lous" contentions by Mr. Miranda, the case was remanded to the district court for resentencing and consideration.

Discussion

U.S. v. Miranda affirms a post-*Booker* role for psychiatric evidence and testimony with regard to federal sentencing procedure. Although federal sentencing guidelines are deemed advisory and the concept of departure has been rendered obsolete by *Booker*, non-frivolous evidence for diminished capacity due to mental illness merits explicit consideration by federal district courts at sentencing. Although district courts still retain discretion to accept or reject these arguments at sentencing, *U.S. v. Miranda* suggests a protected role for psychiatric testimony and evidence during the sentencing phase in federal cases.

Federal Sentencing Guidelines

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Decisions That Fail to Follow U.S. Sentencing Guidelines Are No Longer Presumed Unreasonable.

In *Gall v. United States*, 128 S. Ct. 586 (2007), the U. S. Supreme Court again returns to the question of federal judges' authority to decide the punishment for convicted criminals under the federal sentencing guidelines crafted by the United States Sentencing Commission in 1984. The specific question is whether a sentence that is below the range in the guidelines is lawful. The Court held that appeals courts must review all sentences—whether inside, just outside, or significantly outside the guidelines range—employing a deferential abuse-of-discretion standard.

Facts of the Case

In late winter of 2000, Brian Gall, a 21-year-old student at the University of Iowa, engaged in a collaborative effort with several peers to distribute MDMA (Ecstasy). He participated in the distribution of the illegal substance for approximately seven months and then voluntarily withdrew from the conspiracy. He subsequently graduated from college and moved to Arizona and then Colorado where he began work in construction and eventually earned a living as a master carpenter. He did not use any illegal drugs after graduating from college. Federal law enforcement agents approached him, approximately two years after his involvement in the distribution scheme, to investigate his role. He admitted to his limited participation. One and a half years after this initial interrogation he was indicted by the Southern District of Iowa, along with seven other defendants, on charges related to conspiracy to distribute Ecstasy, cocaine, and marijuana. After he received the indictment, he returned to live in Iowa and while awaiting further proceedings began his own business in construction.

Mr. Gall pleaded guilty to charges related to his participation in the conspiracy. The government recognized his cooperation with its investigation and did not express any doubts about the veracity of his claim of limited participation and full withdrawal from the distribution scheme before any known police investigation. Indeed, his probation officer noted in her presentencing report that he had no significant criminal history and was not a leader in the conspiracy. Nonetheless, despite further acknowledgment of his entirely lawful conduct in the years since his withdrawal from the criminal enterprise, the United States Attorney's office recommended 30 to 37 months in prison, a sentence that would fall within federal sentencing guidelines.

The district court judge delivered a sentence well below the U.S. Attorney's recommendations and the federal guidelines. Rather than the minimum 30 months of imprisonment as recommended by the guidelines, Mr. Gall received 36 months of probation. The district judge explained his ruling, while citing factors to be considered pursuant to 18 U.S.C. § 3553(a). He noted in his sentencing memorandum the factors already discussed: Mr. Gall's lack of criminal history, his pre-indictment withdrawal from the conspiracy, his lawful and productive life since his criminal conduct, and the support of his family and friends. He also recognized Mr. Gall's age at the time of his offense as a factor in assessing the proper punishment. The court concluded: "[He] understands the consequences of his criminal conduct and is doing everything in his power to forge a new life." The district judge emphasized that the reduced sentence

was not "an act of leniency," as probation is a significant curtailment of the convicted person's liberty.

In its reversal and remand of the district judge's sentence, the Eighth Circuit cited its holding in the earlier case of *United States v. Claiborne*, 439 F.3d 479 (8th Cir. 2006), in which it held that the justification of sentences outside of the guidelines range must be "proportional to the extent of the difference between the advisory range and the sentence imposed" (*Claiborne*, p 481, quoting *United States V. Johnson*, 427 F.3d 423 (7th Cir. 2005)). It characterized the discrepancy between the recommended minimum of 30 months imprisonment and the given sentence of probation in *Gall* as "extraordinary" and a "100 percent downward variance." The court of appeals reasoned that the district judge had given too much weight to the mitigating factors of the defendant's case and not enough to the seriousness of the offense.

The Supreme Court granted *certiorari* to address the standards by which the appeals courts may review the district court's departure from the sentencing guidelines.

Ruling

The Court ruled that the Eighth Circuit erred in its reversal and remand of Mr. Gall's sentence by giving insufficient deference to the district court's decision that 18 U.S.C. § 3553(a) factors justified variance from the guidelines. Instead of utilizing a *de novo* analysis to review the lower court's departure, the court of appeals should have assessed the "reasonableness" of that decision by using an abuse-of-discretion standard.

Reasoning

In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court ruled that the provision of the amended Sentencing Reform Act, 18 U.S.C. § 3553(b)(1) which made the sentencing guidelines mandatory, violated the Sixth Amendment. As such, the district judge in *Gall* had the authority to impose a sentence outside the guidelines, although he must "consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variation" (*Gall*, p 590). At issue before the Court was the standard by which the appellate courts should review a lower court's variance from the guidelines.

