

EXHIBIT 9



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: CPD/CSB
NUMBER: P5217.01
DATE: 11/19/2008

Special Management Units

Approved: Harley G. Lappin
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

To provide guidance and procedures for operating Special Management Units (SMU).

Some inmates, such as those who participated in or had a leadership role in geographical group/gang-related activity, present unique security and management concerns. Accordingly, the Bureau of Prisons (Bureau) designates inmates to SMUs where greater management of their interaction is necessary to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public.

SMU designation is non-punitive, and may be appropriate for any inmate meeting the referral criteria in Section 2 below. Conditions of confinement for SMU inmates are more restrictive than for general population inmates, and are described in Section 5. Inmates are expected to complete the four-level SMU program in 18 to 24 months, at which time they may be redesignated to an appropriate facility.

a. **Program Objectives.** The expected results of this program are:

- Inmates who meet the criteria for designation to a SMU will be referred for redesignation.
- SMU inmates will complete a four-level program and be redesignated to the general population.
- Safe and orderly environments at all institutions will be further enhanced by the operation of SMUs.

b. **Pretrial/Holdover/Detainee Procedures.** This Program Statement applies only to sentenced inmates.

2. REFERRAL CRITERIA

Designation to 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 part 541, after being classified as a member of a Disruptive Group pursuant to 28 CFR part 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.

3. REFERRAL PROCEDURES

a. **Referral.** If an inmate appears to satisfy any of the referral criteria above, the Unit Team may present a redesignation referral to the Warden. The referral packet consists of a completed Request for Transfer/Application of Management Variable (EMS-A409), copies of pertinent Special Investigative Supervisor reports and incident reports, and a cover memorandum to the Warden summarizing the rationale for referral for SMU designation. If the Warden approves the referral, it is submitted to the Regional Director. The packet may be submitted electronically at all stages. The Unit Team will be notified if the Warden denies the referral.

b. **Hearing.** If the Regional Director determines that sufficient evidence exists to convene a hearing, the Regional Director appoints a Hearing Administrator to conduct a hearing into whether the inmate meets the criteria for SMU designation. The Hearing Administrator will have been trained and certified as a Discipline Hearing Officer, will be an impartial decision-maker, and will not have been personally involved as a witness or victim in any relevant disciplinary action involving that inmate.

The Warden will be notified of the Regional Director's decision to conduct a hearing before the inmate is provided pre-hearing notice. The inmate's security needs will be assessed and staff made aware of any additional security precautions.

(1) **Pre-Hearing Notice.** The Hearing Administrator completes the form BP-A0935, *Notice to Inmate: Hearing Referral for Designation to a Special Management Unit* (available on Sallyport) and sends it to the inmate's current institution. Unit team staff provide the inmate with a copy of the Notice at least 24 hours before the hearing, and document delivery to the inmate. If the inmate is illiterate, the delivering staff member will read the notice verbatim. If the inmate does not speak English, the Unit Team staff will make arrangements to provide translation.

The Notice will:

- Advise the inmate of the date and time of the hearing.
- Advise the inmate of the opportunity to appear at the hearing.
- Provide a sufficiently detailed explanation of the reasons for the referral. Such explanation will not include information that would jeopardize the safety, security, or orderly operation of correctional facilities, or protection of the public.
- Inform the inmate that a non-probationary staff member will be available to help the inmate compile documentary evidence and written witness statements to present at the hearing. The assisting staff member's responsibility in this role is limited to assisting the inmate in obtaining copies of documents needed, for example, from his central file or other reasonably available source(s), or a written statement(s) from other reasonably available inmates or staff.

(2) **Inmate Appearance and Evidence.** The inmate has the opportunity to appear at the hearing, make an oral statement, and present documentary evidence and written witness statements, except where contrary to the safety, security, or orderly operation of Bureau facilities, or protection of the public. The Hearing Administrator, after consultation with the facility where the inmate is housed, will determine whether the inmate appears at the hearing via videoconference, telephone conference, or in-person. The Warden or designee will determine the location of the hearing. The inmate may not call witnesses at the hearing.

c. **Post-Hearing Findings and Decision.** The Hearing Administrator considers whether, based on information obtained during the referral process and presented at the hearing, the inmate meets the criteria for the SMU program. The Hearing Administrator prepares the form BP-A0936, *Hearing Administrator's Report on Referral for Designation to a Special Management Unit* (available on Sallyport) and provides it to the Regional Director. The Report provides a detailed explanation of the reasons for the Hearing Administrator's findings, but does not include information that would jeopardize the safety, security, or orderly operation of correctional facilities, or protection of the public.

The Regional Director considers whether, based on the Hearing Administrator's findings, the SMU referral is necessary to ensure the safety, security, or orderly operation of Bureau facilities, or protection of the public. The Regional Director includes a recommendation on the Report and forwards it to the Designation and Sentence Computation Center (DSCC).

When considering inmates for designation to the SMU, appropriate DSCC staff involved in the designation process shall review the inmate's CIM assignment to ensure inmates who are separatees pursuant to the CIM Manual are not designated to the same SMU without written concurrence of the Central Office. The DSCC will then review the Report and, after consulting with the Assistant Director, Correctional Programs Division, Central Office, indicate whether SMU referral is approved. If SMU referral is approved, the DSCC selects the SMU that best meets the inmate's greater management needs, and enters said approval on the CMC Clearance Data Sheet. The DSCC forwards the decision to the receiving Regional Director and Warden, with copies to the referring Regional Director and Warden. If a SMU referral is denied, the

DSCC should consider a secondary referral code/rationale provided in the referral, i.e., greater security, adjustment purposes, etc.

d. **Post-Decision Notice and Appeal.** The inmate's copy of the completed Report is sent to the referring Warden, who ensures delivery to the inmate. The Report advises the inmate of the opportunity to appeal the decision and the Hearing Administrator's findings through the Administrative Remedy Program, directly to the Office of General Counsel.

An inmate's appeal of the decision or the Hearing Administrator's findings does not delay designation and transfer to a SMU. Designation and transfer are effected; the inmate may proceed with the appeal while housed in the SMU.

e. **Notice for Current SMU Inmates.** Inmates currently in a SMU are provided the BP-A0937, *Notice to Inmate of Designation to a Special Management Unit* (available on Sallyport). This Notice informs the inmate of the right to appeal the designation decision and the inmate's individual conditions of confinement.

f. **Inmates in Disciplinary Segregation.** When an inmate serving a sanction of disciplinary segregation is designated to a SMU, the referring Regional Director may:

- Direct that the inmate complete the disciplinary segregation period at the current institution; or
- Request that the inmate complete the disciplinary segregation period at the receiving institution before transfer into the SMU.

4. **CENTRAL INMATE MONITORING (CIM) ASSIGNMENTS**

CIM assignments regarding SMU candidates will be finalized prior to assignment to a specific SMU. This will ensure the most appropriate placement of each SMU inmate.

a. **CIM Assignment Related to SMU Placement.** Inmates with CIM assignments related to their SMU placement may be housed in the same institution/SMU housing unit during Levels One and Two, due to the institution's ability to prevent any physical contact between them. SMU inmates approved for Levels Three and Four, however, must demonstrate a willingness and subsequent ability to effectively coexist with other inmates. Inmates who fail to demonstrate these traits with other inmates, and specifically their CIM assignments (individuals or group) will retain those assignments and may be removed from the SMU program pending redesignation to another appropriate facility, consistent with the orderly running and operations of our institutions.

b. **CIM Assignments Unrelated to SMU Placement.** Occasionally, a SMU candidate will have a verified separation need from another SMU candidate that is unrelated to each inmate's consideration for SMU placement. For example, inmate "A" previously testified against inmate "B," and both inmates were made separatees from each other. Under these type circumstances, inmates "A" and "B" should be housed in different SMUs.

5. CONDITIONS OF CONFINEMENT

Conditions of confinement for SMU inmates will be more restrictive than for general population inmates. An inmate's individual conditions will be limited in accordance with this policy as necessary to ensure the safety of others, to protect the security or orderly operation of the institution, or protection of the public. Individual conditions may be further limited as part of a disciplinary sanction imposed pursuant to 28 CFR part 541, except as specified below. Individual conditions are ordinarily made less restrictive when an inmate progresses from level-to-level of the SMU program. The cell door of each inmate in the SMU will be clearly marked with the inmate's Level and any enhanced security needs for that inmate.

The Warden must request a policy waiver, in accordance with the policy on Directives Management Manual, to impose restrictions more stringent than those allowed by this Program Statement or other applicable national directives. Conditions required by regulations, however, may not be waived.

a. **Minimal Conditions.** Except as provided above, minimal conditions of confinement for SMU inmates are as follows, and in accordance with the policy on Occupational Safety, Environmental Compliance, and Fire Protection, and Directives referenced in this Program Statement.

(1) **Environment.** Living quarters are well ventilated, adequately lighted, appropriately heated, and maintained in a sanitary condition.

(2) **Cell Occupancy.** Living quarters ordinarily house only the number of occupants for which they are designed. The Warden, however, may authorize additional occupants as long as adequate standards can be maintained.

(3) **Bedding.** Inmates receive a mattress, blankets, a pillow, and linens for sleeping. Inmates have necessary opportunities to exchange linens.

(4) **Clothing.** Inmates receive adequate institution clothing, including footwear. Inmates have opportunities to exchange clothing or have it washed.

(5) **Personal Hygiene.** Inmates have access to a wash basin and toilet. Inmates receive necessary personal hygiene items. Inmates have the opportunity to shower and shave at least three times per week. Inmates have access to necessary hair care services.

(6) **Meals.** Inmates receive nutritionally adequate meals and may be required to eat all meals in their living quarters.

(7) **Recreation.** Inmates have the opportunity to exercise outside their individual quarters for five hours per week, ordinarily in one-hour periods on different days. The Warden may deny these exercise periods for up to one week at a time if it is determined that an inmate's recreation

itself jeopardizes the safety, security, or orderly operation of the institution. However, recreation conditions specified here may **not** otherwise be limited, even as part of a disciplinary sanction imposed under 28 CFR part 541.

(8) **Personal Property.** Inmates may have reasonable amounts of personal property. Personal property may be limited for reasons of fire safety, sanitation, or available space.

(9) **Commissary.** Inmates have access to the commissary, as determined by the Warden.

(10) **Visits.** Inmates may receive visitors in accordance with 28 CFR part 540. Inmates may be provided non-contact visits, through the use of videoconferencing or other technology.

(11) **Correspondence and Telephone Use.** Inmates may correspond with persons in the community and use the telephone in accordance with 28 CFR part 540 and this Program Statement. However, to deter and detect continued involvement in disruptive geographical group/gang-related activity, correspondence and telephone use are subject to monitoring and analysis for intelligence purposes. Special mail and unmonitored attorney telephone calls are handled in accordance with 28 CFR part 540.

Telephone calls are live-monitored where feasible. If live monitoring is not feasible, calls are ordinarily reviewed within 24 hours. If the call is in a language other than English, it is submitted for translation. The translated call summary is analyzed for intelligence purposes. Inmates may use the telephone a minimum of two completed calls per month, unless telephone restrictions have been imposed pursuant to 28 CFR part 541, and may be increased as they progress through the levels of the program.

Correspondence that is prepared in a language other than English will either be directly translated or submitted to the SIS office for translation. All correspondence is analyzed for intelligence purposes before mailing out of the institution and before being delivered to the inmate.

(12) **Legal Activities.** Inmates may perform legal activities in accordance with 28 CFR part 543.

(13) **Religion.** Inmates may pursue religious beliefs and practices in accordance with 28 CFR part 548.

(14) **Library Services.** Inmates have access to library services in accordance with 28 CFR part 544.

(15) **Medical Care.** A health services staff member visits inmates daily to provide necessary medical care. Emergency medical care is always available either at the institution or from the community.

(16) **Mental Health Care.** Each inmate will be evaluated by mental health staff every 30 days. Emergency mental health care is always available either at the institution or from the community.

b. **30-Day Conditions Review.** The Warden will designate staff to conduct reviews every 30 days of inmates assigned to SMUs, as provided on Form BP-A0951, *Special Management Unit (SMU) 30-day Conditions Review*. The original form will be retained in the inmate's central file.

c. **Housing Unit Daily Record.** The housing unit officer completes Form BP-A0950, *Housing Unit Daily Record*, daily for the items provided therein. At Level Four, completion of the daily record form is optional, as determined by the Warden.

d. **Protective Equipment.** Consistent with the Correctional Services Program Statements, appropriate protective equipment will be made available for Special Management Units. The location of this protective equipment will be in an area accessible to staff as determined by the Warden.

6. PROGRAM STRUCTURE AND REVIEWS

SMUs consist of four program levels, differentiated by the conditions of confinement and expected time frames for completion, as described below. Completion of all levels is expected within 18-24 months.

Level	Expected Level Completion Time	SMU Reviews
One	4 Months	Initially Within 28 Days Subsequently Every 90 Days
Two	6 - 8 Months	Every 90 days
Three	6 - 8 Months	
Four	2 - 4 Months	Every 30 days

a. Level One

Inmate Interaction: At this level, interaction between inmates is minimal (for example, shower, recreation, programming). The Associate Warden is responsible for determining which inmates may be housed or participate in activities together, as necessary to protect the safety, security, and good order of the institution. Inmates will ordinarily be restricted to their assigned cells.

Admission and Orientation: Inmates will participate in an institution and unit admission and orientation (A&O) program as outlined in the policy on A&O. The goal of the SMU A&O

program is to provide inmates with information regarding the institution operations, program availability, and the requirements for successful progression through each of the four levels of the program, based upon specific goals established for each inmate.

Programming: Initial programming assessment will occur within the first 28 days of an inmate's arrival at the SMU. Institution and SMU staff will interact with each inmate on an individual basis to:

- Assess the inmate's program and counseling needs;
- Discuss the SMU program objectives/expectations;
- Establish a set of program goals based on the inmate's individual needs and the programming available within the unit; and
- Communicate requirements of the SMU program, to include the expectations the inmate must meet before he will be considered for a general population institution.

Property: Inmates will have limited personal property, as determined by the Warden through the Institution Supplement.

Level Progression: Progression through Level One is based upon the inmate's compliance with behavioral expectations as established by institution and SMU staff. A multi-discipline Special Management Review will be conducted by the Unit Manager, Captain, and Associate Warden (chairperson)(or their acting). This review will include input from the SMU unit team, correctional staff, psychology staff, education staff, and other appropriate staff to determine the inmate's readiness to progress to the next level. Review of the inmate will be documented on Form BP-A0949, *Special Management Review Report*, along with any accompanying memoranda from any member referred to above, and will be filed in Section 2 of the inmate's Central File. After the initial programming assessment, Level One inmates will be reviewed at least every 90 days. Inmates are expected to progress to Level Two after four months.

b. Level Two

Inmate Interaction: At this level, interaction between inmates is minimal (for example, shower, recreation, programming). The Associate Warden is responsible for determining which inmates may be housed or participate in activities together, as necessary to protect the safety, security, and good order of the institution. Inmates will ordinarily be restricted to their assigned cells, but out-of-cell activities/programming may be increased on a case-by-case behavioral performance basis.

Programming: Inmates will continue their involvement in GED or ESL either individually or in a classroom setting. Initially during this level, inmates may be involved in programs on a self-study basis. Then, individual and small group counseling sessions dealing specifically with treatment readiness and fundamental communication skills will be required. The Associate Warden is responsible for determining which inmates will participate in group activities. All program activities should reinforce the goal of coexisting and acting responsibly.

Curriculum at this level will target “treatment readiness skills” (e.g., basic empathy, attending, responding, respect, genuineness, etc.) to enhance inmate receptivity to the new concepts which they will be exposed to in Level Three. Small group counseling sessions, in particular, should focus on treatment readiness and fundamental communication skills.

Property: At this level, staff may incrementally allow inmates to have additional personal property, based on individual performance.

Level Progression: Progression through this level is based upon the inmate demonstrating the potential for positive “community” interaction. During Level Two, inmates generally program and function separately. Progression to Level Three, however, requires that the inmate demonstrate the ability to coexist with other individuals, groups, or gangs. Accordingly, the multi-discipline Special Management Unit Review prior to Level Three consideration must address CIM assignments in detail. The inmate’s willingness/unwillingness to coexist with his CIM assignments must be documented via a memorandum to the file. This memorandum may also be used as rationale in any subsequent CIM declassification request. Review of the inmate will be documented on Form BP-A0949, *Special Management Review Report*, along with any accompanying memoranda from any member referred to above, and will be filed in Section 2 of the inmate’s Central File. Level Two inmates will be reviewed at least every 90 days. Inmates are expected to progress to Level Three after six to eight months. Inmates who fail to make satisfactory progress may be returned to a previous level.

c. Level Three

Inmate Interaction: Inmates at this level will begin to interact in an open, but supervised, setting with individuals from various groups, to include open movement in the unit and frequent group counseling sessions commensurate with the inmate’s demonstrated ability to effectively coexist with other inmates. The Associate Warden is responsible for determining which inmates may be housed or participate in activities together, as necessary to protect the safety, security, and good order of the institution. There will also be increased privileges (e.g., increased commissary, property, etc.) at this level for those who accomplish unit goals and maintain appropriate conduct.

Programming: Activities at this level will intensify, with more active involvement on the inmate’s part in the group counseling sessions. The Associate Warden is responsible for determining which inmates will participate in group activities.

The focus and emphasis of the SMU program counseling activities will be to minimize the tendency of SMU inmates to involve themselves in disruptive behavior. Counseling will focus on encouraging inmates to find ways in which they can coexist appropriately with other inmates in a general population setting and behave responsibly. Counseling will be value driven and involve cognitive restructuring, and emphasize responsibility and accountability. First and foremost, the inmates must be taught to look toward the future, as the decisions they are making affect their families and their ability to prepare themselves for eventual reentry to society.

Property: At this level inmate access to personal property may be incrementally increased from Level Two based on individual performance.

Level Progression: Progression through this level is based upon the inmate's ability to demonstrate positive "community" interaction skills. Progression to Level Four should be based on a determination that the inmate will likely meet the redesignation criteria provided in Section 8, **Redesignation**, below. Review of the inmate will be documented on Form BP-A0949, *Special Management Review Report*, along with any accompanying memoranda from any member referred to above, and will be filed in Section 2 of the inmate's Central File. Level Three inmates will be reviewed at least every 90 days. Inmates are expected to progress to Level Four after six to eight months. Inmates who fail to make satisfactory progress may be returned to a previous level.

d. **Level Four**

Inmate Interaction: At this level inmates must be able to demonstrate their sustained ability to coexist and interact appropriately with other individuals and groups in the unit. The Associate Warden is responsible for determining which inmates will participate in group activities.

Programming: Inmates will continue to participate in counseling programs outlined in Level Three.

Property: Level Four inmates may be considered for the same personal property privileges as general population inmates.

Level Progression: This level will encompass the inmate's last two-to-four months in the SMU. Level Four inmate reviews will be conducted every 30 days, and documented the same as previous reviews. The inmate's successful progression through this phase will indicate he is prepared to function in a general population setting with inmates of various group affiliations. Ordinarily, inmates who successfully complete the SMU program will be redesignated to the general population of another facility. In some situations, however, the SMU unit team may recommend that the SMU graduate be assigned to the general population of that facility. Inmates who fail to make satisfactory progress may be returned to a previous level.

7. **PERIODIC REVIEW**

SMU inmates are reviewed by the Unit Team in conjunction with regularly scheduled Program Reviews as provided in the policy on Inmate Classification and Program Review. The Unit Team specifically reviews inmates for progression through the levels of the program. An inmate's institutional adjustment, program participation, personal hygiene, and cell sanitation are considered when reviewing the inmate for progression to further levels.

8. REDESIGNATION

a. **Redesignation Criteria.** To be redesignated from SMU status, an inmate must:

- For 12 to 18 months, abstain from all of the following:
 - ▶ Geographical group/gang-related activity.
 - ▶ Serious and/or disruptive disciplinary infractions.
 - ▶ Group misconduct that adversely affects the orderly operation of a correctional facility.
- Demonstrate a sustained ability to coexist with other inmates, staff, and other persons.

b. **Referral Procedures.** When an inmate has met the redesignation criteria, the Unit Team submits a referral to the Warden for designation to the general population, ordinarily of another institution.

If an inmate is not recommended by the Unit Team for redesignation after 24 months, a referral for continued SMU designation must be submitted to the Regional Director. If the Regional Director approves continued SMU designation, the inmate receives written notice of the decision and the rationale for it. The inmate may appeal the decision by attempting informal resolution and filing a formal request with institution staff, as provided by the Administrative Remedy Program.

c. **SMU Failures.** If an inmate continues to exhibit disruptive conduct after 6 additional months in the SMU, the inmate may be referred for designation to another appropriate facility, consistent with the orderly running and operations of our institutions.

9. INSTITUTION SUPPLEMENT

Each institution with a SMU will develop an Institution Supplement that addresses local operations and procedures. The Institution Supplement must be reviewed for legal sufficiency by the Regional Counsel prior to implementation.

REFERENCES

Program Statements

- P1600.09 Occupational Safety, Environmental Compliance, and Fire Protection (10/31/07)
- P5100.08 Inmate Security Designation and Custody Classification (9/12/06)
- P5180.05 Central Inmate Monitoring System (12/31/07)
- P5230.05 Grooming (11/4/96)
- P5264.08 Inmate Telephone Regulations (1/24/08)
- P5265.11 Correspondence (7/9/99)
- P5267.08 Visiting Regulations (5/11/06)

P5217.01 11/19/2008

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P5270.07 Inmate Discipline and Special Housing Units (3/20/06)
P5290.14 Admission and Orientation Program (4/3/03)
P5300.21 Education, Training and Leisure Time Program Standards (2/18/02)
P5322.12 Inmate Classification and Program Review (11/29/06)
P5360.09 Religious Beliefs and Practices (12/31/04)
P5370.11 Recreation Programs, Inmate (6/28/08)
P5521.05 Searches of Housing Units, Inmates, and Inmate Work Areas (6/30/97)
P5580.07 Personal Property, Inmate (12/28/05)
P5803.07 Progress Reports (3/16/98)
P6031.01 Patient Care (1/15/05)
P6340.04 Psychiatric Services (1/15/05)

ACA Standards

- 4th Edition Standards for Adult Correctional Institutions: 4-4277, 4-4287, 4-4288, 4-4290, 4-4292, 4-4295, 4-4296, 4-4297, 4-4299, 4-4300, 4-4301, 4-4363M.
- Performance Based Standards for Adult Local Detention Facilities, 4th Edition: None.
- 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-4A-01, 2-CO-4B-01, 2-CO-4B-04, 2-CO-4F-01.

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport and BOPDOCS.

EXHIBIT 10

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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YASSIN MUHIDDIN AREF

and

DANIEL MCGOWAN

and

ROYAL JONES

and

KIFAH JAYYOUSI

CIVIL ACTION NO.
1:10-cv-0053-BJR

VS.

ERIC HOLDER, Attorney General
of the United States

and

CHARLES E. SAMUELS, Director
of the Federal Bureau of
Prisons (BOP)

and

D. SCOTT DODRILL
Assistant Director, Correctional
Programs Division, Federal
Bureau of Prisons

and

LESLIE S. SMITH, Chief,
Counter Terrorism Unit,
Federal Bureau of Prisons

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and
FEDERAL BUREAU OF PRISONS
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30(B)(6) DEPOSITION OF FEDERAL BUREAU OF PRISONS,
BY AND THROUGH ITS AGENCY DESIGNEE,
FRANK JAVIER LARA
Thursday, July 18, 2013; 1:35 p.m.

Reported By:
Cindy L. Sebo
Ref: 9896B

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2 flexibility to adjust programming. They may have
3 some flexibility to adjust the time. That would
4 be it. But they would still have to perform the
5 count.

6 Q. Okay. So am I correct in
7 understanding you to be saying that a program
8 statement will sometimes confer some discretion on
9 an individual institution to set its own policy?

10 A. Set its own process. It's not a
11 policy at the local level.

12 Q. Okay. What's the difference between a
13 process and a policy?

14 A. The policy is nationwide. At the
15 local level, there are procedures, and they can't
16 contradict policy.

17 Q. Where would a specific institution
18 document its own practices or procedures?

19 A. They can do it via a memorandum or an
20 institution supplement.

21 Q. What's a memorandum?

22 A. It's a memo that would outline
23 specific procedures on guidance that would have to
24 be conducted locally to accomplish a task or to
25 accomplish an expectation.

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2 Q. And what's an institution supplement?

3 A. An institution supplement is a
4 procedure, a set of practices that are identified
5 at an institution that are consistent with
6 national policy, but provide specific guidance to
7 the local facility to where with -- where that
8 supplement is at.

9 Q. So what's the difference between a
10 memorandum and an institution supplement?

11 A. Well, the difference -- it's not
12 really a difference. Normally, a memorandum
13 becomes a supplement or becomes part of a
14 supplement.

15 The memorandum is generated to
16 identify specific intent. And it has to also be
17 in compliance with national policy, and it has to
18 incorporate the elements of the tasks that need to
19 be accomplished or the expectation. And then,
20 from there, it will be provided to the staff.

21 But sometimes they're generated at
22 local level -- at the local level to be applicable
23 for a specific time frame, for a specific
24 situation.

25 There may be an adjustment that needs

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2 A. It references in the Directives
3 Referenced, but let me take a look.

4 (Whereupon, the witness reviews the
5 material provided.)

6 BY MR. AGATHOCLEOUS:

7 Q. Maybe I can help you out.
8 Why don't turn to Page 11 of the
9 document?

10 A. Um-hum.

11 Okay.

12 Q. And based on what you see there, can
13 you answer my question, please?

14 A. Yes, it does.

15 Q. Okay. Why does the BOP allow inmates
16 in its custody to make social telephone calls?

17 A. We allow inmates in BOP custody to
18 make social telephone calls because of the
19 importance of maintaining ties to the outside
20 world or the outside environments, to family
21 members, friends and appropriate associates.

22 Q. Can you more fully describe what you
23 mean by the importance of those things?

24 A. It's always important for an
25 incarcerated individual to maintain ties with

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2 family and friends to communicate.

3 Q. Why is that?

4 A. It's very important. It's an
5 expectation to facilitate -- to assist them to
6 maintain those positive ties with family. It also
7 helps them prepare them for reentry back into
8 society.

9 Q. And why does the BOP allow prisoners
10 in its custody to receive social visits?

11 A. To maintain -- to further those family
12 ties, to fervor those positive connections with --
13 with family members, friends in the community and
14 religious -- their religious' -- their religious
15 chaplains, attorneys, legal -- for legal purposes
16 or other community ties that they need to
17 maintain.

18 Q. And am I correct in thinking that the
19 BOP does allow inmates, as a general matter, to
20 have physical contact during those visits?

21 MR. CARTIER: Objection: vague.

22 BY MR. AGATHOCLEOUS:

23 Q. Can you answer the question, please?

24 A. Would you repeat the question?

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(Whereupon, the court reporter read back the pertinent part of the record.)

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THE WITNESS: As a general matter, visits are conducted to maintain close ties with those outside the BOP facility, with families and friends. And the -- as a general matter, they do maintain contact with those individuals in the visiting room unless concerns are -- are -- there are concerns with the security of that particular facility or the conduct of the visitor or the inmate in those situations.

BY MR. AGATHOCLEOUS:

Q. And why does the BOP allow inmates, when they are allowed to have physical contact during those video -- visits -- why does the BOP allow that?

MR. CARTIER: I'll just object as outside the scope.

You can answer.

THE WITNESS: Once again, in accordance with the -- pursuant to the

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policy, Bureau of Prisons encourages visiting by family, friends and community groups to maintain the morale of the inmate and develop closer relationships between the inmate and family members or others in the community.

BY MR. AGATHOCLEOUS:

Q. And am I correct in thinking that a contact visit is -- would fall within that purpose?

A. Yes.

Q. Okay.

MR. AGATHOCLEOUS: Can I mark this next document as Exhibit 14?

It's a program statement called Special Housing Units.

- - -

(Whereupon, Federal Bureau of Prisons Program Statement Number 5270.10, Special Housing Units, was marked, for identification purposes, as Deposition Exhibit Number 14.)

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FRANK JAVIER LARA

references Special Housing Unit program statement. The inmate discipline policy also provides sanctions for inmates in administrative detention.

BY MR. AGATHOCLEOUS:

Q. Okay. So there is no policy -- am I understanding correctly that there is no national policy that specifically says no prisoner in administrative detention may receive more than this number of telephone calls a month?

A. Other than the Special Housing Unit policy?

Q. Yes, other than the Special Housing Unit policy.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: No.

BY MR. AGATHOCLEOUS:

Q. Does that policy allow for discretion in either the frequency or duration of telephone calls that a prisoner in administrative detention is allowed?

A. The Special Housing Unit policy references an inmate should receive a phone call

1 FRANK JAVIER LARA

2 within the first 30 days of placement in Special
3 Housing Unit and within every 30 days thereafter.

4 Q. As you understand it, does that policy
5 allow for some discretion in the frequency and
6 duration of those telephone calls?

7 A. It allows that.

8 Q. Okay. Who makes those discretionary
9 decisions, then?

10 A. The warden could make those decisions.

11 Q. Can anyone else make those decisions?

12 A. It could be delegated at the local
13 level. That I'm not -- that I'm not sure of.

14 Q. Okay. But -- but, to the best of your
15 understanding, someone other than the warden might
16 be allowed to exercise some discretion in how much
17 telephone access a prisoner in administrative
18 detention gets; is that right?

19 A. It could be written in some local
20 process.

21 Q. Can you describe some of the
22 circumstances under which that discretion might be
23 exercised?

24 A. Emergency situations that the inmate
25 is experiencing, extenuating circumstances to make

1 FRANK JAVIER LARA
2 Telephone Regulations for
3 Inmates, was marked, for
4 identification purposes, as
5 Deposition Exhibit Number 15.)

6 - - -

7 BY MR. AGATHOCLEOUS:

8 Q. Can you review that document?

9 A. Sure.

10 (Whereupon, the witness reviews the
11 material provided.)

12 BY MR. AGATHOCLEOUS:

13 Q. What is this document?

14 A. This document is the institution
15 supplement on telephone regulations that -- at
16 Marion, and it's dated July 11, 2013.

17 Q. Okay. Can you turn to Page 7 of the
18 document and take a look at Section XI?

19 If you want to just quickly review
20 those couple of paragraphs.

21 (Whereupon, the witness reviews the
22 material provided.)

23 THE WITNESS: Okay.

24 BY MR. AGATHOCLEOUS:

25 Q. So how many telephone calls per month

1 FRANK JAVIER LARA

2 does a prisoner in administrative detention at USP
3 Marion receive?

4 A. Use of telephone -- let's see -- I'm
5 sorry -- one 15-minute social phone call per
6 month.

7 Q. Okay. Does anyone at the facility
8 have discretion to provide a prisoner in
9 administrative detention with a longer telephone
10 call?

11 A. Yes.

12 Q. And with more frequent telephone
13 calls?

14 A. Extenuating circumstances, yes.

15 Q. Would more frequent telephone calls
16 only be given under extenuating circumstances or
17 might someone -- an official at the prison decide
18 to give a prisoner more frequent calls even absent
19 extenuating circumstances?

20 A. Normally, it would not be done absent
21 extenuating circumstances.

22 Q. But is it possible?

23 A. It's possible.

24 Q. Okay.

25 MR. AGATHOCLEOUS: Can I mark this

1 FRANK JAVIER LARA

2 (Whereupon, the witness reviews the
3 material provided.)

4 THE WITNESS: Okay.

5 BY MR. AGATHOCLEOUS:

6 Q. So how many telephone calls per month
7 does a prisoner in administrative detention at
8 Terre Haute receive? And we're talking about
9 FCI Terre Haute.

10 A. One phone call every 30 days.

11 Q. And what's the duration of that
12 telephone call?

13 A. Fifteen minutes in length.

14 Q. Okay. Does any prison official at
15 Terre Haute have discretion to provide a prisoner
16 in administrative detention there with a longer
17 telephone call?

18 A. Yes, they do.

19 Q. And does any prison official at
20 Terre Haute have the discretion to provide a
21 prisoner in administrative detention there with
22 more frequent telephone calls?

23 A. Yes, they do.

24 Q. Okay. Now, we're going to turn to
25 visitation.

1 FRANK JAVIER LARA

2 that says Detention or Segregation Status?

3 A. Yes.

4 Q. If you want to review those couple of
5 paragraphs and let us know when you're done.

6 (Whereupon, the witness reviews the
7 material provided.)

8 THE WITNESS: Okay.

9 BY MR. AGATHOCLEOUS:

10 Q. Can you just read out the first
11 sentence of that section into the record, please?

12 A. Ordinarily -- which section?

13 Q. Yeah, starting with the word
14 "Ordinarily."

15 A. Ordinarily, an inmate retains visiting
16 privileges while in detention or segregation
17 status.

18 Q. Okay. Thank you.

19 So, to the best of your understanding,
20 does this policy allow for discretion in the
21 duration of visits that a prisoner in
22 administrative detention might receive?

23 A. Yes, it does.

24 Q. Okay. Does it allow for discretion in
25 the frequency of visits that a prisoner in

1 FRANK JAVIER LARA

2 administrative detention might receive?

