

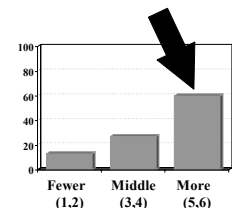
CHAPTER III CIRCUIT COURT JUDGE SURVEY RESPONSES

The results of the circuit court judge survey are organized into three sections in this chapter. The first section examines questions from the first half of the survey, covering the specific statutory goals of sentencing. The following section reports on questions from the second half of the survey, addressing the process of sentence determination. The third section of this chapter examines the circuit court judges' summary guideline assessment and their responses to open-ended questions regarding the challenges foreseen in the implementation of the statutory purposes of sentencing.

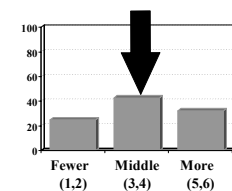
A. Results on the Statutory Goals of Sentencing for Circuit Court Judges

The survey contained nine specific questions concerning the guidelines' statutory mandates. These mandates are listed in Section A of Chapter I. The analysis organizes the circuit judges' responses into one of three analytical categories. The categories reflect the beliefs of the judges regarding how often guideline sentences heard on appeal met a sentencing goal. These three groupings are: “**More**,” “**Middle**,” and “**Fewer**.”²⁶ These three categories are characterized by three distinct bars in the analysis graphs.

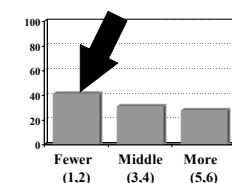
The “**More**” bar: Circuit court judge responses were concentrated in the right-most (“More”) response bar. (See example to the right.) The graph indicates that among the three categories, the greatest number of responding judges reported that “More” of the sentences heard on appeal met the specified sentencing goal.



The “**Middle**” bar: Circuit court judge responses were concentrated in the center (“Middle”) response bar. (See the example to the right.) The graph indicates that among the three categories, the greatest number of responding judges reported that a “Middle” number of the sentences heard on appeal met the specified sentencing goal.



The “**Fewer**” bar: Circuit court judge responses were concentrated in the left-most (“Fewer”) response bar. (See the example to the right.) The graph indicates that among the three categories, the greatest number of responding judges reported that “Fewer” of the sentences heard on appeal met the specified sentencing goal.



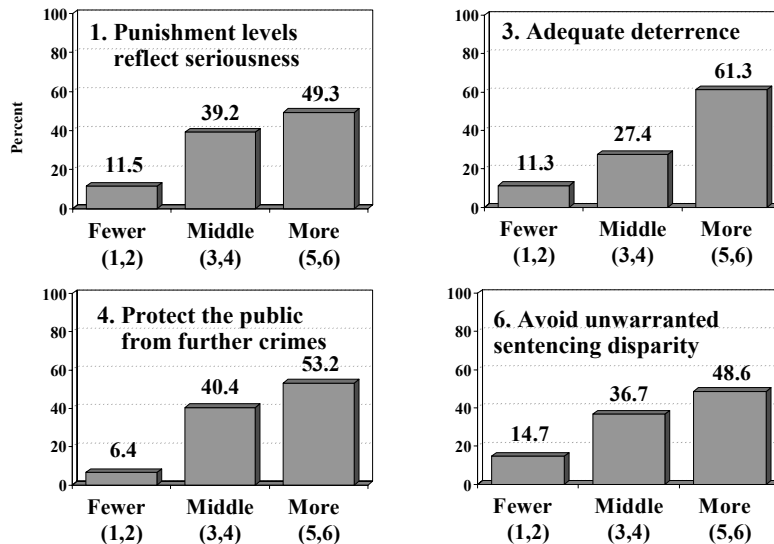
²⁶See the discussion of the “More,” “Middle,” and “Fewer” distributions on pages I-4 through I-6.

Exhibit III-1, below, organizes the nine sentencing goals of the survey into the analysis categories of “More,” “Middle,” and “Fewer.” Each of the next three sections in this chapter examines the circuit court judges’ responses in detail, starting with the “More” category followed by the “Middle” and “Fewer” categories.

Exhibit III-1
Circuit Court Judges’ Opinions on Whether Sentences Heard on Appeal
Met Sentencing Goals

“More”	“Middle”	“Fewer”
(A majority of judges reported that most of their cases met the specified sentencing goal)	(Most responding judges reported that a “middle” number of cases met the specified sentencing goal)	(Most responding judges reported that few of their cases met the specified sentencing goal)
<ul style="list-style-type: none"> • provide punishment levels that reflect the seriousness of the offense (18 U.S.C. § 3553(a)(2)(A)) • afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B)) • protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C)) • avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct (18 U.S.C. § 3553(a)(6), 28 U.S.C. § 991(b)(1)(B)) 	<ul style="list-style-type: none"> • provide fairness in meeting the purposes of sentencing (28 U.S.C. § 991(b)(1)(B)) • provide certainty in meeting the purposes of sentencing (28 U.S.C. § 991(b)(1)(B)) • provide just punishment (18 U.S.C. § 3553(a)(2)(B)) 	<ul style="list-style-type: none"> • provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner where rehabilitation is appropriate (18 U.S.C. § 3553(a)(2)(B)) • maintain sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices (28 U.S.C. § 991(b)(1)(B))

Exhibit III-2: Circuit Court Judges
Sentencing Goals with “More” Achievement



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

1. Circuit Court Judges: Sentencing Goals in the “More” Analysis Grouping

Exhibit III-2 presents the four goals with respect to which, in the opinions of the responding circuit court judges, “More” of their sentences heard on appeal met the specified sentencing goal. These goals were:

- provide punishment levels that reflect the seriousness of the offense (18 U.S.C. § 3553(a)(2)(A)),
- afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B)),
- protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C)), and
- avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct (18 U.S.C. § 3553(a)(6), 28 U.S.C. § 991(b)(1)(B)).

The circuit judge survey responses for each of these four goals are discussed in sequence in the four subsequent sections of this chapter.

Circuit Court Judges: Sentencing Goals in the “More” Analysis Grouping
Punishment Levels Reflect Offense Seriousness

Wording of survey question:

Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, provide punishment levels that reflect the seriousness of the offense? (Survey Question Number 1)

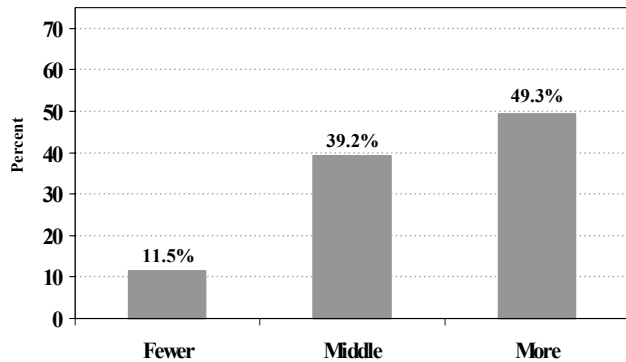
Exhibit III-3 contains the circuit court judge responses for this question about guideline punishment levels.

“All cases” responses. Almost half (49.3%) of the responding circuit court judges believed that “More” of the guideline sentences heard on appeal provided punishment levels reflecting the seriousness of the offense.

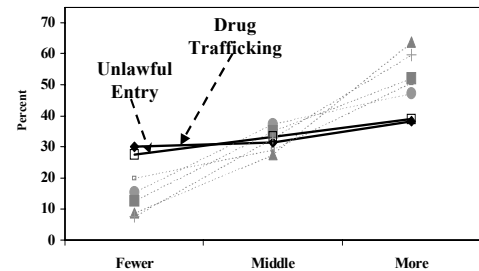
Offense type responses. The response distributions for the seven targeted offense types are shown in the graph to the right.

The graph to the right highlights the response patterns for the two offenses of drug trafficking and immigration unlawful entry. Both of these offenses had response patterns consistent with the “More” grouping. However, compared to the other offense types in the graph, they had both a smaller proportion of responses in the “More” grouping and a larger proportion of responses in the “Fewer” grouping. As a result, these offenses had a response pattern that approached a horizontal line. For drug trafficking and immigration unlawful entry offenses, there was a larger percentage of circuit court judge responses in the “Fewer” response grouping.

