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Newsletter

From Federal CURE's Director, Karen Bond

Goodbye to Dr. Sawyer

Last July, Dr. Kathleen Hawk Sawyer traveled to Columbus, Ohio to speak at FedCURE's National Convention. I have to admit that I really did not want to be impressed with her or even worse, I was determined not to like her. After all, after a 38-month sentence to ClubFed, wasn't she the one who was responsible for all of the unfairness, persecution and misery that I had observed and endured? I was expecting a female Hitler at the very least. Instead, the woman that I met had the steely resolve of Margaret Thatcher, a class reminiscent of Nancy Reagan and a humbleness that reminded me of Amelia Earhart.

While she clearly defended the massive bureaucracy that she was responsible for, she was quick to admit that there were things that the BOP did not do well at all. More than that, she encouraged FedCURE members to communicate with her office and her staff stating that unless they were told about a problem they couldn't begin to take steps to fix it. She listened to our concerns and answered our questions all the time maintaining her sense of humor even when we were relentlessly battering her with our myriad of

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Welcome to Mr. Lappin

While we were in the process of saying goodbye to Dr. Sawyer, Harley Lappin was appointed as Director of the Federal Bureau of Prisons. FedCURE was barraged with phone calls, emails, and letters asking what we knew about Mr. Lappin. Family members of federal prisoners wanted to know what the new Director was likely to do once his appointment was official. Rumors abounded and predictions were dire in regard to the future of the federal prison population under the leadership of Mr. Lappin. We heard a lot of things that created great concern about the progress that had been made since FedCURE began working with Dr. Sawyer last summer.

Yet, within weeks, a FedCURE Board Member was sitting in Mr. Lappin's office discussing our concerns with him. He listened but made no promises. Because of the increasing number of medical cases we were seeing, we asked Mr. Lappin to appoint a medical liaison to assist us in resolving the medical issues we were seeing. Six days later, FedCURE was notified that Mr. Lappin had designated Bryan Pownall, Executive Assistant for MaryEllen Thoms, Asst. Director in charge of Healthcare Services for which we are very grateful.

FedCURE would like to welcome Mr. Lappin and applaud his immediate willingness to respond to the needs of the federal prisoners by appointing a medical liaison. We look forward to working with Mr. Lappin as we strive to improve the conditions of incarceration for the 169,000+ federal prisoners. §

FedCURE Thanks ...

Our sincere thanks to Resist, Inc., Alan Ellis, PA, Susan Montgomery, Dr. Steven C. Richards and Dr. Jeff Ross for their continued sponsorship.

Supreme Court to Issue Major Decision on Visitation; Past Term Had Mixed Record

by Elizabeth Alexander

As this article goes to press, we are awaiting a major decision by the Supreme Court in *Overton v. Bazzetta*, a case that could cast doubt on the right to visitation of prisoners and their family members. The case arose in Michigan in 1995 when the Department of Corrections decided that it needed to reduce the total number of visitors to its prisons in order to reduce substance abuse among prisoners. As a result, the Department changed its visiting and disciplinary rules so that a prisoner found guilty of two misconducts involving substance abuse, which could include violations such as possession of expired medications, permanently loses all visitation with family and friends. In addition, the revised rules ban visitation by the minor son or daughter of the prisoner if a member of the immediate family cannot escort the child. The rule also bans visits by a minor son or daughter if the parental rights of the prisoner have been terminated, even if the custodial parent wants those visits to continue. Similarly, the rule bans visits by minor nieces and nephews, and by all former prisoners other than members of the prisoner's immediate family.

Prisoners and their families filed suit, and the district court and the Sixth Circuit Court of Appeals upheld the restrictions based on the understanding that the restrictions applied to contact visits only, but in fact the prisons also applied these restrictions to non-contact visits. Applying the four-part analysis required under *Turner v. Safley*, 482 U.S. 78 (1987), both the district court and the court of appeals then struck down the regulation as applied to non-contact visits on the ground that it was not reasonably related to the penological interests claimed by the prisons. The Supreme Court granted review, and we anticipate a very difficult fight with an uncertain outcome. The "worst case" outcome would be a decision that prisoners and their families have no constitutionally protected right to either contact or non-contact visits. Almost as bad would be a decision that all of the challenged restrictions pass the *Turner* "reasonableness" test, because it is unclear what restrictions on visitation could be unconstitutional if these baseless restrictions on non-contact visits pass muster.

The last term of the United States Supreme Court also produced important decisions, including a resounding victory and two serious losses. In *Corrections Services Corporation v. Malesko*, 122 S.Ct. 515 (2001), the Supreme Court held that, even though state prisoners in federal civil rights actions can sue private corporations for damages for violating their civil rights, federal prisoners cannot bring damages cases against private prison corporations in what is called a *Bivens* action in federal court. Federal prisoners seeking damages in civil rights cases can sue only the individual employees of the corporation.

The importance of this case is magnified by the effects on private prisons of September 11. Prior to September 11, private prison corporations, including the two largest, CCA and Wackenhut, were in financial trouble. CCA was on the verge of bankruptcy and by May 2001 stock in Wackenhut

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demands. We didn't give her an easy time because we needed answers. In the end, she challenged us to help her fix the system reminding us that ultimately whoever was running the BOP must answer to the demands of the society in which it exists.

Was she perfect? No, she was human and she readily admitted that. Frankly, I was impressed. Over the past ten months, FedCURE has taken many problems and complaints to her office. Invariably, someone on her staff responded to us. FedCURE had provided the federal prison population with a voice and Dr. Sawyer listened as only a trained psychologist could do. Did we get everything we wanted? No, but the last ten months saw a holiday season where federal prisoners had 400 minutes of phone time instead of 300.

The FedCURE Board and staff are grateful to Dr. Sawyer for establishing a conduit through which the issues of the federal prison population could be expressed and examined in an open forum where the Director encouraged her staff to respond. We will miss Dr. Sawyer without a doubt.

FedCURE would like to take this opportunity to invite her continued involvement with our organization as we seek to effect systemic change in the nation's largest prison system. Dr. Sawyer has completed her 27 year "sentence" with the BOP and that alone qualifies her to provide insight into the conditions of incarceration that FedCURE has identified as unacceptable to the federal prison population.

Dr. Sawyer, we hope this is not a goodbye, but rather a transition in which you will actively assist FedCURE in helping to improve the conditions of incarceration for all federal prisoners. §

had fallen from about \$35 per share to about \$11.

After September 11 the BOP issued its two largest requests of the year for bids on the operation of facilities in Georgia to lock up non-citizens charged with crime. In early 2002 the BOP was to solicit bids for fifteen hundred detainees in the Southwest and CCA stock had risen 300% from its low during 2001. Because the BOP population is growing while the states' prison populations are not, the future of private prisons appears to lie increasingly in housing federal rather than state prisoners.

This is a very dangerous trend because whatever problems the BOP has, private corporations are generally worse. These dangers are illustrated by the facts in *Malesko*. CSC had failed to give Malesko his heart medication for several weeks, then required him to walk up to his fifth-floor cell instead of allowing him to use the elevator. He suffered a heart attack while climbing, fell and hit his head and suffered permanent head injuries.

The second Supreme Court prison case of the last term was *Porter v. Nussle*, 122 S.Ct. 983 (2002). In this case the

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Court held that the PLRA exhaustion of remedies requirement applies to a use of force case. Essentially this case is more or less a footnote to the Court's decision in 2001 in *Booth v. Churner*, 582 U.S. 731 (2001), that under PLRA prisoners cannot file suit about conditions of confinement without exhausting grievances even if the grievance system cannot award prisoners damages. Thus, Booth changed the rule for BOP prisoners, who under an earlier decision in *McCarthy v. Madigan*, 503 U.S. 140 (1992), were not required to go through the BOP three-step process for exhaustion when they sought only money damages.

When PLRA was first passed, most prison litigators concentrated on the restrictions on injunctive relief as the worse part of PLRA. But it has become more and more clear that the most destructive parts of PLRA are the exhaustion requirements because they prevent the prisoner from even filing suit for violations of constitutional rights.

In contrast, the third of the Supreme Court decisions about prison law in the last term is a breath of fresh air. In *Hope v. Pelzer*, the Court held that it was clearly established that prison officials violate the Eighth Amendment when they handcuff a prisoner to a hitching post in a non-emergency situation. Just getting rid of the barbarism of Alabama's hitching post is important by itself, but what is more significant is the Court's rationale for striking down the hitching post. Since *Wilson v. Seiter*, 501 U.S. 294 (1991), the Court has always required that prisoners show a deprivation of a basic necessity of life like food or shelter to show an Eighth Amendment violation. But *Hope* emphasizes, not a deprivation of a necessity, but that the conditions were dangerous and offended human dignity. A standard in which human dignity matters would be likely to give very different answers to the question of, for example, whether a female prisoner can be strip-searched by male staff than a standard that asks if the prisoner has been denied a basic necessity of life. Of course, this case may be ignored in the Supreme Court's future decisions because the Court does not say that it is changing its standard but it is at least potentially a very important case.

Another word of caution about *Hope*. The Supreme Court notes that its decision occurs in the context of assuming that there was no emergency situation and not involving a continuing refusal to work. Does this decision implicitly allow use of corporal punishment of a prisoner who refuses to work? But the Court certainly does not say this and, in the context of a field gang, it could be argued that use of a hitching post on a prisoner who refuses to work is just a specific example of the emergency exception; a prisoner who refuses an order in a field crew arguably poses a security danger, but not a prisoner who refuses kitchen duty. §

Healthcare Issues Committee Alert

The Healthcare Issues Committee has received an increasing numbers of health-related complaints from federal prisoners and their families. While many of the complaints are not of an acute nature, or requiring immediate care, there have been several life-threatening cases. We would like to take this time to remind federal prisoners and their families that time can be critical in these issues. **PLEASE** respond **IMMEDIATELY** to any serious medical complaints.

