



Winter 2006

Proceedings of the **Large Jail Network Meeting**

**Implementing PREA:
The BJS Report**

**Statistical Analysis:
Crowding, Life Safety,
& Managing Staff**

Succession Planning

The Question of Tasers

Legal Issues Update

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MEETING HIGHLIGHTS

This document summarizes a meeting of NIC's Large Jail Network held in Longmont, Colorado, on January 22-24, 2006. Approximately 65 administrators of the nation's largest jails and jail systems attended the meeting. In addition to several open forum discussions among participants, the meeting focused on the following topics:

- Report from the Bureau of Justice Statistics: Prison Rape Elimination Act
- Statistical analysis
- Succession Planning for Executives and Middle Management
- Tasers
- Legal Issues Update

Following is a summary of the major sessions of the meeting:

- **Open Forum: Hot Topics for Discussion.** Led by Don Leach, Lexington/Fayette County, Kentucky, the group discussed the following topics: Announcements from the American Correctional Association (ACA); the Second Chance Act; preparing for a pandemic flu epidemic; gangs in jail; correctional officer appraisals; identification cards for releasees; and payment of medical bills for those with pre-existing conditions.
- **Report from the Bureau of Justice Statistics.** Dr. Allen Beck, Chief of the Corrections Statistics Program of the U.S. Bureau of Justice Statistics (BJS), reported on BJS' approach to fulfilling the requirements of the Prison Rape Elimination Act, pointing especially to the involvement of jails. He also touched on other corrections-related studies conducted by BJS.
- **Statistical Analysis: Crowding, Life Safety, and Managing Staff.** Dr. Patrick Jablonski, Statistician for the Orange County, Florida Corrections Department, noted the ways in which statistics have made possible a variety of positive changes in the Department's operations, especially in terms of improved case processing in the county.
- **Succession Planning: Executives and Middle Management.** Gordon Bass, Jacksonville, Florida, pointed to the benefits of a succession planning process and summarized two models for succession planning. Dennis Williams, Escambia County, Florida, discussed the importance of leadership, process, and organizational culture in developing a winning succession planning process.
- **Is There a Proper Place for Tasers in the Use of Force Continuum?** Dr. John Clark, Chief Physician (retired), Los Angeles County Sheriff's Office, noted the special risk factors of jail inmates exposed to tasers and some potential consequences of taser use. He also defined some ethical dilemmas faced by correctional health professionals related to the use of tasers and suggested some measures for developing rational jail policies related to tasers. Attorney Bill Collins focused on some of the legal implications of taser use, including the emerging issue of staff lawsuits from injuries

sustained in training. In addition, he noted the importance of developing a strong policy and training on the use of tasers and videotaping every instance in which the taser is used. Don Leach, Lexington/Fayette, Kentucky, pointed to the fact that a decision to use tasers is based, in part, on philosophical issues related to how one wants to run a jail. He, like Collins, commented that the appearance of a death by taser is much more serious to the public than other types of deaths. A group discussion on the issue followed the presentations.

- **Legal Issues Update.** Bill Collins, Attorney, provided an update on court decisions addressing the following issues: Failure to protect and inmate-on-inmate violence; arrestee strip searches; Religious Land Use and Institutionalized Persons Act (RLUIPA); and Supreme Court comings and goings.
- **Discussion of Next LJN Meeting: Schedule and Topics.** Richard Geaither and Marilyn Chandler Ford led the meeting participants in a discussion of potential topics for the next LJN meeting, to be held in Longmont, Colorado, July 9-11, 2006. Topics for the meeting will include organizational culture change; Federal grants; sex offender laws; and planning for catastrophe.

OPEN FORUM: HOT ISSUES FOR DISCUSSION

DON LEACH, LEXINGTON/FAYETTE, KENTUCKY

Don Leach led an open discussion of topics that LJN members proposed for discussion. A summary of remarks on these issues follows.

AMERICAN CORRECTIONAL ASSOCIATION (ACA) ANNOUNCEMENTS

Jim Gondles:

- Jail administrators are currently being sought in Afghanistan to provide training in jail management.
- Prison Rape Elimination Act (PREA)—ACA will hold a hearing on March 23 in Miami of both jail and prison administrators on PREA. Discussions will focus on how PREA is affecting them and what they are doing to prevent rape in their institutions. If you are interested in attending, you can come to any of the hearings. If you are interested in presenting, contact me.
- Medical standards for jails—Because of complaints about the medical standards in our new standards, ACA is revising them. We hope to have a new version by at least January of next year.
- Certification and Accreditation Program for Small Jails—ACA is also working to develop this program over the next year.
- In February, ACA is locating to new headquarters in Arlington, Virginia. We will hold an open house, and we hope you can come see us in the spring.

SECOND CHANCE ACT, 2005

Art Wallenstein:

The Second Chance Act focuses on prisoners' re-entry to the community. It has not yet passed, but it is now before the House, with bipartisan support in the Senate. The word "county" is now in the legislation, which took a lot of hard work. However, because the first round of money is not available to counties, support from jail administrators is essential in passing the 2006 act. LJN members should consider writing to their congressman in support of the Second Chance Act of 2006.

Meeting participants suggested that Richard Geaither ask someone to highlight for LJN members all current Federal programs providing potential support for jails. The Departments of Labor, Health and Human Services, and the Department all have programs.

PANDEMIC FLU PREPAREDNESS

Don Leach: How can we prepare for a possible flu pandemic? Do we just put in a stock of bird flu vaccine? Is anyone here doing any planning?

Response: We have discussed the issue in staff meetings. We are preparing a contingency plan that is the same as any other, such as a plan for a hurricane. We have no specific plan for a pandemic flu itself.

Tim Albin: Tulsa has set up a protocol and our officers have been designated First Responders. We also have a plan for operating with half of our staff so that we could

operate the jail if we had an outbreak. We also had tabletop exercises scheduled with the health department. Because the jail population is a snapshot of the local population, we are starting to collect data on the incidence of flu in the jail.

Ashbel Wall: In Rhode Island, we have come to the conclusion that a flu pandemic will be very different from anything else we have experienced. So far, there is no vaccine to protect human-to-human transmission, and we have been told that the strategy will be to seal off infected persons as much as possible. Therefore, large numbers of staff will be directed not to come to work, and we may have to seal off the jail. The jail population is, of course, not a healthy population to begin with, and a confined population where the virus can spread easily will make staff reluctant to come to work. In short, it will be a mess, and it is hard to know how to prepare.

Don: If you lock staff in or out of jail, what will happen? How many will just walk out on you?

Tim Albin: Our health department is also focused generally on flu as a catastrophic event, so we will be prepared. But I agree that if a pandemic occurs, it will be a disaster for all jails.

Tony Callisto: Those who work at jails can have masks and gloves and establish some universal precautions to protect inmates. Two years ago when there was a shortage of the flu vaccine, Steve Ingley (AJA) and I wrote to Tommy Thompson at Health and Human Services, pointing out that our staff should have high priority for the vaccine. Perhaps we should renew efforts to include jail staff as high-risk people along with doctors, emergency personnel, and police.

Steve Thompson: We have concluded that we need a kind of political risk management, giving the jail director the authority to release certain number of prisoners. We need to get such legal authority in advance by having a standing set of orders delegating authority to the jail administrator.

Art Wallenstein: It is not established around the country that jail officers are first responders, and it could be a real battle to establish this. The letter Tony Callisto referred to could be very helpful.

Don: How do we keep our staff working when they know the people they are working with are contagious?

Tom Merkel: In Hennepin County, we can already release inmates. Has anyone done any kind of study about the mental health response, such as panic, to events such as a chemical spill or the flu?

Dennis Williams: Escambia County didn't do a plan to avoid panic, but it could be a similar process to our approach to MRSA. Once we encountered everyone in the community talking about "spider bites" and undertook some education on the real causes of MRSA, we had great success. It minimized and cut off the panic we were beginning to experience and made everyone aware of what they could actually do. If we did the same thing, for example, on the need to upgrade universal precautions, etc, the administrative staff might understand, but the line staff would be unlikely to do so. We need to work on this.

Don: A facility near Chicago requires staff to use masks when dealing with inmates. Even though a mask doesn't work well or long, it might help psychologically to keep staff working.

Rick Frey: Broward County met last week with a company called PulseNet. We discussed the question of how you know that flu has reached the community. By the time we know it's happening, it's too late to react. This company has formed a partnership with emergency rooms in Broward County. Physicians go into their system to record information, which feeds into a centralized database that can be mined for common symptoms. PulseNet provides the hardware and software, and the data entered by physicians is then available on a real-time basis to other agencies. We did the same thing with MRSA. Not only will the system identify flu symptoms, but also those of TB and other illnesses. Because the jail is a microcosm of the community, this system will help the community at large.

Tim Moore: In Portland, the county health department runs the jail's medical system with the same protocols as in the community. This approach makes the jail another low income medical provider.

Art Wallenstein: After 9/11, our health department linked all emergency departments in the county together. We are picking up interesting information, but no great crises yet. This approach should be available to all jails, so you should work with your county health departments.

Mike Jackson: The National Sheriffs Association (NSA) is starting to work on pandemic flu preparation for law enforcement because it is clearly needed. One thing that has emerged is that health departments' plans don't understand crowds. They expect orderly lines, but there will actually be panic. We need to keep our staff educated, so that staff and their families get any vaccines available early so they don't go to the emergency room. They need to know that they and families are safe.

Marilyn Ford: In the wake of Hurricane Katrina, Volusia County has started talking to staff about dedication to duty and our expectation of what it means for them to be a first responder. This instills pride in staff. The county has designated our staff as "mission essential," which means that you must show up because you are needed.

Tony Callisto: We asked the county if we could be part of its overall plan and help transport people. We now feel that we are a part of the overall emergency plan for the community.

Don: It is hard to get any information from the Centers for Disease Control (CDC), as they are dealing with the same problems.

Tim Moore: CDC has a cumbersome reporting system. On the national level, they are pretty far behind.

GANG RECRUITMENT AND HANDLING GANG AFFILIATION

Robert Davoren: In New York City, we believe that inmates should live together. We don't separate gang members and we integrate all housing areas. We have cut down on violence by locking down all inmates together. We went from 1500 stabbings or

slashings a year down to 40 a year. You'd be surprised how effective locking them all down can be. The New York City jails are tracking 87 different gangs.

Fred Oliva: In Denver, information on gang activity is forwarded to the jail and the Department of Corrections, but gang recruitment goes on despite our efforts. We provide records of gang membership when they are transferred to other jails or the DOC. It is part of our responsibility to share information.

Don Leach: We don't care why an inmate assaults someone; he goes into lockdown.