Exhibit III-3: Circuit Court Judges - Question 1a
How often did the guideline sentences provide punishment levels that reflect the seriousness of the offense?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

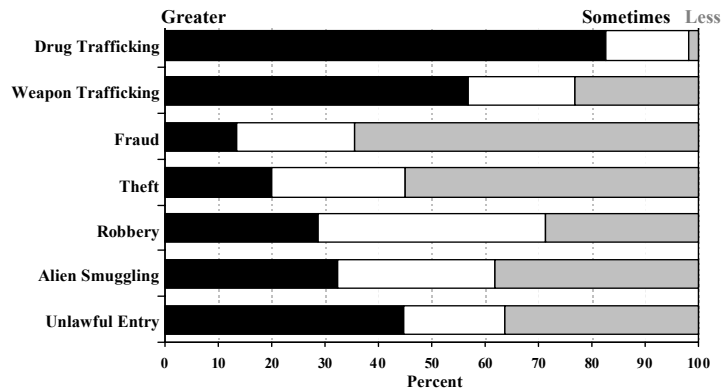


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Exhibit III-4 was a follow-up question for judges reporting that cases heard on appeal did not reflect offense seriousness. It asked whether this was because the punishment levels were *less* than appropriate, *greater* than appropriate, or *sometimes* greater and *sometimes* less than appropriate.

Some offense types had, while others did not have, a majority response. A majority response occurs when more than half the judges agreed on an answer.

Exhibit III-4: Circuit Court Judges - Question 1b
When guideline punishment levels do not reflect the seriousness of the crime, was it because the punishment was generally less than appropriate, more than appropriate, or sometimes greater/sometimes less?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Four offense types fell into the majority response class with two offenses having *greater than appropriate*, and two offenses having *less than appropriate*, answers.

- For drug trafficking (82.7%) and weapons trafficking (56.7%), a majority of circuit court judges reported that sentences of cases heard on appeal were *greater than appropriate*.
- For fraud (64.4%) and theft/larceny/embezzlement²⁷ (55.0%), more than half of circuit court judges reported that sentences of cases heard on appeal were *less than appropriate*.

For the remaining three offense types, there was no majority response.

- For unlawful entry immigration offenses,²⁸ 44.7% of circuit court judges responses reported that the sentences of cases heard on appeal were *greater than appropriate*.
- For robbery offenses, approximately four of every ten (42.8%) responding circuit court judges reported that guideline sentences heard on appeal were *sometimes greater and sometimes less than appropriate*.
- For alien smuggling offenses, the most frequently (38.2%) chosen response was that guideline sentences heard on appeal were *less than appropriate*.

²⁷The Commission's amendments to §2B1.1 (Theft, Embezzlement, Theft of Stolen Property, Property Destruction, and Offenses involving Fraud or Deceit), effective November 1, 2001, may have since addressed some of the concerns underlying these responses.

²⁸The Commission's amendments to §2L1.2 (Unlawful Entry and Remaining), effective November 1, 2001, may have since addressed some of the concerns underlying these responses.

Circuit Court Judges: Sentencing Goals in the “More” Analysis Grouping
Deterrence to Criminal Conduct

Wording of survey question:

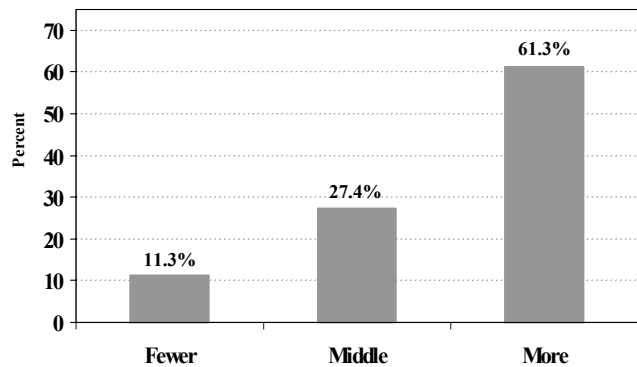
Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, afford adequate deterrence to criminal conduct? (Survey Question Number 3)

“All cases” responses. Exhibit III-5 indicates that more than six of every ten (61.3%) responding circuit court judges reported that overall “More” of their guideline sentences heard on appeal provided adequate deterrence of criminal conduct. This was the largest percentage of responding circuit court judges in the “More” category for any sentencing goal.

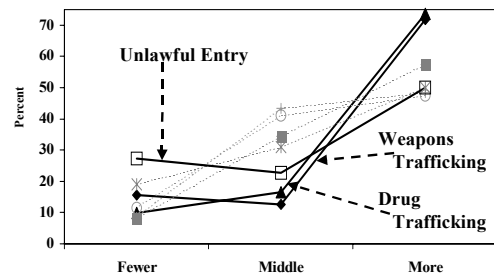
Offense type responses. The graph on the lower right shows responses to the deterrence sentence goal by offense types. Four offense types (the dotted and unlabeled pattern lines in the graph) followed the “More” pattern of Exhibit III-5. However, several offense types show variation.

- Both drug trafficking (71.9%) and weapons trafficking (73.7%) offenses were significantly more likely than other offense types to have circuit court judges reporting that “More” of these cases heard on appeal provided adequate deterrence. This is consistent with the greater length of these sentences; longer sentences would be expected to provide greater public protection.
- For immigration unlawful entry offenses,²⁹ the largest number of responding circuit court judges also selected the “More” grouping over the other two groupings, but their second most likely response was that “Fewer” cases received adequate deterrence. The data thus reveals a response dichotomy – i.e., a contrasting concentration of circuit court judge responses in the opposing “More” and “Fewer” response groupings.

Exhibit III-5: Circuit Court Judges – Question 3
How often did the guideline sentences afford adequate deterrence to criminal conduct?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

²⁹The Commission’s amendments to §2L1.2 (Unlawful Entry and Remaining), effective November 1, 2001, may have since addressed some of the concerns underlying these responses.

Circuit Court Judges: *Sentencing Goals in the “More” Analysis Grouping*
Protection of the Public

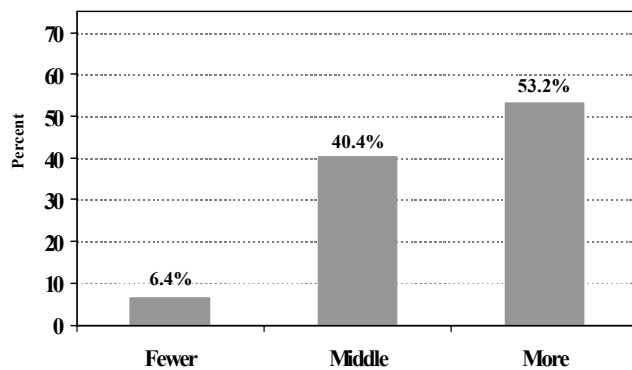
Wording of survey question:

Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, protect the public from further crimes of the defendant? (Survey Question Number 4)

“All cases” responses. A majority (53.2%) of responding circuit court judges reported that “More” of the guideline sentences heard on appeal protected the public from further crimes of the defendant. The data of Exhibit III-6 illustrates the distribution of circuit court judge responses.

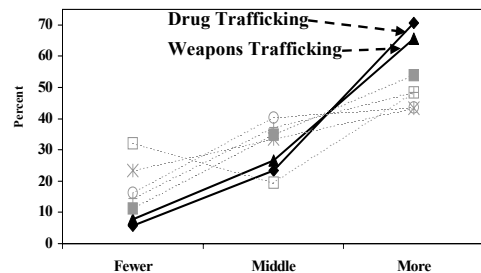
Offense type responses. The first graph below and to the right shows the distribution responses for the selected offense types. Four of the offense types followed the “More” pattern of Exhibit III-6.

Exhibit III-6: Circuit Court Judges – Question 4
How often did the Guideline sentences protect the public from further crimes of the defendant?

