

CHAPTER II

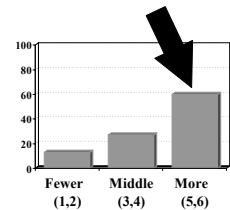
DISTRICT COURT JUDGE SURVEY RESPONSES

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.

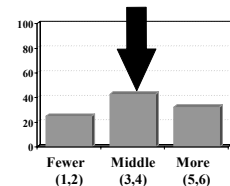
A. District Court Judges' Results: Statutory Goals of Sentencing

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.

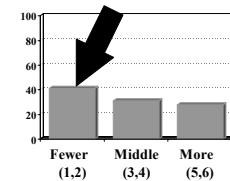
The "**More**" bar: District court judge responses were concentrated in the right-most ("More") response bar. (See the example to the right.) The graph indicates that among the three categories, the greatest number of responding judges reported that "More" of their sentences met the specified sentencing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



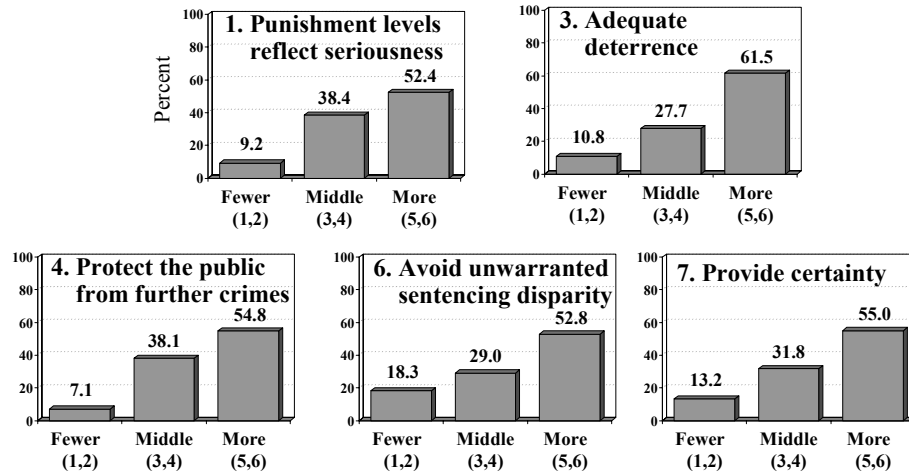
¹See the discussion of the "More," "Middle," and "Fewer" distributions on pages I-4 through I-6.

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

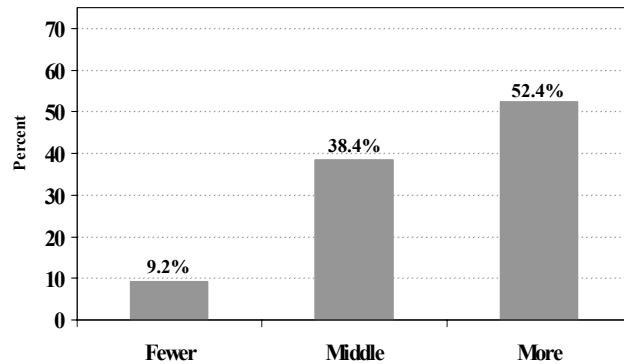
Wording of survey question:

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?

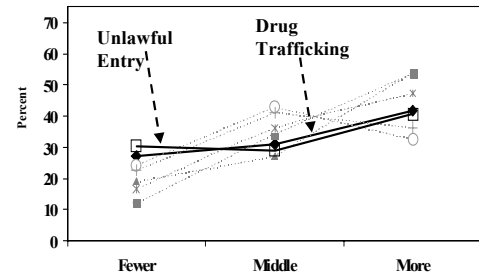


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

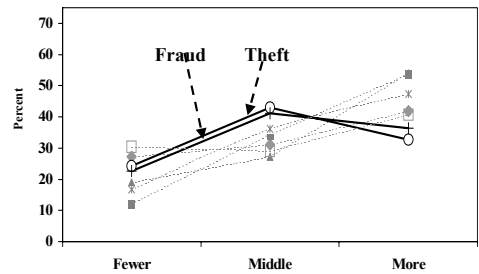
Offense type responses.

