

**EVALUATION OF THE INMATE GRIEVANCE SYSTEM
OHIO DEPARTMENT OF REHABILITATION & CORRECTION**

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The contents of this document reflect the views of Vincent M. Nathan. The contents do not necessarily reflect the official views or policies of the National Institute of Corrections.

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**EVALUATION OF THE INMATE GRIEVANCE SYSTEM
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Vincent M. Nathan

I. Introduction

In May 2000, the Ohio Department of Rehabilitation and Correction ("DRC") renewed for the period commencing July 1, 2000 and ending June 30, 2001 an earlier contract for my services as a consultant/monitor in *Allen v. Carter*, Case No. 3:93CV7563, a suit in the United States District Court in the Northern District of Ohio. The renewed contract added the following to the description of my duties: "Mr. Nathan will also provide consultation and assistance in a review and revision of the Department's inmate grievance procedure." It is in fulfillment of this amended scope of work that I submit this report concerning the DRC's inmate grievance system.

II. Methodology

Having discussed the scope of this project initially by telephone with Assistant Director Thomas Stickrath, I met in Toledo on July 19, 2000 with Cheryl Jorgensen-Martinez, the DRC's chief inspector, and with Gregory Bucholtz, Ph.D., an assistant chief inspector. That discussion was helpful in further defining the scope and purpose of this report and resulted in Dr. Bucholtz's assumption of the role of liaison between the chief inspector's office and the working group I indicated I hoped to establish from the DRC's Bureau of Planning and Evaluation and Bureau of Research to assist me in preparing this report.¹

At my subsequent request, Director Reginald Wilkinson and Mr. Stickrath agreed to make

¹ Dr. Bucholtz was the assistant chief of the DRC's Bureau of Research until the beginning of April 2000, when he became an assistant chief inspector. Thus, he was an ideal choice to serve in his position as liaison.

available persons from the DRC staff I requested to assist me. These persons and I comprised the group that worked with Dr. Bucholtz to develop a research design for the project and, subsequently, to implement that design.

I cannot express sufficiently my appreciation for the hard work, interest, objectivity, intellectual rigor, and professional commitment of Dr. Bucholtz and my colleagues on the working group. In addition to me, the following persons comprised this group:

Bureau of Planning & Evaluation

Evalyn C. Parks, Bureau Chief
Stephen V. Anderson, Assistant Bureau Chief
Gayle S. Bickle, Researcher
Tiffany Cooper, Researcher
Paul J. Konicek, Researcher
Elizabeth A. Moore, Researcher
Kelly A. Ward, Researcher

Bureau of Research

Coretta Pettway, Researcher

These persons brought to the project a degree of professional expertise in the field of social science research, including but not limited to empirical research methodology, without which it would have been impossible to obtain the data that underlie many of the conclusions I have reached. I also received complete assistance from the chief inspector, her staff, and the department's executive leadership. In summary, both by its words and its actions, the DRC made it clear to me that it was seeking an objective, independent, call-it-as-you-see-it report, and those are the objectives I have attempted to achieve in preparing this document.

With the department's encouragement, I arranged for a meeting with S. Richard Arnold,

the Executive Director of the Prison Reform Advocacy Center (“PRAC”), and Peter Davis, the Executive Director of the Correctional Institution Inspection Committee (“CIIC”). This meeting occurred on October 2, 2000, at which time I shared with Mr. Arnold and Mr. Davis the working group’s tentative conclusions regarding a research design for this project. PRAC is a non-profit organization in Cincinnati, Ohio, interested in advocacy for the rights of incarcerated persons; the CIIC is a creation of the Ohio Legislature and answers directly to a committee of State Representatives and Senators. Both PRAC and the CIIC had expressed a strong interest in an evaluation of the effectiveness of the inmate grievance system and both had shared ideas about such an evaluation with departmental personnel prior to my involvement in this project.

Taking into account input from Mr. Arnold and Mr. Davis, the working group and Dr. Bucholtz completed the research design for this project. I shall not undertake to describe that design in detail; rather, I have attached the final version of this document as Exhibit A to this report.

Pursuant to that research design, the working group developed separate surveys to administer to wardens and inspectors of institutional services (“institutional inspectors”) throughout the DRC, as well as to inmates and supervisory staff at seven selected institutions. I have attached those surveys as Exhibit B to this report. We administered the survey for institutional inspectors at a quarterly meeting of the inspectors on September 21, 2000, and tested the inmate survey and the staff survey at Pickaway Correctional Institution on October 12, 2000. I distributed the wardens questionnaire to all DRC wardens by letter of October 19, in which I described the project in some detail. I also asked the wardens to post a brief notice for inmates,

explaining the nature of the evaluation and letting them know how to be in touch with me by letter. After revising both the inmate survey and the supervisors survey, members of the working group made on-site visits to Madison Correctional Institution (October 26), the Ohio Reformatory for Women (October 27), Southeastern Correctional Institution (November 1), Mansfield Correctional Institution (November 3), Southern Ohio Correctional Institution (November 7), and Belmont Correctional Institution (November 14).² The purpose of these visits was to distribute the supervisors survey and to administer the inmate questionnaire to a pre-selected random sample of inmates. Because of the substantial numbers of inmates in the samples, the administration of these surveys would have been impossible without the assistance of institutional staff, in particular the wardens and the institutional inspectors. On behalf of the entire working group, I express appreciation for the outstanding cooperation these persons provided.

I joined other members of the working group at PCI, ORW, MaCI, and SCI and made separate visits to ManCI and SOCF on November 2 and November 9, respectively. During these visits, I interviewed the institutional inspector, the assistant institutional inspector (at SOCF only), the warden, and in some instances other staff, *e.g.*, the Rules Infraction Board hearing officer.³

² On occasion throughout this report, I shall refer to the focus institutions in abbreviated form: Pickway Correctional Institution (PCI), Madison Correctional Institution (MaCI), the Ohio Reformatory for Women (ORW), Southeastern Correctional Institution (SCI), Mansfield Correctional Institution (ManCI), Southern Ohio Correctional Institution (SOCF), and Belmont Correctional Institution (BeCI).

³ The timing of my visit to ORW was unfortunate, as Warden Timmerman-Cooper was involved all day in dealing with an emergency. A van carrying inmates to ORW was involved in an accident resulting in serious injuries to several prisoners. As a result, I suggested that Warden Timmerman-Cooper and I schedule a lengthy discussion by telephone, and we held that discussion on November 28.

My interviews with institutional inspectors, in particular, were lengthy and detailed.⁴

While other members of the working group were engaged in tasks at the focus institutions, Evalyn Parks and Elizabeth Moore engaged in an extensive analysis of the sample of formal grievances (including the underlying informal complaint resolution form) and original grievances the research design called for. Both met with me in Columbus on October 17 to develop consistent coding criteria for evaluating these documents. Upon completing their review, Ms. Parks and Ms. Moore entered their evaluations in a computerized data base. I undertook a review of the sample of grievance appeals, which necessarily involved a reading of the underlying grievance and, in many instances, the initial informal complaint resolution form. I recorded my impressions of these appeal documents in the form of typed notes but did not enter those conclusions in the computerized data base. The review of almost 500 grievances and ICRs, approximately 85 original grievances, and 225 appeals to the Office of the Chief inspector provided an independent, objective evaluation of how the system is operating against which to measure the more subjective responses to structured surveys by various participants in the grievance process.

In addition to the responses to the survey instruments, upon which I have relied heavily, inmates provided me with substantial input through correspondence to my office in Toledo. I read, considered carefully, and responded to all correspondence from inmates. Unfortunately, the scope of this project did not permit me to engage in extensive interviews of prisoners, though I

⁴ Distance and time constraints did not permit me to visit Belmont Correctional Institution. At my request, Warden Arthur Tate met with me in Columbus on December 7, 2000. At that time, BeCI's new institutional inspector had been on the job for only several weeks.

spoke casually with a few prisoners at several institutions and interviewed two inmates, both at SOCF, whose particularly noteworthy letters reached me before I visited that facility.

On October 16 and 17, I had an opportunity to conduct in-depth interviews with Chief Inspector Jorgensen-Martinez and the four assistant chief inspectors assigned to her office: Linda Coval, John Arbogast, Annette Chambers, and Gregory Bucholtz.⁵ All were extremely candid and forthcoming in their comments to me and made a number of suggestions for the improvement of the current system.

In summary, I am satisfied that this report reflects important and credible input from inmates, the chief inspector and her staff, wardens, institutional inspectors, and institutional supervisory staff. It has benefitted from the participation of skilled professional staff in the Bureau of Planning and Evaluation and the Bureau of Research of the DRC. The report that follows relies on the enormous quantity of information this process created, as well as on my own experience in the development and implementation of the DRC's inmate grievance system in 1976 and 1977, when I was serving as special master in *Taylor v. Perini*.⁶ To my knowledge, this is the most comprehensive review of the grievance system since the department implemented it at that time, and I hope that the report that follows will be useful to Director Wilkinson and his staff in

⁵ I did not interview Bobi Little, whose permanent assignment is that of institutional inspector at the Franklin Pre-Release Center. Because one of the experienced assistant chief inspectors, John Arbogast, has been on a special assignment for the DRC for several months, the chief inspector detailed Ms. Little to the office of the chief inspector as a temporary replacement for Mr. Arbogast.

⁶ Anyone interested in the process leading to the development of the grievance system will find a description of that process in several reports I submitted in *Taylor v. Perini*. See 413 F. Supp. 189, 265-267; 421 F. Supp. 740, 742-744; and 431 F. Supp. 566, 570-572.

further strengthening this important management mechanism.⁷

III. General Description of the Inmate Grievance Process

A. Administrative Rules and Policies

In order to understand the DRC's inmate grievance system, one must review four basic documents: two administrative rules and two departmental policies. These are AR 5120-30, AR 5120-9-31, DRC Policy 203-01, and DRC Policy 203-02. Administrative rules set forth the basic operating principles of the department. These rules must be consistent with the legislative purpose and authority of the issuing agency and constitute, in somewhat general terms, the agency's objectives with respect to the subject of the rule. Departmental policies, on the other hand, are more in the nature of directives, intended to provide additional detail to assist in the implementation of the administrative rule to which the policy relates. Thus, one would expect a greater degree of generality at the level of the administrative rule and more specific provisions regarding the details of implementation in departmental policies. This distinction, however, certainly is not obvious in the four documents that establish the DRC's inmate grievance system.

AR 5120-9-30 establishes the position of chief inspector to serve in the unclassified service as the chief of the division of special services. The rule sets forth the duties, authority, and

⁷ Let me acknowledge at the outset that it has been difficult to confine the limits of this report. The vast amount of information the working group developed required me to focus my discussion on what seem to me to be the major characteristics of the system and to emphasize problems to which I believe the DRC should give high priority. The appendix to this report contains a substantial amount of information that my text either does not reflect or mentions only in passing, and that information will be of assistance to the chief inspector's office and to departmental officials in assessing facets of the inmate grievance system I do not discuss in this report.

resources delegated to the chief inspector, and describes specifically the chief inspector's exclusive jurisdiction over grievances against the managing officer (warden) or inspector of institutional services at any DRC institution.

AR 5120-9-30 then turns to the position of the inspector of institutional services and directs the warden to appoint an appropriately qualified person to that position. The institutional inspector "serve(s) as a member of [the warden's] staff ... and shall be an administrative assistant to the managing officer." The AR specifies the primary responsibilities of the institutional inspector, including the investigation and processing of grievances and monitoring of "the application of institutional and departmental rules affecting the services to inmates or the security of the institution." The rule specifically charges the institutional inspector with the tasks of personally training staff on the operation and purpose of the grievance system, as well as personally conducting orientation programs for newly received inmates regarding the grievance procedures.

Administrative Rule 5120-9-31 outlines many, but not all, details of the inmate grievance procedure. It establishes the scope of the grievance system to include "any aspect of institutional life. It [a grievance] may concern departmental or local institutional policies, procedures, rules and regulations or the application of any of these to the grievant. It may also relate to actions on the part of any staff member or inmate affecting the grievant." The rule further establishes that the grievance system "affords a broad range of meaningful remedies, including modification of institutional policies, restoration or restitution for personal property, and disciplinary action against employees who wilfully violate institutional rules."

Following the description of the scope of the system, the AR identifies certain matters that inmates may not raise through the grievance process. These exclusions are decisions relating to inmate discipline, and complaints “unrelated to institutional life such as legislative action, policies and decisions of the adult parole authority, judicial proceedings and sentencing ... No claim involving subject matter exclusively within the jurisdiction of the courts or other agencies will be considered.”

This AR outlines the right of an inmate to mail “kites and written requests” to which the prisoner is entitled to a written or oral response within five working days “after receipt by the appropriate staff member or administrator.” Paragraph F specifically provides that “(a)n inmate should first attempt to resolve his grievance by contacting in person or in writing the appropriate institutional department or staff member whose area of responsibility is related to the grievance” Although there is no specific mention of the informal complaint resolution procedure that DRC Policy 203-02 describes, the AR assumes that an inmate will not file a grievance with the institutional inspector unless the informal process fails to produce a resolution that is satisfactory to the inmate.

AR 5120-9-31 defines an “emergency grievance” and requires the institutional inspector to “immediately take corrective action” in response to such a grievance. It also mandates the receipt of input from staff and other inmates if the grievant is challenging an institutional policy or practice. The rule outlines the time limits under which the institutional inspector must respond to grievances (15 working days unless the inmate agrees to an extension, with the caveat that the

chief inspector must approve any extension beyond 30 days).⁸ It also establishes a period of five working days during which an inmate may appeal the institutional inspector's decision to the chief inspector. The chief inspector must respond to the appeal within 20 working days, but may simply "notify" the inmate of indefinite extensions, so long as "the processing of a grievance from initiation to final disposition shall not exceed 90 days, unless the grievant agrees in writing to an extension for a fixed period."

Somewhat difficult to reconcile with these time limitations is a provision that defers final resolution of some grievances at the institutional level until the warden approves the institutional inspector's recommendation: "If the resolution of the grievance is not within the scope of authority of the inspector of institutional services, he shall submit his findings and recommendations concerning the disposition of the grievance to the managing officer for his endorsement, modification, or disapproval. Within ten working days, the managing officer shall respond to the inspector of institutional services." The following paragraph dictates that the inspector must in all cases provide the inmate with written notice of the resolution of the grievance and the reasons for that resolution; as a result, the inspector will notify the grievant that the former has forwarded a recommendation to the warden for approval or action. What is not clear is how and when the inmate learns of the warden's final decision in those cases in which the inspector refers a recommendation to the managing officer.

In addition to detailing the institutional inspector's grievance-related responsibilities, AR

⁸ In actuality, the rule requires the institutional inspector to respond within ten working days, but allows a five-day extension without the inmate's consent.

5120-9-31 requires the inspector to “make a continuing survey of all institutional areas to determine compliance with administrative and institutional regulations” and to submit a report of the inspector’s findings to the warden “on a monthly basis or more often if necessary.” The AR also reserves to the inspector the power to issue a misconduct report when an inmate files a grievance containing “false accusations and statements ... made in a knowing, deliberate, and malicious attempt to cause significant injury to another party and the potential for such injury is substantiated.”

Policy 203-01 relates to the inmate grievance procedure and, thus, should provide additional detail for implementing AR 5120-9-31. All that I find in the way of additional substance is the requirement that the institutional inspector ensure “that provisions are made for informing non-English-speaking inmates, as well as impaired and handicapped inmates, of the inmate grievance procedure.” The publication, “Using the Grievance Procedure,” must be available in English “and a language other than English if it is found that a significant portion of the inmate population is conversant in that language.” The policy repeats the scope of and exclusions from the grievance system described in AR 5120-9-31.

Unlike that administrative rule, however, which sets time limits for the institutional and chief inspectors, the departmental policy establishes time limits for filing a grievance. The inmate must file a grievance, “formally or informally, in writing, not later than 14 calendar days from the date the grievant became aware or reasonably should have become aware of the event giving rise to the grievance. In any case, the formal grievance must be filed no later than 30 calendar days from the date the inmate became aware of the event giving rise to the grievance.” The policy

states that all time limits imposed on the inmate by this rule and on the institutional and chief inspectors by AR 5120-9-31 “will be strictly enforced” except that “the Chief Inspector or his/her designee has the unilateral right to waive all time limits on a case by case basis ... consistent with the procedure outlined in 5120-9-31(H)(5).” The latter provision reads as follows:

Should the grievance not be resolved by the inspector of institutional services within ten working days, he shall notify the inmate in writing of the reasons for the extension of time with a copy to the chief inspector. If the grievance is not resolved within 15 working days, the inmate shall be entitled to file his grievance directly with the chief inspector unless the inmate has agreed in writing to an extension of the time for a response. Any extension of time beyond 30 days must be approved by the chief inspector.

This qualifier, which applies only to institutional inspectors’ responses, appears to constrain severely the “unilateral right to waive all time limits on a case by case basis.” (Emphasis added.)

DRC Policy 203-01 provides the first mention of the informal complaint resolution procedure that Policy 203-02 further describes. Policy 203-01 also requires inmates to obtain formal grievance forms directly and exclusively from the institutional inspector. Finally, the rule also identifies the institutional inspector as the person to whom staff and inmates may make comments concerning the operation of the grievance procedure in advance of scheduled internal management audits.⁹

Apart from these provisions, DRC Policy 203-01 appears only to repeat other substantive

⁹ I reviewed the most recent internal management audit report for each of the focus institutions. None of these reports addressed in any depth the problems the grievance system faces. For example, none of the management audit reports contained any findings or recommendations on the important subject of the timeliness of responses by supervisors and institutional inspectors.

matters addressed in AR 5120-9-31 and to add ministerial record-keeping and reporting procedures.

