

Transcript Prepared By the Clerk of the Legislature
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LR34 Department of Corrections Special Investigative Committee
August 31, 2016

[LR34]

The Department of Correctional Services Special Investigative Committee met at 10:00 a.m. on Wednesday, August 31, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR34. Senators present: Les Seiler, Chairperson; Patty Pansing Brooks; Vice Chairperson; Kate Bolz; Ernie Chambers; Colby Coash; Laura Ebke; Bob Krist; Heath Mello; Adam Morfeld; Paul Schumacher; and Matt Williams. Senators absent: None.

SENATOR PANSING BROOKS: Okay, I'd like to welcome everybody to the LR34 Special Investigative Committee hearing today. We have had some technology issues a little bit. So, Senators, you have received the document from Ollie. It is...mine is still opening and downloading so it may take a second. We do have a copy of the documents here. And it's my understanding that we may...that if you're looking for the page that's being discussed on your computer, that it could be anywhere from two pages to five pages off, right? But it's basically in the area where we're talking about. Do you have anything else to add about that, Mr. VanDervoort? [LR34]

OLIVER VANDERVOORT: Well, on the index that I handed out this morning it's got the PDF page marked as to where you can jump to in the PDF so you don't have to try and search. [LR34]

SENATOR PANSING BROOKS: Have you all received this? Okay. So we had some...we had so many documents that we downloaded it into one document. People, staff have scanned it in. The scanning pages then, when they were uploaded, did not match exactly as they were supposed to. So that's what happened. Okay. I'd like to go ahead and start the hearing. First, could you each introduce yourselves starting with Senator Williams. [LR34]

SENATOR WILLIAMS: I'm Senator Matt Williams from Legislative District 36. [LR34]

SENATOR BOLZ: Senator Kate Bolz from beautiful south Lincoln, District 29. [LR34]

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SENATOR COASH: Colby Coash, District 27, Lincoln. [LR34]

SENATOR KRIST: Bob Krist, District 10. [LR34]

SENATOR CHAMBERS: Ernie Chambers, District 11. [LR34]

STEVE LATHROP: Steve Lathrop, counsel. [LR34]

SENATOR PANSING BROOKS: I'm Patty Pansing Brooks from District 28. [LR34]

OLIVER VANDERVOORT: I'm Oliver VanDervoort, the committee clerk. [LR34]

SENATOR SCHUMACHER: Paul Schumacher, District 22. [LR34]

SENATOR SEILER: Les Seiler, District 33. [LR34]

SENATOR EBKE: Laura Ebke, District 32. [LR34]

SENATOR MELLO: Heath Mello, District 5, south Omaha. [LR34]

SENATOR PANSING BROOKS: Okay, and thank you all. We are here today. We have brought in legal counsel. Former Senator Lathrop is counsel who has come here on behalf of our committee to help coordinate questioning, to help coordinate our...how we will go forward with our hearings. And he will be initially presenting on behalf of us and asking questions. And then the senators will ask questions as necessary or as warranted. So that's how it will proceed and we wanted to make the record clear about that. So I think first we would like to ask Director Frakes to come to speak. And Senator Lathrop will begin the questioning and the rest of the senators will continue as necessary. Senator...or... [LR34]

STEVE LATHROP: Steve is good. [LR34]

SENATOR PANSING BROOKS: Steve Lathrop. Okay. [LR34]

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STEVE LATHROP: Yeah. Welcome, Director. Would you start by giving us your name. [LR34]

SCOTT FRAKES: Scott Frakes, F-r-a-k-e-s. [LR34]

STEVE LATHROP: And you are the Director of Corrections? [LR34]

SCOTT FRAKES: Yes, I am. [LR34]

STEVE LATHROP: How long have you been the Director of Corrections? [LR34]

SCOTT FRAKES: February 2, 2015. [LR34]

STEVE LATHROP: We are going to discuss, and you probably know from the records request that we've made from the committee that we're going to discuss staffing issues. Those are primarily going to relate to what I'll refer to as the direct line staff or the guards and the security people. Do you have a more accurate term for that group of employees? [LR34]

SCOTT FRAKES: Correctional officer is always preferred to the word "guard." [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: So if we talk about our protective services staff, that include the correctional officers, the corporals, caseworkers, correctional sergeants, correctional lieutenants. [LR34]

STEVE LATHROP: Okay. So if we refer to correctional officers, we'll understand each other. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: All right. One of the things that we're going to do today and from time to time we may refer to documents. And you see two books in front of you? [LR34]

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SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: In the upper corner you'll see numbers that refer to page numbers. That entire pile of paper has been paginated and so at different times we may refer to charts or information that you provided the committee. And if we refer to a page number, it refers to the page numbers of those documents. Fair enough? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: I want to start out if we can and talk about vacancies. You have provided the committee with some material and now I'm going to direct you to page 1,706; 1,706. [LR34]

SCOTT FRAKES: Does it continue in the second volume then? [LR34]

STEVE LATHROP: Yes. [LR34]

SCOTT FRAKES: I'm there. [LR34]

STEVE LATHROP: You're there? Do you see that graph on that page, the first page? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: It says protective services vacancies agencywide. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And then behind that you have in the pages that follow the vacancies by institution. [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: So just as a matter of background for people--and I probably think everybody in the room maybe knows that--but how many institutions are there under your jurisdiction? [LR34]

SCOTT FRAKES: We have ten facilities. [LR34]

STEVE LATHROP: So they all perform some function of incarceration. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: All right. The first page, 1,706, is the agencywide numbers for vacancy positions. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Are these just the correction officers? [LR34]

SCOTT FRAKES: These again would be the protective services, so that would also include the caseworkers. So there's not a legend, so I believe this includes correctional officers, correctional corporals, and caseworkers. [LR34]

STEVE LATHROP: Okay. Do they all fall under the category of correction... [LR34]

SCOTT FRAKES: And sergeants, sergeants are also included. [LR34]

STEVE LATHROP: Do they all fall under the category of correction officers or is there somebody missing from this graph? [LR34]

SCOTT FRAKES: Better, in this case, better term would be "protective services." [LR34]

STEVE LATHROP: What's the difference? [LR34]

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SCOTT FRAKES: Well, correctional officers are our entry level correctional custody staff. Corporals are the next level in that rank. The sergeants are the next level in that series. Caseworkers are a combination of security skills and some case management skills, although because of our staffing the vast majority of our caseworkers perform skills...perform duties that are just very similar to corporals. [LR34]

STEVE LATHROP: All right. So this actually includes more than the corrections officers but gives us a sense of the agencywide vacancies. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: I want to ask you some questions to get some clarity about this graph if I can. It looks like it has some dates on it. Do you see the first one that says 8/5 and the second one, 8/19? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Are those dates? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: There doesn't seem to be any pattern to the dates which is why I'm asking. And are we in 2016 in the period of time between 8/5 and 6/7? [LR34]

SCOTT FRAKES: 8/5 would be the beginning of the fiscal year...nearly the beginning of fiscal year '16; it would be calendar year 2015. [LR34]

STEVE LATHROP: Okay. So that was last August. [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: And then when we get clear over to the last two columns, those would be the most recent figures. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: There are three rows at the bottom. There's a...at the very bottom it says vacant. Do you see that? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And above that it says future preservice and above that it says preservice. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So let's take the very last column, the most recent data which would be July 14, 2016. It says the vacancy is 125. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: That would be protective service employees. [LR34]

SCOTT FRAKES: Those four job classes at the top of the page. [LR34]

STEVE LATHROP: Okay. Above that it says future preservice. What's that mean in relationship to vacancies? [LR34]

SCOTT FRAKES: People hired but that have not yet begun the academy that we send our staff through. [LR34]

STEVE LATHROP: Okay. And above that it says preservice. [LR34]

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SCOTT FRAKES: That are in academy at the time of this measurement. [LR34]

STEVE LATHROP: Okay. Do those two figures--that's preservice and future preservice--do they affect the vacant number? In other words, would the vacant number be higher if you didn't have the preservice people? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So when you hire somebody and you begin their training and they become preservice but they're not actually assigned a post... [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: ...does that...do they affect the vacant number? [LR34]

SCOTT FRAKES: Not in term of positions to hire for, but in terms of positions that are open across the ten facilities, yes. [LR34]

STEVE LATHROP: I may not be asking this clearly and I'm going to try to so that I understand the vacancy number. Does the vacancy number go down by 22 when you put somebody in the preservice category? [LR34]

SCOTT FRAKES: Let me try to...I'm going to give you this answer and see if it clarifies. So the vacant number--125, July 14--are the positions that have no one that owns them. We have not hired an employee. The future preservice are people that have gone through the hiring process, have been hired. They have a date to start academy. It's often the following Monday, but it could be a week out. So there's 51 more staff, but they are employees effective the day they begin the academy. So they are...don't count towards true vacant positions. And then the ones that are in academy are in the academy on the payroll and they're employees. And if we want to talk about true vacancies that we need to hire for, in this case it's 125. If we want to talk about positions that are vacant across the agency, across the ten facilities then you could add those three together and come up with a number that would be close to 200 on that date. [LR34]

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STEVE LATHROP: And so maybe I'm going to ask it a different way and then I think I'll fully understand it. You have 125 vacancies. If you didn't have 51 people in future preservice and 22 people in preservice, your number would be 125 plus 51 plus 22. [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: In other words the vacancy number is going down when people are in training. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Even though they're not at a post. [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: So the true vacancy number, that is not having somebody at a post, is the sum of those three numbers. [LR34]

SCOTT FRAKES: The number of vacant posts across the ten facilities is the sum of those three numbers. [LR34]

STEVE LATHROP: So it's 198 with the understanding that you have 73 people who are in some level of training, either hired or in the middle of training. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: But there's 198 posts that are...don't have somebody assigned to them. [LR34]

SCOTT FRAKES: That is correct. [LR34]

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STEVE LATHROP: Okay. So to fully understand or to completely understand the vacancy numbers across the agency we would add those three numbers up. And if we were to look at a trend, you're running, what, 175 to 200 vacancies at any given time? [LR34]

SCOTT FRAKES: Vacant positions at facilities, yes. It's an important distinction because we don't, in this case on the July 14 date, we don't need to hire 198 people. We need to hire another 125 people. We need to train the entire 198 people and deploy them. [LR34]

STEVE LATHROP: But in terms of staffing, in terms of having people that you can assign hours to and have them go in to work, you have 198...you're 198 men short or people short. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Now some of these people are in training and that would be the preservice people? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: How often are you having training classes? [LR34]

SCOTT FRAKES: We start one every three weeks. [LR34]

STEVE LATHROP: And do you typically have about 20 people in them? [LR34]

SCOTT FRAKES: No, it varies. Anywhere from 20 would be the low end, we've had as high as...I don't know if we've had 60. We've had in the high 50s in some of our classes. [LR34]

STEVE LATHROP: And I saw something in the record, in the information you gave us that the cost of training one of these people, that's been broken down and it's about, what, \$5,900, \$5,900? [LR34]

SCOTT FRAKES: Is that a number that I provided somewhere? [LR34]

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STEVE LATHROP: Somewhere in the documents, \$5,700 or \$5,900 is the cost of training by the time you pay the person to show up and you have them go through whatever you do for the period of time. [LR34]

SCOTT FRAKES: I would estimate that it's even higher than that, but \$5,900 definitely just to cover the salary cost. [LR34]

STEVE LATHROP: Okay. And then you have a dropout rate, too, don't you? [LR34]

SCOTT FRAKES: Small dropout rate. [LR34]

STEVE LATHROP: So somewhere in the 6 (percent) to 8 percent range. [LR34]

SCOTT FRAKES: Okay, there again, if you have a document that gave that number... [LR34]

STEVE LATHROP: You don't have any argument with that figure? [LR34]

SCOTT FRAKES: As long as there was...if there's something my agency provided that... [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: ...supported that number, recognizing that this represents part of the 3,500 pages or so that we provided this last (inaudible). [LR34]

STEVE LATHROP: Okay. And if we were to go in these subsequent pages, we can see the vacancy figures for each one of these institutions for each one of the dates. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So for example, on page 1,714 you have LCC, the Lincoln Correctional Center. The last date you have there, 7/14/2016, you have 18 vacant positions which is actually 27 because the number at the bottom, we should add them all up, right? [LR34]

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SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: The vacancies are a function of turnover and recruiting, am I right? In other words, the vacancies are created when people leave. [LR34]

SCOTT FRAKES: That is correct. [LR34]

STEVE LATHROP: And I should make one clarification before I go on and that is a vacancy is the difference between what you've been appropriated for staff and who you have in place, right? That's different than, ultimately you did a study about how many people you need at Corrections and that's sort of what we need to properly man the place. But the vacancy represents a number...or the difference between the number of people you have there and the number of people Appropriations has given you the money for. [LR34]

SCOTT FRAKES: That represents what we refer to as the true vacancies, those positions that need to be hired, that someone needs to be hired to fill, because there are other vacancies that can occur whether it's a one time, one day for sick or someone that's injured and out for several days or a variety of other things that contribute to vacant posts. So it is important to recognize the distinctions. [LR34]

STEVE LATHROP: Right, and... [LR34]

SCOTT FRAKES: Yes, but your description of what a true vacancy would be in terms of hiring is the difference between... [LR34]

STEVE LATHROP: In other words, to this point in time there's a certain budget for the posts and the vacancies in this information represent the difference between what you've been...what the Legislature has appropriated money for, that many posts, versus how many you have filled. [LR34]

SCOTT FRAKES: How many I have on the payroll, yes. [LR34]

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STEVE LATHROP: And you do a staffing analysis and we'll talk about that a little bit later, but that number is in addition to the vacancies...or in addition to the currently authorized staff. [LR34]

SCOTT FRAKES: Yes, the...yes. [LR34]

STEVE LATHROP: All right. So the vacancies, Director, are a function of turnover and your recruiting efforts, right? If you don't have any turnover, you won't have any vacancies. And if you can recruit fast enough, you might not have any vacancies. But to the extent you have vacancies, it's a symptom of problems with turnover and problems with recruiting. Would that be true? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: All right. Let's look at the turnover data that you provided, or the information. And that's found at 1,650. Do you see that? There's a chart there that shows the figures. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And then there is a graph on the following pages. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Can you see that? Again, the numbers are on page 1,650, but on 1,652 you have a graph of the agency turnover. Is that right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And that shows your agency turnover. And can you tell us...that shows for the three years before 2016 and sort of to date for 2016. Is that right? [LR34]

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SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: So looking at the top three rows, which would give us the last three full years of your turnover, it shows what it is for each institution? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And then it gives an agencywide number. Is that right? [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: The central office, which is where your folks are at, the administration is at. [LR34]

SCOTT FRAKES: Yes, and a number of other support services as well. [LR34]

STEVE LATHROP: Right, they clearly have a lower turnover there than they do out in the institutions. [LR34]

SCOTT FRAKES: That is correct. [LR34]

STEVE LATHROP: But this would suggest that agencywide you're somewhere around 23 (percent), 24 percent? [LR34]

SCOTT FRAKES: That was for fiscal year '15. And somewhere there is a projection for where we think we're going to land in 2016 and I can try and pull it off the top of my head. [LR34]

STEVE LATHROP: The 2016 numbers, do they represent the actual number so far this year, or is that an attempt to project what you expect to be the turnover for the entire fiscal year? [LR34]

SCOTT FRAKES: No, that's through whatever the date was for this processing. It's not a projection. [LR34]

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STEVE LATHROP: Some of these places, individual institutions, have higher turnover rates than others. Am I right? [LR34]

SCOTT FRAKES: Yes, they do. [LR34]

STEVE LATHROP: So if we look at Tecumseh, the last two full years have been 32 (percent) and 31 percent? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: A third of your staff you're turning over in a year? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: The penitentiary also has pretty high numbers: 25 (percent) and 27.5 percent for the last two years. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So the turnover is an issue for the Department of Corrections. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And I think somewhere in the material you provided, and I can dig it out for you if you want me to, but you suggested that 10 (percent) to 12 percent turnover is probably healthy for an organization. [LR34]

SCOTT FRAKES: I use that number. [LR34]

STEVE LATHROP: Yeah. And I think you also use that if you get to 15 percent you've got problems. [LR34]

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SCOTT FRAKES: Okay. Concerns anyway. [LR34]

STEVE LATHROP: Yeah. [LR34]

SCOTT FRAKES: If I used the word "problem"... [LR34]

STEVE LATHROP: Yeah, that it--I think to use your term or your phrase--that it creates some instability and some management issues. And these numbers would suggest that that's...you're in that range. [LR34]

SCOTT FRAKES: Past it. [LR34]

STEVE LATHROP: Yeah. Your turnover is high and it is into the range where you have instability and management issues. You would agree with that? [LR34]

SCOTT FRAKES: Management of the facility as opposed to... [LR34]

STEVE LATHROP: Right. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: It's just you've got people, a third of your staff is walking out the door and you're trying to hire them faster than they can walk out the door. [LR34]

SCOTT FRAKES: It's very unhealthy. [LR34]

STEVE LATHROP: That turnover rate and your vacancies are a function of some cultural problems that you've tried to investigate since you've been at the department. Am I right? [LR34]

SCOTT FRAKES: I believe those contribute to the issue, yes. [LR34]

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STEVE LATHROP: You've done a culture survey. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And you've also done some exit interviews. Am I right? [LR34]

SCOTT FRAKES: Some. [LR34]

STEVE LATHROP: Yeah. So what have you determined are the problems that are creating the turnover and the problems that are creating the vacancies that we've just talked about? [LR34]

SCOTT FRAKES: Concerns include compensation. They include staff believing they don't have a voice, staff believing that if they speak up they'll be retaliated against, staff feeling--well, I would say they would express it as feeling--not engaged but that's the descriptive term. It's a lack of staff engagement. Very typical of a 24/7 operation, the hours of work is often a challenge, in particular for single parents. The mandatory overtime, certainly a significant issue. And then general overtime, an issue for some because we acknowledge that staff are managing...many of the custody staff or protective services staff avoid direct mandatory overtime by working voluntary overtime so they can have control over it. So we can just say overtime. The term "good old boy system" or "good old person system" comes up and it's also described just simply as favoritism. I'm sure there's a number more, but I think that's a good start. [LR34]

STEVE LATHROP: Safety would also be an issue? [LR34]

SCOTT FRAKES: Oh, yes, absolutely. [LR34]

STEVE LATHROP: So safety, and then the safety seems to be related to the perception that there's been a change in the attitude or the level of respect the corrections officers are getting from the inmates. [LR34]

SCOTT FRAKES: Staff in...that is a perception and I would say staff in general feel that perception or have shared that belief, yes. [LR34]

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STEVE LATHROP: Do you know why that is? [LR34]

SCOTT FRAKES: I have theories. I can't tell you that I know why it is. Certainly the lack of programming and pro-social activities that this agency has suffered from contributes to it. I believe that the growing civil disobedience in the country is reflected in the prison population to some degree. We know that security threat groups are certainly contributing to this. [LR34]

STEVE LATHROP: What's a security threat group? [LR34]

