

EXHIBIT 39



U.S. Department of Justice

Federal Bureau of Prisons

Washington, DC 20534

March 5, 2008

MEMORANDUM FOR ALL REGIONAL DIRECTORS

FROM:

Joyce K. Conley
Joyce K. Conley, Assistant Director
Correctional Programs Division

SUBJECT: Referrals for the Communications Management Units

The Bureau has operated the Communications Management Unit (CMU) at FCC Terre Haute, Indiana since December 2006. Currently the need for CMU bed space has exceeded the capacity of the existing CMU and a second CMU will be established at USP Marion, Illinois in the near future.

The CMU was established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require enhanced monitoring of all communications with persons in the community. This will allow staff to protect the safety, security, and orderly operation of Bureau facilities, and protect the public.

The activation of the additional CMU will increase the Bureau's capacity for managing inmates who require enhanced communication monitoring. The CMUs operate as open housing units where inmates reside, and participate in all educational, recreational, religious, visiting, unit management, and work programming within the confines of the housing unit.

Should your staff be aware of inmates who may meet the CMU criteria, they should contact Les Smith, Chief, Counter Terrorism Unit at (b) (7)(2) High or (b) (7)(2) High (b) (2) High for CMU referral information and procedures.

EXHIBIT 40

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

YASSIN MUHIDDIN AREF, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 10-0539-BJR
)	
ERIC HOLDER, <i>et al.</i>)	
)	
Defendants.)	
)	

DEFENDANTS’ OBJECTIONS AND RESPONSES TO PLAINTIFFS’ SIXTH SET OF INTERROGATORIES FOR ALL DEFENDANTS

In accordance with Federal Rules of Civil Procedure 26(e) and 33, Defendants, by and through their undersigned counsel, hereby respond to Plaintiffs’ Sixth Set of Interrogatories. Defendants incorporate by reference the General Statement and Objections set forth in Defendants’ Objections and Responses to Plaintiffs’ First Set of Interrogatories, dated November 21, 2011.

GENERAL STATEMENT AND OBJECTIONS

1. Defendants note that they have previously provided most if not all of the information contained in the responses below to Plaintiffs informally in response to questions posed by Plaintiffs concerning Defendants’ recent document production. Plaintiffs did not object to Defendants’ informal answers and have represented that their purpose in serving these interrogatories is to receive the information previously provided by Defendants “in the form of sworn responses.” Pls.’ Status R., ECF No. 133, at 3-4.

2. Defendants object to the interrogatories to the extent they request information that is not reasonably calculated to lead to the discovery of admissible evidence.

3. To the extent that Defendants answer these interrogatories, Defendants do not concede that the information requested is relevant to this action. Defendants expressly reserve the right to object to further discovery on the subject matter of any of these interrogatories and the introduction into evidence of any answer or portion thereof.

4. Defendants object to these interrogatories to the extent that they seek information protected from disclosure by the attorney-client privilege, the work product doctrine, deliberative process, law enforcement privilege, or any other applicable privilege or immunity recognized under statute or applicable case law.

5. Defendants object to these interrogatories to the extent that they seek to impose obligations beyond those specified under the Federal Rules of Civil Procedure.

6. Defendants object to these interrogatories to the extent that they seek to impose obligations beyond those specified pursuant to the Court's orders governing discovery.

7. Each of the foregoing General Objections is incorporated by reference into each and every specific response set forth below.

8. Notwithstanding the specific responses to any interrogatory, Defendants do not waive any of these General Objections.

RESPONSES

INTERROGATORY NO. 1

Is the document produced at BOP 76413 a draft of a memorandum authored by Joyce Conley on March 5, 2008 (i.e. Deposition Exhibit 38)?

Response to Interrogatory No. 1:

Yes.

INTERROGATORY NO. 2

As to the document produced at BOP 76414-17:

- a. From when does it date?
- b. Who authored it?
- c. What is its purpose?

Response to Interrogatory No. 2:

After reasonable investigation, BOP believes that BOPCMU076414-17 was created after 2008 and was most likely originally drafted by BOP officials in the CTU, although the document may have been further revised by other BOP officials. BOP further believes that BOPCMU076414-17 is a set of talking points, which was most likely for use by the Executive Staff.

INTERROGATORY NO. 3

As to the document produced at BOP 76427-31:

- a. To whom was it distributed?
- b. Was the process described in the memorandum implemented between July 24, 2009 and October 14, 2009?

Response to Interrogatory No. 3:

BOPCMU76427-31 was sent to the NCRO/Regional Director's resource email box, with a copy to the NERO/Regional Director's resource email box. The process described in the memorandum was not implemented between July 24, 2009 and October 14, 2009.

INTERROGATORY NO. 4

As to the document produced at BOP 76687:

- a. From when does it date?
- b. Who authored it?
- c. To who was it distributed?
- d. What is its purpose and use?

Response to Interrogatory No. 4:

Although the date “11/6/06” appears at the top of this document, the BOP, after reasonable investigation, is unable to confirm the date it was created. BOPCMU076687 was maintained by the Legislative and Correctional Issues Branch (LCI), Office of General Counsel; it was maintained in a shared drive that was accessible by multiple LCI officials, but there is no record of it being distributed outside of that office. After reasonable inquiry, Defendants believe that BOPCMU076687 is an early draft sketch of how a CMU-like unit might work.

INTERROGATORY NO. 5

As to the document produced at BOP 77014:

- a. Please identify by Bates number any documents that were attached to this email.
- b. Please identify by Bates number any documents to which this email was attached.

Response to Interrogatory No. 5:

BOPCMU077016 and BOPCMU077017 were sent as attachments to BOPCMU077014.

BOPCMU077014 was sent as an attachment to BOPCMU077018.

INTERROGATORY NO. 6

As to the document produced at BOP 76719:

- a. From when does it date?
- b. Who authored it?
- c. To who was it distributed?
- d. What is its purpose and use?

Response to Interrogatory No. 6:

After reasonable investigation, the BOP has determined that a draft of this document existed as early as March 2007 and was updated as recently as 2008. BOPCMU076719 was compiled by officials in the BOP Counter Terrorism Unit (CTU), and it was shared with the Correctional Programs Division. BOP believes that the purpose of BOPCMU76719 was to convey the views of the CTU regarding how the CMU referral process might operate; it was

further used to brief a warden at USP Marion about CMU procedures prior to the activation of the CMU at that facility.

INTERROGATORY NO. 7

As to the document produced at BOP 76900-33:

- a. Did the CTU use the risk assessment tool referenced in the document in the CMU designation process?
- b. What is the “outside agency” referenced in the document as having provided assistance to the BOP?

Response to Interrogatory No. 7:

The risk assessment tool referenced in BOPCMU076900-33 was not used by the CTU in the CMU designation process. After reasonable inquiry, the BOP is unable to confirm what agency is being referenced by the phrase “outside agency” in BOPCMU07903.

INTERROGATORY NO. 8

Was the document produced at BOP 76788-804 originally attached to the document produced at BOP 76787?

Response to Interrogatory No. 8:

Yes.

INTERROGATORY NO. 9

As to the document produced at BOP 76889-91:

- a. What are the “documents provided to BOP staff, and the Federal Bureau of Investigation (FBI)” referenced in this document?
- b. Does “information” provided to “all BOP regional directors informing them of the new CMU at USP Marion” consist of a March 5, 2008 memorandum authored by Joyce Conley (produced at P000022)? Does this document refer to any further information provided to BOP regional directors?
- c. What are the “previous two memorandums” referenced at BOP 77890?

Response to Interrogatory No. 9:

After reasonable inquiry, the BOP believes that the documents referenced were other memoranda or similar documents providing guidance on the CMUs. The “information”

referenced in the document consists of a March 5, 2008 memorandum authored by Joyce Conley. BOPCMU076889-91 does not refer to any further information provided to BOP regional directors. After reasonable inquiry, the BOP believes that the two previous memos referenced in the email are located at BOPCMU077041-45.

INTERROGATORY NO. 10

Please identify by Bates number all documents were attached to the email produced at BOP 76725.

Response to Interrogatory No. 10:

There were four documents attached to BOPCMU076725: BOPCMU076719, BOPCMU077092-94, BOPCMU077095-102, and BOPCMU077103-07.

INTERROGATORY NO. 11

What is the meaning of “b number” as referenced in BOP 76731?

Response to Interrogatory No. 11:

After reasonable inquiry, the BOP is unable to confirm the meaning of the “b number” reference in BOPCMU076731.

AS TO THE OBJECTIONS:

Dated: March 25, 2014

Respectfully submitted,

STUART F. DELERY
Assistant Attorney General

RONALD C. MACHEN JR.
United States Attorney

ANTHONY J. COPPOLINO
Deputy Branch Director
Federal Programs Branch

By: _____/s/_____

NICHOLAS CARTIER

(D.C. Bar # 495850)

NATHAN M. SWINTON

(NY Bar)

TIMOTHY JOHNSON

(D.C. Bar # 986295)

Trial Attorneys

U.S. Department of Justice

Civil Division/Federal Programs

Mail: P.O. Box 883

Washington, D.C. 20044

Street: 20 Massachusetts Ave., N.W.

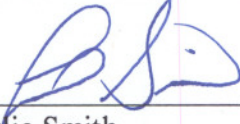
Washington, DC 20001

Ph: (202) 616-8351

Fax: (202) 616-8470

Email: nicholas.cartier@usdoj.gov

I declare under penalty of perjury that Defendants' responses to Interrogatory No. 11 contained in Plaintiffs' Sixth Set of Interrogatories for all Defendant's is correct.



Leslie Smith
Chief, Counter-Terrorism Unit
Federal Bureau of Prisons
Central Office
Washington, D.C.

March 20, 2014

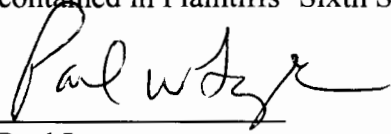
I declare under penalty of perjury that Defendants' responses to Interrogatory Nos. 8, and 9 contained in Plaintiffs' Sixth Set of Interrogatories for all Defendant's are correct.



Kathleen M. McGowan
Executive Assistant
Correctional Programs Division
Federal Bureau of Prisons
Central Office
Washington, D.C.

March 20, 2014

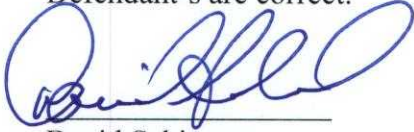
I declare under penalty of perjury that Defendants' responses to Interrogatory No. 4 contained in Plaintiffs' Sixth Set of Interrogatories for all Defendant's is correct.

A handwritten signature in black ink, appearing to read "Paul Layer", written over a horizontal line.

Paul Layer
Deputy Assistant Director
Program Review Division
Federal Bureau of Prisons
Central Office
Washington, D.C.

March 20, 2014

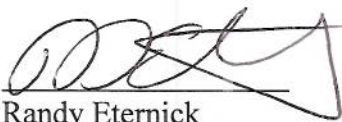
I declare under penalty of perjury that Defendants' responses to Interrogatory Nos. 1, 2, 6, the second sentence of No. 3 contained in Plaintiffs' Sixth Set of Interrogatories for all Defendant's are correct.

A handwritten signature in blue ink, appearing to read "David Schiavone", is written over a horizontal line.

David Schiavone
Senior Intelligence Analyst
Federal Bureau of Prisons
Central Office
Washington, D.C.

March 25, 2014

I declare under penalty of perjury that Defendants' responses to Interrogatory Nos. 5, 7, 10 and the first sentence of No. 3 contained in Plaintiffs' Sixth Set of Interrogatories for all Defendant's are correct.

A handwritten signature in black ink, appearing to read 'Randy Eternick', written over a horizontal line.

Randy Eternick
Administrator
Intelligence/Counter Terrorism Branch
Federal Bureau of Prisons
Central Office
Washington, D.C.

March 27, 2014

EXHIBIT 41

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Management of Terrorist Inmates Overview and Statistical Information

From: Charles Samuels
To: Joyce Conley
Date: 2009/05/22 14:41
Subject: Management of Terrorist Inmates Overview and Statistical Information
Attachments: IT Chart2.wpd, FAQ-BOP_Mgt_of_Terrorist_Offenders_EXE 5-22-09.v1.wpd, - Contents page.wpd, IT - chart - Citizens, Extradition & Conviction - 05222009.wpd

Management of Terrorist Inmates

This information below provides an overview of Bureau of Prisons (BOP) management and housing practices for inmates with a nexus to terrorism, both domestic and international. Please feel free to use this information to respond to general questions you or your staff might receive regarding our terrorism initiatives.

Historical Perspectives:

Historically, the BOP has securely housed inmates convicted of national security violations, and these security controls were increasingly intensified following the 1993 World Trade Center bombing and the emergence of "homegrown" extremists in Spain, the United Kingdom, and other nations. Additionally, the BOP has taken increased measures to detect, deter, and disrupt efforts by extremist or terrorist inmates to radicalize or recruit among their fellow inmates.

Following the events of 9/11, the BOP took a series of decisive actions to strictly control terrorists in our custody and improve institutional security. Many terrorists were consolidated into the Bureau's most secure facility, staff training was strengthened regarding terrorism matters, and we enhanced our intelligence gathering, analysis, and sharing capabilities. Furthermore, we conducted external threat assessments of key facilities and developed action plans for physical security and access to our prisons.

BOP Counter Terrorism Strategy Components:

In support of a broader U.S. Government effort, the BOP has developed and integrated a Counter Terrorism national strategic planning objective into our operations and implemented various initiatives that define our efforts in this area. This objective established a system for the exchange of information and intelligence that detect, assess, and quantify risks/threats of a terrorism matter. These initiatives include the activation of the BOP Counter Terrorism Unit; co-location of terrorists at Communications Management Units at FCC Terre Haute and USP Marion; 100% monitoring of social communications; collaboration with DOJ and intelligence communities; and National Joint

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Terrorism Task Force participation.

BOP Counter Terrorism Unit

After an extensive review and consultation process, BOP Executive Staff authorized the establishment of a dedicated Counter Terrorism Unit (CTU) in Martinsburg, WV, which began operations on October 1, 2006. CTU provides language services and analytical support to all BOP facilities housing terrorist offenders, to include the two BOP CMUs located at FCC Terre Haute, IN, and USP Marion, IL.

As part of the same management strategy, BOP Executive Staff also authorized the development of a stratified, two-track, three-tier risk management model for inmates convicted of or linked to terrorism.

The inmate is evaluated based upon their offense conduct and behavior prior to being taken into custody. Often we rely upon sensitive reporting from outside sources, such as other governmental and law enforcement agencies.

Track two considers the inmate's offense conduct, adjustment while in custody, and propensity for future activity with a terrorism nexus.

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Co-location of Terrorist Inmates - CMU

The CMUs were established to house inmates who, due to their current offense or conviction, offense conduct, or other verified information, require enhanced monitoring of all communications with persons in the community. The CMUs operate as open, general population units. However, inmates assigned to CMUs are separated from all other inmates at the facility. Each CMU has its own indoor and outdoor recreation areas, a law and leisure library, and social/legal visiting areas. Areas also exist within the units for serving group meals and for conducting private medical examinations. Programming (education, religious, visiting) activities are conducted in the units where operations and movement are controlled. Inmates in the CMUs have access to religious services, personal property, commissary, and education services similar to other Bureau of Prisons inmates.

Examples, although not an all inclusive list, of the types of inmates who may be housed in the CMUs include:

- Inmates who have been convicted of, or associated with, international or domestic terrorism;
- Inmates convicted of sex offenses who repeatedly attempt to contact their victims;
- Inmates who attempt to coordinate illegal activities via otherwise approved communication methods while incarcerated; and
- Inmates who have extensive disciplinary histories for the continued misuse/abuse of approved communication methods.

The operational procedures implemented at the CMUs minimize the ability of inmates to circumvent existing mail and telephone monitoring procedures.

100% Monitoring of Social Communications

The key to detecting and disrupting efforts by terrorist offenders to continue their illicit activities is comprehensive intelligence coverage of their telephone, correspondence, visiting, and financial activities. Communications must be actively monitored, translated, assessed, and evaluated from a link analysis perspective. The BOP CTU and the CMUs play central roles in this critical risk management process.

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- All inmates designated as terrorist offenders are subjected to 100% mail monitoring, and all foreign language mail to and from such inmates must be translated.
- All inmates designated as terrorist offenders are also subject to 100% inmate social telephone call monitoring, and all foreign language social telephone calls must be translated. Properly placed legal calls are not subject to this restriction.
- Special Administrative Measures (SAMs), approved by the Attorney General, are also placed on individual inmates that pose a threat of future acts of violence and terrorism, in accordance with provisions set forth in 28 CFR 501.3. SAMs provisions specifically restrict and require close monitoring of communications by inmates under such controls.

Collaboration with DOJ and Intelligence Community

The BOP utilizes the concept of "all source collection" in which we evaluate the charges for which an offender is committed which would include pre-sentence reports, indictments, and other traditional classification matters.

However, this process is not limited to new commitments.

Inmates already in service of their sentence may also be identified who, although they have no known previous nexus to terrorism cases, suddenly emerge as negative charismatic influences on the inmate population and begin to radicalize or recruit for either foreign influenced/inspired or "home grown" terrorist activities.

National Joint Terrorism Task Force (NJTTF)

In addition to these initiatives, the BOP was one of the first member agencies of the National Joint Terrorism Task Force (NJTTF) established in June 2002; and in partnership with the FBI, immediately developed and continues to manage the nationwide Correctional Intelligence Initiative (CII) program which is designed to ensure intelligence sharing and to detect, deter, and disrupt prison radicalization in federal, state, local, territorial, tribal, and privatized corrections. In 2006, the CII program was designated by the National Implementation Plan on the War on Terrorism as having the nationwide "lead" on prison radicalization matters.

Key Results:

The effects of our Counter Terrorism strategy and efforts have been substantial and productive. The BOP's leadership role regarding intelligence sharing, identifying vulnerabilities, and development of coordinated procedures pertaining to the management of terrorist inmates, has

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been universally hailed as a key success in the war against terrorism.

Conclusion:

Terrorist offenders in the custody of the BOP must continue to be managed through reasonable, lawful, but decisive controls to ensure they do not continue their terrorism-related activities while incarcerated, either in their interactions with other inmates, or their contacts with the public. Additionally, we must ensure all possible steps are taken to negate efforts to cultivate new terrorist offenders from amongst our general inmate population.

