

Judicial Perspectives on the Federal Sentencing Guidelines and the Goals of Sentencing: Debunking the Myths

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With the adoption of the 1984 Sentencing Reform Act, Congress ushered in a new era of federal sentencing policy. For some, the prospect of sentencing reform was viewed as a means of eliminating unwarranted disparity among sentences, long perceived as a problem within the federal system.³ For others, however, the creation of a sentencing commission tasked with the authority of developing, and ratifying, guidelines that would shape sentencing policy, amounted to an attack upon the traditional independence enjoyed by sentencing judges.⁴ Judges, in fact, have been among the most outspoken critics of the federal sentencing guidelines, arguing that the guidelines have become overly complicated and are far too rigid in application.⁵

The difficulty, however, is that it is hard to gauge the judges' actual reactions to the guidelines with respect to their fulfillment of the principles and purposes of sentencing. Myth takes root where facts are absent. It has long been rumored that federal judges by and large detest the sentencing guidelines. That proposition has never been tested in any rigorous fashion, however, and appears to be the product of anecdotal tales. As in any large constituency, those who shout the loudest garner the most attention. It is often hard to assess whether the vocal minority represents the majority of judicial opinion. Consequently, it was

³The Senate report explained:

“A primary goal of sentencing reform is the elimination of unwarranted sentencing disparity. The bill requires the judge, before imposing sentence, to consider the history and characteristics of the offender, the nature and circumstances of the offense, and the purposes of sentencing.”

S. Rep. No. 225, 98th Cong., 2d Sess.52 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3235.

⁴See NACDL Applauds Judicial Conference Statement on Sentencing Discretion, 27-Nov, *Champion* 6 (2003); *Who's Afraid of the Federal Judiciary? Why Congress' Fear of Judicial Sentencing Discretion May Undermine a Generation of Reform*, 27-Jun, *Champion* 6 (2003).

⁵See generally, *Planning for the Future: Results of a 1992 Federal Judicial Center Survey of United States*

felt that the best way to determine judicial sentiment with respect to the guidelines would be simply to ask them. The judges' opinions, of course, are important, as the judiciary stands on the front lines of the guidelines' enforcement. They also have the experience in witnessing the effect of the guidelines on the people upon whom they pronounce sentence. Without an appropriate "buy in" by judges, the guideline sentencing system can never fully be implemented.

As a consequence, this paper presents the results of a survey undertaken to determine whether the judiciary believes the federal sentencing guidelines have met the goals and purposes of sentencing. Rather than articulating sentencing aims ourselves, we instead elected to use those that Congress had already established. In 18 U.S.C. 3553 and 28 U.S.C. 994, Congress laid out the principle aims of sentencing. In constructing this survey for the Sentencing Commission, our goal was to determine how well the judges' themselves believed the guidelines to be fulfilling Congress' goals in enacting sentencing reform.

Criminal sentences in the federal courts are governed by two interrelated sets of principles: the statutory purposes of the sentencing and the statutory directives Congress has given to the United States Sentencing Commission (hereafter, "Commission"). Each set of principles was added to the U.S. Criminal Code in 1984 as part of the Congressional effort to rationalize the process of criminal sentencing. A first set of goals appears in Title 18 of the U.S. Code and cites four purposes of punishment, generally labeled as just punishment, deterrence, incapacitation, and rehabilitation. The Sentencing Reform Act adds additional goals under Title 28 to ensure certain, fair, and flexible sentences, as well as to avoid

Judges, 7 Fed. Sent. Rep. 15 (1994).

disparity.

The goals are cited concisely and challenge the Commission to certify that the guideline structure is addressing these goals. In responding to this challenge, researchers and policy analysts can draw from multiple research strategies to evaluate the levels of guideline goal attainment. One of these approaches – the one highlighted in the analysis of this report – surveys stakeholders in the sentencing system and documents their views concerning the guidelines’ attainment of the sentencing goals. Subjective survey data not only reflect the status of the guidelines from the perspectives of the respondents, but they also illuminate the normative operative climate within which judges, prosecutors, probation officers, and defense attorneys perform their interrelated criminal justice duties.

In this paper, the level of achievement for the federal sentencing goals is examined from the personal perspectives of those who actually impose guideline sentences: federal court district judges. The purpose of this paper is three-fold: to document current judicial assessments of guideline sentencing goal achievements, to compare current assessments with corresponding sentencing goal achievement assessments prior to the federal guidelines, and to place judicial assessments into the context of the larger sentencing system with its contrasting player roles.

The first section below introduces the legislative sources of the statutory sentencing goals. The second section describes the empirical sources used in the comparisons, highlighting the Commission’s recent federal judge survey⁶ and documenting several prior sentencing surveys conducted over the past two decades. The third and fourth sections use

⁶A summary of the survey results can be found in Michael Edmund O’Neill, *Surveying Article III Judges’ Perspectives on the Federal Sentencing Guidelines*, 15 Fed. Sen. Reporter 220 (2003).

the response data from the Commission’s district court judge survey to identify the judges’ relative ranking of federal sentencing goal achievement, both overall and specifically for common offense types.

