

Judiciary Committee and LR127 Committee
December 11, 2018
Rough Draft

EBKE: [00:00:02] OK. Good afternoon. We're going to go ahead and get started. We may have some other people trickle in before it's all said and done. This is a special joint hearing of the Nebraska Legislature's Judiciary Committee and the LR127 Corrections Oversight Committee. My name is Senator Laura Ebke. I chair both of those committees. This hearing has been called following the discovery of a previously unknown report commissioned by the Department of Corrections following the so-called Mother's Day riot at the Tecumseh State Correctional Institution in 2015. The report became public knowledge following testimony a few weeks ago in a civil matter stemming from the riot. I've called this as a, as a joint hearing because it obviously fits within both the scope of the Judiciary Committee but also within the general purview of the LR127 Committee. Because the LR127 Committee has a report due on Friday, any findings in this late hearing will likely not make it into the LR127 report. However, several of us believe that it was important to get some of the details of this new information on the record so that the One Hundred Sixth Legislature's Judiciary Committee, as well as any successor committees to the LR127 Committee, have the information available to work with. We will be taking invited testimony only. We also have testimony that will be coming in via telephone at approximately 2:30 p.m. from the authors of the report in question. So here's the plan. We will take our first three testifiers until about 2:15, at which time we'll take a brief break if we aren't complete with them and allow the report authors to call in. After we complete our discussion with the authors, if we didn't get to anyone or interrupted any of our other testifiers, we will return to them. With that, I'd like to introduce the committee staff: Dick Clark, who is our legal counsel; Laurie Vollertsen, who is our committee clerk. And I'd like to let my colleagues introduce themselves. Senator Pansing--

PANSING BROOKS: [00:01:57] Hi. I'm Patty Pansing Brooks from District 28, right here in the heart of Lincoln.

HANSEN: [00:02:04] Senator Matt Hansen, District 26, northeast Lincoln.

KRIST: [00:02:08] Bob Krist, District 10.

BREWER: [00:02:12] Tom Brewer, District 43.

BOLZ: [00:02:14] Kate Bolz, District 29.

BAKER: [00:02:14] Roy Baker, District 30.

EBKE: [00:02:18] OK. And with that, we will begin. I believe Inspector General Doug Koebernick is first.

DOUG KOEBERNICK: [00:02:40] Thank you, Senator Ebke and members of the committees. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I am the Inspector General of Corrections for the Nebraska Legislature. I've been in that position for a little over three years now. What I'm going to try to do is kind of give you a time line of, of how this report came about and was found and a little extra information on top of that. And then Marshall Lux will testify after me. The May 2015 Tecumseh riot took place before I was appointed as the Inspector General of Corrections. As a result, I was not involved in any requests for reports related to that riot. However, I have been involved in the release of the previously unreleased report and would like to give you a time line regarding that. After the 2015 riot, Director Frakes release the internal critical incident review that was led by Thomas Fithian of the Washington Department of Corrections on June 29, 2015. This was a report led by Mr. Fithian which also included members of the department, and it was also observed by Jerrall Moreland of the Ombudsman's Office. At the time of the release,

Director Frakes said the following: The report provides a realistic assessment of the events of May 10 and 11 and makes recommendations that will enhance operations across the agency. Later today we'll learn the exact time line-- learn of the exact time line. But prior to August 2015, Director Frakes hired Dan Pacholke, who was then the deputy secretary of the Washington State Department of Corrections, and Dr. Bert Useem, a professor of sociology at Purdue who has published books on prison riots and other articles, and he required that they-- or asked that they complete a second report and, and they did. And they came to Nebraska and there were three department staff that assisted them with that effort: Brad Hansen, Denise Skrobecki, and Richard Cruikshank. Mr. Hansen was then employed in the department's Central Office but he's now the warden at Tecumseh. Ms. Skrobecki was the warden at York at the time and still is. And Mr. Cruikshank was also a warden within the system. The report, from my information that I've learned, was provided to Director Frakes in August of 2015, and the two authors of the report received payment for the report on August 27, 2015. As you know, the second report emerged during a trial two weeks ago in district court. I've contacted the attorneys in the case and have received the following details. The trial began on Monday and on Tuesday morning Brian Gage, the former warden of Tecumseh, testified and during that testimony he responded to a question by saying something along the lines, do you mean the second-- or the first or second report? The plaintiff's attorney, who had only received one report during the discovery phase, was then told by the Attorney General's lawyers that there was indeed two reports completed on the riot, and Director Frakes had supplied the second one to them the week before the trial started. Over the lunch hour she received that second report. The Attorney General's Office informed me that the plaintiff's attorney broadly requested reports and the complete report authored by Thomas P. Fithian in her discovery request. They objected to the portion of the request asking for reports on the grounds that it was overbroad, unintelligible, unduly burdensome, and irrelevant. The plaintiff's attorney filed a motion to compel, and the Attorney General provided the Fithian report. There was a hearing in January 2018 in which the plaintiff's attorney withdrew her motion on that request and then she renewed it after learning of

a second report during the trial. I do have an e-mail from the Attorney General's Office, if you want to see that, that explains their side of things. A member of the media covered-- covering the trial heard this exchange and then found the report on the Web site of one of the authors, or, or the name of the Web-- name of the report on the Web site of one of the authors. He requested it from two members of your committee and I was asked to obtain it. I requested it from Director Frakes on Wednesday, November 28, and received it later that day from Laura Strimple, the department's chief of staff. I forwarded it to the senators after receiving it. The next day I received an e-mail from Ms. Strimple that said, "I should have marked it as such, and I am sure you are aware...This document is confidential." She included a confidential stamp in the e-mail that included a state statute that states that inmate health records are not public documents. This obviously did not apply to this report. As all of this unfolded, I went back and read numerous legislative transcripts related to the riot to see if that second report was ever mentioned. I found several instances of Director Frakes discussing the riot in the first report, but he never mentioned the second report. Then Deputy Director Diane Sabatka-Rine, now chief of operations, testified before the Legislature and also discussed the first report but never showed that there was a second report. I have a few additional thoughts here before turning it over to Mr. Lux. In his letter to your committee, Director Frakes shared that he had not shared it directly with any members of his agency. As you will hear from Brian Gage, he was the warden of Tecumseh at the time of the riot and when this report was completed, he never was able to review the findings and recommendations from those experts. Brad Hansen, who assisted with the report and later became the warden at Tecumseh, never was able to review the work of those experts. He never received that report from [INAUDIBLE], I was told. Mr. Gage was interviewed by the authors of the second report but, interesting enough, he was never interviewed by the authors of the first report. In 2017, Director Frakes had national experts from the National Institute of Corrections complete a report on the 2017 riot at Tecumseh, so two years later. Although I obtained a copy of the report from the authors, it was not released to anyone else, as far as I know, because it was classified as a confidential document by the department, despite my being

told when they began their work that it would be one. I would encourage the committee to ask for this report because there is interesting information in it, including the final paragraph which I have handed out to you today. The leader of this report told me that after visiting with staff and administration, they learned about security and safety concerns at the maximum-custody facilities in Lincoln. They offered to do security assessments of those facilities as a result of those concerns. The report included the following, and this was the very last paragraph of the report. "Subsequent to this assessment, Director Frakes requested that the National Institute of Corrections return to the agency and provide security audit training for the staff at Tecumseh and the facilities in the Lincoln area. This training will further demonstrate the agency's commitment to safety and security." Despite efforts by the authors of this report, Director Frakes and the department have never followed through on this offer by the NIC. Every so often I check with them just to find out. I check with the authors and, and they-- each time they say, nope, we haven't heard anything. But we would never know that if I hadn't gotten that report, and you never had the opportunity to see that report. Even though the department and the Governor are now indicating the second report is a public document, their effort to tell me that it was confidential the day after I received it indicates that they considered it confidential at that point. It would appear that this was an attempt to limit its distribution. What is interesting to me is that the first report mentioned names and security issues at Tecumseh. The second report did not mention any names or security issues, yet the second one is supposed to be the one that had the security issues in it and needed to be held, be restricted from everybody seeing it. That doesn't make much sense to me but I wish, I wish somebody was here from the department so they could answer those questions, but they're not. And finally I want to share with you that I recently sat down with Director Frakes and discussed many correctional issues with him, including this report. He initially asked me about my recent correctional employee survey and why so many staff expressed a lack of trust in Central Office, a trend in my surveys that I believe has increased over the last three years. I told him that the message I was receiving from staff was that they felt the department was run by a very small number of people in Central Office who

control everything, that they didn't seek their input before making decisions and wasn't transparent in their decision making. I'm sure there are many staff who read about the second report and saw this as just more of the same. With that, I'd answer any questions that you may have, or I can wait until after you have Marshall up here.

EBKE: [00:10:22] Senator Krist.

KRIST: [00:10:26] Doug, let me just say, as I finish out my time, I was very concerned in my time here that we could not find two individuals, one in the case of Julie as a Health and Human Services IG and in your case, because those IG positions are so important and so difficult, as I know from having been on active duty as an IG, to fill with people of incredible integrity, as well as the ability to bridge a gap, because occasionally people don't want to see the IG come and visit, because they're not just there to help, no pun intended. But you have done an admirable job in the time that I've known you. And this actually goes back to LR424 when you and others were so effective in helping us as a Legislature work through that process. So that's the last time I'm going to compliment you, so.

DOUG KOEBERNICK: [00:11:33] Thank you, Senator.

KRIST: [00:11:33] But let me just review something that you said just for everyone's edification and make a record of it. Even though the Governor and, and I'm not going to Mickey Mouse around with this. I've been doing that for 18 months. Even though the Governor and the director claimed that there was some confidentiality involved with this, did I hear you say that the-- one of the people who was involved in doing this study, he actually had it posted on his Web site?

DOUG KOEBERNICK: [00:12:05] Well, just the name of the report, not the actual report.

KRIST: [00:12:08] So if I wrote to that individual during the time it was posted, would I, would I be able to get a copy of the report?

DOUG KOEBERNICK: [00:12:16] He's going to be on the phone with you at 2:30. That would be a good question for him.

KRIST: [00:12:20] OK. That's the fellow--

DOUG KOEBERNICK: [00:12:21] That's Dr. Useem.

KRIST: [00:12:23] I will ask him that question and I appreciate that. And then the second question I guess I'd pose to you is, in your time in dealing with particularly the aftermath of several of these kinds of issues, why do you feel it's so important that the department continue to keep secrets from both the public and from the Legislature regarding actual incidents, if you will? Not everything can be blamed on "we're going to be sued so we can't talk about it." So what in your opinion as the IG is the underlying reason why they have not been forthcoming with the possibility of actually correcting the issue and not just covering things up?

DOUG KOEBERNICK: [00:13:10] That's something that I've wrestled with during my three years. We kind of have a constant tug-of-war between myself and the department as far as the release of information. Even recently there was a serious staff assault at the Lincoln Correctional Center, and under the law they're supposed to report that to me like pretty much immediately, and it took them six days. I knew about it like a couple days later, but it took them six days. And I don't know. We go back and forth on this where, where they, they will be forthcoming with some information and then they go back to this not sharing. I don't know if it's, if it's staff just don't feel

like there's a sense of urgency to, to respond to requests, to, to be open and transparent. I don't know if it's something from the top that that's the message is that, that we don't need to do that. But I heard from a different agency today that does investigations in state prisons that they feel that there is no sense of urgency by the department staff when they are doing investigations. And I said, well, I'm glad to hear that from you because that's, that's been my experience as well. But I, I don't know what the source of it is. It's very troubling, and it has not been corrected.

KRIST: [00:14:29] On the subject of the timeliness and/or the sense of urgency of any investigation, can you credit any part of that to what we've been hearing over the last X number of years, and it's been multiple years, on the lack of manpower in terms of what the State Patrol might be able to dictate or dedicate to those investigations?

DOUG KOEBERNICK: [00:14:52] I think the State Patrol does a good job of getting in there and, and getting answers as fast as they can. They're relying on the information provided to them. As far as like the manpower within the Department of Corrections and whether that influences their ability or inability to respond in a timely manner, in an open manner, in some cases that's probably true. But there's also-- there was two escapes at McCook, and they do internal critical incident reviews, and I know those escapes took place in August and the deadline set for the people doing those critical incident reviews was September 20. It's December. We don't have one of those yet. We got one in November. But there's no excuse for that. I mean these are people who it doesn't take long to get in and do those things, but it doesn't seem anybody's holding anyone accountable over there when they set these deadlines.

KRIST: [00:15:43] Well, there might have been an election in November that they didn't want to report before that process. One last question, Madam Chair, if I could. Just refresh my memory. Aren't there only two State Patrol dedicated to--

DOUG KOEBERNICK: [00:15:59] Oh.

KRIST: [00:16:00] -- investigating these kinds of things--

DOUG KOEBERNICK: [00:16:02] No, there aren't.

KRIST: [00:16:02] -- in terms of criminal investigations?

DOUG KOEBERNICK: [00:16:02] There aren't any. They, they-- there's two investigators within the Department of Corrections that are correctional employees that there was a hearing last year about moving those people over to the department-- or over to the State Patrol.

KRIST: [00:16:16] That's what it was. OK.

DOUG KOEBERNICK: [00:16:16] And that bill didn't go through. But I think it'll-- I've heard it might get introduced again this year.

KRIST: [00:16:22] Yeah. So for those of you who are going to be around, that, that issue has been grayed, obviously, in my memory and in others', and maybe that's something to look into in terms of where the investigators should be or could be located to take it away. My assessment also is that the press is getting bored with the subject matter. We've had more incidents, accidents, riotous activities, deaths and murders in our corrections system in 30 years than we've had-- I'm sorry, in the last 4 years than we've had in the 30 years prior. And I guess that's old news now. So thank you Mr. Koebernick, for all your work.

DOUG KOEBERNICK: [00:17:01] You're welcome.

EBKE: [00:17:01] Other questions? Senator Brewer.

BREWER: [00:17:04] Thank you. Well, I'd have to agree with Senator Krist, being in the military and having to do the IG work. Of course, we're in a little bit different environment than you are because if people don't do what we want them to do, their quality of life goes downhill. But the other 29 pages that go with this, have you seen?

DOUG KOEBERNICK: [00:17:27] Yes, I do have that.

BREWER: [00:17:30] OK. And I guess so we understand the-- the biggest differences between the original and-- we're calling this the second report, is that right?

DOUG KOEBERNICK: [00:17:41] Oh, that, that would be from the 2017 report. That's not the second report. That's the--

BREWER: [00:17:44] Oh.

DOUG KOEBERNICK: [00:17:45] That's the report for the 2017 report that was never released.

BREWER: [00:17:48] So had they followed through with what's on this page here, that would have given us a better snapshot of an independent look at what the problems are?

DOUG KOEBERNICK: [00:18:02] Correct. I think-- I reached out to the experts from the National Institute of Corrections when they were brought in to do this report and had conversations

with them, with their leader, and what they heard from the staff and the administrators when they were out doing that 2017 report was, well, you think it's, it's bad here, well, it's also bad at the State Penitentiary and the Lincoln Correctional Center and the Diagnostic and Evaluation Center. So that's when they worked with the department and said, we will come back and do some assessments of those facilities, and that was agreed to and then that has never taken place.

BREWER: [00:18:37] And that assessment would include both full-time staff and those that are in the-- whatever penitentiary they're looking at?

DOUG KOEBERNICK: [00:18:45] Yeah, I think it's to see like, OK, what kind of-- looking at Tecumseh, what were the concerns that maybe led to that 2017 riot and do we see some of those same issues happening at the State Pen and the Lincoln Correctional Center? And that's-- so they were going to do some sort of assessment, like things that we ought to be concerned about and maybe, you know, hit now rather than wait until some incident later.

BREWER: [00:19:08] All right. Thank you.

DOUG KOEBERNICK: [00:19:11] Sure.

EBKE: [00:19:11] Other questions? Senator Pansing Brooks.

PANSING BROOKS: [00:19:15] Thank you for coming, Mr. Koebornick. This is all so needlessly complicated.

DOUG KOEBERNICK: [00:19:21] Yes.

