

No. 25-417

IN THE
Supreme Court of the United States

FRANCIS NIELSEN,

Petitioner,

v.

KEKAI WATANABE,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

**APPENDIX TO BRIEF OF THE RODERICK &
SOLANGE MACARTHUR JUSTICE CENTER
AND PRISON POLICY INITIATIVE AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENT**

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CIVIL DOCKET

United States District Court for the District of Columbia

973	DATE	PROCEEDINGS
Feb	15	Complaint, appearance filed
Feb	15	Summons, Copies (3) and Copies (3) of Complaint issued DA serv 2-16 #2. serv 2/22. #1 " 2-20
Apr	17	Motion of defts for enlargement of time to answer complaint. P & A. c/m. 4/17. M.C. Appearance of Thomas G. Carcraan. U. S. Courthouse.
May	1	Order granting defts' motion extending time to and including May 21, 1973 within which to answer or otherwise plead. (N) Flannery, J.
May	18	Motion of defts. for enlargement of time; P & A. c/m 5-18 M. C
May	22	Order granting defts motion extending time in which to answer to and including May 28, 1973. (N) Flannery, J.
May	29	Answer of defts to complaint; c/m 5/29/73.
May	29	CALENDARED. CD/N.
Aug	17	STATUS CALL: (Rep: Shirley Hatch) Flannery, J.
Sept	5	MOTION of defts. to sever and transfer; P&A. attachment. c/m 9-5
Sept	17	MOTION of pltfs. for summary judgment; P&A., exhibit A, statement. c/m 9-17
Sept	19	MOTION of pltfs. for leave to file an amended complaint; memorandum; exhibit (1); c/m 9/19/73.
Sept	19	MEMORANDUM of pltfs. in opposition to motion to sever and transfer; c/m 9/19/73.
Sept	20	REQUEST of pltfs. to schedule oral argument on motion to sever & transfer.
Sept	27	MOTION of defts. to hold in abeyance pltfs.' motion for summary judgment and motion for leave to file amended complaint; P&A; c/m 9/27/73.
Sept	27	SUPPLEMENTAL P&A of defts. in support of motion to sever and to transfer; c/m 9/27/73.
Nov	2	MOTION of pltfs. for leave to file second amended complaint; P&A. exhibit c/m 11-2 EX. B & C
Nov	2	SUPPLEMENTAL Memorandum of pltffs in opposition to motions to sever; c/m 11-2.
Nov	2	ORDER denying motion of defts to sever and to transfer. (N) Flannery, J.
Nov	12	MOTION of defts. to amend order of 11-2-73; P&A. c/m 11-12

CIVIL DOCKET

United States District Court for the District of Columbia

RAMER, etal

vs. KLEINDIENST, etal C. A. No. 294-73

PRECEDING
Supplemental Page No. 2

DATE	PROCEEDINGS
	PARTIES
	ATTORNEYS
	LANIER RAMER
	JERRY DESMOND
	Charles Lister
	888 16th St., N.W.
	20006
	JESSE LEE EVANS
	GERALD HEFT
	ANTONIO SAIA
	JAMES H. HAMPTON
	add'l pltffs.
	vs.
	1. RICHARD G. KLEINDIENST
	Attorney General of the
	United States
	Thomas G. Corcoran
	U. S. Courthouse
	2. NORMAN A. CARLSON,
	Director, Federal Bureau
	of Prisons
	do

CIVIL DOCKET

United States District Court for the District of Columbia

RAMER ET AL vs. KLEINDIENST C. A. No. 294-73 Supplemental Page No. 1

DATE	PROCEEDINGS
Nov 13	OPPOSITION of defts. to motions for leave to file amended complaints; c/m 11-13
Nov 13	MOTION of defts. for enlargement of time; P&A. c/m 11-13
Nov 15	MEMORANDUM of pltfs. in opposition to motion for enlargement of time. c/m 11-15
Nov 19	ORDER granting motion of defts for enlargement of time to and including 12-7-73, within which defts. may respond to pltfs' motion for summary judgment. (N) Flannery, J.
Nov 27	ORDER granting defts' motion for an extension of time to respond to pltfs' motion for summary judgment. (N) Flannery, J.
Dec. 7	STATEMENT of genuine issues of defts.; exhibits A, B & C; c/m 12-7-73.
Dec. 11	ORDER granting motion of defts. to amend order of 11-2-73; denying motion of defts. to sever and transfer, without prejudice. (Signed 11-10-73) Flannery, J. (N)
Dec 14	MEMORANDUM of points and authorities of defts. in opposition to motion of pltfs. motion for summary judgment; exhibit A; B; attachment; c/m 12-13-73.
Dec 13*	ORDER denying motion of pltfs. for leave to file a second amended complaint. Flannery, J. (N)
Dec 27	ERRATA sheet of defts. for memorandum of points and authorities in opposition filed on 12-14-73; attachment; c/m 12-27-73.
1974	
Jan 7	MOTION of pltfs. for extension of time in which to file a reply memoran- dum in support of motion for summary judgment; memo; c/m 1-7-74.
	(OVER)

CIVIL DOCKET

United States District Court for the District of Columbia

AMER, et al

vs.

KLEINDIENST, et al

C. A. No.

294-73

Supplemental Page No.

2

DATE		PROCEEDINGS
1974		
Jan	10	ORDER extending time of pltf. in which to file a reply memo in support of motion for summary judgment to and including 1-21-74. (N) Flannery, J.
Jan	21	REPLY Memorandum of pltffs in support of motion for summary judgment; Exhibit D, E, F, G, H, I-1, I-2 & I-3; c/s 1-21-74.
Feb	1	MOTION of defts to hold proceedings in abeyance; P&A; c/m 2-1-74.
Feb	5	OPPOSITION of pltffs to defts' motion to hold the proceedings in abeyance; c/m 2-5-74.
Feb	5	ORDER dismissing action for lack of jurisdiction. (N) Flannery, J.
Mar	29	NOTICE of Appeal by pltffs. from order of Feb. 5, 1974; copy mailed to Thomas G. Corcoran, Jr.; \$5.00 deposit by Lister.
Mar	29	COST Bond on Appeal by pltf. with National Surety Corporation in the amount of \$250.00 approved.
May	7	RECORD on Appeal delivered to USCA; Receipt acknowledged.
1975		
Nov	14	TRANSMITTAL Sheet from USCA returning the original record.
Nov	25	STATUS CALL. Pltf. to file amended complaint within 30 days; pltf. to renew motion for summary judgment within 120 days; Govt. has 15 days to reply. Discovery to be completed within 90 days. (Rep. Shirley Hatch) Flannery, J.
Nov	26	ORDER giving pltffs. to file an amended complaint on or before Dec. 29, 1975; all discovery to be completed on or before Feb. 23, 1976; pltffs. shall file a motion for summary judgment on or before March 24, 1976; and defts. shall respond to pltffs' motion and or file a cross-motion for summary judgment on or before the 15th day following the filing of pltffs' motion. (N) Flannery, J.
		see next page

CIVIL DOCKET

United States District Court for the District of Columbia

RAMER, etal vs. KLEINDIENST, etal C. A. No. 294-73 Supplemental Page No. 3

1975 DATE		PROCEEDINGS
Dec	1	CERTIFIED copy of USCA Order reversing judgment of the District Court and remanding case to the District Court in accordance with the opinion filed herein this date; opinion.
Dec	30	MOTION by pltffs. for leave to file amended complaint adding parties; Memorandum; Exhibit; c/m 12-29-75.
1976		
Jan	7	ORDER granting plaintiffs' motion for leave to file an amended complt. (N) Flannery, J.
Jan	7	AMENDED Complaint adding Jesse Lee Evans, Gerald Heft, Antonio Saia, James H. Hampton as plaintiffs.
Jan	13	REQUEST by pltffs' for production of documents; c/s 1-13-76.
Jan	13	INTERROGATORIES by pltffs' to defts.; c/s 1-13-76.
Feb	3	LETTER dated 1-24-76 to Flannery, J. treated as motion to join as a party plttf. DENIED. (FIAT) Flannery, J.
Feb	27	RESPONSE of defts. to request for production of documents; Attachment 1, 2, 3, 4 & 5; c/m 2-27-76. Exhibit.
Mar	05	MOTION of pltffs for modification of schedule; memorandum; Exhibits (2); c/s 3-5-76.
Mar	15	ANSWERS b, defts. to pltfs. interrogatories; c/m 3-15.
Mar	25	ORDER filed March 25, 1976 directing pltf. to file motion to compel under Rule 37, on or before March 31, 1976; granting pltffs' motion for modification of schedule, and the order of Nov. 26, 1975, is amended to permit the filing of a motion for summary judgment by pltffs on or before 10 days after the disposition of pltffs' motion to compel discovery; oral argument on motions set for Apr. 20, 1976 at 9:30 A.M. (N) Flannery, J.
see next page		

CIVIL DOCKET

United States District Court for the District of Columbia

ANIER RAMER, et al. vs. EDWARD LEVI, et al. C. A. No. 294-73 Supplemental Page No. 4

PROCEEDINGS

1976	DATE	
Mar	26	MOTION of pltffs' to compel discovery; Memorandum; c/m 3-25-76.
Apr	12	MOTION of defts. for enlargement of time to respond to pltffs' motion to compel discovery and pltffs' second interrogatories and production of documents; c/m 4-12-76.
Apr	14	ORDER filed Apr. 13, 1976 extending time to Apr. 15, 1976 for defts. to respond to pltffs' motion to compel discovery and pltffs. second interrogatories and production of documents. (N) Flannery, J.
Apr	14	MEMORANDUM of pltffs' re. defts' motion for extension of time; c/s 4-14-76.
Apr	16	RESPONSE of defts. to request for production of documents, set II; c/m 4-15-76.
Apr	16	ANSWERS of defts' to pltffs' interrogatories set II; c/m 4-15-76.
Apr	16	SUPPLEMENTAL response of defts' to pltffs' interrogatories #'s 28, 29, 30, 39, 40, 41 & 42; Attachment; c/m 4-15-76.
May	12	RESPONSE of defts' to pltffs' interrogatory No. 42; Exhibit; c/m 5-12-76.
Jun	2	MOTION by pltffs' for summary judgment; memorandum; statement; Appendix (Vol. I, II & III); c/s 6-2-76.
June	09	ORDER filed June 8, 1976 directing that defts. shall file a response to the motion for summary judgment filed by pltffs. on 6/2/76 and/or cross-motion for summary judgment on or before June 25, 1976; pltffs. shall file a reply and/or response on or before July 9, 1976 and parties shall appear for oral argument on all motions at 11:00 A.M. September 17, 1976. (N) Flannery, J.
Jun	25	MOTION by defts' for enlargement of time to respond to motion of pltffs for summary judgment; Exhibit A; c/m 6-25-76.

(Over)

CASE CLOSED

CIVIL DOCKET

United States District Court for the District of Columbia
 Lanier Ramer et al. vs. Edward Levi et al C. A. No. 294-73 Supplemental Page No. 5

DATE	PROCEEDINGS
1976	
June 30	MEMORANDUM by pltffs. in opposition to defts. motion for enlargement of time; c/s 6/30/76.
Jul 19	ORDER filed July 16, 1976 granting motion of defts. for an enlargement of time and directing that deft. shall within 45 days, i.e. on or before 8-5-76 file an opposition to the motion of pltffs. for summary judgment should it be necessary to do so at that time. (signed 6-15-76) (N) Flannery, J.
Sept 1	STIPULATION extending time until 9/15/76 for deft. to respond to motion of pltffs. for Summary Judgment. (N) Approved. (FIAT) Flannery, J.
Sept 17	STIPULATION extending time until 10-1-76 for defts. to respond to the motion of pltffs. for summary judgment, approved. (FIAT) (N) Flannery, J.
Sept 22	ORDER filed Sept. 21, 1976 directing that deft. shall file his response to motion of pltffs. for summary judgment no later than 10-1-76. (N) Flannery, J.
Oct 15	STATUS CALL. (Rep. Shirley Hatch) Flannery, J.
Nov 30	STATUS CALL. (Rep. Shirley Hatch) Flannery, J.
1977	
Jan 5	STATUS CALL. (Rep. Shirley Hatch) Flannery, J.
Feb 4	STATUS CALL. (Rep. Shirley Hatch) Flannery, J.
Feb 16	FINAL Judgment filed Feb. 15, 1977 for pltffs. vs. defts. and directing the defts. to publish within 90 days of this judgment, certain rules and regulations and the court shall retain jurisdiction for a period of 180 days. (See final judgment for further details) (N) Flannery, J.
Sept 27	MOTION of defts. for amendment of judgment; c/m 9-27-77.
	see next page

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

App. 11

FILED

E

LANIER RAMER
Inmate, United States Penitentiary
Marion, Illinois, and
JERRY DESMOND
Inmate, United States Penitentiary
Leavenworth, Kansas,

Plaintiffs,

v.

RICHARD G. KLEINDIENST
Attorney General of the United States
Department of Justice
Washington, D. C., and
NORMAN A. CARLSON
Director, Federal Bureau of Prisons
101 Indiana Avenue, N. W.
Washington, D. C.,

Defendants.

Civil Action
No.

294-73

FILED

FEB 15 1973

JAMES F. DAVEY, Clerk

COMPLAINT FOR
DECLARATORY, INJUNCTIVE AND MANDAMUS RELIEF

For their complaint herein, plaintiffs allege as follows:

1. This action is brought by plaintiffs for declaratory, injunctive and mandamus relief to enforce the provisions of the Administrative Procedure Act, 60 Stat. 237 (1946), as amended, 5 U.S.C. §§ 551 et seq. ("the Act").

2. This action arises under the Constitution and laws of the United States, including the Fifth Amendment

to the Constitution of the United States, Part III of Title 18 of the United States Code, and the Act. This Court has jurisdiction under Sections 1331, 1337, 1361, 2201 and 2202 of Title 28 of the United States Code, and Section 10 of the Act, as amended, 5 U.S.C. §§ 701-706. The amount in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs. There exists between the parties an actual controversy, justiciable in character, as to which plaintiffs require equitable relief and a declaration of their rights.

3. Plaintiff Lanier Ramer has been convicted of an offense against the United States, and is now incarcerated as a federal prisoner under the custody and control of defendants and their subordinates at the United States Penitentiary located at Marion, Illinois.

4. Plaintiff Jerry Desmond has been convicted of an offense against the United States, and is now incarcerated as a federal prisoner under the custody and control of defendants and their subordinates at the United States Penitentiary located at Leavenworth, Kansas.

5. Defendant Richard G. Kleindienst is Attorney General of the United States, with his office located at Washington, D. C. Under the provisions of Section 4001 of Title 18 of the United States Code, defendant Kleindienst is vested with control and management of federal penal and correctional institutions, including the penitentiaries located at Leavenworth, Kansas, and Marion, Illinois.

6. Defendant Normal A. Carlson is Director of the Federal Bureau of Prisons, an agency of the United

States. His office is located at Washington, D. C. Under the provisions of Chapter 303 of Title 18 of the United States Code, defendant Carlson and his subordinates have charge of the management and regulation of all federal penal and correctional institutions, including the penitentiaries located at Leavenworth, Kansas, and Marion, Illinois. Defendant Carlson and his subordinates perform their responsibilities pursuant to Chapter 303 of Title 18 under the direction and control of defendant Kleindienst.

7. In connection with their performance of their public responsibilities, defendants and their subordinates from time to time promulgate rules and regulations for the management and control of federal penal and correctional institutions, including the penitentiaries located at Leavenworth, Kansas, and Marion, Illinois. Certain of those rules and regulations, styled "policy statements" by defendants, govern and control the treatment, disciplining, privileges and other circumstances of prisoners incarcerated in federal penal and correctional institutions. Defendants' "policy statements" govern and control such matters as prisoner visits, correspondence, use of law books and other materials, attorney-prisoner relationships, and good time credits and forfeitures.

8. Section 3(a) of the Act, as amended, 5 U.S.C. § 552(a)(1), requires agencies of the United

States to publish in the Federal Register, among other materials,

"(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

"(E) each amendment, revision, or repeal of the foregoing."

9. Section 4 of the Act, as amended, 5 U.S.C. § 553, requires that agencies of the United States shall cause notice of proposals to issue rules and regulations to be published in the Federal Register, unless persons who would be subject to the proposed rules "are named and either personally served or otherwise have actual notice thereof in accordance with law."

10. The Bureau of Prisons is an agency of the United States within the meaning of Section 2(a) of the Act, as amended, 5 U.S.C. § 551(1). The Bureau of Prisons is not exempted or otherwise relieved from the Act's requirements.

11. The "policy statements" promulgated by defendants, described in paragraph 7 herein, are "rules"

within the meaning of Section 2(a) of the Act, as amended, 5 U.S.C. § 551(4), and are required to be published in the Federal Register by Section 3(a) of the Act, as amended, 5 U.S.C. § 552(a). Those "policy statements" are "rules," with respect to which notice must be given or published by defendants pursuant to Section 4 of the Act, as amended, 5 U.S.C. § 553, before they may be adopted, issued or promulgated.

12. Contrary to the requirements of the Act, defendants did not, prior to the promulgation of the "policy statements" described in paragraph 7 herein, publish notices of proposed rule making in the Federal Register, or give actual notice to plaintiffs of such proposed rule making. Contrary to the requirements of the Act, defendants did not, after the promulgation of the "policy statements" described in paragraph 7 herein, publish those "policy statements" in the Federal Register. The "policy statements" promulgated by defendants, together with the actions taken or threatened by defendants and their subordinates on the basis of those "policy statements," accordingly constitute unlawful directives to plaintiffs and other persons incarcerated in federal penal and correctional institutions.

13. Plaintiffs already have suffered, and continue to be immediately threatened by, severe and

- 6 -

irreparable injuries by reason of defendants' failure to comply with the requirements of the Act. Plaintiffs are now, and will in the future continue to be, without adequate notice or knowledge of the rules and requirements embodied in the "policy statements" promulgated by defendants. Accordingly, plaintiffs are now, and will in the future continue to be, denied adequate opportunities to contest the validity of such rules, to participate in the formulation of such rules, to contest the application of such rules to their conduct, and to regulate their conduct so as to avoid violation of such rules. As a result, plaintiffs are arbitrarily and without constitutional justification threatened by losses of privileges, the imposition of disciplinary measures, and other severe losses and injuries.

14. Plaintiffs are without an adequate remedy at law. They have exhausted all administrative remedies open to them, and are otherwise without a prompt and effective remedy to vindicate their rights.

