



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

MAR 22 2010

The Honorable William Reukauf
Acting Special Counsel
Office of the Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: OSC File No. DI-09-3013

Dear Mr. Reukauf:

I am in receipt of your correspondence wherein you conclude that allegations raised by Bernard Halloran, an employee of the United States Department of Justice, Federal Bureau of Prisons, constitute a substantial likelihood that a violation of law, rule, or regulation and a substantial and specific danger to public health or safety has occurred. Mr. Halloran has made allegations related to civil rights violations of inmates and activities that posed a danger to their health and safety during their incarceration at the Federal Correctional Institution located at Talladega, Alabama.

The Office of Special Counsel requested an investigation and report on the allegations made by Mr. Halloran. Please accept this correspondence as a summary of our investigation and findings. It should be noted that the Attorney General has delegated to me authority to review and sign the report, in accordance with 5 U.S.C. § 1213 (d).

Sincerely,


Harley G. Lappin
Director

Enclosure

Federal Bureau of Prisons - Office of Internal Affairs

Report of Investigation

OIA Case Number 2009-04398

OSC Case Number DI-09-3013

Subject: ALLEGED VIOLATION OF LAW, RULE, OR REGULATION AND SPECIFIC DANGER TO PUBLIC HEALTH OR SAFETY AT THE FEDERAL CORRECTIONAL INSTITUTION, TALLADEGA, ALABAMA

(1) Summary of the Information with Respect to Which the Investigation was Initiated

This investigation was initiated based upon a whistleblower disclosure alleging that employees at the United States Department of Justice (DOJ), Federal Bureau of Prisons (BOP), Talladega, Alabama, are responsible for violations of law, rule or regulation, gross mismanagement, abuse of authority, and substantial and specific danger to public health and safety. The Office of Special Counsel (OSC) received these allegations from Bernard Halloran, Captain at the Federal Correctional Institution (FCI) in Talladega, Alabama, who consented to the release of his name.

According to Mr. Halloran, BOP officials engaged in behavior related to: (1) inequitable use of force against inmates; (2) withholding clothing and bedding items from inmates; (3) failure to provide food and medication to inmates; (4) failure to provide showers and recreation to inmates; and (5) failure to control items believed to be a security hazard.

(2) Conduct of the Investigation

This investigation commenced in October 2009, following receipt of an Office of Special Counsel (OSC) letter tasking the Attorney General to conduct an investigation pursuant to 5 USC 1213.

The DOJ, BOP, Office of Internal Affairs (OIA), conducted an investigation at FCI Talladega, Alabama, during the weeks of October 16, 2009, and January 25, 2010. During the investigation, interviews of thirty-nine employees were conducted

by the OIA. Additionally, an examination of institution records was conducted from which additional evidence was obtained.

(3) Summary of Evidence Obtained from the Investigation

Background:

FCI Talladega is located in Talladega, Alabama. The facility includes a medium security FCI with an adjoining minimum security Satellite Prison Camp (SPC). The FCI contains four housing units of which three are used for general population inmates. Each of the general population units comprises two residential wings (Alpha and Bravo) connected by administrative offices. The fourth housing unit (Unit A) contains the FCI's Special Housing Unit (SHU/A-Bravo) as well as a Special Management Unit (SMU/A-Alpha). The FCI houses approximately 970 inmates, while the SCP houses approximately 350 inmates.

The SHU provides a manner by which inmates can be separated from those in general population. Inmates are placed in the SHU for either administrative detention or disciplinary segregation. Placement into administrative detention may occur when an inmate's continued presence within the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the institution. This housing status may also include inmates who require protective custody, those who cannot be placed in local population because they are en route to another institution (holdovers), and those who are awaiting a hearing before the Unit Discipline Committee or Discipline Hearing Officer.

