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July 28, 2005

The Honorable Ricardo H. Hinojosa, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Re: Priorities for 2006 Amendment Cycle

Dear Judge Hinojosa:

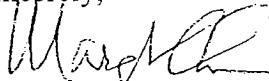
I am writing in my personal capacity to urge the Commission to add to its list of priorities for the coming year the development of guidance for the issuance of sentence reduction orders under 18 U.S.C. § 3582(c)(1)(A)(i). Since 2001, I have written annually to the Commission in my capacity as chair of the ABA Corrections & Sentencing Committee, to make this same request. I was truly gratified when the Commission decided to add this issue to its list of priorities in 2004 and again in 2005, and correspondingly disappointed to see that it does not appear on the list for 2006 – particularly since I know of no reason why the work that was commenced two years ago could not have been continued.

Without direction about what situations might warrant revisiting a sentence, corrections officials are reluctant to expand the reach of “extraordinary and compelling reasons” much beyond the clearly identifiable case of imminent death. This may reflect a lack of guidance to BOP, rather than a lack of political will or failure of compassion. See John R. Steer and Paula Biderman, *Impact of the Federal Sentencing Guidelines on the Presidential Power to Commute Sentences*, 13 FED. SENT. RPTR. 154, 157 (2001) (“Without the benefit of any codified standards, the Bureau, as turnkey, has understandably chosen to file very few motions under this section.”). In fact, in the twenty years since the Sentencing Reform Act was passed, BOP appears to have grown less rather than more comfortable in using its authority under this statute. This administrative record demonstrates the need for Commission guidance as to what circumstances may be sufficiently “extraordinary and compelling” as to warrant sentence reduction.

I appreciate that the Commission has important and difficult guidelines work ahead of it. I also appreciate that there are some, perhaps even at the Commission, who regard this issue as one involving prison administration as opposed to sentencing. While I think there is a strong argument to be made that the issues raised by this statute do implicate many of the concerns raised under 18 U.S.C. § 3553, and that they are thus very much within the Commission's expertise, perhaps all that really needs to be said in this regard is that Congress plainly thought so too. The mandate it gave to the Commission under 28 U.S.C. § 994t is the only one under the original 1984 Act that remains unfulfilled. It seems that this is another reason why Commission should not turn away from what is admittedly an unusual and sensitive task.

If the decision to drop this issue from the Commission's list of priorities was simply a matter of resources, I would like to volunteer my own services to assist the Commission in whatever manner it feels appropriate. I am confident that there are other practitioners, including some with experience in corrections administration, who would be happy to offer their services to the Commission to work on this matter in an advisory capacity.

Sincerely,



Margaret Colgate Love

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Date: 8/10/2005 12:59:33 PM
Subject: BOP does the right thing - reluctantly

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Dying inmate being released

By MAUREEN HAYDEN

Courier & Press staff writer

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Over the weekend, Fortwendel was taken from the Carswell Federal Prison to the intensive care unit at the Huguley Memorial Medical Center in Fort Worth, Texas, to be treated for complications from the cancer. Prison security ordered she be shackled and chained to the bed. Young's order cuts short by eight months the 37-month prison sentence he handed down in March 2003 after Fortwendel pleaded guilty to embezzling more than \$750,000 from a Tell City bank. On Monday, the director of the Bureau of Prisons formally acknowledged that Fortwendel is in the end stages of cancer. That acknowledgment triggered the U.S. attorney to file a motion late Monday seeking a reduction in Fortwendel's three-year prison sentence, which then cleared the way for Young's order. Fortwendel's attorney, Jeff Lantz, hailed the judge's order as an act of justice and mercy. "This ruling is just fantastic ..." said Lantz. "She'll be able to spend her last days in peace with her family." Fortwendel's condition has deteriorated rapidly in recent weeks, according to her family. Any hope for treatment, experimental or otherwise, now appears dim. Getting Fortwendel out of prison has been a bureaucratic nightmare for her lawyers and family. The Bureau of Prisons spent more than a month considering Fortwendel's request for a compassionate release and told her that it could take up to 90 days to process the paperwork.

But Fortwendel's case was apparently expedited after a host of influential parties got involved.

Among those bringing behind-the-scenes pressure on the Bureau of Prisons to act quickly were the U.S. attorney's office and Republican Sen. Richard Lugar's staff. Also hanging over the head of federal prison officials was the potential that Young would bypass the Bureau of Prison's protocol and issue a release order on his own, despite the fact that he might lack jurisdiction to do so. In recent weeks, Lantz and Evansville attorney John Goodridge scrambled to craft legal arguments to give Young the legs to stand on to order Fortwendel's release. Those actions, combined with intense media pressure, finally

forced the Bureau of Prisons to act, Lantz said Tuesday. Fortwendel's family, meanwhile, won't rest easy until she gets home. Her sister, Angie Garrett, was at Huguley Memorial Medical Center when she and her sister got news of Young's order Tuesday morning. By then, Fortwendel had stabilized and had been transferred out of the intensive care unit and onto the hospital's oncology unit. Garrett left her sister's room to call family members with the good news, and was gone for about 20 minutes, she said. In that time, security staff from Carswell arrived at the hospital and transported Fortwendel back to the prison. Garrett said Fortwendel was taken back to the prison over the objections of medical staff and the prison's social worker. "I came back to her room and she was gone," said Garrett. "The prison knew I was there and they didn't even tell me or let me say goodbye. I don't understand why, if the judge ordered her released, and as sick as she was, did they take her back to the prison?"

