

Sentencing Alternatives—Back to the Future



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I. History of Sentencing Principles

A. Balanced Goals

In June of 1987, I had the privilege of testifying before the United States Sentencing Commission (USSC) on the issue of alternatives to incarceration. For the ten years prior to this testimony, our nonprofit organization, the National Center on Institutions and Alternatives (NCIA), had worked with criminal defense lawyers in developing-client specific sentencing alternatives for defendants facing sentencing in state and federal courts. Between 1977 and 1986, with the assistance of private foundations, the National Legal Aid and Defender Association and local public defenders, NCIA established sentencing resource centers in 16 locations in 11 states. Sentencing advocacy and the use of alternative sentences were active in thousands of cases in both state and federal courts, as the sentencing goals of federal courts, codified in 18 U.S.C. §3553(a), required a balancing of punishment, rehabilitation, deterrence, restitution, and public safety.¹

For over a decade, our organization, along with other sentencing advocates, were successful in working with defense attorneys in convincing courts that alternatives to incarceration, including work release, community incarceration, drug rehabilitation centers, home detention, and community service, were responsible and constructive sentences, and often met these sentencing goals. Arguing that community service constituted effective social restitution, NCIA placed construction contractors with fraud convictions in summer camps for children with spina bifida doing building projects, placed first-offense automobile manslaughter offenders in shock trauma units, had antitrust defendants helping in food banks, and had professional athletes with drug convictions lecturing to high school and college audiences. Drug offenders and street dealers were regularly given the opportunity to enter treatment. Violent offenders then, as they are now, were sentenced to prison to protect public safety. To many, such sentences were balanced and met the appropriate statutory goals.

B. The Beginning of Chaos

My testimony before the USSC in 1987 on sentencing alternatives was one of those defining and indelible

moments in my career. I was sandwiched between a Justice Department lawyer from the antitrust division who ridiculed community service sentences (including a Florida tax case I had been involved with six months earlier) and an Assistant United States Attorney who believed that rehabilitation, treatment, and alternatives to incarceration belittled the goals of sentencing. That evening, I appeared on CNN's Crossfire, debating the benefits of sentencing alternatives with the Honorable William Wilkens, Jr., newly appointed Chairman of the USSC, and Pat Buchanan, the conservative host. Despite my best efforts, it was a discouraging experience in my professional career.

Soon thereafter, the Federal Sentencing Guidelines were enacted.

The implementation of the Federal Sentencing Guidelines on November 1, 1987 changed the landscape of federal sentencing. Independent researchers quickly dismissed the Commission's claim that the sentencing guidelines mirrored the past sentencing practices of the federal courts. While the purported goals of the federal sentencing guidelines were to ensure uniformity and rationality in sentencing and to reduce unwarranted disparities, it was obvious to all in the defense, prosecutorial, and judicial communities that the sentencing guidelines were "prison guidelines." The law-and-order approach to criminal justice, fueled by the war on drugs that had started a few years earlier, promoted the belief in "just desserts," such that prison became the only suitable punishment to meet the goals of sentencing. This is reflected in the sentencing guidelines table: Of the 258 sentencing guideline cells, only 21, or 8%, allow for a nonprison sentence.

Over the next decade, sentences only got harsher. Law-and-order speeches and political opportunism became US Sentencing Commission policy. Professor Michael Block from the University of Arizona, one of the original sentencing commissioners and considered by many to be a strong academic influence on the development of the guidelines, lamented the lack of research in the early increase of guideline penalties. Just two short years after the enactment of the guidelines, he argued against amendments mandating an arbitrary increase in imprisonment. In his 1989 testimony before the House of

Federal Sentencing Reporter, Vol. 22, No. 1, pp. 53–58, ISSN 1053-9867 electronic ISSN 1533-8363.
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Representatives subcommittee on criminal justice, Commissioner Block stated:

The personal preferences of sentencing commissioners as to what is 'good' or 'right' or 'just' should not be the basis for the Commission's policy decisions. The basis of those decisions must be information, and information in particular on the costs and benefits of various policy options.

What concerns me about these unsupported amendments is not only that the substantive changes may not be warranted but also that the Commission's process for generating guideline amendments is developing in such a way as to hinder rational policy-making . . . the pure increases in offense levels in this amendment were not:

1. required, either explicitly or implicitly, by Congressional action,
2. responsive in any obvious manner to a problem that the Commission or its staff had identified in the operation of the initial guideline, or
3. intended to further the rationalizing of fraud sentencing begun in the initial guideline.²

Shortly thereafter, Commissioner Block resigned from the US Sentencing Commission and became one of its more vocal critics.