John Husz: In Milwaukee, we are making sure our information is linked to the state's gang database. We meet on a monthly basis with large metropolitan police departments and the DOC to share information about what we see going on in the community and facilities. It is helpful to increase networks and information sharing.

Mitch Lucas: In Charleston, we have local gangs and we do keep them separate. All supervisors track intelligence information and send it to our gang intelligence unit. Local gangs need to be kept separate or they assault each other.

Tony Callisto: We have a policy of absolute zero tolerance of gang activity or symbols. Any kind of violence is met with our upgraded punishment system, which provides that "capitol offenses," assaults with injuries, result in up to 2 years in lockup. Every violation is referred for prosecution. On the other end of the spectrum, we also provide programs for inmates on living and working together. When something happens, such as a stabbing, if inmates know first, it can cause problems. Clean and sober living is an emphasis in our jails, and a third of our units have essentially full-time programs. We also have a gang intelligence unit tracking what goes on.

Tim Albin: Ten years ago, the city of Tulsa got aggressive and shipped gangs off to prison. But they're coming back now, into our system. They are trying to re-establish their positions, in conflict with younger gangs.

Ron Torres: In Albuquerque, in the late '90s, we forced gang members to live together, but recruitment was coming from the state prison system. We cut off the power of leaders and immediately segregated them, so they never hit our general population area. We now keep gang leaders separated, because other inmates more willing to go along with the system.

Shirley Tyler: I came to Mercer County from the state DOC, and I brought an incentive program to the jail that uses the inmate welfare fund to provide incentives such as pizza or chicken dinners. Violence has gone down dramatically. In a small way, it has begun to work. Having come from state, I identified the gang leaders and shipped out seven of them to the state system, with the result that other inmates saw that leaders were not going to stay in the county facility. I haven't had to send anyone to the DOC in 7 or 8 months. When we identify troublemakers, we move them to the next unit where they don't know anyone, which slows down their activities. We are also pursuing criminal charges and long-time lockdown for up to 6 months. In reality, they don't serve that long because we don't have the space, but the threat has a psychological effect. We don't separate gang members, but we have two tiers, which cuts down the amount of time they spend together.

Don: Whether you separate or not, you need a good policy on punishments for violence. But along with this, you need incentives for good protection. We offer a variety of different meals as incentives. I know some jail administrators who lost their jobs for having pizza parties, etc, but just slapping down troublemakers is not enough.

Jim Coleman: We validate gang members up front and then we group them all together. Two weeks ago, the gang hotline informed us of a kid who was going to be murdered. We immediately let gang members know we were watching them.

Steve Murray: When we have gang leaders who are hard to manage, we put them on a tour bus and move them around. We may send them from urban jails to rural ones. Inmates know this is our policy, and they don't want to be moved. All inmates tend to come from the same neighborhoods and schools as gang members. We have a gang intelligence unit and a good relationship with the prosecutor's office. We know that some staff are affiliated with gangs. I just fired a sergeant who was a high-ranking member of the Bloods. I got the sergeant, who was also suspected in a homicide, for tax evasion, because I got tired of waiting for prosecutors.

Tony Callisto: LA County requires staff to keep their tattoos covered.

Tim Albin: Does anyone run the phone numbers of staff to see if there are hits from gang members? Have there been any court challenges to this practice?

CORRECTIONAL OFFICER APPRAISALS

Don Leach: How do you handle the situation when you have a difficult staff member whom no one wants to work with?

Tony Callisto: Staff are all appraised by their supervisors. By policy, supervisors must keep a file of all appraisal documents. In our organization, performance appraisals are based on a set of goals and objectives for on individual over the whole year.

Don: We had a problem with supervisors who were unwilling to fill out the documents. We now say that supervisors can be disciplined for not keeping up with regular appraisals.

Steve Thompson: Every person I have fired over the years has a long record of high performance appraisals. Everyone gets a raise, no matter what their performance. It's a kind of "grade creep." So we have done away with performance appraisals because they had no value. We have moved to "15 minute cups of coffee" twice a year, at which the supervisor says, "Here's what I've noticed recently?" and "What areas do you think I could improve in?" It seems to be more useful than formal appraisals, and it doesn't create documents that can come back and bite you when you face real problems with a staff person and want to fire them.

Steve Van't Hof: We had the same problem in Grand Rapids. About 10 years ago, we did away with performance appraisals, and instead have a seniority shift bid in which someone rises to the top who seems stronger than his/her peers. As an alternative to appraisals, we do "atta boy" or disciplinary letters. Those with commendations get an award.

Don: There are obviously constant changes in the approach to performance appraisals.

Marilyn Ford: We are obligated to use the county's evaluation form. We had one for about 10 years that included performance areas that every employee had to meet, but we have now returned to the county appraisal system, which includes our categories and weighting system. Supervisors meet bi-weekly. Staff receive slightly different raises depending on their ratings. But from an employee perspective, the system does have some meaning. Over time, the numerical system does track poor and stellar performers, even though they may have a weak rater one year and a strong rater the next. Despite all the problems, there is some value in having a performance evaluation system tied to raises. If you have to go into court, you have some evidence for your decision.

IDENTIFICATION CARDS FOR RELEASEES

Regina Huerter: An issue for Denver is that those being released from jail often don't have any identification. Does anyone have a solution to this problem?

Art Wallenstein: We issue a valid offender reentry card, and we met with the state motor vehicle division to be sure our card met state standards. Feedback has been terrific. Releasees can use it to cash checks, rent apartment, etc. I will send a copy out through the network. An ID card is useless unless it meets state standards.

Regina: Our issue is that our ID card is not accepted.

Response: We worked with the Division of Motor Vehicles. While inmates are in custody, we also apply for a Social Security card for them.

PAYMENT OF MEDICAL BILLS FOR THOSE WITH PRE-EXISTING CONDITION

Tim Albin: Does anyone here refuse to pay the medical bills for an inmate who comes in with a pre-existing condition? Are there any problems with this?

Mitch Lucas: A South Carolina decision states that we are not liable in such instances for pretrial detainees. This decision has saved me about \$2 ½ million.

Tim Albin: I'm saying that we won't pay for preexisting conditions, but I'm running into trouble enforcing this policy.

Tom Bay: Health care providers are refusing treatment if they are not paid.

Tim Albin: I am looking for some other states' laws so that we can perhaps tweak ours so that it gives a solid platform for refusing to pay.

Mitch Lucas: Inmates lose all benefits when they come into the jail, including Social Security. If we could do anything as a group, changing this policy would be the most beneficial to all of us.

Tim Albin: I looked at insurance policies of inmates, but they all have a disclaimer saying coverage is not provided if the person is in jail.

Christopher Webb: Virginia has a law that says nothing requires the jail to pay, but health care providers won't give service if we don't, so we pay for everything.

REPORT FROM THE BUREAU OF JUSTICE STATISTICS

**ALLEN BECK, PH.D., CHIEF, CORRECTIONS STATISTICS PROGRAM, U.S.
BUREAU OF JUSTICE STATISTICS**

IMPLEMENTING THE PRISON RAPE ELIMINATION ACT (PREA)

NIC has always had a good relationship with BJS and has been especially helpful in enabling us to implement the requirements of PREA. I have also been impressed by the response of the corrections community in general. Jim Gondles of ACA has attended four of our five workshops on PREA; AJA and NSA have also participated. All the professional organizations have engaged with us in conversations about how to make PREA work.

PRISON RAPE ELIMINATION ACT OF 2003

PREA requires BJS to:

- “Carry out, for each calendar year, a comprehensive statistical report and analysis of the incidence and effects of prison rape”
- Sample “not less than 10 percent of all federal, state, and county prisons, a representative sample of municipal prisons” (including juvenile facilities)
- “Use surveys and other statistical studies of current and former inmates”
- “Not later than June 30 of each year...submit a report...with respect to prison rape, for the preceding calendar year.”
- “The report shall include...a listing of those institutions...ranked according to the incidence of prison rape in each institution” and
- “A listing of any prisons...that did not cooperate with the survey.”

BJS’ MULTI-MEASURE, MULTI-MODE STRATEGY

BJS decided that no single study could respond to all these requirements. To get stable estimates and be able to compare facilities is a very big challenge. One survey would not work for all populations because the criminal justice system is complex and includes specialized facilities with diverse populations that include differential risks of sexual violence.

SEXUAL VIOLENCE DEFINED

Many issues are related to what is being measured, and BJS attempted to define “violent sexual acts” to clarify its work under PREA. For the purpose of BJS’ work, sexual violence is defined as:

- Sexual rape;
- Violent sexual contacts;
- Staff sexual misconduct, even if consensual; and
- Staff sexual harassment generally. (When comparing institutions with each other, this category may not be included, because comparisons are difficult.)

BJS' IMPLEMENTATION STRATEGY

BJS designed the following multi-modal, multi-measure strategy:

Administrative records collection

This administrative records collection was first conducted in 2004 and is being repeated now for 2005. It includes measures of four different types of sexual violence. It indicates what corrections administrators know about sexual violence incidence. It is based on a large sample of state and local facilities, this year including 400 local jails, including at least one publicly operated jail in each state.

Next year, BJS will also look at unsubstantiated incidents, which are sometimes not investigated because of a variety of circumstances. It is important to understand incidents at the margins in order to know better what to do in terms of evidence collection and incident investigation.

National Inmate Survey on Sexual Violence, 2006; National Survey of Sexual Assault Reported by Former Inmates, 2007; National Survey of Sexual Assault in State-Operated Juvenile Facilities, 2007; and National Prison Rape Surveillance Project, 2007

BJS is also required to sample and talk to current and former inmates. This is difficult, as former inmates are not often willing to talk about their experiences. There is no more challenging task than measuring sexual assault in juvenile facilities, as it can involve informed consent and parental consent, as well as mandated reporting of abuse and neglect. There is also the risk of young people getting distressed as a result of the interviews. The "surveillance project" will include collecting information from correctional medical staff, as external sources of information. BJS is establishing a system for medical staff to report incidents without identifying any individuals, to see if there is any correlation between administrative records, inmate interview results, and information from medical staff.

AUDIO COMPUTER-ASSISTED SELF INTERVIEWS (ACASI)

ACASI eliminates the social context of interviews and reinforces the anonymity of respondents. It has been shown that social interaction in interviews about sensitive topics (sexual behavior, drug use) leads to underreporting, especially if the interviewer is female. ACASI also works well as a way to interview those with low levels of literacy or with language problems.

BJS' COOPERATIVE AGREEMENTS

BJS has cooperative agreements with the following major survey firms to implement the PREA surveys:

- Research Triangle Institute—responsible for state and federal prisons, local jails, and private prisons and jails.
- WESTAT—responsible for state-operated juvenile facilities and local and private juvenile facilities.
- National Opinion Research Center—responsible for parolees on active supervision.

