

TAB 25

Letter of Concerns



U.S. Department of Justice

Civil Rights Division

*Coordination and Review Section
P.O. Box 66560
Washington, DC 20035-6560*

TAB 25

_____, 19__

Mr. _____
Commissioner
Department of Corrections

_____, _____

Dear Mr. _____:

In our December __, 19__ letter, we informed then Commissioner _____ that the Department of Justice had received multiple complaints from _____, an inmate at that time at _____ Correctional Center. Mr. _____, who is black, alleged that he, as well as other black inmates, had been harassed by other prison inmates and prison officials because of his race and that, in addition, he had been harassed because of his association with whites. He also alleged that certain privileges, such as visitations and furloughs, have been delayed or denied because of his race. We have concluded our investigation of Mr. _____' complaints as well as additional allegations that were revealed to us during two onsite visits (June and September 19__). This letter is to inform you of the results of our investigation and our desire to negotiate a resolution to the problems that we uncovered.

Allegations

Mr. _____ stated that while he was an inmate at _____ Correctional Center (_CC), he was harassed by corrections officers (CO's) and other inmates because he is black and because he associated with white inmates. His complaint listed numerous incidents of harassment. They are:

1. receiving two "racial letters" by unknown authors;
2. being subjected to ongoing verbal harassment, including racial slurs, by CO's and inmates;
3. seeing racial graffiti on the walls;

4. having inmates make noise outside his room during sleeping hours;
5. removing his name from the visiting list;
6. not being told his wife was waiting to visit him;
7. having his legal mail opened;
8. observing that mail and personal papers were missing from his room;
and,
9. failure of prison officials to put letters of recommendation in his file.

Mr. _____ stated that when he was harassed by other inmates in view of the CO's, and when he reported incidents of harassment to the CO's, they did nothing about it.

Mr. _____ also alleged that he was discriminated against in the granting of furloughs. He said he was turned down in his first request for a furlough. He stated that he had to complete three "day" furloughs before he was allowed a full furlough. He alleged that white inmates who were similarly situated received longer furloughs more quickly after their first request than he did.

During our onsite visits, incidents of racial harassment and other allegations were made by current black inmates. These included:

1. Black inmates were employed only in certain areas, such as the kitchen and laundry, and were denied employment opportunities in higher rated and paying jobs, such as industries.
2. Black inmates were not accepted on the farm crew by the farm crew chief, who made racial slurs concerning black inmates.
3. Investigations of prisoner grievances were not coordinated through one office, and black inmates believed that their complaints were not processed as quickly and thoroughly as those of white inmates.

Jurisdiction

The Department of Justice is responsible for enforcing title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race in federally assisted programs and activities. The _____ Department of Corrections (_DOC) has

received, and continues to receive, Federal financial assistance from components of the Department of Justice and, therefore, is subject to the requirements of Title VI and its implementing regulation, 28 C.F.R. pt. 42, subpt. B, for the period during which such assistance is extended.

The National Institute of Corrections and the Office of Justice Programs have jurisdiction under Title VI over the entire operations a State or local government department or agency, such as the _____ Department of Corrections, when they extend financial assistance to any part of that department or agency. Thus, funding to any facility within the _DOC results in jurisdiction over the entire _DOC.

Under an agreement with the National Institute of Corrections (NIC) of the Department of Justice, the Civil Rights Division investigated complaints of discrimination, including discrimination on the basis of race, against recipients of Federal financial assistance from the NIC. The Office of Justice Programs has also delegated to the Civil Rights Division the responsibility for conducting this complaint investigation.

Section 42.104(a) of the Department of Justice's Title VI regulation states that no person shall be subjected to discrimination on the basis of race, color, and national origin under any program of a recipient of Justice funds. Section 42.104(b)(1)(i) prohibits a recipient from denying an individual any service or benefit on the ground of race, color, and national origin; and section 42.104(b)(1)(ii) prohibits the provision or distribution of benefits in a manner different from that of others under the program on the same grounds. Section 42.104(b)(1)(iv) prohibits the restriction in the enjoyment or privilege of any service or benefit on the same grounds.

Section 104(b)(1)(iii) prohibits a recipient from subjecting an individual to separate treatment on the ground of race, color, or national origin. Section 42.104(b)(2) prohibits a recipient from utilizing methods of administration or other criteria "which have the effect of subjecting individuals to discrimination because of their race, color, or national origin."

