EXHIBIT 9
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.

<table>
<thead>
<tr>
<th>Level</th>
<th>Expected Level Completion Time</th>
<th>SMU Reviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>4 Months</td>
<td>Initially Within 28 Days Subsequently Every 90 Days</td>
</tr>
<tr>
<td>Two</td>
<td>6 - 8 Months</td>
<td>Every 90 days</td>
</tr>
<tr>
<td>Three</td>
<td>6 - 8 Months</td>
<td></td>
</tr>
<tr>
<td>Four</td>
<td>2 - 4 Months</td>
<td>Every 30 days</td>
</tr>
</tbody>
</table>

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 decancellation 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)
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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.

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.
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

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

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

(CTITLE CONTINUED)
and

FEDERAL BUREAU OF PRISONS

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
FRANK JAVIER LARA

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

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

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

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

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

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

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

Q. What's a memorandum?

A. It's a memo that would outline
specific procedures on guidance that would have to
be conducted locally to accomplish a task or to
accomplish an expectation.
FRANK JAVIER LARA

Q. And what's an institution supplement?
A. An institution supplement is a procedure, a set of practices that are identified at an institution that are consistent with national policy, but provide specific guidance to the local facility to where that supplement is at.

Q. So what's the difference between a memorandum and an institution supplement?
A. Well, the difference -- it's not really a difference. Normally, a memorandum becomes a supplement or becomes part of a supplement.

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

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

There may be an adjustment that needs
FRANK JAVIER LARA

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

(Whereupon, the witness reviews the material provided.)

BY MR. AGATHOCLEOUS:

Q. Maybe I can help you out.

Why don't turn to Page 11 of the document?

A. Um-hum.

Okay.

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

A. Yes, it does.

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

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

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

A. It's always important for an incarcerated individual to maintain ties with
FRANK JAVIER LARA

family and friends to communicate.

Q. Why is that?

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

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

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

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

MR. CARTIER: Objection: vague.

BY MR. AGATHOCLEOUS:

Q. Can you answer the question, please?

A. Would you repeat the question?
FRANK JAVIER LARA

(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
FRANK JAVIER LARA

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.

By 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.)
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
within the first 30 days of placement in Special Housing Unit and within every 30 days thereafter.

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

A. It allows that.

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

A. The warden could make those decisions.

Q. Can anyone else make those decisions?

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

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

A. It could be written in some local process.

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

A. Emergency situations that the inmate is experiencing, extenuating circumstances to make
BY MR. AGATHOCLEOUS:

Q. Can you review that document?
A. Sure.

(Whereupon, the witness reviews the material provided.)

BY MR. AGATHOCLEOUS:

Q. What is this document?
A. This document is the institution supplement on telephone regulations that -- at Marion, and it's dated July 11, 2013.

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

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

Q. So how many telephone calls per month
FRANK JAVIER LARA

does a prisoner in administrative detention at USP Marion receive?

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

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

A. Yes.

Q. And with more frequent telephone calls?

A. Extenuating circumstances, yes.

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

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

Q. But is it possible?

A. It's possible.

Q. Okay.

MR. AGATHOCLEOUS: Can I mark this
FRANK JAVIER LARA

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

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

A. One phone call every 30 days.

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

A. Fifteen minutes in length.

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

A. Yes, they do.

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

A. Yes, they do.

Q. Okay. Now, we're going to turn to visitation.
FRANK JAVIER LARA

that says Detention or Segregation Status?

A. Yes.

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

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

A. Ordinarily -- which section?

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

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

Q. Okay. Thank you.

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

A. Yes, it does.

Q. Okay. Does it allow for discretion in the frequency of visits that a prisoner in
FRANK JAVIER LARA

administrative detention might receive?

A. It does.

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

A. It does.

Q. Okay. Who makes those discretionary decisions?

A. The warden.

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

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

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

Q. So you mentioned "emergency situation."

A. Are there any other circumstances that
BY MR. AGATHOCLEOUS:

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

Q. Can you tell me what this document is?

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

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

A. What pages did you say, Page 9?

Q. Page 10.

A. Okay.

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

Q. So is my understanding correct that an
inmate in administrative detention can schedule a social visit on any Saturday or Sunday of the month at this facility?

A. Yes.

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

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

For two hours on those days.

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

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

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

A. According to the information provided, yes.
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Q. Okay. And just reviewing that beginning of the Z unit section that you referenced, are these contact visits?

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

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

A. Yes.

Q. And how about the duration of those visits?

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

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

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

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: According to
FRANK JAVIER LARA

Prisons Institution Supplement
Number THX-5267.08D, Visiting
Regulations, was marked, for
identification purposes, as
Deposition Exhibit Number 18.(

BY MR. AGATHOCLEOUS:

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

(Whereupon, the witness reviews the
material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

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

A. This is -- this is the visiting
regulations institution supplement for Terre Haute

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

A. Yes, it does.

Q. Okay.

MR. AGATHOCLEOUS: Can I also mark
this document as Exhibit Number 19 for the
FRANK JAVIER LARA

record, please?

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

A. Okay.

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

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

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

Q. Okay.

A. -- and --

Q. Sorry, go ahead.

A. -- and it appears that it outlines Special Housing Unit visiting procedures and specifically changes in procedures to utilize -- regarding social -- changes regarding social visiting for inmates in SHU.
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And it provides further guidance that inmates will not be permitted social visiting in the visiting room. And it identifies the -- it directs the captain to ensure that procedures to be utilized will be used -- will be noncontact visiting for inmates housed in SHU; that visits must be approved in advance by the deputy captain. Inmates will be provided -- will provide the SHU lieutenant with visitor information in a timely manner and expect at least two weeks for processing.

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

Okay.

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

A. Okay.

Q. Take a look at the top couple of paragraphs about the FCI.
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(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

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

(Whereupon, the witness reviews the material provided.)

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

BY MR. AGATHOCLEOUS:

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

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

Q. Okay. What are you basing that on?

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

THE WITNESS: Okay. This is
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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(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?
documents in there.

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

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

A. Correct.

Q. Correct.

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

A. Okay.

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

A. Yes.

Q. What was the previous policy regarding contact visits?

A. Pursuant to Exhibit 18, the supplement on visiting regulations for Terre Haute, Section K, the first sentence states, The following procedures will be utilized regarding social visiting for inmates housed in the Special Housing Unit at the FCI. The second sentence,
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Inmates may be permitted social -- social visiting
in the institution visiting room.

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

Q. And would that have included contact
visits?
A. Based on that second sentence, it
appears that way.

Q. Okay. For how long was that previous
policy in place?
A. Without knowing -- well -- in the
Directives Referenced -- or Directives Affected,
the first page of Exhibit 18, it looks like the
previous supplement was dated May 2000 --
May 29th, 2009. So that particular supplement
went in effect at some point thereafter.

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

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

Q. Do you know if that policy was in
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that correct?

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

Q. Okay. But -- okay.

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MR. AGATHOCLEOUS:

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

A. Correct.

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

A. Yes.

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

A. Pursuant to the policy, the structure and the Section 6, the level progression is based on the inmate demonstrating the potential for
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positive community interaction. It specifically outlines, During Level Two, inmates generally program and function separately.

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

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

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

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

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

A. Positive behavior; program participation; program completion; increasing the
inmate's awareness of the programs that are
available at that particular facility; and him
demonstrating a willingness to coexist with other
inmates or other persons in that particular
setting and in that environment.

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

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

A. Right.

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

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

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

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

Q. Okay. What would you call it?

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

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

A. That would be correct.

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

A. It would be the inmate receiving additional increased programming that would allow that inmate to see other outlets or other programs that if they complete one program, they see the next program as something that could expose them
FRANK JAVIER LARA

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to other reentry initiatives that would better
that person.

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

Q. So how does it better a person?
A. By being able to expose that inmate to
the programs available at that facility, whatever
programs they have; also understand that based on
the programs that are available, maybe see the
fact that their behavior was not right and should
not occur, because it's -- it's -- it's not
positive towards reentry back into society.

Q. And how does a prisoner -- I know
you've described some of the things a prisoner can
do to get from level to level, but how does it
actually work?
A. Well, actually, if you -- pursuant to
the policy, when an inmate arrives at any
facility, at any of the SMUs -- if you look at, I
believe, Page 8 -- yeah, Page 8 -- let's back up.
Let's start with Page 7.

If you look at the Admission and
allowing other programs at those locations.

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

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

A. Correct.

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

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

And then, if you go to -- the sentence begins, Individual conditions may be -- may be further limited as part of a disciplinary sanction imposed pursuant to 28 C.F.R. And then the next sentence, Individual conditions are ordinarily
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earlier fairly accurately?

A. I didn't specifically say that.

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

BY MR. AGATHOCLEOUS:

Q. So rather than revisiting what you
said --

A. Okay.

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

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

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

A. Sure.
State of the Bureau 2007

Bureau of Prisons Staff:
Everyday Heroes
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 Devils, 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
A. Well, for the Bureau, that is still part of the designation process. That would be the initial consideration for designation.

Q. Okay.

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

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

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

Are you looking at the document, sir?

A. Yes.

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

A. Yes.

MS. MEEROPOL: Okay. For the record, I'll state that this is a March 5th, 2008 memo from Joyce Conley.
and it's Bates stamped P22.

BY MS. MEEROPOL:

Q. Now, the last sentence of this memo states that if staff are aware of inmates who may meet the CMU criteria, they should contact Les Smith, Chief Counterterrorism Unit, for CMU referral information and procedures. Do you see where I'm reading, sir?

A. Yes.

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

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

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

A. Well, you asked about policy. I mean, this is the information that is available to the staff. We would inform the staff about the documentation we would need in order to
DAVID C. SCHIAVONE

process the referral for routing consideration.

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

A. Generally, it's verbal.

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

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

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

considered for CMU designation?

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

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

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

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

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

Q. Thank you, sir.
DAVID C. SCHIAVONE

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

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

A. No, not to my knowledge, no.

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

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

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

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

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

A. It's my understanding that it
DAVID C. SCHIAVONE

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

Q. During what period of time?
A. Around the time the units opened up
through this memo.

Q. After the issuance of this memo,
did there come a time when the BOP put into
writing CMU criteria?
A. You said after this memo?
Q. Yes.

We -- we already established that

at the time this memo was issued, there were
no -- there was no documentation of CMU
criteria.

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

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

Q. When did that occur?
A. That occurred -- I can't recall

exactly. It was in the period between 2008 and
DAVID C. SCHIAVONE

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

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

A. That would be accurate, yes.

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

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

Q. I'm looking at a paragraph that begins, Under the proposed regulation, inmates may be designated to a CMU if. Is that what you're referring to, sir?

A. Yes.

Q. Now, please take a moment to review the five bullet points to yourself. My question
DAVID C. SCHIAVONE

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Yes, this is correct.

BY MS. MEEROPOL:

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

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

MS. MEEROPOL: Sure.

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

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

MS. MEEROPOL: Thirty-six.

MR. CARTIER: Okay.

BY MS. MEEROPOL:

Q. Sir, can you tell me what this
1. DAVID C. SCHIAVONE

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 what kind of inmates were to be placed in the
2 unit.
3
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
community. This will allow staff to protect the safety, security and orderly operation of the Bureau facilities and protect the public.

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

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

Q. Thank you, sir.

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

A. Correct.

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

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

Q. Yes, sir.
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privileged communications under the deliberative process privilege.

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

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

MR. CARTIER: You can answer if you know.

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

BY MS. MEEROPOL:

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

A. Well, I don't think that's exactly
what I meant. I meant it -- it -- the rules are
the procedures that the Bureau has been using
and the criteria the Bureau considered. I don't
think the rules, especially since they're still
being considered for publication, are an actual
policy document for staff to use.