DRC Policy 203-02 addresses the informal complaint resolution process and requires that forms for this purpose be available to all inmates. The rule requires the inmate to submit an informal complaint resolution form to “the supervisory person most responsible for the particular subject matter of the complaint.” This action is a precondition to filing a grievance unless the institutional inspector determines to waive the informal process because of the emergency nature of the grievance or because the inmate’s complaint involves the use of force with no report or inappropriate supervision.¹⁰

While this policy limits to the institutional inspector the power to issue misconduct reports for false accusations and statements made in a knowing, deliberate, and malicious attempt to cause significant injury, etc. in an informal complaint, the policy authorizes initiation of disciplinary action by the recipient of the informal complaint for “disrespectful, threatening, or otherwise inappropriate comments made in an informal complaint.”

Policy 203-02 also sets time limits for the completion of the informal complaint process. An employee who receives such a complaint must respond to it in writing within five working days. If the inmate receives no response to an informal complaint within seven working days, the prisoner is free to “present the matter to the Inspector of Institutional Services.” The inspector

¹⁰ Policy 203-02 defines “inappropriate supervision” as “(a)ny continuous method of annoying or needlessly harassing an inmate. It is a pattern of behavior on the part of a staff member directed against one or a group of inmates intended to needlessly annoy or harass. This pattern of behavior may include, among other things, abusive language, racial slurs, and writing of conduct reports (tickets) for non-existent reasons.”

then must “take steps to obtain an immediate response” to the complaint. Only when the inmate finally receives a response to the informal complaint may he file a grievance: “The inmate shall attach the ICR form containing the response to the grievance.”

I shall not belabor the obvious by pointing out all of the difficulties one encounters in an effort to make sense of these four documents. In many respects, they are disorganized, ambiguous, and contradictory. A few examples will suffice.

For an inmate to understand all the time limitations under which the grievant, a supervisory employee, the institutional inspector, and the chief inspector operate, the prisoner must consult numerous provisions in various of these documents:

- An inmate must file an informal complaint [203-01(D)], a formal grievance regarding use of force without a report or inappropriate supervision [203-01(C)],¹¹ an emergency grievance [203-01(K)], or an original grievance against the institutional inspector or warden [AR 5120-9-30(G)] within 14 calendar days from the date the inmate became aware or reasonably should have become aware of the event giving rise to the grievance.
- The “supervisory person most responsible for the particular subject matter of the complaint” must respond in writing to the informal complaint within five working days [203-02(F)]. If that person does not so reply, the inmate may, after seven working days, “present the matter” to the institutional inspector, who must obtain an immediate response [203-02(H) and (I)].
- When the inmate gets this response (there being no specific provision for dealing with a complete failure of the supervisor to respond), he must file a formal grievance within 30 days following his awareness of the event giving rise to the grievance [203-01(D)].¹² The actual number of days the inmate will have to file a

¹¹ In order to understand the nature of and procedures controlling a grievance relating to “inappropriate supervision,” the inmate also must consult AR 5120-9-04.

¹² The chief inspector has argued that Policy 203.01 (D) addresses the problem of a non-responding supervisor as follows: “Expiration of a time limit to respond to a **grievance** entitles
(continued...)”

grievance will depend on how long it took ultimately to receive a response to the informal complaint and how long it took to obtain a formal grievance form from the institutional inspector.

- The institutional inspector must respond in writing to the grievance within 15 working days unless the inmate agrees to an extension; the chief inspector must approve any extension beyond 30 days [AR 5120-9-31(H)(5)].
- If the resolution of the grievance is “not within the scope of authority” of the inspector, he must submit his findings and recommendations to the warden for endorsement, modification, or disapproval. In any such case, the warden must respond to the inspector within ten working days [AR 5120-9-31(H)(6)].
- The inmate must appeal the institutional inspector’s decision to the chief inspector within five working days of “receipt of written notice of the resolution of his grievance” [AR 5120-9-31(H)(8)]. It is virtually impossible to establish the date of receipt unless the inspector personally delivers the response to the grievant and records the date of delivery.
- The chief inspector must respond in writing to the appeal within 20 working days, but may notify the inmate of any extension so long as the processing of the grievance from initiation (of the informal complaint? of the grievance?) does not exceed 90 days (unless the grievant agrees to a longer period) [AR 5120-9-31(H)(8)].
- The chief inspector must respond to an original grievance (against the institutional inspector or the warden) within 20 working days; apparently, however, the chief inspector’s office may “approve” the chief inspector’s request for an extension, with notice to the director of the DRC [AR 5120-9-30 (H)].

In summary, an inmate who is attempting to understand the time frames within which the

¹²(...continued)

the inmate grievant to move the **grievance** to the next stage of the procedure” (Emphasis added.) As a matter of practice, staff may rely on this provision to resolve this problem. Supervisors, however, respond to informal complaints, not grievances. Policy 203.02 provides specifically that “(i)t is the policy of the Department of Rehabilitation and Correction that before an inmate files a **grievance** with the Inspector of Institutional Services, he or she should first attempt to resolve the **complaint** by presenting it to the (supervisor) of the department most responsible for the particular subject matter of the **complaint**.” (Emphasis added.)

grievant and others must operate under the grievance system must consult two departmental policies and at least two administrative rules on the subject. Even then, he is left with significant unanswered questions on the issue of time limits, which will be “strictly enforced” against the inmate according to 203-01(D).

One example of ambiguity in the regulations governing the grievance system is the relationship of the institutional inspector to the chief inspector. AR 5120-9-30 provides that the warden will “appoint” the inspector and that the inspector will be “an administrative assistant to the managing officer.” An earlier paragraph of the same regulation states that the chief inspector “shall take part in the annual review” of all inspectors as well as “in the selection process” for this position. Most confusing to me, the AR calls for the chief inspector to “provide functional supervision” to inspectors.

Administrative rules and policies sometimes contradict each other; in other instances, contradictions may exist within a single document. For example, AR 5120-9-31 indicates that the first step of the resolution process is for the inmate to “**contact in person or in writing** the appropriate institutional department or staff member whose area of responsibility is related to the grievance.” (Emphasis added.) Policy 203-02, however, imposes a requirement that the inmate use a specified form, and thus to file a **written** informal complaint. Moreover, the person to whom the inmate must submit the informal complaint is “**the supervisory person most** responsible for the particular subject matter of the complaint.” (Emphasis added.) Yet an earlier provision of the same policy indicates that “**the supervisor or staff member involved**” must give the informal complaint “due consideration and provide the inmate with a prompt, professional,

written response.” (Emphasis added.) In practice, this ambiguity has resulted in confusion regarding whether it is appropriate for the supervisor who receives an informal complaint to refer it to a subordinate staff member (sometimes the subject of the complaint) for response.

Although AR 5120-9-31 recognizes the existence of emergency grievances, and Policy 203-02 authorizes the institutional inspector to accept such a grievance without requiring the inmate to exhaust the informal complaint resolution process, the inmate who submits what he believes to be an emergency grievance (*e.g.*, regarding medical care) is taking a substantial risk that the inspector will reject the grievance as non-emergent, by which time it may be impossible for the inmate to file a timely informal complaint form. Apart from the unclear provision in Policy 203-01 allowing the chief inspector to “waive all time limits on a case-by-case basis,” nothing in the rules or policies tolls for any reason the time limits imposed on inmates.

The use of “working days” and “calendar days” for different deadlines increases enormously the difficulty inmates and staff encounter in determining “timeliness.” In general, staff are subject to “working day” limits while inmates are subject to “calendar day” limits. AR 5120-9-31, however, measures the inmate’s time limit to file an appeal with the chief inspector in “working” days. Nowhere is there a definition of “working day.” Is a day-off on a Wednesday a “working day” for the supervisor who receives an informal complaint or an institutional inspector who receives a formal grievance on the preceding day? What is a “working day” for an inmate for the purpose of filing an appeal?

Nor is it obvious where the line is to be drawn between “disrespectful, threatening, or otherwise inappropriate comments” in an informal complaint that may result in a supervisor’s

issuance of a misconduct report and a “false accusation and statement ... when made in a knowing, deliberate, and malicious attempt to cause significant injury to another party and the potential for such injury is substantiated,” for which only the institutional inspector may issue a misconduct report. Surely, any “false accusation and statement” within the scope of the definition in 5120-9-31(L) is “inappropriate.”

Another member of the working team who reviewed the rules and policies I have discussed concluded that these documents do not present information “in an orderly, systematic manner.” It took that person – who is neither an attorney nor an inmate – two days create a flow chart of the grievance process. Thus, it should come as no surprise that between 29.9% and 38.2% of the inmates surveyed found one or more portions of the grievance process difficult to understand. (Tables Inmate-1, Inmate-2, Inmate-3, and Inmate-4) Nearly a quarter of the supervisors surveyed did not know or could not correctly distinguish the difference between an informal complaint and a formal grievance. (Table Supervisor-21) Though other reasons contribute to this confusion on the part of inmates and staff, I believe that the lack of clarity and organization in the administrative rules and the departmental policies is the foundational flaw underlying this problem.¹³

Recommendation 1: The DRC should repeal AR 5120-9-30, AR 5120-9-31, DRC Policy 203-01 and DRC Policy 203-02 and replace those documents with a single administrative rule that addresses all facets of the inmate grievance system. The new rule should eliminate all conflicts in the existing documents, avoid ambiguity, establish clear time lines, and provide a

¹³ The chief inspector has been working on revised policies and rules for more than one year. The chief inspector and other departmental leaders have delayed finalizing these amendments until the completion of my report.

clear and understandable statement of procedures that both staff and inmates can comprehend. The new rule also should incorporate later recommendations in this report relating to the substance of the grievance system.

B. Overview of Usage of Grievance System

During fiscal year 2000 (July 1, 1999 through June 30, 2000), a total of 4,585 inmates filed a total of 8,580 formal grievances.¹⁴ The number of inmates filing grievances reflects approximately 10% of the average daily population at 33 institutions (including two privately operated facilities) that held inmates during all or part of fiscal year 2000. Both the number of users and the number of grievances increased from fiscal year 1999 to fiscal year 2000, though the DRC's inmate population fell significantly during this period. Inmates appealed approximately 32% (2,765) of these grievances to the office of the chief inspector. The chief inspector also received 605 original grievances against wardens or institutional inspectors.

Because there are no summary records of the number of informal complaint resolution forms inmates submit, the office of the chief inspector is unable to capture that information. An understanding of the number of complaints staff receive and are able to resolve at this level is critically important to any overall analysis of the effectiveness of the grievance system.¹⁵

¹⁴ I have taken this and other information in this subsection from the *FY 2000 Annual Report of the Inmate Grievance Procedure*, which the office of the chief inspector published in December 2000 ("FY 2000 Annual Report"). The FY 2000 Annual Report contains an enormous amount of important information about the operation of the grievance system that I shall not attempt to restate in this report. I strongly urge departmental executives to read my report and the FY 2000 Annual Report together.

¹⁵ The informal complaint resolution form has a place for the inmate to describe his or her complaint and a place for the supervisor to respond in writing. The form consists of an original and three copies. The inmate completes the "complaint" portion of the form and, according to
(continued...)

The rate of usage by inmates at facilities that were open during all of fiscal year 2000 varied widely, from approximately 2% or less at low security and pre-release facilities such as Dayton Correctional Institution and the Franklin Pre-Release Center to more than 33% at high custody institutions such as the Ohio State Penitentiary (38%) and SOCF (34.6%).

Approximately 21% of the formal grievances on which staff completed action in FY2000 were "resolved," *i.e.*, problem corrected, correction pending, or report/recommendation to warden. Some 79% (6,171) were "not resolved," *i.e.*, staff found "no merit" to the grievance. A negligible percentage (approximately one-tenth of one percent) were withdrawn at the inmate's request.

The rates of usage and the outcomes the FY 2000 Annual Report identifies provide a useful starting point for analyzing the inmate grievance procedure. These data, however, raise more questions than they answer, and it is many of those questions that the remainder of this report will attempt to address.

Recommendation 2: I recommend that institutional inspectors begin to maintain a computerized log of informal complaint forms they receive from inmates at the outset of the grievance process, copies the such complaint forms they receive from supervisors, and informal complaint forms inmates attach to formal grievances. Institutional inspectors should include relevant data regarding these ICRs in monthly and annual reports. I further recommend that the office of the chief inspector incorporate this information in future annual

¹⁵(...continued)

institutional practice, must send the original and two copies to the appropriate supervisor and one copy to the institutional inspector. When the supervisor answers the complaint, that individual keeps one copy, returns one copy to the inmate, and sends one copy to the institutional inspector. If the inmate subsequently files a grievance related to the earlier complaint, the grievant must attach his or her only copy of the completed informal complaint resolution form to the grievance.

reports (following the report for FY 2001).

IV. Obstacles to the Use of the Grievance System

In this section of my report, I shall identify and discuss certain possible or actual obstacles to inmates' use of the grievance procedure. In the interest of limiting the length of this report, I have confined my discussion to what I regard to be the most important of these potential obstacles. In response to this report, I hope that the DRC's leadership also will invite input from the chief inspector, institutional inspectors, inmates, and others concerning additional possible obstacles before making final revisions to the current system.

A. Obstacle 1: Difficulties of Use and the Absence of Orientation

1. Rules, Policies, and Written Materials

I have already discussed at some length the extent to which the administrative rules and the departmental policies that govern the grievance system are disorganized, ambiguous, and contradictory. For the reasons I have stated, I believe that these difficulties constitute a major obstacle to the use of the grievance system by many inmates.

A cursory review of "Using the Grievance Procedure," which inmates are supposed to receive, indicates that it is of very little help in deciphering the complex provisions of the formal rules and policies. For example, the reader of "Using the Grievance Procedure" does not learn that an inmate must submit a written informal complaint before filing a formal grievance. Nor does the pamphlet outline any of the time constraints that apply to inmates wishing to file a formal grievance. In general, institutional inmate handbooks add little to what an inmate learns from "Using the Grievance Procedure." An exception is the ORW handbook, which contains a

substantially better but far from complete explanation of the process. Some handbooks are available only in the English language.

2. Orientation of Incoming Inmates

Despite the fact that AR 5120-9-30 requires the institutional inspector to personally conduct “orientation programs for newly received inmates relative to the purposes and functions of the grievance procedures,” it is clear that not all inmates receive initial orientation on this subject and that many inmates who may receive orientation do not in fact understand the system. Because new inmates arrive on a daily basis at Pickaway Correctional Institution and may appear for orientation as they arrive, the institutional inspector at that facility is not confident that he orients all incoming inmates on the subject of the grievance system. He also acknowledged that if orientation occurs on a day when the inspector is not in the prison for some reason, some other staff member provides orientation on the grievance system. The orientation process at Mansfield Correctional Institution involves the use of what the institutional inspector described as a “very long” videotape, which inmates do not like. Inmates on death row receive even less by way of orientation – a packet of written materials only. Neither the inspector nor the assistant inspector is directly involved in the orientation process at ManCI. Inmate orientation on the grievance system at Madison Correctional Institution also relies exclusively on a videotape. Nor is the institutional inspector at SOCF involved in the orientation process for new prisoners. The inspector at the Ohio Reformatory for Women reported to me that she participates personally in the orientation of all newly arrived inmates, though this was not the case at ORW prior to June 2000 when the current inspector assumed that office. The inspector at Southeastern Correctional

Institution attempts to participate personally in all orientation programs but sometimes is forced to rely on a videotape "as a matter of last resort."

3. Inmates' Lack of Knowledge of System

Roughly half of the inmates (52.9%) responding to the survey acknowledged that they received written materials explaining the grievance system. (Table Inmate-6) The highest percentage who responded affirmatively to this question was at Belmont Correctional Institution (72.1%). (Table Inmate-6 Crosstabulation) Approximately one-third of the inmates who received written materials found them difficult to understand. (Table Inmate-7a) Significant percentages of responding inmates found one or more of the grievance-related forms to be difficult to understand: informal complaint form (23.1%) (Table Inmate -31); formal grievance form (26.9%) (Table Inmate-32); appeal form (28.9%). (Table Inmate-33) Slightly less than half the inmates (43.8%) acknowledged the need for help in filling out one or more of these forms. (Table Inmate-34)

The inmate survey asked inmates, "If you did not use any part of the grievance process, why not?" Although few respondents answered "I did not know about the grievance process" in response to this question, inmates' responses to other questions reveal that those who had not used the grievance system were much less likely to know what the different parts of that system were. For the informal complaint process, 32.8% of those who had never used the grievance system responded that they "didn't know what it was," compared to only 1.4% of those who had used the system. (Table Inmate-1 Crosstabulation) Likewise, non-users were much more likely to respond "I don't know what this is" when asked about the formal grievance process (35.6% of

the non-users vs. 6.5% of the users). (Table Inmate-2 Crosstabulation) A relatively high percentage of both groups had never heard of the original grievance process, but the non-users again were more likely than the users to have “never heard of it,” 49.3% vs. 33.4%. (Table Inmate-4 Crosstabulation)

Nancy Barber, the DRC’s literacy coordinator, reviewed “Using the Grievance System,” policies 203-01 and 203-02, and administrative regulations 5120-9-30 and 5120-9-31. She also reviewed the informal complaint resolution form and the formal grievance form. She found that the language in these documents was appropriate for inmates reading at approximately the eighth grade level. This is the case for approximately half the DRC’s population. For inmates reading below this level, the language in these materials would be “very challenging.” Ms. Barber made a number of constructive suggestions that I hope departmental officials responsible for drafting a new administrative rule for the grievance system will discuss with Ms. Barber and take into consideration in drafting the new rule.

