

TAB 21

Investigative Report

SAMPLE INVESTIGATIVE REPORT

I. Introduction

This complaint was referred to the Coordination and Review Section (COR) of the Department of Justice's Civil Rights Division by the County Branch of the NAACP on February , 199 . On March 4, 1997, COR wrote to complainant and offered him the opportunity to complete a formal complaint form and to provide additional information pertaining to his allegations. Complainant provided such information on April 3, 1997. COR subsequently initiated an investigation of this complaint, which was completed in July of 1997. The following report summarizes COR's findings with respect to the allegations raised by this complaint.

II. Allegations

Complainant's allegations pertain to claims of misconduct by correctional officers and other officials at the Training Center ("MCTC"). Complainant, an inmate at the MCTC, claims that he was discriminated against on the basis of his race (African American) in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d, et seq. Complainant's specific allegations are set forth below.

(1) Complainant alleged that he was discriminated against on the basis of his race when a correctional officer refused to permit him to visit the medical department for a regularly scheduled weekly visit in October of 1996.

(2) Complainant alleged that he was discriminated against on the basis of his race in December of 1996 when he was denied parole because he had been involved in a minor incident of misconduct in November of 1996. Complainant further alleged that the December 1996 Parole Board released three inmates who had been convicted of far more violent crimes and who had demonstrated far less potential for rehabilitation than complainant.

III. Methodology

This investigation was conducted by interviewing witnesses and reviewing documents at the MCTC. With respect to complainant's allegation that he was denied permission to attend his weekly medical appointment, the investigator interviewed complainant, the correctional officer on duty at the time of this incident, the correctional officer's supervisor, and other correctional officers who had previously permitted complainant to attend his medical appointments. With regard to complainant's

allegation that he was denied parole, the investigator interviewed members of the Parole Board, and reviewed the files of the other inmates who were considered for parole in December of 1996. The investigator also examined statistics on all of the inmates who were granted parole in 1995 and 1996.

IV. Position of the Recipient

The MCTC did not provide COR with a formal position statement, but the Warden and other officials denied all of complainant's allegations of discrimination. The MCTC acknowledged that complainant should have been allowed to attend his medical appointment, but maintained that complainant was not denied permission for discriminatory reasons. Similarly, Parole Board officials denied discriminating against complainant, and maintained that complainant's failure to be paroled was due to his November 1996 misconduct, not his race.

V. Findings of Fact

It is undisputed that complainant was denied was permission to attend a medical appointment in October of 1996 and that he was denied parole in December of 1996. The facts pertaining to each of these issues are set forth below.

October 1996: Denial of Permission to Attend Medical Appointment

1. Since May of 1996, complainant has been scheduled for a weekly medical appointment with the MCTC Medical Department.
2. Prior to the second week in October of 1996, complainant was granted permission to attend, and attended, each of these weekly appointments.
3. On October 7, 1996, a newly-hired correctional officer, John Doe, was assigned to complainant's unit.
4. On October 10, 1996, complainant approached Officer Doe and advised him that he was going to the Medical Department for his weekly visit.
5. Officer Doe checked the paperwork he had been provided for the unit, but the records contained no notation regarding complainant's weekly medical appointments. The paperwork from previous weeks also contained no notation regarding complainant's appointments. Officer Doe attempted to contact his supervisor, but was unable to reach him. Officer Doe refused to grant complainant permission to leave the unit.
6. Officer Doe's supervisor testified that he had been called out

of the facility on an emergency on the morning of October 10, 1996. Officer Doe's supervisor further testified that, upon his return, he received a message that Officer Doe had been trying to reach him earlier in the day. Officer Doe's supervisor stated that he was unsure as to why the unit paperwork contained no information about complainant's medical visit, but asserted that it must have been due to an administrative error. Officer Doe's supervisor further testified that complainant should have been permitted to visit the Medical Department, but that Officer Doe had no way of knowing this since he was new to the unit and there was no notation about it in the unit paperwork.

7. Several correctional officers previously assigned to complainant's unit testified that they were aware of complainant's regularly scheduled medical appointment, and routinely permitted complainant to visit the Medical Department without first checking the unit paperwork.