The limitations on judge's choices in the types of sentences to be imposed was part of a larger shift away from probationary and alternative sentences, again due to the increasingly widespread belief that a punitive and severe punishment could only be satisfied through imprisonment.³

Notwithstanding the sea change caused by the guidelines, the criminal defense community and NCIA's advocacy for alternative sentences continued. Arguments were based upon the statutory sentencing goals still applicable under 18 U.S.C. §3553, as well as the enabling legislation of the sentencing guidelines. This legislation read:

The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.⁴

In addition, NCIA and others in the criminal defense community spent years traveling the country, assisting defense attorneys in understanding and applying the sentencing guidelines and advocating arguments for departures. Even in the earlier days, there were a limited number of judges who still considered the individual being sentenced and found ways around the mathematical formulae of the guidelines.

C. Chinks in the Armor

In the early 1990s, chinks in the armor of the strict Sentencing Guidelines began to appear. For instance, in 1990, the Sentencing Commission organized a working group to look into the use of alternative sentences within the framework of the guidelines. Chaired by Norman Carlson, the director of the Federal Bureau of Prisons from 1970 through 1987, their report began:

The Alternatives to Imprisonment Project recommends an expansion of the sentencing options currently available by providing an array of intermediate punishments for the federal offender. Sanctions available range from imprisonment, to 24 hour incarceration in the community for a designated period of time, to regular probation.⁵

These recommendations went unheeded, and it was not long before the severity of sentences imposed by the guidelines was having unintended, yet not unanticipated, consequences. Mandatory minimums and incarceration sentences imposed for first-time and nonviolent offenders resulted in the federal prison population increasing at an alarming rate, by almost 150% between just 1985 and 1995 alone.⁶ In addition, the percentage of federal defendants sentenced to probation declined from approximately 48.0 percent in 1984 to 15.5 percent in 1990 to 9.0 percent in 2003.⁷ Therefore, in order to counteract what they believed were unnecessarily harsh sentences and to create more individualized sentences within the confines of the guidelines, judges began to depart from the guidelines for a variety of reasons and with appropriate rationale. Departure reasons included extraordinary family circumstances, history of community service work, and the need to keep employees working. These departures became case law.⁸ By 2001, over 35% of all sentences were departures, with "other reasons" exceeding substantial assistance motions.⁹

Judges across the country became increasingly open to looking more closely at offender characteristics in imposing sentences, even in very difficult cases. For example, in April 2005, following a trial and conviction in a highly-publicized Enron-related fraud case in Houston, a federal judge rejected a 15-year prison recommendation by the Enron Task Force, along with a 288-month guideline calculation by the probation office. In imposing a 30-month sentence on a corporate defendant, the Honorable Ewing Werlein, Jr., stated:

[U]nder Application Note 2 [under USSG Guideline 5K2.20], the Court is also **permitted** and may consider mental and emotional conditions of the defendant, the employment record, the record of prior good works and the motivation for committing the offense. The letters that have been received . . . are indeed probably the most extraordinary compilation of letters about a person that I've ever received. And there is no question in my mind that Mr. Bayly, in his life, has established a very, very high reputation.¹⁰

In another case, where a former Justice Department lawyer was convicted of accounting fraud involving hundreds of millions of dollars, the Honorable I. Leo Glasser imposed a 24-month sentence. Notably, the Court also “split” the sentence, allowing the defendant to serve 12 months of his sentence in the community. In justifying his decision, Judge Glasser stated:

The factors set out in 18 U.S.C. §3553(a) were considered in informing the court’s determination regarding sentence imposed and were discussed at some length as the minutes of the sentencing proceeding reflect.