FedCURE has prepared the following list, which **MUST** be completed before we will address **ANY** complaint:

1. The prisoner needs to file a BP9, if he/she has not already done so, to start the Administrative Remedy Procedure. If BP-9 forms are not readily available, have the prisoner write the complaint on a piece of paper or a cop-out and label it as a BP9.
2. FedCURE advises the family/friend that the prisoner needs to execute a durable Power of Attorney (POA) as soon as possible. FedCURE can provide a blank form upon request. This can be forwarded via e-mail or USPS mail. The POA must be notarized. If a federal prisoner is in SHU, or the hole, he/she can request the service of a notary through a cop-out submitted to the case manager or counselor, whoever takes care of notarization when the prisoner is not in the SHU/hole.
3. The prisoner needs to sign FedCURE's Waiver and Release of Liability Form (WAIVER) acknowledging that the prisoner's name and medical information will be made public through FedCURE's website and its newsletter, as well as e-mail notification. FedCURE will provide a blank form upon request. This can be forwarded via e-mail or USPS mail. The WAIVER must be notarized.
4. The prisoner needs to request BOP medical records (via cop-out) including any specialists' reports. FedCURE will also need any pre-prison medical records, including any specialists' reports, as they relate to the prisoner's medical condition/complaint.
5. It is in the best interest of a prisoner to maintain a relationship with their pre-prison physician(s), especially their specialists (i.e. cardiologist, gastroenterologist, etc.).
6. The family/friend that the prisoner appoints in the POA needs to provide copies of all communications with any medical professional or BOP staff member where the prisoner's medical condition/complaint has been addressed.
7. The family/friend that the prisoner appoints in the POA needs to provide copies of all Administrative actions taken to reconcile the medical complaint that

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State v. Federal Custody and Service of Multiple Sentences

by Howard Kieffer

I have been getting many calls from attorneys with clients being prosecuted in both State and Federal Courts. It used to be once the feds took over a case the state dismissed. Now we seem to have dual prosecutions and sentences. Clients and attorneys need to know where clients will serve any sentence imposed. The answer lies in who has "primary custody" also known as "primary jurisdiction." Whoever first detains the client is the primary custodian. In my experience this is usually the state. Below I provide the federal Bureau of Prisons (BOP) explanation. Counsel's first inquiry must be of the client, do you want to do your time in a State or federal facility?

Federal time first. If a client was arrested first by the feds and there is a federal detainer before any state charges, the client is in federal primary custody and upon sentencing will go to a federal facility. Later the client can go by a writ to the State, plea to a state charge and be sentenced to state time concurrent to a federal sentence already imposed. The Feds then take the client back as the feds are the primary custodian. The client is in a federal facility which may be much better than a state prison. The client gets credit for two sentences at once. The Feds foot the bill. The State will probably have to pay for transport costs on the writ, but if the state writ enters right after the federal sentence, the client is probably near state court and there will be little to no cost to the state. Obviously this is only an advantage if the client wants to do time in a federal facility.

If your client is first arrested by the state and is then charged by the feds, unless the client was bailed by the state, primary jurisdiction will be with the state. If the client wants to do the sentence in a federal facility, this is bad. The client must be in primary federal jurisdiction to go to a federal facility first. The only way to achieve this is for the state to end their jurisdiction, at least temporarily, then assuming a federal detainer is in place, the client defaults to primary federal jurisdiction. The State can later re assert jurisdiction by writ, but it will be secondary to the feds. The client will have to be taken to the state by writ. Counsel in this situation must convince the state prosecutor or judge to bail client on state charges. I argue money, let the feds pay.

State time first. If client wants to do time in State facility and State is primary custodian then client is all set. Further, client can get federal credit while serving state time, if at sentencing federal judge orders that "federal sentence shall commence on the date of imposition". This must be in the actual federal judgment. It was confirmed to me by BOP counsel that if these words are in federal judgment, then BOP in calculating client's federal sentence will credit all time served from date of sentencing forward, toward federal sentence, even though primary jurisdiction is with the State and client is in a state facility. This is ONLY current policy and remains subject to future interpretation and change.

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has gone unheeded.

8. The family/friend that the prisoner appoints in the POA needs to actively advocate on behalf of the prisoner. FedCURE operates on a volunteer basis and as such, its staff and resources are limited.

The family/friend appointed by the prisoner can best help through the following way:

1. Establish a communication network with other federal prisoners' families. This network can sometimes be the difference between knowing and not knowing what is happening with your loved one.

2. Help the federal prisoner keep in touch with pre-prison medical professionals. These are people who have had your loved ones' best medical condition at heart. These professionals are also second opinions or reassurance if and when you need them.

3. When communicating with the BOP or medical professionals, stick to the facts. Provide a timeline of events and cite BOP Program Statements as they apply. Please keep your cool and don't "go off" like fireworks on the 4th of July - it will NOT help.

4. When corresponding with the BOP, start by addressing the appropriate facility staff including the warden, the chaplain and medical personnel. If, and when, you need to address a higher authority, provide copies of prior correspondence. Your communications to specific BOP facilities are not typically forwarded to regional offices. Be aware that the BOP will provide you with only the information to which they believe you are entitled. This includes any emergency care.

5. If you file a complaint with a medical organization, such as JCAHO, please be sure to provide a copy with future correspondence to the BOP.

6. Have your "house in order." Although rare, federal prisoners not sentenced to death or life imprisonment do die while incarcerated. Be sure you know what they want done with their remains and, if possible, organ donation.

FedCURE carefully reviews each medical complaint brought to its attention. Before we can request the independent insight, opinion and help of medical professionals outside the BOP, we have to have as complete a picture as possible. Acting without appropriate facts and information could hurt FedCURE's ability to assist prisoners in the future.

Finally, FedCURE cannot begin to adequately emphasize how important these steps are to federal prisoners, their families and loved ones. If you suspect a problem, do **NOT** wait to see if it gets better - act immediately. Even securing the POA, WAIVER and medical records will take time. §

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Further, this was confirmed to me by Northeast regional office and I have not spoken with other regions on their policy. However, if state sentence has not yet been imposed, it is not as clear that BOP will credit state time to federal sentence, see memo below. Sentencing first on the state case takes care of this issue, but means client will get higher criminal history on federal sentence due to State charges. My clients have generally wanted to be in federal facility so I have not had this issue come up much. For me the hardest part once this system is understood, had been getting the State Court to bail my federal client so primary jurisdiction will transfer to the feds. My best argument seems to be economic. Bail my client, then the Feds pay the cost of incarceration, and if client is planning to plea to something on the State side there is the additional savings of no state trial cost and no risk to the state. Also this is less work for the State prosecutor and judge.

From BOP Website, May, 2000 and follow up telephone call confirming validity with BOP Counsel. This comes from a Memo by Henry Sadowski, Esq., Northeast Regional Counsel for BOP. Web site is at www.bop.gov/ogcpg/ogcfaq.htm, then go to BOP Directory, Central Office, Office of General Counsel, Frequently Asked Questions

Howard O. Kieffer is Executive Director of Federal Defense Associates in Santa Ana, California and is the Moderator/Editor of BOPWatch, an internet based listserv on the federal Bureau of Prisons and related issues. Mr. Kieffer is an expert on the BOP and speaks regularly on related topics. He can be reached via email, at hkieffer@dounsel.com. §

INMATE PLACEMENT PROGRAM BRANCH

Federal Bureau of Prisons, IPPB January, 2003

The Inmate Placement Program Branch was established on October 1, 1996. It was given the mission to strengthen existing bureau programs and to establish new ones designed to enhance the post release employment of federal prisoners. To accomplish its mission the IPPB has focused on holding mock job fairs, posting job openings on bulletin boards in the federal prisons and ensuring that about to be released prisoners prepare employment folders that include a social security card, resume, education transcript and achievement certificates and other documents critical for post release employment. The branch has also focused on the establishment of employment resource centers in federal prisons, strengthening employment assistance services in bureau funded community correctional centers, and training staff who have prisoner employment program responsibilities. All these efforts stress the importance of beginning to

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Please help Federal CURE, Inc. in its fight to identify federal prison injustices, and pursue and promote federal prison reform. For your convenience, we have included a membership application in the back of this issue.

Phone Committee Reports

Members of Federal CURE's recently created Phone Committee are presently working to familiarize themselves with available information concerning the rationale and impact of the BOP's April 1, 2001 restriction of non-legal telephone calls to 300 minutes per month. To this end, Committee members have reviewed, among other things, the Department of Justice-Office of Inspector General's August 1999 report, Criminal Calls: A Review of the Bureau of Prisons' Management of Prisoner Telephone Privileges, which can be found on-line at <http://www.usdoj.gov/oig/bopcalls/callstoc.htm>. Notably, the Office of Inspector General found 300 minutes per month, which was then being recommended as the limit on prisoner telephone usage, to be "an arbitrary figure arrived at without examining data on prisoner telephone usage."

In an effort to properly assess the telephone situation and provide bureau officials with a fair understanding of the true impact that the limitations have had on individual prisoners and their families, the Phone Committee needs to know your story. Are you unable to maintain contact with a child or a sick relative? How are individuals managing at the end of each month after their allotted minutes run out? Is there a feeling that more individuals are able to access available phones? What, if any, effect did the additional 100 minutes provided in November and December 2002 have for you personally as well as in the institution generally? Please send your accounts to the following: Federal CURE, Inc., **Attn: Phone Committee**, P.O. Box 153, Reynoldsburg, OH 43068 §

Staying Connected

by Dawn E. Caradonna, Esq.

We are waiting for the fog to lift. It is early on a Saturday morning at Fort Devens and the visitor's waiting room is full. This is the second Saturday in a row with heavy fog. The "regulars" are already used to the wait. At Fort Devens, early morning fog means an extra head count and a longer wait for visitors. Many of the people in the waiting room are familiar. They come here regularly. Some of them are from the Boston area and are lucky to travel a relatively small distance. Others wake up in the wee hours of the morning and faithfully travel from New York, New Hampshire, Maine, and Vermont. Although the traveling is burdensome, they do it regularly: either weekly or bi-weekly. That's because it is really the only way to maintain a relationship with the friend or family member in Federal prison. As one woman said, "If you write a letter, it takes about a week for it to arrive."

The BOP has stated that it values the family and encourages an prisoner to maintain his or her ties to family and friends so that he or she has a community

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prepare prisoners for transition to employment, their families and their communities at least 18 months before their expected release dates.

Additional information about the Bureau of Prisons offender employment program, including the dates of future job fairs and a copy of the Mock Job Fair Handbook can be obtained from the IPPB web page: www.unicor.gov/placement or through e-mail to smccollum@bop.gov, or telephone 202-305-3860, 3872,3553. §

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in which to return. But some of the prisoners and visitors wonder whether this is just "lip service." They point to the phone system. Liberal phone calls home would allow an prisoner to stay in touch with his or her family and feel connected. Some families can't afford the cost of calls from prison. According to a recent article in the Washington Post, "prison phone service nationwide generates as much as \$1 billion a year..."

But most of the visitors at Devens aren't as concerned about the cost as they are about access. Although the cost is exorbitant, many family members are willing to foot the bill. But they are frustrated with the arbitrary 300-minute per month limit the BOP places on an prisoner's phone privileges. Three hundred minutes a month is simply not enough time for an prisoner and his family to maintain substantial ties. As we're waiting to see our friends and family inside Devens, we begin to talk.