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

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

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

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

So the program statement regarding
custody classification and security designations
would be relevant as well.
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criteria should actually be placed there?

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

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

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

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

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

What's the Counterterrorism Unit's
Q. Is it your testimony that there is a list in those two sources?

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

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

A. I would say that's correct.

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

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

Q. In situations like that, what happens?

A. We make arrangements to have that
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for that particular information.

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

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

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

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

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

A. It summarizes relevant information the CTU believes supports the recommendation for placement in the CMU.
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Q. In summarizing the information that supports designation, should the underlying document that information comes from be included in the designation packet?

A. The CTU provides all relevant information it believes are appropriate to support the recommendations. So if it's summarized in the memo, it would be produced along with the packet unless it's law enforcement sensitive or classified.

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

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

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

A. Well, it's relevant background information for any designation, because it -- it's an identifier and specific to an inmate's designation regardless of him being in the CTU, because it'll relate to his custody.
classification and need for security within the agency.

Q. Now, I understand that the presentence report is generally included in the designation packet; is that accurate?
A. Yes.

Q. Given that the PSR is included in the designation packet, what's the purpose of summarizing the offense conduct in the designation memo?
A. Well, the summary is to give the reader a synopsis of the information. It's -- the package can be very long and very detailed. This provides them an oversight of what they're looking at, what's relevant to the placement in the unit and provides, I guess you could say, like a snapshot, an overview of relevant information.

Q. Is the notice to inmate of transfer also included in the designation packet?
A. Yes.

Q. And what's the purpose of including this notice in the designation packet?
A. It is included in the packet for
all levels of review for comment and
consideration.

Q. Does it reflect the reasons why the
CTU believes that the prisoner should be placed
in a CMU?
A. That's a summary of the relevant
information which supports the inmate's
placement in the CMU.

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

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

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

THE WITNESS: Well, you could say
the initial form would be based on the
perception of the CTU, but the form goes
through the entire review process; so by
the time it's finalized, it would then
be the perception of the Bureau, not
just the CTU.
the CMU designation packet process?

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

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

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

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

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

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

A. Well, I wouldn't describe it as a process because it's not something that you could easily describe in a step-by-step manner. It's a correctional judgment based on a review
of the history of the inmate's conduct, behavior and relevant information regarding a need for greater communication monitoring.

Q. Does the CTU refer to any written criteria to guide its deliberations?
A. Well, we consider the relevant information from the Conley memo, the Dodrill memo, the proposed regulations describing the criteria for CMU placement.

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

Does the CTU rely on any one of those documents more heavily than any other or all three equally?
A. All equally.

Q. Does the CTU rely on any unwritten criteria to guide its deliberations?
A. Sure, a lot of this is based on correctional judgment which is based on experience, knowledge of managing inmates, dealing with designations -- in institution security concerns.

Q. Looking at the Dodrill memo for a moment, which is Exhibit 115. I want to talk
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about the first criteria, which is 2.a. in this memo.

A. Okay.

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

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

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

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

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

Q. Well, okay. I -- Section a says,
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The inmate's current offense or offenses of conviction, or offense conduct, included association, communication or involvement, related to international or domestic terrorism.

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

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

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

Q. But, sir, I'm asking just about this section, a. I mean, there's five criteria
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decision-maker has with respect to communications?

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

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

A. I'm sorry.

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

MR. CARTIER: Do you want more water?

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

The Office of General Counsel reviews the material to make an assessment whether they believe the limitations imposed on the inmate's communications while in the unit are within policy and are supported by the information provided in -- in the referral packet.
BY MS. MEEROPOL:

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

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

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

A. Yes.

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

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

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

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

The proposal is for the assistant director to eventually make those decisions at
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that level, so it -- it just provides a means
for them to -- to look at that material and
become part of the process.

Q. What are they looking for in their
review?

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

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

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

Q. Is that a written statement?

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

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

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

Q. And is the Central Office's
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concurrence or lack of concurrence transmitted
to the North Central Regional Office?
A. Yes.
Q. In what format?
A. Generally, the -- if the Central
Office replies in an e-mail, that's placed into
the packet, and there may also be comments in
the -- the -- the e-mail message which forwards
the packet to the North Central which discusses
the review by OGC and the Central Office.
Q. Has the Central Office always
played this role in the CMU designation process?
A. No.
Q. And when did they first begin to
play this role?
A. I would have to go back and check.
I can remember an executive staff member we had
come in after a change and felt that the packet
should be reviewed by Central Office; I just
can't remember when she came in. I can't
remember --
Q. Leave a blank --
A. I'm sorry. I can't remember the
exact date, it was I would -- I believe it was
somewhere around 2010 or 2011 when we had a change of exec staff in the Central Office.

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

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

Okay, sir?

A. Yes.

Q. Why did the change come about?

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

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

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

Q. Please describe the role that the
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North Central Regional Office plays in the CMU designation process.

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

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

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

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

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

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

Is there any BOP policy document
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that sets forth OGC's role or the Central Office's role in the CMU designation process?

A. No, I would say no.

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

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

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

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

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

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

A. Not that I'm aware of, no. Their
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role is based on the decision of the Regional Director. The Regional Director is the deciding authority. If he's looking for input and comment from other subject matter experts in his division, I would expect an administrator, from my experience, to do that just on about everything they do. That's why they have these different people with subject matter expertise to give comment on relevant factors which may be outlooked by a single deciding authority.

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

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

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

I think you'll find an example in
just looking to see if a CMU -- if a potential CMU inmate meets the CMU criteria?

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

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

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

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

A. The Regional Director is the deciding authority.

Q. Can the Regional Director make his decision based on information that is not included in the designation packet?
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A. Yes, if the region or the Regional Director, himself, comes across information they believe is relevant, which was not included, sure, the -- the Regional Director could consider that information.

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

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

Q. Does BOP policy -- thank you.

A. Sorry.

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

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

The Regional Director has to document a decision in order for it to be communicated for the designation to be made, but
the reasons, that would be up to the Regional Director is what he felt was pertinent to include in that decision.

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

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

Q. Has that process changed in any way over the years that the CMU has been in existence?
A. You're referring to as far as the Regional Director being the deciding authority, then, no.

Q. Yes.

The Regional Director being the deciding authority and the Regional Director utilizing comments from the subject matter experts on his staff, has that process changed at all over the time the CMU has existed?
A. Not that I'm aware. I believe
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under these conditions is based on the following specific information, and then the various inmate's specific information documented in the form, is that accurate, sir?

A. Yes.

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

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

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

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

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

A. Yes, they were.

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

MR. CARTIER: Objection: vague.

You can answer.

THE WITNESS: There are similar
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BY MS. MEEROPOL:

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

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

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

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

MR. CARTIER: I'm going to interpose an objection here. One
BY MS. MEEROPOL:

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

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

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

A. That was the expectation, yes.

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

A. No.

Q. Is there a general range?

A. No.

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

A. No, because there is no range, there is no way to provide them with an expectation, other than the regular program reviews they go through which assess their designation and consideration for the need for that level of monitoring.
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Bureau of Prisons' interrogatory responses in this case, is that the national policy being referenced here includes two BOP program statements: the program statement on inmate classification and program review and the program statement on inmate security designation and classification.

Is that accurate, sir?

A. Yes.

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

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

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

A. Okay.

Q. I understood your testimony -- I understood your testimony to be that as a general matter, one of the items that occurs in a program review is consideration of whether an inmate should be transferred out of the unit
where the inmate currently is, correct?

A. Correct.

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

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

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

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

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

A. I just did. Part of programming at

the institution level in the Bureau of Prisons

has to do with designations and security level.

So when we talk about the

programming and the custody classification, it

would refer back to the other program statement

on custody classification and security

designations.

Q. So first programming.

Where are the references to

programming in here specifically that you're

referring to?

A. If you start at 8.a., The purpose

of initial classification is to develop a

program plan for the inmate during his or her

incarceration. Program plan is going to include

review of their custody classification, their

security designation to make sure they're

appropriate for the facility they're at.

Continued at 8.b., which talks

about follow-up program reviews at the 180-day
Q. So the paragraph that begins with b. that reads, At program reviews, progress in recommended programs will be reviewed, and new programs recommended based upon skills the inmate has gained during incarceration. Program reviews occur at least once every 180 calendar days.

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

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

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

A. Well, anywhere in a program statement where they talk about an inmate's programming while incarcerated would include designation and classification, even if it doesn't specifically say that, because that is part of the inmate's overall programming within the Agency.
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Q. Does this program statement provide any notice to CMU prisoners about what they need to do to gain release from a CMU?

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

So in -- in essence, it would.

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

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

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

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

Q. Is that a no to my question?

A. This -- this isn't a designation program statement. So, no, this doesn't talk about criteria for designations, any
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designations, CMU or otherwise.

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

Do you have Exhibit 112 in front of you?

A. No, sorry not yet.

MR. CARTIER: Sorry.

THE WITNESS: So now I have it.

BY MS. MEEROPOL:

Q. Thank you.

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

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

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

A. Well, sure, because this policy
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Q. Why does it make sense for us to talk --

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

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

A. Correct.

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

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

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

A. Yes.

Q. Can you please direct me to any of the transfers which might be relevant to move an
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inmate out of the CMU?

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


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

BY MS. MEEROPOL:

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

A. Guides which process?

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

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

So it's not in this program
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they would have -- designations would have been
decided at each regional level.

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

A. For nearer release transfers?

Q. Yes.

A. No.

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

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

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

Yeah.

Q. Do you have an explanation as to
why there were no inmates referred for transfer
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until the Dodrill memo was issued?

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

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

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

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

MS. MEEROPOL: Can you read back
BY MS. MEEROPOL:

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

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

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

A. What we just discussed. It was a means to formalize the process for staff for their understanding; in particular, to notify staff and designators that inmates were reviewed every program review, which is every six months, which put them outside of the typical policy.
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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MR. CARTIER:  No.

Do you need the question read back?

THE WITNESS:  Yes, please.

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

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

BY MS. MEEROPOL:

Q.  Why did it take three years?

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

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

Q.  All right.  You testified that the CTU considered one prisoner for referral out of
the CMU prior to the 2009 Dodrill memo. And I imagine that you're not going to be able to testify as to the identity of that prisoner.

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

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

Q. Who was he identified by?

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

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

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

Q. Okay. Let's turn to the Marion Institution Supplement. This is in Exhibit 181.
And let's turn to the September 28th, 2009 Marion Institution Supplement. Please turn to the second page of the Marion Institution Supplement. It's Bates stamped BOP CMU 64133. And review to yourself the paragraph that begins, Classification and reviews of I Unit inmates will occur according to national policy.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MS. MEEROPOL:

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

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

Q. Okay. So please point me to each
of the incorrect statements in this paragraph.

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

Q. And then anything else?

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

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

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

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

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

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

A. Specifically, no. The institution was made aware -- I know staff relied on the
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national designation manual regarding
designation policy, because it was something
they had in writing that they could follow.

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

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

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

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

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

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

A. The warden is the approving
authority for institution supplements, which are
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local policies. The warden -- the warden may
seek review by regional counsel, but the final
decision authority is the warden.

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

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

Q. And who conducts the program
reviews?

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

Q. Okay. Let's look at the
Terre Haute Institution Supplement dated
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October 22nd, 2009. It's part of Exhibit 180.

A. Okay.

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

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

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

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

A. And the second paragraph, you said?

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MS. MEEROPOL:

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

A. Yes, correct.

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

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

Q. Now, this institution supplement postdates the Dodrill memo by about a week. Does that indicate to you that the Terre Haute institution staff, including the warden, did not understand the meaning of the 2009 Dodrill memo?