In summary, the policies and rules governing the grievance system are unduly complicated; inmates receive little if any help from written materials they may receive in the form of “How to Use the Grievance System” and institutional handbooks; institutional inspectors often do not provide supplemental information during the orientation process; inmate responses to relevant questions on the inmate survey indicate that a substantial number of prisoners find elements of the system difficult to understand; the language used in policies, administrative rules, and other documents related to the grievance system is difficult for approximately half of the DRC’s population to read with understanding; and a disproportionate number of inmates who have never

used any part of the grievance procedure do not understand what the various parts of the system are.

Recommendation 3: The department should revise the publication, "Using the Grievance System," to provide a complete and understandable summary of all important elements of the inmate grievance process. Inmates should receive "Using the Grievance System" upon initial intake into the DRC. Institutional inmate handbooks should provide yet additional detail, but should be consistent with all statements in the departmental publication. All materials relating to the grievance system should be available in the Spanish language and should contain language and pictures that are understandable to inmates with reading levels lower than that of the average DRC prisoner. Institutional inspectors should personally provide orientation to all new inmates as they arrive at a prison, using a standard lesson plan set forth in the Inspector of Institutional Services Manual. An inmate orientation program should occur at each facility on a weekly basis.

B. Obstacle 2: Retaliation and Fear of Retaliation

1. Evidence of Retaliation and Fear of Retaliation

Without question, most inmates perceive that they will expose themselves to retaliation if they use the grievance system. Of the inmates commenting on the statement, "I believe staff will retaliate or get back at me if I use the inmate grievance process," 87.2 % agreed, with 65.2% "strongly" agreeing. (Table Inmate-23) Inmates who had used the grievance process were even more likely to agree with the statement, 91.9% (agreeing) and 71.6%. (strongly agreeing). (Table Inmate-23 Crosstabulation)

More than two-thirds (70.1%) of inmates who had used the grievance process responded that they had suffered retaliation for using the grievance process, (Table Inmate-42) and this

percentage held across institutions. (Table Inmate-42 Crosstabulation) Approximately half the respondents (49.1%) alleged retaliation for the use of only the informal complaint process; 71.3% of those who filed a formal grievance alleged retaliation at the informal or formal stage of the process. (Table Inmate-42a) Forms of retaliation inmates cited were verbal abuse/harassment (33.6%), shake-downs of cells or body searches (23.9%), disciplinary confinement for petty or fabricated offenses (16.2%), receipt of misconduct report for petty or fabricated offenses (15.7%), and threats by staff (13.4%)¹⁶ (Table Inmate-42-b)

When asked to list three bad things about the grievance system, 35.8% of all inmate respondents (including users and non-users of the grievance system) mentioned “staff retaliation.” (Table Inmate-27) This was the highest number of prisoners mentioning any specific response. The second most frequent response from non-users of the system to the question, “Why have you not used the grievance system?” was “fear of retaliation from staff (20.9%). (Table Inmate-29) The fourth most frequent response from this group was “do not want to make trouble” (10.9%), an answer that suggests that inmates who have not used the system may fear retaliation. (Table Inmate-29)

Staff supervisors tended to lend credence to the inmates’ perceptions of retaliation. Almost one-half of the supervisors who responded to the survey (48%) said that staff retaliate against users of the grievance system at least “some of the time.” Only 21.4% said this “never” occurred. (Table Supervisor-19) Likewise, in response to their survey, almost 60% of the

¹⁶ The data regarding the forms of retaliation inmates reported do not include responses from Pickaway Correctional Institution, as the relevant question was not part of the survey the working group piloted at that facility.

inspectors believe that there are inmates who do not use the grievance system even though they have legitimate complaints. (Table Inspector-11) One of the two most common reasons these inspectors cited for this non-use was “fear of retaliation” on the part of inmates. (Table Inspector-11) Though no warden mentioned retaliation as being one of the three most negative aspects of the grievance process, one warden acknowledged to me during an interview that retaliation by staff against users of the system is commonplace.¹⁷

Though the evidence that acts of retaliation occur against some inmates who use the DRC’s grievance system is very troubling, it is important for the reader to consider this evidence in the context of the reality of the corrections setting. First, In every correctional system with which I have had any contact, there is a degree of staff misconduct that seems to survive all efforts to thwart it. Whether that behavior takes the form of unnecessary or excessive force against prisoners, staff’s introduction of contraband into the penal setting, or retaliation against inmates who use the grievance system, executive leadership’s most dedicated and concentrated efforts will succeed only to the point of reaching that irreducible minimum.

Second, it is important to refrain from holding all DRC staff responsible for this kind of behavior; to the contrary, my sense is that a relatively small number of DRC staff – probably custody staff – are likely to account for virtually all of this behavior. There is no question that departmental and institutional leadership disapprove of this behavior, and the fact that supervisors, inspectors, and wardens are willing to acknowledge this misconduct as a serious issue speaks well

¹⁷ One of the institutional inspectors I interviewed also expressed concerns about staff’s retaliation against users of the grievance system.

for the department. Denial of the phenomenon at these levels would make the problem all the harder to address. The solution will not be easy and may be less than complete, but the open commitment of departmental and institutional leadership within the DRC, as well as the acknowledgment of the phenomenon by the chief actors in the grievance system, is an important (and often missing) foundation for any successful solution.

All of that having been said, it is clear that the level of actual retaliation, as well as the perception of likely retaliation among DRC inmates, is unacceptably high and constitutes the single most important and difficult obstacle to inmates' use of the system. As such, it deserves the highest priority of the central office and institutional administrations. While acknowledging that its reach will exceed its grasp, I urge the department to adopt and enforce an absolute no-tolerance policy with respect to this form of behavior by staff, and I hope that other actors in the correctional process such as correctional unions will join forces with the director and wardens on this subject. Nothing about this ugly behavior by a minority of staff members reflects well on these organizations or their membership.

2. The Role of Staff Training in Addressing Retaliation

Acts of retaliation (which lead to understandable perceptions of risk of retaliation) have many sources. One relevant factor the grievance system addresses directly, however, is the education of new staff about the grievance system. Administrative Rule 5120-9-30 requires the inspector to conduct "personally" all training of institutional staff on the operation and purposes of the inmate grievance procedure. One institutional inspector stated candidly that he does not participate in the orientation of new staff, though he does teach an annual in-service class.

Another inspector stated that she orients new staff “when asked to do so” by training staff, but she regularly offers in-service training on the grievance system. A third inspector told me that new staff “see the inspector and learn about the grievance system” on roughly a weekly basis. Yet another stated that he provides approximately 30 minutes of orientation to new staff on a monthly basis and teaches the in-service segment regarding the grievance procedure. A fifth inspector told me that she spends approximately 30 minutes each week orienting new staff on the subject of the grievance system, but provided no information regarding her participation in in-service training. The sixth inspector I interviewed stated that he provided both orientation to staff and annual in-service training on the grievance system.

When we surveyed supervisors, 61% responded that they received adequate training on how to respond to inmate complaints; 39% found the training to be inadequate. (Table Supervisor-13) Approximately 25% of the supervisors we surveyed, however, could not correctly distinguish between an informal complaint and a formal grievance (Table Supervisor-21); some 19% did not know the correct distribution for any of the forms used in the informal complaint process. (Table Supervisor-22b) Given their direct involvement in the system, one can assume that supervisors are likely to be better acquainted with the nature and purpose of the grievance system than are line staff.

3. Summary

In summary, inmates’ perceived fear of staff’s retaliation is a major impediment to the use of the system. To the extent that users actually experience retaliation, this is a corruption of the process that largely offsets much of the positive impact the grievance system otherwise would

have. Although improved staff training should have a constructive impact in reducing this phenomenon, no one should assume that it will provide anything like the entire answer to this problem.

Recommendation 4: The DRC should begin to impose the most serious disciplinary consequences for acts of retaliation by staff against inmates as a result of the latter's use of any aspect of the grievance process. As part of its effort to address this problem, DRC officials should ensure that training components at the training academy, new staff orientation at each facility, and annual in-service training emphasize strongly the utility of the grievance system, the DRC's commitment to that system, and the consequences that will flow from acts of retaliation. Institutional inspectors should be personally responsible for orienting new staff and providing the in-service training segment on the grievance system, and this subject should be a component of all in-service training curricula. Wardens should hold supervisors responsible for providing adequate supervision to line staff regarding the DRC's non-retaliation policy, and institutional inspectors should investigate allegations of retaliation with special care and vigor.

C. Obstacle 3: Prospect of Receiving a Disciplinary Report for Lying, Inappropriate Language, Etc.

I asked all inspectors with whom I spoke about the frequency with which they issued misconduct reports pursuant to AR 5120-9-31 or departmental policy 203-02 for "malicious lying" in a grievance or informal complaint. One inspector recalled issuing one such report, and another inspector recalled issuing two or three such reports since 1994. A third inspector issued one misconduct report for lying, but unspecified central office staff overturned the report.

In response to the survey, no inmate raised this issue as a reason for not using the grievance system. One inmate with whom I spoke at SOCF complained about the provision, but

did not indicate that he had ever received a misconduct report for this reason. No inmate listed these disciplinary provisions as one of the three bad things the prisoner identified about the grievance system. In summary, I am satisfied that the prospect of receiving a disciplinary report from an institutional inspector for “malicious lying” is not an obstacle to the use of the system.

Though I made no specific inquiry, my conversations with inspectors, wardens, and the disciplinary officer at one institution left me with a sense that supervisors rarely if ever issue misconduct reports for “disrespectful, threatening, or otherwise inappropriate comments” in an informal complaint. The members of the working group who evaluated the respectfulness of language used by inmates and staff in the grievance process found additional evidence that the use of inappropriate language in informal complaints is rare and, thus, that the issuance of misconduct reports for this reason is unlikely. Working group members found that 99% of 486 informal complaints they evaluated were couched in respectful terms (Table Informal-6) and that 92.6% of 434 responses they studied were similarly respectful in tone.¹⁸ (Table Informal-7)

In summary, I do not believe that the provisions that permit the inspector and supervisory staff to issue misconduct reports under the limited circumstances the rule and policy permit are problematic at this time. In view of the sensitivity of this issue, however, I think that it would be wise for the department to require that copies of all such disciplinary reports and their ultimate disposition be forwarded to the chief inspector for review.

Recommendation 5: Upon completion of the RIB process,

¹⁸ The corresponding percentages for were 97% and 94% for formal grievances (Tables Formal-18 and Formal-19) and 98.6 and 95.8% for original grievances. (Tables Original-21 and Original-22)

including the appellate process, the chief inspector should receive a copy of any conduct report alleging “malicious lying” or “inappropriate language” in connection with the grievance system, the hearing record, and any decision on appeal. If the chief inspector concludes that the misconduct report was inappropriate under the controlling provisions of the grievance system, she should have the authority to direct the voiding and expunging of any disciplinary conviction and to counsel staff involved in writing or reviewing the misconduct report, regardless of the outcome of the hearing or appeal.

D. Obstacle 4: Time Limits

The time limits imposed on inmates is another possible obstacle to the use of the grievance system. For reasons I have already discussed, time spent waiting for a response to an informal complaint, time lost in obtaining a formal grievance form from an institutional inspector, and delays in getting documents to and from the inmate through the DRC’s internal mail system make it difficult to identify timeliness in many cases. Certainly, the issue is one that creates a fair amount of confusion.

When inmates were asked whether the amount of time allowed to file a grievance is sufficient, 27% of the respondents said that the time limit for filing a grievance is sufficient. Some 34% believes the time is too short. Of the 39.1% who responded “don’t know” to this question, many probably never filed a grievance. (Table Inmate-19) In response to the inspectors’ survey, institutional inspectors indicated that they rarely dismiss a grievance for a “procedural defect,” which would include lateness. A total of 66.7% of the respondents said they would address a grievance under these circumstances always (15.2%) or most of the time (51.5%). (Table Inspector-13) In their discussions with me, institutional inspectors by and large stated that they would enforce timeliness requirements only in exceptional circumstances, when the inmate’s delay

was quite substantial or, as one inspector put it, “outrageous.”

One inspector stated that she will not enforce these requirements unless the inmate is at least one month late, as the chief inspector’s office otherwise will not support the institutional inspector’s decision.¹⁹ Another institutional inspector, however, stated that she was “tough” on time limits and that she dismissed one out of four or five grievances for this reason.

Data from the FY 2000 Annual Report of the Inmate Grievance Procedure reflects that 294 of 6,171 grievances “not resolved” during FY 2000 were dismissed because they were “not within the time limits.” This is slightly less than 5% of these unresolved cases.

Recommendation 6: In drafting the new administrative rule concerning the grievance system, DRC officials should focus on fair, identifiable, and enforceable time limits inmates must follow at each stage of the grievance process. The emphasis should be to avoid a degree of staleness that will interfere with the investigative process, and both institutional inspectors and the chief inspector should have the authority to waive a time limit for good cause shown.

E. Obstacle 5: An Anomaly at Pickaway Correctional Institution

During my interview of the institutional inspector at Pickaway Correctional Institution, I was shocked to learn that inmate workers deliver all internal mail from staff to inmates and to other staff unless the sender designates the mail “staff carry.” One result of this practice is that inmate mail carriers have access to and may read (or charge for the delivery of) staff’s responses to kites, informal complaints, and grievances. Apart from being an obvious breach of fundamental

¹⁹ Among the appeals I reviewed, I found no instance in which an assistant chief inspector reversed an institutional inspector for enforcing time limits against the grievant. While many of the delays in these cases were substantial, some were not.

operational security principles, access to these documents by inmate workers may well inhibit some inmates from using the grievance system. To the best of my knowledge, this practice – at least among the focus institutions – is limited to PCI.

Recommendation 7: The department should cease immediately to allow inmate workers to have any role in the delivery of any form of mail or other written communication within any DRC facility.

F. Obstacle 6: Miscellaneous

Inmates cited a number of other reasons they do not use the grievance system. Most of those reasons, apart from the ones I have already discussed, relate to the operation of the grievance system itself. Inmate perceive the process to be “unfair,” believe that it “would not do any good,” that it “takes too long,” and that “staff are not helpful.” Although these perceptions are, in a sense, obstacles to the use of the system, I shall not address them at this point in my report; I shall discuss some of these issues, however, in Section XI, below.

V. Adherence to Mandated Standards

Having described some of the most important obstacles to the use of the inmate grievance system, I turn to the question: Are DRC staff following the procedures mandated by the relevant rules and policies, as well as by the Inspector of Institutional Services Manual? This operations manual (“IISM”), most recently issued in July 1998, provides guidance to all institutional inspectors on every stage of the grievance system.

A. Responses to Informal Complaints

The IISM directs the inspector to address “each issue” an inmate raises in a grievance.

IISM, §13, p. 1.²⁰ In a later section on “Frequently Asked Questions,” the IISM states, “In answering the grievance, you should address all concerns that the inmate expressed in his complaint. Be sure to address each individual complaint clearly.” IISM §22, p. 3. Though the IISM makes no similar references to informal complaints (to which inspectors do not respond), logic suggests that supervisors likewise should address all issues inmates raise in these complaints.

About 80% of the inmates responding to the relevant question on the survey (80.7%) expressed disagreement that “the supervisor clearly addressed all parts of my informal complaint.” (Table Inmate-37) If these responses are reliable, there is a serious problem with respect to the completeness of supervisors’ responses. For reasons set forth below, however, these answers may not be a reliable indicator of the completeness of supervisors’ responses. *See text accompanying note 27, below.*

Members of the working group evaluated a sample of informal complaints to determine the extent to which staff appeared to be following other important procedures related to the informal complaint process. Departmental Policy 203-02 requires the inmate to address an informal complaint to “the supervisory person most responsible for the particular subject matter of the complaint” (203.02 §VI.E) and requires that supervisor to respond to the grievance (203.02 §F). Working group members evaluated 486 informal complaints and found that no one responded to the complaint in 10.7% of the cases. In at least 70.4% of the cases, the appropriate supervisor provided the response, In the remaining 18.9% of the cases, the individual responding

²⁰ The manual is not paginated. The table of contents refers to sections, however, and I shall attempt to identify the page number of the section upon which I am relying.

to the complaint was an unidentified person (who may or may not have been the appropriate supervisor) (11.9%), the subject of the complaint (3.1%), or the institutional inspector (3.9%).²¹ (Table Informal-2)

These data notwithstanding, institutional inspectors and others expressed a high level of concern about the operation of the informal complaint resolution process, including the lack of responses, the lack of timely responses, and the substance of responses. One institutional inspector noted that supervisors “have more trouble following the time requirements” of the informal complaint system than do inmates. This inspector also noted that staff “need to take the grievance system more seriously. They tend to ignore inmates’ complaints. This shows in responses to informal complaints.”²² The inspector expressly noted the lack of responses to medical grievances by medical staff at the facility. When I asked the inspector what elements of the system were most in need of improvement, his first and principal response was that “staff must respond to informal complaints.”

Another institutional inspector told me that supervisors fail to respond in a timely fashion to a substantial number of informal complaints. This inspector provides the warden with a monthly list of “non-responders” but it is not clear that these reports result in disciplinary action.

²¹ The inspector at ORW has taken a step designed to assist inmates in identifying the supervisors to whom prisoners should send informal complaints. She has posted a memorandum in all housing units identifying the “contact person” for each potential “problem area” that may be the subject of an informal complaint. By assisting inmates in this way, the inspector may reduce the number of non-responses and responses from inappropriate persons, and I commend this practice to other inspectors.

