Counseling Your Clients on Doing Time

Editor's Note: The following is an edited version of an interview conducted in November 2001 by Alan Ellis with J. Michael Henderson that appears in the 2002 edition of the Federal Prison Guidebook.

Q: Will offenders be placed at a federal prison of their choice and close to their families?

A: Initial placement is based on an initial classification of the individual by the Bureau of Prisons (BOP) as minimum, low, medium, or high security, and according to whether or not there is available bed space at the institution, with that security level, that is closest to the offender's legal residence. So, if the offender would like to be placed in a minimum security camp, for example, but is classified by the BOP as low, medium, or high security, then the offender would not be initially assigned to a camp. Similarly, if an offender knows of a federal prison near his or her home, the offender will not likely be assigned there if his/her initial security level classification by the BOP is not the same as the security level of the institution. Finally, every new offender should know that the Bureau of Prisons currently houses a very large number of inmates and can have extremely limited bed space at some institutions, which can result in an initial placement further from home than either the offender or the Bureau of Prisons would prefer. In such cases, a future transfer is a reasonable possibility.

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Q: If offenders are granted self-surrender by the court what should they take to prison?

A: It is best to arrive at a federal prison with as few personal possessions as possible because offenders are leaving their regular lives and lifestyle. Also, minimizing what one brings will lessen the possibility of confiscation by prison staff of unauthorized items and reduce the amount of personal belongings, which are mailed back to the next of kin in a box. The individual should bring no items worth more than \$100, including jewelry. A wedding band is fine, as well as an inexpensive wristwatch and a religious medal, if worn. The personal clothing will be returned to the family or friends or the attorney. I recommend that the offender report with only a modest amount of money, perhaps \$75 to \$100. Such an amount will permit some discretionary spending at the institution commissary and a phone call home during the initial days of confinement, freeing the new inmate from having to rely on—or fall in debt to—other inmates. Caution is the watch word should the new inmate encounter another. more experienced inmate who "offers" to help purchase something the new inmate cannot otherwise afford; such offers can have illicit payment return terms that the new inmate is not prepared for and can be dangerous. Similarly, if a new inmate arrives with a lot of money, other inmates quickly become aware of it and the new inmate can be "targeted" by other inmates who would like little more than to get some of the new inmate's money.

Q: Many new offenders ask about how much money they will be able to have in their prison accounts, how much they can spend, and how they can receive money and other materials from their friends and families.

A: The [small amount] of money new inmates bring to prison—no more than \$100—will be used to open an inmate trust fund account from which they will be required to pay for their personal telephone calls, postage stamps, and items from the commissary (personal hygiene items, snacks, etc.). This is the only preliminary information that new offenders need because immediately after arrival they will have all of the answers governing procedural regulations at their fingertips, in the A & O Manual. Also, new inmates receive all pertinent information directly from a staff member from the

institution business office and/or commissary. Armed with both the written and verbal information from prison staff who run the inmate trust fund accounts, the new inmate will know within the first week how to receive money, how it can be spent, and what restrictions and approvals are in place regarding receipt of anything from family or friends.

Q: How about medications?

A: Prescription medicine can be brought with the understanding that it will be checked by institution medical staff to determine if it is in the Bureau of Prisons' medical formulary. If a medication is in the formulary, the medication brought to the prison will be taken and new medication issued to replace it. If medication is not in the BOP's formulary, it will be confiscated and the new inmate will have to see medical staff concerning whether a substitute medication can or will be prescribed. The new offender should not bring over-the-counter medications.

Q: What can a new prisoner expect from staff upon arrival at a federal prison?

A: Upon arrival, the offender will be met by either a correctional officer or member of the receiving and discharge (R&D) department. A strip search, issuance of institutional clothing, photograph, fingerprinting, and inventory of personal property will subsequently be performed by R&D staff. If the offender arrives after normal working hours or when the R & D department is not staffed, he or she will be taken to an area where a strip search will be conducted. Prisoners will be issued institutional clothing and will likely be placed in a secure cell until they can be fully processed for intake through R & D.

The [intake] process will be conducted in a very businesslike manner, which for new inmates can seem impersonal. However, this is a good time for the new inmate to simply watch, listen, and learn who some of the staff are and what they do.

Q: Who is the staff and what does staff do during the intake process?

