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Re: Appeal From Results Of Disclosure Request

February 13, 2003

APPEAL

Yorie Von Kahl, above-named and hereafter "Appellant," hereby appeals the decision of the Parole Commission per Ralph Ardito (contractor) rendered on December 18, 2002.* (Exhibit No. 1).

Specifically, Appellant appeals the non-disclosure of the five items expressly not disclosed listed on pages 1 and 2 of Mr. Ardito's letter. Additionally, Appellant appeals (1) the failure of the Commission to provide him with his repeated requests of the records of each actual hearing he has had beginning with his initial hearing in June of 1984; (2) the failure to provide the full record (explained below); (3) the failure to provide an orderly record (explained below); (4) the repetitious duplicating of copies over-charging Appellant for the record; and (5) failing to provide a legal justification for delaying disclosure of these records, which constitutes a clear violation of the statutes and regulations governing such disclosure and has resulted in the denial of Appellant's right to these documents and his right to at least two statutory interim hearings and at least one 15-year reconsideration hearing.

For the first time, Appellant has been notified by the Commission that the video-tapes "Death and Taxes" and "Firepower" "hae [sic] been excluded from your parole decision making record. **See Mr. Ardito's Letter**, p. 2 (Exh. No. 1), **supra**. Appellant is appealing that decision as well and will address it along with the denial of disclosure of the legal opinion upon them. Facts will be supplied with each argument.

***NOTE: Appelant received the packet from which he appeals on Janurary 22, 2003.**

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NONDISCLOSURE OF SIH/RESCISSION/REVIEW ASSESSMENTS OF OCTOBER 17, 1998, AUGUST 14, 1998 AND JUNE 13, 1997

The non-disclosure of SIH/RESCISSION/REVIEW ASSESSMENTS of October 17, 1998, August 14, 1998 and June 13, 1997 are purported to be based upon Title 5 U.S.C. § 552(b)(5) and merely cited "Privileged Information." **See Mr. Ardito's Letter**, p.1 (Exh. No. 1). Mr. Ardito notified Appellant that Appellant "may request these documents once you have had a hearing conducted by the Commission." **id.**, p. 2.

Title 5 U.S.C. § 552(b)(5) states that:

> (b) This section does not apply to matters that are -
> * * *
> (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

Mr. Ardito's notice that Appellant may obtain these records after a hearing clearly places these assessments outside the scope of § 552(b)(5). The letter says they are in fact available, whereas the statute only applies to those "memorandums or letters which are not available by law."

Furthermore, due to the failure of the Commission to provide Appellant with all available records, including the actual records of his hearings, since approximately February of 1997, the obvious **non sequitor** noted above is compounded by the following:

(1) Failure to provide the requested records, which were repeatedly requested, violated 18 U.S.C. § 4208(b)(2) and (f) and 28 C.F.R. §§ 2.55 and 2.56 - all of which employ the use of the mandatory "shall" in respect to disclosure and the time-period for doing so;

(2) This failure is apparent over the course of **six years** with repeated requests at approximately 60-day intervals:

(3) The "hearing" noted by Mr. Ardito - **i.e.**, a mandatory statutory-interim hearing - after which Appellant can obtain disclosure of such documents was due in April of

1997 and now even Appellant's 15-year reconsideration hearing has passed (due in June, 2001) and, thus, **lost** due to the non-compliance by the Commission of the statutes and regulations noted above, which also violated 18 U.S.C. § 4208, generally, and particularly section (h)(2) thereof, as well as 28 C.F.R. §§ 2.14, 2.19 (especially sections (b)(1), (2), (3) and (4), sections (c) and (d)) and 2.20(d).

Clearly, no SIH hearing will ever be held between the initial hearing and Appellant's 15-year reconsideration hearing of June 2001 (which is now long overdueand pending due to the non-compliance by the Commission with the statutes noted above and its own rules and regulations), but presumably the above assessments will remain part of the "information" to be considered by the Commission at his now belated 15-year reconsideration hearing (**i.e.**, "full reassessment," 28 C.F.R. § 2.14(c)), his mandatory SIH hearings (plural) having been voided by the Commission's positive non-compliance.

It appears that (1) the SIH Assessments do not fall under 5 U.S.C. § 552(b)(5), and (2) with Appellant's 15-year "full assessment" reconsideration hearing pending, Appellant should be provided with the assessments for preparation to enable him to obtain a full and fair hearing (as the parole statutes and regulations contemplate) rather than providing him with such information after-the-fact, which would merely compel him to seek a new hearing by way of appeal.

The Commission should consider its own delinquency in providing Appellant's records. Although the Commission has asserted that its functions are impaired to the point that it cannot comply with the statutes and regulations governing its powers and procedures (which incidently create substantive rights in Appellant), since the Commission was "abolished" by the Sentencing Reform Act of 1984, **see Letter of Response, U.S. Parole Commission, Regarding Request for Disclosure**, Sept. 25, 2002 (Exh. No. 2); **and see Public Notice by Edward Riley**, May 6, 2002, U.S. Parole Comm'n Website (Exh. No. 3), such delay and non-compliance has denied Appellant his SIH hearings and his 15-year reconsideration hearing of June of 2001. In light of these delays (effectively arbitrary denials of required hearings and parole con-

sideration as required by the requisite statutes and regulations governing them), the Commission should demonstrate every effort to comply and disclose with the view to prevent further delays.

The SIH Assessments should be made available promptly.

LEGAL OPINION CONCERNING "DEATH AND TAXES" AND "FIREPOWER" AND THE EXCLUSION OF THESE VIDEO-TAPES FROM APPELLANT'S DECISION MAKING RECORD

Appellant was aware that copies of the documentary "Death and Taxes" were sent to the Parole Commission on his behalf by friends, concerned citizens and at least one copy was sent by the Producer. Jeffrey Jackson, some time prior to his SIH hearing in April of 1995. This documentary was especially important and contained exceptionally mitigating facts, circumstances and information extremely favorable to Appellant and was submitted expressly for the purpose of the Commission's consideration in assessing the true "nature and circumstances of the offense" and to a lesser extent "the history and characteristics of the prisoner" (**i.e.**, Appellant). **18 U.S.C. § 4206(a); see also 28 C.F.R. § 2.18.** The Commission was required by positive law to "consider" this documentary, which included interviews of Appellant, the constitutionally-mandated fact-finders of the trial court (**i.e.**, members of the jury), the lead prosecutor, defense attorneys, witnesses, co-defendants and a graphic history of the incident, trial and aftrmath. **18 U.S.C. § 4207** ("There **shall** alo be taken into consideration such additional relevant information concerning the prisoner...as shall be reasonably available."); **28 C.F.R. § 2.19(b)(1)** (restating 18 U.S.C. § 4207 (citing that statute) and adding: "The Commission encourages the submission of relevant information concerning an eligible prisoner by interested parties."); **see also id., § 2.19(b)(3)** ("All of the materials submitted will become part of the record to be considered by the Commission in its review of the proceedings."); **id., §2.19(c)** ("The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances..."). **Cf. 28 C.F.R. § 2.20(a)** (National Parol Policy includes "individual case consideration");

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id., § 2.20(c)("Especially mitigating...circumstances in a particular case may justify a decision or a severity rating different than that listed.").

Now, for the first time, Appellant's suspicions are confirmed: There is a secret cell within the U.S. Parole Commission, unknown to the statutes and regulations governing parole and decision-making therein, that re-directs favorable, mitigating information submitted on behalf of political prisoners such as Appellant from the files for consideration otherwise mandatorily required to be considered and retained as a permanent "part of the record to be considered." (A former Chief Counsel of the Parole Commission informed Appellant of this "quasi-oversight committee" that operates in virtual secrecy and outside the bounds of the statutes and regulations in respect to "political prisoners" such as Appellantin the past. However, Appellant is here concerned with compliance of the statutes and regulations and does not intend to debate the matter further at this time. It is sufficient that the information is admitted to have been "excluded from [Appellant's] decision making record" for purposes of this appeal).

The "exclusion" of this extremely important and mitigating information was void of any statement as to who or why or when such information was excluded. This is important information to Appellant, as it implicates the decision-making capacity of the Commission, the arbitrariness ans capriciousness of the Commission and evidences denial of otherwise mandatory consideration requirements. Furthermore, it interferes with Appellant's hearings and prospective appeals and, critically, the unauthorized decision-making behind-the-scenes for the purpose (certainly the presumable purpose) of constraining consideration only within perimeters of secretly pre-ordained conclusions. This violates the stated purposes and intentions of the National Parole Policy. **28 C.F.R. § 2.20**("to provide a more consistant exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration"); **see also Senate Report No. 94-369, Parole and Reorganization Act of 1976**, p. 1(to provide fair and equitable parole procedures"); **id.**, p. 19 (JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE)("to provide fair and equitable parole decisions").

Appellant, therefore, initially objects to and appeals the now-apparent "exclusion" of this favorable, mitigating and highly relevant documentary (i.e., "Death and Taxes") from his "parole decision making record."

In respect to the other video-tape, presumably another documentary, Appellant objects to and appeals the same decision in regard to it, although he does not know its source and has never heard of it. Presumably, it too was submitted for consideration, as was "Death and Taxes," and it is required to be considered if there is any relevant information in it in regards to Appellant, his "history and characteristics" and/or "the nature and circumstances of the offense." **18 U.S.C. § 4206(a); 28 C.F.R. § 2.18** (same).

The second matter is the "legal opinion" of an unknown source, but clearly entered into the "parole decision making record" and no doubt an item that the Commission will or has relied upon in its deliberative duties in respect to Apellant and his potential classifications for release purposes.

Obviously, someone decided a "legal opinion" was necessary and obviously such opinion was not sought for the mere purpose of wasting legal man-hours. Presumably, the legal opinion is, has been, or will be relied upon in regards to the information revealed in the documentary, which is clearly relevant and mitigating both as to Appellant's "history and characteristics" and especially as to the "nature and circumstances of the offense." **18 U.S.C. § 4206(a); 28 C.F.R. § 2.18.** Therefore, the opinion,presumably sought and submitted into the record for the purpose of either coloring the nature of the information upon which it is premised or for the purpose of excluding this highly-relevant, favorable and mitigating information from consideration by the officers entrusted to consider all such information.

The Commission did not expressly notify Appellant of the receipt of these video-tapes, the employment of counsel for a "legal opinion" upon them, or the decision to exclude them from the requirements of Title 18 U.S.C. § 4206(a) and 28 C.F.R. § 2.18. This lack of notice, reliance upon the legal opinion and the secret de-

cision to exclude the information should be deemed a deliberate foreforture by the Commission to object to disclosure or reinsertion of these video-tapes into Appellant's decision making record. The opinion should be released and fulldisclosure of its purpose, its use and the decision to exclude the video-tapes from decision making statutes and regulations, as well as the secrecy and times of such decions and acts should be promptly provided Appellant.

Title 5 U.S.C. § 552(b)(5) should not be used as a shield to obscure or obstruct review an unauthorized procedure that clearly does and presumably has seriously affected Appellant's right to have full consideration of this information pursuant to 18 U.S.C. § 4206(a) and 28 C.F.R. § 2.18.

THE PAROLE REVIEW SUMMARY OF APRIL 17, 1995

Disclosure of the Parole Review Summary of April 17, 1995 has also been withheld pursuant to 5 U.S.C. § 552(b)(5) as "Privileged Information."

Appellant, of course, does not know the content of such Summary. However, included in the recent package is a copy of a "Memorandum" by Carol Pavilack Getty, Regional Commissioner, North Central Regional Office, dated May 10, 1995 to the "Regional Commissioners." It appears to be an opinion of Getty as to the circumstances of the case. This is the first time Appellant has seen the information contained in this "Memorandum." **See Exh. No. 4.**

The "Memorandum' demonstrates a wholesale ignorance of the "nature and circumstances of the offense" and virtually a wholesale absence of any consideration of Appellant's "history and characteristics."

The lack of the highly relevant and mitigating factors presented in the documentary "Death and Taxes" is, of course, absent from consideration.

Equally revealing is Ms. Getty's omission of the general content of the "many letters of support for the prisoner from the communuity." These letters, which Appellant estimates to be in exess of 1000, were virtually all demonstrative of outrage at the behavior of the officers at the scene, who caused the violent in-

cident, the shocking behavior of the federal prosecutors and judge (both friends of the deceased marshals), and the clearly abusive and capricious refusal of the Parole Commission to release Appellant, while real criminals were being released into society.

The letters demonstrate that "the community" perceives the continued incarceration of Appellant to be symbolic and part of a cover-up by federal agents.

(Appellant is not ontending to debate these matters at this time, as his concern at present is to obtain full disclosure. Once full disclosure is complete, or if Appellant is compelled to drag this appeal through the federal judiciary, Appellant will submit affidavits of officers, jurors and witnesses, as well as official documents that do in fact reveal a massive secret campaign against Appellant's father involving numerous agencies, which include a plot to create a "shoot-out" with Appellant, his father and co-defendant Scott Faul for the purpose of creating a national incident as an excuse to focus federal efforts against a perceived threat by an organization known as "Posse Comitatus" and general reference to the "tax protest movement." These documents also include secret correspondence between the trial judge and the Director of the FBI and placement of Appellant under FBI "domestic threat guidelines" prior to trial. Public perception has proven to be exceptionally accurate.

Ms. Getty additionally referenced a "letter allegedly from a law enforcement group" and noted in a clearly uninterested manner that "they question the validity of the prisoner's conviction." Ms. Getty states:

> Again, my reaction is that if they have this kind of information, it should be made available to the prosecutor and the court. We do not rule on questions of innocence or guilt.

The "letter" is an Affidavit/Report by former Phoenix, Arizona Police and Training Officer, Jack McLamb, a highly-decrated and esteemed police officer (Officer of the Year by the Moose Lodge of America on two occassions and resigned for sustaining injuries in the line of duty), who, along with numerous other active and former officers (federal, state and local and joined by state senators and judges for a total of 70 officers, former officers and other personel)

investigated, reviewed evidence and witnesses, studied the trial transcripts, interviewed officers at the scene and analyzed the entire incident, the trial and aftermath (from a trained officer perspective) and prepared the Report, under signature, expressly for consideration by the Parole Commission on behalf of Appellant and the interests of justice.

This effort was a display by these officers, former officers, and citizens of the highest patriotism and moral fortitude. Their conclusions, upon the stated facts, demonstrated that the officers at the scene of the incident violated virtually every rule and regulation of their training, jeopardized the lives and welfare of Appellant (who nearly died by gunshots) and those who were with him, as well as other bystanders, and **created** a confrontation that would and did result in violence, and that the marshals and officers aiding them were ultimately responsible for their own deaths and injuries, as well as those of Appellant.

Furthermore, the Report concluded that the trial and imprisonment of Appellant, the malicious trial of his innocent mother and others was purely an act of revenge and a cover-up of the illegal, immoral and obnoxious acts of the officers at the scene themselves.

Officer McLamb, incidently, represented Appellant or rather acted as an expert witness of the event at his parole hearing in Lewisburg, Pennsylvania in 1990. He was ignored, insulted and interupted repeatedly by the hearing examiners,when he explained, or attempted to explain, the "nature and circumstances of the offense."

Ms. Getty's attitude and "reaction" is very similar to that of the examiners in 1990. It reflects the attitude, generally, of nearly all **federal** personel that Appellant has had contact with since this incident occurred, although there have been a few notable exceptions. It reflects the "off-the-cuff" comments made to Appellant by Federal Bureau of Prisons employees over the course of the last 20 years - **e.g.**, "Everyone knows what the federal government has done to you and your family, and they're never going to let you go, because your case is a symbol to them." This is the federal espirit de corps - at bottom a feeling of revenge among federal employees - an institutionalized attitude premised upon self-created rumors and propaganda, which circulated through federal channels and embedded into the minds of such

employees.

Itis evident in Ms. Getty's "memorandum," where she clearly makes no notice of Appellant's non-criminal background - **i.e.**, the "history and charqcteristics of the prisoner" - and limits her consideration to the following:

> On 12/12/94 the prisoner had his latest SIH hearing. He has now served 142 months. Findings were made on one rescission incident for Possession of a Sharpened Instrument. **Otherwise, no other significant information was otained.**

This appears as clear proof that Ms. Getty did not consider and had no intention of considering the extremely significant information supplied by the "many letters" from the community or the results of the long and arduous investigation by experienced and professional law enforcement officers. Ms. Getty merely decided that **anything** submitted by or on behalf of Appellant would be disregarded and only information submitted that could be applied against him would be "considered."

Again, this attitude is reflected in Ms. Getty's commentary on an argument of Appellant's representative at his hearing regarding who may have fired the first shot during the encounter. Appellant's representative argued that because the Presentence Investigation Report suggested that Appellant fired first that the Commission relied upon such statement. Ms. Getty's reply to this was:

> This contention seems to overlook the fact that Kahl's group was well armed and ready for action when the authorities appeared. **Shooting broke out and we know the results.**

This overlooks the fact that no one in "Kahl's group" knew who their assailants were or the facts (undisputed at trial) that the assailants threatened to murder Appellant, his mother, father and friends. Ms. Getty deliberately overlooked the facts, because, as she said, "we" - clearly meaning "we federal employees" - "know the **result**". Her term "ready for action" is merely subjective. Appellant was no more "well armed" or "ready for action" than he was at any other time of his life.

Obviously, the view of "the community" reflected in the "many

letters', and the objective findings of the independent law enforcement officers submitted only after thorough investigation demonstrate the pre-settled and institutionalized bias of Ms. Getty. To base her decision purely on the "result" of the incident rather than "the nature and circumstances of the offense" violates the non-discretionary duties of the Commission. **18 U.S.C. § 4206(a); 28 C.F.R. § 2.18. Cf. 28 C.F.R. § 2.20(a)** (the National Policy requires "individual case consideration").

Mr.s Getty's comment that the information supplied by the independent law enforcement investigators "should be made available to the prosecutor and the courrt" folowwed by her disclaimer: "We do not rule on questions of innocence or guilt," proves she did not and had no intention of considering this highly mitigating information as required by positive law and the non-discretionary implimenting regulations.

Besides being biased in this case, Ms. Gettyt is simply a liar and a hypocrite. She herself has found other parole eligible prisoners "guilty" of offenses for which they were never tried and of which were not related to the offense for which they were in prison. She overturned the examiners in that case, who expressly found no preponderance of evidence that the prisoner committed the untried offense and decided, upon pure speculation of an officer, that the prisoner had committed a "murder." She did this for the sole purpose of raising the prisoner's offense severity level and to take him outside his guidelines. **Compare Preliminary Assessment/Parole-Reparole Guideline Worksheet, Billy E. Dacus, Reg. No. 12857-077, USP LVN, 10/19/93 with MEMORANDUM TO NATIONAL COMMISSION, from Carol Pavilack Getty, re: Billy E. Dacus, Feb. 14, 1994** (Exh. No. 5).

The irony is that the Constitution itself forbids any finding of "guilt" of any person except pursuant to indictment and proof beyond a reasonable doubt by two juries of 12 freemen each and never by a suspicion conveyed by an executive officer to a bureaucrat. There are no constitutional bars to a finding of innocence. Yet, Ms. Getty first claims "we" don't make such findings, while the record proves beyond any doubt that "we" certainly do, when it violates the Constitution - **i.e.**, findings of "guilt."

Of course, the Commission was not asked to find Appellant "innocent." It was asked to "consider" the views of "the community" exhibited in the "many letters" and the extremely favorable and substantial information supplied by the law enforcement investigators (70 personel) in connection with its "consideration" of the "nature and circumstances of the offense," both of which the COmmission was required to do by law. Ms. Getty determined not to "consider" this information and it is apparent that the National Commissioners followed her lead or simply rested upon her derelection of duty.

