

experience—leaving future lawyers to be taught primarily by faculty with little to no law-practice experience. She points out that law schools require far less clinical experience than other professional schools. Howarth identifies distressing false assumptions that knowledge of case law rules is separate from and more important than practice skills. Howarth says, “these assumptions have become cascading fallacies of the bar exam, each step taking us further from what lawyers do.”

Highlighting the gap between legal education and law practice, Howarth says the deliberate push away from practice skills in law schools spills over to the bar exam because “licensors have had to look almost entirely to legal education for bar exam content.” Howarth reiterates longstanding criticism that the bar exam lacks sufficient validity, arguably by design as the exam is modeled after what law schools teach instead of on what lawyers need to know how to do. Howarth takes the unarguable stance that the primary task of the law professors and bar examiners—who are the gatekeepers of the profession—should be to understand what minimum competence in a lawyer looks like.

With receipts in hand, Howarth offers evidence that state bar exams and the multistate bar exams controlled by the NCBE have never been validated. Meaning, as she explains, that “no job analysis or other scientific study links the exam’s content to the skills and knowledge needed by new attorneys.” Describing decades of lost opportunities to engage in practice validity studies, and more recent opportunities to lean into the *McCrate Report* and the *IAALS Building a Better Bar Study*, Howarth laments that “nothing guarantees that a law school graduate will have ever set foot in a law office” or a courtroom.

In part three, Howarth offers a bold solution to redress longstanding issues of exclusion, intrusion, and inconsistency in character-and-fitness determinations. The character and fitness process has kept out individuals due to race, ethnicity, LGBTQ status, political activism, gender identity, financial status, and mental health history. She says that predictions about future misconduct are often wrong. Howarth proposes that state bars shift some character-and-fitness scrutiny away from bar applicants to attorneys in practice. She suggests that state bar associations should invest resources into monitoring

and preventing attorney misconduct. She also proposes that law schools should better prepare students to cope with the stresses of law practice by emphasizing professional-identity formation at all stages of the law school curriculum. She says, “teaching or learning the rules of professional responsibility is much easier than teaching or learning how to follow them. But both are possible.”

*Shaping the Bar* ends as it began, with an underscored emphasis on public protection by ensuring that newly admitted attorneys demonstrate minimum competence to be entrusted with client representation. Tackling the problems analyzed in parts one through three, part four lays the framework for a licensure structure centered around the skill of practicing law and not the rote memorization of legal rules that may be unrelated to the new attorney’s practice area, or even the law of the jurisdiction where the new attorney will practice. According to Howarth, better public protection will require “greater jurisdictional leadership,” and arguably more input and participation from those who practice law.

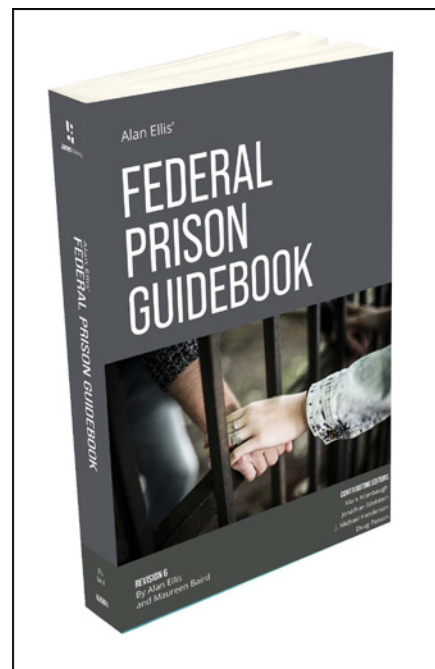
Howarth presents a licensure framework that is well-defined and possible to implement. She offers 12 foundational principles for thinking about more effective ways to protect the public through attorney licensing. I list only five of the principles here:

- New lawyers should have to participate in a “clinical residency” under the supervision of a licensed attorney before receiving a law license;
- Bar exams should test performance skills, not rote memorization of common law rules;
- Jurisdictions should offer multiple pathways to bar licensure;
- Authority to regulate the profession (entry and discipline) should rest entirely in the state courts and state bar associations, and not in test distributors or commercial bar preparation companies; and
- Once licensed, attorneys should have to engage in a modest self-assessment to periodically reassess practice competency.

