

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY FIFTY-SEVEN

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Thursday, May 7, 2015
10:27 a.m.

Marcia G. Patrisso, RMR, CRR
Cheryl Dahlstrom, RMR, CRR
Official Court Reporters
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

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On Behalf of the Defendant

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I N D E X

Direct Cross Redirect Recross

WITNESSES FOR THE
DEFENSE:

MARK BEZY, resumed

By Mr. Mellin (cont'd)

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By Mr. Bruck

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P R O C E E D I N G S

THE CLERK: All rise for the Court and the jury.

(The Court and jury enter the courtroom at 10:27 a.m.)

THE CLERK: Be seated.

THE COURT: Good morning, jurors.

THE JURORS: Good morning, your Honor.

THE COURT: Again, we appreciate your patience. The lawyers and I had some things to discuss and we're ready now to resume where we left off yesterday afternoon with the examination of witnesses.

MARK BEZY, resumed

CONTINUED CROSS-EXAMINATION

BY MR. MELLIN:

Q. Mr. Bezy, you retired from the BOP when?

A. 2006.

Q. And since then you set up a company that deals with you testifying in cases like this, correct?

A. 2008, yes.

Q. Okay. Since 2008. So for the last seven years you have a company in which you go around the United States testifying for federal criminal defendants, correct?

A. Correct.

Q. You've never testified for the government, correct?

A. Correct. I've never been asked.

Q. And how many times have you actually testified in federal

1 death penalty cases?

2 A. I think it's approximately 14.

3 Q. You were just hired recently to testify in the other
4 federal death penalty case here in Massachusetts, correct?

5 A. Yes.

6 Q. The Sampson case?

7 A. Yes.

8 Q. And would you agree that 95 percent of the income you
9 derive in your business is from testifying in capital cases?

00:01 10 A. Correct.

11 Q. Mr. Bezy, you said you were at the ADX in 2015 but you did
12 not go down the range, correct?

13 A. Correct.

14 Q. When was the last time you actually went down the range
15 and looked into a cell?

16 A. At the ADX?

17 Q. Yes.

18 A. In which unit?

19 Q. Well, I was going to ask you to clarify but go ahead.

00:02 20 Which units have you gone down and seen actual cells?

21 A. The only unit that I have not been into is the H unit, and
22 that was because of the SAMs and we were not allowed to go down
23 to the ranges, talk to the inmates because they were under the
24 SAMs. I've been in every other unit in the institution.

25 Q. So you've never actually seen a cell in the H unit?

1 A. Years ago I did, yes.

2 Q. When did you see that?

3 A. Probably 2005.

4 Q. Since 2005, have you ever gone back to the H unit?

5 A. No.

6 Q. And you know there have been changes to the cells since
7 2005, correct?

8 A. Yes.

9 Q. Now, yesterday in response to a question, you said that --
00:03 10 and this is a quote from you. "That's not what I was told
11 yesterday," meaning Tuesday. Do you remember saying that?

12 A. In reference to what?

13 Q. To one of the questions about your understandings of if
14 there had been violations of the SAMs, you said that, "Well,
15 that's not what I was told yesterday."

16 A. Yes. We met with the female FBI agent who's in charge,
17 the national joint federal terrorism task force.

18 Q. And so when you say "we met," who met?

19 A. The defense -- part of the defense team.

00:03 20 Q. And did you sit in on those meetings?

21 A. On that meeting, yes.

22 Q. And that person you're talking about is the unit chief
23 from the FBI that handles terrorism SAMs. Is that right?

24 A. Yes.

25 Q. Michelle Nicolet?

1 A. I believe that's her name.

2 Q. You also sat in on a meeting with Warden John Oliver,
3 correct?

4 A. Correct.

5 Q. And Warden Oliver is actually the current warden at ADX,
6 right?

7 A. Yes.

8 Q. And you sat in on the meeting with BOP official David
9 Schiavone, correct?

00:04 10 A. Correct.

11 Q. Now, when you sat in on those meetings, that's where you
12 learned this information that you talked about yesterday,
13 correct?

14 A. On the SAMs?

15 Q. Yes.

16 A. No, I'd done other research. I'd read the section in the
17 C.F.R.

18 Q. Okay. So -- and when you say "the C.F.R.," what is the
19 C.F.R.?

00:04 20 A. It's 50 -- 28 C.F.R. 501.3.

21 Q. And what does "C.F.R." stand for?

22 A. It's a Code of Federal Regulations.

23 Q. Right. It's the federal regulations that deal with the
24 implementation of the SAMs, correct?

25 A. Correct.

1 Q. It's the federal regulations that talk about what has to
2 be proven and what has to be shown to even get a SAMs, right?

3 A. Correct.

4 Q. It doesn't -- the government can't just ask for a SAMs,
5 right?

6 A. Correct.

7 Q. You have to actually follow the regulations. And when you
8 follow those regulations, then you can proceed to ask for a
9 SAMs, right?

00:05 10 A. Yes.

11 Q. And each year the government must justify the request for
12 the information that they're -- or justify the SAMs request
13 relying on information that they have, right?

14 A. Yes, that they get from the FBI and the U.S. Attorney's
15 Office and other law enforcement.

16 Q. Right. And that information must be sufficient to satisfy
17 the Code of Federal Regulations before the request can even be
18 made, right?

19 A. I believe so.

00:05 20 Q. There's limitations on what the government can do in
21 seeking SAMs, correct?

22 A. Yes.

23 Q. And you understand that from listening to what Ms. Nicolet
24 had to say, the unit chief from the FBI, she talked about what
25 the procedures were that the FBI and then the U.S. Attorney's

1 Offices are required to go through in order to modify or renew
2 a SAMs that is existing, correct?

3 A. Yes.

4 Q. And specifically concerning terrorism cases, right?

5 A. Correct.

6 Q. And from sitting in on that interview with her, you
7 learned that the number of inmates who have been convicted of a
8 terrorism charge and who had a SAMs and were housed at the ADX
9 who had their SAMs removed or not renewed is nine, correct?

00:07 10 (Pause.)

11 A. Yes.

12 Q. And that's just since -- in the last five years, correct?

13 A. Correct.

14 Q. Okay. So since 2009, there have been nine inmates
15 convicted of terrorism who had a SAMs housed at ADX who since
16 that time that SAM has been removed or not renewed, right?

17 A. Yes.

18 Q. Let me go back, then, to your time when you were employed
19 with BOP, so any time prior to 2006. You never dealt with SAMs
00:08 20 at any time when you were actually employed by BOP, correct?

21 A. No.

22 Q. No, that's not correct or, no, you never did?

23 A. No, I never did.

24 Q. And of these federal death penalty cases in which you have
25 testified, you've never testified about SAMs at all, correct?

1 A. Correct.

2 Q. Not one of the 14 cases that you testified in prior to
3 this case have you once talked about SAMs, correct?

4 A. Correct.

5 Q. SAMs didn't even exist when you were at Marion, correct?

6 A. I don't -- I don't believe so, but we had a number -- we
7 did have terrorists there at Marion. We had a special unit.
8 In K unit in Marion we housed -- we housed American spies,
9 domestic terrorists and bombers.

00:09 10 Q. Thank you. That wasn't my question. My question was:
11 You didn't have any SAMs inmates at Marion when you were there,
12 correct?

13 A. Well, I don't know if Jonathan Pollard was under SAMs at
14 that time or not. I'm not sure.

15 Q. As you sit here today, can you tell us one inmate who was
16 at Marion when you were at Marion that was under SAMs?

17 A. It's possible Pollard was and a Japanese national called
18 Kikumura.

19 Q. It's possible?

00:09 20 A. Possible, yes.