PANSING BROOKS: [00:19:26] I'm-- and maybe intentionally complicated. I'm, I'm, number one, discouraged by the letter that came to us on December 7, 2018, from Director Frakes with this specific quote: Had there been a request for reports related to the disturbance at TCSI-- or TSCI, it would have been produced, including the report in question. Well, having led the LR34 Committee which specifically requested all sorts of information, and I can quote a response from Director Frakes from August of 2016, he talked about request number 23 which we sent to him, documents relating to the declaration of an emergency state arising out of the May 2015 riots at the Tecumseh State Correctional Institution and any extension of the emergency status, and whether the emergency status is currently in effect. Pursuant to that, we received the initial report that we are all aware of. And so lest anyone be confused about the fact that there was no confusion on the part of the department, it is quite clear that they knew we were asking for reports and they handed us one of the reports. They specifically spoke about it. They asked a question directly on it, so-- and again, I'm, I'm, I'm very sorry that Director Frakes and no other member of the department are here. Again, at another point, I guess, Director Frakes wrote that Deputies Sabatka-Rine and Smith would be unable to respond to questions related to the drafting of the document. We of course are not here to ask about the drafting of the document but instead want to know about the sharing or the withholding of the document. So again, I know that you know that, but some of these things need to get on the record and just make us all aware of what did happen. You know, we've had intervening legislative committees and-- but pursuant to the, to the LR34 Committee which, which I ended up leading, it is quite clear that we did ask for that report. And it's disingenuous to indicate otherwise. For further-- excuse me. I'm wondering, in your opinion, he talks-- Director Frakes talked about sensitive information in the second report. Do you have a feel for what that would have been? And again, I know it's your feeling and not the director's actual response, but we're dealing with what we have.

DOUG KOEBERNICK: [00:22:30] You know, having read both those reports, I think the second

report maybe he's talking about some information dealing with gang activity. But this isn't stuff that's new to us or, or anything. I've looked through the report trying to figure out what could be the security issue in this ten-plus page report, and that's about all I can come-- come back to is it's something with the gang activity and how they need to handle that. But there isn't, I mean, there isn't any information in here that I see that provides any information that we-- that shouldn't be released. It doesn't name any names, like I said. It doesn't talk about specific security issues within that facility. I don't know what it is. I'm confused.

PANSING BROOKS: [00:23:22] So let's just get a couple things on the record if we could. Did the first report-- because I'm looking at the second report. Did-- that is the new report to us. Did the first report talk as much about the various purposes within a prison system? So the second report said that there were too many purposes at Tecumseh. There was, there was high-security inmates and medium-security inmates and some of the problems that occurred with that. Was that discussed very thoroughly in the first report?

DOUG KOEBERNICK: [00:23:56] No. I'm at a disadvantage because I don't have it in front of me and I'm trying to remember. I got-- I've read three reports over the last week.

PANSING BROOKS: [00:24:01] Right.

DOUG KOEBERNICK: [00:24:02] And so I'm not sure what was in what right now.

PANSING BROOKS: [00:24:02] That's my problem as well and that-- therein lies the complication and the-- a little bit of the concern about what we're trying-- what we're dealing with. Again on the, on the gang activity it talked about that 47 percent approximately of the group appears to be in gangs. It then goes on to talk about the fact that best practices show that really to--

that they, that they call them STGs. That's another word for gangs. What does that stand for? Sorry.

DOUG KOEBERNICK: [00:24:39] Correct. Yes.

PANSING BROOKS: [00:24:40] What does STG stand for?

DOUG KOEBERNICK: [00:24:42] Yeah, strategic threat--

_____ : [00:24:42] Security group.

_____ : [00:24:42] Security.

EBKE: [00:24:42] Security threat group.

DOUG KOEBERNICK: [00:24:46] Security threat group.

PANSING BROOKS: [00:24:46] Huh?

EBKE: [00:24:47] Security threat group.

PANSING BROOKS: [00:24:49] Security threat group, OK. And it talks about the fact that, that any kind of overly aggressive system of response is both costly and ineffective nationally and that, that any correctional systems that have used primarily suppression-based strategies to address gang violence has basically driven up, number one, administrative segregation, and also, number two, gang-related activity. It's, it's driven people to increase membership. By trying to stop it, it causes people to gather and increase it. So I, as I have read the first report, I do not believe that was in that.

DOUG KOEBERNICK: [00:25:32] I don't believe so either.

PANSING BROOKS: [00:25:32] And, and so I think that is something that was, that was particular to it. I think also the discussion of the, of the Wellness League in, in the second report was something that we had heard about tangentially. We had heard information from different inmates and when we went to visit it, we heard that somehow the Wellness League had something to do with it and because-- and what this second report, the Useem report-- I don't know what we're calling it, but the second report talked about the controlled movement that, that there was a-- that even though it's a best practice, that the inmates saw it as a tightening of the screws and that then they felt the Wellness League-- some felt the Wellness League was unfair because now it wasn't available to all inmates. Is that correct?

DOUG KOEBERNICK: [00:26:23] That's, that's correct.

PANSING BROOKS: [00:26:24] OK. And then thirdly they talked about-- I felt it was interesting because there was a discussion of some of the political things and the-- the things that are happening nationally such as Ferguson and the fact that at one point that, that, that these, these people that wrote the second report felt that the inmates felt that, that by revolting and having some sort of defiance or uprising, that they would get some of the similar attention that Ferguson got and even ultimately said, "Hands up, don't shoot," and began to chant that. So I guess I'm, I'm interested. Have you heard anything regarding that about that tie to what's going on nationally and national activities?

DOUG KOEBERNICK: [00:27:21] Yeah. As far as that, Director Frakes actually had brought that up to me after this. So maybe that was that source of where he received that from, but he never

mentioned, mentioned the report.

PANSING BROOKS: [00:27:30] OK.

DOUG KOEBERNICK: [00:27:30] And on that strategic threat group the-- you talk about if, if you really crack down hard on that and everything, what you see is an increase in administrative segregation, use of that, and the higher gang activity. And Director Frakes in his letter says that, you know, he did install this, this intelligence network, and created some positions and things like that as a result of this. But my feeling is that he probably-- from reading my past reports, you, you could see in there that I think they went way beyond what, what these two authors were talking about and, as a result, we've seen an increase in restrictive housing, we've seen more tension out there. I think he, he took that report and did what they said not to do, was my impression.

PANSING BROOKS: [00:28:10] Exactly not to do, which is disconcerting as well. This-- the other thing that I wanted to talk about was the, the fact that the fifth thing that the, the second report mentioned was that the whole early release issue of inmates weighed into this, and we all remember that we somehow erroneously released hundreds of inmates,--

DOUG KOEBERNICK: [00:28:37] Correct.

PANSING BROOKS: [00:28:37] -- recaptured them and reincarcerated them, and that this all weighed in and so-- because we, we released them prior to their discharge date. In my memory, the first report did not have that discussion as well.

DOUG KOEBERNICK: [00:28:50] I don't recall that being in the first report either.

PANSING BROOKS: [00:28:51] So of course that, that is a fault of the state. That is-- that's our fault that we made that mistake. And of course then we have some culpability in what happened again with-- with the whole prison issue. I just, I just wanted to clarify a few of the things that, that this report specifically said. And also, I thought it was interesting because the quote-- the second report went on to talk about that there's a need for-- what they talked about is eight different kinds of-- eight different kinds of housing needs at various facilities. And, and they, they tended to sort of talk about that not every need is necessary at every facility. And that included: number one, maximum; number two, medium; number three, minimum custody. And then it also included mental and physical health, housing, developmental disability housing, geriatric housing or a place to deal with geriatric issues--it wasn't exactly housing--and a place to deal with protective custody and, finally, transition and re-entry services, an area that would deal with that. I just finally want to say that the second report also deals significantly, I believe, with programming, and that's something that Senator Ebke and I have really worked-- on our first day, about, we were assigned by Senator Seiler to look at and try to do what we could to improve programming. And I think we've continued to say that we have this vicious cycle where, where we have the overcrowding that's led to understaffing, and that leads then to a lack of ability to get people to programming because there's not the room to take them to the programming. And we do not have the staff to staff the programming rooms and then people end up jamming out without the programming. And of course once they jam out, then we have the issue of recidivism, and back in they come and there is the overcrowding. So I think the fact that this second report speaks directly to that is, is also important as well. Sorry-- just had a couple more questions.

EBKE: [00:31:21] Go for it.

PANSING BROOKS: [00:31:24] So I-- one other thing that I wanted to ask you about, and I've got-- again, this is complicated-- where my things are. So last year we had a bill that-- it was LB841

that was passed by the Legislature. I brought that bill and it directed the Department of Corrections and the Parole Board to implement a plan for the accelerated parole process. Do you remember that?

DOUG KOEBERNICK: [00:32:02] Yes, I do.

PANSING BROOKS: [00:32:03] And of course its intention was to deal with the fact that 2020 is looming and that we are required by law to get to 140 percent of capacity at, at-- by that time or else Director Frakes or whoever-- the director will have to certify an overcrowding emergency and that will initiate the fact that the Governor then has to declare that emergency and then initiate that the Parole Board will be required to start figuring out who could be released. Is that correct basically?

DOUG KOEBERNICK: [00:32:41] Um-hum, that's correct.

PANSING BROOKS: [00:32:41] So-- until we get down to 125 percent or below.

DOUG KOEBERNICK: [00:32:45] Correct.

PANSING BROOKS: [00:32:45] So I just wondered, have-- so we did-- so a report was required and we did receive it. Have you seen that report?

DOUG KOEBERNICK: [00:32:53] I have. I've read it.

PANSING BROOKS: [00:32:54] OK. And do you have some feelings about whether this report or whether this plan is sufficient to help us get to the 140 percent of capacity required within a year and a month?

DOUG KOEBERNICK: [00:33:09] I don't think that report does anything to inform policymakers or the public on how they would get to that point. There's nothing in there. There's no data, there's no-- it's, it's-- there's very, very little information in that report. It just kind of says, just trust us, we'll, we'll let you know what we need down the road. That's my impression of it.

PANSING BROOKS: [00:33:31] And I would agree it's-- for those of you who haven't seen it, it's seven pages, three of which-- or four of which recount the statute and the bill, and then the other three sort of summarize, you know, what's basically required and what could happen. But it is not a plan. So again, the overcrowding crisis is looming and we, we have to as a Legislature do something about it. Those are all my comments and questions to you.

DOUG KOEBERNICK: [00:34:00] Thank you, Senator.

PANSING BROOKS: [00:34:00] Sorry that I'm commenting, but Director Frakes isn't here, so thank you.

DOUG KOEBERNICK: [00:34:06] You're welcome.

EBKE: [00:34:07] Other questions? Senator Bolz.

BOLZ: [00:34:08] I have just a couple things I'd like to ask you about. I appreciate that this is probably a question that's better directed at Director Frakes. But since you are the-- sort of the person who found the thread of the second report, what you testify is that Director Frakes hired Dan Pacholke and Bert Useem. So this was a report that was requested by Director Frakes in his official capacity as the director of our Department of Correctional Services, correct?

DOUG KOEBERNICK: [00:34:44] Correct.

BOLZ: [00:34:45] And you-- it says he was hired, and so it was also paid for, to our knowledge, was paid for--

DOUG KOEBERNICK: [00:34:51] Yes.

BOLZ: [00:34:51] -- with state-funded dollars?

DOUG KOEBERNICK: [00:34:52] Yes. They each received just slightly less than \$10,000 for the report.

BOLZ: [00:34:59] OK. So I guess I just want to raise that is we paid for this report. There is no reason why a state-funded report shouldn't be released to us. If there were information that was sensitive, that information can be redacted like any of the other pieces of information that have been provided to the Legislature. So I just want to reiterate this was, this was a state-funded report and I find it disappointing that it wasn't shared. So the second question I wanted to ask you specifically, because you've done such a great job of connecting with and, and learning from the, the hardworking staff members who are, who are keeping us safe every day. And one of the things in this report, in the Useem-Pacholke report, that I thought was worth lifting up is we've had conversations in this committee before, in the oversight committees before about how a more civilized facility can be a more safe facility, can be a safer facility. And this report seems to kind of build on that theme specifically by talking about the importance of case management and investing in case management and using case managers to engage inmates and leading down a pathway to greater safety. And I think that's a really important recommendation. So I guess I'm grateful that we

have it now, if we had seen that sooner. My-- the question I'm trying to get to is, can you clarify for me and help me think through how case managers are wrapped up into both the contracting-- the contract negotiation and the merit pay system that has been put into place, because this recommendation seems to prioritize investing in case management and it is my understanding, and perhaps you can validate my understanding, that case managers aren't a part of the Fraternal Order of Police union negotiations, nor were they eligible for the merit pay. So can you, can you clarify or shed any-- is my understanding correct, and can you shed any further light on it?

DOUG KOEBERNICK: [00:37:04] I actually do not know the answer to either one of those questions, but I can find out for you.

BOLZ: [00:37:07] OK. That, that is, that is my recollection. And, and I think if, if, if that is the case, if that-- if those merit-- if the merit pay wasn't equally offered to case managers, that it seems like it might have changed had we known and understood this report. I mean the other thing that I think is worth highlighting on this subject, and then I'll, I'll wrap up, is the-- this report reflects that case managers-- I'm going to read it so that I get it correct. The department has confused this role-- let me just start at the beginning: Case management staff is the visible representation to inmates of a correctional system's commitment to their betterment and well-being. Their primary purpose should be the management of individual's case-- inmate's case plans and to assist them when they have specific needs, for example, deathbed visits, emergency phone calls, special visits. The department has confused this role by deploying them as correctional officers with the title of case manager. And so what I think we're learning from this report is that we need to invest in and reinforce that role of case manager and ask the department to do so, see if that results in a civil-- civilized institutions that are safer. If you have any comments, I'd, I'd be happy to hear them.

DOUG KOEBERNICK: [00:38:25] Yeah, just, just to-- one of the problems within the

Department of Corrections right now is a significant shortage of those positions at both Tecumseh and the State Penitentiary. And maybe if there was more emphasis given to them as far as their salary but, more importantly, their duties, he might not have that, that shortage, because right now I've talked to so many of those people over the years that have grown frustrated because they thought they were getting hired to actually work with inmates to develop, you know, kind of a rapport and to help them move forward, but then they're being used to deliver meals, do cell extractions, do travel orders, and they're not doing what they were hired to do. And that leads to a lot of frustration by them and I think that contributes greatly to the shortage of those staff members within the system.

BOLZ: [00:39:19] OK. Thank you.

EBKE: [00:39:21] Senator Krist, if you had a question.

KRIST: [00:39:22] I just-- I want to be clear, and for the record and for the press, we had a study done--the first study, let's call it. Who did that study?

DOUG KOEBERNICK: [00:39:33] Thomas Fithian from the Department of Corrections in Washington.

KRIST: [00:39:37] OK. That report we all saw.

DOUG KOEBERNICK: [00:39:40] Correct. They did a press release. It was on the public-- you can go out right now and find it on the Internet.

KRIST: [00:39:44] OK. And these are questions that most of the people around the state will

understand. But I just want to make sure that the public understands the lack of transparency and the lack of truthfulness that's been going on from that point forward. The second report was requested directly by the director of Corrections, Mr. Frakes, who for whatever reason is not with us here today. And he asked Mr. "P" and Mr. "U" to do this report--we'll call it report number two--and it's ten pages long. And it cost us \$20,000?

DOUG KOEBERNICK: [00:40:20] Correct.

KRIST: [00:40:20] It's ten pages long. It's a very expensive report that my colleague has already brought up, Senator Bolz. It was paid for by our money and was not released to us for our edification, and for no apparent reason other than the fact that they're claiming that they didn't release it because there was sensitive information in it?

DOUG KOEBERNICK: [00:40:43] That's one of the reasons he states now, yes.

KRIST: [00:40:45] Well, we can ask them, Mr. "P" and Mr. "U," when they come on and talk to us in a bit. Was there any backup information to those ten pages? Are you aware that there was appendixes or--

DOUG KOEBERNICK: [00:40:57] Good question. I-- after I requested the report and received it and I looked at it, I went, there's not a lot here, there, there should-- are there any other work products? I reached back out to the department and said, were there any other documents that they provided to you along with this report, any, anything, you know, a list of people that they interviewed, just their, their work product, and they--

KRIST: [00:41:16] And then the follow-on, there was--

DOUG KOEBERNICK: [00:41:16] -- and they said no.

KRIST: [00:41:19] And to follow on, there was a third attempt for the director at some point to say we still would like to have another assessment in terms of safety, is that correct, and that's never been followed up on?

DOUG KOEBERNICK: [00:41:32] That's the-- that's the 2000-- after the 2017 riot, yes, yes, and that was never followed up on.

KRIST: [00:41:40] I'm in the wrong business if a nine-page or ten-page report cost us \$20,000. Thank you, Mr. Koebernick.

DOUG KOEBERNICK: [00:41:46] You're welcome.