WHEREFORE, plaintiffs pray that this Court

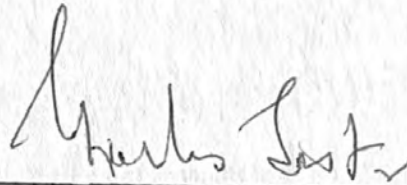
(1) issue a judgment declaring that the "policy statements" described in paragraph 7 herein are subject to the requirements of Sections 3 and 4 of the Administrative Procedure Act, as amended;

(2) enjoin and restrain defendants, their agents and subordinates, and all persons in active concert or

participation with them, from enforcing or causing to be enforced, or from attempting to enforce, by any administrative action or civil or criminal proceeding, any such "policy statement" as to which the requirements of the Administrative Procedure Act have not been satisfied;

(3) issue an order in the nature of mandamus requiring defendants to publish such "policy statements" and notices of the proposed promulgation of such "policy statements," as required by the provisions of the Administrative Procedure Act; and

(4) grant such other or further relief as may be appropriate.



HERBERT DYM
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Washington, D. C. 20009

Dated: February 13, 1973

CHAMBERS OF
ADRIAN A. SPEARS
CHIEF JUDGE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

P. O. BOX 798

SAN ANTONIO, TEXAS 78293

March 14, 1974

Mr. Norman A. Carlson
Director
Bureau of Prisons
Washington, D. C. 20534

Dear Mr. Carlson:

Thank you very much for your letter of February 28, 1974.

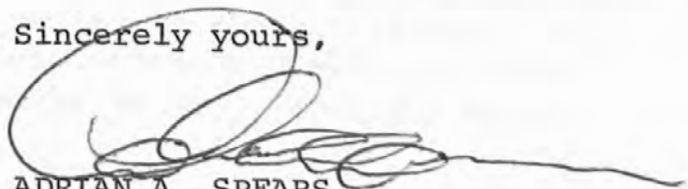
The judges in the district who have expressed themselves in the matter, agree with me that the plan you explained should prove to be a very valuable one. It would certainly provide a system whereby the more spurious complaints of the inmates, especially those that do not rise to the constitutional level, could be handled administratively.

About a year or so ago, I suggested to the San Antonio Bar Association that a committee be appointed to hear prisoner complaints in the Bexar County jail. We were making considerable progress until the sheriff became ill and other things happened to slow down our activities. In the meantime, the San Antonio Bar Association has had a change of administration, and we are going to have to practically start all over again from scratch. Nevertheless, I hope that we can get something constructive along this line in the very near future.

I believe that you can see from the foregoing that we are whole-heartedly in agreement with your plan, and if there is anything we can do to assist, please let me know.

With kindest regards, I am

Sincerely yours,



ADRIAN A. SPEARS

United States District Judge

AAS:mw

P.S. It would be greatly appreciated if you could send any further details of the procedure that might be helpful in the implementation of the plan we are working on for the Bexar County jail.

PRISONS

WASHINGTON, D. C. 20537

Operations Memorandum

2001.11

SUBJECT: ADMINISTRATIVE REMEDY PROCEDURE (P.S. 2001.6)
TEMPORARY REPORTING REQUIREMENTS

4-29-74

1. PURPOSE. To temporarily amend the reporting requirements for the Administrative Remedy Procedure. Except for 3A below, these or similar changes will probably become permanent when the regional offices are established.
2. DIRECTIVES AFFECTED. Policy Statement 2001.6 - Administrative Remedy of Complaints Initiated By Offenders in Bureau of Prisons Facilities, dated February 14, 1974.
3. ACTION. In order to refine the reporting system, and to provide for better local and bureau - wide monitoring of the results of this procedure, the following procedural changes should be made.

A. A photo copy of all complaints and responses filed under this procedure during April, May and June, 1974 should be forwarded at the end of each of those months to the Office of General Counsel. These will be reviewed broadly for uniformity and for complaint and response patterns. Atlanta, Tallahassee and Danbury need not comply with this requirement.

B. When a copy of the monthly log is forwarded to the Office of General Counsel, please send a copy of the log for the month just completed and a copy of the log for the previous month as well. The first of June, for example, send both May and April logs since the earlier mailing of the April log will have some incomplete entries from the later part of the month.

C. To facilitate analysis of the results of this procedure, the following numerical code which best describes the subject of the complaint should be incorporated into your logs and reports. If more than one subject is raised in a complaint, use the subject code which best describes the principal complaint.

SUBJECT CODES

1. Transfer - excluding CTCs
2. Institutional Program Assignment - generally, including custody, MSA
3. Community Communications - including mail, visits, phone
4. Community Programs - including CTCs, furloughs
5. Disciplinary Matters - generally, including segregation, loss of good time

6. Institution Operations - generally, including food, clothing, sanitation, personal property. Does not include subjects described better in categories 2, 3, or 5.
 7. Medical
 8. Legal - generally, including jail time, detainers, sentence computation
 9. Parole - generally, including parole reports, release plans
 10. Complaints Against Staff
 11. Other - specify
4. THIS OPERATIONS MEMORANDUM IS CANCELLED SEPTEMBER 30, 1974

Norman A. Carlson

NORMAN A. CARLSON
Director, Bureau of Prisons

App. 21

Operations Memorandum

2001.14

9-27-74

SUBJECT: LAWSUITS AGAINST INDIVIDUAL EMPLOYEES

1. PURPOSE. To provide information to employees on lawsuits against them in their individual capacities.
2. BACKGROUND. There has been apparent misunderstanding of the policy of the Department of Justice in providing counsel to represent individual staff members who are named as defendants, particularly in suits demanding money damages. This has occurred at a time when there has been an increase in the number of suits filed by inmates naming specific staff members as defendants. Some of these cases have proceeded as far as trial and appeal.

3. DISCUSSION.

a. It is the policy of the Department of Justice to provide legal representation to federal employees who are sued on matters rising out of their regular employment duties. This is ordinarily provided by the U. S. Attorney's office in the District where the case is filed.

b. An employee will usually know he is sued when he is served with a copy of the Complaint, or other legal papers naming him as a defendant. This may be through the mail, or a Deputy Marshal may serve it in person. As soon as the employee receives such a document he should notify his supervisors. A copy of the complete document should be sent to the Regional Office. Assuming that the employee wants U. S. Attorney representation, a letter should be addressed to the U. S. Attorney, advising him of the date on which the paper was received and requesting that the U. S. Attorney provide representation. This letter should be signed by the employee, and an endorsing letter should be forwarded with it by the Chief Executive Officer who will indicate that the defendant is a Bureau of Prisons employee, that the acts mentioned were in the scope of his Bureau of Prisons duties, and requesting representation. In some cases or Districts, the U. S. Attorney may ask for further endorsement of the request by the Regional Office or the Central Office.

c. While there has been a form letter used by the Department of Justice which indicates that representation can only be promised through the trial stages, in fact representation will also be available on appeal of the case. The Department deals with one stage at a time, and different offices in Washington supervise the trial and appeal stages. If the U. S. Attorney has represented an employee at the trial level, and the employee later learns that an appeal is being taken, he should ask the U. S. Attorney to represent him at the appellate stage as well. (Of course, an employee can always retain his own private lawyer if he wants to.)

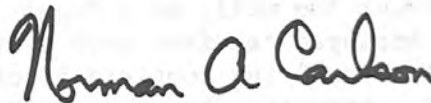
- 2 -

We are advised that the Department will provide representation on appeal, whenever they have provided it in the first instance, and in fact there has never been a case in which representation on appeal has been denied. We have had one case this year, in fact, where the Government has provided full legal representation to an employee through the appeal of the case, and took the case to the Supreme Court.

d. Employees should be assured of top level support of management of this Bureau whenever they are taken into court as a result of their official duties. We have proposed, for inclusion in the Department of Justice's legislative program, a bill which would give legal immunity to those employees acting in the scope of their employment. If enacted, this would mean that they could not be sued individually. This bill has been given top priority in our legislative program requests for 1975. We intend to offer an alternative proposal which would authorize the Government to pay the amount of any judgment awarded by a court against an individual employee, if this would improve the prospects of remedial legislation.

4. ACTION. A copy of this Memorandum shall be given to each employee. Questions about it may be directed to Regional Counsel or the Office of General Counsel.

5. THIS OPERATIONS MEMORANDUM IS CANCELLED AUGUST 30, 1975.



NORMAN A. CARLSON
Director
Bureau of Prisons

Operations Memorandum

SUBJECT: ADMINISTRATIVE REMEDY PROCEDURES - FORMS

2001.15

10-10-74

1. PURPOSE. To advise institutions of the availability of new forms for the Administrative Remedy Procedure.

2. BACKGROUND. The Administrative Remedy Procedure is being revised to include a Regional level of appeal. Accordingly, the forms used under this procedure have been revised to reflect this change, and to provide information copies of completed appeals to the Warden and to the Regional Office.

The revised forms will shortly be available from FPI, Marion. Present cost estimates for the revised forms are:

BP-DIR-9	-	\$6.55 per 100 sets
BP-DIR-10 & 11	-	7.10 per 100 sets

3. ACTION. Immediately upon receipt of this Operations Memorandum, each institution should issue a Purchase Order to FPI, Marion for the number of forms set aside for its use according to the attached list. The figures on the attached list represent an estimate of the number of forms which will be needed for the next 15 months of operation. Thereafter, these forms should be ordered with the routine annual purchase order for forms.

Upon receipt of the revised forms, use of the forms presently in use should be discontinued.

4. THIS OPERATIONS MEMORANDUM IS CANCELLED UPON COMPLETION OF THE REQUIRED ACTION, OR ON NOVEMBER 30, 1974.


EUGENE N. BARKIN
Assistant Director/
General Counsel
Bureau of Prisons

Forms to be used for the Administrative Remedy Procedure should be distributed to the Warden of each institution according to the schedule below.

SETS OF Forms BP-DIR-

9	10	11	Institution
400	200	200	NE - Alderson
500	200	200	Allenwood
1000	400	400	Danbury
2000	1000	1000	Lewisburg
300	100	100	Morgantown
300	100	100	New York FDH
600	300	300	Petersburg
2000	1000	1000	SE - Atlanta
500	200	200	Ashland
300	100	100	Eglin Camp
300	100	100	Lexington
200	100	100	Montgomery, Ala. Camp
500	200	200	Tallahassee
2000	1000	1000	NC - Leavenworth
500	200	200	Marion
500	200	200	Milan
400	200	200	Oxford
700	300	300	Sandstone
1000	400	400	Springfield MCFP
1200	500	500	Terre Haute
200	100	100	SC - El Paso FDC
1000	400	400	El Reno
300	100	100	Fort Worth
700	300	300	La Tuna
500	200	200	Seagoville
700	300	300	Texarkana
300	100	100	W - Englewood
200	100	100	Florence FDC
1000	400	400	Lompoc
800	300	300	McNeil Island
300	100	100	Pleasanton
200	100	100	Safford
700	300	300	Terminal Island
100	50	50	To each Community Treatment Center (9) Atlanta, Chicago, Detroit, Houston, Kansas City, Los Angeles, New York, Oakland, Dallas
3000	1950	1950	Central Office, Office of General Counsel
26,000	12,000	12,000	<u>Total</u>

FEDERAL PRISON SERVICE, WASHINGTON, D. C. 20534

NUMBER 96

DIRECTOR'S LETTER

DATE 12-19-74

TO: WARDENS, DIRECTORS AND SUPERINTENDENTS

As we approach the Holiday Season, I think it is a good time to reflect on the Bureau of Prisons' activities during the past year. Despite a number of problems and frustrations, I personally feel it has been a good year for the organization. We opened four new institutions -- Lexington, Oxford, Pleasanton and San Diego. This represents the first time in the history of the Bureau when four institutions were opened during the course of one calendar year.

The Congress has continued to be responsive to our requests for resources. While we are in a tight financial squeeze at the present time, I think we can take heart in the fact that both the House and Senate Appropriations Committee have demonstrated their confidence in the direction we are moving.

During the year, there were a number of important court decisions affecting the Bureau of Prisons. From a personal standpoint, I was pleased with the Fifth Circuit ruling on the Church of the New Song. In addition, the Supreme Court followed our suggestions in both the McDonnell vs Wolff case as well as in the Washington Post case.

Yesterday morning, J.J. Clark stopped by the office for a cup of coffee. We discussed a number of items including the construction program, Functional Unit Management, etc. J.J. was most complimentary of the changes he has observed during the past year and commented on how far ahead the Bureau of Prisons is in comparison with the many state and local institutions he has visited since his retirement.

He was particularly complimentary of Functional Unit Management, noting the many changes that have occurred at Petersburg since he served the institution as warden. From time to time, it's good to get comments from retirees who can provide a fresh perspective on what we are doing.

FINANCIAL PROBLEMS

In my discussions with wardens and Regional Office staff, I am reminded of the tight financial situation throughout the Bureau. By way of background, the Congress originally approved the entire \$169 million we requested for FY '75. This amount was reduced by \$5.2 million, however as a result of a recision in overall federal spending. As a result of the recision, we are having a rough year with no relief in sight.

I am fully aware of the tremendous increases in costs, particularly for fuel and food. Despite the fact that we have increased the CARE allocation by 39¢ since July 1, 1973, we have not been able to keep up with the price increases for food commodities.

I want to re-emphasize what we have informed institutions on several occasions - there will be no additional funds available to supplement the budget for the remainder of the fiscal year. While we have maintained a very small contingency in the Central Office in the event of a major disturbance, this amount of money is minuscule in comparison with the needs of the institutions. I urge you to carefully review your budget for the remainder of the fiscal year. While there are a number of uncontrollable expenditures, there also are areas such as overtime which can be managed effectively as several wardens have demonstrated. I would appreciate any suggestions or feedback you may have on our budgetary situation.

"THE FUTURE OF IMPRISONMENT"

Some of you have had the pleasure of meeting Norval Morris, who is Director of the Center for Studies of Criminal Justice at the University of Chicago Law School. Norval has recently written an excellent book entitled "The Future of Imprisonment" which I believe should be required reading for all the executive staff of the Bureau of Prisons. We are arranging to purchase a copy of the book for each institution which will be sent to you within the next several weeks.

I suggest you have all your top staff read the book and consider using it in a staff discussion. As the attached review by Tom Wicker indicates, it's a thought-provoking book which I think merits a great deal of consideration by everyone in the field of corrections.

SPECIAL OFFENDERS

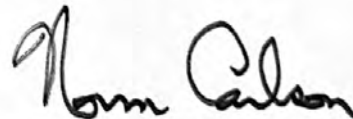
As you know, the concept of Special Offenders is currently under judicial review at Danbury. We are appealing a recent decision of Judge Zampano's which I think would severely curtail our ability to identify and deal with the many organized crime cases in our System. In this connection, several recent incidents have been called to my attention where our staff have been recommending parole in high level organized crime cases. As generally happens, these particular inmates made excellent institutional adjustments and were able to manipulate staff and, thus, receive a glowing recommendation to the Parole Board.

I would suggest that you talk with your Unit Management Staff, Case Workers and Correctional Counselors and caution them in regard to such recommendations. While institutional adjustment is one of the factors to be considered in making a recommendation to the Parole Board, we certainly cannot lose sight of the offender's prior history and the magnitude of the offense. As we have all seen, some of our organized crime cases are extremely sophisticated and able to manipulate their situation while in the institution.

ADMINISTRATIVE REVIEW PROCEDURES

Attached is a recently completed analysis of the Administrative Remedy Procedure for the six month period April 1 through September 30, 1974. I continue to receive a number of compliments from federal judges concerning the procedure. Increasingly, federal courts are requiring the exhaustion of the Administrative Remedy Procedure before they will accept a case for filing.

With warm personal regards for the Holiday Season and best wishes for 1975!



NORMAN A. CARLSON
Director

ADMINISTRATIVE REMEDY PROCEDURE

APPEALS FILED

April 1 - September 30, 1974

Total number of appeals filed - 486

26% of those who filed locally went on to file an appeal.

Subject of Appeals Filed:

Rank	Number	Percent	Subject & Code
1	81	17	5 - Disciplinary Matters
2	71	15	4 - Community Programs
3	59	12	6 - Operations
4	55	11	1 - Transfer
5	47	10	2 - Institution Programs
6	46	9	8 - Legal Matters
7	36	7	3 - Community Communication (mail, visits)
8	33	7	9 - Parole Matters
9	30	6	7 - Medical Matters
10	17	4	11 - Miscellaneous Subjects
11	11	2	10 - Complaints Against Staff

Disposition of Appeals:

58 (27%) Relief was granted to the complainant.
 144 (66%) Relief was Not granted to the complainant.
 15 (7%) Other responses.
 136 Returned to complainant to be filed locally first.

NORTHEAST REGION

Alderson	9
Allenwood	17
Danbury	42
Lewisburg	34
Morgantown	0
New York FDH	0
Petersburg	11
Total	113

23% of all appeals

SOUTHEAST REGION

Atlanta	80
Ashland	12
Eglin Camp	1
Lexington	0
Maxwell Camp	6
Tallahassee	3
Total	102

21% of all appeals

NORTH CENTRAL REGION

Leavenworth	37
Marion	16
Milan	2
Oxford	8
Sandstone	16
Springfield	33
Terre Haute	51
Total	163

34% of all appeals

SOUTH CENTRAL REGION

El Paso FDC	0
El Reno	10
Fort Worth	0
La Tuna	18
Seagoville	9
Texarkana	20
Total	57

12% of all appeals

WESTERN REGION

Englewood	1
Florence FDH	0
Lompoc	25
McNeil Island	14
Safford	2
Terminal Island	9
Total	51

10% of all appeals

	1	2	3	4	5	6	7	8	9	10	11	TOTAL	GRANT	DENY				
	Trf	Prog	Comm	Comp	Prog	Discip	Ops	Med	Legal	Parole	Staff	Other	No.	Percent	No.	Percent	Other	
NE	Alderson	4	1	2	7	1	1	2	2	1	21	3	14	16	76	2		
	Allenwood	1	5	25	37	2	3	3	9	82	26	32	51	62	5			
	Danbury	38	9	30	20	13	7	8	2	139	13	9	106	76	20			
	Lewisburg	17	13	3	26	12	6	9	4	104	24	23	79	76	1			
	Morgantown			2	6			1		10	4	40	6	60				
	New York FDC			1	3	4	1	2		12	1	8	6	50	5			
	Petersburg	3	2	4	9	5	5			32	5	16	23	72	4			
	Region Total	24	58	24	67	71	22	25	8	400	76	19	287	72	37			
SE	Atlanta	21	12	13	8	24	14	19	31	19	4	8	19	11	151	87	3	
	Ashland	2	8	10	3	13	30	3	2	2	7	6	9	10	30	35	47	
	Eglin AFB				1				2	28			1	3	4	12	27	
	Lexington				3					1			2	50	2	50		
	Maxwell AFB	2	1	3	6	2	9	1	1				6	21	7	64	4	
	Tallahassee	25	21	27	19	49	53	26	37	50	2	13	37	11	19	68	3	
	Region Total	25	21	27	19	49	53	26	37	50	13	14	37	11	213	64	84	
NC	Leavenworth	14	7	14	10	22	10	7	12	4	6		17	16	86	81	3	
	Marion	3	4	4	5	19	6		10	1	1		4	8	41	77	8	
	Milan		2	4	5	58	3	1					15	19	51	63	15	
	Oxford	5	8	3	1	8	14	1	2		4	3	13	27	26	53	10	
	Sandstone	12	14	13	24	2	2	5	1	4	1	4	25	30	51	62	6	
	Springfield	41	24	18	37	21	26	24	4	9	7	1	39	18	163	77	10	
	Terre Haute	16	13	8	45	9	6	14	9	10	11	7	12	8	133	90	3	
	Region Total	91	72	64	127	139	67	52	38	28	35	18	125	17	551	75	55	
SC	El Paso FDC	6	14	9	13	16	7	11	4		8	8	28	29	60	62	8	
	El Reno				1	1									2	100		
	Fort Worth	11	2	6	2	13	6	8	2	1	4	8	14	22	44	70	5	
	Latuna				4			2	8				1	7	11	79	2	
	Seagoville	4	18	4	12	12	11	6	5	3	1		8	11	61	80	7	
	Texarkana	21	34	19	32	42	24	27	19	4	13	16	51	20	178	71	22	
	Region Total	21	34	19	32	42	24	27	19	4	13	16	51	20	178	71	22	
W	Englewood	1	1	4	2	4	4	2			1	1	4	25	10	62	2	
	Florence FDC			1		1									1	50	1	
	Lompoc	11	5	4	3	21	11	6	3	2	4	2	18	25	52	72	2	
	McNeil Island	1	3		3	8	4	6	5	2	1		3	9	30	91		
	Safford			2	2	2			2	1			3	43	4	57		
	Terminal Island		8	2	16	9	12	2	2		6		12	22	36	65	7	
	Region Total	13	17	4	15	49	29	26	12	5	12	3	40	22	133	72	12	
	TOTAL	174	202	138	260	350	245	153	131	95	99	54	1901	329	17.3	1362	71.6	210

Filing rate: one complaint per month per 74 inmates.