Staff are currently being trained in methodology, and tests are being conducted in two large jails, where about 2000 inmates will be interviewed in the next few months. National implementation in November will involve 300-350 jails. Researchers will be in each jail for 5-7 days for interviews. A report will be completed in June 2007.

FINDINGS TO DATE: ALLEGATIONS

There were 8,200 allegations of sexual violence in correctional facilities nationwide in 2004.

Total	Reported in survey	National estimate
Prison systems	5,528	8,210
Local jails	669	1,700
Private prisons/jails	67	210
State juvenile systems	931	931
Local/private juvenile facils.	359	1,890
Other facilities	16	20

FINDINGS: SUBSTANTIATED INCIDENTS IN LOCAL JAILS

The rate of substantiated incidents in local jails is 0.64 for every 1,000 inmates. About 27% of alleged nonconsensual sexual acts in local jails were substantiated.

Total	State prisons		Local jails	
	Number	Percent	Number	Percent
Inmate-on-inmate nonconsensual sexual acts	1,229	100%	322	100%
Substantiated	152	17.6	73	27.2
Unsubstantiated	392	47.3	117	43.7
Unfounded	322	37.2	78	29.1
Investigation ongoing	355		41	
Abusive sexual contacts	221	100%	65	100%
Substantiated	57	27.8	22	35.5
Unsubstantiated	126	61.5	31	50.0
Unfounded	22	10.7	9	14.5
Investigation ongoing	16		3	

STAFF SEXUAL MISCONDUCT

In local jails, more than half of alleged incidents of staff sexual misconduct were unsubstantiated or unfounded.

2005 SURVEY OF SEXUAL VIOLENCE

- Currently in the field—will produce a report to meet the Congressional mandate;
- Summary—incident form for each substantiated incident;
- More than 300 jail jurisdictions being sampled, with probabilities of selection proportionate to size;
- Will produce in-depth analysis of substantiated incidents.

DISCUSSION: PREA IN LOCAL JAILS

Question: What are the repercussions for agencies that don't comply?

Allen Beck: The law says institutions are “required to participate.” One incentive to do so is that BJS will provide a list to Congress of facilities that won't cooperate. We have had only four refusals so far, three privately operated juvenile facilities and one Indian facility. Part of the motivation to participate is the desire not to appear on the list of those who didn't. In addition, the Bureau of Justice Assistance grant program stipulates that state executives who receive grants must certify that all facilities in the state have participated.

Question: Are you using Average Daily Population (ADP) or admissions in calculating incidents?

Allen Beck: It is difficult to determine an inmate's potential exposure. We have been challenged to count admissions, but trying to measure flow during a year can be hard. Whether we use admissions or ADP, we must compare like measures. It's important to understand that prisons and jails are different. I was able to have prisons, jails, and juvenile facilities tracked separately. We also need to bound the period of exposure, so we are looking at either a 12-month exposure for prisons, a 6-month exposure for jails, or time since an individual was admitted. This enables us to compare facilities with different terms of incarceration.

Question: How did you determine the selection of institutions?

Answer: We didn't know the prevalence of sexual assaults and didn't want to spend an enormous amount of money to get a lot of zeroes. So, the first year, we didn't sample prisons, but asked for records for the entire prison system. We did sample jails, though. For the personal interviews, we will sample facilities, not systems, because the ultimate interest is in individual facilities. About 330 local jails will be used; for the first cut, we did just over 10% to get a good sample. We will sample proportionate to the size of facilities. For ACASI interviews, we will go to fewer facilities. In November and December, we will interview a large number of inmates in order to get comparable data.

Question: Many inmates in our facilities will have been there only a couple of days or a month.

Answer: Yes, we realize that. We won't interview pre-arraignment inmates, only pretrial and post-trial inmates.

Question: What is the estimated cost for carrying out the provisions of this Act?

Answer: Our status report, which provides the history of appropriations to BJS for this task, is on our web site. So far, we have spent \$26 million; my original estimate was \$13 million, but that included only adults. The cost is \$5 million for one cycle of state-operated juvenile facilities. The costs for this project in staff time and travel are enormous. The Act does provide money for grants; in 2004, there was \$20 million for states, and there is another \$20 million in the 2005 solicitation.

Question: How are participating jails selected?

Answer: The sample is random, but proportionate to size. It would be a very weak sample if we didn't use size, because violence occurs in the big facilities. There are no volunteers. BJS will not rank facilities this year or next; the field is not ready for comparisons between systems. We hope the field will reach a consensus on what should be counted, but until then, we can rank based on disparate reporting systems. Eventually we will have to do so, of course, based partly on inmate interviews. Part of the concern is legal liability, but so far, administrators know that they need to know more about the incidence of sexual violence. So far, there are very low numbers, because that's what is in administrative records. When we move to inmate interviews, we will try to do it fairly and responsibly.

Question: How far in advance will we know if you are coming to the facility?

Answer: Congress requires that I not give too much advance notice, so I can't tell you a lead time. We will sample this summer, and once we know the sample, we will let you know. We will not compromise operations and will comply with all regulations.

Question: After spending \$26 million, is there a significant problem justifying this expense? If so, is there any solution?

Answer: Yes, the Act could be more cost-effective, but it is law. The notion is that statistics can create change at the facility level. Statistics will be collected and published openly to encourage administrators to change their ways. We don't know much about prison rape. I disagreed with the findings of the Act and said that there was an overstatement of incidence and prevalence, but the Act is law. After this research, we will know more about the circumstances of rape and how to prevent it.

Jim Gondles: I have a political observation. The bill had wide support in Congress. Those who wrote the bill estimated that 13% of inmates had been subjected to prison rape. I don't think those who operate jails and prisons believe this; we think the rate is more like $\frac{1}{2}$ of 1 percent. However, we must stand up and make clear that we don't condone violence in our institutions. If we fight this law, people will say that prison and jail administrators are turning a blind eye to rape. The PREA Commission and ACA will hold a hearing on March 23 in Miami.

Question: If our jurisdiction is included in the practice group, what is the likelihood of being included in the actual sample?

Answer: If your system is very large, there is a high likelihood that you will be included. I don't want the same set of inmates exposed to the interviews, but that situation is more likely in prisons than jails. I have to justify my choices to Congress. I have tried to make this an open process. One mistake when the Act was passed was the lack of participation by corrections, so I have tried to put corrections in the room with researchers. Strong opinions help the process.

Question: When an inmate discloses sexual violence in an interview, will the institution also learn of it?

Answer: No, you won't know because you won't know who was surveyed. Not everyone brought forward as a potential interviewee will actually be surveyed on sexual violence. We won't know names; there will be no identification of individuals who have disclosed. That's one problem with victim self-reporting, because there are no opportunities for investigation. We know that about one in four disclosures will be false. My job is to provide information that informs the process and ultimately leads to new correctional standards. I do believe, though, that PREA work has already had some benefits in that we are talking about the issue and, in some cases, changing policies and implementing training.

Question: What is the procedure for interviews?

Answer: We will get a roster of the inmate population and then do a systematic sample of the group. Interviews will take place over several days. We are trying to develop a way to prevent inmates from talking to each other after they have been interviewed. There is no way to control the response rate, but we will collect data on those who refuse and adjust responses accordingly. We won't replace those who refuse with someone else. I am hoping inmates will come forward to be surveyed; we will have to protect staff from knowledge to encourage anonymity.

Question: How will you know if what they report is valid?

Answer: We won't know without investigations. But we can build into the survey certain expectations of false reports, which will be offset by those who won't come forward. Both over- and under-reporting will happen. We are dealing with allegations only, but they will be balanced by administrative records involving substantiated evidence. Inmates will be sampled by age, gender, housing, etc.; if we didn't do this, we would contribute nothing to our understanding of sexual assault.

Question: How will you deal with the mental health population?

Answer: Some of those in the sample will not be able to participate. We recognize that a certain proportion of inmates will fit in this category, so we have developed a very short paper and pencil interview. This will also be used for those in administrative segregation. Ultimately, the interviewer will have to decide if an inmate is cognitively up to the task. Mentally ill inmates may very well be among those victimized.

Question: Will interviews contain questions on past mental health incidents?

Answer: This is a topic near and dear to my heart. Early on, we had information on this, but prison administrators felt it was inappropriate to ask if inmates were on medication or had previous mental health treatment. One problem we have is at the

facility level; we will protect the identity of respondents but not the identity of facilities. We have to exercise restraint as we collect these kinds of data, but there will be all kinds of other key indicators.

OTHER NIJ JAIL DATA COLLECTION EFFORTS

DATA COLLECTION IN LOCAL JAILS

- 2005 Census of Jail Inmates
- 2006 Census of Jail Facilities
- 2006 Deaths in Custody

RECENT BJS PUBLICATIONS ON JAILS AND JAIL INMATES

- *Suicide and Homicide in State Prisons and Local Jails*
- *Profile of Jail Inmates, 2002*
- *Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002*

A copy of Allen Beck's complete PowerPoint presentation is available at:
<http://www.nicic.org/downloads/ljnvault/ljnJan06Beck.ppt>

For additional information, contact Allen Beck, PhD, Bureau Chief, Corrections Statistics, Bureau of Justice Statistics, 810 Seventh St., NW, Washington, DC 20531; (202) 307-0765; becka@ojp.usdoj.gov

STATISTICAL ANALYSIS: CROWDING, LIFE SAFETY, AND MANAGING STAFF

PATRICK JABLONSKI, PH.D, STATISTICIAN, ORANGE COUNTY, FLORIDA

SCOTT BRADSTEET, DEPUTY CHIEF, ORANGE COUNTY, FLORIDA

2005 ORANGE COUNTY PRESENTATION REVISITED

- A significant reduction in the jail population;
- Convergence of a booking decrease and a reduction of average length of stay;
- The average length of stay (ALOS) reduced by implementing multiple case processing changes.

JAIL POPULATION, 1980 – 2000

The jail population steadily increased during the 20-year period, 1980-2000; by the end of 2000, the population was 4,239. Orange County hired the University of Central Florida to determine what was driving the population increases. The consultant projected a population of 5,361 by 2005, so something had to be done.

STEMMING THE TIDE, 2002-2003

Following a year of meetings, the Jail Oversight Commission recommended 36 changes in criminal justice case-processing, including:

- On-site courtrooms with more meaningful initial appearances;
- Two initial appearance sessions on weekdays;
- Faster transfers to state prison;
- Overall more efficient criminal justice process;
- Implementation of the Central Receiving Center, to which an arrested person with mental health problem could be routed; and
- Faster processing of “VOP-only” (violation of probation) felons.