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

Q. So it's your testimony that Wardens Lockett and Marberry signed this document on October 22nd, 2009 despite understanding that it contradicted instructions
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in a manner consistent with sound correctional factors, including an assessment of the threat posed by the inmate, whether the inmate presents a risk of harm to others or to the orderly operation of the institution, and whether the inmate still requires the degree of security and monitoring afforded at a CMU.

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

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

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

A. There is no specific requirement for clear conduct, but their conduct and behavior would be reviewed as part of their historical behavior and conduct and as part of the review for the need for communication monitoring that CMU afforded.
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what you're further asking.

BY MS. MEEROPOL:

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

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

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

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

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

Q. Does the policy require for an
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inmate to be told every reason why they are
still eligible -- why they are still appropriate
for continued CMU designation?

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

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

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

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

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

Q. But what if the reasons for initial
placement aren't the reasons why the inmate is
being retained?

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

Q. Thank you.

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

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

THE WITNESS: Soon.

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

MS. MEEROPOL: Sure.

BY MS. MEEROPOL:

Q. Let me just ask about this document and then take a break, as long as you're okay. But, sir, if you need to take a break earlier, we can do that. It might be a more natural breaking point after a few more questions, but I'm happy to be flexible.

A. I'm okay. I can wait.
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meeting that unit staff had been applying the
instruction in the Dodrill memo appropriately?
A. Yes, I believe they -- they
candoned the reviews appropriately.
Q. Point 3 of the Notice to Inmates,
Exhibit 40, states that Additional information
to be considered includes whether the original
rationale for CMU designation has been
mitigated.
Do you see where I'm reading?
A. Yes.
Q. How is the unit team supposed to
assess whether the original rationale for CMU
designation has been mitigated?
A. Well, it's based on the previous
sentence, which says that the reviews are done
consistent with correctional judgment and
security management.
It's an overall assessment of the
inmate as they have observed through programming
at the institution level.
Q. Can you give me an example of how
an inmate mitigates the reasons for their
placement in the CMU, just a general example?
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A. Well, it -- inmates are placed in the unit based on specific information to a particular inmate. So staff would have to have a -- make a judgment that the -- that the reasons for the inmate being placed in that unit no longer required that level of monitoring.

It’s hard to try to break it down generally when it’s a case-by-case assessment for each inmate.

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

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

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

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

You've stated that it's done on a
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case-by-case basis, and I understand that. I'm trying to understand if there
were any general guidelines or parameters that you can state to explain how an inmate mitigates the original reasons for his placement.

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

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

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

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

A. There is no set time frame.

Q. Is there anything else general that you can cite to to explain what an inmate has to do to mitigate the reasons for his placement
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besides clear conduct and appropriate programming?

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

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

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

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

I understand inmates can discuss this with their unit team.

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

A. Well, yes. They're given the notice which explains why they were placed in
the unit. They would then be able to determine
from that information why they were placed in
the unit and what they would have to do to be
transferred.

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

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

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

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

Q. Looking at Paragraph 4 of
Exhibit 40, it indicates that the unit team
forwards their recommendation to the warden.
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And then is it accurate to say that the next step after the unit team forwards their recommendation is for the warden to consider that recommendation and decide whether he or she concurs with it?

A. Yes, correct.

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

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

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

A. Yes, correct.

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

A. Yes, correct.

Q. Need the warden state the reasons for his or her decision to concur or disagree with the unit team recommendation?
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A. No. I don't know whether the warden is required to document his reason/her reason.

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

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

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

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

A. It's just an indication that at that point, the packet has been completed.
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1   Dodrill memo.
2
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.
Q. The second -- please turn to the second page of the institution supplement and review to yourself the paragraph that begins, Classification and reviews of CMU inmates. It's Bates stamped BOP CMU 1527.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

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

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

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

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

Further down --
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Q. Starting just with that first, what's incorrect about that sentence?
A. There is no ample time that the unit team has to monitor the inmate. The monitoring reviews are done in -- in conjunction with the program reviews, which are done every six months after the initial review.

Q. Okay. And then you were going to direct me to the next error, I believe?
A. Near the bottom, the Inmates are expected to maintain clear conduct and have no sanctioned incident reports for the 12-month period prior to their review, regardless of designation, to be recommended for transfer.

Q. And what's incorrect about this statement?
A. It's inconsistent with the Dodrill memo, which there -- the Dodrill memo does not provide for a review period, a minimum time in the unit or -- or clear conduct.

MS. MEEROPOL: You guys are breaking up a little bit. I think maybe -- let me just wait a minute and see if the connection clears before we
September 1st, 2011 Terre Haute Institution

Supplement -- in that paragraph, I'm sorry, that
we've been looking at?

A. No, I don't believe so.

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

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

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

BY MS. MEEROPOL:

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

(Pause.)

BY MS. MEEROPOL:

Q. Let's take a look at the next
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Terre Haute Institution Supplement, which is dated May 31st, 2012. And turn to the second page, which is Bates stamped BOP CMU 64124. And please review that same paragraph which begins, Classification and reviews of CMU inmates.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MS. MEEROPOL:

Q. Are there any errors in this paragraph?

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

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

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

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

A. The top of my head, I'm not certain. I don't -- I don't recall another one
being issued in 2013, though it should have been. I would have to check.

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

A. Yes.

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

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

(Whereupon, Review for Continued CMU Designation was marked, for identification purposes, as Exhibit Deposition Exhibit Number 182.)

THE WITNESS: Okay.
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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.)
DAVID C. SCHIAVONE

BY MS. MEEROPOL:

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

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

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

A. It could be either.

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

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

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

A. It does, yes.

Q. Let's look again at Exhibit 113,
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Communications Management Unit. Currently, the Bureau of Prisons operates two CMUs, separately located at Terre Haute and Marion.

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

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

Q. Okay. Let's turn to the second page of the proposed rule and look at the second full paragraph that begins, Under this regulation. Do you see where I am reading?

A. I'm sorry, no.

Q. The second page, you said?

Q. The second page, the second full paragraph.
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A. Okay.

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

A. Yes.

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

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay.

BY MS. MEEROPOL:

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

A. Correct.

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

A. At the time the unit was opened, it was decided to have the regional director make the decisions. The regional director was, I believe, still, at the same time, making decisions for the ADX, and the Bureau's designation center was coming online to centralize all designations.
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A decision was made with this policy to continue to centralize designations at the Central Office level.

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

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

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

Q. Well, I think we had that discussion about designation, not review. So I'm asking the separate question of do you consider CMU -- the CMU review process to be similar to SMU, ADX and Carswell review processes?

A. They are similar in some aspects, but those units are different because they're for security reasons. And the criteria for placement in those units are -- are different than a CMU.

Q. And why do those differences lead
watch was used for inmates in the six-month step-down process?

A. That's a local decision. It's not a requirement. It's based on institution staff assessment of security needs for that facility.

MS. MEEROPOL: I'd like to mark for identification Exhibit 184. This is Daniel McGowan's designation packet. It's the document that was previously marked as 182 at Baird's deposition. The first page is BOP CMU 3384.

(Whereupon, CMU MAR Review for Daniel McGowan was marked, for identification purposes, as Deposition Exhibit Number 184.)

BY MS. MEEROPOL:

Q. Sir, I've added page numbers at the upper right-hand corner of this document for ease of our discussion.

Other than those page numbers, is this a true and correct copy of the designation packet created by the CTU and used by the North
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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
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material that the CTU relied on to recommend
Daniel McGowan's CMU designation?

(Whereupon, the witness reviews the
material provided.)

THE WITNESS: No, this doesn't
include all the information that the CTU
relied on.

BY MS. MEEROPOL:

Q. What information is excluded?
A. Well, not excluded, but not
included for -- for the regional review were
actual copies of his correspondence, these
letters, and these other pieces of individual
communication.

Q. I'm sorry. I didn't understand
your response there.

Are you saying there's stuff in
this packet that was not part of the CTU's
designation packet?
A. No.

What I'm saying is that the
referral memo summarizes items which were not
produced with the packet; they were just
summarized.
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Q. Okay. I understand.

And those items were Daniel McGowan's correspondence while incarcerated?

A. Looking at the memo, yes, correspondence, these interviews, his communications, letters, correct.

Q. Why weren't those documents included in the designation packet?

A. We believed we could adequately summarize their content here in the memo without providing the actual documents themselves.

If the -- if the people reviewing the packet wanted to see them, we could have made them available.

Q. We talked much earlier in the day about the fact that you include the presentence investigation report despite summarizing the contents of an individual's conviction.

How come that kind of underlying document is included in the designation packet but not this other type of underlying document?

A. Well, the presentence report is historically been used for all designations
Daniel McGowan's designation that does not appear in this designation packet?

A. We utilize and I believe we produced the press releases from the Department of Justice regarding the offense conduct.

Q. Okay.

MS. MEEROPOL: Why don't we mark those press releases as Exhibit 185?

(Whereupon, a packet of press releases was marked, for identification purposes, as Deposition Exhibit Number 185.)

MR. CARTIER: How are those identified?

THE WITNESS: Can I take a minute while you're pulling that?

MR. CARTIER: Sure, go ahead.

MS. MEEROPOL: It should be one of the folders near the top. Maybe it has press releases.

MR. CARTIER: Okay. I'm looking.

Can we go off the record for a
DAVID C. SCHIAVONE

a summary, sure.

Q. Is an indictment an appropriate thing for the CTU to rely upon in making a -- a CMU designation recommendation?

MR. CARTIER: You can answer.

THE WITNESS: I thought you were going to say something.

MR. CARTIER: I was inhaling.

THE WITNESS: It -- it's part of the inmate's overall history, so it would be a relevant document to consider and review.

BY MS. MEEROPOL:

Q. Even though it hasn't yet been proven?

A. It depends on each individual case and how relevant it is to the management and security of the Bureau of Prisons.

Q. So there are occasions in which it would be appropriate for the CTU to rely on statements in an indictment that have not yet been proven -- proven to recommend an individual for CMU placement?

MR. CARTIER: You can answer.
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THE WITNESS: Yes. The Bureau of Prisons has to manage inmates based on available information, so any relevant information provided regarding that inmate would be relevant to the management of that inmate.

BY MS. MEEROPOL:

Q. In the CTU memo in the paragraph where you describe Mr. McGowan's offense conduct and in the triangle bullet points describing Mr. McGowan's offense conduct, does the CTU distinguish between information found in the indictment and information proven at trial or in some other form?

A. The only basis for this referral is the conduct proven at trial.

Q. And I should say I don't believe there actually was a trial in the case, so let's say "proven" as opposed to "proven at trial."

A. The court -- the court documents relevant to his conviction.

Q. How's that?

A. Why did the CTU recommend
Mr. McGowan for CMU designation?

A. Well, as outlined in this memo, there were concerns based on his incarceration conduct through his communications which related to his offense conduct.

Q. So is it a fair summary to say that the CTU recommended Mr. McGowan for designation to a CMU based on his affiliation with ALF and ELF, his offense conduct and his communication while incarcerated?

A. The referral is based on the overall information, the historical information based on his offense conduct and his incarceration conduct in whole.

Q. Is there something that's not accurate about the way I summarized it?

A. Your statement about his affiliation with ALF and ELF is a relevant factor, but it's not something that we would say a singular identifier that would place an inmate in a CMU.

Q. So is it -- would you be more comfortable with a summary that stated that the CTU recommended Mr. McGowan for designation to a
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CMU based on his offense conduct and his communication while incarcerated?

