

New York State
Department of Correctional Services
Elmira Escape Report

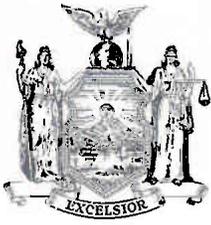


View from attic looking down through the approximately 9x12-inch hole dug through ceiling of cell block to the dummy left on the top bunk in cell F-7-2.

March 19, 2004

Glenn S. Goord
Commissioner





STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

GLENN S. GOORD
COMMISSIONER

March 19, 2004

To the reader:

Inmates Timothy A. Vail and Timothy G. Morgan escaped on July 7, 2003, from the maximum-security Elmira Correctional Facility. They were apprehended the next day a few miles from the prison, thankfully without injury or harm to anyone but inmate Vail. It was the first successful escape from inside that prison since 1984, and the first from the grounds of any of the state's 17 maximum-security prisons since 1994.

In the aftermath of this incident, we owe the public an investigation because, as the *Rome Daily Sentinel* so aptly wrote in a July 10, 2003, editorial about the escape, "The reasons 'why' and 'what happened' in this incident are crucial to preventing future incidents."

This report goes much further than that. It also details exactly how we implemented many of the changes that I felt were necessary to improve upon the facility's operations and minimize the threat of any future escape. This report therefore serves to not only present the issues that I find relevant to the escape incident at Elmira, but now becomes a self-audit tool for all 69 of our other prisons to review their security and related operations.

Vail's sentencing today closes the book on the criminal prosecution of the escape, but opens another — that of this report, detailing our investigation into the circumstances surrounding the incident and its aftermath.

I initially intended to issue this report in the months immediately following the pair's capture. That was based upon my belief that, since their guilt was so obvious, each escapee would plead guilty. My intention changed when Vail told my staff that he intended to demand a jury trial as a means to maximize his out-of-prison time in hopes of attempting another escape.

I decided Vail's exercise of his right to a trial would mean my intended release of this report would coincide with those proceedings. I instead opted to adhere to the Department's long-standing policy of deferring all comment bearing on criminal matters until after they are finally resolved. That policy is designed to prevent inmates from even attempting to distort our statements or misuse our reports to their benefit. Vail ultimately reversed himself and said he would plead guilty. But I decided to withhold issuance of this report until he received his proverbial day in court — just in case he decided to change his mind again and demand a trial.

The remedial actions deemed necessary in this report were implemented within the first two months of the escape. In issuing this report today, I want to assure the public and our employees that the Elmira Correctional Facility remains a secure work site, safe for the Chemung County community that surrounds it.

God Bless America,



Glenn S. Goord
Commissioner

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Chronology of the escape

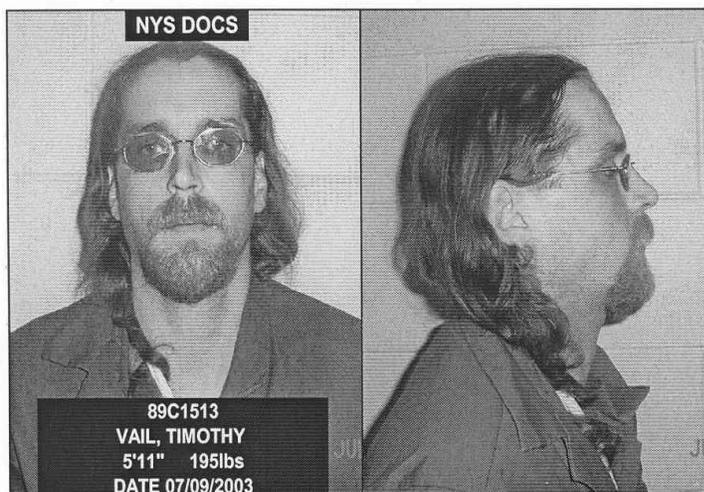
The escapees and the prison

Inmate Timothy A. Vail, 35, entered the New York State Department of Correctional Services on Nov. 21, 1989, followed almost a decade later, on Dec. 22, 1998, by inmate Timothy G. Morgan, 26:

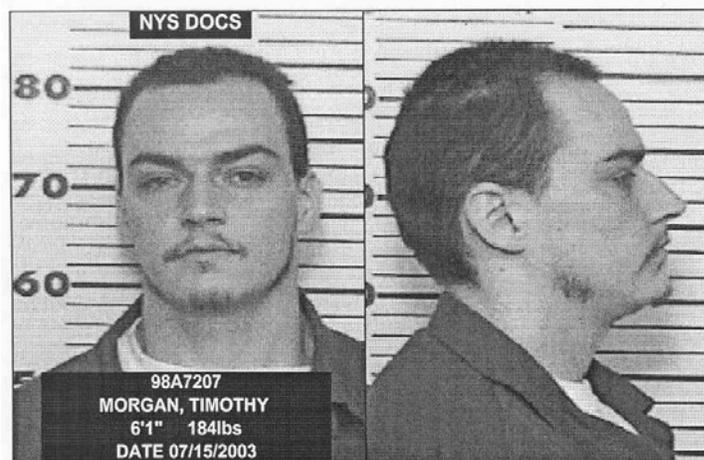
- Vail (89-C-1513) had been convicted in Broome County Court and sentenced on Nov. 15, 1989, to a term of 49 years to life in prison for two counts of second-degree murder, one count each of first-degree robbery and first-degree rape, plus second- and third-degree burglary. He was convicted of the rape and murder of an eight-month pregnant woman he surprised in a law office he was burglarizing.
- Morgan (98-A-7207) was convicted in Fulton County Court and sentenced on November 25, 1998, to a term of 25 years to life in prison for one count of first-degree murder and two counts of second-degree murder, two counts of first-degree robbery, first-degree criminal use of a firearm and fourth-degree grand larceny. He was convicted in the murder of a cab driver.

Morgan was received at Clinton prison and housed at Downstate, Green Haven and Upstate prisons before arriving at Elmira on April 19, 2000. Since his recapture, he has been incarcerated in the disciplinary housing unit at Auburn prison. He was arraigned in Chemung County Court on Aug. 20 on charges of first-degree escape, second- and third-degree burglary plus fourth-degree grand larceny. He pleaded guilty in satisfaction of the charges on Sep. 19, 2003. On Oct. 31, he was sentenced to an additional 0-15 years. That makes him eligible for parole in 2035.

Vail was received at the Wende prison and served time at both Attica and Auburn before arriving at Elmira on May 19, 1999. Moved to Five Points following his recapture, he was transferred Sep. 6 to the disciplinary housing unit at Clinton prison in Dannemora where he remains. He was arraigned in Chemung County Court on Aug. 21 on charges of first-degree escape, third-degree burglary and fourth-degree grand larceny. He pleaded guilty in satisfaction of the charges Jan. 29, 2004. He was sentenced today in Chemung County Court to a consecutive term of 3½-7 years in prison. That makes him eligible for parole in 2041.



Sex - MALE Race - WHITE Hair - BROWN Eyes - HAZEL DOB - 05/18/1967
SCAR: R.BICEP, BACK TATTOO: MULTI



Sex - MALE Race - WHITE Hair - BROWN Eyes - HAZEL DOB - 03/22/1977

The Chemung County site of this escape originally opened in 1876 as the Elmira Reformatory, with the first inmates arriving from Auburn prison on July 24 to help finish construction. Renamed the Elmira Correctional and Reception Center in 1970, this maximum-security prison today has 1,856 beds.

Morgan and Vail were housed within its general confinement capacity of 1,247 cells (of which 36 are double-occupancy, a total of 1,283 beds). The reception unit, inaccessible to other inmates, contains 421 cells (of which eight are double-occupancy) for a total of 429 beds. The facility also has 54 single-occupancy cells in the disciplinary housing unit, 64 single beds in the mental health unit and 26 single beds in the infirmary.

Setting up the escape plan

The information in this report was compiled through an extensive review of physical evidence, facility records, department policies, staff interviews, re-enactments, and interviews with Vail, Morgan and other inmates. *(See aerial view of the front of Elmira prison on page 27.)*

Inmates Vail and Morgan have been separated since their capture. While information provided separately by them may be viewed as suspect, efforts were made, wherever possible, to verify their statements using physical evidence, staff and inmate interviews and facility documentation. Obviously, activities conducted by Vail and Morgan that were undetected by staff or inmates cannot be independently verified. However, the stories and details they gave, separately, are, for the most part, consistent. They are also supported by physical and circumstantial evidence as described in this report.

According to both Vail and Morgan, the two became friends in the late summer/early fall of 2000, when they shared double cell E-6-1 and both were assigned to the Residential Substance Abuse Treatment Program (RSAT). This was the first of three occasions when the two inmates would share the same cell at Elmira.

Under departmental rules, inmates may apply to be double celled. Such an application can be approved after a review that includes inmate's program and behavioral history, as well as whether or not the inmates seeking to double cell are compatible.

