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December 2, 2002

Dear Judge:

Enclosed is a summary of the responses of federal judges to the survey questions the Sentencing Commission circulated earlier this year. More than 51% of the district judges and 33% of circuit judges filled out the questionnaire. We are most appreciative that so many of you took the time to respond to our request for information.

As we explained earlier, the purpose of the survey was to assist us in working with Congress. We already have used results from it in our Special Report to Congress, *Cocaine and Federal Sentencing Policy* (May 2002), which led to a Senate hearing on our recommendation to improve sentencing in this area.

The Commission is committed to an ongoing dialogue with the federal judiciary because we need your input to do our work. We are always interested in your comments.

Best personal regards,

Judge Diana E. Murphy
Chair

SUMMARY REPORT



U.S. SENTENCING COMMISSION'S SURVEY OF ARTICLE III JUDGES

A COMPONENT OF THE
FIFTEEN YEAR REPORT
ON THE U.S. SENTENCING COMMISSION'S
LEGISLATIVE MANDATE



DECEMBER 2002

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SUMMARY REPORT ON THE U.S. SENTENCING COMMISSION'S SURVEY OF ARTICLE III JUDGES

The approaching fifteen-year anniversary of the federal sentencing guidelines brings an opportunity to reflect on the work produced by the U.S. 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. 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. A list of the statutory issues covered by the survey appears in Appendix A.

Reporting of Survey Results

A portion of the survey asked each judge to rate the guidelines' effectiveness in achieving the various goals of sentencing on 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). This summary report treats responses concentrated at the higher end of the scale (*i.e.*, "5" or "6") as indicating higher effectiveness in achieving these goals, responses in the center of the scale (*i.e.*, "3" or "4") as indicating moderate effectiveness in achieving these goals, and responses concentrated at the lower end of the scale (*i.e.*, "1" or "2") as indicating less effectiveness in achieving these goals.

Overall Rating of Guidelines

When asked to provide a general overall rating of effectiveness of the federal sentencing guidelines in achieving the purposes of sentencing (Q18)¹, approximately 40 percent of judges (38.4% of responding district court judges and 41.7% of responding circuit court judges) reported a higher degree of effectiveness, approximately 38 percent of judges (38.6% of responding district court judges and 37.5% of responding circuit court judges) reported a moderate degree of effectiveness, and approximately 22 percent of judges (22.9% of responding district court judges and 20.8% of responding circuit court judges) reported a lower degree of effectiveness.²

¹To assist in linking the survey finding to the relevant data table in the appendices, references to the survey question numbers are placed throughout the text. For example, the reference here to "Q18" indicates that this discussion is based on data from the survey's Question 18 topic (judges' ratings of overall guideline achievement).

²District and circuit court judges responding to the survey held comparable opinions about how the guidelines reflected their legislative mandates, often showing strikingly similar patterns of responding.

Areas of Most Effectiveness in Meeting the Sentencing Goals

Both responding district and circuit court judges believed that the guidelines had been relatively effective in achieving four of the sentencing goals set forth in the Sentencing Reform Act:

- providing punishment levels that reflect the seriousness of the offense (Q1),
- providing adequate deterrence to criminal conduct (Q3),
- protecting the public from further crimes of the defendant (Q4), and
- avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct (Q6).

Responding district court judges were more likely than responding circuit court judges to report higher effectiveness in achieving these four goals, and a majority of responding district court judges also believed that the guidelines were highly achieving the additional goal of providing certainty in meeting the purposes of sentencing (Q7).

Areas of Least Effectiveness in Meeting the Sentencing Goals

A plurality of both responding district and circuit court judges indicated that there were two areas in which the guidelines were less effective in achieving the purposes of sentencing:

- providing defendants with training, medical care, or treatment in the most effective manner, where rehabilitation was appropriate (Q5) and
- maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors (Q9).

Approximately 40 percent of responding district court judges, and slightly more responding circuit court judges, reported that few of their cases met these sentencing goals.

Variations Within Offense Categories

The survey asked judges to provide responses specific to the most common types of offenses sentenced under the guidelines. The response patterns were similar across offense types, but noteworthy differences were observed for drug trafficking offenses. Compared to other offenses, a greater percentage of responding judges reported that drug sentences typically were:

- more likely to afford adequate deterrence (Q3) and to protect the public from further crimes (Q4) and

- less likely to provide fairness (Q8), to provide just punishment (Q10), to maintain sufficient flexibility to permit individualized sentences (Q9), and to avoid unwarranted disparities among similar defendants found guilty of similar conduct (Q6).

