

EXHIBIT 35



U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Complex
Bunter, North Carolina

Complex Supplement

OPI : CMC
NUMBER : BUX 5264.08C
DATE : March 9, 2010
SUBJECT : Telephone Regulations
for Inmates

1. **PURPOSE AND SCOPE:** To establish guidelines for providing inmates access to local and long distance telephone service for social and legal purposes.
2. **DIRECTIVES AFFECTED:** Program Statement 5264.08, Telephone Regulations for Inmates January 24, 2008, and Program Statement 4500.06, Trust Fund/Deposit Fund Manual, Chapter 6, Inmate Telephone System, is referenced. Institution Supplement FCC 5264.07B, Telephone Regulations for Inmates is rescinded.
3. **STANDARDS REFERENCED:** ACA 4-4271, 4-4272, 4-4275, and 4-4497
4. **DESCRIPTION OF RULES OR PROCEDURES:**
 - A. **Procedures:** Maintaining contact with the community via telephone is a privilege afforded to those inmates who demonstrate a willingness to conduct themselves in a responsible and mature manner. Telephones are to be used to maintain family and community ties within the lawful use of the telephone system. Disciplinary sanctions may be imposed for the abuse of telephone privileges. Inmates are responsible for their telephone use expenses.

All calls placed by inmates for other than properly approved attorney calls are subject to recording and monitoring by staff. Notice of the potential for monitoring calls shall be included in the inmate admission materials and posted on or near inmate telephones.

B. TRUFONE Accounts

- (1) TRUFONE account maintenance is automated using the nightly SENTRY process.
- (2) Each inmate may submit a Telephone Number Request Form, BP-S505.052, upon their arrival with a maximum of thirty (30) telephone numbers. When the BP-S505.052 forms are submitted to unit staff, staff will review the form and verify the identity of the inmate that has hand delivered the form to the staff member. Unit staff will hand deliver the telephone request form to Trust Fund staff no later

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following formal, and completed inmate discipline proceedings.

D. Inmates without Funds

Staff-assisted calls may be arranged for those inmates who have a demonstrated need and who have no means of obtaining funds necessary to finance normal phone calls, including inmates in Admission and Orientation status. Such inmates may submit an Inmate Request to Staff Member to the Unit Manager to request a call. The request will normally be processed within five (5) working days and must be submitted by the 25th of the month preceding the month during which the calling will take place. Correspondence related to this provision will be filed in section three of the inmate's Central File.

The Unit Manager may approve that the government bear the expense of inmate telephone use only under compelling circumstances, such as when an inmate has lost contact with his family or has a family emergency. Another example is when the inmate experiences a lack of visits over an extended period of time. This is particularly true when there are no financial resources available either from the inmate or his family.

E. Inmates in Special Housing Units

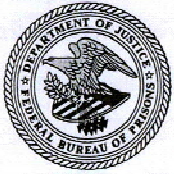
Inmates placed in Administrative Detention, Disciplinary Segregation, Hospital, and Holdover status will be allowed access to the inmate telephone as provided by policy. These calls will be placed, logged, and monitored by the unit staff. Staff shall use discretion in the scheduling of all telephone calls. Inmates who are found in violation of these regulations or who abuse this program in other ways will lose the privilege of making calls either temporarily or permanently. Each Special Housing Unit will maintain a telephone log book of all calls made (inmate's name, register number, date and time of call, and whether the call was completed).

F. Duration of Telephone Calls

The permitted maximum length of each telephone call is 15 minutes. A warning tone will be provided approximately one minute before the maximum time has expired. The telephone call will be automatically terminated approximately one minute after the warning tone.

G. Regulations for the General Population

- (1) Inmates will be responsible for their use of the telephone and are expected to conduct themselves in a responsible manner and respect other inmates. Each inmate is responsible for the content of the telephone calls they make. Use of the telephone is a privilege and misuse will result in disciplinary action which may include restricted telephone use for a length of time as determined by the Unit



U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution
El Reno, OK 73036-1000

Institution Supplement

OPI: TRUST FUND

NUMBER: ERE-5264.08

DATE: September 3, 2010

SUBJECT: Inmate Telephone
Regulations

1. PURPOSE: To establish local procedures for inmate use of TRUFONE telephone system and assign staff responsibilities. This institution does not normally house pretrial or holdover inmates. This institution supplement must be read in conjunction with the program statement for a clear understanding of policy.
2. DIRECTIVES AFFECTED:
 - A. Program Statement 4500.07 is referenced.
 - B. Program Statement 5264.08 is referenced.
 - C. Institution Supplement ERE-5264.07C, dated November 18, 2005, is canceled.
 - D. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4271, 4-4272, 4-4497 and 4-4273 are referenced.
3. PROCEDURES: Telephones for inmate use are located in each housing unit and at the satellite camp. Instructions for the use of the TRUFONE system are posted throughout the institution. Inmates are permitted to make calls from their assigned housing unit only. The use of telephones by the inmate population will not interfere with the institution's schedule of programs or work assignments. Telephone use is prohibited during official counts. Inmates not making calls are prohibited from congregating near the telephone area.

The maximum length of telephone calls is 15 minutes, and

there is a one-hour waiting period for each inmate between the completion of a call and the placing of another call. Telephone calls may be made from 6:00 a. m. to 10:00 p.m. During the hours of 7:30 a.m. to 10:30 a.m., and 12:30 p.m. until after the 4:00 p.m. count, only one phone per unit will be available for use by inmates in the unit during the normal working hours, i.e., inmates on "days off" or working the evening shift. The maximum number of incomplete calls allowed per inmate per day is 25.

Inmates housed in the Special Housing Unit (SHU) will be allowed to use the phone from 4:30 p.m. until 8:45 p.m. on non-shower days only. Requests for use of phones outside of this time frame will be reviewed and approved based on the demonstrated need of the inmate making the request.

Inmates who exhaust their 300 calling minutes per month may request additional minutes for a specific month. The request must be made in writing and submitted through the inmate's unit team to the Warden for approval.

An inmate who demonstrates the need to make a collect call for a good cause will be required to submit a request in writing through his unit team to the Warden for approval.

To obtain TRUFONE credits, an inmate must transfer funds from his TRUFACS account to his TRUFONE account. This transfer can be made by an inmate via a TRUFONE telephone. Transfers are allowed twice daily from 6:00 a.m. to 10:00 p.m. each day. TRUFONE telephone credits are transferred to inmate's TRUFACS account by OFM staff the business day before an inmate releases. The inmate will only be allowed to make collect calls once credits have been transferred.

Inmate telephone suspensions are keyed into TRUFONE system when received by Trust Fund staff, based on sanctions by UDC and/or DHO. Sanctions automatically release when they expire.

Each inmate is required to perform voice recognition registration before the TRUFONE system will allow him to place calls. This requires inmate to dial '111', then his Phone Access Code (PAC), and then receive a name confirmation by saying his name twice into the telephone. If the system does not recognize a match, he will have to repeat the process. Any assistance or questions should be directed to the Trust Fund Supervisor, and also he can



**U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution
Estill, South Carolina**

**Number: EST 5264.08B
Date: FEBRUARY 4, 2011
Subject: TELEPHONE
REGULATIONS FOR
INMATES**

**INSTITUTION
SUPPLEMENT**

1. PURPOSE AND SCOPE:

The purpose of this institution supplement is to establish guidelines for providing inmates access to local, long distance, and international telephone calls for social and legal purposes at the Federal Correctional Institution, and the Satellite Camp (SCP), Estill, South Carolina.

2. DIRECTIVES AFFECTED:

- a. Program Statement 4500.07, Trust Fund\Deposit Fund, dated April 19, 2009, is referenced.
- b. Program Statement 5264.08, Inmate Telephone Regulations, dated January 24, 2008, is referenced.
- c. Federal Prison System, Program Statement 1315.05, Inmate Legal Activities, dated November 05, 1999, is referenced.
- d. Institution Supplement EST 5264.08A, Telephone Regulations for Inmates, dated February 26, 2009, is rescinded.

3. STANDARDS REFERENCED: American Correctional Association Standards for Adult Correctional Institutions, 4th Edition: **4-4271, 4-4272, 4-4275, and 4-4497.**

4. SUMMARY OF CHANGES:

- A. 5.A. changes were made regarding inmate telephone lists.
- B. 5.G. added information regarding V-PIN.

5. DESCRIPTION OF PROCEDURES:

EST 5264.08B
February 4, 2011
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- A. Inmates will be allowed to place a maximum 15-minute telephone call.
- B. No third party telephone calls will be permitted.
- C. A written report of telephone charges is available for any 30-day period within the past 120 days upon payment of \$3 (via BP 199) for **each** 30-day period after the first 30-day period. The BP-199 will contain the specific 30-day period requested by the inmate. This fee shall be waived for inmates without funds. The fee will be reimbursed if the inmate's appeal of the charge results in a subsequent refund.
- D. Inmates who exhaust their 300-minute limit may, at the warden's discretion, be provided a telephone call for good cause shown. Inmates should request such calls through their unit teams. It is intended this exception be used sparingly and only for legitimate emergencies. Inmates will receive their new 300 minutes on their validation date each month.

7. **LEGAL CALLS:**

An inmate who desires to place a call to his attorney will submit a BP-S148.70 (Inmate Request to Staff) to his unit team. Staff will then schedule the inmate-attorney call. Staff are to ensure the unmonitored call is to an attorney.

8. **SPECIAL HOUSING UNIT INMATES:**

Inmates placed in administrative detention, disciplinary segregation, mental health seclusion, hospital, pretrial or in holdover status will be allowed access to the inmate telephones. The special housing unit will maintain a telephone log book of all calls made (inmate's name, register number, date and time of call, and whether the call was completed). We currently do not house pretrial and/or holdover inmates.

