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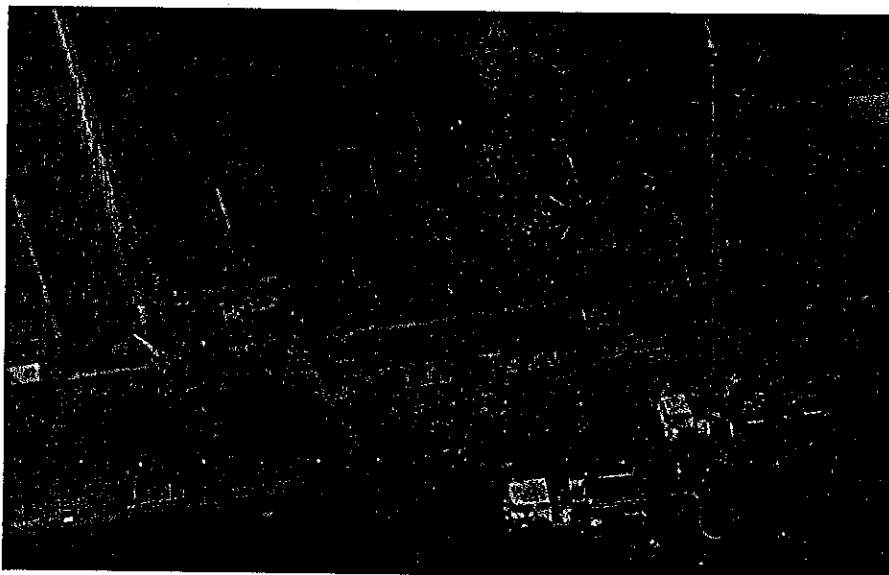
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SECURITY

Pre-emergency Planning for Post-emergency Litigation

by Robert M. Freeman



Courtesy Allied Pix Service Inc.

Inmates destroyed 15 of Camp Hill's 31 buildings during the riots, forcing the DOC to build new cell blocks and upgrade existing ones.

On the afternoon of Oct. 25, 1989, the quiet routine at the State Correctional Institution at Camp Hill, Pa., was shattered as inmates began the first of two riots that would rip apart the institution. By the early morning of Oct. 27, 40 hours after the first officer had been assaulted, SCI-Camp Hill had ceased to exist as a functioning institution. One hundred twenty inmates and staff, many who had been taken hostage or trapped in burning buildings, were injured. Fortunately, none of the injuries were

fatal—although this was not established until days later, after all the ashes and debris had been thoroughly sifted. Eighty percent of the buildings on the 52-acre reservation were vandalized, burned to the ground or suffered smoke damage. Six out of 10 cell-blocks were gutted so severely that it took a year before the last one was restored, and the interior fence of a two-fence perimeter security system was breached.

At the time of the riots, SCI-Camp Hill, which opened in 1941 as a mini-

um security facility designed for 1,414 juveniles, housed 2,564 adult male inmates, many of them "lifers." A number of these inmates later were convicted of hostage-taking, arson, assault and destruction of property. It took more than 3,000 correctional staff, law enforcement officers and emergency response personnel to quell the riots.

In the two years following the riots, hundreds of Camp Hill staff were named as defendants in riot-related inmate lawsuits filed in U.S. District Court. At the time of the riots, I had been with the Pennsylvania Department of Corrections for more than 19 years and a superintendent since 1980. Because I was the superintendent of Camp Hill during the riots, I was named as a defendant in 289 lawsuits. This article is based on five years of experience in making legal responses to the allegations contained in these lawsuits.

Responding to inmate litigation is part of a correctional administrator's daily work. During the routine operation of a correctional institution, staff periodically are named as defendants in inmate litigation, often because of behavior or events unknown to the administrator. This litigation requires a

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legal response from the defendant. The administrative response to routine litigation is best described by the Routine Legal Response (RLR) model: (1) a lawsuit is received and reviewed; (2) allegations are investigated; (3) an institutional response is submitted; (4) plaintiff interrogatories are received and responded to through preparation and review of defendant declarations after additional investigation and discussion; (5) the judge conducts a pretri-

al conference and sets a trial date; (6) staff scheduled to testify review the facts of the case with counsel; and (7) staff testify in court.