EBKE: [00:41:47] Other questions? I have just one.

DOUG KOEBERNICK: [00:41:53] All right.

EBKE: [00:41:53] Dragging us back to the second report, the report in question, and, you know, it was, it was released in August 2015, or the director got it?

DOUG KOEBERNICK: [00:42:01] That's my understanding.

EBKE: [00:42:01] That's what was-- we-- it was paid for in August of 2015, anyhow, right?

DOUG KOEBERNICK: [00:42:07] Correct.

EBKE: [00:42:07] And the request by the LR34 Committee via Senator Seiler, Senator Pansing Brooks, was in July of 2016, correct?

DOUG KOEBERNICK: [00:42:20] Correct.

EBKE: [00:42:20] And Senator [SIC] Frakes responded in August of 2016, the early part of August of 2016. In your observations within the Department of Corrections, if there was something, let's say in August of 2015 they saw all these security threat group problems, would they not have started to address them by that time so that whatever was found in 2015 would no longer be relevant and perhaps not sensitive in the summer of 2016?

DOUG KOEBERNICK: [00:42:52] Possibly, but--

EBKE: [00:42:53] I mean what-- I mean that's one of the things that we've been told on a number of occasions--

DOUG KOEBERNICK: [00:42:57] Um-hum, that it's, that it's taken care of.

EBKE: [00:42:57] -- that they're moving people from one place to another place in response to the, the security threat groups. And so it seems to me like that would have been-- that what was sensitive in 2015, although it could have been redacted and so forth, you know, right away, by 2016 there shouldn't have been too much that would have been hazardous to, to show, you know, to the, to the committee.

DOUG KOEBERNICK: [00:43:21] I agree. I agree.

EBKE: [00:43:21] OK.

DOUG KOEBERNICK: [00:43:23] And even in the 2017 report, one of the things it says is you shouldn't group up people together that have a lot of issues, and that's what we've done since then, so I'm not sure if they're following these recommendations.

EBKE: [00:43:40] OK. Anybody else?

GEIST: [00:43:43] I do have a question.

EBKE: [00:43:43] Senator Geist.

GEIST: [00:43:43] And, and bear with me being rather new to this process. I wanted to ask you about alternatives to grouping, like STG. One of the things that I do recall when we went and visited different facilities was a concern of some of the inmates of other inmates who may be dangerous to them. And so in thinking of-- I've wondered about the strategy of grouping like people together, for instance, the security threat group individuals together, versus dispersing them in the population. And, and I'm wondering, is it-- I mean there's not a good alternative, is there? Or, or is there that-- can you educate me on what would-- what would be a better alternative to make everyone have a sense of safety? That's lost on me, I guess.

DOUG KOEBERNICK: [00:44:50] Yeah. You know, I think there's probably different schools of thought on how to operate with that. And one of the things that impacts the Nebraska system is just the lack of space and lack of beds in different facilities to move people around and maybe spread

them out a little bit. But I know from talking to, to men who have lived at the State Penitentiary for quite some time, they thought, OK, there's benefits to having the mission-specific housing where you just have the veterans together, you have the elderly and everything like that.

GEIST: [00:45:18] Right.

DOUG KOEBERNICK: [00:45:18] There are benefits for them but they also said that in the past you'd kind of have a mixture of population, and so it-- that trouble was diluted in a way. And then you had positive people around some of those problem folks and that helped keep the place more calm. And so doing that, they believe that by getting away from that has caused more problems at like the Nebraska State Penitentiary or Unit 2 at Tecumseh. But I'm, I'm guessing there's lots of different ways of looking at it.

GEIST: [00:45:52] Is, is, is it-- I don't want to stereotype, but I will say some of the feedback I've received was that in some instances an inmate who maybe all of his life all he's known is a gang may have a different mind-set or lack of consciousness maybe than your typical inmate from the past and may be more difficult to integrate within a, a specialized housing unit and may be more difficult to mix with others who are less violent. Is that valid? Would that-- would you--

DOUG KOEBERNICK: [00:46:44] That could be, that could be valid. I think one of the-- I think when you go back again and look at the system and really when you're talking about it, I really start focusing in not so much at Tecumseh but the State Penitentiary with Units 2 and 3 there. And those units, the way they're set up, too, are, are a barrier to, to men being able to kind of get out and-- and it's so tight in there. You've been in there. It's so tight they hardly have any day-room space, they don't have an adjoining outdoor yard that they can just jump into if, if need be, to release some of that pressure and that stress and that angst and everything. So just having that facility the way it is,

those housing units, is, is a real challenge and I think contributes to the problem. But I think there is probably something to what you're saying.

GEIST: [00:47:39] And just one more if you don't mind. And I don't know the answer to this, so you can help me with this. My impression has been that the security threat groups are grouped together in Tecumseh. Are they also grouped together in the State Pen?

DOUG KOEBERNICK: [00:48:02] Oh, I-- there is a mixture.

GEIST: [00:48:03] It-- OK.

DOUG KOEBERNICK: [00:48:03] Yeah.

GEIST: [00:48:03] Ok. Thank you.

EBKE: [00:48:08] Any other questions? Thank you. Mr. Lux, how are you today?

MARSHALL LUX: [00:48:26] Hi. Good afternoon, Senators. My name is Marshall Lux, M-a-r-s-h-a-l-l L-u-x. I'm the Ombudsman for the state of Nebraska. And I wanted to share a few thoughts on the subject of this new report or new old report or second report, or whatever it is we want to call it. I'm having distributed to you some prepared remarks that I've made. Mostly that's my analysis of some of the content of the report. I'd encourage you to read that and-- because there's some ideas in there that I think will be useful. I, I do have a few other comments that I want to make, and I'll try to get through this as quickly as possible to save time. Leaving aside the substantive issues raised in the report, and there are some important ones in there, I think that actually the most important issue that is raised by this, this new old report, this Pacholke report, is, is how it was handled by the

department. And I know from the remarks that I've heard you and-- exchange in your dialogue with Mr. Koebernick that there are some of you who are concerned about that too. I think we should be concerned with the fact that this report is only surfacing now more than three years after it was, was done, and more than three years after the riot. And there are, there are just a few points that I'd like to make that relate to that issue specifically. First of all, let's, let's stop and think for a moment about the event itself, about the riot in 2015. It was one of the most important events in the history of Corrections in the state of Nebraska. It was the first full prison riot that our Corrections system has had in 60 years. So it was a big deal and it was certainly a big enough deal that when the Department of Corrections got this second report addressing that, that event, that is something that should have been, in my opinion, shared with the public, shared with policymakers, shared with the news media so that we knew what it said and what its insights were. Secondly, I would ask that the veterans on the committee to recall that back when the, the Mother's Day riot in 2015 occurred and in the aftermath of that riot, one of the big unanswered questions even into the summer was the cause of the riot--what was the motivation, what was the-- what were the causal factors in the riot and behind it in terms of the motivation of the, of the inmates? The Department of Corrections left the impression that it was basically serendipitous, it just happened, there was no cause for it. And their-- and the news media, both of the newspapers, the Journal Star and the World-Herald, in July of 2015 had commented on the fact that we'd had this event and that there was no explanation as to, as to the cause. So there was this big void in the narrative in terms of what happened. This Pacholke report specifically and thoroughly addresses the issue of cause, so it would have filled that void in the narrative and would have done so in the summer of 2015, back when, when this, when this was all a big issue and we were all worried about what the cause behind the riot was, the one big, unanswered question. This report answers that question. So why wasn't it shared back in 2015 when it would have been of vital interest to-- not only to the public but to the LR34 Committee, or whatever committee it was, that was, that was working, a special select committee that was working on the issue in, in 2015. Furthermore, if you look at the December 7 letter that Senator Ebke

received from Mr. Frakes, you'll see that there is a line in there where he mentions the report that the Ombudsman's Office created on the, on the riot. And we are the third report. We did a long report on, on the riot and spent a lot of time discussing that whole question of motivation and cause because even then that was the unanswered question. Mr. Frakes's letter to Senator Ebke suggests that, well, he really didn't need to release this Pacholke report because the issues discussed in, in that report were discussed in the Ombudsman's report, which is true. The problem is the chronology. Mr. Frakes got his report from these two consultants in, in the summer of 2015. The Ombudsman's Office report didn't come out until October of 2015. So it would have still been relevant and undiscussed in, in, in July and August of 2015 when this report came, when this Pacholke report came out. I'd also point out that this, this new old report, this Pacholke report, covers some very, very important issues. And some of those have been mentioned in your, in your discussions with Mr. Koebernick, the whole thing about the management of security threat groups, as discussed in this, this report, the question of the mission of TSCI and whether there should be some changes made in, in, in the composition of the population of that facility discussed in this Pacholke report. The department's use of case management staff is, is raised in this report. And, and the question there is, should case managers be used as, as guards, basically, as security officers, or should they be doing actual casework? That is raised in this Pacholke report. And the, the, the point is that those are very good issues, they're important issues. That's why you were raising them around this table when you, you talked to Mr. Koebernick, and they are raised in the Pacholke report. But in the three years since the riot, they have not been discussed, they've not been explored. They would have been explored if you got that report because you would have known that those were issues and you would have talked about them and policymakers would have been able to weigh those questions. The fact that you didn't get the report when it was delivered to the department prevented you from looking at those big issues. They're just coming up now. You could have been talking about them three years ago. So all of this brings me to, to, to believe that the, the big question is the handling of the release of the report, or the nonrelease of the report. That's what I

think is the big question here. And then there is the, the, the other, by implication, the other question of what this tells you about the administrative culture of the Department of Corrections, especially at the top in the executive management of the department, and whether they're making bad decisions there. And finally, I, I, I know that, that in some of the comments that have been made about this report there was the suggestion that, well, it couldn't be released because of-- because it has sensitive content. I've read it several times. I don't see anything in there that's terribly sensitive, certainly not in a security sense. It may be sensitive in a bureaucratic sense because it is less than flattering, but not in, not in the security sense. There's, there's nothing in here that, that, that needs to be kept secret from, from inmate population let alone the public. So my, my message to you really is that what you need to be thinking about is trying to get to the bottom of why this report was handled the way in which it was, what that says about the leadership in the department. And with that, I'll stop.

EBKE: [00:58:11] Senator Krist.

KRIST: [00:58:14] First, publicly, let me thank you for your years of service. We worked together, arguably, pretty well when I was the Chairman of the Exec Board, and I hope that your replacement is as-- half as capable, and I know that he will be.

MARSHALL LUX: [00:58:30] Thank you.

KRIST: [00:58:33] We, the state, owes you a great deal. My comments are going to be weighed and measured in different ways but frankly, Scarlett, I don't give a darn. I called for Director Frakes to be replaced, to resign early in '17, and it was after several years of asking Mr. Frakes what he was going to do to fix the problem and continually talking about dashboards and culture change and things that don't give the department, nor the hardworking men and women in Corrections, the

credit that they are due. And I'll say it again, more incidents, accidents, riotous activities, deaths and murders in this system in the last 4 years than we have seen in 30 years prior, and it seems to me that it's time to stop blaming and deflecting and it's time to start doing something about it. I know this Governor doesn't have the will to do it. It was one of my motivations to try and replace him. But you are-- we are where we are and maybe he will find some intestinal fortitude someplace in his millions of dollars. The blaming and deflecting has been, though, something that's been done in this administration. And I share your less fervent but still very pointed comments that we have a leadership problem in the Department of Corrections and that my hope is that the ACLU will prevail and that this state will see the Department of Justice take interest in the Corrections Department because I see no other way out of this, with the exception of somebody with more intestinal fortitude than currently exists and leadership skills coming forward. My only regret today is that my friend and colleague Senator Chambers is not here to join us because what we learned going back to LR424 taught us a lot about leadership, taught us a lot about the situation that currently exists and has existed in Corrections for many, many years. So without editorializing anymore, thank you, Marshall, for all your dedicated service and for, for lack of better terms, calling it like it was, like it is for the many, many years that you've been here. Thank you very much.

MARSHALL LUX: [01:01:13] Thank you, Senator.

EBKE: [01:01:20] Other questions? I would ask you to just, because you've got, I want to say-- I won't say a lot of years of service, but you've got a lot of years of service here.

MARSHALL LUX: [01:01:30] I do, I do.

EBKE: [01:01:30] I would like to hear you just give a brief characterization of the correctional

system, you know, and kind of these problems, kind of how they've boiled to the top over, say, the last 10 or 15 years.

MARSHALL LUX: [01:01:45] Well, that's a big, that's a big, big question, Senator.

EBKE: [01:01:49] Well, we've got 15 minutes. [LAUGHTER]

MARSHALL LUX: [01:01:52] It's-- our Department of Corrections is, is a bureaucracy. And like all bureaucracies, it's, it's fraught with problems--they'll never be perfect, they're not supposed to be perfect. In my experience dealing with, with bureaucracies in the public sector, I hear a lot of, of complaints about how, how agencies work and how, how inefficient they are and so forth. Based on my studies and observations, the fact of the matter is, they are just-- there's just as many problems in the private sector as there are in the public sector, and you could, you could make a strong case for the prospect-- for the proposition that the most incompetently run bureaucracy in this country over the last 40 years was General Motors, not a public agency. But so our Department of Corrections has those kinds of issues, it just does. And the problem has-- two problems have, have come along that have plagued it and made things worse. One of them of course is, is that the issues that Senator Geist was talking about with the emergence of the, of the security threat groups, the gangs, the prison gangs. That is a new challenge that didn't exist in the past and that has made it more difficult for the system to operate and it-- and is what led to the, the change in how they manage the facilities in this state, which happened back earlier this decade. And of course the other problem is that we've got too many inmates in our system not only measured by the beds that, that the system has, but also measured by our ability to, to adequately staff the facilities. And so what is always going to be a difficult job, running a prison system, has gotten a lot more difficult for those reasons. I don't think that our system is underresourced in terms of the decisions that the Legislature makes. I think that you've been, as a body, you've been generous in terms of meeting their needs

with, with dollars. I don't think that's the problem. There is an issue as to whether they ask for what they need, and we have seen that especially in these last several years. There have been a couple of cases that I can recall where Mr. Frakes has turned down money that, that the Legislature, the Appropriations Committee was willing, willing to give the agency. So that's odd. But I do think that, that the system as it now stands is a system that's in stress. That's what the report said, and I think they're, they're right. And I think that needs to be addressed. It hasn't been yet. I'm disappointed with the outcome of LB605. It doesn't seem to have done much but freeze us in place in terms of, of population. I think that there are solutions that are out there. I think that those solutions should be considered by the next, by the next Legislature, the one that meets in a few weeks. And I think that there are ways that we can, we can better manage the, the population and, and get the numbers down basically by moving them into community custody settings rather than keeping them in expensive prison cells because there are a lot-- one of the biggest problems is that we have too many of our, our beds occupied by people who are not dangerous and not worth the expenditure that's involved in keeping in the-- them in those high-security beds when they could be out in a community center working, earning a living, paying rent, being programmed and being reintroduced into society in a way that is positive. Those are the ideas that come to mind when I think about that.

EBKE: [01:06:23] Senator Pansing Brooks.

PANSING BROOKS: [01:06:25] Thank you. Thank you for being here and for your amazing service to our state. I'm-- I guess I'm interested in a couple things. First off, I'm grateful for your summary of the report. I'm hoping that you will just for the record discuss the case management staffing versus Corrections staffing and how the second report, Useem--I don't, I don't know what to call it--but anyway, the second report discussed the fact that, that Corrections is blurring the lines for inmates between case managers and corrections officials, and case management roles I

understand become almost disciplinary rather than case management. Could you speak to that a little bit?

MARSHALL LUX: [01:07:15] It's basically what you've just described. If you go into a unit at, at one of the facilities, what you will find is there will be some people wearing a uniform. Those are security officers, correctional officers. Their job is security, to make sure that things don't get out of hand and that everything goes well in terms of escorting inmates and doing all of those sorts of security-related things. The other people you will see will be wearing khakis and, and polo shirts, and those will be the caseworkers, the case managers. And they are caseworkers. They're supposed to be helping the, the inmates with their, with their individual problems, working their way through the system, helping them figure out how they should get access to programming and all of those sorts of heavy casework things that, that need to be done. They also will write evaluations, reports, things like that, that the security staff is not trained to do. What has happened, and it is highlighted in this report and it is accurate, the report is accurate in that regard, is those lines have been blurred, and they've been blurred for two reasons. One, there's the question of whether they have enough caseworkers in the first place in terms of how they've organize their, their personnel. But it's also-- the other problem is that because they are short-staffed and having problems keeping full-time staff and even having enough staff in the, in the facility to run it, some of the security-related work gets pushed off onto the, onto the caseworkers. And so they end up doing things that they're not really there to do. And so you rob from the casework piece of the, of the operation in order to deal with your shortages on the security side. Essentially, that's one of the many ways in which our staff shortage is basically balancing the problem on the backs of the inmates by taking away things that, that they need. If you read this report, by the way, and I'm sure you will, one of the things that it talks about is how there were-- the facility at Tecumseh on the day of the riot was short-staffed by four people. Historically, when, when you ask the department about the staffing at, at Tecumseh, they would always say it's fully staffed. It took me a while to figure out what that really meant.

