PLACEHOLDER FOR TESTIMONY OF

Sheriff Graham Atkinson
Surry County, NC
North Carolina Gang Investigators Association

UNITED STATES SENTENCING COMMISSION
ATLANTA, GA
FEBRUARY 10-11, 2009
PUBLIC HEARING

Panel Five
VIEW FROM THE DISTRICT COURT BENCH

PUBLIC HEARING
FEBRUARY 11, 2009
ATLANTA, GEORGIA

II. View from the District Court Bench **8:30 a.m. - 10:00 a.m.**

Honorable Bob Conrad Jr.
Chief District Judge, Western District of North Carolina

Honorable Gregory A. Presnell
District Judge, Middle District of Florida

Honorable Robert L. Hinkle
Chief District Judge, Northern District of Florida

Honorable William T. Moore Jr.
Chief District Judge, Southern District of Georgia

Honorable Robert J. Conrad, Jr.
Chief Judge, U.S. District Court for the Western District of North Carolina

Federal Judicial Service:
Judge, U. S. District Court, Western District of North Carolina
Nominated by George W. Bush on February 14, 2005, to a new seat created by 116 Stat. 1758; Confirmed by the Senate on April 28, 2005, and received commission on June 2, 2005. Served as chief judge, 2006-present. Nominated by George W. Bush to the U.S. Court of Appeals for the Fourth Circuit.

Education:
Clemson University, B.A., 1980
University of Virginia Law School, J.D., 1983

Professional Career:
Private practice, 1983-1988
Assistant U.S. attorney, U.S. Attorney's Office, Western District of North Carolina, 1989-2001
U.S. Attorney for the Western District of North Carolina, 2001-2005

Judge Robert Conrad, Jr., United States District Judge for the Western District of North Carolina

Judge Conrad has not issued any significant sentencing opinions since January, 2005. However, he has ruled on numerous § 3582(c)(2) reduction motions, of which the following cases are representative.

US v. Becks, 2008 WL 5236030 (W.D.N.C. Dec. 15, 2008) (holding that defendant was not eligible for a § 3582(c)(2) reduction where original sentence was based on 24-year statutory minimum).

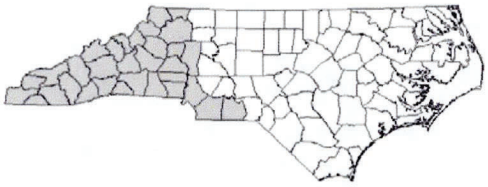
US v. Nesbit, 2008 WL 4772704 (W.D.N.C. Oct. 24, 2008) (granting crack reduction and imposing additional condition of supervised release that defendant spend up to 90 days at a residential reentry center).

US v. Howard, 2008 WL 4104575 (W.D.N.C. Aug. 29, 2008) (denying crack reduction where original sentence was based on money laundering guideline and crack guideline "did not affect the calculation of the guideline range").

US v. Lewis, 2008 WL 3925217 (W.D.N.C. Aug. 21, 2008) (denying crack reduction to eligible defendant where defendant was a key member in a crack conspiracy who moved to the area with the purpose of distributing drugs and protecting territory).

Fiscal Year 2008 Guideline Sentences

NORTH CAROLINA, Western



Average Age	Mean	Median
TOTAL	**35.2**	**33.0**
Male	35.3	33.0
Female	34.8	33.0

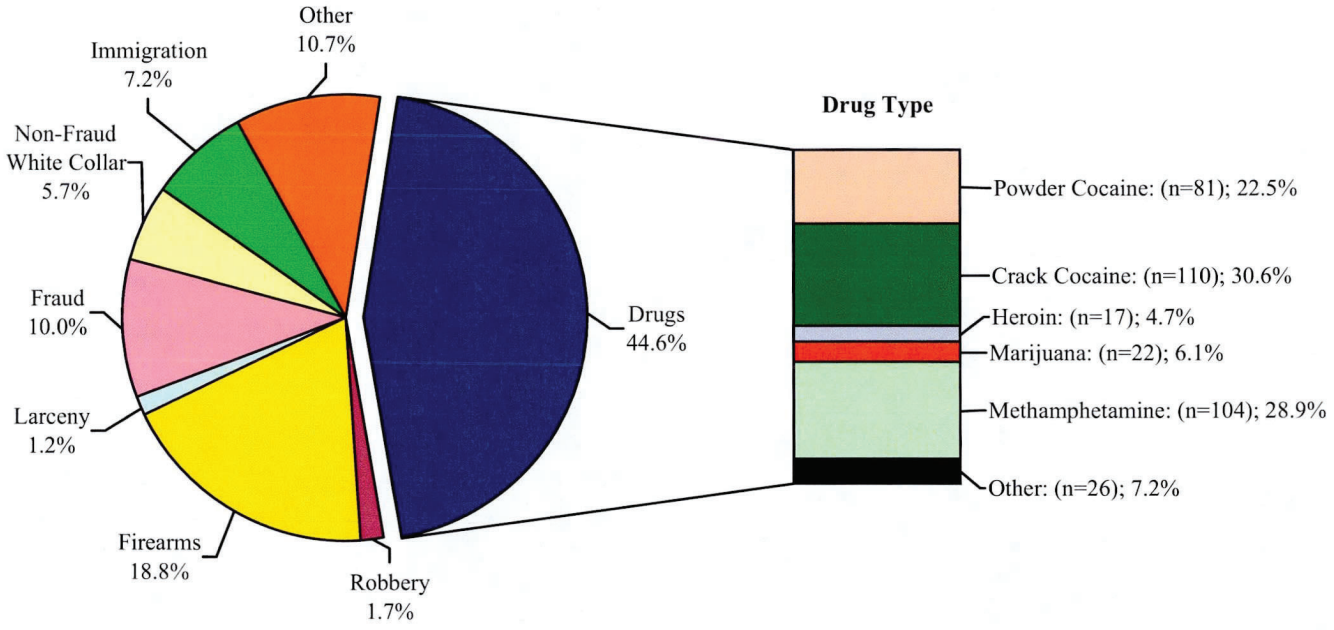
Mode of Conviction		
TOTAL	**807**	**100.0%**
Plea	771	95.5%
Trial	36	4.5%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**802**	**100.0%**	**730**	**91.0%**	**72**	**9.0%**
White	**302**	**37.7%**	260	86.1%	42	13.9%
Black	**283**	**35.3%**	266	94.0%	17	6.0%
Hispanic	**171**	**21.3%**	162	94.7%	9	5.3%
Other	**46**	**5.7%**	42	91.3%	4	8.7%

Departure Status

TOTAL	**800**	**100.0%**
Sentenced Within Guideline Range	515	64.4%
Upward Departure from Guideline Range	5	0.6%
Upward Departure with *Booker*/18 U.S.C. § 3553	3	0.4%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	4	0.5%
All Remaining Cases Above Guideline Range	1	0.1%
§5K1.1 Substantial Assistance Departure	208	26.0%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	8	1.0%
Downward Departure from Guideline Range	10	1.3%
Downward Departure with *Booker*/18 U.S.C. § 3553	6	0.8%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	29	3.6%
All Remaining Cases Below Guideline Range	11	1.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

ROBERT J. CONRAD, JR.
CHIEF UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF NORTH CAROLINA

United States Sentencing Commission
Regional Hearings on the Twenty-Fifth Anniversary
of the
Passage of the Sentencing Reform Act of 1984

February 11, 2009

VIEW FROM THE BENCH

Introduction

On January 21, 2009, the Supreme Court issued what may be its most recent proclamation on federal sentencing; I did not check Westlaw this morning before coming here to see what else has changed. In *Spears v. United States*,[1] the Supreme Court summarily reversed the Eighth Circuit Court of Appeals and held that a district court judge is entitled to reject and vary categorically from the crack cocaine Guidelines based upon the sentencing judge's personal policy preference regarding the appropriate ratio between crack and powder cocaine offenses.

Chief Justice Roberts was troubled by the "bitter medicine of summary reversal" and wrote:

> *Apprendi, Booker, Rita, Gall and Kimbrough* have given the lower courts a good deal to digest over a relatively short period. We should give them some time to address the nuances of precedents before adding new ones. As has been said, a plant cannot grow if you constantly yank it out of the ground to see if the roots are healthy.[2]

The per curiam majority dished back the culinary metaphor:

> The dissent says that "*Apprendi, Booker, Rita, Gall and Kimbrough* have given the lower courts a good deal to digest over a relatively short period." True enough--and we should therefore promptly remove from the menu the Eighth Circuit's offering, a smuggled-in dish that is indigestible.[3]

If the United States Sentencing Commission Guidelines can cause this much heartburn at the highest court, who am I, a judge of an inferior court, to serve up my own critique. Well, I sit

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[1] *Spears v. United States*, No. 08-5721, 2009 WL 129044 (U.S. Jan. 21, 2009).

[2] *Spears*, No. 08-5721, 2009 WL 129044 at *6.

[3] *Spears*, No. 08-5721, 2009 WL 129044 at *4.

slightly easier at the table joined in spirit with Judge Michael McConnell of the Tenth Circuit, who, when placed in the same predicament, wrote:

> If that seems a presumptuous thing for an inferior court judge to say about the product of his superiors, I take comfort in the fact that eight of the nine Justices agree with me that either the Sixth Amendment holding or the remedial holding is wrong, and that the two do not fit together.[4]

Personal Background

The Sentencing Reform Act of 1984 and I began our legal careers at roughly the same time. Shortly after graduating from the University of Virginia School of Law in 1983, I began representing criminal defendants in state and federal court as part of my legal practice. In January 1989, I moved over to the prosecution table, serving for twelve years as an Assistant United States Attorney and for the three years as United States Attorney. In June 2005, I began sitting in the judge's chair in federal district court, and from that vantage point have presided over more than seven hundred felony sentencing hearings.

I also stand at the professor's lectern, teaching a Sentencing Law course at the Wake Forest University School of Law as an adjunct professor. I am indebted to Dean Blake Morrant and Associate Dean Ronald Wright for the privilege of trying to explain the intricacies of the federal sentencing Guidelines, and the legal reasoning behind them, to very talented law students. I note Dean Wright is on the panel from Academia following this one.

Observations

The apparent gut-churning in the Supreme Court evidenced by the cases already mentioned evokes a memory of Dr. Peter Venkman, the eminent para-normal scientist played by Bill Murray in the movie *Ghostbusters*. He had been pursuing a beautiful woman throughout the movie, but his moment of opportunity came only after an evil spirit possessed her. Face-to-face with the enigma of desiring what he knew he could not have, he reconsidered, saying:

> I make it a rule never to get involved with possessed people. Actually, it's more like a guideline than a rule . . .

It seems like the Guidelines, which used to be more like rules, are becoming more like guidelines all the time. Of course, the allusion to "possessed people" is in no way intended to be descriptive of the Sentencing Commission.

The *Apprendi, Booker, Rita, Gall,* and *Kimbrough* decisions have indeed given us all "a good deal to digest." Out of my experiences of sitting in different chairs in the federal

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[4] Michael W. McConnell, The Booker Mess, 83 Denv. U. L. Rev. 665, 677 (2006).

courtroom, let me make a few brief observations regarding the Supreme Court's recent interpretation of the Guidelines.

Heartland

First, I applaud the Sentencing Commission for giving prosecutors, defense attorneys, probation officers, and judges an empirically based "heartland" from which to start the sentencing process.

I have found that the most difficult task for me as a judge is to sentence another human being. Human tragedy is reflected in each hearing. The responsibility to judge wisely and compassionately, while balancing the need to protect society, deter crime, provide just punishment, and aid the effort at rehabilitation, weighs heavily on the heart.

I would feel at a loss in those tough moments of decision if I only had my own idiosyncratic preferences or anecdotal experience to follow. Instead, for the past twenty-five years, judges have had a beneficial resource to consult which reflects, for the most part, the sentencing practices of colleagues across the country and across the years. Thus, I differ with a fellow judge on my district bench who once said publically that the Guidelines would "gag a maggot." No such animal cruelty has occurred.

The systematic approach provided by the Guidelines system has brought order, consistency, and rationality to federal sentencing law. Combined with the appropriate exercise of judicial discretion recognized *Booker*, courts are equipped and empowered to render reasoned sentencing decisions, grounded in past practice and statutory purposes, achieving just sentences in particular cases.

Guideline Goals

Given the potential benefits of the Guidelines, it is healthy to ask whether the goals of transparency, uniformity and proportionality are being achieved.

Here, again, the Commission and Congress are to be commended for achieving the goal of transparency rather significantly. The elimination of parole has provided honesty in sentencing, which is critically important to crime victims and the public. Procedural safeguards, including the preparation of pre-sentence reports, the opportunity to object to information included in them, and full hearings can give defendants greater confidence in the fairness of the sentencing process. Much of the arbitrariness, idiosyncracy, and hiddenness inherent in an indeterminate sentencing scheme has been replaced by an ordered, transparent system.

The goals of uniformity and proportionality are often in tension, and the achievement of them has been complicated largely by the obligation to impose mandatory minimums sentences in certain cases.

Mandatory Minimums

Statutory mandatory minimum punishments, and the Guidelines written to implement them, achieve the goal of uniformity sometimes at the cost of unjust sentences. This is so because the most common mandatory minimums are triggered solely by drug type and quantity and/or criminal history. Such a myopic focus excludes other important sentencing factors normally taken into view by the Guidelines and deemed relevant by the Commission, such as role in the offense, use of violence, the presence of a firearm, and use of special skill. The inability to tailor sentences based on these and other factors results in similar sentences for defendants whose actual conduct was dramatically different and disparate sentences for defendants who are actually similarly situated.

The Guidelines themselves are marred by the obligation to impose mandatory minimum sentences. Typically, Guideline ranges increase proportionally with aggravating factors and criminal history. Guideline ranges influenced by mandatory minimums contain large jumps in sentence length or "cliffs" based on small differences in offense conduct or a defendant's criminal record.

In too many cases a sledge hammer is the only tool available to dispatch a fly. Sentencing decisions are always difficult, but the required application of mandatory minimums in cases where they are not warranted is repugnant. Last year, I was forced to impose a life sentence on a low-level drug conspirator in a large-scale drug-trafficking ring. The individual's role was essentially that of a chauffeur for a major drug dealer who cooperated and received a reduced sentence. The chauffeur had two prior state drug convictions for transactions occurring close in time for relatively insignificant amounts, resulting in little or no actual jail time. Since this was his third offense, I imposed the applicable statutory mandatory minimum of life imprisonment. The sentence was not just and served no statutory purpose. I can tell you that I did not sleep well the night before the sentencing hearing knowing what was coming; afterwards, I did not feel that I had contributed to the furtherance of a just society.

Mandatory minimums have the most potential for disproportionate sentencing in the "stacking" of Title 18, United States Code, Section 924(c) charges. The statute requires mandatory minimum sentences to be served consecutively to all other terms of imprisonment, and the minimum increases from five to twenty-five years for a second or subsequent violation. For example, if a low-level conspirator brought a firearm to a series of three undercover deals, he would face fifty-five years in jail for possessing the gun, regardless of whether it was actively used, and regardless of the drug charges.

Understandably, mandatory minimums are created by the Congress, not the Sentencing Commission. Nonetheless, the Commission's decision to depart from empirical data to cluster Guideline ranges around the statutory minimums makes them less reliable as a sentencing guide. Ultimately, the goal of uniformity must yield to the imperative of doing justice in individual cases.

Re-entry Programs

Justice in individual cases is being aided by new techniques and programs being utilized in supervising offenders. As my colleague and friend Greg Forest, Chief United States Probation Officer in the Western District of North Carolina, said yesterday, efforts are being made by Probation Offices to promote empirical measures such as the use of evidence-based practices in the supervision of defendants and offenders.

To this end, the Office of Probation and Pretrial Services at the Administrative Office of the United States Courts should be encouraged to continue grant funding to implement evidence-based supervision practices. Programs such as risk/needs assessment, motivational interviewing, cognitive-behavioral techniques, offender workforce development, and re-entry programs based on drug court models hold out hope for decreasing recidivism. Therefore, they should be promoted by Congress, the Commission, and the Administrative Office of the Courts and considered by sentencing judges.

I welcome such attention as that recently given by the Commission to Alternative Sentencing in the Federal Criminal Justice System through its 2008 Symposium and publication on the same topic. Effective alternative sanctions are important options in the federal criminal justice systems. For appropriate offenders, alternatives to incarceration can provide a substitute for costly confinement. Ideally, alternatives also provide those offenders opportunities by diverting them from prison (or reducing time spent in prison) and into programs providing the life skills and treatment necessary to become law-abiding and productive members of society. Efforts to assist felons assimilate productively into society under the auspices of "Second Chance" efforts, workforce development initiatives, and re-entry programs should be encouraged.

Sentencing After Booker

An unfortunate by-product of the Guidelines system has been the diminution in passionate sentencing advocacy by defense and government attorneys. In its place, a hyper-technical accounting practice has arisen, focusing battles on sub-sections and application notes, straining out issues such as minor v. minimal participant or organizer v. manager. I often wonder what a criminal defendant, his family, a victim, or the public thinks when exposed to such legal proceedings. As if there are not already enough lawyer jokes. What should not have been lost, and what I hope will be regained following *Booker* and its progeny, is a focus on the statutory purposes of sentencing (just punishment, deterrence, incapacitation, and rehabilitation) and how the Guidelines achieve them, or not, in individual cases.

Yet, the inferior courts have been instructed to first get the Guideline calculations right, which means devoting substantial amounts of time to litigating the applicability of various adjustments. Next, we have been instructed to consider departures under the Guidelines, followed by variances outside the Guidelines, all the while tasting the soup at each stage to see if a "sufficient but not greater than necessary" sentence has crafted. Adding to the complexity of

this multi-course meal are new appellate recipes directing the cooking that is already underway in the kitchen. We must be mindful that district courts are not quaint bistros; a large number of patrons have legitimate expectations of speedy service and we are already operating on a waiting list. Of course, McJustice, a pragmatic, formula-based approach to sentencing without individual consideration, is not a suitable alternative if the goal of proportionality is to be achieved.

The last few years have been a time of tremendous change in federal sentencing practice. Maybe we do need a little time to digest.

Honorable Gregory A. Presnell
Judge, U. S. District Court, Middle District of Florida

Federal Judicial Service:
Judge, U. S. District Court, Middle District of Florida
Nominated by William J. Clinton on June 8, 2000, to a new seat created by 113 Stat. 1501;
Confirmed by the Senate on July 21, 2000, and received commission on July 31, 2000.

Education:
College of William and Mary, B.A., 1964
University of Florida College of Law, J.D., 1966

Professional Career:
U.S. Army Reserve, 1967-1973
Private practice, Orlando, Florida, 1966-2000

Judge Gregory A. Presnell, United States District Judge for the Middle District of Florida

***United States v. Doktor*, No. 6:08-cr-Orl-31DAB, 2008 WL 5334121 (M.D. Fla. Dec. 19, 2008)**: The defendant pleaded guilty to one count of possessing child pornography. The defendant was subject to a guideline range of 57-71, however, the court sentenced the defendant to 36 months in prison. At the conclusion of the sentencing hearing, the government had objected on procedural grounds based on court's statements "concerning the efficacy of Sec. 2G2.2." The court stated that it "was critical of [§2G2.2] because it was not based on empirical data or the sentencing expertise of the Commission." The court then cited the Stabenow article. The court held that the government's objection was without merit and "fails to acknowledge recent Supreme Court precedent that confirms the District Court's right to consider the weight to be given the Guideline score in the context of applying the 18 U.S.C. § 3553(a) factors." According to the court:

> While the Court must properly calculate the Sentencing Guidelines score and consider it as the starting point in the analysis, there is no specific weight that must be accorded to it. Indeed, the weight to be given the Guidelines score lies within the Court's discretion, when considered in the context of the Section 3553(a) factors, and may include policy-related criticism of the particular Guideline itself.

***United States v. Atwell*, 574 F. Supp. 2d 1260 (M.D. Fla. Aug. 4, 2008)**: Order regarding the defendant's eligibility for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c). The defendant argued that he was entitled to a further reduction in his sentenced pursuant to *Booker*. The court disagreed holding that *Booker* does not apply in this case, and adopting Judge Steele's Opinion in *United States v. Speights*, 2008 U.S. Dist. LEXIS 10356 (S.D. Ala. June 23, 2008) "to be a sound and accurate statement of the reasons why *Booker* does not apply to § 3582 resentencings." On motion for reconsideration, the Court held that "[t]he Commission's determination to limit crack reductions to two guideline levels is consistent with the lawful delegation of that authority by Congress."

***United States v. Dullea*, No. 6:07-cr-214-Orl-31DAB, 2008 WL 816819 (M.D. Fla. Mar. 25, 2008)**: The court determined that the defendant's prior sex conviction—for which the defendant had received a ten-day sentence—subjected the defendant to a ten-year mandatory minimum sentence pursuant to 18 U.S.C. § 2252A(b)(2) At the end of its opinion, the court expressed its displeasure with mandatory minimum sentences. The court's statement follows:

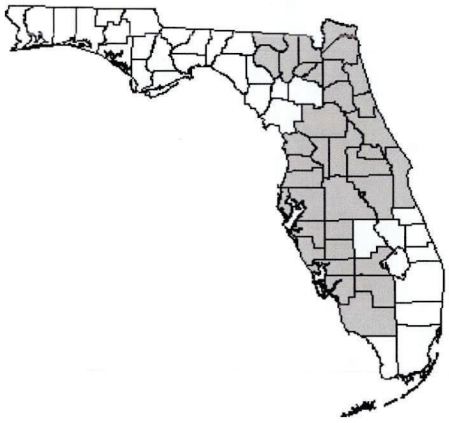
> [T]he crime that [D] committed nearly twenty years ago, a crime that, in the eyes of the Massachusetts legislature and the Massachusetts judiciary, warranted but ten days in jail, now results in his spending at least five additional years behind bars. Congress certainly possesses the authority to require harsher sentences for habitual criminals. And most would agree that harsher sentences are warranted for those who have already demonstrated that the standard punishment is an insufficient deterrent. However . . . a ten day sentence, two decades later, translating into another five years? It is said that the surest way to have the laws respected is to make them respectable. The courts are commanded, when

> imposing a sentence, to consider the need for the sentence imposed "to promote respect for the law." It is difficult to see how the public can respect the unjust sentences that too often result from mandatory minimum sentencing laws. Nevertheless, the Court is duty-bound to impose the sentence selected by the Congress in this instance.

***United States v. Vazquez*, No. 6:04-cr-212-Orl-31DAB, 2008 WL 252641 (M.D. Fla. Jan. 30, 2008)**: This case came before the court on remand from the Eleventh Circuit. The court had given the defendant a 110-month sentence despite the fact that the defendant's guideline range was 210-262 months in prison. The Supreme Court released its decision in *Kimbrough* after the Eleventh Circuit's remand. The court made a statement regarding §4B1.1, specifically stating that "[l]ike the crack/powder disparity involved in *Kimbrough*, the recidivism enhancement employed in U.S.S.G. 4B1.1 is an embodiment of congressional policy. However, *Kimbrough* involved an issue of implied congressional policy, whereas the 4B1.1 enhancement is a product of direct congressional expression. Thus, it may be that 4B1.1 is immune from the policy criticisms otherwise permissible." The court ultimately, however, did not base its decision on policy concerns with §4B1.1 and held that a sentence of 180 months imprisonment complied with the § 3553(a) factors.

Fiscal Year 2008 Guideline Sentences

FLORIDA, Middle



Average Age	Mean	Median
TOTAL	**35.7**	**34.0**
Male	35.6	33.0
Female	36.6	36.0

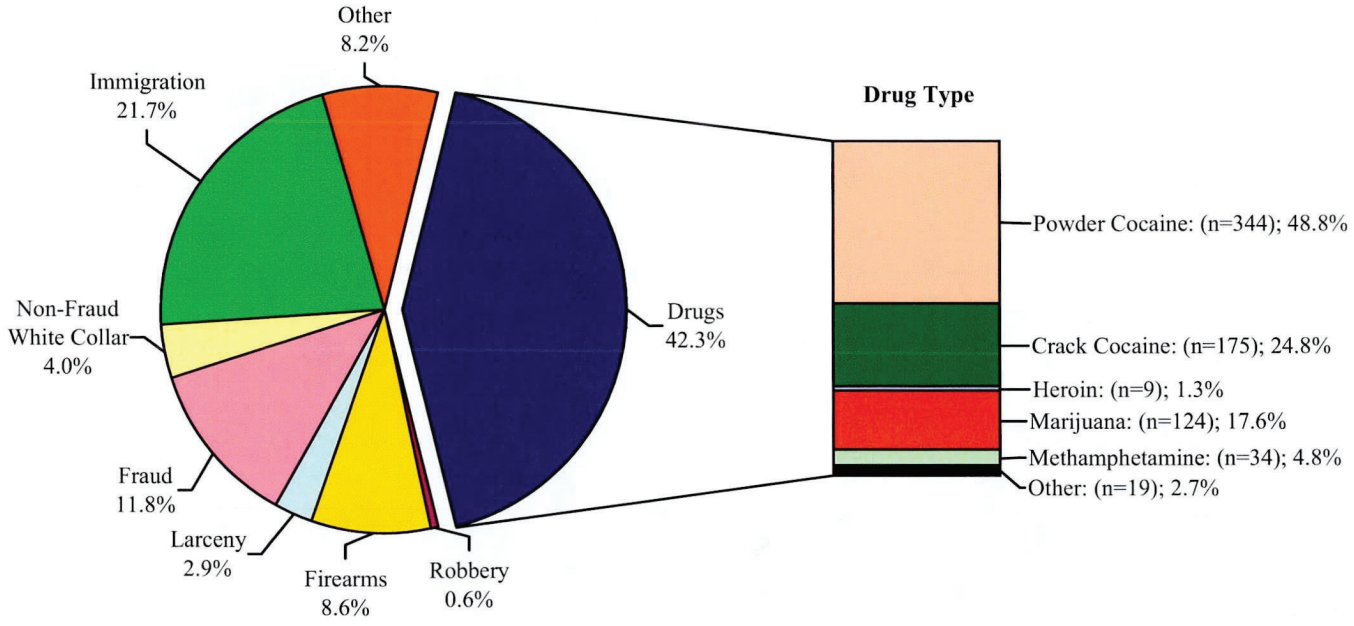
Mode of Conviction		
TOTAL	**1,669**	**100.0%**
Plea	1,570	94.1%
Trial	99	5.9%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**1,654**	**100.0%**	**1,497**	**90.5%**	**157**	**9.5%**
White	**457**	**27.6%**	395	86.4%	62	13.6%
Black	**448**	**27.1%**	395	88.2%	53	11.8%
Hispanic	**742**	**44.9%**	701	94.5%	41	5.5%
Other	7	**0.4%**	6	85.7%	1	14.3%

Departure Status

TOTAL	**1,664**	**100.0%**
Sentenced Within Guideline Range	1,027	61.7%
Upward Departure from Guideline Range	1	0.1%
Upward Departure with *Booker*/18 U.S.C. § 3553	1	0.1%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	9	0.5%
All Remaining Cases Above Guideline Range	1	0.1%
§5K1.1 Substantial Assistance Departure	328	19.7%
§5K3.1 Early Disposition Program Departure	30	1.8%
Other Government-Sponsored Below Guideline Range	22	1.3%
Downward Departure from Guideline Range	21	1.3%
Downward Departure with *Booker*/18 U.S.C. § 3553	15	0.9%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	203	12.2%
All Remaining Cases Below Guideline Range	6	0.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Comments to the United States Sentencing Commission
Atlanta, Georgia
February 11, 2009

by Gregory A. Presnell
United States District Judge
Middle District, Florida

I appreciate the opportunity to appear before you today to share my thoughts about federal sentencing issues.

For those of you who have read my opinions, you know that I have been a vocal critic of the Sentencing Guidelines.[1] My objections have been twofold:

(1) Under mandatory Guidelines, the role of the judiciary was minimized to the point that it threatened judicial independence, and reduced district judges to a mere figurehead, rubber-stamping its imprimatur on the predetermined sentence chosen by the government. In essence, the Court became irrelevant in our criminal justice system; and

(2) The Guideline score often produced arbitrary and grossly unjust sentences.

My first concern has largely been resolved by a series of recent Supreme Court cases: *Booker*, *Kimbrough*, and now *Spears*.

But the lesson from these cases is not only that trial judges now have discretion in the sentencing process.

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[1] *See US v. Belvett*, 2005 U.S. Dist. LEXIS 4659, 18 Fla. L. Weekly Fed. D 372 (M.D. Fla. March 17, 2005); *US v. Hamilton*, 428 F. Supp. 2d 1253 (M.D. Fla. 2006); *US v. Williams*, 481 F. Supp. 2d 1298 (M.D. Fla. 2007); *US v. Delgado*, 2005 U.S. Dist. LEXIS 29966 (M.D. Fla. June 7, 2005); *US v. Miranda-Garcia*, 2006 U. S. Dist. LEXIS 26574 (M.D. Fla. May 4, 2006); *US v. Vasquez*, 2008 U.S. Dist. LEXIS 6984 (M.D. Fla. January 30, 2008).

More importantly, from the Commission's standpoint, judges are now free to consider the weight or effect to be given a particular Guideline based on the Court's view the Guideline's vitality.

And that brings me to my second point. It is now the Sentencing Commission which may become irrelevant, if it continues to promulgate and promote sentencing formulae which the judiciary disregard because of their perceived arbitrariness and lack of empirical foundation. Let me give three examples.

(1) The crack/powder cocaine disparity. The sentencing variance between two substances which are chemically identical and which adversely affects a racial minority defies logic and promotes disrespect for the law, contrary to the mandate of 18 U.S.C. 3553(a).[2] Amendment 706 does little to correct this imbalance.

(2) Illegal re-entry under 2L1.2. The enhancements from 4 to 16 points based upon arbitrary steps of prior criminal conduct often produce grossly unjust results.[3] It would be far better, in my opinion, to simply apply an enhancement range (*e.g.* 2-16 levels) based on the Court's assessment of the seriousness of the prior criminal conduct.

(3) Possession of child pornography under 2G2.2. Sec. 2G2.2 of the United States Sentencing Guidelines has been the subject of much recent criticism by scholars and judges because it is not based on any empirical date or institutional analysis. Thus, because the Guideline is not the product of the Sentencing Commission's institutional strength, and because the Guideline is inherently illogical, many courts have afforded it less deference than it would with an empirically-grounded Guideline. *See e.g. US v.*

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[2] *U.S. v. Hamilton*, 428 F. Supp. 2d 1253 (M.D. Fla. 2006)

[3] *U.S. v. Salazar-Pacheco*, No. 6:05-CR-137 (M.D.Fla. Jan. 20, 2006)

Baird, 580 F. Supp. 2d 889 (D.C. Neb. 2008); *US v. Hanson*, 561 F. Supp. 2d 1004 (E.D. Wis. 2008); *U.S. Shipley*, 560 F. Supp. 2d 739 (SD Iowa 2008); *U.S. Grober*, 2008 WL 5395768 (D. NJ. 2008).

In conclusion, the common law of federal sentencing must be allowed to evolve, and the Commission, if it is to maintain its relevance, must observe and take into account what trial judges are doing and saying.[4] After all, it is the district bench that is on the front line of these issues. We are the ones who have to make the daily hard decisions that affect people and society as a whole in our sentencing decisions.

Judges in my view want guidance. No one wants a return to the pre-Guideline free-for-all which produced vastly different sentences for the same criminal conduct. But, the guidance must be based on the collective wisdom of the actual sentencing process, and not simply a mandate derived from the Commission's notion of sentencing policy, or the desire to placate the apparent will of Congress.

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[4]*See U.S. v. Williams*, 481 F. Supp. 2d 1298 (M.D. Fla. 2007)

Honorable Robert L. Hinkle
Chief Judge, U. S. District Court, Northern District of Florida

Federal Judicial Service:
Judge, U. S. District Court, Northern District of Florida
Nominated by William J. Clinton on June 6, 1996, to a seat vacated by William H. Stafford, Jr.; Confirmed by the Senate on July 25, 1996, and received commission on August 1, 1996. Served as chief judge, 2004-present.

Education:
Florida State University, B.A., 1972
Harvard Law School, J.D., 1976

Professional Career:
Law clerk, Hon. Irving Goldberg, U.S. Court of Appeals for the Fifth Circuit, 1976-1977
Private practice, Atlanta, Georgia, 1977-1978
Private practice, Tallahassee, Florida, 1978-1996
Adjunct professor of law, Florida State University, 1981

Judge Robert L. Hinkle, Chief Judge, Northern District of Florida

Judge Hinkle has written a number of "Order[s] Establishing Procedures on Possible Sentence Reduction Under Amendment 706" and/or Amendment 715. The orders either "provide[] notice of [the court's] intention to consider a reduction and establish[] a procedure under which the government must, and [the defendant] may, address the issue," or deny relief—typically because the defendant is a career offender or because the offense involved a drug other than crack cocaine. These orders use the same boiler-plate language, some of which follows:

> When the Sentencing Commission adopts an amendment reducing a guidelines range, the Commission has express statutory authority-indeed, it may even have a statutory duty-to determine whether and under what circumstances courts will be allowed to apply the amendment retroactively to sentences imposed prior to the amendment's effective date. . . .
>
> When the Commission determines that an amendment may be applied retroactively, a court may reduce a sentence, but only under the circumstances and to the extent specified by the Commission. The court may act on its own motion or on motion of a defendant or the Bureau of Prisons. . . .
>
> The "applicable policy statements issued by the Commission," within the meaning of § 3582(c)(2), are set forth in Guidelines Manual § 1B1.10. As set forth there, proceedings under § 3582(c) (2) "do not constitute a full resentencing of the defendant." *Guidelines Manual* §1B1.10(a)(3). Reductions under § 3582(c)(2) thus may be-and most commonly have been-handled on written submissions, without a hearing.
>
> Acting under its § 994(u) authority, the Commission amended Guidelines Manual § 1B1.10 to include Amendments 706 and 715 in the list of retroactive amendments. The Commission imposed explicit limitations. First, a court must not make a reduction unless Amendments 706 and 715 change the defendant's guideline range. *See Guidelines Manual* §1B1.10(a)(1). Second, the Commission limited the extent of any reduction. For a sentence within the original guideline range, a reduced sentence must not be below the low-end of the amended guideline range. *See Guidelines Manual* §1B1.10(b)(2)(A). But for a sentence that was below the original guideline range, a reduction to a sentence "comparably less than the amended guideline range . . . may be appropriate." *Guidelines Manual* §1B1.10(b)(2)(B). Finally, the reduced term of imprisonment must not be less than any applicable minimum mandatory sentence, nor less than the time the defendant has already served.
>
> *Unless and until otherwise ordered, I intend to apply these limitations exactly as Congress and the Sentencing Commission imposed them. It is true, of course, that arguments can be made for a broader or more limited approach. This order is not intended to prejudge these issues. But the burden will be on the party challenging congressional or Sentencing Commission action, and there is no*

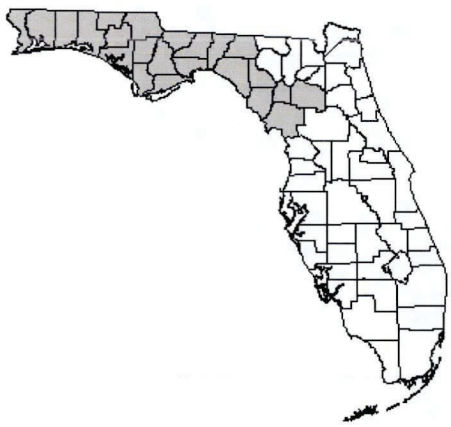
> *reason to delay consideration of an explicitly authorized reduction while more esoteric legal issues are briefed.* By this order I announce my intention to consider only a sentence reduction authorized by the terms of the governing statutes and Sentencing Commission actions. . . .
>
> Any reduction is discretionary. In deciding whether and how much to reduce a defendant's sentence (within the limitations set forth above), a court may consider the sentencing factors listed in 18 U.S C. § 3553(a), the nature and seriousness of the danger that a reduction would pose to any person or the community, and the defendant's post-sentencing conduct. *See Guidelines Manual* §1B1.10, cmt. n. 1(B).

United States v. Spencer, No. 4:97cr42-RH, 2008 WL 4058025 (N.D. Fla. Aug. 26, 2008) (emphasis added). Judge Hinkle has also specifically rejected a defendant's claim that the court may reduce a defendant's sentence beyond the two-level reduction authorized by Amendment 706 pursuant to *Booker*. *See, e.g.*, *United States v. Walden*, No. 4:97cr36-RH, 2008 WL 4057648 (N.D. Fla Aug. 25, 2008) (rejecting the defendant's argument that *Booker* applies to Amendment 706 resentencings, and stating that the defendant's "proposition is not easily squared with the law of the circuit, under which *Booker* is not retroactive," or the "notion that a reduction of a sentence that has become final and not subject to challenge is a matter of grace that may be limited as Congress (either directly or by delegation of authority to the Sentencing Commission) sees fit").

Staff did not find any other relevant sentencing memoranda.

Fiscal Year 2008 Guideline Sentences

FLORIDA, Northern



Average Age	Mean	Median
TOTAL	**34.6**	**31.0**
Male	34.4	31.0
Female	36.5	34.0

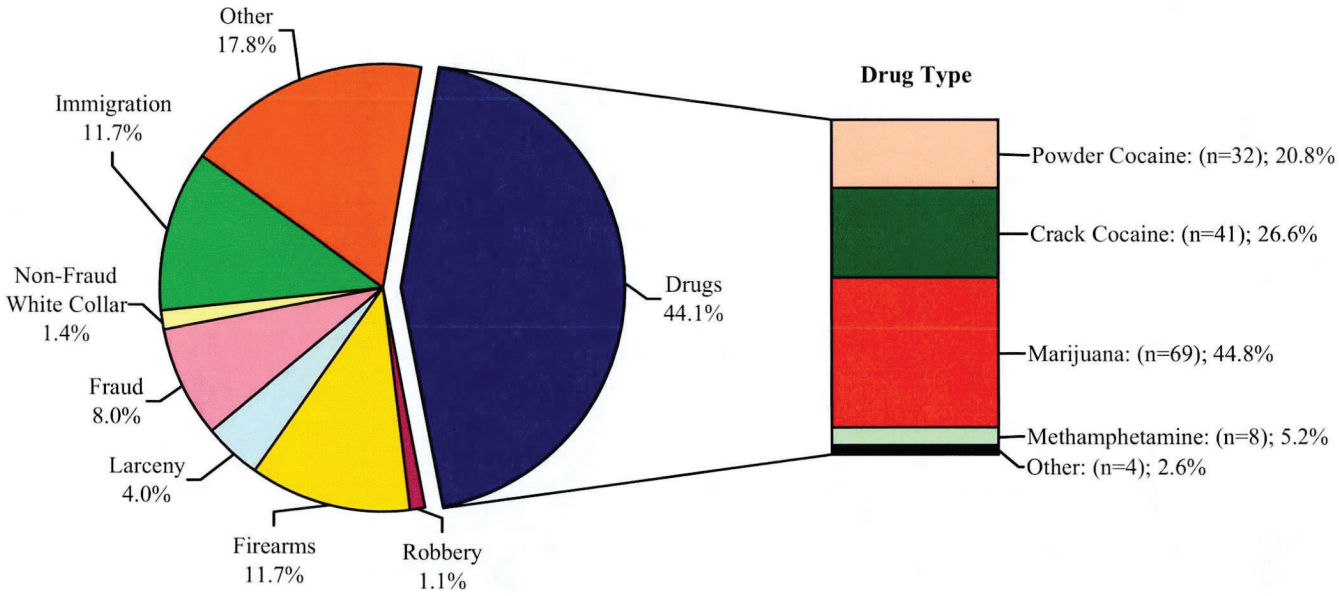
Mode of Conviction		
TOTAL	**351**	**100.0%**
Plea	314	89.5%
Trial	37	10.5%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**339**	**100.0%**	**302**	**89.1%**	**37**	**10.9%**
White	**130**	**38.3%**	104	80.0%	26	20.0%
Black	**127**	**37.5%**	123	96.9%	4	3.1%
Hispanic	**77**	**22.7%**	71	92.2%	6	7.8%
Other	**5**	**1.5%**	4	80.0%	1	20.0%

Departure Status

TOTAL	**338**	**100.0%**
Sentenced Within Guideline Range	239	70.7%
Upward Departure from Guideline Range	1	0.3%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	5	1.5%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	66	19.5%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	0	0.0%
Downward Departure from Guideline Range	4	1.2%
Downward Departure with *Booker*/18 U.S.C. § 3553	1	0.3%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	20	5.9%
All Remaining Cases Below Guideline Range	2	0.6%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

STATEMENT OF
DISTRICT JUDGE ROBERT L. HINKLE
BEFORE THE
UNITED STATES SENTENCING COMMISSION

Atlanta, Georgia
February 11, 2009

Introduction

Judge Hinojosa and members of the Commission: thank you for inviting district judges to provide comments this morning. With the press of business, we who are involved in federal sentencing on a day-to-day basis rarely have occasion to step back and reflect on the overall process. The 25th anniversary of the Sentencing Reform Act provides an occasion for a long view, and I commend the Commission for taking that on.