Background

We reviewed policies and training provided in the area of racial harassment and the _DOC policy on nondiscrimination. At the time of our review, the _DOC did not have a policy specifically addressing racial harassment and did not provide any training to its officials on racial sensitivity or the prevention of racial harassment in its institutions.

We interviewed more than two dozen current and former black inmates and

former and current white inmates about the allegations made by Mr. _____ and any recent allegations of racial harassment by black inmates. We also interviewed _CC officials, including the Superintendent, the Assistant Superintendent, the Grievance Officer, the Chief of Security, and a random sample of guards about racial harassment.

We reviewed the policy on furloughs and the furlough records of 108 inmates, both black and white. These records did not include the community investigation reports prepared by the Division of Probation and Parole. We interviewed _CC officials, including the Superintendent and the Community Programs coordinator, as well as the above-mentioned inmates about furloughs.

Issues

Based on the information provided by the _DOC and the _CC and information gathered during our two onsite visits, we found that some of the issues had been resolved. The remaining issues although not rising to a level of a formal violation of Title VI, did present concerns that we will discuss along with suggested remedies.

Allegation 1. Mr. _____ and other black inmates had been racially harassed by inmates and staff and CO's sometimes did not take action to stop the harassment.

By the time of our investigation, Mr. _____ had been gone for several years, and inmates serving with him had also left _CC. Two former inmates and one current inmate corroborated Mr. _____' allegations that some correctional officers (CO's) and inmates would use racial slurs in addressing him, and that often CO's would do nothing when Mr. _____ was being harassed. One former white inmate said that both he and Mr. _____ were harassed by some CO's about "hanging out" with people of another race.

Our interviews with current inmates revealed numerous incidents of racial harassment. Three current inmates and a former inmate stated certain current black inmates were harassed by some CO's, who used racial slurs or made racial jokes. Another black inmate was referred to as "Buckwheat" by CO's. Other inmates picked it up, and no effort was made to stop the remarks. Six inmates stated that they had heard CO's use racial slurs. One inmate said when he reported the use of racial slurs to a CO, he was told "sticks and stones will break your bones, but names will not hurt you." Racial graffiti and anti-black signs on walls were reported. In one incident, it was alleged that an inmate told CO's three times about a racial slur written on a wall in a dorm, and it was not removed for a month.

Response of CC Officials

Mr. _____ filed many grievances concerning this issue while he was an inmate. In 19__, he filed a grievance stating that a specific white inmate continuously harassed him and the CO's took no action. The Chief Advocate for _DOC investigated this grievance and reported that although there was no documentation to substantiate the allegation, the white inmate in the meantime had been transferred to another facility. The letter from the Commissioner of _DOC stated that CO's will be instructed that racial harassment will not be tolerated and CO's should do what they can to prevent it.

Since the Commissioner's letter was issued, we were told that CO's were counseled about racial harassment. There has been no formal training on prevention of racial harassment nor any type of diversity training. All CO's initially receive training at the Academy. There is no course which covers prevention of racial harassment. The CO's also receive training while at _CC, but again there is no formal training on the prevention of racial harassment. In a meeting with the _DOC Chief Advocate, the Advocate whose jurisdiction includes _CC, and the _DOC EEO Officer, all three agreed that training in this area was essential. They stated that there should be a course at the Academy and that facilities should provide this training to CO's on a regular basis. Mr. _____, an Advocate, suggested putting race relations and peaceful negotiation of interracial disputes (CO's and inmates) into the CO's personnel ratings. Ms. _____, the EEO Officer, said that she would be glad to put together a training package. In a later interview with the Chief of Security, he also echoed the need for more training. He said that a few years ago, _CC had to hire quite a few CO's over a short period of time and their qualifications were not reviewed as thoroughly then as the qualifications of applicants are now. He further stated that training on the prevention of racial harassment would contribute to the professionalism of the CO's.

None of the management staff whom we interviewed believed that Mr. _____ had been harassed. The Superintendent told us that comments stating Mr. _____ was "paranoid" would be found in his personnel file. In reviewing Mr. _____' medical records in his personnel file, there was no mention of paranoia, but statements by Dr. _____ indicated that Mr. _____ was not having an easy time and had a positive attitude despite having to endure racial slurs. The Chief of Security stated that there had been reports of use of racial slurs by CO's in the past.