3 A. It does.

4 Q. And does it provide for discretion in
5 the nature of those visits; in other words,
6 whether those visits are contact visits or
7 noncontact visits?

8 A. It does.

9 Q. Okay. Who makes those discretionary
10 decisions?

11 A. The warden.

12 Q. Does anyone else at the facility level
13 have authority to make those discretionary
14 decisions?

15 A. Again, that would -- locally, the
16 warden may delegate that or may take into
17 consideration recommendations from the
18 correctional -- or the chief correctional services
19 person there, the associate warden.

20 In an emergency situation, a
21 lieutenant, a department has the ability to make
22 changes immediately.

23 Q. So you mentioned "emergency
24 situation."

25 Are there any other circumstances that

1 FRANK JAVIER LARA

2 BY MR. AGATHOCLEOUS:

3 Q. Just let us know when you've had a
4 chance to review the document.

5 (Whereupon, the witness reviews the
6 material provided.)

7 THE WITNESS: Okay.

8 BY MR. AGATHOCLEOUS:

9 Q. Can you tell me what this document is?

10 A. This is inmate visitation
11 supplement -- institution supplement at Marion
12 dated July 5th, 2013.

13 Q. Okay. Can you turn to Page 10 of the
14 document and review the section on inmates in
15 administrative detention?

16 A. What pages did you say, Page 9?

17 Q. Page 10.

18 A. Okay.

19 Q. Have you had a chance to take a look
20 at the language there on administrative detention?

21 (Whereupon, the witness reviews the
22 material provided.)

23 THE WITNESS: Okay.

24 BY MR. AGATHOCLEOUS:

25 Q. So is my understanding correct that an

1 FRANK JAVIER LARA

2 inmate in administrative detention can schedule a
3 social visit on any Saturday or Sunday of the
4 month at this facility?

5 A. Yes.

6 Q. Okay. And so how many of such visits
7 could a prisoner in administrative detention
8 schedule per month?

9 A. Inmates will be allowed social visits
10 on Saturdays and/or Sundays from 8:30 to 3:00 for
11 a period of two hours.

12 For two hours on those days.

13 However, if you look at Page 9, the
14 Z Unit (Special Housing) provides further
15 guidance. Inmates may receive a minimum of four
16 hours of visitation per month.

17 So as long as those -- those minimum
18 hours were maintained, that would be the -- the
19 amount of time an inmate could visit.

20 Q. Okay. So a minimum of four hours, but
21 up to and including visits on Saturdays and/or
22 Sundays between 8:30 a.m. and 3 p.m. for a period
23 of two hours; is that correct?

24 A. According to the information provided,
25 yes.

1 FRANK JAVIER LARA

2 Q. Okay. And just reviewing that
3 beginning of the Z unit section that you
4 referenced, are these contact visits?

5 A. It appears all inmates in Special
6 Housing Unit will be utilizing video visitation --
7 video visiting.

8 Q. Okay. So, to the best of your
9 knowledge, does staff at USP have any discretion
10 regarding the frequency of visits that's described
11 here?

12 A. Yes.

13 Q. And how about the duration of those
14 visits?

15 A. According to the guidance provided for
16 administrative detention, two hours.

17 Q. Right. But, to the best of your
18 understanding, is there any discretion about that?

19 A. In the areas provided, I do not see
20 any discretion.

21 Q. So is your testimony that there is no
22 discretion or that you don't know or . . .

23 (Whereupon, the witness reviews the
24 material provided.)

25 THE WITNESS: According to

1 FRANK JAVIER LARA
2 Prisons Institution Supplement
3 Number THX-5267.08D, Visiting
4 Regulations, was marked, for
5 identification purposes, as
6 Deposition Exhibit Number 18.)

7 - - -

8 BY MR. AGATHOCLEOUS:

9 Q. Please just take a look at the
10 document. Take your time.

11 (Whereupon, the witness reviews the
12 material provided.)

13 THE WITNESS: Okay.

14 BY MR. AGATHOCLEOUS:

15 Q. Can you explain what this document is,
16 please?

17 A. This is -- this is the visiting
18 regulations institution supplement for Terre Haute
19 dated May 31st, 2012.

20 Q. Okay. And does this govern FCI
21 Terre Haute?

22 A. Yes, it does.

23 Q. Okay.

24 MR. AGATHOCLEOUS: Can I also mark
25 this document as Exhibit Number 19 for the

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record, please?

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(Whereupon, Memorandum for Stanley Lovett, Deputy Captain was marked, for identification purposes, as Deposition Exhibit Number 19.)

- - -

MR. AGATHOCLEOUS: This isn't the right document. I apologize.

MR. CARTIER: Should we hold on to it for later?

MR. AGATHOCLEOUS: You can hold on to it, but it's not going to be -- yeah, that's the one.

Send them back. It will be easier. Okay. So start again.

This is the document that I would like marked as Exhibit 19, please. It's entitled, Memorandum for Stanley Lovett, Deputy Captain.

BY MR. AGATHOCLEOUS:

Q. Okay. Just so that we are all on the same page, literally and metaphorically, we are

1 FRANK JAVIER LARA

2 looking at Document Number 19. And it is a
3 February 21, 2013 memo entitled, Memorandum for
4 Stanley Lovett, Deputy Captain.

5 A. Okay.

6 Q. Okay. Just take a moment to review
7 that document.

8 (Whereupon, the witness reviews the
9 material provided.)

10 THE WITNESS: Okay.

11 BY MR. AGATHOCLEOUS:

12 Q. Can you explain what that document is
13 for the record, please?

14 A. This document is a memorandum from the
15 warden at the facility to the deputy captain, and
16 the subject is Special Housing Unit, Inmate
17 Visiting Procedures --

18 Q. Okay.

19 A. -- and --

20 Q. Sorry, go ahead.

21 A. -- and it appears that it outlines
22 Special Housing Unit visiting procedures and
23 specifically changes in procedures to utilize --
24 regarding social -- changes regarding social
25 visiting for inmates in SHU.

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2 And it provides further guidance that
3 inmates will not be permitted social visiting in
4 the visiting room. And it identifies the -- it
5 directs the captain to ensure that procedures to
6 be utilized will be used -- will be noncontact
7 visiting for inmates housed in SHU; that visits
8 must be approved in advance by the deputy captain.
9 Inmates will be provided -- will provide the SHU
10 lieutenant with visitor information in a timely
11 manner and expect at least two weeks for
12 processing.

13 And it appears it says, beginning
14 March 1st, 2013, visits will be conducted
15 Saturday, Sunday and Monday. And it also provides
16 direction to a compound officer who will be
17 available -- who will need to be available to
18 escort visitors to the SHU unit, and SHU unit
19 staff will supervise the visit.

20 Okay.

21 Q. Okay. Can you turn back to Exhibit 18
22 and take a look at Page 5?

23 A. Okay.

24 Q. Take a look at the top couple of
25 paragraphs about the FCI.

1 FRANK JAVIER LARA

2 (Whereupon, the witness reviews the
3 material provided.)

4 THE WITNESS: Okay.

5 BY MR. AGATHOCLEOUS:

6 Q. So based on your review of that
7 section or anything else in this document, can you
8 just -- can you tell me, at the current time, as
9 of today, how many visits per month prisoners in
10 administrative detention status in the SHU at
11 FCI Terre Haute are allowed?

12 (Whereupon, the witness reviews the
13 material provided.)

14 THE WITNESS: If you're asking me
15 to look for that in the top paragraph, I
16 don't see it in there.

17 BY MR. AGATHOCLEOUS:

18 Q. Okay. Do you know how many visits per
19 month these prisoners are allowed?

20 A. At Terre Haute FCI SHU, they're
21 allowed four hours of visitation per month.

22 Q. Okay. What are you basing that on?

23 MR. CARTIER: You can just tell him
24 what it is.

25 THE WITNESS: Okay. This is

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FRANK JAVIER LARA

basically a breakdown of what was in supplements, and I -- for clarification for ease of viewing, I transposed everything into a table for -- for me to review.

BY MR. AGATHOCLEOUS:

Q. Okay. And you did that yourself?

A. Yes.

Q. Okay. Is it your understanding that this memorandum marked as Exhibit 19 has changed the number of visits a prisoner in administrative detention in the SHU at FCI Terre Haute is permitted?

A. Go ahead.

MR. CARTIER: Well, I just want to ask a question.

Is it okay if I direct him to a portion of what he's looking at that might have the answer?

MR. AGATHOCLEOUS: Go ahead.

THE WITNESS: Yeah -- no, I'm looking at it here (indicating).

Could you ask your question again?

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FRANK JAVIER LARA

(Whereupon, the court reporter read back the pertinent part of the record.)

- - -

MR. CARTIER: I'll just object as vague as to -- if we're talking about what this memorandum does -- what the memorandum states versus what the current policy is.

MR. AGATHOCLEOUS: Okay. Let me rephrase.

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

Q. Subsequent to this memorandum, is it still the case that inmates in administrative detention status at the SHU at FCI Terre Haute receive four visits per month?

A. They receive two hours of visiting for a total of four hours per month.

Q. Okay. Pardon me if I mistook the number.

And does anyone at the FCI have the discretion to increase the frequency or number of those visits?

1 FRANK JAVIER LARA

2 documents in there.

3 But I guess you're accurate with what
4 you just said. I just wanted to make it clear,
5 not that this supersedes the policies.

6 Q. Okay. But that entry is based on your
7 understanding of the policies?

8 A. Correct.

9 Q. Correct.

10 All right. Can you turn to
11 Exhibit Number 19? This is the Memorandum for
12 Stanley Lovett.

13 A. Okay.

14 Q. So does this describe a change in
15 policy regarding contact visits at the FCI
16 Terre Haute?

17 A. Yes.

18 Q. What was the previous policy regarding
19 contact visits?

20 A. Pursuant to Exhibit 18, the supplement
21 on visiting regulations for Terre Haute,
22 Section K, the first sentence states, The
23 following procedures will be utilized regarding
24 social visiting for inmates housed in the Special
25 Housing Unit at the FCI. The second sentence,

1 FRANK JAVIER LARA

2 Inmates may be permitted social -- social visiting
3 in the institution visiting room.

4 So it appears there used to be social
5 visiting in the visiting room.

6 Q. And would that have included contact
7 visits?

8 A. Based on that second sentence, it
9 appears that way.

10 Q. Okay. For how long was that previous
11 policy in place?

12 A. Without knowing -- well -- in the
13 Directives Referenced -- or Directives Affected,
14 the first page of Exhibit 18, it looks like the
15 previous supplement was dated May 2000 --
16 May 29th, 2009. So that particular supplement
17 went in effect at some point thereafter.

18 So this supplement, Exhibit 18, is
19 their latest supplement.

20 Q. Okay. So, in other words, am I right
21 in thinking that at least dating back to May 29th,
22 2009, SHU visiting procedures encompassed contact
23 visits?

24 A. Yes.

25 Q. Do you know if that policy was in

1 FRANK JAVIER LARA

2 that correct?

3 A. Activities, illegal activities,
4 activities that direct other inmates to conduct
5 misconduct, that's one example.

6 Q. Okay. But -- okay.

7 Can you take a look at Pages 7
8 through 10 of this exhibit? Just take a glance of
9 at them.

10 (Whereupon, the witness reviews the
11 material provided.)

12 THE WITNESS: Okay.

13 BY MR. AGATHOCLEOUS:

14 Q. So am I right in thinking that this
15 document describes different levels that a
16 prisoner at a SMU might -- might have?

17 A. Correct.

18 Q. And so can a SMU prisoner move from
19 level to level?

20 A. Yes.

21 Q. Okay. And why does a SMU use these
22 different levels?

23 A. Pursuant to the policy, the structure
24 and the Section 6, the level progression is based
25 on the inmate demonstrating the potential for

1 FRANK JAVIER LARA

2 positive community interaction. It specifically
3 outlines, During Level Two, inmates generally
4 program and function separately.

5 And then there's a progression to
6 Level Three. Progression to Level Three requires
7 that the inmate demonstrate the ability to coexist
8 with other individuals, groups, or gangs.

9 So, accordingly, the inmate progresses
10 through levels based on those particular
11 requirements along with other -- other items
12 outlined in the policy.

13 Q. Okay. So why has the BOP decided to
14 create this structure where a prisoner would move
15 from level to level?

16 A. The reason for the structure is to
17 show level progression. The inmate satisfies the
18 requirements of one level before advancing to the
19 next level. And there's specific requirements
20 that the inmate must demonstrate before being
21 considered to the next level.

22 Q. And what is the purpose of allowing a
23 prisoner to progress from level to level?

24 A. Positive behavior; program
25 participation; program completion; increasing the

1 FRANK JAVIER LARA

2 inmate's awareness of the programs that are
3 available at that particular facility; and him
4 demonstrating a willingness to coexist with other
5 inmates or other persons in that particular
6 setting and in that environment.

7 And ultimately they're exposed, from
8 Level One through Level Four, to greater access
9 and to programming and interaction with others.

10 Q. Okay. So that's what happens at each
11 level and that's what you have to do to get from
12 level to level --

13 A. Right.

14 Q. -- but why would the BOP want to
15 graduate a prisoner from level to level?

16 A. So that the inmate would ultimately,
17 upon return to the -- a facility, not continue
18 with the disruptive behavior that was the referral
19 criteria.

20 Q. Is it fair to say that it's sort of
21 like a reward program in the sense that if you
22 sort of comport with rules and program and all
23 that stuff, you will be rewarded by moving from
24 level to level and, eventually, it sounds like,
25 work your way out of an SMU?

1 FRANK JAVIER LARA

2 A. Well, I wouldn't call it a reward
3 program.

4 Q. Okay. What would you call it?

5 A. I would call it reentry skills. I
6 would call it being able to demonstrate that
7 you're going to be a better person when you leave
8 incarceration.

9 I mean, that's ultimately what we
10 want. We don't want inmates going to society and
11 continuing disruptive behavior. We want them a
12 better person. It's incumbent upon us to provide
13 them those outlets.

14 Q. And am I right in thinking that a SMU
15 prisoner earns more privileges as they move from
16 level to level?

17 A. That would be correct.

18 Q. So -- so if it's not a reward program,
19 perhaps is it more accurate to say that it's an
20 incentive system to reward good behavior?

21 A. It would be the inmate receiving
22 additional increased programming that would allow
23 that inmate to see other outlets or other programs
24 that if they complete one program, they see the
25 next program as something that could expose them

1 FRANK JAVIER LARA

2 to other reentry initiatives that would better
3 that person.

4 And, also, that -- that inmate would
5 be exposed to other inmates to which they would
6 coexist in another setting and, at the same time,
7 they learn more skills.

8 Q. So how does it better a person?

9 A. By being able to expose that inmate to
10 the programs available at that facility, whatever
11 programs they have; also understand that based on
12 the programs that are available, maybe see the
13 fact that their behavior was not right and should
14 not occur, because it's -- it's -- it's not
15 positive towards reentry back into society.

16 Q. And how does a prisoner -- I know
17 you've described some of the things a prisoner can
18 do to get from level to level, but how does it
19 actually work?

20 A. Well, actually, if you -- pursuant to
21 the policy, when an inmate arrives at any
22 facility, at any of the SMUs -- if you look at, I
23 believe, Page 8 -- yeah, Page 8 -- let's back up.
24 Let's start with Page 7.

25 If you look at the Admission and

1 FRANK JAVIER LARA

2 allowing other programs at those locations.

3 And for the purposes of the SMU, the
4 identification at this facility and at Lewisburg
5 and Florence, and all of them, they identified
6 specific requirements for their program.

7 Q. Okay. But I'm correct in thinking
8 that one of the ways this program works is that
9 prisoners start off with fewer telephone calls and
10 then end up with more telephone calls?

11 A. Correct.

12 Q. What is the purpose of starting a
13 prisoner off with fewer telephone calls and then
14 progressively giving them more telephone calls?

15 A. If you look at Exhibit, I believe, 21.
16 If you look at Conditions of Confinement, it
17 specifically identifies that the Conditions of the
18 confinement for SMU inmates will be more
19 restrictive than for general population inmate --
20 general population inmates.

21 And then, if you go to -- the sentence
22 begins, Individual conditions may be -- may be
23 further limited as part of a disciplinary sanction
24 imposed pursuant to 28 C.F.R. And then the next
25 sentence, Individual conditions are ordinarily

1 FRANK JAVIER LARA

2 earlier fairly accurately?

3 A. I didn't specifically say that.

4 THE WITNESS: Can you go back and
5 tell me what I said?

6 BY MR. AGATHOCLEOUS:

7 Q. So rather than revisiting what you
8 said --

9 A. Okay.

10 Q. -- precisely, what are some of the
11 reasons that an SMU prisoner is given more visits
12 as time progresses and as they move from level to
13 level?

14 A. As I indicated in reference to the
15 telephone, the inmate would be exposed to program
16 requirements that would be indicative of positive
17 behavior; at the same time, program completions,
18 successful completion of various programs; and
19 also, the staff at the facility could, through the
20 review process, see the inmate's ability to
21 coexist with other inmates.

22 Q. So, in other words, this is a good way
23 for the prison to assess this particular
24 individual's progress?

25 A. Sure.

EXHIBIT 11



U.S. Department of Justice
Federal Bureau of Prisons

State of the Bureau 2007

Bureau of Prisons Staff:

Everyday Heroes



dents, online courses from DHS' Federal Emergency Management Agency (FEMA) and more.

Counter-Terrorism

To enhance counter-terrorism operations, in November 2006, the Bureau activated the Counter-Terrorism Unit (CTU) to:

- assist in identifying and validating inmate involvement in terrorist activities;
- coordinate foreign language translation services, monitor and analyze terrorist inmate communications, and produce intelligence products;
- develop and provide relevant counter-terrorism training; and
- actively collaborate with other correctional agencies, law enforcement, and the intelligence community.

Located in Martinsburg, WV, the CTU assists the agency in identifying, developing, and implementing policies, programs, and protocols that are relevant to national security matters.

Communications Management Unit (CMU)

The Bureau established the CMU at FCC Terre Haute, IN, to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communications with persons in the community to ensure the safe, secure and orderly running of Bureau facilities, and to protect the public. The CMU is an open unit that operates separately from the general population of the main institution. With a capacity of housing 90 inmates, the CMU's operational procedures reduce inmates' ability to circumvent existing mail and telephone monitoring procedures. Types of inmates who may be housed there include those:

- convicted of, or associated with, international or domestic terrorism;
- convicted of sex offenses who repeatedly attempt to contact their victims;
- who attempt to coordinate illegal activities while incarcerated via approved communication methods; and
- those who have received extensive disciplinary actions due to their continued misuse/abuse of approved communication methods.

Sex Offender Management and Treatment

The Adam Walsh Child Protection and Safety Act of 2006 directly affected the BOP by requiring sex offender registration, the establishment of sex offender management and treatment programs in each Bureau region, and the civil commitment of certain sex offenders as "sexually dangerous persons." Although the BOP already offered programming to its population of sex offenders, expansion of management and treatment services was necessary to achieve compliance with the law. Consequently, in FY07, the BOP developed and implemented changes to policies and operations that comply with the new mandates. In January 2007, CPD issued interim guidance regarding implementation of the sections of the Adam Walsh Act that deal with the civil commitment of sexually dangerous persons. Since enactment of the Adam Walsh Act, the agency has:

- created a Certification Review Panel and established end-of-sentence review procedures to determine the applicability of the civil commitment statute to sex offenders releasing from BOP custody;
- established the Commitment and Treatment Program (CTP) at FCC (FCI) Butner to provide those services to sexually dangerous persons;
- developed high- and moderate-intensity Sex Offender Treatment Programs for the Bureau's sentenced inmates, and developed admissions protocols to assign treatment volunteers to the appropriate treatment program based on their individual risk classification; and
- established additional Sex Offender Management Programs (SOMP) to provide treatment and specialized correctional management services to sex offenders.

Currently, three of six SOMP sites (FMC Devens, USP Marion and FCI Seagoville) are fully operational. The remaining three (FCCs Petersburg and Tucson, and FCI Marianna) will be activated by the end of FY09.

Health Care Delivery

Medical Classification: Particularly noteworthy was the very successful use of the BOP's medical classification system in conjunction with the agency's security classification system to determine appropriate institution designations for inmates.

EXHIBIT 12

1 DAVID C. SCHIAVONE

2 A. Well, for the Bureau, that is still
3 part of the designation process. That would be
4 the initial consideration for designation.

5 Q. Okay.

6 Are there any written instructions
7 indicating the process to be followed if a
8 Bureau of Prisons' staff member believes that an
9 inmate should be considered for CMU designation?

10 A. Well, there is a memo which was
11 issued in 2008 from the assistant director at
12 the time instructing institutions to contact the
13 Counterterrorism Unit.

14 Q. Okay. Let's look at that memo. I
15 believe it is the document that has been
16 previously marked as Exhibit 38.

17 Are you looking at the document,
18 sir?

19 A. Yes.

20 Q. Okay. Is this the memo that you
21 just referred to?

22 A. Yes.

23 MS. MEEROPOL: Okay. For the
24 record, I'll state that this is a
25 March 5th, 2008 memo from Joyce Conley

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2 and it's Bates stamped P22.

3 BY MS. MEEROPOL:

4 Q. Now, the last sentence of this memo
5 states that if staff are aware of inmates who
6 may meet the CMU criteria, they should contact
7 Les Smith, Chief Counterterrorism Unit, for CMU
8 referral information and procedures.

9 Do you see where I'm reading, sir?

10 A. Yes.

11 Q. What are the CMU referral
12 information and procedures referred to here?

13 A. The information and procedures
14 would be the documentation the CTU would need
15 from the referring source in order to process
16 the referral for consideration.

17 Q. So if a BOP staff member went ahead
18 at the direction of this memo and contacted
19 Les Smith, under BOP policy, what would
20 Les Smith provide back to that individual in
21 terms of guidance or next steps?

22 A. Well, you asked about policy. I
23 mean, this is the information that is available
24 to the staff. We would inform the staff about
25 the documentation we would need in order to

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2 process the referral for routing consideration.

3 Q. Would -- would all of the
4 instructions to staff be verbal instructions, or
5 are there any written materials provided to
6 staff in this situation?

7 A. Generally, it's verbal.

8 Q. Okay. And what information does
9 policy require you to ask for from staff to
10 begin the designation process?

11 A. Well, like I said, there's no
12 specific policy; but we instruct staff that --
13 to consider an inmate, we want to look at the
14 presentence report, the judgment and commitment
15 order, the statement of reasons and any other
16 information they have relating to communication
17 concerns with the inmate, whether it's
18 disciplinary, investigative, law enforcement,
19 anything which would support their concern for
20 enhanced monitoring of an inmate's
21 communications.

22 Q. Does this 2008 memo represent the
23 only written instructions that the Bureau of
24 Prisons has set forth indicating how a BOP staff
25 member should suggest that a prisoner be

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2 considered for CMU designation?

3 A. Well, there's a 2009 memo from the
4 assistant director which talks about
5 transferring inmates from a CMU which references
6 material which would also be used to consider an
7 inmate for CMU placement.

8 Q. Does that memo say anything about
9 what a staff should do if they think -- what a
10 BOP staff member should do if he or she thinks
11 that an inmate should be considered for CMU
12 placement?

13 A. That memo is specific towards
14 transferring inmates from a CMU, where this memo
15 from March of 2008 discusses initial placement
16 in a CMU.

17 Q. So back to my question, is this the
18 only memo that describes what a BOP staff member
19 should do if he or she thinks that an inmate
20 should be considered for CMU placement?

21 A. Well, this memo is the only memo
22 which describes the initial steps staff could
23 take, but the other memo, like I said, includes
24 information relevant to this process, too.

25 Q. Thank you, sir.

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2 Now, the final paragraph of the
3 Conley memo, the part I read earlier, also
4 includes a reference to CMU criteria.

5 At the time that this memo was
6 issued, had the BOP put the CMU criteria into
7 writing in any document?

8 A. No, not to my knowledge, no.

9 Q. How were BOP staff members supposed
10 to understand whether an inmate might meet the
11 CMU criteria at the time this memo was issued?

12 A. At the time this memo was issued,
13 such information was communicated verbally among
14 the executive staff within the Bureau of
15 Prisons.

16 Q. When you say "among the executive
17 staff," who are you referring to?

18 A. The director, the assistant
19 directors, regional directors. It would be sent
20 to wardens at the institution level.

21 Q. The information was sent verbally,
22 you said. How did this happen? Were there a
23 series of phone calls? Can you -- can you
24 explain exactly how that occurred?

25 A. It's my understanding that it

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2 occurred during different types of executive
3 level meetings, whether they were in person,
4 video conference, phone conference.

5 Q. During what period of time?

6 A. Around the time the units opened up
7 through this memo.

8 Q. After the issuance of this memo,
9 did there come a time when the BOP put into
10 writing CMU criteria?

11 A. You said after this memo?

12 Q. Yes.

13 We -- we already established that
14 at the time this memo was issued, there were
15 no -- there was no documentation of CMU
16 criteria.

17 And so I'm asking if there came a
18 time after this memo that CMU criteria were put
19 into writing.

20 A. The criteria were formalized in
21 writing for the production of the proposed
22 regulations for the Code of Federal Regulations.

23 Q. When did that occur?

24 A. That occurred -- I can't recall
25 exactly. It was in the period between 2008 and

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2 previous version would have been through a
3 review process as the document was created and
4 drafted.

5 Q. So is it accurate to say that prior
6 to April 6th, 2010, the BOP did not have written
7 documentation of CMU criteria available either
8 to the public or for use for -- for internal BOP
9 purposes?

10 A. That would be accurate, yes.

11 Q. Okay. And can you direct me in the
12 document in Exhibit 113 to the CMU designation
13 criteria?

14 A. Well, on Page 17326 of the
15 document, which is the Bates stamped P003268
16 starting at the bottom of the first column, it
17 lists five criteria.

18 Q. I'm looking at a paragraph that
19 begins, Under the proposed regulation, inmates
20 may be designated to a CMU if.

21 Is that what you're referring to,
22 sir?

23 A. Yes.

24 Q. Now, please take a moment to review
25 the five bullet points to yourself. My question

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2 is going to be whether this is an accurate
3 statement of the CMU criteria as they currently
4 stand today.

5 (Whereupon, the witness reviews the
6 material provided.)

7 THE WITNESS: Yes, this is
8 correct.

9 BY MS. MEEROPOL:

10 Q. Okay. Let's take a look at the
11 document that's been previously marked as
12 Exhibit 36.

13 MR. CARTIER: Can we go off the
14 record for one moment?

15 MS. MEEROPOL: Sure.

16 - - -

17 (Whereupon, a discussion was held
18 off the record.)

19 - - -

20 MR. CARTIER: Okay. You want
21 exhibit -- which number?

22 MS. MEEROPOL: Thirty-six.

23 MR. CARTIER: Okay.

24 BY MS. MEEROPOL:

25 Q. Sir, can you tell me what this

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2 document is?

3 A. This is what we commonly refer to
4 as a talking point. It's a summary. It's a
5 briefing document for the executive staff of the
6 Correctional Programs Division in the
7 Central Office.

8 Q. And what's the purpose of this
9 document?

10 A. It's a summary. It's a -- a
11 briefing item for the executive staff. It's
12 produced for just about every area of
13 responsibility they have supervision over to
14 give them just a quick reference to summarize
15 what that area does, what it's responsible for,
16 how it operates.

17 Q. Does this document set forth CMU
18 designation criteria?

19 A. No, this isn't a policy document;
20 this is just a summary of procedures that are
21 currently in place.

22 Q. And looking at the first
23 bullet point in the document, what does
24 associated with international or domestic
25 terrorism mean?

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the public, but other than that, I can't tell from the content when it was produced exactly.

MS. MEEROPOL: Let's take a minute off the record, okay -- actually, I want to take just a quick break.

MR. CARTIER: Can we take a 10-minute break or something?

MS. MEEROPOL: Sure, that sounds fine.

- - -

(Whereupon, a brief recess was taken from 10:17 a.m. to 10:32 a.m.)

- - -

BY MS. MEEROPOL:

Q. Okay. So we're back on the record. I understand you have something you wanted to clarify, sir.

A. Well, when we were talking earlier about the five designation points, it was my understanding from the question that you wanted to know when they were issued in writing, which was when the regs came out in 2010, but the -- the Conley memo in 2008 laid out the general idea and concept of what the CMU was and

1 DAVID C. SCHIAVONE

2 what kind of inmates were to be placed in the
3 unit.

4 So there is a memo prior to the
5 regs coming out. My understanding of the
6 question was you wanted to know when those five
7 specific criteria were -- were documented.

8 Q. Yes. I believe my question was
9 about CMU criteria.

10 Is it your testimony that the
11 Conley memo also sets forth CMU criteria?

12 A. Well, it doesn't set forth those
13 five points in that format, but it identifies a
14 general characteristic of communication concerns
15 which staff would consider for referring an
16 inmate for a CMU.

17 Q. Let's look back at the document in
18 question. It's Exhibit 38.

19 Can you point me to the portion of
20 the memo that you're referring to, sir?

21 A. Well, it would be the second and
22 third paragraphs where it describes what the CMU
23 is for and what type of inmates are placed in
24 the unit, where it says they require enhanced
25 monitoring of all communications with person in

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2 community. This will allow staff to protect the
3 safety, security and orderly operation of the
4 Bureau facilities and protect the public.

5 The next paragraph states, CMU will
6 increase the Bureau's capacity for managing
7 inmates who require enhanced communication
8 monitoring.

9 So it gives an overview of a need
10 to provide enhanced monitoring of these types of
11 inmates.

12 Q. Thank you, sir.

13 So before the break, we were
14 talking about the document that has been marked
15 as Exhibit 179, and I believe you testified that
16 this document was created for the assistant
17 director of correctional programs, correct?

18 A. Correct.

19 Q. And does that individual play any
20 role in the CMU designation process?

21 A. If we can back up one second, just
22 to go back over this -- these documents again,
23 because I think you had asked about identifying
24 and separating the different documents.

25 Q. Yes, sir.

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2 privileged communications under the
3 deliberative process privilege.

4 And, Rachel, just to clarify, are
5 you asking if those -- if documents like
6 that exist, or was your word are they
7 being -- is the BOP considering creating
8 such documents?

9 MS. MEEROPOL: Yeah, my question
10 was whether they -- whether the BOP
11 discussed and decided not to put in a
12 policy document, the steps in the
13 designation process.

14 MR. CARTIER: You can answer if
15 you know.

16 THE WITNESS: The only
17 discussions I've had regarding that
18 topic has been with counsel.

19 BY MS. MEEROPOL:

20 Q. You testified that the proposed
21 rule is a document that is meant to guide the
22 recommendations or decisions made by those
23 individuals involved in the CMU designation
24 process.

25 A. Well, I don't think that's exactly

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2 what I meant. I meant it -- it -- the rules are
3 the procedures that the Bureau has been using
4 and the criteria the Bureau considered. I don't
5 think the rules, especially since they're still
6 being considered for publication, are an actual
7 policy document for staff to use.

8 Q. Is there a policy document for
9 staff to use to guide their recommendation as to
10 CMU designation?

11 A. Well, as we've discussed, the
12 Conley memo and the Dodrill memo have been
13 produced regarding CMU designations.

14 Q. So besides those two documents,
15 there's no other document that individuals
16 involved in the CMU designation process are
17 supposed to look to to guide their
18 recommendation; is that accurate?

19 A. No, because the national policy on
20 designations still covers a lot of the factors
21 regarding CMUs, because they provide oversight
22 nationally for all of designation processes.

23 So the program statement regarding
24 custody classification and security designations
25 would be relevant as well.

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2 criteria should actually be placed there?

3 A. Well, yes, we can refer back to the
4 Conley memo, the Dodrill memo, the national
5 program statement on designations, which provide
6 information regarding the designation process.

7 Q. Is it accurate to say that inmates
8 who meet any of these five bullet points in
9 Exhibit 113 are eligible for CMU designation and
10 at that point the recommender or decision-maker
11 exercises his or her judgment to -- to -- let me
12 start that one over.

13 Is it accurate to say that
14 prisoners who meet one of these five bullet
15 points in Exhibit 113 are eligible for CMU
16 placement but may or may not actually be placed
17 in the CMU?

18 A. Yes, I would say that's accurate,
19 because any and all designations in the Bureau
20 of Prisons are based on a number of different
21 factors including a correctional judgment and
22 decision by the deciding authority.

23 Q. I want to talk about the
24 Counterterrorism Unit for a moment.

25 What's the Counterterrorism Unit's

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2 Q. Is it your testimony that there is
3 a list in those two sources?

4 A. Well, the program statement
5 identifies relevant material which would be used
6 for any designation and then the Dodrill memo
7 discusses -- well, the Dodrill memo primarily
8 discusses the transfer out of the CMU.

9 Q. So is it your testimony that the
10 national policy on designations lists relevant
11 information to be used in general in a
12 designation packet, but there's no other
13 document that the BOP has created to list
14 information that should go in a CMU designation
15 packet?

16 A. I would say that's correct.

17 Q. Is everything that the CTU reviews
18 to make their CMU designation recommendation
19 placed in the designation packet?

20 A. Not always. There could be law
21 enforcement or other sensitive information which
22 can't be transmitted along with the packet.