When I was asked to testify, I was reluctant, because it has been my practice never to comment publicly on the wisdom of the guidelines or of congressional or Sentencing Commission actions affecting sentencing. I like it when the Congress and the Commission do not comment on particular decisions of mine, and I try to return the courtesy. But you of course won't know how the guidelines are really working in the hinterlands unless we tell you, and so I accepted the invitation.

The views I express are mine alone, and I should add that for the most part, these views have no effect on my sentencing decisions.

Overall Assessment of Guideline Sentencing

I suspect if you put to a vote the question whether we should retain the

guidelines or go back to judicial discretion as it existed prior to 1984, most prosecutors would vote to keep the guidelines, but most defense attorneys would not. If you divided every guideline range by 10, however, so that a range of 121 to 151 became instead 12 to 15, I think the vote would flip. Most defense lawyers but few prosecutors would vote to keep the guidelines. As prosecutors or defense lawyers comment in favor of or in opposition to the guidelines, I suspect the motivating force will most often be the length of sentences, not the wisdom of having guidelines.

For myself, I would retain the guidelines, though not without some reservations. I think the state of guideline sentencing is better since *Booker*. My reasoning departs somewhat from that usually offered in support of the guidelines.

The most common theme trumpeted by guideline advocates is the need to eliminate unwarranted sentence disparity. One hears often that in the old days there were substantial unwarranted disparities from district to district and even from judge to judge within the same courthouse. The guidelines have reduced the disparity. But much disparity remains—and it did, even before *Booker*. There is disparity that your statistics do not and cannot measure. By happenstance, one defendant provides information to the prosecutor first and benefits from § 1B1.8, but a codefendant comes in later and thus faces a markedly higher offense level. In one district a defendant is tagged only with the drugs involved in a specific transaction; in another the concept of relevant conduct is applied more broadly,

and the offense level skyrockets. In one district the government files a notice of the defendant's prior convictions under 21 U.S.C. § 851 and the defendant thus faces a long minimum mandatory sentence; in another district the government chooses not to file the notice. A thousand other examples could be given. Your statistics showing the number of sentences within the guideline range do not pick up these disparities, because they are disparities in the calculation of the guideline range.

I suggest, though, that too much attention is given to the issue of disparity. What we should be talking about is not how to reduce disparity but how to improve the quality—the justice and wisdom—of a given sentence. It is better to have five good sentences and five bad ones than to have ten bad but consistent sentences. And it would be better still to have ten good sentences—even if they could be explained only as the considered judgment of a good and honest and experienced district judge whose goal was to get it right, and even if that explanation could not be fit into the grids on a guideline chart.

The guidelines contribute to the quality—the justice and wisdom—of sentences not primarily because they reduce unwarranted disparity, but because they provide a good starting point and a good reality check. My mother used to tell me to proceed cautiously when everyone seemed out of step but me. It was advice I didn't always heed, and I don't always heed it now. But when my initial view on a sentence is out of step with the guidelines, I think twice, as well I

should. It makes for better sentencing.

To be sure, there are hundreds of district judges, and there are some among us who didn't have my mother's wise counsel. A few may pay little attention to the guidelines. Most of us, however, find the guidelines useful. It would be a mistake to govern for the outliers—to design a sentencing system to rein in a few judges at the margins rather than to make the system work well for the vast majority.

With that overall assessment as background, let me try to make three other points and then conclude. You should be pleased to hear that I have not attempted a comprehensive assessment of the guidelines.

Craftsmanship

First, I think the level of craftsmanship exhibited in the guidelines is excellent. For the most part, the guidelines say what they mean, and they are easy enough to understand, even in the sometimes hectic pace of a sentencing proceeding. This is, of course, something the Commission works on constantly, and overall I think you get an "A" for craftsmanship.

Extrapolating from Statutes

Second, I am not as high on the Commission's implementation of at least some congressional policy decisions. Congress adopted minimum mandatory sentences for some drug offenses, and the Commission extrapolated them much more broadly into the guidelines. Congress adopted a career offender provision,

and the Commission, with the help of the circuit courts, gave the statute a broad application. Here in the Eleventh Circuit, prior to the recent Supreme Court decisions to the contrary, carrying a concealed weapon and failing to return to a halfway house were deemed crimes of violence, and some defendants who otherwise would have faced a guideline sentence of under five years were instead deemed career offenders with a range of 262 to 327 months. At least in the days before *Booker*, this sometimes resulted in longer sentences than most would have thought just—but Congress adopted a statute, the Commission and the circuits implemented it broadly, and some district judges departed sparingly. For a defendant sentenced to 262 months, it was hard to say who really made the decision or why, but the sentence was imposed nonetheless.

My suggestion is to implement Congress's decisions, as you of course must, but not to expand them, unless in your independent judgment you conclude that an expansion is appropriate. If you could persuade Congress not to amend the guidelines directly, but instead to let your process—including public comments—play out, it would be that much better.

Blurring Institutional Roles

My third point is perhaps the most important. I suggest that the Commission—and for that matter Congress and the courts—should keep in mind the proper institutional roles of the participants in the sentencing process. Since *Booker*, we are doing better. But troublesome issues remain.

For example, a defendant has a right to be present at sentencing and to allocute. The right is meaningful only if the judge who is in the room—looking the defendant in the eye and listening to the allocution—is actually the person who will make the sentencing decision. Before *Booker*, Congress adopted a statute providing for *de novo* appellate review of departures. We were close to rendering the right to be present and to allocute meaningless. The statute did not survive *Booker*, and the Supreme Court has continued to issue decisions restoring the district judge's role. Perhaps the problem has passed. But when we consider the scope of appellate review, we should bear in mind that more is at stake than how closely we will ride herd on district judges.

More problematic is the blurring of the line between the roles of the judge and the prosecutor. In *Booker* and related cases, the Supreme Court disapproved assigning the jury's function to the judge. Judge and jury, at least, are both neutrals. Much more worrisome, at least to me, is assigning the *judge's* role to the *prosecutor*. Sentencing is a judge's role, subject to limits imposed by Congress and standards put in place by the Sentencing Commission. Congress can adopt minimum mandatory sentences. But in some drug cases, Congress has given the prosecutor the unfettered discretion to impose a minimum mandatory sentence or not. This is so because under 21 U.S.C. § 851, a minimum mandatory sentence based on a defendant's prior convictions applies if and only if the government files a notice of the prior convictions. In some districts, like mine, the government

almost always files the notice, but in others it doesn't. This introduces unwarranted disparity, and, more fundamentally, this is just not a decision properly assigned to the prosecutor.

Another example—though one of limited practical significance—is the third point for acceptance of responsibility. A defendant who accepts responsibility gets a two-level reduction. The defendant gets another level—a third point—for "timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently." U.S. Sentencing Guidelines Manual § 3E1.1(b) (2008). As mandated by Congress, the defendant gets this third point if and only if the government files a motion saying the defendant qualifies. This is a question of historic fact—did the defendant notify authorities in time for the government to avoid preparing for trial and in time for the government and the court to allocate resources efficiently? When there is a disputed issue of historic fact that affects sentencing, the dispute is properly resolved by the judge, if not by the jury. But Congress assigned *this* factual decision to the *prosecutor*. The third point is rarely disputed, and after *Booker* it might not matter much anyway. Even so, it seems remarkable that we have given this core judicial function—finding the facts—to the prosecutor, and more remarkable still that nobody seems to have noticed.

In treating the third point for acceptance in this manner, Congress adopted

the approach long taken for substantial assistance. A minimum mandatory sentence need not be imposed on a defendant who has provided substantial assistance to the government in the investigation or prosecution of others. Congress long ago allocated to the prosecutor the decision whether this standard has been met in a given case. The theory, apparently, is that the prosecutor is better able to determine whether the defendant has substantially assisted the government. It is a curious theory. One might have thought the Constitution allocated fact finding to judges and juries not because they know more than the lawyers but partly because they don't—and so must rely only on information provided through fair procedures in which both sides participate. And one might have thought the Constitution allocated fact finding to judges and juries in part because they are unbiased. Letting the prosecutor decide the facts without disclosing all of the information on which the decision is based is a dramatic departure from the usual approach.

Even so, I do not suggest that the Commission should reexamine the government's monopoly on substantial-assistance motions. For one thing, it was Congress, not the Commission, that put this system in place. For another, the issue is far more complicated than my brief comments suggest, and of enormous importance. In federal sentencing, the substantial-assistance motion is the coin of the realm. Giving the government control of the process raises issues, but it is also quite effective from a law-enforcement perspective. Individuals provide

information and testimony that otherwise would be unavailable—and providing access to every person's evidence is usually good, other things being equal. My sense of it is that many cooperating witnesses tell the truth, and when they don't, the jury usually can figure it out. If the alternative is to require the imposition of a minimum mandatory sentence with no way out, then eliminating the government-controlled substantial-assistance motion would not lead to better sentencing.

Still, the system works only because prosecutors act in good faith. In my district, I'm not sure removing the government's control of the process would make much difference in who receives a substantial-assistance reduction. My point is only that a system that relies on the prosecutor's good faith may not be the system the founders envisioned, and that in any event we should allow an expansion of government control—as illustrated by the third point for acceptance—only with great caution. Note, for example, that on the third point, we have the prosecutor deciding whether the defendant entered a guilty plea in time to allow *the court*—not just the government—to allocate its resources effectively. One would be hard pressed to articulate a ground on which the prosecutor should be the fact finder on the issue of the court's allocation of its resources.

In any event, assigning fact finding to the prosecutor is a slippery slope. As it goes about its day-to-day functions, the Commission should keep in mind always the proper allocation of functions between the judge and the prosecutor.

Conclusion

Now let me conclude. Sentencing is the hardest thing I do. I am less confident that I have gotten it right when I choose a sentence than when I make a decision of any other kind. The district judges I know take sentencing very seriously, as I do, and they work hard at it, as I do. We sometimes have different perspectives and sometimes impose disparate sentences. But a scheme cannot be devised that determines a proper sentence by objective criteria articulated in advance. Taking the judge—and judicial discretion—out of the process would be a bad idea. The guidelines are best when they are *guidelines*, when they give us an idea of a reasonable sentence in a given set of circumstances. We ought not ask the guidelines to do more.

I thank the Commission for its good work.

Honorable Judge William T. Moore, Jr.
Judge, U. S. District Court, Southern District of Georgia

Federal Judicial Service:
Judge, U. S. District Court, Southern District of Georgia
Nominated by William J. Clinton on July 13, 1994, to a seat vacated by Anthony A. Alaimo;
Confirmed by the Senate on October 7, 1994, and received commission on October 11, 1994.
Served as chief judge, 2004-present.

Education:
Georgia Military College, A.A., 1960
University of Georgia School of Law, LL.B., 1964

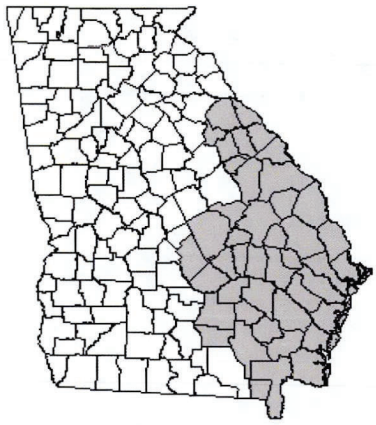
Professional Career:
Private practice, Savannah, Georgia, 1964-1977
U.S. Attorney for the Southern District of Georgia, 1977-1981
Private practice, Savannah, Georgia, 1981-1994
Pro-tem recorders court judge, Garden City, Georgia, 1984-1994

Judge William T. Moore, Jr., United States District Judge for the Southern District of Georgia

Judge Moore has not issued any significant sentencing opinions since January 2005. Staff also searched Westlaw for law review articles, but did not locate any written by Judge Moore. Staff also conducted a search on Google but did not locate any news coverage of cases of that shed light into Judge Moore's sentencing practices or philosophies.

Fiscal Year 2008 Guideline Sentences

GEORGIA, Southern



Average Age	Mean	Median
TOTAL	**34.1**	**31.0**
Male	34.4	31.0
Female	32.5	30.0

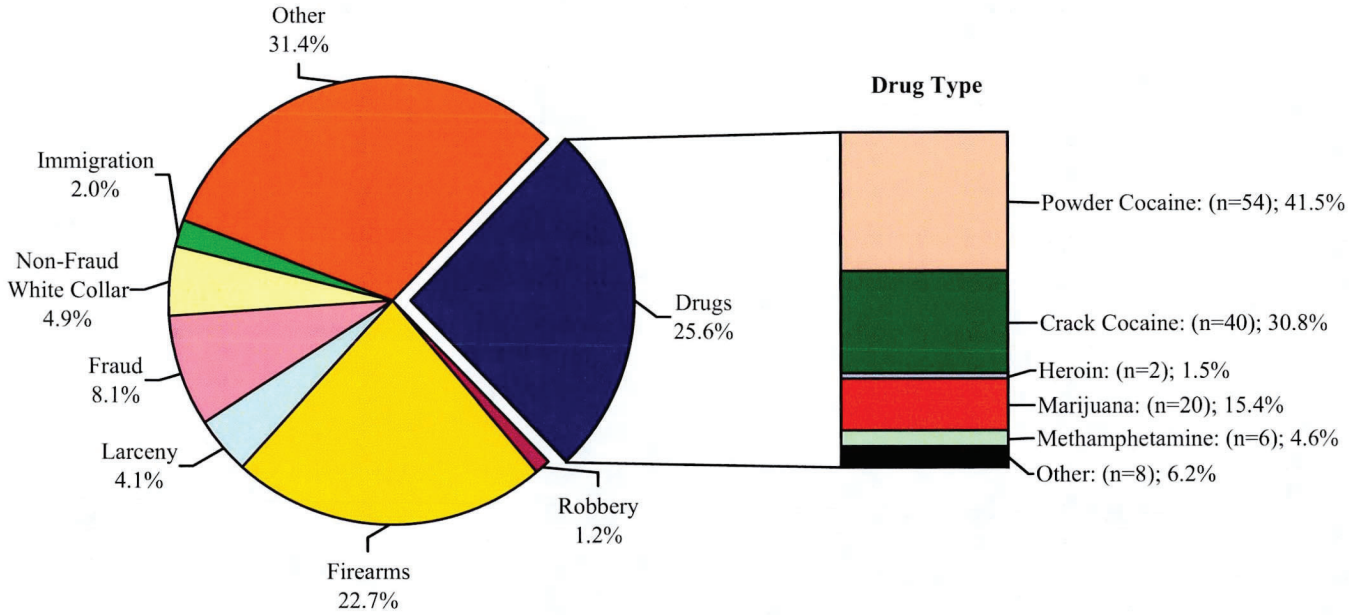
Mode of Conviction		
TOTAL	**517**	**100.0%**
Plea	494	95.6%
Trial	23	4.4%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**370**	**100.0%**	**326**	**88.1%**	**44**	**11.9%**
White	**110**	**29.7%**	100	90.9%	10	9.1%
Black	**225**	**60.8%**	192	85.3%	33	14.7%
Hispanic	**30**	**8.1%**	30	100.0%	0	0.0%
Other	**5**	**1.4%**	4	80.0%	1	20.0%

Departure Status

TOTAL	**516**	**100.0%**
Sentenced Within Guideline Range	407	78.9%
Upward Departure from Guideline Range	4	0.8%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	20	3.9%
All Remaining Cases Above Guideline Range	1	0.2%
§5K1.1 Substantial Assistance Departure	43	8.3%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	6	1.2%
Downward Departure from Guideline Range	7	1.4%
Downward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	27	5.2%
All Remaining Cases Below Guideline Range	1	0.2%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
POST OFFICE BOX 10245
SAVANNAH, GEORGIA 31412

WILLIAM T. MOORE, JR.
CHIEF JUDGE

TELEPHONE (912) 650-4173

February 4, 2009

Ms. Judith Sheon, Staff Director
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

VIA FACSIMILE

Re: Draft of written statement to the Commission

STATEMENT

I thank the Commission for extending to me an invitation to testify at this hearing marking the 25th anniversary of the passage of the Sentencing Reform Act of 1984. I appear before you as the Chief Judge of the United States District Court for the Southern District of Georgia. However, my comments today represent the collective opinions of the three active judges and three senior judges on our Court.

The Advisory Sentencing Guidelines model is working very well. The advisory nature of the guidelines provides a fair balance of both consistency and flexibility to our Court. Most defendants convicted of similar offenses and who have similar situated criminal records fall within the same advisory guideline range. This allows courts across the country to impose fair, consistent sentences. Most defendants sentenced in our district receive a sentence within the advisory guideline range, not withstanding departures based on substantial assistance.

Some cases, however, involve circumstances concerning the offense or the defendant that the Sentencing Commission has failed to consider or adequately address. These cases, which are in the minority, allow the Court to either depart from the applicable guideline range or totally abandon the guideline system, via a variance, and impose a sentence based solely on the factors listed at 18 U.S.C.§ 3553(a). Overall, it appears that the advisory nature of the guidelines, and the reliance on § 3553(a) factors, allows the courts to more fully take into account the personal characteristics and personal backgrounds of defendants in ways that cannot be taken into account strictly by an offense level or criminal history computation. When the guidelines were mandatory, it was more difficult for courts to account for these factors in their sentencing decisions.

The guidelines serve as a model, taking into consideration the relevant factors that should influence sentencing. Our Court likes them as they are. Four of our six judges have experienced pre-guideline sentencing in Federal Court and we would dislike going back to the pre-guideline era. We believe that the advisory guidelines are rational, creative, and help to ensure some uniformity among the judiciary of all fifty states in sentencing people similarly situated. The guidelines should be maintained in their present form with little or no alteration.

The present federal sentencing system offers the Court an appropriate balance. If the Court does not wish to impose a sentence within the advisory guideline range, departure or a variance provides the Court with the discretion to impose an appropriate sentence. In our opinion, this strikes the appropriate balance between judicial discretion, and uniformity and certainty in sentencing.

The offense and offender characteristics are adequately considered in our current system. If a case is seen as typical, a sentence within the advisory guideline range is usually imposed. If there is something atypical about the offense or the defendant, the Court has the discretion to impose a sentence outside the advisory guideline range. We would like to see very little change in federal sentencing. There are, however, some members of our Court who believe that armed robbery, and specifically armed bank robbery, should be judged more severally and sentenced accordingly than the present guidelines call for.

Consistent with the current practice, the sentencing factors set fourth in 18 U.S.C. § 3553(a) should be thoroughly considered in all cases. If the advisory guideline range adequately addresses all § 3553(a) factors, a sentence within the advisory guideline range should be imposed; however, if the range does not adequately address one or more of the § 3553(a) factors, a sentence outside the advisory guideline range should be imposed. We are of the view that the overwhelming number of sentences should be within the guidelines. Judges are not infallible, and the public and Congress would have far more confidence in federal sentencings that are fairly consistent throughout all fifty states.

Our Court is generally not aware of appellate statistics, at least in terms of whether more appeals have been filed since *Booker* than before. It is apparent, however, from our review of appellate decisions that appellate courts are looking for sentencing courts to fully articulate their reasons for imposing sentences within or outside the guideline range.

I believe that there is a view among some judges that the right of appellate review of sentences that fall within the guidelines based on a plea of guilty should be abolished. There is a belief that appeals in these cases are a waste of time and take up too much of the district court's and the appellate court's time.

We do not have any recommendations to the Commission regarding the Federal Rules of Criminal Procedure. Change usually makes for less confidence in the criminal justice system.

There is a view among some judges that statutory penalties should be increased, including the enactment of mandatory minimums in cases involving repeat fraud/theft offenses. Our district has sentenced several repeat fraud offenders whose advisory guidelines did not adequately address the harm caused by their actions, the seriousness of their criminal histories, or the likelihood that they would continue in such criminal acts. Several of these defendants had prior convictions for similar offenses and they were "slapped on the wrist" by state courts.

Also, as I have previously indicated, there is an opinion among some judges that a prisoner should not have the right to file an appeal after pleading guilty and receiving a sentence within the advisory guidelines. Post-sentencing appeals should be re-examined. There are too many motions, and non-meritorious litigation post-sentencing is a burden on the system.

Finally, pursuant to U.S.S.G. § 5K3.1, upon motion of the Government, the Court may depart downward not more than four levels pursuant to an early disposition program authorized by the Attorney General of the United States and the United States Attorney for the district in which the Court resides. In my personal opinion, defendants prosecuted in districts which do not have a fast-track program should be eligible for the same downward departure as like defendants in bordering districts that have a fast-track program. The fast-track program creates a disparity in sentencing between defendants who commit the same offense, but in a different state. In my opinion, it should not make any difference in what state you committed the offense; it should be what offense a defendant committed compared to the offense committed by other defendants within a state that has a fast-track program. This fast-track program creates a built-in disparity in sentencing that the guidelines were designed to eliminate.

Sincerely,

William T. Moore, Jr.
Chief Judge, United States District Court

WTMjr/bdo

UNITED STATES SENTENCING COMMISSION
ATLANTA, GA
FEBRUARY 10-11, 2009
PUBLIC HEARING

Panel Six
VIEW FROM ACADEMIA

PUBLIC HEARING
FEBRUARY 11, 2009
ATLANTA, GEORGIA

III. View from Academia **10:15 a.m. - 11:15 a.m**

Ronald Wright
Executive Associate Dean for Academic Affairs, Professor of Law
Wake Forest School of Law

Dr. Gordon Bazemore
Chair and Professor of Department of Criminology
Florida Atlantic University

Dr. Rodney L. Engen
Associate Professor
North Carolina State University

Ronald Wright
Wake Forest School of Law
Executive Associate Dean for Academic Affairs, Professor of Law
Winston-Salem, North Carolina

Ron Wright is one of the nation's best known criminal justice scholars. He is the co-author of two casebooks in criminal procedure and sentencing; his empirical research concentrates on the work of criminal prosecutors. In 2007, he was invited to present the distinguished Hoffinger Lecture on criminal justice at the NYU School of Law. He is a board member of the Prosecution and Racial Justice Project of the Vera Institute of Justice, and has been an advisor or board member for Families Against Mandatory Minimum Sentences (FAMM), North Carolina Prisoner Legal Services, Inc., and the Winston-Salem Citizens' Police Review Board. He currently serves as Executive Associate Dean for Academic Affairs, where he will focus on curricular and academic issues affecting students and faculty. Prior to joining the faculty, he was a trial attorney with the U.S. Department of Justice, prosecuting antitrust and other white-collar criminal cases.

Ronald Wright
Wake Forest School of Law
Executive Associate Dean for Academic Affairs, Professor of Law
Winston-Salem, North Carolina

2008

Marc L. Miller and Wright, Ronald F., *The Black Box*, 94 Iowa Law Review (2008); Arizona Legal Studies Discussion Paper No. 08-20; Wake Forest Univ. Legal Studies Paper No. 1264010. Available at SSRN: http://ssrn.com/abstract=1264010

Classic accounts of prosecutorial discretion portray charging discretion as the antithesis of law. Scholars express particular concerns about racial and other nefarious grounds for prosecution, while others worry about the increased range of choices available to prosecutors when criminal codes become bloated with new crimes. The familiar response to this problem features a call for greater external legal regulation. The external limits might come from judges who review prosecutorial charging decisions, or from legislatures reworking the criminal code [or from sentencing commissions, see May 2005 article below]. These external oversight projects, however, have failed.

This article explores some facets of internal regulation - efforts within prosecutors' offices to control and legitimize prosecutorial discretion. The authors looked at outcomes produced when chief prosecutors insist on a principled screening of cases using remarkably detailed data from New Orleans and observations from several other major cities

Their thesis is simple: the internal office policies of thoughtful chief prosecutors can produce the predictable choices, respectful of legal constraints, that lawyers expect from traditional legal regulation. The reasons prosecutors give for their charging decisions show the influence of substantive and procedural legal doctrines and the policy priorities of supervisors - all sources that one would expect to dominate in a system that respects the rule of law. Moreover, these reasons show prosecutors responding to social norms, living up to group expectations about what it means to be a prosecutor in that particular office. The key virtue of social norms within a prosecutor's office is transparency. Internal regulations deserve respect when they expose the prosecutor's black box to scrutiny and accountability.

2005

Ronald F. Wright, *Sentencing Commissions as Provocateurs of Prosecutor Self-Regulation*. Columbia Law Review, (2005). Available at SSRN: http://ssrn.com/abstract=658501

This article examines potential efforts by sentencing commissions to influence the work of prosecutors, especially the charges they select and the plea bargains they enter. Working in tandem, commissions and courts can gradually shift back to prosecutors some of the regulatory burdens of producing uniform sentences, leaving more room for judges to dispense mercy.

To reinforce this incremental development, the most important value that prosecutor guidelines should embody is transparency for defendants and for voters. Sentencing commissions have

added value to the criminal sentencing by acting as intermediaries sitting midway between 1) the legislature and the sentencing judge; 2) and between the drafters of general rules and the actors who apply the rules in particular cases. They share some of the systemic perspective of the legislature but are familiar with the daily reality of the courtroom. This intermediary role commission's have could also make them a key player in the creation of prosecutorial guidelines. Commissions understand institutional priorities of prosecutors but have credibility with other actors on questions of sentence consistency. Prosecutorial guidelines could shift some of the work of individualizing justice back tot he judges. A state that produces a set of working prosecutorial guidelines can create a better regulatory balance by giving judges wider sentencing ranges under their guidelines and more expansive powers to depart.

2006

Ronald F. Wright, *Incremental and Incendiary Rhetoric in Sentencing After Blakely and Booker*, 11 Roger Williams Univ. L. Rev. 461-471 (2006) (symposium issue).

In the world of sentencing after *Blakely* and *Booker*, rhetoric reveals a relationship between the speaker and the legislature. Sentencing commissioners, who cast sentencing changes as small and manageable (termed "incremental" rhetoric), perceive that legislative action takes the policy initiative out of their hands. The goal of this rhetoric is not to describe the past or present but to shape the future legislative reaction. The U.S. Sentencing Commission has spoken cautiously about the operation of the guidelines post-*Booker*. The few public statements have emphasized the need for careful, controlled changes to the system.

Prosecutors, who cast sentencing changes as large and threatening (termed "incendiary" rhetoric), seek to "wake the sleeping legislative dragon," and calculate that their perennial allies in the legislature will refashion the sentencing laws in ways that favor them. In contrast to the commission's rhetoric, Attorney General Alberto Gonzales has said "[The] mandatory guidelines system is no longer in place today, and I believe, its loss threatens the progress we have made in ensuring tough and fair sentences. . . we risk losing a sentencing system that requires serious sentences for serious offenders and helps prevent disparate sentences for equally serious crimes. . . ."

Meanwhile, judges have yet to find a consistent rhetorical voice because they have not yet worked out a relationship with the legislature. In the long run, judicial rhetoric that shows an awareness of the legislature and a willingness to offer judicial input on sentencing policy will serve us best.

2005

Ronald F. Wright (with Marc Miller), *The Wisdom We Have Lost: Sentencing Information in the Federal System*, 58 Stan. L. Rev. 361-380 (2005) (electronic copy available at http://papers.ssrn.com/abstract=838393).

Both federal and state experience in sentencing over the last three decades suggest that sentencing data and knowledge most often lead to wisdom when they are collected with

particular uses and users in mind. When data are collected and published with many different users in mind, a variety of participants in the sentencing process can join the Commission as creators of sentencing wisdom, including Congress, state legislatures, state sentencing commissions, sentencing judges, and scholars.

Under the Sentencing Reform Act of 1984, Congress envisioned federal sentencing with a technocratic cast. The SRA directed the U.S. Sentencing Commission to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices. The statute pointed towards the Sentencing Commission itself as the primary user of the data, while the external uses of the data stored in the clearinghouse remain unspecified. Congress can improve the federal sentencing system by directing the U.S. Sentencing Commission to collect information for a broader range of specified users and uses.

Federal experience under the guidelines also shows that rule making and research may have become incompatible tasks. Congress should separate these functions and transfer the responsibilities for national data collection, dissemination, and research to a separate National Sentencing Institute, ideally to be located in the judicial branch.

The authors recommend the creation of a National Sentencing Institute which should be removed from the Commission because the Commission's role as a policymaker and its dominant focus on the real criminal justice system make it a poor repository of national data responsibilities. This new Institute could be an independent agency, a component of the judicial branch, or as part of the Office of Justice Programs at the Department of Justice. This new agency would collect information from agencies other than the Sentencing Commission - including the Administrative Office of the United States Courts, the Executive Office of the United States Attorneys, and the Bureau of Prisons. The goal is to move beyond a collection of data for the benefit of a single rule-drafting institution and to one that serves the needs of many different types of users.

"THE POWER OF INFORMATION VERSUS
THE POWER OF ENFORCEMENT"

STATEMENT OF

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BEFORE THE UNITED STATES SENTENCING COMMISSION

REGIONAL HEARINGS MARKING THE 25th ANNIVERSARY
OF THE PASSAGE OF THE SENTENCING REFORM ACT OF 1984

11 FEBRUARY, 2009
10:15 A.M.
ATLANTA, GEORGIA

INTRODUCTION

Judge Hinojosa, Members of the Commission, and distinguished guests:

I have been asked to comment on how the federal sentencing system operates and what changes I recommend for the system. I am grateful for the opportunity to make a few observations, in a few minutes, on this enormous subject.

I can best summarize my recommendation by saying what the United States Sentencing Commission should do *less* often: the Commission, I believe, should devote less attention to judicial discretion. Judges have shown us, in various settings, that they will follow the guidance offered in sentencing guidelines at a reasonable level, regardless of the amount of effort that the Commission devotes to the enforcement of the guidelines. The Commission should re-conceptualize its role as a source of *information* to sentencing actors—both judges and prosecutors—

about institutional and individual conduct, rather than a source of *limits on discretion* to be enforced. One important source of information should come from the innovative and relevant practices of actors in the state criminal justice systems.

THE DISCRETION CONTROL PROJECT WAS CENTRAL TO THE COMMISSION'S HISTORICAL WORK

The United States Sentencing Commission has devoted much attention and effort over the years to judicial compliance with the federal sentencing guidelines. In the early days, the Commission and its staff talked explicitly about their efforts to measure and promote "compliance" and to minimize departures from the presumptive guideline ranges. The problems with this vocabulary quickly became apparent, and the term "compliance" disappeared underground. But the underlying mindset, I believe, remained in place. The Commission and its staff over the years treated the percentage of "within guidelines" sentences as a crucial number to track and manage. Many of the Commission's routine reports and functions aim to keep that percentage of within-guidelines sentences acceptably high. I'll call this collection of practices the "discretion control project."

A thorough history of the Commission would demonstrate the centrality of the discretion control project to its work. To take one small indicator, look at Appendix C of the guidelines. That list of amendments to the federal sentencing guidelines (725 of them, at last count) shows that control of discretion dominates the agenda. The great majority of those amendments involve (1) changes to reflect new statutory penalties that restrict judicial choices, (2) changes to encourage

judges to increase the penalties they impose, and (3) changes to reduce the number of sentences that judges impose below the presumptive range.

To take another indicator, consider the list of questions that you asked academic commentators to address during these hearings. Four of the eight questions on the list concentrate on the discretion control project:

> How has the advisory nature of the federal sentencing guidelines after the Supreme Court's decision in United States v. Book, 543 U.S. 220 (2005) affected federal sentencing?
> Does the federal sentencing system strike the appropriate balance between judicial discretion and uniformity and certainty in sentencing?
> What type of analysis should courts use for imposing sentences within or outside the guideline sentencing range?
> How have Booker and subsequent Supreme Court decisions affected appellate review of sentences?

Granted, there are reasons why the Commission has stressed the discretion control project, more so than its peer commissions at the state level. The number of federal judges applying the federal sentencing guidelines is larger than the number of judges that apply the typical set of state sentencing guidelines. The federal criminal justice system operates across an enormous number of legal cultures, with tremendously different caseloads in different districts. The centrifugal forces at work in the federal system are stronger than they are in most state systems.

Moreover, the control of discretion is certainly part of the Sentencing Commission's statutory mission, built into several provisions of the Sentencing Reform Act of 1984. The concept of "disparities" in sentencing was not well developed in 1984 — experience since that time has convinced us to view sentencing disparity in shades of gray rather than in black and white — but the Senators and House members who voted for the legislation certainly wanted the

Commission to promote more uniform sentencing practices among federal judges, along with other objectives.[1]

It is also true that Congress, during the 25 years between 1984 and today, has periodically signaled to the Commission that it believes judges impose too many lenient sentences. They have encouraged the Commission — sometimes not so subtly — to prevent the lowest sentences that judges impose. The PROTECT Act in 2003 offered one vivid example, and an entire chorus of mandatory minimum penalty statutes sang the same tune.

These historical realities make it easy to understand why the Commission emphasized the control of judicial discretion in so much of its work. Nevertheless, I argue that the discretion control project occupies too much of the Commission's attention today. It distracts the Commission from other more productive tasks that are equally a part of the Commission's statutory mandate under the Sentencing Reform Act of 1984. And for reasons that I will now describe briefly, federal sentencing judges are likely to stay within reasonable boundaries, even without a vigilant Sentencing Commission looking over the judicial shoulder.

AN EQUILIBRIUM THEORY OF JUDICIAL RESPONSES TO SENTENCING GUIDANCE

I have watched federal sentencing policy unfold, for a few years as a prosecutor in the U.S. Department of Justice and for a longer time as an academic

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[1] *See* Marc L. Miller & Ronald F. Wright, *Your Cheatin' Heart(land): The Long Search for Administrative Sentencing Justice*, 2 BUFFALO CRIM. L. REV. 723 (1999) (electronic copy at http://ssrn.com/abstract=162568).

who specializes in sentencing institutions and the legal tools that affect the work of criminal prosecutors in state and federal systems. One overwhelming reality about federal sentencing jumps out at me on this 25th anniversary: the stability of federal practice. Every few years, events prompt many observers (myself included) to declare that "this changes everything." Then we wait breathlessly for seismic changes, but they do not arrive. Federal sentencing has shown a remarkable ability to absorb shocks and to stay in equilibrium.

Consider just two of the major events in the history of federal sentencing during the guidelines era: *Koon* and *Booker*. In its 1996 decision in *Koon v. United States*,[2] the U.S. Supreme Court complicated and loosened the appellate standards of review for the decisions of federal sentencing judges. Many declared this decision to be the start of a new era of federal sentencing, leading to far more departures from the guidelines. As it turned out, the effect of *Koon* was real, but not transformational. In fiscal year 1995, the year before *Koon* was decided, judges departed from the guidelines in 9.4% of their cases. In fiscal year 1996, the same rate edged up to 11.2%, and it continued to climb until reaching a peak of 18.9% in 2001. In one sense, this is significant growth: departure rates more than doubled between 1995 and 2001. In a larger sense, however, these numbers show judges staying in equilibrium. Judicial departures throughout this period remained less important than "prosecutor departures" (the combination of substantial assistance departures and other government-sponsored requests for departures). More significantly, the total number of within-guidelines sentences remained the largest

[2] 518 U.S. 81 (1996).

single group of sentences (between 60% and 70% for every year during this period). The guidelines still created the center of gravity for federal sentencing, despite the major change to the legal landscape embodied in *Koon*.

The Supreme Court's 2005 decision in *Booker* brought even more profound changes to the legal doctrinal setting for federal sentencing. As you know, the Court in *United States v. Booker*[3] declared that the Sixth Amendment right to a jury trial required federal courts to treat the federal sentencing guidelines as advisory rather than presumptive. Yet the federal judges absorbed even this largest of legal changes with equanimity. The true judicial departures were 5.2% in 2004, the year before *Booker* was decided. That rate increased to 13.6% in 2007, and to 14.7% in the fourth quarter of fiscal year 2008. Again, in relative terms this is a serious shift: nearly a tripling of the rate between 2004 and 2008. In the larger sense, however, judicial departures kept the same rough significance as a sentencing outcome. The judicial departures remained about half as common as government-sponsored departures (combining the substantial assistance and the early disposition program departures). And even in the era of "advisory" guidelines, sentences within the guidelines remained by far the most common outcome.

A quick survey of state sentencing guideline systems tells us that sentencing judges in all of these structured systems also stay within a rough equilibrium, regardless of gradations in the legal binding force of guidelines.

Consider Pennsylvania, for example. The state system offers very loose appellate review of sentences, resulting in guidelines with relatively weak binding

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[3] 543 U.S. 220 (2005).

power. Yet in 2007, Pennsylvania judges imposed 77% of the felony sentences within the "standard" guidelines range. The judges imposed another 14% of the sentences within the guideline ranges but outside the standard range (7% in the mitigated range and 7% in the aggravated range), while they imposed 9% of their sentences outside the three prescribed guideline ranges.[4] Those percentages have remained approximately the same over the years, despite major changes in the statutory framework and in the guidelines themselves since the origin of the state guidelines in the early 1980s.

In North Carolina, a state with no "departures" as such, the judges in fiscal year 2007-2008 imposed 72% of their sentences within the standard presumptive range,[5] quite similar to the 77% in Pennsylvania and reasonably close to the percentage of within-guidelines sentences imposed in a typical year in the federal system.

In Minnesota, the same rough proportions hold true. In 2007, Minnesota judges imposed 76% of their felony sentences within the guidelines range, along with 5% aggravated departures and 19% mitigated departures.[6]

I will not belabor the point by reviewing data from Washington, Oklahoma, Virginia, Maryland, and many other states that operate structured sentencing systems. Despite remarkably different appellate standards of review, and

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[4] *See* Pennsylvania Commission on Sentencing, *Sentencing in Pennsylvania, Annual Report 2007*, at 42.

[5] *See* North Carolina Sentencing Policy and Advisory Commission, *Structured Sentencing Statistical Report for Felonies and Misdemeanors, Fiscal Year 2007-2008*, at 17. The North Carolina judges imposed 25% of felony sentences in the mitigated range, and 3% in the aggravated range.

[6] *See* Minnesota Sentencing Guidelines Commission, *Sentencing Practices: Departure Data for Cases Sentenced in 2007*, at 5.

distinctive sentencing commissions and judicial cultures, each of these systems produces similar outcomes. Somewhere between 60% and 80% of the sentences fall into the designated "normal" range, whether the guidelines are denominated as "voluntary" or "presumptive." Academic studies show that voluntary guideline systems of recent vintage hold almost the same power to unify judicial practice that one finds in presumptive guideline systems.[7]

All of these systems produce levels of judicial consistency that are consistent with the rule of law. The federal system may be on the lower end of the spectrum when it comes to the percentage of cases sentenced within the designated normal range — roughly 60% these days, compared to about 75% in many other jurisdictions. At the same time, the level of departures that judges themselves drive might be a bit low in the federal system — roughly 15% these days, compared to about 25% in many states. The modified real offense nature of the federal system might explain these differences, since much of the prosecutorial view of proper sentences in a state system can be built into the charge rather than a prosecutor-endorsed departure. The exceptionally high level of drug sentences in the federal system might also suppress the number of within-guideline sentences compared to the state systems, which start with lower penalties for drug offenses.[8]

Looking at the big picture, however, the similarities among federal and state judges stand out. It is striking that so many judges, across so many systems and times with completely different legal rules at work, produce similar patterns of

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[7] *See* John F. Pfaff, *The Continued Vitality of Structured Sentencing Following* Blakely*: The Effectiveness of Voluntary Guidelines*, 54 UCLA L. REV. 235 (2006).
[8] *See* Frank O. Bowman III & Michael Heise, *Quiet Rebellion? Explaining Nearly a Decade of Declining Federal Drug Sentences*, 86 IOWA L. REV. 1043 (2001).

sentences. The precise legal consequences for imposing a system outside the normal range do not matter very much. New rules from the sentencing commission that make departures more difficult to sustain do not matter much. The power of appellate courts to overturn a sentence outside the normal range does not matter much. What seems to matter is widespread reporting about normal judicial behavior, and the obligation of judges who leave the normal range to identify themselves and to explain their reasons, however briefly.

Thus, if the United States Sentencing Commission were to devote less energy to its "discretion control project," sentencing practice in the federal courts would likely remain in equilibrium. The momentum of past sentencing practices is powerful. Federal judges, like their state judicial counterparts, would continue to take their cues from the signals and public information that a guideline system make possible, regardless of the particulars of appellate review or amended guidelines.

COORDINATION THROUGH INFORMATION

What is the alternative? If the U.S. Sentencing Commission spends less time trying to devise rules that will constrain the discretion of sentencing judges, where should it redirect those resources?

The centerpiece of the Commission's strategy should be information, not enforcement actions against non-compliant judges. The field of behavioral economics tells us about the power of "focal points," those actions that one actor can predict that another actor will take because it is the normal thing to do. The Commission can accomplish a great deal by creating for federal sentencing judges a

set of "focal points" that specify normal behavior for sentencing, along with the circumstances that most often produce abnormal sentencing behavior.

In this vision, the Commission would become more of a resource for judges than a regulator of judges. When Congress becomes restive about the sentences that judges impose, the Commission should explain the judicial decisions rather than promising to rein in the judges.

The Commission's reports would detail (as they have increasingly done in the post-*Booker* era) the usage of various provisions in the federal sentencing guidelines. Because federal prosecutors are responsible for about twice as many sentences outside the normal range as judges are, more detailed information about prosecutor choices should become a Commission priority. While current reports inform us about substantial assistance motions and early disposition program requests from prosecutors, judges could also benefit from learning about district-specific (and perhaps even prosecutor-specific) statistics on initial charges, amended charges, and sentencing recommendations of various types.