Appellant's reflection upon Ms. Getty's "Memorandum" is premised upon the non-disclosure of the Review Summary of April 17, 1995, which presumably served as the basis of the "Memorandum" (certainly in part) and the fact that the National Commissioners presumably relied upon them both. The "Memorandum," as Appellant has noted, was never disclosed to him prior to the recent partial disclosure completed on January 22, 2003 (the date he received it). Prior to the 1995 hearing, Appellant requested full disclosure and this "Memorandum" was undoubtedly used by the National Commissioners (an "Original Jurisdiction" case) along with the Summary and should have been disclosed as soon as possible.

Prior to his then-scheduled SIH hearing in April of 1997, Appellant again requested full disclosure and has repeated that request now for six years. This six year delay is not permissible, but clearly demonstrates the Commission's regard of Appellant's rights, its own arrogance and defiance of its statutory and regulatory duties and the espirit de corps (noted earlier), which animates its functions.

Appellant reminds the Commission that subsequent to his initial hearing in June of 1984, where the entire case was reviewed, the National Commission (after designating the case "Original Jurisdiction") expressly found no reason to take Appellant outside of his guidelines and ordered a 10-year reconsideration hearing in June of 1994. Appellant's guideline range was then 100 months plus, which according to the published guidelines means 100 to 148 months unless express findings are made to exceed 48 months above the minimum guideline. **See 28 C.F.R. § 2.20, Guidelines For Decisionmaking, Note 1.**

Subsequent to Appellant's SIH hearingtwo years later, and with

no new information before the Commission, the National Commission arbitrarily and capriciously took Appellant outside the guidelines and stated absolutely no reason whatsoever for doing so and ordered a 15-year reconsideration hearing in June of 2001.

Thid decision is void and it clearly violates 18 U.S.C. § 4206(c) and 28 C.F.R. § 2.13(d), both of which mandate "written notice stating with particularity the reasons for its determination, including a summary of the information relied upon, (§ 4206(c)), and "the specific factors and information relied upon for any decision outside the range indicated by the guidelines." (§2.13(d)). There is no need to cite the plethora of district and circuit court rulings holding void a decision outside the guidelines without stated reason in writing and no case has held otherwise.

The ordering of 15-year reconsideration hearings are **only** permitted following an initial hearing or following a previously set 15-year reconsideration hearing. **28 C.F.R. § 2.12(b); id., §2.14(c).**

The 1986 decision violates positive law and the mandatory regulations of the Commission. That decision is void. It is additionally void, under the recent holding of **Lyons v. Mendez**, 303 F. 3d 285 (3rd Ci. 2002), as the Commission was devoid of authority to make such a decision in 1986 pursuant to Public Law 98-473, Title II, Sec. 235 (b)(3). Appellant had already obtained a decision of presumptive or effective release within his guidelines in 1984 and entered his 1986 SIH hearing with that decision intact.

In 1988, following Appellant's second SIH hearing, the National Commission ordered a "continue to 15 year reconsideration hearing" and entered written findings to justify their illegal decision of 1986. The written findings are exactly the very same factors before the Commission at Appellant's initial hearing, where the Commission found those same factors did **not** warrant a decision outside the guidelines.

Of course, this after-the-fact justification to save an abusive, capricious and absolutely void decision is not permissible either. **E.g.,Robinson v. Board of Parole**, 403 F. Supp. 638 (D.C. N.Y. 1975) (after-the-fact justification for increased severity not permissible).

Furthermore, the 1986 and 1988 SIH hearings acted as "rescission" hearings rather than simply statutory interim hearing, but without the notice and procedural requirements of 28 C.F.R. § 2.34. **Compare**

Patterson v. Gunnell, 753 F.2d 253, 254 (2nd Cir. 1985)(empolyment of aggravating factors proper at initial hearing, but not tolerated after-the-fact by the National Parole Board [now Commissioners] to go beyond previous set range without prior notice and opportunity to respond by prisoner **before** it is applied); **Marshall v. Lansing**, 839 F.2d 933, 948 n.20 (3rd Cir. 1988)(noting "caselaw" makes it clear "that the body imposing sanctions must explain its decision to impose an increased penalty contemporaneous with that decision") (construing requirements of 18 U.S.C. § 4206(b) and (c) and rescission regulations).

In view of the apparent repeated violations of the statutes that circumscribe the COmmission's discretion, as well as the implimenting regulations created by the COmmission itself to restrict its procedures, in relation to Appellant and his rights under those statutes and regulations, disclosure of any information used or presumably used is more necessary pursuant to the FOIA than normal. In this case the disclosure of the Review Summary will likely shed light on the institutional bias reflected in Ms. Getty's "Memorandum" and possibly upon the previous actions of the COmmission since its wholly illegal decision and proceeding of 1986.

THe public interest would also be served by disclosure of this material. Simply reviewing "the many letters of support for the prisoner from the community" reveals that the public considers the refusal to release Appellant part and parcel of a vindictive scheme carried on contrary to the interests of justice. M. Getty, and presumably the COmmission, merely noted the "many letters," but did not make any reflection on the substance of them. Obviously, the substance of those letters, like the detailed Report of the independent law enforcement investigators conflicted with the institutionalized bias reflected in Ms. Getty's "result"-type analysis, rather than the rquired review of the "naure and circumstances of the offense" and the "history and characteristics of the prisoner." The substance of the letters reflects enormously on both primary factors statutorily entitled "parole determination criteria" - **i.e.**, "(1) that release would not depreciate the seriousness of [the] offense or promote disrespect for the law; and (2) that release would not jeopardize the public welfare. **18 U.S.C. § 4206(a)(1) and (2); 28 C.F.R. § 2.18.**

Appellant notes that the jurors themselves - the constitutional fact-finders of the court in this case - agree both with the perceived view of the community reflected in the many letters and the conclusions of the Report submitted by the independent officers . The Commission by its own admission has refused to "consider" this information as it is included in the documentary "Death and Taxes," which it is now known has been secretly and surreptitiously "excluded" from Appellant's "decision making record." **See Letter from Ralph Ardito** (Exh. No.1). This is a clear violation of 18 U.S.C. § 4207 and 28 C.F.R. § 2.19(b)(1). 28 C.F.R. § 2.19(b)(3) expressly mandates that "[a]ll of the material submitted will become part of the record for consideration by the Commission in its review of the proceedings." This is irreconsilible with the deliberate "exclusion" of the documentary.

Obviously, release of all material in possession of the Commission should be made in this case as the agancy action throughout does in fact demonstrate extraordinary violations of law and regulations, arbitrary and capricious decisions premised on an admitted self-destruction of the "decision making record," possible conspiracy against Appellant's civil rights and a clear intent to exclude Appellant from protection of the substantive statutes and regulations. Such "'disclosure of the information sought would "she[d] light on an agency's performance of its statutory duties" or otherwise let citizens know "what their government is up to."'" **Bibles v. Oregon Natural Desert Ass'n**, 519 US 355, 355-356, 136 LEd 2d 825, 827, 117 SCt 795 (1997) (per curiam)(cites omitted).

None of the documents withheld from disclosure reflect any need for non-disclosure. What has been disclosed indicates agency action contrary to law. The only possible reason for the non-disclosure, so far as Appellant can perceive (and "the community" will undoubtedly concur) is that the Review Summary will reflect that the Commission did not (or did not intend to) consider the substance of the community view, the highly relevant Report of the independent law enforcement investigators, Appellant's history of non-criminal activity, his exemplary record, his excellent community support, and will reflect mere persistence in focusing on the "result" from a purely federal empolyee perspective, as evidenced by Ms. Getty's "Memorandum."

Disclosure should therefore be made available to Appellant and the public

THE DISCLOSURE IS ADDITIONALLY INCOMPLETE, PREJUDICIALLY REPETITIOUS AND CHAOTIC

The material disclosed through mr. Ardito consists of approximately 400 pages. Most of these pages consist of letters "from the community or are partial letters of such, as many are missing pages. Most of these letters contain page one of the letter itself, but in many cases the following pages are missing. In at least one case, only the last page is included, which is page 32 and is only the closing portion of the letter. Obviously, much of the substance submitted for the Commission's "consideration" has, like the documentary "Death and Taxes," been destroyed, misplaced (deliberately or negligently) or otherwise purged from the "decision making record."

Of the content remaining it is **all** very favorable and largely questions the Parole Commission's failure to release Appellant. The content reveals distrust and suspicion that Appellant is continued in prison as a matter of "political" revenge.

Additionally, the file is in horrible disarray with pages from various letters, reports, etc., scattered throughout and neither in an alphebetical or a sequential order based upon the time such material was placed into the record.

Even more disturbing is the fact that a **majority** of letters sent to the Commission for consideration are not in the file at all. In 1995, Appellant requested disclosure prior to his SIH hearing in April of that year and received, through his case manager, two packets of approximately 500 pages each. These were not received together, but about two weeks apart. At that time, Appellant was notified that additional packets would be sent to the institution, but if they ever were, he never saw them.

The two packets he did see were materials not included in this packet, although there appear to be a very few letters that were in both. Those two packets were very orderly with a single copy of each document, whereas this packet is disorderly with numerous duplicates - some of which appear to have been copied as many as six times.

Fortunately, many of the people who sent letters also forwarded copies to Appellant's mother, so there clearly is no mistaking that they were sent and received by the COmmission. (The Commission wrote them back and thanked them and assured their letters would be "considered").

Either Mr. Ardito has shuffled the papers in the file and failed to copy them all or someone has seriously violated this record from withinthe Commission.

A serious effortshould be made by the Commission to discover the missing records and provide them to Appellant and full explanation should be made as to their loss, the convoluted condition of the record that remains, an explanation of why Appellant has been forced to pay for records which the statutes and regulations mandate to be provided, as well as an explanation for the double-copying and double-charging Appellant for a number of the records that were sent.

The Commission's former explanation (Exh. No. 2) for failing to provide these records **for the last six years** is not a legal justification. This is an admission that the COmmission is legally incompetent to comply with the parole statutes and regulations, which affect both the Appellant and the public. This delay has cost Appellant several statutory interim hearings and a 15-year reconsideration hearing and has hidden the fact that the "decision making record" has been violated since at leastprior to Appellant's 1995 SIH hearing.

In light of the above, Appellant will almost certainly be compelled to bring suit against the COmmission through the judiciary and will begin to prepare notice to the many people who provided letters of support and information for "consideration," who, along with Appellant, had a right to have such information considered and retained in the record. All had a right to expect compliance with the law.

Prompt comliance with this appeal will be expected. The Commission's behavior is as "shameful," "arbitrary and capricious" and incompetent as it was when COngress decided to abolish it in 1983. **See Senate Report No. 98-225** (Oct. 12, 1983), p. 65. It remains a "costly and cumbersome institution," **id.**, p. 58, and its incompetence is admitted. **Letter of Response**, Sept. 25, 2002, **supra** (Exh. No. 2).

Absent a truly good-effort response promptly, the next packages

of "letters from the community" will go to COngress and someone will explain what the appropriations for the Parole Commission have really been spent on.

Sincerely, but with unavaiodable disgust,

Yorie Von Kahl

Yorie Von Kahl

ADDENDUM: Appellant has noted that the 1986 decision by the National Commisiioners in his case issued without a written reason for taking him outside the guidelines and altering his previously set full reconsideration date of June 1994 to June 2001. The Commission, of course, won't pretend that that Notice of Action was valid and no court would uphold it. Yet, it has stood as the decision of the Commission ever since. Subsequent SIH hearings merely resulted in "continue to" the altered reconsideration hearing.

Full reconsideration hearings are special hearings where the Commission reconsiders the entire case. When Appellant received his first Notice of Action following his initial hearing in June of 1984 ordering full reconsideration ten years later, a ten-year reconsideration was the latest permissible at that time. Subsequently, the Commission revised its regulations, **28 C.F.R. § 2.12(b) and § 2.14(c)**, and following Appellant's 1986 SIH hearing - ahearing that does not permit issuance of 15 (formerly 10)year reconsideration hearings - the arbitrary issuance of the 15-year reconsideration hearing was ordered.

Appellant has, as is apparent, been denied both his 10-year and 15-year reconsideration hearings, due to the continual and persistent violations of the statutes and regulations by Commission personel.

Furthermore, relevant and mitigating information has been systematically excluded, destroyed, lost and deliberately or negligently rendered so formless and convoluted as to preclude reasonable and conscientious consideration.

Congress publicly announced its intention to "abolish" the Parole Commission and parole with publication of Senate Report No. 98-225 in October 1983. Ayear later it did abolish both the Parole Commission and parole with the enactment of Public Law 98-473, Title II, Chapter II, Sections 218-234 (Oct. 12, 1984).

Congress retained the Commission and the existing parole statutes **solely** to effectuate the purposes of the Act and solely for 5 years to expedite release of the prisoners under the old system or to ensure that they obtained release dates within their respective guidelines before the new sentencing system came on line with sufficient additional time to complete appellate processes.

Naturally, the COmmission and its employees fought tooth and nail, first to prevent enactment of such "abolition," and later to continue the Commission. Jobs, careers, pensions and benefits were at stake.

It is apparent that in light of the abolition of the Parole Commission within 5 years of the effective date of the Act, which ws either Oct. 11, 1989 (**lyons v. Mendez**, 303 F. 3d 285 (3rd Cir. 2002)(holding effective date to be Oct. ±2, 1984))or November 1, 1992, the Commission in issuing a 15-year reconsideration hearing for Appellant in June of 2001, intended to circumvent the law.

There can be no rational argument that the Commission's intention could have been anything else. The plain language of Public Law 98-473, Title II, Chapter II, Sec. 235(b)(3) unequivocally ordered the Commission to set a release date for Appellant within the guidelines that applied to him (**i.e.**, 100-148 months) and to make damned sure that such release date was set prior to expiration of the 5 years.

The mere fact that Congress preserved chapters 309 and 311 of Title 18 for the purpose of executing the Act, **see id.**, Sec. 235(b)(1), which was directed solely to abolishing parole and the Parole Commission and replacing it with a system that did not suffer the arbitrary and capricious decision-making found by Congress to be the ultimate evil of the former system, did not permit the Commission to ignore either the intent of the Act or the mandatory provisions of § 235(b)(3).

In light of the destruction by deliberate or negligent loss of letters from concerned citizens - resulting in non-consideration of the information they contained - and the other failures of the Commission in this case (deliberate or not), Appellant feels that those citizens have an equal complaint against the Commission. They may even have a greater complaint, as they have been paying the salaries of

the obviously incompetent employees thereof.

The evidence is certianly more than sufficient for a civil proceeding to find fraud by federal employees, both directly on behalf of nameable citizen taxpayers and against the United States.

Consequently, Appellant requests that any and all communications Congress, the Department of Justice or any other person, agency or entity that indicates the Commission has ever used Appellant and/or his erroneously issued decisions outside his guidelines as leverage, an excuse, part of a statistic, or otherwise to persuade Congress to extend the life of the Parole Commission at any time, should be made available to Appellant (and the public) immediately.

This request should also be met if the Commission has used Appellant, whether specifically named or not, for appropriations for funding the Commission.

Appellant reminds the Commission that it can fully review the letters it still retains (hopefully discovering the missing letters as well), the Report of Jack McLamb (and the 70 law enforcement investigators) and the documentary "Death and Taxes" and reopen Appellant's case, as the information contained therein is exceptionally favorable and mitigating. **28 C.F.R. § 2.28(a)(1), (2) or (3).** In light of the information, the Commission can reduce the severity factor, **28 C.F.R. § 2.20(d)**, or simply release Appellant under the original decision of the National Commissioners as issued in June of 1984, **(i.e.,** within his guidelines of 100-148 months), which would result in immediate release, albeit long overdue.

By this suggestion Appellant does not contend that the Commission retains lawful jurisdiction over him, as he believes that § 235(b)(3) of the original SRA, as enacted, limited that jurisdiction to the duties and time-frame prescribed within that section. However, the Commission, still pretending it has such jurisdiction, should make an effort to do what it should have done long ago.

Yorie Von Kahl

Yorie Von Kahl

U.S. DEPARTMENT OF JUSTICE
United States Parole Commission

5550 Friendship Boulevard
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Telephone: (301)492-5821
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April 11, 2003

Mr. Yori V. Kahl
Reg. No. 04565-059
Leavenworth USP
1300 Metropolitan
Leavenworth, KS 66048

Re: Your Disclosure Request

Dear Mr. Kahl:

This is in response to your request of February 13, 2003 received on February 24, 2003 for copies of documents from your parole file. This response replaces the Commission's prior response of December 18, 2002. The terms of your request cover:

Copies of all documents maintained and/or generated by the U.S. Parole Commission.

The Commission is disclosing all of the documents you requested which are in your active file as of the date of this response, except those documents or portions of documents listed below.

Because of safety and security reasons, Bureau of Prisons policy prohibits inmates from obtaining or possessing copies of presentence reports or any document that states reasons for a sentencing decision. Therefore, this disclosure does not include such documents. You may obtain access to these documents through your institutional unit staff.

Any documents submitted by you or your representative are not enclosed, but will be sent if you so request.

Under the FOIA, a document or portion thereof, may be withheld if protected by any of the FOIA exemptions. These exemptions can be found at 5 U.S.C. Section 552(b)(1)-(9).

The following documents have been withheld on the basis of the FOIA exemptions cited below:

1. Prehearing Assessment dated October 17, 1998 (2 pages)*
(b)(5)-Privileged Information

2. Prehearing Assessment dated August 14, 1998 (3 pages)*
(b)(5)-Privileged Information

3. Prehearing Assessment dated June 13, 1997 (2 pages)*

(b)(5)-Privileged Information

4. Legal Opinion Memo dated May 18, 1995 (3 pages)
(b)(5)-Privileged Information

5. Letter dated February 14, 1995 (1 page)
(b)(6)-Clearly unwarranted invasion of personal privacy of others
(b)(7)(C)-unwarranted invasion of personal privacy of others

***You may request these documents once you have had a hearing conducted by the Commission.**

Portions of the following documents have been withheld on the basis of the FOIA exemptions cited below:

1. Codefendant Chart: Guideline range and Salient factor score (2 pages excised)
(b)(6)-Clearly unwarranted invasion of personal privacy of others
(b)(7)(C)-unwarranted invasion of personal privacy of others

2. Review Summary dated April 17, 1995 (1 page excised)
(b)(6)-Clearly unwarranted invasion of personal privacy of others
(b)(7)(C)-unwarranted invasion of personal privacy of others

Other material has been provided to the originating agency for a reply:

DOCUMENT

Progress Reports and Memos (47 pages)

AGENCY NAME

Bureau of Prisons
Washington, D.C. 20534

In addition, a copy of the tape recording of your hearing held on April 17, 1995 is enclosed. Please be advised that the Commission does not retain tapes of hearings conducted more than 10 years ago.

If you are dissatisfied with my action on this request, you have thirty (30) days from the receipt of this letter to appeal this decision to the Chairman of the U.S. Parole Commission. An appeal to the Chairman must be made in writing and addressed to the Office of the Chairman, U.S. Parole Commission, 5550 Friendship Boulevard, Suite 420, Chevy Chase, MD 20815.

