

**INVESTIGATION INTO COMPLAINTS
FROM NATIVE AMERICAN INMATES AT THE
CROSSROADS CORRECTIONAL CENTER,
SHELBY, MONTANA**

**REPORT
OF THE MONTANA DEPARTMENT OF CORRECTIONS
INVESTIGATION TEAM**

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ACRONYMS AND ABBREVIATIONS

ACLU	American Civil Liberties Union of Montana
ADO	Administrative Duty Officer
ANON	Anonymous
CCA	Corrections Corporation of America
CCC	Crossroads Correctional Center
CO	Corrections Officer
DOC	Department of Corrections
HRB	Human Rights Bureau
MSP	Montana State Prison
PPO	Probation and Parole Officer
SFY	State Fiscal Year (July 1 to June 30)

EXECUTIVE SUMMARY

In August of 2008, the Montana Department of Corrections (DOC) began receiving information regarding the treatment of Native American inmates at the Crossroads Correctional Center (CCC), in Shelby, Montana. In November of 2008, the American Civil Liberties Union of Montana (ACLU) visited the CCC after receiving complaints from Native American inmates alleging mistreatment by the facility. After review by the DOC and communications between the DOC, the ACLU, and the Governor's Office, a comprehensive investigation was launched. This investigation took place over the course of three months, from February 2009 to the beginning of May 2009. The investigative team, made up of members of the DOC and the Governor's Office, traveled to Shelby, Montana seven times; conducted over 40 interviews; reviewed records; toured and photographed the facility; observed video monitors; and observed a sweat lodge ceremony.

Information learned during the course of the investigation indicates as follows:

- Beginning in August of 2008, communication between CCC staff and the DOC Contract Placement Bureau was substantially restricted per instruction by CCC management.
- In state fiscal year 2009, 14 of 220 formal grievances filed by inmates were substantively addressed through the grievance system. The majority of grievances filed were not addressed on a variety of technical grounds. The majority of informal grievances were also not addressed or denied on a variety of technical grounds. A new grievance coordinator started in the fall of 2008, but the team has not comprehensively assessed how the system is working under her management.
- The area designated for the sweat lodge has no drainage, is extremely muddy, and has limited protection from weather blowing in from the west.
- The deer antlers used during the sweat lodge ceremony were removed by CCC in August of 2008, due to security concerns raised by Montana State Prison (MSP) personnel.
- An inmate was accidentally burned on his arm by a sweat lodge rock during a ceremony which took place after the antlers previously used for moving the rocks had been removed by the CCC.
- From roughly September to late November 2008, the botanical mixture being given to the inmates for use in the pipe during the ceremony was not consistently usable. Cured tobacco appropriate for the ceremony is now in use.
- Herbs to be used during the ceremony were inappropriately disposed of by CCC staff on one occasion.
- During the summer of 2008, DOC Contract Placement personnel were informed by the CCC that the sweat lodge was being used by inmates to move contraband through the facility, and that strip searches were therefore necessary. However,

the information learned during the investigation does not indicate that any contraband in the facility has been linked to the sweat lodge ceremony.

- Strip searches of inmates occurred prior to and after the sweat ceremony for a period lasting approximately three months. Strip searches were discontinued in November of 2008 because no contraband was ever discovered during the searches.
- During the sweat lodge ceremony inmates have access as needed to bathroom facilities and to drinking and cleansing water. There is no water spigot immediately available in the sweat lodge area.
- Two Correctional Officers (COs) made inappropriate comments about the smudging ceremony, generally antagonized inmates, and were moved by the CCC Warden from security duties at the sweat lodge to “preclude issues.”
- CCC staff and management have received no training specific to Native American culture, tradition or religion.
- High and low security inmates sweat separately due to inmate safety concerns. This division of inmates was suggested by the DOC American Indian Liaison and implemented by the CCC.
- A CO required that an inmate enter the sweat lodge or return to his cell. The inmate then entered the sweat and exited shortly thereafter complaining of shortness of breath.
- Sweats have been cancelled due to cold weather and lack of CCC staffing.
- The CCC Mental Health Coordinator is conveying cultural information to inmates about the sweat lodge ceremony that is not generally accepted by Native Americans.

The information learned during the course of the investigation is inconclusive as to the following:

- Whether grievances were shredded.
- Whether a female CO observed an inmate strip search via a video monitor.
- How many “group” strip searches – in which multiple inmates were stripped and searched at one time – took place. CCC staff and management indicate that two group strip searches were conducted, and that all other strip searches were conducted one or two inmates at a time behind a low brick wall partition. The investigative team’s attempt to cross-check this information through further interviews with inmates was prohibited by attorneys for the ACLU.
- Whether inmates, and in particular the Pipe Carrier, were retaliated against for reporting incidents concerning the sweat lodge ceremony. The investigative team’s attempt to obtain further information through interviews with inmates was prohibited by attorneys for the ACLU.
- Whether adequate attempts have been made to locate a Native American spiritual advisor for the sweat ceremony.

The investigative team submits this Report to the Department of Corrections for review and makes itself available for follow-up as necessary.

I. PURPOSE AND SCOPE OF THE INVESTIGATION

This Report presents the findings of an investigation into allegations of mistreatment made by Native American inmates housed at the Crossroads Correctional Center (CCC), located in Shelby, Montana. Members of the Department of Corrections (DOC) and the Governor's Office conducted the investigation, including: William Fleiner, Bureau Chief of the Criminal Investigation Bureau, Department of Corrections (team leader); Dale Tunnell, Legal Investigator, Legal Services Bureau, Department of Corrections; Jennifer Perez Cole, Director of Indian Affairs, Governor's Office; and Andrew Huff, attorney for the Governor's American Indian Nations Council, Governor's Office.

The investigation was conducted to assess the specific allegations and overall environment in the facility relative to the issues raised by Native American inmates, relying on a team of investigators independent of the CCC and the DOC Contract Placement Bureau. The scope of the report is limited to factual findings and does not address legal issues or make recommendations.

The investigation included (1) interviews with inmates, CCC staff, DOC employees, anonymous interviews, and discussions with Native American leaders; (2) a review of written records provided to the team by DOC Contract Placement Bureau and other staff, and CCC staff; (3) a tour of the entire facility, including observation of video monitors; and (4) observation of a sweat ceremony.

The following inmates were interviewed:

- John Knows His Gun
- Jason Chiefstick
- Darryl Frost
- Dee White Hip
- Brian Johnston
- Edward Stamper
- Eric Swensen
- William Gopher
- Anonymous

The following CCC staff members were interviewed:

- Warden Sam Law (two interviews)
- Assistant Warden Chris Ivins (two interviews)
- Chief of Security Ray Busby (two interviews)
- Chief of Unit Management Ron Sturchio
- Quality Assurance Manager Kari Kinyon
- Security Threat Group Supervisor Rocky Hart
- Training Manager Don Hayes
- Unit Manager Cathy Christiaens

- Shift Supervisor Ken Taft
- Mental Health Coordinator William Dilworth
- Grievance Coordinator Brandy Sherrard
- Chaplain John Meckling (two interviews)
- Disciplinary Hearings Officer Robert "JJ" Johnson
- Correctional Officer Daniel Burtness
- Correctional Officer Carla Chrisman
- Correctional Officer Marvin Linde (two interviews)
- Correctional Officer Phillip Sure Chief
- Anonymous interviewees

The following DOC staff members were interviewed:

- American Indian Liaison Myrna Kuka (multiple interviews)
- Contract Beds Monitor Robert "Jim" Vollrath
- Contract Placement Correctional Services Manager Jerry Johnson
- Probation and Parole Officer Wendy Calvi
- Probation and Parole Officer Darryl Burditt
- Probation and Parole Officer Jody Rismon
- Probation and Parole Officer Jeff Kraft

The following Sheriff's Office staff members were interviewed:

- Toole County Undersheriff Mike Lamey

Discussions concerning Native American cultural issues occurred with:

- State Senator Jonathan Windy Boy (Chippewa Cree)
- State Senator Sharon Stewart-Peregoy (Crow)
- Don Fish (Blackfeet traditionalist)
- Roger White, Jr. (Assiniboine traditionalist)

The following records were reviewed:

- inmate informal resolution forms
- inmate grievance forms
- employee incident statements
- inmate incident statements
- inmate, ACLU, DOC and CCC correspondence
- DOC and CCC memoranda
- CCC incident reports
- CCC disciplinary infraction reports
- CCC disciplinary infraction report log
- CCC disciplinary report investigation forms

- CCC disciplinary investigation reports
- CCC disciplinary hearing decisions
- CCC disciplinary appeals
- Human Rights Bureau filings and decisions
- CCC daily shift reports
- CCC building schedules
- statistical grievance summaries
- one medical record

II. SEQUENCE OF EVENTS

During the summer of 2008, Myrna Kuka, DOC American Indian Liaison, began receiving reports of CCC mistreatment of Native American inmates. *Interview with Myrna Kuka*, February 4, 2009. On August 21, 2008, Ms. Kuka visited the facility to speak with CCC staff and inmates concerning these allegations. *E-mail of Myrna Kuka to Patrick Smith*, August 22, 2008, A1.