"We have to decide which one of us gets to talk," one prisoner's wife told me. With a 300-minute per month limit and a 15 minute per call limit, this couple realizes that they can't both talk during phone calls. They have to decide which one is allowed to speak for each call. If they both try to talk, they aren't able to finish a conversation.

"We try to have ten minute phone calls," another woman tells me. "That way we can talk every night."

"That's a good idea," I say. "Does it work?" "Not really," she admits. We're usually out of minutes by the middle of the month." Then to make up for not speaking for two weeks, they usually have two to three conversations the first day of the next month. It is a common story.

One woman and her son speak about the balancing act between them. The woman tries to maintain her relationship with her husband but understands that her young son also needs to speak to his father. She talks about a recent situation in which a neighbor was harassing her. She would have liked to discuss this situation with her husband. Although he could not have physically helped her, he could have helped her come up with solutions to approach it. He could have been her understanding ear. Instead, she was left to deal with this by herself, feeling completely alone on the outside. She didn't even tell him about the problem

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WHAT IS CONVICT CRIMINOLOGY?

by Dr. Stephen C. Richards, Northern Kentucky University
and Dr. Jeffrey Ian Ross, University of Baltimore

Many prominent criminologists have discussed the failure of prisons to correct criminal behavior. The differential effects of incarceration are well known. Needless to say, we should not assume all prisoners are criminals, or that committing crime has anything to do with going to prison the first time, and even less the second or third. Considering the dramatic growth in prison populations the numbers of "innocent" victims will also continue to grow.

The first failure of correctional institutions is that they hold hundreds of thousands of prisoners who, although they were convicted of a crime, are not violent felons and pose little if any threat to the community. The second is that they hold people too long. The third is that they do not rehabilitate. Instead, prison systems function as vast depositories for drug offenders, minorities, and petty offenders. One cursory look at the gun towers, walls, and razor wire is evidence that prisons were built to warehouse and punish and not to rehabilitate.

The emerging field of convict criminology consists primarily of essays and empirical research written by convicts or exconvicts, on their way to completing or already in possession of a Ph.D., or by enlightened academics who critique existing literature, policies, and practices, thus contributing to a new perspective on prisons. This is a "new criminology" led by exconvicts who are now academic faculty. These men and women, who have worn both prison uniforms and academic regalia, served years behind prisons walls, and now, as academics, are the primary architects of the movement. The convict scholars are able to do what most previous writers could not: merge their past with their present and provide a provocative approach to the academic study of criminology, criminal justice, and corrections.

The exconvict professors have endured years of lockup in penitentiaries and correctional institutions, lived in crowded, noisy, violent cell blocks, and emerged to complete graduate degrees and become professors of sociology, criminology, criminal justice, and related disciplines. Together, exconvict graduate students and professors are now working together to build their expertise in both subject and methodology.

The dramatic expansion in arrests, convictions, and the rate of incarceration guarantees that the number of professors with profound and traumatic firsthand experience with the criminal justice system will continue to increase. In addition, some of the most important members of our growing group are prominent critical criminologists who, though not excons, have contributed to both the content and context of our new school. This growing pool of talent, with its remarkable insight and resources, is the foundation of our effort.

Over the last few years, most of these convict criminologists have met, socialized together, and

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A 2255 Primer: A Guide for Clients and their Family and Friends

by ALAN ELLIS and JAMES H. FELDMAN, JR.

The motion to vacate, set aside or correct a sentence provided by 28 U.S.C. §2255 is a modern descendant of the common law petition for a writ of habeas corpus. It is available only to people convicted in federal courts who are in custody. The §2255 motion is the postconviction tool most federal prisoners turn to after they have exhausted their appeals. When it is used effectively, it can be a powerful tool to right injustices that were not or could not have been raised on direct appeal. This is because it gives courts broad discretion in fashioning appropriate relief, including dismissal of all charges and release of the prisoner, retrial, or resentencing.

Occasionally, the remedy provided by §2255 will be "inadequate or ineffective to test the legality of [a prisoner's] detention." 28 U.S.C. §2255. In those rare instances, federal prisoners may petition for traditional writs of habeas corpus pursuant to 28 U.S.C. §2241.

Who can file a §2255 motion?

Only "prisoners" who are "in custody under sentence of a court established by Act of Congress" may file motions pursuant to 28 U.S.C. §2255 to vacate their convictions or sentences. 28 U.S.C. §2255. To satisfy this "custody" requirement, a defendant must either be in prison or jail, or else have his or her liberty under some other form of restraint as part of a federal sentence. Examples of restraints short of imprisonment which qualify as "custody," include probation, parole, supervised release, and being released on bail or one's own recognizance. A defendant need only satisfy the "custody" requirement at the time he or she files a §2255 motion. A defendant's being released from custody during the pendency of a §2255 motion does not make the case moot or divest a court of jurisdiction to hear the case.

A defendant who has completely finished his or her sentence, or who has been sentenced only to a fine, may not obtain relief through §2255. Defendants who can not meet the custody requirement may still be able to obtain relief under the All Writs Act, 28 U.S.C. §1651, by petitioning for a writ in the nature of Coram Nobis, which has no custody requirement.

What issues can be raised in a §2255 motion?

Section 2255 provides that "prisoners" may move for relief "on the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." Most Circuits of the Court of Appeals have interpreted this language to mean that defendants who meet §2255's custody requirement may not raise issues which challenge aspects of their sentence which are unrelated to their custody. Most §2255 motions allege violations of the defendant's Sixth Amendment right to the effective assistance of counsel.

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because she knew they didn't have enough time to discuss it.

This same woman speaks of her husband's frustrations. He has medical problems. If he had time to talk to her, she could help him decide how to deal with them. Instead, he suffers without her support.

Some of the men with large supportive families face a different dilemma. One woman talks of her large family. Her husband has numerous sons and daughters. One of them is pregnant. They all have challenging and exciting things happening in their lives. Her husband could maintain his relationship with them if he could call them regularly. But they don't live together. He has to decide which one of them to call and allocate his phone resources appropriately.

The fog begins to lift, the count is over, and the visitors are called one by one to be processed so they can visit with their cherished friend or family member. We stop speaking about the phone. A face-to-face visit helps to bridge the distance for the time being. But tomorrow, these same people will face these same frustrations and feel the same voids.

We would like to hear about your phone nightmares. Please send them to: Federal CURE, Inc., **Attn: Phone Committee**, P.O. Box 153, Reynoldsburg, OH, 43068 §

OBSERVATION ABOUT LOVE

Author's identity "classified" (age 13)

What do people feel when they see a prison? A prison is hidden from view and most people feel fear when they actually see one. A prison is a new age castle with glistening rows of razor wire, elevated towers and massive cement walls. These keep some away but others think of them as barriers to overcome.

Inside the prison, past all the metal gates, people go to visit loved ones. Sometimes it takes over an hour just to go from the front desk to the visiting room. They also have to go through metal detectors, get searched and sometimes go through a questionable drug detection test. Some visit fathers; others visit husbands, uncles, sons, grandfathers. People travel across the country just to visit one person for a few hours.

Inside the visiting room, there are people talking, playing cards, holding hands, sharing their lives. When the prisoner comes in and leaves, there's also hugging and kissing for a minute. In there, people are focused and talk for hours. Most people wouldn't guess that there is lots of laughter and joy inside this cage.

The love that you see is not the traditional love. There is a huge obstacle to overcome. It's a huge devotion to stay with someone in prison and, unlike in the movies, there's no physical love. If this devotion isn't love then who knows what is true love. §

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How does a §2255 motion differ from a direct appeal?

One of the most significant differences between a direct appeal and a §2255 motion is that direct appeals are decided based on the district court record as it exists as of the time the notice of appeal is filed. In contrast, §2255 motions offer defendants the opportunity to present the court with new evidence. Section 2255 motions may only be used to raise jurisdictional, constitutional, or other fundamental errors. For example, some circuits hold that guideline calculation errors that escaped notice on direct appeal cannot be raised under §2255. Others have not questioned the appropriateness of raising guideline issues in a §2255 motion. A §2255 motion is, however, always the proper vehicle to question whether an attorney's failure to raise a guideline issue deprived a defendant of his or her Sixth Amendment right to effective assistance of counsel, either at sentencing, or on direct appeal.

What are some of the obstacles a defendant may encounter in litigating a §2255 motion?

Identifying an appropriate §2255 issue is no guarantee of success. Even prisoners who have good issues must often overcome numerous obstacles before a court will even address them. For example, if an issue could have been raised on direct appeal, but was not, a district court will not consider the issue in a §2255 proceeding unless the defendant can demonstrate "cause" (such as ineffective assistance of counsel) for not raising the issue earlier and "prejudice" (that is, that the error likely made a difference in the outcome). For this reason, it is generally not a good idea to forego a direct appeal and proceed directly to a §2255 motion. Conversely, if an issue was raised and decided on appeal, a defendant is procedurally barred from raising it again in a §2255 motion, absent extraordinary circumstances, such as an intervening change in the law or newly discovered evidence.

Section 2255 motions may not be used as vehicles to create or apply new rules of constitutional law. While new interpretations of substantive law may be applied retroactively in a §2255 motion, with rare exceptions, new rules of constitutional law may not.

Do prisoners have a right to appointed counsel to assist them in filing and litigating a §2255 motion?

Prisoners who cannot afford to hire private counsel have no right to appointed counsel to assist them in filing §2255 proceedings. Indigent litigants may, however, petition the court for appointment of counsel. A court has discretion to appoint counsel "at any stage of the proceeding if the interest of justice so requires." 18 U.S.C. §3006A(a)(2)(B); Fed.R.Gov. §2255 Proc. 8(c). Appointment of counsel is mandated only if the court grants an evidentiary hearing, Rule 8(c), or if the court permits discovery and deems counsel "necessary for effective utilization of discovery procedures." Rule 6(a).

Is there a time limit within which a § 2255 motion must be filed?

Prior to Congress' enacting the Antiterrorism and Effective Death Penalty Act ("AEDPA") in 1996, there was no specific limit on the time within which a prisoner was required to file a §2255 motion. The AEDPA's amendment of 28 U.S.C. §2255 imposed a one-year statute of limitations, which is triggered by the latest of four events:

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

All defendants thus have one year from the date on which their judgments of conviction become final within which to file §2255 motions.

Unfortunately, there is no consensus among the Courts of Appeals as to when a judgment of conviction becomes "final," thus triggering the one-year statute of limitations. Prior to the AEDPA, the Supreme Court held, in the context of deciding when a "new rule" could be applied on collateral attack, that a conviction becomes final when "the judgment of conviction was rendered, the availability of appeal exhausted, and the time for petition for certiorari ha[s] elapsed" Although a "new rule" may not be applied retroactively on collateral attack, it may be applied in a particular case if it was announced prior to the judgment of conviction becoming "final" in that case. Although it may seem intuitive that the same rule should trigger the statute of limitations in §2255 cases, not all Courts of Appeals have seen it that way.