Consistent with these findings, the survey also affirmed the respondents' judicial belief that drug trafficking sentences were often longer than required to reflect the seriousness of the drug trafficking crime. (Q1iii).

With respect to other variations across offense types, responding judges also viewed firearms trafficking sentences as relatively effective in meeting the goals of adequate deterrence (Q3) and protection of the public (Q4). Further, when responding judges reported that certain guideline punishment levels did not reflect crime seriousness, immigration unlawful entry sentences more often were reported as too long, while fraud and theft sentences more often were reported as too short.³ (Q1iii)

Mandatory Minimums

With respect to drug trafficking offenses, more than 40 percent of responding judges reported that mandatory minimum statutes highly affect their ability to impose a sentence reflecting the statutory purposes of sentencing. In contrast, slightly more than one quarter of responding judges reported that few of their drug trafficking cases involved mandatory minimum provisions affecting the purposes of sentencing. These data also suggest that responding judges were more concerned with mandatory minimum 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. Looking beyond drug trafficking offenses, approximately 40 percent of all responding district court judges reported that relatively few firearms trafficking cases involved mandatory minimum provisions affecting achievement of the purposes of sentencing. (Q2)

Offender Characteristics

More than half of all responding judges would like more emphasis at sentencing placed on the 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

³The Commission's amendments to §2L1.2 (Unlawful Entry and Remaining) and §2B1.1 (Theft, Embezzlement, Receipt 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.

greater guideline emphasis on several other offender characteristics: physical condition, drug or alcohol dependence/abuse, and role in the offense. (Q12)

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. (Q13)

Judicial Factor Disparity

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. (Q14)

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. (Q15)

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 Needed” response was common (with 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. For example, in sentencing drug trafficking offenders, more than half of responding district court judges (and a somewhat smaller proportion of responding circuit court judges) would like 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 and fraud offenses. (Q11)

Additional Information

This Summary Report highlights only some of the survey's results. Other results can be found in the accompanying tables showing the distribution of responses for each survey question: Appendix B (for district court judge respondents) and Appendix C (for circuit court judge respondents). In addition, the Commission expects to release in the future a more detailed report on the survey, including discussions of the methodology and response rates, blank versions of the judge survey instruments, and graphs comparing total and offense type results.

APPENDIX A
SURVEY TOPICS AND STATUTORY REFERENCES
Article III Judge Survey Conducted by the U.S. Sentencing Commission in January 2002

Topic	Statutory Reference	Survey Question
Provide fairness in meeting the purposes of sentencing	28 U.S.C. § 991(b)(1)(B)	Question 8
Provide certainty in meeting the purposes of sentencing	28 U.S.C. § 991(b)(1)(B)	Question 7
Avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct	28 U.S.C. § 991(b)(1)(B)	Question 6
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)	Question 9
Determine whether to impose a sentence to probation, a fine, or a term of imprisonment	28 U.S.C. § 994(a)(1)(A)	Question 11
Consider whether the following matters, among others, with respect to a defendant, have any relevance to . . . an appropriate sentence: age, education, vocational skills, mental and emotional condition, physical condition including drug dependence, previous employment record, family ties and responsibilities, community ties, role in the offense, criminal history, and degree of dependence upon criminal activity for a livelihood	28 U.S.C. § 994(d)	Question 12

Topic	Statutory Reference	Survey Question
Assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders	28 U.S.C. § 994(d)	Question 13
Assure that the guidelines and policy statements ... reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant	28 U.S.C. § 994(e)	Question 12
Reflect the seriousness of the offense	18 U.S.C. § 3553(a)(2)(A)	Question 1
Promote respect for the law	18 U.S.C. § 3553(a)(2)(A)	Question 15
Provide just punishment	18 U.S.C. § 3553(a)(2)(A)	Question 10
Afford adequate deterrence to criminal conduct	18 U.S.C. § 3553(a)(2)(B)	Question 3
Protect the public from further crimes of the defendant	18 U.S.C. § 3553(a)(2)(C)	Question 4
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)(D)	Question 5
Avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct	18 U.S.C. § 3553(a)(6)	Question 6

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

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

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

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

Question 1 For those cases where you believe that the guideline punishment levels *do not reflect* the seriousness of the crime, was it because the punishment was generally *less* than appropriate, *more* than appropriate, or *sometimes greater/sometimes less*?

