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INVESTIGATION REPORT OF
FEBRUARY 19, 1981 INCIDENT
AT
MINNESOTA CORRECTIONAL FACILITY-ST. CLOUD

Submitted by:
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OMBUDSMAN FOR CORRECTIONS
STATE OF MINNESOTA
SAINT PAUL, MINNESOTA
June 1, 1981

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INTRODUCTION

The Ombudsman for Corrections learned initially about the February 19, 1981 disturbance at the Minnesota Correctional Facility St. Cloud via a radio news bulletin on that date. The disturbance was in progress at the time of the bulletin and Associate Superintendent Gadbois emphasized, on the bulletin, that the institution was not negotiating with the inmates. He stated that "our policy is not to negotiate in a hostage situation".

On the morning of February 20, the Ombudsman telephoned Associate Superintendent Gadbois to briefly discuss the disturbance which had occurred. The Ombudsman advised Mr. Gadbois that his office would be conducting an investigation of the incident. Mr. Gadbois had anticipated that such an investigation would take place.

The Ombudsman's investigation began on the February 25 visit to the institution. The Ombudsman and his staff conducted interviews, during the course of the investigation, with 36 staff members (including Superintendent McRae), 29 inmates (including Terry Budreau), two members of the St. Cloud Police Department, Dr. Charles McCreary, and visitor Virgil Sohm. The investigation focussed on those issues which seemingly were directly related to the February 19, 1981 disturbance and the subsequent use of force to bring the situation under control.

A summary of the incident, and subsequent inmate grievances, follows:

Mr. Budreau complained for several days about a back injury which he sustained on February 13, 1981. He was dissatisfied with the quality of medical care which he received in response to his complaints. Budreau's discontentment resulted in a confrontive situation between him and staff which resulted in his forcible removal to segregation and receipt of several disciplinary reports. Allegations made by inmates after the incident suggested that Budreau was beaten in the process of his transfer to ICU (Segregation).

This report provides a chronology of the significant events related to the incident and answers to questions about the roles of inmates and staff in the course of the incident. This information is based on the interviews and written reports of the incident. The report is organized to provide information on the following:

Terry Budreau, his medical condition and his physical treatment by staff; activities prior to the Culture

Group Meeting, the Culture Group Meeting and the Incident.

The basic questions addressed by the report are:

- .Did Mr. Budreau receive adequate medical care? Was he beaten?
- .Were the four visitors in the Culture Meeting Room being held hostage?
- .Is there a policy not to negotiate with inmates in hostage situations?
- .Were the inmates properly warned about the use of force and gas?
- .Was excessive force used?

The recommendations, based on the findings and conclusions in the report, are offered as solutions, within the range of possibility, to assist the administration in avoiding some of the complications resulting from the incident.

An Appendix is attached to offer more specific information about the nature of the gas used to quell the disturbance and the physical dimensions of the area where the disturbance occurred.

SUMMARY AND RECOMMENDATIONS

The Office of the Ombudsman for Corrections investigated the February 19, 1981 incident at the St. Cloud Correctional Facility by interviewing staff and inmates and reading reports and documents pertinent to the incident. A summary of the incident precedes the recommendations which result from the findings and conclusions of the investigation.

SUMMARY

The February 19, 1981 incident at the Minnesota Correctional Facility - St. Cloud was precipitated by what Indian inmates believed had happened to their fellow inmate Terry Budreau. Other inmates were the principal source of information on which the Indians based their conclusions. This second and third-hand information was either distorted or exaggerated in its repetition of the facts.

The relationship between Indian inmates and institutional staff does not inspire trust between the two groups and trust is essential in potentially volatile situations. Indian inmates believe that institutional staff are both insensitive to their needs and concerns and disrespectful to Indian customs and beliefs. Indian inmates point to the absence of Indian persons in institutional staff positions as an example of the lack of commitment to Indian concerns. Alternatively, some staff believe that Indian inmates use their ethnic differences to take advantage of a situation. The claims of Indian inmates that Terry Budreau was beaten and denied adequate medical care were unfounded. No evidence in the Ombudsman's investigation revealed that Budreau was beaten or that he received inadequate medical care.

Once the decision was made to use forcible entry, the institution staff acted swiftly and professionally in bringing the situation under control.

Information issued to the public about institutional policy regarding hostage negotiation was misleading and implied the existence of a firm institutional policy stating that the administration will never negotiate with inmates for the release of hostages. No such written policy exists; however, a "Riot and Disorder Policies and Plans" exists which outlines procedures for responding to a "disturbance within the institution." Each disturbance is unique and the extent of hostage negotiation which is appropriate requires individual determination.

RECOMMENDATIONS AND RATIONALE

Based on the conclusions of this investigation, the Office of the Ombudsman for Corrections recommends:

1. *That the Ombudsman be added to the list of people notified whenever a disturbance occurs in any of the Department of Corrections facilities.*

In this instance, inmates and visitors were concerned about the lack of an independent observer to witness their departure from the Culture room. The St. Cloud Police were not viewed as impartial observers because they were perceived as symbols of law enforcement.

2. *That in future disturbances involving hostages or potential hostages, correctional facility administrators refrain from issuing policy statements concerning the institution's negotiation posture.*

Misleading information about institution hostage negotiation policy was communicated, in this instance, to the public. Unnecessary concern about institutional resolve and capacity to protect innocent lives (staff, inmates, visitors) could ensue from such misinformation.

3. *That the June 4, 1980 reissuance of the recommendation by the Office of the Ombudsman for Corrections in the "Special Investigation Report on Disciplinary Hearing Unit, Minnesota Correctional Facility - St. Cloud" stated the need for staff training in human and race relations. Further, that such training be integrated into the institution's overall training plan.*
In addition, that the Department of Corrections, and all correctional facilities, review all Departmental training plans with regards to race and human relations and integrate this component into the plan wherever it is lacking.
4. *That the St. Cloud Correctional Facility make every effort to recruit and hire Indian Correctional Officers as vacancies become available.*

There continues to be a need to improve the interpersonal relationships between inmates and staff. Some of the relationship problems are related to the racial composition of the staff and the inmate population.

