

OMBUDSMAN'S REPORT

THE MOTHER'S DAY RIOT AT THE TECUMSEH STATE CORRECTIONAL INSTITUTION

May 10, 2015



OCTOBER 20, 2015

Introduction

The photograph on the cover of this report is taken from a video of the events in the main yard of the Tecumseh State Correctional Institution on the afternoon of Sunday, May 10, 2015, during the so-called “Mother’s Day Riot.” The inmate shown in the photo is Mr. Lenaris Brown, at the time a general population inmate at TSCI. At the time of the photograph, Mr. Brown was being watched by not only a video camera, but also by TSCI staff who were observing events in the main yard through a window. What Mr. Brown is holding in his hands, and what he is obviously trying to show to watching staff, is a handwritten statement of grievances, a document that, as it turns out, is critical to the understanding of the motivation behind the events that took place at TSCI that day.

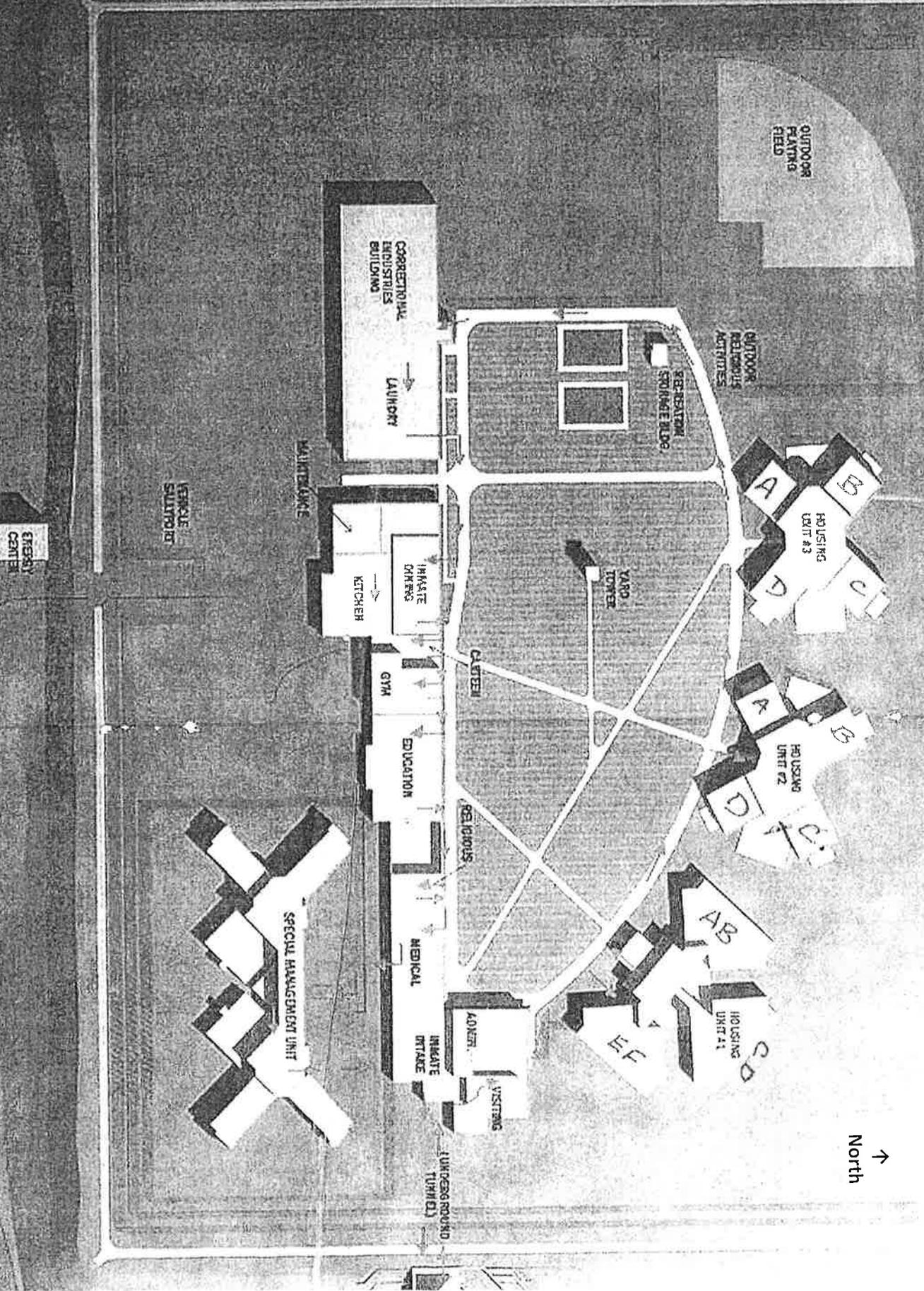
In the weeks and months after the riot, the local news media have tried to shed some light on the subject of the “causes” and motivations behind the riot. On July 5, 2015, the *Lincoln Journal Star* published an article discussing “the apparent lack of insight into what caused (the) deadly Mother’s Day uprising at the Tecumseh State Correctional Institution.” In that report, Dr. Margo Schlanger, who is a professor at the University of Michigan Law School, and has served on the Vera Institute's blue-ribbon Commission on Safety and Abuse in America's Prisons, is quoted as remarking that it was “a shame” that there was not more information on the causes of the riot, because “if something was troubling enough to all those prisoners who participated, it’s probably important to solve it.”¹ On July 26, 2015, the *Omaha World-Herald* published a report relating that the newspaper had received letters from a number of TSCI inmates indicating that the May 10 riot actually “began as a ‘peaceful protest’ over the loss of time out of their cells and other privileges.”² However, in spite of this media attention, many Nebraskans must still have the impression that the riot, with all of its wanton destruction and deadly consequences, was simply a strange case of spontaneous combustion. The truth is that this was not the case at all - the riot, at the outset, did have a “cause,” (using the word “cause” not in the strict sense of “cause and effect,” but more in the political sense of a “motivating idea or an agenda”).

In reporting on this “cause,” we are putting the background and motivation of the event in this framework, not to ennoble it, or to suggest that the inmates’ actions were somehow justified, but simply because it is true, and because, if we are going to understand the event, and hope thereby to avoid a repeat in the future, then we need to understand exactly what was going on, and why. As for the inmates who were involved in this business, they well understood from the outset that there would be consequences for their mutinous actions, even though some (or most) of them did not foresee the event unfolding in quite the way that it did. They will now have to confront those consequences, as their cases are litigated through the administrative disciplinary process, and/or through the criminal justice system. And so, to be clear, while we are telling their story in this report, we are not, in doing so, trying to absolve them of their responsibility for what happened.

¹ Young, J., and Pilger, L. (2015, July 5). Answers on Tecumseh riot lacking, some say. *Lincoln Journal Star*.

² Hammel, P., and Stoddard, M. (2015, July 26). Tecumseh inmates dispute state officials’ report on riot, saying it began as ‘peaceful protest’. *Omaha World-Herald*.

THE CORRECTIONAL INSTITUTION



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On Sunday, May 10, 2015 -- Mother's Day, 2015 -- at approximately 2:20 p.m., an incident started at the Tecumseh State Correctional Institution, which rather quickly deteriorated into a full-blown prison riot. The events of this riot were dire, to say the least: (1) two prison staff persons were assaulted in the yard by a trio of out-of-control inmates; (2) nearly twenty prison staff were left stranded and under siege in offices and the prison tower for a matter of hours; (3) inmates set fires and demolished walls in one of the prison's housing units, ultimately causing damages to furnishings, computers, and CCTV cameras that would cost hundreds of thousands of dollars to repair; (4) one inmate, Rashad Washington, was shot and wounded by the officer in the prison's tower, and had to be hospitalized; (5) another inmate, Samuel Smith, was shot and wounded (by nonlethal weapons) when he charged into the middle of a special operations team that was then moving through the prison's yard; (6) significant parts of the prison were outside of the control of the prison's staff, in some cases for nearly twelve hours; and (7) two cellmates living in Unit #2, Gallery B, Shon Collins and Donald Peacock (both of whom were serving long sentences for First Degree Sexual Assault of a Child) were found dead, apparently victims of homicide at the hands of one or more inmates. The prison in Tecumseh is considered to be a "maximum security facility," and at the time of the riot it held over one thousand inmates who were mostly classified as maximum (with some medium) custody inmates.

The riot was not an unprecedented incident in the history of Nebraska corrections. However, it was certainly an unusual event to most Nebraskans. In fact, the last prison riot in Nebraska had happened almost exactly 60 years earlier, on August 15, 1955, at the Penitentiary in Lincoln (in those days Nebraska's only maximum security prison for males). Coincidentally, an article that discussed the 1955 riot, its causes and aftermath, was published in the Spring - 2015 issue of the *Nebraska History* magazine, a publication of the Nebraska State Historical Society. It is at least interesting to note that while the 1955 riot at the Penitentiary caused more in the way of property damage (an estimated \$100,000 in 1955 dollars, which would convert to approximately \$879,445 in 2015 dollars), the *Nebraska History* article indicates that the 1955 riot "ended without gunfire and only five injuries, all to inmates."³ Although state officials suggested that the cause of the 1955 riot was unknown, the *Nebraska History* article explains that it was, in fact, the result of a concerted effort by Penitentiary inmates to "improve their living conditions." Prison reform was actually a prominent issue in many parts of the country in the early 1950's, and the *Nebraska History* article placed the Penitentiary riot squarely in that historical context:

In 1955 inmates undertook major protest actions in all corners of the country, asserting themselves through both nonviolent and violent means. Prisoners in Nevada, New York, Rhode Island, and Texas staged sit-down strikes. Riots rocked prisons in Michigan, North Carolina, and Wyoming, and convicts in Massachusetts, Texas, and Washington took hostages. As in Nebraska, the inmates behind these actions had reforms in mind, with complaints ranging from food to the parole system...The 1955 Nebraska Penitentiary riots demonstrate an emerging political consciousness among inmates during debates about the prison system's future. Nebraska prisoners had specific reforms they wanted to institute, but with peaceful avenues largely ineffective, violence became the means through which they pushed for reform.

³ Sarnacki, B. 2015. "In the Biting Stage: The 1955 Nebraska State Penitentiary Riots and Violent Prison Activism." *Nebraska History* (Vol. 96, Issue #1): pp. 4-5.

In other words, the 1955 riot at the Penitentiary was not spontaneous, did have an underlying cause, and state officials did, in fact, have a pretty good idea of the content of the inmates' basic grievances. As we shall see, there are some interesting parallels between the 1955 riot and the Mother's Day riot of 2015.

The Critical Incident Inquiry

On the night of April 14, 1912, the R.M.S. *Titanic* struck an iceberg in the North Atlantic, and sank about two and one-half hours later, killing over 1,500 of its passengers and crew. At a time that was still, for the most part, an "Age of Steam," the *Titanic* was one of the most technically sophisticated achievements of its day; yet it sank after brushing against an iceberg on its maiden voyage. In the aftermath of the sinking there were two official post-mortems of the event, one in the United States, and one in Great Britain. The inquiry into the sinking in the United States was carried out by a subcommittee of the U. S. Senate's Commerce Committee, Chaired by Michigan Senator William Alden Smith. Duly exercising the legislative oversight powers of Congress, the Smith committee issued subpoenas to secure the sworn testimony of surviving officers, crew and passengers of the *Titanic* in hearings that were held in New York City and in Washington D.C. Over a period of eighteen days the Committee received evidence dealing with the cause of the accident, the ice warnings that the *Titanic's* officers had received via wireless, the construction and design of the ship, *Titanic's* speed at the time of the accident, the evacuation of the ship as she was sinking, and the number of lifeboats on the ship. The Committee's final report, which was released on May 28, 1912, included many critical findings, including the conclusion that the evacuation of the ship had been chaotic, and that the lack of adequate lifeboats to hold all of the *Titanic's* passengers and crew was the fault of the British Board of Trade, which was the agency charged with the regulation of the safety features of the British maritime fleet (in fact, the report concluded that it was the Board of Trade's "laxity of regulation and hasty inspection" to which the "world is largely indebted for this awful tragedy"). Special criticism was reserved for the *Titanic's* veteran Captain, Edward Smith, whose "indifference to danger" was deemed a "direct and contributing cause of this unnecessary tragedy." The efforts of the Committee would later mature into legislation dealing with maritime safety, including a requirement that ships carry an adequate number of lifeboats for the rescue of all passengers and crew, and new regulations concerning the handling of navigational wireless messages received from other ships.⁴

On the British side, the inquiry into the *Titanic* disaster was managed by the British Board of Trade, through hearings presided over by Lord Mersey, a distinguished judge who had handled the litigation of many commercial cases over the years. While the British inquiry was somewhat more "competent," in terms of how evidence was presented and explained, the unavoidable fact of the proceedings was that the inquiry was being conducted on behalf of the British Board of Trade, the regulatory agency that had certified the *Titanic* as "seaworthy," and sufficiently safe to carry passengers. The other concern, from the British perspective, was that the *Titanic's* crew and officers were British, and any suggestion that they were careless or negligent would cast a shadow over British "seamanship" at a time when British companies were competing with other

⁴ Perhaps the best account of the hearings and subsequent report of the U. S. Senate inquiry can be found in Wade, Wyn Craig. 1979. *The Titanic, End of a Dream*. New York, NY: Penguin Books.

nations (particularly Germany) for dominance over trans-Atlantic sea trade. Given these “vested interests,” it should hardly have been a surprise that Lord Mersey’s final report on the subject did not criticize the Board of Trade as harshly as did the U. S. Senate report. And on the subject of Captain Smith the Mersey report concluded that, while the *Titanic* was going too fast when it hit the iceberg, this did not imply negligence on Captain Smith’s part because he had simply been following the “long-standing practice” of other sea captains steaming across the North Atlantic (in other words, if all sea captains are negligent, then none are). As for the ultimate question in regard to the “cause of the loss of the *Titanic*,” Lord Mersey’s answer was simply “collision with an iceberg,” as though there was no human agency involved in the tragic loss of life. Justifiably, there are those who see Lord Mersey’s investigation and account of the event, in spite of all of its technical detail, as being, in essence, a whitewash carefully designed to protect the vested British interests involved.

I bring this bit of early Twentieth Century history up in this context because it is about the best way that I know of dramatizing how the review of a critical incident, like a prison riot, can be meaningful and useful (or not), depending largely upon the objectivity and independence of the reviewer. In fact, in many instances objectivity and independence of the reviewer can be even more important than technical expertise, in terms of producing a meaningful outcome. Most bureaucracies, when confronted with a critical systemic failure, will tend to withdraw into their defensive positions and, when asked what happened, simply answer, “It was the iceberg’s fault.” Obviously, answers like this one are not terribly useful to anyone, except for the bureaucrats who want to evade all responsibility for their own mistakes. However, as for those of us who want to learn from the incident, and discover better ways to handle things so that such calamities can be avoided in the future, we need the kind of objective and independent critical incident analysis that will place blame where needed, if needed, and that will produce real insights into the event, so that we can grow as a society, and avoid having to repeatedly make the same mistakes, over and over again.

In the wake of the Mother’s Day riot at TSCI, the Department of Corrections could have turned the analysis of the incident over to a few of the Department’s high-ranking administrators, asking them to produce a rough outline of the riot and its causes, which would then be presented to the agency’s Director for follow-up. The leadership of DCS might then have carefully digested the facts, purged the account of inconvenient facts that might embarrass the Department, and then released a sanitized “report” that said, in essence, “It was the inmates’ fault.” Well...inmates cause riots, just like icebergs can cause ships to sink, but those are facts that we already know, and if we are going to learn anything from the events of May 10, then we will need to look at those events honestly, objectively, and fearlessly, and follow them to their ultimate conclusion, whatever that may be. Fortunately, in this case that effort will be greatly facilitated by the fact that new DCS Director Scott Frakes chose to eschew the kind of quasi-cover up that I have just described, and decided to instead turn the critical incident analysis of the May 10 riot over to an outside expert in the area of prison security, Mr. Thomas Fithian, who came to Nebraska, spent days gathering information, and eventually authored a report on the riot offering his analysis of the May 10 riot, its causes, and the management of the incident by DCS staff. Mr. Fithian was assisted in performing this critical incident evaluation by a team of DCS employees. Mr. Frakes offered to allow an employee of the Ombudsman’s Office to serve on this team as well, but we declined that invitation because we understood that we would ultimately be writing this report,

and that there might be some findings by Mr. Fithian with which we disagreed. Nevertheless, Mr. Jerall Moreland of the Ombudsman's Office was allowed to monitor the work of Mr. Fithian and his team, and we were given ready access to documentary evidence and videos of the events at TSCI on May 10. The cooperation of the Department in that regard is greatly, and sincerely, appreciated.

The report prepared by Mr. Fithian was completed and released to the public on June 29, 2015. The report was thorough and fact-intensive, and included more than eighty recommendations for changes that might help DCS to manage like incidents in the future, or to avoid them altogether. On August 6, 2015, Mr. Frakes released a follow-up "corrective action plan," which announced the steps that DCS would be taking to implement Mr. Fithian's recommendations. Much of our own evaluation of the May 10 riot is based on what Mr. Fithian has said, and the Ombudsman's Office would genuinely endorse the great majority of his recommendations (the exceptions we would make would be with respect to suggestions that proposed the reduction of the out-of-cell time allowed for inmates at TSCI).⁵ *The course of action followed by Mr. Frakes in bringing in an outside expert, and initiating an honest and open evaluation of the events of May 10 is, in our opinion, a model of how situations like this should be handled. And, in fact, over the long-term, Mr. Frakes' handling of this element of the response to the riot may be as important as (or even more important than) the lessons to be learned from the event itself.*

Causation/Motivation

Mr. Fithian's critical incident report included two and one-half pages of narrative on the "Causal Factors" related to the TSCI riot. Although Mr. Fithian's discussion of those factors in his report was not particularly detailed, he did, in fact, touch upon a number of issues that were involved as "causal" or motivating factors for the inmates (or some of the inmates) in terms of their behavior on May 10. The issues mentioned included "hot button" concerns, such as limitations on inmate access to the TSCI main yard, the availability of jobs and programming for TSCI inmates, and the conditions being imposed for inmates to participate in the facility's "Wellness League." In his report Mr. Fithian indicated that TSCI's Captain Christopher Connelly stated that "several inmates that identify as Rastafarian had planned to present a petition to gain greater access to the big yard," but the report said that this information "was not verified, and no such petition was found." In fact, the documents that the Ombudsman's Office received from DCS did include what should be characterized as a "statement of grievances," and although this document is not a "petition" in the sense of being a formal request or grievance in writing signed by a number of people, it does have the substantive essence of a petition (absent the signatures), and is certainly a comprehensive statement of inmate grievances. We also know for certain that this document was on the yard during the Mother's Day riot, because that fact is clearly demonstrated by video evidence, recorded during the riot. (See Attachment #1) We would add that we are not implying that Mr. Fithian was ignoring this document, or trying to "cover-up" its existence. We have no reason whatsoever to believe that this is the case, and we assume that Mr. Fithian may simply have missed this document in the hundreds of documents that were generated by DCS for the purposes of his review.

⁵ See p. 17, Recommendations 2 - 4 of the Fithian Report.

The inmate statement of grievances, which is handwritten, and covers two pages, reads as follows:

1. Administration and staff are intentionally and arbitrarily placing us in seg, only to let us out as if nothing happened. But we lose our jobs, cells, units, jerseys etc.
2. We are refused transfers to other institutions by arbitrarily denying us lower custodies, even though most qualify, while those who cause the most trouble are being catered to.
3. Rewarding inmates who inform on their fellow inmates with jobs and other privileges.
4. Created two classes of inmates: Those on the so-called "Incentive/Wellness League," and those who aren't. Which now is a requirement to work in CSI Laundry, play group sports, use the Music Room, have access to a microwave and an ice machine, and it's rumored to be expanded to many other things such as more yard access.
5. The so-called creation of an STG unit, which seems to be coming true since a large majority of all alleged STG are being housed in HU2.
6. The ongoing and increasing disrespect of TSCI staff, who are becoming younger and more inexperienced as staffing problems and overcrowding become ever more prevalent.
7. TSCI inmates being punished (in the form of library and night rec being taken May 9 and 10) for actions of other inmates not currently housed at TSCI.
8. Arbitrarily celling inmates together who aren't compatible and then denying those inmates to move into cells with an inmate they are compatible with.
9. Being denied access to modern technologies and job skills, vocational/technical training, which would help prepare us for our eventual return to civilian life.
10. Inmates are being placed on DOC for "alleged" drug use.
11. TSCI does not support self-betterment clubs or their volunteers.

The above-stated complains are not the only ones, but are the most important, but they are causing us inmates at TSCI psychological and emotional harm because of the following:

1. We are human beings that are sent to prison as a punishment, not to be punished in the form of disrespect, ridicule, harassment etc. by TSCI staff.
2. Many of us TSCI inmates have long sentences and are being denied access to better-paying jobs to pay child support and to purchase items such as TVs, running shoes etc., and must depend on outside support. These items would help ease the hardships of being in prison, away from our children and other loved ones, and the feeling of shame and inadequacy of knowing we'll always be felons, which prevents us from getting better jobs because most of us don't have any vocational/technical training (i.e., computers, typing etc.)
3. A lot of TSCI inmates are being warehoused with no end in sight. Those of us who are here only for a short time don't care what's going on here are TSCI.
4. The fact that those of us not on the "Incentive/Wellness League" are treated differently makes us feel less than those who are on the "Incentive/Wellness League" who are being treated better.

Most of us are getting out of prison someday, and it's in the best interests of everybody that the reasons stated above be addressed because nobody wants more Nikko Jenkinses.

In our opinion, this document is extremely important to understanding the background of the May 10 riot for two reasons. First, it lends credence to post-riot statements by TSCI inmates to the effect that the motivation of at least some of the inmates that day was to register a "peaceful protest" relating to conditions and circumstances at the facility. (See Attachments #1 and #2; and also please note how Attachment #2 appears to be identical to the document being held up in

Attachment #1.) In the same respect, it also tends to substantiate Captain Connelly's statement to Mr. Fithian about "a petition to gain greater access to the big yard." Secondly, the document gives us a comprehensive account of the inmate's principal frustrations and concerns, some of which deserve a full examination in this report.

Of course, the Ombudsman's Office regularly addresses inmate complaints, including complaints from inmates at TSCI, and in the great majority of those cases the Office is actually investigating and responding to inmate-specific issues, rather than a system-wide, or facility-wide issue. But there have been times when the Ombudsman's Office has tried to address issues that are far more generally-oriented, sometimes in response to inmate petitions. One such case was in November of 2006, when we wrote a long letter to former DCS Director Robert Houston addressing a list of issues presented in an inmate petition, dated August 28, 2006, and signed by nearly 75% of the TSCI inmate population. (See Attachment #3) It is noteworthy that this letter addressed some of the same issues (the lack of programming, staff-inmate interactions, etc.) that were listed in the, statement of grievances from May 10, 2015. It should also be noted that the May 10 document made no mention of some of the other issues raised by the TSCI inmates in their 2006 petition, for instance medical care, and food service concerns.

Particularly noteworthy, in retrospect, is the fact that the TSCI inmates in their 2006 petition had expressed their contempt for the facility's handling of inmate grievances, which the 2006 petition characterized as being a "joke." In our November 22, 2006, letter addressed to Mr. Houston we tried to put emphasis on the value of the internal grievance process as a way of "helping to keep track of the 'pulse' of the facility," and we also repeated an earlier recommendation that it was important for the Warden to personally review and monitor the progress of the inmate grievances as a means of learning what he/she could about the systemic-related frustrations of the inmate population. In fact, this was not the first time that the Ombudsman's Office wrote to the DCS Director on the subject of an inmate petition of grievances emanating from TSCI. Less than a year earlier, on December 12, 2005, we wrote to Mr. Houston to discuss the issues raised in a petition in 2005. In our December 12, 2005, letter we stressed that the "single most important point about the inmate petition is not any of the issues raised in that petition, but the fact of the petition itself, as a means of expressing inmate grievances and associated frustrations." To this we added:

Given the many negative, and potentially disruptive, ways that inmates can express, and sometimes have expressed, their frustrations, the fact that the TSCI inmates instead chose to express their grievances through a petition represents a remarkably mature and constructive approach to problem-solving. In our April 20, 2004, letter to Assistant Director Hopkins, we emphasized the need for the TSCI administration to keep an "open ear" for inmate concerns. While an event like the inmate petition might be viewed by some in the TSCI administration as "troublesome," or as threatening to the careers of particular managers, to the institution and the Department generally, it is a positive thing, the sort of opportunity for dialogue with the inmate population that should be welcomed and encouraged. It also offers the Department an opportunity that can be built upon in creative ways.

In our December 12, 2005, letter we also tried to stress the importance of promoting “new lines of communication” with the TSCI inmate population as a “source of information for the TSCI administration in regard to areas inmate concerns and dissatisfaction.” (See Attachment #4)

In both of our letters dealing with the inmate petitions from 2005 and 2006 (actually, the two petitions were nine months apart, in terms of their timing) we tried to stress the importance of positive and open lines of communication between the TSCI administration and the facility’s inmates. In that connection, we tried in the 2006 letter to Mr. Houston to emphasize that the inmate petition process was extremely important as a “means of communication” between the administration and the TSCI inmate population, and that “its value would quickly diminish, if the inmates did not perceive that their concerns were both heard and given serious consideration” by the TSCI administration. While the 2006 petition did raise many of the same issues that were brought up in the 2005 petition (food service, the need for more jobs, inappropriate cell searches, the inmate disciplinary procedure, the operation of the canteen, and staff’s behavior/demeanor toward the inmates), the 2006 petition also had other issues, including the quality of medical services, the availability of rehabilitative and programming opportunities, and the functioning of the TSCI grievance procedure. However, as we indicated in our November 22, 2006, letter on the subject of the petition, the content of the petition, and “whether or not they have merit,” was actually “less significant...than is the fact that the TSCI administration is willing to talk about them and take them seriously.” At the time, and in follow-up to the 2006 inmate petition, there was an effort to organize a “meeting between representatives of the administration and leaders of the TSCI inmate clubs, as a way to engage in dialogue about the issues.”

The plan to involve the club presidents in this process seemed reasonable, because the list of club presidents represented a broad, and diverse, range of TSCI inmates, and included several, but not all, of the inmates who had been involved in circulating the petition. Unfortunately, however, when the decision was made to limit attendance at the meeting to inmates who were club presidents, other (non-club) inmates who were active in circulating the petition promoted a partial boycott of the meeting.

As we indicated at the time, we felt that the inmates who decided to boycott the meeting “made an unwise decision,” because they “sabotaged the very communication that they were seeking in circulating the petition,” and thereby sacrificed credibility.”

The point we were trying to make in 2005 and 2006 remains important now – inmate petitions expressing collective grievances are a positive thing; they can help greatly in the administration of a facility like TSCI by identifying the most important areas of concern for the population of the facility; and they can serve as a starting point for dialogue over issues that need to at least be addressed, if not corrected, in the interest of optimizing an orderly institution. Obviously, this does not mean that the inmates get to decide how the facility is going to be operated. Clearly, it will always be necessary for the staff to be in control, and safety and security will always (within some limits) trump inmate demands/grievances. But this does not imply that any communication with the inmate population is bad, or unnecessary, or a sign of weakness. And this is particularly true if the communication is carried out in a regularized, sanctioned way. In fact, it was with this in mind that we suggested in our December 12, 2005, letter to Mr. Houston that “the time has come for TSCI’s administration to ‘formalize’ or ‘institutionalize’ new forums of management-

to-inmate communication at the facility.” The equation here is fairly simple and obvious – more communication equals less trouble.

From what we have learned about the motivation of the event on May 10, the intent (of certainly some, and possibly the majority of inmates in the main yard on May 10) was to use the event as a way of raising and dramatizing inmates’ collective grievances. (In fact, we have been told - and we believe that it is credible - that it was necessary for some of the gangs at TSCI to negotiate a “truce” so that all of the inmates involved could act in concert in carrying forward the “peaceful demonstration” on May 10.) Therefore, the handwritten, two page document recovered from the inmates in the wake of the May 10 riot was, in fact, the “makings” of an inmate petition, a list of grievances that was supposed to eventually have the endorsement of a significant number of the TSCI inmate population. We have interviewed Mr. Lenaris Brown, who is the inmate holding up the statement of grievances document shown on the cover of this report. Mr. Brown said that the statement of grievances document was prepared by himself, inmate Rashad Washington, and a couple of other inmates. Their basic intention, according to Mr. Brown, was to get the signatures of a number of inmates endorsing the grievance document, and to thereafter present the petition to the TSCI administration, preferably Associate Warden Busboom. Mr. Brown said that at the time depicted in the photograph where he was holding up the grievance document, he was trying to show it to Associate Warden Busboom, who was watching the yard through a window, along with other staff. He said that in the end he was taken into custody, and the grievance document was taken from him by staff, who said that they were going to secure it “in evidence.”

Unfortunately, in this case the petition was stillborn, largely because the way that the inmates involved chose to handle it was ill-conceived, and highly dangerous. Some of the TSCI inmates involved have described their intentions, to the news media, and to this office, as being to mount a “peaceful protest” in order to dramatize their many grievances. In his interview, Mr. Brown also stated that the intent was a “nonviolent” protest. When asked about the assaults on staff at the onset of the riot, Mr. Brown said that “it was not supposed to happen like that,” the assaults were “not part of the plan.” However, while their intentions may have been “nonviolent,” as Mr. Brown said, the situation “just went south,” and turned into an event that was contrary to their nonviolent intent. Therefore, although we certainly credit Mr. Brown’s account that the basic intention of at least some of the inmates involved was “nonviolent,” we must also agree with his characterization of how the event very quickly took on a violent character, even if that was not what he and others had intended to happen.

Obviously, a peaceful or nonviolent protest is preferable to a violent protest, but in reality this situation, described by Mr. Brown a “peaceful protest,” quickly morphed into a violent protest, when the inmates started damaging property, breaking through doors, and tearing down walls. TSCI staff (and probably many inmates, as well) were terrorized, two of the TSCI inmates were wounded by gunfire, two other inmates ended up dead, and the normal operations of the facility were disrupted to the point that they have not yet been restored to normality even today, months after the event. While the idea of a “peaceful protest” may seem relatively benign, if what we are talking about means that the complaining inmates are going to be doing something that is outside of normal prison channels, then that is *not a good idea*, to say the least. In a prison setting, the rule must always be that if a staff person gives an inmate, or a group of inmates, a lawful order, then the inmates must obey that order; and this is a necessity that does not leave very much room

for inmate "protests," peaceful or otherwise. In such a situation, the primary risk is that even a peaceful protest can cause the unexpected to happen, and the situation can very easily spin out of control, which is what we believe happened in the case of the Mother's Day Riot at TSCI. As our step-by-step account of the onset of the riot will show, the whole situation began to unravel rather quickly once it became apparent that something out of the ordinary was going on, and that staff in the main yard might have difficulty managing the situation. Within a matter of minutes there were assaults on two TSCI staff persons by three inmates, and the tower officer had fired a warning shot, all of which quickly transformed the supposedly "peaceful" event into what could eventually be termed a "riot," a very serious, and violent event.

All of this having been said, we believe that it is important, for purposes of historical accuracy, if nothing else, to record that part of the motivation behind the May 10 event was to spur what the inmates considered to be needed "reforms" in how the facility was operated. When Mr. Brown was asked what he believed was the chief motivation of the intended protest, he simply said that the inmates "just wanted the yard back." (This is a complaint that we are familiar with, and we will cover it in detail later in this report.) We must also record that this idea of inmate "protest" is arising in a milieu of social protest and prison reform. As was the case in the mid-1950's, so in 2015 there is talk, and action, related to the reform of prison systems throughout the country, Nebraska's included. President Barack Obama has questioned the use of "solitary confinement," and United States Supreme Court Justice Anthony Kennedy has been actively campaigning to reform the use of administrative segregation in this country. In the State of California thousands of inmates have taken part in hunger strikes to protest administrative segregation. Around the country serious questions are being raised about the high number of people who are incarcerated in the United States, as related to the incarceration rates found in other countries, and a number of states, Nebraska included, have modified their sentencing laws with the idea of significantly reducing the number of "nonviolent offenders" who are sent to our prisons. Furthermore, all of this talk of needed reform was happening in parallel to the Black Lives Matter movement that is going on in our society in 2015. This movement campaigns against cases of "police brutality" in the United States, meaning force directed by law enforcement agents against African-Americans, particularly young African-American males.

In this context of talk of prison reform, and active protest in communities across the country, it is probably not terribly surprising that Mr. Brown and some other TSCI inmates decided to mount a protest for what they considered to be needed reforms at TSCI. Ideas are not stopped by razor wire. And inmates' knowledge of what is going on in the world does not end at the institution's perimeter fence. As was the case in the Penitentiary riot in 1955, so the actions of the inmates at TSCI in 2015 could well be considered to represent "an emerging political consciousness among inmates during debates about the prison system's future." The primary difference between these two events (admittedly more a motivational than a practical difference) is that the Penitentiary riot in 1955 was planned to be a violent event because, in the view of the inmates, "with peaceful avenues largely ineffective, violence became the means through which (the inmates) pushed for reform." In contrast, in 2015 there were at least some of the inmates involved in the event who were planning for a *nonviolent protest*. But, as is often the way of things, the good intentions of 2015 ended up producing more violent results than the less benign intentions in 1955.

The Inmate Grievances

The statement of grievances prepared by Mr. Brown, et. al., and recovered from the yard after the May 10 riot, includes a number of specific complaints relating to the operation of TSCI. In our effort to evaluate that document, it is necessary to look for the leading complaints, in terms of their relevance to a significant portion of the TSCI inmate population. All of the complaints in that document have significance, but some are more substantive (and substantial) than others. Also, some of the complaints are easier to address than others. For instance, the complaint about staff being “disrespectful” is very important, but difficult to address without having specific-fact allegations that demonstrate or substantiate the concern. For the purposes of this report, we have decided to discuss several issues, including specifically: (1) the managed yards policy; and (2) the administration of the TSCI Wellness League. In connection with these larger issues, we will also touch on the handling of the so-called “DOC classification,” and the allegation that the TSCI administration was creating an “STG (Security Threat Group or ”gang member”) unit.

The Managed Yards Policy - Historically, general population inmates residing in TSCI, the Penitentiary, and the Lincoln Correctional Center enjoyed an “open-yard” arrangement, which allowed them, or most of them, to circulate freely from their housing units and into and out of the institutions' main yards much of the day (with routine interruptions each day for “count”). This all changed at TSCI and the Penitentiary in the fall of 2012. At TSCI, the institution went on a modified lockdown on September 14, 2012, as a preliminary to making the transition from an open yard model to a “managed yards” policy, which would be designed to allow the inmates to go into the yards in smaller numbers, and only for scheduled lengths of time. For both TSCI’s general population, and the Penitentiary’s non-minimum custody inmates, this meant that they would now enjoy time out of their housing units only for a few hours per day, and then only in the company of the other inmates in their own housing area. The leadership of the Department explained that the change to managed yards was needed to help address growing concerns about the “security threat groups” (in essence, “gangs”) that were becoming much more active in the facilities. There were also serious concerns in the DCS administration about facility staff being able to manage violent events involving large numbers of inmates in the facilities main yards. (In 2010, there was a series of “gang-related fights” at LCC that alerted the administration to this concern.) In its basic outline, the managed yards policy contemplated that the inmates would be allowed to leave their cells for programming, jobs, education, etc., and would also be allowed to go into the yard and/or the gym for specific, scheduled intervals, but would otherwise be held in their cells, or in the unit’s dayroom area. Obviously, this new policy represented a major change in the inmates’ lifestyle, and when Mr. Brown says that the inmates “just wanted the yard back,” he is, in effect, pleading for a return to the historic way of doing things in Nebraska’s prisons. Of course, the great irony in this whole situation is that the May 10 riot at TSCI largely validated the administration’s concerns about having large numbers of inmates in the main yards – imagine what the outcome might have been if there had been several hundred rioting inmates in the main yard of TSCI on May 10, rather than a relative handful of inmates.

