

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:

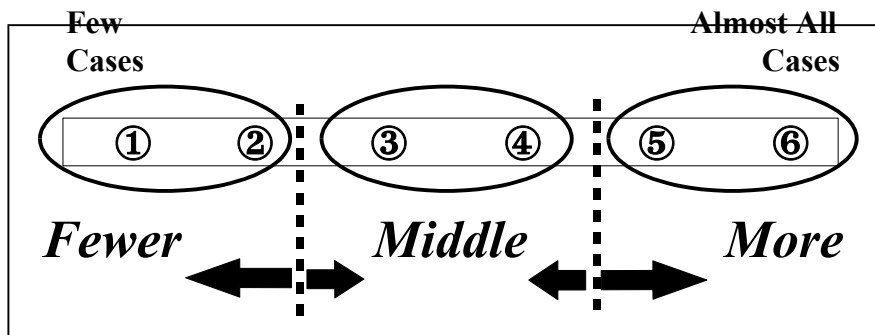
Few Cases	①	②	③	④	⑤	⑥	Almost All Cases
----------------------	----------	----------	----------	----------	----------	----------	-----------------------------

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.

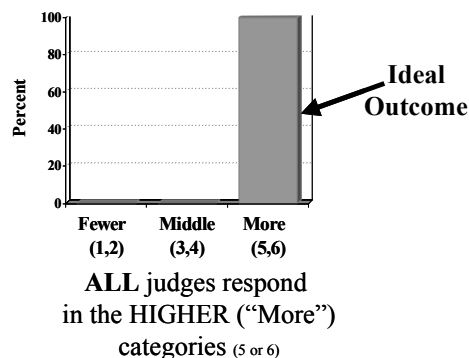
The strategy used for this analysis divides the response categories into three groups.



- 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).

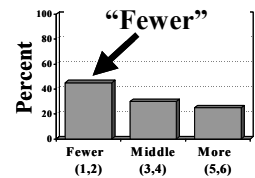
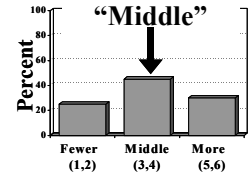
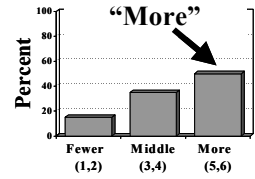
3. Interpretation of the “Three Category” Distribution of Responses

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.

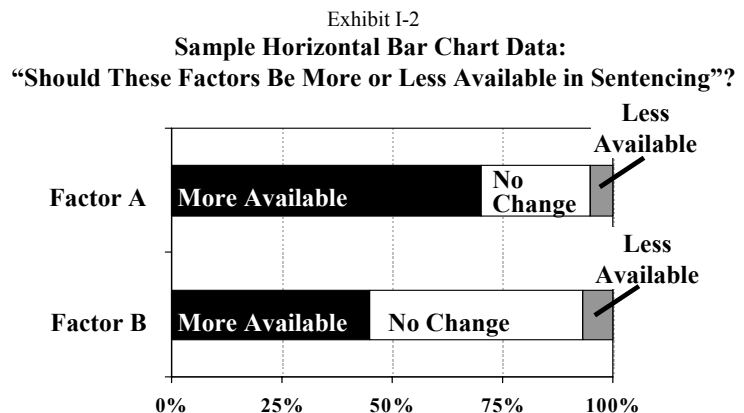


4. The “No Change” vs. “Change Desired” Scale.

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.