

# SECURING A FAVORABLE FEDERAL PRISON PLACEMENT

There is a 97 percent likelihood that your federal criminal client is going to wind up in front of a sentencing judge. There is also an 80 percent likelihood he will go to prison.<sup>1</sup> That's why for many federal criminal defendants, where they do their time can be almost as important as how much time they'll do. Although it is the policy of the Bureau of Prisons (BOP) to place an individual in the least restrictive facility for which he or she qualifies which is within 500 miles of the inmate's "release residence," many inmates end up serving their time far from their families and under harsher conditions than necessary. It doesn't have to be that way. There is a lot a defense attorney can do to ensure that his or her clients do their time in the best possible facilities. First, defense attorneys need to understand how the Bureau of Prisons classifies its facilities, and the characteristics of each type of facility. Second, defense attorneys need to understand how the BOP decides what type of prison is appropriate for a particular defendant. Finally, defense attorneys need to know what to do to increase the chances that their clients will be sent to the prisons they want.

## Federal Prison System

The federal prison system's 96 institutions are divided into five categories: minimum, low, medium, high (the most secure) and administrative.

Minimum level security institutions, commonly called "federal prison camps," are designed for offenders who do not pose a risk of violence or escape. According to Bureau statistics, approximately 25 percent of all inmates are housed in minimum level security facilities. Most individuals want to be designated to a federal prison camp because of the lack of violence and what they perceive to be better conditions of confinement. Minimum security institutions have dormitory housing, a relatively low staff-to-inmate ratio, and limited or no perimeter fencing. These institutions are work- and program-oriented; and many are located adjacent to larger institutions or on military bases, where inmates help serve the labor needs of the larger institution or base. While prisoners are theoretically free to "walk away" from these facilities, few of them do, because inmates who escape from prison camps and are recaptured face severe consequences. In addition to being prosecuted for escape, such inmates serve the rest of their time in more secure (and therefore harsher) facilities, and have less hope of ever serving any portion of their time in halfway houses.

Low security Federal Correctional Institutions (FCIs) have double-fenced perimeters, mostly dormitory or cubicle housing, and strong work and program components. The

BY ALAN ELLIS, J. MICHAEL HENDERSON, & JAMES H. FELDMAN, JR.

staff-to-inmate ratio in these institutions is higher than at minimum security facilities.

Medium security FCIs have strengthened perimeters (often double fences with electronic detection systems), mostly cell-type housing, a wide variety of work and treatment programs, an even higher staff-to-inmate ratio than low security FCIs, and even greater internal controls.

High security institutions, also known as United States Penitentiaries (USPs), have highly-secured perimeters (featuring walls or reinforced fences), multiple- and single-occupant cell housing, the highest staff-to-inmate ratio, and close control of inmate movement.

Administrative facilities are institutions with special missions, such as the detention of pretrial offenders; the treatment of inmates with serious or chronic medical problems; or the containment of extremely dangerous, violent, or escape-prone inmates. They are capable of holding inmates in all security categories. Administrative facilities include Metropolitan Correctional Centers (MCCs), Metropolitan Detention Centers (MDCs), Federal Detention Centers (FDCs), and Federal Medical Centers (FMCs), as well as the Federal Transfer Center (FTC), the Medical Center for Federal Prisoners (MCFP), and the Administrative-Maximum (ADX) U.S. Penitentiary.

A number of BOP institutions belong to Federal Correctional Complexes (FCCs). At FCCs, institutions with different missions and security levels are located in close proximity to one another. FCCs increase efficiency through the sharing of services, enable staff to gain experience at institutions of many security levels, and enhance emergency preparedness by having additional resources within close proximity.

### How the BOP Designation Process Works

Once the U.S. Marshal receives a copy of the judgment in a criminal case (formerly called the judgment and commitment order) from the court or clerk, he or she requests a designation from the BOP's local Community Corrections Management (CCM).<sup>2</sup> The judgment generally includes any recommendation by the sentencing judge with respect to place of confinement. The U.S. Marshal also sends form USM-129 to the CCM, identifying the custody status of the individual and how much time, if any, he or she has served. The U.S. Probation Officer provides a copy of the

Presentence Investigation Report (PSI) to the CCM.

