

SECURING A FAVORABLE FEDERAL PRISON PLACEMENT

By Alan Ellis, J. Michael Henderson, and James H. Feldman, Jr.

There is a 97% likelihood that your federal criminal client is going to wind up in front of a sentencing judge. There is also an 80% likelihood he will go to prison.¹ 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.

The Federal Prison System

The federal prison system's 126 institutions are divided into five categories: minimum, low, medium, high (the most secure) and administrative.

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.

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 13 percent of all inmates are housed in minimum level security facilities, excluding halfway house 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 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 Designations and Sentence Computation Center (DSCC).² 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 DSCC, 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 (PSR) to the DSCC. If the Statement of Reasons (SOR) has not been included in the judgment order the Bureau receives, then DSCC staff must make a reasonable effort to obtain a copy by contacting the

² The DSCC is located in Grand Prairie, Texas.

Court or USPO. This is required to better ensure that the Bureau follows the intentions of the Court when designating a facility, as the SOR may contain information which overrides the Presentence Investigation Report (PSR) and may affect security classification decisions as part of the designation process.

Scoring by the Community Corrections Manager (CCM)

The designation of an inmate to a specific institution is governed by Bureau of Prisons Program Statement 5100.08. First, staff at the DSCC "score" the defendant to determine his or her security level. To score an individual, designation staff consider various factors, including: (a) Court-recommendation, if any, (b) voluntary surrender status, (c) severity of current offense, (d) criminal history category, (e) history of violence, (f) history of escape, (g) detainers, if any, (h) age, (i) education level (verified high school, enrolled in high school or GED, or no high school), and (j) drug/alcohol abuse within the past five years.³

Although most factors the designation staff consider can 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 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.

The recent scoring changes with regard to drug/alcohol abuse and education levels can

³ The forms which list these factors (one for male and one for female inmates) are part of BOP Program Statement 5100.08, which can be found at http://bop.gov/policy/progstat/5100_008.pdf.

raise the total security level score by no more than 3 total points. However, the criminal history category can increase the total by up to thirteen points, which could increase security by one or two levels (for example, from Minimum security to Low or Medium security). The age category requires scoring higher points for younger offenders, which can also increase the security classification by one or two levels. The scoring for education and drug/alcohol abuse can result in a total point increase of no more than three points, which primarily impacts those cases that might be borderline between security levels – for example, a Minimum security case scoring at the top of the BOP Minimum security range could be raised to Low security with the addition of these points.

Next, the DSCC 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 DSCC.

Finally, the DSCC considers whether there are any medical factors which might affect designation. Although neither an Operations Memorandum nor a revised Program Statement has been issued, the Administrative Office of the United States Courts has issued a memorandum to all U.S. District Judges, Magistrates, and Chief Probation Officers outlining the Bureau's 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. Thus, an inmate is given both a security level and a medical level as part of the designation process.

Medical Care Level 1 prisoners are characterized as healthy (overall), requiring only

emergency medical care. 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 Care 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 Care Level 4. Care Level 4 is the same as the current Medical Referral Center placement.

The Bureau 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. A male inmate who is identified in the BOP Central Inmate Monitoring System will be housed in a High security level institution, 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. A male inmate whose current term of confinement falls into the "Greatest Severity" range according to the Offense Severity Scale (Appendix A) of BOP Program Statement 5100.08 will be housed in at least a Low security level 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 "organizers/leaders", which includes importers, high-level suppliers, growers, manufacturers, financiers, money launderers, aircraft pilots and captains of large boats or ships. For example, in a drug case involving more than 10 kilograms of cocaine or 620 kilograms of marijuana, designation staff will look at the role in the offense portion of the PSR 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 PSR 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. A male or female inmate whose behavior (current or prior) includes one or more of the following elements will be housed in at least a Low security level 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 PSR 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 incapable 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. A male or female inmate classified under the BOP Central Inmate Monitoring system as a Threat to Government Official will be housed in at least a Low security level institution, unless this PSF has been waived.

Deportable Alien. The BOP now applies this PSF to any male or female inmate who is not a citizen of the United States. This includes all long-term detainees. Application of this PSF requires placement in at least a Low security facility. It is not to be applied when the U.S. Immigration and Customs Enforcement (ICE) or the Executive Office for Immigration Review (EOIR) have determined that deportation proceedings will not be warranted, or when there is a finding not to deport.