In the fifth section, the analysis compares recent goal achievement data with corresponding data from prior surveys, documenting trends in sentencing goal perceptions over time. Continuing the pre- and post-guideline comparison, the analysis in the sixth section contrasts the judges’ overall evaluations of sentencing system today with evaluations collected before the guidelines. The seventh section finishes the analysis with information on perceived levels of sentencing goal achievement through the eyes of other sentencing stakeholders, namely prosecutors, defense attorneys, and probation officers. The concluding section summarizes the current status of sentencing goal attainment under the federal guidelines and suggests future directions for Commission action to measure and improve goal achievement.

I. The Dual Sources of Federal Sentencing Goals

The legislative history of the Comprehensive Crime Control Act of 1984, which established the Sentencing Commission and articulated the goals of sentencing, provided the framework under which sentencing schemes would be determined. That history, which recounted the problem of disparity and cited the failure of the so-called rehabilitative model of sentencing, laid out the Committee’s basic goals in undertaking sentencing reform.⁷ Those aims included:

“First, sentencing legislation should contain a comprehensive and consistent statement of the Federal law of sentencing, setting for the purposes to be served

⁷4 U.S. Code Congressional & Administrative News, 3222 (1984).

by the sentencing system....

Second, it should assure that sentences are fair both to the offender and to society....

Third, it should assure that the offender, the Federal personnel charged with implementing the sentence, and the general public, are certain about the sentence and the reasons for it.

Fourth, it should assure a full range of sentencing options from which to select the most appropriate sentence in a particular case.

Fifth, it should assure that each stage of the sentencing and corrections process...is geared toward the same goals for the offender and for society.”⁸

Relying upon this basic framework, Congress went on to further clarify and articulate the basic goals and purposes of the federal sentencing system. As a consequence, Title 18, section 3553 of the U.S. Code incorporates four purposes of punishment that serve as the basis for every criminal sentence administered within the federal criminal justice system. In Congress’ view, punishment should:

- “**reflect the seriousness** of the offense, to **promote respect for the law**, and to **provide just punishment** for the offense;”⁹
- “**afford adequate deterrence** to criminal conduct;”¹⁰
- “**protect the public** from further crimes of the defendant;”¹¹

⁸ Ibid.

⁹18 U.S.C. § 3553(a)(2)(A).

¹⁰18 U.S.C. § 3553(a)(2)(B).

¹¹18 U.S.C. § 3553(a)(2)(C).

- “provide the defendant with needed **educational or vocational training, medical care, or other correctional treatment** in the most effective manner.”¹²

These principles, which do not always dovetail perfectly, are generally known as just punishment, deterrence, incapacitation, and rehabilitation, respectively. A second set of sentencing goals grew directly from the Sentencing Reform Act of 1984¹³ to ensure that the statutory purposes of sentencing were applied uniformly within the federal system. To ensure this uniformity, Congress established the Commission and charged it with the task of measuring and monitoring the effectiveness of the federal criminal justice system in meeting the statutory purposes of sentencing.¹⁴ With the goal of standardizing the sentencing process, Congress instructed the Commission to:

- establish policies that “provide **certainty** and **fairness** in meeting the purposes of sentencing, **avoiding unwarranted disparities** among defendants with similar records who have been found guilty of similar criminal conduct while **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.”¹⁵

¹²18 U.S.C. § 3553(a)(2)(D).

¹³Chapter II of the Comprehensive Crime Control Act of 1984, Public Law 98-473, October 12, 1984.

¹⁴The purposes of the Commission are to establish policies that “assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of Title 18, United States Code;”...and to “develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of Title 18, United States Code.” 28 U.S.C. § 991(b)(1)(A) and 28 U.S.C. § 991(b)(2), respectively.

¹⁵28 U.S.C. § 991(b)(1)(B).

In sum, the statutory purposes of sentencing are meant to codify the four basic rationales for punishment, and the statutory purposes of the Commission are meant to ensure that the statutory purposes of sentencing are applied in an effective and consistent manner.¹⁶

II. Methodology

In 2001 the Commission fielded a survey focusing on the statutory goals of the Sentencing Reform Act and the statutory purposes of sentencing.¹⁷ All active Article III judges were mailed anonymous questionnaires in January 2002.¹⁸ Despite an anthrax scare that disrupted mail services and caused some recipients to question mail sent out from the Commission's Washington D.C. postal facility,¹⁹ the 51.8 percent response rate for the district court judges is similar to comparable surveys. Considering the fact that the survey was administered anonymously, without an individualized respondent, the response rate is better than average.

The Commission's survey asked district court judges to assess what proportion of their caseload met each of the sentencing goals. The responses were reported on a six-point scale, with "1" indicating that "Few" cases met the goal and with "6" indicating that "Almost

¹⁶The Sentencing Reform Act also required the Commission to establish policies that "reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process." With these companion mandates in Title 18 and Title 28, Congress expressed its desire that the Commission apply the statutory purposes of sentencing in light of "the advancement in knowledge of human behavior" and in such a manner so as to avoid the "unwarranted sentencing disparity." See 28 U.S.C. § 991(b)(1)(B),(C).

¹⁷For a description of the survey methodology and the wording of the questions, see Linda Drazga Maxfield, SURVEY OF ARTICLE THREE JUDGES ON THE FEDERAL SENTENCING GUIDELINES (Washington, D.C.: U.S. Sentencing Commission, 2003), available at <http://www.ussc.gov/judsurv/judsurv.htm>. A discussion of the survey results can also be found in Michael Edmund O'Neill, Surveying Article III Judges' Perspectives on the Federal Sentencing Guidelines, 15 Fed. Sen. Reporter 220 (2003).

