



## NATIONAL ASSOCIATION OF WOMEN JUDGES

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**Subject:** Written testimony to the Charles Colson Task Force on Federal Corrections (Colson Task Force): J.C. Watts, Jr., Chair; Alan B. Mollohan, Vice Chair, David C. Iglesias, Jim Liske, Laurie O. Robinson, and Cynthia W. Roseberry

**From:** National Association of Women Judges (NAWJ) Women in Prison Committee (WIP); Judge Julie Frantz, President (NAWJ)

NAWJ, formed in 1979, has members at all levels of the federal and state judiciary, in academia, and government agencies. Its emphasis has been on ensuring equal justice and access to the courts for women, minorities, and other historically disfavored groups. NAWJ's WIP Committee was formed in 1991. In this brief paper, we address only a few of the areas specified in the Colson Task Force invitation, and offer the broad outlines of remedial measures which, while applicable to men and women prisoners, are especially targeted at the over 80 percent of women prisoners who had custody of minor children before incarceration.

**The consequences and costs for women of the current size of the federal prison population require urgent actions to reduce the population and its associated costs.**

Retiring Attorney General Eric Holder has focused dramatically on the consequences and costs of over incarceration in the federal prison system. For both men and women the results of overcharging and mandatory minimums have been chronic overcrowding and a continual drive to build huge correctional institutions in isolated geographic locations dictated by the political pressures of influential legislators. The result has been particularly disastrous for women prisoners who have been exiled to large, and unnecessarily secure, institutions hundreds and thousands of miles from their children and families. The inevitable consequence has been diminished family visits because of the cost and time, and often the sheer impossibility of getting to and from the remote prison sites. Ironically these institutions have themselves over time suffered from overcrowding resulting in triple bunking in small

cells and a dearth of programs unrealized or idle due to poor planning and lack of space for conducting group activities. Decades of research show that efforts at rehabilitation are severely damaged by a lack of family visits and the absence of programs for treating addiction and mental health, education, vocational training, work opportunities, etc. When NAWJ members visited BOP's Secure Female Facility in Hazleton, West Virginia, a few years ago, the drug and training programs the women had been promised, and which appeared to prompt many to volunteer to transfer to a new prison in the mountains of West Virginia, had not begun. At Hazleton:

The standard cell is 86.11 square feet, which is less than seven feet wide by fourteen feet long. In this small space, there are bunk beds, a toilet, one plastic chair, a small built in table, and some shelves. The window is narrow and the lighting is in the ceiling so night reading is problematic. The bunk beds were to be converted to triples within thirty days.

**Overcrowding is not inevitable and could be ameliorated if federal correctional authorities applied some fresh, outside the BOP box thinking to the issues confronting them. Our suggestions reflect the thinking of many prison experts over the years and are set out below.**

In our ten or so years of dealing with federal correctional authorities, we have found them singularly unwilling to use the powers they have, such as using compassionate leave to lower the population or assigning women prisoners to community settings or to fight for new authorities where they lack power. They are perennially timid in seeking ways to implement what they say they recognize as the best practices carried out in state systems. Further, they remain uninformed and insensitive to the magnitude of the unique conditions and issues confronting incarcerated women. The last point is demonstrated by the fact that in 2015 as in 2006, BOP has but a single Administrator, Female Offender Branch, on women's issues, and she has no staff and no apparent role in the development of overall BOP policies.

Judge Patricia Wald wrote a prescient article in 1996 in which she found it ironic that the concept of gender equality was sometimes raised as a bar to any special focus on women's needs or treatment in the criminal justice system when that system segregates women from men in terms of institutions and programs, often to the women's disadvantage. *Why Focus on Women Offenders?* NAWJ Training Project (Module 2) (July 26, 1996). After raising many issues including sentencing, Judge Wald concluded:

Many of these proposed reforms need not be gender-specific. Fathers as well as mothers who are primary caretakers deserve equal consideration. But the fact remains that as a group, women present a unique profile to the sentencing and prison system: a group which while still small is growing in numbers and which deserves attention in the planning process. Its primary group characteristics as I have said include: nonviolence, exceedingly high levels of drug and alcohol abuse; proven vulnerability to male domination; a low recidivism potential; and special health needs tied to their unique physical and biological makeup. They are overwhelmingly mothers who have been the primary caretaker for young children. All of these characteristics suggest that society can reduce prison costs, costs of family assistance, hasten a return to productive civilian status of a significant number of offenders, and increase the potential for intact families and the eventual well-being of a new generation by targeting this group of offenders from the point of entry in the system, in order to plan for their appropriate custody, rehabilitation and minimal disruption of family ties. *Id* at 13.

