



PROCEEDINGS
OF THE
LARGE JAIL NETWORK
MEETING

January 1998

National Institute of Corrections

Jails Division

Large Jail Network Meeting

January 11-13, 1998

Longmont, Colorado

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Large Jail Network Meeting

January 10-12,1998

Longmont, Colorado

These proceedings present highlights of a meeting of NIC's Large Jail Network held in Longmont, Colorado, January 10-12,1998. Approximately 50 administrators of the largest jails and jail systems in the country attended the meeting. Presentations and discussions focused on two issues: "Generation X" employees and an update of the Prison Litigation Reform Act of 1996.

- *Opening Address: The Future of Our Workforce.* Robert Brown, NIC Academy, offered an overview of the characteristics of Generation X employees and cultural megatrends affecting all organizations, including corrections agencies.
- *Pre-Employment Testing and Selection.* In this session, Mary Ellen Sheppard, Commander of Personnel Services for Maricopa County, Arizona, described that county's process for hiring detention officers, which has resulted in decreasing the time required to hire a new officer.
- *Use of Pre-Service or In-Service Training During the First Year of Employment.* The three panel members emphasized very different ideas in their presentations. Calvin Lightfoot, Allegheny County, Pennsylvania, pointed to the importance of agencies' developing mission statements and working with other local agencies. Dolores Messick, El Paso County Texas, described El Paso's Floor Control Officer program. Mark Kellar offered hints for administrators to make first-year training more effective.
- *Key Issues for Large Jail Network Consideration.* Art Wallenstein, King County, Washington, urged LJNI members to participate in the LJNI listserv. Dave Parrish, Hillsborough County, Florida, emphasized the value of the Jail Management Certification Commission in promoting professional standards in corrections. Dick Bryce, Ventura County, California, described a new law designed to identify legal and illegal aliens in the jail system prior to arraignment.
- *Generation X Employees and How they Challenge Our Role as Leaders.* Jon Hess, Kent County, Michigan, pointed to the differences between Baby Boomers and Generation X employees and summarized some management approaches that are effective with Generation X employees.

- *Keys to Developing Good Employees During the First Year.* Scott Boies, San Diego County, described the evolution of the county's Correctional Deputy Sheriff Program. Joseph Nor-wick, Dane County, Wisconsin, focused on how corrections can develop healthy, well-balanced employees.
- *Legal Update: Terminating Court Orders Under the Prison Litigation Reform Act.* William Collins summarized the issues involved in the decision of whether to terminate current orders under the provisions of the PLRA.
- *Legal Update: Designing an Access to the Courts Program in Jails after Lewis v. Casey.* William Collins identified the changes in jails' responsibilities to provide inmates access to the courts and to law libraries following the decision in Lewis v. Casey.
- *Future Meeting Topics.* Richard Geaither led a discussion among meeting participants to identify a topic for the next meeting of the Large Jail Network, to be held July 12-14, 1998. The meeting will focus on employee issues, including post-traumatic stress and employee lawsuits, and, if feasible, on innovations in community-based programming, including restorative justice and alternatives to incarceration.

Opening Address: “The Future of Our Workforce”

Robert H. Brown, Jr., National Institute of Corrections Academy

American business has experienced a series of wake-up calls, including Japanese success with different business models. As a result, we have been challenged to come up with a new paradigm, a new framework that will move us from the Industrial Age to the Information Age.

Generation X

Generation X has certain qualities that we, as older managers, need to come to terms with. Generation X employees are part of a changing era that has grown up with technology. This generation is characterized by the following: a desire for instant gratification; comfort with credit cards; and familiarity with technology, including computers. In a sense, what makes Generation X employees difficult is their feeling that they are in control of their own destinies.

MegaTrends

The major trends in society affecting the management of Generation Xers include:

- A move from a national to a global economy;
- The sense of a smaller world-small countries have the capacity to do great economic harm to the U.S.;
- An emphasis on strategic planning in business;
- A move to entrepreneurship;
- A change to informal networks rather than hierarchies;
- Employees less like to have had military experience
- Leaders who are interpersonally attuned, inspiring, and decision makers.

Changes:

- Exploding demographics, including legal and legal immigration;
- A culturally diverse population;
- Unique patterns of cohabitation;
- A large number of people who are functionally illiterate;
- Baby boomers turning 50;
- An influx of women in the workforce;
- Longer life spans;
- Families with two breadwinners;
- An increase in the cost of living.

What is Important to Generation X Employees

- Challenge
- An entrepreneurial environment
- Continued learning
- An environment that allows independent problem-solving
- Quick feedback
- Empowerment

The Challenge for Corrections

Corrections agencies with significant numbers of Generation X employees need to create different kinds of organizations that are no longer paramilitary structures. In addition, we must attract them to the business of corrections. We must not take them for granted and we must change organizational structures to empower these employees and give them an important role.

For additional information, contact Bob Brown, Chief; Academy, National Institute of Corrections, 1960 Industrial Circle, Suite A; 800/995-6429, x111.

Pre-Employment Testing and Selection: A Look at Indicators of a Successful Employee

Mary Ellen Sheppard, Commander of Personnel Services, Maricopa County, Arizona

The Current Reality:

- More inmates
- Fewer officers
- Less resources

Jail administrators are at a competitive disadvantage in competing for quality officers to meet the demands of today's jails. No kid grows up dreaming of being a detention officer. We need to staff our jail full, but we need to hire quality people. The wrong person in a job creates huge problems. Therefore, our job is find responsible adults. Integrity is the first quality we need to identify. Other qualities also help identify the right person; these include communications skills, academic skills, domestic and social situation, physical skills, financial stability, criminal history, driving record, and decision-making skills.

In Maricopa, the county used to recruit and hire detention officers. The biggest problem was that the process took too long.

Maricopa's Process

1. Targeted Orientation

The department now periodically announces openings. Prospective officers come to a location outside the city, which is easy to get to and has available parking.

Overview of Job

The person who does the Targeted Orientation is effective, passionate about his job. He talks about career opportunities and describes the job very candidly. It is important to have a strong Personnel Office if you want to hire quality officers. Those in Personnel should *not* be people on modified duty or on their way out of the agency.

Overview of Hiring Process

The hiring process itself is also described, including the selection phases and selection criteria, which are based on the Arizona Post and MCSO Standards.

Following a break to allow candidates who feel they and the job are not a good match to leave, application materials are distributed. Applicants complete the questionnaire and staff review it immediately. Then the Background Interview is scheduled and a full Background Questionnaire distributed.

The Keys to Success

1. Top notch staff who exemplify the kind of person you want to hire
2. Personnel unit
3. Location easily accessible
4. Plenty of parking
5. Flexible scheduling-a customer focus
6. Reliability
7. Validity

2. Background Investigations

No onsite personal investigations are done; limitations on staff time, and resources make them impossible. However, Talented background investigators can uncover problems, in part because in an environment of honesty and integrity, disclosure is more likely.

In the Background Investigations, staff review the questionnaire. The interview of the candidate focuses on relevant factors such as social, job, educational, financial, criminal, chemical use, integrity, ability to follow instructions, written and verbal communications skills, and desire for the job. Interviewers avoid medical questions and questions on the extent of drug use, for legal reasons. They limit questions in these areas to those with an impact on the ability to perform essential functions and meet standards.

For candidates that pass this phase, agency personnel conduct complete reference checks and write a written report, followed by a conditional offer of employment to the candidate.

The caseload per background investigator is at least 2 to 1200. It is important to keep hiring decisions at the lowest level possible, to let people do what they do best.

3. Polygraph Examination

In connection with the polygraph, the background questionnaire and report are reviewed. Following the computerized polygraph, staff generate a report that notes all discrepancies and whether the candidate was deceptive or not.

4. Psychological Assessment

Following a review of the background questionnaire and report, staff administer three instruments: 1.) Written Examination, which includes Emotional Stability Assessment,

16 Personality Factors, CAQ, and Rorschach Ink Blot. 2.) The B-PAD (Behavioral Personnel Assessment Device. 3.) Clinical Interview (on Anger Management, Chemical Usage, Psychological History, Problem Solving, Ethical Alertness, Vocational Responsibility, Non-prejudicial Thinking). Results are scored and staff write a report noting the candidate's strengths and weaknesses.

The process was recently statistically validated as identifying those with the potential to be good officers.

5. Medical Screening

A contract provider does the medical screening, which is based only on the candidate's ability to perform essential functions. Some traditional standards, such as eyesight, were eliminated from the exam if they did not correlate directly with a candidate's ability to do the job.

6. Hiring Decision

Following a review of all information, the Supervisor of the Backgrounds Unit makes a hiring decision. Results are viewed collectively, and there is an emphasis on integrity, anger control, and lack of biases and prejudicial thinking.

7. New Hire Orientation

New hires are given a critical policy orientation. It is important to deal with issues such as harassment up front and to make clear that there will be zero tolerance. The orientation also covers benefits, the academy, and a non-contact placement option.

Analysis of Maricopa's Hiring Process

A study of nearly 400 new hires found the following:

- 90% of those hired complete successfully the 7-week training academy;
- The mean GPA of Academy graduates is 90%;
- The Mean Defensive Tactics Score is 90%;
- Of those who complete the academy, 85% successfully complete their initial six month probationary period with satisfactory ratings or above;
- The psychological process is not biased against anyone based on age, race, or gender;
- With this new hiring process in place, the average time from registration of an application to a start date for all Sheriffs Department new hires has decreased from **56.37** days to 31.49 days;
- The attrition rate for the Sheriffs Office as a whole has remained relatively constant. The current turnover rate is about 5%.

Creative Approaches

In order to hire additional officers, the Maricopa County Sheriffs Office has also developed some creative approaches, including:

- A summer academy especially for students or teachers;
- Use of part-time employees;
- Return of former employees on a part-time basis.

For additional information, contact Mary Ellen Sheppard, Personnel Services, Maricopa County Sheriff's Office, 3325 West Durango Street, Phoenix, AZ 85009; 602/256-1814.

Pre-Employment Testing: Large Jail Network Discussion

The discussion following this presentation touched on the following issues:

1. We may not be challenging staff sufficiently. Additional challenges might help with the high attrition rate in some jurisdictions.
2. If you have 20 qualified applicants, how do you decide who to hire? There was concern that Maricopa does no drug testing.
3. Determining the literacy officer of candidates is important.
4. Attracting enough applications and retention are the biggest problems.
5. Employment contracts are a way to get a return on investment; they are a way to get people to stay with the department.
6. Achieving balance in the screening process between too lenient vs. too stringent is difficult. Honesty is a good screening issue.
7. Pay issues are important, because some corrections departments can never catch up with police departments. A solution is to use overtime funds to manage a pool of people.
8. There was some concern about lack of background checks and reliance on candidates' face value statements.
9. In one jurisdiction, road officers get less than corrections officers; in another, they are hired at the same rate.
10. Retention is an important issue. Perhaps three years is enough. Some departments are hiring Generation X and younger people and then losing them quickly. To some extent, corrections agencies are in competition with the fast food industry.
11. Staff hiring and retention require management support from top leaders.
12. We don't do a good job in marketing and recruiting.
13. Excellent information can be obtained through exit interviews.
14. Over-qualified officers can also be a problem.

15. Methods of receiving applications vary among jurisdictions, with some being part of Civil Service, while others are not. It is important to find a successful approach within specific contexts.

Suggestions for Large Jail Network:

1. The Large Jail Network could serve as a resource in identifying why corrections agencies lose people. It may be a local culture, different in each jurisdiction, but there may be similarities. One possibility might be a rigorous study of four or five jurisdictions, examining all departures for 1998 to see what the data show about who is leaving and why, as well as who is staying and why. The National Institute of Justice might fund such a study.

Use of Training and Performance Appraisals During the First Year of Employment

Calvin Lightfoot, Allegheny County, Pennsylvania

The recidivism rate among staff is due to the fact that corrections agencies are failing organizations. If we get the same offenders back in our jails over and over, the employee sees that the system does not work. It is no wonder that corrections officers want to be police officers.

In addition, corrections agencies tend to be at battle with other organizations. There is no resource sharing and no collaboration with other agencies such as public health, education, or community organizations. Turf protection keeps us from fulfilling our mission.

What We Can Do

To become successful organizations and retain good employees, corrections agencies need to:

- Do vision statements and disseminate them to everyone, including employees.

Employees must know there are values at work in the agency. At the heart of the vision should be an emphasis on the importance of public safety and the value of working together.

- Create partnerships with other agencies.

It is also important to deliver the correct message, which is really that we all have to cooperate.

If we want good employees, we must let them know there are values at work in the agency. We cannot recruit and retain in a failed system. In preservice training, we must be able to talk about more than how you run the institution. Generation X employees can see right through our failures.

For additional information, contact Calvin Lightfoot, Warden, Allegheny County Jail, 950 2nd Avenue, Pittsburgh, PA 15219-3100; 412/350-2100.

Use of Training and Performance Appraisals During the First Year of Employment

Dolores Messick, El Paso, Texas

Background

El Paso County found that, despite a five-week training academy, its new officers were not performing well when they began work in the facility. In response to what the Sheriffs Department saw as its failure to train adequately, the department established a Floor Control Officer program.

Floor Control Officer

A new officer is now assigned to a Floor Control Officer (FCO) for six months. The program has successfully resulted in new recruits being fully trained by a capable person. The Floor Control Officer goes through a 40-hour training academy and is selected through a competitive process.

The Floor Control Officer works with new recruits five days a week and does an evaluation of their performance on a monthly basis. Any problem is discussed with the officer. If the new officer's performance is inadequate, there are grounds for dismissal if performance does not improve over the six-month period. After six months, however, it is more difficult to dismiss someone who is performing poorly. On the fifth evaluation, the FTO evaluates if the person would be a good addition to the staff. In addition, the employee does a self-evaluation. They then meet and discuss both perceptions. This is a useful tool.

Advantages of the Program

The FTO tests the new hire constantly, including during down times and under stress. In the past, El Paso County was sued, and the officer said he was trained to do things incorrectly. The FTO program keeps this from happening.

The Floor Officer program has provided the following advantages to El Paso County:

- Increased professionalism;
- No lawsuits
- Enhanced the operation
- Saved money in training and time

For additional information, contact Dolores Messick, Captain, El Paso County Detention Facility, 800 E. Overland, El Paso, TX 79901; 915/546-2217.