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.

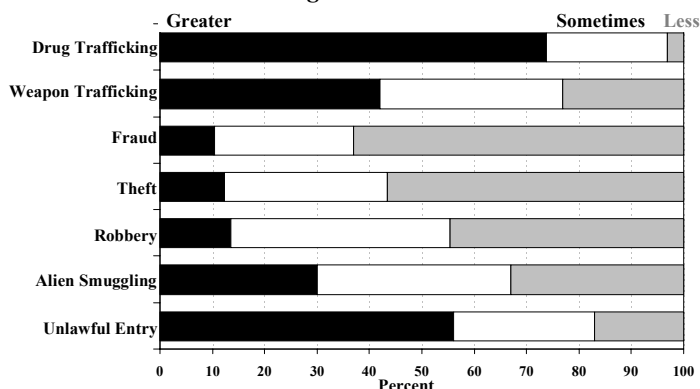
Four offense types fell into the majority response class, with two having *greater than appropriate* and two having *less than appropriate* responses.

- 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:

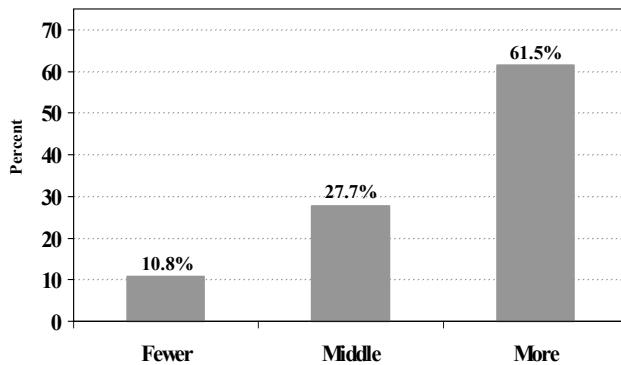
Considering cases that you have sentenced [during the past two years], how often did the guideline sentences afford adequate deterrence to criminal conduct?
 (Survey Question Number 3)

“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.

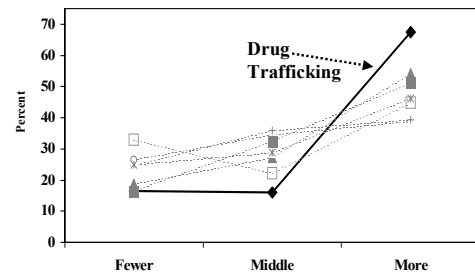
Offense type responses. The graphs below and to the right show reactions to this sentencing goal by offense types. The data for the offense types generally follow the “More” pattern of the “all cases” data of Exhibit II-5, with attention called to two specific offense types.

- **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.

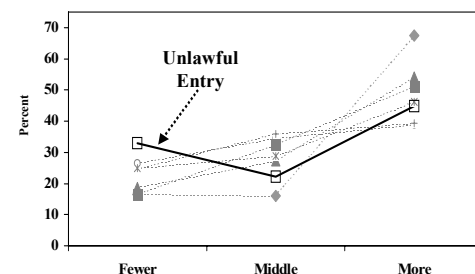
Exhibit II-5: District Court Judges – Question 3
How often did the guideline sentences afford adequate deterrence to criminal conduct?



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:

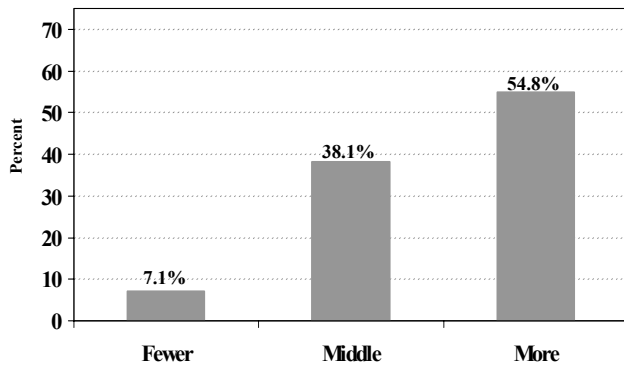
Considering cases that you have sentenced [during the past two years], how often did the guideline sentences protect the public from further crimes of the defendant?
 (Survey Question Number 4)

“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.

