



GRID & BEAR IT

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cance of the Presentence Report, the designation process, potential pitfalls of presenting medical or mental health mitigation, the DAP, the boot camp, furloughs and transfers.

To understand the BOP is to understand bureaucracy

Perhaps as much by design as by necessity, the Bureau of Prisons is, true to its name, a bureaucracy. With approximately 34,000 employees at 102 facilities nationwide, the federal prison system relies substantially on a hierarchal structure.⁵ The majority of decision-making that affects individual inmates occurs at the local (*i.e.*, institutional) level, with senior administrators providing general oversight from one of the bureau's six regional offices or the central office in Washington, D.C.

As most practitioners are familiar, federal prisons are identifiable by the security-level of the populations they house and the corresponding levels of freedom they afford. Federal Prison Camps (FPCs, "camps," or "Club Fed"⁶) house minimum-security inmates, essentially nonviolent offenders with limited criminal histories and less than ten (10) years remaining to serve. Federal Correctional Institutions, or FCIs, are divided into two categories: low and medium, connoting the respective security levels of their populations. Barbed-wire perimeter fencing, higher staff-to-inmate ratios, and more restrictive movement characterize life at an FCI. Nearly all United States Penitentiaries (USPs) are high-security institutions, and, for those offenders who pose the greatest perceived risk to public safety, the BOP opened ADX Florence, Colorado, a Supermax facility, in 1995. In addition to these general categories, the bureau maintains seven Federal Medical Centers (FMCs); the Federal Transfer Center (FTC) in Oklahoma City; and federal detention centers in major metropolitan areas, such as New York and Miami. It also contracts with state and private penal institutions across the country.

Staffing these institutions are an array of counselors, correctional officers, medical personnel, and administrators. While not seeking to demean correction-

al workers or the difficult duties they have assumed, the following is an admittedly broad, though reasonably accurate, generalization of BOP employees: they tend to be conservative-minded (*i.e.*, bureaucratic), reside and work in rural areas, envision their positions as part of a 20-plus year career in corrections and, likewise, subscribe to a set of institutional values that emphasizes the protection of public safety and the need for order. Many also have previous military or law enforcement training and experience, and all are charged with maintaining security and serving as "law-abiding role models."⁷ This latter mandate compels regular (daily) interaction with the populations they manage.

A federal inmate's principal interaction is with his Unit Team, which consists of a Counselor, a Case Manager, and the Unit Team Manager. These are the individuals to whom concerns, grievances, requests, etc. are addressed. To the extent that an inmate disagrees with a Unit Team determination, the primary remedy is an appeal to the Warden. However, wardens, who are vested with enormous discretion often analogized to a feudal lord and his fiefdom, customarily stand behind staff decisions, thereby leaving little opportunity for meaningful review.⁸ Though additional appeals can be made to the regional and central offices, the enormity of running more than 100 institutions of varying security levels makes micromanagement infeasible. In other words, wardens serve at the frontline of the BOP's senior administration, and, absent clear abuses of discretion, their decisions usually stand.

Program statements are the law

The bureau combats systemic disparities in managerial decisions through the promulgation of Program Statements, written policies designed to institute legislative and administrative directives and to regulate nearly every conceivable aspect of an inmate's life. As one former federal inmate succinctly stated: "The rules of the outside world don't apply on the inside. Everything is run according to the program statements." Thus, familiarity with applicable program statements, several of which are discussed herein and all of

Getting to know the Bureau of Prisons: extending advocacy beyond the courtroom

Since the advent of the Federal Sentencing Guidelines some 15 years ago, an inescapable reality of defense representation is that prison is the presumptive punishment for convicted offenders.¹ The numbers don't lie. In 1987, there were 48,300 offenders under federal correctional supervision.² Today, there are more than 161,000³ (a three-fold increase), and estimates place the 2007 figure at 205,000.⁴ Beyond emphasizing the need for meaningful sentencing reform, these numbers reveal a starker truth. To be an effective advocate in today's federal criminal justice system, one must understand the Federal Bureau of Prisons (BOP or bureau), its policies, and its nuances. This article addresses topics defense attorneys commonly encounter when assisting clients facing sentencing to, or incarcerated within, the Bureau of Prisons: the nature and structure of the bureau, the use of program statements, the signifi-

which are available on-line,⁹ is essential to effective representation in any situation involving the BOP.

Program statements are no different than most administrative regulations: they are replete with ambiguities and subject to discretionary interpretation. However, prudence dictates that a defense attorney's instinctive desire to fully advance her client's case is measured against the reality of the milieu in which she is toiling. The BOP is unlike other federal agencies. Federal prison officials operate pursuant to broad, judicially recognized discretion that affords immense latitude in devising and implementing correctional policies.¹⁰ Equally as significant, the majority of correctional workers, who daily interpret and enforce program statements, are not lawyers or legally trained. *This point cannot be overstated.* From countless conversations with attorneys regarding federal prison issues, it is safe to say that much of the frustration that the defense bar encounters when working with the BOP stems from an insufficient appreciation of the background and mindset of the people with whom they are interacting.

