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Newsletter

*From Federal CURE's Director,
Karen Bond*

Last fall, Forbes Magazine contained an article by Penelope Patsuris entitled "Best Places to Go to Prison." It struck me that most Americans really do believe that the federal prisons are literally ClubFeds that cater to white-collar criminals. As a lawyer, I bought into that mythical media portrayal of federal prisons. As a former federal inmate, I can tell you from personal experience that the media portrayal of the federal prisons is blatantly misleading. Having viewed the federal prison system as a lawyer, an inmate, and from a purely academic perspective, it has become increasingly clear to me that until we educate society on the reality of prison life, they will continue to believe that federal prisons are ClubFeds where America sends its white-collar criminals, myself included, to relax while we serve our prison sentences. I need your help in changing America's ClubFed perceptions.

On behalf of the Board of Directors, I would like to extend an invitation to each of you to join us in our efforts to reform the federal prison system. Federal CURE, Inc. (FedCURE) is a nonprofit organization that deals solely with the issues faced by federal inmates and their loved ones. We are working to

promote a system that incarcerates fewer people and provides humane conditions for those who are incarcerated or under post-incarceration supervision via parole or supervised release.

As of Jan. 23, 2003, there were 165,005 federal inmates in 102 facilities nationwide. The Federal Bureau of Prisons (FBOP) has now become the largest prison system in the United States. In last week's Correctional News, Publisher Eli Gage stated that while "states have been suspending prison construction, scaling back mandatory sentencing laws, and exploring alternative sentencing, the FBOP has continued to build, and build quickly."

FedCURE's mission is to serve as the advocate for systemic change in the federal system. FedCURE's board of directors consists of former federal inmates and family members of federal inmates. Kenny Linn, Mark Varca, Fred Mosely, and I all hold law degrees. Working closely with the entire FedCURE Board, we have implemented strategies for reform in the federal prison system. Daily interactions via email and phone conversations with BOP personnel have allowed us to establish credibility as a direct result of our ex-prisoner and former lawyer status. In short, we've been there, done that!

Mark Varca, a former federal inmate, is developing our website to promote prison reform through the use of technology. Mark also oversees our webmaster volunteers. **WWW.FEDCURE.ORG** will be interactive once finished, and will provide a state-of-the art arena for our members and the general public to use as an electronic tool for lobbying for changes in the federal system.

My focus as Executive Director will be to build a strong organization that will provide leadership to teach inmates and their families how to advocate for themselves to improve their incarceration and reentry experiences. At the invitation of the Soros Foundation's Open Society Institute (OSI) in

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THE TOUGH GETTING TOUGHER

by Todd Bussert, Esq.

The Federal Bureau of Prisons (BOP), in response to a December 16 directive from the Department of Justice (DOJ or Justice), has discontinued its longstanding practice of designating low-risk, short-term offenders directly to Community Corrections Centers (CCCs). At the same time, the BOP adopted a new interpretation of 18 U.S.C. § 3624(c) that sets limits on CCC placement restricting pre-release transfers -- except of RDAP or ICC graduates -- to no more than the last ten percent (10%) of a prisoner's sentence up to six (6) months. One hundred and twenty five directly committed CCC prisoners are slated for transfer as a result of these changes; numerous legal challenges are underway; and prisoners' rights groups are rallying to devise a measured response. While the true impact of these policy changes is as yet unclear, DOJ, in what many characterize as a politically motivated effort to increase punishments for high-profile, corporate white-collar offenders, has significantly curtailed re-entry opportunities for most of the 165,000 men and women currently under federal correctional supervision.

Newsweek's Michael Isikoff first reported this story on December 20, the same day that BOP Director Kathleen Hawk Sawyer sent a memorandum to federal judges informing them of the changes. Focusing principally on direct CCC placements, Isikoff indicates that Justice intended the policy move to assist federal prosecutors with securing stiffer punishments in cases involving white-collar defendants, who were perceived as taking advantage of the practice as a means of avoiding "actual prisons." The new policy, unfortunately, sweeps far more broadly.

CCCs are not the exclusive domain of white-collar offenders. Courts commonly recommended the direct CCC placement of eligible defendants for a host of compelling reasons, like enabling a family's primary breadwinner to continue working or keeping a nonviolent offender close to an infirmed relative. As BOP spokesperson Judy Garrett told the New York Times, "There are a lot of drug offenders, single moms and ordinary folks who aren't wealthy people who have benefited from this. It's not just Enron types." Moreover, amendments to the Federal Sentencing Guidelines, made as part of the 2001 economic crimes package as well as in response to the Sarbanes-Oxley Act of 2002, carry heavy penalties for serious white-collar defendants. Such penalties precluded direct CCC placement, which was only available to those qualified

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Washington, D.C., I am serving as FedCURE's representative on the OSI task force. Their goal is to find ways to reduce the federal prison population.

This introductory issue of the FedCURE newsletter contains articles that directly affect your lives. In this edition, you will find in-depth articles about:

- Status of the DOJ order to the BOP that changed halfway house procedures;
- The realities of parole and how technical violations contribute to the recidivism rate;
- How the American Bar Association's proposed "Safety Valve" initiative could get you out of prison earlier;
- Life after prison and surviving when someone you love resides in a BOP facility;
- How you can help eliminate the 300 minute per month phone restrictions;
- Book reviews of books written by FedCURE members that have become big sellers;
- Learn the real history behind FPC Alderson;
- How USP Marion affected one man.

What are the current issues that FedCURE is working on? The removal of the 300-minute per month phone usage limit. Seeing legislation enacted that will prevent the DOJ from cutting halfway house time for federal inmates. Lobbying Congress for the reinstatement of parole in the federal system. Advocating for better medical care, both physical and mental. Stopping the use of the ion detectors that are denying innocent family members their visits at BOP facilities because of false positives. Seeking legislation on a national level that would restore your voting rights once you serve your sentence and barring employers from asking about your felony record except in very limited, specific circumstances.

There are four things you can do to help us help you:

- (1) FedCURE needs to be kept abreast of issues you are confronting while you or a loved one is incarcerated in the BOP;
- (2) FedCURE needs members who are innovative advocates in order to facilitate changes in the federal prison system;
- (3) FedCURE needs you to become actively involved in the fight to accomplish the reforms needed in the federal prison system, and;
- (4) FedCURE needs your support through membership and tax deductible donations so we can keep fighting to secure the rights of all 165,000+ federal inmates. §

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minimum-security prisoners serving relatively short (e.g., six months or less) sentences. See Community Corrections Manual (P.S. 7300.09).

Media accounts raise two other aspects of the policy move: 1) Justice's feigned ignorance of well-established procedure and 2) what has become a public rebuke of Director Hawk Sawyer. According to Newsweek, aides to Attorney General Ashcroft reported ignorance of the direct CCC commitment practice until a West Virginia federal judge brought it to their attention via a complaint letter in 2001. However, as BOP officials told the Times, direct commitments, which usually called for a judicial recommendation at sentencing (in which Justice Department prosecutors always participate), were used for more than 20 years. In fact, both bureau program statements and DOJ publications long laid out the practice. See e.g., Security Designation and Custody Classification Manual (P.S. 5100.07) and A Judicial Guide to the Federal Bureau of Prisons (1995). Indeed, the Solicitor General's Office's May 2001 brief in *Correctional Services Corp. v. Malesko*, 122 S. Ct. 515 (2001) explicitly cites BOP policy when noting that "the BOP employs [CCCs] as an alternative to 'institutional confinement for certain short-term offenders'."

As troubling as Justice's supposed lack of knowledge is, Deputy Attorney General Larry Thompson's reported reprimand of Director Hawk Sawyer—a trained professional who has dedicated 26 years of service to one of this nation's largest correctional systems—for the administration of a practice that pre-dated her appointment by more than a decade. Although some may find fault with the BOP and its policies, direct CCC commitments were not only consistent with the bureau's authority to designate an offender's place of imprisonment, but they were also a sensible use of bed space in the midst of unyielding population pressures. Sadly, the Justice Department's interest in punishing the Fastows of the world, like this country's failed War on Drugs, may well have a disproportionate impact on those already afforded the least protections.

BOP community corrections officials in Washington, D.C. confirm that the bureau provided statistical information to the Justice Department concerning the potential impact of a change in the direct CCC placement policy. Importantly, these same officials assert that Justice made no inquiry into the impact of modifying pre-release policies, which affect the vast majority of those currently incarcerated. Traditionally, bureau personnel considered 18 U.S.C. § 3624(c) when preparing and reviewing halfway house packages, but wardens and

community corrections managers regularly recommended/granted pre-release halfway house stays greater than ten percent of a prisoner's sentence. See PS 7310.04, Community Corrections Center (CCC) Utilization and Transfer Procedure (Dec. 16, 1998). The practice was viewed as a means of relieving institutional overcrowding while affording prisoners the greatest opportunity to reintegrate into the community. Now, barring completion of the RDAP or ICC, federal prisoners can expect to receive halfway house placement for no more than the last ten percent of their sentence up to six (6) months total (e.g., 24 month sentence = 2.4 months or less in a CCC). Although this change is not seen as modifying § 3624(c)'s home confinement allowance, it will undoubtedly disadvantage those persons requiring extra time and assistance to establish employment and residency or simply to identify and secure

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CCM Change Impact Letters

When FedCURE asked how the halfway house changes had affected federal inmates and their families, the replies we received were all negative. The following are excerpts from letters written by both inmates and their loved ones.

The following letter excerpt was written by Tina Moore to the BOP Regional Director. Tina found out about the policy change when she arrived at the FPC to pick her husband up and drive him to the halfway house:

I would like to share with you an incident that took place on Monday, December 23rd at the Federal Prison Camp at Seymour Johnson AFB. I was supposed to pick my husband up at 8:00 am to transport him to the halfway house in Raleigh. I arrived at 7:45 and checked in at the Visitor's Center at the base entrance. At 9:00 am an Air Force Officer comes to my car and tells me that they are running late and will bring my husband out in a few minutes. About 9:15 am he arrives with his unit supervisor. The supervisor, Mr. Earp, tells me that he will not be leaving today because there was a change in policy. Apparently the new policy states that a person cannot go to the halfway house until the 10 percent date. My husband was allowed to speak with me for a few minutes before he was taken back to the camp.

I certainly don't have a problem with a policy

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necessary resources before being released to the street.

FedCURE and several other concerned organizations have already heard of scheduled halfway house placement dates being pushed back as a direct result of the DOJ directive. For many, this sudden and unexpected news has substantially influenced release plans and had consequences ranging from the loss of prospective jobs to exasperating delays in family reunifications. FedCURE is working to ascertain and address difficulties that individuals and families are experiencing due to the recent policy changes and welcomes comments and information. It will update developments through this newsletter as well as on its listserve.

FedCURE member Todd Bussert is a Connecticut attorney who frequently speaks and writes on federal sentencing and prison-related issues. He can be reached at tbussert@bussertlaw.com. §

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change. I believe that there should be some sort of reasonable time to allow implementation so that those that had already out processed could leave. I do have a problem with being told on the morning of his release. The only word that I can use to describe it is CRUEL. We could have been and should have been notified earlier. It is my understanding that this policy was received at the institution on Dec. 13th. They had 10 days to let us know.

When these decisions are made in the future, I wish that someone would consider the implications to the family. I'll use myself as an example. In order to pick him up that day I had to stay in a hotel and take a day off work. This equals about a \$200.00 loss. I also had to add him to my health insurance policy, which is \$250.00 a month. If I drop him now, I can't add him back until next year. I will now have to incur this expense every month until he gets out. We were counting on him to be able to work at the halfway house to help me pay for it. Now, I will have no help. Last but not least, I'll have to take another day off work and spend another night in a hotel when he is released again. Even the smallest amounts of money mean a lot when you are trying to raise a child on one income.

In conclusion, I think something went terribly wrong in the dissemination of information at that institution. The two inmates that had family there

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Federal Bureau of Prisons Changes Halfway-House Designation Procedures

In response to a U.S. Department of Justice, Office of Legal Counsel (OLC) opinion, the Federal Bureau of Prisons (BOP) recently changed its procedures for designating inmates to halfway houses (also known as community correction centers, or "CCCs"). The OLC opinion, dated December 13, 2002, found unlawful the BOP's long-standing practice of accommodating judicial recommendations for direct CCC designation of low-risk, non-violent offenders serving short prison sentences. The OLC opinion concluded that the BOP's only authority to place inmates in CCCs is found in section 3624(c) of Title 18, United States Code. This statute allows the BOP to place inmates in CCCs to facilitate reentry, and such placements are limited to the last 10% of the prison time being served, not to exceed six months.

The BOP will recognize two exceptions to this limitation. Inmates completing the community transition component of residential drug abuse programs (RDAP) may exceed the 10% time limit, but will be limited to 180 days CCC placement. Additionally, inmates designated to CCCs following completion of an intensive confinement center (ICC) program are not limited by either the 10% or six month limits.

As a result of the OLC opinion, low-risk, non-violent inmates serving short prison sentences, for whom sentencing judges recommend direct CCC placement will no longer be designated to CCCs for service of their entire sentences. Additionally, inmates not yet transferred to CCCs as part of their pre-release programming will be reviewed to insure compliance with the 10% limitation. In some cases, CCC transfer dates may be delayed.

Persons having general questions related to these procedure changes should contact the BOP's Office of Public Affairs at (202) 307-3198.

Written for FedCURE publication by the Bureau of Prison's Office of Legal Counsel Staff. §

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.

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waiting for them should have been permitted to go ahead to the halfway house as planned. If this was not possible then we should have been contacted ahead of time. The entire situation was handled poorly. Letter from Tina Moore to Regional Director.

In a letter received by a family member of a federal inmate, he relates the events at the FPC following the BOP's announcement of the halfway house policy change:

Dear Family & Friends: Visitors, wonderful visitors. On Christmas Day J came for a visit with the children, then they returned on Friday evening and again on Saturday. Our other adult child and her husband Thomas were here on Saturday afternoon. It was a great treat to see them all, and particularly to see my darling wife in the kind company of friends and family. It was a good day, given the circumstances, and it started with wry prison humor when Marcus, the county sage, pointed out at breakfast that, unlike the Federal Government, the Nazis allowed their prisoners to receive packages at Christmas, through the good offices of the Red Cross. Your cards and letters, and those visits, made Christmas for me. Thank you.