On October 7 – 8, 2008, Ms. Kuka, and Patrick Smith and Jerry Johnson of the DOC Contract Placement Bureau, visited the facility to look into the reports of mistreatment. *Memorandum from Patrick Smith to Director Ferriter*, October 13, 2008, A2. On November 13, 2008, the American Civil Liberties Union of Montana (ACLU) visited the CCC facility in response to “numerous complaints from individuals at Crossroads concerning treatment of Native Americans at that facility.” *Letter from Ms. Elizabeth Griffing, Legal Program Director, ACLU of Montana, to Warden Mahoney*, December 15, 2008, A6.

A meeting took place between the ACLU, members of the Governor’s Office, and members of the Department of Corrections, on December 12, 2008, to discuss the allegations from the inmates at the CCC. A follow-up letter was sent by the ACLU to Montana State Prison Warden Mike Mahoney, on December 15, 2008, outlining approximately twenty incidents or concerns regarding treatment of Native American inmates by the CCC. *Griffing Letter*, December 15, 2008, A6. Warden Mahoney and Patrick Smith, Contract Placement Bureau Chief, visited the Shelby facility in December and “did not detect the tension in the facility you describe in your letter.” *Letter from Mike Mahoney to Elizabeth Griffing*, December 24, 2008, A10. The ACLU visited the facility again in January of 2009. *Interview with Jason Chiefstick*, February 6, 2009. A follow up letter from Warden Mahoney to Ms. Griffing states, “Thus far we have found no evidence of illegal discrimination or racism, and as I said in my last letter to you we did not detect the tension in the inmate population that you described.” *Letter from Mike Mahoney to Elizabeth Griffing*, February 3, 2009, A13.

Following an exchange of correspondence with the ACLU, the DOC formed an investigative team including members of the Governor’s Office to take another look at the allegations. On February 3, 2009, a letter was sent by Warden Mahoney to Ms. Griffing informing the ACLU that an investigative team had been assembled that would “perform an additional assessment of the overall environment and attitude in the facility

related to the issues you raised in your December meeting and follow-up letter.” *Letter from Mike Mahoney to Elizabeth Griffing*, February 3, 2009, A13 – A14. The investigation took place at the CCC facility, as well as in Helena, Shelby and Cut Bank, on February 5 – 7, February 23 – 25, February 28 – March 1, March 10, April 2, April 16, and May 4, 2009.

On February 9, 2009, Warden Mahoney, the DOC, and the Governor’s Office received notification from Ms. Griffing that the ACLU had entered into attorney-client agreements with several of the inmates. *Letter from Elizabeth Griffing to Warden Mahoney*, February 9, 2009, A15. Several inmate interviews took place on February 6-7, prior to notification by the ACLU that some of the interviewed inmates had signed attorney-client agreements. None of the interviewed inmates informed investigators of their agreements with the ACLU, although they did reference the possibility of ACLU litigation.

On or about April 10, 2009, the ACLU filed a Complaint of Discrimination in the Montana Human Rights Bureau on behalf of a number of Native American inmates. *Complaint of Discrimination*, A17.

On May 4, 2009, the ACLU visited the facility for further client discussions.

III. FINDINGS OF THE INVESTIGATIVE TEAM

The subject areas investigated by the team fall into three primary categories: (1) issues regarding the inquiries into these matters; (2) the CCC grievance procedure; and (3) the sweat lodge.

A. Issues Regarding the Inquiries into these Matters

Visit by Myrna Kuka, August 21, 2008

On August 21, 2008, the DOC Native American Liaison, Ms. Myrna Kuka, visited the CCC facility. The ACLU wrote in its December 15, 2008, letter, “Upon her initial arrival at your facility, she was met with anger and resistance, although she able to interview inmates.” *Griffing Letter*, A8. In her e-mail of August 22, 2008, to Patrick Smith of the DOC Contract Placement Bureau, Ms. Kuka wrote, “I found the circumstances of the visit and the complaints very disturbing and ugly. I observed the Warden very upset with my visit. He verbally abused the Chaplain in the presence of his executive staff and I because I had been contacted. . . . I felt that my presence was unwelcome and all issues along with others that I have not listed here were not welcome and excuses for staff behavior was that he did have officers who ‘did their job very well, by the book and you know they are verbally abused also and they just deal with it as they are doing their job very well.’” *Kuka E-mail*, August 22, 2008, A1.

The investigative team interviewed Ms. Kuka, Chaplain John Meckling, Warden Sam Law and Assistant Warden Chris Ivins concerning the August 21, 2008, visit. Chaplain Meckling stated that he failed to give the Warden advance notice of Ms. Kuka's visit, and that he "caught hell" for this breach of internal protocol. *Meckling Interview*, February 7, 2009. Warden Law confirmed during his interview that he was aggravated that the Chaplain had not told him of the visit, but denied that he "dressed down" the Chaplain during the meeting with Ms. Kuka. The Warden stated that he spoke to the Chaplain about the breach of protocol outside of Ms. Kuka's presence. *Law Interview*, February 25, 2009. Mr. Jim Vollrath, DOC Contract Monitor, was present at the August 21, 2008 meeting with Ms. Kuka and wrote that he "did not detect any anger or resistance from Warden Law or others in the room. I did note that Warden Law was what can only be described as Warden Law, in as much as he was short and to the point in the response to Ms. Kuka but that is his usual mannerism." *Vollrath Memo to Pat Smith*, December 16, 2008, A33-A34. Warden Law, in his December 18, 2008, memorandum to DOC Director Mike Ferriter, stated that he "completely disagrees" with the ACLU's characterization that Ms. Kuka was met with anger and resistance. *Law Memo*, December 18, 2008, A40. Ms. Kuka, during a March 10 interview, reaffirmed that Warden Law dressed down the Chaplain in front of her and appeared very angry during the meeting. *Kuka Interview*, March 10, 2009. Ms. Kuka also stated that she had contacted the Chaplain two weeks in advance of the visit, and left several voice messages prior to her actual arrival at the facility. *Kuka Interview*, March 10, 2009. Assistant Warden Ivins, during an interview on April 16, 2009, stated that the Warden was surprised by the Kuka visit, and that he addressed that fact with Chaplain Meckling during the meeting with Ms. Kuka present. *Interview with Assistant Warden Ivins*, April 16, 2009.

While there are mixed accounts of Warden Law's demeanor with Chaplain Meckling, the information learned during the investigation does not clearly indicate that Warden Law was directly angry with Ms. Kuka or that she was prevented from doing her job. Ms. Kuka was able to interview several inmates, and those interviews have formed the basis of subsequent inquiries. The Warden stated during his April 16, 2009 interview that he later spoke to Ms. Kuka about the August 21, 2009 meeting, and that he desired to re-establish the relationship between the CCC and the DOC's Native American Liaison. He also stated that Ms. Kuka should not hesitate to contact him directly about any issues with the CCC facility. *Law Interview*, April 16, 2009.

*Team Investigation, February 5 – 7, 23 – 25, 28 – March 1,
March 10, April 2, April 16, and May 4, 2009*

The team generally found CCC staff to be professional during the course of the investigation, although Assistant Warden Chris Ivins became verbally confrontational towards team members on three occasions, twice during his first interview and once immediately after the close of his first interview. The team had access to all inmates at CCC. By the time of the investigation, Mr. Boe Twedt, AO # 45921, had been

transferred to MSP. The team did not interview Mr. Twedt. All CCC staff members were made available for interviews.¹

(1) Representation of CCC Staff and Management during the Interviews

The investigative team and Mr. Chad Adams, corporate counsel for CCA,² initially disagreed as to his presence and role during the interviews with CCC staff and management. The team was concerned that the presence of corporate counsel would chill the interview process. After consultation with DOC legal, the team proceeded to conduct two interviews outside the presence of Mr. Adams. Mr. Adams objected to his exclusion from the interviews, and stated he was concerned about due process. Upon further consultation with DOC legal – and after the first two interviews had taken place without CCA counsel present – it was agreed that CCA corporate counsel would be present during the interviews of management-level CCC staff. With the exception of the initial two interviews with Corrections Officer Marvin Linde and Training Manager Donald Hayes, all non-management employees were informed that they could choose to have CCA corporate counsel present. They were also informed by CCA counsel that CCA counsel represented the corporation and did not represent them. After the initial two interviews, most non-management CCC employees chose to have CCA corporate counsel present. Mr. Adams represented CCA during the February 5 – 7 and April 16 interviews with CCC staff and management. Mr. Ryan Wellmore³ represented CCA during the remainder of the interviews with CCC staff and management. CCA corporate counsel was not present for any interviews with inmates.

(2) Allegations of Document Shredding

The team received information early in the investigation that documents relevant to the investigation may have been shredded by CCC personnel. DOC Correctional Case Manager Jerry Johnson informed the team on February 5, 2009, that he had been contacted by telephone on February 4, 2009. The caller gave what is believed to be a false name and stated that CCC personnel were shredding documents. Ms. Griffing of the ACLU also expressed concern via a later e-mail, writing, “I have just recently heard from inmates at Crossroads that the Grievance Coordinator at Crossroads was ordered to dispose of 50 inmate grievances.” *Griffing E-mail to Diana Koch*, February 23, 2009, A41. A CCC staff member that wishes to remain anonymous also conveyed that three grievances from federal inmates had been shredded. Under questioning by the investigative team, Warden Law, Assistant Warden Ivins, and Chief Security Officer Busby all denied that any shredding of grievances had occurred. Based on this information alone, no conclusion can be reached as to whether grievances were shredded.