The Commission could also help federal judges by telling them more about the sentencing decisions of state judges. For instance, the Commission could help us build more information about what offenders do after completing their sentences in the state systems. Current information sources tell us about the prior arrests and sentences of a particular defendant, but we need to link the outcomes for particular offenders back to the "treatment," offering to judges across jurisdictional lines a more detailed picture about the non-prison and prison options available.

Federal sentencing judges could use focal points based on typical state sentences for crimes with large volume counterparts in the federal system. The efforts of the Commission to standardize information across different states could also help the states themselves to make more informed choices as they design sentencing rules. Since we are speaking together today in Atlanta, I will invoke the example of the Centers for Disease Control, which is based in this city. The CDC compiles statistics from 50 distinct state health departments and standardizes the information that appears in different formats in various states. This standardization of state reports allows the CDC to portray the most typical national responses to health problems. The U.S. Sentencing Commission could find that a similar standardizing role for sentencing data would be fruitful.[9]

The Sentencing Reform Act of 1984 spoke about far more than "unwarranted disparities." It envisioned a Sentencing Commission that would serve as a clearinghouse for existing knowledge and a catalyst for new learning. Much of that learning happens every day in the invisible laboratories of the criminal courtrooms around our country—both in the federal and state systems. The U.S. Sentencing Commission can perform a powerful service by compiling that localized wisdom and making it available everywhere.

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[9] For more details, see Marc L. Miller & Ronald F. Wright, *The Wisdom We Have Lost: Sentencing Information and Its Uses*, 58 Stan. L. Rev. 361 (2005) (electronic copy at http://ssrn.com/abstract=838393).

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Gordon Bazemore's research has focused on juvenile justice and youth policy, restorative justice, crime victims, corrections, and community policing. Dr. Bazemore has 30 years experience in juvenile justice practice, research and training/technical assistance, and he has directed research and action projects funded by the National Institute of Justice, Office for Victims of Crime, Office of Juvenile Justice and Delinquency Prevention, the Robert Wood Johnson Foundation, and other public and private agencies. He served as a consultant, researcher and trainer to the Florida Department of Health and Rehabilitative Services' initiative on juvenile pre-adjudicatory detention reform. He is a former member and co-chair of the Florida Juvenile Justice Standards and Training Commission, and a founding member of the Florida Supreme Court work group on Community and Restorative Justice (initiated by Justice Barbara Pariente). Since 1993, Dr. Bazemore has been the Director of the Balanced and Restorative Justice Project funded by the federal Office of Juvenile Justice and Delinquency Prevention. He has advised and provided training and technical assistance to more than 30 states and several federal agencies on juvenile justice, offender reentry, restorative justice, and victim services reform. *Dr. Bazemore recently presented on restorative justice at the Commission's Alternatives to Incarceration Symposium.*

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2008

United States Sentencing Commission, *Earning Redemption: New Roles for Returning Offenders in a Civic Engagement Reentry Model* in Symposium on Alternatives to Incarceration (Proceedings, pgs 56-59) (2008)

Dr. Bazemore was a panelist at the Commission's Symposium on Alternatives to Incarceration and in his presentation stated that "restorative justice works," while some types of criminal justice action, such as punishment, "make things worse." He contends that restorative justice does not. He stated that the impact of restorative justice is underestimated and it should be expanded beyond low-level offenses.

Dr. Bazemore's presentation focused on community participation and the willingness of community members to accept offenders. The community is impacted by reentering offenders, and, in turn, reentering offenders are impacted by the community. The primary goal of reentry is for the offender to strengthen his commitment to being a good citizen. This goal is supported by removing barriers in the community through (1) civic and community service, moving the individual from community service (which makes the individual more trustworthy) to paid positions, (2) restorative conferencing, establishing personal connections of the offender with family, members of the community, and victims, and (3) permitting offenders to vote.

2007

Gordon Bazemore, *The Expansion of Punishment and the Restriction of Justice: Loss of Limits in the Implementation of Retributive Policy*, Social Research Summer, 2007 (Available at

The author argues that as punishment has become a primary goal of sentencing in recent past and the "upper limits" of punishment have expended to offenders even after having served their time. He suggests that 'restorative justice' is gaining support in the field. This approach is grounded in the principles of repair, stakeholder involvement, and transformation in community and government roles. The following excerpts illustrate the author's points.

- *Having accepted the premise that punishment is a good--or at least necessary evil--much of the intellectual work in sentencing reform of the past three decades became focused on the establishment of guidelines and (ideally) restrictions on its use (Tonry, 1996; 1994).*

- *The most blatant examples of the loss of limits on punishment are, as might be imagined, in the response to those formerly incarcerated. Bans on employment, family rights, and occupational licensing are well-known added punishments that occur effectively after incarcerated persons have officially "done their time."*

- *Restorative justice is most accurately understood as a holistic framework for criminal justice reform, and even more broadly as an overarching approach to informal conflict resolution and healing*

- *We suggest that a restorative justice critique of current retributive policy and practice may well be a starting point for the development of more just and more effective approaches to sentencing, both formal and informal, and to a more effective approach to reentry for currently incarcerated persons (see Bazemore and Stinchcomb, 2004).*

2006

Gordon Bazemore, *Measuring What Really Matters in Juvenile Justice*, American Prosecutors Research Institute (July 2006).

This monograph presents a case for creating and utilizing a "report card" system of performance outcomes and measures for juvenile justice systems developed by a partnership between the American Prosecutors Research Institute, the Balanced and Restorative Justice Project, and the National Center for Juvenile Justice. Now in place in some form in 30 states, this approach provides a basis for developing measurement standards grounded in community needs and expectations. This paper provides a detailed rationale and defense for the set of measures and outcomes proposed under the three Balanced Approach mission goals – accountability, public safety, and competency development – utilized in the American Prosecutors Research Institute's National Demonstration Project.

Data on these outcome measures, provided on a routine basis, educate community members on the progress of these programs. Collecting data on the three outcomes signals to communities and staff that achieving goal-oriented objectives of restorative juvenile justice is a priority and promotes the idea of shared ownership of those goals.

Earlier work

Gordon Bazemore and Kay Pranis, *Hazards Along the Way: Practitioners Should Stay True to the Principles Behind Restorative Justice*, Corrections Today, December, 1997

The authors provide a series of lessons to practitioners in implementing restorative justice practices. They assert that legislative and policy changes must be accompanied by fundamental changes in principles and values in order to effect change in juvenile crime. The authors state that, although the lessons focus on mistakes from their experiences with implementing restorative justice principles, "plenty of things are going well in the restorative justice movement." The article details 17 'lessons,' a selection of which is listed below.

Lesson 1 - Restorative justice is not a program.
Lesson 3 - Government can't do it alone. Victims and other citizens must be empowered.
Lesson 4 - Communities can't do it alone; they need training.
Lesson 7 - Address crime victims' issues first.
Lesson 13 - Restorative justice cannot isolate itself from mainstream juvenile justice policy debates.

Lesson 15 - You are what you measure. Performance outcomes are more than data collection and evaluation.

THE EXPANSION OF PUNISHMENT AND THE RESTRICTION OF JUSTICE: LOSS OF LIMITS IN RETRIBUTIVE POLICY AND THE RESTORATIVE JUSTICE ALTERNATIVE

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THE EXPANSION OF PUNISHMENT AND THE RESTRICTION OF JUSTICE: LOSS OF LIMITS IN RETRIBUTIVE POLICY AND THE RESTORATIVE JUSTICE ALTERNATIVE

Introduction

Prior to the 1980s intellectuals and perhaps a majority of corrections professionals in the U.S. would likely have been ridiculed for arguing for the validity of punishment as a primary objective of criminal justice intervention. Rehabilitation reigned as the dominant goal of intervention, with only a few voices challenging the "justice" of an apparent lack of limits and choice sometimes associated with treatment regimes and parole board decision making (American Friends Service Committee, 1970). Though rehabilitation has never sufficed as a *justice* goal or primary rationale for intervention, as more significant critiques challenged the empirical basis of support for treatment (Martinson, 1977), punishment by the 1980s suddenly appeared to have achieved a new status of academic respectability. More importantly, the absence of any apparent alternative allowed retributive punishment to become the primary "currency" of justice in the U.S., and a central focus of criminal justice policy dialogue.

There should be little doubt that a dominant goal of the academic just desserts movement in the U.S. has been to limit punishment and increase the uniformity of its application (e.g., von Hirsch, 1976). Having accepted the premise that punishment is a good-- or at least necessary evil--much of the intellectual work in sentencing reform of the past three decades became focused on the establishment of guidelines and (ideally) restrictions on its use (e.g., Tonry, 1996; 1994). Outside the academic and policy discussion,

however, the new legitimacy afforded to retributive punishment seemed to free legislators and advocacy groups, to more openly advocate for expanded prison sentences with little if any concern for such limits. [1] Meanwhile, as the vacuum left by the decline of support for rehabilitation (Cullen and Gilbert, 1982; Cullen, et. al., 2001) was filled with a new rhetoric that enshrined "just punishment" as the currency of justice, uniformity became the *metric* for structuring its use. Aside from the issue of whether uniformity could ever be achieved in an unequal society, the tendency in academic and some policy discussions seemed surprisingly to conflate uniformity with *justice itself.* In doing so, this discourse appeared to minimize or ignore the role of now acknowledged procedural aspects of justice rituals-- including the quality of input allowed, information provided, and the overall sense of fairness perceived by participants in these *processes* (Tyler, 1990).

Symptoms of a Punishment Addiction. By the late 1980s, public discourse appeared to shift to rhetoric that assumed that punishment was the *equivalent* of justice. On the one hand, if asked to define "justice," most Americans use words such as fairness, similar or equal treatment, lack of discrimination, due process and equal opportunity. Yet, when asked what is meant when we hear that someone has been "brought to justice," we inevitably think first of punishment—often severe punishment. Unfortunately, much flows downward from this overarching logic of justice as the equivalent of deserved retribution to provide support for what much of the world must now recognize as an American *addiction* to punishment. Rightly, we may more accurately refer to a *policymaker* addiction to punishment, as public opinion polls continue to suggest that citizens, when given alternatives in specific case scenarios, appear to be less punitive than politicians and the legislation they develop (Shiraldi and Soler, 1998; Pranis and Umbreit, 1992; Doble and Immerwahr, 1997).

There are many symptoms of the addiction to punishment among American criminal justice policymakers. Indeed, some of the best illustrations of the apparent loss of limits on retribution have in

recent years been frequently discussed (Western, 2007). There are many others. *Item:* In Florida, and a (fortunately) still limited number of states, prosecutors have discretion thanks to "direct file" statutes to send youth fourteen or older to criminal courts without judicial intervention (or waiver), ensuring that, if found guilty, they will likely receive adult sentences. Moreover, though defended as a policy ostensibly focused on limiting the risk to public safety posed by dangerous young offenders being transferred to criminal court, research examining the seriousness of crimes that prompted transfer found that a majority of these youth were property offenders (e.g., Bishop et al., 1996). *Item:* In high schools and middle schools throughout the U.S., punitive zero- tolerance policies are supported and justified by "Uniform Disciplinary Codes" that appear intended to provide the equivalent of determinate sentencing codes in criminal justice. Yet, while grounded in the trappings of proportionality characteristic of the just desserts logic of mandatory minimum and maximum punishments, much of this policy seems aimed primarily at avoiding legal action when parents claim that suspension or expulsion of their sons or daughters was indeed quite arbitrary. Yet, more than even their equivalents in criminal justice systems, these codes nonetheless allow much discretion to slip into decision making regarding student banishment from public schools. Indeed, the combination of this logic and what ostensibly amounts to an absence of clear limits on the decision to exclude students from the educational process appear to be providing the legitimacy needed to engineer what has been described in some large U.S. cities as a kind of "school to jail pipeline." (Advancement Project, 2005; see Stinchcomb et al., 2006).

The most blatant examples of the loss of limits on punishment are, as might be imagined, in the response to formerly incarcerated persons. Here, few if any standards seem to apply in the case of those who have already "done their time" and if the standard of justice is that offenders must take their punishment, these men and women have clearly met this obligation. There can then be little logical rationale justifying restrictions on freedom and added exclusionary punishment for those reentering their

communities (see Travis, 2007 for a discussion of the perverse logic of targeting parole rule violators for rapid, automatic return to prison, while recently released prisoners who commit *new* felonies receive the full measure of due process). Bans on employment, family rights, and occupational licensing are well known, *added punishments* that occur effectively after incarcerated persons have officially "done their time" [2]. Yet, assuming we truly *want* incarcerated persons to eventually be reintegrated, the most egregious and ironic restrictions are those related to disenfranchisement due to restrictions on voting rights that, with the exception of three states, are taken away for varying periods of time for those who have committed any felony (Uggen and Manza, 2002; 2006). As a classic example of arbitrary punishment that appears to have no limits or grounding in basic standards of fairness, three other states ban former inmates from voting for life. What logic, other than added punishment, can justify this ban? Is voting a criminogenic risk factor likely to encourage someone released from prison to re-offend? While polling places in the U.S. have been the scene of substantial criminal activity in recent years (e.g., stealing elections), risk factors associated with such crime do not characterize the bulk of felons exiting prison. Would fear of losing the right to vote function as a deterrent, in either the specific or general sense of this term? Would being deprived of the franchise, on the other hand, somehow promote rehabilitation? Indeed, some research suggests that the opposite may be true (see Uggen and Manza, 2003), and restrictions on going to the polls would not contribute much to an incapacitation agenda. To be clear, the criminal justice motive for disenfranchisement is truly one of punishment for its own sake.

While just desserts philosophy has offered a sentencing rationale intended for the most part to limit and standardize punishment, the logic of upper limits in that model has become uncoupled from a continuing policymaker demand for increasing the intensity and duration of punishment that now appears to know no limits. Where we must all take blame, or responsibility, is in failing to now consider a new *currency* of justice. Such a currency must be based on a different normative theory than the retributive one

that has given legitimacy to punishment, and that has opened the door to what appears to be its unrestricted expansion.

TOWARD A NEW CURRENCY: RESTORATIVE PRINCIPLES AS A NORMATIVE THEORY OF JUSTICE

The good news in the current situation is that the expansion of punishment may have reached its practical limits. Indeed, some are arguing for a new currency of justice (Zehr, 2000) and a different metric for gauging success in achieving goals related to standards implied by this currency. What is needed in fact is a different normative theory of justice that acknowledges the harm of crime and the dept owed by offenders to their victims and victimized communities. Yet, this is a dept that cannot be paid simply by inflicting harm on the offender.

The philosophy and normative theory known as "restorative justice" is not new. Indeed, despite popular beliefs that the need for punishment is "hardwired" into human beings, throughout human history, there is much evidence that early ancephalous communities, as well as some of the most highly organized early civilizations, practiced decision making processes and reparative practices that resemble responses to crime now labeled as restorative practices. These ancient examples suggest that social exchange and the need for reciprocity may be more natural components of the human condition than retribution. Moreover, some historians argue that, acts of personal vengeance aside, it was punishment that was gradually "invented" in Western human societies as an innovation that essentially formalized justice and stifled informal settlement practices and conflict resolution processes (Michalowski, 1985; Weitekamp, 1999). Today, though Americans are clearly *socialized* to expect punishment, such expectations are not an inherent part of the human condition.

Although it is *often* viewed mistakenly as a program or practice model, restorative justice is most accurately understood as a holistic framework for criminal justice reform, and even more broadly as an

overarching approach to informal conflict resolution and healing (Zehr, 1990; Christie, 1977). Grounded in a principle-based paradigm that provides a clear alternative to retributive justice models (Braithwaite and Petit, 1990), restorative justice is compatible with many goals and assumptions of other justice approaches/philosophies—including crime control (deterrence; incapacitation), rehabilitation, and libertarian/due process models (Bazemore, 2001; Braithwaite, 2002). However, as a justice model, it goes beyond these approaches to embrace a view of crime and related behavior as important not because a law was broken, but because individual victims, communities, offenders and their families were harmed by this action (Van Ness and Strong, 1997). The *currency* of restorative justice is therefore repair and healing. The metric by which "justice" in the response to crime is assessed is based on standards that gauge the extent to which harm is repaired rather than the degree to which "just punishment" is administered, the degree to which offenders are referred to services, or incapacitation is achieved.

Principles of Restorative Justice. Van Ness and Strong (1997) articulate three core principles which suggest more specific standards and provide independent and compatible dimensions for assessing what might be called the "restorativeness" of any justice intervention (e.g., Bazemore and Schiff, 2004)::

> *The Principle of Repair*: Justice requires that we work to heal victims, offenders and communities that have been injured by crime. The primary *goal* for any restorative intervention is to repair, this harm.
>
> *The Principle of Stakeholder Involvement*: Victims, offenders and communities should have the opportunity for active involvement in the justice process as early and as fully as possible. The principle of stakeholder involvement is focused on the *goal* of maximizing victim, offender and community participation in decision-making related to the response to crime.

The Principle of Transformation in Community and Government Roles and Relationships: We must rethink the relative roles and responsibilities of government and community. In promoting justice, government is responsible for preserving a just order, and community for establishing a just peace (Van Ness and Strong, 1997). For this macro-level principle, there are two related primary *goals*: 1) systemic change in criminal justice agencies and systems intended to empower community decision-making and maximize community member assumption of responsibility in the response to crime and harm; 2) building, or rebuilding, the community capacity needed to exercise this responsibility and to practice effective informal responses to crime and conflict, social control and mutual support.

What is Restorative Justice? Restorative Justice in Practice

Item-In cities, towns, and rural areas in dozens of countries, victims, family members and other citizens acquainted with a young offender or victim of a juvenile crime gather to determine what should be done to ensure accountability for the offense. Based on the centuries old sanctioning and dispute resolution traditions of the Maori, an indigenous New Zealand aboriginal band, *Family Group Conferences* (FGCs) were adopted into national juvenile justice legislation in 1989 as a dispositional requirement for all juvenile cases with the exception of murder and rape. FGC, or "conferencing" is widely used in many countries in as police initiated diversion alternative, a means of determining disposition (sentence) for juveniles and adults, and has been used for more than a decade in communities in Minnesota, Pennsylvania, Colorado, Illinois and other American states and in much of Canada. Facilitated by a coordinator that may be a youth justice worker, volunteer or police officer, FGCs are aimed at ensuring that offenders are made to face up to community disapproval of their behavior, that an agreement is developed for repairing the damage to victim and community, and that community members recognize the need for reintegrating the offender once he/she has made amends.

Item-In schools in Denver, Colorado, Chicago, Illinois, and many other cities and towns middle and high school students in conflict with other youth, students being bullied or bullying others, and youth removed from the classroom for disciplinary violations meet with students, teachers and staff they have harmed or who have harmed them, as well as parents and community members in restorative peacemaking circles. These informal dialogues make use a "talking piece" as a means of preventing interruption when a participant is speaking and regulating dialogue about the harm caused to victims, acceptance of responsibility and often apologies by offenders, and an agreement for offenders to accomplish various tasks aimed at making amends or repairing the harm they have caused.

Item-In Rwanda, formerly incarcerated members of one of two primary tribal groups Hutu, implicated in genocidal killings of the other primary tribal group, the Tutsi, participate in lengthy (sometimes multiple day) "truth-telling" sessions in communal courts (known as Gacaca). Aimed at repentance, reparation and eventually possible reconciliation with surviving family members of their victims, participants in these sessions ultimately accept responsibility for murder and other crimes, apologize, make commitments of extensive service and/or reparation (as money, goods and/or services) aimed at eventual healing and peace.

Item-In San Jose, California and hundreds of other communities in the U.S., youth arrested for crimes and considered for diversion from court or probation meet with citizen volunteers in Neighborhood Accountability Boards who, with youth and family input, develop a community and victim oriented restorative sentence as an alternative to a court order. When asked why they believe this approach "works" better than traditional juvenile justice intervention, they report that the program is effective because: "we aren't getting paid to do this"; "we can exercise the authority that parents have lost"; "we live in their (offenders and victim's) community"; "we give them input into the contract"; "we are a group of adult neighbors who care about them"; "they hear about the harm from real human beings"; "we follow-up."

Item-In a prison in Texas, the mother of a daughter raped and murdered a decade before and her grand-daughter meet with a trained facilitator meet with the offender responsible (and grand-daughter's mother) for three days of dialogue after several months of preparation by the facilitator. The goal of this meeting was to provide the survivors with answers to their questions about this young woman had died and hear the offender's story. At the end of a two day session the mother and grand-daughter forgive the murderer.

Item-In residential facilities for youth convicted of serious and often violent crimes in Georgia, Tennessee, Illinois, Pennsylvania and other states, staff and the youth they are responsible for are learning new methods of discipline based on restorative justice principles (vs. standard reward/punishment models) aimed ultimately at changing the culture and organizational climate of their facility.

Item -In Northern Ireland, formerly incarcerated Republican (IRA) and Loyalist combatants in the decades-long conflict in the city of Belfast meet with young offenders in community restorative justice conferences. While only a few years before, youth like these caught stealing, joy riding, or committing other crimes were beaten and even shot ("knee-capped"), by these combatants (who assumed de facto responsibility for preserving order in communities where police were not welcome), today these youth are held accountable by meeting with their victims and community members and agreeing to make amends through reparation and service to the individuals and communities harmed by their actions.

Item- In inner city Cleveland, former incarnated felons participate in civic community service projects that typically involve providing assistance to the elderly, helping youth in trouble and those struggling in school, and rebuilding parks. For their efforts, the former inmates "earn their redemption" by making amends to the community they previously harmed, rebuilding trust, and make new positive, connections with community groups and pro-social community members.

Item -In Bucks County, Pennsylvania, neighbors in a primarily white, protestant, middle class neighborhood in a Philadelphia suburb place a Star of David in their windows during the holiday season in solidarity with a Jewish family who the night before had been the victim of group of skinheads who burned a cross in the family's front yard. With input from the families and community members, the young men were diverted from the court with the understanding that they would meet with the victimized family and a rabbi who would also arrange community service and ongoing lessons in Jewish history for the boys.

What do these diverse brief portraits of restorative process have in common? While involving different cultures and ethnic groups addressing a wide range of harm and conflict, these practices share a basic commitment. This commitment is to primary involvement of the true "stakeholders" in crime and conflict, in a very intentional effort to pursue a distinctive justice outcome. Aimed at achieving "accountability" by allowing offenders to actively repair harm to the individuals and communities they have injured, this outcome has been found to be more satisfying to both victims and offenders than those pursued in a court or other formal process. While the term "restorative justice" has in recent years entered popular discourse (after being featured on the Oprah show and in other popular media venues), restorative policy and practice is often widely misunderstood. It is important, therefore, to first be clear about what restorative justice is *NOT*.

Misunderstanding Restorative Justice. Restorative justice is not a single *program,* practice, or process. As indicated by the examples above—especially those involving serious and violent murders and reconciliation following genocide--it is also not an intervention meant only as an alternative response to minor crime, juvenile crime, or other misbehavior. And it is not limited to use in, or as an alternative to, one part of the criminal or juvenile justice process. Indeed, as illustrated in the last case above, restorative justice may occur spontaneously, and completely outside and independent of any formal criminal justice context.

Restorative justice does not assume that the victim will or should *forgive* the offender. Although some victims—including those harmed by some of the most horrific crimes mentioned in the previous examples--choose in their own way and in their own timeframe to forgive the offenders that harmed them,

a successful restorative intervention does not presume either forgiveness or reconciliation. Restorative justice is also not a "soft" option for offenders (many in fact view restorative justice as more demanding than traditional punishments) and restorative proponents do not suggest that more use of restorative justice implies that there is no need for secure facilities. Finally, restorative justice is not focused only on the offender--or on reducing recidivism—even though it has been effective in doing so. It is focused first on the needs of those victimized by crime and their families, and on the needs of other true "stakeholders" in crime and conflict: offenders and their families, communities and supporters of offender and victim.

Research and Effectiveness

There is now general agreement that restorative justice practice has shown positive impact on a variety of intermediate and long-term outcomes including: victim satisfaction and healing, increased offender empathy, and procedural justice or fairness. In recent years randomized trials, quasi-experiments and meta-analyses have also consistently demonstrated positive impact on re-offending. While research on restorative justice is, relatively speaking, in its early stages, unlike studies of punitive programs and weak or counterproductive treatment models, no research shows that restorative justice practices make things *worse* (e.g., increase recidivism).

While only two models of restorative conferencing—FGC and victim-offender mediation—have received consistent and positive ongoing evaluation, other conferencing practices such as neighborhood accountability boards and peacemaking circles have also shown promising early results. In addition, an older, body of evaluation research on the aforementioned reparative practices--essentially restorative obligations or sanctions such as restitution and community service-- has consistently found positive impact. Moreover, unlike a wide range of punitive approaches, as well as a large number of treatment programs that consistently report negative outcomes in evaluations and meta-analyses, no studies of reparative practices (e.g., restitution, community service) report negative findings.

Regarding crime victim impact, researchers for more than a decade have been able to make the claim that crime victims and offenders who participate in face-to-face restorative justice dialogue processes with offenders experience greater satisfaction than those who participate in court or other adversarial processes. Though "selection effects" leaves open the possibility that victims who choose to participate in these processes are predisposed to report greater satisfaction than those who do not, the consistency and strength of these results are nonetheless persuasive. In recent years, experimental research has also verified the effectiveness of restorative conferencing in reducing post traumatic stress syndrome in crime victims.

Much uncertainty remains, however, about the primary causal factor or specific intervention most responsible for producing the typically higher levels of victim satisfaction in this research. For example, it *could* be argued that these results are due less to the fact that restorative processes are so effective, than to the fact that the court and adversarial process is so harmful. Perhaps restorative dialogue processes simply takes advantage of a kind of what is often called a "Hawthorne Effect" whereby victims who are simply listened to, treated with dignity and respect, and given a wider array of choices are more satisfied than those who go through court, regardless of the effect of any special face-to-face dialogue with the offender. While this could mean that positive effects of a restorative process are actually a result of what is usually called procedural justice rather than some presumed restorative justice impact, authors of the bulk of restorative research publications tend to view greater satisfaction as itself a restorative justice benefit.

Although early studies show independent positive impact of restorative obligations—e.g., restitution, community service, unanswered questions remain about what additional positive impact might be attributed to the *purely restorative* features of the restorative process. Yet, evaluation studies in recent years have generally also shown significant reduction in recidivism—at least some of which have been linked to unique features of restorative process and its impact, for example, on offender remorse and empathy. .

Summary and Conclusion

Challenges include moving beyond a programmatic approach to a holistic focus that seeks a restorative outcome in every case, and uses restorative justice principles to solve major systemic problems in criminal justice and communities. Public opinion generally favors restorative justice practices, and prefers alternative forms of accountability for most crimes. Yet, the continued commitment of U.S. policymakers to retributive punishment and to an emerging prison industrial complex that appears to be creating a societal condition sociologist Bruce Western now calls "mass imprisonment" presents formidable challenges to any progressive reform.

Optimism for greater use of restorative justice is based on strong research findings indicating its effectiveness in achieving multiple outcomes for multiple stakeholders, including reduced recidivism, and victim satisfaction and healing. Moreover, the connection between restorative justice principles and evidence-based theories of change at the social-psychological, peer support, and community building levels of intervention, provide further rationales for expanding these approaches. Finally, increasing recognition of a decline in and a need for revitalization of community skills in informal crime control and positive support for pro-social behavior also set the context for greater application of restorative justice solutions.

In summary, we suggest that a restorative justice critique of current retributive policy and practice may well be a starting point for the development of more just and more effective approaches to sentencing, both formal and informal, and to a more effective approach to reentry for currently incarcerated persons (see, Bazemore and Stinchcomb, 2004). While restorative justice principles acknowledge the debt owed by offenders to their victims and victimized communities, this is a debt met neither by inflicting harm on the offender nor by removing the offender's rights as a citizen. As a different normative theory[3], the measure of justice in a restorative approach is the extent to which harm caused by crime is repaired. While restorative justice may therefore demand a lot of offenders, their supporters, and community members, it also provides for the opportunity for victim input and reparation. Most importantly, the normative theory of restorative justice provides a different currency of repair and healing that could begin to displace the currency of punishment that knows no limits. While a restorative metric would certainly have its own limits and guidelines (Braithwaite, 2002), the metric of uniformity as the primary gauge of justice process could at least be supplemented with a metric of stakeholder participation, satisfaction, accountability, reparation, and peacemaking.

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Dr. Engen earned a Ph.D. in Sociology, University of Washington, and an M.S. in Sociology and a B.S. in Psychology from the University of Wisconsin-Madison. Dr. Engen's research seeks to understand the confluence of forces—social structural, organizational, legal, and cultural—that affect punishment in the U.S., and the mechanisms by which they work. He is particularly interested in how criminal justice actors (judges and prosecutors) use sentencing laws (e.g., sentencing guidelines) and the effects of those laws on the sentencing process and on inequality in this process. This entails looking not only at judicial decision-making, but also at the displacement of sentencing authority to the charging and plea bargaining stages of the criminal justice process. Much of this research examines the mechanisms by which race, ethnic, and gender disparities in punishment emerge in the context of sentencing reforms designed to eliminate such disparity. His current work examines how racial disparities emerge in the context of sentencing laws under that were designed to eliminate such inequality, the interaction of gender and race in criminal courts at sentencing, plea bargaining under sentencing guidelines, and the growth of the U.S. prison population and racial disparity in the population.

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2000

Rodney Engen and Randy Gainey, *Modeling the Effects of Legally Relevant and Extralegal Factors Under Sentencing Guidelines: The Rules Have Changed* (2000) Criminology, Vol 38, Number 4.

This is the seminal study on the use of "presumptive sentence" in studying guideline sentencing effects. It is the first paper that proposes using the guideline range (either top, bottom or middle) as an explanatory variable in multi-variate analysis as opposed to using two variables (offense seriousness and criminal history). This method has become the standard method, including work at the U.S. Commission. This study examines data from the Washington State Commission and does not mention the U.S. Commission or its work.

2003

Rodney Engen, Randy Gainey, Robert D. Crutchfield, and Joseph Weis, *Discretion and Disparity Under Sentencing Guidelines: The Role of Departures and Structured Sentencing Alternatives* Criminology, Vol 41, Number 1 (2003).

Studies the use of alternative sentencing provisions as mechanisms for departing from the Washington State guidelines and as "structural sources" of unwarranted sentencing disparity. The authors argue that these features of the guidelines may encourage disparities by requiring consideration of criteria that disadvantage certain offender groups. Males and minorities are less likely to receive sentences below the standard range, but race-ethnicity and gender have inconsistent effects on departures above the standard range.

The structural sources which may lead to unwarranted disparity include intermediate punishments, community-based sanctions, or specific rehabilitation programs for offenders who fit certain legally defined criteria. These are called "structural sentencing alternatives." Departure in sentence length are called "discretionary departures provisions."

2005

Ronald L. Wright and Rodney L. Engen, *The Effects of Depth and Distance in a Criminal Code on Charging, Sentencing, and Prosecutor Power*, 84 North Carolina Law Review (2005).

Studies the impact of charging decisions on sentences, and tries to determine whether these differences are greater than the impact of judicial decisions. This is mostly an empirical study, and it compares the initial felony charges with the charges at conviction. The authors compare the actual sentences imposed with what they "would" have received if convicted of all initial charges.

The authors use data collected from the North Carolina Commission on Sentencing. The major finding is that charge reduction occurs more frequently in serious crimes and sentence reductions are also higher for more serious crimes. The study does not take into account "proof issues" (which the authors readily admit) when calculating what the offender would have received if convicted of all initial charges.

The study does cite the U.S. Commission's Mandatory Minimum study. It cites the finding from the report that prosecutors mitigate the impact of mandatory minimum sentences by dismissing or reducing charges. It also cites Nagel and Schulhofer's finding (Stephen J. Schulhofer and Ilene H. Nagel, "Plea Negotiations Under the Federal Sentencing Guidelines: Guideline Circumvention and Its Dynamics in the Post-*Mistretta* Period", Northwestern Law Review (1997)) that charge bargaining exists to avoid imposition of mandatory minimums. There is no other direct or indirect reference to the federal system.

Sara Steen, Rodney Engen and Randy Gainey, *Images of Danger and Culpability: Racial Stereotyping, Case Processing and Criminal Sentencing*, Criminology, Vol 43, Number 2 (2005).

Studies the effect of race in criminal justice decision making will vary depending on other offender and offense characteristics, and that these differences in treatment within races may be as large as differences between races. The major findings are that white offenders who most resemble the "stereotypical" dangerous drug offender receive significantly harsher treatment than other white offending groups. Meanwhile, black offenders who least resemble dangerous drug offenders receive significantly less punitive treatment than other black offenders.

The authors define dangerous drug offender as being male, possessing a lengthy criminal history and being convicted of a drug delivery offense (specifically of heroin, cocaine or meth).

The authors use Washington State Sentencing Commission data for this study. This study draws from an earlier study by the authors where they conducted interviews with judges, prosecutors and defense attorneys in three counties in Washington State (Sara Steen, Rodney Engen and Randy Gainey, "The Impact of Race and Ethnicity on Charging and Sentencing Processes for Drug Offenders in Three Counties of Washington State" (1999) Final Report, Olympia Washington).

There is no mention of the U.S. Commission or its work in this paper.

Testimony before the United States Sentencing Commission

Public Hearing "The Sentencing Reform Act of 1984: 25 Years Later"

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February 11, 2009

Atlanta, Georgia

Good morning. My name is Rodney Engen. I am an Associate Professor of Sociology at North Carolina State University, where I specialize in the study of criminology and the criminal justice process. I have been involved in research on plea bargaining, sentencing, and sentencing guidelines over the past 15 years. During that time I have also worked as a research investigator with the State of Washington Sentencing Guidelines Commission, and as a research consultant to the North Carolina Sentencing Policy and Advisory Commission. I am honored to have the opportunity to share my thoughts with you today.

I did not come here with a specific set of policy recommendations in mind, but rather, to encourage the commission to exercise its leadership in pursuing three broad objectives that, in my professional opinion, are essential for achieving the SRA's purposes, that are consistent with the commission's missions of advising Congress and advancing research on sentencing practices, and that will ultimately improve the quality of justice in the United States.

I. Reducing Imprisonment Rates.

The U.S. imprisonment rate has grown at an unprecedented rate over the last 35 years. Data released by the Bureau of Justice Statistics, in December, 2008, shows that the U.S. imprisonment rate continued to climb in 2007, reaching an all-time high of 506 persons in state and federal prisons per 100,000 U.S. residents. For white males, the imprisonment rate was 955 per 100,000, for Hispanic males, 1,259. By comparison there were 3,138 black men in state and federal prisons for every 100,000 in the population.

I am confident the Commission is well aware of these numbers, as are most members of the audience, so I won't belabor the point. Rather, it is with these statistics in mind that I wish to encourage the Commission to consider more fully the consequences of sentencing policies that support this unprecedented rate of imprisonment and of racial disproportionality, and to pursue, aggressively, policies that will decrease our reliance on imprisonment and increase the use of community-based alternatives for federal offenders.

Calls to limit or reduce the rate at which offenders, especially non-violent offenders, are sentenced to federal and state institutions are often justified on the basis of the enormous fiscal

burden they impose on the government and taxpayers. However, a growing body of research indicates that the social costs, and indirect economic costs, of imprisonment are enormous as well. The negative consequences of imprisonment are long-term and far reaching, affecting not only individual offenders, but also their families, the communities in which they live, and ultimately local, state, and federal governments.

Imprisonment obviously disrupts offenders' employment. It also significantly reduces their ability to gain employment once released, reduces the quality of jobs they are able to find, and reduces substantially their long-term earning potential (Western, 2006; Western and Pettit, 2004; Pager 2003. Imprisonment separates children from parents, dissolves marriages, and reduces the likelihood of marriage in the future (Lopoo & Western 2005). Imprisonment has significant and negative effects on offenders' physical and mental health (Liebling & Maruna 2005; Kruttschnitt & Gartner 2005), increases exposure to infectious diseases such as HIV, hepatitis, and tuberculosis (Johnson & Raphael, 2006; Massoglia 2008a; National Commission on Correctional Health Care 2002), and generally decreases long-term physical well-being (Massoglia 2008b).

Given the level of racial and ethnic disproportionality in imprisonment rates, these consequences fall disproportionately on African American and, to a lesser extent, Hispanic men; on already economically marginalized groups.

Ex-offenders are not the only ones affected by these collateral consequences. We are all affected. Stable employment and marriage are two of the best predictors of whether offenders will reoffend or refrain from crime (Sampson & Laub 1990). Policies that undermine these stabilizing forces are likely to increase recidivism.

Imprisonment also indirectly impacts the well-being of offenders' families, both by immediately removing a potential source of income during the offender's incarceration and by reducing the ex-offender's earning potential. The loss of employment opportunities post-release can have serious long-range consequences, for instance by making it even less likely they will find jobs that provide stable full-time employment, which is often key to obtaining essential benefits that most of us take for granted, such as health insurance or—dare to dream—a retirement savings

plan. The lack of such benefits not only diminishes their children's quality of life and future prospects, it inevitably will increase the long-term burden on local and state government to provide for the health and welfare of offenders and their dependants.

High rates of imprisonment also indirectly affect whole communities, particularly the economically disadvantaged, high-minority, urban communities from which a large proportion of the incarcerated population comes. The reentry of large numbers of unemployable men into these communities means that all of the problems experienced by these offenders and their families then are multiplied, which is likely to further destabilize these communities and result in even higher crime rates over time than they would have experienced otherwise (Rose & Clear, 1998).

Unfortunately, under the current guidelines, roughly 11% offenders are eligible for community-based alternatives to prison without a sentence departure.[1]

Recommendation: With these considerations in mind, I urge the Commission to pursue, as one of its primary goals, identifying ways to decrease our reliance on imprisonment, to consider the negative social costs and consequences of imprisonment whenever contemplating changes to the guidelines, and to communicate to Congress and the American people that despite the presumed benefits of imprisonment for reducing crime, it also comes at an enormous social cost. This is also one way in which this Commission can demonstrate leadership and set an example that the states might then be more inclined to follow as well.

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[1] The USSC's (2009) *Alternative Sentencing in the Federal Criminal Justice System* reports that alternative sentencing options were available for "nearly one-fourth of federal offenders (p. 3)," based on the fact that 21.5% of all offenders were sentenced in Zones A, B, or C. However, the report also indicates that roughly half of the offenders sentenced in Zones A, B, and C were non-citizens and therefore ineligible for alternative sentences, suggesting that an eligibility rate of 11% is more realistic. Nonetheless, 13.5% of offenders received alternative sentences in 2007 (19% of U.S. citizens). Among 40,830 federal offenders who are U.S. citizens, 5,378 (13%) were sentenced within the guideline range in Zones A, B, or C, and thus were eligible for community based sanctions. This excludes offenders who were not eligible due to mandatory minimums or who received departures, and non-citizens. Among these eligible offenders, 68% received the alternative sentence.

II. Consider the role of US Attorneys and AUSAs in the sentencing process: Promote research examining the relationship between plea-bargaining, sentencing outcomes, and the goals of the SRA.

It is convenient, both for policy makers and for scholars, to act as though criminal sentencing is a simple function of three things: (1) the facts of a case (or at least the facts that can be proven in court); (2) the applicable guidelines; and (3) the thoughtful exercise of discretion by the sentencing judge. If this were the case, then all that would be required to change the nature of punishment would be to fine tune the guidelines. But it is not this simple. The plea agreement struck by the prosecutor and the defendant is the critical fourth term in the equation. The reality of American criminal justice is that sentencing—in the states and in US District courts—is determined to a large extent by what happens in plea negotiations. Ninety six percent of all federal convictions in 2007 were obtained by guilty pleas. Unless we understand what happens at that stage in the process, and why, knowing the final outcome is not especially meaningful.

Research by this Commission (USSC, 1991) found that among drug and firearm cases eligible for mandatory minimum sentences, only 59% were convicted of crimes requiring the most severe mandatory sentence applicable, and 25% were convicted of crimes that did not carry mandatory sentences. Prosecutors also granted "substantial assistance" departure motions in one-third of cases convicted under a mandatory minimum provision, negating the mandatory sentence. Other evaluations estimate that from one third (US General Accounting Office, 1993) to half (Meierhoefer, 1992) of offenders eligible for mandatory minimums in U.S. courts avoided them. Likewise, Schulhofer and Nagel (1997) estimated that federal prosecutors circumvented the guidelines in 20% to 35% of cases, most often in cases involving mandatory minimums, and report "huge discounts" in some jurisdictions. Even more striking, the USSC found that federal prosecutors filed firearm enhancements in only 20% of qualified cases in 2000, down from 45% in 1991 and 35% in 1995 (USSC, 2004).

Interviews with court actors find that plea negotiations involve an even wider range of considerations, including the seriousness of charges, stipulations to "relevant conduct", such as weather a weapon was used, the quantity of drugs involved, the dollar loss amount, the

defendant's role in the offense, or the existence of prior "strikes" in a defendant's record; and eligibility for 5K1 departures (Schulhofer and Nagel, 1997; USSC, 1998; Ulmer, 2005). Research by the commission and others also finds that US Attorneys' definitions of what constitutes "substantial" assistance vary by district, as do practices regarding acceptance of responsibility reductions and the use of Federal Rule 35 allowing resentencing (Ulmer, 2005; USSC, 1998).