¹⁸We choose to exclude from the survey the justices of the Supreme Court as well as the judges of the United States Court of Appeals for the Federal Circuit. These Article III judiciary members were not surveyed primarily because they are not regularly involved in either the sentencing process itself, or the appellate review of sentences.

¹⁹See Manny Fernandez and Monte Reel, Tests Show No Anthrax at Postal Facility; Federal Reserve Mail Also Scrutinized, Official Say. WASH. POST, Jan 16, 2003, at B1(reporting on the reopening of a Northeast

All” cases met the goal. In the analysis here, the two most positive responses, “5” and “6,” are combined to represent the proportion of the judges who believe that the guideline goal has a high level of achievement.

The interpretation of information collected from opinion surveys requires a standard of comparison. For this analysis of the sentencing goals in the federal guideline system, the standard of comparison uses earlier judicial surveys on the goals of sentencing. One source of information involves prior judge surveys that covered sentencing goal issues. Some of these surveys precede implementation of the guidelines, and in fact were commissioned by the U.S. Department of Justice (hereafter, “DOJ”) during the years while the feasibility of federal sentencing guidelines was being debated. Examples of survey research conducted prior to the Sentencing Reform Act appear on the top portion of Exhibit 1.

There have also been several surveys conducted since the guidelines were adopted that address, usually only in part, the goals of sentencing. Some of these projects involve only a few respondents, while others involve nationwide data collection. Examples of survey research conducted after guideline implementation appear on the bottom portion of Exhibit 1.

The availability of the current and past survey findings permits a retrospective evaluation of changes in judicial opinions occurring simultaneously with the advent of the federal sentencing guidelines. Using survey data collected over the past twenty years, current judicial opinions about the goals of sentencing can be compared to opinions from the pre-guideline system and from earlier implementation stages of the guideline system.

Washington, D.C. mail facility after more than 24 hours after an anthrax contamination was feared).

A disadvantage of comparing data across independently collected survey data is the non-uniform nature of the data. The set of surveys use different methodologies, different formats, different questions, and different response categories. Thus, rather than providing definitive comparisons, the analysis provides suggestive trends and hypotheses. Under this caveat, the analysis here does not purport to resolve issues and make absolute judgments. Instead, the analysis documents apparent patterns and trends, illuminating future research directions that may address remaining open questions. The hope is that the Commission will repeat this survey at least every decade in order to maintain a clear picture of the judges' attitudes towards the guidelines.

III. District Judge Perceptions of Sentencing Goal Achievement

The first step in the analysis ranks the goals in terms of the percentage of judges who report high achievement.²⁰ The resulting ordered listing of judicial responses reveals the perceived relative success of sentencing goal attainment. Within this empirical framework, the judges' top rankings demonstrate their assessments of where the guidelines are best meeting their legislative goals.

A. Examining the Survey Results

Exhibit 2 displays the relative high achievement goal rankings as revealed by the district court judge respondents. Depending upon the specific goal examined, the Commission's judge survey demonstrates a wide variance in the judges' perceptions of achievement. At the top of the list, with 61.5 percent, is the goal of deterrence. Almost two

²⁰ For purposes of this analysis, we include only the responses from district court judges. In spite of the fact that the survey was mailed to judges at the height of an anthrax scare, the response rate for district court judges was quite good. Some 51.8 percent of all active district court judges responded to the survey. See, Michael Edmund O'Neill, *Surveying Article III Judges' Perspectives on the Federal Sentencing Guidelines*, 15 Fed. Sen.

out of three district court judges report that most of their sentences achieve this goal. Based on these data, the district court judges believe that the guideline system is putting its greatest energy into discouraging offenders from committing future crimes. Of course, it is unclear as to whether this involves general deterrence, specific deterrence, or incapacitation. Doubtless, many judges understand that imprisoning an offender for a large chunk of time will result in significant incapacitation effects; whether that necessarily translates into general deterrence, however, is less clear.

Next, in descending ranked order and all clustered closely between 55 percent and 52 percent, are the goals of certainty, protection of the public, avoidance of unwarranted disparities, and punishment reflecting offense seriousness. Just over half of district court judges report that most of their sentences achieve these sentencing goals. Most judges perceive that the guidelines are successful at providing convicted offenders with a sentence that accurately specifies actual time to be served, and in doing so, protects the public from future crimes that these offenders would otherwise commit (55.0% and 54.8%, respectively).

The district court judges' relatively high rankings of the goal of avoiding unwarranted disparities – fourth among the set of goals – highlights the priority the guidelines place on this sentencing objective, at least from the perspective of the district court judges. The high ranking for the goal of avoiding unwarranted disparity is particularly salient, as this goal was a central motivation for the shift to structured sentencing under the Sentencing Reform Act.²¹

Exhibit 2 shows that over half (52.8%) of the responding judges report that the guidelines avoid unwarranted disparities for most of their cases. This finding is particularly interesting

Reporter 220 (2003).

