

DOUG KOEBERNICK
Inspector General



STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL OF CORRECTIONS
State Capitol, P.O. Box 94604
Lincoln, Nebraska 68509-4604
402-471-4215

REPORT ON JAMES PAPAZIAN INCIDENT¹

JULY 3, 2018²

INITIAL INCIDENT

On the morning of April 6, 2018 at the Tecumseh State Correctional Institute (TSCI) Yard Corporal Staff B led a search of the cell of James Papazian and Inmate #2. The search team also included Corporal Staff #1 and Case Worker Staff #2. According to Cpl. Staff B, the cell search was conducted due to intelligence that was provided to him regarding Papazian having a weapon in his property. He then talked to his supervisor, Sergeant Staff #4, who then talked to Sergeant Staff #3 (Shift Supervisor) and they gave him clearance to do the cell search. According to Cpl. Staff B, he asked Cpl. Staff #1 to join him and he then asked CW Staff #2 to join him when he entered Unit 3 since CW Staff #2 had a body camera. During the cell search, CW Staff #2 did turn his body camera on and it recorded the search. The video shows that search taking some time and eventually Cpl. Staff B found a sock with Papazian's inmate number stamped on it that contained two AA batteries. As a result Papazian and Inmate #2 were taken to a holding cell.

After the search was complete Cpl. Staff B and Cpl. Staff #1 wrote their reports. Staff #1's report was inaccurate because it stated that she found the sock. Cpl. Staff B then met with Sgt. Staff #3 and shared his report that cited an unidentified informant as the source of the tip. Sgt. Staff #3 asked him to identify the source and he refused and said, "That will get my guy killed." Staff #3 then told him to talk to Captain Staff #5 and identify the informant. Cpl. Staff B met with Cpt. Staff #5 and changed his report saying that he was "tasked" with searching the cell and also wrote that he was threatened with discipline for not identifying the informant.³ Sgt. Staff #3 then met with Papazian and Papazian started crying, said he didn't know anything about the sock, that

¹ This report has been condensed from the report provided to the Public Counsel and the Director of the Nebraska Department of Correctional Services. As part of the changes to the initial report, all names have been redacted from this report except for that of Mr. Papazian. Mr. Papazian has been released from the state correctional system and has been in contact with news reporters and has been sharing his version of these incidents with them.

² Provided to NDCS on July 3, 2018

³ April 6, 2018 NDCS Report

he had just arrived from OCC and that he felt like staff were targeting him. He also shared that he had a special visit with his parents the next week and that he wouldn't jeopardize that visit. Sgt. Staff #3 interviewed Inmate #2 and Inmate #2 said that "there was some shady shit going on" involving Papazian and that unidentified people were trying to mess with Papazian. Inmate #2 also shared that the batteries that were found in the sock were not in the sock prior to the cell search and he explained where they were at and how the batteries belonged to him. Sgt. Staff #3 then met with Major Staff #6 and Deputy Warden Staff #7 and shared that he had reservations about the stories, including Cpl. Staff B's refusal to provide the name of the informant. As a result Papazian and Inmate #2 were allowed to return to their cells without any discipline.

Later that day, Cpl. Staff B told DW Staff #7 that Cpt. Staff #5 had threatened him with punishment because he would not give up the name of the informant and DW Staff #7 told him that he had to reveal it so Intel could track it. He then turned in his resignation "after hearing stories and rumors from other former and current employees about what happens to employees who cross him (Captain Staff #5)." He was then told he would be in the Special Management Unit (SMU) for the final two weeks of his employment and he then filed a workplace harassment complaint with Associate Warden Staff #10. She later told him he was being placed in the SMU because Captain Staff #5 feared for his safety.⁴

All of this led to a suspicion by some members of the TSCI leadership team that Cpl. Staff B may have planted the batteries in the sock. As a result, an investigation was initiated by staff of the Nebraska Department of Correctional Services.

BACKGROUND

After this incident, Mr. Papazian wrote letters to Senator Ernie Chambers and the Legislature's Ombudsman. The Office of Inspector General (OIG) learned about this situation during a visit to TSCI to investigate a suicide that had taken place. The OIG was also contacted about this situation by Papazian's mother on April 27, 2018 via an email. The OIG and the Ombudsman's office discussed the case and it was decided that the OIG should investigate it.