²² The warden of this institution agreed, in a separate interview, that staff sometimes do not take inmates’ complaints seriously.

The warden agreed, in a separate interview, that the failure of some staff to respond to informal complaints is a problem. The inspector also criticized the quality of the responses supervisors give. She specifically mentioned "sarcastic and non-responsive responses" to informal complaints. At a later point in the interview, the inspector stated that staff in general resent the grievance system and "don't want to respond to informal complaints." In summary, this inspector told me that she needed help from the warden and the deputy warden to enforce the informal complaint system.

A third institutional inspector also commented on the informal complaint system. He noted that when he became an inspector, the failure of supervisors to respond to informal complaints was a major problem. He stated, however, that "staff are responding much better now," though he noted a continuing problem regarding responses that say nothing more than "I will investigate." The inspector specifically mentioned the cooperation he is receiving from the deputy warden and the major in connection with this problem.

Another institutional inspector stated that non-uniformed staff are better about responding to informal complaints than are uniformed staff. At a later point in our discussion, the inspector identified "custody" and "medical" staff as being most recalcitrant about responding to informal complaints. She described the staff's non-responsiveness to informal complaints as being a "big problem." She noted that this problem makes it difficult for her to track informal complaints; she also expressed concern about the substance of some of the responses she sees.

Conversely, one inspector stated that supervisors are good about responding to informal complaints, though she noted that she might liberalize the five-day period required for a

response.²³ In like manner, another inspector rated supervisory staff 8 on a scale of 10 in terms of their responsiveness to informal complaints. This inspector made a number of comments during the course of our interview, however, that suggest that line staff, rather than supervisors, sometimes respond to informal complaints and that a number of responses are late.²⁴ She identified “special services” staff as being the worst about answering informal complaints and “operations” staff as being the best in this regard.

Assistant chief inspectors also identified the failure to implement the informal complaint process as a serious problem. One noted the need for training of supervisors in this area, as well as the exertion of pressure by institutional inspectors and the need for discipline of recalcitrant supervisors. Another assistant chief inspector identified the need to make the informal complaint resolution work as a matter of primary importance and also recommended the use of discipline against non-responsive supervisors.

Yet a third assistant chief inspector listed as his first concern the fact that “the informal complaint system is not enforced.” He attributed this process, in large part, to the failure of institutional inspectors to implement an effective tracking system. He also noted that action by the warden is critically important to solving this problem: “non-responders need to face consequences.” This assistant chief inspector lays the responsibility for imposing these

²³ This is the only concern I heard institutional inspectors express about the time limits governing staff who are involved in the grievance system.

²⁴ This inspector noted that supervisors “initial responses completed by staff to informal complaints.” She also told me that she monitors the informal complaint process carefully to avoid formal grievances and will attempt to get a late response when this is necessary.

consequences “at the warden’s feet.”²⁵

The fourth and final assistant chief inspector I interviewed also identified problems with the informal complaint system as a major deficiency. This person identified problems with the informal complaint resolution form itself, problems with the lack of responsiveness of supervisors, an absence of support for the system by wardens, and problems of staff perceptions of the informal complaint resolution process. She noted that inmates sometimes attempt to use the “emergency grievance” designation to avoid the informal complaint mechanism.

I noted one extremely serious problem regarding informal complaints that relates to institutional practice rather than departmental policy. As I have described earlier in this report, the Informal Complaint Resolution form (“ICR”) has three copies in addition to the original. The inmate must send one copy to the institutional inspector and three copies to the relevant supervisor. Upon answering the complaint, the supervisor sends one copy to the institutional inspector and one copy to the inmate, keeping one copy for the supervisor’s file. Thus, an inmate is not able to retain a copy of an unanswered informal complaint form and must rely on the inspector to prove that a supervisor owes the inmate a response. Inmates resent this process and sometimes, as a result, fail to provide the institutional inspector with a copy of the informal complaint or fail to provide supervisors with the original and two copies. Inmates also complain about having to attach to a formal grievance their only copy of the answered complaint, as this procedure leaves them with no evidence of the underlying informal complaint and response.

²⁵ In this connection, it is interesting that only 14 of 31 wardens responding to a survey identified “progressive discipline” as the consequences to supervisors who do not respond to informal complaints. Six said there were no consequences. (Table Warden-11)

In conclusion, I believe that the failure of supervisors to provide timely and appropriate responses to informal complaints is the most fundamental procedural flaw in the current system. By failing to deal effectively with problems at the lowest possible level, these staff are increasing the rate at which inmates file formal grievances. This clogging of the formal process has many ramifications, not the least of which is the inability of the institutional inspectors to keep abreast of their grievance dockets, leading to untimely and/or poor responses that result in unnecessary appeals. I also believe that the informal complaint process would work more efficiently if inmates were allowed to keep a copy of the informal complaints they send to and receive from supervisors.

Recommendation 8: Inspectors should pay greater attention to the issue of whether supervisors' responses to informal complaints address all issues in the inmate's complaint. Moreover, inmates should be permitted to keep a copy of any informal complaint they send to or receive from supervisors. Finally, institutional inspectors should maintain a "suspense file" of pending informal complaints and take action promptly when it appears that a supervisor has failed to answer the complaint in a timely fashion. Institutional inspectors should report recalcitrant supervisors to the warden, who should impose appropriate progressive discipline against these supervisors.

B. Substance of Responses to Grievances, Original Grievances, and Appeals

The Inspector of Institutional Services Manual requires the institutional grievance officer to include the following in any response to a formal grievance: a restatement of the inmate's complaint(s); a description of the inspector's investigation; an answer to the inmate's complaint(s); and a justification for that answer. IISM §17, pp. 1-2. Departmental Policy 203-01 VI.F.4 requires written responses to grievances "at each level of the grievance procedure" and

further requires all responses to include “the decision and an explanation of the decision.” As I have indicated in the immediately preceding subsection of this report, the IISM also requires institutional inspectors to respond to all issues an inmate raises in a formal grievance, and I infer that the same requirement applies to the chief inspector with respect to original grievances and to assistant chief inspectors with respect to all appeals (at least to the extent of all issues raised on appeal). Members of the working group reviewed samples of formal and original grievances to identify the level of compliance with these requirements. In general, the results of this review demonstrate that inspectors and the chief inspector are following these mandated procedures:

- There was a written response to the grievance in 97.2% of the cases and a written response to the original grievance in 100% of the cases. (Tables Formal-5 and Original-6)
- The institutional inspector restated the problem(s) the inmate raised in a grievance 87.8% of the time, and the chief inspector did so in 100% of the original grievances we reviewed. (Tables Formal-6 and Original-7)
- The institutional inspector described the investigation he or she conducted in 88.5% of the surveyed cases; the chief inspector, however, did so in only 23.6% of the original grievances. She did so partly in another 23.6% of the cases and included no description in 52.8% of the responses to original grievances. (Tables Formal 7 and Original 8)
- The institutional inspector described his or her findings (justification for a conclusion) in 97.6% of responses to grievances, and the chief inspector did so in 100% of the responses to original grievances. (Tables Formal-8 and Original-9)
- The institutional inspector stated a conclusion (*e.g.*, “grievance denied”) in 97.6% of the responses to grievances, and the chief inspector did so in 100% of the responses to original grievances. (Tables Formal-9 and

Original 10)

- When inmates designated their grievances as emergencies, institutional inspectors did not even acknowledge this claim in 80.9% of those cases. (Table Formal 10) The chief inspector never addressed in her response to original grievances the fact that the inmate claimed emergency status.²⁶ (Table Original-11)
- Institutional inspectors responded to all issues the inmate raised in a formal grievance in 87.6% of the cases (Table Formal-16) and the chief inspector did so in 100% of the original grievances working group members reviewed.²⁷ (Table Original-17)

I reviewed the sample of responses to grievance appeals described in Exhibit A to this report. I did not code these responses, however, in the manner that other members of the working group coded information regarding formal grievances and original grievances. Therefore, I cannot provide statistical evidence to support my conclusions. I reviewed these responses to appeals with great care, however, looking as well at the underlying documents including the appeal, the original grievance, and the response of the institutional inspector. While I

²⁶ Although inmates tend to identify many routine grievances as emergencies, one should not assume that all grievances inmates label as “emergency” are non-emergent. In one case, for example, a juvenile complained of being placed in a cell with an adult. Though security staff in this instance addressed the matter within 24 hours, there is no evidence that the institutional inspector paid any attention to the “emergency” designation; nor did the assistant chief inspector comment on this fact in responding to the inmate’s appeal.

²⁷ These numbers stand in stark contrast with the relevant responses by inmates to surveys: 70.5% stated that inspectors failed to address all issues set forth in formal grievances, (Table Inmate-38) and 74% expressed this criticism of the chief inspector’s answers to original grievances. (Table Inmate-40) These numbers cast doubt on the perceptions inmates expressed with respect to the completeness of supervisor’s responses to informal complaints, a subject I have already discussed. Unfortunately, the members of the working group did not code this issue with respect to informal complaints.

shall express some criticism later in this report regarding certain recurring deficiencies I found in these appellate responses, I was impressed by the regularity with which assistant chief inspectors provided a response, restated the problems the inmate had raised, described the assistant chief inspector's findings, and stated a conclusion. Like the chief inspector, assistant chief inspectors were less diligent about describing the extent of their investigation, probably because the assistant chief inspector often did nothing more than review the documents on their face. Assistant chief inspectors also tended, with some exceptions, to ignore the facts that the inmate designated the underlying formal grievance as an emergency and that the institutional inspector failed to address this issue. Similar to the findings of the working group regarding the completeness of inspectors' and the chief inspector's responses, I found – contrary to inmates' perceptions – that assistant chief inspectors generally addressed all issues the inmate raised on appeal.

In summary, while short of perfection, the responses to formal grievances, original grievances, and appeals reflect a diligent effort on the part of inspectors, the chief inspector, and the assistant chief inspectors to include most of necessary elements in their responses to grievances. The chief inspector and assistant chief inspectors need to pay more attention to giving the inmate a description of any investigation conducted, and the current rule regarding "emergency grievances," including "emergency" original grievances, clearly is not working at any level, either for the inmates or the grievance system staff.

Recommendation 9: Training regarding the required substance of responses to grievances should be a subject of continuing emphasis in institutional inspector's initial and follow-up training. In addition, the chief inspector should be certain to describe her investigation of any original grievance, and assistant chief inspectors should exercise the same diligence in

responses to appeals. The institutional inspector should read all informal complaints on the day he or she receives them, make an independent determination of whether the inmate's complaint should be treated as an emergency grievance, and take action accordingly. Assistant chief inspectors and the chief inspector should monitor this process closely. The revised rule and inmate orientation sessions should emphasize to inmates the limited scope of the emergency grievance provision.

C. Grievances Challenging Policies

AR 5120-9-31 provides that a grievance may “concern departmental or local institutional policies, procedures, rules and regulations or the application of any of these to the prisoner.” AR 5120-9-31(B). In one appeal I reviewed, however, the assistant chief inspector affirmed the dismissal of a grievance on the basis that an inmate may not grieve a **departmental** (“central office”) policy. ManCI Grievance No. 6-99-59, aff'd. 7/15/99. In a response to an appeal emanating from Southeastern Correctional Institution, the assistant chief inspector, while affirming the institutional inspector's “denial” of a grievance because it challenged a departmental policy, nonetheless informed the inmate that the assistant chief inspector was relaying the inmate's concerns to the office of prisons, which was in the process of reviewing the departmental policy in question. SCI Grievance No. 01-00-01, aff'd. 3/17/00. This is an issue the department should clarify in its revised rules and in its training of institutional inspectors.

Administrative Rule 5120-9-31 is more detailed with respect to challenges to institutional policies. Paragraph H.3 of that rule provides as follows:

If the grievance challenges an institutional policy or practice and the inmate desires the participation of other inmates and institutional staff in the resolution of the grievance, the inmate may request such participation on the grievance form. No inmate or employee who

appears to be involved in the matter shall participate in an advisory capacity in the resolution of the grievance. The inspector of institutional services will solicit opinions from inmates and employees on grievances challenging general policies and practices. In soliciting these opinions, the inspector will not disclose the identify of the inmate grievant. In any instance in which inmates and employees are afforded such an advisory role in the disposition of an individual grievance, the opportunity for such participation shall occur before the inspector renders a decision on the grievance.

The grievance form the department currently uses addresses this issue in an unusual manner.

Rather than asking whether the inmate wants the inspector to solicit opinions from employees and inmates concerning the grievance, as one would expect, the form reads as follows: "I do **not** want the Inspector to solicit opinions from employees and inmates concerning my grievance."

(Emphasis added.) My review of grievances leading to the appeals I evaluated indicated that most inmates do not check the box following this negatively phrased statement. When this is the case, the inspector should solicit opinions if the grievance challenges any institutional policy or practice.

A number of grievances I reviewed challenged institutional policies or practices. *See, e.g.,* ManCI Grievance No. 7-99-64, aff'd. with comments 1/10/00, and MaCI Grievance No. 01-00-21, aff'd. 3/10/00. For an example of a challenge to an alleged institutional practice in which the grievant expressly asked the institutional inspector to obtain input from staff and inmates, *see* ManCI Grievance No. 5-00-12, aff'd. 8/1/00. *See also* PCI Grievance 03-00-08, aff'd. 4/27/00, which challenged the institutional policy regarding property allowed to inmates in local control. Despite these examples, only one institutional inspector recalled ever soliciting input on grievances challenging institutional policies. That inspector told me that she had done so twice in 2000. Apart from this statement, I found no evidence that institutional inspectors abide by this

provision of AR 5120-9-31 or that assistant chief inspectors note this noncompliance. Among the hundreds of grievances I reviewed in connection with the appellate process, I did not find a single instance in which an institutional inspector apparently sought input.

Recommendation 10: The office of the chief inspector should make it clear to inmates that they may file a grievance challenging a departmental as well as an institutional policy. The department should consider whether it finds it useful to continue the “staff and inmate input” provision relating to policy-oriented grievances. If the provision remains in the revised grievance rule, the chief inspector’s office should ensure, through training and review of appeals, that institutional inspectors follow the rule.

D. Timeliness of Responses

1. Lateness of Responses to Informal Complaints, Grievances, Original Grievances, and Appeals

Inmates overwhelmingly believe that supervisors, institutional inspectors, and the chief inspector and her staff “take too long” to provide responses at each level of the grievance process. These expressions by inmates are not necessarily equivalent to an opinion that these staff do not follow existing mandated timelines; rather, it may be a criticism of those timelines themselves. To explore this question more carefully, members of the working group reviewed informal complaints, formal grievances, and original grievances to determine the extent to which inmates received responses in a timely fashion.

Working group members reviewed 486 informal complaints. In an earlier section of this report, I noted that supervisors failed to provide any response whatsoever to 52 or 10.7% of these complaints. (Table Informal-2) Moreover, responses took more than five working days, as required by Policy 203-02 VI.F. in 69 or approximately 20% of these instances. (Table Informal-

3)

Working group members reviewed 467 formal grievances. Of this number 179 or 38.3 % of institutional inspectors' responses were beyond the ten working day requirement of AR 5120-9-31 (H)(5) or any authorized extension to that deadline. (Table Formal-2) The chief inspector failed to respond to original grievances within 20 working days or within authorized extensions, as required by AR 5120-9-30 (H), in approximately 25% of the cases. (Table Original-3)

Of the responses to appeals I reviewed, only 32 responses left the chief inspector's office within 20 working days of the inmate's filing of the appeal.²⁸ The average number of working days that elapsed was 51.9.

In summary, the timeliness of responses appears to be a serious problem at all levels of the grievance system, particularly that of appeals. Opinions on the best means of addressing this problem vary among the participants, and I believe that the answer to this issue is complicated by many other factors, including what may be a higher than necessary volume of frivolous or inconsequential grievances and appeals. I shall address this issue in the immediately succeeding subsection of this report.

As I have already mentioned, the failure of supervisors to respond to informal complaints in a timely, complete, and appropriate fashion has a snowball effect, clogging subsequent levels of the system with unnecessary formal grievances and appeals. In this respect, the actors in the

²⁸ Since I could not determine when an inmate actually received a response, I used the date the inmate put on the appeal and the date the assistant chief inspector put on the response to measure timeliness. Whether time lines refer to the date of sending or the date of receipt is something the revised rule should address.

system are creating their own problems by ignoring the initial and, in some ways, most important level of problem solving.

Another of the most important of the factors resulting in delay is the inadequacy of human resources devoted to the grievance system, both in the institutions and in the office of the chief inspector. Closely related is the diversion of these limited resources to activities that are unrelated or only marginally related to the grievance system. These are issues that I shall address in some detail later in this report.

While lengthening the existing time limits within which some or all of the participants must respond to inmates' complaints is one approach the department is considering, this is not an attractive option in connection in a system that now authorizes as many as 90 days to pass from the filing of an informal complaint to the resolution of a final appeal. I hope that departmental leadership will consider carefully other options before extending deadlines that may have little impact on staff's rate of compliance.

Recommendation 11: The department should consider all steps that can be taken to increase the timeliness of responses at all levels of the grievance system without lengthening the period allowed for response. The new administrative rule governing the grievance system should incorporate any steps departmental officials can identify. One of these steps should be to clarify whether time limits take into account the date of mailing or the date of receipt of a response.

2. Frivolous Grievances and Abuse of the Grievance System

One factor that contributes to delays at each level of the grievance system is the extent to which some inmates file exceptionally large numbers of complaints and others file frivolous or inconsequential informal complaints, grievances, and appeals. Such inmates exist in the DRC as

they do in any correctional system, though the number of multiple filers and objectively frivolous or inconsequential grievances is difficult to ascertain.

