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VIA ELECTRONIC MAIL AND USPS CERTIFIED FIRST-CLASS MAIL

Commission on Safety and Abuse in America's Prisons
c/o Jennifer Trovillion, Coordinator
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Washington, D.C. 20005
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**RE: VIOLENCE, CONDITIONS, AND INFORMATION CONCERNS REGARDING
FEDERAL CORRECTIONAL COMPLEX (FCC) VICTORVILLE, CALIFORNIA**

Dear Ms. Trovillion and Commission Panelists:

I respectfully submit this letter report describing the deadly prison conditions that threaten correctional officers and inmates at Federal Correctional Complex ("FCC") Victorville, California, particularly at (1) United States Penitentiary ("USP") Victorville; and (2) the BOP's previously unopened Federal Correctional Institution ("FCI") Victorville Medium II¹

This Report offers a brief background of FCC Victorville, including the incident of inmate-on-inmate violence last April 11 that has claimed the life of USP inmate Peter Steven Scopazzi, age 37. See High Desert In Brief, "Penitentiary officials reveal killed prisoner's identity," **VICTOR VALLEY DAILY PRESS**, (Tuesday, April 19, 2005) (<http://www.vvdailypress.com/2005/111391601847772.html>). It also describes officially denied but documented abuse of BOP Special Mail policy by FCI Victorville Medium II's mailroom staff. The Report further includes a description of BOP's regular, unlawful response times under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552; BOP's unlawfully tardy response to a February 18 FOIA request regarding Victorville; and also West Regional Counsel Harlan Penn's effective economic denial of records without any apparent consideration of a substantial fee waiver request,

¹ Though named "Medium," likely for its intended correctional mission, FCI Victorville Medium II now seemingly operates as a *de facto* – and unlawfully administered – "control unit." See generally Title 28 C.F.R., Part 541; USDOJ-FBOP Program Statement (P.S.) 5212.07, *Control Unit Programs* (2/20/2001); P.S. 5270.07, *Inmate Discipline and Special Housing Units* (CN-13, pub. 1/9/2003, eff. 12/18/2002).

and based on an exorbitant research fee that stems from unsupported and seemingly outrageous research estimates.

Of special relevance to the Prison Commission, this Report includes the abridged account of an inmate who alleges being intentionally beaten, without provocation, by Federal Bureau of Prisons (“BOP”) staff in his Unit Manager’s office; who was whisked away to the locked-down control unit at previously-unopened FCI Victorville Medium II; who was refused medical treatment by his custodians until after outside correspondence reached Warden Jeff Wrigley and West Region Director Joseph E. Gunja on or about February 22; and who has received no substantial due process protections regarding either his administrative segregation at FCI Medium II or the disciplinary findings regarding the January 10 incident.

In the spirit of full disclosure, the author has submitted materials to this Commission in search of resources with which to document, *inter alia*, FCC Victorville’s secreted – and now murderous – chaos. The author competes for resources against Ivy League alum at a Northeastern mission, of course, and his Louisville legal education knows to temper favorable expectations. In any event, the investigation underlying this Report began well before the Commission’s March announcement, and will last long after this Commission’s twelve-month life expires.

The author begs pardon for the late date of this Report, and understands it can now serve no real purpose at the Tampa hearings. BOP’s FOIA response arrived only last Friday, April 15, though, and only yesterday did Victorville’s inmate murder become public knowledge. *See* Staff Report, “Inmate Dies from Prison Melee,” **VICTOR VALLEY DAILY PRESS**, <http://www.vvdailypress.com/2005/111383731417883.html>, Monday, April 18, 2005. With the FBI conducting an ongoing murder investigation at FCC Victorville, and with this Commission impaneled for three more fiscal quarters, we have time to address the issues here raised.

Background of USP and FCI Medium II Victorville

As of April 11, 2005, USP Victorville is again in “lockdown” status, its third lockdown since opening to inmates in about August 2004. The latest lockdown followed an incident where Hispanic inmates severely cut Caucasian inmates with home-made knives (commonly called “shanks” or “shivs”). Staff is exceedingly quiet about this lockdown (the second in 2005 involving inmates armed with shivs, both of which were reportedly alcohol-involved), but BOP’s officers were reportedly, immediately concerned about a prospective race riot. That concern sharpened when, last weekend (Saturday evening, April 16) one of the assaulted inmates died at Victor Valley, California’s Arrowhead Regional Medical Center. This is but the latest violence to plague USP Victorville, however.