Steven Woghin is 59 years old and, prior to the offenses to which he pleaded guilty, had an unblemished record. He was a practicing lawyer for 33 years, 10 of which were in the service of the United States Department of Justice in various capacities. The two offenses to which he pleaded guilty were committed during his tenure as General Counsel and Senior Vice President of Computer Associates. A thick volume of letters from persons in all walks of life portray a gentle, sensitive, generous person, loyal friend and very capable lawyer. Virtually all express disbelief that he would be standing before a court awaiting the imposition of a sentence.¹¹

During this time, the U.S. Supreme Court also heard challenges to the mandatory principles of the sentencing guidelines.¹² In 2005, in *United States v. Booker*, the Supreme Court ruled that the guidelines were now only advisory, serving only as one factor among several courts must consider in determining an appropriate sentence. *Booker* further instructed that “reasonableness” is the standard controlling appellate review of the sentences district courts impose.¹³

II. The Winds of Change

The floodgates were now open, and district courts began intensely analyzing and applying individual sentencing factors. Since the guidelines were now advisory only, there was more flexibility in the sentencing options judges could consider, including alternatives to incarceration such as treatment programs and home confinement.

An example of this trend is illustrated in a 2005 research report on community service sentences issued by the Probation and Pretrial Services Division of the Administrative Office of the U.S. Courts (AOC) which encouraged judges to recognize the value of a community service sentence as “a flexible, personalized, and humane sanction, a way for the offender to repay or restore the community. It is practical, cost-effective, and fair—a ‘win-win’ proposition for everyone involved.” The report also highlights the broad applicability of alternatives, and indicates selection criteria for eligible offenders that may help the Probation and Pretrial Services identify such offenders.

Courts can use community service successfully with a wide spectrum of offenders: corporations and indi-

viduals, first offenders and recidivists, the indigent and the affluent, juveniles and senior citizens. Not every offender is a good candidate for community service . . . Courts look for offenders with personal and social stability, who are willing and motivated, and who have no history of violence.¹⁴

In its report, the AOC acknowledges that “community service addresses the traditional sentencing goals of punishment, reparation, restitution, and rehabilitation . . . It restricts offenders’ personal liberty . . . allows offenders to atone or ‘make the victim whole’ in a constructive way [and] may be regarded as . . . a form of symbolic restitution when the community is the victim.”¹⁵

Research has increasingly paid attention to whether alternatives to incarceration are effective in meeting the goals of sentencing, including incapacitation, deterrence, retribution and rehabilitation, and has confirmed that they can, if implemented carefully. Studies have shown that offenders may perceive alternatives to incarceration as a harsher sentence than a term of imprisonment. One such study, conducted by Joan Petersilia and Elizabeth Piper Deschenes, on inmates’ perceptions of the severity of criminal sanctions, found “[w]hen the choice was simply prison versus standard probation, most everyone agreed that prison was more severe.”¹⁶ However, they argued that the picture is “no longer obvious,” with the emergence of intermediate sanctions, such as highly restrictive community-based punishments (which often require drug testing, employment, community service, and curfews). For example, in the study, Petersilia and Deschenes determined that inmates ranked 5 years of intensive probation supervision as harsher than 1 year in prison, but not as severe as 3 years imprisonment.¹⁷ In short, Petersilia and Deschenes concluded:

Information offered by inmates during the interviews suggests that while each individual condition might be easy to comply with, when conditions are stacked together—particularly over longer time periods—they become much more difficult . . . Our results provide empirical evidence to support what many have suggested: that it is no longer necessary to equate criminal punishment solely with prison. The balance of sanctions between probation and prison appears to have shifted, and at some level of intensity and length, intensive probation is the more dreaded penalty . . . The results of this study show that certain community-based sanctions are not a “slap on the wrist” and are judged quite punitive.¹⁸

To its credit, the Sentencing Commission is also finally responding to the changing tide. For the first time in its history, in July 2008, the USSC convened a national conference on the issue of alternatives to incarceration. Over a two-day period, the Sentencing Commissioners heard testimony from a variety of academic, legal, correctional, judicial, and political officials regarding the effectiveness

and application of alternatives to incarceration. As an invited speaker, I was pleased to have the opportunity to address the very same issues that I had spoken about 21 years earlier. Alternatives had now returned as a topic of conversation.¹⁹

In its continuing response to the implementation of alternatives, in January 2009, the USSC issued a research report titled, *Alternative Sentencing in the Federal Criminal Justice System*, with one of its conclusions being:

Effective alternative sanctions are important options for federal, state and local criminal justice systems. For the appropriate offenders, alternatives to incarceration can provide a substitute for costly incarceration.²⁰

III. A Brave New World

Perhaps as a result of these Sentencing Commission initiatives, and emboldened by a panoply of additional Supreme Court decisions²¹, there has been an increasing trend of sentencing alternatives to incarceration. One example is instructive.