The changes were not implemented immediately, however. Prior to a meeting of the Commission a year later, Jablonski quickly developed a 20-page report, demonstrating that statistics could bring strong credibility to the jail. At that one-year “reunion” of the Commission, the news media provided a push, noting that the inmate population continued to grow and interviewing the chief judge to ask why the recommendations had not been implemented. Within 3 months, all changes were in place, especially those related to case processing. Some courtroom operations were moved onto the jail grounds, and things changed very quickly. The jail population dropped, thanks in large part to case processing changes.

WHAT HAPPENED IN 2005?

After dropping in 2004, the jail population began to climb in 2005 for a variety of reasons, especially a rise in bookings.

POPULATION MANAGEMENT

What drives a jail's population? The answer is Bookings and Average Length of Stay (ALOS). Orange County's population increase in 2005 was due to an increase in bookings.

- Bookings were at their highest level since 2001;
- Similar levels of bookings in previous years produced average daily population numbers between 3,900 and 4,100.
- The system was functioning well.

SYSTEM PERSPECTIVES: WHAT THE JAIL CAN ADD TO THE DISCUSSION

- Orange County Jail's Monthly Case Processing Report for the county;
- Distribution of the report;
- Utilization of the report;
- The report tracks statistics in the following key areas:
 - Time to Hearing and ALOS for Probation Violators;
 - Mental Health ALOS;
 - Transport Time of Paper-Ready State Inmates; and
 - Initial Appearance Pleas and Non-Monetary Releases.

TIME TO HEARING FOR PROBATION VIOLATORS

The goal is 10-15 days for felony probation violators. In the '90s, it took two months to get someone in front of a judge. In 2001, prior to the creation of the Jail Oversight Commission, the processing time was 54.2 days; after recommendations were implemented, for the first half of 2004, processing time had dropped to 20.2 days. The average in the fourth quarter of 2005 was 19.8 days.

MENTAL HEALTH AVERAGE LENGTH OF STAY

About 16% of the jail population has mental health issues. The ALOS for this population was twice that of the general population, and in 2003 a task force was created to address this issue. As a result of the presentation of convincing jail data, the group created the county's Central Receiving Center, a destination to which law enforcement can take arrestees with mental health problems.

HOW ALOS IS DETERMINED

There are a variety of approaches to calculating ALOS. Orange County's approach is to look back when someone is released from jail and see how long the person was confined in the jail. The information can be subdivided by those with mental health issues or probation violators, and jail reports provide information on different aspects of the population.

PLEAS AND RELEASES AT FIRST APPEARANCE

Orange County tracks releases other than bonds and noted that misdemeanants were not being released. Over time, if the number of releases gets below a certain point, someone has to explain why.

The goal is to take pleas to lesser charges every day. The Corrections Department tracks the number of days when no pleas were taken at initial appearances. Booking officers are trained to track pleas in the courtroom, which is a low-cost way of collecting this information.

TRANSFERS TO STATE PRISON

The Department tracks the time it takes to release inmates after the paperwork has been completed. The time has declined drastically over the past few years and is now at 1.9 days. In some states, the time is limited by what the state Department of Corrections will take.

SUMMARY: THE VALUE OF DATA

The jail can't make changes in case processing, but statistics can make change happen. Let the numbers tell the story. There are things the jail administrators can't say, but it is important to be part of the discussion. In Orange County, a daily report goes to interested parties automatically at 4am.

CROWDING: BOOKINGS VS. RELEASES & ALOS

- Population is driven by bookings and ALOS, but keep an eye on release numbers to help understand the data.
- “Fewer releases always mean that inmates are staying longer than before.” This is a misconception; it is not always true. Fewer releases in sheer number alone don't tell the whole story.

FORECASTING THE FUTURE

- Jail forecasts have a short shelf life. Their accuracy diminishes with time.
- Jail forecasts are often called upon to span 10+ years, but these are essentially coin flips. It makes sense to ask for repeated forecasts.
- Too many intervening variables impact accuracy.
- Any projection must take into account a variety of variables to be useful.
- Moreover, the actual methodological approach is important.
- Many methods are not really appropriate for jail population forecasting.

PUTTING STATISTICS TO WORK: PRIMARY INDICATORS OF JAIL SAFETY

- The Primary Indicators Report is a 152 page quarterly report that covers:
 - Use of Force
 - Inmate Grievances
 - Staff Injuries
 - The “Report Card”
- The report is used to talk with staff about incidents in the jail.
- 2005 compared to 2000:
 - 22% fewer inmate fights
 - 14% fewer inmate batteries
 - 22% fewer inmate injuries

- 28% fewer uses of force
- 53% fewer batteries on staff
- 71% fewer staff injuries
- Primary indicators
 - Uses of force are tracked by facility, because there is variation based on the types of offender in each facility.
 - Inmate grievances declined because staff were looking at the data and responding.
 - The quarterly report is given to managers, who read relevant sections. A meeting is held at which selected slides are shown, indicating health and injury indicators, violence indicators, and inmate management indicators. Colored slides present the story clearly, with red showing high numbers on the indicators and green showing low numbers.

See <http://www.nicic.org/downloads/ljnvault/ljnJan06BradJabStats.ppt> for Dr. Jablonski's complete presentation. For additional information, contact Dr. Patrick Jablonski, Research Statistician, Orange County Corrections Department, PO Box 4970, Orlando, FL 32802; 407-836-0377; Patrick.jablonski@ocfl.net

SUCCESSION PLANNING: EXECUTIVES AND MIDDLE MANAGEMENT

GORDON BASS, JACKSONVILLE, FLORIDA, SHERIFF'S OFFICE

“SUCCESSION PLANNING: THE NEXT GENERATION OF LEADERS”

SUCCESSION PLANNING STRATEGY: SETTING THE STAGE

Recently, Jacksonville was looking at a loss of 96 officers, not including those who were regularly scheduled to retire. We need to ask ourselves what we are doing to build a culture that encourages growth in leadership.

- Expected or not, succession is inevitable.
- Who are your next generation of leaders?
- Succession planning ensures there is a process in which highly qualified, competent people occupy all key positions (particularly key leadership positions) within an organization, not just for the present, but also into the future.
- Few events have such an impact on an organization/agency as the departure of key leaders. (Deferred Retirement Option Plan, Elections, Normal Attrition, New Appointments, etc.).
- Both internal and external perceptions are affected.
- What does your current talent pool of potential leaders look like?
- What are we doing to build a culture of coaching and mentorship throughout the organization?

BENEFITS OF PLANNING

- *Built to Last: Successful Habits of Visionary Companies*, Jim Collins

Collins identified 18 companies that had been in the forefront of their industries for at least 50 years. He found that one of the key reasons behind their success was their history of a strong focus on succession and leadership planning, ensuring leadership excellence and continuity.

THINGS GO RIGHT/THINGS GO WRONG; WHO GETS THE CREDIT?

- Proper planning ensures a seamless transition.
- Organizations have to consider leadership in the dispensable realm.
- Excerpt from the poem, “Indispensable Man.”

“Take a bucket and fill it with water,
Put your hand in it right up to the wrist,
Pull it out and the hole that’s remaining
Is a measure of how you will be missed.”

Don't let this be you!

BENEFITS (CON'T)

Succession planning:

- Ensures that senior management teams engage in the discipline of reviewing the organizations leadership talent;
- Provides a focus for diversity issues/considerations to surface;
- Guides the development of key executives;
- Ensures the regular re-evaluation of your organizational structure and systems (Jacksonville Sheriff's Office reorganization at beginning and recent);
- Provides for continuity of leadership by identifying and developing potential candidates for key leadership positions within the organization;
- Develops a supply of well-trained, broadly experienced, motivated people who are ready to assume key positions;
- Provides an opportunity to integrate desirable candidates throughout the organization who have had positive goals established for them;
- Provides an opportunity to assign these individuals in various departments/units with the goals of educating them with respect to the culture and processes of the organization;
- Provides an opportunity for alignment of the future needs of the organization with the availability of appropriate resources (finding his/her niche);
- Defines career paths (motivators and maintain focus);
- Creates an atmosphere for creativity as these individuals examine the processes and provide new ideas for improvements;
- Creates a well-trained, engaged, and potentially abundant source of capable people who are well versed in the breadth and depth of the organization; and
- Provides an abundance of individuals who are constantly questioning, reviewing, and revising processes and procedures for the sake of efficiency/improvements.

THE PROCESS

- Outlines specific competencies desired for your organization;
- Identifies all key positions in your organization as well as specific competencies needed;
- Identifies potential future candidates from within your organization for these key positions;
- Provides development opportunities/individual development plans; and
- Utilizes training and development, coaching (career counseling/goal setting), mentoring and OJT as development tools.

COMPASS POINTS: AN OUTLINE FOR SUCCESSION PLANNING

Jacksonville uses the "Compass Points" process:

- Define where you currently are in the Succession Planning (SP) process (a key point);

- –Positions planning for;
- –Identifying key people to succeed;
- –Where are they? (Experience, education, training)
- –Any changes since last review?
- –Other candidates identified?

- What has changed inside your organization, which may alter your SP path?
 - –How have the current candidates performed to date?
 - –What jobs have changed and how?
 - –What new opportunities have emerged that may impact your plan?

- Define where you want your SP to take you.
 - –What will the organization look like in 3- 5 yrs?
 - –What will your key people be doing then?
 - –What openings will need to be filled due to attrition, promotion, or expansion?
 - –What new disciplines will the organization require due to the changing environment? How will you fill them?
 - –How does your SP fit with your expectation of where your organization and your internal situation will likely be going?

- Define how you will get from where you are today to what you want your organization to look like at the end of your current SP horizon.
 - –Who will be involved? Their role?
 - –When will they start/end each part of the process and how will you measure progress?
 - –What criteria will be used to measure each candidate’s on-going progress?
 - –Does each candidate offer and demonstrate continuing potential and progress in meeting established requirements?
 - –What criteria determine if someone is not progressing appropriately and what can be done to assist?
 - –What alternatives (if applicable) can be offered those who are not meeting expectations?

ANOTHER MODEL

- International Public Management Association for Human Resources (IPMA-HR) looks at the issue from the broad perspective of public employees;
- “10 Tips for Creating a Public Sector Leadership Development Program.” (IPMA-HR Newsletter, February 2005);

- “. . .the hottest issues facing HR professionals: workforce and succession planning;
- “. . .Sessions focused on the growing need to implement workforce and succession planning systems in order to address the mass exodus of workers that is anticipated in the next five to 10 years.”
- Leadership development is crucial.