Administrative detention is a non-punitive status in which restricted conditions of confinement are required only to ensure the safety of inmates or others, the protection of property, or the security or orderly running of the institution. Placement into disciplinary segregation is also used to separate inmates from the general population; however, this is a punitive measure imposed after it has been determined an inmate committed serious violations of Bureau rules. This sanction can only be administered by a Discipline Hearing Officer upon determining that no other available disposition will adequately achieve the purpose of punishment and deterrence necessary to regulate an inmate's behavior within acceptable limits. Ordinarily, inmates housed in the SHU are confined to their cells twenty-four hours each day. 28 CFR § 541.12(2) requires inmates in a SHU to be

provided an opportunity to recreate for one hour, five times each week. They should also be provided an opportunity to shower and shave three times each week.

During the latter part of 2008, the BOP established SMUs at select BOP facilities including FCI Talladega. Conditions of confinement within a SMU are more restrictive than general population and similar to those in a SHU. Placement into a SMU may be considered for any sentenced inmate whose interaction requires greater management to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public, because the inmate meets any of the following criteria:

- Participated in disruptive geographical group/gang-related activity.
- Had a leadership role in disruptive geographical group/gang-related activity.
- Has a history of serious and/or disruptive disciplinary infractions.
- Committed any 100-level prohibited act, according to 28 CFR § 541, after being classified as a member of a Disruptive Group pursuant to 28 CFR § 524.
- Participated in, organized, or facilitated any group misconduct that adversely affected the orderly operation of a correctional facility.
- Otherwise participated in or was associated with activity such that greater management of the inmate's interaction with other persons is necessary to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public.

Allegation 1:

Mr. Halloran alleged that Warden Constance Reese was biased regarding the manner in which she authorized force to be used against inmates. Specifically, he claimed Reese was more inclined to authorize force against inmates who were not African American. According to Mr. Halloran, an African American inmate broke a desk in his cell. He stated the inmate used the desk to destroy other items in the cell, break windows, and cause significant damage to the cell door. Mr. Halloran reported Reese elected not to authorize force against the inmate. He said that after several hours, the inmate voluntarily submitted to the application of restraints after which he was moved to another cell. Conversely, Mr. Halloran said that two Caucasian inmates

engaged in similar behavior for which Reese authorized the use of force to include the application of chemical agents. Pursuant to 28 CFR § 541.10(a)(3) and (4), staff are required to control inmate behavior in a completely impartial and consistent manner and disciplinary actions may not be capricious.

Reese denied she was biased regarding the manner in which she authorized force to be used against inmates. She stated she did not take an inmate's race into consideration when she authorized force. Reese explained that if inmates of different races exhibited similar behaviors that required a calculated use of force, she would have authorized force without their race being a factor.

A review of institution records revealed that during calendar year 2008, there were seven calculated uses of force. Five of the inmates against whom force was authorized were Caucasian and two were African American. From the beginning of 2009 through October 2009, there were forty-five calculated uses of force. Twenty-four of the inmates for whom force was authorized were African American, thirteen were Caucasian, six were Asian, and two were Native American. It is important to note the increase in calculated uses of force at FCI Talladega coincided with the arrival of SMU inmates.

Allegation 2:

Mr. Halloran reported that on February 15, 2009, following a calculated use of force, two Caucasian SHU inmates were placed into different cells wearing only their underwear. He stated the inmates remained in their cells for two days without mattresses, personal property, blankets, or sheets. Pursuant to 28 CFR § 541.12(c)(3), an inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons. Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. An exception, and the reasons for this, must be recorded in the unit log.

A review of documents revealed that on February 15, 2009, a calculated force was used to gain control over inmates Cross and Coleman, as reported by Mr. Halloran. Lieutenant James Preston was assigned during the evening shift on February 15, 2009, and had a vague memory of the incident reported by Mr. Halloran. He stated he did not have specific recollection of the incident due to the amount of time that has transpired. However, he remembered the inmates having a limited amount of clothing, and possibly no bedding items. Mr. Preston indicated that if bedding items had been withheld from the inmates, he could not remember if they were reissued prior to bedtime. A review of the unit log and Special Housing Unit Records revealed nothing to indicate clothing and/or bedding items were withheld from the inmates. Also, there was no documentation located to suggest the Warden authorized an exception to the items the inmates could have in their cell.

