

August 8, 2006

Sheriff Timothy Howard  
Erie County Sheriff's Office  
10 Delaware Avenue  
Buffalo, New York 14202

Re: In the Matter of Ralph Phillips

Dear Sheriff Howard:

The Commission conducted an investigation into the April 2, 2006 escape from custody of Ralph Phillips, an inmate of the Erie County Correctional Facility. Commission staff conducted an extensive investigation spanning four months, including review of a host of reports, a large volume of records and all of the written statements relevant to this event. In addition, Commission staff conducted interviews with Erie County Sheriff's Office, Jail Management Division and Erie County Correctional Facility uniformed and civilian personnel. The enclosed report includes the Commission's account of the events and conditions in the Erie County Correctional Facility on April 2, 2006 and its findings in this matter, followed by actions required by your office and recommendations offered for your consideration.

This represents the Commission's final report in this matter and as such it is subject to New York's Freedom of Information Law. You are required to act immediately to correct the *Minimum Standards* violations and violations of law cited herein. The actions which you have taken and any plan of future action to come into compliance shall be forwarded to the Commission by **September 30, 2006**.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Daniel L. Stewart  
Chairman

cc: Superintendent Donald Livingston

**NEW YORK STATE COMMISSION OF CORRECTION**

**Albany, New York**



**In the Matter of the Escape of Ralph Phillips  
an Inmate of  
the Erie County Correctional Facility**

**August 2006**

**DANIEL L. STEWART**  
*Chairman*

**FREDERICK C. LAMY**  
*Commissioner*

**FRANCES T. SULLIVAN**  
*Commissioner*

## **PREFACE**

\_\_\_\_\_Pursuant to Article 3, Sections 45(2) and 45(3) of the New York State Correction Law, Commission staff conducted multiple site visits to the Erie County Correctional Facility to investigate the escape of Ralph Phillips on April 2, 2006.

This report details the investigation conducted by Commission staff members Deane McGeary and William Benjamin and was compiled and written under the direction of Donald Nadler, Deputy Director of Operations and James Lawrence, Director of Operations. It recounts and explains the events of the incident and presents the Commission's findings, the resulting required actions and recommendations.

## **I. EXECUTIVE SUMMARY**

On April 2, 2006 at approximately 5:00 a.m., 16 inmates arrived at the Erie County Correctional Facility kitchen from the 'Kilo' housing area. Inmate Ralph Phillips was one of the inmates scheduled for work that morning. Between his arrival in the kitchen at 5:00 a.m. and approximately 5:14 a.m., Phillips climbed on top of the large storage coolers located within the front storage room and exited through a breach in the roof that had been previously cut. Investigators believe that Phillips made the breach in the metal roof over time by splitting a seam in the roof with a 'bar-type' commercial can opener, then tearing the roof open to create a hole approximately two feet square. Once this was accomplished, a layer of gypsum board roofing material was broken out and the rubber roof membrane was cut. Phillips then traversed the facility roof to an area proximal to the pitched skylight above the training Lieutenant's office and then, as evidenced by deeply compressed footprints in the ground, climbed down and/or leaped to the ground. Video surveillance cameras indicate that Phillips then crossed the visitor's parking lot and proceeded toward Walden Avenue, bypassing an outdoor security post while the post officer was on a break but not relieved.

While traversing the facility roof, Phillips triggered a valid, (later verified), roof mounted motion detection alarm. Based on an independent review of the facility's digital alarm records, this alarm was acknowledged and deactivated by facility control room staff without notifying appropriate personnel. The rooftop microwave motion detection system was in poor repair and the subject of multiple malfunction complaints by staff, malfunction that were confirmed by the private electrical contractor following Phillips' escape but were never addressed by the facility administration or the Sheriff's Department. At the time of the escape, it did, however, detect Phillips on the roof of the facility.

At approximately 5:15 a.m., Civilian Cook Kevin Webster noted that Phillips was not performing his assigned kitchen duty and began a search of the kitchen area. Following an extensive search of the kitchen, food service personnel reported Phillips missing from the kitchen. This report triggered a facility response including an emergency lock-down and population count at 5:40 a.m., followed by internal and exterior facility searches. Notification to

administrative, Sheriff's Office Patrol Division , local police department and State Police Troop 'A' occurred at 6:12 a.m., one hour after Phillips was discovered missing.

By 7:15 a.m. search teams were dispatched to set up a perimeter that eventually extended out five miles from the facility. The initial search and apprehension effort continued through the morning then declined throughout the afternoon. Facility staffing and operations returned to status quo levels by the beginning of the 3 p.m. to 11 p.m. shift. A multi-state regional law enforcement alert was not issued until 2:40 p.m., April 2, 2006.

As of this report date, despite efforts by the State Police and multiple local jurisdictions, Phillips has evaded recapture. Since the escape, Phillips is suspected to have committed several burglaries and vehicle thefts. He is also the prime suspect in the June 10, 2006 shooting of State Trooper Sean M. Brown in the town of Veteran in Chemung County.

It is not known for how long Phillips had been planning an escape or working on breaching the facility roof, but based upon visual evidence, it appears to have been a prodigious effort. As he had never been incarcerated in the facility before, it is unlikely that he was previously aware of the physical plant's vulnerability in this area. More likely is that Phillips' negligent assignment as a kitchen worker, the obvious lapses in security and supervision in the kitchen, and the ready availability of contraband tools and tool making materials in that locale made an escape opportunity obvious.

Commission and sheriff's investigators concur as to how the facility roof was breached. This theory is supported by the fact that officers and sheriff's investigators reported finding a 'bar-type' commercial can opener beneath the hole in the roof. Given the can opener consists, in part, of a 16 to 18 inch long 1" square solid steel bar, it appears plausible that this piece of equipment would be heavy and durable enough to force between and pry apart the roof seams.

The Erie County Correctional Facility, located on Walden Avenue in Alden, New York

was constructed in 1985 to replace the County's former correctional facility which is now owned by the State of New York and operated as Wende Correctional Facility. The current design capacity of 798 beds is the result of alterations and an expansion of the main facility, completed in 2000 to relieve overcrowding conditions at the Holding Center in downtown Buffalo. The facility was originally utilized for county level offenders sentenced up to one year and for detaining parole violators, pending revocation proceedings. Since the expansion, the Commission of Correction has granted variance relief from 9 NYCRR Part 7040 Maximum Facility Capacity. Specifically, the Commission has incrementally approved the addition of beds within certain established housing areas and by approving new temporary housing space. The combined effect of the variance relief was an increase in the total facility capacity to 1,013 beds. Whereas initially the operating authority of the facility emanated from the Erie County Executive, Erie County consolidated operation of both facilities under the authority of the Erie County Sheriff's Jail Management Division in 2001. Currently, the Correctional Facility incarcerates offenders including those awaiting trial, those sentenced to one year or less, including intermittent sentences, alleged parole violators, civil commitments and federal inmates boarded for revenue received from the U. S. Marshal's Service.

Since at least August 2005, through the time of Phillips' escape in April 2006 and continuing through to the present, the Erie County Correctional facility has been severely and chronically understaffed, in violation of 9NYCRR , *Minimum Standards and Regulations for the Management of County Jails and Penitentiaries* ( hereinafter, *Minimum Standards*) Part 7041 Staffing Requirements. Due to the extent that such understaffing is aggravated by crowding, the Sheriff's Office is willfully operating the facility in an unsafe manner, in violation of NYS Correction Law§500-c. Staffing shortages in 2005 and 2006 have routinely exceeded 100 staff in the aggregate at both Erie County facilities, many of these supervisory or managerial positions. A mandated security post in the kitchen locale at the Erie County Correctional Facility from which Phillips escaped was vacant on April 2, 2006 due to these violations.

Ralph Phillips is a 44-year old male whose criminal history as an adult dates back to

December 1978. From then until January 2006, a period of approximately 27 years, Phillips was convicted of approximately 13 felony charges, seven misdemeanor charges and one violation. It is estimated that these convictions resulted in Phillips having been periodically incarcerated within local correctional facilities and Department of Correctional Services' facilities for a cumulative period of 24 years. His last prison incarceration began in November 1992 for a sentence of 10 years to 20 years. Phillips was paroled November 18, 2005. His maximum release date was August 12, 2012. The Division of Parole executed a warrant for his retaking and detention on January 6, 2006. Phillips was a dangerous felon and a threat to public safety, which was or should have been known to the Erie County Sheriff's Office Jail Management Division.

The Commission investigation into the escape of Ralph Phillips from the Erie County Correctional Facility revealed serious managerial and executive level operational policy and procedure breakdowns of proportions which rise to the level of willful negligence and professional incompetence. These include, but are not limited to, operation of a large jail complex in an egregiously overcrowded condition without any action to relieve such conditions of confinement; operation of those same facilities in a dangerously understaffed condition such that correction officers and deputy sheriff vacancies have risen above 100 on occasion in 2005/2006; intentional abandonment of mandated security posts, particularly in security-sensitive areas, including the area from which Ralph Phillips escaped; negligent and apparently arbitrary inmate classification and housing area assignment adverse to the safety and security interests of the facility, its staff and the public and in violation of state law and regulations; lack of exercise of security management such that there is virtually no accountability up and down the line of authority and responsibility for inmate security and supervision and contraband control in sensitive areas, including the one from which the escape occurred; inadequate and ineffective maintenance and use of facility alarm systems; multiple breaches of generally accepted security protocols of inmates in correctional settings, all of these culminating in, and a proximate cause of, the escape of an inmate the facility administration knew or should have known was a dangerous felon, a threat to public and law enforcement safety, and who remains at large as the prime suspect in the shooting of a New York State trooper subsequent to his escape.

New York State Correction Law §500-b and *Minimum Standards* Part 7013 require newly received inmates to be prudently classified as to their public safety and institutional security threat and as to their service needs when determining where and under what restrictions and supervision to house them. The total classification score for Phillips failed to reflect his entire criminal history, a violation of Section 7013.8(c)(1). For the classification instrument item pertaining to criminal history, Phillips received a score of four points. This would be the same score that an inmate with one non-violent felony conviction would receive. Entries from his criminal history indicating he was a career felony offender and misdemeanor offender who had spent a cumulative total of 24 years in state prison were not acknowledged or scored. Had this information been considered he would have received a score of 10 for this item alone which would have resulted in a minimum total score of 18. Subsequently, this score would have resulted in a maximum level security designation. Nevertheless, on February 3, 2006, Phillips was transferred to and housed in a low-security dormitory reserved for largely unsupervised kitchen workers with access to areas of the facility which were unsupervised by trained, uniformed staff due to staff shortages. There is evidence to the effect that Phillips was afforded such a transfer without any review or re-application of the regulations governing classification and housing assignment in return for his withdrawal of grievance complaint(s) regarding essential services such as food, grievance complaint(s) that likely would be appealed to the attention of the Commission in Albany.

The kitchen area at Erie County Correctional Facility from which Phillips escaped was unsupervised and unsecure. Between 15 and 24 inmates are routinely assigned as kitchen workers depending upon time of day and level of meal preparation activity, which includes preparation and delivery of 2,700 meals per day including special medical and religious diets. Inmates regularly worked in a variety of food preparation areas, offices and storerooms with the permission of civilian food service workers but largely unsupervised. Moreover, inmate workers exercised unchecked access to such areas without the knowledge of civilian food service workers and without any supervision for extended periods. One of these areas included a storeroom

equipped with upright refrigerated units or coolers which extended up to the underside of the kitchen roof and to which inmate workers had unfettered and unsupervised access. Two prior incidents involving the unsupervised presence of inmate(s) atop the cooler units were documented. The first occurred in May 2005 in which inmate(s) were found to be brewing and consuming alcohol atop the cooler units. The second incident took place in February 2006 involving the same activity. Despite reports up the chain of command to the present Sheriff, no action was taken to improve security in this area.