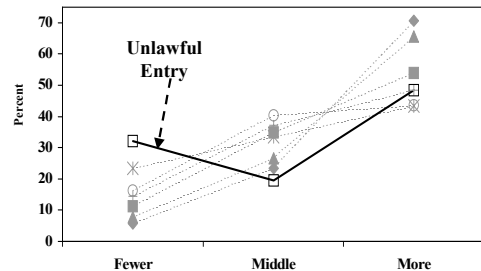


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

- The majority “More” pattern was exaggerated for drug trafficking (70.6%) and firearms (65.7%), with even greater numbers of responding circuit court judges believing that “More” of these offenses provided protection for the public.
- Responses for immigration unlawful entry cases again show an anomalous pattern: the responding circuit court judges were most likely to select the “More” category over the other two categories, but their second most likely response was that “Fewer” sentences heard on appeal provided adequate protection. This dichotomy of responses – i.e., the contrasting concentration of judge responses in the opposing “More” and “Fewer” categories – also appeared for the goal of adequate deterrence discussed in the section immediately above.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Circuit Court Judges: Sentencing Goals in the “More” Analysis Grouping
Avoiding Unwarranted Disparities – Similar Records and Similar Conduct

Wording of survey question:

Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct? (Survey Question Number 6)

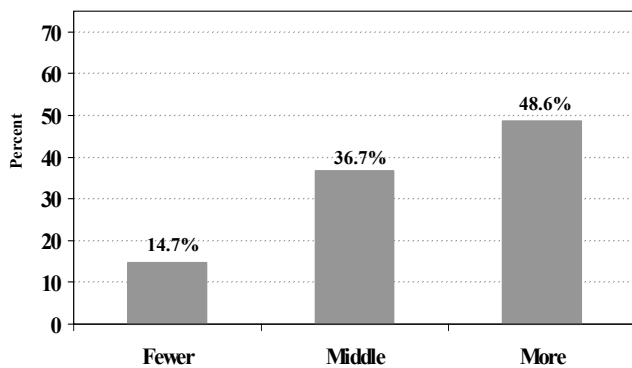
Two different statutes³⁰ related to the guidelines state that the guideline sentences must avoid unwarranted sentencing disparity among defendants with similar records who have been found guilty of similar conduct.

“All cases” responses. Exhibit III-7 indicates that almost half (48.6%) of responding circuit court judges reported that unwarranted disparities were being avoided for “More” of the cases they heard on appeal.

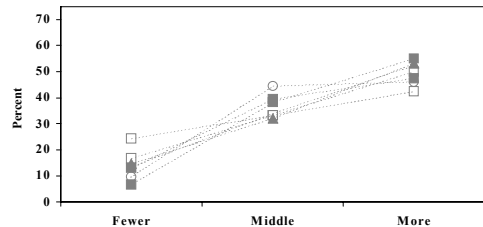
Offense type responses.

Mirroring the data of Exhibit III-7, and across all offense types, the circuit court judges responded that “More” of the guideline cases heard on appeal avoided unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. The graph to the right indicates that all offense types had very similar response patterns.

Exhibit III-7: Circuit Court Judges- Question 6
How often did the guideline sentences avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct?



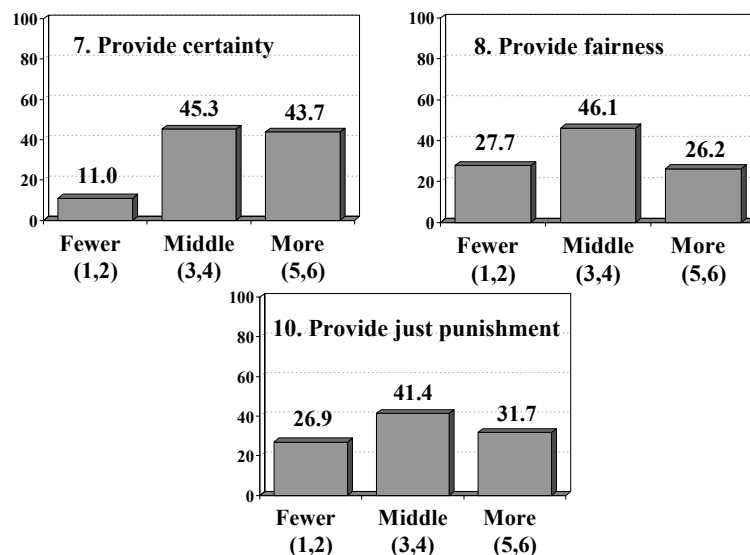
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

³⁰18 U.S.C. § 3553(a)(6), 28 U.S.C. § 991(b)(1)(B)

Exhibit III-8: Circuit Court Judges
Sentencing Goals with “Middle” Achievement



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

2. Circuit Court Judges: Sentencing Goals in the “Middle” Analysis Grouping

Exhibit III-9 above presents the three sentencing goals with respect to which, in the opinion of the responding circuit court judges, a “Middle” number of the cases heard on appeal met the congressional mandate. However, while “Middle” was the most frequently occurring response for circuit court judges for these three goals, this grouping never received a majority of the responses. Both “Middle” percentages for these three goals ranged from approximately 41 to 46 percent of respondents.

The three sentencing goals in the “Middle” analysis category for responding circuit court judges were:

- provide fairness in meeting the purposes of sentencing (28 U.S.C. § 991(b)(1)(B)), and
- provide just punishment (18 U.S.C. § 3553(a)(2)(B)).

The sections below examine the circuit court judge responses to the survey questions about these three sentencing goals.

Circuit Court Judges: Sentencing Goals in the “More” Analysis Grouping
Certainty in Meeting the Purposes of Sentencing

Wording of the survey question:

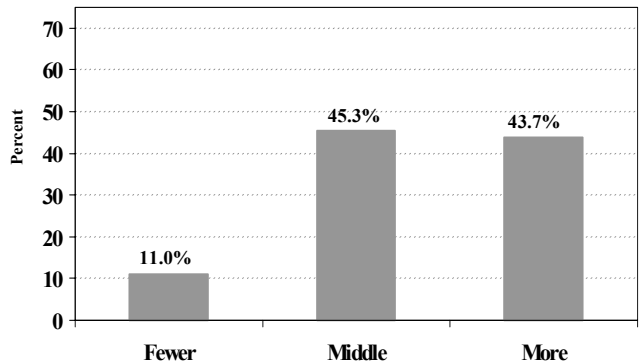
Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, provide certainty in meeting the purposes of sentencing? (Survey Question Number 7)

“All cases” responses.

Exhibit III-9 illustrates that although circuit court judges were most likely (43.5%) to respond in the “Middle” analysis category, an almost equal proportion (43.7%) responded in the “More” response category.

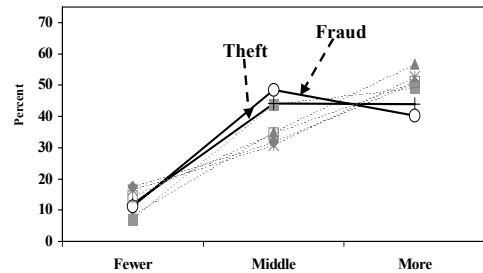
Offense type responses. The “All cases” circuit court responses in Exhibit III-9 masked underlying differences among the individual offense types. This is illustrated in the graph below.

Exhibit III-9: Circuit Court Judges – Question 7
How often did the guideline sentences provide certainty in meeting the purposes of sentencing?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

- For five of the seven offense types, the response patterns for circuit court responses represented a clear “More” response pattern. Circuit court judges reported that “More” of cases heard on appeal met the sentencing goal of certainty for the offense types of drug trafficking, weapons trafficking, robbery, alien smuggling, and immigration unlawful entry offenses. These offense types are represented by the dotted unlabeled lines in the graph on the upper right.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

- In contrast were the offense type patterns of fraud and theft/larceny/embezzlement. These two offense types display the “Middle” analysis pattern, reflecting circuit court judges’ beliefs that a “Middle” number of fraud and theft/larceny/embezzlement sentences heard on appeal had sentences that provided certainty in sentencing.

