Federal Sentencing Practice Tips

Effects of *United States v. Booker, et al.*

by Alan Ellis, Esq.

On January 12, 2005, the Supreme Court handed down its decision in the consolidated cases of *United States v. Booker* and *United States v. Fanfan*. *Booker* has two majority opinions — an opinion by Justice Stevens, which holds that the Federal Sentencing Guidelines, as interpreted in *Blakely v. Washington*, violate the Sixth Amendment, and one by Justice Breyer, which remedies that violation by striking language from the Sentencing Reform Act (SRA) that made the guidelines mandatory. Because the guidelines are now advisory, in cases sentenced after *Booker*, they are simply one factor among several that sentencing courts must consider in fashioning a sentence.

Courts will still be required to "consider" the guideline range, as well as any bases for departure from that range, but they will no longer be required to impose sentence within that range — even where there is no basis to "depart." Under 18 U.S.C. § 3553(a), the key requirement is that the sentence in each case be "sufficient, but not greater than necessary":

(A) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) To afford adequate deterrence to criminal conduct;

(C) To protect the public from further crimes of the defendant; and

(D) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Practice Tips for Preparation for Sentencing

Statistics issued by the federal government indicate that approximately 94% of all indicted federal criminal defendants plead guilty. Seventy-five percent of those who proceed to trial are convicted. Accordingly, there is a 97% likelihood that a federal criminal defendant will face sentencing. Thus, for most federal criminal defendants "How much time am I going to do?" and "Where am I going to do it?" are of key concern. In an effort to obtain the lowest possible sentence to be served at the best possible facility under terms and conditions that will facilitate release at the earliest possible opportunity, I have found the following tips invaluable:

- When you meet with the probation officer, find out what his or her "dictation date" is. That is the date by which he or she must dictate the first draft of the PSI (Presentence Investigation Report). Remember that probation officers often have a proprietary interest in their original draft PSI, and getting them to change it through making objections is often very difficult. Hence, you want the best draft PSI you can get, so you don't have to file that many objections.
- Accompany your client to his or her meetings with the probation officer during the preparation stage of PSI. Probation officers are often overburdened, so have your client complete and bring the forms and documents the probation officer needs with him or her to the initial interview. If you have any cases supporting your position regarding anticipated disputed issues in the guidelines, bring the cases with you and highlight the relevant sections. Remember, probation officers are not lawyers and sometimes have a difficult time with memoranda of law. Highlighted cases are more helpful to them.

Alan Ellis is a criminal defense lawyer with offices in San Francisco, Philadelphia, and soon to be opened in Hong Kong. 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." Mr. Ellis is a Past President of the National Association of Criminal Defense Lawyers.

He is also a contributing editor to the American Bar Association's Criminal Justice *magazine for which he writes a regular quarterly column on federal sentencing. He is a sought after lecturer in criminal law education programs and is widely published in the area of federal sentencing, Bureau of Prisons matters, appeals and other post-conviction remedies with more than 90 articles to his credit. Amongst his publications are the highly acclaimed* Federal Prison Guidebook, *the* Federal Sentencing Guidebook *and the* Federal Post Conviction Guidebook. *Mr. Ellis also publishes* Federal Sentencing and Post Conviction News. *He has recently authored several articles on the United States Supreme Court's decision in* United States v. Booker *entitled "All About Booker," "Litigating in a Post-Booker World," and "Representing the White Collar Client in a Post-Booker World." In the area of international criminal law, he has recently authored "Americans Arrested Abroad," a companion article to his earlier "Going Home: An Introduction to International Prisoner Transfer Treaties."*

More than one legal commentator has referred to Mr. Ellis as the "go-to guy in America" for federal sentencing if "you're in deep trouble and have deep pockets."

• When possible, it is extremely helpful to get the probation officer and the assistant U.S. attorney (AUSA) to accept what you believe is your client's offense behavior, his or her role in the offense, and any grounds for downward departure or variance before the dictation. This simply means getting them to agree that your position is not unreasonable. "If the law is against you, argue the facts. If the facts are against you, argue the law. If both the law and the facts are against you, take the probation officer and the prosecutor out to lunch."