December 1996: Denial of Parole

8. It is undisputed that complainant was involved in a minor incident of misconduct in November of 1996.

9. In December of 1996, complainant and five other inmates were considered for parole by a three-member panel of the Parole Board.

10. All three members of the Parole Board testified that complainant was denied parole due to his involvement in the November 1996 incident of misconduct.

11. Three of the other five inmates were granted parole. Two of these inmates were African American, and one was Caucasian.

12. All three of the inmates who were granted parole had been convicted of more violent criminal offenses than complainant.

13. None of the inmates paroled in December of 1996 had participated in as many prison activities as complainant.

14. None of the inmates paroled in December of 1996 was involved in any incident of misconduct during the six month period prior to the parole hearing.

15. The December 1996 Parole Board denied parole for two other inmates besides complainant. One of these inmates was African American and one was Caucasian. Both inmates had been involved in incidents of misconduct in September of 1996.

16. The Parole Board policy states that parole will automatically be denied if an inmate has been involved in any incident of misconduct during the previous six-month period.

17. No inmate granted parole in 1995 or 1996 had been involved in any incident of misconduct during the six-month period prior to his or her parole hearing.

18. A statistical analysis of decisions made by the Parole Board during 1995 and 1996 revealed no statistically significant difference in the treatment of African American inmates as compared with inmates of other races.

19. Complainant offered no witnesses to support his contention that any member of the MCTC staff or the Parole Board was motivated by racial bias.

20. All of the witnesses interviewed in connection with this complaint testified that they had no reason to believe that any of the officials involved in this case harbored any sort of racial animosity toward complainant.

VI. Analysis and Recommended Determination

The results of this investigation fail to support a finding that complainant was discriminated against on the basis of his race. Accordingly, a determination of "no violation" is recommended with respect to both of the allegations raised by complainant's complaint. Each of complainant's allegations is discussed in greater detail below.

October 1996: Denial of Permission to Attend Medical Appointment

Although it is undisputed that complainant was denied permission to attend his regularly scheduled medical appointment in October of 1996 (Facts 1 and 5), the weight of the evidence fails to support a finding that this was due to racial discrimination. Rather, the evidence reveals that complainant was denied permission to visit the Medical Department because Officer Doe was new to complainant's unit and was unaware of complainant's regularly scheduled visits. (Facts 3, 5, and 6).

The weight of the evidence does not support a finding that Officer Doe was motivated by discriminatory animus when he denied complainant's request for permission to leave the unit. Officer Doe checked the unit paperwork, but was unable to find any notation regarding complainant's appointment (Fact 5). Officer Doe's supervisor testified that this was most likely the result of an administrative error (Fact 6), and there is no evidence to suggest that the lack of such a notation was due to racial discrimination. This is especially true since several of the correctional officers previously assigned to complainant's unit testified that they routinely permitted complainant to visit the Medical Department without first checking the paperwork because they were all aware of his weekly appointments (Fact 7). Since

Officer Doe was new to the unit, there is no reason to believe that he should have similarly been aware of complainant's medical visits.

Moreover, the fact that Officer Doe attempted to contact his supervisor regarding complainant's request further undermines complainant's allegation that Officer Doe was motivated by racial discrimination (Fact 5). Officer Doe's supervisor corroborated Officer Doe's testimony that he was unavailable on the morning in question, and that Officer Doe indeed tried to reach him (Fact 6). Presumably, Officer Doe could have contacted the Medical Department to see if complainant had an appointment scheduled, but Officer Doe's failure to do so, standing alone, is insufficient to support a finding of discrimination. Complainant offered no specific evidence in support of his claim that Officer Doe was motivated by racial bias, and the investigation of this complaint failed to reveal any basis for drawing such a conclusion.

The weight of the evidence also fails to support a finding that complainant missed his medical appointment due to discrimination on the part of Officer Doe's supervisor or any other member of the MCTC staff. Since complainant did not allege that he missed any previous (or subsequent) medical appointments, there is no reason to suspect that Officer Doe's supervisor, or whoever was responsible for the paperwork error, was motivated by unlawful discrimination.