The failure of the Sheriff's Office Jail Management Division to fill the mandated security post in the kitchen virtually assured that there was no uniformed correction officer supervision for these inmates. Commission investigators also found that facility policy failed to include language directing any security staff to routinely tour the kitchen for purposes of assessing and correcting inmate worker supervision issues and security related deficiencies. It was further verified that post orders do not exist for line supervisors and watch commanders and neither have never been tasked with the responsibility of touring the kitchen area. Moreover, the Commission has verified that requests for filling of the mandated kitchen security post from the CSEA Local 815 have been made as early as February 1999 and as recent as until March 28, 2006 to no avail. On October 18, 2005, the Commission issued a Directive to Erie County Sheriff Timothy Howard citing his facilities as unsafe by reason of his failure to comply with state regulations for minimum staffing and inmate classification. Sheriff Howard was ordered to reduce the population of both Erie County facilities to bring inmate counts into line with the dangerously reduced staffing level at the facility and to enable compliance with inmate classification regulations. On November 21, 2005, Erie County agreed to a compliance plan in satisfaction of the Commission's Directive for restoration and deployment of staff designed to restore mandated security/inmate supervision posts which included the mandated post in the Correctional Facility kitchen. The Sheriff in fact failed to comply with the agreed-upon plan, and only redeployed staff to the required kitchen post after the escape of Ralph Phillips in April 2006.

Based upon the findings of the investigation into the escape of Ralph Phillips, the Commission concludes that the Erie County Correctional Facility, as presently led, organized and managed by the Erie County Sheriff, is not a safe, secure or stable institution, nor is it sufficiently capable of fulfilling its role in the public safety establishment of Erie County. The executive leadership and management of the Erie County Sheriff's Office negligently and wrongfully caused a preventable public safety emergency in which an inmate entrusted to their custody escaped and thereafter became the prime suspect in the shooting of a New York State Trooper. Timely and compliant attention to the Actions Required as set forth in the Commission's investigation report is absolutely essential to public safety and will undoubtedly be the subject of further Commission action.

## **II. METHODOLOGY**

This investigation was initiated as a result of the reporting of an escape incident involving inmate Ralph Phillips by phone to the Commission's Officer of the Day at approximately 8:00 a.m. on April 2, 2006. The New York State Commission of Correction received reportable incident forms SCOC-011 and SCOC0-13 on April 2, 2006.

The information included in this report is based on investigative work conducted April 3, 2006 through July 27, 2006 which included a thorough review of:

- Interviews conducted by Commission staff with the following Erie County Correctional Facility staff and inmates:

### **Staff**

Superintendent Donald Livingston

Chief Ronald Heist

Captain Douglas Bienko

Lieutenant Daniel Leary

Lieutenant Charles Martina

Lieutenant Ruth Stroka

Correction Officer Matthew Dils

Correction Officer Amy Kosinski

Correction Officer Mark Alderich

Correction Officer William Whalen

Correction Officer David Padilla

Correction Officer Thomas Bollman

Lieutenant Marcia Dills	Correction Officer H. Bruce Franks
Sergeant Ronald Voll	Correction Officer Edward Harmon
Sergeant Timothy Love	Correction Officer Elizabeth Gilbert
Assistant Food Manager Joel Gregorio	Deputy Richard O'Neil
Cook Kevin Webster	Deputy John Biscotto
Cook Thomas Whalen	

**Inmates**

_____ Perry Turner	Mark Buffington
Raymond Keith	Ray Acker
David Valasquez	Gary Lang (post-release)

- Facility records including but not limited to: facility policy, incident summary and investigative documentation, written staff statements, facility logs, security inspection sheets, classification records, grievance records, staff schedules, training records, video documentation and alarm system data.
- Erie County Sheriff's Patrol Services Division records including but not limited to: police reports, dispatch records and evidentiary records and photos.
- Erie County work order and product specification documentation obtained pursuant to subpoena from O'Connell Electric Company.
- Alarm data analysis information and technical assistance solicited from Norment Security Group Inc.
- Product specification and technical assistance solicited from Southwest Microwave Inc.
- Inmate grievance and labor management meeting documentation subject to subpoena from the Correction Officer's CSEA Local 815, Erie Correction Unit.
- Unsolicited correspondence from Sheriff's Office employees.

### **III. INVESTIGATION**

On April 3, 2006, Commission staff members Terrence Moran, William Benjamin and Deane McGeary responded to the facility for purposes of providing technical assistance and monitoring the initial apprehension efforts being undertaken by the Jail Management and Patrol Services Divisions.

Satisfied that a proper response had been initiated by the Sheriff's Office, Commission staff turned their focus toward reviewing the measures taken to ensure the facility, specifically the kitchen, was secure. In doing so, Commission staff viewed the temporary repairs of the roof breach and toured the kitchen area. During the tour, Commission staff noted an excess of spare or discarded metal equipment stored in the front storeroom. Much of this equipment, if accessible to inmates, was capable of providing contraband tools or weapons and/or the material to fashion tools and weapons, and consumed storage space that could otherwise be used for routinely used equipment and food storage. This constituted a violation of Correction Law §500-c, Custody and Control of Inmates and would later be determined to have facilitated Phillips' escape. Based on this observation, Commission staff recommended that the facility immediately remove any unused equipment from the kitchen, begin securing the storage area, close a second breach in the roof found above the dishwasher, and fence off the area atop the coolers from where Phillips appeared to have escaped.

By the afternoon of April 3, 2006, Commission staff began investigating the incident itself. Commission investigators began a review of facility documentation related to the escape up until that point and began interviewing inmates and facility staff. The investigation continued over the course of the ensuing four months.

#### **Facility Overview**

The Erie County Correctional Facility, located on Walden Avenue in Alden, New York was constructed in 1985 to replace the County's former correctional facility which is now owned

by the State of New York and operated as Wende Correctional Facility. The current design capacity of 798 beds is the result of alterations and an expansion of the main facility, completed in 2000 to relieve overcrowding conditions at the Holding Center in downtown Buffalo. The facility was originally utilized for local offenders sentenced up to one year and for detaining parole violators pending revocation proceedings. Since the facility expansion, the Commission of Correction has granted variance relief from 9 NYCRR Part 7040 Maximum Facility Capacity. Specifically, the Commission has incrementally approved the addition of beds within certain established housing areas and by approving new temporary housing space. The combined effect of the variance relief was an increase in the total facility capacity from 798 to 1,013 beds. Whereas initially the operating authority of the facility emanated from the Erie County Executive's office, following the expansion, Erie County consolidated operation of both facilities under the authority of the Erie County Sheriff's Jail Management Division. Currently, the Correctional Facility incarcerates offenders including those awaiting trial, those sentenced to one year or less, including intermittent sentences, alleged parole violators awaiting parole revocation proceedings, civil commitments and federal prisoners boarded for the U.S. Marshal's Service in order to generate county revenue.

Since at least 2005, through the time of Phillips' escape in April 2006 and through to the present, the Erie County Correctional facility has been severely and chronically understaffed in violation of *Minimum Standards* Part 7041, Staffing Requirements such that multiple mandated security posts have been vacated, abandoned or abolished, including the security post in the kitchen locale from which Phillips escaped.

### **Phillips' Criminal Background and Incarceration History**

Ralph Phillips is a 44-year old male whose criminal history as an adult dates back to December 1978. From then until January 2006, a period of approximately 27 years, Phillips was convicted of approximately 13 felony charges, seven misdemeanor charges and one violation. It is estimated that these convictions resulted in Phillips having been intermittently incarcerated within local correctional facilities and Department of Correctional Services' facilities for a

combined period of least 24 years. His last prison incarceration began in November 1992 for a sentence of 10 years to 20 years. Phillips was paroled November 18, 2005. His maximum release date was August 12, 2012. The Division of Parole executed a warrant for his retaking and detention on January 6, 2006. Phillips was a dangerous felon and a threat to public safety and this was known or should have been known by the Erie County Sheriff's Office.

### **Phillips' Admission to the Erie County Correctional Facility**

Phillips was not arrested for new charges. Therefore, in accordance with Erie County Sheriff's Office Jail Management Division's practice in early 2006, parole officers were required to deliver parole violators directly to the Erie County Correctional Facility. Phillip's admission to the Erie County Correctional Facility occurred in that manner on January 6, 2006.

During the admission process, an initial screening and risk assessment was completed for Phillips. This assessment was unremarkable, noting that Phillips need only be assigned to the Classification Unit (intake segregation) with no restrictions. However, following his admission, Phillips was not assigned to segregated initial classification, rather placed directly in Delta Unit, a secure, individual-cell general population housing area. Such a housing assignment was in violation of Section 7013.8(a) and conflicts with facility policy 05-09-00 which defines classification housing as special (segregated) housing used for the purpose of initial classification or reclassification procedures. This routine violation of *Minimum Standards* was and continues to be a *de facto* practice at Erie County Correctional Facility, because the facility is so crowded that there is no availability of segregated intake housing while trained classification staff study inmate conditions and backgrounds. Consequently, new inmates are placed in any available housing that appears to be commensurate with their security risk. Classification assessment and security threat scoring occurs after housing placement at the Erie facility, not beforehand, as required by state regulations.

## **Classification Procedures and the Classification of Phillips**

Commission staff examined classification procedures during interviews of the Classification Lieutenant and the administrators. The following deficiencies in policy, procedures and facility staff practices were discovered, all of which constitute violations of *Minimum Standards* or state law:

Phillips was classified five days after reception on January 11, 2006 and as a result, remained in Delta Unit. The classification instrument utilized by the facility is a point scale model. His total classification score was 12. However based on this score, Commission staff were unable to determine from this scoring whether Phillips was required to be designated a minimum or medium security inmate. It was noted that the classification instrument scoring criteria, (zero to 15 points), was the same for both minimum and medium security designations. Facility policy fails to provide guidance to classification staff with respect to determining the security designations within the entire scoring range, a violation of §7013.3(a)(2). The Classification Lieutenant and the Superintendent claimed that a ‘typographical’ error existed on the form. However, when questioned as to what scoring range determined the medium level designation, a definitive answer could not be given. Commission staff were told by managers and staff that only two security classification designations exist at the facility. However, when questioned, facility managers gave conflicting accounts regarding which designation other than ‘minimum’ existed. As a practical matter, it appears there are multiple security designations linked to sentence durations and *ad hoc* determinations of individual inmate supervision requirements:

- Inmates scoring 15 or less, with less than 90 days to serve and with no discipline record and no detainers are eligible for housing in Yankee Building, a low security setting;
- Inmates scoring 15 or less, sentenced to six months or less with no discipline record and no detainers are eligible for housing in Tango Building, a low security setting;

- Male inmate kitchen workers are assigned to Kilo dorm.
- Housing pods, A, B, C, D are deemed more secure and are used for housing inmates including, but not limited to, federal inmates and inmates subject to disciplinary segregation regardless of classification score.
- Inmates that demonstrate problems adjusting to dormitory housing are routinely moved to individual cell podular housing, but not necessarily the more secure A-D pods.
- Inmates with medical or mental health special needs and those identified as likely to be victimized in general population are assigned housing in the Medical housing area.