SCOTT FRAKES: The slang term would be "gang." We have a large number of people that come with some affiliation, connection to, or strong membership of a security threat group. So those are certainly some of the factors that contribute to this. And then they complain, the inmates complain that they feel they're not treated with respect by the staff. [LR34]

STEVE LATHROP: You mentioned programming and what was the other, some activities? [LR34]

SENATOR PANSING BROOKS: Social. [LR34]

SCOTT FRAKES: Yeah, pro-social activities. [LR34]

STEVE LATHROP: Pro-social activities. Can you describe how that contributes to, or the lack of programming contributes to the difficulties that you're experiencing with the inmates? [LR34]

SCOTT FRAKES: When you provide programming, and in particular evidence-based programming, cognitive behavioral interventions being a strong preference, then we're giving people tools to see the world differently and that will affect their behavior. It will affect how they treat...how they think about themselves and how they treat others--the people they live with and the people that run the facilities. So to me that's a critical component of changing the inmate culture. Pro-social activities in general include those things, the inmate clubs that are working well and that have good purpose; religious activities; AA; NA; good recreation programs, recreation programs like intramural programs that we do run to the best of our ability. Those

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things engage people in activities that are healthy and good for the mind, good for the body, and allow people to focus on the more positive side of life. When you don't have enough of those opportunities, have a lot of people with idle time and so they look for things to fill that time. [LR34]

STEVE LATHROP: So tell us why there aren't enough of those activities. We're going to have a hearing on programming at some point so I don't want to go clear into the weeds on this. But can you share with the committee why they aren't those type of activities that if you had them-- programming, pro-social activities--if you had them you would have less problems with the inmates themselves? [LR34]

SCOTT FRAKES: I'm told that budget cuts during the financial crisis contributed to the problem. I see a prison. I am operating a prison culture that has not embraced many of these activities in the way that I'm used to from my background. So when it's never been part of the culture then the challenge is, how do you bring it to life? And we're slowly but surely doing that. And we have had a very heavy focus on clinical services, which are crucial, which without a doubt need to be addressed. Those are resource-intensive and expensive. [LR34]

STEVE LATHROP: Distinguish between just programming and the clinical services. What are you talking about? [LR34]

SCOTT FRAKES: Clinical services would be those things that must be delivered by a licensed professional, so sex offender treatment, substance abuse treatment, high-end violence treatment. Then under that is all the cognitive behavioral interventions that can be delivered by a trained facilitator as long as they have the right skill sets and are properly trained. They don't have to have licensure; they just have to have the skills. And then manage and run under a quality assurance fidelity piece which is also not part of the current culture. We're working hard to build that one because without it you really can't say you do evidence-based work. So we had some excellent clinical services, still have some excellent clinical services, and we'll hear staffing being a challenge significantly in that area as well. But outside that...and a good education program. We run a good, basic education program, so that piece works well and that's important for those that need basic education that come without a GED or in many cases with very low

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reading skills. But in terms of expanding into the world of evidence-based programming, using cognitive behavioral interventions, the department just hadn't made that move yet. And I don't...I know there were things that were in place. Vocational programs at one time were much more robust. I'm not sure exactly when in the history that those went away. But I do know that during the economic crisis there was more programming cuts. [LR34]

STEVE LATHROP: So if you had more programming do you think you'd have less problems with inmate-on-staff assaults and inmate-on-inmate assaults? [LR34]

SCOTT FRAKES: It will help. [LR34]

STEVE LATHROP: So part of the safety issue is the fact that the...well, part of your staffing issue is the guy that's looking for a \$15 an hour job is reading the paper and he's also listening to the radio and finding out nine people are getting beat up. And he can make \$15 an hour over at the shop welding or doing something besides. So it's harder to recruit. [LR34]

SCOTT FRAKES: We actually haven't had significant recruitment issues in our protective services areas. It is in the healthcare and behavioral health where we have really difficult time with recruitment because it says somewhere in all of these documents, I think, we hired approximately 400 protective services staff in fiscal year 2016. And we lost 387 protective services staff. So we try basically treaded water in that. And you can look at the numbers. [LR34]

STEVE LATHROP: You treaded water while maintaining a deficiency or a vacancy rate of about 180, 190. [LR34]

SCOTT FRAKES: Vacant posts. [LR34]

STEVE LATHROP: Vacant posts. [LR34]

SCOTT FRAKES: The two... [LR34]

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STEVE LATHROP: Let me go back to the programming. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: Why can't you have more programming? What's the issue there? [LR34]

SCOTT FRAKES: Well, we can and we are and we're moving forward. There are a number of programs that have very little cost to them, the training is not complex, and it was simply a matter of getting things in motion to make that happen. We brought in the Council of State Governments, came in and did the Justice Program Assessment which was released at the end of June. We did that to help get a better sense of what do we have, what's working, what's not working, what changes need to happen so that we get the most value out of what we already are invested in, and then where do we go forward from there. The implementation team has met by phone and now has a meeting scheduled for September 21, I believe it is--20, 21--to move forward. But in the meantime, my deputy director Mike Rothwell with his background in programming, it's extensive, has already reached out and invested in some low-cost programming that we're bringing in and we're just going to go ahead and move forward on that. And then we have a number of other initiatives. So really it's a matter of trying to be strategic and be tactical. [LR34]

STEVE LATHROP: When you talk about programming there's an element of correction officer resources that are employed to make that happen. Am I right? So if you're going to have a guy go to a GED class, then he might need a guard to get him there and then you've got to have...not a guard, a correction officer. And then you got to have a correction officer at the class, right? In other words, these programs take corrections officers to make happen. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Over and above the fundamental basic staffing, you've got to have corrections officers available to provide some measure of security in classrooms or wherever this programming is happening. And you got to get an inmate from one place to the next and that takes resources. [LR34]

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SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: Is that affecting the amount of programming you can do? [LR34]

SCOTT FRAKES: That has slowed us down. [LR34]

STEVE LATHROP: So these vacancies, or not having enough corrections officers, is one of the considerations for why there isn't more programming. Would that be true? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And the programming, in turn, if you had more programming... [LR34]

SCOTT FRAKES: At least the pro-social activity piece, not as much the programming side at this point. But definitely the other pro-social activities we could be doing a lot more if we had our custody staff filled. [LR34]

STEVE LATHROP: Okay. In the absence of those programmings, the pro-social activities as you call them or the basic programming that inmates can't get to, causes some sense of restlessness among the inmates. What's the proper term? Resentment? [LR34]

SCOTT FRAKES: Idleness. [LR34]

STEVE LATHROP: What's happening? Idleness. [LR34]

SCOTT FRAKES: Idleness (inaudible). [LR34]

STEVE LATHROP: What happens with idleness? [LR34]

SCOTT FRAKES: If there is nothing productive to do then people tend to get into trouble. [LR34]

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STEVE LATHROP: So you'd probably be able to have less safety issues if you had more programming and the programming is going to require more staff to staff the programming and more staff to get the inmates from point A to point B. [LR34]

SCOTT FRAKES: It will require...we need to fill our vacant posts to be able to maximize use of the space, control movement, supervise from a security standpoint. In terms of additional staffing to deliver programming, no, not sure at this point that that's correct. We have unutilized resources, vacant positions, and we have the ability for existing staff to be trained and facilitate programming. [LR34]

STEVE LATHROP: So the vacancies aren't affecting your ability to do the programming? [LR34]

SCOTT FRAKES: Which vacancies? [LR34]

STEVE LATHROP: The 200 you have at any given time. [LR34]

SCOTT FRAKES: They are directly impacting the ability to facilitate more pro-social activities. I can't at this...here's how it's affecting the ability to deliver some of the programming that we're ready to launch right now because there are so many demands on existing staff, case managers being a great example. Case managers should be spending, I'll go, at least 85 percent of their time if not 90 percent of their time managing the caseload and then a little bit of their time providing some...just a little bit of security oversight. They could support...they could be present during a movement of inmates or something like that, but most of the time they should be working directly with the inmates that are on their caseload to address the issues. And part of that would be they could be facilitating cognitive behavioral interventions during their work week. But as it is, they spend much more of their time working on the floor helping to cover vacant posts and they also work a lot of overtime because it's available and because many of them really just want to help out, and bless them for that. But because of those factors, that's an impact on the programming piece in the immediate. And then when we talk about, you know, at this present, we talk about clinical services, it is vacancies within the clinicians. And then when we talk about the bigger overall issue would be if we were robust in our ability to deliver

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programming, we need more custody or protective services staff so that we could fully utilize our education space and our other programming spaces. [LR34]

STEVE LATHROP: And that's part of a problem with the vacancies. And then when you did the staffing study, that shows what you need to have a...to be fully staffed, have the people to do the things that you think you need to do to provide the programmings that will keep the idleness down, provide some measure of rehabilitation, and probably improve safety. [LR34]

SCOTT FRAKES: And reduce overtime. [LR34]

STEVE LATHROP: And reduce overtime, which is also a significant problem across the agency but particularly in certain institutions. [LR34]

SCOTT FRAKES: It is more significant in some than others, yeah. [LR34]

STEVE LATHROP: So when we start talking about the difficulty with retention, we talked about safety and you gave me sort of a list about safety, you included pay on there and pay is a significant issue and I think you've identified that. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Right? And that has a couple of components to it, pay does, for these corrections officers. One is that many of them can go out and...well, you're competing with several of the counties that pay better than the Department of Corrections, right? [LR34]

SCOTT FRAKES: That is true and typical across the country. [LR34]

STEVE LATHROP: Yeah, so in Douglas County, for example, or Lancaster County, most of these corrections officers start out at, what, like \$15 an hour? [LR34]

SCOTT FRAKES: Mine right now I think are at \$15.80-something, yes. [LR34]

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STEVE LATHROP: Okay, \$15.80 an hour. What are they...do you know what they're paying in the county jails in like Douglas and Lancaster County? [LR34]

SCOTT FRAKES: Seventeen-something and eighteen-something were two numbers I saw in an article today and I can't tie it to which jail. [LR34]

STEVE LATHROP: So they can go do the same kind of work and make \$2 an hour more somewhere else. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Not have the mandatory overtime that we'll talk about in a little bit, right? Be closer to home? [LR34]

SCOTT FRAKES: Potentially. [LR34]

STEVE LATHROP: So that makes it difficult for you to not only recruit but also to retain. [LR34]

SCOTT FRAKES: It doesn't have the impact that I think people believe because, there again, they can only go there if there's a vacancy. So it isn't that those jails have this huge amount of turnover and that they're drawing. But I have employees that go to work for the counties, without question. [LR34]

STEVE LATHROP: Right. And then, and maybe on the same order, they can go do a lot of things for \$15.80 an hour, right? [LR34]

SCOTT FRAKES: It's hard to find a business that doesn't have a help wanted sign in the window. [LR34]

STEVE LATHROP: Right, and that's the low unemployment rate which is another headwind you face in terms of fully staffing the Department of Corrections. [LR34]

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SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: The \$15.80 is the number people look at to get in the door, right? I want to take a job, I look in the want ads and I can do this Department of Corrections thing, or I can go to a manufacturing concern and work there and they both pay \$15.80 an hour, right? That sort of gets them in the door but you have another problem that your employees have expressed to you repeatedly and that is a guy who's been there ten years is making what the guy that just started is making. [LR34]

SCOTT FRAKES: That was expressed both in the culture survey and in a number of other forums, yes. [LR34]

STEVE LATHROP: Do you know why that is, why the guy who has ten years of experience--- and I say "guy" in a generic way--why the corrections officer who has ten years of experience is paid \$15.80 an hour, the same as the fellow that just finished the training and starts his first day. [LR34]

SCOTT FRAKES: It's my understanding that there was a short period of time where there was, I'll call it, a step pay but some kind of a performance or length-of-service pay system. At this point the only staff in my agency that experience that are our nursing staff and they do have raises based on years of experience up to ten years. Depending on experience they bring, they may start in the middle of that and then can work forward. But that wasn't for...and I don't know the time frames. I want to say that was the late '90s but I don't know the correct time frames. I'm not sure how long it was. It's not so long ago that people don't remember and it was just long enough that it creates some other inequities because those people that were under that system then end up in different pay...you know, different pay ranges than the other staff. For some reason it went away and since then there has just been what I refer to as a flat pay scale. You come in at whatever wage is determined and that's where you stay unless you promote. [LR34]

STEVE LATHROP: Do you think your retention rate would improve if you paid...had some kind of longevity pay where you did implement some sort of a step program? And I think the Appropriations Committee had you do a study to look at, in one of their bills in 2015, to look at

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what's the mandatory overtime, how do we get that down, how do we improve the vacancy rate, and specifically suggested that you look at step pay. Am I right about that? Didn't you have to do a study on that? [LR34]

SCOTT FRAKES: Sounds familiar. [LR34]

STEVE LATHROP: Well? [LR34]

SCOTT FRAKES: Had an awful lot of studies on the direction, so the piece around overtime absolutely sounds correct and... [LR34]

STEVE LATHROP: Well, would it be effective in your retention efforts? [LR34]

SCOTT FRAKES: I believe that having some type of merit, performance-based pay that would recognize the skills, knowledge that are learned, that you can only learn by doing the job, I believe that would be of... [LR34]

STEVE LATHROP: So some program in the pay scale that allows the guy who...the the corrections officer who's been there for a period of time, developed skills, is one of the leaders and the mentors to the new people, that that person is making more than the person that just walked in the door. [LR34]

SCOTT FRAKES: I believe that would have value. [LR34]

STEVE LATHROP: I read in one of the exit interviews a comment by one of the people that left. And maybe I'll make a side note here. When I read those exit interviews, like 68 percent of those people that were respondents were leaving within three years of their start date. You have...part of that big turnover that we talked about earlier, a lot of that is new people, right? They start for...and they're gone within a couple of years? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: A significant percentage of those people. And besides losing them, creating vacancies, and now having to find somebody to hire in their place, they're walking out the door with all the training that you provided, maybe \$6,000 a guy, right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: But one of the people remarked in the exit interviews that when they were talking about the pay scale that they got an increase in their pay. But the increase was completely consumed by the increase in their share of the health insurance premium. Does that sound right? [LR34]

SCOTT FRAKES: Depending on where their pay scale was and their own circumstances, it is possible. [LR34]

STEVE LATHROP: They're kind of all at the same place. Didn't we agree that they're all at \$15.80 an hour? [LR34]

SCOTT FRAKES: Okay, the point would be that if you're at \$15.80 an hour and you're married and you have children, I suspect that the 2.4 percent raise probably gets consumed by the increased cost in healthcare. [LR34]

STEVE LATHROP: So to the extent they have a share of the health insurance premium, some of these folks, they're actually losing ground with the flat rate that they get, 2.4 percent or whatever the raise was. [LR34]

SCOTT FRAKES: Well, it's a cost-of-living raise so it's supposed to address those cost-of-living issues. It would depend I guess on... [LR34]

STEVE LATHROP: So how much is the cost share for a corrections officer on the health insurance? Is it a percent or a flat dollar amount, do you know? [LR34]

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SCOTT FRAKES: There are a variety of plans and it's a dollar amount. And then those plans also have some variations in the copays and things that are covered. So it's possible to go with lower rate plans if you think your needs are going to be less than. On the other hand, if you have known healthcare needs, or again, I think families with children, the better investment may be the more expensive plan that then has less ongoing costs, so a lot of variations. [LR34]

STEVE LATHROP: But the health insurance, their share or the part that they pay for family coverage at least is going up faster than their raises are so they're losing ground staying at the Department of Corrections. [LR34]

SCOTT FRAKES: Again, it would...it's very circumstantial. [LR34]

STEVE LATHROP: Right? [LR34]

SCOTT FRAKES: Yeah, so in some cases... [LR34]

STEVE LATHROP: And from their circumstance, that's true and that contributes to the turnover rate. [LR34]

SCOTT FRAKES: If we're talking about the \$15.80 employee that has a family and has children, they could be in fact in a place where that 2.4 percent just covered the cost of the additional healthcare cost. If we're talking about an employee that's making \$60,000 a year, then it's...the numbers change. But, yes, it contributes. It is a...if nothing else, it doesn't add to job satisfaction... [LR34]

STEVE LATHROP: Right, right. [LR34]

SCOTT FRAKES: ...when you believe you're getting a pay raise and yet nothing changes. [LR34]

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STEVE LATHROP: Your check just got smaller because the bill for the health insurance came in at the same time. The overtime is also a problem for your retention and contributes to these vacancy rates. Am I right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And if I understand, you have...and we're...I think you have some graphs or information at 1,728 in the book. [LR34]

SCOTT FRAKES: I have that? No, you said 1,728? [LR34]

STEVE LATHROP: It might be 1,778. I can't read my own writing here. 1,778. I think that's the report you had to issue... [LR34]

SCOTT FRAKES: Here's the report. [LR34]

STEVE LATHROP: Yeah, that's the report we were talking about. I think Senator Mello was nodding his head like he remembered asking for this report dealing with the overtime and having you examine the pay structure. But the overtime, we have something called mandatory overtime and voluntary overtime. Is that right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And the way it works at the Department of Corrections, as your report indicates, is that if I want to avoid being "mandatoried," which has now become a term, to avoid having somebody at the Department of Corrections make me work another shift, I can volunteer for one and then my name goes to the bottom of the list. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: So the voluntary, I can have a little more control over my life. If I want to make a Thursday soccer game for my daughter, something like that, I can volunteer to work

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overtime on Wednesday so that you won't pull me in on Thursday. But the fact of the matter is that the voluntary overtime is a function of the mandatory overtime program. [LR34]

SCOTT FRAKES: We have a lot of staff that voluntarily work overtime and take a significant amount of overtime because they want the fiscal advantage that it brings and/or the additional leave because they can also take compensatory time. So there is that component of voluntary overtime, people that seek it, want it, but some that work I think too many hours. Then you have exactly what you described: those that want more control over their life so they work voluntary so that they can moved to the bottom of the list. And then the last component is those that are told we need you to stay. You're in the rotation. It's your turn. You've got to work the post. [LR34]

STEVE LATHROP: They are now working, what, a second eight? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: You have some people over at Tecumseh working 12s. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Do they ever get called in for mandatory overtime? [LR34]

SCOTT FRAKES: They may be given mandatory overtime for 4 hours, so they could do a 16-hour day. [LR34]

STEVE LATHROP: Yeah, you can't have them do another 12, right? You at least got to let them go home and sleep at some point. But the people that are doing eights sometimes they're called upon to do another eight. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So you got guards...corrections officers working 16 hours at a time. [LR34]

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SCOTT FRAKES: And corporals and sergeants and caseworkers and case managers and even a number of other job classes that fill in. [LR34]

STEVE LATHROP: So when we look at these figures, and they're right in that 1,788 to 1,888, there's a report in there that you've done that shows the mandatory and the voluntary overtime. And across the institution, we see those on page 1,794. You have a graph and some figures. [LR34]

SCOTT FRAKES: I have that. [LR34]