In addition to the above generalization regarding correctional workers, it is useful to recall the one frustration has encountered when representing a difficult client. Multiply that ten-fold, and you can begin to appreciate the demands of a counselor or case manager faced with a cadre of comparable individuals who would prefer to be anywhere but in prison. Couple those challenges with a desire for career advancement, and it is easy to understand why correctional officials tend to be risk adverse and disinclined to make exceptions to program statements. Nonetheless, bureau personnel do acknowledge mistakes or oversights, particularly if approached tactfully. So, before picking up the phone or sending off a letter, gain a working knowledge of the program statement(s) governing any contested issue.

Never underestimate the importance of the presentence report

A truism emanating from the BOP but unknown to many defense attorneys is that the Presentence Investigation Report (PSI) is 'the Bible' by which virtually every decision effecting an inmate's time in federal custody is made. Within days after sentencing, the Marshal's Service forwards the PSI, along with the Judgment and Commitment Order, to the local Community Corrections Manager (CCM) for review and consid-

eration.¹¹ In most instances, that is *all* the bureau is given. Accordingly, for its purposes, an inmate is the person depicted in his PSI. It is from the PSI that the CCM obtains information for entry into the BOP's computerized management and tracking system (SENTRY). It is also from the PSI that the CCM gathers information to 'score out' an inmate and determine his appropriate security level (See below). And, it is the PSI upon which staff at the institution relies in evaluating an inmate's suitability for programming.

Given a PSI's importance, it should be reviewed not only for errors and omissions that might adversely impact sentencing deliberations, but also for information, or the lack thereof, that might serve to prejudice an individual before the BOP. One area of concern is references to extraneous conduct, such as in drug conspiracy and RICO cases involving numerous co-defendants with whom a client had no contact. Probation officers in such cases often draft a single offense conduct section that is inserted into each co-defendant's PSI in spite of their respective roles or ignorance of one another. Even if the court does not consider a co-defendant's actions in its sentencing deliberations, the BOP rarely misses those references to gun running, extortionate threats, or violence. Thus, while there may have been no direct involvement, red flags will raise, and bureau personnel, albeit subconsciously, will look with disfavor on someone associated with such activities.

Recognizing that once placed in a PSI, information is seldom removed, it is vital to prevent inclusion of potentially harmful information prior to completion of the draft. If that fails, the defense response should include a specific request for the wholesale removal of objectionable references, not merely a notation in PSI's appendix. Should the probation officer refuse modification, it then becomes necessary to ask the court to order the Probation Office's deletion/modification of superfluous information before the PSI is forwarded to the BOP. Similarly, defense counsel should make every effort to provide the Probation Office with information and documentation pertinent to a client's incarceration, such as medical records or evaluations related to anticipated programming needs. It may prove helpful to have certain items appended to the PSI, though the Probation Office is under no obligation to satisfy such a request. Be prepared to forward documentation to the BOP under separate cover, including the sentencing transcript if a record of

the court's consideration of defense objections to the PSI or its position regarding conditions of confinement was made. Such information should be sent to the Community Corrections Manager prior to designation or to the Case Manager of an incarcerated individual, with a specific request that it be placed in his Central File.

Determining where your client is likely headed

"Where will I be going?" It's the question customarily posed by every client contemplating a term of imprisonment. The stock response usually consists of reference to the closest federal facility and mention of a previous client incarcerated there. Such an answer echoes the '500-Mile Rule': the bureau's stated objective of placing each inmate at the lowest security level institution for which he qualifies within 500 miles of his release residence.¹² However, a host of variables weigh in the bureau's designation of every offender. As noted above, the process is controlled by an established written policy: the BOP's *Security Designation and Custody Classification Manual*.

In simplest terms, the *Manual* is an assessment tool that assigns numerical values to factors ostensibly measuring an individual's risk to public safety and institutional security (e.g., presence of detainers, history of escapes or violence, severity of offense, types of prior commitments, pre-commitment status).¹³ Ascertaining a client's security point total—the number dictating minimum-, low-, medium-, or high-security placement—is a straightforward process that entails a review of his PSI in conjunction with the Inmate Load and Security Designation Form and Chapter 5 of the *Manual* (Chapter 6 for female offenders). The more challenging, though still uncomplicated task is determining whether his security point total will be abrogated by either a Public Safety Factor (PSF) or a Management Variable, discretionary factors that supercede otherwise appropriate security levels and, possibly, program participation.

There are presently 11 PSFs in use by the BOP. Of these, application of any of the following four, though not these four exclusively, prohibits an inmate's placement at a prison camp: Greatest Severity Offense, Sentence Length, Sex Offender, and Deportable Alien (See *also*, Serious Telephone Abuse PSF, p. 26).¹⁴ Greatest Severity Offense refers to a *male* inmate's present term of confinement, and includes such offenses as serious assaults, large-scale drug crimes, espionage, extor-

Serious Telephone Abuse Now a Public Safety Factor

Effective January 31, 2002, the DESIGNATION AND CLASSIFICATION MANUAL was revised to include, *inter alia*, a Public Safety Factor for Serious Telephone Abuse, which prohibits placement at minimum-security institutions. In relevant part, this new PSF reads:

A male or female inmate who utilizes the telephone to further criminal activities or promote illicit organizations... must be assigned a PSF for Serious Telephone Abuse. A conviction is not required for the PSF if the Pre-Sentence Investigation (PSI) or other official documentation clearly indicates that the above behavior occurred or was attempted... P.S. 5100.07, Ch. 7, p. 5 (emphasis in original). Additionally, application of this PSF requires satisfaction of one of the following four criteria:

- (1) PSI or comparable documentation reveals the inmate was involved in criminal activity facilitated by the telephone who:
 - meets the definition of a leader/organizer or primary motivator; or
 - utilized the telephone to communicate threats of bodily injury, death, assaults, or homicides; or
 - utilized the telephone to conduct significant fraudulent activity (actual or attempted) in an institution; or
 - leader/organizer who utilized the telephone to conduct significant fraudulent activity (actual or attempted) in the community; or,
 - arranged narcotic/alcohol introductions while confined in an institution.
- (2) Federal law enforcement officials or a U.S. Attorney's Office notifies the Bureau of Prisons of a significant concern and need to monitor an inmate's telephone calls;
- (3) The inmate has been found guilty of a 100 or 200 level offense code for telephone abuse. (Note: 200 level offense codes will be reviewed on a case-by-case basis to determine whether the inmate meets the criteria for a PSF Serious Telephone Abuse); or,
- (4) A Bureau of Prisons official has reasonable suspicion and/or documented intelligence supporting telephone abuse.

Notably, the Designation and Classification Manual does not define leader/organizer generally. Instead, the newly added Appendix G speaks to the concept in terms of drug offenses. For an individual to be considered a Drug Organizer/Leader the offense conduct section of his PSI must list him as an Importer/High-Level Supplier; an Organizer/Leader; a Grower/Manufacturer; a Financier/Money Launderer; or an Aircraft Pilot/Vessel Captain. On the other hand, an individual is deemed Not A Drug Organizer/Leader if her PSI's offense conduct section lists her as a Manager; a Bodyguard/Strongman/Debt Collector; Chemists/Cooks/Chemical Supplier; a Supervisor; a Street-Level Dealer; a Broker/Steerer/Go-Between; a Courier; a Mule; a Renter/Storer; a Money Runner; an Off-Loader/Loader; a Gopher/Lookout/Deckhand/Worker/Employee, an Enabler; a User Only; or a Wholesaler. How and whether the bureau employs these distinctions when assigning individual roles in cases involving other types of offense conduct remains an open question.

tion through violent means, homicide, kidnapping, robbery, violent sexual offenses, and firearms distribution.¹⁵ Sentence Length looks at a *male* inmate's projected release date—sentence length less anticipated good time credit. Those individuals with more than ten years remaining to serve must be housed in at least a low-security institution; more than 20 years, medium-security; and more than 30 years, high-security.¹⁶

Whereas the *Designation and Classification Manual* offers examples of the types of conduct that qualify for application of the Sex Offender PSF, it is essentially assigned when any evidence of sexual misconduct is present in an inmate's background, including prior conduct and notwithstanding the offense of conviction.¹⁷ Not only does application of this PSF preclude camp placement, but it also bars participation in halfway house/pre-release programs.¹⁸ The same prohibitions hold for non-United States citizens, who are assigned a Deportable Alien PSF absent an INS determination that deportation is not merited. Importantly, the *Manual* enumerates three criteria, the satisfaction of which prevents the Deportable Alien PSF's application:

- (1) Documented and/or independently verified history of stable employment in the U.S. for at least three years immediately prior to incarceration. Stable or regular employment is generally defined as full-time (40 hours a week) work...;
- (2) Verified history of domicile in the U.S. (five or more consecutive years immediately preceding the inmate's incarceration for the current term of confinement...); and
- (3) Verified strong family ties in the U.S. Strong family ties include only the immediate family...¹⁹

Management Variables are grounded in the "professional judgment of Bureau staff" and include more nebulous considerations, like population management, the need for medical or psychiatric treatment, and circumstances wherein an inmate poses either a greater or lesser security risk than denoted by his assigned security level.²⁰ Requests for waiver of either a PSF or a Management Variable must be made to the Regional Designator, usually from a BOP official.

Once security level is known, the task of determining the likely facility to which an individual will be designated is easy, particularly in light of the "500-Mile

Rule²¹. A directory of federal facilities with associated security levels and contact information can be obtained through the bureau's Public Information Office or on-line²¹, as can a copy of the BOP's weekly population report.²² From that information, one can identify a facility of appropriate security level, proximity and population.²³ To the extent there are outstanding questions regarding available programming, they should be directed to an institution's Public Information Officer.

Having the foregoing information in hand substantially improve one's ability to advocate for placement at a particular institution or in a specific program. Depending on the complexities of the situation, such requests should be made at the earliest opportunity. At a minimum, it is suggested that the Sentencing Memorandum include clear 'recommendation language' for inclusion in the Judgment and Commitment Order. Congress has directed the BOP to consider "any statement by the Court that imposed sentence concerning the purposes for which the sentence to imprisonment was determined to be warranted or recommending a type of penal or correctional facility as appropriate."²⁴ And, while judicial recommendations are not binding on the bureau, "[e]very effort is made to fulfill the court's request."²⁵ Moreover, a judicial recommendation serves as a strong indicator of the court's intentions concerning the appropriate handling of a given offender as well as its point of view regarding the applicability of certain security enhancements, such as Public Safety Factors.