What it really meant was that they had all of their essential posts covered. It didn't mean that they had all of the staff that they were allotted for any particular shift. There were vacancies on the staff. What was happening was when there were vacancies for essential posts and they could not fill that hole in their essential post by compulsory overtime or something of that nature, then what they would do is they would take an, an employee from a nonessential post, move it to the essential post. Well, what that does is it takes away coverage from the library, from the gym, from, from the club coverage, from all of the things, all of the good things that, that the inmates have to make their life a little easier. And so that process of moving staff around from nonessential posts to essential posts because you're short of staff, that, too, makes the inmates' life less, less livable, makes them more angry and harder to manage too. So there's that issue as well.

PANSING BROOKS: [01:11:22] OK. So thank you for that information. I have read it a couple times. So one of the things that I'm interested in is, is there-- it did speak about being understaffed by four. Do we have a feel for were those the caseworkers? Do we, do we know what the percentage of caseworkers versus actual correctional inmates is required in that regard?

MARSHALL LUX: [01:11:44] I do not, no.

PANSING BROOKS: [01:11:45] OK. Is that something that's set-- it isn't set by, by each institution, it's just something--

MARSHALL LUX: [01:11:54] I think it's-- when I looked at this before, many years ago, my impression was-- one of the issues I raised years ago with regard to TSCI was that I thought that there were too few caseworkers there and too many security staff or that they were out of balance, maybe not so much that they had too many security staff, they didn't have enough caseworkers. And I-- the caseworker is there to help serve the population, not to keep them under control. I thought

that was-- that that mattered. But what the ideal balance is, I, I-- is not something that I would be able to, to give you an answer on.

PANSING BROOKS: [01:12:33] OK. And just a final question, if you would speak to what they termed the "safety paradox," which I think is the other-- and I mentioned it with Mr. Koebernick, but, you know, the key issue is that they said, "Giving inmates the opportunity to engage in activities that they find meaningful (e.g., treatment, education, vocational training) reduces idleness and incentivizes desistance from violent and disruptive behavior." Could, could you speak just a little bit because I think there's a tendency for people to believe, oh, we don't need to be-- that's coddling prisoners to give them programming or to-- you know, they should just be locked up, pay their due, and then be released. Well, we know something like 94 to 96 percent are going to be released. We know the, the kind of programming that, that is required for the Parole Board to act is programming that will make our communities safer, such as addiction behavior-- addiction training or, you know, classes on behavior modification. So could you speak just as a last effort about the importance of programming, the importance and actually the cost savings.

MARSHALL LUX: [01:13:59] Well, actually, you're touching on two things. Obviously, the, the programming is extremely important. We're-- the whole point of prison is not just to punish but to change behavior, and in many cases that's going to require, almost all cases, it's going to require some form of programming. Our programming resources in the system are in short supply, and that is-- that has a sort of effect on the population because inmates who are not programmed when they become eligible for parole are almost automatically not going to be suitable for parole. And so they stay longer than they might otherwise need to. That's programming. But there are other things that you talked about as well and clubs, vocational trainings, those sorts of things which are, are very important, as the report suggests, but they're not only important in terms of equipping the inmate to be a successful citizen when they leave. They also contribute to the safety and security and the good

order in the facility because they keep inmates busy and it keeps them busy on doing positive things. And that's important for obvious reasons, but it's, it's doubly important at this point in time in our prison system because of one other thing that has happened, which I probably should have mentioned when I answered Senator Ebke's question. And the other thing that has happened in our system is that the cultural-- that these, the social arrangements in the facility have changed substantially in the last decade. Historically, the Nebraska prisons, particularly now I'm talking about the male facilities, had what they called open yards. In an open yard arrangement, what happened was the sun come up-- comes up in the morning. Early in the morning the inmates are-- wake up, get out of their cells, go to, to the chow hall, have breakfast, and then they can spend, or they were allowed to spend, most of the day circulating in the yard, talking and exercising and doing, hopefully, mostly positive things with the rest of their day. They were free to do that in the yard. Now some would have been at programming, some would have been in-- some in the library, some would have been, would have been working in jobs that they have. But they would have been able to, to go out and circulate and have certain freedom of access to the yard. Back in around 2011, somewhere in that area, that was all taken away suddenly. And the reason it was taken away was the population problem and the, and the gang issues and the manage-- the difficulties of managing the facility that came along with that. So we took away the open yards. That was a huge change for the inmate population. And looking back, I think that one of the mistakes that was made is that we didn't find some ways to sort of ease that or mitigate that or recompense the inmates for that loss by giving them some other things to do, more other things to do. If we're going to manage their movement, that doesn't mean that they can't have lots more things to do, more vocational training, more, more club activities, more hobby activities, those sorts of things. And the system really didn't do that. It just said, look, we're going to change the way we run this place, you're not going to be able to go into the open yards anymore, you're going to have-- you're going to be stuck in your unit more, and that's just the way it is. And I don't think that that was very well received. And looking back, that probably is what caused that riot in May of 20-- of 2015.

PANSING BROOKS: [01:18:16] And has that changed, to your knowledge?

MARSHALL LUX: [01:18:19] I don't see it changing very much. The, the wellness program was the one thing that was done.

PANSING BROOKS: [01:18:24] Yes.

MARSHALL LUX: [01:18:26] OK? And that started at the penitentiary. That was an idea that came out of the penitentiary and they said, well, OK, the inmates are unhappy because they aren't getting outside of their units as much anymore, so we'll have this wellness program which will, will get them out of their units and into the open air, but it'll be organized. There will be activities going on, so it's not like it'll be the same, the previous thing where everybody was just sort of circulating and doing-- nobody really knew what was going on. It was a good idea. I think it was a great idea. It was exactly the sort of thing I'm talking about helps to make it, you know, the facility more livable and, therefore, more easily managed. And it worked at the penitentiary from, from everything I could tell. And we talked about that in the report that our office did. Problem is it didn't work at Tecumseh because it was, it was administered differently there. It was administered in a way that the inmate population thought was unfair, punitive, and in some cases discriminatory. That led to grievances. Those grievances led to what was supposed to be a peaceful protest on Mother's Day in 2015, quickly spun out of control into a riot. But that was really what the cause was all about, the cause of the riot was primarily about that, about the loss of the open yards and the way the wellness program was being managed.

PANSING BROOKS: [01:19:50] OK. And just finally, so-- and I just--

EBKE: [01:19:51] Well, we get--

PANSING BROOKS: [01:19:52] OK.

EBKE: [01:19:52] We've got a phone call coming in, in about five minutes, so we--

PANSING BROOKS: [01:19:55] This is it. The--

EBKE: [01:19:55] OK.

MARSHALL LUX: [01:19:56] I'll give you a quick answer, Senator.

EBKE: [01:19:58] OK.

PANSING BROOKS: [01:19:58] OK. In all the decades that you have been our Ombudsman, have you ever had a case like this where a department of the state withholds specifically requested information from a special investigative committee of the Legislature?

MARSHALL LUX: [01:20:13] No.

PANSING BROOKS: [01:20:13] Thank you.

EBKE: [01:20:16] Thank you. If there are other questions, we'll try to drag you back here in a little bit. But, but we have-- we're going to take a break for about ten minutes so that we can get our, our authors, report authors on the line, and then we'll resume. So if everybody wants to stretch until 2:30.

[01:20:33] [BREAK]

EBKE: [01:29:22] So we're going to call up-- call the hearing back to order and at this point, I think, do you gentlemen have anything you want to say in advance, or should we just start with questions?

BERT USEEM: [01:29:22] [INAUDIBLE] start with questions would be fine. Dan, did you want to make a--

DAN PACHOLKE: [01:29:22] No, no, no. That's, that's fine with, with me as well.

EBKE: [01:29:22] OK. Well, I will ask the first question then. Tell us a little bit--

LAURIE VOLLERTSEN: [01:29:23] They're going to have to identify themselves each time.

EBKE: [01:29:23] OK. You'll have to figure out, be-- since we've got you telephonically, we'll need, in order to have a clear record, we're going to need to make sure that you identify yourself by last name or something each time you begin speaking so we don't get confused in between.

_____ : [01:29:38] OK.

EBKE: [01:29:39] So, so the first question I would have is, how did you get involved in this particular report? What, what was the genesis of that?

BERT USEEM: [01:29:52] OK. I can, I can speak to it. This is Useem. I can speak to that

question. Shortly after the events of May 10 and 11, I contacted Commissioner [SIC] Frakes to volunteer my services. Excuse me. I-- I've written a couple books, several books on prison riots and felt I might be able to approach the events with a wider perspective. And in these conversations with the Director Frakes, I mentioned that Dan Pacholke was a collaborator on other projects. [INAUDIBLE] went together and we then received a contract from the department to do the investigation.

EBKE: [01:30:37] OK. And can you tell me when you began the investigation and when it concluded, approximately? Hello?

_____ : [01:31:07] I'm just looking through my notes right now.

EBKE: [01:31:09] OK.

_____ : [01:31:09] It-- our obligation was to finish up by July 15, 2015, and we met with Director Frakes on June 24, 2015.

EBKE: [01:31:26] OK. And if any of my colleagues have questions-- I think Senator Krist has a question.

KRIST: [01:31:33] I have a couple, and these are pretty much rapid fire. They're really not a whole lot of substance, I don't think, but take as much time as you need. Thank you for participating in our, in our committee hearing, by the way. What guidelines did the director give you when he hired you for the job?

BERT USEEM: [01:31:55] Well, in the, the written RFP was that we interview executive staff,

first responders, special team leaders and members, excuse me, and others involved in the response, containment, resolution, and restoration of the facility and its operation.

KRIST: [01:32:27] Were you surprised that he didn't share this with the department, or were you under the impression that this report would be shared with the department and the executive branch as well as the legislative branch? Or did you have any expectations to any of those questions?

BERT USEEM: [01:32:48] It did not get discussed with us. I assumed it would be shared with the senior members of the department. But we interviewed them so I thought it would be indeed shared with them, but nothing, nothing explosive on that.

KRIST: [01:33:03] So the report is, well, very, very brief, very concise. Was-- were there appendixes or background information or studies or charts or anything that accompanied the product?

BERT USEEM: [01:33:20] No, there were not.

WAYNE: [01:33:21] Who's speaking right now?

EBKE: [01:33:28] Is, is this Mr. Useem?

BERT USEEM: [01:33:31] I'm sorry, I should say my name. Yeah, yes, it is Useem.

EBKE: [01:33:33] OK, thank you.

KRIST: [01:33:36] Were you asked to come back and do anything further after you presented your

data?

BERT USEEM: [01:33:43] Useem. No.

KRIST: [01:33:46] OK. Is that for both of you, the answer no?

DAN PACHOLKE: [01:33:51] Well--this is Dan Pacholke--I had participated in the review with Mr. Useem and completed that body of work and I really think our deliverable was kind of, you know, we had like daily updates with Director Frakes as we went along and produced the report. At the very end of it, when the report was final, we also had an additional call, a discussion with him around the 24th. And that really put that body of work to rest. Just in-- just for full transparency, I moved on and I started working for NYU probably the summer of 2015, New York University, and they had branched out of Litmus that was working on government innovation. So in my area of specialty is, of course, corrections and criminal justice, so I have-- I did in 20-- probably late 2015 and 2016, I was in and out of Nebraska a little bit with an NYU team. It was a no-cost consulting arrangement because we were funded from NYU, so it was no cost to the state for us to come out there. Subsequent to that, I have-- I am on retainer by a group called Securus Technologies, and I continue to go back and do work inside of Nebraska. Once again, it's a no-cost consulting arrangement. So literally from 2015 until now I've had interactions with Mr. Frakes and the Nebraska Department of Correctional Services.

KRIST: [01:35:28] So you had-- just two others, if I could, Madam Chair?

EBKE: [01:35:31] Yeah, [INAUDIBLE]

KRIST: [01:35:32] Thank you. You have on your Web site listed a study that was done and you

say the data was based upon an unnamed state for early release or the misrelease, let's call it, of individuals. Was that Nebraska that you didn't name?

DAN PACHOLKE: [01:35:50] You-- are you talking about the, "The Making of a Crisis" [SIC] that, that was published in a peer-reviewed journal?

PANSING BROOKS: [01:35:58] Is this Useem again?

EBKE: [01:35:59] No, this is Pacholke.

KRIST: [01:36:02] Is this Mr. "P"?

DAN PACHOLKE: [01:36:02] Oh, excuse me. This is, this is Pacholke. I'm sorry.

KRIST: [01:36:05] OK. I-- I'm assuming it is. It's only referenced as data collected in an unknown state. I guess I'm-- that's-- are you using the data from Nebraska on other studies, on other papers?

BERT USEEM: [01:36:22] Useem. No.

DAN PACHOLKE: [01:36:22] This is Pacholke. No.

KRIST: [01:36:27] Well, who, who is the other state that hasn't been named in that study?

DAN PACHOLKE: [01:36:35] This is Pacholke. But Bert Useem, myself, and another colleague of mine published an academic paper in a peer-reviewed journal on the early release of offenders that occurred in Washington State beginning in December of 2015.

KRIST: [01:36:53] OK, because it's relevant to a conversation we just heard from our Ombudsman in terms of the culture that has built because of those inadvertent releases at that time. I was just wondering if that was Nebraska data that we could look at or come back to. Would you be open to coming back to Nebraska and this time doing a transparent study release?

BERT USEEM: [01:37:24] I, I think I would. This--I'm sorry--this is Useem. and the answer is yes.

KRIST: [01:37:26] Maybe we'll--

DAN PACHOLKE: [01:37:31] I, I would-- this is Pacholke. I would be-- of course I would be interested in working more in Nebraska. You know, you've got a very thoughtful and progressive director there.

KRIST: [01:37:44] We're, we're a bit concerned that the thoughtful director is not sharing the information with the legislative branch, which, of course, if you know anything about civics 101, is responsible for the oversight and the "disbursion" of-- disbursement of money. So we have many questions about how that data-- I would characterize your report-- this is my final question and I'll let both of you comment on it if you'd like to. From what I've seen of the PNU report, as I refer to it, or the second report that was not made public to us until recently and only after it being forced, that it's not complimentary and it's not very constructive in terms of the way the department has run. Would you characterize that study the same way, or how would you characterize it?

BERT USEEM: [01:38:32] I didn't quite hear that last phrase. Not constructive, is that what you said?

KRIST: [01:38:35] Yeah, would you characterize the, the essence of your report that was not released to us as not very constructive or maybe demonstrative in terms of how the department handled or is handling its affairs?

BERT USEEM: [01:38:49] Yeah, I think our intent was--this is Useem. I think our intent was to be constructive, to point the way forward and, and leave it at that. I don't think, I don't think it was-- it was certainly critical but I think appropriately critical.

KRIST: [01:39:03] OK. I-- I emphasize the "appropriately critical." Thank you, sir, for your comments.

BERT USEEM: [01:39:09] Thank you.

EBKE: [01:39:09] Are there other questions by the committee?

GEIST: [01:39:12] I do have one.

EBKE: [01:39:12] Senator Geist.

GEIST: [01:39:13] Yes, and this would be to Mr. Pacholke. Did I understand you correctly that you are continuing in another capacity to, to, to come here to Nebraska and with Security [SIC] Technologies and you're, you're continuing to come here and, and visit our facilities here?

DAN PACHOLKE: [01:39:41] Yes, we're-- yeah. This is Dan Pacholke. Yeah. Yes, I, I, I am and, and I have been, yes, probably about the time this report was authored.

GEIST: [01:39:50] OK. Do you have an opinion of where the department was in 2015 compared to where they are today? Can you-- would you enlighten us on what your opinion is from what you've seen?