• File a presentence memorandum five to seven days prior to sentencing. Statistics show that in 80% of cases, judges decide what sentence they will impose before they take the bench. This is called a "tentative sentence." Unless you can put on a tremendous dog-and-pony show at sentencing, it is likely that your client will receive that sentence. Consequently, if you can provide the judge a solid presentence memorandum with character letters, community-service reports, mental-health evaluations, treatment reports *before* he or she has crystallized his or her thoughts on the case, your sentencing memorandum may go a long way toward determining your client's sentence. At the beginning of your sentencing memorandum, propose a sentence that you believe is "sufficient but not greater than necessary," to meet the purposes of sentencing under 18 U.S.C. § 3553(a)(2) and then go on to explain why.

• Answer the "why" questions. The most important two questions that you can answer for the sentencing judge are: "Why did your client do what he did?" and "Why, if I take a chance on him, won't he do it again?"

• Often, when clients cooperate with the government in compliance with 18 U.S.C. § 3553(a) the government refuses to file a 5K1.1 motion for downward departure based on substantial assistance. Faced with this unpleasant situation, seek a downward departure based on "super/extraordinary acceptance of responsibility." If you spell out to the judge the cooperation the client has provided, even though it may not be all the government had hoped for, it might persuade the judge, many of whom are opposed to the government's unilateral power to control departures for cooperation, to depart downward as much as if the government had filed a 5K1.1 motion. Now, post-*Booker*, the judge can impose a below-the-advisory guideline (not mandatory minimum sentence) on his or her own without a government motion for cooperation.

• After *Booker*, cooperation will remain an important way for defendants to earn lower sentences, but in cases without mandatory minimums, it will not be as critical for plea agreements to include a government promise to file a § 5K1.1 motion. A court may now impose a below-the-guidelines sentence based on a defendant's cooperation even without a government motion. In a case with a mandatory minimum it will still be important to lock in a government's obligation to file a motion pursuant to 18 U.S.C. § 3553(e).

• If your client is a cooperating witness, accompany him or her to any debriefings in case there's a later dispute as to what the client said. Also, your presence will often facilitate the discussions, particularly if you've debriefed and prepped your client in advance. Object to

the Presentence Investigation Report if it does not include all information relevant to Section 3553(a) purposes and factors.

• You might want to seek a lateral departure or variance that requires your client to serve the same amount of time as called for by the guidelines, but addresses the conditions of confinement rather than seeking less time. For example, if the guidelines call for a 21-month sentence, ask the judge to impose a sentence of seven months of incarceration, followed by supervised release with a special condition that the client serve seven months in the correctional component of a community corrections center (CCC), considered the most onerous unit in a halfway house, followed by seven months of supervised release with home confinement and an appropriate amount of community service and if necessary and appropriate — treatment. Not only does this add up to the same 21 months that the client would normally serve, but it actually requires him or her to serve more time since the client will not get any good conduct time on the seven months nor on the community corrections-center and home-confinement portion of the sentence. Indeed, he or she will serve the entire 21 months as opposed to less than 18 months with good conduct time credit. It doesn't reduce the amount of time to be served; it only alters the conditions of confinement.

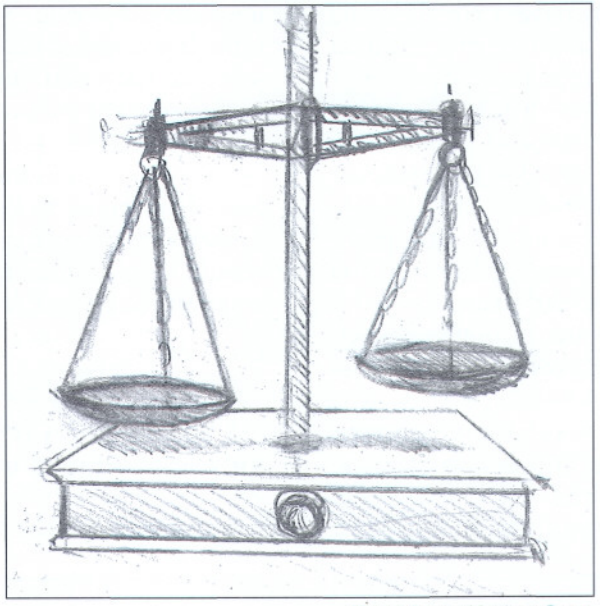

Illustration by Matthew Snow

In appropriate circumstances, considering that the Zones in the guidelines are now also advisory, urge the court to impose a higher split sentence than previously allowable under Zone C of the guidelines. For example, if the guidelines call for a 15–21-month range and you believe that a non-guideline sentence is appropriate, ask the sentencing judge to impose a sentence of eight months followed by supervised release with a special condition thereof of seven months of home confinement. Moreover, if the opportunity presents itself, argue for probation or time served followed by supervised release with a special condition of eight months in a CCC (halfway house) followed by seven months of home confinement plus community service, and treatment, if necessary.