Sincerely,

Rockne Chickinell
General Counsel

Enclosures – (530) pages

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Yorie Von Kahl
#04565-059
P.O. Box 1000
Leavenworth, KS 66048-1000

Office of the Chairman
U.S. Parole Commission
5550 Friendship Blvd.
Suite 420
Chevy Chase, MD 20815

Re: Appeal From Results of Disclosure Request

April 30, 2003

APPEAL

Yorie Von Kahl, above-named and hereinafter "Appellant," hereby appeals the result of the disclosure rendered by Rockne Chickinell, General Counsel for the U.S. Parole Commission rendered April 11, 2003 and received by Appellant on April 14, 2003. The Commission re-ordered full disclosure following the previous appeal in this case and the General Counsel states that "[t]his response replaces the Commission's prior response of December 18, 2002. **See Letter from Rockne Chickinell, General Counsel, April 11, 2003 (attached).**

Appellant incorporates fully his previous appeal (with exhibits) as part of this appeal with the following explicit exceptions:

(1) The orderliness of the file has been remedied and that matter is moot;

(2) The double-copying (in some cases as many as six times) appears to have been corrected;

(3) The prior non-disclosure of the Parole Review Summary dated April 17, 1995 has now been disclosed in part, excepting an unspecified single page, which is purportedly excepted on the ground that the disclosure would be a clearly "unwarranted invasion of personal privacy of others." Appellant notes that the prior non-disclosure was alleged to be exempt as "privileged information." Appellant, therefore, retains his claim as to this document as originally presented, as it appears

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that the redesignation from "privileged information to an "unwarranted invasion of personal privacy of others" is wholly arbitrary. The alleged missing page is undefined or explained in any manner, but obviously consists of matter of sufficient significance that it was included as part of the Parole Review Summary. How it retains any status involving "personal privacy" as part of a public matter affecting Appellant, his rights to a fair hearing and review for parole consideration is impossible to tell and the Commission's excuse is simply unreasonable on the face of the response. Appellant will, therefore, amend the original appeal below so as not to waive any potential question as to the non-disclosure of this missing page;

Otherwise, Appellant amends his original appeal in light of the Commission's latest response by adding the following claims:

(1) The record is clearly incomplete and letters and documents favorable to Appellant have disappeared from the record in addition to those mentioned in the previous appeal **and since the last disclosure** indicating extreme negligence or deliberate destruction of Appellant's record prejudicing his opportunity to a full and fair hearing, consideration of mitigating circumstances and appellate review of decision-making;

(2) Appellant objects to the withholding of the two pages from the "Codefendant Chart" as an unwarranted invasion of personal privacy of others," as the pages have not been identified in any manner and there appears to be no possible way of intelligently appealing the propriety of such designation without some kind of summary information and on its face the non-disclosure is clearly arbitrary;

(3) Appellant objects to the non-disclosure of an unexplained "letter" dated February 14, 1995 (1 page) on the basis that the disclosure would be an "unwarranted invasion of personal privacy of others." Appellant presumes this single page either is, or is directly related to, the withheld page from the Parole Review Summary dated April 17, 1995, and is therefore part of the basis of the decision-making

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procedure regarding Appellant. Without a summary of the contents of the letter, Appellant cannot intelligently contest the designation assigned by the Commission for non-disclosure. However, if Appellant is correct that this letter is the missing page of the Review Summary, it is clearly noticable that the previous designation for withholding has been altered with no discernable explanation and, therefore, appears arbitrary;

(4) Appellant has been denied all records of his hearings, except that of April 17, 1995, on the basis that "the Commission does not retain tapes of hearings conducted more than 10 years ago." Appellant has been consistently requesting these records **for more than ten years** and they have never been provided. **(See e.g. Request of August 8, 1993)** (one of many repeated requests) (attached hereto). This is a violation of 18 U.S.C. § 4208(f) on its face, which mandates these records be "retained by the Commission" **and** that they be made available to Appellant upon request. Failure to retain these records and to provide them to Appellant (for over ten years) is highly prejudicial to him, prevents full and fair review and violates substantive rights created by Act of Congress.

AMENDMENT TO PREVIOUS APPEAL

Appellant note that he has emphatically requested **ALL** available and disclosable material and not that merely disclosable pursuant to the Freedom of Information Act or the Privacy Act. He is not simply seeking general information, but is seeking all information and material that has been or may be used in respect to the Commission's duties in respect to his parole consideration. With the exceptions noted above, Appellant reasserts his previous appeal in full and adds the following matters thereto.

It is clear that all information submitted to the Commission irrespective of its sourse "shall...be taken into consideration" in respect to Appellant and any consideration to either parole him or to decline parole. **18 U.S.C. § 4207.**

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Likewise, "[a] full and complete record of every proceeding shall be retained by the Commission" and "shall" be "ma[d]e available" to Appellant "[u]pon request." **18 U.S.C. § 4208(f).**

Reasonable access to reports and documents must be made to Appellant with only three exceptions. **18 U.S.C. § 4208(b)(2)** and **18 U.S.C. § 4208(c)(1), (2) and(3).** Those exceptions have not been advanced in this case.

THE PAROLE REVIEW SUMMARY OF APRIL 17, 1995 AND THE UNSPECIFIED "LETTER" OF FEBRUARY 14,1995

The Commission is attempting to utilize the exemptions under the FOIA that do not apply to the considerations required under 18 U.S.C. § 4208(c) to evaded the provisions and purposes of the parole law and which govern parole proceedings.

The alleged "letter" noted above is a clear example, as is the missing page from the Parole Review Summary dated April 17, 1995. Unless such document was "obtained upon a promise of confidentiality" or "if disclosed, might result in harm, physical or otherwise, to any person" - neither of which is alleged - any designation as "unwarranted invasion of personal privacy of others" is unreasonable, arbitrary and capricious and conflicts with the requirements of 18 U.S.C. § 4208 and its implimenting regulations.

Furthermore, withholding this page upon the arbitrary designation that it would be an "unwarranted invasion of personal privacy of others," without providing Appellant with a summary of the "basic facts," is a clear violation of 18 U.S.C. § 4208(c).

This applies fully to both the page missing from the Parole Review Summary dated April 17, 1995 and the mysterious and completely unexplained "letter" dated February 14, 1995, which Appellant presumes are one and the same or obviously related.

Appellant assumes this "letter" is the letter sent to the Commission by his ex-wife, as it is not included in the materials disclosed. However, because numerous other letters are clearly missing from the file actually disclosed, he cannot be certain. If he is correct, such letter is not a matter of the "personal privacy of others" and was not "obtained by any promise of confidentiality." It was sent to the Commission in

an attempt to invoke the public powers of the Commission for the purpose of using that public power for personal and vindictive reasons. It is not a matter of privacy at all. At best it is purely an ex parte attempt to wrongly exploit a public function for personal reasons and the Commission has neither the power or authoity to sanction such misuse of public functions.

It is also very obvious that nowhere in the record disclosed were any of the numerous letters, which were sent to the Commission on Appellant's behalf, given any consideration other than an apparent snide remark by Carol Pavilack Getty in a Memorandum dated May 10, 1995 to the "Regional Commissioners" in which she merely noted the "many letters of support for the prisoner from the community" without explaining their extraordinary and clearly mitigating substance.

The withholding of the single "page" from the Parole Review Summary of April 17, 1995 and of the unexplained "letter" for which no "summary" of the "basic contents" of either were provided, as required by 18 U.S.C. § 4208(c), and for which such non-disclosure is arbitrary and capricious and from which Appellant cannot possibly determine the impact upon either his 1995 hearing, the Commission's decision-making process, and for which Appellant has been and is effectively denied even the minimal requirements of due process, renders the Commission's decision illegal on its face.

Appellant reminds the Commission (and refers them to his original appeal of February 13, 2003) that he has diligently sought full disclosure of these materials for more than six years. Failure to comply with his disclosure requests repeatedly at approximately 60-day intervals for no legitimate reason and in violation of the statutes and regulations that govern these matters should be considered a "waiver" on the part of the Commission for all matters in this case.

THE TWO PAGES WITHHELD FRO "CO-DEFENDANT'S CHART"

The Commission has withheld two pages from the "Co-defendant Chart" alleging that it, too, would be an "unwarranted invasion of personal privacy of others." It is noticable that this is the first time the Commission has ever even mentioned a "Co-defendant Chart."

Again, no summary of basic facts as required by 18 U.S.C. § 4208(c) has been provided Appellant. Such designation is obviously arbitrary. Because no summary of the contents has been provided, Appellant can only appeal the withholding of these two pages generally, and not with specificity. It seems doubtful, however, that the withheld pages could possibly fall into a catogory of "personal privacy" particularly in light of the fact that Appellant and his co-defendants Scott Faul and Dave Broer were joined for trial and were in fact tried and sentenced together.

THE RECORD REMAINS PREJUDICIALLY INCOMPLETE AND HAS ACTUALLY LOST ADDITIONAL DOCUMENTS SINCE THE PREVIOUS DISCLOSURE.

Appellant has complained that the previous release of the Commission's file in respect to him and his case was prejudicially incomplete (missing a quantity of material), disorganized and in horrible disarray and portions were repetitively copied.

The file is now in reasonable order and the repetitive copying has been for the most part corrected.

However, material that was in the file in 1995 is missing and, amazingly, additional material has disappeared since the last disclosure on December 18, 2002.

Notably, a 32 page letter written by the former Chief U.S Marshal for the District of North Dakota, Harold "Bud" Warren, along with a letter from Bob Saltzman of Fargo, North Dakota (both of which were sent to the Commission by Mr. Saltzman) are now both missing in their entirety from the record. In December at least the last page of Mr. Saltzman's letter was there referencing the letter from the former marshal.

Formerly, Appellant's complaint was that only the last page of Mr. Saltzman's letter was in the record. The letter from the marshal was in the record completely seperate from Mr. Saltzman's letter. Now however, both are entirely missing.

Marshal Warren's letter is exceptionally favorable to Appellant. Warren was involved with this case, an associate of the trial judge and the deceased marshals in this case and revealed considerable information as to the circumstances and history of this case. So much

so that its absence from the file is both prejudicial to the performance of the Commission in its "consideration" of the history of the case and of Appellant that it necessarily impresses the mind that the record is being deliberately destroyed by someone within the Commission.

Recent newspaper articles are in Appellant's possession that quote U.S. Marshals involved in the case stating that Appellant will not be considered for parole until he has at least reached his maximum release date. The Assistant U.S. Attorney was quoted as stating that "law enforcement" will never get over this case. The general gist and tenor of the articles is essentially that Appellant cannot expect for the Parole Commission to perform its functions in his case impartially and that the federal law enforcement establishment is there in the background to ensure that Appellant will never see freedom again. This is, of course, the same politics that permiated the trial. However, Marshal Wigglesworth, an officer involved in the incident and alleged to have been a "victim" (and who, incidentally, was caught during the trial entertaining the jury in violation of express court orders to keep away from the trial and jury) has affirmatively stated with assurrance that Appellant **will not** be released on parole. Appellant naturally assumes (as does everyone else that has read these articles) that there is a secret liason between the U.S. Marshals and the Parole COmmission premised upon the marshals non-professional interests in keeping Appellant in prison as a symbol to anyone who resists their abusive powers.

In any case, both Mr. Saltzman's letter as well as Marshal Warren's were very beneficial to Appellant. Warren's letter, as noted, contained an insider's view of the incident, the trial, the underhanded activities of the judge and prosecutor (friends of the deceased marshals), manipulation of the jury and the media, etc,... all of which are of the greatest value in considering the factors essential to the "nature and circumstances of the offense" and "the history and characteristics of the prisoner" - both mandatory requirements of the Commission. **28 U.S.C § 4206(a); 28 C.F.R. § 2.18. See also 28 U.S.C. § 4207** (Commission "shall" consider relevant information "as shall be reasonably available").

Unless these records are immediately placed back into the file and Appellant is so notified, he will assume that the Commission is deliberately destroying the file. Obviously, as series of "mistakes" as is evident in the history of this case simply cannot be human error. There is obviously deliberation in the selection of this material. Appellant reminds the Commission that he complained in his previous appeal that the Commission has admittedly ignored the Affidavit/Report signed by 70 law enforcement professionals (the results of a long-term and extensive investigation into this case) as well as a documentary providing the insight of witnesses, jurors and victims, as well as the lead prosecutor and others. Circumstantially, to ignore the best evidence and information that is readily available and to maintain instead what can only be the desire of the officers who have had and continue to have both personal vindictive reasons to continue Appellant in prison as as symbol, as well as to maintain the cover-up of their own non-professional conduct, tends to prove that the Commission is simply acting as a "ruber-stamp" in this case for such interests.

Ironically, the same U.S. Marshal that assured the public that Appellant would never get out of prison (at least not before his mandatory release) also stated that Appellant's co-defendant Scott Faul could be released at any time, **if he would just quit filing to vindicate himself in court.** It certainly seems that the U.S. Marshals Service is in control of our parole. We will, however, deal with that in another forum.

The Commission will note, if it ever bothers to read the numerous letters sent to it on Appellant's behalf - many of which are still in the file - that many, if not most, of the "community" have voiced their opinion that Appellant's incarceration and continued incarceration is a purely political and symbolic effort, at least in part to satisfy the U.S. Marshals Service. The Commission persists in giving credence to that reasonable suspicion.

Appellant's 15-year reconsideration hearing was due in June of 2001. He did not waive it and it is obvious that he has persisted in obtaining the record and to compel the Commission to consider all of the mitigating circumstances. Apparently, the Commission simply does not intend to comply with the law or their regulations. Appellant,

however, has followed the rules properly and has ensured the record is complete.

IN CONCLUSION

It is apparent that the Commission is wasting time. Six years of persistent requests for the file and over ten years of requests for the parole hearing records - only to see the files being destryed before his eyes, and now the Commission asserts that it does not retain the parole hearing tapes for more than ten years in plain violation of the congressinal command to retain the records under 28 U.S.C. § 4208(f).

The Commission gives out 15-year reconsideration hearings as a matter of general practice, which is evident over the past 15 years. This practice began when Congress "abolished" the Commission and gave then five years to process the pre-1987 prisoners to release. By maintaining a large pool of unreleased prisoners, the Commission was able to persuade Congress to continue them for five years at a time, until now they have for the most part managed to put in the necessary time to receive their pensions.

Under Public Law 98-473, Title II, Ch. II, Sec. 218 and 235, the Parole Commission was "abolished" and Appellant was statutorily entitled by law to both a release date and release "within" his applicable guideline. When this Act was enacted on October 12, 1984, Appellant had already seen the Parole Board and the National Commissioners had already found "no reason to take him outside the guidelines."

Yet, at an interim hearing in 1986, for no reason explained or even suggested, and with no new information presented into the record, Appellant was arbitrarily issued a 15-year reconsideration hearing for June of 2001. Interim hearings do not permit the issuance of 15-year reconsideration hearings. This was not a re-opened case, but an obvious act on the part of the Commission to arbitrarily and capriciously abuse Appellant, probably on the urgings of the U.S. Marshals Service or the U.S. Attorney's Office that prosecuted the case. Appellant cannot be sure, but he has obtained secret ex parte communications between the trial judge and the Office of the Director

of the FBI. This communication (which refences other previous communications) clearly instructs the judge how to proceed with this case. It is dated February 27, 1983 - 14 days after the incident. Similar behind-the-scenes activity of federal agencies have also been discovered - the objects of which were ensure convictions. We can be sure that this type of illegal activities has not stopped or that the U.S. Parole Commission is immune from this type of influences. In fact, the recent interviews of the marshals and the prosecuting attoney involved in this case strongly tend to show (or possibly explain) the bizarre behavior of the Commission in this case.

Appellant has tried to comply with all the applicable law in obtaining the records of his case. He has attempted to compel the Commission to comply with the law and regulations that govern these matters. He will not continue to waste much more time.

If the Commisssion does not correct all of the errors in this case - from the illegal decision in 1986 to the correction and consideration of all of the information presented to it over these years, and promptly - Appellant will begin to organize those who have supported him all of these years and will endeavor to release through the widest possible avenues the pertinent portions of Senate Report 98-225 (abolishing the Commission and the reasons therefore), Public Law 98-473 (relating to the abolishment of the Parole Commission and repeal of the parole laws), as well as all documents that he has amassed involving the continuation of the Commisssion at the expense to Appellant and other prisoners, who should have been released long ago.

Appellant will encourage lawsuits and liens against the Commission and those employees who have aided and abetted this fraud committed on Congress and the public and will begin to search for the proper means to raise these questions in the courts and in Congress.

There are, as the Commission well knows, a number of lawsuits pending involving the December 7, 1987 amendment to P.L. 98-473 and its applicability to the prisoners who were required to be released pursuant to the terms of section 235(b)(3) of the original Act. Some of the suits seriously question the inherent "conflict of interest" in the Commission employing long set-off dates, while urging Congress for longer extentions. Appellant has a case pending in Washington,

D.C. in respect to these matters. He has included a conflict of interest claim. He will begin to seek public support in that forum, rather than waste further time and effort with requests and appeals to the Parole Commission, if corrections are not made soon.

Frankly, there seems to be no other reasonable option but to engage the public in this debate. They have interests here too, and a great deal of money has been expended since the Commission was to have been abolished that could well have gone to much better uses.

I, there, await your reply with disgust. If the Parole Commission is an example of America's preparedness, we really are in very serious trouble.

Yorie Von Kahl

Yorie Von Kahl
#04565-059
P.O. Box 1000
Leavenworth, KS 66048-1000

U.S. DEPARTMENT OF JUSTICE
United States Parole Commission

Office of the Chairman

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June 26, 2003

Yorie Von Kahl
Reg. No. 04565-059
P.O. Box 1000
Leavenworth, KS 66048-1000

Dear Mr. Kahl:

This letter is in response to your Freedom of Information Act (FOIA) appeal. You express dissatisfaction with the Commission's response to your FOIA request. You contend that all of the documents that you requested were not released to you. You also challenge the withholding of information from the hearing summary dated April 17, 1995, and the withholding of a letter dated February 14, 1995. Further, you claim that the Commission has not provided you with copies of the tape recordings of all of your hearings pursuant to 18 U.S.C. § 4208(f).

It is clear from your letter that you have confused disclosure pursuant to the Freedom of Information Act and disclosure prior to a parole hearing. Although you may request disclosure of your entire file at any time pursuant to the Freedom of Information Act, you are not entitled to disclosure of your entire file prior to a parole hearing. You are only entitled to reports and other documents to be used by the Commission in making its determination. Since your next hearing will be a statutory interim hearing, the only information the Commission will consider will be any significant developments or changes in your status since your last hearing. 28 C.F.R. § 2.55(b). You may request disclosure prior to your hearing by completing a Parole Form I-24. Your file shows that you have requested disclosure on the Form I-24 and the Commission responded to your requests. (See enclosed copies.)

Contrary to your contention, you are not entitled to have withheld documents summarized in regard to your FOIA request. This requirement applies to documents withheld during a parole hearing. See 18 U.S.C. § 4208(c) and 28 C.F.R. §2.55(d). A review of your file shows that during your prior parole hearing, the Commission complied with the statute and regulations and summarized a withheld document. You should preserve any other issues you have regarding the parole hearing process for your next parole hearing or raise them in your administrative appeal. The purpose of this letter is to address your complaints regarding the FOIA disclosure.

In regard to your complaint that you were not provided with copies of the tape recordings of your prior hearings, as explained to you in the Commission's response, tapes more than 10 years old

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have been destroyed. (A copy of the Commission's retention schedule is enclosed.) The Commission has retained a copy of your prior hearings and this is in the form of the hearing summaries. Those documents have been released to you. The Commission is not obligated to retain the tape recordings of parole hearings. See Hyrnko v. Crawford, 402 F. Supp. 1083 (E.D. Pa. 1975)(verbatim record of parole hearing not required).

In regard to the withheld information, the document of April 17, 1995, contains only a few excisions. Although the Commission previously withheld the information pursuant to Exemption (b)(5), this was an error. The information was properly excised from the document pursuant to Exemptions (b)(6) and (b)(7)(C), 5 U.S.C. § 552. The letter of February 14, 1995 was also properly withheld based on the same exemptions. Exemptions (b)(6) and (b)(7)(C) require a balancing of the public's right to disclosure against an individual's right to privacy. The type of public interest required by the FOIA is that which sheds light on an agency's performance. See U.S. Dept. of Justice v. Reporters Committee, 489 U.S. 749 (1989). You have failed to identify any public interest in the release of the information. You have only identified your own interest in release of the information. The information contains an identifiable privacy interest that outweighs the lack of any identified public interest and therefore, the information must be withheld.