On May 1, 2018, the OIG met with Papazian and Inmate #2 at TSCI. Over the next several weeks, this case was also discussed with a number of NDCS staff and inmates, including multiple interviews with Cpl. Staff B. The OIG requested a significant amount of information from NDCS which also assisted with the investigation.

The emphasis of the investigation was to determine whether or not the sock and the batteries ("the weapon") were planted by Cpl. Staff B and if so, why did he do it and was anyone else involved in this activity.

PAPAZIAN AT THE OMAHA CORRECTIONAL CENTER

Papazian initially stated that he believed he was targeted by Cpl. Staff B at TSCI due to events that took place at the Omaha Correctional Center (OCC) in February and March of 2018.

⁴ This information was compiled from various TSCI Incident Reports.

On March 29, 2018 Papazian was placed in Immediate Segregation (IS) at OCC. Papazian said he was placed there “pending investigation.” He said the IS review sheet that he was presented said he was in there for “Threats/Aggressive Acts.” The OIG was unable to locate this review sheet. Papazian said that a staff member told him that he must have threatened someone. The IS review sheet located by the OIG stated that he was placed in IS due to an investigation into a possible felony detainer and the potential reclassification to a higher custody level. However, the original IS review sheet did not have specific information. Deputy Director Staff #9, in an email to Papazian’s mother, wrote:

“It has been determined, however, that the documentation your son was provided regarding his placement did not include specific information regarding the reason for his restrictive housing placement. I have asked Warden Staff #8 to issue an amended notice. Once this is complete, your son will be provided a copy of this notice.”⁵

Deputy Director Staff #9 contacted Warden Staff #8 and suggested that a revised IS notice be issued that would explain that his placement was based on an investigation into the possible trafficking of contraband. Warden Staff #8 did issue a revised IS review sheet that indicated his reason for placement was the investigation into a possible felony detainer and the potential reclassification to a higher custody level.

The OIG was able to determine that Papazian was actually placed in IS due to NDCS staff listening to a phone call on March 26, 2018 between Papazian and another party. NDCS staff believed that the call involved an attempt to introduce contraband into the facility.

On April 3, 2018 Papazian had a phone call with his mother. According to an OCC staff member, Papazian told his mother that he was being targeted due to him not giving any information to a staff member.

It is important to note that this all took place just a few weeks prior to Papazian having a hearing before the Board of Parole in which it was thought he would be paroled to a federal detainer. Papazian has been charged with a federal crime related to actions by him when he was on work release in 2017. While working at Old Chicago in Lincoln, a search was completed of his locker that found a digital scale, 150 sandwich bags and a cell phone. He was removed from work release status and returned to the Diagnostic and Evaluation Center (DEC). On September 3, 2018 a woman went into Old Chicago and asked a bartender for assistance in finding “the stuff.” Newspaper reports indicate that the bartender helped “her search for an item she was told by an incarcerated acquaintance was in a specific booth of the restaurant.” The two searched for “the stuff” but didn’t find it so she left. According to the press report, “Other staff then checked booths upstairs to ensure nothing illegal was hidden in the restaurant and discovered the meth.” There were more than nine ounces of meth in a FedEx bag.⁶ The woman who was arrested had visited Papazian at DEC on August 27, 2017. She also had visited him once in 2015. After being at DEC Papazian was later placed in the Phelps County Jail for about 90 days before returning to DEC then being placed at OCC in November 2017.

⁵ Email from April 3, 2018

⁶ “Half-pound of meth found stashed in Haymarket restaurant booth, police say,” *Lincoln Journal-Star*, September 7, 2017

An April 3, 2018 the Inmate Transfer Order for Papazian listed the reason for his transfer from OCC to TSCI as “Attempted to introduce contraband.” It listed his current custody as 3A (minimum) but recommended that his custody be 1X (maximum). On April 4, 2018 Papazian was transferred to TSCI. As part of this investigation, it was found that the policy of scanning, organizing and maintaining Inmate Transfer Orders varies from facility to facility which made it somewhat difficult to obtain Papazian’s Inmate Transfer Order.