Pre-Plea PSI's

• When a defendant enters a guilty plea, absent a binding stipulation as to his or her guidelines, the client has no idea what the range will be and what sentence will be received within, below or above it. Consequently, more and more sentencing authorities are recognizing the need for a pre-plea PSI and even a settlement conference before a magistrate or judge unrelated to the case in order to get a third party's view as to the base offense level, and whether there will be upward or downward adjustments or departures. It's also helpful, in some cases, to see what the magistrate or judge would recommend if he or she were the sentencing judge. In short, if you request and are granted a pre-plea PSI, and/or a sentence conference, your client will have a pretty good idea as to what he or she faces at sen-

tencing and can then make a realistic, intelligent and voluntary decision as to whether to enter a guilty plea.

• Often one criminal history point or less does not alter the Criminal History Category (CHC) into which a defendant falls. It may nevertheless be important to object to a PSI's addition of a criminal history point and then to appeal a district court's denial of that objection — even where the inclusion of the point does not affect the client's CHC. While normally the addition of a criminal history point which does not affect the sentencing range would be considered "harmless error," that is not always the case. In *United States v. Vargas*, 230 F3d 328 (7th Cir. 2000), the Seventh Circuit remanded for resentencing based on a seemingly inconsequential criminal history point, because the erroneous inclusion of this point "might have affected" the district court's denial of the defendant's motion for downward departure based on the defendant's contention that his criminal history category significantly over-represented the seriousness of his criminal history. *See* USSG §§ 4A1.3 (p.s.).

• *Booker* offers new opportunities to defendants who entered into pre-*Booker* plea agreements which preclude their seeking downward departures. Such defendants can seek non-guideline sentences or "variances" based on factors that would not previously have justified departures. In some cases, they may even be able to argue for lower sentences based on factors which may previously have justified departures.

• After *Booker*, a non-binding plea agreement which stipulates to the guideline calculation may still be helpful with a judge who has a strong inclination to follow the now-advisory guidelines. Plea agreements under Rule 11(c)(1) (C) which lock in a particular sentence or cap a sentence may now become more common as a way to restore some of the certainty to sentencing that was taken away by *Booker*.

• After *Booker*, the government has less leverage to force a defendant to waive the right to appeal or the right to seek a downward departure or a variance. The defense should now agree to such waivers only when the government gives it something substantial in exchange.

Be Creative

• Let judges be judges. *United States v. Koon*, 518 U.S. 81 (1996) altered the ground rules for downward departure giving defense lawyers and judges more latitude. Be creative. Don't limit yourself to downward departures identified in the guidelines themselves.

Think of things that make your case unusual. Remember that not only must your offender have been an unusual offender, but if the offense behavior is unusual in and of itself specifically, less serious than envisioned by the guidelines, this is a good ground for an "unusual" or "atypical" case as defined by *Koon*: one that is outside of the heartland of the guidelines justifying a downward departure.

• Despite the new availability of non-guideline variances, don't shy away from departures. Judges are encouraging each other to depart rather than grant a non-departure leading to a below-the-guidelines sentence to avoid a legislative *Booker* fix. One that I like to use in appropriate cases is that the defendant has suffered enough (loss of job, wife left him, prosecution has caused an extended illness, etc.) and since one of the purposes of sentencing pursuant to 18 U.S.C. § 3553(a)(2)(A) is "to provide just punishment," you can argue that he's been sufficiently punished so far.