Working group members reviewed a sample of grievance documents filed in calendar year 2000 in an effort to identify the extent of multiple filing of informal complaints, formal grievances, and original grievances. Of 432 inmates in the survey who submitted informal complaints, 91.4% submitted only one such complaint during our survey period. Five inmates filed as many as four such complaints, the maximum the working group identified in its sample.

(Table Informal-1)

Of 342 inmates the working group surveyed, 79.5% filed only one formal grievance during our survey period, 13.5% filed two grievances, and 4.7% filed three formal grievances.

Approximately 2.4% (8 inmates) filed more than three grievances, and the most frequent of these filers submitted 20 formal grievances. (Table Formal-1)

Multiple filing also does not appear to be a terribly common problem among filers of original grievances. Of 47 inmates the working group reviewed, 78.7% filed only one original grievance. Six inmates (12.8%) filed two grievances, one inmate filed four grievances, another filed five grievances, and two inmates each filed seven original grievances. (Table Original-1)

According to the FY 2000 Annual Report, the largest number of grievances any inmate filed was 62 during that fiscal year. The runner-up filed 36 grievances.

Departmental Policy 203-01(H)(3) gives the chief inspector, and only the chief inspector, the authority to “place limitations on an inmate’s access to the grievance procedure for the intentional misuse or abuse of the process.” The chief inspector has used this power sparingly. It

appears that fewer than five inmates throughout the DRC are on some form of restriction at this time. I verified the basis of the restriction in one case. This inmate's recent grievances filled the better part of a drawer of a filing cabinet in the institutional inspector's office. According to the chief inspector, even inmates on restriction may kite the institutional inspector and may file a grievance if the institutional inspector deems the complaint to be serious.

In addition to (and among) multiple filers, there are inmates who file grievances that are frivolous. Institutional inspectors and, in particular, assistant chief inspectors complained about time spent on frivolous appeals and grievances. When asked to list the three most negative aspects of the grievance system both institutional inspectors and wardens listed frivolous grievances/abuse of the process by inmates with far and away the greatest frequency. (Tables Inspector-6 and Warden-13) The same was true of supervisors asked to list the three most negative aspects of the informal complaint resolution process. (Table Supervisor-25) Several assistant chief inspectors told me that they regard the need to be able to expedite responses to frivolous appeals as one of their highest priorities and suggested that there be some reasonable criteria for accepting and responding fully to a grievance appeal.

During my own review of grievances leading to appeals, I found a few examples of grievances or appeals that qualify or might qualify as frivolous. One example is Grievance No. 10-99-23, in which the inspector at Pickaway gave the grievant all requested relief; this was not sufficient, however, to prevent an appeal. The same was true of SOCF Grievance No. 06-00-02, aff'd. 8/2/00. Another inmate at this institution complained that a food service supervisor directed a food server to remove what the supervisor regarded as an excess quantity of scrambled

eggs from a serving spoon. SOCF Grievance No. 01-00-12, aff'd. 3/7/00. In my opinion, the inmate received an appropriate response to his informal complaint, rendering the subsequent grievance and appeal a waste of valuable staff resources. Other grievances on their face may appear frivolous to a person who is not a prisoner, *e.g.*, ManCI Grievance No. 02-00-19, aff'd. 8/8/00, in which an inmate complained that he was shorted one package of cheese spread (worth \$0.71) by commissary staff. Although this small amount of money may well be meaningful to an inmate with few financial resources, the initial reasonable response by the institutional inspector should have brought the matter to an end.

Whatever one concludes about the factual accuracy of the claims of staff concerning the extent of the phenomenon of frivolous complaints, grievances, and appeals, the negative perception among supervisors, institutional inspectors, and assistant chief inspectors clearly affects staff's attitude toward the legitimacy of the whole grievance process. These perceptions, however, must be balanced against those of prisoners who believe that staff treat some extremely serious grievances in a cavalier fashion. However difficult it may be to do so, departmental officials must attempt to address both the legitimate concerns and the perceptions of both inmates and staff on these issues.

Recommendation 12: Orientation sessions for incoming inmates should stress the negative impact on the grievance system of inordinate frequency of use and the filing of frivolous or inconsequential grievances. Moreover, institutional inspectors should meet personally with inmates who appear to be misusing the system in order to counsel them in a constructive fashion. If all else fails, the institutional inspector should be able to recommend to the chief inspector that she impose some form of progressive limitation on the inmate's access to the system, so long as the inmate does not lose all

avenues to complain. The chief inspector also should have the power to authorize institutional inspectors to abbreviate in a reasonable manner their responses to problematic filers. The chief inspector, however, should continue her commendable practice of using her authority sparingly to impose restrictions on access to the grievance system. Later in this report, I shall make an additional recommendations that will address in part frivolous or inconsequential appeals.

VI. Current and Proposed Exclusions from the Scope of the Grievance System

A. Current Exclusions Set Forth in Rules and Policies

Administrative Rule 5120-9-31 and Policy 203-01 set forth certain matters that are outside the scope of the grievance system. The administrative rule provides as follows:

The grievance procedure is not designed to act as an additional or substitute appeal process in connection with rules infraction board or institutional hearing officer proceedings. A complaint relating to a specific disciplinary decision will not be considered. In addition, complaints unrelated to institutional life such as legislative action, policies and decisions of the adult parole authority, judicial proceedings and sentencing are not grievances within the scope of this rule. No claim involving subject matter exclusively within the jurisdiction of the courts or other agencies will be considered. Such claims which present allegations which in part fall within the purview of paragraph (B) above [setting forth the broad scope of the system] and in part within this paragraph will be considered insofar as they are not excluded under this paragraph.

The departmental policy describes the exclusions as follows:

Inmates are not permitted to grieve complaints involving the decisions of the Rules Infraction Board or other disciplinary decisions, parole decisions, and complaints involving matters outside the jurisdiction or control of the DRC, including legislative decisions, judicial decisions and matters exclusively within the jurisdiction of the courts or other external agencies.

Both institutional inspectors and assistant chief inspectors apply the RIB exclusion in a

straightforward manner in cases in which the inmate clearly is using the grievance system in an attempt to challenge an RIB conviction. *See, e.g.*, ManCI Grievance No. 11-99-29 and ManCI Grievance No. 1-9-36, aff'd. 12/14/99; ManCI Grievance No. 12-99-16, aff'd. 3/9/00; MaCI Grievance No. 03-00-16, aff'd. 4/21/00. I observed several instances, however, in which assistant chief inspectors carefully distinguished between a *de facto* appeal of a disciplinary conviction and an allegation of the misuse of the disciplinary process to harass or retaliate against the inmate. Perhaps the best example of this I observed was MaCI Grievance 05-00-15, aff'd. 8/28/00. The assistant chief inspector found information on a log indicating that the conduct report was clearly incorrect; rather than attempting to reverse the disciplinary conviction, the assistant chief inspector modified the institutional inspector's "denial" of the grievance and ordered her to investigate the inmate's allegation of harassment and retaliation.

Similarly, in connection with SCI Grievance No. 05-99-02, the institutional inspector investigated an allegation that a correctional officer issued a conduct report as an act of retaliation. The inspector ultimately concluded that the officer did not issue the misconduct report for this reason, but rather because the inmate called the officer a "gay." Though the inspector (and, ultimately, the assistant chief inspector) found no retaliation, they did not use the RIB exclusion as an excuse to avoid investigation of the inmate's complaint.

In Grievance No. 07-99-25, aff'd. 9/16/99, the assistant chief inspector, while refusing to disturb the decision of the RIB convicting the inmate for losing state property, directed the institutional inspector at SOCF to investigate the question of whether staff had packed up the inmate's property appropriately.

There are exceptions to the generally careful efforts to inspectors and assistant chief inspectors to interpret the RIB exclusion narrowly and correctly. In SOCF Grievance No. 01-00-28, the institutional inspector and assistant chief inspector properly refused to interfere with an RIB conviction. Neither paid any attention to allegations of taped statements on the part of the investigator, which, if made, constituted exceptionally serious misconduct by that staff member. In general, however, it does not appear to me that institutional inspectors or assistant chief inspectors are using the RIB-related exclusion or other listed exclusions to avoid issues within the scope of the grievance process.

Recommendation 13: The exclusions that AR 5120-9-31 and DRC Policy 203-01 set forth are appropriate. The chief inspector's office should remain vigilant, however, in recognizing grievances that raise grievable issues associated with some facet of the RIB process that inspectors can investigate without displacing the disciplinary appeals process. This somewhat fine distinction should be the subject of ongoing training of institutional inspectors.

B. The Failure to Address Single Acts of Inappropriate Supervision

Departmental Policy 203-02 provides that an inmate should file a grievance directly with the institutional inspector, omitting the informal complaint resolution step, when the grievance alleges "inappropriate supervision." The policy further defines that term as "any continuous method of annoying or needlessly harassing an inmate. It is a pattern of behavior on the part of a staff member directed against one or a group of inmates intended to needlessly annoy or harass. The pattern of behavior may include, among other things, abusive language, racial slurs, and writing of conduct reports (tickets) for non-existent reasons." Administrative Rule 5120-9-04 incorporates the same language in defining "inappropriate supervision," but does not insist that

the conduct be continuous. Rather, AR 5120-9-04 merely recognizes that inappropriate supervision “is often a continuous affair.”

This distinction between Policy 203-02 and AR 5120-9-04 creates a serious and invidious contradiction between the two departmental mandates. I reviewed numerous grievances and appeals in which inspectors and assistant chief inspectors disposed of serious allegations on the basis that the inmate had not alleged a continuous series of events. For example, in Grievance No. 12-99-33, the inspector of institutional services at Mansfield Correctional Institution relied on the “continuous method” exclusion to “deny” a grievance alleging that an officer had issued two misconduct reports against the inmate based on race. This institutional inspector specifically stated to me that she adheres to the “continuous conduct” standard in dealing with grievances alleging inappropriate supervision, and I have no doubt that this is true of most or all other institutional inspectors as well.²⁹

Though I saw no such example, a literal reading of the department’s policy would deny an inmate recourse to the grievance system to complain about a staff member’s use of a disgusting racial epithet so long as the staff member confined himself to a single use of the term. This cannot be what departmental officials intended, and I recommend a revision of the rule to make it clear

²⁹ Following a review of a draft version of this report, representatives from the chief inspector’s office told me that the “continuous conduct” definition simply prevents the filing of a formal grievance and that an inmate may submit an informal complaint about an action that fails to qualify as “inappropriate supervision” because it occurred only once. This is a strained interpretation of the policy, as presently written. Moreover, I found no evidence throughout the course of the preparation of this report that institutional inspectors or assistant chief inspectors actually apply this interpretation by referring inmates to the informal complaint process when they file a grievance alleging a single act that, if repeated, would be “inappropriate supervision.”

that single instances of abusive language, racial slurs, and the writing of misconduct reports for non-existent reasons suffices to enable an inmate to file a grievance. It is true that a pattern or practice of such conduct sometimes will assist the inspector in assessing credibility in one-on-one cases in which the inmate's allegation and the staff member's denial are the only evidence the inspector has. This truism, however, should not interfere with access to the grievance system when, for example, an inmate has credible staff or inmate witnesses to a staff member's one-time use of a racial epithet³⁰

Recommendation 14: The DRC should amend its definition of inappropriate supervision in the new administrative rule regarding the grievance system to include single instances of misconduct that AR 5120-9-04 recognizes. The new rule, like AR 5120-9-04 should recognize that proof of inappropriate supervision sometimes will depend on a course of conduct by a staff member and incorporate the record keeping that rule requires.

C. Inconsistent Treatment of Lost or Destroyed Property Claims

In order to obtain compensation for lost or destroyed property, even in situations in which departmental employees have been at fault, an inmate must resort to the Ohio Court of Claims.

³⁰ Contrary to the explicit language of the policy, the Inspector of Institutional Services Manual authorizes inspectors to recognize an important but limited exception to the policy: "Racial slurs or racial discrimination may qualify as inappropriate supervision even if it is a single act. This is at the discretion of the inspector." IISM §15, p. 1. Laudable as this effort to ameliorate the policy may be, it is inappropriate for an informal operations manual to contradict the clear language of departmental policy. Moreover, leaving the scope of exceptions to the discretion of individual institutional inspectors invites yet another level of discrimination. Finally, other forms of abusive language (*e.g.*, "Wop" in describing a person of Italian descent or "Spic" in describing a person of Hispanic background) that have no racial implications, as well as the writing of bogus misconduct reports that can have serious negative consequences for a prisoner, are extremely serious acts of misconduct the grievance system should address.

The filing fee for such an action is \$25.00, rendering it impracticable for an inmate to pursue any claim around or below that value.

In response to this problem, the Inspector of Institutional Services Manual outlines an “Expedited Court of Claims Process.” *See* IIMS §20, p. 11. Under this process, if the institutional inspector finds that the inmate’s grievance is meritorious and that the institution is responsible for the loss, the inspector makes a report to the warden. If the warden agrees that compensation is appropriate, he or she may authorize a consent process to deal with claims up to \$300 in value. I understand that the practice of the Court of Claims in these cases is to return the \$25 filing fee.

Unfortunately, the use of this expedited system is not uniform throughout the department. Two inspectors I interviewed were not familiar with the expedited system the IISM authorizes, though one of these indicated that he “would like to have that authority.” On the other hand, two other inspectors with whom I met were aware of the expedited system and claimed that they had used it. One of these inspectors noted that the inmate always receives a refund of his filing fee in these cases. In addition to these inspectors, the warden of ORW appeared to be aware of the expedited process and to approve of it. She had not used it, but stated that she would if the occasion arose for doing so. Two other wardens, however, responded to their survey instrument by identifying the “lack of remedies for lost/damaged property” as one of the three most negative aspects of the grievance system. (Table Warden-13) This suggests to me that these wardens are unaware of the existence of the expedited court of claims process.

The lack of uniform knowledge of the expedited court of claims process is inexplicable,

and the inconsistency in the use of that process is inappropriate. The process is a useful and salutary one, and the department should take steps to ensure the uniform application of the policy throughout DRC institutions.

Recommendation 15: DRC officials should incorporate the expedited court of claims procedure in the new administrative rule regarding the inmate grievance system. In conjunction with the office of legal services, the chief inspector's office should be certain that all institutional inspectors and wardens are aware of the process and use it appropriately.

D. Other De Facto Exclusions

Neither AR 5120-9-31 nor DRC Policy 203-01 refers to several exclusions that grievance system staff apply as a matter of practice. I observed grievances and responses on appeals that indicate, for example, that an inmate must appeal a decision to exclude incoming printed materials to the central office's publications screening committee. *See, e.g.*, SCI Grievance No. 06-99-11, *aff'd.* with comments 8/4/99. In an extremely peculiar resolution, both the institutional inspector and the assistant chief inspector addressed an inmate's grievance regarding the mailroom's refusal to deliver German-language materials. The institutional inspector suggested that the inmate allow the publications screening committee to review the publications in question. SOCF Grievance No. 03-00-28, *aff'd.* 4/17/00. I find nothing in any policy or rule that confers jurisdiction over foreign language materials, as such, on the publications screening committee; nor am I aware of any limitations on an inmate's receipt of foreign language materials simply on the basis that they are written in a language other than English.

I also understand that inmates must appeal decisions regarding security classification (inter-institutional transfers), as well as those regarding religious accommodation and problems

related to the Americans with Disabilities Act, to central office entities. These matters are treated *de-facto* as being outside the scope of the grievance policy.

AR 5120-3-10 specifically requires the inmate to inform the safety officer of any safety problem before filing a grievance. In one instance, the inmate had filed a safety-related informal complaint with the food service supervisor – precisely the action DRC Policy 203-02 requires. The assistant chief inspector made specific reference to AR 5120-3-10 in affirming the institutional inspector’s “denial” of the grievance in BeCI Grievance No. 10-99-05, aff’d. 2/2/00.

The existence of *de facto* exclusions beyond those addressed in the relevant rules and policies, as well as conflicting rules to which the grievance-related rules and policies make no reference, puts inmates at a serious disadvantage. The department’s revised grievance rule should clearly articulate all exclusions in order to eliminate this source of confusion.

Recommendation 16: The new DRC administrative rule governing the inmate grievance system should include a clear and complete description of all matters that are excluded from the scope of the system. Institutional officials should notify all current inmates of these exclusions, and the orientation of incoming inmates should address this subject clearly.

E. The Treatment of Grievances Related to Medical, Dental, and Mental Health Care: The Possible Need for Another Exclusion from the Grievance System

One of the chief concerns the chief inspector raised with me during the course of our several conversations about this report was that related to grievances raising medical care issues. She asked specifically that I comment on the current practices in dealing with these grievances

and express an opinion as to whether some revision of these practices would be wise.²⁶

Currently, issues regarding any aspect of medical, dental, or mental health care are grievable. Inmates must first file an informal complaint with the health care administrator at the institution to which the inmate is assigned. Institutional inspectors address what I would describe as “procedural” complaints, *e.g.*, assessment of “co-pay” costs, attendance at sick call, and receipt of prescribed medication, which generally require no medical expertise to answer. In those instances that require the exercise of medical judgment, however, the inspector understandably refuses to “second guess” medical staff; occasionally, the inspector will raise concerns in this category with medical staff, but this practice is rare.