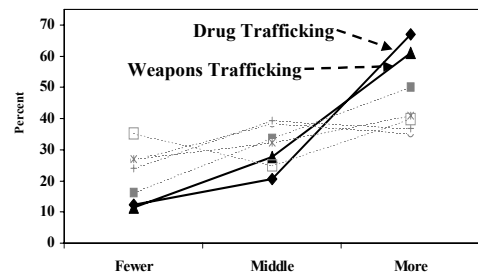
Offense type responses. The graphs below and to the right shows the distribution responses for the given offense types.

- 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.

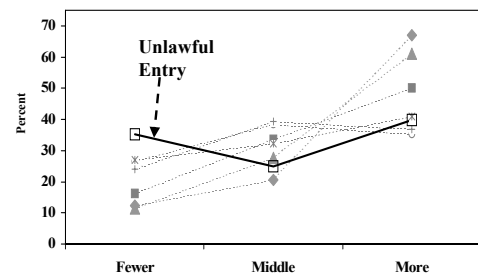
Exhibit II-6: District Court Judges – Question 4
How often did the Guideline sentences protect the public from further crimes of the defendant?



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)

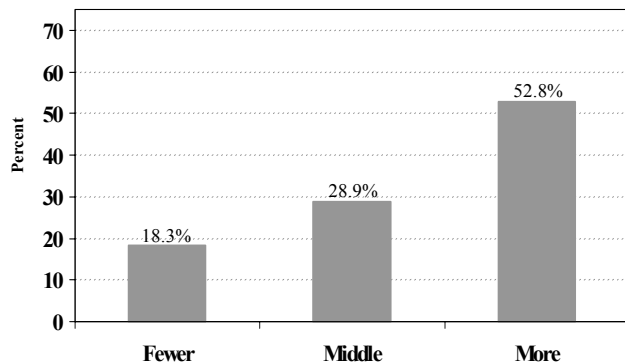
Two different statutes⁴ related to the guidelines state that the guideline sentences must avoid unwarranted sentencing disparity among defendants with similar records who have been found guilty of similar conduct.

“All cases” responses.

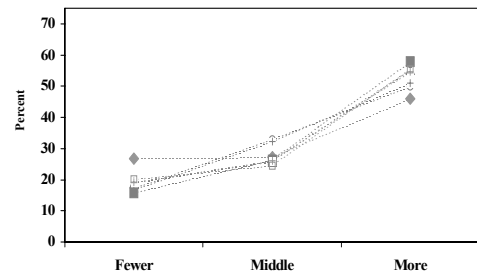
Exhibit II-7 indicates that more than half (52.8%) of responding district court judges reported that unwarranted disparities were being avoided by “More” of their sentences. Even given this majority response of “More,” still a notable proportion of judges – nearly two of every ten (18.3%) responding 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)

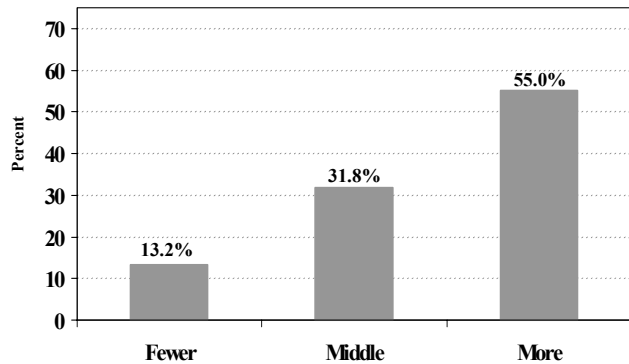
District Court Judges: Sentencing Goals in the “More” Analysis Grouping
Certainty in Meeting the Purposes of Sentencing

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)

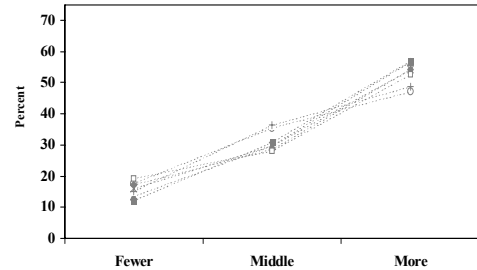
“All cases” responses. Similar to the result above for the goal of unwarranted disparity, Exhibit II-8 illustrates that more than half (55.0%) of district court judges believed that “More” of their imposed guideline sentences provided certainty for the offender.

