

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ENAAM ARNAOUT and JOHN LINDH,)
on their own behalf and on behalf of a)
class of those similarly situated,)
)
Plaintiffs,)
)
v.)
)
WARDEN, FEDERAL CORRECTIONAL)
INSTITUTION, TERRE HAUTE,)
INDIANA,)
)
Defendant.)

No. 2:09-cv-215 JMS-WGH

Plaintiffs’ Motion for Summary Judgment

Come now plaintiffs, by their counsel, and say that:

1. This case concerns whether defendant’s denial of daily congregate prayer to the Muslim prisoners confined to the Communications Management Unit within the Federal Correctional Institution in Terre Haute violates the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb-1.
2. There are no contested issues of material fact in this cause and the law is with the plaintiffs and against the defendant.
3. The plaintiffs motion for class certification (Doc. No. 45) remains pending in this matter and is being briefed separately.
4. Summary judgment should be entered for plaintiffs, including the class once it is certified, and appropriate declaratory and injunctive relief should issue.
5. In support of this motion the plaintiffs rely on the following evidence as more specifically enumerated in the plaintiffs’ memorandum of law submitted in support of this motion:
 - a. The Affidavit of Associate Warden Church, attached as Exhibit 1 to Defendant’s

Objection to Plaintiffs' Motion to File Amended Complaint (Doc. No. 18-1).

- b. The Deposition of Associate Warden Church, and selected exhibits, attached to this Motion as Exhibit 1.
 - c. Plaintiff's First Request for Admissions and Defendant's Responses to Plaintiff's First Request for Admissions, attached to this Motion as Exhibit 2.
 - d. The Supplemental Declaration of John Lindh, attached to this Motion as Exhibit 3.
 - e. Supplemental Declaration of Enaam Arnaout, attached as Exhibit 2 to Plaintiffs' Memorandum in Support of Motion to Certify Case as Class Action (Doc. No. 46-2).
 - f. Declaration of Enaam Arnaout, attached as Exhibit 2 to Plaintiffs' Memorandum in Support of their Motion to file Amended Complaint (Doc. No. 23-2).
 - g. Declaration of John Phillip Walker Lindh, attached as Exhibit 1 to Plaintiffs' Memorandum in Support of their Motion to file Amended Complaint (Doc. No. 23-1).
 - h. Affidavit of Ahmed Bilal, attached as Exhibit 3 to Plaintiffs' Memorandum in Support of Motion to Certify Case as Class Action (Doc. No. 46-3).
 - i. Affidavit of Ali Asad Chandia, attached as Exhibit 4 to Plaintiffs' Memorandum in Support of Motion to Certify Case as Class Action (Doc. No. 46-4).
 - j. Affidavit of Avon Twitty, attached as Exhibit 5 to Plaintiffs' Memorandum in Support of Motion to Certify Case as Class Action (Doc. No. 46-5).
 - k. Affidavit of Brian Carr, attached as Exhibit 6 to Plaintiffs' Memorandum in Support of Motion to Certify Case as Class Action (Doc. No. 46-6).
 - l. Affidavit of Mokhtar Haouari, attached as Exhibit 7 to Plaintiffs' Memorandum in Support of Motion to Certify Case as Class Action (Doc. No. 46-7).
 - m. Affidavit of Rafil Dhafir, attached as Exhibit 8 to Plaintiffs' Memorandum in Support of Motion to Certify Case as Class Action (Doc. No. 46-8).
 - n. Declaration of Randall T. Royer, attached to this Motion as Exhibit 4.
6. In further support of this motion plaintiffs separately submit their memorandum of law which is incorporated by reference.

WHEREFORE, plaintiffs request that this Court grant them summary judgment in this

cause declaring that the denial of congregate daily prayer to prisoners in the Communications Management Unit violates the Religious Freedom Restoration Act, enjoining defendant to allow such prayer to occur during the times that the prisoners are out of their cells, awarding plaintiffs their costs and reasonable attorney's fees, and further that the Court grant all other proper relief.

/s/ Kenneth J. Falk

Kenneth J. Falk

No. 6777-49

ACLU of Indiana

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Attorney for Plaintiffs and
the Putative Class

Certificate of Service

I hereby certify that on this 26th day of August, 2010, a copy of the foregoing was filed electronically with the Clerk of this Court. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system and the parties may access this filing through the Court's system.

Thomas E. Kieper
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/s/ Kenneth J. Falk

Kenneth J. Falk

Attorney at Law

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

CAUSE NO: 2:07-CV-215 LIM-WGH

ENAAM ARNAOUT, et. AL,

Plaintiffs,

v.

WARDEN, FEDERAL CORRECTIONAL
INSTITUTION, TERRE HAUTE,
INDIANA,

Defendant.

The deposition of HARVEY G. CHURCH, taken on behalf of the plaintiff at the Administration Building, Federal Correctional Institution, Terre Haute, Vigo County, Indiana, on the 23rd day of January, 2010.

Karen C. Wilson, notary.

Court Discovery
Professional Court Reporting

Karen C. Wilson
(812) 898-2601

P. O. Box 6012
Terre Haute, IN 47802

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INSTITUTION, TERRE HAUTE,
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Defendant.

DEPOSITION OF HARVEY G. CHURCH

APPEARANCES

FOR THE PLAINTIFFS: MR. KENNETH J. FALK

FOR THE DEFENDANTS: MR. THOMAS E. KEIPER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

CAUSE NO: 2:07-CV-215 LIM-WGH

ENAAM ARNAOUT, et. AL,
Plaintiffs,

v.

WARDEN, FEDERAL CORRECTIONAL
INSTITUTION, TERRE HAUTE,
INDIANA,

Defendant.

The deposition of HARVEY G. CHURCH, produced and sworn before me, Karen C. Wilson, a notary public in and for the State of Indiana, at the Administration Building, Federal Correctional Institution, Terre Haute, Vigo County, Indiana, on the 23rd day of December, 2010 pursuant to statute with written notice as to time and place. This deposition was taken on behalf of the plaintiffs in a certain legal action now pending in the United States District Court for the Southern District of Indiana, Terre Haute Division, wherein Enaam Arnaout is plaintiff and Warden, Federal Correctional Institution, Terre Haute, Indiana are defendants.

1 H A R V E Y G. C H U R C H, being first
2 duly sworn to tell the truth, the whole
3 truth and nothing but the truth deposes and
4 says:

5 DIRECT EXAMINATION:

6 QUESTIONS BY MR. KENNETH J. FALK:

7 Q State your name please?

8 A Harvey G. Church.

9 Q Mr. Church, your business address?

10 A My business address is that of the
11 institution.

12 MR. FALK: That's fine.

13 Q The Federal Correctional Institution?

14 A Yes, the Federal Correctional Institution
15 at Terre Haute, Indiana.

16 Q Have you ever been deposed before?

17 A Yes.

18 Q You understand this is asking and answering
19 questions under oath?

20 A Yes.

21 MR. FALK: I will do my best to a),
22 speak slowly and intelligibly, and b),
23 not talk over you. If you do not
24 understand any of my questions please
25 let me know. I will also try to make

1 sure both you and I give audible
2 responses, and we're not saying, "Uh
3 huh," or nodding or what have you.

4 WITNESS: Thank you.

5 Q You are employed by the United States
6 Bureau of Prisons?

7 A Yes.

8 Q What is your current job position?

9 A My current job position is associate
10 warden.

11 Q At FCI Terre Haute?

12 A No, of the FCC. I'm the associate warden
13 over the entire complex.

14 Q The "complex" means the two prisons which
15 are located, actually are there three
16 facilities located in Terre Haute?

17 A Yes.

18 Q Those are what?

19 A The United States Penitentiary, the Federal
20 Correctional Institution, medium and the
21 SPC camp, satellite camp.

22 Q The Federal Correctional Institution,
23 medium is also known as FCI Terre Haute, is
24 that correct?

25 A Yes.

1 Q How long have you been employed in this
2 position?

3 A Since August 2nd of this year.

4 Q Prior to that were you employed by the
5 Bureau of Prisons?

6 A Yes.

7 Q In what position?

8 A I was the Complex Captain over the Federal
9 Correctional Complex in Florence, Colorado.

10 Q How long have you been employed by the
11 Bureau of Prisons?

12 A Since 1988.

13 Q Prior to that time did you have any
14 employment in the correctional area?

15 A Yes, sir, I did. I worked for the State
16 Corrections in the St. Cloud, Minnesota.

17 Q How long did you do that?

18 A Approximately three years on a part-time
19 basis.

20 Q What is your educational background?

21 A My educational background, I hold a
22 Bachelor of Public Administration in
23 Criminal Justice that was certified through
24 National University in San Diego,
25 California.

1 Q I'll show you what's been marked as
2 Deposition Exhibit 1. Have you seen this
3 document before?

4 A Yes, I have.

5 Q This is the Notice of Deposition for
6 today's deposition, is that correct?

7 A Yes.

8 Q That Notice asked that the Warden of FCI
9 Terre Haute produce a person to answer
10 certain questions for FCI Terre Haute in
11 this case, is that correct?

12 A Yes.

13 Q You are the person who has been designated?

14 A Yes.

15 Q You are aware of the litigation that's been
16 filed in this case, is that correct?

17 A Yes.

18 Q It concerns religious practices at what is
19 called the CMU, is that correct?

20 A Yes.

21 Q What is the CMU?

22 A That is the Communication Management Unit.

23 Q That is a unit within FCI Terre Haute, is
24 that correct?

25 A Yes.

1 Q I'm showing you what's been marked as
2 Exhibit 2, and also Exhibit 3. Have you
3 seen these documents before?

4 A Yes.

5 Q Is it correct that Exhibit 2 is what is
6 called an "Institution Supplement"
7 concerning the Communication Management
8 Unit, although Exhibit 2 is dated in 2006,
9 and Exhibit 3 is a more recent Institution
10 Supplement?

11 A It appears so, yes.

12 Q Are you aware of how these two documents
13 are different?

14 A No, sir, I have not compared the two.

15 Q I assume Exhibit 3 is the current
16 institution Supplement governing the
17 Communication Management Unit?

18 A Yes.

19 Q Just so we can get through this more
20 quickly, I'm going to say "CMU" for
21 Communication Management Unit, is that
22 okay?

23 A Yes.

24 Q Not referring specifically to Exhibits 2 or
25 3, but just the general notion, what is an

1 Institution Supplement?

2 A An Institution Supplement refers to
3 operations that may be specific to that
4 institution as opposed to general policy.

5 Q If you look at the hierarchy that control
6 life in a given institution you will have,
7 of course, federal statutes and federal
8 regulations. Then you will have what the
9 Bureau of Prisons calls "Program
10 Statements," is that correct?

11 A Yes.

12 Q Then blow that you have institution
13 supplements?

14 A Correct.

15 Q So a Program Statement will deal with a
16 general subject---

17 MR. FALK: We'll talk later about
18 religious practices for instance.

19 Q ---for all Bureau of Prisons, is that
20 correct?

21 A Yes.

22 Q Then the institution supplement will focus
23 as you say on the specific institution?

24 A Yes.

25 Q Is there anything below the institution

1 supplement in terms of written procedures
2 for particular institutions?

3 A There would be operational memorandums, but
4 that would be an internal memorandum.

5 Q Those are internal memorandums issued by
6 supervisors, through correctional staff for
7 instance?

8 A Yes.

9 Q You said those are "internal," what does
10 that mean in terms of---

11 A It would be for a specific event.

12 Q The CMU is a general population unit, is
13 that correct?

14 A Yes, sir.

15 Q Although there are, I believe, five beds
16 within it which are deemed to be
17 segregation beds?

18 A Yes.

19 Q In looking through Exhibits 2 and Exhibit
20 3, I believe they both indicate that the
21 CMU is self-contained?

22 A Yes.

23 Q It's a self-contained general population
24 unit, is that correct?

25 A Yes.

1 Q Which means as I understand it, prisoners
2 do not leave the unit for jobs, or for
3 education, for healthcare, for visits or
4 for anything else, is that correct?

5 A That is correct.

6 Q I assume there are emergencies where they
7 may have to leave, if they have to go to
8 the hospital for instance?

9 A Yes, sir.

10 Q We just took a quick tour of the unit?

11 A Yes.

12 Q Exhibit 2 and Exhibit 3 indicate that the
13 CMU is set up to house prisoners whose
14 communications need to be monitored, is
15 that correct?

16 A Correct.

17 Q That is the purpose for the self-
18 containment?

19 A Yes.

20 Q The approximately fifty cells in the CMU,
21 is that correct?

22 A Yes.

23 Q Do you know the exact number?

24 A No, I'm not aware of the exact number right
25 now.

1 Q At the current time all of the prisoners
2 are single celled is that correct?

3 A Correct.

4 Q There is a potential for double celling,
5 but that is not in the plans for CMU, is
6 that correct?

7 A Correct.

8 Q There are five segregation cells which I
9 think we discussed already, is that
10 correct?

11 A Correct.

12 Q And these are exactly the same as the other
13 cells, they would just feature people who
14 would be in their cells twenty-three hours
15 a day in segregation, is that correct?

16 A Correct.

17 Q Those who are not in segregation as I
18 understand it in reading through Exhibit 2
19 and 3, are allowed out of their cells
20 during their day from, I believe 6:00 a.m.
21 until 9:15 p.m., except for count periods,
22 is that correct?

23 A Correct.

24 Q What are the count periods, if you know?

25 A The count periods that we have would be the

1 4:00 o'clock count.

2 Q That's the only count?

3 A During that time, yes. On weekends and
4 holidays there is a 10:00 a.m. count.

5 Q A count period in prison is exactly what it
6 sounds like, it is when all of the
7 prisoners are put back in the cells, and
8 you make sure everything is still there and
9 everything is okay.

10 A Correct.

11 Q About how long do they take?

12 A Thirty to forty-five minutes.

13 Q Aside from that then, from 6:00 a.m. until
14 9:15 the prisoners are allowed out of their
15 cells on the CMU?

16 A Correct.

17 Q I believe that Exhibit 2 or 3 indicates the
18 segregation prisoners are out one hour a
19 day to engage in recreation, is that
20 correct?

21 A Correct.

22 Q There's a concept in the prison setting
23 called "controlled movements."

24 A Correct.

25 Q Are you aware of that concept?

1 A Yes, sir.

2 Q Could you define that for me?

3 A Controlled movement is when we are moving a
4 specific group or one specific inmate,
5 meaning that there is high supervision when
6 the inmates are moved to a particular area
7 and a greater security enhancement during
8 the move is conducted.