DAN PACHOLKE: [01:40:11] Sure. So on the one hand, with Tecumseh Correctional center, I mean, it's, it's a remote, high-security facility. It has a, a new layout design which helps you kind of maximize the stability within the prison, which I think are all good design characteristics. It has the-- the challenge is, is being the most remotely located, which makes staffing it more difficult in, in the sense of maintaining appropriate staffing levels and, of course, being able to get people that are more tenured in their jobs. I mean it's not-- to a certain degree, it's not the most desirable work location just because it is kind of in an outlying area. They still have a mix of populations I think which is challenging to manage within that small perimeter. They have some physical plant challenges as well that would assist in controlling any contained movement, that sort of thing. You know, so, so they have, they have some issues there that I think are unique to Tecumseh. The State Penitentiary has I think a lot of challenges around just the introduction of contraband, a much more difficult physical plant to, to manage in, in the sense of just the way that you can get a visual on offenders moving in the courtyard. It, it has challenges also in the physical plant in the sense that all the [INAUDIBLE] doors inside the units, the main entry doors, are doors that pop open versus slide, so it's really difficult for the staff to possibly control those doors and keep them shut. So I, I, I think there are overall a few challenges both in the sense of probably mitigating violence and contraband control at those two facilities, and definitely staffing challenges in just the sense of turnover. They have-- I think, I think Nebraska's Department of Correctional Services has made great strides in trying to become more familiar with their EOC and become more familiar with updated training around their emergency response procedures. I think that's evident in what you've seen in subsequent small disturbances that have popped up around the department. They have an

enhanced focus on a centralized intelligence unit which, at the time in which Mr. Useem and I authored this report, there really was no centralized intelligence unit. And, and I think they're getting better and better intelligence in order to help them more proactively manage some of the security threat group members they have within that population. I think they're making advances on case management. They've done some good work on mission housing in different locations in order to enhance [INAUDIBLE] safety. So I think there's a lot of things going on there well. Overarchingly, though, as a system it's crowded, it's pretty crowded, and, and crowding is, is extremely difficult to manage. So you have a fairly high crowding issue. You have definitely staff challenges, staffing issues as a whole. And those two are the biggest picture ones to me are both the, the crowding and the inherent issues with keeping all your positions full. But at least in my-- with my discussions with Director Frakes and members of his executive team and the, the wardens and the different people I've come into contact with, people seem to be really aware of, of what's going on within the prison and the prison system as a whole and are actively working to, to resolve those issues. Part of, part of what I think you see, whether it's the commissioning of Mr. Frakes asking Bert and I to author this report and then certainly Mr. Frakes bringing in, you know, New York University, Vera Institute, or even Securus Technologies, is-- he's a bright director and I think he understands the importance of having some outside eyes that bring in more of a national perspective from these issues. Some of it is to help inform him, but some of it also is to help inform his staff that there are, you know, other ways sometimes to get at these very challenging issues. So to me, the department is progressing in the right direction, underlying challenges around crowding and staffing.

GEIST: [01:44:51] Thank you.

EBKE: [01:44:55] I have a couple of questions. This is Senator Ebke. And these are for either of you at this point, I think. As I understand it, Mr. Pacholke, you are involved with New York University. Have either of you or both of you been involved or, or submitted any other reports to the

department that, that deal with any of these questions or any questions generally about the department?

BERT USEEM: [01:45:27] Useem. No on that one.

DAN PACHOLKE: [01:45:28] Pacholke. No, no, as well.

EBKE: [01:45:33] OK. So referring back to this original report, you had an entrance interview, I presume, of some sort with, with Director Frakes, and who else was there?

BERT USEEM: [01:46:00] You know, I can't recall that. I definitely sat down with Director Frakes. I can't recall who else was in the room, at-- in the debriefing.

EBKE: [01:46:10] OK. And did you have some sort of an exit report, as well, or an exit interview?

BERT USEEM: [01:46:16] No, just, just the final report. That was--

EBKE: [01:46:18] OK.

BERT USEEM: [01:46:18] That was all we produced.

EBKE: [01:46:18] And was that-- was that in person or over the phone?

DAN PACHOLKE: [01:46:30] This is Dan Pacholke. In the time we were on site, which would have been, you know, late June 2015, literally we had almost daily phone calls with Mr. Frakes. We had two or three staff members from the agency that were helping us: Denise Skrobecki, I want to

say, Mr. Cruickshank, and I can't remember the third one. But we did almost have daily conversations with him. We certainly debriefed Mr. Frakes and some of his administrative team before we left site. I think when the report was final, was finalized, I think the final discussion with Mr. Frakes, and I think there were other people in the room as well, was done telephonically.

EBKE: [01:47:16] OK. Probably the third person was Mr. Hansen. Does that sound right?

_____ : [01:47:24] Yes.

EBKE: [01:47:24] OK.

_____ : [01:47:24] Yeah.

_____ : [01:47:24] Yeah, it sounds right.

_____ : [01:47:25] Yeah.

EBKE: [01:47:26] OK. OK. Any other questions? Senator Pansing Brooks.

PANSING BROOKS: [01:47:29] Thank you both for being willing to talk to us. The, the report is undated. When, when was the report? When did you finish and complete the report?

BERT USEEM: [01:47:50] I, I don't have a specific date on that. In July, sometime in July.

PANSING BROOKS: [01:47:51] July of 2016? Of '15, '15?

BERT USEEM: [01:47:59] 2015. This is Useem.

PANSING BROOKS: [01:48:02] Yeah, excuse me, it's '15. Yes. OK. When you were working with Director Frakes, you said you spoke with him quite frequently. Did, did you get any indication that he was going to not make your report public?

DAN PACHOLKE: [01:48:25] This is Pacholke. No.

BERT USEEM: [01:48:27] I-- this is Useem. I don't think that was discussed as an issue, so I don't think-- it didn't come up.

PANSING BROOKS: [01:48:34] Were there-- was there any kind of, of consternation or wishing that you would report differently?

DAN PACHOLKE: [01:48:55] This is, this is Dan Pacholke. No.

BERT USEEM: [01:48:59] And Useem. No on that one as well.

PANSING BROOKS: [01:49:01] OK. Thank you. So--

BERT USEEM: [01:49:03] I mean we-- generally what happens on these kinds of things are things do get brought out into the open so we assumed that that would be the case. But certainly it wasn't stated to us that it would not be brought out.

PANSING BROOKS: [01:49:15] OK. I'm, I'm interested in some of the specific information that you have in the report, such as the fact that you've said that 47 percent of the members, the inmates

at Tecumseh were in the STGs. So where did that number come from? That's-- I mean it's, it's, it's a very specific number. Is that something-- is that-- is there a list of gang members? How did you know 47 percent?

DAN PACHOLKE: [01:49:58] This is Pacholke. The, the 47 percent number was the estimate that was given to us by that facility.

PANSING BROOKS: [01:50:09] OK. And was that given orally or in a written report to you?

BERT USEEM: [01:50:15] [INAUDIBLE]

DAN PACHOLKE: [01:50:16] [INAUDIBLE]

_____ : [01:50:19] Correct.

PANSING BROOKS: [01:50:22] Pardon me?

DAN PACHOLKE: [01:50:27] This is Pacholke. It was given to us orally.

PANSING BROOKS: [01:50:30] OK. Thank you. So I, I found a lot of your causes very interesting, the, the, the "causes" or different potential causes for, for the riot. And so I-- I'm interested. For your report, did you do post-riot debriefings and-- because you found out some interesting things such as the wellness program and you found out things about the, about the reincarceration of people. Did you find out those specific issues that the inmates were concerned about in your own interviews or from talking to others?

BERT USEEM: [01:51:28] This is Useem-- from talking to others. We didn't-- we did not interview inmates so it, it wasn't direct information to us.

PANSING BROOKS: [01:51:37] So who were the others to whom you spoke?

BERT USEEM: [01:51:39] Well, the, the staff we talked to in the facility and in the Central Office.

PANSING BROOKS: [01:51:51] OK. So that was staff and not necessarily inmates, huh? Is that correct?

BERT USEEM: [01:51:56] That, that is correct, so that's a limitation of the report.

PANSING BROOKS: [01:51:59] OK. So there, there were some other specific things within the report on, on the day of the riot. You talked about the, the four people that were-- that, that, that the facility was understaffed by four people. So where did that information come from? Was that from staff as well?

DAN PACHOLKE: [01:52:31] This is Pacholke. It, it, it did come from staff that they had four vacancies that day and we did interact with them over their shift rosters at the time. In addition to there being four vacancies on that day, which meant they closed down program areas, which meant there would be less inmate activity, they also had acting sergeant that was assigned to that yard position and they had an acting [INAUDIBLE] they had a sergeant as the acting shift commander. So in addition to the four vacancies, you had two on-site facility supervisors that were really not familiar with the roles they were playing.

PANSING BROOKS: [01:53:15] OK. Continuing with the staff, the staffing issue, you've got

specific citations or, or, a part of the report that talks about the inexperience of the, of the staff, and that some have less than two years of experience, I think. I think over a third have less than two years' experience, and a number were hired on or after 2013, quite a big number. So I-- I'm, I'm-- did that information come from staff, as well, I presume?

_____ : [01:53:58] Yes, that's correct.

PANSING BROOKS: [01:53:59] OK. So did you ever communicate with the inmates at all on this report?

BERT USEEM: [01:54:10] No, no, we did not.

PANSING BROOKS: [01:54:11] OK.

BERT USEEM: [01:54:11] This is Useem.

PANSING BROOKS: [01:54:15] So this is all information from staff. And does that staff include--

BERT USEEM: [01:54:20] Yeah.

PANSING BROOKS: [01:54:20] -- everybody from case management people to correctional officers to-- I understand that Warden Gage was in-- had talked with you. Who did you speak to that were staff?

DAN PACHOLKE: [01:54:44] This is Dan Pacholke. We spoke to the, the people that you referenced, whether it was the warden, the deputy warden, the associate warden, I think the chief of

security, captains, shift commanders, sergeants, other key players in the incident to include, you know, certainly correctional officers. In addition to that, you know, we, we had a pretty good tour of the facility and there is some more like less formal discussions, I would say, with, with staff that were out, were out on post as well. So it was, it was a wide range of people that we talked to, to get a varied perspective. And of course we wanted to talk to people that were kind of key players in the incident as well.

PANSING BROOKS: [01:55:30] And I may have missed it, I'm sorry if I did, but you have done other reports on prison disturbances or riots, is that correct?

BERT USEEM: [01:55:40] No reports. I've written-- this is Useem. I've written books on prison riots, so reports in that sense--

PANSING BROOKS: [01:55:48] Books. Oh, books.

BERT USEEM: [01:55:49] -- chapters on specific prison riots.

PANSING BROOKS: [01:55:51] OK. And--

DAN PACHOLKE: [01:55:54] And this is Pacholke, and I've also done work in other states, in addition to Washington State, in looking at disturbances that have occurred.

PANSING BROOKS: [01:56:04] OK. So I, I am interested because I, I thought most of this information might have come from inmates and at which point some of it could be said that they were complaining and, and-- but the fact that this very pertinent information came from staff is very interesting to me. So what-- is that normal to just talk to staff and not really inmates?

BERT USEEM: [01:56:33] It can go either way. Either researchers can interview just staff or they can interview inmates as well. It's a matter of time and resources.

PANSING BROOKS: [01:56:46] And then just one more thing because I am very concerned about the programming and the different activities that the-- and I know those are two different things that the, that the inmates can do. And we talked about the Wellness League. I presume you've seen overcrowded systems before, so can you tell us what you feel-- you felt it necessary to have the first paragraph under "The Safety Paradox" be about meaningful programming and activities. Could you speak to that a bit?

DAN PACHOLKE: [01:57:26] This is Pacholke. Maybe I'll just lead off and let Mr. Useem work into it. Let me give you one example is largely in Nebraska Department of Correctional Services, caseworkers that carry a caseload for an offender serve as, for the most part, correctional officers in housing units. So they serve a dual role of both, you know, doing door controls and cell inspections and responding to minor rule violations. But in addition to that, they carry a tall caseload. To me, to me, that is a very unique approach and what it begins to do is it begins to confuse the role of the case manager. Case managers or caseworkers in, in the-- in, in a good scenario or in a good system are-- really dedicated their time to, you know, helping inmates with their case, whether it's, you know, am I eligible for a parole hearing, can I get into this program, I really need an emergency phone call to my family based on X incident, I, I really need to know how I'm progressing, I need to transfer to a different facility, that to a certain degree they, they, they served almost more in the inmate advocacy role. And at some point in history, that function was cut out of the Nebraska Department of Correctional Services' budget, at least it appears it was, and that-- and now we have these folks serving this dual role, which doesn't provide a really good separation, to me, of classification as a tool to reduce violence, classification as a tool to get people into evidence-based

programs in order to reduce the likelihood of reoffense, or even case managers that can help you develop other programs that might be, let's just say, desirable and therapeutic to the inmate population. When you add the crowding component in on top of that, which is evident in most of the Nebraska system, is crowding makes it more difficult to get the service anyway, and it makes a longer line to get to the dining hall, it makes it longer lines to get to the healthcare facility, it makes the recreation yards more crowded, and it begins to exasperate and, and stresses the system as a whole. So I think under that "Safety Paradox" part of what we're describing is whether it's mission housing, whether it's more programmatic opportunity, or whether it's a caseworker or case manager that can advocate for, on behalf of the inmates, that those elements are stretched very thin, I would say, within the Nebraska Department of Correctional Services.

PANSING BROOKS: [02:00:20] OK. I, I, I appreciate it. Thank you. You're describing our vicious circle that we've been discussing for quite a while and I agree, I agree. So do you think that-- what's the, the-- what are the key things needed? Do, do we need to put more money towards programming and towards, towards staffing? Is that some of the takeaway? And then that's all for my question.

DAN PACHOLKE: [02:00:45] I, I mean, I mean-- this is Pacholke again. And I hate to cut off Mr. Useem, but I do think that you could probably have a broader commitment to programming in the sense of enhanced funding. I-- you do have staffing challenges, certainly at Tecumseh, in just keeping correctional officers on board, but systemwide I think you have challenges with caseworkers and case management. And I can't overemphasize enough that Nebraska on a national scale is a-- is a really crowded system. And relieving that crowding, in addition to enhancing programs, enhancing case management, I mean, I think those are the key steps, the very big-picture steps that would help you be in a very different position with that prison system.

PANSING BROOKS: [02:01:32] Thank you.

EBKE: [02:01:34] OK. Other questions? I--

WAYNE: [02:01:35] I have a--

EBKE: [02:01:37] Senator Wayne.

WAYNE: [02:01:40] This is Senator Wayne. I'm, I'm a little bit more-- I got questions around the procurement process. You said RFP, so there was an RFP actually sent out, or were you contacted directly by the department?

BERT USEEM: [02:01:53] Contacted directly by the department.

WAYNE: [02:01:54] And who is that speaking?

BERT USEEM: [02:01:55] After our-- after we contacted them, then they came back with a-- and "RFP" may not be a correct term, an agree-- a statement of agreement with Pacholke and myself. This is Useem speaking.

WAYNE: [02:02:08] And who, who was answering that question?

BERT USEEM: [02:02:13] Who's-- Useem.

WAYNE: [02:02:15] Do any of you have a prior relationship with Director Frakes?

BERT USEEM: [02:02:21] I do not. This is Useem.

DAN PACHOLKE: [02:02:23] This is Pacholke. I do. I mean, Mr. Frakes and I worked together in the Washington State prison system for a number of years.

WAYNE: [02:02:37] And so were you contacted directly or was Mr. Useem contacted first regarding this project?

DAN PACHOLKE: [02:02:47] As-- this is Pacholke. As Mr. Useem stated earlier, I, I think he initially sent an e-mail offering services following the Tecumseh riot. Mr. Useem and I had been working on an independent report in Washington State at the time and, anyhow, my name came up. And so, you know, Bert was given a contract. I came to assist.

WAYNE: [02:03:11] I don't have any-- thank you.

EBKE: [02:03:14] Other questions? Senator Bolz.

BOLZ: [02:03:17] If, if-- this is Senator Bolz. I had to step out for a minute. If you've answered questions related to this, you can tell me and I'll just catch up from staff. But my, my question is-- I, I think reports like this have value and have meaning and teach us things, and I think that's one of the reasons it's important that we have it in our hands. But one of the pieces that you identified was the challenge of the security threat groups. One of the things that we did do, and perhaps as an outcome of what Director Frakes read in this report, was we did hire additional intelligence staff to help in the facilities. Are there other recommendations specifically to the-- relating to safety and security threat groups that you can provide for us, what other states do to address that problem?

