

FINAL REPORT

**SURVEY OF ARTICLE III JUDGES
ON THE
FEDERAL SENTENCING GUIDELINES**



LINDA DRAZGA MAXFIELD, PH.D.
WITH THE ASSISTANCE OF HEIDI HALLAS
OFFICE OF POLICY ANALYSIS
UNITED STATES SENTENCING COMMISSION
MARCH 2003

Table of Contents

Executive Summary: Interpretation of Survey Results

Chapters

I Introduction and Methodology

II District Court Judge Survey Responses

- A. Statutory Goals of Sentencing
- B. Sentence Determination
- C. Summary Guideline Assessment and Perceived Challenges

III Circuit Court Judge Survey Responses

- A. Statutory Goals of Sentencing
- B. Sentence Determination
- C. Summary Guideline Assessment and Perceived Challenges

Appendices

District Court Judges

- A. Reproduction of District Court Judge Survey Instrument
- B. Detailed Tables of District Court Judge Survey Responses

Circuit Court Judges

- C. Reproduction of Circuit Court Judge Survey Instrument
- D. Detailed Tables of Circuit Court Judge Survey Responses

EXECUTIVE SUMMARY: INTERPRETATION OF SURVEY RESULTS

The approaching fifteen-year anniversary of the federal sentencing guidelines brings an opportunity to reflect on the work produced by the United States Sentencing Commission and the effect of the guidelines on the criminal justice system. For this reason, the Commission undertook a survey to measure, from the judges' perspectives, how the federal guidelines have responded to the goals Congress set forth for the guidelines in the Sentencing Reform Act. All Article III judges were mailed questionnaires in January 2002.

Response rates were 51.8 percent for district court judges and 33.9 percent for circuit court judges. Overall, district and circuit court judges responded in similar ways to the survey questions.

A. Sentencing Goals

A first part of the survey asked each judge to rate how often the guidelines' sentences met the goals of sentencing using a scale ranging from a low value of "1" (for "Few" of the judge's cases meeting the goal) to a high value of "6" (for "Almost All" of the judge's cases meeting the goal). The analysis considers responses concentrated at the higher end of the scale (i.e., "5" or "6") as indicating that the judges believed "More" of the guideline sentences met the goal, responses in the center of the scale (i.e., "3" or "4") as indicating that the judges believed a "Middle" number of guideline sentences met the goal, and responses concentrated at the lower end of the scale (i.e., "1" or "2") as indicating that the judges believed that "Fewer" guideline sentences met the goal.

1. Goals for which "More" Guideline Sentences Met the Mandates

There were four sentencing goals for which the greatest number of judges believed that "More" of the guideline sentences met the mandates. These four goals were:

- providing punishment levels that reflect the seriousness of the offense (18 U.S.C. § 3553(a)(2)(A)),
- affording adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B)),
- protecting the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C)), and
- avoiding unwarranted sentence disparities among defendants with similar

records who have been found guilty of similar conduct (18 U.S.C. § 3553(a)(6), 18 U.S.C. § 991(b)(1)(B)).

For three of these goals, roughly 50 percent (ranging from 48% to 55%) of judges responded in the “More” grouping; this response substantiates their belief that “More” of their cases met the specified sentencing mandate. One goal – adequate deterrence – had an even higher percentage of judges responding in the “More” category (61.5% for district court judges, and 61.3% for circuit court judges).

Responding district court judges were slightly more likely than responding circuit court judges to report that “More” of the guideline sentences met these sentencing goals. Additionally, a majority of responding district court judges believed that “More” of their guideline sentences achieved the goal of providing certainty in meeting the purposes of sentencing (28 U.S.C. § 991(b)(1)(B)).

Additional information was collected about the survey question addressing the goal of punishment levels that reflect seriousness. For judges who indicated that they did not believe that the punishment seriousness levels were appropriate, a follow-up question asked whether the judge believed that those sentence lengths were greater than appropriate or less than appropriate. A large majority (roughly 75% or more) of both district and circuit court judges reported that drug trafficking guideline punishment levels were greater than appropriate. Between half and two-thirds of the responding judges reported that fraud and theft/larceny/embezzlement guideline punishment levels were less than appropriate.¹ Immigration unlawful entry guideline punishment levels were viewed as greater than appropriate² by a majority of responding district court judges, while weapons trafficking guideline punishment levels were viewed as greater than appropriate by responding circuit court judges.

While the findings generally hold for all offense types, two additional analysis notes are cited with reference to offense type variation. The first note involves the impact of drug trafficking and weapons trafficking offenses on the survey results for the goals of deterrence of criminal conduct and protection of the public from further crimes of the defendant. While most offense types displayed a “More” category response distribution, the results for drug trafficking offenses exhibited an even higher percentage of judge responses in the “More” category. Likewise, weapons trafficking offenses typically had a higher percentage of judges selecting the “More” category than did other offense types. Thus, especially for drug trafficking offenses, and almost always for weapons trafficking, nearly three-fourths of all judges reported that “More” of their sentences met the statutory goals of deterrence and protection of the public. Given that

¹The 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.

²The 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.

guideline sentences for these two offense types are often lengthy, it appears logical for judges to believe that these lengthy sentences would support deterrence and public protection.

A second analysis note about offense type variation involves immigration unlawful entry cases. For the goals of deterrence and protection of the public, these unlawful entry cases displayed a unique “V-shape” response pattern. Judges’ responses were nearly equally concentrated in the “More” and “Fewer” response groupings, with a substantially lower number of responses in the “Middle” response grouping. This dichotomous response distribution revealed a judge split between the “More” and “Fewer” categories on opposite ends of response scale, and suggested polarized judicial disagreement about whether “More” or “Fewer” immigration unlawful entry cases met the sentencing goals of deterrence and protection of the public.

2. Goals for which “Fewer” Guideline Sentences Met the Mandates

Both district and circuit court judges were most likely to indicate two areas where they believed that “Fewer” of the guidelines sentences met the mandates. These were:

- providing 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)), 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)).

For the goal of providing training, care, or treatment, approximately 40 percent of district court judges and slightly more than 50 percent of circuit court judges reported that “Fewer” of the guideline cases met the sentencing goal. For the goal of maintaining flexibility, approximately 45 percent of both district and circuit court respondents reported that “Fewer” of the guideline cases met the sentencing goal.

3. Goals With Differential Attainment by Offense Type

There were two sentencing goals for which judges indicated that only a “Middle” number of all guideline sentences met the sentencing goals. These two goals were:

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

The analysis revealed, however, that this overall “Middle” response pattern masked widely contrasting goal attainment across the seven offense types included in the survey. Only two of the offense types individually displayed the “Middle” response pattern, where the greatest number of judges reporting that a “Middle” number of guidelines cases met the statutory mandate. The first was the fraud offense type with its true “Middle” response pattern for all the responding judges. The second was the theft/larceny/embezzlement offense type, which always fits this goal pattern for district judges.

However, for the other offense types, hidden in the combined data were response patterns reflecting both “More” and “Fewer” data results.

For drug trafficking, the greatest number of both district and circuit judges reported that “Fewer” drug trafficking offenses met the sentencing goals of fairness and just punishment. The percentage for district court judges was between 39 and 42 percent, while the percentage for circuit court judges was between 43 and 45 percent.

In contrast, for two other offense types – weapons trafficking and robbery – the greatest number of both district and circuit judges reported that “More” cases in these offense types met the sentencing goals of fairness and just punishment. The percentage for weapons trafficking for all judges was between 37 and 43 percent, while the percentage for robbery for all judges was between 41 and 44 percent.

It appears that in combining the data across all the seven offense types in the survey, the mix of “More,” “Middle,” and “Fewer” trends across the offenses served to conceal the underlying patterns. As a result, the combined data disguised the varied offense-specific results for the goals of fairness and just punishment.

A note is made concerning immigration unlawful entry cases. For the goals of fairness and just punishment, the unlawful entry offenses displayed response patterns that were nearly horizontal (i.e., approximately equal levels of judge responses in the three response groupings). As was discussed above regarding the unlawful entry offenses’ unique “V-shape” response patterns for the goals of deterrence and protection of the public, this additional display of widely dispersed judicial responses may also support the existence of a lack of judicial consensus on sentencing issues involving immigration unlawful entry offenders.

4. Mandatory Minimum Statutory Provisions

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 example, only 27.2 percent of all guidelines cases sentenced in fiscal year 2001 were sentenced under mandatory minimum statutory provisions. However, among drug offenders only, substantially over half (60.2%) of the convictions involved mandatory minimum statutory provisions.

It would be expected that those same offense types sentenced more frequently under statutes with mandatory minimum statutory provisions would also be those offense types more likely to experience any possible impact of mandatory minimum statutory provisions on sentencing goals. This is in fact that the survey results showed: drug trafficking and weapons trafficking offenses, the offenses most likely to be covered by mandatory minimum statutory provisions, had noteworthy response patterns in the survey data.

- For drug trafficking responses, both district and circuit court judges responded in the “More” grouping more frequently than in either of the other two response groupings. The most frequent answer for both district and circuit court judges was that “More” drug trafficking cases had statutory mandatory minimum provisions that affected the guidelines’ ability to impose sentences meeting the statutory purposes of sentencing
- Additionally, the response pattern for weapons trafficking offenses was noteworthy. Compared to the other offense types, a greater number of district and circuit court judges responded that weapons trafficking cases had statutory mandatory minimum provisions that affected the guidelines’ ability to impose sentences meeting the statutory purposes of sentencing

The remaining five offense types studied in the survey had an overwhelming majority of district and circuit court judge responses in the “Fewer” category. These five offense types were fraud, theft/larceny/embezzlement, robbery, alien smuggling, and immigration unlawful entry. A large majority of 60 percent of all responding judges (and even higher to 70 percent of district court judges) reported that “Fewer” cases in these offense types had statutory mandatory minimum provisions that affected the guidelines’ ability to impose sentences meeting the statutory purposes of sentencing.

These data also suggest that responding judges were more concerned with mandatory minimum statutory effects on drug trafficking cases (compared to other offense types). Roughly one-third more district court judges provided answers to the drug trafficking portion of this question than to the portions of this question addressing other offense types.

B. Sentence Determination Issues

1. Alternative Confinement Sentencing Options

The vast majority of responding judges were positive about the availability of alternatives to incarceration and did not want to see this availability reduced. While a “No Change” response was common and often most frequently given (typically 40% to 70% of judges providing this answer across offense types), the survey data highlighted certain types of offenses for which responding judges desired greater availability of alternatives to straight incarceration.

In sentencing drug trafficking offenders, more than half of responding district court

judges (and a somewhat smaller proportion of responding circuit court judges) believed that the purposes of sentencing would be promoted if there were greater access to straight probation, probation-plus-confinement, or “split” sentencing options.

Slightly more than 40 percent of both responding district and circuit court judges also would like greater availability of sentencing options (particularly probation-plus-confinement or “split” sentences) for theft/larceny/embezzlement and fraud offenses.

2. Offender Characteristics

Both district and circuit court judges reported the desire for more emphasis to be placed on pertinent offender characteristics. More than half of all judges would like to see more emphasis at sentencing placed on an offender’s mental condition or the offender’s family ties and responsibilities. Additionally, more than half of responding district court judges wanted more emphasis placed on offender age at sentencing. More than 40 percent of all responding judges also would like to see the following characteristics made more relevant at sentencing: emotional condition, employment record, public service (including military), and prior good works. More than 40 percent of responding district court judges also desired greater guideline emphasis on several other offender characteristics: physical condition, drug or alcohol dependence/abuse, and role in the offense.

3. Neutrality

Most responding judges (approximately 90%) agreed that the guidelines “Almost Always” maintained neutrality regarding the offender’s religion or creed. Overall, the responding district court judges reported somewhat higher neutrality levels for all characteristics, with a large district court judge majority (74%-79%) also citing “Almost Always” neutrality with respect to national origin, ethnicity, or gender. Fewer district and circuit court judges (but still more than half) believed that there was “Almost Always” neutrality with regard to offender race (62%-68%) and socioeconomic status (54%-60%).

Looking at the findings from a different perspective, however, these data reveal that a large minority of responding judges believed that neutrality was maintained only “Rarely” or “Sometimes” in all categories, with these percentages reaching as high as 20 percent for socioeconomic status and race.

4. Judicial Factor Disparity

There were relatively low levels of “Almost Always” responses with respect to the avoidance of unwarranted disparity among factors in the judicial system (such as district, circuit, or judge). Substantially less than 30 percent of all responding judges reported that the

guidelines “Almost Always” avoided unwarranted disparity with respect to the sentencing circuit, district, or judge. Further, roughly one-quarter (i.e., one out of four) of judges said that unwarranted disparity was only avoided “Rarely” or “Sometimes.”

5. Respect for the Law

More than half of responding circuit court judges believed that the guidelines increased respect for the law among victims of crime and members of the general public. Responding district court judges were more likely to believe that the guidelines had no impact on respect for the law for these groups.

Regarding the topic of respect for the law among federal offenders, the most common response (approximately 45%) between both district and circuit court judge respondents was that the sentencing guidelines had no change on the offender’s respect for the law.

6. Overall Guideline Achievement

When judges were asked to provide a general rating of the federal sentencing guidelines’ achievements in furthering the purposes of sentencing, the following response distribution was obtained:

- approximately 40 percent of judges reported higher achievement (38.4% of responding district court judges and 41.7% of responding circuit court judges).
- approximately 38 percent of judges reported middle achievement (38.6% of responding district court judges and 37.5% of responding circuit court judges), and
- approximately 22 percent of judges reported lower achievement (22.9% of responding district court judges and 20.8% of responding circuit court judges).

C. Challenges for the Commission

This Executive Summary, and the Final Report it accompanies, describe the results of the Commission’s Survey of Article III Judges on the Federal Sentencing Guidelines. Some results bring positive news to the Commission, but in other areas the survey findings indicate that there is great room for improvement.

This report is one means of measuring the degree to which the guidelines are perceived to

achieve the purposes of sentencing as set forth in the Sentencing Reform Act of 1984. All input helps to focus on where and how to move forward, whether the changes are adjustments to specific guideline provisions, or examinations of the sentencing principles on which the guidelines rest. The goal is to use these and other measures to steer the Commission toward the goal of achieving a sentencing system that meets the Congressionally mandated purposes of sentencing.

CHAPTER I INTRODUCTION AND METHODOLOGY

The approaching fifteen-year anniversary of the federal sentencing guidelines brings an opportunity to reflect on the work produced by the United States Sentencing Commission and the effect of the guidelines on the criminal justice system. For this reason, the Commission undertook a survey to measure, from the judges' perspectives, how the federal guidelines have responded to the goals Congress set forth for them in the Sentencing Reform Act of 1984.¹

A. Survey Topics

The questionnaire solicited information in two topic areas.

The first area focused on the statutory language of the Act. The questionnaires asked the judges (based on their experiences in the past two years) to rate how often the guideline sentences met the goals cited in the Act. The ratings were obtained for two levels of specificity: (1) overall (for the judges' entire caseload), and (2) individually for each of the most frequently occurring guideline offense types.

The congressional goals for the sentencing guidelines appear in several statutory locations and include:

- the need for the sentence imposed—
 - to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - to afford adequate deterrence to criminal conduct;
 - to protect the public from further crimes of the defendant; and
 - to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.²
- the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.³

¹Chapter II of the Comprehensive Crime Control Act of 1984, Pub.L. 98-473, October 12, 1984 (hereinafter, "The Act").

²18 U.S.C. § 3553(a)(2).

³18 U.S.C. § 3553(a)(6).

- the provision of certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to provide individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices.⁴

The second area of the survey focused on the operation of the guidelines within the context of the purposes of sentencing. Topics included judicial assessments of whether the guidelines:

- required modification regarding the availability of probation, fine, or imprisonment sentences.⁵
- maintained neutrality as to the race, sex, national origin, creed, and socioeconomic status of offenders.⁶
- provided appropriate emphasis on other characteristics of the offender.⁷

Additionally, the judges had several opportunities in the survey instrument to cite challenges they believed the guidelines face now and in the future and to provide any commentary back to the Commissioners.

Reproductions of the district court and circuit court judge survey instruments appear in Appendices A and C, respectively.

B. Survey Methodology

The individual questions were comparable for district court and circuit court judges, with only minimal wording revisions reflecting their differing sentencing tasks and experiences. A copy of the survey instrument was mailed to each district and circuit court judge in early January 2002, with a requested return date by the end of that month. The mailing was anonymous so that the identity of any judge would not be known to the Commission, although space was provided for a judge to provide voluntarily his/her name and district/circuit. At the end of January 2002, reminder postcards were sent. As the survey was anonymous and thus the status of an individual

⁴28 U.S.C § 991(b)(1)(B).

⁵28 U.S.C. § 994(d).

⁶28 U.S.C § 994(d),(e).

⁷28 U.S.C. § 994(a)(1)(A).

judge's response was not known, the reminder postcards were sent to all judges. The cards requested return of the survey if the judge had not yet mailed it back the Commission.

C. Response Rate

The table below presents the survey response rates for district and circuit survey instruments. Response rates were higher for district court judges (51.8%) compared to circuit court judges (33.9%).

Exhibit I-1
Response Rates:
2002 Sentencing Commission Survey of Federal Judges

	<u>District Court Judges</u>	<u>Circuit Court Judges</u>
Surveys mailed to judges	915	245
Surveys returned from judges	478	84
With at least one question response	466	76
With comment/letter or judge name only	8	7
Survey returned completely blank:	4	1
Response rate	51.8% ⁸	33.9% ⁹

D. Analysis Issues and Techniques

The following sections describe the procedures and techniques used in the analysis of the survey data.

1. Choice of offense types for detailed analysis.

While each question asked the judge to respond for his/her entire caseload, several questionnaire items also asked the judge to provide detail on specific offense categories. In total, seven offense types were targeted for the judge's individual consideration. These seven offense

⁸(466+8)/915=51.80%.

⁹(76+7)/245=33.88%.

types were those most frequently applied nationally under the guidelines in fiscal year 2000 (the most recently completed data year at the time of the survey). The most frequent guideline offense types in that year were:

- drug trafficking (41.1%),
- immigration unlawful entry (10.8%),
- fraud (10.5%),
- weapons trafficking (5.9%),
- theft, larceny, and embezzlement (5.7%),
- alien smuggling (3.5%), and
- robbery (2.9%).

2. The Six-Point “Few Cases” to “Almost All Cases” Response Scale.

Questions 1 through Question 10 of the survey instrument asked each judge to estimate the proportion of his/her caseload for which a cited goal of sentencing was met. For example in Question 10, a district court judge was asked, using the six-level scale illustrated below, how often the judge’s guideline cases were provided just punishment.

10. Considering cases that you have sentenced [during the past two years], how often did the guideline sentences provide just punishment?
(18 U.S.C. § 3553(a)(2)(A))

(i) For all of your sentencing:

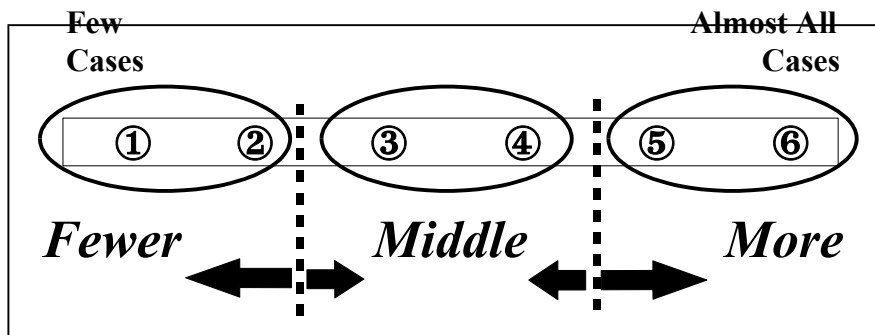
Few Cases						Almost All Cases
①	②	③	④	⑤	⑥	

*Please mark the appropriate
number on the scale*

For example, if a judge overall believed that “Almost All” of his/her cases in the past two years were provided just punishment under the guidelines, then that judge would mark response category “6.”

Comparing survey results across six categories for multiple questionnaire items is a conceptual challenge, requiring an abundance of information to be integrated and contemplated at one time. However, analysis is simplified by aggregating the many response categories into summary statistics. The summary data both assist in the understanding of the survey responses and invite straightforward comparisons across questions.

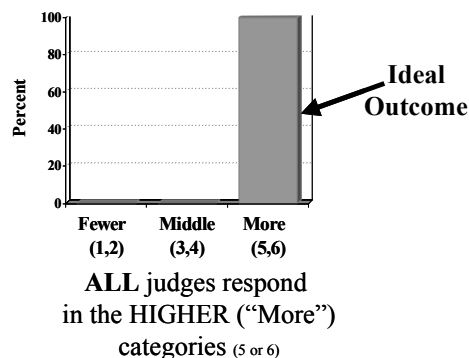
The strategy used for this analysis divides the response categories into three groups.



- A category of “**More**” combines responses of “5” and “6.” Judges who recorded a response of “5” or “6” believed that more of the sentences they imposed under the guidelines met the just punishment mandate under 18 U.S.C. § 3553(a)(2)(A).
- A category of “**Middle**” combines responses of “3” and “4.” Judges who recorded a response of “3” or “4” believed that while some of their cases sentenced under the guidelines met the just punishment mandate under 18 U.S.C. § 3553(a)(2)(A), many others did not.
- A category of “**Fewer**” combines responses of “1” and “2.” Judges who recorded a response of “1” or “2” believed that only a small number of the sentences they imposed under the guidelines met the just punishment mandate under 18 U.S.C. § 3553(a)(2)(A).

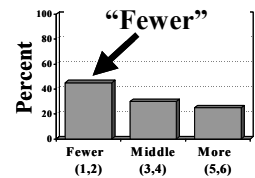
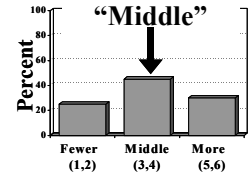
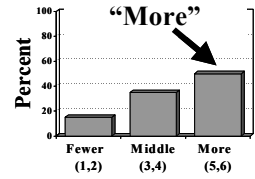
3. Interpretation of the “Three Category” Distribution of Responses

The ideal positive response outcome for an evaluation of guideline performance would be for 100 percent of judges to provide the most positive responses (“5” or “6”). This would signify that almost every case sentence was consistent with the statutory directives. The graph on the right demonstrates the shape of this “ideal outcome,” with all judges selecting responses “5” and “6” in the “More” category.



This “ideal outcome,” however cannot be expected for the multidimensional “real world” process. The actual patterns of responses for Question 1 through Question 10 fell into three categories.

- The **“More”** bar: judge responses were concentrated in response categories “5” or “6,” meaning the largest grouping of judges believed that “More” of their guideline sentences met the associated statutory sentencing goal.
- The **“Middle”** bar: judge responses were concentrated in response categories “3” or “4,” meaning the largest grouping of judges believed that a “Middle” number of their guideline sentences met the associated statutory sentencing goal.
- The **“Fewer”** bar: judge responses were concentrated in response categories “1” or “2,” meaning the largest grouping of judges believed that “Fewer” of their guideline sentences met the associated statutory sentencing goal.