Reese recounted there may have been occasions when it would have been appropriate for staff to withhold bedding from an inmate. She explained this ordinarily would have occurred if an inmate used the bedding to obstruct or block a staff member's view into the cell. Reese said that if bedding was withheld from an inmate, it should have been reissued during the evening, at bedtime. Reese said she could not specifically recall an incident during which bedding would have been withheld from an inmate.

Allegation 3:

On February 13, 2009, a considerable amount of contraband was found by staff in an area adjacent to the SCP. Subsequently, twenty-five inmates housed at the SCP and assigned to the Landscape detail were placed into the SHU pending further investigation of the attempted contraband introduction. At the time, the SHU was at or near capacity, and unit A-Alpha was vacant as it was in the process of being refurbished to accommodate inmates assigned to the SMU. Warden Reese elected to activate unit A-Alpha as an annex of the SHU, and instructed her staff to place all of the SCP who were under investigation into unit A-Alpha. Mr. Halloran alleged there was insufficient staff coverage in unit A-Alpha which resulted in the inmates not receiving showers or recreation for several days. Pursuant to 28 C.F.R. § 541.12, and BOP Program Statement 5270.07, Inmate Discipline and Special Housing Units, segregated inmates should be provided an opportunity to shower and shave at least three

times a week, unless these procedures would present an undue security hazard. This security hazard should be documented and signed by the Warden, indicating the Warden's review and approval. Staff should permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Again, the rationale for denying exercise must be documented. Ordinarily, this type of activity is recorded on a BP-292, Special Housing Unit Record, for each inmate housed in the SHU. SHU staff forward completed records to the inmate's unit team at the end of each week, and the completed forms are required to be maintained in each inmate's Central File.

During the investigation, twelve of the twenty-five inmates placed into Unit A-Alpha (SHU annex) for investigation were still assigned to the Talladega SCP. A review of their Central Files revealed there were no Special Housing Unit Records for the period of time in question. Accordingly, interviews were conducted with staff who were assigned to the unit from February 13, 2009, through February 21, 2009. A majority of the staff could not specifically recall if Special Housing Unit Records were prepared or even available during their shift. Some recounted the officer's station was not properly equipped, and the computer did not have the software necessary to create the form. The unit log book was also reviewed, and it was noted that staff annotated the dates and times when inmates received showers and recreation. Accordingly, the unit log book was used to determine when inmates were provided showers and recreation. Based upon the information obtained from the unit log book, it was determined that from February 13, 2009, through February 23, 2009, the inmates housed in the SHU annex received two showers and two periods of recreation.

The SHU routinely has three staff assigned to the unit from 6:00 a.m. until 10:00 p.m. An additional staff member is assigned to work from 8:00 a.m. to 4:00 p.m. to assist in providing recreation to the inmates. The staff assigned to the SHU are required to work together in order to provide inmates an opportunity to receive three showers and five one-hour periods of recreation each week. Eight additional staff would have been required each day in order for the SHU annex to operate in a

similar manner. A review of Correctional Services rosters covering the period from February 13, 2009, through February 23, 2009, determined there were not eight additional staff available to meet this requirement. As such, it would have been necessary to pay overtime to properly staff the SHU annex.

Interviews with the Warden, Associate Warden, and supervisory correctional services staff revealed conflicting reasons for the unit being inadequately staffed. Warden Reese indicated it would have been permissible for overtime to be paid in order to provide additional positions within the unit. However, Associate Warden Joseph Savidge, who was responsible for the Correctional Services Department, recounted that when the SHU annex was activated, he specifically instructed Mr. Halloran that overtime would not be paid to staff the unit. He said it was possible that within the first few days of the unit being activated, there may not have been sufficient staff to ensure inmates received showers and recreation. Mr. Savidge recounted that during his tours of the unit, inmates complained to him about not having received showers and recreation. He stated he specifically instructed Mr. Halloran (or the acting Captain) to properly staff the unit to ensure the inmates received showers and recreation. Mr. Savidge recalled he advised the Captain (or acting Captain) again that overtime would not be paid in order for the unit to be properly staffed.