Together, these studies provide strong evidence that plea-negotiations frequently determine the charges that defendants plead guilty to, the "facts" that constitute relevant conduct, whether defendants have rendered substantial assistance, and whether mandatory minimums will be applied. As Nagel and Schulhofer pointed out, when prosecutors bargain around the guidelines "the sentencing decision is not being made by the judge, as the guidelines contemplated. It is being made exclusively by the parties" (1992, p. 551). In this way, the displacement of discretion that Alschuler and others warned of more than 30 years ago is very real, and has the potential to undermine the SRA's goals of ensuring uniformity and proportionality.

However, little else is known about the role of plea-bargaining in Federal courts beyond the glimpses provided by this handful of studies. Moreover, none of these studies included data with sufficient detail on the charging and plea agreement process and with a sufficient sample of individual cases to establish how frequently these kinds of facts are negotiated, the characteristics of cases that predict the outcome of these negotiations, or the effect that plea bargaining has on average sentence severity or how closely the "facts" presented in court—and recorded in the commission's sentencing monitoring database—resemble actual offending, relevant conduct, or substantial assistance.

Undoubtedly, "circumvention" of the laws happens, but have the guidelines really shifted control over sentencing to prosecutors, and to what degree? Has plea-bargaining over the essential facts of the case undermined the goals of the SRA? The empirical evidence with which to answer these questions is quite limited.

It is certainly likely that USAs and AUSAs exercise their discretion in ways that often result in what outside observers would consider appropriate, just, and fair outcomes, possibly even adjusting for some features of the guidelines that otherwise might result in a less appropriate punishment. It is also likely that this is often not the case. Does the exercise of discretion on the part of US Attorneys usurp the authority of federal judges and circumvent or undermine the goals of the SRA? The problem, from my perspective as a researcher, is that we currently lack the empirical evidence with which to make this determination.

Recommendation: I urge the commission to strive for greater openness and transparency in the sentencing process, including the charging and plea bargaining stages, so that scholars and concerned citizens alike may make more realistic and useful assessments of whether, in fact, the guidelines goals have been achieved and what modifications might be appropriate or necessary. I urge the commission to work with the department of justice and US Attorneys to nurture a research-positive environment that facilitates greater input from all parties involved in these important decisions. Making data readily available to independent scholars that includes even basic information regarding pre-sentencing decisions, including the initial indictment, relevant facts that can affect the sentence, and plea agreements struck, as well as the final outcome, will greatly improve the quality of their resulting research and will increase the value of that research as guide in policy formation.

To the US attorneys and assistant attorneys in the audience, please do not construe my remarks as an indictment of your office (if you'll pardon the expression). I do not mean to imply that fed prosecutors are abusing their discretion or that this discretion is necessarily at odds with the goals of the SRA. There are certainly instances where applying the guidelines mechanistically may create as many dilemmas for the prosecutor as they resolve, resulting in a greater injustice than would be achieved through some more creative charging. Just as a judge may depart from the guidelines in order to achieve a more appropriate sentence, so too may a prosecuting attorney adjust the charge or relevant facts. The fact is, researchers know so little about how and why Federal prosecutors use their decision-making authority that it is premature for us to conclude anything about the decisions they make, except to point out that they do have discretion, they do

exercise it, and it does make a difference. We just don't know how much difference it really makes.

Understanding the role of charging decisions by us attorneys in the sentencing process is essential to addressing the major questions of interest to the commission: How has Booker affected the process? Do the guidelines appropriately balance uniformity and judicial discretion? Have the guidelines achieved proportionality in punishment? And how can the guidelines be improved? A complete answer to each of these questions requires detailed knowledge of the plea process. Substantial changes to the guidelines, including major decisions like Booker, do not only affect the exercise of discretion on the part of judges, they also affect the charging and plea negotiation process that is at the heart of criminal sentencing. Consequently, it is difficult to anticipate fully the effect of reforms to the sentencing guidelines, either in terms of the severity of punishments meted out, or the degree of uniformity or disparity that results.

USAs and AUSAs play an integral part in the sentencing process. Their knowledge, experience, and insights therefore are absolutely essential to the research endeavor as well if we are to ever develop a comprehensive understanding of the sentencing process, and for the Commission to develop more effective policies. One specific area in which research on the plea process and prosecutorial discretion is absolutely critical is in the use of 5K1.1 departures. Many studies point to departures, especially substantial assistance departures in drug cases, as a point at which unwarranted sentencing disparities arise. Studies indicate that black and Hispanic defendants may benefit less from these departures than do white defendants. But why is this? Does this indicate discrimination either on the part of the judge or the US Attorney who submitted or did not submit a motion for 5K1 departure? Perhaps, but it is also possible that there are real differences in the kinds of assistance provided by different offenders, or in the strength of evidence that might explain variation in the use of departures. Currently data are collected on cases that receive substantial assistance departures, and the nature of the assistance provided, but the data are not readily available to researchers. Furthermore, even if they were, an objective analysis of the use of departures requires the ability to compare sentencing outcomes among cases in which defendants did and did not provide assistance, regardless of whether a departure was ordered.

I will close with the following recommendation, and I will be brief as the point is by no means an unfamiliar one:

III. Encourage the repeal of mandatory minimums.

I urge the Commission to encourage Congress to repeal mandatory minimum sentencing statutes in favor of the guidelines provided in the SRA.

There are not currently, nor have there ever been, any truly "mandatory" sentencing provisions under U.S. laws or state laws. Mandatory minimums do not ensure that offenders who have committed certain crimes or with a requisite criminal history will receive a particular sentence. They do, however, ensure that some subset of the offenders will be subject to especially harsh punishment, while others will avoid those mandatory sentences by pleading guilty to a lesser charge. Mandatory minimums that trump the guidelines, that do not take into account important differences among offenders who ostensibly committed the same crime, and that are controlled entirely by US Attorneys whose decisions are not reviewable, run counter the very principle of presumptive sentencing guidelines. By their very nature mandatory minimums invite inconsistent application, undermine uniformity in the punishments meted out to offenders who in all likelihood committed the same crimes, and yet, simultaneously, by require excessive uniformity for those to whom the mandatories are applied, threatening proportionality of punishment in the process. They are fundamentally at odds with the principles and goals of the SRA, compromise the effectiveness of the SRA in achieving those goals, and interfere with the Commission's ability to achieve meaningful reforms to the sentencing guidelines.

As well-know sentencing scholar past President of the American Society of Criminology, Michael Tonry, concluded:

Evaluated in terms of their stated substantive objectives, mandatory penalties do not work. The record is clear from research in the 1950s, the 1970s, the 1980s, and the 1990s that mandatory penalty laws shift power from judges to prosecutors, meet with widespread circumvention, produce dislocations in case processing, and too often result in imposition of penalties that everyone involved believes to be unduly harsh (1996; p. 135).

UNITED STATES SENTENCING COMMISSION
ATLANTA, GA
FEBRUARY 10-11, 2009
PUBLIC HEARING

Panel Seven
VIEW FROM COMMUNITY INTEREST GROUPS

PUBLIC HEARING
FEBRUARY 11, 2009
ATLANTA, GEORGIA

IV. View from Community Interest Groups 11:15 a.m. - 12:30 p.m.

Spencer Lawton
Georgia Criminal Justice Coordinating Council
Atlanta, GA

Hector Flores
Cuban-American Bar Association
Miami, FL

Loretta Fish
Alderson, WV

The panel is expected to describe different ways that sentencing can impact the community beyond the immediate offender. The panel includes a former federal drug offender, a practitioner from the South Florida Cuban community, and a former district attorney who pioneered victims issues in his state.

Spencer Lawton, Jr.
Savannah, Georgia

Mr. Lawton was elected district attorney for the Eastern Judicial Circuit (Savannah) in 1980, took office in 1981and held that seat until 2008. He served a single county (Chatham County) with a population of close to a quarter of a million people. Mr. Lawton himself served as the solicitor, handing all misdemeanors as well as felonies. In 1983, Mr. Lawton founded the first prosecutor-based victim witness assistance program in the state of Georgia. The program has since developed into a highly functioning staple of the Eastern Judicial Circuit and has inspired the creation of similar programs in jurisdictions throughout Georgia.

Georgia Criminal Justice Coordinating Council

The Criminal Justice Coordinating Council enhances the effectiveness of Georgia's criminal justice system by building knowledge and partnerships among state and local government agencies and non-governmental organizations to develop and sustain results-driven programs, services and activities. It serves as the state administrative agency for numerous federal grant programs and manages state grant programs funded by the Georgia General Assembly. The council conducts planning, research and evaluation activities to improve criminal justice system operations and coordination. It operates Georgia's Crime Victims Compensation Program which utilizes federal funds and fee and fine proceeds to provide financial assistance to victims of violent crime.

PLACEHOLDER FOR TESTIMONY OF

Spencer Lawton
Georgia Criminal Justice Coordinating Council
Atlanta, GA

Hector L. Flores, Esq.
Barzee Flores, PA
Miami, Florida

Hector L. Flores graduated from Wabash College in 1980, and from the Indiana University School of Law in 1983. He began his legal career as a Deputy Indiana State Public Defender (1983-1987) focusing on capital appellate and post conviction relief work. In 1987 he became an Assistant Federal Public Defender in the Southern District of Florida doing trial and appellate work (1987-2008). In twenty-one years as an Assistant Federal Public Defender he tried approximately 150 jury trials including a five month federal death penalty case. From 1991 to 2008 he was a supervisor in that office. He is currently in private practice specializing in federal criminal defense. He is licensed to practice in Indiana and Florida

Cuban American Bar Association (CABA)

CABA is a non-profit voluntary bar association in the State of Florida. Founded in 1974, CABA's members include judges, lawyers and law students of Cuban, Cuban-American descent, as well as those who are not of Cuban descent, but are interested in issues affecting the Cuban community. CABA's mission is to promote equality of our members; serve the public interest by increasing awareness to the study of jurisprudence; foster respect for the law; preserve high standards of integrity, honor, and professional courtesy among our peers; provide equal access to and adequate representation of minorities before the courts; facilitate the administration of justice; build close relationships among our members; support the Cuban-American indigent community; and increase diversity in the judiciary and legal community.

PLACEHOLDER FOR TESTIMONY OF

Hector Flores
Cuban-American Bar Association
Miami, FL

Loretta Fish
Alderson, West Virginia

Loretta Fish was sentenced to 19 years and 7 months in prison in 1994 for conspiracy to distribute methamphetamine. Her boyfriend used, manufactured and sold speed as part of a drug ring in eastern Pennsylvania. Fish was convicted of conspiracy for letting her boyfriend use her car for drugs, allowing a dealer to stay in her trailer, cooking and cleaning for the ring, taking phone messages and acting as a lookout. Her involvement lasted six months. The ring kingpin, who admitted making $500,000 from drugs in just half a year, received five years in prison for testifying against his accomplices. Fish's boyfriend received 17 years. President Clinton commuted her sentence in January 2001. In 2004, Loretta became a Licensed Practical Nurse after graduating from the Greenbrier School of Practical Nursing. She is presently employed as a nurse. Loretta is writing her autobiography and studying to become a Registered Nurse. She was not due to leave prison until 2011.

Families Against Mandatory Minimums (FAMM)

Families Against Mandatory Minimums is the national voice for fair and proportionate sentencing laws. We shine a light on the human face of sentencing, advocate for state and federal sentencing reform, and mobilize thousands of individuals and families whose lives are adversely affected by unjust sentences.

Loretta Fish was convicted by a jury of one count of conspiracy to manufacture and distribute methamphetamine, in violation of 21 U.S.C. § 846.[1] A second count—manufacture of methamphetamine, in violation of § 841(a)(1) and aiding and abetting, in violation of 18 U.S.C. § 2—had been severed and trial on this count was pending at the time of Fish's sentencing. The court sentenced Fish to 235 months in prison, followed by five years of supervised release.

According to the PSR, beginning in the Spring of 1989, and lasting through the summer of 1990, Fish and her co-conspirators manufactured and distributed many kilograms of methamphetamine for associates of motorcycle clubs. Fish's boyfriend introduced her to methamphetamine and played a large role in the conspiracy. Fish's boyfriend supervised the manufacture of methamphetamine in a trailer next to the one he shared with Fish in rural Pennsylvania. Fish and her boyfriend also sold methamphetamine out of their trailer. Fish's actions included the following: (1) she reassured co-conspirators that they could trust her boyfriend; (2) she was involved in discussions regarding the materials being brought to the trailer and how the conspiracy would play out; (3) she acted as a lookout during methamphetamine "cooks"; (3) she allowed co-conspirators to stay at her trailer during the "cooks" and washed their clothes; (4) she was present during deliveries of money to her boyfriend, including a $40,000 payment; (5) she handled customer transactions when her boyfriend was not home; (6) she cleaned out her car for co-conspirators to use to transport equipment and chemicals to another location after she started getting sick and asked that the "cooks" not be done next to her trailer.

Fish was held accountable for approximately 113 grams of "cut" methamphetamine and over 21 kilograms of pure methamphetamine. Based on the amount of drugs, Fish was subject to a ten-year mandatory minimum penalty, and a base offense level of 40.[2] After receiving a two-level reduction for being a minor participant, and a two-level adjustment for obstruction of justice (based the fact that she perjured herself while testifying at a codenfendat's trial), the court found a total offense level of 40. Fish had no prior convictions, placing her in criminal history category I. The court sentenced Fish to 235 months in prison—at the low-end of the guideline range of 235-293 months'—and a five-year term of supervised release.

The PSR listed the sentences of Fish's co-defendants: one received 60 months in prison, one received 360 months in prison, one received life in prison, and one co-defendant's sentence was still pending. Her boyfriend, who was indicted separately, received 200 months in prison.

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[1]There were five co-defendants charged with Fish in the superseding indictment, and four related cases.

[2]The sentencing court used the November 1, 1993 version of the *Guidelines Manual*.

Testimony of Monica Pratt Raffanel
Communications Director
Families Against Mandatory Minimums

Before the
United States Sentencing Commission
Public Hearing on
"The Sentencing Reform Act of 1984: 25 Years Later"

Atlanta, Georgia
February 10, 2009

Thank you Chairman Hinojosa and Commissioners for inviting me to address you today. My name is Monica Pratt Raffanel and I am the Communications Director of Families Against Mandatory Minimums. FAMM is a national, nonprofit organization working for sentences that are individualized, humane and no greater than necessary to impose just punishment, secure public safety and support successful rehabilitation and reentry. FAMM does not oppose prison or punishment, but we believe the punishment should fit the individual and the offense.

I was born and raised in Georgia and live now in Lilburn, not too far from Atlanta. I began working at FAMM in 1993, spending 13 years in Washington, D.C. before moving back to Georgia to raise a family. My job at FAMM is first and foremost to convey the human face of the sentences imposed by mandatory minimums and by the sentencing guidelines that you write. I have been listening to prisoners and their family members tell me their stories for 15 years, and many of their accounts deeply trouble me because they describe families wrenched apart and lives forever altered by sentences that in many cases are unnecessarily long. I know the pain caused by that separation and loss, because I too have experienced what it is like to have a family member in prison.

When I was seven years old, my father was sentenced to a year in state prison for a drug-related offense. My stay-at-home mother struggled to support two young daughters, turning to family and friends for assistance while my father was incarcerated. At the time, she thought it best that I didn't know where my father was, fearing the shame and stigmatization I might face if other kids (and their parents) knew my father was in prison. I remember being very confused and very angry, thinking my father abandoned us.

With the help of a lawyer, my father was released after serving a few months in prison. I'll never forget walking in the door after school and seeing him sitting at the kitchen table. But even that short time in prison had a devastating effect on our family.

I'm sure my father struggled in prison, but I've always felt that my sister, mother and I served a far greater sentence than he – and it didn't end the day he came home. For years after his release, we lived in a house without heat, or hot water, thankful just for a roof over our heads. My father's conviction barred him from certain jobs and made it difficult for him to find steady work. When I was 12, my parent's marriage ended and for years I did not speak to my father because of my anger over his incarceration. Thankfully, we have a good relationship today, but it came at a high cost.

Working for FAMM and hearing from so many families over the years, I realize my family was somewhat "lucky" that my father only received a year in prison. Prison sentences of five, 10, 20 years and more are commonplace today, even for nonviolent, low-level offenders. I want to share with you today two stories about the harm of unduly long sentences on the families of two southern FAMM members.

Stephanie Nodd grew up in Mobile, Alabama. She became pregnant in ninth grade and dropped out of school to care for her child. Stephanie was barely 20 years old when she met John, a handsome drug dealer new to the city with lots of money. He showered her with compliments and promised to reward her generously for helping him set up in the area. Stephanie introduced John to people and local drug spots, sold crack to customers on the street and later delivered cocaine and picked up money for him. In return, John gave her cash; money which Stephanie, a single mother, needed to provide for her four young children. A little over a month after meeting John, Stephanie was arrested, charged and convicted as part of John's crack cocaine business, which operated in the Mobile area from July 1987 to August 1988.

According to her judge, "this defendant is not an organizer, she was not the boss of this operation. She was only a lieutenant. And I feel that because of her young age, she was influenced to a great extent by [John]." So he departed from the life sentence required by the then-mandatory guidelines, calculated using the relevant conduct guideline. She was held accountable for eight kilograms of crack cocaine handled by the organization. Stephanie, who had no adult criminal record, was 23 and pregnant with her fifth child when she sentenced to 30 years in federal prison a few days before Christmas of 1990.

Stephanie's family has served every day of that sentence. Her five children were raised by different relatives. Her mother cared for two and sometimes three of the eldest boys until her death in 2006. Stephanie's youngest son, William, was taken in by his father's grandmother and after her death, by his father. Elizabeth, the youngest, stays with Stephanie's sister. The children can only see Stephanie twice a year. Until her grandmother's funeral, Elizabeth had never seen Stephanie outside prison walls.

Stephanie's long incarceration and the children's separation and dislocation have taken their toll. Her two oldest boys, Marquise and Timothy, are both incarcerated.

While in prison, Stephanie has earned her GED and taken college courses, obtained her forklift license, culinary certification, graduated from computer programming, and completed many other programs.

There is no justification for condemning Stephanie and her family to prison for 30 years, but that is the unconscionable consequence of the crack cocaine penalty structure and relevant conduct on this first-time offender. Had she been sentenced as if her crime involved powder cocaine, she would have left prison more than seven years ago. Stephanie has eight more years to serve on her federal sentence.

Ricky Minor's life, at the time he was convicted of attempt to manufacture methamphetamine, was a mess. Born and raised in Niceville, Florida, he began using drugs at the age of thirteen and graduated to cocaine shortly after he turned 20. He sold some drugs to support his own addiction and repeatedly got into trouble with the law. Despite his troubles, he managed to open and run a small business and, in 1994, got married. He and his wife raised her two children and had a child of their own. But Ricky struggled with addiction and depression and was hospitalized on one occasion after threatening to kill himself. He became addicted to methamphetamine after trying to shake his drug habit in 1998.

In 2000, acting on a tip, police found methamphetamine residue, 1.2 grams of methamphetamine and pseudoephedrine pills in Ricky's house. The DEA estimated that 191.5 grams of methamphetamine could have been produced from the pills.

Ricky pled guilty and, though he had never spent a day in prison, was sentenced by reluctant Judge Roger Vinson to life in prison as a career offender. (His sentence under the

guidelines would have reflected a three-level reduction for acceptance of responsibility. At level 31 with 6 criminal history points it would have been 135 to 168 months – still a lengthy sentence but with the chance of return). He completed the 500-hour drug abuse program and today is proudly sober. He has excelled in prison classes, and is a changed person.

But after his incarceration his family fell apart. He and his wife divorced. His wife abandoned their daughter, who is now a teenager and cared for by her elderly grandparents, who live on a fixed income. His stepdaughter is unmarried, unemployed, and trying to care for two children. His stepson died of a drug overdose. Ricky writes compellingly about the mistakes he made and the clarity he has for the first time in his adult life as a sober person. He will never leave prison, however, to help his elderly parents or guide his daughter into adulthood.

Michael Short, whose sentence was commuted by President George Bush last year, testified to the Judiciary Committee Subcommittee on Crime shortly after his commutation and said "there is a point beyond which the lessons that could be learned and the punishment that could be extracted are well past – they are lost. And beyond that point it makes no sense to warehouse those humans."

He is right. Not only because there is no benefit to keeping people who have been adequately punished locked up, but also because of the harm it causes their children and communities.

American taxpayers spend almost $5.4 billion on federal prisons annually.[1] While some criminologists credit incarceration with 20 to 25 percent of the national crime decline, the

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[1] U.S. DEP'T OF JUSTICE, FY2008 BUDGET AND PERFORMANCE SUMMARY, *available at* http://www.usdoj.gov/jmd/2008summary/pdf/127_bop.pdf (last visited Feb. 10, 2009). As of June 2008, the annual cost of incarceration was estimated at $24,922 per prisoner. Annual Determination of Average Cost of Incarceration, 73 Fed. Reg. 33853 (Dep't of Justice, Bureau of Prisons June 13, 2008), *available at*

relationship between incarceration and crime rates is rather more complicated. According to The Sentencing Project, in the 1990s, "a time of historic declines in crime, there was no discernable correlation between incarceration rates and criminal offending. Between 1991 and 1998, states with above average increases in the rate of incarceration (72 percent) experienced a 13 percent decrease in crime rates. But states with below average increases in the rate of incarceration (30 percent) actually experienced a greater decline in crime rates, 17 percent."[2] Certainty of punishment, not its severity, is the chief contributing factor to deterring crime. Moreover, the destruction to the family carries significant financial and social costs, as illustrated in the stories of Stephanie's and Ricky's children.

In the federal system alone, 123,800 parents (63 percent of the men and 55 percent of the women) of 279,100 children under 18 were incarcerated in 2007.[3] Of the parents in federal prison in 2004, 67.2 percent had been the primary financial supporters of their minor children and 73 percent of them had supported their children with earned income.[4] Racial disparity in sentencing outcomes affects children as well: a black child is seven and one half times more likely to lose a parent to incarceration.[5]

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http://www.thefederalregister.com/d.p/2008-06-13-E8-13265 (last visited Feb. 10, 2009). There are currently 188,603 federal prisoners (excluding those in halfway house and other facilities). U.S. DEP'T OF JUSTICE, BUREAU OF PRISONS, WEEKLY POPULATION REPORT (Feb. 5, 2009), *available at* http://www.bop.gov/locations/weekly_report.jsp (last visited Feb. 10, 2009).

[2] THE SENTENCING PROJECT, "Do More Prisoners Equal Less Crime? A Response to George Will" (June 2008) *available at* http://www.sentencingproject.org/Admin/Documents/publications/will_overall%20response.pdf, (last visited Feb. 10, 2009).

[3] Lauren E. Glaze & Laura M. Maruschak, *Parents in Prison and Their Minor Children*, at 2 (U.S. Department of Justice, Bureau of Justice Statistics, Special Report, NCJ 222984, August 2008), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/pptmc.pdf (last visited Feb. 10, 2009).

[4] *Id.* at 17.

[5] *Id.*

Maintaining family ties while incarcerated is profoundly difficult. Children lose daily contact with the incarcerated parent and many lose contact altogether. In the federal system in 2004, 45 percent of parents reported never having a personal visit from their children, and 8.8 percent have no contact whatsoever.[6] A significant contributing factor to the lack of visits appears to be the distance at which parents in federal prisons are incarcerated. The federal Bureau of Prisons houses 83.6 percent of parents more than 100 miles from home (42.4 percent are housed more than 500 miles from home).[7]

Children of incarcerated parents are more likely than their peers to leave school, become delinquent and end up incarcerated themselves.[8] Of the parents incarcerated in state prisons in 2004, 25 percent reported that one of their parents had also been incarcerated. [9]

I am here today, on behalf of all the families from the southern states with incarcerated spouses and parents in federal prison, to urge you to take steps to ensure that the guidelines promote sentences that are, as required by federal law, no greater than necessary to comply with the purposes of punishment.

We especially ask you to do the following:

1. Urge Congress in the strongest possible terms to end **mandatory minimum sentencing**. Ricky is serving life in prison as a career offender under 21 U.S.C. § 841. His guideline

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[6] *Id.* at 18.

[7] THE SENTENCING PROJECT, *Incarcerated Parents and Their Children: Trends 1991-2007* at 8, *available at* http://www.sentencingproject.org/Admin/Documents/publications/inc_incarceratedparents.pdf (last visited Feb. 10, 2009).

[8] D.H. Dallaire, "Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families," *Family Relations*, 56(5), 440-453 (2007), *reprinted in* THE SENTENCING PROJECT, *Incarcerated Parents and Their Children: Trends 1991-2007*, at 1, *available at* http://www.sentencingproject.org/Admin/Documents/publications/inc_incarceratedparents.pdf, (last visited Feb. 10, 2009).

[9] Glaze & Marushak, *supra* note 3, at 7. They do not report comparable figures for federal prisoners

range would have been 135 to 168 months. Mandatory minimums often result in unduly long sentences. They are a chief contributor to the undue length of many guideline sentences indexed to them, and they utterly undermine the mandate of individualized consideration, proportionality and parsimony in 18 U.S.C. § 3553 (a) The Commission has made a tremendous contribution by making its considered opinion that mandatory minimums do not belong in our criminal justice system known to Congress and the public. It would do all a service by updating the outstanding report on mandatory sentencing produced in 1991 and though well out of date, still referred to and conveying a renewed message to Capitol Hill that such sentences should be ended.

2. **Extend the two-level reduction for crack cocaine to all guidelines anchored to mandatory minimums.** This is a step you can take now that will lower sentences while maintaining the relationship between statutory minimums and guideline ranges. The founding Commission's decision to correlate the guidelines with the mandatory minimums and index the guideline starting point above the mandatory minimums provided for even longer guideline sentences than those called for by Congress. This twin attack on drug offenses caused the unprecedented and disproportionate incarceration of first-time and low-level drug offenders,[10] characterized by the American Bar Association's Kennedy Commission as "far beyond historical norms."[11]

3. **Honor the 25th anniversary of the Sentencing Reform Act by complying with its unrealized directives.** For example, the Commission should review the guidelines with an eye to lowering those sentencing ranges that have generated continued concern with their undue length and severity of punishment in certain cases. The Sentencing Reform Act provides a variety of tools that the Commission can use to do this.

    - 29 U.S.C. § 994(g) provides that "[t]he sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the

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[10] U.S. SENTENCING COMMISSION, FIFTEEN YEARS OF GUIDELINE SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM at 49, 5 (figure 2.7), and iv (2004) (where the Commission states that under the Guidelines sentences have been made "more severe" and lengths of imprisonment have "climbed dramatically.").

[11] AMERICAN BAR ASSOCIATION, JUSTICE KENNEDY COMM'N, REPORTS WITH RECOMMENDATIONS TO THE ABA HOUSE OF DELEGATES, at 38 (Aug. 2004), *available at* http://sentencing.typepad.com/sentencing_law_and_policy/files/JusticeKennedyCommissionReports-11Aug2004.pdf (last visited Feb. 10, 2009). The report also shows, by a comparison to states' guideline systems, that the federal guidelines are unique in accomplishing an *increase* in the severity of sentencing. Thus, the over-incarceration wrought by the federal sentencing guidelines is a problem with the administration of the guidelines, not the guidelines as a system. This is a problem that can be fixed.

Commission. The Department of Justice indicates that during 2007, the federal system operated at 37 percent above its rated capacity and the prisons appear to have been overcrowded for many of the years the guidelines have been in effect.[12]

- 28 U.S.C. § 994(j) directs the Commission to "insure that the guideline 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 violent crime or an otherwise serious offense . . . ."

- 28 U.S.C. § 994(o) provides the Commission broad authority to use the sentencing decisions, especially departures and variances, as well as "comments and data coming to its attention" to inform guideline revisions, including those that would lower guidelines. Many of the sentences called for by the guidelines have been sharply criticized over the years, in judicial opinions and by criminal justice experts, for being unduly harsh and the guidelines themselves for being too complicated. Engaging the feedback mechanism envisioned by the Sentencing Reform Act in a meaningful way could do a great deal to ameliorate what many see as unjust sentences called for in the guidelines.

We look forward to working with the Commission as it considers its work on the guidelines. Thank you.

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[12] HEATHER C. WEST & WILLIAM C. SABOL, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2007, at 7 (Dec. 2008), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf (last visited Feb. 10, 2009).

UNITED STATES SENTENCING COMMISSION
ONE COLUMBUS CIRCLE, N.E.
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(202) 502-4500
FAX (202) 502-4699

February 5, 2009

MEMORANDUM

TO: Acting Chair Hinojosa
Commissioners
Judith Sheon

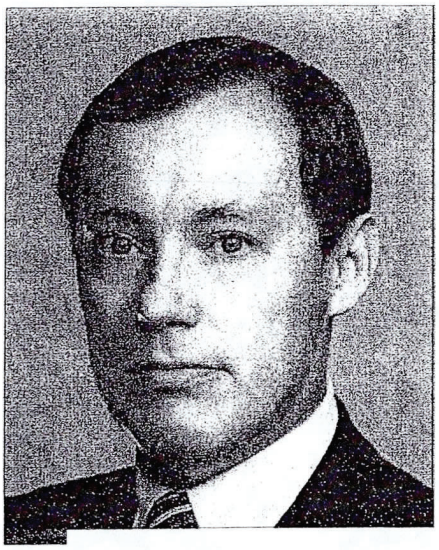
FROM: Ken Cohen

SUBJECT: Luncheon with Circuit and District

The Commission is scheduled to have a luncheon meeting with local appellate judges and district judges at 12:00 noon to 1:30 p.m. on Tuesday, February 10, 2009. The luncheon meeting will take place in Avanzare Steak in the Hyatt Regency where we are holding the public hearing.

To date, Chief Judge J. L. Edmundsion of the Eleventh Circuit; Chief Judge Julie Carnes of the Northern District of Georgia; District Judges Timothy Batten, Sr., Jack Camp, Beverly Martin, and Charles Pannell, Jr., and Thomas Thrash, and Jim Hatten, clerk of the Northern District of Georgia, have indicated they plan to attend. The appellate judge panelists have been invited to attend but indicated they have early afternoon flights to catch. We are waiting to hear from four district judges.

Short bios and relevant circuit and district sentencing data for the Fourth and Eleventh Circuits are attached.



Edmondson, J. L.

404-335-6230

Chief Judge, United States Court of Appeals for the Eleventh Circuit and member, Judicial Conference of the United States, 56 Forsyth Street, N.W., Atlanta, GA 30303. Nominated for appointment March 26, 1986 by President Ronald Reagan. Entered on duty June 9, 1986; elevated to Chief Judge June 1, 2002.

Education: Emory University, Atlanta, GA, 1968, B.A.; University of Georgia School of Law, Athens, GA, 1971, J.D.

Career Record: 1971-73, Law Clerk to Chief Judge, Northern District of GA.

Memberships: American and Gwinnett County Bar Associations; State Bar of GA; Lawyers Club of Atlanta; Old War Horse Lawyers Club.

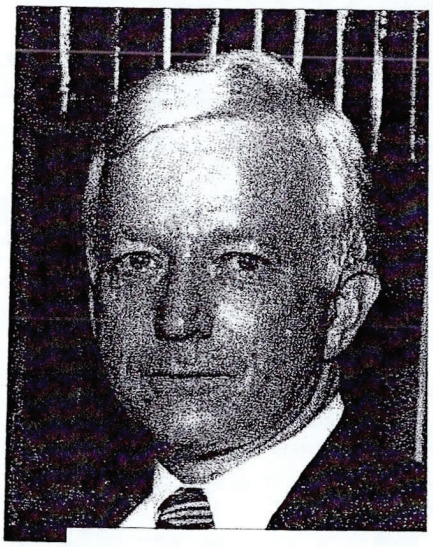
Batten, Timothy C., Sr.

404-215-1420

Judge, United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building and U.S. Courthouse, 75 Spring Street, S.W., Suite 600, Atlanta, GA 30303. Nominated for appointment Sept. 28, 2005 by President George W. Bush; received commission on April 3, 2006.

Education: Georgia Institute of Technology, 1977-81, B.S.; University of Georgia, 1981-84, J.D.

Career Record: 1984-93, Associate then 1993-2006, Partner, Schreeder, Wheeler & Flint, LLP. Admitted to the Georgia Bar, 1984.



Camp, Jack T.

678-423-3020

Chief Judge, United States District Court for the Northern District of Georgia, P.O. Box 939, Newnan, GA 30264. Alternate address: Room 2142, U.S. Courthouse, 75 Spring Street, S.W., Atlanta, GA 30303-3361. Nominated for appointment on Dec. 18, 1987 by President Ronald Reagan. Sworn in May 27, 1988; elevated to Chief Judge Sept. 1, 2006. Born in 1943 in Newnan, Coweta County, GA. Married April 24, 1976 to Rose Elizabeth Thomas. Two children.

Education: The Citadel, Charleston, SC, 1961-65, B.A. (honors), Honor Society; University of Virginia, Charlottesville, VA, 1965-67, M.A., Ford Foundation Fellowship, student asst.; University of Virginia School of Law, 1970-73, J.D., student asst., 1972-73.

Military Service: entered active duty as 2LT; released in 1969 as CPT after Vietnam Conflict service. Inactive Reserves, 1970-86.

Career Record: 1973-75, attorney, Cabaniss, Johnston, Gardner, Dumas and O'Neal; 1975-88, attorney, Glover and Davis. Admitted to AL Bar, 1973; GA Bar, 1975.

Publications: research asst., *Lawyers' Lawyer: A Biography of John W. Davis*, by William H. Harbaugh.

Awards: military awards and decorations include Bronze Star, Vietnam Campaign Medal, Vietnam Service Medal, Natl. Defense Service Medal.

Memberships: State Bar of GA; Newnan-Coweta and Coweta Circuit Bar Association; Federal and Atlanta Bar Associations; Newnan Historical Society; GA Trust for Historic Preservation; Natl. Trust for Historic Preservation; University of Virginia Alumni Association; Alumni Association of the Citadel; Atlanta Citadel Club.

Religion: Presbyterian.

Interests: outdoor sports, history.

Carnes, Julie E.

404-215-1510

Judge, United States District Court for the Northern District of Georgia, Room 2167, 75 Spring Street, S.W., Atlanta, GA 30335. Nominated for appointment Aug. 1, 1991 by President George H. W. Bush. Sworn in May 29, 1992. Born in 1950 in Atlanta, GA.

Education: University of Georgia, Athens, GA, 1972, A.B. and 1975, J.D.

Career Record: 1975-77, law clerk to Judge Lewis R. Morgan, U.S. Court of Appeals for the Fifth Circuit; 1978-89, Asst. U.S. Attorney for the Northern District of Georgia; 1987-89, Special Counsel then 1990-96, Member, U.S. Sentencing Commission.

Martin, Beverly B.

404-215-1540

Judge, United States District Court for the Northern District of Georgia, Room 2388, U.S. Courthouse, 75 Spring Street, S.W., Atlanta, GA 30303-3309. Nominated for appointment March 27, 2000 by President William J. Clinton. Sworn in Aug. 4, 2000. Born in Macon, GA.

Education: Stetson University, Deland, FL, 1976, B.A.; University of Georgia School of Law, Athens, GA, 1981, J.D.

Career Record: 1981-84, Associate Attorney, Martin, Snow, Grant and Napier, Macon, GA; 1984-94, trial and appellate court litigator then Senior Asst. Attorney General and Director, Business and Professional Regulation Division, Office of the Attorney General for the State of GA; 1994-98, Asst. U.S. Attorney for the Middle District of Georgia; 1998-2000, U.S. Attorney for the Middle District of Georgia; 2000-present, current position. Admitted to Georgia Bar in 1981.

Memberships: GA Bar Association; Lawyers Club of Atlanta (GA).

Pannell, Charles A., Jr.

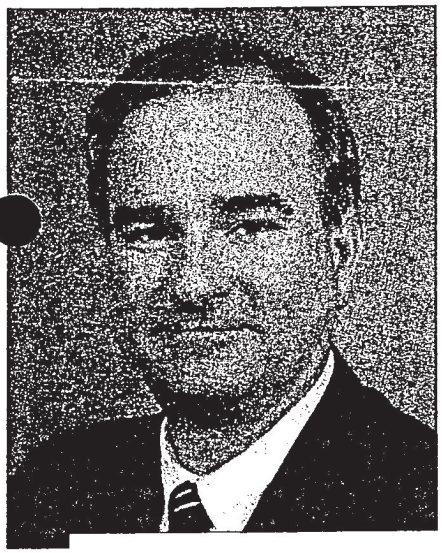
404-215-1580

Judge, United States District Court for the Northern District of Georgia, Room 2367, U.S. Courthouse, 75 Spring Street, S.W., Atlanta, GA 30303–3309. Nominated for appointment July 14, 1999 by President William J. Clinton; received commission on Oct. 26, 1999. Married to Kate Williams. Two children.

Education: University of Georgia, Athens, GA, 1967, B.A., Alpha Tau Omega; Gridiron Secret Society; University of Georgia School of Law, Athens, GA, 1970, J.D.

Military Service: U.S. Army Reserve, Judge Advocate General's Corp., 1971–97; released as COL, Senior Military Judge.

Career Record: 1971–72, Asst. U.S. Attorney, Northern District of Georgia, Atlanta, GA; 1972–76, attorney, Pittman & Kinney Law Firm, Dalton, GA; 1974–76, part-time Special Asst. Attorney General, Law Dept., State of GA; 1977–79, District Attorney, Conasauga Circuit, State of GA; 1979–99, Judge, Superior Court, Conasauga Circuit, State of Georgia.



Thrash, Thomas W., Jr.

404-215-1550

Judge, United States District Court for the Northern District of Georgia, Room 2188, Richard B. Russell Federal Building and U.S. Courthouse, 75 Spring Street, S.W., Atlanta, GA 30303. Nominated for appointment Jan. 7, 1997 by President William J. Clinton; received commission on Aug. 1, 1997. Born in 1951 in Birmingham, AL. Married June 20, 1981 to Margaret Lines.

Education: University of Virginia, Charlottesville, VA, 1969-73, B.A. (high distinction), Phi Beta Kappa, Echols Scholar, Virginia Debaters, president; Harvard University Law School, Cambridge, MA, 1973-76, J.D. (cum laude), Learned Hand Club, president, Best Brief Award, Preliminary Competition and Semifinalist, Ames Moot Court Competition.

Career Record: Summer 1973, Bank Examiner Intern, Comptroller of the Currency, Washington, DC; Summer 1974, Clerk, Swift, Currie, McGhee and Hiers, Atlanta, GA; Summer 1975, Clerk, then 1976-77, Associate, McClain, Mellen, Bowling and Hickman, Atlanta, GA; 1977-80, Asst. District Attorney, Office of Fulton County District Attorney, Atlanta, GA; 1981-82, Associate, Ross and Finch, Atlanta, GA; 1982-85, Associate and Non-Equity Partner, Finch, McCranie, Brown and Blank, Atlanta, GA; 1985-95, Partner, Finch, McCranie, Brown and Thrash, Atlanta, GA; 1995-97, Paradyme Corp., Atlanta, GA; 1995-97, Thomas W. Thrash Attorney at Law, Atlanta, GA Adjunct Professor, Georgia State University College of Law, Atlanta, 1986-97. Admitted to State Bar of GA, GA Supreme Court, GA Court of Appeals, U.S. District Court for the Northern District of GA, U.S. Court of Appeals for the Fifth Circuit, 1976, U.S. District Court for the Middle District of GA, 1985; U.S. Court of Appeals for the Eleventh Circuit, 1981.

Publications: author of numerous publications, the most recent being "Federal Automotive Safety Standards and Georgia Products Liability Law: Conflict or Coexistence?," *Georgia State Bar Journal* (Feb. 1990); "Georgia Campaign Finance and Disclosure Law," *Ibid.* (May 1991); "Apprenticeship at the Bar: The Atlanta Law Practice of Woodrow Wilson," *Ibid.* (Feb. 1992); "The Affidavit Requirement in Medical Malpractice Actions," *Georgia Health Law Developments,* vol. 2, no. 1 (Spring 1993); "Myths about Malpractice," *Atlanta Medicine,* vol. 67 (Fall 1993); "A Review of Roger K. Newman's Hugo Black," *Georgia Bar Journal* (Oct. 1995); *Handbook of Georgia Campaign Finance and Disclosure Law.*

Memberships: GA Legal History Foundation; Vinings Homeowners' Association; State Bar of GA; Vinings Civic Cub; University of Virginia Alumni Association; Harvard Club of GA; Atlanta Historical Society; High Museum of Art; Cochise Club; Judicial Conference Committee on Rules of Practice and Procedure, 2000-06.

Religion: Christian.