21 Q. When you were at Terre Haute, there were zero inmates
22 under SAMs, correct?

23 A. Correct.

24 Q. And that was federal death row, correct?

25 A. Yes.

1 Q. So the time that you were at Terre Haute from -- I believe
2 it was 2004 to 2006 -- is that right?

3 A. Yes.

4 Q. -- you had no dealings whatsoever with SAMs, right?

5 A. Correct.

6 Q. You've never been involved in implementing any inmate
7 SAMs, correct?

8 A. Correct.

9 Q. You've never monitored any phone calls or communications
00:10 10 concerning SAMs, correct?

11 A. Correct.

12 Q. You've never even supervised anyone who did do that,
13 correct?

14 A. Correct.

15 Q. You never addressed or were concerned about any inmate's
16 administrative request to modify SAMs, correct?

17 A. Correct.

18 Q. You never were asked to give input about a modification of
19 a SAMs, correct?

00:10 20 A. Correct.

21 Q. You never talked to anyone at the FBI about a SAMs when
22 you were employed at BOP, correct?

23 A. Correct.

24 Q. You never talked to anyone from the U.S. Attorney's Office
25 about a SAMs when you were employed by BOP, correct?

1 A. Correct.

2 Q. You certainly didn't talk to anyone at main justice, or
3 the Department of Justice in Washington, D.C., about a SAMs,
4 correct?

5 A. Correct.

6 Q. Have you ever read an actual SAMs before getting involved
7 in this case?

8 A. No.

9 Q. Have you ever read the SAMs in this case?

00:11 10 A. Yes, I have.

11 Q. So given your entire career in BOP and now this career you
12 have testifying in capital cases, you have read one SAMs,
13 correct?

14 A. Correct.

15 Q. Now, the individuals that you met with on Tuesday, those
16 are the people that have actual involvement in the
17 implementation of SAMs, correct?

18 A. Yes.

19 Q. People like Ms. Nicolet, correct, or Agent Nicolet?

00:12 20 A. Yes.

21 Q. And Mr. Schiavone?

22 A. Yes.

23 Q. And Warden Oliver, correct?

24 A. Yes.

25 Q. Just so we're all clear, you were never employed at ADX,

1 correct?

2 A. Correct.

3 Q. Now, you told the jury yesterday that SAMs limit an
4 inmate's communications to immediate family members. Is that
5 right?

6 A. Correct.

7 Q. And do you believe that to be true?

8 A. That's what the SAMs says and that's what I was told.
9 Yes, I do believe it to be true.

00:12 10 Q. Inmates can ask for friends or others to be added to their
11 SAMs, correct?

12 A. They can ask but that doesn't mean it's approved, yes.

13 Q. You know in this case that that has happened, correct?

14 MR. BRUCK: Objection, your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: No, I don't.

17 BY MR. MELLIN:

18 Q. You don't know that the SAMs in this case has been
19 modified to allow other than just immediate family members to
00:13 20 meet with the defendant?

21 MR. BRUCK: Objection, your Honor. This is a pretrial
22 matter. It is not comparable to the issue that we're talking
23 about for post trial.

24 THE COURT: All right. I understand. The objection
25 is overruled.

1 THE WITNESS: Can you repeat the question?

2 BY MR. MELLIN:

3 Q. Sure. You're not aware that the SAMs in this case was
4 modified to allow contact with the defendant by persons other
5 than his immediate family members?

6 A. No.

7 Q. You are aware that the SAMs that is in place carries over
8 from pretrial to post trial, correct?

9 A. Correct.

00:13 10 Q. I believe yesterday you said that you were unaware of any
11 SAMs violations that have occurred. Is that right?

12 A. In H unit, yes.

13 Q. In H unit. Are you aware of SAMs violations occurring
14 elsewhere?

15 A. No, I'm not.

16 Q. Do you know who Lynne Stewart is?

17 MR. BRUCK: Objection, your Honor.

18 THE COURT: Sustained.

19 BY MR. MELLIN:

00:14 20 Q. Well, is it your testimony that you believe there -- that
21 you have no knowledge as you sit here today in 2015 of anyone
22 violating a SAMs?

23 MR. BRUCK: This should be confined to H unit, is the
24 relevant issue here. And we object to it, any broader than
25 that.

1 MR. MELLIN: Your Honor, I disagree. I don't think it
2 has to be confined to the H unit. This is about the SAMs
3 issue.

4 THE COURT: Yeah, you may have it.

5 THE WITNESS: Can you repeat it, please?

6 BY MR. MELLIN:

7 Q. Sure. Are you aware as you sit here today in 2015 of any
8 SAMs violations that have occurred?

9 A. Since you brought the lawyer's name up, yes, I am familiar
00:15 10 with that case. She violated the SAMs --

11 MR. BRUCK: We object, your Honor.

12 THE COURT: Sustained. Sustained.

13 BY MR. MELLIN:

14 Q. Without getting into the details of that case, so now you
15 are -- you have a recollection that, in fact, SAMs have been
16 violated in the past?

17 A. In that one case, yes.

18 Q. But that's the only case you can recall?

19 A. Yes.

00:15 20 Q. Now, do you remember sitting in with Ms. Nicolet when she
21 was discussing the number of SAMs violations that have occurred
22 over time?

23 A. She described more of attempts than successful violations
24 in H unit.

25 Q. And what was that number?

1 A. I don't recall.

2 Q. Do you recall it being over 80?

3 A. No.

4 Q. Was it over 70?

5 A. No.

6 Q. You don't recall the number?

7 A. No, I do not.

8 Q. And that number that you're referring to that -- you don't
9 recall the number but you recall the topic coming up, correct?

00:16 10 A. Yes.

11 Q. And that topic was discussing attempts that are made to
12 violate SAMs, correct?

13 A. Correct.

14 Q. And that some of those attempts may or may not be
15 successful, correct?

16 A. Well, if they're an attempt, they're not successful, yes.

17 Q. Well, how would the FBI know if there was a successful
18 attempt to -- or a successful effort to circumvent a SAMs?

19 A. Because if it's on the telephone, they're live monitoring;
00:16 20 if it's in written, they're reading it. They copy it, they
21 analyze it. They scrutinize all communication. And if it's a
22 visitation, it's also -- like I say, it's live and it's
23 recorded.

24 Q. Right. So they scrutinize them looking for these attempts
25 to violate the SAMs, right?

1 A. Correct.

2 Q. That's the whole reason why there's this program set up,
3 so that they can either live monitor the phone calls or look at
4 the communications, right?

5 A. Correct. But I was told that if it was live monitoring
6 and if they're questioning anything, they just kill the
7 conversation.

8 Q. Right. And so as this is going on, the whole idea is the
9 FBI agent on the case is trying to decode the messages that are
00:17 10 being sent, correct?

11 A. Correct.

12 Q. So if there's a successful use of a code, the agent
13 wouldn't even know about it, correct? That's the whole point.

14 A. Well, they're supposed to be trained. I would assume
15 they're trained in the code, in the languages. And that's one
16 of their primary duties, so I think they would be -- it just
17 wouldn't be a routine agent.

18 Q. Well, you know it from your experience at BOP that not
19 every violation is caught, correct?

00:17 20 A. Correct.

21 Q. Yesterday you said that the defendant in this case under
22 his SAMs is entitled to only one 15-minute phone call?

23 A. That's in the SAMs he's under right now, yes.

24 Q. So he can only receive one 15-minute phone call?

25 A. I believe if he requests more, it can be granted. But the

1 SAMs, as it's written, is one 15-minute call.

2 Q. Actually, the SAMs as it's written says he's entitled to
3 at least a minimum of one phone call per month, correct?

4 A. Okay.

5 Q. Is that right?

6 A. Yes.

7 Q. So it's not that he only gets one, it's that he has to be
8 given at least one, right?

9 A. He gets one call a month at minimum.

00:18 10 Q. And right now the determination on how many phone calls he
11 gets while he's in his status here is up to the marshals,
12 correct?

13 A. Yes.

14 Q. He can receive or make more phone calls than just one a
15 month, right?

16 A. It's possible, yes.

17 Q. And then if he were, in fact, sent to ADX and if he were,
18 in fact, assigned to the H unit, how many phone calls would he
19 get there?

00:19 20 A. In the first phase he would get two 15-minute calls.

21 Q. Right. Two 15-minute calls how often?

22 A. Once a month.

23 Q. So it's not that he only gets one call, correct?

24 A. Well, he's in -- he's in H unit at that point, yes.

25 Q. We discussed yesterday a little bit the phases and the

1 step-down processes, and I think there's some confusion. There
2 are phases in the H unit, correct?