BOP can treat anything

The myriad of discretionary constraints tied to the Federal Sentencing Guidelines can present significant obstacles to the development of persuasive mitigation. Accordingly, defense attorneys justifiably underscore a client's poor health or mental state at sentencing. Sometimes the debilitating nature or unique treatment needs of a client's condition motivate requests for downward departure so that she might avoid subjection to the extreme (and atypical) physical and emotional hardship associated with a term of imprisonment. Such requests are invariably accompanied by reports, and possibly testimony, from medical experts substantiating the need to keep the individual in the community and maintain her continuum of care. The answer? The Bureau of Prisons can treat anything.

Every federal institution purports to provide basic medical and mental health care, either through staff employed at the

institution or providers from the surrounding community. Those inmates requiring chronic or specialized care are housed at one of the seven aforementioned Federal Medical Centers.²⁶ And, despite troubling evidence of substandard care²⁷ and mounting costs,²⁸ the BOP steadfastly asserts that it can provide treatment consistent with prevailing community standards to virtually every individual placed under its custody. Defense counsel must therefore exercise caution, especially where a medical departure is sought. There is precedent for the United States Attorney's Office requesting, and courts granting, a defendant's referral to the BOP for a pre-sentencing evaluation—a process that alone can prove highly detrimental to a client's health given the stress and rigors involved.


Where the Probation Office incorporates medical or mental health information into the PSI, and the court does not depart, the BOP may also initially designate an offender to a Federal Medical Center for a clinical evaluation. For those anticipating designation to a camp or FCI (low), such a deviation can cause extreme discomfort and anxiety because FMCs are administrative facilities, meaning that they house inmates of all security levels within the same general population. Should the FMC evaluators conclude that

the individual's condition is not so severe or chronic as to warrant permanent FMC designation, she is then transferred to a standard facility. All too often, this practice exemplifies the concept of "diesel therapy": weeks in transit being shipped between regional state jails while shackled in the back of a van until finally reaching the designated institution. Beyond hardship on the individual involved, the process exacts a tremendous toll on the family.

DAP: Useful treatment and time reduction

In 1988, the Bureau of Prisons created an intensive "inpatient" treatment program to help the increasing number of federal inmates with diagnosable, moderate-to-severe substance abuse problems.²⁹ Notably, the now celebrated potential one-year reduction in sentence available to program graduates³⁰ did not go into effect until 1996, after Congress, in recognition of the fact that treatment lowers recidivism, created the time incentive to encourage federal inmates with drug or alcohol abuse histories to begin the road to recovery and rehabilitation before their release from federal custody. Congress's action has had its desired result. Each year, an increasing number of federal inmates of all backgrounds and security

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levels seek admission into the bureau's ten-month Residential Drug and Alcohol Program (DAP), which is offered at various institutions throughout the country.

Participation in the DAP is voluntary. Trained clinical staff review each interested inmate's application and analyze every candidate's drug and alcohol history to determine if it meets the criteria for alcohol or drug dependency delineated in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*.³¹ While an individual's dependency issues need not be linked to his offense conduct, a diagnosable problem must (a) have existed within the year preceding arrest or, if no arrest, prior to indictment and (b) must be corroborated by the PSI or similar documents in an inmate's central file. Eligibility for a reduction in sentence is *not* among the criteria for admission. The DAP is a clinical program; sentence reductions are administrative determinations made subsequent to program completion.

Each qualified inmate's name is placed on a waiting list governed by projected release date rather than date of acceptance.³² This focus on release is partly due to the reintegration components of the program that provide for follow-up services immediately after release into the community. Most individuals do not gain admission into a DAP until they are within 20 to 24 months of their project release dates and, because DAPs are not available at every institution, a transfer is often required. Once in the program, DAP participants are segregated from the institution's general population. Though they maintain involvement in employment and educational activities, the focus of their time becomes counseling strategies designed around each individual's total recovery from alcohol and drug dependency that are intended to compel inmates "to identify, confront, and alter the attitudes, values, and thinking patterns that lead to criminal and drug-using behavior."³³ The inpatient component is followed by aftercare recovery at a halfway house and a rigorous term of supervised release that includes such added conditions as group counseling and random urinalysis, as well as a lower violation threshold.

Although the BOP historically argued that "(d)rug treatment is a particularly important program in the BOP because it is generally accepted that drug abusers who redirect their lives are less likely to recidivate," for many years it lacked empirical support.³⁴ Recent research, however,

bears out the supposition. A comprehensive three-year follow-up study undertaken by the bureau's Office of Research and Evaluations shows that male inmates who successfully completed the DAP were 16 percent less likely to be re-arrested or revoked than their cohorts who went untreated. Moreover, male DAP graduates were 15 percent less likely to use drugs.³⁵ In sum, the DAP is a multiphasic treatment program from which individuals suffering from substance abuse issues can derive substantial benefit in preparation for community re-entry.³⁶

Boot Camp: A shorter, more arduous, sentence

The other avenue through which a federal inmate can gain a prison-based sentence reduction is the BOP's six-month Intensive Confinement Center program (ICC or "boot camp"), successful completion of which can result in up to a six-month sentence reduction.³⁷ Traditionally, shock incarceration programs were conceived of as alternatives to imprisonment for first-time youthful offenders. Proponents believed that this class of offenders would benefit from the highly structured, military style regimen underlying "boot camp" programs and, consequently, would be less likely to re-offend. Although studies demonstrated that recidivism rates for those individuals channeled into shock incarceration programs were comparable to their counterparts sentenced to prison or a juvenile detention facility, the boot camp ideal gained in popularity throughout the 1980s and was adopted by Congress as a component of the BOP via the Crime Control Act of 1990.³⁸