United States Sentencing Commission

Statistical Information Packet

Fiscal Year 2008

Fourth and Eleventh Circuit

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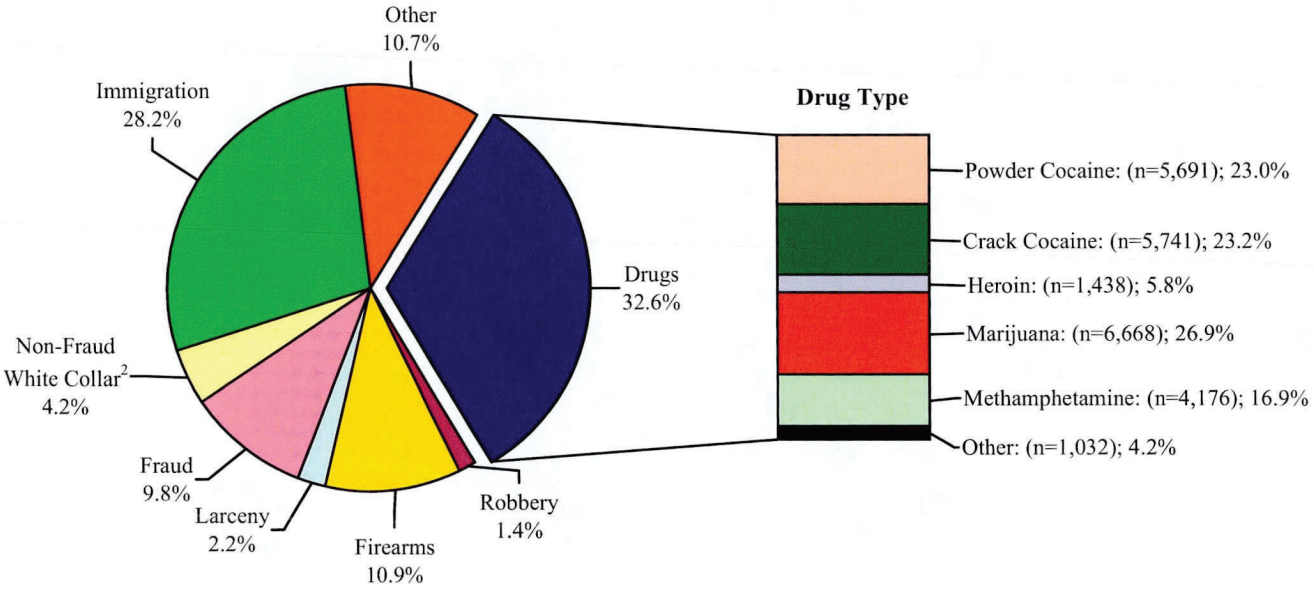
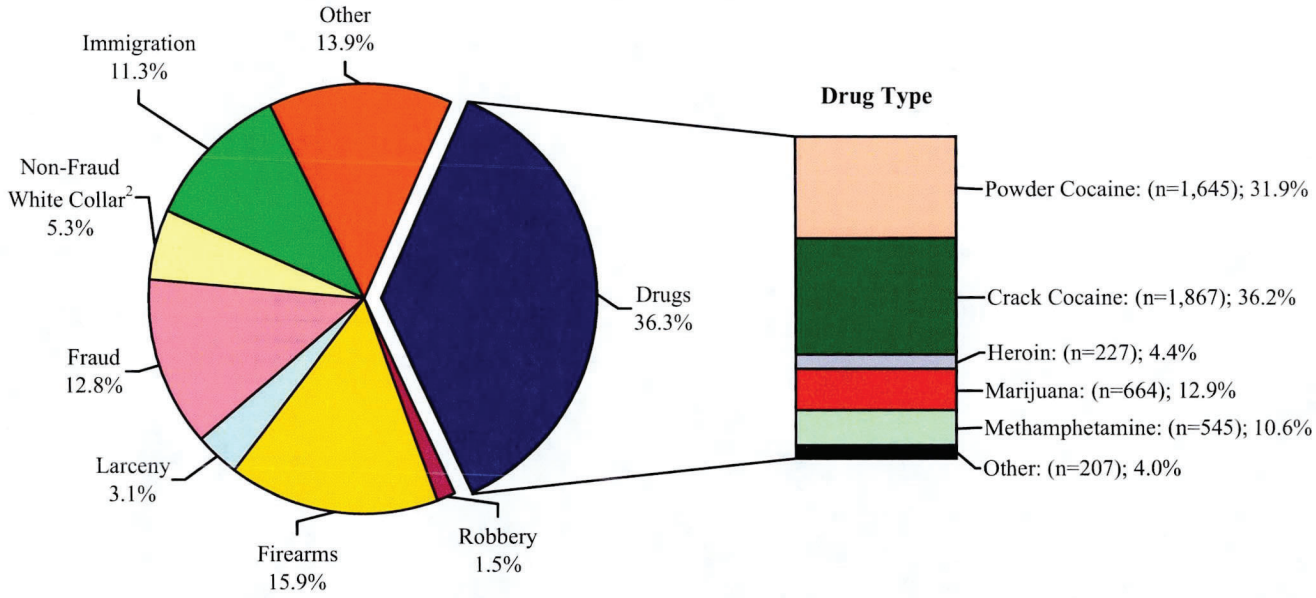
DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED BY SELECT PRIMARY OFFENSE CATEGORY[1]
Fiscal Year 2008

National



Fourth and Eleventh Circuits



[1]Of the 76,436 guideline cases, 462 cases were excluded due to one of the following reasons: missing primary offense category (47) or missing drug type (415). Of the 14,316 guideline cases from the Fourth and Eleventh Circuits, 116 cases were excluded due to one of the following reasons: missing primary offense category (1) or missing drug type (115).

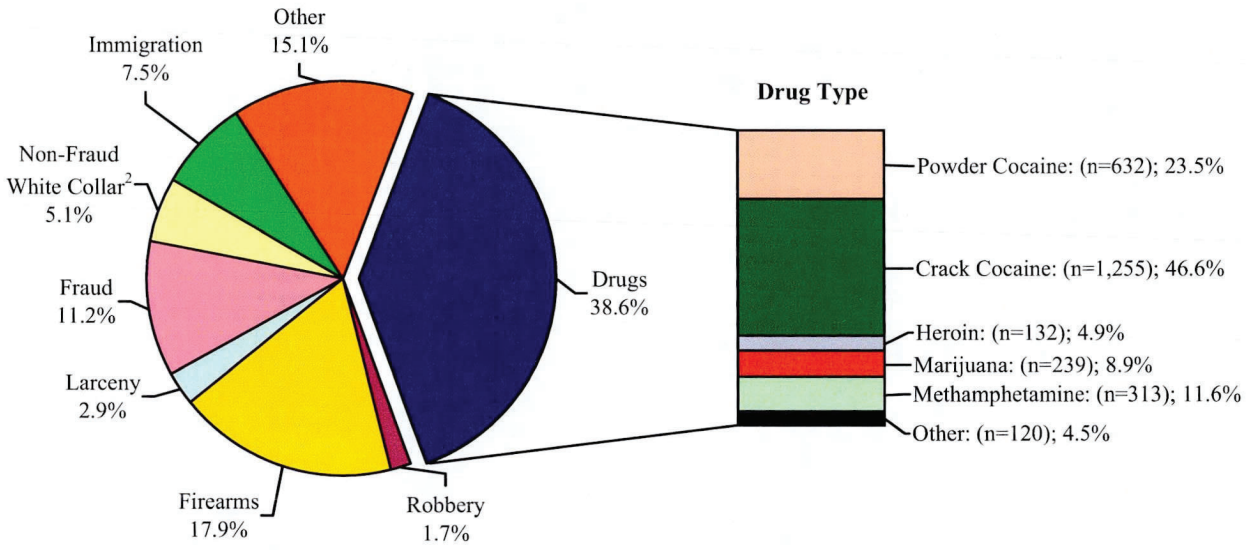
[2]The Non-Fraud White Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering, and Tax.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

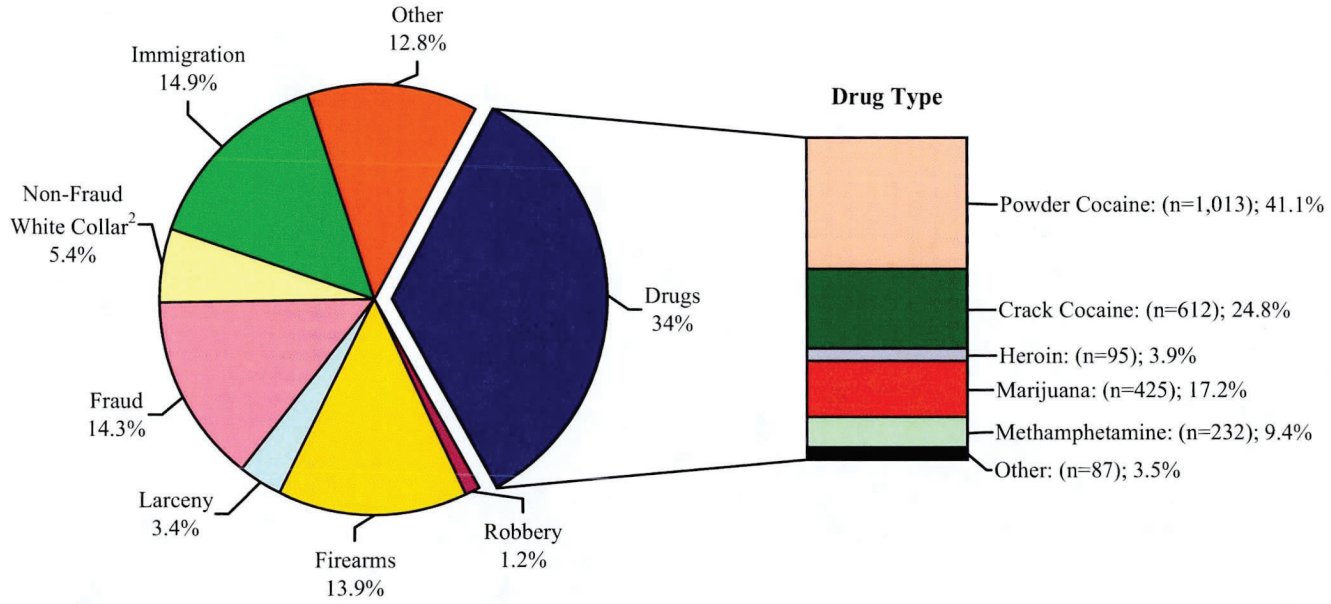
Figure A

DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED BY SELECT PRIMARY OFFENSE CATEGORY[1]
Fiscal Year 2008

Fourth Circuit



Eleventh Circuit



[1]Of the 7,025 guideline cases from the Fourth Circuit, 62 cases were excluded due to missing drug type. Of the 7,291 guideline cases from the Eleventh Circuit, 54 cases were excluded due to one of the following reasons: missing primary offense category (1) or missing drug type (53).

[2]The Non-Fraud White Collar category includes the following offense types: Embezzlement, Forgery/Counterfeiting, Bribery, Money Laundering, and Tax.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 1

DISTRIBUTION OF GUIDELINE DEFENDANTS SENTENCED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

	National		Fourth and Eleventh Circuits	
PRIMARY OFFENSE	Number	Percent	Number	Percent
TOTAL	**76,389**	**100.0**	**14,315**	**100.0**
Murder	69	0.1	10	0.1
Manslaughter	54	0.1	4	0.0
Kidnapping/Hostage Taking	56	0.1	8	0.1
Sexual Abuse	486	0.6	81	0.6
Assault	676	0.9	96	0.7
Robbery	1,052	1.4	207	1.4
Arson	60	0.1	13	0.1
Drugs - Trafficking	24,294	31.8	5,114	35.7
Drugs - Communication Facility	355	0.5	42	0.3
Drugs - Simple Possession	512	0.7	114	0.8
Firearms	8,249	10.8	2,256	15.8
Burglary/B&E	45	0.1	13	0.1
Auto Theft	60	0.1	10	0.1
Larceny	1,684	2.2	446	3.1
Fraud	7,468	9.8	1,815	12.7
Embezzlement	495	0.6	105	0.7
Forgery/Counterfeiting	1,018	1.3	268	1.9
Bribery	219	0.3	56	0.4
Tax	588	0.8	90	0.6
Money Laundering	893	1.2	228	1.6
Racketeering/Extortion	740	1.0	146	1.0
Gambling/Lottery	127	0.2	27	0.2
Civil Rights	70	0.1	8	0.1
Immigration	21,416	28.0	1,600	11.2
Pornography/Prostitution	1,655	2.2	334	2.3
Prison Offenses	371	0.5	60	0.4
Administration of Justice Offenses	1,038	1.4	168	1.2
Environmental/Wildlife	204	0.3	42	0.3
National Defense	54	0.1	11	0.1
Antitrust	24	0.0	6	0.0
Food & Drug	76	0.1	12	0.1
Other Miscellaneous Offenses	2,281	3.0	925	6.5

Of the 76,436 guideline cases, 47 cases were excluded due to missing information on primary offense category.

Of the 14,316 guideline cases from the Fourth and Eleventh Circuits, one case was excluded due to missing information on primary offense category.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 2

MODE OF CONVICTION BY CIRCUIT AND DISTRICT
Fiscal Year 2008

CIRCUIT		PLEA		TRIAL	
District	TOTAL	Number	Percent	Number	Percent
TOTAL	**76,388**	**73,578**	**96.3**	**2,810**	**3.7**
D.C. CIRCUIT	**409**	**376**	**91.9**	**33**	**8.1**
District of Columbia	409	376	91.9	33	8.1
FIRST CIRCUIT	**1,747**	**1,642**	**94.0**	**105**	**6.0**
Maine	210	198	94.3	12	5.7
Massachusetts	471	435	92.4	36	7.6
New Hampshire	223	209	93.7	14	6.3
Puerto Rico	754	716	95.0	38	5.0
Rhode Island	89	84	94.4	5	5.6
SECOND CIRCUIT	**4,601**	**4,412**	**95.9**	**189**	**4.1**
Connecticut	418	407	97.4	11	2.6
New York					
Eastern	1,243	1,182	95.1	61	4.9
Northern	533	523	98.1	10	1.9
Southern	1,586	1,493	94.1	93	5.9
Western	657	644	98.0	13	2.0
Vermont	164	163	99.4	1	0.6
THIRD CIRCUIT	**3,169**	**2,957**	**93.3**	**212**	**6.7**
Delaware	145	134	92.4	11	7.6
New Jersey	998	953	95.5	45	4.5
Pennsylvania					
Eastern	752	655	87.1	97	12.9
Middle	648	637	98.3	11	1.7
Western	544	514	94.5	30	5.5
Virgin Islands	82	64	78.0	18	22.0
FOURTH CIRCUIT	**7,024**	**6,722**	**95.7**	**302**	**4.3**
Maryland	782	728	93.1	54	6.9
North Carolina					
Eastern	692	668	96.5	24	3.5
Middle	355	346	97.5	9	2.5
Western	807	771	95.5	36	4.5
South Carolina	1,212	1,174	96.9	38	3.1
Virginia					
Eastern	2,031	1,935	95.3	96	4.7
Western	404	381	94.3	23	5.7
West Virginia					
Northern	469	456	97.2	13	2.8
Southern	272	263	96.7	9	3.3

CIRCUIT		PLEA		TRIAL	
District	TOTAL	Number	Percent	Number	Percent
FIFTH CIRCUIT	**17,502**	**17,168**	**98.1**	**334**	**1.9**
Louisiana					
Eastern	**480**	470	97.9	10	2.1
Middle	**204**	198	97.1	6	2.9
Western	**340**	318	93.5	22	6.5
Mississippi					
Northern	**185**	180	97.3	5	2.7
Southern	**452**	430	95.1	22	4.9
Texas					
Eastern	**1,016**	983	96.8	33	3.2
Northern	**1,083**	1,028	94.9	55	5.1
Southern	**6,515**	6,426	98.6	89	1.4
Western	**7,227**	7,135	98.7	92	1.3
SIXTH CIRCUIT	**5,407**	**5,188**	**95.9**	**219**	**4.1**
Kentucky					
Eastern	**681**	652	95.7	29	4.3
Western	**497**	475	95.6	22	4.4
Michigan					
Eastern	**737**	699	94.8	38	5.2
Western	**454**	429	94.5	25	5.5
Ohio					
Northern	**905**	886	97.9	19	2.1
Southern	**627**	603	96.2	24	3.8
Tennessee					
Eastern	**593**	572	96.5	21	3.5
Middle	**307**	298	97.1	9	2.9
Western	**606**	574	94.7	32	5.3
SEVENTH CIRCUIT	**3,068**	**2,856**	**93.1**	**212**	**6.9**
Illinois					
Central	**392**	370	94.4	22	5.6
Northern	**928**	846	91.2	82	8.8
Southern	**312**	289	92.6	23	7.4
Indiana					
Northern	**455**	420	92.3	35	7.7
Southern	**295**	283	95.9	12	4.1
Wisconsin					
Eastern	**492**	468	95.1	24	4.9
Western	**194**	180	92.8	14	7.2
EIGHTH CIRCUIT	**5,426**	**5,199**	**95.8**	**227**	**4.2**
Arkansas					
Eastern	**434**	419	96.5	15	3.5
Western	**209**	206	98.6	3	1.4
Iowa					
Northern	**590**	567	96.1	23	3.9
Southern	**471**	441	93.6	30	6.4
Minnesota	**579**	546	94.3	33	5.7
Missouri					
Eastern	**1,015**	986	97.1	29	2.9
Western	**779**	743	95.4	36	4.6
Nebraska	**641**	625	97.5	16	2.5
North Dakota	**254**	239	94.1	15	5.9
South Dakota	**454**	427	94.1	27	5.9

CIRCUIT		PLEA		TRIAL	
District	TOTAL	Number	Percent	Number	Percent
NINTH CIRCUIT	**14,605**	**14,235**	**97.5**	**370**	**2.5**
Alaska	**163**	150	92.0	13	8.0
Arizona	**3,868**	3,809	98.5	59	1.5
California					
Central	**1,847**	1,807	97.8	40	2.2
Eastern	**890**	869	97.6	21	2.4
Northern	**717**	701	97.8	16	2.2
Southern	**3,819**	3,741	98.0	78	2.0
Guam	**68**	66	97.1	2	2.9
Hawaii	**279**	265	95.0	14	5.0
Idaho	**267**	251	94.0	16	6.0
Montana	**420**	384	91.4	36	8.6
Nevada	**433**	418	96.5	15	3.5
Northern Mariana Islands	**18**	16	88.9	2	11.1
Oregon	**640**	621	97.0	19	3.0
Washington					
Eastern	**338**	326	96.4	12	3.6
Western	**838**	811	96.8	27	3.2
TENTH CIRCUIT	**6,140**	**5,977**	**97.3**	**163**	**2.7**
Colorado	**488**	473	96.9	15	3.1
Kansas	**679**	652	96.0	27	4.0
New Mexico	**2,906**	2,894	99.6	12	0.4
Oklahoma					
Eastern	**89**	86	96.6	3	3.4
Northern	**214**	194	90.7	20	9.3
Western	**556**	518	93.2	38	6.8
Utah	**870**	833	95.7	37	4.3
Wyoming	**338**	327	96.7	11	3.3
ELEVENTH CIRCUIT	**7,290**	**6,846**	**93.9**	**444**	**6.1**
Alabama					
Middle	**269**	252	93.7	17	6.3
Northern	**493**	458	92.9	35	7.1
Southern	**556**	533	95.9	23	4.1
Florida					
Middle	**1,669**	1,570	94.1	99	5.9
Northern	**351**	314	89.5	37	10.5
Southern	**2,272**	2,156	94.9	116	5.1
Georgia					
Middle	**443**	431	97.3	12	2.7
Northern	**720**	638	88.6	82	11.4
Southern	**517**	494	95.6	23	4.4

Of the 76,436 guideline cases, 48 cases were excluded due to missing information on mode of conviction.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 3

MODE OF CONVICTION BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

		National				Fourth and Eleventh Circuits			
		PLEA		TRIAL		PLEA		TRIAL	
PRIMARY OFFENSE	TOTAL	n	%	n	%	n	%	n	%
TOTAL	**76,387**	**73,577**	**96.3**	**2,810**	**3.7**	**13,568**	**94.8**	**746**	**5.2**
Murder	**69**	55	79.7	14	20.3	7	70.0	3	30.0
Manslaughter	**54**	50	92.6	4	7.4	4	100.0	0	0.0
Kidnapping/Hostage Taking	**56**	45	80.4	11	19.6	6	75.0	2	25.0
Sexual Abuse	**486**	429	88.3	57	11.7	70	86.4	11	13.6
Assault	**676**	601	88.9	75	11.1	84	87.5	12	12.5
Robbery	**1,052**	1,022	97.1	30	2.9	202	97.6	5	2.4
Arson	**60**	53	88.3	7	11.7	12	92.3	1	7.7
Drugs - Trafficking	**24,294**	23,356	96.1	938	3.9	4,869	95.2	245	4.8
Drugs - Communication Facility	**355**	352	99.2	3	0.8	42	100.0	0	0.0
Drugs - Simple Possession	**512**	500	97.7	12	2.3	109	95.6	5	4.4
Firearms	**8,249**	7,640	92.6	609	7.4	2,073	91.9	183	8.1
Burglary/B&E	**45**	44	97.8	1	2.2	13	100.0	0	0.0
Auto Theft	**60**	57	95.0	3	5.0	10	100.0	0	0.0
Larceny	**1,684**	1,637	97.2	47	2.8	428	96.0	18	4.0
Fraud	**7,467**	7,078	94.8	389	5.2	1,712	94.3	103	5.7
Embezzlement	**495**	483	97.6	12	2.4	103	98.1	2	1.9
Forgery/Counterfeiting	**1,018**	1,001	98.3	17	1.7	260	97.0	8	3.0
Bribery	**219**	210	95.9	9	4.1	55	98.2	1	1.8
Tax	**588**	532	90.5	56	9.5	77	85.6	13	14.4
Money Laundering	**893**	844	94.5	49	5.5	215	94.3	13	5.7
Racketeering/Extortion	**740**	682	92.2	58	7.8	131	89.7	15	10.3
Gambling/Lottery	**127**	123	96.9	4	3.1	27	100.0	0	0.0
Civil Rights	**70**	59	84.3	11	15.7	5	62.5	3	37.5
Immigration	**21,416**	21,257	99.3	159	0.7	1,569	98.1	31	1.9
Pornography/Prostitution	**1,655**	1,590	96.1	65	3.9	320	95.8	14	4.2
Prison Offenses	**371**	363	97.8	8	2.2	58	96.7	2	3.3
Administration of Justice Offenses	**1,038**	983	94.7	55	5.3	157	93.5	11	6.5
Environmental/Wildlife	**204**	195	95.6	9	4.4	42	100.0	0	0.0
National Defense	**54**	49	90.7	5	9.3	11	100.0	0	0.0
Antitrust	**24**	23	95.8	1	4.2	6	100.0	0	0.0
Food & Drug	**76**	73	96.1	3	3.9	12	100.0	0	0.0
Other Miscellaneous Offenses	**2,280**	2,191	96.1	89	3.9	879	95.1	45	4.9

Of the 76,436 guideline cases, 49 cases were excluded due to one or both of the following reasons: missing primary offense category (47) or missing mode of conviction (48).

Of the 14,316 guideline cases from the Fourth and Eleventh Circuits, two cases were excluded due to one or both of the following reasons: missing primary offense category (1) or missing mode of conviction (2).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 4

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

National

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	**75,617**	**65,343**	**86.4**	**1,977**	**2.6**	**2,703**	**3.6**	**5,594**	**7.4**
Murder	**69**	68	98.6	1	1.4	0	0.0	0	0.0
Manslaughter	**54**	49	90.7	2	3.7	0	0.0	3	5.6
Kidnapping/Hostage Taking	**56**	56	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	**484**	462	95.5	11	2.3	8	1.7	3	0.6
Assault	**667**	548	82.2	28	4.2	22	3.3	69	10.3
Robbery	**1,051**	1,002	95.3	22	2.1	8	0.8	19	1.8
Arson	**60**	57	95.0	1	1.7	0	0.0	2	3.3
Drugs - Trafficking	**24,269**	22,927	94.5	520	2.1	376	1.5	446	1.8
Drugs - Communication Facility	**354**	281	79.4	8	2.3	28	7.9	37	10.5
Drugs - Simple Possession	**455**	178	39.1	3	0.7	17	3.7	257	56.5
Firearms	**8,234**	7,576	92.0	182	2.2	224	2.7	252	3.1
Burglary/B&E	**45**	36	80.0	4	8.9	5	11.1	0	0.0
Auto Theft	**60**	49	81.7	2	3.3	4	6.7	5	8.3
Larceny	**1,571**	609	38.8	70	4.5	216	13.7	676	43.0
Fraud	**7,441**	5,080	68.3	491	6.6	705	9.5	1,165	15.7
Embezzlement	**491**	195	39.7	58	11.8	69	14.1	169	34.4
Forgery/Counterfeiting	**1,015**	646	63.6	64	6.3	146	14.4	159	15.7
Bribery	**219**	155	70.8	10	4.6	29	13.2	25	11.4
Tax	**585**	295	50.4	49	8.4	123	21.0	118	20.2
Money Laundering	**889**	660	74.2	31	3.5	72	8.1	126	14.2
Racketeering/Extortion	**738**	648	87.8	22	3.0	27	3.7	41	5.6
Gambling/Lottery	**127**	39	30.7	8	6.3	45	35.4	35	27.6
Civil Rights	**70**	43	61.4	4	5.7	10	14.3	13	18.6
Immigration	**21,390**	20,405	95.4	241	1.1	196	0.9	548	2.6
Pornography/Prostitution	**1,654**	1,602	96.9	20	1.2	16	1.0	16	1.0
Prison Offenses	**370**	337	91.1	10	2.7	9	2.4	14	3.8
Administration of Justice Offenses	**1,015**	605	59.6	41	4.0	105	10.3	264	26.0
Environmental/Wildlife	**188**	30	16.0	5	2.7	27	14.4	126	67.0
National Defense	**53**	41	77.4	4	7.5	4	7.5	4	7.5
Antitrust	**21**	8	38.1	3	14.3	6	28.6	4	19.0
Food & Drug	**66**	16	24.2	6	9.1	12	18.2	32	48.5
Other Miscellaneous Offenses	**1,856**	640	34.5	56	3.0	194	10.5	966	52.0

Of the 76,436 guideline cases, 819 cases were excluded due to one or more of the following reasons: missing sentencing information (105), missing primary offense category (47), or cases in which the defendant received no imprisonment or probation (713).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 5

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

Fourth and Eleventh Circuits

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	**14,114**	**11,815**	**83.7**	**363**	**2.6**	**540**	**3.8**	**1,396**	**9.9**
Murder	**10**	10	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	**4**	3	75.0	1	25.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	**8**	8	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	**81**	79	97.5	1	1.2	1	1.2	0	0.0
Assault	**93**	72	77.4	2	2.2	2	2.2	17	18.3
Robbery	**207**	203	98.1	3	1.4	1	0.5	0	0.0
Arson	**13**	13	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	**5,112**	4,870	95.3	65	1.3	80	1.6	97	1.9
Drugs - Communication Facility	**42**	26	61.9	1	2.4	7	16.7	8	19.0
Drugs - Simple Possession	**104**	46	44.2	0	0.0	5	4.8	53	51.0
Firearms	**2,255**	2,102	93.2	33	1.5	62	2.7	58	2.6
Burglary/B&E	**13**	12	92.3	1	7.7	0	0.0	0	0.0
Auto Theft	**10**	7	70.0	1	10.0	0	0.0	2	20.0
Larceny	**441**	177	40.1	12	2.7	41	9.3	211	47.8
Fraud	**1,812**	1,337	73.8	139	7.7	133	7.3	203	11.2
Embezzlement	**104**	42	40.4	10	9.6	16	15.4	36	34.6
Forgery/Counterfeiting	**267**	198	74.2	13	4.9	26	9.7	30	11.2
Bribery	**56**	47	83.9	3	5.4	4	7.1	2	3.6
Tax	**89**	55	61.8	5	5.6	14	15.7	15	16.9
Money Laundering	**227**	183	80.6	8	3.5	13	5.7	23	10.1
Racketeering/Extortion	**146**	137	93.8	2	1.4	4	2.7	3	2.1
Gambling/Lottery	**27**	12	44.4	0	0.0	12	44.4	3	11.1
Civil Rights	**8**	7	87.5	0	0.0	0	0.0	1	12.5
Immigration	**1,599**	1,484	92.8	26	1.6	35	2.2	54	3.4
Pornography/Prostitution	**334**	323	96.7	5	1.5	2	0.6	4	1.2
Prison Offenses	**60**	52	86.7	1	1.7	3	5.0	4	6.7
Administration of Justice Offenses	**168**	97	57.7	8	4.8	15	8.9	48	28.6
Environmental/Wildlife	**41**	10	24.4	2	4.9	1	2.4	28	68.3
National Defense	**11**	9	81.8	2	18.2	0	0.0	0	0.0
Antitrust	**6**	4	66.7	2	33.3	0	0.0	0	0.0
Food & Drug	**12**	5	41.7	1	8.3	4	33.3	2	16.7
Other Miscellaneous Offenses	**754**	185	24.5	16	2.1	59	7.8	494	65.5

Of the 14,316 guideline cases from the Fourth and Eleventh Circuits, 202 cases were excluded due to one or more of the following reasons: missing sentencing information (11), missing primary offense category (1), or cases in which the defendant received no imprisonment or probation (191).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 5A

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

Fourth Circuit

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	**6,873**	**5,740**	**83.5**	**179**	**2.6**	**286**	**4.2**	**668**	**9.7**
Murder	**6**	6	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	**4**	3	75.0	1	25.0	0	0.0	0	0.0
Kidnapping/Hostage Taking	**1**	1	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	**39**	38	97.4	1	2.6	0	0.0	0	0.0
Assault	**62**	49	79.0	2	3.2	2	3.2	9	14.5
Robbery	**117**	115	98.3	2	1.7	0	0.0	0	0.0
Arson	**11**	11	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	**2,658**	2,522	94.9	33	1.2	48	1.8	55	2.1
Drugs - Communication Facility	**25**	14	56.0	1	4.0	6	24.0	4	16.0
Drugs - Simple Possession	**62**	29	46.8	0	0.0	3	4.8	30	48.4
Firearms	**1,247**	1,162	93.2	18	1.4	36	2.9	31	2.5
Burglary/B&E	**4**	3	75.0	1	25.0	0	0.0	0	0.0
Auto Theft	**5**	4	80.0	0	0.0	0	0.0	1	20.0
Larceny	**199**	89	44.7	4	2.0	18	9.0	88	44.2
Fraud	**780**	565	72.4	60	7.7	65	8.3	90	11.5
Embezzlement	**48**	20	41.7	5	10.4	9	18.8	14	29.2
Forgery/Counterfeiting	**139**	102	73.4	7	5.0	15	10.8	15	10.8
Bribery	**29**	24	82.8	1	3.4	3	10.3	1	3.4
Tax	**50**	32	64.0	4	8.0	7	14.0	7	14.0
Money Laundering	**85**	67	78.8	3	3.5	6	7.1	9	10.6
Racketeering/Extortion	**69**	64	92.8	2	2.9	1	1.4	2	2.9
Gambling/Lottery	**27**	12	44.4	0	0.0	12	44.4	3	11.1
Civil Rights	**5**	5	100.0	0	0.0	0	0.0	0	0.0
Immigration	**521**	481	92.3	12	2.3	8	1.5	20	3.8
Pornography/Prostitution	**151**	143	94.7	3	2.0	1	0.7	4	2.6
Prison Offenses	**37**	31	83.8	0	0.0	2	5.4	4	10.8
Administration of Justice Offenses	**81**	44	54.3	6	7.4	7	8.6	24	29.6
Environmental/Wildlife	**14**	1	7.1	1	7.1	0	0.0	12	85.7
National Defense	**4**	4	100.0	0	0.0	0	0.0	0	0.0
Antitrust	**4**	2	50.0	2	50.0	0	0.0	0	0.0
Food & Drug	**4**	2	50.0	1	25.0	1	25.0	0	0.0
Other Miscellaneous Offenses	**385**	95	24.7	9	2.3	36	9.4	245	63.6

Of the 7,025 guideline cases from the Fourth Circuit, 152 cases were excluded due to one of the following reasons: missing sentencing information (8) or cases in which the defendant received no imprisonment or probation (144).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 5B

TYPE OF SENTENCE IMPOSED BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

Eleventh Circuit

PRIMARY OFFENSE	TOTAL	Prison		Prison/Community Split Sentence		Probation and Confinement		Probation Only	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	**7,241**	**6,075**	**83.9**	**184**	**2.5**	**254**	**3.5**	**728**	**10.1**
Murder	**4**	4	100.0	0	0.0	0	0.0	0	0.0
Manslaughter	**0**	0	--	0	--	0	--	0	--
Kidnapping/Hostage Taking	**7**	7	100.0	0	0.0	0	0.0	0	0.0
Sexual Abuse	**42**	41	97.6	0	0.0	1	2.4	0	0.0
Assault	**31**	23	74.2	0	0.0	0	0.0	8	25.8
Robbery	**90**	88	97.8	1	1.1	1	1.1	0	0.0
Arson	**2**	2	100.0	0	0.0	0	0.0	0	0.0
Drugs - Trafficking	**2,454**	2,348	95.7	32	1.3	32	1.3	42	1.7
Drugs - Communication Facility	**17**	12	70.6	0	0.0	1	5.9	4	23.5
Drugs - Simple Possession	**42**	17	40.5	0	0.0	2	4.8	23	54.8
Firearms	**1,008**	940	93.3	15	1.5	26	2.6	27	2.7
Burglary/B&E	**9**	9	100.0	0	0.0	0	0.0	0	0.0
Auto Theft	**5**	3	60.0	1	20.0	0	0.0	1	20.0
Larceny	**242**	88	36.4	8	3.3	23	9.5	123	50.8
Fraud	**1,032**	772	74.8	79	7.7	68	6.6	113	10.9
Embezzlement	**56**	22	39.3	5	8.9	7	12.5	22	39.3
Forgery/Counterfeiting	**128**	96	75.0	6	4.7	11	8.6	15	11.7
Bribery	**27**	23	85.2	2	7.4	1	3.7	1	3.7
Tax	**39**	23	59.0	1	2.6	7	17.9	8	20.5
Money Laundering	**142**	116	81.7	5	3.5	7	4.9	14	9.9
Racketeering/Extortion	**77**	73	94.8	0	0.0	3	3.9	1	1.3
Gambling/Lottery	**0**	0	--	0	--	0	--	0	--
Civil Rights	**3**	2	66.7	0	0.0	0	0.0	1	33.3
Immigration	**1,078**	1,003	93.0	14	1.3	27	2.5	34	3.2
Pornography/Prostitution	**183**	180	98.4	2	1.1	1	0.5	0	0.0
Prison Offenses	**23**	21	91.3	1	4.3	1	4.3	0	0.0
Administration of Justice Offenses	**87**	53	60.9	2	2.3	8	9.2	24	27.6
Environmental/Wildlife	**27**	9	33.3	1	3.7	1	3.7	16	59.3
National Defense	**7**	5	71.4	2	28.6	0	0.0	0	0.0
Antitrust	**2**	2	100.0	0	0.0	0	0.0	0	0.0
Food & Drug	**8**	3	37.5	0	0.0	3	37.5	2	25.0
Other Miscellaneous Offenses	**369**	90	24.4	7	1.9	23	6.2	249	67.5

Of the 7,291 guideline cases from the Eleventh Circuit, 50 cases were excluded due to one or more of the following reasons: missing sentencing information (3), missing primary offense category (1), or cases in which the defendant received no imprisonment or probation (47).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 6

INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

		National				Fourth and Eleventh Circuits			
		Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
PRIMARY OFFENSE	TOTAL	Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	**14,449**	**9,387**	**65.0**	**5,062**	**35.0**	**1,297**	**53.9**	**1,109**	**46.1**
Fraud	**2,460**	1,255	51.0	1,205	49.0	248	50.7	241	49.3
Larceny	**980**	195	19.9	785	80.1	53	21.6	192	78.4
Immigration	**7,254**	6,678	92.1	576	7.9	729	90.8	74	9.2
Embezzlement	**257**	66	25.7	191	74.3	14	23.0	47	77.0
Drugs - Trafficking	**593**	286	48.2	307	51.8	43	33.1	87	66.9
Drugs - Simple Possession	**340**	103	30.3	237	69.7	25	47.2	28	52.8
Firearms	**304**	134	44.1	170	55.9	32	45.1	39	54.9
Forgery/Counterfeiting	**331**	116	35.0	215	65.0	35	47.9	38	52.1
Other Miscellaneous Offenses	**1,930**	554	28.7	1,376	71.3	118	24.5	363	75.5

Of the 76,436 guideline cases, 61,987 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (61,986), missing sentencing information (105) or missing primary offense category (47).

Of the 14,316 guideline cases from the Fourth and Eleventh Circuits, 11,910 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (11,909), missing sentencing information (11) or missing primary offense category (1).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 6A

INCARCERATION RATE OF DEFENDANTS ELIGIBLE FOR NON-PRISON SENTENCES BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

	Fourth Circuit				Eleventh Circuit			
	Prison Sentence		Non-Prison Sentence		Prison Sentence		Non-Prison Sentence	
PRIMARY OFFENSE	Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	**471**	**54.4**	**395**	**45.6**	**826**	**53.6**	**714**	**46.4**
Fraud	108	52.7	97	47.3	140	49.3	144	50.7
Larceny	23	29.5	55	70.5	30	18.0	137	82.0
Immigration	230	90.9	23	9.1	499	90.7	51	9.3
Embezzlement	6	25.0	18	75.0	8	21.6	29	78.4
Drugs - Trafficking	14	24.1	44	75.9	29	40.3	43	59.7
Drugs - Simple Possession	13	50.0	13	50.0	12	44.4	15	55.6
Firearms	18	47.4	20	52.6	14	42.4	19	57.6
Forgery/Counterfeiting	22	52.4	20	47.6	13	41.9	18	58.1
Other Miscellaneous Offenses	37	26.1	105	73.9	81	23.9	258	76.1

Of the 7,025 guideline cases from the Fourth Circuit, 6,159 cases were excluded due to one or both of the following reasons: defendant ineligible for non-prison alternatives (6,159) or missing sentencing information (8).

Of the 7,291 guideline cases from the Eleventh Circuit, 5,751 cases were excluded due to one or more of the following reasons: defendant ineligible for non-prison alternatives (5,750), missing sentencing information (3) or missing primary offense category (1).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 7

AVERAGE LENGTH OF IMPRISONMENT BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

	National			Fourth and Eleventh Circuits		
PRIMARY OFFENSE	Mean Months	Median Months	Number	Mean Months	Median Months	Number
TOTAL	**56.9**	**33.0**	**66,070**	**81.9**	**54.5**	**11,950**
Murder	221.5	210.0	69	206.2	164.0	10
Manslaughter	48.5	40.0	51	28.5	27.0	4
Kidnapping/Hostage Taking	205.3	180.0	56	207.5	181.0	8
Sexual Abuse	95.0	66.0	469	111.5	108.0	79
Assault	44.3	33.0	568	54.6	30.0	74
Robbery	82.7	65.0	1,018	92.6	72.0	206
Arson	81.1	60.0	58	99.9	70.0	13
Drugs - Trafficking	83.2	60.0	23,266	108.3	86.0	4,916
Drugs - Communication Facility	43.2	48.0	282	33.9	30.0	27
Drugs - Simple Possession	18.9	6.0	167	15.6	6.0	42
Firearms	89.2	60.0	7,708	108.3	77.0	2,129
Burglary/B&E	20.6	18.0	40	19.2	18.0	13
Auto Theft	55.5	24.0	51	37.9	35.0	8
Larceny	18.8	12.5	664	19.9	14.0	185
Fraud	28.6	18.0	5,373	34.2	24.0	1,450
Embezzlement	14.6	12.0	245	13.8	12.0	50
Forgery/Counterfeiting	22.2	18.0	695	24.9	18.0	208
Bribery	26.6	18.0	154	31.3	30.0	39
Tax	24.5	18.0	341	27.5	21.5	60
Money Laundering	42.9	30.0	675	49.8	36.0	185
Racketeering/Extortion	91.6	60.0	668	101.4	63.0	139
Gambling/Lottery	12.1	9.0	47	20.8	13.5	12
Civil Rights	56.8	30.0	47	46.1	30.0	7
Immigration	20.2	14.0	19,993	19.8	12.0	1,371
Pornography/Prostitution	122.3	78.0	1,619	168.7	87.0	327
Prison Offenses	17.8	15.0	343	19.3	15.0	53
Administration of Justice Offenses	25.6	15.0	627	30.2	14.5	104
Environmental/Wildlife	12.8	6.0	35	6.0	2.5	12
National Defense	62.5	30.0	45	47.7	46.0	11
Antitrust	11.9	6.0	11	13.3	14.0	6
Food & Drug	9.7	6.0	20	15.1	13.5	6
Other Miscellaneous Offenses	17.6	9.0	665	16.5	8.0	196

Of the 76,436 guideline cases, 10,366 cases were excluded for one or more of the following reasons: zero months prison ordered (9,544), missing primary offense category (47) or missing or indeterminable sentencing information (822).