PAPAZIAN AT TSCI

Papazian arrived at TSCI the morning of April 4, 2018 and was placed in Housing Unit 3. For the next two days he did not have access to a telephone. On the afternoon of April 6, 2018 Cpl. Staff B, Cpl. Staff #1 and CW Staff #2 arrived at the cell and said that they would be searching the cell. Papazian’s cell mate, Inmate #2, asked if he could use the toilet before the search and the staff agreed. A few minutes later Inmate #2 was finished and the staff entered the cell to begin the search.

The OIG reviewed video and reports related to the cell search and found the following:

On the video, the three staff enter the unit. An inmate sounds out an alarm to other inmates that staff have entered the gallery. They open the door and Inmate #2 asks if he can use the toilet before the search. Two and a half minutes later the inmates leave the cell and are pat searched. About a minute into the search the body camera shows Cpl. Staff #1 getting on a chair to look at the top left side of the top bunk. The body camera doesn’t show Cpl. Staff B and Cpl. Staff #1 again until about two more minutes into the search. At that time, Cpl. Staff #1 is searching the top bunk and it appears as though Cpl. Staff B is searching a mesh laundry bag. About a minute later Cpl. Staff B and Cpl. Staff #1 again appear on the video and Cpl. Staff #1 is on the top bunk and Cpl. Staff B is putting a mesh sack back into the top locker. Around 30 seconds later there is a good shot of Cpl. Staff #1 beginning to search the top locker and Cpl. Staff B looking at the bottom bunk. Cpl. Staff #1 asks Cpl. Staff B if he looked through the towels in the top locker and he says he has. Cpl. Staff B then reacts quickly when he sees Cpl. Staff #1’s hand go into the locker and he starts to search that area again. Cpl. Staff #1 then goes back to searching the top bunk area. Cpl. Staff #1 then says, “This is boring” and Cpl. Staff B said, “It is a tight fit with three people.” CW Staff #2 then says, “I apologize, maybe I shouldn’t have jumped on this.” Cpl. Staff B then is closely searching the bottom of the top locker. It is hard to see what Cpl. Staff B is exactly doing for the next two minutes but he appears to be searching the top locker the entire time. CW Staff #2 asks, “Did you find it?” and Cpl. Staff B replies, “Not yet.” Cpl. Staff B then brings a sock down from the locker in his hand that hits the locker and makes a “clank” and Cpl. Staff #1 says, “You told me you searched that” as he hands the sock to CW Staff #2. They talked about batteries being in the sock and Cpl. Staff #1 asked, “Is that what he’s saying it is?” (referencing the weapon and the informant) and Cpl. Staff B responds, “He didn’t tell me what the weapon was.” And later says in response to Cpl. Staff #2, “I didn’t push my (unintelligible).” They decided to call the Lieutenant and report the finding of the weapon. The video then shows Cpl. Staff B still with his hands in the top locker. [Cpl. Staff B told the OIG that he had found other socks and articles of clothing in the locker and that the sock with a stamped number caught his attention because he had not seen

that before.] A few minutes later Cpl. Staff B and CW Staff #2 discuss the sock and Cpl. Staff B had placed it back in the top shelf of the top locker and retrieved it for CW Staff #2. Cpl. Staff B showed him the number on the sock and says, “He might as well have signed his name to it.” A minute later he says, “Papazian (unintelligible) idiot” then says, “I’ll write the IR saying my snitch gave me the info and that you (Staff #1) found it” even though Staff #1 did not find it. He then asks, “Will that work? Then you can take the credit and write the MR.” and she says, “Sure.” CW Staff #2 leaves the cell when other officers arrive leaving Cpl. Staff B and Cpl. Staff #1 alone in the cell. CW Staff #2 then meets the other officers and identifies Inmate #2 and Papazian for them so they can be taken to a holding cell. He later reenters the cell but the search is fairly completed.