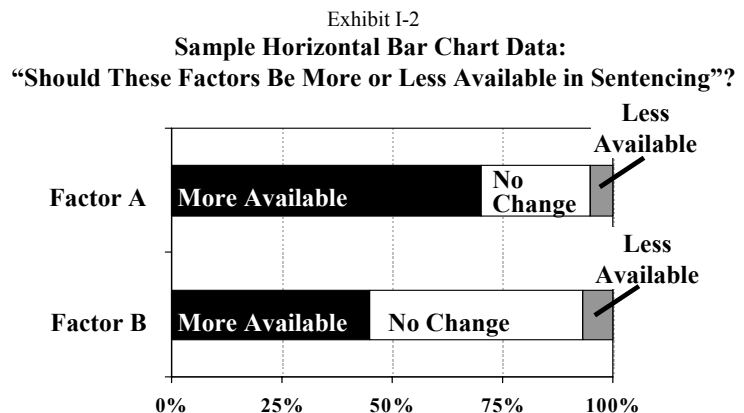


4. The “No Change” vs. “Change Desired” Scale.

Items like survey questions 11 and 12 asked each judge to report whether current guideline practices should be extended or limited or to indicate whether no change was needed. The analysis uses horizontal bar graphs to display the relative response frequencies for “change” and “no change” opinions and thus illustrate the central tendencies of judicial opinions.

The examples in the sample horizontal bar chart of Exhibit I-2 demonstrate how the data are to be interpreted. Imagine that each judge was given two questions asking whether “Factor A” and “Factor B” should be more or less available for guideline sentencing determination, or whether the judge believed that no change in availability was required.

For the hypothetical results of Factor A, Exhibit I-2 indicates that most judges (approximately 70%) responded that Factor A should be more available for guideline sentencing determination. A smaller percentage (roughly 25%) believed no change regarding Factor A availability was needed. A small minority of judges believed that Factor A should be less available for guideline sentencing determination.



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

In contrast, hypothetical Factor B in Exhibit I-2 shows a different distribution of opinions. Holding apart the small percent of judges who believed that Factor B should be less available in guideline sentencing determination, the remaining judges were split nearly equally

between believing that no change in Factor B availability was needed, and that Factor B should be more available in the guideline sentencing process.

5. Interpretation of District vs. Circuit Court Judge Responses

The survey questions were standardized, with question phrases altered only to reflect the differing judicial task of district compared to circuit court judges. However, judges come from varied backgrounds and experiences. These variations are important to consider in the analysis of the survey findings. Three specific issues are described below.

The first issue highlights the caseload composition and characteristics that vary across the districts. The cases that a specific judge encounters depend upon both the types of crime in the district and the likelihood of prosecution for those types of crime. Under the assumption that a given mandated goal of sentencing is either harder, or easier, to meet, depending upon the offense itself, then the likelihood of perceiving “more” or “fewer” cases meeting a sentencing goal is correlated with the types and frequency of crime caseload the judge experiences.

For example, compare the statistics for the three illustrative districts in Exhibit I-3 at the top of the next page. The differences among these three district caseloads are striking. Note that district court judges in the Southern District of California rarely encounter weapons trafficking offenses, while in the Eastern District of Pennsylvania on average one of every six offenders is sentenced for a weapons trafficking offense. Additionally, note that district court judges in the Southern District of New York are sentencing fraud cases at three times the rate (one of every four cases) of district court judges in the Southern District of California (one of every twelve cases).

To appreciate the impact of caseload, assume hypothetically that the guidelines intrinsically have a more difficult task meeting a specific sentencing goal among (for example) fraud cases. In this situation, a judge from the Southern District of New York not only will be more familiar with all facets of all fraud offense guideline problems but would also see the problem as more prevalent. Recall that the survey instructions asked district court judges to respond considering “sentences you have personally imposed during the past two years.” Thus, the cases comprising an individual judge’s caseload themselves will reflect upon the survey responses of that individual judge.

Exhibit I-3
**Comparison of Key Caseload Characteristics
in Three Illustrative Districts¹⁰**

	Judicial District		
	Southern California	Southern New York	Eastern Pennsylvania
Number of cases	4,215	1,418	908
% Hispanic Offenders	78.4	43.4	21.3
% Drug Trafficking	41.9	36.6	38.6
% Fraud	8.4	24.5	16.7
% Immigration	43.6	8.2	4.1
% Weapons Trafficking	0.2	5.6	16.8
% Within Guideline Range	41.3	69.1	52.3

The second issue involving the interpretation of district and circuit court judge responses involves the difference in the judicial task for these two types of judges. While district court judges sentence cases from the specific district, circuit court judges hear appeals on cases from all districts in the circuit. Additionally, circuit court judges hear only cases that are appealed by either the defendant or, less commonly, the prosecution. In fiscal year 2001, a national total of slightly more than 4,200 sentencing appeals were decided, with many of those decisions being appealed for sentencings prior to fiscal year 2001. In contrast, during fiscal year 2001 district court judges sentenced almost 60,000 defendants under the guidelines.

Recall that circuit court judges were asked in the survey to consider “cases you have personally heard on appeal during the past two years.” In evaluating the survey’s results, note that appeal cases are an unknown sample that perhaps do not represent the entire guideline caseload. Further, the information presented here underscores the fact that the caseload of circuit court judges is distinct from that of district court judges in general, and distinct even from district court judges in the same circuit.

A third issue in the comparison of district and circuit court judge survey responses is the

¹⁰United States Sentencing Commission, 2001 Sourcebook of Federal Sentencing Statistics, Appendix B “Selected Sentencing Statistics by District,” <http://www.ussc.gov/ANNRPT/2001/SBTOC01.htm>.

questionnaire response rate. For a mail survey with anonymous questionnaire follow-up, the district court judge response rate (51.8 percent) is expected. However, any analysis must recognize that only half of the district court judges provided input for the survey results. Because the survey was anonymous, it is not possible to analyze whether certain types of respondents (e.g., those in different geographical locations) were less likely to respond.

This problem is magnified even more for the circuit court judges and their response rate (33.9 percent). Again, due the anonymous nature of the survey, it is not possible to analyze whether certain types of respondents (e.g., those in different geographical locations) were less likely to respond.

6. Appendices with All Raw Frequency Counts and Percentages.

The detailed numeric data from all survey responses are provided in Appendix B (for district court judges) and Appendix D (for circuit court judges). For clarity, data values generally are not reported on the graphic exhibits of Chapter II and Chapter III, but the corresponding numbers are located easily in the appropriate Appendix B and D tables. References to the questionnaire survey numbers appear in the text, tables, and charts.

E. Organization of the Report

The remainder of this report is organized into three sections. Chapter II describes the results from district court judge survey responses. Chapter III cites results from circuit court judge survey responses.

Note that for simplicity and brevity, the word “responding” is not always included in the discussion of the survey findings. However, all survey data results reported are based solely on those judges who responded to the survey by recording their answers and returning the survey instrument to the Commission. While these results reflect the beliefs of the survey respondents, it is not known whether the non-responding judges hold comparable or contrasting views.

CHAPTER II

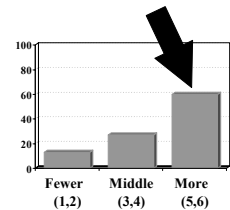
DISTRICT COURT JUDGE SURVEY RESPONSES

The results of the district 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 second 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 district 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.

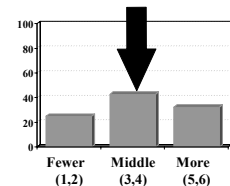
A. District Court Judges' Results: Statutory Goals of Sentencing

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 district court judges' responses into one of three analytical categories. The categories reflect the beliefs of the judges regarding how often sentences under the guidelines met a sentencing goal. The three groupings are: "**More**," "**Middle**," and "**Fewer**."¹ These three groupings are characterized by three distinct bars in the analysis graphs.

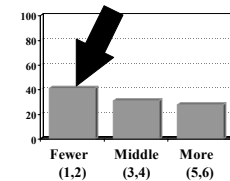
The "**More**" bar: District court judge responses were concentrated in the right-most ("More") response bar. (See the example to the right.) The graph indicates that among the three categories, the greatest number of responding judges reported that "More" of their sentences met the specified sentencing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



The "**Middle**" bar: District 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 their sentences met the specified sentencing goal.



The "**Fewer**" bar: District 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 their sentences met the specified sentencing goal.



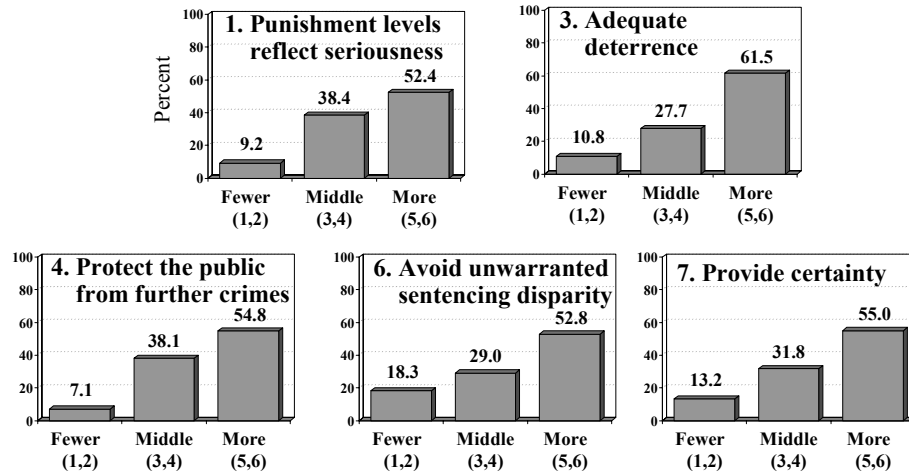
¹See the discussion of the "More," "Middle," and "Fewer" distributions on pages I-4 through I-6.

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

Exhibit II-1
District Court Judges’ Opinions on Whether Guidelines 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)
<p>a. provide punishment levels that reflect the seriousness of the offense (18 U.S.C. § 3553(a)(2)(A))</p> <ul style="list-style-type: none"> • 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)) • provide certainty in meeting the purposes of sentencing (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 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 II-2: District 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. District Court Judges: Sentencing Goals in the “More” Analysis Grouping

Exhibit II-2 presents the five goals with respect to which, in the opinions of the majority of responding district court judges, “More” of their sentences 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)),
- 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)), and
- provide certainty in meeting the purposes of sentencing (28 U.S.C. § 991(b)(1)(B)).

The district judge survey responses for each of these five sentencing goals are discussed in sequence in the five subsequent sections of this chapter.

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

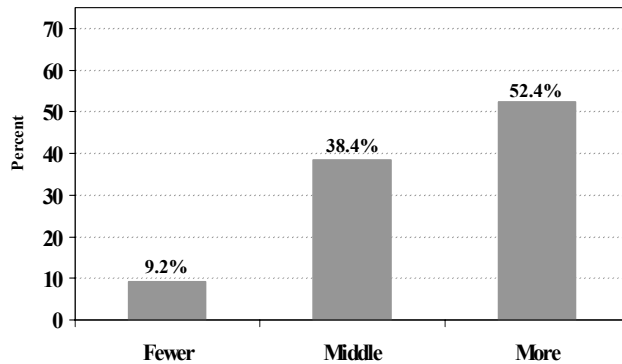
Wording of survey question:

Considering cases that you have sentenced [during the past two years], how often did the guideline sentences provide punishment levels that reflect the seriousness of the offense? (Survey Question Number 1)

“All cases” responses.

Greater than half (52.4%) of the responding district court judges believed that “More” of their guideline sentences provided punishment levels reflecting the seriousness of the offense. Roughly one of every ten (9.2%) responding district court judges reported that “Fewer” of their sentences reflected offense seriousness.

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

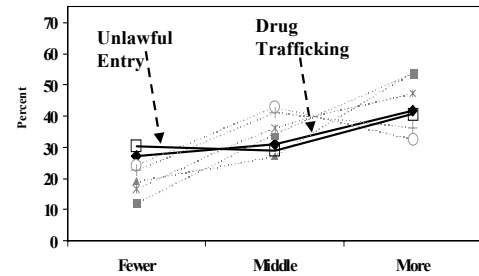


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

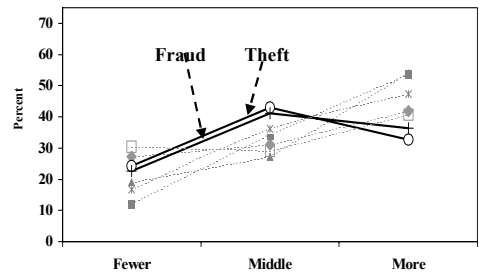
Offense type responses.

When the responses for each offense type were examined individually, some variation was observed.

- Two offense types, marked as drug trafficking and immigration unlawful entry on the graph to the right, also were consistent with the “More” response grouping. However, a smaller percentage of the responding district court judges selected the “More” grouping for these offense types, and a larger percentage selected the “Fewer” grouping.
- Another two offenses types – fraud and theft/larceny/embezzlement – had a distinctly contrasting response pattern: district court judges were more likely to select the “Middle” response grouping. This is one of several sentencing goals where judges’ opinions about fraud and theft/larceny/embezzlement differed from their opinions concerning other offense types.



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 II-4 provides additional detail on judicial beliefs concerning punishment levels and offense seriousness. When responding district court judges reported that sentences did not reflect offense seriousness, a follow-up question asked whether this was because the punishment levels were *less* than appropriate, *greater* than appropriate, or *sometimes* greater and *sometimes* less than appropriate.

The responses are grouped into two classes: those with a majority response and those without a majority response. A majority response is one in which more than half the judges agreed on an answer.

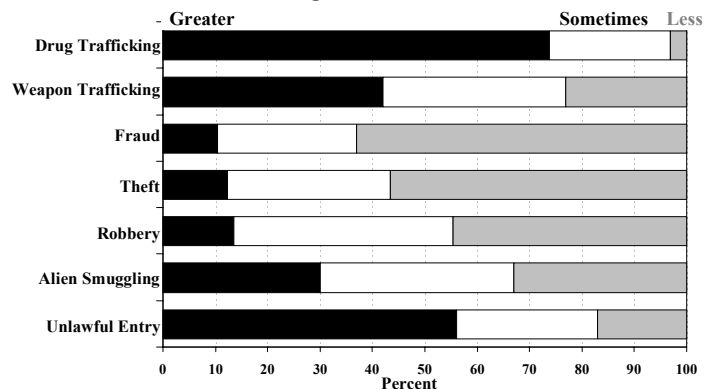
Four offense types fell into the majority response class, with two having *greater than appropriate* and two having *less than appropriate* responses.

- For drug trafficking (73.7%) and immigration unlawful entry (56.0%),² more than half of district court judge respondents reported that imposed sentences were *greater than appropriate*.
- For fraud (63.1%) and theft/larceny/embezzlement offenses (56.6%),³ more than half the district court judge respondents reported that guideline sentences were *less than appropriate*.

Each of the three remaining offense types lacked a majority response.

- For weapons trafficking offenses, the largest response grouping (42.1%) reported that sentences were *greater than appropriate*.
- For robbery (44.7%) and alien smuggling (36.9%) offenses, the most frequently chosen district court judge response was that the sentences were *sometimes greater and sometimes less than appropriate*.

Exhibit II-4: District 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, greater 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.

²The 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.

³The 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.

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

Wording of survey question:

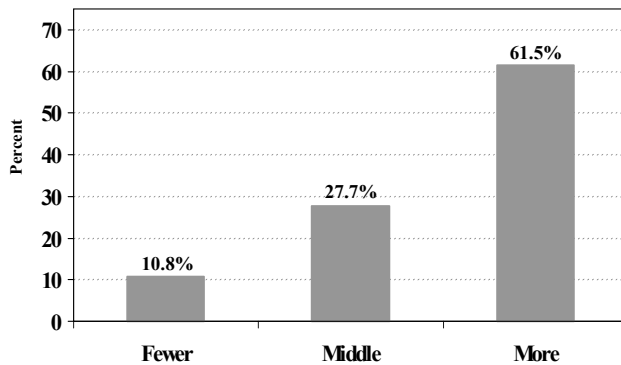
Considering cases that you have sentenced [during the past two years], how often did the guideline sentences afford adequate deterrence to criminal conduct?
 (Survey Question Number 3)

“All cases” responses. Exhibit II-5 indicates that more than six of every ten (61.5%) responding district court judges reported that, overall, “More” of their guideline sentences provided adequate deterrence of criminal conduct. This was the largest percentage of responding district court judges in the “More” category for any surveyed goal.

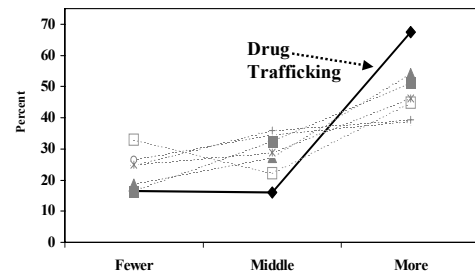
Offense type responses. The graphs below and to the right show reactions to this sentencing goal by offense types. The data for the offense types generally follow the “More” pattern of the “all cases” data of Exhibit II-5, with attention called to two specific offense types.

- Drug trafficking: The first graph shows that more than two-thirds (67.5%) of responding district court judges believed that drug trafficking sentences provided deterrence for “More” drug cases. This strong drug trafficking result appears to drive the results in Exhibit II-5.
- Immigration unlawful entry offenses: The second graph reveals a dichotomy in these answers. While the responding district court judges also were most likely (44.9%) to select the “More” groupings over the other two response groupings, their second most likely (32.9%) response was that “Fewer” sentences were provided adequate deterrence. These results provided a contrasting concentration of district court judge responses in the opposing “More” and “Fewer” response groupings for this offense type.

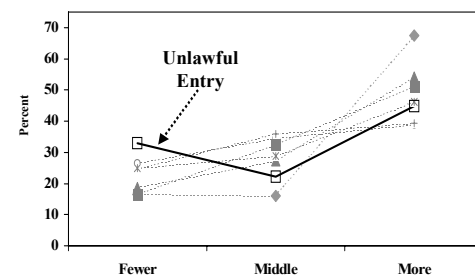
Exhibit II-5: District Court Judges – Question 3
How often did the guideline sentences afford adequate deterrence to criminal conduct?



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.



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

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

Wording of survey question:

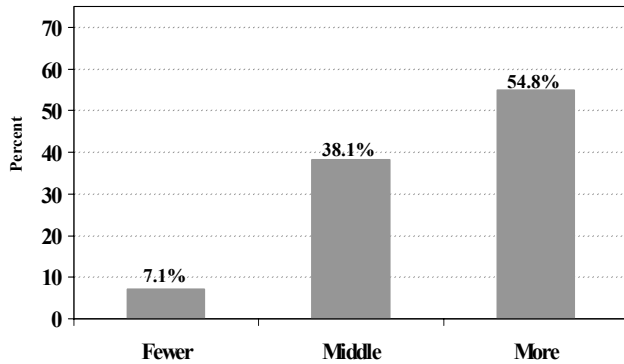
Considering cases that you have sentenced [during the past two years], how often did the guideline sentences protect the public from further crimes of the defendant?
 (Survey Question Number 4)

“All cases” responses. A majority (54.8%) of responding district court judges reported that “More” of their guideline sentences protected the public from further crimes of the defendant. The data of Exhibit II-6 illustrates the distribution of district court judge responses.

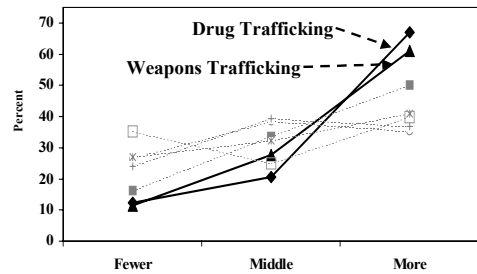
Offense type responses. The graphs below and to the right shows the distribution responses for the given offense types.

- Compared to the other offense types, drug trafficking and weapons trafficking offenses had greater numbers of responding judges reporting that “More” of these sentence provided protection to the public. These two offense types appear to drive the overall response to this question.
- Responses for immigration unlawful entry cases again show an anomalous pattern: the largest number of responding district court judges selected the “More” grouping over the other two groupings, but their second most frequent response was that “Fewer” sentences provided adequate protection. The difference between the “More” and “Fewer” response groupings was only five percentage points. This dichotomy of responses also – i.e., the contrasting concentration of judge responses in the opposing “More” and “Fewer” response groupings categories – also appeared for the goal of adequate deterrence.

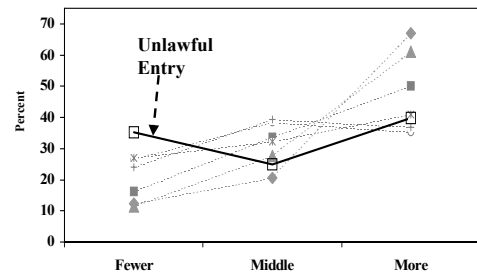
Exhibit II-6: District Court Judges – Question 4
How often did the Guideline sentences protect the public from further crimes of the defendant?



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



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.

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

Wording of survey question:

Considering cases that you have sentenced [during the past two years], how often did the guideline sentences avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct?

(Survey Question Number 6)

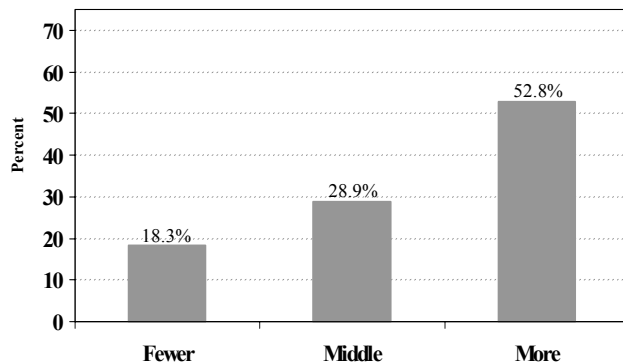
Two different statutes⁴ related to the guidelines state that the guideline sentences must avoid unwarranted sentencing disparity among defendants with similar records who have been found guilty of similar conduct.

“All cases” responses.

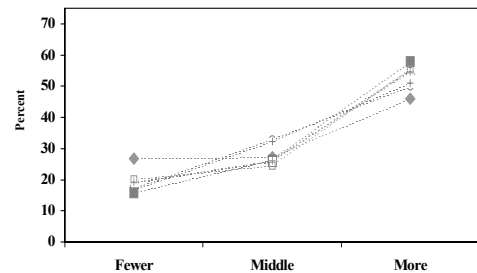
Exhibit II-7 indicates that more than half (52.8%) of responding district court judges reported that unwarranted disparities were being avoided by “More” of their sentences. Even given this majority response of “More,” still a notable proportion of judges – nearly two of every ten (18.3%) responding district court judges – reported that “Fewer” of their guideline sentences were meeting the goal of avoiding unwarranted disparity among similar cases found guilty of similar conduct.

Offense type responses. The graph to the right indicates that all offense types had very similar response patterns and mirrored the “More” distribution of Exhibit II-7. The responding district court judges reported that “More” guideline sentences across offense types met the sentencing goal of avoiding unwarranted disparities across defendants with similar records who have been found guilty of similar conduct.

Exhibit II-7: District 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.

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

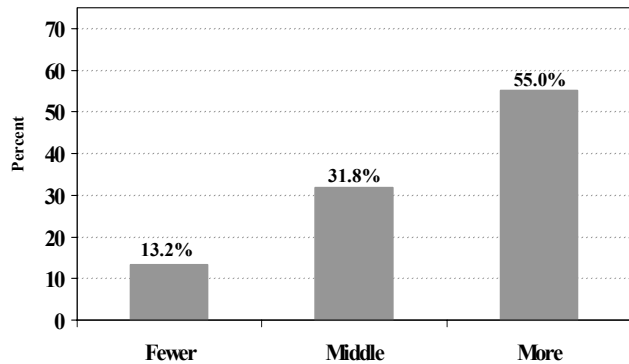
District Court Judges: Sentencing Goals in the “More” Analysis Grouping
Certainty in Meeting the Purposes of Sentencing

Wording of the survey question:

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

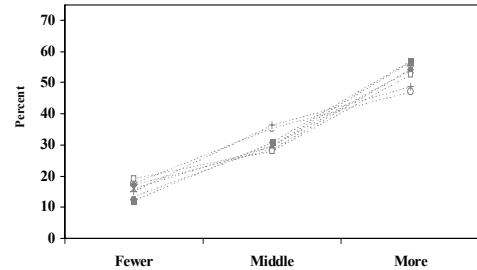
“All cases” responses. Similar to the result above for the goal of unwarranted disparity, Exhibit II-8 illustrates that more than half (55.0%) of district court judges believed that “More” of their imposed guideline sentences provided certainty for the offender.