3 A. Yes.

4 Q. And there are how many phases?

5 A. There's three.

6 Q. And those phases allow an inmate to receive more
7 privileges as they go through the phases, correct?

8 A. Correct.

9 Q. So as you go from Phase 1 to Phase 2, you are getting more
00:20 10 phone calls, right?

11 A. Yes, you get -- yes.

12 Q. What do you get?

13 A. You get one extra phone call.

14 Q. How many more visits do you get?

15 A. Visits the same: Five.

16 Q. What kind of rec time do you get?

17 A. It's ten hours.

18 Q. And as you -- at least a minimum of ten hours, correct?

19 A. Yes.

00:20 20 Q. Right. So you can have more rec time than ten hours per
21 week, correct?

22 A. It's possible, but it's normally -- if they say it's ten
23 hours, it's ten hours.

24 Q. Well, when you say "if it's ten hours, it's ten hours,"
25 you've actually never been a warden at ADX, right?

1 A. No, but at Marion we had the same operation where they
2 were given rec time and we didn't have the luxury of giving
3 them extra rec time.

4 Q. Well, have you spoken to Warden Oliver and asked him that
5 specific question, if he's going to limit an inmate in H unit
6 to just ten hours?

7 A. No.

8 Q. So you don't have any personal knowledge to make that
9 statement, correct?

00:21 10 A. No, I don't.

11 Q. Now, we talked about the three phases in the H unit, but
12 there's also step down too, correct?

13 A. Yeah.

14 Q. Okay. So if an inmate who is in the H unit on a SAMs has
15 that SAMs come down at some point in time -- you follow me so
16 far?

17 A. Yes. There's an approval process for each phase.

18 Q. Right. Right. But if the SAMs comes down, that -- number
19 one, that inmate is not going to be in the H unit any longer,
00:21 20 correct?

21 A. If he gets through Phase 3, no. There's a J unit annex.

22 Q. And what happens at the annex?

23 A. They get more out-of-cell time. They eat one meal out of
24 their cell. There's small recreation groups. That's in H
25 unit -- excuse me. That's in H unit. That's Phase 3.

1 Q. Right. So now the inmate who you said yesterday has no
2 contact with these individuals now has contact, correct?

3 A. But it's got to be approved. The institution has a
4 screening committee. They meet, they review the
5 inmate's -- there's a criteria they look at.

6 Q. Mr. Bezy, just for the record, can you tell me what you're
7 looking at?

8 A. I'm looking at the supplement on H unit.

9 (Pause.)

00:23 10 The programming committee makes a determine [*sic*] on a
11 case-by-case basis. There's no guarantee that an inmate's
12 going to move from Phase 1 to Phase 2 or Phase 2 to Phase 3.
13 It's a case-by-case basis. And eligibility for consideration
14 does not equate to appropriateness for advancement to the next
15 phase. They can meet every criteria that's required to move
16 from Phase 1 to Phase 2, but they don't have to move them.

17 Q. That's fine. And thank you for reading from that, but my
18 question was about when they're on Phase 3, this annex you're
19 talking about, the inmate would have contact with other
00:23 20 inmates, correct?

21 A. In Phase 3, it's part of the unit. They would have
22 contact, and that's part of the program, yes.

23 Q. And then after Phase 3, they could actually move out of
24 that whole area, correct, and they would be in the step-down
25 process?

1 A. No, that's -- it is not up to the Bureau of Prisons for
2 them to leave Phase 3, it's up to the FBI, the U.S. Attorney's
3 Office and DOJ, and eventually it's up to the U.S. Attorney
4 General. The Bureau of Prisons does not have the authority to
5 move a guy out of H unit just on their own.

6 Q. Right. And let's be clear. That's because there's a SAMs
7 on that person, right?

8 A. Right. Right.

9 Q. So if the SAMs is not renewed, right?

00:24 10 A. Correct.

11 Q. So there's no longer a SAMs, right?

12 A. Correct.

13 Q. And we're talking now five, ten, 12, 15 years out, right?

14 A. Right.

15 Q. With no SAMs, that inmate is no longer going to be in the
16 H unit, correct?

17 A. Correct.

18 Q. Okay. So that inmate is now going to phase out of the H
19 unit and they're going to go someplace else, right?

00:25 20 A. Yes.

21 Q. And when they go to this someplace else, they then are
22 going to be in a step-down process, correct?

23 A. Well, it would more than likely be the general population
24 program at the ADX. And then there's a step-down program, but,
25 again, there's no guarantee that an inmate will move through

1 that program based upon his offense. There's a number of
2 factors: There's criminal history, the rationale why he was
3 designated to the ADX, and for safety and security needs of the
4 inmate.

5 Q. Right. Well, you're aware that there have been
6 terrorism-convicted inmates who were on SAMs. When the SAMs
7 was taken down they're no longer even -- well, they're
8 certainly not in the H unit, correct?

9 A. Right.

00:26 10 Q. Some of them go into ADX general population, right?

11 A. Correct.

12 Q. And some of them have gone outside of the ADX altogether,
13 correct?

14 A. Yes.

15 Q. But you'd agree with me that if you're in the step-down
16 process, if you satisfy the first step and move on to the
17 second step, you are receiving more privileges?

18 A. It's not so much that you satisfy the first step. Like,
19 again, you can meet all the criteria that's required to be
00:26 20 evaluated for your appropriateness to move to the next step.
21 But if the committee does not feel it's appropriate, you will
22 stay at your current level.

23 Q. The committee you're now talking about is the committee
24 actually at ADX, right?

25 A. Correct.

1 Q. So that committee is the one who's dealing with the
2 defendant -- or the inmate every day, right?

3 A. Correct.

4 Q. So they're seeing his progress every day, correct?

5 A. Correct.

6 Q. And there's an incentive in place to have him step down,
7 correct?

8 A. There's an incentive, but all inmates will not step down
9 and leave the ADX. Terry Nichols has not left the ADX since
00:27 10 1995. And there's a number of inmates that were at Marion -- I
11 transferred from Marion to the ADX -- that are still there in
12 the general population in the first phase of that program
13 because he will never leave -- they'll never be stepped down.

14 Q. That's fine. But they're in ADX general population,
15 right?

16 A. That's not a regular general -- it's a misnomer. It's not
17 a regular general population of a United States penitentiary.
18 At a United States penitentiary, the inmates, we lock them in
19 their cells at ten o'clock at night, we unlock their cells at
00:27 20 six o'clock in the morning. They have the opportunity to
21 shower, they have the opportunity to walk to a communal dining
22 room to eat. They work, they recreate.

23 The general population at ADX is single-celled, single
24 recreation. You come out of the cell, there's a minimum of two
25 staff there with batons. You're in restraints, you're escorted

1 to a recreation cage which is probably 10 by 20, you're put in
2 there for your recreation or there's some indoor recreation.
3 But you are never unescorted anyplace you go.

4 Q. They can be out of their cell from what time to what time?

5 A. Which prison?

6 Q. In what you were just discussing, in ADX general
7 population.

8 A. In a regular USP, and the ADX --

9 Q. If you'd hold that. I was talking about what you were
00:28 10 just discussing. I think you were just discussing the general
11 population at ADX, correct?

12 A. Right.

13 Q. Okay. Even at ADX, in general population an inmate is
14 allowed out of their cell from what time to what time?

15 A. They're not. They're allowed out of their cell for ten
16 hours a week.

17 Q. Okay. But what are they doing during the day?

18 A. They're sitting in their cells.

19 Q. Or they're holding a job, right?

00:29 20 A. They don't work. There's only one or two inmates in a
21 unit at the ADX who work, and they're called -- they're
22 orderlies. Those are the only two people out of the 60 in that
23 unit that we would offer a job. It would be approved by the
24 captain. They sit in their cells, locked in their cells every
25 day.

1 Q. They're locked in their cells at night. But during the
2 day they have --

3 A. No, you're confusing a standard USP with the ADX. Each
4 one has a general population, but it's apples and oranges,
5 okay? The general population is a program at the ADX. There's
6 the general population program, there's the control unit
7 program, and then there's the special security program. Those
8 are the three main and only programs at the ADX.