Unlike other shock incarceration programs, the BOP does not use the ICC as an alternative to incarceration or solely to relieve prison overcrowding. Rather, because a qualified inmate sentenced to a term of imprisonment of no greater than 60 months (five years)³⁹ is eligible to participate in the ICC when within the final 24 to 30 months of his sentence, the ICC is more properly viewed a program through which inmates serve "a shorter, but more arduous term."⁴⁰ In addition to sentence length, other eligibility criteria include that an inmate is eligible for minimum-security placement; that he volunteers for the program; that he is physically and mentally capable; that he is serving his first period of incarceration or has a minor history; and that his offense of conviction is not violent or a felony including "use of physical force against the person or property of another," "carrying, possession, or use of a firearm or

other dangerous weapon or explosives," "a serious potential risk of physical force against the person or property of another," or "sexual abuse offenses committed upon children."⁴¹ Moreover, while a judicial recommendation is no longer required to gain admission into the program, the BOP will contact the court and the government for comments and objections should a non-recommended inmate seek to enroll.

Placement priority is ordinarily given to direct court commitments (persons serving 30 months or less and expressly recommended by the court). Indeed, individuals sentenced to 30 months or less should make every effort to coordinate self-surrender directly to the next available ICC class so as to avoid designation to another institution and the possibility of delay related to transfer. This can be accomplished by contacting the ICC Administrator before sentencing and obtaining the anticipated start date(s) for the next class(es), which can then be relayed to the court. Priority is also given to "eligible offenders who pose a greater risk of reinvolvement with criminal activity."⁴² There are no restrictions on age, though every ICC candidate must pass an enhanced physical exam.

The ICC is exceptionally demanding both physically and mentally. The program is characterized by 16-hour work days and six-day work weeks during which participants experience physical conditioning, military drills, work assignments, educational and vocational training, substance abuse and stress management counseling, and other components of a practical life skills/coping curriculum designed around a total-wellness model. According to BOP research analyst Jody Klein-Saffran, Ph.D., the ICC provides a more constructive and rewarding institutional experience:

...ICC inmates are taught to work together as a team, whereas in regular prison this is discouraged. In fact, the unspoken rule of 'doing your own time' remains a strong component of the standard prison culture. At the ICC facilities, correctional officers are expected to establish close working relationships with inmates and gain more knowledge about their charges than would be the case in a typical prison facility.⁴³

Upon completion of the program, ICC graduates are transferred to a Community Corrections Center (CCC or "halfway house") and placed in the facili-

ty's pre-release module. This is followed by a period of home confinement prior to the start of supervised release.

Due to the ICC's increasing popularity, the bureau closely scrutinizes whether each potential and participating boot camp inmate will realize the benefits the program is designed to provide. Of special note is the BOP's recent codification of a previously informal policy that disfavored "white collar" offenders except when bed space was otherwise available. Specifically, "[i]nmates who, by virtue of their lack of program needs, do not require the intensive specialized programs offered at an ICC ordinarily are not accepted for ICC placement."⁴⁴ This includes individuals "demonstrating a stable employment/ educational/military history, etc."⁴⁵ Note that on occasion an individual's offense of conviction will suggest a "white collar" defendant (e.g., stock fraud), but his background suggests otherwise (e.g., young adult from disadvantaged background with high school education and limited work history). In such instances, information should be presented to the Probation Office and the Court prior to sentencing so that this inconsistency is included in the PSI and any judicial recommendation. Making a factual record is especially important in light of the growing body of anecdotal evidence showing that some inmates placed into the ICC are subsequently removed when a review of their file reveals incompatibility between their backgrounds and the program's intended purpose.

Furloughs

One of the most difficult aspects of incarceration is the forced separation from loved ones. Feelings of isolation or frustration are most poignant when families gather together to share joy or offer support during times of special familial significance or crisis. The BOP recognizes the inherent hardships of imprisonment and offers qualified inmates furloughs (authorized, unescorted absences from federal institutions) in an effort to advance correctional goals.

There are two kinds of furloughs: "the day furlough" and "the overnight furlough." Another kind of authorized absence popularly known as an "unescorted transfer" or "furlough transfer" is also technically a furlough. The bureau makes clear that a furlough is not right, but a privilege.⁴⁶ And, while furloughs should not be viewed as rewarding good behavior, they are less frequently given to those who demonstrate poor behavior or, more precisely, those whose conduct is inconsistent with defined Bureau policies.

A day furlough consists of a trip to a location within 100 miles of the granting institution that lasts no more than 16 hours and ends before midnight.⁴⁷ Because the stated purpose for day furloughs is "to strengthen family ties and to enrich specific institution program experiences," they are typically granted to inmates wishing to attend a momentous family event (e.g., a child's wedding) or to engage in institution-sponsored activities within the community.⁴⁸ Technically, overnight furloughs *can* extend to 30 days when unique circumstances present themselves,⁴⁹ but they ordinarily last three (3) to seven (7) days.⁵⁰ Moreover, unlike day furloughs, there are no express restrictions on the proximity of an inmate's overnight furlough destination from her designated federal facility.