²¹See 2 Fed. Sent. Rep. 210 (1990).

because evidence suggests that while disparity has, in fact, decreased, regional disparity remains an issue. Similarly, studies recently conducted showing widely diverging departure rates among the various districts further indicate that disparity may be a continuing problem. While it is likely difficult (and perhaps unwise) to eliminate *all* disparity, certainly the judges' perception is that the guidelines have eradicated much of the disparity that previously existed.

With respect to whether guidelines sentences reflect offense gravity, almost the same proportion of district court judges (52.4%) report that most of their sentences imposed under the guidelines reflect the seriousness of the offense. While, at first blush, this may seem surprising, given that judges are frequently heard to criticize the guidelines' apparent harshness. This finding can be interpreted to mean that the guidelines' sentences may occasionally *overstate* the offense's seriousness.

Exhibit 2 uses a dashed line to indicate a distinct empirical gap between the sentencing goals where more than 50 percent of judges reported high achievement and sentencing goals where fewer than 50 percent of judges reported high achievement. Four sentencing goals - just punishment, fairness, rehabilitation, and flexibility - are in the lower half of the ranking distribution. These four lower-achieving goals have only a small proportion of judges reporting that most of their cases achieve these goals. Roughly one-third of the judges report that most of their sentences achieve the goals of just punishment and fairness. Even fewer judges – roughly 25 percent – state that most of their cases achieve the goals of rehabilitation and flexibility. Projecting from these achievement rankings of the

district court judges, the conclusion is that district court judges perceive that these four goals are not adequately addressed by the guideline sentencing structure.

The format of Exhibit 2 also demonstrates that the general goals of sentencing under 18 U.S.C. § 3553(a)(2) guidelines are somewhat more likely to receive positive judge responses than the guideline sentencing goals under 28 U.S.C. § 991(b)(1)(B). Interestingly, both sets of goals have ratings distributed throughout the observed percent scale. The high end of the judge response range is 61.5 percent (for deterrence) and the low end is 24.4 percent (for flexibility). Neither the general sentencing goals under Title 18 nor the guideline sentencing goals of Title 28 are clustered disproportionately in the higher, or lower, parts of the distribution. Three of the five Title 18 general sentencing goals are above Exhibit 2's dotted line, as are two of the four Title 28 guideline sentencing goals. The absolute magnitude for the judges' responses, however, indicate that the goal ratings for the general purposes of sentencing are more positive. For the Title 18 general purpose goals, an average 46.7 percent (median=52.4%) of district court judges report that most of their cases achieved a sentencing goal. For the Title 28 guideline sentencing goals, a somewhat lower average of 41.1 percent (median=42.6%) report that most of their cases achieve a goal.

There is one additional goal covered by the Commission's survey: to promote respect for the law. Using a different survey format, the district court judges were asked whether the guidelines had affected respect for the law, either among federal offenders, crime victims, or the general public. Roughly half of the judges²² believed that the guidelines had any impact on respect for the law. Among only those judges reporting that the guidelines had changed

²²Slightly more than half of district court judges believed respect for the public had changed for federal offenders (54.9%) and crime victims (51.2%), with a slightly smaller 47.3 percent seeing any change in respect

respect for the law, the majority believe the change is to increase respect (72.1% reported an increase in respect in the general public, 78.1 percent reported an increase in respect in crime victims, and 60.5 percent reported an increase in respect in federal offenders). This may come as a surprise to guideline critics who believe that the federal sentencing scheme has undermined confidence in the criminal justice system. If the judges' attitudes are any indication, it appears that a fair proportion of the judges believe that the guidelines did affect respect for the law, and that of that proportion, most believed that they increased respect for the law overall.

B. Summarizing the Results of the Judicial Survey

In summary, the 2001 survey results show a wide range in the levels of perceived goal achievement: a spread of almost 40 percentage points (from 61.5% for deterrence, to 24.4% for flexibility). While achievement generally at the 25 percent level is disappointingly lower than desired, a question remains whether levels of 50 percent or 60 percent are adequately high. The survey results themselves do not provide the context to evaluate whether any of the judges believe these perceived achievement levels are "good enough."²³ The remainder of this report looks at the survey findings in more detail and introduces a historical perspective to the evaluation framework.

IV. Guideline Goal Achievement and Offense Type

The devil truly is in the details. The evidence suggest that the judges' attitudes tend to be quite offense-specific with respect to serving the statutorily articulated purposes of

for the law among the general public.

²³This analysis reports empirical conclusions based on the rankings of the district court judges. No normative element is assumed. The judges' responses indicate their opinions about which goals are being achieved most often, and do not indicate which goals they believe are most important to achieve. A later section of the paper

sentencing. Indeed, the overall goal achievement rankings above mask variation in judicial opinions that are correlated with sentences for specific offense types. Thus, Exhibit 3 shows the district court judges' goal achievement rankings by selected offense types. Two conclusions may be drawn from this data.