9 At the ADX, the inmates are locked in their cells unless
00:30 10 they come out for recreation or they have a medical appointment
11 or they need to be seen by a doctor or they get their ten hours
12 of rec a week. Their showers are in their cells. They shower
13 in their cells. If they come out, there's a slot in the door,
14 they back up to the door, they put their hands through, they're
15 handcuffed and then they're put in leg irons, and then they're
16 escorted by two staff to wherever they're going. And it can be
17 more. It can be a lieutenant hold, it can be a three-man hold.
18 It depends on the inmate. That's the only time they come out
19 of their cells in the general population at the ADX.

00:30 20 It's a whole different world than a regular USP like I ran
21 at Terre Haute. That's an open population penitentiary. This
22 is a -- it's a whole different game. You're mixing apples and
23 oranges.

24 Q. The general population at ADX, you say they will be in
25 their cells, right?

1 A. Correct.

2 Q. What is in their cell?

3 A. They have a shower.

4 Q. Okay. They have their own individual shower, right?

5 A. Correct.

6 Q. They have their own individual cell, right?

7 MR. BRUCK: Counsel has opened the door this far but
8 we're objecting to going further.

9 THE COURT: Well, I think it's the witness that opened
00:31 10 the door. The objection is overruled.

11 BY MR. MELLIN:

12 Q. In their cell they have their own shower, right?

13 A. Correct.

14 Q. So that's even different than the H unit, correct?

15 A. Correct.

16 Q. In the H unit, this more secure facility, the inmate
17 doesn't even have their own shower in their own cell, right?

18 A. Correct.

19 Q. Here they do have a cell with a shower. They also have a
00:31 20 bed, right?

21 A. A concrete bed.

22 Q. Well, a concrete bed. That's -- they have a mattress on
23 top of the concrete bed, right?

24 A. Yes.

25 Q. Yes?

1 A. Yes.

2 Q. They have blankets, right?

3 A. Yes.

4 Q. Okay. They have a TV in their cell, right?

5 MR. BRUCK: Objection, your Honor.

6 THE COURT: Yeah, I think we've had enough of...

7 BY MR. MELLIN:

8 Q. They have heating in their cell, correct?

9 THE COURT: You may have that.

00:32 10 THE WITNESS: Correct.

11 MR. BRUCK: Objection, your Honor.

12 THE COURT: No, that may stand.

13 BY MR. MELLIN:

14 Q. They have air-conditioning in their cell, correct?

15 A. It's -- I don't know if it's called air-conditioning.

16 It's a cool water/cool air system, but it keeps the
17 climate -- yes.

18 Q. Okay. So, but it's temperature-controlled, right?

19 A. Yes.

00:32 20 Q. Now, actually, while we're talking about this, why don't
21 we pull up Exhibit 1595, I think. I don't know if that's the
22 right number. The photo?

23 (Counsel confer off the record.)

24 MR. BRUCK: For the witness only, your Honor?

25 MR. MELLIN: No, no, no, published, your Honor. This

1 is the photo Mr. Bruck showed him yesterday.

2 MR. WATKINS: 5253?

3 MR. MELLIN: It's in color.

4 THE COURT: Do you know the number?

5 MR. MELLIN: I'm told it's Exhibit 3253.

6 THE COURT: Is that the one you want?

7 MR. MELLIN: Yes, your Honor. Thank you.

8 BY MR. MELLIN:

9 Q. Mr. Bezy, you were shown this photo yesterday, right?

00:33 10 A. Yes.

11 Q. And where exactly is this photo from?

12 A. That's the federal correctional complex in Florence,
13 Colorado.

14 Q. Right. And so Florence is a city in Colorado, right?

15 A. Yes.

16 Q. What you see in the photo, though, it's very white
17 everywhere, right?

18 A. Yes.

19 Q. So there was a recent snowfall in the foothills of
00:33 20 Colorado?

21 A. I don't know if it was recent. There's snow on the
22 ground.

23 Q. Well, when did you go out to ADX, in April?

24 A. April.

25 Q. How did it look?

1 A. It was high desert brown.

2 Q. Right. It's typically just high desert out there, right?

3 A. No, you get snow.

4 Q. Well, you get snow two or three times a year, right?

5 A. I've never been assigned there. I've been out there when
6 there has been a lot of snow, though, too.

7 Q. Just so we're all clear just exactly where we are, as you
8 look at this photograph, in the -- behind the ADX, or behind
9 USP Florence, is the beginning of the foothills into the

00:34 10 Rockies, right?

11 A. You're talking about up here?

12 Q. No, I would think those are the Rockies. I was talking
13 about right here, correct? Those are the foothills?

14 A. I'm not from Colorado. I wouldn't -- it's possible.

15 Q. All right. These are the Rockies, correct?

16 A. Correct.

17 Q. The Rocky Mountains, right? Yes?

18 A. Yes.

19 Q. Okay. Florence is located just south of Colorado Springs,
00:35 20 right?

21 A. I believe so.

22 Q. You're not sure where Florence is located?

23 A. I don't -- when I go there, I stay in Canyon City. I
24 don't go to Colorado Springs. But you go through Colorado
25 Springs to get to Florence, yes.

1 Q. And just so everyone knows, Colorado Springs is south of
2 Denver, correct?

3 A. Yes.

4 Q. And as you go south of Florence, you're actually into the
5 high plain deserts, correct?

6 A. Correct.

7 Q. And so in that area, there's very little snowfall
8 year-round, correct?

9 A. I don't live there. I don't know.

00:35 10 Q. Now, when you go to ADX, you can fly right into Colorado
11 Springs, right?

12 A. No, I fly into Denver and drive.

13 Q. Well, is that because it's cheaper to fly into Denver than
14 it is to fly into Colorado Springs?

15 A. It's when you're flying on the government dime, you can
16 only fly certain places.

17 Q. All right. Well, how far is it from Denver to Colorado
18 Springs, then? At least you'll know that.

19 A. It's about a two-and-a-half-hour drive.

00:36 20 Q. Yeah? And Colorado Springs to Florence is about how far?

21 A. I mean, it's about a two-and-a-half-hour drive from Denver
22 all the way to Canyon City.

23 Q. Right. And that drive is through the metropolitan Denver
24 area, correct? You start there, right?

25 A. I don't go through the -- I go the south loop, the new,

1 and then --

2 Q. I25?

3 A. Yes.

4 Q. So you fly into -- I didn't know we were going to get into
5 all of this, but you fly into -- or is it DIA? You fly into
6 the Denver Airport, right?

7 MR. BRUCK: I don't think we should be getting into
8 all of this. We object on relevance.

9 THE COURT: No, overruled. Go ahead.

00:36 10 BY MR. MELLIN:

11 Q. You fly into the Denver Airport and you have to go for
12 quite a distance around the metropolitan Denver area, right?

13 A. I plug it into my Garmin and follow my Garmin.

14 Q. Right. And then your Garmin leads you right down I25,
15 right?

16 A. Correct.

17 Q. And you go right down I25 from Denver to Colorado Springs,
18 right?

19 A. Correct.

00:37 20 Q. And as you're driving down that drive, it's a pretty drive
21 as you're going south. The Rockies are on your right, you have
22 the plains on your left, right?

23 A. Okay.

24 Q. Is that right?

25 A. I'll take your word for it.

1 Q. All right. And you're going through cities on the way
2 down there, correct?

3 A. Yes.

4 Q. And you get to Colorado Springs. It was where the Air
5 Force Academy is at, correct?

6 MR. BRUCK: I object to relevance.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 BY MR. MELLIN:

00:37 10 Q. Okay. And that conveniently, though, is not shown on this
11 photograph, is it, any of Colorado Springs?