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. A female inmate whose current term of confinement or history involves two convictions for serious incidents of violence within the last five years will be assigned to at least a Low security level institution, unless the PSF is waived.

Serious Escape. A female inmate who has been involved in a serious escape within the last ten years, including the current term of confinement, will be assigned to the Carswell Administrative Unit, unless the PSF has been waived. A male inmate who has escaped from a secure facility, or has an escape from an open institution or program with a threat of violence will be housed in at least a Medium security level institution, unless the PSF is 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 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 PSR 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 5100.08 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.

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:

- *Judicial Recommendation.* Occasionally, the BOP may 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.
- *PSF Waived.* This MGTV is applied when a PSF has been reviewed and approved for waiver by the DSCC Administrator, and will cause the inmate to be placed at a different security level than if the PSF were as in place.
- *Long-term Detainee.* Although the BOP assigns security levels to long-term alien detainees at the time of initial classification, these detainees do not receive subsequent

custody reviews as do non-alien regular BOP inmates. Therefore, should circumstances warrant a transfer to a lesser or higher security, the BOP assigns this MGTV. This MGTV can only be approved by the BOP Detention Services Branch, Correctional Programs Division, Central Office.

- *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.

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 "separatees."

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 recommendation. 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 BOP computer system. (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 non-law enforcement agencies or the public, including defense attorneys in most districts.

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 PSR 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").⁴ It is for good reason that the PSR 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 PSR 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 PSR before it is forwarded to the Bureau. A finding made in the judgment in a criminal case will also suffice.

For example, if the PSR 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 PSR 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 PSR adequately documents any drug (illegal as well as prescription) abuse or alcoholism. Many defense lawyers and

⁴ 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," *Champion* (July 2006). Both articles can be found at www.alanellis.com.

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 PSR, 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. § 3553(a) requires a court to "consider." Otherwise, highlighting these problems may have the unintended consequence of the client being designated either to a medical facility rather than a camp, or to a different camp.

This is not to say that medical problems should be minimized. Medical problems should be accurately reported in the PSR. Otherwise, he or she may not receive appropriate medical treatment. Physical problems which impair a client's ability to do certain kinds of work also need to be documented in the PSR. Otherwise, BOP staff may require him to perform strenuous physical labor even though his medical condition does not permit it. It is also important for the PSR to list medications the client has been prescribed.

Finally, it is important to ensure that the PSR lists the correct client address. Since "release residence" is defined by the BOP as the defendant's legal address listed on the PSR, the BOP will attempt to house your client near that address. If that address is far from family and

friends who want to visit your client, you should consider requesting that another address be used.

Prisoners often complain that they have been negatively impacted by inaccurate information in their PSRs. At a recent presentation that Alan Ellis gave at a federal prison, he asked the assembled inmates if the conditions of their confinement were affected by errors in their PSR. Eighty percent responded that they were. He then asked the 80 percent how many of them were told by their attorneys prior to sentencing that the inaccuracies would have no detrimental effect. Almost all of the 80 percent raised their hands. It's up to us to reduce both these figures.

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Federal Lawyer Magazine has described him as “One of this country’s pre-eminent criminal defense lawyers.” The United States Court of Appeals for the Ninth Circuit in a published decision has described him as a “nationally recognized expert in federal criminal sentencing.”

Alan has been awarded a prestigious Fulbright Senior Specialist Award by the U.S. State Department to conduct lectures in China on American criminal law. He is the first practicing American criminal defense lawyer to have been invited to China by both governments.

J. Michael Henderson is a federal prison consultant to the Law Offices of Alan Ellis. Mr. Henderson has over 23 years of experience working with the Bureau of Prisons. Mr. Henderson served as the Regional Designator for the Western Region of the United States in the early 90s, and from 1997 until his retirement in 2000. In that capacity, his duties included oversight of the Federal Bureau of Prisons classification of newly-sentenced federal offenders in the western part of the United States. Mr. 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 in these areas. During his career, Mr. Henderson has received numerous awards and recognition for his work, including noteworthy awards from the inmate branch of the NAACP at FPC Allenwood and the Bureau of Prisons' National Stanford Bates Award for outstanding contributions to improved case management. He is the co-author of the *Federal Prison Guidebook*, and numerous articles on the Bureau of Prisons.

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