Use of Training and Performance Appraisals During the First Year of Employment

Mark Kellar, Harris County, Texas

Background

I am teaching the history of corrections at the University of Houston. In reviewing the past 20-30 years, I can see clear differences over time. Jails in this country used to be disgraceful, but we have made great progress. It is the jail administrator who has made this difference.

Pre Service Training

Texas changed its training requirement to 80 hours of preservice or inservice training within the first year. Harris County has increased its required training to three weeks. However, it is important to remember that all jurisdictions are different. Harris County has a Peace Officer System, but training needs depend on the nature of individual jail systems.

Helpful Hints

1. Get ranking officers to address the training class. This is important from a psychological standpoint, because new employees will behave as they are expected to behave. Messages have much more force if the director spends an hour or two with new recruits.

It is important to be adamant on two or three points, e.g., the fact that harassment or brutalizing inmates will not be tolerated. Corrections agencies used to be racist organizations, but we have made a lot of progress. We cannot let anyone ruin our programs by racist or sexist attitudes.

2. Set up an administrative structure that meets your needs. It is important to involve staff in decisions. In Harris County, we assemble the captains and ask them to identify what we need. As administrators, we often think in limited ways when we make all decisions on our own. It is important to think creatively, not to be bound by the customary or the traditional.
3. Set training people free to do their jobs and to be innovative.

For additional information, contact Mark Kellar, Detention Major, Harris County Sheriff's Department, 1301 Franklin Street, Houston, TX 77002; 713/755-6043.

First Year of Employment: Summary of Roundtable Discussions

- It is important to recognize that jail staffs constitute a community. There is a mix of employees in the jail, and sometimes sworn staff feel superior to others. They need to understand the importance of teamwork.
- It is not always possible to have a structured program.
- Feedback to new officers should be immediate. The individual should also be able to express how he/she sees their performance.
- Some new officers respond well to coaching, while others respond better to another approach.
- A boot camp mentality is not likely to work.
- Objective measures (e.g., number of incidents while on duty) should be used for performance appraisal in order to make clear the standards that will be the basis for evaluation.
- There is a slightly different connotation between “mentor” and “Floor Training Officer.”
- If the sheriff in a jurisdiction is against training, it is hard for a jail administrator to operate it.
- A mission statement is important; it should be genuinely believed in and it should be included in training.
- An appraisal sheet is helpful for a FTO, as there may be a tendency to bond with the new employee during the first two or three weeks.
- FTO programs require commitment but are beneficial. If they are a continuation of the academy, they should be closely tied to training in the academy.
- The traits valued by the organization ought to fit with the mission statement.

Key Issues for Large Jail Network Consideration

I. Listserv for Large Jail Network Art Wallenstein, King County, Washington

The LJN listserv enables participants to post questions and have them answered very quickly. At this point, however, only 31 of 131 members have signed on. It is important to provide your email address to Richard Geaither (rgeaither@bop.gov) or Carol Lemirande (clemarande@bop.gov), so that you can be added to the list. NIC made a commitment to support the listserv. It could be an invaluable resource, but it is not being used.

II. Jail Management Certification Commission Dave Parrish, Hillsborough County, Florida

The Jail Management Certification Commission has completed its first exams. Forty-two people are now Certified Jail Managers. This is an important stamp of professionalism, and you should be sure your staff knows of this opportunity. If you have questions, call the American Jail Association. The exam will be offered at various sites around the country.

On another topic, standards for direct supervision have stated a maximum ratio of 1 officer to 50 inmates, but there has been no real reason for this number. Actual practice has often been 1:64 or 1:72. The new standard to be published will be 1:64. However, we need to determine a real number based on experience and research.

III. Congressional Bill on Immigration and Naturalization Service Dick Bryce, Ventura County, California

A year-long trial program put Immigration and Naturalization Service (INS) agents in the jail to identify aliens, both legal and illegal, who had committed serious crimes. INS had noticed a pattern of repeat crimes committed by aliens and wanted to find a way to get them off the streets to reduce crimes. During the pilot year, INS identified 900 inmates as criminal or illegal aliens and deported them.

The President signed HB1493 in December 1997. The legislation expanded the program to cover 100 counties in the U.S., one-fifth of which are not in border states. Between now and the year 2002, \$84 million will be available to jurisdictions interested in participating. Those interested must have a high number of illegal or documented aliens in the jurisdiction. The purpose of the program is to identify and divert aliens who have committed crimes before arraignment. It is a good program and places no burden on the jail. Those interested may apply to the U.S. Attorney General.

Generation X Employees and How They Challenge Our Role as Leaders

Jon D. Hess, Kent County, Michigan

Profile of Generation X

- Born 1964-1981, they are 17 to 34 years old; by the year 2000, they will overtake the baby boomers, who were born 1946-1964;
- They are 30% of the U.S. population today;
- Experiences that have shaped their perspective include:
 - Grew up as latchkey kids, often in single parent families;
 - Moved around a lot in response to changing situations;
 - Grew up in diverse neighborhoods;
 - Influenced by television, which introduced a number of sexual, political, and racial issues;
 - Had masses of information and multiple channels available.

This background made Generation Xers inclined to look for instant gratification and to expect good pay. The idea of “paying your dues” is foreign to them. Because they saw the system let people down, they have no respect for workaholics. Work does not constitute their lives. The many differences between Baby Boomers and Generation X can help managers understand how their experiences have influenced their attitudes. In short, they want instant feedback, have no job loyalty, and want training to do their jobs.

What Generation X Wants Us to Know

Generation X employees want us to know the following about their attitudes toward work:

- They are currently being mismanaged;
- They are actually cautious and will be loyal if they have a reason;
- They don't like corrections' agencies paramilitary structures;
- They want to be left alone to show they can do the job;
- They want support, not the sense of being checked on;
- They can see through a fake.

What Works

If Generation X employees are not managed well, they can be a force for cynicism and loss of morale in the agency. Some strategies that work in managing Generation Xers:

- Invite their participation in meetings and encourage them to get information;
- Videotape other employees (e.g., nurses, maintenance staff) offering accurate information about their roles;
- Provide training and encourage participation;
- Give them an opportunity to become trainers, resources, to fellow workers;

- Institute a simple suggestion box and require staff to respond to comments in a certain number of days;
- Celebrate successes of staff in various ways, including email messages, hand shakes, certificates of thanks;
- Rotate assignments in the facility frequently to keep staff interested.

What Generation X Employees Want

- Short-term payoffs;
- Participation in goal setting;
- Opportunities to demonstrate resourcefulness;
- A friendly and supportive environment.

Generation X as Managers

Many sergeants in corrections facilities are Generation X managers. They have a different style of management from the past. They are inclined to be more casual, less authoritarian, and to dislike hierarchical structures. We need to come to terms with this, as they are going to become the managers in our facilities.

An interesting book on motivating employees and celebrating their successes is *Teach an Elephant to Dance*. Corrections agencies do not have the resources to celebrate employees' successes in traditional ways such as providing bonuses or taking them to lunch. However, we need to find other ways to reward them.

Generation X: Summary of Roundtable Discussion

1. These kids are not smarter than we are, and they are asking for the same things we did. They are not aliens. They are, in part, a spin-off from our hard work. We should not be afraid of these kids, but should use their energy in our organizations.
2. Generalizing about a whole population has limited value. A whole generation is not the same. We must treat Generation X employees as individuals.
3. You cannot demand respect from these kids; you must earn it.
4. Our line of work demands more from individuals. We are moving into a social work mode with employees and need to talk through all alternatives.
5. We must speak of shared goals. We owe employees something, just as they owe us something.

For additional information, contact Jon Hess, Jail Administrator, Kent County Sheriff's Office, 701 Ball Avenue NE, Grand Rapids, MI 49503; 616/336-3177.

Keys to Developing Good Employees During the First Twelve Months

Scott Boies, San Diego, California

San Diego Sheriff's Department Corrections Deputy Program

History: The Limited Duty Deputy Sheriff Program (1978-88)

Limited Duty Deputies were an adaptation of the Sheriffs Constable position. They got very low pay, spent only five weeks in the training academy, and were not POST-certified. They were issued sidearms, but were designated as limited peace officers. Limited Duty Deputies had custody and court assignments, the same duties as regular deputies.

Incumbents lost a Federal court lawsuit filed for equal pay. At the height of the program, San Diego County had 110 Limited Duty Deputies on the payroll. However, appointments stopped after five years because of recruiting failures. After nine years, only one LD officer remained.

Correctional Deputy Sheriff Program (1986-present)

The County Board of Supervisors thrust the Correctional Deputy (CD) Program upon the Sheriff as a cost-cutting measure in 1985. Top pay for CDs is 21.8% less than the pay in the top step of a Law Enforcement Deputy.

The county started with 200 positions, which have grown to 662, with 709 positions authorized. CDs wear the same uniform as law enforcement deputies except for the word "Corrections" on the badge. The agency initially tried to limit CDs to assignments with no inmate conduct, but that has changed. They are legally defined as "public officers," and have "peace officer" status only while they are guarding inmates.

Program Evolution

The county and sheriff converted many deputy sheriff positions to correctional deputy positions. The increase in CDs caused duties to evolve quickly to encompass full responsibility (i.e., all post positions and inmate contact).

A Corrections Sergeant position was established in 1993 with six officers; there are now 25 in the position. Those in this position attend the Academy for 11 1/2 weeks, 444 hours. Training now includes firearm training and certification.

Bumps in the Road

- Variations in hiring standards--including issues of prior drug use, physical criteria, and use of firearms--created some anomalies:
 - Some CDs who were hired when firearm training was not required have been 'grandfathered' into the program;
 - Corrections Sergeant could supervise CDs and deputies in the jail but could not qualify for hiring as a deputy sheriff until exceptions to the standards related to drug use were granted;
 - Past administrations granted permits for concealed weapons to CDs, and the practice continues.

Union Representation and Peace Officer Status

The labor union, which represents both deputies and CDs, treated CDs as second class members. CDs are now filing to form a separate union, but the current union is hoping to appease them.

The lack of a career ladder and recruitment from deputy sheriff eligibility lists led to unmet expectations for CDs. Attrition increased as qualified CDs sought and obtained peace officer status. Jail staffing eroded as law enforcement deputies retained the position until completion of training. CDs who are seeking law enforcement careers are being provided incentives to enroll in the extended format academy on their own time.

Job Duties

Until the agency realized that some duties exceeded statutory authority, CDs' responsibilities included perimeter patrol, armed and uniformed. Since they were utilized throughout the jail system, CDs raised issues of equal work for equal pay. The Board of Supervisors have awarded CDs public safety retirement benefits and agreed to phase law enforcement deputies out of the jail. However, CDs cannot perform certain duties, such as outside perimeter patrol or jail investigations.

Need for a Master Plan and Partial Solutions

The lack of a definitive plan has led to unrest within the CD rank and file, who are concerned because of their uncertain future. In addition, the increase in the variety of CD assignments, including trainer, recruiter, transportation, facility developer, has had ramifications. For example, CDs assigned to transportation want to be armed with semi-automatic weapons as deputies are. They were recently issued assigned on-duty sidearms at a cost of \$400 per officer, and they are now demanding individually assigned body armor.

Anomalies and Concerns

One current anomaly is that prisoners are received from field law enforcement officers who are peace officers, guarded in the San Diego jail system by public officers, then turned over to corrections (peace) officers at the state prison.

Additionally, Deputy Sheriffs have concerns that they are being phased out of the jail and being replaced by Corrections Deputies. They feel their career opportunities are dwindling--in terms both of assignments and promotions--as positions are converted to CD positions. Some animosity has developed, along with a sense of a caste system.

What Level of Training?

The department is questioning whether it can continue to use the abbreviated academy format for CDs or whether additional training is needed. State-certified weapons training is now included in the 12-week course.

Convert CDs to Deputy Sheriffs?

The alternative of converting all CD positions to Deputy Sheriff positions would increase annual salary costs by \$7 million, not including training and replacement costs. There is also the question of whether San Diego might lose these employees to other agencies after paying for their training. One question is whether there might be a part-time peace officer classification that the legislature would pass or if it would be better to match existing "safety member" retirement package.

Program Future

A summit meeting on the program will take place within the next year. Input from all stakeholders will be discussed and considered to develop a master plan. These perspectives include the CD, legal and legislative issues, recruitment, background investigations, academy, and internal affairs.

For additional information, contact Scott Boies, Captain, San Diego County Sheriff's Department, 9621 Ridgehaven Ct., Box 429000, San Diego, CA 92142; 619/974-2278.

Keys to Developing Good Employees During the First Twelve Months

Joseph Norwick, Dane County, Wisconsin

Developing Healthy, Well-Balanced Employees

Your Most Memorable Impression of the First Year in Corrections

Twice in my first year, I was called into my sergeant's office and reprimanded. I learned two things in the first year: first, that it was important to cover your back and the place was full of boneheads, and, second, that my pay check was the most important part of the job. After all, this was just a job, was my conclusion.

Creating a Profession

It is an insult to say, "This is just a job." That is the image that professional organizations such as the National Institute of Corrections, American Jail Association, and American Corrections Association are trying to correct. Professional organizational standards are reflected in accreditation, and in policies, procedures, and inspections. The question is: How can our agencies and departments foster the ideal of professionalism?

What Do New Employees See in the First 12 Months?

During the first 12 months, a new employee is asking: Why am I here? What is my value to the organization? They need to learn the organization's vision, mission, and goals. It is important to give new employees a sense of the history of the organization, to show them the big picture.

Selection Process

The selection process should be designed to select for success in the organization. Those selected are special, and we should invest in these special people. The selection process is arduous, with full background screening, psychological testing, and so forth. It is important to convince them that this is more than just a job. Basic training and certification have to build self-esteem; they are a first step, but you must go beyond them. Technology is no replacement for a competent professional staff, common sense, and quality decisions.

Training

Training must be continued beyond basic certification. We need to use the two-year probation period well, both to watch for bad performance and reward good performance. New employees should be evaluated regularly, in part by getting input from others,

including staff and volunteers. Supervisors and evaluations have a role in continued training.

The organization should weed out bad employees, rather than live with them. Don't let turnover and vacancies override the fact that some people are not cut out for the job. If you put up with bad employees, you contribute to the problem.

Organizational Response to the Personal Side of Life

Generation X employees are looking for something more than a job. One question is how we respond to the personal lives of employees, including their problems. It is also important to have a system of rewards for good behavior and performance. Such rewards can include attitude awards, commendations, and catching all levels of employees in doing things right. Even the simple things-like picnics, retirement parties, food days-matter. Such events reinforce the idea that "this is more than just a job."

Bottom Line: Is This a Good Place to Work?