While the offense types of fraud and theft/larceny/embezzlement mirror the “Middle” response pattern of Exhibit III-9, these are the only two individual offenses with this pattern. For all the other offense types included in the survey, the greatest number of responding circuit court judges reported that “More” of the cases heard on appeal met the goal of certainty.

Circuit Court Judges: Sentencing Goals in the “Middle” Analysis Grouping
Fairness in Meeting the Purposes of Sentencing

Wording of survey question:

Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, provide fairness in meeting the purposes of sentencing? (Survey Question Number 8)

“All cases” responses.

Exhibit III-10 shows that the largest number (46.1%) of circuit court judges reported that a “Middle” number of appeal cases met this goal. The remaining circuit court judges responses were almost evenly distributed between the “Fewer” and “More” categories (27.7% and 26.2%, respectively).

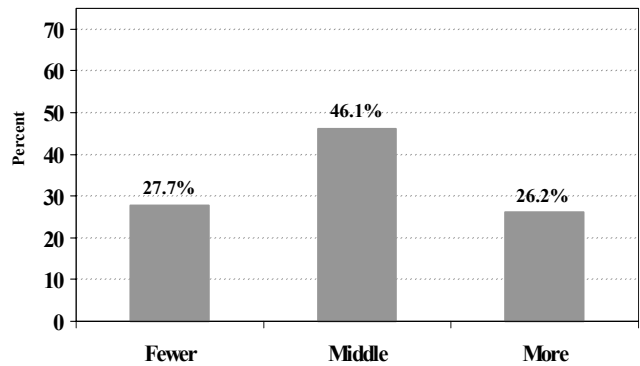
Offense type responses. As was the case for the goal of certainty discussed above, the goal of fairness also exhibits different response patterns for some offense types. The generalized pattern in the exhibit is an amalgamation of the response patterns for each offense type.

- The “More” response pattern characterized four of the seven offenses studied in the survey: weapons trafficking, theft/larceny/embezzlement, robbery, and alien smuggling. These offense types are represented by the dotted unlabeled lines in the graph to the right.

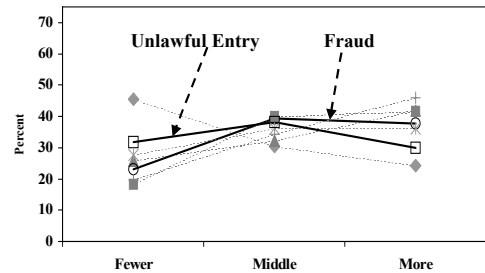
- The “Middle” response patten held for only two of the survey offense types: fraud and immigration unlawful entry. These patterns are shown in the graph above.

- The “Fewer” response pattern held for drug trafficking offenses. The drug trafficking results are displayed in the graph to the right. For the sentencing goal of just punishment, responding circuit court judges were most likely to report that “Fewer” of their cases heard on appeal met the fairness goal.

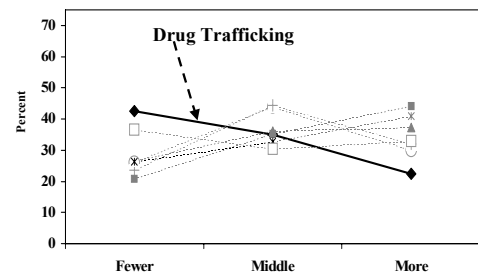
Exhibit III-10: Circuit Court Judges – Question 8
How often did the guideline sentences provide fairness in meeting the purposes of sentencing?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Circuit Court Judges: Sentencing Goals in the “Middle” Analysis Grouping
Just Punishment

Wording of survey question:

Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, provide just punishment? (Survey Question Number 10)

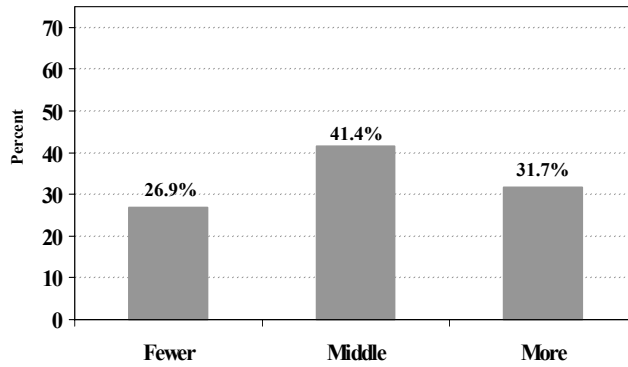
“All cases” responses. For all of their sentencing appeals, two-fifths (41.4%) of the circuit court judge respondents stated that a “Middle” number of the cases met the sentencing goal of just punishment.

Offense type responses. As displayed in the graph on the immediate right, only fraud and theft/larceny/embezzlement have the “Middle” response shape consistent with results of Exhibit III-11.

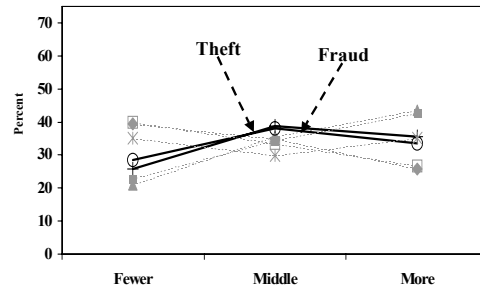
- The “More” response grouping was the most frequent response for the offense types of weapons trafficking and robbery. The greatest number of circuit court judges respondents believed that “More” of the sentences heard on appeal met the goal of just punishment.
- The “Fewer” response grouping prevailed for two offense types: immigration unlawful entry and drug trafficking. The graph on the lower right illustrates this finding.

The offense type of alien smuggling had its own unique response pattern. It had an equal number of responding circuit court judges (approximately 35%) in each of the “Fewer” and “More” response groupings, and the remaining 30 percent of judges in the “Middle” category. This almost “flat” distribution of the three response groupings suggests a diversity of opinions about just punishment for alien smugglers.

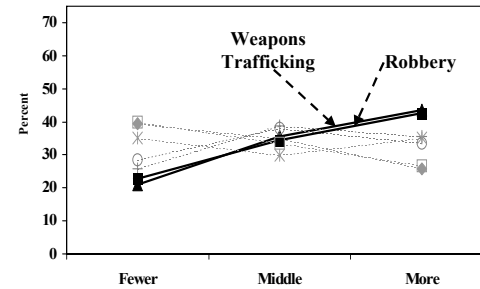
Exhibit III-11: Circuit Court Judges – Question 10
How often did guideline sentences provide just punishment?



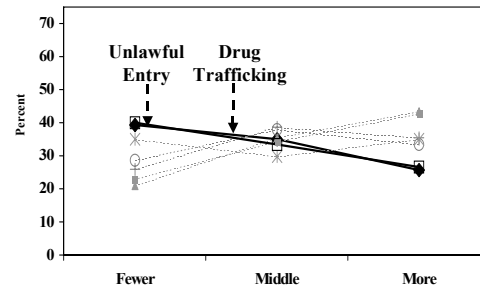
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

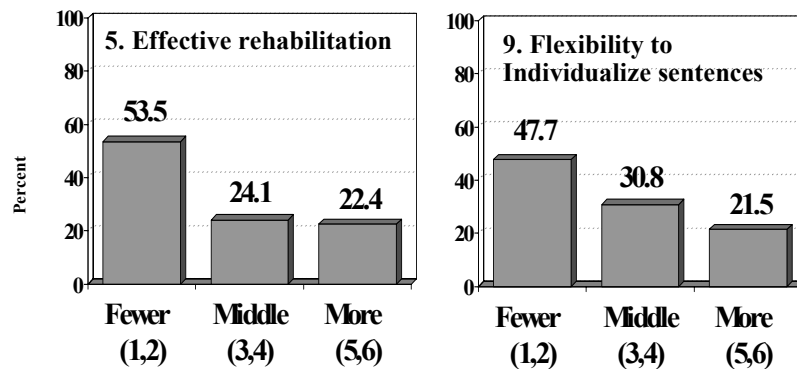


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Exhibit III-12: Circuit Court Judges
Sentencing Goals with “Fewer” Achievement



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

2. Circuit Court Judges: Sentencing Goals in the “Fewer” Analysis Grouping

Exhibit III-12 presents data on the goals having a “Fewer” response distribution. Circuit court judges responding to the survey believed that overall, many guideline sentences heard on appeal did not achieve their sentencing mandates for the goals of:

- providing defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner with respect to which rehabilitation is appropriate (18 U.S.C. § 3553(a)(2)(B)), and
- maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices (28 U.S.C. § 991(b)(1)(B)).