This transition from open yards to managed yards was not exactly unforeseeable. In fact, I can recall an occasion when former DCS Director Robert Houston testified before the Legislature’s Judiciary Committee and mentioned that Nebraska’s “open yards policy” was inconsistent with the way that things were handled in many other states, and that the Department might have to

abandon that policy in the future. Also, it must be noted that the managed yards policy was, in fact, first implemented at the Lincoln Correctional Center after a series of “gang-related fights” among inmates and assaults on staff at that facility beginning in March of 2010, years before the changeover to the new managed yards policy was implemented at TSCI and at the Penitentiary. (The actual change to managed yards at LCC came in April of 2011.) The change in policy at LCC commenced with a modified lockdown of the facility on April 10, 2011, with inmates being thereafter held in their cells for most of the day. Over time, however, the LCC administration implemented the new system for managing inmate movement, and finally, on June 11, 2011, the institution’s main yard was opened for scheduled usage by LCC’s general population inmates. It was not until the fall of 2011 that scheduled dayroom access was added, thereby allowing LCC inmates to have more out-of-cell time. (See Attachment #5) Nevertheless, from the time of the lockdown, the LCC administration was able to increase inmates’ out-of-cell time to the point that, with mealtimes included, the general population inmates at LCC were being allowed out of their cells 8½ hours per day.

When the leadership of DCS first presented the managed yards idea to the Ombudsman’s Office, they stressed the point that they were concerned about escalating gang activity and gang-related violence at TSCI and the Penitentiary, which they hoped to address by better management of the inmates’ access to the main yards at those facilities. My response to this was to accept the basic argument that managed yards were necessary, in part because of elevated gang activity, but also, in the case of the Penitentiary, because I knew that NSP was becoming seriously overcrowded, and, in the case of TSCI, because I knew that there were concerns about the ability of the staff there to meet the challenges of an ever more difficult-to-manage population. However, since we knew about the prior experience of LCC, and how the new system had evolved at that facility, we were under the impression that the Department would see to it that the inmates in those two facilities would be allowed to have adequate out-of-cell time, even if much of it was in the units’ dayrooms. However, what actually developed at both TSCI and the Penitentiary, was not just a system of “scheduled yards,” with the inmates being allowed to go into the yard only at certain times, but a situation where, in reality, the general population inmates in those facilities were being kept locked in their cells for most of the day. In fact, at the outset many of these inmates were being kept locked up in their cells for as many as 22 hours per day. As we saw this taking place, we were very concerned about what was happening, because we regarded this situation as a “virtual lock-down” arrangement, and as being far more drastic than the “managed yards” that had originally been described to us by the leadership of DCS. We strongly believed that it was both inhumane and unnecessary to leave the general population inmates locked up in their tiny (usually two-man) cells for almost the entire day. And so, while we conceded that scheduled yards might well be necessary, we also decided that it would be our responsibility to insist upon changes that would provide for a material increase in the amount of out-of-cell time allotted for the Penitentiary and TSCI inmates. In connection with this, we prepared a statement of our intent which was then published in the December 2012 issue of the *Nebraska Criminal Justice Review*, which is read by many inmates in the Nebraska correctional system. (See Attachment #6)

In following up on the issue of the management of inmate out-of-cell time at the Penitentiary and TSCI, the Ombudsman’s Office had two extended meetings with then-Director Houston and the Wardens to discuss this matter. In addition, we took a tour with Mr. Houston of housing units at

both the Penitentiary and the Lincoln Correctional Center, so that we could see how those two facilities might differ in terms of their ability to manage an arrangement whereby their general population inmates would be given more time outside of their cells. On April 15, 2013, we sent a letter to Mr. Houston summing up our views on the out-of-cell time issue. We pointed out that at LCC, where they had made the transition to managed yards system about a year earlier, they were giving the LCC general population inmates more than eight hours per day out of their cells. We also cited Standard 23-3.6 of the new ABA Standards on Treatment of Prisoners, which calls upon all correctional authorities to “*minimize* the periods during the day in which prisoners are required to remain in their cells.” Our recommendation was that DCS should “act as quickly as possible to change the schedules at NSP and TSCI to allow for the general population inmates in those facilities to have a minimum of 8½ hours of out-of-cell time per day.” (See Attachment #7)

Mr. Houston responded to us with a May 10, 2013, letter and supporting information indicating that the Penitentiary was now allowing its general population inmates to have a minimum of 8½ hours outside of their cells, which included some time in the yard, and mostly time in their unit's dayroom. The supporting information also indicated that the general population inmates at TSCI were receiving a minimum out-of-cell time of 7¾ hours per day, which was much better than the two hours being allowed at the outset, but still not quite up to our recommendation of a minimum of 8½ hours of out-of-cell time per day. (See Attachment #8) In further correspondence (dated June 5, 2013), Mr. Houston advised the Ombudsman's Office that the TSCI administration had made further “adjustments to increase out-of-cell time at TSCI,” and that these changes, which would include “additional day room and mini yard times and utilization of the TSCI ball field for organized recreational activities,” would provide TSCI inmates with “9.75 hours of out-of-cell time.” (See Attachment #9) There were also serious discussions within the Department of the possibility of placing new fencing in the facilities, to subdivide the main yard, and thus create separate compounds so that multiple groups of inmates could be outside simultaneously, while still being separated for ease-of-management purposes. The Ombudsman's Office supported this idea.

As this account reflects, the approach of the Ombudsman's Office to the “managed-yards” issue was focused on the whole question of out-of-cell time, and not on the question of whether it was appropriate or desirable to abandon the open yards model itself. We took this approach in part because, as previously indicated, we felt that the DCS administration was right to be concerned about the risk involved in allowing large numbers of inmates to congregate in the facilities' main yards (former DCS Director Houston was once quoted as describing a nightmare scenario where there might be a facility yard “packed with more than 1,000 inmates”). Given this concern, we were never optimistic about the possibility of convincing the DCS administration to reverse the change to the managed yards policy. Instead, we decided to focus on the question of out-of-cell time, because we were extremely concerned that if we did not do so, then by default the reality (particularly at TSCI) would be a situation where most of the general population inmates would be allowed out of their cells for only a few hours per day – perhaps as few as three hours per day out of their cells. To fully understand this concern, it is necessary to discuss a little more about the history of TSCI.

In the context of the new managed yards arrangement, which basically meant that the inmates at TSCI would be allowed to go into the facility's yards and/or gym for only a few hours per day, the whole question of time in the housing unit dayrooms became the critical component. When it comes to the question of "where will the inmates be," the options for many general population inmates (excluding those who have jobs or classes) are three – they can be: (1) in their cell; (2) in the yard or the gym; or (3) in their housing unit dayroom. Since the idea of managed yards had, in effect, strictly limited their access to the yards/gym, the issue of "access-to-dayroom" became the critical question, once the open yards model was abandoned. In other words, if the inmates could not be in the yard/gym, and if they could not be in the dayroom, then the only alternative for many of them was to be "stuck in their cells" for all but a few hours per day. We understood this equation; and we also understood that the question of "access-to-dayroom" had been a very significant issue at TSCI earlier in its history.

TSCI was opened for operation in December of 2001, and had struggled, even at the beginning, to find sufficient staff. Then in 2004 there were some serious assaults on staff by inmates in the TSCI dayroom areas, and some of those working at the facility supported the idea of reducing the access of inmates to the housing unit dayrooms as a means of improving staff safety. At the time, the schedule at TSCI basically allowed the general population inmates to have access to the housing unit dayrooms at any time that the facility's yard was open, which encompassed much of the daylight hours. However, after the trouble at the facility in 2004, there was a lockdown and the policy relating to dayroom use was substantially changed, to the point that the inmates were only allowed to be in the dayrooms an hour or so each day. (Please see Attachment #4, pp. 3 - 5) Obviously, if inmate access to the yards was limited in a significant way (which is what the new managed yards idea contemplated), then the only way that many of the TSCI inmates would be able to get out of their cells for longer periods would be if they were allowed to congregate in the dayrooms; and so the Ombudsman's Office decided to advocate for more out-of-cell time, with the understanding that what we were really campaigning for was that the TSCI (and Penitentiary) inmates be given more dayroom time. Based on the history at TSCI, however, we also knew that there might be some resistance to this idea insofar as the TSCI staff was concerned. Eventually, DCS did agree to allow both Penitentiary and TSCI inmates to have more out-of-cell time, but that did not restore the old open yards model, which was the inmates' true priority.

Reflecting on the situation today, I do still believe that it was a good decision to concentrate our energies on the "out-of-cell time issue." This was the pragmatic and constructive approach for our office to take, and it did not put us in the dubious position of simply closing our eyes to the risks and obvious safety implications (particularly at the Penitentiary) of the system's significant overcrowding. Nevertheless, we did, and do, recognize that the real priority for the inmates was the restoration of the open yards policy. For a few inmates, particularly for some of those who are involved in "gangs," the loss of the open yards might have been seen as complicating their ability to organize gang activities, or to carry out gang-related assaults. For a few inmates, in particular those who made money selling contraband to other inmates, the loss of the open yards might well have deprived them of their "market." Clearly, we are not going to argue with DCS on behalf of inmates with those goals. But we do believe that for the vast majority of inmates at TSCI and the other facilities (particularly those inmates who had been in the system for many years), the "loss" of the open yards represented a significant erosion of what had long been the very core of prison-society. The idea, and essence, of imprisonment, and what truly makes it

punishment, is that it shrinks the inmate's world down to very narrow precincts. And this is true not only in the physical sense, but also in the social sense – prison narrows the inmate's ability to socialize with other people, which is a powerful need for most of the human species. This is why things like mail from the outside, telephone calls, and visits from family and friends are so very important to the inmates in our prisons...because it increases the inmate's "social circle." The abandonment of the open yards policy must be seen in this context to completely understand the inmates' objections to the Department's decision to move to the managed yards model; it was a decision which significantly narrowed and constricted the inmates' "world," and in that sense amplified their punishment.

The elimination of the open yards was a serious loss, from the perspective of the inmates. But it could also create an opportunity for making the facilities, not only more safe, but also more civil, if the situation is handled properly by the Department. Having eliminated the open yards, and thereby significantly narrowed the inmates' social circle, the Department can now find *new* ways to give the inmates access to more fresh air, and to an enlarged social environment. And so, the desire of the inmates for access to an enlarged society could be used as an incentive to encourage the inmates to seek out and accept jobs in the institution, and to pursue more in the way of club activity, and programming opportunities. (Of course, the problem with this is that TSCI is short of jobs and programming, which is yet another thing at the facility that needs to be corrected.) Another idea along these lines would be to find ways to use the incentive of more yard access as a reward for inmates' good behavior, either through a policy of providing more in the way of yard access to inmates who had a more positive classification in the Department's classification system (i.e., treating Medium Custody inmates differently than Maximum Custody inmates for access-to-yards purposes), or through special programs that delivered more "yard time" to those inmates who participated in those programs. This brings us to the next subject – the Wellness League programs at TSCI and the Penitentiary.

Wellness League – The inmate statement of grievances made reference to the Wellness League as operated at TSCI, specifically stating that the league had "created two classes of inmates":

Those on the so-called "Incentive/Wellness League," and those who aren't. Which now is a requirement to work in CSI Laundry, play group sports, use the Music Room, have access to a microwave and an ice machine, and it's rumored to be expanded to many other things such as more yard access.

The statement also says that the "fact that those of us not on the 'Incentive/Wellness League' are treated differently makes us feel less than those who are on the 'Incentive/Wellness League' who are being treated better." The report prepared by Mr. Fithian states that "after the incident, while conducting interviews, a couple staff noted that inmates had grown increasingly upset with the Wellness League and modified yard schedule," and that the TSCI inmates "are not happy about the modified yard schedule...and would prefer greater access to the yard for all inmates." The report also indicates that the "inmates view the wellness league as an incentive program that is unfair and gives a growing majority of the population access to additional recreation time that others do not receive." In our opinion, the inmates' concerns about the Wellness League *as it was operated at TSCI* was an important part of the causal matrix that resulted in the May 10 riot. And it is certainly an issue that deserves a detailed discussion here.

The basic objective of the Wellness League was to encourage inmates to improve their health by allowing them to have additional time out of their housing units on certain days to exercise by walking or running. Participation in the League was based on the inmate's behavior, and those who qualified for the League would be given special jerseys or shirts that would identify them as being eligible to participate. From the perspective of the corrections administrators the Wellness League is regarded as means by which inmates can be rewarded for good behavior, and involved in an activity that is "positive," and oriented toward self-betterment. Participation in the League could also help inmates to develop a positive self-image, which can be critical for many of them in terms of their "rehabilitation." From the perspective of the inmates, the League represented an opportunity to have more time out of the restrictive confines of their housing unit, to mix with other inmates, enjoy the comparative freedom of the yard, and generally break the monotony of inmate life. And, of course, involvement in the Wellness League was now particularly valued in an environment where inmates were living in the "managed yards milieu" that had significantly reduced their access to yard-time...what managed yards has taken away, the Wellness League could partially restore.

A Memorandum from Mr. Rob Treptow, the Recreation Manager at the Penitentiary, to all NSP inmates outlines the "Wellness incentive program" at NSP as the program was constituted earlier this year. The NSP program, which included both handball and racquetball leagues, as well as the Penitentiary's "new Walking/running program," required that the participants be clear of all Class I Misconduct Reports for "the last year," and clear of all Class II and Class III Misconduct Reports for six months (rules violations in the Nebraska corrections system are categorized in three classes based upon the severity of the violation, with the Class I's being the most serious, and Class III's being the least serious). It should be noted that the memo to NSP inmates makes no mention of inmates being excluded from qualifying for the Wellness program due to having a "drug offender classification." Also, it is our understanding that the Wellness program's criteria for participation did not impact the ability of the inmates in general population to participate in the NSP recreation leagues, such as the facility's softball competitions. (See Attachment #10)

Recently, the format of the Wellness League at the Penitentiary was revised to provide for a "three tier incentive system," and we possess an excellent description of how the new program works at the Penitentiary in the form of the Minutes of a recent meeting of the NSP Community Involvement Committee. The program as it is now constituted has three tiers of participants, with each of the tiers requiring the participant to have a longer record free from the violation of institutional rules. These tiers are identified as follows:

Tier 1 – Walking/running program (green jersey) Inmates must be clear of Class I MR's (i.e., Misconduct Reports) for 6 months, Class II for 3 months and Class III for 1 month with the exception of III. C. Possessing or Receiving Unauthorized Articles and III. F. Selling, Loaning or Giving Items to Others.

Tier 2 – Walking/running, weightlifting/exercise in gym (yellow jersey) Inmates must be clear of Class I for 9 months, Class II for 6 months and Class III for 3 months with the above mentioned exceptions.

Tier 3 – Walking/running, weightlifting/exercise in gym, handball/racquetball, morning open gym (orange jersey) Inmates must be clear of Class I for 12 months, Class II for 9 months and Class III for 6 months with the above exceptions.

Significantly, we are told that the Wellness League program at the Penitentiary “does not replace other recreational activities going on including league programs (e.g., NSP softball competitions) and regularly scheduled yard and gym times.” When he was asked about “the dynamics of the ‘haves and have nots’ and how to prevent animosity among inmates” who did not qualify for the Wellness League, NSP Recreation Manager Treptow said that he had encouraged those inmates who did not qualify to “work for it - it’s absolutely attainable.” Mr. Treptow also emphasized that the NSP inmates not in the League “still get to participate in regular activities.” It should be noted that membership in the NSP Wellness League is hardly “exclusive.” In fact, as of June 30, 2015, a total of 678 NSP inmates were participating in the program, which is more than 50% of the 1,295 inmates living at the Penitentiary on June 30. (See Attachment #11)

The Wellness Program as constituted at TSCI was, in concept, the same as the Wellness Program at the Penitentiary. The idea was to encourage TSCI inmates to improve their health by allowing them to have additional scheduled time in the facility’s main yard in order to exercise, mostly by running. Apparently, the proposal for the TSCI Wellness League was brought forward by TSCI Deputy Warden Michele Capps, who proposed the idea of an incentive-based league to the TSCI Recreation Manager, Teri James, in early 2014. Ms. James has indicated that she did not like the idea, seemingly because she felt that DCS policy intended for inmate recreational opportunities to be handled on a more egalitarian basis – to give “all inmates” the right/opportunity to take part in recreational activities, rather than just a select few. Nevertheless, Deputy Warden Capps sent a memo to the TSCI inmate population on February 11, 2014, informing them that the institution was initiating a “running league,” commencing on March 1, 2014. The memo also explained the qualifications for participating in the league, which included the following: (1) must be “clear of all class one misconduct reports for the last year;” (2) must also “be clear of all class two MRs, with the exception of disobeying a direct order, for the last six months;” and (3) must be “clear of class three MRs for Flare of Tempers/Minor Physical Contact, Cursing and Tobacco Products for the last six months.” Those inmates who had lost good time “in the last year,” and/or who had been in restrictive housing in “the last year” also could not participate in the league. (See Attachment #12)

As the memo prepared by Ms. Capps indicates, the requirements for participation in the Wellness League at TSCI was basically parallel to the requirements set for participation in the comparable program at the Penitentiary, prior to the Penitentiary’s new “tiers” arrangement. However, as the details of the program at TSCI evolved, significant changes were made that altered the scope of the Wellness League in terms of the requirements for participation. In particular, at some point the statement of conditions for participating in the league was revised to specify that the inmates who had a “drug offender classification in the last twelve months” also were ineligible to be in the league. (See Attachment #13) For decades, the Department has had a disciplinary system for its inmates, and has imposed disciplinary action (including the loss of good time and disciplinary segregation) on those inmates who were found using or in possession of drugs, or who provided a urine specimen that tested positive for drug use. The imposition of disciplinary action in these drug cases requires a hearing before an administrative hearing officer (with associated notice in

writing of the allegations), the submission of evidence to verify the allegation against the inmate, and an opportunity for the inmate to be heard on the allegation being made. And only after this process had been completed would the Department be allowed to sanction the inmate on the drug charges being made. The concept of a “drug offender classification” circumvented this process, and instead allowed an inmate to be “classified” as a “drug offender,” based solely on supposed “drug/intoxicant-related activities,” without providing for any Due Process to test, or to at least review, the evidence of the inmate’s alleged drug-related activities. In fact, the Department’s Administrative Regulations on the subject specifically provide that an inmate “can be classified as a drug offender even if no disciplinary action is brought against the inmate, or a disciplinary action is dismissed or reversed.” (See Attachment #14)

In spite of the fact that the inmate was stigmatized as being a “drug offender,” the Drug Offender Classification provided no way for the offender to litigate the issue of his/her innocence, so that, in practical terms, any inmate could be labeled, and then sanctioned, as a “drug offender” by a unit classification committee based on the committee’s best guess of the truth of the supposed “drug-related activities.” Although the inmate could not lose any good time, or be sentenced to disciplinary segregation, the sanctions involved were significant – the inmate would lose his/her visits and telephone privileges for as long as six months, depending upon how many times he or she had been classified as a supposed “drug offender.” And now, with rules on participation in the TSCI Wellness League being revised to specify that those inmates who had a “drug offender classification in the last twelve months” were ineligible to be in the league, the combination of these two elements (the league and the classification) would have two significant implications: (1) it made access to the Wellness League TSCI even more exclusive than it already was; and (2) it imposed yet another sanction for having been classified as a drug offender (the loss of league eligibility)...even though it was a new sanction that was being imposed without anybody ever having bothered to amend the Departmental policy on the issue. (See Attachment #14) In fact, it made it possible for the administrators at TSCI to impose a new removal-of-privileges sanction on supposed “drug offenders” that went well beyond the short-term sanctions provided for in the Department’s Drug Offender Classification policy (loss of privileges for at least 30 days, but for no more than six months). Because of the “in the last twelve months” aspect of the revised TSCI Wellness League participation standards, it would now be entirely possible for an inmate whose classification as a “drug offender” had ended 11½ months ago (and who, at that point, recovered his telephone and visitation privileges) to still suffer the sanction of being ineligible to participate in the TSCI Wellness Program, due to the fact that he had been classified as a “drug offender” less than twelve months ago.

It is worth noting that on August 6, 2015, Mr. Frakes sent a memo to Departmental staff advising them that the Drug Offender Classification policy was being suspended “effective immediately.” (See Attachment #15) The Ombudsman’s Office believes that this action was a positive move on the Director’s part, and that if the Drug Offender Classification policy is ever reinstated, then it should first be substantially revised. In our opinion, the Drug Offender Classification policy as it is currently designed is, in real terms, a form of punishment for inmate misbehavior, and thus an evasion of the normal disciplinary processes for inmate discipline. If the policy is going to be reinstated by the Department, then it should be somehow incorporated in the existing disciplinary procedure, and should be made to comply with the statutory and Due Process requirements that are related to that procedure. The policy should also be made to be thoroughly compliant with

the limitations on disciplinary actions set forth in **Neb. Rev. Stat. §83-4,114**, particularly as that statute relates to disciplinary restrictions on mail and visitations.

Returning to the management of the Wellness League at TSCI, we have already referenced the fact that at the Penitentiary those inmates who did *not* qualify for the wellness program there were still allowed to participate in the Penitentiary's other traditional, sanctioned recreational activities, like league softball competitions. However, according to an email sent by Ms. James to TSCI staff, dated May 4, 2015, that was not going to be the case at TSCI. As was stated in the email, those inmates "wishing to participate in the next softball leagues will have to meet criteria similar to the inmates who can participate in the wellness yard." (See Attachment #16) For an important segment of the inmate population at TSCI, this was a "very big deal," which is why it was specifically mentioned in the grievance document prepared by the inmates who planned to carry out a "non-violent protest" on May 10. In addition, the TSCI inmates had been informed that inmates who were not qualified to be in the Wellness League were also likely to be denied access to jobs in the facility, including the CSI Laundry...jobs that are "few and far between" at TSCI, and highly prized by those inmates fortunate enough to have them. The application of the Wellness League criteria to CSI jobs was stated in a memorandum the Deputy Warden Michele Capps sent to all TSCI inmates on April 28, 2015. In reference to jobs in the laundry, the memo specifically stated, "We are interested in inmates who are within six (6) years of their tentative release date *and meet the Wellness League criteria.*" (emphasis added) (See Attachment #17) Thus, the statement in the inmate's grievance document to the effect that the requirements for participation in the Wellness League are "now is a requirement to work in CSI Laundry, (and to play group sports," was correct.

Finally, the discussion of the Wellness League at TSCI and its implications for the May 10 riot brings us to one last subject, the concern of the inmates who authored the grievance document that the facility's administration was in the process of creating an "STG unit, which seems to be coming true since a large majority of all alleged STG are being housed in HU 2." In a certain respect, Housing Unit #2 was "ground zero" of the May 10 riot (particularly Galleries A and B of Housing Unit #2). It was there that much of the physical damage to the facility was done, and it was there that two inmates were found dead, presumably the victims of homicides carried out by other inmates. Leaving aside for now the question of whether this (i.e., the concentrating of the facility's gang members in a particular Unit) was actually going on at TSCI, we would say that it is within the discretion of the Department to do such a thing, if it is deemed to be advisable. But we would also note, indeed emphasize, that if such assignments are going to be made, and if the inmates in the so-called "STG Unit" are classified in the same way as the other inmates living in other, similar housing units in the institution, then those inmates will need to be treated equally in relation to the treatment of the other similarly-classified inmates, in order to dispel any hint or appearance that the STG inmates are being "ghettoized" in a unit where they will be given less in the way of privileges and benefits. Clearly, this is one concern that inspired the statement of grievances, that is, the proposition that the administration at TSCI had "created two classes of inmates: Those on the so-called 'Incentive/Wellness League,' and those who aren't." And, to a certain extent, it would appear that this concern was justified. Our review of the roster of the Wellness League at TSCI for April 20, 2015, shows that there were 38 inmates from Housing Unit #2, Galleries A and B, in the Wellness League on that date. As we understand it, there are about 768 inmates at TSCI who could qualify for the Wellness program (Housing Unit #1 - A, B,

C, & D; Housing Unit #2 - A, B, & D; and Housing Unit #3 - A, B, C, & D). The 128 inmates in Housing Unit #2 - A, B represent about 16⅔ percent of that total. There were 414 TSCI inmates in the facility's Wellness program on April 20, 2015. The 38 inmates in Housing Unit #2, A, B in the program represented only 9.18% of the Program total. (A proportionate number from Unit #2 - A, B would have been 69 inmates.) Therefore, the Housing Unit #2 - A, B inmates are, in fact, underrepresented in the TSCI Wellness program. In commenting on the Wellness program at TSCI, Mr. Fithian remarked on the importance of keeping the program accessible, for "as the department and facility continue to explore ways to reduce inmate idleness, administrators must ensure programs such as the inmate wellness league that require strict requirements to join, are not excluding other inmates unfavorably." We would suggest that the statistics reflect that, in fact, the handling of the Wellness League at TSCI was "excluding" inmates in Housing Unit #2 - A, B "unfavorably."

We like the basic idea of the Wellness League, and are very impressed with how it works at the Penitentiary. With many inmates at the Penitentiary and TSCI aching to have more "yard time," we believe that it makes sense to create incentive-based opportunities for inmates to have more yard access than they might otherwise have. However, as we look at the situation at TSCI prior to the riot, we are presented with a picture where the Wellness League program at TSCI was not merely being used in a positive sense, as a means to reward demonstrably well-behaved inmates with new yard privileges, but was, in fact, being used as a mechanism to take away privileges that the TSCI inmate population had always possessed (assuming that they were not classified to segregation or to protective custody). In their statement of grievances, the TSCI inmates were suggesting that the institution's Wellness League was creating two classes of inmates, that is, the inmates who were not in the League, and "those who are on the 'Incentive/Wellness League' who are being treated better." This may be true, but it is also a routine part of prison life - if the inmates are going to be given an incentive to obey rules, then it is desirable that there be rewards for their doing so, just as there must be disincentives for when they behave badly. Clearly, this necessarily implies that those inmates who obey the rules can be properly "rewarded," and that those who disobey the rules will be "unrewarded," and may also as be actively punished through the Department's disciplinary process. All of this is appropriate, in our opinion. However, when examined closely, the management of the Wellness League at TSCI went far beyond the concept of incentivizing good behavior; it devolved into a program that was being utilized as a means to take away some privileges that the inmates had traditionally possessed (i.e., disqualification from participation in traditional recreation leagues, and even from access to CSI jobs). As Mr. Fithian observed, when it comes to the development of new "programs and activities," it is important that there be "a balance between behavioral incentive activities and other activities that allow a majority (of the inmates) to participate in." At TSCI, however, the standards for participation in the Wellness League were being "ratcheted up," and were being tied into the dubious business of the Drug Offender Classification, which was thereby used as yet another way to sanction inmates for actions that they had supposedly engaged in, perhaps as long as a year before (remember that the Drug Offender Classification policy had no means for verifying that supposition). In a very real sense, the administration of the Wellness League program at TSCI was being employed as a "smokescreen" to disguise the fact that additional sanctions were now being imposed on TSCI inmates who had supposedly violated the institution's rules. And therefore, at TSCI the Wellness League, instead of being a positive program meant to improve the inmates' health and enhance

their self-image, was being used as another dreary, heavy-handed, and largely extra-legal, way to punish that they had already been punished for in the past.

Onset of the Riot - Chain-of-Events

The onset of the “Mother’s Day Riot” at TSCI can be traced back, in chronological terms, to a few minutes after 2:20 p.m., on May 10, 2015. At that time, inmates from three of the TSCI Living Units, Unit #1, Unit #2, and Unit #3, were released from the confines of their respective Units into the TSCI “big yard,” so that they could go to the medications window to pick up their over-the-counter drugs, which were distributed at that location. The three TSCI Housing Units are arrayed (roughly speaking) on the north side of the facility’s main yard, and the medical area is located in the southeast corner of the compound, and across the big yard from the location of the Units. The expectation was that the inmates, having been allowed out of their units, would go directly to the meds window, line-up, collect their meds, and then return immediately to their respective units. But on May 10, 2015, a rainy, damp, overcast day, that is not what happened.

Fortunately, we have videos of the events that took place in the yard that afternoon, so we do not need to rely entirely upon faulty-memories or after-the-fact descriptions in order to know exactly what happened in the yard that afternoon. The Shift Supervisor at TSCI at the time that the riot commenced was Sergeant (then “Acting Lieutenant”) Christopher Ulrick. The Yard Supervisor, who called for the “med lines” to be commenced at about 2:25, was Sergeant Crystal Rempel. The basic chain-of-events that constituted the onset of the riot can be summarized as follows:

1. Corporal Jacob Bents was on duty in the TSCI Video Room watching the video feeds from CCTV cameras at various locations around the facility. In observing the inmates’ behavior in the main yard at about 2:30, Corporal Bents noticed that a large number of inmates were congregating in an area near to the front of Units #1 and #2. In fact, it was apparent almost at once that something unusual was happening. Instead of making their expected direct trek across the main yard to the meds window, an assembly of perhaps 20 to 30 inmates from Units #1 and #2 coalesced near to the Units, and were talking amongst themselves, with hugs and “high-fives” among the group, behavior which also hinted that something unexpected was going on, even then. Most of the inmates in this group appeared to be African-American, although there were also a number of white inmates, and probably some Latino/Hispanic inmates in the main yard as well.
2. Inmate Rashad Washington, a 27 year old African-American serving a term of from 70 to 110 years for First Degree Assault and a number of weapons-related charges out of Douglas County, was among those released from Unit #1. Instead of going to the meds window, Mr. Washington walked in the opposite direction, and approached the large group of African-American inmates that was standing nearer to Unit #2. Some other inmates from Unit #1 followed Mr. Washington.
3. Noticing that an unusually large number of inmates had exited the Housing Units after the Units were opened up for “med lines,” the staff person in the facility’s tower (TSCI has one tower situated in the institution’s yard), used a loudspeaker to try to direct the

inmates in the yard to assemble in a line. This directive was ignored by the inmates. Sergeant Rempel, who had also noticed that something was going on that was out of the ordinary, immediately called for staff to respond. Also having observed this situation from his vantage point in the Video Room, Corporal Bents contacted Yard Supervisor Rempel via radio, informed her of the situation, and told her that Mr. Washington was “inciting the other inmates on the yard to loiter on the yard.” Sergeant Rempel, who was working a voluntary overtime shift, and was serving as the Yard Supervisor for the first time, then directed Corporal Joseph Hatzenbuehler, who was also assigned to the yard that shift, to take custody of Mr. Washington, and escort him to the holding area. Sergeant Rempel also called for some Housing Unit staff to come into the yard to help “get traffic moving.” Caseworker Sarah Glass, who was assigned to Unit #1, responded to that call, left the Unit, and went into the main yard.

4. Corporal Hatzenbuehler, along with Caseworker Glass, approached Mr. Washington at approximately 2:35, and informed him that he was going to be escorted to holding, and that he would first need to turn around so that he could be placed in restraints.
5. Mr. Washington objected, and asked why of all the inmates in the yard he was the one who was being taken into custody and sent to holding. Corporal Hatzenbuehler replied that he did not know the reason, but that Mr. Washington would need to comply with his directive.
6. At about 2:39 p.m., as Corporal Hatzenbuehler was standing talking to Mr. Washington, Mr. Fredrick Gooch, an inmate serving a sentence of from 18 to 20 years out of Douglas County for Possession of Cocaine, and multiple counts involving Assault on an Officer, approached Corporal Hatzenbuehler from behind and to his right, and struck the side of the Corporal’s head on the right with his fist. Corporal Hatzenbuehler, responding to defend himself, grabbed Mr. Gooch’s shirt with both hands, and at that point both the Corporal and Mr. Gooch fell to the ground. Soon, both Corporal Hatzenbuehler and Mr. Gooch stood up, and Caseworker Guern, who had responded to Sergeant Rempel’s call for assistance from Unit #1, attempted to pull Mr. Gooch off of Hatzenbuehler, while Mr. Gooch swung at Caseworker Guern’s head with a closed fist, but missed. Corporal Hatzenbuehler then tackled Mr. Gooch, and they continued their struggle on the ground. Corporal Hatzenbuehler was able to hold Mr. Gooch on the ground, while Mr. Gooch continued to strike Corporal Hatzenbuehler’s torso with his fists.
7. At about 2:40 p.m. (2:39:50), Officer _____ the officer in the tower fired a warning shot from the TSCI tower. At that point many of the inmates in the big yard responded by sitting or lying down on the ground. We can presume that the inmates in the yard were also getting down on the ground in response to directives from the staff in the yard at that point.
8. Meanwhile, at approximately 2:42, the Shift Supervisor, Sergeant Ulrick, directed all Housing Unit staff to secure the Housing Unit doors, so that there could be incoming traffic only. Although there are some discrepancies as to the timing, according to the

official Timeline an “ERT call” (Emergency Response Team) went out at about 2:45 (Sergeant William Thiemann remembered the timing of the ERT call as being at 2:41).

9. At some point during the struggle with Mr. Gooch, and while Corporal Hatzenbuehler was still on the ground on his back, Mr. Roger Weikle, a white inmate who is serving a term of from 72 to 218 years for multiple crimes, including First Degree Murder, Theft, Burglary, Use of a Weapon to Commit a Felony, two counts of Assault by a Confined Person, and Escape, tried unsuccessfully to stomp on Corporal Hatzenbuehler’s face with his left foot. (In 1984, Mr. Weikle and another inmate had scaled the Penitentiary wall in broad daylight.) The struggle between Corporal Hatzenbuehler and Mr. Gooch would continue until Caseworker Glass finally sprayed Mr. Gooch in the face with MK-IV Pepper Spray, at which point Mr. Gooch was subdued, and placed into restraints by Corporal Hatzenbuehler, who then escorted Mr. Gooch to holding.
10. Sergeant Shane Sears, having observed the attempted assault by Mr. Weikle on Corporal Hatzenbuehler, took Mr. Weikle to the ground. However, when Sergeant Sears and Mr. Weikle then stood up Sergeant Sears was punched in the back of his head by Mr. John Zalme, a 68 year old white inmate, who is serving a sentence of 130 to 229 years out of Lancaster County for multiple counts of felonious assault, and use of a knife to commit a felony, and one count of Stabbing With the Intent to Kill, Wound, or Maim (Zalme was involved in the stabbing of several correctional employees at the Penitentiary in June of 1981; Zalme's original sentence in the system commenced in 1977). Sergeant Sears was able to avoid Mr. Weikle and Mr. Zalme long enough to spray Mr. Zalme in the face with his MK-IV Pepper Spray. Caseworker Guern and Caseworker Glass also used their MK-IV Pepper Spray to subdue Mr. Weikle and Mr. Zalme. At that point Mr. Zalme and Mr. Weikle got down on the ground, joining a large number of other inmates who had formerly been standing in the area, but were now on the ground.
11. At approximately 2:41 Caseworker Paul Tompkins started to make hand gestures that directed the inmates lying on the ground to stand up. However, Corporal Bents gave a directive that the inmates should not be allowed to stand at that time. Staff then placed both Mr. Weikle and Mr. Zalme in restraints, and escorted them to the holding area (one at 2:43, and the other at 2:45).
12. By 2:49 there was a force of perhaps a dozen staff scattered in locations in front of the three Housing Units. There were also perhaps 40 or more inmates lying on the ground. It was about at this time (2:49 according to the official Timeline) that a call went out to all staff to “secure their galleries.” Some staff in the yard appeared to move off toward the Units at this point.
13. At 2:52 the inmates who have been lying on the ground since 2:40 (for twelve minutes) stood up, ignoring the staff orders that they remain prone, and began to walk around the yard as a group. One report from staff indicated that inmate Deanthony Smith had said, “We’re not going to take this shit,” and then stood up, as the other inmates followed his lead. (Records indicate that Mr. Smith is a 21 year old inmate out of Douglas County, serving a 35 year sentence for False Imprisonment, Possession of a Stolen Firearm, the

Use of a Deadly Weapon to Commit a Felony, and two counts of Robbery.) It is rather difficult to estimate the exact number of inmates who were in this group, but it appears to be approximately 40 inmates.