Vail and Morgan would share the same cell twice while assigned to the RSAT program. A routine cell reassignment moves both inmates out of their double bunked cell in March of 2001. For the next 16 months the inmates will be housed separately due to routine facility cell changes.

According to Morgan, he and Vail begin talking about escaping in the summer of 2001. Crucial to their planning is not only Vail's "Jack of all trades" skills that will lead to his work assignment in a shop with the tools needed to carry out an escape, but his outgoing personality that will allow him to develop a relationship of trust with staff throughout the facility.

On June 25, 2001, Vail is assigned as a student in the vocational carpentry shop program in the afternoon, while working as a porter in the morning. It is here in the carpentry shop located on the second floor of Building 4 that he meets, is supervised by and befriends Gary H. Silvers, the civilian instructor.

Vail finishes his student program on Nov. 4, 2001, and continues to work in the shop during the afternoon module. On Dec. 17, 2001, Vail is assigned full-time to the carpentry shop as a tool clerk. On July 29, 2002, Silvers names Vail group leader in the carpentry shop for both the morning and afternoon modules.

Vail would later tell DOCS investigators that this position gives him access to the tools he thinks necessary to carry out an escape. He now moves on to the next phase of his plan: gaining a favorable cell assignment with an accomplice he trusts to share in his plan.

On Aug. 2, 2002, Morgan moves to cell F-7-2T: F-Block, 7 Gallery, 2 Cell, Top bunk. His job assignment remains a hall squad porter, a position he has held since April 16, 2001.

According to Morgan, Vail approaches him in late February-early March 2003 and tells him they have to become cellmates again. Vail confides that he has an escape plan that begins with going through the ceiling in Morgan's cell on the top tier of the cell block and into the attic space above it. From there, Vail believes they can reach an exterior wall through a ventilation conduit.

Vail tells Morgan that he has been eyeing the metal vent louvres on the roof of F-Block each day as he goes back to his cell from the carpentry shop. He said the louvres were not visible to the tower post. Vail believes they can crawl through the ventilation conduit, bend the louvres to access the roof and then use a hand-made rope to descend down the front wall of the prison.

Morgan tells his then-cellmate to seek reassignment out of cell F-7-2 to make room for Vail. His cellmate, who is black, files a request for a cell change on March 5, 2003, listing "ethnic balance" as his reason for requesting the change. That is confirmed by Morgan's cellmate and the written request for cell change. Both Vail and Morgan are white. Department policy lists ethnic compatibility as one of the many criteria listed for consideration when assessing compatibility of double cell occupants. Vail moves into the bottom bunk of Morgan's cell on March 6, 2003. The co-conspirators now share a cell on the top floor of F-Block.

Prior to Vail moving in, Morgan paints the floor and ceiling of the cell black. Morgan says he received black paint from another inmate who Morgan would not identify. The other inmate was allegedly painting the F-Block staircase in September 2002. The statement is uncorroborated because Elmira's policy is to discard Maintenance Stores Requisition Forms #1610 (work orders) after approximately 30 days. According to Morgan, he paints the cell to make the room darker and easier to sleep in. Investigation also discloses that three additional cells on the same gallery had portions painted black.

Implementing the escape plan

Vail leaves F-Block for the carpentry shop at 8:30 a.m. on March 7, 2003. He arrives to learn Silvers had been approved for four hours of personal leave that afternoon. The instructor would be leaving at noontime.

Vail will later tell investigators that he awaited just such an occurrence to advance his escape plan. He knew that, whenever the shop closed early, inmates go directly back to the block without being frisked, either in the shop or at the Center Gate area.

Vail takes four 3-inch sheet rock screws from the shop's inventory and secretes them on his person and brings them back to the cell.

Later that day – less than 24 hours after being bunked together on the top tier of the cell block – Morgan and Vail use the purloined screws to begin chipping away by hand at the concrete ceiling in their cell.

The location in which they chose to dig the hole is at the front of the cell in the right corner, when in the cell facing the gallery. Across the top front of the cell is a 36-inch deep panel. It encloses the mechanism that allows the steel bars of the cell door to be opened by sliding it to the right over a stationary panel of steel bars. From outside the cell, that panel across the top front of the cell blocks any view from the gallery of the hole the inmates dug into the ceiling. To further obscure their scheme, they cover the cell front with towels.



Hole is visible in front right of ceiling. Tape above cell bars held towels covering them.

Additionally, they move the bunk beds to the front of the cell, allowing easier access to the location of the hole and further obscuring visibility.

The inmates know the five-inch thickness of the concrete ceiling by looking up into the gap between the ceiling and a recessed exhaust air ventilation duct on the gallery outside of their cell, assuming it vents into an attic.

As they chip away at the concrete, the inmates flush chips and dust down the toilet in their cell, or throw them out in the garbage. They use black paint to disguise a sheet of black construction paper and tape it over the growing hole in the ceiling to hide their labors.



Center Gate controls inmate movement. It separates housing units from the program and recreation areas.

The inmates say they work on the ceiling from 11:30 a.m. to noon each day, while in their cells for the master count; again from 4-5 p.m. during the evening meal run and then from 5:30-7 p.m. They say they find these times preferable because of the normal din caused by the other inmates on the block. They work on the ceiling all day on weekends. At all times, one digs while the other serves as lookout. Vail further admits to pilfering three-inch hardened steel, self-tapping concrete lag screws as necessary to continue their work.

The inmates devise their own code to track their progress, almost in diary form, on a calendar found in their cell after the escape. In explaining their markings later to an investigator, they say dates where digging occurs are represented by an “X” – the first being March 7. “Smiley faces” (☺) represent days when much progress is made. “Squiggly lines” (such as on April 1st, in the calendar at right) signify days when no digging was done.



Calendar used by inmates to record their progress.

Instructor Silvers confirms that Vail is assigned one day to dismantle a Yates American Jointer Planer as part of his carpentry shop job. This surplus equipment is to be removed from the shop. The planer guide (shown below) is T-shaped: a flat circular disc three inches in diameter with a three-inch shaft protruding from the center. Vail hides the planer guide in the carpentry shop.

Morgan uses the mid-March cancellation of his normal physical education class in Shop 2 to visit Vail that day in the carpentry shop. Vail and Morgan tell Silvers that Morgan is there because he wants to meet the instructor. While there, Morgan hides the planer guide in his pants and returns to his cell without being searched. In the cell, Vail later wraps the disc end of the planer guide with masking tape so they can use it as a hammer. The tape muffles the metal-to-metal contact of the planer guide against screws. They hide the planer guide under clothing in the bottom of a locker in their cell.



Planer guide used in escape preparations.

The Shop 2 log indicates that the weight class to which Morgan normally reports was closed on March 17-18 and 20. Silvers remembers his introduction to Morgan in the carpentry shop, although he cannot remember the exact date. Silvers recalls that meeting with Morgan as the only time he came face-to-face with him. No facility records reflect when the Yates American Jointer Planer itself was dismantled.

The two inmates work for 17 days digging their escape hole during March, five of them represented by “smiley faces” indicating a great deal of progress. Their digging strikes steel rebar reinforcing the concrete in the ceiling. However, Vail is already prepared to deal with this eventuality.

Vail had already hidden four, 4-5-inch sections of blade from an industrial band saw in a piece of plastic pipe in the carpentry shop. Vail uses the carpentry shop's Dremel tool to taper the band saw blades' cutting edges because he knows that will make it easier to saw through the rebar. He hides the blades in a tobacco pouch that he then glues shut. He knows that will allow him to smuggle them from the shop to his cell in packaging that will appear unopened to prison staff.



Unsecured screws as found in the carpentry shop.

Back in their cell, the inmates melt the end of a tooth brush handle to the ends of the saw blades to fashion handles to better grip them. It takes them two days to saw through the rebar. They would eventually need to cut through more rebar to gain access to the attic. According to the inmates, they wrap used blades in tape and discard them in general trash during regular movement on the gallery. The fact that the rebar sections show sawing marks, and the used blades cannot be located, gives credence to the inmates' account.

Vail later tells investigators they needed a steady supply of sheet rock screws because they dull quickly when used to chip away at concrete. He devises a unique scheme to get them.

He prevails upon shop instructor Silvers to allow him to take a chair from the shop back to his cell. Silvers agrees, and also told investigators later that he called the cell block officer to advise that Vail will be bringing the chair to his cell with the instructor's permission.



But, before leaving the shop, Vail secretes a taped bundle of roughly 25 sheet rock screws into each of the four hollow legs of the chair. Neither Vail nor the chair is searched as he returns to his cell block, where officers allow him to take the chair into his cell based upon Silvers' phone call.

Once the chair is in the cell, the inmates now have approximately 100 more sheetrock screws with which to dig – and the hollow legs of an approved chair in which to hide them.

The inmates get a scare when a random cell search brings officers to their cell on March 31. The F-Block log of cell searches does not show any contraband is found in the cell.

On May 16, a random search of the inmates' cell is again conducted. Again, there is no indication in the log book that any contraband was found.

But for the month of May, the inmates' calendar notes 28 days of work on the cell ceiling. Three of those days are noted with "smiley faces."