The number of medically related informal complaints and grievances is far from negligible. Of 8,580 grievances **filed** during fiscal year 2000, 859 (10%) related to medical health care, 62 (.007%) concerned dental care, and 40 (.004%) raised complaints about psychological and psychiatric care. *See FY 2000 Annual Report of the Inmate Grievance System, Appendix A.* During fiscal year 2000, 8,128 grievances were **completed** (either “resolved,” *i.e.*, some action taken, or “not resolved,” *i.e.*, closed with no relief to the grievant). Of this number 1,133 (13.9%) related to medical care, 84 (.01%) related to dental care, and 54 (.006%) related to psychological or psychiatric care. *See FY 2000 Annual Report, Table 2.* Thus, grievances raising issues related to some form of health care comprise a significant percentage of all grievances. Indeed, medical

²⁶ Although some of the information in this section of my report relates directly to complaints regarding medical care, I believe that whatever approach the department adopts to address these grievances should apply as well to those raising issues concerning dental care or mental health care.

health care was the second most common subject of inmate grievances completed during FY 2000. FY 2000 Annual Report, Executive Summary.

Approximately 13% of informal complaints members of the working group reviewed raised medical issues, (Table Informal-9), as did 15.5% of formal grievances. (Table Formal-20). Members of the working group found that 10.7% of all surveyed informal complaints raised “procedural” matters relating to medical care, while only 2.1% required the application of medical expertise. (Table Informal-9) The corresponding percentages in formal grievances raising medical issues was 7.7% and 7.7%. (Table Formal-20)

Only a minority (18.2%) of institutional inspectors expressed any discomfort in addressing medically-related grievances; 81.8% “hardly ever” or “never” felt uncomfortable investigating these grievances. (Table Inspector-18)

Assistant chief inspectors whom I interviewed were not overly concerned about this issue. Three of four expressed the opinion that medically trained staff should continue to address issues requiring medical knowledge. They did not argue, however, for the exclusion from the grievance system of all medically-related grievances, such as those involving complaints about “co-pay” decisions. Some expressed a desire for central office medical personnel, rather than medical staff at the institutional level, to become involved in dealing with “substantive” medical complaints, and one assistant chief inspector noted that the relationship between medical staff and grievance system staff should be a formal rather than an *ad hoc* one.

Another factor one should consider in determining whether to alter the present treatment of grievances related to health care is the fact that two inspectors with whom I spoke singled out

health care administrators as being the least responsive supervisors to informal complaints.

Furthermore, a number of inmates argued in their correspondence to me that asking a medical professional at a particular facility to resolve “substantive” medical complaints from inmates at that institution was the equivalent of using the fox to guard the hen house.

Adding yet another layer of complexity to this issue is the fact that a number of medical grievances may be emergent in nature. As I have indicated above, staff often overlook an inmate’s designation of a grievance as an “emergency.” The fact that inmates overuse this designation contributes to this phenomenon; so does the emphasis on exhausting the informal complaint process before filing a formal grievance. I have made a recommendation earlier in this report addressing the need for institutional inspectors to learn promptly whether an inmate’s informal complaint rises to the level of an “emergency.” See Recommendation No. 9, above. In the case of grievances related to some aspect of health care, however, the institutional inspector often may not be qualified to identify the emergent nature of the inmate’s complaint; rather the health care administrator (who may or may not respond to the complaint) is in a better position to identify potential medical emergencies.

As I also have noted earlier, the grievance system now is struggling to keep up with an enormous volume of complaints and to do so within reasonable time limits. Eliminating the need for institutional inspectors to repeat (and for assistant chief inspectors to confirm) in near-rote fashion that they cannot make or challenge professional judgments concerning the provision of medical, dental, or mental health care would relieve some of the pressure that impedes the grievance system at the levels of the institutional inspectors and the assistant chief inspectors.

There are several approaches the department could take to address grievances raising medical, dental, and mental health issues. One solution, which some appear to support, would be to split “procedural” from “substantive” health care grievances, leaving the former for the grievance process and the latter for the DRC’s bureau of medical services. The distinction between these two kinds of problems, however, is not always obvious, and such a dichotomy is likely to lead to even greater confusion among inmates and inspectors.

A contrary argument is that treating alike all grievances relating to medical, dental, or mental health care is the most practical solution from the point of view of efficiency, and that health care administrators are more likely to be responsive to central office medical personnel than they are at this time to institutional inspectors. Moreover, there is a general consensus that inspectors, assistant chief inspectors, and the chief inspector do not have the professional expertise to evaluate substantive decisions by health care providers. These observations support the exclusion of health care related grievances from the existing grievance system and the creation of a parallel system at the central office level to deal with inmates’ complaints (including the continued use of the informal complaint system at the institutional level). This approach, also would augment current efforts in the area of continuous quality improvement, would provide an independent analysis by professionals other than those whose decisions inmates are questioning, and would provide an enhanced level of assurance to inmates and to the department that institutional staff are meeting legal and professional standards for the provision of care. Moreover, by excluding grievances related to health care from the scope of the regular grievance system, the department would be addressing some of the difficulties, particularly those relating to

timeliness, this report has described in connection with offices of institutional inspectors and the chief inspector's office.

One difficulty with developing a parallel system in the bureau of medical services is that this step will add an enormous responsibility to that office. No doubt, it would be necessary for the department to employ additional health care professionals at the central office level to address medical, dental, and mental health grievances. Placing both the grievance resolution and appeal level in the bureau of medical services would aggravate this need for additional professional staff. Finally, the creation of this parallel system and the addition of yet another exclusion from the existing grievance system also would add one more layer of difficulty to which inmates and staff would have to adjust.

I have not discussed these ideas with institutional personnel or with persons at the central office level who are involved in the provision of physical, dental, or mental health care. For better or worse, I concluded that any such discussions were likely to promote unwarranted speculation and concern about recommendations that departmental leadership may conclude are not worth pursuing. Yet, in the absence of those discussions I believe that it would be unfair and inappropriate for me to recommend one course of action or the other. Moreover, there may be other feasible solutions that have not occurred to me. For this reason, I shall recommend only that Director Wilkinson establish a task force of appropriate medical, mental health, and dental staff – at the institutional and central office levels – as well as the chief inspector and a representative from her office and other appropriate central office personnel to develop a detailed solution with which all elements of the department will feel reasonably comfortable. The input of

a non-departmental "inmate advocate" at some point in these discussions would enhance the credibility of the process and lead to a solution inmates would be more likely to accept with good grace. If departmental leadership wished, I would be pleased to contribute my time voluntarily to serving as a resource for this task force.

Recommendation 17: I recommend that Director Wilkinson appoint a task force consisting of appropriate medical, mental health and dental staff at the institutional and central office levels, as well as the chief inspector and one or more representatives from her office, to develop a proposal for dealing with grievances raising issues concerning medical, dental, or mental health care. The task force should invite input from a non-departmental inmate advocate and submit its recommendations within 30 days following its members' appointment.

VII. Independence of Institutional Inspectors and Chief Inspector's Office

As I have noted earlier, there is significant confusion in AR 5120-9-30 about the relative roles of the warden and the chief inspector with respect to institutional inspectors. While the warden "appoints" the inspector, who serves as "an administrative assistant" to the warden, the chief inspector "shall take part in the annual review" of all inspectors, as well as in the "selection process" for these persons. The chief inspector must "provide functional supervision" to the inspectors.

~~There is no question about who actually calls the shots with respect to these appointments.~~

Although the chief inspector or someone from her office is a member of the panel that interviews the top three candidates, "the warden has the final word." Moreover, all the inspectors whom I interviewed took the position that their "boss" is the warden, though they acknowledged a responsibility to the chief inspector's office as well.

When asked, 75.8% of the institutional inspectors described their relationship with their warden as “excellent” and 18.2% described that relationship as good. Only one inspector described that relationship as “fair” and another single inspector described it as “poor.” (Table Inspector-21)

Several questions on surveys given to wardens and to inspectors address the relationship between these two individuals. When asked, for example, how often the warden implements the institutional inspector’s recommendation, 16.1% of the inspectors responded “all of the time” and 64.5% responded “most of the time.” Only one inspector said, “hardly ever.” (Table Inspector-23)

When asked whether they ever override a recommendation made by an inspector, 60.7% of the wardens responded affirmatively and 39.3% said they have never overridden such a recommendation. (Table Warden-17) The apparent inconsistency between answers of inspectors and those of wardens reflects, among other things, that most wardens have dealt with a number of institutional inspectors, and their responses in all likelihood reflected their experience with all inspectors whom they have supervised. The question posed to institutional inspectors, however, relates directly to the interaction between the inspector and that person’s current warden.

In any event, the conclusion one reaches from these responses is that the relationship between institutional inspectors and wardens is a good or excellent one in an overwhelmingly high number of cases. The only dissent to this observation came from two assistant chief inspectors. One stated that there is a “breakdown” in the relationship between wardens and institutional inspectors, and the other expressed the opinion that the institutional inspectors should report

directly to the chief inspector rather than to the warden and noted that not all inspectors enjoy the support of their wardens. Although these assistant chief inspectors' concerns are troubling, they seem to me to go to the question of the extent of support wardens give to institutional inspectors. I found no evidence during my discussions with wardens, inspectors, or assistant chief inspectors that wardens inappropriately influence the institutional inspectors' initial decision making process.

I believe that it is essential that the chief inspector concur in the appointment of an institutional inspector. I also believe the warden and the chief inspector should play equal roles with respect to annual evaluations and the retention or the removal of an institutional inspector. While I recognize that the warden is the primary executive officer in a prison, the inspector and that person's work performance must be satisfactory both to the warden and the chief inspector. Thus, I do not believe that the warden should be able to unilaterally override the chief inspector's objection to a candidate for the institutional inspector's position or her negative evaluation of an inspector's performance. In the event that the warden and the chief inspector cannot reach agreement, I suggest that the director or the assistant director should make the final decision with respect to any disagreement the warden and the chief inspector are unable to resolve. In doing so, the director or the assistant director should put heavy emphasis on preserving the chief inspector's functional supervision of the inspector and the integrity of the grievance system.²⁷

Both the chief inspector and the members of her office indicated that the relationship

²⁷ Let me make it clear that I am not recommending any encroachment on a warden's authority to respond to a security threat. If, for example, an institutional inspector were to bring contraband into an institution, the warden should be able to remove the inspector from the prison and bar re-entry, as the managing officer could with respect to any person working in the facility.

between the warden and the office of the chief inspector is one characterized by negotiation and persuasion rather than authority. The chief inspector does not have the authority to give a warden a direct order, even to follow departmental rules or policies. The chief inspector, however, has access to the deputy director of the office of prisons and other executive staff of the agency, who have the ultimate authority to enforce departmental policies and rules. So long as it is clear that the chief inspector has resort to a higher level official who can direct the warden in this regard, this arrangement appears to be satisfactory.

During my discussions with the chief inspector and members of her office, I found no evidence that central office officials superior in rank to the chief inspector interfere in any way in the operation of the grievance system. In this respect, it appears that the office of the chief inspector operates entirely independently and without inappropriate influence from above.

Recommendation 18: The rule and practice governing the grievance system should ensure that the warden and the chief inspector both approve the appointment of an institutional inspector, and that both of these persons participate equally in annual evaluations and decisions to retain or remove the inspector. In the event of disagreement between the warden and the chief inspector, the new administrative rule should leave the final decision on the matter to the director or the assistant director.

VIII. The Grievance System as an Information Gathering and Management Tool

A. Institutional Inspectors' Inspection Duties

Administrative Rule 5120-9-31 requires the institutional inspector to "make a continuing survey of all institutional areas to determine compliance with administrative and institutional regulations." The rule further requires the inspector to submit reports of his or her findings to the

warden “on a monthly basis or more often if necessary.” These reports also are included in monthly activity reports inspectors send to the office of the chief inspector. Administrative Rule 5120-9-30 includes among the duties of the institutional inspector “the monitoring of the application of institutional and departmental rules affecting the services to inmates or the security of the institution.”

At the time of the development of the grievance system in the mid-1970s, the decision to add inspection duties to those of the “grievance officer” was directly related to the functioning of the inmate grievance process. The thought was that an inspector, in the course of reviewing grievances, would identify actual or potential trouble spots in the institution. A large number of grievances alleging inappropriate supervision in a particular housing unit, for example, might indicate general supervisory problems affecting all inmates in that unit. By giving the institutional inspector the duty and authority to make such inspections, the drafters of the procedure hoped to reduce the number of grievances and to solve operational problems within the facility.

The inspection function of the institutional inspector has deteriorated into a rote requirement that the inspector complete at least four inspections per month, using forms the chief inspector’s office developed and distributed.²⁸ These forms are generally superficial and often lend themselves to “yes” or “no” answers. Several of the wardens I interviewed acknowledged that the inspectors’ reports are not particularly helpful to the managing officers; certainly, they convey little if any useful information to the chief inspector.

Thirty-three inspectors who responded to the survey the working group developed

²⁸ One inspector told me he does not make these inspections.

claimed that “inspection of institutional services” consumed an average of 11.9% of their working time. (Table Inspector-3) Thus, the impact of this responsibility, while not enormous, is not negligible. Although I think there is much to be said for the inspector to continue to fulfill this function, I believe that inspections should be directly related to the flow of grievances at the institution and should result in narrative reports containing findings and recommendations that will have a constructive impact on the grievance system and on institutional operations. In any event, I do not believe that the current inspection/reporting activities of the institutional inspectors serve a particularly useful purpose.

Recommendation 19: Institutional inspectors should conduct inspections, as needed or as directed by the warden or the chief inspector’s office, to supplement the resolution of individual grievances. These inspections should attempt to identify and bring attention to broader or deeper problems the receipt of one or more grievances has indicated or suggested. A major purpose of the inspecting function should be to reduce the volume of individual grievances by taking corrective action in areas that are producing unduly numerous or serious complaints from inmates. The inspector should direct these reports to the warden and the chief inspector.

B. Generation of Information Useful for Institutional Management Purposes

Institutional inspectors generate a substantial amount of information that can assist wardens and others in spotting troublesome areas of a facility and in identifying trends within the prison. Inspectors produce monthly reports indicating the number of grievances on hand at the beginning of the month, the number received during the month, the number completed during the month, and the number on hand at the end of the month. This report also indicates the number of grievances “resolved” (problem corrected, problem noted and correction pending, and problem

noted and report/recommendation made to warden) and the number “not resolved” (no action taken in response to the grievance). Non-resolved grievances are broken down into ten categories indicating the basis for the “denial” of relief. The report notes the number of grievances withdrawn at the inmate’s request and the number pending resolution at the end of the reporting period.

The monthly report also provides information on the number of 10-day and 15-day extensions the inspector took. It also identifies the number of kites the inspector received, the number of court of claims investigations the inspector completed, and the number of communications with outside agencies.

The report contains dates of inmate orientation sessions, indicating the number of inmates in attendance. The inspector provides similar information regarding staff training activities. The report lists all special assignments, meetings, and seminars in which the inspector participated during the month.

The monthly report ends with a “complaint code list,” in which the inspector identifies the main subject matter each grievance raised. In the case of multiple-subject grievances, the inspector must make a judgment concerning this designation.

At the conclusion of each fiscal year, the inspector submits an annual report containing aggregate numbers regarding the number of grievances, dispositions, and subject matter categories. *See FY 2000 Annual Report of the Inmate Grievance Procedure*, Appendix B. This annual report provides a comprehensive description of the grievance process during the fiscal year it covers, identifying such information as differential filing rates, appeal rates, and rates of original

grievances.

As I have noted in an earlier section of this report, the institutional inspectors do not keep or report aggregate data on the number of informal complaints they receive or on the nature of responses to informal complaints. As a result, the chief inspector's annual report contains no information on this important subject. This is a shortcoming that future reports by inspectors and by the chief inspector should remedy.

This deficiency notwithstanding, the grievance system produces a substantial amount of information that should be highly useful to managing officers. Indeed, all wardens who responded to the wardens survey strongly agreed or agreed that inmate grievances can be helpful in identifying problems in the institution. (Table Warden-2) A total of 66.7% said that they had changed an institutional policy as a result of a grievance.²⁹ (Table Warden-15) Logically, these positive comments should apply equally to aggregate monthly information inspectors generate.

I cannot speak to the extent to which upper level executives in the DRC are using information generated by the inmate grievance system as a management tool. I hope that they are doing so, as this information is one of the most useful early warning systems; I also hope they are encouraging wardens to review monthly inspectors' reports with care and to communicate closely with inspectors on matters of actual or possible concern. Many staff characterize the grievance system as an adversarial process that is biased toward inmates, and wardens are aware of these feelings on the part of staff. Unwelcome as inmates' complaints may be, however, all staff,

²⁹ During my interviews at six institutions, however, wardens and inspectors were unable to recall a significant number of policy changes resulting from the operation of the grievance system. This is something of chief inspector's office may wish to begin tracking.

including supervisory and executive staff, should recognize that informal complaints, grievances, and appeals provide a barometer of the level of tension and of problems; if acted on, these indicators may contribute substantially to the safety of staff and the security of the institution.

Recommendation 20: I recommend that following the issuance of each annual report, the director convene a meeting of wardens and the members of the chief inspector's office to discuss the contents of the report and the operation of all facets of the inmate grievance system.³⁰

IX. The Adequacy of Resources Dedicated to the Inmate Grievance System

A. Institutional Inspectors

The DRC operates 32 facilities from which grievances emanate³¹ In addition, two privately operated prisons in Ohio hold DRC prisoners, and these inmates also have access to the grievance system. Of the 34 institutions, all have institutional inspectors. The institutional inspectors at several facilities also serve as the institutional investigator. Inspectors at other facilities perform non-grievance related duties in their official roles as administrative assistant to the warden, the ACA coordinator, the labor relations officer, the assistant media officer, or some other position.