14. By 2:53 the number of inmates in this group increased to as many as 50 or 60, as other inmates joined in the march. While doing this, some of the inmates in the group called out to other inmates in the facility's mini-yards (yards separated from the main yard by a chain-link fence). There were also other groups of inmates on the yard at this point who did not join the large group of marching/walking inmates. Meanwhile, the tower Officer (via loudspeaker), as well as other staff in the yard, were giving verbal orders to the inmates "to get down on the ground and prone out or force (would) be used."
15. At about 2:58 the group of inmates in the yard marched past the door to the TSCI gym. The gym was already occupied by perhaps 30 other inmates who were there for their scheduled gym-time. Also in a separate office in the gym was Recreations staff person Katie Munn, who had already called Yard Supervisor Sargent Rempel, and told her that she was "trapped" in the gym office, and that the inmates in the gym were asking her to give them the key to open the gym door connecting with the yard.
16. The tower Officer reported that at about this time she received a call from "Central Control." At this point she was asked whether she was "comfortable with firing a shot at an inmate." The tower Officer reported that she responded that "another warning shot would be better since the inmates were still gathered in groups." At that point, the tower Officer (at 2:59 according to the official Timeline) fired a second warning shot. (The Report submitted by the tower Officer stated that the second warning shot was fired at 2:57.)
17. According to the official Timeline, the Shift Supervisor instructed all staff remaining on the yard to leave the yard, if able, at 3:10. In fact, about twelve of the staff had already entered the tower at 3:05. At about the same time (3:04) the large group of inmates on the big yard can be seen running across the yard, but they were running away from the tower area.
18. In the meantime, the situation is out of control in Housing Units #2 and #3. The inmates in Housing Unit #2, Galleries A and B, were refusing orders to return to their cells, and to lockdown. (Each of these Units has four galleries, designated A, B, C, and D.) The same thing was happening in Housing Unit #3, Galleries C and D, and by 3:05 inmates in Housing Unit #3 CD can be seen barricading the Housing Unit door. When it became apparent that the inmates in these Unit #2 and #3 galleries would not lockdown, the Unit staff evacuated the galleries, and went to the more secure control areas in the Units.
19. By approximately 3:15 the inmates inside the gym were using an aluminum bleacher to try to smash their way through the gym window opening on to the big yard, while at the same time, the inmates among the large group in the yard were using a heavy metal sign to try to break the window from the outside.

20. At some point, presumably after the second warning shot, Corporal Bents, while he was in Central Control assisting Sargent Ulrick, was handed a telephone by Corporal Marsha Hume. According to Corporal Bents, Unit Manager Stena Beltz, who was the Officer of the Day for the weekend, was on the line. Corporal Bents' report states that "UM Beltz wanted me to inform the tower that since there was already 2 warning shots fired to tell the tower staff that if there is another incident endangering staff to shoot center mass (the term "center mass" means a potentially lethal shot). While on the phone with UM Beltz I contacted Ofc [redacted] in the tower and repeated the Instructions word for word. I then hung up with the tower and then with UM Beltz." (See Attachment #18)

21. The report prepared by Unit Manager Beltz stated that she had received a telephone call from Sargent Ulrick informing her of the situation at about 2:45 p.m. At that point, Ms. Beltz needed to travel from Lincoln to Tecumseh, a trip that requires approximately one hour via automobile. While traveling to TSCI, Ms. Beltz made, or attempted to make, a number of telephone calls, including "numerous" calls where she spoke with Sargent Ulrick and/or Corporal Bents "continuing to get updates." During one such call "either to or from Cpl. Bents," Ms. Beltz was "told that inmates were still circling our staff on the yard not allowing the staff to get to safety and the tower had shot two warning shots, but nothing was working." At some point while on the telephone with Corporal Bents, Ms. Beltz reports that she:

told Cpl. Bents to get back on the phone and help the tower officer, reminding that [redacted] may have to shoot if necessary and so long as [redacted] can do so keeping staff safety into account, doing so for the safety of our staff and institution. I believe that I told him to reminder [redacted] to shoot center mass and to utilize the use of force continuum.

The report prepared by Unit Manager Beltz further stated that during another telephone call "to TSCI central control a few moments later" she was "informed that the tower officer shot an inmate." (See Attachment #19)

22. The report of tower Officer reflects further light on the decision to fire the potentially lethal shot. [redacted] report states [redacted] gave several directives to the inmates in the main yard (via loudspeaker from the tower) "to get down on the ground and to prone out or force would be used against them." The tower Officer's report states that, after the inmates in the main yard did not get down on the ground as directed from the tower:

a phone call was made to Central Control by Case Manager Neujahr (one of the other staff in the tower) for permission to fire a deadly force shot. Unit Manager Beltz said that if I...had the clear shot to do so. After this call the inmates were given another 2-3 directives to get down on the ground and to prone out. The directives were not followed.

It was at this point that The tower Officer fired a shot at one of the inmates among those who were in the proximity of the gymnasium door, where some inmates were trying to break into the gym. The shot, which the official Timeline sets at 3:19, struck inmate

Rashad Washington in the left thigh. The report that was prepared by the tower Officer, indicated that this shot was fired at approximately 3:36 p.m. - however, the video of the incident indicates that the shot was fired at 3:16 p.m. (See Attachment #20)

23. After Mr. Washington is shot, some of the other inmates moved him to the doorway connecting the yard with the institution's clinic. After several minutes, the inmates in the yard obeyed staff instructions to move away from the clinic door, and then staff opened the door and pulled Mr. Washington into the clinic, securing the door behind them. At this point, the large group of inmates in the big yard began circling the yard with their hands in the air, and chanting, "Hands up, don't shoot," a gesture which is associated with the Black Lives Matter movement, and is meant to protest the use of excessive force by law enforcement officials. (See Attachment #21)
24. While all of this was going on in the big yard, in Housing Units #2 and #3 the situation is getting much worse. By 3:35 there were fires in Unit #3, and by 4:00 the same is true in Unit #2. Inmates in the two Units were trying to make weapons, and in Unit #2 some inmates were trying to break through the wall separating Galleries A and B. Eventually this wall was breached by the inmates. Two inmates serving long terms for the Sexual Assault of a Child, Shon Collins and Donald Peacock, are later found dead in their cell on the upper tier of Unit 2, Gallery B.

In little more than an hour's time, a situation that started as a congregation of inmates in front of Unit #1 had deteriorated to the point of gunfire, bloodshed, and arson in the Housing Units, with a large component of staff under siege, and with significant parts of the institution, including the big yard, two of the mini yards, and parts of two Housing Units, no longer under control of staff. Inmates in two Housing Units were setting fires and destroying State property, including CCTV video cameras and computers, ransacking offices, and rifling through confidential files. All of the normal daily activities of the facility had been disrupted, the CERT (Corrections Emergency Response Team) and SORT (Special Operations Response Team) teams had to be assembled to restore order, by force, if necessary, and before the institution was finally back under the control of the staff two inmates would be dead, presumably the victims of homicide. This event was, by any reasonable definition, more than a mere "disturbance." This event was destructive, bloody, dangerous, and terrifying. This was a RIOT.

Deadly-Force Shot from the Tower

The circumstances surrounding the deadly-force shot that wounded Mr. Washington need to be clarified. The tower Officer's report relates that and/or other staff in the tower gave the group of inmates in the yard "4-5 directives (via loudspeaker) to get down on the ground and to prone out or force would be used against them," but that these "directives were not followed." The tower Officer's Incident Report indicates that there was the telephone communication with Unit Manager Beltz (presumably via telephone conversations involving Corporal Bents and Case Manager Neujahr). The tower Officer's report specifically states that "Unit Manager Beltz said that if I...had the clear shot then to do so." The report further states that after having thus sought "permission to fire a deadly-force shot," and after "the inmates were given another 2-3 directives

to get down on the ground and to prone out,” directives which were also “not followed,” the tower Officer “aimed for center mass at one of the inmates... (later identified as Washington, Rashad #73519)... attempting to break into the gymnasium.” The Report states:

There were approximately 3-4 inmates trying to break into the gymnasium but I... fired at the inmate that was in my line of fire, where I had a clear shot. The shot struck inmate Washington, Rashad #73519 and he fell to the ground. (See Attachment #20)

The video of this event verifies much of the tower Officer’s description. At the time in question there were approximately twenty inmates gathered just outside the door of the gymnasium. Mr. Fithian’s report indicates that the shot in question was fired at a time when Mr. Washington was “near the gym door.” This is accurate, depending upon the definition of the word “near,” and it is certainly true to say that Mr. Washington was among the inmates in the group in the general proximity of the gymnasium door... but Mr. Washington was not, at the time of the deadly-force shot, the inmate who was banging on the door’s window with a metal sign. And, in fact, from our review of the video it appears to us that Mr. Washington himself never did hit the gym door or window, either with the sign or with anything else.

It will be recalled that Mr. Washington was the inmate who was earlier approached by Corporal Hatzenbuehler, who was under orders to take Mr. Washington into custody at the outset of the riot. Later Mr. Washington was among the inmates who marched around the yard immediately before, and after, the staff in the yard retreated to the tower. An Incident Report prepared by Corporal Andrew King, who was among the staff in the tower, indicates that at approximately 3:00 p.m. Mr. Ray Camacho, who is serving a sentence of 31½ to 64 years out of Scottsbluff County for multiple counts of Terroristic Threats and Use of a Firearm to Commit a Felony, tore down the “No Loitering” sign, and then used the sign to try to break the window in the door to the gym. Corporal King’s report also indicates that inmate Chadrick Fitzgerald, who is serving a sentence of 10 to 24 years out of Lancaster County for Possession of a Firearm by a Prohibited Person, also used the sign to try to break the window. Again, the video evidence that we have seen indicates that Mr. Washington was not among those who tried to break open the gym door or window.

The video record of the incident shows that in the seconds before the shot was fired an inmate in a white tee shirt, who we would tentatively identify as being Mr. Camacho (and who certainly was not Mr. Washington), was using the sign to beat on the gym door window. The inmate in the white tee shirt then passed the sign to another inmate (again, not Mr. Washington), and that other inmate began beating on the window with the sign. Immediately after handing the sign to the other inmate, the inmate in the white tee shirt took several steps away from the door in the general direction of the tower (i.e., to the west). These steps took this inmate right past the place where Mr. Washington was then standing (Mr. Washington was also wearing a white tee shirt, but can be easily identified because he had a jacket thrown over one shoulder.) The inmate in the white tee shirt then quickly turned around, and took one or two steps back in the direction of the gymnasium door, which again took him past Mr. Washington’s position. The deadly-force shot from the tower was fired at this exact moment, just as the inmate in the white tee shirt was going past Mr. Washington (at this juncture only a few feet, or less, separated the inmate in the white tee shirt and Mr. Washington), hitting Mr. Washington in the left thigh, and immediately

knocking him to the ground. Mr. Washington might well have been in the tower Officer's "line of fire, where () had a clear shot," but it is also possible to interpret the video record of these events as suggesting that the real target of the shot was the inmate in the white tee shirt, and not Mr. Washington. It should also be noted that, given the way that the gathering of inmates were arrayed relative to the tower, an errant shot aimed in the direction of the inmate in the white tee shirt and/or Mr. Washington could well have hit any one of several inmates...or more than one.

In explaining the motivation for the deadly-force shot, the tower Officer stated in Incident Report that "fired this shot due to fearing for the safety of the staff member Munn who was barricaded in the gymnasium." The tower Officer's Report also mentions that the inmates were "destroying state property." Certainly, the situation was unusual, and could be interpreted as being dangerous with respect to the safety of Ms. Munn. It is important to remember that at the time of these events, the gym was already occupied by perhaps 30 other inmates who were there for their scheduled gym-time. The inmates inside the gym had asked Ms. Munn to give them the key to the door, which she had refused to do (Ms. Munn had locked herself inside an office in the gym by that juncture). While the inmates in the yard were pounding on the gym door's window from their side, some inmates in the gym were using an aluminum bleacher to try to smash their way through the window from their side. It should also be noted that there was supposed to be one Corporal assigned to the gym when, in reality, Ms. Munn was alone in the gym at the time in question.

Probably the most questionable aspect of the deadly-force shot that wounded Mr. Washington is the "process" that led up to the point where the actual shot was made. The first warning shot by the tower Officer was fired at about 2:40 p.m., while the main body of the inmates in the big yard were assembled just outside of Unit #2, on the opposite side of the big yard from the gymnasium. The second warning shot by the tower Officer was fired (according to report) at 2:57, which was more than fifteen minutes after the first warning shot. According to the Incident Report that was prepared by the tower Officer, the deadly-force shot was fired by at approximately 3:36 p.m., although the official Timeline states that the shot was fired at 3:19 p.m., and the video of the incident that we have seen indicates that the shot was fired at 3:16 p.m. In any event, this suggests that at least another 15-plus minutes passed between the firing of the second warning shot, and the deadly-force shot, or, as stated in Mr. Fithian's report, the "warning shot and the use of deadly force were separated by approximately 20 minutes."

In our opinion, although there were two "warning shots" fired by the tower Officer, as a practical matter those shots did not satisfy the need for a reasonable warning that the use of deadly-force was imminent. At the time in question the inmates were being directed by loudspeaker to get on the ground "or force will be used against you," and it is also clear that the inmates gathered in the vicinity of the gymnasium door were not obeying that directive. Nevertheless, we believe that those directives should have been underscored by the firing of two warning shots from the tower at a point *immediately before* the deadly-force shot was fired. In fact, Mr. Fithian stated in his report that DCS should "review the policy on the use of warning shots to ensure that they only serve as an imminent warning to the immediate use of deadly force." Clearly, that is not how it worked in this case, and we would endorse Mr. Fithian's recommendation in that regard. Also, noting that the tower Officer in this case was a fairly new employee of the Department, and that a tower Officer is someone who must make snap judgments on critical, potentially life-or-death,

situations, Ombudsman's Office would recommend that DCS policy call for more veteran staff be assigned to the Department's towers in the future. In addition, this office would endorse Mr. Fithian's idea suggesting that DCS policy include a "requirement to gain the authorization for the pre-planned use of deadly force...from an authority higher than the initial incident commander (i.e., Warden, Director)." ⁶

Notable Events Not Discussed in the Fithian Report

Obviously, it would take a much longer report than that prepared by Mr. Fithian (or by this office, for that matter) to discuss all of the events that transpired from 2:20 p.m., on May 10, 2015, when the events leading up to the riot commenced, until 8:12 a.m., on May 11, when the official Timeline of the incident stops, a period of approximately eighteen event-filled hours. We do believe, however, that for the sake of an accurate and comprehensive history of the 2015 Mother's Day Riot, it is desirable to give a little attention to several incidents that involved the use, or the potential use, of lethal force by the DCS staff. The events we have in mind are the following:

1. At approximately 4:35 p.m., Officer _____, was in a vehicle on the perimeter roadway surrounding TSCI. Officer _____ reported to central control staff that _____ was observing a number of inmates trying to loosen the wires at the bottom of the chain-link fence separating the Unit #2 and Unit #3 mini yards. Officer _____ was advised to fire a warning shot, in the event that it appeared that the inmates might be able to breach the fence. At about 4:45 p.m. Officer _____ concluded that the inmates in question were succeeding in "breaching the fence." Officer _____ broke the seal on a shotgun carried in _____ vehicle, exited the vehicle, and fired a warning shot "directly into the air." No one was injured, and the inmates trying to loosen the fence wires ceased this activity, and ran away. (The basic facts of this event were also confirmed in an incident report prepared by Sergeant Thiemann.)
2. Among the staff who retreated to the tower shortly after the onset of this incident was Caseworker _____. At approximately 5:40 p.m. Caseworker _____, who was apparently in possession of a firearm at that point, took a deadly-force shot at an inmate who was moving through "no-man's-land" between the Unit #3 CD and Unit #2 AB mini yards. Caseworker _____ report of the incident states that the taking of this potentially lethal shot was approved in advance by TSCI's Deputy Warden, Michelle Caps. (This event was confirmed by a report prepared by Corporal Austin Gocke, who was also in the tower at that time.) The inmate in question ran through the area between the yards, from the Unit#3 CD mini yard, and directly toward the Unit #2AB mini yard. The inmate did not run toward the TSCI perimeter fence, which is where he would have gone, if her were trying to escape from the facility. In fact, at the time there were armed TSCI staff located in that vicinity just outside of the fence on the perimeter road, to prevent any attempts by inmates to climb the fence and escape. The video record of this event that was recorded from the tower shows that by the time the shot was fired the running inmate was already

⁶ See Fithian Report, p. 18 & p. 20.

at a point parallel to the fence of the Unit #2AB mini yard, which was occupied at the time by a significant number of inmates. Depending on the aiming point of the rifle, it is entirely possible that the shot could have hit one of the inmates in the Unit #2AB mini yard. Fortunately, this did not happen, and no one in the yard was wounded by the shot. According to his incident report, when he took this shoot-to-kill shot, Caseworker was unaware of whether had actually hit the inmate in question. However, since no wounded inmate was found after the conclusion of the riot, it is apparent that the shot missed its intended target.

3. At about 6:15 p.m., an armed force of staff (apparently including both CERT and SORT team members), some with shields, approached Housing Unit #2 to recover the staff who were isolated in the Unit, and escort them to safety. As this was happening, staff in the tower used the loudspeaker to repeatedly order inmates to, "Get on the ground, or force will be used against you." Near the entrance of Unit #2 there was a small group of inmates who appeared to be on the ground. One of the team members then fired two or three rounds of pepper ball projectiles to saturate the area. At this point, Samuel Smith, an inmate out of Douglas County serving a sentence of from 47 to 72 years for Assault in the Second Degree, the Use of a Deadly Weapon to Commit a Felony, and Murder in the Second Degree, stood up, charged at the staff formation, and penetrated past the team's forward shields into the midst of the team formation. One team member fired several rounds of pepper ball projectiles at close range, reportedly targeting Mr. Smith's torso. In spite of the pepper balls and the wall of shields, Mr. Smith was able to use his fists to strike two of the assembled team members. Mr. Smith was then shot at with a "stinger round" from a shotgun carried by one of the team, while yet another of the team members fired "two 12 gauge Drag Stabilizer Bean Bag rounds" at Mr. Smith. In addition, another team member reportedly fired "two 9 mm (i.e., lethal) rounds from his assigned MP5 (an automatic weapon) targeting inmate Smith." (In fact, only four gunshots can be clearly heard on the sound track from the video taken from the tower.) Mr. Smith was hit by the nonlethal rounds from the shotgun, but not by either of the two lethal rounds from the MP5. Mr. Smith then walked several yards away from the team formation, and fell face-forward to the ground. After receiving many directives from staff, Mr. Smith did finally comply with orders to stay down, and this allowed team members to secure him with flex cuffs. However, as he was being escorted by the team to a secure area, Mr. Smith pulled away from his staff escort, walked away, and remained in the main yard for an additional period of time, even though he had been wounded. Finally, at about 8:00 p.m. Mr. Smith entered the clinic to receive treatment for his "open wounds." Later on, Mr. Smith was transported to Bryan LGH Hospital for treatment of his wounds.
4. While the event involving Mr. Smith was going on, another inmate who had been sitting on the ground in the vicinity of Unit #2 stood up, and started to run away from Unit #2. This was at the time that the tower was admonishing the inmates in the yard to, "get on the ground," and it appeared that many of the inmates did comply with the directive from the tower. The inmate in question stood up, and ran down the sidewalk toward Unit #3, and did not appear to stray into "no man's land." Also, because the SORT/CERT team did not include any arrest teams, the running inmate could not be interpreted as someone trying to evade an arrest. The running inmate was moving away from the position where

the SORT/CERT team was assembled, and did not appear to represent a threat to anyone at that point. However, one of the staff in the tower can be heard on the audio to state, in reference to this running inmate, “He’s up and moving, let’s shoot him.” No shot was fired from the tower at this juncture.

We would note that Mr. Fithian did reference the two situations involving Officer [redacted] and Caseworker [redacted] in the Timeline in his report, but did not add any of the details. We include those details here, along with the account involving Mr. Smith, to demonstrate how dangerous and deadly the riot might have been, and how fortunate it is that there were not even more deaths associated with the event.

Management of the “Mother’s Day Riot”

Mr. Fithian’s report offers a thorough and well-thought through analysis of the problems and mistakes that complicated efforts by the TSCI staff to manage the situation as it unfolded on the afternoon of May 10, 2015. There were a few critical mistakes made, some of which probably did contribute to the outcome, and some of which may not have been terribly important, in terms of how they influenced events. There were also, of course, certain unavoidable issues that made the institution more vulnerable to the “disturbance” on May 10 that ultimately turned into a riot, and Mr. Fithian’s report covers those points as well. The Ombudsman’s Office is not able to add a great deal to Mr. Fithian’s expert analysis of the event, however, we do want to highlight a few of these management-related points.

Relevant Institutional Factors

1. **Implications of TSCI’s Location** – LB 150 of 1997 authorized the Department of Correctional Services to build a new correctional facility, and it was that authorization that would eventually turn into the Tecumseh State Correctional Institution. The bill provided that there would be a “competitive site selection process,” and that the Director of DCS would select the site for the new facility after having considered “various site proposals,” and evaluating those proposals “for cost effectiveness.” Early the following year, DCS Director Harold Clarke selected a building site approximately two miles north of Tecumseh on State Highway 50, with the construction beginning late that same year. TSCI opened for business and received its first inmates in December of 2001. As was specified in LB 150, TSCI was built as a “medium-maximum security adult...facility,” with a design capacity of 960 beds.

From the outset there were some doubts and concerns expressed about the feasibility of the Tecumseh site. The concerns were largely centered on worries about the ability to properly staff the facility, because it was going to be built at a distance away from the State’s population centers in Douglas, Sarpy, and Lancaster Counties. Supporters of the idea argued that it would nevertheless be possible to attract enough employees to fill the 400+ positions at the facility. As will be explained below, there have been challenges in staffing the facility, with an unusually high turnover rate, and the need for many staff to work overtime shifts, in order for the institution to be fully staffed. However, there is

another implication to the location of TSCI that was not apparent to observers outside of the corrections system until the riot. The measures that finally recovered control of TSCI and ended the riot was the involvement of the Department's SORT/CERT teams, in the rescue of isolated staff, and in forcing inmates to return to their cells for lockdown. The problem was that the teams did not reside in the neighborhood around TSCI; most of the team members were from the Lincoln and Omaha areas. As a result, although the call for the SORT team went out at 2:45 p.m., the full complement of SORT team members, with their equipment, were not assembled at TSCI until 5:42 p.m., a full three hours after the riot started. Or, as Mr. Fithian expressed it, "due to the location of TSCI, resources were delayed, in some instances, for extended periods." Thus, response time was slower than would have been optimal, and was clearly another, largely unanticipated, implication of the decision to place the institution at Tecumseh, rather than in Lincoln or in Omaha.

- 2. Staffing Deficiencies** – The single most important fact about the Nebraska correctional system is that the system is overcrowded, when its population is measured against the design capacity of the system's facilities. At the end of April 2015, ten days before the TSCI riot, the population of the system's adult male facilities (excluding the Community Centers) was at 162% of design capacity, a figure which would have been even worse, had it not been for the 185 inmates who were placed by DCS in county jails at that point. However, the real problem at TSCI is not so much a question of its overcrowding, as it is a matter of its understaffing. This is reflected in the fact that, in a system where beds are in short supply, the TSCI population was actually at *less than 100%* of its design capacity as recently as August of 2013. Notably, at the same time (in August of 2013) the total population of Nebraska's adult male correctional facilities was already at 153% of design capacity. And so, at a time when our system was already significantly overcrowded and in need of more beds, at a time when all the other adult male facilities were already filled substantially beyond capacity, TSCI, the system's newest facility, still had "empty beds," and a total population *less than its design capacity*. (As of April 30, 2015, the population of TSCI was at 105% of its design capacity.) Because TSCI was designed with general population cells that were intended to hold two inmates rather than one (which is not the case at the other adult male facilities), it is understandably more difficult to pack a larger number of inmates in TSCI. However, it is interesting to consider that in the past DCS leadership was reluctant to at least fill TSCI up to its full capacity, while at the same time (i.e., in August of 2013) the Diagnostic and Evaluation Center was already at 250% of its design capacity. Certainly, it is reasonable to wonder whether this phenomenon was a reflection of TSCI's chronic staffing issues...its difficulties in filling staff openings and keeping them filled.

In his report, Mr. Fithian, relates that "60 positions out of a total of 431 authorized (at TSCI) are considered true vacancies," a number which represents a "higher than normal vacancy rate." In his report, Mr. Fithian states that:

The total number of staff on duty May 10, 2015, 2nd Shift (1400-2200), was 57, of those; six were on voluntary overtime and there was no one on mandatory overtime. The minimum staffing requirement was identified as 61, however, two program areas and two evening recreation periods were prescheduled to be closed

that weekend which reduced the number of staff required to 57. (See Fithian report, p. 4)

Mr. Fithian's numbers on this point basically track with our findings for the staffing of the facility on the day of the riot, although it appears to us that there were actually nine (and not six, as Mr. Fithian stated) employees working voluntary overtime at TSCI that day. In any case, it must be emphasized that, while the figure of 61 staff was identified as being the "minimum" needed to run the facility on second shift, TSCI, in reality, was *four employees short of that minimum* on the day of the riot. As a result, the Library and educational areas had to be closed, and *three* (not two, as Mr. Fithian's report indicated) evening recreation periods (the gym, ball field, and courts) had to be closed for that day due to the shortage of staff. (It should also be noted that this fact was correctly cited in the inmate's grievance document.) Sadly, there is nothing that is terribly surprising about the shortfall of staff at TSCI. In fact, it is very well known that TSCI has a long history of being difficult to staff adequately, partly due to its location, which is not near to larger population bases in Lincoln and Omaha. However, while this factor may help to explain why the full staffing of the facility was difficult to achieve at the outset, it is reasonable to ask why the facility could not have been adequately staffed eventually, if more those who were hired to work there over the years had remained at TSCI, and made it their career. Obviously, this has not happened, at least not to an optimal degree.

Mr. Fithian's report also indicated that out of "the 210+ custody staff that are employed at TSCI, over 35% have less than two years of NDCS experience." Mr. Fithian's report further explains that this "large percentage of inexperienced staff" is meaningful because of its major impact on "facility operations," including on factors such as "consistency and standardization." In the past, whenever we have confronted the Department on the issue of staffing at TSCI, we have always received the pat (almost pre-programed) answer that "the facility is fully staffed." Of course, what this statement actually meant was that, at that moment in time, the facility had all of its essential positions covered...although, in reality, many of those positions were covered by employees who were working overtime. In fact, the report by Mr. Fithian acknowledged that TSCI's unusually high job vacancy rate "drives significant overtime, recruitment, and retention issues," and requires TSCI to resort to mandatory overtime to fill the vacancies, "which has led to low staff morale."

As a matter of history, there have been times when the relationship between the TSCI staff and the facility's management has been troubled. In fact, the Ombudsman's work in addressing complaints/petitions coming from TSCI have included employee complaints, as well as complaints from the inmates. The most memorable occasion when this office addressed staff complaints came in the spring of 2004, in the wake of two particularly brutal inmate assaults on staff in late February and early March of that year. The staff concerns resulted in a "Group Grievance," in effect, a petition signed by scores of TSCI employees. This grievance document stated the belief that the facility was under-staffed, that there is a "lack of effective administration" at TSCI, which had caused an "extremely unsafe work-place," and that staff safety at the facility has "become an afterthought." In fact, there was an organized (and, of course, "peaceful") demonstration of staff discontent held outside of the facility on April 13, 2004. Oddly enough, inmates at the institution

had also complained to the Ombudsman's Office about the environment at TSCI, and had themselves suggested that TSCI was inadequately staffed, and the staff not adequately trained, to meet the facility's security needs. Of course, this concern paralleled the TSCI staff grievance in 2004, which stated that "by continuing to under staff the prison...(DOC was) placing both staff and inmates at risk." It is also interesting to note that in 2004 the staff complained that at times the eight security staff who were supposed to be working in the yard were thinned in number by because of their being asked to perform other duties. (Similar concerns have been voiced in 2015 after the riot by at least one employee, who wondered why the staffing of the yard was not at the prescribed level.) It goes without saying that the issues raised by TSCI staff in 2004 were serious concerns, and while some of those concerns may have since been addressed, the staff complaints dating from 2004 certainly help to put staffing issues in context, so we can see that, in fact, the facility's adequate-staffing problem is not entirely, or necessarily, a matter of the small population base in the neighborhood where the facility is located. (See Attachment #22)

When we put this all together, what we have is a picture of an institution where there are fundamental/structural challenges in attracting staff (partly due to its location), and where there have also been some difficulties in retaining staff that had already been recruited, as is reflected in TSCI's "higher than normal vacancy rate." We would certainly agree with Mr. Fithian's analysis that this situation, and the mandatory overtime that it implies, has led to deficits in staff morale, but we also suggest that there may be morale-related issues in the way that some of TSCI's senior management has related to its line employees. We would note that Mr. Fithian's report mentioned that some of the TSCI staff had reported "frustration in discussing issues and bringing forth concerns to administrators." Given TSCI's endemic staffing problems, it is certainly essential that the facility's management be particularly skilled at leading and inspiring positive loyalty among its line staff, and that they foster a workplace culture that is open to hearing staff concerns and ideas.

Staffing a facility like TSCI is not a simple issue. It is a complex issue. It is not just a matter of numbers, it is also a matter of what is behind the numbers. For instance, the facility's rate of staff turnover is noteworthy for a couple of reasons: (1) because of its very obvious implications for the veteran-quality of the staff - high turnover equals more rookies, and more rookies equals more "rookie mistakes;" and (2) because high turnover will disrupt the essential process of developing a staff with a maximum level of employee collaboration and cooperative efficiency (i.e., it is hard to have ideal "teamwork" when the members of the team are constantly changing). High turnover is also a contributing factor in relation to another big issue, namely the facility's dependence upon mandatory overtime to fill staffing gaps. Requiring people to work overtime can seriously disrupt the personal lives of the employees involved. They will miss their daughter's birthday party, or their son's soccer game, or the planned dinner out with their spouse to celebrate an anniversary, and all of this creates stresses on personal relationships, and deprives the employees of their needed connectedness with a life outside of their job. And finally this will all lead back in a circle to a situation where the frustrated employee will finally quit, rather than repeatedly having to work extra shifts, which then, of course, contributes to the problem of high turnover, leading, in a vicious cycle, to the need to demand more mandatory overtime from other employees.

The other obvious problem with excessive reliance on overtime, whether mandatory or not, is that it can lead to a situation where some of the staff are performing at less than peak capacity because they are in the twelfth hour on the job without a rest. Clearly, an exhausted employee, an employee distracted by being compelled to change personal or family plans to work mandatory overtime, an employee who is frustrated by being asked to make sacrifices to help address a deficit in staffing that management never seems able to resolve, cannot be reasonably expected to be operating at a peak level of performance. In his report, Mr. Fithian said that “throughout the incident, there were countless numbers of...TSCI staff who responded appropriately and performed well, especially in light of extremely difficult circumstances.” We would agree with this statement. However, it only takes a few mistakes to make bad situations worse, or a worse situations tragic, and clearly the serious nature of the events at TSCI on May 10, 2015, demonstrate how very important it can be to have a correctional facility that is fully staffed with well-rested, alert people, who are veterans in their profession, and who work well together as a team. Clearly, this has to be the goal for this facility, and all other correctional facilities.

Presently, the new leadership of DCS is working hard to restore staff levels at TSCI, and it would appear that they are having some success in that regard. Better staffing levels at the facility should result in less reliance on overtime, which should then have a favorable impact on the turnover rate, at least in theory. But we are concerned that there is more to the “turnover picture” at TSCI than merely the problem of excessive overtime demands. In reality, some of the turnover of staff at the facility may have to do with management issues, just as was suggested by the staff grievances in 2004. And, in any case, it is in the best interests of all concerned for the facility to have an employee-friendly management team, to the extent that this is possible, while still maintaining a safe, secure, and humane environment for the prison’s population.

Whenever we think about staffing at TSCI, we tend to get pulled down into a vortex; a literal whirlpool of circular expectations. We are told that TSCI has a shortfall of staff because of a high turnover rate...that TSCI has a high turnover rate because of the staff being required to work too much overtime...that TSCI staff are being required to work too much overtime because TSCI has a shortfall of staff. And all of this circularity tends to relieve TSCI managers of all responsibility for the staffing problems, as if the staffing issues at TSCI are a “force of nature,” totally beyond their ability to control because of the facility’s location. The unavoidable truth about TSCI is...that it is where it is, two miles north of Tecumseh, Nebraska, and the facility is not portable, and cannot be moved away to some other, supposedly better, location. TSCI it is where it is, and we should not allow the facility’s management team to utilize the facility’s location as an excuse for its high job vacancy rate, and overtime problems. It is time to change our expectations, and henceforth to judge the facility’s management team based, to a significant degree, upon its ability to reduce the level of turnover, and stabilize TSCI’s staffing.

Operational Factors

1. Mr. Fithian's report is critical of the **handling of the TSCI over-the-counter "pill-line,"** and also notes that there were "no post-orders or specific policy instructions regarding OTC." He pointed out that "specific inmates are not screened to be let out of the unit for OTC pill line," and that "pill line occurs when day rooms and mini-yards are open." The result of the procedure for handling the OTC pill distribution at TSCI was, according to Mr. Fithian, the generation of "inmate movement on the courtyard, when no yard staff are available to monitor movement." (It is also interesting to note that the OTC "pill-line" at TSCI was not included on the facility's published schedule for May 10, 2015.)

In fact, there is a memoranda to the inmates, dated December 31, 2014, where Associate Warden Busboom informed the TSCI population that "Medical will be starting an Over the Counter (OTC) medication window pass on Sunday February 1, 2015," that would allow the inmates to obtain over-the-counter drugs "without having to be seen in medical or sending in an 'Inmate Request Form' to medical." The idea as explained in the memo was for pills to be distributed on the first three Sundays of every month. Those inmates with last names beginning with the letters A thru M were to get their over-the-counter drugs on the first Sunday of each month, while inmates with last names beginning with the letters N thru Z were to get their over-the-counter drugs on the second Sunday of each month. The inmates were to fill out a form indicating what drugs they needed, and that form would be presented by the inmate at the "medication window" on the appropriate day. It does not appear that the general population inmates were required to obtain a pass or get permission to leave their housing units to go to the medication window, although the policy described in the memorandum would have precluded inmates with last names that did not begin with the appropriate letters from leaving their units. (See Attachment #23)

The fundamental problem with the way that the "pill-line" was handled, according to Mr. Fithian, was that it created a situation where several units were opened at once, with the inmates being allowed to exit the units and go into the main yard simultaneously, without any direct control over which inmates, or how many inmates, actually went into the yard when the "pill-line" was called. The only way to mitigate this problem would be for unit staff to carefully monitor the inmates leaving the unit to go to the medication window, to make sure that inmates with last names that did not begin with the appropriate letters did not leave the unit. Apparently, this did not happen considering that May 10, 2015, was the second Sunday of the month, and inmates named Brown, Gooch, and Camacho were in the yard after the pill-line was called. The outcome of this was to allow, in the words of Mr. Fithian, "too many inmates (to) be out at one time compared to the number of staff available to effectively respond to incidents."

This handling of the over-the-counter medication distribution was directly responsible for creating the situation where there was suddenly an unusually large number of inmates in the yard, so that, as Mr. Fithian explained it, when trouble started the "responding staff were quickly outnumbered by the inmates, with no additional staff available to assist."

When the Yard Supervisor called for backup, the response consisted of just a few Unit staff, who were only able to assist with the situation at the margins (as did Caseworker Glass, who sprayed Mr. Gooch in the face with her MK-IV Pepper Spray). But these few Unit staff did not represent the numbers needed to enforce discipline on the large number of inmates who assembled in the main yard at that point. In fact, the decision to pull a few staff out of the housing units may have also had some impact in terms of the inability of Unit #2 and Unit #3 staff to lockdown their Units, since both of those Units were, as Mr. Fithian explained, “down by one staff each (who had responded to courtyard),” and when their attempts to “secure 100+ inmates in each unit...were unsuccessful.” In short, because of the handling of the distribution of over-the-counter drugs there were too many inmates out of their cells at one time, in too many places, and without enough TSCI staff on hand to manage them.