Garrett said she couldn't get an answer to that question Tuesday. Federal officials have repeatedly refused to answer questions about Fortwendel, citing "privacy" concerns.

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Dying inmate's options diminish
By MAUREEN HAYDEN Courier & Press
August 4, 2005

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She could stay in prison in Texas and try the standard treatment that had less than a 20 percent chance of working, or she could ask for a "compassionate release" so she could go to one of the nation's major cancer centers for experimental treatment. That was more than a month ago. The first option is no longer on the table because her cancer has advanced too far. The second option soon may be gone. The federal Bureau of Prisons has yet to process the paperwork for the Tell City, Ind., woman to be released, and won't say when or if it will. So on Wednesday, Fortwendel's attorneys again asked a federal judge to intervene. In a motion filed in federal court in Evansville, attorney John Goodridge asks U.S. Judge Richard Young to do, in essence, an end-run around the federal prison system by modifying Fortwendel's three-year prison term for bank embezzlement and ordering her immediate release. In the motion, Goodridge acknowledges Young would be moving into uncharted legal territory. But he argues that a recent U.S. Supreme Court ruling liberates federal judges from the "Dark Age" of restrictive sentencing guidelines that robbed judges of their ability to make the kind of discretionary decision required to get Fortwendel out of prison before she dies.

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Leniency for inmate a complex issue
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In an "extraordinary" legal move, the attorney for a federal prison inmate dying of cancer has asked a federal judge to order her "immediate release" from a prison hospital in Texas. The motion, if granted, could lead to a showdown with U.S. Bureau of Prisons' officials who could refuse to follow the judge's order, citing his lack of jurisdiction in the matter.

On Wednesday, Evansville attorney Jeff Lantz filed a motion asking U.S. District Judge Richard L. Young to order the "immediate release" of convicted felon Darlene Fortwendel, 48, of Tell City, Ind., who was diagnosed six months ago with cancer but went untreated by prison medical staff. Her condition is now terminal.

Young could rule on the motion within days, depending, in part, on the response of the U.S. Attorney who prosecuted Fortwendel on embezzlement charges. Lantz is asking Young to grant Fortwendel "extraordinary relief" by cutting short her three-year prison term for bank embezzlement and ordering her to be released "due to a medical emergency," according to the motion. "We're throwing ourselves on the mercy of the court," Lantz said.

Lantz acknowledged the motion is extraordinary for another reason as well. The veteran lawyer has never filed one like it because there is no statutory provision under federal law for Young to grant it. But if the letter of the law isn't there for Lantz, the spirit of the justice is, says legal expert Jack King, head of public affairs for the National Association of Criminal Defense Lawyers. "What (Lantz) is arguing is that while there is no statutory relief under the law, ... he's asking the judge to compel the Bureau of Prisons to do the fair and decent thing and let this woman go home to die," King said. Fortwendel has been in prison since March 2003, after pleading guilty to charges she embezzled \$750,000 from the Old National Bank branch in Tell City, Ind. The former bank teller spent the money gambling on the Casino Aztar riverboat.

Fortwendel has six months left on her prison term. She's already applied to the Bureau of Prisons for a "compassionate release," but Lantz contends she may be dead before prison staff processes the paperwork. Lantz cites in his motion the lack of medical care given to Fortwendel in the last six months, since she was first diagnosed with cancer at the Greenville (Ill.) Regional Hospital. At the time, she was housed at the minimum-security federal prison near Greenville. After she was diagnosed with cancer, she was transferred to the Carswell Federal Medical Center near Fort Worth, Texas. It's the only federal prison hospital for women. According to medical records obtained by Lantz, the Texas prison staff started a new round of tests in mid-February, but didn't consult an oncologist about the results until mid-March. According to the records, an oncologist ordered a biopsy of Fortwendel's liver, but that biopsy didn't occur until mid-April. It wasn't until late June when prison staff consulted an oncologist about results of the biopsy and other test results. It

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The U.S. Bureau of Prisons has refused to answer questions about Fortwendel's case, citing privacy issues. The bureau was asked by Sen. Richard Lugar to expedite Fortwendel's request for compassionate release, but bureau officials won't say whether the request has been fast-tracked.

As part of the process, the Bureau must move the request through a layer of approvals and must seek the approval of Fortwendel's victim, Old National Bank. Bank spokeswoman Kathy Schoettlin said bank officials won't oppose Fortwendel's request. "She betrayed a lot of her associates, and she betrayed our customers and really a whole community," said Schoettlin. "But in light of her medical condition and the length left on her prison term, we would not oppose a compassionate release if granted. That in no way justifies her crime, but it recognizes the pain and agony her children and family are going through right now."

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