Exhibit II-8: District Court Judges – Question 7
How often did the guideline sentences provide certainty in meeting the purposes of sentencing?



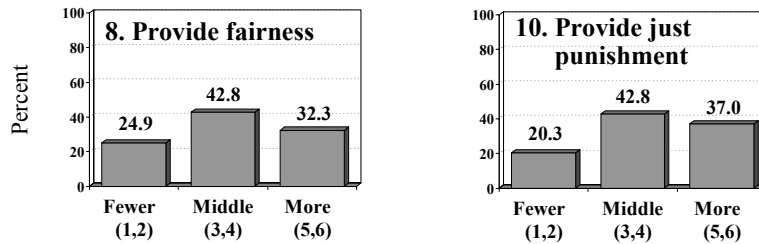
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

Offense type responses. The same pattern of district judge response clustering in the “More” grouping held consistently across the offense types. The graph on the lower right demonstrates that the distributions for offense types almost completely overlap each other.



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

Exhibit II-9: District 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. District Court Judges: Sentencing Goals in the “Middle” Analysis Grouping

Exhibit II-9 above presents the two sentencing goals with respect to which, in the opinions of the responding district court judges, a “Middle” number of the guideline sentences met the congressional mandate. The graphs in the exhibit each indicate that the most frequently reported response of the district court judges was the “Middle” analysis grouping.

The two sentencing goals in the “Middle” analysis grouping 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)).

Comparing the results for the purposes of fairness and just punishment, the proportions of responding district court judges were similar. However, while “Middle” was the most frequently occurring response for district court judges, it never received a majority of the responses. Both “Middle” percentages for these two goals were approximately 43 percent of respondents. Also in both cases, the second most frequently occurring response for the district court judges was the “More” grouping.

The sections below examine the judge responses to the survey questions on these two sentencing goals.

Wording of survey question:

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

“All cases” responses. The greatest number (42.8%) of district court judges responded that the sentencing goal of fairness was met only by a “Middle” number of all guideline sentences combined. However, the individual offense type results highlight substantial variation for this sentencing goal.

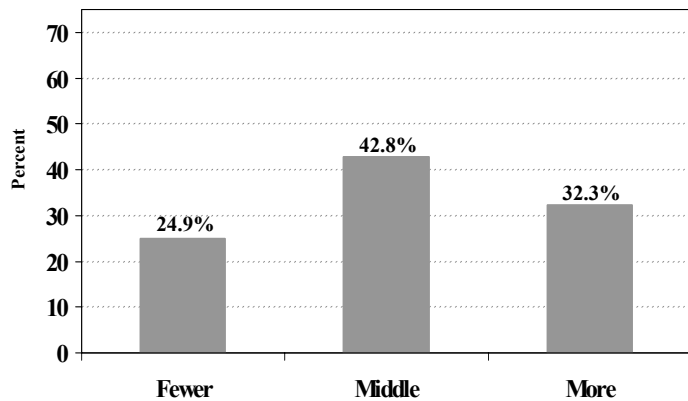
Offense type responses. Of the seven offense types studied in the survey, only two exhibited the “Middle” response category mirroring Exhibit II-10. The first graph on the right shows that these “Middle” offense types were fraud and theft/larceny/ embezzlement.

There were two other offense response patterns.

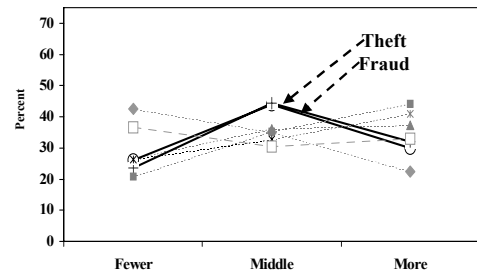
- A “More” response pattern held for three offense types: robbery, alien smuggling, and weapons trafficking. Judges responded in the “More” category more frequently than in either of the other two categories.
- A “Fewer” response pattern held for drug trafficking and immigration unlawful entry (the bottom graph on the right). District court judges responded in the “Fewer” grouping more frequently than in either of the other two response groupings.

Note that for the immigration unlawful entry offenses, the three groupings had nearly equal response levels, suggesting incongruent judicial beliefs about how sentencing goals are met for unlawful entry cases.

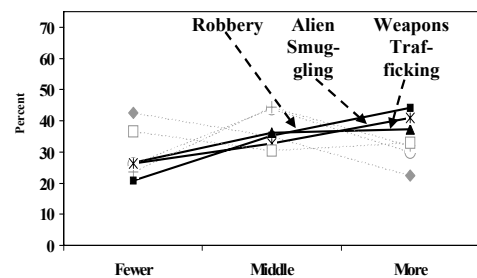
Exhibit II-10: District Court Judges – Question 8
How often did the guideline sentences provide fairness in meeting the purposes of sentencing?



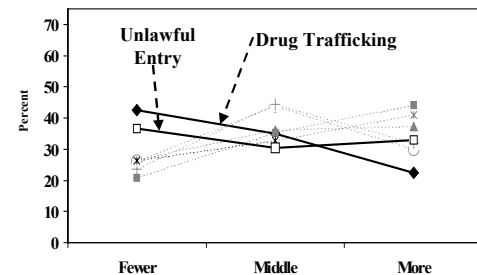
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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.



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

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

Wording of survey question:

Considering cases that you have sentenced [during the past two years], how often did the guideline sentences provide just punishment? Survey Question Number 10)

“All cases” responses.

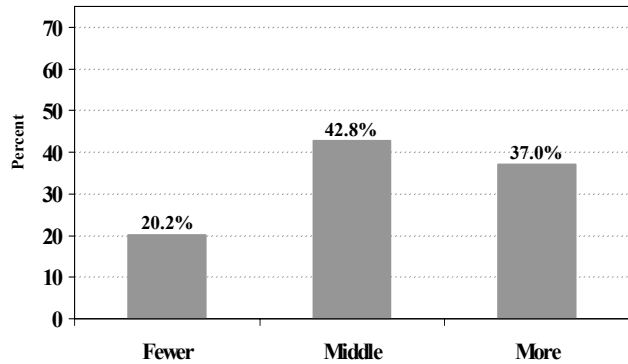
Exhibit II-11 shows that 42.8 percent of responding district court judges agreed that the sentencing goal of just punishment was met only by a “Middle” number of guideline sentences.

Offense type responses.

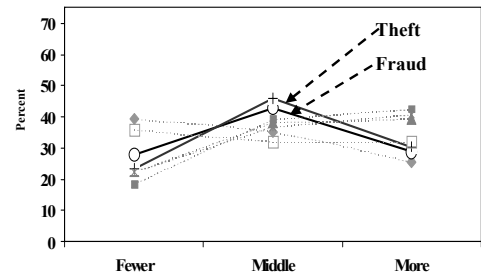
Masked by the generalized data of Exhibit II-11, the individual offense types had response patterns that widely varied.

- The “Middle” response pattern held only for two offense types: fraud and theft/larceny/ embezzlement. These showed the “Middle” response shape with district judge responses clustered in the center category.
- The “More” grouping best characterized the results for weapons trafficking, robbery, and alien smuggling offenses (the dotted unlabeled lines in the graph above on the right). The response with the greatest number of district court judges was that “More” of these offenses met the sentencing goal of just punishment. The percentage differences between the “More” and “Middle” groupings were not large, however.
- Both the drug trafficking and immigration unlawful entry offense distributions most closely resemble the “Fewer” pattern. For these two offense types in the graph at the right, district court judges believed that “Fewer” of their guideline sentences met the sentencing mandate of just punishment.

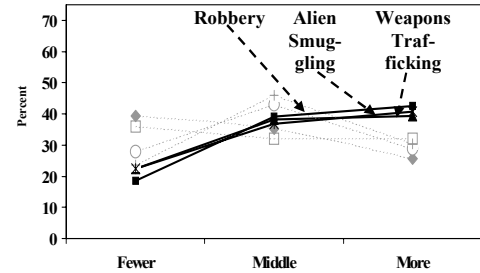
Exhibit II-11: District Court Judges – Question 10
How often did guideline sentences provide just punishment?



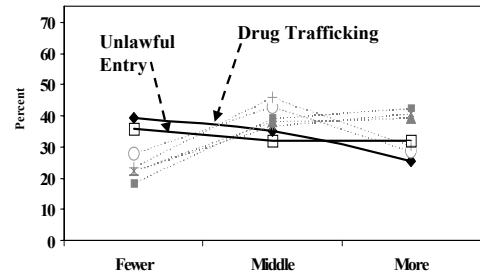
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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

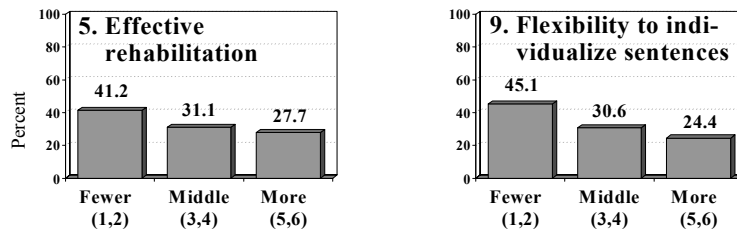


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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

Exhibit II-12: District 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. District Court Judges: Sentencing Goals in the “Fewer” Analysis Grouping

Exhibit II-12 presents data on the goals having a “Fewer” survey response distribution. District court judges responding to the survey believed that overall, many guideline sentences 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 where 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 among the survey results. The sections below describe the district court judges’ beliefs about these sentencing goals.

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

Wording of survey question:

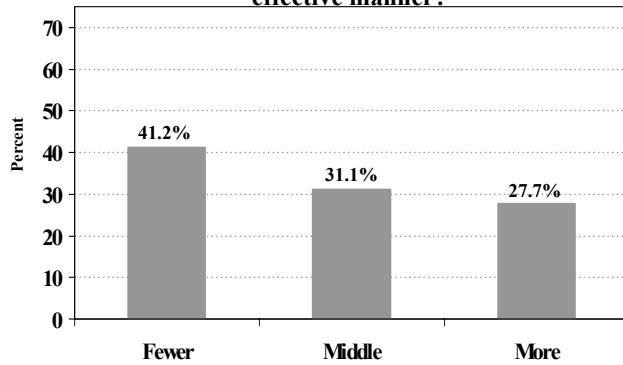
Considering cases that you have sentenced [during the past two years], how often did the guideline sentences, where rehabilitation was appropriate, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner? (Survey Question Number 5)

“All cases” responses. The “Fewer” response category in Exhibit II-13 depicts that 41.2 percent of district court judge respondents reported that “Fewer” cases needing training, care, or treatment were provided that rehabilitation under the guideline sentences.

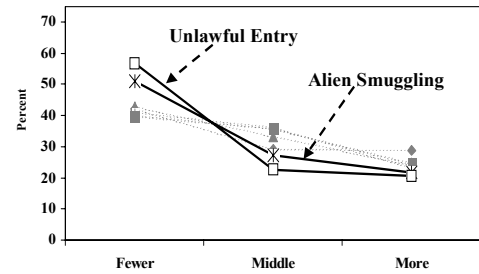
Offense type responses. The graph for the individual offense type results appears on the lower right. The concentration of responses in the “Fewer” category held for all the offense types studied in the survey.

In particular, two offense types had an even more pronounced percentage of responses in the “Fewer” category. Responding district court judges reported that greater than half of their sentences for immigration unlawful entry offenders (56.8%) and alien smugglers (50.9%) did not meet the sentencing goal of providing effective training, care, or treatment.

Exhibit II-13: District 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 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.

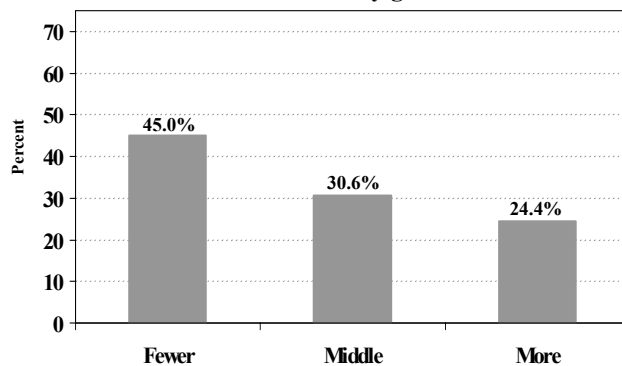
District Court Judges: Sentencing Goals in the “Fewer” Analysis Grouping
Sufficient Flexibility to Permit Individualized Sentences

Wording of survey question:
Considering cases that you have sentenced [during the past two years], how often did the guideline sentences 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)

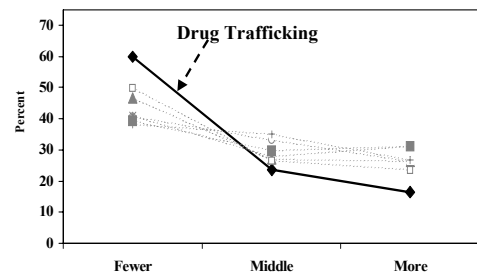
“All cases” responses. The greatest number of responding district court judges (45.0%) reported that “Fewer” cases met the sentencing goal of maintaining flexibility to individualize sentences. These results are presented in Exhibit II-14.

Offense type responses. The graph on the lower right indicates little variation among offense types in district court judges’ responses for the flexibility sentencing mandate. However, for drug trafficking offenses, there is a notably higher concentration of district court judge responses in the “Fewer” response category. Sixty percent (59.9%) of the responding district court judges reported that “Fewer” of their drug trafficking guideline sentences met the sentencing goal of flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices.

Exhibit II-14: District 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 Statutory Mandatory Minimum Provisions on Sentencing Goals

Wording of the survey question:

Considering cases that you have sentenced [during the guideline sentences involve minimum statutory ability to impose sentences that reflect the statutory
(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 mandates. Exhibit II-15 displays the combined responses from district court judges to the question of how often mandatory minimum statutory provisions affected attainment of sentencing goals. The combined data in the exhibit, however, masked substantial offense type variation, as explained below.

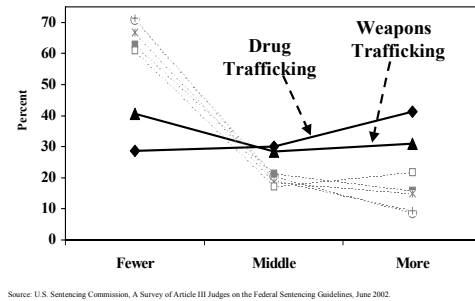
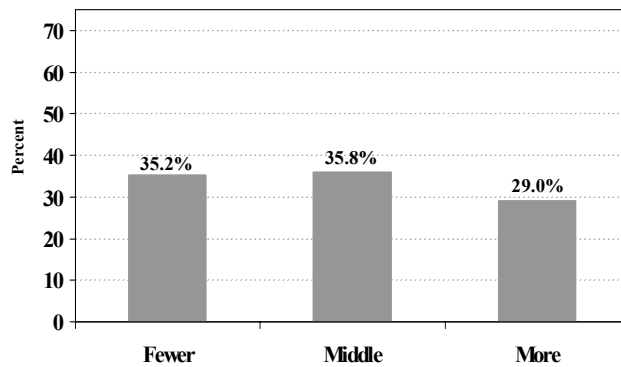


Exhibit II-15: District Court Judges - Question 2

How often did the guideline sentences involve minimum statutory provisions that affect the court's ability to impose sentences that reflect the statutory purposes of sentencing?



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

“All cases” responses. In Exhibit II-15 the responding district court judges were almost uniformly split among the three response groupings. The groupings of “Fewer” and “Middle” had almost identical results, each with approximately 35 percent of responding district court judges (and thus, a combined 71.0% of the responding judges).

Offense type responses. The Exhibit II-15 “All cases” responses about mandatory minimum statutory provisions impact are of dubious relevance in the analysis. 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 example, only 27.2 percent of all guidelines cases sentenced in fiscal year 2001 were sentenced under mandatory minimum statutory provisions. However, among drug offenders only, substantially over half (60.2%) of the convictions involved mandatory minimum statutory provisions.⁵ It would be expected that those same offense types sentenced more frequently under statutes with mandatory minimum provisions also would be those offense types more likely to experience any possible impact of mandatory minimum statutory provisions on sentencing goals.

The graph on the right demonstrates that the impact of mandatory minimum statutory

⁵U.S. Sentencing Commission, 2001 Sourcebook of Federal Sentencing Statistics, Table 44, page 79.

provisions were perceived by judges as strongly related to offense type. Five of the seven offense types (represented by the set of unlabeled dotted lines) show a common pattern: an overwhelming majority of responses in the “Fewer” category. These five offense types were fraud, theft/larceny/embezzlement, robbery, alien smuggling, and immigration unlawful entry, and always more than 60 percent of the district judge responses were in the “Fewer” category. Even higher levels (above 70 percent) of “Fewer” responses were present for fraud and theft/larceny/embezzlement. The most frequent answer for responding district court judges was that “Fewer” cases in these offense types had statutory mandatory minimum provisions that affected the guidelines’ ability to impose sentences meeting the statutory purposes of sentencing.

The graph also demonstrates the conspicuously varying response patterns for drug trafficking and weapons trafficking offenses. Not surprisingly, it is more common for statutes covering either of these offenses to contain mandatory minimum statutory provisions.

- The drug trafficking response pattern in the graph resembles the “More” pattern, and is strikingly different from the pattern for all other offense types studied in this survey data. The district court judges responded in the “More” grouping more frequently than for either of the other two response groupings.
- In contrast, the response pattern for weapons trafficking offenses is consistent with the “Fewer” response grouping of all the other offense types in the graph. However, the percentage (40.6%) of district court judge responses in the “Fewer” category for weapons trafficking offenses was 20 to 30 percentage points lower than the responses for the other five offense types described above.

B. Sentence Determination

1. District Court Judges: Availability of Sentence Types

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 guidelines Sentencing Table provides instructions on appropriate sentence types:

- probation only, with no confinement,⁶
- probation combined with a non-imprisonment sentence alternative,⁷
- substitution of some quantity of imprisonment with a non-imprisonment sentence alternative,⁸ and
- imprisonment.⁹

The survey asked district court judges to indicate whether more or less availability of the non-imprisonment options in Zone A, B, and C would better serve the purposes of sentencing. Their responses appear in Exhibits II-16, II-17, and II-18, respectively.

District Court Judges: Availability of sentence types

Probation

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 II-16 indicates that the overwhelming majority of responding district court judges reported that either they were satisfied with the availability of straight probation options, or they would like these options to be even more available. Two response patterns are noted.

“More Available” for one offense type: First, drug trafficking was the only offense type

⁶In Zone A, the judge can impose straight probation (§5B1.1). All guideline ranges in Zone A include zero (0) months imprisonment as the lower endpoint in the Sentencing Table.

⁷In 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).

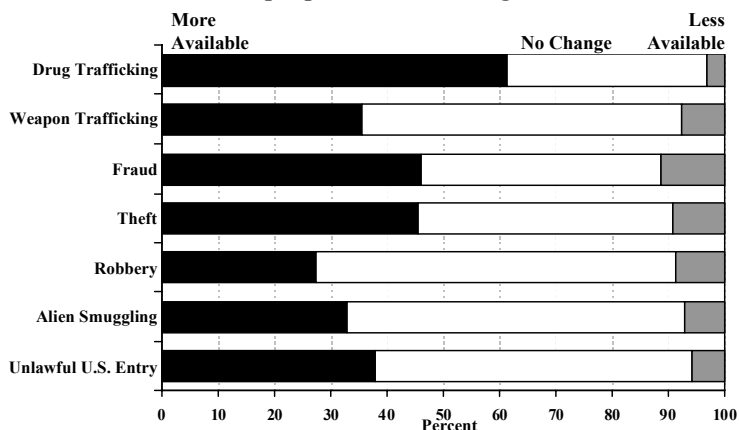
⁸In Sentencing Table Zones B and C, the judge can impose supervised release with conditions of non-imprisonment confinement, for a portion of imprisonment. The non-imprisonment confinement includes community confinement, home detention, or intermittent confinement (§5C1.1). This option is limited in 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.

⁹In Sentencing Table Zone D, the judge must impose a sentence of imprisonment.

with respect to which the responding district court judges were more likely (55.5%) to select the “More Available” option than either of the other two response options.

“No Change” for six offense types: The second pattern typifies all other six offense types included on Exhibit II-16. For these offenses, the district court judges’ most frequent response was “No Change.” For four of these six offense types,¹⁰ the “No Change” response was chosen by more than half of the district court judges. For the other two offense types (fraud and theft/larceny/embezzlement), “No Change” was the most frequent answer chosen, but it was chosen by less than half of responding district court judges. The proportion of “No Change” and “More Available” responses were nearly equal.

Exhibit II-17: District Court Judges- Question 11b
Identify where you believe that changes in the availability of probation plus confinement conditions would better promote 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.

District Court Judges: Availability of sentence types
Probation with confinement conditions

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 II-17 reports the district court judge responses concerning the availability of probation with confinement condition sentences. The results are similar to those for straight probation above, with very few responding district court judges reporting that this sentencing option should be less available.

“More Available” for three offense types: Drug trafficking again was the only offense type with respect to which more than half (61.4%) of district court judge respondents preferred “More Availability” of probation with confinement condition sentences. Also, while “More Available” also was the most frequent response for fraud and theft/larceny/embezzlement offenses, fewer than half of the district court judges selected this answer.

“No Change” for four offense types: Finally, the answer category “No Change” was

¹⁰These four offense types were weapons trafficking (60.6%), robbery (68.8%), alien smuggling (62.2%), and unlawful entry (53.3%).

selected by a majority of responding district court judges for the remaining four offense types: weapons trafficking (56.8%), robbery (64.1%), alien smuggling (59.8%), and immigration unlawful entry (56.4%). This pattern matches the data in Exhibit II-16 for these offenses, although at a magnitude somewhat smaller than the data for Exhibit II-17.

District Court Judges: Availability of sentence types

Imprisonment plus supervised release confinement condition sentences.

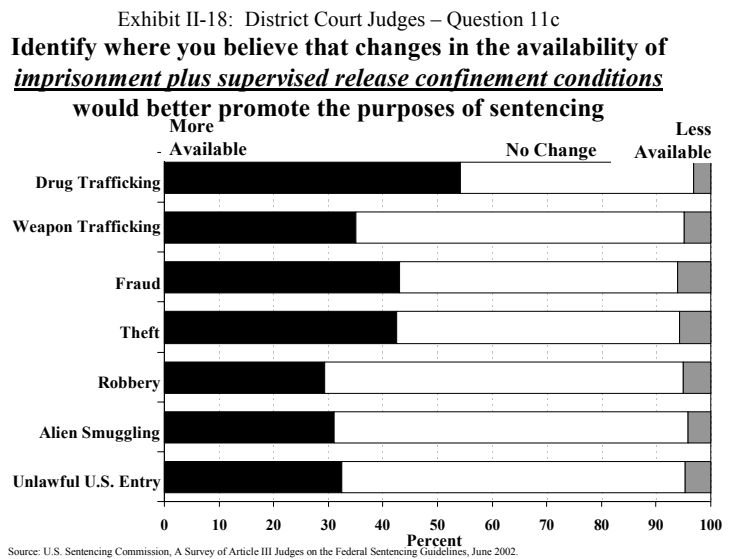
Wording of the survey question:

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 better promote the purposes of sentencing. (Survey Question Number 11c)

Exhibit II-18 shows response patterns similar to those above.