On a related issue, Mr. Fithian pointed out that it was reasonable to question the facility’s “living unit staffing model.” Mr. Fithian explained that “there were 14 staff assigned to the Special Management Unit, where inmates are secured in their cells a majority of the time,” while in Unit #2 and Unit #3 there are “only 4-6 staff, where the inmates are out of their cells a majority of the time.” We would agree with Mr. Fithian that it is necessary to ensure that “sufficient number of staff are available in the right areas,” and we would suggest that this is particularly true where a facility, like TSCI, has ongoing challenges in regard to developing and maintaining a veteran staff, and where the administration is also being asked to meet those challenges in the context of a particularly difficult-to-manage inmate population.

2. Mr. Fithian’s report also criticized the **handling of the situation in the yard at the onset of the disturbance there**. When the tower Officer fired the first warning shot at about 2:40 p.m., the immediate response of the group of inmates gathered in the proximity of Unit #2 was to sit down or lie down on the ground, where they remained inert for about twelve minutes. This point may well have been the only good opportunity that the yard staff had to bring the situation in the yard under control. However, as was pointed out by Mr. Fithian, the staff then in the yard “confronted and attempted to control a large group of inmates without sufficient resources,” so that when the warning shot “gained inmate compliance,” there were not “sufficient resources and equipment...available to capitalize on the situation.” In fact, instead of controlling, or trying to control, the larger situation, the yard staff were directing much of their attention at confronting and trying to arrest Mr. Washington, which led first to the assault on Corporal Hatzenbuehler, and then the assault on Sergeant Sears. It is easy, of course, to look at the situation now, in retrospect, and with plenty of time to reflect on what happened, and to suggest how matters might have been handled differently in these crucial minutes. But even Mr. Fithian observed that by their “focusing on removing inmate Washington...from the courtyard, staff failed to recognize the safety and security risks presented by a large group of inmates already refusing to disperse.” The priority should have been to “control the crowd,” not to arrest a single inmate.
3. There are reasons to be concerned about the implications of **the timing (and arguable delay) of the all-important order to lockdown the Housing Units**. It will be recalled

that Sergeant Rempel made the call for the commencement of the “med lines” at about 2:25 p.m. At that point an unusually large number of inmates exited Units #2 and #3, a fact which was noticed by Corporal Bents at about 2:30 p.m. At some point between 2:30 and 2:35 p.m., Sergeant Rempel, who was the Yard Supervisor, called for Unit staff to provide support in the main yard. Soon thereafter, Corporal Hatzenbuehler approached Mr. Washington (at about 2:39), and thereafter the Corporal was assaulted by Mr. Gooch, an event which then resulted in staff on the yard taking physical measures to control Mr. Gooch, Mr. Weikle, and Mr. Zalme, including the firing of the first warning shot by the tower Officer, at about 2:40 p.m.

The inmates who were standing in the area, responded to the warning shot, by sitting or lying down on the ground. As all of this was happening, an “ERT (Emergency Response Team) call” went out from the Central Control at about 2:45. The TSCI Shift Supervisor, Sergeant (Acting Lieutenant) Ulrick had already ordered that all of the TSCI housing unit doors be secured, “incoming traffic only.” However, according to Mr. Fithian’s report, Sergeant Ulrick did not issue the order to lockdown the Housing Units (i.e., a directive to lock all inmates in their cells) until 2:49 p.m. This means that the lockdown order was not issued by the Shift Supervisor until almost ten minutes after the fighting commenced in the yard (at about 2:39), or until approximately four to five minutes after the ERT call (2:45). By the time that the directive to lockdown the Units went out, the inmates in Unit #2 A and B, and the inmates in Unit #3 C and D, were refusing to lock down. Several minutes later, at 2:52 p.m., the inmates who had been sitting or lying down on the ground in the main yard suddenly decided to stand up *en masse*, an action which, according to Mr. Fithian, “appears to be in response/support of unit inmates refusing to lockdown.”

It is, of course, impossible to know whether things might have turned out differently, if this chain-of-events had been handled differently. What we can say is that in situations like this one, even slight subtleties in timing might change everything that follows. If the *Titanic’s* bow been turned just a few seconds earlier that dark night in April of 1912, then the ship would have avoided the iceberg, and history would have been changed. So, in a case like this one, timing might have made all the difference. Indeed, as Mr. Fithian observed in his report, “the initial actions of staff will have a tremendous impact on the overall outcome of any emergency or incident.” We would simply note that Mr. Fithian also said that “the decision to begin securing inmates in the living unit should have come in response to the ERT call (request for assistance).” By that standard, the all-important order to lockdown the Housing Units was, in fact, belated by perhaps four minutes, and in a volatile situation like this, even a few minutes can matter a great deal.

4. There were a number of issues and concerns identified by Mr. Fithian in relation to **the ongoing management of the incident**. Once it was clear that a serious incident was in the offing, and that there was a crisis that could not be easily managed by the staff on hand, the Shift Supervisor, Acting Lieutenant Christopher Ulrick, took on the role of the “Initial Incident Commander,” and established a command post in the facility’s Central Control. The strategy applicable here is the idea that it is essential to the management of a crisis situation like this to have one (and only one) manager in charge, to make sure that the response of the staff is consistent and well-coordinated at all levels. The other part of

this strategy is to have the crisis management leader be someone who is solely concerned with the response to the incident, which is why Initial Incident Commander is supposed to be clearly identifiable at the onset of the crisis. In the case of the Mother's Day Riot, however, there were breakdowns in the execution of this "unified management" strategy that were identified by Mr. Fithian. For instance, there were situations where the Initial Incident Commander (Acting Lieutenant Ulrick) got distracted from his essential crisis management role by performing other functions. According to Mr. Fithian, this included situations where the Initial Incident Commander "performed other duties not associated with the role, such as taking part in negotiations with inmates in conjunction with (the Crisis Negotiation Team), and leaving the command post to establish a perimeter post."

Mr. Fithian also pointed out that "there were several situations that question the authority of the Incident Commander," including cases where "during the disturbance both Unit Manager Beltz and Associate Warden Busboom issued orders to staff." Presumably, the reference by Mr. Fithian to Unit Manager Beltz relates to the situation where Ms. Beltz spoke to Corporal Bents via telephone and, according to Corporal Bents, directed Bents to relay her message to the tower Officer that "since there was already 2 warning shots fired," if there was "another incident endangering staff" the tower Officer was to "shoot center mass" at the inmate involved. However, this was a directive (the tower Officer characterizes it as "permission") that was given by Unit Manager Beltz at a time when she was traveling by automobile to TSCI from Lincoln, and when she may have had no clear idea of the actual timing of the two "warning shots" that the tower had supposedly already made, and that would therefore have sanctioned a "center mass," or deadly-force, shot to be made according to the Department's "force continuum" policy. As is indicated in the chronology of Mr. Fithian's report, in fact, Unit Manager Beltz did not even arrive at TSCI until 4:00 p.m., which was perhaps as much as thirty minutes after the deadly-force shot had been made from the tower. In fact, the deadly-force shot from the tower may have happened as many as forty-five minutes before Unit Manager Beltz finally arrived at TSCI.

According to Departmental policy, the situation at TSCI already had a designated and clearly identifiable Initial Incident Commander, Sergeant Ulrick, and if "permission" was needed in order to make the deadly-force shot from the tower (and we believe that it was needed in this situation), then that permission should have come from Sergeant Ulrick. Obviously, it was hardly optimal for Unit Manager Beltz to be influencing that critical decision in the tower while she was many miles away traveling from Lincoln to TSCI in an automobile. If Ms. Beltz wanted to make a "suggestion" that the tower Officer might have to "shoot if necessary," then she should have offered that suggestion to Sergeant Ulrick, the Initial Incident Commander, but there is nothing in the record that we have seen that indicates that Ms. Beltz had conveyed that suggestion to Sergeant Ulrick. Also, we would agree with Mr. Fithian that perhaps an even better approach for future purposes might be for DCS to implement "a requirement to gain authorization for the pre-planned use of deadly force (time and circumstances permitting) from an authority higher than the initial incident commander (i.e., Warden, Director)."

5. At a point well in to the riot event, there was **lack of coordination of efforts as between the Initial Incident Commander and the Crisis Negotiation Team leader in regard to the availability of telephone contact with inmates.** According to the official timeline, the Initial Incident Commander (Sgt. Ulrich) and the Crisis Negotiation Team leader (Mr. Simpson) were attempting to negotiate with inmates via telephone as early as 6:00 p.m. In fact, Mr. Fithian's report indicates that the Crisis Negotiation Team was in contact with inmates in the gym, who were informing them that "diabetics are not doing so well," and that an inmate in the gym with a homemade knife intended to stab "sex offenders." There is also one entry in the official timeline that indicates that at 6:40 p.m. there was a statement via telephone from inmates in the gym to the Crisis Negotiation Team that the inmates "want yard open today." However, Mr. Fithian's report indicates that while the Crisis Negotiation Team was "actively negotiating with inmates and talking to barricaded staff," the Command Post "made the decision to cut off phone lines due to inmates using phones." Because of this, the Crisis Negotiation Team's "communications were abruptly ended without CNT knowledge or input." (According to the timeline, this happened at 7:24 p.m.) Obviously, the work of the Crisis Negotiation Team in a situation like this can be critical, and has a value in terms of keeping inmates preoccupied with the discussion of a possible resolution of the situation, even when no resolution is found. Responding to a dangerous situation like the May 10 riot is serious business, and the Crisis Negotiation Team is one of the most important factors in the administration's operational response, and should definitely be given priority treatment. This is why Mr. Fithian recommended that it was desirable to "ensure the Incident Commander and the Crisis Negotiation Team Leader discuss the status of current negotiations, and ensure command decisions that may affect negotiations are discussed with both CNT and tactical teams before taking action."

Some Observations

Staffing Issues

Ever since the facility opened for operations in December of 2001, TSCI has had significant staffing issues, and predictably this has led to complications that have made the institution more difficult to manage in a number of ways. As was explained in Mr. Fithian's report, at the time of the riot "60 positions out of a total of 431 authorized" at TSCI were "considered true vacancies," a number which Mr. Fithian characterized as being a "higher than normal vacancy rate." This vacancy rate is largely a reflection of turnover of staff at TSCI, and is important because, as Mr. Fithian indicated, it has a direct impact on the inability of the facility to develop a veteran and seasoned staff. In fact, Mr. Fithian's report tells us that out of "the 210+ custody staff that are employed at TSCI, over 35% have less than two years of NDCS experience." Mr. Fithian also explained that this "large percentage of inexperienced staff" is meaningful because of its major impact on "facility operations," including on factors such as "consistency and standardization." The other important effect of staffing shortages at TSCI is the need of the facility's managers to rely upon mandatory overtime to fill staffing gaps. Obviously, the use of mandatory overtime is a necessity, since the facility does need to be at least "minimally-staffed" at all times; but the dilemma associated with this continual reliance upon mandatory overtime is that, while it solves a short-term problem, it does so by creating a long-term problem, as it becomes a predominant

factor in the facility's continuing turnover phenomenon. We believe that it should be a high priority for the leadership of DCS to address the staffing issues at TSCI. As we see it, this will necessarily involve two strategies: (1) generating a management at the institution that embraces an employee-friendly philosophy; and (2) providing the security staff at the facility with better compensation than that which they are currently receiving.

Fortunately, we have not recently seen a repeat of the kind of comprehensive complaints from TSCI staff that were experienced in the spring of 2004, when staff alleged that the facility was chronically under-staffed, and that there was a "lack of effective administration" at TSCI, which had caused an "extremely unsafe work-place," where staff safety had "become an afterthought." However, it is reasonable to suppose that, just as happened in the wake of two brutal inmate assaults on TSCI staff in early 2004, so also in the aftermath of the May 10 riot, staff may have a heightened level of concern about safety, and will look (and rightly look) to the management team at TSCI for "effective administration," and a sense that the administrators understands the need for the work environment to be as safe as can reasonably be managed, consistent with fair and humane treatment of the TSCI population. Obviously, employer-employee relationships will always be a potential source of tension and difficulties, and certainly some of that is unavoidable, and necessary. However, the management team at TSCI needs to understand that any needless confrontations with staff, and any unspoken messages of disinterest in staff concerns, are likely to be more harmful and detrimental to the overall interests of the Department than would be the case in many other employer-employee contexts. We have confidence that Warden Gage does understand this, and that he will do what he reasonably can do to make TSCI a safe and positive place to work, but he will need help in that effort from the other members of his management team, because in this area all of the good that is done by many positives can quickly be undone by one negative. In short, much of this issue of having a positive workplace will come down to a question of "management style," which is likely to be a key factor in addressing TSCI's staffing issues.

Secondly, it makes sense that more needs to be done to provide the security staff at TSCI with better compensation than what they are currently receiving. In fact, it could well be argued that DCS needs to elevate security staff salaries across-the-board, at all of its facilities. This is an issue that is best brought into focus by looking at compensation levels for security staff at the Lancaster County Jail and the Douglas County Jail. For example, in 2014 the starting salary for Correctional Officers at the Douglas County Jail was \$16.35 per hour, while at the Lancaster County Jail it was \$17.418 per hour, as compared to a starting salary of \$15.153 per hour for the State's Correctional Officers employed by DCS. At the same time, the starting hourly salary for the Corporals who are employed at the Douglas County Jail was \$18.82, as contrasted with the starting salary of \$16.29 for the State's Corporals. And for Sergeants, the starting hourly salary at the Douglas County Jail was \$22.90, as compared to a starting salary of \$18.105 for the State's Correctional Sergeants. Also, both the Lancaster County and Douglas County jails utilize a step-system, which will annually increase a Correctional Officer's hourly salary (in Lancaster County to \$22.063 after five years, and in Douglas County to \$20.31 after five years). All of this would seem to indicate that the time has come to raise salaries of the State's security staff, at least at the Correctional Officer, Corporal, and Sergeant levels, a move which should help in the staffing of all of the State's correctional facilities, TSCI included.

Repurposing TSCI

As we have indicated, the management of the Tecumseh facility has struggled since TSCI was opened in 2001 to more adequately staff the institution. That struggle continues. All of this has finally led us to the idea that if the State cannot configure the staffing to fit the facility, then it may be necessary to reconfigure the facility, or more specifically the facility's population, to fit the staffing. Even before the riot, there were plans afoot to make changes in the configuration of the TSCI population. In March, Mr. Frakes announced his plans to convert 100 cells in TSCI's Special Management Unit (segregation unit) from single-occupancy to double-occupancy, and thus to open 100 additional beds there "for protective custody needs." In addition, Mr. Frakes indicated that he would be adding beds to 20 other cells in the Special Management Unit, thereby converting those cells as well to double-occupancy. This plan included the idea of transferring 114 protective custody inmates from the Penitentiary to TSCI. This plan also contemplated the proposal to make the conditions in DCS protective custody units "more closely reflect general population housing conditions," whereas in the past those units have limited inmate access to programming and other benefits, like jobs, and recreational opportunities.

The Ombudsman's Office would generally support the changes that Mr. Frakes described back in March of this year. However, we would add two observations that may not be apparent, but do nevertheless need to be made. First, the 100-plus beds that Mr. Frakes proposes to add to TSCI will not increase the design capacity of Nebraska's prisons by a single bed. Presently, the design capacity of Nebraska's adult male facilities (excluding community corrections centers) is 2,642 inmates; and after the department adds all of these 100-plus beds to TSCI, the design capacity of Nebraska's adult male facilities will still be 2,642. The only way that we can increase the design capacity of our system is by building new cells, or by creating new places to house community corrections inmates. The second point that we would emphasize is that what Mr. Frakes is now proposing for adding more inmates to TSCI is necessary, in our opinion, because of the serious overcrowding at the Diagnostic and Evaluation Center. At the end of February 2015, the D&E was at 333% of its design capacity, making it by far the most overcrowded facility in Nebraska's system. By the end of May, the population at the D&E was down to 307% of design capacity, and by the end of August 2015 the population of D&E was down to 242% of design capacity, a total reduction of 146 inmates from the number that the D&E held at the end of August. Given the conditions at the D&E, this reduction was absolutely necessary, in order to make conditions at the D&E safer, more secure, and at least minimally humane. This measure was also carried out in a manner that is consistent with what DCS has already been doing for many years - taking cells meant for single-occupancy and converting them to double-occupancy.

While the Ombudsman's Office sees the steps described here as needed, given the situation at the D&E, we would like to emphasize two points related to the decision to move even more inmates into TSCI at this point. First, we are concerned that this move at TSCI, once made, will never be unmade; that the double-occupancy cells at the facility's SMU will become the "new normal," as the Department moves on, using these cells as if they were designed for two people, when they were really designed for only one. We are also concerned that this measure will be allowed to mask or obscure the fact that what the Nebraska system most needs is more (probably hundreds

more) community custody beds. Secondly, we would have to say that we are at least a little bit worried about the fact that through these moves the Department will be adding more than 100 additional inmates to TSCI, when the real “message” of the riot may well be that the facility needs to be repurposed in a way that makes it easier to manage given its staffing limitations. Transferring the system’s protective custody inmates to TSCI is a move that will be consistent with the goal of making the population at TSCI more manageable, but we are not at all sure that the same can be said with regard to other inmates that are going to be moved to Tecumseh. In this vein, we would also suggest that Mr. Frakes’ best “card” when it comes to retaining staff at TSCI may well be to significantly reconfigure its population, so that it is composed of a much more manageable assortment of inmates. In any case, it is clear that this process of repurposing TSCI by modifying the characteristics of its population is probably going to be a very delicate operation, and is going to need a lot of “hands-on” attention from the Department’s leadership.

The other point that we would make on this subject is that the project for “repurposing” TSCI should not only consist of changing the nature of the facility’s population, but must also involve changing the “qualities” of the institution’s environment. Today, for many of Nebraska’s male inmates, TSCI is the *last* place in the system where they want to live. But we would suggest that, with some imagination and hard work, TSCI could be turned into a more desirable institutional setting. Previously, TSCI had an inmate hobby and crafts program; a program which allowed otherwise idle inmates to use their time and talents on hobby projects. However, that program was eliminated a number of years ago (for reasons that are unclear, but may relate to the inability of the TSCI management to maintain the level of staffing needed to monitor the program). We believe that the hobby and crafts program at TSCI should be restored. More recently, there has been a reduction in inmate self-betterment club activities at the facility. In a setting where we would like to see a regression in gang-related activities, it would seem that we would want to stress the values involved in participating in legitimate club activities. And, since the clubs need to select club leaders, a more vibrant club environment at TSCI would allow for inmate leaders to emerge in a legitimate context, outside of the “gang-scene.” With these points in mind, we believe that club activities should be reemphasized at TSCI.

TSCI also has a history of rather limited programming offerings for its inmates. Fortunately, Mr. Frakes is already working on bringing more programming into TSCI for its expanded population of protective custody inmates, but he is also withdrawing substance abuse programming that had previously been available for general population inmates at TSCI. At this juncture, we would simply say that we are not convinced that Mr. Frakes’ plans for programming options at TSCI are as ambitious as they need to be, especially in an overcrowded system where having inmates with programming deficits may be reducing the number of inmates who the Board of Parole can conscientiously parole. Having more programming options at TSCI might also help to stabilize the facility by giving the inmates in general population there more to work on, and more to lose, if they misbehave. Along these lines, it would also be desirable, we believe, to have more jobs available for all non-segregated inmates at TSCI, and perhaps even vocational training for TSCI medium security inmates. Changes at TSCI of this sort would go a long way, we would suggest, to making the overall environment at the facility more positive, and much more manageable.

The Question of “Motivation”

In our opinion, and when we put the events at TSCI on May 10, 2015, in the historical context of the Penitentiary riot of 1955, the record should reflect that part of the motivation behind the May 10 event at TSCI was to bring to the administration’s attention what the inmates considered to be needed “reforms” in how the facility was operated. And while the merits of the inmates’ ideas of needed reforms were decidedly mixed (we would disagree with the idea that the open yard policy should be reinstated at any DCS facility at this point in time, however, we would agree with the inmates that the administration of the Wellness League program at TSCI was flawed), the reality is that for some, if not for most, of the inmates involved the motivation at the outset was reform oriented, and conceived of as a peaceful, or nonviolent, protest. Obviously, we are not saying, or suggesting, that nonviolent motivations justify or excuse the actions of any of the inmates who were involved in the May 10 event, but what we are saying is that in the minds of some of those involved, the point of their actions, at the beginning, had to do with protesting operational issues at TSCI, and did not, at the outset, contemplate violent or destructive behavior.

All of this having been said, we recognize that it is also be obvious that a prison is no place for civil dissidence. Inmates have a right to think, and certainly a right to complain, but any form of “protest” that would disrupt the operations of a prison is not within the array of processes that are designed to allow inmates to bring their complaints to the surface, and to seek the redress of their grievances. The reasons for this should be apparent from the events that transpired at TSCI on May 10. As we have said earlier in this report, in a prison it is necessary that all lawful orders by the staff be obeyed, and that is an expectation that does not leave any room for inmate “protests,” even if those protests are supposed to be peaceful. In this case, the “peaceful” part of the event lasted for only a very few minutes, and the whole event was suddenly turned around and made violent by the deeds of a few, out-of-control inmates who wanted to use the occasion to assault staff. The event may have started as a peaceful protest, but it quickly turned into a violent riot.

The TSCI Wellness League

As has been discussed earlier in this report, the handling of the Wellness League at TSCI was an important issue, perhaps even a “triggering-condition,” with respect to the riotous events at TSCI on May 10, 2015. In fact, even Mr. Fithian’s report noted the fact that the TSCI inmates “view the wellness league as an incentive program that is unfair and gives a growing majority of the population access to additional recreation time that others do not receive.” We have spent some time in this report discussing the management of the Wellness League at TSCI, and some of the concerns that we have regarding how access to League membership was handled by some of the second-tier managers at the facility. We have explained how the addition of the so-called “Drug Offender Classification” as a criteria for League membership had made that membership even more exclusive than it already was, while also, in effect, creating an additional sanction related to the Drug Offender Classification - a sanction that was not endorsed in the DCS policy statement on the subject of the Drug Offender Classification.

As we have indicated in this report, we like the basic idea behind the Wellness League program, that is, the idea of creating incentive-based opportunities for inmates to have more yard access,

now that the managed yards model has diminished yard access. And we are especially impressed with how the program works at the Penitentiary. However, when we consider the situation that had developed at TSCI immediately prior to the riot, we instead see a situation where the League was not merely being used in a positive sense, but was, in fact, being used as a new mechanism to take away privileges that the general population inmates at TSCI had always possessed. And, in fact, it is particularly noteworthy that the May 10 event at TSCI happened shortly after TSCI administrators had announced new rules and criteria that were being imposed that related directly to the program. On April 28, 2015, Deputy Warden Capps distributed a memorandum in regard to jobs in the CSI laundry. In that memo she indicated to those inmates who wanted to apply for the laundry jobs that, "We are interested in inmates who are within six (6) years of their tentative release date and meet the Wellness League criteria." (See Attachment #17) This memorandum is dated only twelve days before the riot. Then, on May 4, 2015, only six days before the riot, the TSCI Recreation Manager, Teri James, sent an email to the TSCI staff, announcing that those inmates "wishing to participate in the next softball leagues will have to meet criteria similar to the inmates who can participate in the wellness yard." (See Attachment #16) What all of this, in effect, did was create new barriers to access to jobs and recreation leagues that had not existed before, barriers that would exclude many TSCI inmates from privileges that they had access to for many years. In other words, it was one thing to create a new incentive program (that is, the Wellness League) with eligibility limitations, but quite a different thing to create new barriers to involvement in the recreation leagues that had been largely open to all TSCI general population inmates. As Mr. Fithian stated in his report, when developing new "programs and activities," it is important that there be "a balance between behavioral incentive activities and other activities that allow a majority (of the inmates) to participate in." We would submit that the need for this "balance" was disregarded at TSCI when the Wellness League requirements were suddenly made applicable to recreation leagues and laundry jobs.

Looking back, we believe that it is reasonable to wonder whether the two announcements made at TSCI regarding the recreation leagues and laundry jobs, coming at a time so close to the May 10 riot, may actually have been a significant motivating factor behind the frustrations of many of the inmates who were involved in the May 10 event at TSCI. And, although that supposition is merely speculative, we do know that the new rules that connected Wellness League eligibility to access to other opportunities (jobs and league recreation) that were very important to the TSCI inmates is something that was not happening at the Penitentiary. All of this brings us then to the question of why, if the inmates at TSCI were frustrated and aggrieved by the new rules that were being made relating the recreation leagues and laundry jobs, the inmates did not use more traditional means to challenge those new rules, rather than a "non-violent demonstration."

When Inmates Complain

As for how inmates are supposed to complain and raise issues with the administration, the truth is that there are many avenues for them to do so. Their options include following the grievance procedure that is provided for by the Department, pursuant to **Neb. Rev. Stat. §§43-4,135 thru 83-4,139**. (However, the grievance system is not really designed for issues that have to do with "big" operational concerns, like the open-yards policy or the Wellness League - the grievance system is really more designed for "routine issues," relating to the interests of a specific inmate,

or a few inmates.) Another option would be to write a letter of complaint to a State Senator, or to the Governor (sometimes the inmate complaints sent to Senators may be turned over to the Ombudsman's Office for a response). Of course, another option for inmates who want to bring forward a complaint, or a cluster of complaints, would be to create a petition, and have it signed by as many inmates as may agree with the petition's content. At one point, that is what some of the inmates contemplated doing in this case, although, as I have indicated earlier, this idea was "stillborn" because of the way that the inmates involved chose to handle it. And yet another option for inmates who want to raise an issue is to address their complaint to the Ombudsman's Office, which is equipped to follow-up on both complaints about policy issues, as well as the routine, individual-oriented complaints.

As I have stated earlier in this report, the Ombudsman's Office was well aware of the inmates' objections to the Department's decision to eliminate of the open yard policy. However, we were not aware of the inmates' concerns about how the Wellness League was being operated at TSCI, or about the new barriers that were being erected at TSCI with respect to recreation leagues and laundry jobs...those were complaints that we had not heard about. This was a source of concern for me because the ability of the inmates' to complain to the Ombudsman's Office is supposed to be not merely a process for addressing individual grievances, but also a mechanism that provides the inmates with a way to express their complaints and frustrations through legitimate means, so that they do not need to resort to extra-legal actions and violence in order to get attention to their concerns. Of course, part of the answer to the implicit "where is the complaint" question is that the inmates were preparing to complain via a petition, but that was all short-circuited by the riot. The other answer is that, as we discovered when we investigated this matter, in fact, the critical events that would have been a focal point of the TSCI inmates' grievances regarding the new rules covering access to laundry jobs and the recreation leagues had only surfaced very recently (on April 28, and May 4, 2015)...just days before the riot. So, while we knew about the basic outlines of the Wellness League program (which we viewed as being a positive development), we did not hear about the other aspects of what was happening at TSCI, as the administration there was, in effect, trying to use the idea as a way to reconfigure laundry jobs and recreation leagues as "incentive programs." And so, we are left with the sad irony that, while the inmates' complaints about these issues (and about other issues as well) finally did reach the Ombudsman's Office in the form of the grievance document (Attachment #2), it was only after the riot, and then only as a scrap of evidence that had been swept up as a part of the investigation of the riot.

Communication

There are doubtless those amongst us who tend to think of our prisons as warehouses where we keep disagreeable and dysfunctional people. When we see these men trimming the capitol lawn surely we recognize their humanity. And yet when they go back to their institution they become abstractions - "inmates," or "prisoners," or "offenders," or collectively "the population." But the truth is that they are still human beings (albeit human beings who have made some very serious mistakes in their life), and collectively they are a "community," and need to be seen as such by our correctional professionals and policy makers. And, in creating that community, the State's leadership needs to understand that they have also created a situation where there are likely to be

communal complaints; and that those complaints need to be identified, aired, and addressed, in the interests of all concerned.

If TSCI is a difficult place to manage, it is also a difficult place to live. The staff, with all the problems that they have to deal with on a daily basis, and with all of the stress of working in a correctional facility, will at the end of the day leave TSCI and go home. For the inmates, TSCI is home. And many of them, including some whose names are mentioned in this report, will not ever leave TSCI while they are still alive. This is to be their punishment, society has said; and the inmates who are on the receiving end of that punishment aptly refer to it as “doing time.” In fact, “time” is their punishment: (1) in the sense of lost time, time that they might otherwise have spent doing any of the thousands of things that all the rest of us on this side of the fence take for granted; and (2) in the sense of “heavy time,” time spent with nothing to do, no job, no classes, no source of a sense of personal accomplishment, or growth, or hope. This is why something simple, like a job, or even a “little” thing, like the opportunity to participate in a softball league, matters so much, because it eases the monotony of heavy time. This is why they will object so strongly and emphatically when something of that sort is taken away by an administration that seems (to them at least) to be indifferent to their needs. And the problem is that even when the administration is not indifferent, if they are seen by the inmate community as being so, then the results can be just as bad.

If we look again at the Penitentiary riot in 1955, we can see the same phenomenon happening then. The trouble at the Penitentiary actually started with a minor uprising in 1954 and, as a result of that trouble, a man named Sanford Bates, the former head of the federal prison system, was retained by the State to assess the conditions in the Nebraska prison system. According to the *Nebraska History* article cited earlier:

Bates recommended professionalizing the prison system by hiring mental health professionals such as social workers, psychiatrists, and psychologists, creating a department for statistical research, and adding a trained state director to oversee the state system. He also suggested the prisons needed better guards, advocating for increased pay to attract better candidates and more training...He called for a more modern approach in which the prison would prioritize rehabilitation, making the prison more than a simple “custodial institution from which men emerge possibly chastened but very likely no better than when they came in.”

Of course, the inmates at the Penitentiary knew about these recommendations, and eventually a letter signed by 94 of those inmates was sent to the *Omaha World-Herald*. The letter called for the removal of the Penitentiary administration, and also tried to make the elevated level of the inmates’ frustration clear:

When a sleeping dog gets kicked just so long he will eventually get up and bite, and it’s the biting stage as far as we convicts are concerned as we had the share of kicking.⁷

⁷ Sarnacki, B. 2015. “In the Biting Stage: The 1955 Nebraska State Penitentiary Riots and Violent Prison Activism.” *Nebraska History* (Vol. 96, Issue #1): pp. 5-6.

This “biting stage” is, in fact, very close to where the situation was at TSCI on May 10, 2015. The inmate community at TSCI was already hurting from the previous elimination of the TSCI inmate hobby and crafts program, as well as the recent reduction in inmate self-betterment club activities at the facility. This had been followed in 2012 by the elimination of the open yards policy at TSCI. Now, the TSCI inmates were seeing the enactment of new institutional policies that would deprive many of them of the opportunity to obtain one of the prized laundry jobs, and that would even take away from many inmates the long-valued privilege of playing in the TSCI recreational leagues. The message from all of this is very clear - when you take more and more away, there is the likelihood of generating more and more resistance. And that means that when such steps are being contemplated, it is essential that the administration move very carefully and deliberately, and emphasize the value of communication between the prison administration and the inmate community, rather than blindly moving forward with policies that might cause trouble unnecessarily.

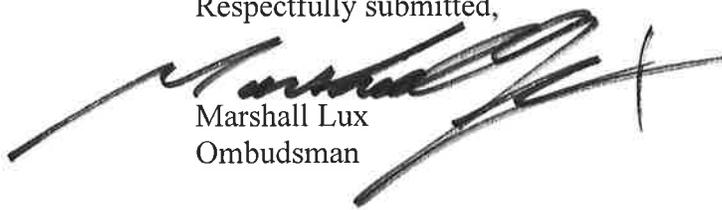
One possible way to engender this communication is through the creation of what are known as “inmate councils,” consultative committees that are made up of institutional administrators and selected inmates who meet on a regular basis to discuss important issues and concerns that relate to the facility. And, in fact, Mr. Frakes has already been moving forward with this idea. DCS first conducted inmate council pilot programs at the Diagnostic and Evaluation Center, and the Lincoln Correctional Center, and the results, we are told, were favorable. At this point, six DCS facilities have some level of activity along these lines, with the Nebraska Correctional Center for Women and TSCI both working on implementation. Mr. Frakes reports that phase one of the inmate councils plan is to develop the necessary structure at the Unit level. Then, next spring, the Department will start working on facility-wide councils. Hopefully, this idea will continue to evolve, as a means of reducing tension and stress in our prisons by increasing communication between the administration and the inmate community, and thus helping everyone to understand the problems and concerns of the others at the table, before simmering inmate frustration turns into a riot.

In the end, we should return to where we began - with the photograph of Lenaris Brown. With all of the mayhem going on in the units, with gunshots being fired from the tower, and armed squads being sent into the facility to restore order by force, if necessary, it is actually this image of Mr. Brown, standing alone in the main yard of TSCI holding up a piece of paper that provides the missing part of this unhappy story. What was his point in doing this? His point was...to communicate; to bring the collective grievances of a part of the TSCI inmate community to the attention of the facility’s administration. Of course, it did not have to happen this way. The inmates would have been better off to have converted their grievance document into a petition, and then sent it off to Mr. Frakes, or to the Governor, or to members of the Legislature, or to the Ombudsman’s Office; and waited for an answer. That the TSCI inmates who were involved in this incident chose to do otherwise, means that they will have to take responsibility for what followed. Still, the image of Mr. Brown, standing in the midst of chaos, holding up a piece of paper, leaves us with the sense of a missed opportunity, with the idea that if only things had happened differently, if only there had been better, more open lines of communication between the administration and the inmates, then all of this trouble might have been avoided.

A Few Final Observations

- The cooperation of Mr. Frakes and Department of Correctional Services staff in helping the Ombudsman's Office to gather evidence for this report is sincerely appreciated.
- If LB 605 works in reducing the proportion of non-violent criminals doing prison time, then as the DCS population boils down to an essence of violent offenders, it may become more and more difficult to find "manageable offenders" to place in TSCI.
- Nebraska's Department of Correctional Services has a great many other pressing issues to address, overcrowding chief among them, and it would be sad if the riot, notwithstanding its drama and shock-value, would distract us from addressing those other issues.
- There were almost exactly 60 years between the May 10, 2015, riot at TSCI and the last riot in the Nebraska correctional system in 1955. Let us all hope that there will be at least 60 more years before the next one.
- In his report on the riot, Mr. Fithian observed that, "Throughout the incident, there were countless numbers of NDCS and TSCI staff who responded appropriately and performed well, especially in light of extremely difficult circumstances." We would agree.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marshall Lux', is written over the typed name. The signature is stylized and extends across the width of the typed name.

Marshall Lux
Ombudsman

Attachment #1

are attending conversations, which means

The above steps are intentionally and arbitrarily placed
most important, not as if nothing happens, but we take care
of it in a very subtle way.

1. The first step is to create a sense of
urgency and importance, even though most people are
not interested in being involved here.

2. The second step is to create a sense of
urgency and importance, even though most people are
not interested in being involved here.

3. The third step is to create a sense of
urgency and importance, even though most people are
not interested in being involved here.

4. The fourth step is to create a sense of
urgency and importance, even though most people are
not interested in being involved here.

5. The fifth step is to create a sense of
urgency and importance, even though most people are
not interested in being involved here.

6. The sixth step is to create a sense of
urgency and importance, even though most people are
not interested in being involved here.

7. The seventh step is to create a sense of
urgency and importance, even though most people are
not interested in being involved here.

Attachment #2

considerations listed below for the following reasons:

1. Administration and Staff are intentionally and arbitrarily placing us in Seg, only to let us out ~~as~~ if nothing happened. But we lose a jobs, cells, units, jerseys, etc.

2. We are refused transfers to other institutions by arbitrarily denying us lower custodies, even though most qualify, while those who cause the most trouble are being catered to.

3. Rewarding inmates who inform on their fellow inmates with jobs and other privileges.

4. Creating 2 classes of inmates: Those on the so-called "Incentive/Wellness League" and those who aren't. Which now is a requirement to ~~and~~ work in CSI Laundry, play group sports, use the Music Room, access to a microwave and an ice machine, and it's rumored to be expanded to many other things such as more yard access.