At the time of this incident, Mr. Halloran had already been relieved of his duties as Captain, and Lieutenant Gregory Smith was acting as Captain. Mr. Smith said he could not recall being told by anyone that staff were not able to provide inmates with showers and recreation. He stated he believed there were sufficient staff to ensure showers and recreation was provided. Mr. Smith indicated he could not specifically remember who would have provided the inmates with showers and recreation, but it would have likely been staff assigned to unit Alpha-A or the SHU. He said there may have also been occasion when extra staff could have been tasked with assisting in providing the inmates in unit Alpha-A with showers and recreation.

Supervisory correctional staff indicated they believed they were not permitted to pay overtime in order to staff the unit. They stated they tried to reassign staff to the unit; however, their resources were limited. They further stated they believed the activation of unit A-Alpha was temporary, until a determination could be made regarding the investigation of SCP

inmates and the attempted introduction of contraband into the SCP. A review of Correctional Services rosters revealed that during the times showers and recreation were provided to inmates, additional staff were assigned to the unit without overtime having been paid.

Allegation 4:

Mr. Halloran alleged that from September 22, 2008, until September 23, 2008, inmates assigned to the SHU were not provided meals or medication for approximately thirty hours. He explained there were two separate incidents during which inmates would not permit staff to secure their food slots. According to Mr. Halloran, Warden Reese failed to authorize the use of calculated force he believed was necessary in order to resolve the issue in a timely manner. 28 C.F.R. § 541.12(2) states in pertinent part, inmates of BOP facilities have a right to health care and nutritious meals. Also pertinent to this issue is BOP Program Statement 5500.11, Correctional Services Manual, which states the Warden or his/her designee may authorize the use of force, chemical agents, less-lethal equipment, and deadly force.

During the latter part of 2008, FCI Talladega began to receive inmates who were designated to the SMU. At the time, the unit where they would be housed was in the process of being refurbished, so the inmates were housed in the SHU. As the number of SMU-designated inmates increased in the SHU, there was a corresponding increase in the number of incidents of disruptive behavior. One method adopted by the inmates to disrupt operations within the unit was referred to by staff and inmates as "jacking the slot." Each cell in the SHU has an opening or food slot that can be secured when not in use. The food slot provides a means for staff to pass items to inmates without having to open the cell door. Staff are required to keep the food slot secured when they are not in the process of passing items to inmates. On occasion, inmates will place their arms through the food slot once it has been opened, after which they refuse to remove their arm. The BOP determined that disruptive behavior, such as inmates blocking their food slots, could pose a security hazard to staff and inmates. Accordingly, staff have been instructed to discontinue all operations within the unit when disruptive incidents occur. Also, staff may use force to gain control over inmates engaged in disruptive behavior, if their behavior poses a threat to staff, other inmates, or the security of the institution. This was confirmed by Regional

Director R. E. Holt; however, he explained incidents such as "jacking the slots" should be resolved in a timely manner.

On September 22, 2009, the evening meal arrived in the SHU at 6:30 p.m. At 6:52 p.m., an inmate refused to allow staff to secure his food slot once he received his meal. At approximately 8:30 p.m., Warden Reese authorized Mr. Halloran to use calculated force in order to remove the inmate from his cell and secure the food slot. The calculated use of force was completed at 10:30 p.m. Almost immediately afterward, four inmates began to break sprinkler heads located in their cells which caused minor flooding. At approximately 11:30 p.m., staff resolved the flooding issue and attempted to feed the inmates who still had not received their evening meal. Between 11:30 p.m. and midnight, it was reported that another inmate refused to allow staff to secure his food slot. Mr. Halloran said he informed Warden Reese of the incident and advised her a "Use of Force" team was available in the SHU. He recounted he requested authorization to remove the inmate from his cell, but Warden Reese refused his request and told him no inmates would be fed until the inmate allowed staff to secure the food slot. Mr. Halloran recounted that he attended the Warden's Executive Staff meeting the following morning and advised all in attendance the inmate still refused to allow staff to secure the food slot. He said he also advised the Warden that in addition to inmates not being fed the previous evening, they also missed that day's breakfast meal. Mr. Halloran said he again requested permission to use force to resolve the matter, but the Warden refused his request. He stated that at 1:30 p.m., Warden Reese finally gave him permission to use force to remove the inmate from his cell. The incident was resolved at 2:00 p.m. when the inmate was removed from his cell.