### Scoring By The CCM

The designation of an inmate to a specific institution is governed by Bureau of Prisons Program Statement 5100.07. First, someone in the local CCM office "scores" the defendant to determine his or her security level. To score an individual, the CCM considers various factors, including: (a) existence and type of detainer, (b) severity of current offense, (c) months to release, (d) type of prior commitments, (e) history of escapes or attempts to escape, (f) history of violence, and (g) pre-commitment status.<sup>3</sup>

Although most factors a CCM office considers raise a defendant's score (and potentially the security level), a court order permitting the defendant to voluntarily surrender to the designated institution can actually *lower* a defendant's score by three points. This factor can sometimes make the difference between a defendant's being designated to a camp or a low-security institution.

Additionally, voluntary surrender spares your client the unpleasantness of being shackled and transferred via "con air" aboard the U.S. Marshal Service prisoner transport aircraft, or bussed. Bussing, known as "diesel therapy" by inmates, can often take weeks. Defense counsel should therefore request voluntary surrender whenever they think there is a possibility that the court will grant it.

Next, the CCM determines whether Public Safety Factors (PSFs) apply. A PSF that applies to your client will rule out a prison camp designation — even if he or she would have otherwise qualified for one. Public Safety Factors are so important in the designation process that we have described them in detail below. Public Safety Factors can be waived — but only by the applicable BOP regional director.<sup>4</sup>

Finally, the CCM considers whether there are any medical factors which might affect designation. Indeed, this is a new wrinkle to the question of where within the BOP a client may be designated. Although neither an Operations Memorandum nor a revised Program Statement has been issued, the BOP has begun to employ a four-level scale in the designation process that seeks to correlate prisoners' perceived medical needs to resources both at institutions and in their corresponding communities. The BOP has already started classifying inmates according to medical needs and initiating redesignation to facilities commensurate with those needs.

An inmate now not only has a security level, but also a medical level, both of which will be considered in determining a facility for service of sentence. Level 1 prisoners are characterized as healthy (overall), requiring only emergency medical care. Level 2 prisoners may have chronic conditions under good control and can manage independently with quarterly status reviews (e.g., an asthma condition controlled by prisoner-held inhaler, or high blood pressure/high cholesterol controlled through medication). "Fragile" persons are classified as Level 3. These are inmates who need assistance with daily living activities and monthly clinical evaluations, such as inmates with cancer who need oncology follow-ups, brittle diabetics, problematic asthmatics, and inmates with chronic conditions not well controlled with medication. Finally, prisoners who require daily nursing care, or who have intractable chronic conditions, are classified Level 4. Level 4 is the same as the current Medical Referral Center placement.

The BOP has also established corresponding levels for facilities beyond those related to security concerns. Level 1 institutions are located approximately one hour or more from community medical centers, or are in communities with limited medical care facilities. (Manchester, Kentucky, which is two hours from Lexington, is an example of a Level One institution.) Lee, Virginia, and Yazoo City, Mississippi, are also Level 1 facilities. Level 2 institutions have no special capabilities beyond those that health services staff ordinarily provide; but they are within about an hour of major regional treatment centers. Fort Dix and Fairton, New Jersey, are examples of Level 2 facilities. Most BOP facilities will be classified as Care Level 2 facilities and will function essentially like most BOP facilities function now. Level 3 institutions may be located adjacent to Level 4 institutions (i.e., federal medical centers), such as FPC Lexington, Kentucky, FCI Butner, and FPC Devens, Massachusetts, or they may be facilities with greater medical capabilities (e.g., FCI Fort Worth, or FCI Terminal Island). To date, the only level three facilities identified are FCI Butner, FCI Forth Worth, and FCI Terminal Island.