¹ This Report was prepared relying on the written notes and the recollections of the team members. Recordings were made of some inmate and CCC interviews. However, due to technical difficulties with the recording equipment, some interviews were only partially recorded or not recorded at all. All interviews that were recorded in any part are in the process of being transferred onto CD. As of the writing of this Report, the recordings are not yet available.

² Browning, Kaleczyc, Berry and Hoven, P.C., of Helena, MT.

³ Browning, Kaleczyc, Berry and Hoven, P.C., of Helena, MT.

(3) DOC/CCC Relationship

The team also assessed the overall relationship between the CCC and the DOC. Interviews with DOC Contract Monitor Jim Vollrath and Contract Placement Correctional Services Manager Jerry Johnson indicate that a significant shift in business practice has occurred since the arrival of Assistant Warden Ivins, in August of 2008. Mr. Vollrath and Mr. Johnson gave consistent testimony that communications under Warden MacDonald were open and unrestricted. Mr. Vollrath and Mr. Johnson stated that Warden Law and Assistant Warden Ivins have forbidden staff from talking with Mr. Vollrath and Mr. Johnson concerning non-work issues, and that any issues regarding the administration of the facility must first go through the Warden or Assistant Warden before Mr. Vollrath or Mr. Johnson can be approached by CCC staff. *Interviews with Vollrath and Johnson*, March 10, 2009. Mr. Vollrath stated that CCC staff members believe that they are under a "gag order," but that it may not have been fully explained to CCC staff by CCC management that communications can still be made as long as they communicate with CCC management first. *Vollrath Interview*, March 10, 2009. Mr. Johnson stated that CCC staff are afraid to be seen talking with him. *Interview with Johnson*, March 10, 2009. Mr. Vollrath stated that there are now delays in when he receives the shift reports and that sometimes meaningful information is not conveyed to him. *Vollrath Interview*, March 10, 2009. Mr. Johnson stated that he believes that neither he nor Mr. Vollrath receive full information from the CCC. *Johnson Interview*, March 10, 2009.

The change in business practice explained by Mr. Vollrath and Mr. Johnson has been echoed by other DOC staff and by anonymous CCC employees. DOC probation and parole officers indicated that CCC staff has been instructed by management that they cannot speak with DOC Contract Monitor Jim Vollrath, and that DOC is portrayed as "the enemy." *Interviews with Darryl Burditt, PPO, and Wendy Calvi, PPO*, February 24, 2009. One PPO indicated that the problem began with the arrival of Assistant Warden Ivins. *Interview with Calvi, PPO*, February 24, 2009. Interviews with CCC staff that wish to remain anonymous confirm the statements of the probation and parole officers and further state that, during training sessions for incoming CCC staff, trainees are explicitly told that DOC "is not their friend." *Interviews with ANON-1, ANON-2, and ANON-3*, February 24, 2009. The team has one document indicating that CCC staff has been told by Chief of Security Ray Busby and Chief of Unit Management Ron Sturchio to "never" speak with DOC contract monitor Jim Vollrath. The document is not, however, included in the appendix in order to protect the confidentiality of its source.

During his interview, Warden Law stated that he thinks of CCC and DOC as partners, and that the relationship has not changed significantly since the end of Warden MacDonald's tenure. *Law Interview*, February 25, 2009. Assistant Warden Ivins stated that DOC is considered as the customer, and not considered an adversary. *Ivins Interview*, February 25, 2009. Assistant Warden Ivins further stated that his communications with Mr. Vollrath and Mr. Johnson have been the same since his arrival at the facility in August of 2008. *Ivins Interview*, February 25, 2009. Chief Unit Manager Sturchio denied during his interview that DOC is regarded as "the enemy."

Sturchio Interview, February 25, 2009. The team questioned CCC management about whether CCC staff had been instructed not to speak with DOC Contract Monitor Jim Vollrath. Warden Law, Assistant Warden Ivins and Chief Unit Manager Sturchio, although interviewed separately, gave nearly identical answers stating that CCC staff are discouraged from speaking with Mr. Vollrath only when they are talking about personal business rather than working. *Interviews with Law, Ivins and Sturchio*, February 25, 2009. Warden Law stated that he has invited Mr. Vollrath to meet on a regular basis every Thursday, but that Mr. Vollrath has not responded to his invitation. *Law Interview*, February 25, 2009.

Assessing all of the interviews together and taking the documentary evidence into account, the investigation reveals that there has been a change in the relationship between the CCC and the DOC. Since the arrival of Assistant Warden Ivins in August of 2008, communications have been restricted.

B. The CCC Grievance Procedure

The CCC grievance procedure has been criticized by inmates and by the ACLU as ineffective. "The grievance procedure was wholly inadequate for redressing any of these wrongs. Inmates have completed grievance forms which were returned to them because of spelling and punctuation errors. When they tried to resubmit the forms they were told the grievances were then too late." *Griffing Letter*, December 15, 2008, A8. Inmates report that grievances are denied nearly every time or are returned unanswered for various reasons. *Interviews with William Gopher, Darryl Frost, Jay Chiefstick, Eric Swenson, and Edward Stamper*, February 6, 2009. DOC and CCC memoranda written in response to these allegations deny that problems exist with the grievance procedure. *Law Memorandum*, December 18, 2008, A39; *Johnson Memorandum*, December 16, 2008, A42-A43; *Vollrath Memorandum*, December 16, 2008, A34. However, during his interview on March 10, 2009, Mr. Johnson stated that the grievances submitted last year were not handled appropriately, and that if they had been responded to in a timely and substantive fashion, the issues under investigation may have been resolved more rapidly. *Johnson Interview*, March 11, 2009. Assistant Warden Ivins, during his April 16, 2009 interview, stated that numerous problems did exist with the grievance system [REDACTED], and [REDACTED] an internal audit revealed problems with the handling of grievances. Assistant Warden Ivins mentioned, as an example, a grievance involving medical issues that should have been forwarded to medical staff immediately, but that was inappropriately handled [REDACTED]. *Interview with Assistant Warden Ivins*, April 16, 2009; *CCA Grievance Audit*, September 23, 2008, A44-A46.

The team has scrutinized selected inmate grievances (including informal, formal, and appealed grievances) going back in some cases to late 2007. The reviewed grievances consist of those filed by the 20 inmates who received write-ups after the November 16, 2008, sweat lodge ceremony. The grievances of these inmates were selected for the purpose of assessing the grievance process generally, and for the purpose of reviewing the particular grievance history of these inmates with regard to the sweat

lodge ceremony, discussed later in the report. A review of the selected 2007-2009 grievances yields multiple “standardized” reasons for return of grievances unaddressed, including: (1) use of the wrong form (informal resolution v. grievance form); (2) time limits on filing; (3) filing multiple informals on a single issue; (4) using the words “our” or “we” in the grievance; (5) insufficient specificity as to date or time of incident; (6) difficulty reading the handwriting; (7) referencing non-grievable issues, like disciplinary actions or the actions of outside agencies; and (8) using “legal jargon.” See *Inmate Grievances*, A47 – A233.⁴ The cumulative effect of these myriad reasons for returning grievances is that few are substantively addressed. The CCC grievance tracking log indicates that in SFY 2009, only 14 of 220 formal grievances were substantively addressed. See “*Information on Grievances at CCC, Fiscal Year 2009*,” A234 – A241.

Several inmate-CCC grievance exchanges are worth highlighting. For example, all of the grievances reviewed by the team that were returned for the use of the words “our” or “we” were not attempts to grieve on behalf of other inmates but were clearly articulated individual grievances. See *John Knows His Gun Informal*, August 14, 2008, A79-80 (complaining of being strip searched by CO Burtness); *Lonnie Dennis Informal*, August 19, 2008, A103 (complaining that he is not allowed the same incentive programs as other inmates because he is in S-Dorm); *Baptiste Mathias Informal*, August 21, 2008, A104 (complaining that [REDACTED] he needs regular recreation time); *Erik Baldwin Informal*, August 15, 2008, A107 (complaining of being strip searched in front of eighty people); *Darryl Frost Informal*, August 4, 2008, A173 (complaining of being strip searched); *Boe Twedt Informal*, August 11, 2008, A180 (complaining of being strip searched); *Boe Twedt Grievance*, September 19, 2008, A228 (complaining that CO Burtness forced him into the sweat lodge). The attempts of Jason Chiefstick to obtain resolution regarding issues with the sweat lodge also merit scrutiny. Five of six grievances submitted by Mr. Chiefstick in August of 2008, giving detailed accounts of CCC treatment of inmates during the sweat lodge ceremony, were returned unaddressed. *Chiefstick Informal*, August 10, 2008, A161; *Chiefstick Informal*, August 10, 2008, A162; *Chiefstick Informal*, August 12, 2008, A163; *Chiefstick Grievance*, August 15, 2008, A165; *Chiefstick Grievance*, August 20, 2008, A167; *Chiefstick Informal*, August 23, 2008, A169 (in which Chief Security Office Busby writes a substantive response).

The team interviewed the current CCC grievance coordinator, Ms. Brandy Sherrard. Ms. Sherrard seemed to have a good understanding of the importance and need of a functioning grievance system. In particular, when asked whether she returns grievances for containing certain words like “we” or “our,” she said that she looks at the substance of the grievance to determine if there is an identifiable individual complaint.