“More Available” for one offense type: Again more than half (54.1%) responding district court judges wanted to see supervised release confinement conditions more available for drug trafficking offenders.

“No Change” for six offense types: For all other offense types, not only was the most frequent response “No Change,” but for all the six offenses more than half of the responding district court judges registered this response. The size of this majority response ranged from 51.0 percent of responding district court judges for fraud offenses, to 65.5 percent of responding district court judges for robbery offenses.



2. Appropriateness of Emphasis Placed on Defendant Characteristics

Wording of the survey question:

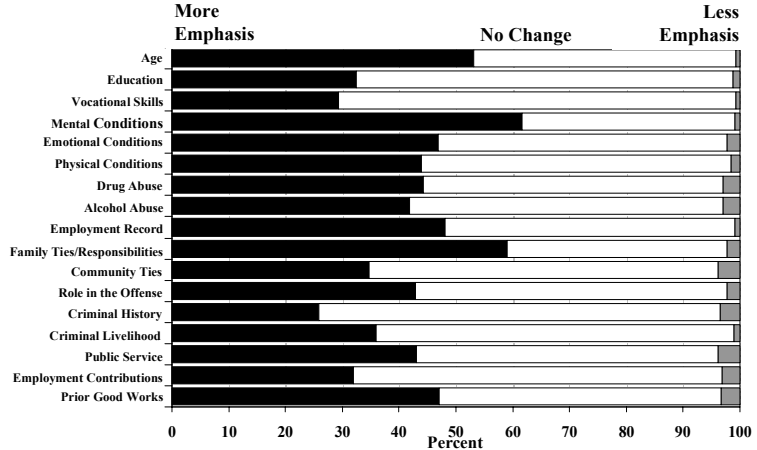
Based on the cases that you personally have sentenced, do you believe that the guidelines should place less or more emphasis on any of the following defendant characteristics for sentencing determination? (Survey Question Number 12)

The survey instrument listed 17 defendant characteristics and asked judges to indicate which characteristics should receive less or more emphasis in sentencing. Exhibit II-19 shows that for 13 of these characteristics¹¹ — i.e., all but four of them — a majority of district court judges responded that “No Change” was needed in the emphasis given them for sentencing. The sizes of these majority responses in the “No Change” category ranged from 51.0 percent (for employment record) to 70.7 percent (for criminal history).

Three of the remaining characteristics all had greater than 50 percent of district court judge respondents reporting that “More Emphasis” was needed for sentencing determination. These characteristics were:

- age (53.2% of responding district court judges),
- mental condition (61.7% of responding district court judges), and
- family ties or responsibilities (59.0% of responding district court judges).

Exhibit II-19: District Court Judges – Question 12
Should the guidelines place *more or less emphasis* on the following defendant characteristics for sentence determination?



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

Finally, the one last characteristic — prior good works — had a closely split response: “No Change” at 49.7 percent and “More Emphasis” at 47.0 percent of responding district court judges.

¹¹The 13 “No Change” majority characteristics reported by the responding district court judges were: education, vocational skills, emotional conditions, physical conditions, drug abuse, alcohol abuse, employment record, community ties, role in the offense, criminal history, criminal livelihood, public service, and employment contributions.

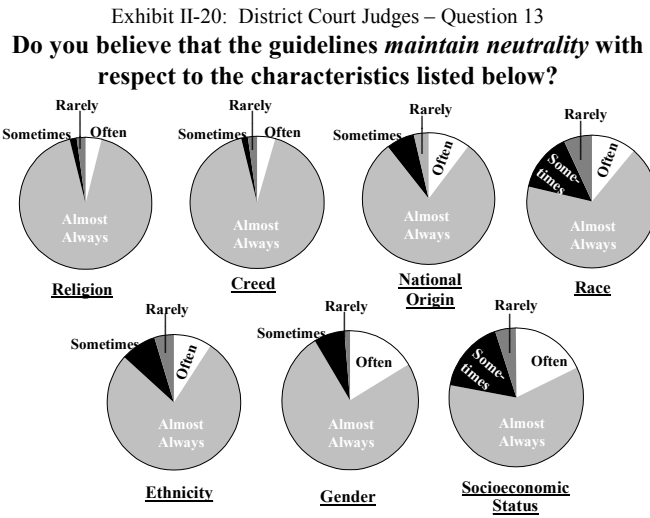
3. Maintain Sentencing Neutrality

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 judges to indicate whether the guidelines maintained neutrality with respect to seven cited defendant characteristics. The results are presented in Exhibit II-20.

For every characteristic, more than half of district court judges reported that neutrality was maintained “Almost Always.” The characteristics and the percentage of “Almost Always” responses varied between 59.8 percent and 92.3 percent and can be grouped as follows:



- religion or creed (more than 90% of responding district court judges),
- national origin, ethnicity, or gender (more than 70% of responding district court judges),
- race (more than 60% of responding district court judges), and
- socioeconomic status (more than 50% of responding district court judges).

4. Avoid Unwarranted Disparity

Wording of the survey question:

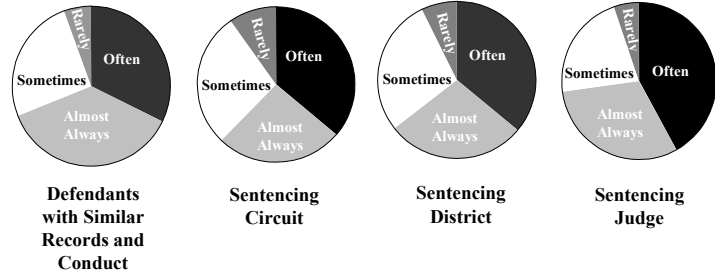
Based on the cases that you personally have sentenced, do you believe that the guidelines avoid unwarranted disparity with respect to the characteristics listed below? (Survey Question Number 14)

Exhibit II-21 presents the results of district court judges’ assessments of unwarranted disparity causes. The survey question focused on the guidelines’ role in avoiding unwarranted disparity within the judicial structure: among sentencing judges, among sentencing districts, or among sentencing circuits. In addition, the question asked whether the judge perceived that the guidelines avoided unwarranted disparity among defendants with similar records and conduct.

The most positive response category for this question (i.e., the one that would provide the most positive finding for guidelines achievement) is “Almost Always.” However, only roughly one third or fewer district court judge respondents reported that the guidelines “Almost Always” avoided unwarranted disparity.

By adding together the two most positive guideline outcomes (i.e., the responses of “Almost Always” and “Often”), the district court judge answers comprised a positive majority. Thus, summing the “Almost Always” and “Often” responses, more than half of responding district court judges indicated that unwarranted disparity was avoided across:

Exhibit II-21: District Court 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.

- defendants with similar records and conduct (69.0%),
- sentencing districts (64.4%),
- sentencing circuits (62.2%), and
- sentencing judges (72.7%).

These data imply, however, that 30 to 40 percent of district judges believed that the guidelines avoided disparity in these areas only “Sometimes” or “Rarely.”

5. Respect for the Law

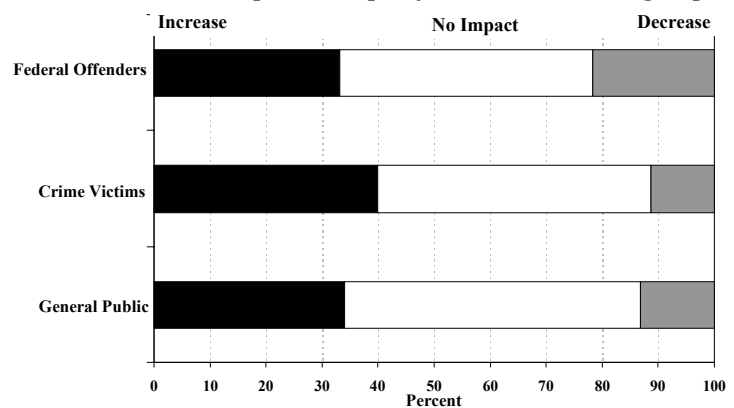
Wording of the survey question:

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 groups? (Survey Question Number 15)

This survey question asked whether the guidelines had increased respect for the law among federal offenders, crime victims, or the general public. Exhibit II-22 illustrates that the most frequently cited answer for each category was “No Impact”: 45.1 percent of federal offenders, 48.9 percent of crime victims, and 52.7 percent of the general public.

Among those district court judges who believed that the guidelines had affected respect for the law, the respondents were more likely to say the effect was to increase respect, rather than to decrease respect. This was particularly true for crime victims and the general public: at a rate of

Exhibit II-22: District 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.

three-to-one, district court judges who believed there was a guidelines impact were more likely to believe that the guidelines had increased respect for the law.

C. Summary Guideline Assessment and Perceived Challenges

1. Guideline Achievement in Furthering the Purposes of Sentencing

Wording of the survey question:

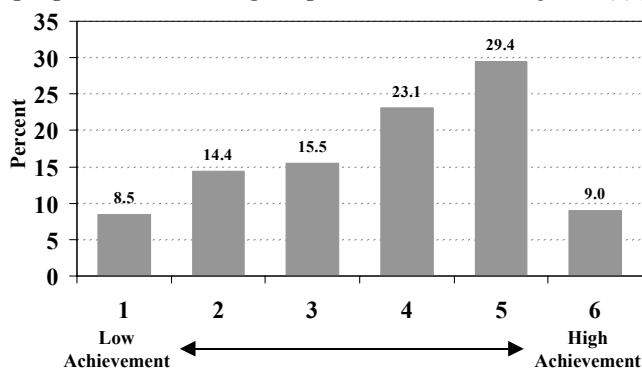
Please mark on the scale below to indicate your rating of the federal sentencing guideline system’s achievements in furthering the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2). (Survey Question Number 18)

This survey item asked the district court judges to rate overall the federal sentencing guideline system’s achievements in furthering the general purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2). Exhibit II-23 presents the results.

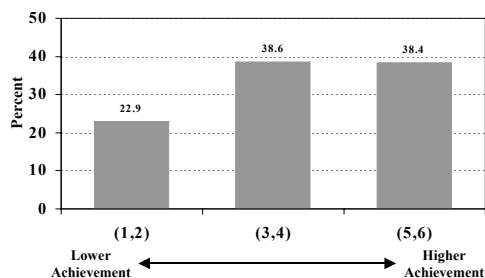
On the six-level scale, with six representing “High Achievement,” the district court judges’ most frequently (29.4%) cited response was “5,” while the second most frequently (23.1%) cited response was “4.”

Using the three-category analysis grouping employed elsewhere in this report, the graph shows essentially a “tie” between the responding district court judges answering in the “Middle” grouping (38.6 % for responses of 3 or 4) and in the “Higher” grouping (38.4% for responses of 5 or 6). However, while over three-fourths¹² of district judge respondents answered in the middle and higher response category groupings, still it is noteworthy that nearly one-quarter (22.9%) of responding district court judges believed that overall the guidelines had merely low achievement in furthering the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2).

Exhibit II-23: District 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. District Court Judge Open Survey Questions: Challenges for the Guidelines

¹²The sum of 38.6% and 38.4% is 77.0%.

The survey provided opportunities for district 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 questions:

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?

Lists of All Challenges.¹³ A total of 455 issues, provided by 248 different district court judges, were contained on the questionnaire forms under Question 16. The five issues receiving the highest number of references¹⁴ were:

- drug policy (18%)

Most district court judges listing this topic area mentioned the quantity ratio disparity of 100-to-1 between crack cocaine (cocaine base) and powder cocaine, with additional concern expressed regarding the harshness of penalties for minor drug offenders (particularly mules).¹⁵

- judicial discretion (17%)

The thrust of this topic dealt with the flexibility of the sentencing judge to tailor sentences specifically to the offender. Judges listing this topic desired greater judicial discretion, with less arbitrary “numerical calculation” and more flexibility to consider factors such as (for example) an offender’s age, mental condition, drug addiction, or health status.

¹³Survey Question Number 16.

¹⁴The 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 was greater than the total number of responding judges.

¹⁵Several responses relating the availability of diversion sentences or drug court systems were included under the category of “sentencing alternatives need.”

- guideline changes (15%)

Responses in this topic area came from judges who mentioned a policy in the guidelines themselves that they believed required adjusting. The most frequently cited area was white collar crimes and the need for these offenses to have higher sentences (particularly to take into account victim harm or impact). Also cited were offenses for which some judges believed sentences were too low (specifically robbery, weapon trafficking, sexual abuse, or organizational crime offenses) or too high (specifically fraud/telemarketing, weapon trafficking, immigration generally and immigration unlawful entry offenses in particular, or bank robbery offenses). Other judges were dissatisfied with the current guidelines' handling of role in the offense adjustments.

- guideline philosophy (10%)

Many district court judges responded to this question by citing the philosophical foundations of the Sentencing Reform Act, noting the difficulty in addressing these very difficult, if not impossible, mandates. The challenge of balancing uniformity and flexibility was a common sentiment and included concerns with relevant conduct, proportionality, the need to “change with the times,” the *Apprendi* decision,¹⁶ and the constant need to modify and respond to changes in society and the law.

- balance of power (10%)

judges cited the greater power given to the prosecution (particularly with regard to plea and charge bargaining and the unique ability to make section 5K1.1 substantial assistance motions). The impression from these responses was that the prosecutor had too much power, and this power undercuts the guideline system.

In fact, several of these five categories were interrelated, and often a judge would reference two together. For example, it was common for a judge to mention both the need for more judicial discretion and the perceived excessive power of the prosecutor. Additionally, the topic area of mandatory minimums accounted for eight percent of all issues cited, while the challenges of §5K1.1 substantial assistance departures encompassed seven percent of all issues cited. Viewing mandatory minimums as a limitation on judicial power vested within the charging purview of the prosecutor, and viewing the judge's inability to make a §5K1.1 motion that is limited to the prosecutor only, both of these topic areas can also be linked to the theme of the balance of power.

Consequently, the debate over power in the courtroom was a major issue for district court judges. By combining the categories of judicial discretion, prosecutorial power, mandatory minimums, and §5K1.1 substantial assistance departures, a total of 41 percent of all areas cited involved control of the sentencing process.

¹⁶*Apprendi v. United States*, 530 U.S. 466 (2000).

Greatest Challenges to the Guidelines.¹⁷ In total, 160 district court judge responses were available for this analysis. Of these, the most frequently cited “greatest challenges” were:

- drug policy (20%),
- guideline philosophy (20%),
- judicial discretion (14%),
- balance of power (11%), and
- §51.1 substantial assistance departures (7%).

For responses to the second greatest challenge to the guidelines, the five most frequently cited “second greatest challenges” were:

- guideline philosophy (19%),
- judicial discretion (16%),
- drug policy (14%),
- disparity (10%), and
- guideline changes (10%).

In this list, the category of disparity appeared for the first time in the “top five.” This challenge category included judges who cited variations in the ways that districts and circuits (or more generally, geographic regions of the country and the role of local attitudes about the seriousness of offenses) handled guideline application and departures. Additionally mentioned was the seemingly unjustifiable differences between sentence lengths in state and federal prosecutions for the same crimes. Another aspect of these responses reflected a concern that departures themselves introduced disparity into the judicial system.

Combining the “greatest” and “second greatest” challenge data, the major challenges can be ranked in terms of the responding district court judges’ opinions. For the 160 district court judges who provided information on these questions, the top challenge was guideline philosophy, with 34 percent of the district court judges classifying this as the greatest or second greatest challenge. The second ranked area was drug policy, with 31 percent of district court judges classifying this as the greatest or second greatest challenge. In third place was judicial discretion, with 26 percent classifying this as the greatest or second greatest challenge.

¹⁷Survey Question Number 17.

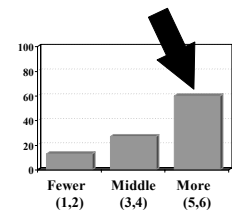
CHAPTER III CIRCUIT COURT JUDGE SURVEY RESPONSES

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.

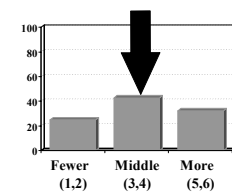
A. Results on the Statutory Goals of Sentencing for Circuit Court Judges

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.

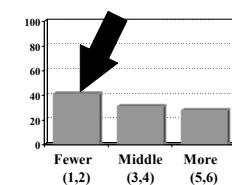
The “**More**” bar: Circuit court judge responses were concentrated in the right-most (“More”) response bar. (See example to the right.) The graph indicates that among the three categories, the greatest number of responding judges reported that “More” of the sentences heard on appeal met the specified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



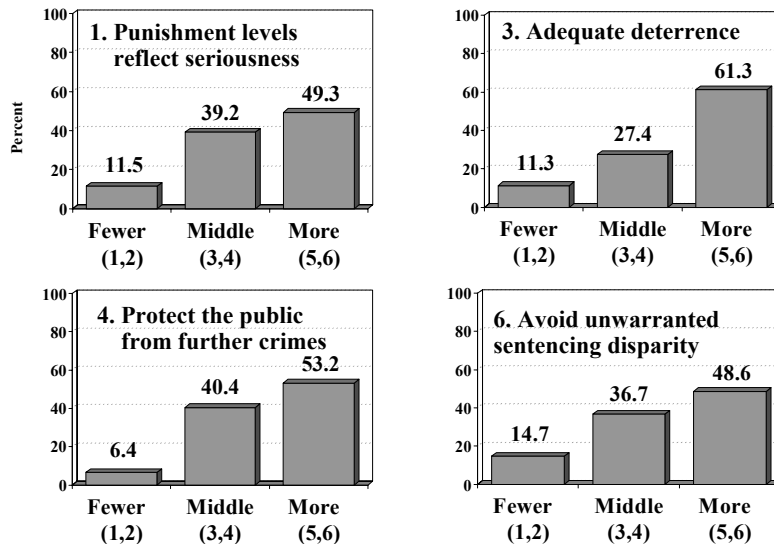
²⁶See the discussion of the “More,” “Middle,” and “Fewer” distributions on pages I-4 through I-6.

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)

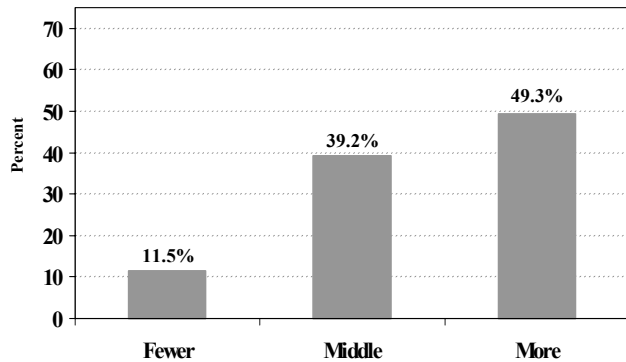
Exhibit III-3 contains the circuit court judge responses for this question about guideline punishment levels.

“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.

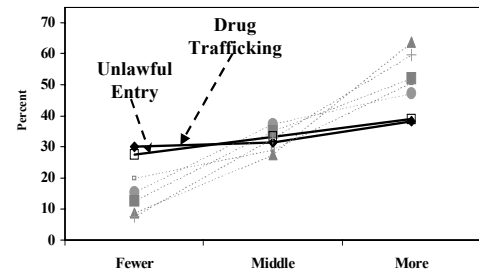
Offense type responses. The response distributions for the seven targeted offense types are shown in the graph to the right.

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.

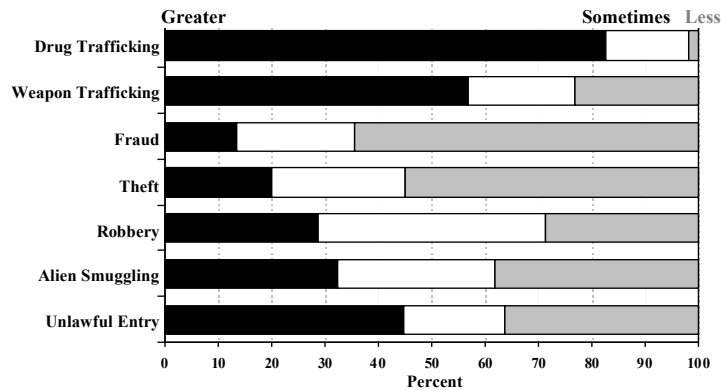


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

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:

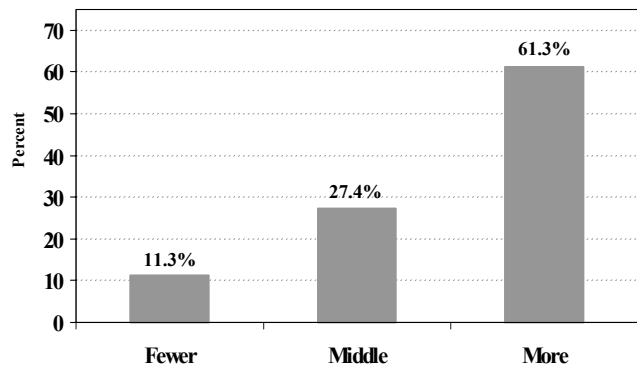
Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, afford adequate deterrence to criminal conduct? (Survey Question Number 3)

“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.

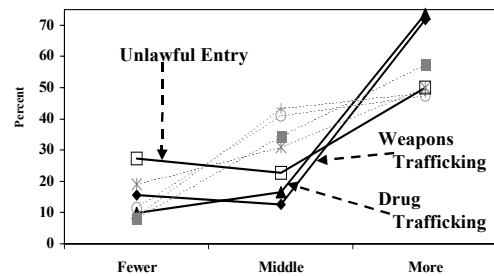
Offense type responses. The graph on the lower right shows responses to the deterrence sentence goal by offense types. Four offense types (the dotted and unlabeled pattern lines in the graph) followed the “More” pattern of Exhibit III-5. However, several offense types show variation.

- 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

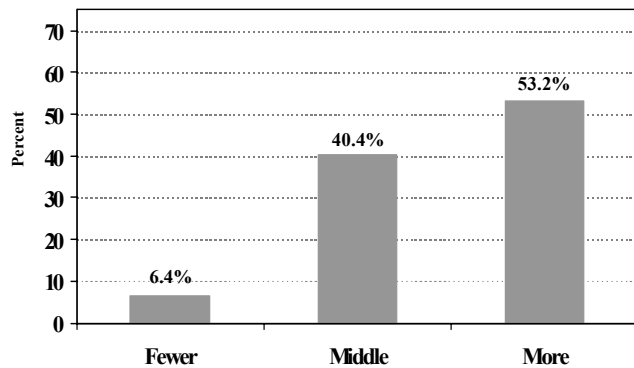
Wording of survey question:

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.

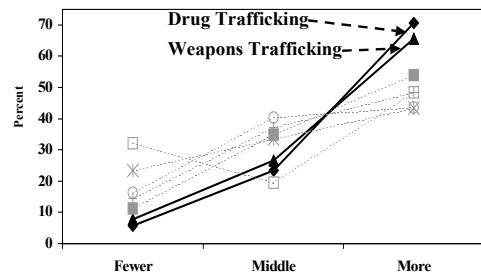
Offense type responses. The first graph below and to the right shows the distribution responses for the selected offense types. Four of the offense types followed the “More” pattern of Exhibit III-6.