9 Q That might involve restraining the prisoner
10 in some way, additional guards, etcetera
11 correct?

12 A That could be definitely the case, yes.

13 Q Within the CMU there are no controlled
14 movements, is that correct, because it's an
15 open unit self-contained, is that correct?

16 A Yes.

17 Q When the prisoners get out in the morning,
18 or their cells are open at 6:00 a.m.,
19 they're free to go within the unit without
20 it being a controlled movement, is that
21 correct?

22 A Correct.

23 Q We just did a quick walk through of the
24 unit and it appears that there's an area in
25 the unit where prisoners can use a law

1 library and actually access email, is that
2 correct?

3 A Correct.

4 Q There's also an area within the unit where
5 there's sort of a lounge area with multiple
6 TVs, is that correct?

7 A Correct.

8 Q There is a food service area with thirteen
9 tables which actually have checker boards
10 on them, but that's where prisoners can go
11 to eat, is that correct?

12 A Correct.

13 Q And there's also a microwave?

14 A Correct.

15 Q And it looks like there was a drink
16 dispenser with like Kool-aid in it, that I
17 assume they can access at any time during
18 the day, is that correct?

19 A Correct.

20 Q The microwave I assume can be used for
21 commissary items during the day, is that
22 correct?

23 A Correct.

24 Q There are also two rooms which are
25 designated multi-purpose rooms, is that

1 correct?

2 A Correct, yes.

3 Q One of them has a washer and dryer that
4 they can use for their own personal
5 laundry, is that correct?

6 A Correct.

7 Q There is a couple of rooms with weight
8 equipment of some sort, is that correct?

9 A I believe it's exercise equipment.

10 MR. FALK: Exercise equipment, excuse
11 me.

12 Q It looks like there's an outside recreation
13 area with a rather large area with a
14 basketball net and goal, is that correct?

15 A Correct.

16 Q And then there's some smaller rooms, which
17 I assume when the CMU was being used for
18 another facility could be locked but now
19 are open, little exercise areas that are
20 all outside, is that correct?

21 A Correct.

22 Q They're outside but they're under a metal
23 roof?

24 A Yes.

25 Q All these areas are places the prisoners

1 are free to go between 6:00 a.m. and 9:15,
2 is that correct?

3 A During their free movement time, yes.

4 Q During this time are their cells locked, or
5 can they go back to their cells and take a
6 nap, or read or do whatever?

7 A They are allowed to go back to their cells.

8 Q Are they allowed to have other prisoners in
9 their cells with them, do you know?

10 A No, I'm not familiar with that.

11 Q Who would know that?

12 A Probably the unit manager.

13 MR. FALK: Can we go off the record for
14 a second?

15 OFF THE RECORD:

16 (OFF THE RECORD DISCUSSION)

17 Q I'm not going to ask you about placement,
18 but it's my understanding that there are
19 cameras and listening devices throughout
20 the unit, is that correct?

21 A Correct.

22 Q Some of these are visible and some of these
23 are not visible, is that correct?

24 A Correct.

25 Q Both cameras and listening devices, is that

1 correct?

2 A Correct.

3 Q I know that as far as the visible cameras
4 are concerned some of them you can see the
5 shapes in the ceiling. Are listening
6 devices in those cameras as well or are
7 they somewhere else?

8 A I am not going to make comment on that sir.

9 MR. FALK: Okay, that's fine.

10 Q Not asking for particular placement, but
11 are they outside as well?

12 A I can't comment on that sir.

13 Q During the day I assume that prisoners are
14 allowed to go into, what was described to
15 me as the food service area?

16 A Yes.

17 Q And sit at the tables?

18 A Yes.

19 Q They're allowed obviously to go in and
20 watch TV---

21 A Yes.

22 Q ---and use the exercise stuff both inside
23 and outside?

24 A Yes, sir.

25 Q They're allowed to do this in groups. They

1 can have two people, three people or four
2 people, I noticed at those tables playing
3 games, is that correct?

4 A Yes.

5 Q I assume you can have group of people
6 watching TV at any one time?

7 A Yes.

8 Q Or playing basketball?

9 A Yes.

10 Q As far as the eating is concerned, does all
11 food have to be consumed in that area?

12 A Yes.

13 Q So they're not allowed to heat up
14 commissary items and go back to their cell
15 with it?

16 A The commissary items, yes, but not food
17 service items that are supplied to them.

18 Q Are there some food items from commissary
19 like popcorn or something like that?

20 A Yes.

21 Q Are they allowed to pop it in the microwave
22 and then take it out of the food service
23 area?

24 A Yes.

25 Q But they can't take the food that they are

1 served for breakfast, lunch and dinner out
2 of that area?

3 A Correct.

4 Q You're aware that this case concerns the
5 issue of congregate prayer for Muslim
6 prisoners?

7 A Yes, sir.

8 Q Are there general restrictions on group
9 activities imposed on the prisoners in CMU?

10 WITNESS: "Group activities" sir? I
11 don't understand the question.

12 MR. FALK: Okay, good point.

13 Q They can sit around and play cards
14 together, and they can watch TV together. I
15 assume they can sit around and talk
16 together as long as they're speaking in
17 English, is that correct?

18 A Yes.

19 Q Are there any restrictions on how many
20 people can watch TV at one time for
21 instance?

22 A No.

23 Q Or how many people can talk in the common
24 area at one time?

25 A No, not as long as their activities aren't

1 related to an educational activity that's
2 over that TV.

3 Q I'm sorry?

4 A There are educational activities that come
5 over that TV as well.

6 Q If there are, then that is restricted to
7 the people who are in that educational
8 program, is that right?

9 A Yes.

10 Q But there are no restrictions on the size
11 of the educational program I assume?

12 A No, not that I'm aware of.

13 Q Going outside, any limits on how many
14 people can play basketball or watch at the
15 same time?

16 A No.

17 MR. FALK: Go off the record for one
18 second.

19 OFF THE RECORD:

20 (OFF THE RECORD DISCUSSION)

21 Q We were off the record discussing basic
22 demographic information about the CMU,
23 population information. It's my
24 understanding that there are fifty-five
25 cells in the CMU, is that correct?

1 A I believe so, yes.

2 Q Given that some of them are reserved for
3 segregation, and given that some of them
4 could be double celled means that the
5 population could be as much as 110?

6 A A hundred and ten to one hundred eleven,
7 yes, sir.

8 Q Since they are single celled and given the
9 constraints that the CMU is operating
10 under, the unit is not to have more than
11 fifty prisoners on it, is that correct?

12 A Yes.

13 Q At the current time today how many
14 prisoners are there?

15 A I believe there are forty-one.

16 Q Are any of these in segregation?

17 A Two, I believe.

18 Q The segregation is a short term
19 segregation?

20 A Yes, sir.

21 Q So these are people who will be going back
22 into the general population on CMU, is that
23 correct?

24 A Yes, sir.

25 Q You recently signed an affidavit which was

1 filed in court. I'll not make it an
2 exhibit. It was signed yesterday. At that
3 point in time there were twenty-four
4 prisoners who identified their religious
5 affiliation as Muslim?

6 A Correct.

7 Q The identification is a self-identification
8 that the prisoners make when they enter
9 BOP?

10 A Correct.

11 Q So somewhere there's a record where these
12 twenty-four said that they are Muslim, is
13 that correct?

14 A Correct.

15 Q I assume that number is the same today, if
16 you know?

17 A I believe it would be the same today. I
18 have not heard of any changes.

19 Q I asked in the Deposition Notice for just
20 some historical information about the
21 number of Muslim prisoners on certain dates
22 in the past, do you know that information?

23 A No, sir, I do not have that.

24 Q If I wanted to know how many were there on
25 January 1st, 2008, or January 1st, 2009, is

1 there a way of knowing that other than
2 going back and seeing the roster of
3 prisoners on that date, and then going
4 through their packets and seeing how they
5 identified themselves?

6 A That would be the way to do it, sir.

7 Q What sort of prisoners do you have on CMU
8 in terms of prisoners coming in and out?

9 A Very low.

10 Q What does that mean, "very low?"

11 A Possibly, one to two a month.

12 Q Coming and going?

13 A Yes.

14 Q From its inception, is it fair to say that
15 a majority of CMU prisoners have identified
16 themselves as Muslim?

17 A I'm not aware of the history of that sir,
18 no.

19 Q How long have you been aware of the history
20 of the CMU in terms of the religious
21 affiliations of its prisoners?

22 A August 2nd of 2009.

23 Q Since then it's fair to say that a majority
24 have been Muslims, is that correct?

25 A That is fair to say.

1 Q Currently you have twenty-four out of
2 forty-one?

3 A Correct.

4 Q Is that roughly what it's been in terms of
5 percentage?

6 A I cannot give you a rough estimate on that
7 sir.

8 Q I'm showing you what's been marked as
9 Exhibit 4, can you identify that document?

10 A That is the Program Statement for Federal
11 Bureau of Prisons, Program Statement No.
12 5360.09, which was authored on 12/31/2004.
13 Religious beliefs and practices is the
14 subject.

15 Q As I understand the way Program Statements
16 work, the parts of the Program Statement
17 that are in bold are actually verbatim
18 quotes from the Code of Federal
19 Regulations, is that correct?

20 A Correct.

21 Q They contain the actual citation, for
22 instance on Exhibit 5, page 1, it starts
23 off with Section 548.10. That is actually a
24 quote from the Code of Federal Regulation
25 book which deals with the Bureau of Prison

1 Section 548.10, is that correct?

2 A I believe so, yes.

3 Q Below that in the items which are not in
4 bold, that is the actual Program Statement
5 from the BOP?

6 A Correct.

7 Q This case as you know, concerns the ability
8 of the Muslim prisoners within the CMU to
9 engage in congregate daily prayer. Do you
10 understand that?

11 A Yes.

12 Q Is there any part of Exhibit 4 that you are
13 aware of that bears directly on the issue
14 of Muslim prisoners within CMU having
15 congregate daily prayer?

16 A Specifically, no.

17 Q These are sort of general guidelines
18 through the BOP?

19 A Yes.

20 Q We previously talked about Exhibits 2 and
21 3, which are the supplements for CMU, is
22 that correct?

23 A Correct.

24 Q Those two documents, the older one being
25 the current, do those documents have any

1 specific directions concerning congregate
2 prayer for Muslim prisoners within the CMU?

3 A As I review the document, no.

4 Q It appears to me, and correct me if I'm
5 wrong, concerning Exhibit 3, the Program
6 Supplement, the only reference to religion
7 is on page 4, paragraph 5(f), is that
8 correct?

9 A Correct.

10 Q Which would indicate that the religious
11 services are provided on the unit of
12 course.

13 A Yes.

14 Q And all communications will be monitored?

15 A Correct.

16 Q Referring back to Exhibit 4, the Program
17 Statement on Religious Beliefs and
18 Practices, I note that on page 21,
19 paragraph 20 there at the top it says,
20 "Each institution will develop an
21 institution supplement for operating
22 religious programs and activities." Do you
23 see that?

24 A Yes, sir.

25 Q Is there any one for the CMU other than the

1 institution supplement which is Exhibit 3?

2 A No, sir.

3 Q Again, referring to Exhibit 4 on page 9,
4 towards the bottom it's quotes from what
5 we've established is the CFR Code of
6 Federal Regulations that institutions shall
7 have space designated for the conduct of
8 religious activities.

9 A Correct.

10 Q Do you see that?

11 A Yes, sir.

12 Q There is no chapel in the CMU, is that
13 correct?

14 A Correct.

15 Q It's my understanding that religious
16 services take place in what the prisoners
17 have told me, and I think what someone
18 described to me during my tour as one of
19 the multi-purpose rooms, is that correct?

20 A Correct.

21 Q Specifically it the multi-purpose room that
22 is also used for educational activities?

23 A Correct.

24 Q If I could describe this room for the
25 record, it is a room that has a mesh door

1 and a mesh barrier between it, and the
2 hallway so you can see into the room, is
3 that correct?

4 A Correct.

5 Q At the far end of the room there is a
6 locked area where it looks like there are
7 supplies stored?

8 A Correct.

9 Q The room itself I measured to be about 19
10 by 11 feet. Do you have any idea if that's
11 correct?

12 A I have no idea if that's correct or not
13 sir.

14 MR. FALK: I just walked it off.

15 Q There is a TV in it, is that correct?

16 A Correct.

17 Q And maybe a piece of exercise equipment?

18 A I'm not familiar with that sir.

19 Q That room is for available for various
20 things?

21 A Correct, multi-purpose.

22 MR. FALK: Good point.

23 Q Including religious services?

24 A Correct.

25 Q Exhibit 4, page 7, indicates that

1 ordinarily all inmates except those in the
2 SHU have access to regularly scheduled
3 congregate services. Do you see that?

4 A Yes. I see the quote there, yes.

5 Q The SHU stands for Secured Housing Unit, is
6 that correct?

7 A Special Housing Unit.

8 MR. FALK: Thank you.

9 Q CMU is not a SHU, is that correct?

10 A No, it is not.

11 Q Therefore, as applied to the CMU prisoners
12 they have access according to Exhibit 4 to
13 regularly scheduled congregate religious
14 services, is that correct?

15 A Correct.

16 Q There is a chapel for other prisoners
17 within FCI Terre Haute, is that correct?

18 A Yes.

19 Q But not for the CMU prisoners because it's
20 a self-contained unit.

21 A Yes.

22 Q At the current time what religious services
23 are being held within the multi-purpose
24 room on the CMU?

25 A I do not have a full list of that sir.

1 Q There is a regular Friday Juma Service for
2 the Muslim prisoners, is that correct?

3 A That is what I understand, yes.

4 Q Are there services for Christians?

5 A Yes.

6 Q Those are on Sunday, I assume?

7 A I don't know what the schedule is on that
8 sir.

9 Q Once a week, or do you know how frequently?

10 A Once a week.

11 Q Are there any other religious services that
12 you're aware of at the current time?

13 A Not that I'm aware of sir.

14 Q Is there a chaplain with the CMU?

15 WITNESS: Assigned specifically there?

16 MR. FALK: Yes, sir.

17 A No.

18 Q There is a chaplain, at least one for FCI
19 Terre Haute, is that correct?

20 A Yes.

21 Q Does he or she have duties regarding the
22 prisoners in the CMU?

23 A Yes.

24 Q What are those duties?

25 A Those duties are to answer religious

1 questions and to provide religious services
2 to them.

3 Q To all of the prisoners who are the same
4 denomination and affiliation as the
5 chaplain?

6 A They work as non-denominational several
7 times where they will do research and get
8 information for any religious practice that
9 they have.