It is clear that when a defendant petitions the Supreme Court for a writ of certiorari as part of the direct appeal, the judgment of conviction becomes final on the date the Supreme Court denies the writ. If the Supreme Court grants the writ, then the judgment of conviction becomes final either on the date the Supreme Court rules (if there is no remand), or on the date that the conviction and sentence are ultimately affirmed on remand. What is not so clear is when a conviction becomes final when a defendant fails to appeal, or when he or she appeals, but fails to petition for writ of certiorari. Two Courts of Appeals have held that where a defendant appeals, but fails to petition for writ of certiorari, the conviction becomes final, triggering the statute of limitations, when the Court of Appeals issues

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its mandate. Other Courts of Appeals have held that the judgment of conviction becomes final, triggering the statute of limitations, on the last day a defendant has to petition the Supreme Court for certiorari.

If a defendant does not appeal, it is clear that in the Third, Fifth, Ninth, and Tenth Circuits, the judgment of conviction becomes final on the last day the defendant could file a notice of appeal - i.e., on the tenth day following the entry of the judgment of sentence. It is not clear yet when the judgment would become final in the Fourth or Seventh Circuits, or in the circuits, which have not yet addressed the question of when a judgment of conviction becomes "final" under the AEDPA. If you are in a jurisdiction which has not decided the issue, the prudent course may be to assume that the year runs from the date the judgment of conviction is entered on the docket (if no notice of appeal is filed), or on the date the court of appeals decides the case or denies a timely-filed petition for rehearing.

If a defendant wins a new trial or a resentencing on appeal (or even as a result of a §2255 motion), then the new judgment of conviction and sentence which is entered after the new trial or resentencing would begin a new year-long statute of limitations.

Is AEDPA's one year rule hard and fast?

No. Every Circuit to have considered the issue has ruled that the AEDPA's one-year statute of limitations is not jurisdictional in nature, and is therefore subject to equitable tolling. Equitable tolling excuses a movant's untimely filing "because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." Courts, however, have rarely found that movants meet the requirements of equitable tolling.

How and where do you file a §2255 motion?

Section 2255 motions must be filed with the district court, which sentenced the defendant. The local rules of most district courts require pro se prisoners to use forms supplied by the Clerk. Some local rules even require attorneys to use the forms. There is no filing fee.

What happens after the motion is filed?

Section 2255 motions are first presented to the judge who presided over the defendant's trial and sentencing if that judge is available. The judge examines the motion and attached exhibits, as well as the rest of the case record. The court then either dismisses the motion or orders the government to file an answer. Dismissal is required where the court concludes that the claims raised in the motion, even if true, would not provide a ground for §2255 relief, or where the claims are conclusively refuted by the files and records of the case.

After the government files its answer, the defendant may want to refute the government's arguments. This can be done by filing a memorandum in reply. Sometimes the right to file a reply memorandum exists under local court rules or court order. Sometimes a defendant must file a motion for leave to file a reply.

At this point, the court will either grant or deny relief, or will hold a hearing. In practice, courts grant hearings only where there are critical facts in dispute. Whenever a court holds an evidentiary hearing, Rule 8(c) requires it to appoint counsel for pro se defendants who cannot afford to hire counsel. The prisoner can be brought to court for the hearing if his or her testimony is required, or for any other reason approved by the judge.

How long does the process take?

Once a defendant files a §2255 motion, it can take anywhere from several weeks (in the event of a summary dismissal) to over a year (if the government is ordered to respond, and a hearing is held) for a court either to grant or dismiss a §2255 motion.

Do any special rules apply to §2255 motions?

Yes - the "Rules Governing Section 2255 Proceedings For the United States District Courts." The rules address the following issues: scope of the rules (Rule 1), form of the motion (Rule 2), filing of the motion (Rule 3), preliminary consideration by the judge (Rule 4), answer of the government (Rule 5), discovery (Rule 6), expansion of the record (submitting evidence) (Rule 7), evidentiary hearing (Rule 8), delayed or successive motions (Rule 9; this rule has been largely, if not entirely, superseded by the AEDPA's more stringent restriction on successive motions), the powers of U.S. Magistrate Judges to carry out the duties imposed on the court by the rules (Rule 10), and the time for appeal (Rule 11). If no Rule specifically applies, Rule 12 provides that "the district court may proceed in any lawful manner not inconsistent with these rules, or any applicable statute, and may apply the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure, whichever it deems most appropriate"

Rule 22 of the Federal Rules of Appellate Procedure addresses the procedure for applying for a certificate of appealability (permission to appeal). Local district court and appellate rules often have special sections devoted to §2255 motions and prisoner petitions.

What rules of discovery apply to §2255 motions?

Rule 6 of the Rules Governing §2255 Proceedings allows defendants as well as the government to conduct discovery pursuant to the Federal Rules of Civil Procedure - but only with permission from the court. The rule gives the district court discretion to grant discovery requests "for good cause shown, but not otherwise."

Can denial of §2255 motions be appealed?

The denial of a §2255 motion can be appealed only if "a circuit justice or judge issues a certificate of appealability." 28 U.S.C. §2253(c)(1). A circuit justice or judge "may issue a certificate of appealability ... only if the applicant has made a substantial showing of the denial of a constitutional right." Id. §2253(c)(2).

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What is required to make a "substantial showing of the denial of a constitutional right"?

The standard for appealability under 28 U.S.C. §2253(c)(2) is somewhat different depending upon whether the district court has rejected the issue sought to be appealed on its merits or on procedural grounds. With respect to constitutional claims rejected on their merits, the Supreme Court has applied to certificates of appealability the standard for granting certificates of probable cause set forth in *Barefoot v. Estelle*, and followed in the AEDPA. Under this standard, the appellant must make a showing that each issue he or she seeks to appeal is at least "debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further." The "substantial showing" standard "does not compel a petitioner to demonstrate that he or she would prevail on the merits." As to claims denied on procedural grounds (that is, where the district court has not reached the merits), the Court in *Slack* clarified that the certificate of appealability standard is somewhat different and easier to meet: (1) "whether jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right" (in other words, does the petition at least allege a valid claim, even though it hasn't been proven yet), and (2) whether "jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

Can a defendant file more than one §2255 motion?

As provided in 28 U.S.C. §2255, before a prisoner may file a second §2255 to challenge a particular judgment, a "panel of the appropriate court of appeals" must "certif[y]" that the motion "contain[s]" either:

(1) newly discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

This harsh rule is tempered slightly by the fact that it applies only to motions which attack the judgment that a defendant has previously moved pursuant to §2255 to vacate. Defendants may file one §2255 motion as of right for each judgment of conviction and sentence.

If a defendant wants to file a second §2255 motion attacking the same judgment, his or her options are severely limited. The newly discovered evidence ground, for example, applies only to newly discovered evidence, which establishes a defendant's factual innocence. It does not, for example, apply to evidence which, had it been known prior to sentencing, would have resulted in a shorter term of imprisonment. Nor would it apply to newly discovered evidence, which, if it had been introduced at trial, might have engendered a reasonable

doubt. The evidence must be such that had it be introduced, "no reasonable fact finder would have found the movant guilty of the offense."

The second ground is also quite narrow. It applies only to "new rule[s] of constitutional law" - not to changes in substantive law. The "new rule" must also have been "previously unavailable" and have been "made retroactive to cases on collateral review by the Supreme Court." A "new rule" has been "made retroactive to cases on collateral review by the Supreme Court" only if the Supreme Court itself has previously declared it to be retroactive - something which ordinarily can happen only on appeal of someone else's timely first §2255 or habeas petition.

Not only must a second §2255 motion meet one of these criteria before it may be filed, it must also be filed within an applicable clause of the statute of limitations. For most defendants, that will mean within one year of the discovery of the new evidence, or "the date on which the right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." §2255 ((3)).

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James H. Feldman, Jr., is an associate in the Ellis firm's Pennsylvania office. Since joining the firm in 1989, he has handled numerous sentencings, appeals, and §2255 motions in federal courts throughout the United States. Mr. Feldman is the editor of *Federal Presentence and Postconviction News* and has co-authored a number of articles on federal sentencing and post-conviction remedies with Alan Ellis. He is a 1976 graduate of the University of Cincinnati Law School.

Full text of this article with case citations is available at www.alanellis.com.

In the next issue of the newsletter, Alan Ellis will discuss the filing of a §2241 motion, also known as a petition of writ of habeas corpus. §

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Club Fed Commissary: It's All About The Money!

by: Anonymous

If fate comes across your path and you're headed to Club Fed (a federal prison facility) just make sure your loved ones send you money. You ask yourself, "why would I need money when I'm going to prison? Isn't Uncle Sam supposed to take care of me?" Well ... surprise ... surprise ... surprise!

Let's get one thing straight. Where you are headed may be called Club Fed. But believe me, a Club it's not; the Fed it is.

When you arrive, they'll give you your US Marshal's number, that's your BOP Swiss Bank Account Number. That number automatically makes you an elite member of Club Fed. With this privilege, you authorize Uncle Sam to hold your money. Forget about making interest. Their only interest is making you spend your money while at Club Fed.

As an elite member of Club Fed, you are allowed to spend your money to buy 300 telephone minutes per month. With this membership, you authorize BOP to record your conversations. And for this service, you are charged premium rates---sorry, no 10-10-220 options.

Another perk as an elite member of Club Fed is commissary privileges. Remember, this is Club Fed and you have to live in style. Privileges have its benefits---didn't I hear this somewhere?

Sure, while at Club Fed you are given three square meals a day. Breakfast at 6 AM; lunch at 11:30 AM; dinner at 4:30 PM. What??? Dinner at 4:30 PM---what happens when I get hungry? Well, there's always the commissary! Commissary? As an elite member, you must bring in new money into Club Fed's coffers.

Club Fed will feed you just enough to keep you standing. If you want seconds you better pray that you work in the kitchen. For those of you who are unlucky---and there are many---who avoid kitchen duty like the plague, you have the luxury of shopping once a week at your local Club Fed commissary.

Who said it's unconstitutional to eat Hagen Daz in the joint? What, you want soda pop? You want fajitas? You need jogging shoes? You want Adidas, Nikes, even New Balance for those special feet? You need shorts? Underwear? Soap for clothes? Shampoo & conditioner? As an elite member of Club Fed---this can all be found at your local Club Fed commissary.