DAN PACHOLKE: [02:04:14] This, this is Pacholke. Yeah, the hiring of the centralized intelligence unit I think was a really big step in the right direction. And I think they're working very hard and beginning to have a deeper understanding of the-- a sense of depth around security threat groups within the Nebraska prison system. So although it's somewhat in its infancy, I think it's over a year, maybe a year-plus it's been established. They're beginning to work those issues.

Independently of that, as I indicated earlier, is I am under-- I am retained by Securus Technologies also. And as of late, we have been working with Mr. Frakes and his staff on doing cell phone forensics because we, we are able to turn around a much greater number of cell phones in a much quicker period of time than most agencies can do internally, so with confiscated cell phones, they're oftentimes fairly rich in intelligence. And I believe Mr. Frakes would indicate-- would give you a very positive feedback on what Securus Technologies has been able to do there. We have also been working on a pilot to do telephone monitoring, sort of targeted telephone monitoring for the Nebraska Department of Correctional Services. I've been doing that for a couple of months and, and really it's the mechanisms where if Securus Technologies has a body of employees that does this as a body of work, as a profession, that they-- and they are more targeted and they have algorithms and they're-- they have some strategy around how they listen to calls, that what it does is it also allows you to get telephone intelligence but at the same time free up the investigative staff that you do have to work more face to face. Additional recommendations that have kind of come out as of late is to do a cell phone assessment specifically at the Nebraska State Penitentiary just to get a sense of the volume of cell phones that might be in that facility and to work on-- and I know Nebraska State Penitentiary is working on this, around broader strategies on how you mitigate their introduction. So, I mean, some of it to me on the, on the, on the STG and the gang issue is just to continue to refine the systems that you have in place. The difficulty, of course, the challenge is, is there-- it is crowded and it's difficult to move them around the system. So, you know, sometimes with some enhanced spacing in the system, you know, you can find people that want to drop out, move to other places that are quieter or, or, or you can get a better handle on who is more disruptive and, you

know, find appropriate ways to sanction them. So I think you're moving in the right direction. It's hard for me to give you specific recommendations today only because I haven't thought about it in great detail.

BOLZ: [02:07:17] That's, that's helpful food for thought. Thank you.

EBKE: [02:07:19] Senator Krist.

KRIST: [02:07:19] This is Senator Krist again. I'm a little confused about the last few minutes. Your testimony tells me that there is some intelligence gathering based upon cell phone and communication monitoring of private individuals, or are these cell phones-- obviously they're not owned by the prisoners themselves. So I have a question on legality in terms of how that intelligence gathering is going on. And the second part of it is if these services are being provided to try to sell a product, why aren't they being afforded-- again, this would be a Frakes question, and I'm not asking you to put yourself in his position, but why doesn't the Judiciary Committee or the oversight committee have benefit to some of this data? Why-- you know, I, I got to, I got to tell you, I'm a little frustrated right now because we've got a very talented cartoonist at the Omaha World-Herald, his name is Koterba, and, and, and he's got a little cartoon a couple days ago of a question. The Governor is standing outside the cell, the report laying inside the cell, and it was as if he was saying, well, you didn't ask me that question. Well, what is the right question to ask, gentlemen? I mean, are there other reports out there? Is there other data out there? The Legislature's responsibility is to look at oversight responsibility. And I feel like, quite frankly, like a mushroom.

DAN PACHOLKE: [02:09:07] This, this, this is Pacholke. Let me, let me attempt to respond, and I think you have numerous questions in there, Senator. First off, the cell phones, the cell phone forensics that I was referencing are cell phones that were confiscated from within prisons that

inmates had in their possession or were located in cells or common areas that we believe were in inmates' possession. OK. So the cell phones are clearly inmates' property. And so the forensic aspect of it is being able to take the cell phone apart, see who they were calling, see who they were texting, see what type of pictures were in there. And, and you can gain a lot of intelligence information because, I mean, clearly, they'll talk more openly and freely on an illegal cell phone than they will across the telephone network, on the one hand. So that's the kind of issue. I stated earlier in my testimony that both when I was with NYU and today I, I, I do, do work for Securus Technologies that I have been engaged with Nebraska in no-cost consulting work. I mean, I-- we don't [INAUDIBLE] who's being charged for work. So with Securus Technologies, they have a capability, a fairly new capability, on cell phone monitoring. It's pretty unique in the country. I mean there, there aren't a lot of-- I don't know that there are any service providers that provide the services to do telephone monitoring. So I, I know that Mr. Frakes is a thoughtful director. I see him as one of the best in the country. I knew he had some challenges, or continued, ongoing challenges, whether it's around gangs or introduction of contraband. So I, I approached him and suggested to him that we could run a 90-day trial and test out cell phone monitoring, test out cell phone forensics, if you wanted to, we could do a cell phone assessment at the Nebraska State Penitentiary to give them an idea of how many cell phones might be in there. There's also some work that the company does around drone detection and we could share that with him as well. So all this was intended as a way for him to meet an operational need for a free service. There's no commitment to buy anything. I'm not a salesman. At the end of it, if he saw an interest in it and he thought it was cheaper than adding an investigator, or if he thought it, it-- thought of something as being beneficial to his intelligence department, then to me the normal rules of procurement apply and he would go through the normal procedures. So in all honesty, I approached him about these things because I think highly of him and I like to work with people that are working progressively. And it's no cost. The pilot is almost over and I'm certain Mr. Frakes would be willing to brief you on the results from his perspective.

KRIST: [02:12:04] Well, I think-- I'll leave it at there. Thank you. Thanks.

_____ : [02:12:07] Good call.

EBKE: [02:12:09] Other questions? I have one or two while other people look, look like they have puzzled looks on their faces. First of all, with respect to this, I think you've got a lot of people here who don't really understand what you're doing with the cell phones, and that's OK, I guess. But one of the questions that I would have, is that, is that something that you work with law enforcement on? I mean anything that you, that you procure from the cell phones, is that-- or is that work directly-- or does that go directly to the department or how-- if there's any useful information, what do you do with it?

DAN PACHOLKE: [02:12:48] Senator, this is Dan Pacholke. All the information that's retrieved off the cell phones is given to the department. I believe some of it has read-- has led to referrals to law enforcement.

EBKE: [02:13:00] OK. And then looking at the time line for things, you would have been working on your report at about the same time as the critical incident review team, the so-called Fithian report. Did, did you run into any of those folks while you were, while you were engaged in your activities here?

BERT USEEM: [02:13:27] No, we did not. This is Useem. No, we did not.

EBKE: [02:13:30] OK.

BERT USEEM: [02:13:30] We, we used it, we relied on it, it was available to us, but it-- we didn't cross paths with these people.

EBKE: [02:13:36] OK. And then so you used it as, as part of the formulation of your final report? You had the information and then you used it in--

BERT USEEM: [02:13:46] Yeah, that's correct.

EBKE: [02:13:48] OK.

BERT USEEM: [02:13:48] This is Useem. That is correct.

EBKE: [02:13:49] OK. And then can I get an-- just a general opinion from you on this. You, you, you made much of the-- in your report of the 47 percent of, of inmates who were part of security threat groups. There's been some talk of late, you know, we're hearing kind of anecdotally that, that we have even more of our inmates at Tecumseh are from the security threat groups, perhaps as much as 80 percent of our inmates are part of the security threat groups. Do you have any opinion on that?

DAN PACHOLKE: [02:14:27] This is Dan Pacholke. Senator, what, what I can-- I mean this is my experience in looking at this both within Washington and other systems, is if you have security threat groups within your prison system, they tend to have more density or volume at your high-security facilities. So I would make the assumption that NSP and Tecumseh are going to have higher rates of STG-involved inmates than you will at other facilities around the system just because they are-- seem to be the two places where you manage more problematic inmates. Tecumseh, of course, is a really modern facility with a modern physical plant, although it does have

some challenges with it, and there would be a tendency to send more problematic cases that way. I think as a system, it's just going to happen, and they are going to have higher ratios or percentages of gang members.

EBKE: [02:15:22] But would you consider that, and this may be a little bit of a leading question, but, but would you consider that problematic given the, the staffing situation that we find at Tecumseh?

DAN PACHOLKE: [02:15:39] This is Pacholke. Yes, Senator, I would agree. It, it, it's problematic by location, by experience, by staffing, by staff turnover. All those things make Tecumseh a much, a much challenged facility.

EBKE: [02:15:54] OK. Does anybody else have any questions?

WAYNE: [02:15:57] Yeah, I have--

EBKE: [02:15:59] OK.

WAYNE: [02:15:59] I have another question.

EBKE: [02:15:59] Senator Wayne has another question.

WAYNE: [02:16:00] Yeah, I have some questions. So I want to get back to the cell phone tracking. So are you using technology that requires a geonet to be put around the facility and anybody in there? You're tracking cell phones or are you just tracking cell phones that were discovered in inmates' rooms?

DAN PACHOLKE: [02:16:21] This is Dan Pacholke. At this point, it's cell phone forensics, which means you take a physical cell phone that was confiscated from an inmate and you take it apart and you get information out of it. So there's no geonet, there's not a-- there's no electronic barrier or electronic intrusion.

WAYNE: [02:16:43] And roughly how many cell phones have you reviewed?

DAN PACHOLKE: [02:16:51] Boy, it would be hard for me to give you a-- this is Pacholke. It would be hard for me to give you a number off the top of my head, but I'm sure it's over 20-25, probably more.

WAYNE: [02:16:57] And how has this, how long has this trial been going on?

DAN PACHOLKE: [02:17:03] Sixty-plus days.

WAYNE: [02:17:06] And how long is it scheduled to go forward?

DAN PACHOLKE: [02:17:12] This is Pacholke. We had allotted about 90 days.

WAYNE: [02:17:16] Ninety days. Do you know-- there's still Fourth Amendment rights even to inmates. Where are-- for the record, what's your analysis of why you can do this?

DAN PACHOLKE: [02:17:32] Well, it's, it's contraband. They're not allowed to possess cell phones within a prison facility, so it is a contraband cell phone.

WAYNE: [02:17:39] It's contraband, but you're going a step farther than the recent Supreme Court rulings regarding particularly cell phones and the data that's kept on cell phones. How, how are you - it's one thing to remove the contraband, but it's another thing to do a forensic analysis of it. What is your legal standing on that?

DAN PACHOLKE: [02:17:59] Senator, I would happily get someone out of our legal department to give you a more complete briefing. The only thing I can share with you is it's a, it's a very common practice to do cell phone forensics on phones that are confiscated within a prison.

WAYNE: [02:18:12] With consent or without the consent of the prisoner?

DAN PACHOLKE: [02:18:17] Without.

WAYNE: [02:18:18] Without. And then would that theory also apply to anybody under the jurisdiction of Corrections, including postsupervised release or anywhere else? What's your-- what is your demarcation point?

DAN PACHOLKE: [02:18:38] Well, I'm not a lawyer, by any means, but the phones that we've been working with in Nebraska, at least in my experience, have all been within prison.

PANSING BROOKS: [02:18:46] Within what?

WAYNE: [02:18:51] I'm sorry, I didn't hear you. Within what?

BREWER: [02:18:52] Confines of the prison.

WAYNE: [02:18:53] Within confines?

DAN PACHOLKE: [02:18:55] The, the, the phones that I have experience with have been within a prison setting.

WAYNE: [02:19:00] And then--

BERT USEEM: [02:19:02] And he [INAUDIBLE] they are inmate phones, they're not staff phones.

WAYNE: [02:19:08] And then--

DAN PACHOLKE: [02:19:08] That's correct. Correct.

WAYNE: [02:19:11] -- whatever you find, is that turned over to the director or to local law enforcement?

DAN PACHOLKE: [02:19:20] It's-- this is Pacholke. It's turned over to a point person in the intelligence and investigations department.

WAYNE: [02:19:29] Do you know if they're turning it over to law enforcement?

DAN PACHOLKE: [02:19:34] I believe, when appropriate, they are referring it for criminal prosecution--

WAYNE: [02:19:36] So who--

DAN PACHOLKE: [02:19:36] -- or criminal investigation when needed.

WAYNE: [02:19:41] So who makes a determination on whether there is probable evidence of a crime being committed to turn over to local law enforcement, a law enforcement person or a non-law enforcement person?

DAN PACHOLKE: [02:19:57] This is Pacholke. I think that's being done by investigative staff within the Nebraska Department of Correctional Services' headquarters.

WAYNE: [02:20:06] OK. Thank you.

EBKE: [02:20:11] Senator Krist had a follow-up, and then Senator Pansing Brooks.

KRIST: [02:20:11] Yeah, or-- yeah, just quickly. We've heard a lot about this report being-- containing very sensitive information. You wrote it. So I'm, I'm at a loss for why it is considered sensitive in any way. I'm more concerned, as our Ombudsman stated earlier, that the lack of transparency was intentional to keep us from, from taking action or knowing what action needed to be taken. What, what, if anything, was sensitive about your report? Why, why would Director Frakes decide not to make it public and in so doing, for lack of, lack of the exposure of the report, withholding evidence until, until actually there was a court case that demanded that it be released? Can both of you comment on that?

BERT USEEM: [02:21:12] This is-- I'm sorry.

KRIST: [02:21:13] Go ahead.

BERT USEEM: [02:21:13] Senator, this is Useem. I share your, your assessment that the sensitivity of the information would not warrant withholding of the-- holding the report.. Why Director Frakes did withhold it, I, I just don't know. I don't think we've had that conversation.

KRIST: [02:21:39] Dan, do you have a comment?

DAN PACHOLKE: [02:21:45] I really don't. I mean in-- from my own perspective, you know, we were asked to come in and take a look at this incident and look at broader cultural system issues around Nebraska, the-- deliverable with the report, and we turned it over to Mr. Frakes and I felt like we had met the, the contract obligations.

KRIST: [02:22:06] Ok. Just, just, just for the public record also, from both of you, there isn't any more unreleased reports or documents that you have done for Mr. Frakes or any member of the Corrections Department or anyone related to the state of Nebraska?

BERT USEEM: [02:22:23] This is Useem. That, that's 100 percent correct.

DAN PACHOLKE: [02:22:27] This is Pacholke. That's correct.

KRIST: [02:22:28] Thank you, gentlemen.

EBKE: [02:22:33] OK. Anybody-- any other questions? I don't see any. Thank you for being with us today, gentlemen. I think we're done with you.

PANSING BROOKS: [02:22:46] Thank you.

BERT USEEM: [02:22:47] OK, very good.

BOLZ: [02:22:49] Thank you.

GEIST: [02:22:50] Thank you.

DAN PACHOLKE: [02:22:50] Thank you.

EBKE: [02:22:50] Thank you.

_____: [02:22:52] The caller--

DAN PACHOLKE: [02:22:53] Hi, this is Dan Pacholke.

_____: [02:22:54] -- has left the conference.

EBKE: [02:22:56] OK. I will make note that we have written testimony from Mr. John Krejci from Reentry Alliance of Nebraska on-- that is before you, and he asked to have that made part of the public record. OK. Mr. Gage.

KRIST: [02:23:20] While-- can I [INAUDIBLE]--

EBKE: [02:23:20] Yeah.

KRIST: [02:23:22] While--go ahead, come on up--Mr. Gage is coming up, and I appreciate you

coming, just-- Mr. Krejci, thank you for all of your contributions in the time that I have been here. Sometimes your, your insight goes back further than our collective knowledge and that's always nice to have that continuity. And you've gone out of your way to make sure to be very respectful of, of all the folks that you have commented on, both positively and negatively, so thank you, Mr. Krejci, for all you've done.

EBKE: [02:23:51] Mr. Gage.

JOHN KREJCI: [02:23:51] Director Frakes says I'm the most friendly critic he has.

[LAUGHTER]

EBKE: [02:23:54] OK, you want to go ahead and introduce yourself?

BRIAN GAGE: [02:24:03] I'm Brian Gage, B-r-i-a-n G-a-g-e.

EBKE: [02:24:03] OK. And did you have a statement of any sort you wanted to begin with or you want to just take questions?

BRIAN GAGE: [02:24:12] Just take questions.

EBKE: [02:24:14] OK. Well--

KRIST: [02:24:17] Sure.

EBKE: [02:24:18] OK. Senator Krist is going to start.