The team has not reviewed the text of grievances filed after January of 2009.

⁴ The term “Inmate Grievances” includes informal resolutions, formal grievances, and grievance appeals.

C. The Sweat Lodge

At the core of the complaints from inmates concerning CCC is their treatment with regard to the sweat lodge ceremony. Identified issues include:

- (1) the condition of the sweat lodge area;
- (2) the removal of the deer antlers used during the ceremony and the burning of an inmate;
- (3) the replacement of cured tobacco used during the ceremony with other substances;
- (4) the inappropriate disposal of herbs used during the ceremony;
- (5) strip searches before and after the ceremony;
- (6) limited bathroom access during the ceremony;
- (7) no drinking or cleansing water in the sweat area;
- (8) derogatory statements made by Correctional Officers (COs) during ceremonies;
- (9) the division of high and low security inmates;
- (10) an inmate asthma attack brought on by a CO forcing the inmate into the sweat lodge;
- (11) the COs arbitrarily stopping the sweat before the expiration of the allotted time for the ceremony;
- (12) allegations of retaliation against inmates; and
- (13) no access to an outside Native American spiritual leader.

Griffing Letter, December 15, 2008, A6; *Inmate grievances*, A47 – A233; *Inmate Interviews*, February 6, 2009; *Interview with William Dilworth*, April 16, 2009.

Condition of the Sweat Lodge Area

The investigative team toured the sweat lodge area on February 6, 2009. The area is extremely muddy, has inadequate drainage, and is exposed to weather moving in from the west.

Removal of Antlers used during the Ceremony

ACLU correspondence, inmate grievances, and Human Rights Bureau filings complain about the loss of antlers used during the sweat lodge ceremony. The ACLU also alleges that an inmate was severely burned by sweat lodge rocks because the antlers had been removed. *Griffing letter*, December 15, 2008, A7.

DOC and CCC memoranda confirm that the antlers were removed pursuant to the recommendations of a DOC security audit. *Smith Memo*, October 13, 2008, A4; *Law Memo*, December 18, 2008, A38; *Vollrath Memo*, December 16, 2008, A32-A33; *Law Interview*, February 25, 2009. Discussions with DOC staff indicate that there was concern that parts of the antlers could be broken off and hidden for use as a weapon. *Tunnell Discussion with Tom Wilson*, March 2009. The antlers were removed by the CCC, probably in early August of 2008. See, e.g., *Chiefstick Grievance*, August 15,

2008, A165. The investigative team knows of no written document produced by CCC or DOC outlining their security concerns about the antlers.

DOC and CCC memoranda indicate that it could not be verified that an inmate had been burned by hot rocks during a sweat ceremony. *Law Memo*, December 18, 2008, A38; *Johnson Memo*, December 16, 2008, A42; *Vollrath Memo*, December 16, 2008, A33 (dismissing the idea that antlers could be more safe than a shovel). However, based on a review of grievances and medical records, as well as inmate interviews, the evidence indicates that [REDACTED], was burned during the sweat lodge ceremony on August 10, 2008. First, an informal grievance submitted by Jay Chiefstick, dated August 10, 2008, states, "Today one of the inmates who was appointed [sic] to handle the rocks was burned on the wrist due to the loss or confiscation of the deer antlers." *Chiefstick Informal*, August 10, 2008, A162. Grievances submitted by [REDACTED] himself, dated August 11, August 26, September 4 and October 15, 2008, describe the incident in detail. For example, Mr. [REDACTED] August 11 informal resolution states, "On August 10, 2008 while participating in the Native American Religious ceremony I was badly burned while putting the rocks into the pit of the sweat lodge. One of the sticks I was using broke causing a hot rock to land on my left wrist." [REDACTED] *Informal*, August 11, 2008, A48. Mr. [REDACTED] filed a complaint with the Human Rights Bureau, dated December 8, 2008, which again describes in detail his burn due to the replacement of antlers with sticks. The complaint states that using a shovel rather than antlers can be problematic because "some tribes do not allow metal to enter the sweatlodge. . . ." [REDACTED] *HRB*, December 8, 2008, A242. Further, the team reviewed a medical record indicating that Mr. [REDACTED] was treated by R.N. Darcy Larson on August 10, 2008, at 3:47 p.m., for a burn to his left wrist. The medical record states, "IM stated burned It wrist area with a rock at sweat lodge." *Progress Note of Darcy Larson*, August 10, 2008, A244. Finally, Mr. [REDACTED] gave an account of his injuries consistent with the above during his interview by the investigative team on February 6, 2009.

The information learned by the team indicates Mr. [REDACTED] was burned during the sweat lodge on August 10, 2008, after the antlers were removed pursuant to an MSP security audit. While the investigative team will not comment upon the security audit and concerns about the potential use of the antlers as a weapon, the team would like to note that in a non-correctional setting the use of antlers as part of the sweat lodge ceremony is a traditional and safe practice. A shovel may be used to move hot rocks to the entrance of the sweat lodge. Antlers are then used by an occupant of the lodge to move the rocks into the fire pit and adjust the position of the rocks once they are in the pit. In some traditional sweats, antlers are used at all stages to manipulate the sweat rocks.

Replacement of Tobacco used during the Ceremony

With regard to the use of tobacco during the sweat lodge ceremony at CCC, the ACLU alleges, "The substance provided for the pipe in the ceremony, which is a central part of the ceremony and usually a cured tobacco, is uncured. Inmates have stated that it does not even appear to be tobacco and it burns the lips, mouths, and lungs of the

participants.” *Griffing letter*, December 15, 2008, A7. Inmate grievances indicate that tobacco for use in the sweat ceremony was replaced with various substances, including raw tobacco or a mixture of herbs called kinnikinnick that was at times unusable, beginning roughly in September of 2008 and continuing until late November or early December of 2008. *Knows His Gun Grievance*, September 23, 2008, A84; *Gopher Informal*, December 2, 2008, A63; *Gopher Grievance*, December 18, 2008, A64 (in which Grievance Coordinator Brandy Sherrard indicates that the request to replace Chaplain Meckling’s kinnikinnick mixture with cured tobacco “has been granted”). During a telephone interview with Don Fish, a well-known Blackfeet traditionalist and chemical dependency counselor who has assisted with the sweat lodge ceremonies at the Shelby facility, Mr. Fish stated that he personally attempted to use the substance provided by the facility during a sweat at the facility and began to cough so forcefully due to its harshness that he was unable to sing during the remainder of the ceremony. *Telephone Interview with Don Fish*, April 17, 2009.

DOC and CCC memoranda acknowledge problems with the tobacco mixture and state that CCC confusion as to the DOC tobacco policy contributed to these problems. *Law Memo*, December 18, 2008, A38; *Vollrath Memo*, December 16, 2008, A32. Warden Law stated during his interview that the DOC policy is to maintain tobacco-free institutions. There is an unwritten exception for the sweat lodge ceremony. *Law Interview*, February 25, 2009. At some point during the fall of 2008, CCC mistakenly understood that DOC was discontinuing the use of tobacco in the sweat lodge ceremony. *Vollrath Memo*, December 16, 2008, A32; *Law Interview*, February 25, 2009. At about the same time, Chaplain Meckling began mixing the kinnikinnick mixture for the pipe. The Chaplain stated during his May 4, 2009 interview that he believes that the kinnikinnick mixture is more traditional than cured tobacco. He further stated that the materials for the mixture were purchased from the Stage Coach Trading Post in Great Falls and run through his blender at home prior to their use in the Pipe. When asked about the inmate complaints about its harshness, Chaplain Meckling stated that the inmates are not supposed to be inhaling it because inhaling the smoke is ceremonially “improper.” When asked where he obtained his information about kinnikinnick and the ceremonial use of the Pipe, Chaplain Meckling stated that he did internet research. *Meckling Interview*, May 4, 2009.

All CCC management and staff interviewed about the tobacco issues confirmed that cured tobacco is now being used in the ceremony. *Law Interview*, February 25, 2009; *Kinyon Interview*, February 24, 2009; *Meckling Interviews*, February 7, 2009, May 4, 2009. The current practice is for Chaplain Meckling to determine the precise mixture that is used in the ceremony, and to maintain control of the tobacco, botanicals and the Pipe when these items are not in direct use during the sweat. *Meckling Interviews*, February 7, 2009, May 4, 2009. The evidence therefore indicates that for a period of time, from roughly September to late November or early December of 2008, the mixture being given to the inmates for use in the ceremony was not consistently usable. The problem appears to have been resolved.

Disposal of Herbs

The ACLU alleges, "Herbs that are a part of the sweat lodge ceremony were confiscated for no apparent reason." *Griffing Letter*, December 15, 2008, A7. This appears to be a reference to an incident involving Lydia Chiefstick, mother of inmate Jason Chiefstick. The incident is described in full in the October 13, 2008, memorandum from Contract Placement Bureau Chief Patrick Smith to DOC Director Mike Ferriter:

"We discussed the issue brought forth by Lydia Chiefstick. It was determined that a staff member from CCC was sent out to the Chiefstick residence to get rocks for the sweat ceremony. This had all been pre-approved and cleared according to policy. When he got there he was asked to bring back some sage and sweetgrass. He agreed to do so and when he arrived at the back gate of the facility he reported that he was given the botanicals by Ms. Chiefstick. He was told by the warden that they were not approved and that policy was clear that these were to be mailed in with sealed, specifically identified clear plastic bags with prior approval by the chaplain. They then are to be inspected by the security chief and chaplain for contraband. This was not done, so the Warden said they could not come in. The staff member then apparently had the items taken to a trash bin offsite. This was not done out disrespect, but totally from a lack of knowledge or education as it relates to these articles. The Warden has agreed to call Ms. Chiefstick and explain and apologize for what has happened and to clarify what changes need to be done for the future."