A. I believe that's what I said; it's based on his offense conduct and his incarceration conduct as a whole.

Q. And his incarceration conduct, did that involve anything apart from communications?

A. No; it was the content of his communications.

Q. Okay. Let's look at the last page of Daniel McGowan's designation packet, which I've numbered as Page 79. It's Bates stamped BOP CMU 67482.

Is this a true and correct copy of the draft notice to inmate of transfer which was created for -- for Daniel McGowan's designation packet by the CTU?

A. To my knowledge, it is.

Q. Why is there no reference in this notice to Daniel McGowan's communications while incarcerated?

A. I wish I had a specific answer. It certainly was relevant in the referral. And through review, a determination was made that
DAVID C. SCHIAVONE

this was the most relevant information to put in
this notice in the limited space available.

Q. Is it your testimony that reference
to Daniel McGowan's communications while
incarcerated was left off because there wasn't
room on the form?

A. No. A decision was made based on
the summary of the information which was most
relevant and appropriate for his designation,
which ended up on this final form.

Q. Who made that decision?

A. Well, the final decision, like I
said, is the warden's signature, but it goes
through a review of all of the different persons
in the process, and they all have comments and
consideration on the form.

Q. Well, I thought this document, this
unsigned version at BOP CMU 67482, was generated
by the CTU.

A. The original version would have
been generated by the CTU, yes.

Q. Was there a version of
Daniel McGowan's notice to inmate of transfer
that made reference to his communications while
Q. Is this a true and correct copy of Mr. Smith's March 22nd, 2010 memo recommending against Daniel McGowan's transfer out of the CMU?

A. It appears to be, yes.

Q. Does this memo document the first time the CTU considered whether Daniel McGowan should be transferred out of the CMU?

A. I believe it does, yes.

Q. Why did the CTU recommend against Mr. McGowan's transfer?

MR. CARTIER: I'll just -- you can answer, but don't reveal any law enforcement sensitive information.

THE WITNESS: Okay.

MS. MEEROPOL: Nick, could you speak up a little bit with your objections?

MR. CARTIER: Yeah. I said -- I said you can answer, but I was instructing the witness not to reveal privileged law enforcement information.

THE WITNESS: Well, it's detailed in the memo that the CTU believed that
McGowan's communications continued to warrant the level of monitoring afforded by a CMU.

BY MS. MEEROPOL:

Q. And what was that based on?
A. It was based on his communications while incarcerated.

Q. I'm looking at the first two paragraphs on BOP CMU 5031. Do those two paragraphs summarize the -- why the CTU decided to recommend against Daniel McGowan's transfer?

MR. CARTIER: And let me state for the record -- I mean, given the nature of Rachel's question, again, the instruction not to reveal the substance of any law enforcement information, but to answer that question, I believe it's appropriate to identify if law enforcement information was also part of your recommendation.

So subject to that, you can answer the question.

MS. MEEROPOL: I mean, honestly,
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-- an open population without posing risk to institutional security.

Q.     What was the basis for the North Central Regional Director's decision?

A.     Absent asking him directly, I would believe it was the information provided which he reviewed from the unit team and the CTU.

Q.     You're assuming that was his basis, but is it fair to say that you can't tell from the document whether that was his basis or not?

A.     He didn't write specifically what he based his decision on, no.

Q.     Okay.

MS. MEEROPOL: I'd like to mark for identification Exhibit 186. This is the document that was previously marked as 183 at Mr. Baird's deposition.

It's an April 9th, 2010 memo for Lisa Hollingsworth, Bates stamped BOP CMU 3531.

(Whereupon, a memorandum was marked, for identification purposes, as Deposition Exhibit
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Number 186.)

- - -

BY MS. MEEROPOL:

Q. Please take a moment to review the
document, sir.

(Whereupon, the witness reviews the
material provided.)

THE WITNESS: Okay.

BY MS. MEEROPOL:

Q. Can you identify this document?

A. It appears to be the written notice
provided to Inmate McGowan regarding his denial
for transfer from a CMU.

Q. Yesterday, we talked at length
about the Dodrill memo, Exhibit 115. And the
fifth paragraph in that memo indicated that
inmates denied redesignation from a CMU will be
notified in writing by the unit team of the
reasons for continued CMU designation.

You're welcome to look at the
exhibit if you'd like, but I've just quoted it
to you.

Is this the notification that memo
requires?
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A. It's the notification the memo requires; however, it doesn't include the reasons why the inmate was determined to be appropriate to continue in a CMU.

Q. In other words, it doesn't comply with the Dodrill memo policy statement?

A. It complies with the policy by notifying the inmate in writing, but it's incomplete.

Q. Okay. Please turn in Exhibit 30, still to the next page after the NCRO review form we had been discussing, and take a look at the August 2nd, 2010 Kelly memo, Bates stamped BOP CMU 3394.

A. I have it, yes.

Q. Does this memo document the next time that Daniel McGowan's unit team considered whether he should be transferred out of the CMU? And when I say "the next time," I mean the time directly after the March memo we discussed just a few minutes ago.

A. I wouldn't be able to tell that without looking at the inmate's program review
Q. Do you have any reason to believe that he did document his reasons anywhere?
A. No. This would be the location where he would make his comments.

Q. Please flip several pages further in Exhibit 30 to the February 1st, 2011 Smith memo, Bates stamped BOP CMU 5023.
A. Okay.

Q. Is this a true and correct copy of the February 1st, 2011 CTU memo recommending Mr. McGowan's redesignation back into the CMU?
A. I believe it is, yes.

Q. What was the basis for that recommendation?
A. Well, it summarized in the memo the CTU believed Inmate McGowan's institution conduct still supported and advocated for the use of criminal activity and -- and direct action in support of radical environmental groups, plus he attempted to violate policies by circumventing communication monitoring and legal mail privileges -- legal mail policies.

Q. Please turn to the CTU referral form which follows the CTU memo. It's dated
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Deposition Exhibit Number 187.)

BY MS. MEEROPOL:

Q. Sir, please take a moment to review the document and tell me if this is a true and correct copy of the designation packet created by the CTU and used by the North Central Regional Director to determine whether Yassin Aref should be designated to the CMU.

And, once again, I will state to you that this is a packet that I put together based on Government counsel's statements about what documents appeared in the packet. And if you later discover, at the time that you review and sign the deposition transcript, that the packet was not complete, I'll ask you to indicate that on your errata form.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Well, this packet doesn't have a copy of the statement of reasons, and I would have to verify whether that was available and provided. It ordinarily is. I don't recall
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specifically if it was in this case. So I would have to check.

BY MS. MEEROPOL:

Q. I'll ask you to please check at the time that you review the transcript to indicate if the statement of reasons should have been included in this designation packet.

Okay?

A. Okay.

Q. Leaving the statement of reasons --

MR. CARTIER: I'm just going to formally request the right for the witness to review and sign the transcript before we forget that.

BY MS. MEEROPOL:

Q. Leaving aside the possibility that the statement of reasons was also included in the designation packet, does this packet include all the other material the CTU relied on to recommend Yassin Aref's CMU designation?

A. Yes, it appears that it does.

Q. Does it contain all the material the CTU considered in deciding whether to recommend Yassin Aref for a CMU designation?
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statement?
A. The CTU based that statement on the presentence report.
Q. Why did the CTU recommend Mr. Aref for CTU?
A. Well, as described in this memo and based on his offense conduct, Aref had significant communication and contact with different terrorist organizations or entities which we believed warranted heightened monitoring of his communications.
Q. I'm sorry. Was that two different bases there, his offense conduct and then his association to other terrorist organizations, or are those the same thing?
A. Well, his offense conduct was based on the -- on the incident which he was convicted for. The presentence report describes these other ties and associations to these other terrorist organizations and groups.
Q. So is it accurate to say that the CMU based its recommendation on his offense conduct, his links to the

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Islamic movement in Kurdistan, the information that his name and telephone number were found in three different Ansar al-Islam camps, and his diary entries, and a 1994 speech?

A. Well, the CTU made the recommendation based on that information as summarized here and found in the presentence report.

Q. Okay. Please flip to the last page of the designation packet, which is the unsigned Yassin Aref notice to inmate of transfer to Communications Management Unit.

A. Are you there, sir?

Q. That's right.

A. Yes.

Q. Is this a true and correct copy of the notice to inmate of transfer created for Yassin Aref's designation packet by the CTU?

A. I believe it is, yes.

Q. Please review the inmate specific portion of the notice and tell me when you're ready.

(Whereupon, the witness reviews the
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on this form.

Q. Okay. Let's turn to Exhibit 32 in the previously marked exhibits.

Please turn to the sixth page of the exhibit, which is the notice to inmate of transfer to Communications Management Unit, Bates stamped P1199.

A. Okay.

Q. Does this notice indicate the reasons why Mr. Nalley approved Yassin Aref for designation to the CMU?

A. No, this document doesn't.

Q. What does this document indicate? Whose reasons does this document reflect?

A. No. This document reflects information which supports the inmate's placement in a CMU.

Q. But it's possible that Mr. Nalley approved him for designation to the CMU based on a completely different reason?

A. You'd have to ask Mr. Nalley what his reasoning was.

Q. So look at the next page of Exhibit 32, please, which is the October 1st,
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the memo, which is Bates stamped 3295.

And allow me to direct your

attention to the warden's handwritten comments.

Does this document the first time

that Yassin Aref's warden considered whether he

should be transferred out of the CMU?

A. I believe it is, yes.

Q. Now, please look at the next page

of Exhibit 32, which is an October 25th, 2010

Smith memo, Bates stamped BOP CMU 3278.

Is this a true and correct copy of

the CTU October 2010 memo recommending

Yassin Aref's transfer out of the CMU?

A. I believe it is, yes.

Q. Does the memo document the first

time the CTU considered whether Yassin Aref

should be transferred out of the CMU?

A. I believe it does, yes.

Q. Why did the CTU recommend in favor

of Yassin Aref's transfer?

A. Well, based on the memo and the

summary that the CTU provided, it was a belief

that the inmate no longer warranted the

communication controls and monitoring of a CMU.
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Q.  What was the basis for that belief?

A.  Law enforcement review of his conduct, his behavior and a correctional judgment.

Q.  Please turn to the next memo, which is an October 26th, 2010 Smith memo, Bates stamped BOP CMU 5012.  We're still in Exhibit 32.

Is this a true and correct copy of the CTU's October 26th, 2010 memo now recommending against Yassin Aref's transfer from the CMU?

A.  I believe it is, yes.

Q.  And why did the CTU change their recommendation?

A.  Between submission of the first memo and this memo, law enforcement sensitive information was obtained which suggested the inmate still required the controls of a CMU.

Q.  Was Yassin Aref -- was Yassin Aref ever informed that confidential information was being relied upon to support his continued CMU designation?

A.  It was law enforcement sensitive
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But usually, inmates are not informed of ongoing investigations.

Q. What was the eventual outcome of this investigation?

MR. CARTIER: I'm just going to caution the witness not to reveal law enforcement information. But can you answer that question?

THE WITNESS: The only thing I can say without specifically identifying the outcome of the investigation was that the inmate was later submitted for redesignation from a CMU, which was then approved.

MS. MEEROPOL: I'd like to mark for identification Exhibit 189, which is a November 10th, 2010 memo for Lisa Hollingsworth, Bates stamped P2432.