You also contend that the Commission should not have withheld information contained on a co-defendant chart. This information was excised pursuant to Exemptions (b)(6) and (b)(7)(C). Applying the analysis above, you have not identified any public interest in the information. Since there is a privacy interest in withholding the information, the documents must be withheld.

Finally, you contend that a 32 page document prepared by Harold Warren submitted to the Commission from Robert Salsman was improperly withheld from disclosure. The Commission did not include this document because it was believed that you had submitted it to the Commission and the disclosure did not contain any documents submitted by you or your representative. This document has been copied and is enclosed with this letter along with the letter from Robert Salsman.

Judicial review of my action on this appeal is available to you in the United States District Court for the judicial district in which you reside, or in the District of Columbia.

Sincerely,

Edward F. Reilly, Jr.
Chairman
U.S. Parole Commission

EFR/PAP/pap

06/26/03

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	A- Program Subject Files. These general subject files consist of correspondence, bulletins, reports, and dockets which fall under these catagories: Legal and Legislative (LEL), Parole Hearings (PAH), Post Release (POS), Pre-Release (PRE), Program Procedures and Administration (PPA).	Cutoff files at end of calendar year, hold at agency for one year, and retire to Federal Records Center. Destroy seven years after cutoff date.
✓	B- Inactive Parolee Case Files. These are a four part file containing basic sentence data, background data, and parole hearing data on a Federal inmate or parolee.	Retire to Washington National* Records Center any time after case becomes inactive. Destroy ten years after the date the case became inactive. (Job No. NC-438-75-1)
✓	C- Parole Hearing Tapes. These are cassettee tape recordings of an individual parole hearing of a Federal inmate or parolee.	Hold in agency for one year and retire to Federal Records Center. Destroy ten years after the date of the hearing.

*Clarification of disposal instructions for parolee case files authorized by Bernard W. Berglind, APMS/OMF, per telecom of 17 Apr 79. 4/17/79

Memorandum

Subject

KAHL, YORI
04565-059

Date

May 10, 1995

To

National Commissioners
U.S. Parole Commission

From

Carol Pavilack Getty
Regional Commissioner
North Central Regional Office
U.S. Parole Commission

A. This case was previously designated Original Jurisdiction and it is referred again pursuant to 28 CFR 2.17 (b)(3) Unusual Media Attention and (b)(4) Long-term sentences.

B. Regional Commissioner's Evaluation, Order and Vote:

The prisoner was convicted of murdering a U.S. Official and is serving a life sentence plus 15 years custody. The offense behavior was rated as Category Eight in severity because it involved murder. With a SFS of 9, the guidelines were 100+ months. A decision more than 48 months above the guideline range was found to be warranted because the offense involved the murder of two government agents and crippling injuries to other agents. At first the prisoner was continued to a 10 year reconsideration hearing, but at a subsequent SIH hearing, the decision was to continue him to a 15 year reconsideration hearing in 6/2001.

On 12/12/94 the prisoner had his latest SIH hearing. He has now served 142 months. Findings were made on one rescission incident for Possession of a Sharpened Instrument. Otherwise, no other significant information was obtained.

The prisoner's representative attempted to argue at the hearing that Kahl's conviction was due to his having an inexperienced attorney and the panel told him that if he believed that he should make the argument in the Federal Court. The representative also argued that his client was being unjustly punished by the USPC because the Commission believed that his client fired the first shot. This contention seems to overlook the fact that Kahl's group was well armed and ready for action when the authorities appeared. Shooting broke out and we know the results.

The Parole Commission also received many letters of support for the prisoner from the community. One letter is allegedly from a law enforcement group and they question the validity of the prisoner's conviction. Again, my reaction is that if they have this kind of information, it should be made available to the prosecutor and the court. We do not rule

on questions of innocence or guilt.

The Parole Commission's last decision in this case was No Change; Continue to a Fifteen year Reconsideration Hearing in June 2001. The SIH panel recommends No Change in the original decision and I agree. Therefore, I vote as follows:

1. Refer to the National Commissioners for Original Jurisdiction consideration.

2. No Change in Continue to a Fifteen year Reconsideration Hearing in June 2001.

Reasons:

Retroactivity does not apply. Neither your recalculated severity rating (old Category Eight; new Category Eight) nor your recalculated salient factor risk category (old Category very good, old score 9; new Category very good, new score 9) is more favorable. This statement means that a finding has been made by the Parole Commission at your hearing that no regulatory or procedural changes have been made by the Parole Commission since your last hearing which would positively affect your case in terms of Offense Severity or Salient Factor Scoring.

As required by law, you have also been scheduled for a statutory interim hearing during April 1997.

wrw
5/10/95

AFFIDAVIT AFFIDAVIT AFFIDAVIT AFFIDAVIT

JOHN W. DECAMP, BEING FIRST DULY SWORN, DOES DEPOSE AND SAY AS FOLLOWS ON THIS 21ST DAY OF September, 1997, at Lincoln, Lancaster County, Nebraska:

1. I am an attorney licensed since 1967 in the State of Nebraska (and authorized to practice in sundry other states on a case-by-case basis) in good standing with the Bar of the State of Nebraska and authorized to practice law under license No. 10951.

2. For two years or more I have been active in legal work to re-open the case of Yori Kahl & Scott Faul emanating out of Medina, North Dakota some 15 years ago in which a shoot-out occurred between U.S. Marshals and Gordon Kahl at which various others, including Gordon Kahl's son Yori Kahl, were present or witnessed.

3. As part of my work in this case I began working to insure that Yori Kahl received a fair, impartial and just parole hearing with all pertinent & relevant facts made available to the Parole Board. THIS TO INSURE THAT AT THE UPCOMING HEARING WHERE YORI KAHL & I WERE TO PRESENT EVIDENCE & INFORMATION TO THE PAROLE BOARD, THE DECISION BY THE PAROLE BOARD HEARING YORI KAHL'S ATTEMPT FOR PAROLE WOULD BE BASED ON FACTS & BE IN EVERY RESPECT THE ESSENCE OF DUE PROCESS.

4. In Spring of 1995 I attended & participated in a Parole Board Hearing on Yori Kahl's potential parole & attended with Inmate Yori Kahl at the USP in Leavenworth, Kansas where Yori was incarcerated and where the Parole Board met to hear his case.

5. Attending with me and guiding me to the Parole Board Hearing & then meeting with me in very frank discussions following the Parole Board Hearing was the case manager FOR YORI KAHL AT Leavenworth who is in charge of the Yori Kahl case. Because I was NOT INTIMATELY FAMILIAR WITH THE PRACTICES, PROCEDURES, POLICIES, NUANCES of Federal Parole Hearings, I asked the individual, Yori Kahl's Leavenworth Case Worker/ Manager, a series of questions relative to the Parole Process & relative particularly to Yori Kahl's parole situation, possibilities,

probabilities, & all related facets of the Parole Process as they would relate to Yori Kahl.

6. This individual was frank, open & I felt quite honest with me in explaining the process and particularly in dealing with the Yori Kahl situation. Though the information he provided shocked and discouraged me tremendously, I felt from the way it was presented that the individual providing the information was BOTH KNOWLEDGEABLE ABOUT WHAT HE WAS SAYING AND WAS FORTHRIGHT & HONEST IN PRESENTING IT TO ME. THE ESSENCE OF WHAT THIS INDIVIDUAL, CASE MANAGER SAID WAS:

1. THE YORI KAHL CASE WAS A UNIQUE CASE & WAS MOST CERTAINLY A "FLAGGED" CASE, UNLIKE ALMOST ALL OTHER CASES THE PAROLE BOARD WE HAD JUST APPEARED BEFORE DEALT WITH.

2. BY "FLAGGED" OR "RED FLAGGED" (I AM NOT CERTAIN I REMEMBER THE EXACT PHRASE USED) THE CASE WORKER EXPLAINED HE MEANT THAT THE LOCAL PAROLE BOARD HEARING THE CASE--THE ONE WE HAD JUST APPEARED BEFORE--REALLY HAD NO AUTHORITY NOR WOULD THEY TAKE AUTHORITY TO DEAL WITH OR MAKE PAROLE DECISIONS ON. INSTEAD, THE DECISION PROCESS WOULD BE AUTOMATICALLY "BUCKED" ON UP TO WASHINGTON FOR OTHERS TO MAKE IRRESPECTIVE OF THE FACTS PRESENTED BY US AT THE HEARING. IN ESSENCE, THE PAROLE BOARD HEARING WE WERE PARTICIPATING IN WAS CEREMONIAL BUT NOT SUBSTANTIVE AS FAR AS ANY DECISION MAKING WITH RESPECT TO YORI KAHL'S PAROLE.

3. THE CASE WORKER EMPHASIZED TO ME THAT THE HIGH PROFILE NATURE OF THE CASE & THE FACT THAT THE KAHL CASE REPRESENTED POSSIBLY THE WORST ATTACK UPON AND KILLING OF U.S. MARSHALLS IN THE HISTORY OF THE COUNTRY IN THE EYES OF THE U.S. MARSHALLS SERVICE GUARANTEED THAT THE U.S. MARSHALLS' SERVICE WOULD HAVE A PROFOUND AND OVERWHELMING INFLUENCE ON THE PAROLE DECISION AT THE NATIONAL LEVEL AND ON THE POLITICAL FRONT. IN SHORT, THE CASE WORKER EMPHASIZED THAT THE DECISION ON WHETHER YORI KAHL GETS PAROLED WAS A POLITICAL AND NOT REALLY A LOCAL PAROLE BOARD DECISION. HE FURTHER EXPLAINED THAT THE "PAROLE BOARD MEMBERS HEARING THE CASE AND BEFORE WHICH" YORI KAHL APPEARED ARE POLITICAL APPOINTEES AND THAT THEY DEFINITELY WERE NOT DUMB ENOUGH OR PRESUMPTUOUS ENOUGH TO BE GRANTING PAROLE--NO MATTER WHAT THE EVIDENCE--UNLESS THAT PAROLE WAS ALSO APPROVED AND DESIRED AT THE MUCH HIGHER

LEVELS OF THE POLITICAL PROCESSES IN WASHINGTON, D.C. AND WITHIN THE U.S. MARSHALLS SERVICE ITSELF.

4. OUR DISCUSSION CONCLUDED WITH THE CASE MANAGER EXPLAINING VERY CLEARLY TO ME THAT THERE TRULY WAS NO POSSIBILITY THAT YORI KAHL WOULD EVER GET PAROLED OR BE ALLOWED TO BE PAROLED BY THE LOCAL PAROLE BOARD ABSENT VERY CLEAR POLITICAL DECISIONS BEING MADE IN WASHINGTON, D.C. WHICH WOULD DIRECT THE PAROLE BOARD TO GRANT PAROLE.

FURTHER AFFIANT SAYETH NOT.

DATED AND EXECUTED THIS 21ST DAY OF SEPTEMBER, 1997, AT LICNOLN, LANCASTER COUNTY, NEBRASKA BY:

JOHN W. DECAMP, ATTY., BAR NO. 10951

COUNTY OF LANCASTER

STATE OF NEBRASKA

BEFORE ME A NOTARY PUBLIC PERSONALLY APPEARED JOHN W. DECAMP WHO EXECUTED THE ABOVE AFFIDAVIT & ACKNOWLEDGED THE CONTENTS THEREIN TO BE TRUE TO THE BEST OF HIS KNOWLEDGE. DATED AND EXECUTED THIS 21ST DAY OF SEPT. 1997.

NOTARY PUBLIC

GENERAL NOTARY-State of Nebraska
JAN G. JEWELL
My Comm. Exp. June 9, 2000

THPDV 542*22 * SENTENCE MONITORING * 08-29-2011
PAGE 001 OF 001 * GOOD TIME DATA * 13:12:53
AS OF 08-29-2011

REGNO...: 04565-059 NAME: KAHL, YORI VON
ARS 1...: THP A-DES
COMPUTATION NUMBER..: 010 FUNC..: PRT ACT DT:
LAST UPDATED: DATE.: 05-26-2011 FACL..: DSC CALC: AUTOMATIC
UNIT.....: B/C QUARTERS.....: B01-231L
DATE COMP BEGINS....: 06-24-1983 COMP STATUS.....: COMPLETE
TOTAL JAIL CREDIT...: 131 TOTAL INOP TIME.....: 0
STATUTORY REL DT....: N/A EXPIRES FULL TERM DT: LIFE
CURRENT REL DT.....: /
PROJ SATISFACT DT...: 02-12-2023 SUN PROJ SATISF METHOD..: TWO THIRDS
ACTUAL SATISFACT DT.: ACTUAL SATISF METHOD:
FINAL STAT GOOD TIME: FINAL EXTR GOOD TIME:
DAYS REMAINING.....: FINAL PUBLC LAW DAYS:

----------EXTRA GOOD TIME EARNINGS----------

INST	TYPE	DATE IN	DATE OUT	PRI/SEN IND
LEW	IGT	08-22-1984	04-19-1988	
LEW	MGT	02-24-1992	04-08-1994	
LVN	MGT	09-01-1997	06-22-2005	
THP	MGT	03-15-2010		

EGT EARNED.....: 884 DAYS

BREAK OVER DATE.....: 08-22-1985

----------EXTRA GOOD TIME LUMP SUM AWARDS AND ADJUSTMENTS----------

NONE

TOTAL EGT.....: 884 DAYS

--------STATUTORY GOOD TIME FORFEITURES, WITHHOLDINGS, RESTORATIONS--------

INFRACTION DATE	NO	DECISION DATE	ACTION TYPE	AMOUNT	INFR SEVERITY /RSN FOR ADJ	FREQ
12-29-1992	1	01-12-1993	FF	30	GREATEST	104
		11-13-1997	RFF	30		

NET SGT FORFEITURES, WITHHOLDINGS, RESTORATIONS: 0 DAYS

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

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PEKFB 542*22 * SENTENCE MONITORING * 09-20-2018
PAGE 001 OF 001 * GOOD TIME DATA * 13:43:25
AS OF 09-20-2018

REGNO...: 04565-059 NAME: KAHL, YORI VON
ARS 1...: PEK A-DES
COMPUTATION NUMBER..: 010 PRT ACT DT:
LAST UPDATED: DATE.: 05-25-2017 FACL..: DSC CALC: AUTOMATIC
UNIT.....: ILLINOIS QUARTERS.....: A05-133U
DATE COMP BEGINS....: 06-24-1983 COMP STATUS.....: COMPLETE
TOTAL JAIL CREDIT...: 131 TOTAL INOP TIME.....: 0
STATUTORY REL DT....: N/A EXPIRES FULL TERM DT: LIFE
CURRENT REL DT.....: /
PROJ SATISFACT DT...: 02-12-2023 SUN PROJ SATISF METHOD..: TWO THIRDS
ACTUAL SATISFACT DT.: ACTUAL SATISF METHOD:
FINAL STAT GOOD TIME: FINAL EXTR GOOD TIME:
DAYS REMAINING.....: FINAL PUBLC LAW DAYS:

----------EXTRA GOOD TIME EARNINGS----------

INST	TYPE	DATE IN	DATE OUT	PRI/SEN IND
LEW	IGT	08-22-1984	04-19-1988	
LEW	MGT	02-24-1992	04-08-1994	
LVN	MGT	12-03-1997	06-22-2005	
PEK	MGT	03-28-2017		

EGT EARNED.....: 871 DAYS

BREAK OVER DATE.....: 08-22-1985

----------EXTRA GOOD TIME LUMP SUM AWARDS AND ADJUSTMENTS----------

NONE

TOTAL EGT.....: 871 DAYS

--------STATUTORY GOOD TIME FORFEITURES, WITHHOLDINGS, RESTORATIONS--------

INFRACTION DATE	NO	DECISION DATE	ACTION TYPE	AMOUNT	INFR SEVERITY /RSN FOR ADJ	FREQ
12-29-1992	1	01-12-1993	FF	30	GREATEST	104
		11-13-1997	RFF	30		

NET SGT FORFEITURES, WITHHOLDINGS, RESTORATIONS: 0 DAYS

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

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DSCBM  540*03 *              SENTENCE MONITORING              *      07-19-2018
              *       INDEPENDENT SENTENCE COMPUTATION       *      15:17:26

SENTENCE PROCEDURE: 10   4205(A)REG ADULT
SPT/PAR/MR VIOL...: N    MAN SGT RATE:
TERM IN EFFECT YRS: 40  MOS:     DAYS:        OR LIFE/DEATH:
TIE CONVERTED  YRS: 40  MOS:     DAYS:
MINIMUM TERM   YRS:     MOS:     DAYS:
JAIL CREDIT   FROM: 02-13-1983   THRU: 06-23-1983 = 131   DAYS
              FROM:              THRU:             =       DAYS
              FROM:              THRU:             =       DAYS
TOTAL JAIL CREDIT DAYS: 131
INOP TIME     FROM:              THRU:             =       DAYS
              FROM:              THRU:             =       DAYS
TOTAL INOPERATIVE TIME DAYS:
                                 SGT RATE.....: 10
DT SENT BEGAN: 06-24-1983        SGT TOTAL DAYS: 4800
                                 STAT REL DT...: 12-22-2009 TUE
                                 180 DAY DT....: 08-16-2022
                                 PAROLE ELIG...: 02-12-1993
                                 2/3 OR 30YR DT: 10-15-2009
HARDCOPY Y/N: Y                  EFT DT........: 02-12-2023 ... Two-Thirds Date

DATA ENTERED BY:



G0000        TRANSACTION SUCCESSFULLY COMPLETED
```

TRULINCS 04565059 - KAHL, YORI VON - Unit: PEK-A-B

FROM: 04565059
TO: R&D/Mailroom
SUBJECT: ***Request to Staff*** KAHL, YORI, Reg# 04565059, PEK-A-B
DATE: 09/26/2018 04:35:03 PM

To: Mr. Hewitt
Inmate Work Assignment: Orderly III-2

9/26/2018 4:34 PM

Mr. Hewitt,

Thanks for your prompt reply. Your answers were very helpful as always.
-----R&D/Mailroom on 9/26/2018 3:02 PM wrote:

>
I have no idea what dscbm stands for. I searched it on our website and nothing comes up. DSCC stands for Designation & Sentence Computation Center.

Statutory release date is your release date home. When you are done with your sentence.

Term in Effect is the sentence you receive. It you receive two 30 month sentences that are consecutive to each other, your TIE is 60 months.
Hewitt

>>> ~^!"KAHL, ~^!YORI VON" <04565059@inmatemessage.com> 9/26/2018 11:00 AM >>>
To: Mr. Hewitt
Inmate Work Assignment: Orderly III-2

9/26/2018 10:46 AM

Mr. Hewitt,

I have a BOP document generated by the "DSCBM." I cannot find anything in the BOP program statements that explain exactly what the acronym DSCBM stands for. I'm believe that it is a reference to the Grand Prairie Designation Sentence Computation Center, but because I can't find anything in the program statements, I'm not certain.

Also, can you explain exactly what a prisoner's statutory release date is? BOP program statements seem to indicate that it is a mandatory release date determined by deducting the amount of good-time credits from the expiration full term date (EFT). So far as I can tell, the EFT date is the full expiration of the sentence date. Is that correct?

I have one last question. When the BOP "converts" a sentence into a "Term in Effect" (TIE), does the the TIE constitute the full term sentence for further computation/calculation purposes such as good-time credit deductions and determining interim tentative parole release dates?

Thank you for your assistance with these questions.

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PROGRAM 5406/3 * BP5 SENTENCE COMPUTATION DATA * 09-19-1983
PAGE 001 * * 11:18:15

REGISTER NO: 04565-059 NAME: KAHL YORI VON
FBI NO.....: UNKNOWN DATE OF BIRTH: 08-12-1959
SEX.....: MALE RACE.....: WHITE UNIT: UNIT2

JUDGMENT NO..: 010 OBLIGATION NO: 010 DOCKET NO: C3-83-16-03
DTE LAST UPDT: 09-19-1983 LAST UPDT BY.: BSP
DATE SENTENCED/PROBATION REVOKED.: 06-24-1983
DATE COMMITTED.....: 07-29-1983
COURT OF JURISDICTION.....: NORTH DAKOTA
JUDGE.....: BENSEN, P.
HOW COMMITTED.....: FED COURT COMT FOR US CD SENT
OFFENSE: SECOND DEGREE MURDER OF FEDERAL OFFICERS; AIDING AND ABETTING

SENTENCE PROCEDURE.: 4205(B)(2) IMMEDIATE PE
SENTENCE IMPOSED...: LIFE MINIMUM TERM: N/A
NEW TERM IN EFFECT.: N/A PROBATION...: N/A
SPECIAL PAROLE TERM: N/A
BASIS FOR SENT CHNG: N/A
FINES.....: $0.00 COSTS.....: $0.00

-- JAIL CREDIT (JC) --- -------- INOPERATIVE TIME AND REASON (INOP) --------
JC FROM THRU INOP FROM THRU INOP REASON
02-13-1983 06-23-1983 N/A

REMARKS: LIFE ON COUNTS 1 & 2 TO RUN CONC.

JUDGMENT NO..: 010 OBLIGATION NO: 020 DOCKET NO: C3-83-16-03
DTE LAST UPDT: 09-19-1983 LAST UPDT BY.: BSP
DATE SENTENCED/PROBATION REVOKED.: 06-24-1983
DATE COMMITTED.....: 07-29-1983
COURT OF JURISDICTION.....: NORTH DAKOTA
JUDGE.....: BENSEN, P.
HOW COMMITTED.....: FED COURT COMT FOR US CD SENT
OFFENSE: FORCIBLY ASSAULT & IMPED FED OFFICERS W/DEADLY WEAPON; HARBORI
NG AND CONCEALMENT OF FUGITIVE, AID & ABET; CONSP TO ASSAULT

SENTENCE PROCEDURE.: 4205(B)(2) IMMEDIATE PE
SENTENCE IMPOSED...: 15 YRS MINIMUM TERM: N/A
NEW TERM IN EFFECT.: N/A PROBATION...: N/A
SPECIAL PAROLE TERM: N/A
BASIS FOR SENT CHNG: N/A
FINES.....: $0.00 COSTS.....: $0.00

-- JAIL CREDIT (JC) --- -------- INOPERATIVE TIME AND REASON (INOP) --------
JC FROM THRU INOP FROM THRU INOP REASON
N/A N/A

30002 MORE PAGES TO FOLLOW . . .

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PAGE 002 OF 002 * SENTENCE COMPUTATION DATA * 09-19-
* 11:13:15

REGISTER NO: 04565-059 NAME: KAHL YORI VON

REMARKS: 10 YRS EA ON CTS 5,6,7,8 CONC BUT CONSEC TO CTS 1&2; 5 YRS EA ON CTS 9&11 CONC BUT CONSEC TO CTS 1,2,5,6,7,8 FOR A TOTAL OF LIFE + 15 YRS UNDER 4205(B)(2).

JUDGMENT/OBLIGATIONS USED IN THE FOLLOWING COMPUTATION ARE:
010 010; 010 020;

TOTAL TERM NOW IN EFFECT.....:	LIFE		
TOTAL TERM IN EFFECT CONVERTED....:	LIFE		
AGGREGATED MINIMUM TERM.....:	N/A		
AGGREGATED SPECIAL PAROLE TERM....:	N/A		
STATUTORY GOOD TIME RATE.....:	N/A	TOTAL JAIL CREDIT.:	131
STATUTORY GOOD TIME TOTAL.....:	0	TOTAL INOP TIME...:	0
SENTENCE BEGAN OR WARRANT EXECUTED:	06-24-1983	PAROLE ELIGIBILITY:	COMM DISC
TWO THIRDS OR THIRTY YEARS.....:	02-12-2013	STATUTORY RELEASE.:	N/A
EXPIRES FULL TERM LESS 180 DAYS...:	N/A	EXPIRES FULL TERM.:	LIFE

G0000 TRANSACTION SUCCESSFULLY COMPLETED

Tr. App. 06 263274

Affidavit of Shantel Thomas

This is in regards to an audio tape of Scott Faul's Parole Hearing dated 12/30/2002.

I received a taped recording of the Parole Hearing of Scott Faul from Scott Faul.

I produced a typed transcript of the recording.

Enclosed with this Affidavit is a copy of the tape and a copy of the typed transcript.

Shantel Thomas

2-16-15

NOTARY PUBLIC LISA ACRA STATE OF WISCONSIN

Lisa Acra Notary exp 8-2-2015

2-16-2015

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PE Parole Examiner
SF Scott Faul
CB Scott's Attorney

PE: All right, we're on the record...[inaudible] Your name is Scott Faul...Your federal reg. number is 04564-059.

SF: Correct.

PE: My name is Sam Robertson. I'm from the United States Parole Commission here to conduct what appears to be an initial hearing on your life sentences, your aggregate life sentences for a multitude of conduct: 2nd degree murder of a federal officer, aiding and abetting, forcibly assaulting and impeding a federal officer by deadly weapon, aiding and abetting, harboring and concealing a fugitive, aiding and abetting in conspiracy to assault, um...B2 sentence--[inaudible] eligibility for parole...Another consecutive B2. It looks like you've been in custody since 2/15/83...that's how long you've been in.

SF: Correct.

PE: Started...Almost 20 years, a couple months short of 20 years...238 months to date. All right, you have never appeared before the commission before. This is your initial hearing. And ah, you're accompanied today I believe by an attorney that will act as your representative, is that correct?

SF: That is correct.

PE: And for the record, could you state your name and business address please?

CB: My name is Clifford Barnard. B-A-R-N-A-R-D. My address is 1790 30th street, suite 280, Boulder, CO, 80301.

PE: All right. And as you're represented today, I will give your representative the opportunity, if he so desires, towards [inaudible] in your interest to make a statement on your behalf or to provide a summary of the case or add whatever he believes is pertinent or relevant to the hearing today. Now, and you'll also get ample opportunity to discuss, offer, provide, or make the record since it is your hearing. Now, what I will do, I will give you a review of the information--we have a brief summary in terms of how we look at the case, in terms of our assessment, and we'll look at giving you what we call an offense severity assessment, a numerical rating. It goes from a low of zero to a high of eight. Eight being murder or those other types of capital offenses. Clearly your is going to be eight because it involves a murder, capital murder, whatever. Ah, we'll look at your [inaudible] factors for um, it appears that you have a high [inaudible] factor score because you had only one prior

(ST)

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(1)

conviction that we counted and that occurred back in 1980--failure to make proper income tax return. You got a fine and a 60 day suspended sentence. So, you would get a [inaudible] factor score of 9, the maximum of 10 points, based on a offense severity of 8 and in conjunction with [inaudible] factor score of 9, your guideline range, ordinary guideline range would be 100 plus months. Clearly you've served more than 100 plus months. And also, um, you know I wouldn't know, and it's not surprising to you, that, that the case is very notorious, um…I mean they've made television movies and books and, and certainly I'm well aware of many of the co-defendants in this case…we've heard of these individuals. Ah, they have, most of them have appeared before the parole commission I believe, but none the less, it's, it's quite, it, it's a case that got a lot of attention let's put it…even 20 years later, it's still, a lot of discussion and a lot of people still know or recognize this particular incident, which is not necessarily good for you or anybody involved in the incident. All right, and I don't need to tell you what your role in it or what you recall. I'm simply going to give you a brief version of what our records suggest occurred. And you can respond to that. Ah, basically we're going back to February of 1983 and to a deputy sheriff by the name of Bradley Kapp apparently spots a vehicle he believes was owned by a member of the Kahl family, and he had also noted that there was an outstanding warrant for one of the Kahls'…Gordon Kahl. Um, there was some discussion or checking and they found that Kahl was at a medical meeting or something and he was apparently armed with a weapon. The deputy subsequently spotted Gordon Kahl in the company of his son Yorie Kahl, who was also armed, Ah, the deputy was in radio contact with federal marshals. Um, they decided not to do anything til' the contingent of the marshals could arrive at the scene to take Gordon Kahl into custody. Um, anyway, the marshals, deputies, the other law enforcement officials people arrived at the scene late in the afternoon of February 13th, 2000, or I guess February 3rd or February 13th I don't know, 1983. Um, there was discussion about what is occurring at this medical clinic. There is some discussion between Gordon Kahl and his son Yorie. Um, the witnesses are also describing some conversation between the Kahl's, Scott Faul, David Broer, Wagner, ah, all discussing, possibly, the outstanding warrant for Gordon Kahl. Um, and the fact that his car may have been spotted anyway, apparently you and the Kahl's and other individuals are aware that law enforcement may be aware that they're looking for one of the Kahl's and spotted his vehicle. So, the cops, officers, marshals, whatever, set up a roadblock…said that at the road block Gordon Kahl, Scott Faul, and Yorie Kahl all got out of their vehicles armed with, ah, rifles, mini 14's. Um, Kahl could get behind the telephone pole to take cover. You go to the edge of the trailer house and into the woods, and Gordon Kahl points his weapon at the marshals. Apparently there's kind of a standoff for a short time and then several minutes later some shooting starts. It states that Yorie Kahl fired the first shot hitting the marshal Cheshire. The shot was fatal. There was a short pause. Then there were 15 more seconds of intense firing. During the firing, marshal Muir was killed and deputy marshal Hopson was wounded. Bradley Kapp was wounded, and Steve Schnabel was wounded. Yorie Kahl was wounded. It says Robert Cheshire was executed at point blank range by one of the perpetrators. It says probably Gordon

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Kahl. The wounded were taken to the Medina clinic. At the clinics, Gordon Kahl showed up carrying two mini 14's. It says eventually he and Scott Faul drove off in Steven Schnabel's police cruiser when he hid for at least a day before they parted company. Scott Faul eventually turned himself in…in the aftermath of the shooting, 5 of the 6 members of the marshal's service were either dead or wounded. So, so anyway there is a shootout and the marshal's and the police obviously lose the shootout very badly. Um, they said 5 out of the 6 are either dead or wounded and, ah, apparently one of the Kahl's was wounded. So, I don't know because I wasn't there…I don't know what your involvement in the shooting was or any of this other than you were obviously at the scene, you obviously turned yourself in later, but you obviously got convicted of a rather serious offense. And ah, that's what our information suggests. Now, tell me what you did and what your view of this is.

SF: Well, ah, I went to the meeting there that day. Ah, initially when I left the farm, ah, of course I didn't go out that day to do any harm to anyone. I mean I just left the farm to go to a meeting like I had on other occasions and ah, ah, matter of fact, that when I got to the Kahl farm, I was going there to go to the clinic and when I got to the Kahl farm, my car was actually low of gas so Gordon said, "Well, I'll drive today." And ah, Yorie actually wouldn't have even brought his gun along but I asked him to go get it. I said, it was real nice and warm that day for February 13th, and ah, I actually convinced him to go back and get his gun so we could hunt rabbits on the way if we saw any, they had a dog, and feed it to the dog. Otherwise, he probably wouldn't have even brought his gun along. And so, I blame myself. You know, looking back, you know, for, although there was no bad…

PE: Mm, hmm.

SF: intent there, it's still a situation that occurred. Anyway, I went to the meeting and, ah, after the meeting, ah, I mean, leaving the meeting I didn't know there was any law enforcement people out there going to stop us out there on the highway…

PE: Mm, hmm.

SF: I certainly wouldn't have gone, you know. I, I would have stayed there. I was getting a ride in their vehicle…

PE: Mm, hmm.

SF: Ah, yet had I known something like this was even possible I certainly wouldn't have even gotten a ride. I was 70 miles from home, but I would have called up and said you know, "Honey, come get me or something", you know. So, there was no, no knowledge that anything like this could occur.

PE: Mm, hmm.

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SF: And ah, and when it finally did occur, I tried to flee and retreat from the thing and, and ah, and after the shooting started this was something that I, I mean, I didn't instigate any of this. But yet, after the shooting started, ah, I panicked and reacted by firing back at a vehicle where the shots were originating and, and ah, you know at that time I wasn't thinking that I wanted to harm anybody…

PE: Mm, hmm.

SF: Or anything like that. Looking back on it, I can, I can see that, ah, you know, I should have done something different that day, you know. And I, ah, I don't know exactly what I could have done or should have done, but I certainly, you know, considered many times how, ah, I wish I would have done something different…

PE: I don't know, actually, you're right. The way this scenario is, I mean you're involved in some stuff where there's inevitably going to be a confrontation with law enforcement, um, whether you intended to do anything or not, people are armed with firearms and then that shooting occurs. And you're there. And you're on the wrong side when the shooting occurs. So, given that, if anybody takes a bullet, or anybody gets hurt, you've just boughten in, in, and I don't know what you could have done at that point. Probably nothing. I mean, once that scenario developed in terms of your culpability and the fact that being named as a conspirator or contributing to that, um, certainly it, you know, anything that you did after that or continued association or involvement with firearms or firing back. In complicit to that degree would certainly be damning. I don't know if you shot anybody or you hit anybody or any of those other things, but, um, you know, you look at this as a, it's kind of an O.K. Corral kind of thing--this shootout, we all know there was a lot of dead bodies and most of them police officers and marshals, and they take a dim view of that…a REAL dim view. Um, and not to mention the, ah, the issue, um, the underlying issue's here, you know the tax protests. Um, the, the most serious, and you've probably heard this before, but the, you know, the greatest threat to the country is not people with guns, it's people who refuse to pay taxes. And there's nothing that can undermine, you know, your government quicker than people not contributing to funding it, and they are really viewed as a serious threat, and that was just part of it, but then, you know, these other things really got out of hand. So, um, but I understand how these things can occur, I mean, based on politics and points of view, and whatever, and then unfortunately it escalates into violence, and once it gets to that point, then you're, you're in a highly difficult situation. As you have been, because you've been in prison now for 20 years because of that. All right, what else do you want to tell me about the offense conduct or whatever else you think is relevant in terms of what I should know about this?

SF: Um, I want to, in asking for parole, I would like to get out and become productive in the community again instead of being, you know, what has been and, and ah, I wouldn't be an embarrassment or, or let [inaudible] down…

PE: Mm, hmm.

SF: And ah, I want to get to doing some hard work and, and try to ah, do something for people, you know, to make up for my wrong past, and…

PE: All right. All right, let me ask you a few questions. Ah, as I look at your institutional adjustment conduct and those other kinds of things too. Um, how old are you right now?

SF: Ah, I'll be 50 in July.

PE: You're 49 right now. Are you in good health?

SF: Yup.

PE: I have a progress report that was completed on September 25th of 2002. Are you assigned a job right now, or?

SF: Yes.

PE: In [inaudible]?

SF: No, I'm an A and O clerk.

PE: A and O clerk. How long have you had this position?

SF: For about 5 years.

PE: 5 years. In 5, in the past you have worked in [inaudible] other kinds of details, so you've always worked.

SF: Right.

PE: Basically. O.k., since being committed to custody, have, what, what other kinds of programs have you been involved in?

SF: Ah, some positive mental attitude classes.

PE: O.k., some self help type groups, counseling programs, personality stress control, communications part 1 and 2, communication skills, principles for success, personal goal setting, nutritional health, just some kinds of, ah, fill in stuff. Ah, in terms of misconduct, I note that…um, you got a shot in 1986, an incident report for possession of anything not authorized. They gave you 7 days D.S. , but ah, they suspended it for 90 days clerk conduct. In July of 86', then you got a charge of assault code twel… and 312 insolence--gave you 60 days D.S., 90 days loss of visiting. Apparently you got into a dispute with the visiting room officer said you threw a deck of cards at the officer. Found guilty, then in 89', refusing to obey an order. They found you guilty.

Gave you 15 days. They suspended it for clerk conduct. And then the last one was in 95', ah, fighting with another person. So those all occurred, is that correct? Do you have anything to offer on any of those misconduct reports?

SF: Nothing important. The, ah, the thing in the visiting room there was nearly I tossed the deck of cards. I, I didn't throw them at him. I tossed them onto the table too hard, and then they were going to slide on the floor and he stopped them with his body, and I shouldn't have tossed the cards.

PE: Yeah, you shouldn't have tossed the cards, but, ah, I, you know, it's kind of a reach, depending on the circumstances, to call that an assault of course. Um, I think that's a little extreme myself, but…ah, the refusing to obey an order. What was that about? That was back in 89'. That was a long time ago.

SF: I think it was just, ah, if I recall right, it, the counselor at Leavenworth, I had a sheet of some paper that was actually my own, and he said give me that, and, and I wanted to keep it and he wanted it, and it was a little thing like that.

PE: Yeah, um, yeah. Then the last one, in so far as the progress report, it seems you apparently got into a fight with somebody [inaudible] several yea…1995. What was that all about?

SF: Ah, it was over, it was work related. It was at work and, ah, it was like, ah, possessive of, I, I, was working as a, ah, a maintenance man that took care of all the, ah, broken things and repair work at unicore, and, ah, it just started over a, some extension cords, and, ah, little squabble. You know.

PE: So, then you didn't get like serious and like pull a shank…

SF: No, no, no.

PE: All right, and regular duty status, no medical restrictions, you don't owe any money to the government, no fines or restitutions. Court assessment at this time, um, when released, um, you want to go back to ah, North Dakota…

SF: Yes.

PE: You still have family back there?

SF: Yes I do.

PE: And they still have the family farm?

SF: It's not, ah, owned by us at the present time.

PE: All right. All right. What else?

SF: I'm eager to go to work, and I'm asking for consideration and I'll, I'll work very hard to do everything the probation department asks of me and ah, asking for a chance to, to get back into society and try to do some good for home.

PE: All right. Barnard, do you have anything to add to this?

CB: I have a few comments to add. Eh, to begin with speaking of the offense. I think as you pointed out, to a certain extent some of the things I'm going to say aren't really particularly significant because just being there, just participating is really all it took. That was the problem. That was the, ah, the downfall, and ah, that really made it so that conviction was going to be likely and occurred. However, the way that the report of the offense was written up, it almost sounded like it was kind of a planned thing from their side, from "their" being the Kahl's and Scott Faul's side. In fact, the outstanding warrant was a warrant that was approximately three or four years old. It was for a misdemeanor violation or a charge, or a vioa, a probation violation on a misdemeanor charge, and ah, that ah, Gordon Kahl had actually been working with who, the person who had been the actual marshal in North Dakota. But with the new regime, he was replaced with marshal Muir and so he was no longer there and marshal Muir took over and decided to take up stronger actions, but when the, the people were meeting at the, the meeting area, they, there was talk about a warrant but also there was some confusion as to what the warrant was because there had been word about an all points bulletin that had been put out and ah, didn't have Gordon Kahl as the person. So, there was confusion as to what it was and why there would be anything there. So, when they got into the car, and, and started to travel it didn't, it wasn't like there were armed people going in a vehicle toward a road block ready for a confrontation. These were a bunch of guys who, especially back in the early 80's, this is the time when in North Dakota people road around with shot guns in the backs of their cars all the time. It was the, the norm. In fact, it would be unusual for people not to have, have weapons. So, it wasn't like they were going for and, and heading into and expecting a confrontation. However, a confrontation occurred, and that's where Scott Faul's difficulties and real problems happened. He did, ah, get out of the vehicle with a, with a weapon and he took off. If life had been really good for him at that point, there wouldn't have been one of the, ah, marshal's who kind of cut him off and thus made it so that he wasn't, couldn't have continued to go. About 100 yards away from him, on the other side of him, was a marshal. So, he was then in a position in between ah, the area where the confrontation occurred and where the marshal on the outside was. When the shots went off, and, and the report said that Yorie Kahl was the person who, ah, fired the, the first shot. I, I've read the transcripts of the trial and I think that nobody can say, nobody knows who fired. Again, as far as the conviction is concerned, that doesn't matter.