The festive feeling were crushed on Boxing Day (the day after Christmas), when the prisoners who were about to be released to halfway houses, and a return to paid work and their homes on weekends, were called in to be told that the Justice Department had put out a Christmas Eve memo, immediately revising long-standing policy, so that short-sentence prisoners will get little or no halfway house time. One poor guy, who had arranged for his family to pick him up the next day, will be here for another four months. Instead of leaving here in June, I will now leave in mid-November. It's instructive to see what goes through the heads of Attorney General John Ashcroft and his Conservative Christian associates on Christmas Eve.

A series of surprise head counts following the announcement, more or less on the hour, started after the four o'clock count on Christmas Day, and resumed after four o'clock on December 26. At around six o'clock several people were taking showers and didn't know the count was going on. One of the two guards was a black female, and when one of the prisoners, shower going full blast, didn't respond to her instruction to put a hand out, she pulled the shower curtain open. The infuriated red-neck cursed her, and was soon taken away to be locked up in the segregation cells (the Hole)

across the road in the medium security prison, from whence he has not returned. If he is eventually allowed to come back here, he will have lost his bunk in a cubicle, and his job. My own Conservative Christian leanings cause me to think that it is inappropriate for female guards to be in a men's bathroom and shower. Excerpt printed with approval of a federal inmate who shall remain anonymous.

The wife of a federal inmate who had been sentenced directly to a halfway house told FedCURE how the DOJ pronouncement has impacted their future:

My husband, Larry, resides for the time being, at the CCC in Brooklyn. He was sentenced in August 2002 to a year and a day in a Federal PrisonCamp at Schulykill, PA. Due to family financial obligations the sentencing judge made the recommendation to the BOP for my husband to be placed in a CCC. He is a non-violent first time offender that was allowed to work and serve his sentence at the same time. The judge postponed his surrender date three (3) times so the BOP could place him in the Brooklyn CCC and not lose his employment. On December 23, 2002 we received from the BOP the worst Christmas present; the BOP policy change re-designation letter. This change not only affects my husband and I, but his dependent mother who resides at our home. Without my husband's income our necessary monthly expenses will be short about 800 dollars a month, with no help coming anytime soon. My husband and I own our home which we worked very hard to purchase, but our meager resources are dwindling. If we lose our home because I don't have my husband's income to help not only will we have no home but his mother will be on the street since she can not afford to live on her own.

This policy change is unjust and there are offenders in the same halfway house as my husband who have the same and possibly more time to do on their sentence who are not being affected by this change because they are not white-collar offenders. On January 13, 2003 my husband started an Administrative Appeal from the inside but I am told by him that he can and will be moved by the BOP while in appeal. He is scheduled to be re-designated to Schulykill, PA on January 24, 2003. Names have been changed to protect those involved from retaliation because they spoke out.

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Federal district judges in Massachusetts, Washington, D.C., North Carolina, and California have granted restraining orders preventing the transfer of inmates from their CCC placements. At this time, no federal inmates residing in BOP facilities have filed legal challenges to the reduction in halfway house time at the end of their sentence. FedCURE, along with numerous other groups, will continue to work on this issue. If you have been affected by the halfway house policy change, please write or email us and tell us what the impact has been on your situation. Letters should be sent to: Federal CURE, Inc., P.O. Box 153, Reynoldsburg, OH 43068. If you have access to email, please email us at director@fedcure.org. §

As each day brings the announcement of new prison construction projects, we at FedCURE feel it is important to remind the public exactly what goes on inside these SuperMax facilities touted to be the ultimate in high security. We can guarantee you that if you or someone you love ever ends up in one, you'll quickly change your mind about the efficacy of such a facility. Our thanks to Doret Kollerer for allowing us to reprint Standing Deer's article in full.

Step Into the Nightmare

by Robert Standing Deer Wilson

I know something about consuming High Security corrections. I spent some years in the Control Unit at Marion, Illinois -- the prototype of later High Security/Control Unit/ Adjustment Center/Ad Seg/Administrative Maximum/Special Handling Unit, manmade, hell-on-earth nightmares. I was sent to USP Marion in 1976 after being convicted of bank robbery. While there, I watched men's minds deteriorate and dissolve into madness. I nearly crossed that line myself.

What do these severe terms of confinement do to the minds of the men? Does living in a cage smaller than your bathroom with constant harassment from guards reduce men to sniveling, quivering jellyfish -- like the parole board wants -- or are some of these prisoners harboring a seething rage, a hatred and lust for revenge so deep that citizens will have to pay with their lives when these men get out? The justification for the death penalty in some minds is "At least they can't kill again." But most of the men in High Security will get out.

I do not suggest that all, or even most of those in High Security, will be driven to madness and terrorism. I don't even suggest that most of these men belong in High Security. I am saying that if the State of Texas has its way and builds eight of these

things, there will be nearly 5,000 men subjected to this cruel and unusual punishment. If just one out of a thousand seeks revenge for his mistreatment when he gets out, and kills only one person, five Texans will die because of the blunders of their prisoncrats.

To bring to light the truth that High Security doesn't make men better -- it simply makes them crazier -- I wrote an article in 1982 which included the poem "When I Get Out," written some 20 years ago by a convict who was in the Marion Control Unit with me in the late '70s. He was executed in 1992 by the State of Delaware, but not before he had killed 19 people. He is an example of the monsters that mind-torture creates, bought by big bucks spent on ever more sophisticated mind-control techniques used in legal, behavior modification torture chambers. The poem is obviously the product of a totally deranged mind. I had to clean it up, cut out parts of it, and change some of the wording before I could include it. Even so, it still shocks and jolts the reader.

"When I Get Out" and my original introduction to it have been published all over the world, including appearances in the books *Cages of Steel*, *Criminal Injustice*, *Journal of Prisons*, and in the intellectual publication *Issues in Radical Therapy*. So when the editor of *The Huntsville Item* asked me for a guest column in December 1997, I cleaned up the 1982 piece with the poem and sent it in.

Here is the poem. Listen carefully. You're about to step into the nightmare that prisoncrats have created in your name.

WHEN I GET OUT

When I get out
the first thing I'm gonna do
is get me a gun to protect myself
from the police. Probably more than one gun
because
there's so many different kinds
of police. Maybe a .460 Weatherby
with a twelve-power scope
for kings, dictators, presidents and popes.
A .357 magnum for law enforcement officials in
general,
and a nice nine millimeter
Browning High Power
for just plain folks like you.

When I get out
I want to kill as many people

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as I can before they get me.
I'd like to get the Queen Mother
and the Pope
and the President if I have the time.
Remember when you cut off my
eyelids by putting me in a
sensory deprivation chamber
in total darkness
because I wanted to go
to my mother's funeral?
Remember when you chained
me to a bed
and beat on my feet
with wooden paddles
until they turned to blood and
swelled up like basketballs?

When I get out
I'm going to spend the hatred
you've taught me
by becoming a mass murderer.
And all you judges, jurypersons,
cops, jailers and executioners
can't stop me
because it was you who
murdered Charles Brooke
and taught me that
it's cool to kill.

It was you who told me I lived
in a free country
as you ground your heel in my humanity
and laughed at my pleas for dignity
and spat on my manhood.

It was you who dressed up
in moon man suits
beat me to the floor with clubs
and drugged me with Prolixin
because I couldn't stop calling
my baby daughter's name
when she left this world.

So, in return for the lessons
you have given me I'm going to teach you two
things:
First, that these sealed-tomb, tiger cages
belong to you, Mr. & Mrs. America,
and it is you who must accept
the responsibility
for what you and your hirelings
have done to me.

The second thing I'm going to teach you
is something you should already know
but don't act like you do, namely
the Christians say "Do Unto Others, etc."
the Buddhists Say something about
"What goes around comes around."

In prison we simply say:
Payback belongs to me
when I get out.

It won't be much longer.
I'm counting the days
So, you better pray I don't find you,
gentle reader,
'cause when I've paid my debt
to society
society must pay its debt to me.
When I get out .

I never dreamed The Huntsville Item, which is read
only by guards, Ku Klux Klan members, and other
redneck types, would publish my piece with the
poem. But on January 6, 1998, as I was sitting in
my cage trying to talk my cellie out of tattooing
MAYHEM on his forehead, here comes Turd Head
Red -- a runner at the law library -- with the
January 6 edition of The Item. Turd was all out of
breath as he handed me the paper with my piece in
it.

My cellie looked at me and said, "Oh shit."

"Oh shit," I replied.

So I packed my books and legal files and waited for
the guards to gather me up. Three days later, on
January 9, here they came, four deep -- two rushed
me and handcuffed me behind my back while two
began destroying my cage, pouring my legal files
out on the floor and stealing everything pertaining
to Leonard Pettier, political prisoners, my political
files and notes and the draft of The Item piece, plus
some books, Cages of Steel, Can't Jail the Spirit,
With the Power of Justice in our Eyes, and other
titles.

Before they throw you in the hole, they take you to
the "infirmary" where a guard posing as a nurse
takes your temperature and blood pressure to
assure you are healthy enough for solitary
confinement. They charge the victim \$3 for this
service and you have no choice but to go. My blood
pressure was 276/148, a reading that means you
have been dead for about a week, but the
guard/nurse recorded it as 229/121 and claimed it
was so high because I was scared of the guards.
(Yeah, right! Hee, hee, hee. They really frighten me.)
They tried to kill me by refusing me all blood
pressure meds.

I was held incommunicado without a charge for 13
days (never mind their "Rules of Disciplinary

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Procedure," which say if a pre-trial detainee is held 10 days without a charge he'll be released.) They falsified my lock-up date from 1/9/98 to 1/13/98 in order to comply with the pre-hearing 10-day rule. The charge was "Threatening Capt. Pickett, other correctional officers, and public officials." The FBI laughed at it.

The rules also say that in pre-trial hearing you will be allowed all your property. I couldn't even get a stamp, envelope, pencil, or sheet of paper out of my property even though I had tons of writing materials stored in a room about 10 feet from my cage. They had me where prisoners can't come, so nobody could slip me anything or smuggle a letter out. But through an extralegal resource I was able to get word out.

Bonnie Kerness of the Control Unit Project of American Friends Service Committee was the first to post my situation on the Internet, then Anna Dobbyn in San Antonio, Zoitista, and now my wife has Peter D. Erricho's web page in Boston. So the cards and letters poured in, along with faxes and phone calls and telegrams. By March 26, 1998, I had received 1,600 letters, and people were calling the prison, faxing the warden and director and writing outraged letters. Whoever thinks that emergency responses are a waste of time and resources can argue with me because if it had not been for the Power of the People, I would be dead today.

The authorities figured out how to tame my support. On February 4, they confiscated my legal files and political notes and began moving me from wing to wing for no apparent reason. Then they took my name away from me and on March 26, transferred me to Pack I Prison. My name must now be written as "Robert H. Wilson," even though my legal name is Standing Deer Wilson. What they accomplished by changing my name is that now they send all the mail coming to Estelle back to the sender without explanation. This makes all but the most dogged or experienced give up. When they call the warden at Estelle, he says "Wilson is no longer here," and when they call the warden at Pack 1, he says "Who? Standing Deer? We have no such person!"

And we thought we were slick!

When they put me on a bus and brought me to Pack 1, I had none of my property, not envelopes, stamps, writing paper -- or any meds. My blood pressure med is Clonidine 0.02 mg three times a day, and if you abruptly cease taking it you go into

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ABA "Safety Valve" **Recommendations Could Shorten** **Sentences**

The recommendation expresses American Bar Association support for the development and implementation of mechanisms for the reduction or modification of prison sentences based on extraordinary and compelling circumstances not foreseen at the time of sentencing; and for the development of specific criteria by which decision-makers may determine when it will be appropriate to reduce or modify a term of imprisonment. The recommendation also encourages jurisdictions to implement measures to ensure that physically and mentally challenged prisoner have access to assistance when seeking sentence reductions or appealing adverse decisions.

AMERICAN BAR ASSOCIATION **CRIMINAL JUSTICE SECTION** **REPORT TO THE HOUSE OF DELEGATES** **RECOMMENDATION**

RESOLVED, That the American Bar Association urges federal, state, territorial and local governments to evaluate their existing laws, as well as their practices and procedures, relating to the consideration of prisoner requests for reduction or modification of sentence based on extraordinary and compelling circumstances arising after sentencing, to ensure their timely and effective operation.

FURTHER RESOLVED, That the American Bar Association urges these jurisdictions to develop criteria for reducing or modifying a term of imprisonment in extraordinary and compelling circumstances, provided that a prisoner does not present a substantial danger to the community. Rehabilitation alone shall not be considered an extraordinary and compelling circumstance.

FURTHER RESOLVED, That the American Bar Association urges these jurisdictions to develop and implement procedures to assist prisoners who by reason of mental or physical disability are unable on their own to advocate for, or seek review of adverse decisions on, requests for sentence reduction

REPORT

In the 1980s, rehabilitation of prisoners fell out of

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favor and "truth in sentencing" movements swept through Congress and state legislatures. The federal Sentencing Reform Act of 1984 and similar state laws abolished parole and required defendants to serve a fixed term in prison, without hope for early release from a parole board based on their good behavior. Release dates under such a sentencing regime are now largely determined at the time of sentencing.

One of the consequences of the movement to determinate sentencing was the restriction or elimination of "safety valve" mechanisms once available to seek mid-term reduction of sentence. In some jurisdictions there is no authority for courts or prison officials to modify a sentence once it has become final, even when unforeseen post-sentence developments made a prisoner's continued incarceration inappropriate or unjust. Other jurisdictions rely upon ad hoc and necessarily arbitrary mechanisms to deal with various compelling situations that may present themselves from time to time. Jurisdictions that do have a sentence reduction authority tend to construe it narrowly, invoking it only in cases of imminent death or total disability.

The absence of an accessible mechanism for making mid-course corrections in exceptional cases is a flaw in many determinate sentencing schemes that may result in great hardship and injustice. Executive clemency, the historic remedy of last resort for cases of extraordinary need or desert, cannot be relied upon.

