

**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.