12 MR. BRUCK: I object to the characterization of
13 convenience.

14 MR. MELLIN: I will rephrase.

15 THE COURT: Okay.

16 BY MR. MELLIN:

17 Q. Is Colorado Springs shown on this photograph?

18 A. No, it's too far away.

19 Q. Well, how far away is the southern portion of Colorado
00:37 20 Springs from Florence?

21 A. An hour plus.

22 Q. You believe it's an hour plus?

23 A. Yeah.

24 Q. Okay. And then as you go south of Colorado Springs,
25 there's actually a fort there, right?

1 A. Yes.

2 Q. Fort Carson?

3 A. Yes.

4 Q. A very big Army installation, right?

5 A. Yes.

6 Q. How far is Fort Carson from USP Florence?

7 A. 45 minutes to an hour, I believe. I've never timed it.

8 Q. Okay. The ADX, when we were talking about it having
9 heating, it's a very modern facility, right?

00:38 10 A. It's 20 years old, yes.

11 Q. In the lifetime of BOP, that's a pretty modern facility,
12 though, right?

13 A. Yes.

14 Q. Okay. I mean, it's one of the newer facilities, correct?

15 A. No, it's not one of the newer ones. There's a lot more
16 newer ones. But it's been activated for 20 years.

17 Q. And it's got all of the latest upgrades when it comes to
18 heating and cooling, right?

19 A. I've never checked into that, but --

00:39 20 Q. Well, an inmate at ADX is not going to be necessarily hot
21 or cold; they're going to monitor the temperature, right?

22 A. Right. There's a facility department there that takes
23 care of the heating and the...

24 Q. An inmate at ADX is permitted visitors, right?

25 A. Correct.

1 Q. Even an inmate in the H unit is permitted visitors, right?

2 A. Yes. They're all noncontact visits at the ADX.

3 Q. How many visits is an inmate in the H unit permitted per
4 month?

5 A. I believe it's five.

6 Q. Those are five social visits, right?

7 A. Correct.

8 Q. How many legal visits is an inmate in the H unit
9 permitted?

00:39 10 MR. BRUCK: I object to this, your Honor. That's not
11 relevant to any of the topics we discussed.

12 MR. MELLIN: Your Honor, I believe it goes straight
13 to --

14 THE COURT: Overruled. You may have it. It goes to
15 the conditions of the SAMs.

16 THE WITNESS: I'm not sure but they have to request
17 them and there's only certain days of the week that they -- H
18 unit inmates are allowed in the visitation room. So if it's
19 available and the room's available, they'll grant the visit.

00:40 20 BY MR. MELLIN:

21 Q. Right. There's an unlimited number of meetings that an
22 inmate can have, legal meetings, correct?

23 A. Right. But there's only certain days that they do H unit
24 visits at the ADX.

25 Q. Right. The social visits that an inmate can have, the

1 five visits per month, those include family members, right?

2 A. Spouses, parents, siblings. Who's approved by the SAMs,
3 yes.

4 Q. Right. So whoever's on the SAMs list can go see the
5 inmate at ADX, correct?

6 A. Right.

7 Q. An inmate can ask for and get a SAMs modified to have
8 other individuals on the SAMs list, right?

9 A. He can ask for it. It's up to the FBI and the U.S.

00:41 10 Attorney's Office to amend the SAMs.

11 Q. Right. But if there is no objection to it and there's no
12 basis under the Code of Federal Regulations to exclude it, then
13 that will be permitted, right?

14 A. It's possible, yes.

15 Q. And so an inmate can ask that a new person be added to the
16 list, right?

17 A. They can request but they have to be approved.

18 Q. And so if this defendant with his SAMs currently that he
19 has goes to ADX H unit, he immediately is going to be permitted
00:42 20 five social visits a month with people on his approved list,
21 correct?

22 A. Correct.

23 Q. He'll be able to meet with family or whoever's on that
24 list, right?

25 A. Yes.

1 Q. When an inmate is at ADX, if they meet someone new, they
2 can add that person, or make a request to add that person as
3 well, right?

4 A. What do you mean if they meet someone new?

5 Q. If they meet a new person?

6 A. No; there has to be a prior relationship before
7 incarceration.

8 Q. Is it your testimony that you cannot modify a SAMs to
9 allow for a new person that you did not know prior to the
00:43 10 institution of the SAMs to be added to the list?

11 A. I was giving you the BOP policy. The BOP policy is there
12 must be a prior relationship to incarceration. And again, I'm
13 sure the FBI and U.S. Attorney's Office -- because as the
14 warden says, there's a great partnership there -- they would
15 ask what -- you know, they would ask the warden, because they
16 get input from the ADX staff too, and it may not be approved.

17 Q. Right. But it may be approved, right?

18 A. It's up to the U.S. Attorney's Office and the FBI.

19 Q. And you're aware, though, that at times modifications have
00:43 20 been made to allow new girlfriends or boyfriends or whatever to
21 be added to a list, right?

22 A. I'm not aware of any, no.

23 Q. Are you aware that an inmate is allowed to write an
24 unlimited number of letters?

25 A. Correct.

1 Q. He can receive an unlimited number of letters, correct?

2 A. If they're on the approved list, he can write to them and
3 he can receive from them. If not, it's rejected
4 correspondence.

5 Q. Right. But if there is a new person added, they can write
6 to that person and receive communications from that person with
7 an unlimited basis each month, correct?

8 A. Right. If it's approved by the FBI and the U.S.
9 Attorney's Office, yes.

00:44 10 Q. So if this defendant were sent to ADX, to the H unit, even
11 under the SAMs as it exists today, he can write an unlimited
12 number of letters to people on his family and friend list,
13 correct?

14 A. On the approved list, yes.

15 Q. And he can receive an unlimited number back from them,
16 correct?

17 A. On the approved list, yes.

18 Q. In addition to that, he can write an unlimited number of
19 letters to -- or what's called legal mail, right?

00:45 20 A. To the attorney of record, yes.

21 Q. Okay. And that legal mail is not monitored. Is that
22 right?

23 MR. BRUCK: I'm going to object to this.

24 THE COURT: No, your may have it.

25 THE WITNESS: It's -- when it comes in, it's opened,

1 it's screened for contraband, and then it's delivered to the
2 inmate. But on certain circumstances the court can grant
3 access to review legal material.

4 BY MR. MELLIN:

5 Q. But in the normal course, if an inmate writes legal mail
6 on some piece of correspondence, no one is allowed to open that
7 up and look at it, correct?

8 A. No, we open it in front of the inmate, we search it, we do
9 a -- we look at it, we search the pages, we make sure there's
00:46 10 nothing concealed in it as far as contraband that we could see
11 between the pages, pages stuck together, something behind a
12 stamp, something behind -- we can look at it very closely. And
13 everything's x-rayed to begin with, so it's opened in front of
14 the inmate and then it's given to the inmate.

15 Q. Right. But no one can read it, correct?

16 A. If the court authorizes it, it can be read.

17 Q. Right. But that's the exception to the general rule.

18 Isn't that right?

19 A. Right.

00:46 20 Q. So the general rule is if an inmate writes on
21 correspondence, "legal mail," and it is sent out, no one from
22 BOP is opening that letter, correct?

23 A. I think he may have to seal it in front of -- it may have
24 to be sealed in front of the inmate [sic] or --

25 MR. BRUCK: Your Honor, I object to this line of

1 questioning because it does not include that the limitation is
2 to counsel of record; not just any lawyer.

3 MR. WEINREB: Objection, your Honor.

4 THE COURT: No, I think that was referred to. But
5 anyway, go ahead.

6 MR. WEINREB: Your Honor, he's testifying.

7 MR. MELLIN: I'll be happy to just say that.

8 BY MR. MELLIN:

9 Q. The defendant -- or excuse me. The inmate decides that he
00:47 10 is going to send out something and he writes "legal mail" on
11 it, correct?

12 A. Correct.

13 Q. The inmate has to write down the address of approved
14 counsel, right?

15 A. There is a disclaimer that has to be put on the envelope
16 by the inmate. If it's not put on, then it's not considered
17 legal mail coming in or going back out.

18 Q. Right.

19 A. So there is an official disclaimer put on it, and it has
00:47 20 to be the specific BOP disclaimer for legal mail.

21 Q. Right. The disclaimer is on the envelope. The inmate
22 writes "legal mail." The address of the attorney is on that
23 envelope. Once that happens, BOP is not opening that mail,
24 correct?