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Message Path	xml\Cabinet\CMU\4A3F34B6.BOPMSCO.PO4.100.1766933.1.102D1.1.xml
From	Charles Samuels
Display Name	Charles Samuels
Email	Nonrespo@bop.gov
UUID	Nonrespo@bop.gov
Reply To	Nonrespo@bop.gov
Text	Charles Samuels
To	Joyce Conley
CC	
Subject	Management of Terrorist Inmates Overview and Statistical Information
Scheduled date	2009-05-22 14:41:58
Creation date	2009-05-22 14:41:58
Modified date	2011-07-11 13:36:18
Delivered date	2009-05-22 14:41:58
Message size	10239
Attachments	4
Attachment	IT Chart2.wpd
Name	IT Chart2.wpd
Content ID	4A3F34B6.BOPMSCO.PO4.100.1766933.1.102D1.1_A_1
Is Inline	false
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Size	7386
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Name	FAQ-BOP_Mgt_of_Terrorist_Offenders_EXE 5-22-09.v1.wpd

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Name	- Contents page.wpd
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Type	file
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Name	IT - chart - Citizens, Extradition & Conviction - 05222009.wpd
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Recipients	1
Recipient	Joyce Conley
Display Name	Joyce Conley
Email	Nonresp@bop.gov
UUID	4A3F34B6.BOPMSCO.PO4.100.1766933.1.102D1.1_R_1
Distribution Type	TO
Recipient Type	User
Expire	0
Delay delivery until	1243017718
Delegated	false

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Property	Value
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Archived	true
Read	true
Deleted	false
Opened	true
Completed	false
Security	Normal
Box type	Sent Items
Return notification when opened	false
Return notification when deleted	false
Return notification when completed	false
Return notification when declined	false
Return notification when accepted	false
Archive Version	2008.1
Internal ID	Nonresponsive
Name	Mail
Source	sent
Class	Public
Account	Nonresponsive
Location ID	1334767240451
Class Name	GW.MESSAGE.MAIL
Original Subject	
Personal Subject	
Enclosing Folders	1
Folder	CMU
ID	4C56D95B.BOPMSCO.PO4.100.1766 933.1.18309.1
Name	CMU
Type	Normal
System	false
Share Type	NotShared

EXHIBIT 42

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF
et al.,

Plaintiffs,

vs.

Civil Action 10-0539 (RMU)

ERIC HOLDER, et al.,

Defendants.

ATTORNEYS' EYES ONLY

DEPOSITION OF DONALD L. DENNEY, Ph.D., a
witness, taken on behalf of the Plaintiffs,
pursuant to Notice, on the 26th day of July, 2013,
at the Federal Bureau of Prisons, 400 State Avenue,
Suite 800, Kansas City, Kansas, before

LOUISE R. BELL

of Dolginoff & Associates, a Registered
Professional Reporter, Certified in Kansas and
Missouri.

APPEARANCES

For the Plaintiffs:

MS. CHAUNIQUE YOUNG
(Via video conference)
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012

MR. ANDREY SPEKTOR
(Via video conference)
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, New York 10153

<p style="text-align: right;">Page 18</p> <p>1 A. I'm aware of the two different units, and I 2 recognize that they are not identical in terms 3 of their form and structure. 4 Q. (By Mr. Spektor) But putting aside their form 5 and structure -- by that, I just mean the 6 physical attributes of the two units -- are 7 there any other differences that you're aware 8 of between the two units? 9 A. I am not aware of any other differences, no. 10 Q. Okay, we talked a little bit about the process 11 of -- the nomination that originates at either 12 the facility level and, as I understand it, 13 sometimes at the CTU level. Can you just 14 describe that process in your own words, as you 15 understand it, of an inmate being first 16 recommended and then placed into the CMU? 17 A. The typical process that I'm aware of is that 18 that information would come to the North 19 Central Regional Office to typically our 20 Correctional Programs staff, who would then 21 assemble a packet of information that they 22 would collect and put into a folder, and then 23 that folder information would then be routed to 24 various sources here in the regional office for 25 review and for comment, ultimately resulting in</p>	
<p style="text-align: right;">Page 19</p> <p>1 it being reviewed by the Regional Director to 2 determine whether or not the Regional Director 3 believed that the individual warranted 4 placement into the CMU. 5 Q. You mentioned this packet that you get of 6 information. Can you just tell me what you 7 remember to be included in those packets? 8 A. Sure. The most important piece of information 9 in that packet, to me, was the pre-sentence 10 investigation report. There were, at times, 11 copies of information from the CTU with respect 12 to their -- their assessment of the case and 13 its need for CMU placement. I recall Sentry 14 printouts of the inmate profile. If there were 15 any relevant medical or mental health 16 information that had been forwarded to us, that 17 information would be included as well. 18 And those are the things that strike 19 me most about what I remember from the packet. 20 I'm sorry, and the review form itself. 21 Q. When you say "the review form," is that a CMU 22 review form where you make your recommendation? 23 A. Yes. 24 Q. Do you remember seeing notices of transfers to 25 the CMU already filled out in that packet?</p>	

EXHIBIT 43

CIM REVIEW

DATE: NOVEMBER 20, 2007 CURRENT FACL: ENG CUSTODY: IN
NAME: (P-1) REG NO: (P-1) S/L: MEDIUM

TELEPHONE OR MAIL ABUSE I. R.(S): 10/07 LYING OR FALSIFYING A STATEMENT (313); 10/07 PHN ABUSE (297); 10/07 REFUSING AN ORDER (307); 09/07 PHN ABUSE (397)

CIM ASSIGN: (O)2

COMMENTS

CORRECTIONAL PROGRAMS: (P-1) current offense is for Felon in Poss of a F/A. Since his arrival at ENG in May 2007, he has amassed four(4) phone related I/R's, and has compromised the PAC numbers of five (5) separate inmates by adding seven of his own phone numbers to their telephone lists and using their accounts to call the individuals. There has not been found to be any link between the inmates whose accounts were compromised. He is a muslim convert, who has been known to act as the Imam to other incarcerated Muslims, during which time, his preachings included condoning attacks on military recruiting stations and carrying out a martyr mission, killing as many people as possible. He is a care level 1 with a projected release date of 01-18-2016, and he maintains STG assignments (O)1

(O)1

J. George 11/20/07

CORRECTIONAL PROGRAMS ADMINISTRATOR *Recommended placement in the unit to curtail telephone abuse and limit his ability to spread his terrorist views. J. George 11/20/07*

CORRECTIONAL SERVICES ADMINISTRATOR: *Concur with placement in CMU due to history of circumventing telephone procedures. J. H. 11/23/07, Acting SA*

EXECUTIVE ASSISTANT: *I concur with the above recommendations. J. A.*

DEPUTY REGIONAL DIRECTOR: *Concur with above Recommendations. J. H. 11/23/07*

REGIONAL DIRECTOR: *Approved, Concur W/DRD. J. H. 11/28/07*

EXHIBIT 44

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF)	
)	
and)	
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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)	
	)	DEPOSITION OF
and	)	BRADLEY A.
	)	SHOEMAKER
CHARLES E. SAMUELS, Director	)	FRIDAY,
of the Federal Bureau of	)	AUGUST 16, 2013
Prisons (BOP))	
)	
and	)	CONFIDENTIAL -
	)	PURSUANT TO
D. SCOTT DODRILL, Assistant	)	PROTECTIVE ORDER
Director, Correctional)	
Programs Division, Federal)	
Bureau of Prisons)	
)	
and)	
)	
LESLIE S. SMITH, Chief,)	
Counter Terrorism Unit,)	
Federal Bureau of Prisons)	
)	
and)	
)	
FEDERAL BUREAU OF PRISONS,)	
Defendants.	)	Ref. 10029

1 A I manage four housing units that consist of
2 about 600 inmates. I have seven staff that I
3 supervise. And we handle the day-to-day needs
4 of the inmates, of those particular inmates.

5 Q Anything else that you can think of?

6 A Well, we correspond with the US marshals and
7 assistant United States attorney's office to
8 determine classification as far as custody level
9 and transfers to other facilities.

10 Q How long have you been at this current -- in
11 your current position?

12 A I was moved from the medium component, the FCI
13 to the penitentiary in April. So I've been in
14 this actual position since April 8th or 9th, I
15 believe.

16 Q What's the medium component?

17 A The FCI.

18 Q The FCI, okay.

19 And who do you report to?

20 A The associate warden, Mr. Castaneda.

21 Q Who are your direct reports? Who reports to
22 you?

23 A I have three case managers, three counselors,
24 and a secretary.

25 Q So let's go back to 2006. What position did you

1 hold in 2006?

2 A That's when I was promoted to unit manager.

3 Prior to that I was a case manager.

4 Q And in 2006 were you also in the general
5 population, or were you in the CMU?

6 A No, I was in general population.

7 Q Okay. And at what point did you come to the
8 CMU?

9 A I don't know the exact date, but I was
10 temporarily promoted to the special confinement
11 unit and the CMU. Again, I don't know the exact
12 dates, but I was there less than one year.

13 Q Can you give me an approximate date?

14 A I believe it was 2009, end of 2010.

15 Q So from approximately the end of 2009 to the end
16 of 2010 --

17 A Approximately.

18 Q -- you were working in the CMU on a temporary
19 basis?

20 A Correct.

21 Q Why did you come on a temporary basis?

22 A There was a vacancy. I had experience in the
23 special confinement unit of about five to six
24 years as the case manager.

25 Q Okay.

1 purpose of the CMU?

2 A Communication Management Unit that's -- there
3 are inmates that, above other inmates, I guess
4 general population inmates, that require
5 monitoring of their communication.

6 Q Do you know why they require monitoring of their
7 communication?

8 A No.

9 Q Do you know if the purpose of the CMU has
10 changed over time?

11 A I don't believe that it has, but I wouldn't know
12 that.

13 Q So you understand the goal of the CMU?

14 MR. JOHNSON: Objection, asked and
15 answered.

16 You can answer.

17 A I believe it's just to monitor the
18 communication.

19 Q Do you know who is eligible to go to the CMU?

20 A No.

21 Q Do you know how the BOP decides who to send to
22 the CMU?

23 A No.

24 Q So you never reviewed paperwork or anything of
25 the sort that would indicate why the BOP made

1 the decision to send who they sent to the CMU?

2 A I'm not sure what you're asking.

3 Q My question is: Is there anything that you ever
4 reviewed during the time that you worked in the
5 CMU that would indicate why a particular person
6 was sent, why a particular inmate was sent to
7 the CMU?

8 MR. JOHNSON: Objection, ambiguous.

9 You can answer.

10 A No. When they arrived at Terre Haute, they were
11 already designated. So that was a different
12 phase that I wasn't exposed to.

13 Q Is there any expectation as to how long a
14 prisoner should remain in the CMU?

15 A No.

16 Q So there's no expectation?

17 A You mean like upon arrival?

18 Q Right, right. They can stay there indefinitely,
19 in other words?

20 A I'm not sure.

21 Q Do you know if there's any difference in Terre
22 Haute or Marion?

23 A I don't know.

24 Q So how did you obtain this position of unit
25 manager? What was the process?

1 wasn't associated with it.

2 Q And based on your observations, did a CMU unit
3 share any similarities that you observed?

4 MR. JOHNSON: Objection, vague.

5 You can answer.

6 A Not that I recall.

7 Q So no common characteristics or traits?

8 MR. JOHNSON: Same objection.

9 You can answer.

10 A Not that I can -- I know of.

11 Q For example, being Muslim or terrorism
12 convictions or anything of that sort?

13 A I don't -- I wouldn't know.

14 Q Were you ever curious as to why certain inmates
15 were designated to the CMU?

16 A I wouldn't know why they were designated. On my
17 part, I just assumed that it was an inmate that
18 required more monitoring of his communication.

19 Q Was there ever a person you encountered in the
20 CMU who you thought did not belong?

21 MR. JOHNSON: Objection, vague.

22 You can answer.

23 A Again, I don't know the basis of why they were
24 designated there, so I wouldn't know that
25 answer.

1 appeal; correct?

2 A I'm a little confused with the question.

3 Q Okay. So if you have an inmate who has been
4 convicted of a terrorism-related charge, that
5 conviction will always be there, that will not
6 go away unless, for some reason, the inmate is
7 able to appeal that conviction; correct?

8 A And when, yes.

9 Q And when, yes, successfully.

10 A Yes.

11 Q So how would you review the designation of an
12 inmate who is only placed in the CMU due to a
13 terrorism-related conviction?

14 MR. JOHNSON: Objection, incomplete
15 hypothetical.

16 You can answer.

17 A I don't know that I would just look at his --
18 I'm not sure -- I would never know why an inmate
19 was designated, because that's prior to him
20 getting to the unit. But I would not just
21 simply look at his offense. I would look at
22 other factors based on that Custody
23 Classification Form 5100.

24 Q So if you were trying to determine whether an
25 inmate still belongs in the CMU, but the reason

1 point system, we would make a recommendation
2 based on the security or custody of each inmate.

3 Q Then it continues that, "Additional information
4 to be considered includes whether the original
5 rationale for CMU designation has been
6 mitigated, whether the inmate no longer presents
7 a risk, and that the inmate does not require the
8 degree of monitoring and controls afforded that
9 in the CMU."

10 Now, with respect to the phrase "additional
11 information to be considered includes whether
12 the additional -- original rationale for CMU
13 designation has been mitigated."

14 So you would agree that if the original
15 rationale for CMU designation was a
16 terrorism-related conviction, would it be
17 virtually impossible for this original rationale
18 to be mitigated; correct?

19 MR. JOHNSON: Objection, argumentative,
20 vague.

21 You can answer.

22 A Again, I'm not involved with the initial
23 designation, so I wouldn't know if just his
24 offense or if there were other things considered
25 when placing him in the CMU.

1 following.

2 Q So it was both his instant offense and the
3 information that you list in the paragraph
4 below; correct?

5 A Yes.

6 Q So what was the basis for disapproving
7 Mr. Jayyousi's transfer request?

8 MR. JOHNSON: Objection, asked and
9 answered.

10 You can answer.

11 A Well, I can't speak for the warden, but the unit
12 team, the recommendation was based on the
13 seriousness of his offense, the amount of time
14 that he had to serve, according to this. I
15 mean, I don't recall his actual case unless I
16 look at this, but what this information is
17 providing me is that's what the decision was
18 based on. His instant offense, the amount of
19 time he was sentenced, and the time remaining.

20 Q This seems to indicate that the decision to
21 redesignate Jayyousi to the CMU was based on his
22 terrorism-related conviction, not his
23 institutional behavior; is that correct?

24 A To redesignate him?

25 Q Let me restate.

1 This notice seems to indicate that the
2 decision to recommend disapproval for his
3 transfer request, Mr. Jayyousi's transfer
4 request was based on his terrorism-related
5 conviction and not any institutional behavior.

6 MR. JOHNSON: Objection, argumentative. Is
7 there a question?

8 A Could you reask me the question? I'm not sure
9 what you're asking me.

10 Q Is there anything that was written in this
11 document to indicate that Mr. Jayyousi was
12 misbehaving in the institutional setting, and
13 that this misbehavior caused him -- caused his
14 transfer request to be denied?

15 A The only thing regarding his institutional
16 behavior, it states that his history of
17 institutional conduct violations include
18 interfering with a security device on June 2nd,
19 2005.

20 Q And that was obviously prior to his being
21 designated to the CMU; correct?

22 A I'm not sure.

23 Q Well, the CMU, I believe, opened in 2006, and
24 Mr. Jayyousi was transferred in June 2008. So
25 it would appear that this occurred prior to his

1 arrival at the CMU?

2 A Yeah. I wasn't sure when the CMU opened. If it
3 opened in '06 and this happened in '05, then
4 yeah, I would agree with that.

5 MS. LEWIS: I'm going to mark Exhibit 91,
6 which is P00498.

7 Before I get to this next exhibit, let's
8 take a ten-minute break. Does that work for
9 everyone?

10 MR. JOHNSON: Sure.

11 MS. LEWIS: Thank you.

12 (A recess was taken.)

13 MS. LEWIS: So I'm marking Exhibit 91,
14 P00498.

15 (Deposition Exhibit 91 marked for
16 identification.)

17 BY MS. LEWIS:

18 Q Let me know when you're done reading. I'm just
19 going to ask you about the first page --

20 A Oh, okay.

21 Q -- if that's helpful.

22 A Yeah, I'm ready.

23 Q This is another memo from you to the warden
24 dated May 21st, 2010; correct?

25 A Yes.

1 Q And this concerns another request by
2 Mr. Jayyousi to be transferred from the CMU;
3 correct?

4 A Yes.

5 Q And here you write, "It has been determined that
6 the original reasons for CMU designation and
7 placement still exist and continued placement is
8 warranted."

9 And what are those original reasons?

10 A I don't recall, but they're not noted on here.

11 Q Do you believe that the reference to "original
12 reasons" are the reasons that you listed in the
13 December 23rd, 2009 memo to the warden that we
14 discussed previously, which is Exhibit 90?

15 A I'm of the opinion, yes, that those are the
16 reasons on that Exhibit 90, yes.

17 Q And Mr. Jayyousi's transfer was, again, denied
18 by the warden; correct?

19 A I'm not sure if that's his signature, but
20 somebody signed for the warden on that May 21,
21 2010.

22 Q Disapproving Mr. Jayyousi's --

23 A Yes.

24 Q -- request; correct?

25 A Yes, correct.

EXHIBIT 45

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)	
	)	DEPOSITION OF
and	)	TIMOTHY COLEMAN
	)	THURSDAY,
CHARLES E. SAMUELS, Director	)	AUGUST 15, 2013
of the Federal Bureau of)	
Prisons (BOP))	
	)	CONFIDENTIAL -
and	)	PURSUANT TO
	)	PROTECTIVE ORDER
D. SCOTT DODRILL, Assistant)	
Director, Correctional)	
Programs Division, Federal)	
Bureau of Prisons)	
)	
and)	
)	
LESLIE S. SMITH, Chief,)	
Counter Terrorism Unit,)	
Federal Bureau of Prisons)	
)	
and)	
)	
FEDERAL BUREAU OF PRISONS,)	
Defendants.	)	Ref. 10028

1 communications.