During the first few days of June, the inmates decide they need to diet in order to slim down enough to fit through whatever hole they could manage to dig in the cell ceiling. Facility records are not routinely updated regarding inmates' weight changes unless there is a medical problem. Since neither reported one, their weight loss did not trigger any suspicions by staff.



Sledgehammer head stamped "shop 6" with end taped to muffle hammering sounds.

On June 6, a third random cell search is conducted. Again as recorded in the F-Block log, no contraband was found.

A week later on June 14, the words "Break Through" appear on the inmates' calendar followed by an exclamation point. Both inmates would later independently confirm to investigators that it is on this date they broke through the concrete with a screw-size hole.

On June 20, Silvers takes one hour of personal leave, leading to the early closing of the carpentry shop. Knowing he will not be required to go through a metal detector, Vail makes use of the opportunity. He takes from the carpentry shop a 12-pound sledgehammer head, clearly stamped as coming from "Shop 6," wraps it in a towel, places it in his net bag and carries it undetected back to his cell.

"Shop 6" was a carpentry/maintenance shop in Building 6 that closed in the mid-1980s. It was packed up and moved to Building 4 to become the vocational carpentry shop now taught by Silvers where Vail works. Silvers would later tell investigators that the sledgehammer head was openly observed around the current carpentry shop for the entire 17 years that he has been working there. It was, he added, often used as a door-stop. When questioned after the escape about the current location of the sledgehammer head, instructor Silvers stated, "I thought it was thrown out."

For the month of June 2003, the inmate's calendar indicates 28 days of work on the cell ceiling. June 25 is noted with a "smiley face," followed with an exclamation point. According to the two inmates, that signifies they were able to make faster progress using the sledgehammer head to pound the screws into the concrete ceiling.

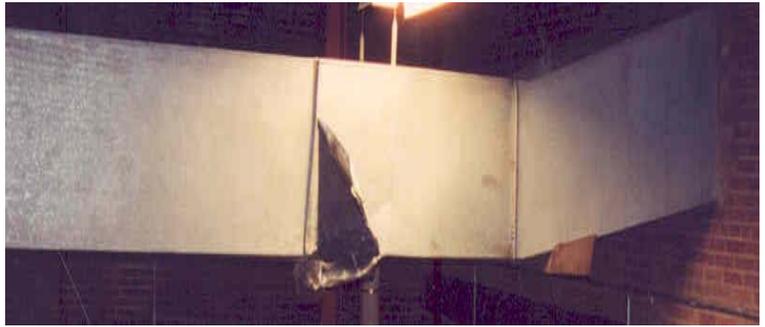
Final preparations for the escape

Vail removes a 14-inch stabilizer bar from a table saw in the carpentry shop, tapes it to his leg and brings it back to the cell block during a non-scheduled movement, thereby again avoiding a search and/or a metal detector. He later tells investigators that his plan is to have the bar available in case it is needed for any reason in the cell block attic during the final stage of the escape.



14-inch stabilizer bar taken from a table saw in the carpentry shop.

Vail, within the two weeks prior to the escape, borrows hair clippers from another inmate. Vail uses them to change Morgan's appearance by cutting off most of Morgan's shoulder-length hair. They save the hair for later use in making dummy heads.



Vail opened this 30-by-24-inch steel duct in the attic some 10 feet from the exterior wall shown at right.

On July 4, Vail fills a clear plastic garbage bag with clothes and fashions a dummy head, covering it with papier-mâché, glue, flesh-colored paint and Morgan's cut hair.

Later that day, Vail places the dummy head and a "body" he fashions from clothes on the top bunk. He lines the hole in the ceiling with a clear plastic bag. He strips off his clothes, smears petroleum jelly over his body and wiggles up through the approximately 9 by 12-inch hole. Meanwhile, Morgan sits on the bottom bunk watching the 12-inch, black-and-white in-cell television.

Vail brings up into the attic with him most of the items used to dig the hole in the ceiling. He explores the attic area, crossing the 24 feet from the cell ceiling hole to the ventilation duct work which vents to the F-Block roof.



Employee shows how inmates say they exited.

Vail then uses one of the self-tapping concrete screws to break the seam of the galvanized steel duct work. He then pries the duct work open with his bare hands, enlarging the hole enough to accommodate either inmate. Vail leans down and whispers through the hole, asking Morgan if he can hear him moving about and working in the attic; Morgan replies in the negative.

An officer walks by the cell, Morgan later claims, never noticing that it is a dummy in the top bunk. Morgan says that is because the officer's attention is focused on watching him, rather than at the partially-obscured bunk. Vail later drops back down into the cell and hides the escape paraphernalia in the cell.

On the evening of July 5, Vail again places the dummy head in the bed and goes through the hole into the attic.



Back and front of dummy heads fashioned by inmates.

This time, he enters the duct work and crawls about 12 feet inside of it until it ends at a louvred grate to an exterior wall. He removes bird screening attached on the inside of the louvre. On the other side of the louvre is the F-Block roof. He checks the rigidity of the louvre slats and finds them soft and pliable, satisfied that they can be spread easily. Vail returns to the cell.



Rope tied to this ladder was dropped down front of facility.

On July 6, the pair continue implementing their escape plan. Vail constructs a second dummy head. The inmates tie together their combined eight state-issued bed sheets with Morgan's three personal sheets. The inmates tie the 11 sheets together, end-to-end, and tighten and strengthen each sheet by tying it tight at 6-8 inch intervals with masking tape. The pair test the strength of their "rope" by tying it to the cell bars and pulling and hanging on it.

After the 10:30 p.m. master count, they begin final preparations for their flight. They line the ceiling hole with plastic garbage bags and smear the exposed side of the bags with petroleum jelly. After the count is completed, Vail places the dummy head in the bunk, strips off his clothes, covers himself with petroleum jelly and ascends through the hole in the ceiling.

At some point during this period of time, they place a small bucket of water and a bar of soap into the attic with which to clean themselves of the petroleum jelly. They place five taped bundles of sheet rock screws and the planer guide onto an attic I-beam about 12 feet from the cell ceiling hole.

At approximately 12:00 a.m. on July 7, Morgan mimics Vail, by placing his dummy head in the bunk, taking off his clothes, covering himself with petroleum jelly and ascending through the hole into the attic. The inmates clean up with soap and water in the attic and get dressed. Vail scurries to the duct work, climbs inside and crawls along to the louvred vent. He bends one louvre up and the next down, creating enough of an opening for each of them to crawl through. He slips through the opening onto the roof.



Morgan, still inside the duct work, passes the sheet rope and stabilizer bar out to Vail, then exits the louvred vent to join Vail on the roof.

The inmates creep the 36 feet east to a steel ladder located six feet from the edge of the roof at the front of the prison. The permanently-affixed ladder rises five feet to a higher roof. A turret jutting eight feet out from the prison wall blocks CO Richard Mustico in Tower Post 1 from seeing them. The inmates secure one end of the length of sheets to the base of the ladder and feed the other end over the edge of F-Block where the wall meets the turret.

Sometime before 1:30 a.m., Vail climbs over the edge of the roof and begins his 46-foot descent down the rope to the ground. His right hand becomes entangled in the sheets. As he attempts to free it, he loses his grip and falls approximately 30 feet, bouncing off of a granite protrusion on the turret about nine feet from the ground. He lands on the ground on his back about



Staff examine cell after the escape.

10 feet away from the base of the cellblock wall. His location is 76 yards from the nearest staffed post, Tower Post 1. As a result of the fall, inmate Vail sustained a fractured shoulder, chest injuries and a sprained ankle.

Unable to move because of his injuries, Vail lays alone on the ground for approximately 15 minutes when he is joined by Morgan, who escapes injury after falling from the rope while 12 feet above the ground. Morgan assists Vail back to the cover of the wall, with the turret shielding them from Tower Post 1.

At approximately 2:30 a.m., a vehicle pulls into the parking lot, the driver parks it and walks toward the front gate. The driver returns to the vehicle, re-enters momentarily, exits the vehicle and enters the facility – unaware of the inmates. The driver of the vehicle and the described actions were those of Dana Aidala, the Deputy Superintendent for Security. He was making an unscheduled tour.

Shortly thereafter, the inmates flee in an easterly direction, across the upper parking lot and then a lawn and row of trees in front of the institution, down a second lawn then across the lower parking lot and exit facility property. They are not detected.

Discovery of the escape

CO James Davenport, the regular F-Block Tour 1 officer, conducts a master count of F-7 gallery at 6:30 a.m. on July 7. Upon reaching cell F-7-2, he notices “both inmates still lying on their bunks.” He yells for them to stand and taps his flashlight on the bars, but receives no response. He reaches through the bars and pulls the blanket from the bottom bunk.

“When I pulled it I noticed there wasn’t anyone under the covers, it appeared to be a dummy,” Officer Davenport will later tell investigators. He telephones the Watch Commander to report the escape.



Correction Officers were among those searching for escapees.