5. The so-called creation of a STG unit, which seems to be coming true since a large majority of all alleged STG are being housed in HUZ.

6. The ongoing and increasing disrespect of TSCI staff, who are becoming younger and more inexperienced as staffing problems and overcrowding become ever more prevalent.

7. TSCI inmates being punished (in the form of library and night rec being taken away) for actions of other inmates not currently housed at TSCI.

8. Arbitrary celling inmates together who aren't compatible and then denying those inmates to move into cells with an inmate they are compatible with.

9. Being denied access to modern technologies and job skills, vocational/technical training, which would help prepare us for our eventual return to civilian life.

10. Inmates are being placed on DOC for "alleged" drug use.

11. TSCI does not support self-betterment clubs or its volunteers.

The above stated complaints are ^{not} the only ones, but are the most important, but they are causing us inmates at TSCI psychological and emotional harm because of the following:

1. We are human beings that are sent to prison as a punishment not to be punished in the form of disrespect, ridicule, harassment, etc. by TSCI staff.

2. Many of TSCI inmates have long sentences and are being denied access to better paying jobs to pay child support and to purchase items such as TVs, running shoes, etc and must depend on outside support. These items would help ease the hardships of being in prison, away from our children and other loved ones, and the feeling of shame and inadequacy of knowing we'll always be a felon, which prevents us from getting better jobs because most of us don't have any vocational/technical training (i.e. computers, typing, etc)

3. A lot of TSCI inmates are being warehoused with no end in sight. Those of us who are here only for a short time don't care what's going on here at TSCI.

4. The fact that those of us ~~not~~ on the "Incentive/Wellness League" are treated different, makes us feel less than those who are on the "Incentive/Wellness League" ~~are~~ who are being treated better.

Most of us are getting out of prison some day and it's in the best interest of everybody that the reasons stated above be addressed because nobody wants more Nikko Jenkins.

Attachment #3

MARSHALL LUX
Public Counsel



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November 22, 2006

Mr. Robert Houston, Director
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, Nebraska 68509-4661

RE: Ombudsman's Evaluation of the Warden's Response to the 2006 TSCI Inmate Petition

Dear Mr. Houston:

This letter represents the evaluation of the Ombudsman's Office of the response provided by Warden Britten to the Tecumseh State Correctional Institution inmate petition that is dated August 28, 2006.

As you know, we have acknowledged the importance of the inmates' petition, which was signed by approximately three out of every four general-population inmates at TSCI, and which was the second such petition submitted by TSCI inmates within a relatively short period of time (9 months). We felt that it was significant that such a large number of the TSCI inmate population seemed to share so many of the same concerns about the operation of the institution. As a general matter, we felt that this latest inmate petition communicated two vitally important messages. First, and foremost, by submitting a second petition, the TSCI inmates are, we hope, expressing a degree of confidence in this method of communicating their concerns. The inmates who drafted, circulated, and signed the petition did so because they were reasonably hopeful that their collective voices would be heard. Second, the relatively close timing of the two petitions, and correspondence of the issues included on the new petition with some of the issues mentioned on the previous petition, indicate that there are both new, and some lingering, issues that the inmates seek to bring to the attention of the administration.

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We believe that this "petition process" has been an important means of communication for the TSCI inmate population, and that its value would quickly diminish, if the inmates did not perceive that their concerns were both heard and given serious consideration. It is, thus, in the spirit of open and effective communications that the Ombudsman's Office weighs in on the Warden's response to the concerns raised in the latest petition. For discussion purposes, we would break the issues raised in the petition down into eight separate areas.

A. Rehabilitation/Programming

Much as the "dayroom issue" was the predominant concern in the 2005 petition, the issue of rehabilitation occupies a similar position on the subsequent petition. In both instances, the concerns were elevated in importance due to their relationship to immediate circumstances. The dayroom issue presented in the earlier petition was brought up in the context of restrictions that had been recently been imposed on dayroom usage. In the case of the rehabilitation issues raised in the recent petition, we know that, shortly before the petition, the TSCI inmates had learned that access to the educational programs offered through Metro Community College were going to be prioritized in favor of admitting those inmates who are within five (5) years of their Tentative Release Dates. It is our understanding that the change in policy regarding priority of access to the Metro Community College classes was due to the discovery of a stipulation in the contract providing federal funding to Metro. It would appear that the contract was discovered to require that educational programming be specifically directed toward transitional programs, that is, preparing inmates for a successful return to society. As we understand the new policy, it is only when the educational program offerings are not filled by eligible inmates (those within 5 years of their TRD) that inmates who are not within five years of their release dates are given the opportunity to participate in the Metro offerings.

While we understand that the Department cannot direct the respective policies of Metro Community College and the federal government, it is important to acknowledge that this change in policy has resulted in a significant impact upon the inmate population. It is our assumption that, under this new rule, a significant percentage of the medium and maximum custody inmates housed at TSCI will not have priority to receive classes now, or at any time in the near future. Of course, in a situation where there are scarce resources, it is arguable that there is less need to provide educational opportunities to inmates who are many years away from their release into society. However, one of our concerns about the new policy is that it will preclude from eligibility for classes those inmates who not within five years of their projected release dates (TRD), but who are nevertheless eligible for parole under Nebraska law. As a matter of law, any inmate who is parole eligible is subject to being released into society within a matter of days, if the Board of Parole exercises its discretion, and grants that inmate a parole. In light of this, if possible, we would like

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to see the priority extended to cover those inmates who are parole eligible, but not within five years of their TRD. If it is determined that Metro Community College is unable to provide classes to those inmates, then we would suggest that the Department of Correctional Services explore other options to address these unmet educational needs. It is certainly arguable that, in making inmates into better citizens, educational programming is a critical part of the overall rehabilitation process. *We would suggest that the Department do whatever it can to make sure that educational programming is available to all inmates who might soon be released on our streets, including those who are parole eligible, but not within five years of their TRD.*

We note that in the Department's recently completed *Strategic Capital Facilities Master Plan* stated that "(o)ne of the overriding goals throughout DSC should be to provide consistency of (program and treatment) opportunities at all custody levels, for each population grouping." The *Master Plan* made this point after observing that TSCI has fewer "program and treatment opportunities" than other DSC facilities, "despite the state-of-the-art laundry program and specially designed in-patient substance abuse unit." (Please see *Strategic Capital Facilities Master Plan*, p. 2-44.) If there are, indeed, to be fewer educational offerings being made available to the average TSCI inmate, then we would suggest that work opportunities for TSCI inmates take on an even greater degree of importance. While the TSCI administration has recently expanded work opportunities at the institution through its double shifts in the laundry, and the addition of the wood shops, we perceive that there remains a need for additional work opportunities for TSCI inmates. Clearly, inmates need to learn to have meaningful and productive lives through work, and to rely upon wages to provide resources to meet their financial needs. *We would suggest that the Department needs to continue to look for ways to expand work opportunities for the TSCI inmates.*

Of course, there are inevitably going to be other programming issues to be concerned about, and other interests to be balanced, and there will always be the issue of whether enough inmates will have access to the enough programs that may help to address the deficits that led to their incarcerations. Presumably, the Board of Parole will continue to expect that the inmates will participate in such programming. We recognize, of course, that all of these issues are directly impacted by resource allocation decisions, and *we feel that the time is appropriate for the Department to seek more in the way of programming resources.*

The final issue having to do with Rehabilitation generally concerns to the Department's classification system, which relates to the process whereby inmates are enabled to move through the correctional system. Since TSCI is an institution that is designed to house higher-custody inmates, who are typically serving longer sentences, the outside perception may be that, for most TSCI inmates, movement through the system is a non-issue. However, the inmate petition suggests that those TSCI inmates who are eligible for pro-

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motion to less restrictive custody levels are experiencing difficulties that hamper their opportunities. In fact, we have seen some recent statistics that suggest that a significant number of inmates at TSCI are eligible for community custody under the Department's classification process, but are still filling more restrictive (in terms of access to work and programming) and more expensive beds at TSCI. In his response to the inmate petition, Warden Britten indicated that the Department is taking steps to increase capacity at the existing community facilities, thereby expanding the existing placement opportunities for those inmates who are eligible for placement at community custody. In stressing this point, we believe that the Warden has put his finger on the real problem in this area, that is, the immediate need for more community custody "beds."

One of the most important issue identified by the inmates in their petition is the necessity for "movement through the system to complete this process of rehabilitation and aid in the reintroduction to society." Over the years, we have observed the Department making significant and meaningful adjustments to its philosophy regarding inmate classification. The Department's new classification system seems to be working quite nicely, in terms of making community custody status available to the system's maximum number of community-appropriate inmates. This is an important step. In general, it is likely that each inmate's odds of returning to a successful, law-abiding, life will be enhanced through having a more gradual release back into society, and by having the opportunity to return to society with the resources that he or she has earned through work while in community custody programs. By adjusting its classification system, the Department is helping to further this end. The significant piece that remains is the need for more community custody beds.

B. Medical

The Tecumseh State Correctional Institution is unique among all of the facilities of the Nebraska Department of Correctional Services in that the medical services provided to its inmates are provided by an outside contractor. A company called Correctional Medical Services (CMS) provided medical services during the institution's first four years, but CMS has now been replaced by Correct Care Solutions (CCS). Notwithstanding this change in the medical services contractor, Dr. Janssen Williams has been working as the TSCI staff physician, since the institution opened approximately five years ago.

It is noteworthy, we believe, that while medically-related issues did not appear in the TSCI inmate petition last year, those issues are raised in the most recent inmate petition. This should be a source of some concern. As you know, Warden Britten's response to the petition addressed many medical issues, and we appreciated his observations. Our office, nevertheless, does intend to do some further follow-up on TSCI medically-related issues, although we will do so separately, through consultation with Dr. Kohl. As you

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know, our office has been very enthusiastic in our support of Dr. Randy Kohl, and his stewardship of the medical services provided within the Department, and we will be interested in hearing his evaluation of these issues.

C. Cell Searches

In expressing their concerns about cell searches, the inmates raised complaints about the perception of a sudden increase in the number of cell searches, about damages caused by staff during cell searches, and about the unwarranted confiscation of inmate property. It is important to note that these complaints do not question the functional necessity of conducting searches of inmates' cells, but are more focused on the "manner" of the searches. We have stressed in the past that the supervisory security staff at TSCI need to keep a careful watch on how cell searches are being conducted, to avoid unnecessary damage and disruption of inmates' property. We would probably all agree that it should be easy to both fulfill the institution's needs for adequate cell searches, and protect the inmates' property at the same time. The critical point is that the TSCI inmates have raised this issue in both of their petitions and, in so doing, have made it clear that this is a matter of significant, and continuing, concern to them.

Related to the issue of cell searches are questions concerned with the confiscation of inmate property. Here again, there is no question of the necessity to confiscate contraband, altered items, unauthorized articles, and the like. However, the Ombudsman's Office believes that inmates have had legitimate concerns regarding some items that have been confiscated from their cells. In particular, we have heard a number of complaints from TSCI inmates concerning the confiscation of items of personal property that they had previously been allowed to keep in their cells, but which supposedly did not meet current regulations. For the most part, these were items that the inmate involved had possessed while living in a different institution, but which were deemed not acceptable for the inmate to possess at TSCI. With these cases in mind, *we would suggest that the petitioners' position that the Department should refine its policies regarding appropriate inmate property has some merit, at least to the extent that there may be a need to resolve some of the apparent differences among the various institutions in the system.*

We noted that the petition again raised a procedural issue regarding the practice of not allowing inmates to be present while TSCI staff searched their cells. In that connection, the petition cited Operational Memorandum 203.01.05, which appeared to authorize the inmates to be present to observe searches. It is our understanding, however, that this rule has now been changed, so that inmates cannot be present during cell searches. When we discussed this issue in connection with the previous petition, we indicated that we fully appreciated that it is appropriate correctional practice not to allow inmates to be present while their cells are being searched. There are perfectly good security reasons why staff

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may not want to have inmates see how they search, or where they search, when they examine a cell. However, while we do not take issues with this practice, *we would suggest that, if inmates are not to be present during cell searches, then there is an even greater need for staff to be respectful in their treatment of the inmates' property, when searches occur.*

D. Staff and Inmate Interaction

It is important, we think, to acknowledge the considerable challenges involved in opening and operating any new correctional facility. Clearly, the opening of the Tecumseh State Correctional Institution has presented certain challenges; some that were expected, and some that were unique. Hiring and training staff to work with what is arguably the most difficult inmate population in the system has not been an easy task. Balancing the need for absolute control and security with the needs for communication and professionalism requires rare qualities, and not all of the applicants for the jobs at TSCI can be expected to naturally possess those qualities. On top of the need to recruit and train new staff, the administration of the facility has had to contend with staff vacancies, mandatory overtime, and the many resulting stresses experienced by staff must who are asked to work long hours away from their families.

As TSCI is completing its initial five years of operations, we believe that the institution has been successful in employing a core of capable staff, who are making positive contributions to the over-all culture of the institution. There is a clear expectation that everyone associated with the institution is to be treated professionally and with respect. This is as it should be. Just as inmates are held accountable for inappropriate interactions, so too must staff be held accountable and, if subsequent investigations reveal that there was professional misconduct, then appropriate disciplinary actions must be taken.

At one point in the petition, the inmates specifically listed the need for improved working relationships between inmates and unit staff, particularly in terms of the inmate classification process. Ideally, inmates should be able to freely seek the counsel and guidance of unit staff, because the classification and the parole processes are both based upon the premise that unit staff will develop a professional understanding of the inmates, based upon daily experience. With the background of relationship and knowledge, the unit staff are the ones in the best position to provide accurate assessments of the inmate's readiness for promotion and/or parole. Thus, we would be concerned, if inmates feel that they cannot go to a specific TSCI caseworker for fair treatment and honest advice, and *we would suggest that the facility's administration should be on the watch for any caseworker who shows hostility or unprofessional demeanor toward any inmate.* Inevitably, the system will have its share of inmates with a "bad attitude," but it does not need, and should not tolerate, that sort of behavior from its casework staff and, if that appears, then the case-

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worker involved should receive, at the least, retraining.

Lastly, we want to acknowledge the steps that the Department is currently taking to provide staff training in diversity, cultural sensitivity, cross-cultural communication, and dispute resolution. Arguably, correctional “communities” are the most culturally and ethnically diverse in our society and, with that in mind, it is appropriate that the people who are working in those communities have training in how to function successfully in that setting. It is our hope that the training opportunities that are now being provided to DCS staff will help to better equip them to handle the issues that they must confront in a positive, thoughtful, and culturally-sensitive manner.

E. Food Service

When TSCI opened, the Department contracted the institution’s food service to a private contractor, Aramark. In the inmate petition, the inmates expressed concerns about food service at the institution, with particular attention to sanitary issues, food temperature, portion sizes, and the quality of food. As you may recall, issues related to the TSCI food service were included in the inmate petition of November 2005, and so, in the meantime, we have met and discussed some of these issues with Mary Carmichael, the TSCI contract monitor.

In the past, we have readily acknowledged the challenges of providing food service in a correctional institution. Preparing nutritional meals that are tasty and filling on a budget of less than \$1.50 per inmate per meal is no small challenge. We have also acknowledged the tremendous importance of the food service to the TSCI inmate population. Since the facility opened, the Ombudsman’s Office has received regular complaints from the TSCI inmates on the quality and quantity of food served at the facility. During this same five-year period, the inmates at the other DCS institutions have rarely brought us complaints about food service in their facilities. The frequency and regularity of complaints about the TSCI food service, together with the scarcity of such complaints from other facilities, suggest to us that there are real concerns here that should not be ignored.

Since TSCI apparently follows the same master menu as the other DCS institutions, the source of complaints would not appear to be a question of the types of foods that are being served. While not all inmates share the same tastes, inmates at all facilities have the opportunity to register their meal preferences. If it is not the menu that is the source of complaints, then it is difficult not to look to the actions of Aramark, the contract provider, for the explanation that would distinguish between the much-complained-about TSCI food service, and rarely-complained-of food service at the other institutions. In fact, we suspect that very subtle disparities (much more subtle than having corresponding

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menus) are what distinguish the TSCI food service from food service at the other institutions. For example, a "scoop" of potatoes at TSCI may be strictly measured when served, while a "scoop" of potatoes served at other institutions may be more generously rounded. Or, a scoop of vegetables served at TSCI could contain liquid, while the slotted scoops at other institutions might produce servings that contain only vegetables. We would also emphasize that it is our understanding that TSCI food items typically come from different suppliers than the food served at other institutions and, thus, may be of different quality.

We certainly appreciate the fact that Ms. Carmichael has been doing a conscientious job in trying to monitor the performance of Aramark under the contract, and we are even willing to accept that Aramark is meeting the expectations of the contract, in its strictest terms. However, the nature, and the "stubbornness," of these complaints argues that something needs to be done, regardless of whether the terms of the contract are being strictly adhered to, or not. This issue, unlike many of the other issues in the inmate petition, is capable of being easily managed by the TSCI administration, and so, for that reason, *we would suggest that the reduction of food service complaints at TSCI be given priority treatment.* The goal, quite simply, is to have fewer complaints in this area, and we would suggest that the TSCI administration do whatever it reasonably can to accomplish that goal. Hopefully, the Department will be able to expect Aramark's full cooperation in finding ways to alleviate the number of food service complaints emanating from TSCI. If not, then it may ultimately be necessary to end the Department's five year experiment with privatizing the food service at TSCI.

F. Disciplinary Procedures

There have been arguments about the inmate disciplinary process since before the United States Supreme Court decided the case of Wolff v. McDonald in 1974, and arguments on the subject will undoubtedly continue for the foreseeable future. As we have watched the evolution of the DCS disciplinary process, we have concluded that what is most needed, at this point, is the development of a less formal system for dealing with minor incidents of inmate misconduct that are worthy of consideration, but not serious enough to invoke the formal disciplinary process. Under such an informal disciplinary system, an inmate who had misbehaved could be counseled or warned about his or her behavior, and then instructed as to the consequences of failure to make positive changes. The informal discipline could be documented and, if the misbehavior was repeated, the inmate's case could be submitted to the formal disciplinary process. In our response to the inmates' previous petition, we noted that we were concerned about the indications in national data that suggested that there are a significantly higher number of inmate misconduct reports filed against inmates in the Nebraska system than in other states. We would hope that the Department's use of an informal system might improve these numbers, and help to avoid some of the high costs associated with formal disciplinary proceedings.

G. Grievance Procedures

Inmate frustration with the grievance process is another subject that is not new. According to the inmate petition, “the grievance process at TSCI and throughout the Department is a joke...down right pointless.” Warden Britten’s response evidenced a very different point of view, stating that “the grievance process is a valuable tool for issues to be raised and responded to in a responsible manner.” Of course, we in the Ombudsman’s Office are quite accustomed to hearing expressions of inmate dissatisfaction with the grievance process, but we still would agree with Warden Brittin that it is a valuable, if imperfect, tool for administrators, not only in terms of dealing with specific issues, but also in terms of helping to keep track of the “pulse” of the facility. In the past, when we have stressed the need for Warden Britten to monitor individual grievances, it has been with this latter point in mind, and we have been encouraged to hear that the Warden is following up on this suggestion.

We also would suggest that there are adjustments to the grievance system that could be made. For example, the inmates have voiced their frustration about the fact that, in some cases, the staff person who is being grieved about is also the one who is responding to the grievance, even though the rules indicate that staff shall not respond, when they are the subject of the grievance. (Please see A.R. 217.02.) Additionally, concerns have been expressed about the timeliness of responses, and the thoroughness of investigations into the allegations contained within the grievances.

Obviously, in order for the grievance procedure to be the effective tool that the Department intends it to be, not only must the grievances be taken seriously, but they must also be seen by the inmates to be taken seriously. The Ombudsman’s Office fully understands that not all grievances merit the same level of attention and investigation, but *we would suggest that the TSCI administration do whatever it reasonably can to demonstrate to the inmates that serious grievances will be taken seriously.* It should also be a relatively simple matter, for instance, to *see to it that the person who is the subject of a grievance is not the one who responds to the grievance on behalf of the facility.*

H. Canteen Operations

While the canteen may appear to be one of the less significant issues raised in the most recent petition, it is an area that merits attention, particularly in light of the fact that it is a subject that was included by inmates in both petitions. Basically, the inmates are arguing that some of the decisions made by the Canteen Manager, particularly those concerning what items may not be ordered by inmates, have been arbitrary. In his response, Mr. Britten has indicated that those decisions are consistent with policy, but he does not cite specific policy provisions that apply. Clearly, there is nothing wrong with the Canteen

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Manager making decisions that have a basis in established Departmental policy, but if that is the justification for such decisions, then someone needs to be in a position to cite the specific policy, and explain how it applies.

Conclusion

In our December 9, 2005, letter relating to the prior petition, we expressed the opinion that "the single most important feature about the inmate petition is the fact that the inmate population at TSCI chose to express their grievances and associated frustrations through a petition, rather than through less constructive means." We would echo the same observation in this instance, as well. This petition process has been a positive way for the TSCI inmates to express their collective concerns.

At the time this petition was submitted, our office contacted the TSCI administration and expressed our support for a meeting between representatives of the administration and leaders of the TSCI inmate clubs, as a way to engage in dialogue about the issues. The plan to involve the club presidents in this process seemed reasonable, because the list of club presidents represented a broad, and diverse, range of TSCI inmates, and included several, but not all, of the inmates who had been involved in circulating the petition. Unfortunately, however, when the decision was made to limit attendance at the meeting to inmates who were club presidents, other (non-club) inmates who were active in circulating the petition promoted a partial boycott of the meeting. In our opinion, those inmates made an unwise decision. By refusing to accept the "club-president format," the inmates who promoted the boycott sabotaged the very communication that they were seeking in circulating the petition. In so doing, those inmates not only lost credibility, but they also deflected attention from the issues, and directed in on to their own personal interests.

Notwithstanding the partial boycott, the meeting was held, and the TSCI administration, at the very least, showed that it was making real efforts to open up channels of communication between itself and the TSCI inmate population. The regular meetings that Deputy Warden Gage is having with inmate club presidents are also a positive addition in that regard, and we would suggest that those meetings be expanded in subject-matter scope to provide the TSCI inmates with a forum to voice concerns that they may have with regard to other issues, such as programming, work, food, etc. We would also suggest that those meetings involve Warden Britten, so that he will have a regular opportunity to hear concerns that are on the mind of the inmates.

As you know, we are very appreciative of the Department's willingness to discuss the issues presented in the latest petition with our office. From our conversations with staff and inmates, we believe that a number of the issues raised in the petition are concerns

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that are shared to some degree by the administration. Here again, communication about the issues is what is most critical. The most recent TSCI inmate petition, like the last such petition, is essentially a list of problems expressed as grievances. The content of the grievances, and whether or not they have merit, is less significant, in one important respect, than is the fact that the TSCI administration is willing to talk about them and take them seriously.

Since our office would like to share a copy of this letter with the TSCI inmates, a prompt response to this letter would be very helpful. Again, thank you for your personal involvement in seeing that these matters were responded to by the Department.

Very truly yours,

Marshall Lux
Ombudsman

cc. Mr. Frank Hopkins
Warden Fred Britten

Attachment #4

MARSHALL LUX
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December 12, 2005

Mr. Robert Houston, Director
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, Nebraska 68509-4661

RE: Ombudsman's Evaluation of the Warden's Response to the TSCI Inmate Petition

Dear Mr. Houston:

We are writing to you today to offer our evaluation, and recommendations, with regard to the concerns that were raised by the petition that was recently submitted by hundreds of inmates of the Tecumseh State Correctional Institution. As you know, the Ombudsman's Office has been very interested in the petition, and the issues that it presented. The Tecumseh facility has a history of posing management challenges that are unique in the Nebraska correctional system. Most notably, of course, were the several serious assaults of TSCI staff by inmates in 2004, a phenomenon which led to the implementation of a "modified lock-down" of the facility that lasted for a period of several months. In fact, that lock-down was itself the culmination of a series of lock-downs of the facility that have occurred in its short history. Although the lock-down was officially lifted in June of last year, its aftermath continues to influence the management of the Tecumseh facility, as is reflected in the issues raised in the inmates' petition concerning the scheduling of dayroom time. In a larger sense, as well, the recent inmate petition has "echoes" of the situation that prevailed in 2004, in that it is a reflection of the ongoing need for improved communication between the TSCI inmates and the facility's administration.

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As we viewed it, the inmate petition in this case is particularly notable, because of the unusually large number of inmates who signed the petition. We counted some 458 signatures on the petition, which is a number that is roughly 75% of the total of approximately 600 general population inmates who are currently incarcerated at TSCI. Of course, the recent petition by the inmates is not the first expression, on a significant scale, of dissatisfaction with the management of TSCI. In 2004, over one-hundred TSCI employees signed a "Group Grievance" expressing their concerns about staff safety, and asking for changes in the staffing of the facility. (The employees indicated that they felt that TSCI needed to have more in the way of casework staff, a view with which the Ombudsman's Office agreed at the time.) Occasional, isolated complaints from individual inmates or employees truly are routine matters for any correctional facility, but complaints of the scale seen in the recent inmate petition, and in the 2004 TSCI employee Group Grievance, are quite unusual, and should, at the very least, tell us that there are significant management issues facing the leadership at the Tecumseh facility. As the Ombudsman's Office has stated before, in making this point, we do not mean to imply that TSCI is "unmanageable," or that the challenges that are presented at the Tecumseh facility cannot be met. On the contrary, to repeat what we said in an April 20, 2004, letter to Department of Correctional Services Assistant Director Frank Hopkins, "there is no reason to believe that timely and well considered actions by management could not materially change the environment at TSCI in relatively short order." That was true in 2004, and it is still true today. (Please see attached copy of our evaluation of the situation in 2004.)

At this point, we have the benefit of both the inmates' petition, and the response of the facility's administration to the issues raised in that petition. (Please see the attached copies of the inmate petition, and the November 30, 2005, memorandum of response.) The question now is what we are to make of the administration's response. As a general matter, when the Ombudsman's Office examines a document like TSCI administration's response to the inmate petition, we are looking for a response that is more than simply reactive to the issues that were presented in the inmates' complaint. We are looking for something that does more than simply offering broad and undifferentiated assurances from administrators that "everything is alright," or that "we have plans to make things better." What we look for is ideas – for creativity and insight. Ideas are, after all, what truly distinguishes the great administrator. A good administrator makes the trains run on time. A great administrator invents the airplane. The difference is creativity.

The great administrator also knows how to recognize an opportunity. Probably the

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single most important point about the inmate petition is not any of the issues raised in that petition, but the fact of the petition itself, as a means of expressing inmate grievances and associated frustrations. Given the many negative, and potentially disruptive, ways that inmates can express, and sometimes have expressed, their frustrations, the fact that the TSCI inmates instead chose to express their grievances through a petition represents a remarkably mature and constructive approach to problem-solving. In our April 20, 2004, letter to Assistant Director Hopkins, we emphasized the need for the TSCI administration to keep an "open ear" for inmate concerns. While an event like the inmate petition might be viewed by some in the TSCI administration as "troublesome," or as threatening to the careers of particular managers, to the institution and the Department generally, it is a positive thing, the sort of opportunity for dialogue with the inmate population that should be welcomed and encouraged. It also offers the Department an opportunity that can be built upon in creative ways.

The Ombudsman's Office is genuinely appreciative of the Department's thorough approach in responding to the concerns raised in the inmate petition. While we are satisfied with some of the content of the response that was prepared by Warden Britten, there are also particular areas of that response that we perceive as being incomplete or misdirected. The balance of this letter will represent our attempt to discuss the issues raised in the petition, and to offer some ideas about how to deal with those issues.

A. DAYROOM TIME

In our judgment the dayroom issue represents the most significant, and certainly the most immediate, concern for the TSCI inmate population. It is our understanding that the inmates are basically upset by the fact that the dayrooms attached to their living units are only accessible for a very limited part of the day. The TSCI dayrooms are designed to be accessible during periods when the inmates are free to leave their cells, in order to provide inmates with an interior space in which to congregate and pass the time. If the inmates are not allowed to use the unit dayrooms, then they are basically compelled either to stay in their cells, or to go into the prison yard, which is often too cold in the winter months, or too hot in the summer. The only other alternatives for the inmates who leave their cells are to go to the facility's library, which is not a room that can accommodate a large number of occupants, or to go into the facility's gymnasium, which is larger, but does not offer the same kind of relaxed setting that is available in the dayrooms.

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The TSCI administration explains that, immediately prior to the inmate petition, the facility's dayrooms were essentially being made available to the inmates for one hour, three times a day. Before the 2004 lockdown, the dayroom schedule at TSCI was much more liberal, basically allowing access to the dayrooms at any time that the facility's yard was open. It would appear that the schedule offering inmates a very limited amount of dayroom time was, in fact, a response to TSCI's history of inmate assaults on housing unit staff. In the words of Warden Britten's response, "(t)he dayroom schedule is designed to better monitor inmate activity on the housing units." As a matter of fact, the 2004 assaults on staff were focused on the day areas, and we are aware that staff at the facility have been concerned that expansion of the dayroom schedule would have a deleterious effect on security, particularly in the sense of reducing staff safety.

In his response to the inmate petition, Warden Britten indicated that the institution has decided to provide the inmates with an additional hour of dayroom time in the mornings, and another additional hour in the afternoons. However, since access to the dayrooms is limited to certain groups at any one time, under this new schedule, some inmates would have one additional hour in the mornings, while others would have an additional hour in the afternoons. Warden Britten also indicated that the dayroom schedule would again be reviewed by the administration by no later than May 1, 2006.

As adjusted, the scheduled dayroom hours at TSCI would be increased from one or two hours per day, to two or three hours per day. It is interesting to contrast this new arrangement with the dayroom schedule that is being utilized at the Lincoln Correctional Center, which is the DCS institution most like TSCI, at least in terms of inmate security level. At LCC, the dayrooms are currently open in the mornings, afternoons, and evenings at the times the facility yard is open, that is, from 9:00 AM to 10:15 AM, from 12:00 PM to 3:15 PM, and from 5:00 PM to 8:45 PM, amounting to a total of over eight hours per day. Of course, LCC is a well established facility, that has been in operation for some 25 years, while TSCI is a new facility that arguable is still experimenting, in operational terms, and trying to find the optimal schedule for dayroom hours. Certainly, scheduling two or three hours of dayroom per day, instead of one or two, can be viewed as an increase, but it is still well short of the total dayroom hours that are allowed at LCC.

In our judgment, providing some additional dayroom access to the TSCI inmates is a move in the right direction, and is a step that is being taken at the right time. It is not coincidental that the dayroom scheduling issue has been raised by the TSCI

inmates at this time. Given the onset of winter weather, and the physical layout of the facility, the TSCI inmates were spending a large amount of time confined to their cells, and were understandably displeased. On the other hand, in light of the somewhat troubled history of TSCI, and particularly the assaults on staff in the dayrooms, it is reasonable that the institution would be cautious about opening the dayrooms for as many hours as are allowed at LCC, for instance. It is right for the administration of TSCI to be careful in adjusting the dayroom hours, but it would be wrong for the administration to be slow in making those adjustments, when the need is recognized. The timing of change is difficult, of course, but it is our observation that not acting quickly enough can often be as much, or more, of a mistake than acting too quickly.

Warden Britten's response to the inmates' petition has also indicated that the dayroom schedule will be reviewed by the facility's administration again, on or before May 1, 2006. Obviously, it is desirable to review the dayroom scheduling, but in our opinion it was a misjudgment to have cited the May 1, date in that context. Even though the May 1 date was mentioned by Mr. Britten as being, in a sense, a ceiling and not a floor, the TSCI inmates are likely to hear that as being "don't expect any changes until May." In fact, *the review of the dayroom scheduling is something that should be ongoing, an open issue, a situation that could change at any time, and the Ombudsman's Office would recommend that this point be stressed in the communications with the TSCI inmates.*

In the end, it is clear that the TSCI dayroom schedule is not a settled thing, cast in stone, never to be changed. The TSCI dayroom schedule has, in fact, already been marginally adjusted, and may be further liberalized in the future, if security concerns allow. From the perspective of the inmates, however, the glass still appears to be mostly empty. For the future, it is, obviously, in the best interests of the inmates to cooperate in making the dayrooms a safe place for both the inmates and the staff, and our message to the inmate community would be to urge patience, and to stress that they need, as a community, to police themselves, so that access to the dayrooms can ultimately be expanded.

B. FOOD SERVICE

The second concern of the inmate petition relates to food service. As you know, the situation with food service at TSCI differs significantly from other Nebraska correctional institutions in that the food service at the Tecumseh facility is pro-

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vided by a private contractor, Aramark, a major corporation that has contracts with more than 475 correctional facilities in North America. Other Nebraska facilities are staffed by State employees who supervise inmate cooks and kitchen help. The inmate petition raises questions about the quantity of food that is being served by Aramark, the manner of preparation, menu substitutions, serving line delays, and even the eating utensils occasionally provided. However, when all of these concerns are added together, what they suggest to the inmate population, or at least to those who signed the petition, is that the vendor may be attempting to cut corners to avoid costs and improve its profit margin, and may not be providing the service agreed to in the TSCI food service contract.

The Ombudsman's Office is aware, of course, that "complaints about the food" are endemic to correctional institutions, just as they are in the military, or in any setting where food service is regimented. We also understand the challenges of food preparation in this unusual environment. Preparing nutritional food economically for a large number of people, from different cultures, and with different individual needs and tastes, is not an easy task. However, in the case of TSCI, the challenges are "complicated" by the additional variable that Tecumseh represents the only DCS facility with a privatized food service vendor. This fact brings a different dynamic to "food complaints" at TSCI, just as it does to medical complaints made in the context of TSCI's "privatized" medical service. Because of the involvement of the private vendor, inmate complaints about the TCSI food, or about medical treatment, are complicated by the underlying suspicion among inmates that lapses in service, or in treatment, are really a reflection of attempts by the vendors to cut corners in order to improve their profit margin.

The Ombudsman's Office appreciates the fact that the Department has appointed its own Contract Monitor, who has the job of overseeing the overall performance of the food service and medical treatment vendors. Clearly, that kind of oversight is a necessity in any situation where the taxpayers' dollars are being used in this way. The Ombudsman's Office also appreciates the arguments behind the idea of "privatization," and is not prepared to enter into the debate over that fundamental policy. We do, however, believe that it is useful, in retrospect, to question the idea of trying out the "privatization" model at TSCI, as opposed to at another one of the DCS facilities. TSCI is a new facility, with many important and unavoidable challenges to meet, and arguably that facility, and its administrators, did not need the additional complication of "privatized" food and medical services.

Given the situation that exists with regard to food service at TSCI, *the Ombuds-*

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man's Office recommends that the TSCI administration attempt to intensify its supervision of the food vendor for the foreseeable future. Difficulties like those cited in the Warden's response are probably unavoidable, but at the very least the Contract Monitor should make certain that a process is in place to assure that she is informed by the vendor each and every time that there are problems resulting in menu substitutions, serving line delays, or the substitution of eating utensils, not to mention issues relating to the quantity or quality of the food being prepared and served. *Moreover, the TSCI administration should make it a point to notify the inmate population whenever problems occur in food service, like those that are cited in the Warden's response, and to inform the inmates of the cause of the problem.* Transparency in a situation like this is always a good policy, and should go a long way toward assuaging inmate concerns that food issues are really a reflection of wrongful motivation on the part of the vendor.