Of the six CO's we interviewed, none specifically corroborated Mr. _____' allegations, but some did note concerns. One CO stated that he had observed staff using derogatory racial terms in a joking manner. Another said there had been a problem in the past of pushing notes with racially derogatory terms under black inmates' doors. Some white inmates were thought to be prejudiced against black

inmates. Some CO's were thought to be "not professional" in their behavior. When questioned about what they would do if they observed a CO racially harassing an inmate, some stated they would speak to fellow officers or try to resolve the issue informally. One said there needed to be more an emphasis on "professionalism." One CO stated that because the population of the inmates at _CC has been changing over the years, there is a greater need for a "race relations" training.

Findings and Recommendations

Mr. _____ believes that while he was an inmate at _CC he was singled out for racially motivated harassment by both inmates and staff. At the time, Mr. _____ was one of a very few black inmates and his conviction for killing a white ex-inmate garnered much publicity. Although we were unable to corroborate all the specific incidents (e.g., receiving letters, inmates making noises outside his room), there is sufficient evidence to find that the complainant was subject to verbal harassment, including racial slurs by CO's and by other inmates, which was tolerated by the CO's. These incidents were not casual or isolated. Mr. _____' medical file indicates that he sought counseling to handle the racial slurs.

Mr. _____ filed many grievances concerning these incidents. Although action was taken to resolve some issues, _CC staff did not take any steps, such as issuing a policy or conducting training, to ensure a nondiscriminatory environment.

During our onsite review, we found that incidents of racial harassment were continuing. There are ample statements from current inmates that racial harassment by both CO's and inmates (tolerated, and perhaps encouraged by CO's) took place after Mr. _____ left, and continued up to the time of the investigation. We have no reason to believe that it has ceased even today. These were not isolated incidents and the use of derogatory racial terms was recurring.

_DOC has the responsibility to provide an environment free from racial harassment and intimidation. After investigating Mr. _____' complaint against a particular inmate, _DOC said that steps would be taken to prevent this type of behavior in the future. No policy on the prohibition of racial harassment has been issued and neither has training on interracial relationships, multicultural relationships, racial sensitivity, or professional responsibilities in the face of racial misbehavior on the part of the staff been provided to the staff at _CC.

Although Mr. _____' release and passage of time prevent specific remedies for him personally, there are a number of steps that can be taken to prevent such behavior in the future. These include:

Recommendation 1: The _DOC shall adopt a clear and detailed policy against racial (sexual or disability-related) harassment by CO's and by inmates against inmates. The statement of policy is to include specific examples of what constitutes such harassment. It should also include the specific steps CO's should take to prevent racial harassment of inmates and the specific steps to take when racial harassment is observed or encountered.

Recommendation 2: Specific disciplinary measures should be required when either an inmate or a CO engages in racial harassment and when a CO fails to respond to a situation where an inmate is being racially harassed.

Recommendation 3: The _DOC shall inform all current inmates of this policy within 90 days, post this notice throughout _DOC facilities, and make this policy a specific and separate part of inmate orientation.

Recommendation 4: The _CC shall make the acceptance and investigation of incidents of racial harassment an integral part of the grievance procedure, with investigations being done personally by the Grievance Officer and reviewed by the Warden, and a record of such grievances and their investigation and resolution should be kept on file for at least three years. A report on such grievances will be filed with the Department of Justice six months after the date of this report and every six months thereafter for three years.

Recommendation 5: The _CC, in cooperation with _DOC, shall develop a training module in race relations, to be given to all current staff within 90 days, including the warden and other senior staff and new staff during their initial training or orientation.

Recommendation 6: The _CC, in cooperation with _DOC, shall develop a renewal or refresher course in race relations, to be taken on an annual basis by all CO's and other staff, including the warden and other senior staff.

Recommendation 7: A course on racial sensitivity shall be developed and incorporated into the mandatory curriculum for all trainees at the Academy.

Allegation 2. Mr. _____ alleged that the CO's harassed him based on his race by opening his legal mail before he received it.

Finding

According to _DOC policy 16.2, "Inspection of Prisoner Mail," "privileged mail" is defined as mail between a prisoner and attorneys, judges, State and Federal

officials, and the Parole Board. Unlike regular mail, privileged mail must be opened in the presence of the prisoner.

During our onsite review, we were informed that _CC instituted new procedures for handling privileged mail. The mail officers are the only _CC staff allowed to open privileged mail in front of the prisoner. CO's are no longer allowed to open privileged mail.

The new procedure of only allowing mail officers to open privileged mail will give _CC more control over the handling of the mail. There will be considerably fewer staff members allowed to open privileged mail and it will be easier to monitor the opening of mail.