The author's first contact with Victorville came after a client's transfer from USP Lompoc in about October 2004.² The USP was locked down in November and December 2005, in response to an inmate strike protesting, *inter alia*, a new inmate no-smoking policy and lacking resources at BOP's brand-new facility. Restrictions were lifted over the holidays, until New Year's Day 2005.

On January 1, reports indicate several gang-affiliated inmates ran from custody and assaulted several other inmates with concealed shivs.³ Correctional Officers finally cornered the rampaging inmates, who stood over a slashed and bleeding inmate to prevent his extraction. BOP officers lured the assailants back to their cells by bringing a "shot caller" – a senior inmate with authority – to order the victim's extraction, and the incident's cessation.⁴ Reports suggest the New Year's Day assailants were intoxicated on cell-made alcohol.

On January 10, 2005, without warning, BOP officers took fifty to sixty men into custody for transport to the previously unopened FCI Medium II. BOP staff referred to these men as "Lompoc's All-Stars" from a "Top-40 List" of most disruptive inmates, and alleged these inmates to be the highest-scrutiny high-security inmates at USP Victorville – the Worst of the Worst. Many were extracted from their cells in the Special Housing Unit ("SHU") by choice, bringing some violence on themselves, while at least one inmate was beaten in a mainline Unit **as he tried to comply** with orders in his Unit Manager's office.

FCI Medium II's inmates were originally told they would be there for around two weeks, but BOP staff later increased the estimate to between six and twelve weeks – the figure eventually rose to one year. Even today FCI Victorville Medium II seems to serve as a quasi-lockdown, inmate transfer center – arguably to the point of "control unit" custody – rather than the facility's seeming medium-security design and mission. Before the USP removals the evening of January 10, 2005, however, Victorville's FCI Medium II was also seemingly denoted an "inactive" facility.

Early reports indicated FCI Victorville Medium II was, literally, almost empty when inmates arrived. The facility's kitchen was not operational. No general or law library existed and, despite official statements to the contrary, inmates had no access to legal research materials. When BOP's senior administrators began moving inmates to FCI Victorville Medium II, it was by all accounts grossly deficient under the BOP's own, deferential policies. To the average American, the conditions would likely classify as "appalling."

² USP Lompoc is an aging facility that BOP is downgrading to medium-security. Most former high-security Lompoc prisoners were moved to USP Victorville, while the rest have been or are being disbursed throughout the BOP.

³ The author does not know at this writing the January 1 victims' identities.

⁴ This Hispanic shot caller was reportedly housed at FCI Victorville Medium II, at last information.

Prior to the January 1 armed violence, the USP was overseen by erstwhile warden of FCI Victorville Medium I, Mr. Slade. Reports indicate that, within hours of the New Year's Day assaults, Regional Director Gunja had replaced Warden Slade as USP Victorville's top administrator.

USP Victorville's current warden, Joe Norwood, recently came from FCI Englewood, Colorado to replace an interim warden named Schultz; Warden *Pro Tem* Schultz had ostensibly relieved Mr. Gunja so the Director could return to his Regional duties. A correctional officer at FCC Victorville confirmed that Regional Director Gunja acted as USP Victorville's warden for at least a fortnight in January 2005; other information suggests Mr. Gunja may continue today to play a direct oversight role in some of FCC Victorville's operations.

FCI Medium II continues to operate as an arguably unauthorized control unit. The conditions at Medium II currently pale in comparison, though, to the mortal danger now evident to all at USP Victorville.

Sometime Monday afternoon, April 11, 2005, at least two white inmates were sliced by one or more Hispanic inmates. Staff immediately expressed concern about a possible race riot, and returned every inmate to his "house" (cell) "until further notice." Though the assaults occurred in the Unit from whence Inmate Smith (*infra*) originated,⁵ the entire Penitentiary today is locked down and inmates have been told to expect showers every three to four days. Lockdown at USP Victorville seems destined to continue for a number more weeks, then, while the FBI completes its murder investigation and DOJ-BOP reviews its regularly-kept records to significantly improve its understanding of government operations and activities within FCC Victorville.