Associate Wardens Becky Clay and Joseph Savidge were interviewed regarding this matter. They recounted that following their attendance at the Executive Staff meeting, they met to discuss the manner in which Warden Reese was handling the situation. Clay and Savidge said they agreed the inmates had missed too many meals and thought the Warden needed to act soon in order for the inmates to be fed. They recounted they met with Warden Reese after which she agreed to follow their advice and allow the inmates to be fed. Both Clay and Savidge opined that the manner in which Warden Reese handled the incident was not intended to punish the inmates in the SHU. They said they believed her hesitancy to deal with the matter in a more timely

manner was based upon two primary factors. First, they said Reese had relatively little experience dealing with disruptive inmates. Second, Clay and Savidge recounted that Regional Director Holt had provided previous instruction regarding security concerns within a SHU or SMU. They said they were told by Mr. Holt that an inmate's refusal to allow staff to secure their food slot would be considered a security concern. Clay and Savidge recounted Mr. Holt directed that operations within the unit would cease until the security hazard was resolved.

Warden Reese said that on or about September 22, 2008, she recalled being advised that staff in the SHU were having difficulties with inmates designated to the SMU. She recounted being told throughout the day that inmates were refusing to allow staff to secure their food slots; however, Warden Reese stated she believed the incidents were short lived. She acknowledged that staff had been previously instructed to cease operations within the SHU whenever there was a security breach, such as an inmate refusing to allow staff to secure the food slot. Warden Reese explained that a cease in operations would include discontinuation of feeding, recreation, showers, and the issuance of medication until the issue was resolved. Warden Reese maintained she could not recall ever being told inmates were not fed the evening meal on September 22, 2008. She further stated she could not remember if she was contacted by anyone regarding the breach of security that occurred at approximately 12:00 a.m. on September 23, 2008. Warden Reese stated her first recollection of being told about the issue was during the morning Executive Staff meeting. She stated she was unable to specifically remember when she authorized force to be used, but it may have been after Clay and Savidge spoke with her. Warden Reese stated she could not understand nor explain why force was not used until 2:00 p.m. to resolve the security breach.

A review of institution records revealed that from September 22, 2008, until September 23, 2008, a majority of the inmates assigned to the SHU missed three consecutive meals. Additionally, none of the inmates received medication they may have been prescribed. According to a review of inmate Special Housing Unit Records and the unit log, inmates in the SHU received their lunch meal on September 22, 2008 between 10:40 a.m. and 1:37 p.m. The inmates were not fed again until approximately 5:30 p.m. on September 23, 2008. A review of the Special Housing Records indicated the inmates in SHU received their evening meal on September 22, 2008. However, this was

determined to be inaccurate. During interviews with staff and a review of logs books and other documents, it was determined that approximately fifty of the seventy-six inmates assigned to the unit at the time were not provided the evening meal. Further, there was no indication inmates received their prescribed medication due to the prolonged periods when operations within the unit had ceased. Correctional Officer Michael Formentini was responsible for completing the Special Housing Records during the evening of September 22, 2008. He confirmed he documented inaccurate information into the Special Housing Unit records in regards to the inmates who received the evening meal. Mr. Formentini said that once the unit officers began to deliver meals to the inmates, he believed all of the inmates were going to be fed. He confirmed he prematurely annotated that all of the inmates ate the evening meal and did not correct the record afterward.