The organization's goal should be to have career employees. A variety of facility assignments and training can assist in career path development. Employees should have options to do move to different areas and do different things.

As jail administrators, we don't own the jail; it belongs to the community. With few exceptions off inmates will shortly be back in the community, which means that the community has a stake in the jail. In Dane County we invite the community into the jail; we also work cooperatively with other local social service agencies.

To stop recidivism of offenders, we challenge corrections officers to come up with new programs. Some new programs include tax assistance, an AIDS program, and a grant to bring in private services such as mental health and a job program. We must tap into the creativity in our organizations.

Creating a professional, competent staff also allows me to attend groups such as the Large Jail Network and share information to enable me to become better at administration. By being professional and competent on a daily basis, employees are helping to achieve the vision and mission of the agency.

This is more than just a job. This is a career.

For more information, contact Joseph M. Norwick, Captain, Dane County Sheriff's Office, Public Safety Building, 115 W. Doty St., Madison, WI 53703; 608/259-5929.

Legal Update: Terminating Court Orders Under the Prison Litigation Reform Act

William Collins, Attorney at Law, Olympia, Washington

PLRA Goal

A major goal of the PLRA was to reduce the level of federal court oversight of state and local correctional facilities. It limited the courts' power to order relief, limited the powers of special masters, invited termination of old court orders, and created disincentives for inmate suits.

Terminate Court Orders

Under the PLRA, existing court orders may be terminated:

- Consent decrees may be terminated immediately. The *Benjamin* decision said that although the decree is terminated, there is an implicit contract embodied by the decree, which remains enforceable *in state court*.
- There is concern today with the upcoming "open season" on non-sent decrees, which begins two years after date of passage of the PLRA (April 26, 1998). This provisions would also include consent decrees, although it would not be concerned with the presence or absence of "magic words."

PLRA: Termination

For every court order in effect prior to passage of the PLRA (April, 1996), upon motion, the court must terminate the order, unless it finds current constitutional violations.

- A decree cannot be extended because the courts thinks problems might recur. It can't be extended if compliance with extra-constitutional provisions of the decree is not at issue.
- The idea is that, unless conditions currently violate federal law, the federal court has no business in continuing an Order.

If violations are found, the court must re-examine the form of relief. All prospective relief injunctions must:

- Be narrowly drawn-All injunctions must be narrowly drawn to correct specific violations of federal law;
- Extend no further than necessary to correct violations of a federal right;

- Be the least intrusive means necessary; and
- Give “substantial weight” to its effect on public safety and the operation of the criminal justice system.

Old orders that do not meet these requirements are subject to immediate termination.

Should You Terminate?

The decision of whether to terminate court orders depends on:

- The intensity of the court’s supervision of your system;
- Whether there are still legitimate claims that need to be addressed;
- Whether you are willing to invest the time and money required;
- A determination of the degree to which current operations are impacted by the decree.

You need to decide if the decree helps you enforce professional standards or if it is a hindrance to operations. Is it a boon (such as a population cap) or a boondoggle (such as restrictions that were applied to an old jail being carried over to a new jail)? Of course, you may not have the luxury to keep the “boon” order because of intervener powers. Other powers, such as prosecutor, policy, county councilpersons with their own agendas can ask for termination.

Termination: Three Issues

- Is the “right” still a right? Especially for older decrees, has the law changed? If the law has changed, then a former violation might no longer be a violation even if facts haven’t changed.
- Facts: Do violations still exist? Do the facts still violate the law? Answering these questions requires an *objective* assessment of the facts and an investment in proving your case. Although, in theory, PLRA puts the burden of proof on the plaintiff to prove a continuing violation, in practice, you should plan to prove that violations no longer exist.
 - Before bringing a motion, do your own careful analysis. Bring in experts for review. An expert will also be needed at hearings. An early expert review may show areas of needed improvement that are correctable before the motion.
 - Remember that a selective termination is presumably possible; that is, you could move to terminate only portions of the Order.

- Scope of relief If a problem still exists at the constitutional level, but it isn't as great as it was, or if portions of the Decree have been terminated, the original Order may be too extensive.
 - An examination of this question will combine a legal review, a factual analysis of the current situation, and, probably, a review of your history of compliance and difficulties with the court. If you have had a running war with a district court for 10 years on compliance, don't look for an easy out or reduction in the scope of the Order. You may have to work through the District Court to the Court of Appeals.

Strategizing Out Loud

- Do your homework before you file the motion. Know your strengths and weaknesses and move ahead accordingly.
- It may be possible to negotiate a revised Order. The plaintiff may be willing to agree to drop some parts of the case.

The PLRA makes a traditional consent decree hard to enter, but a “private settlement agreement” may be possible. This would be an agreement between parties, not enforceable in federal court, and enforceable in state court only if the parties agree.

- The question of who to serve when a motion is filed is a potential problem in an old case. (In *Taylor v. State of Arizona*, 1997, the state served the former counsel in a motion to amend, but the counsel no longer represented plaintiffs. The court set aside the earlier revised order because of improper notice.
- The 30-day stay provision is probably unconstitutional. It may not be a battle you want to fight, but the general idea is that the court shouldn't sit on the motion, so put pressure on for an early hearing.
- Should we let the dust settle? There are still various unanswered questions about PLRA's termination aspects, which the courts are addressing. A very early motion to terminate may get drawn into these legal battles. If the Decree is not a major problem, it may be better to wait for a year or so until the rules of the game are somewhat clearer.

Summary

Long-running federal court orders can distort the ideal scheme of government, which assumes, in the case of the jail, that the jail will be operated under the authority of local government officials. Federal oversight is the exception. PLRA wants to emphasize “exception.”

- PLRA gives the opportunity to terminate federal court oversight. Defendants are in the position to take the offensive by analyzing their situation, getting their house in

the best possible order, and taking the initiative.

- Success in these efforts, as with other types of litigation, will depend on the degree of preparation.

For additional information, contact William Collins, Attorney at Law, P. O. Box 2316, Olympia, WA 98507; (360) 754-9205.

Legal Update: Designing an Access to the Courts Program in Jails after *Lewis v. Casey*

William Collins, Attorney at Law, Olympia, Washington

Access to the Courts: The Old Way

Following *Bounds v. Smith* in 1977, it was the duty of a corrections agency to provide access to the courts including a law library and persons trained in the law. The inadequacy of a law library was grounds for filing suit against a corrections agency. In response, a jail or prison could add books or space, or allot more time for inmates to spend in the library. Most jails could not provide adequate libraries. They often used access from nearby libraries, but the courts usually found such approaches inadequate. Under this old system, jails went to a great deal of effort, but with little benefit except compliance with the *Bounds* decision.

***Lewis*: A New Day Dawning**

The decision in *Lewis* reaffirms the principle that corrections has a “helping duty” with respect to access, but it modifies the impact. The focus is on the right of an inmate to access to courts not to a library. The decision addresses only civil rights and criminal matters. For a jail, potential problem areas at the margin and include an inmate who no longer has representation or who is representing himself. The *Lewis* decision encourages institutions to experiment with different ways of providing assistance, perhaps by providing minimal access to a library along with access to forms.

The greatest change following *Lewis* is that an inmate must show that he has actually been injured in some way as a result of lack of assistance. Many inmate claims related to court access are being dismissed on the grounds that they do not show injury.

***Lewis* and Prejudice**

Possible forms of injury to an inmate include dismissal of the case or inability to file a case. Courts will no longer engage in abstract reviews of library quality. An issue important to jails is “length of stay.” Delay of weeks or perhaps months may not be sufficient to show injury. If you are trying to restructure your law library, you might be able to give priority of access to inmates with longer time to serve in the facility.

(Re)Creating an Access to the Courts System

1. Establish a grievance system. This will slow down inmates in civil rights cases.
2. Tell inmates what resources you have and how to get them. Provide a list of materials and a list of lawyers and organizations willing to help. This enables you to

show the court what you have done. Providing simply an access to forms is inadequate protection.

3. Develop a mini-library including packets of materials that help inmates understand the law and how to file suit.
4. Consider using a lawyer. It is possible to draw up a contract that defines limits, such as the specific groups a lawyer could assist (e.g., those who are illiterate, those serving a long time in jail). This is potentially simpler than using a system involving books because there are no delivery or access issues. Lawyers are under an ethical obligation not to bring frivolous lawsuits.

Federal Materials in a Law Library

- Court pleading forms-the district court will send forms;
- Court rules-contained in two or three paperback books;
- How to file Habeas 1983s actions-“how,to do it” books;
- How to do legal research;
- Texts on habeas, inmate rights;
- Publications to stay current (e.g., Criminal Law Reporter, Detention and Corrections Case Law)
- Information on getting help
- Perhaps Federal Reporters, USC, federal digests, encyclopedias

In general, inmates are better off with digests of opinions than full texts of decisions.

State Materials in a Law Library

- Check with counsel. If inmates have counsel, you need the following materials:
 - How to do post-conviction challenges-state habeas court petitions;
 - Court forms, rules
 - State statutes, annotations-a full set
 - Sentencing manuals
 - Selected digests

Backup Library

A backup library is not required but is not a bad idea. There should be some ability for an inmate to get delivery of research. Delivery of materials to an inmate in segregation might also be appropriate. Establishing a charge or co-pay for copies is possible. It is important to document what you provide.

Library Access

Remember that you control access. Inmates have a right to access to courts, not to libraries. For inmates in segregation, it is perhaps possible not to provide access for a

limited period; for others, you might want to provide delivery of materials. Do not forget female inmates in your facilities.

Problems at the Margins

You need to consider how to deal with problems at the margins. These include the access of segregated inmates and what to do with inmates who cannot read. The options include doing nothing and waiting to be sued; providing inmate law clerks, which is not wise because inmate turnover is too great; or providing limited referrals to lawyers. It is important to assess the magnitude of problems and your resulting exposure to potential suits.

Process for Catching the Problems

The wider the margins, the greater the possibility for problems. You need a system for flagging potentially sensitive legal issues. One approach is to establish a grievance system to alert key staff to problems. It is important to tell inmates what the grievance system is.

Closing

The *Lewis* decision invites experimentation, including the possibility of reducing the library and establishing more administrative alternatives. It is important to devise a systematic approach to problem identification so that when an issue on the margin emerges, you have a response.

For additional information, contact William Collins, Attorney at Law, P.O. Box 2316, Olympia, WA 98507; (360) 754-9205.

Future Meeting Topics

Richard Geaither led a discussion among meeting participants to identify topics for the next meeting of the Large Jail Network. Topics suggested were the following:

- Employee lawsuits
- Post-traumatic stress
- Medical issues
- Restorative justice
- Alternatives to incarceration
- Marketing the jail
- Special needs inmates
- An update on funding sources
- Innovations in community-based programming
- Tuberculosis and OSHA regulations
- Funding source alternatives to inmate welfare funds

A vote among meeting participants determined that the next meeting will focus on two topics:

1. Employee issues-including post-traumatic stress and employee lawsuits
2. Innovations in community-based programming (if feasible)

The next meeting of the Large Jail Network will be in Longmont, Colorado, on July 12-14, 1998.

APPENDIX A

Meeting Agenda

LARGE JAIL NETWORK MEETING

Longmont, Colorado

January 11-13, 1998

Raintree Plaza Conference Center

Agenda

SUNDAY, January 11, 1998 6:00 PM - 8:00 PM

Informal Dinner

Welcome to the
NATIONAL INSTITUTE OF CORRECTIONS

Introductions and Program Overview Richard Geather
Correctional Program Specialist, NIC Jails Division

Opening Address:

Presentation

The Future of Our Workforce: Pre-employment Testing, Recruiting, Hiring, Training and Evaluating 'New -Age' Employees".. and *"Training and Performance Appraisal Issues During the First Twelve Months of Employment*

Robert Brown, Program Specialist
NIC Academy Division

2:00 PM ROUND TABLE DISCUSSION

2:45 PM BREAK

3:00 PM *What are the keys (excluding the performance appraisal process) to developing healthy well balanced employees during the crucial first 12 months of service.*

- Scott Boies - San Diego, CA
- Rob Sprecher - Shelby Co., TN
- Joseph Norwick - Dane Co., WI

4:00 PM ROUND TABLE DISCUSSION

5:00 PM ADJOURN

5:30 PM DINNER

Please note: Evening Session

7:00 PM *Legal Issues Update - Update of PLRA (Prison Litigation Reform Act) and other issues*

- William Collins
- Attorney at Law, Olympia, WA



8:00 AM

Legal Issues Update (cont)

..... William Collins, Attorney at Law
Olympia, WA

10:00 AM

Presentation of Future Meeting Issues and meeting evaluations

11:00 AM

RECAP AND CLOSEOUT Richard Geather



APPENDIX B

Meeting Participants

LARGE JAIL NETWORK MEETING

January 11-13, 1998

Longmont, Colorado

FINAL PARTICIPANT LIST

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APPENDIX C

Materials from Presenters

Success in Selection
DETENTION OFFICER HIRING



Success in Selection
DETENTION OFFICER HIRING PROCEDURES

More Inmates
Fewer Officers
Less Resources

These truths could be expressed in more eloquent ways, but no matter how they are said the reality is the same. Jail administrators are competing for quality officers to meet the demands of today's jails at an obvious competitive disadvantage. The problem is further exacerbated because hiring officers is not enough-numbers aren't the only concern. To avoid litigation, reduce liability, and manage risk, there must be an emphasis on quality. But, how do you find quality officers? How do you avoid hiring the problem employee while meeting the demand for staff? Bottom line, how do you hire responsible adults in a responsible way?

GOAL: TO HIRE ***RESPONSIBLE ADULTS*** IN A ***RESPONSIBLE*** WAY.

PROCESS:

I. TARGETED ORIENTATION:

Overview of Job:

Given by Detention Supervisor
Consistent Information Provided
Real Life/Real Issues
Focus on Career/Challenge/Opportunity

Overview of Hiring Process:

Selection Phases: Background, Polygraph, Psychological, Medical
Selection criteria
AZ POST & MCSO Standards

(Break) Allows those who feel either the job isn't right for them or they aren't right for the job to exit.

Distribute Application Materials

Distribute and Explain Background Questionnaire

Sixteen pages reflect the 'whole' candidate

Emphasis on INTEGRITY and FOLLOWING INSTRUCTIONS

(Applicants complete questionnaire and staff review)

Schedule Background Interview
Distribute full Background Questionnaire

“If it is predictable, it is preventable!”