**Danbury: A Case in Point** In December 2013, when faced with the task of relocating New England women in the prison at Danbury, Connecticut, to another facility until the Danbury prison was renovated, BOP reviewed each woman's file and classification and found that many could be placed in camps and in other prisons closer to home. This action highlights the fact that (1) many non-violent women offenders are over classified and could serve their sentences under less confining circumstances

at no risk to the public; and (2) BOP is not observing its policy of placing people within 500 miles from home, where possible.

BOP's classification tool for security settings has been widely criticized as greatly over classifying the danger presented by most women prisoners who are white collar or low level drug offenders without a violent history. A determination that Sister Megan Rice, an 84-year old religious pacifist, merits a classification that requires her to serve a sentence in a secure prison, rather than a camp, seems questionable.

The fact that in 2013 the BOP Director could send a letter to all federal prisoners urging them to maintain a relationship with their children and simultaneously transfer several hundred New England women prisoners to Aliceville, Alabama, ostensibly to relieve overcrowding at its male facilities, is a disconnect that remains hard to fathom.

We have repeatedly urged BOP to expand the use of community sentencing, but to date, it has been unenthusiastic, and instead has cited legal and political concerns which it has made no efforts that we are aware of to overcome or change.

When NAWJ visited Hazleton several years ago, 357 of the 580 incarcerated women (62%) were serving time for drug related crimes but the facility did not offer BOP's 500 hour Residential Drug Related Abuse Treatment Program. We were told the reason was cost, which seems a highly shortsighted decision given the overwhelming nature of the prisoners' drug related crimes.

The Arthur Liman Public Interest Program at Yale and Judith Resnik, Arthur Liman Professor of Law, along with other prison experts have developed questions and considerations for any serious deep-dive effort to reform BOP's programs for women prisoners. Liman has presented scholarly statements on incarcerated women and, in particular, the status of those incarcerated at the BOP camp and prison at Danbury. *The State of Civil and Human Rights in the United States: Hearing Before the Senate*

*Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, Women in Detention: The Need for a National Agenda* (Dec. 9, 2014)

[http://www.law.yale.edu/documents/pdf/Liman/Liman\\_Final\\_Statement\\_Hearing\\_Civil\\_and\\_Human\\_Rights\\_\\_Women\\_in\\_Detention\\_filed\\_December\\_8\\_2014\\_\(1\).pdf](http://www.law.yale.edu/documents/pdf/Liman/Liman_Final_Statement_Hearing_Civil_and_Human_Rights__Women_in_Detention_filed_December_8_2014_(1).pdf)

Do the sentencing guidelines based on a male model discriminate against women due to differences in behaviors that underlie the commission of the crime? Should a sentencing authority begin with a presumption against sentencing any non-violent offender for incarceration if the offender is the primary caregiver of a minor child? BOP should be required to perform an annual review of each prisoner's conditions and classification to be sure the person is as close to home as possible and in the least restrictive setting consistent with security. BOP should have visiting hours and conditions that are consistent nationwide and provide opportunities for visits at least four days each week. There should be special conditions on BOP's use of local jails. BOP should devise a strategy using state prisons and community-based facilities to place women within 300 miles from their place of residence. BOP should make greater use of The Second Chance Act provision that allows releasing a person to a halfway house for a year prior to their scheduled release. Financial resources are needed to improve community treatment facilities and oversight, and subsidized family visits. It is time to take a hard look at prison industries and to reinstitute college credit classes that existed in prison by making prisoners re-eligible for Pell grants or for community college classes. Making uniforms and dog training have benefits, but create few employment possibilities. Finally, an objective third-party review of all aspects of the BOP's treatment of incarcerated women is long overdue.

We heartily endorse a thorough review of the current women prisoner system based on the answers to these questions and considerations. We wish you success in your endeavors. If we can supply additional information, we would be pleased to do so.

Judge Julie Frantz, President of NAWJ