Inmate "Smith," FCI Medium II, January 10 to March 11, 2005

For safety reasons, the Report identifies the subject prisoner only as "Inmate Smith" and withholds confidential supporting documentation. Inmate Smith has graciously authorized disclosure of his case's particulars, in the interest of informing the Commission and perhaps preventing future, similar incidents. While anyone knowing this inmate's situation will be able to quickly name him, Inmate Smith has agreed to take this risk because he does not wish another prisoner to share his experience.

Though we believe the risk of serious bodily retaliation has passed, Inmate Smith has yet to resolve issues regarding his custody, his administrative segregation at FCI Victorville Medium II, and the suspended disciplinary allegations stemming from the January 10 incident. The Commission is surely aware of the many adverse consequences that can befall a disruptive inmate, including summary "reinstatement" of "suspended" discipline. Inmate Smith may have discipline deemed suspended for his January 10 incident reports, though he had not been served his final adjudication

⁵ USP Victorville is split into two sides by a wire fence that bifurcates the USP. Inmates on opposite sides of the Penitentiary are meant to have no contact, and effectively live in different worlds.

when we last spoke, in about early April, and has not apparently received a number of other procedural protections required by Constitution and program statement alike.

I do not mean to suggest Victorville's entire staff is complicit to whatever is happening there – to the contrary, my experience with typical BOP staffers, including Victorville's staff, is a pleasant, human conversation focused on simply obeying policy.⁶ No particular BOP agent has particular cause to silence Inmate Smith that did not exist three months ago. We would still be remiss, though, to ignore the risks of retaliation for this Report. Inmate Smith understands the risks he takes, and he has earned my personal thanks for bravely opening this account to the world and this Commission.

To the average citizen, Inmate Smith might not cut a particularly sympathetic profile. He has served nearly 14 Federal years for his chemist's role in a drug manufacturing offense, and he still is not projected for release until August 2019. He has a previous incident report, whether true, for which BOP has determined he must remain at high-security until release. Thus, since he was 21, Inmate Smith has lived inside a United States Penitentiary. In that time Inmate Smith has read himself into a doctoral-level education, and developed an international network of correspondents. Whether Inmate Smith deserves all the time he got, he has used his time wisely.

During the Holiday Season of 2004, Inmate Smith and members of his unit team⁷ had arranged a transfer from one Unit to the next, to be with an old friend from his days at USP Lompoc. On January 10, 2005, at approximately 6 p.m. PST, Inmate Smith was called from his cell and told he was wanted in the Case Manager's Office.

Inmate Smith proceeded from his cell unrestrained, anticipating this call was to move him to his friend's cell in the Unit in the adjacent compound. As security camera tapes requested from Victorville USP will likely show – if BOP produces rather than destroys them – Inmate Smith peaceably followed his guards down the hall without restraints.

Inmate Smith said he knew he was in trouble the moment he entered the Unit Manager's office.⁸ An empty chair sat near Inmate Smith, and a seated audience in that Office included a duty Captain, the Unit Manager who occupied the office, an inmate Counselor, and a Special Housing Unit ("SHU") senior officer. Members of the Special Operations and Response Team ("SORT") stood along the wall in full gear.

⁶ I have sought to identify Victorville's entire staff, though, with FOIA Request No. 2005-03244 (discussed *infra*).

⁷ The unit team consists of the case counselor (officer charged with daily administration of inmates and their central file); the unit manager (officer charged with administering the unit); and the case manager (officer charged with overseeing inmates' legal matters).

⁸ Though the author possesses the names of some BOP officers present in the Unit Manager's Office that evening, Inmate Smith has been returned to a different Unit at the USP. To protect Inmate Smith, his available remedies, and presumed innocent correctional officers, this Report respectfully omits those names.

Someone ordered Inmate Smith to “cuff up;” he placed his hands behind his back and leaned slightly forward in the standard pose of compliance. He then counted almost to one-thousand-two before “they dumped me.”