As dormitory housing provides inmates with 24 hour access to one another, such housing is generally reserved for inmates of lower security designation than a facility's maximum level. This classification paradigm is viewed by the Commission as a requirement of NYS Correction Law §500-b and is a generally accepted practice by local correctional facilities statewide. For this reason, the Commission limits the percentage of dormitory housing areas local jurisdictions may construct. Such a requirement is not observed by classification and administrative staff at the Erie County Correctional Facility. With exception to Yankee and Tango buildings, Medical housing, Disciplinary Segregation housing and Kilo dorm, once admitted to the facility, inmates are readily assigned to housing areas based primarily on where vacancies exist. Facilities (such as those in Erie County) that are crowded beyond their capacities to operationally adjust to variation in inmate population risk, typically resort to determining housing assignments in this fashion, a consequence that classification law and associated regulations are expressly intended to prevent. Once this eventuates, facility administrations often violate the intent of their own policy (and of law) by having to commingle security designations within housing areas. Other than for inmates that demonstrate problems adjusting to dormitory housing, formal and objective criteria for classification of inmates according to security management need do not appear to exist at the Erie County Correctional Facility. Failure to define such classifications and determine appropriate housing based on formal and objective criteria violates §7013.8(d) and Correction Law §500b(7)(a). This is directly attributable to the fact that the facility is routinely called upon

to house more than 200 inmates above its design capacity together with significant cohorts of inmates held for trial or parole revocation, contrary to its design intent. These conditions played an important role in the improper classification of Phillips and hence his escape. Phillips' classification was never definitively established within limitations of various housing settings and consequently changeable without regard to security management need.

The total classification score for Phillips failed to reflect his criminal history, a violation of Section 7013.8(c)(1). For the classification instrument item pertaining to criminal history, Phillips received a score of four points. This would be the same score that an inmate with one non-violent felony conviction would receive. Entries from his criminal history indicating he was a career felony offender and misdemeanor offender who had spent a cumulative total of 24 years in state prison were not acknowledged or scored. Had this information been considered he would have received a score of 10 for this item alone and which would have resulted in a minimum total score of 18. Subsequently, this score would have resulted in a maximum level security designation. Nevertheless, on February 3, 2006, Phillips was transferred to and housed in a low-security dormitory reserved for kitchen workers who had routine access to unsupervised sectors of the facility when on work assignment.

Commission staff investigated as to whether a classification review took place prior to Phillips' February 3, 2006 assignment to Kilo dorm, the housing area reserved for kitchen workers. Upon reviewing Phillips' classification record, Commission staff could find no indication that a classification review was prompted or occurred in accordance with §7013.9. Section 7013.9 requires a classification review to be conducted when one of the following conditions occur:

- The inmate is involved in a serious unusual incident or exhibits adjustment problems which threaten his/her safety or the safety, security or good order of the facility.
- A written request, including justification(s), is made by facility staff to alter or review the inmate's classification status based on new information or exhibited

positive or negative behavior.

- The facility medical director discloses relevant information about the inmate pursuant to Section 7013.10 that has not already been considered in determining the inmates' classification status.

The only written record that exists is in the housing location history which indicates that Phillips was transferred from one of the "secure" inner pods, Delta, to Kilo Dorm on February 3, 2006. There is nothing in the record that would invoke a classification review for Phillips, even though his classification was effectively lowered without such a review on February 3, 2006. This record does in fact indicate that Phillips was transferred due to "operational requirements." The classification lieutenant stated to Commission investigators that he recalled Phillips submitted a written request to work in the kitchen, citing a "problem with his diet." A copy of this request should have been included in the classification record pursuant to §7013.12(b)(8). It was not. Nevertheless, his request in and of itself should not have resulted in a change in his classification status given his extensive criminal history combined with a lack of familiarity to facility staff. Absent an institutional record indicating a history of positive behavior, which might offset the risk associated with being a career offender, the decision to change the classification status of an unknown career offender demonstrates poor judgement and unreasonably poor discretion and, as such, is contrary to the requirements of Correction Law §500-b(7)(a).

Due to the misapplication of classification theory and practice with consequent violations of Correction Law and state regulations set forth herein, Commission staff inquired as to the training that was received by the classification Lieutenant. Commission staff was advised that the Lieutenant's training consisted of being issued lesson plans to study and then given the classification final exam. Chief Ronald Heist reported that he was the instructor and maintained that this instructional approach was approved by staff formerly employed by the Commission of Correction. Chief Heist's anecdotal assertion of Commission approval notwithstanding, the Commission of Correction routinely disapproves such instructional practices, especially for courses that are intimately related to population security management within a correctional

facility. Failure to provide staff with Commission-approved training when their duties include the administration and implementation of classification procedures is a violation of Section 7013.11.

Section 7013.3(c) requires the Chief Administrative Officer review classification policies and procedures on an annual basis. Review of facility policy indicates that the current policy has an effective date of September 14, 1998. While Section 7013.3(d) prescribes a written format for purposes of documenting annual policy revisions, the policy indicates that it has remained virtually unchanged since its development in 1993 and further, has not been reviewed by the Chief Administrative Officer since 2003. Commission staff noted a minimum of two changes that should have resulted if a genuine review of the facility's classification policy and procedure occurred. Such changes include:

- The policy still references the use of pedigree report form CF-11-86 for documenting information required by Part 7002 Admissions and Correction Law. This form was supplanted when the facility implemented the computerized Jail Management System.
- The 'typographical error' previously noted on the classification instrument should have been corrected and a score range established for medium level security designations.

### **Assignment of Phillips as a Kitchen Worker**

\_\_\_\_\_ During the course of the investigation, multiple facility staff conveyed their impressions to Commission staff in interviews that the decision to assign Phillips to kitchen worker status was the outcome of a grievance he submitted relating to food portioning. The significance of a connection between an inmate grievance and a housing area transfer is rooted in one of the intended purposes of the grievance program. Specifically, proper implementation and follow up with facility grievances can help facility administrations identify and subsequently correct policy

or procedural problems. Pacifying inmates for purposes of convincing them to withdraw or accept determinations unrelated to the substantive complaint not only serves to disguise the existence of problems but also can contribute to the facility having to process a greater number of frivolous or even baseless grievances.

Therefore, Commission staff initiated an inquiry to ascertain whether Phillips did in fact submit a grievance and whether this grievance resulted in his assignment to kitchen worker status. The activities and findings resulting from this inquiry include the following:

- On April 14, 2006, Commission staff requested copies of any and all written complaints and grievances that may have been submitted.
- During an interview occurring April 18, 2006, in response to being questioned whether or not Phillips ever complained about food that he had received, Chief Ronald Heist stated that Phillips had not done so.
- On April 19, 2006 Commission staff interviewed Officer Mark Alderich, the officer reported to have been working Delta Unit the day that the complaint allegedly originated.
- Officer Alderich confirmed that Phillips had taken issue with the amount of cheese he received with one of his meals. Shortly thereafter, Alderich received a copy of a grievance that was submitted by Phillips and was directed to provide an explanation as to what had transpired. Within a week of submitting this grievance, Phillips was on the transfer list to the kitchen. A copy of Officer Alderich's response was forwarded to the CSEA Local 815 union office for archiving.
- As the Commission had yet to receive a copy of any complaints or grievances from the administration pursuant to the April 14, 2006 request and since Chief Heist denied that Phillips had ever complained about food he received, Commission staff requested a copy of Officer Alderich's statement from CSEA Local 815 officials.
- On April 24, 2006, the Commission received a copy of the grievance submitted by

Phillips from CSEA Local 815, a memo from Chief Heist to Officer Alderich requesting a written response to the allegations made in the grievance, and a copy of Officer Alderich's written response.

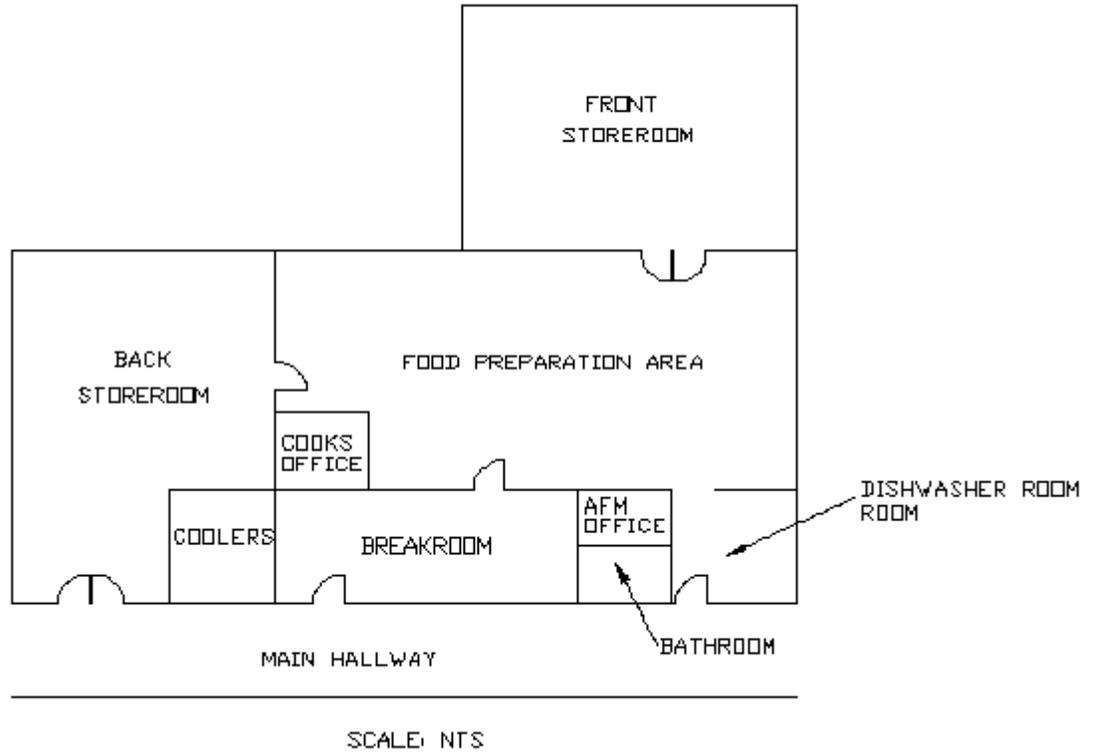
- On May 3, 2006 while visiting the Correctional Facility, Commission staff received a copy of the grievance and a memo from Chief Heist to Phillips advising that he had failed to request an action to be taken and that pursuant to 9 NYCRR §7032.4(f), he had two days to supply sufficient information. Commission staff were informed that the grievance was temporarily placed separate from other grievance files into a folder containing grievances that were returned to the grievant for various filing defects.
- A written grievance determination was never issued by the grievance coordinator for this grievance.

It should be noted that, if a grievance is submitted that articulates a complaint to a degree sufficient for the grievance coordinator to understand, then it must be processed and a written determination issued. Failure to specify an action requested is not grounds for returning the grievance unprocessed and is a violation of §7032.4(h). If necessary, such information shall be obtained through investigation of the grievance pursuant to §7032.4(f). It is likely that since the evidence in support of Phillips' grievance was a food tray long since sent for disposal, proper handling of the grievance would have justified denial.