A: The R & D staff members are those who perform the search, fingerprinting, and personal property inventory of the new arrival. A correctional counselor or a case manager will conduct a brief private interview. A medical staff member, usually a physician's assistant, will conduct a medical screening.

Q: What is most important for the inmate at this initial intake phase?

A: It is important for the inmate to understand that this is the business of incarceration, to understand that prison staff is not trying to be demeaning.

It is wise for the new arrival to listen carefully to any and all questions that staff asks, and to answer those questions honestly. If the new inmate does not understand a question, it is appropriate to ask staff for clarification. Similarly, the new inmate should read and fully understand all forms that are provided—some for the inmate's signature. A failure in this early communication process could lead to potential difficulties at some future point of incarceration. Forms and information relative to telephone use, mail correspondence, and visiting are provided.

Q: Will the new inmate receive written rules and guidance before being placed in the general inmate population?

A: Yes. Upon arrival, each new inmate is given an admission and orientation (A & O) handbook, for which [he or she] must sign. I cannot overstate the importance of this document and the inmate's receipt of it with signature because from that moment forward the inmate will be held responsible for knowing and complying with all of the Bureau of Prisons and institutional rules outlined in it. The A & O handbook is thorough and describes the various institutional departments and staff, schedules for the inmate to follow within the institution, and visiting and correspondence information. The smartest action that a new inmate can take with respect to the A & O handbook is to read it cover to cover as soon as possible, and to keep it at hand for future reference.

Q: When does a new arrival enter the general inmate population?

A: Upon successful completion of the intake process. Successful completion means that the institution has received all necessary official documentation from the sentencing court and from the respective U.S. marshals and U.S. probation offices. Such documentation includes the judgment and commitment order and the pre-sentence investigation report. If such documentation is lacking or incomplete, it may not be possible for staff to allow the inmate to enter the general inmate population. Similarly, if during the intake screening process some interviewing staff members identify a potential concern for the new inmate's health or safety, then the individual may not be put in the general inmate population.

Q: What is important for the inmate to know if not placed in the general inmate population, and what if anything will he or she be told?

A: It is important that the new arrival understand that most federal prisons do not lock up their general inmate population in isolated cells 24 hours a day, which means that inmates are moving about. Given

that fact, BOP staff, which is charged with ensuring an inmate's safety, cannot and should not place a new arrival in the open inmate population until they have complete case documentation that, in conjunction with the intake interviews, provides a reasonable assurance that the new inmate will not encounter an identifiable and undue risk. Also, the new arrival's health can be a concern.

If new arrivals cannot be placed in the institution's general population because of insufficient or missing documentation or for health reasons, they

Inmates should keep personal business private. will be so informed. If, during the intake process, staff identifies a potential security risk to an inmate's safety or to the safety of others, the new arrival may be given only limited information because staff cannot divulge sensitive or investigative details.

Q: What happens when the inmate is placed in the general inmate population and what can the new arrival expect?

A: The inmate will be assigned specific housing and will begin an admission and orientation period.

During this period, the new arrival will meet the case manager, correctional counselor, and unit manager who comprise the inmate's unit team. These are the inmate's key staff members and they will have primary responsibility for managing almost every aspect of the inmate's case during confinement. The new arrival will also attend formal admission and orientation sessions where staff members from every department in the institution will provide information and answer questions concerning all aspects of confinement.

Q: What is important for the new inmate during this orientation period?

A: It is most important for new inmates to read the A & O handbook. This will lay a foundation for the information that they will receive from staff members at the admission and orientation sessions. Next, it is important for new inmates to observe and to listen, keeping personal business to themselves rather than sharing it with other inmates, and to understand their accountability for where to be at any given time in the institution.

Q: Will inmates be given a work assignment? What should they know about it and what if the new inmate decides that he or she is not satisfied with the housing and/or work assignments?

A: New inmates may be given a temporary work assignment during the admission and orientation period, or it may be assigned after orientation. It is important for new inmates to know that the initial work assignments are based solely upon institutional need rather than the inmates' personal preference. They may be assigned to what they perceived to be menial work, or work that is uninteresting. However, they will receive a monetary stipend for their work. During orientation, staff members will provide information about work assignments that the inmates may find more interesting, and they'll learn how they can go about applying for those assignments.