10 Q Speaking specifically of the Muslim
11 prisoners within CMU, who are their
12 services led by?

13 A I believe they have a contract Imam, or a
14 contract religious supervisor that comes
15 in.

16 Q He does not come in every week though, is
17 that correct?

18 A I'm not aware of the schedule sir.

19 Q Are you aware of whether any of the prison
20 services are self led for the Muslim
21 prisoners?

22 A They shouldn't be self led. They are
23 supposed to be supervised by a staff
24 member.

25 Q There's a difference between supervision

1 and leading. Are they allowed---

2 MR. FALK: Let's go off the record for a
3 second.

4 OFF THE RECORD:

5 (OFF THE RECORD DISCUSSION)

6 Q Off the record we had a conversation
7 concerning the frequency with which the
8 Imam will come into the CMU to lead
9 services, and I believe you indicated you
10 did not know how frequently he would visit?

11 A Correct.

12 OFF THE RECORD:

13 (OFF THE RECORD DISCUSSION)

14 Q The Muslim prisoners are given the
15 opportunity to go into the multi-purpose
16 room for congregate services once a week
17 for their Friday Juma service, is that
18 correct?

19 A Correct.

20 Q It's my understanding there are both
21 cameras and listening devices within the
22 multi-purpose room, is that correct?

23 A I can't answer that question sir.

24 MR. FALK: Back off the record.

25 OFF THE RECORD:

1 (OFF THE RECORD DISCUSSION)

2 Q I took a tour before the deposition of the
3 CMU, and it appears that there are visible
4 monitoring devices both in the multi-
5 purpose room which is used for religious
6 activities and in the hallway immediately
7 outside, is that correct?

8 A Yes.

9 Q Whenever prisoners are within the multi-
10 purpose room or in some group activity such
11 as recreation outside or eating, I assume
12 that there are staff always present?

13 A Yes.

14 Q During the religious services themselves
15 are the guards within that multi-purpose
16 room, or are they standing or sitting
17 outside looking through the mesh door?

18 A They would be in direct visual and audio
19 contact.

20 Q It is a multi-purpose room obviously. You
21 know it's being used at least on Sundays
22 for a Christian religious service and
23 Friday for the Juma service. How long is
24 the Juma service, do you know?

25 A No, sir, I do not.

1 Q Is the room for educational programs?

2 A Yes.

3 Q Do you know how frequently it's used?

4 A I do not have the schedule of the
5 educational programing, no, sir. It would
6 be used on a daily basis.

7 Q Is it used for anything else other than the
8 educational program?

9 A Education and recreation. I believe there
10 may be some type of hobby/craft activities
11 that come over the TV in there.

12 Q Somewhere there is a schedule, and if I
13 wanted to know this week how the multi-
14 purpose room is being used I could access
15 the schedule?

16 A Correct.

17 Q Without looking at the schedule can you
18 tell me the period of time the room is not
19 being used, as well as the period of time
20 it is being used?

21 A I'm not going to make the assumption that
22 it's not being used at non-scheduled times.

23 Q Although of course it's open. I saw someone
24 in there just doing something as we walked
25 through.

1 A Correct.

2 Q The Juma services are on Friday, is that
3 correct?

4 A Yes.

5 Q Are you aware of when it is?

6 A No, sir.

7 Q All Muslim prisoners are allowed to attend
8 except I assume those who are in
9 segregation, is that correct?

10 A Correct.

11 Q Are you aware of the rate of attendance
12 among the prisoners?

13 A No, sir.

14 Q Is attendance kept of some sort? Is their
15 movement recorded?

16 A I couldn't give you an answer to that sir,
17 no.

18 Q I believe Exhibit 4 indicates that
19 prisoners are allowed to pray in languages
20 other than English during religious
21 services, but any sermons or comments have
22 to be in English, is that correct?

23 WITNESS: Where would you find that at
24 sir?

25 MR. FALK: Let's go off the record. I'll

1 have to look.

2 OFF THE RECORD:

3 (OFF THE RECORD DISCUSSION)

4 MR. FALK: Let me strike the last
5 question just to save us time.

6 Q Exhibit 4 will govern how prisoners can
7 pray in languages other than English, is
8 that correct?

9 A Correct.

10 Q Therefore, you will follow in the CMU what
11 Exhibit 4 says in terms of the use of non-
12 English during the course of religious
13 services?

14 A Correct.

15 Q You indicated already that during the
16 services correctional officers will be
17 present in the sense that they will be on
18 the scene and have visual and audio contact
19 with the prisoners?

20 A Correct.

21 Q Which may either be in or outside of the
22 room?

23 A Yes.

24 Q Are you aware of the current staffing
25 pattern?

1 WITNESS: On?

2 Q For the correctional officers on CMU?

3 A Briefly, yes.

4 Q Can you tell me what that is in terms of
5 the number of people there on the floor at
6 any one time?

7 A We have one SIS tech.

8 Q What does that mean?

9 A Special investigative services tech, or
10 special investigative supervisor tech. Two
11 officers. One case manager. One officer in
12 the control bubble.

13 Q On the floor at any one time there are two
14 officers circulating I assume?

15 A Yes.

16 Q This staffing pattern is that 24/7 or are
17 you giving me the day pattern?

18 A No, it would be the day pattern.

19 Q How many shifts do you run?

20 A We have three shifts.

21 Q So there is day, evening, night?

22 A Yes.

23 Q Day is from when to when?

24 A Roughly 8:00 a.m. to 4:00 p.m.

25 Q Then 4:00 to 12:00?

- 1 A 4:00 to midnight, yes.
- 2 Q Does the staffing pattern change?
- 3 A I believe the SIS tech and the case manager
4 is gone.
- 5 Q The nighshift from midnight to 8:00 a.m.,
6 the the same, two officers and one in the
7 bubble?
- 8 A Yes, I believe that's it.
- 9 Q The SIS tech, is he or she involved in
10 supervision or are they working on other
11 things?
- 12 A They are both. They are involved in
13 supervision questions to the inmates and
14 also in monitoring incoming and outgoing
15 communication.
- 16 Q The case manager, what is his or her role
17 as opposed to the officer's roles?
- 18 A They help in management of files, making
19 copies, providing legal documents, file
20 information and sentencing information.
- 21 Q Are you aware that some Muslims will engage
22 in daily prayer five times a day?
- 23 A Correct. Yes, I am.
- 24 Q How are you aware of this?
- 25 A Just through past practice or from my

1 experience working with inmates of that
2 affiliation.

3 Q Are you aware from past practice how long
4 these daily prayers take?

5 A No, sir.

6 Q Are you aware from your past affiliation
7 exactly what the prayers entail or what the
8 procedure entails?

9 A No, sir.

10 Q There are no documents that you are aware
11 of that specifically concern the ability or
12 inability of Muslim prisoners to pray daily
13 at CMU, is that correct?

14 WITNESS: Could you repeat that question
15 sir?

16 MR. FALK: I doubt it. Could you read
17 that back?

18 (COURT REPORTER PLAYS BACK QUESTION)

19 Q "There are no documents that you are aware
20 of that specifically concern the ability or
21 inability of Muslim prisoners to pray daily
22 at CMU, is that correct?"

23 WITNESS: You were asking ability or
24 inability, sir, authorization or non-
25 authorization?

1 MR. FALK: Right.

2 A No, sir, there are no documents. We go by
3 the Program Statement where they are
4 allowed the one congregate service. If they
5 prefer to pray on their own, their five
6 times a day we do not stop them. It is an
7 individual event.

8 Q The Program Statement you are referring to
9 is Exhibit 4, is that correct?

10 A Correct.

11 Q You interpret Exhibit 4, as saying that
12 prisoners are only allowed one congregate
13 religious opportunity a week, is that what
14 you said?

15 A That is led or authorized.

16 Q Can you show me where in Exhibit 4, it says
17 that?

18 MR. FALK: We can go off the record so
19 you can look for that.

20 OFF THE RECORD.

21 Q Did you find the portion of Exhibit 4, that
22 indicates that?

23 A Yes, sir. Again, Exhibit 4, which is
24 Program Statement 5360.09, page 3, section
25 7, paragraph a) reads: "The level of

1 scheduled activity is expected to be
2 commensurate with the institution's
3 mission/ need. Authorized congregate
4 services will be made available for all
5 inmates weekly with the exception of those
6 detained in Special Housing Units (SHUs).

7 Q Was there a time that you're aware of in
8 the CMU were allowed to engage in daily
9 prayers together?

10 A Through hearsay I did hear that they were
11 allowed at one time to do that.

12 Q That was before your time on the unit, is
13 that correct?

14 A Yes, sir.

15 Q Do you know where those prayers were
16 occurring?

17 A No, sir. The information I got wasn't that
18 specific.

19 Q Do you know who led those prayers?

20 A No, sir, I do not.

21 Q Do you know why they were discontinued?

22 A I believe there was a security emergency
23 and all inmates had to be placed back into
24 their cells for accountability purposes and
25 the inmates refused to interrupt their

1 prayer service and return to their cells.

2 Q This is from what other people on the unit
3 or other staff told you?

4 A Yes.

5 Q Obviously, these sort of security
6 emergencies where prisoners have to be put
7 back in their cells are not unusual in any
8 prison in an CMU, is that correct?

9 A Correct.

10 Q At the current time I assume if that
11 emergency happens and the prisoners are
12 playing basketball or what have you, they
13 are told to lock up and that's what they
14 are supposed to do?

15 A Yes, they are instructed to return to their
16 cells and all cell doors are secured.

17 Q It's your understanding from talking to
18 staff that there was an incident where the
19 prisoners refused to lock up while they
20 were doing the communal prayer, is that
21 correct?

22 A That is my understanding of the incident.

23 Q Are you aware that group prayer was allowed
24 in the CMU for a few days after the most
25 recent Ramadan?

1 A No, sir, I was not aware of that.

2 Q Are you aware of any prisoners within the
3 BOP system who are allowed to engage in
4 daily prayers with other prisoners?

5 A No, sir, I'm not aware of that.

6 Q At the current time, prisoners within the
7 CMU are not allowed to engage in daily
8 congregate prayer except for the once a
9 week Juma service, is that correct?

10 A Correct.

11 Q Why is that?

12 A Because of the intensiveness of staff and
13 staff supervision, the disruption of the
14 daily operation of the unit. As the program
15 states, "we tend to cater to the masses
16 rather than a select few throughout the
17 entire general population."

18 Q The prisoners are allowed to engage in
19 solitary daily prayer, is that correct?

20 A Correct.

21 Q Are you aware of whether prisoners within
22 the CMU do engage in this prayer?

23 A I'm not aware of that, no.

24 Q Do you know how the prisoners in CMU are
25 made aware of when it is time to engage in

1 that prayer during the day?

2 A I believe they would talk amongst
3 themselves. It's a scheduled religious
4 practice from what I understand.

5 Q Where do these individual prayers take
6 place, if you know?

7 A I do not know.

8 Q Is there any prohibition of them engaging
9 in an area outside of their cells that
10 you're aware of?

11 A If they were in a group that would be
12 considered a congregate.

13 Q But if some of them happen to be in the
14 exercise area, is there a problem with
15 engaging in prayer there?

16 A If they were not interfering with that
17 operation or the use of that exercise area.
18 If other people wanted to use that they
19 would have to leave that area.

20 Q The prohibition on congregate worship would
21 apply to two prisoners worshiping together,
22 is that correct?

23 A That would be considered congregate, yes.

24 Q We discussed that certainly prisoners
25 within CMU are allowed to be engaged in

1 many other type of congregate activities,
2 is that correct?

3 A No, sir.

4 Q They're allowed to have recreation
5 together, is that correct?

6 A Yes, sir, but that is not a congregate
7 activity.

8 Q Maybe I'm using the wrong definition. What
9 is a "congregate activity?"

10 A My understanding of a congregate activity
11 has a religious basis.

12 MR. FALK: Then congregate is the wrong
13 word.

14 Q They are allowed to be in groups talking,
15 watching TV, recreating, playing games,
16 that sort of stuff correct?

17 A Correct, just as we are in the other
18 general populations within the FCI.

19 Q I think you testified earlier and correct
20 me if I'm wrong, that at the current time
21 there's no restriction on how many people
22 can engage in that sort of group activity,
23 playing basketball or watching TV, talking
24 about current events that sort of stuff is
25 there?

1 A No, sir.

2 Q There is no restriction?

3 A No.

4 Q When prisoners on the CMU engage in that
5 sort of group activity such as everyone
6 watching a sporting event on TV, or lots of
7 people outside playing basketball, is there
8 always a guard physically there or do you
9 rely on whatever sort of monitoring you
10 have electronically as well?

11 WITNESS: In just the CMU sir, or
12 throughout?

13 MR. FALK: No, in the CMU.

14 A In the CMU we have guards that rotate
15 through and they do schedule in on
16 scheduled grounds.

17 Q If I'm a CMU prisoner, and I'm out playing
18 basketball in a group and there's another
19 group out there watching, there may be a
20 guard out there rotating through or there
21 may not be, is that correct?

22 A Yes, they will be doing scheduled irregular
23 rounds.

24 Q The same, if there's a group in the multi-
25 purpose room in an educational program

1 watching the closed circuit TV, the guard
2 may be there or the guard may be rotating
3 in and out correct?

4 A Correct.

5 Q But they're under supervision of one sort
6 or another at all times?

7 A Correct.

8 Q I'm showing you what has been marked as
9 Exhibit 5.

10 A Yes, sir.

11 Q Are you aware of this document?

12 A Yes, sir, I am.

13 Q What is it?

14 A The document you've just handed me is
15 Program Statement 5270.7 authored on
16 12/29/1987, Inmate Discipline in Special
17 Housing Units.

18 Q I'm giving you this document because your
19 attorney has noted that it has some
20 relevance to this litigation, or at least
21 to the practice of congregate religious
22 practices on the CMU. I just have a couple
23 of questions if that's okay.

24 A Yes.

25 Q The CMU is not a special housing unit, is

1 that correct?

2 A Correct.

3 Q The CMU is not a disciplinary placement, is
4 that correct?

5 A Correct.

6 Q Nor is it an administrative segregation
7 placement, is that correct?

8 A Correct.

9 Q Are you aware of anything in Exhibit 6 that
10 has any bearing on the question of
11 congregate daily prayer for Muslim
12 prisoners within the CMU?

13 A I'm not aware of that, no.

14 Q Are you aware that any other documents
15 aside from individual grievances that might
16 have been filed that concerned the
17 terminations that Muslim prisoners within
18 the CMU cannot engage in congregate daily
19 worship?