Moreover, grievances not satisfactorily resolved at the facility level are appealed to the Commission for appellate decision by the Commission's Citizens' Policy and Complaint Review Council. Due to Erie County's recent history of financial difficulty and complaints associated with breakdowns in essential service delivery, food service grievances were a potentially sensitive issue. Moreover, the Commission has repeatedly cited the Sheriff and the Jail Management Division to be in continuous violation of *Minimum Standards*, Part 7032, Grievance Program, and had summoned Jail Management Division managers to Albany in December 2005 to a working hearing to redress grievance violations, and had Erie County's inmate grievance program under close scrutiny. Superintendent Livingston, Chief Heist and

Lieutenant Leary maintain that the submission of Phillips' grievance and subsequent assignment of Phillips to Kilo dorm was 'coincidental.' The Commission found that a substantial body of circumstantial evidence exists that strongly and creditably argues otherwise:

- Phillips submitted this grievance on January 29, 2006.
- On February 2, 2006, following some investigation of the grievance, Chief Heist returned the grievance "unprocessed" citing it as incomplete.
- On February 3, 2006, Phillips, a career offender relatively unknown to facility staff, is transferred to Kilo dorm purportedly based upon his written request to work in the kitchen which cited a "problem with his diet." Additionally, this decision occurred absent a facility staff recommendation for a transfer.
- On June 21, 2006, Commission staff interviewed former inmate Gary Lang, a self-described friend of Phillips who worked in the kitchen with him. Lang was queried regarding his knowledge of the circumstances that led to Phillips' assignment to the kitchen. Lang stated to Commission staff that Phillips told him that he wrote a grievance regarding the short food portions served at the correctional facility and that Chief Heist called Phillips to his office to offer him a deal, specifically, if he dropped the grievance he would be assigned to work in the kitchen.
- During a June 22, 2006 interview with Superintendent Livingston, Chief Heist and Lieutenant Leary, Commission staff were advised that while such was not the case with Phillips, rather than adjusting food service procedures, assignment to the kitchen has been utilized in the past to resolve food service grievances, e.g., inmate Arthur Delaney who complained about difficulty obtaining a religious diet who was reassigned as a kitchen worker in satisfaction of his grievance.



### **Kitchen Layout and Operation**

As depicted above, the kitchen is composed of seven distinct areas: two offices, an inmate bathroom, the front storeroom, the food preparation area, the back storeroom and the dishwasher room. The dishwasher room and the back storeroom have doors leading to the main hallway. Each of these doors can be secured to prevent unauthorized access (by inmates) to the kitchen from the main hallway. However, during prior visits, Commission staff have observed the door between the dishwasher and the main hallway open during times when it appeared unwarranted.

Kitchen staff reported that this door was routinely left open when trays were being washed but secured during down times. Inmates working in the kitchen reported to Commission investigators that staff would also secure the door if they observed inmates in the dishwasher room fraternizing with inmates in the hallway. The back storeroom door to the main hallway is only opened during food tray delivery and for trash removal. The practice of leaving doors open is contrary to generally accepted good correctional practice and provides opportunities for inmates to access unauthorized areas and to pass contraband, with attendant breaches of safety and security, a violation of Correction Law §500-c. The generally negligent and lax approach to facility security evidenced by these lapses was a causative factor in Phillips' escape.

Both the front storeroom and the back storeroom can be secured to prevent unauthorized access by inmates from the food preparation area. Both inmates and staff indicated that the front storeroom is only opened when a staff member is present to supervise inmates in that area. The same cannot be said for the back storeroom. Based on the interviews conducted, it is evident that depending on the individual civilian cooks and number of civilian cooks working the kitchen, inmates had varying degrees of access to the back storeroom including:

- Under direct supervision of kitchen staff;
- With permission from kitchen staff, but not necessarily supervised; and
- Unchecked, unsupervised access.

Moreover, the array of coolers in the back storeroom clear the ceiling/roof areas breached by Phillips by about 60" and are used for storage of boxes above, suitable for various arrangements into blinds.

A staff break room is located between the food preparation and serving area and the main hallway. The break room has two doors, one to the main hallway and one to the kitchen. The door between the main hallway and the staff break room is routinely left unsecured. To ensure that inmates do not access the kitchen from the main hallway via the break room, the door between these two areas is secured.

Each day, between the hours of 5:00 a.m. and 7:00 p.m., between 15 and 24 kitchen workers are present in the kitchen at one time depending on scheduled activities and the type of meals being prepared. Generally the number of inmates assigned increases as the day progresses and then decreases following delivery of the evening meal. Monday through Friday, female kitchen workers are utilized between 5:15 a.m. and 6:30 a.m. to prepare the breakfast meal. Following the breakfast meal, female kitchen workers are returned to housing and male kitchen workers begin working in the kitchen until closing. On weekends only male kitchen workers are utilized. Commission staff were informed during interviews that for the weekend breakfast meals the individual male kitchen workers were scheduled for early arrival on either Saturday or Sunday. Generally, if an inmate was not scheduled to work Saturday morning, he was scheduled for Sunday morning. This scheduling practice was implemented for purposes of letting kitchen workers share the burden of having to wake up early on weekends. However, this practice also permitted inmates to predict whether they would be called to work early on any Sunday.

On Sunday, April 2, 2006, 16 kitchen workers were scheduled and arrived in the kitchen to work at 5:00 a.m.. Inmates are expected to perform a variety of duties centered around the following functions: 1) food storage; 2) food processing and preparation; 3) food tray preparation and delivery; 4) food service equipment sanitation; and, 5) kitchen area sanitation and trash removal. These duties are assigned at the discretion of food service personnel. The criteria used for selection is a subjective combination of the following factors; inmate skill sets, inmate seniority working in the kitchen and general cooperation working with individual kitchen staff. During down times, kitchen workers were generally able to lounge in areas throughout the kitchen including the back storeroom at times.

The food service civilian workforce consists of five cooks who report to the Assistant Food Service Manager. For matters regarding food purchases and food preparation, the Assistant Food Service Manager reports to the Food Service Manager who is located at the Holding Center. For all other matters, this position reports to the Correctional Facility Captain. The food service personnel work schedules can result in there being as many as five or six staff scheduled during the week and three on weekends. However, after factoring in the use of leave time and

the facility imposed minimum staffing requirement of one cook at all times, the kitchen rarely operates at this maximum staffing level. The Assistant Food Service Manager has the discretion to flex work schedules to avoid overtime and maximize staff coverage over the 14 hours per day that the kitchen is open. Nevertheless, facility documentation indicated that periods ranging from 3 to 12 hours daily existed in which there is only one cook present.

In addition to preparing an average of 2700 meals per day, including special meals, serving them in approved quantities at the correct temperature and distributing them to housing areas in a timely manner, facility policy 05-08-00 charges kitchen staff with the responsibility of maintaining “direct active supervision” of kitchen workers. Facility policy also requires all new employees to undergo 40 hours of orientation training. As compared to the sixteen classroom hours of security and supervision training that correction officers receive, food service personnel receive a total of one to two classroom hours of orientation instruction. Of this time, only a portion of it is devoted to security and supervision. The balance of orientation training is on the job training. The kitchen staff interviewed report that a majority of their security and supervision training was passed down from other food service personnel, either directly or by learning from their mistakes.

Commission staff found that, from time to time, memos have been issued to food service personnel relating to security and supervision of the kitchen area. Generally, these would pertain to securing storeroom doors and ensuring food service personnel supervise inmates when they are in the storerooms. As a practical matter, these memos and facility policy 05-08-00 (supervision) served no purpose when food service staffing levels were permitted to be reduced to one cook. Due to the poor sight lines resulting from the kitchen layout, it is physically impossible for one person to supervise food retrieval from storage areas, while simultaneously monitoring food preparation, food tray preparation and the activities of idle kitchen workers. Furthermore, on a daily basis, inmates must be escorted to the rear exterior vehicle sallyport area to deliver trash to the trash compactor. When only one cook was scheduled, performance of this task meant securing the kitchen workers in the kitchen under no supervision while escorting workers to the trash compactor. Providing that adequate security and supervision policy existed

and that the food service personnel received adequate security and supervision training, it would be reasonable to fault food service personnel for abandoning supervision of kitchen workers. However, Commission staff believe that for some food service personnel, the routine of permitting inmates unsupervised access to various areas within the kitchen was the likely result of food service personnel having to prioritize where their presence was needed when simultaneous food service functions were being performed by inmates. The alternative would be for the food service personnel to disrupt the work flow and jeopardize the timely delivery of meals to housing areas. For other food service personnel, negligence properly describes their conduct. Management reported to Commission staff that some cooks have been observed sitting in the cook's office, which had windows covered with paper to prevent visibility from the back storeroom, rather than supervising the kitchen workers. No formal corrective action was taken rather only episodic verbal prompting. Other than these memos, there was no facility policy pertaining to kitchen security procedures. The Commission acknowledges that the issuance of staff memos may be useful for implementing procedural changes or reiterating existing facility policy. It is not, however, a suitable substitute for facility policy. The lack of suitable policy regarding proper facility safety security and supervision is a violation of *Minimum Standards* §7003.1 and 7003.4.

Commission staff also noted that facility policy failed to include language directing any security staff to routinely tour the kitchen for purposes of assessing and correcting worker supervision issues and security related deficiencies. It was further verified that kitchen post orders do not exist for line supervisors and watch commanders and neither have ever been tasked with the responsibility of touring the kitchen area. Notwithstanding these findings, the Commission hesitates to state conclusively that security staff have not shared concern toward security deficiencies in the kitchen area. The Commission has verified that requests for a kitchen security post from the CSEA Local 815 have been made as early as February 1999 and as recently as March 28, 2006. Union officials indicated that these requests have been based on line staff observations of security and supervision practices occurring within the kitchen.

The Commission of Correction finalized a Position and Staffing Analysis for the

Correctional Facility in February of 2005. This analysis mandated that a security post be maintained in the kitchen. Specifically, an allocation was made to ensure security coverage existed between 4:00 a.m. and 8:00 p.m. This determination was based on the following:

- The facility capacity is now 1,013 beds with variances resulting in a 250% increase in work product over its original design capacity of approximately 400 inmates;
- The incorporation of the front storeroom into the kitchen complex effectively displaces a staff member to this room whenever inmates are present and reduces the sight lines within the kitchen;
- The classification of inmates assigned to kitchen worker positions had changed to include unsentenced (trial) inmates;
- The number of kitchen workers assigned to the kitchen had increased to as many as 24 at one time;
- The Commission's experience with incidents statewide is replete with the use of kitchen equipment and utensils as weapons and as a source of contraband tools and kitchen workers at the Correctional Facility would have access to just such equipment and utensils, often without supervision;
- The fact that the ratio of food service personnel to kitchen workers had been decreased.

Since implementation of the Position and Staffing Analysis, the facility administration has failed to deploy staff to the kitchen security post, a violation of *Minimum Standards* Part 7041 Staffing Requirements. Deployment to this position requires an allocation of 3.62 full time equivalent staff. It was evident that the administration has been reluctant or was not authorized to draw from the existing staff resources to fill these positions.

### **Phillips' Escape**

Between his arrival in the kitchen at 5:00 a.m. and approximately 5:14 a.m., Phillips

climbed on top of the large storage cooler located within the front storage room and exited through a breach in the roof that had been previously cut. Investigators believe that Phillips made the breach in the roof over time by splitting a seam in the roof with a ‘bar-type’ commercial can opener, then tearing the roof open to create a hole approximately two feet square. Once this was accomplished, a layer of gypsum board roofing material was broken out and the rubber roof membrane was cut. Phillips then traversed the facility roof to an area proximal to the skylight above the training Lieutenant’s office and then, as evidenced by deeply compressed footprints in the ground, climbed down and/or leaped to the ground. Video surveillance cameras indicate that Phillips then crossed the visitor’s parking lot and proceeded toward Walden Avenue, bypassing an outdoor security post while the post officer was on a break but not relieved.