23 Q. In situations like that, what
24 happens?

25 A. We make arrangements to have that

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2 for that particular information.

3 Q. Are there other situations in which
4 information relied on by the CTU to come to
5 their recommendation is left out of the
6 designation packet?

7 A. No, all relevant information the
8 CTU believe supports the recommendation is
9 included unless it can't be transmitted in a
10 typical format that is used to pass the packets
11 between the reviewing authorities.

12 Q. What's the purpose of the CTU
13 designation memo?

14 A. The CTU memo is a starting point.
15 It makes the recommendation and gives a point of
16 view and perspective of the Counterterrorism
17 Unit regarding our review of the case and if we
18 believe the inmate warrants the level of
19 monitoring in the CMU.

20 Q. Does the designation memo also
21 summarize all the relevant information in the
22 designation packet?

23 A. It summarizes relevant information
24 the CTU believes supports the recommendation for
25 placement in the CMU.

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2 Q. In summarizing the information that
3 supports designation, should the underlying
4 document that information comes from be included
5 in the designation packet?

6 A. The CTU provides all relevant
7 information it believes are appropriate to
8 support the recommendations.

9 So if it's summarized in the memo,
10 it would be produced along with the packet
11 unless it's law enforcement sensitive or
12 classified.

13 Q. Does the CTU memo include a
14 description of offense conduct, even when the
15 offense is not the reason for CMU placement?

16 A. Ordinarily, there will be at least
17 a brief summary, if not just a statement of the
18 offense charges and conviction.

19 Q. And what's the purpose of including
20 that information in the designation memo?

21 A. Well, it's relevant background
22 information for any designation, because it --
23 it's an identifier and specific to an inmate's
24 designation regardless of him being in the CTU,
25 because it'll relate to his custody

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2 classification and need for security within the
3 agency.

4 Q. Now, I understand that the
5 presentence report is generally included in the
6 designation packet; is that accurate?

7 A. Yes.

8 Q. Given that the PSR is included in
9 the designation packet, what's the purpose of
10 summarizing the offense conduct in the
11 designation memo?

12 A. Well, the summary is to give the
13 reader a synopsis of the information. It's --
14 the package can be very long and very detailed.
15 This provides them an oversight of what they're
16 looking at, what's relevant to the placement in
17 the unit and provides, I guess you could say,
18 like a snapshot, an overview of relevant
19 information.

20 Q. Is the notice to inmate of transfer
21 also included in the designation packet?

22 A. Yes.

23 Q. And what's the purpose of including
24 this notice in the designation packet?

25 A. It is included in the packet for

1 DAVID C. SCHIAVONE

2 all levels of review for comment and
3 consideration.

4 Q. Does it reflect the reasons why the
5 CTU believes that the prisoner should be placed
6 in a CMU?

7 A. That's a summary of the relevant
8 information which supports the inmate's
9 placement in the CMU.

10 Q. It's a summary of the relevant
11 information that the CTU believes supports the
12 prisoner's designation, correct?

13 MR. CARTIER: Objection. Are we
14 talking about the draft notice here?

15 MS. MEEROPOL: Yeah, I'm talking
16 about the notice as included in the
17 designation packet.

18 THE WITNESS: Well, you could say
19 the initial form would be based on the
20 perception of the CTU, but the form goes
21 through the entire review process; so by
22 the time it's finalized, it would then
23 be the perception of the Bureau, not
24 just the CTU.

25

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2 the CMU designation packet process?

3 A. Well, the Bureau implemented the
4 process for referring inmates through that
5 particular means in early 2007, after the unit
6 at Terre Haute first opened.

7 Q. Were referral or designation
8 packets created for the first set of CMU
9 prisoners?

10 A. I am not aware -- the CTU was not
11 involved in that process.

12 Q. Okay. But you're not testifying
13 today just as with respect to your role in the
14 CTU, sir, but as a witness for the Bureau of
15 Prisons.

16 So --

17 A. I'm not aware. I don't know that
18 packets were created for those inmates.

19 Q. Please describe the process by
20 which the CTU decides whether to recommend a
21 prisoner for CMU designation.

22 A. Well, I wouldn't describe it as a
23 process because it's not something that you
24 could easily describe in a step-by-step manner.
25 It's a correctional judgment based on a review

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2 of the history of the inmate's conduct, behavior
3 and relevant information regarding a need for
4 greater communication monitoring.

5 Q. Does the CTU refer to any written
6 criteria to guide its deliberations?

7 A. Well, we consider the relevant
8 information from the Conley memo, the Dodrill
9 memo, the proposed regulations describing the
10 criteria for CMU placement.

11 Q. Do you refer -- do you -- let me
12 start over.

13 Does the CTU rely on any one of
14 those documents more heavily than any other or
15 all three equally?

16 A. All equally.

17 Q. Does the CTU rely on any unwritten
18 criteria to guide its deliberations?

19 A. Sure, a lot of this is based on
20 correctional judgment which is based on
21 experience, knowledge of managing inmates,
22 dealing with designations -- in institution
23 security concerns.

24 Q. Looking at the Dodrill memo for a
25 moment, which is Exhibit 115. I want to talk

1 DAVID C. SCHIAVONE

2 about the first criteria, which is 2.a. in this
3 memo.

4 A. Okay.

5 Q. Does this criteria apply only to
6 individuals who have an association with
7 terrorism as shown through their conviction or
8 offense conduct?

9 A. I'm sorry. Can you say that again?

10 Q. Let me try to say it in a different
11 way.

12 Is it accurate to say that this
13 criteria would not apply to an individual whose
14 terrorism association has been displayed through
15 his incarceration conduct, as opposed to his
16 offense conduct?

17 A. That's a hard question to answer,
18 because it could cross into law enforcement
19 information which relates to each individual
20 inmate. We look at the -- the entire history of
21 the information regarding the inmate, looking at
22 offense conduct, as this says, a conviction --
23 conviction, the offense conduct, the association
24 with terrorism.

25 Q. Well, okay. I -- Section a says,

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2 The inmate's current offense or offenses of
3 conviction, or offense conduct, included
4 association, communication or involvement,
5 related to international or domestic terrorism.

6 So what I'm trying to understand
7 here is, is this subsection just about an
8 individual whose conviction or offense conduct
9 is about terrorism, or could it also apply to an
10 individual who is associated with terrorism
11 through something other than their conviction or
12 offense conduct?

13 A. I'm trying to think of a way to
14 word this.

15 We consider all relevant
16 information regarding an association of
17 terrorism. And some of that information may
18 relate to his incarceration conduct, which would
19 subsequently or could possibly relate to offense
20 conduct or convictions. It's based on an
21 individual case-by-case basis, and the
22 information would be subjected to review based
23 on the breadth of that information.

24 Q. But, sir, I'm asking just about
25 this section, a. I mean, there's five criteria

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2 decision-maker has with respect to
3 communications?

4 A. It could. It's designed to provide
5 a point for -- any other type of activity that's
6 not more defined in the other points.

7 Q. What is the Office of General
8 Counsel's role in the CMU designation process?

9 A. I'm sorry.

10 Q. Please take your time, sir. I've
11 got to cough myself, so, you know, if you need
12 to take a break, I understand.

13 MR. CARTIER: Do you want more
14 water?

15 THE WITNESS: No, I'm good. I
16 have some.

17 The Office of General Counsel
18 reviews the material to make an
19 assessment whether they believe the
20 limitations imposed on the inmate's
21 communications while in the unit are
22 within policy and are supported by the
23 information provided in -- in the
24 referral packet.

25

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2 BY MS. MEEROPOL:

3 Q. Does OGC opine as to the
4 appropriateness of CMU placement or just the
5 sufficiency of the supporting evidence?

6 A. Their comments are based on the
7 sufficiency of the evidence. They leave the
8 correctional judgment as far as designations to
9 others.

10 Q. Has OGC always played that same
11 role with respect to the CMU designation?

12 A. Yes.

13 Q. What role does the Central Office
14 play in the CMU designation process?

15 A. Well, the Central Office is the
16 supervisory authority over the CTU. Right now
17 they review the material as a matter of
18 oversight to the CTU.

19 Q. What do you mean by that, "as a
20 matter of oversight"?

21 A. Well, everybody has supervisors.
22 They -- they review the material just to give it
23 another layer of review and assessment.

24 The proposal is for the assistant
25 director to eventually make those decisions at

1 DAVID C. SCHIAVONE

2 that level, so it -- it just provides a means
3 for them to -- to look at that material and
4 become part of the process.

5 Q. What are they looking for in their
6 review?

7 A. They look at the same criteria
8 everybody else looks at.

9 Q. Do they provide an independent
10 recommendation as to whether CMU placement is
11 appropriate?

12 A. They will generally provide a
13 statement, whether they concur with the
14 recommendation as written by the CTU, yes.

15 Q. Is that a written statement?

16 A. Ordinarily, ordinarily, I would --
17 well, the CTU receives an e-mail response with
18 their comment.

19 Q. And does the Central Office provide
20 any explanation of the reasons for their
21 concurrence or against their concurrence?

22 A. No, ordinarily, their comment is
23 just limited to whether they concur or don't
24 concur with the recommendation.

25 Q. And is the Central Office's

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2 concurrence or lack of concurrence transmitted
3 to the North Central Regional Office?

4 A. Yes.

5 Q. In what format?

6 A. Generally, the -- if the Central
7 Office replies in an e-mail, that's placed into
8 the packet, and there may also be comments in
9 the -- the -- the e-mail message which forwards
10 the packet to the North Central which discusses
11 the review by OGC and the Central Office.

12 Q. Has the Central Office always
13 played this role in the CMU designation process?

14 A. No.

15 Q. And when did they first begin to
16 play this role?

17 A. I would have to go back and check.
18 I can remember an executive staff member we had
19 come in after a change and felt that the packet
20 should be reviewed by Central Office; I just
21 can't remember when she came in. I can't
22 remember --

23 Q. Leave a blank --

24 A. I'm sorry. I can't remember the
25 exact date, it was I would -- I believe it was

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2 somewhere around 2010 or 2011 when we had a
3 change of exec staff in the Central Office.

4 Q. Okay. Well, you're going to have a
5 chance to review and sign this transcript after
6 the deposition.

7 So I'll just ask you to please do
8 whatever you can to refresh your recollection as
9 to whether -- when that change happened and if
10 you can provide a more specific date as to when
11 Central Office review occurred, to please
12 include that in your errata form.

13 Okay, sir?

14 A. Yes.

15 Q. Why did the change come about?

16 A. Well, like I said, we -- we got a
17 new assistant director and senior deputy
18 assistant director, and it was just their
19 preference to have more oversight of their areas
20 of responsibility.

21 Q. Did any individual case prompt that
22 decision to have more oversight?

23 A. No, not that I know of. It was
24 just a change in the exec staff.

25 Q. Please describe the role that the

1 DAVID C. SCHIAVONE

2 North Central Regional Office plays in the CMU
3 designation process.

4 A. The Regional Director for the North
5 Central Regional Office is currently the
6 deciding authority for CMU designations.

7 Q. And does North Central Regional
8 Office staff also play a role in the CMU
9 designation process?

10 A. Yes, the Regional Director has the
11 packet routed through his subject matter experts
12 in several divisions for comment.

13 Q. Is the CTU's role in the CMU
14 designation process set forth in writing in any
15 BOP policy document?

16 A. We're back to policy documents
17 again which we talked about. The Dodrill memo
18 and the Conley memo indicate that the CTU is
19 involved in the process.

20 Q. So does -- the Dodrill memo talks
21 about the CTU's role.

22 I don't see anything on the Dodrill
23 memo about OGC's role or the Central Office's
24 role.

25 Is there any BOP policy document

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2 that sets forth OGC's role or the Central
3 Office's role in the CMU designation process?

4 A. No, I would say no.

5 Q. Now, the Dodrill memo also sets
6 forth the fact that the Regional Director of the
7 North Central Region plays a role in the CMU
8 designation process.

9 I don't see anything in the memo
10 about the role played by other individuals
11 within the North Central Regional Office.

12 Is that accurate, sir? Well, I
13 guess you can't answer whether it's accurate
14 what I see.

15 Do you also not see anything in
16 that memo about the North Central Regional
17 Office's staff's role in the designation
18 process?

19 A. No, I don't see anything regarding
20 that specific process either.

21 Q. Is there any other document where
22 the North Central Regional Office's -- where the
23 North Central Regional Office's staff's role in
24 the CMU designation process is set forth?

25 A. Not that I'm aware of, no. Their

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2 role is based on the decision of the Regional
3 Director. The Regional Director is the deciding
4 authority. If he's looking for input and
5 comment from other subject matter experts in his
6 division, I would expect an administrator, from
7 my experience, to do that just on about
8 everything they do. That's why they have these
9 different people with subject matter expertise
10 to give comment on relevant factors which may be
11 outlooked by a single deciding authority.

12 Q. Is it fair to say then that the
13 Regional Director could decide tomorrow, I no
14 longer want my office staff to utilize the CMU
15 review form and to provide comment to me; I'm
16 just going to make the decisions myself and --
17 and begin making the decisions in a different
18 manner?

19 A. I believe that would be his
20 discretion -- his or her discretion, yes.

21 Q. Okay. Let's take a look at one of
22 the CMU review forms currently utilized, as far
23 as I understand it, by the North Central
24 Regional Office.

25 I think you'll find an example in

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2 just looking to see if a CMU -- if a potential
3 CMU inmate meets the CMU criteria?

4 And when I say "criteria," I'm
5 referring to the five bullet points set forth in
6 the Dodrill memo which are also reflected in the
7 proposed rule.

8 A. Right; I would say no, that's not
9 their only job. They have to look at all
10 aspects of institution security relevant to that
11 particular case and they may determine that an
12 inmate is appropriate for a CMU. They may
13 determine the inmate is not. The inmate may
14 require greater security, other factors
15 regarding that particular case.

16 So they should be looking at every
17 aspect of the designation process as it relates
18 throughout the Agency.

19 Q. What's the Regional Director's role
20 with respect to the CMU designation process?

21 A. The Regional Director is the
22 deciding authority.

23 Q. Can the Regional Director make his
24 decision based on information that is not
25 included in the designation packet?

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2 A. Yes, if the region or the
3 Regional Director, himself, comes across
4 information they believe is relevant, which was
5 not included, sure, the -- the Regional Director
6 could consider that information.

7 Q. Can a Regional Director make his
8 decision based on some information in the packet
9 while deciding that other information in the
10 packet is not compelling to him?

11 A. Sure, it's his decision. He has to
12 make a judgment based on what supports the CMU
13 placement, and he may agree with all or some of
14 the information -- he or she.

15 Q. Does BOP policy -- thank you.

16 A. Sorry.

17 Q. Does -- does BOP policy require the
18 Regional Director to document the reasons for
19 his or her decision?

20 A. We're back to policy again, and
21 we -- we've discussed what policies are out
22 there.

23 The Regional Director has to
24 document a decision in order for it to be
25 communicated for the designation to be made, but

1 DAVID C. SCHIAVONE

2 the reasons, that would be up to the
3 Regional Director is what he felt was pertinent
4 to include in that decision.

5 Q. So there's no requirement that the
6 Regional Director document the reasons for his
7 or her -- her decision?

8 A. Correct.

9 Q. Was the North Central Regional
10 Office process that we've just discussed always
11 in place for CMU designations?

12 A. Yes.

13 Q. Has that process changed in any way
14 over the years that the CMU has been in
15 existence?

16 A. You're referring to as far as the
17 Regional Director being the deciding authority,
18 then, no.

19 Q. Yes.
20 The Regional Director being the
21 deciding authority and the Regional Director
22 utilizing comments from the subject matter
23 experts on his staff, has that process changed
24 at all over the time the CMU has existed?

25 A. Not that I'm aware. I believe

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2 under these conditions is based on the following
3 specific information, and then the various
4 inmate's specific information documented in the
5 form, is that accurate, sir?

6 A. Yes.

7 Q. Who has authority for the final
8 version of the text in this form?

9 A. The warden would, because the
10 warden signs the form.

11 Q. When are the notices to inmate of
12 transfer provided to CMU inmates?

13 A. Within five days of their arrival
14 in the unit.

15 Q. Were notices to inmate of transfer
16 provided to the first set of inmates sent to the
17 CMU?

18 A. Yes, they were.

19 Q. Are there other units within the
20 Bureau of Prisons that use the same kind of
21 designation process as that which is used for
22 the CMU?

23 MR. CARTIER: Objection: vague.

24 You can answer.

25 THE WITNESS: There are similar

1 DAVID C. SCHIAVONE

2 BY MS. MEEROPOL:

3 Q. What are the concerns that would be
4 raised by using SMU processes for CMU
5 designation?

6 A. I was just speculating here. I
7 mean, you're talking about a more extensive
8 process which is staff intensive, time and money
9 go along with that -- the CMUs are a general
10 population unit. They're -- they're much
11 similar to other typical general population
12 units.

13 If we did due process hearings in a
14 CMU, what would be the difference in doing due
15 process hearings for other designations that
16 inmates wanted to challenge prior to arrival,
17 other -- other units where the inmates are out
18 of the cell for the same amount of time.

19 Q. Leaving aside the resource issues
20 posed by providing due process hearings for CMU
21 designations, would there be any other concerns
22 with using due process hearings for CMU
23 designations?

24 MR. CARTIER: I'm going to
25 interpose an objection here. One

1 DAVID C. SCHIAVONE

2 BY MS. MEEROPOL:

3 Q. At the time that the CMU was opened
4 in 2006, what was the expected duration of CMU
5 placement?

6 A. There was no expected duration of
7 placement. The placement was based on a need to
8 continue to monitor the inmate's communications.

9 Q. So it might be as short or as long
10 as the communications monitoring need continues?

11 A. That was the expectation, yes.

12 Q. Is there currently an expected
13 duration for CMU placement?

14 A. No.

15 Q. Is there a general range?

16 A. No.

17 Q. Are CMU prisoners provided any
18 information regarding how long they can expect
19 to spend in the CMU?

20 A. No, because there is no range,
21 there is no way to provide them with an
22 expectation, other than the regular program
23 reviews they go through which assess their
24 designation and consideration for the need for
25 that level of monitoring.

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2 Bureau of Prisons' interrogatory responses in
3 this case, is that the national policy being
4 referenced here includes two BOP program
5 statements: the program statement on inmate
6 classification and program review and the
7 program statement on inmate security designation
8 and classification.

9 Is that accurate, sir?

10 A. Yes.

11 Q. Are there any other program
12 statements being referred to in this sentence,
13 sir?

14 A. No, I believe those are the two
15 relevant policies.

16 Q. Okay. Let's first turn to the
17 BOP's program statement on inmate classification
18 and program review which is the document that's
19 been previously marked as Exhibit 141.

20 A. Okay.

21 Q. I understood your testimony -- I
22 understood your testimony to be that as a
23 general matter, one of the items that occurs in
24 a program review is consideration of whether an
25 inmate should be transferred out of the unit

1 DAVID C. SCHIAVONE

2 where the inmate currently is, correct?

3 A. Correct.

4 Q. Can you direct me to the portion of
5 this program statement that describes that
6 process?

7 A. Well, the main section -- because
8 this talks -- this program statement talks about
9 the inmate classification and programming in the
10 institution and within the agency, so one of the
11 main parts would be Section 8, Item a., The
12 purpose of initial classification is to develop
13 a program plan for the inmate during his or her
14 incarceration.

15 There's sections below that which
16 talk about ongoing reviews, such as in
17 Section b., The inmate's programming in the
18 institution will deal with his custody
19 classification and his designation to determine
20 if the inmate continues to be appropriate for
21 that facility and whether redesignation to
22 another appropriate facility is necessary or
23 appropriate.

24 Q. I'm not seeing anything here that
25 actually talks about redesignation to a

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2 different facility.

3 So can you direct me specifically
4 to what you're talking about?

5 A. I just did. Part of programming at
6 the institution level in the Bureau of Prisons
7 has to do with designations and security level.

8 So when we talk about the
9 programming and the custody classification, it
10 would refer back to the other program statement
11 on custody classification and security
12 designations.

13 Q. So first programming.

14 Where are the references to
15 programming in here specifically that you're
16 referring to?

17 A. If you start at 8.a., The purpose
18 of initial classification is to develop a
19 program plan for the inmate during his or her
20 incarceration. Program plan is going to include
21 review of their custody classification, their
22 security designation to make sure they're
23 appropriate for the facility they're at.

24 Continued at 8.b., which talks
25 about follow-up program reviews at the 180-day

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2 interval.

3 Q. So the paragraph that begins with
4 b. that reads, At program reviews, progress in
5 recommended programs will be reviewed, and new
6 programs recommended based upon skills the
7 inmate has gained during incarceration. Program
8 reviews occur at least once every 180 calendar
9 days.

10 Is it your testimony that that
11 paragraph refers to consideration of transfer to
12 a different unit?

13 A. Yes, because an inmate's
14 designation and custody classification is part
15 of their programming.

16 Q. Anywhere else in this program
17 statement where the issue of redesignation to a
18 different unit is discussed?

19 A. Well, anywhere in a program
20 statement where they talk about an inmate's
21 programming while incarcerated would include
22 designation and classification, even if it
23 doesn't specifically say that, because that is
24 part of the inmate's overall programming within
25 the Agency.

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2 Q. Does this program statement provide
3 any notice to CMU prisoners about what they need
4 to do to gain release from a CMU?

5 A. Well, this program statement, along
6 with the designations program statement,
7 discusses the program reviews and the criteria
8 for various types of designations.

9 So in -- in essence, it would.

10 Q. Well, let's talk about this program
11 statement separately. We're going to talk about
12 the classification one next.

13 Does this program statement provide
14 any notice to CMU prisoners about how they can
15 gain release from a CMU?

16 A. Well, this program statement talks
17 about program reviews, which as part of
18 programming encompasses designations.

19 So the factors for designations
20 would be identified more specifically in that
21 program statement.

22 Q. Is that a no to my question?

23 A. This -- this isn't a designation
24 program statement. So, no, this doesn't talk
25 about criteria for designations, any

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2 designations, CMU or otherwise.

3 Q. So let's look at the designation
4 and custody classification program statement,
5 which I believe is the document that's been
6 previously marked as Exhibit 112.

7 Do you have Exhibit 112 in front of
8 you?

9 A. No, sorry not yet.

10 MR. CARTIER: Sorry.

11 THE WITNESS: So now I have it.

12 BY MS. MEEROPOL:

13 Q. Thank you.

14 Does this program statement say
15 anything about how CMU prisoners will be
16 reviewed for transfer out of the CMU?

17 A. Well, this program statement
18 discusses designation criteria for all inmates;
19 it doesn't specifically reference CMUs. And the
20 other program statements talks about reviews,
21 this talks about criteria for designations.

22 Q. Is there anything in this program
23 statement that guides the process for review of
24 transfer out of the CMU?

25 A. Well, sure, because this policy

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2 Q. Why does it make sense for us to
3 talk --

4 A. I'm sorry. The CMU is a
5 specialized designation. It happens to be a
6 unit, but it's a particular designation.

7 Q. Okay. So wouldn't it make sense
8 for us to use the term "redesignation" when
9 we're talking about the question of whether an
10 inmate is going to stay in the CMU or be moved
11 out of the CMU?

12 A. Correct.

13 Q. Okay. What -- where in this
14 program statement in Exhibit 112 are
15 redesignations discussed?

16 A. That would be in Chapter 7. This
17 chapter talks about inmate transfers, and in the
18 first sentence, it says, Transfers (also known
19 as redesignations).

20 Q. So it's my understanding that this
21 chapter lists various type of -- types of
22 transfers or redesignations; is that accurate?

23 A. Yes.

24 Q. Can you please direct me to any of
25 the transfers which might be relevant to move an

1 DAVID C. SCHIAVONE

2 inmate out of the CMU?

3 MR. CARTIER: Again, we're
4 talking about the 2007 time period?

5 MS. MEEROPOL: 2007, yes.

6 THE WITNESS: Well, any of the
7 transfers would be relevant to moving an
8 inmate out of the CMU; however, before
9 such a transfer was considered, a
10 judgment would have to be made that the
11 inmate didn't require the communication
12 monitoring afforded in a CMU before the
13 inmate was transferred to another
14 facility.

15 BY MS. MEEROPOL:

16 Q. Is there anything in this program
17 statement that guides that process?

18 A. Guides which process?

19 Q. What you just said, the
20 determination that communications monitoring is
21 no longer required.

22 A. That specific process was part of
23 the activation of the unit and formalized in the
24 Dodrill memo.

25 So it's not in this program

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2 they would have -- designations would have been
3 decided at each regional level.

4 Q. Between 2006 and mid-2009, did the
5 Terre Haute or Marion unit teams recommend any
6 CMU prisoners for nearer release transfers out
7 of the CMU?

8 A. For nearer release transfers?

9 Q. Yes.

10 A. No.

11 I'm trying to get BOP slang square
12 in my mind.

13 The way I'm looking -- I'm thinking
14 about how I do things and how we do things now,
15 and there's different types of transfer codes.
16 So there's a process for transferring inmates
17 from programs and out of programs and then
18 making them available for other types of
19 transfers.

20 So the easiest way to put it is
21 the -- the inmates -- there were no inmates
22 referred for transfer.

23 Yeah.

24 Q. Do you have an explanation as to
25 why there were no inmates referred for transfer

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2 until the Dodrill memo was issued?

3 A. We did consider -- the CTU drafted
4 a consideration memo for one inmate, but there
5 were -- there were discussions ongoing as to how
6 the process would work for reviewing, first, the
7 inmate for removal from the CMU program to -- to
8 assess the need for communication monitoring in
9 regards to standard designation processes for
10 the program statement on designations.

11 Q. So is it fair to say that no
12 inmates were referred for redesignations out of
13 the CMU prior to the Dodrill memo because the
14 policies weren't actually in place yet to
15 determine how that decision was going to be
16 made?

17 A. No, I wouldn't characterize it that
18 way. Everyone knew that the decision was still
19 going to be made by the regional director, who
20 was the approving authority.

21 The concern was identifying
22 the -- the -- the process which would encompass
23 the review to consider those inmates similarly
24 to how they were placed in the unit originally.

25 MS. MEEROPOL: Can you read back

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2 that answer, please?

3 - - -

4 (Whereupon, the court reporter
5 read back the pertinent part of
6 the record.)

7 - - -

8 BY MS. MEEROPOL:

9 Q. So is it fair to say that no
10 inmates were referred for redesignation out of
11 the CMU prior to the Dodrill memo because the
12 process for linking that consideration to the
13 reason for CMU placement had yet been made
14 explicit?

15 A. I would -- I would say that's
16 accurate. The -- the concern was the program
17 review, yes.

18 Q. What was the impetus for the
19 Dodrill memo in 2009?

20 A. What we just discussed. It was a
21 means to formalize the process for staff for
22 their understanding; in particular, to notify
23 staff and designators that inmates were reviewed
24 every program review, which is every six months,
25 which put them outside of the typical policy

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considerations for the 18-month time frame
before they were eligible for designation.

Q. Was the BOP working on creating
that process the entire -- let me start over.

Was the BOP working on creating
that process from the time that the CMU opened,
or did it only begin to create that process at
some later point?

MR. CARTIER: Is this something
you need to take a break and discuss?

THE WITNESS: I think so.

MR. CARTIER: Okay. We're
just -- I think there's a concern that
the answer might touch on privileged
communications, so --

MS. MEEROPOL: Let me identify --
let me identify a couple of follow-up
questions I had in mind, and maybe you
can discuss if there are any or all of
the questions that -- that you can
answer so that we make the most
efficient use of your break time.

Really, what I have in mind to try
to understand is whether -- is why it

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2 MR. CARTIER: No.

3 Do you need the question read
4 back?

5 THE WITNESS: Yes, please.

6 - - -

7 (Whereupon, the court reporter
8 read back the pertinent part of
9 the record.)

10 - - -

11 THE WITNESS: The BOP was working
12 to create that process from the time the
13 unit was opened.

14 BY MS. MEEROPOL:

15 Q. Why did it take three years?

16 A. I wish I could explain better how
17 Government processes work. I mean, there's --
18 there's a lot of different levels of review.
19 You can consider similarly how long it's taken
20 for the proposed regulations to be reviewed and
21 approved.

22 So it's complicated in -- in the
23 Government.

24 Q. All right. You testified that the
25 CTU considered one prisoner for referral out of

1 DAVID C. SCHIAVONE

2 the CMU prior to the 2009 Dodrill memo. And I
3 imagine that you're not going to be able to
4 testify as to the identity of that prisoner.

5 Was there something special about
6 that prisoner that led to him being the only one
7 considered during that three-year period?

8 A. No. Inmates are reviewed
9 individually based on their own history and
10 information which suggests their need for that
11 level of monitoring. And that inmate happened
12 to be identified.

13 Q. Who was he identified by?

14 A. Originally, he was identified by
15 the unit team.

16 Q. Did the CTU ultimately decide not
17 to recommend his transfer out of the CMU? And
18 when I say "ultimately," I mean in the
19 pre-Dodrill period.

20 A. No. The referral wasn't routed as
21 the process was being undertaken to develop the
22 procedures in the Dodrill memo. So it was held
23 until that time -- or after that time, actually.

24 Q. Okay. Let's turn to the Marion
25 Institution Supplement. This is in Exhibit 181.

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2 And let's turn to the
3 September 28th, 2009 Marion Institution
4 Supplement.

5 Please turn to the second page of
6 the Marion Institution Supplement. It's Bates
7 stamped BOP CMU 64133. And review to yourself
8 the paragraph that begins, Classification and
9 reviews of I Unit inmates will occur according
10 to national policy.

11 (Whereupon, the witness reviews the
12 material provided.)

13 THE WITNESS: Okay.

14 BY MS. MEEROPOL:

15 Q. Is this an accurate description of
16 the policy that was in place at Marion with
17 respect to CMU reviews from September 28th, 2009
18 until the date of the next institution
19 supplement, which is dated August 29th, 2011?

20 A. This is the documented policy which
21 they had published, but they were notified by
22 the CTU that their statements in this paragraph
23 were incorrect regarding these minimal time
24 frames.

25 Q. Okay. So please point me to each

1 DAVID C. SCHIAVONE

2 of the incorrect statements in this paragraph.

3 A. On the third line, it says, After
4 the inmate has spent a minimum of 18 months in
5 the unit, but less than 24 months.

6 Q. And then anything else?

7 A. And near the bottom of the
8 paragraph, again, it says, Inmates are expected
9 to maintain clear conduct and have no sanctioned
10 incident reports for the 18- to 24-month period
11 to be recommended for transfer.

12 Q. When was Marion informed that this
13 was an incorrect statement of policy?

14 A. After they published this document
15 and it was made available to the CTU in the
16 Central Office.

17 Q. Do you have a general time frame
18 for when that occurred?

19 A. It would have been shortly after
20 the publication date.

21 Q. Can you explain why the institution
22 supplement wasn't corrected until almost
23 two years later?

24 A. Specifically, no. The institution
25 was made aware -- I know staff relied on the

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2 national designation manual regarding
3 designation policy, because it was something
4 they had in writing that they could follow.

5 I know that staff were made aware
6 that this was incorrect and was not the practice
7 to be followed.

8 Q. What practice was followed at
9 Marion between September 28th, 2009 and the next
10 institution supplement dated August 29th, 2011?

11 A. The practices are those which were
12 formulated and outlined in the Dodrill memo,
13 which came out shortly after this document.

14 Q. Are institution supplements
15 reviewed by the Bureau of Prisons prior to
16 publication?

17 A. By "Bureau of Prisons," what do you
18 mean? I mean, they're created by the
19 institution and approved by the warden, which
20 are part of the Bureau of Prisons.

21 Q. So is there any review of
22 institution supplements above the warden level
23 prior to publication?

24 A. The warden is the approving
25 authority for institution supplements, which are

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2 local policies. The warden -- the warden may
3 seek review by regional counsel, but the final
4 decision authority is the warden.

5 Let me step back, too, just to --
6 there are other reviews of local policies which
7 would happen during institution -- what we call
8 program reviews, which are an audit of
9 policies -- an audit of practices and -- and
10 operations of an institution.

11 So relevant program statements
12 would have been reviewed during any of these
13 program reviews which occur at the institution
14 level for each of the identified divisions and
15 departments.

16 Q. And who conducts the program
17 reviews?

18 A. The Central Office has a program
19 review division which coordinates these reviews.
20 They have staff which -- the staff who will lead
21 the reviews, but they pull subject matter
22 experts from the field, from various
23 institutions.

24 Q. Okay. Let's look at the
25 Terre Haute Institution Supplement dated

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2 October 22nd, 2009. It's part of Exhibit 180.

3 A. Okay.

4 Q. Please turn to the second page of
5 that institution supplement. It's Bates stamped
6 BOP CMU 76146.

7 Please review to yourself the
8 paragraph that begins, Classification and
9 reviews of CMU inmates.

10 A. I'm sorry. Could you read the
11 Bates stamp again, please?

12 Q. CMU 76146. It's the second page of
13 the October 22nd, 2009 Terre Haute CMU
14 institution supplement.

15 A. And the second paragraph, you said?

16 Q. Yes, the one that begins,
17 Classification and reviews of CMU inmates will
18 occur according to national policy.

19 (Whereupon, the witness reviews the
20 material provided.)