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

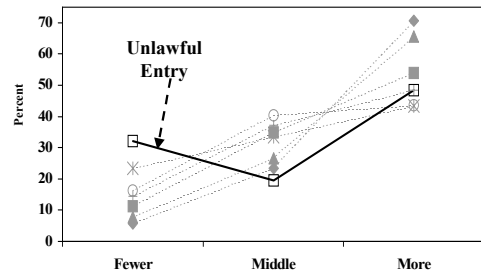


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

- 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:

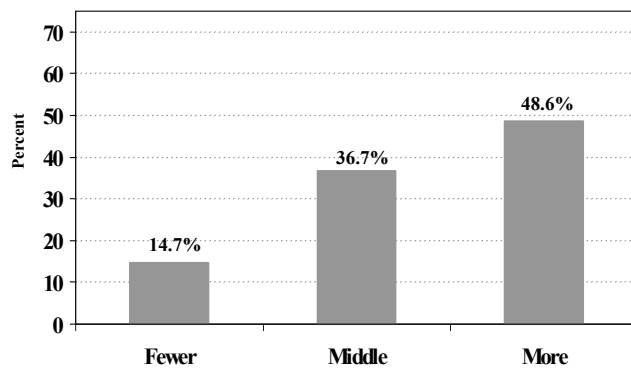
Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct? (Survey Question Number 6)

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.

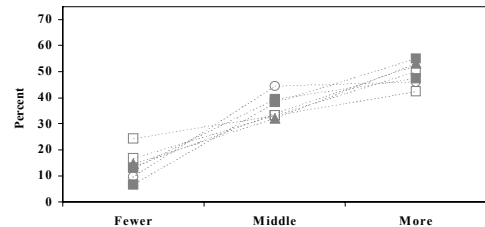
“All cases” responses. Exhibit III-7 indicates that almost half (48.6%) of responding circuit court judges reported that unwarranted disparities were being avoided for “More” of the cases they heard on appeal.

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?



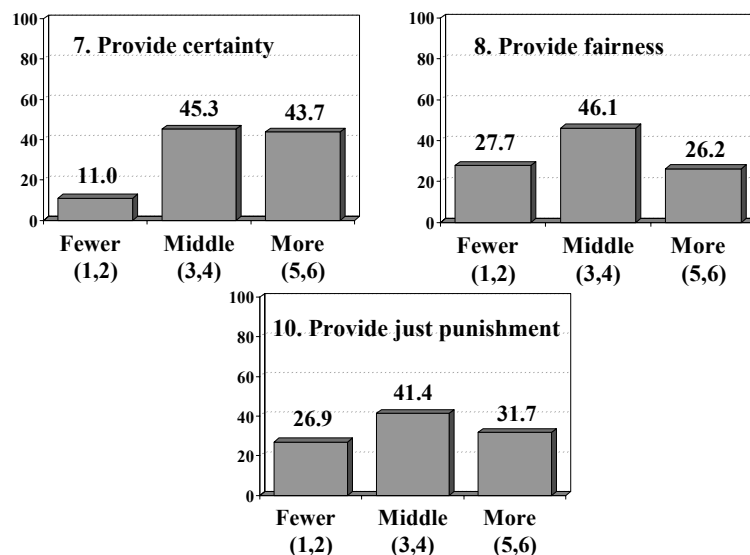
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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:

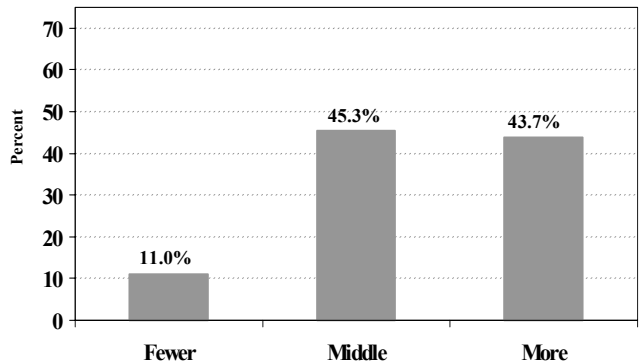
Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, provide certainty in meeting the purposes of sentencing? (Survey Question Number 7)

“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.

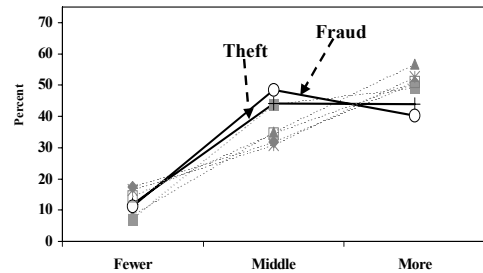
Offense type responses. The “All cases” circuit court responses in Exhibit III-9 masked underlying differences among the individual offense types. This is illustrated in the graph below.

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).

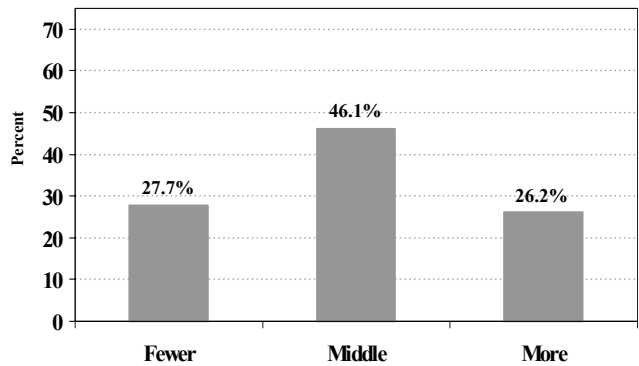
Offense type responses. As was the case for the goal of certainty discussed above, the goal of fairness also exhibits different response patterns for some offense types. The generalized pattern in the exhibit is an amalgamation of the response patterns for each offense type.

- 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.

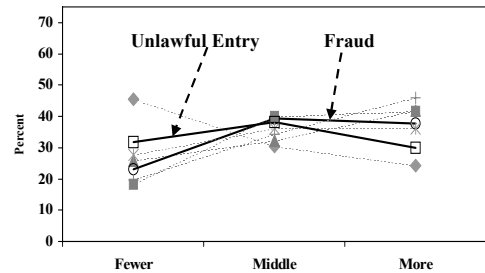
- The “Middle” response patten held for only two of the survey offense types: fraud and immigration unlawful entry. These patterns are shown in the graph above.

- 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.

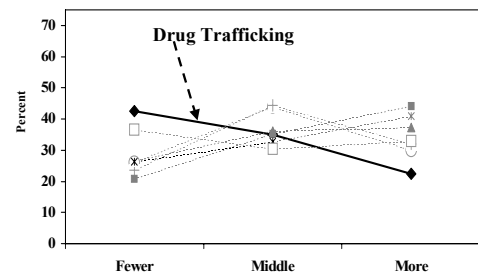
Exhibit III-10: Circuit Court Judges – Question 8
How often did the guideline sentences provide fairness in meeting the purposes of sentencing?



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.

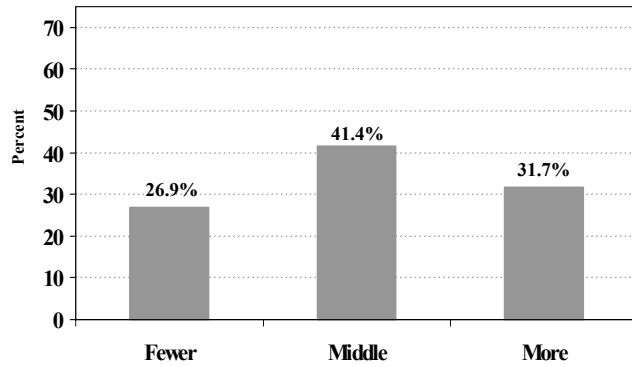
Offense type responses. As displayed in the graph on the immediate right, only fraud and theft/larceny/embezzlement have the “Middle” response shape consistent with results of Exhibit III-11.

- 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.

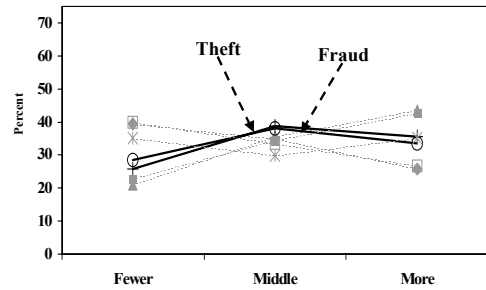
The offense type of alien smuggling had its own unique response pattern. It had an equal number of responding circuit court judges (approximately 35%) in each of the “Fewer” and “More” response groupings, and the remaining 30 percent of judges in the “Middle” category. This almost “flat” distribution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

Exhibit III-11: Circuit Court Judges – Question 10

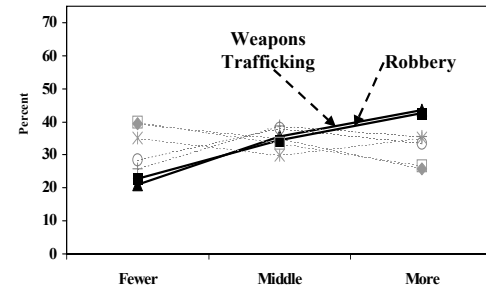
How often did guideline sentences provide just punishment?



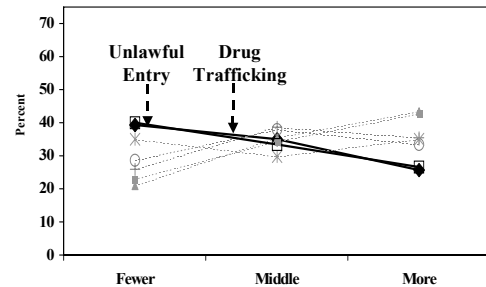
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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

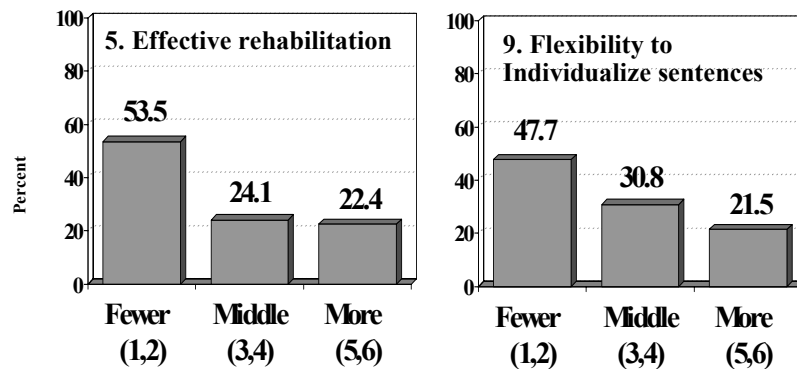


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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

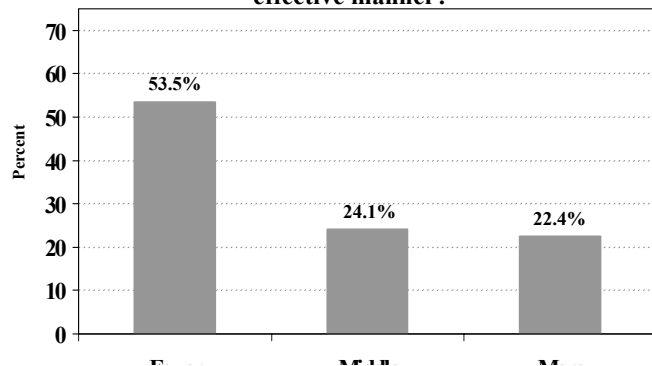
Wording of survey question:

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.

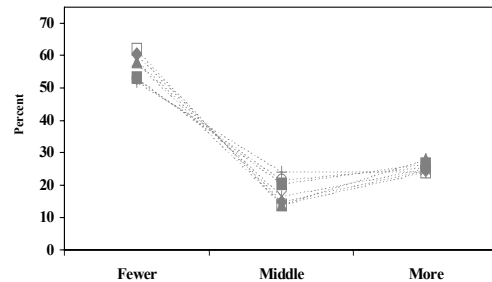
The responses to this question were among the most critical with regard to the guidelines’ achievement of the sentencing goals. For the cases that the circuit court judges heard on appeal, over half (53.5%) of the respondents believed that “Fewer” of the cases met the sentencing goal of training, care,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

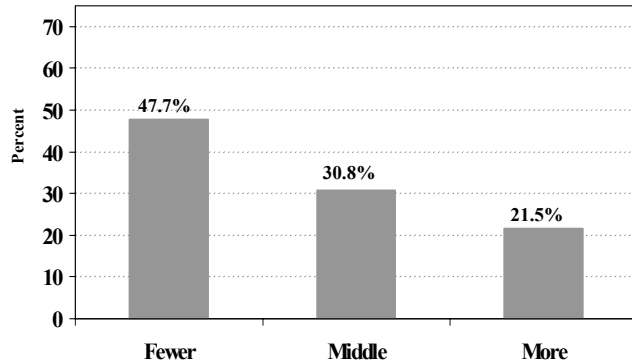
Considering sentencing cases that have come to you on appeal [during the past two years], how often did the guideline sentences, as properly applied, maintain sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment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

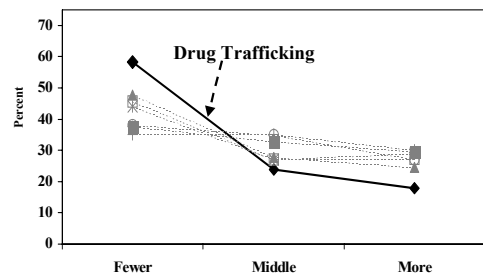
Offense type responses. Of the seven offense types examined in the survey, all mirror the “Fewer” analysis grouping of Exhibit III-14. Regardless of offense type, the greatest number of responding circuit court judges reported that “Fewer” sentences heard on appeal met the sentencing goal of flexibility.

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.

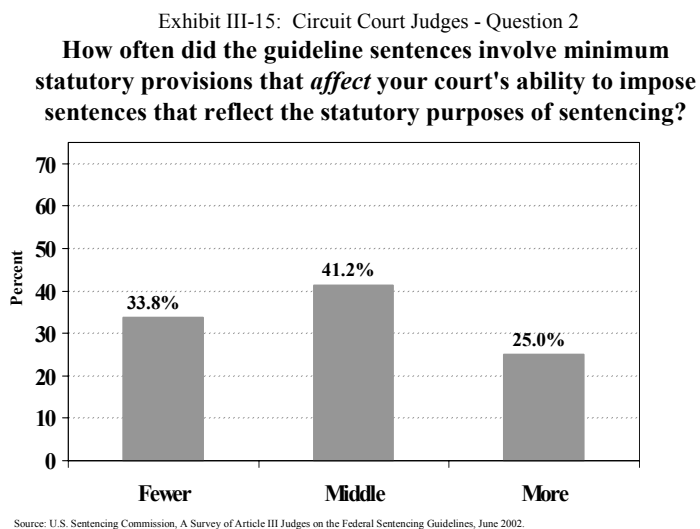
4. Effect of Mandatory Minimum Provisions on Sentencing Goals

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.

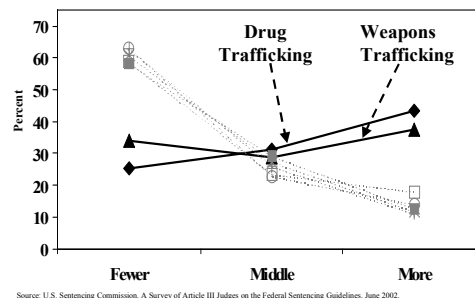


“All cases” responses. In Exhibit III-15, the responding circuit court judges were most likely (41.2%) to report that a “Middle” number of cases heard on appeal had sentencing goals affected by the presence of mandatory minimum provisions. The combined data in the exhibit, however, mask substantial offense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

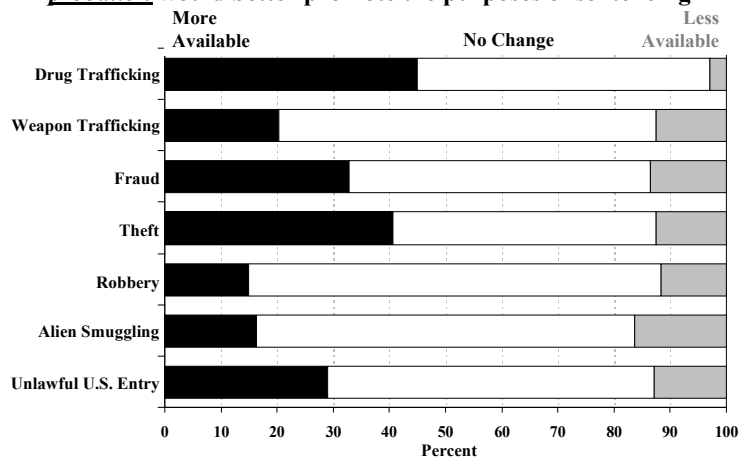
Circuit Court Judges: Availability of sentence types

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.

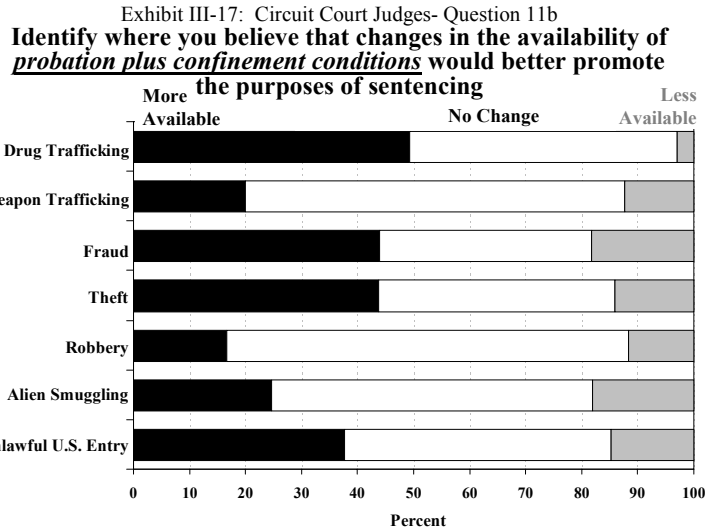
Circuit Court Judges: Availability of sentence types

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

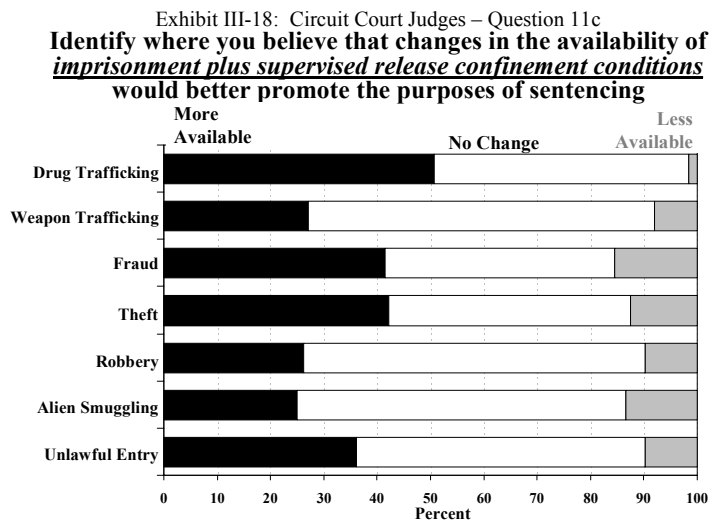
Imprisonment plus supervised release confinement condition sentences.

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.

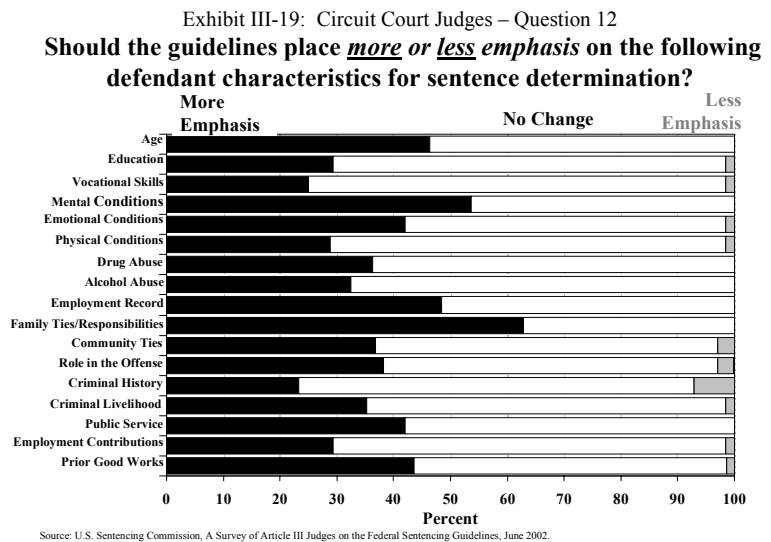
Circuit Court Judges

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)

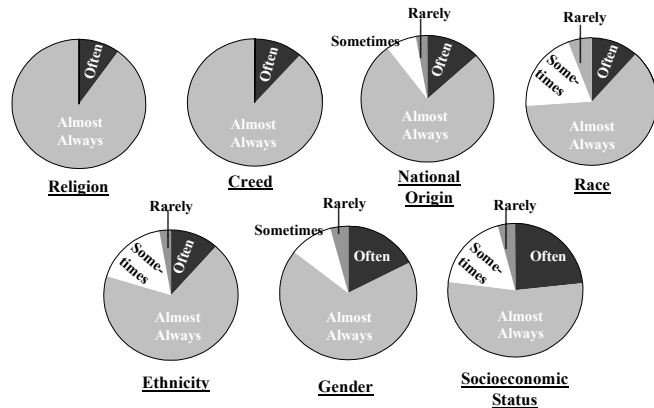
This survey question asked circuit court judges, based on the cases they had personally

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.

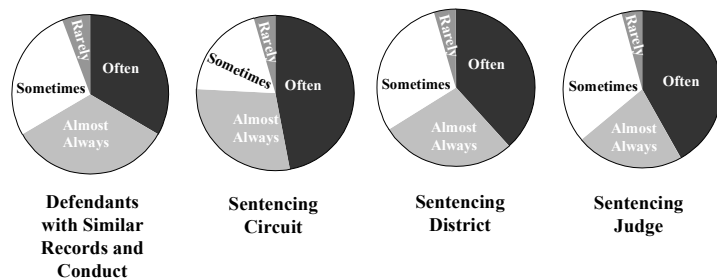
4. Avoid Unwarranted Disparity

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

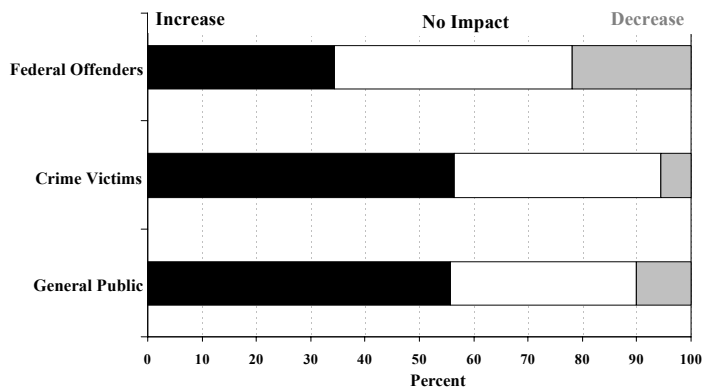
Wording of the survey question:

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)

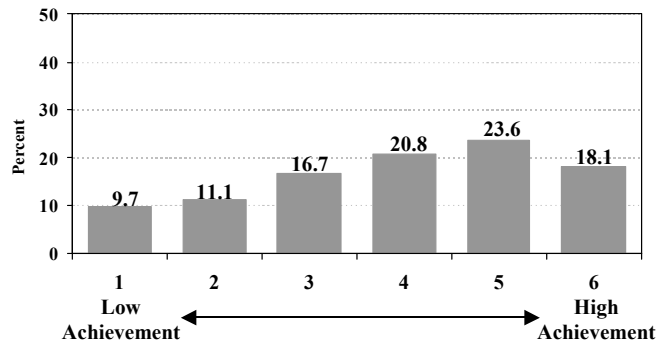
This survey question asked the circuit court judges to rate the federal sentencing guidelines system's achievements in furthering the general purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2). The results are presented in Exhibit III-23.