That the new sentencing regimes make no provision for handling extraordinary post-sentence developments seems less an expression of political will than simple oversight. Determinate sentencing simply swept out all early release mechanisms, without considering the need to address those later-developing circumstances not contemplated at the time of sentencing. As a result, people whose continued confinement no longer makes legal or moral sense may languish for years without a way to draw attention to their situation. There should be a way of examining such cases and, if appropriate, dealing with them equitably and compassionately.

The American Bar Association therefore urges jurisdictions to evaluate their current laws and practices relating to sentence modification and reduction, and to establish or reinvigorate "safety valve" mechanisms to deal with cases involving extraordinary and compelling post-sentence developments that make a prisoner's continued

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withdrawal and your blood pressure shoots sky high -- there are recorded deaths for not getting it. So I went into a blood pressure crisis with a reading of 276/148 and nearly died. The health care professional in the guise of a male nurse told me, "Nothing is an emergency. Put in a sick call request." This happened at 2 p.m. By luck I had an attorney phone call at 3 p.m. from Margaret Gold . When I told Margaret about the denial of Clonidine, she called the medical director and bared her fangs, so they got me to the clinic and put Clonidine and Anlodipine down me and just barely saved my life.

The ACLU in Houston is now my good friend, and I've got a lot of help in Texas. On 90.1 FM radio at 9 p.m. every Friday night, "The Prison Show" airs with Ray Hill, an ex-prisoner, as the host. He said kind words about me for two weeks running and gained me more friends, so a whole bunch of folks will crawl down the prison's throat if they try to kill me again.

Ted Koppel did four "Nightline" evenings from Estelle's new control unit. One evening he spent the night there to emphasize his journalistic dedication. Now he really knows what it's like to be thrown into a control unit with no company other than the camera crew, sound technicians, producer, director, and guards bringing pizza, coffee, cupcakes, and seeking autographs all night long!

Koppel got dynamite interviews from Marta Glass, an ACLU volunteer, Debora Perkey, an ACLU attorney, and Ray Hill, but much of what they said came out of Ted Koppel's mouth live as if he said it. That Friday night Ray Hill started "The Prison Show" saying, "This is Ray Hill and Marta Glass coming to you from Ted Koppel's cutting room floor."

Ted Koppel also said, "It's one thing to isolate dangerous inmates 23 hours a day, but it becomes a deeper social problem when those men are literally driven nuts by the process, but then released right back out on the street when their time's up." Hey Ted! That's exactly what I said, but I got 24 days solitary confinement in the hole and lost parole eligibility for another year. Ted Koppel should at least have lost his good time.

Attorney Margaret Gold sent Ted Koppel a big packet about how I was locked up and given a major case, destroying my parole possibilities for at least a year, and how the propaganda minister for

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the TDC lied to the press, saying, "This is not a First Amendment case" and claiming I was not locked up for having my guest editorial published in The Huntsville Item, but rather because they found contraband in my cage and I was "verbally assaultive" to the guards.

A total fabrication! There was NO contraband. There was NO verbal assault. There might have been in other circumstances, but I was so happy to be locked up for publishing a piece I have been trying for 15 years to have published in a mainstream newspaper, knowing it was a clear First Amendment case, that I wanted to keep it pristine.

By the way, when I went to the hole, my cellie did tattoo MAYHEM on his forehead. Looks pretty good too. In color.

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incarceration inappropriate or unjust. The resolution contemplates that jurisdictions will take a broad view of any existing authority to reduce sentences, that they will enact new laws where necessary, and that they will ensure that these laws are administered in a timely and effective fashion¹. The measures we advocate are not intended to inaugurate any general across-the-board sentence reduction measures, or substitute for more general sentencing reform². Rather, they are intended to serve the limited function of dealing with truly exceptional cases under existing determinate systems.

The resolution also urges jurisdictions to develop specific criteria by which decision-makers can determine when it will be appropriate to reduce or modify a term of imprisonment. Historically, post-conviction sentence reduction measures have provided a safety valve to deal not only with such circumstances as severe illness or impending death, and physical or mental disability, but also with extreme old age, subsequent changes in applicable law, extraordinary assistance to the government, compelling changes in personal or family circumstances, or some combination of these. They have also proven useful to effect a promised but undelivered consideration for assistance to the government, to correct unjustifiable disparity of sentence among similarly situated co-conspirators, or to cure mistakes in a sentence not discovered in time for the court to correct in the ordinary course³.

If a safety valve was considered an essential component of a sentencing scheme prior to the advent of determinate sentencing, today it is even more essential, because rule-based sentencing may preclude or limit a court's ability to take into account at sentencing the potential for extraordinary developments in a particular case. For example, a prisoner sentenced while in the early stages of a serious chronic illness may have no possibility of release if the progress of his disease makes his sentence more onerous than anticipated or intended. Similarly, when a mother must leave behind young children in the care of family members, there may be no way to ensure that intervening events do not leave them effectively orphaned. Particularly where a sentencing court is permitted to take into account serious health problems and exigent family circumstances in determining an offender's sentence in the first instance, it would seem reasonable to provide a means of bringing these circumstances to the court's attention when they develop or become aggravated unexpectedly mid-way through a prison term.

A comprehensive review conducted on behalf of this Committee in 1995 found that only about half the states made formal provision for release of terminally ill prisoners⁴. Moreover, statutes providing for early release of ill and disabled prisoners, including so-called "medical parole" statutes, are seldom used. In 1996, a study of state and federal early release provisions by the U.S. Justice Department's Office of Justice Programs found that only 20 jurisdictions had actually released any prisoners pursuant to these authorities⁵.

In the federal system, the sentencing court has statutory authority to reduce an imposed term of imprisonment, upon motion of the Director of the Bureau of Prisons (BOP), if the court finds that "extraordinary and compelling reasons" warrant such a reduction. See 18 U.S.C. 3582(c)(1)(A). The legislative history of this statute indicates that Congress intended its authority to be used broadly, if not routinely, to respond to a variety of circumstances that exceed the burdens normally attendant upon incarceration⁶. In practice, however, BOP invokes the statute only in cases of imminent death or severe mental illness or physical incapacitation. In the ten years between 1990 and 2000, only 226 prisoners were released pursuant to this authority⁷.

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It seems apparent that, as currently designed, most sentencing systems cannot routinely accommodate the variety of post-conviction developments that may warrant revisiting a sentence after it has become final. That is why the ABA urges jurisdictions to design flexible review mechanisms that will permit sentence reduction in the rare and deserving case⁸. Recognizing that there are many different forms that an effective sentence reduction mechanism might take, including a return to the sentencing court, an administrative review procedure, and even executive clemency, the ABA encourage jurisdictions to experiment to find processes that work effectively and efficiently. Whatever form the mechanism takes, it ought to be easily engaged by prisoners and their outside advocates.

Similarly, the grounds for sentence reduction may vary from jurisdiction to jurisdiction. This resolution aims only to return to governments the tools of compassion, not to dictate how they will be used. That said, however, we do not believe that governments should restrict use of a "safety valve" mechanism to cases involving medical or health-related concerns. While specialized medical furlough and geriatric release procedures may provide some guidance for how to administer sentence reduction authority, we hope that jurisdictions will want their criteria to be sufficiently broad and elastic to allow consideration of such non-medical circumstances as old age, changes in the law, heroic acts or extraordinary suffering of a prisoner, unwarranted disparity of sentence, and family-related exigencies⁹.

The resolution specifically states that "rehabilitation alone shall not be considered an extraordinary and compelling circumstance," underscoring the special-purpose nature of the sentence reduction mechanism we are recommending¹⁰. At the same time, it also indicates that a prisoner's rehabilitation may legitimately be considered in combination with other factors in deciding whether a prisoner's situation presents "extraordinary and compelling" reasons for sentence reduction.

The ABA also recommends that jurisdictions implement measures to ensure that physically and mentally challenged prisoners have access to assistance, from family members or other advocates, when seeking sentence reductions or appealing adverse decisions. This is particularly important in systems that require prisoners to initiate requests personally or to maintain active advocacy, which are ill-suited for persons nearing death or otherwise too ill or incapacitated to engage the process meaningfully.

This resolution represents a significant extension of existing ABA sentencing policy. The ABA Sentencing Standards authorize reduction of sentences that have otherwise become final in only two circumstances, both of which are time-limited: Standard 18-7.1 contemplates that a court may revisit and reduce a sentence within a specified period of time following its imposition; and, Standard 18-7.2 addresses sentence modification only while a case remains under the jurisdiction of the sentencing court, which the commentary makes clear does not include situations involving confinement. The instant resolution contemplates a sentence reduction authority that by definition is open-ended, permitting mid-course corrections whenever significant post-sentence developments not anticipated by the sentencing court present themselves.

The resolution also expands on the criteria for sentence reduction in existing ABA policy. The resolutions on compassionate release adopted in 1995 and 1996 addressed only terminal illness and physical incapacity as grounds for sentence reduction. In August of 2002 the House adopted a policy encouraging jurisdictions to "adopt and fully implement" mechanisms for the early release of terminally ill and incapacitated inmates, and also to "assess the desirability of applying such mechanisms to elderly or other prisoners in specified circumstances." The instant resolution would encourage jurisdictions to make use of the tools of compassion in a wider variety of circumstances, though it would leave each jurisdiction to decide for itself exactly what circumstances are so "extraordinary and compelling" as to warrant early release.

Footnotes:

1. *These measures are especially timely in light of the increasing pressure on prison budgets posed, in part, by the enormous cost of incarcerating so many people. At the same time, it bears emphasis that our recommendations are not so much about prison economies as they are about the proper working of the justice system.*

2. *The "safety valve" authority we recommend may thus be contrasted with the risk review committees recently established by the State of Louisiana to review the cases of, and consider for early release, all non-violent offenders originally sentenced under mandatory minimum sentencing laws that were subsequently relaxed. See Ryan S. King and Marc Mauer, State Sentencing and Corrections Policy in an Era of Fiscal Restraint, The Sentencing Project, February 2002; Judith Greene and Vincent Schiraldi, Cutting Correctly: New Prison Policies for Times of Fiscal Crisis, Justice Policy Institute, February 2002. This is not to say that subsequent changes in the law might not be grounds for reduction of an individual prisoner's sentence, particularly if it*

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were combined with other circumstances such as old age or ill health.

3. See, e.g., *U.S. v. Diaco*, 457 F. Supp. 371 (D.N.J., 1978)(federal prisoner's sentence reduced because of unwarranted disparity among codefendants); *U.S. v. Banks*, 428 F. Supp. 1088 (E.D. Mich. 1977)(same).

4. See *Compassionate Release of Terminally Ill Prisoners, Draft Report of the ABA Corrections and Sentencing Committee's Compassionate Release Working Group*, October 1995. Other states rely upon executive clemency, administrative leave or furlough, and parole. See *Incarceration of the Terminally Ill, Current Practices in the United States, The Grace Project, Volunteers of America 5* (2001). See also Marjorie P. Russell, "Too Little, Too Late, Too Slow: Compassionate Release of Terminally Ill Prisoners - Is the Cure Worse than the Disease?," 3 *Widener J. Pub. L.* 799, 836 n.10 (1994).

5. See *Office of Justice Programs, U.S. Department of Justice, Update: HIV/AIDS, STDs and TB in Correctional Facilities* (1996-1997) at xiv. A total of 153 prisoners were released in 1996 nationwide for medical reasons. California, with a prison population of some 150,000, grants an average of 28 compassionate releases annually. N.N. Dubler, & B. Heyman, *End-of-life care in prisons and jails*, in M. Puisis (ed.), *Clinical Practice in Correctional Medicine* 355-364 (1998). New York's 1992 Medical Parole Law resulted in a total of 215 releases in the seven years ending in 1998. See J.A. Beck, *Compassionate release from New York state prisons: Why are so few getting out?*, 27 *Journal of Law, Medicine, & Ethics*, 216-233 (1999).

6. See Mary Price, *The Other Safety Valve: Sentence Reduction Motions under 18 U.S.C. § 3582(c)(1)(A)*, 13 *Fed. Sent Rptr.* 188(2001).

7. See Price, *supra* note 6 at 191. Under current BOP practice, requests for reduction of sentence must be approved at an institutional level by the prison warden, and then at a regional level, and finally at the national level by the Director herself. Because BOP does not keep a record of requests for sentence reduction that are not approved at the institutional level, it is impossible to tell what percentage of the total number of requests are subsequently brought to the attention of the court. **The paucity of sentence reduction motions under 18 U.S.C. § 3582(c)(1)(A) may reflect a lack of guidance to BOP, rather than a lack of political will or failure of compassion. See John R. Steer and Paula Biderman, Impact of the Federal Sentencing Guidelines on the Presidential Power to Commute Sentences, 13 Fed. Sent. Rptr. 154, 157 (2001)(“Without the benefit of any codified standards, the Bureau, as turnkey, has understandably chosen to file very few motions under this section.”). Without direction about what situations might warrant revisiting a sentence, corrections officials are reluctant to expand the reach of “extraordinary and compelling reasons” much beyond the clearly identifiable case of imminent death. The United States Sentencing Commission has recently undertaken to develop substantive guidance for a court in considering motions under 18 USC § 3582 (c)(1)(A), including examples of circumstances that are sufficiently “extraordinary and compelling” to warrant reduction, in accordance with 28 U.S.C. § 994(t).**

8. We do not extend our recommendations to any particular decision-making procedure. However, we note that prison officials have from time to time expressed concern about being placed in a position of deciding which cases are meritorious and which are not, even where a court has the ultimate authority to reduce a sentence. This concern seems particularly well-founded

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Observations & Experiences

Recently, I asked several FedCURE members about their observations of and experience with the BOP either as inmates or loved ones of inmates with the ultimate issue being how involvement with the BOP has affected their lives. From perpetuated injustices to hopefulness, the frank honesty of the writers both dismayed and inspired me. I'm betting that you will see yourself reflected in the words of at least one of these FedCURE members.