(Gordon Graham)

KEYS TO SUCCESS:

1. Top notch staff
2. Accessible location
3. Candidates treated as ‘customers’
4. Candid discussion of job with staff
5. Expedited process
6. Immediate feedback to candidates
7. Cooperation with County HR

DISCUSSION PTS.

1. No standardized test
2. No physical agility test

II. BACKGROUND INVESTIGATION:

Review Questionnaire

Interview Candidate (Relevant Factors: Social, Job, Educational, Financial, Criminal, Chemical Use, Integrity, Ability to Follow Instructions, Written, Verbal Communication Skills, Job Desire)

(Avoid medical questions and extent of drug use (ADA). Limit questions in these areas to ability to perform essential functions and meet standards)

Complete Reference Checks
Complete Written Report

(Conditional Offer of Employment)

KEYS TO SUCCESS:

1. Top notch staff (exemplify the kind of person you want hired)
2. Personnel Unit
3. Location easily accessible
4. Plenty of parking
5. Flexible scheduling-customer focus
6. Reliability
7. Validity

DISCUSSION PTS.

1. No onsite investigation with references

III. POLYGRAPH EXAMINATION:

Review Background Questionnaire & Report
Conduct Interview
Complete Polygraph (Computerized Polygraph System)
Report generated-Deceptive or not; discrepancies noted

KEYS TO SUCCESS:

1. Staff experience
2. Communication
3. Get at issues in multiple ways

DISCUSSION PTS.

1. Drug Screen Option

IV. PSYCHOLOGICAL ASSESSMENT:

Review Background Questionnaire & Report
Written Examination (Emotional Stability Assessment 16 Personality Factors, CAQ, Rorschach Ink Blot)
B-PAD (Behavioral Personnel Assessment Device)
Clinical Interview (Anger Management, Chemical Usage, Psychological History, Problem Solving, Ethical Alertness, Vocational Responsibility, Non-prejudicial Thinking)
Scored results-rated 1 - 5; lower score better.
Report generated: Strengths, Weaknesses

KEYS TO SUCCESS:

1. Validity
2. Reliability
3. Communication
4. Statistical Analysis

DISCUSSION PTS.

1. Conflict between high interpersonal skills and authoritarian approach
2. Highest scores-better???

V. MEDICAL SCREENING :

Contract Provider
Based Upon Essential Functions Only
Report generated-Ability to perform job; preexisting conditions

KEYS TO SUCCESS:

1. Detailed, quality essential functions
2. No Subjective Standards
3. Communication

DISCUSSION PTS.

1. No physical agility

VI. HIRING DECISION

All Information Reviewed

Individual Components of Process-NOT Pass/Fail-Viewed Collectively

Emphasis on Integrity, Anger Control, Biases & Prejudicial Thinking

Made by the Supervisor of the Backgrounds Unit unless exception to hiring standards being considered.

KEYS TO SUCCESS:

1. Decision made by lowest possible level appropriate
2. Consistency
3. Attention given to behaviors which create problems
later: Use of Force, Harassment

DISCUSSION PTS.

1. Standards v. Vacancies

VII. NEW-HIRE ORIENTATION

Critical Policy Orientation

Benefits

Academy

Non-contact Placement Option

KEYS TO SUCCESS:

1. Ensure expectations for professionalism
are known before first day as an employee
2. Allows placement in-between scheduled
academies

DISCUSSION PTS.

GENERAL HIRING STANDARDS

Drug Use:	AZ Post Standards
Criminal History:	No felonies No misdemeanors in past three years
Employment:	No termination in past six months No pattern of disciplinary problems
Traffic:	No license suspension/DUI in past three years No pattern of violations
Psychological:	Score 3 or higher
Polygraph:	No deception indicated
Medical:	Able to perform essential functions with/without reasonable accommodations.

Look for consistent responses. Focus on whole person. If standard not achieved, look at circumstances. Override possible.

Analysis of Hiring Process*

- 90 percent of the people hired successfully complete the seven week training academy.
- Mean GPA of Academy Graduates is 90%
- Mean Defensive Tactics Score is 90%
- Of those who complete the academy, 85% successfully complete their initial six month probationary period with satisfactory ratings or above.
- The psychological process is not biased against anyone based upon age, race or gender-no adverse impact
- With this process in place, the average time from the application being registered to a start date (for all Sheriff new hires) has **decreased from 56.37 to 31.49 days.**
- The attrition rate for the Sheriffs Office, as a whole, has remained relatively constant.

General Observations

- 1. The hiring process overall does a statistically valid job of selecting the right candidates for the position of detention officer in a timely manner.**
2. Attributes valued in the selection process, e.g., good interpersonal communication skills and non-aggressiveness, may though be considered less valuable by supervisors.
3. More often than not, when the process fails, a 'red flag' was there (If it is predictable, it is preventable)
4. The elimination of a pre-employment test increased the number of overall candidates, but resulted in a slight increase in academic failures in the Detention Academy.
5. The introduction of the Orientation resulted in a lower resignation rate for new-hires who decided, after being hired, 'the job isn't what they expected.'
6. The lack of physical agility testing (pre-hire and on-going) has raised a concern
- 7. The process works...responsible adults are being hired...but, more applicants are required. We need to look at:**

NON-TRADITIONAL EMPLOYMENT OPPORTUNITES
PART TIME EMPLOYEES(Academy in summer:
students/teachers for part-time work during school year, full time
summers)
TEMPORARY EMPLOYEES
RECRUITMENT EFFORTS
BETTER MARKETING! ! !

8. On-going evaluation is essential.

* Based upon a study completed by Jeffrey T. Stone, MCSO Psychological Services
MCSO Personnel Statistics

SUMMARY

HIRE RESPONSIBLE ADULTS IN A *RESPONSIBLE* WAY

through a

COMPREHENSIVE SELECTION PROCESS

which is

VALID

&

RELIABLE

The Right Person

All The Time

*Detailed Essential Functions
Targeted Orientations
Comprehensive Screening
Relevant Selection Criteria*

*Dedicated Personnel Unit
Best Staff Assigned
Best Environment Provided
Resources Made Available
Consistent*

&

TIMELY

PUT INTO THE PROCESS WHAT YOU WANT
OUT OF IT

ROLE OF COMMAND:

SET UP THE PROCESS
SUPPORT THE PROCESS
SUPPORT THE STAFF
DON'T MEDDLE

ACKNOWLEDGEMENTS:

Lt. Paul Russo, MCSO Backgrounds Supervisor
Jeff Stone, MCSO Legal Liaison
Dr. Robin Ford, Director Psychological Services
Scott Hermann, Psychological Assistant
Grace Fribbs, MCSO Employee Liaison
Tiffani Shaw, Return to Work Coordinator

(602) 256-1814

- 15.a. ESSENTIAL JOB TASKS are those primary responsibilities that the individual who holds the position must be able to perform unaided or with the assistance of an accommodation. Essential job tasks are those fundamental to successful performance of the position. Marginal job functions which may be performed by some incumbents on some occasions, but are incidental to the primary responsibilities of the position, are not considered essential job tasks.

The following should be carefully completed by someone familiar with the position to be filled (i.e. immediate supervisor, incumbent, ect.) Refer to the class specification, position description, or incumbent's performance evaluation as necessary. If you need clarification or assistance, contact you departments ADA Coordinator or your recruiting analyst.

- 15.b. IDENTIFY THE ESSENTIAL JOB TASKS of the position, indicating the percentage of time performing. Circle the appropriate responses for each task:

Task Letter Code	Essential Job Tasks: DETENTION OFFICER "DO" (action verb) + "WHAT" (immediate object)	% of time performing	Frequency:	Does the position exist to perform this task?	Is there insufficient staff available to assist in performing this task?	Does this task require a high degree of specialized skill?
A	Conduct security walks & head counts. This includes standing, stair climbing & walking for long periods of time. This requires the ability to distinguish color and perceive shapes to identify inmates, officers & citizens.	100%	constantly <u>frequently</u> occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO
B	Perform facility & inmate cell searches. This includes stooping, kneeling, crouching, laying down & crawling under bunks, lifting & climbing to reach all areas of the cell & facility including climbing ladders/stairs to reach overhead sky lights, attic crawl spaces, rooftops, etc.	20%	constantly <u>frequently</u> occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO
C	Perform searches of inmates & visitors which includes touching & feeling clothing to detect weapons & contraband. Also includes the ability to squat, stoop, stretch, bend to floor level to search pant legs, socks & shoes.	50%	<u>constantly</u> frequently occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO
D	Perform frisk & strip searches of inmates which includes visually observing unclothed inmates to detect weapons & contraband.	40%	<u>constantly</u> frequently occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO
E	Conduct continual visual surveillance of inmates and various areas of detention facilities. This requires twisting and bending to view various monitors.	100%	<u>constantly</u> frequently occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO
F	Provide inmate services; recreation, serving meals, visitation, clothing exchanges. This includes lifting food trays, beverage containers, canteen bags and bundles of laundry weighing 1 to 80 lbs. Requires bending, stooping and kneeling. While on recreation may spend several hours exposed to the elements outside.	50%	constantly <u>frequently</u> occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO
G	Quickly select & correctly operate appropriate button switches & knobs used to control doors, sliders & communication systems while maintaining emotional control under extreme stress. Be able to distinguish between audio alarms for radio duress activations, P.A. systems, phone ringing, perimeter alarm activations, etc. This could be going on at the same time.	25%	constantly <u>frequently</u> occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO
H	Pursue fleeing inmates on foot. This includes the ability to run, climb or jump, bend, stoop and crawl over a prolonged distance.	100%	<u>constantly</u> frequently occasionally	<u>YES</u> NO	<u>YES</u> NO	<u>YES</u> NO

(Attach additional copies as needed to show all essential job tasks)

Task Letter Code	ESSENTIAL JOB TASKS: "DO" (action verb) + "WHAT" (immediate object)	% of time performing	Frequency:	Does the position exist to perform this task?	Is there insufficient staff available to assist in performing this task? -	Does this task require a high degree of specialized skills?
I	Monitor and control all activities regarding inmate movement. This includes escorting/walking inmates to various locations within the jail facility. During the hours of darkness be able to observe the movement of large & small groups of inmates as these groups move from one location to another in fair to poorly lit areas. May include 9 separate housing units spread out over an area of 450,000 square feet. Movement between housing units may be outside.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
J	Use body force to gain entrance through barriers to seize or rescue inmates. This could involve extreme body force.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
K	Subdue resisting inmates using hands & feet while employing defensive tactics or approved non-lethal weapons. Restraining resistive inmates forcibly may include kneeling, bending or stooping as well as lifting the inmate after he/she is restrained.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
L	Respond quickly to emergency situations which may include physically restraining combative inmates, lifting & carrying inmates during a medical crisis or putting on an air pack for a fire emergency. This includes entering smoke-filled areas appropriately by stooping or crawling, selecting and opening fire extinguishers/hoses & physically removing inmates from danger which may include dragging unconscious victims. (Average 180 lbs.) This also includes escorting inmates up & down stairs to evacuate areas while wearing emergency equipment.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
M	Perform basic first aid procedures & cardiopulmonary resuscitation as needed. This includes kneeling and bending.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
N	Gather information for investigations by interviewing & obtaining the statements of the victims, witnesses, suspects & confidential informants. Handwriting capabilities are necessary.	25%	constantly frequently occasionally	YES NO	YES NO	YES NO
O	Prepare log book entries and write reports using appropriate grammar, symbols and legible handwriting. This includes the ability to perform simple mathematical functions.	25%	constantly frequently occasionally	YES NO	YES NO	YES NO
P	Inventory & inspect security equipment through testing which includes pressing buttons, turning switches and lifting/turning equipment.	3%	constantly frequently occasionally	YES NO	YES NO	YES NO
Q	Operate telephones, electronic equipment, fingerprint equipment, cameras, & fax machines. This includes the ability to turn electronic knobs & typing for computer/data entry.	35%	constantly frequently occasionally	YES NO	YES NO	YES NO
R	Communicate effectively over radio channels while initiating & responding to radio communications, often under adverse conditions.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO

Task Letter Code	ESSENTIAL JOB TASKS: "DO" (action verb) + "WHAT" (immediate object)	% of time performing	Frequency:	Does the position exist to perform this task?	Is there insufficient staff available to assist in performing this task?	Does this task require a high degree of specialized skills?
S	Communicate verbally & effectively by listening & providing information, direction & commands to inmates and/or the general public. This may include managing interpersonal conflict between inmates to maintain order. This communication may take place in areas where there is an additional level of noises, etc.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
T	Exercise independent judgment within legal guidelines. This includes the ability to read & comprehend rules, regulations, policies & procedures for purposes of insuring appropriate officer behavior/response involving the general public.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
U	Subdue resisting inmates using approved non lethal weapons, ie. Pepper spray (Chemical discharge containing-Oleo resin capsicum), stun device (short duration exposure containing 50,000 volts and .004 amps.)	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
V	Be capable of manually unlocking and opening 8 x 12 metal gates to allow vehicles to enter the jail grounds.	10%	constantly frequently occasionally	YES NO	YES NO	YES NO
W	Ability to work any shift due to detention facilities operating 24 hours a day, 7 days a week.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
X	Perform perimeter checks in a vehicle.	20%	constantly frequently occasionally	YES NO	YES NO	YES NO
Y	Provide courtroom security, as well as, documenting judicial information, ie. bond information, sentence and release information.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
Z	Inventory of inmates belongings: clothing, personal property for transport to other facilities. This includes standing for long periods of time, lifting, climbing a ladder while carrying semi-heavy bags of clothing. Requires the ability to distinguish color and shapes to identify clothing for inventory purposes.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
AA	Ensure legal documentation pertinent to an arrest/release is complete and processed to the appropriate areas; court, court desk, facility. Requires good proofreading skills, standing for long periods of time and positive communication with outside agencies to include police and probation departments.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO
BB	Cash accounting of inmates funds to open an account or close an account. Requires sitting for extended periods of time.	100%	constantly frequently occasionally	YES NO	YES NO	YES NO

15c. WORK ENVIRONMENT (check the appropriate box for each environment)

Environment	Not Applicable	Rarely	Frequently	Constantly
indoors			X	
outdoors			X	
above 90 degrees			X	
below 40 degrees		X		
air conditioned			X	
chemicals/fumes			X	
smoke/dust			X	
wet/damp area			X	
confined area				X
stairs or ladders			X	
unprotected heights			X	
high noise level				X
dim lighting			X	
bright lighting			X	
other				