Of the 14,316 guideline cases from the Fourth and Eleventh Circuits, 2,366 cases were excluded due to one or more of the following reasons: zero prison months ordered (2,164), missing primary offense category (1) or missing or indeterminable sentencing information (202).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 8

COMPARISON OF SENTENCE IMPOSED AND POSITION RELATIVE TO THE GUIDELINE RANGE
Fiscal Year 2008

	National		Fourth and Eleventh Circuits	
	n	%	n	%
TOTAL CASES[1]	**74,436**	**100.0**	**13,499**	**100.0**
CASES SENTENCED WITHIN GUIDELINE RANGE	**44,223**	**59.4**	**9,077**	**67.2**
CASES SENTENCED ABOVE GUIDELINE RANGE	**1,195**	**1.5**	**267**	**2.0**
DEPARTURE ABOVE GUIDELINE RANGE	**473**	**0.6**	**109**	**0.8**
Upward Departure From Guideline Range[2]	326	0.4	63	0.5
Upward Departure With *Booker*/18 U.S.C. § 3553[3]	147	0.2	46	0.3
OTHERWISE ABOVE GUIDELINE RANGE	**722**	**0.9**	**158**	**1.2**
Above Guideline Range With *Booker*/18 U.S.C. § 3553[4]	622	0.8	146	1.1
All Remaining Cases Above Guideline Range[5]	100	0.1	12	0.1
GOVERNMENT SPONSORED BELOW RANGE[6]	**19,050**	**25.6**	**2,407**	**17.9**
§5K1.1 Substantial Assistance Departure	10,043	13.5	2,208	16.4
§5K3.1 Early Disposition Program Departure	5,889	7.9	30	0.2
Other Government Sponsored Below Range	3,118	4.2	169	1.3
NON-GOVERNMENT SPONSORED BELOW RANGE	**9,968**	**13.4**	**1,748**	**13.0**
DEPARTURE BELOW GUIDELINE RANGE	**2,458**	**3.3**	**326**	**2.4**
Downward Departure From Guideline Range[2]	1,544	2.1	203	1.5
Downward Departure With *Booker*/18 U.S.C. § 3553[3]	914	1.2	123	0.9
OTHERWISE BELOW GUIDELINE RANGE	**7,510**	**10.1**	**1,422**	**10.6**
Below Guideline Range With *Booker*/18 U.S.C. § 3553[4]	6,677	9.0	1,303	9.7
All Remaining Cases Below Guideline Range[5]	833	1.1	119	0.9

[1]This table reflects the 76,436 cases sentenced nationally in Fiscal Year 2008, 14,316 of which were from the Fourth and Eleventh Circuits. Of these, 2,000 cases nationally and 817 cases from the Fourth and Eleventh Circuits were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range.

[2]All cases with departures in which the court did not indicate as a reason either *United States v. Booker,* 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual.*

[3]All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker,* 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

[4]All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker,* 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

[5]All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

[6]Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 8A

COMPARISON OF SENTENCE IMPOSED AND POSITION RELATIVE TO THE GUIDELINE RANGE
Fiscal Year 2008

	Fourth Circuit		Eleventh Circuit	
	n	%	n	%
TOTAL CASES[1]	**6,462**	**100.0**	**7,037**	**100.0**
CASES SENTENCED WITHIN GUIDELINE RANGE	**4,286**	**66.3**	**4,791**	**68.1**
CASES SENTENCED ABOVE GUIDELINE RANGE	**149**	**2.3**	**118**	**1.6**
DEPARTURE ABOVE GUIDELINE RANGE	**88**	**1.4**	**21**	**0.3**
Upward Departure From Guideline Range[2]	52	0.8	11	0.2
Upward Departure With *Booker*/18 U.S.C. § 3553[3]	36	0.6	10	0.1
OTHERWISE ABOVE GUIDELINE RANGE	**61**	**0.9**	**97**	**1.3**
Above Guideline Range With *Booker*/18 U.S.C. § 3553[4]	52	0.8	94	1.3
All Remaining Cases Above Guideline Range[5]	9	0.1	3	0.0
GOVERNMENT SPONSORED BELOW RANGE[6]	**1,228**	**19.0**	**1,179**	**16.7**
§5K1.1 Substantial Assistance Departure	1,135	17.6	1,073	15.2
§5K3.1 Early Disposition Program Departure	0	0.0	30	0.4
Other Government Sponsored Below Range	93	1.4	76	1.1
NON-GOVERNMENT SPONSORED BELOW RANGE	**799**	**12.3**	**949**	**13.5**
DEPARTURE BELOW GUIDELINE RANGE	**163**	**2.5**	**163**	**2.3**
Downward Departure From Guideline Range[2]	111	1.7	92	1.3
Downward Departure With *Booker*/18 U.S.C. § 3553[3]	52	0.8	71	1.0
OTHERWISE BELOW GUIDELINE RANGE	**636**	**9.8**	**786**	**11.2**
Below Guideline Range With *Booker*/18 U.S.C. § 3553[4]	563	8.7	740	10.5
All Remaining Cases Below Guideline Range[5]	73	1.1	46	0.7

[1]This table reflects the 7,025 cases sentenced in the Fourth Circuit and 7,291 cases sentenced in the Eleventh Circuit. Of these, 563 cases from the Fourth Circuit and 254 cases from the Eleventh Circuit were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range.

[2]All cases with departures in which the court did not indicate as a reason either *United States v. Booker,* 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual.*

[3]All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker,* 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

[4]All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker,* 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

[5]All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

[6]Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 9

SENTENCES RELATIVE TO THE GUIDELINE RANGE BY CIRCUIT AND DISTRICT
Fiscal Year 2008

CIRCUIT		SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/*BOOKER*		ABOVE RANGE W/*BOOKER*		REMAINING ABOVE RANGE	
District	TOTAL	n	%	n	%	n	%	n	%	n	%
TOTAL	**74,436**	**44,223**	**59.4**	**326**	**0.4**	**147**	**0.2**	**622**	**0.8**	**100**	**0.1**
D.C. CIRCUIT	**406**	**154**	**37.9**	**1**	**0.2**	**0**	**0.0**	**4**	**1.0**	**1**	**0.2**
District of Columbia	**406**	154	37.9	1	0.2	0	0.0	4	1.0	1	0.2
FIRST CIRCUIT	**1,734**	**1,091**	**62.9**	**8**	**0.5**	**7**	**0.4**	**7**	**0.4**	**3**	**0.2**
Maine	**210**	130	61.9	2	1.0	0	0.0	1	0.5	0	0.0
Massachusetts	**465**	237	51.0	3	0.6	1	0.2	4	0.9	1	0.2
New Hampshire	**223**	108	48.4	2	0.9	2	0.9	1	0.4	0	0.0
Puerto Rico	**748**	563	75.3	1	0.1	3	0.4	1	0.1	2	0.3
Rhode Island	**88**	53	60.2	0	0.0	1	1.1	0	0.0	0	0.0
SECOND CIRCUIT	**4,541**	**2,061**	**45.4**	**7**	**0.2**	**6**	**0.1**	**17**	**0.4**	**5**	**0.1**
Connecticut	**418**	175	41.9	1	0.2	0	0.0	4	1.0	0	0.0
New York											
Eastern	**1,239**	479	38.7	2	0.2	1	0.1	7	0.6	2	0.2
Northern	**488**	260	53.3	1	0.2	1	0.2	1	0.2	0	0.0
Southern	**1,578**	700	44.4	0	0.0	1	0.1	3	0.2	2	0.1
Western	**655**	381	58.2	1	0.2	3	0.5	2	0.3	1	0.2
Vermont	**163**	66	40.5	2	1.2	0	0.0	0	0.0	0	0.0
THIRD CIRCUIT	**3,148**	**1,686**	**53.6**	**19**	**0.6**	**4**	**0.1**	**19**	**0.6**	**3**	**0.1**
Delaware	**144**	71	49.3	0	0.0	0	0.0	2	1.4	0	0.0
New Jersey	**988**	508	51.4	3	0.3	1	0.1	6	0.6	2	0.2
Pennsylvania											
Eastern	**750**	325	43.3	3	0.4	1	0.1	7	0.9	0	0.0
Middle	**646**	362	56.0	11	1.7	0	0.0	0	0.0	1	0.2
Western	**539**	366	67.9	2	0.4	2	0.4	1	0.2	0	0.0
Virgin Islands	**81**	54	66.7	0	0.0	0	0.0	3	3.7	0	0.0
FOURTH CIRCUIT	**6,462**	**4,286**	**66.3**	**52**	**0.8**	**36**	**0.6**	**52**	**0.8**	**9**	**0.1**
Maryland	**731**	362	49.5	6	0.8	2	0.3	6	0.8	2	0.3
North Carolina											
Eastern	**673**	378	56.2	25	3.7	19	2.8	9	1.3	1	0.1
Middle	**355**	272	76.6	1	0.3	0	0.0	2	0.6	0	0.0
Western	**800**	515	64.4	5	0.6	3	0.4	4	0.5	1	0.1
South Carolina	**1,205**	797	66.1	2	0.2	0	0.0	4	0.3	0	0.0
Virginia											
Eastern	**1,562**	1,176	75.3	11	0.7	9	0.6	16	1.0	4	0.3
Western	**397**	262	66.0	2	0.5	1	0.3	4	1.0	1	0.3
West Virginia											
Northern	**468**	338	72.2	0	0.0	1	0.2	4	0.9	0	0.0
Southern	**271**	186	68.6	0	0.0	1	0.4	3	1.1	0	0.0

CIRCUIT	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE *W/BOOKER*		BELOW RANGE *W/BOOKER*		REMAINING BELOW RANGE	
District	n	%	n	%	n	%	n	%	n	%	n	%	n	%
TOTAL	**10,043**	**13.5**	**5,889**	**7.9**	**3,118**	**4.2**	**1,544**	**2.1**	**914**	**1.2**	**6,677**	**9.0**	**833**	**1.1**
D.C. CIRCUIT	**140**	**34.5**	**0**	**0.0**	**33**	**8.1**	**11**	**2.7**	**22**	**5.4**	**30**	**7.4**	**10**	**2.5**
District of Columbia	140	34.5	0	0.0	33	8.1	11	2.7	22	5.4	30	7.4	10	2.5
FIRST CIRCUIT	**183**	**10.6**	**17**	**1.0**	**75**	**4.3**	**49**	**2.8**	**34**	**2.0**	**233**	**13.4**	**27**	**1.6**
Maine	49	23.3	0	0.0	0	0.0	4	1.9	1	0.5	22	10.5	1	0.5
Massachusetts	39	8.4	1	0.2	33	7.1	24	5.2	14	3.0	102	21.9	6	1.3
New Hampshire	48	21.5	0	0.0	7	3.1	7	3.1	6	2.7	39	17.5	3	1.3
Puerto Rico	41	5.5	16	2.1	33	4.4	12	1.6	11	1.5	49	6.6	16	2.1
Rhode Island	6	6.8	0	0.0	2	2.3	2	2.3	2	2.3	21	23.9	1	1.1
SECOND CIRCUIT	**994**	**21.9**	**1**	**0.0**	**172**	**3.8**	**181**	**4.0**	**150**	**3.3**	**890**	**19.6**	**57**	**1.3**
Connecticut	75	17.9	0	0.0	17	4.1	36	8.6	37	8.9	70	16.7	3	0.7
New York														
Eastern	288	23.2	1	0.1	89	7.2	47	3.8	54	4.4	250	20.2	19	1.5
Northern	133	27.3	0	0.0	5	1.0	33	6.8	7	1.4	46	9.4	1	0.2
Southern	283	17.9	0	0.0	36	2.3	39	2.5	40	2.5	444	28.1	30	1.9
Western	174	26.6	0	0.0	20	3.1	5	0.8	4	0.6	60	9.2	4	0.6
Vermont	41	25.2	0	0.0	5	3.1	21	12.9	8	4.9	20	12.3	0	0.0
THIRD CIRCUIT	**764**	**24.3**	**1**	**0.0**	**50**	**1.6**	**55**	**1.7**	**52**	**1.7**	**436**	**13.9**	**59**	**1.9**
Delaware	8	5.6	0	0.0	2	1.4	3	2.1	0	0.0	31	21.5	27	18.8
New Jersey	281	28.4	1	0.1	10	1.0	12	1.2	6	0.6	152	15.4	6	0.6
Pennsylvania														
Eastern	232	30.9	0	0.0	15	2.0	7	0.9	24	3.2	125	16.7	11	1.5
Middle	177	27.4	0	0.0	16	2.5	11	1.7	3	0.5	60	9.3	5	0.8
Western	58	10.8	0	0.0	5	0.9	22	4.1	18	3.3	59	10.9	6	1.1
Virgin Islands	8	9.9	0	0.0	2	2.5	0	0.0	1	1.2	9	11.1	4	4.9
FOURTH CIRCUIT	**1,135**	**17.6**	**0**	**0.0**	**93**	**1.4**	**111**	**1.7**	**52**	**0.8**	**563**	**8.7**	**73**	**1.1**
Maryland	173	23.7	0	0.0	29	4.0	10	1.4	19	2.6	108	14.8	14	1.9
North Carolina														
Eastern	191	28.4	0	0.0	3	0.4	5	0.7	5	0.7	34	5.1	3	0.4
Middle	56	15.8	0	0.0	0	0.0	2	0.6	0	0.0	22	6.2	0	0.0
Western	208	26.0	0	0.0	8	1.0	10	1.3	6	0.8	29	3.6	11	1.4
South Carolina	256	21.2	0	0.0	19	1.6	23	1.9	0	0.0	86	7.1	18	1.5
Virginia														
Eastern	101	6.5	0	0.0	17	1.1	51	3.3	18	1.2	134	8.6	25	1.6
Western	82	20.7	0	0.0	4	1.0	4	1.0	0	0.0	35	8.8	2	0.5
West Virginia														
Northern	40	8.5	0	0.0	13	2.8	4	0.9	2	0.4	66	14.1	0	0.0
Southern	28	10.3	0	0.0	0	0.0	2	0.7	2	0.7	49	18.1	0	0.0

CIRCUIT		SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/*BOOKER*		ABOVE RANGE W/*BOOKER*		REMAINING ABOVE RANGE	
District	TOTAL	n	%	n	%	n	%	n	%	n	%
FIFTH CIRCUIT	**17,389**	**12,247**	**70.4**	**88**	**0.5**	**33**	**0.2**	**173**	**1.0**	**28**	**0.2**
Louisiana											
Eastern	**479**	367	76.6	5	1.0	4	0.8	9	1.9	1	0.2
Middle	**204**	143	70.1	2	1.0	0	0.0	1	0.5	0	0.0
Western	**335**	254	75.8	1	0.3	0	0.0	8	2.4	0	0.0
Mississippi											
Northern	**177**	109	61.6	0	0.0	0	0.0	4	2.3	0	0.0
Southern	**421**	340	80.8	1	0.2	2	0.5	4	1.0	3	0.7
Texas											
Eastern	**1,012**	735	72.6	8	0.8	0	0.0	4	0.4	3	0.3
Northern	**1,081**	736	68.1	22	2.0	12	1.1	35	3.2	2	0.2
Southern	**6,510**	3,753	57.6	29	0.4	3	0.0	24	0.4	11	0.2
Western	**7,170**	5,810	81.0	20	0.3	12	0.2	84	1.2	8	0.1
SIXTH CIRCUIT	**5,357**	**2,910**	**54.3**	**22**	**0.4**	**10**	**0.2**	**34**	**0.6**	**9**	**0.2**
Kentucky											
Eastern	**681**	314	46.1	0	0.0	1	0.1	5	0.7	0	0.0
Western	**488**	349	71.5	3	0.6	0	0.0	1	0.2	0	0.0
Michigan											
Eastern	**736**	403	54.8	3	0.4	0	0.0	4	0.5	2	0.3
Western	**452**	273	60.4	5	1.1	3	0.7	9	2.0	3	0.7
Ohio											
Northern	**905**	496	54.8	1	0.1	1	0.1	6	0.7	1	0.1
Southern	**621**	250	40.3	1	0.2	2	0.3	1	0.2	1	0.2
Tennessee											
Eastern	**586**	358	61.1	2	0.3	1	0.2	3	0.5	2	0.3
Middle	**286**	160	55.9	2	0.7	1	0.3	0	0.0	0	0.0
Western	**602**	307	51.0	5	0.8	1	0.2	5	0.8	0	0.0
SEVENTH CIRCUIT	**3,041**	**1,683**	**55.3**	**3**	**0.1**	**9**	**0.3**	**34**	**1.1**	**5**	**0.2**
Illinois											
Central	**387**	215	55.6	0	0.0	0	0.0	0	0.0	1	0.3
Northern	**919**	425	46.2	1	0.1	4	0.4	3	0.3	2	0.2
Southern	**310**	239	77.1	1	0.3	3	1.0	5	1.6	1	0.3
Indiana											
Northern	**452**	296	65.5	0	0.0	2	0.4	3	0.7	1	0.2
Southern	**293**	168	57.3	1	0.3	0	0.0	8	2.7	0	0.0
Wisconsin											
Eastern	**490**	192	39.2	0	0.0	0	0.0	13	2.7	0	0.0
Western	**190**	148	77.9	0	0.0	0	0.0	2	1.1	0	0.0
EIGHTH CIRCUIT	**5,405**	**3,475**	**64.3**	**32**	**0.6**	**11**	**0.2**	**48**	**0.9**	**8**	**0.1**
Arkansas											
Eastern	**432**	302	69.9	2	0.5	2	0.5	1	0.2	2	0.5
Western	**206**	146	70.9	1	0.5	0	0.0	2	1.0	0	0.0
Iowa											
Northern	**590**	429	72.7	10	1.7	3	0.5	5	0.8	2	0.3
Southern	**469**	252	53.7	2	0.4	1	0.2	5	1.1	1	0.2
Minnesota	**575**	272	47.3	1	0.2	0	0.0	1	0.2	0	0.0
Missouri											
Eastern	**1,010**	696	68.9	0	0.0	0	0.0	6	0.6	0	0.0
Western	**778**	497	63.9	2	0.3	3	0.4	10	1.3	1	0.1
Nebraska	**640**	429	67.0	10	1.6	0	0.0	12	1.9	2	0.3
North Dakota	**251**	122	48.6	0	0.0	1	0.4	1	0.4	0	0.0
South Dakota	**454**	330	72.7	4	0.9	1	0.2	5	1.1	0	0.0

CIRCUIT	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/*BOOKER*		BELOW RANGE W/*BOOKER*		REMAINING BELOW RANGE	
District	n	%	n	%	n	%	n	%	n	%	n	%	n	%
FIFTH CIRCUIT	**1,299**	**7.5**	**1,254**	**7.2**	**1,021**	**5.9**	**418**	**2.4**	**39**	**0.2**	**655**	**3.8**	**134**	**0.8**
Louisiana														
Eastern	53	11.1	0	0.0	7	1.5	6	1.3	4	0.8	23	4.8	0	0.0
Middle	44	21.6	0	0.0	1	0.5	4	2.0	1	0.5	7	3.4	1	0.5
Western	30	9.0	0	0.0	0	0.0	0	0.0	5	1.5	24	7.2	13	3.9
Mississippi														
Northern	40	22.6	0	0.0	14	7.9	2	1.1	0	0.0	5	2.8	3	1.7
Southern	36	8.6	0	0.0	1	0.2	2	0.5	3	0.7	17	4.0	12	2.9
Texas														
Eastern	104	10.3	0	0.0	91	9.0	28	2.8	6	0.6	27	2.7	6	0.6
Northern	173	16.0	0	0.0	23	2.1	7	0.6	3	0.3	62	5.7	6	0.6
Southern	371	5.7	1,095	16.8	802	12.3	225	3.5	1	0.0	184	2.8	12	0.2
Western	448	6.2	159	2.2	82	1.1	144	2.0	16	0.2	306	4.3	81	1.1
SIXTH CIRCUIT	**1,375**	**25.7**	**1**	**0.0**	**133**	**2.5**	**98**	**1.8**	**105**	**2.0**	**584**	**10.9**	**76**	**1.4**
Kentucky														
Eastern	290	42.6	0	0.0	6	0.9	7	1.0	1	0.1	51	7.5	6	0.9
Western	62	12.7	0	0.0	23	4.7	9	1.8	0	0.0	38	7.8	3	0.6
Michigan														
Eastern	154	20.9	0	0.0	12	1.6	11	1.5	14	1.9	125	17.0	8	1.1
Western	86	19.0	0	0.0	0	0.0	9	2.0	8	1.8	53	11.7	3	0.7
Ohio														
Northern	209	23.1	0	0.0	27	3.0	14	1.5	22	2.4	106	11.7	22	2.4
Southern	195	31.4	0	0.0	30	4.8	22	3.5	39	6.3	65	10.5	15	2.4
Tennessee														
Eastern	149	25.4	0	0.0	4	0.7	8	1.4	3	0.5	47	8.0	9	1.5
Middle	64	22.4	0	0.0	11	3.8	6	2.1	10	3.5	30	10.5	2	0.7
Western	166	27.6	1	0.2	20	3.3	12	2.0	8	1.3	69	11.5	8	1.3
SEVENTH CIRCUIT	**559**	**18.4**	**1**	**0.0**	**78**	**2.6**	**44**	**1.4**	**98**	**3.2**	**455**	**15.0**	**72**	**2.4**
Illinois														
Central	93	24.0	1	0.3	5	1.3	7	1.8	3	0.8	58	15.0	4	1.0
Northern	176	19.2	0	0.0	21	2.3	23	2.5	81	8.8	155	16.9	28	3.0
Southern	31	10.0	0	0.0	2	0.6	1	0.3	5	1.6	17	5.5	5	1.6
Indiana														
Northern	95	21.0	0	0.0	5	1.1	0	0.0	4	0.9	26	5.8	20	4.4
Southern	50	17.1	0	0.0	15	5.1	5	1.7	2	0.7	44	15.0	0	0.0
Wisconsin														
Eastern	102	20.8	0	0.0	30	6.1	4	0.8	0	0.0	134	27.3	15	3.1
Western	12	6.3	0	0.0	0	0.0	4	2.1	3	1.6	21	11.1	0	0.0
EIGHTH CIRCUIT	**814**	**15.1**	**52**	**1.0**	**144**	**2.7**	**73**	**1.4**	**76**	**1.4**	**613**	**11.3**	**59**	**1.1**
Arkansas														
Eastern	62	14.4	0	0.0	6	1.4	10	2.3	11	2.5	24	5.6	10	2.3
Western	33	16.0	0	0.0	0	0.0	2	1.0	0	0.0	21	10.2	1	0.5
Iowa														
Northern	57	9.7	31	5.3	1	0.2	0	0.0	3	0.5	46	7.8	3	0.5
Southern	101	21.5	0	0.0	25	5.3	6	1.3	3	0.6	62	13.2	11	2.3
Minnesota	164	28.5	0	0.0	8	1.4	11	1.9	23	4.0	92	16.0	3	0.5
Missouri														
Eastern	132	13.1	0	0.0	22	2.2	18	1.8	12	1.2	114	11.3	10	1.0
Western	136	17.5	0	0.0	21	2.7	8	1.0	11	1.4	87	11.2	2	0.3
Nebraska	24	3.8	18	2.8	44	6.9	7	1.1	6	0.9	79	12.3	9	1.4
North Dakota	93	37.1	3	1.2	3	1.2	3	1.2	1	0.4	23	9.2	1	0.4
South Dakota	12	2.6	0	0.0	14	3.1	8	1.8	6	1.3	65	14.3	9	2.0

CIRCUIT		SENTENCED WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/*BOOKER*		ABOVE RANGE W/*BOOKER*		REMAINING ABOVE RANGE	
District	TOTAL	n	%	n	%	n	%	n	%	n	%
NINTH CIRCUIT	**14,042**	**6,259**	**44.6**	**68**	**0.5**	**17**	**0.1**	**70**	**0.5**	**21**	**0.1**
Alaska	**158**	82	51.9	0	0.0	0	0.0	3	1.9	2	1.3
Arizona	**3,723**	1,204	32.3	41	1.1	3	0.1	9	0.2	3	0.1
California											
Central	**1,614**	605	37.5	3	0.2	4	0.2	12	0.7	4	0.2
Eastern	**883**	425	48.1	0	0.0	4	0.5	6	0.7	2	0.2
Northern	**704**	371	52.7	0	0.0	2	0.3	5	0.7	0	0.0
Southern	**3,737**	1,870	50.0	10	0.3	2	0.1	6	0.2	3	0.1
Guam	**68**	51	75.0	1	1.5	0	0.0	0	0.0	1	1.5
Hawaii	**278**	119	42.8	0	0.0	0	0.0	1	0.4	1	0.4
Idaho	**265**	125	47.2	0	0.0	0	0.0	3	1.1	0	0.0
Montana	**417**	298	71.5	5	1.2	0	0.0	8	1.9	3	0.7
Nevada	**429**	292	68.1	1	0.2	1	0.2	2	0.5	0	0.0
Northern Mariana Islands	**18**	13	72.2	0	0.0	0	0.0	0	0.0	0	0.0
Oregon	**628**	294	46.8	2	0.3	0	0.0	3	0.5	2	0.3
Washington											
Eastern	**337**	132	39.2	1	0.3	1	0.3	8	2.4	0	0.0
Western	**783**	378	48.3	4	0.5	0	0.0	4	0.5	0	0.0
TENTH CIRCUIT	**5,874**	**3,580**	**60.9**	**15**	**0.3**	**4**	**0.1**	**70**	**1.2**	**5**	**0.1**
Colorado	**473**	285	60.3	2	0.4	0	0.0	2	0.4	2	0.4
Kansas	**664**	403	60.7	2	0.3	3	0.5	44	6.6	1	0.2
New Mexico	**2,900**	1,743	60.1	4	0.1	0	0.0	5	0.2	2	0.1
Oklahoma											
Eastern	**89**	83	93.3	0	0.0	0	0.0	0	0.0	0	0.0
Northern	**213**	165	77.5	2	0.9	0	0.0	0	0.0	0	0.0
Western	**339**	241	71.1	1	0.3	0	0.0	10	2.9	0	0.0
Utah	**859**	441	51.3	4	0.5	0	0.0	7	0.8	0	0.0
Wyoming	**337**	219	65.0	0	0.0	1	0.3	2	0.6	0	0.0
ELEVENTH CIRCUIT	**7,037**	**4,791**	**68.1**	**11**	**0.2**	**10**	**0.1**	**94**	**1.3**	**3**	**0.0**
Alabama											
Middle	**266**	174	65.4	0	0.0	0	0.0	5	1.9	0	0.0
Northern	**478**	304	63.6	0	0.0	3	0.6	13	2.7	0	0.0
Southern	**556**	364	65.5	2	0.4	0	0.0	6	1.1	0	0.0
Florida											
Middle	**1,664**	1,027	61.7	1	0.1	1	0.1	9	0.5	1	0.1
Northern	**338**	239	70.7	1	0.3	0	0.0	5	1.5	0	0.0
Southern	**2,162**	1,584	73.3	1	0.0	2	0.1	23	1.1	1	0.0
Georgia											
Middle	**351**	283	80.6	0	0.0	2	0.6	6	1.7	0	0.0
Northern	**706**	409	57.9	2	0.3	2	0.3	7	1.0	0	0.0
Southern	**516**	407	78.9	4	0.8	0	0.0	20	3.9	1	0.2

CIRCUIT	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/*BOOKER*		BELOW RANGE W/*BOOKER*		REMAINING BELOW RANGE	
District	n	%	n	%	n	%	n	%	n	%	n	%	n	%
NINTH CIRCUIT	**1,302**	**9.3**	**3,961**	**28.2**	**748**	**5.3**	**262**	**1.9**	**140**	**1.0**	**1,001**	**7.1**	**193**	**1.4**
Alaska	28	17.7	0	0.0	20	12.7	2	1.3	6	3.8	13	8.2	2	1.3
Arizona	183	4.9	1,930	51.8	118	3.2	48	1.3	26	0.7	139	3.7	19	0.5
California														
Central	212	13.1	429	26.6	109	6.8	31	1.9	31	1.9	124	7.7	50	3.1
Eastern	132	14.9	183	20.7	33	3.7	16	1.8	11	1.2	62	7.0	9	1.0
Northern	84	11.9	49	7.0	78	11.1	13	1.8	13	1.8	69	9.8	20	2.8
Southern	154	4.1	1,232	33.0	118	3.2	103	2.8	14	0.4	159	4.3	66	1.8
Guam	6	8.8	0	0.0	0	0.0	1	1.5	0	0.0	6	8.8	2	2.9
Hawaii	86	30.9	0	0.0	3	1.1	3	1.1	2	0.7	59	21.2	4	1.4
Idaho	70	26.4	33	12.5	4	1.5	1	0.4	3	1.1	23	8.7	3	1.1
Montana	54	12.9	0	0.0	0	0.0	4	1.0	3	0.7	36	8.6	6	1.4
Nevada	36	8.4	0	0.0	44	10.3	3	0.7	3	0.7	43	10.0	4	0.9
Northern Mariana Islands	4	22.2	0	0.0	0	0.0	0	0.0	1	5.6	0	0.0	0	0.0
Oregon	117	18.6	22	3.5	66	10.5	15	2.4	9	1.4	95	15.1	3	0.5
Washington														
Eastern	29	8.6	68	20.2	39	11.6	1	0.3	2	0.6	54	16.0	2	0.6
Western	107	13.7	15	1.9	116	14.8	21	2.7	16	2.0	119	15.2	3	0.4
TENTH CIRCUIT	**405**	**6.9**	**571**	**9.7**	**495**	**8.4**	**150**	**2.6**	**75**	**1.3**	**477**	**8.1**	**27**	**0.5**
Colorado	76	16.1	0	0.0	21	4.4	19	4.0	5	1.1	57	12.1	4	0.8
Kansas	106	16.0	0	0.0	41	6.2	3	0.5	3	0.5	57	8.6	1	0.2
New Mexico	91	3.1	391	13.5	367	12.7	93	3.2	41	1.4	155	5.3	8	0.3
Oklahoma														
Eastern	1	1.1	0	0.0	0	0.0	0	0.0	0	0.0	5	5.6	0	0.0
Northern	29	13.6	0	0.0	1	0.5	1	0.5	0	0.0	15	7.0	0	0.0
Western	21	6.2	0	0.0	3	0.9	4	1.2	1	0.3	56	16.5	2	0.6
Utah	52	6.1	180	21.0	48	5.6	25	2.9	3	0.3	90	10.5	9	1.0
Wyoming	29	8.6	0	0.0	14	4.2	5	1.5	22	6.5	42	12.5	3	0.9
ELEVENTH CIRCUIT	**1,073**	**15.2**	**30**	**0.4**	**76**	**1.1**	**92**	**1.3**	**71**	**1.0**	**740**	**10.5**	**46**	**0.7**
Alabama														
Middle	61	22.9	0	0.0	2	0.8	3	1.1	0	0.0	20	7.5	1	0.4
Northern	95	19.9	0	0.0	2	0.4	5	1.0	2	0.4	52	10.9	2	0.4
Southern	124	22.3	0	0.0	4	0.7	2	0.4	2	0.4	50	9.0	2	0.4
Florida														
Middle	328	19.7	30	1.8	22	1.3	21	1.3	15	0.9	203	12.2	6	0.4
Northern	66	19.5	0	0.0	0	0.0	4	1.2	1	0.3	20	5.9	2	0.6
Southern	198	9.2	0	0.0	19	0.9	23	1.1	33	1.5	257	11.9	21	1.0
Georgia														
Middle	39	11.1	0	0.0	5	1.4	2	0.6	0	0.0	13	3.7	1	0.3
Northern	119	16.9	0	0.0	16	2.3	25	3.5	18	2.5	98	13.9	10	1.4
Southern	43	8.3	0	0.0	6	1.2	7	1.4	0	0.0	27	5.2	1	0.2

Of the 76,436 cases, 2,000 were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range. Districts for which information needed to determine the relationship between the sentence imposed and the guideline range is missing in five percent or more of the cases received included: Western Oklahoma (39.0%), Eastern Virginia (23.1%), Middle Georgia (20.8%), Central California (14.6%), Northern New York (8.4%), Southern Mississippi (6.9%), Middle Tennessee (6.8%), Western Washington (6.6%), and Maryland (6.6%).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 10

GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

National

		WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/*BOOKER*		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
PRIMARY OFFENSE	TOTAL	n	%	n	%	n	%	n	%	n	%
TOTAL	**74,395**	**44,200**	**59.4**	**326**	**0.4**	**147**	**0.2**	**622**	**0.8**	**100**	**0.1**
Robbery	**1,050**	671	63.9	15	1.4	13	1.2	13	1.2	2	0.2
Drugs - Trafficking	**24,198**	12,476	51.6	43	0.2	17	0.1	66	0.3	21	0.1
Drugs - Simple Possession	**411**	368	89.5	1	0.2	2	0.5	5	1.2	3	0.7
Firearms	**8,211**	5,515	67.2	58	0.7	31	0.4	105	1.3	17	0.2
Larceny	**1,548**	1,159	74.9	3	0.2	4	0.3	25	1.6	5	0.3
Fraud	**7,305**	4,524	61.9	26	0.4	9	0.1	72	1.0	14	0.2
Embezzlement	**483**	334	69.2	0	0.0	1	0.2	2	0.4	0	0.0
Forgery/Counterfeiting	**1,006**	697	69.3	2	0.2	4	0.4	15	1.5	3	0.3
Immigration	**21,043**	13,128	62.4	97	0.5	35	0.2	196	0.9	21	0.1
Other Miscellaneous Offenses	**9,140**	5,328	58.3	81	0.9	31	0.3	123	1.3	14	0.2

Fourth and Eleventh Circuits

		WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/*BOOKER*		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
PRIMARY OFFENSE	TOTAL	n	%	n	%	n	%	n	%	n	%
TOTAL	**13,499**	**9,077**	**67.2**	**63**	**0.5**	**46**	**0.3**	**146**	**1.1**	**12**	**0.1**
Robbery	**207**	156	75.4	4	1.9	2	1.0	3	1.4	0	0.0
Drugs - Trafficking	**5,090**	3,056	60.0	7	0.1	4	0.1	19	0.4	1	0.0
Drugs - Simple Possession	**67**	57	85.1	0	0.0	1	1.5	1	1.5	0	0.0
Firearms	**2,247**	1,642	73.1	17	0.8	9	0.4	33	1.5	3	0.1
Larceny	**380**	305	80.3	1	0.3	1	0.3	9	2.4	0	0.0
Fraud	**1,782**	1,167	65.5	5	0.3	5	0.3	21	1.2	3	0.2
Embezzlement	**102**	76	74.5	0	0.0	0	0.0	1	1.0	0	0.0
Forgery/Counterfeiting	**268**	186	69.4	1	0.4	1	0.4	3	1.1	1	0.4
Immigration	**1,528**	1,233	80.7	13	0.9	18	1.2	27	1.8	0	0.0
Other Miscellaneous Offenses	**1,828**	1,199	65.6	15	0.8	5	0.3	29	1.6	4	0.2

National

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/*BOOKER*		BELOW RANGE W/*BOOKER*		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
TOTAL	**10,033**	**13.5**	**5,886**	**7.9**	**3,114**	**4.2**	**1,544**	**2.1**	**914**	**1.2**	**6,677**	**9.0**	**832**	**1.1**
Robbery	116	11.0	0	0.0	32	3.0	30	2.9	32	3.0	118	11.2	8	0.8
Drugs - Trafficking	6,267	25.9	1,184	4.9	882	3.6	457	1.9	322	1.3	2,273	9.4	190	0.8
Drugs - Simple Possession	10	2.4	0	0.0	11	2.7	0	0.0	1	0.2	6	1.5	4	1.0
Firearms	929	11.3	33	0.4	253	3.1	169	2.1	119	1.4	883	10.8	99	1.2
Larceny	97	6.3	6	0.4	39	2.5	23	1.5	15	1.0	134	8.7	38	2.5
Fraud	1,063	14.6	42	0.6	250	3.4	145	2.0	133	1.8	887	12.1	140	1.9
Embezzlement	28	5.8	0	0.0	14	2.9	14	2.9	9	1.9	71	14.7	10	2.1
Forgery/Counterfeiting	105	10.4	0	0.0	18	1.8	29	2.9	8	0.8	109	10.8	16	1.6
Immigration	344	1.6	4,588	21.8	1,071	5.1	457	2.2	93	0.4	842	4.0	171	0.8
Other Miscellaneous Offenses	1,074	11.8	33	0.4	544	6.0	220	2.4	182	2.0	1,354	14.8	156	1.7

Fourth and Eleventh Circuits

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/*BOOKER*		BELOW RANGE W/*BOOKER*		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
TOTAL	**2,208**	**16.4**	**30**	**0.2**	**169**	**1.3**	**203**	**1.5**	**123**	**0.9**	**1,303**	**9.7**	**119**	**0.9**
Robbery	19	9.2	0	0.0	2	1.0	3	1.4	3	1.4	15	7.2	0	0.0
Drugs - Trafficking	1,337	26.3	0	0.0	58	1.1	66	1.3	38	0.7	459	9.0	45	0.9
Drugs - Simple Possession	3	4.5	0	0.0	4	6.0	0	0.0	0	0.0	1	1.5	0	0.0
Firearms	269	12.0	0	0.0	18	0.8	40	1.8	14	0.6	193	8.6	9	0.4
Larceny	20	5.3	0	0.0	7	1.8	2	0.5	1	0.3	29	7.6	5	1.3
Fraud	273	15.3	0	0.0	18	1.0	32	1.8	26	1.5	207	11.6	25	1.4
Embezzlement	7	6.9	0	0.0	0	0.0	2	2.0	1	1.0	13	12.7	2	2.0
Forgery/Counterfeiting	34	12.7	0	0.0	3	1.1	9	3.4	1	0.4	28	10.4	1	0.4
Immigration	50	3.3	30	2.0	25	1.6	13	0.9	12	0.8	93	6.1	14	0.9
Other Miscellaneous Offenses	196	10.7	0	0.0	34	1.9	36	2.0	27	1.5	265	14.5	18	1.0

Of the 76,436 guideline cases, 2,041 cases were excluded due to one or both of the following reasons: missing information from the submitted documents that prevented the comparison of the sentence and the guideline range (2,000) or missing primary offense (47).

Of the 14,316 guideline cases from the Fourth and Eleventh Circuits, 817 cases were excluded due to one or both of the following reasons: missing information needed to determine the relationship between the sentence imposed and the guideline range (817) or missing primary offense category (1).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.