The Ombudsman's Office is also particularly concerned about the case of inmate Robert Deas (#50613), who was formerly employed by Aramark to work in the TSCI kitchen. Mr. Deas, who was one of the moving forces behind the inmate petition, had earlier raised concerns with the administration about whether the food being served in the cafeterias at TSCI were consistent with the serving sizes that were published and agreed upon pursuant to the Aramark contract with the State. It is, at best, an uncomfortable coincidence that, shortly after making this report, Mr. Deas was terminated from his position as head cook. Obviously, it is in the best interests of the institution, the inmates, and the taxpayers for TSCI to make certain that the vendor is following the terms of the food service contract. Reports about possible inconsistencies with service mandated by the contract, or any other concerns about the vendor's practices, are things that should definitely be encouraged, because such reports are just the kind of information that will help to make the Contract Monitor's job much easier. In light of this, *the Ombudsman's Office would recommend that the termination of Mr. Deas be investigated by DCS on the Departmental level, and would strongly encourage restoring Mr. Deas to the former position and pay scale he had achieved in the TSCI kitchen, if it is determined that his termination was not justified.*

C. CANTEEN

The inmate petition raised concerns about the TSCI canteen, specifically regarding prices that supposedly are unnecessarily high, and regarding policies prohibiting special orders of certain items as being "gang related." The Warden's response to

the petition indicated that there had, in fact, been a minimal decrease in the price of *essential canteen items* over the past twenty two months. An additional comparison of other selected items showed only a small (3.47 %) increase in prices over the same period. Additionally, the Warden's response noted that canteen prices are uniform throughout the DCS institutions, and that any profits from the TSCI canteen are placed in the Inmate Welfare Fund, and are utilized to purchase items that directly benefit inmates.

The Ombudsman's office has no reason to believe that the practices of the TSCI canteen are significantly different than at other institution's canteens. It is clear, however, that the inmate perception at TSCI is that there are differences. In order to educate inmates on the realities of the canteen, it would be to the advantage of both the inmate population and the institution's administration to provide a means for TSCI inmates to have greater involvement in the operations of the canteen. As for how this might be achieved, that is a subject that will be discussed later in this letter.

D. INMATE JOBS AND PAY

The issue of low rates of inmate pay and lack of meaningful work opportunities at TSCI raised in the inmate petition are not a new concerns, but are issues that have been frequently voiced by TSCI inmates to the Ombudsman's Office and others. The need for inmate jobs, and for adequate inmate pay, are a common concern among all inmates. Although the inmates incarcerated in Nebraska facilities are provided with basic food and clothing, the inmates are also generally expected to pay for personal hygiene and other "necessities" out of their own pockets. Arguably, the issue of jobs and pay is a matter of heightened importance to the inmates living at the Tecumseh facility. As a maximum security facility, a substantial portion of the TSCI inmates are serving long sentences. Inmates with a limited opportunity for parole or community custody, often without family support, must rely heavily upon institutional jobs as their source of income. It is also the case that, with longer term inmates, there is less turnover in the higher paying inmate jobs at TSCI, which creates additional pressures within the facility's inmate community.

The response to the petition indicated that the institution "is currently looking at increasing the number of jobs available to general population inmates," and is particularly seeking to add a wood shop at the facility. The response stated that

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this new shop would provide a “substantial,” but unspecified, number of additional work opportunities for TSCI inmates. However, nothing was said in the response about the details of the plans for the new shop, its funding, its management, or the timing of its implementation. Although the response to the inmates’ petition also asserted that the inmate pay scale in Nebraska is comparable to the scale in other states, the administration’s response also acknowledged that inmate pay levels have not increased since 1990. It is also notable that, due to the lack of job opportunities at TSCI, inmates with the higher paying jobs who worked seven-day work weeks recently had their work weeks reduced from seven to five days, in effect resulting in a 28% cut in pay. Clearly, the overall availability of inmate jobs at the Tecumseh facility is not optimal, and needs to be addressed.

The Ombudsman’s Office realizes that the inmate pay scale was recently adjusted to allow for enhanced compensation of inmates who are actively furthering their education. We also understand that the matter of the inmate pay scale is a Department-wide issue, rather than a concern that is unique to TSCI. The recent adjustment in the inmate pay scale shows clearly that the Department is not “numb” to the pay scale issue, and that adjustments can be made. The key, insofar as the pay scale is concerned, is that the inmate pay scale be adjusted when necessary to respond to any inflation in the prices demanded in the inmate canteens. *Since the response to the inmate petition acknowledges that “from December 2003 to November 2005” there has been “an average increase of 3.47%” on the prices of some canteen items, the Ombudsman’s Office would recommend that the Department review its inmate pay scale to determine whether it is desirable to adjust the inmate pay rates to deal with increases in canteen prices.*

For those who are responsible for administering TSCI, the pressing problem is the issue of jobs. In fact, the need for more jobs for the TSCI inmate population has been recognized as a concern basically since the facility opened. Inmate jobs like the wood shop positions announced in the warden’s response would certainly be beneficial, but it is probably only a start to addressing the issue. In the opinion of the Ombudsman’s Office, the “jobs issue” is one of the priority issues involved in the long term management of TSCI, and resolving that problem should be treated as a priority by the Department. *The Ombudsman’s Office recommends that the Department do whatever is necessary to expedite the opening of the wood shop at TSCI, and would also encourage the Department to explore other job options for TSCI, including the possibility of instituting gardening or farming programs that could offer a number of benefits to TSCI and its inmates.*

E. DISCIPLINARY ISSUES

The inmate petition raised concerns about the disciplinary process used for the handling of allegations of rules infractions against inmates. Calling the process a "kangaroo court," the petition particularly raised concerns that proper investigations of alleged rules violations are not being conducted. The inmate petition also generally contends that the process, as it is executed by the Department, is unfair.

As you know, the DCS disciplinary process commences when a Misconduct Report alleging a rules violation is prepared and submitted by a DCS employee. In response to such a report, a DCS Investigating Officer is assigned to the case. The Investigating Officer is supposed to do what the title implies, that is, investigate the allegations encompassed in the Misconduct Report. It is interesting that, in regard to the Investigating Officer, Mr. Britten's response, in effect, minimizes the role of the Investigating Officer. In his response, Warden Britten emphasizes that DCS regulations require the Investigating Officer to forward the misconduct report to the disciplinary committee for an hearing where the Investigating Officer "finds *some evidence* that an offense was committed." As a practical matter, since in a large majority of cases the allegation being made by the employee is itself "some evidence," this means that nearly every case will necessarily end up on the disciplinary committee's desk, except for the few cases that, as a technical matter, simply fail to allege a violation of the rules. The upshot of this is that, in fact, a very high percentage of DCS misconduct reports do go to hearing.

Of course, the Ombudsman's Office receives a significant number of inmate complaints concerning disciplinary issues every year, and so we know how the system works. As we have observed the workings of the disciplinary system, our office has long been concerned that there is a tendency within DCS to have an unusually high number of misconduct hearings. Indeed, it is our understanding that some other states experience a significantly lower number of inmate disciplinary proceedings per inmate than does the Nebraska Department of Correctional Services. According to the *2001 Corrections Yearbook*, published by the Criminal Justice Institute, the State of Iowa had a total of 19,034 inmate misconduct reports in 2000, while the State of Nebraska, a state with approximately one-half as many inmates as Iowa, had 20,894 inmate misconduct reports in 2000. It is interesting to compare these statistics with a study done for the U. S. Department of Justice covering the years 1992 through 1999. (A copy of some excerpts from the study is attached.) The results of that study showed that nationally the states averaged 2.5 inmate misconduct reports per inmate annually. When this 2.5 per inmate average

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is compared with the approximately 8,000 inmates in the Iowa system, it would appear that Iowa would have been right on the national average for inmate misconduct reports with its 19,034 reports in 2000. Obviously, Nebraska, with its approximately 4,000 inmates and 20,894 misconduct reports in 2000, would have been substantially above the national average. We cite these statistics in this context, because the point raised in Warden Britten's response relating to the role of the Investigating Officer may expose one of the reasons why this imbalance is the case.

It would appear that one important missing piece in the DCS disciplinary process is that which might be characterized as "prosecutorial discretion." Certainly, Mr. Britten's response makes it clear that the Investigating Officer has no such discretion. Another implication of the Warden's response is, in effect, that the inmate's suggestion that the investigations conducted are not meaningful is essentially correct. The Warden is basically saying that the Investigating Officers do not need to conduct a detailed investigation, because all that they need to do is to find "some evidence," a very low standard. If the investigations being carried out in response to the Misconduct Reports are not detailed, and if no one involved in the pre-hearing process really has prosecutorial discretion, then it is small wonder that a very high percentage of DCS disciplinary cases go to hearing.

It should be emphasized that the Ombudsman's Office has recognized that there have, in fact, been significant improvements in the DCS disciplinary system in recent years. As Warden Britten correctly observed in his response to the inmate petition, most of the DCS institutional disciplinary hearings are now being conducted by a trained hearing officer. In addition, we have noted that the Department's Appeals Board has been contentious about correcting errors and reversing cases where there was a clear mistake in the disciplinary process. The Ombudsman's Office believes, however, that there is a continuing need for improvement of the DCS disciplinary process in the pre-hearing phase. In particular, we would suggest that the process needs to be adjusted to restore the concept of "prosecutorial discretion," perhaps at the institutional CEO level. ***The Ombudsman's Office recommends that the pre-hearing phase of the DCS disciplinary process be reviewed by the Department to see whether improvements can be made to allow for more discretion in deciding whether to go forward with disciplinary hearings.***

F. BEHAVIOR OF TSCI STAFF

The inmate petition raised concerns about certain practices by TSCI staff, particularly with regard to the search of inmates' cells. The 458 inmates who signed the petition felt that the staff treated their property disrespectfully, and were upset that searches were conducted at unusual hours of the day, and that the inmates who occupied a cell being searched were not allowed to be present to observe the actions of staff while the cell searches were in progress. The TSCI inmates' petition also generally asserted that the TSCI staff includes individuals who "have no people skills or respect for others," and who are "blatantly rude, disrespectful, and racist."

With regard to the manner in which cells are searched, Mr. Britten's response to the petition explained how searches are done, but really failed to offer a clear explanation for those processes and practices. Presumably, the basic explanation for how the searches are done is "security reasons," for instance, to keep the inmates from being aware of what places in the cells are searched, or not searched, and to keep the inmates from trying to distract the staff while the cell searches are in progress. There are also obvious security reasons for wanting the searches to occur at unpredictable times of the day. In the opinion of the Ombudsman's Office, these are perfectly legitimate security concerns, and do clearly justify the timing of the searches, and the policy of not having the inmates present to observe the searches. It would have been helpful, however, if Warden Britten's response had made these points, rather than simply saying, in effect, "this is how it is done."

While it seems clear that the search procedures complained about in the petition are appropriate, in saying this we by no means intend to undercut the seriousness of this issue for the TSCI inmates. In our interviews of inmates at TSCI in 2004, we learned that the inmates take the issue of how the searches are handled very seriously. As was discussed in our April 20, 2004, letter to Mr. Hopkins:

most of the inmates that we talked to said that several of the unit employees did not respect inmates or treat them appropriately. One of the (TSCI employees) was singled out by inmates as being careless and/or overzealous when conducting routine searches of cells...(and) was accused of damaging property and of throwing paper around cells. Additionally, concerns were expressed about cases where no record was made on "shake-down sheets" of property that was confiscated from cells by staff.

That these complaints that were prevalent in 2004 are still being featured in the

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inmates' 2005 petition is a source of some concern. Obviously, when cells are searched, as they necessarily must be, the searches should be done in a manner that, to the extent practicable, avoids disordering or damaging inmate's personal property. It has to be accepted that cell searches will usually inconvenience the inmates involved, but it is by no means necessary that cells be left in disarray, or that inmate personal property be damaged.

When we look at the recent inmate petition in conjunction with what we learned from TSCI inmates in 2004, it is clear that by far one of the most important issues raised was that having to do generally with TSCI staff behavior toward inmates. In his response to the petition, Warden Britten said that the expectation is that TSCI staff will be "interested and motivated to develop and acquire excellent interpersonal communication skills." Warden Britten also mentioned that the staff training specifically emphasizes a "commitment to diversity, listening to different perspectives, good interactions with others, and report writing." The Warden's response also correctly pointed out that the petition had failed to provide specific illustrations of the concerns about staff behavior toward inmates, and stated that specific allegations of misbehaviors by staff would be investigated, and that disciplinary action would be taken when appropriate.

Inmate complaints about TSCI staff attitudes have been voiced periodically since the opening of the Tecumseh facility. We highlighted this point in our April 20, 2004, letter to Mr. Hopkins, explaining that, in our interviews of inmates:

One of the (TSCI employees) was singled out by a number of inmates who indicated that he was unnecessarily rude and demeaning in his treatment of inmates. Concerns were also expressed by minority inmates that one of the (employees) exhibited racist attitudes toward some inmates.

While addressing concerns about staff professionalism in the hiring process, and through disciplinary actions against offending staff, are necessary steps, the Ombudsman's Office believes that more work may need to be done in the staff training arena. Particularly in light of the diversity of the Tecumseh inmate population, it is probably desirable for the staff of that institution, and perhaps other DCS institutions as well, to have special training in the area of cultural understanding and communication. Recently publicized ideas about "cultural competency" training that is designed to help people to work "cross-culturally" would seem to be an excellent fit for the correctional environment, where people from radically different backgrounds are thrown together in often stressful circumstances. With that in

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mind, *the Ombudsman's Office would recommend that the Department research and develop a "cultural competency" component to the training provided to the agency's facility staff.* (Please see attached materials.)

G. SANITATION

The inmate petition indicated that there are certain concerns with regard to the hygiene of TSCI inmates, and cleanliness of the cells. Inmates who signed the petition were upset that they were only allowed to take showers one time every day. The inmates were also concerned that they were limited to cleaning their cells twice per week. Warden Britten's response acknowledged that, while there may be a few work-related exceptions, in general, TSCI inmates are allowed to shower only once daily. The Warden also acknowledged that, as a general rule, cell-cleaning chemicals are made available to inmates only twice every week, although, in the case of an emergency, cleaning supplies may be made available as needed. Of course, the fact that the TSCI inmates are emphasizing the issue concerning the polices with regard to cell-cleanings may well be related to the day-room issue. The more time that the inmates are required to be confined to their cells, the more likely they are to have concerns about cell cleanliness.

Certainly, we can conceive of reasons why the institution might want to limit the frequency of inmate access to showers, and to materials for the cleaning of cells, but, unfortunately, Warden Britten's response did not offer anything in the way of an explanation for those limits. While the Ombudsman's Office is not prepared to make any recommendations on this subject at this time, we would stress that we can certainly understand that some inmates might be more fastidious than others, or have different needs in terms of personal and cell cleanliness. Additionally, as a general matter, the Ombudsman's Office would remind the TSCI administration that the threat of the spread of infectious disease within the prison environment ratchets up concerns about cleanliness in the institution. As a general matter, it would seem that cleanliness and sanitation in the facility is a consideration that should be subordinate only to security concerns.

H. COMMUNICATION WITH THE INMATES

As we have already indicated, the Ombudsman's Office believes the single most important feature about the inmate petition is the fact that the inmate population at

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TSCI chose to express their grievances and associated frustrations through a petition, rather than through less constructive means. Of course, we also appreciate the seriousness with which the Department approached the concerns raised in the petition. While we recognize that some positive steps are being taken by the TSCI administration, particularly with regard to increased scheduling of dayroom time, and the planned addition of the prison workshop jobs, in our judgment what the inmate petition has most emphasized is the basic, and continuing, need for improved communications between the TSCI administration and the inmate population at the facility.

In our April 20, 2004, letter to Mr. Hopkins, the Ombudsman's Office particularly stressed the point that prisons need "the cooperation of inmates to run optimally," and that "positive communication between staff and inmates is a critical component to fostering that cooperation." We also discussed the role of the Warden of the institution in promoting an atmosphere of "positive communication" at TSCI, pointing out that "our interviews and other contacts have created the impression that Mr. Britten is perceived by some staff, and some inmates, as being a remote figure who is disinterested in their problems." In expanding on this in our April 20, 2004, letter, we said that:

Whether this is a fair characterization of the Warden's actual behavior, or not, seems to be less the point than the simple fact that the perception does exist. Warden Britten needs to address this perception by being more "visible," by making it a point to engage in substantive meetings with inmates and line staff, and by demonstrating to all that he understands that there are ongoing problems at TSCI (as there will always be at any institution) that he intends to address...Above all, Warden Britten needs to demonstrate to the entire TSCI community that he understands that his fundamental role is that of a "problem-solver," and he needs to take that role to heart.

Admittedly, although we stressed this point in 2004, the Ombudsman's Office did not offer anything in the way of practical suggestions for how communication with the inmate population might be improved, aside from the recommendation that "the Warden...personally read and monitor the progress of action on all inmate grievances," in order to be "better able to garner an understanding of the content and pattern of inmate concerns, and also to make certain that the grievance process itself is working properly."

While the Ombudsman's Office continues to believe that our suggestion of having

Warden Britten monitor individual grievances provides a useful method for “keeping a finger on the pulse of the institution,” our office would also like to make some other recommendations that might further communication at TSCI. In that regard, we believe that, in light of the history of the institution, and particularly in light of the positive development of the inmates’ decision to express their collective grievances through the recent petition, the time has come for TSCI’s administration to “formalize” or “institutionalize” new forums of management-to-inmate communication at the facility. *To that end, the Ombudsman’s Office would recommend that the TSCI administration:*

- 1. Arrange for annual meetings of key administrators with a randomly selected panel of inmates representing all housing units for the purpose of discussing the significant concerns, or collective grievances, of the facility’s inmate population;*
- 2. Form a Canteen Committee comprised of staff and inmates to advise the TSCI administration about concerns related to canteen products, prices, and procedures; and*
- 3. Designate key administrators, including the Warden, to eat meals with the inmates at least once every week.*

As we understand it, the TSCI Deputy Warden is already in the practice of conducting quarterly meetings with the inmate club leaders to discuss common issues concerning their clubs, and we would certainly encourage that this practice be continued.

As you know, the institution of these sorts of management/inmate forums at TSCI would by no means represent a dramatic departure from accepted practice. In fact, as we understand it, the approaches described above are already being used with success at LCC, the facility in the DCS system that perhaps has the most in common with TSCI in terms of the inmate population. As we see it, so long as these forums are operated in a way that prevents inmate participants from abusing their role in their relationship with other inmates, and so long as it is made clear that the inmates are not being given the implicit power to make security-related decisions about the running of the institution, forums of this nature would have the potential to make significant contributions to the management of the facility. Forums of this nature would not only open new lines of communication with the TSCI inmate population, but they would also give the inmates a sense that they have a new and

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legitimate way in which to influence the management of the facility on issues that are important to them, like the operation of the canteen. Forums that build new sources of communication with the inmate population can also be a meaningful source of information for the TSCI administration in regard to areas inmate concerns and dissatisfaction. Opening new lines of communication, and finding ways to collect more in the way of useful information, are important goals for any administrator, and certainly are steps that would contribute to the sound management of TSCI.

As in the past, the Ombudsman's Office welcomes the Department's response to our observations and recommendations. At some point, we would like to share a copy of this letter with the TSCI inmates and the news media, so a response within a reasonably short period of time would be desirable.

Thank you for your continuing attention to the concerns raised by the recent inmate petition and for your personal commitment to improved performance in all DCS institutions.

Very truly yours,

Marshall Lux
Ombudsman

cc. Mr. Frank Hopkins
Mr. Larry Wayne
Ms. Robin Spindler
Warden Fred Britten

Attachment #5



Dave Heineman, Governor
Robert P. Houston, Director

MEMORANDUM

DATE: February 5, 2013
TO: James Davis, Deputy Ombudsman for Corrections
FROM: Mario F. Peart, Warden – LCC *Mario Peart*
SUBJECT: LCC Operation Modification Time Lines

Sequence of Events:

On 3/22/10, there was a fight on the B Unit mini compound yard between two gang members, one a Blood and the other a Crip. After the altercation, there were two large groupings on the mini compound facing and yelling at each other. The compound was subsequently closed.

Again on 5/10/10, a large grouping of inmates was discovered on the compound. Additional staff were sent to disperse the group. During this time, two gang members engaged in a fight, one from the 18th Street Gang and one from East Side Locos and one of the inmates assaulted a staff member.

On 8/11/10, two rival gang members engaged in an altercation on the E Unit mini compound.

Following the above, there were five other gang-related fights. As a result, on 10/12/10, LCC was placed on a lockdown status and DEC staff assisted with securing the institution. Still yet, there were four more gang-related fights.

The beginning of 2011 resulted in two more gang-related fights and in February, a gang member assaulted Capt. Sparks. Information revealed that she was specifically targeted because she is the Security Threat Group Coordinator.

This incident was followed by assaults on two other staff members by gang members. The last one resulted in serious injuries. As a result, on April 10, 2011, the LCC was placed on emergency lockdown status and on April 14, 2011, Warden Sabatka-Rine communicated to staff by written correspondence that the LCC would be on a modified institutional schedule after review of the events that had lead up to this point and input from line, supervisory and Executive Staff. On April 25, 2011, Warden Sabatka-Rine sent written notice to be posted in the housing units addressed to all LCC inmates of the modified schedule of operations. In it, she reminded the inmates that we are committed to providing a safe environment for staff and inmates.

MEMO TO JAMES DAVIS
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During the next six months of modified operation from April 14, 2011 to October 18, 2011, discussions and conversations took place as to how the facility would operate concerning access to yards and the various programs.

April 14, 2011: (From the onset) provisions existed for regular meal service, visits, telephone calls, showers, laundry services, cell cleaning, medical/dental appointments, canteen services, mail delivery, law library, work assignments, education and recreation time.

Week of April 20, 2011: Inmates permitted to attend worship services, recreational library and hair care services and increased access to ice/hot water.

May 16, 2011: Self-betterment club activities resumed.

June 11, 2011: Big yard open during morning and afternoon recreation times on weekends and holidays only and for scheduled recreation times.

In September of 2011, Warden Peart was assigned as Warden of the Lincoln Correctional Center and after review and consultation with staff and conversations with Mr. Hopkins, dayroom access was added to the schedule. The notice was sent out on October 18, 2011 to the Lincoln Correctional Center staff and inmates that after careful review and evaluation of the events to this point, that the current form of operation will no longer be referred to as modified operation but has now become standard operation and, as with every aspect of the facility, we will continue to monitor, evaluate and make changes and/or adjustments to all areas, departments and programs when necessary to make the LCC a safe place for staff, inmates and visitors.

MFP/lab

xc: Robert Houston, Director
Frank Hopkins, Deputy Director/Institutions
Diane Sabatka-Rine, Warden NSP
Fred Britten, Warden TSCI
File

Attachment #6

NEWS and MISCELLANEOUS

By Mel Beckman

Racial percentages, Nebraska Department of Correctional Services

The sources for the information below are the 2011 Annual Report and Statistical Summary of the Department of Correctional Services and the U.S. Census Bureau's Nebraska Quick Facts.

Nebraska's population: 1,842,641 (2011 estimate)

White Persons represent 90.1% of Nebraska's population.
White females are 60.5 % of the female prisoners.
White males are 55.5 % of the male prisoners.

Black Persons represent 4.7 % of Nebraska's population.
Black females are 20.2 % of the female prisoners.
Black males are 27% of the male prisoners.

Hispanics/Latinos are 9.5% of Nebraska's population.
Hispanic females are 8.9% of the females prisoners.
Hispanic males are 12.4 % of the male prisoners.

Native Americans are 1.3% of Nebraska's population.
Native American females are 6.5 % of the female prisoners.
Native American males are 4 % of the male prisoners.

Employees of the Department: 2157

White	1948	(90%)
Black	89	(4%)
Hispanic	69	(3%)
Native American	10	(.05%)
Other	41	(2%)

Nebraska Statewide Directory of Resources for Sex Offender Outpatient Treatment

This 8-page listing of resources, published by the Behavioral Health Division of the Nebraska Department of Health and Human Services was revised in September of this year. The new revision lists several dozen individuals and agencies offering sex offender treatment. The original list was compiled with the assistance of professionals statewide. The Division of Behavioral Health does not endorse or promote any of the therapists who have self-identified in the directory. It is not considered an official or all-inclusive listing and is a work in progress. The directory is online at http://dhhs.ne.gov/behavioral_health/Documents/Sex-Offender-Directory.pdf.

Lockdown at the Tecumseh State Correctional Institution and the Nebraska State Penitentiary

The Office of Public Counsel/Ombudsman has been receiving letters from inmates about restrictions placed on them since September at the two institutions, as has the NCJR. The Ombudsman, Marshall Lux, has shared the response he has been giving to them and it is printed in the next column.

Ombudsman's memo

First of all, I believe that it would not be correct to characterize what is happening at TSCI now as a "lockdown," although it started out in that context, and has some features of a lockdown. In truth, what is happening, as we understand it, is that the way in which TSCI has been managed in the past is now going through a transformation, and is moving toward what will be a "new normal" in terms of how the inmate population will be managed. This is not a case of "collective punishment," or an "overreaction" to a specific fight that occurred in the facility, but is a deliberate effort on the administration's part to change the way that the TSCI inmate population is going to be handled.

Secondly, I would say that it is our understanding that what is happening at TSCI and NSP is a "work in progress," and is by no means final. In fact, I would suggest that what is going on now at these two facilities is more in the nature of small steps, or progressions, as the administration of each facility is looking for ways that the facility might be managed differently going forward. When a fundamental change like this takes place there are obviously going to be complications and wrinkles that will have to be worked out, and it will take some time for those issues to be resolved.

On a practical level, what has fundamentally happened here is that TSCI and NSP are adopting a new management model that eliminates the wide-open, access-to-all "Big Yard," and instead separates the population into smaller, more manageable segments organized around the Unit. This is being done, as we understand it, as a way for the administrations of TSCI and NSP to maintain an optimal level of real control over the facility, and restrict some gang activity that might otherwise have threatened the safety of the inmates and staff at the facilities. As a general matter, I believe that the Department has the legal authority to do this. However, as with most things in life, the most important questions are concerned with the details, and how it is done, and on this point our office believes that there are still some very important issues that must be addressed. One of our main goals in this situation is to encourage the management of TSCI and NSP to allow the general population inmates to have more time outside of their cells, even if that only means more time to circulate in the Day Room. We are also interested in promoting changes in the scheduling, etc., so that the new management model will have limited impact on the programming and privileges that have traditionally been available to the inmates, which includes library access, work opportunities, education, canteen, hobby, clubs, making telephone calls, and taking showers. We would also like to see the administration limit or eliminate those situations where inmates have to routinely sacrifice one activity to do another, like having to choose between going to canteen or recreation.

Finally, I want to stress that the Ombudsman's Office is still working aggressively on these issues. Mr. James Davis of our office in particular has been working with the administration to advocate on these issues, and will continue to do so. I can also report that Mr. Davis, Mr. Moreland, Ms. Brunkow and I met earlier this month with Director of Corrections Robert Houston, Deputy Director Frank Hopkins, the Wardens of TSCI and NSP, and others to discuss these issues in detail. We will be meeting again to see what progress has been made, and in the meantime, we will be following developments at TSCI and NSP, and making recommendations for changes, as the opportunity allows.

Marshall Lux, Ombudsman

Attachment #7

MARSHALL LUX
Public Counsel



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April 15, 2013

Mr. Robert Houston, Director
Department of Correctional Services
P. O. Box 94661
Lincoln, Nebraska 68509-4661

Dear Mr. Houston:

I am writing to you today to summarize the views of the Ombudsman's Office on the subject of the modified arrangement/system for the management of the general population inmates at the Nebraska State Penitentiary and the Tecumseh State Correctional Institution. For a number of months now the general population inmates in those two facilities have spent large segments of their days locked up in their (typically two-man) cells in what is, in essence, a modified or managed lock-down situation. In fact, when this all began the situation was such that many general population inmates at NSP and TSCI were being confined to their cells for 22 hours out of the day. And when the inmates were allowed out of their cells they had to spend much of their time attending to daily chores, like taking showers and making telephone calls, leaving them with little time to exercise and socialize with other inmates. In the months that have followed, the framework of this "managed lock-down" has been altered somewhat so that now the NSP and TSCI general population inmates are being allowed out of their cells for a few more hours per day. However, the situation that currently exists at NSP and TSCI is still nothing like what it was before, in terms of the number of hours that these inmates are allowed to leave their cells each day to conduct important daily activities.

The practice in Nebraska prisons before the initiation of this new management model at NSP and TSCI was to allow most of the inmates to leave their cells at some point in the morning, and then permit them to spend much of the rest of their waking hours outside of their cells. During that time they could meet with their visitors, attend classes or programming sessions, participate in club activities, exercise, and socialize with other inmates. The only exception to this out-of-cell norm was those times in each day when inmates were expected to return to their cells for "count." However, the new arrangement at NSP and TSCI has substantially changed this earlier practice, and has dramatically altered the "quality of life" of many inmates in two of Nebraska's most important correctional facilities. This is a situation that our office could not ignore.

I certainly appreciate all of the time that you and other DCS administrators have given to my staff and I as we have tried to address this significant issue. I felt that we made real progress, at least in improving

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our understanding of the issue, through the group meetings that we held, and I particularly appreciated your accompanying Mr. Moreland and I on the inspection several weeks ago of living units at NSP and the Lincoln Correctional Center. I felt that we gathered valuable information during that tour, and the professionalism of the staff and administrators at those facilities, including, of course, Wardens Peart and Sabatka-Rine, did not pass unnoticed. Also, as always, I am grateful for the time and attention that you yourself have contributed when the Ombudsman's Office is involved in examining important issues like this one.

The Ombudsman's Office has taken an interest in this issue because we believe that it is a particularly important matter in terms of defining the fundamental character of our state's correctional facilities, and because we believe that there have to be real checks and balances in our administrative systems, so that important decisions like this one are not made in a setting where only one perspective is dominant. We certainly respect the professionalism and expertise of the Department's leadership, but we want to make certain that this critical quality-of-life decision affecting hundreds of inmates is not made without there being meaningful input from other sources and perspectives. In this particular case, the Ombudsman's Office wanted to make quite certain that the interests and concerns of the general population inmates at NSP and TSCI were articulated as this important decision was being made, and so we have tried to the best of our abilities to perform in that role in our discussions with you and your staff. In practical terms this has placed the Ombudsman's Office in a situation where we have needed to express views that may be "unpopular" among some in the DCS hierarchy, but we cannot allow that to dissuade or discourage us in the performance of this important role.

When the change at NSP and TSCI was originally presented to our office in the latter part of 2012, it was characterized as a response to concerns about escalating gang activity and gang violence in these institutions, and was explained as a basic strategy to maintain effective control over the institutions by limiting, and thus better managing, inmates' access to the institutions' yards. I supported this idea at the time, because I understood that the Department's long-held policy of having "open yards" in its male facilities, while laudable, might eventually have to be modified in response to growing gang activity and other complications, and because I also understood that all general population inmates would still be afforded some amount of time (albeit less than previously) on a daily basis to exercise outside in the institutions' yards. What actually developed, however, was not just managed yard time, but a radically changed system wherein the vast majority of the general population inmates at NSP and TSCI, inmates who had in the past spent most of their daylight hours outside of their cells, were instead going to be confined to their cells for as much as 22 hours per day. I hope that it is thoroughly clear by this point that the Ombudsman's Office did not, and does not, endorse this arrangement. Quite the contrary, our office, as you know, has been consistently advocating for real changes in the existing schedule at NSP and TSCI, changes that would restore inmates' out-of-cell time to a situation that is near as possible to what it was before, with the understanding that inmates' yard time would still be limited, but that they would nevertheless be allowed to spend more time outside of their cells in their Unit's commons area.

In advocating for this position, we would reject the idea that we are somehow trying to "micromanage" the operation of NSP and TSCI. On the contrary, we believe that the question of out-of-cell time is an issue that involves fundamental standards and principles of humane treatment of prisoners, principles

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that are an expression of the moral imperatives of our society in regard to how we treat each other as fellow human beings - concerns that are far from being minor matters or insignificant details. In that regard, we would cite the new "ABA Standards on Treatment of Prisoners," adopted by the American Bar Association in February of 2010. ABA Standard 23-36(a) provides: "To the extent practicable and consistent with prisoner and staff safety, correctional authorities should minimize the periods during the day in which prisoners are required to remain in their cells." In addition, Standard 23-36(b) states that: "Correctional authorities should provide all prisoners daily opportunities for significant out-of-cell time and for recreation at appropriate hours that allows them to maintain physical health and, for prisoners not in segregated housing, to socialize with other prisoners." I would particularly invite your attention to the word "minimize" used in Standard 23-36(a). This word is especially important when we stop to consider that at the beginning of this process, when inmates at NSP and TSCI were being allowed out of their cells only two hours per day, what was going on was in essence an arrangement that minimized out-of-cell time, and very nearly maximized the amount of time that the inmates were being confined to their cells. Since then, the administrators at NSP and TSCI have gradually increased the out-of-cell time of their general population inmates, but not nearly to the point where it can reasonably be said that they are "minimizing" those "periods during the day in which prisoners are required to remain in their cells." The ABA Standards, as a general expression of principles, do not give us a specific answer as to what would be an appropriate minimum number of hours of out-of-cell time. However, in looking for an answer we might pause to consider the "Correctional Management Standards for Men's Prisons" of the State of Victoria in Australia, which sets the "minimum number of out of cell hours" at 12 hours per day. Or we might consider that the right answer to the minimum hours question is to be found in how DCS itself is currently managing one of its other institutions.

In analyzing this issue it is important to remember that Nebraska also has one other maximum/medium custody institution, the Lincoln Correctional Center, a facility that has a mix of inmates substantially the same as those found at NSP and TSCI. The most important difference between LCC and the other institutions in this context is that LCC actually went through this process of managing inmate access to the yards earlier, and has already arrived at an arrangement that successfully manages the access of its general population inmates to the yard, without compromising the LCC inmates' traditional freedom of movement outside of their cells. I believe that if what we are looking for is a standard for an adequate minimum of hours that inmates should be allowed outside of their cells, then we need look no further than what is happening now at LCC.

I do realize that there are differences in how the three facilities - NSP, TSCI, and LCC - are designed and how the Housing Units are configured. Although we learned in our recent visit to LCC and NSP that most of the Penitentiary's Housing Units have less square footage in their commons areas than is the case at LCC, I would not agree that this means that it is either necessary or acceptable to treat the general population inmates at NSP differently than those at LCC in terms of their out-of-cell time. (As for TSCI, it is my understanding that the TSCI Housing Units have even larger commons areas than do the Housing Units at LCC.) I recall that during our trip to NSP we visited one housing unit at a point where the inmates happened to be outside of their cells, and what we observed was that there were only about twelve of the unit's inmates who were actually sitting in the commons area at the time, a number which was hardly an overwhelming or unmanageable crowd. On the contrary, I continue to believe that the administrators at both NSP and TSCI could manage their facilities with a reasonable level of safety and security while still providing their general population inmates with more in the way of out-of-cell

time, even if that time had to be spent in their Unit's commons area.

The issue that we are concerned with here is the question of the *minimum* amount of out-of-cell time that a general population inmate should have at NSP or TSCI. I am aware that some inmates have more out-of-cell time than others do, because of their having CSI jobs, or because they must be out of their cells to attend programming sessions, etc. What we are concerned with here, however, is not a matter of how many inmates may be fortunate enough to have more out-of-cell time, but a matter of what the standard should be for the minimum of out-of-cell time allotted, an absolute floor, in terms of the least amount of time that the any general population inmate is allowed to be outside of his cell. I realize that there are some inmates at NSP and TSCI who may have decided to take advantage of more in the way of programming now because that gives them a means to be outside of their cells for a bit more time, but I do not believe that it is appropriate for the state to attempt to "motivate" its inmates by, in effect, depriving them of humane conditions of treatment, the kind of treatment that should be afforded as a minimum standard. I suppose that we could probably also motivate some of our inmates to take more programming by threatening them with physical abuse, but that would hardly be an appropriate course of action, and any resulting increase in the attendance at programming sessions would hardly justify the failure to meet the minimum standard of humane treatment that would be involved in such a situation. I would add that I also realize that the schedules at NSP and TSCI do have some complexities, and that on some days some inmates have more out-of-cell time than on other days. Once again, however, that is a situation that begs the fundamental question here, which is, "what should be *the minimum amount of out-of-cell time that all general population inmates should have every day.*" As I see it, the easiest and best way to find an answer to that question is to look at what is happening now at LCC.