Smith Memo, October 13, 2008, A3. There is no record of any other incident occurring with regard to disposal or confiscation of herbs/botanicals. DOC memoranda confirm that herbs are allowed if they are delivered through the proper channels. *Johnson Memo*, December 16, 2008, A42. Warden Law stated during his interview on April 16, 2009, that he has tried to contact Ms. Chiefstick by phone to follow up on this matter, but has not succeeded. *Law Interview*, April 16, 2009.

Strip Searches

Inmates housed at CCC have made allegations of strip searches conducted by CCC staff over a period of approximately three and one-half months, during the summer and fall of 2008. *Griffing Letter*, December 15, 2008, A6; *Inmate Grievances*, A47-A233; *Inmate Interviews*, February 6-7, 2009. Further, the ACLU alleges that a female Correctional Officer ("CO") observed the strip search via video camera at least once, and said "nice show" to an inmate the following week. See *Griffing Letter*, December 15, 2008, A6. DOC and CCC memoranda confirm that strip searches occurred, but defend the searches based on a "serious security" concern. *Law Memo*, December 18, 2008, A36 (stating, "As you know, a serious security concern necessitated the institution of these searches."); *Johnson Memo*, December 16, 2008, A42 (stating, "Unclothed body searches are commonplace in all corrections facilities. They are essential to control contraband."); *Vollrath Memo*, December 16, 2008, A31 (stating, "The use of strip searches prior to and after the sweat lodge ceremony was a measure implemented because it was discovered

that contraband, in particular but not limited to, tobacco was being introduced into the facility and the sweat ceremony was being used as a place to redistribute the contraband.”). Although there is agreement that strip searches occurred from about August through October of 2008, it is unclear how many of these searches were group strip searches – meaning several or all of the inmates were strip searched together, at one time. The information available to the team from CCC staff and management is that two group strip searches occurred.

(1) Group Strip Searches

Warden Law stated during his interview that the strip searches were instituted pursuant to his direction. *Law Interview*, February 25, 2009. Warden Law stated, however, that he did not direct that group strip searches be implemented, and that he ordered the group searches to be stopped when he understood that some had occurred. *Law Interviews*, February 25, 2009; April 16, 2009 (stating that he instructed Assistant Warden Ivins and Chief Security Officer Busby that searches were to take place one inmate at a time). Warden Law, when asked how group strip searches could occur without explicit instruction, stated that perhaps there was “officer error.” *Law Interview*, February 25, 2009. During his April 16, 2009 interview, Warden Law stated that he believed that about two group strip searches occurred. *Law Interview*, April 16, 2009. Mr. Don Fish stated during a telephone conversation that he personally observed one group strip search, on or about October 12, 2008, when he was at the facility assisting with a sweat ceremony. *Telephone Conversation with Don Fish*, April 17, 2009.

Assistant Warden Ivins and shift Supervisor Taft both denied knowledge of group strip searches having occurred. *Interviews with Ivins and Taft*, April 16, 2009. CO Linde, during his April 16, 2009 interview, stated that searches were conducted two inmates at a time, behind the low brick partition separating the gym from the toilet facilities. *Linde Interview*, April 16, 2009. Both Ivins and Linde stated during their interviews that group strip searches would be logistically impossible with a limited number of COs. *Ivins and Linde Interviews*, April 16, 2009.

Assistant Warden Ivins stated during his interview that he suggested to the Warden that the strip searches stop because no contraband was being found during the searches and no contraband was appearing in the pods. *Ivins Interview*, February 25, 2009. He stated that the strip searches ended in late October or early November, 2008. *Ivins Interview*, April 16, 2009. Warden Law confirmed that after it became clear no contraband was being found, the strip searches were discontinued. *Law Interview*, April 16, 2009.

After the initial interviews with inmates and later interviews with CCC staff and management, it became clear to the investigative team that further interviews with the inmates would be necessary to cross-check how many of the strip searches were group strip searches, in which several or all of the inmates were stripped and searched at one time. The ACLU was contacted for permission to interview the inmates. The ACLU agreed to the interviews and a plan was made to interview the inmates, with ACLU

counsel present, on May 4, 2009. Upon arrival at the Shelby facility, team member Andrew Huff was informed by ACLU attorney Elizabeth Griffing that the team would not be allowed to interview the inmates, and that further information from the inmates would have to be obtained via the litigation process. Ms. Griffing stated that attorney Ron Waterman had decided that no further inmate interviews should take place.

(2) Basis for Strip Searches

Warden Law gave two reasons during his interviews for ordering the strip searches: (1) his belief that tobacco was being smuggled out of the sweat lodge and into the pods; and (2) information that marijuana was being smuggled through the facility via the sweatlodge. With regard to the tobacco smuggling, the Warden stated that he saw a plastic bag containing the sweat lodge herb mixture, presented to him after it was found amongst the sweat lodge blankets in the laundry. *Law Interview*, February 25, 2009. The inmates interviewed about this matter indicated that the federal inmates carry the kinnikinnick mixture in a plastic bag, containing mostly "bear root" or "bitterroot," and that it appeared amongst the blankets in the laundry. *Interviews with Gopher, Frost, Chiefstick, White Hip*, February 6, 2009. Chaplain Meckling stated during an interview that the plastic bag discovered was of the same type formerly allowed in the facility to carry botanicals for individual religious use in the pods. He also stated he still has the plastic bag and that the mixture is still inside of the bag. He informed the team that it is not clear that tobacco is part of the mixture. *Meckling Interview*, May 4, 2009. The Warden stated during his interview that the presence of the plastic bag in the laundry could have been accidental or purposeful. When asked whether an investigation took place to determine whether it was accidental or purposeful, the Warden stated that no investigation took place and that no investigation was necessary, because he personally saw the plastic bag of kinnikinnick. *Law Interview*, February 25, 2009. Chief Security Officer Busby stated during his interview that [REDACTED] told him the sweat was being used to smuggle tobacco into the pods. *Busby Interview*, February 7, 2009. However, when the team questioned the inmate [REDACTED] [REDACTED]. *Anonymous Interview*, February 25, 2009.

There is limited information concerning alleged marijuana smuggling. Warden Law stated during his interview that the source of the information concerning marijuana was [REDACTED]. The Warden stated that he did not consider any information from [REDACTED] to be "concrete." *Law Interview*, February 25, 2009. Assistant Warden Ivins also stated during his interview that the source of the marijuana information was [REDACTED]. The Assistant Warden stated that he considered information from [REDACTED] to be of no value. *Ivins Interview*, February 25, 2009. Rocky Hart, the Security Threat Group supervisor in charge of monitoring gang activity in the facility, stated during his interview that [REDACTED] [REDACTED]

⁵ This Report will not name [REDACTED].

⁶ This Report will not name [REDACTED].

[REDACTED] . Further, [REDACTED] . Mr. Hart stated that the inmates that are involved in the sweat lodge ceremony are not members of gangs. *Interview with Rocky Hart*, February 25, 2009.

In light of Warden Law's statement that the plastic bag of bearroot/bitterroot could have been accidentally left in the sweat lodge blankets, and that no investigation occurred as to how the bag came to be in the blankets, and in light of the statements by both Warden Law, Assistant Warden Ivins, and Security Threat Group supervisor Rocky Hart that the source of the marijuana information is not credible, the information learned by the team does not indicate that the sweat lodge was used to move contraband into or through the facility. Further, the strip searches never yielded any contraband, and – with the exception of the plastic bag of bearroot/bitterroot – the teams knows of no contraband appearing in the pods coming from the sweat, during or after the period of the strip searches.

(3) Female Observation of Male Strip Search

The team also interviewed CO Carla Chrisman concerning the allegation of one inmate that she observed a strip search via video monitor and later said “nice show” to the inmate. *Interview with Carla Chrisman*, February 7, 2009. CO Chrisman denied making such a statement and said that it would be impossible to see any strip search via video because the gym camera angle precludes seeing into the bathroom area where searches occurred. The investigative team, however, observed the control center video screens, including the gym monitor screen. The team notes that it would be possible to observe a search of inmates in the bathroom area, but that it would be very difficult – due to the poor quality of the picture – to discern individuals. The information learned by the investigative team about whether CO Chrisman inappropriately observed and commented on a strip search is inconclusive. The allegation comes from one inmate, CO Chrisman denies having observed or commented on any strip search, and the team directly observed that it would be difficult to make out individuals on the gym security monitor.

(4) CCC-DOC Communication regarding the Strip Searches

The Warden stated that Pat Smith and Jim Vollrath were informed of the strip searches and did not object to them. *Law Interview*, February 25, 2009. Mr. Vollrath and Mr. Johnson confirmed during their interviews that Warden Law informed them of the strip searches and that they did not object to the searches going forward. *Vollrath and Johnson Interviews*, March 10, 2009. Mr. Vollrath stated that Warden Law told him that contraband had been found in connection with the sweat lodge. Mr. Johnson stated that Chief Security Officer Busby told him that the sweat was being used to move contraband. *Vollrath and Johnson Interviews*, March 10, 2009. The memorandum authored by Vollrath confirms that he believed contraband had been discovered in connection with the sweat lodge and that the sweat lodge was being used to move contraband through the facility. *Vollrath Memo*, December 16, 2008, A31.