Escape pursuit procedures are initiated that include an immediate telephone call to the Communications Control Center in the Department’s Central Office in Albany. Other escape response protocols were also initiated immediately, including notifying the state police, the Chemung County Sheriff’s Department and local police agencies.

Escape pursuit and capture

Once the inmates leave facility property, they proceed in an easterly direction through the streets of Elmira and Elmira Heights. At approximately 5:15 a.m., they cross state Route 17. Their crossing is observed by a passing truck driver who is later identified and interviewed.

They continue eastward up and over a hill known as “Old Baldy” coming upon an abandoned camping trailer. They take refuge in the trailer until approximately 9 p.m., when they exit the trailer and travel approximately 100 yards to an unoccupied residence at 295 Latta Brook Road. The escapees burglarize the residence, removing several items of food and some camping supplies. They then return to the trailer and remain inside until the morning of July 8.

During the early morning hours of July 8, there is a large concentration of Department, State Police and local law enforcement officers searching in the general vicinity of Latta Brook Road. Their presence becomes more ominous to the escapees with the approach of a State Police helicopter that hovers overhead – flushing the escapees from the trailer.

They flee in a westerly direction, traveling along a stream bed which parallels Latta Brook Road. They continue in that direction, passing under Route 17 through a concrete culvert bringing them to the rear of the P & C Supermarket located at Lake Road in Elmira Heights North.

The escapees observe a motorist depart from his van idling in the front parking lot of the supermarket. Morgan enters the vehicle and drives it to the rear of the supermarket and picks up Vail. Almost simultaneously, the motorist recognizes the sound of his van being placed in gear and turns to observe his vehicle being stolen. He immediately notifies police.

The escapees drive north with police in pursuit for approximately 2½ miles, into the Village of Horseheads. State Police stop the vehicle at approximately 7:10 p.m. at the intersection of Route 14 and Gardener Road at the entrance to the Jubilee Shopping Plaza. The escapees surrender without incident.

State Police transport the pair to the Horseheads barracks for processing and examination by a physician. Vail is later treated at Upstate Medical Center for injuries sustained in the fall, and is released back into the Department’s custody.

Summary of findings and conclusions

Security staffing was appropriate

On Jan. 1, 1995, Elmira’s security staffing called for 454 officers. Later that year, the staffing was increased by six officers for a new medical infirmary. In 1996, it was increased by four officers to replace civilians who were performing security functions. On the day of the escape, the assigned officer strength at Elmira was 464. All posts were fully staffed on July 7, 2003. Thus, staffing was not a factor in the escape.

Complacency/over familiarity

Inmate Vail, as a result of his personality, artistic talent and capabilities as a carpenter, ingratiated himself to staff at all levels at Elmira prison.

As a painter/artist, Vail was often called upon to paint Christmas decorations and murals for the facility, as well as to do paintings for individuals. Vail would give, sell or barter his paintings with other inmates, in violation of Department rules and regulations.

Vail's talent as an artist enabled him to advise staff which paint supplies to order, for example, for decorations and murals – including flesh-tone paints used in seasonal pieces (like the one at right). That same paint was used to paint the “facial” parts of the dummies. The facility paid for the paint and supplies Vail used in the carpentry shop – and in his cell.

According to Vail and confirmed by the shop instructor, Vail was often called out to various areas of the facility for “odd jobs” and projects. He would often move unescorted with a pass given by the shop instructor. There are no official work orders to document Vail’s whereabouts during these jobs. Passes and receipts are destroyed after 30 days.

It is apparent that Vail moved around the facility quite often on an informal on-call basis, often with a tool box used to complete his work.

Vail’s skills as a carpentry shop worker and as a manipulator allowed him to gain the trust of the vocational instructor who supervised the shop. Instructor Silvers described Vail as the type who could “do anything” and was “more like a coworker” than an inmate.



Photo above shows seasonal decorations made by Vail while, below, is a painting he did for vocational instructor Silvers.



Vail, Morgan and the instructor agreed that the former had access to all areas of the carpentry shop. Both inmates described the instructor as a “good guy” who was manipulated by Vail. To the inmates’ knowledge, Silvers had not broken any prison rules. However, during an interrogation, Silvers admitted bringing cigarettes in to Vail in exchange for the “Jets” painting (shown on page 12) that the instructor brought home.

Silvers also admitted to bringing a friend’s lawnmower carburetor into the facility on his own authority, allegedly so it could be fixed in the small engine repair shop. However, he admitted having Vail fix the carburetor. In addition, he admitted bringing in a map of the Adirondacks to show Vail where he went on hunting trips. The map’s potential value was demonstrated later when, after their recapture, Vail said their goal was to hide out in the Adirondacks to elude law enforcement. The map was found in the shop after the escape. Silvers also admitted bringing in food, specifically fish, for inmate Vail to eat.

Conclusion #1

The display of inmate artwork in the prison is allowed pursuant to Department Directive #4405, Inmate Art and Handicrafts. Therefore, Vail’s artwork being displayed in hallways and offices was allowable and is not uncommon in areas such as prison visiting rooms, corridors, mess hall and offices across the state.

On the other hand, the Department has numerous policies and procedures in place regarding the supervision of inmates, conduct and duties of staff. Each employee of the department is issued an Employees’ Manual. Instructor Silvers was in specific violation of Sections 2.14 and 6.24 of the Employees’ Manual. Section 2.14a states that employees cannot “Accept any gift, gratuity, food, drink, service, reward or any other consideration, regardless of value, in any form from or on behalf of any inmate, former inmate, parolee, relative or friend of an inmate or parolee regardless of whether or not it might influence the discharge of his duties.” Section 6.24 of the Employees’ Manual states that “No personal work for any person shall be done in any shop or department of a facility, nor shall any property or materials be delivered from any shop or department to any employee or other person, except by written order of the Superintendent.”

Also, according to Section 7.1 of the Employees’ Manual, “Every employee while on duty, shall devote all his time and effort to the performance of his duties. Each employee shall maintain an attitude and posture of alertness at all times. When supervising inmates, an employee shall not allow his attention to be diverted in any way which interferes with the maintenance of supervision.”

Tool Control

Investigators confirmed Vail’s allegation that every item he needed in the escape he had taken from the carpentry shop. His explanation was confirmed by interviewing staff and reviewing records and inventories.

Vail’s job in the shop, as well as his relationship with the instructor, also enabled him to take advantage of inadequate tool, equipment and supply control. Inmate Vail had easy access to all items utilized during the escape, including sheet rock screws and masonry screws, which were stored in drawers behind a desk, in boxes and on windowsills, unsecured and without the required controls. The metal planer guide was taken off a Yates American Jointer planer that was supposedly removed from the shop and “disassembled” by Vail at Silvers’ direction. The pieces of band saw blade that inmates said they used to cut through the rebar in their ceiling were taken from a band saw, which is classified as a Class A tool.

Class A tools are defined as those most likely to be used by inmates in an escape, as a weapon or as a means to manufacture weapons, or capable of causing death or serious injury. Such tools must be issued by staff and, when used by inmates, must be under the supervision of an employee at all times. If a band saw blade is used on the band saw, the shop supervisor must inspect both the saw and the blade at the beginning and end of each day. These missing pieces of band saw used in the escape had been modified – using the carpentry shop Dremel tool, which is itself another Class A tool. Both inmates described the modifications made to the saw blades and provided drawings of how this was accomplished.

The 14-inch metal stabilizer bar came from a table saw that Vail was assigned to disassemble for removal from the shop. The sledgehammer head also came from the shop, despite reports that it came from a construction site. The sledgehammer head had been in the carpentry shop for the better part of two decades. Silvers told investigators he had thought the head had recently been thrown away in a discard bin. Investigators could not pinpoint when Vail seized the opportunity to take it out of the bin and hide it in the shop until an opportunity arose for him to transport the sledgehammer head back to his cell.

While specific evidence corroborates all items mentioned by the inmates, the most troubling question involved the blades used to cut the rebar in the ceiling. Both Vail and Morgan independently provided the exact same description of the blades used. The inmates claim to have made the modification and provided drawings. Inmate Vail maintains they were modified off a broken band saw blade. Both Vail and the shop instructor corroborate that there were band saw blades in the shop and the control of these blades was lacking. Vail and Morgan claim they threw the blades away in a cell block garbage can as they were so worn down after using them to get through the rebar, they were useless.

An inventory of the carpentry shop the day after the escape yielded a shortage of six jig saw blades. According to the instructor, he did not consider either the band saw blades or the jig saw blades as Class A tools. This is contrary to Department policy and procedures. He admitted he did not keep close track of band saw blades, nor did he keep a formal running inventory of the jig saw blades. While Vail was adamant that he utilized the modified band saw blade and knew nothing of the jig saw blades, instructor Silvers maintained that Vail could have had access to the jig saw blades as well.

A search of the entire facility, including the carpentry shop, yielded no evidence of the modified blades described by Vail and Morgan, nor of the missing jig saw blades.