STEVE LATHROP: That shows the amount of overtime worked at each facility by month. Am I right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So for example, in June, and I assume is that June of 2016? Some of the your information is in fiscal years and some of it is in regular years. I assume this is a calendar year graph. [LR34]

SCOTT FRAKES: Just confirm that if I can. [LR34]

STEVE LATHROP: In any case, what pages 1,793 and 1,794 show are mandatory overtime and the voluntary overtime. And there's a lot more voluntary overtime and that's...some people want it, but an awful lot of people are doing it just to avoid the disruption caused by mandatory overtime. [LR34]

SCOTT FRAKES: I know that...I know that happens. I don't have a breakdown. There's...we have no way of knowing who's doing it because they're managing their life and who's doing it because they want the compensation or compensatory time. But, yes. [LR34]

STEVE LATHROP: But in your culture survey and in your exit interviews you recognize that the amount of required overtime is a significant consideration for your turnover rate. [LR34]

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SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So the mandatory overtime is contributing to the vacancies. It's contributing to the retention problem. And you're involved in some kind of a cycle, am I right? [LR34]

SCOTT FRAKES: It feels like that. [LR34]

STEVE LATHROP: Yeah, it would because you have folks with pay issues, folks with overtime issues, folks with safety issues that say, I'm done, and they leave. That means people have to work more overtime when somebody quits before you can replace them. And it's a vicious cycle where you're losing a third of your staff every year in some of these places and you can't hire them fast enough. [LR34]

SCOTT FRAKES: Protective services we can, but the rest, no. [LR34]

STEVE LATHROP: Well,... [LR34]

SCOTT FRAKES: Unless you want to say that we can hire...okay, it's true. We're just treading water as I said. [LR34]

STEVE LATHROP: Yeah, when I look at those vacancy when we--and that was the first thing we talked about--when we looked at those vacancy numbers, somewhere across the agency that are 180 a month, you're not keeping up with them or you wouldn't have vacancy rates that high. You may be hiring as many folks coming in as you have leaving, but you're always somewhere around 170 to maybe even 200 short at any given time. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And that's why you got the overtime, which is contributing to the people leaving, which is...you just can't get caught up. Is that right? That's the problem with the vacancies. [LR34]

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SCOTT FRAKES: It's everything that we've discussed for the last... [LR34]

STEVE LATHROP: It's also contributing to the morale issue, isn't it? The morale? [LR34]

SCOTT FRAKES: I think it certainly contributes to morale and staff engagement. [LR34]

STEVE LATHROP: And, Director, I know that you've read the culture survey. That was commissioned by you, right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And you've read the exit interviews, right, people telling you why they're leaving? [LR34]

SCOTT FRAKES: I don't read all the exit interviews, no, but I get informed on the information that's coming out of those. [LR34]

STEVE LATHROP: All right. You're looking at sort of the what are the top five reasons. You've got a morale problem over there, too, don't you? And you talked about it. You talked about it a little bit early on, which is folks that have the perception that there's a good old boy network. As I read some of the exit interviews, some of the things people had to say were it feels like promotions are based upon who you know and not performance, that you're better off being quiet rather than speaking up, that it's about maintaining the status quo. You have people working overtime--mandatory and voluntary. You have people with issues related to safety. Morale has to be affected by occurrences like last week where nine corrections officers are assaulted. Those are some of the things that you're dealing with in terms of employee morale that affect retention. [LR34]

SCOTT FRAKES: All but the last example. The last one, it's interesting. Sometimes those events have as much of a positive impact on morale as they do a negative impact in terms of staff (inaudible). [LR34]

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STEVE LATHROP: I'll have to take your word for it because that sounds hard to believe. But they just as often talk about the mandatory overtime and the pay as the primary reasons for leaving. Would you agree with that? [LR34]

SCOTT FRAKES: I would say it's...the staff engagement piece is strong as well. So I put on those three issues for...thank you. And again, that would be the mandatory...or the overtime must more focused on protective services staff. Certainly with the other challenges we have, other areas such as behavioral health, healthcare, there it's more about engagement issues, competitive external wages, and... [LR34]

STEVE LATHROP: What do you mean by engagement issues? [LR34]

SCOTT FRAKES: Morale is... [LR34]

STEVE LATHROP: You suggested that that's a consideration in the turnover. And tell me what you're talking about. [LR34]

SCOTT FRAKES: An engaged work force believes that they're valued; that they have a voice in the operations, although that's a difficult one to clarify what that really means; that they can share their concerns; that they can put forward ideas; that they will not be retaliated against or discounted or not valued because of that. And morale is a kind of a generic term that is sometimes used as that, but to me it's how do you define what morale is and how do you change morale? But you can change opportunities for employee engagement. You can create a culture where staff do have a voice, where staff do believe they are valued, and where retaliation is not tolerated. [LR34]

STEVE LATHROP: Okay. You've been there two years. Tell me what you've done to...obviously the pay scale is not something that you have done something to resolve. And I think you said in the paper today that you've given out some kind of a bonus to some of your staff pending your opportunity to do something about wages, right? So putting that aside, with the morale issues, the engagement, the making people feel like the good old boys network isn't still in place, those

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kinds of things, tell me what you've done in the last two years to make that cultural change at the department. [LR34]

SCOTT FRAKES: Well, it's not quite 19 months yet but not split hairs. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: (Exhibits __) So what have I done? I have asked for and completed, had the culture survey completed so that we really could understand what the issues were for staff. I have opened my door in every way I can to make sure that staff know that it's safe and they can talk to me and they do a lot. I have made it clear to my management team and the layers below that I expect them to listen to what staff have to say, that I won't, will not tolerate retaliation. And I can find it or when they find it, it needs to be addressed. If we have managers and other leaders that refuse to change that or engage in that behavior then we need to take the steps necessary. If we can't change the behavior we need to make a change in the employee, to the employee's status. I've made some management moves. I have...let's see. We have created the employee councils at all the facilities giving staff a voice so they can get directly to the executive team of the facility. The next phase of that that we'll bring to life soon, soon as some other things just settle down a little bit, will be a statewide employee council. Done the same model with family members of inmates as well and at some point we'll create a statewide family council as well because there's...because all of these pieces ultimately connect together in terms of running a healthy prison system. So those are...we took the retention funds that were given to us and we have initiated a number of things that are coming to life, not as quickly as I wanted to but it was a really busy summer to say the very least. But we've still managed to get work groups that are going on creating the wellness centers at the State Penitentiary and at Tecumseh. We have offered up professional development opportunities where we cover the costs and pay the staff to do them. So we have opened up the doors for our employees to get compensated for their continuing education credits, also pursue dual licensure. And we have an excellent organization out of Arizona, Desert Waters, who is coming in next month to begin resiliency training for our line staff, protective custody staff to give them tools that will help them better deal with the stress of working in corrections. Even in the best of times this is stressful work. [LR34]

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STEVE LATHROP: Okay. So you've taken these measures to improve morale which of course contributes to retention which in the end is what drives your vacancy rate. But it hasn't had a significant impact on your vacancy rate, would you agree with that? [LR34]

SCOTT FRAKES: So far it has not. [LR34]

STEVE LATHROP: So far. And does that lead you to the conclusion that the vacancy rate is not going to improve until something is done about the pay scale? [LR34]

SCOTT FRAKES: I think we won't see significant improvement until we address the pay issues. [LR34]

STEVE LATHROP: That's the vacancy rate and turnover rate are going to remain flat until you do something about the pay scale. [LR34]

SCOTT FRAKES: There's one of those call it chicken and egg, cause and effect. But until we're able to reduce the overtime, stabilize the work force, and then allow us to create a culture where employees are engaged, it's going to be difficult to break through. [LR34]

STEVE LATHROP: But you can't...you're stuck in this place right now, right? And you can do what you can do to try to improve the culture through your leadership and through whatever since your corrections officers and your staff gets from you in your leadership position. But the reality is the overtime, the vacancy rates, and all those things are a function of not so much the culture but the pay scale. [LR34]

SCOTT FRAKES: You saw from the exit surveys though there...the pay is not the only issue that people complain about. [LR34]

STEVE LATHROP: It's not the only issue, you're right. [LR34]

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SCOTT FRAKES: Okay, so the engagement, the culture is a piece of it. People come to jobs for pay but they typically stay at jobs because they're happy and they like them and they feel like they're valued. [LR34]

STEVE LATHROP: I think your culture survey suggested that 68 percent of the respondents were either dissatisfied or highly dissatisfied with the pay. Do you agree with that? [LR34]

SCOTT FRAKES: That sounds right, yes. [LR34]

STEVE LATHROP: So that's a big piece of it. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: There was in that culture survey I think also some mention of the facilities which I guess I didn't think of before I read it. But there was a notation, I think it might have been in a report you wrote when you were responding to the Legislature or in the culture survey, that suggested that the facilities are in need of repair and that the last administration left a bunch of stuff that needs to be fixed and that that affects how the employees perceive their own environment. Is that true? [LR34]

SCOTT FRAKES: There has been a backlog of maintenance and repair and we have a number of facilities that are at the end of their life cycle. [LR34]

STEVE LATHROP: Is that entire facilities or are you talking about fixing the air-conditioning unit at a particular facility? [LR34]

SCOTT FRAKES: There's no entire facility that needs to be torn down, but across ten facilities there are issues such as HVAC and air-handling systems. I'm trying to think of some of the other things. Some of the control systems are at a point where they need to be updated. You could...it's a very long list of different things that would... [LR34]

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STEVE LATHROP: Have you...and I don't want to go into the capital improvements too far, but maybe just to give the committee, because ultimately somebody is going to have to decide where the money gets spent. Have you developed some kind of a list of capital improvements that need to be done? [LR34]

SCOTT FRAKES: There is a list, yes. [LR34]

STEVE LATHROP: And do they...have you put it to bid or do you have any idea what it's going to cost to get those things done? [LR34]

SCOTT FRAKES: That is...part of that will be addressed through, I believe it's referred to as, the 309 process. I sometimes get confused. So there's those capital improvements that are needed. And then through my own budget process I will be addressing a number of needs. [LR34]

STEVE LATHROP: We've talked about the vacancy rates and the reasons people are leaving. I want to visit with you a minute about your recruitment efforts. And we have, it looks like 2,771. You can look it up or we can just talk about it. But it looked from those documents that I read, there were some e-mail exchanges, that you put a group together to look at ways to recruit more folks to become corrections officers. Did you put a committee together to study that? [LR34]

SCOTT FRAKES: I did have a group that was working on that. [LR34]

STEVE LATHROP: You're going to have to talk just a little bit louder for me. There's a machine running outside. [LR34]

SCOTT FRAKES: Yes, I did have a work group that was looking at those issues. [LR34]

STEVE LATHROP: Okay. And this was...it struck me from the notes that I read that it was a little bit of a group that brainstormed about ideas on how to effectively recruit more folks to work at the Department of Corrections. Am I right? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: And if you a read all these pages...and there's not all those pages. There's 30 maybe, 30 pages in there of e-mail exchanges and notes from different meetings. What I took away from it is you had a group of people that were in this work group that were trying to brainstorm on where can we advertise and what could we do to engage the community and try to get more people to come to the Department of Corrections, right? [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: And they came up with ideas like advertise in the Tecumseh theater, right? Run radio ads, be on Husker football, put up some billboards in Lincoln, a variety of different strategies to bring in more people, yes? [LR34]

SCOTT FRAKES: Those are ideas that they put forward, yes. [LR34]

STEVE LATHROP: Okay, okay. You've got to give an audible response because it's not going to record this. [LR34]

SCOTT FRAKES: I understand. [LR34]

STEVE LATHROP: Okay. So they did job fairs and then they engaged the various colleges in Nebraska to try to recruit at the colleges to get more people to come. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And I got to say I can't think of anything they didn't try to do when I look at the list of things that they did try to do to recruit for the Department of Corrections. [LR34]

SCOTT FRAKES: I imagine there's still something out there we haven't tried yet, but we have covered a lot of bases. [LR34]

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STEVE LATHROP: They're on social media. They're on billboards. They're on Husker football. They're on the radio, the TV. And they're showing up at job fairs and going to the colleges. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Now maybe somebody can come up with a different idea, but it looks like they're trying everything. And they didn't just have ideas. They actually did these things. They put up billboards. They did the radio ads. They did all these things to try to get people to come and work at the Department of Corrections. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Right? And what struck me when I read that was they have all these things that they've been trying but that vacancy rate still isn't changing a whole lot. [LR34]

SCOTT FRAKES: But if we dropped the turnover rate in half we would...again, we hired 400 people in fiscal year 2016 in protective services and lost 387. If we cut that turnover rate even by a third we would be very close to the correct math to be having few vacancies. If we cut it in half we'd have no vacancies and we'd have more applicants than we have positions to fill. [LR34]

STEVE LATHROP: If only you could stop them from leaving. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Did you...and I want to go back to something that I talked about before. Again, when we talk about the vacancies, those are the positions that are authorized so far. But you've done a study, a staffing study. Am I right? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: Tell me why you did a staffing study. That was something you came up with yourself. Am I right? [LR34]

SCOTT FRAKES: It is. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: I think there was conversation early on about whether or not the department was correctly staffed. And the way to determine that is to do a staffing analysis. And having ample experience in that process, I knew the right way to accomplish that. That's what I did. [LR34]

STEVE LATHROP: You came to Nebraska by way of Washington? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Did you do those kind of staffing studies out in Washington. [LR34]

SCOTT FRAKES: We did back in 1987 I think it was. [LR34]

STEVE LATHROP: And what you're trying to identify, and this is different than vacancies, you're trying to identify how many people do we need working at these different facilities in order to have them at the proper staffing level. [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: Now the staffing levels that you're looking for, is that...I'm going to use a car analogy. Are you looking for the Cadillac or are you looking for the Chevy? [LR34]

SCOTT FRAKES: We're looking for the staffing levels that are based on good correctional practice informed by the National Institute of Corrections using models that they've created and shared with many states across the nation, a staffing level and a staffing model that's driven by

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the security level of the facility or the security level of a unit, because many of our facilities are multi-custody level, as well as the physical plant issues, the programming needs, the work needs, and all those factors. So it was a two-pronged project. It was to create a model for how we would staff our facilities and then using that model to guide individual audits of each of the facilities which we then are able to take into account things like sizes of living units or how they're laid out or sight lines or all those, in some cases, exceptions to the model, many cases. Tecumseh would be a great example of a facility modern built, very consistent with modern correctional practices. And its audit showed that there was a few positions that should be moved and utilized differently. But in terms of overall staffing I believe there was a need for two or three additional FTEs. [LR34]

STEVE LATHROP: Yeah, I'll talk about your conclusions. I just want to make sure I understand the process. So the National Institute of Corrections has a model. This is an organization...do we belong to this place? [LR34]

SCOTT FRAKES: No, it's a federally funded training resource for all of corrections across America. They have a training program. They have suggestions about how to build a model. And then there's the ability for agencies to look at it and decide how they operate their facilities, what is the philosophy of their corrections system and those things. [LR34]

STEVE LATHROP: Did you do one of these in Washington before you came to Nebraska?
[LR34]

SCOTT FRAKES: Yes, again, there was done in 1987 that still is utilized. It's been modified slightly over the years in terms of the relief factor numbers as things like additional training or additional leave has been added. But in terms of the base model, it still remains the same today as it was in 1987. [LR34]

STEVE LATHROP: The one you did in Washington? [LR34]

SCOTT FRAKES: Well, I took advantage of it. I didn't actually do that one in '87. [LR34]

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STEVE LATHROP: Okay. So before you did one here in Nebraska, when you decided to do the staffing analysis, did you have some of your employees get trained in this NIC model? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And tell me what that involved. [LR34]

SCOTT FRAKES: A weeklong training with facilitators sent here by the National Institute of Corrections. I think we had over 20, I want to say we had 25 people in the class. They learned the concepts of how you do the math and determine how many staff it takes to actually staff an 8/7 or a 24/7 post, how...then they looked at the data that was available in terms of how many days of leave do our staff get because that's something that varies state to state: so sick leave, annual leave, the holiday pay which could be holidays off. So there's...you look at those numbers, you look at what are the base training requirements. For us, it's six days a year. That's an average number. You put all of that together and then that's how you determine what the overall relief factor multiplier is to staff posts. [LR34]

STEVE LATHROP: Is this process objective? Like once I go through the training, there's not a lot of judgment here. I go, I look at considerations that are on the checklist that you've given to us and you've described, and then I come up with, well, this place needs 25 people to operate a 24/7 facility. [LR34]

SCOTT FRAKES: It's an excellent question. Much more objective in a modern facility such as Tecumseh, which again, it's a reflection that staff based on correctional practices, current correctional practices; much more assessment opinion subjectiveness comes into when you get into an older facility--NSP, LCC--because there you have a model that says at maximum custody it should take this many staff to run a living unit based on a living unit configuration that is...has good sight lines, that has a central control post that can see both...as an example, it can see both sides of a unit. So typical staffing for a medium custody: one in the booth, one on each side. But if you go to LCC where the living units were built very differently, a very unusual design, you have to then do some judgment and decide is that the right... [LR34]

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STEVE LATHROP: And judgment up? [LR34]

SCOTT FRAKES: Sometimes or... [LR34]

STEVE LATHROP: If you have an older facility you are, because they don't have the modern...maybe they don't have the sight lines, maybe they don't have the cameras, whatever, you're going to need more people in an older place than maybe what the model would say. [LR34]

SCOTT FRAKES: Maybe. [LR34]

STEVE LATHROP: Okay. So the process, you weren't one of the people that went out and did this assessment. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: Who did you put in charge of it? [LR34]

SCOTT FRAKES: Warden Barb Lewien. [LR34]

STEVE LATHROP: And tell us who Barb Lewien is. [LR34]

SCOTT FRAKES: She's the warden of the Omaha Correctional Center in Omaha. [LR34]

STEVE LATHROP: Did she have any experience doing these? [LR34]

SCOTT FRAKES: Not until she went through the training. The other piece of the training was that they actually go and conduct audits so that they get practice and understand. [LR34]

STEVE LATHROP: So you send Ms. Lewien to the NIC training and they teach her how to come back to Nebraska and conduct these audits of your ten institutions? [LR34]

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SCOTT FRAKES: We did the training here, but, yes. And it's a team. [LR34]

STEVE LATHROP: Oh, okay. They came out here and trained? Did they train anybody else besides her? Does she have a team? [LR34]

SCOTT FRAKES: Yes. There was over 20 in the class and they put together a team that...can't remember if it was six and a help...and a support staff. That sounds correct; her and five other auditors and a support staff. [LR34]

STEVE LATHROP: So I want to walk through the process. She goes out to...and we'll pick a place, LCC, she does this audit. Does she take a team of people with her? [LR34]

SCOTT FRAKES: Yes. Actually they... [LR34]

STEVE LATHROP: She does an audit and...oh, pardon me, go ahead. [LR34]

SCOTT FRAKES: They did the first one or two audits as a group. And then once they got their sense of how it was going, got their legs under them, they did then divide up the facilities. But I'd have to go back and really get the details (inaudible). [LR34]