THE JACKSONVILLE SHERIFF’S OFFICE APPROACH

In summary, we have a General Order that addresses the entire process of career development, including all levels up to the supervisory level. On all evaluations, each career counselor (every lieutenant) has a copy of a sheet that lists the person’s plans, short- and long-range goals, what needs to take place to reach these goals, and what the employee has done to achieve these goals within the last evaluation period. The sheet also covers training and career development opportunities throughout the organization for executive level development, including external resources to which executives can be sent for additional training and development. In addition, Jacksonville has a career enhancement program.

See <http://www.nicic.org/downloads/ljnvault/LJNJan06BassSuccess.ppt> for a copy of Gordon Bass’ complete PowerPoint presentation. For additional information, contact Gordon Bass, Director, Jacksonville Sheriff’s Office, 501 E. Bay Street, Jacksonville, FL 32202; 904-630-5847; gordon.bassjr@jaxsheriff.org

DENNIS WILLIAMS, ESCAMBIA COUNTY, FLORIDA

“LIVING OR LEAVING A LEGACY?”

This is the main question facing those of us who have been in the business for about 30 years. Leadership, a process, and a culture are the keys to developing successors who can and will carry on the mission.

AVAILABLE OPTIONS

- Select and promote based on education and experience;
- Select and promote based on political connections. Does the person have a positive effect on the community? (You can't escape politics.)
- Select and promote based on abilities; or
- Select and promote by stepping out of the box.

LEARNING FROM OTHERS (MANAGEMENT WISDOM FROM THE NEW YORK YANKEES' DYNASTY)

- The New York Yankees, in 1921, made a decision to become the best team in baseball.
- The Yankees have successfully dominated organized baseball for over eight decades.
- Since 1921, the Yankees have played in 39 World Series and won 26 of those championships.
- Growth and continuity have been achieved from within. Developing talent from within is a key to the Yankees' success.
- What allowed a single decision to become the best way to turn into the dynasty we know today? What allows the dynasty to be successful? Is it Superstars? Scouting and Trades? Salaries? Money?
- The Dynasty came from homegrown talent developed from within by adhering to the core competencies of the organization.

THE CORE COMPETENCIES

- Leadership
- Process
- Culture

THE FOUNDATION OF *LEADERSHIP*

- The most influential person in the leadership mix is the front line supervisor.
- The front line supervisor is the face of the organization.
- The strategic decisions the front line supervisor makes every day determine the outcomes and performance of the organization's employees.
- If those decisions are based on the core competencies, the goals of the organization will continue to be met.

When I came to Escambia County, I found that the jail had deteriorated after a court order ended. It literally stank. I committed to the community that I would upgrade jail

operations. Our mission was to become the jail others looked up to. We planned for accreditation from the beginning. Like the Yankees, we committed the team to make radically positive changes. It took the commitment of staff and the support of the sheriff as well as leadership.

THE DESIRABLE TRAITS OF A FRONT LINE SUPERVISOR

Recognize and encourage these traits:

1. Accomplishments exceed those of their peers;
2. Inspire others to superior performance;
3. Embody the core competencies of the organization;
4. Recognized and respected by their peers as leaders. This is the single most important quality.

THE PROCESS FOR DEVELOPING A DYNASTY

- Raise the bar. Establish clear goals.
- People will live up to or down to whatever expectation is set for them. Lowering standards for performance or hiring has bad consequences.
- The standard set for the Yankees by owner Jack Ruppert in 1921 was not a league title, which they won, but the World Series. They won that in 1923.
- From then until now, the standard remains the World Series.

WINNING BECOMES AN ORGANIZATIONAL PROCESS

- It is measurable and observable in and through individual team members: some superstars, some stars, and mostly solid performers.

DESIGN YOUR CULTURE FOR SUCCESS

- Diversify your talent pool. Look past all barriers. This will enhance ideas and your approach.
- Look for talent, not sameness. It will yield innovation and growth.
- Dave Parrish helped to bring these ideas to the forefront at least 15 years ago. Collectively, we can respond to problems. Leaders of large jails need to buy into the notion that this is an honorable profession.
- Celebrate your history. Knowing where you have been helps you get where you are going. Knowledge also builds ownership and traditions of excellence. What, historically, have we done and how can we build on that?
- Boldly promote your traditions of excellence.
- The Yankees began with two organizational goals: 1) The Yankee brand equates to a winner; and 2) The Yankees are an employer of choice.

ANCIENT CHINESE PROVERB

“If you want one year of continuity, grow grain. If you want 10 years of continuity, grow trees. If you want 100 years of continuity, grow people.”

CONCLUSION

- Establish a strong pervasive leadership structure built with leaders who are credible, believable, and goal-oriented;
- Develop a road map for a credible, clear, and practical process that can be followed to the goal; and
- Establish and sustain a culture that motivates employees to establish personal goals that derive value from their contribution to organizational success.
- “Your greatest legacy as a leader will be how you develop your people to carry on after you are gone.” John W. Gardner, *On Leadership*, p.36

See: <http://www.nicic.org/downloads/ljnvault/ljnJan06WilliamsLivingLegacy.ppt>

For additional information, contact Dennis Williams, Director, Escambia County Sheriff's Office, P.O. Box 18770, Pensacola, FL 32523; 850-436-9822; dwilliams@escambiaso.com

RICHARD GEATHER, NIC JAILS DIVISION

Richard Geather noted that NIC's publication, "Correctional Leadership Competencies for the 21st Century: Executives and Senior-Level Leaders" is now available. NIC plans to use the competencies identified in the publication to design training programs and select appropriate candidates for the programs.

Richard pointed to the section of the Executive Summary that lists the core competencies for senior-level leaders, and then to the section that identifies the positions included in this category.

The complete document is available from the NIC Information Center, 1860 Industrial Cir., Suite A, Longmont, CO 80501; (800) 877-1461; (303) 682-0213; Fax: (303) 682-0558.

IS THERE A PROPER PLACE FOR TASERS IN THE USE OF FORCE CONTINUUM?

**DR. JOHN CLARK, CHIEF PHYSICIAN (RET.), LOS ANGELES COUNTY SHERIFF'S
OFFICE**

OBJECTIVES

- Highlight the force technologies and the consequences of their use.
- Identify and define the ethical dilemma that we as correctional health professionals face.
- Identify principles and measures that may assist us in formatting rational policy and procedure.

FORCE TECHNOLOGIES/METHODOLOGIES

- Swarm Technique
- Spit Bags/Mesh Bags
- Restraint Chair
- 2, 3, 4 & 5 Point Restraints
- Chemical Agents/Sprays
- Bean Bags
- Rubber Bullets
- Sting Ball Grenades
- Hog/Bow Tying
- Forced Medication
- Tasers

POTENTIAL CONSEQUENCES OF USING FORCE

- Injury to Inmate
 - Fractures
 - Facial Injuries
 - Death
- Injury to Staff
- Lawsuits

In LA County, I presided over 750 deaths in custody over 20 years. This gives me the right to an opinion. The cause of death was consistent with deaths in the free community, with the leading cause of death cardiovascular heart disease. Seventy percent of deaths occurred in the 25% of the population who were 40 years old and older. This has implications for intake screening, as older inmates are at risk for additional medical problems.

THE ETHICAL DILEMMA

- The application of force to contain violent behavior is a necessary tool for law enforcement and corrections personnel.

- Trends in criminal justice and population demographics have led to an inmate population that demonstrates increasingly violent behavior.
- Such trends have resulted in more conspicuous roles for medical and mental health professionals in the management of correctional institutions.
- From the standpoint of the health professional, there is a question of whether participation in use of force incidents crosses the line from safeguarding inmate welfare to serving as accessory to security measures not appropriate to the practice of medicine. This has implications for such things as whether health care professionals should be present at a cell extraction.

DOZENS OF MEDICAL AND FIELD STUDIES

- US Department of Defense
- United Kingdom Home Office
- Canadian Government
- Alfred Hospital, Australia
- Potomac Policy Institute
- Journal of Pacing and Clinical Electrophysiology (PACE)
- Orange County Task Force
- Cincinnati Police Department
- Madison, Wisconsin Police
- University of San Diego

The tests found the taser to be a “non-lethal technology.” However there have been 100 or so deaths related to taser use, perhaps not all of them directly related to the taser. California, Florida, and Georgia have had a significant number of unintended deaths.

NEUROMUSCULAR INCAPACITATION

- A very effective way of getting one’s attention, cooperation, and keeping control;
- An important question is: What is the most effective amount of voltage to effect neuromuscular incapacitation (NMI) without causing cardiac arrhythmia?

The studies (Journal of Clinical and Electrophysiology) say, “No amount of voltage applied produced a cardiac arrhythmia.” However, the test subjects were anesthetized and were essentially healthy kids, not correctional populations.

NEUROMUSCULAR INCAPACITATION: THE SAN DIEGO STUDY

Test subjects were all healthy deputies or correctional officers; again, these were not jail or prison inmate types but buffed-up officers.

- No history of medical problems;
- Not taking any medications;
- Required to meet parameters for BMI (Body Mass Index);
- None had significant decrease in pO₂ saturation after exercise.

SUDDEN IN CUSTODY DEATHS

- Asphyxia (Positional, Compression, Choking and Strangulation)
- Excited Delirium
- Acute Cardiac Death
- Average age at time of an Acute Cardiac Death (ACD) is 32
- 5 to 10% of ACD show no signs of anatomical abnormality at autopsy

SUDDEN IN-CUSTODY DEATHS/RISK FACTORS

- Chronic diseases
- Intoxication with alcohol or drugs
- Smoking
- Prescription medications that affect central nervous system
- Mental illness
- Obesity/big bellies
- Intense physical activity
- Hyperthermia
- Oral facial injuries
- Electrical devices, such as pacemakers
- Hog Tie, Bow Tie and Tarping

ACUTE CARDIAC DEATH/PATHOPHYSIOLOGY

- In some of these deaths we are not able to determine the exact cause, primarily due to the lack of telltale pathology at autopsy.
- Many of these deaths are coded as Cardiac Arrest due to an Acute Fatal Arrhythmia.
- Acute cardiac arrest can result from “Hypoxia,” a state of decreased oxygen in the blood, which is sufficient to cause an impairment of body functions.
- Hypoxia causes a normal heart rhythm to become irregular:
 - The heart can beat too slowly or it can beat too fast.
 - Some arrhythmias are benign, and some are more serious.
 - Most are precipitated by vigorous exercise and/or emotional stress.