Because _CC has adopted stricter procedures for handling privileged mail and because the inmates interviewed did not have any specific complaints involving privileged mail, we consider this allegation resolved.

Allegation 3. Mr. _____ alleged that the CO's harassed him based on his race by scratching his name off of the list for visitors and by delaying the visits of his wife.

Finding

According to _DOC Policy 16.4, "Prisoner Visiting," each facility is required to maintain a visiting program, provide a visiting room, and set up rules for visiting. According to the _CC "Visiting Program," all visits are by appointment only. Visitors should arrive at least 15 minutes before their appointment. The policy further states: "the prisoner is not called until the visitor has arrived and signed in at the visit area."

During our onsite visit, we were informed that Mr. _____' complaint that he was not notified when his wife arrived for visiting hours was investigated by Correctional Officers _____ and _____ in July 19___. There was no finding of discrimination, but "some discrepancies in the visit calling practices" were uncovered. The officers later contacted Mr. _____, and he said that he had been called on time for the last few visits of his wife. The visiting procedures were revised to minimize any delays in the calling of prisoners when their visitors arrive. Previously, the dorms were called in the same order for each visiting period. Prisoners who lived in the dorm called last were delayed in arriving at the visiting room even if their visitor had arrived first. Now prisoners whose visitors arrive first are to be called first. Supervisors were notified of the problems in visits being delayed and told to monitor the CO's overseeing the visiting room.

Because _CC has adopted stricter procedures for visiting and because the inmates interviewed did not have any specific complaints involving visiting, we consider this allegation resolved.

Allegation 4. The complainant alleged that he was initially denied a furlough because of racial discrimination and received shorter furloughs than white inmates who were similarly situated.

Policies and Procedures

The eligibility requirements and the procedures for granting furloughs to inmates of the _DOC facilities are contained in the Department of Corrections Policy No. 18.6, "Community Rehabilitative Programs Furlough Policy." The Chief Administrative Officer of each facility has jurisdiction to grant furloughs to inmates housed at the facility. Inmates must meet eligibility requirements, which include consideration of community sentiment, minimum security, minimum time served, and appropriate conduct and behavior.

An inmate must submit an application to the staff member designated to process furloughs nine weeks before the requested date for the furlough. The application is evaluated on twelve factors, including such factors as conduct and social attitude of the inmate, address of the furlough, intended benefits of the furlough, and a report of a Community Investigation conducted either by the Division of Probation and Parole, Department of Correction staff, or law enforcement officers. A "Community Investigation" is "an investigation to determine: (1) if the residence to which the prisoner has requested a furlough is appropriate and will not be conducive to criminal behavior or to violations of furlough regulations and (2) community sentiment." The community assessment portion of the investigation will include statements made by members of the community, including "positive and negative opinions by the investigator in determining whether or not a furlough is appropriate in that particular community." (p. 2) After the initial furlough, a furlough can be requested once every 60 days. The length of a furlough is up to 48 hours over a three-day period.

_____ Correctional Center

The _CC uses its own "Furlough Guidelines" in addition to the Department of Corrections policy. These guidelines are patterned after the requirements listed in the policy, but contain additional material. Furloughs are granted by the Superintendent of the _____ Correctional Center. Community Investigations are done by the Division of Probation and Parole. All denials of

furloughs are reviewed by the Superintendent and he makes the ultimate decision in the granting of furloughs.

According to _____, Community Programs Coordinator, applications for furloughs must be submitted to her nine weeks before the requested date of the furlough. She sends back the application if the prisoner does not meet the eligibility requirements for a furlough. If all eligibility requirements are met, she requests the Division of Probation and Parole to conduct a community investigation. The investigation is conducted by a probation officer and usually takes 9 to 12 weeks. The probation officer usually talks to the victims, the victim's family, probation officers, police officers, district attorneys, and neighbors. Ms. _____ stated that the reports varied by probation officer. Some probation officers interview more people than other officers. Some probation officers make recommendations on whether there is "negative community sentiment" and other officers only report the interviews. DOC does not have any written guidelines for conducting and reporting the community investigation. We did not interview any staff from the Division of Probation and Parole.