CHRONOLOGY OF EVENTS LEADING TO FEBRUARY 19, 1981

INCIDENT

AT MINNESOTA CORRECTIONAL FACILITY-ST. CLOUD

TERRY BUDREAU

COMPLAINT ABOUT BACK AND TRANSFER TO ICU:

- 2-15-81 Budreau was seen by the institution doctor because of his complaint about low back pains associated with bending and lifting over a one-week period.
- 2-13-81 Budreau fell on a sink in the janitor's closet while on his job in food service. He injured his back and was transported in a wheelchair to the infirmary for examination by the doctor. X-rays of his back were taken and were negative. Examination revealed that his back was "tender over the lumbar area with a fair amount of spasm." Local heat and norgesic were prescribed. He was returned to Cell House E after being given a hot tub treatment in the infirmary. He was placed in a cell on the Flag (ground level) to avoid the necessity to climb stairs because he was experiencing some difficulty in walking.
- 2-14-81 Budreau was placed on medical lay-in which restricted him to his cell for bed rest. Meals and medication were delivered to his cell.
- 2-17-81 Budreau sent a written message, via an inmate, to the Indian Cultural Group. He complained in the note about his back pain and the inadequate medical care that he felt he was receiving.
- 2-18-81 Budreau saw the doctor and expressed continued complaints about back pain. Examination revealed tenderness on both sides of the bruised area which he sustained from the fall on the sink. Sensation was present and normal in his lower extremities. The medical plan prescribed continuation of daily tub soaks and reexamination in one week. Budreau refused the prescribed tub soaks and requested to speak with an attorney because he believed he was receiving inadequate medical care. The tub soaks were discontinued but the status of medical lay-in was continued.
- 2-19-81 About 8:45 AM, Budreau complained about back pain. He left his cell in order to register a complaint with staff about the food and to indicate his desire to see a doctor. Staff ordered him to return to his cell and called the Security Squad to take him to ICU (segregation) when he refused to do so. At this time, approximately 8:55 AM, all other inmates in the cell block were locked in their cells. When the Security Squad arrived, Budreau continued his resistance to being moved to ICU and was handcuffed

for forcible removal. His hands were cuffed behind his back. Three Security Squad Officers carried him to ICU.

REMOVAL TO ICU

INCIDENT REPORTS:

A review of the Incident Reports written by the three Security Squad Officers and the Health Service Officer indicated that Budreau resisted removal to ICU by kicking and struggling. Officers, previously informed about Budreau's back problems, exercised care not to aggravate his back injury. Budreau was carried by the three officers: two held him around his chest (under his arms and shoulders) and the third officer held his legs.

The reports indicated that Budreau was still struggling upon his arrival at ICU and was placed in a quiet cell at about 9:00 AM. At 9:05 AM, the medic saw him in the quiet cell. Budreau complained that his legs were numb and asked to see a doctor.

INTERVIEWS WITH INMATES:

The two inmates in the cell block who were witnesses to the incident contradicted the officers' claims, in their reports, that they had used extreme care in removing Budreau. One inmate who was interviewed claimed that an officer put his knee in Budreau's back while handcuffing him and that Budreau was lifted off the floor, on which he was lying face down, by the handcuffs behind his back. Both inmates who were interviewed admit that the view from inside their cell was obstructed: one inmate, in a second gallery cell, was looking down on the flag; the other inmate, in a flag cell, required the use of a mirror, extended arm's length outside the cell bars, to observe the activity which was not directly in front of his cell.

CHARGES AGAINST BUDREAU:

Later, Budreau was charged with disobeying a direct order, resisting placement, being in an unauthorized area, committing verbal abuse, and threatening others. He signed a waiver for a hearing and entered a guilty plea to disobeying a direct order and verbal abuse. He was sentenced to 60 days in segregation, with 30 days suspended, for 30 days.

CONTINUATION OF CHRONOLOGY

- 2-20-81 Budreau was seen by Dr. Charles McCreary (civilian) who examined him and recommended transfer to St. Paul Ramsey Hospital for evaluation.
- 2-21-81 At about 9:05 AM, Budreau was taken to St. Paul Ramsey Hospital. The following information was excerpted from Budreau's Physical Medicine Discharge Summary at St. Paul-Ramsey Medical Center:

"At the time of admission, the patient complained primarily of discomfort in the low back with "numbness" in the right leg. This resulted in the patient having difficulty with simple ambulation.

Past medical history was generally noncontributory in that the patient denied any similar difficulties in the past.

PHYSICAL FINDINGS:

Physical examination on admission revealed a young adult who was in no acute distress. The blood pressure on admission was 140/80 and the pulse was 90 and regular.

Neurological examination revealed the patient could straight leg raise to 70 degrees on the right side and to 90 degrees on the left. Reflexes in the lower extremities were present and equal, and superficial sensation was intact.

The patient could assume a knee chest position with some difficulty and no attempt was made to bring him to a long sitting position.

Examination of the back revealed a healing contusion which was probably due to the original injury of ten days ago. Otherwise, only a minimal amount of tenderness was noted even on deep palpation over the lumbosacral joint laterally to both sides.

LABORATORY & X-RAY DATA:

X-rays of the back were not available. No laboratory studies were performed during this hospitalization.

HOSPITAL COURSE:

Treatment measures were conservative in nature consisting primarily of bedrest with localized heat. After several days, a formal therapy program was instituted.

The patient's response was generally satisfactory although subjectively (sic) continued to complain of discomfort in the low back. He was completely functional in and about the ward and could manage all his personal self care needs. He was ambulatory on the ward also.

In view of the adequate response to limited treatment measures, it was decided that the patient could indeed be discharged to the St. Cloud institution. No formal treatment measures are recommended. Gradual mobilization of the patient should be continued and it would appear that as of next Monday, 3/2/81,

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this man should (sic) be able to resume his regular activities at the institution without any limitations. If this man continues to have difficulty he will be seen by the institution physician for definitive care.

PROGNOSIS:

The patient's condition at the time of discharge from the hospital is fair.

DISABILITY:

The disability is partial and temporary. Length of disability would be five days.