9. **OFFICE OF PRIMARY RESPONSIBILITY:** Financial Management

M. L. Rivera, Warden

Distribution: Executive staff
LAN



U.S. Department Of Justice
Federal Bureau of Prisons
Federal Correctional Complex
Victorville, California

Complex Supplement

OPI: Correctional Programs
Number: VIX 5264.08b
Date: August 17, 2010
Subject: INMATE TELEPHONE REGULATIONS

1. **PURPOSE AND SCOPE:** To implement Program Statement 5264.08, Inmate Telephone Regulations (1/24/08), at the Federal Correctional Complex (FCC), Victorville, California. This Supplement must be read in conjunction with that Program Statement.
2. **OBJECTIVES:** To establish local procedures for operating the inmate telephone program.
3. **DIRECTIVES REFERENCED:**
 - a. Directives Rescinded:
FCC 5264.08, Inmate Telephone Regulations, (04/09/08)
 - b. Directives Referenced:
P.S. 5264.08, Inmate Telephone Regulations, (1/24/08)
4. **STANDARDS REFERENCED:** Standards for Adult Correctional Institutions 4th Edition: 4-4271, 4-4272, 4-4273, and 4-4497
5. **PROCEDURES FOR TELEPHONE USAGE:**
 - a. **Availability:** Inmate telephones are available from 6:00 a.m. to 9:45 p.m. On weekdays, inmate telephones are restricted from 7:30 a.m. - 10:30 a.m., and 12:30 p.m. - 4:00 p.m., for "working" inmates. For inmates on days off or evening shift, one phone per unit will be available. On weekdays between the hours of 10:30 a.m. - 12:00 p.m., all phones will be available. On weekends and holidays, all phones will be available from 6:00 a.m. to 9:45 p.m.
 - b. **Personal Access Code:** A Personal Access Code (PAC) will be delivered to the inmate through regular institution mail. To make a telephone call, the inmate must first dial the approved telephone number, then enter their PAC. Inmates are required to identify themselves by using their full name when they make use of the telephone for the first time. Detail information for PAC instructions are listed in English and Spanish on the GTE BOT-1 form. An inmate may not possess another inmate's telephone access code number, nor may an inmate give his or her telephone access code

number to another inmate. Inmates must report to the unit team when their telephone access number is lost or stolen. A fee of \$5.00 will be charged when a replacement PAC number is required due to negligence.

- c. **Prohibited Calls:** It is not permitted for any inmate to engage in any third party, three way, call forwarding, credit card or electronic transfer of calls. The Bureau of Prisons does not provide for inmates to send or receive facsimile communication.
- d. **Limitations:** Inmates are limited to 300 minutes per calendar month for ITS-II monitored telephone calls. Each telephone call is limited to a fifteen minute time frame. After the completion of a telephone call of fifteen minutes or less, there will be a 30 minute restriction interval before another telephone call can be made. Inmates who exhaust their 300 minute limitation may, at the Warden's discretion, be provided a telephone call for good cause shown. Inmates are to request such calls through the unit team. Exceptions will be granted sparingly and only for bonafide emergencies. The inmate is responsible for the cost of such calls, i.e. collect calls. A limitation on the number of incomplete call attempts per day has not been set. However, due to ITS computer requirements, the default limit is 99.
- e. **Unmonitored and Staff Assisted Calls:** Upon verification of circumstances and need, an occasional unmonitored call to an attorney may be approved. Inmates must contact their unit team to place unmonitored attorney calls. All pretrial and holdover inmates who do not have access to the ITS system must contact the unit team to place a phone call. An unmonitored call to the inmate's attorney will be provided if an imminent court deadline can be verified. Additionally, there may be rare occasions in which an inmate may be allowed to utilize a monitored, non-ITS phone. An inmate would normally request this type of call through his Unit Team or the Chaplain. Upon verification of extenuating circumstances, permission by the Warden may be granted for the use of a monitored phone in the Chapel, without charge. Phone calls under this section should be granted sparingly and only after the need has been verified. Prior to and upon completion of the call, the staff member facilitating the call will provide the SIS department with the details of the call.
- f. **Telephone List Updates:** All changes and additions to an inmate's telephone lists will be submitted by the inmate through the automated Trust Fund inmate account system (TRULINCS).

- g. **Phone Credits:** Inmates may transfer funds from their commissary account to their ITS-II account by using any ITS-II telephone. Funds may not be transferred in excess of an inmate's available commissary balance and inmates may not transfer funds from their ITS-II account back to their commissary account.

Transfer hours are Monday-Friday, 4:30 p.m. - 9:45 p.m.; weekends & holidays 7:30 a.m. - 9:45 p.m. Prior to an inmate's release, their funds shall be transferred from their ITS-II account back to their commissary account and processed according to set release procedures.

- h. **Telephone Rates:** All rates are established at the national level. Rate charts are available by request from Trust Fund staff.
- i. **USP Holdover Inmates:** Holdover inmates will be allowed to make calls only after they have been housed at FCC Victorville for thirty (30) days. Holdover inmates housed in the Special Housing Unit must submit an Inmate Request to Staff Member (BP-148) to obtain a Phone Access Code (PAC) number. Unit staff will inform the inmate of the opportunity to have a PAC number if he wishes to make calls and will make available the BP-148. A copy of the BP-148 will be forwarded to ITS Staff, who will issue the PAC number via institution mail. Normally, this process should be completed within two (2) work days of the receipt of the request.

6. **Responsible Department:** Correctional Programs

Approved By:

//s//	//s//	//s//
_____ Francisco J. Quintana Warden, Complex & USP	_____ R. Philip Guttierrez Warden, FCI I	_____ Tereser A. Banks Warden, FCI II/Camp

U.M. & FIN.MGT.
5264.8A
August 30, 2010

**TELEPHONE
REGULATIONS
FOR INMATES**

1. **PURPOSE AND SCOPE:** To provide guidelines and regulations for the use of telephones for collect, attorney, local, long distance, foreign, and emergency calls at FPC Yankton, South Dakota.

2. **DIRECTIVES AFFECTED:**
 - a. Program Statement 5264.08, "Telephone Regulations for Inmates", dated January 24, 2008, is referenced.

 - b. Program Statement 1315.07, "Inmate Legal Activities", dated November 5, 1999, is referenced.

 - * c. Program Statement 4500.06, "Trust Fund/Deposit Fund Manual", dated February 19, 2009, is referenced.

 - d. Program Statement 5270.07, "Inmate Discipline and Special Housing Units", dated December 29, 1987, is referenced.

 - e. Program Statement 5290.14, "Admission and Orientation Program", dated April 3, 2003, is referenced.

 - * f. Institution supplement YAN 5264.8, entitled "Telephone Regulations for Inmates", dated May 14, 2009, is hereby rescinded.

3. **STANDARDS REFERENCED:** American Correctional Association Fourth Edition Standards for Adult Correctional Institution: 4-4271, 4-4272, 4-4273, and 4-4497.

4. **BACKGROUND:** Contact with family members and other community resources is intended to be constructive and wholesome communication. The use of telephones must be supervised and structured in order to protect the security and orderly management of the institution, as

DISTRIBUTION: Warden, Associate Warden, Department Heads, AFGE, NCRO, Master File.

well as the general public. Adequate rules ensure basic control and responsible use of the telephone program. The telephone program is designed to supplement, not replace, regular mail correspondence and visiting between inmates and their families, and appropriate community resources.

5. **GENERAL:** Maintaining contact with the community via telephone is a privilege afforded to those inmates who demonstrate a willingness to conduct themselves in a responsible and mature manner. Telephones are to be used to maintain family and community ties, within the lawful use of the telephone system. Disciplinary sanctions may be imposed for the abuse of telephone privileges.

All calls placed by inmates with the exception of properly approved attorney calls are subject to recording and monitoring by staff. Notice of potential for monitoring is included in the inmate admission materials and posted on or near inmate telephones. Inmate-to-inmate telephone calls may only be authorized through the permission of the Unit Manager and only for exceptional circumstances such as a death in the family.

6. **GENERAL PROCEDURES:** Upon arrival in the institution and at the inmate's request, a new inmate will be permitted to make two staff-assisted collect telephone calls. Each call will be no longer than five minutes in duration.

* Inmates will be provided with information on the Trust Fund Inmate Telephone System (TRUFONE) use during their initial classification in the Admission and Orientation Program. Inmates will be expected to enter their own phone numbers using the TRULINCS contact list. Phone numbers can be added or deleted at any time, however, no more than 30 phone numbers can be active at one time. Providing false information will subject the inmate to disciplinary action.

* Each inmate shall be provided a unique nine-digit Phone Access Code (PAC) number to access his TRUFONE account and instructions on using the telephones. New commitments will be directed to trust fund staff located in the warehouse to register for voice recognition. The voice recognition process must be completed prior to phone use. The PAC number and telephone numbers will remain the same when transferred to another institution.

An inmate may not give his PAC to another inmate or use another inmate's PAC. Lost or stolen PACs should be reported immediately to Unit staff. To obtain a new PAC number, the inmate will be required to pay a fee of \$5.00, using a Request for Withdrawal of Inmate Personal Funds form, to help defray the cost of establishing a new PAC number.

* With the exception of collect calls, in order for an inmate to place telephone calls, it will be necessary to transfer funds from his commissary account to TRUFONE. The amount of this transfer will serve as a credit in the individual inmate's TRUFONE account. This will be done by the inmate via the telephone teller system and shall not exceed two transfers per day. Credits must be purchased in whole dollar amounts. It is the inmate's responsibility to track the telephone credits transferred by reviewing his commissary account and TRUFONE account balance via the telephone teller system. Once telephone credits have been transferred, the credits may not be transferred back in to the commissary account, except in the event of

transfer, release, or telephone restriction of more than 30 days. An inmate on telephone restriction for more than 30 days may request in writing that his TRUFONE credits be returned to his commissary account. This is accomplished by Trust Fund staff only. There is no limit on the dollar amount of telephone credits that an inmate can buy.