RECOMMENDATIONS PRIOR TO USING TASERS

- Review the clinical studies that are referenced by the manufacturers of these devices.
- Assess how closely your intended subjects match the study group. (Are they healthy, free of chemicals of abuse and prescription drugs that may affect the central nervous system)?
- Involve your Responsible Physician in the development of your policy and procedure.
- In addition, involve the legal counsel for your agency in the process.

- Review the Amnesty International Report (AI Index: AMR/51/139/2004) concerning deaths that have occurred while Neuromuscular Incapacitation Technology was in use.
- Consider the potential life style and health risks of the target of the force to be employed.
- Involve your Responsible Physician in the training and review of your Use of Force Incidents.

AT A MINIMUM, POLICY, PROCEDURE, AND PRACTICE SHOULD ADDRESS:

- A philosophy that this technology is “Less-Lethal” versus a “Non-Lethal” or “Less than Lethal” technology
- Indications for use (aggressive threat versus passive resistance)
- Its position in the Use of Force Continuum
- Training
 - Curriculum
 - Hours Required
 - Debriefing—how often updated
 - Outcome Updates—on a timely basis
- Absolute Use Exclusions:
 - Restrained/handcuffed/shackled subjects
 - Children
 - The elderly
 - Pregnant subjects
 - Restricted target areas (eyes, groin, etc.)
 - Subjects at dangerous height or near a potential hazard (such as a flammable gas or liquid or standing water).
 - Previous failed applications (It didn’t work the first time! Why would it work the 7th, 8th, or 9th time?)
 - Mode of Operation: Taser versus Stun
 - Maximum duration of application
 - Post use medical review—an important part of the process
 - Dart removal—manual suggests you can just yank them out, but this must be considered.
 - Supervision/Use Review

IN SUMMARY

- The debate on the merits is far from over.
- Until the dust clears, we must remember that our subjects are at risk for unintended outcomes.
- NMI technology is not without risk and it is “Less Lethal” at best.

- The agency is responsible for determining how it will be used in your jurisdiction.
- The manufacturers are only responsible for the production of a reliable device.
- The goal of the manufacturer is to make a safe product and to make a profit.
- Therefore, the agency must employ all of its resources in mapping out strategies for their use.
- The clinical studies as well as the reports of unintended outcomes and alleged misuses should be reviewed to ensure that your officers are properly trained, informed, and safe in carrying out their duties.
- Most important, be sure that your organization has taken appropriate steps to manage subjects in the safest, most humane manner possible, while minimizing your liabilities.

See: <http://www.nicic.org/downloads/ljnvault/LJNJan06ClarkTaser.ppt> for Dr. Clark's complete PowerPoint presentation. For additional information, contact John H. Clark, MD, 525 East Seaside Way, Suite 504, Long Beach, CA 90802; 562-233-8937; lasd015939@aol.com

WILLIAM COLLINS, ATTORNEY AT LAW, OLYMPIA, WASHINGTON

TASERS IN JAILS

When you talk about the various types of hypoxias, John, many inmates have all the risk factors you listed and are therefore at substantially increased risk. The other thing that occurred to me is that when a jail is making a decision about using a taser on an inmate, it should go through a lifestyle decision about the inmate's risk factors. However, by the time you go through such a decision the situation is out of hand.

Some of what I'm going to say is not purely legal, but just my reality-based observations. Many people are looking for a link between taser use and deaths in custody. This means that you should be very careful about who can use the taser and when it can be used. It is clearly not an everyday tool. It is similar to a jail suicide in that after a suicide or taser use followed by a death, there will be intense scrutiny. You should be sure you can defend yourself not only in terms of whether the taser was the direct cause of the death but also whether the taser use was appropriate.

SOME TASER QUESTIONS

- Will it be abused? That is, misused. (yes)
 - Example: A police lieutenant zaps a 68-year old granny as she sits three feet in front of him in police station.
- Will it become "lethal force?" (maybe)
- Will it become "almost" lethal force? (wouldn't surprise me). The courts will push this issue.
- Remember Murphy's Law!

THE HUDSON FORCE TEST

Was force used in a good faith effort to restore order, or maliciously and sadistically, to cause harm?

1. What was the need for force? What behavior was presented?
2. Amount of force used (force continuum)
3. Injuries sustained
 - Death, injuries from falls
 - Tobacco litigation analogy—People were suing tobacco companies, but the companies were winning because the evidence against them wasn't strong enough. Finally, someone won such a case, and now litigation is going the other way. In terms of tasers, litigation now says that there is no direct medical link between use of the taser and death, but sooner or later, that link is going to be shown. This doesn't necessary mean you can't use the tool, but it does suggest that the taser may be pushed further along the use of force continuum.
 - The Hagar Jury Rule: "Don't leave your fate to a group of people not smart enough to get off jury duty."
4. Threat perceived. (You had better be serious when you use the taser; this has to do with the force continuum.)

5. What effort to temper did you make? A videotape can show that you were being very polite to the inmate and the inmate was totally inappropriate. You need to be able to show that you tried to do something else. You must be able to explain why lesser alternatives would not have been satisfactory. This is the crux of the matter. We have a range of alternatives from talking to the guy to, ultimately, shooting him. The question is: why didn't we do something else?

PROTECTING YOURSELF

1. (Don't use it in the shower.)
2. A strong **policy** defines when the taser may/may not be used.
3. Control **who has them**. Don't give one to every officer. The more people you give it to, the more you increase the likelihood of misuse. There is a constant stream of litigation on the clear abuse of use of force techniques. I have no reason to believe that if an officer will abuse OC spray, he will also abuse tasers. Every time you use a taser, its use must be recorded.
4. Train officers, especially on "when" and "not when."
 - o Emerging issue: STAFF lawsuits from injuries sustained in training. They may allege a) the taser caused my injury and/or 2) there weren't enough precautions taken when I collapsed. The public's perception about the use of taser is very different from other uses of force. Clearly inappropriate use of force that is "traditional abuse," that is, low-tech abuse, is not as bad in the eyes of the public as high tech abuse of force. A jury is likely to be more sympathetic to a victim of the taser.

TASERS: WHY THEY ARE USED

- "Tasers reduce the number of fights, save injuries to officers and inmates." But can you prove this with hard data 1) in jails generally and 2) in your jail?
- Imagine: Put yourself in the place of the plaintiff's lawyer: "Sir, how many officers and inmates were injured in force situations for 1-2 years before you went to tasers? Were those in circumstances where a taser would have helped? What is the injury rate for officers and inmates after you began using the taser?"
- Is street data comparable to the jail situation? You have more ways to control an inmate than a police officer does.
- **Don't** use the taser as an opening in all force situations.

DON LEACH, LEXINGTON/FAYETTE, KENTUCKY

“ARE TASERS IN JAILS A GREAT NEW TOOL OR ANOTHER HEADACHE”?

PHILOSOPHICAL ISSUES

Everything comes down to how we want to run our jails.

- “Non-lethal” or “less-lethal” or “less-than-lethal”—*whatever!*
- “Sticks” over “carrots”—We have plenty of sticks in jail, but we don’t provide enough carrots. We do things based more on ego than on the reality of the situation. We often move someone from one cell into another just because we want to prove that we can.
- Interpersonal Communications vs. use of force—Often, we should think about more proactive ways of getting things done. I’m not going to say that tasers should be completely outlawed. As officers use OC spray and other sticks, our interpersonal communications (IPC) skills have declined.
- Quality of staff—IPC skills have declined in part as a result of the staff we’re getting; are they not as trainable? We talked about lowering standards re: use of drugs. Are we also lowering IPC requirements?
- Increased training requirements—Should we increase training requirements to cover tasers? Use of tasers requires a high level of training and judgment on the part of the individual officer.

MEDICAL ISSUES

- Safety Issues—Everyone is questioning taser safety. The International Association of Chiefs of Police is reconsidering the use of tasers. Will anything come out of legal cases re: tasers? The sheer number of lawsuits will eventually result in someone winning a judgment, which will result in the floodgates opening for increasing numbers of cases.
- We don’t have healthy adults in jail. You have to wonder how the studies using healthy individuals apply to our situation.
- High risk factors in use
 - Excited delirium;
 - Substance abuse—cocaine, crack, meth, PCP;
 - Those with heart disease are more susceptible; why add something to increase the likelihood of a problem?
 - The mentally ill are more often shocked.

LEGAL ISSUES

- There is questionable research on the effects of tasers. I’m not sure we should base our jail policies on such research.
- Every day a lawsuit results from someone being tased:
 - James Borden died Nov. 6, 2004, after being shot with a taser for initially refusing to pull up his pants in an Indiana county jail.
 - A six-year old and 12-year old were shocked by tasers in Miami.

- An inmate singing after lights out was tased.
- A handcuffed, manacled man died after multiple shocks.

Comment: It's up to us in this room to set policy and expectations on the use of the taser.

Comment: The consequences of slapping someone or using OC spray are less than using the taser, which can result in someone dying.

PR ISSUES

The appearance of a taser death is much more serious to the public than other deaths. Without really intense monitoring, it's hard to know that the taser is being used appropriately. The taser is a tool, but its use is a judgment issue.

- Safety is based on questionable research.
 - Austin, Texas—Forum examines racial implications behind taser use. Use was highest in minority areas. (1/4/06)
 - Southern Christian Leadership Council protests the overuse of the taser in Georgia
- Inappropriate use on- and off-duty—There have been situations where an officer was disciplined for using a taser on family or at a party. Use is hard to control; the reality is that we can't guarantee appropriate use of the taser.

For a copy of Don Leach's PowerPoint presentation, see:
<http://www.nicic.org/downloads/ljnvalut/LJNJan06LeachTasers.ppt> *For additional information, contact Don Leach, Administrative Officer, Senior, Lexington/Fayette Urban County Government, 600 Old Frankfort Circle, Lexington, KY 40510; 859-425-2612; donl@lfucg.com*

DISCUSSION: USE OF TASERS

Dr. Clark, Bill Collins, Art Wallenstein, and Don Leach led meeting attendees in a discussion of the use of tasers in jails. Following is a summary of that discussion.

Art Wallenstein: I'm more concerned with piling on and positional asphyxia than with the taser. We train staff to get off inmates and get them up quickly.

Dr. Clark: Yes, for all the force technologies, what bothers me is what happens to the individual after the force is applied. If you go back over cases, one thing they have in common was how the individual was restrained after the force was applied.

Bill: All the options we're talking about carry a threat of death or serious bodily injury. We don't know if an inmate has a heart condition that is just short of terminal. So these options all carry with them a certain amount of risk.

Comment: We haven't decided about tasers yet. Given that there are alternatives to use, I don't understand the judgment that having used the taser twice—with 50% being an inappropriate use by a sophisticated, well-trained agency—why you would conclude that this a tool that you can't do without. Why take the risk of a newspaper reporting that a taser killed someone?