KRIST: [02:24:23] There's been a lot of conversation-- thanks, Brian, for coming. I really appreciate you, you, you being here. There's been a lot of conversation about the confusion between the kind of employees that are, are roaming about the-- Tecumseh, in particular, whether they're caseworkers, whether they're corrections officers, and how they're used or not used appropriately. It's a pretty open-ended question. Are they being used appropriately? Is there a common-- or is there a good mix of folks there, in your opinion? I mean you, you lived it. It, it seems to me that there's a lot of confusion. And while you're commenting on that, it seems to me like within the merit system or within the pay system, making those corrections officers, as I under-- I'm sorry, those caseworkers, as I understand it, corporals in terms of the pay cycle, as well, or the pay structure, as well, so it's-- that's not a very pointed question. It's a "tell us everything you know, Brian."

EBKE: [02:25:31] And, and before you-- and before you do that, why don't you go ahead and, and let everybody know what your background with Department of Corrections is and why we asked you to come in.

BRIAN GAGE: [02:25:41] Why don't I go to my notes because I want to make sure I get it all down.

EBKE: [02:25:44] OK.

BRIAN GAGE: [02:25:44] I was hired back in 1982 in Kearney. A gentleman left and they hired me full time temporarily. Why? Because he was in the military. Later on, in May of '83, they hired me full time as a-- what they call a fire watcher. That means I had to stay awake on third shift to make sure any fires, etcetera. Through the years I took advantage and I went up for a number of positions. Like I tell people is I applied for more than I received, but I ended my career as warden at Tecumseh. Before that, I was appointed warden at York. That was my first appointment. Before

that, I was-- served as deputy warden for a number of years there at Tecumseh, and associate warden for I think a couple years before that at Tecumseh, and again, a number of positions in between that 1982 to when I left. So I have a lot of experience, and I also just got back from Montana. I'm a national auditor for the American Correctional Association. So your-- back to your question, I see a lot of things throughout the different states, like-- you go down to some facilities have maybe a size of 500 inmates. They have three case managers but all those case-- their job, their main job is to do case management, similar to what I think Senator Wayne or somebody had said in reference to what their job responsibility is. You know, 40 hours a week they're responsible to follow up classification problems with, with inmates, questions, etcetera. Nebraska-- and I was part of that system, the unit management system, years ago back in the '80s, started at the penitentiary. Really, the-- we had corporals, officers running housing units and as soon as they-- we started the unit management system, we had what they called is unit supervisor Is and IIs, case managers and caseworkers. Officers were happy to get off the units. They wanted to just take care of what officers-- security, yard, escorts, etcetera. Nebraska was really never used how it was supposed to be set up. They've used basic caseworkers as glorified officers on units. And the reason for that is because just the, the crowding, necessity for budgets, etcetera. Why put an officer and a caseworker there on one post if a caseworker can just do the job of both? So really the, the caseworker became the officer on first and second shifts on the majority of the facilities and they basically opened doors, those type of things, really got out of the what they call a caseworker. And the reason I say that, Senator, is that the problem you run into is the requirement for a caseworker was a bachelor's degree, etcetera, so you'd hire these people and, hey, I'm a glorified officer, I'm not doing what I'm-- I went to school for. But eventually if they stayed long enough, we had an opening with the case managers. What would happen though? Well, a case manager is sick or a caseworker is sick, a case manager would have to fill that role. So instead of doing case manager work of doing, you know, classification and stuff, they would be opening doors, shutting them, doing searches, etcetera. So the concept, the unit management concept initially, it-- I guess it diluted to basically

glorified correctional officers.

KRIST: [02:29:30] So how many of those-- what's the-- in your opinion, what's the proper proportion of case manager, caseworkers, corrections officers in any, in any situation? You, you alluded to a 500-person structure and then only three, three caseworkers?

BRIAN GAGE: [02:29:49] Here-- here's the problem Nebraska has, and I see that in York, I see it in every facility, at least was when I was part of it, is that we handle-- like York, I'll just say, because everybody forgets the women, etcetera, and it's a, it's a great facility. Problem is, it's away from Lincoln-Omaha area because of the medical carriers and stuff like that you need for some, some of the inmates. But they have maximum, medium, minimum inmates all living within the same housing units, similar to the penitentiary, similar to Tecumseh, even, even to most extent, even OCC. We have medium and minimum living at OCC. The penitentiary has maximum, minimum, or medium maybe in the same cell, definitely in the same unit. So your, your question has to do with percentage of staff, officers, caseworkers [INAUDIBLE] unit. That number would be higher for the higher security facilities and higher in the-- it should be higher in the higher security units. But that has just bled because the bigger problem, you all know and I've heard it here today, is that the department is still bed driven, bunk driven, whatever else. You know, you open up a 200-bed community up in Omaha tomorrow, they'll have it full, OK, magically somehow. That's how it goes. That's, that's what happens with-- and it's been that way for a number of years. Nebraska has been a bed-driven department.

KRIST: [02:31:32] Thank you.

EBKE: [02:31:34] Other questions? Senator Bolz.

BOLZ: [02:31:35] Thanks for coming, Mr. Gage. In your experience at Tecumseh, just, just a boots-on-the-ground perspective, are there-- were there any particular areas where you thought more resources could have been well spent?

BRIAN GAGE: [02:31:52] That will be a longer answer than I just gave to Senator Krist. Yes. Here-- here's what I always requested: mental health workers. You know, we had specialists come in. Dr. White said at the time said that we need to concentrate on the severely mentally ill, which we can all agree-- I definitely agree on. The problem is, is you're, you're taking your resources and hitting only those few inmates. There's such a large number of inmates that need follow-up with psychotropic medications, follow-up with a group for their issues, etcetera, bipolar 2, depression, etcetera, that are not being met. Sometimes if, if we got a position filled, a mental-- a licensed mental health practitioner or a psychologist, I may see them down at-- they "were placed at Tecumseh," but I may see them a day a week. The rest of the time, because they are short in other places, they would be sent to like LCC or some other facility, then-- or they'd get tired of driving also and just transfer to those open positions. You have that. You have the residential treatment program down at Tecumseh, really-- I really support the residential because we have-- of course you're going to know the numbers, percentage of 80-85 percent really need it. The problem is you don't have the follow-up, you don't have the-- you don't have the staffing for the nonresidential treatment individuals in need. So the people that don't meet that criteria for residential, they need the nonresidential. Well, it's not there. Or the people that got done with the residential that need the follow-up, that is not there either. Does that make sense?

BOLZ: [02:33:50] That's, that's very helpful.

BRIAN GAGE: [02:33:51] The other problem you have is that you had a large number on waiting lists. You know, like the sex offender program, even going into the residential treatment programs,

you had waiting lists, and the prioritizing the ones that really need it, because you almost need it-- that type of thing before you get out or get on parole. So, so your-- the answer is it's the mental health staff, it's the treatment staff. Education, you know, through budget cuts through the years it was cut to basically we were lucky to have GED. And they've slowly, at least when I left, they were kind of looking at that but really haven't gone into-- like when I started the penitentiary, in '82 so, they had culinary arts, they had welding, they had these different programs, but because, again, budget cuts, we've wiped them out.

BOLZ: [02:34:50] OK. Just one, one follow-up question and, and one comment. The follow-up question is, are there any other examples of-- like the example you just gave of a resource, in this case a mental health professional being, being at Tecumseh but being shared or redistributed to another facility. Are there other examples of things like that where you-- where it wasn't helpful?

BRIAN GAGE: [02:35:15] The problem is, is-- or maybe the good thing because it's the department. Those individuals are answering to the department, not to that facility. So they move them wherever they go. So off the top of my head, the main ones would be, again, that, that mental health. Medical, we had contract-- when I was down there, we had contract medical and we were one of the few facilities that had them fully staffed most-- majority of the time compared to the other facilities.

BOLZ: [02:35:45] OK. And the, the comment, and I'm, I'm a little bit of a dog with a bone on this, is, is that per the department's own regulations, there is to be a staffing analysis on behavioral health needs as it relates to their budget request has-- that I have yet to see. And I'm going to keep bringing it up until I see a specific behavioral health request, a behavioral health analysis that meets the intent and the expectation of the regulations. Thank you.

EBKE: [02:36:21] Senator Brewer.

BREWER: [02:36:23] Thank you. All right, let's back up a little. And at the time of the uprising, the riot at Tecumseh, you were there then, right?

BRIAN GAGE: [02:36:35] Yes.

BREWER: [02:36:36] And were you aware of the requests for this document that we just got through reviewing on the, the teleconference?

BRIAN GAGE: [02:36:47] The request? No. But I was interviewed for it, yes.

BREWER: [02:36:50] And you, you were able to see it after it was done, because it sounds like not very many got a chance to see this document when it was first completed. Is that accurate?

BRIAN GAGE: [02:37:01] No, I did not see it at all.

BREWER: [02:37:04] All right. Well, I've got to-- I don't mean to vent on you. I've just got to vent on somebody and you're in the chair, OK?

BRIAN GAGE: [02:37:09] Go ahead.

BREWER: [02:37:09] We paid \$20,000 for this document that's 11 pages, actually 10.5. The document doesn't have a date. There's no time line. There-- there's, there's no table of contents. There's none of the names of the individuals that are involved. There's no sworn statements. There's no documentation that would support, either diagrams or, or photos. There's no real story to this. It's

bits and pieces and I'm feeling a little bit frustrated over this. So I'm trying to, to roll back and, and try and understand the mind-set and, and what went into some of this. I think the, the comments you've made, after being at Tecumseh and some of the other places, is spot on. I think that's-- that, that is the root of the problem that we-- we've got some key missing parts in this puzzle and that's what-- why things aren't working as well as they should. But where I get frustrated is, is we're looking at, at the very small issues here and really the big issue is, is it comes down to leadership. And I'm going to cut to the bone here and if you don't want to answer, I don't blame you. But in the military what we, we find is you can have a good commander and a bad staff and if he's strong enough, he can make the staff look good. And then the other way around, you can have a great staff and a weak commander and if the staff are willing to prop him up, then that's the way people will perceive him. My concern here is, is it, is it one way or the other? Is it the staff? Is it the top? Or is it a combination of? But if you present this to me with a check-- with a bill for \$20,000, I'm going to have a really hard time not doing something ugly to you because this is, this is just robbery almost if you look at it. I didn't say anything on the call because it doesn't do any good to beat them. They've done it. We paid for it. It's over. But, you know, we, we didn't get-- I mean, I, I would, I would maybe give a thousand bucks for this on a good day. So what's your gut feeling on where we are as far as the leadership issue and where we need to make changes there?

BRIAN GAGE: [02:39:13] Well, first of all, I'm, I'm here for free.

BREWER: [02:39:16] That's good. I appreciate that.

BRIAN GAGE: [02:39:16] And also I have-- I'm lucky now. I have a full-time job with Southeast Community College. I teach. I love it, etcetera. It helps me care for my family a lot more. I have to write a ten-page paper by Friday that has to have work cited, has to have those details with an APA format, etcetera. When they showed me that report of 10 pages, or 11, 10.1--

BREWER: [02:39:42] Ten and a half.

BRIAN GAGE: [02:39:43] -- whatever it is, I asked again, just similar to what you guys said, if-- where's the-- who did they talk to? They-- I know they talked to me, but I'm not cited in there. And they were saying officers, whatever, don't know. I know where they got the percentage at. Ten to one, it was Mr. Connelly [PHONETIC] because we have documentation of who we believe as leaders, shot callers, wannabes, those type of things as far-- we have a list of those because those are-- that's part of the intel. I see this more of an opinion paper. I was shocked by \$20,000. I'll give you one. But the thing is, is I am also frustrated. I had-- I'll just tell you because I don't have "bone in the mix," whatever. I had a lot of hope that we would-- going to have programs that were evidence based, that we were going to look at the programs not for what people felt was nice to have for inmates, etcetera, but also we were going to put our money into programs that actually worked with people to help them get on parole, etcetera. With the new director, whatever, basically what it comes down to is what I've seen as, well, just wait. I always got told, well, wait another 90 days, Brian, wait another 90 days, we're working on things. But it was always just postponed and held up or whatever magically happened at Central Office. So my, my answer to you is if he was a Nebraska football coach, he'd have been gone already and-- but that's my--

BREWER: [02:41:23] Well, and follow-up, the thing that we are going to have to sort out here-- because again, there's, there's, there's all kinds of stuff down at this level, but we can, we can fix the little stuff. If we don't fix the big stuff, it's always going to be broken. And, you know, we're, we're coming into a period here where we're going to have to make some decisions on a lot of money. And, you know, when it came time to give the blessing to the new head of the Nebraska State Patrol, I held him in that chair for an hour grilling him. And what I told him is my concern is that you're a good person, I think you're coming with great credentials, and you may be just the thing to

fix the Nebraska State Patrol. And my issue with the Nebraska State Patrol is I think that we have some great troopers but there is a level, a crust in there of the old guard that continue to not allow the changes that are needed and won't think out of the box and because of that, the organization can never get any better. And I said, your, your job is to figure out how to do that, and my fear is that they will figure out a way to eat you alive before you get a chance to get it done. I think that the, the, the Department of Corrections has that, that layer that has been there, that won't think out of the box, won't change things, and that's where we seem to be gumming up the works here. Is that anywhere close to accurate?

BRIAN GAGE: [02:42:49] Here's what I, what I see. Again, I'm a citizen looking, looking now in-

BREWER: [02:42:53] Right.

BRIAN GAGE: [02:42:53] -- at all the dumb things we've done. One is that we brought up years ago, in reference to the shortage of staff down at Tecumseh, about bussing people from Lincoln to Omaha down there. I got told no because it's too costly, it cost too much, etcetera, it's short term, we need look at long-term things. We went to other states that have put facilities in rural settings, where do you advertise, how do you do that, etcetera, etcetera. The problem is, is again, it's-- our department is crowded. There's no room, etcetera. There are excellent people. These are the same people that other states would hire that are working day for day, shift to shift at those facilities. The problem is, is that our state is still putting money in-- what I got told, they want to put housing at-- or new housing at the penitentiary. Penitentiary is old. It's-- I don't know, when is it, 1957 is the oldest one? Newest one is-- I think is '83 or something like that, or '87. They're old. They're-- they see the-- you see the wear or the-- logistically it just-- they're tired. They're over-- you go to the community centers. They have rooms that are designed for maybe four. They have six or plus in

there. We're not, we're not paroling the percentage of what other states are doing. All that adds up, and that's what I kind of wanted from the-- our administration of-- whatever. Running a facility, that's making sure a lot of different things happen. But at the end of the day, it comes down to the administration hopefully leading the way in how-- relieving that pressure that's there and making recommendations to you guys, probably your experts, but not a lot of policymakers are experts in corrections. They have to rely on those administrators to do it. And again, that's your--

BREWER: [02:45:08] No. Thank you.

BRIAN GAGE: [02:45:08] -- your job.

BREWER: [02:45:08] You're, you're being very honest and I appreciate it. Thank you for your testimony.

EBKE: [02:45:16] Other questions? Senator Pansing Brooks.

PANSING BROOKS: [02:45:17] Thank you. Thank you for being here, Warden. I'm just-- if you could give me just a little background, I can't remember when you left and, and also I'm interested in why you left.

BRIAN GAGE: [02:45:31] OK. I left-- my last day was April 1, 2016. I had a box full of material that I thought I was coming-- I was asked to come to Central Office and the material had to do with moving from a 12, 12-hour back to the 8-hour shift. I had all that. I entered and director said is we've made a decision to have a management change. And I told them I under-- I understand because when you came in I was appointed, you could have wiped everyone out. But I know that happened because I know what other states do. That's what happens in other states also.

PANSING BROOKS: [02:46:17] OK. Have-- did, did you read the report? Whatever you think about it, did you read the report.?

BRIAN GAGE: [02:46:23] Yes.

PANSING BROOKS: [02:46:24] The, the, the [INAUDIBLE]--

BRIAN GAGE: [02:46:25] The second report?

PANSING BROOKS: [02:46:25] The second report, yes.

BRIAN GAGE: [02:46:26] Yes.

PANSING BROOKS: [02:46:28] I presume you read the first one too.

BRIAN GAGE: [02:46:30] Yes.

PANSING BROOKS: [02:46:30] So I'm wondering what-- why do you think it wasn't released?

BRIAN GAGE: [02:46:38] I have-- it just amazed me. You guys just discussing the cell phone issue is a lot more sensitive than knowing that we have security threat groups, the STGs, security threat groups, at our facilities. You just go down and ask any leader, any shot caller, any wannabe, hey, what kind of gangs we have, you know, they know we have Lomas, skinheads, [INAUDIBLE], all those different gangs. They know who they are. They know whatever else. So I, again, reading-- I agree with everything that's in that report.

PANSING BROOKS: [02:47:22] Do you-- that was my next question.