In the opinion of the Court, the Eighth Circuit had applied a standard in which "extraordinary" circumstances would be necessary to justify a sentence outside the range of the guidelines. The Court firmly rejected this requirement. Furthermore, the Court interpreted the Eighth Circuit's mention of the "100 percent downward variance" of the sentence (from a minimum of 30 months in prison to probation) as proof of its reliance on a "rigid mathematical formula that uses the percentage of a departure as the standard for determining the strength of the justifications required for a specific sentence" (*Gall*, p 594). Such a method would be inherently flawed, according to the Court, noting as an example that a sentence of probation would always be a 100 percent departure from any minimum sentence of imprisonment, whether it is 1 or 100 years. Furthermore, such an approach would come close to instating a presumption of unreasonableness in the appellate review of all sentences outside the guidelines range. The Court noted that several appellate court decisions had already rejected such a presumption.

Rather than relying on a proportionality test—whereby a lower court's justification of a departure from the guidelines should be "proportional to the extent of the difference between the advisory range and the sentence imposed" (*Claiborne*, quoting *Johnson*, pp 426–7)—the Court reckoned that appellate review should utilize the abuse-of-discretion standard to determine the "reasonableness" of the sentence. Such a standard would thereby allocate the proper degree of deference to the district court's superior position to judge the unique circumstances of a case. From that position, it is better suited to determine the relevance of the facts as pertains to 18 U.S.C. § 3553(a), the provision that lists factors a judge must consider when determining a sentence. In *Gall*, however, the Eighth Circuit had instead relied on a *de novo* analysis of the sentence to make its ruling. The Court noted that the Eighth Circuit may have logically come to a different conclusion than the lower court about the determination of the sentence, but this was not its role. In *Booker* the Court had struck down 18 U.S.C. § 3742(e) (2000)(Supp. IV) which instructed appellate courts to apply a *de novo* standard in sentencing cases. The Eighth Circuit had failed to apply the more flexible abuse-of-discretion standard.

Discussion

Gall makes clearer the standard by which federal appellate courts shall review sentences that fall out-

side the advisory guidelines. The Supreme Court rejected the standards of extraordinary circumstances and proportionality, endorsing instead the broader abuse-of-discretion standard. In so doing, the Court emphasized its faith in district courts to use appropriate discretion when varying from the guidelines.

Although the focus of the Supreme Court's review of *Gall* was clearly to establish the standards for appellate review of district court sentencing, there are undercurrents in this case that speak more directly to matters pertaining to mental health and theories of development. In his justification of sentence, the district judge made explicit reference to the age of Mr. Gall at the time of the offense (21) and hence his lack of maturity. The judge went even further in making reference to "studies on the development of the human brain [which] conclude that human brain development may not become complete until the age of twenty-five" (*Gall*, p 600). In his dissent, Justice Alito directly confronts the question of age, arguing that such a consideration, in fact, is directly at odds with the judgment of the Sentencing Commission when it determined what should be considered in departing from the guidelines and what should not. He elaborates, "The Sentencing Commission issued policy statements concluding that 'age,' 'family ties,' and 'community ties' are relevant to sentencing only in unusual cases" (*Gall*, p 608). In dissenting, Justice Alito clearly was of the opinion that this case was not unusual in that regard. Nor per the citation of the majority opinion of the Court does it appear that the district judge had argued that Mr. Gall's case was exceptional with regard to his age. To the contrary, the judge argued that age should be taken into account in general. "While age does not excuse behavior, a sentencing court should account for age when inquiring into the conduct of a defendant" (*Gall*, p 601, quoting App. 123, n.2.). The Court clearly agreed with this reasoning: "it was not unreasonable for the District Judge to view Gall's immaturity at the time of the offense as a mitigating factor" (*Gall*, p 601).

The Court appears to be establishing more firmly a trend in applying the results of scientific studies to its analysis of how the law can most fairly and justly address criminal conduct, particularly in special populations. This new direction is further illustrated by its recent holding in *Roper v. Simmons*, 543 U.S. 551 (2005), where the Court expressly forbade the imposition of the death penalty on offenders committing crimes before the age of 18. The scientific community of psychologists, psychiatrists, neuroscientists, and others must do its best to maintain the rigor of its science and its drawn conclusions, while helping other institutions—whether they be judicial, legislative, or other—to avoid misinterpreting or overinterpreting studies whose results may be less than conclusive. To do otherwise would be to invite a backlash of skepticism as was expressed by Justice Scalia in a recent case related to competency to represent oneself when, in response to a reference to a psychiatric study made by Justice Breyer, he bristled, "Are there any psychiatric studies that show how accurate psychiatric studies are?"

Civil Commitment in Puerto Rico: Private Versus State Action

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Civil Commitment Laws in Puerto Rico Challenged by a Woman Involuntarily Committed by Her Son

In the Commonwealth of Puerto Rico, any person 18 years old or older may file a petition in the court requesting the involuntary commitment of an individual. The petition must be certified by a psychiatrist indicating the need of the individual in question. Ms. Clara Estades-Negroni, after being involuntary committed, claimed that her constitutional rights under 42 Section 1983 had been violated and that the institution and the psychiatrist should be held liable.

In *Estades-Negroni v. CPC Hospital San Juan Capestrano*, 412 F.3d. 1 (1st Cir. 2005), the U.S. Court of Appeals for the First Circuit affirmed the district court's dismissal of the *Estades-Negroni* federal action. The court expressed no opinion as to whether the allegations in the complaint, if true, state a viable claim or viable claims under the Puerto Rico law. Ms. Estades-Negroni alleged that after being involun-