When the SORT officers took Inmate Smith to the ground, the submitting prisoner’s head and shoulders crashed against the empty chair; he reported persistent neck and back pain for several weeks after the crash, and may still be stoically suffering. Several baton strokes then fell on Inmate Smith, hurting his hip so badly that he believed it had been broken and healed again until physicians finally attended to him, on and after February 28 or March 1. When the batons stopped pounding, Inmate Smith was in shackles and was removed to the FCI Medium II. At Medium II, Inmate Smith was sequestered in lockdown status.

Inmate Smith’s correspondence to me reported he was the first of many men beaten that night, and that many of those men suffered grave injuries. Inmate Smith also reports that some of the injured, those extracted from the Special Housing Unit (“SHU”) brought beatings on themselves by fighting extraction. Without inspection of Victorville’s records, of course, this Report has no way to verify what level of force was actually employed in each inmate’s circumstance.

Inmate Smith received his original Incident Report for the January 10 beating on the morning of January 11. The reporting officer, a Lieutenant, signature-verified the Report was prepared just 150 minutes after Inmate Smith’s thrashing, at 8:30 p.m. The Lieutenant further specified that Inmate Smith was ordered from his cell but “stated ‘I am not cuffing up, come in and get me.’” After giving another refused order to Inmate Smith, the Lieutenant verified with his signature that “Inmate [Smith] was then extracted from his cell by a Use of Force Team with no further incident.”

Inmate Smith challenged his alleged misconduct at (ostensibly) the initial UDC hearing, held after lunch, on or about Wednesday, January 12, 2005. He disputed that he was removed from the cell, and directed BOP staff to the cameras that recorded him moving down his Unit’s hallway unrestrained. The hearing ended without immediate resolution.

Inmate Smith was delivered a new incident report on or about Thursday, January 20, 2005 (“the Revised Incident Report”). It was signature-verified as the Revised Incident Report by the original reporting Lieutenant, and was ostensibly prepared at about 11:30 p.m. on January 12, 2005 (eight days before service, and within twelve hours after Inmate Smith specified the original Report’s fatal flaw, as documented by the USP’s security cameras). Aside from wholly changing Inmate Smith’s Incident Description, the Revised Incident Report otherwise seems substantially the same as the original Incident Report.

About twenty-one days after his alleged incident, Inmate Smith finally had his final disciplinary hearing. After a heated exchange with one hearing officer, Inmate Smith learned he had lost certain

privileges for sixty days but, pending six months of clear conduct, the discipline would be suspended.

Again, in early April, Inmate Smith reported having not yet received his copy of final disciplinary adjudication, despite repeated requests to FCI Victorville Medium II's staff. Moreover, Inmate Smith's new USP Unit Manager could not find any UDC record in his central file, sometime before March 16, 2005.⁹ Such omission is arguably arbitrary and capricious non-compliance with Title 28, C.F.R., Part 541, and P.S. 5270.07, *Inmate Discipline and Special Housing Units* (Change Notice 13, published 1/9/2003 (eff. 12/18/2002)), and blatant violations of Inmate Smith's due process rights.

More than once after his removal to FCI Medium II, Inmate Smith requested medical calls for, and log notations of, the substantial pain in his neck and hip. To the author's knowledge, Inmate Smith was never provided more than a smattering of ibuprofen before a letter to FCI Medium II Warden Jeff Wrigley and West Regional Director Joseph E. Gunja, dated February 18, 2005. After that correspondence, on or about February 28 or March 1, two physicians visited Inmate Smith in his cell. Radiology and other treatment followed.

Inmate Smith was also visited in his cell, on information and belief in about the last week of February, by both FCI Medium II Warden Jeff Wrigley and West Regional Director Joseph E. Gunja. The administrators talked amongst themselves as Inmate Smith pleaded his case, and privately ruled out multiple possible reasons for Inmate Smith's administrative segregation. Toward the end of the interview, Inmate Smith reports Regional Director Gunja stated: "We may have made a mistake in your case." Regional Director Gunja promised to review the matter with Warden Wrigley, and he obviously fulfilled that promise.

Despite previously being told he would either be transferred away from Victorville or held at FCI Medium II for one full year, Inmate Smith was returned to USP Victorville on or about the morning of Friday, March 11, 2005. He was placed in the Unit opposite the Block where he was beaten, which is also the same block in which the New Year's Day slashings occurred and Inmate Scopazzi was mortally wounded last week. Inmate Smith now in fact lives in the very cell where he thought correctional officers were leading him the evening of January 10, 2005.