First, as in Exhibit 2, a dashed line again divides the goals into two groupings. The five goals appearing above the dotted line in Exhibit 3 are the same five goals above the dotted line in Exhibit 2: deterrence, certainty, protection of the public, avoidance of unwarranted disparity, and reflection of offense seriousness. However, the ordering of these goals within offense type varies considerably. For three offense types -namely, fraud, theft, and robbery - avoidance of unwarranted disparity has the highest rank of positive judicial achievement ratings, with the goal of certainty having the second highest ranking. For firearms offenses, the judges rank highest achievement of the goal of protecting the public, while achievement of the goal of the deterrence has the highest rank for drug trafficking offenses. Also consistent with Exhibit 2, the four lowest ranking goals are also the lowest ranking goals for each of the five offense types, although again their ordering varies by offense type. Unsurprisingly, rehabilitation is the lowest ranked goal for all offense types except drug trafficking.

Exhibit 3 also illustrates that the overall level of sentencing goal achievement is not congruous among the offense types. Judges are more likely to see goal achievement for some offense types than for others. The bottom lines in Exhibit 3 display the mean and median percent of judges who report that most of their cases meet a sentencing goal. The offense

discusses normative issues underlying goal achievement.

types of firearms and robbery are most likely to have judges report goal achievement for their cases. The average percent of judges saying most of their cases meet a sentencing goal is 45.3 percent for firearms and 45.8 percent for robbery; the median percents for these offense types are even higher at 54.0 percent and 50.1 percent, respectively.

In sharp contrast are the substantially lower levels of perceived goal achievement for the offenses of fraud and theft. The average percent of judges saying that most of their cases meet a sentencing goal is only 34.8 percent for fraud offenses and 36.0 percent for theft offenses. The median values are similar, at 32.7 percent and 36.3 percent, respectively. The survey-wide similarity in judge responses for fraud and theft offenses has been previously noted,²⁴ and the markedly lower levels of perceived goal attainment for these offenses are troublesome. The low ratings of goal achievement for fraud and theft may be grounded in the judges' majority opinions (56.6% and 63.1% respectively) that the sentence lengths for these offenses are less than appropriate.²⁵ The Commission's subsequent amendments to §2B1.1²⁶ may have since addressed some of the concerns underlying the judges' low goal achievement responses for fraud and theft offenses.

V. Time Trends in Perceived Goal Achievement

The earlier Exhibit 2 data from the Commission's 2001 survey arrays district court judge responses into a hierarchy of goal achievement. This array cannot answer important policy questions, most notably whether goal achievement under the guidelines is as good as,

²⁴Maxfield, *supra* note 8 at II-4,5,11,12,17,19.

²⁵*Ibid.* at II-5.

²⁶The guideline amendment for §B1.1 (Theft, Embezzlement, Theft of Stolen Property, Property Destruction, and Offenses involving Fraud or Deceit) was effective November 1, 2001, only weeks before the survey.

or perhaps is better than, goal achievement prior to the guidelines' adoption. In order to study whether the federal sentencing guidelines have affected sentencing goal attainment, information about sentencing goal achievement *prior* to the guidelines is necessary.

A. Trends for the Sentencing Goals Under Title 18

The most comparable pre-guideline data on goal attainment is available from the 1980's Federal Sentencing Guidelines Project, sponsored by DOJ's Office for Improvements in the Administration of Justice Federal Justice Research Program. One of the questions in the DOJ survey asks federal judges to report on the level of sentencing goal achievement for five sentencing goals: general deterrence, specific deterrence, protection of the public, rehabilitation and just punishment.²⁷ Each goal is rated on a five point scale, and the survey findings report the percentage of judges who believe that each goal is achieved "Extremely well," "Very well," or "Somewhat."

Exhibit 4 reprints the data from the 1981 survey. More than three-fourths (77%) of federal judges believe that the goal of specific deterrence had high achievement. The goals of general deterrence (65%) and protecting public (69%) have close levels of perceived achievement, with approximately two-thirds of judges reporting high achievement. Fewer judges (32%) believe that the goal of rehabilitation is met.

²⁷Yankelovich, Skelly, and White, Inc., SENTENCING GOALS AND THEIR APPLICATION IN FEDERAL COURTS (Washington, D.C.: Federal Sentencing Guidelines Project, Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice, August 1980); Inslaw, Inc., and Yankelovich, Skelly, and White, Inc., FEDERAL SENTENCING: TOWARD A MORE EXPLICIT POLICY OF CRIMINAL SANCTIONS (Washington, D.C.: Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice, May, 1981). The 1981 survey list of general sentencing goals differs from the 2001 survey list in several respects. First, the 1981 survey does not separately question respondents about the sentencing goal of "reflecting the seriousness of the offense," as appears in 18 U.S.C. § 3553(a)(2)(A). Second, in the 1981 data the goal of deterrence is separated into the components of "general deterrence" and "specific deterrence, while the Commission's 2001 survey only cites a goal of "deterrence," as appearing in 18 U.S.C. § 3553(a)(2)(B).

Exhibit 4 also draws a comparison between the goal achievement ordering of the 1981²⁸ survey data and 2001 survey data. For both surveys the judges report the highest levels of goal achievement for deterrence and protection of the public, although deterrence is ranked first (average 71%) in the 1981 survey of judges and protection of the public is ranked first (82.2%) in the 2001 survey. Also in both surveys, the judges rank just punishment third in terms of goal achievement, with the goal of rehabilitation having a distant lowest achievement level. With the implementation of the guidelines, the data in Exhibit 4 indicate that there are gains in achievement for the goal of protecting the public, moving from second place in 1981 to first place in 2001.