Gayle Johnston, mother of a federal inmate wrote the following: *I am the mother of Jeffrey Johnston, who is an inmate at FPC Estill. Jeff has been in prison since December 2001. He is totally confined to a wheelchair due to Muscular Dystrophy. Due to the MD as well as other physical problems, Jeff has been treated by a pain management specialist since 1994. Before being transferred to FPC Estill, Jeff was at FMC Butner where the medical staff was appropriately treating his illness and addressing his chronic pain. He was even working in the Main Facilities office there. The controlled movements of the FMC, however, made it difficult for Jeff to get around in his wheelchair. In June, 2002, he was transferred to FPC Estill. Since that transfer, BOP medical staff has not provided appropriate treatment for his medical condition. Prior to incarceration, Jeff was in an automobile accident that resulted in virtually every major bone below his waist being broken. He has plates in both hips. His legs, knees, ankles, and feet are held together by rods, screws, nuts, and bolts. Combined with the MD, Jeff is in severe pain constantly, yet the medical staff has refused to address these issues for Jeff, telling him there is nothing they can do for him.*

As a very disturbed mother, I have contacted Congressional leaders, BOP Regional Office staff, and the staff in Healthcare Service in Washington. Part of me feels that the BOP resents my interference and they are making Jeff suffer because of it. Private physicians have told me that the BOP, by removing Jeff from his chronic pain management meds, has left Jeff wide open for heart attacks, stroke, liver damage, kidney failure and a myriad of other complications. Even as I write this, I'm aware that he is very sick.

In November 2002, we were told that Jeff would be moved to FMC Lexington. He is still at FPC Estill. Let me say that I know what he did was wrong, and that he should pay for it by serving his sentence, but not with pain and suffering or even his life. To

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hear BOP personnel tell me what the policy says is like being repeatedly stabbed by a sharp knife. Don't they understand that it does not matter what the policy says when your child needs medical attention? I have fought tirelessly for my son for months now, yet the BOP has done nothing. They have no heart. They treat these men much worse than animals. If these same people would treat their dog this way, they would immediately be placed in jail on charges of cruelty to animals. My heart is breaking knowing what my child is enduring and knowing the physical toll that may yet be extracted because of the BOP's refusal to treat him.

Karen has been such a help to me and I will ever be grateful to her. I continue to thank God for her and FedCURE and for the great work they are doing. Somehow, we have all got to band together in order to show the public what is happening to these prisoners. The mind set of 3 hot meals a day, plenty of TV, not having to work, and being housed in comfort is a farce. The media needs to become involved and discover and share the nightmares that so many families involved with the BOP are going through. My prayer is that my son will be transferred to a medical center and will receive the needed treatment before it is too late for him.

The following was written by a FedCURE board member whose husband is incarcerated: *This memo is about how federal incarceration has affected my family. I'll be honest in saying that only dark thoughts come to mind, along with an element of self derision for being so naïve about justice and its place in the legal system.*

My husband, the federal inmate, and I are both trying to cope and adjust to our new "assignments" established on November 1, 2002 when he self-surrendered. He's been the "breadwinner" since our marriage 23 years ago, and I've been the caretaker and support system. Now, he's the "bread-eater," a direct result of trying to establish some semblance of comfort at FPC Jesup combined with the BOP's Financial Responsibility Program, Inmate (5380.07). I, in turn, am trying to be the breadwinner, as well as his legal and information resource team, his psychologist, his wife, and the mother of our three sons (ages 16 to 21). The boys are handling this extremely well. I'm trying to keep my head, heart, and soul together because I know if I don't; it will directly affect my husband.

The bright spots in our days include letters we receive from each other and telephone calls. While I grew up writing letters to family members and pen pals, letter writing is a relatively new form of communication for my husband. He is working at it

though. Just as I write him everyday, he too writes me. My understanding is that the "volumes" that pass one way or another confound his fellow inmates. It takes a lot of work and energy to write sometimes, but we each know how important it is to the other person. We also know that a 5 - 7 minute call can't possibly cover everything that goes on in a day. We have been careful with our calls knowing the standard time limit of 300 minutes per month looms in the background.

So far, visits have been a couple of times a month. I'm hoping to be able to continue to visit on that schedule, but with a 4-hour trip one-way, it is a challenge. I've stayed overnight near the prison a couple of times, but that adds up in expenses. I won't complain too loudly though, for I know the BOP could have ordered him even further away from home.

The recent directive from the Deputy Attorney General to Kathleen Sawyer/BOP made for many tenuous hours at FPC Jesup. There were some heated comments about "long timers" and "short timers" and how the short timers "got what they deserved." Issues like these and how BOP personnel handle them are not helpful or healthy for any inmate population. One of my husband's biggest complaints, aside from the quality of food, is the lack of information or how information is delivered. In some ways, I see the BOP's handling of information as a trap being laid, just waiting to spring.

While I won't go into details of his indictment and sentence, I will say I am proud of my husband. He has been working at integrating himself, not into the system, but into the society. He knows and understands that FPC Jesup will now be "home" until early 2004. He knows that he has to deal with the people as well as the circumstances. So far, he has lost neither his compassion nor his sense of humor, for which I am grateful.

In closing, I know my husband is lucky to have family and friends supporting him. I also know there are inmates who either entered with family and friends, who have since gone distant, or who had no one when they were incarcerated. For these inmates, for whatever the reason for their incarceration, I feel great sorrow. To endure this time alone with no support is a great tragedy.

Another FedCURE Board member wrote about her observations while visiting a friend in a BOP facility: When I was a child and my parents went away and

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left me with someone else, I was devastated and had a tantrum. When I was a child and my parents were with me, I felt warm and fuzzy and everything was perfect in my world. When I was a child and went away to camp, I would feel homesick for my parents because they loved and protected me. When I was a child, I would sit on my dad's lap and cry about the sad things, ask about the curious things, and giggle about the funny things. I loved my family. Then my dad died. My best friend was gone. I would do anything to be able to visit with my dad.

Some children, whose parents are in prison, have had experiences like mine. Others have had experiences exactly the opposite. Some parents have been unwilling to take care of their children. Some children have experienced the anxiety and guilt of knowing they would be abused again. There is no trust. There is no crying on dad's lap or asking questions. The giggles are silenced for some children.

I have witnessed some visits with inmates where I believe the children would be better off without the negative parenting skills and attitudes. I have thought they were lucky to only visit and be able to leave. The problem is, the skills being demonstrated in the prison setting are the same skills that were with the family before prison. Those skills didn't go away even though the parent did. In these cases, it appears that visiting a parent in prison is a negative experience. However, there is a bond between parents and children that is life itself. There is nothing children want more than to be with their parents, no matter how badly they are treated by that parent.

Family visits can be a way for these children and parents to begin a healing process. These visits should be a time when parent and child begin looking at what didn't work, while making new commitments and promises to one another rebuilding the trust that was broken because of choices made by the parents that had unworkable and disastrous results for the family unit.

All of the children mentioned above will either experience a process that could create a sense of responsibility, support, and integrity or they may experience the same old ways they have always known and, in any event, the children will follow in their parents' footsteps. There is no possibility of altering the negative relationships or of supporting the positive relationships without family visits.

As a certified mediator, program designer, and facilitator, I work with at-risk families and they quickly alter their results. I propose that the BOP

needs to help incarcerated parents generate new family systems and language that creates workable results. This approach will create a new generation with values and goals that create positive communities. When our communities benefit, our universe alters.

The spouse of a federal inmate serving a 20-year sentence wrote the following: My husband's sentence is approximately the span of a generation. Since my pregnancy failed some time between his arrest and the close of discovery, we do not have the family we had hoped for. We do, however, have a strong marriage. We have maintained a commitment to giving the marital relationship the highest of priorities. After all, at the end of the day, the only thing we know cannot be taken from one of us is the love of the other. We have worked hard on communication skills. Our individual spiritual development has been a significant tool that helps us keep focused on what matters and what doesn't. Financial hardship is so common a result of a spouse's incarceration as to be the rule rather than the exception. We have learned to redefine what "enough" is, to minimize the importance of possessions, to moderate the standard of living in my household.

My husband and I are grateful that the BOP acknowledges the fundamental nature of a prisoner's right to marry. We regret that we cannot enjoy all aspects of the marital relationship, but we are convinced that we alone, independent of any institution, can determine the course and depth of that relationship. BOP has custody of my husband's physical person. That is all of him, and all of us, they can control. The rest, and it is substantial, belongs to us.

The following stories provide insight into what life after prison is like:

The Homecoming: Life After Fifteen Years in Federal Prison by Mark A. Varca and Anthony J. Varca: At the young ages of fifty-four and seventy-eight, we are not terribly proud of having the unique distinction of being the only father and son in the history of the Federal Bureau of Prisons (and possibly the United States) to have been incarcerated together, as cellmates, for fifteen years. Being released from a medium security federal prison in June of 2002, however, after serving a mandatory fifteen years of a fifty-two year sentence for marijuana, made us very happy. (For the curious see: U.S. vs. Varca, 896 F.2d 900 (5th Cir. 1990); re hrn'g en banc denied, 901 F.2d

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1110 (5th Cir. 1990); cert' denied, 498 U.S. 878.)

Coming out to a halfway house, however, left the celebrating on hold. In fact, the "CCC" placement in a halfway house was a total waste of valuable tax dollars as we had our own home, a loving and supporting family and close friends, waiting for us. There are thousands of inmates who need this type of placement after release. We did not want nor did we require these services. Thankfully, after petitioning the Bureau of Prisons and a few political friends, the higher ups realized this, and two and a half weeks after entering the halfway house, we were placed on Home Confinement until October of 2002, when we went on parole.

As a family, extended as it has become, we all came to the realization that, we were not all prepared for the homecoming. It's hard work and requires a lot of adjusting and cooperation among family members. What's more, and to our knowledge, the Bureau of Prisons and the halfway houses have no homecoming counseling programs whatsoever available to federal inmates coming out of the prisons who are returning home to their families. And further, that there is a genuine need thereof for both inmates and their families for such a program.

But not for a program I developed, authored, and implemented while in the Bureau of Prisons, for federal inmates and their families back in 1991 titled "Coping With Confinement", we would not have any reference for coping with the homecoming. Dragging this program out of one of the sixty boxes holding over five thousand pounds of legal materials was well worth the effort.

Because we, our family and close friends, found it so valuable during this period, we feel it necessary to share a few excerpts with you here:

Home Coming and Reintegration: The fears of the more years you spend in prison, the more time killing mechanisms you will employ to cope with confinement, the degree in which you have slowed down, the routines and rituals you have developed while a prisoner, and the fantasizing you have engaged in because of the lack of other diversions will become deeply ingrained. The longer you are in prison, the longer it will take to "gear up" upon your release, to handle the confusion, and to retrieve your mind from the world in which you had lived for so long.

Although the period of family disruption following your confinement is extremely difficult, in contrast with the popular view, homecoming can be equally stressful. At that

time, family members must once again make shifts in family role structures plus the addition of adjusting to other changes which have occurred during the period of your confinement. Typically, neither the released inmate, nor his or her family anticipates the many different adjustment problems associated with the reunion and reintegration process.

We have found these two paragraphs to be instructive. The information has helped us to focus on the homecoming process more clearly; every one is on the same page. It is a whole new world-lots of changes-and may God bless us all during the homecoming and reintegration process. We hope you can benefit from this realization in the same way.

Please note that in the near future, you will be able to view the "Coping With Confinement" program in it's entirety on our website at: WWW.FEDCURE.ORG.

Stephen C. Richards, a former federal prisoner, is a FedCURE Member and an Associate Professor of Sociology and Criminology at Northern Kentucky University. He is a Soros Senior Justice Fellow. Some of his recent work includes Behind Bars: Surviving Prison (Alpha) and Convict Criminology (Wadsworth) with Jeffrey Ian Ross. He shared the following with us about life after prison: *FEDERAL PRISONER BECOMES UNIVERSITY PROFESSOR - I entered federal prison not as a convicted criminal, but a prisoner of the drug war. I would do hard time in maximum security for failure to cooperate with federal authorities in the persecution and destruction of others. As a result, I would lose a wife, son, and home. I started college in 1969, and left in 1972 without a degree. I entered prison determined to somehow complete that degree. Upon leaving prison I went to graduate school. Today, I am an Associate Professor of Sociology and Criminology.*

College Credit by Correspondence - I entered prison with 115 college credits towards a Bachelors' Degree in Sociology. Still needing fifteen credits to graduate, I went to work in a UNICOR (federal prison industries) cable factory, where we constructed electric cable harnesses under contract for the military. I worked my way up to Grade 1 clerk, and as one of the highest paid prisoners in the facility, I made approximately \$200 a month, including overtime. I used my "inmate pay" to pay for college courses by mail. Every month, after making my commissary purchases (food, smokes,

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stamps, etc.), I would set aside so much to pay for the next course. It took me two years to compete five courses (15 credits), and complete the degree requirements for the UW degree. To my knowledge, I was the only prisoner that year in the entire FBOP to complete a college degree.

Graduate School - Released from federal prison in 1987, I entered the Masters Program at UW-Milwaukee. In 1989, upon completing the MA, I entered the PhD Program in Sociology at Iowa State University, graduating in 1992. Today, I am an Associate Professor of Sociology and Criminology at Northern Kentucky University.

Becoming a University Professor - It is a long way from Leavenworth to the ivory tower. Earning a PhD was only the first step in becoming a professor. I still needed to overcome the stigma of a criminal record and learn to manage my identity. If I had chosen an academic discipline other than Criminology this may have been less of a problem. Nevertheless, the experience I had with the criminal justice system and prisons have provided a real life education in these subjects that goes well beyond the academic training available to most of my colleagues. Unfortunately, some university faculties are threatened by an ex-convict that knows how little they know about the subjects they teach and research.

Many criminology and criminal justice faculty come from sheltered backgrounds. They have little real world knowledge of working class lives, let alone the perils of poverty, or the struggles of convicts. Yes, they have PhDs, and through many years of studying their discipline, they do acquire considerable insight into why people do crime. Still, they never really get it. Which is no surprise, considering they never bothered to talk with convicts. Many academics that claim to be prison scholars and write books on the subject, have spent precious little time inside of prisons, and even then only on escorted tours.