(Whereupon, a memorandum was marked, for identification purposes, as Deposition Exhibit Number 189.)
DAVID C. SCHIAVONE

BY MS. MEEROPOL:

Q. Can you identify this document, sir?

A. It appears to be written notification provided to Inmate Aref regarding the denial of his transfer from a CMU.

Q. Does it provide an adequate explanation of the reasons for Mr. Aref's continued CMU designation?

A. No, it doesn't provide any reasons.

Q. Okay. I'm going to ask you to turn back to Exhibit 32 and to flip towards the middle of the document -- I mean of the exhibit to a March 18th, 2011 Kelly memo,

Bates stamped 3280.

Sir, how are you doing breakwise?

Do you need to take a break at any time?

A. Soon, please, yes.

Q. I should be done with Mr. Aref in about five minutes. We could get through him or I'm happy to stop and break now if -- if you prefer to do that?

A. Five minutes will be fine.
Q. Does this memo document the next time that Yassin Aref's unit team considered whether he should be transferred out of the CMU?

A. I believe it does, yes.

Q. Looking at the second page of the memo, does this document the second time that Yassin Aref's warden recommended his transfer from the CMU?

A. I believe it does, yes.

Q. Okay. Please flip to the next page, which is a March 22nd, 2011 Les Smith memo, Bates stamped BOP CMU 5010.

Is this a true and correct copy of the CTU's March 22nd, 2011 redesignation memo recommending Yassin Aref's transfer out of the CMU?

A. I believe it is, yes.

Q. Why did the CTU recommend Yassin Aref's transfer out of the CMU?

A. The CTU believed the inmate no longer warranted the controls and monitoring of a CMU.

Q. And what was that based on?

A. Law enforcement review of his
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institution conduct and correctional judgment.

Q. Please flip to the next page, which is the CMU referral form for Yassin Aref dated March 25th, 2011.

Is this a true and correct copy of the North Central Regional Office's March 25th, 2011 review of Yassin Aref's CMU designation?

A. I believe it is, yes.

Q. Why did the North Central Regional Director decide to release Yassin Aref from the CMU?

A. The Regional Director noted on the form he concurred based upon the above-noted comments on this form.

Q. Did the North Central Regional Director base his decision on the comments on this referral form or other comments as well, or can you not tell?

A. I can't tell. All he documented was what he wrote here.

MS. MEEROPOL: Okay. Why don't we take a 10-minute break?

MR. CARTIER: Yeah, let's do that.
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(Whereupon, a brief recess was taken from 10:16 a.m. to 10:29 a.m.)

MS. MEEROPOL: Okay. We're back on the record after a short break.

And I'd like to mark for identification Exhibit 190, which is Kifah Jayyousi's designation packet. The first page of the document is Bates stamped BOP CMU 76177. And it should be in the new exhibits folder.

(Whereupon, Kifah Jayyousi's designation packet was marked, for identification purposes, as Deposition Exhibit Number 190.)

BY MS. MEEROPOL:

Q. Sir, please take a moment to review the document and tell me if this is a true and correct copy of the designation packet created by the CTU and used by the North Central Regional Director to determine whether
Kifah Jayyousi should be designated to the CMU.

And, again, I'll assert to you that it was collated based on Government counsel's statements that identify the contents of the designation packet.

At the time that you review and sign your deposition transcript, if you discover that the packet is not complete, I'll ask you to indicate that on your errata form.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: It appears to be complete.

BY MS. MEEROPOL:

Q. Does the packet contain all of the material the CTU relied upon to recommend Kifah Jayyousi's CMU designation?

A. I believe it does, yes.

Q. Does it contain all the material the CTU considered in deciding whether to recommend Kifah Jayyousi for CMU designation?

A. I believe it does, yes.

Q. Does it include all the material the North Central Regional Director relied upon
DAVID C. SCHIAVONE

to recommend Kifah Jayyousi for CMU designation?

A. I believe it does, yes.

Q. Please turn to Page 64 of the designation packet. It's a March 31st, 2008 Smith memo, Bates stamped BOP CMU 4620.

A. Okay.

Q. Is this a true and correct copy of the CTU designation memo created for Kifah Jayyousi?

A. I believe it is, yes.

Q. On the second page of -- the second page of the memo, the third paragraph lists organizations Kifah Jayyousi is associated with.

What is the basis for the CTU's statement that Kifah Jayyousi is associated with Al-Qaeda?

A. It's my recollection this information came from a presentence report.

Q. Why did the CTU recommend Mr. Jayyousi for CMU designation?

A. Summarized in this memo, the CTU believed the inmate warranted heightened controls of his communication based on his offense conduct.
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Q. Was it based on anything else besides offense conduct?

A. The supporting information in the PSR as well as his actual offenses.

MS. MEEROPOL: Okay. I'd like to mark for identification Exhibit 191.

It's a Superseding Indictment, Bates stamped BOP CMU 76344.

(Whereupon, Superseding Indictment was marked, for identification purposes, as Deposition Exhibit Number 191.)

MR. CARTIER: Was this a previously marked exhibit?

MS. MEEROPOL: No; it's a new one. It should be in the new folders.

I think KJ Indictment, maybe, is the title.

BY MS. MEEROPOL:

Q. Sir, was this indictment considered by the CTU in making its recommendation for Mr. Jayyousi's CMU designation?
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A. Okay.

Q. Does this notice indicate the reasons why Mr. Nalley approved Kifah Jayyousi for designation to a CMU?

A. No.

Q. What does this notice indicate?

A. This notice indicates to the inmate the reasons that support his placement in the CMU.

Q. Mr. Nalley could have based his approval of Mr. Jayyousi's designation on completely different reasons, correct?

A. Mr. Nalley could have based his decision on what he felt was important in the referral packet and the information available to him to make that decision.

Q. Flip forward four pages in Exhibit 31 to the December 23rd, 2009 Shoemaker memo. It's Bates stamped BOP CMU 4813.

A. Yes.

Q. Does this memo document the first time that Kifah Jayyousi's unit team considered whether he should be transferred out of the CMU?
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his transfer from the CMU?

A. As far as I can tell, yes.

Q. Why did the unit team recommend Mr. Jayyousi's transfer from the CMU?

A. The unit team indicated they have noted no continuation of actions which precipitated his placement in the CMU, among their other comments in the entire memo.

Q. And why -- is it fair to say that the unit team's recommendation was based on Mr. Jayyousi's positive incarceration conduct?

A. They don't state that specifically.

They just make these particular comments in the memo.

Q. Why did the warden agree with the unit team's recommendation?

A. The warden stated he has acted within the regulations set forth and has not presented issues which cause concern.

Q. Please turn to the following memo, which is a March 22nd, 2011 Smith memo, Bates stamped 5016.

Does this memo document the first time the CTU considered Kifah Jayyousi for
transfer from the CMU?

A. I believe it does, yes.

Q. Why did the CTU recommend against Kifah Jayyousi's transfer?

A. The CTU believed the inmate still warranted the controls and monitoring of a CMU.

Q. Why?

A. Well, as summarized in this memo, based on his incarceration conduct and his offense conduct and the additional information noted in the presentence report.

Q. The third through fifth paragraphs of the second page beginning with, While in Terre Haute CMU -- do you see where I'm reading?

A. Yes.

Q. The third through fifth paragraphs describe a sermon delivered by Kifah Jayyousi at the CMU.

Was this sermon one of the reasons that the CTU recommended against Mr. Jayyousi's transfer?

A. Yes, it's included in the memo as one of the reasons the CTU considered.

Q. Was it the most significant reason?
BY MS. MEEROPOL:

Q. Did the CTU also provide the North Central Regional Office with information indicating that Mr. Jayyousi's incident report was eventually expunged?

MR. CARTIER: Same objections.

THE WITNESS: According to this packet, no, other than the memo from the CTU, which indicated specifically that the inmate had no sanctioned incident reports.

So I guess my answer should be yes, it did. The CTU referral memo indicates that the inmate had no sanctioned incident reports.

Sorry.

BY MS. MEEROPOL:

Q. Please turn to the first page of the transfer packet, which is Bates stamped 4618.

Was this document the first time that the North Central Regional Director considered Kifah Jayyousi's transfer from the CMU?
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A. I believe it is, yes.

Q. Sorry about that. Give me one second.

(Pause.)

BY MS. MEEROPOL:

Q. Please look at the Regional Director's statement on the second page of the CMU Review [sic] form.

Why did the Regional Director decide to keep Kifah Jayyousi in the CMU?

A. The Regional Director made a comment which says, Based on the above-noted -- I guess it says comments.

Q. What are the above-noted comments he is referring to?

A. They would be the comments entered onto the form by the other reviewing staff in the Regional Office.

Q. Might it also refer back to the CTU's memo?

A. It might, yes.

Q. I'm going to ask you to turn back to Exhibit 31 and to the second-to-last page of that exhibit, which is an April 14th, 2011 memo.
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It doesn't appear to be Bates stamped.

A. The last page, you said?

Q. The second-to-last page.

A. Okay. I have a memo --

Q. Are you looking --

A. Go ahead.

Q. -- are you looking at the April 14th, 2011 Kelly memo?

A. Subject, Transfer Denial.

Q. Yes.

A. Yes.

Q. Is this the notice provided to Kifah Jayyousi of his transfer denial as required by the Dodrill memo?

A. It appears to be, yes.

Q. Does this memo provide Mr. Jayyousi with the reasons for his continued CMU designation as required by the Dodrill memo?

A. No, it does not.

MS. MEEROPOL: Okay. I'd like to mark for identification Exhibit 193, which is a Inmate Activity Record. The first page is Bates stamped BOP CMU 60568. It should
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-
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, Wessam al-Delamaa 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;
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-
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 interagency 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 Xcelerator, 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 Xcelerator, 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
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)

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 circumstance (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:


§ 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.

* Paragraph 6002 Class E Airspace Designated as Surface Areas. * * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area. * * * * *

Paragraph 6005 Class E Airspace Extending Upward From 500 Feet or More Above the Surface of the Earth. * * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth. * * * * *

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BO Docket No. 1148–P]

RIN 1120–AR48

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, N.W., 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 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 assure 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 such 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 a level or 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, or 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 (BOP) 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
deprive 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
perspective on the need for a global
understanding of the security concerns
prevailing 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-
prisoners 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 transferred 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 terrorism-
related activity can occur in codes
which are difficult to detect and
extremely time-consuming to interpret.
Inmates involved in or to provide equipment
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 (2d Cir. 1998)
(“Because Aajj was in jail and his telephone calls were monitored, Aajj
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. Hammond, 381 F.3d 316, 334 (4th Cir. 2004) (“A
conversation that seems innocuous on
day may later turn out to be of great significance, particularly if the
individuals are taking it in code.”); United States v. Monteavisa, 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
hanging 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
Nasirjassaninated Rabbi Kahane, he
was placed in Rikers Island, where “he
began to receive a steady stream of
visitors, most regularly his cousin El-
Gabrowny, and also Abouhalima,
Salameh, and Ayyad. During these
visits, as well as subsequent visits once
Nasir was at Attica, Nasir 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, Nasir also
tape recorded messages while in
custody.” United States v. Rahman, 189 F.3d 88, 105–06 (2d Cir.
1999), impressed. Sheikh Abdul
Rahman had urged his followers to wage
jihad to obtain his release. Violent
tactics and murders followed. United
States v. Sattar, 314 F.Supp.2d 279,

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
necessity 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 correspondences.”
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. Unattended 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. 603(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, 3922, 3924, 4001, 4042, 4001, 4062 (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), 5038; 20 U.S.C. 509, 510, 5303(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 4410–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0109]

RIN 1625–AA09

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 credent, 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:


(2) Fax: 202–475–0306.


(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” 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 619–278–762; 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

(TITLE CONTINUED)
and

FEDERAL BUREAU OF PRISONS

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
So that was basically -- it was the recommendation of the OIG audit.