Ms. _____ reviews the written investigation report when it is sent to her. If the report contains "negative community sentiment," Ms. _____ and the other member of the Furlough Committee must reject the request for a furlough. Although not precisely defined, "negative community sentiment" appears to be any objection from members of the community to the granting of a furlough. The request for the furlough is then sent to Superintendent _____, who may override the initial denial of the request. The Superintendent may ask for recommendations from the Furlough Committee on whether the furlough request should be granted, but he usually makes the decision on his own. Superintendent _____ may deny the request for a furlough, approve a shorter furlough, recommend that the prisoner re-apply with a new furlough address or sponsor, or grant the full furlough. If Superintendent _____ denies the furlough, he determines when the prisoner may re-apply.

There are no written guidelines for determining whether an application for furlough may be approved if the community investigation report reveals "negative community sentiment." The decision to override the "negative community sentiment" is totally at the discretion of Superintendent _____. Ms. _____ did state that if there was only one report of "negative community sentiment" from the prosecuting attorney and the probation officer recommended the furlough be granted, it usually was granted. She also said that the longer the sentence of the prisoner the more likely he would be granted a shorter furlough initially and then gradually achieve a full furlough. There are no written guidelines for determining how long a furlough should be granted or the gradual increase of the hours for a furlough over time.

Ms. _____ stated that if the prisoner's family is from out of state, the prisoner may request a furlough at a motel, but this decision is made by Superintendent _____. If a request for a furlough is denied by Superintendent _____, the prisoner may submit an appeal to the Superintendent.

Superintendent _____ stated that when he reviewed applications for furloughs in which the investigative reports revealed "negative community sentiment," he usually did not override the denial. He did state, however, that he did weigh the "negative community sentiment." He considered who was against granting the furlough and how much negative sentiment there was. If the only objections were from a prosecuting attorney who objected to all furloughs, he probably would grant the furlough. If the police objected to the furlough, he usually called the police to discuss it. If the victim's family objected to the furlough, he suggested another community. He considered the amount and strength of the "negative community sentiment" and sometimes would recommend a shorter furlough rather than a denial. He makes these decisions without any written guidelines.

Data

In April 19__, the original complainant, Mr. _____, was denied a furlough upon his first request because his community investigation report revealed "negative community sentiment." He re-applied for a furlough at a new address. His request was again denied. The Superintendent told him to reapply at a new address in 90 days. He was granted a seven hour furlough at the _____ Mall for July __, 19__. He was again granted a seven hour furlough on September __. Mr. _____ alleges that he was told that if he successfully completed his first two furloughs, he would be granted a full furlough for the next furlough. His next furlough was also a daytime furlough on November __. He was granted his first full 48 hour furlough for January __ to February __, 19__. He was restricted to the address of the furlough for this and his next three furloughs. In October, he was allowed to spend some time at the _____ Mall, and in December and January, he was allowed to visit relatives for a certain time period during his furlough.

During our investigation, we reviewed the furlough records of 14 black and 94 white inmates, who were either at _CC when Mr. _____ was there or were current inmates at the time of the onsite investigation. The number of black inmates was too small to form any statistical conclusions, but we did note trends that the data indicated. Of the 13 black inmates other than Mr. _____, only seven had applied for furloughs. Four black inmates were initially denied furlough requests because of "negative community sentiment." One black inmate requested an overnight furlough in a motel, but was granted four hours at the _____ Mall and was never granted an overnight furlough. He alleged that this was due to

discrimination based on the fact that he is married to a white woman. A former black inmate also alleged he was denied a furlough because he was married to a white woman. One black inmate and four white inmates who had "negative community sentiment" were granted overnight furloughs at a motel. The records of the other two black inmates, one with "negative community sentiment" and one without "negative community sentiment" indicated that their first furloughs were cancelled. They did receive furloughs on their next request. One black inmate who was initially denied a furlough received a day furlough on his second request and a full furlough on his third request, but his furlough was not granted until seven months after he had initially requested a furlough.

During our investigation, we reviewed four files of white inmates, similarly situated to Mr. _____, who had been convicted either of manslaughter or murder. Three applied for furloughs and were initially denied and asked to re-apply. One who had initially received "negative community sentiment", reapplied and no longer had "negative community sentiment" and all furloughs were approved. Another inmate re-applied at another address for the furlough and received a full 48 hour furlough. Furthermore, two white inmates with "extreme negative community sentiment" noted on their furlough records were allowed longer furloughs than Mr. _____ for their first two furloughs and were granted full 48 hour furloughs for their third furloughs. Five other white inmates who were not convicted of as serious a crime as Mr. _____ but who had "negative community sentiment" in their community investigation reports received more favorable treatment in the granting of furloughs than Mr. _____. Only one was denied the first time he applied. Two were granted overnight furloughs on their second request; two were granted either overnight or full furloughs on their third request; and two were granted either overnight or full furloughs on their fourth request.