STEVE LATHROP: Not important to me on who went to which place. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: I just want to make sure I understand that the people are trained, they go out and do an audit, that the process is fairly objective, may involve some rounding up at older places where the sight lines in some of the facilities require more security because of the age of the facility. [LR34]

SCOTT FRAKES: It could. It could. [LR34]

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STEVE LATHROP: And then...is this done on some checklist and then it turns into math?
[LR34]

SCOTT FRAKES: Yes. (Inaudible). [LR34]

STEVE LATHROP: All right. But then, at some point, does Ms. Lewien prepare a draft report?
[LR34]

SCOTT FRAKES: Subsequent to that, that's the correct word to use, but before that occurred, we met...I don't know, December or January I met with the team...we looked at the results of the first couple of audits. We looked at the proposed... [LR34]

STEVE LATHROP: I'll get to that in a second. I'll get to... [LR34]

SCOTT FRAKES: Ultimately, yes, there was a draft produced. [LR34]

STEVE LATHROP: Okay. She produces a draft. Before the draft document is produced, that is the staff analysis draft document, do they sit down and talk to you about it or do they simply prepare the staff analysis draft? [LR34]

SCOTT FRAKES: We met and talked. [LR34]

STEVE LATHROP: Did you look at their math before they did the draft staff analysis? In other words, if they went out to an institution and it said we're going to need seven people, did you look at that before it turned into a draft report? [LR34]

SCOTT FRAKES: We met and conferred with the results of the first audits, looked at the proposed model, and came to agreement...as we came to agreement I'm still the Director, so... [LR34]

STEVE LATHROP: Sure. [LR34]

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SCOTT FRAKES: I said this is what's going to be our base model based on custody level.
[LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: Because that was an important piece. Until that was confirmed, we can't do the math. So you need to know. [LR34]

STEVE LATHROP: Okay. So when you conferred after she had done these audits and the team meets with you, did you think they did it the right way? [LR34]

SCOTT FRAKES: I think they did good work, yes. [LR34]

STEVE LATHROP: Okay. And then do you give them the green light to prepare the draft of the staff analysis? [LR34]

SCOTT FRAKES: I think we met again before the first draft was actually put together so that we could go through and they could share their thoughts about the exceptions that they felt were necessary and so... [LR34]

STEVEN LATHROP: That was done before the first draft? [LR34]

SCOTT FRAKES: I believe...my memory of that. [LR34]

STEVE LATHROP: Okay. So they would have had that input before they prepared the first draft analysis. [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: Okay. And then after the first draft analysis is done or after the draft analysis is complete, what happens to that document? Who looks at that and who's offering input before we get to the final? [LR34]

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SCOTT FRAKES: And actually I'm trying to think back, I think that the meeting that I'm thinking of was done based on that first draft, the one that was published in...or that was produced in April or May, somewhere in there. (Inaudible). [LR34]

STEVE LATHROP: Okay, but before the draft gets...before the draft is done, you've looked at...you've looked at Ms. Lewien's work and the committee's work and you recognized it as having been done correctly and then the draft is prepared. And my question is, what happens to the draft after it's prepared? [LR34]

SCOTT FRAKES: We met, we went through it, we discussed the decisions that were made in terms of the exceptions that were recommended. In some cases I supported those exceptions, in other cases I did not. We came to...we went back and...trying to think what else that we looked at...that whether or not we made any adjustments to the model at that point in terms of finalizing the model. Can't recall (inaudible). [LR34]

STEVE LATHROP: Why would you need to make some adjustments to the model if everybody went through the training and did it correctly...the audit? [LR34]

SCOTT FRAKES: Because it's a learning process. We did not get a manual from NIC that said this is what the state of Nebraska staffing analysis should look like. (Inaudible.) [LR34]

STEVE LATHROP: Okay. Okay. So you looked at the draft? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Did anybody else look at the draft? [LR34]

SCOTT FRAKES: The team. [LR34]

STEVE LATHROP: Anybody else look at the draft besides the team? [LR34]

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SCOTT FRAKES: Hmm, trying to remember if I shared it anywhere else. I don't think so; not until later I shared with the Inspector General. [LR34]

STEVE LATHROP: Are you talking about the draft or the final? I'm still talking about the draft. [LR34]

SCOTT FRAKES: Yeah, I know you're talking about the draft. [LR34]

STEVE LATHROP: I'm talking about what happened between the time the draft is produced and the time the draft turns into a final. So you told me that you looked at it, the team looked at it. Did anybody in the administration look at it? [LR34]

SCOTT FRAKES: I don't believe so. [LR34]

STEVE LATHROP: Didn't share that with anybody in the Governor's office? [LR34]

SCOTT FRAKES: I don't believe so. [LR34]

STEVE LATHROP: Did you share what the conclusions were in the draft with the administration before you got to the final draft or the final report? [LR34]

SCOTT FRAKES: I don't believe so. [LR34]

STEVE LATHROP: As you know, this committee requested both the draft and they requested the final report. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And they've been provided. And you know what I know which is there's a difference between the two. Right? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: And in the draft report, and we're going to talk about them in a second and look at them, in the draft report, there is a...two things that are obvious to me. One is that in the draft report you call for more staff added, right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Right down to every single institution, right? And by the time we get to the final report, we've cut the number of staff this analysis requires almost in half. Would you agree with that? [LR34]

SCOTT FRAKES: A hundred positions is what's in my mind, but... [LR34]

STEVE LATHROP: You cut a hundred positions. [LR34]

SCOTT FRAKES: From the draft, yes. [LR34]

STEVE LATHROP: So was there something that Ms. Lewien and her group did incorrectly? [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: Were you given some instruction on what the results of this final analysis could show? [LR34]

SCOTT FRAKES: So that is the core issue, correct? [LR34]

STEVE LATHROP: Pardon me? [LR34]

SCOTT FRAKES: That is the core issue that you're looking for? Was I told by the Governor to change it? [LR34]

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STEVE LATHROP: Well, I think the committee would probably be interested in that. But I'm just asking the question because that's what they've got me up here to do. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: Okay? [LR34]

SCOTT FRAKES: No, I was not given outside instruction to change the numbers. [LR34]

STEVE LATHROP: Okay, but they changed. And here's another thing that I noticed, and we're going to go through each facility before we get done talking about this. In the draft, you put down what it's going to cost to add the additional staff, and in the final you did not. Is that true? [LR34]

SCOTT FRAKES: That's true. [LR34]

STEVE LATHROP: And just to be perfectly clear, before we talk about the numbers of people in this staff analysis that you would add, these are people that we would add to positions that have been authorized, some of which are vacant. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So when you say we need...and I'm going to...this is a hypothetical, because we'll go through the numbers in a minute, but when you say we need ten more people over at Tecumseh, that's ten more people and then you have a bunch of vacancies over there. So to look at getting it fully staffed, we would look at the vacancy number and then add to it the people that you've recommended in this report. Would that be true? [LR34]

SCOTT FRAKES: At the point that those positions were funded and authorized, yes. [LR34]

STEVE LATHROP: Okay. So what we're looking at, as we analyze the Corrections officers and the staff needs, and we're not talking about medical, we're not talking about program people or

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psychologists, psychiatrists, medical doctors, any of that business. We're talking about the people that work in Corrections as Corrections officers, am I right? [LR34]

SCOTT FRAKES: Officers, corporals, yes. [LR34]

STEVE LATHROP: Yeah, core people... [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: ...that are providing the Corrections officers stuff. That's what you studied and you have not studied how many more nurses do we need, how many more psychologists, mental health professionals. That's never been done, is that true? [LR34]

SCOTT FRAKES: Well, not by me and not that I'm aware of, no. [LR34]

STEVE LATHROP: You didn't walk into this job and find that study in a file cabinet or anywhere else. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: Okay. So we've hired a certain number of psychologists and psychiatrists, but we don't even know if that's enough because no study similar to this staffing analysis has been completed with respect to those, what I'll call, professional positions. Is that true? [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Okay. I'm going to grab these books because each one of them have a...one is the draft and one is the final. Okay? And let's start out with CCCL. That's Community Corrections (Center)-Lincoln? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: Okay. And we will spend a little bit of time talking about the first one, and I think it will go faster after that. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: The draft is at page 259 in that book. [LR34]

SENATOR KRIST: Can I interrupt for just a second. Can we find that on this? Can you give us the specific (inaudible.) [LR34]

SENATOR PANSING BROOKS: Yes, I just...I was going to announce it. So if you look at your...the information that was sent to each of you via e-mail and you download it, and then if you go up to the...if you go to the top and it will come down and it will say you are on page 260 out of 2,945. If you highlight whatever page is first, you can type in 260. And then you may have to scroll one or two pages to get to the specific graph which Mr. Lathrop is referencing. [LR34]

SENATOR KRIST: Okay. Thank you. [LR34]

SENATOR PANSING BROOKS: But they're all here. It is...I've been following along the whole time. [LR34]

SCOTT FRAKES: I have 261, 250, 260 in front of me. [LR34]

STEVE LATHROP: Okay. And maybe put your finger at 677 because that's where the final is because I want to talk about the difference between the two. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: So in the case of the Community Corrections Center in Lincoln, the draft study is found on page 259 and there are observations in here, things that they note, things that might be useful, helpful. And then we get back towards some graphs where their numbers are going to show up, right? [LR34]

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SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Background--273. Do you see that? How about 275, that's kind of the punchline of all this? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So on page 275, this is sort of a...the worksheet of your group run by Ms. Lewien. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And they get to the bottom line, and this document has at the top--minimal post staffing analysis. So this is the minimum of what this study shows you should have at Community Corrections Center in Lincoln. Right? And the bottom line it has--total new FTE recommended 5.00. Tell me what FTE 5.0 means. [LR34]

SCOTT FRAKES: I'll say full-time equivalent. It could also be full-time employee. It gets to be used both ways. One way or the other it's...it's also what I'd call a body. [LR34]

STEVE LATHROP: Pardon me. Oh, okay. That's another employee. [LR34]

SCOTT FRAKES: Yes. So that's 5 employees is what that would translate to. And just for the mathematical awareness, it takes 5.22 FTEs to staff one post 24 hours a day, seven days a week. [LR34]

STEVE LATHROP: Okay, they're recommending five more people. [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: And in the page that follows, and I'm going to find the page, page 284--they figure out what those five people are going to cost. [LR34]

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SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: Right? In other words, they do the math. It's going to be a corporal...looks like three corporals, one sergeant, one captain, and then they run that out and tell you that it's going to cost \$249,852 to come up with the number of people you need to be minimally staffed at the Community Corrections Center in Lincoln. [LR34]

SCOTT FRAKES: As proposed in this draft document. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: The process wasn't completed yet. [LR34]

STEVE LATHROP: Pardon me? [LR34]

SCOTT FRAKES: The process was not completed yet. (Inaudible.) [LR34]

STEVE LATHROP: I'll get to the rest of the process. [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR LATHROP: But just...just before we go to the part that makes this whole thing change, this is done by somebody that's been trained by NIC. Before they were turned loose to do this study and do this audit in Nebraska, they had done practice audits with the NIC people, right? [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: It is an objective standard and it came up with five. And then it...you sit down with the committee before it turns into a final draft, is that right? [LR34]

SCOTT FRAKES: That's correct. [LR34]

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STEVE LATHROP: And the final draft is at page 677. Am I right? [LR34]

SCOTT FRAKES: This is...my 66...677 is a staffing model page. [LR34]

STEVE LATHROP: I said 677. [LR34]

SCOTT FRAKES: Sorry, I have dyslexia hearing. [LR34]

STEVE LATHROP: That's all right. [LR34]

SCOTT FRAKES: Okay. Yes, this is the beginning of that preparation center. [LR34]

STEVE LATHROP: So when we get to the final draft, two things are true about this report. That when we get to the minimal post staffing analysis and the proposed post plan, the number turns into 2.31 instead of 5. [LR34]

SCOTT FRAKES: Do you have a page... [LR34]

SENATOR PANSING BROOKS: On page... [LR34]

STEVE LATHROP: I'm sorry. It's page 709. I apologize. [LR34]

SCOTT FRAKES: And I'm sure you're...yes, that's correct. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: And we're no longer setting out in the report what it's going to cost to hire the people to get to the minimal post staffing analysis. [LR34]

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SCOTT FRAKES: That's correct because that's not part of what the final document should reflect. [LR34]

STEVE LATHROP: Well, okay. Is there...does the NIC say put it in the draft but don't put it in the final document or is that some discretion you exercised? [LR34]

SCOTT FRAKES: The NIC doesn't give any direction on what document to produce as part of a final analysis. That's not part of what they... [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: They train the mechanics. [LR34]

STEVE LATHROP: Let me ask what happened to the number between the time the draft was done that said that you needed 5 people and the time the final report is done that says...well, now the minimum staffing is 2.3? Who exercised some judgment from the draft to the final report that reduced the number of people you needed to hire to minimally staff the Community Corrections Center in Lincoln? [LR34]

SCOTT FRAKES: Ultimately me. [LR34]

STEVE LATHROP: Okay. So did you believe that Ms. Lewien made some kind of a mistake in her analysis or in her audit? [LR34]

SCOTT FRAKES: No, because it was a learning process. [LR34]

STEVE LATHROP: Okay. What did she do wrong that you intervened, made some judgment call and the number went from 5 to 2.3? [LR34]

SCOTT FRAKES: She didn't do anything wrong. [LR34]

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STEVE LATHROP: Okay. What did you notice about her work product that you felt obliged to change? [LR34]

SCOTT FRAKES: And as you know, these are large documents, a lot of complexity, a lot of numbers, so... [LR34]

STEVE LATHROP: There are a lot of numbers. [LR34]

SCOTT FRAKES: Yeah, if you'll bear with me. [LR34]

STEVE LATHROP: But these pages are pretty...these pages are the same pages. We're comparing apples to apples. [LR34]

SCOTT FRAKES: No, no, I'm just saying in terms of this isn't stuff that I pull off the top of my head so I have to look and compare and see what the variance is. Relief factor stayed the same. Relief factor...we took the relief factor off for the armory key tool sergeant because in a community custody facility, it's not necessary that someone fill that post if they're not there for the day. So there's no need for relief. [LR34]

STEVE LATHROP: Isn't that part of the minimum staffing though? You want that guy there, don't you? At least in the study? [LR34]

SCOTT FRAKES: No, there's a difference. That's why relief factors do differ for some of the positions because there is a difference. There are posts that need to be filled every day that there needs to be someone in. And then there are posts, such as the captain, such as the lieutenant, such as the key control sergeant that doesn't have direct oversight of inmates or doesn't have a security...a direct security function that needs full control. [LR34]

STEVE LATHROP: So you don't need him there to minimally staff the place? [LR34]

SCOTT FRAKES: Correct. [LR34]

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STEVE LATHROP: Do we need him at all? [LR34]

SCOTT FRAKES: Absolutely. [LR34]

STEVE LATHROP: Well, if we need him, why don't we want him there? [LR34]

SCOTT FRAKES: There's a difference between posts that have to be staffed because you need someone to either control a door or control...observe cameras or monitor movement or do counts and those positions that have much more administrative functions and it could be done at different hours of the day. In fact, with the lieutenant we may want them...or better yet to say that army key control sergeant we may want them to come in on different shifts and be available whether it's to provide staff training or do audits or all those other things. So that's the difference. [LR34]

STEVE LATHROP: When you go through the training then in NIC...or when NIC comes to Nebraska and trains you, as Ms. Lewien was trained and her group was trained, do they tell you to include those people and you decided not to? Or did she include people in the draft that her training should have told her not to include? [LR34]

SCOTT FRAKES: No, because it isn't that black and white. So... [LR34]

STEVE LATHROP: So which way do they train you? What's the NIC say about it? [LR34]

SCOTT FRAKES: It's been some 12 years since I attended the training, so I can't tell you specifically what they said... [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: ...other than it is not...they do not hand us a staffing model for Nebraska. They give us the tools to go out and figure out how to both build a staffing model that works for the agency and then audit to that, ultimately, decided model. [LR34]

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STEVE LATHROP: And I feel like I'm getting close to argumentative and I don't want to cross that line. But maybe I'll just make this point and that is, Ms. Lewien went through the training and came up with the draft numbers. And we're going to go through each of them and compare them. And I can give you the pages if you want me to or I can just give them to you in a summary fashion. But there is a difference in virtually every single facility. Am I right? [LR34]

SCOTT FRAKES: I believe so, yes. [LR34]

STEVE LATHROP: Which gets you down to the 138 that I think somebody was talking about the other day. [LR34]

SCOTT FRAKES: That is the final number. [LR34]

STEVE LATHROP: Okay. So let me...and if you want to look, we'll go through each one, but I'm going to ask you if this sounds correct. At Community Corrections Center of Lincoln the draft said you needed 5 people and it would cost \$249,852; and your final version, that is, after you've made some changes to it, and by you I mean you as the director... [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: ...get it down to 2. [LR34]

SCOTT FRAKES: Three. [LR34]

STEVE LATHROP: Then you have the Community Corrections Center at Omaha, that draft said you needed 23 new people. Right? Sound right? [LR34]

SCOTT FRAKES: (Inaudible). [LR34]

STEVE LATHROP: I can give you the pages if you want them. Or you can look at them over the lunch hour if you care to. [LR34]

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SCOTT FRAKES: If you want me (inaudible.) [LR34]

STEVE LATHROP: That said, you need to spend at the Community Corrections Center, in addition to filling the vacancies, the number of new people you needed would be 23 and it would cost \$1,028,739. Okay? That number, by the way, is an annual expenditure for the additional 23 people. Would that be true? [LR34]

SCOTT FRAKES: I'll accept the numbers you proposed. [LR34]

STEVE LATHROP: Okay. And after you looked at the draft and before the final came out, it went from 23 people down to 4. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: Sound right to you? [LR34]

SCOTT FRAKES: I'd have to...again, I'd have to (inaudible) those, but I'm sure... [LR34]

STEVE LATHROP: And no indication of what it would cost to hire those 4 people. Diagnostic and Evaluation Center, the draft said you needed 11 people at a cost of \$540,595 a year. And the final version, after you have made your revisions is 4. Lincoln Correction Center, LCC, said you needed 51 new people, additional staff. And when you completed your...by the way, at a cost of \$2,407,443 and you got it down to 44 in the final. Right? [LR34]

SCOTT FRAKES: That I know that number well, yes. [LR34]

STEVE LATHROP: Okay. At York, said you needed 24 new people in the staffing analysis at a cost of \$1,141,176... [LR34]

SCOTT FRAKES: In the draft. Again, that wasn't... [LR34]

STEVE LATHROP: In the draft. [LR34]

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SCOTT FRAKES: That wasn't...that was a working document. [LR34]

STEVE LATHROP: Yeah, in the... [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: Well, it was the one prepared by the team that went through the training. [LR34]

SCOTT FRAKES: That was still working to come up with the final product. [LR34]

STEVE LATHROP: Okay. All right. You got it down to 20 before the final. And then the facility for women in York said you needed 5 at a cost of \$260,000; and you...the final has it down to 2... [LR34]