Allegation 5:

Mr. Halloran alleged that during Fall 2008, Warden Reese informed staff she wanted the institution decorated for the Christmas season. According to Mr. Halloran, Warden Reese directed staff to string dozens of strands of holiday lights around the institution. Mr. Halloran compared the Christmas lights to extension cords, which are considered accountable items within a federal correctional facility. He explained that accountable items, if possessed by an inmate, posed a potential threat as they could be used as weapons or as an aid to escape. Mr. Halloran reported the holiday lights used by Warden Reese were not properly accounted after they were purchased and brought into the facility. Lastly, Mr. Halloran alleged the holiday lights were accessible to inmates for extended periods of time. BOP Program Statement 5500.12, Correctional Services Procedural Manual, requires all low security level facilities and above to establish procedures for the control of extension cords. Specifically, all extension cords will be inventoried and have a metal identification tag attached, indicating issue number (by location) and length of the cord. FCI Talladega Institution Supplement 5500.12.2C, Tool Control, categorizes extension cords exceeding ten feet in length as most likely to be used in an escape or escape attempt. As such, they are to be locked in a metal cage or concrete-walled room. Further, they can only be issued to staff and kept under direct staff supervision if used by an inmate.

As the Captain, Mr. Halloran was responsible for tool control within the institution. It was his opinion that holiday lights should be considered an extension cord, since they had the capacity of being hooked together in order to supply electricity to subsequent strands of lights. However, he said the holiday lights were never categorized as a tool. Warden Reese said she did not view the holiday lights as a security hazard and did not believe they were a threat to the security of the institution. During the course of the investigation, a specific reference to the classification of holiday lights as a hazardous tool could not be located. Accordingly, a "subject matter expert" opinion was sought from BOP Correctional Services Administrator Frank Strada. Mr. Strada stated the Captain is responsible for outlining tool control procedures for the institution and must determine the items that would most likely be used in an escape attempt or be hazardous to internal security/staff safety. He stated that if the holiday lights met any of the aforementioned criteria, they should be classified as a hazardous tool. Mr. Strada opined he did not believe a strand of holiday lights met any of the aforementioned criteria.

(4) Violation or Apparent Violation of Law, Rule or Regulation

Allegation 1:

Insufficient evidence exists to substantiate any violations of law, rule or regulation occurred. During calendar year 2008, there were seven calculated uses of force. Five of the inmates against whom force was authorized were Caucasian and two were African American. Thus, 71% of the uses of force were against Caucasian inmates and 29% were against African American inmates. During the same time frame, the racial composition for the FCI population was 44% Caucasian and 55% African American.

From the beginning of 2009 through October 2009, there were forty-five calculated uses of force. Twenty-four of the inmates for whom force was authorized were African American, thirteen were Caucasian, six were Asian, and two were Native American. Thus, 29% of the uses of force were against Caucasian inmates, 53% were against African American inmates, 13% were against Asian inmates, and 4% were against Native American inmates. During the same time frame, the racial composition for the FCI population comprised 44% Caucasian, 55% African American, and less than 1% Asian and Native American.

The statistical information compiled for the uses of force Reese authorized during 2008 suggested a higher percentage of force being used against Caucasian inmates. However, the statistics were based on only seven uses of force. There was a substantial increase in the uses of force during 2009, and the statistical information revealed essentially no disparity in uses of force against inmates by race.

Our investigation determined there was insufficient evidence that Warden Reese was biased regarding the manner in which she authorized the use of calculated force against inmates. Reese said she did not take an inmate's race into consideration when she determined if force should be authorized. Accordingly, there is insufficient evidence that Warden Reese was biased or capricious regarding the manner in which force was authorized to gain control over inmates.