20 A No, sir.

21 Q Aside from the schedule which I will ask
22 your attorney to provide me concerning the
23 usage of the multi-purpose room, are there
24 any other documents concerning the usage of
25 that room that you are aware of?

1 A Not to my knowledge, no.

2 MR. FALK: Could we go off the record
3 please.

4 OFF THE RECORD:

5 (OFF THE RECORD DISCUSSION)

6 Q We discussed the fact that Exhibit 4
7 discussed the once a week congregate
8 prayer, is that correct?

9 A It discusses a once a week religious
10 service.

11 Q Are you aware of other BOP facilities that
12 allow, besides the once a week service,
13 other meetings throughout the week for
14 religious study or religious practices?

15 A I am not aware of other institutions
16 policies or practices at this point.

17 Q You're not aware either way, is that
18 correct?

19 A Correct.

20 Q Are there specific concerns about security
21 or otherwise concerning the CMU prisoners
22 meeting together for congregate prayer that
23 are not present when they're meeting
24 together for group basketball, or group
25 discussions, or group TV watching or the

1 other activities they do in groups?

2 A There is always a concern when you have a
3 group of the same affiliation discussing
4 things specific to that affiliation,
5 whether it be continuing criminal
6 enterprises and other attempts and
7 nefarious actions. There's always a threat
8 of that no matter what group it is.

9 Q Who would know the practices at the BOP
10 concerning group meetings for religious
11 purposes? For instance, in the Indiana
12 Department of Correction, I know because I
13 do litigation there, and I know their
14 policies. Each religion is entitled to, for
15 instance meeting at least once a week for
16 services and also once a week for study.
17 Who would know what the practices at the
18 BOP with regard to that?

19 A There are three different levels that you
20 could look at. For the institution
21 specifically you could ask the head
22 chaplain. There is also a Regional
23 Religious Services Administrator. There is
24 also a Central Office Religious Services
25 Administrator.

1 Q You actually have no knowledge of what
2 other facilities are doing?

3 A No, sir.

4 Q The previous job you had within the BOP was
5 in Florence, is that correct?

6 A Correct.

7 Q Was that at the super max?

8 A It was the entire complex. I was over the
9 entire complex as the Chief of Correctional
10 Supervisors.

11 Q Did you have any knowledge of the religious
12 practices throughout that facility?

13 A Some of all three facilities, yes. It was
14 very limited. I was very specific in my
15 task to correctional services and security
16 issues.

17 Q If I was to ask you about that facility,
18 how frequently prisoners were allowed to
19 meet for religious purposes would you have
20 that knowledge?

21 A No, sir, not at this point. It's been
22 several months since I dealt with that
23 specifically.

24 Q Do you have a recollection of what it was
25 at that facility?

1 A No. I would feel uncomfortable in giving
2 you that recollection.

3 MR. FALK: Perfectly fine. I have no
4 further questions.

5 MR. KIEPER: Mr. Church, just a few.

6 CROSS EXAMINATION:

7 QUESTIONS BY MR. THOMAS E. KIEPER:

8 Q We've talked back and forth throughout the
9 questions between CMU inmates and some
10 questions have been directed more
11 generally. For purposes of the religious
12 practices and group activity restrictions
13 that apply to the CMU, are there any
14 differences between those restrictions and
15 regulations that are unique to the CMU, or
16 are they the same throughout all general
17 housing population?

18 A They run the same throughout all the other
19 general population.

20 Q Is it important from a correctional
21 standpoint that there be some uniformity in
22 how those regulations are applied through
23 various housing units?

24 A Yes, sir, very important.

25 Q Why is that?

1 A It goes to the saying of being firm, fair
2 and consistent throughout. One group is not
3 treated with any more benefit or one inmate
4 is not treated with any more benefit than
5 the other. That shows the commonality
6 amongst the inmate population.

7 Q I would like to ask you to take a look at
8 Exhibit 3. That is the current institution
9 supplement dealing with the CMU, is that
10 correct?

11 A Correct.

12 Q At one point you were asked, I believe if
13 there were any particular references to the
14 restrictions on congregate group prayer
15 contained within that institution
16 supplement. Do you generally remember that
17 discussion?

18 A Yes, I do generally.

19 Q Directing your attention specifically to
20 paragraph f). That is a paragraph that
21 references religious services and you
22 discussed that with Mr. Fulk in your
23 questions and answers correct?

24 A Yes.

25 Q That particular paragraph does indicate

1 that the religious services are subject to
2 specific communication needs and so forth
3 as set out in section 3 of that institution
4 supplement correct?

5 A That is what the paragraph says, yes.

6 Q So there would be a potential impact on
7 religious practices geared to the
8 communication monitoring mission correct?

9 A Yes, sir.

10 Q You have talked about, in response to a
11 question, the fact that you had heard some
12 discussion about congregate prayers or
13 group prayers being allowed on a daily
14 basis in the CMU. Do you remember that
15 series of questions and answers?

16 A Yes, sir.

17 Q If I remember correctly, I think you had
18 indicated that the CMU had previously
19 allowed those inmates to meet as a group
20 for those daily prayer opportunities. Is
21 that a fair recollection of your answer?

22 A That was a fair recollection. I don't know
23 if it was something that was written as
24 allowed or something that was done without
25 any intervention.

1 Q That's where my question is headed, are
2 activities by general population or CMU
3 inmates that is not stopped or interfered
4 with by correctional staff, necessarily
5 program or authorized activity?

6 WITNESS: Could you repeat that sir, I'm
7 sorry.

8 MR. FALK: Strike that, and let me see
9 if I can't rephrase it more properly.

10 Q Is there a difference between authorized
11 group activities in a prison environment
12 versus inmates gathering in a group without
13 interference by staff?

14 A Yes.

15 Q How would you differentiate or describe
16 those two different events?

17 A How I would do that is, if it was one
18 single group of one single affiliation
19 having a gathering and talking that was
20 unscheduled, or if they met at a certain
21 time in a certain area where they were
22 allowed and were not causing a disruption
23 and it was not stated that this is
24 specifically for what this time is. As long
25 as the orderly running of the institution

1 was there, all people are able to be
2 involved in it if people could come and go,
3 and the officers could interject and they
4 were still paying attention to rules. That
5 would be something that we wouldn't
6 interfere with as long as the orderly
7 running of the institution was there.

8 WITNESS: Do I make myself clear on
9 that?

10 MR. KIEPER: Yes.

11 WITNESS: Yes, thank you.

12 Q The definition of congregate and group
13 became a little unsettled in some of the
14 question, and you indicated that you
15 considered congregate to be more or less
16 defined as two or more inmates. Do you
17 recall that series of questions?

18 A Yes, I do, and I do not believe I said
19 "congregate" was a group of two or more
20 inmates. I believe I said "congregate" had
21 a connotation of a religious atmosphere
22 that is added into the group. A group would
23 be more than two inmates.

24 Q The fact that a group of inmates during
25 recreation were playing basketball or

1 volleyball, you would not consider that a
2 congregate activity?

3 A No, sir, I would not.

4 Q You were asked a question about Exhibit 5,
5 and whether or not there were any relevance
6 to that Exhibit 5, to the issue of group or
7 congregate prayer and you answered that you
8 were not aware of any. During the break I
9 had asked you to take a look at Exhibit 5
10 in the context of discipline related to
11 unauthorized group activity. Did you do
12 that?

13 A Yes, sir, I did.

14 Q At page 11 of Exhibit 5, as far as a
15 prohibited act defined as code 315,
16 Participating in an Unauthorized Meeting or
17 Gathering. Do you have that document in
18 front of you?

19 A Yes.

20 Q Is that a correct statement?

21 A That is a correct statement. I believe I
22 misunderstood the question that it referred
23 specifically to prayer. If it is an
24 unauthorized congregate visit that would
25 all be under that category of participating

1 in an unauthorized meeting or gathering.

2 Q So inmates that are participating in
3 unauthorized group activities, or meetings
4 or gatherings would be subject to
5 discipline under this particular policy, is
6 that correct?

7 A Correct.

8 MR. KIEPER: That's all I have. Thank
9 you.

10 RE-DIRECT EXAMINATION:

11 QUESTIONS BY MR. KENNETH J. FALK:

12 Q You are not aware of whether any
13 institutions within the BOP allow Muslim
14 prisoners to engage in daily prayer
15 together, is that correct?

16 A As I've stated before, yes, sir.

17 Q It's possible of course, that someone might
18 interpret the prohibition in Exhibit 5 on
19 page 3, concerning congregate services not
20 to include persons getting together to
21 pray, is that correct, as opposed to having
22 a formal service?

23 A In reference to your question sir, you're
24 asking me about possibilities and
25 probabilities. I can only state the facts

1 of what we do at this institution.

2 Q So you are not aware of any interpretation
3 of the meaning of congregate service as you
4 are on page 4 of Exhibit 4, is that
5 correct?

6 A Correct.

7 MR. FALK: I have no further questions.

8 RE-CROSS EXAMINATION:

9 QUESTIONS BY MR. THOMAS E. KIEPER:

10 Q The Program Statement 5360.09, deposition
11 Exhibit 4 at page 3, paragraph (a), does
12 provide for the warden's discretion for
13 limitations on scheduled activities
14 commensurate with the institutions mission
15 or needs correct?

16 A Correct.

17 Q In that sense there would be, or could be
18 differences between various institutions in
19 how these regulations are imposed on the
20 population, is that correct?

21 A If you're asking if wardens have different
22 discretions, yes.

23 Q The program accounts for different needs of
24 different institutions based upon the
25 mission of the institution correct?

1
2
3
4
5
6

A Correct.

MR. KIEPER: That's all.

MR. FALK: I have nothing further.

A handwritten signature in cursive script, appearing to read "Harvey G. Church", is written over a horizontal dashed line.

HARVEY G. CHURCH

STATE OF INDIANA)
COUNTY OF SULLIVAN)

I, Karen C. Wilson, a notary public in and for the State of Indiana, do hereby certify that HARVEY G. CHURCH, the deponent herein was by me first sworn to tell the truth, the whole truth and nothing but the truth, in a cause presently pending in the United States District Court for the Southern Division of Indiana, Terre Haute Division, wherein Enaam Arnaout is plaintiff and Warden, Federal Correctional Institution, Terre Haute, Indiana are defendants. That the deposition was taken on behalf of the plaintiff in the above cause of action at the Administration Building, Federal Correctional Institution, Terre Haute, Vigo County, Indiana, on the 23rd day of December, 2009, at approximately 9:30 o'clock a.m.; that said deposition was taken down by means of recording and afterwards reduced to typewriting by me; that the deposition was delivered to the deponent for review and signature, and was returned to me with signature affixed to the deponent's signature line; that the plaintiff was not present in person but was represented by counsel, Mr. Kenneth J. Falk; that the defendants were not present in person but were represented by counsel, Mr. Thomas E. Kieper.

I also certify that I am a disinterested person in this action, that I am not a relative or attorney of any party, or otherwise interested in the event of this action, and am not in the employ of the attorneys for the respective parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 17th day of August, 2010.

Karen C. Wilson
KAREN C. WILSON, NOTARY PUBLIC
SULLIVAN COUNTY, INDIANA

My commission expires: September 7, 2015

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ENAAM ARNAOUT, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 WARDEN, FEDERAL CORRECTIONAL)
 INSTITUTION, TERRE HAUTE,)
 INDIANA,)
)
 Defendant.)

No. 2:09-cv-215 LJM-WGH

Notice of Deposition

The deposition of the Warden of the Federal Correctional Institution, Terre Haute, Indiana ("Warden"), shall be taken on the 23rd day of December, 2009 beginning at 9:30 a.m. The deposition will be taken in the Administration Building of the Federal Correctional Institution, Terre Haute, Indiana.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure the Warden shall designate one or more employees, officers, agents, or other persons to testify on his behalf at the deposition as to the following matters.

1. The number of prisoners currently confined to the Communications Management Unit at the Federal Correctional Institution, Terre Haute, Indiana ("CMU").
2. The number of Muslim prisoners currently confined to the CMU.
3. The number of Muslim prisoners confined to the CMU on:
 - January 1, 2008
 - January 1, 2009
4. The capacity of the CMU.
5. The frequency with which prisoners enter and leave the CMU.
6. Whether prisoners confined to the CMU are allowed out of their cells during the day and, if so:



- a. The times of day the prisoners are allowed out of their cells.
 - b. The areas where prisoners are allowed to go during the day.
 - c. Whether prisoners are allowed to gather to engage in group conversations or other group activities while they are out of their cells and whether there are any restrictions imposed on the prisoners concerning such group conversations or group activities.
7. Whether there is a multi-purpose room in the CMU and if so the use to which that room is put on a daily basis.
8. Where do the weekly Jum'ah prayers take place in the CMU and who are present for such prayers.
9. Whether there are cameras and/or listening devices within the CMU so as to observe the prisoners and what such devices are in the CMU's multi-purpose room.
10. Whether Muslim prisoners in the CMU have ever been allowed to engage in their daily prayers (with the exception of the Jum'ah prayer) in a group or groups, as opposed to individually and, if so:
- a. When such congregate worship was allowed.
 - b. Where did such congregate worship occur within the CMU,
 - c. When was such congregate worship discontinued.
 - d. The reasons the congregate worship ceased.
 - e. The person(s) who determined that congregate worship should cease.
11. All reasons why Muslim prisoners confined in the CMU are not allowed to meet together for the daily prayers at the current time.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, please bring with you to the deposition the following documents:

- a. The Bureau of Prisons' Program Statement concerning Religious Beliefs and Practices.
- b. The Bureau of Prisons' Program Statement concerning Inmate Discipline and Special Housing Units.

c. Any other Bureau of Prisons' Program Statements that allow for the determination that Muslim prisoners within the CMU may not worship together for the daily prayers celebrated in Islam.

d. Any Institution Supplement(s) issued by the Warden or others at the Federal Correctional Institution, Terre Haute, that concern the congregate or solitary worship of Muslim prisoners within the CMU.

e. Any other documents (with the exception of responses to individual prisoners' grievances) that concern:

-the determination that Muslim prisoners within the CMU may not worship together for the daily prayers celebrated in Islam

-the congregate or solitary worship of Muslim prisoners within the CMU

-the use of the multi-purpose room located in the CMU

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Attorney for Plaintiffs

Certificate of Service

I certify that a copy of the foregoing was served on the below named person(s) by first class U.S. Postage, pre-paid, and via e-mail, on this 3rd day of December, 2009.