25 A. Well, they can check to see if there is an attorney at

1 that address. Yes, the SIS office would monitor that. And in
2 certain cases, in conjunction with an FBI court order, they
3 could open it.

4 Q. In general, does BOP open legal mail?

5 A. Coming in or going out?

6 Q. Going out, let's start with.

7 A. Going out it's sealed in front of staff and it's given to
8 staff and then it's sent out.

9 Q. So the answer to that is no, they don't open it, correct?

00:48 10 A. It's not -- they seal it -- it's sealed in front of staff
11 and then it's sent out.

12 Q. Who seals it?

13 A. Staff or the inmate can seal it.

14 Q. Does BOP go through the pages of whatever is in that
15 document?

16 A. Yes, they'll do a cursory search.

17 Q. Do they read it?

18 A. No.

19 Q. Right. They don't have any right to read it, correct?

00:48 20 A. Correct.

21 Q. Again, legal mail is unlimited, correct?

22 A. Yes.

23 Q. Legal mail coming in is unlimited, correct?

24 A. Yes.

25 Q. You're aware that inmates have abused that process,

1 correct?

2 MR. BRUCK: Objection to this.

3 THE COURT: Yeah, I think we've gone far enough on
4 this, Mr. Mellin.

5 BY MR. MELLIN:

6 Q. Concerning contacts or communications, you're aware that
7 inmates can file lawsuits, right?

8 A. Yes.

9 Q. You know that from your experience as the warden, right?

00:49 10 A. Right.

11 Q. Your name would be put on pleading after pleading, right?
12 The inmate versus the warden and the Department of Justice?

13 A. They have to go through the administrative remedy process.
14 They have to exhaust that first before they can go into civil
15 court, yes.

16 MR. BRUCK: Beyond the scope, your Honor.

17 THE COURT: Well, we'll wait until the next question.

18 BY MR. MELLIN:

19 Q. And inmates can sue to change the conditions of
00:49 20 confinement, correct?

21 MR. BRUCK: Same objection.

22 MR. MELLIN: Your Honor, this goes directly to the
23 SAMs and what limitations would be on --

24 THE COURT: All right. Okay.

25 BY MR. MELLIN:

1 Q. Inmates can sue to change the conditions of confinement,
2 correct?

3 A. Yes.

4 Q. You know that because, in fact, you're involved in a
5 lawsuit just along those lines, right?

6 A. Excuse me?

7 Q. You're involved in a lawsuit regarding the changing of
8 conditions of confinement?

9 A. I am?

00:50 10 Q. Are you? You're not?

11 A. In which case?

12 Q. Is there a case that you're involved with in Colorado
13 concerning the conditions of ADX?

14 A. Yes.

15 Q. You're aware that a defendant can -- or excuse me -- an
16 inmate can write a book, right?

17 A. There's a process they go through for manuscripts, yes.

18 Q. They can write a book even if they're on SAMs at the H
19 unit, right?

00:51 20 MR. BRUCK: Objection. This is a misleading question.
21 They can write whatever they want.

22 MR. WEINREB: Your Honor, if Mr. Bruck is testifying,
23 it's not appropriate.

24 THE COURT: Well, you can point it out on redirect.

25 BY MR. MELLIN:

1 Q. An inmate on the H unit can write a book, correct?

2 A. I believe so.

3 Q. Inmates on death row write books, correct?

4 A. Yes.

5 Q. You know that from your own experience, correct?

6 A. Yes.

7 Q. Mr. Hammer wrote a book, right?

8 MR. BRUCK: Objection to --

9 THE COURT: Yes.

00:51 10 MR. BRUCK: -- particular inmates.

11 THE COURT: Yes, I think the other answers were
12 sufficient. We don't need specific instances.

13 BY MR. MELLIN:

14 Q. Assuming an inmate has no SAMs restrictions, or the SAMs
15 that were in place at one time now are no longer in place, that
16 book -- if an inmate writes a book, that book can be sent to
17 anyone, correct?

18 A. I don't think it can be sent to staff, but it can be sent
19 to outside people, yes.

00:52 20 Q. Right. It can be sent to anyone in the outside world,
21 right?

22 A. Yes.

23 Q. You would agree that inmates in USPs or ADX communicate
24 with each other almost every day, correct?

25 A. Yes, because their rec cages are side by side.

1 Q. And it's not only that their rec cages are side by side,
2 but they can communicate through their cells, correct?

3 A. Yes, they can use the vent -- some of the toilets, yes.

4 Q. Right. The inmates get somewhat ingenious with this
5 method of communication, right?

6 A. Yes.

7 Q. So what they do, they clear the water out of their toilets
8 or out of their sinks and they communicate through the plumbing
9 to each other, right?

00:53 10 A. Yes.

11 Q. And that happens repeatedly every day, right?

12 A. It happens, yes.

13 Q. They send out things called kites, correct?

14 A. Yes.

15 Q. Do you know what a kite is?

16 A. Yes.

17 Q. What is a kite?

18 A. It's a written message, a letter.

19 Q. And how is it --

00:53 20 MR. BRUCK: Objection. The question is conflating H
21 unit with ADX generally, and it's -- we would object to
22 conflating these two different institution units.

23 THE COURT: Yeah, I think where there are possible
24 differences, you should be clear which you're addressing.

25 MR. MELLIN: That's fine.

1 BY MR. MELLIN:

2 Q. Well, I'm not sure, Mr. Bezy, if you have experience on
3 the H unit, but do you have experience on the H unit enough to
4 comment on whether or not kites are being sent between inmates
5 on the H unit?

6 A. No, I don't.

7 Q. But you are aware, though, that kites are sent in general
8 population, correct?

9 A. Correct.

00:54 10 Q. They are even sent in general population at ADX, right?

11 A. I believe so, yes.

12 Q. And these messages are sent by what's called fishing,
13 correct?

14 A. Yes.

15 Q. And what is fishing?

16 A. You take thread out of a T-shirt, underwear, you wrap it
17 around your kite, and from underneath your door you can sling
18 it down the range. But then you can also modify the doors to
19 prevent that from occurring too.

00:54 20 Q. You're aware that inmates play chess with each other,
21 right?

22 MR. BRUCK: I object to the scope, your Honor.

23 MR. MELLIN: Your Honor, it goes directly to
24 communications.

25 THE COURT: Well, I think it's getting cumulative.

1 The objection is sustained.

2 THE WITNESS: At some institutions, yes.

3 THE COURT: Mr. Bezy, wait for the next question.

4 BY MR. MELLIN:

5 Q. One thing I failed to ask you about is if an inmate sends
6 a letter out to someone -- in fact, even on a SAMs, if an
7 inmate sends something out to someone who's approved on his
8 SAMs list, BOP cannot keep that person from posting whatever
9 that information was on the Internet, correct?

00:55 10 A. I believe there is some conditions that they comply --
11 because when the -- on the phone, you know, they'll read the
12 SAMs to the caller, and there may even be something written
13 that they have to sign about written correspondence. I know
14 there is. And on some units there are -- you have to sign that
15 you won't post anything.

16 Q. Right. So you sign that you won't post anything to get
17 onto the list, right?

18 A. Right.

19 Q. But once you're on the list, if you receive something, you
00:56 20 can still post it, right?

21 A. Yes. And then as a warden, I'd ban you from any type of
22 correspondence or contact with that inmate for the rest of your
23 life.

24 Q. Correct. But yet it's too late. It's now been posted,
25 correct?

1 A. Correct. You'd never post it again, though.

2 Q. All right. But if that message wants to be sent and an
3 inmate wants to send that message, they can use someone on
4 their approved list to post that message on the Internet and
5 there's nothing BOP can do to stop that at that moment?

6 A. Well, if it -- well, I mean, like I said, everything is
7 read by the FBI and the BOP. It's scanned, it's recorded. If
8 there's any indication that that would happen, they would not
9 let that letter out. It would be rejected.

00:56 10 Q. It could be anything, though, right? It could just be,
11 "Hi, mom. Here's what I'm up to," right?