Most routine lawsuits represent an isolated, unpredictable event. Because administrators cannot predict the filing of routine lawsuits and one lawsuit may have no relationship to another, the RLR model is logical and necessary. It meets routine administrative needs, especially when there is little litigation, even though months or years may pass between steps one and seven.

Unfortunately, life isn't always rou-

tine at a correctional institution. Administrators are trained to plan for crises by developing institutional emergency plans that attempt to cover all contingencies: riots, hostage situations, inmate work stoppages, utility failures and natural disasters. However, traditional emergency plans, such as the one in place for Camp Hill in October 1989, typically do not address a critical issue: preparation for cost-effective, efficient legal response to post-emergency inmate litigation.

Most emergency plans do not address the need for efficient management of a large volume of post-emergency litigation because the focus in planning is on managing the emergency, not anticipating the legal consequences of the emergency. There tends to be an unvoiced assumption that, if litigation is forthcoming, it should be processed using the RLR model.

In December 1989, inmates filed the first riot-related lawsuits. This litigation involved alleged violations of the right to Eighth Amendment protection against the infliction of cruel and unusual punishment. Inmates alleged that staff failed to protect them both before and after the riots. Inmates charged physical and psychological abuses (ranging from beatings to derogatory and racial verbal abuse to being made to kiss the rear end of a state trooper's horse) and hardships resulting from crowding and lack of food and clothing.

Each lawsuit was treated as an individual event. After the attorney assigned to the case discussed specifics with each defendant and prepared the appropriate declarations, the case would move slowly toward a trial date. As the volume of cases increased, and more and more attorneys and staff were drawn into the response process, it became clear to me that a more efficient method of managing post-emergency litigation was necessary.

Lessons Learned

Based on the Camp Hill experience, I learned firsthand that the RLR model is not the most efficient way to address a large volume of post-emergency litigation. In particular, I encountered the following event reconstruction problems:

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Faulty memory. Managing a riot is extremely stressful. Psychological trauma and fatigue can blot out critical pieces of information that later will become significant in court. The good manager attempts to keep a written log of important events during a riot, because decisions have to be made quickly under extremely difficult circumstances, accurate record keeping often suffers.

Line staff caught up in the violence and chaos of the riot cannot be expected to maintain useful logs. The inability to recall critical information years later, or a recall that differs significantly from that of other staff, can produce a "weak link" witness or defendant whose testimony may create holes in the defense's presentation and sway a jury to believe the plaintiff.

Lack of physical evidence to support staff. Staff must prove that proper procedures were followed; beatings, or other forms of abuse, did not occur; and all decisions being litigated were made on the basis of sound correctional management requirements. Credibility may be weakened by: (1) the lack of a comprehensive videotape record, backed up by photographs, of riot damage and key post-emergency inmate management activities, such as moving inmates from one location to another, feeding inmates, and distributing clothing, bedding and personal hygiene items; (2) the lack of documentation such as medical records, duty rosters, transfer logs, time-on-duty records, identification of videotape and photographic evidence, critical meeting minutes and incident reports.

Inaccurate documentation. Badly written reports that contradict other reports, incomplete duty rosters, poorly maintained block logs, poorly organized personnel records, incomplete minutes of step-down meetings, incident reports that leave out critical information and medical records with conspicuous time gaps will be exploited by opposing counsel at the trial. Inaccurate information may create a greater defendant credibility problem than missing information.

In addition to these event reconstruction problems, we also had to deal with the following:

Lack of staff familiarity with the judicial process. Many correctional staff are uncomfortable with the formal legal structure of the courtroom. This discomfort may create credibility problems. Staff may not appreciate the role of the judge as he or she attempts to guide an inmate representing himself through the complicated court process, an activity that staff frequently interpret as constituting judicial favoritism toward the inmate.