2 Q And in your understanding, who is eligible to go
3 to the CMU?

4 A I don't know, I'm not proxy to that information.

5 Q What's your understanding of the goal of the
6 CMU?

7 MR. CARTIER: Object, asked and answered.

8 You can answer.

9 A To monitor one hundred percent of the
10 communications of inmates that are sent there.

11 Q Do you know if there's any expectation as to how
12 long a prisoner should remain in the CMU?

13 A Not to my -- I'm not proxy to that information
14 either.

15 Q Do you know if there's any difference between
16 the unit in Terre Haute and the one in Marion?

17 A Not to my knowledge.

18 Q Do you know why sometimes inmates are sent from
19 Terre Haute to Marion?

20 A No.

21 Q No, you don't know, or --

22 A No, I don't know.

23 Q Just based on your observations, have you
24 noticed any common characteristics of the
25 inmates assigned to the CMU?

EXHIBIT 46



U.S. Department of Justice

Federal Bureau of Prisons

Washington, D.C. 20534

October 14, 2009

MEMORANDUM FOR MICHAEL K. NALLEY, REGIONAL DIRECTOR
NORTH CENTRAL REGIONAL OFFICE

FROM:  D. Scott Doerrill, Assistant Director
Correctional Programs Division

SUBJECT: Review of Inmates for Continued Communication
Management Units (CMU) Designation

Inmates designated to the CMU must be regularly reviewed according to standard criteria to determine whether CMU designation remains necessary. Please implement the following procedures at the CMUs in your region, including posting of the attached "Notice to Inmates" within CMUs.

- (1) Review of inmates for continued CMU designation will be conducted by the Unit Team in connection with regularly scheduled program reviews. Inmates are provided at least 48 hours prior notice of scheduled program reviews and are expected to attend. They can personally raise questions and concerns with Unit Team regarding their placement in the CMU.
- (2) In determining whether continued CMU placement is necessary, the Unit Team will consider whether the original reasons for CMU placement still exist, including whether:
 - (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 unmonitored communication with persons in the community.
- (3) Reviews for continuing CMU designation are done in a manner consistent with sound correctional judgement and security threat management practices. Additional information to be considered includes whether the original rationale for CMU designation has been mitigated, whether the inmate no longer presents a risk, and that the inmate does not require the degree of monitoring and controls afforded at a CMU.
- (4) Unit Team staff will forward their recommendations to the Warden. With the concurrence of the Warden, recommendations will then be forwarded to the Bureau's Counter Terrorism Unit (CTU) for review of individual inmate cases. The CTU will forward the final recommendation to the Regional Director, North Central Region, for further review and consideration. The Regional Director, North Central Region, has final authority to approve an inmate's re-designation from a CMU.
- (5) Inmates denied re-designation from a CMU will be notified in writing by the Unit Team of the reason(s) for continued CMU designation. Inmates not satisfied with the re-designation decision, or any other aspect of confinement in the CMU, can appeal the decision or situation through the administrative remedy program. The inmate's Unit Team can provide the necessary form(s).

- (6) Once an inmate is approved for re-designation by the Regional Director, North Central Region, a referral packet is prepared for the Designation and Sentence Computation Center (DSCC) containing:
- Request for Redesignation Memorandum (drafted by the CTU).
 - Approval memo signed by North Central Regional Director.

Approval is noted in SENTRY on the inmate's "CIM Clearance and Separatee Data" by a Designator at DSCC, who also loads the re-designation.

- (7) Inmates approved for transfer from a CMU are ordinarily re-designated to either FCI Terre Haute, IN (for THA CMU inmates) or USP Marion, IL (for MAR CMU inmates), general population, for a period of no less than 6 months, as a step-down process from the CMU, if they meet security and custody classification requirements for a medium security facility.
- (8) Inmates requiring placement in a high security institution are ordinarily re-designated to USP Terre Haute for no less than 6 months, as a step-down process from the CMU.
- (9) Should the inmate's programming and conduct remain appropriate after transfer from a CMU, he can be considered eligible for transfer to another appropriate security level facility.

EXHIBIT 47

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

YASSIN MUHIDDIN AREF, <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.	)	Civil Action No. 10-0539 (RMU)
)	
ERIC HOLDER, <i>et al.</i>)	
)	
Defendants.)	

**DEFENDANTS’ SUPPLEMENTAL RESPONSE
TO INTERROGATORY NO. 33 OF PLAINTIFFS’ FIRST SET OF
INTERROGATORIES**

In accordance with Federal Rules of Civil Procedure 26(e) and 33, Defendants, by and through their undersigned counsel, hereby supplement their response to Interrogatory No. 33 of Plaintiffs’ First Set of Interrogatories. Defendants incorporate by reference the General Statement and Objections set forth in Defendants’ Objections and Responses to Plaintiffs’ First Set of Interrogatories, dated November 21, 2011.

SUPPLEMENTAL RESPONSE

INTERROGATORY NO. 33

How many current BOP inmates are eligible for nomination to the CMU by virtue of fitting into one or more of the BOP’s criteria for CMU designation as identified in the BOP’s 2007 Statue [sic] of the Bureau Report (*see* Complaint at ¶ 33)?

Objections to Interrogatory No. 33:

Defendants object that it would be unduly burdensome to attempt to identify every prisoner who might theoretically be eligible for a CMU designation. Defendants further object

that the information sought is not relevant because the decision to designate an inmate to the CMU is an individualized determination based on the particular security risks posed by an individual inmate.

Amended Response to Interrogatory No. 33:

Subject to and without waiving these objections and the general objections set forth in Defendants' Objections and Responses to Plaintiffs' First Set of Interrogatories, dated November 21, 2011, and pursuant to the agreement of the parties as reflected in Plaintiffs' February 9, 2012 letter, Defendants respond as follows:

As of March 12, 2012, there were 264 BOP inmates whose current offense(s) of conviction, or offense conduct, includes association, communication, or involvement, related to international terrorism, and 90 BOP inmates whose current offense(s) of conviction, or offense conduct, includes association, communication, or involvement, related to domestic terrorism.

As of January 28, 2012, the number of BOP inmates who had received more than one sustained disciplinary report involving the misuse or abuse of approved communication methods was 3,997.

AS TO THE OBJECTIONS:

Dated: March 12, 2012

Respectfully submitted,

TONY WEST
Assistant Attorney General

RONALD C. MACHEN JR.
United States Attorney

VINCENT M. GARVEY
Deputy Branch Director
Federal Programs Branch

_____/s/_____
NICHOLAS CARTIER
(D.C. Bar # 495850)
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Attorneys for Defendants

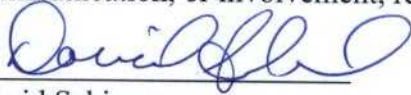
CERTIFICATE OF SERVICE

I certify that on March 12, 2012, a true and correct copy of Defendants' Supplemental Response to Interrogatory No. 33 of Plaintiffs' First Set of Interrogatories was sent via email to counsel for Plaintiffs, Rachel Meeropol and Alexis Agathocleous, Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012 at AAgathocleous@ccrjustice.org and RachelM@ccrjustice.org.

Dated: March 12, 2012

_____/s/_____
NATHAN M. SWINTON
Attorney for Defendants

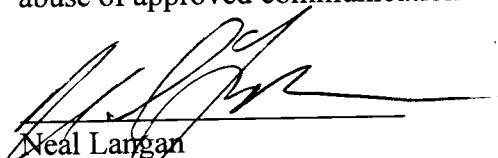
I declare under penalty of perjury that Defendants' amended response to Interrogatory No. 33 contained in Plaintiffs' First Set of Interrogatories regarding the number of inmates whose current offense(s) of conviction, or offense conduct, includes association, communication, or involvement, related to international or domestic terrorism is correct.



David Schiavone
Senior Intelligence Analyst
Federal Bureau of Prisons
Central Office
Washington, D.C.

March 12, 2012 

I declare under penalty of perjury that Defendants' amended response to Interrogatory No. 33 from Plaintiffs' First Set of Interrogatories regarding the number of BOP inmates who have received more than one sustained disciplinary report involving the misuse or abuse of approved communication methods is correct.



Neal Langan
Social Science Research Analyst
Federal Bureau of Prisons
Central Office
Washington, D.C.

March 12, 2012

EXHIBIT 48

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF
et al.,

Plaintiffs,

vs.

Civil Action 10-0539 (RMU)

ERIC HOLDER, et al.,

Defendants.

ATTORNEYS' EYES ONLY

DEPOSITION OF MARY BERNA POTTS, a witness,
taken on behalf of the Plaintiffs, pursuant to
Notice, on the 25th day of July, 2013, at the
Federal Bureau of Prisons, 400 State Avenue,
Suite 800, Kansas City, Kansas, before

LOUISE R. BELL

of Dolginoff & Associates, a Registered
Professional Reporter, Certified in Kansas and
Missouri.

APPEARANCES

For the Plaintiffs:

MS. RACHEL MEEROPOL
(Via video conference)
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012

MR. ANDREY SPEKTOR
(Via video conference)
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767 Fifth Avenue
New York, New York 10153

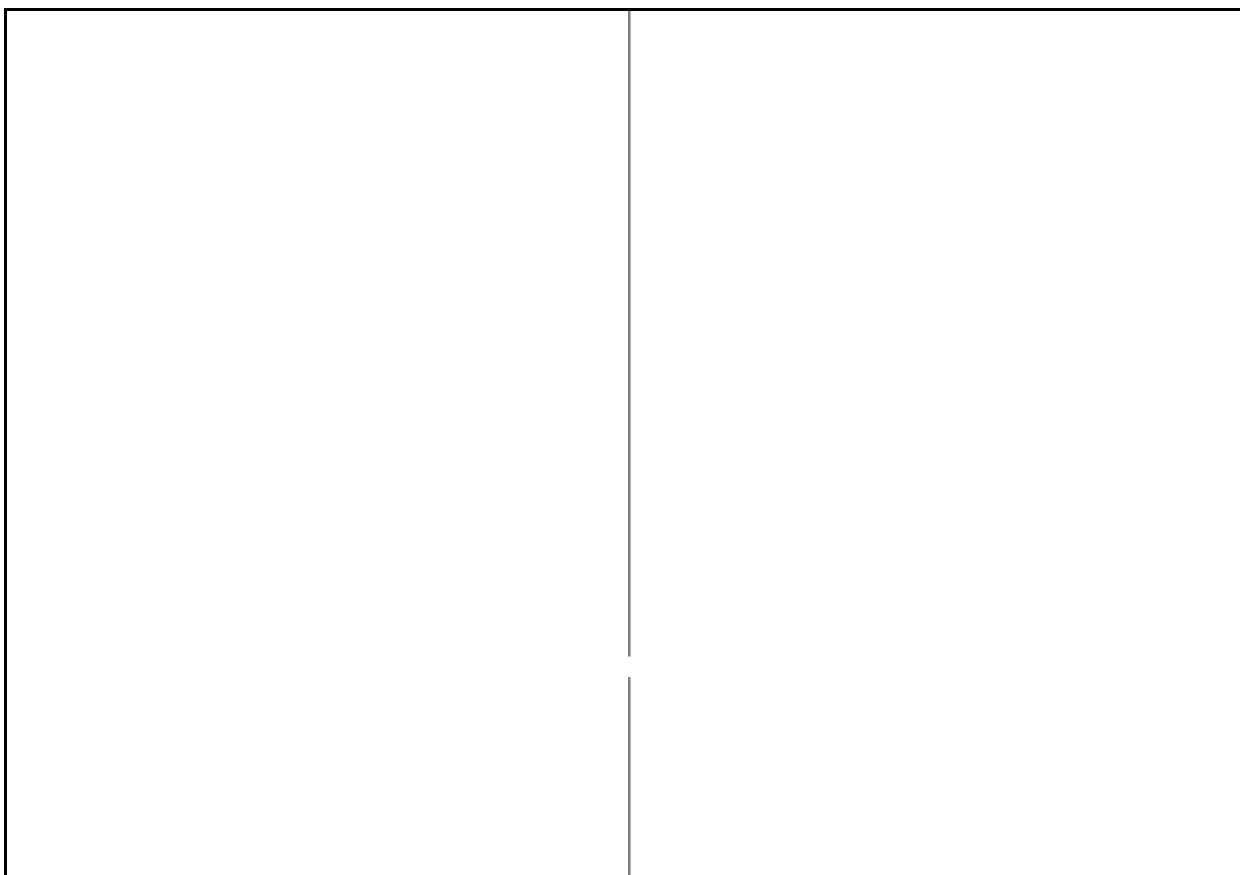
Page 10

1 **Q. I know it's hard to place a number, but did --**
 2 **was the reviewing CMU referrals and designating**
 3 **inmates to a CMU, was that a significant part**
 4 **of your job, or is that sort of a minimal part**
 5 **of your job?**
 6 A. It was a minimum part of my job.
 7 **Q. When did you first learn about the CMU?**
 8 A. Approximately in 2007 when I began my position
 9 as Correctional Programs Specialist.
 10 **Q. And what did you learn about it?**
 11 A. Well, I learned how to prepare CMU referrals.
 12 And that was --
 13 **Q. And who -- I'm sorry, go ahead.**
 14 A. Well, and that was utilizing the CMU
 15 guidelines, which is the Bates number we
 16 referenced earlier.
 17 **Q. And who provided you those guidelines?**
 18 A. My supervisor.
 19 **Q. Who was your supervisor?**
 20 A. Well, I had two different supervisors at the
 21 time. Initially when I began my position, I
 22 had Mike Junk, J-u-n-k. He was the
 23 Correctional Programs Administrator. And then
 24 he retired. And then the second supervisor I
 25 had was Laura Mason, M-a-s-o-n.

Page 13

1 A. Yes. And that was the referral summary.
 2 **Q. And what were you told about what you should be**
 3 **putting in the summary?**
 4 A. There wasn't -- it just was following what was
 5 in the guidelines, and basically just that.
 6 **Q. And I don't have the document in front of me**
 7 **that you're referring to, but did those**
 8 **guidelines talk about criteria that should be**
 9 **weighed in deciding whether an inmate belongs**
 10 **in the CMU?**
 11 A. Yes. It includes those type of inmates --
 12 those type of inmates with conduct, convictions
 13 that we would make referrals for.
 14 **Q. Can we just take one minute, please?**
 15 A. Sure.
 16 (Pause)
 17 **Q. (By Mr. Spektor) And so just to clarify, did**
 18 **anyone explain to you, other than what's on the**
 19 **paper, did anyone explain to you what the**
 20 **criteria is supposed to mean, did you get any**
 21 **sort of fuller explanation?**
 22 A. I believe that we did in internal meetings when
 23 we discussed CMU, through my supervisors, as
 24 one would when you're discussing certain
 25 guidelines that we now have to adhere to, and

<p style="text-align: right;">Page 22</p> <p>1 us to take it off. That's, to the best of my</p> <p>2 ability, what I recall.</p> <p>3 Q. Do you recall the year when that happened?</p> <p>4 A. I don't recall the year.</p> <p>5 Q. Did they explain why your recommendation's not</p> <p>6 needed in some cases?</p> <p>7 A. Well, to the best of my knowledge, I'm not an</p> <p>8 administrator, so I just -- my role is just to</p> <p>9 write and assess and review and compile the</p> <p>10 information in the comments section.</p> <p>11 Q. We discussed the criteria before, but are you</p> <p>12 aware of any weight to the -- any differing</p> <p>13 weight to the different criteria; for example,</p> <p>14 does it seem more important for terrorists with</p> <p>15 terrorist convictions or for communications</p> <p>16 violators?</p> <p>17 A. Okay, I'm not -- can you repeat the question</p> <p>18 again? I'm sorry.</p> <p>19 Q. Sure. You mentioned the different criteria</p> <p>20 that's used in CMU designations.</p> <p>21 A. Uh-huh.</p> <p>22 Q. And the criteria discusses the sorts of inmates</p> <p>23 that belong in the CMU.</p> <p>24 A. Correct.</p> <p>25 Q. Is your sense that some inmates belong in the</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Do you have any standard as to how many of</p> <p>2 those criteria need to be met for an inmate to</p> <p>3 be recommended to be placed in the CMU?</p> <p>4 A. No. There's -- if you're talking -- am I</p> <p>5 understanding correctly that -- are you asking</p> <p>6 me that I need to have a certain number for</p> <p>7 them to go into the CMU?</p> <p>8 Q. Yes. You mentioned you have five -- I believe</p> <p>9 you said five criteria. If an inmate only</p> <p>10 meets one of those criteria, is that enough for</p> <p>11 you to recommend him to the CMU?</p> <p>12 A. That's correct.</p> <p>13 Q. Does it matter what criterion that is?</p> <p>14 A. As long as it's one of these criteria that we</p> <p>15 discussed.</p> <p>16 Q. Do you have a sense as to whether the BOP has</p> <p>17 any goals regarding the percentages of inmates</p> <p>18 that are in the CMU for different reasons?</p> <p>19 A. No.</p> <p>20 Q. For instance -- okay. Thank you.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Is it your sense that the BOP is looking at the</p> <p>23 entire universe of people that are -- inmates</p> <p>24 that were eligible for the CMU, or are they</p> <p>25 just looking at it on a case-by-case basis?</p>
<p style="text-align: right;">Page 23</p> <p>1 CMU more than others? And an example I gave is</p> <p>2 inmates who have terrorist convictions as</p> <p>3 opposed to ones that have communications</p> <p>4 violations.</p> <p>5 A. Yes. That -- that is the way I understand the</p> <p>6 guidelines. And of course the guidelines also</p> <p>7 include those who have extensive disciplinary</p> <p>8 history. Any of those inmates who attempt to</p> <p>9 coordinate illegal activities through approved</p> <p>10 communications.</p> <p>11 Q. So as you understand your role, as long as you</p> <p>12 see an inmate that has -- that fits one of the</p> <p>13 criteria, then it doesn't matter what criteria</p> <p>14 it is?</p> <p>15 A. I only -- I specifically use this criteria</p> <p>16 that's here. If -- if -- if a referral is --</p> <p>17 Q. And there --</p> <p>18 You can finish your answer.</p> <p>19 A. Okay. If a referral is being sent from the</p> <p>20 institution or through CTU, I will write up the</p> <p>21 referral and give a synopsis of the offense and</p> <p>22 the offense conduct. And it may or may not fit</p> <p>23 the criteria as outlined. Not all cases --</p> <p>24 every case is individual. So I do individual</p> <p>25 assessments based on each case.</p>	



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1 **Q. Now, the next document you'll see is dated**
2 **March 9, 2010.**
3 A. Okay.
4 **Q. And it's a memorandum from Unit Manager Kelly.**
5 A. Okay.
6 **Q. And again there's a gap. This one is dated**
7 **March 9, 2010. And the last form that we've**
8 **seen from your office is September 2008. So**
9 **does this gap indicate to you that Mr. McGowan**
10 **was not considered for redesignation from the**
11 **CMU in that period of time?**
12 MR. CARTIER: Objection; calls for
13 speculation. You can answer.
14 A. I'm not sure.
15 **Q. (By Mr. Spektor) If he had been considered for**
16 **transfer out of the CMU, would another form --**
17 **would another CMU form then be created?**
18 A. Yes.
19 **Q. And is it your understanding that the policy is**
20 **to create CMU review forms every time a**
21 **prisoner is considered for a redesignation to**
22 **or from the CMU?**
23 A. Yes.
24 **Q. Do you normally consider memoranda from Unit**
25 **Managers when you decide whether to**

	<p style="text-align: right;">Page 36</p> <p>1 A. Yes. It has my name as the Correctional 2 Programs -- it's hard to tell who the 3 administrator's signature is, but I do have my 4 name up on top, on the top portion.</p> <p>5 Q. (By Mr. Spektor) If you notice, it's dated 6 March 15th, 2007. My question is, do you see 7 your involvement in this designation?</p> <p>8 A. I'm sorry, I didn't understand the question.</p> <p>9 MR. SPEKTOR: Maybe it would be a good 10 time for a break and maybe the connection will 11 get better.</p> <p>12 MR. CARTIER: Let's take a five-minute 13 break. 14 (A recess was taken.)</p> <p>15 MR. SPEKTOR: Nick, we should mark 16 that document as another exhibit, the document 17 that the witness has been referring to, the 18 guidelines.</p> <p>19 MR. CARTIER: Sure. This could be 20 Exhibit 36. 21 (Potts Deposition Exhibit No. 36 was 22 marked for identification.)</p> <p>23 Q. (By Mr. Spektor) So we were looking at 24 Page 93. The BOP CMU number is 060685.</p> <p>25 A. Okay.</p>

1 changed.