15e. PHYSICAL ENVIRONMENT (complete the following for each task)

TASK	Not Applicable	indicate the task letter(s) of the corresponding Essential Job Task(s) from section 15.b on the preceding page.
sitting		G, O, BB
standing		A, B, C, D, E, F, G, I, N, Q, Z, AA
walking		A, B, C, E, F, H, N
driving a vehicle		X
speaking		A, B, C, D, F, G, L, N, Q, R, S, AA
hearing		A, B, C, F, G, L, N, Q, R, S, Y, AA
seeing		A, B, C, D, E, F, G, I, L, N, O, P, Y, Z, AA
reading		A, F, N, P, T, Y, AA
distinguishing colors		A, E, F, I, L
bending/kneeling		B, C, D, E, F, K, L, M
reaching		A, B, C, D, F, K, L, M, Z
twisting		A, B, C, E, F, G, K, L, M
climbing		A, B, E, I, L, Z
crawling		B, L, M
crouching		B, C, D, F, K, L
balancing		B, F, Z
wearing protective gear		B, C, D, L, M
precise dexterity		G, H, K, M, P, Q, S, T, Y
other: Physical Restraining/Running		H, I, J, K, L, U B, H, L, U

15d. SOCIAL ENVIRONMENT (check the appropriate box for each factor)

Factor	Not Applicable	Rarely	Frequently	Constantly
emergencies			X	
traumatic subject matter (crime, accidents, etc.)				X
dangerous environment				X
interruptions				X
time pressures			X	
high volume of work				X
handling multiple or complicated tasks				X
unscheduled tasks			X	
frequently changing tasks			X	
accuracy				X
decision making			X	
concentration/vigilance				X
teamwork				X
isolation				X
work in close physical proximity of others				X
public contact			X	
overtime/rotating shifts				X
other: reassignment to different locations			X	

15f. IF LIFTING, carrying, pushing, or pulling is involved (complete the following, indicating appropriate distance and weight)

TASK	Weight	indicate the task letter(s) of the corresponding Essential Job Task(s) from section 15b. On the preceding page:
lifting floor to waist	* lbs	B, F, L
lifting waist to shoulder	* lbs	B, F, L
lifting shoulder to overhead	* lbs	B, L
carrying a distance of (undetermined) ft.	20 - 300 lbs	B, F, L
Pushing or pulling a distance of (undetermined) ft.	20 - 300 lbs	B, F, L, Z
Other:		

*Various Weight. I.e. property, food trays, air packs to individuals. (. 300 lbs)

The environments described are only representative of how the essential job tasks are currently performed or envisioned. As such, in order to accommodate disability or limitation, the essential job tasks may be performed in ways other than described on this page.

15.g. COMPLETED BY: Capt. Moose, Waelde, Karowski, & Lt. Gad.

Title: Detention Bureau

Phone 256-1000



Generation X

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THIRTEENTH EDITION

January 1997

There is More Than Money at the Bottom Line

By Bruce Tulgan

When I speak to business leaders and managers all over North America, the question I am asked most often is this: "Are Xers really motivated by anything other than money?" The answer is an emphatic "YES." Of course, Xers want to be fairly remunerated for the work we do. Who doesn't? What is more, if the job ever becomes "just a job," then money will be the most important incentive in a manager's repertoire. But, Xers want much more than money out of work. Work is critical to Xers' self definition and sense of well-being because it is our greatest opportunity to build a new kind of success and security from within ourselves. That means that managers have it within their power to provide non-financial incentives which are profoundly important to Xers.



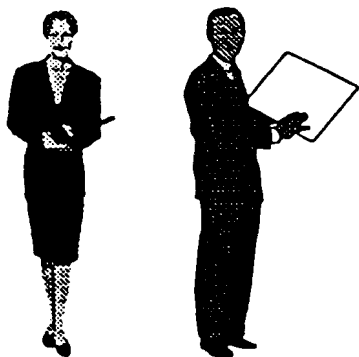
The non-financial incentives most sought by Xers are Self Building™ opportunities. If you are an empowering manager and create conditions for effective delegation, you can send Xers' motivation level into the stratosphere with Self Building™ bonus incentives.

Self Building™ Incentives Package

- Learning new marketable skills.
- Building long term relationships with individuals who can help us.
- Tackling creative challenges and collecting proof of our ability to add value in any workplace.

Self Building™ Bonus Incentives

- Greater responsibility for tangible results.
- Increased creative freedom.
- More power to plan our own work schedules.



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FOURTEENTH EDITION

February 1997

Leaving Without Really Leaving

By Bruce Tulgan

Recruiting new employees can be time consuming and expensive. Sometimes, you have to recruit two or three or four employees just to add one new high performing value adder to the team - someone who is going to stick around for a while. Then you have to train them and that costs money. It can take anywhere from six to twenty-four months before new employees earn more for an organization than they cost. If you are losing employees inside the first two years, you may be getting a zero return on your recruiting and training investment. That's a problem. Granted, there are some employees you are probably happy to bid good riddance. But, what about when you lose the solid performers, and worst of all, the rising stars?

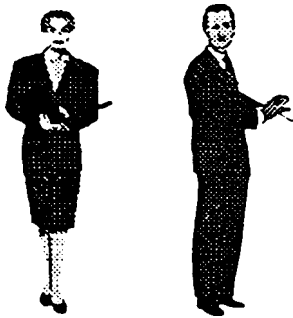
Look at the top four reasons why solid performers and rising stars leave their jobs in established organizations:

- To devote more time to their personal and family lives.
- To pursue a better job (greater responsibility, creative freedom, more flexible schedule, new learning opportunities, more money).
- To go back to school for an advanced degree.
- To start a business.

There are many ways for an organization to entice valued employees to stay. You can offer them raises, promotions, benefits, learning opportunities, and creative challenges. But, if they want to leave, let them leave... without really leaving.

The fact is, you can probably hold onto many of the solid performers and rising stars who leave... if you are willing to employ them on a more flexible basis.

Why can't they leave their positions as full time employees, but still add value on a part time basis, or as a flextimer, telecommuter, periodic temp, or consultant? After all, you've already invested in recruiting and training them. They know the organization and the people in it. They have some valuable skills and experience. Leverage your investment. Most will be happy for the opportunity to take on as much work as they can fit into their lives and they'll do as good a job as ever. Probably even better.



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FIFTEENTH EDITION

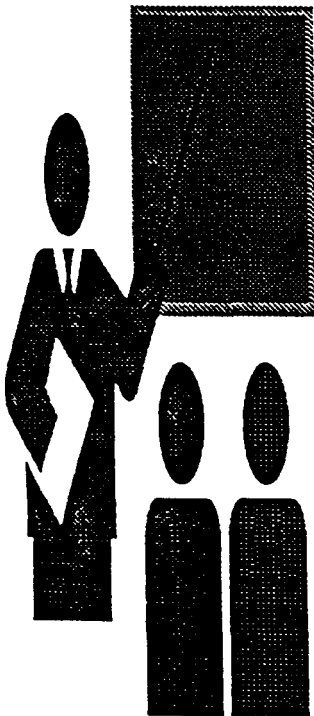
March 1997

MENTORING GENERATION X

By Bruce Tulgan

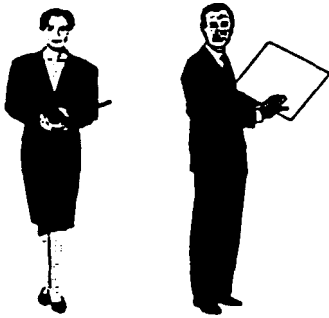
Generation Xers are so fiercely independent that sometimes people assume that Xers are not interested in having mentors. The truth is that most Xers place a high value on opportunities to build lasting relationships with those in the workplace who have grown wise through experience. While information and technology have usually been Xers' most reliable problem solving resources, teachers have usually been Xers' primary human supporters outside of family (and sometimes including family). Most Xers welcome the chance to create long term bonds of loyalty with teaching managers and mentors, especially in a world where Xers cannot believe in long term bonds of loyalty with established organizations.

Xers rarely turn to mentors for raw information they can find elsewhere. What Xers look for from mentors is the kind of learning that is not available from other sources:



- ✧ Someone they can look to as a role model;
- ✧ Someone who will teach them and share experiences with them;
- ✧ Someone who will care about them and help answer some of their deepest questions;
- ✧ Someone who will push them and demand more of them than they may demand of themselves;
- ✧ Someone who believes they are capable of achieving the impossible and is willing to help them do it;
- ✧ Someone who will provide them with unique opportunities to prove themselves;
- ✧ Someone who will introduce them to others;
- ✧ Someone who will value their opinions and ideas, seek their input and learn from them.

By mentoring Xers, managers demonstrate a deep commitment and provide valuable direct support for Xers' Self Building™ process and win Xers' most dedicated efforts. Plus, being a role model keeps the pressure on you to always be at your very best; teaching helps you think of new ways of looking at problems and solving them; and having a prote'ge' forces you to practice your leadership skills - priority setting, communication, and motivation.



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SIXTEENTH EDITION

April 1997

BUILDING TEAM SPIRIT

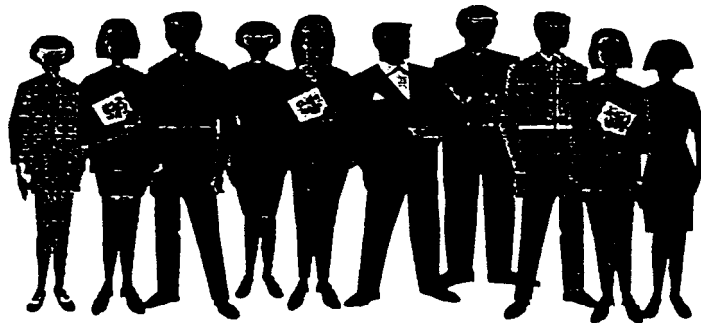
By Bruce Tulgan

How do you build team spirit in a climate of rapid change and intense competition? That challenge seems even greater when some or all of your team members are fiercely independent Generation Xers—accustomed to solving problems in their own way and at their own pace.

Xers are so fiercely independent because most grew up spending a lot of time alone, either because their parents didn't stay married, or both parents worked, or because parents in the 1960s and 1970s just tended to be more permissive than parents in the past. This childhood of aloneness taught Xers to expect to fend for themselves. But the other side of being alone is loneliness and most Xers also have a strong desire for connections, opportunities to build meaningful relationships around shared goals, and the chance to contribute to something of lasting value. That is why the right kind of team can be such a fantastic opportunity for Xers' growth, learning and achievement,

What Xers Look for in a Team

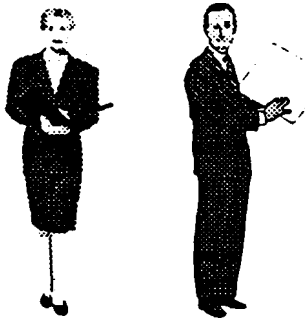
(1)
Teams focused on solving immediate needs and producing concrete results *fast*



(4)
Teams in which each individual gets credit for his or her individual contributions

(2)
Teams in which each individual is brought in because he or she has unique skills and knowledge to offer

(3)
Teams in which authority is fluid and facilitative; based on who has the most skill, knowledge and experience to deal with the specific matters at hand



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SEVENTEENTH EDITION

May 1997

SHARE THIS ADVICE WITH YOUR NEW HIRES

By Bruce Tulgan

Our generation is entering the workforce during the most profound change in the economy since the industrial revolution. This change goes well beyond things like downsizing, restructuring and reengineering. The nature of work itself is changing fundamentally and forever. Organizations are leveling out their hierarchies and becoming more fluid because their staffing strategies must be adapted to fast changing and unpredictable markets. More and more work is being done by ad hoc teams of specialists from across several functional areas who come together just long enough to tackle particular projects or address immediate needs. Fewer and fewer people work in old fashioned "jobs" anymore--doing the same tasks on the same schedule in the same building in the same department for the same boss from one day to the next.

While no one may ever again have an old fashioned job, there will always be a lot of work to do. Today, employers need flexible workers prepared to adapt to rapidly changing circumstances and get the job done, whatever the job happens to be on any given day. You will keep growing as long as you continue building your skills and seizing opportunities to add value.

KEY SURVIVAL STRATEGIES FOR THE WORKFORCE OF THE FUTURE

- Be a voracious learner and build new skills more quickly than they become obsolete.
- Approach relationships with individuals in terms of what you have to offer.
- Identify and seize opportunities to add more value in everything you do.
- Be ready to reinvent yourself or your role in any organization.
- Don't compromise your physical, mental, or spiritual well-being for any reason, including work.
- Don't make plans more than one year ahead, but plan your days and weeks in detail.



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EIGHTEENTH EDITION

June 1997

REDEFINING THE MEANING OF "GENERATION X"

By Bruce Tulgan

By 1991, advertising executives were using "Generation x" as a code word for the post-baby boomer market segment considered so difficult to pin down. There had been a punk rock band called "Generation x" in the early 1980s. But the mathematical variable did not become a common referent for the post-boomer demographic until the success of Douglas Coupland's novel Generation X (1991), which featured a group of jaded twenty-somethings dropping out of the rat-race. By 1993, it was official: the successors to the baby boom were being called "x" by Time, Newsweek, BusinessWeek, and Fortune. In the four years since 1993, the ubiquitous term has become the inescapable name for the fifty-two million Americans born between 1963 and 1977. Inescapable as the term may be, we can insist on defining the meaning.



Generation X *\jɛ-nə-'rā-shən 'ɛks\ n*

1 Renewable loyalty: Xers don't expect long-term relationships with established employers, rather Xers expect to be independent value adders, routinely reinventing ourselves and our roles in any organization.

2 Selective focus: The information revolution shaped the way Xers think, learn and communicate, which makes Xers uniquely suited to thrive in today's tidal wave of information and technology.

3 Creative entrepreneurship: Xers' latchkey childhood taught us to be independent problem solvers. We look for opportunities to prove ourselves to ourselves and others by producing tangible results.

4 Tuned-in to feedback: Xers seek constant feedback from the world around us to guide our ongoing adaptation to change.



Generation X

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NINETEENTH EDITION

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July 1997

"Why Should I Care?"

By Bruce Tulgan

When I was first traveling and speaking to business leaders about Generation X, the most common response was this:



I have young people lined up 'outside my door begging for jobs. Why should I care how they want to be managed? If they don't like it, they can leave and make room for the next one in line.