Table 10A

GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY
Fiscal Year 2008

Fourth Circuit

		WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/*BOOKER*		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
PRIMARY OFFENSE	TOTAL	n	%	n	%	n	%	n	%	n	%
TOTAL	**6,462**	**4,286**	**66.3**	**52**	**0.8**	**36**	**0.6**	**52**	**0.8**	**9**	**0.1**
Robbery	**117**	86	73.5	4	3.4	2	1.7	2	1.7	0	0.0
Drugs - Trafficking	**2,655**	1,609	60.6	5	0.2	2	0.1	10	0.4	1	0.0
Drugs - Simple Possession	**35**	30	85.7	0	0.0	1	2.9	0	0.0	0	0.0
Firearms	**1,244**	925	74.4	15	1.2	7	0.6	12	1.0	2	0.2
Larceny	**143**	109	76.2	1	0.7	1	0.7	3	2.1	0	0.0
Fraud	**766**	510	66.6	5	0.7	3	0.4	7	0.9	2	0.3
Embezzlement	**47**	33	70.2	0	0.0	0	0.0	0	0.0	0	0.0
Forgery/Counterfeiting	**140**	106	75.7	0	0.0	1	0.7	0	0.0	1	0.7
Immigration	**508**	399	78.5	12	2.4	15	3.0	6	1.2	0	0.0
Other Miscellaneous Offenses	**807**	479	59.4	10	1.2	4	0.5	12	1.5	3	0.4

Eleventh Circuit

		WITHIN GUIDELINE RANGE		ABOVE RANGE DEPARTURE		ABOVE RANGE DEPARTURE W/*BOOKER*		ABOVE RANGE W/BOOKER		REMAINING ABOVE RANGE	
PRIMARY OFFENSE	TOTAL	n	%	n	%	n	%	n	%	n	%
TOTAL	**7,037**	**4,791**	**68.1**	**11**	**0.2**	**10**	**0.1**	**94**	**1.3**	**3**	**0.0**
Robbery	**90**	70	77.8	0	0.0	0	0.0	1	1.1	0	0.0
Drugs - Trafficking	**2,435**	1,447	59.4	2	0.1	2	0.1	9	0.4	0	0.0
Drugs - Simple Possession	**32**	27	84.4	0	0.0	0	0.0	1	3.1	0	0.0
Firearms	**1,003**	717	71.5	2	0.2	2	0.2	21	2.1	1	0.1
Larceny	**237**	196	82.7	0	0.0	0	0.0	6	2.5	0	0.0
Fraud	**1,016**	657	64.7	0	0.0	2	0.2	14	1.4	1	0.1
Embezzlement	**55**	43	78.2	0	0.0	0	0.0	1	1.8	0	0.0
Forgery/Counterfeiting	**128**	80	62.5	1	0.8	0	0.0	3	2.3	0	0.0
Immigration	**1,020**	834	81.8	1	0.1	3	0.3	21	2.1	0	0.0
Other Miscellaneous Offenses	**1,021**	720	70.5	5	0.5	1	0.1	17	1.7	1	0.1

Fourth Circuit

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/*BOOKER*		BELOW RANGE W/*BOOKER*		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
TOTAL	**1,135**	**17.6**	**0**	**0.0**	**93**	**1.4**	**111**	**1.7**	**52**	**0.8**	**563**	**8.7**	**73**	**1.1**
Robbery	11	9.4	0	0.0	0	0.0	2	1.7	1	0.9	9	7.7	0	0.0
Drugs - Trafficking	696	26.2	0	0.0	29	1.1	43	1.6	20	0.8	209	7.9	31	1.2
Drugs - Simple Possession	1	2.9	0	0.0	3	8.6	0	0.0	0	0.0	0	0.0	0	0.0
Firearms	160	12.9	0	0.0	9	0.7	18	1.4	5	0.4	87	7.0	4	0.3
Larceny	11	7.7	0	0.0	5	3.5	1	0.7	1	0.7	9	6.3	2	1.4
Fraud	107	14.0	0	0.0	12	1.6	20	2.6	9	1.2	72	9.4	19	2.5
Embezzlement	2	4.3	0	0.0	0	0.0	2	4.3	0	0.0	8	17.0	2	4.3
Forgery/Counterfeiting	15	10.7	0	0.0	1	0.7	3	2.1	1	0.7	12	8.6	0	0.0
Immigration	20	3.9	0	0.0	14	2.8	3	0.6	4	0.8	30	5.9	5	1.0
Other Miscellaneous Offenses	112	13.9	0	0.0	20	2.5	19	2.4	11	1.4	127	15.7	10	1.2

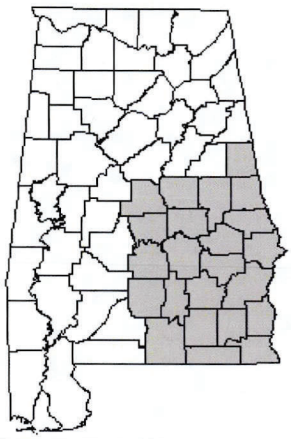
Eleventh Circuit

PRIMARY OFFENSE	§5K1.1 SUBSTANTIAL ASSISTANCE		§5K3.1 EARLY DISPOSITION		OTHER GOV'T SPONSORED		BELOW RANGE DEPARTURE		BELOW RANGE DEPARTURE W/*BOOKER*		BELOW RANGE W/*BOOKER*		REMAINING BELOW RANGE	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
TOTAL	**1,073**	**15.2**	**30**	**0.4**	**76**	**1.1**	**92**	**1.3**	**71**	**1.0**	**740**	**10.5**	**46**	**0.7**
Robbery	8	8.9	0	0.0	2	2.2	1	1.1	2	2.2	6	6.7	0	0.0
Drugs - Trafficking	641	26.3	0	0.0	29	1.2	23	0.9	18	0.7	250	10.3	14	0.6
Drugs - Simple Possession	2	6.3	0	0.0	1	3.1	0	0.0	0	0.0	1	3.1	0	0.0
Firearms	109	10.9	0	0.0	9	0.9	22	2.2	9	0.9	106	10.6	5	0.5
Larceny	9	3.8	0	0.0	2	0.8	1	0.4	0	0.0	20	8.4	3	1.3
Fraud	166	16.3	0	0.0	6	0.6	12	1.2	17	1.7	135	13.3	6	0.6
Embezzlement	5	9.1	0	0.0	0	0.0	0	0.0	1	1.8	5	9.1	0	0.0
Forgery/Counterfeiting	19	14.8	0	0.0	2	1.6	6	4.7	0	0.0	16	12.5	1	0.8
Immigration	30	2.9	30	2.9	11	1.1	10	1.0	8	0.8	63	6.2	9	0.9
Other Miscellaneous Offenses	84	8.2	0	0.0	14	1.4	17	1.7	16	1.6	138	13.5	8	0.8

Of the 7,025 guideline cases from the Fourth Circuit, 563 cases were excluded due to missing information needed to determine the relationship between the sentence imposed and the guideline range.

Of the 7,291 guideline cases from the Eleventh Circuit, 254 cases were excluded due to one or both of the following reasons: missing information needed to determine the relationship between the sentence imposed and the guideline range (254) or missing primary offense category (1).

SOURCE: U.S. Sentencing Commission, 2008 Datafile, OPAFY08.



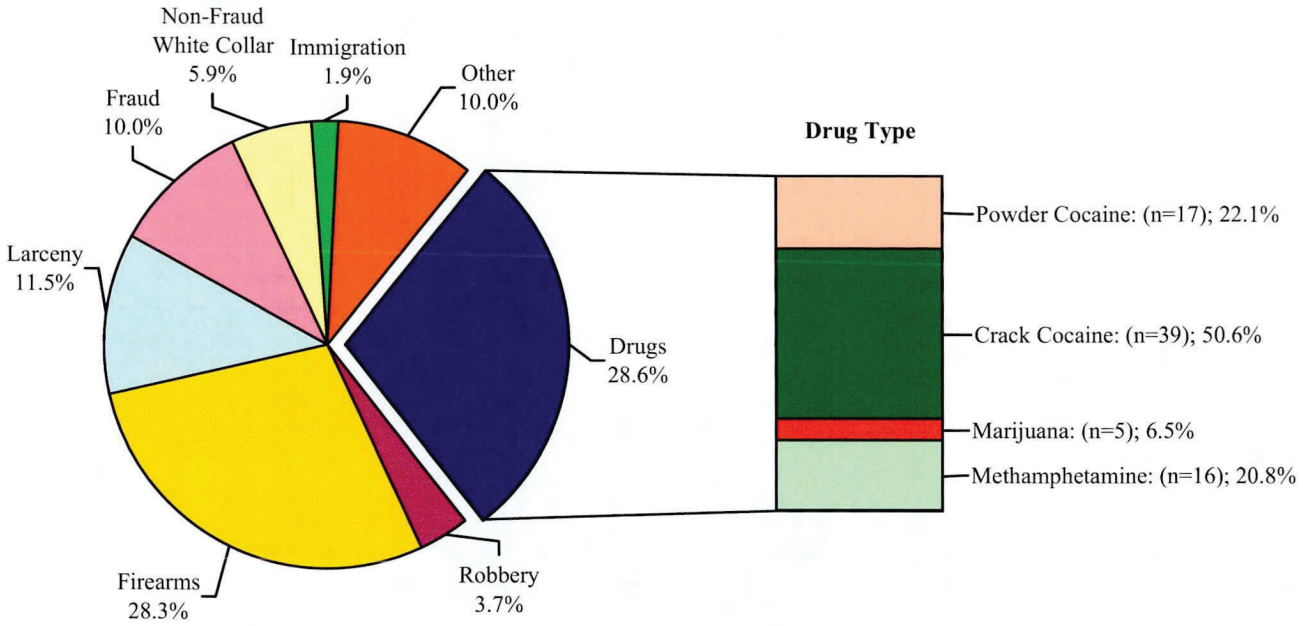
Average Age	Mean	Median
TOTAL	**34.5**	**32.0**
Male	34.8	32.0
Female	33.2	33.0

Mode of Conviction		
TOTAL	**269**	**100.0%**
Plea	252	93.7%
Trial	17	6.3%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**264**	**100.0%**	**214**	**81.1%**	**50**	**18.9%**
White	**71**	**26.9%**	51	71.8%	20	28.2%
Black	**176**	**66.7%**	150	85.2%	26	14.8%
Hispanic	**15**	**5.7%**	11	73.3%	4	26.7%
Other	**2**	**0.8%**	2	100.0%	0	0.0%

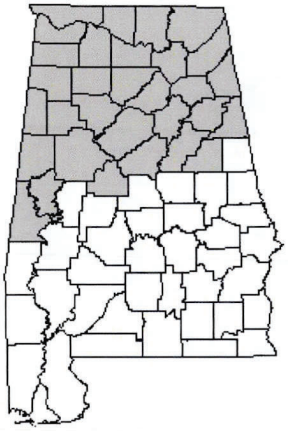
Departure Status		
TOTAL	**266**	**100.0%**
Sentenced Within Guideline Range	174	65.4%
Upward Departure from Guideline Range	0	0.0%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	5	1.9%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	61	22.9%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	2	0.8%
Downward Departure from Guideline Range	3	1.1%
Downward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	20	7.5%
All Remaining Cases Below Guideline Range	1	0.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

ALABAMA, Northern



Average Age	Mean	Median
TOTAL	**37.6**	**35.0**
Male	37.3	34.0
Female	39.3	37.0

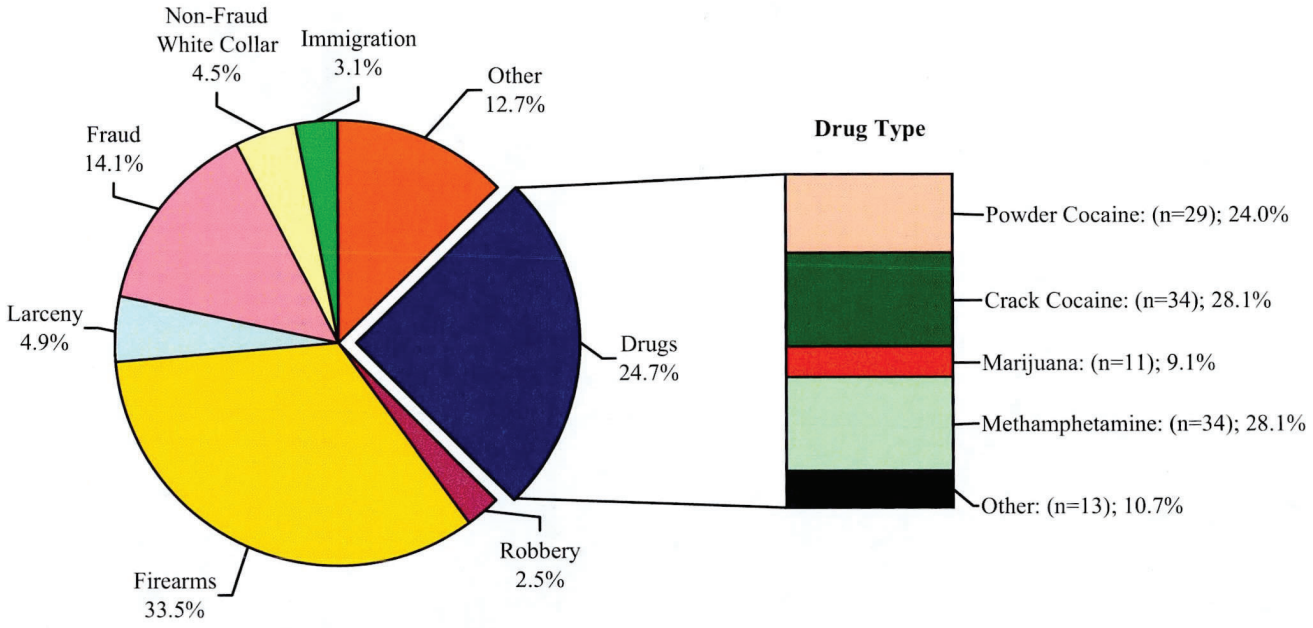
Mode of Conviction		
TOTAL	**493**	**100.0%**
Plea	458	92.9%
Trial	35	7.1%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**468**	**100.0%**	**395**	**84.4%**	**73**	**15.6%**
White	**169**	**36.1%**	137	81.1%	32	18.9%
Black	**241**	**51.5%**	205	85.1%	36	14.9%
Hispanic	**57**	**12.2%**	52	91.2%	5	8.8%
Other	**1**	**0.2%**	1	100.0%	0	0.0%

Departure Status

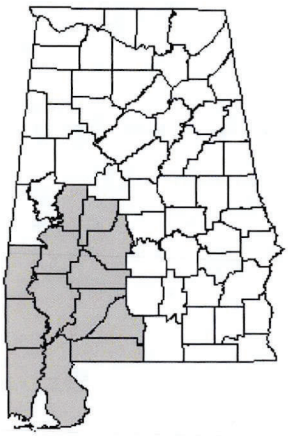
TOTAL	**478**	**100.0%**
Sentenced Within Guideline Range	304	63.6%
Upward Departure from Guideline Range	0	0.0%
Upward Departure with *Booker*/18 U.S.C. § 3553	3	0.6%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	13	2.7%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	95	19.9%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	2	0.4%
Downward Departure from Guideline Range	5	1.0%
Downward Departure with *Booker*/18 U.S.C. § 3553	2	0.4%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	52	10.9%
All Remaining Cases Below Guideline Range	2	0.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

ALABAMA, Southern



Average Age	Mean	Median
TOTAL	**33.4**	**31.0**
Male	32.9	30.0
Female	35.7	36.5

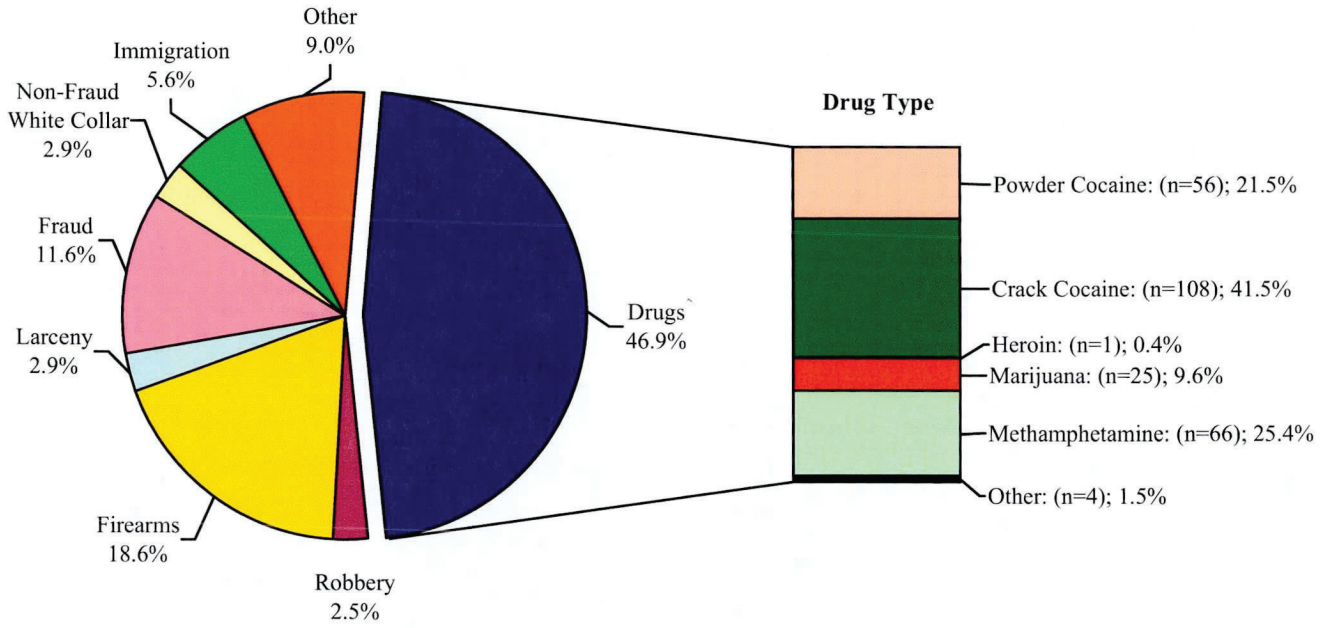
Mode of Conviction		
TOTAL	**556**	**100.0%**
Plea	533	95.9%
Trial	23	4.1%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**551**	**100.0%**	**449**	**81.5%**	**102**	**18.5%**
White	**175**	**31.8%**	133	76.0%	42	24.0%
Black	**305**	**55.4%**	254	83.3%	51	16.7%
Hispanic	**67**	**12.2%**	59	88.1%	8	11.9%
Other	**4**	**0.7%**	3	75.0%	1	25.0%

Departure Status

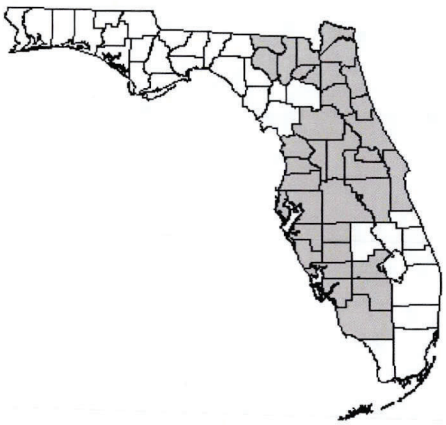
TOTAL	**556**	**100.0%**
Sentenced Within Guideline Range	364	65.5%
Upward Departure from Guideline Range	2	0.4%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	6	1.1%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	124	22.3%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	4	0.7%
Downward Departure from Guideline Range	2	0.4%
Downward Departure with *Booker*/18 U.S.C. § 3553	2	0.4%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	50	9.0%
All Remaining Cases Below Guideline Range	2	0.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

FLORIDA, Middle



Average Age	Mean	Median
TOTAL	**35.7**	**34.0**
Male	35.6	33.0
Female	36.6	36.0

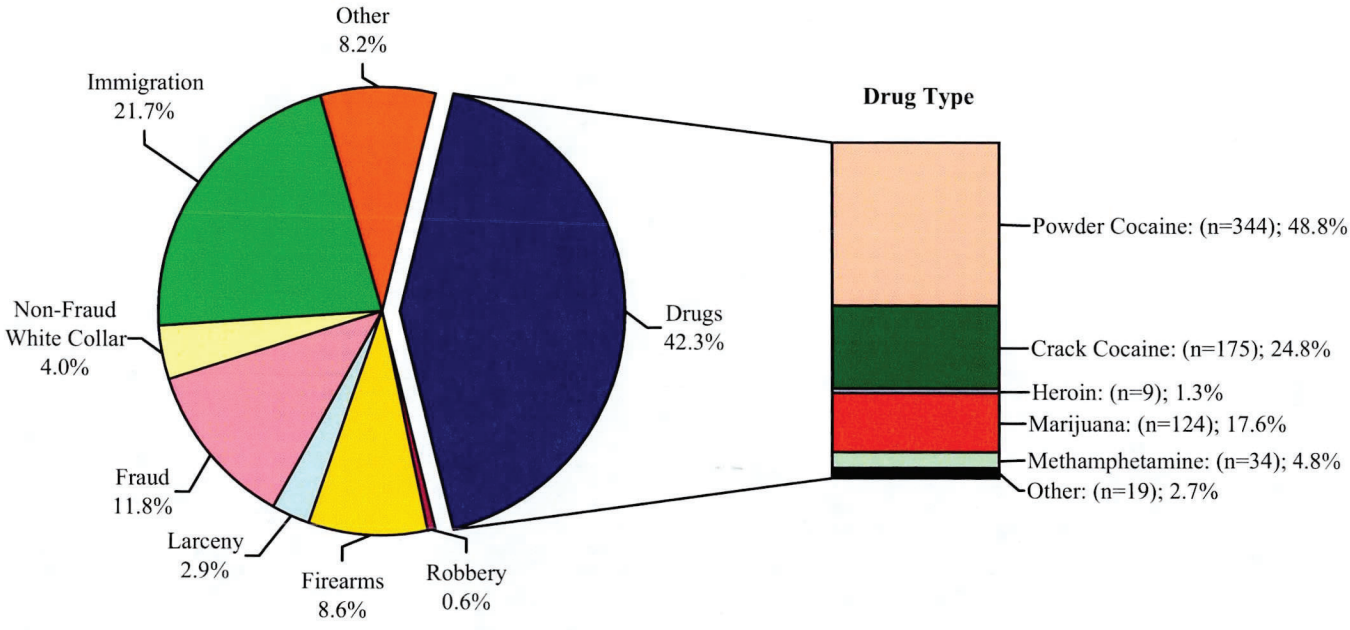
Mode of Conviction		
TOTAL	**1,669**	**100.0%**
Plea	1,570	94.1%
Trial	99	5.9%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**1,654**	**100.0%**	**1,497**	**90.5%**	**157**	**9.5%**
White	**457**	**27.6%**	395	86.4%	62	13.6%
Black	**448**	**27.1%**	395	88.2%	53	11.8%
Hispanic	**742**	**44.9%**	701	94.5%	41	5.5%
Other	7	**0.4%**	6	85.7%	1	14.3%

Departure Status

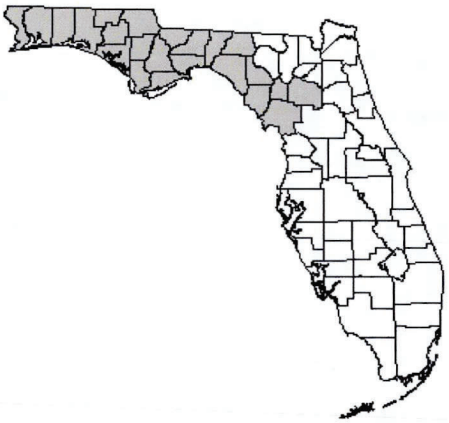
TOTAL	**1,664**	**100.0%**
Sentenced Within Guideline Range	1,027	61.7%
Upward Departure from Guideline Range	1	0.1%
Upward Departure with *Booker* /18 U.S.C. § 3553	1	0.1%
Above Guideline Range with *Booker* /18 U.S.C. § 3553	9	0.5%
All Remaining Cases Above Guideline Range	1	0.1%
§5K1.1 Substantial Assistance Departure	328	19.7%
§5K3.1 Early Disposition Program Departure	30	1.8%
Other Government-Sponsored Below Guideline Range	22	1.3%
Downward Departure from Guideline Range	21	1.3%
Downward Departure with *Booker* /18 U.S.C. § 3553	15	0.9%
Below Guideline Range with *Booker* /18 U.S.C. § 3553	203	12.2%
All Remaining Cases Below Guideline Range	6	0.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

FLORIDA, Northern



Average Age	Mean	Median
TOTAL	**34.6**	**31.0**
Male	34.4	31.0
Female	36.5	34.0

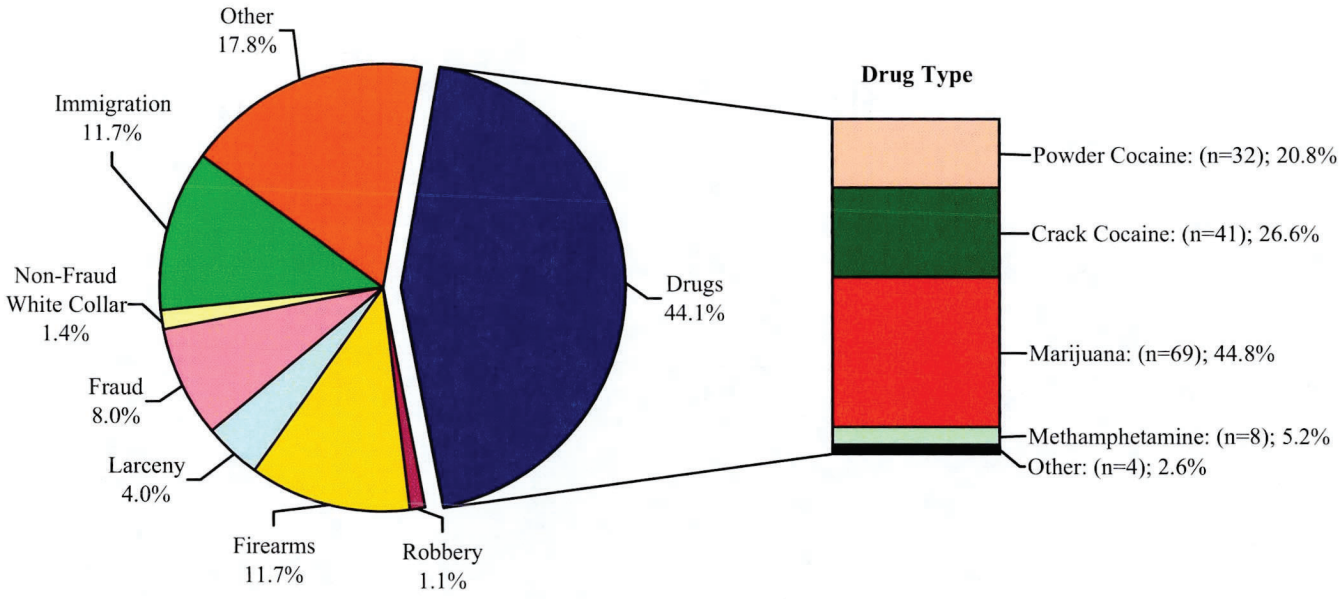
Mode of Conviction		
TOTAL	**351**	**100.0%**
Plea	314	89.5%
Trial	37	10.5%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**339**	**100.0%**	**302**	**89.1%**	**37**	**10.9%**
White	**130**	**38.3%**	104	80.0%	26	20.0%
Black	**127**	**37.5%**	123	96.9%	4	3.1%
Hispanic	**77**	**22.7%**	71	92.2%	6	7.8%
Other	**5**	**1.5%**	4	80.0%	1	20.0%

Departure Status

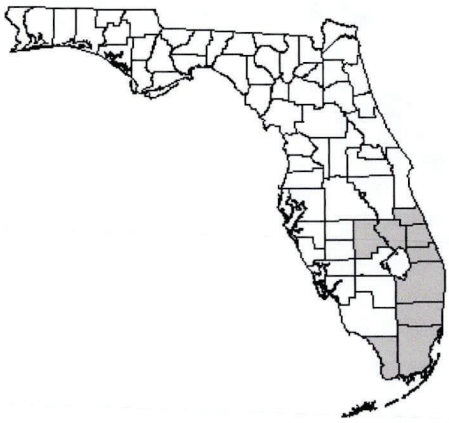
TOTAL	**338**	**100.0%**
Sentenced Within Guideline Range	239	70.7%
Upward Departure from Guideline Range	1	0.3%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	5	1.5%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	66	19.5%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	0	0.0%
Downward Departure from Guideline Range	4	1.2%
Downward Departure with *Booker*/18 U.S.C. § 3553	1	0.3%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	20	5.9%
All Remaining Cases Below Guideline Range	2	0.6%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

FLORIDA, Southern



Average Age	Mean	Median
TOTAL	**37.1**	**36.0**
Male	37.1	36.0
Female	36.9	36.0

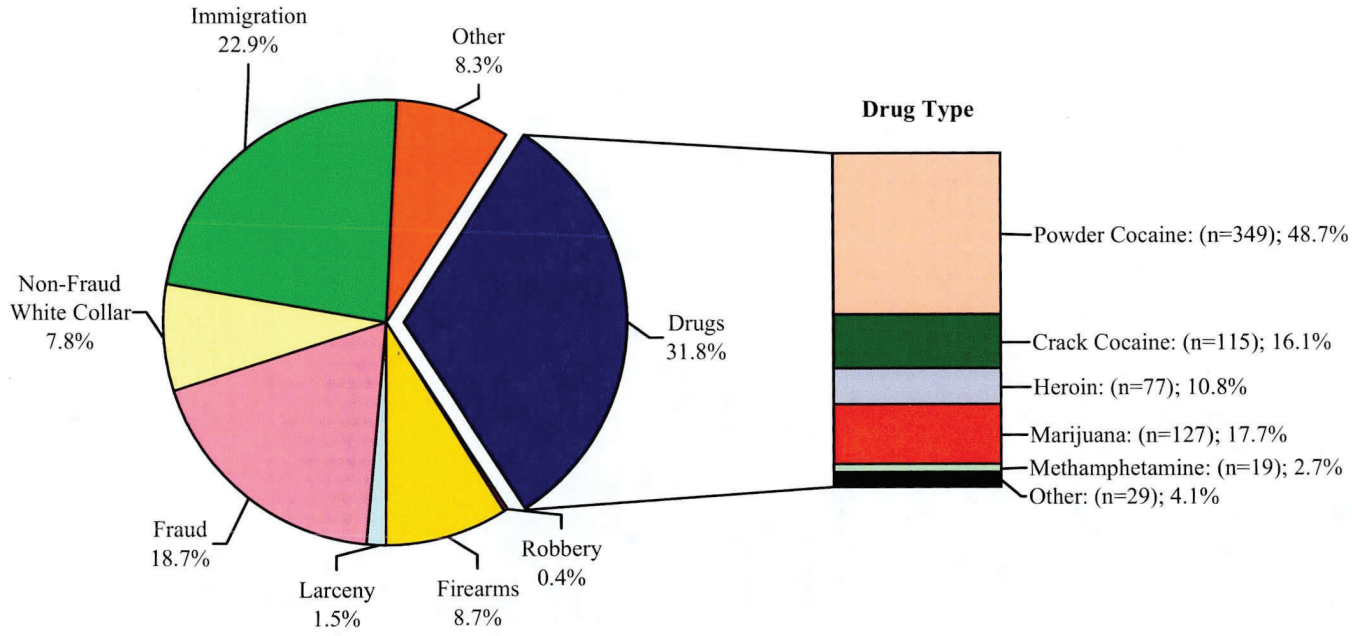
Mode of Conviction		
TOTAL	**2,272**	**100.0%**
Plea	2,156	94.9%
Trial	116	5.1%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**1,955**	**100.0%**	**1,684**	**86.1%**	**271**	**13.9%**
White	**341**	**17.4%**	301	88.3%	40	11.7%
Black	**584**	**29.9%**	511	87.5%	73	12.5%
Hispanic	**1,015**	**51.9%**	858	84.5%	157	15.5%
Other	**15**	**0.8%**	14	93.3%	1	6.7%

Departure Status

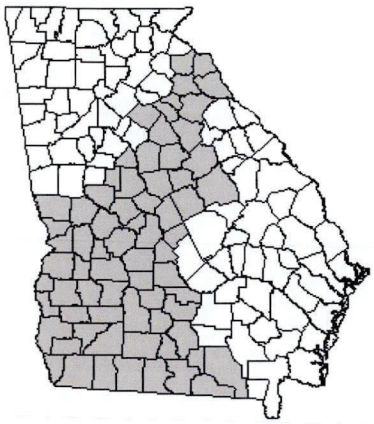
TOTAL	**2,162**	**100.0%**
Sentenced Within Guideline Range	1,584	73.3%
Upward Departure from Guideline Range	1	0.0%
Upward Departure with *Booker*/18 U.S.C. § 3553	2	0.1%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	23	1.1%
All Remaining Cases Above Guideline Range	1	0.0%
§5K1.1 Substantial Assistance Departure	198	9.2%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	19	0.9%
Downward Departure from Guideline Range	23	1.1%
Downward Departure with *Booker*/18 U.S.C. § 3553	33	1.5%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	257	11.9%
All Remaining Cases Below Guideline Range	21	1.0%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

GEORGIA, Middle



Average Age	Mean	Median
TOTAL	**33.0**	**30.0**
Male	32.8	30.0
Female	34.0	30.0

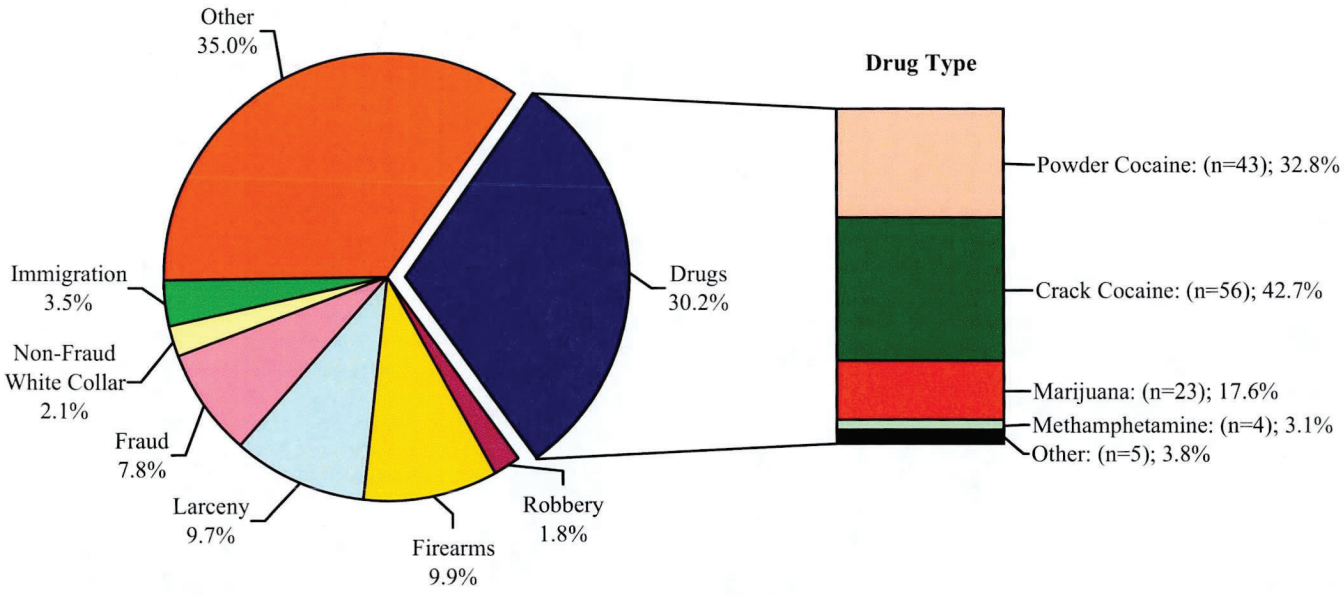
Mode of Conviction		
TOTAL	**443**	**100.0%**
Plea	431	97.3%
Trial	12	2.7%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**331**	**100.0%**	**275**	**83.1%**	**56**	**16.9%**
White	**93**	**28.1%**	66	71.0%	27	29.0%
Black	**202**	**61.0%**	178	88.1%	24	11.9%
Hispanic	**27**	**8.2%**	26	96.3%	1	3.7%
Other	**9**	**2.7%**	5	55.6%	4	44.4%

Departure Status

TOTAL	**351**	**100.0%**
Sentenced Within Guideline Range	283	80.6%
Upward Departure from Guideline Range	0	0.0%
Upward Departure with *Booker* /18 U.S.C. § 3553	2	0.6%
Above Guideline Range with *Booker* /18 U.S.C. § 3553	6	1.7%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	39	11.1%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	5	1.4%
Downward Departure from Guideline Range	2	0.6%
Downward Departure with *Booker* /18 U.S.C. § 3553	0	0.0%
Below Guideline Range with *Booker* /18 U.S.C. § 3553	13	3.7%
All Remaining Cases Below Guideline Range	1	0.3%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

GEORGIA, Northern

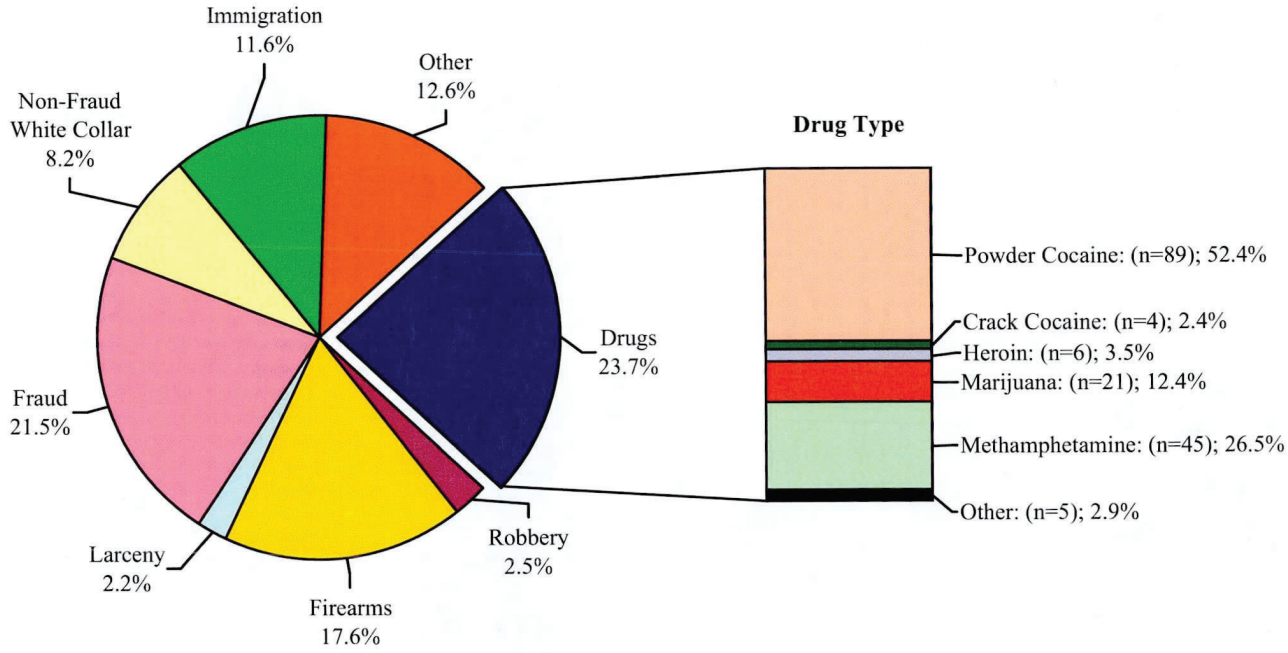
Average Age	Mean	Median
TOTAL	**36.2**	**35.0**
Male	36.1	35.0
Female	36.9	35.0

Mode of Conviction		
TOTAL	**720**	**100.0%**
Plea	638	88.6%
Trial	82	11.4%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**701**	**100.0%**	**611**	**87.2%**	**90**	**12.8%**
White	**190**	**27.1%**	158	83.2%	32	16.8%
Black	**246**	**35.1%**	203	82.5%	43	17.5%
Hispanic	**251**	**35.8%**	239	95.2%	12	4.8%
Other	**14**	**2.0%**	11	78.6%	3	21.4%

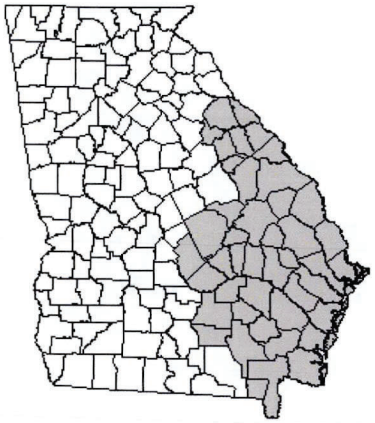
Departure Status		
TOTAL	**706**	**100.0%**
Sentenced Within Guideline Range	409	57.9%
Upward Departure from Guideline Range	2	0.3%
Upward Departure with *Booker*/18 U.S.C. § 3553	2	0.3%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	7	1.0%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	119	16.9%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	16	2.3%
Downward Departure from Guideline Range	25	3.5%
Downward Departure with *Booker*/18 U.S.C. § 3553	18	2.5%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	98	13.9%
All Remaining Cases Below Guideline Range	10	1.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

GEORGIA, Southern



Average Age	Mean	Median
TOTAL	**34.1**	**31.0**
Male	34.4	31.0
Female	32.5	30.0

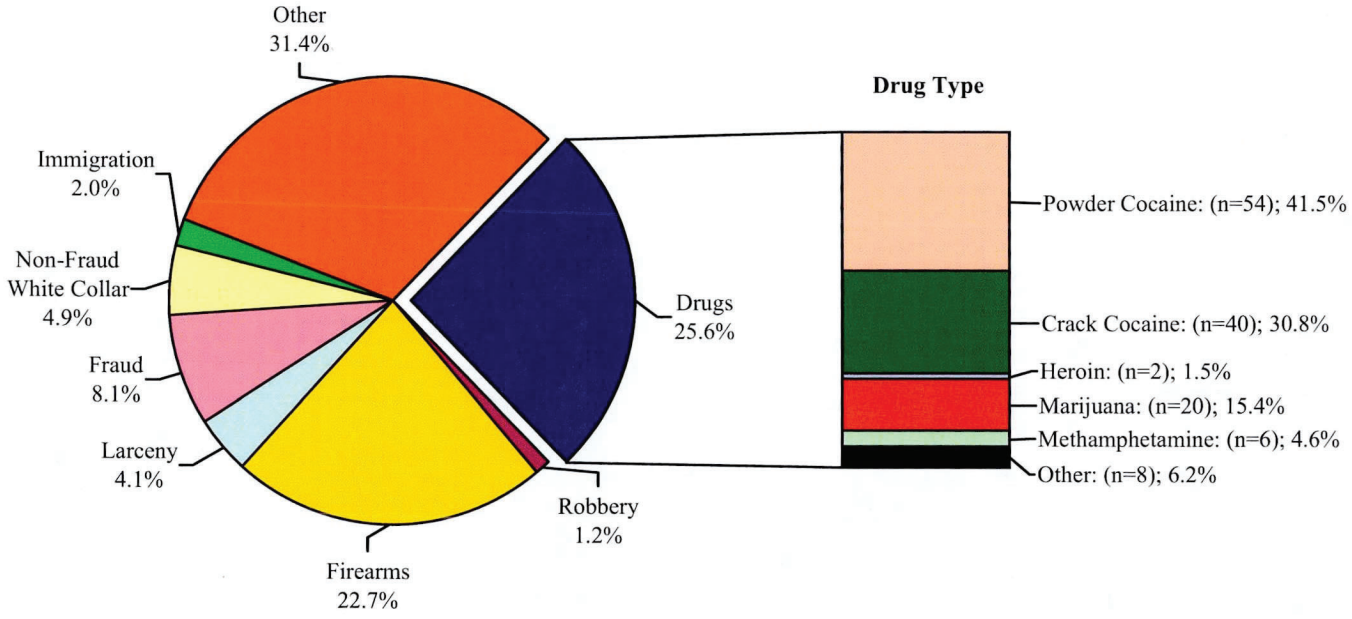
Mode of Conviction		
TOTAL	**517**	**100.0%**
Plea	494	95.6%
Trial	23	4.4%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**370**	**100.0%**	**326**	**88.1%**	**44**	**11.9%**
White	**110**	**29.7%**	100	90.9%	10	9.1%
Black	**225**	**60.8%**	192	85.3%	33	14.7%
Hispanic	**30**	**8.1%**	30	100.0%	0	0.0%
Other	**5**	**1.4%**	4	80.0%	1	20.0%