Inmates with hearing or speech disabilities or those that are deaf, who are not capable of utilizing the regular inmate telephone system, will notify their unit team that they request to make a telephone call using a Telecommunications Device for the Deaf (TDD). This device is located in the Employee Services Department.

The unit team will coordinate with the ESD and designate a date and time for the inmate to utilize the Telecommunications Device for the Deaf (TDD). A unit staff member, designated by the Unit Manager, will assist the inmate with the call and monitor the content of the call to ensure it is within the established guidelines for telephone calls for inmates.

An inmate being released will present his merry-go-round form to the Accounting Technician. The inmate will not be allowed to place calls after this transaction.

7. **REGULATIONS AND GUIDELINES:**

1. Telephones will be available in the Unit Inmate Telephone Room. Each unit shall leave one telephone available for inmates on "days off" or "evening shift" workers. All other telephones will be activated for inmate use during the hours of 6:00 a.m. - 7:30 a.m., 11:00 a.m. - 12:30 p.m., 4:30 p.m. - 10:00 p.m., and 10:30 p.m. - 11:30 p.m. Monday through Friday; and 6:00 a.m. - 10:00 a.m., 10:30 a.m. - 4:00 p.m., 4:30 p.m. - 10:00 p.m., and 10:30 p.m. - 11:30 p.m. Saturday, Sunday, and federal holidays.
2. All telephone calls will be limited to 15-minute intervals. At the end of 14 minutes, a tone will warn the caller there is only one minute remaining in the call. At the end of 15 minutes, the call will automatically disconnect. A 30-minute waiting time has been established between calls. The maximum number of incomplete call attempts per day is limited to 99.
3. Only one inmate per telephone will be allowed in the unit inmate telephone room at one time. Inmates not making telephone calls will not be permitted to congregate inside the telephone room. The use of another inmate's access code is prohibited.
- * 4. Every inmate, unless he is on telephone restriction, will be allotted 300 call minutes per month which may be used for any combination of collect or direct-dial calls. The TRUFONE automatically resets each inmate account monthly regardless of usage. Unused minutes are not carried over into the next month. Only numbers on the approved list may be utilized for calls.

At the Warden's discretion, an inmate who has exhausted the 300 minutes per calendar month limitation may be provided a telephone call for a good cause. Such a request shall be made through the unit staff.

EXHIBIT 36

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----X

YASSIN MUHIDDIN AREF

and

DANIEL MCGOWAN

and

ROYAL JONES

and

KIFAH JAYYOUSI

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

VS.

ERIC HOLDER, Attorney General
of the United States

and

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

and

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

(TITLE CONTINUED)

1 and

2

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

6

7 and

8

9 FEDERAL BUREAU OF PRISONS

10 -----X

11

12

13 DEPOSITION OF FEDERAL BUREAU OF PRISONS

14 BY AND THROUGH ITS AGENCY DESIGNEE,

15 DAVID SCHIAVONE

16 Thursday, August 8, 2013; 8:45 a.m.

17

18

19 Reported by:

20 Bonnie M. Olachea

21 Ref. No.: 10021

1 of terrorist inmates that are in our custody,
2 the real truth is we couldn't possibly manage
3 and monitor all of the inmates.

4 Q. Is it fair to say there are quite a
5 few inmates with terrorism convictions in your
6 prisons?

7 A. There is a significant number.

8 Q. Do you have an estimate as to how
9 many?

10 A. Currently, there are more than 400
11 individuals in custody with a nexus to
12 terrorism.

13 Q. And that's either international or
14 domestic or both?

15 A. Correct.

16 Q. Is there a process for deciding which
17 prisoners shall be monitored by the CTU?

18 A. Well, I said it's a judgement. I said
19 it's an assessment based on available
20 information.

21 Q. And who makes that decision?

1 Q. I'm going to refer to that as -- well,
2 is there a phrase that you use to refer to that
3 initial designation?

4 A. No.

5 Q. So we'll call it the initial
6 designation.

7 A. Right.

8 Q. So during the initial designation
9 period did you rely on any written criteria or
10 written instructions?

11 A. Written instructions, no. This was
12 being formulated as a response to the OIG report
13 so we looked at the criteria outlined in the OIG
14 report it was recommended for the Bureau of
15 prisons to do in order to meet the
16 recommendations in the report.

17 And the discussion was to provide an
18 environment where we could manage and monitor
19 inmates and monitor their communications.
20 Though it wasn't in writing, the five criteria
21 they use now is basically what we were looking

1 at, at the time.

2 Q. Well, the five criteria, if I
3 understand them, include individuals who don't
4 have any nexus to terrorism, correct?

5 A. Right.

6 Q. So were you still considering
7 individuals in those categories for the initial
8 designation?

9 A. No, not initially. Because, I mean,
10 we had to start somewhere and we had to
11 prioritize the time and the effort. The first
12 goal was determined to be the terrorists because
13 they were the highest priority. They were the
14 individuals identified in the OIG reports.

15 So we started with the terrorist
16 inmates, and then we worked into other groups
17 after we had reviewed all of the terrorist
18 inmates.

19 Q. What process did you use to designate
20 those initial individuals? You said that you
21 discussed it as a group. Was there any formal

1 process related to their designation?

2 A. No. The first group of inmates
3 were -- it was an executive level decision and
4 we were informed which inmates were selected
5 from the list to be moved and when they were
6 going to be moved.

7 Q. And who made that selection?

8 A. It was my understanding it was our
9 assistant director.

10 Q. Who was that?

11 A. At the time it was John Vanyur.

12 Q. So he looked at the chart you had
13 created and determined from that chart who he
14 was going to designate?

15 A. I don't know exactly what or how they
16 compile the first group of inmates from the
17 whole list. But they chose a group of inmates
18 from the list of inmates which was more than the
19 original inmates that went into the unit and
20 they moved those in to open the unit.

21 Q. About how many people had you

1 procedures in writing.

2 Q. Prior to documenting the procedures in
3 writing, is it fair to say that the procedures
4 for redesignating prisoners out of the CMU were
5 not yet in place?

6 A. No. Because there were designation
7 procedures available in national policy so...

8 Q. So is it accurate to say that prior to
9 2009 there were not CMU specific re-designation
10 procedures in place?

11 A. The CMU was expected to follow the
12 national designation policies.

13 Q. Did there come a time when you became
14 aware of any expectation as to how long a
15 prisoner would stay in the CMU?

16 You said that initially there really
17 wasn't one. And I'm wondering if one developed
18 over time.

19 A. No. There's no expectation because
20 it's based on each individual inmate and their
21 conduct, and a review to determine if they need

1 that level of monitoring.

2 Q. So it's possible that CMU designation
3 could be permanent for an inmate?

4 A. I wouldn't describe it as permanent
5 because it's a continuous review. So it's a
6 determination ongoing as to whether the inmate
7 needs that. We wouldn't look at an inmate and
8 say, This is going to be permanent, because we
9 wouldn't look at any designation as being
10 permanent.

11 An inmate's conduct and behavior
12 changes over time.

13 Q. But it's possible that an inmate's
14 conduct could continue to necessitate CMU
15 placement through the entirety of his sentence?

16 A. I guess anything is possible. But, I
17 mean, we don't look at it in that manner. We
18 designate as an agency inmates appropriately
19 based on their individual specific needs.

20 (Discussion off the record.)

21 BY MS. MEEROPOL:

1 Q. Is there any difference in your mind
2 between the CMU at Terre Haute and the CMU at
3 Marion?

4 A. Well, the difference is the physical
5 structure and layout of the units. Otherwise
6 operationally for the most part they function
7 the same or similarly. The differences are
8 going to be based on the physical structure of
9 the institution.

10 Q. Does that physical structure have any
11 relevance in terms of designating inmates to one
12 or the other unit?

13 A. No.

14 Q. After the initial designation did
15 there come a time that a designation process was
16 developed for CMU designations?

17 A. Yes. A formal -- well, more or less a
18 formal process of doing the designations was
19 established.

20 Q. And when was that process established?

21 A. It was after that first group went

1 into the unit after December 2006.

2 Q. So was it sometime in 2007, sometime
3 in 2008?

4 A. No. It was -- it would have been --
5 the inmates arrived in Terre Haute mid December
6 2006, so it would have been the end of December
7 or January 2007.

8 Q. And how was that process developed?

9 A. Well, it was a discussion between the
10 counter-terrorism unit, correctional programs
11 division, and the Central Office, the Office of
12 General Counsel.

13 Q. What was your goal with respect to the
14 process?

15 A. What was our goal?

16 Q. Yes. So when you're coming up with a
17 process, what did you want that process to
18 accomplish? What were the goals of the process?

19 A. Well, the goal was to come up with a
20 process to meet our already-in-place designation
21 requirements, the national policy on

1 designations, but also to allow for adequate
2 review of the inmates for placement in the unit
3 to insure we were complying with policies for
4 monitoring and managing their communications at
5 the level we intended in the unit.

6 Q. When developing the process, was there
7 any attention paid to insuring that individuals
8 were not sent to the CMU based on faulty
9 information or without need?

10 A. Well, it's part of the process.
11 That's why there's different review steps, and
12 there's different individuals involved to review
13 the information. And just like we did initially
14 with the first list, get different insights and
15 input into that information.

16 Q. Can you describe the process for me
17 that was put into place in 2007?

18 A. The process was developed where the
19 counter-terrorism unit would be the -- I
20 shouldn't say the initiator of the referrals.
21 The reviews -- the reviews -- the referrals from

1 other institutions, other agencies are
2 designations that would come to the CTU. We
3 would coordinate the information, collect and
4 write the original recommendation.