ADMINISTRATIVE RENEDY PROCEDURE - LOCAL FILINGS

APRIL 1 THRU SEPTEMBER 30, 1974

Filing rate: one complaint
per month per 74 inmates.

ADMINISTRATIVE RENEDY PROCEDURE - LOCAL FILINGS
APRIL 1 THRU SEPTEMBER 30, 1974

GTO

FEDERAL PRISON SERVICE, WASHINGTON, D. C. 20534

NUMBER 113

DIRECTOR'S LETTER

DATE 4-8-76

TO: WARDENS, DIRECTORS AND SUPERINTENDENTS

JAIL CRISIS

We have recently received an unusually large number of letters and phone calls from United States Attorneys, U. S. District Court Judges and others concerning the overcrowded and inhumane conditions found in most local jails.

Several weeks ago, the Chief Judges from the U. S. District Courts in Maryland, Virginia and the District of Columbia met with Deputy Attorney General Tyler and me to discuss their mutual concerns. All three districts have tremendous problems in respect to housing inmates in the metropolitan D.C.-Baltimore area. Despite the fact the new D.C. Jail opened last week, it is already overcrowded and as a result, parts of the old jail will remain in operation.

In follow-up to the concern expressed by the three judges, the Assistant Directors and I met with Deputy Attorney General Tyler and Glen Pommerening on Monday of this week. As a result of our discussions, the Department will be submitting a budget amendment for FY 1977 to OMB requesting site and planning funds for a Metropolitan Correctional Center in the D.C. area. Hopefully, such a Center can be located near the Beltway around Washington, thus providing a rapid access to all three District Courts -- Baltimore, Washington and Alexandria.

In addition to discussing the jail situation in this area, we spent considerable time reviewing other metropolitan areas where similar problems exist. Emerging from our discussion was the decision that the Bureau will consider building detention facilities in areas where the average federal caseload exceeds 250.

In metropolitan areas where the population is not sufficient to justify a separate facility, we are going to develop a legislative proposal which would provide financial encouragement to state and local governments to include space for federal inmates as they construct new jails and detention centers. I have asked Sherm Day to work on this project in coordination with LEAA. Should the proposal be accepted, it would undoubtedly be a responsibility that would be assigned to the National Institute of Corrections. I know Sherm would appreciate any suggestions or comments you might have.

THIS LETTER IS NOT FOR PUBLICATION, BROAD DISSEMINATION OR ATTRIBUTION

One important point -- this possibility should not be discussed outside of the Department of Justice. At this point in time, it is simply in a proposal state and I am afraid that if state and local governments learn of the proposal, we will be immediately inundated with pressure for such grants. While I certainly think it's a sound concept, there are many hurdles to overcome, including the OMB as well as the legislative process in Congress.

FURLOUGHS

Yesterday, several of the Assistant Directors and I met with the Directors of the Federal Probation Officers Association who were in Washington for their annual meeting. As you may recall, last year the group voiced concern regarding furlough practices in several institutions.

Apparently the comments in the "Blue Letters" have been effective as no one in the group had complaints or concerns to express. All in attendance were complimentary regarding the manner in which we are now implementing the furlough program.

In this connection, I want to call your attention to the new Furlough Policy Statement 7300.12D which was issued on March 19. I urge you to discuss the revised policy with your staff in order to insure that everyone understands the changes that have been made. Of particular concern is the absolute requirement for contact with the U. S. Probation Office to insure consultation when a furlough is first being considered. This must be accomplished by the use of the standardized form which has been developed and is attached to the new Policy Statement.

UNFORTUNATE INCIDENTS

While I dislike singling out any institution in my comments, I am attaching a recent article concerning a homosexual rape at Petersburg. My reason for doing so in this case is that the incident could easily have occurred in any of our institutions.

Incidents of this type call attention to the need for staff to be alert to the possibility of transferring inmates who are obviously unsuited for an institution because of age and/or physical appearance. When inmates are committed that would more appropriately be handled in another institution, staff should immediately telephone the Population Management Section here in the Central Office and request an immediate redesignation rather than proceeding with the time consuming referral process to effect a transfer. Once such

redesignation has been made, you may want to consider transferring the offender immediately in order to avoid the possibility of an unfortunate incident occurring.

ADMINISTRATIVE REMEDY PROCEDURE

Two years have now passed since we implemented the Administrative Remedy Procedure throughout the Bureau. I am attaching a statistical summary of filings during the past calendar year at all three levels -- institution, Regional Office and Washington -- and graphs showing trends in the volume of filings and rates of granting relief. You will note that the rate of relief has diminished. While this may initially appear to indicate the procedure is not effective, I hope it reflects the opposite. As procedures and responses are refined, there should be less need for granting relief, particularly on appeal.

Again, I want to emphasize the importance for wardens to carefully monitor both complaints and responses. While the majority of replies I have seen recently have been well documented, some were totally deficient and completely unresponsive. A well documented, responsive reply at the institution level diminishes the likelihood of an appeal and enhances the integrity of the Procedure in the eyes of inmates, the courts and our critics.

COMMUNITY TREATMENT CENTER REFERRALS

During our last meeting, the Executive Staff and I discussed the Task Force report on referrals to Community Treatment Centers. We have established a goal of increasing referrals by five percent per year during the next several years. Thus far in 1976, we are considerably below this goal, partly because of a decline in the number of paroles granted. I again urge that you emphasize to staff the importance of referrals to CTC's, particularly for those being released by expiration of sentence and mandatory release.

POPULATION PRESSURES

Today's computer print-out shows a total population of 26,360, an increase of 179 since my last Director's Letter. One of the contributing factors in the rise in population is a decline in the number of paroles.

The Parole Board recently made a comparison of changes in the type of offenders being considered for parole during two time periods -- October 1974 to May 1975 and June 1975 to June 1976. The results of this comparison, as reflected in the attached chart, indicate there have been a marked rise in the number of offenders in the higher severity categories. The number of

inmates serving sentences for "moderate" offenses dropped from 497 to 399 while the number in the "very high" category increased from 896 to 964. This obviously indicates that the number of inmates incarcerated for more serious offenses has been increasing. Such offenders will serve more time because of the sentences imposed as well as the Parole Board's guidelines.

Yesterday, Dr. John Flanagan of the University of Wisconsin met with us and discussed his projections for future prison populations. You may recall that Dr. Flanagan wrote the article in the November-December issue of the Journal of Corrections which was circulated to all institutions.

Based on Dr. Flanagan's analysis, he predicts that the federal prison population will continue to increase until reaching a peak of 35,000 in 1985. While such a figure staggers my imagination, the possibility certainly exists that this projection may be accurate. As I have said before, things are going to get worse before they get any better. The question is -- how much worse?

PORNOGRAPHIC MOVIES

I was recently contacted by an Assistant U. S. Attorney who was prosecuting a case involving interstate shipment of pornographic films. The defendant in the case had alleged that the movies were not pornographic and stated that they had been shown in one of our major institutions. In checking into the situation, we learned that although the producer had offered the film free of charge, the staff had wisely declined the offer.

I point this incident out as it again indicates how cautious we have to be in accepting offers of "free" movies or other forms of entertainment. Without question, some of these individuals would like to put us in the "trick bag", as they attempted to do in this instance and in a similar case some time ago.

FISCAL YEAR 1978 BUDGET

While we won't know the House mark on our 1977 budget request for at least a month, we are already in the process of developing the 1978 budget. You will recall that several months ago, we asked for wardens' input on the 1978 request. The responses indicated heavy emphasis on needs to improve institutional security, unit management and medical support services. Another high priority was placed on the need for increased administrative and clerical support.

These and other suggestions have been included in our preliminary budget request. While I am certainly not optimistic about receiving additional resources in 1978, I want you to know that we have reflected your suggestions in formulating the budget submission.

INSTITUTIONAL TITLES

Some time ago, the Executive Staff agreed to consolidate and simplify the various titles used for federal institutions. Attached is the Attorney General's Order No. 646-76 which officially implements these decisions.

See you in Butner!



NORMAN A. CARLSON
Director

												GRANT		DENY			
	1	2	3	4	5	6	7	8	9	10	11	TOTAL	No.	Percent	No.	Percent	Other
Trf	Prog	Comm	ComProg	Discip	Opns	Med	Legal	Parole	Staff	Other							
Alderson	4	44	8	27	50	4	15	8	2	15	1	176	53	30	122	69	1
Allenwood	3	13	3	65	20	19	11	6	4	3		145	48	33	89	61	8
Danbury	6	47	18	30	84	11	20	9	4	40	1	270	20	7	233	86	17
Lewisburg	25	48	32	17	88	52	29	28	16	7		342	66	19	265	77	11
Morgantown	14	11		7	52	3	4		1	6		98	11	11	72	73	15
New York MCC	8	2	8	27	5	17	13	1	2	1	2	90	31	34	52	58	7
Petersburg	2	6	4	14	74	15	13	1	2	1		132	15	11	106	80	11
NE REGION	62	171	73	187	373	121	105	53	25	81	2	1253	244	19	939	75	70
Atlanta	30	40	28	9	91	41	46	60	11	13	2	371	63	17	289	78	19
Ashland	6	6	6	6	28	13	15	3	2	16		101	21	21	71	70	9
Eglin AFB	1	1		7	4	2	6	1	3	3	1	25	5	20	19	76	1
Lexington	31	3	7	17	79	11	8	5	3	4		169	38	22	125	74	6
Maxwell AFB	3	2	1	11	3	1	36	4	4	16		21	3	14	18	86	
Tallahassee	17	2	21	4	55	25	36	4	4	4	4	184	32	17	120	65	32
SE REGION	87	54	63	54	260	93	111	73	20	52	4	871	162	19	642	74	67
Chicago MCC	61	27	30	8	132	37	19	48	5	8		375	72	19	292	78	11
Leavenworth	43	60	55	13	104	54	9	30	13	4	7	392	65	17	276	70	51
Marion	2	13	5	6	180	13	6	8	1	3		237	31	13	179	76	27
Milan	35	22	26	5	92	50	30	12	8	12	5	297	70	24	199	67	28
Oxford	18	14	4	20	16	7	13	6	2	11		111	17	15	93	84	1
Sandstone	68	82	27	40	61	65	76	26	9	76	13	543	129	24	355	65	59
Springfield	48	22	21	30	128	52	32	18	11	20	5	387	26	7	326	84	35
Terre Haute	275	242	168	122	713	278	185	148	49	134	39	2342	410	18	1720	73	212
NC REGION																	
E1 Reno	18	30	23	10	110	64	32	16	7	48	1	359	51	14	288	80	20
Ft. Worth	4	1		6	23		3	6	1	2		46	13	28	33	72	
La Tuna	14	13	11	10	22	7	20	3	4	4	1	105	31	30	65	62	9
Seagoville	13	3	2	14	15	15	1	7	1	23		94	14	15	76	81	4
Texarkana	17	10	5	4	49	16	13	14	2	8		138	14	10	118	86	6
SC REGION	66	57	41	44	219	102	69	46	11	85	2	742	123	17	580	78	39
Englewood	6	4	5	3	38	11	2			12		81	13	16	68	84	
Florence						1				1		2			2	100	
Lompoc	30	24	8	18	34	17	16	7	4	43	1	202	53	26	138	68	11
McNeil Island	24	24	19	5	60	16	19	23	5	5		200	23	12	146	73	31
Pleasanton	38		4	1	84	6	3			15	1	152	31	20	113	74	8
Safford	2	1	2	5	3	1				1		13	2	15	11	85	
San Diego MCC	2	2	3		9	7	21		1	4		49	6	12	41	84	2
Terminal Is.	8	16	2	21	63	11	19	2	3	24		169	18	11	130	77	21
W REGION	108	71	43	53	291	70	80	32	13	105	2	868	146	17	649	75	73
GRAND TOTAL	598	593	388	460	1856	664	550	352	118	457	40	6076	1085	18	4530	75	461

LOCAL FILINGS -

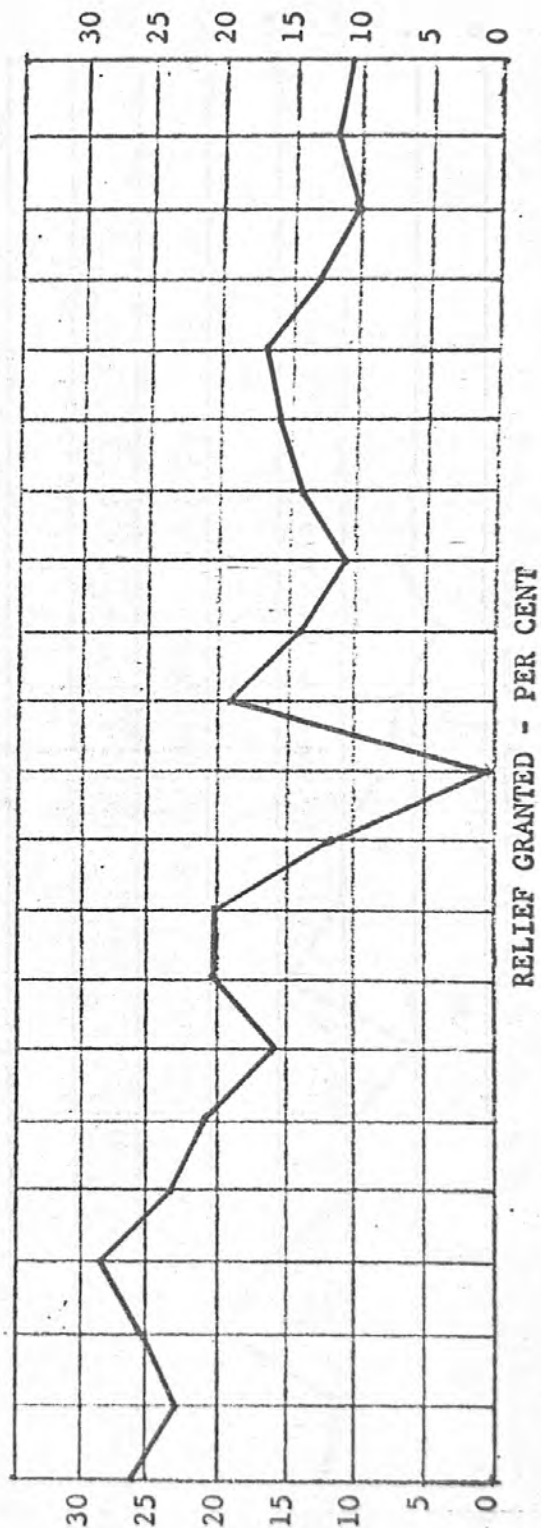
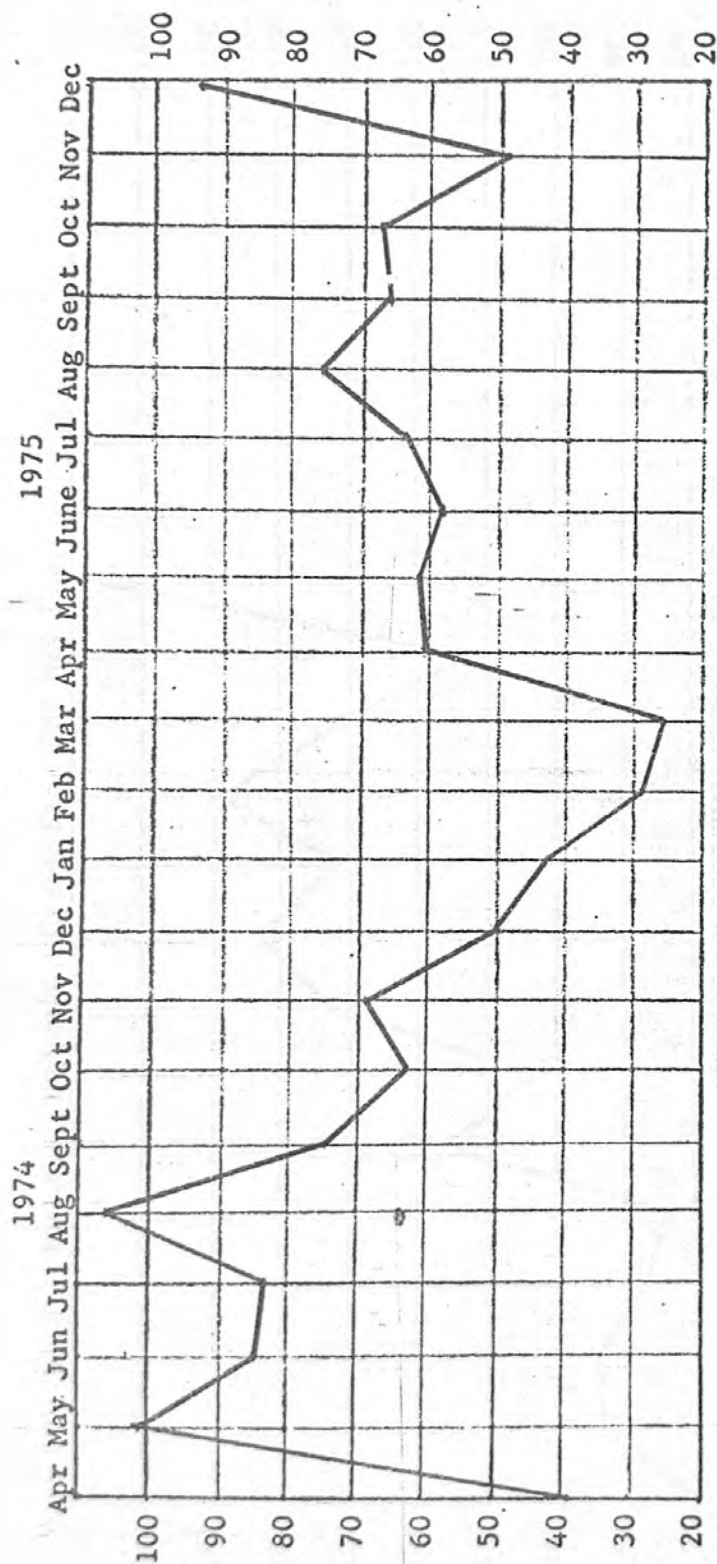
ADMINISTRATIVE REMEDY PROCEDURE -