It is not known for how long Phillips had been planning an escape. Based upon visual and physical evidence, it appears to have been a prodigious effort. A *Buffalo News* report indicated that he had talked about the escape with former inmate Gary Lang. When Commission staff interviewed Lang, he claimed that he had no knowledge of Phillips’ plans. Commission staff are not inclined to believe that Phillips coordinated an elaborate escape plan beginning with the manipulation of assignment to a worker position. As he had never been incarcerated in the facility before, it is unlikely that he was previously aware of the physical plant’s vulnerability in this area. More likely is that Phillips’ negligent assignment as a kitchen worker, the obvious lapses in security and supervision in the kitchen, and the ready availability of contraband tools and tool making materials in that locale made an escape opportunity obvious. In any case, Phillips developed an inordinate level of trust by the food service personnel. Interviews of inmates and civilian staff reveal that Phillips was characterized by inmates and facility staff to be a relatively quiet inmate who was mechanically inclined and very competent in completing tasks assigned by food service personnel. Phillips was also regularly assigned to a multitude of duties spanning a wide range of Food Service Department and kitchen functions. He was described as willing to volunteer and cooperate fully with the food service staff, and was regularly relied upon to perform tasks differing from his routine duties throughout the kitchen on an as needed basis. This took him into virtually every area of the kitchen, including areas not routinely accessible to

other inmates and areas routinely unsupervised by kitchen staff.

Given the trust he had engendered among the civilian staff and the absence of any trained uniformed supervision or security procedures for the area, Phillips was able to either collect or make an impressive array of tools preparatory to his escape. He fashioned a metal grappling hook with homemade rope which was left behind, apparently unneeded. The 'bar-type' commercial can opener Phillips used is constructed in part of a 16 to 18 inch-long 1" square solid steel bar, a piece of equipment heavy and durable enough to force between and pry apart the roof seams. Also found was a can lid that was bent 180 degrees at one end to form a rounded edge that was safe to grip. Several such instruments used in succession could have cut the gypsum material and the rubber roof membrane. It should be noted that many such can lids were reported found atop the cooler by facility staff who first responded, but only one lid found its way into the evidence retained by Sheriff's Office investigators, calling this aspect of the internal investigation into question. A single can lid alone would not retain a sufficient cutting edge to cut through the roofing material.

Lids removed from canned goods have long been recognized as threats to safety and security in jails and prisons, such that elaborate precautions to keep them out of inmate hands are routine. Commission investigators were shown an upright mailbox similar to that the United States Postal Service situates in public for mail collection, located in the kitchen area. Management referred to this as a 'secured' trash container that was intended to be used for staff to discard trash that could be fashioned into contraband. The food service personnel were aware of the intended purpose of this container but remarked that the security staff did not empty it when it was full so alternative procedures had to be developed. Therefore, food service personnel began a procedure whereby can lids were placed in an empty can and then brought to the trash compactor. The problem with this procedure was that can lids are not secured or accounted for pending placement in the compactor. Moreover, the inmate given the task of disposing of the can lids was none other than Gary Lang, an associate and arguably a confederate of Ralph Phillips, who had previously escaped from the Steuben County Jail. During site visits, Commission staff made multiple requests to view the contents of the secured trash container.

After two weeks, a key was located to open the padlock on the container. Commission investigators were told that the key was on the second shift sergeant's key set. Commission staff were assured that a copy of the key would be made and attached to the kitchen officer's key set, (since sergeants rarely, if ever, appear in the kitchen). On June 22, 2006, during a follow-up site visit, the officer (now) assigned to the kitchen was unable to open this container, citing he did not have a key. This kind of security incompetence is pernicious and, taking multiple lapses as a whole, invites calamities such as an escape.

The lack of inmate worker supervision combined with the unwarranted trust bestowed upon Phillips provided ample opportunity for him to access the top of the coolers during the many extended visits necessary to breach the roof. He was also readily capable of concealing his activities because the top of the coolers have been used to store light-bulb boxes, boxed dry goods, rags, food trays, spare metal parts and kitchen equipment. Many staff interviewed reported no significant changes in the appearance of the top of the coolers when in fact Phillips had arranged boxes to form a blind around the area under the roof breach. The well-known failures of uniformed staff and supervisors to periodically inspect secluded areas of facility departments accessible to inmates flies in the face of basic, prudent security practice.

Facility staff also found a metal hook-like 'come-along' object believed to have been used to move bread carts in the facility's old bakery. This hook appeared as though it was intended to be used as a grappling hook as it was tied to four bed sheets which in turn were tied together. The fact that Phillips left it behind as apparently unnecessary when he escaped begs the question of whether he had been on the roof prior to the escape. During interviews with Commission investigators, facility staff reported that a hand-drawn diagram depicting the front roof line and other roof features was found in Phillips' property after the escape and forwarded to Captain Douglas Bienko. Captain Bienko stated he forwarded it to Patrol Services Division investigators. Commission staff requested the diagram but were informed via two Patrol Services Division memoranda it had 'either' been misplaced or thrown away. No copy was apparently ever made, nor was it tagged and bagged as evidence. The Commission was told that, in any event, the Patrol Services Division investigators determined that the diagram did not

resemble any part of the facility. In contrast with this determination, it was reported in the *Buffalo News* that following Phillips' associate Gary Lang's release from custody, the Patrol Services Division interviewed him and investigators told Lang:

He (Phillips) had this escape going for quite some time - that's what the sheriffs told me (Lang), because of the maps he drew, . . . (emphasis added)

Inmate Lang claims he had been told that 'maps' drawn by Phillips had been connected to his escape by the very investigators who claim to have lost them after dismissing their significance. The idea that hand drawn diagrams thought by facility staff members to represent the facility roof line from which Phillips descended to the ground would be turned over to Sheriff's investigators as evidence, then dismissed as of no consequence and either discarded or lost, calls the credibility of the Sheriff's internal investigation in this regard into question.

Facility staff at the escape scene also reported the existence of inmate clothing wrapped around the sharp metal edges of the roof breach and the presence of civilian clothing beneath the breach. Commission staff inquired into how extra jail issue and civilian clothing could have been brought into the kitchen. Facility staff explained that pat frisks of kitchen workers are routinely performed upon their return to Kilo dorm from the kitchen, but that inmates are not searched upon arrival at the kitchen from Kilo dorm. Commission staff also found that kitchen workers have unchecked access to many parts of the facility including laundry and reception/intake. Both the laundry area and the intake area have inmate workers. Commission staff observed that staff often leave doors to facility areas unsecured, including the kitchen area, commissary/laundry and the inmate property room. It was also noted by Commission staff during investigation of this incident as well as during a prior evaluation in February 2006, that intake workers were utilized to issue and retrieve inmate property from the property room without supervision, a violation of §7002.4(e). Absent appropriate worker supervision and accountability, the theft of clothing from the laundry or the property room by inmate workers could be easily accomplished. Furthermore, once any kitchen worker secreted contraband in the kitchen, detection would be unlikely because food service personnel do not pat search inmates or

conduct area searches. As noted, this raised the significance of and the risk of failing to fill and maintain a uniformed security post in the kitchen.

### **Pre-existing Indicators of a Kitchen Area Security Threat**

Less than a year prior to Phillips' escape, two incidents occurred, which, given an appropriate response by implementing appropriate staffing, physical plant and procedural changes, could have prevented the escape from occurring. Both incidents involved the production of homemade alcohol on top of the coolers:

May 19-20, 2005

At approximately 7:03 p.m. an officer assigned to Kilo dorm noticed that inmate Richard Coons appeared intoxicated. Investigation of his condition indicated that he had consumed homemade alcohol while working in the kitchen that day. The following morning, a search of the kitchen was conducted, supervised by Sergeant Joseph Pyjas. Facility documentation indicates that on top of the coolers was a "bar area" set up with four chairs, "empty hooch containers," cups, sugar, bread and two containers of fermenting homemade alcohol.

Facility documentation indicates that this incident was reported up the chain of command via two internal reporting mechanisms. Pursuant to facility policy, an incident summary report, dated May 19, 2005, including a statement from Sergeant Pyjas detailing search findings and a copy of the Commission's Reportable Incident Report Form SCOC-011 was generated and forwarded to the administration for review. A shift summary report, dated May 20, 2005 was also forwarded to administrative staff including then-First Assistant Superintendent Livingston, Chief Heist and then-Undersheriff Timothy Howard.

Other than a memo, reportedly reiterating the need for food service personnel to supervise inmates while in the storerooms, issued to staff, no other corrective action had been taken by the

administration.

February 13, 2006

Supervisory staff had received a tip that homemade alcohol was being made in the kitchen. As a result, Lieutenant Ruth Stroka ordered a search of the kitchen area. Facility documentation indicates that, atop one of the coolers, Officer Amy Kosinski discovered one half a case of potatoes, and a half filled plastic gallon container with what appeared to be juice, fruit and bread. Also noted were the existence of “various metal parts from kitchen equipment which could be used to harm somebody.”

Facility documentation indicates that this incident was also reported up the chain of command via the same two internal reporting mechanisms. In this case, the incident summary report, dated February 6, 2006, including a statement from Officer Amy Kosinski detailing search findings was generated and forwarded to the administration for review. This incident was not reported to the Commission of Correction pursuant to 9 NYCRR, Part 7022 Reportable Incidents. A shift summary report, dated February 13, 2006 was also forwarded to administrative staff including Superintendent Livingston, then-Chief Benson, Chief Heist, Undersheriff Donovan and Sheriff Howard.

Other than a verbal recommendation from Lieutenant Stroka to Assistant Food Service Manager Joel Gregorio to remove excess items from the top of the cooler, no other corrective action had been taken by the administration.

These two incidents demonstrated the capability of inmates to obtain unchecked and unsupervised access to the top of the coolers, and the negligent response of facility managers and executives up to and including the Sheriff. Had the facility administrators and executives addressed either one of these incidents by preventing the storage of the items on top of the

coolers, and/or restricting all inmate access to the top of the cooler, such measures would likely have prevented inmate miscreant activities and the escape. Additionally, had the administration not violated the Commission's Position and Staffing Analysis by vacating a mandated security post within the kitchen, but rather deployed and appropriately charged officers assigned to this post with the responsibility of conducting daily searches of the entire kitchen area and supervisory staff with the responsibility of making routine inspections, the escape would likely have been prevented. Since Phillips' escape, the facility has cordoned off the top of the coolers by installing fencing above them. Had this installation and staff deployment occurred following either of the contraband incidents preceding the escape, it would have prevented Phillips breaching the roof. The failure to do so was grossly negligent and flagrantly incompetent.

### **Electronic Perimeter Security and Alarm Responses**

The Correctional Facility is equipped with an Mx-1000 Perimeter Control System. This system monitors and manages perimeter alarms in 26 zones. Sixteen zones are protected by a rooftop microwave detection units. The remaining zones are protected by fence mounted motion detection sensors. In addition to the Perimeter Control System, there is a minimum of eight exterior cameras installed in various locations on the facility premises for use by control room officers to view zone locations.

The rooftop perimeter security employs the use of Southwest Microwave's Model 300B outdoor microwave link and Model 375C outdoor microwave transceiver. Operation of each of these detectors is described as follows in Southwest Microwave's technical manuals:

#### **Model 300B**

“Each Model 300 B consists of one Model 300BT transmitter and one Model 300 BR receiver, each with universal mounting bracket. The transmitter radiates amplitude modulated X-band energy that travels to the receiver where it is detected. The received energy is amplified and processed so that it causes an

alarm relay to be energized. When an intruder approaches the beam, received energy is changed causing the relay to be de-energized, and an alarm occurs.”