Thomas E. Kieper
Assistant United States Attorney
Office of the United States Attorney
10 W. Market Street – Suite 2100
Indianapolis, IN 46204
tom.kieper@usdoj.gov

Kenneth J. Falk
Attorney at Law



U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: CPD/RSB
NUMBER: P5360.09
DATE: 12/31/2004
SUBJECT: Religious Beliefs and Practices

1. PURPOSE AND SCOPE §548.10. (a) The Bureau of Prisons provides inmates of all faith groups with reasonable and equitable opportunities to pursue religious beliefs and practices, within the constraints of budgetary limitations and consistent with the security and orderly running of the institution and the Bureau of Prisons.]

2. SUMMARY OF CHANGES

- The use and type of religious headwear and religious garments are delineated;
- Due dates for the annual report have been changed;
- Some of the implementing text has been moved under appropriate rules language sections;
- The religious diet accommodation for the certified food component has been modified;
- The credentials required for religious contracts and volunteers have been clarified. The required forms have been developed;
- Any religious group whose doctrine, rituals or practices espouse domestic and/or foreign terrorism, or advocates any type of violence will not be authorized to meet;
- Staff supervision requirements for inmate religious programs is delineated;
- Language requirements used in religious programming is defined;
- The unauthorized religious practices are expanded to include language or behaviors that could be reasonably construed as a threat to safety, security, or orderly running of the institution; and,
- The Ceremonial Meal Equity Formula Threshold is modified.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. Religious accommodations will be made for all religions authorized to meet in Bureau of Prisons facilities.



b. The religious rights of inmates of all faiths will be protected within the parameters of the security and orderly running of the institution.

c. Religious resources will be equitably distributed for the benefit of all inmates.

d. Pastoral care will be available to inmates and staff.

e. Expertise on matters of religion in the correctional environment will be available for staff.

[Rules - Bracketed Bold]

Implementing Text - Regular Type

4. DIRECTIVES AFFECTED

a. Directive Rescinded

P5360.08 Religious Beliefs and Practices (5/25/01)

b. Directives Referenced

P1350.02 Donations, Acceptance of (6/29/98)
P3420.09 Standards of Employee Conduct (2/5/99)
P3939.07 Chaplains, Employment, Responsibilities and Endorsements (10/26/01)
P4510.05 Inmate Contributions (1/26/99)
P4761.04 Special Foods or Meals From Outside Sources Introduced into Institutions (4/22/96)
P5264.07 Telephone Regulations for Inmates (1/31/02)
P5266.10 Incoming Publications (1/10/03)
P5267.07 Visiting Regulations (4/14/03)
P5280.08 Furloughs (2/4/98)
P5300.20 Volunteers and Citizens Participation Programs Manual (6/1/99)
P5326.04 Marriages of Inmates (12/17/98)
P5500.11 Correctional Services Manual (10/10/03)
P5500.12 Correctional Services Procedures Manual (10/10/03)
P5538.04 Escorted Trips (12/23/96)
P5553.06 Escapes/Death Notification (8/23/99)
P5580.06 Personal Property, Inmate (7/19/99)
P5800.12 Receiving and Discharge Manual (12/31/97)

T5303.01 Ministry of the Bureau Chaplains (6/1/95)
T5360.01 Practical Guidelines for Administration of Inmate Religious Beliefs and Practices (3/27/02)

c. Rules cited in this Program Statement are contained in 28 CFR §548.10-20 and 28 CFR §540.48.

5. STANDARDS REFERENCED

a. American Correctional Association Standards for Adult Correctional Institutions 3rd Edition: 3-4261, 3-4265, 3-4274, 3-4300, 3-4301, 3-4374, 3-4375, 3-4387, 3-4454, 3-4455, 3-4456, 3-4457, 3-4458, 3-4459, 3-4460, 3-4461, 3-4462, and 3-4463

b. American Correctional Association Standards for Adult Local Detention Facilities 3rd Edition: 3-ALDF-3D-24, 3-ALDF-3E-04, 3-ALDF-4C-07, 3-ALDF-4C-08, 3-ALDF-4E-44, 3-ALDF-4E-45, 3-ALDF-4F-04, 3-ALDF-5F-01, 3-ALDF-5F-02, 3-ALDF-5F-03, 3-ALDF-5F-04, 3-ALDF-5F-05, 3-ALDF-5F-06, 3-ALDF-5F-07, 3-ALDF-5F-09, and 3-ALDF-5F-10

c. American Correctional Association 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-5E-01

6. PRETRIAL, HOLDOVER, AND DETAINEE PROCEDURES. Procedures in this Program Statement apply to Pretrial, Holdover, and Detainee Centers. The exception to these procedures exists where building design prevents the maintenance of an outside worship area, including the sweat lodge (see Section 12.c. of this Program Statement).

7. RELIGIOUS OPPORTUNITIES AND LIMITATIONS §548.10 (b) [When considered necessary for the security or good order of the institution, the warden may limit attendance at or discontinue a religious activity. Opportunities for religious activities are open to the entire inmate population, without regard to race, color, nationality, or ordinarily, creed. The warden, after consulting with the institution chaplain, may limit participation in a particular religious activity or practice to the members of that religious group. Ordinarily, when the nature of the activity or practice (e.g., religious fasts, wearing of headwear, work proscription, ceremonial meals) indicates a need for such a limitation, only those inmates whose files reflect the pertinent religious preference will be included.]

a. **Religious Accommodation.** The level of scheduled activities is expected to be commensurate with the institution's mission/need. Authorized congregate services will be made available for all inmates weekly with the exception of those detained in any Special Housing Units (SHUs). If a state of emergency exists (e.g. fog, institution lock down, food strike), the warden or designee will determine the appropriate level of

chapel programming. Inmates may recite formulaic prayers in the language required by their religion. Sermons, original oratory, teachings and admonitions must be delivered in English. The warden may authorize the delivery of programs in other languages only when it is appropriate to accommodate the overall needs of the population. Best correctional practices for each religion are included in the Practical Guidelines for Administration of Inmate Religious Beliefs and Practices Technical Reference Manual.

The Warden may periodically review religious practices to determine whether a religious practice remains within the scope of best correctional practice and religious accommodation. If upon review, the Warden determines that a religious practice jeopardizes institution safety, security and good order, the practice may be temporarily restricted. The religious practice may resume only upon completion of a thorough evaluation of the practice with respect to compelling government interests and least restrictive alternatives.

To ensure the safety, security and good order of the institution, any religious group that encourages domestic and/or foreign terrorism, or advocates any type of violence will not be authorized to meet.

b. **Religious Use of Wine.** Inmates may be permitted to receive small amounts of wine as part of a religious ritual only when administered under the supervision of BOP chaplains, clergy contractors, or clergy volunteers authorized by the Bureau to perform the ritual.

Because wine is otherwise a contraband substance, it can be dispensed only under strict control and supervision. Inmates will not be allowed to give wine to other inmates. For this PS' purposes, the consumption of wine under these circumstances will not be considered consumption of alcohol or ingestion of an illegal substance.

The institution will purchase the wine using normal procurement procedures. Wine will be secured in an appropriate area of the chapel. For scheduled services for which wine is authorized, chaplaincy staff will provide the wine to the contract or volunteer community minister in a disposable 2 ounce covered container. The container will be used to measure and transport the wine. The minister will dispose of the empty 2 ounce container or any unused portion of the wine to protect against contamination or abuse. The chaplain will inform staff of

procedures for procuring, storing, and using wine. This is accomplished through ongoing training to avoid unnecessary and potentially disruptive confiscation of essential sacred elements.

c. **Unauthorized Practices.** The following religious practices and activities are never authorized:

- animal sacrifice;
- language or behaviors that could reasonably be construed as a threat to safety, security, or the orderly running of the institution, (e.g., curses);
- nudity;
- self-mutilation;
- use, display, or possession of weapons or what appears to be a weapon (e.g., paper sword);
- paramilitary exercises;
- self-defense training;
- sexual acts;
- profanity;
- consumption of alcohol (except as noted in 7b, Religious Use of Wine);
- ingestion of illegal substances;
- proselytizing;
- encryption; and
- disparagement of other religions.

d. **Supervision of Inmates.** Ordinarily the level of supervision of inmate religious groups in secure facilities will follow these guidelines for religious programs involving worship, study or meetings.

- Inmate-led religious programs require constant staff supervision.
- Religious programs with Level I volunteers require constant staff supervision.
- Religious programs led by Level II volunteers and contractors require intermittent visual and audio supervision by staff. This applies to both escorted and unescorted volunteers and contractors.
- Special Religious Programs (e.g. choirs, concerts, seminars) require constant staff supervision.

When necessary, Wardens may identify alternative practices and implement the least restrictive alternative consistent with the security and orderly running of Bureau institutions.

8. **RELIGIOUS PREFERENCES §548.10 (c)** [The Bureau of Prisons does not require an inmate to profess a religious belief. An

inmate may designate any or no religious preference at his/her initial team screening. By notifying the chaplain in writing, an inmate may request to change this designation at any time, and the change will be effected in a timely fashion.]

Unit staff will enter the initial religious preference (RLG) assignment into SENTRY at the inmate's initial classification. When the chaplain approves an inmate's request for changing a religious preference, the chaplain is responsible for making the necessary change in the SENTRY RLG assignment.

To maintain the security and orderly running of the institution, and to prevent abuse or disrespect by inmates, the chaplain will monitor patterns of changes in the inmate's declarations of religious preference.

In determining whether to allow an inmate to participate in a specific religious activity, as described in Section 7, [§548.10(b)] above, staff may wish to refer to the information reported on the intake screening form and the inmate's religious preference history. Inmates showing "No Preference" or indicating membership in a different faith group may be restricted from participating in activities deemed appropriate for members only.

9. **[DEFINITION §548.11. For purposes of this subpart, the term "religious activity" includes religious diets, services, ceremonies, and meetings.]**

10. **[CHAPLAINS §548.12. Institution chaplains are responsible for managing religious activities within the institution. Institution chaplains are available upon request to provide pastoral care and counseling to inmates through group programs and individual services. Pastoral care and counseling from representatives in the community are available in accordance with the provisions of §§ 548.14 and 548.19. The chaplain may ask the requesting inmate to provide information regarding specific requested religious activities for the purpose of making an informed decision regarding the request.]**

28 CFR §548.14 and §548.19 refer to Sections 12 and 17, respectively, of this PS.

a. **Chaplains as Pastoral Care Providers.** The chaplaincy department is directed by full-time Bureau chaplains. All chaplains are qualified pastoral care providers who have verifiable religious credentials and current religious endorsements.

Chaplains plan, direct, and supervise all aspects of the religious program and have physical access to all areas of the institution to minister to inmates and staff. All institution chaplains are employed to:

- lead worship services in their own tradition (e.g., General Christian, Jewish, Buddhist, Catholic);
- provide professional spiritual leadership and pastoral care;
- accommodate the legitimate religious needs of inmates; and
- supervise institution religious activities.

Chaplaincy Services support staff may assist the chaplains in supervising the institution's religious activities and administrative duties, but may not perform duties reserved for professional chaplains.

(1) **SHU Religious Access.** Ordinarily, all inmates, except those in the SHU, have access to regularly scheduled congregate services. Inmates of all faiths will have regular access to chaplains. Upon written request, inmates may also have access to recognized representatives of their faith groups while in SHUs. Each chaplain will provide pastoral care in SHUs and hospital units weekly.

Chaplains will provide opportunities for individuals to receive the sacraments and sacred rituals in SHUs. This includes, but is not limited to, communion and Sabbath prayer items--matzo and grape juice. Ordinarily, sacred pipe use will be accommodated in Administrative Detention. The Warden may determine the circumstances under which the sacred pipe may be used in Disciplinary Segregation.

(2) **Telephone Calls.** Individual pastoral care includes counseling inmates and/or their families in personal crisis and family emergency situations. When authorized by the warden, chaplains may facilitate inmate telephone calls in emergency situations. No other chapel staff are authorized to facilitate these calls.

Each Chapel will be equipped with an additional telephone which is capable of recording inmate telephone conversations during the pastoral calls. A notice in English and Spanish will be placed at the telephone location to advise the user that all conversations are subject to recording and that using the telephone constitutes consent. This telephone will be separate from the telephones provided for staff use.

Chaplains will also maintain a telephone log which includes:

- the date, telephone number, and person called;
- name and register number of the inmate; and
- a brief reason for the call.

(3) **Women and Special Needs Inmates**

(a) Pregnant inmates will be offered religious counseling to aid in making an informed decision whether to carry the pregnancy to full term.

(b) The particular needs of women and special needs inmates may require the contracting of spiritual counselors or advisers for religious needs other than those of a specific faith tradition.

(4) **Deaths and Serious Illnesses.** Each institution will establish clear procedures to involve a chaplain in notifying inmates and/or their families of serious illness or death of either inmates or their family members. The chaplain will coordinate appropriate religious rituals at the time of an inmate's serious illness or death.

Also, the chaplain may advise the Warden regarding religious factors which may influence decisions concerning the performance of autopsies on deceased inmates and the proper disposition of the remains.

b. **Introduction of New and Unfamiliar Religious Components.** Inmates may request the introduction of new or unfamiliar religious components into the Chaplaincy Services program. When information is required regarding a specific new practice, the chaplain may ask the inmate to provide additional information which would be considered when deciding to include or exclude the practice from the Chaplaincy Services program.

(1) **Religious Issues Committee (RIC).** When a decision cannot be reached locally, a RIC at the Central Office, appointed by the Assistant Director, Correctional Programs Division (CPD), will review inmate requests for introducing new religious components into the overall religious program.

The RIC is to meet as necessary and maintain records of its recommendations. Periodically, the RIC will issue summary reports and recommendations to all Chief Executive Officers.

(2) **Requests.** Inmate requests are made by completing the New or Unfamiliar Religious Components Questionnaire form (BP-S822). This form, along with sufficient documentation on which to base an informed decision, will be submitted to the chaplain for routing to the Central Office RIC through the Warden and Regional Director.

Upon completing the review, the RIC will make recommendations to the Warden regarding the request's appropriateness. The Warden will determine the local disposition of the request after the institution receives the RIC recommendations.

(3) **Implementation of the RIC Recommendation.** Decisions regarding the Chaplaincy Services program's expansion rest with the Warden and are subject to the institution's parameters for maintaining a safe and secure institution and availability of staff for supervision.

11. **[SCHEDULES AND FACILITIES §548.13**

a. Under the general supervision of the warden, chaplains shall schedule and direct the institution's religious activities.]