CALENDAR YEAR 1975

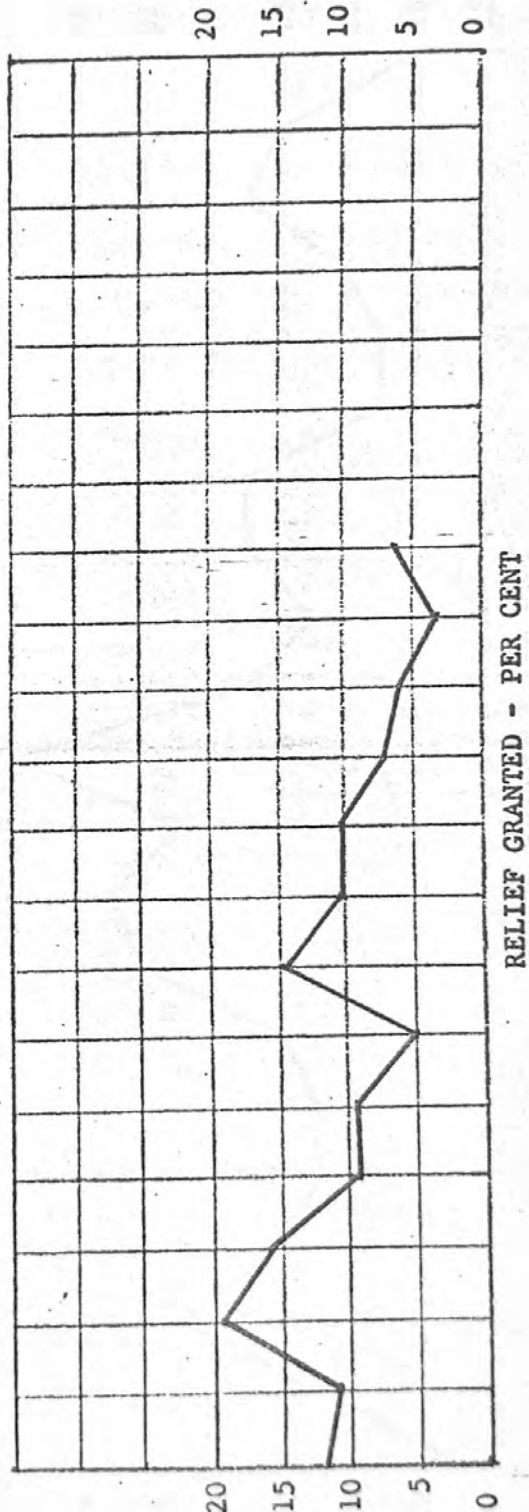
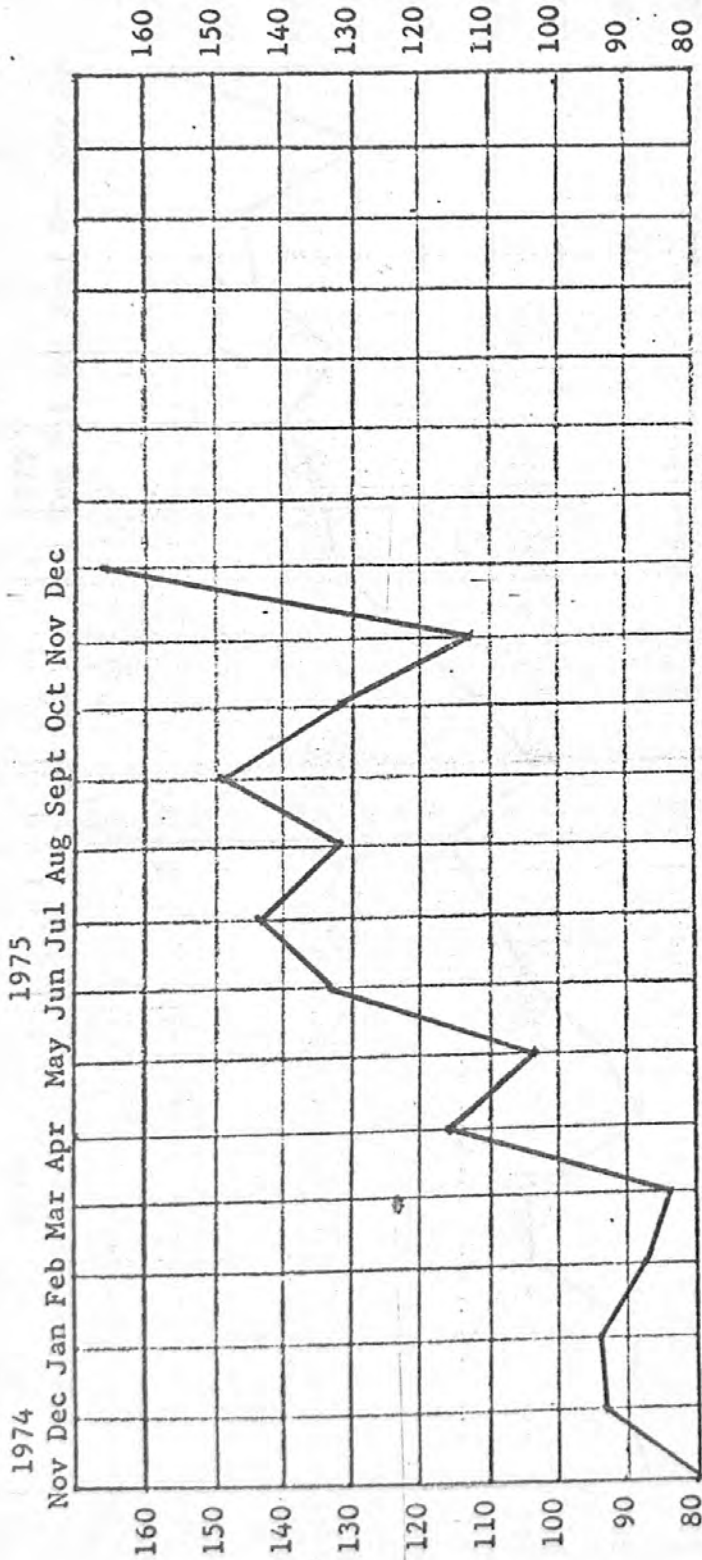
	1	2	3	4	5	6	7	8	9	10	11	TOTAL	GRANT		DENY		Prematurely
	Trf	Prog	Comm	Comp	Disc	Ops	Med	Legal	Parole	Staff	Other		No.	Percent	No.	Percent	Filed
Alderson	1	2	1	2	2	3	3	1				11	1	12	7	88	3
Allenwood	1	4	7	9	1	3	2	1				23	1	5	21	95	1
Danbury	1	17	7	6	30	2	6	3	1	3		76	11	15	62	85	3
Lewisburg	5	20	8	1	39	8	6	14	5	2		108	21	21	79	79	8
Morgantown	2				2		1			1		6	1	20	4	80	1
New York MCC		1		2	1	1	1					6	2	33	4	67	
Petersburg	9	2	16	21	13	3	2	18	7	9		22	3	16	16	84	3
NE REGION		46		88	17	21	18	7				252	40	17	193	83	19
Atlanta	9	9	12	5	40	12	12	19	8	5	1	132	9	8	98	92	25
Ashland	1			1	4	3	2	1	1	5	1	19	1	6	16	94	2
Eglin AFB			2	2	2							5			4	100	1
Lexington	1			1						1		4	1	25	3	75	
Maxwell AFB	3											2			2	100	
Tallahassee	14	9	14	9	8	3	14	21	9	1	2	15	1	8	12	92	2
SE REGION					54	19	14	9				177	12	8	135	92	30
Chicago MCC	31	15	13	2	72	6	7	23	1	3	1	0	10	7	128	93	35
Leavenworth	17	7	8	3	47	13	1	13	1		1	111	4	5	69	95	38
Marion					21			2				23	1	6	16	94	6
Milan	12	7	5	1	22	9	15	4	2	1		78	5	9	53	91	20
Oxford	3				7	2	2	1				20	2	12	14	88	4
Sandstone	28	19	2	8	23	8	11	11	3	4	1	118	5	6	83	94	30
Springfield	6	5	7	7	56	14	6	9	4	3		117	7	7	91	93	19
Terre Haute	97	56	35	22	248	52	42	63	11	12	2	640	34	7	454	93	152
NC REGION																	
El Reno	7	4	2	1	26	13	4	2		11		70	5	8	59	92	6
Ft. Worth	4	2	2	1	11	4	2	1	1	1		3	1	33	2	67	
La Tuna					6							28	5	22	18	78	5
Seagoville	3	3	1	2	19		3	11		11		10	2	40	3	60	5
Texarkana	14	9	5	5	62	17	9	18	1	24		53	5	14	32	86	16
SC REGION												164	18	14	114	86	32
Englewood	3	1	1		7				1	1		14	2	18	9	82	3
Florence	12	2	4	5	5	3	4	1	6	6		0					
Lompoc	8	19	6	3	24	4	3	6		1		48	3	9	31	91	14
McNeil Island	10				8					1		74	7	11	58	89	9
Pleasanton		2		1		1				1		19	1	9	10	91	8
Safford							3			1		5			5	100	
San Diego MCC	3	3	1	1	15	3	1	1		1		5	1	3	4	100	1
Terminal Is.	36	27	15	10	59	11	11	8	7	13		32	14	9	28	97	3
W REGION												197			145	91	38
GRAND TOTAL	170	147	85	67	511	116	97	128	35	70	4	1430	118	10	1041	90	271

REGIONAL APPEALS -ADMINISTRATIVE REMEDY PROCEDURE-CALENDAR 1975

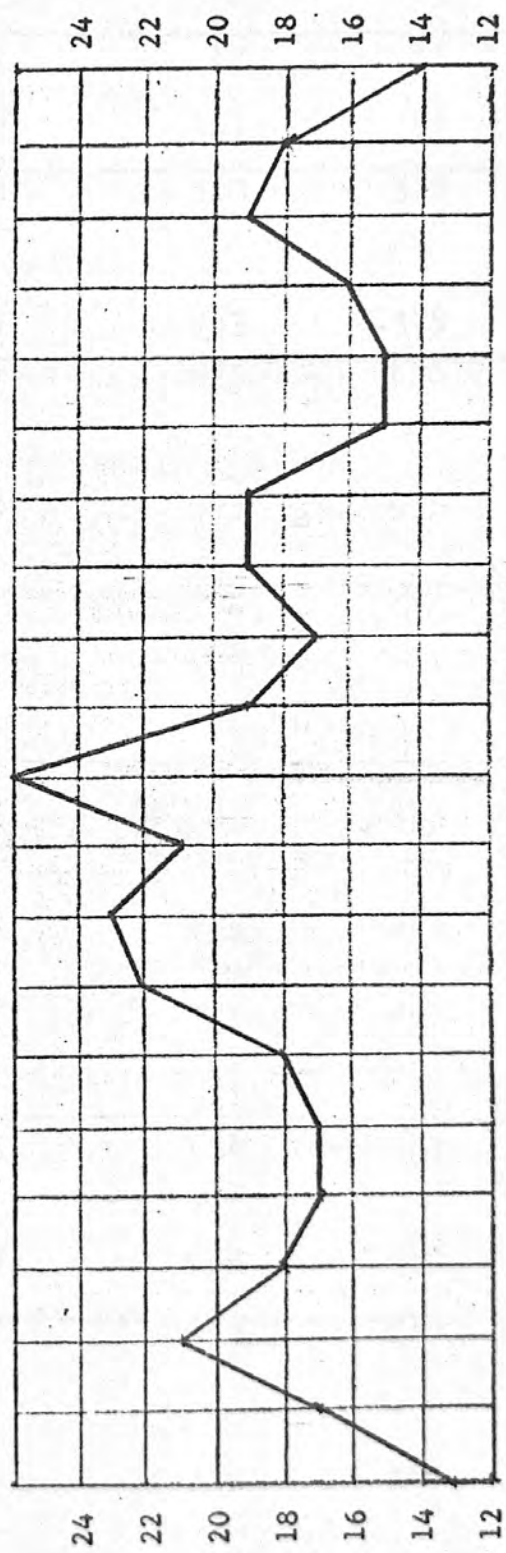
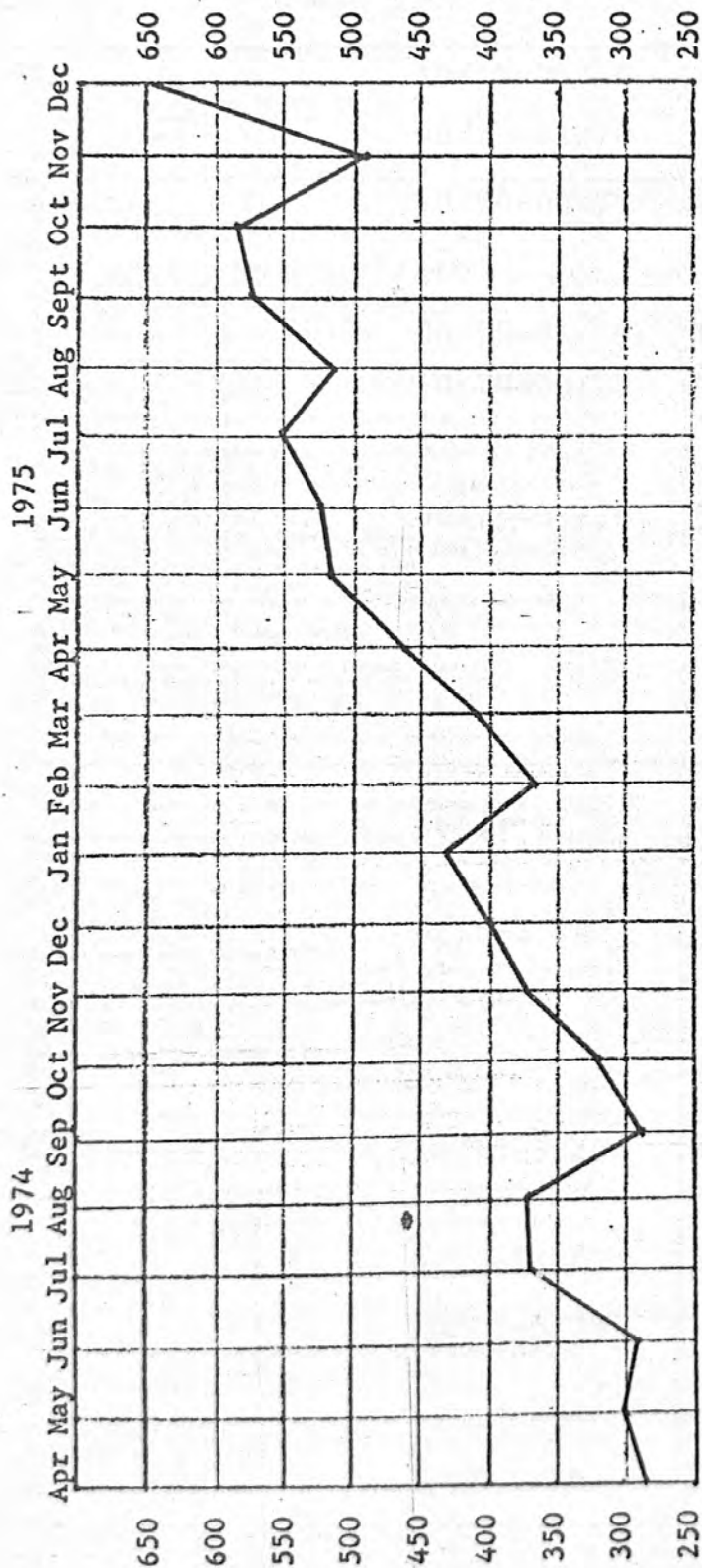
	1	2	3	4	5	6	7	8	9	10	11	TOTAL	GRANT	DENY	Prematurely		
	Trf	Prog	Comm	Comp	Discip	Opns	Med	Legal	Parole	Staff	Other		No.	Percent	No.	Percent	Appealed
Alderson												4	2	22	7	78	4
Allenwood		4		7	2			1		1		13	1	5	21	95	21
Danbury	3	8	5	5	10	2	3	4				43	6	13	39	87	42
Lewisburg	4	22	6	2	34	3	5	10		2		87					
Morgantown				1	3				1			4			2	100	2
New York MCC				1		1	1					3			1	100	2
Petersburg				1	8				2			11	1	25	3	75	7
NE REGION	7	34	11	17	57	7	10	15	4	3		165	10	12	73	88	82
Atlanta																	
Ashland	5	13	10	1	20	11	7	12	4	1		84	6	14	36	86	42
Eglin AFB	1	2						2		1		6			2	100	4
Lexington	1			2		1						1			1	100	1
Maxwell AFB							1	1				6					5
Tallahassee	1									1		1					1
SE REGION	8	15	10	3	21	12	8	15	4	1		101	6	13	39	87	3
Chicago MCC																	
Leavenworth	16	13	9	1	30	3	1	14	1			0	10	15	57	85	21
Marion	8	3	7	3	22	12	3	5				64	2	5	38	95	24
Milan	1				5				1			6			2	100	4
Oxford	5	3	2		7	5	5		1	1		24	1	6	15	94	8
Sandstone	6	2		1	4	1	1	2				17			2	100	15
Springfield	15	13	1	7	7	6	6	7	1	3		60	9	20	36	80	15
Terre Haute	4	3	7	1	24	6	4	4	4	3		56	7	17	35	83	14
NC REGION	55	37	26	13	99	22	16	32	8	7		315	29	14	185	86	101
El Reno	1	1	1	2	11	3	3	1		3		26	1	5	19	95	6
Ft. Worth					1							1					1
La Tuna	1		1		3	5		2				12	1	12	7	88	4
Seagoville					3		1	1		2		7			2	100	5
Texarkana	2		1		4			3	1	1		12	2	22	7	78	3
SC REGION	4	1	3	2	22	8	4	7	1	6		58	4	10	35	90	19
Englewood	2				1							3					
Florence												0			2	100	1
Lompoc	3	1		1	2							9	2	33	4	67	3
McNeil Island	4	10	3		8	1	1	3	1	1		31	2	8	22	92	7
Pleasanton												0					
Safford		2										2	1	50	1	50	
San Diego MCC												0					
Terminal Is.		5		3	4		1					13	1	12	7	88	5
W REGION	9	18	3	4	15	1	2	3	2	1		58	6	14	36	86	16
GRAND TOTAL	83	105	53	39	214	50	40	72	19	22		697	55	13	368	87	274