Q. And can you describe in general terms what -- what work the CTU does?

A. We monitor, analyze inmate communications. We have identified a certain segment of the Bureau of Prisons inmate population that we monitor. I have 15 intelligence analysts; that's their responsibility is to monitor the inmate communications. I have assigned caseloads. I have two staff in the Bureau of Prisons.

We manage the language translation program for the entire agency. I have two staff members that run that program for me.

We provide -- create and provide relevant training to internal and external agencies, internal BOP, external agencies, produce intelligence reports, intelligence bulletins, what we call "intelligence summaries," which are submitted to the -- basically, the Federal law enforcement community.

That's basically the mission in my office.
every single person who was -- who was it who
communicated to you the information you needed to
know about the CMUs so that you could do your job
as chief of CTU?

A. I guess when they actually asked me
to, basically, we're going to have this unit
called communications management unit; we need to
determine -- I need nominees or inmates that
we're going to place there. My office, myself
and David Schiavone, we actually came up with the
approximately 40 candidates. We submitted it;
that was the end of my involvement on that.

Now, to answer your question about
the CMU, I would imagine it was heavily with
North Central Regional Office and the actual
facility, because, I mean, officers are going to
go in and get the unit back online, it's going to
take work from the local institution staff.
North Central Region is going to be funding the
money.

But I had no involvement in that. I
mean, that's just me thinking how the process
would probably work.

Q. I understand.
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But who was it that told you this is what the CMU is; this is how it's going to work?

A. I don't recall now. That was 2006.

Like I said, I remember talking to Kim Williams about -- she would call me. It's like how can we move the inmates from Point A to Point B without having contact with other inmates?

But other than that, I don't -- I only remember them saying during the meetings on CTU. I don't even remember recalling them saying, all right, we're finished with the CTU portion; we're going to move on to CMU. I don't even remember that. I just think we have a good concept on CTU; we'll see you later.

That's basically what it is per my involvement.

Q. Okay. So did anyone provide you with any information or training to help you figure out who should be going to a CMU and who should not?

A. No.

Q. Were you provided with any written materials about the CMUs when they first opened?

A. No.
have computers, come to think of it, to be able
to conduct the research.

But it was probably a typed memo that
we submitted, these are the 40 candidates. There
was no referral packages completed back then, not
that I recall.

Q. Did you receive any instructions as
to how to identify those initial candidates?

A. No, other than the initial wave that
we looked at were international terrorists,
because the OIG audit was conducted on
international terrorists.

Q. Were you specifically told that that
is the category of prisoner you should be looking
at?

A. I don't recall that, no.

Q. And, presumably, there were more than
40 terrorists, convicted terrorists, in BOP
custody at the time.

Were you given any sort of criteria
or instructions about how to identify which of
that larger group of prisoners to nominate for
the CMU?

A. No.
this memo?

A. No, I don't.

Q. The CMU at Terre Haute had already existed for over a year once this proposal was generated; is that right?

A. That's correct.

Q. So was there a process in place before this memo was issued to get CMU nominations from around the country?

A. Not that I'm aware of.

Q. So the memo, the last paragraph of the memo, states that BOP staff -- if BOP staff become aware of -- of inmates who may meet the CMU criteria, they should contact you for CMU referral information and procedures.

So what kind of referral information and procedures does that refer to?

A. The referral information will -- like I said, I needed the supporting documentation.

They would prepare a memo, like a cover memo.

They would have their supporting documentation.

Again, we required the inmate's presentence investigation; the statement and reasons, known as SOR; J&C was judgment and commitment file; we
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would require any investigations that were generated off this -- you know, why they feel the inmate qualifies -- a disciplinary history on the inmate.

That's the supporting documentation that we're looking for.

Q. And so is it the role of the party nominating someone to collect all of that and get it to you, or do they get you a name, and then you gather all that information?

A. If the warden were to contact me, I would say, Warden, this is what we need. The warden isn't going to do it. He will have it delegated to somebody. We would eventually get it.

The majority of the information comes from what we call the "CMC," the case management coordinator, that would be all the -- like the PSI, the J&C, the SOR, the investigative reports; disciplinary reports would come from SIS. They would compile the information. Some institutions had SIS write the cover memo and the warden signed it. Some institutions had, you know, management write it. It didn't matter to me.
Q. All right. Let's talk a little bit more about the criteria for CMU placement.

So we've talked today about how the initial category -- and correct any -- anything I say that -- that misrepresents anything we've discussed -- we talked about how the initial category was inmates with terrorist convictions and that ultimately there were new categories added on over the years.

Now, am I right in thinking that you did have a role in sort of developing these criteria?

A. Yes.

Q. And tell me a little bit more about how you came up with these criteria.

A. It was basically the type of the inmate referrals that we were receiving. When we started receiving these sex offenders referrals, inmates who have sex offender convictions, who were attempting to reach out and contact their victims -- once we identified several of those, you know, in the referral process, we recommended for placement in CTU or CMU; and it was approved.
After two or three of them, it's like maybe this is something that we need to consider and have in one of our criteria for -- for who's eligible. And that's how that one evolved.

And like I said, first, it was sex offenders, and then we had some inmates that were writing out, threatening judges.

So we changed that from basically sex offenders to any inmate that's writing out, trying to contact a witness, a victim, et cetera.

That's basically how those -- I mean it just -- once we started receiving the inmates that were doing these specific instances, we incorporated it.

Q. Okay. Do you remember when you added the sex offender category?
A. No.

Q. How about then you said it expanded to anyone trying to contact witnesses or victims. Do you remember when that was added?
A. No.

Q. Okay. Then were the -- what were the -- what was the next category that was added?
A. Well, I don't remember the sequence,
sir.

I know another one is where the inmates are circumventing the established communication procedures. That could be anything from a possession of a cell phone within inside the facility, where they're directing drug activities. It can be where they're actually brazen enough to just use the institution phone to conduct drug activities or illegal acts.

Just once we started -- like I receive a referral, and it's like, yeah, this is something that we need to look at. How many other inmates are out there?

Sovereign citizens, attempting to gain information or glean information on staff members. So they can follow their leads.

Again, we evolved to that.

Q. And as you are adding these categories, was that being documented anywhere?

A. Yes, we have a documentation that's in the memo.

Q. Right.

We'll get to that. And I know, ultimately, there is a memo that said these are
the five categories.

But it sounds like over time those --
those categories were being added on one by one.

So was that -- as they were being
added, was it documented anywhere?

A. From Ms. Conley's memo in 2008, where
she basically states in here -- The CMU was
established to house inmates who, due to their
current offense or conviction, offense conduct or
other verified information, requiring enhanced
verbatim) monitoring of all communications with
persons in the community.

That's a pretty generic statement, I
realize that, but that was in '08. That's the
first time that I can think of that something
like that was actually documented.

We've done what we call "briefing
bulletins" for the executive staff over
the years. We've incorporated -- you know, as
we've expanded out, that's the only time I can
remember is when, like internally the briefing
bullets, did they go out to all facilities,
something in this type of a memorandum, not till,
I -- want to say -- Mr. Dodrill did the memo
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that -- there was a gap in that time frame.

Q. Okay. Sir, is it fair to say that until March 2008 -- or, actually, let me strike that.

Until that Dodrill memo that you referred to, the only guidance people had throughout the BOP in terms of who to nominate was this memo here (indicating), this 2008 memo from Ms. Conley?

A. To my knowledge, yes.

Q. Okay. I want to direct your attention to a document that was previously marked as Exhibit 36.

MR. CARTIER: Thank you.

BY MR. AGATHOCLEOUS:

Q. Here you go.

This is a document entitled, communications management unit.

Do you recognize this document?

A. Yes.

Q. What is it?

A. If I remember correctly, this is the briefing bullets I was talking about earlier. We have in -- in Correctional Programs Division, or
CPD, we maintain a booklet -- or let me retract that.

The division maintains a booklet which is called the "briefing booklet." And it's for the exec staff. So let's say I get new senior deputy assistant director and a new assistant director in, each division underneath his branch, his area he's responsible for, they have briefing booklets. And, to my knowledge, that's what this is (indicating).

Well, if you look on the back, it says "CMU talking points." That's the briefing booklet.

Q. And do you know who authored this document?
A. It depends on what version they have. Some we authored. Others that are actually -- we've discovered in the booklet that somebody actually altered it. We wrote the initial one. But there's been versions in that booklet that I've discovered that didn't come from my office, and I don't know who does it.

Q. Who would have authority or ability to alter this kind of a document?
submitted.

Q. And who would you send those corrections to?

A. My boss, Mr. Eternick.

Q. Okay. And do you remember following up to make sure that the corrections had been made?

A. No.

Q. Would it be erroneous for individuals involved in the designation process to use these criteria or use this document (indicating) in reaching their decision or recommendation about whether someone belongs in a CMU?

A. When you say "designation process" --

Q. Well, anyone who is reviewing -- who's involved in -- in reviewing whether someone should be sent to the CMU, if they were using this document to make this decision, would that be erroneous?

A. No, because this was a -- these were bullets for the exec staff. At that time, they weren't involved in the -- even to this day, unless there's a -- a -- a disagreement. But even to this day, the exec staff aren't CPD,
Correctional Programs Division, and that's what this briefing bullet is for is the Correctional Programs Division.

This is not for the regional director nor North Central. It's not even shared with OGC, who is doing the review process. So I don't see it as a concern.

Q. Okay.

A. Now, there may be some wordsmithing, but the gist of this is basically the same.

Q. Would it surprise you to learn that staff involved in the designation process used this document to make their decisions about designations to the CMU?

A. My -- and my question would be what staff.

Q. Staff at the North Central Regional Office.

A. Then I wasn't aware of that.

Q. Does it surprise you to learn that?

A. I'm not going to say "surprised." I just wasn't aware of it. I'm not -- I'm not involved in the North Central. They have their own review process, their own separate world from
A. There may be. But I'm not -- off the top of my head, I can't think of any right now.

Q. So by my read, the criteria in here are fairly broad.

So let's take a look at the first one, 2(a). This includes any inmate whose conviction or offense conduct included association, communication or involvement related to international or domestic terrorism.

So, presumably, that involves a fair number of BOP inmates.

So once an inmate falls into this category and is identified as such, how do you decide whether or not they should go to the CMU -- that you're going to refer them to the CMU?

A. Make the referral?

Q. Yeah.

A. We look -- we look at the incident offense; in other words, what their actual crime was -- the PSI provides quite a bit of information, background on the inmate, what his involvement was in the crime. That's -- after reviewing that, we get intelligence from other
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1 law enforcement agencies.

   Again, we review all the supporting
2 documentation that I've explained before,
3 everything that's required for a referral.
   We go through it all, and then we
4 make a determination whether he actually needs to
5 be placed in a CMU or he can program in a regular
6 population.
7
8   Q. Certain terms of the winnowing down
9   that you're describing.
10   A. I can't think of anything off the top
11   of my head.
12   Q. So I want you to compare the criteria
13   that appear in this document to the ones -- and
14   I'm referring to Exhibit 115 -- and compare them
15   to the ones that appear in Exhibit 36.
16   A. Okay.
17   Q. Do you think there's any meaningful
18   difference between these criteria?
19   A. For the first one, 2(a), that you
20   just spoke of, the first bullet on 36, which is
21   inmates who have been convicted of, or associated

a local investigation, that means the warden has already approved it. Who am I to argue with the warden?

Q. Do you ever consider press releases from either the Department of Justice or the United States Attorneys' office?

A. We use them, yes. They're not always correct, but we do use them.

Q. If a press release is about an indictment, do you treat that differently than a press release that's about a conviction?