Staff stress when appearing in court. Testifying in court is stressful, even under the best circumstances. A

response to allegations of inappropriate conduct or faulty decision-making that involves cross-examination by an inmate convicted of participating in the riot can be extremely stressful. Staff may be overly aggressive on the stand because of their negative feelings about the inmate, the riot and the lawsuit. Overly aggressive responses easily can be misinterpreted by the jury as proof that the defendant is indeed capable of committing the alleged abuses.

Continued next page

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Continued

The PELR

Because of these problems, RLR response to post-emergency litigation may lead to undeserved legal victories for the plaintiffs.

The RLR model must be replaced by a model that can be set into motion before the first lawsuit is received, a

model much more sensitive to the demands of event reconstruction. Such a model is the Post-emergency Litigation Response (PELR) model. PELR is designed to minimize, or eliminate, the three major event reconstruction problems identified above.

PELR makes three basic assumptions: (1) each post-emergency lawsuit will have themes in common with the majority, if not all, of the other

Preparing Staff for Trial

Staff scheduled to testify always should be provided a pre-trial briefing on court protocol by an attorney. The eight basic elements of presenting well before a jury include:

1. Dress appropriately. Dark blue or grey suit or sports jacket with white shirt and conservative tie for the male. Conservative female attire: no short, tight skirts, revealing blouse, or tasteless jewelry. Do not testify in uniform. Many civilians do not respond well to correctional uniforms.

2. Be respectful to both judge and jury. Always stand when the judge and/or jury enter and leave the room. Do not sit until both the judge and jury are seated.

3. Be professional at all times, not just while in the courtroom. Members of the jury may see staff on the street outside the courthouse, in the hallway prior to trial, or during lunch if a common dining area is shared. Horseplay, vulgar language or wisecracking will offend jurors.

4. Clearly understand the question before responding. If you don't understand the question, ask to have it repeated. Do not rush into an answer. If you don't know the answer or can't remember it, acknowledge that fact and wait for the next question. Staff are not expected to know everything. Do not try to fake an answer, or speculate, or try to re-create from memory a situation or behavior that has faded with the passage of time.

5. Speak slowly and clearly during testimony. Direct all responses to the person who is asking the question, especially if it is the judge. Always address the judge as "Your Honor." Do not address a female judge as "Ma'am." Use correctional jargon only when necessary and immediately explain it in lay terms.

6. Don't show your anger or irritation during cross-examination. If a defendant can be provoked in a courtroom, this lack of control may convince a jury that the defendant also can be provoked into inappropriate behavior while on the job and thus may be guilty of the behavior alleged.

7. When excused from the witness stand, either take a seat or leave the courtroom as quickly and quietly as possible. If staying in the courtroom, do not joke, talk, or otherwise show disrespect for the proceedings.

8. Be respectful to the plaintiff, no matter how absurd or provocative the allegations made by that individual and his/her inmate witnesses. No matter what the inmate may have done during the riot, no matter how emotional staff may be about the riot and any personal consequences they or their colleagues suffered, disrespect to the plaintiff will hurt staff credibility.

9. Do not display hostility toward private counsel representing the plaintiff. The counsel is just doing his or her job. Even if provoked by a "pro-inmate" attorney, do not become hostile. A jury will note the hostility and remember it in their deliberations.

Testifying before judge and jury can be anxiety arousing under normal circumstances. The experience of being cross-examined by a plaintiff who was involved in a major disturbance can be extremely troubling. If the Camp Hill lawsuits are representative of post-riot litigation, there is a high probability that at least some plaintiffs will have been rioters convicted of taking staff hostage, brutalizing them and helping to destroy the institution. Having done this, these inmates later demand compensation for alleged staff behavior. Intense negative emotions can be aroused just by the thought of being in this type of situation. It was my experience that being cross-examined by a riot-convicted plaintiff was much more stressful than being questioned by private counsel. The LRT must include counselors trained to handle post-traumatic stress situations and a psychologist or psychiatrist who can provide certification of an inability to testify if necessary. Counseling staff must be especially sensitive to the pre-trial concerns and issues of staff taken hostage or otherwise injured during a riot.

post-emergency lawsuits; (2) most, if not all, of these themes can be anticipated immediately through careful post-riot analysis; (3) event reconstruction of the critical decisions and staff/inmate actions defining each theme can be under way well before the first lawsuit is received, and completed long before the first case goes to trial.