FINAL DIAGNOSES:

1. Contusion of low back.

DISCHARGE MEDICATIONS:

1. Tylenol-650 mg. q. 4 h. p.r.n."

2-25-81: Budreau was discharged from the hospital and returned to St. Cloud.

THE INCIDENT

ACTIVITIES PRIOR TO CULTURE MEETING:

2-19-81: At lunch time, Indian inmates began to learn about the Budreau incident. Other inmates, two or three of whom were in E House at the time of the incident, reported what happened. Others would learn about what happened on their jobs; still others would not learn about the incident until they attended the Indian Culture Group.

3:00 PM Captain Olson came on duty and met with Captain Weiss who was going off duty. Captain Weiss discussed the Budreau case with Captain Olson suggesting that the matter would bear watching.

5:00 PM Captain Olson received a telephone call that inmate Littlewolf wanted to see him. He saw Littlewolf who expressed concerns about what had happened to Budreau. Captain Olson read the incident report to Littlewolf. Littlewolf wanted Budreau to see a lawyer and an outside doctor and was advised that Budreau could see an outside doctor at his own expense. Captain Olson also informed Littlewolf that Budreau had seen a doctor

several times and believed that the sharing of this information satisfied Littlewolf. However, Littlewolf was heard to say, on leaving Olson, that he would call someone in Washington, D.C..

CULTURE GROUP MEETING:

- 6:00 PM Indian inmates began to assemble for the regularly scheduled Culture Group meeting. Many in the group were aware of the "Budreau incident" but were not sure to what extent it would be discussed at the meeting. Some inmates were bringing other issues about Indian treatment in the institution to the meeting because they believed they (Indians) were generally subject to excessive shakedowns and verbal abuse. Initially, Eric Johnson, the culture group sponsor, and about 38 inmates were at the meeting in the Culture Group meeting room. The meeting room is approximately 60 x 30 feet and has two inner offices, one at either end of the room. (See Appendix for drawing of the room). When the group first gathered in the meeting room, several of the inmates (the Council) entered the Indian Culture Office at one end of the room for a meeting. Johnson did not accompany them into the office nor could he hear the discussion which took place in the office. Johnson was aware of the "Budreau incident" and had neither been approached during the day by inmates to inquire about Budreau nor to request his assistance. Two days prior to this date, Johnson was present when Budreau, on his way to the Canteen, stopped community visitors to tell them that the staff was not doing anything about his back injury. Johnson, as culture group sponsor, enjoys a good working relationship with Indian inmates; however, the working relationship should be differentiated from having their confidence. So Johnson's exclusion from the council meeting was not unusual.
- 6:30 PM Four visitors, Virgil Sohm, Chester Merrill, Jerry Dearly, and Harold Lightfeather, from the Heart of the Earth School arrived at the meeting. Such visitors are customary practice at Culture meetings and all four were participants at prior Culture Group meetings. When the visitors arrived, the Council was meeting in the office and the other inmates were milling around the larger room. Tensions began to build up as the discussion focussed on Budreau. Some of the inmates briefly mentioned the problem to the visitors. Johnson stated that he was not sure the visitors were aware of what was happening when they first arrived. He told them that there were some problems but did not elaborate further.

The inmates version of what happened when the visitors arrived differs somewhat from staff. Inmates claim that staff had instructed the visitors to go into one of the inner offices in the meeting room. Staff states that the suggestion came from the inmates. Staff made no effort to prevent the visitors from entering the room.

6:35 PM

The inmates holding a Council meeting in the Indian Culture Office came out into the larger room and all the inmates gathered together for a few minutes. An inmate spokesman told Johnson that the inmates were concerned about Budreau. They believed that Budreau was beaten and wanted to go as a group to Segregation to check on Budreau's condition. Johnson advised the group that the Captain was the only person who could make a decision on such a request. The inmates advised Johnson to get the Captain and at about the same time, Johnson asked if any inmates wanted to leave the room. Approximately ten men decided to leave; some were issued passes and others were told to go without passes.

6:40 to
7:00 PM

Johnson called Lt. Hammond, in charge of security, to inform him that there was a problem requiring his attention in the Culture room, i.e., a group of inmates wanted to go to Segregation to join Budreau in lock-up as either a show of solidarity or a sign of protest. The inmates stated, later, that they were only interested in going to see Budreau in Segregation to assure themselves that he had not been physically beaten. The time of Johnson's call to Lt. Hammond coincided with the time of the second switchout for gym. The gym is located in the same area as the Culture Group meeting room. The Security Squad, after each gym period, is required to position itself in the corridors near the gym. These same corridors lead to the Culture Group room.

Lt. Hammond responded to the call from Johnson and left to go to the Culture room. On his way to the room, he ordered the Security Squad to remain in place in the corridor. Hammond entered the Culture Group room alone. When he entered, the inmates were standing along the edges and around the walls of the room. The visitors were still in the office, except for Virgil Sohm who had a camera and was taking pictures. Johnson was near the entrance door. Comments were coming at Hammond from all over. He characterized the mood of the inmates as hostile. They wanted to know why Budreau was beaten. All were talking at the same time and no one person seemed to be in charge. He asked Johnson who could speak for the group and two inmates were identified. As he approached the group, he was surrounded by inmates who were no long-

er demanding to go to Segregation as he had been previously told. He asked a couple of inmates to accompany him to see the Captain to further discuss the situation. That idea was rejected. The inmates were demanding that Budreau be released and the officers be fired. They wanted the Captain to come to them. Hammond said he would go talk to the Captain. Johnson was then ordered to leave the room and the area. The Security Squad was ordered to remain in place as Hammond returned to the Custody office.

The inmates believed that Hammond was going to get the Captain and bring him back to the Culture room to discuss their concerns. One inmate followed Hammond and Johnson to the door, looked down the corridor and saw the Security Squad that Hammond had ordered to remain in place. His interpretation was that Hammond and Johnson had not been dealing in good faith. He quickly retreated into the room and informed the other inmates that the Security Squad was in the corridor and that they would be rushing the room. At this time, all the inmates became concerned and began to move furniture around the room to barricade themselves in as a means of protection from the Security Squad.