In fact, no inspector dedicates all of his or her time to the duties of that position. They report that they spend, on average, approximately 34% of their work time responding to grievances. (Table Inspector-3) Approximately three-fourths (75.8%) of institutional inspectors report three or more unrelated work assignments or committee activities. (Table Inspector-4) On

³⁰ See also Recommendation 2, above.

³¹ One of these, the Toledo Correctional Institution, opened in FY 2001 and thus is not represented in the FY 2000 Annual Report of the Inmate Grievance Procedure.

average, inspectors reported that they spend almost 11% of their time on committee assignments and 10.3% of their time on “other” (apparently non-grievance-system-related) duties. (Table Inspector-3) Twenty-six, or 78.8%, reported that duties outside the inspector’s position adversely affect their ability to do their job effectively; 24.2% reported the extent of this diversion as being “a great deal.” (Table Inspector-7)

A member of the working group reviewed personnel files to determine the longevity of the tenure of institutional inspectors. The length of time served as institutional inspector ranges from one month to nine years, with an overall average of two years and two months. More than half of the current inspectors (56.3%) have held this position for a year or less, while 40.6% have served for two to nine years.

One of the observations that struck me is that a number of the institutional inspectors and wardens whom I interviewed indicated that they had inherited dysfunctional grievance systems. This was true of the inspector and the warden at Pickaway Correctional Institution, the inspector and the warden at ORW, the inspector and the warden at Southeastern Correctional Institution, the inspector and the warden at Madison Correctional Institution, and the warden at Belmont Correctional Institution. All of the inspectors at these five institutions have held that position for less than one year.

Several wardens also commented on the relatively high turnover rate among wardens. Three of the wardens I interviewed received their appointments in 1999, and two became wardens

in 2000.³² In general, wardens expressed concern about the rate of turnover in the warden's position, suggesting that a warden often is not at an institution long enough to make a substantial impact on operations at that facility.

This level of turnover is not unique to the DRC. My experience is that in many of the larger state correctional systems increases in the inmate population and the accompanying construction boom have outstripped the number of experienced managers in the system. One of the negative impacts of this phenomenon is the need to shuffle high-level or mid-level management staff from institution to institution to address management problems a dearth of experience creates.

The rate of turnover among inspectors also is a direct result of their perception of the position they fill. Of the six inspectors I interviewed, most (including one who has served in excess of six years) indicated that they regarded the job as a short-term position of two to three years' duration – a career step in the direction of higher management. The sixth inspector, also a person with relatively long tenure in the position, suggested that the ideal tenure for an inspector would be five to six years, up to a maximum to ten. One of the assistant chief inspectors I interviewed stated that a minimum of two to three years and a maximum of five years would be appropriate. Without question, the inspector's position is an excellent training ground for future

³² I do not mean to imply that all these persons occupy their first position as warden at their current institutions of assignment. In several instances, they have had prior experience as wardens at other institutions. Although turnover may bring an experienced person to the chief executive's office, it also brings a new management style and often involves a change of relationship between the warden and the institutional inspector, a phenomenon on which several inspectors commented.

deputy wardens, wardens, and other high-level positions, and both wardens and inspectors perceive it as such. In the long run, this perception, because it is a correct one, is likely to strengthen the grievance system.

I gained a strong impression, however, that the current rate of turnover in inspectors, coupled with the same phenomenon in wardens, places an additional strain on the inmate grievance system. I sense that the DRC has not yet found the most efficient balance to avoid stagnation on the one hand and a counterproductive level of turnover on the other. Although one inspector spoke of the pressure of being regarded by other staff as an “inmate lover” and slightly more than half of the inspectors acknowledged that they felt awkward working with fellow employees some of the time (48.5%) or most of the time (3.0%) (Table Inspector-26), a large majority also reported that they are treated with equal respect (69.7%) or more respect (9.1%) in relation to other executive staff. (Table Inspector-25)

In short, while burnout may be a factor, I think that the high rate of turnover among inspectors is largely related to a commendable degree of career-related ambition. In the subsections below, I shall address the level of compensation of inspectors, as well as the extent to which the department makes support staff available to the inspectors. If the department could find solutions to some of the problems in these areas, I believe that a significant number of inspectors would consider the position at least as a mid-term commitment rather than, as seems to be the case with many inspectors today, a short-term stepping stone to higher pay and enhanced status.

Recommendation 21: The chief inspector should make a thorough survey of non-grievance-related activities

institutional inspectors are performing. To the extent that the chief inspector concludes that these assignments are interfering with the institutional inspector's ability to discharge all the responsibilities of that position in an effective and efficient manner, she should communicate this fact to the warden, who should take prompt corrective action to eliminate some or all of these extraneous duties. In addition, without in any manner discouraging institutional inspectors from seeking to advance their careers within the department, the DRC should establish a presumptive minimum period of service (dependent on satisfactory performance), of perhaps three years' duration. The DRC should avoid transfers of inspectors within this minimum time period in all but exceptional circumstances.

B. Qualifications and Training

1. Qualifications

Ohio's Department of Administrative Services ("DAS") requires the institutional inspector to meet the minimum qualifications of "two years training or two years experience in an adult rehabilitation and corrections system that provided knowledge of departmental, state and/or federal laws, rules and procedures and American Correctional Association standards affecting detention of inmates and inmate rights; one course or three months experience in investigative methods and techniques; and one course or three months experience in behavioral or social sciences." DAS job description. As best I can tell, there is no DAS-imposed educational requirement inspectors must achieve.

This fact notwithstanding, the DRC is entitled to impose additional requirements, including educational attainment, for these exempt positions. The department's current practice (as opposed to written policy) is to require a college degree or, at a minimum, two years of college and current attendance. The chief inspector indicated to me that there may be exceptions

even to this minimal ongoing attendance requirement, and other sources indicated that these exceptions are relatively commonplace.

Of 32 inspectors currently serving in that position, 9 hold high school diplomas, 7 have some college credits but no degree, 3 hold associate (2-year) degrees, 11 hold baccalaureate degrees, and two have masters degrees. Thus, a number of current inspectors fail to meet the educational requirement the department has made a matter of "practice" for new appointments. Although one warden and one inspector told me they found the educational requirement problematic and an assistant chief inspector expressed grave reservations about the "college requirement," it seems to me to be an appropriate qualification, particularly in view of the virtually universal opinion that the pay range for the position should be higher than it is. I do not share the belief that the imposition of such a requirement will prevent a continuing emphasis on practical experience, a fear some staff expressed. Moreover, the department's insistence on a college degree will increase the upward mobility of institutional inspectors within the DRC, a positive phenomenon I have already mentioned.

Recommendation 22: I recommend that the DRC make the possession of a college degree a preferred qualification for newly appointed institutional inspectors and apply that standard to all future appointments.

2. Training

Turning to the issue of practical training, I am surprised by the dearth of formal training inspectors receive prior to assuming their responsibilities. The inspector at Pickaway Correctional Institution informed me that he received no training whatsoever before assuming his responsibilities. The inspector at Mansfield Correctional Institution reported that she had

received no special training for the position, but had had the benefit of being part of a “buddy system” with a previous inspector. When I interviewed her in late October 2000, the inspector at Madison Correctional Institution had received no formal training and had been unable to attend a two-day session the chief inspector’s office makes available to new inspectors. She too reported engaging in a “buddy system” with her predecessor as inspector.

The inspector at SOCF had some prior experience as assistant inspector before becoming acting inspector in 1994. He also engaged in a week-long training program in interrogation and interviews at the central training academy in 1995. The assistant institutional inspector at SOCF took the same course at the central training academy after she became assistant inspector. The inspector at ORW had attended a quarterly meeting of inspectors and a two-day training session at the chief inspector’s office before becoming inspector.³³ The inspector at Southeastern Correctional Institution engaged in this two-day training session approximately one month after she became the inspector. She also had prior experience as a secretary for an institutional inspector at Chillicothe Correctional Institution. At least one assistant chief inspector clearly identified additional training of inspectors as one of the system’s needs at this time.

When asked on the survey, however, 36.4 % of the current inspectors rated their training as excellent, and 45.5% as good; 18.1% (divided evenly) described their training as fair or poor. (Table Inspector-30) I cannot reconcile these answers with the responses I received from the inspectors I personally interviewed other than by suggesting that the question on the survey

³³ Quarterly meetings of inspectors have some training component; by no means, however, is this the only function of those meetings.

instrument went to the issue of the quality of training, while the issue I raised during my interviews was more related to the quantity of training these inspectors received. Particularly when one considers the state of affairs most inspectors described as inheriting from their predecessors, it appears to me that there must be much greater emphasis on pre-service and in-service training of institutional inspectors.

Recommendation 23: The chief inspector's office should increase the length of training institutional inspectors receive before assuming the full responsibilities of their positions. In addition, there should be greater emphasis on continuing in-service training to address areas of weakness. Former inspectors who have moved on to higher-level executive positions after successful terms as inspector, assistant chief inspector, or chief inspector could contribute from time to time to the department's training resources for this purpose.

C. Level of Compensation

Of 32 institutional inspectors for whom I obtained information, 30 are at pay range 12, one is at pay range 13, and one is at pay range 15. Job position titles vary. Twenty-six inspectors are correctional grievance officers 2, three are correctional warden assistants 1, one is a correctional warden assistant 2, one is a mental health administrator, and one is a labor relations officer. The beginning base salary for pay range 12 is \$18.66 per hour or \$38,812 per year. In addition, inspectors obtain annual pay raises and longevity pay for state employees.

Every institutional inspector with whom I spoke agreed that the appropriate pay range for the inspector should be at least level 13, which is the equivalent to the pay range of administrative assistants 2 to the warden. This is not inconsistent with the provision of Administrative Rule 5120-9-30, which states that the inspector "shall be an administrative assistant to the managing

officer...” Only one warden I interviewed believes that pay range 12 is appropriate for this position. One recommended pay range 13 and another suggested pay range 14.

The chief inspector and the four assistant chief inspectors I interviewed agree that the institutional inspector’s job warrants at least pay range 13; two assistant chief inspectors thought that level 14 would be appropriate.

One institutional inspector made the point that the current pay range of inspectors affects staff’s perception of the status of the inspector’s position. Paying institutional inspectors at the lowest level of compensation members of the warden’s executive staff earn sends a message concerning the importance attached to the position. Given the scope of the inspector’s responsibilities and the importance of the grievance system to the orderly functioning of the department and its institutions, a one-level increase in the pay range of institutional inspectors is both appropriate and necessary.

Recommendation 24: I recommend that the DRC seek to increase the entry level salary for institutional inspectors to Level 13.

D. Support Staff

1. Assistant Inspectors

Three prisons, Mansfield Correctional Institution, the Ohio State Penitentiary, and SOCF have full-time assistant inspectors to assist the institutional inspector. One assistant chief inspector told me that there is a need for assistant inspectors at other facilities, *e.g.*, Chillicothe Correctional Institution. I did not discuss the issue of the appropriate level of compensation for the position of assistant institutional inspector.

Recommendation 25: I recommend that the chief inspector make an evaluation of all current DRC facilities and make recommendations to Director Wilkinson for the appointment of assistant institutional inspectors at facilities in need of such additional staff to operate the grievance system effectively and efficiently. In connection with this evaluation, I recommend that the chief inspector recommend an appropriate entry level for compensating assistant chief inspectors.

2. Secretarial/Clerical Support

Eleven, or 33.3%, of the inspectors have access to no secretarial/clerical support whatsoever; seven, or 21%, have a personal, full-time secretary. These seven inspectors include those who also enjoy the assistance of an assistant inspector. Finally, 15, or 45.5%, of the inspectors are able to use a secretary they share with one or more other staff. (Table Inspector-31)

During my interviews, wardens and inspectors were virtually unanimous that inspectors require the assistance of full-time, exempt secretaries. The institutional inspector's office engages in a vast amount of record keeping, including the logging of informal complaints, kites, formal grievances, and an enormous amount of correspondence from inmates seeking grievance forms or information about the grievance system. That office is responsible for maintaining and monitoring informal grievances to which supervisors have not responded and for producing reports of institutional inspections. Filing, photocopying (usually in a place remote from the inspector's office), and answering the telephone also consume a substantial amount of time.³⁴ In summary, it is virtually impossible for an inspector to do an adequate job without secretarial and clerical

³⁴ During several of my interviews, telephone calls from staff to the inspector's office seeking answers to questions frequently interrupted my discussions with inspectors.

assistance.

Both wardens and inspectors underscored the confidentiality of much of the information that flows through the office of the institutional inspector. For this reason, they believe that the secretary who serves the inspector should be exempt, *i.e.*, not affiliated with a union whose members are often the subjects of inmates' grievances.

In the absence of a secretary, when inspectors leave their offices to conduct inspections, inmate orientation, or staff training – or to attend the multitude of meetings that seem to occupy much of their time – the inspector's office is left unattended. During office hours, the absence of secretarial assistance to answer the telephone guarantees that interviews with inmates will suffer frequent interruptions.³⁵

In summary, one of the highest priorities of the department should be to ensure that all inspectors have the services of a full-time, dedicated, exempt secretary. If any sharing of secretarial services is appropriate at institutions producing little grievance activity, it should be limited to an arrangement under which an exempt secretary serves the institutional inspector and the institutional investigator, both of whom are privy to highly confidential information. Efforts to share staff with wardens and other high-ranking executives who may have exempt secretaries is not calculated to result in true sharing; the reality is that these secretarial staff are likely to give a lower priority to the inspector's needs than to those of a warden or deputy warden, for example.

³⁵ In this connection, several assistant chief inspectors told me that they regarded the failure of inspectors to maintain regular open office hours as one of the most substantial deficiencies in the operation of the grievance system. This issue is directly linked to relieving institutional inspectors of clerical and secretarial duties.

Shared staff also are likely to be less proximately situated to the inspector than to the other officials the secretary serves.

Recommendation 26: Every institutional inspector should have a full-time, exempt secretary whose duties relate exclusively to the inspector's office. If the level of usage of the grievance system at an institution makes this arrangement infeasible, the institutional inspector should share a secretary with an investigator, but not with any other person.

E. The Office of the Chief Inspector

The staff of the chief inspector's office consists of the chief inspector, four assistant chief inspectors, and two secretaries. The workload of these persons is extremely heavy, and significant diversions to other, non-grievance assignments make this workload even more burdensome. In particular, one assistant chief inspector has worked virtually full-time on an unrelated (but quite important) investigation for several months, during which the chief inspector "borrowed" the institutional inspector from the Franklin Pre-Release Center to carry that assistant chief inspector's work load.

Three of the assistant chief inspectors serve as appellate officers for eight institutions, and one handles appeals from ten facilities. The chief inspector deals with all original grievances and has a host of supervisory duties related to the grievance system. As earlier sections of this report have indicated, critically important needs such as training, responding to appeals in a timely fashion, and enhancing the quality of some institutional investigations require additional attention.

One of the most time-consuming and frustrating tasks of the staff of the chief inspector's office is dealing with grievance appeals that relate to inconsequential, if not altogether frivolous, grievances, as well as appeals in cases in which the grievant has already obtained all the relief he

or she sought or could reasonably expect to receive. These are grievances that require no investigation at the institutional level by the assistant chief inspectors. Staff should be able to address them quickly, spending a minimum of time in constructing formal responses.

I believe that the most efficient and effective approach to addressing the need for additional human resources in the office of the chief inspector would be to employ a person to serve as an administrative assistant to the assistant chief inspectors. Assistant chief inspectors would continue to be responsible for screening all incoming appeals, but they would be able to forward to the administrative assistant those appeals not requiring investigation or a response written by an assistant chief inspector. The administrative assistant would respond to these appeals as directed by the assistant chief inspectors. By improving the efficiency of all of the assistant chief inspectors, this addition to the staff of the office would have a high impact at a relatively low cost, and I commend this solution to the department for its consideration.

Recommendation 27: The DRC should assign an additional person to serve as an administrative assistant in the office of the chief inspector. This person should be responsible for addressing grievance appeals that professional staff identify as not requiring the personal attention of assistant chief inspectors.

X. Concluding Comments: The Inmate Grievance System as an Effective Problem-Solving Mechanism

I shall conclude this report with an effort to address this bottom line question: Does the existing grievance system serve as an effective problem-solving mechanism? No answer to this question can be absolute, and any conclusion must rely on a combination of interested and disinterested perceptions, as well as whatever relatively "hard" evidence may be available. Let me

begin with a description of the perceptions of inmates, the users of the system.

In responding to the inmate survey, 15.9% of the prisoners who ventured an opinion had a favorable reaction to the fairness of the informal complaint process, while 84.1% disagreed. (Table Inmate-15) The corresponding percentages for responses to formal grievances were 24.9% and 75.1% (Table Inmate-18), and for responses to appeals the corresponding percentages were 29.7% and 70.3%. (Table Inmate-16) Finally, 29.6% of responding inmates with an opinion had a favorable reaction to responses to original grievances and 70.4% did not. (Table Inmate-17)

When asked whether the grievance process is a good way to solve a problem, 38.6% of inmate respondents strongly or somewhat agreed; 61.4% strongly or somewhat disagreed. (Table Inmate-25) When one considers the responses only of inmates who claim to have used the system, the percentage of favorable responses falls slightly to 34.1% and the percentage of negative responses rises to 65.9%. (Table Inmate 25a Crosstabulation) One would have hoped that the extent of satisfaction would have increased among users, but this is not the case; one can take some comfort, I suppose, from the fact that it did not decline precipitously.