The PELR model provides for pre-emergency legal training of staff; decision documentation during an emergency; establishment of a multiagency litigation response team (LRT); preparation of staff prior to testimony; counseling support for staff called to testify; and mandatory post-trial debriefing. In describing this model, I will explain certain elements by relating them to the Camp Hill riots.

Legal Training of Correctional Staff

While at the academy, staff should receive training about the courtroom experience that goes beyond dry lectures. This initial exposure can include:

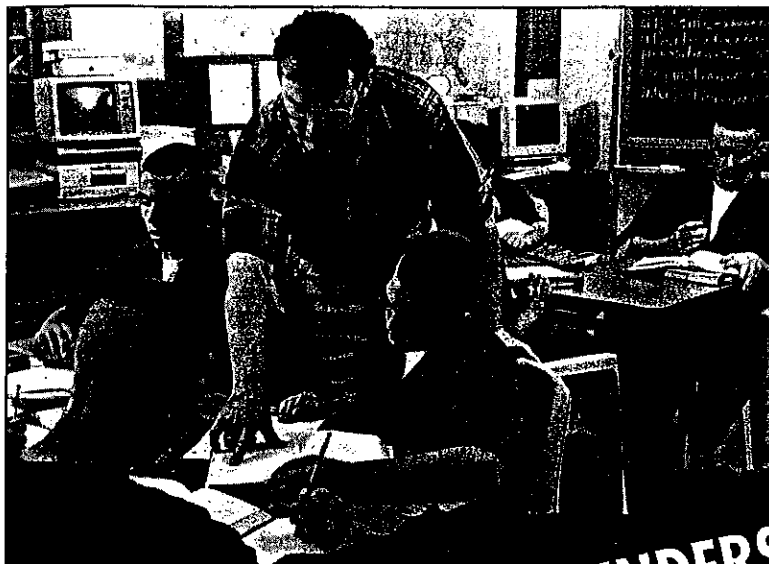
- staging mock trials at the academy;
- playing roles in front of a training class or in small groups;
- having experienced lawyers or inmates, especially those with actual court experience, play the roles of plaintiffs;
- observing a real trial involving correctional staff;
- viewing videotaped testimony (both staff and inmate) from an actual case; and
- using case studies, preferably presented by an experienced attorney, which show negative consequences resulting from poor testimony.

This initial exposure, which is more effective than "war stories," should stress the critical importance of the issues emphasized during observation and report-writing classes.

Documentation

Decisions made before, during and after the riot, especially those made quickly under duress, will be scrutinized by attorneys and judges for years after the event.

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Litigation Response Team

The LRT will have a number of specific post-emergency functions to be performed by correctional officers, attorneys, counselors, psychologists and clerical staff. A single person, the litigation response coordinator, should coordinate all activities. This individual must be able to organize and manage large amounts of information under difficult conditions and communicate well with all staff, including those from other agencies.

Representatives of the state police and other emergency response agencies that will be called into service during and after an institutional disturbance must be included in the LRT. They must assist in the development of a comprehensive institutional emergency plan that clearly will establish the role of each agency in an emergency. They also must participate in all emergency plan training, exercises and debriefings.

The LRT will be charged with the responsibility of performing six critical legal response functions:

1. Talk to inmates and line staff as soon as possible after the emergency to determine the common litigation themes being discussed. These themes must be reported immediately to a legal debriefing team.

2. Debrief, as soon after the emergency as possible, all administrators and command staff who have played a role in emergency management. The most effective debriefing will be accomplished by the team of attorneys who will represent the correctional staff. Debriefing should establish immediately a decision tree for pre-emergency administrative decisions that may have played a role in triggering the event, emergency management decisions, and post-emergency management decisions.