The two sentencing goals cited above received the most critical judicial rankings of the survey results. The sections below describe the circuit judges’ beliefs about these sentencing goals.

Circuit Court Judges: Sentencing Goals in the “Fewer” Analysis Grouping
Provide Needed Training, Care, or Treatment

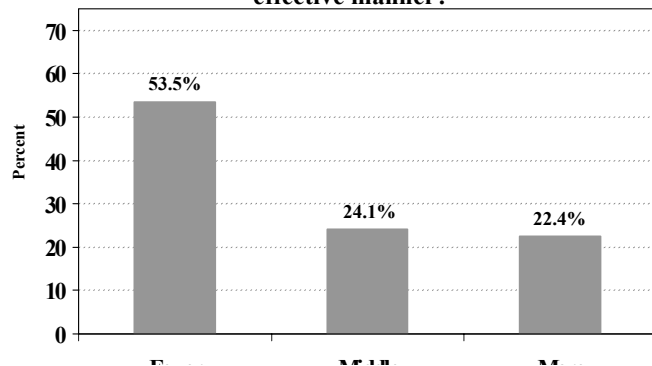
Wording of survey question:

Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner? (Survey Question Number 5)

“All cases” responses.

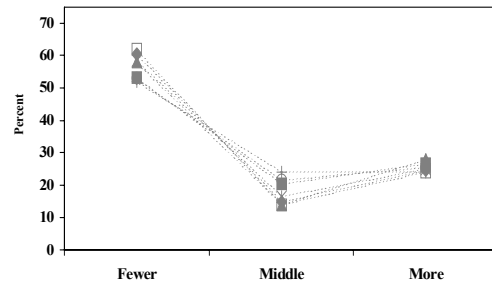
The responses to this question were among the most critical with regard to the guidelines’ achievement of the sentencing goals. For the cases that the circuit court judges heard on appeal, over half (53.5%) of the respondents believed that “Fewer” of the cases met the sentencing goal of training, care, or treatment.

Exhibit III-13: Circuit Court Judges – Question 5
How often did the guideline sentences [where rehabilitation was appropriate] provide educational or vocational training, medical care, or other correctional treatment in the most effective manner?



Source: U.S. Sentencing Comm

Offense type responses. Almost identical distributions held for the seven offense types examined in the survey. For all these seven offense types, a majority (ranging from 52% to 62%) of responding circuit court judges reported that “Fewer” of the sentences heard on appeal received needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Circuit Court Judges: Sentencing Goals in the “Fewer” Analysis Grouping
Sufficient Flexibility to Permit Individualized Sentences

Wording of survey question:

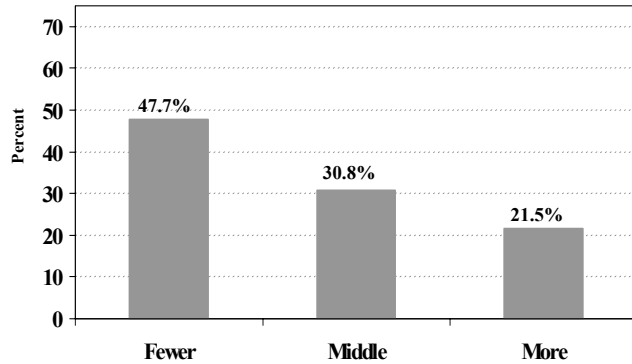
Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, maintain sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices? (Survey Question Number 9)

“All cases” responses. Almost half (47.7%) of responding circuit court judges reported that “Fewer” of the guideline sentences of the appealed cases maintained sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not considered by the establishment of the sentencing guidelines. Exhibit III-14 reports the results for this question.

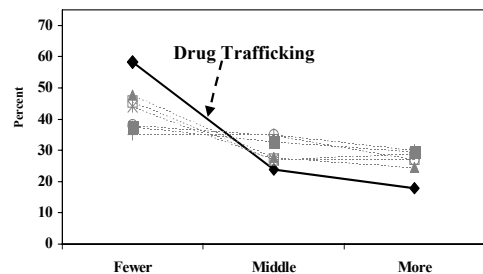
Offense type responses. Of the seven offense types examined in the survey, all mirror the “Fewer” analysis grouping of Exhibit III-14. Regardless of offense type, the greatest number of responding circuit court judges reported that “Fewer” sentences heard on appeal met the sentencing goal of flexibility.

Note, however, that drug trafficking offenses have a magnified “Fewer” response pattern. The graph shows that the proportion of “Fewer” responses for drug trafficking cases heard on appeal is substantially higher (peaking at 58.8%) than for the other six offense types.

Exhibit III-14: Circuit Court Judges – Question 9
How often did the guideline sentences maintain sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not considered by guidelines?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

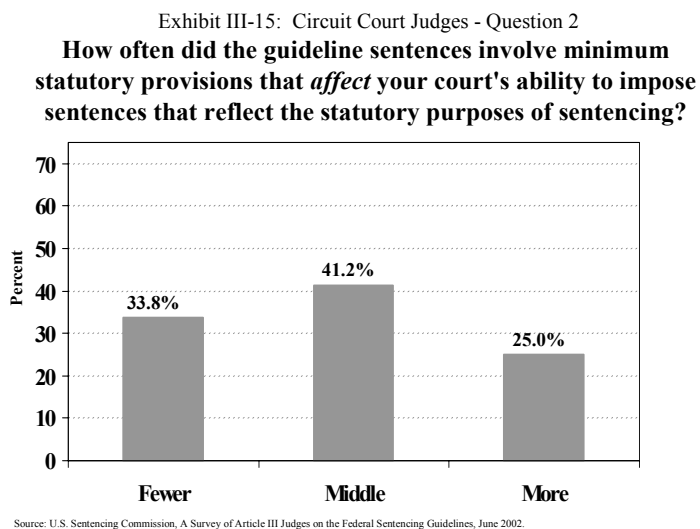
4. Effect of Mandatory Minimum Provisions on Sentencing Goals

Wording of the survey question:

Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, involve mandatory minimum provisions that affect your ability to impose sentences that reflect the statutory purposes of sentencing? (Survey Question Number 2)

While mandatory minimum statutory provisions are not sentencing goals specified in the Sentencing Reform Act, their presence may impact the guidelines' abilities to achieve the cited statutory sentencing goals.

Exhibit III-15 displays the combined responses from circuit court judges to the question of how often mandatory minimum statutory provisions affected attainment of sentencing goals among cases they heard on appeal. The combined data in the exhibit, however, masked substantial offense type variation, as explained below.

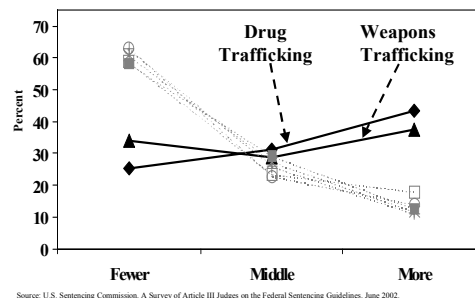


“All cases” responses. In Exhibit III-15, the responding circuit court judges were most likely (41.2%) to report that a “Middle” number of cases heard on appeal had sentencing goals affected by the presence of mandatory minimum provisions. The combined data in the exhibit, however, mask substantial offense type variation.