Regardless of furlough type, a federal inmate remains under BOP custody even when away from the institution. This means (a) that furloughed inmates are still expected to adhere to prescribed rules (e.g., no marriages or driving without prior written staff approval);⁵¹ (b) that sanctions can be imposed for rules violations committed away from the institution;⁵² (c) that failure to timely return to the institution makes one an "escapee"⁵³ and (d) that time spent on furlough is

credited towards one's sentence—a furlough does not extend an inmate's projected release date or sentence.⁵⁴ Another noteworthy consideration is that the costs and responsibilities of furloughs (i.e., transportation, lodging, food) are borne by the inmate and/or his family.⁵⁵

Before an inmate is considered for a furlough, she must generally (a) be listed as community custody; (b) be deemed physically and mentally capable; (c) have demonstrated "sufficient responsibility" so as to assure compliance with furlough requirements; and (d) (1) be within two years of anticipated release for a day furlough, or (2) be within 18 months of anticipated release for an overnight furlough to a location within the institution's "commuting area," or (3) be within 12 months of anticipated release for an overnight furlough outside of the commuting area.⁵⁶ Furthermore, furloughs are generally unavailable to inmates convicted of serious crimes against the person or those "whose presence in the community could attract undue public attention, create unusual concern, or depreciate the seriousness of the offense."⁵⁷ This includes, but is not limited to, those convicted of "crimes of violence,"⁵⁸ those under an assigned Public Safety Factor; those who refuse to participate in the

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Inmate Financial Responsibility Program or other programming, including GED and drug treatment; and those with escape histories.⁵⁹ One notable exception is the “Emergency Furlough”, which permits attendance to “a family crisis or other urgent situation.” These furloughs are available to an inmate confined at his initially designated institution for less than 90 days as well as to those with more than two years remaining until their projected release dates.⁶⁰

Initiation of a furlough begins with an inmate’s request to his Unit Team and is subject to the warden’s approval. The bureau’s enumerated justifications for furlough grants include: “to be present during a crisis in the immediate family, or in other urgent situations; to participate in the development of release plans...; to transfer directly to another institution or to a non-federal facility; to appear in court in connection with a civil action; and to comply with an official request to appear before a grand jury, or to comply with a request from a legislative body or regulatory or licensing agency...”⁶¹ Additionally, a warden may recommend a furlough to inmates seeking medical, surgical, psychiatric or dental treatment “not otherwise available”, though such grants require added review and approval from BOP medical personnel.⁶²

With respect to the transfer between facilities justification above, the recent change to the *Security Designation and Custody Classification Manual* includes express authorization for unescorted transfers from low- or minimum-security institutions to minimum-security institutions if the individual being transferred is classified as minimum security and either out or community custody.⁶³ Moreover, family members on an individual’s approved visiting list may provide transportation to the receiving institution subject to warden approval.

Transfers

In terms of facility transfer, the issue is usually one of whether it can be obtained rather than how it will occur (unescorted v. escorted). As a general rule, once placed at a particular institution, a federal inmate is not eligible for transfer until she has demonstrated 18 months of infraction-free conduct.⁶⁴ Even then, transfers are usually limited to compelling reasons. Nearly every BOP institution is overcrowded, and wardens, who approve transfers, are not inclined to accept additional inmates absent unique circumstances. The most persuasive arguments for movement usually rest on the distance between a given inmate and her family.

In most instances, the BOP equates the “legal address” in an inmate’s PSI to her ‘release residence.’ the place she intends to return following release. Accordingly, the bureau attempts to adhere to the 500-Mile Rule discussed above and place inmates within close proximity to their release residences. The rule occasionally succumbs to other relevant considerations, such as overcrowding or the presence of co-defendants. Other times, an individual’s “legal address” has no bearing on her family contacts or the location where she wishes to settle following release. Regardless, an individual seeking to transfer to another facility needs to provide her Unit Team documentation confirming the necessity of the move. This can include a letter from a spouse confirming a new release residence or from a parent explaining difficulties in visitation related to distance, cost, or medical considerations.

Barring change in an inmate’s security level, transfers will only be made to institutions of commensurate security (e.g., low to low). Where escorted transfers are called for, the process can be extended and arduous. Take for example a former client from South Florida housed at FCI Coleman (medium), Florida whose security level was reduced to low. A request was made for transfer to FCI Coleman (low)—a simple matter of walking across the street. Instead, the bureau transported the individual to FCI Yazoo City (low), Mississippi via the Federal Transfer Center in Oklahoma City. The process took more than six weeks, during much of which he was unable to communicate with his family. If that were not enough, the individual was ultimately placed at Coleman (low) to complete his sentence. So, while transfers can ease personal pressures, the process may serve to temporarily exacerbate them.

Final thoughts and quick tips

The following are some final tips to keep in mind:

- *Remember Discretion.* The program statements that govern federal correctional management are subject to wide-ranging interpretation. Though largely consistent across the system, remember that the issue sometimes boils down to individual decisions. As an example, do not think that obtaining a furlough is as easy as described above. It is a subjective process contingent on a warden’s discretion.

- *Silence is Golden.* As hard as the concept seems for some, it is essential that clients realize complaining normally does more harm than good once incarcerated. To the extent forceful advocacy is needed, it

is best handled from outside the institution.