Just as long as you have money in your BOP Swiss Bank Account---you can shop 'til you drop.

Who said they give you free soap or toothpaste in the joint? I don't know which joint you've been to, but all this has to be bought by YOU!!! Sorry no "blue light specials..."

What? You want to watch TV in prison? As an elite member of Club Fed get ready to shell some bucks. You'll need to buy a FM radio and headphones. All TV's are on

FM frequency. BOP says that this reduces noise in the units and allows prisoners the comfort to sleep with limited noise. Just remember...no radio; no TV. A Sony FM radio will only set you back for about \$42.00. Why so much? Come on, it's digital and you can preset up to five channels. Believe me it's like surfing the net. While your headphones range from \$18.00 to \$38.00. Now, now, stop complaining---it's a privilege, not a right---you do want to watch TV, don't you?

Now imagine how much money is to be made with the federal prisoner population at just a little over 150,000. Imagine if each prisoner receives just \$100.00 per month from their families---BOP has just generated \$1.5 Million in new money and they didn't even have to send out a demand letter.

Now you ask, "what happens to the profits made from the commissary?" How dare you question your Club Fed membership! You want to get charged with conspiracy to overthrow the US Government. Come on, get a life, the government is not supposed to make a profit---but who said Club Fed is the government. They use the profits as they see fit and they don't even have to tell you. Remember, this is the price for being an elite member of Club Fed.

What is so beautiful about this arrangement is that your friends at BOP don't pay any federal, state or local taxes. Never mind about competition, it's non-existent.

Mind you, there is nothing wrong with allowing prisoners to buy certain necessities---but if prisoners were fed properly and paid decent wages then BOP would have to rethink how to milk this cash cow. The bottom line is: as an elite member of Club Fed, your family is taxed on the outside and you the prisoner are taxed inside during your stint.

Club Fed ... it's not about membership: "IT'S ALL ABOUT THE MONEY!"

Prisoners are Profitable

by William Rodriguez

Coming to federal prison has become a multi-billion industry in the United States. Running the gamut from privatization of prisons to prison industries to potential profits from the prisoners themselves, a substantial amount of cash flow is generated. All this hard currency circulating only perpetuated the construction of new prisons. Specifically, I am housed at the largest prison complex in the United States, which has access to an enormous amount of real estate. As I write a super maximum security is under construction. In society crimes are being committed, individuals are being arrested, and as they are found, guilty they are being sentenced in record numbers in federal prison. Then, innocent people become victims of crimes, lives are destroyed with criminal records, and families are broken apart. Although the issue originates in society itself, the alarming rate of prison construction never

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ends. The reason stems from the economic concept our markets operate on.

The focus is on Capitalism. Capitalism is an economic system founded on the ownership of capital goods. Initially an entrepreneur can make an investment in capital goods to provide a product to a market with the incentive of making a profit. Such a system in our free markets influences the increase of prices to finance operations, innovation to maintain a competitive advantage, and the provision of products where a market exists. The entire concept is designed to keep competition fair in business. Such a system benefits society in the form of low unemployment, higher wages in tandem with economic growth, and a variety of prices for goods and services. Unfortunately, for prisoners they have become the capital goods necessary for investment in prisons to flourish. Under restraint from lengthy and infinite sentences, prisoners are the newest product and market segment with an immense amount of revenue producing potential.

The reinforcement of these capitalistic practices begins at a political level. Politicians claiming economic stimulation lobby for the location of prisons, but their ulterior motives purport staying in office. The hidden agenda rests with "legislatures in each state who are responsible for defining the boundaries of their congressional districts."¹ Temporary residence of a large prison population within these electoral districts only increases its constituents. Every 10 years the U.S. Census Bureau conducts a census of the total population within all districts for Apportionment. With this data "the 435 memberships in the House of Representatives [are divided] among the 50 states that have voting seats."^{1A} Accordingly to the results each state is entitled to have a "number of House memberships."^{1B} Although each state must have at least one representative before the other 385 get divided due to Article 1, Section 2 of the U.S. Constitution. For this reason, politicians are alleviated of budgetary constraints by counting prisoners as residents of geographical entities. In effect, prisons become a means within the boundaries of districts to attract "population-based state and federal aid"² supporting the governance of politicians.

To further illustrate the inequality of this, consider the constitution of "many states [which] mandate the residence is where you choose to be and that 'no person shall be deemed to have gained or lost a residence, by reason of his presence or absence ... while confined in any public prison.'"² Yet the communities that we come from are under represented when were counted where incarcerated and the populations in that locality are overrepresented. This type of electoral malapportionment is an expensive price for the distinct areas of ethnic, social and, economic interests, which have much to gain with the equal access to government for legislative reform. As a result, a paradox occurs that literally ignores the true residences of prisoners thereby eliminating legislators from our districts while enhancing the responsibility of others who must account for us elsewhere and their

"official"² districts. A paradox wielded by the super strength of a billion dollar industry that puts economic interests before society - the people who are supposed to be represented by the House of Representatives.

The simple truth is local economies depend upon the incarceration of a prison population for revenue. Employment opportunities are plentiful when a prison is opened in their areas. Local vendors supply commissary with products that are marked up then sold to us. Vending machines are placed in housing units, visiting room, and staff dining halls generating income. Local contractors are retained to provide repair services. In a nutshell, money travels from the local prison (i.e., us and our families) to the local businesses to the local consumer.

"Traditional Correctional theory says that prison should accomplish three goals: 1) keep the prisoner from committing street crime during the course of his sentence, 2) punish the prisoner for their crime, and 3) rehabilitate the prisoner in preparation for his return to society."³

However, in this evolving world of incarceration federal prisons have added a fourth goal. They now profit from prisoners in anyway possible using retail management practices that utilize cross merchandising. These practices involve a cross selling of products/services that are essential for our survival while in prison. These necessities are what assist us to sustain ourselves in a multitude of ways. From shopping at the commissary with inflated prices to paying to wash our dirty laundry to expensive rates for telephone calls we pay the price, but the imposition of new fees to finance operations continues. Just consider "28 CFR [Code of Federal Regulations] part 505 allows for [the Bureau of Prisons to assess and collect a fee to cover the cost of incarceration for Federal prisoners - \$21,601."⁴ In addition, "the Bureau of Prisons may assess and collect a fee [i.e., \$2.00 dollars] for health care services provided in connection with certain kinds of prisoner health care visits."⁵

Last time I checked employment wages in federal prison were based on a grading system. At Grade 4 you earn \$0.12 cents an hour, Grade 3 \$0.17, Grade 2 \$0.29 cents, Grade 1 \$0.40 cents. Working in Prison industries, you work your way up the pay scale every few months only if you have a GED or a High School Diploma. After this, you're eligible for a raise every 18 months. Occasionally other jobs provide bonuses during the holidays. These bonuses are given due to the limitation of Grades by different departments in the prison. However, this year we didn't get any because of the downfall of the economy and the budget. If your performance is deemed extraordinary, you might receive a bonus. Otherwise, the only other way to obtain a higher wages of compensation is if you are confidential informant in the prison. You can do this if you have the dignity to look at yourself in the mirror after committing such selfish acts. It's now easy to see

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Sex Abuse Prevention

that an individual would have to work plenty of hours to receive the equivalent of the minimum wage in a paycheck. It's obvious where the majority of profits originate since there are not that many low-wage work hours in our days.

Behind all this exists a serious controversy. Families of prisoners have been targeted as a market with plenty of disposable income to spend. Everybody in prison has family, although not everyone received financial support from them. Their aid to us is founded on the love they hold for us. The new marketing concept is if prisoners pay the price, let their families pay also. Families support us only to finance our needs. Since options for earning decent wages in federal prison are limited, families ultimately become consumers of this business. Furthermore, as the rates of incarceration rise target markets expand pouring more money into prisons.

Prison bureaucrats now focus on cost shifting instead of cost reduction. As an undergraduate student in business, I admire the marketing tactics and creativity of financial acumen. However, as a federal prisoner I loathe the exploitation of prisons and our families to finance this industry. In life, we all have choices; I know I like many made the wrong one years ago. Regardless of my decision, it does not justify the minimal wages we receive, it does not justify the implementation of new fees that my family pays once as a taxpayer then twice as a loved one, and it does not justify the continuous construction of prisons in towns barely seen on a map for political gain first, economic stimulation second which until this day has failed to stop the growth of crime. Today prisons are just job security, a paycheck for local citizens, and big business for people who do not even have the slightest idea about prison. Therefore, federal prisoners have replaced top selling goods to become the hottest market commodity of this century.

References

1. www.census.gov/population/www/censusdata/apportionment/delivering, Congressional Apportionment - Delivering the Numbers, P. 1 of 1
- A. *ibid.*,/calculated, Congressional Apportionment - How it's Calculated, P. 1 of 1
- B. *ibid.*,/what, Congressional Apportionment - What it is?, P. 1 of 1
2. Fortune News, Winter 2002 - 2003, Volume XXXVII, Number 4, "Locked Up, Then Counted Out: Prisoners and The Census," Peter Wagner, P. 22 - 23
3. Prison Policy News, March/April 2002, Vol. 3, No. 2, "Mind Games: Psychological Issues at Work in Crime and Punishment."
4. 67 FR, 3/19/02, page 15286
5. Unknown issue of Federal Register. §

Therapy for a high majority of sexual offenders can be effective and has a large opportunity for long-term success, according to the director of an organization that speaks about such topics. Wayne Bowers, Lansing, MI, director of the Sexual Abuse Treatment Alliance of Michigan and CURE Sort is proof of what good therapy can do to turn a life around and to curtail abuse.

Having found success in controlling a once chaotic life with the therapy process at the Johns Hopkins Sexual Disorders Clinic, Baltimore, MD, directed by Dr. Fred Berlin, Bowers promotes the importance of such treatment. Having lived the process of gaining control through the counseling, which covered a time before a second incarceration and three different groups during a Kansas prison stint of five years, Bowers returned to Baltimore in 1989 to renew participation in Berlin's program.

He maintained contact with the National Institute for the Study, Prevention and Treatment of Sexual Trauma for six years as he pieced his life back together. With a journalism background and his willingness to speak up, opportunities to promote the need for therapy arose. Realizing its importance, and its effectiveness, and witnessing such an outpouring of negative information about sex offenders and how they tended to all be categorized after the impact of a few horrific cases, Bowers saw the importance of telling his story.

Upon his parole in Baltimore, he became active with a national organization, which seeks to reduce crime through the reform of the criminal justice system, known as Citizens United for the Rehabilitation of Errants (CURE), headquartered in Washington, DC. But he soon learned of a new branch of CURE that emphasized the importance of therapy for sex offenders. It was founded by a man in Michigan, Loren Perry.