21 THE WITNESS: Okay.

22 BY MS. MEEROPOL:

23 Q. Is it fair to say that this
24 institution supplement is inaccurate in the same
25 way that the Marion Institution Supplement was

1 DAVID C. SCHIAVONE

2 inaccurate?

3 A. Yes, correct.

4 Q. And, again, what was the practice
5 in place at Terre Haute between October 22nd,
6 2009 and September 1st, 2011, the date of the
7 next Terre Haute Institution Supplement?

8 A. The practice was to follow the
9 procedures outlined in the Dodrill memo.

10 Q. Now, this institution supplement
11 postdates the Dodrill memo by about a week.

12 Does that indicate to you that the
13 Terre Haute institution staff, including the
14 warden, did not understand the meaning of the
15 2009 Dodrill memo?

16 A. No. The cyclical review process
17 for institution supplements is lengthy, and this
18 document would have been routed for review and
19 consideration prior to the issuance of that
20 memo, and would have been updated prior to that
21 memo being issued.

22 Q. So it's your testimony that
23 Wardens Lockett and Marberry signed this
24 document on October 22nd, 2009 despite
25 understanding that it contradicted instructions

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2 in a manner consistent with sound correctional
3 factors, including an assessment of the threat
4 posed by the inmate, whether the inmate presents
5 a risk of harm to others or to the orderly
6 operation of the institution, and whether the
7 inmate still requires the degree of security and
8 monitoring afforded at a CMU.

9 And my -- my question is whether
10 that accurately describes the review that the
11 unit team was supposed to be conducting
12 post-Dodrill memo?

13 A. Yes, I would say it's an accurate
14 summary of those factors.

15 Q. Is there any requirement that CMU
16 inmates maintain clear conduct to be eligible
17 for redesignation out of the CMU? And I'm
18 talking about during this time period,
19 post-Dodrill memo.

20 A. There is no specific requirement
21 for clear conduct, but their conduct and
22 behavior would be reviewed as part of their
23 historical behavior and conduct and as part of
24 the review for the need for communication
25 monitoring that CMU afforded.

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2 what you're further asking.

3 BY MS. MEEROPOL:

4 Q. Well, I can imagine an inmate who
5 was designated to the CMU based on offense
6 conduct, and his offense conduct may continue to
7 present a reason why CMU designation is
8 appropriate.

9 But when the unit team or the CTU
10 was considering whether he should be
11 redesignated, they actually made their decision
12 not based on his offense conduct, but based upon
13 some incarceration conduct.

14 I'm saying -- I'm asking whether
15 this policy requires for that nonoffense conduct
16 reason to be disclosed to the inmate?

17 A. The policy requires that the
18 inmates be notified why they're still
19 appropriate to be placed in the CMU. That's --
20 that's what it reads, and that's what it says.

21 The inmates are, by this policy, to
22 be notified why they're believed to be
23 appropriate to be continued in the CMU. That's
24 what they are notified for.

25 Q. Does the policy require for an

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2 inmate to be told every reason why they are
3 still eligible -- why they are still appropriate
4 for continued CMU designation?

5 A. Again, absent law enforcement
6 information or something the inmate wouldn't be
7 privy to, the policy doesn't specifically state
8 all, but it would be an expectation that the
9 inmate would be provided sufficient information
10 to file an administrative remedy challenging the
11 decision.

12 Q. What does that mean, "sufficient
13 information to" -- "to file an administrative
14 remedy challenge"? What would make -- what
15 makes some level of information sufficient?

16 A. If it could be released to the
17 inmate, other than law enforcement information,
18 then that should be provided to the inmate.

19 Q. All the reasons should be provided
20 as long as it's not law enforcement sensitive?

21 A. A summary of the reasons as -- as
22 outlined in the notice the inmate was originally
23 provided, yes.

24 Q. But what if the reasons for initial
25 placement aren't the reasons why the inmate is

1 DAVID C. SCHIAVONE

2 being retained?

3 A. Then the inmate should be made
4 aware of those, too. If -- if there was conduct
5 in the CMU which would further support the
6 inmate's continued placement, then, yes, the
7 inmate should -- should be made aware of that.

8 Q. Thank you.

9 Please turn to the document that's
10 been previously marked as Exhibit 149.

11 MR. CARTIER: Do you need a break
12 or are you fine?

13 THE WITNESS: Soon.

14 MR. CARTIER: Rachel, in a little
15 bit, are we coming to a good point for a
16 break?

17 MS. MEEROPOL: Sure.

18 BY MS. MEEROPOL:

19 Q. Let me just ask about this document
20 and then take a break, as long as you're okay.

21 But, sir, if you need to take a
22 break earlier, we can do that. It might be a
23 more natural breaking point after a few more
24 questions, but I'm happy to be flexible.

25 A. I'm okay. I can wait.

1 DAVID C. SCHIAVONE

2 meeting that unit staff had been applying the
3 instruction in the Dodrill memo appropriately?

4 A. Yes, I believe they -- they
5 conducted the reviews appropriately.

6 Q. Point 3 of the Notice to Inmates,
7 Exhibit 40, states that Additional information
8 to be considered includes whether the original
9 rationale for CMU designation has been
10 mitigated.

11 Do you see where I'm reading?

12 A. Yes.

13 Q. How is the unit team supposed to
14 assess whether the original rationale for CMU
15 designation has been mitigated?

16 A. Well, it's based on the previous
17 sentence, which says that the reviews are done
18 consistent with correctional judgment and
19 security management.

20 It's an overall assessment of the
21 inmate as they have observed through programming
22 at the institution level.

23 Q. Can you give me an example of how
24 an inmate mitigates the reasons for their
25 placement in the CMU, just a general example?

1 DAVID C. SCHIAVONE

2 A. Well, it -- inmates are placed in
3 the unit based on specific information to a
4 particular inmate. So staff would have to have
5 a -- make a judgment that the -- that the
6 reasons for the inmate being placed in that unit
7 no longer required that level of monitoring.

8 It's hard to try to break it down
9 generally when it's a case-by-case assessment
10 for each inmate.

11 Q. Are there no general parameters
12 that you can provide me with to help me
13 understand this?

14 A. Well, we have the Dodrill memo and
15 this notice, which explains the five criteria
16 and the information staff assess.

17 Q. Well, the five criteria are the
18 reasons for original placement. And my
19 understanding is that the unit team is tasked
20 with deciding whether those original reasons
21 have been mitigated.

22 And I want to understand how an
23 inmate mitigates the original -- the original
24 reasons for his placement.

25 You've stated that it's done on a

1 DAVID C. SCHIAVONE

2 case-by-case basis, and I understand that.

3 I'm trying to understand if there
4 were any general guidelines or parameters that
5 you can state to explain how an inmate mitigates
6 the original reasons for his placement.

7 A. Well, along with these guidelines
8 and these memos we've talked about, the
9 institution policies for inmates to follow on
10 programming, the discipline policy, the
11 communication policies that inmates are aware
12 of, would all be relevant to the assessment.

13 Q. So does an inmate mitigate the
14 original reasons for his placement by
15 maintaining clear conduct and programming
16 appropriately?

17 A. That could be part of the overall
18 assessment, yes.

19 Q. How long does an inmate have to
20 maintain clear conduct and program appropriately
21 to mitigate the reasons for his placement?

22 A. There is no set time frame.

23 Q. Is there anything else general that
24 you can cite to to explain what an inmate has to
25 do to mitigate the reasons for his placement

1 DAVID C. SCHIAVONE

2 besides clear conduct and appropriate
3 programming?

4 A. Like I said, it's based on a
5 case-by-case basis. So it would depend on what
6 information is used to support that particular
7 inmate's placement.

8 Q. Are CMU inmates told how they can
9 mitigate the reasons for their initial
10 placement?

11 A. Well, the inmates can discuss
12 the -- the information in their notice with the
13 unit team. They can discuss it with any staff
14 that entered the unit, and they have access to
15 the administrative remedy.

16 Q. Well, that wasn't really my
17 question.

18 I understand inmates can discuss
19 this with their unit team.

20 My question is, are they provided
21 with any affirmative information about what
22 steps they could take to mitigate the reason for
23 their original CMU placement?

24 A. Well, yes. They're given the
25 notice which explains why they were placed in

1 DAVID C. SCHIAVONE

2 the unit. They would then be able to determine
3 from that information why they were placed in
4 the unit and what they would have to do to be
5 transferred.

6 Q. Well, what about a notice that
7 merely refers to offense conduct? Does a notice
8 of that nature provide any information to a CMU
9 inmate as to what steps he could take to
10 mitigate the reasons for his placement?

11 A. Sure. If -- if the reason for his
12 placement was relevant to his offense conduct,
13 the inmate would have to not engage in similar
14 conduct or be involved in similar information
15 that was included in that notice.

16 Q. And how long must he refrain from
17 engaging in conduct similar to his offense
18 conduct to mitigate his -- the reasons for his
19 original placement?

20 A. There's no time frame. It is an
21 assessment and a judgment based on a
22 case-by-case basis.

23 Q. Looking at Paragraph 4 of
24 Exhibit 40, it indicates that the unit team
25 forwards their recommendation to the warden.

1 DAVID C. SCHIAVONE

2 And then is it accurate to say that
3 the next step after the unit team forwards their
4 recommendation is for the warden to consider
5 that recommendation and decide whether he or she
6 concurs with it?

7 A. Yes, correct.

8 Q. Does this require the unit team to
9 make an independent initial recommendation apart
10 from the warden?

11 A. Yes. The purpose and expectation
12 is for the unit team to make an assessment.

13 Q. Now, I understand that in the event
14 that the warden concurs with a unit team's
15 recommendation for placement, then that
16 recommendation will be forwarded to the CTU.

17 Correct?

18 A. Yes, correct.

19 Q. If a warden disagrees with the unit
20 team's recommendation for redesignation, does
21 that end the review process?

22 A. Yes, correct.

23 Q. Need the warden state the reasons
24 for his or her decision to concur or disagree
25 with the unit team recommendation?

1 DAVID C. SCHIAVONE

2 A. No. I don't know whether the
3 warden is required to document his reason/her
4 reason.

5 Q. Now, assuming that the warden and
6 the unit team recommend redesignation from the
7 CMU and that recommendation going to the CTU, is
8 the CTU supposed to consider the facility
9 recommendation in coming to their
10 recommendation, or is the CTU supposed to make
11 an independent recommendation?

12 A. It's actually both. The CTU should
13 consider the institution's information because
14 they consider factors, obviously, the CTU
15 doesn't have access to by not being at the
16 institution. And the CTU will make an
17 assessment based on information at our level.

18 Q. Paragraph 4 goes on to state that
19 The CTU will forward the final recommendation to
20 the regional director, North Central Region, for
21 further review and consideration.

22 What does the word "final" indicate
23 in that sentence?

24 A. It's just an indication that at
25 that point, the packet has been completed

1 DAVID C. SCHIAVONE

2 Dodrill memo.

3 A. Yes.

4 Q. When does the first unit team
5 meeting occur?

6 A. The first unit team meeting occurs
7 28 days after an arrival at an institution.

8 Q. Are there any circumstances in
9 which a unit team could recommend a CMU prisoner
10 for transfer out of the CMU at an initial team
11 meeting?

12 A. Sure. The review is designed to
13 determine if the conditions warranting CMU
14 placement are present. If they're no longer
15 present, then the unit team could recommend
16 transfer.

17 Q. So it's possible they could no
18 longer be present even after just one month at
19 the CMU?

20 A. I would say it's possible, sure.

21 Q. Okay. Let's turn to the
22 September 1st, 2011 Terre Haute Institution
23 Supplement. This is in Exhibit 180, and the
24 first page is Bates stamped BOP CMU 1526.

25 A. Okay.

1 DAVID C. SCHIAVONE

2 Q. The second -- please turn to the
3 second page of the institution supplement and
4 review to yourself the paragraph that begins,
5 Classification and reviews of CMU inmates. It's
6 Bates stamped BOP CMU 1527.

7 (Whereupon, the witness reviews the
8 material provided.)

9 THE WITNESS: Okay.

10 BY MS. MEEROPOL:

11 Q. Is this a correct policy statement?
12 And by "correct," once again, I mean consistent
13 with the Dodrill memo.

14 A. No. There's parts of this which
15 are not consistent with the Dodrill memo.

16 Q. All right. Can you please point me
17 to each of those parts?

18 A. Well, the second half of the second
19 sentence which reads, And after the unit team
20 has had ample time to monitor the inmate's
21 institutional adjustment, program progress,
22 responsibility, and to verify the inmate is not
23 engaging in activities that warranted the
24 initial CMU placement.

25 Further down --

1 DAVID C. SCHIAVONE

2 Q. Starting just with that first,
3 what's incorrect about that sentence?

4 A. There is no ample time that the
5 unit team has to monitor the inmate. The
6 monitoring reviews are done in -- in conjunction
7 with the program reviews, which are done every
8 six months after the initial review.

9 Q. Okay. And then you were going to
10 direct me to the next error, I believe?

11 A. Near the bottom, the Inmates are
12 expected to maintain clear conduct and have no
13 sanctioned incident reports for the 12-month
14 period prior to their review, regardless of
15 designation, to be recommended for transfer.

16 Q. And what's incorrect about this
17 statement?

18 A. It's inconsistent with the Dodrill
19 memo, which there -- the Dodrill memo does not
20 provide for a review period, a minimum time in
21 the unit or -- or clear conduct.

22 MS. MEEROPOL: You guys are
23 breaking up a little bit. I think
24 maybe -- let me just wait a minute and
25 see if the connection clears before we

1 DAVID C. SCHIAVONE

2 September 1st, 2011 Terre Haute Institution
3 Supplement -- in that paragraph, I'm sorry, that
4 we've been looking at?

5 A. No, I don't believe so.

6 Q. Do you have any explanation for
7 why, almost two years after the Dodrill memo was
8 issued, the Terre Haute Institution Supplement
9 is still incorrect?

10 A. My recollection is they had a
11 change in staff. They -- they had a new unit
12 manager come in who, again, was not familiar
13 with CMU policies, who was more familiar with
14 national policy, and that's what he tended to
15 relate to.

16 MS. MEEROPOL: Okay. I'd like to
17 mark for identification Exhibit --

18 BY MS. MEEROPOL:

19 Q. Sorry. Actually, before I do that,
20 let me ask this: Has there been a new
21 Terre Haute Institution Supplement issued
22 since -- give me one moment, please.

23 (Pause.)

24 BY MS. MEEROPOL:

25 Q. Let's take a look at the next

1 DAVID C. SCHIAVONE

2 Terre Haute Institution Supplement, which is
3 dated May 31st, 2012. And turn to the second
4 page, which is Bates stamped BOP CMU 64124.

5 And please review that same
6 paragraph which begins, Classification and
7 reviews of CMU inmates.

8 (Whereupon, the witness reviews the
9 material provided.)

10 THE WITNESS: Okay.

11 BY MS. MEEROPOL:

12 Q. Are there any errors in this
13 paragraph?

14 A. Yes. The same two errors exist in
15 this paragraph.

16 Q. Okay. Do you have an explanation
17 as to why these errors still haven't been
18 corrected?

19 A. No. My only explanation would be
20 just a failure of staff to adequately review and
21 update the policy.

22 Q. Is this the current Terre Haute
23 Institution Supplement for the CMU?

24 A. The top of my head, I'm not
25 certain. I don't -- I don't recall another one

1 DAVID C. SCHIAVONE

2 being issued in 2013, though it should have
3 been. I would have to check.

4 Q. Okay. I'm going to assume from
5 your answer that this is the current Terre Haute
6 Institution Supplement. If that's incorrect,
7 I'll ask you to indicate that when you have a
8 chance to review and sign this transcript.

9 Okay?

10 A. Yes.

11 MS. MEEROPOL: Okay. Let's mark
12 for identification Exhibit 182, which is
13 a form titled, Review for Continued CMU
14 Designation.

15 And, Nick, this is going to be the
16 document that was marked as 181 at
17 Baird's deposition.

18 - - -

19 (Whereupon, Review for Continued
20 CMU Designation was marked, for
21 identification purposes, as
22 Exhibit Deposition Exhibit
23 Number 182.)

24 - - -

25 THE WITNESS: Okay.

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DAVID C. SCHIAVONE

after a final decision was made by the regional director and the designation was formalized in our computer system.

Q. Would that be a written notification at that point or a verbal notification?

A. It would be verbal.

MS. MEEROPOL: Okay. I'd like to mark for identification Exhibit 183. This is two documents, both dated December 30th, 2013 from M. Bayless, CMU Unit Manager.

Nick, I believe you'll find copies of the documents in the folder marked Review Receipts or something to that nature.

- - -

(Whereupon, a letter was marked, for identification purposes, as Deposition Exhibit Number 183.)

- - -

(Whereupon, the witness reviews the material provided.)

1 DAVID C. SCHIAVONE

2 BY MS. MEEROPOL:

3 Q. Sir, can you identify this document
4 for me?

5 A. This appears to be a notice given
6 to an inmate regarding continued CMU
7 designation.

8 Q. Is the review referred to in this
9 memo the unit team's review or the entire unit
10 team, CTU NCRO, redesignation review?

11 A. It could be either.

12 Q. Is it fair to say that the inmate
13 is not provided with the reason his -- for his
14 continued CMU designation in this memo?

15 A. No. The second paragraph
16 identifies factors that were considered which
17 were believed to support continued CMU
18 placement.

19 Q. So this notice fulfills the Dodrill
20 memo's requirement that inmates denied
21 redesignation from a CMU will be notified in
22 writing by the unit team of the reasons for
23 continued CMU designation?

24 A. It does, yes.

25 Q. Let's look again at Exhibit 113,

1 DAVID C. SCHIAVONE

2 Communications Management Unit. Currently, the
3 Bureau of Prisons operates two CMUs, separately
4 located at Terre Haute and Marion.

5 Q. You don't read that paragraph to
6 indicate that the proposed rule is describing
7 procedures currently in place? That's how I
8 read codifies and describes; but if you read it
9 differently, please feel free to tell me so.

10 A. Yeah, I read it differently,
11 because this is a proposal to create a
12 regulation which would outline these policies
13 formally. It doesn't say it's based on what is
14 currently being done; it just says it is
15 describing policies to be formalized and
16 approved in the regulation for CMUs.

17 Q. Okay. Let's turn to the second
18 page of the proposed rule and look at the second
19 full paragraph that begins, Under this
20 regulation.

21 Do you see where I am reading?

22 A. I'm sorry, no.

23 The second page, you said?

24 Q. The second page, the second full
25 paragraph.

1 DAVID C. SCHIAVONE

2 A. Okay.

3 Q. Under this regulation, initial
4 consideration of inmates, do you see that, sir?

5 A. Yes.

6 Q. Okay. Read that paragraph to
7 yourself, please.

8 (Whereupon, the witness reviews the
9 material provided.)

10 THE WITNESS: Okay.

11 BY MS. MEEROPOL:

12 Q. Now, this describes a different
13 process than the BOP is currently using with
14 respect to CMU designations, correct?

15 A. Correct.

16 Q. Why isn't the CMU currently using
17 this process being described in the proposed
18 rule?

19 A. At the time the unit was opened, it
20 was decided to have the regional director make
21 the decisions. The regional director was, I
22 believe, still, at the same time, making
23 decisions for the ADX, and the Bureau's
24 designation center was coming online to
25 centralize all designations.

1 DAVID C. SCHIAVONE

2 A decision was made with this
3 policy to continue to centralize designations at
4 the Central Office level.

5 The assistant director actually has
6 oversight of the national designation center.

7 Q. Are there any other facilities
8 within the Bureau of Prisons that use a review
9 policy similar to what we've been discussing
10 that's actually in place at the CMU?

11 A. Well, we discussed earlier the
12 reviews for the administrative unit, the SMUs,
13 the ADX. They are in some way similar.

14 Q. Well, I think we had that
15 discussion about designation, not review.

16 So I'm asking the separate question
17 of do you consider CMU -- the CMU review process
18 to be similar to SMU, ADX and Carswell review
19 processes?

20 A. They are similar in some aspects,
21 but those units are different because they're
22 for security reasons. And the criteria for
23 placement in those units are -- are different
24 than a CMU.

25 Q. And why do those differences lead

1 DAVID C. SCHIAVONE

2 watch was used for inmates in the six-month
3 step-down process?

4 A. That's a local decision. It's not
5 a requirement. It's based on institution staff
6 assessment of security needs for that facility.

7 MS. MEEROPOL: I'd like to mark
8 for identification Exhibit 184. This is
9 Daniel McGowan's designation packet.
10 It's the document that was previously
11 marked as 182 at Baird's deposition.
12 The first page is BOP CMU 3384.

13 - - -
14 (Whereupon, CMU MAR Review for
15 Daniel McGowan was marked, for
16 identification purposes, as
17 Deposition Exhibit Number 184.)

18 - - -
19 BY MS. MEEROPOL:
20 Q. Sir, I've added page numbers at the
21 upper right-hand corner of this document for
22 ease of our discussion.

23 Other than those page numbers, is
24 this a true and correct copy of the designation
25 packet created by the CTU and used by the North

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DAVID C. SCHIAVONE

Central Regional Director to determine whether Daniel McGowan should be designated to the CMU?

MR. CARTIER: Can we go off the record for one moment? Is that okay?

MS. MEEROPOL: Sure.

(Whereupon, a discussion was held off the record.)

- - -

BY MS. MEEROPOL:

Q. So Exhibit 184 is a compilation of documents that Government counsel has identified as the designation packet for Daniel McGowan.

I'm going to ask you, at the time that you review and sign your deposition transcript, if you learn that that is not the case, to please indicate as much.

Okay?

A. Okay.

Q. And my questions are going to go forward based on the assumption that this is the complete Daniel McGowan designation packet.

Okay?

A. Okay.

Q. Does this packet include all the

1 DAVID C. SCHIAVONE

2 material that the CTU relied on to recommend
3 Daniel McGowan's CMU designation?

4 (Whereupon, the witness reviews the
5 material provided.)

6 THE WITNESS: No, this doesn't
7 include all the information that the CTU
8 relied on.

9 BY MS. MEEROPOL:

10 Q. What information is excluded?

11 A. Well, not excluded, but not
12 included for -- for the regional review were
13 actual copies of his correspondence, these
14 letters, and these other pieces of individual
15 communication.

16 Q. I'm sorry. I didn't understand
17 your response there.

18 Are you saying there's stuff in
19 this packet that was not part of the CTU's
20 designation packet?

21 A. No.

22 What I'm saying is that the
23 referral memo summarizes items which were not
24 produced with the packet; they were just
25 summarized.

1 DAVID C. SCHIAVONE

2 Q. Okay. I understand.

3 And those items were
4 Daniel McGowan's correspondence while
5 incarcerated?

6 A. Looking at the memo, yes,
7 correspondence, these interviews, his
8 communications, letters, correct.

9 Q. Why weren't those documents
10 included in the designation packet?

11 A. We believed we could adequately
12 summarize their content here in the memo without
13 providing the actual documents themselves.

14 If the -- if the people reviewing
15 the packet wanted to see them, we could have
16 made them available.

17 Q. We talked much earlier in the day
18 about the fact that you include the presentence
19 investigation report despite summarizing the
20 contents of an individual's conviction.

21 How come that kind of underlying
22 document is included in the designation packet
23 but not this other type of underlying document?

24 A. Well, the presentence report is
25 historically been used for all designations

1 DAVID C. SCHIAVONE

2 Daniel McGowan's designation that does not
3 appear in this designation packet?

4 A. We utilize and I believe we
5 produced the press releases from the Department
6 of Justice regarding the offense conduct.

7 Q. Okay.

8 MS. MEEROPOL: Why don't we mark
9 those press releases as Exhibit 185?

10 - - -

11 (Whereupon, a packet of press
12 releases was marked, for
13 identification purposes, as
14 Deposition Exhibit Number 185.)

15 - - -

16 MR. CARTIER: How are those
17 identified?

18 THE WITNESS: Can I take a minute
19 while you're pulling that?

20 MR. CARTIER: Sure, go ahead.

21 MS. MEEROPOL: It should be one
22 of the folders near the top. Maybe it
23 has press releases.

24 MR. CARTIER: Okay. I'm looking.

25 Can we go off the record for a

1 DAVID C. SCHIAVONE

2 a summary, sure.

3 Q. Is an indictment an appropriate
4 thing for the CTU to rely upon in making a -- a
5 CMU designation recommendation?

6 MR. CARTIER: You can answer.

7 THE WITNESS: I thought you were
8 going to say something.

9 MR. CARTIER: I was inhaling.

10 THE WITNESS: It -- it's part of
11 the inmate's overall history, so it
12 would be a relevant document to consider
13 and review.

14 BY MS. MEEROPOL:

15 Q. Even though it hasn't yet been
16 proven?

17 A. It depends on each individual case
18 and how relevant it is to the management and
19 security of the Bureau of Prisons.

20 Q. So there are occasions in which it
21 would be appropriate for the CTU to rely on
22 statements in an indictment that have not yet
23 been proven -- proven to recommend an individual
24 for CMU placement?

25 MR. CARTIER: You can answer.

1 DAVID C. SCHIAVONE

2 THE WITNESS: Yes. The Bureau of
3 Prisons has to manage inmates based on
4 available information, so any relevant
5 information provided regarding that
6 inmate would be relevant to the
7 management of that inmate.

8 BY MS. MEEROPOL:

9 Q. In the CTU memo in the paragraph
10 where you describe Mr. McGowan's offense conduct
11 and in the triangle bullet points describing
12 Mr. McGowan's offense conduct, does the CTU
13 distinguish between information found in the
14 indictment and information proven at trial or in
15 some other form?

16 A. The only basis for this referral is
17 the conduct proven at trial.

18 Q. And I should say I don't believe
19 there actually was a trial in the case, so let's
20 say "proven" as opposed to "proven at trial."

21 A. The court -- the court documents
22 relevant to his conviction.

23 How's that?

24 Q. Sounds good to me.

25 Why did the CTU recommend

1 DAVID C. SCHIAVONE

2 Mr. McGowan for CMU designation?

3 A. Well, as outlined in this memo,
4 there were concerns based on his incarceration
5 conduct through his communications which related
6 to his offense conduct.

7 Q. So is it a fair summary to say that
8 the CTU recommended Mr. McGowan for designation
9 to a CMU based on his affiliation with ALF and
10 ELF, his offense conduct and his communication
11 while incarcerated?

12 A. The referral is based on the
13 overall information, the historical information
14 based on his offense conduct and his
15 incarceration conduct in whole.

16 Q. Is there something that's not
17 accurate about the way I summarized it?

18 A. Your statement about his
19 affiliation with ALF and ELF is a relevant
20 factor, but it's not something that we would say
21 a singular identifier that would place an inmate
22 in a CMU.

23 Q. So is it -- would you be more
24 comfortable with a summary that stated that the
25 CTU recommended Mr. McGowan for designation to a

1 DAVID C. SCHIAVONE

2 CMU based on his offense conduct and his
3 communication while incarcerated?

4 A. I believe that's what I said; it's
5 based on his offense conduct and his
6 incarceration conduct as a whole.

7 Q. And his incarceration conduct, did
8 that involve anything apart from communications?

9 A. No; it was the content of his
10 communications.

11 Q. Okay. Let's look at the last page
12 of Daniel McGowan's designation packet, which
13 I've numbered as Page 79. It's Bates stamped
14 BOP CMU 67482.

15 Is this a true and correct copy of
16 the draft notice to inmate of transfer which was
17 created for -- for Daniel McGowan's designation
18 packet by the CTU?

19 A. To my knowledge, it is.

20 Q. Why is there no reference in this
21 notice to Daniel McGowan's communications while
22 incarcerated?

23 A. I wish I had a specific answer. It
24 certainly was relevant in the referral. And
25 through review, a determination was made that

1 DAVID C. SCHIAVONE

2 this was the most relevant information to put in
3 this notice in the limited space available.

4 Q. Is it your testimony that reference
5 to Daniel McGowan's communications while
6 incarcerated was left off because there wasn't
7 room on the form?

8 A. No. A decision was made based on
9 the summary of the information which was most
10 relevant and appropriate for his designation,
11 which ended up on this final form.

12 Q. Who made that decision?

13 A. Well, the final decision, like I
14 said, is the warden's signature, but it goes
15 through a review of all of the different persons
16 in the process, and they all have comments and
17 consideration on the form.

18 Q. Well, I thought this document, this
19 unsigned version at BOP CMU 67482, was generated
20 by the CTU.

21 A. The original version would have
22 been generated by the CTU, yes.

23 Q. Was there a version of
24 Daniel McGowan's notice to inmate of transfer
25 that made reference to his communications while

1 DAVID C. SCHIAVONE

2 Q. Is this a true and correct copy of
3 Mr. Smith's March 22nd, 2010 memo recommending
4 against Daniel McGowan's transfer out of the
5 CMU?

6 A. It appears to be, yes.

7 Q. Does this memo document the first
8 time the CTU considered whether Daniel McGowan
9 should be transferred out of the CMU?

10 A. I believe it does, yes.

11 Q. Why did the CTU recommend against
12 Mr. McGowan's transfer?

13 MR. CARTIER: I'll just -- you
14 can answer, but don't reveal any law
15 enforcement sensitive information.

16 THE WITNESS: Okay.

17 MS. MEEROPOL: Nick, could you
18 speak up a little bit with your
19 objections?

20 MR. CARTIER: Yeah. I said -- I
21 said you can answer, but I was
22 instructing the witness not to reveal
23 privileged law enforcement information.

24 THE WITNESS: Well, it's detailed
25 in the memo that the CTU believed that

1 DAVID C. SCHIAVONE

2 McGowan's communications continued to
3 warrant the level of monitoring afforded
4 by a CMU.

5 BY MS. MEEROPOL:

6 Q. And what was that based on?

7 A. It was based on his communications
8 while incarcerated.

9 Q. I'm looking at the first two
10 paragraphs on BOP CMU 5031.

11 Do those two paragraphs summarize
12 the -- why the CTU decided to recommend against
13 Daniel McGowan's transfer?

14 MR. CARTIER: And let me state
15 for the record -- I mean, given the
16 nature of Rachel's question, again, the
17 instruction not to reveal the substance
18 of any law enforcement information, but
19 to answer that question, I believe it's
20 appropriate to identify if law
21 enforcement information was also part of
22 your recommendation.

23 So subject to that, you can answer
24 the question.

25 MS. MEEROPOL: I mean, honestly,

1 DAVID C. SCHIAVONE

2 -- an open population without
3 posing risk to institutional security.

4 Q. What was the basis for the North
5 Central Regional Director's decision?

6 A. Absent asking him directly, I would
7 believe it was the information provided which he
8 reviewed from the unit team and the CTU.

9 Q. You're assuming that was his basis,
10 but is it fair to say that you can't tell from
11 the document whether that was his basis or not?

12 A. He didn't write specifically what
13 he based his decision on, no.

14 Q. Okay.

15 MS. MEEROPOL: I'd like to mark
16 for identification Exhibit 186. This is
17 the document that was previously marked
18 as 183 at Mr. Baird's deposition.

19 It's an April 9th, 2010 memo for
20 Lisa Hollingsworth, Bates stamped
21 BOP CMU 3531.

22 - - -

23 (Whereupon, a memorandum was
24 marked, for identification
25 purposes, as Deposition Exhibit

1 DAVID C. SCHIAVONE

2 Number 186.)

3 - - -

4 BY MS. MEEROPOL:

5 Q. Please take a moment to review the
6 document, sir.

7 (Whereupon, the witness reviews the
8 material provided.)

9 THE WITNESS: Okay.

10 BY MS. MEEROPOL:

11 Q. Can you identify this document?

12 A. It appears to be the written notice
13 provided to Inmate McGowan regarding his denial
14 for transfer from a CMU.

15 Q. Yesterday, we talked at length
16 about the Dodrill memo, Exhibit 115. And the
17 fifth paragraph in that memo indicated that
18 inmates denied redesignation from a CMU will be
19 notified in writing by the unit team of the
20 reasons for continued CMU designation.

21 You're welcome to look at the
22 exhibit if you'd like, but I've just quoted it
23 to you.

24 Is this the notification that memo
25 requires?

1 DAVID C. SCHIAVONE

2 A. It's the notification the memo
3 requires; however, it doesn't include the
4 reasons why the inmate was determined to be
5 appropriate to continue in a CMU.

6 Q. In other words, it doesn't comply
7 with the Dodrill memo policy statement?

8 A. It complies with the policy by
9 notifying the inmate in writing, but it's
10 incomplete.

11 Q. Okay. Please turn in Exhibit 30,
12 still to the next page after the NCRO review
13 form we had been discussing, and take a look at
14 the August 2nd, 2010 Kelly memo,
15 Bates stamped BOP CMU 3394.

16 Are you there, sir?

17 A. I have it, yes.

18 Q. Does this memo document the next
19 time that Daniel McGowan's unit team considered
20 whether he should be transferred out of the CMU?
21 And when I say "the next time," I mean the time
22 directly after the March memo we discussed just
23 a few minutes ago.