When establishing the decision tree, the LRT will need to take all factors into consideration, with the pros and cons of any disagreement documented. Attorneys must know as quickly as possible about any significant differences of opinion among staff before a particular course of action was implemented. The debriefing team should maintain all debriefing results in a central data bank that is updated systematically and cross-referenced. This central data bank will provide the foundation for all future legal responses.

All physical injuries to staff must be filmed and photographed.

3. Prepare a visual record of all major events by using video and photography equipment. This activity should begin as soon as possible. In the case of a riot, visual record teams should film all inmate riot activities. The film will be invaluable when the rioters are prosecuted in criminal court. Attempts to retake the institution

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always should be filmed, as should all inmate surrenders. After the institution is secure, visual record teams should enter the institution and systematically film all physical damage, carefully recording time, date, place and camcorder operator/photographer. All four identifying references must be recorded accurately. In several of the Camp Hill cases, the judge did not allow key photographs into evidence because the defense could not establish the time, date, cell block and photographer of the photos.

All activities involving inmates (such as feeding, distribution of clothing and personal necessity items, and any other situation with the potential for litigation) should be filmed and all identifying information recorded.

Line staff caught up in the violence and chaos of a riot cannot be expected to maintain useful logs.

The movement of inmates always should be filmed because it is then that many inmates allege that brutality occurs. This type of visual record would have greatly improved defendant response to many of the Camp Hill beating lawsuits.

All filming should be backed up by photographs for easier presentation to a jury. Jurors regard visual evidence as concrete proof that staff are telling the truth and the plaintiff is lying. The presentation of photographs and videotape evidence can significantly shorten the length of the trial. However, only the LRT should have permission to film. Amateur filming should be prohibited. These films tend to be flawed, unsystematic and of such poor quality that they can weaken a case and confuse the jury.

The number of visual record teams necessary will depend on the size of the institution and the worst-case scenario presented in the emergency plan. All equipment and training needs can be established during routine emergency planning.

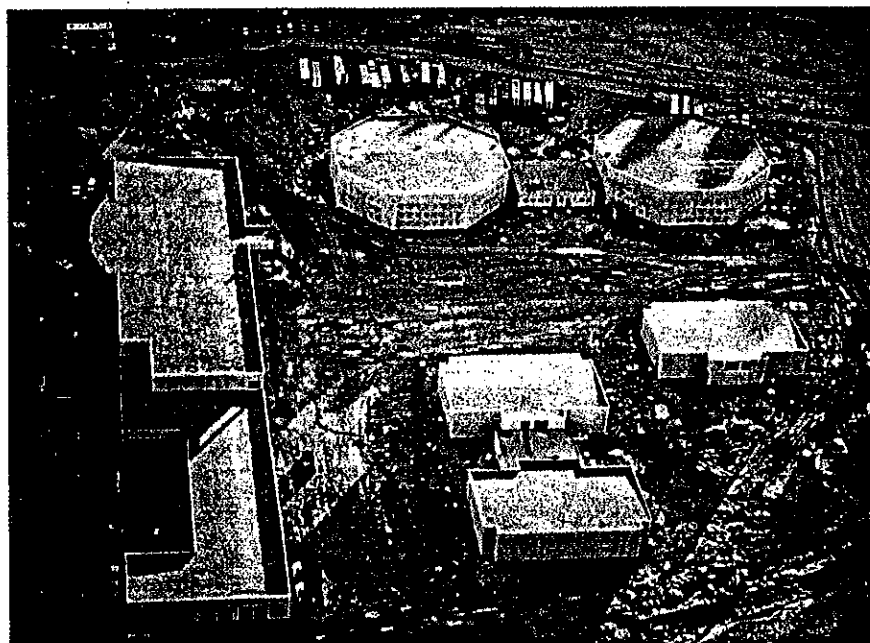
4. Ensure that the assignment of all personnel, regardless of agency, is recorded accurately. Event reconstruction years after the riot will waste hundreds of hours.