WASHINGTON APPEALS - ADMINISTRATIVE REMEDY PROCEDURE



REGIONAL APPEALS - ADMINISTRATIVE REMEDY PROCEDURE



LOCAL FILINGS - ADMINISTRATIVE REMEDY PROCEDURE

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)		OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
		Very Good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
LOW					
Immigration Law Violations	10/74-05/75	47	87	55	27
Minor Theft (Includes larceny and simple possession of stolen property less than \$1,000)	06/75-01/76	39	111	54	18
Walkaway					
LOW MODERATE					
Alcohol Law Violations	10/74-05/75	160	503	316	141
Counterfeit Currency (Passing/Possession less than \$1,000)					
Drugs:					
Marijuana, Simple Possession (less than \$500)					
Forgery/Fraud (less than \$1,000)					
Income Tax Evasion (less than \$10,000)					
Selective Service Act Violations	06/75-01/76	121	483	345	113
Theft From Mail (less than \$1,000)					
MODERATE					
Bribery of Public Officials	10/74-05/75	497	835	508	301
Counterfeit Currency (Passing/Possession \$1,000 - \$19,999)					
Drugs:					
Marijuana, Possession With Intent to Distribute/Sale (less than \$5,000)					
"Soft Drugs", Possession with Intent to Distribute/Sale (less than \$500)	06/75-01/76	399	709	456	300
Embezzlement (less than \$20,000)					
Explosives, Possession/Transportation					
Firearms Act, Possession/Purchase/Sale (single weapon - not sawed-off shotgun or machine gun)					
Income Tax Evasion (\$10,000 - \$50,000)					
Interstate Transportation of Stolen/Forged Securities (less than \$20,000)					
Mailing Threatening Communications					
Misprision of Felony					
Receiving Stolen Property With Intent to Resell (less than \$20,000)					
Smuggling/Transporting of Aliens					
Theft/Forgery/Fraud (\$1,000 - \$19,999)					
Theft of Motor Vehicle (Not Multiple Theft or for Resale)					
HIGH					
Burglary or Larceny (Other than Embezzlement) from Bank or Post Office	10/74-5/75	602	687	373	191
Counterfeit Currency (Passing/Possession \$20,000 - \$100,000)					
Counterfeiting (Manufacturing)					
Drugs:					
Marijuana, Possession With Intent To Distribute/Sale (\$5,000 or more)					
"Soft Drugs", Possession with Intent to Distribute/Sale (\$500 - \$5,000)	6/75-1/76	579	685	321	176
Embezzlement (\$20,000 - \$100,000)					
Firearms Act, Possession/Purchase/Sale (sawed-off shotgun(s), machine gun(s), or multiple weapons)					
Interstate Transportation of Stolen/Forged Securities (\$20,000 - \$100,000)					
Mann Act (No Force - Commercial Purposes)					
Organized Vehicle Theft					
Receiving Stolen Property (\$20,000 - \$100,000)					
Theft/Forgery/Fraud (\$20,000 - \$100,000)					
VERY HIGH					
Robbery (Weapon or Threat)	10/74-5/75	896	664	347	180
Drugs:					
"Hard Drugs" Possession with Intent to Distribute/Sale (No Prior Conviction for Sale of "Hard Drugs")					
"Soft Drugs", Possession with Intent to Distribute/Sale (over \$5,000)	6/75-1/76	964	903	357	246
Extortion					
Mann Act (Force)					
Sexual Act (Force)					
GREATEST					
Aggravated Felony (e.g., Robbery, Sexual Act/Aggravated Assault) - Weapon Fired or Personal Injury	10/74-5/75	107	189	157	89
Aircraft Hijacking					
Drugs:					
"Hard Drugs" (Possession with Intent to Distribute/Sale for Profit (Prior Conviction(s) for Sale of "Hard Drugs")					
Expionage					
Explosives (Detonation)	6/75-1/76	140	210	147	92
Kidnapping					
Willful Homicide					

- NOTES: 1) These guidelines are predicated upon good institutional conduct and program performance.
2) If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with these of similar offense behaviors listed.
3) If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
4) If an offense behavior involved multiple separate offenses, the severity level may be increased.
5) If a continuance is to be given, allow 30 days (1 month) for release program provision.
6) "Hard Drugs" include heroin, cocaine, morphine or opiate derivatives, and synthetic opiate substitutes.



Office of the Attorney General
Washington, D. C. 20530

DESIGNATION OF BUREAU OF PRISONS INSTITUTIONS

Order No. 646-76

This order consolidates existing designations of institutions and facilities as places of confinement and detention of persons charged with or convicted of Federal offenses, classifies the institutions, and includes the designation of three new institutions-- in Butner, North Carolina, Miami, Florida and Memphis, Tennessee.

By virtue of the authority vested in me by Sections 4003, 4042, 4081 and 4082 of Title 18, United States Code, it is hereby ordered as follows:

1. The following institutions and facilities are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General:

A. The Bureau of Prisons facilities at the following locations are designated as U.S. Penitentiaries:

C. The Bureau of Prisons facilities at the following locations are designated as Federal Prison Camps:

- (1) Allenwood--Montgomery, Pennsylvania
- (2) Eglin Air Force Base, Florida
- (3) Maxwell Air Force Base--Montgomery, Alabama
- (4) Safford, Arizona

D. The Bureau of Prisons community residential facilities at the following locations are designated as Community Treatment Centers:

- | | |
|---------------------------|-----------------------------|
| (1) Atlanta, Georgia | (7) Los Angeles, California |
| (2) Chicago, Illinois | (8) Miami, Florida |
| (3) Dallas, Texas | (9) New York, New York |
| (4) Detroit, Michigan | (10) Oakland, California |
| (5) Houston, Texas | (11) Phoenix, Arizona |
| (6) Kansas City, Missouri | |

E. The Bureau of Prisons facilities at the following locations are designated as Metropolitan Correctional Centers:

- (1) Chicago, Illinois
- (2) New York, New York
- (3) San Diego, California

- (1) Atlanta, Georgia
- (2) Leavenworth, Kansas
- (3) Lewisburg, Pennsylvania
- (4) Marion, Illinois
- (5) McNeil Island, Washington
- (6) Terre Haute, Indiana

B. The Bureau of Prisons facilities at the following locations are designated as Federal Correctional Institutions:

- | | |
|-----------------------------|----------------------------------|
| (1) Alderson, West Virginia | (12) Miami, Florida |
| (2) Ashland, Kentucky | (13) Milan, Michigan |
| (3) Butner, North Carolina | (14) Morgantown, West Virginia |
| (4) Danbury, Connecticut | (15) Oxford, Wisconsin |
| (5) El Reno, Oklahoma | (16) Petersburg, Virginia |
| (6) Englewood, Colorado | (17) Pleasanton, California |
| (7) Ft. Worth, Texas | (18) Sandstone, Minnesota |
| (8) La Tuna, Texas | (19) Seagoville, Texas |
| (9) Lexington, Kentucky | (20) Tallahassee, Florida |
| (10) Lompoc, California | (21) Terminal Island, California |
| (11) Memphis, Tennessee | (22) Texarkana, Texas |

F. The Bureau of Prisons facilities at the following locations are designated as Federal Detention Centers:

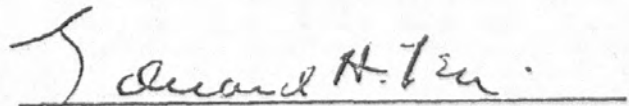
- (1) Florence, Arizona
- (2) El Paso, Texas

G. The Bureau of Prisons facility at Springfield, Missouri is designated as The U.S. Medical Center for Federal Prisoners.

2. This order supersedes all existing orders and designations of Federal institutions as places of confinement.

3. This order is effective as of March 22, 1976.

Date: March 31, 1976



Edward H. Levi
Attorney General

Mr. Clair Cripe
General Counsel, Bureau of Prisons
Attention: Mr. Ira Kitzshbaum, Assistant General Counsel

September 23, 1976

Medical Director
Bureau of Prisons

Summary of Terre Haute Medical Problems over the Past 1½ Years

Pursuant to your request and the request of the Department of Justice, this report is presented to assist in the preparation of litigation in Civil Action No. TH 7593C of the U. S. District Court for the Southern District of Indiana, Terre Haute, Division.

As a brief introductory summary I emphasize that since 1975 the medical program at Terre Haute has been under the special surveillance of the North Central Regional Office of the Bureau as well as my office with the advice and consent of the Director, Bureau of Prisons. I visited the penitentiary hospital at Terre Haute on January 14-17, 1975 with the Regional Administrator of Medical Services, Mr. William Whisenhunt. I visited alone August 22, 1975 and I visited March 21-25, 1976 with Mr. Whisenhunt, and my Deputy, Dr. Harry W. Weller. In addition, since January 1975, Dr. Weller, Mr. Whisenhunt and I have had multiple telephone conversations with the Warden, the Hospital Administrative Officer, the Chief of Health Programs (Dr. Ben DeGracia) and the senior medical consultant (Dr. John Freed).

In recent years, until July 1973, Medical Services at the U. S. Penitentiary, Terre Haute, Indiana, were provided by two full time USPHS Commissioned Officer physicians. With the cessation of the draft and therefore the markedly reduced availability of Commissioned Officers, these two positions were replaced with one full time Civil Service physician and by the "rotation" of four to five physicians from the community through the second position. In actuality these physicians visited four to five days a week, spending up to one-half day per visit. We considered this innovation to be a model program in that the full time physician served as the Chief of Health Programs and provided the continuity necessary for ongoing management of the medical program. The visiting consultants provided fresh viewpoints, a variety of opinions, instant consultation in several areas and a linkage to the community.

For at least the past ten years (our central office records are not clear prior to 1966) the hospital at the penitentiary has been accredited by the Joint Commission on Accreditation of Hospitals. In addition to that we have made frequent use of the Terre Haute Regional Hospital for problems we felt could be managed there and were not appropriate for transfer to the Medical Center for Federal Prisoners, Springfield, Missouri.

The problems under review began in January 1975 with the death of William Lowe (No. 20382-175) on January 6, 1975. Because of questions concerning

the management of this case and particularly questions concerning the behavior of the Chief of Health Programs (Dr. Norman Silverman), the Director of BOP asked that I immediately review the circumstances. I arrived in Terre Haute on January 14, 1975 along with the Regional Administrator of Medical Services, Mr. William Whisenhunt. We made a careful review of the circumstances concerning Dr. Lowe's death. A report was begun but because of the nature of the findings relative to Dr. Silverman, and the problems relating to the impending Freedom of Information Act, no official report was filed. I have retained notes pertaining to the case in which I found the following problems:

1. The staff physician managed the case through the Physician's Assistant on duty by way of telephone. While the record indicates that reasonable treatment procedures were ordered and implemented, it appears that the attendance of the physician would have been prudent.
2. The use of steroids (Prednisone) in this case may not have been detrimental and may in fact have had a life-supporting effect in the late state of the pneumonic spread. However, the utilization of steroids at the time ordered was not customary treatment, and again it would have been prudent for the physician to have been in attendance prior to the utilization of steroids.
3. Though the patient appeared to be improving, deterioration may have been masked by steroid therapy. The high pulse noted on January 5, in retrospect, may have reflected his deteriorating condition. This was not so interpreted at that time.
- 4/ Although the question has been raised concerning the late utilization of Demerol, it does not appear to me to have been a significant factor in the case, nor was it clearly contraindicated, although again the attendance of the physician would have been prudent.

Following our review of the case, Mr. Whisenhunt and I sat down with the staff and in a manner usually utilized in retrospective case reviews, went over with the staff some of our concerns as well as their concerns about management of the case. We also reviewed the circumstances existing at Terre Haute with the Warden, with the Hospital Administrative Officer (Mr. Ralph Michaud) and with the senior consultant, Dr. Freed. I felt that Dr. Silverman was suffering from mental difficulties possibly secondary to his clinical utilization of a psycho-therapeutic agent for depression. It could not be established that there was a clear cut association between his condition and problems in the management of this case, although this is obviously speculative. We recommended that Dr. Silverman be discharged immediately. The Warden and I conferenced with Dr. Silverman at which time the Warden asked for his resignation which was obtained.

In a closeout meeting with the Warden and the Hospital Administrative Officer, we again reviewed several problems in the operation of the hospital and clinic.

After the resignation of Dr. Silverman, Dr. Freed and the community

consultants increased their coverage to the penitentiary hospital in order to provide full coverage necessary for adequate medical care. This continued until the entry on duty of a new full time Chief of Health Programs, Dr. Ben DeGracia, August 3, 1975. During that period from January to August, two deaths occurred (April 10, 1975) Frederick McCain, No. 33927-118 and June 8, 1975, Robert Graman, No. 30814-139). Circumstances of these deaths were analyzed at the institution level and also reviewed at the Regional Office and in my office. While we had some concerns about certain aspects of the management of these cases, we did feel that the care provided by Terre Haute staff was probably within acceptable limits under the circumstances. There was a change in Hospital Administrative Officers on June 1, 1975. Although this was not done at our instigation, it was our expectation that this change would bring about improved services.

Dr. Ben DeGracia entered on duty on August 3, 1975. On August 15, 1975 the death of Roscoe Simmons (No. 34803-136) occurred. (Mr. Simmons was also known as Joe Jones, Jr.). Upon reviewing the preliminary information about this death, I visited Terre Haute on August 22, 1975 to review the circumstances in more detail. Mr. Simmons had died of status asthmaticus and I interviewed staff responsible for the management of the case as well as reviewing all medical records and other official records pertaining to the case as well as documents submitted by various inmates. It is my opinion as well as the opinion of the medical staff and consultants at the penitentiary hospital, that the intractability of the status asthmaticus presented by Mr. Simmons was such that it is unlikely any alternative or additional therapeutic measures would have significantly altered the fatal course. However, there were significant problems in both the specific management of the case, as well as, general management in the hospital.

Several problems have been pointed out by Dr. Webb (Springfield) in his review of the case, although I did not completely agree with Dr. Webb regarding the implication of his comments on the use of thorazine. My concerns relating to this case are as follows:

1. The lack of aggressive treatment in face of acute asthmatic symptoms which never seemed to significantly respond to the treatment provided.
2. The failure of the physician to come to the hospital despite several calls. One record indicates a total of five telephone calls to Dr. DeGracia, though he could recollect receiving only two or three calls.
3. The poor medical records. No formal inpatient record was initiated or maintained, and the record that was kept was incomplete and had to be supplemented by additional reports from members of the staff.

I reviewed these problems with the Hospital Administrative Officer and members of the staff, as well as the Warden, Dr. Freed, and Dr. DeGracia. The attached report I made to Warden Benson on my return to Washington

reviewed several points of discussion and is self-explanatory. Specific discussion with the Warden and staff included the necessity of understanding that the Chief of Health Programs was in charge of medical care at all times and should remain cognizant of the care being furnished by the Physician's Assistants. We also recommended that the Physician's Assistant who had been on evening duty be removed from that shift temporarily and receive additional training.

Discussion with Dr. DeGracia indicated that since the Physician's Assistant on duty had not specifically asked him to come to the hospital he did not detect the seriousness of the problem nor did he feel it was appropriate to go since he had not been so requested. This explanation, of course, is really not acceptable, but at that point Dr. DeGracia had been on duty less than two weeks and the entire operation of the program was somewhat foreign to his experience.

Following the death of Simmons in August 1975, I personally made follow-up contacts with his previous employer and found that his performance had been entirely professional and satisfactory, as had been originally reported in conjunction with his application for employment. Had we discharged Dr. DeGracia, who we considered competent, we would have had no prospect for replacement. Dr. Freed and the other community physicians were not in a position to extend their services at that time. We are currently attempting to find a second full time physician.

After that episode we continued to maintain telephone surveillance with Terre Haute. Dr. Weller, Mr. Whisenhunt, and myself spoke at times with the Warden, the Hospital Administrative Officer Dr. DeGracia and Dr. Freed. During the period from August 1975 to March 1976 we reviewed several cases via telephone brought to our attention by Terre Haute staff. It was our opinion that management of these cases by the Terre Haute staff was within acceptable limits. These cases were later reviewed with Dr. Freed on our March visit. On March 21 through March 25, 1976, Dr. Weller, Mr. Whisenhunt and I

On March 21 through March 25, 1976, Dr. Weller, Mr. Whisenhunt and I conducted a planned audit of the program at Terre Haute particularly to review the appropriateness of retaining Dr. DeGracia on the staff. During the audit, we did determine certain problem areas that we discussed in depth with the Warden, the Hospital Administrative Officer (Mr. Mark Thompson) Dr. DeGracia and Dr. Freed. Our concerns included: (a full report is attached)(

1. The staff was "not pulling together"; that is, coordination among the HAO-PA staff -- CHP-Consultants needed improvement.
2. Too much responsibility was being accepted by Physician's Assistants in the management of certain outpatient cases and in others referrals were being made directly to the visiting consultant rather than initially to the Chief of Health Programs.
3. There was a breakdown in some of the follow-up records regarding administration of medication on an outpatient basis and in the follow-up of chronic medical problems.

These were reviewed in detail with the staff and we established that for the most part cases referred to the visiting consultants should be monitored by Dr. DeGracia. We again asked Dr. John Freed to maintain close surveillance of the total medical program at Terre Haute and to advise us should significant problems develop. We did, however, feel that on balance, Dr. DeGracia's management of cases was within acceptable limits and Dr. Freed concurred in this opinion. Dr. Freed also concurred that this physician's cultural orientation may somewhat alter his approach to patients, though the language barrier, per se, did not seem of major significance.