24 A. I wouldn't be able to tell that
25 without looking at the inmate's program review

1 DAVID C. SCHIAVONE

2 Q. Do you have any reason to believe
3 that he did document his reasons anywhere?

4 A. No. This would be the location
5 where he would make his comments.

6 Q. Please flip several pages further
7 in Exhibit 30 to the February 1st, 2011 Smith
8 memo, Bates stamped BOP CMU 5023.

9 A. Okay.

10 Q. Is this a true and correct copy of
11 the February 1st, 2011 CTU memo recommending
12 Mr. McGowan's redesignation back into the CMU?

13 A. I believe it is, yes.

14 Q. What was the basis for that
15 recommendation?

16 A. Well, it summarized in the memo the
17 CTU believed Inmate McGowan's institution
18 conduct still supported and advocated for the
19 use of criminal activity and -- and direct
20 action in support of radical environmental
21 groups, plus he attempted to violate policies by
22 circumventing communication monitoring and legal
23 mail privileges -- legal mail policies.

24 Q. Please turn to the CTU referral
25 form which follows the CTU memo. It's dated

1 DAVID C. SCHIAVONE

2 Deposition Exhibit Number 187.)

3 - - -

4 BY MS. MEEROPOL:

5 Q. Sir, please take a moment to review
6 the document and tell me if this is a true and
7 correct copy of the designation packet created
8 by the CTU and used by the North Central
9 Regional Director to determine whether
10 Yassin Aref should be designated to the CMU.

11 And, once again, I will state to
12 you that this is a packet that I put together
13 based on Government counsel's statements about
14 what documents appeared in the packet. And if
15 you later discover, at the time that you review
16 and sign the deposition transcript, that the
17 packet was not complete, I'll ask you to
18 indicate that on your errata form.

19 (Whereupon, the witness reviews the
20 material provided.)

21 THE WITNESS: Well, this packet
22 doesn't have a copy of the statement of
23 reasons, and I would have to verify
24 whether that was available and provided.
25 It ordinarily is. I don't recall

1 DAVID C. SCHIAVONE

2 specifically if it was in this case. So
3 I would have to check.

4 BY MS. MEEROPOL:

5 Q. I'll ask you to please check at the
6 time that you review the transcript to indicate
7 if the statement of reasons should have been
8 included in this designation packet.

9 Okay?

10 A. Okay.

11 Q. Leaving the statement of reasons --

12 MR. CARTIER: I'm just going to
13 formally request the right for the
14 witness to review and sign the
15 transcript before we forget that.

16 BY MS. MEEROPOL:

17 Q. Leaving aside the possibility that
18 the statement of reasons was also included in
19 the designation packet, does this packet include
20 all the other material the CTU relied on to
21 recommend Yassin Aref's CMU designation?

22 A. Yes, it appears that it does.

23 Q. Does it contain all the material
24 the CTU considered in deciding whether to
25 recommend Yassin Aref for a CMU designation?

1 DAVID C. SCHIAVONE

2 statement?

3 A. The CTU based that statement on the
4 presentence report.

5 Q. Why did the CTU recommend Mr. Aref
6 for CTU?

7 A. Well, as described in this memo and
8 based on his offense conduct, Aref had
9 significant communication and contact with
10 different terrorist organizations or entities
11 which we believed warranted heightened
12 monitoring of his communications.

13 Q. I'm sorry. Was that two different
14 bases there, his offense conduct and then his
15 association to other terrorist organizations, or
16 are those the same thing?

17 A. Well, his offense conduct was based
18 on the -- on the incident which he was convicted
19 for. The presentence report describes these
20 other ties and associations to these other
21 terrorist organizations and groups.

22 Q. So is it accurate to say that the
23 CMU based its recommendation on his offense
24 conduct, his links to [REDACTED]
25 [REDACTED] the

1 DAVID C. SCHIAVONE

2 Islamic movement in Kurdistan, the information
3 that his name and telephone number were found in
4 three different Ansar al-Islam camps, and his
5 diary entries, and a 1994 speech?

6 A. Well, the CTU made the
7 recommendation based on that information as
8 summarized here and found in the presentence
9 report.

10 Q. Okay. Please flip to the last page
11 of the designation packet, which is the unsigned
12 Yassin Aref notice to inmate of transfer to
13 Communications Management Unit.

14 Are you there, sir?

15 A. The document 2938?

16 Q. That's right.

17 A. Yes.

18 Q. Is this a true and correct copy of
19 the notice to inmate of transfer created for
20 Yassin Aref's designation packet by the CTU?

21 A. I believe it is, yes.

22 Q. Please review the inmate specific
23 portion of the notice and tell me when you're
24 ready.

25 (Whereupon, the witness reviews the

1 DAVID C. SCHIAVONE

2 on this form.

3 Q. Okay. Let's turn to Exhibit 32 in
4 the previously marked exhibits.

5 Please turn to the sixth page of
6 the exhibit, which is the notice to inmate of
7 transfer to Communications Management Unit,
8 Bates stamped P1199.

9 A. Okay.

10 Q. Does this notice indicate the
11 reasons why Mr. Nalley approved Yassin Aref for
12 designation to the CMU?

13 A. No, this document doesn't.

14 Q. What does this document indicate?
15 Whose reasons does this document reflect?

16 A. No. This document reflects
17 information which supports the inmate's
18 placement in a CMU.

19 Q. But it's possible that Mr. Nalley
20 approved him for designation to the CMU based on
21 a completely different reason?

22 A. You'd have to ask Mr. Nalley what
23 his reasoning was.

24 Q. So look at the next page of
25 Exhibit 32, please, which is the October 1st,

1 DAVID C. SCHIAVONE

2 the memo, which is Bates stamped 3295.

3 And allow me to direct your
4 attention to the warden's handwritten comments.

5 Does this document the first time
6 that Yassin Aref's warden considered whether he
7 should be transferred out of the CMU?

8 A. I believe it is, yes.

9 Q. Now, please look at the next page
10 of Exhibit 32, which is an October 25th, 2010
11 Smith memo, Bates stamped BOP CMU 3278.

12 Is this a true and correct copy of
13 the CTU October 2010 memo recommending
14 Yassin Aref's transfer out of the CMU?

15 A. I believe it is, yes.

16 Q. Does the memo document the first
17 time the CTU considered whether Yassin Aref
18 should be transferred out of the CMU?

19 A. I believe it does, yes.

20 Q. Why did the CTU recommend in favor
21 of Yassin Aref's transfer?

22 A. Well, based on the memo and the
23 summary that the CTU provided, it was a belief
24 that the inmate no longer warranted the
25 communication controls and monitoring of a CMU.

1 DAVID C. SCHIAVONE

2 Q. What was the basis for that belief?

3 A. Law enforcement review of his
4 conduct, his behavior and a correctional
5 judgment.

6 Q. Please turn to the next memo, which
7 is an October 26th, 2010 Smith memo,
8 Bates stamped BOP CMU 5012. We're still in
9 Exhibit 32.

10 Is this a true and correct copy of
11 the CTU's October 26th, 2010 memo now
12 recommending against Yassin Aref's transfer from
13 the CMU?

14 A. I believe it is, yes.

15 Q. And why did the CTU change their
16 recommendation?

17 A. Between submission of the first
18 memo and this memo, law enforcement sensitive
19 information was obtained which suggested the
20 inmate still required the controls of a CMU.

21 Q. Was Yassin Aref -- was Yassin Aref
22 ever informed that confidential information was
23 being relied upon to support his continued CMU
24 designation?

25 A. It was law enforcement sensitive

1 DAVID C. SCHIAVONE

2 But usually, inmates are not informed of ongoing
3 investigations.

4 Q. What was the eventual outcome of
5 this investigation?

6 MR. CARTIER: I'm just going to
7 caution the witness not to reveal law
8 enforcement information. But can you
9 answer that question?

10 THE WITNESS: The only thing I
11 can say without specifically identifying
12 the outcome of the investigation was
13 that the inmate was later submitted for
14 redesignation from a CMU, which was then
15 approved.

16 MS. MEEROPOL: I'd like to mark
17 for identification Exhibit 189, which is
18 a November 10th, 2010 memo for
19 Lisa Hollingsworth, Bates stamped P2432.

20 - - -

21 (Whereupon, a memorandum was
22 marked, for identification
23 purposes, as Deposition Exhibit
24 Number 189.)

25 - - -

1 DAVID C. SCHIAVONE

2 BY MS. MEEROPOL:

3 Q. Can you identify this document,
4 sir?

5 A. It appears to be written
6 notification provided to Inmate Aref regarding
7 the denial of his transfer from a CMU.

8 Q. Does it provide an adequate
9 explanation of the reasons for Mr. Aref's
10 continued CMU designation?

11 A. No, it doesn't provide any reasons.

12 Q. Okay. I'm going to ask you to turn
13 back to Exhibit 32 and to flip towards the
14 middle of the document -- I mean of the exhibit
15 to a March 18th, 2011 Kelly memo,
16 Bates stamped 3280.

17 Sir, how are you doing breakwise?
18 Do you need to take a break at any time?

19 A. Soon, please, yes.

20 Q. I should be done with Mr. Aref in
21 about five minutes. We could get through him or
22 I'm happy to stop and break now if -- if you
23 prefer to do that?

24 A. Five minutes will be fine.

25

1 DAVID C. SCHIAVONE

2 Q. Does this memo document the next
3 time that Yassin Aref's unit team considered
4 whether he should be transferred out of the CMU?

5 A. I believe it does, yes.

6 Q. Looking at the second page of the
7 memo, does this document the second time that
8 Yassin Aref's warden recommended his transfer
9 from the CMU?

10 A. I believe it does, yes.

11 Q. Okay. Please flip to the next
12 page, which is a March 22nd, 2011 Les Smith
13 memo, Bates stamped BOP CMU 5010.

14 Is this a true and correct copy of
15 the CTU's March 22nd, 2011 redesignation memo
16 recommending Yassin Aref's transfer out of the
17 CMU?

18 A. I believe it is, yes.

19 Q. Why did the CTU recommend
20 Yassin Aref's transfer out of the CMU?

21 A. The CTU believed the inmate no
22 longer warranted the controls and monitoring of
23 a CMU.

24 Q. And what was that based on?

25 A. Law enforcement review of his

1 DAVID C. SCHIAVONE

2 institution conduct and correctional judgment.

3 Q. Please flip to the next page, which
4 is the CMU referral form for Yassin Aref dated
5 March 25th, 2011.

6 Is this a true and correct copy of
7 the North Central Regional Office's March 25th,
8 2011 review of Yassin Aref's CMU designation?

9 A. I believe it is, yes.

10 Q. Why did the North Central Regional
11 Director decide to release Yassin Aref from the
12 CMU?

13 A. The Regional Director noted on the
14 form he concurred based upon the above-noted
15 comments on this form.

16 Q. Did the North Central Regional
17 Director base his decision on the comments on
18 this referral form or other comments as well, or
19 can you not tell?

20 A. I can't tell. All he documented
21 was what he wrote here.

22 MS. MEEROPOL: Okay. Why don't
23 we take a 10-minute break?

24 MR. CARTIER: Yeah, let's do
25 that.

1 DAVID C. SCHIAVONE

2 - - -

3 (Whereupon, a brief recess was taken
4 from 10:16 a.m. to 10:29 a.m.)

5 - - -

6 MS. MEEROPOL: Okay. We're back
7 on the record after a short break.

8 And I'd like to mark for
9 identification Exhibit 190, which is
10 Kifah Jayyousi's designation packet.

11 The first page of the document is
12 Bates stamped BOP CMU 76177. And it
13 should be in the new exhibits folder.

14 - - -

15 (Whereupon, Kifah Jayyousi's
16 designation packet was marked, for
17 identification purposes, as
18 Deposition Exhibit Number 190.)

19 - - -

20 BY MS. MEEROPOL:

21 Q. Sir, please take a moment to review
22 the document and tell me if this is a true and
23 correct copy of the designation packet created
24 by the CTU and used by the North Central
25 Regional Director to determine whether

1 DAVID C. SCHIAVONE

2 Kifah Jayyousi should be designated to the CMU.

3 And, again, I'll assert to you that
4 it was collated based on Government counsel's
5 statements that identify the contents of the
6 designation packet.

7 At the time that you review and
8 sign your deposition transcript, if you discover
9 that the packet is not complete, I'll ask you to
10 indicate that on your errata form.

11 (Whereupon, the witness reviews the
12 material provided.)

13 THE WITNESS: It appears to be
14 complete.

15 BY MS. MEEROPOL:

16 Q. Does the packet contain all of the
17 material the CTU relied upon to recommend
18 Kifah Jayyousi's CMU designation?

19 A. I believe it does, yes.

20 Q. Does it contain all the material
21 the CTU considered in deciding whether to
22 recommend Kifah Jayyousi for CMU designation?

23 A. I believe it does, yes.

24 Q. Does it include all the material
25 the North Central Regional Director relied upon

1 DAVID C. SCHIAVONE

2 to recommend Kifah Jayyousi for CMU designation?

3 A. I believe it does, yes.

4 Q. Please turn to Page 64 of the
5 designation packet. It's a March 31st, 2008
6 Smith memo, Bates stamped BOP CMU 4620.

7 A. Okay.

8 Q. Is this a true and correct copy of
9 the CTU designation memo created for
10 Kifah Jayyousi?

11 A. I believe it is, yes.

12 Q. On the second page of -- the second
13 page of the memo, the third paragraph lists
14 organizations Kifah Jayyousi is associated with.

15 What is the basis for the CTU's
16 statement that Kifah Jayyousi is associated with
17 Al-Qaeda?

18 A. It's my recollection this
19 information came from a presentence report.

20 Q. Why did the CTU recommend
21 Mr. Jayyousi for CMU designation?

22 A. Summarized in this memo, the CTU
23 believed the inmate warranted heightened
24 controls of his communication based on his
25 offense conduct.

1 DAVID C. SCHIAVONE

2 Q. Was it based on anything else
3 besides offense conduct?

4 A. The supporting information in the
5 PSR as well as his actual offenses.

6 MS. MEEROPOL: Okay. I'd like to
7 mark for identification Exhibit 191.
8 It's a Superseding Indictment,
9 Bates stamped BOP CMU 76344.

10 - - -
11 (Whereupon, Superseding Indictment
12 was marked, for identification
13 purposes, as Deposition Exhibit
14 Number 191.)

15 - - -
16 MR. CARTIER: Was this a
17 previously marked exhibit?

18 MS. MEEROPOL: No; it's a new
19 one. It should be in the new folders.
20 I think KJ Indictment, maybe, is the
21 title.

22 BY MS. MEEROPOL:

23 Q. Sir, was this indictment considered
24 by the CTU in making its recommendation for
25 Mr. Jayyousi's CMU designation?

1 DAVID C. SCHIAVONE

2 A. Okay.

3 Q. Does this notice indicate the
4 reasons why Mr. Nalley approved Kifah Jayyousi
5 for designation to a CMU?

6 A. No.

7 Q. What does this notice indicate?

8 A. This notice indicates to the inmate
9 the reasons that support his placement in the
10 CMU.

11 Q. Mr. Nalley could have based his
12 approval of Mr. Jayyousi's designation on
13 completely different reasons, correct?

14 A. Mr. Nalley could have based his
15 decision on what he felt was important in the
16 referral packet and the information available to
17 him to make that decision.

18 Q. Flip forward four pages in
19 Exhibit 31 to the December 23rd, 2009 Shoemaker
20 memo. It's Bates stamped BOP CMU 4813.

21 Are you there, sir?

22 A. Yes.

23 Q. Does this memo document the first
24 time that Kifah Jayyousi's unit team considered
25 whether he should be transferred out of the CMU?

1 DAVID C. SCHIAVONE

2 his transfer from the CMU?

3 A. As far as I can tell, yes.

4 Q. Why did the unit team recommend
5 Mr. Jayyousi's transfer from the CMU?

6 A. The unit team indicated they have
7 noted no continuation of actions which
8 precipitated his placement in the CMU, among
9 their other comments in the entire memo.

10 Q. And why -- is it fair to say that
11 the unit team's recommendation was based on
12 Mr. Jayyousi's positive incarceration conduct?

13 A. They don't state that specifically.
14 They just make these particular comments in the
15 memo.

16 Q. Why did the warden agree with the
17 unit team's recommendation?

18 A. The warden stated he has acted
19 within the regulations set forth and has not
20 presented issues which cause concern.

21 Q. Please turn to the following memo,
22 which is a March 22nd, 2011 Smith memo,
23 Bates stamped 5016.

24 Does this memo document the first
25 time the CTU considered Kifah Jayyousi for

1 DAVID C. SCHIAVONE

2 transfer from the CMU?

3 A. I believe it does, yes.

4 Q. Why did the CTU recommend against
5 Kifah Jayyousi's transfer?

6 A. The CTU believed the inmate still
7 warranted the controls and monitoring of a CMU.

8 Q. Why?

9 A. Well, as summarized in this memo,
10 based on his incarceration conduct and his
11 offense conduct and the additional information
12 noted in the presentence report.

13 Q. The third through fifth paragraphs
14 of the second page beginning with, While in
15 Terre Haute CMU -- do you see where I'm reading?

16 A. Yes.

17 Q. The third through fifth paragraphs
18 describe a sermon delivered by Kifah Jayyousi at
19 the CMU.

20 Was this sermon one of the reasons
21 that the CTU recommended against Mr. Jayyousi's
22 transfer?

23 A. Yes, it's included in the memo as
24 one of the reasons the CTU considered.

25 Q. Was it the most significant reason?

1 DAVID C. SCHIAVONE

2 BY MS. MEEROPOL:

3 Q. Did the CTU also provide the North
4 Central Regional Office with information
5 indicating that Mr. Jayyousi's incident report
6 was eventually expunged?

7 MR. CARTIER: Same objections.

8 THE WITNESS: According to this
9 packet, no, other than the memo from the
10 CTU, which indicated specifically that
11 the inmate had no sanctioned incident
12 reports.

13 So I guess my answer should be
14 yes, it did. The CTU referral memo
15 indicates that the inmate had no
16 sanctioned incident reports.

17 Sorry.

18 BY MS. MEEROPOL:

19 Q. Please turn to the first page of
20 the transfer packet, which is
21 Bates stamped 4618.

22 Was this document the first time
23 that the North Central Regional Director
24 considered Kifah Jayyousi's transfer from the
25 CMU?

1 DAVID C. SCHIAVONE

2 A. I believe it is, yes.

3 Q. Sorry about that. Give me one
4 second.

5 (Pause.)

6 BY MS. MEEROPOL:

7 Q. Please look at the Regional
8 Director's statement on the second page of the
9 CMU Review [sic] form.

10 Why did the Regional Director
11 decide to keep Kifah Jayyousi in the CMU?

12 A. The Regional Director made a
13 comment which says, Based on the above-noted --
14 I guess it says comments.

15 Q. What are the above-noted comments
16 he is referring to?

17 A. They would be the comments entered
18 onto the form by the other reviewing staff in
19 the Regional Office.

20 Q. Might it also refer back to the
21 CTU's memo?

22 A. It might, yes.

23 Q. I'm going to ask you to turn back
24 to Exhibit 31 and to the second-to-last page of
25 that exhibit, which is an April 14th, 2011 memo.

1 DAVID C. SCHIAVONE

2 It doesn't appear to be Bates stamped.

3 A. The last page, you said?

4 Q. The second-to-last page.

5 A. Okay. I have a memo --

6 Q. Are you looking --

7 A. Go ahead.

8 Q. -- are you looking at the
9 April 14th, 2011 Kelly memo?

10 A. Subject, Transfer Denial.

11 Q. Yes.

12 A. Yes.

13 Q. Is this the notice provided to
14 Kifah Jayyousi of his transfer denial as
15 required by the Dodrill memo?

16 A. It appears to be, yes.

17 Q. Does this memo provide Mr. Jayyousi
18 with the reasons for his continued CMU
19 designation as required by the Dodrill memo?

20 A. No, it does not.

21 MS. MEEROPOL: Okay. I'd like to
22 mark for identification Exhibit 193,
23 which is a Inmate Activity Record. The
24 first page is
25 Bates stamped BOP CMU 60568. It should

EXHIBIT 13



1186MH

1 of 3 DOCUMENTS

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CQ Congressional Testimony

June 17, 2009 Wednesday

SECTION: CAPITOL HILL HEARING TESTIMONY

LENGTH: 6858 words

HEADLINE: DEPARTMENT OF JUSTICE OVERSIGHT;
COMMITTEE: SENATE JUDICIARY

BODY:

TESTIMONY-BY: ERIC H. HOLDER JR., ATTORNEY GENERAL

AFFILIATION: U.S. DEPARTMENT OF JUSTICE

Statement of Eric H. Holder Jr. Attorney General of The United States U.S. Department of Justice
Committee on Senate Judiciary

June 17, 2009

Good morning Chairman Leahy, Ranking Member Sessions, and Members of the Committee. Thank you for the opportunity to appear before you today to highlight the work and priorities of the U.S. Department of Justice. I would also like to thank you for your support of the Department. I look forward to your continued support and appreciate your recognition of the Department's mission and the important work that we do.

I testified during my confirmation hearings earlier this year that under my leadership, the Department would pursue a very specific set of goals: ensuring public safety against threats both foreign and domestic; ensuring fair and impartial administration of justice for all Americans; assisting our state and local partners; and defending the interests of the United States according to the law. I believe we are on the right path to accomplish those goals.

First, we are working to strengthen the activities of the federal government that protect the American people from terrorism and are doing so within the letter and spirit of the Constitution. Let me be clear: we need not sacrifice our core values in order to ensure our security. Adherence to the rule of law strengthens security by depriving terrorist organizations of their prime recruiting tools. America must be a beacon to the world. We can lead and are leading by strength, by wisdom, and by example.

Second, we are working to ensure that the Department of Justice will always serve the cause of justice, not the fleeting interests of politics. For example, law enforcement decisions and personnel actions must be untainted by partisanship.

Third, we are working to reinvigorate the traditional missions of the Department. Without ever relaxing our guard in the fight against global terrorism, the Department is also embracing its historic role in fighting crime, protecting civil rights, preserving the environment, and ensuring fairness in the market place.

Counter-Terrorism Efforts

The highest priority of the Department is to protect America against acts of terrorism. The Department has improved significantly its ability to identify, penetrate, and dismantle terrorist plots as a result of a series of structural re-

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forms, the development of new intelligence and law enforcement tools, and a new mindset that values information sharing, communication and prevention.

I am committed to continuing to build our capacity to deter, detect and disrupt terrorist plots and to identify terrorist cells that would seek to do us harm. And I am committed to doing so consistent with the rule of law and American values. We will continue to develop intelligence, identify new and emerging threats and use the full range of tools and capabilities the Department possesses in its intelligence and law enforcement components.

The threats that confront us know no boundaries. So while the focus is on protecting the security of Americans here at home, now more than ever, there is a critical link between our national security and the creation of sustainable institutions in emerging, failing, or failed states and in post conflict environments. Our counterterrorism efforts are aided by fostering international cooperation, maximizing U.S. influence regarding the development of foreign legal policies and procedures, and establishing direct ties and personal relationships with our counterparts across the globe. Working with our federal, state, and local partners, as well as international counterparts, the Department has worked tirelessly to safeguard America and will continue to do so.

Over the past several years, the FBI has transformed its operations to better detect and dismantle terrorist enterprises - part of the FBI's larger emphasis on threat-driven intelligence. As part of this strategic shift, the FBI has overhauled its counterterrorism operations, expanded intelligence capabilities, modernized business practices and technology, and improved coordination with its partners. From the Joint Terrorism Task Forces, where agents work side by side with their state and local counterparts to make sure no terrorism threat goes unaddressed, to growing a professional analytic cadre to identify emerging threats, I am committed to ensuring that the FBI continues to build its capabilities as a national security organization.

The Department's National Security Division ensures that the prosecutorial and the intelligence elements within Main Justice are centrally managed. Since January 20, the Department's National Security Division has marked several key achievements in prosecuting terrorism and terror-related cases, including:

In the first use of U.S. criminal courts to prosecute an individual for terror offenses against Americans in Iraq, Wesam al-Delaema pleaded guilty to planting roadside bombs targeting Americans in Fallujah, Iraq.

Four defendants pleaded guilty in connection with their efforts to acquire surface-to-air missiles and other weapons for the Liberation Tigers of Tamil Eelam, a terrorist organization in Sri Lanka.

An associate of international arms dealer Monzer al-Kassar was found guilty of terror violations in connection with his efforts to sell surface-to-air missiles and other weapons to terrorists in Colombia.

An Ohio man and al-Qaeda member was sentenced to 20 years in prison for conspiring to bomb targets in Europe and the United States.

Five defendants in the Fort Dix trial were sentenced, ranging from 33 years to life in prison, for plotting to kill American soldiers in 2007 at the Fort Dix military base.

Implementing the President's Executive Orders to Close Guantanamo

Consistent with our commitment to national security as the Department's number one priority, the Justice Department is leading the work set out by the President to close Guantanamo and to ensure that policies going forward for detention, interrogation, and transfer live up to our nation's values. As the President said in his speech at the National Archives, instead of serving as a tool to counter-terrorism, Guantanamo became a symbol that helped al-Qaeda recruit terrorists to its cause.

On January 22nd, President Obama issued three Executive Orders and a Presidential Memorandum that gave significant responsibility to the Department. The Department is coordinating an interagency effort to conduct the hard work of implementing these important Presidential initiatives. The Principals listed in the Executive Orders and Presidential Memorandum have been called upon to:

Review and help effect the appropriate disposition of individuals currently detained at the Guantanamo Bay Naval Base;

Develop policies for the detention, trial, transfer, release, or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations;

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Study and evaluate current interrogation practices and techniques and, if warranted, recommend additional or different guidance; and

Review the detention of Ali Saleh Kahlah al-Marri.

The Department, together with the Departments of Defense, State, Homeland Security, and Office of the Director of National Intelligence, the Central Intelligence Agency, the Joint Chiefs of Staff and others, is implementing these Orders; and with the indictment and guilty plea of Mr. al-Marri in late April, we have brought about a just resolution of that case.

With regard to the President's Executive Orders, I have appointed an Executive Director to lead the Guantanamo Detainee Task Force. I have also named two officials to coordinate the Task Force Reviews on Interrogation and Detention Policy. The Guantanamo Detainee Review Task Force is responsible for assembling and examining relevant information and making recommendations regarding the proper disposition of each individual currently detained at Guantanamo Bay. The Task Force is considering whether it is possible to transfer or release detained individuals consistent with the national security and foreign policy interests of the United States; evaluating whether the government should seek to prosecute detained individuals for crimes they may have committed; and, if none of these options is possible, recommending other lawful means for disposition of the detained individuals.

The Task Force on Interrogation and Transfer Policies is charged with conducting a review to determine whether the Army Field Manual interrogation practices and techniques, when employed by departments or agencies outside the military, provide an appropriate means of acquiring the intelligence necessary to protect the nation, and whether different or additional interrogation guidance is necessary. This task force is also responsible for examining the practices regarding transfer of individuals to other nations to ensure that such practices comply with all domestic and international legal obligations and policies of the United States, and are sufficient to ensure that such individuals do not face torture or inhumane treatment.

The Task Force on Detention Policy is charged with conducting a review of the lawful options available to the federal government for the apprehension, detention, trial, transfer, release or other disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism operations.

The Executive Orders and Presidential Memorandum require me to coordinate or co-chair each of these interagency activities. The leaders of other U.S. Government departments and agencies are participating in these task forces, including the Secretaries of Defense, State, Homeland Security, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Chairman of the Joint Chiefs of Staff and other officials. While implementing these Orders, the Department will take necessary precautions to ensure decisions regarding Guantanamo detainees account for safety concerns of all Americans.

With respect to the task of reviewing the detention of Ali Saleh Kahlah al-Marri, I am pleased to report to you that on April 30, al-Marri pleaded guilty to conspiracy to provide material support to the al-Qaeda terrorist network. By entering into that agreement, al-Marri admitted that he worked for and provided material support to al-Qaeda with the intent to further its terrorism objectives and activities here in the United States. At the time that President Obama directed me to lead an interagency review of his case, al-Marri had been detained in a naval brig in South Carolina for more than five years without charges. The resolution of this matter in the criminal justice system is a result of the dedicated work of career prosecutors and investigators at the Justice Department and in other agencies. As a result, the Department has shown that our criminal justice system can and will hold terrorists accountable for their actions, protecting the American people in a manner consistent with our values and prosecuting alleged terrorists to the full extent of the law.

Trying accused terrorists in the federal criminal justice system has been a common and successful approach that the Department has taken since the 1990's. The Department has prosecuted and convicted individuals who planned such terrorist acts as the bombings of the World Trade Center in 1993, the American embassies in East Africa, and the U.S.S. Cole. An independent analysis found that federal prosecutors achieved a conviction rate of more than 90 percent on at least one charge among a group of 160 defendants whose cases were resolved. Since the beginning of this year, more than 30 individuals charged with terrorism violations have been successfully prosecuted and/or sentenced in federal courts nationwide.

It is also important to state that there are currently 216 inmates in Bureau of Prisons (BOP) custody who have a history of or nexus to international terrorism. Federal prisons are considered some of the most secure in the world. The "Supermax" facility in Florence, Colorado (ADX Florence), which is BOP's most secure facility, houses 33 interna-

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tional terrorists. There has never been an escape from ADX Florence, and BOP has housed some of these international terrorists since the early 1990's. In addition to the ADX Florence, the BOP houses such individuals in the Communications Management Units at Terre Haute, Ind., and Marion, Ill., as well as in other facilities among different institutions around the country.

Under the law, the Attorney General may direct the BOP to initiate Special Administrative Measures with respect to a particular inmate (including those being held pre-trial or during trial) when there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. Generally, these measures can be initiated to prevent acts of terrorism, acts of violence, or the disclosure of classified information.

The Mexican Cartels and Southwest Border Security

The Department has undertaken significant work recently to confront the threat posed by the Mexican drug cartels and to ensure the security of our southwest border. The effort is being led by Deputy Attorney General David Ogden. This strategy uses federal prosecutor-led task forces that bring together federal, state and local law enforcement agencies to identify, disrupt and dismantle the Mexican drug cartels through investigation, prosecution, and extradition of their key leaders and facilitators, and seizure and forfeiture of their assets. The Department also co-chaired an inter-agency effort with the Department of Homeland Security, on behalf of the Office of National Drug Control Policy, to develop the 2009 National Southwest Border Counternarcotics Strategy. That Strategy was recently released June 05, 2009, and identifies recommended actions to combat the illegal trafficking of drugs, outbound flow of illegal cash, and weapons across the border with Mexico. The Department is also increasing its focus on investigations and prosecutions of the southbound smuggling of guns and cash that fuel the violence and corruption, as well as attacking the cartels in Mexico itself, in partnership with the Mexican Attorney General's Office and the Secretariat of Public Security.

Confronting the Mexican cartels, together with our partners in the Mexican government, is a paramount priority for the United States and the Department. The southwest border in particular is a vulnerable area for illegal immigration, drug trafficking, and the smuggling of illegal firearms. Implementing a comprehensive strategy for confronting the cartels and security at the border involves collaboration and coordination at various levels of the government.

Addressing the Southwest Border threat has two basic elements: policing the actual border to interdict and deter the illegal crossing of undocumented persons or contraband goods, and confronting the large criminal organizations operating on both sides of the border. To that end, the Justice Department is targeting the Mexican cartels as it did La Cosa Nostra or any other large organized crime organization. The efforts of Justice Department law enforcement components - DEA, FBI, ATF, U.S. Marshals Service (USMS), the U.S. Attorneys, the Criminal Division and the Organized Crime Drug Enforcement Task Force (OCDETF) - along with the Department of Homeland Security and other federal agencies - have already yielded important results.

In February, I announced the arrest of more than 750 individuals on narcotics-related charges and the seizure of more than 23 tons of narcotics under Operation Xcellerator, a multi-agency, multi-national effort that targeted the Mexican drug trafficking organization known as the Sinaloa Cartel. The Sinaloa Cartel is also believed to be responsible for laundering millions of dollars in criminal proceeds from illegal drug trafficking activities. This Cartel is responsible for bringing tons of cocaine into the United States through an extensive network of distribution cells in the United States and Canada. Through Operation Xcellerator, federal law enforcement agencies along with law enforcement officials from the governments of Mexico and Canada and state and local authorities in the United States delivered a significant blow to the Sinaloa Cartel. In addition to the arrests, authorities seized over \$59 million in U.S. Currency, more than 12,000 kilograms of cocaine, more than 1,200 pounds of methamphetamine, approximately 1.3 million Ecstasy pills, and other illegal drugs. Also significant was the seizure of 169 weapons, 3 aircraft, and 3 maritime vessels.

In March, the Department announced increased methods to be used in the fight against Mexican Drug Cartels. The Department and DHS are working closely in support of the Department of State on efforts against the cartels in Mexico through the Merida Initiative. The Department's coordination will include the FBI, DEA, ATF, USMS, OCDETF and the Criminal Division, who will work with law enforcement colleagues to investigate and prosecute cartel members for their illegal activities in the United States and to disrupt the illegal flow of weapons and bulk cash to Mexico.