But in the new economy of fluid markets, fierce competition and unpredictable staffing needs, the market for skilled Xers has become very competitive:

- Demand for young workers has increased substantially for the fourth consecutive year (following four consecutive years of decline).
- Shortages of young skilled employees are reported throughout the service sector, including computer programming, retail, accounting, and engineering.
- Starting salaries in these service sector fields are projected to be 4% higher than one year ago.

Why? There is a growing premium on flexible workers who can: (1) acclimate quickly to new environments, (2) take charge of their own skill building, (3) easily learn new technologies, (4) seize emerging opportunities, (5) focus on results, (6) monitor feedback constantly and adjust rapidly to changing circumstances, and (7) anchor themselves to relationships with individuals, instead of institutions.

Xers have these traits because we are shaped by the same forces shaping the changing workplace, and we have no other point of reference. With no stake in the workplace of the past, Xers expect to be sole proprietors of our skills and abilities, working as independent value adders on a project by project basis.

These days people are asking, "How can I gain strategic advantage by recruiting, motivating and retaining the best young workers?"

Stay tuned for our next three newsletters: August (Recruiting), September (Motivating), and October (Raining).



Generation X

The Workforce of the Future

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TWENTIETH EDITION

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August 1997

RECRUITING GENERATION X

By Bruce Tulgan

Business leaders in every industry are scrambling to become employers of choice for Generation X. Considering the skyrocketing cost of recruiting and training, employers agonize when those investments go walking out the door without ever paying a dividend. Just think of the strategic advantage in becoming a magnet for the best young talent, especially those trained at the expense of your competitors.

Create a powerful recruiting message based on the opportunities Xers seek

- Marketable skills
- Relationships with decision makers
- Creative challenges yielding proof of our ability to add value
- Growing responsibility and room for creative expression
- Flexible schedules

**WANTED: GENERATION X...
seeking flexible, technoliterate,
information savvy workers who think
like entrepreneurs, take charge of their
own careers, and stand ready to adapt
themselves to ever changing roles and
responsibilities.**

Treat your recruiting process like an ongoing campaign

- Deliver the recruiting message at every opportunity in every available venue
- Gear your Web site toward recruiting because potential applicants will probably visit more often than potential clients and customers
- Encourage your best employees to recruit their friends
- Build personal relationships with college placement officials so they send you their best people
- Discuss career issues with your favorite clients, customers, and vendors and let them know about opportunities in your organization
- Provide internships and cooperative education programs in order to preview potential recruits and give them a chance to preview your organization
- Stay in close touch with your prized employees so you don't lose them, because an ounce of retention is worth a pound of recruiting

Stay tuned for our next two newsletters: Motivating (September) and Retention (October).

Generation X

The Workforce of the Future

Twenty-first Edition

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September 1997

Motivating Generation X

By Bruce Tulgan

Skilled workers of all ages are trading old fashioned dues-paying and ladder climbing for a new career path based on mobility. Generation Xers are leading the charge. Xers are moving from one new experience to the next, soaking up the flood of Self Building™ dividends that comes with each new experience:

marketable skills, relationships with decision-makers, and creative challenges that allow Xers to collect proof of their ability to add value.

When the Self Building™ dividends slow down, a job is in danger of becoming just a job. Keep Xers focused on the job by making it the center stage of their growth and development:

- Make training an obsession in your organization. Fill the workplace with training resources and give Xers the remote control.
- Teach Xers to micromanage themselves. Help Xers carve up the job into bite size chunks so they can frame their roles in terms of tangible day-to-day results.
- Move from six and twelve month reviews to FAST Feedback. FAST is frequent, accurate, specific and timely.
- Reward people every day for stellar performance. You can't give people raises every day, but you can expand your repertoire of non-financial rewards and incentives.

Coming Next Month...

Stay tuned for our October newsletter on retention

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Generation X

The Workforce of the Future

Twenty-second Edition

Copyright 1997, Rainmaker, Inc.

October 1997

Retaining Generation X

By Bruce Tulgan

Skilled workers of all ages are trading security for mobility, and Xers are leading the charge by moving from one new experience to the next, soaking up training resources, creative challenges, and exposure to decision-makers. These are the elements of the new job security. Getting trapped for too long in the same tasks and responsibilities, answering to the same

people in the same place, for the same hours, day after day, is the greatest threat to the new job security. In this trap, the pace of Self Building™ slows down to a crawl-no matter how fast-paced the job-and Xers begin looking for an escape hatch. The problem is that most of the obvious escape hatches lead right outside of your company.

TAKE A NEW APPROACH TO RETENTION:

- ◆ Build internal escape hatches. Give people the chance to reinvent themselves right within your company. Let them move into new skill areas, work with new people, take on new tasks and responsibilities, work different hours, or work from a new location.
- ◆ Create personal retention plans. From day one, talk with each employee about her career planning, the various roles she might play in the company over time, and what you might have to offer at each stage of her career. Maintain an ongoing dialogue so you can address issues as they arise.
- ◆ Cultivate fluid relationships. Build renewable short-term loyalties with employees based on win-win project-oriented transactions.
- ◆ Allow people to leave without leaving. When valued employees want to leave, offer them the chance to continue adding value on a part-time basis, as flextimers, telecommuters, periodic temps, or consultants. Consider offering sabbaticals (three months, six months, a year) after which you would welcome them back with open arms. After all, as you've already invested in recruiting and training them, why not leverage your investment?

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Generation X

The Workforce of the Future

Twenty-third Edition

Copyright 1997, Rainmaker, Inc.

November 1997

*Give Everyone a Promotion
...to "Knowledge Worker"
by Bruce Tulgan*

Xers know that our voracious appetite for on-the-job learning is the key to our success. In today's knowledge driven economy, that voracious appetite is also the key to your organization's success. The knowledge and ideas of your employees can quickly become product and service innovations, shaking up markets and keeping your organization on the cutting edge. In the post-information revolution economy, market leaders in every industry

will be the organizations populated by knowledge workers at all levels: Workers who routinely leverage information and knowledge in their work. To grow knowledge workers at all levels, an organization must support employee efforts to acquire expertise and transform themselves, the roles they play, the work they do, and their value in the organization and on the open market.

- 1** Prepare for transforming your employees into knowledge workers by conducting an inventory of the core competencies of your business and your employees, and brainstorm a list of all the dormant knowledge dimensions that could be mobilized.
- 2** Recognize that knowledge work is not about "what you do," but rather "how you do it." Ask employees to inventory their core competencies and the knowledge dimensions of their tasks and responsibilities. Then ask them to recommend plans for reinventing their jobs as knowledge work.
- 3** Commit to turning every employee into a resident expert on something (anything).
- 4** Ask everyone to be a teacher and share their expertise with co-workers.
- 5** Encourage employees to suggest new knowledge-based revenue streams: Can any products be enhanced with a knowledge service? Can any services be enhanced with a knowledge product?
- 6** Grow your brightest stars into recognized niche experts with high market value.

Generation X

The Workforce of the Future

Twenty-fourth Edition

Copyright 1997, Rainmaker, Inc.

December 1997

Teach Xers to Micromanage Themselves

Managers often complain to me that Generation Xers are reluctant to take direction from the boss-it seems like they just don't want to be told what to do. The truth is that most Xers are perfectly glad to be told what to do. They just don't want to be told how to do it. Xers say, "Give me a clear target and get out of my way so I have a chance to prove myself." This insistence on doing things their own way is what makes Generation X the most entrepreneurial generation in history. It also causes a lot of managers a lot of anxiety. How should a manager calibrate the delegation of responsibility to a relatively inexperienced member of the team?

- ① Stick to the principle that all work should be divided into clearly delineated tangible results, each result assigned to an owner and each owner assigned 100% responsibility.
- ② With newer employees who have not yet earned much responsibility, assign 100% ownership for tangible results that are smaller in scope. Let them use these smaller results as proving ground to earn ownership of larger results.
- ③ Attach a concrete deadline to every tangible result, regardless of scope.
- ④ Spell out any parameters, guidelines, or specifications at the time results and deadlines are assigned.
- ⑤ With larger results, require result-owners to make and submit a plan of action including intermediate goals and deadlines, as well as the concrete actions necessary to achieve each intermediate goal.
- ⑥ Encourage result-owners to monitor change and be prepared to adjust goals and fine tune their plans.

Contact Rainmaker, Inc. for information on two new management aids by Bruce Tulgan: *The Micromanage Yourself™ 1998 Weekly Action Planner* (HRD Press) and its companion *The Manager's Guide to Effective Delegation* (HRD Press).

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105TH CONGRESS
1st SESSION

H. R. 1493

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1997

Mr. GALLEGLY (for himself, Mr. ROYCE, Mr. PACKARD, Mr. Cox of California, Mr. ROHRABACHER, Mr. CUNNINGHAM, Mr. RIGGS, Mr. CAWERT, Mr. KIM, and Mr. BILBRAY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To require the Attorney General to establish a program in local prisons to identify, prior to arraignment, criminal aliens and aliens who are unlawfully present in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. PROGRAM OF ID- C A T I O N OF CERTAIN
4 DEPORTABLE ALIENS AWAITING ARRAIGN-
5 MENT.

6 (a) ESTABLISHMENT OF PROGRAM. - Not later than
7 6 months after the date of the enactment of this Act, the

1 Attorney General shall establish and implement a program
2 to identify, from among the individuals who are incarcer-
3 ated in local governmental incarceration facilities prior to
4 arraignment on criminal charges, those individuals who
5 are within 1 or more of the following classes of deportable
6 aliens:

7 (1) Aliens unlawfully present in the United
8 States.

9 (2) Aliens described in paragraph (2) or (4) of
10 section 237(a) of the Immigration and Nationality
11 Act (as redesigned by section 305(a)(2) of the Illegal
12 Immigration Reform and Immigrant Responsibility
13 Act of 1996).

14 (b) DESCRIPTION OF PROGRAM - The program au-
15 thorized by subsection (a) shall include-

16 (1) the detail, to each incarceration facility se-
17 lected under subsection (c), of at least one employee
18 of the Immigration and Naturalization Service who
19 has expertise in the identification of aliens described
20 in such subsection; and

21 (2) provision of funds sufficient to provide
22 for-

23 (A) the detail of such employees to each
24 selected facility on a full-time basis, including
25 the portions of the day or night when the great-

1 est. number of individuals are incarcerated prior
2 to arraignment;

3 (B) access for such employees to records of
4 the Service and other Federal law enforcement
5 agencies that are necessary to identify such
6 aliens; and

7 (C) in the case of an individual identified
8 as such an alien, pre-arraignment reporting to
9 the court regarding the Service's intention to
10 remove the alien from the United States.

11 (c) SELECTION OF FACILITIES.-

12 (1) IN GENERAL - The Attorney General shall
13 select for participation in the program each incarcer-
14 ation facility that satisfies the following require-
15 ments:

16 (A) The facility is owned by the govern-
17 ment of a local political subdivision described in
18 clause (i) or (ii) of subparagraph (C).

19 (B) Such government has submitted a re-
20 quest for such selection to the Attorney Gen-
21 eral.

22 (C) The facility is located-

23 (i) in a county that is determined by
24 the Attorney General to have a high con-

1 centration of aliens described in subsection
2 (a); or
3 (ii) in a city, town, or other analogous
4 local political subdivision, that is deter-
5 mined by the Attorney General to have a
6 high concentration of such aliens (but only
7 in the case of a facility that is not located
8 in a county).

9 (2) NUMBER OF QUALIFYING SUBDIVISIONS. -
10 The total number of local political subdivisions de-
11 termined under clauses (i) and (ii) of paragraph
12 (1) (C) to meet the standard in such clauses shah not
13 be less than 100.

14 (3) TREATMENT OF CERTAIN FACILITIES. -All
15 of the incarceration facilities within the county of
16 Orange, California, and the county of Ventura, Cali-
17 fornia, shah be selected for participation in the pro-
18 gram.

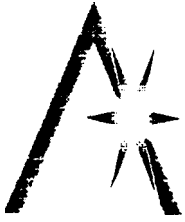
19 **SEC. 2. STUDY AND REPORT.**

20 Not later than 1 year after the date of the enactment
21 of this Act, the Attorney General shah complete a study,
22 and submit a. report to the Congress, concerning the
23 logistical and technological feasibility of implementing the
24 program under section 1 in a greater number of locations
25 than those selected under such section through-

1 (1) the assignment of a single Immigration and
2 Naturalization Service employee to more than 1 in;
3 carceration facility; and

4 (2) the development of a system to permit the
5 Attorney General to conduct off-site verification, by
6 computer or other electronic means, of the immigra-
7 tion status of individuals who are incarcerated in
8 local governmental incarceration facilities prior to
9 arraignment on criminal charges.

○



*Large Jail Network:
Legal Update*

**Terminating Court Orders
Under the
Prison Litigation Reform Act**

(PRLA, part deux)

CORRECTIONAL LAW *Reporter*™

VOLUME IX, No. 4

Pages 49-64

ISSN #1043-6766

December/January 1998

PLRA Significantly Modified by Second Circuit

by Fred Cohen

The controversial consent decree termination procedures of the Prison Litigation Reform Act (PLRA) just took an interesting turn in a Second Circuit decision, **Benjamin v. Jacobson**, 124 F.3d 162 (2d Cir. 1997). In response to New York City's motion to terminate several consent decrees, the embattled Federal District Court Judge Harold Baer upheld the constitutionality of PLRA, 18 U.S.C. § 3626(b), allowing a defendant or intervenor to vacate a pre-PLRA consent decree where there is no finding of unconstitutionality on the record. **Benjamin v. Jacobson**, 935 F. Supp. 332 (S.D.N.Y. 1996). Judge Baer actually vacated the decrees, and without a hearing on whether current constitutional violations existed. His order was stayed by the Second Circuit pending their review. (For a review of Judge Baer's decision, see VIII CLR 33 (October/November 1996).

Now, a three-judge panel of the Second Circuit, with Judge Guido Calabresi writing, affirmed in part, and reversed in part—and managed to partly salvage pre-PLRA consent decrees. Judge Calabresi, former Dean of Yale Law School, is a first-rate scholar on federal jurisdiction and remedies and his well crafted opinion is likely to be broadly persuasive.

See PLRA, page 61

Failure-to-Train Liability Remains More Theoretical Than Real

The following conversation took place recently in the dynamic, high pressure editorial offices of the *Correctional Law Reporter*.

"Computer," we said, "let's find out what is happening with 'failure to train' lawsuits, the type of suit where the plaintiff claims that her rights were violated because the government employee was not properly trained."

"Okay," muttered the computer in its flat, mechanical voice. "What do you want me to look for?"