2 But as the referrals would come in
3 from CMU or the institution, yes, the referral
4 was worked up regardless, and I just utilized
5 the information that was provided to me, and
6 then, to the best of my knowledge, worked up
7 the review form.

8 **Q. And in those cases where you did make a**
9 **recommendation, how did you reach your decision**
10 **whether to recommend the inmate to the CMU?**

11 A. Well, my recommendation was based strictly on
12 using the guidelines. Any of the inmates that
13 had been referred, then I was strictly just
14 using the guidelines, nothing more.

15 **Q. And again, I just want to clarify. When you**
16 **say "using the guidelines," you mean when an**
17 **inmate meets one of the criterion that's listed**
18 **on the guidelines, your job is, as you**
19 **understand it, is to recommend that inmate to**
20 **the CMU?**

21 A. That's correct. And that's utilizing the Bates
22 form Exhibit 36.

23 **Q. Do you believe that your job, in recommending**
24 **inmates to the CMU, do you believe that job has**
25 **any discretion? And by "discretion," I mean do**

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1 through telephone and mail.
2 **Q. Where do you see that this inmate was**
3 **associated with a terrorist group?**
4 A. "For jihad." When I see the word "jihad," that
5 to me is an association or affiliation of a
6 terrorist organization.
7 **Q. But before the word "jihad," it says "his**
8 **continued support for jihad"; it doesn't say**
9 **that this inmate belongs in an organization**
10 **that carries out jihad. Is that a significant**
11 **distinction to you, does that difference mean**
12 **anything to you?**
13 A. Well, if he's not in the -- he has some form of
14 association through that organization.
15 **Q. So if this inmate just wrote that, you know, in**
16 **a letter that he supports jihad and that's the**
17 **extent of his association, is that enough for**
18 **you to conclude that he meets one of the**
19 **criterion?**
20 A. Well, the reason I would -- my -- my response
21 to that is because I believe that -- that we
22 need to ensure the safety of the public and
23 also the orderly running of the institution as
24 well.
25 Whether or not he has any other

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1 A. I'm not sure.
2 **Q. The next line, if you see, says: Appears**
3 **regular phone and mail monitoring are working**
4 **sufficiently.**
5 **Do you see that?**
6 A. Yes.
7 **Q. But you concurred with CMU placement for this**
8 **inmate, if you look above at your**
9 **recommendation; is that correct?**
10 A. That's correct.
11 **Q. So do you remember if you disagreed with the**
12 **fact that regular phone and mail monitoring are**
13 **working sufficiently?**
14 A. Well, I disagreed. I didn't put -- I didn't
15 put a -- my statement under the Correctional
16 Programs Administrator, is that I concur with
17 Marion CMU placement. But my basis was based
18 on that he needed continued monitoring through
19 telephone and as well as any -- and I did put
20 "social communication."
21 **Q. So which of the criteria for CMU placement does**
22 **this inmate meet, in your view?**
23 A. In my view, I believe that this inmate
24 affiliation with a terrorist group would
25 require some -- some enhanced monitoring

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1 ties -- but apparently from what I have written
2 here, he has continued to support jihad through
3 telephones. And so that, to me, my main goal
4 is to ensure that -- that we protect the
5 public. If we can place him in a CMU, that --
6 then that can be established through them. If
7 at some point in time they don't believe that
8 there's anything, then they can certainly
9 recommend again and recommend denial that
10 there's no threats. But that's just my
11 professional opinion based on the criteria that
12 I'm using --
13 **Q. I'm just focusing on -- thank you. I'm just**
14 **focused on the word "support," and I'm just**
15 **trying to understand what "support" means to**
16 **you. So if someone spoke out about jihad, is**
17 **that -- does that mean that they support jihad**
18 **and what -- and if -- and so -- yeah, if you**
19 **can answer that question: Does that mean that**
20 **they support jihad if they just spoke out about**
21 **it?**
22 MR. CARTIER: Objection; vague. You
23 can answer.
24 A. That's my belief.
25 **Q. (By Mr. Spektor) And if that's all that**

1 **happened, would you still write that -- would**
2 **you still believe that the inmate is associated**
3 **with a terrorist organization?**

4 A. I do.

5 **Q. So the Executive Assistant disagreed with you;**
6 **and I'm wondering, did he or she call you and**
7 **talk about the differences, if you remember?**

8 A. No. Because once it leaves my -- my office,
9 then it just continues to route through --
10 through the respective administrators, and
11 everyone has an opportunity to put down what --
12 as they review this, what their beliefs are,
13 what the recommendations are.

14 We don't -- no one comes to me and
15 tells me, Well, I disagree with you. It -- it
16 just -- it leaves my office and each individual
17 makes their own assessment. And then of course
18 the RD is the final reviewing authority.

19 **Q. So there's no follow up; once you sign off, you**
20 **make your summary and you make a**
21 **recommendation, you never hear about this**
22 **particular case again; is that correct?**

23 A. Well, no, because it would come back -- once it
24 has been completely filled out by the
25 respective administrators and executive staff

<p style="text-align: right;">Page 58</p> <p>1 A. In my view, that would mean like he had -- he 2 would have ties or associations to this 3 particular Portland 7 jihadist group. 4 Q. And I just want to nail down what you think 5 "ties" or "association" means. So again, if 6 this inmate was just voicing his support for an 7 organization, would that, in your view, mean 8 that he has links, ties, or associations to 9 that organization? 10 A. Ties, links, members, to the particular 11 organization, I believe that the individual 12 then -- again, I believe that his -- that this 13 group here is a terrorist organization, of 14 course. And -- and that's my response. 15 Q. If the inmate just wrote a letter that says, 16 Hey, I think jihad is a good idea, would that 17 mean to you that he has links to a jihad 18 organization? 19 A. An inmate who is writing any letter or any sort 20 of statement as that, yes, I would definitely 21 believe that it's a very serious statement, 22 especially since, you know, we've had 9/11, and 23 so any ties to any terrorist groups are 24 definitely at the crucial forefront of what we 25 do for the Bureau of Prison, for the protection</p>	
<p style="text-align: right;">Page 59</p> <p>1 of the public, of the -- of public and also for 2 the orderly running of the institution. 3 Q. And would it cause you to recommend that inmate 4 to the CMU just on the basis of that -- of that 5 letter that I just mentioned? 6 MR. CARTIER: Objection; hypothetical. 7 You can answer. 8 A. In my view, I believe so, because again, it's 9 an inmate who's reaching out, if he feels that 10 he's writing letters, trying to get a hold of 11 terrorist organizations. Then that's where we 12 need to monitor this inmate through the 13 enhanced monitoring communications via 14 telephone, mail, so that staff can ascertain 15 what type of communication he intends, to 16 continue to proceed and to obtain information 17 regarding this individual and what his -- what 18 he's planning to do. For safety precautions, 19 again. 20 Q. Thank you. 21 A. You're welcome. 22 A. If you can turn to Page 102. And when you get 23 there, just tell me if you recognize this 24 document. 25 A. Okay.</p>	

EXHIBIT 49

Communications Management Unit

The Communications Management Unit (CMU) is located at the Federal Correctional Complex, Terre Haute, Indiana.

The CMU was established to house inmates who, due to their current offense of conviction, offense conduct, or other verified information, require increased monitoring of communications between the inmate and persons in the community in order to protect the safety, security and orderly operation of Bureau facilities, and the public.

Examples, although not an all-inclusive list, of the types of inmates who may be housed in the CMU include:

- Inmates who have been convicted of, or associated with, international or domestic terrorism.
- Inmates convicted of sex offenses and who repetitively attempt to contact their victims.
- Inmates who attempt to coordinate illegal activities via approved communication methods while incarcerated.
- Inmates who have extensive disciplinary histories for the continue misuse/abuse of approved communication methods.

The operational procedures in the CMU minimize the ability of inmates to circumvent existing mail and telephone monitoring procedures.

The CMU has a capacity to hold 90 inmates and operates as an open, general population unit. However, inmates assigned to the CMU are separated from all other inmates at FCC Terre Haute.

The CMU has its own indoor and outdoor recreation areas, a law and leisure library, social and legal visiting areas. Areas also exist within the unit for serving group meals and for conducting private medical examinations.

Programming (education, religious, visiting) activities are conducted in the unit where operations and movement are controlled.

Inmates in the CMU have access to religious services, personal property, commissary, and education services similar to other Bureau of Prisons inmates.

All incoming and outgoing correspondence is reviewed by staff.

All telephone communications are monitored and occur in English,

unless previously scheduled and approved by staff. Telephone calls occurring in languages other than English are translated. No attorney-client communications are monitored.

The ability for inmate in the CMU to contact persons in the community, and the Bureau's authority to limit and monitor this contact, is in accordance with Bureau regulations found at 28 C.F.R. Part 540.

Additional inmates are being reviewed for transfer to the CMU based upon their repeated violations of Bureau of Prisons communication regulations under circumstances that further criminal enterprises, threaten staff and inmate safety, or pose threats to persons in the community.

Upon admission to the unit, each inmate is notified of their rights to appeal the transfer through the Administrative Remedy process.

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EXHIBIT 50

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF
et al.,

Plaintiffs,

vs.

Civil Action 10-0539 (RMU)

ERIC HOLDER, et al.,

Defendants.

ATTORNEYS' EYES ONLY

DEPOSITION OF JANET L. GEORGE, a witness,
taken on behalf of the Plaintiffs, pursuant to
Notice, on the 26th day of July, 2013, at the
Federal Bureau of Prisons, 400 State Avenue,
Suite 800, Kansas City, Kansas, before

LOUISE R. BELL

of Dolginoff & Associates, a Registered
Professional Reporter, Certified in Kansas and
Missouri.

APPEARANCES

For the Plaintiffs:

MS. RACHEL MEEROPOL

MS. CHAUNIQUA YOUNG

(Via video conference)

CENTER FOR CONSTITUTIONAL RIGHTS

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MR. ANDREY SPEKTOR

(Via video conference)

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	<p style="text-align: right;">Page 13</p> <p>1 A. We would have talked about the referrals coming 2 in, we would have talked about what format we 3 were going to use, we would have talked about 4 who was going to be in the routing process.</p> <p>5 Q. Did you also discuss what criteria would be 6 used to evaluate inmates for CMU placement?</p> <p>7 A. Initially the criteria was very vague.</p> <p>8 Q. What do you recall of that criteria?</p> <p>9 A. Mostly we were told that it was going to be 10 people who needed their communication with the 11 outside world limited.</p> <p>12 Q. Any more guidance than that?</p> <p>13 A. No.</p> <p>14 Q. Is it a fair statement that that could include 15 a very wide range of inmates within the Bureau 16 of Prisons?</p> <p>17 A. Yes.</p> <p>18 Q. You said that you discussed in the early 19 meeting -- let me back up for a second. 20 Are we talking about one specific 21 early meeting, or were there several meetings 22 to sort of gear up for the CMU referral 23 process?</p> <p>24 A. We met daily with our supervisors, so it may 25 have been talked about daily, it may have been</p>

	<p style="text-align: right;">Page 16</p> <p>1 CMU change over time? 2 A. No. 3 Q. You indicated that initially the criteria for 4 CMU placement was relatively vague. Did that 5 change over time? 6 A. The criteria never really was established 7 formally. 8 Q. Was the criteria established informally in some 9 way? 10 A. There really were no criteria set; it was 11 inmates who needed their communication 12 restricted. That was basically what the 13 criteria was. 14 Q. Did you receive any instruction or training or 15 guidance as to how to decide whether an inmate 16 needed their communication monitored such that 17 they would be appropriate for CMU placement? 18 A. No specific training. But it was -- it was 19 things that we talked about during our 20 meetings. Just in general, you know, after 21 having so many years in the Bureau of Prisons, 22 some of the stuff comes naturally. 23 Q. Is it fair to say that it was somewhat 24 self-evident to you at the office as to who 25 these individuals were who were appropriate for</p>
	<p style="text-align: right;">Page 17</p> <p>1 CMU placement? 2 A. Somewhat, with the concurrence of our 3 supervisor. 4 Q. Did the process for referring individuals to 5 the CMU change over time? 6 A. Not that I recall, no. 7 Q. When you first started referring individuals to 8 the CMU, did you have any expectation as to how 9 long those individuals would remain there? 10 A. No. 11 Q. Did that change over time? 12 A. I have no idea. 13 Q. Is there any difference in the two CMU units, 14 Marion and Terre Haute? 15 MR. JOHNSON: Objection; vague. 16 Q. (By Ms. Meeropol) You can answer if you can, 17 please. 18 A. I have no idea. 19 Q. You described the first step in the referral 20 process as your office receiving a referral. 21 Who did you receive that referral from? 22 A. Based on the paperwork that I reviewed, there 23 were -- the paper could come from several 24 sources, or the referral could come from 25 several sources: the CTU -- the Counter</p>

	<p style="text-align: right;">Page 24</p> <p>1 A. I'm sorry, you're cutting out. Can you repeat 2 it, please?</p> <p>3 Q. I will. Did you play any role in considering 4 inmate requests for transfer out of the CMU?</p> <p>5 A. Are you talking about official transfers, or 6 just the inmate requesting transfer?</p> <p>7 Q. Well, let's start with official transfers.</p> <p>8 A. No.</p> <p>9 Q. How about the inmate requesting transfer?</p> <p>10 A. We responded to inmate requests frequently. 11 Mostly in the form of administrative remedies.</p> <p>12 Q. And did inmate administrative remedies lead to 13 reconsideration of the appropriateness of their 14 CMU placement?</p> <p>15 A. I wouldn't say reconsideration; I would say 16 review of.</p> <p>17 Q. And what's the distinction you're drawing?</p> <p>18 A. We would review the reasons why they were 19 placed in the CMU and remind them of that. We 20 did not reconsider them for placement there.</p> <p>21 Q. Are you aware of whether others in your office 22 were involved in the official CMU transfer 23 requests?</p> <p>24 A. No.</p> <p>25 Q. Let's go back to discussion of the CMU referral</p>

	<p style="text-align: right;">Page 45</p> <p>1 information in the packet underlying this form 2 that would indicate whether this inmate's 3 association with the Portland Seven was proven 4 or suspected or something else? 5 MR. JOHNSON: Objection; calls for 6 speculation. 7 A. It would be speculating. There's no way to 8 know if it was in there proven or otherwise, 9 based on what I have here. 10 Q. (By Ms. Meeropol) It could be either way? 11 A. Correct. 12 Q. I'd like to ask you to turn to Page 120 in 13 Exhibit 33. This is a CMU review form 14 Bates-stamped '60913 and dated March 27th, 15 2007. Do you see that? 16 A. Yes. 17 Q. Could you take a moment to please review the 18 form? 19 (The witness complied.) 20 A. Okay. 21 Q. Do you believe that this inmate is appropriate 22 for CMU placement? 23 A. Do I believe he was appropriate at the time I 24 did the referral? 25 Q. Well, we'll start with that, yes.</p>

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1 A. I would say yes.

2 **Q. Sitting here today and having reviewed it**

3 **again, do you believe this inmate is**

4 **appropriate for CMU placement?**

5 A. I've been out of that department for quite a

6 while, and I have no idea today if the criteria

7 have changed or if there's any type of

8 difference in the program today based -- versus

9 what it was then. So I can't say for sure.

10 **Q. As you sit here today, do you have any reason**

11 **to believe that this inmate is inappropriate**

12 **for CMU placement?**

13 A. My answer stays the same; I don't know what

14 the -- what the program is like today.

15 **Q. But I'm asking you based on what you do know,**

16 **do you have any reason to believe that this**

17 **inmate is inappropriate for CMU placement?**

18 MR. JOHNSON: Objection; asked and

19 answered.

20 A. I believe looking at it today that he -- as

21 long as everything is the same as it was then,

22 then yes, he's appropriate.