Since October, 1993, he has directed Sex Offenders Restored through Treatment (SORT), one of several issue chapters of CURE. SORT is a program that promotes restoration of persons who have offended in a sexual way by participating in effective therapy. It pursues the use of alternative sentencing when possible that includes effective sex offender treatment. And it promotes the need for effective therapy in all correctional facilities for those incarcerated with a sex offense.

Bowers has directed the Sex Abuse Treatment Alliance, a non-profit organization, since Feb., 1997. It is a coordinating organization assisting in bringing treatment providers in touch with each other, assisting in disseminating information of treatment for those who need it and coordinates education and public information programs that inform society about sex abuse, both from the perspective of victims and offenders. It promotes a restorative justice approach in prevention and in recovery.

MEMBERSHIP NOTICE

Please notify FedCURE immediately if your membership information changes, including a change of address, phone or incarceration location (prisoners).

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"What most people don't realize is that the victim and offender have many similar emotional issues with which to confront," Bowers said. "I have been amazed in discussing topics with both victims and offenders that there are amazing similarities. What it shows me is the fact that we can work together to gain resolution of cases. But for that to occur, the stigma of sexual exploitation must be confronted. We must quit demonizing these people, and see them for who they truly are -- in most instances friends, or family members, or persons well known by those they victimize.

"We must continue to point out that all persons who sexually act out - they are not the same, as so many of the laws today imply. And we must continue showing the success for those who have received counseling.

"The philosophy of prisons has changed substantially this decade to more of a warehousing mode, and if I might add a personal opinion, one of huge economic development proportions," Bowers said. "Some day this nation needs to take a serious look at what it has developed with the huge prison increase. We incarcerate more people than any other civilized nation. There are countless persons locked up who have acted out due to emotional or mental illness issues. Yes, they must be responsible for their actions, but won't we all be better off as a society if we make sure they are given the tools to correct and control their behavior while they are in the state's control?"

CURE Sort and Bowers can be contacted at P.O. Box 1191, Okemos, MI 48805-1191. Phone is 517-482-2085. E-mail address is: wayne@arq.net. §

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participated in a number of panels and roundtables (e.g., "Convicts Critique Criminology" and "Convict Criminology") at the American Society of Criminology (ASC; 1997, 1998, 1999, 2000, 2001, 2002) the Academy of Criminal Justice Sciences (ACJS; 2000, 2001), and the American Correctional Association (2001, 2002) annual conferences. This provided us with a means to get to know one another, become familiar with our published work and current projects, and discuss future initiatives.

Who Are the Convict Criminologists?

We now number some two dozen exconvict graduate students and professors working at universities, including five former federal prisoners. Add to this convicts still in prison that we correspond with and publish in different venues. We also have a growing group of "non-con" convict criminologists that co-author with the excons and participate in our activities.

In terms of academic experience, the convict authors fall into three distinct cohorts. The first are the more senior members, full and associate professors, some with distinguished research records. A second group of assistant professors is just beginning to contribute to the field. The third are the graduate student exconvicts. As this process continues, some of these former prisoners will complete their graduate educations and become the future

cohorts of the new school. The excons undoubtedly provide convict criminology with unique and original experiential resources, but some of the most important contributors may yet prove to be scholars, who though having never served prison time, and are contributing to our efforts.

The Purpose of Convict Criminology

Our first goal is to impact the academic knowledge base on prisons. As exconvict professors of sociology, criminology, and criminal justice we are deeply disappointed in the academic literature published on prisons. With some exception, most of the existing literature is written from a managerial viewpoint, that of prison administrators, and does not reflect the experience and insights of prisoners and their families. As written, most academic studies and textbooks used in college classrooms fail to truthfully describe conditions of confinement and the damage done to prisoners.

Our second goal is to use our dual roles as excons and professors to challenge the public perception of prisoners. We represent the potential of people now warehoused in our nation's prison systems. There are many men and women wasting away in penitentiaries and correctional institutions that need immediate access to college courses and advanced training.

Our third goal, implied by the first two, is that over time, Convict Criminology will provide the public with a more realistic understanding of prisoners and prisons. As authors, we write books, journal articles, newspaper and magazine pieces.

Our fourth goal is to change the very language used to discuss prisons. For example, we do not use the words "prisoners" or "offenders." These are managerial terms used by law enforcement and correctional staff. We prefer convicts, prisoners, men, women, or persons. For example, we might say, "John was convicted of a criminal offense and is now a prisoner." John has a name, he is not a prisoner, or offender.

Finally, it is our pleasure to cooperate with FedCURE. We have common interests and cause. The most immediate concern is the well being of federal prisoners and their families. We will work together to improve conditions of confinement in the Federal Bureau of Prisons.

Stephen C. Richards, a former federal prisoner, serves on the FedCURE Board of Directors and is an Associate Professor of Sociology and Criminology at Northern Kentucky University. He is a Soros Senior Justice Fellow.

Jeffrey Ian Ross is an Assistant Professor of Criminal Justice at the University of Baltimore.

Ross and Richards' recent work includes 2002. Behind Bars: Surviving Prison (Alpha) and 2003. Convict Criminology (Wadsworth). Books can be ordered from amazon.com, barnes and noble.com, or any bookstore. §



Book Reviews

Don't Kill in Our Names: Families of Murder Victims Speak Out Against the Death Penalty (ISBN 0-8135-3182-9, Publication date: February 14, 2003; 304 pp., 18 b&w illus.; Cloth, \$27.00)

Would you oppose the death penalty for the murderer of your husband? Your mother? Your son? Families of murder victims are often ardent and very public supporters of the death penalty. But the people whose stories appear in this book have chosen instead to oppose the death penalty for their loved ones' murderers. Surviving the murder of their loved one has led them to understand that the death penalty does not serve their needs. For some, their journey has taken them on a path of forgiveness leading them to reach out to the killer and establish a relationship with him or her. Others have formed their own organizations to oppose the death penalty or promote restorative justice. All are members of a nationwide group, Murder Victims' Families for Reconciliation (MVFR), whose mission is to end the use of the death penalty.

In Don't Kill in Our Names: Families of Murder Victims Speak Out Against the Death Penalty, Rachel King weaves third-person narrative with wrenching first-hand accounts, presenting the stories of ten family members. Each is a heartrending tale of grief, soul searching, and of the challenge to oppose the death penalty instead of choosing the more socially acceptable behavior of supporting it. In fact, many people in the book have actually experienced discrimination by the state because of their opposition to the death penalty. Others have faced social ostracism from family and friends.

King sets the stories in the context of the national discussion over the death penalty debate and restorative versus retributive justice. The book will appeal not only to those who oppose the death penalty, but also to those who strive to understand how people can survive the ordeal of homicide.

Rachel King works for the Capital Punishment Project of the American Civil Liberties Union. She is currently working on a book about the families of death row prisoners.

If you are a FedCURE member and have published a book, please let us know so we can feature it in future editions of the newsletter. ~-~

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NATIONAL LEGAL PROFESSIONAL ASSOCIATES

HALFWAY HOUSE POLICY STILL UNDER ATTACK

As was mentioned in previous NLPA newsletters, the December 2002 change to the Bureau of Prisons Halfway House policy continues to generate litigation with favorable results to defendants. In the Washington, D.C. case of *Culter v. United States*, a Federal District Court held that the retroactive application of the policy violated the due process rights of the prisoner.

It is refreshing to read strong opinions from the judiciary on the capricious acts of the DOJ such as the following opinion from U.S. District Judge Michael Ponsor in the 28 U.S.C. § 2255 case of *Iacoboni v. United States*, a District of Massachusetts case:

"It is no exaggeration to say that the December communications reflected a disregard for—indeed, almost an insult to—the courts. The affront was particularly grave to judges who had imposed sentences in reliance on the then-prevailing sentencing regime . . . The lack of respect for the proper role of the judiciary, the plain discourtesy in the brusque manner of notification, and particularly the subversion of the sentencing process by the insistence on a retroactive application of the new sentencing rules, all were highly offensive and gratuitous. Even if the BOP's about-face on community corrections could somehow be justified— and it cannot— it should never have been carried out in the cavalier manner it was."

Staff of NLPA have researched this new policy issue extensively. We have been in touch with many of the advocacy groups around the nation who have expressed a collective concern on the Department of Justice's improper construction of 18 U.S.C. § 3624(c) and U.S.S.G. § 5C1.1. At best, the new policy is improper as implemented for it violates the ex post facto prohibition in the United States Constitution. At worst, the new policy as a whole is patently erroneous.

STANDARD FOR 3621 TIME OFF RE-AFFIRMED

In the recent case of *Kuna v. Daniels*, 234 F. Supp. 2d 1168 (D.C. Oregon November 30, 2002); 2002 U.S. Dist. LEXIS 23282, the Federal Court in Oregon reaffirmed the standard for admission into the Federal residential drug abuse program.

Petitioner had applied for admission into the residential drug abuse program at the FCI Sheridan. He was denied

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admission and subsequently filed a 28 U.S.C. 2241 petition alleging that the BOP found him ineligible for a one-year sentence reduction pursuant to 18 U.S.C. §3621(e)(2)(B). He filed a writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 seeking a determination of eligibility for the drug treatment program.

Mr. Kuna argued that: (1) the BOP did not follow its own rules in denying his eligibility for the sentence reduction program; and (2) the BOP's interpretation of the program statements are an overly narrow interpretation of the statutory mandate to provide substance abuse treatment to prisoners. The court found that the BOP has acted arbitrarily in imposing eligibility requirements that go beyond its program statements, did not address the second alternative argument, and subsequently granted the requested petition for writ of habeas corpus.

BACKGROUND The Petitioner was in federal custody based on a conviction for Conspiracy to Possess a Controlled Substance with Intent to Distribute, and Possession of a Controlled Substance with Intent to Distribute, in violation of 21 U.S.C. §§841(a)(1) and 846, and 18 U.S.C. §2. Petitioner was sentenced in 1990 to a 200-month term of incarceration, with a release date of February 18, 2005, including reductions for good conduct. Prior to his sentencing, petitioner spoke to a probation officer for the preparation of a Pre-Sentence Investigation ("PSI") report. The Petitioner admitted to the probation officer that he drank socially.