(continued)

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

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

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

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

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

CIRCUIT JUDGES	i. ii. Considering only defendants with mandatory minimum convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	13	19.1	11	16.4	13	22.0	25	43.9	23	42.6	24	43.6	22	43.1	22	39.3
2	10	14.7	6	9.0	7	11.9	11	19.3	11	20.4	8	14.5	9	17.6	11	19.6
3	12	17.6	13	19.4	12	20.3	7	12.3	9	16.7	7	12.7	10	19.6	12	21.4
4	16	23.5	8	11.9	5	8.5	6	10.5	5	9.3	9	16.4	4	7.8	1	1.8
5	11	16.2	14	20.9	13	22.0	2	3.5	1	1.9	2	3.6	1	2.0	4	7.1
6 Almost All	6	8.8	15	22.4	9	15.3	6	10.5	5	9.3	5	9.1	5	9.8	6	10.7
Total	68	100.0	67	100.0	59	100.0	57	100.0	54	100.0	55	100.0	51	100.0	56	100.0
Missing	8	—	9	—	17	—	19	—	22	—	21	—	25	—	20	—
Mean	3.3		3.8		3.4		2.4		2.4		2.5		2.4		2.5	
Median	3.0		4.0		3.0		2.0		2.0		2.0		2.0		2.0	

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

CIRCUIT JUDGES	i. ii. Considering only defendants convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	3	4.8	7	10.9	4	6.6	3	4.9	1	1.7	2	3.3	4	6.9	8	12.9
2	4	6.5	3	4.7	2	3.3	4	6.6	4	6.7	3	4.9	7	12.1	9	14.5
3	6	9.7	5	7.8	5	8.2	16	26.2	16	26.7	13	21.3	13	22.4	13	21.0
4	11	17.7	3	4.7	5	8.2	9	14.8	10	16.7	8	13.1	5	8.6	1	1.6
5	19	30.6	13	20.3	16	26.2	11	18.0	13	21.7	13	21.3	12	20.7	11	17.7
6 Almost All	19	30.6	33	51.6	29	47.5	18	29.5	16	26.7	22	36.1	17	29.3	20	32.3
Total	62	100.0	64	100.0	61	100.0	61	100.0	60	100.0	61	100.0	58	100.0	62	100.0
Missing	14	—	12	—	15	—	15	—	16	—	15	—	18	—	14	—
Mean	4.5		4.7		4.9		4.2		4.3		4.5		4.1		3.9	
Median	5.0		6.0		5.0		4.0		4.0		5.0		4.5		4.5	

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

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

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

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

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

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

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

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

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

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

Question 6 Considering cases that have come to you on appeal, how often did the guideline sentences, as properly applied, avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CIRCUIT
JUDGES**

Offense Type

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

**PROBATION WITH
CONFINEMENT
CONDITIONS**

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

**IMPRISONMENT
PLUS SUP. RELEASE
CONFINEMENT
CONDITIONS**

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

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

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

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

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

*Includes military, civic, charitable, or public service

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

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

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

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

CIRCUIT
JUDGES

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

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

CIRCUIT
JUDGES

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

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

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

Question 15 Do you believe that the sentencing guidelines have increased, decreased, or had no impact on *respect for the law* for these groups?¹

**CIRCUIT
JUDGES**

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

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

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

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

Question 18
CIRCUIT
JUDGES

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

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

Question 19A
CIRCUIT
JUDGES

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

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

Question 19B
CIRCUIT
JUDGES

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

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

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

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

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

DISTRICT
JUDGES

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

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

Question 1 For those cases where you believe that the guideline punishment levels *do not reflect* the seriousness of the crime, was it because the punishment was generally *less* than appropriate, *more* than appropriate, or *sometimes greater/sometimes less*?

(continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DISTRICT
JUDGES

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

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

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

DISTRICT
JUDGES

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

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

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

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

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

DISTRICT JUDGES	ii. Considering only defendants convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	37	9.4	96	22.2	52	12.7	52	12.3	41	9.7	42	10.7	38	12.3	75	19.3
2	61	15.5	88	20.4	57	13.9	58	13.7	59	13.9	39	9.9	43	14.0	67	17.3
3	75	19.1	82	19.0	68	16.5	96	22.7	99	23.3	58	14.8	53	17.2	60	15.5
4	93	23.7	69	16.0	81	19.7	90	21.3	89	21.0	80	20.4	48	15.6	58	14.9
5	87	22.1	52	12.0	88	21.4	71	16.8	75	17.7	98	25.0	71	23.1	76	19.6
6 Almost All	40	10.2	45	10.4	65	15.8	56	13.2	61	14.4	75	19.1	55	17.9	52	13.4
Total	393	100.0	432	100.0	411	100.0	423	100.0	424	100.0	392	100.0	308	100.0	388	100.0
Missing	73	—	34	—	55	—	43	—	42	—	74	—	158	—	78	—
Mean	3.6		3.1		3.7		3.6		3.7		4.0		3.8		3.4	
Median	4.0		3.0		4.0		4.0		4.0		4.0		4.0		3.0	

Question 9 Considering cases that you have sentenced, how often did the guideline sentences maintain sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices?