A follow-up audit is planned within the next several months so that it will have occurred within less than one year after the audit of March 21-25, 1976.

The Director of the Bureau of Prisons has maintained surveillance over the action and findings of my review of the Terre Haute medical problems. No other deaths except two homicides, have occurred at Terre Haute since the death of Roscoe Simmons.

ROBERT L. BRUTSCHE, M.D., M.P.H.
Assistant Surgeon General, USPHS

RLB:es

23 June 77

App. 51

To: Mike Quinlan
U.S. Bureau of Prisons

From: The National Prison Project of the
American Civil Liberties Union Foundation

Re: P. S. 2001.6A and the Administrative Remedy Process.

This memorandum discusses the existing administrative remedy procedure provided federal prisoners by the United States Bureau of Prisons under Policy Statement No. 2001.6A (eff. 10/18/77). The focus of the memo is to outline some of the problems routinely encountered by prisoners who file administrative remedy complaints. The comments of the National Prison Project are submitted and based upon the hundreds of administrative remedy complaints and appeals that are received by the Project from federal prisoners in relation to the administrative remedy procedure.

I. ROUTINE PROBLEMS ENCOUNTERED BY FEDERAL PRISONERS WITH RESPECT TO THE EXISTING FEDERAL ADMINISTRATIVE REMEDY PROCEDURE.

A. Access to the Administrative Remedy Process.

The first problem encountered by the prisoner is obtaining the appropriate form. The administrative remedy complaint forms are not available in the cellhouse and dormitory boxes used for such other forms as "Inmate Request to a Staff Member", change of visiting list and telephone list forms, hobby craft purchase and mailing forms, and the other types of forms which are frequently and routinely used by prisoners. Instead, the prisoner must request the administrative complaint forms from an officer designated to dispense them. The officer is usually the prisoner's "correctional counselor" who is assigned to assist the prisoner's caseworker in performing such ministerial duties. Often a prisoner will receive one of two responses to his/her

request for a complaint form: (1) the officer may ask the prisoner why s/he wants the form and then advise the prisoner that s/he may get into trouble for filing it, or that such a complaint will look "bad" in the prisoner's central file when s/he appears before the Parole Commission; or (2) the officer may refuse to give the form to the prisoner. This refusal usually comes in the form of a statement by the officer to the effect that he does not have any forms available at the time and does not know where to obtain them, or, he may state that he does not have the time to get one and for the prisoner to re-apply at a later time. In either event the forms are often difficult to obtain and their limited availability used as a method of intimidation, harassment and/or discouragement. See generally, Attachments A-1, A-2, A-3 and A-5.

Similarly, in several institutions the counselor from whom a form is requested, upon asking and receiving the prisoner's statement as to the nature of the complaint, will tell the prisoner that the complaint is not the "proper subject of the administrative remedy" and thus refuse to issue the form. See, e.g., Attachment A-3. This practice defeats the purpose of the administrative remedy process because it denies the formal channels provided by P.S. 2001.6A of presenting such complaints where informal attempts have failed to resolve the problem. For example, one prisoner submitted a Request to a Staff Member to a chaplain concerning a religious problem. The chaplain refused to answer the prisoner's request in writing. Thus, the prisoner requested an administrative remedy form from his counselor. After the counselor asked what the problem was, and upon hearing the nature of the complaint, he advised the prisoner that his complaint was not the proper subject of the administrative remedy and refused to provide the form.

Recommendation

1. Administrative complaint forms should be available in the cellhouses, dormitories and the Classification and Parole Offices, as are the other routinely used forms.
2. One officer should be designated to accept the administrative complaints without question or comment, rather than a particular correctional counselor designated according to caseload.^{1/}
3. Forms should be available in a box on each tier of the segregation units where they can be obtained by prisoners during shower or recreational periods when they are released from their cells. It is the experience of the National Prison Project that prisoners in segregation who are in most need of the forms are generally the prisoners who have the most difficulty obtaining them.

B. Repercussions of Filing Administrative Remedy Complaints.

Repercussions against prisoners who file administrative complaints take two basic forms. First, the most frequent complaint we receive at the National Prison Project is that prisoners are being harassed because they have filed an administrative remedy complaint. See, e.g., Attachments A-1 and A-4. Proving such allegations is very difficult. However, as long as a substantial number of prisoners feel they will be harassed if they file an

^{1/} In this connection perhaps this same official could also notarize prisoners' petitions and complaints to the courts. This would: (1) relieve the caseworker of this function, giving him more time to concentrate on his crowded caseload; (2) allow the prisoner to file his/her administrative remedy complaint, or court petition, without the present prevalent fear that an adverse notation will immediately be placed by the caseworker into his/her central file to the effect that the prisoner is a "writ writer", "trouble-maker", etc. Real or not, such fear exists and is prevalent.

administrative remedy complaint; the administrative grievance procedure will not be used by a great many prisoners and will not gain the credibility needed to act as an effective problem-solving device.

Second, we have evidence that recently an increasing number of prisoners have been given disciplinary reports for "lying" in an administrative remedy complaint. See, e.g., Attachments B-1 and B-2. To permit such punishment for "lying" in the administrative remedy process whenever an allegation turns out to be not completely accurate, or not to justify relief, destroys the usefulness of the process. To be successful, prisoners must be able to feel they can use the process without fear of retaliation. Where the prisoner makes a claim based upon the facts of which s/he is aware, disciplinary action for making such allegations should never be allowed.^{2/}

The basic reason why punishment for the contents of an administrative remedy complaint should never be allowed is that many, if not most, factual situations require that the

^{2/} The law is clear that statements made by prisoners that are critical of the prison administration are protected by the First Amendment. In Carothers v. Follette, 314 F.Supp. 1014 (S.D.N.Y. 1970) the court found no prison interest sufficient to permit a letter to a prisoner's parents to be intercepted. The letter in that case was highly critical of the prison system, and was returned by prison officials because it contained "derogatory and lying statements" about the administration. The court rejected the prison officials proffered justification that the letter's content would retard the prisoner's rehabilitation, "unless that word is to be defined as abject acceptance of all prison conditions, however unjustifiable." Id. at 1025. In Adams v. Carlson, 342 F.Supp. 882 (E.D.Ill. 1973) officials returned letters to prisoners with the instruction to "tell the truth." The court issued a preliminary injunction holding that "... the letters ... which contain the inmate's depiction of conditions and events in the prison, and his own thoughts about them, may not be rejected for mailing by the defendants or their agents simply for the reason that the defendants do not deem the letters to be truthful." Id. at 896.

prisoner exhaust administrative remedies before filing a complaint in court. In fact, failure to exhaust administrative remedies has become the government's primary boiler-plate defense in most prisoner pro se actions. P. S. 2001.6A specifically recognizes that ". . . courts frequently require evidence that administrative remedies have been exhausted before ruling on a complaint . . ." Id. at 2. Consequently, punishment based upon the factual allegations of an administrative remedy complaint which the administration deems to be untrue, no less than allegations contained in a formal judicial complaint, constitutes an impermissible abridgement of the right of access to the courts.

Other more subtle forms of retaliation for filing administrative complaints exist, or prisoners fear that they do.

Prisoners committed to segregation with definite tentative release dates, e.g., seven days in punitive segregation or possible release at the end of thirty days, feel that if they file an administrative remedy complaint while in segregation the I.D.C. will view such action as a demonstration of the prisoner's "negative attitude" toward the administration and will therefore continue the prisoner in segregation for additional time.

Another aspect similar to the above feeling of the prisoner confined in segregation who is apprehensive about filing an administrative complaint about the conditions in segregation is the prisoner committed to a minimum security institution. For the most part prisoners feel that they will be transferred to higher security facilities if they initiate any sort of complaint, administrative or judicial. In fact, most prisoners are told in A & O, at such institutions as Eglin Air Force Base, that because of the low prisoner-staff ratio in such institutions the administration cannot afford to keep a prisoner on the camp if s/he has any sort of problem -- with strong suggestion to the effect that filing complaints is a "problem". Thus, there are very few

administrative complaints filed from the lower-security institutions. See, e.g., Attachments A-4 and B-1, p.2.

Recommendation

1. P. S. 2001.6A should be amended to specifically prohibit punishment for the content of allegations in an administrative remedy complaint.

2. P. S. 2001.6A should be amended to provide for sanctions against any officer who in any way obstructs or impedes access to the administrative remedy process, including any form of retaliation for the exercise of the right to use such process.

C. Responses to Administrative Remedy Complaints.

1. Time.

Although there are set time limits within which administrative remedies must be responded to, the average time required to exhaust remedies is generally in excess of five months. The greatest portion of this delay is probably attributable to the Central Office on the final appeal. Some of these final appeals have taken as long as nine months before a response; other prisoners are told that they should proceed to court if they are not satisfied with the delay.

The average time required to exhaust administrative remedies has two immediate consequences. Generally, it discourages utilization of the process, and particularly, it renders the process meaningless to certain categories of complainants.

In the general sense routine complaints of prison conditions are discouraged because prisoners feel that by the time any potential relief could be, or would be, granted the conditions complained of will no longer affect them. For example, the prisoner given a 30 day sentence to segregation who wants to challenge the decision of the I.D.C., or the conditions within the segregation

unit (e.g., the absence of an adequate law library, the absence of exercise periods, clean clothes, hygienic materials, linen, etc.), knows that s/he will be released from such confinement before his/her administrative complaint and appeals will be acted upon.

The particular category of complaints that render the administrative remedy process meaningless, in terms of time, is the example of the prisoner with a very short period of time remaining on his/her sentence who incurs a disciplinary report resulting in a forfeiture of good time. If s/he has thirty days remaining before release at the time of the forfeiture the restoration of good time would still not remedy the fact that the prisoner would be held in prison beyond his/her release date. However, the law is clear that habeas corpus is the sole remedy in such situations and thus the exhaustion of administrative remedies is required before filing a petition in court.

Recommendation

The only remedies for the above examples would appear to be more meaningful consideration and actions on the former types of complaints, which is discussed below, and an absolute priority to those prisoners of the second category where it is apparent that their release date, absent a forfeiture, is imminent. This would entail little more than closer screening of incoming administrative complaints.

2. The Quality of Responses to Administrative Complaints.

The resolution of administrative complaints involves little more than a comparison of the allegations in the complaint with the statements of the officials whose alleged action or inaction provide the basis for the complaint. There is generally no investigation into the matter in controversy other than a review of the prisoner's file and the written statements of

officials' contained therein. This includes complaints at the institutional level. The word of the officer is weighed against the word of the prisoner and the decision is virtually always decided in favor of the former. Prisoner-witnesses are seldom interviewed.

In terms of "due process" emphasis is given completely to procedure, as opposed to substance. It appears that as long as the correct procedure is followed, a correct disposition of the substance of the matter will logically follow. One example of this is contained in Attachment A-1 where the prisoner alleged that he was having difficulty obtaining an administrative remedy complaint. The response, essentially, stated that he had obtained such forms in the past and thus the forms were available. Such response completely disregarded the facts cited by the prisoner with respect to the incident(s) complained of in the instant circumstances. No matter if he ultimately succeeded in obtaining the form he used in processing his complaint that complaint forms were very difficult to obtain, he stated, as do several of the prisoners in Attachment A, that it took him several days to obtain the form. The response totally evades this claim.

As to quality of responses. In the case of the prisoner in Attachment A-1 who asked whether he was being harassed by impeding his access to the complaint forms, the response was that his question was "asinine". The claim, if proved, presents a very grave question and should have been investigated. This response bespeaks itself in terms of quality and the professionalism of the responding officer. Such responses can do no less than inculcate an attitude of distrust and incredibility toward the system.

Vague reasons such as "security of the institution" used to justify the challenged administrative action and deny the

request for relief are far too frequently and loosely used. In many instances the "security" justification either has no relation to the facts giving rise to the complaint and the legitimate penological interests of the institution, or the actual security interest is so vague or insubstantial that it renders the response meaningless and unjustified. For example, see Attachment C where the prisoner complained that a certain minister was not allowed to enter the prison to administer religious services to muslim prisoners. The simple, unexplained answer was that to allow this particular minister admission to the prison for such services would "be a threat to the security and orderly condition of the institution." Such unexplained responses are routine. This one was made in the face of the fact that the same individual had been allowed to enter other federal prisons for the same reasons requested by the prisoner in the complaint. This was not disputed. Thus, both in terms of basing decisions upon facts which relate to "security" justifications given by officials, and in terms of establishing "... an undisputed record of facts which will enable the courts to make more speedy dispositions," P. S. 2001.6A, the usual response to administrative complaints is inadequate.

3. Indexing Decisions of Administrative Cases.

At the institutional, Regional and National levels of the administrative remedy process there exists no effective system of indexing the decisions of administrative remedy complaints. Thus, there is no method of insuring consistent decision-making with respect to a given state of facts. Moreover, without such a system it would seem that "continuous review of administrative decisions and policies" (P. S. 2001.6A) would be impossible, contrary to policy.

With an efficient system of indexing decisions it is probable that the number of administrative complaints by prisoners would be reduced, since they would know how a given factual problem has been decided in the past. Thus, much of the present backlog of administrative remedy complaints could be reduced, enabling administrators to more fully investigate claims and render more substantive, rational decisions. Such decisions will be the backbone of any meaningful administrative remedy grievance mechanism.

Another major purpose of indexing and categorizing complaints and decisions in more detail is to allow Bureau officials to spot problems that affect a large number of individuals, to investigate apparent problem areas more thoroughly and to take broader corrective action. Without an effective indexing system this purpose is severely maimed.

Finally, consistency in decision-making cannot be underemphasized. A new administrator with only minimal training before s/he assumes the new position of responding to administrative complaints must have an efficient indexing system to work from in order to respond to complaints in the consistent, even-handed manner due process requires.

Conclusion

Our recommendations are little more than a call for compliance with the spirit of existing Policy Statement No. 2001.6A. The only actual change suggested in the Policy itself is the recommendation that it be amended to provide sanctions for any official that might impede access to the process or act in a retaliatory manner against prisoners who use it.

One final recommendation must be made that is not embodied in P. S. 2001.6A: That is the provision for outside review. Most of the experts in the area of administrative grievance

mechanisms endorse the practice of fact-finding and decision-making by a person or agency independent of the department of corrections. See, e.g., Prison Grievance Mechanisms, p. PM-7, prepared by the Center for Community Justice; Keating, et al., Grievance Mechanisms In Correctional Institutions, p. 33; and Mc Gillis, et al., Controlled Confrontation, pp. 27-31. The rationale supporting outside review is primarily that impartial outsiders, in addition to providing ^{the} unemotional perspective of a neutral party, imposes at the lower levels of a grievance mechanism the necessity of responding reasonably, since unreasonable responses and faulty logic will be detected. Outside review cannot be done by extra-institutional personnel who are hired by and responsible to the corrections department because many grievances involve the substance or application of departmental policies and regulations. The outside reviewers must be completely independent of the correctional department.

FEDERAL PRISON SERVICE, WASHINGTON, D. C. 20537

DIRECTOR'S LETTER

NUMBER 133DATE 10-4-77

TO: WARDENS, DIRECTORS AND SUPERINTENDENTS

Attached you will find a copy of the recent Executive Staff minutes.

BEARDS

Without question, the most controversial item discussed by the Executive Staff concerned policy on beards. As you know, the U. S. District Court in Connecticut has ordered that we permit beards at Danbury. Both the Criminal Division and the Solicitor General have turned down our request to appeal the decision. It's only a matter of time before similar suits are filed in other District Courts, particularly as we transfer inmates who were allowed to wear beards at Danbury.

We have discussed the alternative approaches to the situation. As a result of those discussions, I have concluded that the best policy would be to allow beards in institutions under stringent guidelines as to both length and appearance. We're now working on the Policy Statement and should have it ready for transmittal within the next 30 days. While I recognize that not all of you agree with the decision, I do expect everyone to fully support the policy when it is issued.

ADMINISTRATIVE REMEDIES

As we do during virtually every Executive Staff Meeting, we spent some time discussing the Administrative Remedy Procedure. I recognize that the procedure has resulted in an additional workload both in institutions as well as regional offices and here in Washington. I am, however, convinced that the procedure is a good one and has been of significant benefit to the Bureau.

Last week, the House Judiciary Committee reported out a bill which will require states to implement similar procedures or face the possibility of direct intervention by the Civil Rights Division on inmate complaints regarding their operations.

There are several problems which have recently come to my attention concerning the Administrative Remedy Procedure. One concerns the filing of incident reports on inmates who obviously make false statements in their complaints. As a general rule, incident reports should not be written except in the most blatant or malicious of cases. In addition, there should be no staff intimidation or making real or implied threats against inmates for filing

grievances. While attempts at informal resolution are important and obviously should be pursued, staff members should never refuse to give an inmate the forms when requested.

I realize there have been instances where inmates have abused the system by filing literally hundreds of obviously frivolous complaints. In such instances, I am willing to inform inmates that we will no longer accept grievances for a period of time because of their documented histories of misuse of the procedure. Whenever you believe such action may be indicated, please send me a memo through your Regional Director outlining the facts of the particular case. I want to emphasize that I am the only one who can make the decision to cut off an inmate's ability to use the system and will do so only in the most blatant cases of abuse.

INMATE PERSONAL PROPERTY

From observation as well as feedback from wardens and regional staff, I am becoming increasingly concerned about the amount of personal property we are permitting in our institutions. While we obviously want to permit inmates to maintain personal possessions, there has to be a limit drawn as to the amount of such material if we are to operate neat, sanitary and safe institutions. In addition to the "junky" appearances of housing units because of excessive personal property, it also can pose a very real threat of fire.

While we don't want a sudden "crack-down" on personal property because of the possible consequences such action could have, I am asking each warden to work out a procedure to control the amount of personal property inmates may maintain in housing units. Consideration should be given to providing storage space for excess material if such space is available in areas other than the housing unit.

URINE SURVEILLANCE

Preliminary results from the urine surveillance program are encouraging. All of the regional directors have reported that the program is working and may result in a decrease in narcotic smuggling into institutions.

I am concerned, however, that the disciplinary action being taken against inmates who refuse to cooperate with the urine surveillance program are not uniform. So far as I am concerned, refusal to submit to the test should be viewed in the same light as if the results were positive.

STAFF MEMORANDUM

I know you are aware of the policy prohibiting individual staff members writing unsolicited letters to the Parole Commission, Federal Judges, etc. I recently came across several cases where "To Whom It May Concern" memos were being written by staff and given to inmates. The inmates, in turn, were forwarding the memos to Federal Judges, the Parole Commission, etc., which obviously is a circumvention of the intent of the policy.

Please discuss with your staff the fact that only official correspondence concerning inmates is permitted and the use of "To Whom It May Concern" memos is clearly contrary to policy.