Current program schedules will be posted in English and Spanish on bulletin boards clearly visible to the inmate population.

[b. The warden may relieve an inmate from an institution program or assignment if a religious activity is also scheduled at that time.]

In scheduling authorized religious activities, chaplains will consider both the availability of staff supervision and the need to share the time and space available among the eligible groups.

[c. Institutions shall have space designated for the conduct of religious activities.]

This designated space will be sufficient to accommodate the needs of all religious groups in the inmate population fairly and equitably. Chaplaincy Services areas (inside and outside) will be neutral and suitable for use by various faith groups. The general area will include:

- office space for each chaplain;
- storage space for the needs of the religious programs;
- and

- proximity to lavatory facilities for staff and volunteers.

Management will make every possible effort to provide private office space for each chaplain. One outside worship area will be maintained in a suitable, secure, and private location, except in institutions where building design or security considerations would prohibit its construction. The single outside worship area should be large enough to accommodate all faith traditions requiring outside worship space.

12. COMMUNITY INVOLVEMENT (VOLUNTEERS, CONTRACTORS) \$548.14

a. The institution's chaplain may contract with representatives of faith groups in the community to provide specific religious services which the chaplain cannot personally deliver due to, ordinarily, religious prescriptions or ecclesiastical constraints to which the chaplain adheres.]

The term "representatives of faith groups" includes both clergy and spiritual advisors. All contractual representatives of inmate faith groups will be afforded equal status and treatment to help inmates observe their religious beliefs, unless the security and orderly running of the institution warrants otherwise. The volunteer must complete the Credentials of Religious Volunteer form (BP-S777) prior to his or her becoming a badged volunteer. The form will be maintained in the Official Volunteer File.

[b. The institution chaplain may secure the services of volunteers to assist inmates in observing their religious beliefs.]

Institutions unable to secure volunteers to meet religious needs may request a written waiver from the Regional Director.

Inmates may not place volunteers or contractors on their telephone lists or use the Inmate Telephone System to contact volunteers or contractors. If a specific program need exists, the chaplain may facilitate and monitor a telephone call. A Level I volunteer, a badged volunteer (Level II), or contractor will be neither a minister of record nor placed on an inmate's visiting list.

[c. The warden or the warden's designee (ordinarily the chaplain) may require a recognized representative of the faith group to verify a volunteer's or contractor's religious credentials prior to approving his or her entry into the institution.]

Ordinarily, the credentials required for conducting worship services will be ordination. In lieu of ordination credentials, adequate documentation of recognized religious and ministerial position in the faith community is required.

A qualified and credentialed non-citizen may be extended a religious services contract if permitted by the annual appropriations act and immigration law.

The prospective contractor must complete the Credentials of Religious Contractor form (BP-S778) prior to Bureau allocation of appropriated funds for a contract, whether for a one-time visit by Request for Purchase or multiple visits during the fiscal year, using the normal contracting procedures. It will become part of the official Contractor Security File.

Ordinarily, inmates of any faith tradition will have access to their faith group's official representatives while in a SHU or hospital unit. Usually this does not include hospitals that are outside the secure confines of the institution. Inmates in SHU will make a written request to the chaplain for a visit with their faith representatives, and requests will be accommodated consistent with the terms of the representative's contract and the security and orderly running of the institution.

Faith group representatives will always be escorted in a SHU. As an alternative to facilitate supervision, the approved SHU visit may occur in the Visiting Room during regularly scheduled visiting hours.

13. **[EQUITY §548.15. No one may disparage the religious beliefs of an inmate, nor coerce or harass an inmate to change religious affiliation. Attendance at all religious activities is voluntary and, unless otherwise specifically determined by the warden, open to all.]**

14. **[INMATE RELIGIOUS PROPERTY §548.16**

a. Inmate religious property includes but is not limited to rosaries and prayer beads, oils, prayer rugs, phylacteries, medicine pouches, and religious medallions. Such items, which become part of an inmate's personal property, are subject to normal considerations of safety and security. If necessary, their religious significance shall be verified by the chaplain prior to the warden's approval.]

Personal religious items may not be purchased with appropriated funds. All personal religious property will be purchased either from commissary stock or through an approved catalogue source using the Special Purpose Order process. No religious item may have a monetary value greater than \$100.

[b. An inmate ordinarily shall be allowed to wear or use personal religious items during religious services, ceremonies, and meetings in the chapel, unless the warden determines that the wearing or use of such items would threaten institution security, safety, or good order. Upon request of the inmate, the warden may allow the wearing or use of certain religious items throughout the institution, consistent with considerations of security, safety, or good order.

The warden may request the chaplain to obtain direction from representatives of the inmate's faith group or other appropriate sources concerning the religious significance of the items.]

Two types of headwear are identified, religious and ceremonial. Religious headwear is worn throughout the institution and ceremonial headwear may be worn only in the Chapel. If additional religious or ceremonial headwear not listed is requested, the procedures outlined in Section 10.b., Introduction of New and Unfamiliar Religious Components, are to be followed.

(1) **Religious Headwear.** A standard color and style generally eliminates the necessity for the religious headwear permit cards. The cards are discouraged because of the perceived connotation of religious discrimination and/or violations of religious freedom and privacy.

In order to achieve uniformity, inmates who have a SENTRY religious preference listed below are authorized to wear the following religious headwear throughout the institution including the SHU consistent with **[14b]** above:

Jewish	yarmulke	black or white
MST of A	kufi	black or white crochet cap
Muslim	kufi	black or white crochet cap
Nation of Islam	kufi	black or white crochet cap
Native American	headband	multi-colored

Rastafarian	crown	multi-colored (red, yellow, green threads running through a black cap)
Sikh	turban	white

Headwear worn throughout the institution may not contain graphics or writing. Crowns may not have a bill. Headbands can be worn only in a circle, covering the forehead but not the crown of the head. Inmates are authorized three items of religious headwear.

Note: MST of A refers to the Moorish Science Temple of America.

(2) **Ceremonial Headwear.** In addition, inmates who have a pertinent SENTRY religious preference may wear the following ceremonial headwear in the Chapel. These are not worn to and from the Chapel or in any other area of the institution:

MST of A	fez	red
Odinist/Ásatrú	hlath (hlad)	brown with one or more embroidered runes

The authorized hlath must contain embroidered runes. Plain headbands without runes are not authorized. Inmates are authorized one item of ceremonial headwear.

(3) **Religious Attire for Women.** Scarves and headwraps (hijabs) are appropriate for female inmates who have identified a religious SENTRY preference of Muslim, Jewish, Native American, Rastafarian, and those of the orthodox Christian tradition:

Jewish	scarf	black or off-white
MST of A	scarf	black or off-white
Muslim	hijab	black or off-white
Nation of Islam	scarf	black or off-white
Rastafarian	scarf	black or off-white
Orthodox Christian	scarf	black or off-white
Native American	headband	multi-colored

Inmates are authorized three scarves or headwraps.

Jumper dresses are always approved for women whose religion compels them to wear loose-fitting clothing for the sake of modesty. Institutions housing females should have a supply of jumper dresses available in the laundry.

(4) **Ceremonial Clothing.** At the Warden's discretion, the following articles of personal religious clothing may be worn for services in the Chapel, but not on the compound, housing units or visiting room:

Jewish	kittel	a white prayer robe worn during some holiday services.
Muslim	kurta shirt	a knee-length shirt worn during the weekly Jumah service.
Native American	ribbon shirt	a multi-colored shirt worn during the Pow Wow.
Wicca	tabbared	a hoodless poncho or cape, earth brown color, worn during services.

For Muslims, the shalwar (baggy pants) are not authorized. A jalabiyya (full-length robe) is not authorized. The kittel and kurta shirts are authorized for men only. The ribbon shirt and tabbared may be authorized for both men and women. Islamic inmates may not hem or wear their pants above the ankle.

(5) **Ritual Underclothing.** Temple garments and tzitzis are authorized for Mormon and Jewish inmates respectively. The Temple garments or ritual underclothing are authorized for Mormon (LDS) inmates. The tallis katan or tzitzis, a small four-cornered garment, is authorized for Jewish male inmates.

(6) **Transferable Religious Property.** A list of generally authorized and transferable inmate religious property is contained in the Practical Guidelines for Administration of Inmate Beliefs and Practices TRM. Additional personal religious property items may be approved locally by the Warden, but these must be sent home when transferring to another institution. Disposable headwear is made available in Receiving and Discharge for inmates requiring headwear while in transit.

[c. An inmate who wishes to have religious books, magazines or periodicals must comply with the general rules of the institution regarding ordering, purchasing, retaining, and accumulating personal property. Religious literature is permitted in accordance with the procedures governing incoming publications. Distribution to inmates of religious literature purchased by or donated to the Bureau of Prisons is contingent upon the chaplain's granting his or her approval.]

Inmates desiring to subscribe to religious periodicals or purchase religious books or literature may do so following procurement policy and procedures. Retention of religious materials is governed by the provisions in the Program Statement on Inmate Personal Property. Rejection of religious publications is governed by the procedures specified in the Program Statement on Incoming Publications.

Media resources purchased with appropriated funds will be provided equitably among the various religions. All media materials must be religious in nature. Material that is not considered religious in nature may not be procured through purchase or donation. Media materials shall not denigrate or disparage any other religion or religious groups. Donated religious media resources may be accepted in accordance with the Program Statement on Acceptance of Donations.

All media resources will be previewed by staff, or any other staff-designated volunteers, prior to distribution.

15. **[WORK ASSIGNMENTS §548.17.** When the religious tenets of an inmate's faith are violated or jeopardized by a particular work assignment, a different work assignment ordinarily shall be made after it is requested in writing by the inmate, and the specific religious tenets have been verified by the chaplain. Maintaining security, safety and good order in the institution are grounds for denial of such request for a different work assignment.]

16. **[OBSERVANCE OF RELIGIOUS HOLY DAYS §548.18.** Consistent with maintaining security, safety, and good order in the institution, the warden shall endeavor to facilitate the observance of important religious holy days which involve special fasts, dietary regulations, worship, or work proscription. The inmate must submit a written request to the chaplain for time off from work to observe a religious holy day. The warden may request the chaplain to consult with community representatives of the inmate's faith group and/or other appropriate sources to verify the religious significance of the requested observance.

The chaplain will work with requesting inmates to accommodate a proper observance of the holy day. The warden will ordinarily allow an inmate to take earned vacation days, or to make up for missed work, or to change work assignments in order to facilitate the observance of the religious holy day.]

The Central Office Chaplaincy Services Branch, CPD, maintains a general list of recognized holy days to identify days on which inmates of various faith groups may seek to be excused from work and school attendance. The list is published annually in an Operations Memorandum (OM) but, because of the changing nature of religious observances, it is not exhaustive. Requests for days off work and school attendance by members of religions not included in the above-mentioned OM are to be given due consideration and authorized by the Warden when appropriate.

Days free from work/school are determined by the religious community standards and ordinances of faith groups. As such, the number of days off work for religious holy day observances is not limited to one per year. Absent religious community information, the Bureau does not have the religious authority to determine whether inmates should be free from work/school for religious reasons on particular days.

17. **[PASTORAL VISITS \$548.19.** If requested by an inmate, the chaplain shall facilitate arrangements for pastoral visits by a clergy person or representative of the inmate's faith.

a. The chaplain may request an NCIC check and documentation of such clergy person's or faith group representative's credentials.

b. Pastoral visits may not be counted as social visits. They will ordinarily take place in the visiting room during regular visiting hours.]

(1) **Minister of Record.** For this section's purposes, the minister of record is defined as that spiritual leader, clergy person, or official representative, whom the inmate identifies and the chaplain verifies, as a minister of the inmate's religion of record.

An inmate will identify a minister of record by submitting a written request to the chaplain. The clergy person the inmate identifies will also submit a request for consideration as the minister of record to the chaplain. Following a review of the minister's credentials and appropriate security checks, the chaplain will request that unit staff place the identified clergy person on the inmate's visitor list as the minister of record. An inmate may only have one minister of record at a time.

The minister of record will not count against the total number of authorized social visitors an inmate is allowed to have on his or her visiting list. Additionally, if the institution

uses a point system to monitor social visits, visits from the minister of record will not be counted against the total number of visits allowed.

(2) **Official Visits from Faith Representatives (Other than Minister of Record)**. Visits from faith representatives other than the minister of record will be in accordance with the Program Statement on Visiting Regulations and may be counted against the total number of visits allowed. The faith representative's credentials and appropriate security checks will be reviewed prior to scheduling the visit. Refer to the Special Visits section of the Program Statement on Visiting Regulations.

(3) **Location**. Visits with the minister of record or other official faith representatives will be accommodated in the visiting room during regularly scheduled visiting hours, and to the extent practicable, in an area of the visiting room which provides a degree of separation from other visitors. Upon request, the visit may occur in a private visiting section contained in the visiting area if available.

- If space is not available, the visit may be rescheduled when private accommodations can be made in the visiting room during regularly scheduled visiting hours.

The Warden may limit the number of these official visits an inmate receives each month, based upon available resources.

18. **[DIETARY PRACTICES §548.20**

a. **The Bureau provides inmates requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the institution and the Bureau through a religious diet menu. The inmate will provide a written statement articulating the religious motivation for participation in the religious diet program.]**

(1) **Components**. The religious diet program, called the Alternative Diet Program, will consist of two distinct components:

- One component provides for religious dietary needs through self-selection from the main line, which includes a no-flesh option and access to the salad/hot bar (where the salad/hot bar is part of the Food

Service Program). In institutions where meals are served in prepared trays, local procedures will be established for providing the no-flesh component.

- The other component accommodates dietary needs through nationally recognized, religiously certified processed foods.

(2) **Requests and Interviews.** Inmates wishing to participate in the religious diet program will make the request in writing. Chaplains will ordinarily conduct the oral interview and complete the interview form within two working days of the request. When the interview is completed, the chaplaincy team will review the request to determine how to accommodate the inmate's stated religious dietary needs.

The inmate's interview responses will determine which component of the religious diet program best accommodates his or her religious dietary needs.

Inmates will review and sign a copy of the completed interview form. Chaplains will document an inmate's refusal to sign the document.

(3) **Notification.** Inmates will be notified on the Notification of Religious Diet Accommodation (BP-S700), of the religious diet for which they are approved, based on their religious dietary needs (BP-S700). Completed forms will be placed in section 6 of the Inmate Central File.