DISCUSSION The BOP's program statement 5331.10 contains certain eligibility criteria a prisoner must fulfill to enter the drug treatment program, including the prerequisite that the prisoner suffer from a "verifiable documented drug abuse problem." As verification, the program statement requires: (1) a determination by drug abuse program staff that the prisoner has a substance abuse disorder; and (2) substantiation in the PSI or other similar documents in the prisoner's central file of the diagnosis. "Any written documentation in the prisoner's central file which indicates that the prisoner used the same substance, for which a diagnosis of abuse or dependence was made via the interview, shall be accepted as verification of a drug abuse problem." P.S. 53310.10 at 4 (emphasis in original). Petitioner's eligibility interview supported a DSM-IV diagnosis of alcohol dependence. Petitioner was denied eligibility, however, because according to the BOP, the PSI revealed that petitioner drank alcohol only on a social basis. This did "not constitute abuse or dependence." Program statement 5330.10 does not require verification in the prisoner's central file of "abuse or dependence." Use, not self-reporting of abuse, provides sufficient documentation given that many individuals with dependencies minimize the extent of their substance abuse. By its own terms, the program statement requires only written documentation that the prisoner used the substance for which he or she now seeks treatment. Petitioner's PSI states that he drank alcohol. According to the program statement, this documentation of use "shall" be accepted, and no additional verification in the file is required. The BOP is without discretion to go beyond the unambiguous terms of its program statement. See *Bowen v. Hood*, 202 F.3d 1211, 1221-22

(9th Cir. 2000) (treating unambiguous language in a program statement as binding upon the BOP). The BOP had acted arbitrarily in denying petitioner eligibility and imposing additional eligibility requirements not contained in its program statements.

CONCLUSION The Court was clear in its holding. The petition for writ of habeas corpus was granted with Mr. Kuna categorically eligible for the sentence reduction upon successful completion of the drug treatment program.

NLPA can be contacted through its website www.nlpa.com. §

PRISON VISITORS GUINEA PIGS FOR TECHNOLOGY

by Tricia Hedin

Joan (*not her real name*) is getting ready to visit her husband in the U.S. Penitentiary in Lompoc, California. She has traveled with her 13-year-old son for 24 hours on a train and is now unpacking in a Motel 6 located near the prison. Joan takes a shower and carefully takes freshly laundered cotton clothes out of a suitcase. Her son does the same. Neither will sit on a chair or bed in the motel room before leaving for the prison. She is nervous even about sitting down in the rental car. She uses no perfume, no lotion, and although she had a migraine headache the night before, she took no medication, not even aspirin. Why? Because either Joan or her son will be subject to ion spectrometry testing when they are processed in to visit at the federal prison. The Iontrack drug detection device, one of many purchased by the U.S. Federal Bureau of Prisons to the tune of \$1.6 million in 1997, will be used by a correctional officer to vacuum particles off the hands, legs, clothes, and shoes of visitors. If the particles are tested to be an illegal drug, then the visitors will not be allowed to visit for 48 hours. The second time within thirty days, visits are suspended for 30 days. The third occurrence results in a suspension of ninety days; the fourth 180 days.

If Joan or her son test positive for drug residue, they will not be given a drug test to see if they ingested any drugs nor can they request to be searched to prove they are not smuggling drugs. They will be sent away with no criminal charges and no method to challenge the test results. Any challenge based upon prescribed medication has to be submitted, in writing, to the warden, a process which takes longer than Joan's vacation time from her job. Joan will have spent her hard earned time and money to travel to visit her husband only to go home without seeing him. Joan, who does not use drugs, will wonder where she picked up drug residue or she will learn, as many prison visitors know, that the technology is flawed.

Yet the U.S. Federal Bureau of Prisons continues to use the Iontrack equipment and now the U.S. government is using the same technology to test for explosives on

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airline passengers' baggage. This drug detection technology was implemented by the Federal Bureau of Prisons in 1998 as part of a two year research project to see if using the device on visitors would reduce drug use among prisoners as shown by urinalysis test results. One-hundred sixty thousand visitors were tested. After the research project ended, the prisons continue to use the technology and the research report was quietly put on a shelf. That is because, in the penitentiaries where 50% of the visitors were tested for drug residue, the positive drug urinalysis results for randomly tested prisoners increased 11.1 per cent. And while the drug use among prisoners in medium-security correctional institutions decreased 30%, these institutions also implemented drug treatment programs and other drug detection methods within the prisons at the same time, rendering the research results inconclusive as to what caused the change. Poor research methodology doomed any results. The other problem cited by the researchers is that the drug detection equipment malfunctioned, either due to operator error or equipment breakdown, and was inoperable 30% of the time.

Not many citizens care whether prison visitors are allowed to visit their incarcerated friends or family but they should. Maintaining family ties helps with post-prison transitions and lowers recidivism. Children need to continue their bond with an incarcerated parent (as long as the parent has not victimized the child). Visiting privileges help maintain the safety levels within prisons for prisoners and officers alike. Citizens may not care about prison visitors' rights but when the ion spectrometry was implemented by the State of Iowa on truck drivers, the truck drivers' union was outraged and promised to fight it. When a naturalized citizen, a Muslim cleric in Oregon, was arrested recently at the Portland airport, the FBI stated his luggage tested positive for explosives residue and cocaine. Later, the FBI issued a report stating the luggage was re-tested and the original test results were erroneous. Mariah Taylor, a health care worker and well known activist in Portland, Oregon, tested positive at the Sheridan Federal Correctional Institution and was arrested in August, 2001, when she refused to leave the premises because she knew the results were faulty. The charges were later dropped. According to an Associated Press article, the Washington State scientist who developed the technology believes it is only sensitive enough to indicate that further testing might be useful. Yet who is challenging the results of drug detection tests on prison visitors? The American Civil Liberties Union is interested in the issue but, because no one is arrested and prisoners don't have a constitutional right to social visits, they have not found an ideal test case yet. Prison visitors, also, are often afraid of challenging prison policies because of the imbalance of power and the vulnerability of the prisoners.

Given all of the flaws and the poor research results, why are prison visitors still being subjected to this technology? It does not prove they are smuggling drugs - and obviously drugs are still entering the prisons despite the technology. It does not prove the visitor is intoxicated; a urinalysis or breathalyser test would be more accurate. It often gives false positives due to

certain chemicals found in other substances, such as lotions. It can traumatize previously abused children to be touched all over their bodies by a correctional officer. A false positive result can cause a parent to wonder about a child's drug use and can erode any respect for prison staff. The Federal Bureau of Prisons administrators ignore all the negative information regarding the ion spectrometry technology. Is it because they do not want to admit they wasted \$1.6 million of our tax dollars? Are the airports in the process of making the same mistake of purchasing this technology to check luggage? Perhaps the Federal Bureau of Prisons should sell their ion spectrometry equipment to the airports to save the taxpayers additional funding of questionable technology. Then mothers like Joan could sit down and have a cup of coffee before visiting at the prison.

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Family Separations

by Sylvia McAfee

The Father of my children didn't leave our family because of choices he made that sent him into the prison system. We had four children and I decided I could no longer tolerate his sarcastic and verbally 'abusive' ways. The kids were 15, 13, 12 and 7 years old. Today they have children of their own who are those ages. After several years of counseling, pleading and praying, I decided that I had no other choice than to tell him to leave. I was so sure that getting rid of the negative parent would solve everything and we would be a peaceful, loving family. He left the family because of relationship choices we both made. The afternoon that he packed his car and drove away was one I'll always remember. My 12 year old son ran into my bedroom and flopped onto the bed, sobbing. I put my arm around him while my own tears flowed. It was a sad and yet refreshing moment my dreams of marriage and family had just died the pain was wrenching in my chest. But the idea of putting our lives together with things that mattered; camping, music, play was the part that refreshed. As we cuddled close that afternoon, my son stopped crying and looked over at me and said, "Mom, thank you so much for getting rid of him for me, I prayed he would go away". I felt like a hero I knew then that I was right in breaking up the family in order to free myself and my children from this sarcastic and cutting person they called Dad.

Within a few months, the 3 boys were acting out beyond my imagination. I hadn't experienced "at-risk" kids and didn't have a clue what was going on with them. The 15 year old quit high school and moved into his own apartment. He had a job where his dad worked, and he worked full time. He was upset and angry with me. Our second son was selling parsley as marijuana along with other antics that didn't work. After my loving and failed attempts to straighten him out, he joined the navy. The 12 year old finished high school, ran cross country track, worked, went on to college to be a teacher. He is the one who thanked me for getting rid of his dad. He is the one who, until recently has acted as if he could hardly stand

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to be around me, but he wouldn't talk about it he was sarcastic, cautious didn't want me to influence his children but he wanted me close to them. To the best of my ability, I was.

My daughter always missed her dad. She wanted him to visit and come over and go places and stay close. She loved her dad and he loved her. He treated her differently than he did me and the boys. I could see why she would miss him.

Because of the commitment I made to being a mother, I did everything I could think of to keep us all involved in life and respecting each others differences. We have shared fun times as a family on a frequent basis, but this nagging, upsetting 'thing' was always between me and my youngest son.

I had learned all of the 'reasonable' reasons about why divorce is best when things can't be worked out. Out of my family, I'm the only one who seemed to agree with those reasons.

Last year, my youngest son called and talked for several hours. I've learned to hear what my family has to say without defending my position, but it was tough. He has no recall about thanking me for removing his dad. On the contrary, he wanted to share with me about what has hurt him and upset him all of these years. He said that I did the worst thing anyone could do to a kid. When I divorced his dad, I removed his role model he told me how painful it was not to know how to be a man he didn't feel like he was normal. He searched for the answers and with his own young family, became involved with their church. It was there that he could find his identity. He told me more about the loss and pain that he suffered because of me. I told him how sorry I was that my actions had affected his life in such a negative way. I told him that it would have been so much better if Dad and I had, back then, been able to find a way to work with keeping the family together. I apologized again for the part he felt I had played in his sadness and agony. Then he told me that he was feeling better for the first time in years. He said that when I apologized to him, it made all the difference in the world. Since that talk, we have a warm and loving relationship. I never feel he's withholding or angry with me anymore.

The subject of divorce doesn't really seem to have much in common with prison issues, except that I don't think boys or girls have a button that turns off or on with REASONS. Their parents are extremely important to their growing up, identity, self esteem, and future possibilities. How we interact teaches them how to interact... kids only know what they experience. The prison system divides families more than divorce. Relationship with those incarcerated is less possible because of the secure nature of it all: because of the rules of it all 15 minute phone calls, physical distance from family, finances.

Many of the kids have parents who don't know how to go about relationships that are loving, honest and trustworthy. What's going to happen to these kids? Are they learning the language of hurt, defense, and anger in order to be the next generation inside a system where we continue to build for the future? §

Just How ARE We Going To Make It Through This . . .

by Susie Ricketts, Portsmouth, VA

That was the question that I asked myself as soon as I heard that my husband was to self-surrender at FCI Morgantown, June 21,2000 to begin serving a 13-year sentence. My initial thought was that my life was coming to an end, my world was crumbling before me, and the rug had been yanked from under me. Just which way was I now supposed to turn? How would I be able to make it without my husband, my soulmate, my best friend? How am I going to be able to survive this?