Over the last nine months, the USMS has deployed an additional 94 Deputy U.S. Marshals to district offices and will be sending four additional deputies to assist the Mexico City Field Office in order to step-up efforts along the Southwest Border. In addition, within the last three months, four new Criminal Investigators have been placed in the

EXHIBIT 14



Program Statement

OPI: CPD/CSB
NUMBER: 5267.08
DATE: 5/11/2006
SUBJECT: Visiting Regulations

"CORRECTED COPY"

1. [PURPOSE AND SCOPE §540.40. The Bureau of Prisons encourages visiting by family, friends, and community groups to maintain the morale of the inmate and to develop closer relationships between the inmate and family members or others in the community. The Warden shall develop procedures consistent with this rule to permit inmate visiting. The Warden may restrict inmate visiting when necessary to ensure the security and good order of the institution.]

Due to practical considerations and the different characteristics of institutions, certain limitations and controls must be established in developing and administering visiting regulations. The extent of these limitations will vary with each institution, and are recognized as reasons upon which visiting restrictions may be based. These limitations will be specified in the Institution Supplement.

The Warden has the authority to restrict or suspend an inmate's regular visiting privileges temporarily when there is reasonable suspicion that the inmate has acted in a way that would indicate a threat to the good order or security of the institution. Ordinarily, the duration of the restriction or suspension should be limited to the time required to investigate and initiate the discipline process.

Reasonable suspicion exists when reliable information and/or facts are presented to the Warden that the inmate is engaged, or attempting to engage, in criminal or other prohibited behavior. Reasonable suspicion must be directed to the inmate(s)/visitor(s) in question.

[**Bracketed Bold - Rules**]

Regular Type - Implementing Information

In determining reasonable suspicion, staff should consider whether the available information could reasonably lead a person with correctional experience to suspect that the inmate is engaged in criminal or other prohibited behavior. (See Section 17.c. of this PS for reference to inmates in detention or segregation status.)

2. **SUMMARY OF CHANGES.** This re-issuance incorporates the following modifications:

- All authorized items entering the visiting room must be carried in a clear plastic container/bag. The size and quantity of the container/bag will be determined by the institution and established in the institutions supplement.
- Guidelines for Institution Supplements are established.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. All inmates will be permitted visits by family, friends, and community groups consistent with the security and orderly running of the institution.

b. A record of visitors will be maintained for all inmates.

c. A visiting schedule will be established for all institutions.

d. Procedures to monitor all visiting areas will be established to prevent the passage of contraband and to ensure the security and good order of the institution.

4. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

P5267.07 Visiting Regulations (4/14/03)

b. **Directives Referenced**

P1280.11 JUST, NCIC and NLETS Telecommunication Systems
(Management and Use) (1/7/00)

P1315.07 Legal Activities, Inmate (11/5/99)

P1490.06 Victim and Witness Notification Program (5/23/02)

P4500.04 Trust Fund/Warehouse/Laundry Manual (12/15/95)

P5100.07 Security Designation and Custody Classification
Manual (9/3/99)

P5180.04 Central Inmate Monitoring System Manual (8/16/96)
P5270.07 Inmate Discipline and Special Housing Units
(12/29/87)
P5280.08 Furloughs (2/4/98)
P5360.09 Religious Services and Practices (12/31/04)
P5500.11 Correctional Services Manual (10/10/03)
P5500.12 Correctional Services Procedures Manual (10/10/03)
P5510.09 Searching, Detaining, or Arresting Persons Other
Than Inmates (3/6/98)
P5520.01 Ion Spectrometry Device Program (2/24/05)
P5521.05 Searches of Housing Units, Inmates and Inmate
Work Areas (6/30/97)
P7331.04 Pretrial Inmates (1/31/03)

c. Rules cited in this Program Statement are contained in
28 CFR 540.40-52.

5. **STANDARDS REFERENCED**

a. American Correctional Association 4th Edition Standards for
Adult Correctional Institutions: 4-4156, 4-4267, 4-4285, 4-4498,
4-4499, 4-4499-1, 4-4500, 4-4501, 4-4503, and 4-4504

b. American Correctional Association 4th Edition Performance-
Based Standards for Adult Local Detention Facilities:
4-ALDF-2A-61, 4-ALDF-5B-01, 4-ALDF-5B-02, 4-ALDF-5B-03,
4-ALDF-5B-04 and 4-ALDF-7E-05

6. **PRETRIAL/HOLDOVER/DETAINEE PROCEDURES.** The procedures
specified in this Program Statement apply to all inmates housed
in Bureau institutions. Refer to the Program Statement on
Pretrial Inmates for specific information regarding pretrial
inmates.

7. **VICTIM/WITNESS CASES.** Refer to the Program Statement on
Victim and Witness Notification for procedures when a
Victim/Witness Program (VWP) inmate requests to place a victim or
witness on his or her visiting list.

8. **WITSEC INMATE.** Refer to the Central Inmate Monitoring System
Operations Manual (**Sensitive But Unclassified**) for procedures
when an inmate in the Witness Security Program (WITSEC) requests
to place an individual on his or her visiting list.

9. **[VISITING FACILITIES §540.41.** The Warden shall have the
visiting room arranged so as to provide adequate supervision,
adapted to the degree of security required by the type of
institution. The Warden shall ensure that the visiting area is

as comfortable and pleasant as practicable, and appropriately furnished and arranged. If space is available, the Warden shall have a portion of the visiting room equipped and set up to provide facilities for the children of visitors.

a. Institutions of minimum and low security levels may permit visits beyond the security perimeter, but always under supervision of staff.

b. Institutions of medium and high security levels, and administrative institutions may establish outdoor visiting, but it will always be inside the security perimeter and always under supervision of staff.]

Reasonable accommodations should be made to ensure that all parts of the visiting area accessible to the public are also accessible to visitors and inmates with disabilities.

10. [VISITING TIMES] §540.42

a. Each Warden shall establish a visiting schedule for the institution. At a minimum, the Warden shall establish visiting hours at the institution on Saturdays, Sundays, and holidays. The restriction of visiting to these days may be a hardship for some families and arrangements for other suitable hours shall be made to the extent practicable. Where staff resources permit, the Warden may establish evening visiting hours.

b. Consistent with available resources, such as space limitations and staff availability, and with concerns of institution security, the Warden may limit the visiting period. With respect to weekend visits, for example, some or all inmates and visitors may be limited to visiting on Saturday or on Sunday, but not on both days, in order to accommodate the volume of visitors. There is no requirement that every visitor has the opportunity to visit on both days of the weekend, nor that every inmate has the opportunity to have visits on both days of the weekend.]

To the extent practicable, and consistent with available resources and concerns for institution security, the Warden is encouraged to establish visiting and/or attempt to accommodate a visitor who can only visit on a specific weekend day.

11. [FREQUENCY OF VISITS AND NUMBER OF VISITORS §540.43. The Warden shall allow each inmate a minimum of four hours visiting time per month. The Warden may limit the length or frequency of visits only to avoid chronic overcrowding. The Warden may establish a guideline for the maximum number of persons who may visit an inmate at one time, to prevent overcrowding in the visiting room or unusual difficulty in supervising a visit. Exceptions may be made to any local guideline when indicated by special circumstances, such as distance the visitor must travel, frequency of the inmate's visits, or health problems of the inmate or visitor.]

The Warden may establish a limit, consistent with available resources, on the number of visits an inmate may receive and/or the number of visiting hours (in excess of four) allotted to the inmate each month. Due to space limitations, limits on visiting may be necessary when an inmate has numerous regular visitors living in the vicinity of the institution.

Where facilities permit, the Warden may allow family groups to visit. The Warden may also authorize special visits to accommodate a unique circumstances (e.g., a person traveling a long distance to visit, a person visiting a hospitalized inmate).

12. [REGULAR VISITORS §540.44. An inmate desiring to have regular visitors must submit a list of proposed visitors to the designated staff. See §540.45 for qualification as special visitor. Staff are to compile a visiting list for each inmate after suitable investigation in accordance with §540.51(b) of this part. The list may include:]

§540.51(b) refers to Section 18.b. of this Program Statement.

[a. Members of The Immediate Family. These persons include mother, father, step-parents, foster parents, brothers and sisters, spouse, and children. These individuals are placed on the visiting list, absent strong circumstances which preclude visiting.]

The word "spouse" includes a common-law relationship which has been previously established in a state that recognizes such a status. In states that do not, a common-law relationship is not considered "immediate family." For determination of applicable state laws, the Regional Counsel should be consulted.

Failure to obtain acknowledgment of parent or legal guardian may preclude the addition of children to the visiting list. When deemed appropriate, background checks may also be completed on immediate family members. For determination of applicable state laws, the Regional Counsel should be consulted.

[b. Other Relatives. These persons include grandparents, uncles, aunts, in-laws, and cousins. They may be placed on the approved list if the inmate wishes to have visits from them regularly and if there exists no reason to exclude them.

c. Friends and Associates. The visiting privilege ordinarily will be extended to friends and associates having an established relationship with the inmate prior to confinement, unless such visits could reasonably create a threat to the security and good order of the institution. Exceptions to the prior relationship rule may be made, particularly for inmates without other visitors, when it is shown that the proposed visitor is reliable and poses no threat to the security or good order of the institution.]

Regardless of the institution's security level, the inmate must have known the proposed visitor(s) prior to incarceration. The Warden must approve any exception to this requirement.

See Section 18.b.(2) of this Program Statement regarding background investigations for proposed visitors.

Ordinarily, an inmate's visiting list should not list more than 10 friends and associates. The Warden may make an exception to this provision when warranted.

Under 18 U.S.C. § 3582(d), which applies to offenses committed on or after November 1, 1987,

"The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or

communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise."

Consultation with the Regional Counsel may be necessary to determine this provision's applicability to a specific case(s).

[d. Persons with Prior Criminal Convictions. The existence of a criminal conviction alone does not preclude visits. Staff shall give consideration to the nature, extent and recentness of convictions, as weighed against the security considerations of the institution. Specific approval of the Warden may be required before such visits take place.]

Ordinarily, staff should obtain written authorization from the appropriate federal or state probation/parole official prior to approving visitation privileges for an individual on probation, parole, or supervised release. A copy of this authorization will be maintained in section 2 of the Privacy Folder in the Inmate Central File.

See Section 18.b.(2) of this Program Statement regarding background investigations for proposed visitors.

[e. Children Under Sixteen. Children under the age of 16 may not visit unless accompanied by a responsible adult. Children shall be kept under supervision of a responsible adult or a children's program. Exceptions in unusual circumstances may be made by special approval of the Warden.]

The signature of a parent or legal guardian on the Visitor Information form (BP-629) is necessary to process a request for an applicant under 18 years of age. Ordinarily, completing the questionnaire portion of this form (items 1 through 14) is not required if such an applicant is a verified immediate family member of the requesting inmate.

In unusual circumstances, the Warden, after consultation with Regional Counsel, may make exceptions to the requirement for acknowledgment by parent or legal guardian.

13. [QUALIFICATION AS SPECIAL VISITOR §540.45. Persons in the categories listed in this section may qualify as special visitors rather than as regular visitors. Visits by special visitors ordinarily are for a specific purpose and ordinarily are not of a recurring nature. Except as specified, the conditions of

visiting for special visitors are the same as for regular visitors.

a. Business Visitor. Except for pretrial inmates, an inmate is not permitted to engage actively in a business or profession. An inmate who was engaged in a business or profession prior to commitment is expected to assign authority for the operation of such business or profession to a person in the community. Pretrial inmates may be allowed special visitors for the purpose of protecting the pretrial inmate's business interests. In those instances where an inmate has turned over the operation of a business or profession to another person, there still may be an occasion where a decision must be made which will substantially affect the assets or prospects of the business. The Warden accordingly may permit a special business visit in such cases. The Warden may waive the requirement for the existence of an established relationship prior to confinement for visitors approved under this paragraph.

b. Consular Visitors. When it has been determined that an inmate is a citizen of a foreign country, the Warden must permit the consular representative of that country to visit on matters of legitimate business. The Warden may not withhold this privilege even though the inmate is in disciplinary status. The requirement for the existence of an established relationship prior to confinement does not apply to consular visitors.

c. Representatives of Community Groups. The Warden may approve visits on a recurring basis to representatives from community groups (for example, civic, volunteer, or religious organizations) who are acting in their official capacity. These visits may be for the purpose of meeting with an individual inmate or with a group of inmates. The requirement for the existence of an established relationship prior to confinement for visitors does not apply to representatives of community groups.

d. Clergy, Former or Prospective Employers, Sponsors, and Parole Advisors. Visitors in this category ordinarily provide assistance in release planning, counseling, and discussion of family problems. The requirement for the existence of an established relationship prior to confinement for visitors does not apply to visitors in this category.]

The following processing procedures apply to ministers of record and clergy:

(1) **Minister of Record.** An inmate wanting to receive visits from his or her minister of record must submit a written request to the Chaplain. Upon approval, unit staff will add the name and title (minister of record) to the inmate's visitor list.

An inmate may only have one minister of record on his/her visiting list at a time. The addition of the minister of record will **not** count against the total number of authorized regular visitors an inmate is allowed to have on his or her visiting list, and will **not** count against the total number of social visits allowed.

(2) **Clergy.** Visits from clergy (other than the minister of record) will be in accordance with the general visitor procedures, and **will** count against the total number of regular visits allowed.

Ordinarily, clergy visits will not be accommodated unless requested by the inmate. However, the Chaplain may approve a visitation request initiated by the clergy if the inmate wishes to visit with the clergy.

Clergy/minister of record visits will be accommodated in the visiting room during regularly scheduled visiting hours and, to the extent practicable, in an area of the visiting room which provides a degree of separation from other visitors. If a private area is not available, the visit may be rescheduled.

The Warden may establish a limit to the number of minister of record and clergy visits an inmate receives each month, consistent with available resources. However, during times of personal or family emergencies, an inmate will be authorized a visit from his or her minister of record. Refer to the Program Statement on Religious Beliefs and Practices for additional information regarding minister of record and clergy.

14. **[ATTORNEY VISITS §540.46. Requirements for attorney visits are governed by the provisions on inmate legal activities (see §543.12 through 543.16 of this chapter). Provisions pertinent to attorney visits for pretrial inmates are contained in §551.117 of this chapter.]**

§ 543.12 through 543.16 refers to the Program Statement on Inmate Legal Activities. § 551.117 refers to the Program Statement on Pretrial Inmates.

Staff may not subject visits between an attorney and an inmate to auditory supervision. To the extent practicable, attorney visits, for both pretrial and sentenced inmates, are to take place in a private conference room. However, areas designated for attorney visits will be arranged so as to provide adequate unobstructed visual supervision.

Where such a room is not available, the attorney visit may occur in a regular visiting room, provided the inmate and the inmate's attorney have a degree of separation from other visitors.

Occasionally, a situation may arise when a private area or conference room is not available, and the attorney does not wish to meet in a regular visiting room. When this occurs, the attorney may reschedule the visit. Refer to the Program Statement on Inmate Legal Activities for additional information on processing legal visits.

15. [MEDIA VISITS §540.47. Requirements for media visits are governed by the provisions on contact with news media (see subpart E of this part). A media representative who wishes to visit outside his or her official duties, however, must qualify as a regular visitor or, if applicable, a special visitor.]

(Section 540.48 is removed and reserved.)

16. [TRANSPORTATION ASSISTANCE §540.49. The Warden shall ensure that directions for transportation to and from the institution are provided for the approved visitor (see §540.51(b)(4)). Directions for transportation to and from the institution and pay phone service, with commercial transportation phone numbers posted, are also to be made available at the institution to assist visitors.]

If pay phone service is not available, the visitor is to ensure transportation is arranged prior to the visit.

§540.51(b)(4) refers to Section 18.b.(4) of this Program Statement.

17. [VISITS TO INMATES NOT IN REGULAR POPULATION STATUS §540.50

a. Admission and Holdover Status. The Warden may limit to the immediate family of the inmate visits during the admission-orientation period or for holdovers where there is neither a visiting list from a transferring institution nor other verification of proposed visitors.

b. Hospital Patients

(1) When visitors request to see an inmate who is hospitalized in the institution, the Chief Medical Officer (or, in his absence, the Health Services Administrator), in consultation with the Captain, shall determine whether a visit may occur, and if so, whether it may be held in the hospital.]

When a visit is denied because the inmate is suffering from an infectious disease, is in a psychotic or emotional episode which makes a visit inadvisable, or is otherwise not in a condition to see visitors, the situation is to be carefully and sensitively explained to the approved visitor. Notification to the visitor will be addressed in the Institution Supplement. Documentation is to be maintained in section 2 of the Privacy Folder in the Inmate Central File.

Inmates with medical conditions will be reviewed by the Chief Medical Officer or in his/her absence, the Health Services Administrator, in consultation with the Captain to determine whether visiting will be permitted. Visiting procedures for inmates with medical conditions will be addressed in the Institution Supplement.

[(2) Visits to inmates hospitalized in the community may be restricted to only the immediate family and are subject to the general visiting policy of that hospital.

c. Detention or Segregation Status. Ordinarily, an inmate retains visiting privileges while in detention or segregation status. Visiting may be restricted or disallowed, however, when an inmate, while in detention or segregation status, is charged with, or has been found to have committed, a prohibited act having to do with visiting guidelines or has otherwise acted in a way that would reasonably indicate that he or she would be a threat to the orderliness or security of the visiting room.

Loss of an inmate's visiting privileges for other reasons may not occur unless the inmate is provided a hearing before the Discipline Hearing Officer (DHO) in accordance with the provisions of §541.17 of this chapter, following those provisions which are appropriate to the circumstances, which results in a finding by the DHO that the inmate committed a prohibited act and that there is a lack of other appropriate sanctions or that imposition of an appropriate sanction previously has been ineffective.

The Unit Discipline Committee (UDC) may not impose a loss of visiting privileges for inmates in detention or segregation status. The provisions of this paragraph (c) do not interrupt or delay a loss of visiting sanction imposed by the UDC or DHO prior to the inmate's placement in detention or segregation status.]

§541.17 refers to the Program Statement on Inmate Discipline and Special Housing Units.

Ordinarily, an inmate in administrative detention or disciplinary segregation status may receive visits in accord with the same rules and regulations that apply to general population inmates, providing such visits do not pose a threat to the security or orderly operation of the institution. In such cases, the Warden may authorize special visiting procedures to preclude such a threat.

Refer to the Program Statement on Inmate Discipline and Special Housing Units for information regarding loss of visiting privileges resulting from disciplinary action.

18. [PROCEDURES §540.51

a. Responsibility. The Warden of the institution shall establish and enforce local visiting guidelines in accordance with the rules and regulations of the Bureau of Prisons.]

Ordinarily, the Captain is responsible for the visiting room's appearance/operation and the training of visiting room officers.

[b. Preparation of The List of Visitors

(1) Staff shall ask each inmate to submit during the admission-orientation process a list of proposed visitors. After appropriate investigation, staff shall compile a visiting list for each inmate and distribute that list to the inmate and the visiting room officer.]

An inmate will be provided written material on the institution's visiting procedures during the intake screening process. At a minimum, the information will include the following:

- Facility address/phone number; directions to the facility and information about local transportation;
- Days and hours of visitation;
- Approved dress code;
- Identification requirements for visitors;

- Items authorized in the visiting room;
- All authorized items entering the visiting room must be carried in a clear plastic container;
- Special rules for children;
- Authorized items that visitors may bring to give to the inmate, if applicable; and
- Special visit requirements.

Ordinarily, an initial visiting list is prepared and distributed within seven days of receiving the required information to process the visiting list. This list identifies immediate family members approved to visit the inmate. Additional family members and friends may be added following the completion of an appropriate investigation.

Visiting privileges for a minister of record must be submitted directly to the Chaplaincy Services Department for review and approval/denial.

Whenever a person is deleted from or added to an inmate's visitor list, staff will update the list as soon as possible to reflect the change. A copy of the most current approved visiting list will be placed in section 3 of the Inmate Central File.

Likewise, if an inmate elects not to have any visitors, he or she will be asked to sign a visiting list indicating no visitors are requested. This form will be filed in section 3 of the Inmate Central File.

[(2) Staff may request background information from potential visitors who are not members of the inmate's immediate family, before placing them on the inmate's approved visiting list. When little or no information is available on the inmate's potential visitor, visiting may be denied, pending receipt and review of necessary information, including information which is available about the inmate and/or the inmate's offense, including alleged offenses.]

The Visitor Information form (BP-629) is used to request background information and obtain the visitor's consent to release information. This form will be filed in section 2 of the Privacy Folder in the Inmate Central File.

Regardless of the institution's security level, staff should obtain background information on potential visitors who are not immediate family members. This is required in the Medium, High, and Administrative institutions due to their greater security

needs. The Warden or designee may make an exception to this procedure when warranted.

Staff in institutions housing pretrial offenders are strongly encouraged to complete a background check (NCIC) on potential visitors due to limited information received on these individuals. Background checks may also be completed on immediate family members.

If the background information reveals that visitation privileges for the individual would present security concerns or disrupt the orderly running of the institution, the Warden may deny visiting privileges. Documentation reflecting this decision should be maintained in section 2 of the Privacy Folder in the Inmate Central File.

Refer to the Program Statement on Pretrial Inmates for additional information on visiting procedures for Pretrial Inmates.

[(3) If a background investigation is necessary before approving a visitor, the inmate shall be held responsible for mailing a release authorization to the proposed visitor. That form must be signed and returned to staff by the proposed visitor prior to any further action regarding visiting. Upon receipt of the authorization form, staff may then forward a questionnaire, along with the release authorization, to the appropriate law enforcement or crime information agency.]

The inmate is to mail the BP-629 to his or her proposed visitor(s). The proposed visitor must complete this form and mail it directly to the unit staff member responsible for processing the inmate's visiting list. Staff should advise the inmate to provide his or her proposed visitor with the staff member's name and address.

If necessary, staff will either send the Request for Conviction Information form (BP-311) to the appropriate law enforcement agency to gather additional background information or complete a background check using the National Crime Information Center (NCIC).

Visitor Information forms, Request for Conviction Information forms, and/or NCIC background information will be maintained in section 2 of the Privacy Folder of the Inmate Central File.

Ordinarily, when an inmate transfers from one institution to another, staff need not re-approve the visitors already contained on the inmate's visiting list. However, staff should review the visiting list to ensure the approved visitors are still appropriate. When possible, the unit team should be consulted prior to approval of a visitor not on the inmate's approved visiting list.

[(4) Staff shall notify the inmate of each approval or disapproval of a requested person for the visiting list. Upon approval of each visitor, staff shall provide the inmate with a copy of the visiting guidelines and with directions for transportation to and from the institution. The inmate is responsible for notifying the visitor of the approval or disapproval to visit and is expected to provide the approved visitor with a copy of the visiting guidelines and directions for transportation to and from the institution. The visiting guidelines shall include specific directions for reaching the institution and shall cite 18 U.S.C. 1791, which provides a penalty of imprisonment for not more than twenty years, a fine, or both for providing or attempting to provide to an inmate anything whatsoever without the knowledge and consent of the Warden.]

Refer to the Program Statement on Searching, Detaining, or Arresting Persons Other than Inmates, for information regarding contraband warning signs.

[(5) An inmate's visiting list may be amended at any time in accordance with the procedures of this section.

c. Verification of Special Visitor Credentials. Staff must verify the qualifications of special visitors. Staff may request background information and official assignment documentation from the potential visitor for this purpose.

d. Identification of Visitors. Staff shall verify the identity of each visitor (through driver's license, photo identification, etc.) prior to admission of the visitor to the institution.]

Photo Identification must be a valid state or government issued photo identification.

Visitors under the age of 16 who are accompanied by a parent or legal guardian and are exempt from this provision.

[e. Notification to Visitors. Staff shall make available to all visitors written guidelines for visiting the institution. Staff shall have the visitor sign a statement acknowledging that the guidelines were provided and declaring that the visitor does not have any article in his/her possession which the visitor knows to be a threat to the security of the institution. Staff may deny the visiting privilege to a visitor who refuses to make such a declaration.]

Visiting room staff are to make the institution's written guidelines for visiting available to visitors. The Notification to Visitor form (BP-224) may be retrieved via the Sallyport Policy/Forms intranet website.

[f. Searching Visitors. Staff may require a visitor to submit to a personal search, including a search of any items of personal property, as a condition of allowing or continuing a visit.]

Refer to the Program Statement on Searching, Detaining, or Arresting Persons Other than Inmates for additional instructions on this subject.

[g. Record of Visitors. The Warden shall maintain a record of visitors to each inmate. The visitor's signature may be required on that record and shall be required on at least one visiting log or record maintained by the institution.

h. Supervision of Visits. Staff shall supervise each inmate visit to prevent the passage of contraband and to ensure the security and good order of the institution. The Warden may establish procedures to enable monitoring of the visiting area, including restrooms located within the visiting area. The Warden must provide notice to both visitors and inmates of the potential for monitoring the visiting area. The Warden may monitor a visitor restroom within the visiting area when there is reasonable suspicion that a visitor and/or an inmate is engaged, or attempting or about to engage, in criminal behavior or other prohibited behavior.]

Visitor restrooms may be monitored physically only with the Warden's written approval, and only after it is determined that there is a reasonable suspicion that the visitor and/or inmate is engaged, or attempting to engage, in a criminal activity or other

prohibited behavior. Physical monitoring should be conducted by a person of the same sex as the visitor using the restroom. Other restrooms may be inspected and monitored as needed for security purposes.

Refer to the Program Statement on Searching, Detaining, or Arresting Persons Other than Inmates for further information regarding "reasonable suspicion."

[(1) The visiting room officer shall ensure that all visits are conducted in a quiet, orderly, and dignified manner. The visiting room officer may terminate visits that are not conducted in the appropriate manner. See 28 CFR §541.12, item 5, for description of an inmate's responsibility during visits.]

§541.12 refers to the Program Statement on Inmate Discipline and Special Housing Units. When terminating a visit, visiting room officers should consult with the Lieutenant or Institution Duty Officer.

[(2) Staff shall permit limited physical contact, such as handshaking, embracing, and kissing, between an inmate and a visitor, unless there is clear and convincing evidence that such contact would jeopardize the safety or security of the institution. Where contact visiting is provided, handshaking, embracing, and kissing are ordinarily permitted within the bounds of good taste and only at the beginning and at the end of the visit. The staff may limit physical contact to minimize opportunity for the introduction of contraband and to maintain the orderly operation of the visiting area.]

An inmate who has been approved for, and is awaiting placement in the ADX-Florence Control Unit, may be limited to non-contact visits.

[(3) The visiting room officer may not accept articles or gifts of any kind for an inmate, except packages which have had prior approval by the Warden or a designated staff member.]

All authorized items entering the visiting room must be carried in a clear plastic container/bag.

An inmate's visitor **may not** leave money with any staff member for deposit in the inmate's commissary account. Refer to the Trust Fund/Warehouse/Laundry Manual for additional information on accepting packages.

[(4) The visiting room officer shall be aware of any articles passed between the inmate and the visitor. If there is any reasonable basis to believe that any item is being passed which constitutes contraband or is otherwise in violation of the law or Bureau regulations, the visiting room officer may examine the item.]

An Associate Warden, the Institution Duty Officer, or the Captain will be notified in such cases.

19. [PENALTY FOR VIOLATION OF VISITING REGULATIONS \$540.52. Any act or effort to violate the visiting guidelines of an institution may result in disciplinary action against the inmate, which may include the denial of future visits, possibly over an extended period of time. Moreover, criminal prosecution may be initiated against the visitor, the inmate, or both, in the case of criminal violations.]

In an effort to eliminate the introduction of drugs and drug paraphernalia into Bureau institutions, the Bureau will seek criminal prosecution against visitors who participate in contraband violations. Additionally, as a disincentive for inmates found guilty of these violations, the Discipline Hearing Officer (DHO) or Unit Discipline Committee (UDC), may impose the loss of visiting privileges as a sanction.

Refer to the Program Statement on Inmate Discipline and Special Housing Units for information regarding loss of visiting privileges resulting from disciplinary action.

20. **VISITING REGULATIONS REGARDING PETS.** Visitors are precluded from bringing animals onto institutional grounds, except for animals that assist persons with disabilities. The visitor must provide staff with certification that the animal is trained for that purpose.

21. **INSTITUTION SUPPLEMENT.** Each institution will develop local procedures and guidelines required to administer this Program Statement. The institution will involve the Regional Office, Correctional Programs Administrator, in developing the Institution Supplement.

The Institution Supplement must be available in English and Spanish.

The Institution Supplement will include, at a minimum, the following considerations:

- The visiting schedule for the institution, including all of its components (e.g., satellite camp, jail, etc.), if they differ;
- Holdover visiting procedures (time frame for approval; who is permitted to visit, etc.);
- Procedures addressing special visitors (i.e., minister of record and clergy visits);
- Procedures for disapproving proposed visitors;
- Procedures for approving any exception to the prior relationship requirement;
- The method by which staff will make written guidelines available to visitors;
- Limitations specific to the institution, (e.g., visiting space, frequency of visits, number of visitors);
- Identify staff responsible for arranging and supervising special visits;
- Procedures to maintain a record of visitors for each inmate;
- Procedures for a backup system to the computer visiting program;
- Facility address/phone number, directions to the facility, and information about local transportation;
- Days and hours of visitation;
- Approved dress code;
- Identification requirements for visitors;
- Items authorized in the visiting room;
- Special rules for children;
- Authorized items that visitors may bring to give to the inmate, if applicable;
- Special visit requirements;
- Procedures for storing items not authorized in the visiting room (i.e., cellphones, car keys, handbags, etc);

- Visiting procedures for inmates assigned to the Special Housing Unit;
- Visiting procedures for inmates hospitalized in the community;
- Procedures for child areas (i.e. whether inmates are permitted in areas designated for children);
- The size and quantity of any clear plastic container/bag used to carry authorized items into a visiting room;
- Procedures for the use of non-contact visiting areas (if available);
- Procedure to ensure the maximum capacity of the visiting room is not exceeded (i.e. early termination due to overcrowding); and
- Procedures addressing frequency of changes to the inmate(s) visiting list.

/s/
Harley G. Lappin
Director

EXHIBIT 15

proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points*, signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 5000 General.

* * * * *

AAL AK D Big Delta, AK [Removed]

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Paragraph 6002 Class E Airspace Designated as Surface Areas.

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AAL AK E2 Big Delta, AK [Removed]

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Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

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AAL AK E4 Big Delta, AK [Removed]

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Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

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AAL AK E5 Big Delta, AK [Removed]

Issued in Anchorage, AK, on March 9, 2010.

Anthony M. Wylie,
Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010-7775 Filed 4-5-10; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP Docket No. 1148-P]

RIN 1120-AB48

Communication Management Units

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) proposes to establish and describe Communication Management Units (CMUs) by regulation. CMUs are designed to provide an inmate housing unit environment that enables staff monitoring of all communication between CMU inmates and persons in the community. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protect the public. The Bureau currently operates CMUs in two of its facilities. This rule would clarify existing Bureau practices with respect to CMUs.

DATES: Comments are due by June 7, 2010.

ADDRESSES: Written comments should be submitted to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534. You may view an electronic version of this regulation at www.regulations.gov. You may also comment by using the www.regulations.gov comment form for this regulation. When submitting comments electronically you must include the BOP Docket No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS

INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on www.regulations.gov.

Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Discussion

This proposed rule codifies and describes the Bureau’s procedures for designating inmates to, and limiting communication within, its Communication Management Units (CMU). Currently, the Bureau operates two CMUs, separately located at the Federal Correctional Complex (FCC), Terre Haute, Indiana (established in December 2006), and the United States Penitentiary (USP), Marion, Illinois (established in March 2008).

Current regulatory authority. The Bureau currently has regulatory authority to restrict the communications of high-risk inmates. *See, e.g.* 28 CFR 540.12 (authorizing Wardens to establish and exercise controls to protect individuals, security, discipline, and the good order of the institution); 28 CFR 540.14 (a) (indicating that institution staff shall open and inspect all incoming general correspondence.); 28 CFR 540.100 *et seq.* (authorizing limitations upon an inmate’s telephone privileges consistent with ensuring the security or good order of the institution or protection of the public, and authorizing Wardens to establish procedures that enable monitoring of telephone conversations); 28 CFR 540.40, *et seq.* (authorizing Wardens to limit inmate visiting when necessary to ensure the security and good order of the institution).

Purpose of the CMU regulations. The CMU regulations establish specific parameters for Bureau staff when operating CMUs while putting inmates and the public on notice of CMU operation.

The purpose of CMUs is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between CMU inmates

and persons in the community. The CMU concept allows the Bureau to monitor inmates for whom such monitoring and communication limits are necessary, whether due to a terrorist link or otherwise, such as inmates who have previously committed an infraction related to mail tampering from within an institution, or inmates who may be attempting to communicate with past or potential victims. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protect the public. The volume, frequency, and methods of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart.

A CMU is a general population housing unit where inmates will ordinarily reside, eat, and participate in educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.

Under this regulation, initial consideration of inmates for CMU designation begins when the Bureau becomes aware of information relevant to the criteria described in § 540.201. The Bureau's Assistant Director, Correctional Programs Division, will then make a determination based on a review of the evidence presented, and a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public.