In the case of Camp Hill, numerous correctional staff and state troopers were named, or at least referenced, in inmate litigation, yet their assignments at the time of alleged violations often remained vague. The frustrating process of trying to establish assignments and locations after years had passed would have been avoided if specific officers, or clerks, had been

directed to accurately record the shift assignments of all personnel who were in contact with inmates.

5. Ensure that officers properly maintain all block logs and other documents that later will be shown in court. An LRT officer should visit each housing area (permanent or temporary), including the infirmary, at least twice per day to check the block logs and any other documents used to record staff and inmate activity. All documents should be checked for proper recording

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of routine officer activities such as handing out basic necessities; response to inmate medical complaints (there will be an extraordinary number of these after a riot); transfer of inmates within and out of the block; the names of escort officers; reports of inmate aggression or destructive behavior with staff response to those behaviors; and records of all staff assignments with the supervisor clearly identified. Cross-outs, writing between the lines of a log

book, writing in the margins, and entries placed in the log at a later day must be minimized, because these practices may be interpreted by jurors as clumsy attempts by staff to falsify the record.

The LRT must be especially sensitive to the presence of any derogatory comments, racial slurs, vulgarity or scatological references to inmates recorded by frustrated staff. This kind of material can be extremely damaging to the defense position that staff who write childish log entries are actually professional, competent and nonvindictive individuals.

6. Ensure that all documentation is immediately removed from the origination site and safely preserved in a specified records area under the control of the litigation response coordinator so it is available to the defense team. If this is not done, valuable documentation may be misplaced or destroyed, especially if staff retire or transfer to other institutions. Original documents, not photocopies, should be stored. Photocopies of all documentation should be given to attorneys as quickly as possible.

Post-trial Debriefing

After completion of the last trial, major participants in the litigation should assess the strengths and weaknesses of PELR management and make any modifications necessary for future emergencies. This debriefing must be comprehensive, with no setting of artificial time constraints that limit the process by reducing the time for full review and discussion.

Conclusion

No administrator wants to believe that a major institutional emergency will occur. But emergencies do occur, and usually when least expected. Including a PELR model in the institutional emergency plan is an investment well worth the initial expenditure of time and effort. □

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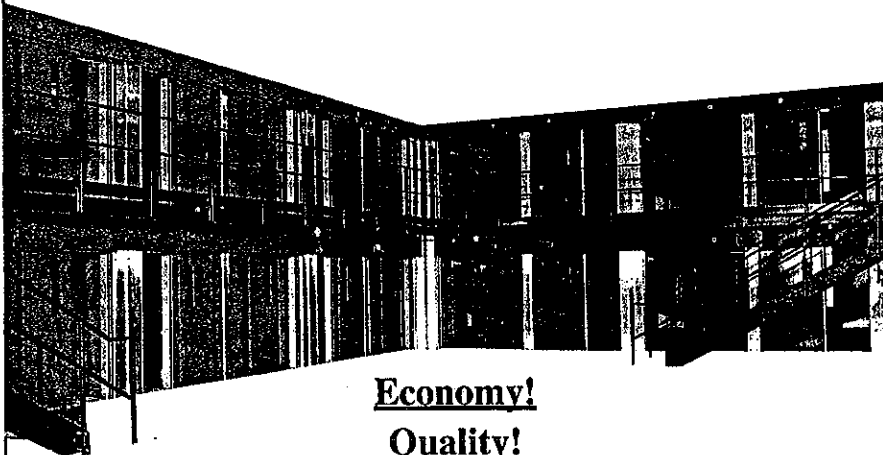
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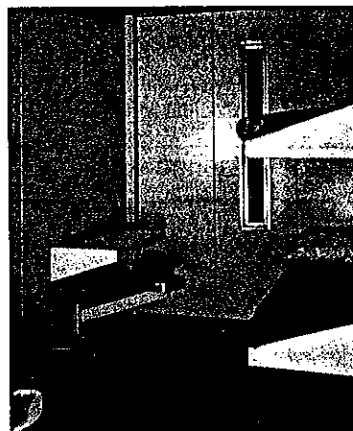
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