23 **Q. (By Ms. Meeropol) Do you have any reason to**

24 **believe that things are different from the way**

25 **they were when you were there?**

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1 A. Haven't a clue.

2 **Q. But you don't have any reason to believe they**

3 **are; correct?**

4 MR. JOHNSON: Objection; asked and

5 answered.

6 A. Again, I have no idea. I don't -- I don't keep

7 up with that. After I moved out of that

8 department, I don't have any knowledge of it.

9 **Q. (By Ms. Meeropol) So looking at this form, how**

10 **come you believe, based on -- let me rephrase**

11 **that.**

12 **You indicated that at the time when**

13 **you were engaged in the CMU reviews, this**

14 **person appears appropriate for CMU placement.**

15 **Based on what?**

16 A. Based on his circumvention of the mail and

17 phone monitoring, as well as his institution

18 conduct.

19 **Q. What institution conduct are you referring to?**

20 A. Based on what it says here, "His conduct

21 includes the militant recruitment and

22 radicalization of other inmates..."

23 And he was "heard discussing" --

24 **Q. What does that mean --**

25 A. I'm sorry, and he was "heard discussing

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1 politics and Hamas on the phone."

2 **Q. Taking first the phrase "military recruitment**

3 **and radicalization of other inmates," what does**

4 **that mean?**

5 A. To me that means he was attempting to recruit

6 them to his beliefs and way of thinking.

7 **Q. Do you know what the source of that information**

8 **is?**

9 A. The source of that information would have been

10 whatever we received from whoever submitted

11 this -- this -- what was the word you used?

12 Nomination.

13 **Q. Nomination?**

14 A. Yes.

15 **Q. Do you believe that you would have had access**

16 **to the facts underlying that statement when you**

17 **wrote this summary? And, for example, I mean,**

18 **do you expect that you were provided**

19 **information about who he recruited, when,**

20 **toward what goal, et cetera?**

21 A. I don't recall if the documentation was that

22 specific or not.

23 **Q. So is it possible that you just received**

24 **information, for example, from the CTU**

25 **indicating that this inmate was involved in**

Page 49

1 **militant recruitment and radicalization, with**

2 **no detail provided?**

3 A. Is it possible? Yes. I -- I don't -- I don't

4 know.

5 **Q. I'd like to ask you to turn to Exhibit 34,**

6 **ma'am. You can leave the binder open, because**

7 **we're still going to be using that as well.**

8 **Towards the end of Exhibit 34, you'll**

9 **find a memo from Les Smith that's dated**

10 **March 20th, 2007. I believe it's the last memo**

11 **in the exhibit, and it's Bates-stamped '67422.**

12 A. Okay.

13 **Q. Have you seen this document before?**

14 A. I don't recall. I would say yes, but I don't

15 recall it specifically.

16 **Q. Is this the type of document that you would**

17 **rely on to write your Correctional Programs**

18 **summary?**

19 A. This, in addition to whatever other information

20 we were provided.

21 **Q. Take a moment to review the memo. I want to**

22 **ask you if you believe that this memorandum**

23 **relates to the CMU form that we've just been**

24 **reviewing.**

25 MR. JOHNSON: I'll object; no

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1 foundation, calls for speculation. But you can
 2 review and answer.
 3 (The witness examined the document.)
 4 A. Okay, I've reviewed. Can you ask your question
 5 again?
 6 **Q. (By Ms. Meeropol) Sure. Based on your review,**
 7 **do you believe that this memo relates to the**
 8 **CMU review form we've just been discussing?**
 9 MR. JOHNSON: Same objection.
 10 **Q. (By Ms. Meeropol) And to be specific, I'm**
 11 **referring to the form dated March 27th, 2007.**
 12 A. It appears to, yes.
 13 **Q. Does the Les Smith memo provide any additional**
 14 **facts about recruitment or radicalization?**
 15 A. Not that I can tell.
 16 **Q. And you've taken the time to review the entire**
 17 **document; correct?**
 18 A. Yes.
 19 **Q. Do you think those facts as to the specifics of**
 20 **the recruitment and radicalization this inmate**
 21 **was supposed to have been involved in would**
 22 **have been necessary for your office to review**
 23 **the appropriateness of CMU placement?**
 24 A. Based on the way the offices work together, we
 25 would have trusted that someone had that

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1 information. It wouldn't necessarily -- I
 2 wouldn't have necessarily needed detailed
 3 information about who and where.
 4 **Q. When you say that "we would have trusted that**
 5 **someone had that information," are you thinking**
 6 **of another office in particular?**
 7 A. Probably the CTU staff had that information.
 8 **Q. Do you think having the facts underlying this**
 9 **inmate's supposed recruitment and**
 10 **radicalization would have helped your office to**
 11 **adequately review the appropriateness of this**
 12 **inmate's CMU placement?**
 13 A. No.
 14 **Q. How come?**
 15 A. I don't believe it would have changed anything.
 16 **Q. Why not?**
 17 A. Because if we see a name and a number or a name
 18 and a -- a specific incident, it's still the
 19 same outcome; he still was associated with
 20 militant recruitment and radicalization, which
 21 is what we have here in the memo.
 22 **Q. Okay. Your summary also indicates that this**
 23 **inmate was "heard discussing politics and Hamas**
 24 **on the phone"; correct?**
 25 A. Correct.

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1 **Q. Is that a basis for CMU designation?**
 2 A. It could be one piece of the puzzle, yes.
 3 **Q. I'd like you to please turn to Page 122. This**
 4 **is a CMU review form Bates-stamped '60715 and**
 5 **dated April 16th, 2007.**
 6 **Are we looking at the same page,**
 7 **ma'am?**
 8 A. Yes, we are.
 9 **Q. Okay. And could you identify for me which**
 10 **portions of this form you authored?**
 11 A. The top portion under where it says "CMU
 12 Review," and the comments section.
 13 **Q. Okay. Portions of this document have been**
 14 **redacted, and I'm just going to ask you about**
 15 **the unredacted portions and ask you to try to**
 16 **respond as best you can just based on the**
 17 **unredacted portions, okay?**
 18 A. Okay.
 19 **Q. Looking at the Correctional Programs summary, I**
 20 **again see the phrase "recruitment and**
 21 **radicalization." The summary reads, "During**
 22 **his incarceration, he has associated himself**
 23 **with the recruitment and radicalization of**
 24 **other inmates." Do you see that?**
 25 A. Yes.

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1 **Q. Do you think that means the same thing or**
 2 **something different from what you wrote in the**
 3 **last Correctional Programs summary we read**
 4 **about the inmate being involved in militant**
 5 **recruitment and radicalization of other**
 6 **inmates?**
 7 A. I have no way to know if it's the same or
 8 different, based on the information that I
 9 have.
 10 **Q. What's the source of this information?**
 11 A. I would assume it came from the packet, but I
 12 don't have that information in front of me, so
 13 that would be an assumption.
 14 **Q. Okay, let's take a look again at Exhibit 34.**
 15 **And this time I'm going to direct you to the**
 16 **second Smith memo within that exhibit. It's**
 17 **Bates-stamped '67364 and dated March 12th,**
 18 **2007.**
 19 **Are you looking at that page, ma'am?**
 20 A. '67364?
 21 **Q. Yes.**
 22 A. Yes.
 23 **Q. Please take a moment and review that memo. I'm**
 24 **going to ask you again whether you believe that**
 25 **this memo relates to the April 16th, 2007 CMU**

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1 **review form we've been discussing.**
 2 MR. JOHNSON: Again object; lack of
 3 foundation, and speculative. But go ahead.
 4 (The witness examined the document.)
 5 A. Okay.
 6 **Q. (By Ms. Meeropol) Do you believe that this**
 7 **March 12, 2007 memo relates to the April 16th,**
 8 **2007 CMU review form at Page 22 of Exhibit 33?**
 9 A. I can't say for sure. It appears to, but I
 10 don't know for sure.
 11 **Q. You'll notice that the inmate's projected**
 12 **release date is December 10th, 2022, according**
 13 **to the Correctional Programs summary, and I see**
 14 **that same date under additional pertinent**
 15 **information on Section 8 of Smith's memo. Do**
 16 **you see that?**
 17 A. Yes, I do.
 18 **Q. Does it make it seem to you as though it's**
 19 **quite likely that these documents relate to**
 20 **each other?**
 21 MR. JOHNSON: Same objections.
 22 A. It's possible, yes. Is it a hundred percent?
 23 I don't know.
 24 **Q. (By Ms. Meeropol) Okay. Do you believe that**
 25 **the source of your Correctional Programs**

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1 **summary was this March 12th Les Smith memo?**
 2 A. Assuming that this -- that they both relate to
 3 one another, then yes.
 4 **Q. Is it fair to say that there's no information**
 5 **provided in Les Smith's memo to explain why**
 6 **this person is eligible for CMU placement**
 7 **beyond the statement the "Reasonable evidence**
 8 **indicates that his incarceration conduct has**
 9 **included association with recruitment and**
 10 **radicalization of other inmates"?**
 11 A. Is it fair to say that, other than that,
 12 there's no information other than that?
 13 **Q. Yes.**
 14 MR. JOHNSON: Objection;
 15 argumentative. You can answer.
 16 A. Yes.
 17 **Q. (By Ms. Meeropol) Do you think that that one**
 18 **statement, without underlying fact, provided**
 19 **adequate information for your office to**
 20 **appropriately review this inmate's CMU**
 21 **placement?**
 22 A. Yes.
 23 **Q. I'd like you to take a look back at Page 122 in**
 24 **Exhibit 33. Please look at the Correctional**
 25 **Programs Administrator line. Can you read what**

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1 asked us to get more information.
 2 **Q. Did that ever happen?**
 3 A. I have no idea. In this particular case?
 4 **Q. You don't remember any -- I was going to ask,**
 5 **do you ever remember an instance of that**
 6 **happening?**
 7 A. Yes.
 8 **Q. And can you describe that instance for me,**
 9 **please?**
 10 A. No, I can't. I just remember in general that
 11 happened frequently, where we would get
 12 questions and a need for information, or there
 13 would be just one little question that we'd
 14 have to look on the computer for, or something
 15 along those lines. I don't recall specific
 16 instances, no.
 17 **Q. Do you remember the type of questions that the**
 18 **Regional Director would call with?**
 19 A. No.
 20 **Q. Let's turn to Page 127 in Exhibit 33. This is**
 21 **a CMU review form Bates-stamped '60822 and**
 22 **dated July 20th, 2007; correct?**
 23 A. Yes.
 24 **Q. Please take a moment to review the form, ma'am.**
 25 (The witness examined the document.)

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1 A. Okay.

2 **Q. This narrative includes a reference to the CTU**

3 **recommending placement in the CMU. The earlier**

4 **reviews that we looked at did not indicate one**

5 **way or the other anything about whether the CTU**

6 **was recommending placement. Do you remember**

7 **what led to this change?**

8 A. I do not, no.

9 **Q. Reading the document again today, do you**

10 **believe that this prisoner belonged in a CMU?**

11 A. Based on the criteria or the mission of the

12 unit then, yes.

13 **Q. How come?**

14 A. Because he had the ability to influence others

15 and his crimes were significant against

16 interstate commerce and so forth.

17 **Q. The last sentence -- well, the last full**

18 **sentence of the Correctional Programs narrative**

19 **states, "Based on his significant leadership**

20 **abilities, high educational and technical**

21 **background, and blatant disregard for**

22 **government, CTU staff are recommending**

23 **placement in the CMU."**

24 **Do you agree that those three criteria**

25 **make the prisoner appropriate for CMU**

Page 59

1 **placement?**

2 A. Potentially any one of those criteria could

3 make an inmate appropriate for the CMU.

4 **Q. And what about those criteria or any one of**

5 **them make an inmate appropriate for CMU**

6 **placement?**

7 MR. JOHNSON: Objection; vague. You

8 can answer.

9 A. I'm sorry --

10 **Q. (By Ms. Meeropol) You can answer if you can,**

11 **please.**

12 A. Yeah, can you repeat that, please, because

13 there was really no question there.

14 MS. MEEROPOL: Could you read it back

15 for me, please?

16 (The pending question was read by the

17 reporter.)

18 A. Okay. Explain to me what you mean, because I

19 think it's pretty self-explanatory. If they

20 have technical abilities that are beyond the

21 average person, that could make someone

22 appropriate. It depends on what circumstance

23 you're looking at.

24 **Q. (By Ms. Meeropol) Well, for example, his**

25 **significant leadership abilities, why is the**

Page 60

1 **CMU appropriate or necessary for someone with**

2 **significant leadership abilities?**

3 A. In this particular case, his leadership

4 abilities tied into his current offense.

5 **Q. And why does that make CMU designation**

6 **appropriate?**

7 A. Because if he has the ability to lead others in

8 that way, then he could do it for illegal or

9 other purposes that are inappropriate.

10 **Q. I'd like you to look at the next page, which is**

11 **Page 128. It's a CMU review form Bates-stamped**

12 **'60938. Its dated August 7th, 2007. Please**

13 **take a moment to review the form.**

14 (The witness examined the document.)

15 A. Okay.

16 **Q. Your narrative references the fact that this**

17 **inmate maintains communication with many people**

18 **in the white separatist movement, is a prolific**

19 **writer, and has published a lot; correct?**

20 A. Yes.

21 **Q. I'm looking at the second half, if that helps.**

22 A. Yes.

23 **Q. Do you know whether that communication that**

24 **you're referencing here was criminal in nature?**

25 A. Based on what I have in front of me, I don't

Page 61

1 know.

2 **Q. Is that question relevant to the**

3 **appropriateness of CMU placement?**

4 A. No.

5 **Q. If you learned that the communication in**

6 **question was purely political and did not**

7 **address criminal actions or plans, would you**

8 **still believe it was relevant for CMU**

9 **placement?**

10 A. Would I believe him being a prolific writer was

11 relevant?

12 **Q. Yes.**

13 A. In this particular case, yes.

14 **Q. And how come?**

15 A. Because of his associations.

16 **Q. It appears that this individual did not end up**

17 **in the CMU. Can you tell why from this form?**

18 A. No.

19 **Q. Do you have any idea, having reviewed this**

20 **form, why this individual would have been sent**

21 **to ADX as opposed to CMU?**

22 A. Based on the form, I have no idea.

23 **Q. Let's look at Page 130 in Exhibit 33, please.**

24 **This is a CMU review form Bates-stamped --**

25 **well, the Bates stamp is pretty hard to read,**

Page 72

1 **placement.**
2 A. I don't think you can draw that conclusion,
3 because this is -- this person was referred
4 from the institution or however the referral
5 came. You know, we have inmates that get in a
6 fight, but they don't -- not everybody gets the
7 same punishment for what they do. Not
8 everybody's found guilty for what they do. So
9 each case is looked at individually.
10 **Q. So is it fair to say that there's no procedure**
11 **in place to ensure that one inmate who's found**
12 **using a cell phone is treated the same as**
13 **another inmate who's found using a cell phone?**
14 A. Each case is treated individually.
15 **Q. Okay. Please turn to Page 144. This is a CMU**
16 **review form dated November 21st, 2008 and**
17 **Bates-stamped '60829.**
18 A. Okay.
19 **Q. Please take a moment to review the form, and**
20 **let me know when you're done.**
21 **(The witness examined the document.)**
22 A. Okay.
23 **Q. Do you agree that this individual is**
24 **appropriate for CMU placement?**
25 A. Based on the information I have here, yes.

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1 A. No.
2 **Q. Do you have adequate information, based on this**
3 **memo, to decide if the prisoner is appropriate**
4 **for the CMU?**
5 A. Yes.
6 **Q. And that's what information that you would be**
7 **relying on?**
8 A. The fact that he was circumventing the phone
9 monitoring procedures.
10 **Q. So is it your testimony, then, that any**
11 **prisoner who is using a cell phone in a secure**
12 **federal prison is appropriate for CMU**
13 **placement?**
14 A. I can't speak about other inmates; I can only
15 speak about this particular one. And this was
16 the one that was referred to us, and yes, we
17 considered him appropriate.
18 **Q. Okay, but my question is referring to the fact**
19 **that the only information that you said you**
20 **were relying on in saying that this person is**
21 **appropriate for CMU placement was the fact that**
22 **he was using a cell phone in a secure federal**
23 **prison. And I'm asking if that means that any**
24 **inmate using a cell phone in a secure federal**
25 **prison would be equally eligible for CMU**

EXHIBIT 51

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

YASSIN MUHIDDIN AREF
et al.,

Plaintiffs,

vs. Civil Action 10-0539 (RMU)

ERIC HOLDER, et al.,

Defendants.

ATTORNEYS' EYES ONLY

DEPOSITION OF PETER D. POTTIOS, a witness,
taken on behalf of the Plaintiffs, pursuant to
Notice, on the 25th day of July, 2013, at the
Federal Bureau of Prisons, 400 State Avenue,
Suite 800, Kansas City, Kansas, before

LOUISE R. BELL

of Dolginoff & Associates, a Registered
Professional Reporter, Certified in Kansas and
Missouri.