Of the seven black inmates who applied for furloughs, 83%(6) had "negative community sentiment" in their community investigation reports. Of the records that we reviewed, 79 white inmates applied for furloughs. Of the white inmates, 40%(31) had "negative community sentiment" in their community investigation reports. Although the number of black inmates applying for furloughs was very small, the disparity between the percentage of black inmates and white inmates receiving "negative community sentiment" indicates a problem because "negative community sentiment" is the major reason for the denial of a furlough to an eligible inmate. The black inmates whom we interviewed reinforced this perception that black inmates have great difficulty receiving furloughs because their community investigation reports always contain "negative community sentiment." Of the 86 inmates who requested furloughs, 37 had "negative community sentiment" in their reports. Of all reports with "negative community sentiment," 17%(6) belonged to black inmates although only 8%(7) of the inmates who requested furloughs were black.

Of the six black inmates who had "negative community sentiment," four eventually received furloughs. Of the 31 white inmates who "negative community sentiment," 27 eventually received furloughs. Two of the black inmates (50%) had initial four hour furloughs at the _____ Mall while six of the white inmates (23%) had initial four hour furloughs at the _____ Mall. Six of the white inmates (23%) received full furloughs for their initial furlough while no black inmate was granted a full furlough for his initial furlough. Two of the black inmates (50%) received 8 hours or less for their second furlough while nineteen of the white inmates (76%) received overnight or weekend furloughs for their second furlough. Although these statistics do not take into consideration other factors that may have influenced the granting of furloughs, they do indicate that black inmates with "negative community sentiment" seem to be treated more strictly in the granting of furloughs than white inmates with "negative community sentiment."

Some of the black inmates from _____, _____ said it is very difficult to get a furlough because they are from _____, which has a bad reputation. They also said it was difficult for them to get a furlough address in another town because many black inmates were not from _____ and did not have relatives in other areas of _____. Our review revealed that seven black inmates listed their home address as _____. Three inmates were not eligible and two did not apply. One inmate stated that if you live in _____, you can never get a furlough. One black inmate was granted a furlough for a motel outside _____ and another was granted a furlough for an address in _____. Five white inmates who listed their home address as _____ and had "negative community sentiment" were granted furloughs in other towns.

Response from CC Officials

Superintendent _____ stated that Mr. _____' crime created much publicity at the time. Mr. _____ is black and was married to a white woman and killed a white man. The victim's family was very vociferous against granting Mr. _____ a furlough. Because of these factors, which contributed to "negative community sentiment," the Superintendent started Mr. _____ with a short furlough and very gradually worked up to a full furlough. The Superintendent stated that he uses his own judgment and experience in deciding whether to override a report of "negative community sentiment" and in deciding how long a furlough should be. He said he often recommends a furlough be taken in a different town or at a motel. Many of the black inmates told us that they were not originally from _____, and they did not have another address for a furlough. The Superintendent also stated that _____ has areas of drug activity and crime and it is difficult to be furloughed there.

Findings and Recommendations

1. Almost all of the black inmates who requested furloughs had "negative community sentiment" in their community investigation reports. Although the number of black inmates requesting furloughs was small, we are concerned that the community investigative reports of black inmates routinely contain "negative community sentiment." We did not review the community investigative reports to determine whether they were discriminatory and we did not have information on the factors that were used to determine "negative community sentiment." Nevertheless, we think that the area of community investigative reports needs further review to determine whether there are discriminatory factors in the process of preparing these reports.

Recommendation: The _DOC shall review the procedures for investigating inmates who request furloughs. This includes a survey of the Division of Probation and Parole's role in this process and the procedures that they use to develop the community investigative reports. A random sample of the reports should be reviewed to determine whether there are any discriminatory factors in the development of these reports. If necessary, written procedures to prohibit the play of discriminatory factors in this process should be developed.