(4) **SENTRY Record.** The chaplain is responsible for entering pertinent information for each inmate approved to participate in the religious diet program into the SENTRY religious diet participant list within 24 hours of approval, under normal operations. Food Service will begin serving those approved for the certified processed food line normally within two days of SENTRY notification, under normal operations.

(5) **Monitoring.** Both chaplains and food service staff will monitor the SENTRY religious diet participant list daily to ensure that all eligible inmates are served religious diet meals with minimal delay upon intake or redesignation. Inmates who are not approved for the certified food line may request a re-interview at six-month intervals.

Chaplains will escort contract chaplains to the religious diet food preparation area randomly to monitor the preparation and serving of food items and compliance with religious dietary laws.

[b. An inmate who has been approved for a religious diet menu must notify the chaplain in writing if the inmate wishes to withdraw from the religious diet. Approval for an inmate's religious diet may be withdrawn by the chaplain if the inmate is documented as being in violation of the terms of the religious diet program to which the inmate has agreed in writing. In order to preserve the integrity and orderly operation of the religious diet program and to prevent fraud, inmates who withdraw (or are removed) may not be immediately reestablished back into the program. The process of re-approving a religious diet for an inmate who voluntarily withdraws or who is removed ordinarily may extend up to thirty days. Repeated withdrawals (voluntary or otherwise), however, may result in inmates being subjected to a waiting period of up to one year.]

Prepared and wrapped trays will be provided for inmates approved for the certified food component. Those who are observed eating from the main line may be removed temporarily from that component. In addition, those who purchase and/or consume non-certified foods from the commissary may also be temporarily removed from that component.

The Warden has authority to remove inmates from and reinstate them to the program. Ordinarily, this authority is delegated to the chaplains. Inmates will be notified in writing (BP-S820) of a religious diet violation and potential removal from the religious diet program. Removal is not punitive in nature but provides an opportunity for the inmate and staff to reevaluate this program's appropriateness to meet the inmate's demonstrated needs. At the inmate's request for reinstatement, an oral interview will be conducted prior to reinstatement.

[c. The chaplain may arrange for inmate religious groups to have one appropriate ceremonial or commemorative meal each year for their members as identified by the religious preference reflected in the inmate's file. An inmate may attend one religious ceremonial meal in a calendar year.]

Ceremonial or commemorative meals will be served in the Food Service facilities, unless the Warden authorizes otherwise. To maintain equity in menu design, all meals must be prepared from food items on the institution master menus.

Chaplains may use a small portion of the annual Chaplaincy Services budget to acquire traditional/ritual foods to supplement the mainline foods served for the ceremonial meal. Ritual or traditional foods must be consistent with the faith group's religious dietary laws.

If purchasing ritual/traditional foods, a per capita equity formula is to be determined locally. To determine the per capita cost, the total amount of appropriated funds designated for this purpose shall be divided by the total number of inmates participating in all ceremonial meals for the fiscal year. To prevent waste or abuse, the total amount per faith group is to be no less than \$10 nor greater than \$200.

The Food Services Department is to be the only source of procurement for all meal items. Foods for ceremonial meals may not be donated or catered.

An Inmate Request to Staff (BP-S148) must be submitted to the chaplain 60 days before the ceremonial meal requesting ritual/traditional foods. The chaplain will consult with the Food Service Administrator to develop the menu for each ceremonial or commemorative meal at least 45 days before the scheduled date of the observance. This facilitates timely food ordering and preparation.

d. **Religious Fasts.** There are generally two different types of fasts, a public and a private or personal fast. When inmates observe a public fast, i.e. one which is regulated by law or custom for all the faith adherents, Food Service will provide a meal nutritionally equivalent to the meal(s) missed.

Public fasts usually begin and end at specific times. Accommodations may also be made for bagged meals at times when Food Service is normally closed. When an inmate fasts for personal, religious reasons, no special accommodations need to be made for the meal(s) missed. Requests for meals after a personal fast should be determined on a case-by-case basis, applying sound correctional and pastoral judgment.

A list of public fast days is published annually in the OM on religious holy days, but, because of the changing nature of religious observances, it is not exhaustive.

19. **ANNUAL REPORT.** Each institution will submit an annual report to the Chaplaincy Services Branch, CPD. The reporting year will be from October 1st through September 30th. The institutions will receive the report forms each September from the Central Office Chaplaincy Branch. The appropriate Associate Warden and Warden will sign the report prior to forwarding the report to the Regional Chaplaincy Administrator.

■ A signed copy of the report will be retained in the chaplain's office.

The completed reports will be sent to the Regional Chaplaincy Administrators by the third Friday in November and the Regional Chaplaincy Administrators will forward the reports to the Central Office Chaplaincy Branch by the second Friday of December. The Chaplaincy Services Branch will compile the information and provide a summary report to the Regional Directors by the second Friday of May.

20. **INSTITUTION SUPPLEMENT.** Each institution will develop an Institution Supplement for operating religious programs and activities. The Institution Supplement requires the Regional Director's approval prior to issuance and must include the following:

- a. Procedures for serious illness and/or death notifications;
- b. Procedures for religious fasts, ceremonial meals and whether appropriated funds will be used to supplement the ceremonial meals with traditional/ritual foods;
- c. Reasons for removal from the religious diet program and procedures for religious diet program reinstatement;
- d. Procedures for acquiring authorized religious items when no catalog vendor is available (i.e. eagle feathers);
- e. Authorized religious property;
- f. Sweat Lodge procedures, including who may participate, modesty/security requirements, and medical clearance requirements if any;
- g. Procedures and limitations for pastoral visits for inmates in general population and procedures for accommodating pastoral visits for inmates in special housing or hospital units;
- h. Procedures and limitations for storage and provision of religious wine;
- i. Indoor and outdoor areas authorized and designated for the ritual use of tobacco; and
- j. Where applicable, procedures for procuring, storing, and using tobacco for rituals.

21. **BUREAU OF PRISONS FORMS.** The following BP-Forms will be used in conjunction with this Program Statement:

- Questionnaire Regarding New or Unfamiliar Religious Components (BP-S822)
- Notification of Religious Diet Accommodation (BP-S700)
- Credentials Religious Volunteer (BP-S777)
- Credentials Religious Contractor (BP-S778)
- Notification of Religious Diet Violation (BP-S820)

22. **IMPLEMENTATION.** Implementation of this Program Statement will occur within 90 days of the effective date of this policy.

/s/
Harley G. Lappin
Director

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ENAAM ARNAOUT, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 2:09-cv-215 LJM-WGH
)	
WARDEN, FEDERAL CORRECTIONAL)	
INSTITUTION, TERRE HAUTE,)	
INDIANA,)	
)	
Defendant.)	

First Request for Admissions to Defendant

Come now plaintiffs, by their counsel, and request that the defendant respond to the following request for admissions as required by Rule 36 of the Federal Rules of Civil Procedure.

1. The attached document is the most recent document available specifying the schedule for the usage of the multi-purpose room located in the Communication Management Unit at the Federal Correctional Institution in Terre Haute, Indiana.

Response:

2. Inmates in the Communications Management Unit at the Federal Correctional Institution in Terre Haute, Indiana, are allowed to visit other inmate's cells during the day.

Response:

3. An Imam leads the Jum'ah service at the Communications Management Unit at the Federal Correction Institution in Terre Haute, Indiana, approximately once a month.

Response:

4. In the absence of the Imam, prisoners within the Communications Management Unit at the Federal Correctional Institution in Terre Haute, Indiana, lead the Jum'ah prayers.

Response:

/s/ Kenneth J. Falk
Kenneth J. Falk
No. 6777-49
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202
317/635-4059 ext.104
fax: 317/35-4105
kfalk@aclu-in.org

Attorney for Plaintiffs

Certificate of Service

I hereby certify that on this 1st day of March, 2010, a copy of the foregoing was served on the below named person(s) by first class U.S. postage, pre-paid, and via e-mail

Thomas E. Kieper
Assistant United States Attorney
Office of the United States Attorney
10 W. Market Street, Suite 2100
Indianapolis, IN 46204
tom.kieper@usdoj.gov

/s/ Kenneth J. Falk
Kenneth J. Falk
Attorney at Law



U.S. Department of Justice
Federal Bureau of Prisons
Communication Management Unit

Terre Haute, IN 47802
November 24, 2008

From: S. Julian
Communication Management Unit Manager

Subject: Multi-Purpose Room Usage

To: All Concerned

The Multi-Purpose Room located in the Communication Management Unit is authorized to be utilized during the following days and times:

Monday	9:30 a.m. - 10:45 a.m.	Education Class (ACE)
Monday Services	2:00 p.m. - 3:00 p.m.	Catholic Church
Monday - Friday	11:00 a.m. - 12:00 noon	GED Independent Study
Monday - Thursday	1:00 p.m. - 2:00 p.m.	Education Class (ESL)
Friday	9:00 a.m. - 10:00 a.m.	Education Class (ESL)
Fridays	1:00 p.m. - 2:00 p.m.	Jumah Prayer
Sunday - Saturday	4:30 p.m. - 8:30 p.m.	Hobby Crafts

The Multi-Purpose Room will be secured at all other times as there are no other authorized activities scheduled as of this date. Future memorandums will be furnished as additional activities are authorized and scheduled.

cc: CMU Control Center
CMU Officers
CMU Unit Team

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ENAAM ARNAOUT; RANDALL T.)
ROYER)

Plaintiffs,)

v.)

CAUSE NO. 2:09-cv-00215-LJM-WGH

WARDEN, FEDERAL CORRECTIONAL,)
INSTITUTION, TERRE HAUTE, IN)
Defendant.)

**DEFENDANT RESPONSES TO PLAINTIFF'S
FIRST REQUEST FOR ADMISSIONS**

Comes now the Defendant, by Counsel, and in response to the Plaintiffs' First Request for Admissions states as follows:

1. The attached document is the most recent document available specifying the schedule for the usage of the multi purpose room located in the Communication Management Unit at the Federal Correctional Institution in Terre Haute, Indiana.

Response: Defendant admits the attached document is the most recent schedule for the usage of the multi purpose room located in the Communication Management Unit at the Federal Correctional Institution in Terre Haute, Indiana.

2. Inmates in the Communications Management Unit at the Federal Correctional Institution in Terre Haute, IN, are allowed to visit other inmate's cells during the day.

Response: Defendant admits inmates in the Communications Management Unit at the Federal Correctional Institution in Terre Haute, IN, are allowed to visit other inmate's cells during the day when they are not locked in their cells for counts or other reasons.

3. An Imam leads the Jum'ah service at the Communications Management Unit at the Federal Correctional Institution in Terre Haute, IN, approximately once a month.

Response: Defendant admits a Contract Imam leads the Jum'ah service at the Communications Management Unit at the Federal Correctional Institution in Terre Haute, IN, approximately once a month.

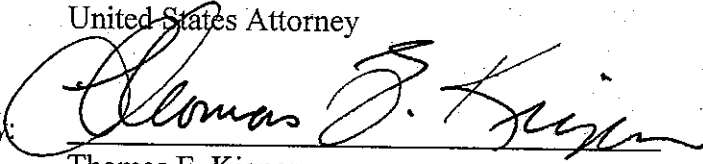
4. In the absence of the Imam, prisoners within the Communication Management Unit at the Federal Correctional Institution in Terre Haute, IN, lead the Jum'ah prayers:

Response: Defendant admits that in the absence of the Imam, inmates within the Communication Management Unit at the Federal Correctional Institution in Terre Haute, IN, lead the Jum'ah Friday prayers, however, the inmates rotate responsibility for leading the prayer.

Respectfully submitted,

TIMOTHY M. MORRISON
United States Attorney

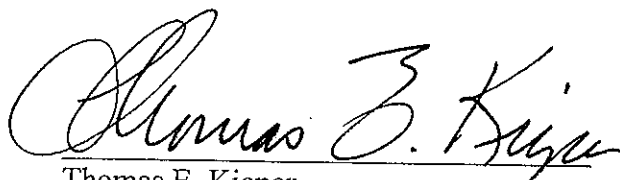
By:


Thomas E. Kieper
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2010, a copy of the **DEFENDANT RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS** was mailed, First Class Postage Prepaid, United States Postal Service to the following counsel of record:

Kenneth J. Falk, Esq.
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

A handwritten signature in black ink, reading "Thomas E. Kieper". The signature is written in a cursive style with a large initial "T" and "K".

Thomas E. Kieper
Assistant United States Attorney

Office of the United States Attorney
10 West Market Street, Suite 2100
Indianapolis, IN 46204
(317) 226-6333
(317) 226-5027 [Fax]

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ENAAM ARNAOUT, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 2:09-CV-00215 JMS-WGH
)	
WARDEN, FEDERAL CORRECTIONAL)	
INSTITUTION, TERRE HAUTE,)	
INDIANA,)	
)	
Defendant.)	

Supplemental Declaration of John Phillip Walker Lindh

Comes now John Phillip Walker Lindh, being duly sworn upon his oath, and says that:

1. Adherents to Islam are required to engage in five daily prayers or *Salah* or *Salat*. The prayers are very brief, lasting only approximately ten minutes.
2. During the prayers we do not converse among ourselves. Instead, each prayer features a prescribed sequence of actions and words including bowing, prostration, and sitting.
3. The daily prayers create a direct link between the worshiper and God. This is one of the primary obligations of Islam.
4. The Koran commands that the prayers be held at dawn (*Fajr*), early afternoon (*Dhur*), in the late afternoon (*Asr*), at post-sunset (*Maghrib*), and in the evening (*Isha*).
5. While confined in the Communications Management Unit ("CMU") I have attended congregate prayer opportunities with other Muslim prisoners when such

opportunities have been available.

6. I attempt to follow all of the laws of Islam.

7. Inasmuch as we cannot participate in group prayer, except for the *Jum'ah* prayer, I am frequently forced to pray in my cell. This is not appropriate, not only because the prayers should be in a group setting, but also because we are taught that *Salat* must occur in a ritually clean environment. In my cell I am forced to pray in close proximity to my toilet. This is not appropriate.

8. At the current time there are approximately 35-40 prisoners in the CMU and I believe approximately 21-22 are Muslim.

9. Of the Muslim prisoners, all are Sunni Muslims with one exception. One prisoner is Shiite but he worships with the Sunnis.

10. During the Ramadan in 2009, when Muslim prisoners were allowed to pray together for a number of the daily prayers, the prayers were led by prisoners.

11. During the month of Ramadan in 2010, which began this month, Muslim prisoners are again being allowed to pray together on a daily basis in the CMU's multi-purpose room. However, this year we are only being allowed to pray together one time a day. These prayers are lead by prisoners.