Hammond had returned to the Security office and began a discussion with Captain Olson and Collin Gau. Before the discussion could be completed, he received a call from a member of the Security Squad that they could hear noise of breakage and moving of furniture coming from the Culture room. He ordered them to hold tight and continued his discussion. Momentarily, a second call came. The situation had worsened. He then ordered the door to the Culture room closed and locked and the area secured (6:52 PM).

The visitors were still in the Culture room when the door was closed and locked and the area secured. The staff was aware of their presence in the room and that one of the visitors, Chester Merrill had a heart condition for which he was on medication.

7:00 to
8:00 PM

Superintendent McRae arrived at the institution at about 6:55 PM and proceeded to the Custody office where he assumed command. The administrative staff present were Superintendent McRae, Don Belschner, Day Custody Captain Leon Weiss, Captain Olson. Tom Raiden (Director of Training), Collin Gau and Millard Fleming were also present.

The situation was discussed among the staff as to how they would proceed. The Riot and Disorder Policies and Plans which call for notification of the St. Cloud Police, Highway Patrol, Stearns County Sheriff and St. Cloud Fire Department would be

followed. The police, highway patrol and county sheriff assist with patrolling and securing the perimeters of the institution. Those notified are not expected to enter into the institution to assist with controlling the disorder but have specific roles related to outcomes from institutional disturbances. For example, the fire department is called because fires often occur during such disturbances. The St. Cloud Police were to play a specific role because they were asked to enter the institution and come to the area of the Culture room to serve as observers only.

Verification was made of the number of inmates and visitors in the Culture room (29 and 4, respectively).

Captain Weiss was designated as the Chief Negotiator based on: his prior experience with Indian inmates (in prior weeks, Weiss worked with Indian inmates to help resolve some of their grievances) and training in "hostage negotiation".

Efforts were made to establish telephone contact with the inmates in the Culture room. The first contact initiated by the inmates came to Don Belschner. Efforts were made to determine whether or not the visitors were being held as hostages. Inmates would neither confirm nor deny that they were holding the visitors as hostages. Belschner spoke with Virgil Sohm during this telephone call. Sohm raised concern about Mr. Merrill who has a heart condition but did not verify whether or not the visitors were being held hostage. Sohm made a request for an outside line which was denied. Later, Belschner called the Culture Office and told an inmate to whom he spoke that if the inmates did not release the visitors, they were responsible for their health. Belschner also spoke with Sohm and advised him that the situation would now be handled as if the visitors were hostages. An inmate wanted Sohm to read a list of demands, one of which was an outside line. This was rejected; it was decided that there would be no discussion of demands until the visitors were released. Sohm reiterated his request for an outside line which was again denied.

According to Mr. Sohm, the request for the outside line was made in order to call Heart of the Earth School to request a community observer while the group surrendered to institution officials. Sohm indicated that he and the inmates were very concerned about their safety without the presence of some community observers.

Millard Fleming, a black officer, placed a call to the Culture room to see if he could be of any assistance. He believed his "good relationship" with the Indian inmates might make a difference.

The inmates asked for Captain Weiss, who was not yet available, and Officer Bronson, who would not be made available.

8:00 to
9:30 PM

About 8:00 PM, Captain Weiss made telephone contact with the inmates. He told them that there could be no discussion of grievances until the visitors were released from the room. Weiss assured the inmates that if the visitors were released, staff would not rush the room but would provide an opportunity for inmates to discuss their grievances. Weiss also spoke with Sohm telling him the same thing and informing him that the institution was handling the situation as if the visitors were hostages. He asked Sohm to confirm whether or not the visitors were free to leave the room. Sohm replied that he believed that they were. Weiss terminated the call indicating that he would call back in ten minutes. Captain Weiss made several later attempts to call the Culture Office but received no answer. Meanwhile, discussion by staff continued with respect to the alternatives for the administration's course of action. An order, previously issued by the Superintendent, was to prepare for forcible entry, if necessary.

Fifteen to twenty officers were in the area of the Culture room corridor from which a twelve man entry team, wearing gas masks was assembled. In addition, eight other men wearing gas masks were present, two of these were observers from the St. Cloud Police Department.

At about 8:30 PM, the entry team indicated it was ready and standing by. Before a decision to enter was made, Captain Weiss continued to try to make telephone contact with the inmates. Finally, bullhorns were used in the corridor and in the yard, at the windows of the Culture room, to tell the inmates to call the Custody Office. Officers from the institution, the Stearns County Sheriff and two fire engines and firemen from St. Cloud were assembled outside the windows of the Culture room. Although there was considerable noise from the fire engines outside, officers in the corridors said they could hear the message from the bullhorn telling the inmates to call the Custody Office. Officers on the outside of the building said they could hear the message from the bullhorns on the inside of the building.

At approximately 8:40 PM, Captain Weiss received a call from the inmates in the Culture room. The inmate on the phone wanted to discuss grievances with Captain Weiss. Weiss again stated his position that the visitors should be released before any discussion could take place. The inmate caller indica-

ted that he did not have the authority to make such a decision because he was not the chief. Weiss suggested that the inmates discuss the matter and he would call them back in five minutes. The staff assessment of the situation was that it was escalating. Staff in the yard was reporting that the inmates were arming themselves with broken broomsticks and other objects available within the room. The need for a forcible entry became more likely. A decision was made to attempt one more effort to secure release of the visitors. At approximately 8:50 PM, Captain Weiss received a call from an inmate in the Culture room restating their interest in a discussion of grievances. Captain Weiss reiterated his position: send the visitors out and then he would talk. The inmates wanted to know if the media had been notified about the situation and Weiss responded that they had not. The inmates said the visitors did not want to leave and Sohm, personally, verified this on the phone. According to Sohm, the visitors remained because they believed that if the door was opened for them to leave, the staff would have the opportunity to forcibly enter. They did not want to take that chance and believed that staff would not use the kind of force it did if they remained in the room. The telephone conversation continued and Weiss indicated that the visitors had ten minutes to come out or the entry team was coming in. He then terminated the call.