The only question left unanswered by Professor Howarth’s exhaustively researched book is whether a system of legal education and licensure that cherishes the practice of law instead of disregarding it—one where status hierarchy does not privilege those without law practice experience over those

with it—would be the condition precedent for the rollout of her plan or the professional utopia that will result from it. ☺

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## **Alan Ellis' Federal Prison Guidebook (Revision 6)**

**By Alan Ellis, Maureen Baird**

*Published: Jan. 1, 2022; James Publishing*

*Paperback, 600 pages, \$299.95*

**Reviewed by: Elizabeth Kelley**

I have reviewed several editions of Alan Ellis’ *Federal Prison Guidebook* for *The Federal Lawyer*. The reason I always volunteer to review the latest edition is that each time, there is important new material. This edition is no exception.

Ellis is a longtime—bordering legendary—criminal defense lawyer. He has established himself as a pioneering specialist in federal sentencing. Others have come after him, but he remains the first. The *Federal Prison Guidebook* is now in its 24th edition, or as its publisher states on the cover, revision six. With one exception, it has been reliably published every two years since 1998. The evolution of the book is itself a story.

It all began many years ago when Ellis was a brand-new lawyer practicing in State College, Pennsylvania. He tried two jury cas-

es, and both times, his clients were convicted. An experienced lawyer offered him some advice: First, when the government refers to your client by a derogatory term, do not nod your head in agreement. Second, in closing argument, don't say your client didn't do it; rather, wrap your arms around the flag and argue reasonable doubt. In his next jury trial, Ellis followed this advice, and his client was acquitted. Nonetheless, Ellis decided he wasn't cut out for this and changed the focus of his practice. He began representing people at parole hearings and, eventually, built a nationwide practice.

At that time, the Bureau of Prisons published a relatively thin guide to prisons. In 1998, it stopped publication. Ellis decided that it was a valuable resource, and that if the bureau was not going to publish it, he would. Thus, he began self-publishing the *Federal Prison Guidebook*. In 2010, he was approached by James Publishing, who offered Ellis a lifetime contract for producing a new edition every two years. A look at the guide over the years shows that it has grown in length and that various experts in the field of federal sentencing have contributed chapters—such as Mark Allenbaugh, Jonathan Edelstein, J. Michael Henderson, and Doug Passon. Former Bureau of Prisons warden, Maureen Baird, joined Ellis in this edition as a co-editor.

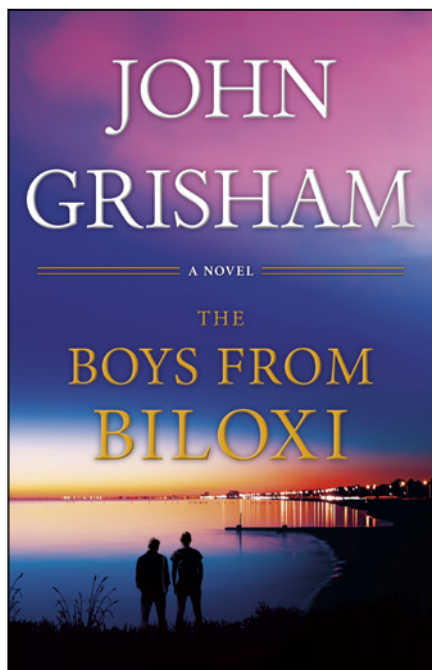
This latest volume follows the same organization as past editions. The first half of this two-and-a-half-inch book (it doesn't have page numbers but rather section numbers) is both a deep dive into and an intricate examination of all aspects of federal sentencing and post-conviction remedies. (It is this level of detail which caused a criminal defense lawyer with whom I have worked to say that not having a copy of the guide is malpractice.) The first chapter is "Federal Prisons 101"—it discusses everything from reporting to prison to mental health resources to commissary. Other chapters cover prison placement, RDAP (Residential Drug Abuse Program), and how to do time. In this edition, there are over a dozen new sections on topics such as compassionate release, the First Step Act, and loss calculation in white collar sentencing.