Offense type responses. As discussed earlier in Chapter II,³¹ mandatory minimum statutory provisions are more common for some offense types than for others. As such, the effect of mandatory minimum statutory provisions will be concentrated among those affected offense types. For crimes that typically do not have statutory mandatory minimum provisions (e.g., fraud, theft, robbery, alien smuggling, and immigration unlawful entry), roughly 60 percent of the responding circuit court judges reported that “Fewer” of the cases heard on appeal involved mandatory minimum statutory provisions that affected the court’s ability to impose sentences reflecting the statutory purposes of sentencing.

³¹See the mandatory minimum statutory provision discussion on page II-16 and following.

The graph to the right clearly illustrates the contrasting response patterns for the two offense types likely to have mandatory minimum statutory provisions: drug trafficking and weapons trafficking. The drug trafficking and weapons trafficking “More” response patterns documented that the circuit court judges believed that goals of sentencing were jeopardized by the presence of mandatory minimum statutory provisions for these offense types. The responding circuit court judges reported that “More” of these offense sentences heard on appeal were affected.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

B. Sentence Determination

1. Circuit Court Judges: Availability of Sentence Type Responses

The Commission is bound by statute (28 U.S.C. § 944(a)(a)(A)) to provide a means to determine the types of sentences to impose: probation, a fine, or a term of imprisonment. The Sentencing Table provides instructions on appropriate sentence types:

- probation only, with no confinement,³²
- probation combined with a non-imprisonment sentence alternative,³³
- substitution of some quantity of imprisonment with a non-imprisonment sentence alternative,³⁴ and
- imprisonment.³⁵

The survey asked circuit court judges to indicate whether more or less availability of the non-imprisonment options in Zone A, B, and C would better promote the purposes of sentencing. Exhibits III-16, III-17, and III-18 illustrate the circuit court judges’ responses for probation

³²In Zone A, the judge can impose straight probation (§5B1.1). In Zone A, all guideline ranges include zero (0) as the lower endpoint in the Sentencing Table.

³³In Sentencing Table Zones A and B, the judge can impose probation with conditions of non-imprisonment confinement. However, in Zone B, this option only applies for offenders who have a Sentencing Table imprisonment range of at least one month, but not more than six months, duration. The non-imprisonment confinement includes community confinement, home detention, or intermittent confinement (§5B1.1).

³⁴In Sentencing Table Zones B and C, the judge can impose supervised release with conditions of non-imprisonment confinement, for a portion of imprisonment. The non-imprisonment confinement includes community confinement, home detention, or intermittent confinement (§5C1.1). This option is limited in that the offender in Zone B must serve at least one month of the imposed sentence in imprisonment, and the offender in Zone C must serve at least half of the imposed sentence in imprisonment.

³⁵In Sentencing Table Zone D, the judge must impose a sentence of imprisonment.

sentences, probation with confinement condition sentences, and imprisonment plus supervised release confinement conditions, respectively.

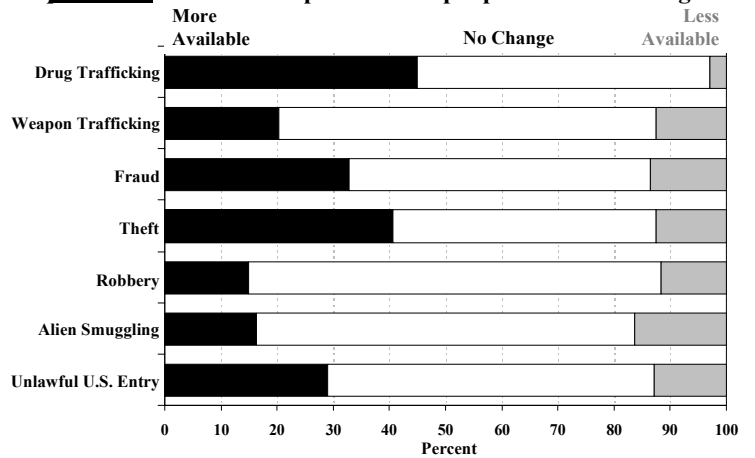
Circuit Court Judges: Availability of sentence types

Probation sentences.

Wording of the survey question:
Identify where you believe that changes in the availability of straight probation would better promote the purposes of sentencing. (Survey Question Number 11a)

Exhibit III-16 indicates that the overwhelming majority of responding circuit court judges either were satisfied with the availability of straight probation sentences or would like these straight probation options to be even more available. The sum of these two response categories ranged from 83.6% for alien smuggling offenses to 97.1% for drug trafficking offenders.

Exhibit III-16: Circuit Court Judges – Question 11a
Identify where you believe that changes in the availability of straight probation would better promote the purposes of sentencing



“No Change”: There was a common response pattern for offense types in Exhibit III-16. The most frequently selected response category was “No Change.” Robbery had the highest percentage of “No Change” responses (73.3%), while theft/larceny/embezzlement had the lowest percentage (46.9%) of “No Change” responses. A minority of circuit court judges believed probation sentences should be made less available.

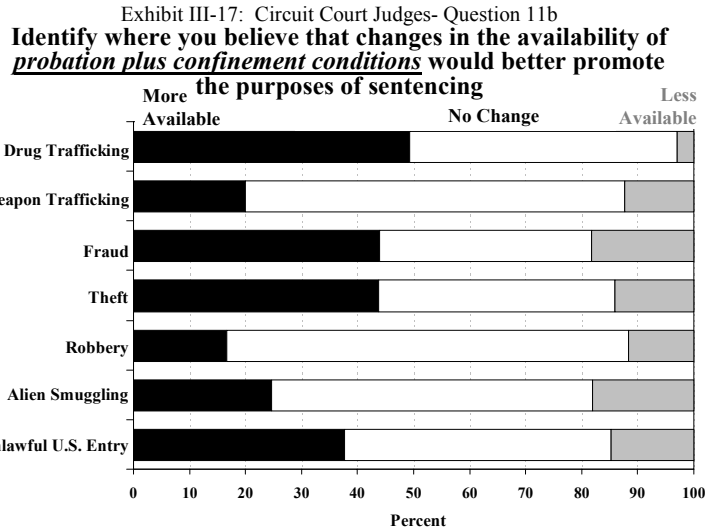
Circuit Court Judges: Availability of sentence types

Probation with confinement condition sentences.

Wording of the survey question:
Identify where you believe that changes in the availability of probation confinement conditions (including intermittent confinement, community confinement, or home detention as now permitted in Zones A and B) would better promote the purposes of sentencing. (Survey Question Number 11b)

Exhibit III-17 illustrates that offense response patterns fell into two major categories. “No Change”: First, a majority of circuit judges responded that three offense types needed “No Change” in availability of probation with confinement options: robbery (71.6%), weapon

trafficking (67.7%), and alien smuggling (57.4%). On the other hand, the circuit judges' responses for drug trafficking offenses and theft/larceny/embezzlement offenses were almost equally split between "No Change" and "More Available."



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Circuit Court Judges: Availability of sentence types

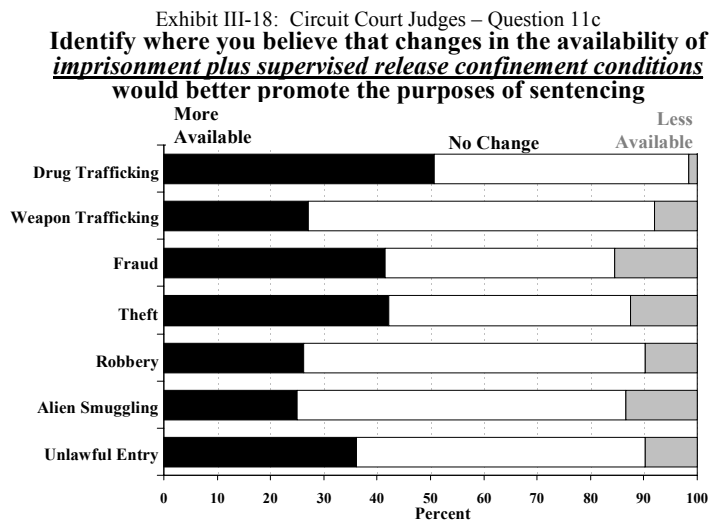
Imprisonment plus supervised release confinement condition sentences.