Conclusion #2

Upon investigation, it was determined that Department tool control policies were not being properly adhered to in the carpentry shop regarding the storage, replacement and disposal of tools. The procedure for the daily inspection and necessary replacement of band saw blades was not being followed: Staff could return only a piece of a broken blade and receive an entire blade in return. Directive #4930 states, “Whenever there is a need to replace a worn out or broken blade, it must be turned in to the appropriate storage area and exchanged on a one-for-one basis. Prior to issuing a new blade, the individual in charge of the storage area must ensure the entire blade is present, that the exchange is recorded in the inventory record, and that the worn out blade is disposed of outside the facility.”

Failure to follow the tool control directive on disposition of tools also contributed to Vail's acquiring the sledgehammer head. While investigation confirmed it had belonged to Shop #6, it did not appear on any shop inventories. There were no appropriate storage and distribution procedures in place to account for sheet rock screws, nails or concrete screws.

Frisking, Searching and Cell Standards

Vail was able to bring the contraband materials back to the cell undetected, by taking advantage of flaws in Elmira's frisking practices as well as in its procedures at the shop building and Center Gate. Vail was able to smuggle screws and larger items out of the shop because of the predictability as to when staff would put inmates through metal detectors. He was able to smuggle approximately 100 screws in the legs of a chair, which the shop instructor authorized him to take back to his cell by calling the block officer. The shop instructor stated that he allowed inmate Vail to take the chair back to his cell and he made the call to an officer in the block to let him know of the approval. Allegedly the pieces of band saw blade were smuggled back to the cell by placing them in a foil tobacco pouch and resealing the pouch to make it appear to be unopened, with the assumption the officers would not check the unopened pouch.

The block cell search log verifies that cell F-7-2 was searched by staff on three separate occasions between the dates the inmates' calendar indicates the chipping began and the day of the escape. On each occasion, the log indicated no contraband items were found in the cell. According to the inmates, at the time of the cell searches the metal planer guide went undetected in the cell, as did the ceiling hole, which was covered by black construction paper painted black to match the ceiling. Screws in the cell (including those hidden in the chair legs) also went undetected.

Inmate Vail was also known as a "jailhouse tattoo artist." He had two homemade tattoo machines in his cell, which is a violation of Departmental rules and regulations for health, safety and security reasons. Those machines were not seized as contraband during cell searches and were found in the cell the day of the escape.

Limited visibility into Morgan and Vail's cell contributed to their ability to avoid detection of their escape efforts. The towels taped on the wall covering the upper portion of the bars, multiple clotheslines across the cell, the placement of the bed against the cell bars and the black ceiling limiting the visibility into the cell were all contributing factors in the escape. Each of these occurrences violated cell standards.

An overall facility search following the escape failed to recover any additional items utilized in the escape. However, during interviews with Vail, he revealed exactly where in the attic he had hidden the metal planer guide and several bundles of screws. Investigators went to the area he had identified and found exactly the items that Vail said he had left there.

Conclusion #3

The Shop #4 Patrol officer is responsible for overall security supervision of the maintenance/vocational carpentry shop area.

Job description records indicate that the job description for Shop #4 Patrol, which includes coverage of the carpentry shop on the second floor, was changed. The change required that at approximately 10:45 a.m., the officer escort the first floor maintenance inmates to an early meal, pat frisking the inmates as they leave Shop 4. This means inmates in the second floor carpentry shop remained in the building with civilian employee supervision for approximately 30-45 minutes before they returned to their cells. This change removed the officer from a position where he could frisk the carpentry shop inmates before they left the building.

The facility unilaterally changed this job description several years ago, violating the Department's regulation that any proposed security post change had to be approved in Albany before it could be implemented.

A site visit was conducted by the Albany security staffing unit to observe inmate movement and frisking procedures through the Center Gate and shop areas. It was determined that numerous changes had been made to the job descriptions that were not compatible with the existing operational schedule or plot plan.

The job description changes made by the facility substantially reduced the number of officers available for frisking inmates during scheduled and non-scheduled movement times. Movement through the Center Gate area caused confusion and led to the possibility of inmates passing through without being frisked. In addition, frequent inmate movement during non-scheduled times resulted in inconsistent frisking through the Center Gate area. These inadequate and inconsistent frisking practices allowed the inmates to know they could leave their work assignments at unscheduled times and return to their cells with the possibility of not being frisked. This left the facility vulnerable and further contributed to the inmates' ability to smuggle contraband through this critical area.

The cell search logbook indicates Vail and Morgan's cell was searched three times after the hole in the ceiling was alleged to have been started and covered with a piece of construction paper painted black. Upon reviewing the cell search forms, there was no contraband recovered during any of these cell searches, nor any damage reported to the ceiling of the cell.

Based on facility cell standards, cell inspections and facility policies, there is no reason except complacency that no one observed and reported the compromised ceiling or the construction paper covering the hole.

Additionally, staff should have detected the contraband items that were likely present in the cell, i.e., screws, metal handle, etc. It is likely the evidence of the escape effort was present in the cell for weeks, if not months, for the inmates to be able to break through the concrete.

The overall condition of the cell was never identified as a problem even though the ceiling was painted black, construction paper was covering the hole in the ceiling, there were multiple clotheslines hanging in the cell from front to back obstructing visibility, and towels were hanging from the bed covering the cell bars, further obstructing visibility. Records indicate there were no misbehavior reports issued for any type of contraband, cell cleanliness or cell obstruction issues during the time in question.

Per Employees Manual, Section 10.3, Supervision of Inmate Housing Units, "a careful inspection of the inmate's living quarters, doors to inmates' living quarters, bars and windows ... will be made daily or as often as directed by the person in charge of security services, to ensure that all are in proper condition ..."

Elmira Facility Policy and Procedure Security Inspections #8.58, VI, Procedure A, 2, requires regular inspections of bars, gates, fences, windows, locks/locking mechanisms, inspections of the inmate living quarters, will occur Saturday morning after the AM meal and prior to the noon meal.” In addition to the Saturday inspection, various cells and control points are to be inspected at random times during the course of the week, so as not to establish a predictable pattern. The inspection form must be completed by the officer on the block and sent to the Deputy Superintendent for Security. Proper supervision of the cell inspection is needed to ensure staff is not becoming too complacent in performing their duties. In the final analysis, an accurate institutional security inspection depends entirely upon the accuracy of every employee who actively makes a security inspection. No records exist indicating security inspection reports to the Superintendent were submitted for F-Block, including Cell F-7-2, or that such inspections were conducted within the time frame the inmates stated they were working on the ceiling of their cell. Additionally there is no paperwork to indicate any cell block attics were inspected.

The facility must ensure all required cell inspections and bar checks are completed and documented. There needs to be proper supervision of staff to make sure that the inspections are being thoroughly conducted. While this was not the case prior to the escape, it is now the rule at Elmira.

Working on the Ceiling

Vail and Morgan indicated they were able to work on their cell ceiling avoiding detection due to the location of the cell, which is on the fourth floor of the cell block at the end of the gallery near the stairwell. This cell was three floors above the officers station, but near enough to the stairwell to hear footsteps on the stairs. They picked times when there was increased noise due to inmate movement, meal runs or counts. Being long term, "jail wise" inmates, they were apparently cognizant of staff patterns, indicating they knew the staff that were predictable and those that weren't, and worked around that. One of the two acted as a lookout while the other chipped away at the concrete ceiling. Due to the location of their cell, they could likely hear staff coming and maintain apparent normalcy while staff was in the area.

During the escape pursuit, there were allegations that blaring TV sets on the gallery masked the sounds of the inmates digging into the ceiling. Elmira has an in-cell television program that allows inmates to purchase from the commissary 12-inch black-and-white TVs equipped with headphones for in-cell use. As an enticement, inmates who agree to double cell are issued TVs, normally from among those left behind by inmates who left Elmira for non-cell TV prisons. Inmates are required to use the headphones. If inmates use the television without the headphones, facility procedures require that officers direct inmates to use the headphones. If violations persists, officers are supposed to write disciplinary tickets that could cost inmates their TV privileges. The few such TV-related disciplines on the block indicate that abuse of headphone use was not a widespread problem, or it was ignored by staff.

The only F-Block communal TV – with sound coming through speakers rather than headphones – is located on the ground floor, or “flats.” In As shown in the diagram on page 18, the TV is about 150 feet from the officer’s desk – roughly 125 feet down the length of the cellblock and approximately 25 feet around a corner. The cell from which the inmates escaped is on the same side of the block as the TV, but nearly 120 feet away and three stories above the TV.

The officers who regularly work the area said they never allowed the communal TV to be played at loud volume. To further dispel the myth of the TV blocking out of the sounds of the escape activities, investigators turned the communal TV to maximum volume. The sound was barely audible to monitors listening from the officers’ station and on each gallery on the same side of the block as the escapees’ cell. Even with the TV at maximum volume, it is not possible that the sound from the TV carried sufficiently to mask the sound of the inmates’ escape preparation efforts.