The data also provide some evidence regarding overall improved levels of goal achievement following implementation of the guidelines. Exhibit 4 reports these findings,²⁹ using realigned classification of 2001 data³⁰ to make it as comparable to the 1981 definitions as possible.

²⁸For the 1981 data, averaging the specific deterrence (77%) and general deterrence (65%) percents results in an combined deterrence percent of 71%.

²⁹To permit this comparison, the data from the 2001 survey is reconfigured to report high goal achievement as a response in the top three of the six response categories. This is necessary because the published data for the 1981 survey categorizes “achievement” as the sum of responses in three of the scale’s five response categories: the combined responses for “Extremely well,” “Very well,” and “Somewhat.” In 2001, the survey questions asked judges to rank the frequency of goal achievement on a six point scale. The response aggregation of 2001 data that is most similar to the 1981 aggregation involves a grouping of the top three of the six 2001 response categories (i.e., the sum of the top three out of the six categories). This procedure is still uneven, as the three-out-of-six grouping for the 2001 data represents a smaller share of the scale than the three-out-of-five grouping for the 1981 data. However, using the three-out-of-six grouping for the 2001 data, any goal achievement improvement observed over the two decades will likely underestimate the real differences, making the observed differences merely a lower bound of actual change. The actual improvement in goal achievement will likely be even greater than represented by the data in Exhibit 4.

³⁰Consequently, all the 2001 percentage statistics in Exhibit 4 are greater than their corresponding statistics in Exhibit 2. This is because Exhibit 2 reports the percent of judges responding in the top *two* of the six response categories, while Exhibit 4 data on 2001 presents the percent of judges responding in the top *three* of the six response categories.

For each goal, the change over time in the judges' ratings is positive. The percent of judges reporting higher achievement is greater in 2001 than in 1981. The percentages increase roughly between seven and thirteen percentage points, with the largest improvements in protection of the public and rehabilitation.

The trends identified across these two surveys must be interpreted with caution. The surveys' questions have different wording and response options, and thus are not directly comparable. However, both tap the same underlying dimensions: judges' perceptions about the degree to which sentencing goals are obtained. The absolute percentage figures cannot be strictly compared, but the relative trends support the interpretation that under the guidelines, judges perceive higher levels of sentencing goal achievement, at least for the four goals compared here. The data do not suggest, however, that it is the guidelines system itself which caused this improvement in goal achievement. The adoption of a guidelines system is only one possible explanation, no more supported at this point than any alternative explanation.

B. Trends for the Sentencing Goals Under Title 28

Of the four sentencing goals cited in the Title 28 statute, only two can be addressed with historical data: avoiding unwarranted disparities and fairness. Data addressing possible trends since implementation of the guidelines appear in the two sections below.

1. Disparity

Although the sentencing goal of avoiding unwarranted disparity first appears legislatively in the Sentencing Reform Act, the debate over the magnitude of disparity in federal sentencing was raging prior to the Act's passage. In fact, DOJ's survey in 1981 contains several questions asking judges to assess the presence of disparity. The survey

results indicate that just under half of the judges (48.9%) report that unwarranted sentencing disparity occurs “some of the time” in the federal court system as a whole. A more positive view is held by a large minority: 39.9 percent of the judges report that unwarranted sentencing disparity occurs only “every once in a while” or “never or virtually never.” The remaining 11.2 percent of judges report that unwarranted disparity occurs “Most of the time” or “All of the time or virtually all of the time.”³¹ These perceptions of frequency, however, hide the true concerns of the judiciary. Regardless of how frequently the judges believe that unwarranted sentencing disparity occurs in the system, one out of every three judges (35.0%) cites the magnitude of the problem as “Very serious” or “Serious.” Only one in four judges (26.0%) report unwarranted sentencing disparity in the federal system as “A small problem” or “No problem at all.”³²

The Commission’s 1991 survey measures judicial opinion during a later period of guideline transition and indicate that judges are almost equally split on the impact of the guidelines on pre-guideline disparity: 31.8 percent report that the guidelines increased disparity, 36.2 percent report that the guidelines have decreased disparity, and 32.0 percent said that the guidelines have no impact on disparity.³³

In the 2001 survey, a specific question asks federal district court judges how often the guidelines avoid unwarranted sentencing disparity for similar offenders convicted of similar conduct. On a four-point scale, more than a third (36.9%) of district court judges report that

³¹John Bartolomeo, JUDICIAL REACTIONS TO SENTENCING GUIDELINES (Washington, D.C.: Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice Publication FJRP-81/005 under a contract award to Inslaw, Inc., May 1981) at 21 (Table 3). Percentages cited here are adjusted to exclude nonresponses reported in original table.

³²Ibid. at 23 (Table 5).