"Look back through the last year or so of cases from the federal district courts and courts of appeal and find all the cases where the phrase 'failure to train' appears in a case along with either 'prison' or 'jail'."

"Okeedokee, boss," and the electronic marvel plunged into several CD-ROMs from the West Publishing Company and returned a long list of decisions where the sought-for words appear.

Now came the time consuming part, calling up these cases and reading them to

see what they said about "failure to train." Despite the help of the computer, we managed to get through only about half the total list, checking 100 or so cases, beginning with the most recent and moving backwards. The cases dealt with failure-to-train claims from corrections, many from law enforcement, and several involving schools.

Failure to Train Claims Usually Fail

Our findings are almost identical to a similar review we conducted back in 1992: Failure-to-train claims are a common part of civil rights claims, but they almost never succeed, at least in reported decisions (plaintiffs in some failure-to-train cases may win settlements, but these cases would not be revealed in our review of published decisions). See IV CLR 33 (November 1992).

We found only one opinion in which the court said "defendants are liable for
See *LIABILITY*, next page

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Benjamin: Another View

Second Circuit Approach May Create Confusion - Other Circuits Take Different Tack

by Bill Collins

I dissent from my co-editor's optimistic view of the Second Circuit decision in the Benjamin case (see "PLRA Significantly Modified by Second Circuit" p. 1). I do not believe the decision will be persuasive to most other circuits (although I can envision the Ninth Circuit taking a similar approach), especially where persuasiveness counts most: in the Supreme Court. Pessimistically, I see confrontations between state and federal courts and confusion for the defendant who dares try to have a consent decree terminated under the Prison Litigation Reform Act (PLRA).

Worst Case Scenario

What is the worst case scenario which could come from the Second Circuit's demonstration of judicial creativity in Benjamin? An agency moves to terminate a consent decree under the PLRA. It is an old decree which contains many very detailed requirements, many of which are not constitutionally mandated. It has no specific termination date nor clear standards for termination. It may even have been developed around a facility which no longer exists and now be applied to a new facility. The district court finds that the decree does not comply with the PLRA's requirements and must be terminated unless the court finds constitutional violations continue. Following a hearing, the court finds that there are a couple of continuing violations warranting continuation of portions of the decree, but in several other areas, the court must end its jurisdiction.

An Unholy Mix of Federal and State Oversight

The court enters its order regarding the continuing violations. It "remands" the rest of the case to a state court. To enforce the decree's remaining portions. It also retains some vague sort of oversight over the state court and its treatment of the decree, to assure that the court enforces the decree lest plaintiffs contractual rights be somehow unconstitutionally impaired.

The state court tells the federal court to take a hike, that it has no power to saddle

the state court with the task of overseeing a consent decree. When the dust of litigation over this issue settles, and assuming the Second Circuit's view prevails and the state court now has oversight responsibility for portions of the consent decree, the defendants now answer to the federal court on some portions of the decree, a state court on the rest of the decree, and perhaps must defend the state court's decisions in front of the same federal court.

Co-editor Cohen's suggestion that damages could be awarded should the state court not enforce the decree with enough vigor raises a question: Damages against whom? The state court judge? Another round of litigation on this question looms.

Ah, this unholy mixture of both federal and state court oversight over a largely constitutional jail is certainly the goal Congress had in mind when it passed the PLRA. Right. Better that the consent decree termination provisions of PLRA simply be declared unconstitutional than create this new welter of overlapping and interlocking state and federal court jurisdiction over a facility which, remember, is largely constitutional.

Cooperative Agencies Penalized?

There is one additional irony from the Benjamin approach. Other portions of the termination sections of the PLRA provide for termination of contested orders when no continuing constitutional violation can be shown. Under the terms of the PLRA, parties cannot avail themselves of these provisions yet, but will be able to two years after the effective date of the PLRA. Assuming these termination provisions are upheld (and they pose fewer constitutional questions than do the consent decree termination provisions of the Act), the cooperative defendant who agreed to settle a case through a consent decree will, in effect, be penalized for that cooperation by having a state court continue to enforce provisions of the decree while the party that litigated and lost a case will be able to have the case terminated if the constitutional violations have been cured.

Other Circuits Take Less Controversial Approach

While the Second Circuit's interpretation of PLRA invites the sort of confusion described above, two other circuit courts have applied the consent decree termination provisions of the PLRA in much less controversial fashion.

In a decision released only three weeks before Benjamin, the Eighth Circuit upheld the constitutionality of the consent decree termination provisions of the PLRA, reversing a district court decision to the contrary. *Gavin v. Branstad*, 112 F.3d (8th Cir. 1997). The case was remanded to the district court to determine if any constitutional violations continued which would support the court continuing some level of jurisdiction in the case. In rejecting several different arguments that the termination provisions were unconstitutional, the Gavin court discussed the impairment of contract theory which was the basis of the Second Circuit's decision that a decree terminated at the federal level enjoys a continuing life in state court. Assuming the statute's provisions substantially impaired the contract rights to the plaintiffs (which the court said it seriously doubted), the court found that the law was rationally related to a legitimate governmental interest, and therefore did not unconstitutionally impair plaintiffs' contract rights. The thought that a decree terminated at the federal court level might take on some new life in state court was not a thought that appeared to enter the minds of the three judges deciding the Gavin case.

The first court of appeals decision examining the termination provisions of PLRA is consistent with the Gavin holding. *Plyler v. Moore*, 100 F.3d 36.5 (4th Cir. 1996). While the inmate plaintiffs did not raise an impairment of contract argument in *Plyler*, the general tenor of the opinion leaves little doubt that had the contract issue been raised, it would have been rejected along with the various other constitutional challenges to the Act which the court addressed and found wanting.

See COLLINS, next page

PLRA, from page 49

This is a highly technical opinion suitable for an advanced seminar in constitutional law and remedies. Our effort will be to communicate its essence and implications without bewildering our non-lawyer readers and without offending our many lawyer readers.

Definition of "Relief" is Critical

There are seven decrees at issue here, the earliest dating from 1978-79 and with a history replete with charges of noncompliance by plaintiffs and judicial overreaching by defendants. The areas involved include detainees' mail, searches, property, physical plant, food, health, and sanitation. The broad sweep of these decrees led in 1987 to the creation of an agency entitled Office of Compliance Consultants which was charged with monitoring the defendants compliance with the decrees.

Under PLRA's termination provision a defendant or intervenor is entitled to "immediate termination of prospective relief" in cases where a court had originally granted such relief without making the findings that are now mandatory under § 3626 (a). (That is, the *relief* is narrowly drawn, extends no further than necessary to correct the federal violation, and is the least intrusive corrective measure available).

The key term — italicized above — is relief and it is Judge Calabresi's interpretation of relief that manages to resurrect the decrees in this case, albeit with quite a different spin. As a matter of interpretation, then, if relief means the past consent decrees themselves then they are annulled on motion. In effect, Judge Baer at the district court level read the law as requiring past consent decrees to be annulled on motion if they did not comply with the new PLRA requirements. Read this way, once vacated it is as though there had never been an agreement or decree and there is simply nothing left. The case is simply over.

On the other hand — and this is the approach adopted by Judge Calabresi at the circuit level — if "relief" simply means federal judicial enforcement, then the decree remains alive although the federal courts cannot enforce it any longer, absent findings of continuing constitutional violations.

Decree Enforceable as Contract Under State Law

So, you wonder, what good is a decree in federal court that cannot be enforced by the federal court? Ah, that is the creative part of this decision. A consent decree

shares the characteristics of a contract and a judgment; it is unique in law. Viewed, then, as a contract solemnly entered into by plaintiffs and a state or local governmental entity the agreement is enforceable, as a contract, *in state court!*

Judge Calabresi explains that legislative termination or alteration of relief (or remedies) is constitutional while legislative termination of a decree is dubious at best. Following long-accepted rules of interpretation, the reviewing court feels bound to avoid a constitutional question when possible and judicial interpretation of

rectional law? Is the apparent saving of older consent decrees rather illusory?

Judge Calabresi opines that plaintiffs should be able to obtain all the relief from state courts, including specific performance, previously available in federal courts. If state courts do not enforce the contractual rights embodied in the consent decree/contract, then this might constitutionally impair the parties' contractual rights giving rise to a federal court action which could include damages.

Obviously, defendants will now not

If state courts do not enforce the contractual rights embodied in the consent decree, then this might constitutionally impair the parties' contractual rights giving rise to a federal court action which could include damages.

ambiguous legislative language is the handiest technique to do so.

Thus, the agreement, *nee* decree, remains valid but the judicial forum changes.

COMMENT: This ruling, of course, is valid only in the Second Circuit and the rule of the case binds only the parties to the lawsuit. This is, however, a highly regarded circuit, and Judge Calabresi is an acknowledged constitutional law scholar, and it is likely to be highly persuasive in other, similar cases.

To our knowledge, this is the first Circuit Court of Appeals to follow this path, although the eminent district Judge Keeton took a similar tack in *Inmates of Suffolk Co. Jail v. Sheriff of Suffolk Co.*, 952 F. Supp. 869 (D. Mass. 1993).

John Boston, lead counsel for the original plaintiffs, surely must feel as though he revived the dead.

One may ask: What about state court enforcement? Aren't state courts generally even more hostile to prisoner claims than federal courts? Aren't state courts barely knowledgeable about cor-

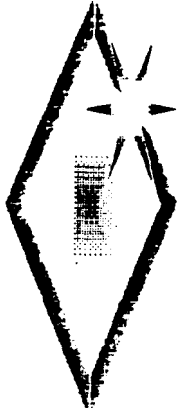
be so quick to seek termination of an older consent decree given the time, expense, and threat to implementation progress; and for what? Simply to win the duty to comply with a different judicial system? Seems like a bad choice.

The future-oriented provision of PLRA, its requirements of relief narrowly drawn and findings of unconstitutionality, seemed constitutional to most, although perhaps poor policy. Where defendants recently have desired to settle prisoner law suits but to not concede unconstitutionality, state-court enforceable "performance contracts" have been entered into.

Thus, we may be at the dawning of a whole new era of the expansion of state court involvement in corrections. There already has been a rediscovery of state constitutional law in the criminal procedure field with hundreds of state court decisions imposing on state law enforcement agencies far more rigorous requirements than those fashioned by the Supreme Court. ■

COLLINS, from page 60

COMMENT: I assume New York City, the defendant in *Benjamin*, will ask the Second Circuit to reconsider its holding. If the Circuit rejects that request or upholds the *Benjamin* result, watch for a request for Supreme Court review. If *Benjamin* eventually gets to the Supreme Court, don't expect the present conservative court, which only last year lambasted a federal judge for going too far in ordering relief in a prison case, *Lewis v. Casey*, 116 S.Ct. 2174 (1996), to uphold *Benjamin* in its current form. ■



Large Jail Network: Legal Update

**Designing an access to the courts
program in jails after
*Lewis v. Casey:***

A light at the end of the tunnel?

CORRECTIONAL LAW *Reporter*™

VOLUME VIII, No. 6

Pages 81-96

ISSN #1043-6766

April/May 1997

Farmer Sexual Assault Case Reaches Surprise Ending

"Farmer v. Brennan Still Limping Along" we reported in our last issue. VIII CLR 69 (Feb/Mar 1997). No longer. Farmer just fell flat on its face. In January, a federal court jury in Madison, Wisconsin returned a verdict for the federal defendants in the failure-to-protect inmate rape case that has already made one trip to the Supreme Court and two to the court of appeals. The jury found that Dee Farmer, the transsexual inmate who brought the case, had not been sexually assaulted! End of case.

The jury was given three questions to answer:

1. Was Dee Farmer sexually assaulted by another inmate?
2. If so, were the defendants deliberately indifferent to the safety needs of Farmer?
3. If so, what damages should be awarded.

Because it answered "no" to the first question, the jury did not reach the second or third.

Farmer v. Brennan, 114 S.Ct. 1970 (1994); the Supreme Court version of the case, presented the issue whether officials could be deliberately indifferent to the constitutionally protected needs of an inmate (such as safety or medical care) if they did not have actual knowledge of the risk the inmate faced. The Court held that actual

See FARMER, page 95

Does *Lewis v. Casey* Open the Door To Smaller, Less Costly Law Libraries?

Caution: This article discusses options for providing inmates with "meaningful" access to the courts in light of Lewis v. Casey, 116 S.Ct. 2174 (1996). The alternatives discussed below have not been "court tested." Any agency considering reducing the legal resources it currently provides to inmates should do so only with advice of counsel that takes into consideration the most recent interpretations of Lewis. An agency that pushes the limits of Lewis, absent clear case authority supporting a particular proposal, probably should expect to have to defend its actions before a district court and court of appeals, which may not agree with the reasoning, results, or narrow interpretations of Lewis.

The dust from *Lewis v. Casey*, 116 S.Ct. 2174 (1996) has settled somewhat, permitting examination of what the case may mean in terms of what resources an institution must provide inmates who seek to exercise their right of access to the courts by pursuing some type of legal claim.

In more concrete terms, suppose a new, large institution were being opened. What sort of legal resources should the prudent,

but fiscally conservative, administrator provide? Before *Lewis*, the apparent alternatives were (1) some form of help from lawyers or other persons trained in the law or (2) a law library that was at least the equivalent of that approved in *Bounds v. Smith*, 430 U.S. 817 (1977), perhaps modified somewhat by the recommendations of the American Association of Law Libraries (AALL).

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The "Bounds Library" Option

The first alternative — help from persons trained in the law — has been shunned by most agencies over the years although it is an idea worth revisiting, especially after *Lewis*. The second — the "Bounds library" — requires a major investment in both law books and the space to keep them, to say nothing of the effort needed to maintain and operate the law library.

From both a physical and fiscal perspective, most of a law library is comprised of reporters containing opinions from the federal district courts, courts of appeal, and Supreme Court. The generally recommended collection of federal reporters for institution law libraries now totals nearly 1,200 volumes and grows constantly. State court reporters will add perhaps more than 200 more volumes, depending on the state. Other large multi-volume sets of materials could add several hundred additional books.

In recent years, reporters and other large collections have become available on CD-ROM. CD-ROMs are slightly cheaper than books and permit collapsing a room full of books into a few inches of shelf space. However, using CD-ROMs depends on the availability of computers, potentially creating other problems. But any agency creating a new law library that will include reporters should consider CD-

ROMs instead of hardbound books.