With regard to housing assignments, new inmates will be assigned to quarters with another inmate not of their choosing, and usually to an upper bunk bed. Through routine inmate movement and in meeting other inmates, it may be possible to discuss changing quarters with a member of the unit team, usually the correctional counselor. Also, through seniority and clear conduct an inmate can receive preferred quarters within a housing unit.

Q: In addition to quarters and work assignments, what other aspects will the new inmate learn about?

A: The new inmate will be told about how the custodial staff, or correctional officers, conduct their supervision of inmates; disciplinary processes; visiting privileges; mailroom services; sentence computation and earning of good time credit; educational services that include available classes, training, law and leisure libraries, and recreational activities; medical and mental health services; psychology programs; religious services; food service; payment of court-ordered fines and restitution; and release planning and preparation programs.

Q: Can new inmates "learn the ropes" from other inmates?

A: I suppose it's inevitable that every new inmate learns something about institutional rules, staff roles, and various aspects of prison life from other inmates. However, strong caution is needed, because the only things a new inmate knows about any other inmate is what that other inmate selectively chooses to tell the new inmate. Potential pitfalls abound and a new inmate who wishes to get through the process of incarceration successfully, without negative repercussions and with an eye toward benefiting from all available programs for which [he or she] may qualify, should let the written BOP regulations be the primary guide, rather than other inmates. Further, in understanding how the Bureau of Prisons regulations function and are implemented, the inmate should

rely upon staff for clarification, as well as information in the inmate law library.

Q: But isn't there, in fact, an adversarial relationship between staff and inmate?

A: In the mind of many inmates there may be because they are being put in—and kept in—a controlled environment. They should be encouraged, however, not to bring a negative emotional and psychological experience to bear upon prison staff, who are not in a position to rejudge their criminal case and who are required to keep them confined.

Q: What if a staff member seems unhelpful, less than responsive to a problem, or evasive in communicating with the inmate?

A: The inmate almost always has a case manager, correctional counselor, and unit manager available for assistance. In addition, almost every day that the inmate goes to eat a meal there are staff members available in the dining area from all institutional departments, including the upper management—the associate wardens and the warden. The availability of a wide range of staff members is important because BOP staff members are human beings, too, and some will be more effective communicators than others. Some staff will be more thorough and patient than others. So if an inmate is experiencing difficulty in dealing with a particular staff member, there are many others who can address the problem.

Q: What if an inmate follows all of the rules and regulations, but encounters a situation or has a problem that none of the institution staff, including the warden, can or will resolve?

A: This is an extremely rare scenario. Just because an inmate may not receive an answer to a question, or receive a response that is personally favorable, does not mean that staff has not responded and acted within the scope of Bureau of Prisons policy. Sometimes, inmates mistakenly believe that because they do not receive action or the response they want, staff has mistreated them. This usually stems from incomplete or inefficient communications, lack of understanding BOP policies and proce-

dures, and inmates not speaking to all staff members who can resolve the dispute. That said, there is a procedure known as the administrative remedy process that is available by which an inmate can request reconsideration of staff decisions and/or formal reviews of staff decisions at higher levels.

Q: What do the administrative remedy procedures involve?

A: First, the inmate should make a meaningful attempt at informally resolving the dispute. If unsuccessful, the inmate can file an administrative remedy form BP–9 with the warden. If this step fails to resolve the issue, the inmate can file an administrative remedy form BP–10 with the regional office. If that process is unsatisfactory, the inmate may file an administrative remedy form BP–11 with the BOP's central office in Washington, D.C., for the highest level of formal review.

One of the most important things an inmate should consider in both filing an administrative remedy complaint and in whether or not to reasonably expect a positive result from filing complaints under the administrative remedy process is whether or not the staff action or decision that [he or she] is appealing was made within the authority and parameters of BOP policies. If it was, there is little a formal review can accomplish, regardless of what other inmates may say. Conversely, review of appeals can involve careful scrutiny by BOP legal staff as well; so if a complaint involves a staff decision or action that was not made within the parameters of policy, the action or decision will be rectified for the inmate.

Q: What can an inmate anticipate in terms of maintaining clear conduct and open communication with staff?