#### Public Safety Factors

*Disruptive group.* This PSF applies to male inmates who are belong to a "disruptive group." Inmates with this PSF are always housed in high-level security level institutions, unless the PSF has been

waived. A “disruptive group” is a prison gang that has been identified by prison staff and certified by the BOP as engaging in illicit activities within the BOP and/or being disruptive to the internal operation of the BOP. Organized crime groups like La Cosa Nostra, which operate outside the prison environment, are not “disruptive groups” as defined by the PSF, unless they meet these criteria.

#### *Greatest Severity Offense.*

This PSF applies to male offenders whose current term of confinement falls into the “greatest severity” range according to the offense severity scale in Appendix B to Program Statement 5100.07. An inmate with this PSF is housed in at least a low-level security institution, unless the PSF has been waived.

Greatest severity offenses include:

- aircraft piracy
- arson
- assault (serious bodily injury intended or permanent or life-threatening bodily injury resulting)
- car-jacking
- certain drug offenses — but only if the defendant was a manager or owner of large-scale drug activities (*i.e.*, drug activities involving drug quantities in excess of 10 kilograms of cocaine, 31 grams of crack, 250 kilograms of hashish, 620 kilograms of marijuana, 2 kilograms of heroin, 17 kilograms of methamphetamine, 20,000 dosage units of PCP, and 250,000 dosage units of amphetamine, barbiturates, LSD or other illicit drugs). Just because your client is involved in large-scale drug activity does not mean that the offense is considered “greatest severity.” That appellation is reserved for “ring leaders” and the heads of widespread, large-scale drug organizations who, because of their resources and criminal activities, may not be considered by the BOP as appropriate for initial placement in open, minimum security camps. For example, in a drug case involving more than 10 kilograms of cocaine or 620 kilograms of marijuana, the CCM will look at the role in the offense portion of the PSI to see if there’s any upward adjustment under United States Sentencing Guideline section 3B1.1. If not, the offender will generally not be treated as a greatest severity offender.

If your client receives a mitigating role under USSG § 3B1.2, he or she will not qualify for the greatest severity PSF. Similarly, if the sentencing judge finds that your client’s guideline offense level should not be enhanced under USSG

§ 3B1.1 for an aggravating role, make sure that the PSI is corrected and/or that the judge issues findings pursuant to Rule 32(c)(1) of the Federal Rules of Criminal Procedure. When it is a close call whether this PSF applies, a finding by the sentencing judge (try getting the government to concede this) and/or a notation on the judgment in the criminal case that the defendant was not part of an organizational network and did not organize or maintain ownership interest/profits from large-scale drug activities will help avoid this PSF.

- escape from a closed institution or secure custody through the use of force or weapons

- espionage, including treason, sabotage or related offenses

- the use or possession of explosives involving risk of death or bodily injury

- extortion by weapons or threat of violence

- homicide or voluntary manslaughter

- kidnapping involving abduction, unlawful restraint, or demanding or receiving ransom money

- robbery

- sexual offenses, including rape, sodomy, incest, carnal knowledge, or transportation with coercion or force for commercial purposes

- use of toxic substances or chemicals as weapons to endanger human life

- distribution of automatic weapons or exporting sophisticated weaponry, or brandishing or threatening use of a weapon

*Sex Offender.* This PSF applies to male or female inmates whose current offense behavior or prior criminal history includes one or more of the elements listed below. An inmate with this PSF is housed in at least a low-security institution, unless the PSF has been waived. A defendant need not have a sex-offense conviction for this PSF to apply. For example, if a sex offense was dismissed as a result of a plea bargain, the BOP will apply this PSF if the PSI documents the behavior that triggers it.

Any of the following offense elements (or attempts to commit any of them) can trigger the “sex offender” PSF:

- engaging in sexual conduct with another person without obtaining permission (examples include forcible rape, sexual assault or sexual battery);

- possession, distribution or mailing of child pornography or related paraphernalia;

- any sexual contact with a minor or other person physically or mentally inca-

pable of granting consent (examples include indecent liberties with a minor, statutory rape, sexual abuse of the mentally ill, and rape by administering a drug or substance);

- any sexual act or contact not identified above that is aggressive or abusive in nature (examples include rape by instrument, encouraging use of a minor for prostitution purposes, and incest).