Upon arrival at the designated CMU, inmates will receive written notice from the Warden of the facility in which the CMU exists. The written notice will explain that designation to a CMU allows greater Bureau staff management of communication with persons in the community through complete monitoring of telephone use, written correspondence, and visiting. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart. The written notice will also explain that general conditions of confinement in the CMU may be limited as necessary to provide greater management of communications, and that designation to the CMU is not punitive and, by itself, has no effect on the length of the inmate's incarceration. CMU inmates

continue to earn sentence credit in accordance with law and Bureau policy.

Through the written notice, inmates will also be informed that designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate will be provided an explanation of the decision in sufficient detail, unless providing specific information would jeopardize the safety, security, or orderly operation of the facility, or protection of the public.

Continued designation to the CMU will be reviewed regularly by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates. The inmate may challenge the CMU designation decision and any aspect of confinement therein, through the Bureau's administrative remedy program. While this regulation may allow for limiting the communication of inmates to whom it is applied, it will not extinguish their monitored communication abilities absent abuse or violations committed by the inmate.

With this regulation, the Bureau seeks, when warranted, on a case-by-case basis, to more effectively monitor communication while still accommodating the rights guaranteed by the First Amendment to petition for redress of grievances. By limiting the communications of these inmates, the Bureau seeks to balance First Amendment rights with its correctional mission.

The proposed regulation would clarify current authority for imposing limits and restrictions on the communications of inmates in the Bureau's custody based on evidence, either from outside sources (such as other federal agencies) or from internal sources (such as intelligence gained through observation of inmates in Bureau custody). Communications would be limited if such evidence indicates, inter alia, a high degree of potential risk to national security.

The approach of this rule will also provide a more effective means to implement a previously-published proposed rule (BOP Docket No. 1135) providing for limiting the communication opportunities of inmates who are: (1) Charged with, convicted of, or detained in relation to an offense under title 18 U.S. C. chapters 113B or 115; or (2) charged with having engaged in, have engaged in, are detained in relation to, or are linked in any way to terrorist-related

activity as part of their current or previous offense conduct or conduct while incarcerated.

BOP 1135 contemplated limiting the communications of inmates in a general population prison setting who were identified as having an identifiable link to terrorist-related activity. It is difficult to police inmate communication in the "open" context of a general population setting because it is harder to detect activity such as inmates sending mail under another inmate's name, or using another's PIN number, without constant monitoring.

By physically separating out the properly classified prisoners who need comprehensive monitoring, and involving the Assistant Director of the Bureau's Correctional Programs Division in addition to the Warden in the initial decision to restrict communications, we hope to lessen any adverse impact on the vast majority of the other prisoners not subject to comprehensive monitoring but still only subject to random monitoring.

After taking into consideration any public comment received after publication of this proposed rule, the Bureau will adopt a consolidated final rule.

This regulation, however, will be applied differently from regulations in 28 CFR part 501, which authorize the Attorney General to impose special administrative measures (SAMs). Under 28 CFR part 501, SAMs are imposed after approval by the Attorney General and are generally based on information from the FBI and the U.S. Attorney's Office (USAO), but are typically not based solely on information from internal Bureau of Prisons sources. Unlike 28 CFR part 501, the proposed regulations allow the Bureau to impose communication limits based on evidence from FBI or another federal law enforcement agency, or if Bureau of Prisons information indicates a similar need to impose communication restrictions, evidence which does not rise to the same degree of potential risk to national security or risk of acts of violence or terrorism which would warrant the Attorney General's intervention by issuance of a SAM.

Furthermore, while SAMs have the potential to restrict communication entirely, this regulation delineates a floor of limited communication, beneath which the Bureau cannot restrict unless precipitated by the inmate's violation of imposed limitations, and then only as a disciplinary sanction following due process procedures in 28 CFR part 541.

Also, the comprehensive monitoring provided by the new regulation would lead to greater protection for the public,

since reconstruction of communications from random monitoring may not provide a full scenario if dangerous communications are discovered.

Likewise, there would be greater protection for inmates as a result of the new proposed rule. The initial decision regarding which inmates to more closely monitor is made by the Assistant Director of the Bureau's Correctional Programs Division, who has a broad scope of authority and a global understanding of the security concerns prevalent in the Bureau's correctional setting. In addition, the inmate can challenge this classification-based treatment decision through the Bureau's administrative remedy program. Further, the CMU inmate's regular inmate associates will not be general population inmates. In the new proposed rule, the only inmates being specially monitored are the inmates placed in the CMU.

Further, CMU monitoring would result in a fuller record that would more readily show whether an inmate's use of words may have been taken out of context and whether the inmate might not need to remain under close communications scrutiny.

Another advantage of CMU monitoring is that closer scrutiny and finer monitoring distinctions can be applied or removed in "stages" from the defined CMU inmate population, so that work and leisure opportunities can be adjusted for the population instead of simply excluding them from such opportunities. Also, consolidating high-risk inmates in the CMU would make it more operationally feasible to minimize the adverse consequences such as the communication delay to the monitored inmates, since the marshaling and organizing of resources into a standard approach should make it easier for translators and officials responding to requests for special exceptions to act quickly.

Under the proposed regulation, inmates may be designated to a CMU if:

- The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;
- The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a propensity to encourage, coordinate, facilitate, or otherwise act in furtherance of, illegal activity through communication with persons in the community;
- The inmate has attempted, or indicates a propensity, to contact victims of the inmate's current offense(s) of conviction;

- The inmate committed a prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or

- There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

One important category of inmates which might be designated to a CMU is inmates whose current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism. Past behaviors of terrorist inmates provide sufficient grounds to suggest a substantial risk that they may inspire or incite terrorist-related activity, especially if communicated to groups willing to engage in or to provide equipment or logistics to facilitate terrorist-related activity. The potential ramifications of this activity outweigh the inmate's interest in unlimited communication with persons in the community.

Communication related to terrorist-related activity can occur in codes which are difficult to detect and extremely time-consuming to interpret. Inmates involved in such communication, and other persons involved or linked to terrorist-related activities, take on an exalted status with other like-minded individuals. Their communications acquire a special level of inspirational significance for those who are already predisposed to these views, causing a substantial risk that such recipients of their communications will be incited to unlawful terrorist-related activity.

The danger of coded messages from prisoners has been recognized by the courts. *See Turner v. Safley*, 482 U.S. 78, 93 (1987) ("In any event, prisoners could easily write in jargon or codes to prevent detection of their real messages."); *United States v. Salameh*, 152 F.3d 88, 108 (2nd Cir. 1998) ("Because Ajaj was in jail and his telephone calls were monitored, Ajaj and Yousef spoke in code when discussing the bomb plot."); *United States v. Johnson*, 223 F.3d 665, 673 (7th Cir. 2000) ("And we know that anyone who has access to a telephone or is permitted to receive visitors may be able to transmit a lethal message in code."); *United States v. Hammoud*, 381 F.3d 316, 334 (4th Cir. 2004) ("A conversation that seems innocuous on one day may later turn out to be of great significance, particularly if the individuals are talking in code."); *United States v. Moncivais*, 401 F.3d 751, 757 (6th Cir. 2005) (noting that

seemingly nonsensical conversations could be in code and interpreted as indicative of drug dealing activity). Also, an Al Qaeda training manual contains the following advice regarding communications from prison: "Take advantage of visits to communicate with brothers outside prison and exchange information that may be helpful to them in their work outside prison. The importance of mastering the art of hiding messages is self evident here."

There have been cases of imprisoned terrorists communicating with their followers regarding future terrorist activity. For example, after El Sayyid Nosair assassinated Rabbi Kahane, he was placed in Rikers Island, where "he began to receive a steady stream of visitors, most regularly his cousin El-Gabrownny, and also Abouhalima, Salameh, and Ayyad. During these visits, as well as subsequent visits once Nosair was at Attica, Nosair suggested numerous terrorist operations, including the murders of the judge who sentenced him and of Dov Hikind, a New York City Assemblyman, and chided his visitors for doing nothing to further the jihad against the oppressors. Nosair also tape recorded messages while in custody * * * *United States v. Rahman*, 189 F.3d 88, 105-06 (2d Cir. 1999). Imprisoned, Sheikh Abdel Rahman had urged his followers to wage jihad to obtain his release. Violent attacks and murders followed. *United States v. Sattar*, 314 F.Supp.2d 279, 288-89 (S.D.N.Y. 2004).

To minimize the risk of terrorist-related communication and other similar dangerous communication to or from inmates in Bureau custody, this regulation clarifies the Bureau's current authority to limit and monitor the communication of CMU inmates to immediate family members, U.S. courts, federal judges, U.S. Attorney's Offices, members of U.S. Congress, the Bureau, other federal law enforcement entities, and the inmate's attorney. The Bureau allows communication with these individuals to help inmates maintain family ties, and protect inmates' access to courts and other government officials in order to raise issues related to their incarceration or their conditions of confinement, while minimizing potential internal or external threats.

Particular consideration has also been given to the ability of CMU inmates to communicate via special mail. Special mail is defined in 28 CFR part 540. For the purposes of CMUs, however, this rule would limit special mail to privileged communication with the inmate's attorney. Correspondence from the correspondents listed in 28 CFR 540.2(c) as "special correspondence,"

other than attorneys. (e.g. President and Vice President of the United States, the Department of Justice, members of Congress, Governors, State legislatures, courts, media etc.) will be treated as "general correspondence" for the purposes of CMUs. There is no frequency or volume limitation on correspondence with an inmate's attorney, unless necessary as a result of the inmate's abuse or violation of these regulations.

To effectively and efficiently allow monitoring and review of the general correspondence communications of CMU inmates, those communications may be limited in frequency and volume as follows:

- Written correspondence may be limited to three pieces of paper, double-sided, once per week to and from a single recipient;
- Telephone communication may be limited to a single completed call per calendar month for up to 15 minutes; and
- Visiting may be limited to one hour each calendar month.

Unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations, there is no frequency or volume limitation on written correspondence with the following entities: U.S. courts, Federal judges, U.S. Attorney's Offices, Members of U.S. Congress, The Bureau of Prisons, other federal law enforcement entities, or, as stated earlier, the inmate's attorney (privileged communications only). Correspondence with these entities is not limited under these regulations in furtherance of inmates' access to courts and their ability to defend in litigation.

By limiting the frequency and volume of the communication to/from inmates identified under this regulation, we will reduce the amount of communication requiring monitoring and review. Reducing the volume of communications will help ensure the Bureau's ability to provide heightened scrutiny in reviewing communications, and thereby increasing both internal security within correctional facilities, and the security of members of the public.

Inmates may incur additional limitations on their communications as the direct result of abusing or violating individualized communication limits imposed under this subsection, but additional limitations will occur only to the extent possible under this regulation and according to the procedures in this subsection. Unmonitored communications with verified attorneys may be limited in the form of monitoring only as provided in 28 CFR

part 501 (regarding national security cases and prevention of acts of violence and terrorism) and part 543 (regarding inmate legal activities). Inmates may also be subject to disciplinary action or criminal prosecution for abusing or violating limits imposed under this subsection.

Executive Order 12866

This regulation falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB. The Bureau of Prisons has assessed the costs and benefits of this regulation as required by Executive Order 12866 Section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. There will be no new costs associated with this regulation.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders and immigration detainees committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 540

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 540 as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. Chapters 113b and 115, 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 530C(b)(6).

2. Add a new subpart J, to read as follows:

SUBPART J—COMMUNICATION MANAGEMENT HOUSING UNITS

Sec.	
540.200	Purpose and scope.
540.201	Designation criteria.
540.202	Designation procedures.
540.203	Written correspondence limitations.
540.204	Telephone communication limitations.
540.205	Visiting limitations.

§ 540.200 Purpose and scope.

(a) *Purpose of this subpart.* This subpart authorizes and defines the Federal Bureau of Prisons' (Bureau) authority to operate, and designate inmates to, Communication Management Housing Units (CMUs) within Bureau facilities.

(b) *CMU.* A CMU is a general population housing unit where inmates

ordinarily reside, eat, and participate in all educational, recreational, religious, visiting, unit management, and work programming, within the confines of the CMU. Additionally, CMUs may contain a range of cells dedicated to segregated housing of inmates in administrative detention or disciplinary segregation status.

(c) *Purpose of CMUs.* The purpose of CMUs is to provide an inmate housing unit environment that enables staff to more effectively monitor communication between CMU inmates and persons in the community. The ability to monitor such communication is necessary to ensure the safety, security, and orderly operation of correctional facilities, and protect the public. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart.

(d) *Application.* Any inmate (as defined in 28 CFR § 500.1(c)) meeting criteria prescribed by this subpart may be designated to a CMU.

(e) *Relationship to other regulations.* The regulations in this subpart supercede and control to the extent they conflict with, are inconsistent with, or impose greater limitations than the regulations in 28 CFR Part 540, or any other regulations in this chapter, except 28 CFR Part 501.

§ 540.201 Designation criteria.

Inmates may be designated to a CMU if evidence of the following criteria exists:

(a) The inmate's current offense(s) of conviction, or offense conduct, included association, communication, or involvement, related to international or domestic terrorism;

(b) The inmate's current offense(s) of conviction, offense conduct, or activity while incarcerated, indicates a propensity to encourage, coordinate, facilitate, or otherwise act in furtherance of, illegal activity through communication with persons in the community;

(c) The inmate has attempted, or indicates a propensity, to contact victims of the inmate's current offense(s) of conviction;

(d) The inmate committed prohibited activity related to misuse/abuse of approved communication methods while incarcerated; or

(e) There is any other evidence of a potential threat to the safe, secure, and orderly operation of prison facilities, or protection of the public, as a result of the inmate's communication with persons in the community.

§ 540.202 Designation procedures.

Inmates may be designated to CMUs only according to the following procedures:

(a) *Initial consideration.* Initial consideration of inmates for CMU designation begins when the Bureau becomes aware of information relevant to the criteria described in § 540.201.

(b) *Assistant Director authority.* The Bureau's Assistant Director, Correctional Programs Division, has authority to approve CMU designations. The Assistant Director's decision must be based on a review of the evidence, and a conclusion that the inmate's designation to a CMU is necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public.

(c) *Written notice.* Upon arrival at the designated CMU, inmates will receive written notice from the facility's Warden explaining that:

(1) Designation to a CMU allows greater Bureau staff management of communication with persons in the community through complete monitoring of telephone use, written correspondence, and visiting. The volume, frequency, and methods, of CMU inmate contact with persons in the community may be limited as necessary to achieve the goal of total monitoring, consistent with this subpart;

(2) General conditions of confinement in the CMU may also be limited as necessary to provide greater management of communications;

(3) Designation to the CMU is not punitive and, by itself, has no effect on the length of the inmate's incarceration. CMU inmates continue to earn sentence credit in accordance with law and Bureau policy.

(4) Designation to the CMU follows the Assistant Director's decision that such placement is necessary for the safe, secure, and orderly operation of Bureau institutions, or protection of the public. The inmate will be provided an explanation of the decision in sufficient detail, unless providing specific information would jeopardize the safety, security, and orderly operation of correctional facilities, or protection of the public.

(5) Continued designation to the CMU will be reviewed regularly by the inmate's Unit Team under circumstances providing the inmate notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates.

(6) The inmate may challenge the CMU designation decision, and any aspect of confinement therein, through

the Bureau's administrative remedy program.

§ 540.203 Written correspondence limitations.

(a) *General correspondence.* General written correspondence as defined by Part 540, may be limited to three pieces of paper (not larger than 8.5 x 11 inches), double-sided writing permitted, once per calendar week, to and from a single recipient at the discretion of the Warden, except as stated in (c) below. This correspondence is subject to staff inspection for contraband and for content.

(b) *Special mail.*

(1) Special mail, as defined in Part 540, is limited to privileged communication with the inmate's attorney.

(2) All such correspondence is subject to staff inspection in the inmate's presence for contraband and to ensure its qualification as privileged communication with the inmate's attorney. Inmates may not seal such outgoing mail before giving it to staff for processing. After inspection for contraband, the inmate must then seal the approved outgoing mail material in the presence of staff and immediately give the sealed material to the observing staff for further processing.

(c) *Frequency and volume limitations.* Unless the quantity to be processed becomes unreasonable or the inmate abuses or violates these regulations, there is no frequency or volume limitation on written correspondence with the following entities:

- (1) U.S. courts;
- (2) Federal judges;
- (3) U.S. Attorney's Offices;
- (4) Members of U.S. Congress;
- (5) The Bureau of Prisons;
- (6) Other federal law enforcement entities; or

(7) The inmate's attorney (privileged communications only).

§ 540.204 Telephone communication limitations.

(a) *Monitored telephone communication* may be limited to immediate family members only. The frequency and duration of telephone communication may also be limited to a single connected call per calendar month, lasting no longer than 15 minutes. The Warden may require such communication to be in English, or translated by an approved interpreter.

(b) *Unmonitored telephone communication* is limited to privileged communication with the inmate's attorney. Unmonitored privileged telephone communication with the inmate's attorney is permitted as

necessary in furtherance of active litigation, after establishing that communication with the verified attorney by confidential correspondence or visiting, or monitored telephone use, is not adequate due to an urgent or impending deadline.

§ 540.205 Visiting limitations.

(a) *Regular visiting* may be limited to immediate family members. The frequency and duration of regular visiting may also be limited to a one hour visit each calendar month. The number of visitors permitted during any visit is within the Warden's discretion. Such visits must occur through non-contact visiting facilities.

(1) Regular visits may be simultaneously monitored and recorded, both visually and auditorily, either in person or electronically.

(2) The Warden may require such visits to be conducted in English, or simultaneously translated by an approved interpreter.

(b) *Attorney visiting* is limited to attorney-client privileged communication as provided in Part 540. These visits may be visually, but not auditorily, monitored. Regulations and policies previously established under 28 CFR part 543 are applicable.

(2) For convicted inmates (as defined in 28 CFR part 551), regulations and policies previously established under 28 CFR part 543 are applicable.

[FR Doc. 2010-7728 Filed 4-5-10; 8:45 am]

BILLING CODE 4410-05-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2010-0109]

RIN 1625-AA00

Safety Zone; Big Bay Fourth of July Fireworks, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone on the navigable waters of the San Diego Bay in support of the Big Bay July Fourth Show to Benefit the San Diego Armed Services YMCA. This temporary safety zone is necessary to provide for the safety of crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or

anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before May 6, 2010. Requests for public meetings must be received by the Coast Guard on or before May 6, 2010.

ADDRESSES: You may submit comments identified by docket number USCG-2010-0109 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7262, e-mail Corey.R.McDonald@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2010-0109), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG-2010-0109" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2010-0109" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on

EXHIBIT 16

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

YASSIN MUHIDDIN AREF

and

DANIEL MCGOWAN

and

ROYAL JONES

and

KIFAH JAYYOUSI

VS.

ERIC HOLDER, Attorney General
of the United States

and

CHARLES E. SAMUELS, Director
of the Federal Bureau of
Prisons (BOP)

and

D. SCOTT DODRILL
Assistant Director, Correctional
Programs Division, Federal
Bureau of Prisons

and

LESLIE S. SMITH, Chief,
Counter Terrorism Unit,
Federal Bureau of Prisons

CIVIL ACTION NO.
1:10-cv-0053-BJR

(TITLE CONTINUED)

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and
FEDERAL BUREAU OF PRISONS

-----X

CONFIDENTIAL
PURSUANT TO THE PROTECTIVE ORDER

DEPOSITION OF LESLIE SCOTT SMITH
Friday, December 13, 2013; 9:06 a.m.

Reported by:
Cindy L. Sebo
Ref. No.: 10853

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2 So that was basically -- it was the
3 recommendation of the OIG audit.

4 Q. And can you describe in general terms
5 what -- what work the CTU does?

6 A. We monitor, analyze inmate
7 communications. We have identified a certain
8 segment of the Bureau of Prisons inmate
9 population that we monitor. I have 15
10 intelligence analysts; that's their
11 responsibility is to monitor the inmate
12 communications. I have assigned caseloads. I
13 have two staff in the Bureau of Prisons.

14 We manage the language translation
15 program for the entire agency. I have two staff
16 members that run that program for me.

17 We provide -- create and provide
18 relevant training to internal and external
19 agencies, internal BOP, external agencies,
20 produce intelligence reports, intelligence
21 bulletins, what we call "intelligence summaries,"
22 which are submitted to the -- basically, the
23 Federal law enforcement community.

24 That's basically the mission in my
25 office.

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2 every single person who was -- who was it who
3 communicated to you the information you needed to
4 know about the CMUs so that you could do your job
5 as chief of CTU?

6 A. I guess when they actually asked me
7 to, basically, we're going to have this unit
8 called communications management unit; we need to
9 determine -- I need nominees or inmates that
10 we're going to place there. My office, myself
11 and David Schiavone, we actually came up with the
12 approximately 40 candidates. We submitted it;
13 that was the end of my involvement on that.

14 Now, to answer your question about
15 the CMU, I would imagine it was heavily with
16 North Central Regional Office and the actual
17 facility, because, I mean, officers are going to
18 go in and get the unit back online, it's going to
19 take work from the local institution staff.
20 North Central Region is going to be funding the
21 money.

22 But I had no involvement in that. I
23 mean, that's just me thinking how the process
24 would probably work.

25 Q. I understand.

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2 But who was it that told you this is
3 what the CMU is; this is how it's going to work?

4 A. I don't recall now. That was 2006.
5 Like I said, I remember talking to Kim Williams
6 about -- she would call me. It's like how can we
7 move the inmates from Point A to Point B without
8 having contact with other inmates?

9 But other than that, I don't -- I
10 only remember them saying during the meetings on
11 CTU. I don't even remember recalling them
12 saying, all right, we're finished with the CTU
13 portion; we're going to move on to CMU. I don't
14 even remember that. I just think we have a good
15 concept on CTU; we'll see you later.

16 That's basically what it is per my
17 involvement.

18 Q. Okay. So did anyone provide you with
19 any information or training to help you figure
20 out who should be going to a CMU and who should
21 not?

22 A. No.

23 Q. Were you provided with any written
24 materials about the CMUs when they first opened?

25 A. No.

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2 have computers, come to think of it, to be able
3 to conduct the research.

4 But it was probably a typed memo that
5 we submitted, these are the 40 candidates. There
6 was no referral packages completed back then, not
7 that I recall.

8 Q. Did you receive any instructions as
9 to how to identify those initial candidates?

10 A. No, other than the initial wave that
11 we looked at were international terrorists,
12 because the OIG audit was conducted on
13 international terrorists.

14 Q. Were you specifically told that that
15 is the category of prisoner you should be looking
16 at?

17 A. I don't recall that, no.

18 Q. And, presumably, there were more than
19 40 terrorists, convicted terrorists, in BOP
20 custody at the time.

21 Were you given any sort of criteria
22 or instructions about how to identify which of
23 that larger group of prisoners to nominate for
24 the CMU?

25 A. No.

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2 this memo?

3 A. No, I don't.

4 Q. The CMU at Terre Haute had already
5 existed for over a year once this proposal was
6 generated; is that right?

7 A. That's correct.

8 Q. So was there a process in place
9 before this memo was issued to get CMU
10 nominations from around the country?

11 A. Not that I'm aware of.

12 Q. So the memo, the last paragraph of
13 the memo, states that BOP staff -- if BOP staff
14 become aware of -- of inmates who may meet the
15 CMU criteria, they should contact you for CMU
16 referral information and procedures.

17 So what kind of referral information
18 and procedures does that refer to?

19 A. The referral information will -- like
20 I said, I needed the supporting documentation.
21 They would prepare a memo, like a cover memo.
22 They would have their supporting documentation.
23 Again, we required the inmate's presentence
24 investigation; the statement and reasons, known
25 as SOR; J&C was judgment and commitment file; we

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2 would require any investigations that were
3 generated off this -- you know, why they feel the
4 inmate qualifies -- a disciplinary history on the
5 inmate.

6 That's the supporting documentation
7 that we're looking for.

8 Q. And so is it the role of the party
9 nominating someone to collect all of that and get
10 it to you, or do they get you a name, and then
11 you gather all that information?

12 A. If the warden were to contact me, I
13 would say, Warden, this is what we need. The
14 warden isn't going to do it. He will have it
15 delegated to somebody. We would eventually get
16 it.

17 The majority of the information comes
18 from what we call the "CMC," the case management
19 coordinator, that would be all the -- like the
20 PSI, the J&C, the SOR, the investigative reports;
21 disciplinary reports would come from SIS. They
22 would compile the information. Some institutions
23 had SIS write the cover memo and the warden
24 signed it. Some institutions had, you know,
25 management write it. It didn't matter to me.

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2 Q. All right.

3 Let's talk a little bit more about
4 the criteria for CMU placement.

5 So we've talked today about how the
6 initial category -- and correct any -- anything I
7 say that -- that misrepresents anything we've
8 discussed -- we talked about how the initial
9 category was inmates with terrorist convictions
10 and that ultimately there were new categories
11 added on over the years.

12 Now, am I right in thinking that you
13 did have a role in sort of developing these
14 criteria?

15 A. Yes.

16 Q. And tell me a little bit more about
17 how you came up with these criteria.

18 A. It was basically the type of the
19 inmate referrals that we were receiving. When we
20 started receiving these sex offenders referrals,
21 inmates who have sex offender convictions, who
22 were attempting to reach out and contact their
23 victims -- once we identified several of those,
24 you know, in the referral process, we recommended
25 for placement in CTU or CMU; and it was approved.

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2 After two or three of them, it's like
3 maybe this is something that we need to consider
4 and have in one of our criteria for -- for who's
5 eligible. And that's how that one evolved.

6 And like I said, first, it was sex
7 offenders, and then we had some inmates that were
8 writing out, threatening judges.

9 So we changed that from basically sex
10 offenders to any inmate that's writing out,
11 trying to contact a witness, a victim, et cetera.

12 That's basically how those -- I mean
13 it just -- once we started receiving the inmates
14 that were doing these specific instances, we
15 incorporated it.

16 Q. Okay. Do you remember when you added
17 the sex offender category?

18 A. No.

19 Q. How about then you said it expanded
20 to anyone trying to contact witnesses or victims.

21 Do you remember when that was added?

22 A. No.

23 Q. Okay. Then were the -- what were
24 the -- what was the next category that was added?

25 A. Well, I don't remember the sequence,

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2 sir.

3 I know another one is where the
4 inmates are circumventing the established
5 communication procedures. That could be anything
6 from a possession of a cell phone within inside
7 the facility, where they're directing drug
8 activities. It can be where they're actually
9 brazen enough to just use the institution phone
10 to conduct drug activities or illegal acts.

11 Just once we started -- like I
12 receive a referral, and it's like, yeah, this is
13 something that we need to look at. How many
14 other inmates are out there?

15 Sovereign citizens, attempting to
16 gain information or glean information on staff
17 members. So they can follow their leads.

18 Again, we evolved to that.

19 Q. And as you are adding these
20 categories, was that being documented anywhere?

21 A. Yes, we have a documentation that's
22 in the memo.

23 Q. Right.

24 We'll get to that. And I know,
25 ultimately, there is a memo that said these are

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2 the five categories.

3 But it sounds like over time those --
4 those categories were being added on one by one.

5 So was that -- as they were being
6 added, was it documented anywhere?

7 A. From Ms. Conley's memo in 2008, where
8 she basically states in here -- The CMU was
9 established to house inmates who, due to their
10 current offense or conviction, offense conduct or
11 other verified information, requiring enhanced
12 [verbatim] monitoring of all communications with
13 persons in the community.

14 That's a pretty generic statement, I
15 realize that, but that was in '08. That's the
16 first time that I can think of that something
17 like that was actually documented.

18 We've done what we call "briefing
19 bulletins" for the executive staff over
20 the years. We've incorporated -- you know, as
21 we've expanded out, that's the only time I can
22 remember is when, like internally the briefing
23 bullets, did they go out to all facilities,
24 something in this type of a memorandum, not till,
25 I -- want to say -- Mr. Dodrill did the memo

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2 that -- there was a gap in that time frame.

3 Q. Okay. Sir, is it fair to say that
4 until March 2008 -- or, actually, let me strike
5 that.

6 Until that Dodrill memo that you
7 referred to, the only guidance people had
8 throughout the BOP in terms of who to nominate
9 was this memo here (indicating), this 2008 memo
10 from Ms. Conley?

11 A. To my knowledge, yes.

12 Q. Okay. I want to direct your
13 attention to a document that was previously
14 marked as Exhibit 36.

15 MR. CARTIER: Thank you.

16 BY MR. AGATHOCLEOUS:

17 Q. Here you go.

18 This is a document entitled,
19 communications management unit.

20 Do you recognize this document?

21 A. Yes.

22 Q. What is it?

23 A. If I remember correctly, this is the
24 briefing bullets I was talking about earlier. We
25 have in -- in Correctional Programs Division, or

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2 CPD, we maintain a booklet -- or let me retract
3 that.

4 The division maintains a booklet
5 which is called the "briefing booklet." And it's
6 for the exec staff. So let's say I get new
7 senior deputy assistant director and a new
8 assistant director in, each division underneath
9 his branch, his area he's responsible for, they
10 have briefing booklets. And, to my knowledge,
11 that's what this is (indicating).

12 Well, if you look on the back, it
13 says "CMU talking points." That's the briefing
14 booklet.

15 Q. And do you know who authored this
16 document?

17 A. It depends on what version they have.
18 Some we authored. Others that are actually --
19 we've discovered in the booklet that somebody
20 actually altered it. We wrote the initial one.
21 But there's been versions in that booklet that
22 I've discovered that didn't come from my office,
23 and I don't know who does it.

24 Q. Who would have authority or ability
25 to alter this kind of a document?

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2 submitted.

3 Q. And who would you send those
4 corrections to?

5 A. My boss, Mr. Eternick.

6 Q. Okay. And do you remember following
7 up to make sure that the corrections had been
8 made?

9 A. No.

10 Q. Would it be erroneous for individuals
11 involved in the designation process to use these
12 criteria or use this document (indicating) in
13 reaching their decision or recommendation about
14 whether someone belongs in a CMU?

15 A. When you say "designation process" --

16 Q. Well, anyone who is reviewing --
17 who's involved in -- in reviewing whether someone
18 should be sent to the CMU, if they were using
19 this document to make this decision, would that
20 be erroneous?

21 A. No, because this was a -- these were
22 bullets for the exec staff. At that time, they
23 weren't involved in the -- even to this day,
24 unless there's a -- a -- a disagreement. But
25 even to this day, the exec staff aren't CPD,

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2 Correctional Programs Division, and that's what
3 this briefing bullet is for is the Correctional
4 Programs Division.

5 This is not for the regional director
6 nor North Central. It's not even shared with
7 OGC, who is doing the review process. So I don't
8 see it as a concern.

9 Q. Okay.

10 A. Now, there may be some wordsmithing,
11 but the gist of this is basically the same.

12 Q. Would it surprise you to learn that
13 staff involved in the designation process used
14 this document to make their decisions about
15 designations to the CMU?

16 A. My -- and my question would be what
17 staff.

18 Q. Staff at the North Central Regional
19 Office.

20 A. Then I wasn't aware of that.

21 Q. Does it surprise you to learn that?

22 A. I'm not going to say "surprised." I
23 just wasn't aware of it. I'm not -- I'm not
24 involved in the North Central. They have their
25 own review process, their own separate world from

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2 A. There may be. But I'm not -- off the
3 top of my head, I can't think of any right now.

4 Q. So by my read, the criteria in here
5 are fairly broad.

6 So let's take a look at the first
7 one, 2(a). This includes any inmate whose
8 conviction or offense conduct included
9 association, communication or involvement related
10 to international or domestic terrorism.

11 So, presumably, that involves a fair
12 number of BOP inmates.

13 So once an inmate falls into this
14 category and is identified as such, how do you
15 decide whether or not they should go to the
16 CMU -- that you're going to refer them to the
17 CMU?

18 A. Make the referral?

19 Q. Yeah.

20 A. We look -- we look at the incident
21 offense; in other words, what their actual crime
22 was -- the PSI provides quite a bit of
23 information, background on the inmate, what his
24 involvement was in the crime. That's -- after
25 reviewing that, we get intelligence from other

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2 law enforcement agencies.

3 Again, we review all the supporting
4 documentation that I've explained before,
5 everything that's required for a referral.

6 We go through it all, and then we
7 make a determination whether he actually needs to
8 be placed in a CMU or he can program in a regular
9 population.

10 Q. Certain terms of the winnowing down
11 that you're describing.

12 Are there any further written
13 criteria to assist you in that process?

14 A. I can't think of anything off the top
15 of my head.

16 Q. So I want you to compare the criteria
17 that appear in this document to the ones -- and
18 I'm referring to Exhibit 115 -- and compare them
19 to the ones that appear in Exhibit 36.

20 A. Okay.

21 Q. Do you think there's any meaningful
22 difference between these criteria?

23 A. For the first one, 2(a), that you
24 just spoke of, the first bullet on 36, which is
25 inmates who have been convicted of, or associated

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2 a local investigation, that means the warden has
3 already approved it. Who am I to argue with the
4 warden?

5 Q. Do you ever consider press releases
6 from either the Department of Justice or the
7 United States Attorneys' office?

8 A. We use them, yes. They're not always
9 correct, but we do use them.

10 Q. If a press release is about an
11 indictment, do you treat that differently than a
12 press release that's about a conviction?

13 A. Treat it the same. I hate to say
14 this, but press releases from Government offices
15 ranks just above media. There's a lot of
16 inconsistencies in there. A lot of
17 grandstanding.