Allegation 2:

Insufficient evidence exists to substantiate any violations of law, rule or regulation occurred. Our investigation determined inmates Cross and Coleman were forcibly removed from their cell on February 15, 2009, as reported by Mr. Halloran. However, there was insufficient evidence to corroborate his claim that clothing and bedding were withheld from the inmates for two days. The Lieutenant responsible for the evening shift at the time recalled the February 15th incident reported by Mr. Halloran. While his recollection of the incident was limited due to the amount of time that had transpired, he remembered the inmates having a limited amount of clothing, and possibly no bedding items. The Lieutenant indicated that if bedding items had been withheld, he could not recall if they were reissued prior to bedtime. A review of Special Housing Unit records and the unit log revealed nothing to indicate clothing or bedding had been withheld from the inmates. Reese recounted there may have been occasions when it would have been appropriate for bedding and clothing items to be withheld from an inmate. She explained this would have occurred if an inmate used the bedding to obstruct or block a staff member's view into the cell. Reese said if bedding was withheld from an inmate, it should have been reissued during the evening, at bedtime. Reese said she could not specifically recall an incident during which bedding would have been withheld from an inmate.

Allegation 3:

Sufficient evidence exists to substantiate a violation of 28 C.F.R. § 541.12(2) in that the BOP failed to provide inmates an opportunity to shower regularly or receive a regular exercise period. Specifically, our investigation determined that from February 13, 2009, through February 23, 2009, segregated inmates housed in unit A-Alpha were not provided sufficient opportunity to receive showers or recreation and showers. Warden Reese confirmed she instructed staff to activate unit A-Alpha, which had been in the process of being refurbished in order to accommodate SMU inmates. Following its activation, Reese placed twenty-five inmates into the unit from the SCP and transferred an additional four SCP inmates from the SHU to unit Alpha-A. From February 13, 2009, through February 23, 2009, the inmates only received two showers and two periods of recreation. Warden Reese indicated it would have been permissible for overtime to be paid in order to properly staff the unit. However, Associate Warden Joseph Savidge stated he instructed the Captain to staff the unit without paying overtime. He acknowledged the inmates in the unit complained to him about not having received showers or recreation. He also confirmed he met again with the Captain and instructed him to ensure the unit was properly staffed in order for the inmates to receive showers and recreation. Following this, Mr. Savage confirmed that he reminded the Captain overtime would not be paid in order to staff the unit. Lieutenant Gregory Smith (acting Captain) said he could not recall being told by anyone that staff were unable to provide inmates with showers and recreation. He stated he believed there were sufficient staff to ensure showers and recreation was provided.

Allegation 4:

Sufficient evidence exists to substantiate an additional violation of 28 C.F.R. § 541.12(2) in that from September 22, 2008, until September 23, 2008, the BOP did not provide meals or medication to SHU inmates for approximately thirty hours. This was due to the cessation of normal operations within the unit because of the disruptive inmate behavior. Nevertheless, the BOP had the means to resolve the matter in a much more timely manner but failed to do so. It was also determined there was sufficient evidence that BOP staff documented inaccurate information into inmate Special Housing Unit records.

Mr. Halloran reported that the first incident to cause operations within the unit to cease occurred on September 22, 2008, at 4:30 p.m.; however, the actual time was 6:52 p.m. He received authorization to use force from Warden Reese at 8:30 p.m., and the situation was resolved two hours later when the disruptive inmate was forcibly removed from his cell. Staff attempted to resume feeding the inmates but were hampered by additional disruptions within the unit. At approximately midnight, another inmate blocked his food slot which Mr. Halloran claimed he reported to Warden Reese. Mr. Halloran recounted he advised the Warden that he still had a use of force team available from the previous incident. He said Warden Reese refused his request and told him none of the inmates would be fed until the offending inmate allowed staff to secure his food slot.

The next morning, staff confirmed Warden Reese was advised during her Executive Staff meeting that the inmate's food slot had been blocked since midnight, and the inmates still had not been fed. It was also confirmed that Reese did not initially authorize force to resolve the situation. Following the Executive Staff meeting, the Warden's two Associate Wardens met to discuss the manner in which she was handling the disruptive inmate. Following this meeting, Reese reportedly agreed to authorize force in order to remove the inmate from his cell and secure the food slot. According to Halloran, Warden Reese authorized him to use force at approximately 1:30 p.m., and the situation was resolved at 2:00 p.m. Warden Reese stated she could not understand nor explain why force was not used until 2:00 p.m. to resolve the security breach. The inmates in SHU were provided their evening meal at 5:30 p.m. on September 23, 2009.