SCOTT FRAKES: Point three. [LR34]

STEVE LATHROP: Is it 2.3? [LR34]

SCOTT FRAKES: I thought that was the number I saw. [LR34]

STEVE LATHROP: You may remember this better than you're letting on. [LR34]

SCOTT FRAKES: Well, we just looked at that one, that that was the Community Corrections Center in Lincoln, wasn't it? [LR34]

STEVE LATHROP: No, that was the women, NCYF. [LR34]

SCOTT FRAKES: They only had an original of 5? [LR34]

STEVE LATHROP: The original... [LR34]

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SCOTT FRAKES: No, that's the youth facility. [LR34]

STEVE LATHROP: Oh, pardon me, the youth... [LR34]

SCOTT FRAKES: Yeah, it's 5. Okay, but it was 2. [LR34]

STEVE LATHROP: Okay. The state pen was 47 new FTEs at a cost of \$2,192,167. And your final had it down to 24, almost in half. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: So let me stop with this one and ask you--what was it on the list of things, and I can give you page numbers if you want to look at the report--what was it at the penitentiary that was included in the draft but not included in the final that you thought was unnecessary to minimally staff it after the analysis had been done by Ms. Lewien? [LR34]

SCOTT FRAKES: Again, I would need to sit down, I would need to compare the two documents, I would need to go back and look, I'd have to make specific notes to answer that question. [LR34]

STEVE LATHROP: Okay, we're going to have a lunch break in about 10 minutes and you're welcome to do it now so that...or over the lunch break if you'd like, or take a few minutes to look at the two. I can give you the page numbers before we break so that you can look and see what was it about the analysis done in the draft that said 47 people were needed to minimally staff the pen and you had it down to 24 in the final. OCC said...the draft said you needed 40 people at a cost of \$1,886,912; and that number in the final was 27 new FTEs. In Tecumseh, I'm getting close to the end, Tecumseh was 36...36 new FTEs at Tecumseh, in addition to their vacancies, to minimally staff it, 36 people at a cost of \$1,671,636. And the final report said you need 3; 10 percent of that number. Somewhere along the way that analysis between the draft and the final version knocked 33 percent...or 90 percent of those people off as necessary for the minimal staffing. And finally, the Work Ethic, (inaudible), the Work Ethic you needed 12 was in the draft at a cost of \$597,937; and your final said you needed 8. Why is that important? I've given you all

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these numbers. I want you to know I did a little math. I added up from the draft analysis done by Ms. Lewien and her trained crew who conducted the audit, adding up all those numbers that I've given, the annual cost to get to minimum staffing...and once again, I don't want to belabor this point, this is...the people you need over and above the positions that have been appropriated. So you have at any given time about 180 vacancies. In addition to filling those vacancies to minimally staff your ten facilities, the annual cost under the draft would be \$11,976,457. We'll call it \$12 million. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: Okay? That would be, when we look at the draft, 254 additional employees, under the draft, to get you to minimum staffing; and the final has it down to 138. Now when I look at the 138, it breaks it down in the summary, as you probably know, between corporal, sergeants, lieutenants, and captains. Right? Says you need 80 corporals, 52 sergeants, 4 lieutenants, and 2 captains. [LR34]

SCOTT FRAKES: For which facility? [LR34]

STEVE LATHROP: That's the sum of your 138. [LR34]

SCOTT FRAKES: All of the positions, I'm sorry, yes, okay. [LR34]

STEVE LATHROP: Right? Right? And so that cost, in contrast to the \$12 million in the draft, the final gets it down to \$6,531,488. Sound about right? [LR34]

SCOTT FRAKES: Yeah, yes, it does. [LR34]

STEVE LATHROP: Was there any one of those facilities that you remember saying, after looking at the draft, I think we need more people than what you came up with, Ms. Lewien, so I'm going to add people? [LR34]

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SCOTT FRAKES: Hmm. I recall being convinced the recommendations were correct. I don't think...I can't recall saying that we should add something. [LR34]

STEVE LATHROP: So, Director Frakes, when we look at the difference between the numbers--254 versus 138; 254 in the draft, additional people; and your final has 138, which is a lot of people, by the way. That's still a lot of people, considering your...there in addition to filling the vacancies. Right? But the difference between the two you attribute to exercising judgment after the audit had been completed? You exercising judgment? And without any other interference or any other input? [LR34]

SCOTT FRAKES: Well, working with the team. I was part of the team in that sense. It was a collaborative effort. [LR34]

STEVE LATHROP: You were not part of the draft, however. Right? [LR34]

SCOTT FRAKES: I interacted with the team in the development of the staffing model and helping to answer questions about what they were seeing and looking at. What I don't recall is, at this moment in time, is whether or not we specifically met prior to production of that first draft document or if we met after that. Seems to me like we met after that because this was a work in process. There's no conspiracy here. There's no... [LR34]

STEVE LATHROP: Oh, no. I'm not suggesting there's a conspiracy. But I'm seeing the difference between the two. You told me that it was an objective model, that these people went through the training, that they did these audits the way they were supposed to, that there's not a...they didn't do something wrong in the audit process, and then some judgment is exercised and the numbers are cut in half. [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: Okay. [LR34]

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SCOTT FRAKES: Yeah. The model is objective, the auditing process has more subjective components to it. And again, you could even, I guess, argue that the model has some subjectiveness to it because it's not a United States model for staffing. It's a staffing model developed for Nebraska. [LR34]

STEVE LATHROP: Okay. Do you want to break now? [LR34]

SENATOR PANSING BROOKS: I think we need to. [LR34]

STEVE LATHROP: Okay. That's fine. [LR34]

SENATOR PANSING BROOKS: So thank you for coming, Director Frakes. I think what we'd like to do is to continue the questioning at 1:30 when we reconvene. Our committee is going to be going into Exec over lunch. And I know that Mr. Lathrop still has questions, and I know also that committee members have questions. So those of you who are also here to speak today, we hope that you will please continue to be here and still be available for questioning. [LR34]

SCOTT FRAKES: So it will be...I'm sorry. [LR34]

SENATOR PANSING BROOKS: No, go ahead. Do you have a question? [LR34]

SCOTT FRAKES: Would it be acceptable to walk through a couple of these or would you...I can't prepare to walk through all ten of them. [LR34]

STEVE LATHROP: No, no, I wouldn't expect you to. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: If you want to take up the one that we talked about before that had the...went from like 47 down to 22, whatever one that was. [LR34]

SCOTT FRAKES: Sorry, NSP? [LR34]

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SENATOR PANSING BROOKS: That was NSP. [LR34]

STEVE LATHROP: Yeah, let's do that. [LR34]

SCOTT FRAKES: Okay, I can do that during the break. [LR34]

STEVE LATHROP: Okay. After that I don't have any more questions. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you, Director Frakes. And we are now going to...
[LR34]

BREAK

SENATOR PANSING BROOKS: And I'd like to call the hearing back to order. Again, Director Frakes, if you could come up, I think we'll continue with the questioning. Thank you for coming back for us. [LR34]

SCOTT FRAKES: Yes, I would depend upon that. [LR34]

SENATOR PANSING BROOKS: Appreciate it. And again, we're...we are going to have Mr. Lathrop continue to ask questions on behalf of the committee. And then again, after his questioning, we will have members of the committee asking our own questions. And then we'll decide how we're going to move on from there at that point. [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR PANSING BROOKS: Thank you. [LR34]

STEVE LATHROP: Okay. When we left you suggested that after the break you'd like to go through the State Penitentiary numbers, the difference between the draft and the final version. And for those people who are trying to track it on their computer or some other device, that's page...the draft is 473 through 518, and the final is 1013 through 1082. [LR34]

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SCOTT FRAKES: I just need... [LR34]

STEVE LATHROP: Go ahead. [LR34]

SCOTT FRAKES: ...need to get to the correct set of documents. [LR34]

STEVE LATHROP: I'll just let you do a narrative if you want. [LR34]

SCOTT FRAKES: Okay. Thank you. And, of course, we picked one that presented enough additional complexities that I'm not going to, in this conversation, I will not get you to the exact number of differences. I think I can illustrate well the process that we used to end up with the final proposal or at least the concepts. [LR34]

STEVE LATHROP: All right. [LR34]

SCOTT FRAKES: And so let me find the other. I'm getting close there. [LR34]

STEVE LATHROP: So in the draft then the numbers, the matrix, if you will, or the schedule seems to be at 499 and 500. [LR34]

SCOTT FRAKES: Correct. And in the actual finished document you say their finals are 1013-1082. I could...we're all referring to the same documents. [LR34]

STEVE LATHROP: And it looks like you're looking for... [LR34]

SCOTT FRAKES: Looks like it's around 10... [LR34]

STEVE LATHROP: ...1125 maybe. [LR34]

SCOTT FRAKES: So what...1059. I see 499 and 500 for the draft document; 1059-10... [LR34]

STEVE LATHROP: It's 1013 to 1082 over on (inaudible). [LR34]

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SCOTT FRAKES: Right. So the document starts on 1059 and then jumps to 1061, yes. There's no 1060. Well, there's nothing on 1060. So that would be the final proposed plan. So looking at page 499 in the draft, the first difference identified was in the draft there was an administrative lieutenant. Would be about the sixth line down. [LR34]

STEVE LATHROP: Right. [LR34]

SCOTT FRAKES: Okay. That's a reflection of an old-school thinking, an old process. We need lieutenants to be shift commanders; and, in some cases, we may need lieutenants for some other special functions, intelligence or some other things. But in terms of having somebody as an upper manager that's pretty much designated to do data entry, do other things that would be more clerical in function, doesn't make sense. So it isn't that there isn't work that needs to be done. We just need to put that work with the right people. So that's one position. And as you see there, that was originally proposed without relief, because it would be much like you and I. We don't come to work, nobody comes and sits in our chair for the day. So there was no relief factor. After discussion I said, no, we're not going to have an administrative lieutenant. So that's one. We move into the sergeant section. The first thing that I identified was in the original proposal they had a yard sergeant on all three shifts. Well, our movement of inmates with...our direct observation movement of inmates, where they walk and we're not right with them, is from roughly 6:00 a.m. to 9:00 p.m., so there's about 15 hours a day, give or take, where you have controlled but unescorted movement. There's...any movement that happens after the 9:00 p.m. count is done under escort, done under control, and so we don't need to have a sergeant to supervise the movement of inmates during the first shift. I'm sorry, for us it's third shift or the graveyard shift. [LR34]

STEVE LATHROP: One guy. [LR34]

SCOTT FRAKES: So that's...and then, of course, with the relief factor, 1.74. So that's 1.74 FTEs. Turnkey, the original proposal said that there should be a sergeant at the turnkey, which is an open movement control area. They control some doors. But it's not a booth; it's just a desk. They control some doors. They check passes. Basically it's an important function but it's a corporal

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function and so that is reflected in the final proposal. There are two corporals dedicated on day shift and on swing shift to supervise the turnkey. [LR34]

STEVE LATHROP: So did you get rid of two sergeants and then put in two corporals? [LR34]

SCOTT FRAKES: No, I think the corporals already existed. They did. But they take their supervision and guidance from the shift supervisor. We didn't need an additional sergeant that was dedicated to just be there to supervise that. So two positions, two posts, seven days a week multiplied times the relief factor, that's 3.48 FTEs less. And then the last one in the sergeant group was...that I...I didn't make my...the math didn't add up perfectly so there's something else here that I just didn't identify in the little time I had. But the proposal in the draft, in the draft work, there was a sergeant for Cornhusker State Industries shops and there was a sergeant separately for the Cornhusker State Industries laundry. It's all part of Cornhusker State Industries. They're all in the same location. One supervisor can provide guidance to the collection of officers, corporals actually, that are identified, of which there are one, two, three, four, five, six corporals that provide direct supervision. So one supervisor, six staff under them, that's adequate. So we didn't need to have an Industries shop sergeant and an Industries laundry sergeant. And that was a five-day-a-week post with relief, so 1.25 FTEs. Then we get down to the corporals. Originally in the draft work the team had identified a total of 336.56 FTEs for corporal staffing. And of course, again, that doesn't translate to 336 people because of the relief factors, but that's the total FTE count, full-time equivalent count. The final proposed, sorry, it says "proposed" even in this document still, but the final document landed at 321.83 FTEs for corporals, so a difference of about 15 FTEs. I went through. First thing I noticed was, oh, yes, when we met one of the things we did was try to land on more common terminology. The team...first of all, when I put the team together, I asked the instructors. I met with them and said, you know, how did it go? What do you think? Are we ready to do this? I knew them because I had attended their training 12 years back and have a connection to NIC. So they said, yes, you're ready. You got people that took this class that definitely can do this. I said, well, give me some suggestions. You know, who do you think would be some of the better team members, might be stronger, really seem to really understand it? Any recommendations on a team lead? So I took that information. That's how I put together the team. And then I was going to go someplace with this that made sense. That team represents, I want to say, six...five facilities. Each one of those

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people brings their experiences, their knowledge. In several of the cases, that might be one or two facilities that they've worked at. It may be only one facility and I'd have to go back and...I'd have to do a lot more work to tell you exactly. Barbara Lewien certainly had been at a number of facilities. So they have their understanding of how things are run at the prison they work at. Those, our prisons, because we're not consistent, because we have not had a staffing model, because we have not had a good solid staffing analysis, there's different terminology for different posts. People are used in different ways, just a huge amount of variation across our agency as it exists today. So part of what we were trying to do was not only do we want a model that defines in a perfect scenario this is how many staff it takes to do these different...manage staff, oversee these different locations, but also let's try to use common terminology. So if major facilities have turnkey as a post, let's use that as the post name. Let's define what that is. You know, some places had yard officer, some places had escort officers. So what I noticed when I sat down for the few minutes I had was, oh, yes, in the draft we were still working through some of that. So if you look at the two collections of corporal positions, you'll notice there's some changes in terms of just even the terminology. In some cases, though, in the draft--trying to find a good example--at the bottom of page 499 there is a line called yard corporal, supervise the yard, five posts, five posts, four posts on graveyard shift, and then there is another location and it's over here called facility escorts on page 500, four posts, four posts, two posts. You go to the final product and you'll find it on...what is the...get the right page number for you. [LR34]

STEVE LATHROP: I can appreciate that some of the terminology became more standardized between the draft... [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: ...and the final product. [LR34]

SCOTT FRAKES: But there's... [LR34]

STEVE LATHROP: But does that explain why you cut 15 corporals? Regardless, when the team goes out there to do their audit and they go, we need some bodies, right, we need some workers in here, whether they call them the turnkey operator or an escort, if it's a corporal, it's a corporal,

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and if they need them, they need them. So how does mixing the names up or not having standardized the names affect the fact that you cut 15 corporals out of here? [LR34]

SCOTT FRAKES: It's important just in terms of knowing what we're all looking at... [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: ...in answering the question of, well, wait a minute, over here now you have...I lost it again--movement and escort, nine, nine, and six, but that doesn't exist in the draft. Well, that's because we took and combined and the mass stayed the same. It was five of one and four of another for nine, nine, nine. Just I wanted to clarify that because you can't just lay these on top of each other and immediately draw lines. To go back and explain every bit of this will be more time consuming and I (inaudible). [LR34]

STEVE LATHROP: No, that's okay because we...I think we want to call some other people and I'm pretty sure some of the people up here want to talk to you too. And so I can't take up your whole afternoon getting in too far into the weeds. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: But you cut 15 corporals out of there... [LR34]

SCOTT FRAKES: Right, I (inaudible). [LR34]

STEVE LATHROP: ...who had a job in the draft and who don't have a job in the final. [LR34]

SCOTT FRAKES: Okay. I can give you... [LR34]

STEVE LATHROP: And some of the names changed. So were there assignments that they did or concluded needed to be done to minimally staff this in the original audit that you thought were unnecessary by the time the final version of this report was completed? [LR34]

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SCOTT FRAKES: So some differences between the draft and the final document: In the draft they had identified eight positions for travel orders. Those are escorts outside of the facility. We talked about what's the data show. Well, the data wasn't very good but we can look at the overtime attributed to escorting inmates outside of the facility. And since those positions don't exist currently, I can make a reasonable assumption, at least at this point, that six positions, which is three teams, managed correctly and used correctly, could do it. [LR34]

STEVE LATHROP: Oh. You know, I was look...I watched that travel stuff when...and I don't...I'm not down there moving these people around but every time somebody needs to go to the dentist they get a...they get, what, two guys in a van and they move? [LR34]

SCOTT FRAKES: Unless they're minimum. [LR34]

STEVE LATHROP: And right now you're pulling them off of different posts so it's like, you two, leave your posts and run over and take this guy to the dentist. And they got to sit there while he's getting his teeth worked on. And in the meantime, you got to have somebody work overtime to work their shifts because those travel orders... [LR34]

SCOTT FRAKES: Yeah, or it's the other way around. [LR34]

STEVE LATHROP: ...did somebody tell me, and now I can't remember who it was, that the travel orders are sitting, run in stacks this big? [LR34]

SCOTT FRAKES: We've got a backlog right now. [LR34]

STEVE LATHROP: You've got a lot. [LR34]

SCOTT FRAKES: Yeah. Yep. [LR34]

STEVE LATHROP: And it is a man-hour eater, right? [LR34]

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SCOTT FRAKES: That's why you want to have dedicated posts for travel. I call them escorted leave but here it's travel orders. [LR34]

STEVE LATHROP: Yeah, but they got to be Corrections officers. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: You can't hire Happy Cab to do that. [LR34]

SCOTT FRAKES: No. No. [LR34]

STEVE LATHROP: Right? [LR34]

SCOTT FRAKES: Absolutely not. [LR34]

STEVE LATHROP: And so when they did the original audit, somebody thought you needed eight people for that? And what are you telling us, that you don't think you need eight, you can do it with two? [LR34]

SCOTT FRAKES: I think based on the information we have to work with, it's going from zero to six is the right place to start. You know, there are days when you could use 12. You could send six teams. And then there are days when you only need one team. So now you've got ten more people, and you can deploy them and you can use them; but if you're correctly staffed and fully staffed, that's not an efficient way to manage. So it's trying to find the balance between enough work to fully utilize those positions; and if there's additional travel orders above that, then you use overtime. [LR34]

STEVE LATHROP: Okay. And somebody that did the audit thought they needed eight and you've cut that number. [LR34]

SCOTT FRAKES: Yeah. [LR34]

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STEVE LATHROP: And I guess that's about as much time as I want to spend, but I don't want you to feel like I cut you off without giving you an opportunity. [LR34]

SCOTT FRAKES: I think that that's a good example. With the relief, that's 2.5. Another example was...one last and I'll stop. Probably this is a good one. The recommendation was that we staff the front entrance position 24 hours a day. There's not a whole lot that happens at the facility from 9:00 p.m. until 6:00 a.m. So to have a corporal out at the front desk of NSP staring at an empty hallway just doesn't make sense. [LR34]

STEVE LATHROP: No. Well, you got anybody out there now staring in an empty hallway at night? [LR34]