APPEARANCES

For the Plaintiffs:

MS. RACHEL MEEROPOL
(Via video conference)
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012

MR. ANDREY SPEKTOR
(Via video conference)
WEIL, GOTSHAL & MANGES, LLP
767 Fifth Avenue
New York, New York 10153

	<p style="text-align: right;">Page 13</p> <p>1 of my head; there are probably others. 2 Q. If you think of any other characteristics 3 during this deposition, you can feel free to 4 tell me and supplement that, okay? 5 A. Okay. 6 Q. Did you receive any written materials at the 7 regional office regarding the CMUs? 8 A. I did not receive any written materials, no. 9 Q. Did you receive any training regarding how to 10 determine a prisoner's eligibility for the CMU? 11 A. I would not call it formal training, but I did 12 have the individuals in my office, including my 13 supervisor and the other specialists, fill me 14 in on who may qualify for a CMU placement. 15 Q. And did they provide you with any other general 16 information besides what you've already relayed 17 to me? 18 A. No. 19 Q. You said earlier, I believe, that you also 20 received information from staff at the Units 21 themselves; is that correct? 22 A. Verbal information through telephone calls. 23 Q. And what type of information did you receive? 24 A. I can't specifically say what was received from 25 who, but it had to do with the makeup of the</p>

	Page 16
	1 Office.
	2 Q. Anything else regarding your responsibilities?
	3 A. At that point in time, no.
	4 Q. What were you told about the packet that you
	5 would be preparing?
	6 A. That the information that we would be gathering
	7 would be put in a referral format and it would
	8 be routed around for the other administrators,
	9 the deputy director -- Regional Director, and
	10 the Regional Director for a final decision.
	11 Q. Were you provided with any written information
	12 about the -- what should be included in the
	13 packet?
	14 A. No, there was no written guidelines.
	15 Q. Were you given instructions, non-written
	16 instructions, about what to include in the
	17 packet?
	18 A. Yes, I was.
	19 Q. And what was that?
	20 A. To the best of my knowledge, I was given
	21 guidance to include information that would be
	22 pertinent for the decision-making authorities
	23 to utilize when making a decision regarding
	24 placement in a CMU. And it had to do with
	25 information pertaining to anything regarding

Page 15	Page 17
1 Q. Okay, thank you, sir.	1 their communication that could -- that would
2 MS. MEEROPOL: One moment, please.	2 require a heightened monitoring.
3 (Discussion off the record.)	3 Q. Well, that's a pretty wide range of
4 MS. MEEROPOL: I'm going to apologize;	4 information, I could imagine. Were you
5 we have a couple law students who are going to	5 provided guidance as to the sources of
6 be joining us in a few minutes, so you may see	6 information you should look to?
7 a couple other people enter the screen. We'll	7 A. The only guidance in that regard would be to
8 just keep going, okay?	8 look at the information provided to us from the
9 MR. CARTIER: Fine with us.	9 CTU.
10 MS. MEEROPOL: Great.	10 Q. And what type of information was provided from
11 (Pause in the proceeding.)	11 the CTU to you?
12 (The reported noted the arrival of	12 A. Depending upon the type of the referral, the
13 Adriana Ballines and Alexandria McKee.)	13 information could include a referral memo from
14 Q. (By Ms. Meeropol) Sir, when did you first learn	14 CTU. It would include a pre-sentence
15 that you would be playing a role in reviewing	15 investigation, judgment and commitment order.
16 inmates for CMU placement?	16 It could include a referral from the actual
17 A. Shortly after my arrival to Correctional	17 institution if the alleged behavior occurred
18 Programs in September 2009.	18 within the institution. It also included a
19 Q. And what were you told about the role you would	19 notice of CMU placement. It also included
20 play?	20 discipline hearing reports, as well as Special
21 A. At that time, I was a specialist, and it was my	21 Investigative Services investigations. It
22 understanding, it was presented to me, that I	22 would include all those documents, depending
23 would be preparing a referral package that we	23 upon what type of referral it was and where it
24 receive from CTU and we'd prepare that for	24 originated from.
25 routing within the North Central Regional	25 Q. What do you mean by "what type of referral"?

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1 if he has been submitted for release from the
 2 CMU on a prior occasion to disapprove, we
 3 would, upon chance, look at that as well.
 4 **Q. Thank you. Was it the regional office's**
 5 **policy, as far as you understand it, to create**
 6 **a CMU referral form every time a prisoner was**
 7 **considered for redesignation to or from a CMU?**
 8 A. I'm not aware of where that practice came
 9 about. It was established prior to me arriving
 10 in the Correctional Programs department, and it
 11 was never discussed as to why it was created.
 12 Except to say that it was a narrative to give
 13 all the people a way to make an informed
 14 decision.
 15 **Q. But was that the policy, to do it every time**
 16 **CMU redesignation was considered, at the time**
 17 **you were at the office?**
 18 MR. CARTIER: I'll just object as
 19 vague. I'm not sure if your question also
 20 addresses admin remedies. But you can answer.
 21 A. I'm not aware of a policy. And, in fact, I
 22 don't think there is a policy regarding that;
 23 however, it was a practice that we used.
 24 **Q. (By Ms. Meeropol) So is it fair to say that it**
 25 **was a practice of the regional office to create**

Page 53

1 **a CMU referral form every time a prisoner was**
 2 **considered for redesignation to or from the**
 3 **CMU?**
 4 A. That is fair to say, that's correct.
 5 **Q. Thank you. If you turn to the next page in**
 6 **Exhibit 30, sir, you will see a memorandum from**
 7 **Mr. Kelly, the Unit Manager. Are you on that**
 8 **page? It's Bates-stamped '3407.**
 9 A. Yes, I'm on that page.
 10 **Q. Have you seen this document before, sir?**
 11 A. I can't recall that I have. I'm not saying
 12 that I haven't.
 13 **Q. Did you see documents of this type, the unit**
 14 **recommendation regarding CMU inmate**
 15 **redesignation, when you were putting together**
 16 **your CMU referral packets?**
 17 A. I would have to say that it usually comes from
 18 the warden, but it looks like this one has come
 19 through the warden. So I have seen memorandums
 20 like this from the warden.
 21 **Q. And were memorandums like this included in the**
 22 **CMU referral packet?**
 23 A. I assume we're talking about referral out of
 24 the CMU, and yes, these documents would be in
 25 the out-of-CMU referrals.

	<p style="text-align: right;">Page 64</p> <p>1 continues to correspond with ALF and ELF, or 2 were you just referring to his continued 3 correspondence with other environmental groups? 4 MR. CARTIER: I'll just object; I'm 5 unclear whether we're talking about the CTU 6 referral or CMU referral. 7 MS. MEEROPOL: Thank you. I'm 8 referring to the CMU referral form 9 Bates-stamped '5032. 10 MR. CARTIER: Okay, no objection. 11 A. Can you ask that again, please? 12 MS. MEEROPOL: Could you read it back 13 for me, please? 14 (The pending question was read by the 15 reporter.) 16 A. Although this is my referral, I would have 17 taken that information from the CTU, so I can't 18 get inside their mind-set as to what they were 19 referring to specifically, whether it was a 20 general group or those groups. But based upon 21 the context of this, I would have to say it was 22 with those particular groups. 23 Q. (By Ms. Meeropol) So you don't know as a 24 matter of fact; but looking at the referral, 25 the referral seems to imply that he was</p>
<p style="text-align: right;">Page 63</p> <p>1 across your desk, what steps would you expect 2 that you would take with respect to that issue? 3 A. As stated earlier, I would pull the 4 documentation from the referrals. I would 5 review that document, I would review Sentry, I 6 would review what the inmate stated, and -- in 7 his remedy. I would also look at the 8 attachments he submitted. And those are some 9 of the things that I would consider. 10 Q. Okay. 11 A. And I would also consider the -- 12 Q. Looking at the CMU -- 13 A. I just thought I would also consider the 14 warden's response. 15 Q. Thank you, sir. 16 Looking back at the CMU referral form 17 again, it indicates "CTU indicates, although 18 marginalized, McGowan continues to correspond 19 with numerous associates of these groups, 20 including those who have been the subject of 21 local, state and federal investigations, as 22 well as criminal charges." 23 Do you see where I'm reading, sir -- 24 A. Yes, I do. I'm sorry, yes, I do. 25 Q. Now, does this sentence mean that McGowan</p>	<p style="text-align: right;">Page 65</p> <p>1 continuing to correspond with ELF and ALF; is 2 that correct? 3 A. That is a correct statement. 4 Q. Please read the next sentence to yourself, sir. 5 The one that starts, "He continues to provide 6 guidance." You don't have to read it out loud; 7 just to yourself. 8 (The witness complied.) 9 A. Okay. 10 Q. Do you understand this to be a referral to 11 providing guidance to ELF and ALF, or again, 12 just general groups? 13 A. I would have to say the same response. In the 14 context, the way it is written, I would be 15 inclined to believe that it was to the ALF/ELF, 16 but I do not know that for a fact. 17 Q. Do you think that McGowan's correspondence and 18 guidance to general environmental groups, not 19 the ELF and ALF, would be relevant to the 20 question of whether he is eligible for transfer 21 from the CMU? 22 A. I guess it would depend what was in that 23 correspondence, to make an informed decision, 24 if it was generally to other general groups. 25 Q. So what would make the difference to you?</p>

	<p style="text-align: right;">Page 124</p> <p>1 why that is?</p> <p>2 MR. CARTIER: Same objection. You can</p> <p>3 answer.</p> <p>4 A. I would believe it's based upon the SMU's</p> <p>5 physical structure of being almost considered a</p> <p>6 lockdown unit; they're more restrictive.</p> <p>7 Q. (By Ms. Meeropol) Please turn to Page 60, sir.</p> <p>8 This is Bates-stamped '60935. Can you please</p> <p>9 identify the document for me?</p> <p>10 A. This is a CMU referral in which I prepared the</p> <p>11 narrative portion.</p> <p>12 Q. Can you tell why this individual was sent to</p> <p>13 the CMU by reading the Correctional Programs</p> <p>14 summary? And I understand that, again, this is</p> <p>15 a situation where you were considering his</p> <p>16 transfer out of the CMU. I'm just wondering</p> <p>17 if, reading the summary, if you can tell why he</p> <p>18 was sent to the CMU.</p> <p>19 A. My best guess, based upon the referral I have</p> <p>20 in front of me, is that he used a communication</p> <p>21 method to circumvent our established methods to</p> <p>22 make contact with individuals on the outside of</p> <p>23 the prison.</p> <p>24 Q. Using a cell phone; is that accurate?</p> <p>25 A. It appears so.</p>
	<p style="text-align: right;">Page 125</p> <p>1 Q. Is it accurate to say that the BOP confiscates</p> <p>2 hundreds of cell phones a year from inside a</p> <p>3 federal prison?</p> <p>4 A. I wouldn't have knowledge of that as being an</p> <p>5 accurate statement.</p> <p>6 Q. Do you believe that mere possession and use of</p> <p>7 a cell phone would make someone appropriate for</p> <p>8 CMU placement; or, in your understanding, would</p> <p>9 there have to be something more to the story to</p> <p>10 explain CMU placement for an individual like</p> <p>11 that?</p> <p>12 A. I don't think that the mere possession of a</p> <p>13 cell phone would warrant placement in the CMU.</p> <p>14 I think there would have to be other factors</p> <p>15 involved to warrant placement.</p> <p>16 Q. Okay, please turn to Page 63. This is</p> <p>17 Bates-stamped '60762. Can you identify it for</p> <p>18 me?</p> <p>19 A. It is a CMU referral in which I prepared the</p> <p>20 narrative portion.</p> <p>21 Q. Please review the Psychology Services</p> <p>22 Administrator comment on the document in front</p> <p>23 of you, and then let me know if you have any</p> <p>24 trouble reading his handwriting.</p> <p>25 A. Many people have trouble reading his</p>

	<p style="text-align: right;">Page 133</p> <p>1 to the level of requiring CMU placement. So in 2 this case, continued militant beliefs, it could 3 be reason for placement in a CMU. 4 Q. (By Ms. Meeropol) We just broke up for a 5 moment. Maybe the court reporter could read 6 your answer back for me. 7 (The last answer was read by the 8 reporter.) 9 Q. For an individual like this where continued 10 militant beliefs are part of the larger picture 11 that lands them in the CMU, would that 12 individual have to change his beliefs to then 13 be eligible for release from the CMU? 14 MR. CARTIER: Objection. You can 15 answer. 16 A. You're kind of being tricky with the words as 17 for "militant beliefs." I don't think a person 18 would have to change their beliefs; I would 19 think they would have to change the militant 20 portion of those beliefs. 21 Q. Okay. Please turn to Page 84. This is 22 Bates-stamped '60851. Could you identify it, 23 please? 24 A. This is a CMU referral in which I prepared the 25 Correctional Programs narrative, and I also</p>

EXHIBIT 52

████████████████████ UPDATE INMATE REMARKS * 05-02-2007
PAGE 001 OF 001 14:41:15
REGISTER NO: 00281-000 NAME: TWITTY AVON R
FU
ACTION SEQ -----REMARK-----

RKS: 0205 - 5/2/07 NCR/MKN/JLG CLEARED FOR TRF FM HAZ TO THA CMU. REMA
RKS: 0225 - 7/29/05 NCR/CSB CNCL LEE (CIM CNCRN) APV TRF FM LVN TO HAZ-318 REMA
RKS: 0230 - 6/8/05 NCR/THA APV TRF FM LVN TO LEE CD-369 REMA
RKS: 0235 - 07-26-2001/CO/AF: INITIAL DESIG.;LVN DC FEL (USP LEAVENWORTH).

NSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED G0005 TRA



U.S. Department of Justice
Federal Bureau of Prisons

Correctional Programs Division

Counter Terrorism Unit

Address [Redacted]

March 8, 2007

MEMORANDUM FOR MICHAEL K. NALLEY, REGIONAL DIRECTOR
NORTH CENTRAL REGIONAL OFFICE

//s//

FROM: Leslie S. Smith, Chief, Counter Terrorism Unit

SUBJECT: Communication Management Unit (CMU) Referral
TWITTY, Avon, Hatem, Reg. No. 00281-000

1. Rationale for Re-designation: Inmate Twitty's current offense of conviction is for Murder 1 While Armed, 22 USC § 2101. LE [Redacted] his incarceration conduct has included association with recruitment and radicalization of other inmates

LE [Redacted]

LE [Redacted]

2. Proposed Transfer Code: 323 / Close Supervision Case

3. CIM Assignment: Separation

4. STG Assignment: STG [Redacted]
STG [Redacted]

5. Release Destination: District of Columbia

6. Medical Status: A medical evaluation was completed. The report indicates there are no medical or dental concerns that would preclude his placement in the CMU.

7. Does Inmate Concur With Transfer: The inmate's opinion was not solicited.

8. Additional Pertinent Information: Inmate Twitty is a 52 year old black, male

Sensitive but Unclassified
FOIA Exempt


Communication Management Unit (CMU) Referral
TWITTY, Avon, Hatem, Reg. No. 00281-000

LE serving a Life sentence. His security level is HIGH; his custody level is IN. He is a LE inmate. His is serving a Life sentence and is next eligible for a parole hearing in February 2009. He arrived at HAZ on 08-31-2005 as a 318 transfer from LVN. His disciplinary history includes sanctioned reports for code 320, Failing to Stand Count, and code 321, Interfering with the Taking of Count.

**Sensitive but Unclassified
FOIA Exempt**

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Inmate Name (Last, First, Middle): Twitty, Avon	Register Number: 00281-000
Warden (print and signature):  B. R. Jett, Warden	Institution: FCI Terre Haute, Indiana

NOTICE: This notice informs you of your transfer to a Federal Bureau of Prisons (Bureau) facility that allows greater management of your communication with persons in the community through more effective monitoring of your telephone use, written correspondence, and visiting. Your communication by these methods may be limited as necessary to allow effective monitoring. Your general conditions of confinement in this unit may also be restricted as necessary to provide greater management of your communications. Your transfer to this unit, by itself, will have no effect on the length of your incarceration. You will continue to earn good-conduct sentence credit in accordance with Bureau policy.

Your transfer to this facility under these conditions is based on the following specific information:

Your current offense of conviction is Murder While Armed, 22 USC section 2101. Reliable evidence indicates your incarceration conduct has included involvement in recruitment and radicalization efforts of other inmates through extremist, violence oriented indoctrination methods to intimidate or coerce others.

Based on this information, your transfer to this facility for greater communication management is necessary to the safe, secure, and orderly operation of Bureau institutions, or protection of the public. Your continued designation to this facility will be reviewed regularly by your Unit Team under circumstances providing you notice and an opportunity to be heard, in accordance with the Bureau's policy on Classification and Program Review of Inmates.

OPPORTUNITY TO APPEAL TRANSFER DECISION - You may appeal this transfer decision, or any conditions of your confinement, through the Bureau's Administrative Remedy Program, 28 C.F.R. §§ 542.10 through 542.19, and corresponding policy. A member of your Unit Team will provide you with the necessary form upon request.

INSTRUCTIONS TO STAFF - Provide the inmate a copy of this form and complete the following information documenting delivery.

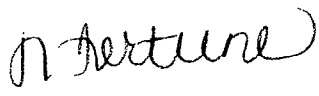
Staff Member Name and Position (printed): L Fortune	Staff Member (signature): 	Date Issued: 5/30/07
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EXHIBIT 53

DEPOSITION EXHIBIT

2
DATE: 7/18/13 **CLS**



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: OGC/LIT
NUMBER: 1330.17
DATE: August 20, 2012

Administrative Remedy Program

/s/

Approved: Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE §542.10

a. Purpose. The purpose of the Administrative Remedy Program is to allow an inmate to seek formal review of an issue relating to any aspect of his/her own confinement. An inmate may not submit a Request or Appeal on behalf of another inmate.

Inmates seeking a formal review of issues relating to sexual abuse should use the regulations promulgated by the Department of Justice under the Prison Rape Elimination Act, 42 U.S.C. § 15606, et seq. These procedures are provided in Section 16 of this Program Statement.

b. Scope. This Program applies to all inmates in institutions operated by the Bureau of Prisons, to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility, and to former inmates for issues that arose during their confinement. This Program does not apply to inmates confined in other non-federal facilities.

The president of a recognized inmate organization may submit a request on behalf of that organization regarding an issue that specifically affects that organization.

c. Statutorily-mandated Procedures. There are statutorily-mandated procedures in place for Tort claims (28 CFR 543, subpart C), Inmate Accident Compensation claims (28 CFR 301), and Freedom of Information Act or Privacy Act requests (28 CFR 513, subpart D). If an inmate raises an issue in a request or appeal that cannot be resolved through the Administrative Remedy Program, the Bureau will refer the inmate to the appropriate statutorily-mandated procedures.

Federal Regulations from 28 CFR are shown in this type.
Implementing instructions are shown in this type.