Application of this PSF is also required if a defendant’s current offense is referenced in the Sex Offender Notification and Registration Program Statement, or if it involves a violation of any of the following statutes: 18 U.S.C. § 2241, 18 U.S.C. § 2242, 18 U.S.C. § 2243, 18 U.S.C. § 2244, 18 U.S.C. § 2251, or 18 U.S.C. § 2252.

*Threat to Government Officials.* An inmate who is a threat to government officials is housed in at least a low-level security institution, unless the PSF has been waived.

*Deportable Alien.* This PSF applies to inmates who are citizens of foreign countries. An inmate with this PSF is housed in at least a low-level security institution, unless the PSF has been waived. The BOP will not apply this PSF if the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security (formerly the Immigration and Naturalization Service) or an immigration judge has determined that deportation proceedings are unwarranted. If this PSF applies, the BOP will not waive it unless an inmate meets each of the following criteria:

(a) Documented and/or independently verified history of stable employment in the United States for at least three years immediately prior to incarceration. “Stable employment” means full-time (40 hours a week) work. Part-time or seasonal work prior to incarceration does not meet this criterion.

(b) Verified history of domicile in the U.S. (*i.e.*, five or more consecutive years immediately preceding the inmate’s incarceration for the current term of confinement). In other words, if an inmate was arrested and detained in March 1993 on his current conviction and was in the United States between 1980 and 1984, and again between 1992 and 1993, a PSF for deportable alien would be applied since the five years were not consecutive and did not immediately precede the incarceration.

(c) Verified strong family ties in the United States. This criterion considers ties with the defendant’s “immediate

family” — *i.e.*, the defendant’s mother, father, step-parents, foster parents, brothers and sisters, spouse, and children. The word “spouse” includes a common-law relationship which has previously been established in a state which recognizes common-law marriage. If your client is not from such a state, then the BOP will not consider a partner to be “immediate family.” Defense counsel should consult with BOP regional counsel to determine the application of state laws in this context.

**Sentence Length.** A male offender with more than 10 years remaining to be served will be housed in at least a low security facility, unless this PSF has been waived. A male offender with more than 20 years remaining to serve will be housed in at least a medium-security facility, unless the PSF has been waived. A male offender with more than 30 years remaining to serve (including non-parolable life sentences) will be housed in a high-security facility, unless the PSF has been waived. This rule does not mean that a defendant who receives a 12 year (*i.e.*, 144 month) sentence would necessarily be ineligible for a prison camp. First, the BOP does not look to the *sentence* the defendant received to determine whether this PSF applies — it looks to the time a defendant has left to serve. After expected good-time credit is subtracted, a sentence of 144 months results in approximately 123 months to serve ( $144 \times .85 = 122.4$ ). While this might still leave more than 10 years to serve, if the defendant has already served more than three months in pre-trial confinement, he may have less than 10 years to serve following designation, and may therefore be eligible for a federal prison camp.

**Violent Behavior.** This PSF applies to a female inmate whose current term of confinement or history involves two convictions (or findings of commission of a prohibited act by a BOP disciplinary hearing officer) for serious incidents of violence which occurred within the last five years. Such defendants are assigned to the Carswell Administrative Unit, FMC Carswell, Texas, unless the PSF has been waived.

**Serious Escape.** This PSF applies to male and female inmates. It applies to female inmates who have been involved in “serious escapes” within the last 10 years, including the current term of confinement. Such inmates are assigned to the Carswell Administrative Unit, unless the PSF has been waived. It applies to male inmates who have escaped from

secure facilities with or without threats of violence or who have escaped from open institutions or programs with a threat of violence. Such inmates are housed in at least medium-level security institutions, unless the PSF has been waived.

**Prison Disturbance.** This PSF applies to male or female inmates who have been involved in more than one serious incident of violence within an institution and have been found guilty of one or more of certain prohibited acts, such as engaging in or encouraging a riot. Male inmates with this PSF are housed in a high-level security institutions, unless the PSF has been waived. Female inmates with this PSF will be assigned to the Carswell Administrative Unit, unless the PSF has been waived.