Another question to which inmates responded listed four statements about the grievance process in general and asked which of those statements best describes the process. In response to this question, 24.8% identified "always fair" or "mostly fair," while 75.2% described it as "hardly ever fair" or "never fair." (Table Inmate-24)

We have reached a familiar point in any discussion of relative success and failure: Do we regard the glass as being partly full or as being partly empty? What the responses I have

described above suggest to me is that a quite significant portion of the inmate population responding to these questions was willing to acknowledge some degree of confidence in one or more levels of the grievance system. My professional experience is that the numbers of DRC inmates who acknowledged the grievance system as a positive phenomenon, particularly in light of some of the problems this report has described, are somewhat impressive. Clearly, however, the substantial majority of inmates view the process negatively, and this is a matter that should be of real concern to the DCR. Although there are a number of causes for this negative view on the part of inmates, my belief is that substantial progress in dealing with issues related to retaliation, which I have discussed at length above, would do more than any other single action to improve inmates' perceptions of the fairness of the system.

The institutional inspectors' survey asked inspectors to share their opinions as to the perceptions of inmates, custody staff, and non-uniformed staff – as well as their own opinions -- regarding the grievance system. The following table reflects the inspectors' responses:

Table Inspector-10

Group	Entirely Fair	Fair Most of the Time	Biased vs. Inmates	Biased v. Staff	Rarely Fair
Inmates	0	48.5%	51.5%	0	0
Custody Staff	0	45.5%	0	54.5%	0
Non-custody staff	6.1%	69.7%	6.1%	18.2%	0
Inspector	39.4%	60.6%	0	0	0

Apart from themselves, inspectors recognize that very few actors regard the process as

“entirely fair.” Inspectors also are somewhat overly optimistic about inmates’ perceptions. It is interesting that approximately half of the inmates and half of the custody staff, in the view of the inspectors, regard the system as biased against the “their side.”

Another survey asked supervisors, the lowest level of staff involved in the grievance process but the staff members closest to the day-to-day operation of the institutions, to list three positive things about the informal complaint resolution process. Supervisors’ third most frequent response (given by 39.1% of the supervisors) was “resolves problems.” (Table Supervisor-24) This is consistent with the opinion of 38.6% of inmates who felt that the grievance system is a good way to solve problems. (Table Inmate-25)

In my opinion, one of the relevant gauges of the effectiveness of a grievance system is the extent to which the participants in the system regard and treat it as “adversarial.” I believe that the more “adversarial” the system is or is perceived to be, the less likely it is to be or to be perceived as effective. My observation is that the DRC’s inmate grievance system in fact is too adversarial in nature and that inmates and staff alike regard it as adversarial.

Prisoners often refer to filing a grievance “on” or “against” a particular staff member. Staff use the same terminology. Responses to formal grievances frequently use such phrases as “your grievance is without merit” or “denied.” Inmates “win” or “lose” their grievances. A significant percentage of responding supervisors (15.5%) believe that one of the three worst things about the informal complaint resolution process is that inmates use the process to “threaten staff.” (Table Supervisor-25) The repeated use of language of this kind becomes a self-fulfilling prophesy.

Three wardens confirmed my sense that the grievance system is overly adversarial in nature when they listed the adversarial nature of the process as one of the three worst things about the system. (Table Warden 13) Moreover, 21.2% of the institutional inspectors view the grievance system as being adversarial most or some of the time. (Table Inspector-19)

Let me turn now from perceptions of participants in the grievance system to other, more disinterested, observations. Members of the working group evaluated 433 informal complaints, 460 formal grievances, and 72 original grievances to determine whether answers were logical and responsive. The question team members evaluated was "Did the response fix the problem or explain sufficiently why it cannot be fixed?" Using their best judgment as professionals outside the operation of the process, team members reached affirmative conclusions in 88% of the informal complaints (Table Informal-8), 92.6% of the formal grievances (Table Formal-17), and 100% of the original grievances. (Table Original-19)

I reviewed and "graded" 210 responses to grievance appeals. I attempted to evaluate the relevance, correctness, fairness, and tenor of the response, and I believe that I applied relatively rigorous standards to my review. I awarded the following "grades" of A (the best) to F (the worst): A = 93 (44%); B = 34 (16%); C = 32 (15%); D = 33 (16%); and F = 18 (8%). I found 75% of the responses to be satisfactory to excellent.³⁶ While my level of satisfaction with the substance of responses was somewhat lower than that of the members of the working group who evaluated the other elements of the grievance system, our joint conclusions are overwhelmingly

³⁶ Naturally, in those instances in which an institutional inspector's response was a good one, the response on appeal was likely to be acceptable or better.

favorable.³⁷

Whatever conclusion one reaches about the effectiveness of the current system, there are two observations with which I believe any thoughtful person will agree. First, the grievance system in the DRC is far from the sham that some have described it as being. To the contrary, it is a system that is deeply imbedded in the culture of the agency and one to which many inmates make recourse. It offers relief to a significant number of prisoners who choose to use it and provides valuable information to institutional and departmental managers. Many staff do not “like” the system, but they accept it as part of the fabric of institutional life.

Second, I also believe that even the most ardent supporters of the current system will agree that its performance can and should improve. Staff’s undoubted retaliation against users of the system, the failure at all levels to address emergency grievances, and the need for enhanced human resources both at the institutional and the chief inspector’s level are only some of the serious deficiencies this report has described. I hope that departmental leadership, as well as those involved in the grievance system on a day-to-day basis, will find useful the recommendations I have made and that these persons will secure the resources necessary to implement those recommendations.

In closing, the preparation of this report has been a rewarding professional experience for me. I remember the non-system that I found in place throughout the department when I began to

³⁷ In this respect, let me state directly that I found members of the working group from the Bureau of Planning and Evaluation and the Bureau of Research to be rigorously critical of what they saw. I am prepared to assert unequivocally that they did not give the department any “breaks” when making judgments about various elements of the grievance system.

serve as special master in *Taylor v. Perini* in 1975. I also recall the difficulties and obstacles persons who attempted to improve the system from within faced and overcame. Those who constructed the DRC's grievance system in the mid-1970s hoped that it would be a national model, and the department's initial allocation of resources was impressive. The subsequent addition of the informal complaint process was an enormous improvement and, equally important, evidenced that departmental officials did not regard the grievance system as a static entity.

The inmate grievance system in Ohio has never been perfect or even close to perfect, but it reflects a diligent effort over the years by departmental leadership to implement a meaningful process for the redress of inmates' grievances. The constituency favoring the continuation and improvement of that process is growing. Former inspectors now sit at wardens' desks, and the first effective chief inspector now occupies the second highest administrative position in the agency. While these developments have not sufficed to eliminate the problems this report has disclosed, they – as well as the decisions to commission and to cooperate in the preparation of this report – auger well for further needed improvements in dealing with this critically important element of the correctional process in Ohio

XI. Summary of Recommendations.

I have included recommendations throughout the body of this report so as to assist one reading the report in focusing on the findings and reasons underlying each recommendation. Here, for the added convenience of the reader, I summarize all of those recommendations in one place.

Recommendation 1: The DRC should repeal AR 5120-9-30, AR 5120-9-31, DRC Policy 203-01 and DRC Policy 203-02 and

replace those documents with a single administrative rule that addresses all facets of the inmate grievance system. The new rule should eliminate all conflicts in the existing documents, avoid ambiguity, establish clear time lines, and provide a clear and understandable statement of procedures that both staff and inmates can comprehend. The new rule also should incorporate later recommendations in this report relating to the substance of the grievance system.

Recommendation 2: I recommend that institutional inspectors begin to maintain a computerized log of informal complaint forms they receive from inmates at the outset of the grievance process, copies the such complaint forms they receive from supervisors, and informal complaint forms inmates attach to formal grievances. Institutional inspectors should include relevant data regarding these ICRs in monthly and annual reports. I further recommend that the office of the chief inspector incorporate this information in future annual reports (following the report for FY 2001).

Confusing

Recommendation 3: The department should revise the publication, "Using the Grievance System," to provide a complete and understandable summary of all important elements of the inmate grievance process. Inmates should receive "Using the Grievance System" upon initial intake into the DRC. Institutional inmate handbooks should provide yet additional detail, but should be consistent with all statements in the departmental publication. All materials relating to the grievance system should be available in the Spanish language and should contain language and pictures that are understandable to inmates with reading levels lower than that of the average DRC prisoner. Institutional inspectors should personally provide orientation to all new inmates as they arrive at a prison, using a standard lesson plan set forth in the Inspector of Institutional Services Manual. An inmate orientation program should occur at each facility on a weekly basis.

Recommendation 4: The DRC should begin to impose the most serious disciplinary consequences for acts of retaliation by staff against inmates as a result of the latter's use of any aspect of the grievance process. As part of its effort to address this

problem, DRC officials should ensure that training components at the training academy, new staff orientation at each facility, and annual in-service training emphasize strongly the utility of the grievance system, the DRC's commitment to that system, and the consequences that will flow from acts of retaliation. Institutional inspectors should be personally responsible for orienting new staff and providing the in-service training segment on the grievance system, and this subject should be a component of all in-service training curricula. Wardens should hold supervisors responsible for providing adequate supervision to line staff regarding the DRC's non-retaliation policy, and institutional inspectors should investigate allegations of retaliation with special care and vigor.

Recommendation 5: Upon completion of the RIB process, including the appellate process, the chief inspector should receive a copy of any conduct report alleging "malicious lying" or "inappropriate language" in connection with the grievance system, the hearing record, and any decision on appeal. If the chief inspector concludes that the misconduct report was inappropriate under the controlling provisions of the grievance system, she should have the authority to direct the voiding and expunging of any disciplinary conviction and to counsel staff involved in writing or reviewing the misconduct report, regardless of the outcome of the hearing or appeal.

Recommendation 6: In drafting the new administrative rule concerning the grievance system, DRC officials should focus on fair, identifiable, and enforceable time limits inmates must follow at each stage of the grievance process. The emphasis should be to avoid a degree of staleness that will interfere with the investigative process, and both institutional inspectors and the chief inspector should have the authority to waive a time limit for good cause shown.

Recommendation 7: The department should cease immediately to allow inmate workers to have any role in the delivery of any form of mail or other written communication within any DRC facility.

Recommendation 8: Inspectors should pay greater attention to the issue of whether supervisors' responses to informal complaints address all issues in the inmate's complaint.

Moreover, inmates should be permitted to keep a copy of any informal complaint they send to or receive from supervisors. Finally, institutional inspectors should maintain a "suspense file" of pending informal complaints and take action promptly when it appears that a supervisor has failed to answer the complaint in a timely fashion. Institutional inspectors should report recalcitrant supervisors to the warden, who should impose appropriate progressive discipline against these supervisors.

Recommendation 9: Training regarding the required substance of responses to grievances should be a subject of continuing emphasis in institutional inspector's initial and follow-up training. In addition, the chief inspector should be certain to describe her investigation of any original grievance, and assistant chief inspectors should exercise the same diligence in responses to appeals. The institutional inspector should read all informal complaints on the day he or she receives them, make an independent determination of whether the inmate's complaint should be treated as an emergency grievance, and take action accordingly. Assistant chief inspectors and the chief inspector should monitor this process closely. The revised rule and inmate orientation sessions should emphasize to inmates the limited scope of the emergency grievance provision.

Recommendation 10: The office of the chief inspector should make it clear to inmates that they may file a grievance challenging a departmental as well as an institutional policy. The department should consider whether it finds it useful to continue the "staff and inmate input" provision relating to policy-oriented grievances. If the provision remains in the revised grievance rule, the chief inspector's office should ensure, through training and review of appeals, that institutional inspectors follow the rule.

Recommendation 11: The department should consider all steps that can be taken to increase the timeliness of responses at all levels of the grievance system without lengthening the period allowed for response. The new administrative regulation governing the grievance system should incorporate any steps departmental officials can identify. One of these steps should

be to clarify whether time limits take into account the date of mailing or the date of receipt of a response.

Recommendation 12: Orientation sessions for incoming inmates should stress the negative impact on the grievance system of inordinate frequency of use and the filing of frivolous or inconsequential grievances. Moreover, institutional inspectors should meet personally with inmates who appear to be misusing the system in order to counsel them in a constructive fashion. If all else fails, the institutional inspector should be able to recommend to the chief inspector that she impose some form of progressive limitation on the inmate's access to the system, so long as the inmate does not lose all avenues to complain. The chief inspector also should have the power to authorize institutional inspectors to abbreviate in a reasonable manner their responses to problematic filers. The chief inspector, however, should continue her commendable practice of using her authority sparingly to impose restrictions on access to the grievance system. Later in this report, I shall make an additional recommendations that will address in part frivolous or inconsequential appeals.

Recommendation 13: The exclusions that AR 5120-9-31 and DRC Policy 203-01 set forth are appropriate. The chief inspector's office should remain vigilant, however, in recognizing grievances that raise grievable issues associated with some facet of the RIB process that inspectors can investigate without displacing the disciplinary appeals process. This somewhat fine distinction should be the subject of ongoing training of institutional inspectors.

Recommendation 14: The DRC should amend its definition of inappropriate supervision in the new administrative rule regarding the grievance system to include single instances of misconduct that AR 5120-9-04 recognizes. The new rule, like AR 5120-9-04 should recognize that proof of inappropriate supervision sometimes will depend on a course of conduct by a staff member and incorporate the record keeping that rule requires.

Recommendation 15: DRC officials should incorporate the expedited court of claims procedure in the new administrative rule regarding the inmate grievance system. In conjunction

with the office of legal services, the chief inspector's office should be certain that all institutional inspectors and wardens are aware of the process and use it appropriately.

Recommendation 16: The new DRC administrative rule governing the inmate grievance system should include a clear and complete description of all matters that are excluded from the scope of the system. Institutional officials should notify all current inmates of these exclusions, and the orientation of incoming inmates should address this subject clearly.

Recommendation 17: I recommend that Director Wilkinson appoint a task force consisting of appropriate medical, mental health and dental staff at the institutional and central office levels, as well as the chief inspector and one or more representatives from her office, to develop a proposal for dealing with grievances raising issues concerning medical, dental, or mental health care. The task force should invite input from a non-departmental inmate advocate and submit its recommendations within 30 days following its members' appointment.

Recommendation 18: The rule and practice governing the grievance system should ensure that the warden and the chief inspector both approve the appointment of an institutional inspector, and that both of these persons participate equally in annual evaluations and decisions to retain or remove the inspector. In the event of disagreement between the warden and the chief inspector, the new administrative rule should leave the final decision on the matter to the director or the assistant director.

Recommendation 19: Institutional inspectors should conduct inspections, as needed or as directed by the warden or the chief inspector's office, to supplement the resolution of individual grievances. These inspections should attempt to identify and bring attention to broader or deeper problems the receipt of one or more grievances has indicated or suggested. A major purpose of the inspecting function should be to reduce the volume of individual grievances by taking corrective action in areas that are producing unduly numerous or serious complaints from inmates. The inspector should direct these

reports to the warden and the chief inspector.

Recommendation 20: I recommend that following the issuance of each annual report, the director convene a meeting of wardens and the members of the chief inspector's office to discuss the contents of the report and the operation of all facets of the inmate grievance system.³⁸

Recommendation 21: The chief inspector should make a thorough survey of non-grievance-related activities institutional inspectors are performing. To the extent that the chief inspector concludes that these assignments are interfering with the institutional inspector's ability to discharge all the responsibilities of that position in an effective and efficient manner, she should communicate this fact to the warden, who should take prompt corrective action to eliminate some or all of these extraneous duties. In addition, without in any manner discouraging institutional inspectors from seeking to advance their careers within the department, the DRC should establish a presumptive minimum period of service (dependent on satisfactory performance), of perhaps three years' duration. The DRC should avoid transfers of inspectors within this minimum time period in all but exceptional circumstances.

Recommendation 22: I recommend that the DRC make the possession of a college degree a preferred qualification for newly appointed institutional inspectors and apply that standard to all future appointments.

Recommendation 23: The chief inspector's office should increase the length of training institutional inspectors receive before assuming the full responsibilities of their positions. In addition, there should be greater emphasis on continuing in-service training to address areas of weakness. Former inspectors who have moved on to higher-level executive positions after successful terms as inspector, assistant chief inspector, or chief inspector could contribute from time to time to the department's training resources for this purpose.

Recommendation 24: I recommend that the DRC seek to

³⁸ See also Recommendation 2, above.

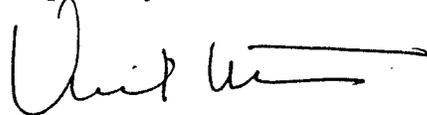
increase the entry level salary for institutional inspectors to Level 13.

Recommendation 25: I recommend that the chief inspector make an evaluation of all current DRC facilities and make recommendations to Director Wilkinson for the appointment of assistant institutional inspectors at facilities in need of such additional staff to operate the grievance system effectively and efficiently. In connection with this evaluation, I recommend that the chief inspector recommend an appropriate entry level for compensating assistant chief inspectors.

Recommendation 26: Every institutional inspector should have a full-time, exempt secretary whose duties relate exclusively to the inspector's office. If the level of usage of the grievance system at an institution makes this arrangement infeasible, the institutional inspector should share a secretary with an investigator, but not with any other person.

Recommendation 27: The DRC should assign an additional person to serve as an administrative assistant in the office of the chief inspector. This person should be responsible for addressing grievance appeals that professional staff identify as not requiring the personal attention of assistant chief inspectors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent M. Nathan", with a long horizontal flourish extending to the right.

Vincent M. Nathan