Mr. Formentini said that when he prepared the Special Housing Unit record during the evening of September 22, 2009, he annotated that all of the inmates were fed the evening meal. He acknowledged that approximately fifty of the seventy-six inmates assigned to the unit were not fed due to operations within the unit being ceased. The documentation of inaccurate information into the Special Housing Unit record had no direct bearing on the fact that meals and medication were withheld from inmates.

Allegation 5:

Insufficient evidence exists to substantiate any violations of law, rule or regulation occurred. Our investigation determined there was no specific policy requirement regarding the control of holiday lights in a BOP facility. Mr. Halloran said he considered the holiday lights to be the same as an extension cord, since they could be connected together in order to conduct electricity. Since Warden Reese did not view the holiday lights to be a hazard or threat to the security of the institution, an opinion was sought from the BOP's Correctional Services Administrator, Frank Strada. Mr. Strada stated he did not believe it was likely for holiday lights to be used in conjunction with an escape attempt, and they were not hazardous to internal security or staff safety. As such, Mr. Strada opined holiday lights were not considered to be a hazardous tool for which accountability and control was required.

(5) Action Taken or Planned as a Result of the Investigation

Allegation 1:

The investigation conducted by the BOP, OIA determined there was no violation of law, rule, or regulation for which action needs to be taken.

Allegation 2:

The investigation conducted by the BOP, OIA determined there was no violation of law, rule, or regulation for which action needs to be taken.

Allegation 3:

The investigation conducted by the BOP, OIA determined there was sufficient evidence that Warden Reese, Associate Warden Savidge, and Lieutenant Smith failed to ensure inmates received recreation and showers in accordance with federal regulations. Accordingly, the allegation of Failure to Follow Policy will be sustained against Warden Reese, Associate Warden Savidge, and Lieutenant Smith. Insofar as Warden Reese has since retired from federal service, no disciplinary action can be processed. Associate Warden Smith and Lieutenant Smith are currently employed by the BOP, so the disciplinary process will commence.

Allegation 4:

The investigation conducted by the BOP, OIA determined there was sufficient evidence the action, or lack of action, by Warden Reese resulted in inmates not being provided food or medication in accordance with federal regulations. Therefore, the allegation of Failure to Provide Medication and Food to inmates will be sustained against her. Insofar as Warden Reese has since retired from federal service, no disciplinary action can be processed. It was also determined that Mr. Formentini documented inaccurate information into the Special Housing Unit record. Accordingly, the allegation of Falsification of Documents will be sustained against him, and the disciplinary process will commence.

Allegation 5:

The investigation conducted by the BOP, OIA determined there was no violation of law, rule, or regulation for which action needs to be taken.



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

September 25, 2009

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH:

Duro / DeMuz 10/10/09
THE DEPUTY ATTORNEY GENERAL

FROM:

Harley Lugin
Harley E. Lugin
Director

SUBJECT:

Delegation of Authority

PURPOSE:

To obtain a delegation of authority pursuant to 5 U.S.C. §1213 (d) in order to provide response to request for investigation by the Office of Special Counsel

TIMETABLE:

Immediately

SYNOPSIS:

The Office of Special Counsel (OSC) has requested the Attorney General to investigate allegations that an employee at the Federal Correctional Institution in Talladega, Alabama, has engaged in conduct which may constitute a violation of law, rule, or regulation, gross mismanagement, a substantial and specific danger to public health and safety, and an abuse of authority.

DISCUSSION:

In order to respond to the OSC request for investigation, the Director of the Bureau of Prisons must receive delegation of authority from the Attorney General.

RECOMMENDATION:

Written approval of delegation of authority.

APPROVE:

[Signature] 10-14-09

DISAPPROVE:

OTHER:

Attachment