SCOTT FRAKES: It depends. It depends. [LR34]

STEVE LATHROP: So sometimes you do? [LR34]

SCOTT FRAKES: Sometimes you do if they think they have the staffing. I would guess a lot of times they don't because they would see it as an unnecessary post staff. [LR34]

STEVE LATHROP: There's nothing that happens at that front desk. [LR34]

SCOTT FRAKES: Nothing that can't be managed from, you know, other control points. But really, prisons don't do a lot of movement or activity after the evening count until morning. And that's 1.74 FTEs for that. [LR34]

STEVE LATHROP: Okay. We've talked today about the vacancies, about the turnover, which is a retention issue, and its counterpart--recruiting, the struggles that you have there. And we've talked about, I'll call it, chronically being...having...chronically having about 180 vacancies at any given time. [LR34]

SCOTT FRAKES: Vacant posts. [LR34]

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STEVE LATHROP: Vacant posts. Yeah, that's a spot that somebody ought to be working at. And when they're not, it's creating overtime, which is affecting quality of life for your workers and exacerbating the turnover issue, right? [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: And so we've talked about the 180 you need to hire to be fully staffed. And then to maintain the minimum staffing, whether you look at the draft which is 254 more people or the final version which is 138, that's the challenge. That's the challenge. And I know that you've...I think I saw this in an article in the World-Herald today, that you gave out or you intend to give out to certain staff a \$500 bonus. And I think the language that I saw in the article, and I'll ask you if it's accurate, until you can negotiate some kind of a change in the pay. [LR34]

SCOTT FRAKES: I don't think that was a quote from... [LR34]

STEVE LATHROP: Did I read that right? [LR34]

SCOTT FRAKES: It may have been. I don't know that was a quote from me, though. I don't...but... [LR34]

STEVE LATHROP: Well, let's...these...this is a quote, and Paul Hammel wrote this and it says: These bonuses are a way to recognize the challenges of high turnover, challenges high turnover presents until we can negotiate a labor contract to address compensation needs long term. [LR34]

SCOTT FRAKES: Okay. That is me, yeah. [LR34]

STEVE LATHROP: Do you think you said that? [LR34]

SCOTT FRAKES: Yeah, I do. [LR34]

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STEVE LATHROP: So is your solution to vacancies, to the turnover, to the recruiting issue to negotiate some kind of a contract or some kind of a change to the contract? [LR34]

SCOTT FRAKES: I see that as an important piece of the talk this morning. [LR34]

STEVE LATHROP: Right. [LR34]

SCOTT FRAKES: Simply giving people more money but not changing some of the other issues raised won't solve the problem. [LR34]

STEVE LATHROP: No, you've still got some cultural issues and you still have some...perhaps if you paid them more they would...you wouldn't have so many vacancies and then some of the overtime issues and some of those things might change. But ultimately, is it your strategy or your plan to work on the cultural issues but also to renegotiate the labor contract? [LR34]

SCOTT FRAKES: Well, I don't specifically negotiate the contract. I'm able to give input on it. [LR34]

STEVE LATHROP: I didn't mean you. I assume that that's not in your wheelhouse and that somebody in the administration is in charge of working through what do these people need to get paid in order for you to not have the problems that we've just... [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: ...talked about with vacancy, turnover, and recruiting. [LR34]

SCOTT FRAKES: The administration will be submitting a proposal to the union tomorrow, which is one month ahead of when it's actually required by law, statute. [LR34]

STEVE LATHROP: Okay. So I want to ask you a question and maybe I want to preface it a little bit by talking about the CIR, right? So the CIR is a place for political subdivision and state employees to go to work through a wage dispute. You understand that much. [LR34]

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SCOTT FRAKES: Uh-huh. I do. [LR34]

STEVE LATHROP: Okay. And that the CIR, if I am in labor and you are in management, if we can't agree, we'll go there and they'll figure out what the average is for that type of work. Basically, you get an award from the CIR for average. Right? [LR34]

SCOTT FRAKES: I'm sorry. Say that again. [LR34]

STEVE LATHROP: In other words, they find a prevailing wage rate or what the average wage rate is for people that do like work. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: You understand that's what the CIR does if we can't agree? [LR34]

SCOTT FRAKES: No. No, I didn't realize that we had that component. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: I've only been through labor dispute, I guess it would be. I haven't done... [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: ...work with them around wages. [LR34]

STEVE LATHROP: Well, maybe this is my point, because this seems to be, to me at least, part of the problem, is that if we look at what corrections officers get paid in neighboring states we're not doing that bad. Right? They're all making somewhere in the neighborhood, some make a little more, might even be some that make a little bit less. Have you seen the comparables? [LR34]

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SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So you would agree with that. The problem with that is, in chaining yourself to what others are making in neighboring states is it's not getting you the employees you need. Right? [LR34]

SCOTT FRAKES: Potentially. [LR34]

STEVE LATHROP: Well, let me put it this way. With your recruiting efforts that we talked about, this committee that began to advertise in Lincoln on billboards, in theaters in Tecumseh, during the football games, all of the efforts, the additional efforts that have been undertaken to recruit, with your turnover at this hourly rate, you're still about 180 vacant posts at any given time. And on top of that, you need to hire another 138 to 254, depending on the draft versus the final version. That's a lot of people to hire. Right? [LR34]

SCOTT FRAKES: Agree. Agree. [LR34]

STEVE LATHROP: And historically at the pay rate and given the other challenges of hiring corrections officers, you haven't been able to do it. [LR34]

SCOTT FRAKES: But there again, we did hire 400 staff. It's the retention of those staff that's driving the... [LR34]

STEVE LATHROP: Yeah. You hired 400, while 400 walked out the door. But you always remained 185 down. [LR34]

SCOTT FRAKES: But if, again,... [LR34]

STEVE LATHROP: That's...that's... [LR34]

SCOTT FRAKES: ...if the turnover rate was half, we would have no vacancies. [LR34]

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STEVE LATHROP: Okay. So if the turnover rate is half, tell this committee how you're going to get it to half. So it's right now, we can see from the numbers, that you're rolling somewhere around 30 percent. Am I right? [LR34]

SCOTT FRAKES: Somewhere in there. [LR34]

STEVE LATHROP: Some of the places are higher. Some of them may be a little bit lower. But across the agency, you're about 30 percent. [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: How do you intend to bring that down to half? [LR34]

SCOTT FRAKES: Addressing compensation, addressing issues related to staff engagement, and continuing to change this agency through building a safer, more healthy prison system. [LR34]

STEVE LATHROP: Okay. Let's talk about the compensation piece. You being...I'm pointing at you, not specifically you, you're not writing this up but somebody in the administration is going to provide to the labor organization that represents these folks some kind of a proposal to do something with their pay. Right? [LR34]

SCOTT FRAKES: Yes, tomorrow morning. [LR34]

STEVE LATHROP: It's either going up or they're going to have some step program or some combination of that. [LR34]

SCOTT FRAKES: Proposal goes in tomorrow morning. [LR34]

STEVE LATHROP: Okay. Yeah, and I get you can't tell me what that's going to look like. [LR34]

SCOTT FRAKES: Right. [LR34]

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STEVE LATHROP: And I'm not even going to ask you. You think that that will be sufficient, along with some cultural changes, to drop your turnover rate to 15 percent? [LR34]

SCOTT FRAKES: I'm not going to set the goal that high to begin with. It's... [LR34]

STEVE LATHROP: All right. Well, then you're going to continue to have a problem, right? I mean if filling... [LR34]

SCOTT FRAKES: I'm trying to run some numbers in my head is all I'm trying to do. [LR34]

STEVE LATHROP: Yeah. [LR34]

SCOTT FRAKES: So I don't know what the right number is. If it's...if 25 percent, based on our, you know, hiring practices, allows us to make headway or is it 24 percent or...there's a number in there somewhere where we would actually start to see progress (inaudible). [LR34]

STEVE LATHROP: Let me ask you this, and this is a free-market question, which a lot of people around here like to talk about, and that is have you done any studies to see how much more over \$15.80 an hour you got to pay these folks before you can get the turnover rate down to 15 percent? [LR34]

SCOTT FRAKES: No. Not that I'm aware of. [LR34]

STEVE LATHROP: So there's going to be a proposal, but it's not based upon some study of at what point do you get your turnover down to 15 percent versus 30. [LR34]

SCOTT FRAKES: There will be a proposal submitted tomorrow morning. [LR34]

STEVE LATHROP: All right. Then if there was no study and there's going to be a proposal and that's your response, then we'll take that and see how it works. Is that the plan? [LR34]

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SCOTT FRAKES: Well, there will be a proposal submitted tomorrow morning and then there's a negotiations process. Both labor and management get to submit proposals. That's what negotiation is about. You know, where we finally end up is the results of that negotiation. Then we move forward from there. I am optimistic that an agreement can be reached that will be meaningful to my staff. I wouldn't expect in one round of negotiations that we address all the compensation issues (inaudible) challenging. [LR34]

STEVE LATHROP: Okay. Let me just ask one question so that I know if I need to call other witnesses. Do you feel like there is any impediment, because your workers, these corrections officers, are represented by a union? Because I think that came out last week in a comment that we heard or that I read in the paper that the union was the problem. Do you see any impediment between the administration negotiating some change to the contract in the short term? Like, you don't see a CIR problem or there's a contract so we can't do anything with it till it's expired? [LR34]

SCOTT FRAKES: Not sure that I understand your question. [LR34]

STEVE LATHROP: All right. That's fair. There is a labor contract that's in place. The administration appreciates that they can negotiate something different by agreement before the expiration of the current contract. Is that true? [LR34]

SCOTT FRAKES: I believe so. Yes. [LR34]

STEVE LATHROP: Okay. And in fact, you're going to try to do that. [LR34]

SCOTT FRAKES: No. What's been brought forward is to begin the negotiations on the next labor contract earlier than normal. [LR34]

STEVE LATHROP: Okay. Let me ask about the retention funds. Again I saw in the paper that you are paying or you made an announcement yesterday that you are going to use some of the retention funds that have been appropriated for a \$500 bonus for certain of your employees. Is that...did I...do I have that correct? [LR34]

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SCOTT FRAKES: May have been reported that way. That is I'm using additional funds, separate from the \$1.5 million, at this point to fund... [LR34]

STEVE LATHROP: Oh, that was going to be my first question. So you...the...and I keep pointing at Mello over there, but the Appropriations Committee appropriated \$1.5 million for retention and you developed a plan for that, that's in the book that you shared with us. And basically that's providing for some education, some certification type things for the staff that goes through that process. [LR34]

SCOTT FRAKES: Staff...it is that. It is staff training. It is wellness centers. It is a behavioral health conference to allow our behavioral health professionals to come together and take advantage of... [LR34]

STEVE LATHROP: Other than the wellness, which is...is that a gym over at Tecumseh or something? [LR34]

SCOTT FRAKES: Yes, and at NSP for staff. [LR34]

STEVE LATHROP: Oh, okay, some kind of a gym for the staff at those two facilities. But otherwise, it's generally if people want to take advantage of the program that you've set up, it's some kind of certification or continuing education sorts of things. [LR34]

SCOTT FRAKES: There's a large commitment to develop/delivering staff training. I talked about the resiliency training. We're bringing Desert Waters (inaudible) 600 staff. [LR34]

STEVE LATHROP: Okay. More education,... [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: ...training. But now yesterday there was something about you providing \$500 bonuses to some people who fit certain criteria. [LR34]

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SCOTT FRAKES: That is correct. [LR34]

STEVE LATHROP: Who gets it? [LR34]

SCOTT FRAKES: It is staff in positions that have shown both high vacancy rates and high turnover rates. It includes officers, corporals, caseworkers, licensed mental health professionals, chemical dependency counselors, food service staff, registered nurses, licensed--I'll probably get this wrong--LPNs. I may have missed somebody but I think that's all of them. [LR34]

STEVE LATHROP: Okay. And how many...you must have budgeted for this and have some idea how many people. So what's the criteria? You told me who qualifies. What do they have to do to get it? [LR34]

SCOTT FRAKES: They have to have been employed with us before January 1, 2016, still be employed with us, and again be in those positions where they are...where there's both high turnover and high vacancies. It's about 1,000 staff. [LR34]

STEVE LATHROP: A thousand staff? [LR34]

SCOTT FRAKES: Uh-huh, \$500,000 commitment. [LR34]

STEVE LATHROP: You said a \$500? So you're going to spend a half a million dollars? And when does that happen? Do you have a date where you're going to look at the roster and see who qualifies and who doesn't? [LR34]

SCOTT FRAKES: Right now we're doing that, but September 14 is when the money will be placed in their paychecks. [LR34]

STEVE LATHROP: Okay. So on September 15, if I'm not liking my job as a correction officer, do I get to just leave? Can I take the bonus check on the 14th and walk out on the 15th? [LR34]

SCOTT FRAKES: You could. [LR34]

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STEVE LATHROP: Director Frakes, do you have any intention of offering that again or at any time in the future or is this kind of a one-time thing? [LR34]

SCOTT FRAKES: Don't have any intentions or plans, but a door is not closed either. [LR34]

STEVE LATHROP: Sure. Sure. I just wonder if that announcement makes people that were about to leave think all I got to do is hold on two more weeks, I get \$500. And are you going to have a bubble in the middle of September of people that didn't leave for three or four weeks, waiting for this money? [LR34]

SCOTT FRAKES: As long as they were employed as of September 4 I think is the cutoff for the payroll. [LR34]

STEVE LATHROP: Where is the money coming from? [LR34]

SCOTT FRAKES: We had \$211,000 carryover, may not be the exact correct term, but we came in, in a positive variance at the end of fiscal year 2016, \$211,000. By reducing turnover, we can reduce training costs. We should also be able to do some overtime reduction. And then doesn't take a lot to get to another \$289,000. So that is the plan. [LR34]

STEVE LATHROP: Okay. Is that variance you're talking about with the \$211,000, is that because you didn't spend it on all of the...is that the vacancy savings? [LR34]

SCOTT FRAKES: We didn't have any vacancy savings, per se, because we use it to pay either for contract staff for healthcare and mental health or for overtime. [LR34]

STEVE LATHROP: Overtime. [LR34]

SCOTT FRAKES: Yeah. Shouldn't say that, though, excuse me, because we did acknowledge...we acknowledged the salary savings. We didn't try to hide it. So in our budgeting process for this last fiscal year, we acknowledged a number of about \$4 (million), \$4.5 million

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that would not be spent on salaries. And then at the same time said but here's overtime cost, here's contract staff costs. [LR34]

STEVE LATHROP: Okay. You did the staffing study. When are you going to hire the staff? When is the...when does that process start? Is that going to appear in a budget request or can you start doing that with some savings or, and I don't want this to sound argumentative, but with some money laying around? What's the plan for the conclusion from your staffing study? [LR34]

SCOTT FRAKES: That plan will be addressed in my budget request that will be submitted September 15, just two weeks from now. [LR34]

STEVE LATHROP: It will be addressed? Now I can't wait to find out. Are we going to see your request include staffing those same...the positions that study suggested needed to be filled? [LR34]

SCOTT FRAKES: My budget request will be submitted on September 15. [LR34]

STEVE LATHROP: Okay. Okay. Well, I was never on Appropriations Committee so I don't know how hard I can push you on that. Maybe we just have to wait. I may have asked this earlier, but one of the topics this committee intends to discuss is behavioral health programming. Well, let's start with behavioral health. Do you...have you done any kind of study on the need versus what you actually have... [LR34]

SCOTT FRAKES: There was some work... [LR34]

STEVE LATHROP: ...been authorized? [LR34]

SCOTT FRAKES: Well, there was some work done but I...I think "study" isn't...I wouldn't consider it to be that quality. [LR34]

STEVE LATHROP: Why don't you tell us what work has been done, even if it doesn't rise to a full study. This committee is going to be interested in...and I can just tell you going back to the

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days when we were focusing on Tecumseh a couple years ago, it looked like they were woefully understaffed in mental health. And my question is, is that on account of vacancies or are the minimum staffings that have been allocated for mental healthcare you just can't fill the posts? [LR34]

SCOTT FRAKES: The last thing that you said is absolutely correct in terms of we have a significant number of vacancies in behavioral health and that makes it difficult to know whether or not we have enough allocated positions because we've not got there. If we were fully staffed, it would be much easier to assess whether or not we could meet the need. At the same time, we've just implemented our risk/needs assessment tool and it's working. Staff are being trained. It's being done at the Diagnostic and Evaluation Center. We'll be expanding to some other facilities shortly as part of the parole guidelines project. But that's a project that takes about a year to fully implement. We need... [LR34]

STEVE LATHROP: Does the...forgive me. Does the risk/needs assessment tell you how many more mental health people you need? [LR34]

SCOTT FRAKES: No. No, but it gives you a better sense of the needs of the population. [LR34]

STEVE LATHROP: So if I'm a corrections officer and I'm walking by a cell and somebody is behaving in some way this study is going to teach me to recognize, then I can alert somebody in behavioral health. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: No? [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: Tell me what it is briefly. [LR34]

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SCOTT FRAKES: The risk/needs assessment tool determines risk to reoffend, needs to address to reduce the risk to reoffend, and then a responsibility piece that helps determine what's the best staging in terms of when do you put someone in the (inaudible). [LR34]

STEVE LATHROP: Doesn't that happen at the Diagnostic and Evaluation Center every time somebody gets sentenced? [LR34]

SCOTT FRAKES: It hasn't been happening consistently or in a way that was effectively used. [LR34]

STEVE LATHROP: Do they screen for mental health over at Diagnostic and Evaluation? [LR34]

SCOTT FRAKES: They do an initial assessment, yes. [LR34]

STEVE LATHROP: And does that tell you...I mean if you add up all of those problems the people have, what do you have, 5,700 inmates, something like that? [LR34]

SCOTT FRAKES: 5,280 this morning I think it was. [LR34]

STEVE LATHROP: Okay, so let's call it 5,300. They've all been through D&E and they all have a folder that says this guy is fine, this guy is fine, this guy is schizophrenic, this guy has got a major mental illness, right? Can't you decide or sort of add those up and determine how much staff you need that way? [LR34]

SCOTT FRAKES: Ultimately, we could. If our assessment was to that level and all of our clinical assessments were being done at D&E, I think we could get a lot closer. We're not there yet. We're in the process of making those changes. [LR34]

STEVE LATHROP: Maybe the fact that you're not there yet suggests that you don't have enough staff to do it. [LR34]

SCOTT FRAKES: Because we have so many vacancies, yes, absolutely. [LR34]

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STEVE LATHROP: In mental health. [LR34]

SCOTT FRAKES: Yes, behavioral and mental health. [LR34]

STEVE LATHROP: So you're going to be able to give us at least the vacancy information on mental health when that request is made, but you'll be unable to give us information on what a proper minimum staffing would be for mental health. [LR34]

SCOTT FRAKES: Probably. [LR34]

STEVE LATHROP: Is there a standard in any corrections, like the ACA or whatever standard that Corrections folks like yourself are required to follow when it comes to mental health staffing? [LR34]