This past January, NCIA had the opportunity to work with James Russ, Esq., on a difficult sentencing matter in the Middle District of Florida. Mr. Russ is a defense attorney with over 55 years of experience, and is considered by many to be a patriarch of the Florida Defense Bar, and an unwavering advocate for his clients. In this case, his client, following a hung jury at a first trial, was convicted at a second trial of one count of Conspiracy to Commit Honest Services Fraud. The sentencing guidelines for this defendant were 37–46 months, and the government, arguing enhancements, requested 108 months imprisonment.

In our combined sentencing memorandum, Mr. Russ argued for a sentence of probation, conditioned by a community service order and community confinement. NCIA provided testimony regarding the effectiveness of community-based alternatives, as well as research regarding sentencing disparity based on 18 USC §3553(a)(6). In imposing sentence, the Chief Judge of the Middle District of Florida varied under 18 U.S.C. §3553(a) factors and imposed a sentence of 18 months home confinement, 400 hours of community service, and 60 days of weekend confinement in a Community Corrections Center.²²

Numerous other examples of community service orders and alternative sentences imposed are available on our website.²³

IV. Back to the Future

In a 2008 case in the Eastern District of New York, the Honorable John Gleeson imposed a community service sentence in a fraud case with a loss of over \$150 million. His comments regarding the goals of sentencing and the value of alternatives are particularly encouraging:

In fact, you know, one might say, how could, no matter what the timing of the cooperation, no matter how

essential you were to the prosecution of the more culpable participants in this crime, how do you justify an intelligent, accomplished businessman such as yourself committing this type of crime and not being sent to jail, not being, having the punishment include that type of condemnation, the most significant form of condemnation a sentencing judge in a financial crime can mete out?

But nothing should ever be out of bounds and I've struggled with your lawyer's request, struggled with it throughout the presentations I've heard here, and I conclude that a sentence that doesn't include incarceration is appropriate here. Alternatives to incarceration exist that can carry both the community and this Court's condemnation of your conduct but channel it in a way that's more constructive, given your significant charitable works and contributions before this case, given the extraordinary timing of your cooperation and its nature, given your age and your physical circumstances. I don't think the goals of sentencing here require you to be incarcerated . . .

The combination of circumstances in your case makes you worthy of serving your punishment in a manner that's a little more constructive than going to jail.²⁴

In addition to an increased use of community service, other sentencing alternatives have become more popular, particularly as their effectiveness has been proven. Using global positioning system (GPS) devices, home monitoring agencies can now give real-time 24-hour locations of probationers. The Second Chance Act encourages expanded terms in halfway houses. Intermittent confinement is also readily available at facilities contracted at the local, state, and federal levels.

In determining the most appropriate sentence to meet the sentencing goals articulated in 18 U.S.C. §3553, sentencing alternatives can often be shown to be more effective than imprisonment. The US Supreme Court has empowered and instructed district court judges to consider every defendant individually, and it is now up to those who practice within the federal criminal justice system to take on the challenge of providing courts with all available options, independent of the severity of the guideline calculations and the government's routine arguments for maximum imprisonment. Sentencing alternatives are back, and should be a consideration in the majority of cases. As Judge Gleeson emphasized: ". . . nothing should ever be out of bounds."

V. Where Do We Go from Here?

Despite their potential value, both in human capital and in incredible cost savings, the future of alternatives in the federal system is still tenuous at best. The culture of punishment solely through imprisonment has permeated the system for so long that lawmakers, judges, district attorneys, and probation officers think that justice can only be satisfied through a sentence of incarceration. However, there are a number of strategies that could assist in

resurrecting the implementation of alternatives in the federal system. It would require a sea change of both policy and practice but, if implemented, could turn the Titanic of unbridled imprisonment around and send a message that the United States can once again operate a model criminal justice system. These strategies include:

A. Development of a Political Will

First, we must be strong in our resolve that rehabilitation of offenders is acceptable and worthwhile and can be achieved through well-funded, evidence-based programs in the community. This is easier said than done, but our political leadership has to finally understand that prisons are contributing to the crime problem and busting our budgets. Recidivism rates are obscene, prisons have become fertile breeding grounds for gang recruitment, and costs are out of control. It is a public safety issue to sentence a 19-year-old petty drug dealer to a five year prison sentence, committing taxpayers to a price tag of \$125,000 and then releasing him back into the community at the age of 24 with no training, no job skills and barriers to employment. Political leaders have to be able to understand and articulate this position, and vote against any future prison construction projects.