12 A. Yes.

13 Q. And that could be posted immediately on the Internet,
14 correct?

15 A. Correct.

16 Q. It could also be a coded message that the agent doesn't
17 understand is a coded message, right?

18 MR. BRUCK: Objection.

19 THE COURT: Sustained.

00:57 20 THE WITNESS: I would hope they --

21 MR. MELLIN: You don't have to answer that, Mr. Bezy.

22 BY MR. MELLIN:

23 Q. Is it fair to say that there's no way for BOP to guarantee
24 that no word from an inmate could ever be posted on the
25 Internet?

1 MR. BRUCK: This has been asked and answered several
2 times.

3 THE COURT: Sustained. Sustained.

4 BY MR. MELLIN:

5 Q. You mentioned earlier that there could be communication
6 when an inmate is on rec time. Is that right?

7 A. Yes.

8 Q. And the rec time we're talking about is the ten
9 hours -- at least ten hours a week that an inmate is allowed to
00:58 10 go out and recreate, right?

11 A. Are we talking H?

12 Q. We'll start with H.

13 A. Okay. Yes.

14 Q. Yes? And if we -- H is going to have ten hours a week.
15 If you're out of H, how many hours do you get a week?

16 A. If they're in H, like I said earlier, it's -- the place
17 has got -- it's got video cameras and it's got microphones.
18 And if they want to overhear -- if law enforcement wants to
19 overhear, they will overhear.

00:58 20 Q. Right. But that happens day in and day out, correct?

21 A. Right.

22 Q. There's communications between inmates day in and day out
23 that BOP overhears, right?

24 A. Right.

25 Q. So if an inmate, starting with the H unit, is outside

1 doing recreation, there can be another inmate outside at the
2 same time, correct?

3 A. Right. But if there's a question, there's also indoor
4 recreation areas that are separate from the outdoor recreation
5 areas. So you can segregate. You can put one inmate outside,
6 you can put one inmate inside if you have any questions.

7 Q. My point is two inmates can be outside recreating at the
8 same time, correct?

9 A. Correct.

00:59 10 Q. Even on the H unit?

11 A. Right. There's over-hearings going.

12 Q. Right. And those two inmates can talk back and forth to
13 each other, correct?

14 A. That's what ADX staff say, yes.

15 Q. Now, if the SAMs comes down and an inmate is no longer on
16 the H unit, they have more ability to communicate during rec
17 time, correct?

18 A. Correct.

19 Q. And especially they have more opportunity if they move on
00:59 20 to a USP at some point, correct?

21 A. Correct.

22 Q. Because at a USP, they're going to have the availability
23 to play sports and do all types of other activities, correct?

24 MR. BRUCK: Objection to going on to a USP.

25 THE COURT: Yeah, sustained. Sustained. Let's stay

1 with the ADX.

2 BY MR. MELLIN:

3 Q. Well, if an inmate has their SAMs removed, they at some
4 point can get into the stepped-down process, right?

5 A. Yes.

6 Q. And if they succeed in the stepped-down process --

7 MR. BRUCK: This has all been asked and answered and
8 he's doing the same thing.

9 THE COURT: I think it's cumulative.

01:00 10 MR. MELLIN: I was just trying to link it to the
11 recreation, your Honor.

12 THE COURT: Let's move along.

13 BY MR. MELLIN:

14 Q. Do you know the number of people -- the number, not the
15 names -- the number of people that are on the defendant's
16 approved list in this case?

17 A. No, I do --

18 MR. BRUCK: Objection, your Honor.

19 THE COURT: Sustained.

01:01 20 MR. MELLIN: With the Court's indulgence.

21 (Pause.)

22 BY MR. MELLIN:

23 Q. Would you agree that the more people that are on an
24 approved list, there is a greater risk that there could be a
25 violation?

1 MR. BRUCK: Objection.

2 THE COURT: Sustained.

3 MR. MELLIN: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. BRUCK:

6 Q. Mr. Bezy, starting back to the SAMs process again, you
7 were asked yesterday about the SAMs being allowed to expire at
8 the end of the year?

9 A. Correct.

01:02 10 Q. Are you aware whether or not there is an automatic process
11 to trigger the renewal process within the Department of
12 Justice --

13 A. Yes.

14 Q. -- by the FBI?

15 A. Yes. It's tracked, and I believe it's -- about three to
16 four months out they start the renewal process.

17 Q. All right. And so the people involved are notified that
18 the process is ready for renewal and needs to be proceeded
19 with?

01:03 20 A. Correct.

21 Q. Are you aware of any SAMs inmate convicted of a terrorist
22 offense who had their SAMs discontinued just because the
23 government forgot to renew the SAMs?

24 A. No.

25 Q. I believe the government provided us and you with the

1 total number of SAMs inmates who have been convicted of
2 terrorism-related offenses and assigned to ADX since it opened
3 in 1994. Do you have that -- do you have that statistic?

4 A. Yes, I do.

5 Q. And what -- how many SAMs inmates convicted of
6 terrorism-related offenses have been assigned to ADX since it
7 opened in 1994?

8 A. Thirty-four.

9 Q. Thank you.

01:04 10 There was some discussion about being transferred out of
11 ADX. Based on everything you know about the regulations,
12 procedures, policies of the Federal Bureau of Prisons in which
13 you spent a 28-year career, is there any likelihood that
14 Mr. Tsarnaev will be transferred out of ADX no matter what the
15 result of his conduct, step-down programs or anything else?

16 MR. MELLIN: Objection.

17 THE COURT: Sustained.

18 BY MR. BRUCK:

19 Q. Now, you were questioned a moment ago about the
01:04 20 three -- about the phase-down program at -- on H unit for
21 inmates who have SAMs?

22 A. Correct.

23 Q. Am I correct in thinking that in order -- and you said
24 that the -- the Phase 1 to Phase 2 basically involves one more
25 phone call a month?

1 A. Yes.

2 Q. And a couple of other minor changes in the way people walk
3 to the showers?

4 A. Yeah, they get unescorted to the shower and they may
5 get a -- yes.

6 Q. Okay. And then for -- and that does not affect the amount
7 of contact -- or whether the person is allowed contact with
8 other inmates on the unit. Is that correct?

9 A. Correct.

01:05 10 Q. Phase 3 does allow some greater interaction with other
11 SAMs inmates on H unit, correct?

12 A. Correct.

13 Q. And for that reason, in order to advance to Phase 3, the
14 SAMs actually has to be modified, correct?

15 A. Correct.

16 Q. And that modification is up to the Department of Justice,
17 not the Bureau of Prisons?

18 A. Correct.

19 Q. All right. Are there inmates at H unit now who have spent
01:06 20 many years on H unit without ever being approved to go to Phase
21 3 and have a little bit of contact with other inmates?

22 MR. MELLIN: Objection.

23 THE COURT: Overruled.

24 You may answer.

25 THE WITNESS: Yes.

1 BY MR. BRUCK:

2 Q. Okay. By contrast, you also talked about the step-down
3 program, correct?

4 A. Right.

5 Q. And that is for people who are not on H unit?

6 A. Correct.

7 Q. But are at ADX?

8 A. Correct.

9 Q. And for most inmates, that is designed to eventually get
01:06 10 people transferred out of ADX?

11 A. Yes.

12 Q. But so long as someone stays at ADX, you've described the
13 conditions there, right?

14 A. Correct.

15 Q. And is it your testimony that Mr. Tsarnaev belongs to two
16 categories of inmates that would require him to stay at ADX?

17 A. It would have impact, yes, and it's -- his CIM of special
18 supervision --

19 Q. Excuse me. CIM stands for what?

01:07 20 A. Central Inmate Monitoring. Special supervision and broad
21 publicity.

22 Q. Okay. I'm sorry. Special supervision --

23 A. Special supervision and broad publicity.

24 Q. Okay. So special supervision is one categorization of an
25 inmate?

1 A. Yes. It's based upon the nature of his offense.

2 Q. Based on the nature of the offense?

3 A. Correct.

4 Q. Which is not something that he can change?

5 A. No.

6 Q. Or that will ever change?

7 A. No.

8 Q. And that is a factor that would require him, in your
9 opinion, to stay at ADX?

01:08 10 A. Yes.