The arrangement that now exists at LCC is something that, as I understand it, evolved over a period of about six months, and it is, as you know, an arrangement that daily allows the LCC general population inmates to have significantly more time outside of their cells than do the general population inmates at either NSP or TSCI. The best way to demonstrate this difference is to break down the day into three segments, Morning, Afternoon, and Evening, with the *minimum out-of-cell time at each institution* being as follows:

	<u>LCC</u>	<u>NSP</u>	<u>TSCI</u>
Morning	2 hours	2 hours	2 hours, and 10 minutes
Afternoon	2½ hours	2 hours	2½ hours
Evening	2½ hours	None	None
Total	7 hours	4 hours	4 hours, and 40 minutes

In addition, general population inmates at all three of the institutions are allowed time to attend three meals per day, which gives each of them about 1½ additional hours out of their cells in the aggregate. If we add these "meal hours" into the equation, then *inmates at LCC are receiving a minimum of 8½ hours in out-of-cell time per day*, as compared to a *minimum of only 5½ hours at NSP*, and *6 hours and 10 minutes at TSCI.*

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Although I suspect some might advocate for even more out-of-cell time as the proper minimum, in my opinion the 8½ hours of out-of-cell time per day being allotted at LCC is a morally defensible number, in terms of achieving the ABA standard of *minimizing* "the periods during the day in which prisoners are required to remain in their cells." On the other hand, I do not believe that the idea of keeping the general population inmates at NSP confined to their cells for 18½ hours per day, or keeping the TSCI general population inmates confined to their cells for very nearly 18 hours per day, represents a humane or morally defensible situation. While these inmates have committed crimes, and are subject to being punished for those actions, as human beings the inmates in the State's correctional facilities deserve to be managed within a certain standard of humane treatment. In my opinion, a minimum of 8½ hours of out-of-cell time per day, as is the practice at LCC, meets this standard, while the arrangements that are currently in place at TSCI (where inmates have more than 25% less out-of-cell time than at LCC), and at NSP (where inmates have almost 36% less out-of-cell time than at LCC) do not, in fact, "minimize" the periods during the day in which prisoners are required to remain in their cells, and thus are neither sufficient, nor satisfactory.

I have listened with some skepticism to the suggestions of corrections administrators that the general population inmates at NSP and TSCI are somehow becoming "adapted" to this new arrangement that radically changed previous practices, and significantly limited the amount of time that those inmates are allowed to be outside of their cells. It has even been suggested to us that many of the inmates are "happy" with the new arrangement, because having less out-of-cell time at their institution means less exposure to the potential that they will be assaulted by inmates who are troublemakers in the facility. In fact, I can assure you that our office has received many complaints from inmates at NSP and TSCI about this significant reduction in their out-of-cell time. As an example, I am enclosing a copy of a Memorandum that was prepared by our Deputy Ombudsman for Corrections, James Davis, discussing the content of complaints on this subject related in letters written to Senator Ernie Chambers by two NSP inmates. I am also enclosing a copy of a petition signed by what appears to be approximately five hundred of the inmates at NSP registering their collective displeasure at the new system that is keeping them locked up in their cells for most of the day. I would suggest to you that this hardly reflects a spirit of acceptance or "adaptation" to the new arrangements among the affected inmates.

If the general population inmates at NSP and TSCI are upset and unhappy with the fact that they are being locked up in their cells for up to 18½ hours per day, then that should hardly come as a surprise. Although the average square footage of the cells at NSP is about 76 square feet, a significant part of that space is occupied by beds, a stool, and a sink, so that the useable space is actually somewhat less than 76 square feet. And since almost all of the cells contain two occupants, this means that each of the inmates is spending something like three-quarters of his day living in a space that consists (per inmate) of only about 30 square feet. I am concerned that this is a situation that is likely to create unneeded, and potentially hazardous, stress within the inmate populations at NSP and TSCI, and might perhaps generate disagreements and explosive confrontations between cellmates. This may particularly be a concern when it is considered that a significant portion of the inmate population have mental health issues; disabilities that may make those inmates more prone to aggravating and inciting their cellmate. In addition, I am also concerned that the confinement of inmates to their cells for a far greater amount of time than was previously the case may itself contribute to the propagation of mental health issues among individuals who simply cannot cope with the prospect of living much of the day in cramped and

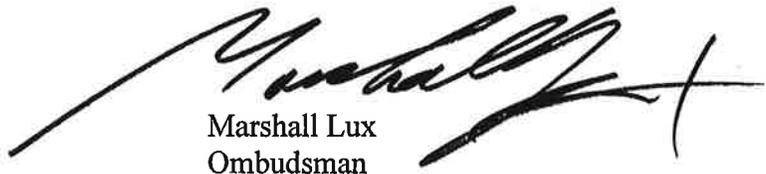
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April 15, 2013
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claustrophobic conditions. Finally, I am concerned that this situation, which places the inmates in a condition of enforced inactivity for roughly $\frac{3}{4}$ of the day, will over time cause a deterioration in the health of these now mostly sedentary inmates who have less access to space outside their cells to at least walk for exercise.

As a matter of common decency and humane treatment, we need to recognize that there ought to be a standard for the minimum amount of time per day that the Department's general population inmates are allowed to be outside of their cells. This is certainly something that is contemplated in the American Bar Association Standards, and while those Standards do not state specifically what the minimum time would be, I would suggest that it is somewhere in the range of eight hours per day in the aggregate. I cite this number of hours because it has been shown to be workable (even where inmates' time in the yards has been reduced) at LCC, and because it is a number that is relatively close to what was earlier the longstanding practice in Nebraska correctional facilities. With this in mind, it is the Ombudsman's recommendation that the Department of Correctional Services act as quickly as possible to change the schedules at NSP and TSCI to allow for the general population inmates in those facilities to have a minimum of $8\frac{1}{2}$ hours of out-of-cell time per day, as is already the standard at LCC. As for how this can be achieved, I would like at this point to leave it up to the Department to make suggestions. For example, I suspect that it might be possible to make some relatively minor alterations to the physical plant at NSP and TSCI that would allow the general population inmates there to have more in the way of out-of-cell time, without compromising safety. Specifics on steps of that nature, however, would obviously need to come from the Department.

I would appreciate it if you would provide any response that you have to this letter by May 10, 2013. Thank you for your attention to this issue, and for your patience in helping our office to address this important matter.

Very truly yours,



Marshall Lux
Ombudsman

Attachment #8

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Robert P. Houston
Director

May 10, 2013

Mr. Marshall Lux, Ombudsman
State of Nebraska
Office of the Public Counsel/Ombudsman
P.O. Box 94604, State Capitol
Lincoln, NE 68509-4604

RECEIVED BY



MAY 14 2013

Dave Heineman
Governor

OMBUDSMAN'S OFFICE

Dear Mr. Lux:

Marshall

I am responding to your April 15, 2013, letter received in my office on April 17, 2013. I continue to appreciate your interest in inmates' out-of-cell time. As you are aware, numerous predatory and retaliatory inmate behaviors led to my approval of schedule changes at the Nebraska State Penitentiary (NSP) and the Tecumseh State Correctional Institution (TSCI). In our discussions the past few months, I assured you the new schedules would be, and will be reviewed and expanded as time progresses. Our decisions were driven by safety and security concerns. While we have expanded the schedules several times since October, 2012, we have now reached a point where we can achieve 8 ½ hours of out of cell time daily for inmates at NSP and TSCI (see schedules attached-note the schedules do not include out-of-cell time for work).

The Nebraska Department of Correctional Services is committed to safe, humane prisons; I believe we have not wavered in that commitment. Since implementation of the new schedules at NSP and TSCI, we have not experienced significant groupings of inmates associated with Security Threat Groups (STG's), we have not had fights or assaults involving a high number of inmates in any incident and, we have not had a lock down due to the behaviors mentioned above, nor for any other reason. We will continue to evaluate schedules when possible, and monitor inmate activities throughout 2013. As I mentioned to you today, Virginia Department of Corrections, Deputy Director David Robinson will be here in October to assist us to make further modifications; he will conduct a 'close-out' on Friday, October 4, 2013, here at Central Office. You and members of your Office are most welcome to attend.

Thank you again for your interest in this matter.

Sincerely,

Robert P. Houston
Director

Attachment: "Summary of Out of Cell Time"

cc: File

SUMMARY OF OUT OF CELL TIME

Nebraska State Penitentiary

January 2013

1.5 hours	Meals
.5 hours	Showers/Phone Calls
1.0 hours	Recreational Yard
1.0 hours	Scheduled Day Room
1.0 hours	Job Assignment
.5 hours	Doors Ice/Hot Water
.25	Scheduled Iron Access
5.75 hours	TOTAL

May 1, 2013

1.5 hours	Meals
7.0 hours	Dayrooms*
**	Showers
8.5 hours	TOTAL

*Dayrooms Open: 0830-1030; 1300 to 1530; and 1815 to 2015 (maximum capacity 20). Inmates can remain in the dayroom during any of these times or opt to attend other scheduled outdoor recreation yard (minimum of 1 hour per day), gymnasium or program activities, shower, clean cells or use the inmate calling system. During times of extended daylight, 2 evening yard sessions are scheduled and available for individual housing units on a rotating basis.

**In addition to being accessible during open dayroom times, showers are also accessible beginning at 0630 (or when lines are called for breakfast); 1100; and 1630 (or when lines are called for the evening meal).

Tecumseh State Correctional Institution

January 2013

1.5 hours	Meals
.25 hours	Phone Call
.25 hours	Shower
1.0 hours	Yard/Gym
1.0 hours	Dayroom/Mini-Yard
1.0 hours	Job Assignment
5.00 hours	TOTAL

May 20, 2013

1.5 hours	Meals
7.25 hours	Dayrooms*
8.75 hours	TOTAL

*Dayrooms Open (includes housing unit mini-yard): 0700-1030 and 1130-1515. Inmates can remain in the dayroom/mini-yard during any of these times or opt to attend other scheduled outdoor recreation yard, gymnasium or program activities, shower, clean cells or use the inmate calling system. In addition, 1.25 hours of outdoor recreational time is provided from 1900-2015 hours for individual housing units on a rotating basis.

May 3, 2013



Dave Heineman, Governor
Robert P. Houston, Director

MEMORANDUM

TO: TSCI Staff and Inmates
FROM: Michele Capps, Deputy Warden (W)
DATE: June 3, 2013
SUBJECT: Expansion of dayrooms and mini yards

Effective June 10, 2013:

- The dayrooms will be open in the morning each day starting at 0615 hours. The mini yards will continue to rotate in accordance with the previous schedule.
- Mini yard doors will be secured between internal housing unit doors.
- Inmates will have access to the mini yards while the dayrooms are open in the afternoon from 1130-1515.
- In the evening, dayrooms and mini yards will be expanded to include all galleries from 1900-2015 hours.

Attachment #9

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Robert P. Houston

Director



Dave Heineman
Governor

June 5, 2013

RECEIVED BY

JUN 06 2013

Marshall Lux
Office of the Public Counsel/Ombudsman
P.O. Box 94604, State Capitol
Lincoln, NE 685009-4604

OMBUDSMAN'S OFFICE

RE: Out-of-Cell Time for NSP and TSCI Inmates

Dear Mr. Lux:

I have reviewed the copy you sent me of your May 21, 2013, correspondence to the Judiciary Committee. I appreciate your comments and I also note the cooperative spirit of your work with the Department of Correctional Services on the issue of out-of-cell time.

For various reasons, the inmate population is ever changing and with these changes we continue to strive to maintain the safety of our facilities. Our Department is nationally recognized for the safety of our inmates and staff; this is of utmost importance to us.

As stated before in our communications, we continue to look at and make adjustments in our facilities to include the Nebraska State Penitentiary (NSP) and the Tecumseh State Correctional Institutions (TSCI). Because of our review, changes have occurred to increase out-of-cell time for an inmate who is not involved with programming or jobs available in areas such as CSI shops, kitchen, maintenance, etc.

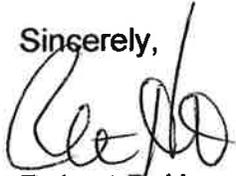
In your correspondence you noted a concern at TSCI in reference to out-of-cell time per day. Warden Gage and his staff have reviewed and made adjustments to increase out-of-cell time at TSCI. These adjustments will include additional day room and mini yard times and utilization of the TSCI ball field for organized recreational activities. The outcome will be that inmates at TSCI will receive 9.75 hours of out-of-cell time. Please see the attached memo effective June 10, 2013.

We will continue to review the schedules at our maximum security facilities. Also in this review we have asked for input as stated in your correspondence, from an outside

Marshall Lux, Ombudsman
June 5, 2013
Page -2-

Correctional Administrator. I am confident that the safety of these facilities will be maintained with this review process. Every opportunity to safely increase out-of-cell time will be explored and implemented, whenever possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Houston', written over the word 'Sincerely,'.

Robert P. Houston
Director

Attachment

cc: Frank X. Hopkins, Deputy Director – Institutions
Diane Sabatka-Rine, Warden, Nebraska State Penitentiary
Brian Gage, Warden, Tecumseh State Correctional Institution
Mario Peart, Warden, Lincoln Correctional Center

Attachment #10

Date: 3-10-15
To: All inmates
From: Rob Treptow, Recreation Manager
Subject: NSP inmate wellness incentive programs

NSP will begin implementation of the Wellness incentive programs. This currently will encompass the Handball/Racquetball league from last year and include a new Walking/running program. In order to be considered for participation in the programs, inmates must meet the following requirements:

- Clear of all class one misconduct reports for the last year.
- Clear of all class two and three misconduct reports for 6 months.
- Inmates must submit an interview request form stating which program you would like to be added to.
- All requests are due by the 15th of each month in order to be considered for the following months programs.

Walking/running program March 30-July 1, 2015

Times: Internal-Monday-Thursday-Saturday 2:10pm-3:10pm

External-Tuesday-Friday-Sunday 2:10pm-3:10pm

Handball/racquetball: May 1-September 1, 2015 6:30pm or as scheduled

The rosters will be updated on a monthly basis. The Walking/running league will continue through July 1, 2015. We will review it at the conclusion of that session in order to determine any changes and/or continue the program.

*Please note: the deadline for April will be extended to March 22, 2015 due to the short notice.

Attachment #11

Nebraska State Penitentiary
Community Involvement Committee

June 30, 2015
3:00PM

Present: NSP Acting Warden Robert Madsen; NSP A&R Manager Rob Treptow; Barb Brunkow, Assistant Ombudsman's Office; Judge Don Grant; Dave Larson, Vice President Reentry Alliance of Nebraska (RAN); Anita Eberspacher, Community Justice Center; Anthony Kay, Assistant Ombudsman Office; and Sarah Nelson, NSP AIII.

Presenter: Rob Treptow, A&R Manager – Inmate Wellness Program

The session of the Nebraska State Penitentiary (NSP) Community Involvement Committee (CIC) began with the introduction of staff and the community involvement committee representatives. New representatives include Dave Larson, Anita Eberspacher, and Anthony Kay. Mr. Madsen explained Warden Sabatka-Rine's Acting Deputy Director role at Central Office and how this has created several acting positions at NSP until the Deputy Director position is filled.

Mr. Madsen discussed Director Frakes' Repurposing and Consolidation Project and the plan to move NSP Protective Custody (PC) inmates to TSCI from NSP. This plan includes double bunking restrictive housing unit cells. This is a new concept for NDCS but not a new one throughout the country. The installation of the additional bunks in HU #4 has been completed. NSP has already transferred approximately 14 PC inmates to TSCI. Once PC inmates in HU #3 A/C galleries transfer to TSCI, it will become a general population housing unit and will ultimately be filled by inmates from the Diagnostic and Evaluation Center (DEC). Only one gallery in HU #4 will be for restrictive housing, which will be double bunked. The Control Unit will remain single bunked. An assessment will be completed on each inmate entering restrictive housing to determine living assignments. Although the additional bunks are installed, at this point, they remain single man cells.

In addition to relieving the overcrowding at DEC, the goal of the Repurposing and Consolidation initiative is to centralize resources to best serve our inmate population. Inmates diagnosed with mental illnesses will be transferred to the Lincoln Correctional Center, which currently provides specialized programming for this population. The Mental Illness Review Team (MIRT) consists of psychologists and mental health staff who meet monthly or as needed to evaluate behaviors and diagnosis to make judgment of best placement for inmates with mental illnesses. With the eventual centralization of PC inmates, more programming opportunities will be made available for this classification.

NSP changed its operational status in August 2012 after a series of significant incidents. Inmate movement now occurs in a much more controlled manner. Operations are constantly being evaluated in an effort to ensure safety and security and also provide inmates more out of room/housing unit time. The Inmate Wellness Program is a result of these assessments.

Rob Treptow presented the recently revised Inmate Wellness Program. The NSP Inmate Wellness Program was expanded upon to include a three tier incentive system for greater inmate participation and programs. The program began on Monday, June 8th.

- **Tier 1 - Walking/running program** (green jersey) Inmates must be clear of Class I MR's for 6 months, Class II for 3 months and Class III for 1 month with the exception of III.C. Possessing or Receiving Unauthorized Articles and III.F. Selling, Loaning or Giving Items to Others.
- **Tier 2 - Walking/running, weightlifting/exercise in gym** (yellow jersey) Inmates must be clear of Class I for 9 months, Class II for 6 months and Class III for 3 months with the above mentioned exceptions.
- **Tier 3 - Walking/running, weightlifting/exercise in gym, handball/racquetball, morning open gym** (orange jersey) Inmates must be clear of Class I for 12 months, Class II for 9 months, and Class III for 6 months with above exceptions.

Inmates must submit an Inmate Interview Request stating the tier they would like to be added to. A&R staff will screen applicants and maintain an updated roster. As of June 30, 2015, 678 inmates were participating in the program; 108 Tier 1, 109 Tier 2, and 461 Tier3.

The program is staff intensive but it provides a great opportunity for the inmate population for outdoor exercise and to either continue or work towards good/better behavior and ultimately to encourage pro social behaviors. This program does not replace other recreational activities going on including league programs and regularly scheduled yard and gym times. There have currently been no complaints regarding the limits to the handball courts. Inmates play on a first come, first serve basis but have shown respect for others. The main issue encountered is inmates giving their jerseys to other inmates. Misconduct reports are issued to the inmates upon discovery. Each inmate must sign an agreement that states he is responsible for his assigned jersey so if it is lost, he will receive a misconduct report and have to pay for jersey. The group talked about possible ways to deter inmates from trading jerseys (ID cards with different colored backgrounds). It was suggested to keep track of misconduct reports associated with the program and as a facility as a whole. It was determined to revisit these statistics at the next meeting.

The group spoke about the dynamics of the "have and have nots" and how to prevent the animosity among inmates. Mr. Treptow stated he has had inmates upset because they don't qualify but he encourages these inmates to work for it – it's absolutely attainable. Again, inmates still get to participate in regular activities, leagues. One of the most important factors to this program is educating staff and having them take the time to talk to the inmates and address their concerns. The expectation is that staff communicate and work with the inmate population to explain and encourage. The program is a foundation and gives room to expand upon. Mr. Treptow talked about the three keys important to the success of this program: staff education, enforcement of policy, and continuous evaluation.

The group also talked about long term benefits of being in the program as far as inmates' health and the increase in morale. The inmate feedback has been positive. Communication is key – we want to motivate and encourage our inmate population. In addition to face to face conversations, information is shared by posting memos, supervisory staff tours where inmates can speak with management staff, and the program information will be incorporated into inmate handbooks and operational memorandums. Quarterly meetings are held with all NDCS Recreational staff to share information and learn what does and does not work.

The minimum security, external housing units are also being looked at to expand time on the yards.

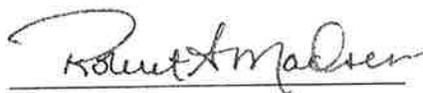
Anita Eberspacher talked about employment resources and the recent transitional living fair held at NSP. She noted more inmates came in through RTC and she was slightly disheartened by the lack of interest from the internal general population inmates. The fair was offered to general population inmates within 12 months of release. If an inmate discharges from med/max he may not have enough time to gather resources necessary. The reentry initiative is focusing on this concern and an effort is being made by staff to educate inmates.

Dave Larson asked about modified lockdown and how it has affected religious programming. Religious programming currently offered weekly. The group discussed the new Moral Recognition Therapy (MRT) classes. Education staff have started the classes and are also being conducted by two other staff members. Mr. Larson stated he was interested in seeing changes from those who've participated in MRT and how it relates to the wellness program. These programs should have a direct positive effect on inmates and ultimately their success after release.

Judge Grant suggested inviting members from the media to the committee to share good stories and happenings in corrections.

The group also discussed other individuals who may be interested in CIC.

There being no further business, the NSP Community Involvement Committee adjourned.



Robert Madsen
NSP Acting Warden

Attachment #12



Dave Heinemann, Governor
Michael L. Kenney, Director

MEMORANDUM

TO: TSCI Inmate Population
FROM: Michele Capps, Deputy Warden
DATE: February 11, 2014
SUBJECT: Running League

TSCI is starting a running league on March 1st - June 31st, for the general population inmates. Inmates will be allowed to run or jog on the main yard for one hour on Mondays, Wednesdays and Fridays. Only a minimal amount of walking will be allowed as a warm up or cool down. You can't leave one activity to attend another (Library pass, gym time, medical pass, work, and etc.). If you want to run on a particular day, you need to plan accordingly. We will start with a morning group and possibly expand into an afternoon session. A summer league may also be considered, if the spring league is successful. Depending on the number of requests received, an additional time frame may be added, or we may have to limit the amount of participants.

The approved inmates will be placed on a roster available to all staff, outlining the times and expectations. The session will run from 0930-1030 hrs.

All request forms need to be sent to the deputy warden by the 21st day of February. In order to be considered for participation in the league, the inmate must meet the following requirements:

- Be clear of all class one misconduct reports for the last year. Must also be clear of all class two MRs, with the exception of disobeying a direct order, for the last six months.
- Inmates on room restriction are not allowed to participate.
- Be clear of class three MRs for Flare of Tempers/Minor Physical Contact, Swearing/Cursing and Tobacco Products for the last six months.
- No disciplinary restrictive housing or loss of good time in the last year.
- No placement in restrictive housing for the last year (excluding court imposed restrictive housing).
- Inmates are expected to be actively running, jogging or walking during this time. The yard is still closed during this time and you will not be able to sit at the shade units or stand, run, or jog in groups.
- Inmates not actively running, jogging, walking or those who are requesting to return back to their housing will receive one warning. If future incidents occur they will be removed from the league.

Attachment #13

WELLNESS YARD CRITERIA

- Clear of all class I misconduct reports for the last twelve months.
- Inmates who have been placed in restrictive housing for less than 30 days ON I.S. STATUS and released without any sanctions are ELIGIBLE. Inmates who have been on ANY OTHER STATUS in restrictive housing are not eligible for twelve months.
- No Loss of Good Time or Drug Offender Classification in the last twelve months.
- Clear of all class II misconduct reports, with the exception of disobeying a direct order, for the last six months.
- Clear of class III misconduct reports for Swearing/Cursing, Flare of Tempers, and Tobacco Products for the last six months.
- Inmates who are in the league must maintain eligibility. If you receive any of the above disqualifiers, you will be removed from the league. If you are sent to restrictive housing your name will be removed and you will have to reapply.

IF YOU WANT TO KNOW IF YOU QUALIFY OR WHEN YOU WILL BE YARD ELIGIBLE, SEND A REQUEST TO THE RECREATION MANAGER.

Attachment #14

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.10	Page 1 of 4
		Drug Offender Classification	

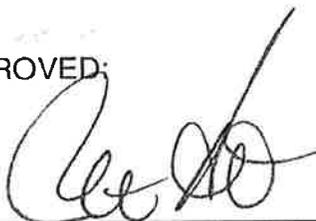
This Administrative Regulation is to be made available in law libraries or other inmate resource centers.

EFFECTIVE: June 6, 2003
 REVIEWED: April 29, 2004
 REVISED: June 29, 2005
 REVISED: June 1, 2006
 REVIEWED: July 6, 2007
 REVISED: June 16, 2008
 REVISED: June 24, 2009
 REVIEWED: June 29, 2010
 REVISED: June 29, 2011
 REVISED: August 10, 2012

SUMMARY of REVISION/REVIEW

Revisions are minor and include the addition of Nebraska in the signature block, and modifications to format under Procedure II. C.

APPROVED:



ROBERT P. HOUSTON, Director
 Nebraska Department of Correctional Services

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.10	Page 2 of 4
		Drug Offender Classification	

PURPOSE

The purpose of the Drug Offender Classification (DOC) is to eliminate drug use by providing disincentives for the distribution, possession, and use of drugs/intoxicants by inmates through suspension of telephone, visiting and/or other privileges.

GENERAL

The Drug Offender Classification promotes participation in substance abuse programs, and imposes disincentives to engaging in drug/intoxicant -related activities by limiting an inmate's interaction with persons outside of the Department to decrease an inmate's opportunity to access, acquire, distribute or use drugs/intoxicants.

If an inmate's personalized plan does not already require substance abuse programming, it will be recommended that any inmate classified as a drug offender participate in a substance abuse program.

PROCEDURE

- I. AN INMATE MAY BE CLASSIFIED AS A DRUG OFFENDER IF THE INMATE ENGAGES IN DRUG/INTOXICANT RELATED ACTIVITIES.
 - A. "Drug/intoxicant related activities" include, but are not limited to possession, use or distribution of unauthorized drugs/intoxicants or refusal to provide a urine specimen to be tested for unauthorized drugs/intoxicants.
 - B. "Unauthorized drug/intoxicant" as used in this Administrative Regulation means any drug/intoxicant or substance that Nebraska law makes illegal to use, possess, or distribute; alcohol; any medication that has not been prescribed for the inmate; any medication for which the prescription has expired; any medication that is not consumed as specified by a prescription.
 - C. An attempt to engage in a drug/intoxicant -related activity may be sufficient to classify an inmate as a drug offender.
 - D. If an inmate on Drug Offender Classification is considered for community custody placement, his/her Drug Offender Classification status shall be reviewed at the time of his/her custody classification review.

II. DRUG OFFENDER CLASSIFICATION REFERRALS

Any inmate involved in a drug/intoxicant -related activity may be referred to the unit classification committee for consideration of classifying the inmate as a drug offender.

- A. An inmate can be classified as a drug offender even if no disciplinary action is brought against the inmate, or a disciplinary action is dismissed or reversed.
- B. Drug Offender Classification (DOC) cannot be imposed by a disciplinary committee as a disciplinary action/sanction.
- C. Drug Offender Classification will include the following:

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 201.10	Page 3 of 4
		Drug Offender Classification	

1. Drug Offender Classification form
2. Notice/Waiver of Classification Hearing
3. Misconduct Report Disposition

III. PRIVILEGE SUSPENSION

A. The visiting and telephone privileges of an inmate classified as a Drug Offender are subject to suspension for the following time periods:

- | | | |
|----|--|----------|
| 1. | First Drug Offender Classification | 30 days |
| 2. | Second Drug Offender Classification | 60 days |
| 3. | Third Drug Offender Classification | 90 days |
| 4. | Fourth and Subsequent Drug Offender Classification | 6 months |

B. If an inmate classified as a drug offender engages in any additional drug/intoxicant - related activities, the Warden may extend the length of time that the inmate will be classified as a drug offender.

1. The extension of the drug offender classification may not exceed the amount of time established above for the number of drug offender classification actions that have been imposed on the inmate previously. EXAMPLE: If an inmate on his/her first drug offender classification engages in drug/intoxicant -related activity, the length of the drug offender classification can be extended by 60 days for a total of 90 days.
2. The total period of the drug offender classification cannot exceed six months from the date of the last drug offender classification imposed by the Warden. EXAMPLE: If an inmate's drug offender classification is for six months and the inmate engages in another drug/intoxicant related activity while so classified, a new six-month period of drug offender classification shall begin on the date the Warden approves the classification action. The total period of the Drug Offender Classification cannot exceed six months from the date of the last Drug Offender Classification sanctions were imposed.

IV. TELEPHONE AND VISITING GUIDELINE FOR DRUG OFFENDER CLASSIFICATION

- A. Only legal and clergy visits will be allowed while an inmate is classified as a drug offender.
- B. Only verified family emergency and legal telephone calls will be allowed while an inmate is classified as a drug offender.
- C. Each time a drug offender classification goes into effect or the length of the drug offender classification is extended, an inmate may make one telephone call as outlined below.

	<p style="text-align: center;">ADMINISTRATIVE REGULATION</p> <p style="text-align: center;">Department of Correctional Services State of Nebraska</p>	<p style="text-align: center;">NUMBER 201.10</p>	<p style="text-align: center;">Page 4 of 4</p>
		<p>Drug Offender Classification</p>	

1. The telephone call will be to a person on the inmate's authorized telephone list.
2. The purpose of the telephone call is to notify the person that the inmate has been classified as a drug offender or the length of the drug offender classification has been extended.
3. The inmate will select the person to be called.
4. The call will be made on a staff telephone.
5. The notification telephone call is limited to not more than five (5) minutes.

REFERENCE

- I. ATTACHMENTS: None
- II. ACA STANDARDS: None

Attachment #15



PETE RICKETTS – GOVERNOR
SCOTT R. FRAKES – DIRECTOR

MEMORANDUM

DATE: August 6, 2015

TO: NDCS Staff

FROM: Scott Frakes, Director

A handwritten signature in black ink, appearing to be "S. Frakes", is written over the "FROM:" line.

SUBJECT: AR 201.10 – Drug Offender Classification (DOC)

Effective immediately, AR 201.10 is suspended. Inmates who are on Drug Offender Classification will need to be removed and their visiting and phone privileges reinstated. Research and Planning is currently evaluating the program to see what impact, if any, the DOC had on the inmate drug use. Should the data show that DOC impacted inmate drug use in a positive way, it will be reinstated with some revisions.

If you have any questions or concerns, please contact Cathy Gibson-Beltz.

Attachment #16

DeFreece, Cindy

From: James, Teri
Sent: Monday, May 04, 2015 9:15 AM
To: DCS TSCI
Subject: league criteria
Attachments: Wellness Yard and League Criteria.docx

Inmates wishing to participate in the next softball league and future leagues will have to meet criteria similar to the inmates who can participate in the wellness yard. Inmates who do not meet this criteria will still have the opportunity for recreation during their scheduled recreation on the daily schedule.

I have attached the criteria for the wellness yard and for the leagues. Units, please post this information.

Teri James, Recreation Manager
Tecumseh State Correctional Institution
2725 North HWY 50
PO Box 900
Tecumseh, NE 68450
(402)335-5998

Attachment #17



Pete Ricketts, Governor
Scott R. Frakes, Director

MEMORANDUM

DATE: April 28, 2015
TO: ALL TSCI INMATES
FROM: Michele Capps, Deputy Warden 
SUBJECT: CSI Laundry Interviews

Applications for CSI Laundry positions will be accepted between April 28, 2015, through May 12, 2015.

EVERYONE WHO PREVIOUSLY APPLIED WILL NEED TO REAPPLY.

To apply, submit an application attached to an Inmate Interview Request to the Deputy Warden on or before the closing date. Applications received after the closing date will not be accepted.

We are interested in inmates who are within six (6) years of their tentative release date and meet the Wellness League criteria.

Not all applicants will receive interviews. Those not accepted for an interview will be notified. Candidates accepted for an interview will be notified by pass list.

Interviewees not hired immediately may be added to a waiting list for consideration for future openings. If not hired from the waiting list within one year, it will be necessary to reapply.

cc: Warden
Associate Warden
Major
Unit Administrator
CSI Operations Manager
CSI Laundry Supervisor
Operations Captain
Unit Managers (7)
Housing Unit Bulletin Boards

Attachment #18

Dissemination Level:
Sensitive _____
Confidential _____
Restricted _____
Unclassified _____
3D _____

Information Reliability:
Confirmed _____
Probable _____
Doubtful _____
Cannot be judged _____
TBD _____

Source Reliability:
Reliable _____
Usually Reliable _____
Unreliable _____
Unknown _____
TBD _____

Special Considerations:
Restricted information _____
Informant involved _____
Criminal in nature _____
Drug-related _____
STG-related _____

Reason for Staff Action:

Forwarded to Investigative Capt? Y N

Disposition:

DATE: 5-11-2015

TO: Captain Connelly

FROM: Cpl Bents

RE: Staff Assault, Institution Incident

On 5-10-2015 I Cpl Bents was assigned to Tecumseh State Correctional Institution. At approx. 1430 hrs I was in video monitoring speaking with Sgt Ulrick. About slowing things down because of the large numbers of Inmates that were congregating in front of housing unit 1 and moving towards housing unit 2. Inmate Washington, Rashad #73519 was identified by myself as the Inmate that was wearing his coat draped over one shoulder. I viewed in on camera. I relayed the information to the Yard Sgt. Rempel as Inmate Washington being the Inmate that was inciting the other Inmates on the yard to loiter on the yard. Sgt Rempel informed staff to take him to holding.

Cpl Bents gave a directive over the radio to all housing units to secure their doors. Incoming doors only until further notice.

Myself and Sgt. Ulrick monitored CW Guern attempt to get the group of inmates in front of housing unit 1 to move out of the area. At that time Cpl Hatzenbuehler and CW Glass arrived on the other side of the large group of inmates. At this time Inmate Washington was standing amongst the large group of Inmates. CW Glass and Cpl Hatzenbuehler entered the large group of inmates to restrain and take Inmate Washington to holding.

At approx. 1438 Inmate Gooch, Fredrick #65759 assaulted Cpl Hatzenbuehler from behind. Cpl Hatzenbuehler along with CW Glass began to move into the grass towards operations. CW Guern immediately responded to the assaults along with Sgt. Sears. Inmate Gooch #65759 along with Inmate Weikle, Rodger #35769 and Inmate Zalme, John #31008 began assaulting Sgt. Sears and Cpl Hatzenbuehler. OC was deployed along with a warning shot from the tower. All inmates in the area were on the ground. Sgt Ulrick had left to Central control. I Cpl Bents began giving orders on the radio to not let any Inmates in the area up or released until each Inmate one at a time was searched and name and number recorded. I observed CW Tompkins make arm gestures to a large group of Inmate that were near the HU 1AB sidewalk to get up and move. I gave another directive to not let any of the Inmates up. Cpl Hatzenbuehler restrained and escorted Inmate Gooch #65759 to Intake holding and CW Guern assisted along with CW Perry in escorting Inmate Weikle # 35769. I went to Intake to assist in securing the Inmates into Intake holding.

Inmate Weikle #35769 when asked why he got involved stated that he has mental problems and that he just blacked out. Inmate Weikle stated that he did not know why he assaulted staff. That he just reacted. Inmate Weikle was strip searched without incident.

Cpl Bents then went to Inmate Gooch #65759 who was still in full clothing and had not been strip searched. Inmate Gooch was putting water onto his face. I Cpl Bents asked Inmate Gooch #65759 if he was willing to submit to a strip search or if he was going to refuse. Inmate Gooch stated that he was still in restraints, and asked how soon it would be before he could get a shower. I informed Inmate Gooch #65759 that the sooner we strip searched

the sooner we could get him decontaminated. Inmate Gooch #65759 stated that he was still in handcuffs. I had W Perry go to Central Control for the Intake Keys. I Cpl Bents opened the hatch and removed the restraints from Inmate Gooch. Staff assisted in performing a strip search with only the hatch opened. I Cpl Bents was monitoring radio traffic and left Intake to go to the Video room. Where I began to have staff secure their areas and get to a secure location. I Cpl Bents was instructed by Sgt Ulrick to start a staff accountability roster to locate all staff in the institution. I used the cameras in video monitoring to help and verify where staff were securing themselves and used the phone to identify names of the staff in the locations. I suggested to Sgt Ulrick to begin calling everyone to get things going just to be safe. I went into central control to assist Sgt Ulrick when I was handed the phone by Cpl Hume. UM Beltz was on the line (OD for the weekend) UM Beltz wanted me to inform the tower that since there was already 2 warning shots fired to tell the tower staff that if there is another incident endangering staff to shoot center mass. While still on the phone with UM Beltz I contacted Ofc Hanzlik in the tower and repeated the instructions word for word. I then hung up with the tower and then with UM Beltz.

At approx. 1516 I entered Central Control with the staff accountability roster. At approx. 1519 a shot was fired and loud verbal commands over the radio for inmates to get down on the ground and to disperse or they are considered a threat and force will be used.