8:53 PM Superintendent McRae stated, at that time, that they would enter the area using gas. He ordered that the inmates be warned two minutes prior to entry. It was also decided to make one more effort to minimally secure the release of Chester Merrill. At 8:57 PM, Weiss contacted the Culture Office and specifically requested that Mr. Merrill be sent out because they were coming in with gas and it could get rough for him. The conversation continued and Weiss said they had one minute before the squad would enter. At this point, the inmate on the other end of the line dropped the phone receiver. The noise of muffled conversation and breakage was reportedly heard in the background.

9:07 PM Superintendent McRae gave the order to go in with gas. At the same time, the Captain tried to contact the Culture Office and found the line was busy. He assumed that the line had either been destroyed or the receiver was left off the hook. The inmates indicated that they left the telephone to discuss Weiss' demand that the visitors be sent out and could not arrive at any consensus on the matter. Many of the inmates believed that this request was a ruse on the part of staff to rush the room by

force. Discussion of the matter by the inmates was still in progress when the staff entered the room.

9:08 PM The bullhorns notified inmates that barricades should be removed because the staff was coming in and would be using gas.

9:15 PM Captain Weiss ordered Lt. Hammond to proceed. Lt. Hammond who was in charge of administering the gas is the most knowledgeable staff person about the use and effect of gas. Hammond was trained in the use of gas; members of the entry team were trained in SOS. In staff training, all participants were in areas where gas had been used. In effect, they all experienced what the inmates were to experience. This is a requirement for any staff member who may be part of such an effort. The type of gas used was CS (Orthochlorobenzal-malonitrile), a highly refined form of tear gas. CS is a quick acting, fully incapacitating form of gas. It is more potent than CN (Chloraceteophe-none), fully incapacitating its victims, although the after effects are believed to be less harmful. Victims offer no resistance when overcome by CS gas. (See appendix)

Hammond was aware of Chester Merrill's heart condition before the gas was used. Through his training, he had learned that CS gas should have no greater effect on Merrill than anyone else. The plan was for the entry team to shoot the gas into the Culture room from three areas in the yard outside the room. Highpowered water hoses were used to break the windows of the room because of the difficulty in getting the gas cannisters through the screens on the windows and to reach between the windows and mesh wire screens. Two gas delivery people were outside with Mighty Midget grenades. A total of fourteen continuous Discharge Grenades were used. All the grenades were G.O.E.C. manufacture. Ten of the grenades were #98 Mighty Midgets and four were #2 grenades. Five Mighty Midget grenades were delivered from the School Hall and five were delivered from the outside. Also the four #2 grenades were delivered from the outside. There were a total of five malfunctions, three minis and two #2. Therefore, a total of nine grenades functioned properly. All of the grenades used were of C.S. loading. In addition, Mace and CS in the aerosol spray cans were used. According to Hammond they were used by officers in the yard outside the Indian Culture Office and by officers entering the room. Mace was used outside because the grenades shot into the room did not land in the office area, it was used at the door because the barricades made it

difficult for the officers to enter. While they were pushing away the barricades, inmates were attacking them with broken and sharply pointed broom sticks. Several officers received bruises on their hands as they were making their entry. The objective of using gas was to fully incapacitate the inmates in order to avoid any fighting upon entry.

9:30 PM All of the inmates had been removed from the area and taken to ICU (Segregation). The visitors had been released and Mr. Merrill had been taken to St. Cloud Hospital. One inmate who had been injured with a cut above one eye (neither he nor the staff is aware of how that injury occurred) was sent to St. Cloud Hospital for treatment. Sohm claimed that he was maced by officers after he had been removed from the room. In the confusion in the room, Sohm was handcuffed and was being taken to ICU by an officer when another officer recognized him and he was released from the cuffs. Sohm was unable to identify who maced him because he was too busy trying to protect his eyes. Staff denies that any mace was used, except that which was used upon entry into the room and through the window from the yard. Staff said it was totally unnecessary to use mace because there was no resistance and that the only way Sohm could have been maced was if he was at the window of the Indian Culture Office or at the door when the officers entered.

CHARGES AGAINST INDIAN INMATES

The 29 inmates were subsequently issued four disciplinary reports. They were charged with:

- 1) destruction, damage or alteration of property; unlawful assembly; possession of contraband; riot; holding hostages;
- 2) arson; unlawful assembly; riot;
- 3) interference with personnel in course of duties; verbal abuse; inciting to riot;
- 4) destruction, damage or alteration of property; threatening others; possession of contraband; riot.

As of 5/27/81, twenty-six inmates have signed waivers to a disciplinary hearing and entered guilty pleas. Twenty-five pled guilty to riot and one to interference with personnel in course of duties, destruction, damage or alteration of property and unlawful assembly. Those who entered pleas were sentenced to 360 days segregation with 180 days suspended for 360 days. Three inmates did not sign waivers and are awaiting hearings.

FINDINGS AND CONCLUSIONS

The narrative of the facts surrounding the February 19, 1981 incident is separated in three parts: Terry Budreau, activities prior to the Culture Group meeting, and the Culture Group meeting. The report on the findings and conclusions are separated in the same manner.

TERRY BUDREAU

FINDINGS:

1. Did Budreau have a medical problem?

- .Budreau complained of back pains and was seen by the institution doctor as early as 2-5-81.
- .Budreau sustained an injury to his back on 2-13-81. The institution doctor saw Budreau and confirmed the injury.

Conclusion: Budreau had a legitimate medical problem.

2. Did Budreau receive adequate medical care?

- .On 2-5-81, Budreau saw the institution doctor.
- .on 2-13-81, Budreau saw the institution doctor concerning his injury.
- .On 2-14-81, Budreau was placed on medical lay-in.
- .On 2-19-81, Budreau was seen by a medic in the quiet cell (following his removal from Cell Hall E).
- .On 2-20-81, Budreau was ssen by Dr. McCreary, an outside physician. This medical visit was arranged by the Heart of the Earth School.
- .On 2-21-81, Budreau was transferred to St. Paul Ramsey Hospital where he was examined and treated.
- .On 2-25-81, Budreau was discharged from the hospital with a fair prognosis: disability partial and temporary. The final diagnosis of Budreau's condition was contusion of the lower back and the prescribed medication was 650 mg. of Tylenol.