5 The recommendation, along with the
6 supporting material, would be sent to the Office
7 of General Counsel. The Office of General
8 Counsel would review the information. And then
9 it would go to the regional director from the
10 North Central Region for a final decision.

11 Q. I believe you said that the CTU would
12 initiate referrals, but also that referrals
13 would come from other institutions; is that
14 correct?

15 A. Referrals can come from just about any
16 -- any source, institutions included.

17 Q. Was there a time in the beginning of
18 the CTU that referrals were only generated --
19 I'm sorry. Let me try that again.

20 Was there a time in the beginning of
21 the CMU that referrals were only generated at

1 the CTU, rather than also from institutions?

2 A. Well, initially the unit was open
3 based on direction of the Central Office and
4 review of specific inmates in response to the
5 OIG report. So the initial group of inmates
6 were reviewed at the Central Office level in
7 response to that report.

8 Once the unit was open and established
9 and we had coordinated the movement of the
10 initial inmates identified who required that
11 placement, then we were at liberty to accept
12 referrals from any source.

13 Q. At that point did you request
14 referrals from other sources?

15 A. There was a point in time when the
16 assistant director made the wardens and the
17 regions aware of the unit and that the unit was
18 available for referrals.

19 Q. The first group of 16 or 17 inmates
20 that were sent to the CMU, were they all Muslim?

21 A. No.

1 Normally the terrorist inmates are
2 identified for referral to us.

3 Q. Did there come a time when your office
4 put into writing the criteria for a CMU
5 designation?

6 MR. CARTIER: Object as vague as to
7 what --

8 Are you speaking of the CTU?

9 BY MS. MEEROPOL:

10 Q. I'm sorry. Did there come a time when
11 your office put into writing designation for
12 criteria for CMU designation?

13 A. No. The only memo that has been
14 issued right now is the re-designation memo
15 other than the one you showed me before. But
16 the criteria is outlined in the re-designation
17 memo from October 2009.

18 Q. Could I ask you to flip in your -- in
19 the binder of previously marked exhibits to
20 Exhibit 36? It's the very last one.

21 (Discussion off the record.)

1 BY MS. MEEROPOL:

2 Q. Looking again at Exhibit 36, the
3 fourth bullet point, what does "extensive
4 disciplinary history" mean to you?

5 A. I didn't write this and I don't -- I
6 don't know what the person who wrote it meant.
7 It's kind of vague, honestly, which is
8 problematic for this bullet because it needs to
9 describe more like these bullets do which say
10 that offense conduct has to be communication
11 related which provide a security concern, a
12 safety concern.

13 "Extensive" is too -- too vague, too
14 general.

15 Q. It's too vague to be useful in
16 determining who should be sent to the CMU?

17 MR. CARTIER: Objection.

18 THE WITNESS: Well, these aren't the
19 bullets that we use. These are, so...

20 BY MS. MEEROPOL:

21 Q. Okay. I'm asking, if you were relying

1 THE WITNESS: I'm not going to
2 speculate on that because we don't use these
3 bullets. I don't know that anybody has ever
4 used these bullets to nominate or designate an
5 inmate to the CMU.

6 BY MS. MEEROPOL:

7 Q. If you did learn that individuals had
8 used these bullets to nominate or designate
9 inmates to the CMU, would that seem problematic
10 to you in any way?

11 MR. CARTIER: Same objection.

12 THE WITNESS: Well, I would have a
13 concern because I know that we use these
14 bullets.

15 BY MS. MEEROPOL:

16 Q. And when you say "these" you're
17 referring to Exhibit 40?

18 A. Exhibit 40, yeah. Sorry.

19 Q. And it would be problematic to have
20 the Bureau of Prisons using two different sets
21 of criteria to send individuals to the CMU; is

1 that accurate?

2 MR. CARTIER: Objection;

3 argumentative. You can answer.

4 THE WITNESS: I believe it would be.

5 I mean you want to have one criteria. Having

6 separate sets is confusing to everybody.

7 BY MS. MEEROPOL:

8 Q. Are you aware of any weight to the

9 different criteria? So, turning to the notice

10 to inmates rather than to Exhibit 36. Is CMU

11 placement more important, for example, for

12 prisoners with terrorist convictions than it is

13 for prisoners who violate communications rules?

14 A. No. There's no weight given to any of

15 the different criteria over any of the others.

16 Q. You talked about the initial

17 designation process. And I had a sense that

18 your group was looking at all of the prisoners

19 with a terrorist related conviction, and

20 determining from that group who needed to go to

21 the CMU; is that correct?

1 sure.

2 Q. Is there any other phrase that would
3 be more correct that I could use?

4 A. No, no. The designation packet is
5 what we generally refer to.

6 Q. And what is included in that
7 designation packet?

8 A. From which source to -- are you
9 talking about the CMU referrals that the CTU
10 generates?

11 Q. Yes.

12 A. Ordinarily the packet's going to
13 include at least a cover memo from Les Smith our
14 chief; PSR; and if available we generally
15 include the judgment, the JNC we call it, the
16 statement of reasons. And we'll include any
17 other relevant information regarding the
18 inmate's communications such as intelligence
19 reports, institution investigations, discipline
20 reports.

21 Anything which relates to the inmate's

1 history, conduct, incarceration behavior which
2 would be relevant to the CMU referral.

3 Q. So is it the goal of the CTU to
4 include all relevant information in the
5 designation packet?

6 MR. CARTIER: Objection; vague.

7 You can answer.

8 THE WITNESS: Well, there's no way to
9 ever include all of the information. An
10 inmate's history is vast and very detailed. We
11 include the most relevant information we believe
12 will support the designation.

13 BY MS. MEEROPOL:

14 Q. Do you include relevant information
15 that might argue against designation?

16 A. Sure. If it's available and it's
17 pertinent to the case, sure.

18 Q. You mentioned the statement of
19 reasons. Can you tell me what that is?

20 A. A statement of reasons is a document
21 the court uses to identify specific reasons that

1 the court used in the sentencing of an inmate.

2 Q. The first document that you included
3 that you described was the cover memo from Les
4 Smith. Can you describe that memo? What is its
5 purpose?

6 A. Well, the designation memo is actually
7 based on a standard memo the bureau has used for
8 different designations, and we've just
9 incorporated it for the CMU. It includes a
10 summary of the inmate's offense conduct,
11 institution conduct, his behavior, relevant
12 information which summarizes the need to monitor
13 the inmate's communication. Will also include
14 other relevant background information which is
15 assessed during any designation process.

16 Q. What role do you generally play in
17 creating this memo, if any?

18 A. Ordinarily I'm the point of contact in
19 the office so I generally am tasked with
20 collecting the information, and I draft the
21 memos for the chief.

1 Q. And then does he review and sign off
2 on those memos?

3 A. Correct, yes.

4 Q. Does he provide you with edits or
5 feedback on occasion?

6 A. True, yes.

7 Q. And then the memo goes out under your
8 boss's name; is that correct?

9 A. Correct. There's been some that I've
10 signed in his place when I've been acting, but
11 it goes out under the chief's signature block.

12 Q. You said that you generally collect
13 all the relevant information. Where do you
14 collect that information from? What's the
15 source of the information?

16 A. It depends on the inmate. It depends
17 on the case. If the referral comes from the
18 designation center we'll collect the referral
19 packet from the designation center. The
20 institution could provide relevant information.

21 Sometimes referrals come from outside.

1 They may have information which is relevant to a
2 designation.

3 So it's any information we can collect
4 from relevant sources which support the inmate's
5 placement in the CMU.

6 Q. Do you fact check any of the
7 information that you receive?

8 A. Fact check?

9 Q. So if you're getting information from
10 an institution from some other office, do you
11 take any steps to corroborate the truth of that
12 information, or do you simply rely on the
13 information that you're getting from other
14 offices?

15 MR. CARTIER: You can answer.

16 THE WITNESS: Generally we don't --
17 there's no need to fact check. The information
18 we get is signed by some type of authority over
19 that particular information so I don't have --
20 we don't have a need to double-check that
21 information if it has either court signature or

1 a warden signature. It's -- we take it the way
2 it's presented to us.

3 BY MS. MEEROPOL:

4 Q. Prior to creating a draft of the
5 designation memo for Les Smith, do you ever
6 discuss with Mr. Smith what to include in the
7 memo?

8 A. Certainly, yes.

9 Q. Do you discuss what to exclude from
10 the memo?

11 A. Well, we don't exclude anything we
12 think is relevant. So there's no real
13 discussion about excluding anything. We
14 certainly can't include absolutely everything on
15 an inmate's history. But we want to make sure
16 that we put enough information in to support the
17 recommendation.

18 Q. Have you ever had any internal
19 discussion within the CTU about whether facts
20 that you rely on need to have need to have some
21 sort of indicia reliability?

1 Well, you indicated earlier that when
2 facts come to you under signature, you take that
3 as -- I would call it an indicia of reliability.
4 That this is reliable information because you
5 can rely on other Bureau of Prisons individuals
6 who have undertaken an investigation before they
7 signed off on these facts.

8 Is that accurate?

9 A. That's accurate.

10 Q. So what about if facts come from other
11 sources. For example, you know, from other
12 prisoners, from informants of some sort, from
13 prison guards.

14 Would you consider those facts in the
15 same way, or must they have some level of
16 reliability?

17 MR. CARTIER: Objection; hypothetical.
18 You can answer.

19 THE WITNESS: Well, you're talking
20 about a couple different things. A prison guard
21 or a correctional officer is a staff member. So

1 court's full statement and the background on the
2 case. So while the cover memo summarizes the
3 reasons for the referral, it provides the full
4 document to the staff making further assessments
5 and decisions on the case to be able to refer
6 the entirety of the document.