**Juvenile Violence.** This PSF applies to current male or female juvenile offenders with any documented single instance of violent behavior, past or present, which resulted in a conviction, a delinquency adjudication, or finding of guilt. For purposes of this PSF, “violence” is defined as aggressive behavior causing serious bodily harm or death, or aggressive or intimidating behavior likely to cause serious bodily harm or death (*e.g.*, aggravated assault, intimidation involving a weapon, or arson).

**Serious Telephone Abuse.** This PSF applies to male or female inmates who have used a telephone to further or promote criminal activities. An inmate need not have been convicted of this criminal activity so long as it is documented in the PSI or other official report. Not every inmate who has used a telephone to commit a crime will be assigned this PSF. However, some while collar offenders who would otherwise be camp eligible will not be. Defense counsel should consult BOP Program Statement 5100.07 to determine its applicability to a particular client. An inmate assigned this PSF must be housed in at least a low security level institution, unless the PSF has been waived. Any offender who is assigned the Serious Telephone Abuse PSF may also have his or her use of the telephone at Bureau of Prisons institutions restricted.

### Assignment To An Institution By The Designator

Once the CCM has scored an individual and applied any PSFs, it transmits this information to the regional designator via computer.<sup>5</sup> The computer system generates a list of the appropriate security level facilities in order from closest to furthest

to the inmate’s release residence. The designator then assigns an institution, considering any PSF, sentence limitations, management variables, central inmate monitoring (CIM) information, any judicial recommendation, medical care level, and bed space availability at the institutions.

### Management Variables

Management Variables (MGTVs) are factors which can trump a defendant’s security score or PSF, and are generally imposed by the designator. Management variables include:

**Greater Security.** When the Bureau of Prisons believes that an offender represents a greater security risk than the assigned security level would suggest, it may apply this Management Variable and place the inmate in an institution with a higher security level. The BOP typically applies this MGTV to offenders with lengthy prior arrest records but few convictions, non-violent offenders who have a history of poor adjustment under probation or community supervision, offenders with a history of organized crime involvement, offenders with significant foreign ties and/or financial resources, and offenders who have had disciplinary problems during prior incarceration. Inmates who receive this MGTV are placed one security level higher than their score would otherwise require.

- **Lesser Security.** When the Bureau of Prisons concludes that an offender represents a lesser security risk than his or her scored security level would suggest, it can apply this MGTV to place him/her in an institution outside normal guidelines.

- **Judicial Recommendation.** Occasionally, the BOP will rely on a judicial recommendation to apply a MGTV to place an inmate in a higher or lower security level than his or her score would otherwise require.

- **Release Residence.** Occasionally, the BOP will assign an inmate to an institution because it is close to his “release residence,” even though the inmate’s score would normally require an institution with a different security level. Generally, this MGTV will be applied to assign an inmate to a higher security level institution, although in theory it can work both ways.

- **Population Management.** Sometimes the BOP will place an inmate in an institution with a higher security level,

because the lower security level institutions for which the inmate qualifies are overcrowded. When it does, it applies this MGTV.

- *Central Inmate Monitoring Assignment.* Some inmates need to be monitored or separated from others. Sometimes these special management concerns limit the options for placement. When this happens, the BOP applies this MGTV to permit placement outside normal guidelines.

- *Medical or Psychiatric.* The BOP will apply this MGTV when an inmate needs medical/psychiatric treatment that is available only in an institution outside his or her security level.

- *Work Cadre.* At secure facilities without satellite camps, the Regional Director may authorize a certain number of work cadre inmates to perform work outside the perimeter of the institution. When such a placement is outside normal security level scoring guidelines, the BOP will apply this MGTV to allow the inmate to participate in the work cadre.

### Central Inmate Monitoring Information

Central Inmate Monitoring (CIM) information determines whether a particular inmate needs to be separated from other inmates for any reason — such as because one may have testified against the other. The Assistant U.S. Attorney who prosecuted the case generally communicates this information to the BOP. These inmates are called “separates.”