Limited Bathroom Access During the Ceremony

The ACLU alleges that no toilet facilities are available in the sweat lodge area. *Griffing Letter*, December 15, 2008, A7. Two inmates have alleged that there is limited bathroom access during the sweat lodge ceremony. *Interviews with Gopher, Johnston*, February 6, 2009. Two inmates stated when questioned that they were unaware of any issues regarding bathroom access. *Interviews with Swenson, Stamper*, February 6, 2009. Bathroom access was not discussed during the other inmate interviews. *Interviews with Frost, Knows His Gun, Chiefstick, Whitehip, Ingram, Vogel*, February 6, 2009. COs Linde and Burtness denied there is any problem with access to bathrooms, but stated that sometimes the inmates urinate in the corner of the sweat lodge area. *Interviews with Linde and Burtness*, February 6, 2009. CO Linde explained that during the construction of what is now the outdoor recreation area, which was put into use during the fall of 2008, inmates had to be accompanied through the old sweat lodge grounds to a bathroom on the other side because the recreation area bathroom was not yet completed. He stated that for reasons of practicality, he escorted inmates every two hours to and from the bathroom facility. CO Linde stated that with the bathroom facility that is now available in the new outdoor recreation area, inmates can use the facilities without an escort as needed. *Linde Interview*, April 16, 2009. CO Phillip Sure Chief stated that since the time he began providing security at the sweat lodge in January of 2009, there have been no complaints that he knows of from the inmates. *Sure Chief Interview*, February 24, 2009.

The investigative team observed the sweat lodge area, the outdoor recreation area, and the available bathroom facilities. The bathroom facility in the new outdoor recreation area is reasonably close to the sweat lodge area, and is in good working order. The evidence indicates that there are accessible bathroom facilities.

No Drinking or Cleansing Water Available in the Sweat Lodge Area

The ACLU alleges that no drinking or cleansing water is available in the sweat lodge area. *Griffing Letter*, December 15, 2008, A7. The investigative team observed that water is made available for the sweat lodge ceremony, including drinking water, through the use of a cooler and buckets. Apparently, there was some discussion when the sweat lodge was moved to its current location under Warden McDonald that a water spigot would be made available in the area. *E.g., Interview with Darryl Frost*, February 6, 2009. While there is no water spigot in the sweat lodge area, the evidence indicates that sufficient drinking and cleansing water is made available for the ceremony.

Derogatory Statements made by COs during Ceremonies

The ACLU and inmates have alleged that certain COs who have provided security at the sweat lodge ceremonies have made derogatory or disrespectful statements. As stated in the ACLU letter, "Guards are used to oversee the ceremony and they are not only disrespectful, but actively confrontational and harassing of the participants." *Griffing Letter*, December 15, 2008, A7. Inmates, both in grievances and in their

interviews, have uniformly complained that COs [REDACTED] have made derogatory and disrespectful statements about the ceremony and about the inmates that participate in the ceremony. See, e.g., *Knows His Gun Informal*, November 29, 2007, A74; *Knows His Gun Informal*, December 2, 2007, A75; *Knows His Gun Informal*, December 4, 2007, A76; *Knows His Gun Informal*, August 14, 2008, A79; *Chiefstick Informal*, December 2, 2007, A154; *Chiefstick Informal*, August 10, 2008, A161; *Chiefstick Informal*, August 12, 2008, A163. A specific complaint has been made that CO [REDACTED] once stated to CO [REDACTED] that he should toss a piece of beef jerky into the sweat lodge area "to see the Indians fight over it like a piece of dog meat." *Inmate Incident Statement, submitted by Eric Swensen, AO# 42272, September 14, 2008, signed October 17, 2008, A245*. During his interview, Mr. Swensen reaffirmed the "dog meat" incident and further stated that CO [REDACTED] once stated in front of Mental Health Coordinator William Dilworth that the smoke from the smudging ceremony smelled like "burning dirty underwear." *Swensen Interview, February 6, 2009*. During his interview, Mental Health Coordinator Dilworth confirmed that certain COs have made disrespectful comments regarding the smudging ceremony, although he does not specifically recall the "burning underwear" statement that Mr. Swensen alleges CO [REDACTED] made. Mr. Dilworth further stated that the inmates have heard and can sense the disrespect of certain officers, and that he has made an effort to explain the serious nature of the smudge ceremony to the COs. *Interview with Dilworth, April 16, 2009*.

COs [REDACTED] denied during their interviews that they had been in any way disrespectful of the ceremony or to ceremony participants. CO [REDACTED] stated that he had never seen the incident statement submitted by Mr. Swensen, and that he had never previously been informed of the allegation that he had made a racist statement to CO [REDACTED]. [REDACTED] stated that Swensen's "Incident Statement" was a "lie." Further, [REDACTED] stated that he has a good relationship as far as he knows with the Native American inmates, and that he has been hunting with a Native American friend from Shelby. [REDACTED] *Interview, February 6, 2009*. CO [REDACTED] stated during his interview that he never heard [REDACTED] say anything similar to the allegation made by Mr. Swensen. He further stated that the inmates do not like him because he makes them follow the rules. CO [REDACTED] stated that he [REDACTED] *Interview, February 25, 2009*. Both COs [REDACTED] were moved from security duties at the sweat lodge area in January of 2009. *Law Interview, February 25, 2009*. Warden Law stated during his interview that he made the decision to move COs [REDACTED] from security duties at the sweat lodge to "preclude issues." *Law Interview, February 25, 2009*. Since they were moved and replaced in January of 2009, the team knows of no inmate complaints or grievances regarding the conduct of the COs providing security at the sweat lodge ceremony.

The team interviewed CCC Training Manager Donald Hayes to determine whether CCC staff received any training with regard to Native American culture or religion. Mr. Hayes stated during his interview that CCC staff receive one hour per year of general cultural diversity training. While no training specific to Native American culture is included in the curriculum that is offered to CCC staff, Mr. Hayes stated that

the corporate curriculum can accommodate facility-specific training. *Hayes Interview*, February 6, 2009.

Division of High and Low Security Inmates

Several inmates complain of the separation of high and low security inmates during the sweat lodge ceremony. In its letter of December 15, 2008, the ACLU states that, "The inmates are able to attend the ceremony every other week with low classification inmates one week and high classification inmates the next week." *Griffing Letter*, December 15, 2008, A7. This information has been confirmed in interviews with DOC Liaison Myrna Kuka, Warden Law, and Jerry Johnson. Warden Law, in his memorandum dated December 18, 2008, states that, "this was implemented at the suggestion of the department's Native American specialist. It is also a good safety practice, as reducing interaction between inmates of different security and custody levels reduces the likelihood of predatory violence." *Law Memo*, December 18, 2008, A37. Ms. Kuka has confirmed that she suggested the division of high and low security inmates to reduce the likelihood of violence and exploitation amongst inmates using the sweat lodge ceremony. *Kuka Interview*, February 6, 2009. The team did not investigate whether three sweat lodge ceremonies (one federal, two state) can logistically be conducted every week.

Inmate Asthma Attack

The ACLU letter of December 15, 2008, alleges that, "A participant who was participating in the ceremony, but due to his asthma was unable to enter the sweat lodge, was ordered by a guard to enter the sweat lodge, at which time the participant had an asthma attack." *Griffing Letter*, December 15, 2008, A7-A8. Warden Law, in his December 18, 2008 memorandum, wrote that the incident had not been brought to the attention of CCC staff. *Law Memo*, December 18, 2009, at A39. The Johnson memo of December 16, 2008, states that there is no evidence to support the allegation. *Johnson Memo*, December 16, 2008, A42. The Vollrath memo of December 18, 2008, states, "What this office is aware of, are numerous inmates remaining in close proximity of the ceremonial lodge but not participating in the religious rite. Those inmates serious about the practice of the sweat ceremony requested that those not participating in the actual rite not be allowed to congregate too closely around the lodge. I suspect that the officer, in an attempt to facilitate the desired affects of the sweat ceremony, told the inmate to leave the area or participate." *Vollrath Memo*, December 18, 2008, at A33.

CO Burtness confirmed during his interview that he has told inmates that they have to participate in the ceremony or return to their cells. On one occasion, he told inmate [REDACTED], to enter the sweat lodge or return to his cell. According to CO Burtness, Mr. [REDACTED] entered the sweat lodge of his own accord, and did not explain to the CO that he was asthmatic. The inmate then exited the sweat lodge, stating that he could not breathe. *Interview with CO Burtness*, February 25, 2009.