Conclusion: Budreau had ample access to medical care. He received prompt medical attention and was not denied access to an outside physician. Although Budreau expressed dissatisfaction with the medical care he received, there is no evidence to indicate that he received inadequate medical care.

3. Did the staff use excessive force in moving Budreau? Was he beaten? Was he injured?

- .Budreau refused to return to his cell when ordered to do so.
- .The Security Squad was summoned to remove him from Cell Block E and place him in Segregation (ICU).
- .Budreau resisted being moved and had to be bodily carried by three Security Squad Officers.
- .The officers were aware of Budreau's back injury and were instructed to use caution in moving him.
- .Budreau's resistance made moving him more difficult and resulted in putting more strain on his back.
- .The officer denied striking or beating Budreau in any manner.
- .Budreau did not accuse the officers of beating him.

Conclusion: Excessive force was not used in moving Budreau. His back injury did not result from the officers moving him but may have been exacerbated by his struggling. There is no evidence to support a claim that Budreau was beaten.

PRIOR TO THE CULTURE MEETING

FINDINGS:

1. How did the Indian inmates learn about the "Budreau Incident"?

- .At the noon meal, inmates, who were in Cell Hall E at the time of the "Budreau Incident", talked with some Indian inmates about what happened.
- .Other inmates learned about what happened on their jobs from inmates who were not necessarily present in Cell Hall E at the time of the incident.
- .Other inmates did not learn about what happened until the Culture Group meeting.

Conclusion: In some instances, Indian inmates received second and third-hand information about the incident. Under such conditions, the likelihood of distorted and/or exaggerated information becomes more probable.

2. What was the staff response?

- .At 3:00 PM, Captain Weiss briefed Captain Olson, his replacement, and included information about the "Budreau Incident".
- .At 5:00 PM, Captain Olson met with Inmate Littlewolf to discuss Budreau.
- .Captain Olson believed the discussion was satisfactory and inferred from this belief that Littlewolf felt the same. However, Littlewolf was heard to say that he would contact someone in Washington, D. C. as he left the meeting.

Conclusion: Appropriate steps were taken to inform the change of staff from the day to evening shift. Captain Olson's perception that Littlewolf was satisfied with the explanation he provided was erroneous.

CULTURE GROUP MEETING

FINDINGS:

1. Was the meeting of the Indian inmates authorized by the administration?

- .The Indian Culture Group (Ogi-Chi-Dog) is authorized to hold two regularly scheduled meetings per week on Tuesday and Thursday.
- .February 19, 1981, Thursday, was the date of a regularly scheduled meeting.
- .Indian inmates, along with their sponsor, assembled for the meeting at the proper time (6:00 PM) and place (Indian and Chicano Culture Meeting Room).

Conclusion: The February 19 meeting was duly authorized and appropriately scheduled.

2. Were there people at the meeting other than inmates and staff? If so, were they authorized to be there?

- .Four community people from the Heart of the Earth School were present at the meeting.
- .Most, if not all, Culture Group meetings have outside guests present.
- .All persons present at the 2-19-81 meeting were previously cleared to be there by the administration.
- .All of the visitors, community people, present attended previous Culture Group meetings and were known by the staff.
- .The visitors, upon arrival at the institution, were cleared to proceed to the meeting.
- .Staff permitted the visitors to enter the meeting room.

Conclusion: The four visitors at the meeting were authorized to be there, were escorted to the meeting area by staff, and were given permission to enter the meeting room by staff.

3. Was the Culture Group sponsor and other staff aware of the "Budreau Incident" and its effect on the Indian inmates? Could the meeting have been disbanded? Could the visitors have been prevented from entering the meeting?

- .The sponsor, who works the 8:00 AM to 4:00 PM shift, returned to the institution for the Culture meeting. Therefore, he was at the institution during the time of the incident and was aware of it.
- .Although the group sponsor works well with the Indian inmates, he does not particularly enjoy their confidence and trust.
- .The sponsor became more aware of the problem when the meeting convened.
- .Tensions in the meeting room were high.
- .At no time did the sponsor or other staff suggest to inmates that they should discontinue the meeting. The sponsor's stated reason for not doing so was his belief that it would escalate the situation.

- .The sponsor suggested that the visitors leave the area but made no special effort to prevent them from entering the room.
- .Some inmates who wanted to leave voluntarily from the meeting were permitted to do so.

Conclusions: Staff did not follow the customary procedure of issuing direct orders for inmates to leave an area as is done when it is believed that the inmate group represents a threat to the security of the institution. Nor did staff use their authority to prevent nonemployees from entering an area which was rapidly becoming a security problem. Although any change in the outcome of the incident through the use of procedures such as direct orders is speculative at this date, it is nonetheless important to explore the procedures which were available and not used.

4. What were the issues of the Indian inmates at the Culture meeting? How did staff respond? How did inmates respond?

- .The inmates were protesting what they believed happened to Budreau.
- .Inmates believed Budreau was beaten by staff and denied medical attention.
- .The inmates requested to be taken, as a group, to see Budreau in segregation.
- .The sponsor did not have the authority to make the decision on the above request.
- .The sponsor summoned the Security Lieutenant who came to the meeting room.
- .The same demand was made.
- .The Lieutenant had to clear the request with the Captain.
- .The Lieutenant ordered the sponsor out of the room because he believed the situation had intensified.
- .The visitors were not ordered out; nor were the inmates.
- .The Lieutenant returned to the Security office to discuss the inmate request with the Captain.
- .Shortly after the Lieutenant left the room, an inmate looked out the door of the Culture room and saw the Security Squad in the corridor near the gym where the Lieutenant had ordered them to remain.
- .The inmate immediately notified the other inmates in the room about the presence of the Security Squad.
- .Inmate interpretation of the presence of the Security Squad was that staff responded to the inmate request by calling the Squad.
- .The inmates began to prepare for what they believed would be a "rush" from staff.
- .Staff closed and locked the door leading to the Culture Room.
- .Inmates barricaded the entrance to the Culture Room in order to block access to the room when the door (which opens out into the corridor) is opened.