2. PROGRAM OBJECTIVES. The expected results of this program are:

- A procedure will be available by which inmates will be able to have any issue related to their incarceration formally reviewed by high-level Bureau officials.
- Each request, including appeals, will be responded to within the time frames allowed.
- A record of Inmate Administrative Remedy Requests and Appeals will be maintained.
- Bureau policies will be more correctly interpreted and applied by staff.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

P1330.16 Administrative Remedy Program (12/31/2007)

b. Directives Referenced

P1320.06 Federal Tort Claims Act (8/1/03)
P4500.08 Trust Fund/Deposit Fund Manual (5/4/12)
P5212.07 Control Unit Programs (2/20/01)
P5214.04 HIV Positive Inmates Who Pose Danger to Other, Procedures for Handling of (2/4/98)
P5264.08 Inmate Telephone Regulations for Inmates (12/24/08)
P5270.09 Inmate Discipline Program (7/8/11)
P5890.13 SENTRY-National On-Line Automated Information System (12/14/99)

28 CFR 301 Inmate Accident Compensation

28 CFR 16.10 Fees (for records requested pursuant to the Freedom of Information Act (FOIA))

c. Rules cited in this Program Statement are contained in 28 CFR 542.10 through 542.19; and 28 CFR Part 115 – Prison Rape Elimination Act National Standards

4. STANDARDS REFERENCED

- American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4236 and 3-4271
- American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-3C-22, and 3-ALDF-3E-11 5.

5. RESPONSIBILITY §542.11

a. The Community Corrections Manager (CCM), Warden, Regional Director, and General Counsel are responsible for the implementation and operation of the Administrative Remedy Program at the Community Corrections Center (CCC), institution, regional and Central Office levels, respectively, and shall:

(1) Establish procedures for receiving, recording, reviewing, investigating and responding to Administrative Remedy Requests (Requests) or Appeals (Appeals) submitted by an inmate;

See Section 13 for further information on remedy processing, including use of SENTRY.

(2) Acknowledge receipt of a Request or Appeal by returning a receipt to the inmate;

The receipt is generated via SENTRY.

(3) Conduct an investigation into each Request or Appeal;

(4) Respond to and sign all Requests or Appeals filed at their levels. At the regional level, signatory authority may be delegated to the Deputy Regional Director. At the Central Office level, signatory authority may be delegated to the National Inmate Appeals Administrator. Signatory authority extends to staff designated as acting in the capacities specified in this §542.11, but may not be further delegated without the written approval of the General Counsel.

§ 542.11 refers to Section 5 of this Program Statement.

For purposes of this Program Statement, the term "institution" includes Community Corrections Centers (CCCs); the term "Warden" includes Camp Superintendents and Community Corrections Managers (CCMs) for Requests filed by CCC inmates; and the term "inmate" includes a former inmate who is entitled to use this program.

(5) The Warden shall appoint one staff member, ordinarily above the department head level, as the Administrative Remedy Coordinator (Coordinator) and one person to serve as Administrative Remedy Clerk (Clerk). The Regional Director and the National Inmate Appeals Administrator, Office of General Counsel, shall be advised of these appointees and any subsequent changes.

To coordinate the regional office program, each Regional Director shall also appoint an Administrative Remedy Coordinator of at least the Regional Administrator level, ordinarily the Regional Counsel, and an Administrative Remedy Clerk. The National Inmate Appeals Administrator, Office of General Counsel, shall be advised of these appointees and any subsequent changes.

(6) The Administrative Remedy Coordinator shall monitor the program's operation at the Coordinator's location and shall ensure that appropriate staff (e.g., Clerk, unit staff) have the knowledge needed to operate the procedure. The Coordinator is responsible for signing any rejection notices and ensuring the accuracy of SENTRY entries; e.g., abstracts, subject codes, status codes, and dates. The Coordinator also shall serve as the primary point of contact for the Warden or Regional Director in discussions of Administrative Remedies appealed to higher levels.

(7) The Administrative Remedy Clerk shall be responsible for all clerical processing of Administrative Remedies, for accurately maintaining the SENTRY index, and for generating SENTRY inmate notices.

(8) The Unit Manager is responsible for ensuring that inmate notices (receipts, extension notices, and receipt disregard notices from institutions, regions and the Central Office) are printed and delivered daily for inmates in their units and for deleting those notices from

SENTRY promptly after delivery to the inmate. CCMs are responsible for this function for inmates under their supervision.

b. Inmates have the responsibility to use this Program in good faith and in an honest and straightforward manner.

6. RESERVED

7. INFORMAL RESOLUTION §542.13

a. Informal Resolution. Except as provided in §542.13(b), an inmate shall first present an issue of concern informally to staff, and staff shall attempt to informally resolve the issue before an inmate submits a Request for Administrative Remedy. Each warden shall establish procedures to allow for the informal resolution of inmate complaints.

The Warden is responsible for ensuring that effective informal resolution procedures are in place and that good faith attempts at informal resolution are made in an orderly and timely manner by both inmates and staff. These procedures may not operate to limit inmate access to formal filing of a Request.

b. Exceptions. Inmates in CCCs are not required to attempt informal resolution. An informal resolution attempt is not required prior to submission to the regional or Central Office as provided for in §542.14(d) of this part. An informal resolution attempt may be waived in individual cases at the Warden or institution Administrative Remedy Coordinator's discretion when the inmate demonstrates an acceptable reason for bypassing informal resolution.

For example, the Warden may waive informal resolution for Unit Discipline Committee (UDC) appeals, or when informal resolution is deemed inappropriate due to the issue's sensitivity.

Although not mandatory, inmates may attempt informal resolution of DHO decisions. See the Program Statement **Inmate Discipline Program**.

8. INITIAL FILING. §542.14

a. Submission. The deadline for completion of informal resolution and submission of a formal written Administrative Remedy Request, on the appropriate form (BP-9), is 20 calendar days following the date on which the basis for the Request occurred.

In accord with the settlement in *Washington v. Reno*, and for such period of time as this settlement remains in effect, the deadline for completing informal resolution and submitting a formal written Administrative Remedy Request, on the appropriate form (BP-9) (BP-229), for a disputed telephone charge, credit, or telephone service problem for which the inmate requests reimbursement to his/her telephone account, is 120 days from the date of the disputed telephone charge, credit, or telephone service problem.

Administrative Remedy Requests concerning telephone issues that do not involve billing disputes or requests for refunds for telephone service problems (such as Administrative Remedy

Requests concerning telephone privileges, telephone lists, or telephone access) are governed by the 20-day filing deadline.

b. Extension. Where the inmate demonstrates a valid reason for delay, an extension in filing time may be allowed. In general, valid reason for delay means a situation which prevented the inmate from submitting the request within the established time frame. Valid reasons for delay include the following: an extended period in-transit during which the inmate was separated from documents needed to prepare the Request or Appeal; an extended period of time during which the inmate was physically incapable of preparing a Request or Appeal; an unusually long period taken for informal resolution attempts; indication by an inmate, verified by staff, that a response to the inmate's request for copies of dispositions requested under §542.19 of this part was delayed.

Ordinarily, the inmate should submit written verification from staff for any claimed reason for delay.

If an inmate requests an Administrative Remedy form but has not attempted informal resolution, staff should counsel the inmate that informal resolution is ordinarily required. If the inmate nevertheless refuses to present a request informally, staff should provide the form for a formal Request. Upon receipt of the inmate's submission, the Coordinator shall accept the Request if, in the Coordinator's discretion, informal resolution was bypassed for valid reasons, or may reject it if there are no valid reasons for bypassing informal resolution.

c. Form

(1) The inmate shall obtain the appropriate form from CCC staff or institution staff (ordinarily, the correctional counselor).

The following forms are appropriate:

- Request for Administrative Remedy, Form BP-9 (BP-229), is appropriate for filing at the institution.
- Regional Administrative Remedy Appeal, Form BP-10 (BP-230), is appropriate for submitting an appeal to the regional office.
- Central Office Administrative Remedy Appeal, Form BP-11 (BP-231), is appropriate for submitting an appeal to the Central Office.

(2) The inmate shall place a single complaint or a reasonable number of closely related issues on the form. If the inmate includes on a single form multiple unrelated issues, the submission shall be rejected and returned without response, and the inmate shall be advised to use a separate form for each unrelated issue. For DHO and UDC appeals, each separate incident report number must be appealed on a separate form.

Placing a single issue or closely related issues on a single form facilitates indexing, and promotes efficient, timely and comprehensive attention to the issues raised.

(3) The inmate shall complete the form with all requested identifying information and shall state the complaint in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8 1/2" by 11") continuation page.

The inmate must provide an additional copy of any continuation page. The inmate must submit one copy of supporting exhibits. Exhibits will not be returned with the response. Because copies of exhibits must be filed for any appeal (see § 542.15 (b) (3)), the inmate is encouraged to retain a copy of all exhibits for his or her personal records.

(4) The inmate shall date and sign the Request and submit it to the institution staff member designated to receive such Requests (ordinarily a correctional counselor). CCC inmates may mail their Requests to the CCM.

d. Exceptions to Initial Filing at Institution

(1) **Sensitive Issues.** If the inmate reasonably believes the issue is sensitive and the inmate's safety or well-being would be placed in danger if the Request became known at the institution, the inmate may submit the Request directly to the appropriate Regional Director. The inmate shall clearly mark "Sensitive" upon the Request and explain, in writing, the reason for not submitting the Request at the institution. If the Regional Administrative Remedy Coordinator agrees that the Request is sensitive, the Request shall be accepted. Otherwise, the Request will not be accepted, and the inmate shall be advised in writing of that determination, without a return of the Request. The inmate may pursue the matter by submitting an Administrative Remedy Request locally to the Warden. The Warden shall allow a reasonable extension of time for such a resubmission.

(2) **DHO Appeals.** DHO appeals shall be submitted initially to the Regional Director for the region where the inmate is currently located.

See the Program Statement Inmate Discipline Program.

(3) **Control Unit Appeals.** Appeals related to Executive Panel Reviews of Control Unit placement shall be submitted directly to the General Counsel.

See the Program Statement Control Unit Programs.

(4) **Controlled Housing Status Appeals.** Appeals related to the Regional Director's review of controlled housing status placement may be filed directly with the General Counsel.

See the Program Statement Procedures for Handling HIV Positive Inmates Who Pose Danger to Other.

9. APPEALS § 542.15

a. Submission. An inmate who is not satisfied with the Warden's response may submit an Appeal on the appropriate form (BP-10) to the appropriate Regional

Director within 20 calendar days of the date the Warden signed the response. An inmate who is not satisfied with the Regional Director's response may submit an Appeal on the appropriate form (BP-11) to the General Counsel within 30 calendar days of the date the Regional Director signed the response. When the inmate demonstrates a valid reason for delay, these time limits may be extended. Valid reasons for delay include those situations described in §542.14(b) of this part. Appeal to the General Counsel is the final administrative appeal.

These deadlines specify the date of the Appeal's receipt in the regional office or the Central Office. The deadlines have been made deliberately long to allow sufficient mail time. Inmates should mail their Appeals promptly after receiving a response to ensure timely receipt. Ordinarily, the inmate must submit written verification from institution staff for any reason for delay that cannot be verified through SENTRY.

In many cases, courts require a proper Appeal to the General Counsel before an inmate may pursue the complaint in court.

b. Form

(1) Appeals to the Regional Director shall be submitted on the form designed for regional Appeals (BP-10) and accompanied by one complete copy or duplicate original of the institution Request and response. Appeals to the General Counsel shall be submitted on the form designed for Central Office Appeals (BP-11) and accompanied by one complete copy or duplicate original of the institution and regional filings and their responses. Appeals shall state specifically the reason for appeal.

(2) An inmate may not raise in an Appeal issues not raised in the lower level filings. An inmate may not combine Appeals of separate lower level responses (different case numbers) into a single Appeal.

(3) An inmate shall complete the appropriate form with all requested identifying information and shall state the reasons for the Appeal in the space provided on the form. If more space is needed, the inmate may use up to one letter-size (8 1/2" x 11") continuation page. The inmate shall provide two additional copies of any continuation page and exhibits with the regional Appeal, and three additional copies with an Appeal to the Central Office (the inmate is also to provide copies of exhibits used at the prior level(s) of appeal). The inmate shall date and sign the Appeal and mail it to the appropriate Regional Director, if a Regional Appeal, or to the National Inmate Appeals Administrator, Office of General Counsel, if a Central Office Appeal (see 28 CFR part 503 for addresses of the Central Office and Regional Offices).

c. Processing. The appropriate regional office to process the Appeal is the regional office for the institution where the inmate is confined at the time of mailing the Appeal, regardless of the institution that responded to the institution filing.

10. ASSISTANCE §542.16

a. An inmate may obtain assistance from another inmate or from institution staff in preparing a Request or an Appeal. An inmate may also obtain assistance from outside sources, such as family members or attorneys. However, no person may submit a Request or Appeal on the inmate's behalf, and obtaining assistance will not be considered a valid reason for exceeding a time limit for submission unless the delay was caused by staff.

b. Wardens shall ensure that assistance is available for inmates who are illiterate, disabled, or who are not functionally literate in English. Such assistance includes provision of reasonable accommodation in order for an inmate with a disability to prepare and process a Request or an Appeal.

For example, Wardens must ensure that staff (ordinarily unit staff) provide assistance in the preparation or submission of an Administrative Remedy or an Appeal upon being contacted by such inmates that they are experiencing a problem.

11. RESUBMISSION §542.17

a. **Rejections.** The Coordinator at any level (CCM, institution, region, Central Office) may reject and return to the inmate without response a Request or an Appeal that is written by an inmate in a manner that is obscene or abusive, or does not meet any other requirement of this part.

b. **Notice.** When a submission is rejected, the inmate shall be provided a written notice, signed by the Administrative Remedy Coordinator, explaining the reason for rejection. If the defect on which the rejection is based is correctable, the notice shall inform the inmate of a reasonable time extension within which to correct the defect and resubmit the Request or Appeal.

(1) **Sensitive Submissions.** Submissions for inmate claims which are too sensitive to be made known at the institution are not to be returned to the inmate. Only a rejection notice will be provided to the inmate. However, other rejected submissions ordinarily will be returned to the inmate with the rejection notice.

(2) **Defects.** Defects such as failure to sign a submission, failure to submit the required copies of a Request, Appeal, or attachments, or failure to enclose the required single copy of lower level submissions are examples of correctable defects.

Ordinarily, five calendar days from the date of the notice to the inmate is reasonable for resubmission at the institution level; at least 10 calendar days at the CCM or regional offices; and 15 calendar days at the Central Office.

(3) **Criteria for Rejection.** When deciding whether to reject a submission, Coordinators, especially at the institution level, should be flexible, keeping in mind that major purposes of this Program are to solve problems and be responsive to issues inmates raise. Thus, for example, consideration should be given to accepting a Request or Appeal that raises a sensitive or

problematic issue, such as medical treatment, sentence computation, or staff misconduct, even though that submission may be somewhat untimely.

c. Appeal of Rejections. When a Request or Appeal is rejected and the inmate is not given an opportunity to correct the defect and resubmit, the inmate may appeal the rejection, including a rejection on the basis of an exception as described in §542.14 (d), to the next appeal level. The Coordinator at that level may affirm the rejection, may direct that the submission be accepted at the lower level (either upon the inmate's resubmission or direct return to that lower level), or may accept the submission for filing. The inmate shall be informed of the decision by delivery of either a receipt or rejection notice.

12. RESPONSE TIME §542.18.

If accepted, a Request or Appeal is considered filed on the date it is logged into the Administrative Remedy Index as received. Once filed, response shall be made by the Warden or CCM within 20 calendar days; by the Regional Director within 30 calendar days; and by the General Counsel within 40 calendar days. If the Request is determined to be of an emergency nature which threatens the inmate's immediate health or welfare, the Warden shall respond not later than the third calendar day after filing. If the time period for response to a Request or Appeal is insufficient to make an appropriate decision, the time for response may be extended once by 20 days at the institution level, 30 days at the regional level, or 20 days at the Central Office level. Staff shall inform the inmate of this extension in writing. Staff shall respond in writing to all filed Requests or Appeals. If the inmate does not receive a response within the time allotted for reply, including extension, the inmate may consider the absence of a response to be a denial at that level.

The date a Request or an Appeal is received in the Administrative Remedy index is entered into SENTRY as the "Date Rcv", and should be the date it is first received and date-stamped in the Administrative Remedy Clerk's office. Notice of extension ordinarily is made via SENTRY notice.

13. REMEDY PROCESSING

a. Receipt. Upon receiving a Request or Appeal, the Administrative Remedy Clerk shall stamp the form with the date received, log it into the SENTRY index as received on that date, and write the "Remedy ID" as assigned by SENTRY on the form. Once a submission is entered into the system, any subsequent submissions or appeals of that case shall be entered into SENTRY using the same Case Number. The "Case Number" is the purely numerical part of the "Remedy ID" which precedes the hyphen and "Submission ID."

All submissions received by the Clerk, whether accepted or rejected, shall be entered into SENTRY in accordance with the SENTRY Administrative Remedy Technical Reference Manual.

Sensitive issues, when the inmate claims that his or her safety or well-being would be placed in danger if it became known at the institution that the inmate was pursuing the issue, should be

withheld from logging in until answered and/or should be logged into SENTRY with sufficient vagueness as to subject code and abstract to accommodate the inmate's concerns.

A Request should be submitted and logged in at the institution where the inmate is housed at the time the inmate gives the Request to the counselor or other appropriate staff member. If the event(s) occurred at a previous institution, staff at that previous institution shall provide; promptly upon request, any investigation or other assistance needed by the institution answering the Request. If an inmate is transferred after giving the Request to a staff member, but before that Request is logged in or answered, the institution where the Request was first given to a staff member remains responsible for logging and responding to that Request.

b. Investigation and Response Preparation. The Clerk or Coordinator shall assign each filed Request or Appeal for investigation and response preparation. Matters in which specific staff involvement is alleged may not be investigated by either staff alleged to be involved or by staff under their supervision. Allegations of physical abuse by staff shall be referred to the Office of Internal Affairs (OIA) in accordance with procedures established for such referrals. Where appropriate; e.g., when OIA or another agency is assuming primary responsibility for investigating the allegations, the response to the Request or Appeal may be an interim response and need not be delayed pending the outcome of the other investigation.