At that point Inmate #2 and Papazian were escorted to a holding cell. Papazian reported that while in holding that Sgt. Staff #3 asked him if he knew why he was there. Later that day he said that Major Staff #6 told him that he could go and that he wouldn’t see him (meaning Cpl. Staff B) anymore. Papazian also shared that he talked with CW Staff #2 later and that CW Staff #2 was surprised it was planted.

ADDITIONAL PAPAZIAN INCIDENTS AT TSCI

After that cell search incident Papazian had other incidents take place at TSCI before he was paroled to a federal detainer.

On April 30, 2018 Sgt. Staff #10 wrote a misconduct report related to a telephone call between Papazian and his mother on April 28, 2018.

On May 6, 2018 Sgt. Staff #10 monitored a telephone call between Papazian and a telephone number assigned to Civilian #1 that appeared to indicate an attempt to bring contraband into the facility. The next day contraband was introduced into the facility by a visitor although there is no proof that these two incidents were connected.

On May 8, 2018 Sgt. Staff #10 conducted a search of the Papazian and Inmate #2 cell without any other staff at 0100 hours. He found an altered pillow and two suspected gambling sheets with point spreads on football games. A misconduct report was submitted with his findings. The OIG requested video of this search but was informed there was no video, neither from a body camera or an institutional camera.

PAPAZIAN SUBSTANCE ABUSE TREATMENT RECOMMENDATION

Papazian never had a recommendation for substance abuse treatment prior to April 12, 2018. The recommendation was then made for non-residential treatment and the comments regarding that recommendation were “New information: MR Drug paraphernalia. Recommend Outpatient.” The MR (misconduct report) in question appears to have been the from July 2017 but that would seem to more of a “dealing drugs” misconduct report rather than a “using drugs” misconduct report. The OIG contacted NDCS substance abuse treatment staff and was told that due to the transfer of Papazian from OCC to TSCI this triggered a review by one of their staff who then found the misconduct report and made the change in recommendation. It does not appear that anyone else initiated this process. This change took place almost nine months after the misconduct report was completed.

CPL. STAFF B WORK HISTORY

Cpl. Staff B started at TSCI as a Case Worker in March 2016. He voluntarily demoted to Corporal in November 2016. He was promoted back to Case Worker in July 2017. He voluntarily demoted to Corporal and transferred to OCC in October 2017. He later commuted to TSCI for a number of months for five hour shifts before transferring back to TSCI on March 19, 2018. The OIG was unable to locate any history of discipline of Cpl. Staff B during his time at NDCS.

As explained earlier Cpl. Staff B resigned effective April 20, 2018 on April 6, 2018. On April 12, 2018 Cpl. Staff B offered to rescind his resignation but this was not accepted by the facility's warden. On April 13, 2018 Cpl. Staff B was placed on investigatory suspension.⁷

NDCS INVESTIGATION #1

NDCS assigned Investigator Staff #11 to investigate the Papazian/Cpl. Staff B incident. Staff #11's report was dated April 19, 2018. The case packet was reviewed by three members of the NDCS Central Office. Mr. Staff #12 shared that they all agreed to the recommendation of forwarding it to the Patrol and the review process was completed on May 3, 2018. It should be noted that the report did not actually make a recommendation to forward it to the Nebraska State Patrol. It actually said the following:

“Based on the body camera footage of that of Caseworker Staff #2, the discrepancy of the size of the weapon, namely two AA batteries in a sock, and the unwillingness to divulge the name of the informant who said there was a weapon hidden in the cell I feel this case should be turned over to the Personnel Investigator and possibly the Nebraska State Patrol for review and possibly disciplinary action or criminal charges.”

As part of this report Investigator Staff #11 reviewed interviews conducted by TSCI Captain Staff #12 with Inmate #2, Papazian and Cpl. Staff B, as well as reviewing a written report by Cpl. Staff B that was provided to Cpt. Staff #12. Investigator Staff #11 interviewed Cpt. Staff #13 at OCC and CW Staff #2 and Cpl. Staff #1 at TSCI.