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



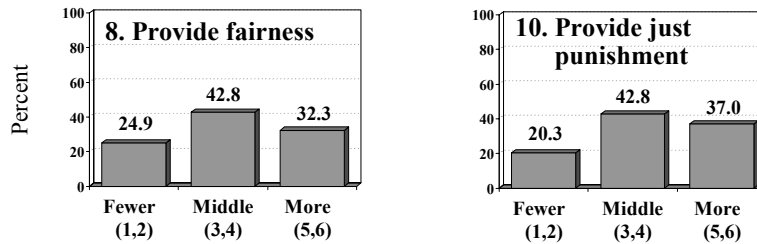
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.

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.

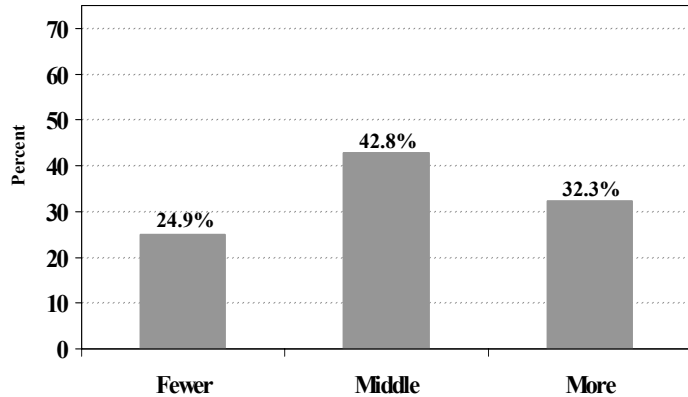
Offense type responses. Of the seven offense types studied in the survey, only two exhibited the “Middle” response category mirroring Exhibit II-10. The first graph on the right shows that these “Middle” offense types were fraud and theft/larceny/ embezzlement.

There were two other offense response patterns.

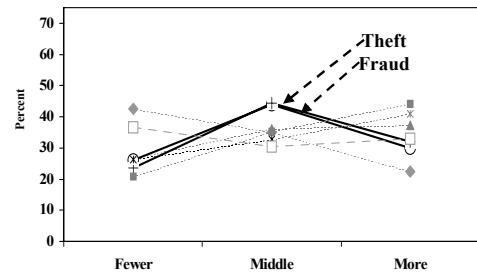
- A “More” response pattern held for three offense types: robbery, alien smuggling, and weapons trafficking. Judges responded in the “More” category more frequently than in either of the other two categories.
- A “Fewer” response pattern held for drug trafficking and immigration unlawful entry (the bottom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

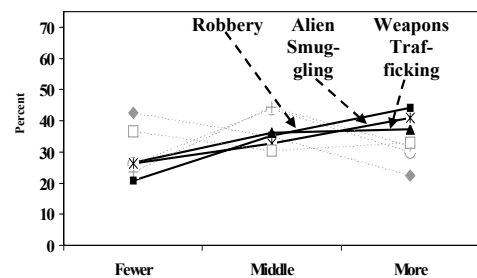
Exhibit II-10: District Court Judges – Question 8
How often did the guideline sentences provide fairness in meeting the purposes of sentencing?



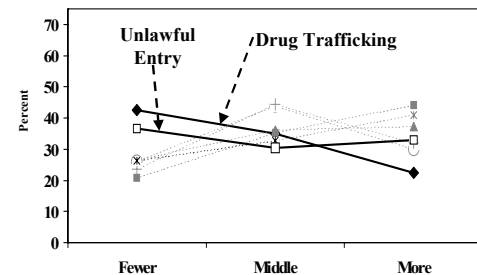
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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.