7 Q. Do you have any understanding of how
8 the North Central Regional Office review of CTU
9 referrals works?

10 A. Only vaguely and only based on
11 discovery produced in this case.

12 Q. Does the designation packet also
13 include a notice to inmate of transfer to the
14 CMU?

15 A. Yes, it does.

16 Q. What's the purpose of including that
17 document?

18 A. As part of the CMU referral. And it
19 provides the statement which will be provided to
20 the inmate notifying him of his placement in the
21 unit and his appeal rights. So it gets to --

1 at that point, and then coordinate with the
2 designation center for a typical re-designation.

3 If the case came from an outside
4 source such as an institution, we would include
5 OGC's comments with the recommendations through
6 the final process to the Regional director.

7 Q. Okay. Now, we were talking about
8 notice to inmates for transfer to the CMU.

9 Who drafts the inmate specific portion
10 of that document?

11 A. Ordinarily, the CTU drafts the
12 document.

13 Q. And who in the CTU?

14 A. I'm the starting point. I begin the
15 drafting process.

16 Q. And does Les Smith sign off on the
17 final version?

18 A. Yes.

19 Q. What's the purpose of the inmate
20 specific portion of the notice to inmate of
21 transfer?

1 legal question for the legal staff to determine
2 what kind of protections are appropriate.

3 BY MS. MEEROPOL:

4 Q. Well, I wasn't asking what was
5 appropriate. I was asking what was in place.

6 So was it your sense that there are
7 more procedures in place to review ADX or SMU
8 designation than there are for CMU designation,
9 if you know?

10 A. There's different procedures. I don't
11 know if you could say there's more or less.

12 Q. Do you know why there are different
13 procedures?

14 A. Specifically it was a decision by our
15 legal staff.

16 Q. Do you think that's the right
17 decision?

18 A. I have no reason to question the
19 judgment of our legal staff.

20 Q. Based on your understanding of the
21 purpose of CMU designation, do you believe that

1 following SMU style procedures for CMU
2 designation would be problematic in any way?

3 A. Problematic how?

4 Q. In any way. If you were told
5 tomorrow, maybe by your legal staff or by
6 whomever, that from now on you were going to use
7 the SMU style procedures, would that strike you
8 as problematic in any way?

9 A. Well, problematic? I mean, there's
10 not -- it's certainly something that could be
11 done because we're doing it. So if we did it
12 for another group of designations it's something
13 that could be done. It would be a change and
14 would require some restructuring of the
15 procedures.

16 I would wonder if we're going to
17 eliminate the OGC, the legal office review.

18 Q. But there's no problem you could
19 identify with making that change?

20 A. Well, problem -- I mean, it could be
21 done. It would take some -- some coordination

1 to set up the procedures and the process.

2 Q. Okay. I understand that the Regional
3 director has final authority on CMU
4 designations.

5 Would you say that there's anybody
6 else who has a primary responsibility for
7 decisions on who gets sent to the CMU?

8 A. I don't understand what the difference
9 is.

10 Q. Well, the regional director has the
11 final signoff. Is he the person who plays the
12 largest role in determining who gets sent to the
13 CMU, or does someone else play the largest role?

14 A. I wouldn't define anybody's role any
15 larger than any other. I mean, the process is
16 set up with the different levels of review, the
17 different steps that are involved. It's -- the
18 purpose is to provide adequate information to
19 make an informed judgment and decision for
20 placement.

21 Q. I'd like to mark for identification

1 We make a recommendation whether we
2 feel the inmate's conduct and behavior still
3 warrant that level of communication monitoring.
4 And then our recommendation is referred for
5 final decision.

6 Q. To the North Central Regional Office?

7 A. The final decision's made by the North
8 Central Region. I don't remember the exact
9 timeframe. But the referrals now are going
10 through our administrator in the Central Office,
11 too.

12 Q. Why is that?

13 A. Just another level of oversight.
14 Another individual to review the process and the
15 procedures.

16 Q. Is that individual's role different
17 from the NCRO role in any way?

18 A. Well, it doesn't have decision-making
19 authority. They make recommendations based on
20 their review of the material.

21 Q. And for how long has that been going

1 on?

2 A. The last year or two at least. I
3 don't remember exactly.

4 Q. Do you know what prompted that change?

5 A. Change in our exec' staff. First the
6 Central Office was reviewing cases which the CTU
7 didn't agree with, and then the Central Office
8 was reviewing all of the cases.

9 Q. So there was a point in time when, if
10 there was a disagreement between the CTU and,
11 who, the Regional office, then the Central
12 Office would get involved; is that what you're
13 saying?

14 Is that what you're saying?

15 A. No. There's no disagreement. You've
16 seen and you've said that the CTU doesn't agree
17 with all referrals.

18 Q. Right.

19 A. So, the decision was made to have the
20 Central Office review the packets at another
21 level.

1 re-designation out of the CMU?

2 MR. CARTIER: Just object. There's a
3 lack of foundation here.

4 But you can answer if you understand.

5 THE WITNESS: Well, as we said before
6 no timeframe, so it doesn't matter what
7 consideration the inmate was placed in the CMU
8 under. There's a judgment made at every review
9 if the inmate warrants that level of monitoring
10 and continued placement in the CMU.

11 BY MS. MEEROPOL:

12 Q. Are there any criteria in place to
13 help the unit team determine whether an inmate's
14 behavior has been -- whether an inmate has
15 successfully kept from engaging in the
16 problematic behavior for long enough to warrant
17 removal from the CMU?

18 A. There are no timeframes. There's no
19 specifics. It's based on judgment, observation.
20 The unit team structure is based on a -- working
21 directly with the inmate population,

1 pointed it out.

2 Q. Are you aware of any information that
3 Daniel McGowan was "the leader" of ALF or ELF?

4 A. Well, that's a tricky question because
5 the groups consider themselves leaderless. So,
6 the only type of leadership role we would try to
7 characterize anybody had would be particular
8 acts that they were involved in.

9 Q. It would be impossible for an
10 individual to be the overall leader for ALF or
11 ELF as the groups don't operate with that kind
12 of structure?

13 MR. CARTIER: Objection;
14 mischaracterizes the record and testimony.

15 You can answer.

16 THE WITNESS: It would be fair to say
17 that the groups, themselves, in their own public
18 statements consider themselves leaderless. They
19 advocate for individuals to act on behalf of
20 their name.

21 It would be realistic to assume that

1 certain groups and certain functions have
2 leaders and leaders within their own structure.

3 So trying to overall describe a leader
4 of all of ALF and ELF, I would say no. But
5 could you identify leaders within parts of ALF
6 and ELF? Then I think you probably could.

7 MS. MEEROPOL: Let's go off the record
8 for one moment.

9 (Discussion off the record.)

10 BY MS. MEEROPOL:

11 Q. I'd like to mark for identification
12 Exhibit 45. The first page of the document is
13 Bates stamped 60822.

14 (Schiavone Deposition Exhibit Number 45 was
15 marked for identification and attached to
16 the transcript.)

17 BY MS. MEEROPOL:

18 Q. Now the first page that you're looking
19 at is dated July 20, 2007. It's a CMU review
20 form for an individual whose name is redacted.
21 And it appears that this individual was approved

1 BY MS. MEEROPOL:

2 Q. Let's flip in Exhibit 30 to Daniel
3 McGowan's Notice of Transfer. And let's look at
4 it side by side with the redacted inmate's
5 Notice of Transfer from Exhibit 45.

6 Would you agree that the inmate
7 specific portion of these two notices are
8 identical, with the exception that several
9 phrases are added to the redacted inmate's
10 notice that don't appear in Daniel McGowan's
11 notice?

12 And please take your time.

13 A. (Reading.) Yes. The information is
14 similar and it's based on their offense conduct.
15 They were involved in the same conspiracy, and
16 much of the information is identical in their
17 court records.

18 Q. Was the redacted inmate's notice to
19 inmate of transfer written prior to Mr.
20 McGowan's notice?

21 A. Yes. It would have been written at

1 the time of the referral being made.

2 Q. Did you use the redacted inmate's
3 Notice of Transfer as a template when you were
4 creating Mr. McGowan's notice?

5 A. I believe I did, yes.

6 Q. And you took out information from the
7 redacted inmate's notice that you believe did
8 not apply to Mr. McGowan; is that accurate?

9 A. I don't know if I removed the
10 information or if it was removed during the
11 review process or who recommended changes to the
12 actual language.

13 Q. Would you agree that the information
14 in Mr. McGowan's Notice of Transfer indicated
15 that his offense conduct included communicating
16 in code and teaching others how to commit crimes
17 of arson would apply to the redacted inmate as
18 well?

19 A. I'm not sure I understand.

20 Q. Okay. I'm asking -- I'll withdraw the
21 question.

1 Q. Okay. Now, I do not have any CTU
2 memos regarding Mr. McGowan's designation
3 between this March 2008 memo and then the
4 following March 2010 memo.

5 Do you believe that that indicates the
6 CMU did not consider Mr. McGowan's potential
7 release from the CMU during that two-year
8 period?

9 A. I believe that's correct. We would
10 have only considered his transfer out of the CMU
11 if the institution had referred him for
12 re-designation.

13 Q. Let's take a look at that institution
14 referral, which is a March 9, 2010 memo from
15 Unit Manager Kelly, Bates stamped 3407.

16 Are you looking at the same document?

17 A. Yes.

18 Q. For the record we're still in Exhibit
19 30.

20 Did you receive this document at the
21 CTU?

1 Q. Now, the memo indicates that Mr.
2 Jayyousi's -- that the unit team has determined
3 that the original reason for Mr. Jayyousi's CMU
4 designation and placement still exist, correct?