Choosing the *Bounds* library option leaves a lingering question of how to provide assistance for illiterate inmates, or others incapable of using the library. Assistance from other inmates could perhaps fill this need, but unanswered questions remain as to how much training, if any, those other inmates might need. *Lewis* tacitly recognizes possible problems for this type of inmate but does not address what to do for them.

No More Right to Browse. After *Bounds*, "meaningful access to the courts" was interpreted in the library context to mean that the inmate should have access to extensive materials that would permit original research on an issue and pursuit of a claim, from initial inquiry through trial and appeal. Some courts went so far as to read *Bounds* as including a "right to browse" through a law library. *Kaiser v. County of Sacramento*, 780 F.Supp. 1309 (E.D. Cal. 1991). The right to browse appears to be

Any access-to-the-courts system is presumed acceptable until someone shows it is not.

Is All This Still Necessary?

Unfortunately for the administrator, *Lewis* does not provide a definitive answer. The "answer" from *Lewis* may be only that an institution probably can get away with less for longer than before. Whether less will ultimately be enough is not at all clear. However, *Lewis* does raise a question as to whether a "Bounds library" is still required.

The basic principle from *Bounds* is that a correctional facility is under a duty to provide resources to the inmate to permit the inmate to obtain "meaningful access to the courts." *Lewis* reaffirmed this principle but may have effectively changed what it means in practice.

one of the first casualties of *Lewis*: "However, recently the Supreme Court has made clear that an inmate does not have a constitutional right to 'turn pages in a law library.'" *Tokar v. Armontrout*, 97 F.3d 1078 (8th Cir. 1996).

Time to Reconsider Providing Legal Assistance?

The majority in *Lewis* specifically narrows the scope of *Bounds*. It "disclaims" sections of *Bounds* suggesting the right of access to the courts includes a right to "discover grievances, and to litigate effectively once in court" (116 S.Ct. at 2181, *empha-*

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Correctional Law Reporter (ISSN #1043-6766) is published bimonthly by Civic Research Institute, Inc., 4490 U.S. Route 27, P.O. Box 585, Kingston, NJ 08528. Periodicals postage paid at Kingston, NJ and at additional mailing office. Subscriptions: \$135 per year in the United States and Canada; \$30 additional per year elsewhere. Vol. VIII, No. 6, April/May 1997. Copyright 1997 by Civic Research Institute, Inc. All rights reserved. POSTMASTER: Send address changes to Civic Research Institute, Inc., P.O. Box 585, Kingston, NJ 08528. Correctional Law Reporter is a trademark owned by Civic Research Institute, Inc. and may not be used without express permission.

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sis in original.). This seems to say that the duty of officials extends only through providing resources to allow the inmate to prepare and file adequate initial pleadings in a case.

In several places the opinion emphasizes that both *Bounds* and *Lewis* invite experimentation on the part of institution officials. It suggests in dicta that "one such experiment, for example, might replace libraries with some minimal access to legal advice and a system of court-provided forms... that ask[ed] the inmate to provide only the facts and not to attempt any legal analysis." 116 S.Ct. at 2180. Our administrator then may want to consider using some type of attorney assistance, which,

ity to bring the claim in the first place. Elaborating on the actual injury requirement, Justice Scalia wrote "the new [access-to-the-courts] program would remain in place at least until some inmate could demonstrate that a nonfrivolous legal claim had been frustrated or was being impeded." 116 S.Ct. at 2181. In other words, any access-to-the-courts system is presumed acceptable until someone shows it is not.

Bottom Line: Time and again the opinion emphasizes that the right to access to the courts is measured by the inmate's ability "to file nonfrivolous legal claims . . . rather than the capability of turning pages in a law library. . ." 116 at 2182. Note that the Court said only "file" claims, not "file and fully pursue claims to their logical

vide some level of assistance it requires, extends only to:

- Direct or collateral attacks on convictions (criminal appeals and habeas corpus); or
- Challenges to conditions of confinement (the "inmate rights," § 1983 case correctional administrators are so familiar with).

Is Sticking to the Bare Minimum Wise? Material on other matters need not be provided. However, it may be wise to consider the value of materials on, for instance, parental rights. How many inmates are involved in parental rights issues, often as the responding party, and have no legal assistance in such proceedings. The same can be said for materials dealing with immigration. The fact that the institution is not constitutionally mandated to provide legal materials on topics such as parental rights or immigration does not mean there is no value or benefit in providing them.

Replace Reporters With How-To Help? An underlying assumption in the "Bounds library" approach is that the inmate should be able to research an issue in the same way a lawyer would — by reading the cases, assimilating the holdings of individual cases, using legal education and skills to synthesize the meaning of many cases. Another assumption is that the inmate, armed with his newly acquired legal knowledge, should be able to file a lawsuit and pursue that claim, pro se, through trial and appeal to the highest court in the land. Despite the furor about inmates clogging courts with frivolous complaints, there are notable examples of inmates doing exactly what *Bounds* assumed they would do. The Supreme Court's most recent inmate use of force case, *Hudson v. McMillian*, 112 S.Ct. 995 (1992), is such an example. The inmate there, acting pro se, won his case at trial, lost on appeal, and received assistance of counsel only at the Supreme Court level.

Lewis undercuts both of these assumptions, by its disclaiming any suggestion that the right of access to the courts includes the right to find grievances or "litigate effectively once in court." The right is to "have a reasonably adequate opportunity to file nonfrivolous legal claims challenging convictions or conditions of confinement." 116 S.Ct. at 2182

While some inmate litigators may be able to educate themselves enough about

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The fact that the institution is not constitutionally mandated to provide legal materials on topics such as parental rights or immigration does not mean there is no value or benefit in providing them.

under *Lewis*, could probably be limited to advising the inmate on habeas corpus or civil rights matters and assisting in preparing initial pleadings going to a court. This alternative would permit removing the law library altogether.

Higher Hurdle Now in Access-to-the-Courts Claims

Lewis makes another sharp break from lower court application of *Bounds* by demanding that in order for any access-to-the-courts claim to succeed, the inmate must prove that the shortcomings in the legal resources provided (of whatever description) resulted in actual injury to the inmate's attempts to pursue a nonfrivolous claim, which challenged either his conviction or conditions of confinement. Prior to this, courts could — and would — evaluate challenges to an institution's means of providing access to the courts without requiring a showing that any inmate had been frustrated in pursuing a legal claim by that system.

The concept of "actual injury" is not defined by the Court but Justice Scalia's majority opinion offers examples that suggest the injury must be attributable to deficiencies in the legal resources which cause the dismissal of a claim or the inability

conclusion at an appellate court.") If all of this means that the institution's post-*Lewis* obligation stops after it has provided the inmate with enough assistance to allow him to prepare and file only an adequate initial pleading in a habeas corpus or civil rights case, then there is a serious question whether a library full of reporters and material directly related to reporter use (use as digests) is necessary.

The Low-Budget Library Option: What Is Needed?

Let's return to our hypothetical administrator, readying that new institution. Feeling the same inherent discomfort about letting lawyers wander about the institution that the farmer feels asking the fox to guard the chicken coop, she rejects any plans relying on assistance from lawyers. "Gimme the books," she says. But what books? A *Bounds* library is the prudent course, perhaps trimming a little here and there, but making no major changes. "No," says our administrator, "I want to take *Lewis* to the max, or close to it. I don't want to put more into a library than I have to. Give me a minimalist library. If a court tells me it isn't enough, I will get more."

OK. First of all, *Lewis* says the right of access to the courts, and the duty to pro-

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The Lewis "actual injury" requirement reopens the entire question of such paging systems. "Standing alone, delay and inconvenience [in obtaining access to legal materials] do not rise to the level of a constitutional deficiency." *Jones-Bey v. Wright*, 944 F.Supp. 723 (N.D. Ind. 1996). Waiting for a book and doing research for an initial pleading on the installment plan, while perhaps frustrating to the inmate, will not create a legal problem unless the delay prejudices the inmate. The Casteel case, cited above, found a paging system plus the ability to contact groups such as the ACLU provided officials with at least qualified immunity.

A slow working paging system could present problems for the inmate trying to respond to a court-imposed deadline, such as the deadline to respond to a defendant's motion for summary judgment. But, and this is a big but, if lower courts accept the Supreme Court at its word about the right of access to the courts protecting only the filing of an initial pleading and not being concerned about the inmate's ability to "litigate effectively," then inadequacies in a library or paging system adversely affecting the inmate in some way after the initial pleading has been filed are irrelevant to violations of the right of access to the courts. Even if courts do not accept this reading of the case, prejudice could be avoided by special delivery procedures when an inmate faces a deadline and/or by the court granting extensions of time to allow the inmate to file necessary pleadings.

A paging system should provide the inmate with a list of materials available from the main library. It should be able to provide documentation of requests received and requests fulfilled.

COMMENT: *Lewis* invites experimentation. It emphasizes that what is important is that the inmate be able to file at least an initial pleading that addresses a conviction or condition of confinement, not that the inmate be able to browse through a law library full of reporters. It insists that to win an access-to-the-courts claim the inmate must show he was actually injured in attempts to pursue a legal claim. The continued legal necessity for a traditional *Bounds* law library seems open to question.

In our next issue, we will offer suggestions for the contents of the low budget law library. ■

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(301) 258-4066; TDD: (301) 413-0006; internet: info@www.gao.gov or http://www.gao.gov.

Sentencing Policy

Three Strikes and You're Out: Vengeance as Public Policy

by David Shichor and Dale K. Sechrest, eds.
Thousand Oaks, California: Sage Publications (1996)

Shichor and Sechrest assemble a stellar group of authors to write about issues concerning the treatment of repeat offenders, specifically, the "three strikes" laws. The book is well-organized and covers all of the important topics related to this issue. It begins with the legal and historical issues involved in with the enactment of three strikes laws in various states. The first chapter reviews decisions by the United States Supreme Court that have challenged three strikes laws and their predecessors, using Eighth Amendment "cruel and unusual punishment" arguments. "Criminology and the Recidivist," the second chapter, discusses the history of penal practices, specifically focusing on the Jacksonian penalty in the first half of the 19th century, the progressive penalty used in the latter half of the 19th century, and the new penalty, which began being used in about 1960.

The section on "Implementing the Law" includes chapters devoted to the estimated benefits and costs of the mandatory sentencing law in California, the effect at the county and municipal, rather than the state level.

In the "System Effects" section, the various chapters discuss how the enactment of three strikes laws affects law enforcement, the courts, and corrections. "Special Issues" include how the media and society have affected the formulation of three strikes laws, how street gangs will be influenced by such laws, the effects on women offenders and on white collar-criminals.

The last chapter discusses the future implications of three strikes as public policy on the legal, penological, crim-

inal justice, policy, and justice issues. This is well-done and should be on the bookshelf of corrections administrators and policy-makers, alike.

Copies: Sage Publications, Inc., 2455 Teller Road, Thousand Oaks, CA, 91320; e-mail: order@sagepub.com.

Rehabilitation

Religion and Rehabilitation

by Andrew Skotnicki
15(2) *Criminal Justice Ethics* 34 (1996)

Where the reports on HIV-positive inmates and trends in prison populations and costs are straightforward and factual, this article is more enigmatic and thoughtful. Skotnicki's premise is that when rehabilitation is discussed solely in terms of programs or therapy and rational self-interest, it is ignoring the most important factors, religious faith and conversion. He asserts that in order to make changes in the human heart, there must be more of a conversion than that of the mind — a conversion of faith and belief must take place.

He begins by discussing the idea of rehabilitation, which is assumed by most of the rehabilitation literature as being simplistic; Skotnicki argues that it is much more complex. Previous studies understand rehabilitation as a function of something that someone does to the offender and to which he or she responds, eventually causing the offender to make changes in his or her character and attitudes. He discusses positivism and determinism — how each has had its turn to be popular in penological thinking, and how each swing of the pendulum from rehabilitation to punishment has wreaked havoc on society. This is not waiting-room-reading; it is not meant to be skimmed, but it is complicated and interesting, meant to be carefully read and more carefully contemplated.

Reprints: Institute for Criminal Justice Ethics, Department of Law, Police Science and Criminal Justice Administration, John Jay College of Criminal Justice, 445 West 59 Street, New York, NY 10019. ■

Here are several titles which might be included in a jail law mini-library. This is not an all inclusive list. Among other things, it does not speak to state law materials nor “how to do legal research” materials.

- Boston and Manville, *Prisoners Self Help Litigation Manual*. Includes both a “how to file and prosecute a § 1983 action” section as well as section on substantive inmate rights questions. Although it does not include updates, it is a wonderful resource. About \$40, from Oceana Publications, phone (9 14) 693-8 100.
- *Detention and Corrections Caselaw Catalog*, Miller, et al, CRS Publications, P.O. Box 1180, Washington Grove, MD 20880 (301) 977-9090.. A very long list of case squibs, broken into 50 categories, from “Access to the Courts” to “Work-Prisoner.” Cost - Less than \$100.00. An excellent “research starter.” Now includes quarterly updates.
- *Rights of Prisoners*, (or is it *The Law of Prisoners’ Rights?*) by Mushlin, Shepard’s-McGraw Hill. The most detailed treatise on prisoners’ rights, with pocket parts. While somewhat duplicative of Boston and Manville, including both books would strengthen the library somewhat, for relatively little additional money.
- *The Law of Probation and Parole*, Cohen and Gobert, Shepard’s-McGraw Hill. The probation - parole companion to the previous book.
- *AELE Jail and Prison Law Bulletin*, AELE 5519 North Cumberland Ave. # 1008, Chicago, IL 06056-1498. Short summaries of recent cases. Monthly. May be duplicative of the Caselaw Catalog, now that it has quarterly updates.
- *National Prison Project Journal*, ACLU National Prison Project, 1875 Connecticut Ave., NW, Washington, D.C. 20009. Quarterly. Free. Articles on topics of interest to inmates, plus reviews of selected cases.
- *Criminal Law Reporter*, BNA, Washington D.C. Weekly. Includes summaries of major criminal law cases from around the country. Includes some corrections cases. Expensive compared to other items on the list, but probably the best resource for staying current.
- Manville, Daniel and George N. Brexna, *Post-Conviction Remedies: A SelfHelp Manual*. The habeas corpus counterpart to the *Prisoners Self-Help Litigation Manual*. Oceana Publications, price around \$40 ?
- Robbins, Ira, *Hubeas Corpus Checklists*, West Publishing. Price around \$120. Another excellent work on habeas corpus.

A handwritten signature in black ink that reads "Bill Collins". The signature is written in a cursive, flowing style.