I went to the gate house since all other staff were in secured locations out of harm, so that staff could unlock the crash gate for Emergency Vehicles to be able to get to the south gate. I then had Cpl Rodriguez start an accountability roster at the gatehouse for any and all staff that would be arriving and leaving the institution.

I Cpl Bents then returned to the video room to continue to monitor the yard and Housing Unit cameras. Between radio traffic and visibility of cameras, inmates began starting fires inside the gallery. I continued to monitor staff locations for security risks. While using the Yard cameras to try and capture facial recognition of inmates that were in the main yard, to be identified at a later time. When CERT and SORT members began to arrive in the Video room I began giving and showing locations of staff and how many staff, that were in secured locations and the risk factors of the different locations. The top priority was the female staff A&R Munn that was secured in the Gym Office.

I then continued to monitor the CERT and SORT teams as they moved through the yard and HU to retrieve the remaining staff.

During this time I also continued to move and give information to Capt. Kirkendall in the command center.

Attachment #19



Pete Ricketts, Governor
Scott R Frakes, Director

MEMORANDUM

TO: CIRT

FROM: Beltz, Unit Manager HU 3 (u)

DATE: May 19, 2015

SUBJECT: May 10, 2015

On May 10, 2015 I UM Beltz was the OD for TSCI. At approximately 1445 hours I received a phone call from Sgt. Ulrick informing me that two staff had been assaulted, numerous (too many to count) inmates were refusing to leave the main yard, lock down on the units and filling mini-yards refusing to return to their units. In addition I believe I was told at that time that the inmates on the yard were circling the staff on the yard not allowing them to get to safety. We agreed that CERT, SORT and CNT re-call should be activated as well a re-call of TSCI staff. I told Sgt. Ulrick I would call Central Office OD and Brad Hansen as well as DW Capps and asked that he have central control contact Warden Gage, AW Busboom, Captain Kirkendall, Captain Morris, all Unit Managers and any other staff deemed appropriate and necessary.

I contacted DW Capps immediately and briefed her and she stated she would be going in and would be at TSCI in approximately 20 min. I let her know that I was on my way from Lincoln and would be there as soon as I could. I then attempted to contact CO OD Jodi Witte and Brad Hansen being unsuccessful I contacted or was contacted by TSCI again speaking with Sgt. Ulrick and Cpl. Bents in central control continuing to get updates. I still continued to attempt to get ahold of Jodi Witte and Brad Hansen.

I UM Beltz received numerous calls from and placed numerous calls to TSCI- Sgt. Ulrick as well as Cpl. Bents regarding the situation. During a call either to or from Cpl. Bents I was told that inmates were still circling our staff on the yard not allowing the staff to get to safety and the tower had shot two warning shots, but nothing was working.

I told Cpl. Bents to get back on the phone and help the tower officer, reminding her that she may have to shoot if necessary and so long as she can do so keeping staff safety into account, doing so for the safety of our staff and institution. I believe that I told her to remind her to shoot center mass and to utilize the use of force continuum. I either received a call or placed a call back to TSCI central control a few moments later and was informed that the tower officer shot an inmate, but they did not know how bad it was or exactly where on the inmate's body he was shot. I was informed that the inmate was trying to forcefully gain access to an area where staff was located. I asked again if we had followed the use of force continuum and was told that we had. I was informed shortly after that the inmate was Washington, Rashad and he was shot in the leg.

I was told that the inmate had been brought to the clinic area door by other inmates. I told staff to make sure that they got on the voice boxes and/or bull horn from the tower to tell the other inmates to leave the area and not to retrieve inmate Washington until the area was cleared of other inmates and to ensure that

there was enough staff present prior to opening the clinic door. I was informed shortly after this that two staff had gotten inmate Washington off of the yard and into the clinic.

I was then able to contact Jodi Witte and Brad Hansen and gave them a briefing I informed them of what information I had and updated them as information continued to come to me during my drive to TSCI. At some point I contacted Rob Treptow CNT coordinator and made sure CNT was activated as well as my assistant TSCI CNT team leader Daniel Wendt and Team members Leigh Edwards and Athena Brown and left a message for CNT team member Keith Broadfoot. I also contacted acting Deputy Director Cathy Gibson-Beltz who stated that she would contact Diane Sabatka-Rine.

I arrived at the facility at approximately 1600 and reported to Sgt. Ulrick initial incident commander and then to the Warden's conference room and followed instructions from the Initial Incident Commander and then the Ultimate Commander as needed.

Attachment #20

Attachment 20 is redacted from the public report for security reasons

Attachment #21





Attachment #22

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April 20, 2004

Mr. Frank Hopkins, Assistant Director
Nebraska Department of Correctional Services
P. O. Box 661
Lincoln, Nebraska 68509

Dear Mr. Hopkins:

As you know, the Ombudsman's Office has recently been making inquiries into certain issues concerning the management and operation of the Tecumseh State Correctional Institution (TSCI). We became interested in the matter particularly in the wake of three recent assaults upon TSCI staff by inmates, incidents that were followed by the modified lock-down of the facility, a rather unusual situation that has now prevailed at TSCI for a period of several weeks. The present lock-down, which is, in fact, one of five or six lock-downs that have occurred at the institution since it opened less than two and one-half years ago, was commenced on March 3, after two particularly vicious inmate assaults on staff happened in rapid succession in late February and early March. Naturally, we were concerned with the implications of these events for staff safety, and we felt that the situation merited our attention.

In the wake of the most recent assaults, there has been what is, for Nebraska, a remarkable expression of discontent among staff at the Tecumseh facility. At the end of March, a "Group Grievance" was distributed among the TSCI staff. This grievance/petition stated the belief that the institution is under-staffed, that there is a "lack of effective administration" that has caused an "extremely unsafe workplace at Tecumseh," and that the safety of staff at the facility has "become an afterthought." Scores of TSCI employees signed the document. On April 13,

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there was an open, organized demonstration of staff discontent outside of the facility. While demonstrations of staff discontent of this nature may not be extraordinary in some other states, in Nebraska it is, in fact, quite unusual to see corrections staff register their displeasure with administration so openly and vocally. This too has convinced us that it was necessary to learn more about the situation at TSCI.

A principal goal of this effort by the Ombudsman's Office was to attempt to determine whether the series of assaults on staff, particularly the two assaults that led to the recent lock-down, had a common denominator, that is, an identifiable cause, in common, that might be addressed by management. The Ombudsman's Office was also interested to learn more about the current management of TSCI, in order to determine whether there were any other significant issues at the Tecumseh facility which might be relevant to the assaults on staff there, and/or which might make the facility a greater challenge to manage than is the case with other Nebraska corrections facilities. The Ombudsman's Office has many years of experience in observing the operation of Nebraska's correctional facilities, and we realize that, as a matter of historic reality, serious assaults by inmates upon staff at Nebraska facilities are, thankfully, a relatively unusual occurrence. Thus, when we saw a series of serious assaults upon staff at TSCI, we could not help but recognize that we were experiencing an extraordinary situation, something that needed to be examined for an underlying cause. Of course, our office was also interested to examine the rather unusual complaints that have been voiced by the TSCI staff about their work environment, and about their strongly felt sense of insecurity at the workplace. Curiously, some of the inmates at the institution have also complained to the Ombudsman's Office about the environment at TSCI, specifically asserting that the institution is inadequately staffed, and that the staff is inadequately trained, to meet the ongoing, everyday needs of the inmate population. We have even received communications from TSCI inmates suggesting that the staffing at the facility is inadequate to meet security standards, thereby creating an environment that might actually promote more violence in the institution. It is perhaps not unusual to hear employees express concerns about the staffing at the institution, but to hear similar complaints from inmates is, indeed, an extraordinary event in our experience.

In pursuing this matter, the Ombudsman's Office has interviewed both inmates and staff at the Tecumseh facility. In addition, we have interviewed TSCI Warden Fred Britten, and TSCI Human Resources Director Becky Mencl. We have also been provided with statistical and other information by both Mr. Britten and Mr.

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Steve King of the Department. While the interviews with inmates and staff were admittedly limited in number, we felt that our office had the advantage of being in a unique position in terms of our ability to gather useful information from inmates and staff. In our experience, inmates, and even some staff, are willing to be quite candid and open with the Ombudsman's Office, perhaps even more so that they would be with correctional officials who are seeking answers to essentially the same questions. Because of this communications advantage, we decided to interview some, but by no means all, of the inmates and staff of the Tecumseh facility, to see if we could gain some insights on the situation there, or at least on the impressions that inmates and staff have about that situation. In the end, inmates and staff did show a willingness to talk candidly about their experiences and concerns, and we felt that we should share some of that information with you.

As we present this information to you, it might be best to categorize it into several different areas, and to characterize those areas as being "issues" or "concerns." Because of the scope of the subject matter, and because of time limitations, we have not been able to pursue these matters to the point where we would feel comfortable in making what we would call "findings." Candidly, at this point, our office is not able to provide details to flesh out the concerns that are reflected in many of these areas, nor are we able to say that all of the areas of concern have a basis in fact that can yet be substantiated to a degree that could legitimately be called "certitude." Under better circumstances, our office would have preferred to conduct more in the way of investigation and research, but in light of the circumstances, and particularly in light of exigencies that might be created by the lockdown, we felt that it would be better to communicate with you now, in the hope that the Department can take this raw information, and use its own resources to follow-up.

One point that should be understood at the outset is that many of these "areas of concern" are, in fact, interrelated. As a matter of fact, it could well be argued that the "shortage," or perceived shortage, of certain staff at TSCI is the root cause of many of the concerns that have been identified. Nevertheless, each of the concerns that has been identified deserves separate attention, and, for purposes of useful organization, we would categorize the concerns into the following areas:

- **Inmate Assaults on TSCI Staff**

It seems clear that assaults upon TSCI staff by inmates in the institution have occurred with a frequency that is unusual for DCS institutions. The

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recent assaults at TSCI also seem notable for their unusual brutality, and for their lack of apparent motivation. In years past, when serious assaults have been inflicted on staff of the Penitentiary, for example, they have been connected with escape attempts, or have had some other immediately apparent motivation. In contrast to this, some of the assaults at TSCI have seemed to “come out of nowhere,” a situation which hints that something else is going on as a cause of those assaults.

There has been some disagreement about the actual number of assaults at the Tecumseh facility. In part, this is a matter of semantics, with the definition of “assault” varying depending upon who is using the term. TSCI staff speak in terms of “dozens” of assaults (the grievance/petition talks about “two dozen” assaults “in recent months”), while Mr. Britten says that there have been only 13 assaults on “housing unit staff.” Mr. Britten also makes the point that the category “assaults” can include a wide spectrum of events, some of which are relatively minor. With this in mind, it is probably more useful to try to limit consideration to assaults on staff that are “serious,” either because weapons were used or because severe injuries were inflicted.

The Corrections Yearbook, as pointed out by Mr. King, reflects that there were a total of nine assaults of DCS staff by inmates in 2002 that required medical attention. (The same source reported that all assaults of DCS staff by inmates in 2002 amounted to a total of 178.) Even though other nearby states may have recorded a larger number of serious assaults on staff during the same period, the important question is not how Nebraska compares with other jurisdictions, but how the number of assault-events at Tecumseh compares with Nebraska’s own experience over time. Mr. King himself has been reported in the news media as asserting that there have been a total of six serious assaults of TSCI staff by inmates since January of 2003. While six serious assaults may not sound like many, when that number is compared with a total of nine serious assaults in the entire system over a twelve month period, it would, in fact, appear that something unusual is happening at Tecumseh.

The recent assaults of staff at TSCI also seem to be unusual in terms of their ferocity and brutality. These were not minor incidents of inmates shoving or wrestling with staff. In at least two of the cases, improvised weapons were used, and in all cases significant injuries were received. On September 14, 2003, Caseworker Elaine Wilson was the victim of an attack

by inmate Terrance Johnson, who beat Ms. Wilson on the head using a broken mop handle and a weighted sock as a sap. Ms. Wilson suffered serious injuries both to her face, and to an arm, which was battered when she tried to defend herself. On February 29, 2004, Caseworker Barnes was assaulted by an inmate (allegedly inmate Leo Thomas) and suffered both a broken ankle, a broken jaw, and other injuries to the face. A few days later, on March 3, 2004, Caseworker Rohrbaugh was assaulted by inmate Tom McBride, who allegedly hit Mr. Rohrbaugh on the side of the head with a heavy mop wringer. (Interestingly, both Caseworkers Barnes and Rohrbaugh were assigned to Housing Unit #2, although Mr. Barnes was actually assaulted while working temporarily on Housing Unit #3.) As you know, all of these staff had injuries that required medical attention.

In conducting our inquiries, we were interested in learning more about the background of the latter two assaults (Caseworkers Barnes and Rohrbaugh). We particularly wanted to talk to inmates familiar with all of the Unit #2 employees, to see whether we could find some explanation for the attacks. (The assault on Caseworker Wilson appears to have been connected with an incident the day before, when she confiscated a radio from Mr. Johnson's cell.) While a few of the inmates who were interviewed did not express concerns about the staff on Unit #2, most of the inmates that we talked to said that several of the unit employees did not respect inmates or treat them appropriately. One of the caseworkers who was assaulted was singled out by inmates as being careless and/or overzealous when conducting routine searches of cells. He was accused of damaging property and of throwing paper around cells. Additionally, concerns were expressed about cases where no record was made on "shake-down sheets" of property that was confiscated from cells by staff on Unit #2, including the two caseworkers who were assaulted. Inmates also said that one of the Unit #2 caseworkers had made unprofessional comments about sex in front of inmates, and that the same caseworker had made inappropriate comments about the specifics of a particular inmate's crime. One of the caseworkers who was assaulted was singled out by a number of inmates who indicated that he was unnecessarily rude and demeaning in his treatment of inmates. Concerns were also expressed by minority inmates that one of the caseworkers who was assaulted exhibited racist attitudes toward some inmates. Some inmates also intimated that one caseworker made a practice of retaliating against inmates who filed grievances against him. In addition, inmates indicated that some inmate grievances were ignored, or even discarded, by unit staff.

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As a whole, our interviews with inmates presented a picture suggesting that some Unit #2 employees, including Caseworkers Barnes and Rohrbaugh, were themselves a source of trouble on Unit #2 – that is, that staff were, generally speaking, and to varying degrees, rude, disrespectful, unprofessional, and/or retaliatory in their behavior toward the Unit #2 inmate population. Some of the inmates also intimated that this behavior by the caseworkers was approved of, and even encouraged by, the Unit's management, and that attempts to grieve the caseworkers' behavior were frustrated or mishandled by Unit #2 staff. Naturally, our office was not surprised that at least some inmates would say negative things about staff (and we are not suggesting that the inmates' express or implicit allegations against any of the staff have been verified), but we do think that it is worth noting that the interviews did tend to produce these common themes. It is also quite interesting to note that some inmate grievances filed against Unit #2 caseworkers definitely echoed the same themes. For instance, a March 16, 2004, letter written by Mr. Britten indicates that Caseworker Barnes has been the subject of four inmate grievances involving "harassment by not allowing an inmate to shower, retaliation, discrimination, harassment and attempted assault." The same letter indicated that Caseworker Rohrbaugh has been the subject of 15 grievances, including complaints that concerned "removing unauthorized articles from an inmate room, harassing certain inmates, inappropriate language, took an emergency grievance, (and) reading an inmate's case file." (Please see March 16, 2004, letter attached.) In addition, it is worth noting that, of the 13 assaults on TSCI housing unit staff that were cited in Mr. Britten's letter, five of those assaults were directed at Housing Unit #2 staff, while Housing Unit #1 staff had only one assault, and Housing Unit #3 staff were involved in only two assaults (the rest of the assaults of housing unit staff were in the Special Management Unit). When the staff of one of TSCI's main housing units experience more than twice as many assaults as the staff on the other two units, there could well be a reason for it, and that reason may have something to do with how the staff behave toward inmates and/or with how the Unit is managed.

- **Staffing at TSCI**

In our communications with TSCI staff, we have repeatedly heard concerns about the staffing levels at the institution. Indeed, the grievance/petition submitted by TSCI staff members prominently featured the allegation that the agency "(b)y continuing to under staff the prison...is placing both staff

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and inmates at risk.” The grievance/petition specifically asks for DCS to resort to “full staffing rather than minimum staffing on all units and all shifts.” Since this issue is apparently so important to staff, and since it is at least conceivable that staffing issues could be making a contribution to other difficulties experienced at TSCI, we felt that the issue deserved to be examined.

Some of the TSCI staff to whom we have spoken have suggested that there is an issue with respect to the staffing of the institution’s yard area. Apparently, the TSCI yard is supposed to have a total of eight corrections officers present during the first and second shifts, with the number reduced to five corrections officers for the third shift. In communications with our office, some staff have indicated that at times the eight employees who are on the yard are diluted by the duties that they have to perform. We have been told, for instance, that there are times when some of the officers in the yard are assigned to check numerous manhole covers (to make sure that they are sealed), or to go out of the institution to pick up mail, or to check the facility’s perimeter fence, or to guard CSI trucks while they are in the yard, or to provide escorts, and that these miscellaneous duties can attenuate the coverage of the yard and have an impact on safety.

Another common theme in complaints from TSCI staff is concerned with the number of employees who are assigned to work in the institution’s living units. Staff who spoke to our office described situations when a single caseworker might be alone on a unit (or a segment of a unit) and be solely responsible for meeting the needs of as many as 128 inmates. It was suggested that this situation not only made it difficult for the casework staff on the units to complete their daily tasks, but it also created a potentially dangerous situation for the staff. Our office was told, for instance, that immediately after Caseworker Barnes was assaulted, another (female) caseworker, who had herself been threatened by inmates, was required to work alone on the unit. Additionally, TSCI employees who contacted our office expressed the view that “full staffing” of the institution would, in fact, contemplate having more staff present on the living units than is currently the case. For example, we were told that, under “full staffing,” a corporal was supposed to have been present on the living unit on the day that Caseworker Wilson was assaulted. In fact, however, no corporal was there at the time.

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Mr. King has provided the Ombudsman's Office with a very useful statistical breakdown of the "Authorized FTE vs. Filled Positions for Custody and Housing Staff" at TSCI, the State Penitentiary (NSP), and the Lincoln Correctional Center (LCC), and we have tried to do what we can to analyze those numbers. Those statistics show that, as of March 30, 2004, TSCI had a total of 326 positions authorized, with a total of 316 positions currently filled. The ten vacancies at TSCI were more than the five vacancies each at NSP and LCC, but that would not appear to be a remarkable deviation. In short, if these statistics are correct, then it would not appear that TSCI has a problem with respect to employee vacancies. (Please see attached Table.)

Of course, it is at least conceivable that there is a staff shortage at TSCI, not in terms of the number of vacancies, but in terms of the number of staff that have been authorized for the facility. While it is not possible for the Ombudsman's Office to definitively assert what would constitute optimal or "full" staffing of TSCI, in our view, a comparison between TSCI and LCC offers the most useful analysis, since those are the two institutions in the Nebraska system that are primarily concerned with managing maximum security inmates. When we look at LCC, we see that it has a total of 172 authorized positions to manage an institution containing an inmate population of approximately 470 inmates. TSCI, by comparison, has a total of 326 authorized positions in an institution with an inmate population of approximately 850. This means that TSCI has about 2.6 inmates per staff person, while LCC has a slightly higher number of about 2.7 inmates per staff person. If this comparison is valid, it would appear that the total of the authorized staff at TSCI would actually compare favorably with LCC.

As we analyze Mr. King's statistics further, however, it becomes clear that the real issue with regard to TSCI's staffing is not vacancies, or the total of authorized employees, but the way in which the TSCI staff has been organized in functional terms. If we look at the total number of line-casework employees (unit case managers and unit caseworkers) authorized for LCC, we see that the Lincoln facility is allotted a total of 56 such employees. In contrast, TSCI is authorized a total of only 49 unit case managers and unit caseworkers. In other words, LCC (the facility in the system most comparable to TSCI in terms of the type of inmates involved) has almost 15% more unit case managers and unit caseworkers than does TSCI, and those 15% more case managers and caseworkers at LCC, in fact, deal with nearly 400 fewer inmates than is the case at TSCI. In their grievance/petition,

TSCI staff have asserted that “the institution is working five to seven caseworker position short on each shift.” Based upon our analysis of Mr. King’s statistics, we would agree with this assertion. In fact, in order to have the same ratio of line-casework staff to inmates that prevails at LCC, TSCI would need to have a total of nearly 100 unit case managers and unit caseworkers on staff, rather than the 49 that they presently have.

- **Staff Morale at TSCI**

In light of what has happened at TSCI in recent weeks, we believe that it is reasonable to ask whether staff morale at the institution is as positive as it could be, or as positive as it needs to be to meet the facility’s goals. When a number of staff members are seriously injured, when scores of staff sign a collective grievance, when staff plainly assert that they believe that their work environment is unsafe, when staff feel that they are overworked, when staff openly rally to demonstrate their unhappiness with management, alert administration must wonder whether there is reason to be concerned that overall staff morale is suffering. Naturally, all employees will never be perfectly satisfied with any work situation, but it seems clear that concerns about staff morale must be examined, if for no other reason than because of the implications for work performance.

Of course, staffing levels at the institution, as discussed above, can have a significant impact on morale, particularly if the staff feel that they are overworked or cannot reasonably meet the demands of the job. Staffing levels can also impact morale if shortages in a particular area requires more frequent usage of overtime and double shifts. Employees who work frequent double shifts can become weary, can make more mistakes, can be frustrated about missing leisure time activities with family and friends, can be less patient with difficult inmates, and may, as a result, suffer in terms of their motivation to do a good job. Fortunately, Mr. Britten has told us that TSCI is using less overtime than was the case six months ago, so perhaps these concerns, at least, can be alleviated.

There is, of course, no simple way in which we can gage the level of morale among a large and diverse employee population like that at TSCI. When he was interviewed by the Ombudsman’s Office, Mr. Britten acknowledged that TSCI staff are “frustrated,” but said that he believed that the quality of staff morale at the institution is “appropriate.” It should be noted, however,

that Mr. Britten made this assessment at precisely the time that TSCI staff were organizing a rally outside of the institution to express their dissatisfaction with TSCI management. One has to wonder what the TSCI employees in the street might have said, if they had been asked the same question about morale as was posed to Mr. Britten.

- **Other Issues at TSCI**

In our communications with TSCI staff, other interesting issues have been raised that deserve a mention in this context. One of the more interesting of those issues concerns the amount and quality of training that is provided to staff working in the institution. Some of the TSCI staff contacted by the Ombudsman's Office have told us that they do not feel that they have been adequately trained for their jobs. It is our understanding, for instance, that when Caseworker Wilson was assaulted in September of 2003, she had still not received the self-defense training that she was supposed to have gotten in July of that year. Some TSCI staff have even alleged that they have been directed to sign forms reflecting that they had completed training that, in fact, they have never had. Of course, pre-service or in-service training for TSCI staff also has implications for use of overtime, since staff have to be replaced while in training. This is particularly true in those areas where the institution may be at minimal staffing levels, as would seem to be the case with unit case managers and unit caseworkers.

Another area that has been mentioned in contacts with TSCI staff has to do with the radio equipment that is supplied to TSCI staff. TSCI employees have told the Ombudsman's Office that there is a shortage of the radios for staff to use to communicate with each other in the institution, and that there is also a shortage of the battery chargers that are used with the radios that TSCI does have. Staff are concerned about this situation, because they feel that it has implications for employee safety. A staff person in jeopardy needs to be able to call for help quickly, so that emergency support personnel can come to their aid. When questioned by the Ombudsman's Office on this issue, Mr. Britten acknowledged that not all of the TSCI security staff have radios, but he also expressed the opinion that not all of the security staff at TSCI needed to have radios.

An additional concern expressed by TSCI staff had to do with the computer system at the institution that, among other things, operates the security

doors in the facility. We have been told that the system has had occasions (in some instances, as many as several incidents per month) when the system has ceased to operate. This means that staff have to manually lock and un-lock doors, an inefficiency which is not planned in the organization and the staffing of the facility. In our interview with Mr. Britten, the Warden acknowledged that the facility's computer system has crashed occasionally. Mr. Britten said, however, that computer systems experts were scheduled to come to the institution soon to work on the problem.

RECOMMENDATIONS

Our overall analysis, based on what we know thus far, is that the situation at TSCI is troubling, but not out of control. Certainly, the recent series of serious assaults on staff, together with what appears to be a rising level of dissatisfaction among rank and file TSCI employees is, or should be, a source of concern for administrators. That being said, however, there is no reason to believe that timely and well considered actions by management could not materially change the environment at TSCI in relatively short order. With that in mind, we would offer the following recommendations:

- 1. The leadership of DCS should publicly demonstrate to the staff and inmates at TSCI that it understands that there are problems at the institution that need to be addressed.** Acknowledging that there are unresolved issues at TSCI does not mean that the agency would be acknowledging fault, or even that it would be admitting that mistakes have been made. TSCI is still a relatively new institution, and it should be expected that here are going to be issues relating to the operation of the facility that management is going to have to work out over time. Moreover, saying that there are problems at the institution does not mean that those issues are insurmountable. The issues at TSCI can more accurately be perceived of as "challenges" that need to be addressed by aggressive management. In his media comments in response to the recent demonstration, Mr. King said that the Department had heard the message being sent by the staff involved, but he also cited statistics which tended to minimize the underlying significance, from a management standpoint, of the situation at TSCI. In our view, it would be preferable for the agency to send a clear and unadulterated message that it sees that there are management challenges at the institution, and that it intends to act aggressively to do something about those issues. Particularly in light of recent indications of staff discontent, we

believe that this approach is desirable, because it is much more likely to encourage staff that their concerns are, in fact, being heard, and that something definitive is going to be done.

- 2. The Department should act as quickly as possible to address the apparent shortage in the number of unit case managers and unit caseworkers assigned to TSCI.** As we have indicated earlier in our letter, it appears to our office that there is a significant shortage of unit case managers and unit caseworkers at TSCI. This shortage has arguably contributed to some of the management, morale, and inmate frustration issues that have presented themselves at the institution. The unit case managers and unit caseworkers are, after all, the staff members at TSCI who have the most significant, ongoing contact with the inmate population. They are not simply counselors for the inmates. They write passes, assist inmates who want to make legal telephone calls, pass out medications, maintain inmate case files, supervise the unit porters, conduct searches of cells, collect urine samples, prepare parole progress reports, escort inmates to the clinic, assist in the periodic count of inmates, sit on disciplinary and classification committees, write incident and misconduct reports, and probably perform many, many other routine tasks that we have not mentioned. As a group, they are the people on staff who have direct and ongoing contact with the inmate population all day, every day. They are, in a very real sense, the frontline contact point between the TSCI staff and inmate population, and if there are too few of them, then there can be problems. If they are overwhelmed with work because too few people are being asked to do too much, then the case managers and caseworkers themselves can become tired and frustrated, can make mistakes, and perhaps be less inclined to be tolerant of even legitimate inmate demands. In response, the inmates can become frustrated when the case managers and caseworkers are necessarily slower than expected in meeting their needs. Our central recommendation is that the Department act quickly to augment the number of these critical staff positions at TSCI.
- 3. If the Department is not able to increase the number of case managers and unit caseworkers assigned to TSCI, then it might be desirable to, at least temporarily, reduce the number of inmates at TSCI.** It might, for example, be possible to move some of the many inmates at TSCI who are classified as minimum custody to other institutions. In fact, it is our understanding that TSCI already has a fairly long waiting list of minimum custody inmates who are in line to be transferred to the Penitentiary, but who

cannot be transferred, because there is no space for them at the Penitentiary. On the other hand, there is a much shorter waiting list, as we understand it, for transfer of similar inmates to the Omaha Correctional Center (OCC). We have been told by staff at TSCI that it is the "philosophy" of the TSCI classification committee to direct such transfers almost exclusively to the Penitentiary, and to only transfer minimum custody inmates to OCC in exceptional cases. Perhaps, however, the time has come to change that philosophy, so that minimum custody inmates can be more quickly and efficiently transferred out of TSCI.

- 4. Warden Britten should be encouraged to do more to personally and openly address staff and inmate concerns.** Our interviews and other contacts have created the impression that Mr. Britten is perceived by some staff, and some inmates, as being a remote figure who is disinterested in their problems. Whether this is a fair characterization of the Warden's actual behavior, or not, seems to be less the point than the simple fact that the perception does exist. Warden Britten needs to address this perception by being more "visible," by making it a point to engage in substantive meetings with inmates and line staff, and by demonstrating to all that he understands that there are ongoing problems at TSCI (as there will always be at any institution) that he intends to address. In order to keep an "open ear" for inmate concerns, the Warden should, at least temporarily, personally read and monitor the progress of action on all inmate grievances. By doing this, the Warden should be better able to garner an understanding of the content and pattern of inmate concerns, and also to make certain that the grievance process itself is working properly. On the other hand, with staff, the TSCI administration needs to rely less upon the formal employee grievance process, which lacks immediacy and tends to have the effect of creating an adversarial relationship between the employees and management. In fact, to this point, the response of the TSCI administration to staff concerns has sometimes presented the appearance of being more interested in process than substance. For example, it is our understanding that, when the "Group Grievance" was being distributed among the TSCI staff near the end of March, Ms. Mencl's immediate response was to engage in a dispute over whether the document was a "petition" or a "grievance," and demand that the staff person circulating the document turn it over to her at once. In our view, rather than engaging in a "tug-of-war" over the grievance document, it would have been much more desirable for the administration of TSCI to have relied instead upon rapid-response to staff concerns and issues through

initiating informal meetings with the concerned staff. In the end, it is up to the Warden to see that this approach is adopted. Above all, Warden Britten needs to demonstrate to the entire TSCI community that he understands that his fundamental role is that of a "problem-solver," and he needs to take that role to heart

5. **DCS needs to evaluate all of the unit managers currently assigned to TSCI and, if necessary, replace them by recruiting the very best unit managers from throughout its entire system to take on the critical unit manager roles at TSCI.** In addition to its array of unit case managers and unit caseworkers, TSCI has seven unit managers whose job it is to supervise the case managers and caseworkers assigned to each of the facility's units, and who are generally expected to make certain that the housing units at the institution operate smoothly. We believe that, from an administrative standpoint, the individuals holding these unit manager positions are, collectively, the linchpin of the TSCI administration and, if there is any point in the existing TSCI management where immediate changes need to be considered, then this would be the place. More than anyone else, the unit managers are the ones who set the tone for the housing units. They are the ones who must mentor the unit case managers and unit caseworkers. They are the ones who must make sure that the unit case managers and unit caseworkers are getting the work done. And they are the ones to whom the inmates must look for the resolution of problems that arise on the units.

Because TSCI is a relatively new institution, with many high custody inmates, and with certain management issues yet to be resolved, we believe that it is, or should be, a priority for TSCI to have the very best corps of unit managers that the DCS system has to offer. With this in mind, we suggest that it is desirable for DCS to make an effort to conduct a special evaluation of the current unit managers at TSCI, and to be prepared to replace one or more of those unit managers, if it is determined that better unit managers are available to be transferred to TSCI. It should be added that, when we say "better" in this context, we do not necessarily mean "most senior" or "most experienced." Of course, experience has its value, but longevity is not the only standard of effectiveness, and it is certainly possible for a long term unit manager to still be mediocre. In evaluating the people who are filling, or who might fill, these critical positions at TSCI, we believe that DCS should generally look for unit managers who have excellent communications skills, who understand that there is a "big

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picture,” and are not unnecessarily pedantic, and who, above all, are good problem-solvers, rather than being problem-generators. If the DCS can find men and women like this to manage the housing units at TSCI, then we feel that it would have an immediate, and very positive, impact on the operation of the facility.

In making these recommendations, we want to make it clear that we believe that it is reasonable to be positive about TSCI's future. TSCI is by no means a “sinking ship,” or a “lost cause,” and is not foreordained to being an ongoing management problem. It is true that there are unresolved issues at TSCI, but we believe that aggressive action, coupled with good management decisions, now can resolve, or at least can alleviate, those issues, so that the institution can function at a high level of effectiveness in the future.

We would suggest that Nebraska would also do well to learn from the mistakes of others, particularly when it comes to lessons about the danger of “complacency.” For instance, I imagine that you have already read the report of the Blue Ribbon Panel that examined the hostage incident in January at the Morey Unit of the Lewis Prison Complex in Buckeye, Arizona. Certainly, that report is interesting reading, and offers many insights and useful recommendations of the kind that should be considered by all corrections administrators. One of the more significant points that the Blue Ribbon Panel emphasized was the importance of what it called “professionalism” in the management of a correctional institution. The Panel pointed out that, in the Arizona experience, “the Moray unit suffered from complacency and a general lack of professionalism,” with “many administrative errors” being made over the months and years before the hostage incident in January. In fact, the Panel found that a level of complacency about those “numerous deficiencies in supervision and performance” had played a role in the Moray hostage situation. Hopefully, this letter will contribute to the work that the Department is already doing to review the TSCI situation, so that we need never worry about the threat of complacency here.

Our office believes that the Arizona Blue Ribbon Panel was also correct to emphasize the importance of “good staff/inmate communication,” and to recommend that steps be taken to avoid “policies, practices and protocols... that inhibit good communication between officers and offenders.” Prisons need the cooperation of inmates to run optimally, and positive communication between staff and inmates is a critical component to fostering that cooperation. It is, in fact, with this principle in mind that we particularly urge that the Department reorder its expenditures to

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increase the number of case managers and caseworkers assigned to TSCI. As we see it, the Nebraska correctional system is well designed for positive staff/inmate communication, but there must be sufficient staffing to make that design work. At TSCI, this means that there needs to be an adequate number of case managers and caseworkers, since those employees are the ones who have the most direct and ongoing contact with the facility's inmate population.

We would, of course, welcome your reaction to our observations and recommendations. To that end, we would ask for your response to this letter at your earliest convenience.

Very truly yours,

Marshall Lux
Ombudsman

cc. Mr. Harold Clarke
Warden Fred Britten
Ms. Becky Mencl

Attachment #23

Tecumseh State Correctional Institution
Medical Services

Date: December 31, 2014

REVISED 1/6/14

To: Tecumseh State Correctional Institution Inmates.

From: Busboom

Medical will be starting an Over the Counter (OTC) medication window pass on Sunday February 1, 2015. This will allow you to come to medical on Sundays, from **1430-1530** to the med window and pick up Tylenol **OR** Ibuprofen and antacids without having to be seen in medical or sending in an "Inmate Request Form" to medical. OTC forms will be located in the housing unit. Please bring a form, already filled out, to the Sunday medication window. The medication window will be scheduled according to the first initial of your last name.

First Sunday of the month – Last name begins with **A – M**

Second Sunday of the month – Last name begins with **N – Z**

Third Sunday of the month – Protective Custody (medical will deliver)

This is what you can get at the OTC med window.

_____ **Tylenol 325 mg** – 30 pills. Taken 1-2 pills by mouth every 6 hours as needed.

OR

_____ **Ibuprofen 200 mg** – 30 pills. Taken 1-2 pills by mouth every 6 hours as needed.

_____ **Antacids** – 30 pills. Take two (2) tums by mouth four (4) times a day as needed.

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Scott R. Frakes

Director



Pete Ricketts
Governor

November 1, 2015

Mr. Marshall Lux, Ombudsman
PO Box 94604
Lincoln, NE 68509

Dear Mr. Lux,

I have reviewed your report received in my office on October 20, 2015. I appreciate the time and effort put into examining the events of May 10, 2015. NDCS will use the report to further guide our work to improve operations at TSCI and throughout the agency. I am committed to building a corrections system that is safe, healthy, and effective. The perspectives and insight provided by you and your staff will help us achieve those goals.

I will request that you redact the names of those staff involved in the use of lethal force. One of the staff involved has already received threats of being targeted in the community. Drawing renewed attention to these staff may place them in risk of harm.

We will continue our efforts to build a strong working relationship with your office. Thank you for the many supportive comments found throughout the report. The events of May 10, 2015 have slowed down our efforts to address challenges across NDCS, but we are moving forward.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Frakes".

Scott Frakes, NDCS