Conclusion: The inmates believed they had a legitimate issue and were responding in a manner which they believed would be effective. The Culture meeting provided an opportunity for the inmates to discuss their concerns with other Indians and to gain additional support. The inmate reaction to the presence of the Security Squad was predictable; Indian inmates do not trust the staff. The sight of the Security Squad presence, irrespective of the reason, merely served to reinforce the Indian sense of mistrust. Staff and inmates reacted to each other partly out of mutual distrust and partly out of staff's perception that there was a breach of security. The closing and locking of the door leading to the Culture room did secure the area but also escalated the disorder inside the room.

5. Were the visitors being held hostage?

- .The first and only references about hostages were made by staff.
- .The visitors entered the room voluntarily and with the assent of staff.
- .The first telephone contact with the inmates failed to affirm that the visitors were being held hostage.
- .A subsequent telephone contact with one of the visitors established his belief that the visitors were free to leave.
- .The institution's position, contrary to the visitors' belief, was that the visitors were hostages and would be treated as such.
- .The visitors believed that their presence added a measure of protection for the inmates.
- .Both inmates and visitors were concerned that if the barricades were removed to allow the visitors to leave the room, the staff would rush the room.
- .The inmates, at no time, attempted to use the presence of the visitors to strengthen their bargaining position.
- .The inmates, at no time, threatened to harm the visitors.
- .All 29 inmates received disciplinary charges for holding hostages; however, the administration did not nor did they consider filing charges in District Court.

Conclusion: The idea that the visitors were being held hostage originated with the staff who based all their activities on that premise. The inmates were not holding the visitors hostage and the visitors did not perceive that they were being held hostage.

6. Did staff attempt to negotiate an end to the disturbance? Is there an institutional policy not to negotiate with inmates?

- .Six telephone contacts were made between the Custody office and Culture office. Each contact involved discussion of the release of the visitors as a condition for discussion of grievances.
- .Bullhorns were used to augment telephone contacts and to ensure that the inmates heard the warning about the forced entrance with gas.
- .No policy exists that prohibits negotiating with inmates when hostages are held.
- .The status of the visitors was perceived differently by inmates and staff.

- .The Superintendent characterized the discussions on the telephone as a form of negotiation.
- .Captain Weiss, who received training in hostage negotiation, headed the entry team. This fact may have served to reinforce staff's perceptions that they were dealing with a hostage crisis.

Conclusion: Staff did attempt to negotiate an end to the disturbance based on their perception that hostages were being held. No institutional policy prohibits negotiating with inmates for the release of hostages. A Riot and Disorder Policies and Plans governs staff procedures in such situations.

7. Were the inmates given sufficient warning that a failure to vacate the room would result in the use of force? Were inmates told what the nature of the force would be?
 - .7:32 PM - Staff received a call from the Culture room from visitor Sohm who raised concerns about the visitor who had a heart condition (Merrill). Sohm did not at this time verify whether or not the visitors were free to leave.
 - .7:45 PM - Staff discussed its options for regaining control of the area. A decision was made to prepare for forcible entry with the use of gas.
 - .8:03 PM - Captain Weiss contacted the Culture office to advise the inmates, and Sohm, that there would be no discussion of demands until the visitors were released.
 - .8:25 PM - Captain Weiss called the Culture office and received no answer.
 - .8:26 PM - Captain Weiss called the Culture office again and received no answer.
 - .8:30 PM - Entry teams were ready and standing by for forcible entry, if necessary.
 - .8:34 PM - Bullhorns were used in the corridors outside the Culture office to advise inmates to call the Custody office.
 - .8:34 PM - Bullhorns were used in the yard outside the windows of the Culture office to advise inmates to call Custody.
 - .8:37 PM - Captain Weiss received a call from the Culture office. Inmates wanted to discuss their demands. The response to the request was negative and demanded the release of the visitors. Staff assessed the situation as escalating and it became more apparent to staff that forcible entry may be necessary.
 - .8:42 PM - Inmates called Captain Weiss in the Custody office to discuss demands. The response was negative and again called for the release of the visitors. Inmates were told that no discussion would take place until the visitors were out and that the "inmates would be responsible for anything that happened as they were forcing us to come in."
 - .8:50 PM - Same telephone conversation as above was repeated. Captain Weiss indicated that the inmates had ten minutes before the staff would make its forcible entry.
 - .8:53 PM - Superintendent McRae made the decision to enter and to use gas. He ordered the staff to notify the inmates two minutes prior to entering.

- .8:53 PM - Captain Weiss called the Culture office requesting that inmates send Mr. Merrill out because it was going to get rough, i.e. staff would be coming in and gas would be used.
- .9:02 PM - Same telephone conversation as above was repeated. Captain Weiss advised the inmates that staff would enter in one minute. The inmates left the telephone without hanging up.
- .9:05 PM - Superintendent McRae gave the order to enter and use gas.
- .9:15 PM - Captain Weiss ordered the staff to enter and use gas.
- .9:16 PM - Gas was used and forcible entry was made.