### Judicial Recommendations

A judge’s recommendation of a particular BOP facility is just that — a recommendation. Some judges mistakenly think that the BOP doesn’t follow their recommendations. While they are not binding on the Bureau, the BOP actually follows judicial recommendations over 85% of the time. In fact, the BOP is required to consider a judge’s recommendation. See 18 U.S.C. § 3621(a)(4)(B). When the BOP fails to follow a judicial recommendation, it is often because the judge had recommended an institution for which the defendant did not qualify. For example, when a judge recommends a violent offender for a federal prison camp, the BOP will not honor that recommendation. But when the individual qualifies for placement in the institution recommended by the sentencing judge, the Bureau will make every effort to honor the judge’s rec-

ommendation. Some designations actually require a judicial recommendation. For example, designation to the Bureau of Prisons Sexual Offender Treatment Program at FCI Butner requires one.

With increasing frequency, prison overcrowding is making judicial recommendations *with reasons in support* even more important. If there is only room for a few additional inmates at a particular institution, an inmate with a judicial recommendation which explains why the judge recommended the particular institution is more likely to be selected for one of the available slots than is an inmate with an unexplained judicial recommendation. Similarly, an inmate with an unexplained recommendation is more likely to get a slot than is an inmate without any recommendation at all.

In accordance with Rule 38(b) of the Federal Rules of Criminal Procedure, when the court of conviction recommends that the inmate be retained in a place of confinement which will allow the inmate to participate in the preparation of the appeal, the BOP will make every effort to place the inmate in such a facility. If there is a reason not to place the inmate in that facility, the BOP calls the matter to the attention of the court and attempts to arrive at an acceptable place of confinement.

### After An Inmate Is Designated

Once a designation is made, the information is communicated to the U.S. Marshal. If the client is not incarcerated, the Marshal directly informs the client of the designation. If the client is incarcerated at a federal institution, the client may be able to obtain that information from a staff member, who can obtain it from the Marshal. (Staff are not required to provide this information to an inmate, but some will.) If the client is in a non-federal facility, he or she may not be able to obtain this information from institution staff, because they are not privy to the computer used by the BOP and the U.S. Marshal Service. If the client is unable to obtain this information, defense counsel may be able to obtain it from the Marshal. (The Marshal is not required to disclose that information, but some will.) Unfortunately, under strict BOP policy, the Bureau will not release this information to anyone other than the Marshal — not even to the defendant’s attorney.

### The Role Of Defense Counsel In Prison Placement

There are four things defense counsel can do to ensure that a client serves

time in the best possible facility. First, counsel should ensure the accuracy of the information on which the Bureau will rely to make its designation decision. Second, counsel should score the client and search for PSFs to determine the appropriate security level. Third, counsel should consult with the client to determine which facility at the appropriately-calculated security the client prefers and then ask the sentencing judge to recommend that facility to the BOP as well as to provide reasons in support of that recommendation. Counsel should, of course, suggest reasons as part of his or her request. Finally, counsel should, in appropriate cases, request self-surrender.

The most important thing that defense counsel can do to ensure designation to the lowest security prison possible is to make sure that any inaccurate information in the PSI is corrected. The Bureau of Prisons relies almost exclusively on the information contained in the Presentence Investigation Report to decide where a defendant will do his or her time — as well as to make other important correctional decisions (such as whether a defendant is eligible for the Bureau’s Residential Drug Abuse Program — “RDAP”).<sup>6</sup> It is for good reason that the PSI is known as the “bible” by prisoners and BOP staff alike.

If defense counsel objects to inaccurate information at the time of sentencing and the judge sustains those objections, defense counsel must make sure that the PSI is corrected before it is sent to the BOP or, at a minimum, that formal findings are made by the judge pursuant to Fed.R.Crim.P. 32(c)(1) and attached to the PSI before it is forwarded to the Bureau. A finding made in the judgment in a criminal case will also suffice.

