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November 29, 2010

The President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-09-3013

Dear Mr. President:

Pursuant to 5 U.S.C. § 1213(e)(3), the Office of Special Counsel is forwarding to you agency reports concerning disclosures from a whistleblower at the Department of Justice, Federal Bureau of Prisons (BOP), Federal Correctional Institution (FCI) Talladega, Talladega, Alabama. Mr. Bernard Halloran, who consented to the release of his name, was a Captain at FCI Talladega, prior to his reassignment to FCI Terre Haute, in Terre Haute, Indiana. Mr. Halloran disclosed that Ms. Constance Reese, the former Warden at FCI Talladega, engaged in activities that violated the rights of inmates and posed a danger to their health and safety.

Mr. Halloran's disclosures were referred to the Honorable Eric H. Holder, Jr., Attorney General, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Attorney General Holder tasked BOP's Office of Internal Affairs with conducting the investigation. We received a report of that investigation dated March 22, 2010, and a supplemental report dated August 6, 2010. Mr. Halloran provided comments on the reports to this office pursuant to 5 U.S.C. § 1213(e)(1). As required by law, 5 U.S.C. § 1213(e)(3), we are now transmitting the reports and Mr. Halloran's comments to you.

Mr. Halloran disclosed that inmates who were housed in FCI Talladega's Special Housing Unit (SHU) were not provided with meals and medication for nearly 30 hours between September 22 and 23, 2008. He explained that this is a violation of 28 C.F.R. § 541.12, which states that inmates of BOP facilities have a right to health care, including nutritious meals, proper bedding and clothing, an opportunity to shower regularly, a regular exercise period, and medical treatment. Mr. Halloran alleged that the SHU inmates were denied food and medication pursuant to an order from Warden Reese in response to two incidents in which inmates used their arms to block staff from closing the food slots on their cells. Mr. Halloran explained that Warden Reese failed to order the use of force against the two disruptive inmates, despite several recommendations that she do so.

Similarly, Mr. Halloran alleged that in February 2009, in response to the discovery that several inmates were in possession of contraband, Warden Reese placed 20 Prison Camp inmates into an empty unit within the SHU. Warden Reese was informed that additional staff would need to be assigned to the unit, but she failed to assign the extra personnel, leaving the unit with

only one officer for a minimum of five days. As a result, the inmates were not permitted to shower or participate in recreation periods and other required activities during that period, in violation of Section 541.12. Mr. Halloran also alleged that on February 15, 2009, Warden Reese ordered that two inmates be placed in their cells in their underwear and without bedding, in violation of Section 541.12.

Mr. Halloran expressed his belief that in addition to violating Section 541.12 in the above instances, the Warden engaged in discrimination when disciplining inmates. Mr. Halloran alleged that this was a violation of 28 C.F.R. § 541.10, which requires staff to control inmates behavior in an impartial and consistent manner. Mr. Halloran alleged that Warden Reese ordered the calculated use of force against Caucasian inmates significantly more frequently than against African-American or other minority inmates.

In addition, Mr. Halloran claimed that in the fall of 2008 the Warden ordered dozens of strands of holiday lights to be strung up around the facility. Mr. Halloran likened the lights to extension cords, which are considered “accountable items” within a correctional facility. This means that they pose a potential threat to safety if possessed by inmates, and thus need to be properly counted and monitored. Mr. Halloran alleged that the holiday lights used by the Warden were not individually accounted for when they reached the facility nor when they were removed, and were within the reach of inmates across the institution for an extended period of time. Mr. Halloran alleged that this was a violation of BOP Program Statement (PS) 5500.12 (October 10, 2003), § 205, Para. 4, which requires that all low level security facilities and above must establish procedures for the control of extension cords, among other tools.<sup>1</sup>

In its report, the agency substantiated the allegation that Warden Reese improperly denied inmates food and medicine between September 22 and September 23, 2008, in violation of Section 541.12. The report also found that during this incident, Correctional Officer Michael Formentini improperly recorded that inmates did receive a full evening meal, even though they did not. The agency also substantiated Mr. Halloran’s allegation that Section 541.12 was violated when inmates who were placed in the SHU following the discovery of contraband were improperly denied the opportunity to shower or exercise due to improper staffing. In its investigation, the agency found that Associate Warden Joseph Savidge stated at the time that overtime would not be paid to staff the SHU, resulting in a staff shortage.