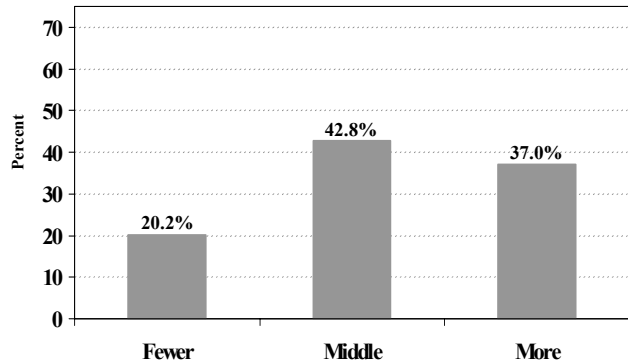
Exhibit II-11 shows that 42.8 percent of responding district court judges agreed that the sentencing goal of just punishment was met only by a “Middle” number of guideline sentences.

Offense type responses.

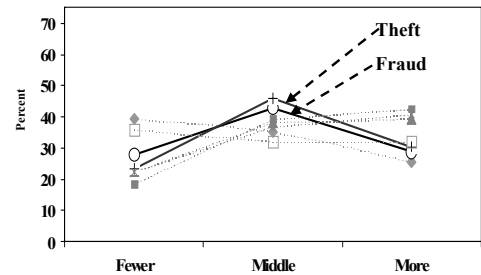
Masked by the generalized data of Exhibit II-11, the individual offense types had response patterns that widely varied.

- 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.

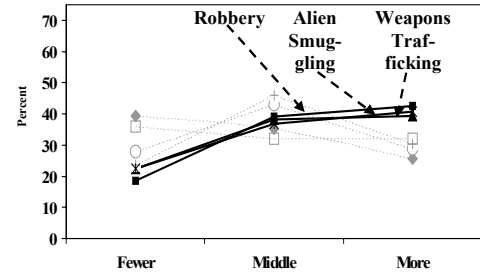
Exhibit II-11: District Court Judges – Question 10
How often did guideline sentences provide just punishment?



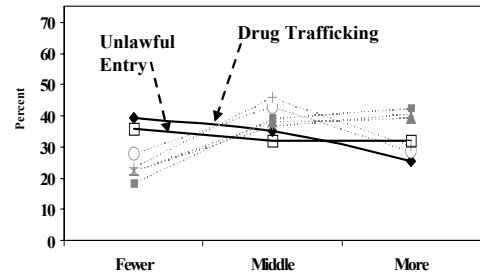
Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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

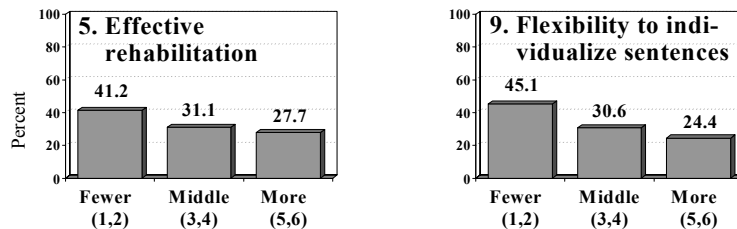


Source: U.S. Sentencing Commission, A Survey of Article III Judges on the Federal Sentencing Guidelines, June 2002.



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:

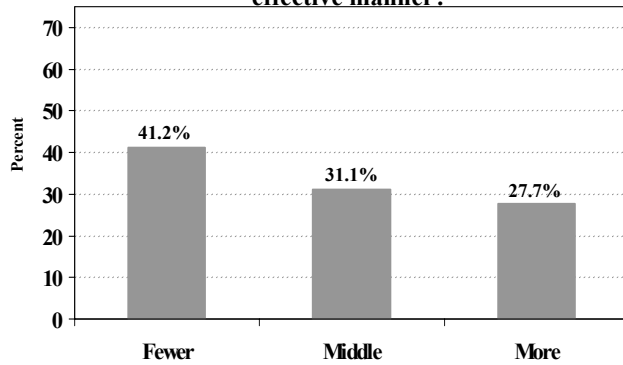
Considering cases that you have sentenced [during the past two years], how often did the guideline sentences, where rehabilitation was appropriate, provide defendants with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner? (Survey Question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

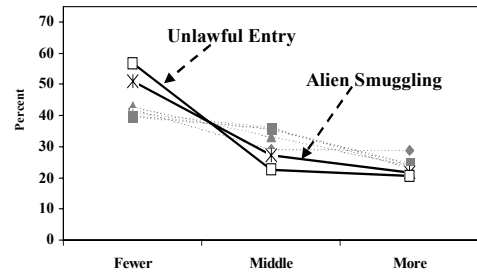
Offense type responses. The graph for the individual offense type results appears on the lower right. The concentration of responses in the “Fewer” category held for all the offense types studied in the survey.