A. Treat it the same. I hate to say this, but press releases from Government offices ranks just above media. There's a lot of inconsistencies in there. A lot of grandstanding.

Q. That's what press releases are all about.

A. That's true.

Q. If information that you cite in a referral memo is controverted, do you indicate that that's the case in these memos?

THE WITNESS: Could you repeat that, ma'am?
(Whereupon, the court reporter read back the pertinent part of the record.)

THE WITNESS: What do you mean by "controvert," exactly?

BY MR. AGATHOCLEOUS:

Q. Disputed.

A. Understood, disputed.

Yes, if there was something disputed, we would address that.

Q. And how would you address it?

A. We would list -- we would list it -- the statement and we would list how it was disputed. That way the approving officials above me can make that decision, not me.

Q. Do the referral packets always include a copy of the inmate's judgment and conviction?

A. I wouldn't say all the time, no.

Q. Is it only if the designation or the referral -- I apologize, is based on the conviction?
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offense is animal terrorism, the AETA Terrorism Act, we put -- that would qualify.

Now, he could have another charge or another, say -- let's say he was investigated for possession of a cell phone. We may not list that, because the primary is he's a terrorist.

Q. So is it fair to say that the -- that the notice of transfer isn't actually intended to give the inmate notice of all the facts that led to the designation, just so long as it refers to one of the categories?

MR. CARTIER: I'll object to lack of foundation with respect to the ultimate reasons for placement.

But you -- you can answer.

THE WITNESS: To me, sir, of those facts, I'm notifying the inmate why he's being placed in the unit. And it has to meet one of these categories. I may not get specifics. If the inmate was convicted of terrorism activities, he knows it. I don't have to remind him.

So I -- that's what's in the block.
Q. I think I'm using the wrong word, and maybe that's leading to some confusion. My understanding is that various people at the North Central Regional Office reviewed the referral?

A. Now I understand what you're talking about.

Q. Okay. I apologize. So -- so what I'm asking is what's your understanding of the role in that process.

A. Prior to the discovery in this case, I had no idea they were doing it. That form they have, I didn't realize there was such a form until I reviewed it. Because they don't share.

It's obvious to me that the regional director has identified certain staff -- they're called administrators, regional administrators -- certain staff to go through and review these documents, and they're to provide input so the regional director can make a more informed decision.

Q. So previous to seeing the discovery in this case, were you under the impression that your referral packet went straight to the
BY MR. AGATHOCLEOUS:

Q.  You understand it?
A.  Yeah.

Q.  Okay. Let's talk about someone who is sent to the CMU based on facility conduct, something like recruitment and radicalization. My understanding is that what the unit team would be looking for in that scenario is whether that behavior stopped at the CMU. Is that also your understanding?
A.  Yes.

Q.  How long do you think someone would have to refrain from that kind of questionable conduct before they would be appropriate for transfer out?
A.  Sound correctional judgment, sir. To me, there's never been a time frame set to my knowledge. I can't answer when they would recommend.

Q.  What are some of the things that you're looking for when you consider a case like that?
MR. AGATHOCLEOUS: So I would like to mark for identification a document entitled, Review for Continued CMU Designation as Exhibit 168.

(Whereupon, Review for Continued CMU Designation was marked, for identification purposes, as Smith Deposition Exhibit Number 168.)

BY MR. AGATHOCLEOUS:

Q. Once you've had a chance to take a look at it, just let me know.

A. Yes, sir.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay, sir.

BY MR. AGATHOCLEOUS:

Q. Is this the change you were talking about?

A. Yes, sir.

Q. So I know you mentioned that the new 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.
Q. Anyone else?
A. The only ones I've seen are the case manager.
Q. Okay.
A. The case manager initiates it; the unit manager approves it; then it goes up here to the CEO, the Chief, the warden; they sign it; and then it goes to North Central division.
   We forward it on once we receive it -- we do our recommendations, and then it goes to the warden -- or to the regional director.
Q. What's the purpose of this new form?
A. I can't answer that, sir.
Q. Have you ever talked to the regional director -- the new regional director, Mr. Laird, you said, about this form?
A. No.
Q. Have you spoken to anyone at either CMU about this form?
A. Not CMU. I might have talked to my boss about it, Randy Eternick.
Q. What did you talk about with Mr. Eternick?
A. The only thing I can figure is, hey,
there's a new form. This is at the direction of Mr. Laird. We didn't have no input in design, any of that.

Q. At any point, has Mr. Eternick told you what the purpose of this new form is?
A. Not that I recall. I don't know if he knows.

Q. Okay. Let's go through the form. So Box Number 1 says ARSD CMU.
A. Um-hum.

Q. Do you know what that means?
A. Yes.

Q. Can you tell me?
A. Arrival date -- the ARS is the arrival. The D stands for date. So basically, his arrival date at CMU.

Q. The second bottom says, Anticipated Release Date/Release Method.
A. I would say yes.

Q. You don't seem sure, though.
A. The only reason I say yes is because it has release method. That could be -- what's
the anticipated release date may be
February 15th, 2016. Release method may be good
conduct. But that's estimated. That's
anticipating the inmate doesn't get any
disciplinary and have a good conduct removed, or
it could be two-thirds sentence.

It depends on what law or series of
laws he was sentenced under. It could be parole.

So that's -- that's what tells me
it's probably his actual release from prison
versus his release from the CMU, because it has
release method.

Q. Right.

So because of the use of the words
"release method," that suggests to you this
wouldn't be referring to the anticipated release
from the CMU?

A. Correct.

Q. Okay.

Okay. I think I understand Box
Number 3, Next Review Date. Presumably, that's
the next program preview.

Is that also your understanding?

A. Yes, sir.
Q. Okay. How about Number 4, Original Reason for CMU Designation?

In the forms you've seen so far -- and you don't have to go into any details, but do they just summarize what was on the original notice for -- of transfer?

A. Basically, yes.

Q. And then, in Box Number 5, how has the unit team been using that box in the forms you've seen?

A. Basically off the original referral memo from what I've seen.

Q. Have you seen examples where more than one of those is checked?

A. Yes.

Q. And then Box Number 6 says, Disciplinary History related to misuse/abuse of approved communication methods. Can you explain what your understanding of that box is for?

A. Again, they would document any time an inmate received disciplinary action based on abuse or misuse of established communication procedures. They would actually list -- how much
they would list in there, I don't know. It might be something simple as a date it occurred, what he was charged with, gang activity using coded communications, whatever.

Obviously, they're restricting -- let's say I had a assault on staff. That wouldn't be related to abuse/misuse of communication methods, so they're restricting it based on communications only.

Q. Does Box Number 6 only include disciplinary incidents where there has been a finding of misconduct?

A. In other words, it's been sustained?

Q. Correct.

A. I would say yes.

Q. Have you ever seen one of these forms filled out that refers to an incident where it was not sustained?

A. Not to my knowledge.

This is a relatively new form, too.

Q. When did they start using this form?

A. That's a good question.

I'd say the last 12 months.

Q. Okay. So calendar year 2013? Is
that fair?

A. Yes, that's fair.

Q. Was it first half of the year or second half of the year?

A. I'm going to say starting the summer of last year. Just guessing.

Q. December of last year?

A. No; summer.

Q. Summer.

Okay. Thank you.

How about Box Number 7? It says Inmate Comments/Statement.

How has that been filled out in the forms you've seen?

A. When they have their program review -- their program review with the inmate, he has an opportunity to present -- this is the -- the -- the space where he would be able to put his statement.

Q. Is it always filled out?

A. I don't know that, sir.

Q. No, but the ones you've seen.

A. The ones I've seen, no, not always.

Q. About what percentage of the time
would you say it's filled out?

A. Sir, it's so new, I couldn't even
tell you. I can't answer that. I don't know.

Q. In those instances where it hasn't
been filled out, does it say why?

A. No, not to my knowledge.

Q. So is it fair to say that you've
received copies of this form where Box Number 7
is completely blank?

A. I can't answer that, sir, because
when I review it, I'm not so much looking at the
inmate's comments. I'm more looking at what the
warden's comments are.

So I really can't -- I don't give
this form that thorough of a review. I'm looking
for the warden's comments. I already know what
the disciplinary history is going to be. So I'm
reading my recommendation from CTU to the RD.

This is supposed to be separate. I
just glance at it out of curiosity to see what
the warden is saying. Because this is not
supposed to influence my decision (indicating).

Q. I see.

Where -- where does the warden --
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Q. Do you recall any situation in which someone was transferred from one CMU to the other and then transferred from that second CMU to general population in less than 18 months?

A. I would say yes, probably, on 18 months --

Q. Okay. Can you --

A. -- but I don't recall who it would be without reviewing it. But I would say that's more feasible than four months.

Q. Okay. Do you have any recollection -- specific recollection of that happening?

A. I'd have to review records.

Q. Thank you.

Your memo -- and now, I'm referring to a March -- the March 22nd, 2011 memo -- it refers to an incident where Mr. Jayyousi was the rotational Muslim prayer leader at the Terre Haute CMU.

A. Which page are you on?

Q. I'm on the second page. It's marked 4514 [sic].

A. Okay.
Q. It's the third paragraph -- the third new paragraph, and you say, While in THA CMU, Jayyousi was the rotational Muslim prayer leader. And then there's three paragraphs about that. Do you remember learning about that incident?

A. Yes.

Q. And what materials did you review prior to writing this memo?

A. I didn't write this memo.

Q. Prior to reviewing this memo, then?

A. The only thing I remember reviewing was the translation from Officer -- or excuse me -- from Intelligence Analyst Bair of the actual transcription of the audio and the video. I had never saw the video.

Q. Okay. If you flip forward a couple of pages, you'll see a CTU memo dated April 12th, 2011 from John Bair. Is that the memo you were talking about?

A. Yes, sir.

Q. So just to be clear, you examined this memo in considering this transfer request?
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A. Yes -- well, no. I considered the speech. I can't remember if it was this specific -- I recall specifically reviewing this memo, but I can't recall if what -- how I originally gained knowledge was off this memo. I'm quite confident it wasn't off this memo, because the incident occurred -- I'm trying to remember when it actually occurred.

Q. 2008.

A. Yeah, 2008, August 15th. So I would have become knowledgeable probably within hours regardless of where I may have been, as long as my cell phone was not turned off.

So, yeah, this was -- this was significant.

Q. Sure.

My question is, did you review this when you were considering the transfer request?

A. I reviewed the transcript. I don't know if it was specifically this memo (indicating).

Q. Okay. But -- but you somehow looked at a transcription.

It may have been this?
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material provided.)

THE WITNESS: Can you repeat your question?

BY MR. AGATHOCLEOUS:

Q. Is it fair to say that this -- part of the function of this document was to document people who were being considered for placement at the second CMU?

A. I would say yes, sir.

Q. Okay. Thank you.

Okay. I want to turn your attention to a document that was previously marked as Exhibit 123.

A. No wonder I couldn't find it.

Q. Here you go.

A. Thank you.

Q. Okay. So let's start with the November 15th, 2010 CTU memo that starts this document. It's -- it's dated 674 -- not dated, I apologize -- it's Bates stamped 67400.

And in that memo, you recommend this inmate's transfer to the CMU.

You describe his offense conduct.

And if you turn to Page 2, you'll see that in the
first full paragraph, you state that he has a history of subscribing to a radicalized Islamic philosophy and has maintained a consistent interest in radical Islam. Efforts need to be made to effectively manage -- something -- it's redacted. I think it's his name -- and his radicalized points of view, to preclude his views from recruiting or radicalizing other inmates.