For two months at FCI Victorville Medium II, Inmate Smith suffered chronic pain from his injuries in permanent administrative lockdown. He was without access to legal materials to prepare for a Court of Appeals filing deadline. And, like every other inmate locked down at FCI Victorville Medium II, he was forced to endure the cold, High Desert season without many of the amenities

⁹ A Federal inmate's "central file" is the BOP's proof of the prisoner's existence; no record is supposed to exist (barring some Privacy Act-exempted records) that is excluded from the central file, because each inmate is only what the BOP reads those documents to mean. Incident reports ("shots") impact security scoring and, in the author's personal experience, have never before failed to appear in a prisoner's central file.

available at prisons activated **before** inmates arrive, amenities like blankets and a kitchen and a law library and commissary-available winter wear. Despite feeling residual tensions at the USP, Inmate Smith reports overall relief at his re-removal inside FCC Victorville.

Mailroom at FCI Victorville Medium II

I possess five letters from Inmate Smith to authorized counsel that are clearly labeled “Legal Mail” and “Attorney Client Mail” (on the back, across the envelope’s seal). No correspondence Inmate Smith sent counsel from FCI Victorville Medium II bears the Bureau’s literal rubber stamp, however, that affirms the letter was treated as Special Mail. No correspondence, therefore, has been assured legal mail treatment, notwithstanding Warden Wrigley’s assertion to the contrary.

USDOJ-FBOP Program Statement (P.S.) 5265.11, *Correspondence*, at 18 (7/9/99) repeats the mandates of 28 C.F.R. § 540.18(d), that “staff shall stamp the following statement directly on the back side of the inmate’s outgoing special mail.” The stamping of that lengthy statement is not merely a suggestion, but rather a Director’s regulation adopted after notice and comment procedures. The act of stamping Special Mail with this block of ink is, in part, to help assure recipients that no surreptitious re-opening has occurred. It is not within an institution’s discretion to refuse.

As the true copies attached to the February 18 letter showed Warden Wrigley, Inmate Smith had already sent three pieces of Legal Mail from FCI Medium II that failed to comply with 28 C.F.R. § 540.18(d). Counsel has since received two more Legal Mail envelopes from him, through the mailroom at FCI Victorville Medium II, that omit the mandated stamp, and are instead sealed with Inmate Smith’s own handwriting. Warden Wrigley’s response (dated March 10 and postmarked March 15) quotes, however, the very policy with which this author can demonstrate FCI Medium II failed to comply.¹⁰

The author respectfully submits FCI Victorville Medium II’s mail room has, on at least five occasions since about January 27, failed to comply with Federal law. Such failures seem, on their face, to constitute arbitrary and capricious violations of Inmate Smith’s civil rights, and calls to question how other mails – indeed, other, unrelated rights – are being handled at all of FCC Victorville.¹¹

In fairness to Victorville’s administration, the letterhead address on the prior Special Mail reflects a residence where, for ethical reasons, counsel does not state himself to be an “attorney.” Counsel provided every West Region senior agent every available mode to verify Maryland Bar credentials,

¹⁰ Since returning to USP Victorville, Inmate Smith has sent me two letters; both envelopes are sealed with the mandated rubber stamp.

¹¹ The author has yet to verify reports of other legal mail failing to reach attorneys, and regular, “general” mail failing to reach inmates and families alike; the latter failures include USP Victorville.

though, and offered to take any additional steps the BOP required to grant legal standing in this Federal custody matter. Moreover, legal mail from counsel's client remaining at USP Victorville has always been stamped in accordance with 28 C.F.R. § 540.18(d), indicating at least one FCC Victorville administrator acknowledged counsel's practice authority for these purposes. There thus exists no legitimate reason why special mail should be treated any differently between FCC Victorville facilities. The author has asked Warden Wrigley to conduct a second review of FCI Victorville Medium II's Special Mail procedures, for statutory and regulatory compliance.

Freedom of Information Act ("FOIA")

As a preliminary matter, the author distinguishes this sharp analysis of BOP's Western Region from the genuine assistance received from staff in BOP's Central Office FOIA Section. Those staffers are too few in number and overwhelmed by FOIA requests; while BOP is far outside compliance with statutory response times, the author appreciates the FOIA Section's best efforts under impossible conditions.

