



## ON DEATH AND DYING IN THE FEDERAL BUREAU OF PRISONS — THE RECENT REPORT FROM THE OFFICE OF THE INSPECTOR GENERAL

BY

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Over the past three decades, NCIA, along with a plethora of defense lawyers, prisoner advocates, former Federal Bureau of Prisons (BOP) officials and some lawmakers have been calling for major policy changes in how the BOP manages its elderly, infirm and dying inmates. To date, the BOP response has ranged from bureaucratic malaise to outright resistance. As one example, in 1999, NCIA and the Heritage Foundation cosponsored two forums on elderly and ailing inmates, with the outcome being legislation introducing a pilot program for the release of federal nonviolent, elderly inmates. A draft bill was prepared with and sponsored by Senators Kennedy and Hatch. When former Attorney General Ed Meese and I presented it to the Director and General Counsel of the BOP, we were abruptly informed that the BOP already had that authority in place, and “was exercising its authority appropriately.” When that news got back to the Senate, the draft legislation died on the spot.

The recent report from the Office of the Inspector General (OIG) in the Department of Justice may be the turning point in our three-decade long battle to force the BOP to change its ways. In a scathing April 2013 report on the BOP’s Compassionate Release Program,<sup>1</sup> the OIG found that “...*the existing BOP compassionate release program has been poorly managed and implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided.*” And that is only the beginning.

The report cites data heretofore unavailable from the BOP. These include:

- ◆ The process to appeal a Warden’s or Regional Director’s denial of a compassionate release request can take up to more than 5 months to complete;
- ◆ Only 8 of the 111 inmate handbooks at the BOP institutions had information regarding compassionate release;

<sup>1</sup>U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, *The Federal Bureau of Prisons’ Compassionate Release Program*, 1-2013-006. The report can be found at: <http://www.justice.gov/oig/reports/2013/e1306.pdf>.

- ◆ From 2006 through 2011 the BOP Director considered 211 compassionate release requests that had been approved by a Warden and Regional Director. Of the 208 reviewed by the OIG, 206 were for medical reasons and 2 were for non-medical reasons. The BOP Director approved 142 (68%) of the requests and denied 38 (18%). In 28 cases (14%) the inmates died before a decision was made.
- ◆ Significantly, these 211 requests represent only a sampling of requests that made it to the BOP Director level. The total number of requests cannot be determined because the BOP has no tracking program in place for all requests. Based on a Wardens' questionnaire, in the two-year time period 2010-2011, there were approximately 618 requests, and only 64 (10.3%) were considered by the BOP Director.
- ◆ In considering the impact of the compassionate release program on public safety, the OIG found a recidivism rate of 3.5% for inmates released through the program, and these were for minor probation violations or drug sales. By comparison, the general recidivism rate for federal prisoners has been estimated to be as high as 41%.

These findings, and the recommendations in the 85-page report, cannot come soon enough for me. Three years ago, NCIA assisted in the sentencing proceedings of a 75-year-old physician in Philadelphia who pled guilty to a tax offense and had no prior criminal history. Sentenced to imprisonment for a year and a day, he reported as ordered to a Federal Prison Camp (FPC) in the Northeast region. Five months into his sentence he had difficulty seeing. Along with his defense attorney, NCIA petitioned the BOP for a medical furlough to have his eyesight repaired. While the request was "under consideration," the inmate fell in the shower and injured his back. Unable to leave his bunk, the inmate was transferred to the local medical center where he underwent back surgery which left him paralyzed from the waist down.

Following this operation, his defense attorney and NCIA began petitioning the BOP for a compassionate release, soliciting the Court's support and asking for the AUSA's position. The AUSA was informed by the BOP that the "*defendant is receiving appropriate medical care at this time*" and the "*BOP is planning on transferring the defendant to FMC Devens, Massachusetts (when medically appropriate) for six months of intensive physical therapy treatment.*" (For the record, the defendant had only four months left on his sentence.)

Following his release from the hospital, our client returned to the FPC. Two days later he was put on a prison van and driven for seven hours to the Federal Medical Center (FMC) at Devens. He died the next morning. All this happened while we were petitioning for compassionate release and/or a



medical furlough. If implemented by the BOP, the recommendations made by the OIG could have saved my client's life, and many others. These recommendations include:

- ◆ Expanding the use of the compassionate release program to cover both medical and non-medical conditions for inmates who do not present a risk to the community;
- ◆ Update written policies to accurately reflect the BOP's criteria for determining eligible requests;
- ◆ Establish timeframes for processing requests at each step of the review process and for handling inmate appeals;
- ◆ Require that all inmates be informed about the compassionate release program, including how to initiate a request and circumstances that may qualify as "extraordinary and compelling;"
- ◆ Track each compassionate release request, its status, and final disposition; and
- ◆ Require that Wardens document the specific reasons for denying an inmate's request for compassionate release.

These changes, and others recommended in the OIG report, will hopefully force the BOP to take its responsibility seriously, and establish a protocol for release of its elderly, infirm and dying inmates. We will be a better society if they do.