Departure Status

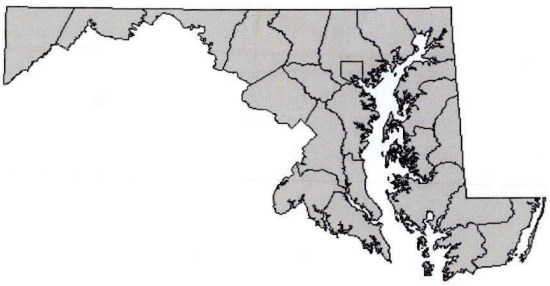
TOTAL	**516**	**100.0%**
Sentenced Within Guideline Range	407	78.9%
Upward Departure from Guideline Range	4	0.8%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	20	3.9%
All Remaining Cases Above Guideline Range	1	0.2%
§5K1.1 Substantial Assistance Departure	43	8.3%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	6	1.2%
Downward Departure from Guideline Range	7	1.4%
Downward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	27	5.2%
All Remaining Cases Below Guideline Range	1	0.2%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

MARYLAND



Gender, Race, and Ethnicity

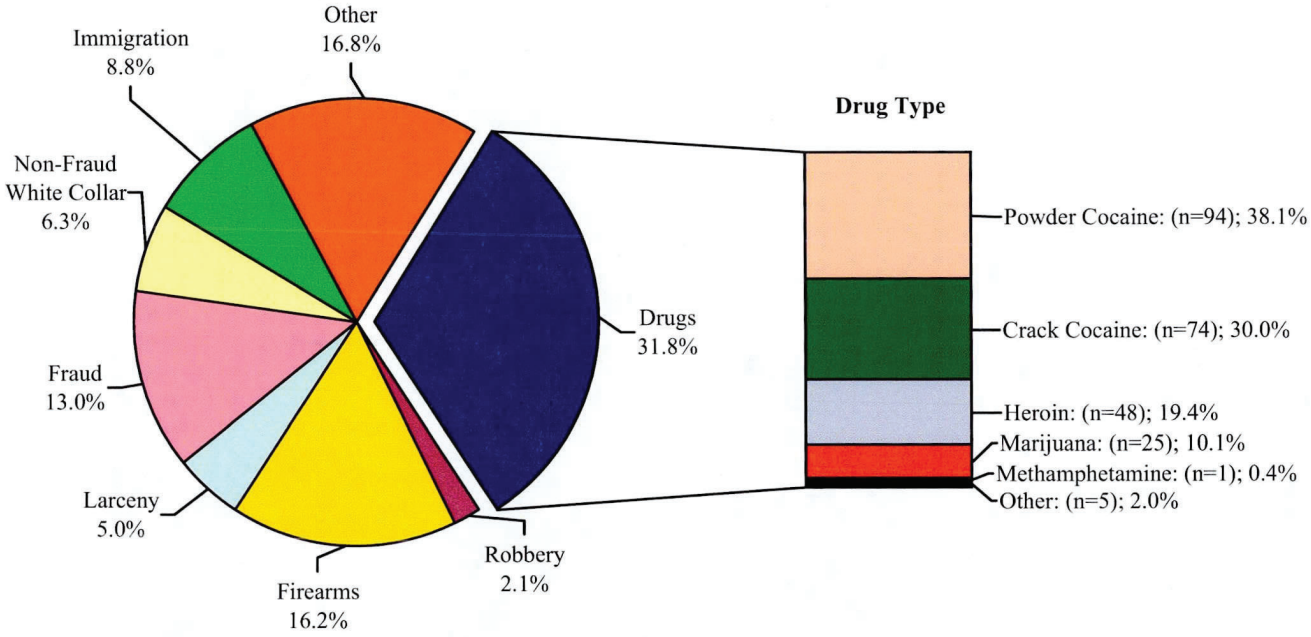
	TOTAL		Male		Female	
TOTAL	**741**	**100.0%**	**671**	**90.6%**	**70**	**9.4%**
White	**175**	**23.6%**	157	89.7%	18	10.3%
Black	**408**	**55.1%**	370	90.7%	38	9.3%
Hispanic	**136**	**18.4%**	124	91.2%	12	8.8%
Other	**22**	**3.0%**	20	90.9%	2	9.1%

Average Age	Mean	Median
TOTAL	**36.4**	**34.0**
Male	36.1	34.0
Female	39.2	38.0

Mode of Conviction		
TOTAL	**782**	**100.0%**
Plea	728	93.1%
Trial	54	6.9%

Departure Status

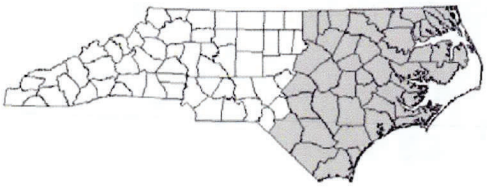
TOTAL	**731**	**100.0%**
Sentenced Within Guideline Range	362	49.5%
Upward Departure from Guideline Range	6	0.8%
Upward Departure with *Booker*/18 U.S.C. § 3553	2	0.3%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	6	0.8%
All Remaining Cases Above Guideline Range	2	0.3%
§5K1.1 Substantial Assistance Departure	173	23.7%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	29	4.0%
Downward Departure from Guideline Range	10	1.4%
Downward Departure with *Booker*/18 U.S.C. § 3553	19	2.6%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	108	14.8%
All Remaining Cases Below Guideline Range	14	1.9%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

NORTH CAROLINA, Eastern



Average Age	Mean	Median
TOTAL	**34.1**	**32.0**
Male	33.8	32.0
Female	36.4	34.5

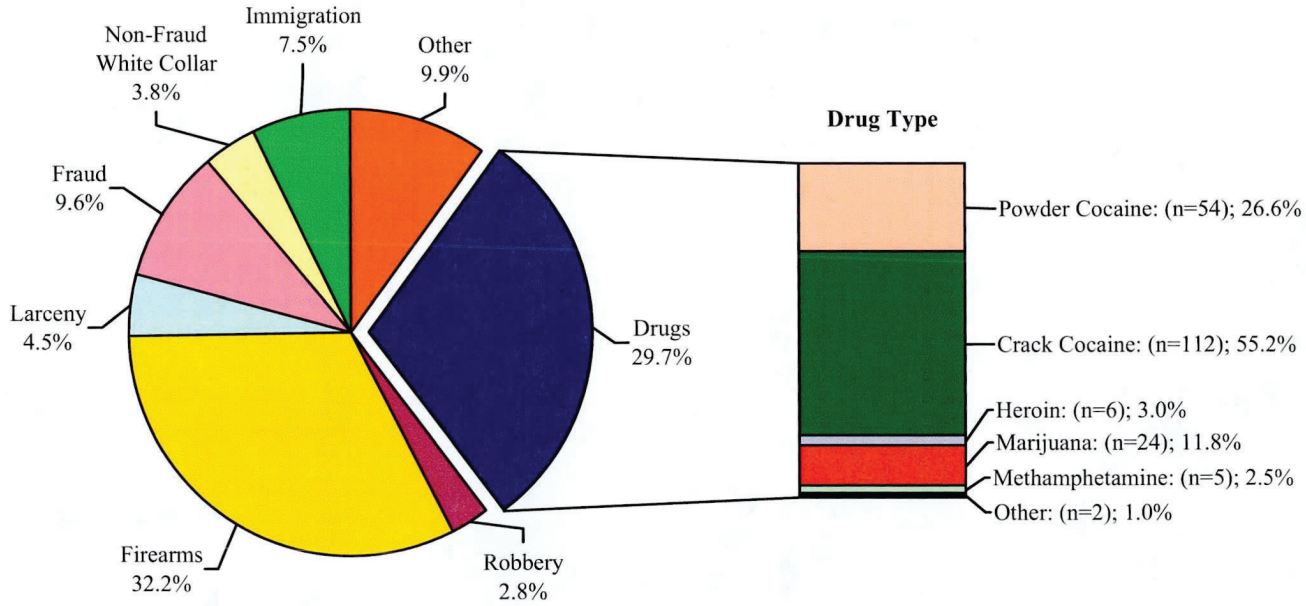
Mode of Conviction		
TOTAL	**692**	**100.0%**
Plea	668	96.5%
Trial	24	3.5%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**657**	**100.0%**	**590**	**89.8%**	**67**	**10.2%**
White	**196**	**29.8%**	164	83.7%	32	16.3%
Black	**372**	**56.6%**	344	92.5%	28	7.5%
Hispanic	**75**	**11.4%**	69	92.0%	6	8.0%
Other	**14**	**2.1%**	13	92.9%	1	7.1%

Departure Status

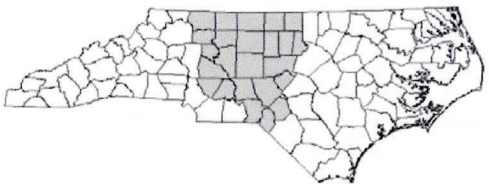
TOTAL	**673**	**100.0%**
Sentenced Within Guideline Range	378	56.2%
Upward Departure from Guideline Range	25	3.7%
Upward Departure with *Booker*/18 U.S.C. § 3553	19	2.8%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	9	1.3%
All Remaining Cases Above Guideline Range	1	0.1%
§5K1.1 Substantial Assistance Departure	191	28.4%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	3	0.4%
Downward Departure from Guideline Range	5	0.7%
Downward Departure with *Booker*/18 U.S.C. § 3553	5	0.7%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	34	5.1%
All Remaining Cases Below Guideline Range	3	0.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

NORTH CAROLINA, Middle



Gender, Race, and Ethnicity

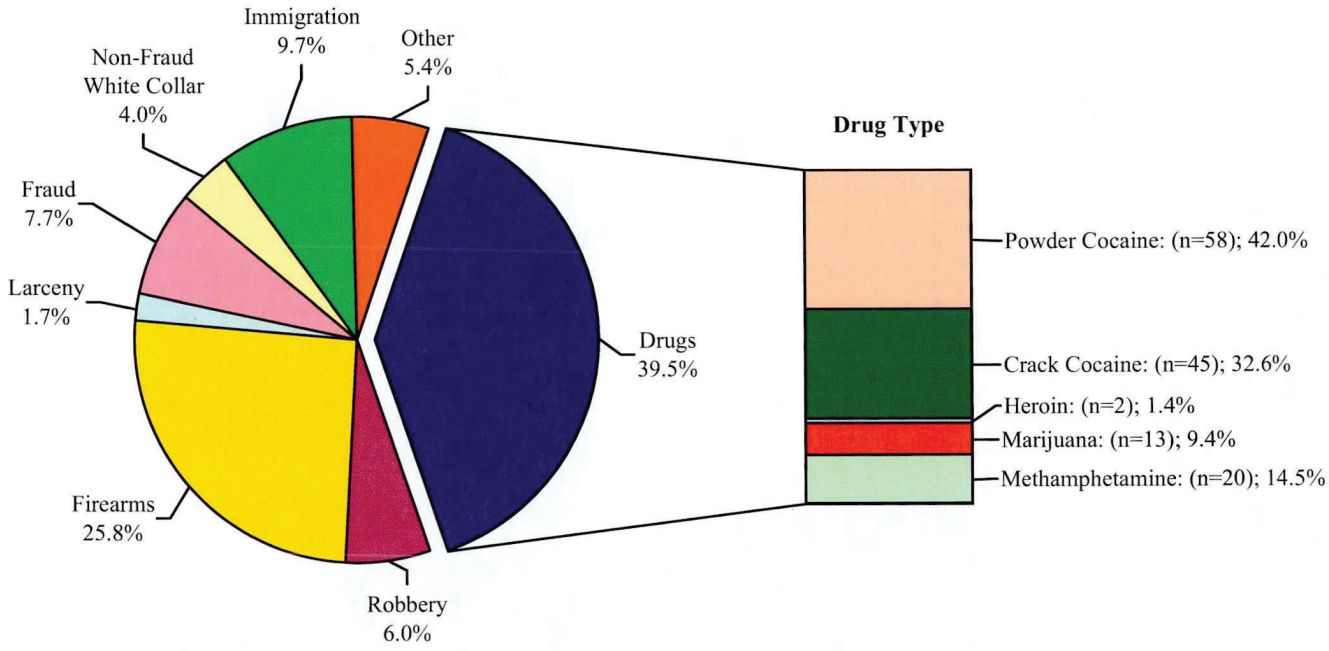
	TOTAL		Male		Female	
TOTAL	**354**	**100.0%**	**311**	**87.9%**	**43**	**12.1%**
White	**83**	**23.4%**	60	72.3%	23	27.7%
Black	**164**	**46.3%**	149	90.9%	15	9.1%
Hispanic	**101**	**28.5%**	96	95.0%	5	5.0%
Other	**6**	**1.7%**	6	100.0%	0	0.0%

Average Age	Mean	Median
TOTAL	**34.3**	**32.0**
Male	34.0	31.0
Female	36.4	36.0

Mode of Conviction		
TOTAL	**355**	**100.0%**
Plea	346	97.5%
Trial	9	2.5%

Departure Status

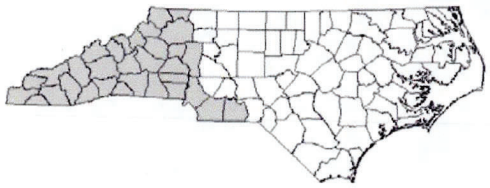
TOTAL	**355**	**100.0%**
Sentenced Within Guideline Range	272	76.6%
Upward Departure from Guideline Range	1	0.3%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	2	0.6%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	56	15.8%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	0	0.0%
Downward Departure from Guideline Range	2	0.6%
Downward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	22	6.2%
All Remaining Cases Below Guideline Range	0	0.0%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

NORTH CAROLINA, Western



Average Age	Mean	Median
TOTAL	**35.2**	**33.0**
Male	35.3	33.0
Female	34.8	33.0

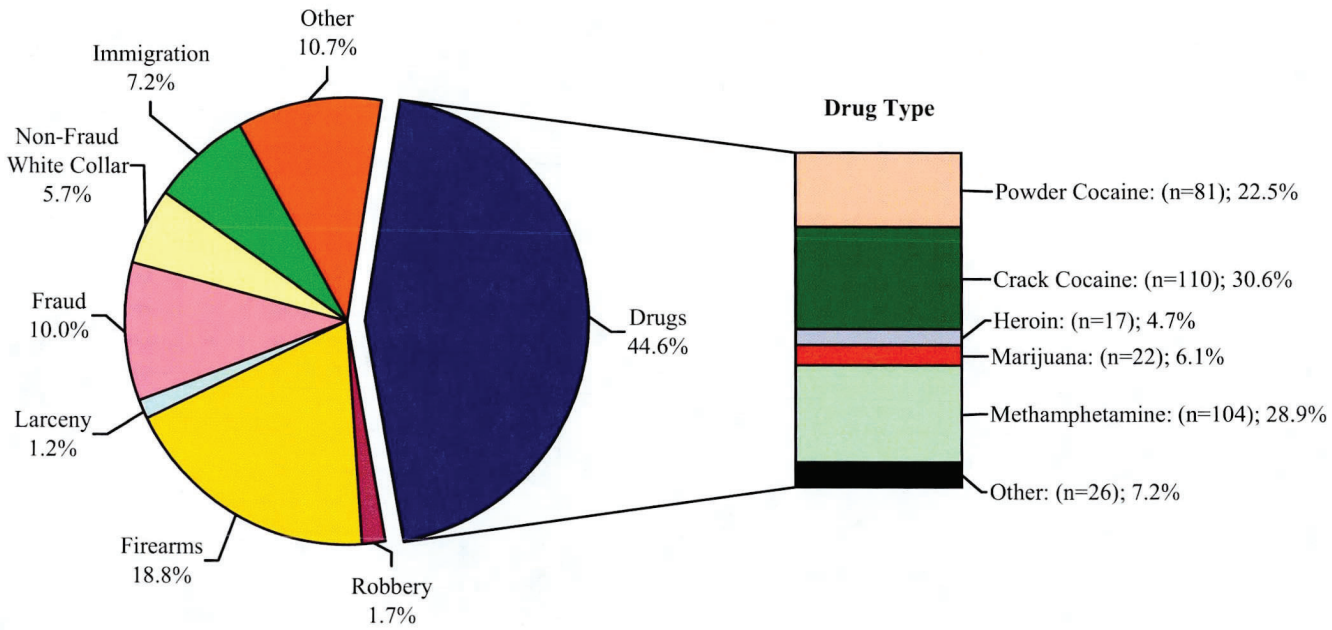
Mode of Conviction		
TOTAL	**807**	**100.0%**
Plea	771	95.5%
Trial	36	4.5%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**802**	**100.0%**	**730**	**91.0%**	**72**	**9.0%**
White	**302**	**37.7%**	260	86.1%	42	13.9%
Black	**283**	**35.3%**	266	94.0%	17	6.0%
Hispanic	**171**	**21.3%**	162	94.7%	9	5.3%
Other	**46**	**5.7%**	42	91.3%	4	8.7%

Departure Status

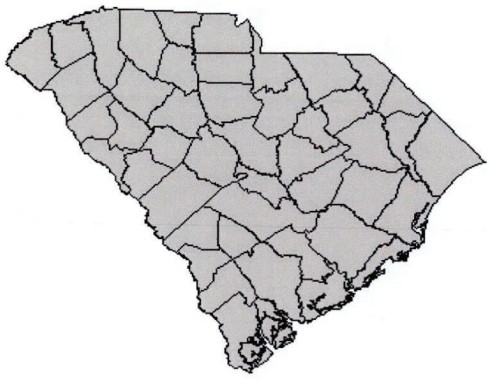
TOTAL	**800**	**100.0%**
Sentenced Within Guideline Range	515	64.4%
Upward Departure from Guideline Range	5	0.6%
Upward Departure with *Booker*/18 U.S.C. § 3553	3	0.4%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	4	0.5%
All Remaining Cases Above Guideline Range	1	0.1%
§5K1.1 Substantial Assistance Departure	208	26.0%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	8	1.0%
Downward Departure from Guideline Range	10	1.3%
Downward Departure with *Booker*/18 U.S.C. § 3553	6	0.8%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	29	3.6%
All Remaining Cases Below Guideline Range	11	1.4%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

SOUTH CAROLINA



Average Age	Mean	Median
TOTAL	**34.0**	**32.0**
Male	33.9	32.0
Female	34.7	33.0

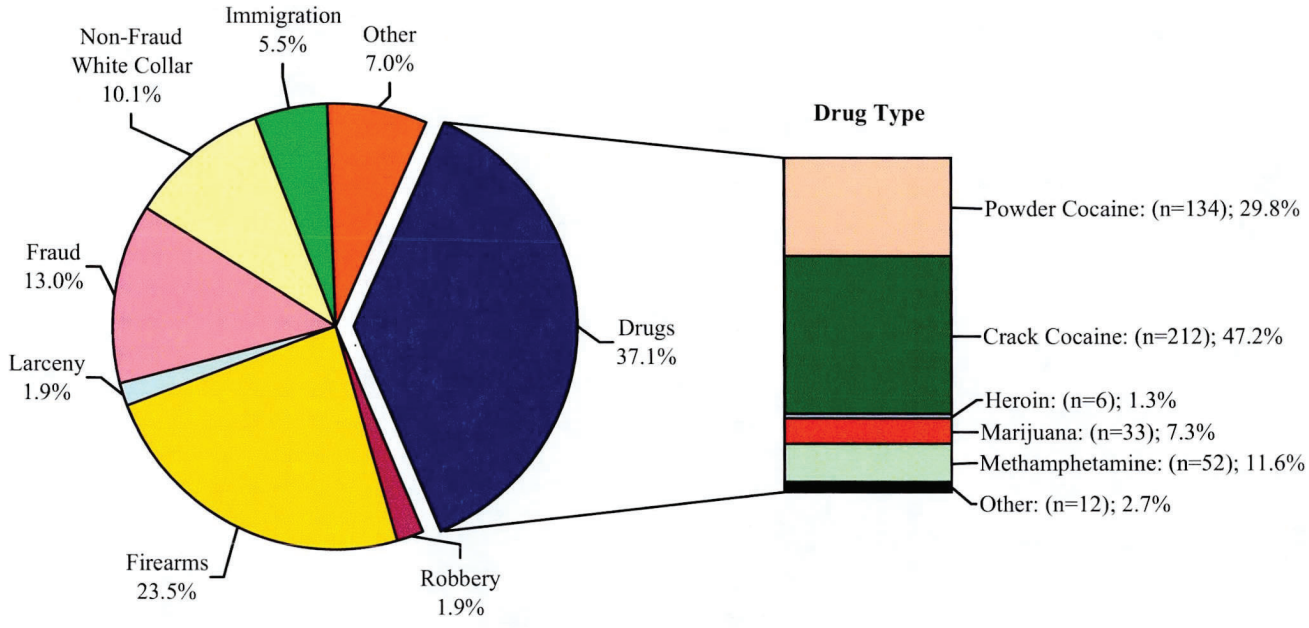
Mode of Conviction		
TOTAL	**1,212**	**100.0%**
Plea	1,174	96.9%
Trial	38	3.1%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**1,199**	**100.0%**	**1,016**	**84.7%**	**183**	**15.3%**
White	**386**	**32.2%**	288	74.6%	98	25.4%
Black	**612**	**51.0%**	554	90.5%	58	9.5%
Hispanic	**189**	**15.8%**	164	86.8%	25	13.2%
Other	**12**	**1.0%**	10	83.3%	2	16.7%

Departure Status

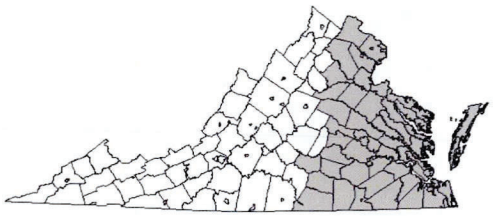
TOTAL	**1,205**	**100.0%**
Sentenced Within Guideline Range	797	66.1%
Upward Departure from Guideline Range	2	0.2%
Upward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	4	0.3%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	256	21.2%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	19	1.6%
Downward Departure from Guideline Range	23	1.9%
Downward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	86	7.1%
All Remaining Cases Below Guideline Range	18	1.5%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

VIRGINIA, Eastern



Average Age	Mean	Median
TOTAL	**34.1**	**32.0**
Male	33.7	31.0
Female	36.1	35.0

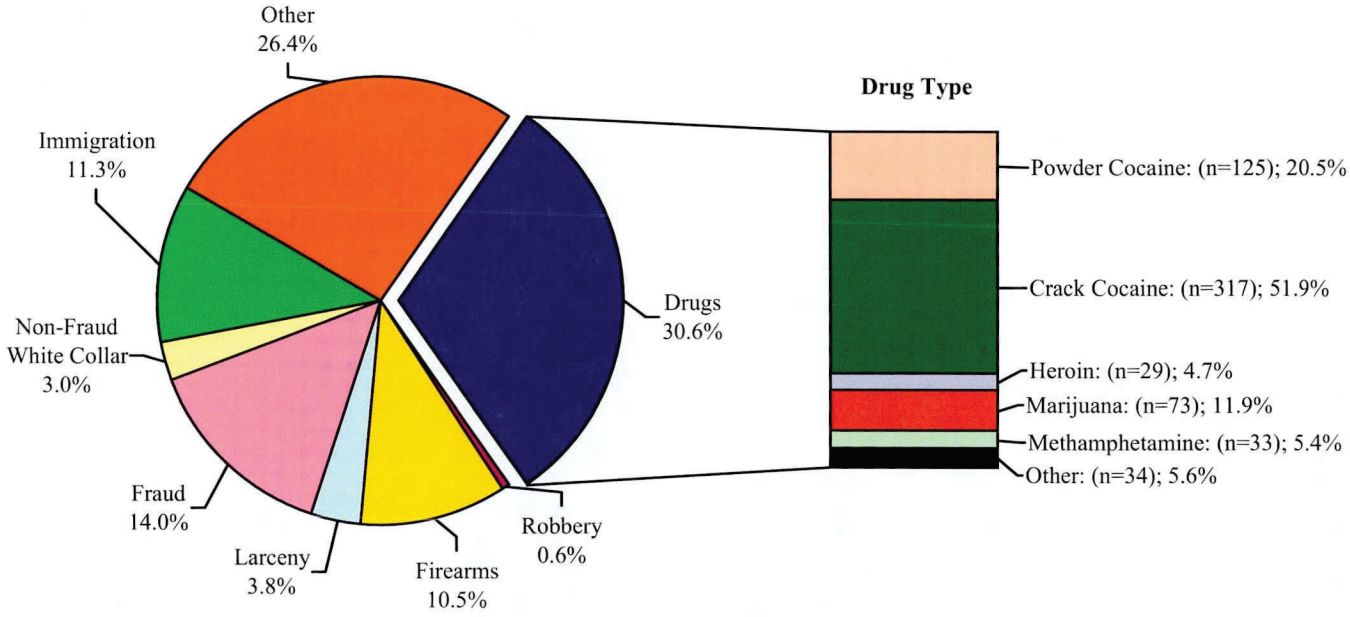
Mode of Conviction		
TOTAL	**2,031**	**100.0%**
Plea	1,935	95.3%
Trial	96	4.7%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**1,497**	**100.0%**	**1,279**	**85.4%**	**218**	**14.6%**
White	**381**	**25.5%**	299	78.5%	82	21.5%
Black	**774**	**51.7%**	687	88.8%	87	11.2%
Hispanic	**249**	**16.6%**	223	89.6%	26	10.4%
Other	**93**	**6.2%**	70	75.3%	23	24.7%

Departure Status

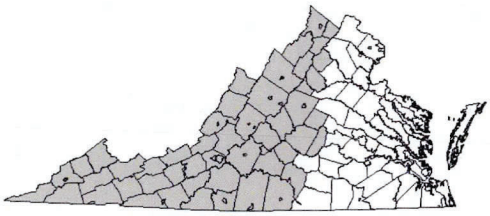
TOTAL	**1,562**	**100.0%**
Sentenced Within Guideline Range	1,176	75.3%
Upward Departure from Guideline Range	11	0.7%
Upward Departure with *Booker*/18 U.S.C. § 3553	9	0.6%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	16	1.0%
All Remaining Cases Above Guideline Range	4	0.3%
§5K1.1 Substantial Assistance Departure	101	6.5%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	17	1.1%
Downward Departure from Guideline Range	51	3.3%
Downward Departure with *Booker*/18 U.S.C. § 3553	18	1.2%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	134	8.6%
All Remaining Cases Below Guideline Range	25	1.6%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

VIRGINIA, Western



Average Age	Mean	Median
TOTAL	**35.8**	**34.0**
Male	35.6	33.0
Female	36.8	38.0

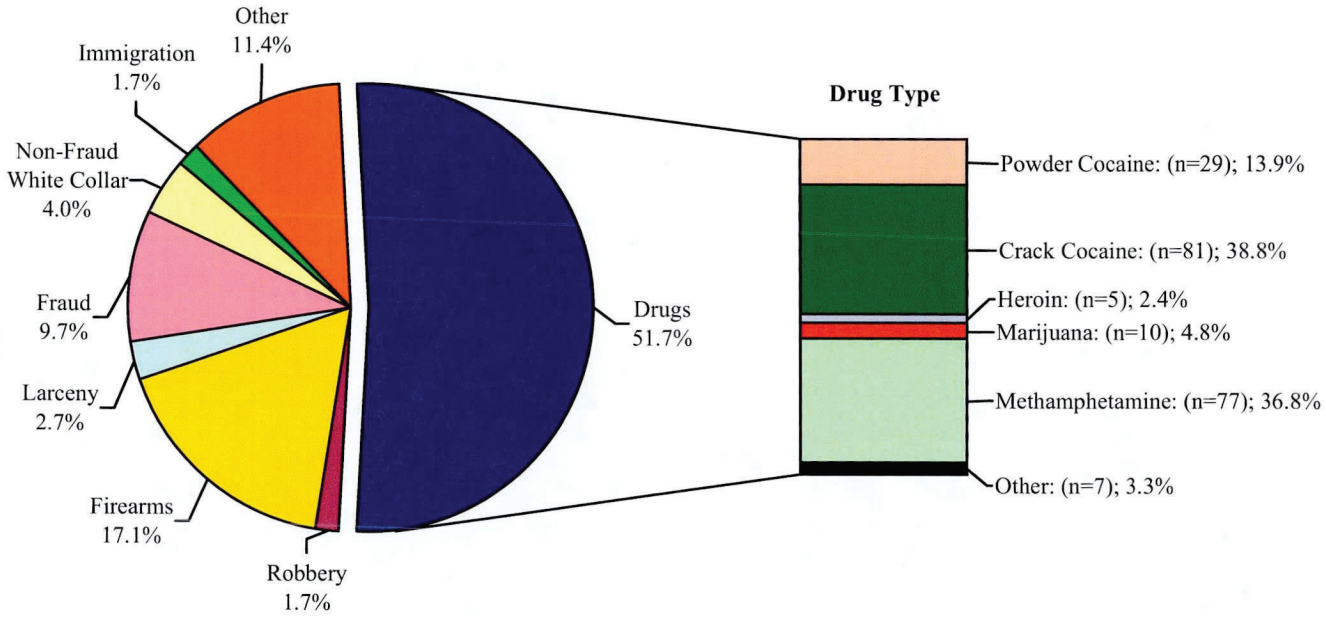
Mode of Conviction		
TOTAL	**404**	**100.0%**
Plea	381	94.3%
Trial	23	5.7%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**399**	**100.0%**	**327**	**82.0%**	**72**	**18.0%**
White	**225**	**56.4%**	166	73.8%	59	26.2%
Black	**127**	**31.8%**	116	91.3%	11	8.7%
Hispanic	**47**	**11.8%**	45	95.7%	2	4.3%
Other	**0**	**0.0%**	0	-	0	-

Departure Status

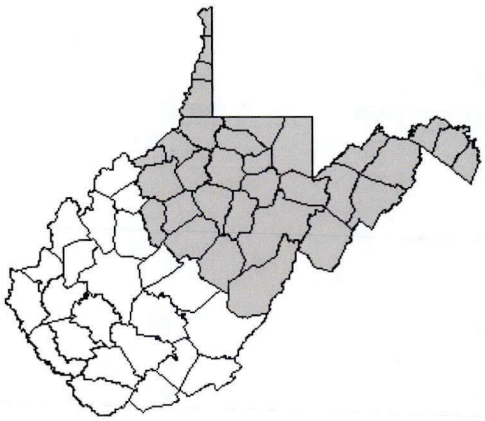
TOTAL	**397**	**100.0%**
Sentenced Within Guideline Range	262	66.0%
Upward Departure from Guideline Range	2	0.5%
Upward Departure with *Booker*/18 U.S.C. § 3553	1	0.3%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	4	1.0%
All Remaining Cases Above Guideline Range	1	0.3%
§5K1.1 Substantial Assistance Departure	82	20.7%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	4	1.0%
Downward Departure from Guideline Range	4	1.0%
Downward Departure with *Booker*/18 U.S.C. § 3553	0	0.0%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	35	8.8%
All Remaining Cases Below Guideline Range	2	0.5%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

Fiscal Year 2008 Guideline Sentences

WEST VIRGINIA, Northern



Average Age	Mean	Median
TOTAL	**34.0**	**31.0**
Male	34.4	31.0
Female	32.9	29.0

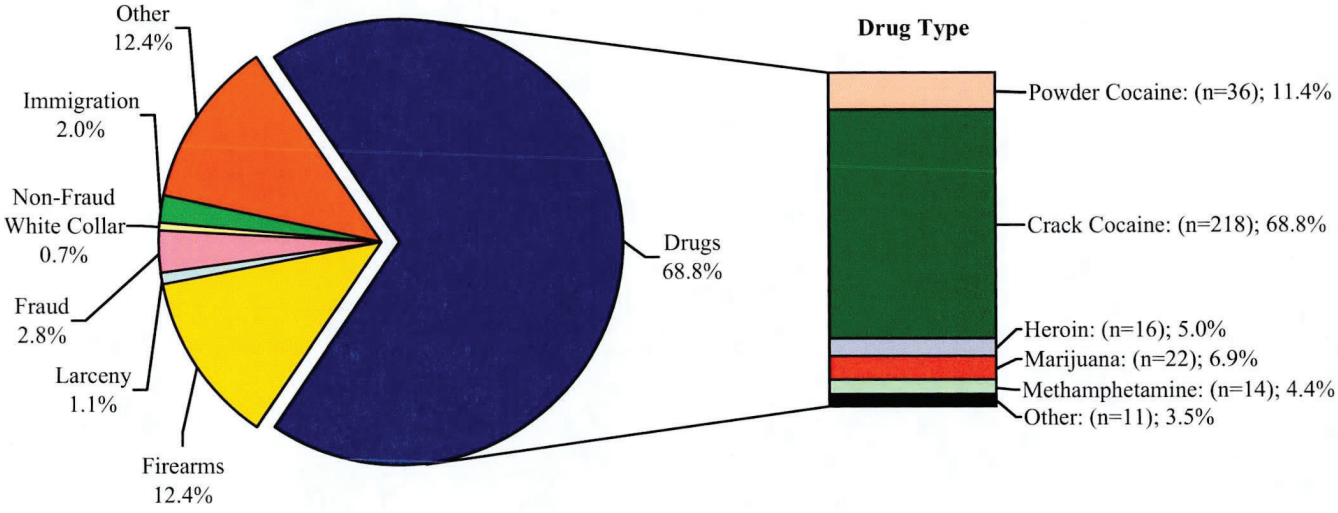
Mode of Conviction		
TOTAL	**469**	**100.0%**
Plea	456	97.2%
Trial	13	2.8%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**451**	**100.0%**	**355**	**78.7%**	**96**	**21.3%**
White	**244**	**54.1%**	178	73.0%	66	27.0%
Black	**165**	**36.6%**	138	83.6%	27	16.4%
Hispanic	**35**	**7.8%**	33	94.3%	2	5.7%
Other	**7**	**1.6%**	6	85.7%	1	14.3%

Departure Status

TOTAL	**468**	**100.0%**
Sentenced Within Guideline Range	338	72.2%
Upward Departure from Guideline Range	0	0.0%
Upward Departure with *Booker*/18 U.S.C. § 3553	1	0.2%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	4	0.9%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	40	8.5%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	13	2.8%
Downward Departure from Guideline Range	4	0.9%
Downward Departure with *Booker*/18 U.S.C. § 3553	2	0.4%
Below Guideline Range with *Booker*/18 U.S.C. § 3553	66	14.1%
All Remaining Cases Below Guideline Range	0	0.0%



SOURCE: U.S. Sentencing Commission, 2008 Datafile, USSCFY08.

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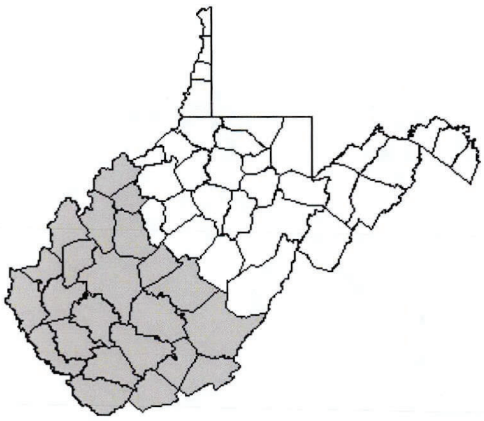
WEST VIRGINIA, Southern



Average Age	Mean	Median
TOTAL	**35.9**	**33.0**
Male	35.9	33.5
Female	35.7	32.0

Mode of Conviction		
TOTAL	**272**	**100.0%**
Plea	263	96.7%
Trial	9	3.3%

Gender, Race, and Ethnicity

	TOTAL		Male		Female	
TOTAL	**270**	**100.0%**	**221**	**81.9%**	**49**	**18.1%**
White	**152**	**56.3%**	114	75.0%	38	25.0%
Black	**108**	**40.0%**	99	91.7%	9	8.3%
Hispanic	**8**	**3.0%**	7	87.5%	1	12.5%
Other	**2**	**0.7%**	1	50.0%	1	50.0%

Departure Status

TOTAL	**271**	**100.0%**
Sentenced Within Guideline Range	186	68.6%
Upward Departure from Guideline Range	0	0.0%
Upward Departure with *Booker*/18 U.S.C. § 3553	1	0.4%
Above Guideline Range with *Booker*/18 U.S.C. § 3553	3	1.1%
All Remaining Cases Above Guideline Range	0	0.0%
§5K1.1 Substantial Assistance Departure	28	10.3%
§5K3.1 Early Disposition Program Departure	0	0.0%
Other Government-Sponsored Below Guideline Range	0	0.0%
Downward Departure from Guideline Range	2	0.7%
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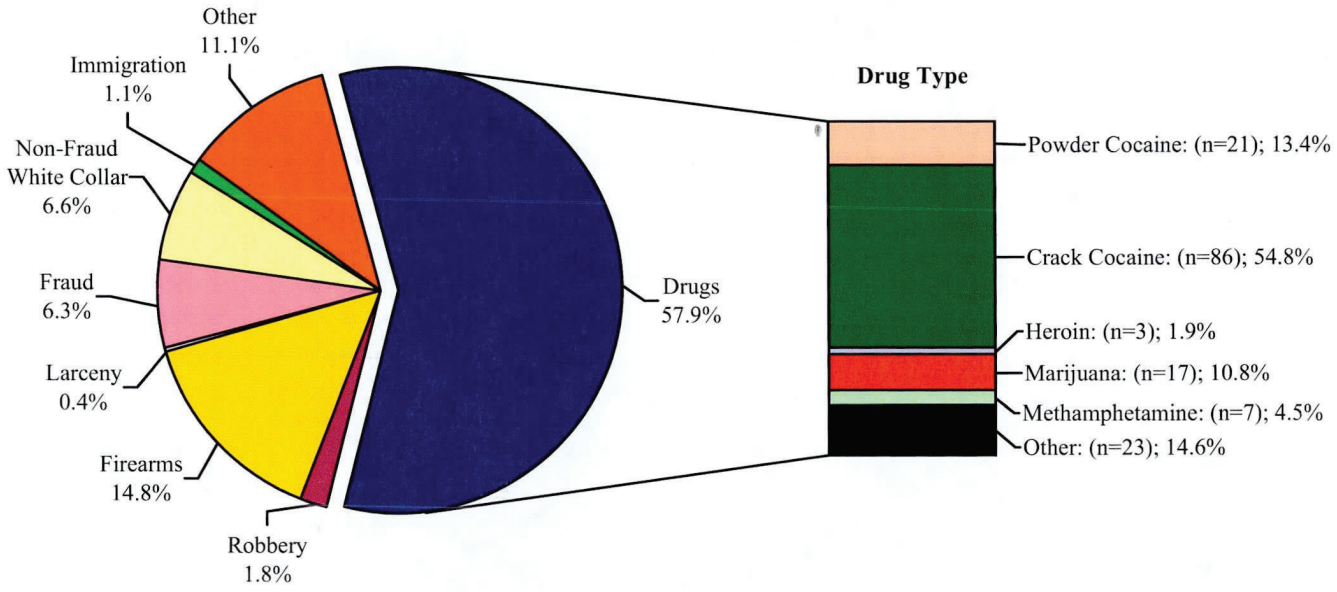

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NOTES and Handouts

Fed Ct

Atlanta Regional NR

- Multiple Dist Ct panels Cohen Notes

- Tone was high minded
- The Judges want to Cs guidance
- Cases become irrelevant -
- Specific problem made -
- Exceeded expectation - Cashilo / Donnelly CARRE

More Dist Ct judges
- more chiefs to survey fellow judges

Law Enforcement panel really worked
perceptions
↳ BN - more panels like that

Nothing on of academia -
but need them -

Get beyond the Chief Judges -
Not active

Cashilo - Survey? Consider it
Hiring - hire someone who calls →
Maybe make sense afterward

BN - the question so broad -
so hard to design.
How to make it manageable

LAST QUESTIONAIRE

Can we survey USAO & FPD as well
Last questions

Goes to have 2 FPD w/ diff practices -
Get very different perspectives

Session - Look at those judges who have waived
on sentencing

Hire: Get a Real Victim

Session: Don't need to hear from Kamm again

Maybe Paul Cassel can help -

Vera Inst of Justice -
from an operational -
not academic

offered help on crack recidivism

~~Hit~~ C JA panels

→ Deposits to Judic

Case trend [illegible] case related

Jim England – the level of burden of effort on notion of variance

Win – we could do [illegible] project of when deps/variance in the PSRs

BH – Wavering hesitate to do this

WF Update –

Subcommittee has met by conf call –

– talked about discussing of impact what has to be in the PSRs

lot of disagreement –

will be discussed in early April mtg in Washington –

worthwhile to have a rep of the Commission there

Suspect it will not go forward to publication –

JUDY

- FY 08 Ann Report / Sourcebook
  over 76,000 cases ↑ of few thousand

- Alternative Paper on web
- Changing Face of Docket

- PAG

- Training — Train on SOR —
  not just boxes — add text

- Rachel Barkow
- Fed Cure

PORN

Leeded prior Cong drivers
proportionality
takers vs distribution

→ Commentary of 2212 re uncy —