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.

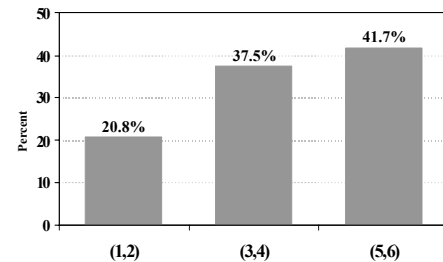
Using the three-category analysis grouping employed throughout this report, the graph on the lower right shows that slightly more responding circuit court judges selected a higher achievement rank over a middle achievement rank: 41.7 percent for the higher achievement answers of 5 or 6, compared to 37.5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



A SURVEY OF ARTICLE III JUDGES ON THE FEDERAL SENTENCING GUIDELINES

IN PREPARATION FOR A FIFTEEN YEAR REPORT ON THE
SENTENCING COMMISSION'S LEGISLATIVE MANDATE

PURPOSE

In its enabling legislation, codified at 28 U.S.C. § 994, the U.S. Sentencing Commission is charged with promulgating and distributing guidelines and policy statements that further the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2).

As the federal guideline system approaches its fifteenth year, the Commission is undertaking a study to determine how judges view the guideline system in terms of these overarching legislative mandates. The results of the survey will be included in the Commission's Fifteen Year Report submitted to Congress. The Commission asks your help in providing accurate data in furtherance of this project.

ANONYMITY

The survey is designed to obtain anonymous responses, but there is a space provided at the end of the questionnaire if you wish to provide your name and district. The U.S. Sentencing Commission will report only aggregate data and at no time will identify any respondent.

PROCEDURE

The questionnaire is composed of two sections. The first section focuses on the statutory purposes of sentencing described in 18 U.S.C. § 3553 and 28 U.S.C. § 991. The second section contains questions about guideline operation in the context of the types of sentences available under the guidelines, statutory interpretations inherent in the guideline structure, and challenges you foresee for future guideline development. There is also opportunity to provide comments.

As a frame of reference, we ask that you generally consider the guideline sentencings that you have experienced within the past two years, or that period of time within the past two years that you have been sentencing. Additionally, your responses are most helpful if you focus on the sentences as computed under the Guidelines Manual, prior to any departures that you considered appropriate. This will help the Commission target the guidelines computations themselves.

RETURN OF SURVEY INSTRUMENT

Please return your completed questionnaire in the accompanying addressed envelope. In order to begin analysis as soon as possible, we ask that you return the questionnaire by January 31, 2002. If you have any questions, please contact Dr. Linda Drazga Maxfield at 202-502-4500 or USSCSurvey@ussc.gov.



- Use a No. 2 pencil or blue or black ink pen only.
- Do not use pens with ink that soaks through the paper.
- Make solid marks that fill the oval completely.
- Make no stray marks on this form.
- Do not fold, tear, or mutilate this form.



CORRECT MARK



INCORRECT MARKS

UNLESS OTHERWISE SPECIFIED, please respond to questions in terms of the sentences that result from the **GUIDELINES COMPUTATIONS THEMSELVES**, prior to any applied departures (DOWNWARD, UPWARD, OR SUBSTANTIAL ASSISTANCE §5K1.1).

Considering cases that you have sentenced, how often did the guideline sentences . . .

(Please respond to Question 1 through Question 10. As you do, consider the sentences you personally have imposed during the past two years.)

1. . . . provide punishment levels that reflect the seriousness of the offense? (18 U.S.C. § 3553(a)(2)(A))

(i) Of all your sentencings:

Few Cases		Almost All Cases
①	②	③
④	⑤	⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases		Almost All Cases
Drug Trafficking	①	②	③
Firearms Trafficking	④	⑤	⑥
Fraud	①	②	③
Larceny/Theft/Embezzlement	④	⑤	⑥
Robbery	①	②	③
Alien Smuggling	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③
	④	⑤	⑥

(iii) For those types of cases where you believe that the 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*?

	Less	Greater	Sometimes Both
Drug Trafficking	L	G	S
Firearms Trafficking	L	G	S
Fraud	L	G	S
Larceny/Theft/Embezzlement	L	G	S
Robbery	L	G	S
Alien Smuggling	L	G	S
Unlawful Entry into U.S.	L	G	S

2. . . . involve minimum statutory provisions that affect your ability to impose sentences that reflect the statutory purposes of sentencing?

(i) For all your sentencings where a mandatory minimum sentence is applicable:

Few Cases		Almost All Cases
①	②	③
④	⑤	⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes where a mandatory minimum sentence is applicable:

	Few Cases		Almost All Cases
Drug Trafficking	①	②	③
Firearms Trafficking	④	⑤	⑥
Fraud	①	②	③
Larceny/Theft/Embezzlement	④	⑤	⑥
Robbery	①	②	③
Alien Smuggling	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③
	④	⑤	⑥

Considering cases that you have sentenced, how often did the guideline sentences . . .

3. . . . afford adequate deterrence to criminal conduct? (18 U.S.C. § 3553(a)(2)(B))

(i) Of all your sentencings:



Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

4. . . . protect the public from further crimes of the defendant? (18 U.S.C. § 3553(a)(2)(C))

(i) Of all your sentencings:



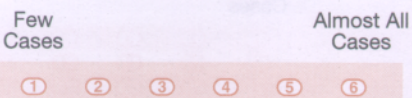
Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

5. . . . where rehabilitation was appropriate, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner? (18 U.S.C. § 3553(a)(2)(D))

(i) Of all your sentencings where rehabilitation was appropriate:



Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes where rehabilitation was appropriate:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

6. . . . 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))

(i) Of all your sentencings:



Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

Considering cases that you have sentenced, how often did the guideline sentences . . .

7. . . . provide certainty in meeting the purposes of sentencing? (28 U.S.C. § 991(b)(1)(B))

(i) Of all your sentencing:

Few Cases		Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%; text-align: center;">1</td> <td style="width: 16.6%; text-align: center;">2</td> <td style="width: 16.6%; text-align: center;">3</td> <td style="width: 16.6%; text-align: center;">4</td> <td style="width: 16.6%; text-align: center;">5</td> <td style="width: 16.6%; text-align: center;">6</td> </tr> </table>			1	2	3	4	5	6
1	2	3	4	5	6			

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases		Almost All Cases			
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

8. . . . provide fairness in meeting the purposes of sentencing? (28 U.S.C. § 991(b)(1)(B))

(i) Of all your sentencing:

Few Cases		Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%; text-align: center;">1</td> <td style="width: 16.6%; text-align: center;">2</td> <td style="width: 16.6%; text-align: center;">3</td> <td style="width: 16.6%; text-align: center;">4</td> <td style="width: 16.6%; text-align: center;">5</td> <td style="width: 16.6%; text-align: center;">6</td> </tr> </table>			1	2	3	4	5	6
1	2	3	4	5	6			

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases		Almost All Cases			
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

9. . . . 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))

(i) Of all your sentencing:

Few Cases		Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%; text-align: center;">1</td> <td style="width: 16.6%; text-align: center;">2</td> <td style="width: 16.6%; text-align: center;">3</td> <td style="width: 16.6%; text-align: center;">4</td> <td style="width: 16.6%; text-align: center;">5</td> <td style="width: 16.6%; text-align: center;">6</td> </tr> </table>			1	2	3	4	5	6
1	2	3	4	5	6			

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases		Almost All Cases			
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

10. . . . provide just punishment? (18 U.S.C. § 3553(a)(2)(A))

(i) Of all your sentencing:

Few Cases		Almost All Cases						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 16.6%; text-align: center;">1</td> <td style="width: 16.6%; text-align: center;">2</td> <td style="width: 16.6%; text-align: center;">3</td> <td style="width: 16.6%; text-align: center;">4</td> <td style="width: 16.6%; text-align: center;">5</td> <td style="width: 16.6%; text-align: center;">6</td> </tr> </table>			1	2	3	4	5	6
1	2	3	4	5	6			

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases		Almost All Cases			
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

PART II: SENTENCE DETERMINATION

11. The sentencing guidelines are required by statute to provide a means to determine the *type* of sentence to impose: probation, a fine, or a term of imprisonment (28 U.S.C. § 944(a)(1)(A)). Thus, the sentencing table in the *Guidelines Manual* precludes certain sentence types from some offenders. For example, in Zone B of the sentencing table, straight probation is not permitted unless there exists a condition providing the judge a basis to depart.

Please identify where you believe that changes in the availability of guideline *sentence types* would better promote the purposes of sentencing.

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/Theft/Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
Straight Probation Sentences (§5B1.1)							
Should be more available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be less available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OR: No change needed (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[For the questions below: Probation Confinement Conditions include intermittent confinement, community confinement, or home detention, as now permitted in Zones A and B.]

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/Theft/Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
Probation with Confinement Conditions (§5B1.3(e))							
Should be more available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be less available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OR: No change needed (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[For the questions below: Supervised Release Confinement Conditions include community confinement or home detention following a term of imprisonment, as now permitted in Zones A, B, and C.]

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/Theft/Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
Imprisonment plus Supervised Release Confinement Conditions (§5C1.1)							
Should be more available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be less available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OR: No change needed (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. The sentencing guidelines are required by statute to address the relevance of certain defendant characteristics, although the importance of some characteristics is de-emphasized.
(28 U.S.C. § 994(d),(e))

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?

For each factor, please mark "L" (Less), "M" (More), or "NC" (No change needed).

	Less	More	No Change		Less	More	No Change
Age (§5H1.1)	L	M	NC	Community ties (§5H1.6)	L	M	NC
Education (§5H1.2)	L	M	NC	Role in the offense (§5H1.7)	L	M	NC
Vocational skills (§5H1.2)	L	M	NC	Criminal history (§5H1.8)	L	M	NC
Mental condition (§5H1.3)	L	M	NC	Criminal livelihood (§5H1.9)	L	M	NC
Emotional condition (§5H1.3)	L	M	NC	Public service* (§5H1.11)	L	M	NC
Physical condition (§5H1.4)	L	M	NC	Employment-related contributions (§5H1.11)	L	M	NC
Drug dependence or abuse (§5H1.4)	L	M	NC	Prior good works (§5H1.11)	L	M	NC
Alcohol dependence or abuse (§5H1.4)	L	M	NC	Others (please specify):			
Employment record (§5H1.5)	L	M	NC	_____	L	M	NC
Family ties and responsibilities (§5H1.6)	L	M	NC	_____	L	M	NC

**Includes military, civic, charitable, or public service*

13. The guidelines are required by statute to maintain neutrality with respect to certain defendant characteristics. (28 U.S.C. § 994(d))

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

For each factor, please mark "R" (Rarely), "S" (Sometimes), "O" (Often), or "A" (Almost Always).

	Rarely	Sometimes	Often	Almost Always		Rarely	Sometimes	Often	Almost Always
Religion	R	S	O	A	Gender	R	S	O	A
Creed	R	S	O	A	Socioeconomic status	R	S	O	A
National origin	R	S	O	A	Others (please specify):				
Race	R	S	O	A	_____	R	S	O	A
Ethnicity	R	S	O	A	_____	R	S	O	A

14. The Sentencing Commission is charged with establishing sentencing policies and practices for the federal criminal justice system that *avoid unwarranted sentencing disparity*. (28 U.S.C. § 991(b)(1)(B), 994(d))

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?

For each factor, please mark "R" (Rarely), "S" (Sometimes), "O" (Often), or "A" (Almost Always).

	Rarely	Sometimes	Often	Almost Always
Defendants with similar records and conduct	R	S	O	A
Sentencing Circuit	R	S	O	A
Sentencing District	R	S	O	A
Sentencing Judge	R	S	O	A
Others (please specify): _____	R	S	O	A
_____	R	S	O	A

15. One listed statutory goal for the guidelines is "to promote respect for the law." (28 U.S.C. § 3553(a)(2)(A))

Do you believe that the sentencing guidelines have increased, decreased, or had no impact on respect for the law for these groups?

For each group, please mark "I" (Increase), "D" (Decrease), or "NI" (No impact).

	Increase	Decrease	No Impact
Federal Offenders	I	D	NI
Crime Victims	I	D	NI
The General Public	I	D	NI
Other (please specify): _____	I	D	NI

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?

18. For this question, consider all sentences you have imposed in the past two years, including those in which you departed from the guidelines.

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

Low
Achievement

High
Achievement

① — ② — ③ — ④ — ⑤ — ⑥

19. While a Federal District Judge, have you sentenced any federal felony offender using Old Law (i.e., "pre-guidelines")?

Yes

No

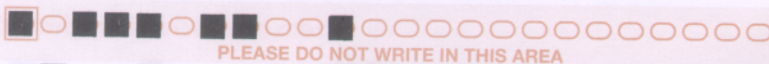
20. Clarifications and/or Comments

The Commission welcomes all comments that you believe will help the Commission in its analysis of how the guidelines are meeting the statutory purposes of sentencing. You are also encouraged to provide your thoughts regarding the statutory definitions of the purposes of sentencing, problem areas you are experiencing with sentences under the guidelines, research areas you would like to see the Commission address, or any other topic you wish to raise. *Attach additional paper if needed.*

21. We invite you to provide your name and district. We will keep your responses anonymous.

Name: _____ District: _____

The Commission thanks you for your valuable assistance in its Congressional Report effort. Please return your completed questionnaire in the accompanying addressed envelope. If you have any questions, please contact Dr. Linda Drazga Maxfield at 202-502-4500 or USSCSurvey@ussc.gov.



APPENDIX B
A Survey of Article III Judges on The Federal Sentencing Guidelines
Responses of District Judges

Question 1 Considering cases that you have sentenced, how often did the guideline sentences provide punishment levels that reflect the seriousness of the offense?

DISTRICT JUDGES

i. ii. Considering only defendants convicted of these crimes:

	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	5	1.2	51	11.2	33	7.7	32	7.4	36	8.2	21	5.1	24	7.7	60	14.5
2	32	8.0	73	16.0	48	11.2	73	16.8	63	14.4	29	7.0	28	8.9	65	15.7
3	53	13.2	75	16.5	54	12.6	99	22.8	87	19.9	61	14.7	51	16.3	53	12.8
4	101	25.2	66	14.5	62	14.5	88	20.3	93	21.2	81	19.5	62	19.8	67	16.2
5	117	29.2	74	16.3	103	24.0	78	18.0	86	19.6	118	28.4	72	23.0	80	19.4
6 Almost All	93	23.2	116	25.5	129	30.1	64	14.7	73	16.7	105	25.3	76	24.3	88	21.3
Total	401	100.0	455	100.0	429	100.0	434	100.0	438	100.0	415	100.0	313	100.0	413	100.0
Missing	65	—	11	—	37	—	32	—	28	—	51	—	153	—	53	—
Mean	4.4		3.9		4.3		3.7		3.8		4.4		4.1		3.7	
Median	5.0		4.0		5.0		4.0		4.0		5.0		4.0		4.0	

Question 1 For those cases where you believe that the 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?*

(continued)

iii. Considering only defendants where punishment did not reflect seriousness:

	Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Less	11	3.1	57	23.1	200	63.1	164	56.6	93	44.7	59	33.0	48	17.0
Greater	261	73.7	104	42.1	33	10.4	36	12.4	28	13.5	54	30.2	158	56.0
Sometimes	82	23.2	86	34.8	84	26.5	90	31.0	87	41.8	66	36.9	76	27.0
Total	354	100.0	247	100.0	317	100.0	290	100.0	208	100.0	179	100.0	282	100.0
Missing	112	—	219	—	149	—	176	—	258	—	287	—	184	—
Mean		2.2		2.1		1.6		1.7		2.0		2.0		2.1
Median		2.0		2.0		1.0		1.0		2.0		2.0		2.0

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of District Judges

Question 2 Considering cases that you have sentenced, how often did the guideline sentences involve mandatory minimum provisions that *affect* your ability to impose sentences that reflect the statutory purposes of sentencing?

DISTRICT JUDGES	i. ii. Considering only defendants with mandatory minimum convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	59	14.8	62	14.2	91	25.3	175	58.5	177	58.8	142	48.8	131	53.9	145	49.7
2	82	20.5	63	14.4	55	15.3	37	12.4	38	12.6	41	14.1	31	12.8	33	11.3
3	65	16.3	53	12.2	42	11.7	32	10.7	31	10.3	42	14.4	27	11.1	29	9.9
4	78	19.5	78	17.9	60	16.7	29	9.7	27	9.0	20	6.9	18	7.4	21	7.2
5	60	15.0	82	18.8	59	16.4	10	3.3	12	4.0	19	6.5	18	7.4	27	9.2
6 Almost All	56	14.0	98	22.5	52	14.5	16	5.4	16	5.3	27	9.3	18	7.4	37	12.7
Total	400	100.0	436	100.0	359	100.0	299	100.0	301	100.0	291	100.0	243	100.0	292	100.0
Missing	66	—	30	—	107	—	167	—	165	—	175	—	223	—	174	—
Mean	3.4		3.8		3.3		2.0		2.0		2.4		2.2		2.5	
Median	3.0		4.0		3.0		1.0		1.0		2.0		1.0		2.0	

Question 3 Considering cases that you have sentenced, how often did the guideline sentences afford adequate deterrence to criminal conduct?

DISTRICT JUDGES	i. ii. Considering only defendants convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	23	5.7	46	10.6	36	8.8	46	11.0	44	10.4	34	8.7	37	11.8	71	18.5
2	21	5.2	26	6.0	28	6.9	66	15.7	60	14.2	30	7.7	41	13.1	55	14.4
3	38	9.4	31	7.2	33	8.1	78	18.6	77	18.2	62	15.8	50	16.0	48	12.5
4	74	18.3	38	8.8	39	9.6	67	16.0	75	17.7	65	16.6	40	12.8	37	9.7
5	123	30.4	80	18.5	104	25.5	64	15.2	67	15.8	84	21.4	56	17.9	63	16.4
6 Almost All	126	31.1	212	49.0	168	41.2	99	23.6	100	23.6	117	29.8	89	28.4	109	28.5
Total	405	100.0	433	100.0	408	100.0	420	100.0	423	100.0	392	100.0	313	100.0	383	100.0
Missing	61	—	33	—	58	—	46	—	43	—	74	—	153	—	83	—
Mean	4.6		4.7		4.6		3.8		3.9		4.2		4.0		3.8	
Median	5.0		5.0		5.0		4.0		4.0		5.0		4.0		4.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of District Judges

Question 4 Considering cases that you have sentenced, how often did the guideline sentences protect the public from further crimes of the defendant?

DISTRICT JUDGES i. ii. Considering only defendants convicted of these crimes:

DISTRICT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	13	3.3	23	5.3	25	6.1	40	9.5	37	8.7	25	6.5	34	11.0	76	19.9
2	15	3.8	30	6.9	22	5.4	72	17.1	65	15.3	38	9.8	49	15.9	58	15.2
3	42	10.7	33	7.6	41	10.0	87	20.6	82	19.3	58	15.0	52	16.9	50	13.1
4	107	27.4	56	13.0	72	17.6	75	17.8	85	20.0	72	18.6	47	15.3	45	11.8
5	118	30.2	100	23.1	103	25.1	62	14.7	63	14.8	88	22.7	46	14.9	52	13.6
6 Almost All	96	24.6	190	44.0	147	35.9	86	20.4	93	21.9	106	27.4	80	26.0	100	26.2
Total	391	100.0	432	100.0	410	100.0	422	100.0	425	100.0	387	100.0	308	100.0	381	100.0
Missing	75	—	34	—	56	—	44	—	41	—	79	—	158	—	85	—
Mean	4.5		4.7		4.6		3.7		3.8		4.2		3.9		3.6	
Median	5.0		5.0		5.0		4.0		4.0		5.0		4.0		4.0	

Question 5 Considering cases that you have sentenced, how often did the guideline sentences, where rehabilitation was appropriate, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner?

DISTRICT JUDGES i. ii. Considering only defendants needing services convicted of these crimes:

DISTRICT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	73	18.8	101	24.6	88	23.4	83	21.7	81	21.5	77	21.3	86	29.8	124	35.9
2	87	22.4	72	17.5	73	19.4	70	18.3	73	19.4	66	18.3	61	21.1	72	20.9
3	53	13.6	69	16.8	78	20.7	72	18.8	69	18.3	69	19.1	40	13.8	44	12.8
4	68	17.5	50	12.2	47	12.5	64	16.8	67	17.8	60	16.6	39	13.5	34	9.9
5	55	14.1	61	14.8	42	11.2	46	12.0	42	11.1	44	12.2	28	9.7	37	10.7
6 Almost All	53	13.6	58	14.1	48	12.8	47	12.3	45	11.9	45	12.5	35	12.1	34	9.9
Total	389	100.0	411	100.0	376	100.0	382	100.0	377	100.0	361	100.0	289	100.0	345	100.0
Missing	77	—	55	—	90	—	84	—	89	—	105	—	177	—	121	—
Mean	3.3		3.2		3.1		3.2		3.1		3.2		2.9		2.7	
Median	3.0		3.0		3.0		3.0		3.0		3.0		2.0		2.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of District Judges

Question 6 Considering cases that you have sentenced, how often did the guideline sentences avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct?

DISTRICT JUDGES i. ii. Considering only defendants convicted of these crimes:

DISTRICT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	34	8.5	61	14.0	43	10.4	35	8.3	36	8.6	32	8.1	33	10.4	46	11.9
2	39	9.8	56	12.8	35	8.5	37	8.8	34	8.1	30	7.6	28	8.9	32	8.3
3	40	10.0	68	15.6	45	10.9	73	17.3	66	15.7	48	12.2	41	13.0	44	11.4
4	76	19.0	51	11.7	62	15.0	66	15.7	70	16.7	56	14.2	41	13.0	50	13.0
5	105	26.3	91	20.8	104	25.1	101	24.0	105	25.0	113	28.7	81	25.6	100	25.9
6 Almost All	106	26.5	110	25.2	125	30.2	109	25.9	109	26.0	115	29.2	92	29.1	114	29.5
Total	400	100.0	437	100.0	414	100.0	421	100.0	420	100.0	394	100.0	316	100.0	386	100.0
Missing	66	—	29	—	52	—	45	—	46	—	72	—	150	—	80	—
Mean	4.2		3.9		4.3		4.2		4.2		4.4		4.2		4.2	
Median	5.0		4.0		5.0		4.0		5.0		5.0		5.0		5.0	

Question 7 Considering cases that you have sentenced, how often did the guideline sentences provide certainty in meeting the purposes of sentencing?

DISTRICT JUDGES i. ii. Considering only defendants convicted of these crimes:

DISTRICT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	28	7.2	39	9.4	26	6.6	31	7.6	28	6.9	25	6.6	25	8.3	41	11.0
2	23	5.9	32	7.7	27	6.8	40	9.9	33	8.1	21	5.5	23	7.6	31	8.3
3	41	10.6	48	11.5	48	12.1	63	15.5	68	16.7	57	15.0	40	13.2	45	12.1
4	82	21.2	71	17.1	70	17.7	81	20.0	80	19.7	60	15.8	50	16.6	60	16.1
5	124	32.0	117	28.1	118	29.8	102	25.1	108	26.5	122	32.2	91	30.1	107	28.7
6 Almost All	89	23.0	109	26.2	107	27.0	89	21.9	90	22.1	94	24.8	73	24.2	89	23.9
Total	387	100.0	416	100.0	396	100.0	406	100.0	407	100.0	379	100.0	302	100.0	373	100.0
Missing	79	—	50	—	70	—	60	—	59	—	87	—	164	—	93	—
Mean	4.3		4.3		4.4		4.1		4.2		4.4		4.3		4.1	
Median	5.0		5.0		5.0		4.0		4.0		5.0		5.0		5.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of District Judges

Question 8 Considering cases that you have sentenced, how often did the guideline sentences provide fairness in meeting the purposes of sentencing?