Art: I'm not troubled about headlines. There should be very little use of tasers when IPC is employed. I'm satisfied with its appropriate use.

Question: We all know that new arrestees are at high risk from drugs, obesity, and other problems, and we also know what medications they are on. Should this create a protocol whereby nurses inform us of these conditions so we know the risk of using force?

Dr. Clark: The issue of the involvement of medical personnel in use of force is important. We must recognize that inmates are at risk, but I would not suggest that nursing staff or physician disclose medical information with respect to risk factors related to use of force. Communicable diseases should be disclosed, but not an inmates' risk with respect to use of force. It's a legitimate issue, but I'm not willing to make such a recommendation. When you look at data on the use of force, 80% were mental health clients who refused medication. I think there are better interventions that would work in such situations. For example, medical, mental health, and corrections staff can have a daily meeting sharing what's going on in the unit and formulate a plan to manage a difficult inmate in the event of problem. Inter-staff communications, can go a long way in addressing some problems.

Art: The case will come. If we prohibited use on those with cardiovascular problems, that would end the use of taser. So far, the research has not indicated that approach. The next case will come when a warden sues a county health department, saying that the medical staff didn't give me advice on the risk involved in using the taser on an individual.

Dr. Clark: It's similar to HIV. It's not who you know is HIV+, but who you don't know. You can't provide the labels; the bottom line is that everyone coming in is at risk.

Question: Are there cases when taser is the only alternative?

Art: I'm not sure we know that yet. If I show you that piling on is more lethal than the taser, do we abolish piling on?

Question: Where is the taser on the continuum of force?

Don: That's my issue as well. Why do we have to do use it at all? A fundamental element of the policy should include the immediacy of the need to act. Could they have waited?

Dennis: There has to be a real, immediate need. The training process makes this clear. Users must understand the tool as an advantage if it is properly used.

Bill: Most policies wouldn't get to an absolute definition of appropriate use. The taser might be a preferred response, if it's safer than piling on, for example. This means we can't answer the question about an appropriate, necessary use.

Fred Olivas: We have been using the taser for 15 years. We did research on where in the facility it should be used. I was originally opposed, believing that it could be used as a toy. We could all send you policies defining the use of taser. I now think it's a very effective tool, especially because just showing the red light or arcing is almost always enough to control the inmate. Each of us has to make the decision.

Bill: From a defense attorney's perspective, if I'm defending use of the taser, I want to see the data. What I don't want to see is the actual use of the taser increasing, a kind of 'taser creep.' If that's happening, I need you to explain why that's going on.

Comment: The evidence is that the flash of the taser is scaring people. But we need to watch our traditional use of force, and our tendency to move people simply to show that we can do so.

Question: Where is the taser on the use of force continuum? There must be some difference in expressing a philosophy on use of the taser, given the wide range of frequency of use among the agencies here.

Dennis: We use the taser when there is active physical aggression purporting to put a deputy or others at risk and no lower alternatives have been successful. We have a demonstrably more aggressive population as well as higher rates of arrest than some others.

Comment: The presentation of the taser is enough. It's used only when either a fight or a physical altercation is going on, not just resistance.

Bill: In a jail situation, we're not making a decision to shoot. We're saying the taser may be a preferable alternative technique to piling on. It's just an additional tool. We don't expect to kill the guy, but we recognize that there is a risk that the inmate or officer could be seriously injured.

Comment: Before we put an inmate in the restraint chair, we are required to call mental health staff in.

Question: How do you distinguish between the results of the taser and the stun shield?

Bill: I don't know the technical difference. They deliver the same voltage and cause the same physical response in the inmate. You have responsibility for the safety of inmates. Why you don't shoot them instead of doing cell extractions? That is, we're cutting the issue thinner and thinner. I want to make sure you have an understanding of the medical and legal risks of tasers. Then you can make an informed decision.

Comment: A lot of us have been involved in places that were more brutal than tasers. The old approaches were riskier.

Bill: We've come a long way from just going in and beating the crap out of them. We pay much more attention to the use of force issue now.

Bill: A very interesting side issue is lawsuits from staff related to injuries sustained during the training process. There would be a kind of irony if agencies stopped using tasers because of staff injuries sustained in training.

Question: We have a policy requiring that anyone using OC must undergo the experience so that we understand the effects. Is this true of tasers too?

Bill: Yes, in some jurisdictions, but not in others. There has been a lawsuit in Denver from an officer following a fall after being tased, and there were seven shoulder injuries on staff in *one* jurisdiction. We have to realize that the response to abuse of this use of force will be strong. It's a dramatic use of force, so be sure that you have a policy and that supervision and training all reinforce that policy. I'm still not a proponent of allowing all staff to use the taser. Limit it to supervisors, who more likely to know how to handle situations. Young officers may leap too quickly to taser use. The fact that you can absolutely verify when a taser was used helps, but you can still misuse it.

Question: But what if we send in a mental health person when someone refuses to move?

Bill: In all situations where you're going to be at the high end of the continuum, not just with the taser, if time is on your side, bring a mental health person in to try and do something. This helps from a legal perspective, and it might help from an operational perspective as well if you can control the situation with minimal injury to everyone.

Dr. Clark: There are some situations where use of force is planned, and in others there is an exigent set of circumstances. In that case, I'm not going to call a mental health person. But as soon as the individual is placed in a restraint chair, I'd make sure a medical and mental health person sees him right away. We know that most of these people are mentally ill. I always ask, "Is the person bad, mad, or mentally ill?" I don't think I can overemphasize the importance of communications among medical, custody, and mental health staff. We all recognize danger signs, and that's the time to get everyone together and ask how to handle the situation.

Question: Bill, if I ask you to articulate when we can use deadly force, there is no problem, but can you say when we can use the taser?

Bill: Along with other options like piling on, it's one step below deadly force. Although your policy may talk about "immediate need," the problem is that judgment is always involved. A line staff may say he felt it was necessary to save his life, where a

more experienced officer might say that all that was needed was to disengage. All criteria are based on judgment. The question is, who do you trust with that decision?

Comment: Our policy calls for a use of force necessary to control a situation only as long as it takes. We've done away with the use of force continuum.

Bill: My understanding is that the use of force continuum structures that decision.

Comment: Most of us have a Special Response Team. Since we implemented that, our injuries have plummeted. We have two tasers, and our policy says that the only time to use a taser is when the inmate has a weapon and is threatening to use it. Other circumstances can be defused. In what other kinds of situation should it be used?

Comment: Some of us believe the taser is right under deadly force, but it's hard to arrive at a conclusion on the issue because it is still evolving.

EMERGENCY PREPAREDNESS

RICK FREY, BROWARD COUNTY, FLORIDA, SHERIFF'S OFFICE

Rick Frey demonstrated the software program for emergency preparedness for first responders developed by the Broward Sheriff's Office. Local law enforcement has access to the program in all cars. The goal of the program is to try and make as many decisions ahead of a crisis as possible.

Included in the program are items identified as priority needs by staff. They include such things as:

- Primary and secondary perimeters for all jails;
- Responding law enforcement agencies for every jail;
- Primary, secondary, and mobile command posts;
- Aerial photos and ground views of all facilities;
- Pre-established rally points for staff, family, and media staging;
- Evacuation plans for every facility;
- Phone numbers of hospitals;
- Hurricane guide

The guide, which was developed after a National Sheriffs' Association tabletop exercise, will be updated periodically.

One captain did the project over a couple of weeks, not working on it full-time. The system requires maintenance approximately every 90 days.

For additional information, contact Rick Frey, Director, Broward County Sheriff's Office, PO Box 9507, Fort Lauderdale, FL 33301; 954-831-5924; rick_frey@sheriff.org

LEGAL ISSUES UPDATE

BILL COLLINS, ATTORNEY AT LAW

INMATE ON INMATE VIOLENCE: FAILURE TO PROTECT

I have been immersed in this issue for more than two years as a monitor in a lawsuit involving a state prison, so I have had the chance to get more sensitive to this issue.

- “Deliberate indifference to inmate safety needs”—This is the legal test, but it doesn’t mean that you guarantee the safety of inmates.
- *Knowing* of and *disregarding* an excessive risk to inmate health or safety is the issue. (Doing “something” may not be enough.)
- A claim can be for ALL INMATES, or ONE INMATE
 - Systemic failure—a general pattern of not protecting inmates from each other;
 - Failure by one/two officers—specific instances of failure to protect
- Twist: *Failure to investigate* causes of violence is deliberate indifference. *234 F.Supp. 2d 1209 (D. Wy., 2002)*—There was no showing of excessively high levels of inmate-inmate violence here, but the institution was not investigating *why* incidents occurred.

FAILURE TO PROTECT: SOME RELEVANT ISSUES

- Levels of violence—how many incidents?
- Reported incidents vs. the actual number—especially in terms of sexual assaults.
- Types of violence: 1 on 1? Many on 1? —reflects the character of the threat
- Injuries to inmates: bloody noses or broken jaws? —reflects the level of violence
- Gangs—level of gang-related violence
- Tensions—racial or other
- Non-direct supervision housing unit, where staff is not present in the unit most of the time—It’s much harder for incidents to go undetected in a direct supervision jail.
- Double celling/triple celling

FAILURE TO PROTECT: SOME RELEVANT ISSUES (2)

- **Dysfunctional classification** system (crowding . . . sloppy administration . . .)
- **Weapons** being frequently found
- **Staff:**
 - proactive or reactive? Attitude (from top down)
 - training and supervision
 - Routinely not following P & Ps

- **Incident analysis:** looking for root causes. Did mistake, misconduct by staff, or institution problem contribute? You need an analysis beyond “Smith hit Jones.”
- **Poor documentation:** was the task (cell checks) being done at all?

FAILURE TO PROTECT: SOME RELEVANT ISSUES (3)

- **Basic security** precautions?
 - Routine searches, done **properly**
 - Frequency and quality of facility shakedowns, contraband control
 - Are sound P&Ps being followed?
 - Failure to follow no-contact orders
 - Video surveillance. Where is it used? How good is it?
- **Defective equipment** compromising safety, e.g., cell locks, cell intercoms, video surveillance cameras, etc.

All are relevant issues that a plaintiff’s lawyer will exploit. The defense attorney wants to show how aggressively you have been pursuing such precautions.

COMPARATIVE VIOLENCE DATA

You need to collect data on violence, including the number of incidents and the rate per day. Otherwise, the plaintiff’s attorney can say that violence is exceptionally high without having any evidence.

ARRESTEE STRIP SEARCHES

- **“Reasonable suspicion”** to strip search an arrestee remains the rule.