Those were the questions that rushed through my mind when I learned that in less than a month I would have to live the next 13 years by myself, and raise two kids in the process, as well as keep supporting two stepsons that haven't had anyone other than their father for the past 10 years. Their mother passed away 13 years earlier of Breast Cancer.

A little faith and a shining example is all it has taken. Please don't misunderstand me - I'm not a religious fanatic, but I have found that a little faith in the man upstairs has gone a very long way. To be able to give the burden of anger and resentment to someone else takes so much off a person, it can't possibly be described.

The other element that has helped both of us to survive all of this is that we both **LOVE EACH OTHER**. I can't even come close to putting into words the devotion, the commitment, and the love, that my husband and I share. The 10 years that we spent with each other prior to his incarceration have been the best 10 years of our lives. I learned to respect, honor, and love my husband, and he learned to do the same with me. And there is also a very large element of **TRUST**. We have always trusted each other and knew that the trust would continue to endure even with our separation.

The last element would most definitely have to be communication. I make sure that I go visit at least once a month. I am fortunate enough to have him close enough that this is possible. My husband calls me every day just to say "Hey" and "I Love You". He also calls to check on the family. I keep him informed of everything that I can and include him in every decision that I make. Even though he may not be right here, he is still a part of this family. He deserves the chance to have a say in matters that will affect him once he is finally able to come home. And he **WILL** come home - one day in the future - to this house and to this family. We will always be here.

This is what continues to keep us together. This hasn't been easy and we have until April 6, 2010 before he comes home. But I will continue to love and support my husband, will stand beside him, and will be here after he gets home. He is my life. He is my love. **NOTHING** can ever come between us. §

Fighting a Threat to Judicial Discretion.

by Mary Price, General Counsel, FAMM

New legislation, slipped quietly into a popular child protection bill, has brought unprecedented changes to how judges may sentence defendants. The "Feeney Amendment," known for its sponsor, Florida Republican Thomas Feeney, was seeded by the Ashcroft Justice Department. The DOJ is highly critical of judicial discretion and aims to increase the power of federal prosecutors at the expense of judges. Thanks to an outpouring of opposition, it only partly succeeded.

Early in April, shortly before the full House of Representatives was to vote on the Child Abduction Prevention Act, also known as the Amber Alert bill, the Feeney Amendment was added to the bill. The amendment was described by its putative author as "an essential component of legislation to fight against child pornography and abductions." Despite that description, as originally drafted, the Feeney amendment would have all but gutted judicial independent discretion to depart from otherwise mandatory guideline sentences. Among other things, it would have eliminated all grounds for judicial departures except for those expressly permitted by the U.S. Sentencing Guidelines.

This tactic of attaching controversial legislation to popular bills is sometimes used as a way of avoiding wider debate. Two days after the amendment was attached, without hearings or a meaningful opportunity for debate, it passed the House.

Departures are one of the few ways that judges may exercise independent judgment at sentencing. A judge may depart from the guidelines for specific reasons when necessary - and when not expressly prohibited - to reach a just sentence when factors exist that were not adequately accounted for by the guidelines. Departures may be based on reasons permitted by the Sentencing Guidelines, or for reasons not enumerated in the Guidelines, but considered by the judge to warrant sentencing outside the Guidelines. Only departures expressly forbidden by the Guidelines are off limits.

One reason that the Feeney Amendment sought to limit departures was the perception that judges are giving too many departures or departing for the wrong reasons. But a look at the numbers demonstrates that the overwhelming bulk of departures are sought or concurred in by the government. For example, the Justice Department controls one important class of departures, known as "substantial assistance" departures under U.S.S.G. § 5K1.1. On motion by the government, a judge may depart, not only from the guideline sentence, but also from the statutory mandatory minimum sentence, when the defendant has provided assistance to the government in the investigation or prosecution of another case. By far, the largest share of departures is sought by the government under this authority. In 2001 alone substantial assistance departures were granted in 17 percent of all federal prosecutions. Together with another class of government-supported departures, commonly seen in the southern border states and used to manage prosecutorial case loads in illegal immigration cases, government-sought or supported departures made up a

full 79 percent of all downward departures granted in 2001.

Not content to control the lion's share of departures, however, the Ashcroft Justice Department now has its eye on the remaining 21 percent.

When news of the Feeney Amendment got out, groups mobilized rapidly to confront it. The House version of the bill contained the Feeney language while the Senate version did not. Those two versions had to be reconciled in a special meeting of senators and representatives called a "conference committee."

A sharply contentious conference debated the measure, with Sen. Kennedy leading the opposition. Ultimately the divided committee produced a compromise version of Feeney that Sen. Hatch represented as affecting only defendants in child endangerment cases. That was incorrect (the compromise contained much of the old language and some new provisions to further limit judicial discretion). Last minute, late night lobbying stripped some of the more egregious aspects from the legislation.

The final bill, without benefit of hearings or meaningful debate, passed the House (400-25) and Senate (98-0). It has dealt a blow to discretion in sentencing. Called the PROTECT Act, Title IV of Pub. L. 108-21, contains the Feeney Amendment in its Title IV and does the following:

- › Limits departures in certain child endangerment crimes to those specifically enumerated in the guidelines;
- › Requires judges to state the reasons for departures with greater specificity and report the reasons to the Sentencing Commission in all cases;
- › Establishes a stricter standard of appellate review of departures in all cases (overruling Supreme Court precedent that established that judicial departures were to be accorded due deference);
- › Prohibits downward departure based on new grounds if a case is remanded to the trial court for resentencing when a departure has been overturned on appeal;
- › Requires government motion before a judge can award a downward adjustment based on extraordinary acceptance of responsibility;
- › Imposes new and more burdensome reporting requirements on judges who depart and gives the Justice Department and Congress more access to each judge's sentencing records;
- › Directs the Sentencing Commission to promulgate a policy statement within 180 days authorizing a new downward departure for "fast track" departures pursuant to an early disposition program authorized by the Attorney General and the U.S. Attorney (concentrated in border state immigration cases), requires a government motion before they can be granted, and limits them to four levels;
- › Limits the Commission's ability to alter sentencing rules established by the Act;
- › Requires sentencing guidelines be consistent with statutory provisions;

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- › Requires that the Justice Department report to Congress on new regulations to oppose and appeal downward departures; and
- › Limits to the number of judges on the Sentencing Commission to three or fewer.

Most troubling is a provision that directs the United States Sentencing Commission to review the incidence of downward departures and, within six months, amend the guidelines "to ensure that the incidence of downward departures [is] substantially reduced."

As FAMM, NACDL, the Leadership Conference on Civil Rights and other organizations stated in a letter to the Commission following the passage of the Feeney Amendment:

[d]epartures are a healthy, necessary part of the sentencing guideline system. Without them, the guidelines will be no more than complex mandatory minimum sentencing laws, replete with the intolerable disparities and outcomes that characterize those laws. Eviscerating judicial departure authority will hand all remaining sentencing discretion to the prosecution, guaranteeing rampant injustice and racial disparity, as evidenced most dramatically today by the crack cocaine mandatory minimums. Unlike judicial discretion, unreviewable prosecutorial discretion is exercised behind closed doors, sometimes for reasons that do not comport with the ends of sentencing.

The group letter called upon the Commission to conduct a comprehensive survey, and hold hearings around the country to engage the views of judges, lawyers, prosecutors, and others, and consider the reasons behind departure rates that may on the surface appear out of line, but upon closer inspection reveal problems with the design of a particular guideline.

While it remains to be seen what the Commission will do to "substantially reduce the incidence of downward departures" the fight is not over yet. Groups are gearing up to prepare for possible congressional and/or Commission hearings as well as to address any proposed guideline amendments that will be published for comment. §

Letters ...

My husband and I would like to thank the Federal Cure for the help and advice they gave to us over the past three months while we were fighting the BOP CCC Policy change. It is nice to see kind people helping us in time of need. I really appreciate everything they have done. Karen has been a big help and if I had not spoken to her my husband would probably be serving his time in a prison camp instead of the Corrections Center he is in now. Although we are still fighting the policy change, my husband and I still have hope that the Appeals court will issue the restraining order for the entire time it takes for the appeal. It has been an emotional and frustrating three months. This policy change just makes my husband's sentence even harder, emotionally and financially. My husband knows he committed a crime and he admitted to his crime but he is a decent, hard-working individual. All he wants is to do his time and still be able to help support his family. If the court really felt it necessary for my husband to go to

a prison camp they wouldn't have made the *Letters cont'd.*

recommendation for the CCC.

This policy change is unfair and unjust to offenders like my husband. Why are only white-collar offenders, usually non-violent, affected by this change when there are violent offenders doing a year in the corrections centers that have not been affected at all? How can our government say this not unfair and prejudice against white-collar offenders? All I know is that for first-time offenders like my husband, "community confinement" is "imprisonment". Maybe if someone in our justice department spends two weeks to a month in a CCC they would realize the CCC's are "imprisonment".

Concerned Wife, New York

My gratitude goes out to Karen Bond and all Federal CURE members and supporters. I know I am here in the Federal Medical Center in Rochester, Minnesota thanks to the efforts of CURE and Cathy, my daughter.

In 2002, while at the USP Coleman, I began to experience chest pains once or twice a day. But my frequent trips to sign up for "sick-call" yielded no positive results. The Clinical Director at the USP Coleman would not authorize the necessary tests, such as an angiogram. He repeatedly instructed the Physician's Assistant to double the dose of Isosorbide, Dinitrate, a vasodilator. Fortunately, in October of 2002, I was transferred back to the Coleman Medium Facility. The chest pains continued, and finally, after 3 months of requests I was sent to the local hospital in Leesburg, Florida, where a cardiology specialist indicated that I urgently needed a bypass re-do of my six vessel bypass surgery done in 1994. I was transferred back to Coleman Medium without having had this procedure. After many weeks of advocacy and pressure by Fed CURE and my daughter on the BOP Headquarters, I was transferred to the Federal Medical Center in Rochester, MN. I have had several tests done at Mayo Clinic but no surgery as yet and the chest pains continue.

I thank Federal CURE for the sincere concern about my condition as well as the well being of the thousands of prisoners now currently in the Federal BOP system.

My most sincere thanks, Eduardo Mantilla, #14869-050

Membership dues are used to defray the cost of postage and telephone expenses, including fax and e-mail. Our future plans include funding the cost of drafting and promoting legislation to bring about federal prison reform.

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