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## Mounting Charges of Leniency, Unfairness Hobble Advocates of Non-Jail Sentences

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WASHINGTON—Life is tougher these days for Jerome Miller and Herbert Hoelter — and for many of their white-collar clients.

Mr. Miller and Mr. Hoelter are long-time foes of imprisonment for any but truly dangerous or hardened criminals. They run the National Center on Institutions and Alternatives, a six-year-old nonprofit organization that seeks to help persons facing stiff prison terms on felony charges. The NCIA devises and presents to the courts proposed alternative sentences: individually tailored combinations of community service, restitution, fines, curfews and, occasionally, even relatively short stays behind bars.

As the nation's cells filled to overflowing in recent years, many judges were willing to accept such alternatives, particularly for white-collar criminals considered of little danger to public safety and unlikely to have the inclination or opportunity to sin again.

Now, though, mounting congressional, press and public complaint of a double standard — "tougher sentences for crime in the suites" — is spurring prosecutors to demand, and many judges to order, long prison terms for prominent white-collar criminals. The idea, they say, is not only to punish offenders, but also to "send a message" that will deter possible future criminals.

### Serving Society

In defense of its program, the NCIA points to a number of clients who, it says, are doing far more good serving society than serving time. Clyde Meltzer, who pleaded guilty in a Marc Rich & Co. AG tax evasion case, is putting in 500 hours teaching math, developing job opportunities and raising funds for a Newark, New Jersey inner-city youth organization. Solomon Weiss, convicted of racketeering, fraud and perjury in Warner Communications Inc.'s purchase of a theater in Westchester County, New York, will work 40 hours a week for five years with New Jersey groups for teen-agers and senior citizens.

But some recent and highly publicized cases have shown the increasing reluctance of legal authorities to grant such options. Former Deputy Secretary of Defense Paul Thayer, an NCIA client, got a surprisingly tough four-year prison sentence for trying to cover up an illegal insider stock-trading scheme. Tennessee banker-politician Jake Butcher drew 20 years for defrauding his banks of millions of dollars. And, despite an NCIA recommendation, former Wall Street Journal reporter R. Foster Winans drew not only

community service but also an 18-month prison term for his part in an insider-trading scheme based on his leaks of advance information from the Journal's "Heard on the Street" column.

"Cases like those set a trend," says Mr. Hoelter, "and our chances of walking a guy out of the courtroom without jail are down, particularly in any case that has substantial press or notoriety. We probably have doubled the percentage of cases where we feel obliged to include six months or a year incarceration — maybe 50% now, compared to somewhere between 20% to 30% a little while ago. You can't have your whole alternative package thrown out because it's unrealistic."

Housed in a small red-brick building on the edge of Alexandria, Virginia, the NCIA practices what it calls "client-specific planning." Responding only to requests from worried defense attorneys or troubled judges, its staffers compile extensive background on the accused and prepare well-documented menus of detailed alternatives to prison.

The NCIA proposes and arranges the community service to be done, enlists leading citizens to monitor the client's performance, lays out a precise schedule of restitution payments

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and, if necessary, fixes exact times and places for drug or alcohol treatment or marital counseling.

Since its start in 1979, the NCIA has submitted over 4,000 plans to federal, state and local judges, and claims to have had some two-thirds of its proposals adopted in whole or in large part. It doesn't argue the guilt or innocence of the client, only the appropriate punishment. "Our goal," Mr. Hoelter says, "is to convince the courts that prison isn't the only way to punish people." Still, the center's officials insist they never compromise public safety, and they will ask for prison if in doubt.

White-collar cases make up about half of the center's workload. "The white-collar criminal is in many ways particularly suited to alternative sentencing," says Mr. Miller, who managed to close Massachusetts' youth institutions in the early 1970s. "They come with a lot more potential

for community service, a lot more skills. They are less violent. We can make the punishment just as distasteful as prison and save the taxpayers the \$25,000 to \$35,000 a year it costs to keep a person in prison."

The center charges healthy hourly rates to those who can afford them and plows that income back into providing the same service for indigent clients, including street criminals. Unless a criminal poses a danger to the community, center officials argue, it makes sense to have him performing useful work and making some restitution to his victims and society.

### A Source of Talent

Naturally, the organizations that benefit from community-service sentences are enthusiastic about the center. "We have been able to have people with talents and skills we never could have afforded otherwise," says Kathleen DiChiara, director of the Community Food Bank in Newark.

Elsewhere, alternative-sentencing advocates appear to have some high hurdles to overcome. One is the widespread public belief that, as one criminologist puts it, "anything other than prison isn't punishment." NCIA briefs contend that most offenders are severely punished in alternative programs, not merely by the lengthy community service and financial restitution or fines but also, in the case of white-collar criminals, by the exposure, shame and loss of career.

"We have had clients turn down our alternative plans as being too tough," says Mr. Hoelter. "They'd rather do time or take their chances on probation or parole."

Most people, though, dispute this idea. "Prison is a more severe sanction than any form of community service, and society simply doesn't want serious offenders to get off lightly," says Harvard crime specialist James Q. Wilson.

A more serious roadblock to non-incarceration programs is the argument that prison sentences deter future criminals — and alternative sentences don't.

The NCIA insists that "there still are no conclusive empirical studies which document that prison sentences in themselves do deter other criminal behavior." But, again, critics aren't convinced. "As a basic principle," says Robert Ogren, head of the Justice Department's white-collar crime section, "we view incarceration as part of deterrence.

"There might be some instances where alternatives would be OK, but they would be very, very few," Mr. Ogren adds. "We view our battle as one to stiffen the spine of the courts."