Wording of the survey question:

Identify where you believe that changes in the availability of supervised release confinement conditions (including community confinement or home detention following a term of imprisonment, as now permitted in Zones A, B, and C) would

Exhibit III-18 also depicts the similar offense response patterns among the sentence type survey questions.

"No Change" for four offense types: A majority of circuit judges responded "No Change" in availability of supervised release confinement conditions: robbery (63.9%), weapon trafficking (65.1%), alien smuggling (61.7%), and immigration unlawful entry (54.1%). On the other hand, the circuit judges' responses for drug trafficking offenses, fraud offenses, and theft/larceny/embezzlement offenses were almost equally split between "No Change" and "More Available": the responses for these categories never differed by more than three percentage points. Few circuit court judges selected the "Less Available" response option.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

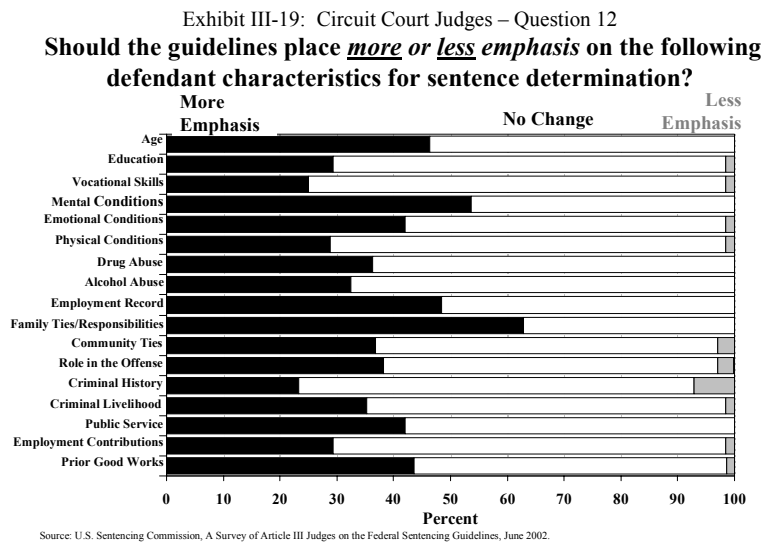
Circuit Court Judges

2. Emphasis Placed on Defendant Characteristics

Wording of the survey question:

Based on the cases that you personally have sentenced, do you believe that the guidelines should place less or more emphasis on any of the following defendant characteristics for sentencing determination? (Survey Question Number 12)

This survey question listed 17 defendant characteristics and asked circuit court judges to indicate whether the characteristics should have more, or less, emphasis placed on them for sentencing. In Exhibit III-19, more than half of the circuit court judges reported that “No Change” was needed for 14 of these 17 defendant characteristics.³⁶ For the 14 characteristics, the “No Change” percentage ranged from 73.5 percent for vocational skills to 53.6 percent for age. One characteristic, employment record, was closely divided between “No Change” (51.5%) and “More Emphasis” (48.5%).



A majority of circuit court judges believed that “More Emphasis” should be given during sentencing for the offender’s mental condition (53.6% of circuit court judge respondents) and family ties/responsibilities (62.9% of circuit court judge respondents).

Circuit Court Judges

3. Maintain Sentencing Neutrality

Wording of the survey question:

Based on the cases that you personally have sentenced, do you believe that the guidelines maintain neutrality with respect to the characteristics listed below? (Survey Question Number 13)

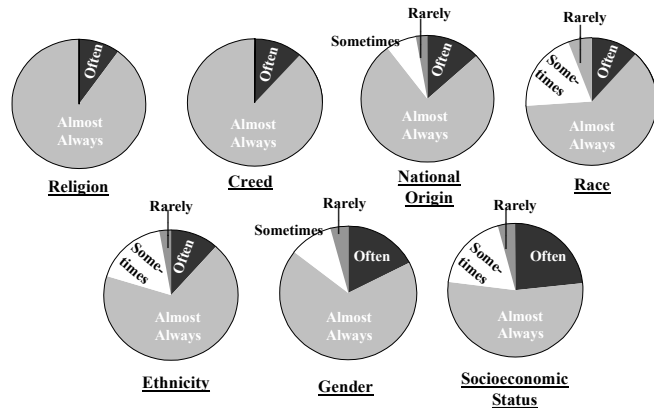
This survey question asked circuit court judges, based on the cases they had personally

³⁶The 14 characteristics with respect to which the most common response was “No Change” were age, education, vocational skills, emotional conditions, physical conditions, drug abuse, alcohol abuse, community ties, role in the offense, criminal history, criminal livelihood, public service, employment contributions, and prior good works.

heard on appeal, to indicate whether the guidelines maintained neutrality with respect to seven cited defendant characteristics. Exhibit III-20 presents the results from this question. Similar to the district court judge responses, more than half of the respondents reported that neutrality was “Almost Always” maintained for every characteristic. The “Almost Always” results can be summarized as follows:

- religion or creed (more than 80% of circuit court judge respondents),
- national origin (more than 70% of circuit court judge respondents),
- race, ethnicity, or gender (more than 60% of circuit court judge respondents), and
- socioeconomic status (more than 50% of circuit court judge respondents).

Exhibit III-20: Circuit Court Judges – Question 13
Do you believe that the guidelines *maintain neutrality* with respect to the characteristics listed below?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

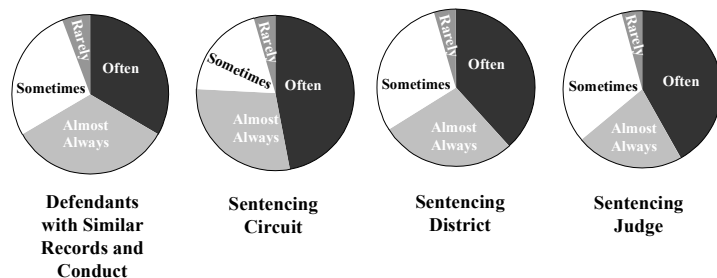
4. Avoid Unwarranted Disparity

Wording of the survey question:

Based on the cases that you personally have sentenced, do you believe that the guidelines avoid unwarranted disparity with respect to the characteristics listed below?

The responses to this question address the circuit court judges’ beliefs that the guideline cases they heard on appeal avoided unwanted disparity with respect to the listed characteristics. As displayed in Exhibit III-21, the most common response for each characteristic was “Often” with respect to the sentencing circuit (47.0%), sentencing district (38.2%), and sentencing judge (42.0%). For defendants with similar records and conduct, the most common response was a tie between two categories: “Often” (33.3%) and “Almost Always” (33.3%).

Exhibit III-21: Circuit Judges – Question 14
Do you believe that the guidelines *avoid unwarranted disparity* with respect to the characteristics listed below?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

By combining the two most preferred responses (i.e., the response categories most

positive concerning the guidelines' achievement), the analysis examined the percentage of circuit court judges who responded in either the "Often" or "Almost Always" categories. The percentage frequencies were as follows:

- defendants with similar records and conduct (66.6% of circuit court judge respondents),
- sentencing circuit (75.8% of circuit court judge respondents),
- sentencing district (66.1% of circuit court judge respondents), and
- sentencing judge (63.7% of circuit court judge respondents).

5. Respect for the Law

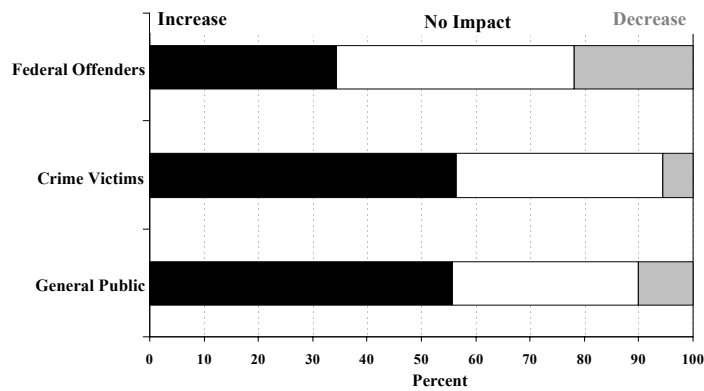
Wording of the survey question:

Based on the cases that you personally have sentenced, do you believe that the guidelines have increased, decreased, or had no impact on respect for the law for these

Exhibit III-22 presents the answers about respect for the law for the listed groups: have the sentencing guidelines increased, decreased, or had no impact on, respect for the law?