COs Arbitrarily Stopping the Sweat Ceremony

Allegations have been made by the ACLU and by inmates that COs have cancelled or stopped the sweat lodge arbitrarily prior to expiration of the allotted time for the ceremony. The responses from CCC staff to inmate grievances indicate that the sweat has been cancelled on several occasions when the temperature drops below 0°F, or when there is insufficient staffing to provide security. *See, e.g., Gopher Informal*, November 19, 2007, A47; *Gopher Informal*, December 22, 2008, A65; *Gopher Grievance*, December 24, 2008, A66; *Gopher Grievance Appeal*, January 1, 2009, A68; *Knows His Gun Informal*, November 19, 2007, A73; *Knows His Gun Informal*, April 23, 2008, A78 (in which Chaplain Meckling writes, “The canceling of sweat lodge for April, Sunday the 20th was because of weather condition [sic] and lack of officers on site to oversee the sweat area”). With regard to stopping the sweat lodge early, Warden Law responded in his memorandum that, “The officers supervising the sweat lodge cannot [stop the sweat lodge ceremony] arbitrarily or without supervisory authorization. While we are unaware of this occurrence, safety and security concerns may require the facility to make slight modification to an activity. We understand the importance of sweat lodge ceremony, but we reserve the right to alter schedules when it is necessary for safety and security.” *Law Memo*, December 18, 2008, A38. The Johnson and Vollrath memos note that COs do not have sole discretion to halt activities, and that the building schedule must be adhered to so that order is maintained. *Johnson Memo*, December 16, 2008, A42; *Vollrath Memo*, December 16, 2008, A33.

Although inmates, in their grievances and interviews, have referenced other instances of COs stopping the ceremony, most of the complaints surrounding this issue center on a single incident which occurred on November 16, 2008, three days after the initial visit to the facility by the ACLU. The inmates are consistent in stating that when CO Linde called for the inmates to “wrap it up,” those that were inside the sweat lodge did not hear the order. *See Inmate Disciplinary Infraction Reports*, A246-A303. The Pipecarrier, John Knows His Gun, has written that CO Linde did not give a direct order to immediately stop the sweat, but that he merely warned it “was getting close to wrap up time.” *Disciplinary Appeal, John Knows His Gun*, November 25, 2008, A264. Linde called in Shift Supervisor Taft when the inmates did not immediately begin breaking down the lodge. *Taft Interview*, April 16, 2009. The inmates also state that the ceremony started late because Chaplain Meckling did not have the proper materials prepared on time. *See, e.g., Weaving Grievance*, November 16, 2008, A130; *Bryan Informal*, November 17, 2008, A149. Chaplain Meckling stated during his interview that he told the inmates they could have an extended sweat. *Meckling Interview*, February 7, 2009. CO Linde, Warden Law, Assistant Warden Ivins, and Shift Supervisor Taft all state that Meckling would not have the authority to declare an extension, as only the Shift Supervisor or the Administrative Duty Officer (ADO) were authorized to alter the building schedule. Further, Linde, Ivins and Taft all stated that, to their knowledge, no extension was ever authorized on November 16, 2008. During a second interview on May 4, 2009, Chaplain Meckling was less certain of whether he ever indicated to inmates they could have an extended sweat, and he also stated that any such extension would have to be approved by the Shift Supervisor. *Meckling Interview*, May 4, 2009. CO Linde has

stated that the inmates did not obey his command to begin packing up, so he notified Shift Supervisor Taft. Taft arrived and ascertained that the inmates were complying, although Linde told him that the inmates had refused to leave prior to Taft coming onto the scene. Two more COs were called in to assist Linde with pat down searches. *Taft Interview*, April 16, 2009. Taft, in his April 16, 2009 interview, stated that Assistant Warden Ivins instructed him that disciplinary write-ups should occur. The incident ultimately led to about 20 disciplinary write-ups – all of the inmates that participated in the sweat that day. No CCC staff interviewed, including long-time staffers, could recall a similar mass write-up except in a violent situation which occurred in 2008 and resulted in injuries to COs.

Although there are some inconsistencies in testimony, the information learned by the team indicates as follows with regard to the November 16 incident: Chaplain Meckling was late in starting the ceremony and may have told some of the inmates they could have extra time for the sweat. Multiple inmate disciplinary reports indicate that the inmates believed they had until 3:15 to end the sweat ceremony. CO Linde, Shift Supervisor Taft, and the ADO for that day, Assistant Warden Ivins, were not made aware that Chaplain Meckling may have indicated the sweat could be extended. No extension was authorized by any appropriate CCC official. The exact exchange between CO Linde and the Pipe Carrier John Knows His Gun is not known, but it is clear that Linde thought he was ordering an immediate cessation to activities, and Knows His Gun thought they were being warned to “wrap things up” – meaning finish up the ceremony. After Shift Supervisor Taft arrived on the scene the inmates began breaking down the lodge. Assistant Warden Ivins instructed Taft that disciplinary reports should be prepared for all of the inmates at the sweat. Taft and Linde worked together to prepare approximately 20 disciplinary reports.⁷

Allegations of Retaliation

The inmates and ACLU allege that CCC has retaliated against them for reporting incidents. *Griffing letter*, December 16, 2008, A8. Warden Law flatly denies retaliation and has written that “our facility has no tolerance for retaliation through official process [sic].” *Law Memo*, December 18, 2008, A39. In his memorandum, Mr. Johnson stated there was no evidence to support the allegation of retaliation. *Johnson Memo*, December 16, 2008, A43. Mr. Vollrath wrote, “In order for the use of disciplinary action to be considered retaliatory, the action taken would have to be without merit and I could find no actions that would meet that criteria.” *Vollrath Memo*, December 16, 2008, A33. The team presents here the information it learned during the investigation, but notes that follow up interviews with the inmates on these issues were prohibited by ACLU attorneys. Based on the information obtained thus far, the team cannot reach any conclusion as to whether retaliation did or did not occur.

⁷ The exact number of disciplinary reports is unclear. CO Linde states that he wrote up 23 reports. The shift report indicates that 22 reports were written. Assistant Warden Ivins during his interview indicated 21 reports were written. The team was given a total of 17 formal reports and 3 other written statements from inmates, for a total of 20.

(1) November 16, 2008 Sweat Lodge and Disciplinary Write-ups

Given the proximity in time to the initial ACLU visit to the facility on November 13, 2008, the team carefully scrutinized the incident of November 16 which resulted in disciplinary write ups for all of the inmates who attended the sweat lodge on that day. Pipe Carrier Knows His Gun wrote that he believed CO Linde was merely giving notice that it was "close to wrap up time." *Disciplinary Appeal, John Knows His Gun*, November 25, 2008, A264. A witness to the verbal exchange between Linde and Knows His Gun wrote that Knows His Gun never refused to follow a direct order and that CO Linde was rushing the inmates "when it was not even time for us to leave." *Incident Statement of Jimmie Bryan*, November 16, 2008, A267. Many inmates stated during the disciplinary process that they did not hear a direct order and that they were on their last round of the sweat. *Disciplinary Hearing Reports*, A246-A303. The team interviewed the Disciplinary Hearings Officer (DHO), Mr. Robert "JJ" Johnson, on February 24, 2009. Mr. Johnson stated that during the hearings on the November 16 incident, he determined that seven inmates were inside the sweat lodge when CO Linde told Pipe Carrier Knows His Gun to "wrap up" the sweat. When asked how he determined who was inside the lodge, DHO Johnson stated that the information came from one inmate that attended the ceremony, and that some of the other inmates confirmed the information. All of the inmates that were presumably outside of the sweat lodge were then found guilty of disciplinary infractions. However, Shift Supervisor Ken Taft wrote in his November 16, 2008 "Incident Statement" that after he arrived at the sweat lodge the top was removed by inmates and he saw approximately 15 inmates inside the lodge, not seven as was concluded by DHO Johnson. *Incident Statement of Ken Taft*, November 16, 2008, A308. Further, in a document produced on February 3, 2009, CO Linde states that there were 6-8 inmates outside of the "hut." See *Employee/Civilian-Incident Statement of Marvin Linde*, February 3, 2009, A314. This would mean that approximately 15 inmates were inside the lodge. Further, DHO Johnson stated that he never reviewed video footage of the sweat that day. *Johnson Interview*, February 24, 2009.

The documents and interviews concerning the disciplinary review process after the November 16 sweat leave many questions unanswered. During his interview, DHO Johnson stated that he was given no information by any party about whether an extension was authorized by Chaplain Meckling. The Chaplain was never brought in as a witness in the disciplinary hearings or asked about his involvement. *Meckling Interview*, May 4, 2009. The CCC did not investigate why so many inmates clearly believed they were within the allotted time limit. See *Disciplinary hearing documents*, A247-A303. Further, the written statements of Shift Supervisor Taft and CO Linde were not taken into consideration in determining who was in the lodge and video footage was not reviewed by the DHO.

(2) Treatment of John Knows His Gun

On November 30, 2008, approximately two weeks after the incident at the sweat lodge, John Knows His Gun was disciplined with a total of 45 days in administrative segregation after an exchange with Chief of Unit Management Ron Sturchio in the cafeteria and hallway. During his interview, Mr. Knows His Gun stated that kinnikinnick was shown to him by Chaplain Meckling earlier in the day, for use in the sweat lodge. The material looked like a bad mixture that could not be put in the pipe for ceremonial use in the sweat lodge. Mr. Knows His Gun stated that the Chaplain told him to notify Sturchio about his concerns.⁸ When Knows His Gun told Sturchio about the kinnikinnick and said that the mixture was unusable, Sturchio responded that Knows His Gun was going to be removed from his position as Pipe Carrier due to the November 16 incident at the sweat lodge. Knows His Gun stated that he asked Sturchio to put this in writing, at which point someone told him to sit down or he would be put in the hole. Knows His Gun went back to the Chaplain's office and then into the hallway, where he told his sweat lodge set up crew that there would be no pipe that day because of the bad mixture. *See also Disciplinary Appeals of John Knows His Gun*, December 1, 2008, A323-A324. Sturchio then confronted him in the hallway and accused him of "starting a riot." Taft was called in by Sturchio whereupon Sturchio said, "Lock this son of a bitch up," and Taft brought Knows His Gun to Medical prior to placement in administrative segregation. *Interview with John Knows His Gun*, February 6, 2009.