11 Q. And, in fact, there are inmates who have been convicted of
12 similar offenses who have been at ADX for 20 years or more?

13 MR. MELLIN: Objection.

14 THE COURT: Overruled.

15 You may answer it.

16 THE WITNESS: Yes, Terry Nichols is there.

17 BY MR. BRUCK:

18 Q. Who is the --

19 A. He was the --

01:08 20 MR. MELLIN: Objection, your Honor.

21 THE COURT: Sustained.

22 BY MR. BRUCK:

23 Q. And in addition, you mentioned another classification that
24 would separately require him to stay at ADX?

25 A. Broad publicity. Where everybody -- basically, there's so

1 much press about him, that everybody -- everybody would know
2 who he is.

3 Q. All right. And the reason that that would require him to
4 stay at ADX rather than be transferred to another institution
5 is what?

6 A. In my opinion, there would be other inmates in different
7 populations that would want to do great bodily harm to him.

8 Q. Okay. He could not be safely transferred out of ADX?

9 A. No.

01:08 10 Q. Mr. Mellin asked about challenges to the SAMs restrictions
11 in court?

12 A. Yes.

13 Q. To your knowledge, has any court, any court --

14 MR. MELLIN: Objection.

15 THE COURT: I haven't heard the question.

16 MR. BRUCK: May I finish the question?

17 THE COURT: Yes, go ahead.

18 BY MR. BRUCK:

01:09 19 Q. Has any court ever removed a SAMs classification from an
20 inmate?

21 A. No.

22 MR. MELLIN: Your Honor, objection. He doesn't have a
23 basis of knowledge for that.

24 THE COURT: The answer may stand.

25 MR. BRUCK: If you would bear with me just one moment,

1 your Honor.

2 (Counsel confer off the record.)

3 MR. BRUCK: That's all we have. Thank you very much.

4 MR. MELLIN: Your Honor, very briefly?

5 THE COURT: Okay.

6 RE-CROSS-EXAMINATION

7 BY MR. MELLIN:

8 Q. Mr. Bezy, how many legal cases have you read to -- that
9 form the basis of your last statement that no court has ever
01:10 10 done something?

11 A. It came from your FBI female agent that's over the
12 national counterterrorism task force.

13 Q. You're aware that courts have, and the parties have agreed
14 based on courts' decisions, to modify SAMs, correct?

15 MR. BRUCK: Objection, your Honor. This is a legal
16 conclusion --

17 THE COURT: Well, no. Go ahead. You may answer it.

18 MR. BRUCK: -- regarding a Court's decision.

19 THE COURT: You may have it.

01:10 20 THE WITNESS: I'm going by what the FBI subject matter
21 expert told us the other day in a meeting.

22 BY MR. MELLIN:

23 Q. Okay. So you're basing your entire testimony here in this
24 court --

25 MR. BRUCK: Objection to his entire testimony.

1 MR. MELLIN: No -- on this point.

2 THE COURT: Start the question again.

3 BY MR. MELLIN:

4 Q. You're basing your testimony on that point in this court
5 based on a conversation that you had on Tuesday. Is that
6 right?

7 A. She's the leader of the national joint terrorism task
8 force who you would think would know it. And I took her word
9 for it, yes.

01:11 10 Q. You were asked about two factors that Mr. Bruck said would
11 have an impact on the defendant's transfer out of ADX, right?

12 A. Correct.

13 Q. How many total factors are there?

14 A. There's a number of them, yes.

15 Q. Right. How many?

16 A. Offhand, I don't know. Well --

17 MR. BRUCK: Relevance.

18 THE COURT: Overruled.

19 MR. BRUCK: It's also misleading, your Honor. We
01:11 20 think it implies that more than one is required to keep someone
21 at ADX.

22 MR. MELLIN: Your Honor, I object to that comment.

23 THE COURT: No, you may have the question.

24 THE WITNESS: I don't know. There's a number of them.

25 BY MR. MELLIN:

1 Q. Right. As you sit here today, you don't even know the
2 answer to that question, do you?

3 A. I have a policy right here. If I need to know it, I can
4 look up the policy.

5 Q. I'm asking you, as you sit here today, you don't even know
6 the number of factors the BOP would have to consider to
7 determine whether or not the defendant will be transferred out
8 of ADX?

9 A. I made the initial recommendation --

01:12 10 Q. Sir, if you could please just answer my question.

11 A. Okay. Could you repeat it?

12 Q. As you sit here right now, you don't even know the number
13 of factors that are involved in the determination of deciding
14 if the defendant would be sent out of ADX, correct?

15 A. It can be one factor, correct.

16 Q. You don't know the number, correct?

17 A. The total number, no. But I know the numbers that are on
18 him, and it doesn't take all the factors to be applicable.

19 Q. And you're testifying as an expert in this field, correct?

01:12 20 A. Correct.

21 Q. Yet you don't even know the other factors that are
22 involved, correct?

23 A. There are a number of them. There's escape risk, sex
24 offenders, drug dealers, sentence length. I mean, you can go
25 on and on and on if you want to.

1 Q. Right. There's a very long list and you cherry-picked two
2 out of it?

3 A. I didn't cherry-pick. That's what --

4 MR. BRUCK: Objection to the characterization of
5 cherry-picking.

6 THE COURT: Well, the witness has contradicted it, so
7 we'll just let it stand.

8 BY MR. MELLIN:

9 Q. There's a very long list and you just talked about two,
01:13 10 correct?

11 A. No, that's what the Bureau of Prisons in their
12 professional judgment put on him as two assignments necessary
13 to provide adequate security for him.

14 Q. Right. And all I'm asking, those other factors could
15 override the one or two factors you've talked about, correct?

16 A. It's possible but not likely.

17 Q. And it's -- that decision is not made by Mr. Bezy, it's
18 made by the people at ADX, correct?

19 A. No, it's made by -- this was made by a case manager, can
01:13 20 make a recommendation; the institution can be; the region can
21 approve it; the central office can do it. It's made by the
22 professionals in the Bureau of Prisons.

23 Q. It's not made by you, correct?

24 A. Correct.

25 MR. MELLIN: Thank you.

1 THE COURT: All right, Mr. Bezy. Thank you. You may
2 step down.

3 (The witness is excused.)

4 THE COURT: Jurors, let me just mention one thing. I
5 believe it was yesterday there was some reference in the
6 testimony to costs of running a prison and so on. Any possible
7 cost to the government from any method of punishment is not an
8 appropriate subject for you to be considering at all, and there
9 are principally two reasons for that: First of all, it's just
01:14 10 improper to consider cost in making the serious judgment you'll
11 have to make. That's completely irrelevant to your decision
12 and you're not to make it. The second is, of course, you don't
13 have any information about that, what the cost of relative or
14 possible punishments might be, so there's no way to make a
15 rational judgment about it not having that information.

16 So there was some reference to it, but it's not a
17 proper subject for you to consider, all right?

18 We'll take a short -- well, I don't know how long.
19 We'll take a recess.

01:15 20 THE CLERK: All rise for the Court and the jury. The
21 Court will take a recess.

22 (The Court and jury exit the courtroom and there is a
23 recess in the proceedings at 11:42 a.m.)

24 (The Court and jury entered the courtroom at 1:02
25 p.m.)

1 THE COURT: Jurors, again, we appreciate your
2 patience. There are some issues we've been working on.
3 Actually, we need a little bit more time. We're going to
4 actually end the day today here and the week and ask you to
5 come back on Monday. I think this approach will make it
6 smoother on Monday when we actually get going. All right.

7 So, once again, I caution you to avoid any discussion
8 of the case. Don't make up your mind about any of the issues
9 in the case, of course, and, as much as you can, as you've told
02:36 10 me you have been able to do, avoid any accounts of the media in
11 the case.

12 Have a good weekend. It looks like the weather is
13 going to be delightful for a change. And we'll see you on
14 Monday morning. We'll be in recess.

15 THE CLERK: All rise for the Court and the jury. The
16 court will be in recess.

17 (Whereupon, at 1:04 p.m. the trial recessed.)
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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

Date: May 7, 2015