### Model 375C

\_\_\_\_\_“Model 375C includes both transmitter and receiver in a single enclosure. The transmitter radiates microwave energy that is reflected back into the receiver by objects in the detection zone.”

“A microwave transceiver transmits microwave energy into the detection zone, and objects in the zone reflect energy back to its receiver. Whenever an object is moving, the Doppler effect shifts the frequency of its reflection and the transceiver generates an alarm whenever it detects a frequency shift in the reflected energy.”

When an alarm condition exists, a signal is sent to an alarm controller transponder which in turn forwards a signal to a device called a Programmable Logic Controller or P.L.C. The P.L.C. sends a message to two touch screens located in Central Control for operator action. All input and output activities of both the P.L.C. and the touchscreen are stored as a digital record on the touchscreen’s computer hard drive. This record may be downloaded daily for review.

Following the escape, Sergeant Timothy Love downloaded the alarm data for April 2, 2006 and conducted a preliminary assessment of the data. Sergeant Love’s analysis resulted in the finding that a zone 20 alarm occurred at 5:14 a.m. and was responded to by the officer working at the Touchscreen #2 station. This officer was identified as David Padilla. Due to the implications of these findings, the Jail Management Division enlisted the services of Norment Security Group, the security software vendor, for purposes of verifying whether a zone 20 alarm occurred and what specific actions were taken by the touch screen operators. Upon completion

of this request, the Commission was provided a copy of the analysis summary generated by Norment Security Group staff. This summary included the following findings:

- At 5:14:14, a zone 20 alarm was triggered. Providing the speaker volume was at an audible level, the data indicates that an audio alarm was sounded and an alarm message was sent to the touchscreen queue at 5:14:14;
- At 5:14:23 the touchscreen #2 operator selected the zone 20 icon;
- At 5:14:25 the touchscreen #2 operator acknowledged the alarm. This action turned off the alarm sound and removed the alarm from the queue but did not reset the alarm.
- At 5:14:26:27 the touchscreen #2 operator reset an intercom switch and selected a display screen for vestibule 1029. At this time zone 20 was still in alarm mode.
- At 6:17:53:55 that the touchscreen #1 operator selected zone 20, acknowledged and reset the alarm.

While the alarm system indicates that the roof perimeter alarm occurred at 5:14 a.m., digital video recordings of the north parking lot shows Phillips crossing the north parking lot at 5:09 a.m. The Commission deems this time differential to be incidental in nature as separate computers are utilized for the alarm and digital video systems. On April 2 the security computer was reportedly seven minutes ahead of the video computer.

Zone 20 envelops the north side roof perimeter above the back storeroom and the skylight which serves as a partial roof for the training, administration and business offices. The zone is protected by the Model 300B outdoor microwave link. The technical manual for the model 300B detectors indicates that the detection pattern extends parabolically from each detector. For a span of 220 feet, the approximate span of zone 20, the detection pattern width ranges from 3 to 12 feet depending on the sensitivity settings.

In an attempt to replicate the responses of the alarm touchscreen operators on the morning

of April 2, 2006, Captain Beinko and Commission staff performed a controlled alarm test on June 22, 2006. Captain Bienko attempted to trigger the zone 20 alarm at the approximate point that it was suspected that Phillips triggered the alarm while Commission staff observed control room activity. In total, three attempts were made at triggering the alarm at approximately 10:44, 10:45 and 10:46 a.m. Of the three attempts, two were successful. Commission staff noted that an alarm message queued to both touchscreens simultaneously with an audible alarm tone. The alarm data for this test was subsequently downloaded and compared to the downloaded data chronicling the events that occurred on April 2, 2006. Using a point reference code document, Commission staff were able to decipher the second and third alarm tests. Comparing these codes to the code analysis conducted by Norment Security Group, Inc. yielded test data observably similar to the record of responses by the touchscreen operators working the morning of April 2, 2006. Therefore, there is objective data to support that Phillips' escape triggered an audible alarm that was acknowledged in the control room and which remained in alarm mode (although inaudible after acknowledgment) for approximately one hour until reset in the control room.

Control room officers David Padilla and Thomas Bollman were interviewed. Both officers insisted that no alarms were heard or responded to during the approximate time Phillips was on the roof. Officer Padilla suggested that the data was altered as part of an on-going administrative attempt to find a single staff member at whom to direct blame for the escape. Commission staff received a copy of the data that was forwarded to Norment Security Group. Review of the file properties associated with the April 2, 2006 touchscreen #2 record indicates that the file was last modified April 3, 2006 at 12:00:34 a.m. Had the file been altered following this date and time, such would have been evident by a change in the 'last modified' date. Based on these facts, the Commission is satisfied that the alarm data file received from the facility is authentic.

However, the Commission's evaluation of the facility's security electronics reveals that the system has been erratically inspected, poorly maintained and that staff complaints of malfunctions have remained unaddressed. Review of the central control room security inspection reports submitted prior to the escape indicated that staff responsible for documenting security

inspections generally failed to do so in a consistent manner. Not only were several inspections missed over the last three years, a violation of §7003.10, but deficiencies were inconsistently reported. While it is evident that prior to the escape problems existed with the perimeter security system, very few staff documented these problems, including, but not limited to, perimeter zone alarm malfunctions. Since the escape inspecting staff have been relatively consistent in reporting the same deficiencies week to week. Of significance are the following findings by inspecting facility staff:

- While no zone malfunctions were reported following hardware replacement, beginning June 4, 2003 staff began noting that the touch screens occasionally locked up, i.e., would not travel to desired intercom location maps. These findings were found on inspection sheets submitted up to and beyond the date of the escape.
- Inspecting staff began noting problems with an inability to reset alarms in multiple zones including but not limited to zone numbers 8, 16, 22, 25, 26, as early as July 2004. The last inspection sheet forwarded to the Commission indicated that as of June 13, 2006, these same alarms would not reset.
- The perimeter zone map provided to the perimeter officer indicates that zone 11, surrounding the library atrium and zone 1, (an area on the second floor roof) are also non-functional. Neither of these two zones were referenced as being problematic on inspection sheets submitted prior to or after the escape.
- Since April 2005, exterior cameras #25 and #38 have been reported to be inoperable. While neither of these cameras are routinely used to observe zone activity, camera #25 reportedly gives a partial view of zone 20. Commission staff were unable to confirm this report, as it was inoperable during site visits.

Review of O'Connell Electric's records and documentation submitted by the facility indicates that with the exception of sporadic repairs to cameras and an estimate of repairs dated May 4, 2006 confirming the existence of problems in the above referenced zones, the facility failed to initiate corrective measures to ensure the integrity and optimum operation of the

perimeter security system hardware. The Commission did not receive any documentation from the facility indicating that problems with the touchscreens were addressed.

The findings related to this inquiry indicate that Officer Padilla is accurate in that several zones and at least two cameras were in fact inoperable for significant periods of time prior to and following the escape. It is also clear that control room officers have been experiencing problems with the security touch screens. Whether these experiences are operator errors or actual problems is unknown by the Commission at this time. The alarm system clearly has not been fully maintained; this is known to operators and may well color their responses to alarms. Moreover, the alarm system is not tested regularly, nor are operators provided in-service training and security drills using the alarm system as part of an integrated security maintenance program. Notwithstanding Officer Padilla's assertions, Phillips' presence on the roof of the Erie County Correctional Facility did indeed activate a valid alarm in roof security zone 20 on the morning of April 2, 2006.

Facility policy 06-11-00 concerning perimeter alarms has an effective date of June 1, 1988. Due to its effective date, the policy still references G-line sensors, which have been inoperable for many years and zone listening capabilities which were replaced in 2000. The policy also requires the control room officer to scan the effected zone with primary and secondary cameras. Only after an alarm is "apparently valid," does the policy direct the control room officer to notify the watch commander and dispatch "an available" officer. Interviews with staff reveals that the actual practice has evolved as follows: When a zone alarm is activated, the control room officer must scan the effected zone with primary and secondary cameras and notify the perimeter officer of the zone activation. None of this was accomplished. As it was dark at the time of the escape, had Officer Padilla responded by panning zone 20 with exterior cameras, the question still remains whether lighting on the roof was adequate to verify the alarm. There is no alternative procedure for verification of an alarm under nighttime conditions.

Commission investigators reviewed the perimeter activity sheet submitted for the 12:00 a.m. to 8 a.m. shift on April 2, 2006 and interviewed the perimeter officer. While the perimeter

officer stated that he did not receive a response request from central control, he would not or could not have responded in any event, because he was inside the facility using the restroom. The facility administration does not require this post to be relieved for breaks, effectively allowing post abandonment during meal and restroom breaks. Moreover, the perimeter officer is tasked daily with delivering food trays to Tango and Yankee buildings. When this is occurring, according to facility administrators, the perimeter officer's response could be delayed three to five minutes, in effect nullifying the perimeter post response altogether. Given the low light conditions, routine abandonment of the perimeter officer post, low officer confidence in alarm system performance and the lack of alternate response procedures for darkness, and the absence of in-service training and drills, the facility administration effectively foreclosed its capability to prevent Phillips' escape once he broke out of the building.

### **Sheriff's Office Response to the Escape**

At approximately 5:15 a.m., Civilian Cook Kevin Webster noted that Phillips was not performing his assigned kitchen duty and began a search of the kitchen area. At approximately 5:25 a.m., following an extensive search of the kitchen, he called the Kilo housing area to advise Officers Elizabeth Gilbert and Edward Harmon that Phillips was unaccounted for. Officer Gilbert then notified line supervisory staff, Sergeant Ronald Voll, who in turn notified Lieutenant Charles Martina, the Watch Commander. Lieutenant Martina responded to the kitchen and verified that one inmate was unaccounted for in the kitchen. At approximately 5:40 a.m., Lieutenant Martina ordered a general lockdown of the facility, the return of kitchen inmates to Kilo Unit and a facility-wide population count. Available staff were summoned to the kitchen to conduct a thorough search of the facility and the kitchen area. After 'discovering' a breach in the kitchen ceiling above the dishwasher, Lieutenant Martina dispatched staff to the facility roof. As this hole existed for several months prior (due to dishwasher vent repairs), it is evident that Lieutenant Martina had not been in the kitchen for a significant period of time preceding the escape. Facility staff dispatched to the roof discovered a large breach located above the kitchen storage coolers at approximately 6:08 a.m. During interviews of staff deployed to the roof, Commission staff were advised that an equipment shortage existed, specifically radios and

flashlights, which necessitated facility staff having to use personal flashlights and personal cell phones to communicate with command staff via central control. The inability to rapidly issue basic emergency equipment creates an unsafe facility operating environment and a threat to public safety. Moreover, correction officers were without firearms or chemical agent certification. Any correction officer may well have been at a marked disadvantage in any encounter with Phillips had immediate search and apprehension efforts been effective.

At 6:12 a.m., Erie County Sheriff's Dispatch was notified that a possible escape occurred. This notification prompted a succession of actions taken by the Sheriff's dispatchers for purposes of apprising the State Police Troop A, Erie County Sheriff's Office Patrol Services Division, local police departments and for calling investigative staff to report for duty. Facility policy 06-05-00 references multiple phone numbers of local law enforcement agencies. While the Commission is confident that Sheriff's dispatchers have up to date phone numbers, some of those listed in this policy were incorrect.