SCOTT FRAKES: Not specific to staffing. There's expectations to meet needs here in Nebraska. We have a statutory requirement to meet the community standard of care; but that's a very, very ambiguous term. So we've been trying to figure out how do we define that since it's not really defined. [LR34]

STEVE LATHROP: Okay. What about programming? Same thing? [LR34]

SCOTT FRAKES: Right. There's not... [LR34]

STEVE LATHROP: See, I think you sent us some information on the waiting list for programming. And I wonder, is the waiting list just the people who are waiting for a particular, let's say anger management, that are waiting for anger management that are within some time period of their release date? Or is it everybody that they've decided over at Diagnostic and Evaluation are going to need, of the 5,300 people that traveled through D&E, that they've determined of those 5,300 how many need anger management? [LR34]

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SCOTT FRAKES: No, because today our clinical assessments aren't getting done yet at Diagnostic Center. And so many of the assessments are not getting done until later in the people's sentences. That's a piece that has to be fixed and we're... [LR34]

STEVE LATHROP: Okay. And maybe you can give us a brief preview about what that is and we'll get into more detail when we talk about mental health. But what are you doing to fix that? [LR34]

SCOTT FRAKES: We are, again, rolling out the risk/needs assessment tool, which is a component, because it will...there are some indicators or assessments within that tool that help identify some part of the population that clearly doesn't need clinical assessment. So then that allows the clinicians to focus on a smaller group of people. The expectation and the goal is to establish clinical assessment at the Diagnostic Center within 90 days, complete the risk/needs assessment component within 30 days, complete clinical assessments within 90 days, and then we'll actually know what the needs are. [LR34]

STEVE LATHROP: Okay. And that will be a change. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: That will be an improvement when it happens. But the fact that it hasn't been done means that the waiting list is artificially low because there's a lot of people you might have caught in a proper assessment that aren't on a list because no proper assessment was ever done. [LR34]

SCOTT FRAKES: Potentially, yes. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: Especially high-end violence. That's probably the weakest area. [LR34]

STEVE LATHROP: I think that's all I got, Madam Chair. [LR34]

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SENATOR PANSING BROOKS: Okay. Thank you, Mr. Lathrop. Anybody else? Yes, Senator Krist. [LR34]

SENATOR KRIST: Just...Hi, Director. [LR34]

SCOTT FRAKES: Hello, Senator. [LR34]

SENATOR KRIST: Thank you for coming today. Just for clarification, there were a few things that Mr. Lathrop brought to our attention. You sent us, and the date that you wrote the letter was August 30, 2016, and it was a memorandum sent from you to Corrections in general, to all employees. In there you say, regarding the bonuses: I would love to provide this bonus to every staff member as it is only with each member...key member that we can effectively operate our facilities and achieve our vision of a safe prison, transforming lives, safe communities...transformed lives, I'm sorry, safe communities. These are one-time funds derived from a small positive variance from fiscal year 2016 budget and projected savings in overtime staff, etcetera, etcetera, retention rate. And then we talked about you renegotiating. The reason that you could only do that at this point is that we're going to be renegotiating a contract. So my question comes from both things that we've heard in the press and from my understanding of union negotiations. The Governor sent out a letter on the 25th of August; says that: We are ready to negotiate an NDCS specific bargaining agreement for our Corrections team. The two of these kind of go hand in hand, because obviously you're giving bonuses and you're looking towards the time when you can fix matters in a different way. And I won't go into the detail that Mr. Lathrop did, but we've already established that money is going to be part of the answer. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR KRIST: True? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR KRIST: Okay. When the Governor wrote the letter, and I'm assuming you were involved with the setup to the negotiations. I'm not going to ask you for specifics, but it's my

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understanding with the statutes that it is not possible or legal to negotiate on a specific bargaining agreement for an agency. Rather, it would be, and I'll use the word, "Category P," which Corrections falls into with others. Again, I'm not asking for specifics. But in the best chance of having something happen in the renegotiation, I'm assuming that we're not going to go in, as the Governor said, for specific negotiations for an agency. We're going to look at that entire category. [LR34]

SCOTT FRAKES: I do not know enough at this point about Nebraska labor law to be able to specifically answer that question. DAS and labor relations staff are putting this together. I would expect they will follow the law and the rules that are (inaudible). [LR34]

SENATOR KRIST: (Inaudible). If Mr. Marvin comes up at a later date, I'll probably address the same question. So we can assume that in terms of the actual negotiation going on, you had input in terms of what you need in terms of whether it be bonuses, whether it be retention, whether it be step programs. You put input to that negotiation process that will happen tomorrow, again tomorrow, but specifically in terms of just your agency, which then fall to DAS to legally negotiate in the larger category. Is that your... [LR34]

SCOTT FRAKES: I did provide input. [LR34]

SENATOR KRIST: Okay. Very good. And then just one other quick question and comment. I appreciate you bringing the information forward and working with our committee and making sure that the information we asked for was there, and your attendance here and other times when you've been invited. I have to say just for the record we've had this conversation the whole time you've been here. It became apparent to us that money was going to have to be part of the equation. We did ask for potentially even in a more accelerated renegotiation to make sure that we could make those dollars and cents available for whatever purpose. And in a concern for this next biennium, we have to set those priorities early because I don't think we're going to have the surplus that we have enjoyed over the last four or five years. [LR34]

SCOTT FRAKES: Yeah. [LR34]

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SENATOR KRIST: I don't know what that dollar amount is going to be but it probably isn't going to be as available. So please press the urgency for which we will be...we will see you and request to take care of those dollars and cents in order to make a difference in Corrections. That's my request to you. [LR34]

SCOTT FRAKES: Understand. Thank you. [LR34]

SENATOR PANSING BROOKS: Okay. Senator Mello. [LR34]

SENATOR MELLO: Thank you, Chairwoman Brooks, and thank you, Director Frakes. Just maybe more of a kind of historical perspective on a couple questions I want to ask regarding the bonus plan and the use of the retention funds. Do you recollect this committee meeting with you shortly after the riot in Tecumseh in May of 2015 and discussing kind of the aftermath of what had happened? I think we met in this room. I actually believe the press wasn't even there. I believe it was more of an Executive Session to kind of debrief this committee in regards to what happened at the Tecumseh riot and what were some of the challenges. Do you remember...vaguely remember that? [LR34]

SCOTT FRAKES: I remember the meeting, yes. [LR34]

SENATOR MELLO: Okay. Do you remember at all in regards to members of this committee approaching you and your staff at that time in regards to what, if anything, could be done to begin to address the staffing crisis that we all knew was there in Tecumseh in regards to looking at the existing labor contract that the state was already operating under and/or evaluating other options that you or the department could use to try to address salary compensation, bonuses, whatever it is? Do you remember us asking questions regarding that back in that meeting and then, to some extent, leaving it--I'll give you a little bit more picture of it--leaving the meeting, giving you the opportunity to look back and see if there was anything else that could be done? Do you remember, vaguely remember that or having any of your staff look into that? [LR34]

SCOTT FRAKES: Well, I remember conversations of that nature, though specific to that meeting that day, not necessarily. But, yes, I do remember conversations like that. [LR34]

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SENATOR MELLO: Okay. And then I'm going to have a page pass around a document which is some testimony from the Appropriations Committee earlier this year on LB733, which was a bill that Senator Watermeier brought. He worked with the Inspector General's Office in regards to seeking an appropriation. Initially, it was an ongoing appropriation to address both recruitment and retention of staff at the Department of Correctional facilities. And I'm going to just read, I'm going to read your statement out here. And the page will be bringing you a copy of it because it really sets kind of the tone for I guess my last couple questions. If you look on page 11, I asked you essentially, in regards to what the bill does in regards to providing some funding, provide some wage increases, and how is that not going to be helpful to you in regards to dealing with, in the short term, as you enter into the long-term collective bargaining process. And this was your response. Quote: Because today it's not clear to me how I could use those funds. So again, I still do not have a clear answer on this concept of bonus pay. And the collective bargaining process, while it's true we could open the contract, we did just open it. And it just came to life in July so it's a brand new contract. And to go back to the table prematurely, in essence, I do not think would be beneficial to everyone. We're, you know, on the heels of starting the negotiation process for the next contract. So I don't have a better answer for you today. I think that there's a compensation issue that needs to be addressed, but I don't want to do it piecemeal and I want to do it in a way that's beneficial to state employees and not just one group of employees, end quote. So my question to some extent is, one, what's changed? What's changed since that hearing where I was not trying to be too pointed with you I think at the time, but I can tell you I was caught off guard a little bit with the use of the retention funds when you made that announcement earlier this summer. And yesterday's release caught me off guard that much more in light of you publicly stating, one, you weren't supportive of the money in the first place; two, you said you didn't know how you would use the money; and three, you specifically said you didn't want to use a bonus payment because you thought it was, one, both unfair to all state employees and you wanted to focus mostly exclusively on the collective bargaining contract. So I want to give you the opportunity to kind of walk me through, one, who came up with this plan? Who was involved? What was the time line in coming up with this bonus payment plan? Did the Governor come up with it? Did he have to sign off on it? And then to some extent, why did you not use the initial money that the Legislature provided you in the first place, which was our intention of that money to be used to help provide and serve as that bridge between now and when you finalize the collective bargaining process? Why did you not use that money up-front?

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And instead, you're basing the money to pay for this off savings you may or may not get sometime next fiscal or sometime this current fiscal year, which I didn't quite realize that until you answered Mr. Lathrop's question, was how you were going to pay for it in the current fiscal year. So I've got more concerns on that, but I'll...I threw about five questions at you, Scott. So who came up with it? Who was involved in it? What was the time line? Did you have to get approval from the Governor? And more importantly, what's changed between February 2016 and yesterday when you made this announcement? [LR34]

SCOTT FRAKES: Okay. I came up with it. Yes, to make a \$500,000 adjustment to my budget, I do have to have a conversation with the Governor. What changed was--Senator Lathrop hit on a key piece--when you give out cash bonuses it's the question mark of...there's a question mark of how it will be perceived, whether or not it will have the impact that you desire. I still believe that the strategies that we implemented--and they're really getting off the ground right now with the initial \$1.5 million--are going to have an impact. But there's an acknowledgment at this point in time with those high turnover/high vacancy positions that we needed to try something else before I get in a position of where I'm, I don't know, looking for how am I going to keep the prison doors open, and especially in terms of the healthcare behavioral health piece which is so critical to the overall operations. And that sounds bad because I say that out loud and I think, well, custody staffing are every bit as important. Everyone involved is important and that is one of the challenges. But I knew that I had...I felt I had about \$500,000 that I could try something different with. If I spread it across 2,100 employees, it becomes inconsequential. I wanted to target high turnover/high vacancy positions. That's where we came up with the number. It's a gamble. Let's be honest, it's a gamble. We also, as we move forward and we continue to watch the numbers. And we're talking to people and trying to assess what's the right strategies that are going to make a difference short term because again, on compensation issues, the long-term solution is addressing it through for those that are represented through the contract process. If we get three or four more months into this and we're not seeing results from the strategies we used with the \$1.5 million, we'll try a different strategy. That's the answer I gave about I don't have any plans at this time to do additional just cash bonuses. But if it looks like it makes sense and it makes more sense than what I've tried so far, I'd keep that door open. And if it turns out that from a budgetary need the smartest thing is I didn't...we didn't accrue the savings, as an example,... [LR34]

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SENATOR MELLO: Uh-huh. [LR34]

SCOTT FRAKES: ...I may look at the \$1.5 million and say, oh, part of that has got to be moved over. So as you know better than I do--you're much better at this in terms of the management of appropriations--while everything is line items, we work towards the bottom line at the end of the year. [LR34]

SENATOR MELLO: I appreciate that and just maybe for the record, your agency has to provide the Appropriations Committee, and arguably this committee will get a copy of it as well in October, what you would do moving forward in the sense of if you were to request retention funds again. And so it gives you, I guess, another chance to be able to take a step back, reevaluate the use of that money and make a detour, so to speak, if that's the case. One last question I've got and it's more in the sense of we're talking about staffing. And I've followed your vacancies and a couple other agencies over my entire time here in the Legislature, and so it's...I'm well aware of the vacancy challenges you've had. And we've talked about that before off-line. The question I've got is, at what point do you start to see, staffing-wise in your agency in light of the multiple assaults on staff, when do you start to see the red line that we've crossed, so to speak, when it comes to safety of all of the whole agency? I mean when do we...I think I told someone the other day I think that we're at that point of that state of emergency in light of what we saw with the most recent assault of nine correction officers. And at what point do you start to...to start looking at any and all other ideas to help and assist you with staffing up the agency until you're able to find a method that's working to retain the people that you need to keep your staffing levels at? And that's outside of, obviously, the staffing analysis that's going to ask for, no doubt, more staff. What has to happen next for you to go to the Governor and say, Governor, we need to do something bold, something different, because if we don't do something people are going to keep getting assaulted and it's going to be problematic for us? [LR34]

SCOTT FRAKES: The answer begins 18 months ago and a few days. It's been on my mind since I arrived here. This is not an agency that was robust and in good health, so...and then with the disturbance at Tecumseh, became very clear we had some significant issues. So I think that it has been on my mind. It has been part of the different strategies in terms of bringing the team together to address recruitment, then hiring a person dedicated to recruitment. That's been very

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beneficial. It's just so many different things that we continue to look at, adjustments we make. It certainly a year ago, me not understanding what it's like to try and hire people in an economy with a 2.9 percent unemployment rate, that's a learning lesson for me. It's not understanding fully, because I didn't have all the information I needed, what the real compensation issues were. So I would say that in terms of elevating, we're there. That's why I said I've identified some funds, I want to move forward and do this as another different strategy, see if I can at least give some short-term hope to some people. It's saying if we could go to the...get to the table quicker we could address the issues, recognizing that we're talking about next...the contract that goes into effect July 1. But for many employees the hope, the knowledge, the belief that that's coming down the road can make a difference. So I want to say one more thing specific to what you raise, though. While there's no doubt we have vacancies, there's some perception I think that that means then that we run with, you know, a fraction of the staff. If we run with fewer staff than a normal staffing pattern, it's because we've closed program areas or reduced (inaudible) and then that gets back to the inmate population. But the overtime is driven by filling those posts. So we have people, and often they're tired and that's a factor as well. But in terms of last week, can't point to that and say it was a staffing shortage issue. Ultimately, nine staff were engaged and there was, I believe, five staff initially there when one inmate decided, for whatever reason, that they could strike staff. And it grew into 12 inmates attacking 9 staff. So it's trying to sort out. We could be overstaffed and it would have nothing to do with changing what happened last week or some of the other staff assaults that we've had. Because we've got some other core issue, part of which I know based on (inaudible). I have to be careful about what I say in these settings because my population, if they don't watch the hearings, they at least read the press and they pay attention. But I've talked earlier about security threat groups. It's a very real issue. They operate under a very different set of rules than you and I. And they see violence as the ends to a means...means to an end and will not hesitate and they are escalating that and that is a component that we're trying to work through, trying to identify where is the leadership coming from. We've had issues in other facilities. We've been able to identify and address those. But I hate to...I'll never say it's fixed because that is a evolving system. Whatever we...you know, if we figure the right strategy at Tecumseh and we get it addressed, then there's the potential that it pops up somewhere else. So hear me clearly, not making excuses, not denying that staff are tired, not denying that if we were fully staffed it would significantly cut overtime and we're delivering more program it will be a safer and healthier system. But none of those are going to stop

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these...necessarily stop these random act of violence, especially when they're driven by a security threat group culture that says that's how they're going to...that wants to be in control of the prisons and wants to be in control of the streets of Omaha. [LR34]

SENATOR MELLO: Okay. Thank you. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Mello. Anyone else? Senator Schumacher. [LR34]

SENATOR SCHUMACHER: Thank you, Madam Chairman. Thank you, Director Frakes, for coming before us again and again and again. It's a dialogue that we really need to have and try to work through some problems. One of the things you said early in your testimony today in response to Senator Lathrop's question was that you think that security is a very important thing and the decrease in security is related to a decrease in programming. And the decrease in programming attributed in part was caused by the financial crisis back around 2010-2011, when they start pulling back on the programming and getting tight, even though the Nebraska economy wasn't suffering anything like the rest of the country was. And I thought, oh, well, you know, that's an explanation. But then I began to think. This is a conscious decision that we're here. It wasn't Wall Street pulling the plug and messing with our penitentiary. Right in the middle of this 2012, when this should really have been all-focusing, the Governor came to us and asked for what I think was like a \$200 million tax cut. I think it was called LB970. Finally, the then-Governor and the Revenue Committee and the Appropriations Committee negotiated that to \$50 million, growing up to about \$80 million over a year over time. That was a choice. That was a choice. It would have left another \$50 (million), \$80 million in the kitty, which would have gone a long way, probably not all the way but a long way toward addressing the problem that you face. Since 2005, we made tax cuts, conscious decisions to reduce revenue that now are impacting us to the tune of about three-quarters of a billion dollars a year. And by eight years from now, if we do nothing more, our revenue shortfall, because those...some of those tax cuts are compounding, are going to be \$1.1 billion less. We have penitentiaries, education, and everything else. So this wasn't fate casting some ugly net over us. It was a conscious decision. And it was a conscious decision from what we've learned, I think, from the hearings that some of us have been in for three and four years, that came about from us wanting to live in a fantasy land. We knew back in

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2007-2008 there was a study saying we needed an additional facility, we need to spend money on programming and whatever. I think Senator Lathrop brought that out in the prior hearings very, very well. And we didn't do it because we wanted to believe that we could do it without spending money and by affording more and more tax cuts. So we know we've got a big problem and so far we've done not so well in addressing it. Solitary confinement is still at the high levels. We're still having these real problems with staffing the penitentiary. Our wages are low. Our programming is off. And we like to pat ourselves on the back and, well, just do the math with me a little bit on this \$500,000 thing that just came about. You take taxes, Social Security and everything out of that, take home about 400 bucks. [LR34]

SCOTT FRAKES: Correct. [LR34]

SENATOR SCHUMACHER: Right? It's pretty close. Okay. Divide the 400 bucks by 52 weeks and you divide that, you come up with about \$7.69 a week and just...for the people. Some are working overtime, but let's just pretend they work 40 hours. That's 19 cents an hour. That's symbolic. It's not substantive. The \$1.5 million that we talk about that...you know, for this extra fund that the Legislature gave, that noise outside of the windows to put four fountains in, \$2.4 million. Let's put it in context. We haven't begun to realistically address your issue. The risk that we take and what I'm trying to ask and ascertain from you today is you risk people getting killed, more than maybe just two that happen to be on the other side of the law, maybe some on our side of the law. [LR34]

SCOTT FRAKES: Always. [LR34]

SENATOR SCHUMACHER: We risk people killed, property burned. We risk (inaudible) people getting hurt for the rest of their life. I mean you risk a real question on our stability of our criminal justice system. We're consciously taking that risk. And we're taking it, I really think the substance of the evidence shows, because we're scared to admit this thing is going to cost a lot of money to fix. And we're avoiding and dancing around that issue something fierce. And that's not a smart thing because if this thing blows up on us, and there's just a decent chance it may, you're going to be pointing the finger at us, we're going to be pointing it back. We're all going to be pointing the finger at the Governor. He is, to a certain extent if it blows up, staking his political