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.

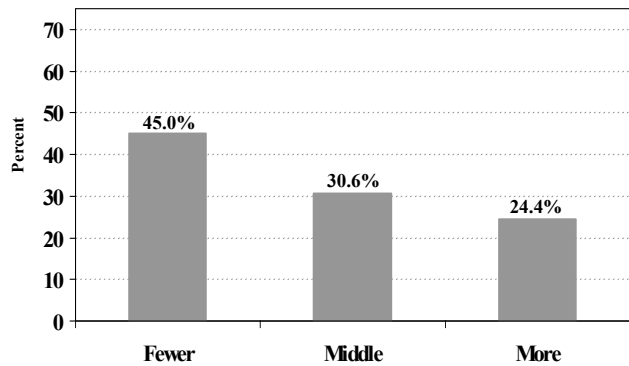
District Court Judges: Sentencing Goals in the “Fewer” Analysis Grouping
Sufficient Flexibility to Permit Individualized Sentences

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)

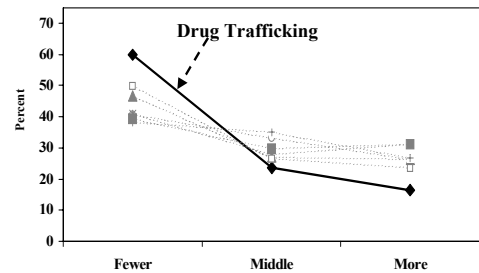
“All cases” responses. The greatest number of responding district court judges (45.0%) reported that “Fewer” cases met the sentencing goal of maintaining flexibility to individualize sentences. These results are presented in Exhibit II-14.

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.

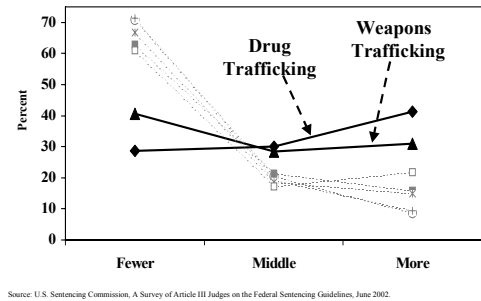
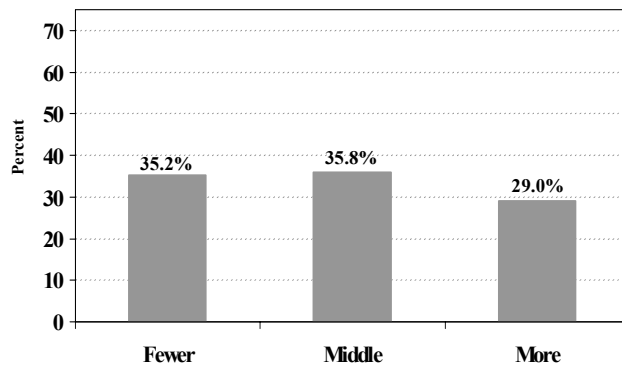


Exhibit II-15: District Court Judges - Question 2

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).