Illustration by Bill Robles

Using the "Post-*Booker*" Manual

• The Sentencing Commission has prepared a "post-*Booker*" manual for judges, probation officers and attorneys. The Commission advises judges to give "substantial weight" to the advisory guidelines. However, if the judge indicates that he is giving "substantial weight" to the sentencing guidelines, defense counsel should object on the ground that such a sentencing practice would make the guidelines as binding as they were before *Booker*, thus violating both the Sixth and Eighth Amendment and the interpretation of Section 3553 adopted by the remedial majority in *Booker*. In the alternative, defense counsel can argue that since the "*weighted*" approach in effect makes the guidelines binding, thereby triggering the Sixth Amendment, a court may use this approach to enhance a sentence only if it relies solely on facts proven to a jury beyond a reasonable doubt or admitted by the defendant or that it finds by proof beyond a reasonable doubt or, at least, by clear and convincing evidence. Even in cases in which a court has not indicated that it will not give "substantial weight" to the guidelines, defense counsel should argue that the judge must base all guideline adjustments on facts proven beyond a reasonable doubt or, in the alternative, by clear and convincing evidence.

• Use 18 U.S.C. § 3553(a) factors as a guide to structuring your sentencing memorandum, but keep in mind that you are no longer bound by the Sentencing Guidelines. Where the facts support a traditional guidelines departure, argue for it. But when they don't, use the factors listed in 18 U.S.C. § 3553(a) to argue for a non-guideline sentence below the range. Remind the court that the guidelines are only *one* of seven equally important factors it must consider in determining a sentence that is "sufficient, but not greater than necessary, to comply with the purposes" of sentencing set forth in § 3553(a)(2).

• Pre-*Booker*, the Guidelines prohibited a court from relying on certain offender characteristics for downward departures. *See* USSG §§ 5H1.4 (drug and alcohol abuse), and 5H1.12 (lack of youthful guidance or a disadvantaged upbringing). Courts were also prohibited from relying on other factors, except in extraordinary circumstances. *See* USSG §§ 5H1.1 (age), 5H1.2 (education and vocational skills), 5H1.3 (mental and emotional conditions), 5H1.4 (physical condition and appearance), 5H1.5 (employment record), 5H1.6 (family ties and responsibilities) and 5H1.11 (charitable acts). Now that the guidelines are no longer mandatory, these limitations no longer restrict a court from imposing a sentence below the guideline range.

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Remember, not only does 18 U.S.C. § 3553(a)(1) *require* a court to "consider … the history and circumstances of the defendant," but § 3661 provides that "no limitation shall be placed on the information concerning the background, character and conduct of the defendant which a court may receive and consider for the purposes of imposing an appropriate sentence."

• If you think your client is crazy, guess what? He may be crazy. Consider having him evaluated by a mental-health professional, such as a psychiatrist, psychologist, or social worker. If there is evidence of head trauma, particularly head trauma which left your client unconscious, have him evaluated by a neuropsychologist, a mental-health professional who specializes in brain injury. While a mental disorder may not rise to the level that would justify a diminished capacity downward departure under U.S.S.G. § 5K2.13, the mental disorder still may be grounds for a lower sentence, either through a departure for extraordinary mental or emotional problems as suggested by U.S.S.G. § 5H1.3, or after taking into account the factors listed in 18 U.S.C. § 3553(a) as a variance or a below-the-guidelines sentence.

• While a single mitigating factor may not warrant a downward departure or a post-*Booker* "variance" or below-the-now-advisory-guideline sentence, a combination of these factors, taken together, may persuade the court otherwise. Even if you don't get a downward departure or variance, these mitigating factors can often help in getting a sentence at the low end of the guideline range. This is particularly important when the offense level and/or the criminal-history score render advisory-high guidelines.

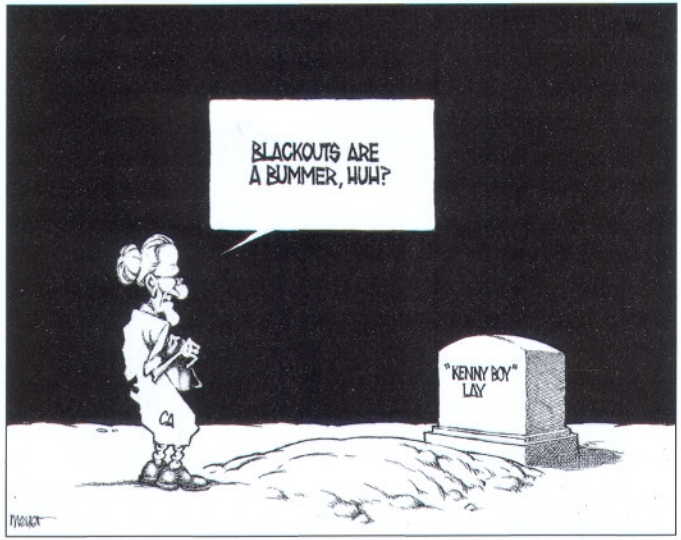
• Departures based on the fact that the guidelines overstate the seriousness of the offense have been recognized by at least two cases, *U.S. v. Restrepo*, 936 F.2d 661 (2d Cir. 1991); *U.S. v. Alba*, 933 F.3d 1117 (2d Cir. 1991); and *U.S. v. Lara*, 47 F.3d. 60 (2d Cir. 1994), all of which support the position of awarding a defendant a departure below the four-level downward adjustment for a minimal role in the offense.