DISTRICT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	1 Few	37	9.4	96	22.2	52	12.7	52	12.3	41	9.7	42	10.7	38	12.3	75
2	61	15.5	88	20.4	57	13.9	58	13.7	59	13.9	39	9.9	43	14.0	67	17.3
3	75	19.1	82	19.0	68	16.5	96	22.7	99	23.3	58	14.8	53	17.2	60	15.5
4	93	23.7	69	16.0	81	19.7	90	21.3	89	21.0	80	20.4	48	15.6	58	14.9
5	87	22.1	52	12.0	88	21.4	71	16.8	75	17.7	98	25.0	71	23.1	76	19.6
6 Almost All	40	10.2	45	10.4	65	15.8	56	13.2	61	14.4	75	19.1	55	17.9	52	13.4
Total	393	100.0	432	100.0	411	100.0	423	100.0	424	100.0	392	100.0	308	100.0	388	100.0
Missing	73	—	34	—	55	—	43	—	42	—	74	—	158	—	78	—
Mean	3.6		3.1		3.7		3.6		3.7		4.0		3.8		3.4	
Median	4.0		3.0		4.0		4.0		4.0		4.0		4.0		3.0	

Question 9 Considering cases that you have sentenced, how often did the guideline sentences 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?

DISTRICT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	1 Few	110	27.4	151	34.6	110	26.8	102	24.2	100	23.6	98	24.7	81	26.0	121
2	71	17.7	110	25.2	82	20.0	69	16.4	62	14.7	58	14.6	47	15.1	75	19.1
3	66	16.4	58	13.3	66	16.1	77	18.2	83	19.6	67	16.9	47	15.1	55	14.0
4	57	14.2	45	10.3	45	10.9	63	14.9	65	15.4	51	12.8	40	12.8	49	12.5
5	65	16.2	38	8.7	67	16.3	75	17.8	73	17.3	73	18.4	58	18.6	56	14.2
6 Almost All	33	8.2	34	7.8	41	10.0	36	8.5	40	9.5	50	12.6	39	12.5	37	9.4
Total	402	100.0	436	100.0	411	100.0	422	100.0	423	100.0	397	100.0	312	100.0	393	100.0
Missing	64	—	30	—	55	—	44	—	43	—	69	—	154	—	73	—
Mean	3.0		2.6		3.0		3.1		3.2		3.2		3.2		2.9	
Median	3.0		2.0		3.0		3.0		3.0		3.0		3.0		3.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of District Judges

Question 10 Considering cases that you have sentenced, how often did the guideline sentences provide just punishment?

DISTRICT JUDGES i. ii. Considering only defendants convicted of these crimes:

DISTRICT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	26	6.7	79	18.1	36	8.7	55	12.9	47	11.1	33	8.3	28	9.1	72	18.5
2	53	13.6	93	21.3	57	13.7	64	15.1	53	12.5	40	10.1	41	13.3	68	17.5
3	71	18.2	78	17.9	72	17.3	105	24.7	105	24.8	72	18.1	71	23.0	64	16.5
4	96	24.6	75	17.2	87	20.9	78	18.4	90	21.2	83	20.9	43	13.9	60	15.4
5	102	26.2	68	15.6	102	24.5	83	19.5	79	18.6	99	24.9	74	23.9	70	18.0
6 Almost All	42	10.8	43	9.9	62	14.9	40	9.4	50	11.8	70	17.6	52	16.8	55	14.1
Total	390	100.0	436	100.0	416	100.0	425	100.0	424	100.0	397	100.0	309	100.0	389	100.0
Missing	76	—	30	—	50	—	41	—	42	—	69	—	157	—	77	—
Mean	3.8		3.2		3.8		3.4		3.6		4.0		3.8		3.4	
Median	4.0		3.0		4.0		3.0		4.0		4.0		4.0		3.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

**A Survey of Article III Judges on The Federal Sentencing Guidelines
Part II: Sentence Determination
Responses of District Judges**

Question 11 Please identify where you believe that changes in the availability of guideline *sentence types* would better promote the purposes of sentencing.

DISTRICT JUDGES	Offense Type													
	Drug Trafficking		Weapon Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
STRAIGHT PROBATION SENTENCE														
More available	244	55.5	126	29.9	165	38.2	175	40.6	85	20.7	104	30.5	167	41.4
Less Available	15	3.4	40	9.5	75	17.4	66	15.3	43	10.5	25	7.3	21	5.2
No change needed	181	41.1	255	60.6	192	44.4	190	44.1	282	68.8	212	62.2	215	53.3
Total	440	100.0	421	100.0	432	100.0	431	100.0	410	100.0	341	100.0	403	100.0
Missing	26	—	45	—	34	—	35	—	56	—	125	—	63	—

PROBATION WITH CONFINEMENT CONDITIONS	Drug Trafficking		Weapon Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	More available	274	61.4	151	35.4	200	46.1	198	45.6	113	27.2	114	32.9	151
Less Available	14	3.1	33	7.7	49	11.3	40	9.2	36	8.7	25	7.2	23	5.8
No change needed	158	35.4	242	56.8	185	42.6	196	45.2	266	64.1	207	59.8	226	56.5
Total	446	100.0	426	100.0	434	100.0	434	100.0	415	100.0	346	100.0	400	100.0
Missing	20	—	40	—	32	—	32	—	51	—	120	—	66	—

IMPRISONMENT PLUS SUP. RELEASE CONFINEMENT CONDITIONS	Drug Trafficking		Weapon Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	More available	238	54.1	149	35.0	185	42.9	183	42.6	120	29.3	107	31.0	130
Less Available	14	3.2	21	4.9	26	6.0	25	5.8	21	5.1	14	4.1	19	4.8
No change needed	188	42.7	256	60.1	220	51.0	222	51.6	268	65.5	224	64.9	251	62.8
Total	440	100.0	426	100.0	431	100.0	430	100.0	409	100.0	345	100.0	400	100.0
Missing	26	—	40	—	35	—	36	—	57	—	121	—	66	—

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of District Judges

Question 12 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?¹

DISTRICT JUDGES

	Total		Less		More		No Change		Missing
	n	%	n	%	n	%	n	%	n
Age	451	100.0	3	0.7	240	53.2	208	46.1	15
Education	451	100.0	6	1.3	146	32.4	299	66.3	15
Vocational Skills	449	100.0	3	0.7	132	29.4	314	69.9	17
Mental Conditions	449	100.0	4	0.9	277	61.7	168	37.4	17
Emotional Conditions	448	100.0	10	2.2	210	46.9	228	50.9	18
Physical Conditions	446	100.0	7	1.6	196	43.9	243	54.5	20
Drug Dependence/Abuse	452	100.0	13	2.9	200	44.2	239	52.9	14
Alcohol Dependence/Abuse	449	100.0	13	2.9	188	41.9	248	55.2	17
Employment Record	449	100.0	4	0.9	216	48.1	229	51.0	17
Family Ties/Responsibilities	451	100.0	10	2.2	266	59.0	175	38.8	15
Community Ties	446	100.0	17	3.8	155	34.8	274	61.4	20
Role in the Offense	444	100.0	10	2.3	190	42.8	244	55.0	22
Criminal History	444	100.0	15	3.4	115	25.9	314	70.7	22
Criminal Livelihood	442	100.0	5	1.1	159	36.0	278	62.9	24
Public Service*	444	100.0	17	3.8	191	43.0	236	53.2	22
Employment Contributions	442	100.0	14	3.2	141	31.9	287	64.9	24
Prior Good Works	445	100.0	15	3.4	209	47.0	221	49.7	21

*Includes military, civic, charitable, or public service.

¹The District Judges listed the following "other" defendant characteristics (number of responses): Some respondents feel that drug quantity/role (2) and rehabilitation (1) should receive less emphasis. Others state that the guidelines should place more emphasis on aberrant behavior (1), acceptance of responsibility (2), adequacy of counsel (1), any characteristic deemed appropriate (2), drug quantity/role (1), economic compulsion (2), poverty (1), rehabilitation (6), religious (1), restitution (1), and if they are unlikely to recidivate (1). The following were listed but not rated: any characteristic the judge deems appropriate (2), guidelines make individualized sentences impossible (1), and "three-strikes" law (1).

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of District Judges

Question 13 Based on the cases that you personally have sentenced, do you believe that the guidelines *maintain neutrality* with respect to the characteristics listed below?¹

DISTRICT
JUDGES

	Total		Rarely		Sometimes		Often		Almost Always		Missing
	n	%	n	%	n	%	n	%	n	%	n
Religion	453	100.0	10	2.2	8	1.8	17	3.8	418	92.3	13
Creed	452	100.0	10	2.2	8	1.8	20	4.4	414	91.6	14
National Origin	452	100.0	16	3.5	32	7.1	46	10.2	358	79.2	14
Race	456	100.0	32	7.0	65	14.3	50	11.0	309	67.8	10
Ethnicity	453	100.0	21	4.6	40	8.8	41	9.1	351	77.5	13
Gender	448	100.0	7	1.6	34	7.6	73	16.3	334	74.6	18
Socioeconomic Status	448	100.0	23	5.1	76	17.0	81	18.1	268	59.8	18

¹The District Judges listed the following "other" characteristics (number of responses): One respondent states for immigration status (1) the guidelines rarely maintain neutrality. Others feel that the guidelines sometimes maintain neutrality with age (1), responsibility to family (1), and responsibility to community (1). A few respondents believe for powder/crack cocaine (2) the guidelines often and always maintain neutrality. The following was listed but not rated: these should not maintain neutrality (1).

Question 14 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?¹

DISTRICT
JUDGES

	Total		Rarely		Sometimes		Often		Almost Always		Missing
	n	%	n	%	n	%	n	%	n	%	n
Defendants with Similar Records and Conduct	445	100.0	25	5.6	113	25.4	143	32.1	164	36.9	21
Sentencing Circuit	402	100.0	39	9.7	113	28.1	145	36.1	105	26.1	64
Sentencing District	410	100.0	30	7.3	116	28.3	148	36.1	116	28.3	56
Sentencing Judge	433	100.0	23	5.3	95	21.9	181	41.8	134	30.9	33

¹The District Judges listed the following "other" characteristics (number of responses): Some respondents feel for prosecutorial policies (3) unwarranted disparity is rarely avoided. Others believe that the guidelines avoid unwarranted disparity sometimes with respect to counsel for defendant (1), probation officer (1), and prosecutorial policies (4). One states that prosecutorial policies (1) almost always avoid disparity. The following were listed but not rated: geographic district (1), type of drug involved (1), prosecutorial policies (1), and consistency is not necessarily good (1).

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of District 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?¹

**DISTRICT
JUDGES**

	Total		Increase		Decrease		No Impact		Missing
	n	%	n	%	n	%	n	%	n
Federal Offenders	446	100.0	148	33.2	97	21.7	201	45.1	20
Crime Victims	438	100.0	175	40.0	49	11.2	214	48.9	28
The General Public	446	100.0	152	34.1	59	13.2	235	52.7	20

¹The District Judges listed the following "other" groups (number of responses): Respondents believe the guidelines increased respect for the law for attorneys (1) and law enforcement (1). Others state for attorneys (4), drug offenders (1), family members (2), judges (7), and minority communities (1) the guidelines have decreased respect. Some Judges also mention that there has been no impact on respect for the law for drug offenders (1), judges (1), and media (1). The following were listed but not rated: attorneys (3), drug offenders (3), judges (1), and law enforcement (1).

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of District Judges

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

	n	%
1 Low Achievement	38	8.5
2	64	14.4
3	69	15.5
4	103	23.1
5	131	29.4
6 High Achievement	40	9.0
Total	445	100.0
Missing	21	—
<hr/>		
Mean	3.8	
Median	4.0	

Question 19 **While a Federal District Judge, have you reviewed the sentence of any
DISTRICT** **federal felony offender under Old Law (i.e., "pre-guidelines")?**
JUDGES

	n	%
Yes	276	60.7
No	179	39.3
Total	455	100.0
Missing	11	—

Source: U.S. Sentencing Commission, Survey of Article III Judges, District Judge Responses, January 2002.



A SURVEY OF ARTICLE III JUDGES ON THE FEDERAL SENTENCING GUIDELINES

IN PREPARATION FOR A FIFTEEN YEAR REPORT ON THE
SENTENCING COMMISSION'S LEGISLATIVE MANDATE

PURPOSE

In its enabling legislation, codified at 28 U.S.C. § 994, the U.S. Sentencing Commission is charged with promulgating and distributing guidelines and policy statements that further the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2).

As the federal guideline system approaches its fifteenth year, the Commission is undertaking a study to determine how judges view the guideline system in terms of these overarching legislative mandates. The results of the survey will be included in the Commission's Fifteen Year Report submitted to Congress. The Commission asks your help in providing accurate data in furtherance of this project.

ANONYMITY

The survey is designed to obtain anonymous responses, but there is a space provided at the end of the questionnaire if you wish to provide your name and circuit. The U.S. Sentencing Commission will report only aggregate data and at no time will identify any respondent.

PROCEDURE

The questionnaire is composed of two sections. The first section focuses on the statutory purposes of sentencing described in 18 U.S.C. § 3553 and 28 U.S.C. § 991. The second section contains questions about guideline operation in the context of the types of sentences available under the guidelines, statutory interpretations inherent in the guideline structure, and challenges you foresee for future guideline development. There is also opportunity to provide comments.

As a frame of reference, we ask that you generally consider the guideline sentencings that you have heard on appeal within the past two years, or that period of time within the past two years that you have been reviewing sentencing cases. Additionally, your responses are most helpful if you focus on the sentences as computed under the *Guidelines Manual*, prior to any departures that the district judge considered appropriate. This will help the Commission target the guidelines computations themselves.

RETURN OF SURVEY INSTRUMENT

Please return your completed questionnaire in the accompanying addressed envelope. In order to begin analysis as soon as possible, we ask that you return the questionnaire by January 31, 2002. If you have any questions, please contact Dr. Linda Drazga Maxfield at 202-502-4500 or USSCSurvey@ussc.gov.



- Use a No. 2 pencil or blue or black ink pen only.
- Do not use pens with ink that soaks through the paper.
- Make solid marks that fill the oval completely.
- Make no stray marks on this form.
- Do not fold, tear, or mutilate this form.



CORRECT MARK



INCORRECT MARKS

UNLESS OTHERWISE SPECIFIED, please respond to questions in terms of the sentences that result from the **GUIDELINES COMPUTATIONS THEMSELVES**, prior to any applied departures (DOWNWARD, UPWARD, OR SUBSTANTIAL ASSISTANCE §5K1.1). Please answer the questions, not in terms of how the district judge actually sentenced the case, but in terms of how the case should have been sentenced under the guidelines.

Considering sentencing cases that have come to you on appeal, how often did the guideline sentences, as properly applied . . .

(Please respond to Question 1 through Question 10. As you do, consider the sentencing cases you personally have heard on appeal during the past two years.)

1. . . . provide punishment levels that reflect the seriousness of the offense? (18 U.S.C. § 3553(a)(2)(A))

(i) Of all your sentencing appeals:

Few Cases		Almost All Cases
①	②	③
④	⑤	⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

(iii) For those types of cases where you believe that the 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?

	Less	Greater	Sometimes Both
Drug Trafficking	(L)	(G)	(S)
Firearms Trafficking	(L)	(G)	(S)
Fraud	(L)	(G)	(S)
Larceny/Theft/Embezzlement	(L)	(G)	(S)
Robbery	(L)	(G)	(S)
Alien Smuggling	(L)	(G)	(S)
Unlawful Entry into U.S.	(L)	(G)	(S)

2. . . . involve minimum statutory provisions that affect the court's ability to impose sentences that reflect the statutory purposes of sentencing?

(i) For all your sentencing appeals where a mandatory minimum sentence is applicable:

Few Cases		Almost All Cases
①	②	③
④	⑤	⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes where a mandatory minimum sentence is applicable:

	Few Cases					Almost All Cases
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

Considering sentencing cases that have come to you on appeal, how often did the guideline sentences, as properly applied . . .

3. . . . afford adequate deterrence to criminal conduct? (18 U.S.C. § 3553(a)(2)(B))

(i) Of all your sentencing appeals:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

4. . . . protect the public from further crimes of the defendant? (18 U.S.C. § 3553(a)(2)(C))

(i) Of all your sentencing appeals:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

5. . . . where rehabilitation was appropriate, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner? (18 U.S.C. § 3553(a)(2)(D))

(i) Of all your sentencing appeals where rehabilitation was appropriate:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes where rehabilitation was appropriate:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

6. . . . 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))

(i) Of all your sentencing appeals:

Few Cases Almost All Cases

① ② ③ ④ ⑤ ⑥

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases			Almost All Cases		
Drug Trafficking	①	②	③	④	⑤	⑥
Firearms Trafficking	①	②	③	④	⑤	⑥
Fraud	①	②	③	④	⑤	⑥
Larceny/Theft/Embezzlement	①	②	③	④	⑤	⑥
Robbery	①	②	③	④	⑤	⑥
Alien Smuggling	①	②	③	④	⑤	⑥
Unlawful Entry into U.S.	①	②	③	④	⑤	⑥

Considering sentencing cases that have come to you on appeal, how often did the guideline sentences, as properly applied . . .

7. . . . provide certainty in meeting the purposes of sentencing? (28 U.S.C. § 991(b)(1)(B))

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases
1	2	3	4	5	6		

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

8. . . . provide fairness in meeting the purposes of sentencing? (28 U.S.C. § 991(b)(1)(B))

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases
1	2	3	4	5	6		

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

9. . . . 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))

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases
1	2	3	4	5	6		

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

10. . . . provide just punishment? (18 U.S.C. § 3553(a)(2)(A))

(i) Of all your sentencing appeals:

Few Cases							Almost All Cases
1	2	3	4	5	6		

Please mark the appropriate number on the scale.

(ii) Considering only defendants convicted of these crimes:

	Few Cases					Almost All Cases
Drug Trafficking	1	2	3	4	5	6
Firearms Trafficking	1	2	3	4	5	6
Fraud	1	2	3	4	5	6
Larceny/Theft/Embezzlement	1	2	3	4	5	6
Robbery	1	2	3	4	5	6
Alien Smuggling	1	2	3	4	5	6
Unlawful Entry into U.S.	1	2	3	4	5	6

PART II: SENTENCE DETERMINATION

11. The sentencing guidelines are required by statute to provide a means to determine the type of sentence to impose: probation, a fine, or a term of imprisonment (28 U.S.C. § 944(a)(1)(A)). Thus, the sentencing table in the *Guidelines Manual* precludes certain sentence types from some offenders. For example, in Zone B of the sentencing table, straight probation is not permitted unless there exists a condition providing the judge a basis to depart.

Please identify where you believe that changes in the availability of guideline sentence types would better promote the purposes of sentencing.

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/ Theft/ Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
Straight Probation Sentences (§5B1.1)							
Should be <i>more</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be <i>less</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OR: No change needed (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[For the questions below: *Probation Confinement Conditions* include intermittent confinement, community confinement, or home detention, as now permitted in Zones A and B.]

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/ Theft/ Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
Probation with Confinement Conditions (§5B1.3(e))							
Should be <i>more</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be <i>less</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OR: No change needed (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[For the questions below: *Supervised Release Confinement Conditions* include community confinement or home detention following a term of imprisonment, as now permitted in Zones A, B, and C.]

	Offense Type						
	Drug Trafficking	Weapon Trafficking	Fraud	Larceny/ Theft/ Embezz.	Robbery	Alien Smuggling	Alien Unlawful Entry
Imprisonment plus Supervised Release Confinement Conditions (§5C1.1)							
Should be <i>more</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Should be <i>less</i> available (mark offenses):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OR: No change needed (mark):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. The sentencing guidelines are required by statute to address the relevance of certain defendant characteristics, although the importance of some characteristics is de-emphasized. (28 U.S.C. § 994(d),(e))

Based on the cases that you personally have heard on appeal, do you believe that the guidelines should place less or more emphasis on any of the following defendant characteristics for sentencing determination?

For each factor, please mark "L"(Less), "M"(More), or "NC"(No change needed).

	Less L	More M	No Change NC		Less L	More M	No Change NC
Age (§5H1.1)	L	M	NC	Community ties (§5H1.6)	L	M	NC
Education (§5H1.2)	L	M	NC	Role in the offense (§5H1.7)	L	M	NC
Vocational skills (§5H1.2)	L	M	NC	Criminal history (§5H1.8)	L	M	NC
Mental condition (§5H1.3)	L	M	NC	Criminal livelihood (§5H1.9)	L	M	NC
Emotional condition (§5H1.3)	L	M	NC	Public service* (§5H1.11)	L	M	NC
Physical condition (§5H1.4)	L	M	NC	Employment-related contributions (§5H1.11)	L	M	NC
Drug dependence or abuse (§5H1.4)	L	M	NC	Prior good works (§5H1.11)	L	M	NC
Alcohol dependence or abuse (§5H1.4)	L	M	NC	Others (please specify):			
Employment record (§5H1.5)	L	M	NC	_____	L	M	NC
Family ties and responsibilities (§5H1.6)	L	M	NC	_____	L	M	NC

**Includes military, civic, charitable, or public service*

13. The guidelines are required by statute to maintain neutrality with respect to certain defendant characteristics. (28 U.S.C. § 994(d))

Based on the cases that you personally have heard on appeal, do you believe that the guidelines maintain neutrality with respect to the characteristics listed below?

For each factor, please mark "R"(Rarely), "S"(Sometimes), "O"(Often), or "A" (Almost Always).

	Rarely R	Sometimes S	Often O	Almost Always A		Rarely R	Sometimes S	Often O	Almost Always A
Religion	R	S	O	A	Gender	R	S	O	A
Creed	R	S	O	A	Socioeconomic status	R	S	O	A
National origin	R	S	O	A	Others (please specify):				
Race	R	S	O	A	_____	R	S	O	A
Ethnicity	R	S	O	A	_____	R	S	O	A

14. The Sentencing Commission is charged with establishing sentencing policies and practices for the federal criminal justice system that *avoid unwarranted sentencing disparity*. (28 U.S.C. § 991(b)(1)(B), 994(d))

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

For each factor, please mark "R" (Rarely), "S" (Sometimes), "O" (Often), or "A" (Almost Always).

	Rarely	Sometimes	Often	Almost Always
Defendants with similar records and conduct	R	S	O	A
Sentencing Circuit	R	S	O	A
Sentencing District	R	S	O	A

	Rarely	Sometimes	Often	Almost Always
Sentencing Judge	R	S	O	A
Others (please specify): _____	R	S	O	A
_____	R	S	O	A

15. One listed statutory goal for the guidelines is "to promote respect for the law." (28 U.S.C. § 3553(a)(2)(A))

Do you believe that the sentencing guidelines have increased, decreased, or had no impact on *respect for the law* for these groups?

For each group, please mark "I" (Increase), "D" (Decrease), or "NI" (No impact).

	Increase	Decrease	No Impact
Federal Offenders	I	D	NI
Crime Victims	I	D	NI

	Increase	Decrease	No Impact
The General Public	I	D	NI
Other (please specify): _____	I	D	NI

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?