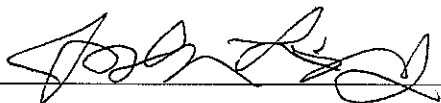
12. Prior to joining this litigation I exhausted the grievances available to me and I have attached copies of my grievances.

13. I wish to engage in daily congregate prayer with other Muslim prisoners and the failure to allow me to do so is imposing a substantial burden on my exercise of my religion.

Verification

I verify, under the penalties for perjury, that the foregoing representations are true.

Executed on: 8/25/2010
(date)



A handwritten signature in black ink, appearing to read "Kenneth J. Falk", is written over a horizontal line.

Prepared by:

Kenneth J. Falk
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Unit Manager Julia	DATE: 1/19/09
FROM: John Linth	REGISTER NO.: 45426-083
WORK ASSIGNMENT: n/a	UNIT: D

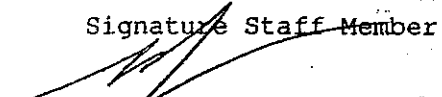
SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

I am a Muslim, and my religion requires that I perform 5 daily prayers in congregation. This is mandatory and not optional. Prisoners in general population in federal prisons across the country are allowed to use a room in the chapel to pray any time they choose. Here we are not provided with a chapel, but there is a multi-purpose room which remains locked and unused most of the day. I request that you allow this room to be opened and used for the performance of my 5 daily prayers in congregation.

(Do not write below this line)

DISPOSITION:

See Response

Signature Staff Member 	Date 1/20/09
---	-----------------

Record Copy / File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86 and BP-S148.070 APR 94

WALKER LINDH, John
Reg. No.: 45426-083
CMU

Inmate Request to Staff Response

The administration is willing to provide the required time for congregational prayer on Fridays for Jumah Prayer only. Inmates may pray individually in their personal areas, but no additional congregational prayer time(s) shall be provided other than Friday's Jumah Prayer.

Attachment 1
 THX-1330.13J

FEDERAL CORRECTIONAL COMPLEX
 TERRE HAUTE, INDIANA
INFORMAL RESOLUTION FORM

Inmate Name: John Lindh Reg. No. 45426-083
 Unit: D

NOTICE TO INMATE: You are advised normally prior to filing a Request for Administrative Remedy, BP-2999(13), you must attempt to informally resolve your complaint through your Correctional Counselor. Please follow the steps listed below:

1. State your complaint: I am a Muslim, and my religion requires that I perform 5 daily prayers in congregation. This is mandatory and not optional. Prisoners in general population in federal prisons across the country are allowed to use a room in the chapel to pray any time they choose. Here we (see attachment

(If more space is needed, you may use up to one letter size (8 1/2 x 11) continuation page. You must also submit one copy of supporting exhibits. (Exhibits will not be returned with the response to the BP-229(13) responses.))

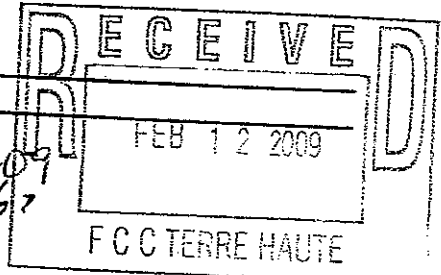
2. State what actions you have made to informally resolve your complaint: I have written to the unit manager requesting that he resolves this problem.

3. State what resolution you expect: I expect to be provided with access to the multi-purpose room to perform my 5 daily prayers in congregation as required by my religion.

Inmate's Signature: John Lindh

Date: 1/22/09

Correctional Counselor's Comments (Steps to Resolve): see attached response



Counselor's Signature: A. Buttline

Date: 1-23-09

Unit Manager's Review: SR

Date: 1/23/09

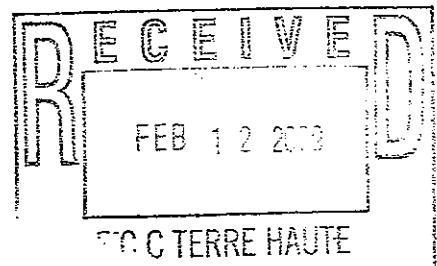
Informally Resolved: _____

Date: _____

	BP-8 ISSUED	BP-8 RETURNED	BP-9 ISSUED	BP-9 RETURNED
DATE	1-22-09	01-23-09	1-26-09	1-28-09
TIME	1:00 pm	1:15 pm	1:00	1:00
COUNSELOR	A. Buttline	A. Buttline	A. Buttline	A. Buttline

Attachment:

(continued from page 1) are not provided with a chapel, but there is a multi-purpose room which remains locked and unused most of the day. I request that I ~~be~~^{be} allowed to use this room for the performance of my 5 daily prayers in congregation as required by my religion.



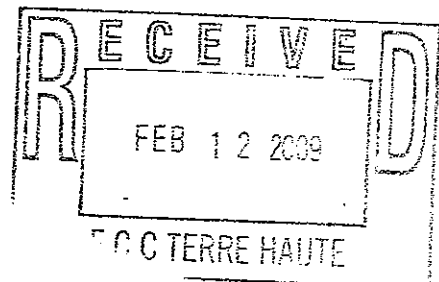
WALKER LINDH, John
Reg. No.: 45426-083
CMU

Informal Resolution Response

This is in response to your Request for Informal Resolution, received on January 23, 2009, wherein you request to be allowed group prayer five (5) times a day.

Per Program Statement 5360.09, Religious Beliefs and Practices, "Authorized congregate services will be made available for all inmates weekly."

The administration is willing to provide the required time for congregational prayer on Fridays for Jumah Prayer only. Inmates may pray individually in their personal areas, but no additional congregational prayer time(s) shall be provided other than Friday's Jumah Prayer.



Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

n: <u>Linck, John P.W.</u>	<u>45426-083</u>	<u>D</u>	<u>F41 Terre Haute</u>
LAST NAME, FIRST, MIDDLE INITIAL	REG. NO.	UNIT	INSTITUTION

Part A- INMATE REQUEST

I am a Muslim, and my religion requires that I perform 5 daily prayers in congregation. This is mandatory and not optional. Prisoners in general population in federal prisons across the country are allowed to use a room in the chapel to pray any time they choose. Here we are not provided with a chapel, but there is a multi-purpose room which remains locked and unused most of the day. I request that I be allowed to use this room for the performance of my 5 daily prayers in congregation as required by my religion. If the prison administration can allow me to perform Jewish prayer in congregation which is mandatory, it can also allow me to perform my 5 daily prayers in congregation.

1/29/09

DATE

John Linck

SIGNATURE OF REQUESTER

Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

SECOND COPY: RETURN TO INMATE

CASE NUMBER: 45426-083

CASE NUMBER: _____

Part C- RECEIPT

Return to: _____	REG. NO. _____	UNIT _____	INSTITUTION _____
SUBJECT: _____			

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)

Remedy No.: 526006-F1

FCC Terre Haute, IN

PART B - RESPONSE

This is in response to your Administrative Remedy receipted on February 12, 2009, in which you request to have additional congregational prayer five (5) times a day in the Communication Management Unit (CMU).

A review of your request indicates the administration provides the required time for congregational prayer on Fridays for Jumah Prayer only. According to Program Statement 5360.09, Religious Beliefs and Practices, "Authorized congregational services will be made available for all inmates weekly."

Inmates may pray individually in their personal area, but no additional congregational prayer time(s) shall be provided other than Friday Jumah Prayer.

Therefore, your request for Administrative Remedy is denied.

If you are dissatisfied with this response, you may appeal to the Regional Director, Federal Bureau of Prisons, Gateway Complex, Tower II, 8th Floor, 4th & State Ave., Kansas City, Kansas 66101. Your appeal must be received within 20 calendar days of the date of this response.

2-20-09

Date

Wendell Jett

B.R. Jett, Warden

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy of the completed BP-229(13) including any attachments must be submitted with this appeal.

n: Lindh, John P.W. 45426-083 D-33 FCL Terr

LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL

I am a Muslim and my religion requires that I perform 5 daily prayers in congregation. This is mandatory and not optional. Prisoners in general population in federal prisons across the country are allowed to use a room in the chapel to pray any time they choose. Here we are not provided with a chapel, but there is a multi-purpose room which remains locked and unused most of the day. I request that I be allowed to use this room for the performance of my 5 daily prayers in congregation as required by my religion. If the prison administration can allow to perform Jewish prayer in congregation, it can also allow me to perform my 5 daily prayers in congregation.

2/25/09

DATE

John Lindh

SIGNATURE OF REQUESTER

Part B - RESPONSE

DATE

REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.

SECOND COPY: RETURN TO INMATE

CASE NUMBER: 5046 2009

Part C - RECEIPT

CASE NUMBER: _____

Return to: _____

LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

SIGNATURE, RECIPIENT OF REGIONAL APPEAL

U.S. Department of Justice
Federal Bureau of Prisons
North Central Regional Office

Regional Administrative Remedy Appeal
Part B - Response

Administrative Remedy Number: 526006-R1

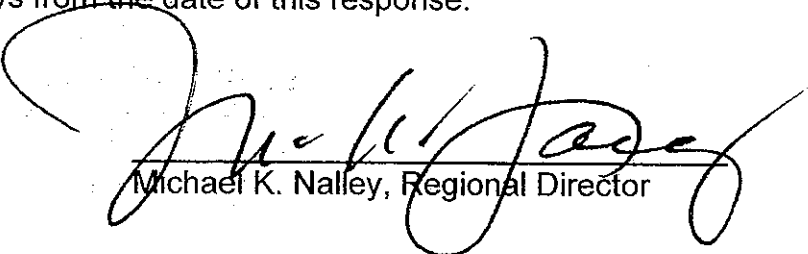
This is in response to your Regional Administrative Remedy Appeal received in this office on March 6, 2009, in which you allege you are not allowed to participate in five daily congregative prayers. Specifically, you allege there is a multi-purpose room on the Communications Management Unit (CMU) unused most of the day which could be used for the five daily congregative prayers. You are requesting the use of the multi-purpose room to accommodate your five daily congregative prayers.

We have reviewed your appeal and the response the Warden provided to your BP-229. You were advised Program Statement 5360.09, Religious Beliefs and Practices, allows for congregative services for all inmates once a week. Therefore, you are allowed to participate in congregative prayer during Friday Jumah Prayer services. All other required daily prayers should be accommodated individually in your cell.

Based on the above information, your Regional Administrative Remedy Appeal is denied.

If you are dissatisfied with this response, you may appeal to the Office of General Counsel, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. Your appeal must be received in the Office of General Counsel within 30 days from the date of this response.

3/20/09
Date


Michael K. Nalley, Regional Director

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: Lindh, John P. W. 45426-083 D FCI Terre Haute
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL

I am a Muslim, and my religion requires that I perform 5 daily prayers in congregation. This is mandatory and not optional. Prisoners in general population in federal prisons across the country are allowed to use a room in the chapel to pray any time they choose. Here we are not provided with a chapel, but there is a multi-purpose room which remains locked and unused most of the day. I request that I be allowed to use this room for the performance of my 5 daily prayers in congregation as required by my religion. If the prison administration can allow me to perform Jumu'ah prayer in congregation, it can also allow me to perform my 5 daily prayers in congregation.

DATE

SIGNATURE OF REQUESTER

Part B - RESPONSE

RECEIVED

APR 15 2009

Administrative Remedy Section
Federal Bureau of Prisons

RECEIVED

MAY 12 2009

Administrative Remedy Section
Federal Bureau of Prisons

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 526006-A2

Part C - RECEIPT

CASE NUMBER: _____

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL

Administrative Remedy No. 526006-A2
Part B - Response

This is in response to your Central Office Administrative Remedy Appeal in which you request to participate in five daily congregate prayers. You state there is a multi-purpose room in the Communications Management Unit unused most of the day which could be used for the five daily congregate prayers. You request use of the multi-purpose room to accommodate your five daily congregate prayers.

Our review reveals that the Warden and Regional Director adequately responded to the issues you raised in your appeal. P.S. 5360.09, Religious Beliefs and Practices, states the Bureau of Prisons provides inmates of all faith groups with reasonable and equitable opportunities to pursue religious beliefs and practices, consistent with the security and orderly running of the institution and the Bureau of Prisons. Congregate prayer is not allowed for any faith group due to security concerns. You are allowed to participate in congregate prayer during the Friday Jumah Prayer services. Inmates are permitted to conduct religious prayer in their assigned cell anytime each day as long as they are not disrupting their unit.

Staff are working diligently to ensure your ability to adhere to the tenets of your faith are upheld and facilitated to the maximum extent possible, and in a manner consistent with P.S. 5360.09, Religious Beliefs and Practices, and institution safety and security.

Therefore, we concur with the responses provided. Accordingly, your appeal is denied.

July 28, 2009
Date

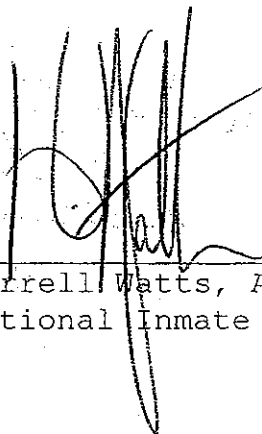

Harrell Watts, Administrator
National Inmate Appeals

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

ENAAM ARNAOUT, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 WARDEN, FEDERAL CORRECTIONAL)
 INSTITUTION, TERRE HAUTE,)
 INDIANA,)
)
 Defendant.)

No. 2:09-CV-00215 LJM-WGH

Declaration of Randall T. Royer

Comes now Randall T. Royer, being duly sworn upon his oath, and says that:


1. I am an adult person who is currently confined to the Administrative Maximum facility within the Florence Federal Correctional Complex in Florence, Colorado.
2. From December of 2006 until October of 2009 I was confined to the Communications Management Unit (“CMU”) at the Federal Correctional Institution in Terre Haute, Indiana.
3. I am Muslim.
4. I was among the first group of prisoners who were moved to the CMU in December of 2006.
5. From December of 2006 until June of 2007, Muslim prisoners in the CMU were allowed to pray together for daily prayers that occurred during the periods of time that prisoners were generally allowed out of their cells.
6. This ended in June of 2007 after an incident where a lockdown was announced during one of the daily prayers. The prisoner leading the prayers, and many of those praying did not

hear the announcement as they were at the front of the multi-purpose room where there was a fan that was very noisy. Therefore, prisoners did not immediately lock up.

Verification

I verify, under the penalties for perjury, that the foregoing representations are true.

Executed on: June 14, 2010
(date)



Randall T. Royer

Prepared by:

Kenneth J. Falk
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202