• Remember the "safety valve" (18 U.S.C. §§ 3553(f) and U.S.S.G. 5C1.2). The safety valve is a mechanism for first-time, non-violent, low-level drug traffickers to receive a sentence below the mandatory minimum statutory sentence otherwise only available to more

serious offenders who can earn a below the mandatory minimum by cooperating against other offenders. Low level dealers, couriers or workers often do not have any information on other offenders — unlike their bosses — Congress, passed 18 USC 3553(f) and USSG 5C1.2, concerned because of the miscarriage of justice resulting when "big fish" cooperated against their codefendants, suppliers and customers, while the "little fish" worker, paid a small sum of money to transport drugs from Point A to Point B, or to unload shipments of smuggled drugs, usually had no such information to provide.

Under appropriate circumstances, without the necessity of the government filing a 5K1.1 motion, a defendant may receive a sentence below the mandatory minimum. Also, if the defendant meets the criteria for the safety valve and his or her offense level is determined to be 26 or greater, it is decreased by two levels. (U.S.S.G. § 2D1.1(b)(4)).

• After *Booker*, district courts must still state reasons for the sentences they impose (18 U.S.C. § 3553(c)). See *United States v. Webb*, 403 F.3d 373, 385 n. 8 (6th Cir. 2005). When that sentence is outside the guideline range, § 3553(c)(2) still requires the court to provide a written explanation in the Judgment and Commitment Order of why the sentence is outside the guideline range. When you argue for a sentence below the guideline range, prepare a written statement of reasons that the judge can adopt. Should the government appeal, a well-reasoned justification for the sentence can help ensure that it will meet the new test for "reasonableness."



Tom Meyer/San Francisco Chronicle

• *Booker* has almost returned sentencing to pre-guideline days in which arguments that humanize a defendant and mitigate guilt can produce a sentence as low as probation (unless probation is precluded by law or unless a mandatory minimum applies). An important difference between pre-guideline sentencing and post-*Booker* sentencing is that a judge now must "consider" a list of seven factors (only one of which is the advisory guideline range) before imposing a sentence that is "sufficient but not greater than necessary" to achieve the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2).

• Section 3553(a) requires a court to fashion a sentence which is "sufficient, but not greater than necessary" to

achieve the goals of sentencing — one of which is to provide a defendant with the rehabilitation he needs (§ 3553(a)(2)(D)). At the same time, 18 U.S.C. § 3582(a) requires the court to "recognize that imprisonment is *not* an appropriate means of promoting correction or rehabilitation." (*Emphasis added.*) After *Booker*, it will therefore be possible, in some cases, to argue that these two requirements support a sentence without any term of imprisonment so as to meet a defendant's need for educational, vocational or medical services as part of his rehabilitation.