FURLOUGHS

Recently, there have been several incidents concerning furloughs that again point up the need to closely monitor the program. At least one of these incidents could possibly have been avoided if the U. S. Probation Office in the district where the offender was sentenced had been contacted. Current policy requires that only the Probation Office in the district where the inmate will be going is to be contacted prior to the granting of a furlough.

We are issuing a new Policy Statement which requires that in cases where an inmate is going to a location other than the district where they were sentenced, both the U. S. Probation Office in the sentencing district as well as the district where the inmate is to go on furlough should be contacted.

I again urge you to personally monitor the furlough program. While furloughs have proven to be of great benefit, it remains a highly visible program that has the potential to backfire unless carefully and judiciously used.

NOTIFICATION TO FEDERAL JUDGES

We are issuing another policy which will require that wardens personally notify the sentencing judge as well as the U. S. Attorney and U. S. Probation Office in instances of escape or the death of an inmate. Recently, several Federal Judges have criticized the Bureau when they learned after the fact that an inmate they sentenced had either escaped or died while in custody. In one such instance, the inmate who escaped had threatened the judge at the time of sentencing.

In preparing the individual letters, please make certain they do not become merely "form letters", but rather answer all the obvious questions a judge would ask -- who, what, why, when and where. The policy will also require notification when the inmate is apprehended.

HOLDOVERS

A Federal Judge in New Jersey recently released an offender committed under the Youth Corrections Act because he had been held for an extended period of time in holdover status at one of our penitentiaries. While such incidents unfortunately do occur from time to time, we should certainly do everything possible to avoid them. Specifically, offenders committed under the Youth Act as well as all offenders committed for Study and Observation should be given the highest priority in terms of bus movements and transfer.

Whenever a Youth Act or other such commitment is housed in holdover status at a penitentiary for more than several days, please contact J. D. Williams in order that he can explore alternative means of effecting the transfer. In some cases, we may simply have to use our own vehicles to move inmates in order to avoid cases such as the one I cited.

INMATE INFORMANTS

A number of questions have been raised with regard to the paragraph in Director's Letter #132 dated July 22, 1977, concerning the use of inmates as informants. It was not my intention to have you bring to my attention requests by Law Enforcement Agencies to have inmates brought out on writ for testimony in state or federal cases, even though they would be testifying for or cooperating with the government. Similarly, it was not my intention to be informed of efforts by Law Enforcement Agencies to interview within institutions inmates who have knowledge of criminal activities either within or outside the institution.

The cases I would like to have referred to my personal attention by the Director of the agency involved (FBI, DEA, etc.) are instances where the investigative agency requests that the inmate be placed on furlough, or serve as an undercover agent or witness concerning an on-going criminal conspiracy either within the institution or during the time the inmate is on work or study release.

The purpose, of course, is to insure that in those cases where the inmate's safety may be jeopardized that the Agency's Director, the Criminal Division, and I have concluded that it is in the best interest of all concerned to allow the inmate to participate in the investigation in an active way. If you have any questions, please let me know.

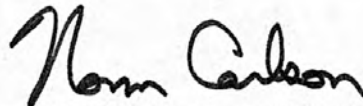
MISCELLANEOUS

Several wardens have raised the question as to how the staff training coordinator position should fit into the overall organization structure of the

institution. Specifically, they were asking whether or not the position must report to the Personnel Officer. So far as I am concerned, this is an item that should be left to the discretion of individual wardens. I am certain the organizational structure you develop will be the most appropriate for your own institution.

Let me remind you again of my hope that all new U. S. Attorneys, U. S. Marshals and Federal Judges will visit institutions in their districts at an early date. I was pleased to recently note that the new U. S. Attorney from Minnesota has already spent a day at Sandstone. As was mentioned during the Wardens Conference, it takes persistence to arrange such visits but I think the long range payoffs from such visits are well worth the efforts required.

Finally, I would urge each of you to submit newsworthy items on your institution and employees for the Monday Morning Highlights. We are all negligent in using Highlights as a vehicle of calling attention to the many accomplishments of our staff.



NORMAN A. CARLSON
Director



Operations Memorandum

App. 67

NUMBER

2200.1 CH-2

DATE

12-29-77

FPI-MI-9-10-76-2M-6135

SUBJECT: NOTICE OF PUBLICATION OF BUREAU OF
PRISONS' REGULATIONS IN THE FEDERAL
REGISTER

ACTION DATE(S)

1. PURPOSE:

To distribute the Bureau of Prisons' notice of proposed rulemaking for posting in BOP facilities.

2. DIRECTIVES AFFECTED:

Operations memorandum 2200.1 CH-1 is superseded.

3. BACKGROUND:

In compliance with 5 U.S.C. 552 the BOP is publishing its proposed regulations in Chapter 5 of Title 28 of the Federal Register, and eventually in the Code of Federal Regulations. Copies will be furnished to the Wardens. Interested persons may submit written comments as provided in the proposed rules.

4. ACTION:

(a) Wardens shall post copies of these regulations in the places that will ensure the widest coverage, e.g. the law library, inmate bulletin board, staff bulletin board, and

(b) post with the regulations a notice that persons wishing to comment should send their written comments to Rule Making Unit, BOP, Office of General Counsel, 320 1st Street, N.W., Washington, D.C. 20534; and

(c) give a copy of the notice and the proposed regulations to the president of the local union. Representatives of the union are not required to comment on the proposed regulations, but may comment if they desire.

(d) Staff may respond as members of the general public. Such comments should be sent directly to the Rule Making Unit at the above address (4)(b) and not through the chain of command.


for NORMAN A. CARLSON
Director
Bureau of Prisons

POLICY STATEMENT/OPERATIONS MEMORANDUM ISSUANCES
SERIES 2200.1 CH-2

ALDERSON	10	SAFFORD	10
ALLENWOOD CAMP	10	SANDSTONE	10
ASHLAND	10	SEAGOVILLE	10
ATLANTA	10	SPRINGFIELD	10
BUTNER	10	TALLAHASSEE	10
DANBURY	10	TERMINAL ISLAND	10
EGLIN AFB	10	TERRE HAUTE	10
EL PASO	10	TEXARKANA	10
EL RENO	10	F.P.I. FT. WORTH	10
ENGLEWOOD	10		15
FLORENCE FDH	10	(2) Metropolitan Correctional Centers	
FT WORTH	10	Chicago	10
LA TUNA	10	San Diego	10
LEAVENWORTH	10	Memphis	2
LEXINGTON	10	(5) Regional Offices	2
LEWISBURG	10	ATLANTA	2
LOMPOC	10	DALLAS	2
MARION	10	KANSAS	2
MAXWELL AFB	10	PHILADELPHIA	1
MCNEIL ISLAND	10	SAN FRANCISCO	2
MILAN	10	(2) Staff Training Centers	2
MORGANTOWN (RFK)	10	Atlanta	2
NEW YORK-FDH m c c	10	Dallas	2
OXFORD	10	(11) Community Treatment Centers	1
PETERSBURG	10	() Correctional Programs Officers	2
PLEASANTON	10	Director, Dept., of Corrections	
		DJ Office of Int. Audit	
		DJ Personnel Office	
		(5) Community Svcs. Reg. Directors	
		AFGE LIST - 2 each when so noted on Clearance Sheet	

UNITED STATES GOVERNMENT

Memorandum

TO : All Wardens and Regional Directors

DATE: December 29, 1977

FROM : *Clair A. Cripe* Clair A. Cripe, General Counsel

SUBJECT: Change in Federal Register Transmitted in
Operations Memorandum 2201.1 CH-2

Because of the delay in delivery of copies of the Federal Register and in order to allow the inmate population ample time to comment on the proposed rules published in the Federal Register on Wednesday, December 21, 1977, the comment date has been extended to February 10, 1978.

Please make an ink change on the Federal Register closing date for comments on these rules from January 27, 1978 to February 10, 1978.



5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Memorandum

M. Carlson
App. 70



Subject

Advisory Report on U.S. Penitentiary
Terre Haute

Date

January 6, 1982

To

Norman A. Carlson
Director
Bureau of Prisons

From

George A. Ralston, Jr.
George A. Ralston, Jr.
Regional Director
North Central Region

Norm,

I am enclosing the report of the advisory group which was appointed to look into our general concerns regarding the operation of Terre Haute.

The review team spent two and one-half days at the institution, interviewing staff and reviewing a variety of records, relating not only to medical concerns but to the overall management of the institution.

I am satisfied that the report presents a clear picture of several important elements of Terre Haute's operations at this point in time. As we have discussed earlier, I believe that certain changes in the Terre Haute staffing will bring about improvements. I also believe that this report can be used as a supplement to the Board of Inquiry Report on the death of Inmate Hardin on December 4, 1981, and you may wish to provide Dr. Brutsche with a copy for his review.

Enclosure

cc: Dr. Brutsche, Assistant Director, Medical and Services
Bill Imhoff, Medical Services Administrator, North Central Region
George A. Ralston, Jr., Regional Director, North Central Region

RECEIVED
DIRECTOR'S OFFICE
JAN 11 10 27 AM '82
BUREAU OF PRISONS



Subject

Advisory Report on U.S. Penitentiary - Terre Haute

Date

January 8, 1982

To

D
G. A. Ralston, Jr.
Regional Director
North Central Region

From

W. C. Schwalb
Steve Schwalb, Chief
Office of Inspections
Doug Davis
Doug Davis
Correctional Programs Administrator
Jerry Kavanaugh *J. C. Kavanaugh*
Correctional Services Administrator
W. C. Phillips
Richard Phillips
Executive Assistant

Attached is a copy of the final report prepared at your request with respect to selected areas of medical and management operations at the United States Penitentiary, Terre Haute, Indiana. The report contains a number of general observations regarding the management of the Terre Haute facility, specific findings with respect to the death of Inmate Peter Hardin on December 4, 1981, and past administrative and medical practices at the institution.

This report is submitted in order to assist you in evaluating operations at Terre Haute, and may be used in conjunction with the report prepared by the Board of Inquiry appointed by Director Carlson to investigate Inmate Hardin's death. However, the mission of our work group, and the final report itself, were not intended to supplant or otherwise modify the Board of Inquiry's report.

We remain at your disposal for further discussion of the issues raised in our report, or should any additional information be required.

ADVISORY REPORT ON OPERATIONS
AT THE
UNITED STATES PENITENTIARY, TERRE HAUTE, INDIANA

This report is submitted as a summary of the activities of the review team commissioned by North Central Regional Director, George A. Ralston, Jr. in mid-December 1981, to develop further information with respect to the death of inmate Peter Hardin on December 4, 1981, and assess selected operational areas at the United States Penitentiary, Terre Haute, Indiana. The review team consisted of: Mr. Steve Schwalb, Chief, Office of Inspections, Bureau of Prisons, Washington, D.C.; Mr. Doug Davis, Correctional Programs Administrator North Central Regional Office; Mr. Jerry Kavanaugh, Correctional Services Administrator, North Central Regional Office; Mr. Richard Phillips, Executive Assistant, North Central Regional Office. The team conducted an on-site investigation at Terre Haute on December 21, 22, and 23, 1981.

METHOD OF STUDY

The team had the benefit of reviewing a number of documents relating to the death of inmate Peter Hardin, Reg. No. 00743-033, which are appended to this report. The team found the materials compiled by the original Board of Inquiry to be of invaluable assistance in laying the foundation for its inquiry into the medical aspect of its mission, as well as indicating collateral areas of inquiry which were to require further examination. Each member of the review team was provided with a copy of the relevant material assembled by the Board of Inquiry as well as summaries of selected interviews which were transcribed by the Board. These materials, to a great degree, constituted the basis for the chronological description of events surrounding Mr. Hardin's death.

After reviewing the information made available by the Board of Inquiry, the review team determined that in addition to enhancing available information about the death of inmate Hardin, there were several other specific areas of concern which should be addressed. These included: administrative visibility within the institution, communication among managers and administrators, the relationships between mid-level managers, the relation of those managers to the hospital staff, and the overall operation of the medical department at Terre Haute.

In order to ascertain whether this review should encompass additional areas, a pattern of generalized interviews was established for the initial day of the inquiry. Each team member first conducted a series of interviews with institutional staff, initially with line and mid-level employees. A list of interviewer/interviewees is appended as Attachment 1. These interviews, while focusing on events surrounding inmate Hardin's death, also were structured to include questions regarding the overall management of the facility, communications between staff, and staff/inmate relationships.

The review team then made an extensive comparison of interview results, in order to determine whether the aforementioned areas of inquiry ought to be expanded. It was determined that on the basis of these interviews, the preponderance of opinion was that overall communications within the institution, and the overall management of the facility, were functional. However, the team became aware of certain management problems which tended to indicate the need to focus more specifically on the death of inmate Hardin than had been previously envisioned. Accordingly, the second day of review activity concentrated on the function of the Medical Department at Terre Haute, the interface between the hospital staff and other staff in the institution, administrative behavior relating to the Hardin death, and only selected aspects of the overall management of the institution.

OVERALL IMPRESSIONS

The review team made a number of general observations regarding Terre Haute during the course of its visit. Overall, sanitation within the institution appeared to be average. The main corridors appeared to have received no extra attention, and there was no evidence of any heightened sanitation because of the review team's presence. Units toured at various times presented the expectable variation in sanitation and orderliness. A number of deferred maintenance projects are worthy of note, including a significant need for painting in many areas, and the required replacement and repair of a large number of light fixtures in various inmate cells. The hospital surgery area was in disarray and needed cleaning. Since this area is not in use, it would appear to be a simple matter to perform a one time cleaning operation and secure it permanently.

On the positive side, the administrative detention/disciplinary segregation unit was much improved in appearance, in contrast with the observations made by two of the review team members who visited the unit in September 1981. Progress has been made in completing the security screen project. Methods of food service in that unit have been changed in accord with recommendations made by the Regional Food Service Administrator, and staff expressed satisfaction with the improvement in dispensing beverages within the unit. The appearance of the hospital entrance has been improved, and prior to the team's visit full time staff coverage was put into place, controlling entry to the hospital.

As a further observation, although Terre Haute staff have not experienced any recent difficulties with perimeter security itself, the presence of an increasingly aggressive and escape-prone population may make it advisable for staff there to develop a proposal for a higher inner fence and other perimeter security enhancements.

CHRONOLOGY OF EVENTS REGARDING HARDIN DEATH

In order to fully understand the team's conclusions with respect to the medical organization at Terre Haute, a chronological summary of the events surrounding inmate Hardin's death is necessary.

The record of health care with respect to this particular medical problem began on November 25, 1981. Hardin at that time had a temperature of 101°F, and was diagnosed by institutional medical staff as having a viral syndrome. At that time he was given a three-day idle and told to increase his intake of fluids.

On Sunday, November 29, 1981, at 5:40 P.M., Hardin collapsed in the corridor in front of the pill line window. PA Smith did a thorough patient workup, and after a phone call to Dr. Vincze, Hardin was admitted to Terre Haute Regional Hospital. Dr. Vincze at no time examined the patient prior to this intake, and in what was determined to be a regular pattern of his, simply ordered Hardin admitted on the basis of telephone information.

From Sunday, November 29 through Tuesday, December 1, 1981, Hardin was in observation status at the Terre Haute Regional Hospital. A number of tests and procedures were performed, including a Cat Scan. The results included abnormal hematology findings and five chemistry values outside normal limits. On one occasion during this period, Hardin fell out of bed, and had to be helped by the contract guard. Upon discharge on December 1, 1981, Hardin was diagnosed as having a viral syndrome, was given a two day idle, and was prescribed for 10 grains of Tylenol, daily multiple vitamins, and 250 mg of Keflex per day (a broad spectrum antibiotic). At this time, although additional tests had been performed and results had not yet been received, there was consideration of a possible seizure disorder. Attachment 2 contains the hospital reports relating to this period.

Upon return to the institution on December 1, 1981, Hardin was in a weakened condition and displayed a temperature of 100.2°F. He had to be moved from the receiving and discharge area to the institution hospital by wheelchair. It is uncontroverted that PA McDonald positioned Hardin in a wheelchair outside Dr. Vincze's office. McDonald also asserts he presented the medical record to the Doctor. McDonald followed up by issuing the two day idle slip and the prescription for the medication to the pharmacist through PA Brown. Hardin was never examined by Dr. Vincze, and departed the hospital walking without assistance.

On Wednesday, December 2, 1981, Hardin required the assistance of two correctional counselors to move to the 12:30 P.M. medication line. Hardin received one medication at that time, and both counselors report that they told the pharmacist that Hardin needed to be placed in the hospital. Although the pharmacist recalls the counselors assisting inmate Hardin to the pill line, he does not recall the conversation and no information concerning this incident was passed on to other staff. Hardin was returned to his cell and one of the counselors obtained a food tray from the dining room and carried it to him there. The same two counselors called the hospital in an attempt to obtain further consideration in behalf of the inmate, but were told that a staff meeting was in progress. Neither has any recollection of who they spoke to on this occasion. However, at that time Unit Manager Damrill was informed of the problem at the pill line, and the fact that it was necessary to feed Hardin in the unit.

On this same date, at 3:30 P.M. Correctional Officer Williams recorded in the unit log that "Hardin fell down in the doorway of the unit, Counselor Wiot and myself picked him up and put him back in bed." On his way home after going off duty, Mr. Williams went to the hospital where he waited for a meeting to be over and spoke to PA's McDonald and Trueblood. He advised them that Hardin was weak, had fallen down, and was now back in his cell. Mr. Williams was advised that Mr. McDonald was familiar with the case, but no further action was taken as a result of this contact. What is apparently a post dated entry was made in the unit log after the fact, recording this contact with the hospital. Copies of the log for the relevant time period are included in Attachment 3.

At approximately 3:40 P.M. on Wednesday, December 2, 1981, eight or nine inmates confronted officers Williams and Guess about Hardin's problems, and wanted to know what was going to be done. While the chronology of events at this point is unclear, it appears that after Williams had spoken to the hospital staff, he met two of these inmates and told them that he had informed the medical staff about Hardin, and there was no further inmate involvement. However, there was no contact made with the correctional supervisor regarding this group of inmates' concern regarding Hardin, and no log entries were made at that time.

Shortly thereafter, two inmates confronted officer Guess at the door of the unit and advised him that Hardin needed help. They offered to assist in carrying Hardin to the hospital, and officer Guess went to check on Hardin's condition in his cell. A second check 10 minutes later resulted in Mr. Guess proceeding to the hospital to get a wheelchair. His concern at that time was either to get Hardin to the hospital, or to the food service in order to clear his count. Although Mr. Guess told the Board of Inquiry that he felt Hardin was too sick to be on the unit at that time, he admits he did not tell the medical staff this. PA McDonald and Mr. Koontz showed Mr. Guess a copy of the idle slip for Hardin, and Mr. Guess returned to the unit and informed the Control Center of the idle so that the count would be correct. At that time he instructed Hardin to get on the sick call list for Thursday morning.