More than half of circuit court judge respondents reported that they believed there had been an increase in respect for the law among crime victims (56.3%) and the general public (55.7%). With respect to the effect of the guidelines on federal offenders' respect for the law, the most commonly held opinions was that the sentencing guidelines have had no impact on federal offenders (43.8%).

Exhibit III-22: Circuit Court Judges – Question 15
Do you believe that the sentencing guidelines have increased, decreased, or had no impact on respect for the law for these groups?



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

C. Summary Guideline Assessment and Perceived Challenges

1. Guideline Achievement in Furthering the Purposes of Sentencing

Wording of the survey question:

Please mark on the scale below to indicate your rating of the federal sentencing guideline system's achievements in furthering the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2). (Survey Question Number 18)

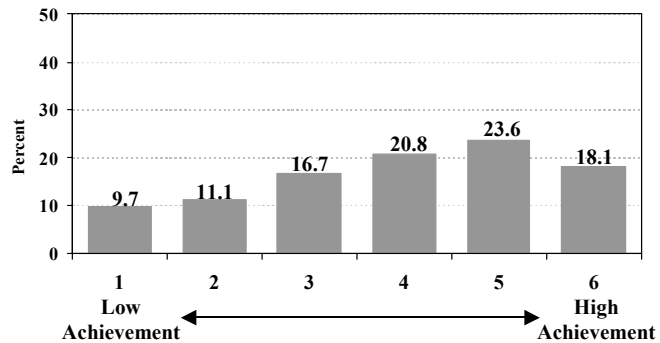
This survey question asked the circuit court judges to rate the federal sentencing guidelines system's achievements in furthering the general purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2). The results are presented in Exhibit III-23.

The respondents were presented with a six-level scale, with the highest endpoint of "6" representing "High Achievement." The lowest endpoint was "1," reflecting "Low Achievement." The most frequently reported response was "5," with 23.6 percent of circuit court judge respondents selecting this rating. The second most frequently cited response was "4," with 20.8 percent.

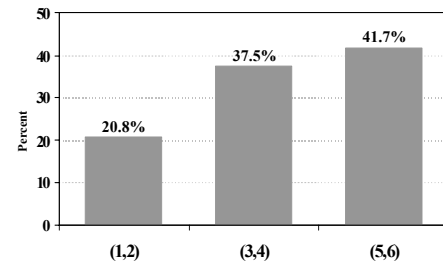
Using the three-category analysis grouping employed throughout this report, the graph on the lower right shows that slightly more responding circuit court judges selected a higher achievement rank over a middle achievement rank: 41.7 percent for the higher achievement answers of 5 or 6, compared to 37.5 percent for the middle achievement answers of 3 or 4.

A large minority (20.8%) of circuit court judge respondents rated the guidelines with low achievement ranks of 1 or 2 in terms of furthering the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2).

Exhibit III-23: Circuit Court Judges – Question 18
Please mark on the scale to indicate your rating of the federal sentencing guideline system's achievements in furthering the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2)



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

2. Circuit Court Judge Open Survey Questions: Challenges for the Guidelines

As was the case for the district court judges, the survey provided opportunities for circuit court judges to list issues perceived as challenges for the guidelines and then to identify the top two issues. These questions read:

Wording of the survey question:

16. **What factors or conditions do you see as challenges for the sentencing guidelines in their attempt to promote the statutory purposes of sentencing?**

Please list all factors, conditions, or issues you see as challenges for the guidelines.
Attach additional paper if needed.

17. **Of the factors, conditions, or issues listed in Question 16 above, which do you perceive as . . .**
 . . . the greatest challenge?
 . . . the second greatest challenge?

This section of the report discusses the guideline challenges cited by the circuit court judges.

Lists of All Challenges.³⁷ A total of 36 circuit court judges provided what they believed to be challenges to the guidelines. In all, 58 issues were listed on the questionnaire. The five issues receiving the highest number of references³⁸ were:

- judicial discretion (22%)

A majority of the respondents felt that the sentencing Judge should be given more opportunity to take into account the personal characteristics of the defendants. They believed that this was restricted by the use of numeric calculations to determine the sentence range.

³⁷Survey Question Number 16.

³⁸The percentages represent the relative frequency with which the issue was cited among all reasons. As many Judges cited multiple challenges, the total number of challenging issues is greater than the total number of responding Judges.

- drug policy (20%)

Many of the responding circuit court judges believed that the quantity ratio of 100-to-one between crack cocaine (cocaine base) and powder cocaine was a challenge to the guidelines. Respondents stated that the penalties for minor drug offenders were too harsh. Some felt that the guidelines should shift emphasis away from the quantity of drugs and toward the offender's role in drug offenses.

- balance of power (14%)

The respondents reported that too much power had been given to the prosecutors. Many felt that sentences were prosecution-driven, thus creating disparities through charge bargaining, plea agreements, and motions for downward departures.

- guideline philosophy (14%)

Like the district court judges, some of the circuit court judges responded to the survey question soliciting guideline challenges by citing the philosophical foundations of the Sentencing Reform Act. Some stated that it was difficult to balance uniformity and flexibility. Others felt that the guidelines had become too complicated with the addition of many amendments. Also, a common theme was that the guidelines should be voluntary "guidelines" only, and not mandatory.

- mandatory minimums (7%)

Respondents listing this challenge believed that mandatory minimums were inconsistent with the guideline system. Many believed they should be eliminated because they were too restrictive and harsh and impinged on judicial discretion.

The challenges listed by the circuit court judges were similar to those reported by the district court judges. The categories were also interrelated and would often be stated together by the same Judge. As exemplified in the district court judge discussion of Chapter II, it was common for a Judge to mention both the need for more judicial discretion and the amount of power they perceived the prosecutors had available to them. It was also reported that mandatory minimums limited the discretion of Judges during sentencing.

The distribution of power in the courtroom was a major concern for circuit court judges. When the categories of judicial discretion, balance of power, and mandatory minimums were combined, almost half (49%) of the challenges cited involved the control of sentencing power; the comparable statistic for district court judges was 41 percent.

Greatest Challenges to the Guidelines.³⁹ Only 22 circuit court judges responded with their opinion of the “greatest challenge” to the sentencing guidelines. Of these Judges, the six most frequently mentioned were as follows:

- judicial discretion (41%),
- guideline philosophy (14%),
- drug policy (9%),
- balance of power (9%),
- disparity (9%), and
- rehabilitation (9%).

Among these challenges, the categories of disparity and rehabilitation appeared for the first time among the most frequently mentioned challenges. The circuit court respondents believed that even with a guidelines system, it would be impossible to eliminate completely disparity. Some also reported that there was a lack of uniformity in guideline application. Other circuit court judges believed that the minimal availability of rehabilitation is the greatest challenge. They felt that the guidelines needed to incorporate more alternatives to prison as sentencing options.

The following are the most frequently cited by the circuit court judges as the “second greatest challenges”⁴⁰:

- drug policy (16%),
- judicial discretion (16%), and
- guideline philosophy (16%).

The major challenges can be ranked in terms of the circuit court judges’ overall opinions by combining the “greatest” and “second greatest” challenge data. For the 22 Judges who provided their thoughts on these questions, over half felt that lack of judicial discretion was the greatest challenge to the sentencing guidelines, with 55 percent classifying it as the greatest or second greatest challenge. The second ranked challenge was guideline philosophy, with 27 percent of the respondents classifying it as the greatest or second greatest challenge. Lastly, 23 percent listed drug policy as the greatest or second greatest challenge, putting it in third place.

³⁹Survey Question Number 17.

⁴⁰The “second greatest challenges” listed all received over 2 responses. Only 19 circuit court judges responded to this question.