

**FINAL REPORT**

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



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## **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.<sup>1</sup> Immigration unlawful entry guideline punishment levels were viewed as greater than appropriate<sup>2</sup> 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

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<sup>1</sup>The 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.

<sup>2</sup>The 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.