18. For this question, consider all sentencing cases you have heard on appeal in the past two years, including those in which there was a departure from the guidelines.

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



19a. If you served as a Federal District Judge, have you sentenced any federal felony offender under Old Law (i.e., "pre-guidelines")?

- Yes No Never served as District Judge

19b. While a Federal Circuit Judge, have you reviewed the sentence of any federal felony offender under Old Law (i.e., "pre-guidelines")?

- Yes No

20. Clarifications and/or Comments

The Commission welcomes all comments that you believe will help the Commission in its analysis of how the guidelines are meeting the statutory purposes of sentencing. You are also encouraged to provide your thoughts regarding the statutory definitions of the purposes of sentencing, problem areas you are experiencing with sentences under the guidelines, research areas you would like to see the Commission address, or any other topic you wish to raise. *Attach additional paper if needed.*

21. We invite you to provide your name and circuit. We will keep your responses anonymous.

Name: _____ Circuit: _____

The Commission thanks you for your valuable assistance in its Congressional Report effort. Please return your completed questionnaire in the accompanying addressed envelope. If you have any questions, please contact Dr. Linda Drazga Maxfield at 202-502-4500 or USSCSurvey@ussc.gov.



APPENDIX D
A Survey of Article III Judges on The Federal Sentencing Guidelines
Responses of Circuit Judges

Question 1 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, provide punishment levels that reflect the seriousness of the offense?

CIRCUIT JUDGES i. ii. Considering only defendants convicted of these crimes:

CIRCUIT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	1	1.4	7	9.6	3	4.3	3	4.2	3	4.2	0	0.0	4	6.2	9	13.0
2	7	10.1	15	20.5	3	4.3	8	11.1	6	8.5	5	7.5	9	13.8	10	14.5
3	12	17.4	17	23.3	9	13.0	10	13.9	13	18.3	6	9.0	10	15.4	11	15.9
4	15	21.7	6	8.2	10	14.5	17	23.6	12	16.9	16	23.9	9	13.8	12	17.4
5	17	24.6	11	15.1	21	30.4	18	25.0	23	32.4	16	23.9	17	26.2	13	18.8
6 Almost All	17	24.6	17	23.3	23	33.3	16	22.2	14	19.7	24	35.8	16	24.6	14	20.3
Total	69	100.0	73	100.0	69	100.0	72	100.0	71	100.0	67	100.0	65	100.0	69	100.0
Missing	7	—	3	—	7	—	4	—	5	—	9	—	11	—	7	—
Mean	4.3		3.7		4.6		4.2		4.2		4.7		4.1		3.8	
Median	4.0		3.0		5.0		4.0		5.0		5.0		5.0		4.0	

Question 1 For those cases where you believe that the 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*?

(continued)

iii. Considering only defendants where punishment did not reflect seriousness:

	Drug Trafficking		Firearms Trafficking		Fraud		Larceny/Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Less	1	1.9	7	23.3	29	64.4	22	55.0	8	28.6	13	38.2	17	36.2
Greater	43	82.7	17	56.7	6	13.3	8	20.0	8	28.6	11	32.4	21	44.7
Sometimes	8	15.4	6	20.0	10	22.2	10	25.0	12	42.9	10	29.4	9	19.1
Total	52	100.0	30	100.0	45	100.0	40	100.0	28	100.0	34	100.0	47	100.0
Missing	24	—	46	—	31	—	36	—	48	—	42	—	29	—
Mean		2.1		2.0		1.6		1.7		2.1		1.9		1.8
Median		2.0		2.0		1.0		1.0		2.0		2.0		2.0

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of Circuit Judges

Question 2 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, involve mandatory minimum provisions that *affect* the court's ability to impose sentences that reflect the statutory purposes of sentencing?

i. ii. Considering only defendants with mandatory minimum convicted of these crimes:

CIRCUIT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	1 Few	13	19.1	11	16.4	13	22.0	25	43.9	23	42.6	24	43.6	22	43.1	22
2	10	14.7	6	9.0	7	11.9	11	19.3	11	20.4	8	14.5	9	17.6	11	19.6
3	12	17.6	13	19.4	12	20.3	7	12.3	9	16.7	7	12.7	10	19.6	12	21.4
4	16	23.5	8	11.9	5	8.5	6	10.5	5	9.3	9	16.4	4	7.8	1	1.8
5	11	16.2	14	20.9	13	22.0	2	3.5	1	1.9	2	3.6	1	2.0	4	7.1
6 Almost All	6	8.8	15	22.4	9	15.3	6	10.5	5	9.3	5	9.1	5	9.8	6	10.7
Total	68	100.0	67	100.0	59	100.0	57	100.0	54	100.0	55	100.0	51	100.0	56	100.0
Missing	8	—	9	—	17	—	19	—	22	—	21	—	25	—	20	—
Mean	3.3		3.8		3.4		2.4		2.4		2.5		2.4		2.5	
Median	3.0		4.0		3.0		2.0		2.0		2.0		2.0		2.0	

Question 3 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, afford adequate deterrence to criminal conduct?

i. ii. Considering only defendants convicted of these crimes:

CIRCUIT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	1 Few	3	4.8	7	10.9	4	6.6	3	4.9	1	1.7	2	3.3	4	6.9	8
2	4	6.5	3	4.7	2	3.3	4	6.6	4	6.7	3	4.9	7	12.1	9	14.5
3	6	9.7	5	7.8	5	8.2	16	26.2	16	26.7	13	21.3	13	22.4	13	21.0
4	11	17.7	3	4.7	5	8.2	9	14.8	10	16.7	8	13.1	5	8.6	1	1.6
5	19	30.6	13	20.3	16	26.2	11	18.0	13	21.7	13	21.3	12	20.7	11	17.7
6 Almost All	19	30.6	33	51.6	29	47.5	18	29.5	16	26.7	22	36.1	17	29.3	20	32.3
Total	62	100.0	64	100.0	61	100.0	61	100.0	60	100.0	61	100.0	58	100.0	62	100.0
Missing	14	—	12	—	15	—	15	—	16	—	15	—	18	—	14	—
Mean	4.5		4.7		4.9		4.2		4.3		4.5		4.1		3.9	
Median	5.0		6.0		5.0		4.0		4.0		5.0		4.5		4.5	

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of Circuit Judges

Question 4 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, protect the public from further crimes of the defendant?

CIRCUIT JUDGES i. ii. Considering only defendants convicted of these crimes:

CIRCUIT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	1 Few	1	1.6	2	2.9	1	1.6	2	3.2	4	6.5	2	3.2	5	8.3	11
2	3	4.8	2	2.9	4	6.3	8	12.9	5	8.1	5	7.9	9	15.0	9	14.5
3	13	21.0	9	13.2	11	17.2	11	17.7	13	21.0	9	14.3	14	23.3	11	17.7
4	12	19.4	7	10.3	6	9.4	14	22.6	10	16.1	13	20.6	6	10.0	1	1.6
5	18	29.0	16	23.5	14	21.9	8	12.9	12	19.4	10	15.9	9	15.0	13	21.0
6 Almost All	15	24.2	32	47.1	28	43.8	19	30.6	18	29.0	24	38.1	17	28.3	17	27.4
Total	62	100.0	68	100.0	64	100.0	62	100.0	62	100.0	63	100.0	60	100.0	62	100.0
Missing	14	—	8	—	12	—	14	—	14	—	13	—	16	—	14	—
Mean	4.4		4.9		4.8		4.2		4.2		4.5		3.9		3.8	
Median	5.0		5.0		5.0		4.0		4.0		5.0		4.0		3.5	

Question 5 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied where rehabilitation was appropriate, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner?

CIRCUIT JUDGES i. ii. Considering only defendants needing services convicted of these crimes:

CIRCUIT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
	1 Few	19	32.8	24	45.3	17	34.0	16	31.4	16	32.0	17	34.7	21	43.8	22
2	12	20.7	8	15.1	12	24.0	11	21.6	10	20.0	9	18.4	7	14.6	9	18.0
3	6	10.3	4	7.5	3	6.0	3	5.9	5	10.0	5	10.2	3	6.3	5	10.0
4	8	13.8	4	7.5	4	8.0	8	15.7	7	14.0	5	10.2	5	10.4	2	4.0
5	5	8.6	5	9.4	5	10.0	5	9.8	4	8.0	5	10.2	4	8.3	4	8.0
6 Almost All	8	13.8	8	15.1	9	18.0	8	15.7	8	16.0	8	16.3	8	16.7	8	16.0
Total	58	100.0	53	100.0	50	100.0	51	100.0	50	100.0	49	100.0	48	100.0	50	100.0
Missing	18	—	23	—	26	—	25	—	26	—	27	—	28	—	26	—
Mean	2.9		2.7		2.9		3.0		2.9		2.9		2.8		2.6	
Median	2.0		2.0		2.0		2.0		2.0		2.0		2.0		2.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of Circuit Judges

Question 6 Considering cases that have come to you on appeal, 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?

CIRCUIT JUDGES i. ii. Considering only defendants convicted of these crimes:

CIRCUIT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	4	5.9	9	13.6	4	6.5	4	6.3	4	6.6	3	5.0	6	10.2	6	10.0
2	6	8.8	7	10.6	5	8.1	2	3.2	4	6.6	1	1.7	2	3.4	4	6.7
3	9	13.2	8	12.1	9	14.5	14	22.2	12	19.7	10	16.7	11	18.6	12	20.0
4	16	23.5	14	21.2	11	17.7	14	22.2	12	19.7	13	21.7	9	15.3	8	13.3
5	22	32.4	15	22.7	16	25.8	13	20.6	13	21.3	18	30.0	16	27.1	16	26.7
6 Almost All	11	16.2	13	19.7	17	27.4	16	25.4	16	26.2	15	25.0	15	25.4	14	23.3
Total	68	100.0	66	100.0	62	100.0	63	100.0	61	100.0	60	100.0	59	100.0	60	100.0
Missing	8	—	10	—	14	—	13	—	15	—	16	—	17	—	16	—
Mean	4.2		3.9		4.3		4.2		4.2		4.5		4.2		4.1	
Median	4.0		4.0		5.0		4.0		4.0		5.0		5.0		4.5	

Question 7 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, provide certainty in meeting the purposes of sentencing?

CIRCUIT JUDGES i. ii. Considering only defendants convicted of these crimes:

CIRCUIT JUDGES	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	1	1.6	4	6.3	1	1.7	2	3.2	2	3.4	2	3.5	5	9.1	6	10.9
2	6	9.4	7	11.1	4	6.7	5	8.1	5	8.5	2	3.5	4	7.3	2	3.6
3	14	21.9	10	15.9	13	21.7	14	22.6	11	18.6	10	17.5	7	12.7	10	18.2
4	15	23.4	10	15.9	8	13.3	16	25.8	15	25.4	15	26.3	10	18.2	9	16.4
5	16	25.0	17	27.0	20	33.3	11	17.7	13	22.0	15	26.3	17	30.9	16	29.1
6 Almost All	12	18.8	15	23.8	14	23.3	14	22.6	13	22.0	13	22.8	12	21.8	12	21.8
Total	64	100.0	63	100.0	60	100.0	62	100.0	59	100.0	57	100.0	55	100.0	55	100.0
Missing	12	—	13	—	16	—	14	—	17	—	19	—	21	—	21	—
Mean	4.2		4.2		4.4		4.1		4.2		4.4		4.2		4.1	
Median	4.0		5.0		5.0		4.0		4.0		4.0		5.0		5.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of Circuit Judges

Question 8 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, provide fairness in meeting the purposes of sentencing?

CIRCUIT JUDGES	ii. Considering only defendants convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	10	15.4	21	31.8	9	14.5	7	11.5	7	11.5	6	10.0	9	15.5	10	16.7
2	8	12.3	9	13.6	7	11.3	7	11.5	5	8.2	5	8.3	7	12.1	9	15.0
3	14	21.5	12	18.2	10	16.1	13	21.3	16	26.2	12	20.0	17	29.3	18	30.0
4	16	24.6	8	12.1	10	16.1	11	18.0	5	8.2	12	20.0	4	6.9	5	8.3
5	9	13.8	8	12.1	16	25.8	15	24.6	19	31.1	13	21.7	11	19.0	9	15.0
6 Almost All	8	12.3	8	12.1	10	16.1	8	13.1	9	14.8	12	20.0	10	17.2	9	15.0
Total	65	100.0	66	100.0	62	100.0	61	100.0	61	100.0	60	100.0	58	100.0	60	100.0
Missing	11	—	10	—	14	—	15	—	15	—	16	—	18	—	16	—
Mean	3.5		3.0		3.8		3.7		3.8		4.0		3.5		3.4	
Median	4.0		3.0		4.0		4.0		4.0		4.0		3.0		3.0	

Question 9 Considering cases that have come to you on appeal, 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?

CIRCUIT JUDGES	ii. Considering only defendants convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	16	24.6	26	38.8	17	27.9	14	22.2	14	23.3	14	23.0	15	25.4	18	30.5
2	15	23.1	13	19.4	12	19.7	10	15.9	7	11.7	9	14.8	11	18.6	9	15.3
3	10	15.4	7	10.4	7	11.5	13	20.6	12	20.0	11	18.0	10	16.9	9	15.3
4	10	15.4	9	13.4	10	16.4	9	14.3	9	15.0	9	14.8	6	10.2	7	11.9
5	8	12.3	5	7.5	6	9.8	8	12.7	8	13.3	9	14.8	8	13.6	7	11.9
6 Almost All	6	9.2	7	10.4	9	14.8	9	14.3	10	16.7	9	14.8	9	15.3	9	15.3
Total	65	100.0	67	100.0	61	100.0	63	100.0	60	100.0	61	100.0	59	100.0	59	100.0
Missing	11	—	9	—	15	—	13	—	16	—	15	—	17	—	17	—
Mean	3.0		2.6		3.0		3.2		3.3		3.3		3.1		3.1	
Median	3.0		2.0		3.0		3.0		3.0		3.0		3.0		3.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on The Federal Sentencing Guidelines Responses of Circuit Judges

Question 10 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, provide just punishment?

CIRCUIT JUDGES	All		Drug		Firearms		Larceny/ Theft/Emb.		Robbery		Alien		Unlawful			
	Sentencing		Trafficking		Trafficking		Fraud		Smuggling		U.S. Entry					
	n	%	n	%	n	%	n	%	n	%	n	%	n	%		
1 Few	5	7.9	17	25.8	8	12.9	8	12.7	8	12.9	8	13.1	9	15.8	11	18.3
2	12	19.0	9	13.6	5	8.1	10	15.9	8	12.9	6	9.8	11	19.3	13	21.7
3	7	11.1	16	24.2	10	16.1	12	19.0	12	19.4	11	18.0	10	17.5	9	15.0
4	19	30.2	7	10.6	12	19.4	12	19.0	12	19.4	10	16.4	7	12.3	11	18.3
5	12	19.0	8	12.1	14	22.6	9	14.3	10	16.1	10	16.4	5	8.8	2	3.3
6 Almost All	8	12.7	9	13.6	13	21.0	12	19.0	12	19.4	16	26.2	15	26.3	14	23.3
Total	63	100.0	66	100.0	62	100.0	63	100.0	62	100.0	61	100.0	57	100.0	60	100.0
Missing	13	—	10	—	14	—	13	—	14	—	15	—	19	—	16	—
Mean	3.7		3.1		3.9		3.6		3.7		3.9		3.6		3.4	
Median	4.0		3.0		4.0		4.0		4.0		4.0		3.0		3.0	

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

**A Survey of Article III Judges on The Federal Sentencing Guidelines
Part II: Sentence Determination
Responses of Circuit Judges**

Question 11 Please identify where you believe that changes in the availability of guideline *sentence types* would better promote the purposes of sentencing.

**CIRCUIT
JUDGES**

Offense Type

	<u>Drug Trafficking</u>		<u>Weapon Trafficking</u>		<u>Fraud</u>		<u>Larceny/ Theft/Emb.</u>		<u>Robbery</u>		<u>Alien Smuggling</u>		<u>Unlawful U.S. Entry</u>	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
STRAIGHT PROBATION SENTENCE														
More available	31	44.9	13	20.3	22	32.8	26	40.6	9	15.0	10	16.4	18	29.0
Less Available	2	2.9	8	12.5	9	13.4	8	12.5	7	11.7	10	16.4	8	12.9
No change needed	36	52.2	43	67.2	36	53.7	30	46.9	44	73.3	41	67.2	36	58.1
Total	69	100.0	64	100.0	67	100.0	64	100.0	60	100.0	61	100.0	62	100.0
Missing	7	—	12	—	9	—	12	—	16	—	15	—	14	—

**PROBATION WITH
CONFINEMENT
CONDITIONS**

	<u>Drug Trafficking</u>		<u>Weapon Trafficking</u>		<u>Fraud</u>		<u>Larceny/ Theft/Emb.</u>		<u>Robbery</u>		<u>Alien Smuggling</u>		<u>Unlawful U.S. Entry</u>	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
More available	33	49.3	13	20.0	29	43.9	28	43.8	10	16.7	15	24.6	23	37.7
Less Available	2	3.0	8	12.3	12	18.2	9	14.1	7	11.7	11	18.0	9	14.8
No change needed	32	47.8	44	67.7	25	37.9	27	42.2	43	71.7	35	57.4	29	47.5
Total	67	100.0	65	100.0	66	100.0	64	100.0	60	100.0	61	100.0	61	100.0
Missing	9	—	11	—	10	—	12	—	16	—	15	—	15	—

**IMPRISONMENT
PLUS SUP. RELEASE
CONFINEMENT
CONDITIONS**

	<u>Drug Trafficking</u>		<u>Weapon Trafficking</u>		<u>Fraud</u>		<u>Larceny/ Theft/Emb.</u>		<u>Robbery</u>		<u>Alien Smuggling</u>		<u>Unlawful U.S. Entry</u>	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
More available	34	50.7	17	27.0	27	41.5	27	42.2	16	26.2	15	25.0	22	36.1
Less Available	1	1.5	5	7.9	10	15.4	8	12.5	6	9.8	8	13.3	6	9.8
No change needed	32	47.8	41	65.1	28	43.1	29	45.3	39	63.9	37	61.7	33	54.1
Total	67	100.0	63	100.0	65	100.0	64	100.0	61	100.0	60	100.0	61	100.0
Missing	9	—	13	—	11	—	12	—	15	—	16	—	15	—

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of District Judges

Question 12 Based on the cases that you personally have heard on appeal, do you believe that the guidelines should place less or more emphasis on any of the following defendant characteristics for sentencing determination?¹

CIRCUIT JUDGES

	Total		Less		More		No Change		Missing
	n	%	n	%	n	%	n	%	n
Age	69	100.0	0	0.0	32	46.4	37	53.6	7
Education	68	100.0	1	1.5	20	29.4	47	69.1	8
Vocational Skills	68	100.0	1	1.5	17	25.0	50	73.5	8
Mental Conditions	69	100.0	0	0.0	37	53.6	32	46.4	7
Emotional Conditions	69	100.0	1	1.4	29	42.0	39	56.5	7
Physical Conditions	66	100.0	1	1.5	19	28.8	46	69.7	10
Drug Dependence/Abuse	69	100.0	0	0.0	25	36.2	44	63.8	7
Alcohol Dependence/Abuse	68	100.0	0	0.0	22	32.4	46	67.6	8
Employment Record	68	100.0	0	0.0	33	48.5	35	51.5	8
Family Ties/Responsibilities	70	100.0	0	0.0	44	62.9	26	37.1	6
Community Ties	68	100.0	2	2.9	25	36.8	41	60.3	8
Role in the Offense	68	100.0	2	2.9	26	38.2	40	58.8	8
Criminal History	69	100.0	5	7.2	16	23.2	48	69.6	7
Criminal Livelihood	68	100.0	1	1.5	24	35.3	43	63.2	8
Public Service*	69	100.0	0	0.0	29	42.0	40	58.0	7
Employment Contributions	68	100.0	1	1.5	20	29.4	47	69.1	8
Prior Good Works	69	100.0	1	1.4	30	43.5	38	55.1	7

*Includes military, civic, charitable, or public service.

¹The Circuit Judges listed the following "other" defendant characteristics (number of responses): Respondents feel that gender (1) and when the defendant has learned lessons to avoid committing another crime (1) should receive more emphasis.

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of Circuit Judges

Question 13 Based on the cases that you personally have heard on appeal, do you believe that the guidelines *maintain neutrality* with respect to the characteristics listed below?

CIRCUIT
JUDGES

	Total		Rarely		Sometimes		Often		Almost Always		Missing
	n	%	n	%	n	%	n	%	n	%	
Religion	69	100.0	0	0.0	0	0.0	7	10.1	62	89.9	7
Creed	69	100.0	0	0.0	0	0.0	8	11.6	61	88.4	7
National Origin	68	100.0	2	2.9	5	7.4	9	13.2	52	76.5	8
Race	69	100.0	4	5.8	14	20.3	8	11.6	43	62.3	7
Ethnicity	69	100.0	2	2.9	12	17.4	8	11.6	47	68.1	7
Gender	69	100.0	3	4.3	7	10.1	12	17.4	47	68.1	7
Socioeconomic Status	69	100.0	3	4.3	13	18.8	16	23.2	37	53.6	7

Question 14 Based on the cases that you personally have heard on appeal, do you believe that the guidelines *avoid unwarranted disparity* with respect to the characteristics listed below?

CIRCUIT
JUDGES

	Total		Rarely		Sometimes		Often		Almost Always		Missing
	n	%	n	%	n	%	n	%	n	%	
Defendants with Similar Records and Conduct	69	100.0	4	5.8	19	27.5	23	33.3	23	33.3	7
Sentencing Circuit	66	100.0	3	4.5	13	19.7	31	47.0	19	28.8	10
Sentencing District	68	100.0	3	4.4	20	29.4	26	38.2	19	27.9	8
Sentencing Judge	69	100.0	3	4.3	22	31.9	29	42.0	15	21.7	7

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of Circuit 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?¹

**CIRCUIT
JUDGES**

	Total		Increase		Decrease		No Impact		Missing
	n	%	n	%	n	%	n	%	n
Federal Offenders	73	100.0	25	34.2	16	21.9	32	43.8	3
Crime Victims	71	100.0	40	56.3	4	5.6	27	38.0	5
The General Public	70	100.0	39	55.7	7	10.0	24	34.3	6

¹The Circuit Judges listed the following "other" groups: The guidelines increase respect for the law in Congress (1). Another respondent feels that family members (1) have a decreased respect for the law.

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.

A Survey of Article III Judges on the Federal Sentencing Guidelines Responses of Circuit Judges

Question 18
CIRCUIT
JUDGES

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

	n	%
1 Low Achievement	7	9.7
2	8	11.1
3	12	16.7
4	15	20.8
5	17	23.6
6 High Achievement	13	18.1
Total	72	100.0
Missing	4	—
Mean	3.9	
Median	4	

Question 19A
CIRCUIT
JUDGES

If you served as a Federal District Judge, have you sentenced any federal felony offender under Old Law (i.e., "pre-guidelines")?

	n	%
Yes	37	59.7
No	4	6.5
Not Serve	21	33.9
Total	62	100.0
Missing	14	—

Question 19B
CIRCUIT
JUDGES

While a Federal Circuit Judge, have you reviewed the sentence of any federal felony offender under Old Law (i.e., "pre-guidelines")?

	n	%
Yes	49	70.0
No	21	30.0
Total	70	100.0
Missing	6	—

Source: U.S. Sentencing Commission, Survey of Article III Judges, Circuit Judge Responses, January 2002.