5 A. Correct. That's what the memo says.

6 Q. And we already discussed those
7 original reasons were offense conduct, correct?

8 A. The recommendation from the CTU was
9 based on offense conduct.

10 Q. Please flip forward several more pages
11 to the February 22, 2011 memo from Mr. Kelly.
12 It's Bates stamped 4610.

13 Have you seen this document before,
14 sir?

15 A. Yes.

16 Q. My understanding is that Mr. Jayyousi
17 was transferred from the Terre Haute CMU to the
18 Marion CMU, and that's why we're now seeing a
19 memo from Mr. Kelly.

20 Does that sound accurate to you?

21 A. Correct.

1 Q. Do you understand that that transfer
2 had any impact on Mr. Jayyousi's chance for
3 re-designation out of the CMU?

4 A. No, it did not. It just -- the
5 transfer's for the administrative institution
6 reasons and not based on Inmate Jayyousi's
7 conduct behavior.

8 Q. Please turn to the next memo, which is
9 a March 22, 2011 memo, Bates stamped 4613.

10 Did you write this memo, sir?

11 A. I drafted the memo, yes.

12 Q. The first paragraph refers to the
13 warden's memo that we just looked at, correct?

14 A. Correct.

15 Q. Did you review and consider that memo
16 when you were deciding whether to recommend Mr.
17 Jayyousi for transfer?

18 A. Of course, yes.

19 Q. Now, if I can direct your attention to
20 the bottom of the second page, it indicates, "At
21 the time of this recommendation from the warden

1 Q. Let's look back at Exhibit 31 at the
2 March 22, 2011 Les Smith memo. It's at Bates
3 stamp 4613. I think it's directly before the
4 document you're looking at.

5 A. 4613?

6 Q. Yes.

7 A. Okay.

8 Q. I believe you testified earlier that
9 you drafted this document; is that correct?

10 A. Correct.

11 Q. Is it fair to say that you relied on
12 the sermon in recommending that Mr. Jayyousi not
13 be recommended for release out of the CMU?

14 A. The sermon was one of the pieces of
15 information used, yes.

16 Q. Now, at Page 2, looking four
17 paragraphs down at the paragraph that states,
18 "Inmate Jayyousi's comments encouraged
19 activities which would lead to a group
20 demonstration."

21 Do you see that?

1 A. Yes, that's correct.

2 Q. Are you aware that Mr. Aref's
3 conviction resulted from a sting operation? In
4 other words, that he never had any actual
5 contact with JEM, but rather with an undercover
6 informant who is referred to in the PSR as a
7 cooperating individual who was posing as someone
8 connected to JEM?

9 A. Yes.

10 Q. So in other words, Mr. Aref never had
11 any direct or indirect contact with JEM,
12 correct?

13 A. He believed he had communication with
14 a terrorist group, which is the significant
15 fact.

16 Q. But he didn't actually, correct?

17 A. In substance, he didn't have direct
18 contact, but he thought he did.

19 Q. He didn't have any direct contact
20 either, correct?

21 A. He believed that he was communicating

1 with a terrorist organization and terrorist
2 individuals.

3 Q. Yes. But my question was, did he
4 actually have any indirect contact with a
5 terrorism organization?

6 A. No. He was dealing with the
7 confidential informant.

8 Q. So is the statement in the first
9 paragraph of your memo that Mr. Aref's "offense
10 conduct included significant communication,
11 association, and assistance to JEM," accurate?

12 A. We believe it is. The inmate had a
13 significant belief that he was communicating
14 with a terrorist organization, that he was
15 supporting that terrorist organization, and he
16 was willing to engage in a terrorist act.

17 Q. Would it maybe be more accurate to say
18 Mr. Aref believe that he had significant
19 communication and association and assistance to
20 JEM?

21 A. We can argue about words and

1 outside of the documents?

2 BY MS. MEEROPOL:

3 Q. Yes. Any discussion.

4 A. The only discussion I had was
5 notifying them the day after we had new
6 information, and we would be resubmitting our
7 original recommendation.

8 Q. So is it fair to say -- and I don't
9 think it violates any privilege to say -- that
10 you learned something from the JTTF that led you
11 to change your mind about Mr. Aref's
12 re-designation out of the CMU?

13 A. Yes.

14 Q. Are you aware of whether Mr. Aref was
15 provided any information as to why his transfer
16 was denied?

17 A. I'm not aware.

18 Q. Do you believe that he was provide any
19 information about why his transfer was denied?

20 A. I believe he was. It's a requirement
21 for the inmate to be notified of the denial so

1 they can appeal it through the administrative
2 remedy process.

3 Q. Is it your understanding that policy
4 requires inmates to be notified of why they were
5 denied or just of the fact that they were
6 denied?

7 A. The requirement is to notify them in
8 summary the reasons for the denial.

9 Q. Do you know whether or not CMU staff
10 were provided with this JTTF information?

11 MR. CARTIER: Are you talking about
12 institutional staff?

13 MS. MEEROPOL: Yes.

14 MR. CARTIER: Do we need to talk about
15 it? You can answer.

16 THE WITNESS: No. Yes, the
17 institution was provided relevant information.

18 BY MS. MEEROPOL:

19 Q. So they were provided the JTTF
20 information?

21 A. Yes.

1 Q. Is it fair to say that Mr. Aref did
2 everything that he was supposed to do for over
3 three years in the CMU, but was denied transfer
4 anyway because of undisclosed information from a
5 Federal law enforcement agency?

6 A. I'm not going to answer that
7 specifically because it could relate to the
8 actual information. But the information related
9 to his continued placement in the unit, which is
10 the monitoring of his communications, which we
11 believe was relevant to our recommendation.

12 Q. Is it fair to say that Mr. Aref had no
13 ability to access that JTTF information or to
14 shape his behavior according to that
15 information?

16 A. It's two different questions.

17 Q. Okay. I'll ask the first one --

18 A. No, no. He wouldn't have had access
19 to the information. The information is based on
20 his conduct and his behavior, so obviously, he
21 would have an ability to change that.

1 Q. But he wouldn't know that he needed to
2 change it because he didn't have access to the
3 information itself, right?

4 A. I don't know what he knows or how he
5 interpreted anything.

6 Q. The October 25th and 26th, 2010 CTU
7 memos are the earliest memos we have regarding
8 the possibility of transferring Mr. Aref out of
9 the CMU.

10 Does that indicate to you that your
11 office did not consider Mr. Aref's eligibility
12 for re-designation from the CMU until October of
13 2010?

14 A. That seems accurate. We wouldn't have
15 considered the inmate unless the institution had
16 submitted him for consideration.

17 Q. Okay. Please flip in Exhibit 32 to
18 the November 3, 2010 CMU referral form. The
19 correctional --

20 A. Is this Document 3296?

21 Q. Yes, sir. Thank you.

1 do you continue to believe that Mr. Aref's
2 placement in the CMU was a good use of CMU
3 space?

4 A. That's a subjective question. We
5 recommended the inmate based on the information
6 that was available at the time, and we stood by
7 our recommendation.

8 Q. And you stand by it today?

9 A. We can't go back and undo what we've
10 done in the past. There was reason to support
11 what we did. We summarized it, and there's no
12 reason to question it.

13 Q. I'd like to turn in the previously
14 marked exhibits to Exhibit 34.

15 Did you write this memo, sir?

16 A. Yes, I believe I did.

17 Q. Okay. Take a moment to review the
18 document. I want to know if it's accurate to
19 say that this prisoner was sent to the CMU for
20 using a cell phone.

21 A. No, that's not accurate. That's part

1 of the information was used, but it wasn't the
2 only part of the information used.

3 Q. Now, there's information that's been
4 redacted from this document. Without referring
5 to any information that's been redacted, is
6 there anything else in this memo that indicates
7 why the inmate was sent to the CMU besides the
8 use of a cell phone?

9 MR. CARTIER: You're talking about the
10 recommendation, right?

11 MS. MEEROPOL: Yes.

12 THE WITNESS: No. It appears the
13 other supporting information has been redacted.

14 BY MS. MEEROPOL:

15 Q. Let's look at the next memo dated
16 March 12, 2007. Did you draft this memo as
17 well, sir?

18 A. Are we talking about 6734?

19 Q. Yes.

20 A. Yes.

21 Q. Point 1 in the memo states, "Reliable

1 A. Correct.

2 Q. And you indicated that the difference
3 between those individuals and individuals who
4 are placed in the CMU is that you've made a
5 determination that the individuals who are
6 placed in the CMU require a greater
7 communications monitoring; is that accurate?

8 A. Well, the CMU provides a means to
9 control and monitor all of the inmates'
10 communications. And it provides a basis for us
11 to try to preclude inmates from circumventing
12 monitoring. The Bureau of Prisons can monitor
13 any inmate in our custody.

14 Q. How does the CMU make it easier to
15 monitor --

16 In what way does the CMU make it
17 easier to monitor communications more fully?

18 A. Well, there's a number of different
19 reasons. We have the dedicated staff at the
20 counter-terrorism unit who are trained with a
21 specialized training in order to monitor the

1 inmates and understand different dynamics of
2 terrorism-related issues, sovereign citizens,
3 other things which we are tasked with
4 monitoring. The unit itself is smaller, it's
5 more controlled, so that it's less likely for
6 inmates to use other inmates or third parties to
7 circumvent communication monitoring. The
8 limitations on the phone calls allow us to
9 monitor them live and directly.

10 The same with the visits. It just
11 provides more control of the communications to
12 engage staff more directly in the monitoring.

13 Q. In terms of monitoring the CMU
14 prisoners' mail, my understanding is that
15 incoming and outgoing mail goes to your office
16 before it goes to its final destination; is that
17 correct?