For example, if the PSI incorrectly states that your client has a history of aggressive sexual behavior, even when it’s not part of the conviction offense, he or she will not go to a federal prison camp despite what the otherwise calculated score might indicate or the judge recommends. Similarly, if the PSI shows open, undisposed cases, these could be scored as a detainer (even if a formal detainer has not been filed at the time of initial designation). This information must be corrected if it is inaccurate.

It is also important for defense counsel to make sure that the PSI adequately documents any drug (illegal as well as prescription) abuse or alcoholism. Many defense lawyers and defendants tend to downplay substance abuse problems, under the mistaken belief that

revealing such problems can harm the client. Unless a client's substance abuse problem is adequately documented in the PSI, he or she may not qualify for the Bureau's Residential Drug Abuse Program (RDAP) and will not get the chance to earn up to a one-year reduction in sentence pursuant to 18 U.S.C. § 3621(c)(2), which permits such a reduction for nonviolent inmates who successfully complete a residential drug treatment program in a BOP facility.

Attorneys often try to magnify their client's health problems in hopes of gaining sympathy from the sentencing judge. A focus on mental or physical problems can be warranted if it supports an argument for a lower sentence based either on Guideline Program Statements such as USSG § 5H1.3 (p.s.) (mental and emotional conditions "not ordinarily relevant") and § 5H1.4 (physical condition "not ordinarily relevant"), or the non-

guideline factors 18 U.S.C.

### Notes

1. According to Department of Justice statistics, 93.6% of federal criminal cases result in a guilty plea; 75.6% of the defendants who go to trial are convicted, and 82.8% of convicted offenders receive a prison term.

2. There is a Community Corrections office in every judicial district.

3. The forms which list these factors (one for male and one for female inmates) are part of BOP Program Statement 5100.07, which can be found at [http://bop.gov/policy/progstat/5100\\_007.pdf](http://bop.gov/policy/progstat/5100_007.pdf).

4. The Bureau has divided the country into six geographical regions. Each region is headed by a regional director.

5. Centralized BOP designations are being phased in this year. The responsibility for designation of offenders sentenced in the North Central region has now officially

been transferred to the new centralized location in Grand Prairie, Texas. It is anticipated that all designations will be centralized by May 2006. The BOP will notify other Federal agencies (i.e., U.S. Probation, U.S. Marshals, Federal Courts) in the five remaining regions 45 days prior to transferring designations to the Texas location. The Mid-Atlantic and Southeast regional offices of the BOP no longer have full-time Designator staff positions. The phone number for the new centralized designation site is 972-352-4200.

6. For more information on the RDAP program, see Alan Ellis and J. Michael Henderson, "Getting Out Early: BOP Drug Program," *Criminal Justice* (Summer 2005); and Alan Ellis and J. Michael Henderson, "Reducing Recidivism: The Bureau of Prison's Comprehensive Residential Drug Abuse Program," found at <http://alanellis.com/CM/Publications/reducing-recidivism.pdf>. ■

### About the Authors

Alan Ellis, a past president of the National Association of Criminal Defense Lawyers (1990-1991), is a nationally recognized authority in the fields of plea negotiations, sentencing, appeals, parole and prison matters, *habeas corpus* 2241 and 2255 petitions and international prisoner transfer treaties. With offices in San Francisco, Philadelphia, and Bangkok, Ellis has successfully represented federal criminal defendants and prisoners throughout the United States and abroad. He is the publisher of three highly acclaimed guidebooks: the *Federal Sentencing Guidebook*, the *Federal Post Conviction Guidebook* and the *Federal Prison Guidebook*. Ellis also publishes "Federal Sentencing and Post Conviction News." He has recently authored several articles on the United States Supreme Court's decision in *United States v. Booker*.