PE: Mm, hmm.

CB: But, just, just as far as any kind of plans or intentions on these people's part, it

really, it really wasn't there. It was a, a dangerous situation that blew up, and Scott unfortunately was both trapped and then he was in a situation too of fighting sort of broke out, gun fire was going on, and his friends were involved in this gun fire. He was in a absolutely no win situation and had been from the start, and as he said, he panicked and, ah, acted incorrectly, although at that point there may not really have been any correct way to act on his part. The other, only other thing really with regard to, to the incident itself was there was talk about and statement of, of the possibility of, ah, ah, execution of the deputy, um, Cheshire…and I, I believe that both from his own later written letter that came in, Gordon Kahl stated that he did that and that the reason he did that was because he had seen them shoot down his son. Not a justification, but a statement, writ…, submitted simply to explain that certainly…

PE: Mm, hmm.

CB: Scott Faul wasn't responsible for that, ah, very unfortunate situation and, ah, and, but, but not something that Scott either condoned or participated in directly.

PE: Excuse me for a second. Let me turn this tape over. [tape is flipped]. All right.

CB: And, the, the last thing I would say with regard to the incident itself really comes from a juror who was sitting on the jury in this case, and who was one of the people who convicted Scott Faul and the other people involved that got convicted. Ah, first of all, the charges originally were first degree murder, and they were found guilty then of second degree murder and the other, ah, violations to which you referred in the beginning. And, the, the juror in both interviews and in fact ah, I believe she's written a letter to the, ah, parole commission that should be there along with numbers of other letters from Scott's family in support of him, in which she has expressed her surprise and her, ah, concern that the, ah, sentence for Scott was so severe and so long. She said, and she told me just literally on Friday, that, and that I would be authorized to state this to, to the, ah, commission, that it was her belief that pursuant to the jury instructions that she got and much as, ah, was stated earlier here, that Scott Faul being there, Scott Faul being a participant in this made it so that he had to be convicted of, of the crimes that, ah, with which he was charged. However, she did not feel that he had any intent to harm anybody or any intent to kill anybody, and for that reason she specifically was shocked when she found out what the sentence would be. She said that if she would have realized that the sentence would have been so severe, she would have very likely done something differently. Now, these are after the fact matters, and that have not, ah, changed the fact that the conviction is there, but I do think it's relevant to show what Scott Faul's participation and, and how, how culpable, not whether he was culpable, but rather how culpable he is in this, which really gets me to the, the next point which is 20 years later. Is this now a time when Scott Faul is and should be, is eligible for and should be granted parole at this time? When looking at the possible reasons for sentencing, we see the, the deterrence, both general and specific. With regard to general deterrence, a 20 year sentence is certainly a long period of time, and longer than what most people think murderers are

going to be getting these days. So, I think general deterrence has been accomplished. As far as specific deterrence with regard to Scott Faul, Scott Faul didn't have a prior record particularly, and has not shown criminal behavior while incarcerated, there were a few write-ups, but all in all, for a person who's been in a very difficult, ah, situation for 20 years, his record is really quite good. He has shown, and I think, ah, certainly has indicated that, ah, specific deterrence has been accomplished. And, and along with that also goes the, the change in age. He's now almost 50 years old, a time when, ah, the wild and crazy actions of youth are certainly passed. Even if he were likely to be so inclined, which in fact he wasn't previously during his youth. Ah, as far as punishment is concerned, he certainly has been punished, he has received 20 years, and he has been away from his family and also submitted, as I was mentioning before, I think there are 20 some letters, many of which are from members of his family…people that are strongly supporting him now, who are still standing by him, and who have missed his, ah, participation in the family life, included in particular would be the most recent the most recent things of his two year old, three, and twin six year olds, ah, grandchildren that he'd like to be able to go and spend time with, and all of whose families would welcome him into their homes…some of whom have said that, ah, he's welcome to not only visit, but in fact could come and live with them if things in North Dakota and the plan that he's suggesting for his parole wouldn't work in North Dakota, he has other places to go. He does have the fortunate, ah, situation of, despite the fact he's spent 20 years incarcerated, he still does have this extremely strong family support, and these are people that have stood by him and are willing to and are going to continue to stand by him, which certainly is going to make it so that the likelihood of recidivism for him is, ah, significantly and drastically reduced compared to people who simply wouldn't have that kind of a support system outside. Ah, with regard to the questions then of acceptance of responsibility and remorse, one of the things that Scott didn't say here…

PE: Mm,hmm.

CB: Was, and didn't indicate remorse, and I, I can assure that that was only because he overlooked it. I have now been dealing with and seeing Scott for, ah, several years, and I can tell you that during that time, every time we meet, Scott most certainly shows a tremendous amount of sorrow, certainly for himself…no question that he doesn't enjoy the, the results that have been brought upon himself for this, but he doesn't ever only talk about himself. He always talks about the impact that this has had on everybody…the fam, the people, the, that were, ah, killed obviously. They are no longer here, and their families have been impacted for, for the rest of their lives. The people that were injured. Ah, ah, have been significantly hurt. The codefendants. Everybody. And, and he has repeatedly and, and consistently, ah, spoken about the, the tremendous and terrible impact, and the things that he did say to you earlier that were consistent with this was he has tortured himself literally about what he could have done to have present…prevented this and all of what happened to everybody else. So at this point, I think he has shown the remorse. He, he does accept responsibility for his actions, he knows that he, ah, has done wrong. He knows

that he should, and is, and has correctly received some punishment, but at this time, we think that that punishment has been enough, and that all he really would like to do is get out of the legal system, go and comply with any and all regulations that would be place upon him, conditions of parole, so that he could go back, live with his family, see his grandchildren, see the, his brothers, see his, his wife, see his parents who are both still alive, and try to be a contributing member to society and in some way pay back society for some of the things that he has cost society.

PE: All right. All right. Here's probably what your looking at realistically. All right. I said when we started this thing, no surprise to you, in a tough, a notorious case. Um, people on both sides have different views at this point, but [inaudible] when you talk about, there's confrontations with law enforcement and other individuals. You know, there's the Waco, there's the Randy Weaver thing, it goes back to North Dakota and different kinds of things, and it seems to the level of being almost [inaudible] to talking about, which is not necessarily again healthy for you when these things are being bantered about still in the media and people talk about them and they focus on them, and there's also some things in terms of, ah, the individuals involved, and the me memory of this, and, ah, you know clearly it has become an institutional thing. It's like…the, the case involved in, now I can't remember but, the shooting in North Dakota with the FBI agents…Peltier. Um, it's become institutionalized among law enforcement in the community that, you know, that there is no tolerance for people that shoot federal officers or cops or those kinds of things. Um, that's what that Peltier thing's about, and that's what this is about. Um, somebody has wrote in and said, I've read so many letters recently, and they said something that they were sure that the, that the marshal's service, not necessarily the individuals, because a lot of people don't know anything about this stuff. You know, they just mention it, and automatically, you know, they have a grudge or they look at it as, as some kind of an issue, you know. Either you're on the right side or you're on the wrong side, and **you're on the wrong side.** Now what are we going to do about parole or what does the future look for you? Um, I would say that I wouldn't rule parole out entirely in this case, but in terms of commission, in terms of these kinds of cases, the minimum time that we expect people to serve for accountability, if there is ever such a thing as accountability, is between 20 to 25 years. When it involves law enforcement officers, it's gonna be on the higher end. A minimum of 25, and possibly even 30 years, before you could be released. I would expect that, um, realistically, before you're released you will serve between a minimum of 25, another 5 years, um, and as many as 30 years before you get paroled. So, you could serve another 5 to 10 years in custody before the commission will act to release you…**NOT** because probably you are any kind of threat to the community or any of those other kinds of things…be like, um, the chances of you doing anything illegal if you were released today is virtually nill. Um, they would probably never hear a squeak out of you again. I'm sure you're not a risk. That's not the issue. Risk is not the issue with you. It's accountability. Um, how much time should you spend in prison for being involved in this incident. Even though there's nothing to indicate that you were specifically convicted of shooting anybody or killing anybody, that you were not involved in some overt act

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that led to the death of somebody. As your attorney understood and expressed, and as I said initially, the fact of the matter is you were there, and there meaning something ensued where at least two marshals ended up dead, and a couple deputies on the ground with bullet holes in them. Um, about as bad as it can get, um, about as bad as it can get. So, when I tell you these things I'm giving you the benefit of my experience based on not only this case and the other co-defendants, but generally what the criminal justice community, the United States government, which I represent, um, looks at in terms of assessing accountability in making determinations. Expect to do between a minimum of 25 years...another five years, and as much as 30 years before you will get paroled from here. Now, even saying that, there is no guarantee that you will ever get paroled, um, but there appears to be some window of relief based on that 25 to 30 year mark to get parole. Um, and in that context, what I'm going to recommend today is what we call a 15 year hit...neither a recommendation nor is it a denial of parole at this point. We call it a 15 year reconsideration or a 15 year set off. Um, there were probably strategically, it might have been, and I know probably what you were doing, it probably might have been better had you appeared earlier, and not waited 20 years. Um, in this kind of case, in some situations this might have been helpful to you. It' not, it's not a fatal blow, but it's not particularly doing you, it was of no particular benefit to wait 20 years to apply for parole. Um, simply because it, at the worst, that can delay the possibility of acquiring a de novo kind of hearing. But, I am going to recommend a 15 year reconsideration hearing today. Now, understand what I'm telling you in the context of what I just told you earlier. Um, a de novo hearing would occur 15 years from this date if you're still in custody and you haven't been paroled already, which would be December of 2017. It's a long time you know. You could still be in prison at that time. I don't know. Um, you would get a hearing every 2 years. An interim hearing based on this information...at each of those hearings, they can advance that date, um, or they can advance that 15 year reconsideration date, and there's a mechanism or protocol at work here. Before they can do anything about giving you a parole date, they have to advance that date. Um, they can advance it for any number of reasons. Um, but the commission can, what I'm saying is the commission can, based on superior program achievement, other aspects of your case, um, your continued good conduct, they can parole you. They can reant, they can advance that date to give you a parole date. Um, again, I wouldn't expect, realistically, um, serious consideration for parole for another at least 5 years. Um, we, we're talking about 2 dead marshals here, um, a couple of other wounded officers, um, even you probably being perhaps the least culpable or less of, certainly less culpability than Yorie Kahl or Gordon Kahl or any of the Kahl brothers, or whoever else was involved, but again you're paying for the fact that you were there, and some decisions you made that led you to the point of being there, and some things probably beyond your control. Maybe some decisions the cops made to block the road at that particular date in time and to precipitate a confrontation...perhaps it was all unnecessary, it could have been resolved in some other manner. But, as your attorney said, none of that makes any difference after the shots are fired and the bodies are lying there. They, they don't, really, nobody's really concerned about how this happened, how it could have been avoided, who really contributed to this, what

your culpability was, ah, the fact of the matter is that you were there, um, with a couple other guys with weapons in opposition to law enforcement, and shots were exchanged, and law enforcement lost that day in a sense. They lost that day, and then the next day after and, and for the rest of your life you lost, because now you're paying the price. But, um, I'm recommending the 15 year set off, but expect and understand that you're going to do at least another 5 years, I think. Because in my opinion, before you've got a realistic chance of parole. And if you continue to do well, you do have a chance, a realistic chance, of parole. The door hasn't been closed on you. If it was, I'd tell you right now just to forget it, um, just get used to this, this is where you'll be living for the rest of your life. But, um, it is a tough case and it's still notorious and it's still, there's still a lot of opposition out there to paroling any of you guys involved in this, um, you know, those kinds of prosecutor kinds of sources and law enforcement and those kinds of people. So there's always going to be some opposition to it. But, none the less, um, that's the decision for today. Um, you'll get your decision in about 3 weeks, and I'm sure that's what, you know, the commission is going to go along with, I mean without breaking stride here, um, they pretty much would expect you to get a 15 year set off at this point, and to take you at least another 5 years before they really will consider your, your petition for parole. All right. That's what it's, that's what's going on. I just want you to know. All right, good luck.

SF: Thank You.

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U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: CPD/ISM
NUMBER: 5880.30
DATE: July 16, 1993
SUBJECT: Sentence Computation Manual ("Old Law"-Pre-CCCA-1984)

1. PURPOSE AND SCOPE. To transmit the revised "Old Law" Sentence Computation Manual for sentences of inmates for crimes which ocurred prior to the effective date of the Comprehensive Crime Control Act of 1984.

The "Old Law" Sentence Computation Manual, Program Statement 5880.20, was issued on September 25, 1972. Since then, the repeal and supercession of numerous sections of the United States Code have caused many of that Manual's sentence implementation instructions to become outdated and have added new sentencing provisions. Many Program Statements and Operation Memoranda have also been issued which change the way the Bureau of Prisons interprets and computes sentences. Also, court decisions since 1972 have caused the Bureau of Prisons to change the manner in which some sentences are implemented.

As a result of these changes, it is necessary to issue a revised Manual. This Manual provides staff with definitive sentence implementation and computation instructions. To the extent possible, all existing Program Statements and Operation Memoranda impacting "old law" sentencing have been updated and are included in this Manual to provide one source document which is the Bureau of Prisons' official sentence interpretation, implementation and computation policy.

2. DIRECTIVES AFFECTED

a. Directives Rescinded

P.S. 1330.8	Sentence Correction or Reduction, Rule 35 of the Federal Rules of Criminal Procedure (12/17/79)
P.S. 5050.9	Parole Commission Reorganization Act of 1976 (03/18/77)
P.S. 5050.34	Canal Zone Offenders, Parole Commission Jurisdiction (02/14/77)
P.S. 5880.17	Statutory Good Time Rate Applicable to Violator Terms (PV or MRV) (06/07/72)
P.S. 5880.18	Computing YCA Terms for Commitments of Less Than Six Years (10/09/73)

"Bold, Indented & in Quotes - USC Citation"
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Regular Type - Implementing Information

IV STATUTORY GOOD TIME

1. **Statutory good time statute and explanation.** Statutory good time (SGT) is a credit (day) that a prisoner may earn, based on good conduct, that is deducted from the sentence **(EFT)** as authorized under **18 USC § 4161** and states,

> **"Each prisoner convicted of an offense against the United States and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence beginning with the day on which the sentence commences to run, as follows:**
>
> **Five days for each month, if the sentence is not less than six months and not more than one year.**
>
> **Six days for each month, if the sentence is more than one year and less than three years.**
>
> **Seven days for each month, if the sentence is not less than three years and less than five years.**
>
> **Eight days for each month, if the sentence is not less than five years and less than ten years.**
>
> **Ten days for each month, if the sentence is ten years or more."**

2. **Statutory good time chart.** The chart below also shows the authorized rates of SGT that may be awarded for good conduct:

0 to 6 Months	=	0 Dys
6 Months to 1 Year and 1 Day	=	5 Dys Per Mo
1 Year and 1 Day to 3 Years	=	6 Dys Per Mo
3 Years to 5 Years	=	7 Dys Per Mo
5 Years to 10 Years	=	8 Dys Per Mo
10 Years and More	=	10 Dys Per Mo

3. Statutory good time for often imposed sentences. The next chart shows the number of days **SGT** that can be earned for often imposed sentences:

180 Days (**never** equals 6 months)	=	0 Days
6 Months (5 Days Per Month)	=	30 Days
1 Year (5 Days Per Month)	=	60 Days
1 Year and 1 Day (6 Days Per Month)	=	72 Days
2 Years (6 Days Per Month)	=	144 Days
3 Years (7 Days Per Month)	=	252 Days
4 Years (7 Days Per Month)	=	336 Days
5 Years (8 Days Per Month)	=	480 Days
6 Years (8 Days Per Month)	=	576 Days
7 Years (8 Days Per Month)	=	672 Days
8 Years (8 Days Per Month)	=	768 Days
9 Years (8 Days Per Month)	=	864 Days
10 Years (10 Days Per Month)	=	1200 Days

4. Statutory good time formula and examples. The formula for determining SGT for a single month, or any number of months, is: **Month(s) x rate = Days SGT.**

The formula for determining SGT for a partial month is:
Days x rate ÷ 30 = Days SGT for Partial Month (fractions are dropped).

Example No. IV - 1:

The next example demonstrates the SGT calculation for a sentence of **4 years, 6 months and 10 days.** The SGT rate is **7 days** per month (see paragraph 2, this chapter) and the resulting total days SGT is subtracted from an EFT of 05-15-81 to arrive at an SRD.

Years	=	4 Years
Months in 1 Year	= x	12 Months
Months in 4 Years	=	48 Months
Odd Months	= +	6 Months
Total Months	=	54 Months
SGT Rate	= x	7 Days
Days SGT for 54 Months	**=**	**378 Days**

Days in Partial Month	=	10 Days
SGT Rate	= x	7 Days
Numerator	=	70
Denominator (Divided By)	=	30
Days SGT for Partial Month	**=**	**2 Days (Fraction Dropped)**

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If a sentence can be automatically calculated on SENTRY, the recording of SGT forfeitures, withholdings, and restorations will be accomplished by ISM staff through use of the SENTRY Statutory Good Time Status/Update transaction.

If a sentence cannot be automatically calculated on SENTRY, it will be necessary to maintain a Good Time Record, **BP-380**, to record adjustments resulting from SGT actions. The SRD will then be entered in SENTRY by using the Calc/Update Computation transaction so that the prisoner's name will appear on the appropriate release list. The manual Good Time Record will be filed on the right side of the J&C File.

11. When a sentence is calculated, the total possible amount of SGT for that sentence is deducted from the EFT date of the sentence. Thereafter, if SGT is forfeited, or if SGT is withheld or restored, the SRD of the sentence is adjusted accordingly. This adjustment is accomplished by use of the SENTRY Statutory Good Time Status/Update transaction or by manual calculation on the Good Time Record. Detailed instructions for performing the SENTRY transaction are contained in the **SENTRY Technical Reference Manual.** Instructions for the method used to manually calculate SGT are contained in this chapter.