DISTRICT JUDGES	ii. Considering only defendants convicted of these crimes:															
	All Sentencing		Drug Trafficking		Firearms Trafficking		Fraud		Larceny/ Theft/Emb.		Robbery		Alien Smuggling		Unlawful U.S. Entry	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
1 Few	110	27.4	151	34.6	110	26.8	102	24.2	100	23.6	98	24.7	81	26.0	121	30.8
2	71	17.7	110	25.2	82	20.0	69	16.4	62	14.7	58	14.6	47	15.1	75	19.1
3	66	16.4	58	13.3	66	16.1	77	18.2	83	19.6	67	16.9	47	15.1	55	14.0
4	57	14.2	45	10.3	45	10.9	63	14.9	65	15.4	51	12.8	40	12.8	49	12.5
5	65	16.2	38	8.7	67	16.3	75	17.8	73	17.3	73	18.4	58	18.6	56	14.2
6 Almost All	33	8.2	34	7.8	41	10.0	36	8.5	40	9.5	50	12.6	39	12.5	37	9.4
Total	402	100.0	436	100.0	411	100.0	422	100.0	423	100.0	397	100.0	312	100.0	393	100.0
Missing	64	—	30	—	55	—	44	—	43	—	69	—	154	—	73	—
Mean	3.0		2.6		3.0		3.1		3.2		3.2		3.2		2.9	
Median	3.0		2.0		3.0		3.0		3.0		3.0		3.0		3.0	

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

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

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

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

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

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

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

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

**DISTRICT
JUDGES**

Offense Type

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

**PROBATION WITH
CONFINEMENT
CONDITIONS**

	<u>Drug Trafficking</u>		<u>Weapon Trafficking</u>		<u>Fraud</u>		<u>Larceny/ Theft/Emb.</u>		<u>Robbery</u>		<u>Alien Smuggling</u>		<u>Unlawful U.S. Entry</u>	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
More available	274	61.4	151	35.4	200	46.1	198	45.6	113	27.2	114	32.9	151	37.8
Less Available	14	3.1	33	7.7	49	11.3	40	9.2	36	8.7	25	7.2	23	5.8
No change needed	158	35.4	242	56.8	185	42.6	196	45.2	266	64.1	207	59.8	226	56.5
Total	446	100.0	426	100.0	434	100.0	434	100.0	415	100.0	346	100.0	400	100.0
Missing	20	—	40	—	32	—	32	—	51	—	120	—	66	—

**IMPRISONMENT
PLUS SUP. RELEASE
CONFINEMENT
CONDITIONS**

	<u>Drug Trafficking</u>		<u>Weapon Trafficking</u>		<u>Fraud</u>		<u>Larceny/ Theft/Emb.</u>		<u>Robbery</u>		<u>Alien Smuggling</u>		<u>Unlawful U.S. Entry</u>	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
More available	238	54.1	149	35.0	185	42.9	183	42.6	120	29.3	107	31.0	130	32.5
Less Available	14	3.2	21	4.9	26	6.0	25	5.8	21	5.1	14	4.1	19	4.8
No change needed	188	42.7	256	60.1	220	51.0	222	51.6	268	65.5	224	64.9	251	62.8
Total	440	100.0	426	100.0	431	100.0	430	100.0	409	100.0	345	100.0	400	100.0
Missing	26	—	40	—	35	—	36	—	57	—	121	—	66	—

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

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

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

DISTRICT JUDGES

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

*Includes military, civic, charitable, or public service

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

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

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

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

DISTRICT
JUDGES

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

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

Question 14 Based on the cases that you personally have sentenced, do you believe that the guidelines *avoid unwarranted disparity* with respect to the characteristics listed below?¹

DISTRICT
JUDGES

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

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

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

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

Question 15 Do you believe that the sentencing guidelines have increased, decreased, or had no impact on *respect for the law* for these groups?¹

**DISTRICT
JUDGES**

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

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

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

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

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

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

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

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

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