BRIAN GAGE: [02:47:24] And so I have no idea and that's, that's for the director to make that call.

PANSING BROOKS: [02:47:31] Do you feel that it's sensitive information? I mean, you sort of spoke to that just now.

BRIAN GAGE: [02:47:34] There was more sensitive in the first report.

PANSING BROOKS: [02:47:37] OK.

BRIAN GAGE: [02:47:37] The first reports is, as far as getting down to the-- what kind of equipment to have in the towers or whatever else, that's more sensitive than the second report.

PANSING BROOKS: [02:47:51] And when did you first see the second report? Was it after this trial?

BRIAN GAGE: [02:47:57] After, after the trial. What I was-- and that's the only reason I'm here. I got-- I have four more lawsuits, I think, pending and I was asked-- they put the evidence on the screen. They asked me questions about the first report. And then they put something else on. I said, is that the first or the second? And then that's why I'm here today. I'd never seen the-- but I would assume because they flew people in. There's always reports. You know, like I had never seen the reports from the State Patrol after the riot, never seen this report from the Fire Marshal after the riot. They were all there, too, doing their after reports. I would assume they all went to our Central

Office, but no one gave them to me or briefed me on them, etcetera.

PANSING BROOKS: [02:48:51] OK. You sort of said it, but you didn't find anything necessarily surprising in the report? Or did you find something surprising in the report, the second report?

BRIAN GAGE: [02:48:59] No, I didn't see anything surprising.

PANSING BROOKS: [02:48:59] OK. So I'd just like to take you through the five, the five, the-- I don't know, five reasons they sort of thought or causes that they had. So what's your thought about the too many purposes served that they talk about?

BRIAN GAGE: [02:49:19] Here-- we had other experts come in as far as the design of the facility, etcetera, because you-- it's a rural setting, it's on 200 acres, 40 acres of it is buildings, how we can build fences, add more fencing to separate the different classifications. One thing that in between all this was the director's wanting us to double bunk the SMU, double bunk Unit 1. Cost us about \$100,000, etcetera, getting that all done while we're in the aftermath of the riot. We had a population of protective custody in Unit 2C. We had death row in a type of step program over in Unit 1 from segregation. And Unit 1, we have the largest segregation unit in Nebraska. So every time there was a fight or issues or something, those individuals came down there, there was no progression as far as how to release those. You-- again, you have medium and maximum in the same house unit, in the same cell. They weren't split up. So you have a lot of different issues there. I hope I'm answering your question, but it's a little bit [INAUDIBLE]

PANSING BROOKS: [02:50:57] Yeah, you are. So just going back briefly on the-- you talked about the, the double bunking. Was one of those units you described solitary or restrictive housing? I'm sorry, you said a unit.

BRIAN GAGE: [02:51:09] Yeah, and special management unit, that's segregation or restrictive housing. He wanted those double bunked.

PANSING BROOKS: [02:51:18] So you're saying "he." The director?

BRIAN GAGE: [02:51:19] Director.

PANSING BROOKS: [02:51:21] And, and why was that?

BRIAN GAGE: [02:51:22] He wanted-- first of all, he wanted to make it, half of it, protective custody unit. Wasn't designed for that. He wants it, so you follow through. But as, you know, when the riot happened, etcetera, it automatically became that.

PANSING BROOKS: [02:51:43] OK. So it's, it's my-- in my memory, the Vera report--that's the national report--does not support double bunking in, in restrictive housing. Is that correct?

BRIAN GAGE: [02:51:54] What I remember, yes, correct.

PANSING BROOKS: [02:51:57] OK. Thank you for that. Then secondly, the discussion that the report had on the gangs, and the discussion is that generally best practices is not to-- that, that by aggressively-- I, I can find the, the language that he used but-- or that they used, but that aggressively going after the gangs causes gangs to increase and causes more people to be sent into protective custody. Would you agree with that or not?

BRIAN GAGE: [02:52:32] Here's, here's what you see in protective custody, a large number of

white inmates going. That number has constantly increased. I don't know where it is today because they don't have those numbers on their site, but it was constantly increasing as the-- their-- gangs ebb and flow. There's a lot of gang activity in Omaha or shootings, etcetera. You start feeling that in the facilities and that can affect it. But the idea of gangs is so hard because, again, you want to concentrate on the leaders and the shot callers, the ones they're with. And then you have the--

PANSING BROOKS: [02:53:19] Could you define shot callers, please?

BRIAN GAGE: [02:53:20] Shot callers and enforcers, those are the ones that-- kind of the-- you know, you have your leaders--

PANSING BROOKS: [02:53:26] Within the gang?

BRIAN GAGE: [02:53:28] I'm sorry?

PANSING BROOKS: [02:53:28] Within the gang?

BRIAN GAGE: [02:53:28] Within the gang, lieutenants, etcetera. In a-- a leader will be really calm, you know, playing cards, no problems, etcetera. It's here-- he's usually smart enough to not have that affect, but he'll have everybody do his bidding.

PANSING BROOKS: [02:53:50] OK. So what's your thought about their comment that overly aggressive, an overly aggressive system of response is costly, ineffective, and that generally, that systems that are using suppression-based strategies end up driving up administrative segregation and unintentionally elevating the status of the gang?

BRIAN GAGE: [02:54:14] What's obvious is that our segregation-- which is full. You know, I had to have kick-out lists every, every day in reference to the sheer numbers that we had in our segregation who we can release out to general population and those type of things. The idea-- I do really like the intel idea, how they've managed it. We wanted it for years of having an intel connection, having every facility have an intel officer, having those data and information coming out so we can actively track. We did not have that prior. It was almost individually facility. The, the problem you have is that once you start looking for a gang, everybody's a gang member. Well, that's not true. They may have associate, they may have a connection, or because of the threat, etcetera, but not everybody is a gang member. And those are the type of things you've really just got to watch for, in reference to your aggressiveness with it, and you want to concentrate on just the ones that are a threat to the others.

PANSING BROOKS: [02:55:31] OK. So just continuing on with the causes, the third one was the Wellness League was deemed unfair by some of the inmates. Do you think that's correct, a correct summary of what sort of happened?

BRIAN GAGE: [02:55:43] Yeah. We had basically what the Ombudsman testified. We had an open-yard concept years. I remember when we had to weld the windows shut at the penitentiary. Inmates wouldn't move in or didn't, didn't want to leave the yard. They were upset. So, so we've gone through a lot of it. It's a rarity to have an open-yard concept in maximum security, of course at Omaha, minimum security, whatever else. But again, problem is, is you have maximum and medium and all under that same umbrella. So because Nebraska never really developed a maximum facility, you had the open-yard concept still follow. They had to shut down. I think when I was in York, they shut down the yard to, to not have that opened up. When I got back to the department or the-- that facility, we started the Wellness League. We wanted inmates that are behaving, etcetera, out more and kind of more of an incentive for those inmates to stay out of trouble. The problem is,

is the ones that are in trouble don't like that. And that's where it is because, again, you don't have incentive or how separate they are. That's, that's one of the problems.

PANSING BROOKS: [02:57:09] So back when we were, when we were running the LR34 Committee, my understanding was that part of the problem was that the Wellness League was taken away, not that it was available for some and not for others. Can you speak to that?

BRIAN GAGE: [02:57:26] It was avail-- we were expanding it even. At one point it was a certain amount of time from a Class II or I MR, you couldn't be on it. You would still get your regular time out, but you would have additional time. And what we did is went from like a six-month to like three months and that clear from those type of certain MRs to kind of opened it up more.

PANSING BROOKS: [02:57:51] Do you have a suggestion how to handle some of these, I guess they are considered privileges, better? How, how-- because taking them all away isn't, in my opinion, a great idea, but I don't know. Maybe that is--

BRIAN GAGE: [02:58:04] Yeah. No, it's not. The idea is you have to be clear to-- the problem is, is first of all there's no-- there was no policy from the department level--that's back to Senator Brewer's thing--there was no policy in reference to it, nothing from Central Office of how to manage it. It was really just up to the individual facilities. The, the idea is, how do you manage a maximum/medium-type housing unit, this-- differently? And you really need to separate them. You need to have it a clear distinction. Nebraska has a long-term-- and I've heard it numerous times that we overclassify people, and you definitely see that percentagewise of how many we have on maximum compared to other states.

PANSING BROOKS: [02:58:54] Overclassify when they first come in?

BRIAN GAGE: [02:58:57] It could be all the way through the system as far as classifying them as-- and where-- who is the true maximum custody inmate that needs limited movement, etcetera, and who's the ones that, hey, are able to have more movement and more program opportunities?

PANSING BROOKS: [02:59:17] And is there any ability to, to appeal that classification?

BRIAN GAGE: [02:59:21] Yeah, but they rarely see an overturn of that appeal.

PANSING BROOKS: [02:59:28] OK. I'm going to jump to the fifth cause, which, which was the improper release of hundreds of inmates. Do you-- did you hear that the inmates at Tecumseh were aggravated and upset about that, their reincarceration? I mean, can you speak to that?

BRIAN GAGE: [02:59:50] I don't know if it was that. It was more for the recalculation of their sentencing, of their sentences. That's-- you hear that but not from the ones that were-- that always are vocal, etcetera.

PANSING BROOKS: [03:00:05] But they were reincarcerated. They were taken back from the community.

BRIAN GAGE: [03:00:08] Some, yeah, some--

PANSING BROOKS: [03:00:08] Yes.

BRIAN GAGE: [03:00:08] -- some were. And some, though, were also resentenced under-- got more time.

PANSING BROOKS: [03:00:14] Who were already still there.

BRIAN GAGE: [03:00:21] Right.

PANSING BROOKS: [03:00:21] Well I, I appreciate your coming. I think those are the, those are the main things that-- just want to look at one more thing. Can you, can you speak about continuing safety at the prison for both staff and inmates? We're, we're still understaffed, we-- at least from the last that we knew. And so could you speak to that safety issue, because to me it also deals with the safety of our communities. So besides the people that we ask to work for, for our state to protect us from people that we have deemed dangerous, and then of course the protection-- it's the safety of the inmates there whom we are under a duty to protect as well. Could you speak to the fact that the undercrowding-- or the overcrowding, excuse me, relates to the whole safety factor--

BRIAN GAGE: [03:01:21] Well, you--

PANSING BROOKS: [03:01:21] -- or the understaffing relates to that?

BRIAN GAGE: [03:01:23] Yeah. You ask kind of-- it's kind of a difficult question. Here-- here's an example. This room holds I don't know how many people. Right? Right now it's comfortable, it's-- you know, we have so many people that are in this room comfortable. If we filled all the chairs and had standing room in this, the lighting is still the same, the air-handling system is the same, but we'd probably hear more noise, hear people get irritated, probably whatever else. That's similar to crowding in a, in a prison. Can you do it? Yes. The problem is, is what comes from that. Like I was talking about in 1980, whatever building, etcetera, designed for a certain amount of people, well, it's designed, the air handling, the air, the heating, all that stuff is designed for that many people. When

you start adding bunks, when you add like when they did it-- seven and eight at the penitentiary, they had it for single bunk. Immediately they went to double bunk. That's probably one of the more driving things why I'm here is staff safety. When you add that, then you need-- should have been adding more staff. But, no, that never happens. When you're at Tecumseh, when you have a more, more of the maximum-custody inmates or more violent-type inmates, you should have more staff-- never there. So the idea is-- and I guess that's your guys' thing is we either provide more programming, lower our numbers in our facilities, or build, start building. And the thing is, is when you're talking that, that, that crowding just adds to everything. You go to the penitentiary, their dining hall that was designed for whatever amount, look at it. Look at how different things are happening. As far as no-- lack of pro-- it's not just the space. Like the-- like Tecumseh, I had space for, like, education rooms that were vacant a lot of times. It was having the trained staff, licensed trained staff, with mental health practitioners, residential coming in and doing it. And so I guess I don't-- I'm not answering your question but it's--

PANSING BROOKS: [03:03:59] That is answering it. So from your years' experience there, do you, do you believe that building a new facility would solve the understaff-- the understaffing issue?

BRIAN GAGE: [03:04:10] No. The-- what-- if you're going to build in Nebraska, you build with your parole officers. I would do 20 or 25, if you're going to ask me. Look at your parole percentage. Adding 20-25 parole officers and you could parole so many, X number of inmates. Look at community or community-type beds, not dorms, whatever, but community beds where you have people that are going out prior to parole, etcetera. That's where I would put my time and effort into that. You do not need another Tecumseh or a penitentiary because, I'll just tell you, you're going to fill it. It's going to be back to that. Senator, what I would tell you if I was there, you add a 200-bed community in Omaha, you're going to fill it as soon as it's done. And why? Because the need is

there and I think it's very much warranted. That's my two cents, I guess.

PANSING BROOKS: [03:05:16] Thank you. Thank you for your help.

EBKE: [03:05:16] Other questions? Senator Krist.

KRIST: [03:05:20] Would you-- I, I want to be respectful because you're, you're kind of on a hot seat-- not kind of, you're on a hot seat in a lot of ways. Would you say that what you just said, because I know or I think I know that you shared those opinions while you were active with the Department of Corrections, led to that day of dismissal? In other words, your, your focus on what you think was an alternative way of thinking led to you not working in Corrections anymore.

BRIAN GAGE: [03:06:04] Here-- and I get that asked and I've heard a lot of rumors, I've heard a bunch of stuff, and I told you exactly what that day was. The, the problem we have is that staffing down in Tecumseh, lack of support for either the programming, having to go to a closed custody, whatever-- and I know what that means. But there's nothing in policy trying to, well, figure that out. And I'm used to going with policy. That's what protects you from a lot of different things. I seen that in military, all that stuff. The, the lack of policy, it's just, hey, start this and do this. Well, staff asking me questions, which they should, I walk around, talk to them, etcetera, where, where, where are we going to go, what's this, etcetera, and then going back to the director going, well, this is what they are saying, well, you need to go around and talk to them, listen to them. Well, I am. This is what they're saying. Well, they, they just need to understand. Never get a clear thing so, yeah, it's probably that-- I'm sure that's part of it.

KRIST: [03:07:18] Well, I-- you have my respect. You, you, you have-- you've been professional throughout this whole encounter. I quite frankly think that you were a scapegoat and my, my

opinion at this point comes from years of dealing with these kind of committees and from talking to the same people that you talk to. Most of the people who are corrections officers or are working in the system right now do not feel that they're being listened to. They do not feel that their safety is paramount. And I am sorry I'm not going to be around to continue these kind of discussions, but I am very happy that, that you have made the statements that you have. And I really appreciate your professionalism. Thank you.

EBKE: [03:08:09] Other questions? I have just one. You, you heard the discussion about cell phones earlier. Can you tell us a little bit? I mean obviously this is a pilot program, so it wasn't something that you were doing. Can you tell us what was going on? You know, if you found contraband, if you found cell phones, what was the earlier policy or what was the previous policy?

BRIAN GAGE: [03:08:30] Well, that's-- kind of raised my ears, too, and I spoke to Mister-- I told Mr. Davis, look at the-- we had policy in our administrative regulation about cell phones when you collected it or when you found them. You secured them. You didn't turn them on; you didn't turn them off. You secured them, usually put them in a can or a device so they could be turned over to law enforcement. That's what we wanted to do. We're not experts in-- somebody said Fourth Amendment, whatever else. That's for law enforcement to decide. Hopefully they can get information and then two months later you see something on the TV that somebody was arrested because of some drug deal. That's the-- I'd be concerned in reference to also the sheer numbers they've confiscated. Cell phones are a big security risk in any facility, especially a secured facility, like penitentiary or Tecumseh. That would raise my ear as far as how they're getting in-- is it staff, is it visitors, thrown over the fence, those type of things. There are-- I'm not here to sell anything. It sounds like there's others maybe. But I would have the same concern. I, again, like I said, I like the intel officers, I like those things, but again, Corrections and law enforcement are two different type of divisions and I like having law enforcement look into those type of things because they're the

experts at it.

EBKE: [03:10:08] OK.

BRIAN GAGE: [03:10:08] That's my two cents, Senator.

EBKE: [03:10:10] Thank you. Any other questions? OK. I think we're done with you. Thank you for being here today.

BRIAN GAGE: [03:10:19] Thank you.

PANSING BROOKS: [03:10:20] Thank you.

EBKE: [03:10:20] Did anybody in the committee-- we've still got-- we've still got some of our earlier testifiers. Anybody have anything they wanted to bring back up? I see nothing. So that closes our hearing. I appreciate everybody attending, and thank you for our testifiers for taking time out of their day to be here.