A: An inmate who conducts himself [or herself] in an above-board manner at all times, in terms of both staff interaction and interactions with other inmates, will not generally warrant or elicit extra scrutiny or suspicion. The inmate will likely receive favorable consideration for security and custody level reductions when eligible, which can result in

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placement in a less secure setting with less intense staff supervision, and if eligible, participation in community activities. Earlier, I referenced that an offender who is initially assigned to a prison farther from [his or her] home than might be preferred could receive a future transfer to an institution closer to home; it must be stressed that clear conduct is required in order for an inmate to receive such a transfer. Disciplinary action, on the other hand, can result in placement in a more restrictive setting, an upgrade in security level and custodial supervision, loss of good time, greater restrictions on visiting, unfavorable consideration for transfer to a prison closer to the inmate's home, not to mention loss of preferred quarters assignment, and loss of eligibility for certain programs.

Q: Some inmates have court-ordered fines, criminal penalty assessments, or restitution. Will these need to be paid for from the same inmate trust fund account that is used for personal spending in the institution while the offender is confined? If so, what can the new inmate expect?

A: Possibly, yes. The payment of court-directed fines or fees will be dependent upon how the court order is written. Some fines and/or fees, for example, might be imposed strictly as a condition of the offender's supervised release, after incarceration. Some court orders do not distinguish. The information is contained in the court's judgment and com-

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mitment (J & C) order that is also used to impose sentence, and so it could benefit the offender to review that document closely with his/her attorney for any needed clarification. After arrival at a federal prison, institution staff will review the J & C order. and, if payment is required during confinement, they will discuss payment options with the inmate. When an installment-type of payment plan is needed, the inmate and the unit team can set up a payment schedule, which can involve regular fixed withdrawals from the inmate's trust fund account. The Bureau of Prisons term for this is the inmate financial responsibility program (IFRP), and the new inmate should understand that the BOP is quite serious in its administration of the program—to the point that there can be serious repercussions if prison staff determine that an inmate is not making a meaningful effort at satisfying court-imposed financial obligations. Sanctions that the bureau can impose for failure—which is called refusal—to make measurable progress in a payment plan can include loss of a preferred housing assignment, reduction of pay for an inmate's work assignment, and exclusion from programs for which the inmate may otherwise be qualified, including furloughs and halfway house placement.

Q: With regard to furloughs, what can an offender reasonably expect?

A: It is important for every new offender to understand that there is no "entitlement" to unescorted social furloughs while [he or she] is serving a sentence, or to halfway house placement before the conclusion of the sentence. With that understood, there is the matter of technical eligibility for these programs, and the fact that technical eligibility does not mean an automatic approval in all cases.

First, for an unescorted social furlough, inmates must be, and remain, classified as minimum security. Additionally, they must have been assigned what is known as community custody, which is the very lowest supervision assignment in the Bureau of Prisons. Inmates must have maintained clear conduct and otherwise comported themselves appropriately during confinement, as observed and judged by staff, not according only to the inmate's selfreport or accounting. (This is important.) Social furlough eligibility is further contingent upon how much time the offender has remaining to serve, as it cannot occur early in the sentence. Initially, there can be one-day furloughs, and, subsequently, as the sentence is served there can be overnight furloughs. The Bureau of Prisons places restrictions on the frequency, and the inmate bears the cost of social furloughs. Other possible furloughs can be granted under extraordinary circumstances, such as admission to a community hospital or to attend the funeral of an immediate family member, and, to some extent, for specially defined and regulated legal or religious functions. These are made on a case-bycase basis, and always require minimum security classification and clear conduct.

Q: With regard to halfway house placement, what can an offender reasonably expect?

A: Pre-release halfway house placement, known in the Bureau of Prisons as placement in a community corrections center (CCC), is a program that is widely utilized for as many inmates as possible. The general time an inmate will be approved for CCC placement will range from 30 days to, in a few cases, six months. No inmate should consider CCC placement as a means of early release from prison, nor that a lengthy CCC placement will be a likelihood. The Bureau of Prisons contracts with private agencies for halfway house space, and, therefore, one variable in placement is federal funding, regardless of how many available beds a particular halfway house says it has. Another factor will be the length of time an individual has served, because CCC placement is provided for transition back to community life from confinement, and offenders who serve long sentences generally need greater transitional assistance. Other factors considered by BOP staff in determining CCC placement for an offender are the nature and quality of family and community ties and the inmate's conduct during confinement. There are some offenders, who because of the crime they committed, will be excluded from CCC placement, but most offenders will receive the benefit of some CCC placement.