Chief of Unit Management Sturchio's account of this incident differs somewhat from the account of Knows His Gun. In his November 30, 2008, "Incident Statement," Sturchio writes that after Knows His Gun confronted him about the kinnikinnick and said he would have the other inmates write to the ACLU, Sturchio "told inmate Knows His Gun that he is probably going to be removed as the pipe carrier due to his major write up he received and was guilty of approx. two weeks ago for causing issues out in sweat lodge." Sturchio then told Knows His Gun to "move away from me and go sit down." Sturchio also warned Knows His Gun that he was "being flagrant" and that if he continued, he would be placed in SMU. The Sturchio statement then recounts that Knows His Gun confronted him again, more aggressive in his stance, and then went into the hall to have a discussion with other inmates about getting Sturchio fired, including threats of an ACLU law suit. *Sturchio Incident Statement*, November 20, 2008, A315. Sturchio stated during his interview that he told Knows His Gun to stop forming an "unauthorized group," and eventually called in Taft to "lock the son of a bitch up" and take him to administrative segregation. During his interview, Sturchio stated that he did not ever feel physically threatened by Knows His Gun. He also stated he did not know the significance of the Pipecarrier in Native American religion. He stated that he knew that the Pipecarrier is selected from amongst the inmates, and not by the facility. Finally, Sturchio stated that it is understandable that Knows His Gun would be upset concerning the statement about removal as the Pipecarrier. *Sturchio Interview*, February 25, 2009. Knows His Gun was disciplined with 25 day in administrative segregation for a 4109 ("flagrant disobedience"), and with an additional 20 days for 4207 (unauthorized group).

⁸ Chaplain Meckling, during his May 4, 2009 interview, vehemently denied sending Mr. Knows His Gun to Sturchio. Meckling said that he told Knows His Gun not to see Sturchio.

(3) Treatment of Frost, Young, and Chiefstick

Darryl Lewis Frost, AO#2023818, Adrian Young AO#41499, and Jason Chiefstick AO#45861 allege that the CCC has discriminated against them based on race. Mr. Frost and Mr. Young allege that they were unjustly accused of fighting with each other. When the CCC Disciplinary Hearings Office found them "not guilty" of fighting, Chief Security Officer Busby reversed the decision, finding them "guilty" without evidence, and eliminating their clear conduct status. *Human Rights Bureau filings*, A325-A345. Mr. Chiefstick alleges that he was unfairly disciplined after the discovery of "pruno" that his roommate had snuck into their cell. *Chiefstick Interview*, February 6, 2009.

The allegations of Frost and Young were investigated by the Human Rights Bureau, which made a finding of "no reasonable cause" to believe unlawful discrimination occurred. HRB Case No. 0085013313, A336; HRB Case No. 0085013296, A345. The HRB Final Investigative Report indicates,

CCC states Frost's decision was overturned due to new evidence that he was in fact involved in a fight with inmate Young. Busby stated that Frost also admitted to the fight and asked to "make a deal" with him to drop the charges. CCC articulates a legitimate non-discriminatory reason for overturning Frost's decision.

HRB Case No. 0085013313, A336.

The investigative team questioned DHO Johnson and Chief of Security Busby with regard to the allegations of Frost and Young. DHO Johnson stated that he found Frost and Young "not guilty" because no affirmative proof was presented during the initial hearing indicating that a fight took place. Mr. Johnson stated that Frost and Young later admitted to Chief of Security Busby that they had a fight. *Johnson Interview*, February 24, 2009. Chief of Security Busby also stated that Frost and Young both admitted to the fight, and that Frost attempted to make a deal with him if he would allow the "not guilty" decision to stand. Chief of Security Busby stated to investigators that he does not make deals with inmates, and therefore reversed the "not guilty" decision. *Busby Interview*, February 7, 2009. Busby also presented photographs of Young and Frost taken at the time of the alleged altercation. The injuries appeared to investigators to be consistent with injuries sustained in a fight.

The allegations of Frost, Young and Chiefstick could not be followed up on due to ACLU's prohibition on further inmate interviews. It cannot be conclusively determined from this information whether discrimination or retaliation took place.

No Access to an Outside Native American Spiritual Leader

The ACLU alleges that “the participants no longer are allowed a spiritual advisor who can participate in the ceremony with them.” *Griffing Letter*, December 15, 2008, A8. Inmate grievances request the presence of an outside spiritual advisor. *See, e.g., Weaving Informal*, November 19, 2008, A131; *Frost Informal*, August 11, 2008, A175; *Frost Grievance*, August 22, 2008, A176; *Frost Grievance Appeal*, September 22, 2008, A178. Written and verbal responses of the CCC and DOC are consistent in explaining that attempts have been made to recruit a volunteer spiritual advisor, but that these attempts have been, for the most part, unsuccessful. *See, e.g., Twedt Informal*, August 14, 2008, A187 (in which Chaplain Meckling writes, “I have tried over the last year and a half to have a Native American Religious Advisor come to the facility but there has been issues with money and other means of supporting their coming. I will continue to seek an advisor”). Chaplain Meckling stated during his interview that he facilitates eight different religions in the facility, one of which is the Native American religion. His job is to bring in volunteer pastors and religious leaders for the inmates, rather than function directly as a pastor to the inmates. He has had difficulty finding a Native American spiritual advisor willing to consistently come and assist with the sweat lodge. Chaplain Meckling stated that Don Fish, a Blackfeet traditionalist and chemical dependency counselor, came into the sweat as a volunteer during a period of time in the fall of 2008. *Meckling Interviews*, February 7, 2009, May 4, 2009.

The difficulty in recruiting an outside Native American spiritual coordinator was discussed during the interview of Mental Health Coordinator William Dilworth. Mr. Dilworth, who states he is part Osage, said that he has received instruction from a Blackfeet elder concerning American Indian religion, and that he is a Pipe and Bundle carrier. Mr. Dilworth further stated that he has been taught that under traditional American Indian teachings, inmates are not entitled to participate in the sweat lodge at all, due to their crimes. Mr. Dilworth stated that he has told this to the inmates, and that the inmates were upset with the information. *Dilworth Interview*, April 16, 2009. Teammates Andrew Huff (Chippewa Cree) and Jennifer Perez Cole (Assiniboine) have never heard of this restriction on the sweat lodge, and contacted selected American Indian leaders to ask whether such a restriction actually existed. State Senators Jonathan Windy Boy (Chippewa Cree) and Sharon Stewart-Peregoy (Crow) both stated that, while there are variations in traditional practices amongst tribes, there is no general tradition of barring inmates from the sweat lodge, and in fact, the sweat lodge is very often part of a healing process beneficial to inmates. Blackfeet traditionalist Don Fish also stated that there is no blanket rule barring those who have committed crimes from entering the sweat lodge, although in some traditions people who have committed sex crimes against children are not allowed into the lodge. Assiniboine traditionalist Roger White, Jr., stated that everyone is welcome in the sweat lodge, and restricting entry to the lodge is not good.

Don Fish confirmed that he assisted with the sweat lodge ceremony and also stated that he told Meckling he was willing to continue coming to the sweat. Mr. Fish

stated that Chaplain Meckling has not contacted him to invite him back up to the sweat lodge ceremony. *Telephone Conversation with Don Fish*, April 17, 2009. During his May 4, 2009, interview, Chaplain Meckling confirmed that he has not contacted Mr. Fish in several months. *Meckling Interview*, May 4, 2009.

IV. CONCLUSION

The team submits this Report to the Department of Corrections for review and makes itself available for follow up as necessary.

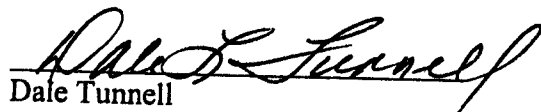
DATED this 15th day of May, 2009.



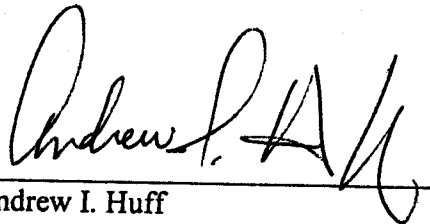
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GAIN Attorney
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PHOTOGRAPHS



Area of old sweat lodge grounds
February 6, 2009



Current sweat lodge area
February 6, 2009



View of sweat lodge area looking towards
the recreation area bathroom
February 6, 2009



Sweat lodge area
February 6, 2009



View from brick partition looking towards
gym video monitor
February 6, 2009



Inmates at sweat lodge ceremony
Vollrath photo, date unknown



Inmates at sweat lodge ceremony
Vollrath photo, date unknown



View of sweat lodge
February 6, 2009



Interior of sweat lodge
February 6, 2009



Recreation area bathroom
February 6, 2009



Hallway leading to recreation area
February 6, 2009



View from hallway into gym entryway
showing brick partition
February 6, 2009