No wonder most of the prison literature reads like fairy tales (this journal being one exception). Textbooks talk about constitutional amendments, the Bill of Rights, prisoner's rights, prison programs, and rehabilitation. Ideally, prisoners should have these protections and services. Unfortunately, most textbooks paint a false picture of reality, and as such do a disservice to students.

I have learned that becoming a professor means I do not have to suffer fools or foolish books. I have no patience for social scientists that study their subject from a safe distance. Fortunately, we have a growing group of "convict criminologists" that

have the courage to do the science and "tell it like it is."

Convict Criminologists - Today, even while working to fit in and play the professor role, I enjoy my ex-con status. As one of the leaders of the Convict Criminologists, a growing group of ex-convict criminology faculty, I prefer the company of my "felonious friends" who although they have fancy college degrees have not forgotten from where they came.

Bob Darrah, former federal inmate and a panel participant at the 2002 Federal CURE Convention, shared these thoughts with FedCURE: The world is a different place after two adult children, forty years of marriage, and forty-six months of federal incarceration. I have learned to question authority even though I am a retired Iowa State Trooper. There is never a day that passes that I don't think that "Big Brother" is coming again. I have difficulty listening to prosecutors and people of authority state their information as if it were Godly. Consequently, I tend to tune out the news and information that I have listened to for years.

My life is better now with very little need for stress and enjoying all of the moments I have left with my wife and children. I once thought that I needed to work as a CPA twenty-four hours per day to provide for my family. Today, I work casually, without money, real estate, or ownership in any asset. I will continue to live my remaining years with daily exercise, no stress, and enjoy the love of my family, friends, and my only grandchild who was born in 2001.

David Novak, former federal inmate, FedCURE member and founder of Davrie Communications talked about how incarceration shaped his life after prison: For the past seven years, I have served as a consultant to those facing federal incarceration. One of the most challenging aspects of my work is assisting people in facing the emotional turmoil brought about by federal prosecution and upcoming incarceration. I will draw upon my personal experience, having been prosecuted and incarcerated, as a foundation, and augment this with observations I have made during the past seven years.

During the period of pre-incarceration, the emotional fabric of your life will be significantly challenged by your upcoming incarceration. Many of the people, who you expect to support you, will not. On the other hand, many people from whom you expect no support will rally to your side.

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Feelings of helplessness, shame, frustration, anger, hurt, and sorrow should be expected at this time.

Throughout this period, I reacted like I always had to emotional upheaval-I withdrew. I cut myself off from family and friends. In retrospect, I believe that this was a big mistake. At the risk of offering unsolicited advice as you move through this difficult period, I would encourage a level of openness that might be foreign to many of you. The way to get through this time and to enjoy the support that most family and friends will offer is to be open and honest. Communicate your feelings- whatever they may be. It is also imperative that you realize everybody in your life is affected by this event. Parents, children, siblings, friends, partners, spouses, clients, and even the people with whom you do business will be affected by the events you are going through.

I would highly recommend that some form of outside counseling be considered during this time. Several options are available. Private counselors provide a one on one session that many individuals may find helpful. Another option would be to attend one of the many twelve step programs available in most communities. Alcoholics Anonymous and Narcotics Anonymous are excellent examples of this type of program. In addition to providing support, you may find the members of these types of groups a valuable resource in terms of personal experience. Each of you must decide what is right for you at this time. Through it all, it is important that you continue to openly communicate with your spouse and family. This is an incredibly trying time. Properly managed, it may actually serve to strengthen family ties and friendships.

Dealing with the shame of what I was going through was one of the most difficult things for me. One of the pieces of information I came across as I researched my book **DownTime-A Guide to Federal Incarceration** helped me to deal with my shame. In 1997, one out of every 165 Americans was awaiting trial, incarcerated, or serving some form of supervised release. By the end of 1999, this number had increased to one out of every 162 Americans. By being open about my situation, I was surprised to find several individuals who had overcome similar challenges in their past. Their survival, and their willingness to share their experiences with me, did much to bolster my strength.

Another thing that many defendants will deal with is the judgmental nature of people. Before going through this process, I, like many Americans

lumped all criminals into a single category. I believed that everyone who went to prison was a violent offender who had terrorized helpless people. Keep in mind that this is the mindset that many of you will now be up against. Now is the time to recognize what you can and cannot control. Now is the time to concentrate on what you can control. You have no control over what people think of you. You have no control over what is written in the papers or mentioned on news programs. What you do have control over is the way you allow yourself to react. This time will certainly test your mettle. Clear, concise, open and honest communication between you and the people who really matter will help.

The single most important piece of advice I can give to people in this situation is to accept full responsibility for their actions. I cannot tell you how tiring it is to hear people talk about how they were framed, persecuted, and treated unfairly by the judicial system. Let it go. Accept responsibility for your plight and work to manage it to your best advantage.

To Disclose or Not to Disclose-That is the Question! Discernment is defined in Webster's dictionary as: **to perceive as separate and distinct: discriminate.** During your time on pre-trial release, you would do well to keep this definition in mind. Clearly, you may have little control over who finds out about your situation. If you, like me, see your face on the evening news and on the front page of your local newspaper, chances are many people will already know your situation.

Even in this age of information, there will still be people that you must inform of your upcoming incarceration. While in prison, I met men whose children thought they were on long business trips. I also met men who found great comfort in the full disclosure they had made to their family and friends. Although prosecuted in Seattle, Washington, I spent my pre-trial release in Charleston, South Carolina. Although my case had gained great notoriety in Seattle, nobody in Charleston knew what I was going through. I was very careful about who I shared this information with.

While in Charleston, I secured employment in a small downtown retail store that was owned by three men. I informed two of the owners about my predicament. They were supportive and even supplied me with a letter for court. They suggested that the third owner, an older gentleman, might

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not be as receptive to my situation. They suggested that I keep this information from him. I chose to follow their well-intentioned advice. It was the wrong thing for me to do. About two weeks after my incarceration, the owner, whom I had withheld information from; found out that I had gone to prison. Discovering my deception, he made some very sweeping misjudgments about my character. I lost him as a supporter and a friend. To this day, I regret the fact that I was not open with him.

The point I make is, that the shame that you attempt to avoid is often less painful than the result of any deception you use to avoid that shame. It is important to keep in mind that in this age of technology, there is very little privacy left to people. While living in Charleston, South Carolina, more than one of my acquaintances found information about my arrest and conviction on the Internet. This presented them with a very one-sided view of the events leading to my incarceration. The only way to combat this lopsided view of events is to be open with those people whom you care about before they get their information from some other source.

Often people will take their lead from you. If you are open about your mistakes, and how you plan to learn from them, most people will understand. My conviction and incarceration put a tremendous strain on my relationship with family and friends. I feel that this strain was reduced by my attitude. I admitted my mistakes, paid my price, and committed to rebuilding my life as early as possible.

Regardless of the actions you take prior to your incarceration, there will still be people who insist on judging you. Don't waste your limited emotional resources on these people. Surely they are entitled to their opinion, but that is all. Even the individuals who provide support throughout the process will, at times, be a tremendous strain. It is important to remember that as much as people might empathize with your position, it is you who must truly experience it. Take care of yourself.

The advice of a trusted clergy member or the insight provided by a professional therapist may go a long way in helping you to decide which course of action is right for you. Many men that I served time with in prison were handsomely rewarded for their openness. Upon release from prison, they had the support of their families and jobs awaiting them. People who had been trusted with open communication prior to incarceration offered many of these men jobs. Other men lost family and

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Alderson: Time to Reclaim the Vision

by Clare Hanrahan

Seventy-five years ago the Federal Industrial Institution for Women at Alderson opened the gates to its first two hundred inmates. These women prisoners had long been held in jails, workhouses, prisons, and reformatories designed to incarcerate men. They came from penal institutions at a time when abuse by male guards, physically, mentally, and sexually, was considered normal in American prisons. Alderson was meant to be different.

In the early 1920's a prison reform movement grew out of concerns of women's suffrage activists who experienced harsh prison conditions for acts of civil disobedience. These women of privilege returned to speak of the indignities and abuse they endured as captives in male dominated prisons.

This first federal prison for women, situated on rich farmland in a grove of ancient trees on a bend of the Greenbrier River in the Allegheny Mountains, was the culmination of the vision and work of women in twenty-one national organizations. The founding vision for Alderson was of a "women's sphere" creating a "community of women working together under the guidance of other women," according to the first superintendent, Dr. Mary B. Harris. She held a doctorate in Sanskrit from the University of Chicago, and believed that women prisoners, when treated with dignity and provided with educational opportunities, could "build within themselves a well of self-respect" and learn the skills that would enable them to earn their own living.

Alderson came under the authority of the U.S. Bureau of Prisons in 1930. Following World War II, a military model of prison administration took hold. Seventy percent of correctional officers in women's prisons today are male. Many are former military. A power and control model has replaced the "women's sphere," with a military style chain of command, instead of the cooperative clubs designed for self-governance that were part of the early vision.

Women prisoners must wear ill-fitting men's military-khaki shirts and jackets as uniforms with only men's thermal underwear issued in the winter. Adding to the indignity, pat down searches by male guards can be ordered at any time, anywhere, and male doctors and physician's assistants administer the gynecological exams required of all women upon

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entrance to the prison.

Today at Alderson Federal Prison Camp and in other women's prisons throughout the United States, male "correctional officers" and administrators dominate. They devise and enforce the petty and demeaning rules, patrol the corridors, guard us while we sleep, and walk in and out of the sleeping quarters, shower and toilet rooms of captive women at will.

Alderson's prisoners are a profitable commodity, especially to UNICOR, the prison industry, where hundreds of women sew army jackets for a pittance in a locked and loud factory, hunched over the machines day after day, only to have the prison rob them of most of their meager wage to pay outrageous fines. Alderson is a work camp. The labor of captive women, paid as little as 4 cents an hour, is critical to the operation of the prison. We worked in the sewing factory, on the landscape crews, and as painters, plumbers, clerks, and electricians, even firefighters, in the only all-woman fire brigade in the country. We toiled in the Greenhouse among the Mother plants and in the kitchen, on our feet for hours amid the noise and rush --cooking, cleaning, serving the ample and insipid meals that filled us with pasta, sugar, and every kind of way to serve white flour.

Most, as many as 80 percent of Alderson's nearly 1,000 captives are convicted violators of America's Draconian drug laws, accounting for an over one hundred percent increase in women felons in the past ten years. These are the addicts, users, or low-level dealers taking a rap for a kingpin or a boyfriend. Some are just the families and associates of drug dealers, caught in the wide net called conspiracy cast by zealous prosecutors. Most are nonviolent first offenders, held for five, ten, twenty years, or more, on Mandatory Minimum sentences at a cost of at least \$22,000 per person, per year.

Billie Holiday, a Heroin Addict and Alderson inmate in 1947 wrote in her book, *Lady Sings the Blues*: "People on drugs are sick people. So now we end up with the government chasing sick people like they were criminals...the jails are full and the problem is getting worse every day."

Little has changed with that, except the numbers. Women are the fastest growing and the least violent of imprisoned Americans. A recent *Z* magazine article, "Reinforcing Racism with the War on Drugs," notes that so-called "corrections" spending is "consuming tax dollars that once went to social

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Book Reviews

Behind Bars: Surviving Prison (Alpha Books ISBN 0-02-864351-8). Jeffrey Ian Ross (University of Baltimore) and Stephen C. Richards (Northern Kentucky University) Richards is a former federal prisoner having served 11 years, including time in USP Atlanta, USP Terre Haute, USP Marion, and USP Leavenworth. Both Ross and Richards are FedCURE members.

Ross and Richards are both veteran criminologists who have published extensively on crime and prisons. Clearly, they have the experience to back up what they write: Ross worked almost four years inside a correctional institution, and Richards spent 11 years as a federal inmate. They tell it like it is, the "low-down and dirty" of what a person can expect if they go to jail or prison. Their information comes from first-hand experiences and from conversations with convicts.

Behind Bars answers questions frequently asked by first-time convicts, such as "Will I be assaulted or raped in the first 24 hours on the inside? (Maybe, so be ready to defend yourself.) What will happen to my family and friends once I am incarcerated? (If it's a long sentence, there's a good chance they'll move on with their lives and forget about you.) What are the long-term effects of being in prison? (Depends on the individual, but statistics aren't very encouraging.) Will I be able to secure a good job after I am released? (Your chances are better if you get, or at least start working on, a college degree.)

The number of people being incarcerated at state and federal facilities continues to grow at an alarming rate. The most recent official estimate of persons in correctional custody (DOJ Statistics, 2001), serving time in jail, prison, or on probation or parole, is 6.47 million with 3.8 million on probation, and 725,527 on parole.

Contrary to popular belief, most people in jail and prison are not your typical "career criminals," such as band robbers, counterfeiterers, and mafia hit men. Instead, the vast majority of the prison population is made up of young, nonviolent and first-time offenders. Over 90 percent of prisoners are male. About half of all prisoners are African-American, 20 percent Hispanic, and the rest mostly English-speaking Caucasians. Additionally, there is a growing number of special-needs prisoners (mentally ill, mentally retarded, medical, elderly) serving time in prisons and community corrections facilities who

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services such as education, job training, health clinics, and housing.

Alderson has strayed far from its founding vision, expressed best by its first superintendent, Mary Belle Harris. She believed that "control through care and compassion, rather than terror was most efficacious," and she helped create an environment of cooperation emphasizing self-governing principles to provide every inmate "an equal chance to develop as far as her endowment permits and become a law-abiding and self-supporting member of her group."

The famous labor organizer and socialist Elizabeth Gurley Flynn, in her book, *The Alderson Story: My Life as a Political Prisoner* wrote: "We were far removed from the customs and spirit of Dr. Harris' days. Confidence in the women, which had brought out the best in even the worst of them, was now replaced by distrust and suspicion, an atmosphere in which the inmate was always wrong."

Today, as Alderson Federal Prison moves into its 75th year, construction is underway on a second 500-bed concrete warehouse to incarcerate mothers, grandmothers and great-grandmothers. Over the years many women of courage, commitment and integrity, the famous and the obscure, have contributed to Alderson and its rich history, both as keeper and kept. It is a place that must be reclaimed by women, and for women, and soon, so that the vision of its founders can once again serve the needs of women and help them to develop the abilities so valued by Alderson's founders who wanted all Alderson alumni to "claim independence and equal rights upon release."