The second half of the guidebook is a description of every federal prison in the country. It is arranged by region (i.e., Mid-Atlantic, Western), and contains details on counseling, health, and rehab services; mail policy; and location (along with information

on the closest airport, which is particularly helpful for prisons located in remote areas).

Granted, much of the content in the guidebook is available online. Many of its sections appeared as articles in other publications, and the Bureau of Prisons maintains a webpage for each of its facilities. However, one of the advantages of the guide is that all the material is collected in one comprehensive volume. Additionally, although Ellis and most of the other contributors are criminal defense lawyers, the guide is filled with facts and objective detail, thus being a valuable resource for anyone involved in the federal criminal justice system—including judges, assistant U.S. attorneys, and probation officers.

My prediction is that the next edition will be even more valuable. First, the U.S. Sentencing Commission, for the first time in many years, has a full slate of appointees, and as of the writing of this review, is busy drafting new policies. Second, Colette Peters was recently appointed director of the bureau; she has been tasked with much-needed reform, and for the sake of the more than 158,000 individuals who are incarcerated within the federal system, there will likely be many changes by the time the 2025 edition is released. ☉



## *The Boys From Biloxi*

**By John Grisham**

*Published: Oct. 18, 2022; Doubleday*

*Hardcover, 454 pages, \$29.95*

**Reviewed by: Peter Mansfield**

Prostitution. Strip clubs. Gambling. Mobsters. Illegal booze. Homemade bombs. Contract killers. Beachside assassinations. Cockfighting. Armed robbery. Stolen jewelry. A category-five hurricane. Misbehaving servicemen. Crooked cops. Drug smuggling. Confidential informants. Daring prison-break. Suicide. Capital punishment.

If that sounds like too much frenetic activity for one book, you're probably unfamiliar with the many previous works of lawyer/novelist John Grisham. In *The Boys From Biloxi*, his 51st(!) book, Grisham stages these events over the course of about 30 years in the scenic, but hardly sleepy, beachside town of Biloxi, located in south Mississippi along the Gulf of Mexico.

The story tracks two generations of families, the Malcos and Rudys, who originally emigrated from Croatia to the Mississippi gulf coast in the early 20th century. The action begins in earnest in the late 1950s. As the de facto boss of the loosely organized Dixie mafia, Lance Malco has begun consolidating his empire of illegal alcohol, gambling, and prostitution at nightclubs along beachside Highway 90. In contrast, idealistic family man, Jesse Rudy, is commuting to evening law school in New Orleans. Meanwhile, their sons, Hugh and Keith, are close friends and star together on the local Little League baseball team.

By the 1960s, both patriarchs are firmly committed to their chosen vocations. While Lance is willing to employ any violent means to justify his end—a near monopoly on beachside vice, Jesse has graduated law school, built a successful civil-law practice, and grown increasingly frustrated with local law enforcement's permissive attitude towards the massive crime syndicates on the coast. Their respective offspring have shown interest in following in their fathers' footsteps. Hugh Malco becomes a mobster's apprentice, while Keith Rudy enrolls in law school.

Hurricane Camille brings unprecedented fury and destruction to mark the end of the 1960s in Biloxi. Having built up a reservoir of goodwill in the community by suing insurance companies after the storm, Jesse is elected district attorney in the 1970s on a reform platform. He quickly sets his prosecutorial target on organized crime, which pits the Rudys squarely against the Malcos. Father against father. Son against son. The conflict is palpable, the stakes are high, and the maneuvers are Machiavellian. By the