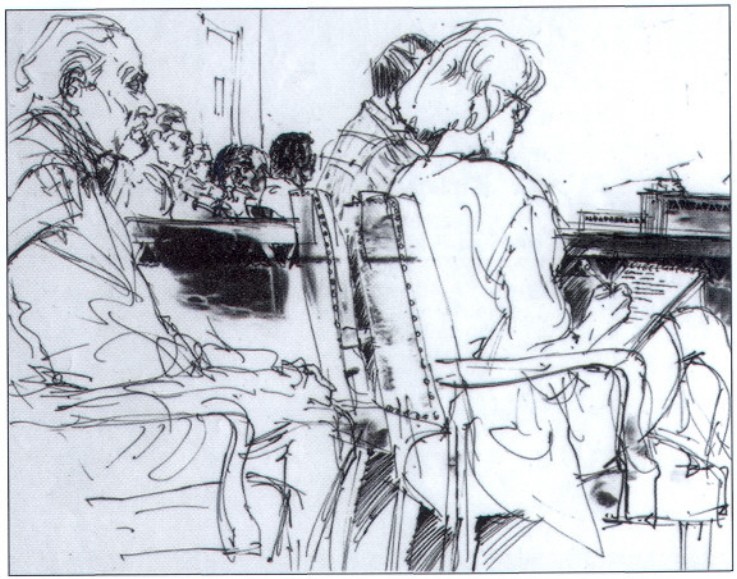


Illustration by Bill Robles

• Consider hiring a mitigation specialist. We have one in our firm, who is a forensic licensed clinical social worker.[1] Mitigation specialists, or sentencing advocates as they are often called, develop individualized sentencing plans for attorneys whose clients face conviction and the prospect of incarceration. The individualized sentencing plans are used by defense attorneys to offer alternatives to lengthy incarceration to prosecutors during plea negotiations, to probation officers during the pre-sentence phase, and to courts at sentencing. Typically, the focus of their sentencing proposals is on substance abuse and/or mental-health treatment, victim restitution, community service, and avoidance of future misconduct. By helping judges understand the clients' life story, they help the attorney argue, often successfully, for alternatives to lengthy incarceration.

Recommendations for Location of Confinement

• Some judges don't like to recommend particular places of confinement at sentencing. Their reasons include, but are not limited to, the fact that they don't believe they are "correctional experts" who are able to determine where a client should serve his or her sentence, and they often get letters from the Bureau of Prisons (BOP) advising them that their recommendations cannot be honored in a particular case.

• Generally, the reason behind the letters is that the judge has recommended a facility incompatible with the defendant's security level. As to their lack of

knowledge of "correctional practices," however, a lawyer is only asking a judge to recommend a facility if the defendant qualifies based on his or her security level. In fact, Program Statement 5100.07 from the Bureau of Prisons indicates that the Bureau welcomes a sentencing judge's recommendation and will do what it can to accommodate it. Indeed, Bureau statistics show that in an overwhelming majority of the cases in which the defendant qualifies for a particular recommended institution, the court's recommendation is honored.

• Without a recommendation, your client may not wind up in the facility for which he or she qualifies (as close to his or her home as possible) due to prison overcrowding. Should there be only one slot open at a prison and there are two defendants who want that placement, the one with the judicial recommendation is more likely to get it, and where both defendants have recommendations, the one whose judge has stated reasons for the recommendation will generally get it. It may help to get a copy of the Bureau's Program Statement 5100.07 and 18 U.S.C. and show the page that deals with judicial recommendations to the court.

• A year-and-a-day sentence results in an inmate serving significantly less time — approximately 46 days less than a 12-month sentence because the 12-month sentence does not provide for good-conduct time.

• An inmate is not entitled to credit for time served on pre-trial release under home confinement or even in a halfway house as a condition of bond.

• Certain considerations termed Public Safety Factors by the BOP — e.g., deportable alien, high-level/high-volume drug trafficking, conviction of sexual offenses including child pornography, sentence length of more than ten years, and others — will preclude camp placement despite an inmate being otherwise qualified for federal-prison-camp placement. The Bureau of Prison looks to the Presentence Investigation Report to determine the applicability of a particular Public Safety Factor.

• Generally, deportable aliens are not eligible for federal-prison-camp placement. However, a non-U.S. citizen may still be eligible for a federal prison camp if he meets the following criteria: (1) documented and/or independently verified history of stable employment in the U.S. for at least three years immediately prior to incarceration; (2) verified history of domicile in the U.S. for five or more consecutive years; and (3) verified strong family ties (only the immediate family) in the United States (BOP Program Statement 5100.07, Ch. 7). The information must be verified in the Presentence Investigation Report. The Bureau of Prisons currently has a limited pilot program for placing some female alien inmates in a minimum-security camp setting, following

careful review on a case-by-case basis. The success or failure of the pilot program will likely determine the future feasibility for placing more alien females in camps.

• 18 U.S.C. § 3624(c) defines that a prisoner can spend the last 10% of his sentence, not to exceed six months, in community placement, i.e., halfway house or home confinement. 18 U.S.C. § 3621(b), however, gives the BOP virtually unlimited discretion in placement decisions. RDAP inmates are eligible for a full six-month community placement. (See Chapter 12.)