Requests or Appeals shall be investigated thoroughly, and all relevant information developed in the investigation shall ordinarily be supported by written documents or notes of the investigator's findings. Notes should be sufficiently detailed to show the name, title, and location of the information provided, the date the information was provided, and a full description of the information provided. Such documents and notes shall be retained with the case file copy. When deemed necessary in the investigator's discretion, the investigator may request a written statement from another staff member regarding matters raised in the Request or Appeal. Requested staff shall provide such statements promptly. For a disciplinary Appeal, a complete copy of the appealed disciplinary actions record shall be maintained with the Appeal file copy.

c. Responses. Responses ordinarily shall be on the form designed for that purpose, and shall state the decision reached and the reasons for the decision. The first sentence or two of a response shall be a brief abstract of the inmate's Request or Appeal, from which the SENTRY abstract should be drawn. This abstract should be complete, but as brief as possible. The remainder of the response should answer completely the Request or Appeal, be accurate and factual, and contain no extraneous information. The response should be written to be released to any inmate and the general public under the Freedom of Information Act (FOIA) and the Privacy Act. Inmate names shall not be used in responses, and staff and other names may not be used unless absolutely essential.

Program Statements, Operations Memoranda, regulations, and statutes shall be referred to in responses whenever applicable, including section numbers on which the response relies.

d. Response Time Limits. Responses shall be made as required in Section 12 of this Program Statement.

e. Index Completion. When a response is completed, the Clerk shall update SENTRY in accordance with the SENTRY Administrative Remedy Manual and the instructions in

Attachment A. Particular attention should be paid to updating the status date, code, and reason, and to making any changes to the subject code and abstract indicated by the Coordinator or by the response drafter. The abstract shall be taken from the response's first paragraph. Abbreviations may be liberally used, as long as they are easily understood, to allow as complete a description of the issue in the 50 characters allotted. For consistency, the Administrative Remedy Coordinator shall approve the closing entry, including the subject codes, status code and reason, and abstract, before the closing entry is made by the Clerk.

f. **Response Distribution.** For an institution response, one copy of the complete Request and response shall be maintained in the Warden's Administrative Remedy File together with all supporting material. Three copies shall be returned to the inmate. An inmate who subsequently appeals to the regional or Central Office shall submit one copy with each appeal.

One copy of a Regional Appeal and response shall be retained at the regional office. One copy shall be sent to the Warden at the original filing location. The remaining two copies shall be returned to the inmate; one to submit in case of subsequent appeal to the Central Office, and one to retain.

One copy of a Central Office Appeal and response will be returned to the inmate. One copy will be retained in the Central Office Administrative Remedy File, one copy will be forwarded to the regional office where the Regional Appeal was answered, and one to the Warden's Administrative Remedy File at the original filing location.

g. **File Maintenance.** The Warden's Administrative Remedy File and Administrative Remedy Files at the Regional Offices and Central Office shall be maintained in a manner that assures case files are readily accessible to respond to inquiries from Federal Bureau of Prisons staff, inmates, and the public. Institutions shall file Regional and Central Office response copies with the inmate's institution submission copy. Regional offices shall file copies of Central Office responses with the inmate's Regional Appeal file. Each location shall maintain copies of supporting material and investigation notes with the case file.

When a Regional or Central Office Appeal was not preceded by a lower level filing, the institution and regional copies shall be filed at the institution and region having responsibility for the inmate at the time of response.

To provide information and feedback, Wardens and Regional Directors are encouraged to route response file copies from subsequent appeal levels to the Coordinator and the appropriate department head or person who investigated and drafted the response at their respective levels.

14. ACCESS TO INDEXES AND RESPONSES §542.19.

Inmates and members of the public may request access to Administrative Remedy indexes and responses, for which inmate names and Register Numbers have been removed, as indicated below. Each institution shall make available its index, and the indexes of its regional office and the Central Office. Each regional office shall make available its index, the indexes of all institutions in its region, and the index of the Central Office. The Central Office shall make available its index and the indexes of all institutions and regional offices. Responses may be requested from the location where they are maintained and must be identified by

Remedy ID number as indicated on an index. Copies of indexes or responses may be inspected during regular office hours at the locations indicated above, or may be purchased in accordance with the regular fees established for copies furnished under the Freedom of Information Act (FOIA).

At present, fees are detailed in 28 CFR § 16.10, which specifies a charge of \$.10 per page duplicated and no charge for the first 100 pages. Staff shall forward funds received for purchase of index and response copies to the FOIA/Privacy Act Section, Office of General Counsel, Central Office.

Any location may produce its index or that of another location by making the appropriate entries on a SENTRY retrieval transaction, and specifying the "SAN" (sanitized) output format.

15. RECORDS MAINTENANCE AND DISPOSAL

a. **Disposal Authority.** The authority for Administrative Remedy records disposal is the "job number" NC1-129-83-07 provided by the National Archives.

b. **Administrative Remedy Indexes.** SENTRY Administrative Remedy indexes shall be maintained in computer-accessible form for 20 years, then destroyed. Pre-SENTRY indexes shall be maintained at the site of creation for 20 years, then destroyed.

c. **Administrative Remedy Case Files.** Administrative Remedy Case Files shall be destroyed three full years after the year in which the cases were completed (i.e., response completed). For cases submitted since implementation of the SENTRY module (July 1990), at the end of each calendar year (beginning at end of 1993), run SENTRY index retrieval transactions to identify the lowest case number for cases answered (status = cl* and status date in the appropriate range) during the calendar year ended three years previously. Cases below that number must be destroyed. Thus, cases answered in 1990 would be destroyed at the end of 1993; cases answered in 1991 would be destroyed at the end of 1994, etc.

To identify the lowest case number for cases answered during a given year, it may be necessary to check indexes with "Date Received" in the year in question as well as those with "Date Received" in the previous year.

Cases maintained under the pre-SENTRY numbering and filing system should be destroyed according to the following schedule:

YEAR OF CASE #	DESTROY AT END OF
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16. ADMINISTRATIVE REMEDY PROCEDURES UNDER THE PRISON RAPE ELIMINATION ACT (PREA)

Title 42 U.S.C. §15607 (a) required the Attorney General to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape. Title 42 USC § 15607(b) states that the national standards shall apply immediately to the Federal Bureau of Prisons upon adoption of the final rule. The final rule is published in Title 28 C.F.R. Part 115. This section only addresses administrative remedy procedures in relation to issues of sexual

abuse, and shall not constitute the sole response of the agency to allegations of sexual abuse. Appropriate steps to address the safety and security of inmates shall be made in accordance with the other provisions of the PREA regulations, and BOP policy on sexual abuse prevention.

§115.52 Exhaustion of administrative remedies

(a) An agency shall be exempt from this standard if it does not have administrative procedures to address inmate grievances regarding sexual abuse.

The Federal Bureau of Prisons has an administrative remedy system, and therefore section 115.52 (a) does not apply. The following sections, 115.52 (b) through 115.52 (g), apply to inmates seeking a formal review of issues relating to sexual abuse. For any issue not specified in sections 115.52 (b) through 115.52 (g) below, the administrative remedy system outlined in Sections 1 through 15 of this Program Statement applies.

(b)(1) The agency shall not impose a time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

“Sexual abuse” is defined for the purposes of this section in 28 C.F.R. § 115.6.

Administrative remedies regarding allegations of sexual abuse may be filed at any time. For all other issues, the 20 calendar day period specified in Section 8 of this Program Statement shall be followed. Accordingly, administrative remedies regarding an allegation of sexual abuse shall not be rejected as untimely under Section 11 of this Program Statement, above.

Once filed, the inmate should follow the time requirements for appeal, as stated in Section 9 of this Program Statement, above.

(2) The agency may apply otherwise-applicable time limits on any portion of a grievance that does not allege an incident of sexual abuse.

If the inmate includes on a single form multiple unrelated issues, the portion of the administrative remedy regarding allegations of sexual abuse should be accepted and processed. The inmate shall be advised to use a separate form for each unrelated issue.

(3) The agency shall not require an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse.

Inmates are not required to attempt informal resolution under Section 7 of this Program Statement, above, regarding allegations of sexual abuse.

(4) Nothing in this section shall restrict the agency's ability to defend against an inmate lawsuit on the ground that the applicable statute of limitations has expired.

(c) The agency shall ensure that

(1) an inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and

(2) such grievance is not referred to a staff member who is the subject of the complaint.

Matters in which specific staff involvement is alleged may not be investigated by either staff alleged to be involved or by staff under their supervision. Allegations of physical abuse by staff shall be referred to the Office of Internal Affairs (OIA) in accordance with procedures established for such referrals. Where appropriate, e.g., when OIA or another agency is assuming primary responsibility for investigating the allegations, the response to the Request or Appeal may be an interim response and need not be delayed pending the outcome of the other investigation.

(d)(1) The agency shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(2) Computation of the 90-day time period shall not include time consumed by inmates during the course of an administrative appeal.

(3) The agency may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The agency shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(4) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly-noticed extension, the inmate may consider the absence of a response to be a denial at that level.

Time frames in this section are consistent with Section 12 of this Program Statement, above.

(e)(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(2) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

The inmate's approval of the remedy filed on his or her behalf shall be documented, and include the inmate's signature. An inmate's decision to decline to have the remedy processed on his or her behalf should also be documented, and include the inmate's signature. The documentation should be retained in the agency Administrative Remedy File at the appropriate level and on Sentry in accordance with Section 13 of this Program Statement.

Responses to third party remedies should be provided to the inmate who is the subject of the remedy.

An inmate is required to personally file any subsequent appeal. However, the inmate may receive assistance in preparing the appeal in accordance with Section 10 of this Program Statement, above.

(f)(1) The agency shall establish procedures for the filing of an emergency grievance where an inmate is subject to a substantial risk of imminent sexual abuse.

This section applies when an administrative remedy alleges a substantial risk of imminent sexual abuse. If a remedy meets both of these criteria, the remedy will receive expedited processing, as described below.

Section 12 of this Program Statement provides for an "emergency" administrative remedy as required by section 115.52(f). An expedited BP-9 (BP-229) response shall be provided if a remedy is determined to be of an emergency nature which threatens the inmate's immediate health or welfare. *See* 28 C.F.R. § 542.18.

The inmate shall clearly mark "Emergency" on the BP-9 (BP-229), and explain, in writing, the reason for filing as an emergency administrative remedy under this section.

If an inmate files an emergency administrative remedy with the Warden, the local Administrative Remedy Coordinator shall make a determination as to whether the remedy alleges a substantial risk of imminent sexual abuse. If the local Administrative Remedy Coordinator agrees that the administrative remedy meets the criteria for an emergency administrative remedy, the request shall be accepted, and receive expedited processing as stated below.

If the remedy is rejected for failing to meet the criteria of an emergency grievance under this section, a rejection notice will be provided to the inmate, and the remedy will be processed in accordance with the usual time frames indicated above.

(2) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response within 48 hours, and shall issue a final agency decision within five calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

If an inmate files the emergency grievance with the institution under Section 12 of this Program Statement, above, alleging a substantial risk of imminent sexual abuse, an expedited BP-9

(BP-229) response should be provided within 48 hours. Best efforts to provide BP-10 (BP-230) and BP-11 (BP-231) responses within five calendar days should also be made in accordance with the provisions on exhaustion referenced above. If the inmate does not receive a response within

the time allotted for reply, the inmate may consider the absence of a response to be a denial at that level.

Inmates may also file "sensitive" administrative remedies under Section 8 of this Program Statement, above, regarding allegations of sexual abuse. If an inmate reasonably believes the issue is sensitive and the inmate's safety or well-being would be placed in danger if the remedy became known at the institution, the inmate may submit the remedy directly to the appropriate Regional Director. *See* 28 C.F.R. § 542.14 (d) (1). "Sensitive" grievances should be processed in accordance with Section 8 and Section 11 of this Program Statement, and the expedited response times specified in this section do not apply.

(g) The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith.

17. INSTITUTION SUPPLEMENT

Each Warden shall forward a copy of any Institution Supplement developed to implement this Program Statement to the Regional Administrative Remedy Coordinator and to the National Inmate Appeals Administrator in the Central Office.

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.

EXHIBIT 54

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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YASSIN MUHIDDIN AREF

and

DANIEL MCGOWAN

and

ROYAL JONES

and

KIFAH JAYYOUSI

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

VS.

ERIC HOLDER, Attorney General
of the United States

and

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

and

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

and

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

(TITLE CONTINUED)

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and
FEDERAL BUREAU OF PRISONS
-----X

30(B)(6) DEPOSITION OF FEDERAL BUREAU OF PRISONS,
BY AND THROUGH ITS AGENCY DESIGNEE,
THOMAS LEE ALBRIGHT
Thursday, July 18, 2013; 9:04 a.m.

Reported by:
Cindy L. Sebo
Ref: 9896A

1 THOMAS LEE ALBRIGHT

2 now, we're looking at the 8-1/2 and talking about
3 the 8-1/2; so, you know, I'm just trying to
4 stay -- understand what -- where you're talking
5 about.

6 Q. As a general matter, if an inmate
7 challenges -- if an inmate files a BP-9 appealing
8 CMU designation, would you expect the warden to
9 undertake an investigation to determine whether
10 the reasons listed on the notice of transfer are
11 factually correct or not?

12 A. Yes, I would imagine.

13 Q. If an inmate is not satisfied with the
14 warden's response to his BP-9 regarding CMU
15 designation, what's the next step that he should
16 undertake?

17 A. The regional administrative remedy
18 appeal, BP-10.

19 Q. And does the regional director have
20 the authority to take any action with respect to
21 CMU designation pursuant to that request?

22 A. Yes.

23 Q. And what action may they take?

24 A. Through consultation and through their
25 investigation with the designation center or any

1 THOMAS LEE ALBRIGHT

2 entity that designated that inmate there, they can
3 consult with them. And if they disagree, you
4 know, they would make decisions based on that
5 investigation.

6 Q. And what -- what decision would they
7 make if they disagreed?

8 A. Well, as we talked about earlier, if
9 they want to concur with the inmate that the
10 inmate's designation wasn't appropriate or they
11 don't feel that he's appropriate for that security
12 level or that facility, then they can request the
13 designation center redesignate that inmate to
14 another facility and, through concurrence with
15 them, come up with a conclusion.

16 Q. But it would be the designation
17 center's decision at the end of the day?

18 A. They're the ones that do the
19 designations.

20 Q. Is that a yes?

21 MR. CARTIER: I'm going to object
22 to lack of foundation.

23 THE WITNESS: I think, through
24 concurrence with the investigation and if
25 they both concur that needs to be -- the

1 THOMAS LEE ALBRIGHT
2 inmate needs to be transferred, the
3 designation center is the one that
4 actually designates it. So the regional
5 director can grant that appeal based on
6 their investigation.

7 BY MS. MEEROPOL:

8 Q. Is that a guarantee that the
9 designation center would actually change the
10 inmate's designation?

11 A. Not necessarily.

12 Q. The designation center could disagree
13 and refuse to take that action?

14 A. Yes.

15 Q. What investigation would you expect
16 the regional office to undertake in the event of a
17 inmate's regional appeal about CMU designation?

18 A. They would review the information
19 that's relevant to the inmate's concerns to make
20 sure they're addressed. That could be, again, the
21 presentence investigation report, disciplinary
22 history, adjustment commitment order, any
23 recommendations by the -- the judge or the court,
24 any confidential investigation that may be
25 conducted.

1 THOMAS LEE ALBRIGHT

2 policy, is it appropriate when an inmate has filed
3 an administrative remedy pointing out inaccuracies
4 in a notice of transfer to ignore the question of
5 whether or not there are inaccuracies and,
6 instead, answer the question as to whether that
7 individual's designation is appropriate?

8 A. Again, based on the information that's
9 in front of me, you're -- you're asking the
10 question whether it's appropriate for the BOP to
11 ignore. And I cannot speak for this packet or
12 these remedies because I don't know if those
13 issues were ignored.

14 They may have been investigated and
15 determined that it was appropriate and the
16 information that was available for the designation
17 in the designation packet was appropriate to
18 designate him to a CMU.

19 So I cannot answer your question if
20 it's appropriate to ignore, because it may well
21 not have been ignored. But I can't speak for who
22 wrote this, who -- who designated him, who -- who
23 investigated it.

24 Q. Did the administrative remedy process
25 function as it should with respect to this

1 THOMAS LEE ALBRIGHT

2 inmate's complaint?

3 A. He made it all the way through the
4 BP-11 level, so, yes, he had the opportunity to
5 file all the way up.

6 MS. MEEROPOL: I'd like to mark for
7 identification Exhibit 8. It's another
8 administrative remedy packet for
9 Mr. McGowan. The first page is Bates
10 stamped P000562.

11 - - -

12 (Whereupon, Daniel McGowan's
13 Administrative Remedy - Informal
14 Resolution, Marion, Illinois,
15 9/4/08 was marked, for
16 identification purposes, as
17 Deposition Exhibit Number 8.)

18 - - -

19 - - -

20 (Whereupon, a brief recess was taken
21 from 11:38 a.m. to 11:45 a.m.)

22 - - -

23 BY MS. MEEROPOL:

24 Q. We're back after a short break.

25 Sir, I've given you a document we've

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THOMAS LEE ALBRIGHT

it through the administrative remedy if the inmate disagreed with what decision was made in the program review process and they decide to file that through the administrative remedy process disagreeing with what the unit management or unit decision was -- unit team decision.

BY MS. MEEROPOL:

Q. Do you recall ever seeing an administrative remedy packet regarding that question?

A. Specific to CMU?

Q. Yes.

A. No, I have not.

Q. Do you believe that it is possible for a CMU prisoner to learn the reason why they were denied transfer from the CMU through the administrative remedy process?

A. Depending on the circumstances, if it wasn't confidential information used to designate him there, yes, I -- I -- I do believe there would be reasons why we could advise him that he wasn't -- or that he was denied.

Q. Would you expect that if -- unless

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THOMAS LEE ALBRIGHT

there's a situation where there's confidential information, that an inmate would be able to learn those reasons through the administrative remedy process?

A. Yes.

MR. CARTIER: I'm just going to interpose a comment, just that the -- my understanding is 30(b)(6) topic was not designations. And I believe that that initial designation is not transfers.

But I don't object to him answering as a fact witness, but that seems to be outside the scope.

MS. MEEROPOL: Okay. Okay.

I'd like to mark for identification Exhibit 10. It's another administrative remedy for Daniel McGowan. The first page is Bates stamped P000635.

- - -

(Whereupon, Daniel McGowan's Administrative Remedy - Informal Resolution, Marion, Illinois, 4/12/10 was marked, for identification purposes, as