Also on May 3, 2018 the OIG met with Director Scott Frakes and Staff #14 regarding a different issue. During that conversation the Papazian incident was discussed. The OIG shared that he would continue to look into this and when asked more about it the response was that it was important to try to learn why Cpl. Staff B might have planted the weapon and that it might be a criminal matter. At that point, Director Frakes and Staff #14 indicated that they were not aware that it had been viewed as a potential criminal matter by NDCS. However, later that day Director Frakes sent the OIG an email that clarified this and said the following:

“Turns out I did not have all of the facts on the incident involving the ex-employee. It was turned over to our criminal investigators, and there may be a potential misdemeanor violation.”

⁷ May 8, 2018 Email from NDCS to the OIG

The OIG communicated with NDSC Legal Staff #14 about the review of the Staff #11 Report and how it took place. They were helpful in describing the process in the following email response:

“The lead investigator, Staff #11, came to my office to discuss the case before he finished his report. He wasn’t sure whether there were any potential crimes that could result from the investigation against Corporal Staff B. I suggested Obstruction of Justice, and recommended having the State Patrol investigate because Staff #11 was not confident there would be enough evidence to turn it in to a prosecutor. I did not want there to be an appearance of impropriety. Staff #11’s report recommended forwarding the case to the State Patrol.

As is our practice, when a criminal investigator finishes a report, the packet is physically circulated to Staff #12, then to me, then to Deputy Director Staff #9. We agree or disagree with the recommendation of the investigator, or suggest further action. In this case, it took from 4/19/18 to 5/3/18 to complete circulation. We all agreed that the case should be forwarded to the State Patrol.⁸

I can’t remember the exact date Staff #11 and I had our discussion, but Staff #11 tells me he finished his report on or about April 19, 2018. He said the conversation would have taken place a day or two before he finished his report.

Forwarding the case to the State Patrol seemed like the right thing to do because the case was unusual. I would have handled any other case the same way.”⁹

On May 10, 2018 the OIG informed Director Frakes that information on this case would be forwarded to the Nebraska State Patrol and this was done later that day.

In addition to the Staff #11 Report, there was one other report completed on this incident that was not directly provided to the OIG as part of the many information requests made by the OIG regarding this incident. It was completed by Cpt. Staff #12, was dated April 23, 2018, and was submitted to Staff #14 and TSCI Deputy Warden Staff #7.

NDSC REPORT #2

This report shared that Cpt. Staff #12 was asked to review the incident by Staff #14 “due to the nature of the complaints and the seriousness of the allegations made by Inmate Papazian.”

As a result Cpt. Staff #12 met with Cpl. Staff B on April 13, 2018 (this is the interview that was reviewed by Staff #11). Cpt. Staff #12 shared with him that his sudden resignation and his unwillingness to identify the informant were suspicious. Cpl. Staff B then changed his story to say he didn’t reveal it because he didn’t actually know who it was because he only overheard a conversation in the dining hall. Cpl. Staff B asked that the body camera be reviewed by him and that CW Staff #2 and Cpl. Staff #1 be questioned as well.

⁸ Although there was agreement to notify the Patrol about this case by this group the OIG was informed that the Patrol was contacted regarding this case on April 19, 2018 and May 9, 2018.

⁹ May 15, 2018 Email from NDSC to OIG

As part of that interview Cpl. Staff B again expressed his concern about being “threatened” by Cpt. Staff #5 with punishment and that he did not trust Cpt. Staff #5. However, he did not give concrete reasons why he felt that way. Cpl. Staff B stated that he overreacted by quitting his job over this incident. Cpt. Staff #12 also asked him if he knew anything about Papazian and he indicated that he knew he had trouble while on work release and at OCC. Cpl. Staff B stated to Cpt. Staff #12 that, “Word is, Papazian had a personal relationship with an employee, but I legitly (sic) don’t know who.”

On that same day Cpt. Staff #12 also interviewed Papazian’s cell mate, Inmate #2, for about an hour. Cpt. Staff #12 asked him if he planted the weapon or even if Papazian did it as well. In the Staff #12 Report, Inmate #2 shared that he had seen the batteries found by Cpl. Staff B prior to the search and that they were no longer there after he returned to the cell after the search.

