

**AMERICAN BAR ASSOCIATION
JUSTICE KENNEDY COMMISSION**

George Washington University Law School
November 13, 2003

VIEW FROM INSIDE

Roger D. Groot

My view from the inside is based primarily on my nine years as the Faculty Supervisor of the Alderson Legal Assistance Program at Washington & Lee University School of Law. Like most criminal lawyers, I have visited a number of penal institutions over the years. Also like most lawyers, I learned relatively little about those institutions. I did, however, learn a great deal about the institution that is now Federal Prison Camp, Alderson, West Virginia.

Because my view from the inside is so heavily based on the Alderson experience, I need to say a few words about that institution. Alderson was the first federal penal institution for women. Prior to its opening in 1928, federal female prisoners were contracted to state or local facilities. In its original manifestation, Alderson was overtly constructed and operated on a reformative model. Although this is somewhat offensive to modern ears, the thrust of the Alderson's mission was reformation through the instillation of womanly virtues and the teaching of womanly skills. Over the years, as Alderson served several roles for the Bureau of Prisons, it became less focused on reform and rehabilitation and more focused on sheer incarceration. Nonetheless, as prisons go, I would rate Alderson as a "good" prison.

When I came to Alderson in 1988 it was a Federal Correctional Institution – the middle kind of federal facility. Within the institution itself was a secure sub-institution known as Davis Hall. Davis Hall housed a wide variety of inmates – Alderson inmates in punitive segregation, Mariel Cubans held indefinitely for the INS, troublesome inmates from other federal institutions,

overflow pretrial inmates from the Metropolitan Correctional Center in New York, etc. As the Bureau of Prisons constructed new female institutions – FCI, Marianna and the regional FPC's, Alderson was converted from an FCI into an FPC.

1988 was, of course, a watershed year to be, in a low security federal institution. The effects of the 1984 and 1986 amendments to the federal drug laws had already been felt. But inmates affected by the Sentencing Reform Act and the Sentencing Guidelines began to arrive in 1988. From that time forward most inmates arrived with one of three sentences – a five-year mandatory minimum drug or firearm sentence, a 63-month guideline drug sentence or a six-month property crime sentence.

Alderson was never a brutal or inhumane place. Staff on inmate violence was extremely rare and I never became aware of staff use of extreme measures (e.g., strip cells) for punitive or retributive purposes. On the other hand, Alderson was a penal institution and with the fact comes a heaping helping of callousness, indifference, monotony, repetitive daily indignities and reprisals. These are all simply facts of prison life for which there is no remedy, either administrative or judicial. These facts can also combine in interesting ways. During my time, there was an older inmate who was a constant, vocal complainer. Consequently (I believe) she was assigned to the housing unit most distant from the dining hall. The medical staff was unresponsive to her request for a medical chit requiring housing nearer the dining hall. This inmate struggled to and from every meal down and then up a rather steep incline on her two canes. Alderson probably represents the best prison life can be. But, because these simple facts of prison life, which can neither be remedied nor removed, makes that life debilitating and, to a certain extent, dehumanizing. For that reason alone, incarceration should be the last rather than the first response to criminality.

Callousness toward the inmates can also take a more active, pernicious form. When an inmate has a legitimate, remediable grievance, the instinct for institutional self-preservation will, in the end, always win out. In the simplest kind of case, the inmate will be suddenly transferred to another institution where she will lose contact with her witnesses, be deprived of legal assistance, face venue or jurisdiction difficulties, etc. The most extreme example in my experience involved an inmate who was sexually assaulted by a staff member. The United States Attorney (with, I am sure, the connivance of the BOP) tried to condition an indictment upon a waiver of civil remedies. An indictment was finally returned and the staff member pleaded guilty. The filing of the related civil actions by Alderson Legal Assistance brought complaints that the legal assistance program was destroying staff morale. Shortly thereafter Alderson placed such severe restrictions on the legal assistance program that it could not continue professionally to operate and it was discontinued. Actions like these can only solidify the beliefs of inmates, most of whom do come from the lower classes, that "the man" always wins. Doing right is not the critical ingredient to success; what matters is the power to get by with doing wrong. This lesson is taught over and over in the prison environment. That is another reason why incarceration should be the last resort.

Useful work could be a remedy for monotony and boredom, which can in turn lead to misconduct of various kinds. Idle hands are, in fact, the devil's workshop. In general, I believe, prisons do not provide useful work and I employ the term "useful" to mean both "productive" and "transferable." In its defense, the Bureau of Prisons is buffeted and constrained in this regard by both the right and the left. From the right come the cries that every inmate should work, but insistence that prison industries should not compete with free world providers. From the left come cries that inmates should be taught utile work skills, but the unions and other organizations

decry the use of convict labor. The upshot is that UNICOR, the federal prison industries, is limited to producing goods for the government.

At Alderson this limitation translated into the Garment factory and the Decal Factory. The Factory actually did teach good and useful skills, but employed very few inmates. The Garment Factory was a large sewing mill that produced very simple products – e.g., mailbags for the Postal Service and pajamas for the VA. Even if industrial sewing was a growth industry rather than a dying one, the skill level attained in the Garment Factory probably would not transfer into the free world work place.

Because I believe political forces will always prevent prisons from providing useful work, the hope that prisons will regularly turn out productive, self-sufficient citizens is a pipe dream. This is another reason why incarceration should be the last resort.

Let me return to my earlier comments about the post-1987 sentences I saw at Alderson. The six-month property crimes sentences are, in general, both unnecessary and counterproductive in every possible way. They are unnecessary because these women, in my experience, were almost universally first-time offenders who had committed minor, non-violent offenses; a non-incarcerative penalty should be applicable in such circumstances. Those sentences are counterproductive on the inmate's side because in the federal system the inmate is sent to a distant location and the family is disrupted in ways that adversely affect both its economy and its relationships. In addition, this inmate occupy one more prison space and be a burden to staff. By the time all of her paperwork arrives at the institution, she is fully processed and has adjusted to the prison environment, her sentence will have expired.

The five-year and 63-month drug sentences are simply too long. For all of the reasons set out above, an inmate who has fully served one of those sentences will not return to society a better,

more productive citizen. In fact, in the case of a female inmate, she has in all likelihood lost her children to a termination of parental rights, has not acquired new job skills and has been at best scarred and at worst embittered by her prison experience. I am compelled to add that there is a way to retain mandatory minima (statutory or guideline) and in a productive way shorten time actually served – increase the amount of good conduct time an inmate can earn.