18 Q. That's what press releases are all
19 about.

20 A. That's true.

21 Q. If information that you cite in a
22 referral memo is controverted, do you indicate
23 that that's the case in these memos?

24 THE WITNESS: Could you repeat
25 that, ma'am?

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 - - -

3 (Whereupon, the court reporter read
4 back the pertinent part of the
5 record.)

6 - - -

7 THE WITNESS: What do you mean by
8 "controvert," exactly?

9 BY MR. AGATHOCLEOUS:

10 Q. Disputed.

11 A. Understood, disputed.

12 Yes, if there was something disputed,
13 we would address that.

14 Q. And how would you address it?

15 A. We would list -- we would list it --
16 the statement and we would list how it was
17 disputed. That way the approving officials above
18 me can make that decision, not me.

19 Q. Do the referral packets always
20 include a copy of the inmate's judgment and
21 conviction?

22 A. I wouldn't say all the time, no.

23 Q. Is it only if the designation or the
24 referral -- I apologize, is based on the
25 conviction?

1 CONFIDENTIAL - LESLIE SCOTT SMITH
2 offense is animal terrorism, the AETA Terrorism
3 Act, we put -- that would qualify.

4 Now, he could have another charge or
5 another, say -- let's say he was investigated for
6 possession of a cell phone. We may not list
7 that, because the primary is he's a terrorist.

8 Q. So is it fair to say that the -- that
9 the notice of transfer isn't actually intended to
10 give the inmate notice of all the facts that led
11 to the designation, just so long as it refers to
12 one of the categories?

13 MR. CARTIER: I'll object to lack
14 of foundation with respect to the ultimate
15 reasons for placement.

16 But you -- you can answer.

17 THE WITNESS: To me, sir, of those
18 facts, I'm notifying the inmate why he's
19 being placed in the unit. And it has to
20 meet one of these categories. I may not
21 get specifics. If the inmate was
22 convicted of terrorism activities, he
23 knows it. I don't have to remind him.

24 So I -- that's what's in the block.

25

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1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Q. I think I'm using the wrong word, and
3 maybe that's leading to some confusion.

4 My understanding is that various
5 people at the North Central Regional Office
6 reviewed the referral?

7 A. Now I understand what you're talking
8 about.

9 Q. Okay. I apologize.

10 So -- so what I'm asking is what's
11 your understanding of the role in that process.

12 A. Prior to the discovery in this case,
13 I had no idea they were doing it. That form they
14 have, I didn't realize there was such a form
15 until I reviewed it. Because they don't share.

16 It's obvious to me that the regional
17 director has identified certain staff -- they're
18 called administrators, regional administrators --
19 certain staff to go through and review these
20 documents, and they're to provide input so the
21 regional director can make a more informed
22 decision.

23 Q. So previous to seeing the discovery
24 in this case, were you under the impression that
25 your referral packet went straight to the

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 THE WITNESS: I have -- I

3 understand it.

4 BY MR. AGATHOCLEOUS:

5 Q. You understand it?

6 A. Yeah.

7 Q. Okay. Let's talk about someone who
8 is sent to the CMU based on facility conduct,
9 something like recruitment and radicalization.

10 My understanding is that what the
11 unit team would be looking for in that scenario
12 is whether that behavior stopped at the CMU.

13 Is that also your understanding?

14 A. Yes.

15 Q. How long do you think someone would
16 have to refrain from that kind of questionable
17 conduct before they would be appropriate for
18 transfer out?

19 A. Sound correctional judgment, sir. To
20 me, there's never been a time frame set to my
21 knowledge. I can't answer when they would
22 recommend.

23 Q. What are some of the things that
24 you're looking for when you consider a case like
25 that?

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 MR. AGATHOCLEOUS: So I would like
3 to mark for identification a document
4 entitled, Review for Continued CMU
5 Designation as Exhibit 168.

6 - - -

7 (Whereupon, Review for
8 Continued CMU Designation was
9 marked, for identification
10 purposes, as Smith Deposition
11 Exhibit Number 168.)

12 - - -

13 BY MR. AGATHOCLEOUS:

14 Q. Once you've had a chance to take a
15 look at it, just let me know.

16 A. Yes, sir.

17 (Whereupon, the witness reviews the
18 material provided.)

19 THE WITNESS: Okay, sir.

20 BY MR. AGATHOCLEOUS:

21 Q. Is this the change you were talking
22 about?

23 A. Yes, sir.

24 Q. So I know you mentioned that the new
25 regional director asked for this.

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Do you know why?

3 A. No, I don't, because this was
4 directed to the wardens. There's two wardens,
5 one at Terre Haute, one at Marion. I'm just not
6 privy to the information.

7 Q. Um-hum.

8 Does this come to you, though?

9 A. Yes, this is what they complete.
10 It's to their -- the old-fashioned memo we used
11 to see. This is what we receive now.

12 Q. Okay. So do you still get that kind
13 of old-fashioned memo, or you just get --

14 A. Just this, to my knowledge --

15 Q. Just this?

16 A. -- I haven't seen those old memos
17 anymore.

18 Q. I see.

19 And do you know when this is filled
20 out?

21 A. When they do their recommendation for
22 removal.

23 Q. And the ones that you've seen, who
24 has been filling them out?

25 A. Case manager.

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1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Q. Anyone else?

3 A. The only ones I've seen are the case
4 manager.

5 Q. Okay.

6 A. The case manager initiates it; the
7 unit manager approves it; then it goes up here to
8 the CEO, the Chief, the warden; they sign it; and
9 then it goes to North Central division.

10 We forward it on once we receive
11 it -- we do our recommendations, and then it goes
12 to the warden -- or to the regional director.

13 Q. What's the purpose of this new form?

14 A. I can't answer that, sir.

15 Q. Have you ever talked to the regional
16 director -- the new regional director, Mr. Laird,
17 you said, about this form?

18 A. No.

19 Q. Have you spoken to anyone at either
20 CMU about this form?

21 A. Not CMU. I might have talked to my
22 boss about it, Randy Eternick.

23 Q. What did you talk about with
24 Mr. Eternick?

25 A. The only thing I can figure is, hey,

1 CONFIDENTIAL - LESLIE SCOTT SMITH
2 there's a new form. This is at the direction of
3 Mr. Laird. We didn't have no input in design,
4 any of that.

5 Q. At any point, has Mr. Eternick told
6 you what the purpose of this new form is?

7 A. Not that I recall. I don't know if
8 he knows.

9 Q. Okay. Let's go through the form.
10 So Box Number 1 says ARSD CMU.

11 A. Um-hum.

12 Q. Do you know what that means?

13 A. Yes.

14 Q. Can you tell me?

15 A. Arrival date -- the ARS is the
16 arrival. The D stands for date. So basically,
17 his arrival date at CMU.

18 Q. The second bottom says, Anticipated
19 Release Date/Release Method.

20 Is that referring to anticipation
21 release date from BOP custody?

22 A. I would say yes.

23 Q. You don't seem sure, though.

24 A. The only reason I say yes is because
25 it has release method. That could be -- what's

1 CONFIDENTIAL - LESLIE SCOTT SMITH
2 the anticipated release date may be
3 February 15th, 2016. Release method may be good
4 conduct. But that's estimated. That's
5 anticipating the inmate doesn't get any
6 disciplinary and have a good conduct removed, or
7 it could be two-thirds sentence.

8 It depends on what law or series of
9 laws he was sentenced under. It could be parole.

10 So that's -- that's what tells me
11 it's probably his actual release from prison
12 versus his release from the CMU, because it has
13 release method.

14 Q. Right.

15 So because of the use of the words
16 "release method," that suggests to you this
17 wouldn't be referring to the anticipated release
18 from the CMU?

19 A. Correct.

20 Q. Okay.

21 Okay. I think I understand Box
22 Number 3, Next Review Date. Presumably, that's
23 the next program preview.

24 Is that also your understanding?

25 A. Yes, sir.

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Q. Okay. How about Number 4, Original
3 Reason for CMU Designation?

4 In the forms you've seen so far --
5 and you don't have to go into any details, but do
6 they just summarize what was on the original
7 notice for -- of transfer?

8 A. Basically, yes.

9 Q. And then, in Box Number 5, how has
10 the unit team been using that box in the forms
11 you've seen?

12 A. Basically off the original referral
13 memo from what I've seen.

14 Q. Have you seen examples where more
15 than one of those is checked?

16 A. Yes.

17 Q. And then Box Number 6 says,
18 Disciplinary History related to misuse/abuse of
19 approved communication methods.

20 Can you explain what your
21 understanding of that box is for?

22 A. Again, they would document any time
23 an inmate received disciplinary action based on
24 abuse or misuse of established communication
25 procedures. They would actually list -- how much

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 they would list in there, I don't know. It might
3 be something simple as a date it occurred, what
4 he was charged with, gang activity using coded
5 communications, whatever.

6 Obviously, they're restricting --
7 let's say I had a assault on staff. That
8 wouldn't be related to abuse/misuse of
9 communication methods, so they're restricting it
10 based on communications only.

11 Q. Does Box Number 6 only include
12 disciplinary incidents where there has been a
13 finding of misconduct?

14 A. In other words, it's been sustained?

15 Q. Correct.

16 A. I would say yes.

17 Q. Have you ever seen one of these forms
18 filled out that refers to an incident where it
19 was not sustained?

20 A. Not to my knowledge.

21 This is a relatively new form, too.

22 Q. When did they start using this form?

23 A. That's a good question.

24 I'd say the last 12 months.

25 Q. Okay. So calendar year 2013? Is

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 that fair?

3 A. Yes, that's fair.

4 Q. Was it first half of the year or
5 second half of the year?

6 A. I'm going to say starting the summer
7 of last year. Just guessing.

8 Q. December of last year?

9 A. No; summer.

10 Q. Summer.

11 Okay. Thank you.

12 How about Box Number 7? It says
13 Inmate Comments/Statement.

14 How has that been filled out in the
15 forms you've seen?

16 A. When they have their program
17 review -- their program review with the inmate,
18 he has an opportunity to present -- this is
19 the -- the -- the space where he would be able to
20 put his statement.

21 Q. Is it always filled out?

22 A. I don't know that, sir.

23 Q. No, but the ones you've seen.

24 A. The ones I've seen, no, not always.

25 Q. About what percentage of the time

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 would you say it's filled out?

3 A. Sir, it's so new, I couldn't even
4 tell you. I can't answer that. I don't know.

5 Q. In those instances where it hasn't
6 been filled out, does it say why?

7 A. No, not to my knowledge.

8 Q. So is it fair to say that you've
9 received copies of this form where Box Number 7
10 is completely blank?

11 A. I can't answer that, sir, because
12 when I review it, I'm not so much looking at the
13 inmate's comments. I'm more looking at what the
14 warden's comments are.

15 So I really can't -- I don't give
16 this form that thorough of a review. I'm looking
17 for the warden's comments. I already know what
18 the disciplinary history is going to be. So I'm
19 reading my recommendation from CTU to the RD.

20 This is supposed to be separate. I
21 just glance at it out of curiosity to see what
22 the warden is saying. Because this is not
23 supposed to influence my decision (indicating).

24 Q. I see.

25 Where -- where does the warden --

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Q. Do you recall any situation in which
3 someone was transferred from one CMU to the other
4 and then transferred from that second CMU to
5 general population in less than 18 months?

6 A. I would say yes, probably, on
7 18 months --

8 Q. Okay. Can you --

9 A. -- but I don't recall who it would be
10 without reviewing it. But I would say that's
11 more feasible than four months.

12 Q. Okay. Do you have any
13 recollection -- specific recollection of that
14 happening?

15 A. I'd have to review records.

16 Q. Thank you.

17 Your memo -- and now, I'm referring
18 to a March -- the March 22nd, 2011 memo -- it
19 refers to an incident where Mr. Jayyousi was the
20 rotational Muslim prayer leader at the
21 Terre Haute CMU.

22 A. Which page are you on?

23 Q. I'm on the second page. It's
24 marked 4514 [sic].

25 A. Okay.

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Q. It's the third paragraph -- the third
3 new paragraph, and you say, While in THA CMU,
4 Jayyousi was the rotational Muslim prayer leader.
5 And then there's three paragraphs about that.

6 Do you remember learning about that
7 incident?

8 A. Yes.

9 Q. And what materials did you review
10 prior to writing this memo?

11 A. I didn't write this memo.

12 Q. Prior to reviewing this memo, then?

13 A. The only thing I remember reviewing
14 was the translation from Officer -- or excuse
15 me -- from Intelligence Analyst Bair of the
16 actual transcription of the audio and the video.
17 I had never saw the video.

18 Q. Okay. If you flip forward a couple
19 of pages, you'll see a CTU memo dated April 12th,
20 2011 from John Bair.

21 Is that the memo you were talking
22 about?

23 A. Yes, sir.

24 Q. So just to be clear, you examined
25 this memo in considering this transfer request?

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 A. Yes -- well, no. I considered the
3 speech. I can't remember if it was this
4 specific -- I recall specifically reviewing this
5 memo, but I can't recall if what -- how I
6 originally gained knowledge was off this memo.

7 I'm quite confident it wasn't off
8 this memo, because the incident occurred -- I'm
9 trying to remember when it actually occurred.

10 Q. 2008.

11 A. Yeah, 2008, August 15th. So I would
12 have become knowledgeable probably within hours
13 regardless of where I may have been, as long as
14 my cell phone was not turned off.

15 So, yeah, this was -- this was
16 significant.

17 Q. Sure.

18 My question is, did you review this
19 when you were considering the transfer request?

20 A. I reviewed the transcript. I don't
21 know if it was specifically this memo
22 (indicating).

23 Q. Okay. But -- but you somehow looked
24 at a transcription.

25 It may have been this?

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 material provided.)

3 THE WITNESS: Can you repeat your
4 question?

5 BY MR. AGATHOCLEOUS:

6 Q. Is it fair to say that this -- part
7 of the function of this document was to document
8 people who were being considered for placement at
9 the second CMU?

10 A. I would say yes, sir.

11 Q. Okay. Thank you.

12 Okay. I want to turn your attention
13 to a document that was previously marked as
14 Exhibit 123.

15 A. No wonder I couldn't find it.

16 Q. Here you go.

17 A. Thank you.

18 Q. Okay. So let's start with the
19 November 15th, 2010 CTU memo that starts this
20 document. It's -- it's dated 674 -- not dated, I
21 apologize -- it's Bates stamped 67400.

22 And in that memo, you recommend this
23 inmate's transfer to the CMU.

24 You describe his offense conduct.

25 And if you turn to Page 2, you'll see that in the

1 CONFIDENTIAL - LESLIE SCOTT SMITH
2 first full paragraph, you state that he has a
3 history of subscribing to a radicalized Islamic
4 philosophy and has maintained a consistent
5 interest in radical Islam. Efforts need to be
6 made to effectively manage -- something -- it's
7 redacted. I think it's his name -- and his
8 radicalized points of view, to preclude his views
9 from recruiting or radicalizing other inmates.

10 And you then indicate in the third
11 paragraph -- third full paragraph that Based on
12 his offense conduct and beliefs, it's recommended
13 that he be sent to a CMU.

14 So just to extrapolate from that, is
15 it fair to say that this inmate's radicalized
16 religious beliefs and interests were at least one
17 of the reasons you recommended him for CMU
18 designation?

19 A. Allow me to read it a little bit
20 more, please.

21 Q. Absolutely. Take your time.

22 (Whereupon, the witness reviews the
23 material provided.)

24 THE WITNESS: Okay. Your question,
25 sir?

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 BY MR. AGATHOCLEOUS:

3 Q. Is it fair to say that this inmate's
4 radicalized religious beliefs and interests were
5 one of the reasons you recommended his transfer
6 to the CMU?

7 A. I believe his offense conduct were
8 probably his primary. But based on his radical
9 beliefs, it would have been secondary, yes.

10 Q. Thank you.

11 Now, I'd like you to turn to the
12 notice to inmate of transfer dated January 3rd,
13 2011. This is for the same inmate.

14 Did you draft this notice?

15 A. Mr. Schiavone.

16 Q. Okay. Did you review it, though?

17 A. I'm assuming I did. Since I signed
18 it, I would say yes.

19 Q. Can you read the box that lists the
20 reasons for his transfer?

21 A. Your current offenses of
22 conviction --

23 Q. You don't have to read it out loud.
24 I mean to yourself.

25 A. I'm sorry. I apologize.

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Q. Don't worry about it.

3 (Whereupon, the witness reviews the
4 material provided.)

5 THE WITNESS: Yes, sir.

6 BY MR. AGATHOCLEOUS:

7 Q. Why wasn't the information about his
8 radicalized Islamic philosophy or continued
9 interest in radical Islam included on this notice
10 of transfer?

11 A. To me, it had stuck to the offense
12 conduct. And, like I said, with limited space,
13 there's only so much we can put in there.

14 But that, to me, would have been the
15 attempted use of mass destruction. It doesn't
16 get much bigger than that one. So that's what we
17 went with.

18 Q. Do you believe that, ideally, this
19 notice would include all the reasons that were
20 considered?

21 A. To me, it's sufficient. I don't have
22 to specifically list -- I don't understand why I
23 would have to specifically list out each one.

24 We're given the offense conduct. To
25 me, that's sufficient. Because it basically

1 CONFIDENTIAL - LESLIE SCOTT SMITH
2 states, based on the offense conduct, it is
3 recommended you be designated to the CMU. It
4 also states beliefs which could threaten. I
5 understand that.

6 But the primary weapon -- WMD, that's
7 the primary charge.

8 Q. Is there any reason why this inmate
9 should not be told that these were factors
10 considered?

11 A. No.

12 Q. Did this inmate have many other way
13 to learn about all of the reasons he was
14 considered for CMU placement?

15 A. I guess he could have asked
16 Mr. Shepherd when he presented the form.

17 Q. To the extent that his radicalized
18 philosophy and continued interest in radical
19 Islam were a factor you considered, how could
20 this inmate mitigate the behavior, that behavior
21 that you were concerned about, if he wasn't told
22 that that behavior was problematic as far as the
23 BOP was concerned?

24 A. Through time, observations,
25 communication monitoring, see how he interacts

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 Q. So is it your testimony that even
3 though 1,774 cell phones -- well, actually, let
4 me step back.

5 My understanding is that it isn't
6 that 1,774 cell phones were found, period; it's
7 that 1,774 cell phones were seized from BOP
8 prisoners actually found and attached to a
9 specific prisoner.

10 Does that surprise you?

11 A. That high of a number, yes.

12 Q. It does.

13 Okay. Well, I'm basing that
14 information on a BOP report --

15 A. Okay.

16 Q. -- so if this was one of 1,774
17 incidents where inmates were -- cell phones were
18 seized from BOP inmates in 2008, how come this
19 guy ends up in the CMU?

20 A. Because he was obviously referred to
21 us by the institution. If they don't refer them
22 to me -- we don't track cell phones.

23 Q. Do you remember any other inmates who
24 were found with cell phones being referred for
25 CMU placement?

1 CONFIDENTIAL - LESLIE SCOTT SMITH

2 A. No.

3 Q. Ever?

4 A. Oh, I thought you meant with this
5 group in 2008.

6 Q. No, no. I -- well, that was my
7 question, in 2008.

8 A. Okay. No, I don't recall anybody
9 else in 2008.

10 Q. Okay. Uh-huh.

11 So this was the one case of someone
12 being found with a cell phone in 2008 that you
13 can recall?

14 A. That I recall.

15 Q. Okay. Subsequent to that, have other
16 inmates who were found with cell phones been
17 referred to the CMU?

18 A. Yes.

19 Q. And how many ended up in the CMU?

20 A. Two of them have, yes.

21 Q. How many referrals would you say that
22 you've had based on possession of a cell phone?

23 A. That I don't know off the top of my
24 head.

25 But I know of two other inmates that

1 CONFIDENTIAL - LESLIE SCOTT SMITH
2 I have in the unit that were referred to and
3 approved for the unit that -- cell phone --
4 illegal cell phone. And both of them were -- the
5 cell phone use were not BOP custody. They were
6 ones caught in a county jail, and one was caught
7 in state prison. But they were indicted
8 Federally because of interstate commerce.

9 Q. And in those couple of cases that
10 you're referring to, were there other reasons for
11 CMU placement or was possession of a cell phone
12 the only reason?

13 A. It was -- possession of a cell phone
14 is circumventing communication procedures, which
15 is one of our standards that qualify.

16 MR. AGATHOCLEOUS: Okay. I'd like
17 to mark as Exhibit 174 the following
18 packet -- referral packet to the CMU.

19 For clarity, it begins on
20 BOP CMU 76121.

21 - - -
22 (Whereupon, Packet of referral
23 materials was marked, for
24 identification purposes, as
25 Smith Deposition Exhibit

EXHIBIT 17

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF, et al.)
)
Plaintiffs,)
)
vs.) No. 10-0539 (BJR)
)
ERIC HOLDER, et al.)
)
Defendants.)

DEPOSITION OF KIFAH WAEI JAYYOUSI

The deposition of KIFAH WAEI JAYYOUSI, a witness called at the instance of Defendant taken on November 15, 2013, at 8:00 a.m., at the United States Penitentiary, Route 5, Marion, Illinois, before Valeri Bleyer, Notary Public and Certified Shorthand Reporter, CSR No. 084-002678, for the State of Illinois, pursuant to notice.

A P P E A R A N C E S

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UNITED STATES DEPARTMENT OF JUSTICE
CIVIL DIVISION FEDERAL PROGRAMS BRANCH
20 Massachusetts Ave., N.W., Room 5118
Washington, DC 20530

In behalf of the Defendants;

1 A. My immediate family.

2 Q. Immediate family?

3 A. Yes.

4 Q. Okay. And my understanding is you have a
5 fairly large immediate family. You have a wife, two
6 twin sons --

7 A. Yes.

8 Q. -- and three daughters?

9 A. That's correct.

10 Q. Okay. Well, I would like to ask you to
11 kind of provide an overview and timeline of the
12 various facilities you've been housed in since your
13 arrest. Before I do that, just so the record is
14 clear, where are you currently incarcerated?

15 A. At USP Marion in Marion, Illinois. Unit N.

16 Q. And that is the -- unit N is in the part of
17 the general population?

18 A. Yes, sir, it is.

19 Q. While you've been in general population or
20 GP at USP Marion have you been housed in any units in
21 addition to unit N?

22 A. When I arrived here I was housed at the
23 communication management unit or they call it unit I.
24 I unit.

25 Q. Okay. So I'll limit my questions just to

1 boys.

2 Q. Was your brother ever able to visit?

3 A. I'm trying to think. He might have come
4 one time. I believe he did come one time.

5 Q. And I believe your parents --

6 A. My parents would never want to come. My
7 mother told me in particular that she did not want to
8 come in that situation and see me behind a glass
9 window. My -- both my parents are elderly and they
10 were very emotional to learn that it's behind the
11 glass. You know, they wouldn't be able to touch me,
12 in other words.

13 Q. I understand. Has your father visited you
14 since you've been placed in general population here
15 in Marion?

16 A. No. His health has deteriorated. And he
17 said, when you get to Milan, I'm going to go out
18 there no matter what. He is almost blind. And he
19 needs someone to be next to him. He can hardly walk.
20 So he said when you get to Milan he'll be able to
21 come, because that's only like 40 minutes away from
22 home.

23 Q. And I apologize for asking this again. I
24 want to make sure I understand. It's true for both
25 Terre Haute and the Marion CMU, did you always use

EXHIBIT 18

1 McGowan - Protected

2 Q Which one?

3 A Patrick Reinsborough.

4 Q So other than the people you have
5 already listed, did anyone else visit you that
6 you considered a colleague?

7 A No.

8 Q Just to kind of get a sense of
9 what the visits were like at Sandstone, maybe we
10 can talk about your visits with your wife.

11 I believe I read, I think it was a
12 post from you, about what it was like to have a
13 visit. My understanding, it was a contact
14 visit.

15 A Yes.

16 Q Am I also correct you felt that
17 there were still limitations on your ability to
18 have meaningful contact with your wife?

19 A I don't know what you mean by
20 that.

21 Q Were the visits limited in any way
22 that frustrated you?

23 A They were limited by the fact that
24 I was incarcerated and that the visit had an
25 end.

EXHIBIT 19

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- - -

YASSIN MUHIDDIN AREF, et al.,)
)
Plaintiffs,)
) CIVIL ACTION NO.
vs.) 10-0539 (BJR)
)
ERIC HOLDER, et al.,)
)
Defendants.)

- - -

Deposition of YASSIN MUHIDDIN AREF
Friday, November 22, 2013

- - -

The deposition of YASSIN MUHIDDIN AREF,
called as a witness by the Defendants, pursuant to
Notice and the Federal Rules of Civil Procedure
pertaining to the taking of depositions, taken before
me, the undersigned, Deborah L. Endler, a Notary
Public in and for the Commonwealth of Pennsylvania, at
the Prison SCI Loretto, 772 Saint Joseph Street,
Loretto, Pennsylvania, 15940, commencing at 8:30
o'clock a.m., the day and date above set forth.

- - -

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MORSE, GANTVERG & HODGE, INC.
PITTSBURGH, PENNSYLVANIA
412-281-0189

- - -

1 A Until March 2009.

2 Q So almost two years?

3 A I think it was two years, two months
4 something, I believe.

5 Q And where did you go next?

6 A Marion, Illinois.

7 Q And I know you were in a CMU at Marion,
8 also?

9 A Yes.

10 Q And did you go directly from Terra Haute to
11 Marion CMU?

12 A From CMU to CMU, yes.

13 Q So that was March 2009?

14 A I believe so.

15 Q And how long were you in the CMU at Marion
16 for?

17 A Until May 2011.

18 Q So that was 26 months?

19 A About.

20 Q And then where did you go next?

21 A I came out the same prison but to the
22 general population.

23 Q Okay. So you were in the Marion general
24 population?

25 A Yes.

1 Q And that was May 2011?

2 A Yes.

3 Q How long were you in the Marion general
4 population?

5 A Until the end of November.

6 Q So in November where did you go?

7 A Allenwood.

8 Q Was that by airplane?

9 A Yes, yes.

10 Q And how long were you at Allenwood?

11 A One year.

12 Q So November 2012?

13 A Yes.

14 Q And was that in the general population?

15 A Yes.

16 Q Where did you go after Allenwood?

17 A Canaan.

18 Q Where is Canaan?

19 A I think here in Pennsylvania somewhere,
20 like holding center.

21 Q How long were you there?

22 A 52 days.

23 Q And were you in the general population?

24 A For those they are in the transfer only,
25 they have the special unit for the people that are in

1 Q Did you have visitors when you were at the
2 Terre Haute CMU?

3 A Yes.

4 Q Who came to visit you?

5 A I'm not sure to call that a visit because
6 indeed it's not a visit. Which is a visit, it's to
7 somebody comfort you or comfort your family or
8 children or sit together, to have some good time or to
9 talk. That's not the case in the CMU.

10 They came, they put you in the small room,
11 three, four children, all crying. They want to hug
12 you and the children, they jump to the phone, they
13 want to speak to you and they have to speak one at a
14 time.

15 I'm not sure that's a visit. It's just
16 more torture than to be privileged to see your family
17 like that.

18 But the first time they came my two sons.
19 Another they came they supposed to have four hour.
20 After one hour, they say no. They cancel the visit
21 and they kick them out.

22 And I just remember I was begging them if
23 they can't just leave my children. They said legal we
24 want them to wait outside or anything, but let me just
25 talk to my children. And they were crying.

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1 They said no, they said no, visit is over.
2 And imagine three days they drive and they stayed
3 there night and they almost three days to drive back
4 and one hour and they cut it off.

5 So it was not kind of privilege. It was
6 torture. I just, sometimes you say I just don't need
7 you to go through. I just don't need to see them in
8 this case.

9 Q Did your sons ever come see you again when
10 you were at the Terre Haute CMU?

11 A Yes, I believe they came back.

12 Q Do you remember how many times they came
13 back?

14 A I'm not sure exactly how many time, but
15 they came back, whole family came. My wife, children.

16 Q How long did that visit last?

17 A Maybe whole four hour was that the visit at
18 that time, I think. Maybe two days for four hours or
19 one day eight hours. I think that's what it was, from
20 beginning. So maybe twice four hours.

21 Q Did your daughters visit you or come see
22 you at the Terre Haute CMU any time other than the one
23 time when your whole family came?

24 A I'm going to say just one time they came.
25 But they came, yes.

1 Q How many times did the whole family come
2 see you when you were at the Terre Haute CMU?

3 A I don't know.

4 Q Was it more than once?

5 A Of course. I just told you about two of
6 them just now.

7 Q I'm talking about the entire family, your
8 wife and all your children. I know they came on one
9 occasion. Did they come more than just once?

10 A Let me just say this. I just remember one
11 time. I ask my wife to come and bring the children.
12 She asking me what's the point for them to drive 1,500
13 mile to talk to me on the phone, so we can talk from
14 here.

15 It's just the first visit was painful
16 enough to say did I want my family to go through this.
17 I'm thinking myself how this will affect my children
18 and shape them and what's kind of memory they will
19 carry.

20 I told her was not a visit, it was kind of
21 torture.

22 There is a guy just had a visit, he is
23 coming back to the cell, crying, crying, crying. I
24 said what's wrong, what's wrong. He said his son I
25 think he told me, he's three years, he says every five

1 minute he knock the door, 'police, police, that is my
2 daddy. Let me go there. Let me go there.' And he
3 keeps crying. And he spend all the day, make
4 everybody cry. So it was not really visit. But that
5 was the visit.

6 Q So I understand that your whole family came
7 out that one time. Is it --

8 A I believe they came more than one time.
9 But how many time I don't remember.

10 Q Do you remember them coming out a second
11 time when you were at the Terre Haute CMU?

12 A I believe they came.

13 Q And I just want to know, it's kind of yes
14 or no questions, did you have a specific memory that
15 your entire family came to see you after that one
16 particular visit you've been discussing?

17 A I'll have to say no.

18 Q Did your wife come see you other than the
19 one time when your entire family came out?

20 A If she came, they all came together.

21 Q Okay.

22 A And I believe they came. They came more
23 than one time.

24 Q But you can only remember one specific
25 time?

EXHIBIT 20

**EXECUTIVE STAFF MEETING
GRAPEVINE, TX
JULY 28 - AUGUST 1, 2008**

ADDITIONAL PAPER

This Executive Staff Paper was submitted at the Executive Staff Meeting. Option B was approved and included as an attachment to the Management of Inmates at USPs Decision Paper.

11. SPECIAL MANAGEMENT PENITENTIARY

Objective: Identify a central location/facility which will house inmates deemed too disruptive or influential to maintain in High security, general population institutions. Facility selection will be based upon jurisdictional influence, facility design and inmate capacity, while minimizing disruption to programs crucial to the successful development of inmates and their eventual reintegration into society.

Restrictive conditions of confinement programs currently in use by this agency include the Communications Management Unit (CMU) , Special Management Unit (SMU) and Administrative Maximum (ADX). These programs provide varying degrees of restrictive living conditions for inmates based upon their management needs and provide the basis for the following three options:

Option A: Communications Management Unit.

Action: Option A is not approved.

Option B: Special Management Unit.

Action: Option B is approved.

Option C: Administrative Maximum.

Action: Option C is not approved.

**EXECUTIVE STAFF MEETING
SEATTLE, WA
JULY 27-31, 2009**

Kathy reported on two lawsuits challenging the conditions of confinement at the CMU at Marion. Visitation, congregate prayer, and other issues are the ACLU's concerns.

**EXECUTIVE STAFF MEETING
WASHINGTON, DC
February 7-10, 2011**

RD Nalley reported, as of January 3, 2011, there are 38 inmates housed in the communications management unit at Marion.

**EXECUTIVE STAFF MEETING
WASHINGTON, DC
May 3-6, 2011**

As of April 18, 2011, there are 36 inmates housed in the Communication Management Unit (CMU). Currently, there are no inmates awaiting redesignation approval.

There are 35 inmates housed in the CMU at USP Terre Haute. Two inmates have an RRC placement date of September 29, 2011, and February 16, 2012; two were denied RRC placement, and one is pending an RRC placement date. Eight inmates were released to the FCI Terre Haute general population.

**EXECUTIVE STAFF MEETING
PORTLAND, OR
JULY 18-21, 2011**

Communication Management Units (CMUs)

Each CMU has the capacity to house 50 inmates, for a total of 100. Currently, Marion's CMU has 41 inmates and Terre Haute's CMU has 40 inmates. As of July 17, 2011, 19 beds are available between the two units.

**EXECUTIVE STAFF MEETING
LEXINGTON, KY
FEBRUARY 6-9, 2012**

External Auditing Branch

While the SHU operations audit is titled, "SHU," this audit is looking at inmates confined in all forms of housing restricted from the general population, i.e., ADX, CMU, SMU.

Intelligence and Counter Terrorism Branch

Currently there are 276 international terrorist inmates (53 have ties to Al Qaida and 19 of those are U.S. citizens.). There are 88 domestic terrorists in the Bureau and 435 sovereign citizens.

Acting AD Mitchell stated when on a writ, Communications Management Unit (CMU) inmates should have all communications monitored in a similar manner as when housed in the CMU. Intelligence analysts from the Counter