B. Promote Free Speech Among Correctional Leadership

I have attended criminal justice conferences for over 30 years and have not heard one state or federal correctional administrator testify that we can “build our way out of the crime problem.” Rather, the reverse is true; correctional administrators routinely argue that police must divert minor offenders, drug treatment programs must take more clients, mentally ill offenders should go to psychiatric facilities, medically fragile inmates should be released, and noncitizen inmates should serve their time in their own countries.

Yet in the federal system, when confronted by political and judicial questioning, correctional administrators revert to their mantra of “we can handle any inmate, any time, with whatever maladies the inmate has.” The political leadership has wanted to hear such arguments, and, to date, the Federal Bureau of Prisons (BOP) has not disappointed them.

Perhaps the time has come to allow them to speak freely without political repercussions. Perhaps the director of the BOP will tell Congress that the 50,000 noncitizen inmates in the BOP should be transferred to their own countries, and save us the expense of their incarceration. Perhaps the director will also tell Congress that we do not need to build an oncology center at the federal prison in Butner, North Carolina, and that existing compassionate-release procedures will be used to allow elderly inmates who are paralyzed, in need of transplants, or otherwise incapacitated to seek medical care in their own communities. Or perhaps they will tell Congress that they will honor the spirit of the Second Chance

Act, and authorize release of nonviolent inmates into halfway houses for 12 months, so they have a better opportunity for reentry.

C. Education of Judges and Other Court Officials

Over the years, a collateral consequence of the limited use of alternatives was the stifling effect on sentencing practice or knowledge. Currently, many assistant U.S. attorneys, defense attorneys, federal probation officers, and even federal judges have a limited and, in many instances anecdotal, knowledge of alternatives to incarceration. This is not necessarily their fault, as there is a general paucity of research and information concerning alternative sentences. Instead, research on federal guidelines has focused on the percentage of inmates sentenced within guideline sentences, and the volume and types of departures and monies collected through fines and restitution. Any analysis or debate regarding imposition of sentences that included home confinement, placement in halfway houses, or community service orders became footnotes, usually in appellate briefs.

Additionally, many of these same professionals entered their careers after the federal sentencing guidelines were enacted, limiting their perspective of a federal criminal justice system that, before the guidelines, operated on a completely different sentencing theory. While most actors in the criminal justice system can list the types of alternatives to incarceration or intermediate sanctions that are available, such as halfway houses, electronic monitoring, intensive supervision, day reporting, community service, and fines, these types of sanctions are predominantly thought of as being imposed after incarceration and not as the actual sentence itself. This, combined with the limited application of intermediate sanctions within the guidelines, lessens the information available to construct an alternative sentence.

For this reason, there needs to be a recommitment to education and advocacy regarding the use of alternatives to incarceration and how these alternatives can be applied, creatively and often in combination, to construct a sentence that is just as punitive, but more cost-effective, than a term of imprisonment. Along these lines, more research is needed that evaluates whether alternatives to incarceration, such as community service, can be effective in meeting the goals of sentencing. This will enhance judges' confidence that they are imposing a sentence that is proportional to the crime committed and that will provide adequate punishment.

D. The Culture of Federal Probation Must Change

The need for change in any organizational culture is a very sensitive subject, especially since most employees, including federal probation officers, do a professional job with what they have been taught. To make probation officers instrumental in recommending and implementing alternatives to incarceration, however, there must be a major cultural shift in how they view their responsibilities.

In the vast majority of federal sentencing, the probation officer has been relegated to a robotic role. They view their mission solely as calculating the most legally appropriate guideline range; recommending departures does not fall within their purview. Virtually all federal presentence reports have limited personal and professional history information, as this has been tangential to the guideline sentence.

Given the Supreme Court cases over the past 4 years, and the reduced role of the guidelines in the sentencing process, I suggest that there be both a cultural and practical revolution within the federal probation service. Probation officers should return to the practice before the guidelines of providing extensive background information to the sentencing courts, and even developing and recommending alternative sentences.