Conclusion #4

At the time of the escape, Elmira had inadequate cell layout policies. Inmates were allowed to arrange items in their cell as they saw fit. This allowed inmates to move their bunks tight against the cell bars and obstruct visibility into the cell. Appropriate cell layout policies are now in place and being enforced.

Elmira policy #8.44 states in part, "In order to maintain good order and to discourage or detect inmate misbehavior, officers assigned to housing units shall, in addition to normal counts, make frequent irregular rounds of the housing units." Because the escapees alleged they could predict the timing and course of some officers' rounds, staff has been advised to ensure they vary the time and route of their rounds.

Department Directive #4921, Inmate Television Sets and Elmira Facility Policy 22.07 both contain a set of rules that an inmate must sign for, one of which requires the inmate to use earphones or face disciplinary action and loss of TV privileges. Correction Officers have the ability to control the volume of the communal TV by turning it down, as well as the in-cell TVs, by disciplining inmates who fail to heed warnings to use headphones.

During a Nov. 1, 2001, facility labor/management meeting, the officers' union leaders said there was an issue regarding the noise level from in-cell and community TVs in F-Block. Management stated it would look into the issue and get back to the union. There was no formal, written response to the union, but the administration verbally informed union leaders that officers control the volume on the communal TV and have both the authority and responsibility to write inmates disciplinary tickets if inmates fail to use their television headphones. There is no record that staff have ever issued any significant number of such tickets.

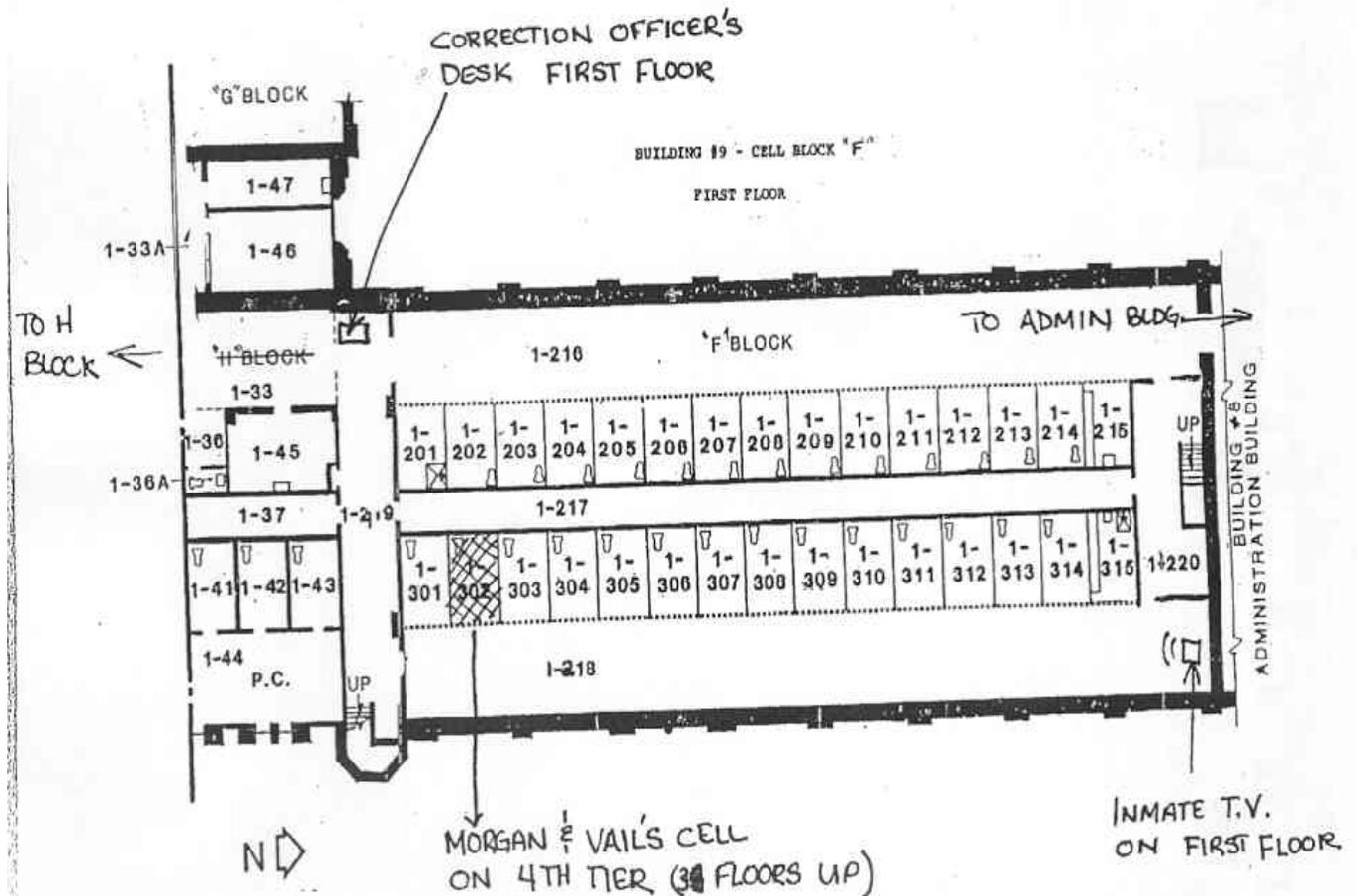


Diagram shows relative location of the inmates' cell, officer's station and gallery television set.

Evading the Count

There is disagreement between staff and the escapees as to the what time Vail and Morgan left their cell through the hole in the ceiling and entered the attic. Upon sworn interrogation, Correction Officer James Davenport, assigned to F-Block the night of the escape, said he saw Vail and Morgan sitting on the bottom bunk playing cards during the 12:30 a.m. count. With regard to the 2:30 a.m. and 4:30 a.m. counts, Davenport further swore during interrogation, “evidently I wasn’t sure there were living breathing bodies in there.” Officer Davenport also stated that the dummies were discovered when the inmates did not respond for the “standing” count at about 6:30 a.m.

According to Vail, he went up into the attic at approximately 10:30 p.m. and Morgan came up to meet him at approximately 12:30 a.m. According to Morgan, they both went up at approximately 12:30 a.m. Both said they went down the rope at approximately 1:30 a.m.

Regardless, Vail and Morgan said they were on the ground in the front of the facility to see a vehicle pull up and back into a parking space near the front gate approximately 190 feet from where they were located. They indicated that an individual got out of the vehicle, went toward the front gate, then went back to the vehicle, they assumed, to turn off the headlights that were left on.

Conclusion #5

When the officer did the 12:30 a.m. count, he states he counted living breathing bodies in the cell. While it remains unclear specifically when the inmates left their cell, when the officer did the 2:30 a.m. and the 4:30 a.m. counts, it is obvious that he did not check the cell closely.

If the count had been taken properly, the officer would have detected that the inmates had escaped. He did not follow the facility and departmental policy regarding count procedures. There is no question his view was obscured by the bed placement and the towels covering the cell bars. If the escape had been detected at the 2:30 a.m. count, the inmates, by their own admission, would have still been on facility grounds.

That’s because their description of an arriving vehicle describes the 2:30 a.m. actions of Dana Aidala, the Deputy Superintendent for Security Services, who was coming in to the facility to make unannounced rounds. Dep. Aidala told investigators later that he did leave his parked vehicle and then return to the vehicle to retrieve something. He corroborated that his vehicle lights also stay on, going off automatically. It was soon after this time that Vail and Morgan said they made their way down the hill to the street.

The fact that Dep. Aidala noted nothing amiss when he parked his vehicle is understandable. There were cars parked between where he parked and the inmates about 190 feet away. It is also understandable that he did not see the narrow rope hanging down the front of the facility at that hour. In fact, the makeshift rope was not spotted by the more than 100 officers who arrived after daybreak and entered the prison at about 6:45 a.m. for the 7 a.m. shift change.

Elmira’s policy states that counts are taken four times during the night shift (Tour 1). Counts are taken at 12:30 a.m., 2:30 a.m., 4:30 a.m. and 6:30 a.m.

Elmira Policy #8.09 and DOCS Directive #4945 both state, in part, that “... In performing a night count, the employee has one paramount responsibility, which is to observe and report the presence of living bodies, or the absence of assigned inmates ... Employees must always bear in mind that inmates, knowing employees do not wish to disturb sleeping inmates, have skillfully constructed dummies to delay the detection of escapes ... To be sure that a live inmate is counted, the employee must see skin, and breathing or other movement.”

The hanging of towels, taped on the wall above the bars and hung down obstructing visibility was in violation of the Department's Standards of Inmate Behavior. Officers did not effect the removal of the towels and did not discipline the inmates for failing to comply. There is no evidence that Vail and Morgan had ever been disciplined for that offense. The towels did limit sight, contributing to the employee not being able to detect the dummies in the beds. The morning of the escape still found towels taped over the bars of cell F-7-2 as well as a towel hanging from a clothesline blocking sight lines from the gallery.

