



# BOOK REVIEW

REVIEWED BY HOWARD O. KIEFFER

in the realm of the spirit, and inevitably there as well) from sundown to sundown, sleeping, walking, speaking, silent, working, playing, viewing, eating, voiding, reading, alone, with others. . . .” It is thus easy to think of prisoners as members of a separate netherworld, driven by its own demands, ordered by its own customs, ruled by those whose claim to power rests on raw necessity.”

Justice William Brennan, dissenting in *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 354-55 (1987).

Alan Ellis and his co-author, J. Michael Henderson, each bring a unique perspective to this updated and expanded edition of the *Federal Prison Guidebook*. Ellis, a nationally recognized federal sentencing expert and NACDL Past-President is able to add both value and credibility to the publication by drawing upon Henderson’s depth of experience working for the Bureau of Prisons (BOP) for more than 23 years.

Most criminal defense lawyers, even the most experienced who are in the federal courts every day, are there to win their cases, the reality, however, is that most of these prosecutions end in guilty pleas or verdicts and proceed to sentencing where the key questions for most people are: “How much time am I going to get and where am I going to do it.”

The *Federal Prison Guidebook* provides much of the basic information needed to answer the “where” question. The Bureau of Prisons used to put out what they called a “Facilities Guide.” It was a prison by prison analysis, including photographs of most facilities, that ceased publication in 1992.

Ellis first published his *Federal Prison Guidebook* in 1998 and took what they had done, and added a lot of information. In his 2000 edition, he expanded the volume to include practice tips, articles on how to get your client a favorable federal prison placement, and how to obtain early release. This time, an analysis of the BOP’s placement policies has been added, along with practice tips and articles on how to “do time,” the

Residential Drug Abuse Program (RDAP) and some *Booker* articles previously published elsewhere. While the *Booker* articles and the majority of the practice tips make interesting reading from a sentencing perspective, they add little to the book’s primary mission.

Every client wants to be assigned to a minimum security facility (a federal prison camp). It used to be that if you had a white-collar offender, and s/he were sentenced to a period of imprisonment, camp was pretty much a certainty. This is not necessarily the case any longer. There are now factors that will keep some of these clients out of a federal camp, at least as an initial designation. A simple example is whether or not s/he is in custody at sentencing. If the judge remands the client after the verdict or plea, and they are not going to be allowed to voluntarily surrender, that will negatively impact the chances of getting to a camp and the client could find himself at a low-level security prison, which has fences.

Ellis and Henderson never broach the existence of a “10 Best” as does the general press with their oft-mentioned references to the existence of “Club Fed” — and that is a good thing.

They provide more than enough information for practitioners to counsel their lucky clients on what to expect upon self surrender, but what is missing is any description about what those not so lucky go through, just to get to their designated facilities. The book fails to get across the BOP’s method of control and message to inmates that nothing should ever be taken for granted and change can always be expected. To use the inmate vernacular: “You ain’t got nothin’ coming.”

More than 80 percent of the *Federal Prison Guidebook*, fully 400 pages, is devoted to a prison by prison listing of facilities, broken up on a regional basis — including privately run prisons under contract. Most of this general information is easily accessible on the BOP’s own public Web site at [www.bop.gov](http://www.bop.gov). Ellis’ book, however, gives context to the otherwise repetitive facility descriptions and is nicely enhanced

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## Federal Prison Guidebook

By Alan Ellis & J. Michael Henderson  
2005 - 576 pages  
(including appendixes)  
To Order: Call 415-460-1430  
Reviewed by Howard O. Kieffer

Justice Brennan once described the plight of prisoners with these compelling words:

Prisoners are persons whom most of us would rather not think about. Banished from everyday sight, they exist in a shadow world that only dimly enters our awareness. They are members of a “total institution” that controls their daily existence in a way that few of us can imagine. “[P]rison is a complex of physical arrangements and of measures, all wholly governmental, all wholly performed by agents of government, which determine the total existence of certain human beings (except perhaps

## JURY INSTRUCTIONS CORNER

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counsel to heavily rely on CALCRIM. More than ever we are likely to see “pre-instruction discussions degenerating into an exercise of checking numbers off a list.” (BNA *Criminal Practice Manual* (Pike & Fisher Inc. 1999) § 131.101.)

Hence, in this new era of jury instruction advocacy the need for criminal practitioners to look beyond the pattern instructions is more important than ever. “Counsel should closely review standard jury instructions before they are given and aggressively move to supplement such instructions to preserve the accused’s right to propound his or her theory of defense.” (McSorley, *Portable Guide to Federal Conspiracy Law — Developing Strategies for Criminal and Civil Cases* (ABA, 1996) p. 185.) “The value of defense-prepared and defense-submitted jury instructions should not be underestimated. Failing to aggressively investigate and pursue theory of defense instructions simply cedes the playing field to the government and may

forfeit valuable appellate rights by not preserving the record. ... Examples abound where persistent defense counsel, by aggressively pursuing theory of defense instructions, have saved the day either in obtaining a favorable verdict or by setting the stage for an appeal that overturned the conviction.” (*Id.* at 188.)

### Note

1. The difference between telling the jurors that witnesses forget and/or make mistakes “sometimes” versus “often” or “commonly” can have a devastating impact in criminal trials. For example, in eyewitness identification cases – which are notorious for generating wrongful conviction – mistaken identification is often the primary defense theory. To tell the jurors that people “sometimes” make mistakes in what they remember is much different than saying that such mistake are made “often.” Sometimes means “occasionally,” “at times” or “now and then.” (*Roget’s New Millennium Thesaurus*, First Edition, 2005.) This gives the witness a false aura of credibility by implying that more often than not witnesses will not forget. This, combined with CALCRIM’s omission of any specific instruction on mistaken eyewitness identification (see CALCRIM 315, Related Issues), unjustifiably “loads the deck” in favor of the eyewitness and reduces the reliability of any eyewitness-based convictions under CALCRIM. ■

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with pertinent visiting information, including lodging listings. The authors are to be congratulated for their success in extracting valuable institution-specific programming — unique, even one-of-a-kind, educational, vocational, religious and recreational opportunities — from the BOP and other contacts. This information is all but unknown outside a very small circle and is crucial to the clients’ overall incarceration experience and, more than anything else, makes “doing time” somewhat bearable.

Make no mistake, the *Federal Prison Guidebook* is no *Fodor’s* guide, but then it’s not meant to be. There are no pictures, other than the authors’ — perhaps because the BOP refused to supply them. Nonetheless, this is one reference book that belongs in the library of every federal practitioner, including public defenders, U.S. district judge and U.S. probation officer. In fact, if you are in the business of criminal defense, you need to have a couple of extra copies around — just to loan to clients. ■

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### About the Author

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Thomas Lundy is a graduate of King Hall, University of California School of Law at Davis. He has been challenging standard pattern

jury instructions for over 30 years in his appellate practice and professional writings. He founded and continues to edit FORECITE which originally challenged and supplemented CALJIC. He also authors a national publication on criminal jury instructions. He is currently authoring a fully revised version of FORECITE in response to the new CALCRIM instructions. ©2006 by Thomas Lundy. All Rights Reserved. Republished with permission.

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