On February 18, 2005, the author requested records from BOP Central Office (FOIA/PA Chief Wanda Hunt) and West Regional Counsel Harlan Penn under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Notwithstanding the twenty-day mandatory response period and a request for expedited process, West Regional Counsel Penn finally dated his response to Request No. 2005-03244 on April 12, 2005. The Response was postmarked April 13, and the author received it the afternoon of Friday, April 15.

In his Response, Regional Counsel Penn denied a detailed request for FOIA fee waiver with a mere conclusory statement, substantially quoted from the Act, that "this information is unlikely to contribute significantly to public understanding of the operations or activities of the government, and is primarily in the commercial interest of the requester [sic, statutory]."

Rather than offering any rebuttal to substantial justification for fee waiver, Mr. Penn has simply demanded \$17,792.00 to **find** (not reproduce) records for a high-tech complex that opened only last fall. Moreover, by responding to this FOIA request without guaranteeing preservation of records, Mr. Penn has effectively required immediate payment at risk of requested records' destruction. Again, the author underlines Mr. Penn's utter failure to comply with FOIA's statutory twenty-day response time, while simultaneously relying on FOIA's cost provisions to effectively quash the request. Respectfully, DOJ-BOP seems bound to follow **all** of the Freedom of Information Act, not just the text of subsections that suit Executive Branch purposes.

According to West Regional Counsel Penn and Victorville's institutions, BOP estimates needing 1,114 labor hours to provide records that should already be at its ready disposal. If those records were not collected before, they certainly will be after the FBI completes its murder investigation and

significantly improves DOJ's understanding of Government's operations and activities at FCC Victorville.

Spoken differently, Mr. Penn was "informed by institution staff" that a brand new, ostensibly high-technology facility will require one full-time employee to work FOIA Request No. 2005-03244 exclusively for almost 28 weeks to compile these records. Then, only after those seven labor months, will BOP make subsequent decisions regarding information release, denial, and duplication. Respectfully, Mr. Penn's estimate, as informed by Victorville staff, seems an outlandish attempt to price a legitimate FOIA requestor away from potentially embarrassing records. *See, e.g.*, Dan Christensen, "Feds Drop \$373,000 FOIA Search Fee Demand," **DAILY BUSINESS REVIEW** (April 4, 2005) (available at <http://www.law.com/jsp/article.jsp?id=1112349912757>, last visited Tuesday, April 19, 2005).

At very best, West Regional Counsel Penn has offered only disingenuous conclusions regarding fee waiver, without a scintilla of support, and has also wholly omitted a basis for his and Victorville's ludicrous research estimates. At worst, West Regional Counsel Penn is intentionally attempting to obstruct the letter, intent, and Congressional mandate underlying 5 U.S.C. § 552. In any event, the fee waiver and research fee issues are but two of several raised by Mr. Penn's tardy FOIA response.

This Report dares not presume Mr. Penn's motives. It does expressly challenge his conclusory guesswork. We will presently revisit this research estimate, that BOP needs seven worker months to find nine months of regularly-kept records at a nine-month-old institution, and whether the author will seek only records from the USP and Medium II.

The author assures the Commission this *pro bono publico* service (and its out-of-pocket expenses) have been wholly in the requestor's commercial disinterest. After considering this analysis, the Prison Commission can decide for itself whether the records requested regarding FCC Victorville will really, as Attorney Penn asserts without support, fail to significantly contribute to the public's understanding of DOJ-BOP's operations and activities within the wires of FCC Victorville. The author also prays the Commission ask itself whether, under these circumstances, DOJ-BOP Attorney Penn can fairly be described as fulfilling his duties of candor and truthfulness, or his Federal responsibilities regarding open dissemination of public records. The question whether DOJ actively obstructs open records is one of this Commission's pending inquiries.

Conclusion

In less than nine months of activation, USP Victorville's four wardens – Slade, Gunja, Schulz, and Norwood – have locked its inmates down three times. The first lockdown responded to a non-violent inmate strike that related, in part, from BOP's sudden ban on inmate smoking and other conditions associated with new facilities.