Excerpts from talk before the American Association of University Women, Brevard, NC, 2002
Clare Hanrahan is an Asheville writer, speaker and community activist. She is author of the book, "Jailed for Justice: A Woman's Guide to Federal Prison Camp," based on her six-month incarceration at Alderson as a consequence of peaceful protest, a misdemeanor trespass charge.

Contact her at chanrahan@ncpress.net. §

"Book Reviews" continued from page 19

are controlled with medication (chemical restraint).

Admittedly, the entire book might not apply to every prisoners in every prison in the U.S., but the topics covered are chillingly familiar to those of us who've already experienced ClubFed. While the book was written primarily for men, there is one chapter that

addresses the unique issues faced by women in prison. **Behind Bars** is not a generic version of the BOP's program statements. The information contained in it, however, could very well preserve both your life and your sanity if you are heading to prison. Available from www.barnesandnoble.com. ~-

Down Time: A Guide to Federal Incarceration (ISBN 0-9710306-0-X) by David Novak, former federal inmate, founder of Davrie Communications and FedCURE member. **Down Time** presents the most accurate and comprehensive practical advice in print today for anyone facing federal prison time. It was written to address the information needs of three distinct audiences - the professionals of the legal community who represent federal defendants, individuals facing incarceration and the family members who support them. **Down Time** informs, educates, and explains by example the challenges faced by men and women during incarceration in a FBOP facility. Available from Davrie Communications, Inc., 13215-C8 SE Mill Plain, #144, Vancouver, WA 98684 or at <http://www.davrie.com>. ~-

Jailed for Justice by Clare Hanrahan, former federal inmate and FedCURE member. An insightful guide for women activists facing time in a federal prison camp. Hanrahan draws upon her first-hand experiences at FPC Alderson to guide the reader through the morass of BOP incarceration. Available from Celtic Wordcraft, P.O. Box 7641, Asheville, NC 28802 or by emailing chanrahan@ncpress.net. ~-

KGB (ISBN 1-58851-698-9) written by Mike Palecek former federal inmate and FedCURE member. **KGB** is based in the Woodbury County jail. These prisoners, the damned of America, scheme alone with an underground radio station and a Morningside College faculty member to bring justice to America. During the '80s Palecek served five terms in county jails in Iowa and Nebraska, and federal prisons [Chicago MCC, Terre Haute, Leavenworth, El Reno, La Tuna] for misdemeanor trespass at Offutt Air Force Base, near Omaha, in protest of U.S. nuclear weapons targeting. Available at www.amazon.com. ~-

Convict Criminology: A Book By Ex-Con Professors and Critical Criminologists. By Jeffrey Ian Ross, University of Baltimore and Stephen C. Richards, Northern Kentucky University. Reviewer: Dr. Victoria Simpson Beck, College of Mount St. Joseph, Cincinnati, Ohio.

Convict Criminology is an edited book that features

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The Realities of Parole

by Kenny Linn

I read the Rules and Procedures Manual of the Parole Commission. I thought I understood what appeared to be cut and dried. Here is what I did not know but later found out:

Many released parolees are sent to the district where their crime was committed rather than to the district where they have some family ties or acquaintances, thus making it impossible to secure the employment and habitation that would inhibit recidivism.

Ordinarily, parolees only make up a miniscule portion of a parole officer's caseload. The majority of probation officers do not know or understand the Rules and Procedures Manual of the U. S. Parole Commission.

Parolees with unpaid fines, restitution, or assessments will find it difficult, if not impossible, to obtain permission to travel anywhere outside of the district for any reason whatsoever. Those under a drug aftercare condition cannot consume alcohol even though alcohol was never a part of their case or a personal problem. Many types of employment are impossible to obtain because of various state and federal licensing criteria. The Parole Commission prohibits many other types of employment (i.e. paralegal work by non-lawyers, computer work by those who had computer usage involved in their criminal activity).

"Association" with ex-felons has no set definition and will invariably mean whatever the probation officer wants it to mean. Possession of a firearm translates into not being allowed to visit a house where a firearm is present even if the parolee did not know the firearm was there.

International travel is almost impossible to obtain regardless of the legitimacy or necessity of the travel.

A non-cooperating defendant will find it nearly impossible to receive realistic early termination consideration. My "case specific factor" for removal from early termination guidelines was that mine was a "big" case, never mind that the description of my 27-kilo cocaine case as "big" was a misnomer when compared to the size of others who cooperated and were released within their guidelines.

It is entirely possible to find oneself under post-incarceration supervision for a lengthier time than

"Book Reviews" continued from page 20

9 chapters by ex-convict professors, including 3 former federal prisoners that are now criminology professors and FedCURE members. The book has been widely adopted for university courses across the country. Textbooks for Criminology, Criminal Justice, Corrections and Sociology courses tend to focus on qualitative explanations for criminal behavior, and qualitative justifications for the goals of incarceration. As we educate the next generation of criminologists, it is imperative that we provide students with a broader understanding of criminal behavior and correctional treatment through qualitative assessments. **Convict Criminology** provides educators with a unique opportunity to present students with a personal glimpse into the lives of prisoners, ex-convicts, and individuals working within the correctional system.

Convict Criminology is compilation of quantitative and qualitative articles written, for the most part, by ex-convict criminologists. Despite the writers' disparate criminal, correctional, and release experiences, the overall theme of the book is consistent: current legal and correctional policies in the United States are doing more social harm than good. The book also helps to correct common misconceptions of prisoners, ex-convicts, and corrections, held by the public and perpetuated by the media. Finally, the book emphasizes the "failure of criminologists to recognize the dehumanizing conditions of the criminal justice system" (Terry, 2003: 112-113) in the United States, and the relationship between this failure and the failure to reduce crime. Unlike traditional textbooks, **Convict Criminology** offers a realistic approach to studying prison conditions; illustrates that the outcome of the "war on drugs" has been the incarceration of thousands of non-violent offenders; and promotes understanding of the true meaning of doing time, and the subsequent impact of ex-con stigmatization on post-release success.

Convict Criminology begins with Foreword by Todd Clear and Preface by John Irwin. Ross and Richards then introduce "The New School of **Convict Criminology**". The chapters are grouped into three sections. The first section of the book is entitled "**What's Wrong with Corrections**". The second section of **Convict Criminology**, entitled the "**Convict Experience and Identity**," conveys personal experiences of ex-convicts before, during, and after their correctional experience. The final section in **Convict Criminology** is entitled "Special Populations." Richards and Ross conclude the book

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with "An Invitation to the Criminology/Criminal Justice Community."

While I found **Convict Criminology** to be a thought-provoking educational tool, perhaps most revealing are the consistent student reviews of the book. According to students: **Convict Criminology** was viewed as a remarkable book, with outstanding contributors providing a unique perspective on the criminal justice system; an important educational supplement to criminal justice and sociology courses; provided an in-depth look at the individual experiences of inmates, which is difficult to attain and more interesting than traditional textbooks; helped to humanize criminals; and altered current views regarding criminals and the criminal justice system.

In general students expressed their gratitude to contributors of **Convict Criminology** for sharing their stories, and allowing them a glimpse into reality. Specifically, the book appears to have had an ideological impact on students. For example, one student wrote: after reading this book, "I think we must reevaluate our priorities and designate prison space to those offenders who should be confined—namely violent offenders." Another student wrote: "After reading this book I came to realize that because we socially stigmatize ex-convicts, we are basically sentencing all criminal offenders to life in prison. We need to address the prejudice that results in limiting the ex-convicts ability to contribute to society in a positive fashion, and which, perhaps, creates a self-fulfilling prophecy." Another student wrote: "As a police officer, I expected this book to be filled with a lot of "liberal crap." Since I work within the criminal justice system my knowledge of what transpires within correctional institutions has been shaped by the system. What I discovered by reading **Convict Criminology** is every story (even in the criminal justice system) has at least two sides, and maybe some of the stories that I have heard from arrestees are not as far from the truth as I previously thought." Finally, several students wrote: "This is the best book I have read during college (and/or during my life). The life experiences shared in the book dramatically altered my perspectives on punishment (people should be given a second chance); ex-convicts (they are not so very different from the rest of us); and helped me understand the importance of education within the correctional system, and the importance of socially reducing the stigma associated with the label of ex-con."

Convict Criminology is an appropriate text for a number of criminology, criminal justice, and sociology courses, at both the undergraduate and graduate levels, such as Introduction to Criminal

Justice, Criminology, Corrections, and Sociology of Deviant Behavior. The readings are not overly difficult, the personal stories shared by the contributors immediately engage the reader, and the contributors provide insightful suggestions for future research and social change. Using this text in related courses has provoked stimulating class discussions, and challenged perspectives on law, deviance, criminals, and corrections. This book is highly recommended.

The book published by Wadsworth in 2003 can be ordered at bookstores, amazon.com. or barnes and noble.com. ~~-

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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imprisonment time. It is also possible to find oneself under a lifetime of supervision.

Pros and Cons of Parole (Versus Supervised Release)

Pros:

1. Those under the supervision of the Parole Commission have better good time provisions for prison release purposes.
2. Those under the old law had the availability of the old Rule 35(b) mercy plea for a sentence reduction at the judge's discretion.

Cons:

1. A judge familiar with a case is more likely to allow early termination of a worthy supervisee than a faceless bureaucrat, particularly if it is a non-cooperating defendant.
2. A judge is more likely to accept recommendations from a local probation office than a bureaucrat from an agency headquarters office who may have alternative motives for the decision.

The bottom line is that it is far better to have judicial supervision of meaningful decisions that affect the lives of those under post-incarceration supervision than to have the decisions ultimately made by those with no contact with the person in question. §

**AN OVERVIEW OF THE USE OF
FEDERAL PRISONS FOR
OFFENDERS WHO TECHNICALLY
VIOLATE THE CONDITIONS OF
THEIR RELEASE WITHOUT NEW
CRIMINAL CONDUCT**

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I. INTRODUCTION

The purpose of this paper is to provide a framework to understand the practice of revoking offenders for technical violations of the conditions of their release without new criminal conduct. The paper will address whether or not they are a public safety issue; the potential costs to the Bureau of Prisons; the frequency and percentage of technical violations; the impact of the United States Sentencing Commission's Revocation Policy Statement on technical violations; the impact of legislative mandates; a prototype of a typical technical violation case; the adversarial nature of revocation hearings in Federal courts; and, recent trends to alternative problem-solving models for technical violators.

Criminal justice policymakers should rightfully be interested in the outcome that follows implementation of new laws and initiatives on the Federal level. New approaches may have outcomes that are intended, but also unintended. Certainly, there are at least four issues of interest with regard to the revocation of Federal offenders on Probation, Parole, or with Terms of Supervised Release (TSR) on supervision in the community who subsequently return to the Federal Bureau of Prisons (BOP) or who remain under the BOP jurisdiction following revocation. The four issues are:

1. The safety of the public;
2. The number of persons under the jurisdiction of the BOP for technical violations without new criminal conduct is costly;
3. The number of technical violations is increasing over time;
4. The percentage of persons revoked for technical violations without new criminal charges is greater than the percentage of persons revoked for new misdemeanor and felonies offenses combined.

An examination of each of the four issues is useful.

1. The safety of the public.

Policymakers should be very concerned about the quality of supervision of offenders in the community. Contemporary supervision practices should reflect this value and assure that the public is not vulnerable to unwarranted risk of harm when they are in the community. The mission of the Federal Probation System reflects this value by declaring its primary goal "...to provide protection to the public and assist in the fair administration of justice." To the degree that the offenders are guided successfully by probation officers in the community toward gaining pro-social values and appropriate conduct may have a direct effect on the public's well being and safety. Conversely, offenders that choose to engage in new criminal conduct in the community may rightfully be thought of as having put the public's safety at risk.

2. The number of persons under the jurisdiction of the BOP for technical violations without new criminal conduct is costly.

The increase in the total number of persons incarcerated today (160,193) in Federal prisons compared to 1980 (19,023) is a remarkable story of growth and expansion. Some would consider the costs to be staggering; others would argue that the costs to incarcerate record numbers of offenders are required for the public safety. Still, hard economic choices (such as between prison expansion and public education) beg for an examination of whether we have the right "type" of persons incarcerated. Said another way, is there a demonstrable group of offenders, such as technical violators of the conditions of their release without new criminal offenses, which if released today would likely have no adverse effect on the safety of the public? If yes, how much prison space do they take up in a given year and at what costs?

3. The number of technical violators is increasing over time.

If the number of persons returning to prison for technical violations of the conditions of their release over time was diminishing or even constant over time, an outsider might chalk this issue up to doing business with a difficult population. However, when there may be enough persons violated for technical reasons to empty 3 prison facilities today (see page 27) at, on average, \$22,176.18 per year per offender, there may be sound reason to take a closer look at contemporary policies and procedures.

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4. The percentage of persons revoked for technical violations without new criminal charges is greater than the percentage of persons revoked for new misdemeanors and felonies offenses combined.

It would be difficult to mount an argument that new criminal conduct, particularly convictions for felony offenses, do not merit re-incarceration. Convictions for new, serious crimes are substantial evidence that the offender continues to rely on anti-social attitudes and behavior. It may be fruitful, however, to examine the phenomenon of "technical" violation behavior without new criminal conduct that results in re-incarceration. Typically, at their core, technical violations are characterized by non-compliant behavior inconsistent with special and standard conditions, such as not responding favorably to substance abuse treatment, not reporting as directed to the probation officer, or not paying fines or restitution. The number of congressionally mandatory special conditions has increased, such as drug testing and fines. With forty-five (45) percent of persons under supervision in the Federal Probation System having substance abuse problems, it is reasonable to expect that directly or indirectly, problems associated with substance abuse are the driving force in non-compliant behavior¹. Practitioners and treatment providers agree generally that in spite of lengthy periods of incarceration, relapse behavior is expected.