E. The Federal Bureau of Prisons Must Exercise Its Discretion

Finally, BOP must follow the lead offered by state prison systems and be more open to the use of alternatives to incarceration for inmates under their supervision. Due to budget constraints, states have been forced to create cost-effective solutions to the rising costs of imprisonment, which has resulted in the transfer of nonviolent offenders to community supervision, an increased use of electronic monitoring, and the development of drug courts. However, the BOP has held on to a narrow view that punishment can only be met through incarceration. The result has been soaring costs and reduced safety to inmates and staff alike. The BOP currently has the discretion to release offenders into Residential Reentry Centers for up to 12 months, and to release inmates to home confinement for the last 10% of their sentences. In addition, the BOP should lobby for a major expansion of its Residential Drug and Alcohol treatment program (RDAP), which they claim is one of their most successful programs and allows for continued treatment in the community, but has a waiting list of over 7,000 inmates.²⁵ Implementing any or all of these measures would be a good first step toward bringing alternatives into the federal system.

VI. Outlook

A recent op-ed piece in the *New York Times* on reforming the economy concludes with the supposition that

We are in one of those 'generational revolutions' that Jefferson said were as important as anything else to the proper functioning of our society. We can no longer pretend that our collective behavior as a nation for the past 25 years has been worthy of us as a people. Many of us hoped that Barack Obama's election would address the dire decline in our collective ethic.²⁶

Those of us advocating for change in the federal system echo these thoughts. It is time for the federal criminal justice system to return to its place as a model for the free world. Alternatives to incarceration can and should play a major role in that effort.

Notes

- ¹ Under the statute, "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing and the courts are required to consider "the nature and circumstances of the offense and the history and characteristics of the offender." 18 U.S.C. §3553(a) (2003).
- ² Testimony of Michael Block before the House of Representatives, Subcommittee on Criminal Justice (1989). *U.S. Sentencing Commission: Before the Subcomm. on Criminal Justice and the H. Comm on the Judiciary*, 101st Cong. (1989) (statement of Michael Block, Commissioner)
- ³ See MICHAEL TONRY, *SENTENCING MATTERS* (1996).
- ⁴ 18 U.S.C. §3553, 28 U.S.C. §994(j) (2006).
- ⁵ U.S. Sentencing Commission, *Alternatives to Imprisonment Project* (1990).
- ⁶ Bureau of Justice Statistics, *Prisoners under State or Federal Jurisdiction* (2005).
- ⁷ The Constitution Project, *Principles for the Design and Reform of Sentencing Systems: A Background Report* 28 (n.d.), available at www.constitutionproject.org/manage/file/34.pdf.
- ⁸ See *United States v. Milikowsky*; *United States v. Taubman*; and *United States v. Husein*.
- ⁹ U.S. Sentencing Commission, *Annual Report* 44 (2001).
- ¹⁰ *United States v. Bayly*, Sentencing Transcript (Apr. 21, 2005).
- ¹¹ *United States v. Woghin*, Memorandum and Order (Feb. 6, 2007).
- ¹² *Blakely v. Washington*, 542 U.S. 296 (2004).
- ¹³ *United States v. Booker*, 543 U.S. 220, 244-45 (2005).
- ¹⁴ Administrative Office of the U.S. Courts, Office of Probation and Pretrial Services, *Court & Community Informational Series: Community Service* (2005), available at <http://www.uscourts.gov/misc/revision-community.pdf>
- ¹⁵ *Id.*
- ¹⁶ Elizabeth Piper Deschenes & Joan Petersilia, *What Punishes? Inmates Rank the Severity of Prison vs. Intermediate Sanctions*, 58(1) *FED. PROBATION* 3 (1994).
- ¹⁷ *Id.* at 6.
- ¹⁸ *Id.* at 8.
- ¹⁹ U.S. Sentencing Commission, *National Symposium on Alternatives to Incarceration* (July 14-15, 2008).
- ²⁰ U.S. Sentencing Commission, *Alternative Sentencing in the Federal Criminal Justice System* 20 (Jan. 2009).
- ²¹ *Gall v. United States*, 552 U.S. 38 (2007); *Rita v. United States*, 551 U.S. 338 (2007); *Kimbrough v. United States*, 552 U.S. 85 (2007); *Nelson v. United States*, 552 U.S. , 129 S. Ct. 890 (2009)
- ²² *United States v. VanderLuitgaren*, (Jan. 30, 2009).
- ²³ See www.ncianet.org
- ²⁴ *United States v. Shamilzadeh*, (Apr. 1, 2008).
- ²⁵ U.S. Sentencing Commission, *supra* note 19 (statement of Beth Weinman, National Drug Abuse Coordinator).
- ²⁶ Sandy B. Lewis & William D. Cohan, *The Economy Is Still at the Brink*, *N.Y. TIMES*, June 7, 2009, at A9.