The 11 p.m. - 7 a.m. block officer indicated the he would, as a practice, tell the inmates to take them down, but they would just put them back up. He indicated he would just "let it go" if he could see into the cell. The officer does not recall if he saw the towels blocking visibility on F-7-2 on the counts he completed on July 7. Observation of other cells in F-block the day after the escape indicated that the hanging of such articles on cell bars probably had been quite common place and the policy precluding such was not consistently enforced.

Department Directive #4912, Maintenance of Living Quarters, Section II, 9, states, in part, that there should be no obstructions – there must be full vision into the cell. The hanging of anything on the cell bars that obstructs visibility is prohibited. The inmates hung numerous linens and clothing on the cell bars and on clotheslines running from the front to the rear of their cell, limiting visibility into their cell.

Elmira Policy 8.44, Housing Unit Procedures, VI, I, 1, states, in part, all clotheslines are to be tied the length of the cell, not across it. Inmates are allowed to wrap the clothesline around a cell bar once. There are to be no multiple loops around the cell bars. Rounds by all staff, including supervisors should have required the inmates to remove these items or face disciplinary action. Rounds and observations made by Central Office staff immediately following the escape indicated significant noncompliance with these regulations.

Since that time, living quarter maintenance and cell procedures have been re-emphasized at Elmira, and inmates are being required to comply or face disciplinary action.

Evading the Towers

Tower 1, located in the southeast corner in the front of the facility, would have had the best possible view of the area where inmates went over the prison wall and headed down the hill in front of the facility toward the street.

But that area of F-Block's roof where the inmates exited through the duct work and out the vent is obscured from the view of Tower 1. The inmates said the unsecured louvred vent in this area was the reason the inmates chose this location for the escape.

The location where the inmates came down the rope, some 76 yards from Tower 1, is also hidden from the view of Tower 1 by the turret that protrudes from the facility. The inmates stated this is precisely the reason they picked that location. The protrusion of this turret is why, even if the officer was looking in their direction at the time they were coming down the rope, he would not have been able to see them.

According to the inmates, when Vail fell from the rope, he hit the turret and landed approximately 10 feet out from the wall. Vail stated he could look up from this position and see the tower and the officer. The inmate said he lay there for approximately 15 minutes before Morgan climbed down the rope and dragged him back behind the turret. They claimed they remained there for approximately 1½ hours waiting for inmate Vail to recover from his fall, before escaping down the hill. If the officer had focused his attention on that area at any time during the 15 minutes that Vail claimed he was lying on the ground or when the inmates crossed the parking lot, they should have been observed by the officer in Tower Post 1, CO Richard Mustico.

Elmira has a policy that requires all wall tower officers to make security calls every hour to the officer staffing Tower Post 1. Tower Post 1 is staffed around-the-clock. The officers on that post also have the responsibility to log the calls. Their written report is provided to the facility arsenal each day, showing the calls logged during each of the three, eight-hour shifts in the previous 24 hours.

Conclusion #6

During sworn questioning, Tower Post 1 Officer Mustico said he received hourly calls from the five other tower officers and that he was alert and doing his job throughout his entire shift. When confronted with telephone records showing no calls were made, Officer Mustico admitted that he did not receive or make any phone calls. He also admitted that he filled out and signed the form indicating, falsely, that all calls were made.

The other staffed job in the front of the facility is Tower Post 7. This tower is located at the northeast front of the facility, opposite Tower Post 1. The distance from the escape location, turrets and nighttime darkness make it unlikely, even with perimeter lighting, that this officer could have seen the inmates during their escape across the grounds. A reenactment showed the officer would have had to be focused in a particularly precise direction in order to have caught even a momentary glimpse of the escapees before they would have been out of his field of vision.

Tower Post 3 is an unstaffed post located at the southwest corner in the back of the facility. There were reports during the escape pursuit that an officer staffing Tower Post 3 would have been able to see the inmates on the roof of F-Block. But as the picture at right makes clear, Tower Post 3 has absolutely no line of sight to F-Block.



Post 9 is a ground level officer station positioned directly in front of the facility. While it has been closed on the 11 p.m. to 7 a.m. shift since 1989, reports following the escape alleged that, if the post had been staffed, the officer on Post 9 could have seen the escapees when they began coming down the wall.

This photo was taken from Tower Post 3. In the right far background is H-Block. To its left, and totally obscured by Shop 1 Building behind the smokestack and then G-Block, is F-Block. Thus, Tower Post 3 has no view of F-Block.

This post was eliminated because the officer was so often moved away from the post that “assignment” here was a misnomer. On the 11:00 p.m. to 7:00 a.m. shift, Post 9 job description duties included, for example, spending at least one hour patrolling the prison farm. The facility routinely utilized the Post 9 officer for emergency assistance, both to the community and inside the prison. The officer also transported inmates to area hospitals. This officer could be reassigned because the facility relied upon Tower Posts 1 and 7 to provide front perimeter security. Had this post been staffed the night of the escape, it is more than likely that this officer would not have even been “on post” and able to detect activity 170 feet away.

As part of the investigation, a team of investigators conducted a re-enactment at approximately the same time of day with similar weather conditions, in an effort to ascertain how inmates Vail and Morgan were able to avoid detection by the officers in Tower Posts 1 and 7.

It found that Officer Mustico had the opportunity from Tower Post 1 to detect the outside presence of the inmates, either after Vail landed from his fall, or when the inmates crossed the grounds and fled facility property. Additionally, the watchfulness he claimed is also suspect, given his admittedly false statements about receiving phone calls from the other tower officers.

To avoid a repeat of the events of the night of the escape, Elmira's policy was revised on July 10, 2003 to comply with Section 16.11 of the Department's Employees' Manual. Wall post officers are now required to report to their supervising officer inside the prison, rather than to another officer in a tower. The record of those hourly phone calls now confirms the alertness of the officers in every tower who have been advised of the necessity for the calls.

A review of the tower log book also indicated that supervisor's rounds of the towers were not being completed as required by Department policy. That, too, has been addressed by ensuring supervisors are aware of the pivotal role of those rounds.

Change in Appearance/Behavior

According to Vail, Morgan and other inmates, inmate Morgan's hair was cut a full two weeks prior to the escape. Inmate Morgan's hair length went from approximately shoulder length to a close-cropped cut. There is no documentation that any staff referred inmate Morgan for a new photo ID pursuant to Department policy when inmates change their appearance, or that he was ever ordered to get a new photo ID card. Both inmates also lost considerable weight to enable them to make it through the hole in the ceiling.

Conclusion #7

Per Department Directive #4035, Inmate Identification Cards, Section II C 1 (b): "If an inmate drastically changes his/her physical appearance by altering the length and style or color of hair, or by the growth or removal of a beard or mustache, he/she will be rephotographed."

There is no record to document that staff noticed or responded to the dramatic changes in Morgan's appearance. There is no documentation that he was directed to get a new ID card. There is no record of a misbehavior report being issued by any staff for Morgan's refusal of an order to apply for a new card.

Sheet Control

The rope made by the inmates to descend from the roof to the ground, consisted of 11 sheets tied together. The inmates' ability to have access to this amount of sheets was enhanced by Elmira utilizing an outdated and inappropriately-altered 1988 DOCS Directive which allowed four sheets per inmate. The current directive, dated June 2, 1997, limits inmates to two sheets each. However, the practice at Elmira remained four. A copy of the 1988 version of the directive was still posted in the laundry area on the day of the escape. Hence, the inmates had four state sheets apiece plus Morgan's three personal sheets.

Conclusion #8

At the time of the escape Elmira Policy #11.9 allowed the inmates four state sheets each, or a total of eight in F-7-2 because it was a double-occupancy cell. This, along with three personal sheets acquired by the inmates, provided enough material to make a rope of sufficient length.

When packing up the inmates' cell after the escape, two additional state sheets were recovered along with four personal sheets. That means the facility was not enforcing even its own policy regarding the number of sheets inmates could possess, or its rule that sheets were only to be exchanged on a one-for-one basis with those turned in.

Escape Notification

Escape pursuit procedures were implemented at approximately 6:40 a.m. All predesignated escape pursuit posts, including roadblocks, were in place in a timely fashion, by approximately 8:20 a.m. Subsequent posts were added as information developed as to where the escapees might be located.

The function of the roadblocks and roving patrols is not only to recapture or at least contain any escapee, but to assist with the dissemination of important information to the public that may aid in the apprehension of escapees. The facility also alerted the community by sounding its siren, and through its notification of state, county and local police agencies.

Conclusion #9

Upon notification of the escape, the facility responded in a timely manner and in accordance with the Department's and facility's Emergency Response Plan for notification of law enforcement agencies. Appropriate staff were quickly deployed, roadblocks and roving patrols were established, while both the facility and Central Office opened Emergency Operations Centers to coordinate pursuit operations.

Notification of the public is critical as both a warning, as well as to seek assistance in notifying law enforcement of possible sightings of the escapees. Notification of the community will be enhanced by repositioning the siren to increase its range and by increasing the notification of local governmental offices and schools.