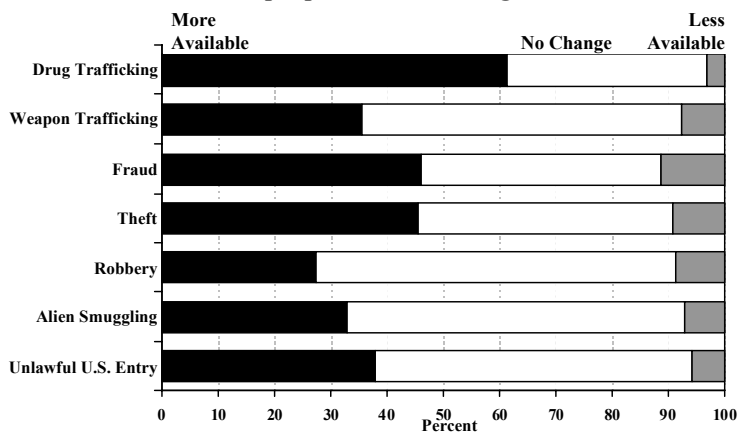
⁸In Sentencing Table Zones B and C, the judge can impose supervised release with conditions of non-imprisonment confinement, for a portion of imprisonment. The non-imprisonment confinement includes community confinement, home detention, or intermittent confinement (§5C1.1). This option is limited in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

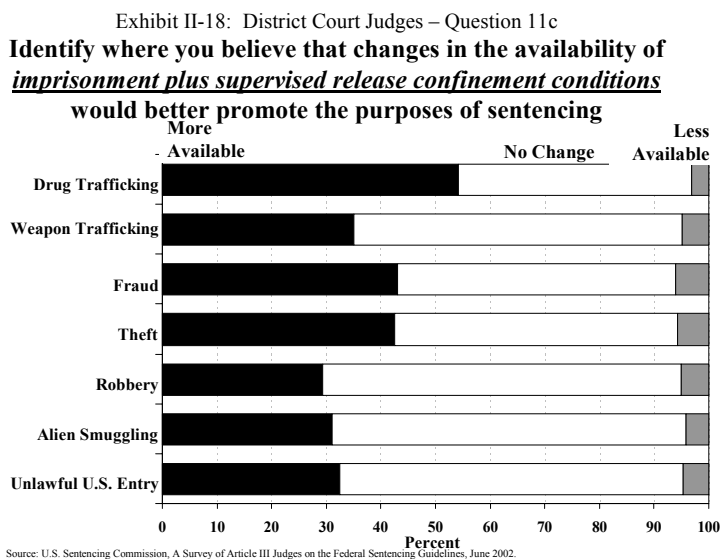
Wording of the survey question:

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:

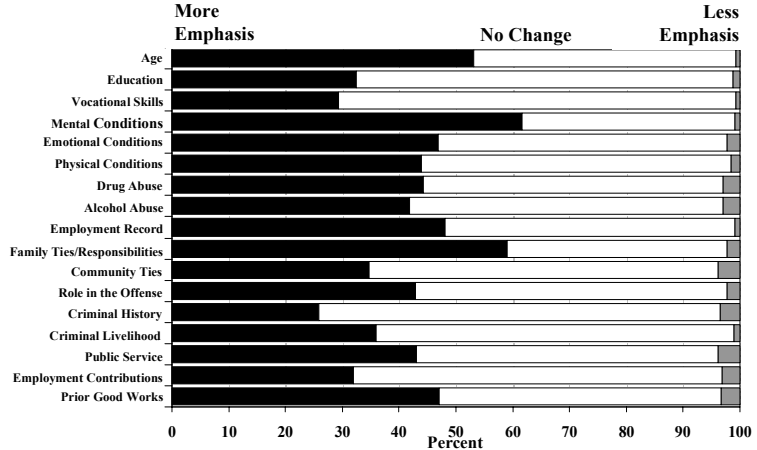
Based on the cases that you personally have sentenced, do you believe that the guidelines should place less or more emphasis on any of the following defendant characteristics for sentencing determination? (Survey Question Number 12)

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.

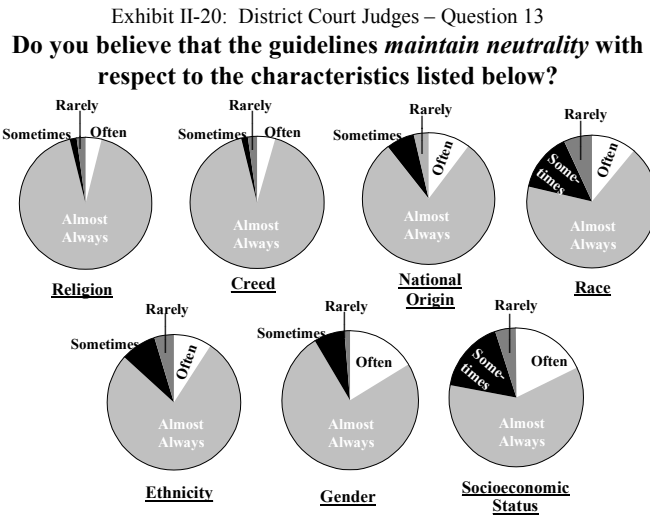
3. Maintain Sentencing Neutrality

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:

- 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

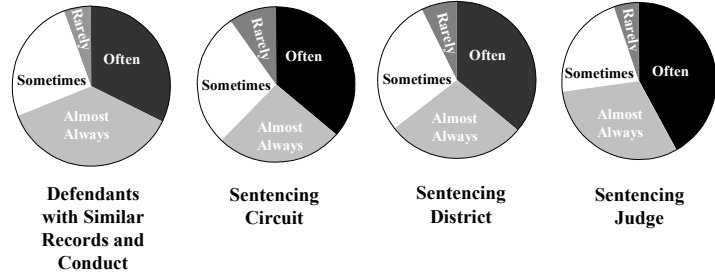
Wording of the survey question:

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.

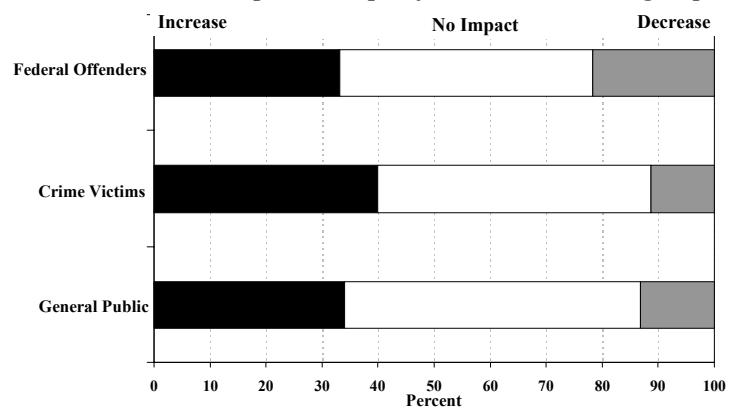
Among those district court judges who believed that the guidelines had affected respect for the law, the respondents were more likely to say the effect was to increase respect, rather than to decrease respect. This was particularly true for crime victims and the general public: at a rate of

Exhibit II-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.

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:

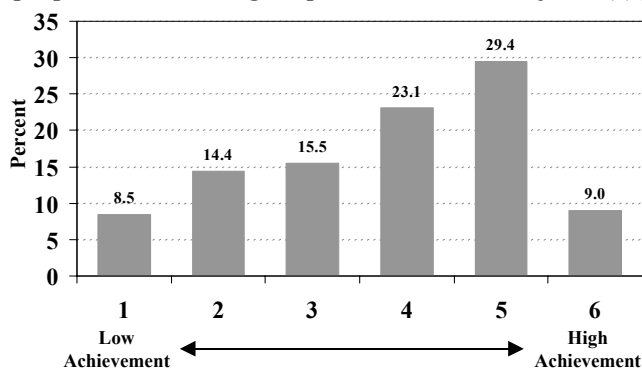
Please mark on the scale below to indicate your rating of the federal sentencing guideline system’s achievements in furthering the purposes of sentencing as specified in 18 U.S.C. § 3553(a)(2). (Survey Question Number 18)

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.

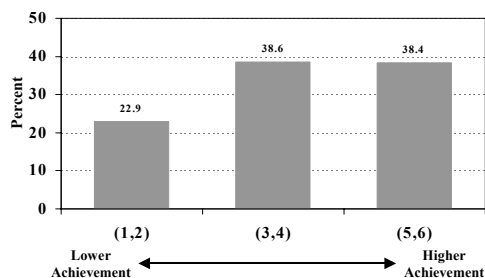
On the six-level scale, with six representing “High Achievement,” the district court judges’ most frequently (29.4%) cited response was “5,” while the second most frequently (23.1%) cited response was “4.”

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.