By 6:15 a.m. efforts began to call facility staff who resided locally in to work for assistance. Captain Douglas Bienko was also notified and arrived at the facility by 6:35 a.m. to assume incident command. As the day shift arrived, they were briefed and assigned to search teams. By 7:15 a.m. search teams comprised of facility supervisory and line staff and law enforcement personnel were dispatched to search zone perimeters that eventually would extend out five miles from the facility. Due to a lack of equipment available for deployment, facility staff, with the exception of a few, were instructed to utilize personal vehicles and cellular phones to maintain contact with incident command. Facility policy 06-05-00 requires facility staff to draw one radio, one pair of handcuffs, two batons and two flashlights per detail. With the exception of handcuffs, facility inventories did not permit this to occur.

Following the initial discovery of the breach in the roof, the area above the coolers was not secured by facility staff. Command staff failed to ensure that the security and integrity of the area atop the coolers was maintained. Specifically, Lieutenant Martina failed to assign a security staff member to this area pending processing and collection of evidence by Sheriff's Office

investigators. By 7:30 a.m., the area above the coolers was processed by crime scene investigators. This investigation resulted in the identification of evidence including: an L-shaped metal bar and a 'bar-type' commercial can opener with metal bar attached. This evidence was received by Captain Bienko by 9:30 a.m. and forwarded to Superintendent Donald Livingston and it remained in his office until April 5, 2006. Six other items were identified and confiscated as evidence at approximately 12:00 p.m. on April 2, 2006. These items included: a metal hook attached to four bed sheets which were tied together, three articles of civilian clothing, a piece of gypsum roof material with tar on it and a number 10 can lid. These items were placed in Captain Bienko's office, an area accessible to both facility staff and inmate workers, until April 5, 2006. Phillips' personal property at his bunk in Kilo dorm was also searched and confiscated including but not limited to a diagram that staff describe represented the facility's front roof line. This property was placed in Superintendent Livingston's office by investigators.

Superintendent Livingston arrived at the facility by 7:30 a.m. and assumed incident command. The Commission of Correction was notified of the escape at approximately 8:00 a.m. The initial search and apprehension effort continued through the morning then declined throughout the afternoon. A NYSPIN multi-state regional alert was not issued until approximately 2:40 p.m. This notification was grievously late. As would become obvious in short order, a timely regional law enforcement response to Phillips' escape was of paramount importance.

## **Conclusion**

Based upon the findings of the investigation into the escape of Ralph Phillips the Commission concludes that the Erie County Correctional Facility as presently led, organized and managed by the Erie County Sheriff is not a safe, secure or stable institution, nor is it sufficiently capable of fulfilling its role in the criminal justice and public safety establishment of Erie County. The executive leadership and management of the Erie County Sheriff's Office negligently and wrongfully caused a preventable public safety emergency in which an inmate entrusted to their custody escaped and thereafter became the prime suspect in the shooting of a

New York State Trooper. Timely and compliant attention to the Actions Required as set forth in the Commission's investigation report is absolutely essential to public safety and will undoubtedly be the subject of further Commission action.

#### IV. FINDINGS

1. Based on the facts in the case of the escape of Ralph Phillips, the Commission finds that the Erie County Correctional Facility as presently led, organized and managed by the Erie County Sheriff is not a safe, secure or stable institution, nor is it sufficiently capable of fulfilling its role in the public safety establishment of Erie County. Through multiple violations of state law and state regulations and failure to conform to generally accepted good correctional practice, executive leadership and management of the Erie County Sheriff's Office negligently and wrongfully caused a preventable public safety emergency in which an inmate entrusted to their custody escaped and thereafter became the prime suspect in the shooting of a New York State Trooper.
2. Following the admission of Phillips to the facility, he was not assigned to a housing area designated for classification purposes. Failure to sequester an inmate in a housing area designated for classification pending completion of classification procedures is a violation of Section 7013.8(a).
3. The classification score as determined by facility staff and assigned to Phillips did not reflect his criminal history, a violation of *Minimum Standards* §7013.8(c)(1). Phillips' classification was never definitively established within defined security limitations of various housing settings and was consequently changeable without regard to security management need. Facility policy and the classification instrument used by the facility fail to equate point score totals to specific classification and sub-classification categories or to distinguish classification categories across the objective classification scoring range. This is a violation of §7013.3(a)(4) which requires that written policy exists for

determining classification assessments made subsequent to initial screening for the assignment of inmates to appropriate facility housing areas consistent with the requirements of 9 NYCRR, Part 7013 Classification.

4. The Erie County Correctional Facility's practice of assigning inmates to housing areas based primarily on where vacancies exist effectively nullifies all attempts to classify and assign inmate housing formally and objectively and therefore violates §7013.8(d). Such a practice results in the imprudent and injudicious commingling of inmates, a violation of Correction Law §500b(7)(a).
5. On February 3, 2006, despite being a career felony offender who had spent a cumulative total of 24 years in state prison, Phillips was given an arbitrary, *de facto* change in classification without documented rationale, whereupon he was transferred to and housed in a low-security dormitory reserved for kitchen workers who had routine access to unsupervised sectors of the facility when on work assignment. No classification review took place in accordance with *Minimum Standards* §7013.9. Phillips was afforded such a transfer without any review or re-application of the regulations governing classification and housing assignment in satisfaction of grievance complaints regarding essential services such as food, grievance complaints that likely would be appealed to the attention of the Commission in Albany.
6. Facility policy fails to specify or provide any guidance as to criteria that was to be used in determining Phillips' eligibility for worker status and how to apply such criteria. The failure to include this information within facility policy results in the reduction of all worker determinations to a subjective classification process, which violates the requirements of an objective classification system in violation of *Minimum Standards* §7013.1, 7013.3(a)(4) and 7013.8(d).
7. The manner in which the facility classification lieutenant received classification training,

i.e., self-study of the Commission's curriculum followed by the administration of a subject-related examination, was not a Commission-approved method for this training, a violation of §7013.11(c). The Commission certification of the classification lieutenant in charge of the facility classification system who was so trained was based on a misrepresentation and is consequently invalid.

8. The last administrative review of the Correctional Facility's classification policy and procedures occurred in 2003. Such a lapse in the administrative review of this policy and procedures is a violation of §7013.3(c) and (d).
9. The facility grievance coordinator failed to issue a determination for the grievance submitted by Phillips concerning food portioning, a violation of §7032.4(i).
10. The facility staff routinely leaves facility doors, e.g. kitchen doors, break room doors, commissary doors and property room doors unsecured at times that would not warrant such conditions. This is contrary to generally accepted good correctional practice and provides opportunities for inmates to access unauthorized areas and to pass contraband with attendant breaches of safety and security, a violation of Correction Law §500-c. The generally negligent and lax approach to facility security evidenced by these lapses was a causative factor in Phillips' escape.
11. Facility policy directed food service personnel to maintain 'direct active supervision' of workers working in the kitchen. However, this term has meaning only for trained uniformed officers. There is no policy or procedures to address supervision dilemmas such as those posed when only one cook was scheduled to work in the kitchen. In fact, inmate kitchen workers often are largely unsupervised, a fact known to facility managers and Sheriff's Office executives. This is a violation of *Minimum Standards* §7003.1.
12. Facility administrators and Sheriff's Office executives failed to appropriately charge security line staff, supervisors and managers with the responsibility of touring the kitchen

for purposes of regularly assessing security and supervision operations and conditions and directing measures to be taken to address deficiencies, a violation of §7003.1.

13. Facility administrators and Sheriff's Office executives failed to provide post orders (specific duty performance orders) for line supervisors and watch commanders, in accordance with generally accepted good correctional practice. Absent a reference document providing information regarding their responsibilities related to assessing and correcting deficiencies related to the security of the facility and supervision of inmates and line staff, accountability of line supervisors and command staff who perform these functions is lost.
14. The Sheriff, Sheriff's Office executives and the facility administration failed to deploy security staff to the mandated kitchen staff post identified in the February 2005 Position and Staffing Analysis as referenced within the Commission's August 15, 2005 Notice of Violation of 9 NYCRR Part 7041 Staffing Requirements and the November 21, 2005 Staffing Compliance Plan. This plan was agreed to by Erie County in satisfaction of the Commission's October 18, 2005 Directive and provided for restoration and deployment of staff to restore mandated security/inmate supervision posts which included the required post in the Correctional Facility kitchen. The Sheriff remained in violation of state regulations despite agreement to comply, and only redeployed staff to the required kitchen post after the escape of Ralph Phillips in April 2006. This violation directly contributed to the escape of Ralph Phillips.
15. As evidenced by Phillips' unchecked movements and actions, together with statements made by food service personnel, an unwarranted level of trust was bestowed on the facility kitchen workers in general, and on Ralph Phillips in particular, notwithstanding that violations of classification law and regulations improperly assigned him there.
16. The facility administration failed to implement procedures requiring accountability and control of can lids, a major contraband item, pending disposal. Moreover, the area from

which Phillips escaped was littered with spare metal equipment and spare parts suitable for use as tools or weapons. The facility administration lapsed into an unsafe condition which permitted inmates to have unsupervised access to can lids and other equipment that facilitated the fabrication of tools used for an escape. These failures and lapses are a violation of Correction Law §500-c, Custody and Control of Inmates.

17. The facility administration failed to maintain control of facility-issued and civilian clothing such that Ralph Phillips was in possession of both types of clothing which directly facilitated his escape. Inmate workers had access to unsupervised and unsecured areas of the facility, including the laundry room and intake property room, a violation of §7002.4(e). Food service personnel did not frisk inmates, and there were no uniformed staff posted to do so, thus providing the opportunity for any contraband obtained from and secreted in other areas of the facility to be readily transported undetected to the kitchen. No area searches were made of the kitchen by correction officers or civilian workers, resulting in the secreting of clothing, tools and other equipment used in Phillips' escape, together with a hidden breach in the facility roof.
18. Following notification up the chain of command to Sheriff's Office executives, including Sheriff Timothy Howard, previous security breaches and alcohol contraband seizures which occurred less than one year prior to Phillips' escape, went unaddressed, despite having taken place in the secluded area atop the kitchen storeroom coolers, the site of Phillips' subsequent escape. The failure to take corrective action constitutes a negligent dereliction of duty on behalf of the Sheriff, Sheriff's Office executives and the Correctional Facility administration which contributed to the escape of Ralph Phillips.
19. Ralph Phillips' traverse of the Correctional Facility roof activated an alarm in the Correctional Facility's Central Control room. Correction Officer David Padilla acknowledged and disregarded an alarm activation of zone 20, without notifying the perimeter officer or other appropriate personnel of the activation. This inaction constitutes a negligent dereliction of central control room staff duties.

20. Notwithstanding the failure to notify the perimeter officer of the roof alarm, the perimeter officer post had been abandoned without relief at the critical time, a violation of *Minimum Standards*, Part 7040 Staffing Requirements, and had been regularly abandoned for employee breaks and while the officer was assigned to other duties, a direct result of negligent operation of the Correctional facility in an understaffed condition.
  
21. There exists as many as five perimeter zones that are inoperable and in the case of zone 20, at least one zone that has an insufficient motion detection pattern. Five of the zones have been inoperable since July 2004. Further, two exterior cameras, one reportedly capable of providing a partial view of zone 20, have been reported inoperable since April 2005. Review of the central control room security inspection reports submitted prior to the escape indicated that staff responsible for documenting security inspections generally failed to do so in a consistent manner. Not only were several inspections missed over the last three years, a violation of §7003.10, deficiencies were also inconsistently reported. Given that many of the zones consist only of microwave detection equipment, an effective physical barrier to prevent or deter facility perimeter breaches does not exist. As the facility roof was and still is an area which is most vulnerable to security breaches, negligently allowing such equipment to fall into and remain in disrepair threatens the safety of the public, a violation of Correction Law §500-c and is a negligent dereliction of duty on behalf of the Sheriff, Sheriff's Office executives and the Correctional Facility administration.
  