12. When SGT is forfeited, the SENTRY Statutory Good Time Status Update transaction must be performed. The date of the infraction, as well as the date the DHO made the decision to forfeit the SGT, and the amount of SGT forfeited must be entered. The infraction date refers to the date the inmate committed the prohibited act.

When SGT is withheld for a particular month, the date of the infraction, as well as the date the DHO made the decision to withhold the SGT, and the amount of SGT withheld must be entered on the Statutory Good Time Status/Update transaction.

When SGT is restored, the date of the infraction for which the SGT was lost, as well as the date the DHO made the decision to restore the SGT, and the amount of SGT restored must be entered on the Statutory Good Time Status/Update transaction.

13. Any SGT adjustment must be audited. An updated copy of the good time data transaction must be placed in the J&C File. Any prior hard copies are to be destroyed. The person performing the SGT adjustment, and the person auditing the adjustment will so signify by signing and dating the source document used in the update. The source document will then be placed in the J&C File, with a copy to the central file. *

VII ADULT SENTENCES

1. **Length of sentence computation results.** Based on the length of sentence, the EFT date, the 180 day date, parole and mandatory parole eligibility dates, the SRD and the 6 month/10% date (if required) are calculated on the basis of the amount of SGT, EGT, presentence time credits, and inoperative time involved, if any, and the parole provision in effect.

2. **Determination of length of sentence.** The length of sentence is normally determined by reviewing the judgment and commitment which will show the sentence imposed. On many occasions, however, it is the computation specialist who must determine the actual length of sentence. On such occasions, it may be necessary to calculate the EFT date first, or to add two or more sentences together, to learn the total length. These situations usually occur after **1)** a warrant for an alleged **parole violator is executed** or a parolee is taken into custody after appearance on a Parole Commission issued summons; **2)** imposition of **concurrent sentences**; or **3)** imposition of **consecutive sentences.**

3. **Calculating dates and computation rules.** After the length of sentence and EFT date have been determined, the next step is to apply the proper number of days SGT, if any, to arrive at the SRD. Calculating the 180 day date (if necessary) is next, to be followed by calculating the 6 month/10% date and then both the PE date and mandatory PE date (if necessary).

a. **Expires Full Term date.** The EFT date, also known as the "full term date" of the sentence, is the maximum date of the sentence. This date is determined by adding the total length of sentence to the beginning date of sentence, minus presentence time credit (Chapter VI.), plus inoperative time (Chapter V.). (See Example Nos. III - 2 through III - 12.)

There is no statutory provision that provides a rule for calculating the EFT date (ending date or "full term date") of a sentence. The arithmetical logic used by the Bureau of Prisons for calculating the EFT is so fundamental that it simply does not lend itself to challenge or litigation. (**Note:** The Expiration Table is used for sentences imposed in **days** only. Sentences imposed in **years and/or months, plus any days,** are added directly to the DCB.)

The Bureau of Prisons follows the rule that a partial day (regardless of how long/short that partial day is) in either presentence custody or in service of a sentence equals one full day for sentence calculation purposes. (This rule also applies to the day on which an escape occurs and to the date on which return to federal custody occurs. Each day counts as one full day served on the sentence.) As a result, all the below examples have been **backed up one day at the end** of the calculation so as to include the initial day of sentencing.

Example No. VII - 7:

Sentenced on 03-12-81 to 5 years and 11 months.

DCB	=	81-03-12
Sentence	=	+05-11-00 5 Years 11 Months
Unconverted EFT	=	86-14-12
EFT	=	**87-02-11***

Example No. VII - 8:

Sentenced on 06-23-81 to 6 years and 10 months.

DCB	=	81-06-23
Sentence	=	+06-10-00 6 Years 10 Months
Unconverted EFT	=	87-16-23
EFT	=	**88-04-22***

Example No. VII - 9:

Sentenced on 05-12-81 to 4 years, 3 months and 10 days.

DCB	=	81-05-12
Sentence	=	+04-03-10 4 Yrs 3 Mos 10 Dys
EFT	=	**85-08-21***

Example No. VII - 10:

Sentenced on 09-12-81 to 6 years, 9 months and 28 days.

DCB	=	81-09-12
Sentence	=	+06-09-28 6 Yrs 9 Mos 28 Dys
Unconverted EFT	=	87-18-40
Step No. 1 of Conversion	=	88-06-40
Step No. 2 of Conversion	=	88-07-10
EFT	=	**88-07-09***

As fully discussed in Chapter III, paragraph 2.f., and as demonstrated in Example Nos. III - 13 through 15, there are a number of computation **exceptions** that produce an **incorrect** answer even when backing up the calculation 1 day. In such situations, **the computation is not backed up 1 day either before or after the calculation is complete.**

b. Statutory Release Date. 18 USC § 4163 provides that a person ". . . **shall be released at the expiration of his term of sentence less the time deducted for good conduct.**" The good conduct time to which the statute refers is SGT (see Chapter IV) and EGT (see Chapter XIII). The generic phrase of **"statutory release date" (SRD)** was given to the different kinds of release

under this section to easily identify those persons released from service of a sentence by operation of some or no SGT and/or EGT and not by parole. There are **three** kinds of **SRD** releases and they are:

(1) Mandatory Release (**MR**). Under the provisions of **18 USC § 4164**, any person who attains an SRD, based on any combination of good time (SGT and/or EGT), that equals **more than 180 days**, shall be **mandatorily** released **as if on parole.** Such person is under parole supervision **up to** 180 days before the EFT date.

(2) Expiration of Sentence Full Term (**Exp.FT**). Any person who accumulates **no** good time (SGT and/or EGT) is released **unconditionally** from confinement with **no supervision to follow.**

(3) Expiration of Sentence Good Time (**Exp.GT**). Any person who accumulates **180 days or less** of any combination of good time (SGT and/or EGT) is released **unconditionally** from confinement with **no supervision to follow.**

c. Weekend/holiday release. Under **18 USC § 4163 (P.L. 87-665)**, for a release that falls on a Saturday, Sunday, or legal holiday, the Bureau of Prisons has **discretionary** authority to release the person on the preceding work day, providing such release date was achieved under the provisions of **18 USC § 4163** (see the program statement on **Release of an Inmate Prior to a Weekend or Legal Holiday** and **28 CFR 571.30**), which states in part,

> **"Except as hereinafter provided a prisoner shall be released at the expiration of his term of sentence** [emphasis added] **less the time deducted for good conduct . . . If such release date falls upon a Saturday, a Sunday, or a Monday which is a legal holiday at the place of confinement, the prisoner may be released at the discretion** [emphasis added] **of the warden or keeper on the preceding Friday. If such release date falls on a holiday which falls other than on a Saturday, Sunday or Monday, the prisoner may be released at the discretion** [emphasis added] **of the warden or keeper on the day preceding the holiday."**

The number of days used under **18 USC § 4163** to effect release on a work day instead of a weekend/holiday may not be added to the number of days remaining to be served to release a prisoner **". . . as if released on parole . . ."** (**18 USC § 4164**) who would otherwise have been released by expiration of sentence. In addition, the number of days used to effect a weekend/holiday early release **may not** be used to **increase** a period of supervision for a release under **18 USC § 4164.** For example, if the number of days remaining to be served for an **MR** that falls on a Sunday is **500 days** and the actual release on **MR** is moved back to Friday, then the number of days remaining to be served would **not** be increased by two days and would remain at **500 days.**

Final EFT	= 91-05-04	= 19117	
Less 180 Days		= - 180	180 Days
180 Day Date	**= 90-11-05**	**= 18937**	
DCB	= 79-04-03		
1/3 of 11 Yrs 7 Mos	= +03-10-10		3 Yrs 10 Mo 10 Dys
Unconverted PE Date	= 82-14-13		
Original PE Date	= 83-02-12*	= 16114	
Inoperative Time		= + 301	301 Days
Tentative PE Date	= 83-12-10	= 16415	
Presentence Time		= - 118	118 Days
Final PE Date	**= 83-08-14**	**= 16297**	
DCB	= 79-04-03		
2/3 of 11 Yrs 7 Mos	= +07-08-20		7 Yrs 8 Mos 20 Dys
Original 2/3 Date	= 86-12-22*	= 17523	
Inoperative Time		= + 301	301 Days
Tentative 2/3 Date	= 87-10-19	= 17824	
Presentence Time		= - 118	118 Days
Final 2/3 Date	**= 87-06-23**	**= 17706**	

8. Consecutive and concurrent sentences. The Bureau of Prisons computes consecutive and concurrent sentences in accordance with the provisions of **18 USC § 4161 and 3568 as described below.**

a. Consecutive sentences. As to **consecutive** sentences, **18 USC § 4161** provides in part,

> **"When two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed."**

Based on **18 USC § 4161, consecutive** adult sentences, regardless of the type of parole, or non-parole, eligibility involved, are combined (aggregated) into a single sentence for sentence computation purposes.

b. Concurrent sentences. Although no statute exists that mentions the term **"concurrent,"** a **court may order** that a sentence be served concurrently with an existing sentence or violator term, providing that the offense does not require some other result. If the court remains silent as to the manner in which a sentence is to be served in relation to an existing sentence, then, both the Bureau of Prisons and the courts follow the rule that sentences imposed at the same, or at a later time, run (operate) concurrently if the court is silent as to the manner in which the sentences are to be served, provided that the person is in exclusive federal custody (not under the jurisdiction of a federal writ of habeas corpus from state custody) at the time of sentencing and provided that the offense does not require some other result. This position is supported by language in **18 USC § 3568** which states in part,

"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence."

"If any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention."

Therefore, a person who is sentenced by a court to a concurrent sentence, or in the case of a "silent" sentence, begins to serve that sentence immediately, if such person is in exclusive custody and the offense does not require some other result, because such person will be covered by the provisions of **18 USC § 3568.**

9. Aggregated sentence. An **aggregated sentence** is **defined** as two or more sentences or violator terms that have been combined resulting in a common SRD, an EFT and common PE date. Adult sentences under the provisions of **18 USC § 4205(a), (b)(1) and (b)(2)) may** be aggregated. An adult sentence imposed under **18 USC § 4205(f)** may **not** be aggregated with any other adult sentence or with another sentence under **§ 4205(f). No** adult sentence may be aggregated with a **JJDPA, YCA,** or **NARA** sentence or the original portion of a **single count "split sentence."**

The following definitions and rules pertain to the following sentence situations:

a. Aggregated consecutive sentence: One or more sentences or violator terms added to one or more sentences or violator terms to form a single sentence. Presentence time credit applicable to each sentence shall be totaled and subtracted from the EFT date and PE date. Inoperative time will always affect a consecutive aggregated sentence the same as if it was a single sentence.

b. Aggregated concurrent sentence: A concurrent sentence or violator term that is running along with another sentence or violator term, and that has an EFT date which is longer, are combined to form a single sentence. Presentence time credit applicable to each shall be totaled and subtracted from the EFT date and PE date that result from the aggregation. Inoperative time that occurs **before** a concurrent sentence or violator term begins to run, will have no affect on the EFT date or PE date of the concurrent sentence or EFT of the violator term.

The total length of the aggregate will be determined by adding the length of the first sentence or violator term to the overlap of the concurrent sentence or violator term. The overlap is determined by finding the difference (exact number of days) between the EFT date (unaffected by presentence time credit) of

XIII EXTRA GOOD TIME

1. [PURPOSE AND SCOPE § 523.10.]

[(a) The Bureau of Prisons awards extra good time credit for performing exceptionally meritorious service, or for performing duties of outstanding importance or for employment in an industry or camp. An inmate may earn only one type of extra good time award at a time (e.g., an inmate earning industrial or camp good time is not eligible for meritorious good time), except that a lump sum award as provided in § 523.16 may be given in addition to another extra good time award. The Warden or the Discipline Hearing Officer may not forfeit or withhold extra good time. The Warden may disallow or terminate the awarding of any type of extra good time (except lump sum awards), but only in a nondisciplinary context and only upon recommendation of staff. The Discipline Hearing Officer may disallow or terminate the awarding of any type of extra good time (except lump sum awards), as a disciplinary sanction. Once an awarding of meritorious good time has been terminated, the Warden must approve a new staff recommendation in order for the award to recommence. A "disallowance" means that an inmate does not receive an extra good time award for only one calendar month. Unless other action is taken, the award resumes the following calendar month. A "disallowance" must be for the entire amount of extra good time for that calendar month. There may be no partial disallowance. A decision to disallow or terminate extra good time may not be suspended pending future consideration. A retroactive award of meritorious good time may not include a month in which extra good time has been disallowed or terminated.]

b. The Attorney General is authorized to deduct extra good time (EGT) credits from an inmate's sentence under the provisions of 18 U.S.C. § 4162 for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations (MGT) or for actual employment in an industry (IGT) or camp (CGT):

(1) The Attorney General has delegated his authority to the Director of the Bureau of Prisons under the provision of 28 Code of Federal Regulations 0.96(h).

(2) The Director of the Bureau of Prisons delegates his/her authority to the Regional Directors, Wardens or Chief Executive Officers (CEO), Regional Inmate Systems Administrators, and Community Corrections Managers under the provisions of 28 Code of Federal Regulations 0.97.

(3) Wardens and CEOs are authorized to delegate their authority to institution teams or committees, consistent with existing delegations.

(4) The rules in this chapter apply to sentences imposed for offenses that were committed prior to November 1, 1987, regardless of when the sentence was, or is, imposed.

[(c) The provisions of this rule do not apply to inmates sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. This means that inmates sentenced under the Sentencing Reform Act provisions for offenses committed on or after November 1, 1987 are not eligible for either statutory or extra good time, but may be considered for a maximum of 54 days of good conduct time credit per year [see 18 U.S.C. § 3624(b)].

2. [DEFINITIONS § 523.1.]

[(a) "Statutory Good Time" means a credit to a sentence as authorized by 18 U.S.C. § 4161. The total amount of statutory good time which an inmate is entitled to have deducted on any given sentence, or aggregate of sentences, is calculated and credited in advance, when the sentence is computed.]

[(b) "Extra Good Time" means a credit to a sentence as authorized by 18 U.S.C. § 4162 for performing exceptionally meritorious service or for performing duties of outstanding importance in an institution or for employment in a Federal Prison Industry or Camp. "Extra Good Time" thus includes Meritorious Good Time, Work/Study Release Good Time, Community Corrections Center Good Time, Industrial Good Time, Camp or Farm Good Time, and Lump Sum Awards. Extra good time and seniority are inseparable with the exception of lump sum awards for which no seniority is earned.]

[(c) "Seniority" refers to the time accrued in an extra good time earning status. Twelve months of "seniority" automatically causes the earning rate to increase from three days per month to five days per month and seniority is then vested.]

[(d) "Earning Status" refers to the status of an inmate who is in an assignment or employment which accrues extra good time.]

3. [GOOD TIME CREDIT FOR VIOLATORS § 523.2.]

[(a) An inmate conditionally released from imprisonment either by parole or mandatory release can earn statutory good time, upon being returned to custody for violation of supervised release, based on the number of days remaining to be served on the sentence. The rate of statutory good time for the violator term is computed at the rate of the total sentence from which released.]

[(b) An inmate whose special parole term is revoked can earn statutory good time based on the number of days remaining to be served on the special parole violator term. The rate of statutory good time for the violator term is computed at the rate of the initial special parole term plus the total sentence that was served prior to the special parole term and to which the special parole term was attached.]

[(c) Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned (extra or statutory) during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.]

4. [MERITORIOUS GOOD TIME §523.11

(a) Staff are responsible for recommending meritorious good time based upon work performance. Each recommendation must include a justification which clearly shows that the work being performed is of an exceptionally meritorious nature or is of outstanding importance in connection with institutional operations. Work performance and the importance of the work performed are the only criteria for awarding meritorious good time.]

* The inmate's work supervisor is responsible for recommending that an inmate receive MGT based on work performance. The recommendation must include a justification which clearly shows the inmate's work performance meets all necessary criteria to receive MGT. The recommendation shall be approved by the Warden, or designee before MGT is awarded. *

Participation in institutional educational or vocational programs, or both, or maintaining good housekeeping, is not in itself a justification for an award of MGT. However, when an inmate's participation in a vocational work program is of an exceptionally meritorious nature or is of outstanding importance in connection with institution operations, staff may recommend the inmate for MGT. The quality of the work performed must meet all of the standards set forth for the awarding of EGT. Participation in vocational programs consisting only of classroom activity does not qualify an inmate for MGT.

[(b) A retroactive award of meritorious good time is ordinarily limited to three months, excluding the month in which the recommendation is made. A retroactive award in excess of three months requires the approval of the Warden or designee (may not be delegated below the level of Associate Warden). Staff are to include with any recommendation for an inmate to receive a retroactive award of meritorious good time, a written statement confirming the inmate's eligibility for the retroactive award.]

An inmate who was approved for MGT while in pretrial status and who is subsequently sentenced on the same crime for which he or she was being detained will be granted EGT on the approved beginning date. The inmate's eligibility for MGT begins once the inmate is placed in the work assignment. A retroactive award in excess of three months will ordinarily be considered to remedy an administrative error or oversight. A retroactive award or presentence award may not be in an amount which would cause the inmate to be past due for release.

[(c) Meritorious good time continues uninterrupted regardless of work assignment changes unless the Warden or the Discipline Hearing Officer takes specific action to terminate or disallow the award.]

When action is taken to terminate EGT, it will be terminated as of the date of the incident. When EGT is to be disallowed, it will be disallowed for the month in which the incident occurred.

5. **[WORK/STUDY RELEASE GOOD TIME §523.12. Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.]**

6. **[COMMUNITY CORRECTIONS CENTER GOOD TIME §523.13. Extra good time for an inmate in a Federal or contract Community Corrections Center is awarded automatically, beginning on arrival at the facility and continuing as long as the inmate is confined at the Center, unless the award is disallowed].**

When an inmate is transferred to a contract Community Corrections Center (CCC) from a Federal facility, the community corrections center good time (CCCGT) shall become effective on the date of arrival at the CCC. In all cases, the transferring federal facility shall project the CCCGT to a final SRD. This will be done by using the SENTRY Extra Good Time Status/Update transaction or manually on the Good Time Record.

When an inmate is committed directly to a CCC, the appropriate Community Corrections Manager shall award CCCGT from the date of commitment to determine the correct SRD. This will be accomplished using the SENTRY Extra Good Time Status/Update transaction, or manually, using the **BP-380.**

7. **[INDUSTRIAL GOOD TIME §523.14. Extra good time for an inmate employed in Federal Prison Industries, Inc., is automatically awarded, beginning on the first day of such employment, and continuing as long as the inmate is employed by Federal Prison Industries, unless the award is disallowed. An inmate on a waiting list for employment in Federal Prison Industries is not awarded industrial good time until actually employed.]**

When an inmate leaves an industrial assignment, the IGT is terminated. Thereafter, a prisoner will not receive EGT until the new work supervisor recommends the award by issuance of an Extra Good Time Recommendation, **BP-390**, or the prisoner is reassigned to industries, a camp, or CCC.

* An inmate assigned to Federal Prison Industries (UNICOR), or detailed to duty approved by the Director as being essential to an industrial operation, is entitled to receive Industrial Good Time (IGT). Notification of an inmate's entry into or removal from an industrial assignment is provided to ISM by use of the Industrial/RAPS Action Report, **FPI-96**. This form is completed by Industries and indicates the industry to which the inmate is assigned or removed from and the date of the action.