³³U.S. Sentencing Commission, NATIONAL SURVEY OF JUDGES AND COURT PRACTITIONERS 1991 (Ann Arbor,

the guidelines “Almost always” avoid unwarranted disparity. An additional 32.1 percent report that the guidelines “Often” avoid such disparity.³⁴ Therefore, the comparison shows that in 1981, about a quarter of judges (26.0%) report that frequency of disparity is small or nonexistent, while in 2001 a larger 36.9 percent report that the guidelines “almost always” avoid disparity. The questions are worded differently, but imply that perhaps judges appear less likely to see unwarranted disparity in 2001, compared to 1981.³⁵

On a related disparity topic, judges the 1991 Commission survey identify sources of unwarranted disparity. These sources include: adjustments for role in the offense, §5K1.1 substantial assistance motions by the prosecutor, plea agreements, prosecutor’s charging decisions, and mandatory minimum provisions. The frequency data in Exhibit 5 show that the 38.9 percent of judges cite mandatory minimums as the cause of unwarranted disparity in “All or Many” cases, followed by 25.1 percent of judges citing the prosecutor’s charging decisions and 21.9 percent citing plea agreements. Responses are made to each source separately, so that the percentages for each separate source sum to 100 percent.

2. **Fairness**

Alschuler and Schulhofer report survey data in 1989 regarding fairness of guideline sentences for three offense types: drug offenses, bank robbery offenses, and white collar

Michigan: Inter-University Consortium for Political and Social Research Datafile and Documentation ICPSR 9837, February 1993). These original tabulations were performed by the authors.

³⁴Maxfield, *supra* note 8, at B-9. On the other extreme, only 5.6 percent report that the guidelines “Rarely” avoid disparity. These are welcome positive responses on the issue of avoiding disparity for similar offenders with similar offenses. However, the survey responses regarding disparity across sentencing circuits, sentencing districts, and sentencing judges are relatively less positive: only 26.1 percent, 28.3 percent, and 30.9 percent, respectively, believe that these sentencing factors “Almost always” avoid unwarranted sentencing disparity.

³⁵Another question in the Commission’s 2001 survey further supports a theory of decreasing perceived disparity by the judges over time. In asking how frequently in their caseloads the judges believed that the guidelines avoided unwarranted disparity, slightly higher than half of judges reported that disparity was avoided for most of their cases, regardless of offense type. See Maxfield, *supra* note 8, at B-4.

crime. A majority of their respondents report that drug sentences are not appropriate, with 70.5% citing sentences that are too severe. A small majority of respondents report that bank robbery and white collar crime offenses receive appropriate sentences (57.7% and 56.0%, respectively). For those reporting that the sentences for these two offenses are not appropriate, the majority opinion is that both bank robbery sentences and white collar crime sentences are too lenient (91.0% and 63.6% of judges, respectively).

In 1996, a Federal Judicial Center survey³⁶ asks judges to rate, on a five point scale, the fairness of different guideline sentences. On the scale, a “1” indicated “Too lenient” and a “5” indicated “Too harsh.” All fairness responses clustered around the scale’s “3” midpoint, with the average ratings ranging from 2.7 to 3.6. The most distinctive response was 3.6 for drug trafficking, indicating that judges believed that drug trafficking sentences tended to be too harsh. Those on the “lenient” side of the scale were larceny (average rating of 2.8) and fraud and robbery (each with an average rating of 2.7).³⁷

In the 2001 data, fairness is highly associated with offense type. For robbery and weapons trafficking, judges are most likely (roughly 42 percent for each offense type) to report that most of the caseload for these offenses meet the fairness goal. However, for drug trafficking offenses, only 24.2 percent of judges report that the goal of fairness is obtained. For the offenses of fraud and larceny, the most frequent response (37.7% and 45.9%, respectively) cites that fairness is achieved only some of the time.³⁸ Consistent with some the 1996 findings of Johnson and Gilbert, the 2001 Commission survey also discovers that

³⁶Molly Treadway Johnson and Scott A. Gilbert, *THE U.S. SENTENCING GUIDELINES: RESULTS OF THE FEDERAL JUDICIAL CENTER'S 1996 SURVEY* (Washington, D.C.: Federal Judicial Center, 1997).

³⁷*Ibid.* at 112.

the largest response category of judges believe that drug trafficking sentences are longer than appropriate, and that larceny and fraud offenses are shorter than appropriate. For robbery cases, however, there is less judicial consensus: approximately forty percent of judges say that the sentences are shorter than appropriate while another forty percent robbery sentences are sometimes shorter and sometimes longer than appropriate.³⁹

“Fairness,” of course, is a difficult notion to capture; indeed, it is almost necessarily subjective. It is reasonable to assume that one judge’s notion of fairness might not necessarily dovetail perfectly with that of another judge. Certainly, what a judge deems to be “fair” will be a culmination of that individual judge’s training and experience at the bar and on the bench. In a particular district, for example, the legal community may consider a small amount of illicit drugs—even something as serious as crack or heroin—to be of little consequence, while in another district, even small amounts may be seen as being legitimately prosecuted. Individual states have considerable variety in terms of the levels of punishment for certain sorts of offenses. It should come as no surprise then, that judges, whose backgrounds are influenced by the jurisdictions in which they practice, would carry those same intuitions to the bench. This practical reality is one major reason that regional disparity will be difficult to entirely stamp out.

VI. Overall Assessment of Sentencing

The preceding discussion covering detailed data on achievement of specific sentencing goals begs the larger question: how favorably do judges perceive the sentencing process as a whole? Judicial survey data that evaluates the sentencing process itself would

³⁸Maxfield, *supra* note 8, at B-5.

³⁹Maxfield, *supra* note 8, at B-1.

provide an important subjective measure of satisfaction with global sentencing system goal attainment. Fortunately, roughly comparable questions regarding sentencing system evaluation are available for the 1981 survey and the Commission's 2001 survey. The data for this comparison appear in Exhibit 9.