22. Equipment shortages hampered the immediate response to Phillips' escape and demonstrated that the facility administration was ill-prepared to properly equip staff for a large-scale emergency response. Specifically, shortages of radios, flashlights, batons and vehicles existed. The inability to rapidly issue basic emergency equipment creates an unsafe facility operating environment and a threat to public safety. Moreover, correction officers were without firearms or chemical agent certification and therefore could not be issued those weapons. Any correction officer may well have been at a marked

disadvantage in any encounter with Phillips had immediate search and apprehension efforts been effective.

23. Facility policy 06-05-00 pertaining to emergency responses failed to include accurate telephone numbers for many of the local law enforcement agencies listed therein.
24. Following discovery of the breach in the roof, command staff failed to ensure that the security and integrity of the area atop the coolers was maintained. Specifically, Lieutenant Martina failed to assign a security staff member to this area pending processing and collection of evidence by Sheriff's Office investigators.
25. Following the identification of items of evidence, Sheriff's Office investigators and the facility administration failed to secure such evidence in an area that was inaccessible to facility staff and inmate workers. Specifically, the metal 'come-along' hook attached to four connected bed sheets, three articles of civilian clothing, a piece of gypsum roof material with tar on it and a number ten can lid were placed in Captain Bienko's office, an area accessible to both facility staff and operations workers, until April 5, 2006.
26. The issuance of a NYSPIN Multi-State Regional alert nearly nine hours after the escape failed to forewarn regional local law enforcement agencies in a timely manner, and represented a threat to the safety of law enforcement officers who may have encountered Phillips unaware that a dangerous felon had escaped and was at large.

**V. ACTION REQUIRED**

1. That the Sheriff of Erie County shall take immediate action to correct violations of 9 NYCRR Part 7000 et seq., *Minimum Standards and Regulations for the Management of County Jails and Penitentiaries*, in particular Classification, Staffing Requirements and Security and Supervision, and of NYS Correction Law §500-c, Custody and Control of Inmates, to address issues of executive and managerial negligence and professional

incompetence, and to otherwise improve the executive level management of the Erie County Jail Management Division. Dangerously low staffing levels shall be immediately remedied based upon the Commission's December 2004 and February 2005 Position and Staffing Analysis pursuant to *Minimum Standards* Part 7041, with the understanding that absent such remediation, the Commission may act to reduce the Maximum Facility Capacity of the facility(s) in accordance with *Minimum Standards* Part 7040.

The Jail Management Division shall employ and make available for duty not less than **591** full time uniformed staff, apportioned between the Erie County Holding Center and Erie County Correctional Facility and among managers, supervisors, and line staff as set forth in the Commission's Notice of Violation dated August 15, 2005. The Sheriff shall prevent intentional abandonment or vacating of mandated security posts for any reason, including breaks and meals, particularly in security-sensitive areas.

Implementation of a unitary, consistent chain of command such that there is accountability up and down the line of authority and responsibility is a critical need. The facility security architecture and procedural framework should be reviewed and security hazards rectified. A comprehensive review of the state of knowledge of, and direction to, managers and supervisors staff as to their duty post orders, which shall be reduced to writing, shall be undertaken and remedied as warranted. Particular attention shall be directed to oversight of security procedures, performance of line staff, inmate movement and access, interdiction of illicit and/or unsupervised inmate activity, restriction of inmate facility access, personal visits to all areas of the facility and keeping of records of supervisory and managerial activity. Regular meetings between executive administrators and supervisors at the Erie County Holding Center and Correctional Facility should be scheduled and held, with proceedings recorded and distributed.

2. Absent the development and implementation of policy and procedure that causes all new admissions to the Jail Management Division to take place at the Holding Center, in accordance with *Minimum Standards* §7013.8(a), the Correctional Facility administration

shall designate a minimum of two housing areas for purposes of housing newly received male and female inmates separate from respective general populations pending completion of classification procedures, at the Correctional Facility.

3. In accordance with §7013.1 and §7013.3, the Sheriff shall require the Jail Management Division and Correctional Facility administration to develop and implement policy and procedures which provide for the systematic, formal, objective assessment and classification of inmates in compliance with the requirements of Part 7013 including but not limited to §7013.3(a)(4). This requires that there be written policy, reflected by actual practice for determining classification assessments made subsequent to initial screening for the assignment of inmates to appropriate facility housing areas. Such policy shall objectively define all sub-classifications utilized and define associated criteria for assigning housing within corresponding classification designations, without overlap.
4. The Correctional Facility administration shall discontinue the current practice of assigning housing based primarily on where housing vacancies exist and shall comply with the provisions of §7013.8(c) and Correction Law §500-b (7). Inmates shall not be housed in housing areas not rated for their objective classification scores, nor shall inmate classification scores be altered without classification review, including complete re-classification in accordance with Part 7013.
5. In accordance with §7013.3(a)(4) and Correction Law §500-b(7), the Correctional Facility administration shall establish security designations for each housing area at the facility and define criteria for assigning housing within each of these areas.
6. For purposes of complying with Correction Law §500-b, subsections 7(b) and 7(c), and *Minimum Standards* §7013.8(c) and (e) and facility policy 09-03-00, the Jail Management Division shall forward all medical and classification documentation to the Correctional Facility and vice versa when inmates are transferred between the two facilities.

7. In accordance with Correction Law §500-b (7) and *Minimum Standards* §7013.8 (c) when inmates are classified and assigned to housing, the Correctional Facility administration shall require that classification staff consider the entire criminal history of each inmate and objectively score the respective classification assessment accordingly.
8. In accordance with *Minimum Standards* §7013.9, the Correctional Facility administration shall ensure that all inmate assignments to ‘worker’ status and to ‘worker’ housing from any other housing classification are preceded by a classification review. Furthermore, the classification file shall contain written documentation that such a review occurred pursuant to §7013.12. In accordance with §7013.3(a)(4) and §7013.8(d), the Correctional Facility administration shall develop and implement a classification policy that defines formal and objective criteria to be met by inmates for purposes of determining eligibility for assignment to ‘worker’ status and ‘worker’ housing. In accordance with Correction Law §500-b(7) and *Minimum Standards* §7013.8(d), following a classification review and determination to assign any inmate to worker status, affected inmates shall be assigned to housing that is designated for inmate workers.
9. Due to material misrepresentations by the Correctional Facility administration to the Commission as to the manner of instruction, effective this date, the Commission has revoked the satisfactory completion certificate of Classification Training of Lieutenant Daniel Leary and decertified the classification trainer status of Chief Ronald Heist. The Jail Management Division shall forward the names of all staff that received classification training via ‘self study’ instructional methods. Furthermore, as is consistent with the requirements of §7013.11, the Correctional Facility shall only utilize facility staff who have completed a Commission-approved training program for performing duties related to the administration and implementation of classification procedures.
10. Pursuant to §7013.3(c), the Jail Management Division shall conduct annual classification policy and procedural reviews and make changes as appropriate. Such reviews shall be

documented in accordance with procedures prescribed by §7013.3(d).

11. In accordance with §7032.4(i), the Correctional Facility grievance coordinator shall issue written determinations for all grievances submitted that articulate a complaint with objective facts and clarity sufficient for the grievance coordinator to understand.
12. For purposes of complying with Correction Law §500-c, the Correctional Facility administration shall require that all doors and gates, including but not limited to those permitting access to the kitchen, laundry commissary, break room, reception/intake unit and intake property rooms, are secured when inmates and staff are not traversing through them.
13. For purposes of complying with §7003.1 and §7003.4(d), the Correctional Facility administration shall develop and implement policy that adequately defines food service personnel and kitchen security staff responsibilities relative to security of the kitchen and supervision of the inmates.
14. The Correctional Facility administration shall develop and implement a policy that addresses kitchen tool control and the handling of kitchen waste products, e.g., can lids, that may readily be used or altered for use for purposes that would jeopardize the safety or security of the facility or of persons therein.
15. The Correctional Facility administration shall develop and implement procedures that require that inmate workers are personally searched by uniformed staff prior to leaving and upon returning to the kitchen.
16. For purposes of compliance with §7022.1, following the review, investigation and assessment of serious or problematic incidents, the Sheriff's Office, the Jail Management Division and the Correctional Facility administration shall exercise due diligence by thoroughly examining the circumstances surrounding and leading to such incidents,

documenting the findings and, if warranted, improving or reinforcing relevant facility policies, procedures and actual practices so as to prevent recurrence.

17. For purposes of complying with Correction Law §500-c, Erie County and the Erie County Sheriff shall take measures to immediately repair all existing inoperable exterior security monitoring and alarm systems. Once repaired, Erie County and the Erie County Sheriff shall diligently maintain these systems through a scheduled maintenance, testing and drill program.
18. For purposes of complying with Correction Law §500-c, the Correctional Facility administration shall regularly test all exterior security monitoring and alarm systems. The results of such tests shall be documented and included with recorded results of the weekly security device inspection conducted pursuant to §7003.10.
19. For purposes of compliance with §7003.5(e), the Correctional Facility administration shall review and revise all relevant emergency response policy and procedures for purposes of ensuring that response practices and information including but not limited to, emergency notification telephone and fax numbers, are current, and that regional law enforcement notifications, when warranted, are made timely.

## **VI. RECOMMENDATIONS**

1. In order to eliminate the need for duplicative activities regarding initial screening and risk assessment, when inmates are transferred between the Holding Center and the Correctional Facility, the Jail Management Division should develop and implement procedures that permit classification and medical staff to utilize existing Erie County classification and medical information for purposes of conducting a classification review and assignment of appropriate housing.
2. In order to efficiently utilize the already seriously depleted pool of security staff resources

available at the Correctional Facility and the Holding Center, the Jail Management Division should cease filling and backfilling non-mandated, redundant security posts located in the Correctional Facility dormitories, Joliet, Kilo, Lima, Nova, Oscar, Papa, and Romeo.

3. In order to better prepare civilian staff for recognizing security deficiencies, supervising inmates and safely interacting with inmates, the Correctional Facility administration should review and revise the existing civilian orientation training program so that it emphasizes concepts pertaining to security, supervision and manipulative inmate behaviors. Following this activity, the Correctional Facility administration should require that all civilian staff, whose duties require contact with the inmate population, attend the revised training program.
4. In order to ensure that facility emergencies such as this incident can be responded to by sufficiently equipped staff, the Jail Management Division should procure adequate quantities of emergency response equipment including but not limited to: emergency vehicles, flashlights and two-way radios.
5. In order that facility staff are able to defend themselves or third persons when encountering dangerous or potentially dangerous individuals outside the confines of the facility, the Jail Management Division should enact measures that would authorize a sufficient number of facility staff to use chemical agents and firearms during the course of performing their duties outside the secure confines of the facility. Such measures would necessarily require firearms training and certification, chemical agents training and development of a facility-based firearms arsenal. Nevertheless, Erie County correction officers are nominally peace officers and the county should take positive advantage of that status.
6. In order that crime scenes are preserved pending evidentiary processing, the Correctional Facility administration should reiterate facility policy related to crime scene preservation to line, supervisory and command level staff.

7. In order that evidentiary chains of custody are not compromised, the Correctional facility administration should revise policy 05-03-04, pertaining to evidence handling, so that it designates a secure location to store evidence that is too large or voluminous to place in the facility evidence locker.