- *Communication Considerations* As of April 1, 2001, federal inmates are only allowed 300 minutes of telephone use per month. While attorney calls made with the assistance of the Unit Team (i.e., on a private line) do not fall within this restriction, it is impractical for most inmates not to use their allotted phone time to speak with their attorneys. Also, when sending legal mail, make sure to mark the envelope “Special Mail: Open Only in the Presence of Inmate” and to write or type your name, followed by “Attorney-At-Law” on the envelope. Mail from a law firm is not necessarily considered legal mail, and do not assume the person opening the envelope knows the meaning of “Esquire.”

- *Finding a Client.* For those tired of long calls to the BOP’s Inmate Locator [(202) 307-3126], the service is now available on-line at <http://inmateloc.bop.gov/locator/FindInmateHttpServlet>. It requires either the inmate’s Register, DCDC, FBI or INS Number or the individual’s first and last name. The result will provide an inmate’s name, age, race, sex, projected release date and location, with facility phone number.

- *A Year Is a Year.* Offenders sentenced to one year will serve one year; good conduct time is not given to inmates serving a sentence of one year or less. Individuals sentenced to 12 months and one day receive full good time credit.

- *A Halfway House Is a Prison.* The BOP considers Community Corrections Centers/Comprehensive Sanction Centers penal institutions when an individual is designated under the corrections (versus pre-release) component. Accordingly, if an individual is serving a 12-month and one day sentence or less and the court includes a recommendation in the Judgment and Commitment Order, he can be directly committed to a halfway for the duration of his sentence.

In closing, the following resources are recommended for any reader interested in additional information or assistance. First, the bureau’s Web site: www.bop.gov, is an invaluable source of information that can provide quick and easy answers to many questions. Second, numerous helpful publications can be obtained from the BOP’s Public Information Office [320 First Street NW Washington, D.C. 20534]. Third, clients, who, once inside, quickly learn about prevailing rules and regulations, both formal and informal. Fourth, guidebooks, many of which are now written by former inmates and offer an ‘insider’s perspective’, provide useful, consolidated infor-

mation. Fifth, NACDL Corrections Committee's on-line Discussion Forum, where members can freely exchange information. Sixth, and last, prison consultants, of which there are a growing number. Find one with a good reputation who knows the system and does not promise too much. Many are also sentencing advocates and mitigation specialists and can help early in the process.

Good luck.

Notes

1. See, Douglas C. McDonald and Kenneth E. Carlson, Federal Sentencing in Transition, 1986-90 (USDOJ-BJS: June 1992) (52% of federal offenders sentenced to prison in 1986 versus 74% in 1990).

2. USDOJ-BJS, Correctional Populations in the United States, 1988, p. 58, Table 5.1 (GPO: March 1999).

3. USDOJ-BOP, Weekly Population Report (May 16, 2002).

4. Kathleen Hawk Sawyer, Statement of the Director, Federal Bureau of Prisons Before the Senate Subcomm. on Criminal Justice of the Judiciary Comm. (April 6, 2000).

5. USDOJ-BOP, The Bureau in Brief (Apr. 2002).

6. "Club Fed" is arguably the single greatest misnomer attached to federal prisons. To the extent that minimum-security federal prisons exist and continue to be built, it is because the level of security provided is consistent with the negligible risk of violence or escape posed by the populations they house. The expenditure of additional taxpayer dollars merely to house camp inmates in more secure facilities would be wasteful and counterproductive. Furthermore, whereas the notion of country club prisons is most often associated with affluent white collar offenders, drug offenders actually comprise more than 65 percent of the FPC population. USDOJ-BOP, State of the Bureau 1999 at 54.

7. USDOJ-BOP, About the Federal Bureau of Prisons (Oct. 2000).

8. This article deliberately avoids detailed discussion of the bureau's administrative remedy process inasmuch as it offers modest redress for most inmate grievances. Those wishing further information may wish to review the BOP Office of General Counsel's Frequently Asked Questions Web page at <http://www.bop.gov/ogcpg/ogc-faq.html>.

9. <http://www.bop.gov/foiapol.html>.

10. See, e.g., Lopez v. Davis, 121 S. Ct. 714 (2001) (upholding use of BOP program statement that categorically denies early release to federal inmates whose crime involves, albeit peripherally, possession of a firearm despite statutory allowance permitting sentence reduction to nonviolent

offenders who successfully complete residential substance abuse treatment program).

11. A listing of Community Corrections Offices and the districts they serve can be found at <http://www.bop.gov/facilnot.html#ccc>

12. USDOJ-BOP, Program Statement No. 5100.07, Security Designation and Custody Classification Manual, Ch. 3, p. 3 (Jan. 31, 2002).

13. See, e.g., P.S. 5100.07, Ch. 5, pp. 5-14.

14. Other PSFs include Disruptive Group (male only), Threat to Government Officials, Violent Behavior (female only), Serious Escape (female only), Prison Disturbance and Juvenile Violence, which was recently added along with Serious Telephone Abuse.

15. P.S. 5100.07, Ch. 7, p. 1 and Appendix B, p. 1.

16. P.S. 5100.07, Ch. 7, p. 4.

17. P.S. 5100.07, Ch. 7, p. 2. PSF not applied if previous case was nolle prossed or dismissed but is if conduct underlying conviction involved inappropriate sexual behavior.