If an Industrial/RAPS Action Report, **FPI-96** is prepared removing an inmate from an industrial assignment because of a non-disciplinary temporary release (e.g., writ, medical treatment, parole hearing, etc.), the inmate should not be removed from IGT earning status. Individual circumstances will determine if an inmate will receive IGT when temporarily removed from the industrial assignment. IGT will ordinarily continue when an inmate is temporarily removed for a non-disciplinary reason. Also, when an inmate is transferred, IGT will continue until arrival at the designated institution unless the Warden or DHO determines otherwise.

An Extra Good Time Recommendation will be completed to notify ISM of a monthly disallowance of IGT. The absence of this notification will be construed as evidence that the inmate's work performance has met the standards for the awarding of IGT. *

8. **[CAMP OR FARM GOOD TIME §523.15. An inmate assigned to a farm or camp is automatically awarded extra good time, beginning on the date of commitment to the camp or farm, and continuing as long as the inmate is assigned to the farm or camp, unless the award is disallowed.]**

* An inmate committed to a camp is automatically entitled to receive Camp Good Time (CGT), even though the inmate may be prevented from actual employment. The CGT may be disallowed the same as any other form of EGT in accordance with § 523.10(a). *

9. **[LUMP SUM AWARDS §523.16. Any staff member may recommend to the Warden the approval of an inmate for a lump sum award of extra good time. Such recommendations must be for an exceptional act or service that is not part of a regularly assigned duty. The Warden may make lump sum awards of extra good time not to exceed thirty days. If the recommendation is for an award in excess of thirty days and the Warden concurs, the Warden shall refer the recommendation to the Regional Director who may approve**

the award. No award may be approved which would exceed the maximum number of days allowed under 18 U.S.C. § 4162. The actual length of time served on the sentence, to the date that the exceptional act or service terminated, is the basis on which the maximum amount possible to award is calculated. No seniority is accrued for such awards. Staff may recommend lump sum awards of extra good time for the following reasons:

(a) An act of heroism;

(b) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;

(c) An act which protects the lives of staff or inmates or the property of the United States; this is to be an act and not merely the providing of information in custodial or security matters;

(d) A suggestion which results in substantial improvement of a program or operation, or which results in significant savings; or

(e) Any other exceptional or outstanding service.]

When determining the maximum amount possible to award, jail time and months in which EGT may have been disallowed shall be included. Any EGT previously earned is then deducted from the maximum amount possible to determine the total amount available for the lump sum award.

10. **[PROCEDURES §523.17**

[(a) Extra good time is awarded at a rate of three days per month during the first twelve months of seniority in an earning status and at the rate of five days per month thereafter. The first twelve months of seniority need not be based on a continuous period of twelve months. If the beginning or termination date of an extra good time award occurs after the first day of a month, a partial award of days is made.]

* If SENTRY is used to calculate EGT, a hard copy of the Good Time Data transaction will be signed and dated by the ISM staff accomplishing the transaction and a copy will be placed in the J&C file with a copy to the central file. Any hard copy previously filed will be discarded so that the file reflects the inmate's current status.

All documents pertaining to the award, disallowance, and termination of EGT must be controlled by staff and may not be left in an area accessible to inmates. All documents must be hand carried by staff or sent through the mail to the ISM Staff for processing.

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Instructions for entering EGT transactions in SENTRY can be found in the **SENTRY Sentence Monitoring Manual.** Instructions for manually computing EGT when SENTRY is not available or appropriate, must be used. The manual calculation must be recorded on a manual Good Time Record, Form **BP-380** and maintained in the inmates's J&C File. All EGT actions will be updated as source documentation is received. The ISM Manager must establish adequate systems of control to ensure that all necessary documentation is received that affects the inmate's EGT earning status. It is usually necessary to project EGT on the manual Good Time Record all the way to the SRD.

The abbreviations for the various types of good time are:

IGT	-	Industrial Good Time
CGT	-	Camp/Farm Good Time
MGT	-	Meritorious Good Time
WDS	-	District of Columbia Good Time
WST	-	Work/Study Release Good Time
CCC	-	Community Corrections Center Good Time
LSA	-	Lump Sum Award
ADJ	-	Adjustment of Extra Good Time
GCT	-	Good Conduct Time
SGT	-	Statutory Good Time

When an inmate's EGT is terminated, a SENTRY Extra Good Time Update transaction must be performed. The date the EGT terminates must be entered so that the inmate's SRD will be adjusted accordingly.

If EGT is disallowed for a particular month, the disallowance will be indicated on the SENTRY Extra Good Time Update transaction by removing the inmate from earning status for that month. The Inmate Systems Manager will be responsible for establishing procedures to ensure the inmate's EGT resumes the following month. A SENTRY waiting list may be used for this purpose.

When an inmate is transferred to a CCC, CCCGT will automatically accrue. The transferring institution will be responsible for performing the Extra Good Time Update transaction so that the CCCGT will begin on the scheduled date of arrival at the CCC.

If the sentence was not calculated by SENTRY, the transferring institution is responsible for computing the CCCGT manually on the Good Time Record so that the final SRD is determined. The SRD must then be entered on SENTRY. CCCGT must be projected to determine a SRD for all inmates, including those who have been granted a parole date.

If approval is received for a lump sum award, SENTRY must be updated using the Extra Good Time Update transaction. The date of approval of the award must be keyed as well as the amount of the award.

A manual Extra Good Time Record (**BP-380**) shall be initiated for each inmate whose sentence cannot be automatically calculated on SENTRY. This Extra Good Time Record will be used to document all EGT and SGT actions. EGT will be calculated to the SRD and recorded on the manual Extra Good Time Record. Any Parole Eligibility Date affected by the application of EGT will be calculated, posted in SENTRY and documented on the manual Extra Good Time Record as well. Camp Good Time, Work-Study Release Good Time, and CCC Good Time may be projected to the final SRD as required for realistic programming or release planning. The Extra Good Time Record will then be filed on the right side of the J&C file. As an inmate's projected SRD is adjusted, that date will be keyed on SENTRY using the Calc/Update Computation transaction so that the inmate's name will appear on the appropriate release list. After the adjusted SRD has been keyed, the SENTRY Extra Good Time Record and the original Form **BP-380** will be placed in the J&C File.

The information in the heading of the Extra Good Time Record, e.g., name, register number, etc., will be typed when the form is initiated. This data will be obtained from the judgment and commitment order and sentence computation. The presumptive or effective parole date will be entered on the Extra Good Time Record and on SENTRY when the Notice of Action is received. Any time a Notice of Action appears to be inconsistent with policy or appears to be altered, the United States Parole Commission (USPC) should be contacted for verification. The person contacting the USPC will document the contact on the Notice of Action and it will be filed in the J&C file. EGT adjustments will be entered by indicating the type of EGT earned, the date in and/or out of the assignment, and the mnemonic code of the institution. Adjustments of SGT will be entered by indicating the type of action, e.g., forfeiture, restoration, etc., the mnemonic code of the institution, and the date the action occurred. All calculations are to be handwritten in pencil for ease in updating.

SENTRY Extra Good Time Status/Update transaction (PSEG) is used to make SENTRY entries for all IGT, and EGT awards, disallowances, and terminations. The printed copy of the Good Time Data transaction shall serve as the Bureau of Prisons' official record of EGT credit. Whenever a good time action is taken, a hard copy will be placed in the inmate's J&C file.

Copies reflecting previous action need not be retained, so that there will be only one hard copy which shows the inmate's current

status. In addition, all entries of lump sum and EGT awards and terminations must be supported by placing the original of the Extra Good Time Recommendation in the J&C file.

All EGT disallowances must be supported by placing the original of the completed Extra Good Time Recommendation in the J&C file. All IGT awards and terminations entered in SENTRY must be supported by placing the Industrial Employment, or a copy of the PP37 inmate work history in the J&C file.

The projection of SRD's for those sentences that cannot be automatically calculated by SENTRY will be accomplished manually on the Good Time Record. The SRD will then be entered on SENTRY by using the CALC/UPDATE Computation Transaction.

[(b) An inmate may be awarded extra good time even though some or all of the inmate's statutory good time has been forfeited or withheld.]

[(c) Parole and mandatory release violators may earn extra good time the same as other inmates. Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.]

Seniority gained on the original portion of the sentence does not carry over to the violator term. The beginning rate of EGT for a parole or mandatory release violator will be at the three day rate and the prisoner must gain twelve months of seniority while serving the violator term prior to advancing to the five day rate.

[(d) Staff working in the community have the same extra good time authority as the Warden when approving the award of good time for an inmate confined in a non-federal facility and may approve meritorious good time or lump sum awards in accordance with this rule upon recommendations made by a responsible person employed by the non-federal facility. The appropriate staff in the Regional Office may review all such awards if the Regional Director requires the review.]

The Community Corrections Manager shall consult with the appropriate Regional Inmate Systems Administrator for guidance should any problems arise as to the applicability of EGT or lump sum awards in non-federal facilities.

An inmate serving a concurrent federal sentence in a non-federal institution may earn EGT. State authorities will

make the recommendation to the appropriate Regional Inmate Systems Administrator for final approval. Any such award shall be consistent with the requirements for awarding EGT to inmates who are serving their sentence in a federal institution.

[(e) An inmate who is transferred remains in the earning status at time of transfer, unless the reason for transfer would otherwise have caused removal from an earning status, and provided the inmate's behavior is such while in transit that it does not justify removal. Where the receiving institution is a camp, farm, or community corrections center, the extra good time continues automatically upon the inmate's arrival. Where the receiving institution is other than a camp, farm, or community corrections center, the extra good time is terminated upon arrival, and staff at the receiving institution shall review each case to determine if the inmate should continue in meritorious good time earning status if not immediately employed in Federal Prison Industries or assigned to a work/study release program. If the inmate then is not continued in meritorious good time earning status, later awards must comply with procedures outlined in § 523.11.]

Section 523.11 refers to paragraph 4 in this Chapter.

* For EGT purposes, a prisoner the Bureau places in **home confinement** shall be treated the same as if received at a CCC.

The Unit Team, at the prisoner's first review after arrival at the receiving facility, shall note in the Team Comments section of the Program Review Report that the inmate's EGT status was reviewed and that a determination was made to continue, or not to continue, the inmate in an MGT earning status **from the date of arrival.** When the decision by the Unit Team is to continue the inmate in an MGT status, the Team approving the continuation must execute an Extra Good Time Recommendation and forward it for processing to Inmate Systems. *

[(f) An inmate serving a life sentence may earn extra good time even though there is no mandatory release date from which to deduct the credit since the possibility exists that the sentence may be reduced or commuted to a definite term.

(g) Extra good time is not automatically discontinued while an inmate is hospitalized, on furlough, out of the institution on a writ of habeas corpus, or removed under the Interstate Agreement on Detainers. Extra good time may be terminated or disallowed during such absences if the Warden or the Discipline Hearing Officer finds that the inmate's behavior warrants such action.]

Inmates who are transferred from one federal institution to another for medical attention (which includes psychological evaluation/treatment), and who are in an earning status, will

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continue to earn EGT regardless of the type, e.g., MGT, IGT, or CGT. Inmates who are temporarily transferred to another facility for a hearing before a member of the Parole Commission continue to earn EGT.

Staff designated by the Warden should review such cases on a periodic basis to assure that the EGT is properly awarded.

[(h) Extra good time earned by an inmate in a District of Columbia Department of Corrections facility is treated the same as if earned in a Bureau of Prisons institution, upon transfer to a Bureau institution.

(i) An inmate committed under the provisions of 18 U.S.C. § 3651 (split sentence) may earn extra good time credits provided the sentence imposed is not under the provisions of 18 U.S.C. § 5010(b) or (c) (YCA). All extra good time and seniority earned is carried over to any subsequent probation violator sentence based on the original split sentence.

(j) An inmate committed under the provisions of 18 U.S.C. § 4205(c) may earn extra good time credits towards the final sentence that may be imposed. Such extra good time credits do not reduce the three months allowed for study. An inmate committed under the provisions of 18 U.S.C. § 4244, as amended effective October 12, 1984, may earn extra good time credits toward the final sentence that may be imposed. Such extra good time credits do not reduce the provisional sentence. Extra good time may continue during a commitment for examination of hospitalization and treatment under 18 U.S.C. § 4245, as amended effective October 12, 1984.]

The reference to "as amended effective October 12, 1984" refers to the date that Congress passed the Comprehensive Crime Control Act of 1984 (P.L. 98-473).

[(k) Inmates committed under the provisions of 18 U.S.C. § 4244, 4246-47, 4252, 5010(b), (c), (e), or 5037(c) as these sections were in effect prior to October 12, 1984, are not entitled to extra good time deductions. Inmates committed under the provisions of 18 U.S.C. § 4241, 4242, 4243, or 4246 as these sections were amended effective October 12, 1984, are not entitled to extra good time deductions.]

Even though an inmate serving a Youth Corrections Act or Sentence Reform Act of 1984 sentence (an SRA sentence may earn good conduct time under 18 U.S.C. 3624(e)) may not earn EGT credit toward his/her SRD when placed in a work assignment, he/she may accrue seniority toward a subsequent concurrent or consecutive "old law" adult sentence that is imposed prior to release from the YCA or SRA sentence and the later imposed "old law" adult sentence. For example, if an inmate serving a

YCA or SRA sentence is employed in industries and an "old law" adult sentence begins to run one year and two months later, then the inmate would begin earning IGT at the rate of five days per month, since the person has accrued fourteen months of seniority while serving the YCA or SRA sentence. The inmate, of course, would receive no IGT credit toward the adult sentence for those fourteen months. In other words, he/she receives the seniority from the YCA or SRA sentence but no days.

[(l) A pretrial detainee may not earn good time while in pretrial status. A pretrial detainee, however, may be recommended for good time credit. This recommendation shall be considered in the event that the pretrial detainee is later sentenced on the crime for which he or she was in pretrial status.]

An inmate in pretrial status may be approved for EGT (IGT and CGT will automatically accrue the same as for a sentenced inmate and MGT must be approved the same as for a sentenced inmate) and Lump Sum Awards the same as a sentenced inmate. If the inmate is subsequently sentenced, the pretrial EGT or Lump Sum Award shall then be deducted from the sentence. The dates of assignment to and removal from an EGT earning status shall be entered into SENTRY for future use should the prisoner receive a sentence to imprisonment.

A pretrial inmate is only eligible for EGT credits for time detained in a Bureau of Prisons' facility. EGT is not available for those released from detention to a program or residence as a condition of bond. A pretrial inmate released from detention is not subject to the custody of the Attorney General, and is therefore, not eligible for credits pursuant to 18 USC § 4162.

[(m) An inmate committed for civil contempt is not entitled to extra good time deductions while serving the civil contempt sentence.]

Where the inmate is serving a criminal sentence concurrently with the civil contempt sentence, EGT may be awarded on the concurrent criminal sentence. An inmate serving a civil contempt sentence may earn seniority toward a criminal sentence in the same way that seniority may be accrued while serving a YCA or SRA sentence as discussed in paragraph 10.l. above.

[(n) A military or Coast Guard inmate may earn extra good time. Extra good time earned in Federal Prison Industries in a military or Coast Guard installation is treated the same as if earned in Federal Prison Industries in the Bureau of Prisons. Other forms of military or Coast Guard extra good time, such as Army Abatement time, are fully credited, but no seniority is allowed.]

[(o) American citizens who are serving sentences in foreign countries and who are subsequently returned to this country under the provisions of 18 U.S.C. Chapter 306 (P.L. 95-144) may have earned work, labor, or program time credits in the foreign country similar to extra good time earned under 18 U.S.C. § 4162. Such foreign "extra good time" credits shall be treated as if awarded under § 523.16, Lump Sum Awards, with any future lump sum award consideration in this country calculated on the basis of time served in custody of the Bureau of Prisons. After return to this country an inmate may earn extra good time at the three-day rate and advance to the five-day rate after one year of seniority is accrued. No seniority is accrued for foreign "extra good time" credits.]

Section 523.16 refers to paragraph 9 in this Chapter.

Foreign "extra good time" credits shall be entered on the SENTRY Extra Good Time Status/Update transaction as "Adjustment of Extra Good Time". The "Date In/Action Date" will be the date of commitment to the designated institution. If a Good Time Record is maintained, they will be entered as "Foreign Extra Good Time Credits." (See Chapter VIII.)

[(p) An inmate in extra good time earning status may not waive or refuse extra good time credits.]

[(q) Once extra good time is awarded, it becomes vested and may not be forfeited or withheld, or retroactively terminated or disallowed.]

r. If the institution feels that a state inmate is entitled to good time compensation, a request may be made to state authorities to award good time credits. Any such award shall be made in accordance with the state's laws or regulations. It is the responsibility of state authorities to make changes to release dates for their inmates and their responsibility to keep the Inmate Systems Manager notified of changes.

11. Seniority Calculations. As stated in paragraph 2.c. above, twelve months of seniority automatically causes the EGT earning rate to increase from three days per month to five days per month. The following example demonstrates the method for determining seniority:

Example No. XIII - 1:

Assigned to IGT status on 08-29-69; removed from IGT on 12-31-69; awarded MGT beginning on 03-04-70. Determine the date that the rate changes after placement in an MGT earning status on 03-04-70.

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Date Out of IGT	= 69-12-31
Date In IGT	= -69-08-28*
Seniority Accrued	**= 00-04-03 4 Mos 3 Dys**
1 Yr	= 00-11-31 11 Mos 31 Dys
Seniority Accrued	= -00-04-03 4 Mos 3 Dys
Seniority Necessary	**= 00-07-28 7 Mos 28 Dys**
Date In MGT	= +70-03-03*
Rate Changes On	**= 70-10-31**

12. EGT Formula. The basic formula for the computation of EGT is: Days on Assignment x Rate = Product ÷ Days in Month = Total Number of Days To Be Awarded for a Month (any fraction of a day equals 1 day). Appendix XV shows the number of days to be awarded when assigned or removed on any date of any month. The number of days to award were determined by using this formula. An examples follow.

Example No. XIII - 2:

Assigned to IGT on 03-13-81. Counting the day assigned, IGT is authorized for the balance of March and equals 19 days. The EGT rate for this example is 3 days per month.

19 Days x 3 Day Rate = 57 Product

57 Product ÷ 31 Days in Mar = 1.8 = 2 Dys for Mar

Example No. XIII - 3:

Removed from IGT on 04-25-82. Counting the day on which removed, IGT is authorized for 25 days in April 1982. The EGT rate for this example is 5 days per month.

25 Days x 5 Day Rate = 125 Product

125 Product ÷ 30 Dys in Apr = 4.1 = 5 Dys for Apr

(See Appendix V for a chart that shows the number of EGT days to award for the month in which assigned and for the month in which removed from an EGT earning assignment.)

If a prisoner goes in and out of more than one EGT assignment during any one month, then the total number of days in an earning status during the month is used in the formula to determine the total product for the month and the total product is then divided by the number of days in that month to determine the proper number of days to award. In **no case** may a prisoner earn more than the rate authorized for that particular month. An example follows.

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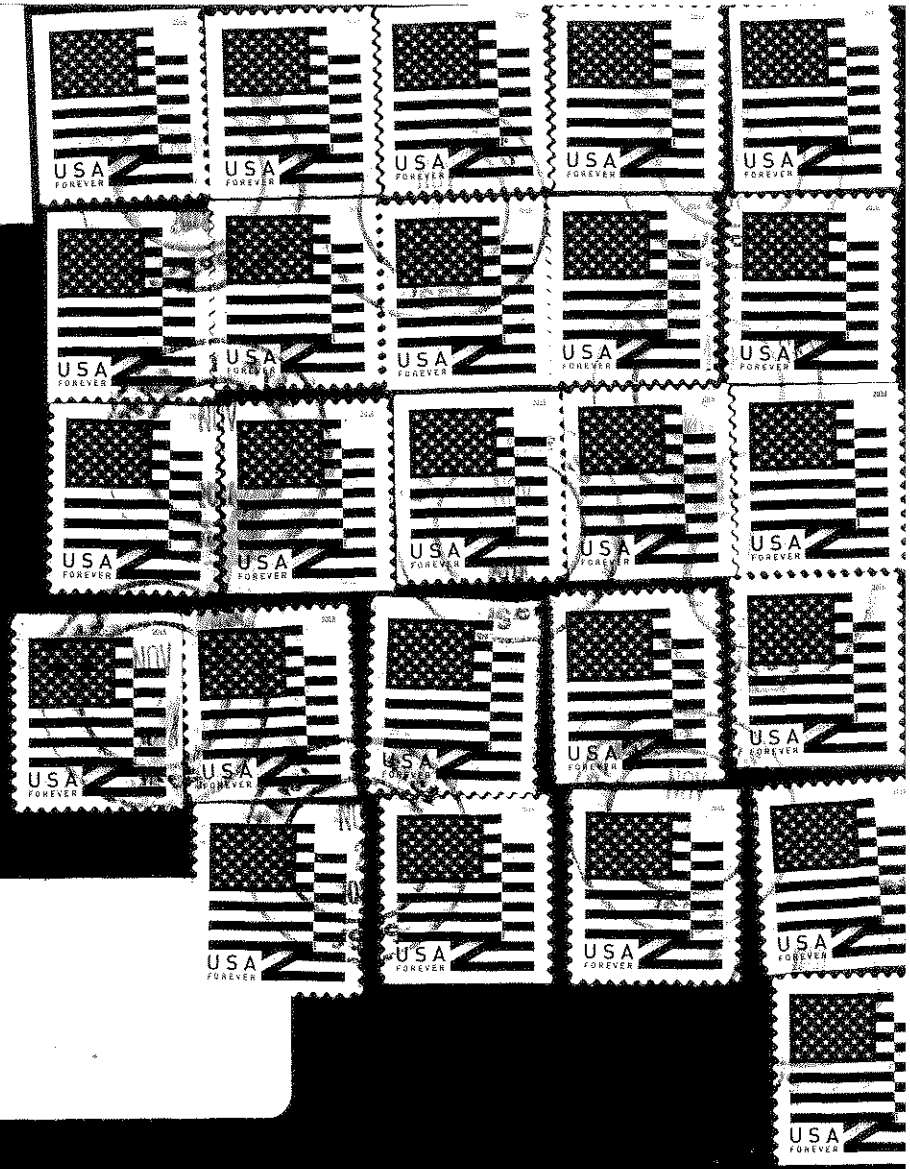

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