Cpt. Staff #12 reviewed the body camera footage from the cell search and described what he viewed in the report:

“I was unable to confirm the batteries described by Inmate #2 with any certainty. However, within a few minutes of the search Cpl. Staff B reached into the area where Inmate #2 stated the batteries were. A few minutes after that Cpl. Staff B retrieved a sock out of the upper bunk cabinet. I saw what appeared to be Cpl. Staff B putting something into this sock and heard an audible “tink” when it appears the items hit the bottom of the sock.” After multiple attempts to view this, I contacted Staff #14 to view the footage to see what his opinion was of what I had witnessed on this video. Staff #14 stated he believed it looked as if the staff member had put something in the sock. I agreed with that assessment and notified four staff members¹⁰. I organized them to watch the video without explanation regarding what they would see as to not influence them. The group was not unanimous in opinion of what they saw on the video.”

Cpt. Staff #12 then interviewed Cpl. Staff B a second time and he told Cpl. Staff B that the body camera footage showed him placing the batteries in the sock. When he was unable to explain it, Cpt. Staff #12 said he was suspended and was placed under investigation. He was later escorted from the building and did not return to TSCI again.

Cpt. Staff #12’s report contained the following conclusion:

“It cannot be said with certainty Cpl. Staff B placed batteries in the sock for the purpose of placing an inmate in jeopardy. Cpl. Staff B did refuse to give supervisors the identity of his alleged Confidential Informant. Cpl. Staff B made it very clear to several supervisors he would not give the name of the inmate who had informed him of the weapon due to safety concerns for the informant. His lack of being forthright from the beginning of this situation has exacerbated the situation. Ultimately, it is difficult to determine what the reality of the situation is as he claimed to not know from whom he had heard the information.

¹⁰ The OIG removed the names in this case.

Due to the significant demand to maintain confidentiality of the inmate, and submission of resignation due to such; his claim of not knowing who the inmate was makes the claim difficult to determine veracity. There is no indication any intentional wrong doing was conducted by Cpl. Staff #1 or CW Staff #2.”

His recommendation at the end of his report was the following:

“It is recommended Cpl. Staff B be allowed to resign as he has submitted such and this matter be closed. It would also be recommended, any request for rehire by Cpl. Staff B be strongly screened as this situation has resulted in a very negative perception on his truthfulness and his propensity to be forthright as well as concerns of his overall stability.”

SUMMARY OF FINDINGS

As stated earlier in the report, the emphasis of the investigation was to determine whether or not the batteries were planted by Cpl. Staff B and if so, why did he do it and was anyone else involved in this activity.

PLANTED OR NOT PLANTED?

The OIG is unable to determine whether or not the batteries were planted by Cpl. Staff B despite a review of the video of the incident, a review of several reports and interviews with several inmates and staff. In the NDCS Report #2 both Cpt. Staff #12 and Staff #14 seem to believe that they saw Cpl. Staff B place the batteries in the sock but the OIG is unable to confirm that on the video.

Certain actions taken by Cpl. Staff B and contradictions made by Cpl. Staff B are concerning. These include the following:

- Cpl. Staff B stated that he asked CW Staff #2 to assist with the search since he had a body camera. CW Staff #2 indicated that this was not the case and that it was his idea to assist with the cell search. During the search one might conclude that Cpl. Staff B was not comfortable with CW Staff #2 being there due to comments he made at that time.
- Cpl. Staff B said he had a confidential informant or a “snitch” but never identified that person. When pressed on it he changed his story to saying he overheard some inmates talking about it in the dining hall but couldn’t identify who said it. Cpl. Staff B told the OIG that he would have been willing to take a Statement of Charges in order to not give up his confidential information but later discussed overhearing the comments in the dining hall. In addition, after he found the sock and batteries Cpl. Staff B said, “He (his source) didn’t tell me what it was.” Cpl. Staff #2 responded by saying, “Next time he could be more specific.” Cpl. Staff B then said, “I didn’t push my (unintelligible).” This would indicate that he had a conversation with an informant which is not what he later told TSCI staff and the OIG.
- Cpl. Staff B indicated in his own report that he “had given the upper bunk shelf area an initial glance” and that an “odd-looking sock had caught” his attention. He reported that it was then that he found the sock with the two AA batteries. However, video evidence shows that he spent time searching through the upper bunk shelf area. He then spent