Alan Ellis, a past president of the National Association of Criminal Defense Lawyers (1990-1991), is a nationally recognized authority in the fields of plea negotiations, sentencing, appeals, parole and prison matters, *habeas corpus* 2241 and 2255 petitions and international prisoner transfer treaties. With offices in San Francisco, Philadelphia, and Bangkok, Ellis has successfully represented federal criminal defendants and prisoners throughout the United States and abroad. He is the publisher of three highly acclaimed guidebooks: the *Federal Sentencing Guidebook*, the *Federal Post Conviction Guidebook* and the *Federal Prison Guidebook*. Ellis also publishes "Federal Sentencing and Post Conviction News." He has recently authored several articles on the United States Supreme Court's decision in *United States v. Booker*.

#### Alan Ellis

910 Irwin St.  
San Rafael, CA 94901  
415-460-1430  
Fax 415-460-1630  
E-MAIL [aelaw1@aol.com](mailto:aelaw1@aol.com)

J. Michael Henderson is a federal prison consultant to the Law Offices of Alan Ellis. Henderson has over 23 years of experience working with the Bureau of Prisons. He served as the Regional Designator for the Western Region in the early 1990s, and from 1997 until his retirement in 2000. His duties included oversight of the BOP classification of newly-sentenced federal offenders in the western part of the United States. Henderson also worked at several prisons ranging from administrative to high security, and at the Bureau of Prisons North Central Regional Office in Kansas City. He helped revise and implement BOP policies in the areas of Central Inmate Monitoring and Designations, and also provided staff training. He is the co-author of the *Federal Prison Guidebook*, and numerous articles on the Bureau of Prisons.



J. Michael Henderson is a federal prison consultant to the Law Offices of Alan Ellis. Henderson has over 23 years of experience working with the Bureau of Prisons. He served as the Regional Designator for the Western Region in the early 1990s, and from 1997 until his retirement in 2000. His duties included oversight of the BOP classification of newly-sentenced federal offenders in the western part of the United States. Henderson also worked at several prisons ranging from administrative to high security, and at the Bureau of Prisons North Central Regional Office in Kansas City. He helped revise and implement BOP policies in the areas of Central Inmate Monitoring and Designations, and also provided staff training. He is the co-author of the *Federal Prison Guidebook*, and numerous articles on the Bureau of Prisons.

#### J. Michael Henderson

910 Irwin St.  
San Rafael, CA 94901  
415-460-1430  
Fax 415-460-1630

James H. Feldman, Jr., is a senior associate in the Ellis firm's Philadelphia office. Since joining the firm in 1989, he has handled numerous sentencing, appeals, and § 2255 motions in federal courts. He is Editor of *Federal Presentence and Post Conviction News*, and co-author of the *Federal Sentencing Guidebook* and the *Federal Post Conviction Guidebook*. Mr. Feldman has also authored numerous articles on federal sentencing and post-conviction remedies including "Litigating in a Post-Booker World," "Representing the White Collar Client in a Post-Booker World," and "A 2255 and 2241 Primer." In 1982, he moved to Philadelphia to serve as staff attorney for the Central Committee for Conscientious Objectors. As a result of his work with CCCO, Feldman is one of a handful of attorneys experienced in litigating *habeas* petitions on behalf of members of the United States armed forces.



James H. Feldman, Jr., is a senior associate in the Ellis firm's Philadelphia office. Since joining the firm in 1989, he has handled numerous sentencing, appeals, and § 2255 motions in federal courts. He is Editor of *Federal Presentence and Post Conviction News*, and co-author of the *Federal Sentencing Guidebook* and the *Federal Post Conviction Guidebook*. Mr. Feldman has also authored numerous articles on federal sentencing and post-conviction remedies including "Litigating in a Post-Booker World," "Representing the White Collar Client in a Post-Booker World," and "A 2255 and 2241 Primer." In 1982, he moved to Philadelphia to serve as staff attorney for the Central Committee for Conscientious Objectors. As a result of his work with CCCO, Feldman is one of a handful of attorneys experienced in litigating *habeas* petitions on behalf of members of the United States armed forces.

#### James H. Feldman, Jr.

Law Offices of Alan Ellis, P.C.  
50 Rittenhouse Pl.  
Ardmore, PA 19003-2276  
610-658-2255  
Fax 610-649-8362  
E-MAIL [aelaw2@aol.com](mailto:aelaw2@aol.com)