2. There was inconsistency in the granting of furloughs to inmates who had "negative community sentiment" in their community investigative reports. Although the number of black inmates with "negative community sentiment" was small, these inmates received less generous furloughs than the white inmates who had "negative community sentiment." Black inmates were more likely to be restricted to shorter furloughs more times than white inmates. The policy of the ____ Correctional Center was to gradually increase the furlough over time for those who had "negative community sentiment." This was done more with black inmates than white inmates. There are no written procedures on the policy of gradualism, so it was difficult to evaluate the specific instances of its use. Although we did not know all the factors that were considered in each of these decisions in overriding the "negative community sentiment" because there was no written explanation in the records, we are concerned because there appears to be a stricter application on the granting of furloughs to black inmates than to white inmates. The lack of written procedures for the granting of furloughs when there is "negative community sentiment" makes it very difficult to evaluate these decisions and determine whether discriminatory factors played a role. Superintendent _____ stated that he is capable of making these decisions because of his judgment and experience. There is no guarantee that these decisions always will be made fairly by officials in the future. The lack of written procedures could allow discriminatory factors to play a role in these decisions.

Recommendation: The _DOC shall review the procedures for overriding a

report of "negative community sentiment" in the granting of furloughs at _____ Correctional Center. Written procedures should be developed to ensure that the overriding of "negative community sentiment" in the granting of furloughs is consistent and nondiscriminatory. A written policy explaining how these procedures work should be developed and distributed to inmates to better explain the process for granting furloughs.

Other Areas of Concern

During our onsite investigation at the _CC, we uncovered two problems that we would like to address. The first is the grievance procedure. Although _CC has a grievance officer and a grievance procedure, we found that the actual investigation of grievances was inconsistent and confusing to the inmates. The second concerns employment of the inmates. Concerns were raised by both inmates and correctional staff that black inmates were steered to certain jobs and were not represented among those inmates who worked in the industries program.

Grievance Procedures

According to _DOC policy 14.5, "Client Grievance Policy and Procedures," prisoners may file a grievance with the Grievance Review Officer. The Grievance Review Officer must respond to the grievance within 20 days. If the prisoner is dissatisfied with the result, he or she may file an appeal with the Superintendent. The Superintendent must respond within 20 days. The grievance can finally be appealed to the Commissioner of Corrections.

Response of _CC Officials

According to the Grievance Review Officer, when he receives a grievance from an inmate, he refers it to the supervisory CO of the unit where the incident being grieved happened. If the grievance cannot be informally resolved, the Grievance Review Officer investigates the grievance and writes a response to the inmate within 20 days. If the grievance involves the behavior of a CO, it is usually investigated by _____, a CO Investigator.

During our onsite investigation, we discovered that grievances were investigated by a variety of different staff members, which is inconsistent with the aforementioned grievance procedures that designate the Grievance Review Officer. The Casework Supervisor stated that if an inmate has a grievance and he or she tells her staff about it, and if it is against a guard, she reports it to the supervisory CO. If there is a grievance against other staff members, she reports it to _____, Deputy Superintendent. She said that she does not receive any notification of the disposition of the grievances that she has referred to other staff members. Thus,

she often cannot tell the inmate what happened to his or her grievance. The Business Manager said that if there is a grievance against anyone on his staff or one of his programs, one of his staff members investigates it. If it is a serious grievance, it might be investigated by ____ ____.

The _DOC also has an Advocate and three part-time Advocates who travel from facility to facility. It was unclear what the relationship between the Advocates and the Grievance Review Officer is and if there is overlap in their work.

During our interviews with inmates and former inmates, most of the black inmates who specified a problem that they were having did not file a grievance. They did not think anything would be done or they were afraid of retaliation. Some were not aware of the procedures for filing a grievance. In one instance, a female inmate told us about a problem that she was having with another inmate assigned to a job in the infirmary. We relayed the information to the Grievance Review Officer and the matter was resolved.

There does not appear to be any consistency in the way grievances are investigated. Although the grievance procedures designate the Grievance Review Officer as the staff member to investigate grievances, many other staff members are also conducting investigations of grievances. Many of the inmates were unclear as to which staff members handled problems voiced by inmates.

Recommendation 1: The procedures on inmate grievances should be followed more consistently. It is important to have an independent office, such as that of the Grievance Review Officer, investigate grievances against _CC staff members. Once it is determined that a grievance cannot be resolved informally, the Grievance Review Officer should conduct the investigation. If the CO Investigators are going to conduct investigations of grievances against CO's and other selected grievances, there should be written standards as to when they will investigate grievances.

Recommendation 2: During orientation for new prisoners, the Grievance Review Officer should give a presentation on the grievance procedures, similar to the presentations on the furlough and work release procedures. The proper way to file a grievance should be explained. There should also be a description of the investigative process.