II. THE IMPACT OF GUIDELINES-BASED DETERMINATE SENTENCING

The Sentencing Reform Act (SRA) of 1984 (effective for offenses that occurred after November 1, 1987) abolished parole, recast probation as sentence, and created Terms of Supervised Release (TSR). To assure that the punishment portion of the sentence was effective, guidelines created by the United States Sentencing Commission (USSC) and trumped by the Congress, increased both the length of the sentence (particularly for illicit drugs) and the actual time served by limiting good time. Except for 54 days a year good time, *the sentence is the time to be served*.

The legislative history of the SRA made it clear that TSR was to be imposed only when needed to serve the purposes of re-integration and rehabilitation following the punishment phase, i.e., the period of incarceration. But, the Drug Abuse acts of 1986 and 1988 authorized courts to revoke TSR and later *required* revocation and re-imprisonment for any violation involving possession of a controlled substance. Verified use of drugs through urinalysis and other forms of testing was interpreted to be tantamount to possession of controlled substance.

Finally, the 1988 Drug Abuse Act added the incapacitation goal "protection of the public" to the purposes of TSR². For all practical purposes, the writer believes that the goals of re-integration and rehabilitation thereafter may have taken a back seat to the focus on public safety.

The USSC's Guidelines Manual states in Chapter Seven (page 373) that under 28 U.S.C. § 994(a)(3), the USSC is required to issue guidelines or policy statements applicable to the revocation of probation and supervised release. To date, the Commission has chosen to issue policy statements only, intended to provide guidance³. Presumably, revocation guidelines will be issued after Federal judges, probation officers, practitioners and others have had an opportunity to evaluate and comment on the policy statements.

The policy statement guidance classifies revocations into three classes - A, B, and C. Class A is serious new criminal conduct. Class B violations are defined as conduct constituting any other Federal, state, or local offense (than in Class A) punishable by a term of imprisonment exceeding one year. Class C violations are best understood as new misdemeanor offenses or technical violations, defined as follows: conduct constituting (A) a Federal, state, or local offense punishable by a term of imprisonment of one year or less (misdemeanor); or (B) a violation of any other condition of supervision.

The probation officer is required in the USSC manual at §7B1.2(b) to promptly report to the court any alleged Grade C violation unless the officer determines: (1) that such violation is minor, and not part of a continuing pattern of violations, e.g., missing a scheduled reporting session with a probation officer; and (2) that non-reporting (to the court) will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to the reporting of violations. Upon a finding of a Grade C violation §7B1.3(a)(2) suggests that the court may (A) revoke probation or supervised release; or (B) extend the term of probation or supervised release and/or modify the conditions of supervision. Upon revocation of probation or supervised release, §7B1.5(a) and (B) recommend that no credit shall be given for any "street time" prior to the revocation⁴.

Perhaps most important to *where* the offender will *actually* serve the revocation re-incarceration time (in a BOP facility, local jail, community confinement, or home confinement) is the provision of §7B1.3(c)(1)

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that states, "where the minimum term of imprisonment under §7B1.4 is at least one month but not more than six months, the minimum term may be satisfied by (B) "a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement (halfway house) or home detention (with or without electronic monitoring)... for any portion of the minimum term⁵. Similarly, §7B1.3(c)(2) states at (B), "where the minimum term of imprisonment under §7B1.4 is more than six (6) months but not more than ten (10) months, a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement (halfway house) or home detention (with or without electronic monitoring)... provided that at least one-half of the minimum term is satisfied by imprisonment⁶.

Finally, at §7B1.4 of the guideline's manual, the USSC recommends use of the following matrix or table, employing the offender's previously determined criminal history category for punishment for the violation behavior:

Revocation Table⁷
(In months of imprisonment)
Criminal History Category

Grade of Violation	I	II	III	IV	V	VI
Grade C	3-9	4-10	5-11	6-12	7-13	8-14

A typical example of a technical violation for a Grade C violation and application of the Revocation Table would be the following:

John Jones, married with two teenaged children, has a 3-year TSR. He served 5 years in prison was released to the community on the TSR on September 2, 2000. He was required to report to the probation officer each month, but failed to do so in November 2000, March 2001, and June 2001. The probation officer determined that he was actually unemployed from May 3, 2001 through June 2001, having been laid off from work (an event he did not report to his probation officer). Also, some time in June 2001, he changed residence without advising the probation officer. On July 1, 2001, the probation officer requested a warrant for violation of the TSR. The court issued the warrant. Eight days later, the US Marshals executed the warrant. Mr. Jones was detained in a local county jail pending a revocation

hearing. In a revocation hearing before the court on August 1, 2001, the court found Mr. Jones in violation of three conditions of his release (monthly reporting, full employment, notifying the probation officer before changing residence). The court revoked the TSR. Mr. Jones has criminal history category of III. The court imposed a 9-month period of incarceration followed by a two-year of TSR.

III. THE FEDERAL BUREAU OF PRISONS - FACTS AND FIGURES

The BOP has experienced remarkable growth since 1980. Simultaneously, the primary function of the BOP changed, moving away from providing institutional programs intended to "rehabilitate" prisoners (indeterminate sentencing) toward the administration of safe, well-run institutions in line with the congressional mandate for a guideline-driven determinate sentencing model.

According to recent BOP data, the following data reflect their growth and contemporary profile⁸:

- a) The BOP population has grown as follows:
 - 1) 1980 - 19,023
 - 2) 1990 - 54,613
 - 3) 1995 - 85,865
 - 4) 2002 - 160,193
 - 5) 2003 - 165,005
- b) Today there are 102 institutions.
- c) 133,513 persons are in BOP facilities.
- d) 33,213 persons are in privately managed facilities.
- e) 13,467 persons are in non-BOP facilities (most likely contract halfway houses) at an annual cost of \$16,602.02 per inmate.
- f) 26,182 (19.6%) persons are in Minimum Security Level BOP facilities at an annual cost of \$22,176.18.
- g) 45,837 (34.3%) persons are in Low Security Level BOP facilities.
- h) 37,145 (27.7%) persons are in Medium Security Level BOP facilities.
- i) 15,352 (11.4%) persons are in High Security Level facilities.
- j) Ninety-three percent (93%) are males.
- k) Fifty-six percent (56%) are white (89,730).
- l) Forty-one percent (41%) are Black (65,398).
- m) Two percent (2%) are Native American.
- n) Thirty-two percent (32%) are Hispanic (50,711).
- o) Seventy-one percent (71%) are citizens of the U.S.
- p) Sixteen percent (16%) are citizens of Mexico.
- q) Sixty-two percent (62%) have sentences ranging from 3 to 15 years (89,767).
- r) Fifty-five percent (55%) are sentenced for drug

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offenses (77,791).

III. FEDERAL PROBATION SUPERVISION POPULATION

Today, roughly 8,000 probation and pretrial services officers serve 94 judicial districts in 500 locations. As of September 30, 2001, 104,410 persons are on supervision in the community (45 percent are substance abuse related)⁹. The annual cost of supervision is \$3,247.10 per offender¹⁰. The community-based supervision population is broken down by the following type of cases:

Parole (old law cases)	--	about 3,750 (an additional 2,606 are incarcerated moving toward release) ¹¹
TSR	--	about 69,000 ¹²
Probation	--	about 31,000 ¹³

It is anticipated that roughly 150,000 persons will be on Federal supervision by 2005. Parole and probation cases will diminish in number and percentage and TSR will increase in both number and percentage.

IV. REVOCATION RATES

Tracking revocation rates with precision by type, disposition, and where the offender actually serves the re-incarceration is not accomplished by a straightforward analysis of available data. The data tracking systems in the Administrative Office of the U.S. Courts (AOUSC) and the BOP do not yield a factual report or lend themselves readily to a deduction from the available data as to the effect of technical violations on the Federal prison population or under the jurisdiction of the BOP in a given year.

Technical revocations do not always result in re-incarceration in a Federal prison for different reasons. The following three scenarios are examples of revocations without re-incarceration in a Federal prison:

Case A - A probation officer requests a warrant from the court for a TSR offender for three positive urinalysis results for the use of marijuana and failure to report for two months as directed. The warrant is executed and the releasee is detained until a revocation hearing is held two months later. In the revocation hearing, the court extends the period of TSR by one year with added special conditions. Conceivably, the probation office could close the case by technical revocation, yet reinstate

supervised release. In any case, the releasee would not have returned to the BOP.

Case B - After 9 months on TSR, a supervised releasee is charged with violating three conditions of release - full employment, fine payment, and reporting to the probation officer each month. The court revokes her TSR, and imposes an 8-month period of incarceration. After the BOP gives the offender credit for four months in a local jail pending the revocation hearing, she is transferred to a local community confinement facility for two weeks, and thereafter placed on home confinement with electronic monitoring for 3½ months.

Case C - Six months into a 3-year TSR, an offender submits three positive urinalysis tests. At the probation officer's request, the court issues a warrant for violation of TSR on May 1, 2002. The warrant is executed on May 15, 2002, and the offender is detained without bond in the local county jail. A hearing on violation of TSR is held on July 15, 2002, at which the court revokes TSR and imposes a 4-month period of incarceration with credit for time served (two months), followed by the original 3-year term of TSR. From July 15, 2002 until September 15, 2002, the offender remains in the local county jail.

Contemporary supervision practices are replete with opportunities to find non-compliant behavior. Multiple special conditions of supervision, combining fines, restitution, home confinement, and substance abuse treatment are the norm, not the exception. For many, they may indeed serve as a tripwire back to prison.

Officers have the use of unprecedented investigative tools such as: online databases that include credit information, automobile tag numbers, criminal record information, and property ownership; polygraphs for sex offenders; and, onsite urinalysis testing equipment. In short, they are able to capture more investigative information more quickly, all of which add up to more information about non-compliance in varying degrees of severity.

But most importantly, of all Federal supervision cases, 31,365 (21%) persons on supervision receive substance abuse treatment and another 7,597 (7%) receive mental health treatment¹⁴. It is well documented that many, if not most addicts or persons with mental health problems, will relapse during some period of their recovery. The difference between predictable relapse and ongoing criminal

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conduct may be a difference without a distinction for practitioners.

Case law has clearly afforded the offender with the right to a full hearing before the court (or Parole Commission) for an adverse decision that could effect their freedom, such as revocation. Federal due process procedures provide for a probable cause and revocation hearing. The probation officer that supervised the case and petitioned a revocation hearing from the court has a vested interest in "winning" the public revocation hearing. The probation officer is ably represented by the government, the offender by the public defender, if unable to afford counsel. The hearing is formal with witnesses allowed. Often, the probation officer is cross-examined. The probation officer's recommendation for disposition may be influenced by the use of guidelines from the USSC, in the form of an advisory policy statement matrix on revocation decision-making (see Revocation Table).

Select Revocation Rates

The following data reflect the changing pattern of the number and type of revocation rates over time:

Year	Cases Closed by Revocation	Type	New Crime	Technical
1980 ¹⁵	2,451 (24%)	Parole	956	1,495
1985 ¹⁶	5,772 (21%)	Probation and Parole	1828	3,944
1992 ¹⁷	3,254 (34%)	Parole	1,025	2,229
1992 ¹⁸	2,307 (47%)	TSR	649	1,658
2001 ¹⁹	10,723 (28%)	Probation (1,574) Parole (377) TSR (4,718)	3,430	6,669

The scenarios below display the economic impact of re-incarcerating offenders for non-criminal technical violations of the special and standard conditions of supervision²⁰. Note, no attempt is made to distinguish between costs of confinement at low/minimum security prison facilities. Also, the costs of supervision are averages; more intensive inpatient treatment could raise the averages (see following table).

Case	Location of Post-Violation Experience	Annual Costs
#1	Medium security prison - 1 year	\$22,176
#2	6 months prison, 6 months Community Corrections Center (CCC)	\$19,389
#3	Community Corrections Center - 1 year	\$16,602
#4	6 months CCC, 6 months supervision	\$9,925
#5	Continued community supervision - 1 year	\$3,247

Expressed another way, if all of the 6,669 technical violators are incarcerated in Federal prisons for six months the cost is likely to be \$73,945,872. If 6,669 technical violators were housed in a local community correction center (CCC) for six months the costs are likely to be \$55,359,369. If 6,669 technical violators spend 3 months in a CCC and 3 months on community supervision, the annual costs would be about \$33,094,913. Finally, if the entire technical violator population spend the full year in the community on supervision the costs are likely to be around \$21,654,243 (with the above cited caveat regarding more expensive community treatment options).

And finally, if hypothetically, 2,663 technical violators of TSR were not incarcerated in Federal prisons annually, based on November 2002 population counts, the following prisons could be emptied:

Facility	Population as of 11/2002 ²¹
Danbury, CT, FCI	1,086
Phoenix, AZ, FCI	1,205
Talladega, FL, Camp	372

VI. OPTIONS AVAILABLE OTHER THAN INCARCERATION FOR TECHNICAL VIOLATIONS

Finding a safe alternative to reliance on incarceration for offenders who engage in technical violations of the standard and special conditions of supervision supports numerous worthy values and goals, some of which are:

- a) Reducing the growth rate for new prison construction.

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- b) Reducing the prison population.
- c) Reducing prison costs.
- d) Reserving prison space for high risk and violent offenders.
- e) Reducing the number of low level and minimum security offenders in prison who might represent a low risk of recidivism.
- f) Reducing the number of low level and minimum security offenders in prison who might represent a low risk of violence.
- g) Increasing the reliance on community-based intensive substance abuse treatment instead of prisons for relapse into substance abuse, including inpatient treatment therapeutic communities, residential treatment programs, halfway houses.
- h) Increasing the use of cost-effective and results driven alternatives to incarceration.
- i) Keeping offenders in the community, employed (paying taxes), and in proximity to families and dependent children.
- j) Increasing the community-based pro-social support systems (family, social services, faith-based communities, education, employment, treatment) while decreasing the daily association with anti-social allies (other inmates).