While these events had been transpiring, Mr. Damrill had also been made aware by two staff that there were problems with Hardin. Mr. Damrill called the hospital, talking to a female staff member who advised that there was a meeting going on. Mr. Damrill asked that he be called when the meeting was over, but no call was returned by 4:25 P.M. When no call was received, rather than following up further, Mr. Damrill proceeded to the staff lounge to eat.

In the lounge, Mr. Damrill and Mr. Koontz happened to meet by chance, and Mr. Damrill told Mr. Koontz that Hardin was in the unit but that he thought he ought to be in the hospital. The consensus of staff present was that Mr. Koontz responded by saying Hardin had the flu, the doctors said he was faking it, he was a malingerer, and that medical staff believed him to have a virus. Again, there was no record that Mr. Damrill followed through any further in obtaining a higher level of review with respect to Mr. Koontz's determination that Hardin needed no further care. Mr. Seely witnessed this encounter and his account of the conversation, as well as that of Mr. Damrill, are included in Attachment 4.

On Thursday, December 3, 1981, at 1:00 P.M., during a general unit shakedown, Mr. Damrill saw Hardin in his cell and in speaking with him Hardin indicated that he was feeling "fine". However, Mr. Damrill made a decision not to shake down Hardin's cell at that time.

Also on Thursday, Counselor Wiot made two contacts with Hardin. On the first occasion, Hardin said he was quite weak, and on the second occasion Hardin told him that he wanted to go to the ice machine. Mr. Wiot assisted Mr. Hardin by obtaining ice water for him and helped him back to his bed. At that time Mr. Wiot indicates he asked Mr. Damrill why Hardin was still within the unit and was told that he (Damrill) was still trying to obtain the assistance of the hospital staff to get him admitted. However, for the most part, Thursday was a rather uneventful day, with Hardin making no complaints about his condition and staff apparently making no strong attempt to secure additional medical care for him. Mr. Damrill's comments during the interviews that Hardin appeared to be a typical "recovering inmate" perhaps sums the day's activity up best.

On Friday, December 4, 1981, Hardin was scheduled to come off his idle, and was to have reported to work in the kitchen at 5:30 A.M. The morning watch officer did not get Hardin out of bed, and he noted that he was very disoriented and was not able to dress himself. The officer called for PA Smith, who advised that Hardin had just returned from the hospital because he "flaked out." The officer then called LT Keifer who instructed him to keep Hardin in the unit and place him on sick call that morning. Keifer also stated that Hardin should be observed closely if he remained in the unit. PA Smith placed Hardin on the 9:00 A.M. callout for the hospital.

At the shift change, PA Smith relayed to PA Brown his concern that Hardin be seen on the 9:00 A.M. sick call. At 10:05 A.M. Hardin still had not reported to the hospital and Mr. Brown called the unit to see why he had not reported. Mr. Brown was told that Hardin was unable to get out of bed to make his sick call. Mr. Brown informed Mr. McDonald, who then informed Mr. Koontz. Mr. Koontz attempted to contact Psychologists Ramer and Weir, but when he was unable to do so, asked Unit Psychologist Craig to conduct a psychological evaluation of inmate Hardin.

Dr. Craig went to Hardin's cell for an initial evaluation and he found "no marked evidence of any major mental or emotional disorder. Nor does malingering appear to be a viable explanation for his behavior." What he also noted was that Hardin was laying on his bed in a fetal position in his own waste. Hardin was unable to dress himself or walk, and had to be assisted in changing his soiled clothes.

Dr. Craig returned to the hospital, where he reported to PA McDonald that Hardin needed to be hospitalized. McDonald in turn reported to Dr. Vincze who wrote up the order for Hardin to be hospitalized and told PA McDonald to inform Dr. Weir. It is not clear why Dr. Vincze asked that Dr. Weir be informed of the impending hospitalization, and there is no evidence that Mr. Koontz attempted to follow up once he found that Dr. Craig had reported his findings. Dr. Craig's account of his clinical impression is Attachment 5.

At 11:00 A.M., Dr. Craig and PA McDonald went back to the unit and moved Hardin to the Hospital in a wheelchair. Dr. Vincze wrote an order in the medical record to "admit to USP TH for observation". In a standing order, CBC, differential, urinalysis, and CO2 orders were carried out, and PA McDonald did a standard chest x-ray although one was not ordered. There was no physical exam made at the time of admission, neither were any standing orders written for periodic observation and vital sign checks.

At 1:00 P.M. on Friday, December 4, 1981, Dr. Brown, the consultant from the Terre Haute Regional Hospital, called the institution and told PA McDonald that Hardin had a seizure disorder and should be placed on phenobarbital. McDonald entered the information in the Medical Record, but advised no other staff. No updated physical was done subsequent to this new information. The medical care records for the relevant period are appended in Attachment 6.

At 2:45 P.M. on December 4, 1981, Hardin was moved with assistance by the PA and inmate orderly to another room. At that time he was unable to walk without assistance, was experiencing uncontrolled urinating, and had slurred speech. Drs. Vincze, Weir, and Craig, PA Brown, and the inmate orderly all observed this but no further health care plans were made. On that same day there was a conflict between Dr. Vincze and Mr. Koontz regarding whether or not Hardin's door should be locked. Mr. Koontz indicates he assumed that at that time Hardin was a psychiatric patient because Dr. Weir was with Dr. Vincze. Because of the lack of supervision on the unit, and the status of the patient, the room remained locked except when staff issued medicine and when the food tray was delivered.

Late Friday afternoon, a camp inmate presented a problem with respect to possible attempted suicide and was placed in the hospital without Mr. Koontz' knowledge. A Correctional Officer was placed on duty within the hospital to observe this inmate and also was observing Hardin occasionally. Also during this time PA Edwards indicated that he was observing Hardin every 45 minutes. However, from early Friday afternoon and up until the time of his death, Hardin was fundamentally an in-patient in the institutional hospital without the constant medical coverage recommended by the Regional Audit, and with the knowledge of the Hospital Administrator. The governing regulation and audit materials are Attachment 7.

Throughout the morning watch of Saturday, December 5, 1981, PA Smith continued the 45 minute checks on Hardin while a Correctional Officer was watching the suicide case. The officer had two verbal contacts with Hardin during the evening, indicating that he was conversant during that time.

At 10:10 A.M. on Saturday, December 5, 1981, the inmate orderly reported that Hardin had slept well all morning, but when PA Smith went in to check him he found that Hardin had urinated, defecated, and was lying in his own excrement. PA Smith instructed Hardin to get up and use the toilet, and to help the orderly clean up his bed. PA Smith

called Dr. Vincze, and notified him of Hardin's condition asking him to take a look at the patient. Dr. Vincze instructed PA Smith to "leave the patient's bed in the shape it was in until he cleaned it up".

Smith then called third floor and talked to the inmate orderly, who asked him to come up there, stating that Hardin had urinated on himself again. At 10:25 A.M. Smith arrived in the in-patient area, found Hardin "lying in his bed, no respiration and no heart beat, patient's pupils were dilated and non-responsive to light". Smith immediately began CPR and the inmate was sent for help. Emergency procedures continued until the patient was moved to the Terre Haute Regional Hospital by ambulance under escort by Mr. Koontz. Hardin was pronounced dead at the community hospital after further attempts at revival were futile.

At the time of this writing the autopsy results have not indicated a clear cause of death. The report of the toxicology studies has not been received so the official cause of death is not known.

ADMINISTRATIVE VISIBILITY

Overall, staff interviewed at each level indicated that top administrators were visible throughout the institution, and that the Warden and Associate Wardens were accessible to the inmate population. There were occasional comments regarding the quality of interaction between administrators and inmates, particularly focused on occasional episodes where inmates came away from their contacts with administrators with the impression that action would be taken where, in fact, policy or other considerations would have precluded that type of action. Understanding that the quality of contact is just as important as the quantity, administrators or managers at all levels should be careful in the method of communicating with inmates regarding topics outside their specialty area. They should ensure that no commitments are made for actions which are impermissible, or which should be approved through other channels.

COMMUNICATIONS WITHIN THE ADMINISTRATION

The review team was repeatedly made aware of a series of problems within the administration relating to past conflicts between Associate Wardens. Although one of the two parties involved has been transferred, it was quite evident that the existence of open disagreements between the two Associate Wardens created a number of related problems within the divisions under those Associate Wardens. The preponderance of staff opinion in this regard was that the degree and intensity of disagreement between these two administrators hampered effective communication between them and their departments, and that this had been a long standing problem which was remedied only by the reassignment of one of the parties. However, these problems in no way impacted the health care systems related to the death of inmate Hardin.

It is disappointing to the review team that a problem of such magnitude existed, and that it continued for a prolonged period of time and had such an impact on internal operations at Terre Haute. The degree of polarization between divisions was repeatedly referenced in

interviews, as were a number of accounts of open conflicts between the two Associate Wardens in department head meetings. The end results of such conflicts are inevitably negative, and it is regrettable that the individuals themselves were unable to curtail this conflict, and it is even more unfortunate that the Warden was unable or unwilling to effectively intervene.

RELATIONSHIPS BETWEEN MID-LEVEL MANAGERS

The relationships between mid-level managers has, until recently, mirrored that of the respective division heads. Although the transfer of one party has resolved the focal conflict, there remains a residue of feeling which was detected in a number of interviews. In addition to the historical problems stemming from the two Associate Wardens, those department heads working under the Associate Warden (Programs) have been faced with an additional dilemma. Associate Warden Day's management style is to reflect all but the most serious problems back to the department heads involved, for resolution without his involvement. This has not been a totally successful technique, as evidenced in a number of the interviews with the affected staff. Additionally, certain other aspects of Associate Warden Day's management style have operated to heighten tensions between department heads, both within and between divisions. During the closeout, a great deal of information on this topic was conveyed to Mr. Day, with the hope that constructive changes may take place in his management style.

OVERALL RELATIONS WITH MEDICAL DEPARTMENT

Staff throughout the institution conveyed the impression that it was extremely difficult to obtain medical treatment for inmates at Terre Haute. While the physician assistants themselves were given high marks for individual competence, the tone set by Administrator Koontz, and mirrored by Assistant Administrator Miranda, was one of insensitivity. Mr. Koontz has a direct, abrasive and sometimes explosive personality style and he often conveys an air of insensitivity to inmates and staff problems. This frame of reference has been compounded by staffing shortages within the department which place additional stresses on the physician assistants and the administrators. As an example, while the review team was at Terre Haute, the medical department was operating with three physician assistant positions unfilled and one lab technician position vacant. Further, until just recently, medical staff were required to control inmate access to the hospital, performing custodial functions. This latter situation has been remedied by the assignment of a Correctional Officer to that post. An additional dimension to this problem was the attitude and performance of the former Chief of Health Programs, Dr. Vincze. This individual, who has subsequently resigned, also portrayed an insensitive, rigid, uncaring attitude toward inmates, and was apparently not functioning as a contributing member of the health programs staff.

The overall impression gained by the review team, and one which was consistently reinforced throughout the interviews, was that of a medical staff which was overworked, at odds within itself internally because of various personality conflicts, and operating within a frame of reference of insensitivity to non-emergency inmate needs.

LEADERSHIP WITHIN THE HOSPITAL

A critical element of this investigation was the leadership provided to medical staff at USP Terre Haute by HAO Henry Koontz. As referenced earlier, Mr. Koontz has a direct, sometimes explosive personality, and often portrays the appearance of insensitivity to staff and inmate concerns. By failing to set a cooperative, sensitive management style for his department's operation, other staff perceived it increasingly difficult to obtain appropriate care for inmates. Whether or not this was in fact the case, staff throughout the institution perceived it thusly. Within the department itself, investigation disclosed that physician assistants did not always communicate with the administrator on issues of concern. The first reason disclosed for this was that Mr. Koontz's aggressive style was difficult for employees to deal with, and therefore staff often chose not to do so. The second reason put forward was that when presented with some type of procedural problem, Mr. Koontz often imposed impractical or unworkable solutions on staff. They therefore minimized communication with him in order to avoid increasing their already difficult workload. In either case, the net effect was to severely hamper communications within the department. A compounding factor in this respect was the poor communications between Dr. Vincze and other staff, and the inability of Mr. Koontz to maintain a sound, professional working relationship with Dr. Vincze.

With respect to the Hardin death, the review team made a number of determinations regarding Mr. Koontz. Although Dr. Vincze retained responsibility for the medical management of patient Hardin, it was clearly Mr. Koontz' responsibility to ensure that Bureau policies, practices, and procedures were carried out appropriately, and the administrative details of hospital operation were fully coordinated. In that respect, the team found that Mr. Koontz was lacking in several respects.

1. As Hospital Administrator, Mr. Koontz should have had appropriate procedures developed, setting forth responsibility for examining an inmate upon return from the community hospital. This was not done in the case of inmate Hardin. There were no procedures in place sufficiently detailed and understandable to ensure that these necessary medical steps were taken. This was particularly critical, inasmuch as Hardin was returned from the community facility in a feverish state, with abnormal laboratory findings which should have provided an indication that additional followup was necessary.

2. Related to the above problem was the fact that neither the physician assistant or the physician in charge established a followup health care plan. While arguably this might be within the province of the physician, there were no administrative safeguards in order to ensure that something was done. In other words, Mr. Koontz should have had a system in place to ensure that the physician was in fact performing his duties. Not only were the duties not clear, as enumerated in #1 above, but there was no system in place to follow through for the minimum health care required.

3. Mr. Koontz failed to ensure that adequate and appropriate procedures were in place with respect to inmate Hardin's admission to USP Terre Haute hospital on December 4, 1981. There was no clear enunciation of Hardin's status in the hospital, neither was any health care plan or schedule of observation established, neither were any orders made for taking of vital signs in order to ensure Hardin's well being. The lack of procedural guidelines for examining, evaluating, and admitting patients to institutional hospitals constitutes a serious breach of necessary administrative practice, in the view of the team.

4. During the period between December 1 and December 4, 1981, Mr. Koontz was aware personally on at least two occasions of problems in Inmate Hardin's condition which should have alerted him to the need for intensified monitoring of his health care status. In a direct confrontation with a unit manager regarding Hardin's health, a conversation which Mr. Koontz does not recall, Mr. Koontz categorized Hardin as a malingerer and failed to take any further action.

5. Mr. Koontz failed to maintain effective communication with his own staff and within the department. Channels of communication within the medical department were insufficient to bring other indicators of Hardin's abnormal condition to the proper authorities' attention. This particular point relates to the earlier reference to staff unwillingness to deal with Mr. Koontz on many issues because of his attitude or because of the types of procedures he implemented. In addition, a significant number of contacts were made by various staff with the medical department regarding Hardin's medical condition. Taken together, these should have been a sufficient indicator of Hardin's need for intensive medical monitoring. However, the lines of communication within the department were such that this information never became known or was ineffectively analyzed.

6. Mr. Koontz's failure to follow the recommended procedures and to abide by his own commitment to maintain constant medical coverage in the hospital in-patient area was a notable one. An inmate was admitted in an extremely debilitating condition without appropriate examination, without on-going monitoring of vital signs, and without appropriate medical supervision. The medical audit of April 1981 reflected a need for medical coverage of inmates housed in the Terre Haute hospital in-patient area. Mr. Koontz committed in his response to that audit, that no patients would be housed in the hospital without constant medical coverage. Mr. Koontz has admitted that he was aware that Hardin was admitted without the appropriate coverage, and yet failed to act to obtain the proper coverage or to achieve Hardin's removal. As a further sign of Mr. Koontz's lack of awareness of events within his own department, a second inmate was placed in the hospital on December 4, 1981, and Mr. Koontz was totally unaware of that inmate's presence.

In summary, Mr. Koontz failed to provide an overall health care structure at USP Terre Haute which was sufficient to foster necessary internal communications among medical staff, to present other staff with a responsive, sensitive posture with respect to inmate health care needs, and entailing sufficiently comprehensive procedures to ensure that necessary health care be provided to inmates.

FINDINGS

The review team commenced its inquiry with the task of gathering supplementary information regarding the death of Inmate Hardin, and learning of any conditions within the administration and management of the facility which may have contributed to that death or impaired effective operation of the facility. With respect to those objectives, the team makes the following findings.

1. That the unfortunate death of inmate Hardin was a result of a complex set of circumstances involving procedural gaps, staff communication problems, and an apparently obscure medical problem, none of which could reasonably have been anticipated, but which apparently related to his eventual death.
2. That Hospital Administrator Koontz' leadership in the operation of the Terre Haute hospital is deficient in that he has failed to provide adequate procedures and safe guards for proper inmate care, as well as failing to ensure necessary and appropriate communication at all staffing levels in the hospital, and between the hospital and other departments.
3. That visibility of top administrators within the institution is good, but the quality of that visibility may bear closer examination with respect to effective and accurate communications of policies and procedures with the inmate population.
4. That significant communications and personality conflicts existed between two Associate Wardens (one of whom has been reassigned) which negatively impacted on departmental functions. Their conflicts were inappropriate and detrimental to the operation of the institution.
5. That the conditions which brought about inmate Hardin's death are not typical of overall communication and management effectiveness at USP Terre Haute.

List of Interviews

Correctional Programs Administrator Davis interviewed the following individuals:

Psychologist Dennis Weir
Case Management Advisor Walter Buer, Jr.
Associate Warden (Programs) John Day
Unit Manager John Henry
Case Manager Scott Greenwell
Case Manager Mike Young
Unit Manager Roger Stafford
Unit Manager Willis Gibson
Case Manager Dennis Ehm
Unit Manager George Damrill
Physicians Assistant Kevin McDonald
Case Manager Bill Seeley
Records Administrator Gordon Pleus

Steven Schwalb of the Office of Inspections interviewed the following individuals:

Chief Psychologist John Ramer
Personnel Officer Dennis O'Neil
Hospital Administrator Henry Koontz
Associate Warden (Programs) John Day
Pharmacist Robert Palladin

Correctional Services Administrator Kavanaugh interviewed the following individuals:

Acting Chief Correctional Supervisor Ed Gooch
Associate Warden (Operations) Ed Posey
Correctional Supervisor Richard Peters
Special Investigative Supervisor William Thomas
Correctional Supervisor Dan Roseworm
Safety Officer Richard Muckridge

Executive Assistant Richard Phillips interviewed the following individuals:

Personnel Officer Dennis O'Neil
Executive Assistant Ron Thompson
Business Manager Larry O'Connell
Associate Warden (Programs) John Day
Chaplain James Forsythe
Case Management Advisor Walter Buer, Jr.
Associate Warden (Operations) Ed Posey