Credit Not Given for Concurrent Sentences

• A growing number of inmates are losing substantial credit toward their federal sentences because the BOP is narrowly interpreting 18 U.S.C. § 3585(b), which governs credit for prior custody, to prohibit "double credit" on concurrent sentences imposed by different jurisdictions. Under BOP policy, any time credited toward another sentence cannot be credited toward a federal sentence, even if the state sentence resulted from related conduct and even if the judge, whether state or federal, ordered the sentences to run concurrently (BOP Program Statement 5880.28). Thus, the BOP's interpretation of 18 U.S.C. § 3585(b) sometimes converts a concurrent sentence into a consecutive sentence regardless of the Judgment and Commitment Order. There are, however, ways to get around this. See, for example, U.S.S.G. § 5G1.3 and downward departures.

• The interpretation between state and federal sentences has always been a vexing issue. For a discussion of state versus federal custody and service of multiple sentences contact David Beneman, Esq., Maine CJA Resource Counsel, at PO Box 465, Portland, ME 04112, Beneman@maine.rr.com, for his excellent article on the subject.

• The Bureau of Prisons can tell you if your client has been designated, but they will not tell you to what facility. If he has been designated, the U.S. Marshal for the district in which he was sentenced and the Pretrial Services in the district where he is being supervised can tell you the location. Once you've found out where he's been designated, check with that institution to make sure that they have his "paperwork," particularly the PSI. If he's a self-surrender, when he gets there, they will put him in the

special housing unit (SHU) of the adjacent main institution if there is one or in a local county jail until they receive this document.

• Many white-collar offenders think that if their sentence is under ten years and they have no prior record, they will automatically go to a federal prison camp. This is not necessarily so. There can be Public Safety Factors (for example, Serious Telephone Abuse or Deportable Alien) or a Management Variable (for example, Greatest Security evidenced by language in the PSI that would indicate that a defendant has off-shore assets and a propensity to travel internationally). Open cases — either state or federal — can also count as a detainer even though no actual detainer has been filed preventing minimum-security-camp placement. Any open cases need to be resolved prior to the time that the Presentence Investigation Report is forwarded to the Bureau of Prisons for designation scoring.

• Medical levels of care can also affect a client's designation or placement. See "News from the Bureau of Prisons," *Federal Sentencing and Post-Conviction News* (Winter 2006).

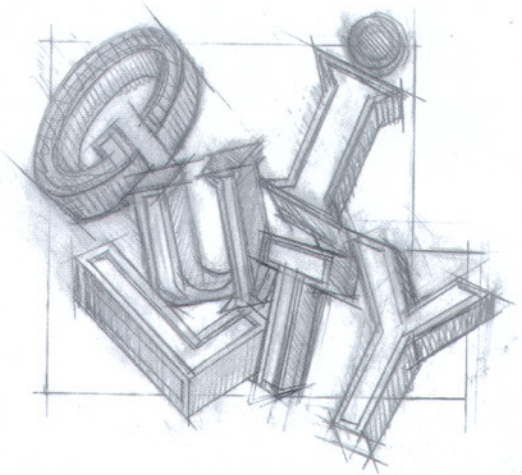


Illustration by Matthew Snow

1. You can also contact the National Association of Sentencing Advocates, 514 Tenth Street, NW, Suite 1000, Washington, DC 20004, phone 202-628-0871, fax 202-628-1091, sentencingproject.org/nasa.

Further information on sentencing and related topics and recommendations for additional sources can be found at alanellis.com.

See publications: Alan Ellis, "Answering the 'Why' Question: The Powerful Departure Grounds of Diminished Capacity, Aberrant Behavior, and Post-Offense Rehabilitation," Federal Sentencing Reporter (May/June 1999).

• Read the following articles on sentencing at our website:

a. "Representing the White Collar Client in a post-Booker World" (PDF)

b. "Baker's Dozen: Federal Sentencing Tips for the Experienced Advocate, Part I"

c. "Baker's Dozen: Federal Sentencing Tips for the Experienced Advocate, Part II"

d. "Answering the 'Why' Question: The Powerful Departure Grounds of Diminished Capacity, Aberrant Behavior, and Post-Offense Rehabilitation."

• Visit Sentencing Law and Policy blog, sentencing.typepad.com.

• Join the NACDL and BOPWATCH list serves. Nacdl.listserv@nacdl.org; http://groups.yahoo.com/group/BOPWatch/