about two minutes holding Papazian's laundry bag which had been in the upper bunk shelf area (which contained items such as socks). He then put the laundry bag back into the upper bunk shelf area. He then was searching a lower area when Cpl. Staff #1 asked about the upper bunk shelf area and if he had searched the towels. When Cpl. Staff B saw her reaching into that upper bunk shelf area he stood up and interrupted her search and this caused her to stop her brief search of that area. He indicated at that time that he had searched the upper bunk shelf area. However, he began to search it again for almost two minutes before CW Staff #2 asked him if he had found the weapon yet. Cpl. Staff B responds, "Not yet." Twenty second later he indicated that he found something. Cpl. Staff #1 reacted by saying, "You told me you searched that (meaning the upper bunk shelf area)." He then handed the sock with two AA batteries to CW Staff #2.

- Cpl. Staff B said the sock was "odd-looking" because it had an inmate number on it. The OIG talked to other staff who said this was not unusual.

OTHER INVOLVEMENT AND WHY?

If Cpl. Staff B did indeed plant the sock and batteries in the Papazian cell as was alleged, the next questions are why and was anyone else involved.

The OIG was unable to answer either of these questions as there is no evidence that the OIG has reviewed that would answer them. While Papazian accused Cpt. Staff #13 of being involved, it is important to note that Cpt. Staff #13 was out of the state when all of this took place and that both Cpt. Staff #13 and Cpl. Staff B both told the OIG that they had only very minimal contact with each other in the past. The OIG was able to determine that Staff #14 and his immediate staff were the ones who caused Papazian to be moved from OCC to TSCI and that Cpt. Staff #13 was not involved in that decision in any manner.

OTHER FINDINGS

Both Sgt. Staff #10 and Cpt. Staff #13 were pointed to by Papazian as being involved with the situation. However, Investigator Staff #11 only interviewed Cpt. Staff #13 but did not interview Sgt. Staff #10. Sgt. Staff #10 was never mentioned in the body of the NDCS Report #2 but the allegation regarding Cpt. Staff #13 was contained in the body of the report. It is unclear why the reports were done this way.

The OIG found that Cpl. Staff B was able to access his state email for an extended period of time after he was no longer employed by NDCS. This was brought to the attention of Director Frakes and was addressed almost immediately. NDCS reports they reviewed the issue and found that human error was the cause.

The OIG found that inmate transfer orders (the paperwork that follows an inmate from facility to facility) is handled and stored differently at TSCI and OCC. This process is not uniform or consistent.

The OIG requested copies of various interview inmate requests ("kites") submitted by Papazian at OCC and TSCI. These are forms that are filled out by the inmate and are responded to by NDCS staff. It was found that not all kites are kept or even tracked so many kites that Papazian had submitted were not able to be viewed by the OIG for their content and for any responses.

RECOMMENDATIONS FOR PROCESS/POLICY IMPROVEMENTS

- 1) Consider utilizing body cameras for all planned cell searches;
- 2) Review the policy and practice of ceasing access to an employee's state email account after they have been terminated or resigned;
- 3) Have all inmate transfer orders completed and scanned and maintained by each facility in a uniform and consistent manner;
- 4) Develop a system for recording what is in a kite. One suggestion may be to utilize the inmate contact notes system; and,
- 5) Review the system in which misconduct reviews are reviewed by program staff that would trigger possible changes in programming recommendations.

CONCLUSION

While there are many issues of concern highlighted in this report, there was no evidence uncovered by the OIG that shows that Cpl. Staff B planted the batteries and sock in the cell of Papazian.

NDCS RESPONSE

Director Scott Frakes responded to the OIG report on July 15, 2018. Director Frakes' provided his responses to the five recommendations made in the report. They are attached to this report.

In the response to the recommendation that stated: "Consider utilizing body cameras for all planned cell searches" Director Frakes responded with the following:

"As you note in your report, the cell search in question was captured on video from a body camera. Your review of the video did not help you answer the primary question in your investigation. NDCS is utilizing body cameras on a limited basis to determine the effectiveness of this technology. It is expensive, impacts staff resources, and does not provide the definitive answers that people would be led to believe. I am most interested in seeing how the body cameras might impact interactions between staff and inmates. I do not plan to make a greater investment in body cameras at this time."