18 A. Correct.

19 Q. What do you do with that mail when it
20 comes into your office?

21 A. We review it for any security concerns

EXHIBIT 37

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Yassin Muhiddin Aref,

and

Daniel McGowan,

and

Royal Jones,

and

Kifah Jayyousi,

Plaintiffs,

vs.

Civil Action No. 1:10-cv-0053-BJR

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

1 Leslie S. Smith, Chief Counter
2 Terrorism Unit, Federal Bureau of
3 Prisoners,
4 and
5 Federal Bureau of Prisons,
6 Defendants.

7 -----

8

9 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

10 VIDEOCONFERENCE DEPOSITION OF BRIAN JETT

11 Taken November 1, 2013

12 Commencing at 8:00 a.m.

13

14

15

16

17

18

19

20

21

22

23 REPORTED BY:

24 KELLEY E. ZILLES

25 Ref: 10632

1 that correct?

2 A. When I was there, that is correct.

3 Q. And which position did you hold?

4 A. I was the warden at the Federal Correctional
5 Institution was where my office was based.

6 Q. And how did you divide your responsibilities
7 with the complex warden?

8 A. Generally speaking, I was in charge of the
9 Federal Correctional Institution and the Federal Prison
10 Camp.

11 Q. And my understanding is that that includes the
12 communications management unit, correct?

13 A. Correct.

14 Q. For how long did you hold the position of warden
15 at Terre Haute?

16 A. Approximately 34 months.

17 Q. Can you recall the dates of your time as warden
18 at Terre Haute?

19 A. I arrived approximately August of 2006 and I
20 left June of 2009.

21 Q. And am I correct in understanding that the
22 communications management unit did not exist at Terre
23 Haute when you first arrived but opened shortly into
24 your time there?

25 A. Yes.

1 issues?

2 A. At times.

3 Q. To the extent that you did not play a role in
4 resolving the issues, did you play a supervisory role in
5 ensuring that the issues were resolved?

6 A. Yes.

7 Q. Did there come a time when you learned that a
8 communication management unit would open at Terre Haute?

9 A. Yes.

10 Q. And when was that?

11 A. I would say definitively it was most likely in
12 October of 2006.

13 Q. From whom did you learn this information?

14 A. From the regional director.

15 Q. Is that Mr. Nalley?

16 A. Yes.

17 Q. One moment, please. I've just been joined by my
18 colleague as I mentioned to you would happen. I'm sorry
19 for interrupting you, sir. What did Mr. Nalley tell you
20 about the communication management unit?

21 A. That it would be opened.

22 Q. Anything else?

23 A. No. Are we done?

24 Q. If only it were that easy. Did you receive any
25 written material about the communication management unit

1 at that time in October of 2006?

2 A. I don't understand your question, what material?

3 Q. Any, did you receive any written policy
4 statements or written procedures regarding the
5 communication management unit in October of 2006?

6 A. No.

7 Q. Did you receive any material of that nature at
8 any time prior to the opening of the communication
9 management unit?

10 A. Not that I recall.

11 Q. What's your understanding of the purpose of the
12 CMU?

13 A. The purpose of the communication management unit
14 at the time I was there was designed to monitor
15 communication.

16 Q. Has that purpose changed over time as far as you
17 are aware?

18 A. No.

19 Q. What's your understanding of who is eligible to
20 be designated to a CMU?

21 A. My understanding is any inmate in the Federal
22 Bureau of Prisons would be eligible.

23 Q. Are you aware of whether or not there are
24 criteria to determine which inmates should be sent to
25 the CMU?

1 CMU?

2 A. No, I did not.

3 Q. Did you expect that it might be a permanent
4 designation for some prisoners?

5 A. No.

6 Q. Does that mean that at the time it opened you
7 assumed that it would not be a permanent designation for
8 any prisoners?

9 A. I didn't assume anything when it opened.

10 Q. So you didn't have any idea at the time it
11 opened whether or not it would be permanent?

12 A. That is correct.

13 Q. Or what length of stay the prisoners there could
14 expect?

15 A. As stated.

16 Q. By the time you left the communication
17 management unit did you then have, at that point did you
18 have a sense of how long a prisoner's stay was likely to
19 be in that unit?

20 A. No, I didn't.

21 Q. Did you receive any training specific to the
22 CMU?

23 A. No.

24 Q. Did you receive any written policies specific to
25 the CMU?

1 A. That was asked once, the answer is still no.

2 Q. Well, actually, sir, my initial question was
3 about what you received in October of 2006 and then
4 prior to the CMU opening. And I'm now asking you over
5 the entire period of time that you were the warden at
6 Terre Haute in charge of the CMU did you receive any
7 written material or written policies about that unit?

8 A. Received, no.

9 Q. What was your role with respect to the CMU?

10 A. It was one unit inside the institution that I
11 had supervisory oversight.

12 Q. Was your role with respect to the CMU any
13 different than your role with respect to the other units
14 over which you had supervision?

15 A. No.

16 Q. So let's talk generally about your role as
17 warden at Terre Haute with respect to housing units.
18 What are the various, the various duties that you
19 undertook with respect to those units? You've already
20 listed that you made rounds as one, and I'm wondering
21 what the other duties were?

22 A. Well, as I said, as a warden my role is to
23 implement policy and to ensure the safe and secure
24 running of an institution.

25 Q. And how did you do that, for example, how did

1 it if you --

2 A. I only recall Jayyousi, et cetera, from
3 documentation that I reviewed a couple days ago that you
4 have.

5 Q. Okay. I understand.

6 A. Up until then I would have answered no.

7 Q. Okay. Just so that you understand going
8 forward, the documents that your counsel showed you
9 before the deposition, you know, that's not a privileged
10 matter, so you should feel free to answer questions, you
11 know, by indicating that you looked at a document and
12 that refreshed your recollection without worrying that
13 you're divulging privileged information. What is
14 privileged is any conversations you had with your
15 attorney about those documents, and I won't be asking
16 you questions that should elicit that response. And of
17 course if you're worried that you're going to say
18 something that discloses that information, you should
19 feel free to talk to your attorney about it before you
20 answer the question, okay?

21 A. Yes.

22 Q. Are you familiar with the process for
23 designation of an inmate to the CMU?

24 A. Say that another way.

25 Q. Are you familiar with the way in which an inmate

1 gets designated to go to the CMU?

2 A. No.

3 Q. Do you have any idea how that works?

4 A. No.

5 Q. Did you play any role in considering whether
6 inmates were eligible for CMU placement?

7 A. No.

8 Q. And I believe you've already testified that you
9 were not aware of whether or not there was any criteria
10 to guide who should be placed in the CMU, correct?

11 A. Yes.

12 Q. Do you have any understanding as to how an
13 inmate may be nominated for CMU placement?

14 A. No.

15 Q. Did you ever nominate a prisoner for placement
16 in the CMU?

17 A. I don't like the word nominate, I'm not quite
18 sure what that means. I think towards the end of my
19 tenure there if an inmate throughout the Bureau of
20 Prisons had communication issues, that name most likely
21 would be submitted to a regional director and from there
22 I don't know what the criteria or anything would take
23 place.

24 Q. So if I understand you correctly, you're saying
25 that at some point later in the time that you were

1 A. Well, you should have asked me that. Yes, I
2 read PSI's.

3 Q. Thank you, sir. The last sentence of that
4 paragraph states that, "Sensitive reporting from other
5 law enforcement agencies was used to determine your
6 placement in the CMU." Do you have any idea what that
7 refers to?

8 A. No.

9 Q. Do you see anything in this response that
10 responds to Kifah Jayyousi's contention that his PSI did
11 not indicate that he ever recruited anyone? And if you
12 don't know what I'm talking about, you can look back at
13 the BP-9 form.

14 A. Okay. Now ask me the question again, please.

15 MS. MEEROPOL: Would you mind reading the
16 question back, please.

17 (Requested material read back.)

18 A. I don't, no.

19 Q. I'm sorry, were you saying I don't know or --

20 A. No, I was going to say --

21 Q. Or you said I don't and then no?

22 A. Well, let me put it another way. The response
23 clearly indicates that the PSI reveals his association
24 with terrorism. As far as recruiting individuals and
25 who those individuals are, this response does not say,

1 the PSI does not say who they were nor does it say that
2 he did not do it. In other words, it's not addressed.

3 Q. Do you see anything in this BP-9 response that
4 responds to Kifah Jayyousi's contention that his PSI did
5 not indicate that he had any ties to al-Qaeda?

6 A. Not al-Qaeda directly, just terrorism.

7 Q. Given the fact that the response does not
8 address those two points, do you believe that the
9 response is adequate?

10 A. Yes.

11 Q. Okay.

12 MS. MEEROPOL: I think now is a good time
13 to take a break. Do you want to do another five
14 minutes, is that fine?

15 MR. JOHNSON: Sure. Unless anyone wants
16 longer. Five good for everyone?

17 THE WITNESS: Five is fine.

18 MR. JOHNSON: Okay. Five minutes or so.

19 MS. MEEROPOL: Okay. Great.

20 (Short break taken at 10:11 a.m.)

21 BY MS. MEEROPOL:

22 Q. Sir, have you ever heard the CMU described as a
23 self-contained general population unit?

24 A. Yes.

25 Q. What does that mean?

1 medical, so I don't know off the top of my head all the
2 steps that the review team takes to comply with policy.

3 Q. Well, you were warden at the CMU for three
4 years, correct?

5 A. Correct.

6 Q. Or close to three years?

7 A. Correct.

8 Q. During that time did the CMU unit team ever
9 recommend to you that a CMU inmate should be transferred
10 out of the CMU?