VII. ESSENTIAL ELEMENTS OF A PROBLEM-SOLVING REVOCATION PROCESS FOR TECHNICAL VIOLATORS

There is sound reason to continue the present due process procedures for a revocation hearing that is based on a new felony conviction. At the margin, however, are 624 revocations for offenders who had minor offenses, i.e., convictions for offenses with 90 days incarceration, 1-year probation or less, or a fine²². By contrast, due process procedures for technical violators (backed by USSC policy statement quasi-guidelines) may be unintentionally reinforcing an adversarial procedure that could be better served in a problem-solving venue. With a procedural shift, numerous opportunities emerge to solve the immediate problems presented by the offender without causing other more costly unintended consequences.

With procedural due process in place for revocation hearings that involve new criminal conduct, the threshold decision is whether this offender poses an explicit, demonstrable third party risk of harm to family members, community members, or authorities. If not, then offenders can be afforded the opportunity to waive their rights to a formal hearing in favor of a parallel problem-solving review process track. At its core, the process must diminish starkly the adversarial nature and tone of the procedure.

The reality that offenders have problems is a given.

The reality that probation officers have tried unsuccessfully to bring offenders into compliance with special and standard conditions within the context of the culture of their organization and their individual skills is also a given. One obvious conclusion is to broaden the community-based expertise and design a structured, yet tailored series of remedial behavioral steps toward stabilization. Subject matter experts within the probation office, defender services, non-profit organizations, community organizations, faith-based organizations, civic groups, substance abuse, domestic violence experts, all have a place in designing structured program options. Available community-based resources within a graduated sanctions scheme are a consideration.

Any structured program option should be built on a sound cost-benefit analysis that compares the potential alternative program option costs with those of incarceration. The analysis should include the realistic income potential of the offender based on demonstrated past employment lost in lieu of incarceration.

Program features should also entertain the impact on family and dependants of offender. There is substantial evidence that children of incarcerated parents are more likely to experience incarceration themselves.

VIII. LEGISLATIVE MANDATES

Most notably, California and Arizona have passed legislation designed to place low-level drug users in treatment programs rather than prison. Equally striking however, in 1997, Oregon implemented the Senate Bill 1145 that created a state/county partnership, transferring responsibility for all felons who were serving sentences of one year or less from the state to the counties with associated funding. The legislation mandated the formation of "Local Public Safety Coordinating Councils." One of the most immediate goals of one county, Benton County, Oregon, was to develop a process by which formal revocation hearings could be waived and the offender afforded a structured sanction review intended to solve the problem, rather than a knee-jerk back to prison. There is reason to believe the process has continued to reduce the number of persons in prison for technical violations. Finally, in the recent past, the state of Washington has legislatively mandated that offenders may not be revoked back into prisons short of a new felony conviction.

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Using Technology To Bring About Criminal Justice Reform™

by Mark A. Varca, Chief Information Officer,
WWW.FEDCURE.ORG

As Chief Information Officer of **FEDCURE.ORG**, my duties are to oversee and manage **FEDCURE.ORG**'s Information Technology (IT) development and operations.

In the past several months, **FEDCURE.ORG** has established a Pro Bono Web Masters Group (WMG), led by Becky Gruebmeier of St. Rita's Medical Center IS Department.*

The WMG completely redesigned the **FEDCURE.ORG** site. The newly designed site was up and running on the World Wide Web on 02 November 2002.

FEDCURE.ORG is building an IT infrastructure to accommodate its mandate: "Using Technology To Bring About Criminal Justice Reform™". We are not a copy, stuff, mail & phone operation. We are an Internet.ORGanization. We are **FEDCURE.ORG**.

As such, we are developing an Internet presence and employing the E-tools necessary to facilitate our business processes. That is, to process to resolution, in the most efficient manner, the myriad of reform issues **FEDCURE.ORG** handles on a daily basis regarding the Federal Criminal Justice System in the United States.

For example: The E-Government Act of 2002, signed into law this past December by President Bush, was passed to improve information services management and promote collaboration in IT projects, among a myriad of federal agencies. It creates an Office of E-Government within the White House Office of Management and Budget, which is designed to encourage accountability with regard to online government services. Most important, and paramount to **FEDCURE.ORG**'s operations, is that the legislation is slated to make it easier for the private sector to work collaboratively with the federal government by requiring that agencies post regulatory changes online.

What is even more important to **FEDCURE.ORG**, is that because federal agencies serve different constituencies and are responsible to different congressional committees, they tend to develop in line with particular interests. Therefore, it is imperative that **FEDCURE.ORG**'s Information Technologies interface transparently with the federal governmental system, in line with our

"Technical Violations" continued from page 28

IX. SUMMARY

Federal determinate sentencing legislation sought to punish offenders uniformly through incarceration based on guidelines. Legislation added public safety features to the community supervision experience. Subsequently, the number of technical violators without new criminal offenses in Federal prisons or under the jurisdiction of the BOP has increased. The number of technical violators incarcerated is significant and costly. Some practitioners believe that substance abuse is driving the number of technical violations. Finally, in counties and states that must bear the financial burden of incarceration for technical violators trends are emerging to develop innovative revocation procedures with community-based options that are results driven and cost effective. It may well be in the best interest of Congress to explore the intended and unintended consequences of contemporary policies and practices that drive revocation decisions in Federal courts today. A shift toward a problem-solving venue - rather than an adversarial model of revocation for technical violators of the conditions of release - has numerous advantages without risk of harm to the safety of the public.

Footnotes:

- 1) Administrative Office of the United States Courts, Year-in-Review Report, Fiscal Year 2001.
- 2) Wooten, Harold, B., Guest Editor, Federal Sentencing Reporter, Violation of Supervised Release: Erosion of a Promising Congressional Idea into Troubled Policy and Practice; Vol. 6, No. 4, January/February 1994.
- 3) The United States Sentencing Commission Guidelines Manual, Washington, D.C., 2001, page 373.
- 4) Ibid #3.
- 5) Ibid #3.
- 6) Ibid #3.
- 7) Ibid #3.
- 8) Federal Bureau of Prisons "Quick Facts", www.bop.gov.com, May 2002.
- 9) United States Probation and Pretrial Services System, Year-In-Review, Fiscal Year 2001.
- 10) Hughes, John M., Administrative Office of the United States Courts, Memorandum to all Chief Probation Officers, June 3, 2002.
- 11) United States Parole Commission Workload Profile, FY-2002.
- 12) Ibid #9.
- 13) Ibid #9.
- 14) Ibid #1.
- 15) Ibid #2.
- 16) Wooten, Harold B., "It's O.K., Supervision Enthusiasts: You Can Come Home Now!", Federal Probation Quarterly, 1985, 49 (4), 4-7.

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"Using Technology" continued from page 29

particular interests, if we are to be "In the loop" and an effective lobby on Criminal Justice Reform issues.

Another example is in the area of philanthropy or fundraising. According to a recent study by Kintera Inc., about two thirds of charitable donations made online are given during the workday. Averages of 48 per cent of those online donations are made between 10:00 a.m. and 3 p.m. In part, this is a sign that charitable organizations are increasingly embracing Information Technology. Accordingly, look to see a dramatic increase of e-philanthropy solicitations in your E-mail in box, **FEDCURE.ORG** included.

The "Holy Grail" so to speak, among today's criminal justice reform activist groups, is to have the ability to raise funds electronically (E-funding) and to lobby their elected and appointed governmental officials electronically on criminal justice reform matters (E-lobby.)

FEDCURE.ORG is on the frontier and on the leading edge in developing such a system. In the past several months, **FEDCURE.ORG** has made a number of remarkable accomplishments. Along with philanthropic supporters, **FEDCURE.ORG** has embarked on an ambitious IT project to become the world's premier electronic forum for the exchange and processing of information concerning the federal criminal justice system in the United States. Stay tuned.

* Ms. Gruebmeier also freelances at her IT shop at: Carefree Spirit Consulting and Design, <http://www.cfspirit.com>.

"Using Technology To Bring About Criminal Justice Reform"TM

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Action Alerts

In January 2003, **WWW.FEDCURE.ORG** issued an Action Alert on its website for inmate Eduardo Mantilla who suffers from coronary artery disease. The following letter was received from Mr. Mantilla's daughter, Cathy Falkerberg.

Dear Karen and all members of Federal CURE,

On behalf of my father, Eduardo Mantilla, and my entire family, I wanted to personally thank you for your fervent work and dedication to justice. Since the evening of January 9, when my phone call reached your home, you have been a source of support, compassion and ultimately responsible for getting the BOP Medical staff to agree to transfer my father to the medical facility in Rochester, Minn.

I do not know yet if he has been transported there as of this afternoon, but am hopeful the BOP will do what is right and provide him the proper medical care from this point forward. I will certainly keep you up to date on his progress.

I am truly amazed and sincerely indebted to how quickly you and your organization were able to mobilize and affect the necessary change in the manner in which Federal Bureau of Prisons was handling my father's precarious medical condition. Thank you.

Most sincerely,

Cathy Falkenberg
§

"Technical Violations" continued from page 29

- 17) Ibid #2.
- 18) Ibid #2.
- 19) Annual Report of the Director, Administrative Office of the United States Courts, Washington, D.C., Table E-7, September 30, 2001.
- 20) Ibid #10.
- 21) Weekly Population Report, Federal Bureau of Prisons, November 7, 2002.
- 22) Ibid #19.

Harold. B. Wooten, President, Wooten Associates. Mr. Wooten is a consultant on criminal justice issues and the former Chief of Operations of the Federal Probation System. (Wooten assoc@aol.com) §

National CURE on WWW.FEDCURE.ORG

by Charles Sullivan [cure-usa@erols.com]

Federal CURE is one of the issue chapters of National CURE. An issue chapter is national in membership and focuses on a specific area. The area for Federal CURE is the federal correctional system.

Federal CURE is one of six issue chapters. The others focus on helping prisoners who are (1) from other countries (2) on death row and (3) serving life sentences. The final two seek to provide (4) effective treatment for sex offenders and (5) aid ex-prisoners who still have restrictions on employment.

There are also over 30 state chapters. To belong to CURE, one has to pay a membership fee of an issue or state chapter.

Every issue and state chapter has one representative on the National CURE Board of Directors. The Board meets annually and votes on the policy and positions of the entire organization.

Every other year at this meeting a three-person Executive Committee is elected from the Board and by the Board. This Executive Committee applies the policy and positions to the daily operation of the organization.

The Board also hires an executive director and administrator. The staff implements the policies and positions of the Board and the Executive Committee.

Last October, the annual meeting was held in San Antonio. Next November, the Board will meet in Des Moines, Iowa. §

"ABA" continued from page 12

where the grounds advanced by a prisoner for sentence reduction relate to some non-medical circumstance outside the expertise and interest of prison officials. Accordingly, we recommend that jurisdictions consider alternative ways of administering sentence reduction mechanisms that would relieve prison officials of a gatekeeper function that they evidently regard as inappropriate and even compromising. In addition to placing actual authority to reduce a sentence in a court or separate administrative body, consideration should be given to allowing individuals direct access to the decision-making authority.

9. The legislative history of the federal sentence reduction statute describes it as a "safety valve" to be used in unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of severe illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, and some cases in which the sentencing guidelines for the offense of which the defend[ant] was convicted have been later amended to provide a shorter term of imprisonment.

*S. Rep. No. 225, 98th Cong., 1st Sess. 37, 55. Regulations published by BOP implementing this authority contemplate that it will be used in non-medical cases. See 28 C.F.R. §§ 571.61, 571.62. Regulations implementing an earlier formulation of this sentence reduction authority, 18 U.S.C. § 4205(g), specifically provide that BOP could use the statute "in particularly meritorious or unusual circumstances which could not reasonably have been foreseen by the court at the time of sentencing," such as "if there is an extraordinary change in an inmate's personal or family situation or if an inmate becomes severely ill." 28 C.F.R. §§ 579.40(a), (b). See also *Turner v. United States Parole Commission*, 810 F. 2d 612, 617 (7th Cir. 1987)(§ 4205(g) regulations "only very loosely identifi[y] the classes of cases that the Bureau may review for possible motions," and "reveal the Bureau's retention of the entire discretion granted to it under the statute."). The legislative history of § 3582(c)(1)(A) indicates that its authority was intended to be at least as broad as the authority in § 4205(g), and perhaps broader. See *S. Rep. No. 225, supra*. This seems appropriate in light of the limitations placed by the guidelines on a sentencing court's ability to consider a defendant's personal circumstances, and the elimination of parole.*

10. This phrase is taken almost verbatim from the statutory provision directing the United States Sentencing Commission to develop policy guidance for sentencing courts in considering motions made by the Director of BOP under 18 U.S.C. § 3582(c)(1)(A). See 28 U.S.C. § 994(t).

This ABA report and recommendation was shared with FedCURE by Margaret Love of Asbill Moffitt & Boss, Chartered, 1615 New Hampshire Avenue, NW Suite 200, Washington, DC 20009. §

"Observations" continued from page 18

friends during this time. Regardless of what you decide to do, give it your best shot.

Whatever you choose to do must be right for you and your family. You must do what is appropriate for you in your situation. Remember that the avoidance of shame may actually lead to a much less comfortable situation than you would find yourself in if you were open and honest in the first place. Hold your head high. You have made a mistake and you will pay a price for that mistake. You are taking all of the steps to clear your name, pay your debt, and restore your place in society. You have nothing to be ashamed of. Don't let anyone tell you different.

If any of you reading these accounts would like to share your story for the next edition of the FedCURE newsletter, please mail it to Federal CURE, Inc. Attn: Newsletter, P.O. Box 153, Reynoldsburg, Ohio 43068 or email it to FedCURE at director@fedcure.org. §

Membership dues are currently 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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Rehabilitation of Errants

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*Federal Prison Chapter Serving
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Name:	
Inmate Number (if applicable):	
Organization Name:	
Address 1:	
Address 2:	
City/State/Zip:	
Phone Number:	
Fax Number:	
E-Mail Address:	

Type of Membership: (check one box below
and include that amount with the application)

	<input type="checkbox"/> Inmate \$5 (12 postage stamps)	<input type="checkbox"/> Individual \$20	<input type="checkbox"/> Family \$25	<input type="checkbox"/> Life \$100
Tax Deductible Contribution	<input type="checkbox"/> \$200	<input type="checkbox"/> \$500	<input type="checkbox"/> \$1,000	<input type="checkbox"/> \$5,000

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