In short, the weight of the evidence supports a finding that Officer Doe denied complainant permission to visit the Medical Department because he was new to the unit, was unaware of complainant's medical appointments, could not find any written authorization for this trip, and was unable to contact his supervisor. While it is undisputed that complainant should have been allowed to leave the unit for his appointment, the results of this investigation do not support a finding that he was denied such permission for discriminatory reasons. Accordingly, a finding of "no violation" is recommended with regard to this allegation.¹

December 1996: Denial of Parole

The weight of the evidence fails to support a finding that

¹ It should also be noted that there is little, if any, relief that could be granted with respect to this allegation. Since complainant did not allege that he was continuously denied access to the Medical Department, that he missed any subsequent appointments, or even that he had any further trouble with Officer Doe or Officer Doe's supervisor, there is virtually no corrective action that the MCTC could possibly undertake.

complainant was denied parole in December of 1996 for discriminatory reasons. It is undisputed that complainant was involved in an incident of minor misconduct in November of 1996 (Fact 8), and all three members of the Parole Board testified that this was reason that complainant was denied parole (Fact 10).

For a number of reasons, the results of the investigation fully support a finding that complainant was indeed denied parole as a result of his involvement in the November 1996 incident of misconduct. First, a written policy of the Parole Board reveals that all applications for parole are automatically denied if an inmate has been involved in any incident of misconduct during the previous six-month period (Fact 16). Since complainant was admittedly involved in an incident of misconduct only one month prior to his parole hearing, it is clear that the members of the Parole Board were acting consistently with Parole Board policy when they denied complainant's application. Second, during 1995 and 1996, the Parole Board did not approve any applications for parole if the inmate in question had been involved in any incident of misconduct during the six-month period prior to the hearing (Fact 17). It is also important to note that all of the December 1996 parole decisions were made in accordance with this policy (Facts 14 and 15). In other words, none of the three of the inmates who were granted parole had been involved in any incidents of misconduct during the previous six months (Fact 14), while the two inmates who were denied parole (besides complainant) had similarly engaged in misconduct less than six months prior to the parole hearing (Fact 15).

Significantly, the evidence also fails to support a finding of racially disparate treatment during the December 1996 Parole Board meeting. Of the three inmates who were granted parole, two were African American and one was Caucasian (Fact 11). Similarly, of the two inmates who were denied parole, along with complainant, one was African American and one was Caucasian (Fact 15). Since the parole board granted parole to both African American and Caucasian inmates, and denied parole for both African American and Caucasian inmates, it is difficult to conclude that their decisions were racially motivated.

Perhaps most importantly, many of complainant's allegations of disparate treatment do not seem to be based on a claim that he received less favorable treatment than similarly situated inmates of a different race. Rather, complainant appears to attribute disparate treatment to factors other than race. For example, complainant alleges that the inmates who received parole in December of 1996 were all incarcerated for far more violent crimes than he was, and all demonstrated far less impressive records of rehabilitation. While complainant may be correct in making such assertions (Facts 12 and 13), these claims do not support a finding of racial discrimination. Even if the Parole

Board's decisions were improper (and there is no reason to believe that they were in light of the policy on misconduct), the evidence would still fail to support a finding of racial discrimination because several of the inmates whom complainant cites as receiving preferential treatment are also members of complainant's own race.

Finally, the results of this investigation revealed no other evidence to support a finding that complainant was denied parole for discriminatory reasons. A review of all parole decisions made during the two-year period prior to complainant's hearing uncovered no statistically significant differences in the treatment of African American inmates and inmates of other races (Fact 18). Moreover, complainant provided no witnesses to support a finding that members of the Parole Board were motivated by racial bias (Fact 19), and no other witnesses offered any evidence to support a finding that any members of the Parole Board or the MCTC staff harbored any sort of discriminatory animus toward complainant (Fact 20). Accordingly, the weight of the evidence fails to support a finding that complainant was discriminated against in December of 1996 when he was denied parole.

VII. Proposed Corrective Action/Remedial Action

The results of this investigation reveal no basis for a finding of violation and thus no reason to propose any corrective or remedial action. However, the MCTC should probably be notified as to the circumstances surrounding complainant's missed medical appointment. Although it appears that this was a one-time occurrence, the lack of proper paperwork is a concern that the MCTC might wish to address to prevent such problems in the future.