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future on it. This is a big gamble it's not smart to take because we don't control the odds. We aren't the house. So what can we do--and I guess this is where this...that little soliloquy leads up to--what can we do, from your perspective, what you think that the Governor is open to do, with the Legislature I really believe has got a pretty much open checkbook if we just knew how much to write the check for, to make it happen and fix this problem that isn't going to get cheaper to fix? [LR34]

SCOTT FRAKES: You can acknowledge, as I've tried to reinforce repeatedly, that coming in and asking for \$30 million mid-biennium was not part of a reality I'd ever had before, and to have it granted was amazing. So that was the beginning. And I've got a budget submittal. It will be...I think it's public the night of the 15th. It's due the 15th. So September 15 my budget submittal will go in and at that point you'll be able to see what I believe this agency needs and can utilize in the next biennium. And then at that point we can have the conversation about how we can move forward. [LR34]

SENATOR SCHUMACHER: Can you give us a--and not now but I mean somewhere in the context of the discussions that are going to happen between now and passing that budget--an idea of what you realistically think you absolutely certainly need within the confines of our financial reality, which I hope is what you propose, and what would be a really good way to do it to not have a Cadillac operation but at least a Chevrolet operation out there and with reasonable degrees of certainty improvements? I mean what would be, to get us a figure, what would really be nice to have if it were a priority? [LR34]

SCOTT FRAKES: Yeah. So again, you've got to give me until September 15 to finalize and submit my budget. It's just two weeks. [LR34]

SENATOR SCHUMACHER: Okay. Well, just keep in mind it really would be nice to know what you really need, because I think you know what you really need. [LR34]

SCOTT FRAKES: I do. [LR34]

SENATOR SCHUMACHER: Okay. Thank you. [LR34]

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SCOTT FRAKES: Okay. [LR34]

SENATOR PANSING BROOKS: Senator Chambers, did you have something? [LR34]

SENATOR CHAMBERS: Yes. Mr. Frakes, I always go last at these gatherings. And I say things and ask questions often for the record. So I'm going to read from a transcript of our hearing April 18 of this year, an exchange between you and me. Then I have a comment or two. And naturally, you'll be able to respond. Because I'm not giving every word on every page, I will give the page from that transcript that I'm speaking from. So if anybody wants to check it, they can do so. Beginning at page 86, Chambers: Director Frakes, much of what has happened with Nikko Jenkins has been made public. He has publicized some of it himself by way of letters to judges, to the media, and to others, so there's no issue of confidentiality here. And the questions that I'm asking are going to the competency of your staff. Where is he being held right now? Frakes: Nebraska Penitentiary. Chambers: And under whose authority is that penitentiary? Frakes: He's there by court order. Chambers: And who runs the penitentiary? Frakes: The warden is Rich Cruickshank, I guess you'd pronounce it, C-r-u-i-c-k-s-h-a-n-k. Chambers: And if it's to be viewed as a pyramid, who sits at the pinnacle, at the very top? Frakes: That's me. Chambers: And you could be analogized to the captain of a ship. A captain may not be aware of his or her own personal knowledge of everything that happens, but the captain is held responsible for whatever happens on his or her ship whether he or she has personal knowledge or not because there's a duty and a responsibility to create a chain of command, farm out responsibility so that the ship is handled the way it should be. In other words, a captain cannot have something very bad go wrong with the ship and say, well, this guy who's supposed to be mopping the deck did it. It's on the captain. Now when Nikko Jenkins winds up with several keys, first of all, is he a magician? Can he make things out of nothing? Can he make them materialize? Frakes: I don't believe so, no. Chambers: If he came into possession of keys, somebody either gave those keys to him or he got them from somebody. Would you agree? Going to page 87. Frakes: Yes, he did get them from staff. Chambers: How would an inmate obtain an employee's keys? Frakes: Pretty much has to be through the failure of staff to maintain control of their keys, bottom line. Chambers: I'm going to be frank with you. I believe they are deliberately making things available to him, hoping he'll kill himself. Going to page 88. And some of the implements that have been made available to him would have been able to achieve that. Now if he dies in custody, probably a grand jury

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would say, well, there's no wrongdoing. But even people who think that he should be locked up, and some think he should just be done away with any kind of way it would happen, they still don't think that he should come into possession of keys and be able to swallow several of them. He should not have been able to obtain the badge of a guard. Frakes: Officer. Chambers: There was one time when there was a restraint that he managed to get when he was going to take a shower or coming from one that he used to try to hang himself with. What action is taken to make sure those things don't happen? See, if it happens once then maybe somebody could have let down. For these things to continue happening, I think the responsibilities are on your doorstep because you're not doing what was needed to keep that from happening. So if you had an employee and he or she continues to have derelictions, how long would it take before you terminated that employee? Frakes: It would depend on what the actions were, what the finding of the individual investigations were. There's a need for progressive discipline. It's...you know, we have a state system.... Chambers: If you were your boss, would you fire you? Frakes: For what's happened to Mr. Jenkins? Chambers: Yes. Frakes: No, I wouldn't fire me for that. Chambers: Nobody has been fired. Frakes: Going to page 89. No, no. Action has been taken. Chambers: So then that means that what is being done there is not considered seriously. It's not a very serious thing that he would wind up with an employee's keys. Frakes: It is very serious, the thing that he ended up.... Chambers: But you didn't fire the employee. Frakes: No. Chambers: And obtained the badge off an employee's jacket, that's not considered serious either, is it? Frakes: That is serious and.... Chambers: But you didn't fire the employee, did you? Frakes: It does not rise to the level of termination. Chambers: But sometimes if an inmate spits on a guard, that's an assault. Frakes: Yes. Chambers: I think what you're doing out there is insane. There is no proportionality. Anything an inmate does, it can be a verbal threat, it can be throwing a piece of paper and that's an assault, and a punishment can be imposed. But an employee can lose his or her keys to a man who is under the tightest type of confinement that's possible; the employee continues to work. Are you so desperate for people that you have these totally incompetent people? You don't think that was recklessness on the part of these employees to lose--going to page 90--possession of these things that I've mentioned? And there were others. How would a man in his situation get a razor blade more than once? Does he manufacture razor blades? Frakes: No, I don't think he's got the capability to manufacture a razor blade. Chambers: What kind of surveillance do they have him under? Frakes: 24/7. Chambers: And yet he can get these objects, these items, and nobody is fired. Frakes: So far.... Chambers: In the prison you ran in

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Washington, this wouldn't have happened, would it? Frakes: Yes, it would have. Chambers: It did happen? Frakes: Didn't specifically happen, but staff made bad decisions. Staff made mistakes. Going to page 91. Chambers: Repeatedly with the same person? Frakes: But it isn't the same staff member. I think maybe that's the misconception. He's under 24/7 coverage so think of the number of staff it takes to watch him over a seven-day period. It's not one. Chambers: Then when you have this continuous incompetency by staffs in this very critical situation, that reflects on you. You don't know how to assign staff. Then when they do something that I consider to be a very serious infraction, you just say ho-hum. Frakes: I did not say that, Senator Chambers. Chambers: Well, they're still working. Frakes: But you don't terminate someone because they make a single mistake. Chambers: If they make a mistake? Frakes: A single mistake. Chambers: A mistake is three plus three are seven. That's a mistake. These were not mistakes. Frakes: You believe they were willful. I do not believe they were willful. Chambers: Were they stupid? Frakes: My staff are not stupid. Chambers: Then it wasn't stupidity. Frakes: It was an error. Chambers: page 92--An error? Frakes: Yes. Chambers: Do you train them on what they are to do when they're dealing with this situation? Frakes: Yes. Chambers: Did that violate their training? Frakes: Yes. Chambers: Were you ever in the military? Frakes: No, I was not. Chambers: But you can imagine from things you've heard that there is such a thing as discipline and a chain of command. Frakes: Yes, sir. Chambers: And the one at the top is ultimately responsible. That would be you. This job has outgrown you, hasn't it? Frakes: No. Chambers: You can't figure how to handle it, can you? Frakes: I'm satisfied with my performance so far. Chambers: Well, naturally, you would be because you don't have a very high standard. Suppose one of your people made, as you call it, a mistake and left a door open that shouldn't have been open and 20 inmates escape. That would just be a mistake, wouldn't it? Frakes: page 93--Now you describe a situation that could lead to termination. Chambers: It what? Frakes: You've just described a situation that could lead to a staff member being terminated. Going to page 93. Chambers: I think enough is in this record to make my point. I think there is not only incompetency. I think there's willfulness and I think it's with you being complicit and having given tacit approval of all these things happening. Now these staff members have made it bad on you. You are the one who is incompetent. You are the one who knows that these things have happened over and over and over, and you have done nothing to prevent it from happening. You're the captain of the ship. You're on leave while the ship is foundering in the harbor. I'm not through with this by a long shot. Going to page 98. Chambers: Mr. Director, you've heard the term "deterrence." Frakes: Yes.

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Chambers: What does that term mean and how does it apply? Frakes: It's those things that encourage--I'd say "encourage" is the best word I can think of--people to act in different ways. So the laws serve as deterrence. The sanctions that are part of our laws serve as deterrence. Chambers: So it's actually to prevent somebody from behaving in a certain way that's not acceptable, to deter them. Frakes: That's (inaudible). And for some, it's not clear what the deterrence is because they know all of those pieces and still engage in the behavior. Going to page 99. Chambers: The actions of these people were so reckless, so disregarding of any standard of care that it rises to the level of an intentional act. And when one person does it and gets away with it, another person does it and gets away with it, a third one does it and gets away with it, the person in charge of maintaining discipline has not relied on the principle of deterrence but has, rather, encouraged and facilitated this misconduct by allowing those who engage in it to get away with it. These acts by your people were not done in a corner, so to speak; they were known. If your intention, and I'm going to say that your failure to act rises to the level of intention as I view it, if your intention is to have Nikko Jenkins kill himself, if he does I'm going to ask for a federal investigation to have you charged because you knew. You have warning. You could anticipate what was going to happen. You did nothing to prevent it from happening when you had the authority and the wherewithal to prevent it. So if anything happens to him, I want you to know that I, using whatever tools are available under the law, intend to come after you. You could stop this from happening today, Mr. Director, if you chose to, but you have chosen not to and that's the way I see it. Frakes: I think you should do exactly what you described. I believe the record will speak for itself. Going to page 100. Senator Chambers, I care about everyone that's under my charge and I care about the 2,400 staff that work for this department, and I care about the citizens of Nebraska. I don't want another situation like occurred with Nikko Jenkins. I don't want Nikko Jenkins to hurt himself. I certainly don't want him to kill himself. And I can continue to sit here and talk and it's just me talking, so again there's certainly a record of the actions that I've taken in the last few months, the actions taken with the staff that made mistakes, the efforts to ensure that Nikko Jenkins gets the help he needs. Chambers: But you have failed to take action that I think should have been taken against those employees. You're letting them get away with it. Mr. Frakes, when was the latest self-harm incident involving Nikko Jenkins? [LR34]

SCOTT FRAKES: It was earlier this month. I don't remember the exact (inaudible). [LR34]

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SENATOR CHAMBERS: August 1. And you were notified when it happened, weren't you?
[LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: And his...this was a very serious self-mutilation, wasn't it? [LR34]

SCOTT FRAKES: Not as...I'm not going to minimize it. He cut his throat with a razor blade.
[LR34]

SENATOR CHAMBERS: He cut his throat with a razor blade and he was taken to the hospital.
[LR34]

SCOTT FRAKES: He was. [LR34]

SENATOR CHAMBERS: And how many sutures did it take to close that cut? [LR34]

SCOTT FRAKES: I believe it was approximately 40. [LR34]

SENATOR CHAMBERS: 42. How did he get that razor blade? [LR34]

SCOTT FRAKES: It has not been determined. He has alleged that it was a staff member that
gave it to him. [LR34]

SENATOR CHAMBERS: Is there a guard posted at his door all the time? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: Is there a guard posted at his door all the time? [LR34]

SCOTT FRAKES: There's an officer posted, yes. [LR34]

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SENATOR CHAMBERS: And he's under surveillance 24 hours, 7 days of the week. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: That's what you said. If a guard is there, you've told me that Mr. Jenkins does not manufacture razor blades. Do you still hold to that? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: And in 2015, wasn't there a sharp object restriction placed on Mr. Jenkins by the mental health staff along with the custody staff in 2015, keep him from getting sharp objects? You weren't aware of that? [LR34]

SCOTT FRAKES: Not saying I'm not aware of it but... [LR34]

SENATOR CHAMBERS: Well, I guess since I'm not in that area I can know more about it than you do. Is a razor blade considered contraband? [LR34]

SCOTT FRAKES: Depends on the setting. Depends on again the custody level. And if there's a sharps restriction then it's controlled very closely or should be controlled very closely. The man still has a right to shave so they have to do that. [LR34]

SENATOR CHAMBERS: So if he wound up with a razor blade, would that razor blade be considered contraband? Before you answer, if it wasn't, then when he was taken after this incident to a disciplinary hearing, he was charged with possessing contraband. So why would they charge him with possessing contraband if it wasn't contraband? [LR34]

SCOTT FRAKES: It was contraband. [LR34]

SENATOR CHAMBERS: Now if I brought contraband into the prison, the law says any person, I've committed a crime. You're aware of that? [LR34]

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SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: And what would happen if I was caught bringing contraband into the institution? Would I be arrested? [LR34]

SCOTT FRAKES: You're a staff member or are you a public? [LR34]

SENATOR CHAMBERS: I'm a citizen. [LR34]

SCOTT FRAKES: As a citizen. It would depend on the contraband and there would be notification made to law enforcement if it was something that rose to a level, so. [LR34]

SENATOR CHAMBERS: So if it were an employee bringing contraband in, what would happen? [LR34]

SCOTT FRAKES: Again, it would depend on the contraband. But bringing in a weapon, bringing in drugs there would be a referral to law enforcement, most likely would be termination (inaudible). [LR34]

SENATOR CHAMBERS: Now do you know the identity of the one who gave him the razor blade? [LR34]

SCOTT FRAKES: I know who the allegations were made against. I don't know that in fact that occurred. [LR34]

SENATOR CHAMBERS: And...but you've been told who gave him the razor blade by somebody, weren't you? [LR34]

SCOTT FRAKES: I'm aware of the allegations made by Mr. Jenkins. [LR34]

SENATOR CHAMBERS: Okay. [LR34]

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SCOTT FRAKES: And that there's a criminal investigation that's currently underway. [LR34]

SENATOR CHAMBERS: Is that individual who was alleged to have done this still working for the department? [LR34]

SCOTT FRAKES: No, they had given two weeks' notice and had left employment prior to Mr. Jenkins making the allegation. [LR34]

SENATOR CHAMBERS: So it's believed that there's more than just a naked allegation. For people who don't realize it, an allegation is just an accusation without proof. It doesn't mean it's true or false. It just means that it hasn't been established by proof. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: Now the reason I read that report...I meant from the transcript, and I gave copies of pictures to my colleagues and I asked them not to make them available to the media, you said that you were not going to allow things to happen for him to be harmed. Let me not say what you said. Let, as you said, let the record speak for itself. We had this hearing only three and a half months before this incident happened that I just described. It should have been fresh on your mind. There are also photographs of the numerous, serious lacerations, cuts, carvings on his body in Housing Unit 4. And he was, after he was taken out of that medical unit at NSP, he was put back in Housing Unit 4, wasn't he? [LR34]

SCOTT FRAKES: He was. [LR34]

SENATOR CHAMBERS: And that's where numerous lacerations and self-mutilations occurred, wasn't it? [LR34]

SCOTT FRAKES: Yes, it is. [LR34]

SENATOR CHAMBERS: And wasn't it Deputy Director Sabatka-Rine, was she the one who made the decision that he should go back to Housing Unit 4 or you? [LR34]

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SCOTT FRAKES: I'll take responsibility. [LR34]

SENATOR CHAMBERS: Okay. But she was warden when a determination was made that Jenkins would not have a transitional plan but he would be released right into north Omaha right out of solitary. That was her decision. And now she's deputy director of Corrections, correct? [LR34]

SCOTT FRAKES: She is. [LR34]

SENATOR CHAMBERS: Now there were two individuals. I'm just about through. You're familiar with Larry Wayne. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: He used to work for the Department of Corrections, didn't he? [LR34]

SCOTT FRAKES: He did. [LR34]

SENATOR CHAMBERS: He was let go when you came, wasn't he? [LR34]

SCOTT FRAKES: He retired about a month or so after I arrived, yes. [LR34]

SENATOR CHAMBERS: And under pressure, because the committee on which some of us serve recommended that he be removed. You're aware of that recommendation, weren't you? [LR34]

SCOTT FRAKES: I am. [LR34]

SENATOR CHAMBERS: Mike Kenney, you're familiar with him. [LR34]

SCOTT FRAKES: I am. [LR34]

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SENATOR CHAMBERS: And he was let go also, wasn't he? [LR34]

SCOTT FRAKES: He retired as well. [LR34]

SENATOR CHAMBERS: Did that committee make a recommendation that he go also? [LR34]

SCOTT FRAKES: The committee did make that recommendation. [LR34]

SENATOR CHAMBERS: Both of these men are now receiving money from the Department of Corrections for work they're doing inside the penitentiary, aren't they? [LR34]

SCOTT FRAKES: I'm not sure about the funding source, but they are working for...I get these mixed up. It's either Christian Heritage or Prison Fellowship. [LR34]

SENATOR CHAMBERS: So two men who were let go because they didn't do the job they should, pursuant to the recommendation of an investigative committee of the Legislature, are now back within the penitentiary providing services to inmates. For me, that shows not just disregard for the Legislature, not just contempt for the Legislature but defiance. And I have put myself under a time restriction and I hope I haven't gone much over it. But I'm stopping now, not because I don't have more to say but, as Abraham Lincoln said, the promise being made must be kept. I think the job has outgrown you. That's all I have, Madam Chair. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Chambers. We have... [LR34]

SENATOR CHAMBERS: Oh, one other thing because I meant to give him notice. I am preparing to ask for that federal investigation. And I think you are trying to have things done so Nikko Jenkins will kill himself, and you almost succeeded this time. And I say "you" because I make you responsible, because you knew and you acknowledged and admitted enough things in April. [LR34]

SCOTT FRAKES: And the record will still speak for itself. I appreciate that, though, Senator Chambers. [LR34]

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SENATOR CHAMBERS: I'm through. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you, Senator Chambers. I think that we have determined that we are not calling any further witnesses. I think we're through with your testimony today, Director Frakes. Thank you for coming to appear before us and thank you for your efforts to respond to all the questions. We have discussed that we are not going to pull any other witnesses up today unless there's somebody that you all want to question or somebody that...okay. Seeing none, we're closing the hearing now. Thank you. [LR34]