11 A. I don't recall.

12 Q. As warden did you ever provide the unit team at
13 the CMU with any guidance as to how they should decide
14 whether a CMU inmate needed to stay in the CMU?

15 A. No.

16 Q. Do you remember knowing during the time you were
17 warden any criteria you should consider to determine
18 whether or not a CMU inmate needed to stay in the CMU?

19 A. No.

20 Q. Okay. I'd like to mark for identification
21 Exhibit 142, Exhibit 142 which you'll find in folder 11.
22 The first page is Bates stamped P1097.

23 (Deposition Exhibit Number 142
24 marked for identification.)

25 Q. Sir, please take a moment to review the

1 document.

2 A. Okay. Go ahead.

3 Q. Okay. I'd like to direct your attention to the
4 third paragraph on the BP-9 response, which is on page
5 P1098. I'm sorry, I mean the fourth paragraph where it
6 states, "Due to this evidence you will remain in the CMU
7 for a minimum of 18 months." Where did you get that
8 time period from?

9 A. I don't remember.

10 Q. During your time as warden at Terre Haute was
11 there a requirement in place that inmates stay in the
12 CMU for at least 18 months?

13 A. I don't recall that being a requirement, no.

14 Q. I'd like to mark for identification Exhibit 143,
15 you'll find it in folder 12, and it's the FCC Terre
16 Haute communication management handbook.

17 (Deposition Exhibit Number 143
18 marked for identification.)

19 Q. Now I note that this document is dated after the
20 time that you left the Terre Haute CMU. Did you, was
21 there a document similar to this, a CMU handbook in
22 place during the time that you were warden at the CMU?

23 A. As stated prior in my testimony, I said there
24 was. This is the A&O handbook.

25 Q. Well, let me, let me ask for a little

1 review, would you expect the report to indicate that?

2 A. I don't know.

3 Q. You talked about the fact that as warden when
4 you consider nearer release transfers you document
5 whether or not the transfer is granted and the reasons
6 why the transfer is granted or rejected. And we've also
7 talked about the fact that you believe that transfer out
8 of the CMU may have, that consideration of transfer out
9 of the CMU may have occurred at program reviews, but you
10 don't recall specifically. What I'm trying to
11 understand is if indeed transfer out of the CMU was
12 considered at program reviews whether the program review
13 report would reflect that consideration?

14 MR. JOHNSON: Objection, argumentative,
15 asked and answered. You can answer.

16 A. I don't know.

17 Q. Okay. Let's look at the next program review in
18 Exhibit 145, it's dated 10/24/07. And you can take a
19 moment to review it, as much time as you need. I'm
20 going to ask whether this program review report
21 indicates any problems with Mr. Aref's behavior?

22 A. Okay.

23 Q. Does it indicate any problems with Mr. Aref's
24 behavior?

25 A. No.

1 Q. Does the report indicate that Mr. Aref has clear
2 conduct, is meeting his program goals and was
3 programming appropriately?

4 A. Yes.

5 Q. Does this document indicate whether or not Mr.
6 Aref was considered for transfer out of the CMU at his
7 10/24/07 program review?

8 A. Yes.

9 Q. And where are you seeing that, sir?

10 A. The CCC recommendation.

11 Q. Could you tell me what that is?

12 A. CCC recommendation is a community correction
13 center and it's something that they would review prior
14 to his release. But where I see this is where it says
15 it's not applicable because he has a detainer, ICE put a
16 possible deportation on that detainer. And if memory
17 serves me correctly, if you have a detainer, especially
18 from ICE which means that detainer is outside this
19 country, you are ineligible for a transfer at that
20 point.

21 Q. Can you tell from this document whether or not
22 Mr. Aref was considered for transfer out of the CMU to a
23 regular general population unit at this program review?

24 A. Well, I think I just answered that very
25 concisely.

1 Counselor.

2 Q. Okay. Maybe looking further in this document
3 will actually help with this line of questioning.
4 Please turn to the next program review in Exhibit 145,
5 it's dated 4/29/08. Please take a look at, at those
6 three pages.

7 A. Okay.

8 Q. Does this program review indicate any problems
9 with Mr. Aref's conduct?

10 A. No.

11 Q. Does it indicate that Mr. Aref has clear
12 conduct, satisfactory work performance, is meeting goals
13 and is programming appropriately?

14 A. That's what it states.

15 Q. Now do you agree that the last page indicates
16 that Mr. Aref has requested transfer to a nearer release
17 residence?

18 A. Yes.

19 Q. And I'm referring to Page 1147. What is this
20 line, "Unit team will make recommendation" indicate to
21 you?

22 A. It means the unit team will review his request
23 for nearer transfer and make a recommendation.

24 Q. To you or to someone else?

25 A. It doesn't state.

1 Q. Do you recall whether policy called for them to
2 make a recommendation to you?

3 A. I don't recall.

4 Q. Did you receive a recommendation from Mr. Aref's
5 unit team regarding his nearer release request in April
6 of 2008?

7 A. I don't recall.

8 Q. Would that recommendation have generated any
9 paperwork?

10 A. If there was a recommendation I would presume
11 that paperwork would be generated.

12 Q. Okay. Let's turn to the last program review
13 report in this packet, it's dated October 15, 2008.
14 Would you agree, well, let me give you a moment to
15 review the document first.

16 A. Okay.

17 Q. Does this document indicate that Mr. Aref has
18 now had 18 months of clear conduct in the CMU?

19 A. Let's see. Close to it, you're a month short.

20 Q. Does this report indicate any problems with Mr.
21 Aref's conduct?

22 A. Conduct, no.

23 Q. Does it indicate that he's meeting goals and
24 programming appropriately?

25 A. Yes.

EXHIBIT 38

PROTECTED -- ATTORNEYS' EYES ONLY

From: Charles Samuels
To: Stewart Rowles
Date: 4/28/2008 10:13 AM
Subject: Fwd: Response to CMU Questions

Listed below is the response Joyce sent to Stephanie.

Charles

>>> Joyce Conley 4/25/2008 6:27 PM >>>
Stephanie,

Please find listed below my response to your questions regarding the Communications Management Unit (CMU).

1) Does BOP have a formal written policy (in the form of a program statement or otherwise) on the criteria it uses to place an inmate in a CMU? If so, please provide me with a copy of this policy.

Response: Designations to the Communications Management Units (CMUs) are coordinated by the BOP's Counter Terrorism Unit, in conjunction with BOP staff detailed to the National Joint Terrorism Task Force (NJTTF). Final approval authority for placement in the CMUs rests with the Regional Director, North Central Region, and the Assistant Director, for the Correctional Programs Division.

The CMU designation process is not outlined in a Program Statement or national policy; however, the BOP has clearly articulated the process through documents provided to BOP staff, and the Federal Bureau of Investigation (FBI). This information is available on the [REDACTED] Correctional Intelligence Initiative home page.

[REDACTED]

[REDACTED] In addition, we provided information to all BOP Regional Directors informing them of the new CMU at USP Marion, Illinois, and outlined the basic criteria for the CMU.

2) If there is no formal written policy, and placement in the CMU is a practice based on the professional judgment of BOP personnel evaluating a host of factors pertaining to inmates and inmate behavior, [REDACTED]

[REDACTED]

Response: The CMU was established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information (primarily obtained from the FBI), require absolute 100% increased monitoring of communications between the inmate and persons in the community in order to protect the safety, security and orderly operation of BOP facilities, and the public. If it is determined (based on the provided information) that an inmate needs this level of monitoring, he must be housed at a CMU, [REDACTED]

Although not an all inclusive list, the following types of inmates may be housed in the CMU:

- Inmates who have been convicted of, or associated with, international or domestic terrorism.
- Inmates convicted of sex offenses and who repeatedly attempt to contact their victims.
- Inmates who attempt to coordinate illegal activities via otherwise approved communication methods while incarcerated.

PROTECTED -- ATTORNEYS' EYES ONLY

- Inmates who have extensive disciplinary histories for the continued misuse/abuse of approved communication methods.

The operational procedures of the CMU are formally outlined in the Institution Supplement, Operation & Security of the Communication Management Unit, dated November 30, 2006.

The BOP has implemented standardized procedures for reviewing the cases of inmates linked to terrorism. The CMU designation process is accomplished by a small group of skilled and experienced staff who have been involved with this process since the CMU was opened. These staff developed the Category 1, 2, and 3 definitions and consult among themselves on potential CMU cases. We have confidence in their knowledge and abilities and there is a high level of consistency in their decisions.

[REDACTED]

However, the BOP would welcome any relevant information that documents a reduced risk or threat posed by CMU inmates which would support less intensive monitoring of communications and, therefore, the potential for alternative housing. To this end, the BOP agrees to:

- consider redesignating certain terrorist inmates currently at the CMU after 18-months of clear conduct;
- take into consideration any information [REDACTED] which would demonstrate that the original rationale for CMU placement has been mitigated. For continuity reasons, we would request this information be generated [REDACTED]
- conduct reviews for removal from CMU in a manner that is consistent with sound correctional judgement and our Security Threat Group (STG) management practices. This review would include a number of factors, to include an assessment of the threat posed by the inmate, their relative standing within the STG, and if the inmate still presents a risk of engaging in radicalization or recruiting;
- "step down" appropriate inmates from the CMU to FCC Terre Haute (THA) General Population. Inmates would be further evaluated by CTU staff to ensure that the inmate does not require the degree of security and controls than are afforded at a CMU; and,
- review inmates who have successfully "stepped down" from the CMU to the THA General Population for a transfer to an institution commensurate with their security and custody needs which is closer to their home of record.

[REDACTED]

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I trust this addresses all issues of concern. As I mentioned in our phone conversation yesterday, we enjoy an excellent working relationship with our FBI colleagues and will continue to work together in a collaborative and productive manner.

Best regards,

Joyce