And you then indicate in the third paragraph -- third full paragraph that Based on his offense conduct and beliefs, it's recommended that he be sent to a CMU.

So just to extrapolate from that, is it fair to say that this inmate's radicalized religious beliefs and interests were at least one of the reasons you recommended him for CMU designation?

A. Allow me to read it a little bit more, please.

Q. Absolutely. Take your time.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Okay. Your question, sir?
BY MR. AGATHOCLEOUS:

Q. Is it fair to say that this inmate's radicalized religious beliefs and interests were one of the reasons you recommended his transfer to the CMU?

A. I believe his offense conduct were probably his primary. But based on his radical beliefs, it would have been secondary, yes.

Q. Thank you.

Now, I'd like you to turn to the notice to inmate of transfer dated January 3rd, 2011. This is for the same inmate.

Did you draft this notice?

A. Mr. Schiavone.

Q. Okay. Did you review it, though?

A. I'm assuming I did. Since I signed it, I would say yes.

Q. Can you read the box that lists the reasons for his transfer?

A. Your current offenses of conviction --

Q. You don't have to read it out loud. I mean to yourself.

A. I'm sorry. I apologize.
Q. Don't worry about it.

(Whereupon, the witness reviews the material provided.)

THE WITNESS: Yes, sir.

BY MR. AGATHOCLEOUS:

Q. Why wasn't the information about his radicalized Islamic philosophy or continued interest in radical Islam included on this notice of transfer?

A. To me, it had stuck to the offense conduct. And, like I said, with limited space, there's only so much we can put in there.

But that, to me, would have been the attempted use of mass destruction. It doesn't get much bigger than that one. So that's what we went with.

Q. Do you believe that, ideally, this notice would include all the reasons that were considered?

A. To me, it's sufficient. I don't have to specifically list -- I don't understand why I would have to specifically list out each one.

We're given the offense conduct. To me, that's sufficient. Because it basically
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states, based on the offense conduct, it is
recommended you be designated to the CMU. It
also states beliefs which could threaten. I
understand that.

But the primary weapon -- WMD, that's
the primary charge.

Q. Is there any reason why this inmate
should not be told that these were factors
considered?

A. No.

Q. Did this inmate have many other way
to learn about all of the reasons he was
considered for CMU placement?

A. I guess he could have asked
Mr. Shepherd when he presented the form.

Q. To the extent that his radicalized
philosophy and continued interest in radical
Islam were a factor you considered, how could
this inmate mitigate the behavior, that behavior
that you were concerned about, if he wasn't told
that that behavior was problematic as far as the
BOP was concerned?

A. Through time, observations,
communication monitoring, see how he interacts
Q. So is it your testimony that even though 1,774 cell phones -- well, actually, let me step back. My understanding is that it isn't that 1,774 cell phones were found, period; it's that 1,774 cell phones were seized from BOP prisoners actually found and attached to a specific prisoner.

Does that surprise you?

A. That high of a number, yes.

Q. It does.

Okay. Well, I'm basing that information on a BOP report --

A. Okay.

Q. -- so if this was one of 1,774 incidents where inmates were -- cell phones were seized from BOP inmates in 2008, how come this guy ends up in the CMU?

A. Because he was obviously referred to us by the institution. If they don't refer them to me -- we don't track cell phones.

Q. Do you remember any other inmates who were found with cell phones being referred for CMU placement?
CONFIDENTIAL — LESLIE SCOTT SMITH

A. No.

Q. Ever?

A. Oh, I thought you meant with this group in 2008.

Q. No, no. I -- well, that was my question, in 2008.


Q. Okay. Uh-huh.

So this was the one case of someone being found with a cell phone in 2008 that you can recall?

A. That I recall.

Q. Okay. Subsequent to that, have other inmates who were found with cell phones been referred to the CMU?

A. Yes.

Q. And how many ended up in the CMU?

A. Two of them have, yes.

Q. How many referrals would you say that you've had based on possession of a cell phone?

A. That I don't know off the top of my head.

But I know of two other inmates that
I have in the unit that were referred to and approved for the unit that -- cell phone -- illegal cell phone. And both of them were -- the cell phone use were not BOP custody. They were ones caught in a county jail, and one was caught in state prison. But they were indicted Federally because of interstate commerce.

Q. And in those couple of cases that you're referring to, were there other reasons for CMU placement or was possession of a cell phone the only reason?

A. It was -- possession of a cell phone is circumventing communication procedures, which is one of our standards that qualify.

MR. AGATHOCLEOUS: Okay. I'd like to mark as Exhibit 174 the following packet -- referral packet to the CMU. For clarity, it begins on BOP CMU 76121.

(Whereupon, Packet of referral materials was marked, for identification purposes, as Smith Deposition Exhibit}
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF, et al.)
) )
Plaintiffs,
) No. 10-0539(BJR)
) )
vs. )
) )
ERIC HOLDER, et al. )
) )
Defendants. )

DEPOSITION OF KIFAH WAEL JAYYOUSI

The deposition of KIFAH WAEL 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.

APPEARANCES

MS. RACHEL MERROPOL & MR. ALEXIS AGATHOCLEOUS
SENIOR STAFF ATTORNEY
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, Seventh Floor
New York, NY 10012

In behalf of the Plaintiffs;

MR. TIMOTHY A. JOHNSON & MR. NICHOLAS CARTIER
TRIAL ATTORNEY
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;
A. My immediate family.

Q. Immediate family?

A. Yes.

Q. Okay. And my understanding is you have a fairly large immediate family. You have a wife, two twin sons --

A. Yes.

Q. -- and three daughters?

A. That's correct.

Q. Okay. Well, I would like to ask you to kind of provide an overview and timeline of the various facilities you've been housed in since your arrest. Before I do that, just so the record is clear, where are you currently incarcerated?

A. At USP Marion in Marion, Illinois. Unit N.

Q. And that is the -- unit N is in the part of the general population?

A. Yes, sir, it is.

Q. While you've been in general population or GP at USP Marion have you been housed in any units in addition to unit N?

A. When I arrived here I was housed at the communication management unit or they call it unit I. I unit.

Q. Okay. So I'll limit my questions just to
Q. Was your brother ever able to visit?
A. I'm trying to think. He might have come one time. I believe he did come one time.
Q. And I believe your parents --
A. My parents would never want to come. My mother told me in particular that she did not want to come in that situation and see me behind a glass window. My -- both my parents are elderly and they were very emotional to learn that it's behind the glass. You know, they wouldn't be able to touch me, in other words.
Q. I understand. Has your father visited you since you've been placed in general population here in Marion?
A. No. His health has deteriorated. And he said, when you get to Milan, I'm going to go out there no matter what. He is almost blind. And he needs someone to be next to him. He can hardly walk. So he said when you get to Milan he'll be able to come, because that's only like 40 minutes away from home.
Q. And I apologize for asking this again. I want to make sure I understand. It's true for both Terre Haute and the Marion CMU, did you always use boys.
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF, et al.,
Plaintiffs,

against-

ERIC HOLDER, et al.,
Defendants.

** C O N F I D E N T I A L **

DEPOSITION of DANIEL MC GOWAN, taken by
The Department of Justice, at the offices of
Weil Gotshal & Manges, on Friday, November 8, 2013,
commencing at 9:10 a.m., before Elizabeth Santamaria,
a Certified Shorthand (Stenotype) Reporter and
Notary Public within and for the State of New York.
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
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF, et al., )
Plaintiffs, ) CIVIL ACTION NO.
v. ) 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.
Q: So almost two years?
A: I think it was two years, two months something, I believe.
Q: And where did you go next?
A: Marion, Illinois.
Q: And I know you were in a CMU at Marion, also?
A: Yes.
Q: And did you go directly from Terra Haute to Marion CMU?
A: From CMU to CMU, yes.
Q: So that was March 2009?
A: I believe so.
Q: And how long were you in the CMU at Marion for?
Q: So that was 26 months?
A: About.
Q: And then where did you go next?
A: I came out the same prison but to the general population.
Q: Okay. So you were in the Marion general population?
A: Yes.
Q And that was May 2011?
A Yes.

Q How long were you in the Marion general population?
A Until the end of November.

Q So in November where did you go?
A Allenwood.

Q Was that by airplane?
A Yes, yes.

Q And how long were you at Allenwood?
A One year.

Q So November 2012?
A Yes.

Q And was that in the general population?
A Yes.

Q Where did you go after Allenwood?
A Canaan.

Q Where is Canaan?
A I think here in Pennsylvania somewhere, like holding center.

Q How long were you there?
A 52 days.

Q And were you in the general population?
A For those they are in the transfer only, they have the special unit for the people that are in
Q Did you have visitors when you were at the Terre Haute CMU?
A Yes.
Q Who came to visit you?
A I'm not sure to call that a visit because indeed it's not a visit. Which is a visit, it's to somebody comfort you or comfort your family or children or sit together, to have some good time or to talk. That's not the case in the CMU.

They came, they put you in the small room, three, four children, all crying. They want to hug you and the children, they jump to the phone, they want to speak to you and they have to speak one at a time.

I'm not sure that's a visit. It's just more torture than to be privileged to see your family like that.

But the first time they came my two sons. Another they came they supposed to have four hour. After one hour, they say no. They cancel the visit and they kick them out.

And I just remember I was begging them if they can't just leave my children. They said legal we want them to wait outside or anything, but let me just talk to my children. And they were crying.
They said no, they said no, visit is over. And imagine three days they drive and they stayed there night and they almost three days to drive back and one hour and they cut it off. So it was not kind of privilege. It was torture. I just, sometimes you say I just don't need you to go through. I just don't need to see them in this case.

Q Did your sons ever come see you again when you were at the Terre Haute CMU?

A Yes, I believe they came back.

Q Do you remember how many times they came back?

A I'm not sure exactly how many time, but they came back, whole family came. My wife, children.

Q How long did that visit last?

A Maybe whole four hour was that the visit at that time, I think. Maybe two days for four hours or one day eight hours. I think that's what it was, from beginning. So maybe twice four hours.

Q Did your daughters visit you or come see you at the Terre Haute CMU any time other than the one time when your whole family came?

A I'm going to say just one time they came. But they came, yes.
Q: How many times did the whole family come see you when you were at the Terre Haute CMU?

A: I don't know.

Q: Was it more than once?

A: Of course. I just told you about two of them just now.

Q: I'm talking about the entire family, your wife and all your children. I know they came on one occasion. Did they come more than just once?

A: Let me just say this. I just remember one time. I ask my wife to come and bring the children. She asking me what's the point for them to drive 1,500 mile to talk to me on the phone, so we can talk from here.

It's just the first visit was painful enough to say did I want my family to go through this. I'm thinking myself how this will affect my children and shape them and what's kind of memory they will carry.

I told her was not a visit, it was kind of torture.

There is a guy just had a visit, he is coming back to the cell, crying, crying, crying. I said what's wrong, what's wrong. He said his son I think he told me, he's three years, he says every five
minute he knock the door, 'police, police, that is my
daddy. Let me go there. Let me go there.' And he
keeps crying. And he spend all the day, make
everybody cry. So it was not really visit. But that
was the visit.

Q So I understand that your whole family came
out that one time. Is it --
A I believe they came more than one time.
But how many time I don't remember.

Q Do you remember them coming out a second
time when you were at the Terre Haute CMU?
A I believe they came.

Q And I just want to know, it's kind of yes
or no questions, did you have a specific memory that
your entire family came to see you after that one
particular visit you've been discussing?
A I'll have to say no.

Q Did your wife come see you other than the
one time when your entire family came out?
A If she came, they all came together.

Q Okay.
A And I believe they came. They came more
than one time.

Q But you can only remember one specific
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