18. USDOJ-BOP, Program Statement No. 7310.04, Community Corrections Center (CCC) Utilization and Transfer Procedure, Ch. 10(a) (Dec. 16, 1998) (Inmates assigned Sex Offender PSF "shall not ordinarily participate" in CCC program).

19. P.S. 5100.07, Ch. 7, p. 3.

20. P.S. 5100.07, Ch. 7, pp. 9-14.

21. See, State of the Bureau <http://www.bop.gov/ipapg/sob99.pdf> (.pdf document) or the .html directory <http://www.bop.gov/facilnot.html#fac>

22. <http://www.bop.gov/weekly.html>.

23. Nearly all federal correctional institutions operate above rated capacity, so the question is one of degree: Is the institution in question capable of accept an additional inmate or does sound management policy argue for designation to a relatively less crowded facility?

24. 18 U.S.C. § 3621(b)(4).

25. USDOJ-BOP, Judgment and Commitment Orders in A Judicial Guide to the Federal Bureau of Prisons, p. 18 (2000); see, P.S. 5100.07, Ch. 7, p. 11 (outlining use of "Judicial Recommendation" management variable). Where the BOP is unable to comply with a judicial recommendation, it must so notify the Court. USDOJ-BOP, Program Statement No. 5070.10, Judicial Recommendations and U.S. Attorney Reports, Responses to (June 30, 1997).

26. These are FMC Butner, North Carolina; FMC Carswell, Texas; FMC Devens, Massachusetts; FMC Fort Worth, Texas; FMC Lexington, Kentucky; FMC Rochester, Minnesota; and the Medical Center for Federal Prisoners (MCFP) Springfield,

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Missouri. Of the seven, FMC Carswell alone serves female inmates. Also, FMC Devens and FMC Ft. Worth provide services to geriatric inmates.

27. See, e.g., USGAO, Bureau of Prisons Health Care: Inmates' Access to Health Care is Limited by Lack of Clinical Staff (1994); Elizabeth Alexander, Associate Director for Litigation, National Prison Project, Testimony Before the House Comm. on the Judiciary, Subcomm. on Intellectual Property and Administrative Justice (July 1991).

28. Richard M. Stana, Associate Director Administration of Justice Services, General Government Division, Federal Prisons: Containing Health Care Costs for an Increasing Inmate Population, Statement of to Subcomm. on Criminal Justice Oversight (USGAO: April 6, 2000).

29. USDOJ-BOP, Drug, Alcohol, and Related Treatment Programs in A Judicial Guide to the Federal Bureau of Prisons, p.37 (1995) ("30.5 percent of Federal inmates have moderate to severe substance abuse problems, and this figure is sure to increase").

30. See, 18 U.S.C. §3621(e).

31. USDOJ-BOP, Program Statement No. 5330.10, Inmate Drug Abuse Programs Manual, Ch.5.4.1(a)(1), pp. 3-4 (Oct.9,1997).

32. P.S.5330.10, Ch.5.4.1(a)(4), p. 4.

33. Pelissier, et al., Triad Drug Treatment Evaluation, 65 Federal Probation 3, 3 (Dec. 2001)

34. 1995 Judicial Guide at 37.

35. Triad Drug Treatment Evaluation at 6 (female DAP graduates 18 percent less likely to re-offend or use drugs).

36. Every BOP institution offers a 40-hour outpatient treatment program, which is mandatory for certain classes of offenders. P.S. 5330.10, Ch. 4. There are no sentence reductions associated with completion of this program; however, participation does not effect DAP eligibility.

37. There are three ICC programs currently operating: ICC Lewisburg, Pennsylvania and ICC Lompoc, California for men and ICC Bryan, Texas for women.

38. See, 18 U.S.C. §4046; 1990 U.S. Code Cong. and Admin. News 6472.

39. USDOJ-BOP, Program Statement No. 5390.08, Intensive Confinement Center (ICC) Program, Ch.8(a), pp. 4-5 (Nov. 14,1999).

40. 1990 U.S. Code Cong. and Admin. News 6472, 6558.

41. P.S.5390.08, Ch.8(a), pp. 4-5.

42. P.S.5390.08, Ch.8(b), p. 5.

43. Jody Klein-Saffran, Ph.D., Bureau of Prisons: Expanding Intermediate Sanctions Through Intensive Confinement Centers in Correctional Boot Camps: A Tough Intermediate Sanction (NJ: 1996).

44. P.S.5390.08, Ch.8(b), p.6.

45. *Id.*

46. USDOJ-BOP, Program Statement No. 5280.08, Furloughs, Ch. 1 (Feb. 4, 1998).

47. P.S.5280(6)(a)(1).

48. *Id.*

49. See, 18 U.S.C. §§ 3622, 4082.

50. P.S.5280.08(1).

51. P.S.5280.08-Table 1.

52. P.S.5280.08(12).

53. *Id.*

54. P.S.5280.08-Table 1.

55. P.S.5280.08(8).

56. P.S.5280.08(9).

57. P.S.5280.08(10).

58. USDOJ-BOP, Program Statement No. 5162.04, Categorization of Offenses (Oct. 9, 1997) (defines "crimes of violence").

59. P.S.5280.08(10).

60. P.S.5280.08(9)(d).

61. P.S.5280(7).

62. *Id.*

63. P.S.5100.07, Ch.10, p.8A.

64. P.S.5100.07, Ch.10. ■

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