In response to its findings, the agency identified four employees who were responsible for these violations: Warden Reese, Associate Warden Savidge, Lieutenant Gregory Smith, and Correctional Officer Formentini. The report sustained the violations against Warden Reese, but because she has since retired from federal service, no disciplinary actions were taken against her. In its supplemental report, dated August 6, 2010, the agency indicated that a 14-day suspension was proposed against Associate Warden Savidge, a ten-day suspension was proposed against Lieutenant Smith, and a seven-day suspension was proposed against Correctional Officer Formentini.

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<sup>1</sup> FCI Talladega is a medium security level facility. The adjacent Prison Camp is a minimum security facility.

The agency found insufficient evidence to substantiate Mr. Halloran's allegation that two inmates were placed in their cells without required bedding and clothing. The investigation found that two inmates were forcibly removed from their cells on February 15, 2009, but through interviews with the staff present at the time, the agency found no conclusive evidence that they were returned to their cells without proper clothing or bedding. Rather, staff indicated that if their bedding were removed, it would likely have been returned to the inmates at bedtime, and the lieutenant responsible for the evening shift on that day recalled that the inmates did have clothing. Further, the SHU log book did not reflect that any clothing or bedding had been withheld.

The agency also did not substantiate Mr. Halloran's allegation that Warden Reese discriminated against Caucasian inmates. The agency explained that in calendar year 2008, seven calculated uses of force were recorded, five of which were against Caucasian inmates, or 71%. However, in calendar year 2009, there were 45 recorded uses of force, of which only 13 were against Caucasian inmates, or 29%. In 2009, 53% of all calculated uses of force were against African-American inmates. Based upon these statistics, the agency found that there was insufficient evidence to determine that Warden Reese was biased when ordering the use of force against inmates.

Finally, the agency did not find sufficient evidence to substantiate the allegation that allowing the stringing of holiday lights within the facility constituted a violation of PS 5500.12. Rather, the agency interviewed Mr. Frank Strada, BOP's Correctional Services Administrator, who indicated that string lights are not considered a hazardous tool within the meaning of PS 5500.12, and therefore do not need to be accounted for and controlled.

Mr. Halloran submitted comments in response to the agency's report and supplemental report. In his comments, Mr. Halloran expressed concern with several aspects of the agency's findings. First, he reiterated his belief that Warden Reese engaged in bias when ordering a calculated use of force against Caucasian inmates, with a specific focus on the statistics used by the agency from calendar year 2008. He stated his belief that the changes which occurred in calendar year 2009 were due to increased involvement by him and Associate Warden Becky Clay, and not a lack of bias on the part of Warden Reese. Mr. Halloran also reiterated his allegation that two inmates were placed in their cells without bedding and clothing, and explained that the order would not have been documented in the SHU log book because it was given by Warden Reese verbally to the on-duty shift lieutenant that day. Mr. Halloran also expressed his disagreement with the agency's determination that string lights do not constitute an accountable item similar to an extension cord. He stated his belief that string lights meet the definition of an extension cord and explained that he has never worked at a correctional institution which included the purchase and installation of string lights as part of a holiday display.

Mr. Halloran also commented upon those allegations which the agency sustained. He stated that he felt that Warden Reese's retirement should not bar liability for her actions, and expressed his belief that she should be subject to some corrective action for her role in the events. He pointed specifically to Warden Reese's management style as a root cause of the

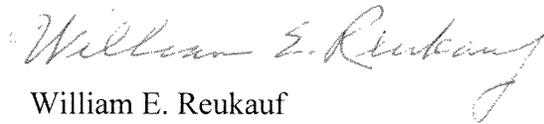
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issues he disclosed, as well as to Associate Warden Savidge's reluctance to confront Warden Reese with his concerns. Mr. Halloran also expressed dissatisfaction with the disciplinary action proposed against Lieutenant Smith, whom Mr. Halloran believes was not culpable.

OSC has reviewed the original disclosures, the agency's report and supplemental report, and Mr. Halloran's comments. Based on that review, we have determined that the reports contain all of the information required by statute and that the agency's findings appear to be reasonable.

As required by law, 5 U.S.C. § 1213(e)(3), we have forwarded copies of the agency's report and supplemental report and Mr. Halloran's comments to the Chairmen and Ranking Members of the Senate Committee on the Judiciary and the House Committee on the Judiciary. We have also filed copies of the reports and comments in our public file, which is available online at [www.osc.gov](http://www.osc.gov), and closed the matter.

Respectfully,

A handwritten signature in cursive script that reads "William E. Reukauf". The signature is written in dark ink and is positioned above the printed name and title.

William E. Reukauf  
Associate Special Counsel

Enclosures