Q: What can you tell family members about some prison issues that they might be concerned with, starting with visiting.

A: The new inmate will receive a copy of visiting regulations and forms to send the family, which they will need to complete and return for visiting. Family members must understand that it is imperative for them to answer the questions on the visiting forms accurately and honestly; failure to do so can result in a loss or denial of visiting privileges. For example, a family member who has a prior court conviction of any type, even if given probation, should report it on the appropriate section of the visiting form because a background check by the Bureau of Prisons will uncover it, and, if they forgot

or intentionally omitted the information, they will likely be denied visitation.

New inmates will be given a copy of their approved visiting list, usually by their assigned correctional counselor. The family should ensure that they are approved prior to traveling to the prison to visit. It will be extremely helpful if the family can prepare for the visit by adapting to the notion that a federal prison is a serious and controlled setting, and not a place of emotional warmth. There are no private and/or unsupervised visits with family members in the BOP, but the family can be somewhat relieved in knowing that the majority of visiting rooms are open, without the glass partitions and telephones for communicating that we often see depicted in television and movie dramas. The family should be prepared for being subjected to search

procedures and supervision when visiting. Such scrutiny is necessary because, unfortunately, one of the ways illegal drugs and some other types of contraband are smuggled into prisons is by visitors, including family. Therefore, it is recommended that visitors bring very little with them into the prison, and nothing to give to

Pre-release is used as often as possible.

their loved one (except coins that they can use at the vending machines in the visiting room). After being cleared into the visiting room, they will be expected to conduct themselves appropriately at all times, which means that they should avoid any conduct that might make correctional staff suspicious, especially excessive physical contact with their loved ones. Generally, they will be permitted to embrace their loved ones only at the beginning and at the conclusion of each visit. This may be a change for both inmate and family, but it is very important to understand and appreciate the fact that a prison is a very serious setting, and not a casual one.

The family should also be prepared for the possibility of early termination of their visit should the visiting room become crowded. This can and does happen in order to allow other inmates to have visits. This can be an emotionally difficult situation for both the inmate and the family, and, therefore, it is important to realize that early termination due to crowding will be an impartial decision by prison staff. Arguing with staff will not improve or help the situation. In fact, all visitors are expected to comply with prison staff at all times in order to maintain their visiting privileges. The Bureau of Prisons holds

the inmate accountable if a visitor fails to follow regulations or comply with staff instructions.

Finally, the family should know that while their loved one is serving a sentence in a federal prison, misconduct that results in the receipt of a written incident report can be sanctioned by the loss of visitation privileges, even if the misconduct was not related to visiting. The reason is that the Bureau of Prisons expects clear conduct if the inmate is to be permitted full privileges and receiving visits is supposed to be a motivating factor to help an inmate maintain clear conduct. The family should reiterate the importance of visiting to the inmate. And, should the inmate incur misconduct sanctions that include a temporary loss of visitation, the family will be better served by helping their loved one understand that family visitation should be a priority rather than by being angry with the BOP.

Q: Are family members also subjected to security measures with regard to written correspondence and telephone calls?

A: Telephone calls from the inmate are subject to monitoring and recording for security reasons, and that incoming mail will be opened and screened. Therefore, what the family members say and write should always be aboveboard and appropriate. Further, the family also needs to know that an inmate is prohibited under BOP regulations from conducting a business while confined, so written and telephone correspondence must not involve such prohibited conduct. Finally, the family should be strongly cautioned against making three-way, or third-party calls after the inmate has connected with them telephonically, because this, too, is prohibited by the Bureau of Prisons. Such calls are generally viewed by the bureau as circumventing telephone regulations, which is [a] reasonable [position] because the inmate is allowed to have a large number of people on the authorized telephone list and can even modify the list frequently.

Q: What should the family know about the prison disciplinary process?