While this response is somewhat accurate it is important to note that there was a great deal of information gained from the viewing of the video by the OIG and staff of NDCS. The video raised more questions that would not have been raised if it did not exist. In addition, video of cell searches could possibly provide additional protections for inmates and staff in a number of instances, including when a cell search is conducted by a single staff member.

In the response to the recommendation that stated: "Review the policy and practice of ceasing access to an employee's state email account after they have been terminated or resigned", Director Frakes responded with the following:

"The policy/practice is fine. Human error led to the mistake."

During the Papazian investigation the OIG was aware of another instance in which a former employee of NDCS continued to have access of their email after they had left their employment. This information was shared with Director Frakes. The OIG would still encourage a review of this process.

In the response to the recommendation that stated: “Develop a system for recording what is in a kite. One suggestion may be to utilize the inmate contact notes system,” Director Frakes responded with the following:

“Inmate Interview Requests are intended to be an informal communication tool, and this is understood by staff and inmates. Formal correspondence include tracking systems, timeframes for response, and retention schedules. At some point in time the GTL system will be utilized as an electronic interview request system, and this will allow for some level of retention and retrieval. This move to an electronic system will not occur until the current functionality of the GTL tablets meets NDCS expectations.”

The OIG has reviewed the capabilities of the GTL tablet in the past and using them for this purpose would be a benefit for the inmate population and the staff of NDCS.

In the response to the recommendation that stated: “Review the system in which misconduct reviews are reviewed by program staff that would trigger possible changes in programming recommendations,” Director Frakes responded with the following:

“The process for changes to clinical programming recommendations is under review, and should result in more consistent application.”

The OIG looks forward to learning the results of this review.



July 15, 2018

Re: Investigation, James Papazian #80358

Doug Koebernick, Inspector General
PO Box 94604
Lincoln, NE 68509

Dear Mr. Koebernick,

Thank you for the opportunity to review your report dated July 3, 2018. My responses to the five recommendations you made are inserted into your text (highlighting and quotations added):

“RECOMMENDATIONS FOR PROCESS/POLICY IMPROVEMENTS”

- 1) **“Consider utilizing body cameras for all planned cell searches;”** As you note in your report, the cell search in question was captured on video from a body camera. Your review of the video did not help you answer the primary question in your investigation. NDCS is utilizing body cameras on a limited basis to determine the effectiveness of this technology. It is expensive, impacts staff resources, and does not provide the definitive answers that people would be led to believe. I am most interested in seeing how the body cameras might impact interactions between staff and inmates. I do not plan to make a greater investment in body cameras at this time.
- 2) **“Review the policy and practice of ceasing access to an employee’s state email account after they have been terminated or resigned;”** The policy/practice is fine. Human error led to the mistake.
- 3) **“Have all inmate transfer orders completed and scanned and maintained by each facility in a uniform and consistent manner;”** We will review the transfer documentation process to see if improvements are needed.

- 4) "Develop a system for recording what is in a kite. One suggestion may be to utilize the inmate contact notes system; and," Inmate Interview Requests are intended to be an informal communication tool, and this is understood by staff and inmates. Formal correspondence include tracking systems, timeframes for response, and retention schedules. At some point in time the GTL system will be utilized as an electronic interview request system, and this will allow for some level of retention and retrieval. This move to an electronic system will not occur until the current functionality of the GTL tablets meets NDCS expectations.
- 5) "Review the system in which misconduct reviews are reviewed by program staff that would trigger possible changes in programming recommendations." The process for changes to clinical programming recommendations is under review, and should result in more consistent application.

Department investigations staff conferred with the Nebraska State Patrol (NSP) on the case starting on April 19, 2018, and have turned over available documents/video. My staff continue to work with the Patrol on the case.

Sincerely,



Scott Frakes, Director
NDCS

cc: Diane Sabatka-Rine
Dawn-Renee Smith