Elmira administrators failed to follow its own policy for notification of the local media at the time of the escape as directed in their emergency response plan. Facility administrators agree media notification must be a high priority to ensure the widest dissemination of information on escapes.

Involvement of Other Inmates

Numerous inmates were interviewed by Department investigators, the Division of State Police, and facility staff. There is no proof that any other inmates assisted in or had "in depth knowledge" of the escape.

Staff Involvement

There is no proof that any staff intentionally assisted the inmates in the escape.

Outside Assistance

Investigation by the Department found no proof that the inmates had any actual or planned help from individuals outside of the facility regarding the implementation of the escape plan.

Corrective Actions

As a result of the findings contained in this report, the facility has initiated the following actions in addition to those listed above to address the actions that contributed to this escape. Elmira's executive team has incorporated these findings into facility policies that have been conveyed to staff, stressing the importance of these changes in order to maintain a secure workplace for staff and inmates, and to protect the public.

- Cell F-7-2 has been repaired and placed back into service.
- An overall facility search was conducted to ensure its security, including an inspection of the perimeter, attics and basements.
- Facility staff have completed a clean up effort in the attics, basements, catwalks, and pipe chase areas, to remove unnecessary material to facilitate future inspections.
- The facility has limited vocational shop areas to just one means of entrance or egress. Additional metal detectors have been placed in the vocational shops and all inmates are now frisked upon exiting the shop. Staff has been redirected to accommodate the frisking of inmates exiting the shops. A plan to consolidate the vocational shops is near completion to provide a common corridor for enhanced security supervision. That will ensure inmates are searched before they even leave shop areas.
- The Center Gate frisk area is being redesigned to ensure better control of all inmate movement through it, to provide a secure location for the efficient use of the walk-through metal detector, as well as providing secure frisk rooms over and above those being conducted in the shop buildings. The redesigned Center Gate building will provide enhanced security and observation of inmates. This project is scheduled for bid in December, after currently-planned security improvements are underway.

Cell Standards

- The facility has established cell color standards limiting the colors the inmates may use to paint their cells to an off-white or beige. That will make it easier to spot alterations in the ceiling.
- The facility has established a standard cell layout clearly defining the position of cell furniture. The facility now ensures that all cell inspections are completed and documented with a weekly review by a Captain and the Deputy Superintendent for Security Services.
- Officers have been advised to enforce existing rules that prevent inmates from doing anything that impedes visibility into their cells in any way.
- Elmira is now in compliance with the Department's Directive #3086, Linen Inventory Control.

Supervision of Inmates

Staff has been advised that:

- It is and always has been their responsibility to ensure they are counting actual living, breathing bodies during their counts per Directive #4945, Inmate Counts.
- When an inmate alters his appearance, he must be re-photographed and issued a new state ID card in accordance with the long-standing Departmental Directive #4914, Inmate Grooming Standards.

- No post description changes will take effect outside of the approved process. That means any proposed job description changes must be approved by the executive team and forwarded to the security staffing unit in Albany for approval prior to implementation. If the now-retired Deputy Superintendent for Security Services who approved the job description changes in the vocational shop described on page 16 was still working for this agency, he would be subject to disciplinary action for having implemented the change without having forwarded the proposal to Albany for review.

Tower Policy

Facility policy for wall towers has been revised to comply with Section 16.11 of the Employees' Manual which states "the wall post officer shall report to his supervising officer in such form and at such times as may be designated by the Superintendent." Tower officers shall now report hourly via telephone, directly to the Assistant Watch Commander's Office.

Tool Control

A tool control audit was conducted to ensure that all tools will be properly received, inventoried, etched and issued. During this audit, all excess and/or surplus tools and machinery were removed from the facility, documented by the appropriate paperwork to confirm removal/disposal.

The facility has taken steps to ensure:

- All tools are delivered to the storehouse, inventoried, color coded, and etched before being issued.
- All purchase orders for tools must be reviewed and approved by the Deputy Superintendent for Security Services.
- A centralized secure storage area has been established in the outside storehouse, to which inmates are denied any access.
- Scrap barrels in the shops have been redesigned to ensure disposed material cannot be removed or retrieved.
- The facility has taken steps to ensure that broken and worn out saw blades are disposed of outside the facility, rather than winding up in scrap barrels or trash receptacles.
- Common materials such as nails, screws, tape, etc., shall be controlled in a reasonable manner consistent with sound security practices. Non-hazardous materials and supplies shall be periodically inspected to ensure that accountability is maintained, sufficient but not excess quantities are available, and all supplies and materials are properly safeguarded.

A followup inspection was conducted in September 2003 ensuring the facility was in compliance with Department Directives regarding tool control. A review of records and tool control procedures determined the facility was in compliance.

Assessing responsibility

The escape of inmates Timothy Vail and Timothy Morgan was avoidable. It resulted from complacency manifested in a widespread breakdown in Departmental practices, long-time policies and security procedures. The inmates recognized and took advantage of these lapses. Staff complacency allowed the inmates to identify, smuggle and utilize contraband and other material to enable their escape.

There is little doubt that had there been strict adherence to established policy, procedure and practices, the escape would have been thwarted. The dedicated staff at Elmira last saw an escape in 1984. Its excellent record led to a mood of complacency, exhibited by staff over-familiarity with Vail, lax tool control, spotty inmate frisks and incomplete cell searches. Count procedures and perimeter security requirements were not followed.

Failures in basic correctional practices, regarding supervision of inmates, alertness and observation, contributed to the inmates' success in escaping the proverbial "security envelope" – the cell.

If that envelope remains secure, inmates are confined to their cells. It also indicates that the vigilance of staff is safeguarding the rest of the institution as well. But if the envelope can be breached, that normally indicates breakdowns are occurring elsewhere in the prison – as was demonstrated here. That is a serious situation: The professionalism of staff is the first line of defense in prison security, with security equipment and barriers as the important second line of defense.

If the first line of defense weakens, that renders the second line of defense less effective. If inmates can breach the "security envelope," that significantly increases inmates' chances of evading all other security apparatus – whether the facility is surrounded by a fence, a wall or a moat.

There is no guarantee that, given what happened at Elmira, that the fence being constructed later this year would have been sufficiently monitored to prevent this escape – especially since it appears the escapees spent 90 minutes outside the wall before exiting the facility. That time could have been used breaching a fence.

The lapses at Elmira go further than just line staff. Elmira supervisors and administrators bear the responsibility for not appropriately monitoring staff performance, ensuring that departmental policies were adhered to and enforcing accountability accordingly. To their credit, most affected employees conceded to investigators that their actions had violated established rules and known procedures. It is the Department's policy to attempt to correct such behavior rather than attempt to punish individual employees for conduct committed by many.

That's why one purpose of this report is to identify deficiencies and offer corrective actions designed to improve Elmira's overall operations. Another purpose is to provide a self-auditing tool for all other prisons in hopes of preventing similar incidents from occurring within their perimeters.

However, the conduct of three employees was found to be so egregious as to demand discipline:

- Officer Richard Mustico received a notice of discipline for, first, filling out an hourly call sheet indicating that he had received security calls from other towers between 11 p.m.-7 a.m., when in fact he knew no such calls were received. Secondly, he gave false and misleading information during the investigation indicating that the calls were received when records show they were not.

- Officer James Davenport has received a notice of discipline for, first, failing to exercise due diligence and proper custody/control of inmates under his care, specifically by failing to observe and note the presence of inert dummies in the bunks of cell F-7-2 and detect that Vail and Morgan were not in their cell and had escaped from the facility. Secondly, Davenport submitted count slips which incorrectly indicated that all inmates, including Vail and Morgan, were present and accounted for.
- Vocational Instructor Gary Silvers has received a notice of discipline for: (1) delivering contraband to inmate Vail (a pack of cigarettes); (2) receiving a personal gift from Vail (a painting); (3) bringing a map into the prison which he shared with inmate Vail without authorization from the Superintendent; (4) improperly causing an official record to be destroyed by shredding a carpentry shop inventory, and (5) failing to maintain a proper accounting and inventory of tools and equipment.

A final word

Department employees have the extremely difficult task of round-the-clock commitment to literally thousands of prison security details that protect them and the residents of surrounding communities. Their commitment to detail is no more evident than in the fact that the last escape from any maximum-security facility occurred in 1994. It is hoped that the information contained in this report motivates employees around the state to recommit themselves to the high level of professionalism and vigilance for which they are known. That will ensure their security as well as the safety of the public – a public that recognizes that correctional employees perform the most difficult tasks that New York requires of any of its state employees.



Tower Post 1 is the detached tower located to the front left of Elmira prison, with detached Tower Post 7 directly across on the right side of this photo. F-Block is located to the immediate left of the facility entrance. The inmates came down the front of the prison to the left of the main entrance, just to the right of the first turret. Post 9 is located in the small building at the front edge of the upper parking lot, to the left of the walkway that angles down the hill to the lower parking lot. This view of the facility is intentionally limited, because the Department does not, for security reasons, circulate aerial photographs detailing the entire layout of state prisons.