A: As already referenced, the new inmate will receive a full and comprehensive list of Bureau of Prisons rules and regulations immediately upon arrival at a federal prison, including all prohibited acts. Therefore, the family should understand that there is usually very little excuse for the claim by offenders that they might not know they were violating a rule. Also, the family can understand that BOP staff are generally much too busy in their daily routines to write disciplinary reports against an inmate

simply because a staff member "dislikes" the inmate. In fact, the formal disciplinary process requires an eyewitness staff account of an inmate's prohibited conduct, further investigation by a correctional supervisor, and then an in-person review with the inmate by a unit team member staff, and, later, if referred by the unit team, by an impartial disciplinary hearing officer (DHO). This leaves very little room for the personal likes or dislikes of a single staff member. The family should realize that the institution's DHO is virtually autonomous as an independent department head within the institution and, therefore, very impartial. Finally, even if found guilty of a prohibited conduct, the inmate has an appeal process whereby all disciplinary proceedings are impartially reviewed at administrative levels higher than the institution. Unfortunately, when an inmate receives an incident report for disciplinary purposes, the family might only receive a highly subjective and often self-serving account from the inmate. So, while the family should be supportive of their loved one, based on the multilayered disciplinary review process, it is more realistic and helpful for the family to refrain from adopting an adversarial attitude toward the Bureau of Prisons regarding disciplinary matters.

Q: What should the family understand about medical care in prison?

A: When an offender is sentenced to a federal prison term, the Bureau of Prisons assumes all responsibility for medical care. Therefore, a personal doctor will not be able to continue treating the inmate, and neither the new inmate nor the family will have a choice in selecting a medical provider. The standard of medical care provided in the Bureau of Prisons is based on the standard of medical care provided in the community, and regular review and accreditation of the medical practices and facilities is required. The medical staffing can vary from one prison to another, and offenders whose needs cannot be managed at one might be placed in another, which can sometimes move the inmate farther from the family. Families should be as supportive as possible under such circumstances, knowing that the health of their loved one can supersede the [desire to have] proximity to the family. Also, the family should know that many prison facilities augment their medical care with doctors from the community, usually specialists, on a contract basis. Finally, the BOP has some institutions that are strictly for inpatient medical care and surgery. The hardest part for the family, I believe, is not having a part in the health care for their loved one. But focusing on the

positives of the BOP system can help, even if that system is more impersonal to the inmate than private medical practice. Finally, each BOP region has a regional health services administrator who is usually open to knowing about serious and significant health care concerns should an inmate feel his or her medical needs are not being adequately addressed.

Q: Do you have any final words of advice? **A:** Let me offer the three most important pieces of advice that I can to the offender who will be going to a federal prison facility for the first time:

First, the federal court proceedings and, ultimately, sentencing to prison has likely taken a very serious toll on the offender and the family psychologically, emotionally, and often financially. With this backdrop, when the time for confinement finally arrives it sometimes becomes "convenient" for the offender and/or the family to vent their frustrations on the Bureau of Prisons. It is important to keep perspective, which is that no person in the Bureau of Prisons has been responsible for the inmate's current circumstances, and, ultimately, it will not be the BOP's responsibility to rebuild lives or relationships. Straight thinking in this regard can empower the offender and the family, and help them avoid the nonproductive trap of feeling as though they are victims.

Second, offenders would be well advised to keep important personal information about themselves and their families confidential—period! This does not mean being so secretive as to arouse the suspicions of other inmates. But it should be painfully obvious that there are real criminals in federal prisons, and becoming vulnerable to them can only complicate life for the well-meaning offender who truly wishes to serve his or her sentence with as little hassle as possible and go home. I have read one book that advises new inmates to make friends with other inmates and their families in the institution's visiting room. If that worked for the author or someone he knew, that was good, but his subjective experience, which is neither assured nor a general rule, should not be the basis for offering advice. An offender should rely on getting his/her "warm fuzzies" from family and friends outside of prisons, not from other inmates and their families. Well-meaning inmates can be conned, their family's privacy and well-being compromised, and life seriously disrupted if they choose to be friendly with the wrong inmates. (And if the offender thinks he/she can always detect the good from the bad, they are mistaken unless they are professional behavioral scientists.)

Last but not least, humility, clear conduct, and an understanding that federal prison—while offering a variety of programs and activities—may be an experience of some drudgery, with no "entitlements," can and should help offenders appreciate freedom and family more than they may have prior to incarceration. With self-reliance, the "big picture" the offender can focus on through the confinement term is returning home and staying out of prison, where, once released, freedoms and value of family can be maintained. There is no sounder advice.

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