

1 DAVID C. SCHIAVONE

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

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

8 A. For nearer release transfers?

9 Q. Yes.

10 A. No.

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

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

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

23 Yeah.

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

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2 until the Dodrill memo was issued?

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

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

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

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

25 MS. MEEROPOL: Can you read back

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2 that answer, please?

3 - - -

4 (Whereupon, the court reporter

5 read back the pertinent part of

6 the record.)

7 - - -

8 BY MS. MEEROPOL:

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

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

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

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

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

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

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

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

THE WITNESS: I think so.

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

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

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

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2 MR. CARTIER: No.

3 Do you need the question read

4 back?

5 THE WITNESS: Yes, please.

6 - - -

7 (Whereupon, the court reporter

8 read back the pertinent part of

9 the record.)

10 - - -

11 THE WITNESS: The BOP was working

12 to create that process from the time the

13 unit was opened.

14 BY MS. MEEROPOL:

15 Q. Why did it take three years?

16 A. I wish I could explain better how

17 Government processes work. I mean, there's --

18 there's a lot of different levels of review.

19 You can consider similarly how long it's taken

20 for the proposed regulations to be reviewed and

21 approved.

22 So it's complicated in -- in the

23 Government.

24 Q. All right. You testified that the

25 CTU considered one prisoner for referral out of

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

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

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

13 Q. Who was he identified by?

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

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

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

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

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

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

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

13 THE WITNESS: Okay.

14 BY MS. MEEROPOL:

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

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

25 Q. Okay. So please point me to each

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2 of the incorrect statements in this paragraph.

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

6 Q. And then anything else?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Q. And who conducts the program
17 reviews?

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

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

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

3 A. Okay.

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

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

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

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

15 A. And the second paragraph, you said?

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

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

21 THE WITNESS: Okay.

22 BY MS. MEEROPOL:

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

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2 inaccurate?

3 A. Yes, correct.

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

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

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

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

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

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