Recommendation 3: There should be a written explanation of the duties of the Advocates and how their work is coordinated with the Grievance Review Officer. This should be distributed to the inmates.

Employment

While we were conducting our onsite review, certain issues arose concerning the jobs available to inmates. Subsequent to our review, we received a complaint alleging that the industries program at the prison discriminated against black inmates.

Allegations

The most serious allegation uncovered during our onsite review concerned the behavior of the farm crew chief towards black inmates. There was a consensus among the black male inmates whom we interviewed that the farm crew chief did not welcome black inmates. Three inmates gave examples of being rejected by the farm crew chief. One black inmate said when he was assigned to the farm crew, the chief told him that he did not need him. He said that a guard told him that the farm crew chief will not take black inmates. Another black inmate said once when he was assigned to the farm, he waited along with two other assigned inmates for the farm chief. The farm crew chief then arrived and chose the two white inmates for the crew and did not take him. A third black inmate said that a guard told him and another black inmate that the farm crew was looking for volunteers, but when the farm crew chief saw the two black inmates, he told the guard he did not need anyone. It was alleged that the farm crew chief made racial slurs about black inmates working on the farm and used racial epithets against a black inmate who worked on the farm crew. Several white former inmates whom we interviewed and some staff corroborated the fact that blacks assigned to the farm crew were very seldom selected by the farm crew chief. One staff member stated that "it is pretty much known that the farm crew chief is prejudiced."

Another allegation was that very few black inmates worked in the industries. This is significant because the industries jobs are the only jobs that pay. Only two black female inmates were known to have worked at the industries. One black inmate said he has been trying to get a job there, but has been unsuccessful.

During our review of the personnel files of the 108 inmates, we recorded the work records of those inmates who had their work records included in the personnel files, i.e., the files of eight black inmates and 42 white inmates. Although some of the black inmates had requested jobs in industries, the files did not reveal any black inmate who had worked in industries. The files of the white inmates indicated that four had worked in industries.

The final allegation concerning employment of inmates was that black inmates were almost always assigned to the kitchen and laundry and seldom assigned to outside work crews. The files indicated that three of the nine black inmates (33-1/3%) had been assigned to outside work crews while 24 of the 42 white inmates (57%) had been assigned to outside work crews. One staff member

stated that black inmates seem to be routinely assigned to the kitchen and laundry and very seldom assigned to outside work crews or work in industries.

_CC Officials Response

Our staff spoke to _____ about our concerns in the employment area. He said that the farm crew chief had been interviewed and denied discriminating against black inmates. The farm crew's chief was counseled by his supervisor. Mr. _____ said he would look into the allegation that black inmates are routinely assigned to the kitchen and the laundry and not to outside work crews. He also said he would talk to the person in charge of the industries about the recruitment of black inmates for industries and the small number of black inmates employed by the industries.

Further Information Needed

Because we did not have the opportunity to completely investigate the allegations about employment that were brought to our attention during our onsite review, we cannot make a conclusive finding about each allegation. We would like the _CC to provide us with any information that they uncovered when they looked into these issues and any additional information that we may need.

1. Please provide us a written description of the investigation completed by _CC concerning the allegations against the farm crew chief. In addition, please tell us how many black inmates have been assigned to the farm crew within the last year and whether any actually worked on the crew. Please let us know if any black inmate who was assigned to the work crew and/or who actually worked on the farm experienced any racial discrimination, such as racial epithets.

2. Please submit a list of black inmates who within the last year requested assignment to other than the kitchen and the laundry, and the assignment of each inmate. Please also let us know the current work assignment of all the black inmates currently housed at _CC.

3. Please submit a report of any investigation into the employment practices of the industries. Please submit a list of all black inmates who within the last year applied to the industries, a list of the black inmates who were accepted, and a list of the black inmates who were rejected. For those rejected, please provide a written explanation for the rejection. Please do the same for white inmates. In addition, please submit a list of the current black inmates employed by industries and any recruitment effort _CC has conducted to elicit applications from black inmates.

We would like to commence negotiations to resolve these matters as soon as

possible. We are committed to resolving this in a productive and amicable manner. Please call Ms. Linda King of my staff at (202) 307-2231 to initiate negotiations.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected under Title VI. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

We would like to thank your staff, especially the staff at _CC for being cooperative and helpful during this investigation. I am looking forward to working with you to resolve these matters expeditiously.

Sincerely,

Merrily A. Friedlander
Chief
Coordination and Review Section
Civil Rights Division