A number of cases have said that any time someone is told to get naked (clothing exchange, hygiene check, etc.) and staff observe them, this amounts to a strip search. Thus, you need reasonable suspicion that the person possesses contraband, has a communicable disease, or has a weapon in order to strip search them. The courts have said that in some situations, reasonable suspicion can come from a weapons, drug, or violence-related offense. Can you base reasonable suspicion on an inmate’s jail history? There is no case law on this, but it sounds reasonable.

- Is the 11th Cir. (Alabama, Georgia, Florida) *Hicks*, 422 F.3d 1246 considering a change? In recent years, the 11th Circuit has said that it was not sure you need reasonable suspicion to strip search, but there is no precedent. If a jail can convince the entire court to hear the case, the court might overturn that requirement. This is the only court saying this. The Supreme Court has never looked at the issue.
- Elsewhere:
 - A **“failure to appear”** warrant is not grounds for an automatic strip search. *Calvin v. Hill Co*, 2005 WL 3446194, (N.D.111, 2005)
 - A **prerelease strip search** is not okay. A jail had a policy of strip-searching those released in court, as it took 6 hours or so to

complete the paperwork for releasing them. The court found this practice unconstitutional. During litigation, the jail struck a compromise, saying the releasee could sit in the waiting room until the paperwork was processed or return to the cell and be strip-searched.

STRIP SEARCHES: DISCUSSION

Comment: We had an inmate found not guilty of marital rape, and there was a delay between the verdict and his release. We said that because of the delay we needed to strip search him. This became an issue, although it didn't happen, but the jury found the jail not guilty.

Comment: In LA county, it takes hours to get inmate from court back to jail, and the paperwork gets delayed, a laborious process. It was taking 2-3 days to get a person out. From the perspective of a judge or the general public, it is hard to understand this.

Bill: Another arrestee strip search case was *Tardiff v Knox County, Maine 397 Fsupp. 2d. 115*. A small jail in Maine, with 60 beds or so, had a history of being told they were strip-searching too many people. They had made policy changes that weren't being followed. In a 2005 decision, the court found liability, and the case went on to settle for \$3.3 million.

Comment: How long ago did the "failure to appear" law change?

Bill: I don't know. Failure to appear doesn't create any more rationale for a strip search than the original arrest. Sacramento County settled for \$15 million over the same issue. I have become convinced that it is almost impossible to win arrestee strip search cases where you are using a loophole (redefining, etc). The best you can hope for is that the court may say the issue wasn't clearly established this time, but next time there will be a damage award. In the Maine case, there had been training on the issue, and they said that they were trying to give people a warning without being too harsh. The real answer is "no," you can't do this.

THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

RLUIPA shifts the Scales of Justice so that decisions are skewed slightly toward the rights of the individual. It replaces the Turner Test. Now...

- **If the government imposes substantial burden on religion, then it must show:**
 - **Compelling Governmental Interest**
 - **Least Restrictive Means**

THE MYSTERIES OF RLUIPA REVEALED (MAYBE)

- "Compelling governmental interest"--The old "Legitimate Penological Interest (LPI) test, restated. Security, order, etc.
- "Least restrictive means"
 - Increased court oversight. Still get some "deference," but

- Invites “why didn’t you” questions and judicial second-guessing.

If you impose a substantial burden by not allowing an inmate to attend group religious services, etc., then you have to show that you are furthering a governmental issue, that is, that it’s a security issue. But you must use the least restrictive means of doing this. Your task is to convince the court you have good reasons.

Where religious restrictions are imposed, or accommodation requests denied, you need good reasons:

- “We don’t want to.” Not good.
- “Go to Hell.” REALLY not good

RLUIPA: “SUBSTANTIAL BURDEN” = “SUBSTANTIAL CONFUSION”

Courts can’t decide what “substantial burden” means. It’s **something like:**

- Pressure to significantly modify behavior
- Great restriction or onus
- Violate beliefs,
- BUT “mere inconveniences,” or “incidental effects” not “substantial.” *Spratt v. Wall, 2005 WL 3434739 (D.R.I.) 2005*

RLUIPA: SUBSTANTIAL BURDEN (2)

The Spratt Case: It was a “substantial burden” when the prison cancelled the inmate’s privilege of preaching to other inmates when the inmate said this was a religious “calling.” In essence, this lets the inmate define what is a substantial burden to him. It’s a very subjective approach.

- **Spratt** lost the case on “least restrictive” issues.

We are still looking for guidance on what “inconvenience” and “incidental effects” are.

SUPREME COURT COMINGS AND GOINGS

GOINGS: LAST YEAR’S ACTION

- RLUIPA is constitutional (*Wilkinson v. Cutter, 125 S. Ct. (2005)*). The implication is that you need to pay more attention to religious restrictions. Ask if you have a good reason for them and if there are other ways to meet your goals.
- Supermax and due process (*Wilkinson v. Austin, 125 S.Ct. 2385 (2005)*)—This dealt with a decision to place an inmate in supermax confinement. The court required minimal due process. It provides no guidance for jails.

DISCUSSION: LEGAL ISSUES

Question: What do you do with juveniles who are in the jail who have been processed as adults but are under the age of 18?

Answer: You don't have to worry about Office of Juvenile Justice and Delinquency Prevention (OJJDP) sight and sound restrictions. There are those who still argue for sight and sound separation for this group, but I wonder how you'll deal with a small group you have to keep separated from everyone else? You can simply trust your classification system to make appropriate decisions if state laws let you do that. Another, even better goal, although nearly impossible, is to try and get a state law requiring that they remain in juvenile facilities until they turn 18. There are some dietary issues, exercise issues, and so forth, but I think you should just treat them as normal inmates with some special needs. Even so, you still may not be meeting some of their needs, and constitutional arguments can be made around them.

The other thing interesting about this group is whether they can give consent for medical care. Who is entitled to give consent for care? A jail officer can perhaps act *in loco parentis* for a juvenile. Washington State has a statute written for the juvenile detention system that gives that power, but it is not thought of in the jail context.

Richard Geaither: You nearly always address the issue of strip searches. I assume there's a reason for this, and I know that Sacramento and Atlanta lost cases in this area.

Bill: It is a mystery in a way, but the subject never goes away because jailers don't want to change their process. Early strip search cases go back into the mid '80s, and there is an unbroken line of cases with essentially the same conclusion—the “reasonable suspicion” rule. But jail administrators refuse to change, so the cases keep coming back again from both large and small jurisdictions.

Comment: Jailers should ask, “How much contraband have I prevented with strip searches?” They are not yielding the intended results.

Comment: We litigated this issue aggressively, defending the county's strip search policy within the last 5 years in district court. Information from booking and strip searches found that, over about 20,000 strip searches, there were only 5 examples in which contraband had been found, and three of them were instances in which a case for “reasonable suspicion” case could easily have been made. It's hard to warrant that great an intrusion.

Question: When does an arrestee become an inmate?

Bill: There is no formal definition. My working definition is that once an arrestee becomes housed in a unit, he/she is then an inmate. The inmates is then on the same basis as others in the unit, subject to your general policy on strip-searching inmates. This is an arrestee vs. inmate distinction, not a pretrial vs. sentenced distinction. There is very little case law on **inmate** strip searches.

Question: I have a question about jails' requirements for covering pre-existing medical conditions. Are we accountable?

Bill How and where an inmate acquired a medical condition is irrelevant to your obligation to treat it. Courts will ask: is this condition serious and how did you respond to it? You cannot say, “We don’t have to do anything for this guy because he didn’t take care of himself outside of jail.” Preexisting conditions are irrelevant in the jail context; just take it out of the equation. However, if you have someone coming into booking with an obvious medical condition, you can postpone booking. No payment issue can be a condition of medical care. If an inmate can’t afford it, you must still provide care.

If the jail releases an inmate with a medical condition early, there can also be a problem. If the jail knows that the inmate is being released into a situation in which he has no ability to provide for his medical needs, that could easily constitute deliberate indifference on the part of the jail.

TOPICS FOR NEXT MEETING

MARILYN CHANDLER, FORD, VOLUSIA, FLORIDA, AND RICHARD GEAITHER, NIC JAILS DIVISION

The next LJN meeting will be held July 9-11, 2006.

PROPOSED TOPICS

Marilyn Chandler Ford, Volusia County, Florida, and Richard Geaither led participants in a discussion of potential topics for the next Network meeting. Suggested topics included the following:

- Grants—Federal grant sources and tips (how to get, how to manage);
- Organizational culture change—how to change the culture;
- Best practices in developing and training first line supervisors;
- Public policy and why jail administrators need to be involved;
- Planning for catastrophe (e.g., pandemic flu);
- Health checks on inmate well-being;
- Threat assessment (vulnerability analysis);
- Dealing with excessive staff absences (and Family Medical Leave Act changes);
- Recruitment;
- How to counter low officer morale, especially in a union state;
- Sex offender registry (panel on community and victim notification and effect on jails);
- Criminal justice coordinating committees (best practices);
- Re-entry practices and how to make the public aware of them;
- How to deal with the Department of Justice

The following topics were selected; some will be the topic of a panel discussion, while others will be presented more briefly as “hot topics”:

- Organizational culture change;
- Grants;
- Sex offender laws; and
- Planning for catastrophe.

APPENDIX A: MEETING AGENDA

1:00 p.m. *Statistical Analysis: Orange County FL Corrections Department - Crowding, Life Safety, and Managing Staff*.....Scott Bradstreet
Dr. Patrick

Jablonski

Orange County, FL

2:45 p.m. *Succession Planning: Executives and Middle Management*.....Dennis Williams
Escambia County, FL
Gordon Bass
Jacksonville, FL

5:00 p.m. ADJOURN

Tuesday, January 24, 2006

8:00 a.m. *Is There a Proper Place for Tasers in the Use of Force Continuum*..Dr. John Clark (Ret.)
Chief Physician
Los Angeles County Sheriff's Office
Art Wallenstien
Montgomery County, M.D.
Don Leach
Lexington / Fayette, KY
Bill Collins,

Attorney

Olympia, WA

12:00 noon LUNCH

1:00 p.m. **Legal Issues Update**.....Bill Collins, Attorney
Olympia, WA

4:00 p.m. *Presentation of Future Meeting Issues & Meeting Evaluation*.....Richard Geaither
Marilyn Chandler Ford
Volusia County,

FL

4:30 p.m. *Recap, Closeout, and Adjourn*.....Richard Geaither

APPENDIX B: LIST OF MEETING ATTENDEES

Large Jail Network Meeting – 06J2401

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Sunday, January 22, 2006-Tuesday, January 24, 2006 Longmont, CO

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LARGE JAIL NETWORK MEETING

January 22-24, 2006

Longmont, CO

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