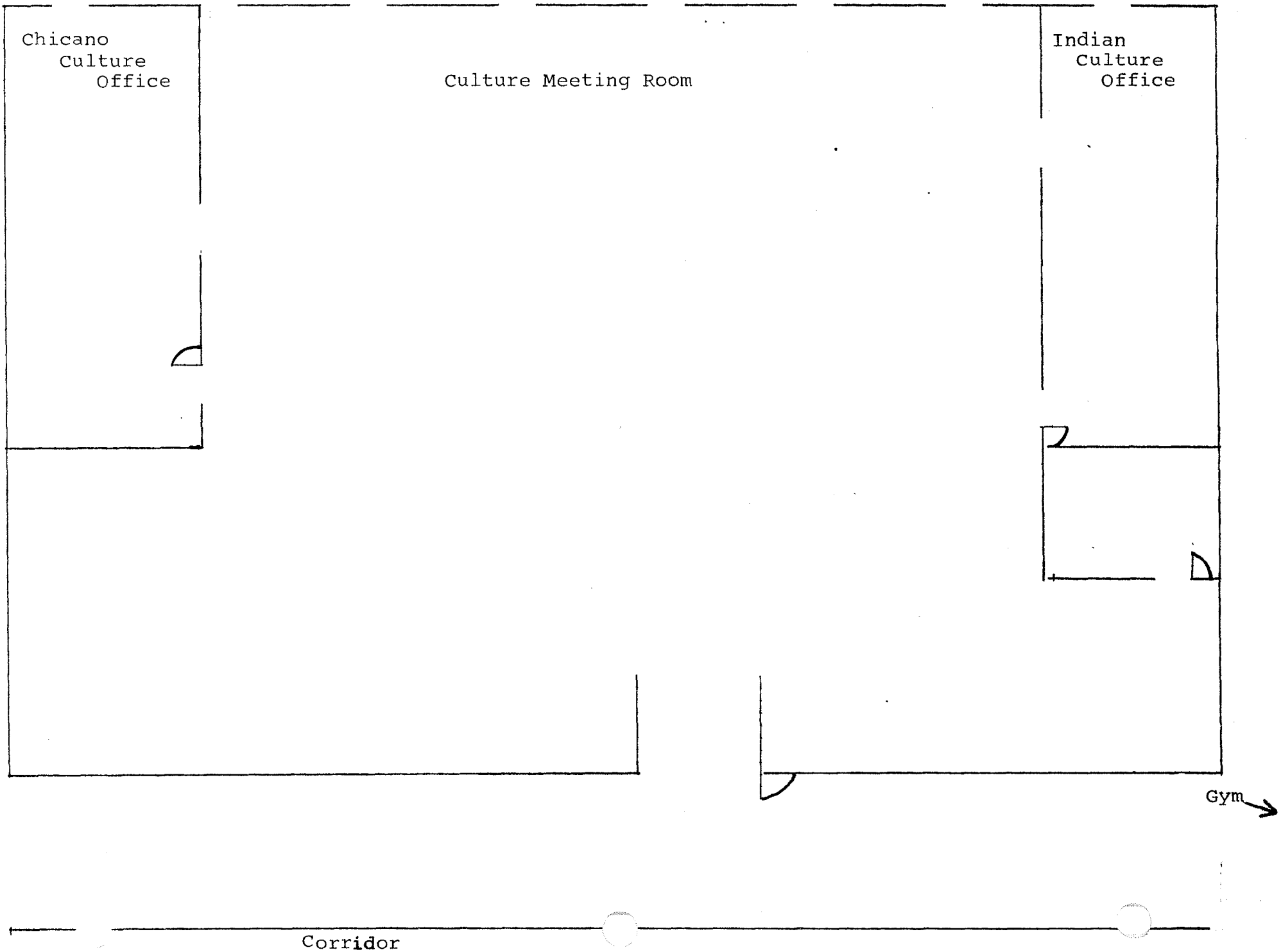
Conclusion: The discussion with inmates concerning vacating the room and/or releasing the visitors transpired over a time period of one and ¼ hours (7:30 to 9:15 PM). Beginning at 8:42 PM, staff made four specific references to the inmates that force would be used and two specific references to the use of gas.

8. Was excessive force used? Were there any injuries?

- .A total of 14 continuous discharge G.O.E.C. grenades (CS loading) were used. Five grenades malfunctioned.
- .Mace and chemical shield in aerosol spray cans were used.
- .Twelve officers formed the entry team. Four to six additional officers entered the room after the initial entry was made.
- .Inmates offered initial resistance at the door.
- .No inmate resistance occurred after staff entered the room.
- .Some staff received scratches on their hands and arms during entry. No hospitalizations were required.
- .One inmate received a cut above an eye and was treated at St. Cloud Hospital and released.
- .Visitor Merrill was transported to St. Cloud Hospital where he was treated.
- .Visitor Sohm was handcuffed and claims to have been maced after being removed from the room.
- .By 9:30 PM, all inmates were removed and taken to segregation for confinement.

Conclusion: There is no evidence that staff used excessive force in removing the inmates from the Culture room. Inmates offered no resistance once the room was entered and injuries were minimal. The Ombudsman was unable to verify that Sohm was maced after leaving the room. Sohm's being handcuffed appeared to have been unintentional.

APPENDIX



Why Chemical Shield Is Superior To Other CS Products

Chemical Shield utilizes CS (Orthochlorobenzalmalononitrile) as its active ingredient, the same basic incapacitating agent that the U.S. Army uses. The fact that the Army employs CS, as opposed to other chemical agents, such as CN, is a testimonial to the effectiveness of CS. A technical report, published by the Army after a lengthy study that shows the effects of the chemical CS on man, is available upon request. (Edgewood Arsenal Report).

The Army, however, uses CS in powder form, which, when burned, produces a gaseous substance. This is not an acceptable mode for consumer use in that it would be too difficult to project a powder or gas efficiently enough to incapacitate a single individual. In addition, CS in powder form can produce long-term residual area contamination. Powders and gases, therefore, are primarily used in riot control situations. Consequently, in order to make CS practical for average individuals to use, the powder must be put into aerosol form. This entails a careful blending of the active ingredient with a combination of solvents, propellants and other chemicals that enhance the effectiveness of the CS. In fact, the effectiveness of a liquid CS product is actually determined for the most part by the carrier, or solvent, and other chemicals with which the CS is mixed, as opposed to the percentage of actual CS that is in the product.

In essence, an effective solvent containing 1% CS, would be a better incapacitator than a less effective solvent with 3% CS. Thus, the secret to any liquid CS product lies in the formulation of the solvent, along with the proper propellant and associated enabling chemicals.

The Chemical Shield mixture was developed after years of careful experimentation. This formulation is a secret, and while others have tried to imitate it, none have been able to perfect a safer, or faster acting CS product. In fact, the chemicals present in Chemical Shield are combined in such a way as to **increase** the effectiveness of the CS by causing it to act **faster** when it touches the skin. The solvent itself aids in the dissolution of the fatty deposits covering the facial nerve endings, thus serving as a catalyst in the induction of the incapacitating response.

The experiences of Chemical Shield users, as well as our own experiments, bear out the fact that Chemical Shield is the fastest acting, most effective, yet safest non-lethal chemical self-defense product on the market today.