The DOJ 1981⁴⁰ survey was conducted years prior to the passage of the Sentencing Reform Act. The questionnaire asked federal judges at that time to rate the then-current sentencing decision making process on a five point scale. A total of 39.8 percent of the 254 federal judge respondents rate the 1981 sentence decision making process as better than "adequate," 36.2 percent rate it as "adequate," and 24.0 percent rate it as less than "adequate."⁴¹ In summary, judge opinions are skewed favorably toward the pre-guideline sentencing process.

The 1981 survey was conducted in a policy environment where judges were highly negative to the guidelines concept.⁴² Even when expressing preferences for the survey's most open proposed guideline alternative (voluntary guidelines with wide sentencing ranges), still 43.5 percent of judges report that they would be less than "moderately" satisfied and 29.3 percent report that they would be only "moderately" satisfied.⁴³ The judicial aversion to

⁴⁰Bartolomeo, *supra* note 18.

⁴¹ *Id.*, at 19. Percentages cited here are adjusted to exclude nonresponses.

⁴²For examples that document judicial dissatisfaction during and following the Commission's creation of the guidelines' structure, *See* Federal Courts Study Committee, "Chapter 7 – Sentencing," REPORT OF THE FEDERAL COURTS STUDY COMMITTEE, reprinted in FEDERAL SENTENCING REPORTER 2 (February/March 1990) at 233-235 and Daniel J. Freed, "Federal Sentencing in the Wake of the Guidelines: Unacceptable Limits on the Discretion of Sentencers," YALE LAW JOURNAL 101 (1992) at 1719-20.

⁴³Bartolomeo, *supra* note 18, at 24. Percentages cited here are adjusted to exclude nonresponses.

guidelines is so strongly expressed in the survey that the report suggests that “judges feel there is something onerous about the very concept of guidelines.”⁴⁴

In the Commission’s 2001 survey, judges rate the guidelines in terms of the relative proportion of their caseload that meets the statutory goals of sentencing. A total of 38.4 percent report that a high percentage of their cases meet the sentencing goals, while 38.6 percent report that some of their cases meet the goals, and 22.9 percent of district court judges say that few of their cases meet the goals of sentencing. The underlying concept of this question might be generally construed as asking judges to rate “*guidelines achievement for the sentencing decision making process.*” As such, the underlying question is structurally similar to the earlier described question in DOJ’s pre-guidelines 1981 survey that asks judges to rate the then-current sentencing decision making process.

Comparing the general response distributions of these two surveys, taken twenty years apart, the data in Exhibit 9 are surprisingly similar. In both instances of sentencing system evaluations, roughly 40 percent of the judges give more positive (i.e., “higher”) rankings and roughly one quarter of judges give less positive (i.e., “lower”) rankings.

VII. Contrasting Perceptions of Other Sentencing Stakeholders

There are multiple stakeholders in the criminal justice system, ranging from the judges to the victims. Along with the 1981 survey’s collection of information from federal judges, the survey also collects perceptions on sentencing goal achievement from several other major system stakeholders: prosecutors, defense attorneys, and probation officers.⁴⁵ The

⁴⁴Ibid. at 7.

⁴⁵The survey also collected data from the general public. These results from the general public are not included in the tables due to their tangential relevance to the discussion. In general, the public makes only minor distinctions among the sentencing goals included in the 1981 survey.

analysis below shows that perceptions often vary widely among these sentencing stakeholders. To understand how the sentencing goals are being perceived, it is necessary to take a panoramic view of the opinions of all stakeholders in the sentencing process.

A. *Sentencing Role and Sentencing Goals Under Title 18*

It is logical that the differing perspectives emanating from the differing roles in the criminal justice system would result in differing opinions of sentencing goal achievement. Exhibit 6 presents goal achievement data from the 1981 survey as reported by judges, prosecutors, defense attorneys, and probation officers. The data support the expectation of differing perceptions, but provide additional insights as well.

The first finding from Exhibit 6 is that for prosecutors, defense attorneys, and probation officers, the greatest number of respondents report that the goal of protecting the public had high achievement. This is in contrast to judges, who gave their highest achievement response to specific deterrence. Except for this flip-flop for first and second place, the four stakeholders in the sentencing system agree⁴⁶ on rankings of the remaining goals: general deterrence, just punishment, and rehabilitation.

Exhibit 6 also suggests that one's role in the sentencing process impacts perceptions of goal achievement. Prosecutors are, comparatively, the least likely to report goal achievement for all five goals in Exhibit 5. This lowered achievement perspective can be seen in their average achievement percentage: the average of the prosecutors' goal achievement statistics is 43 percent.⁴⁷ This is substantially lower than for the other stakeholders, where the

⁴⁶The sole exception is the defense attorneys, who rank just punishment achievement ahead of general deterrence.

⁴⁷The goal achievement statistics for prosecutors are 61 percent for protecting the public, 52 percent for specific

achievement statistic rounds to 59 percent for judges and probation officers, and 50 percent for defense attorneys. These averages reflect the very *high* percentages of judges attributing goal achievement to specific deterrence (77%), the *high* percentages of defense attorneys and probation officers attributing high achievement to protecting the public (76% and 79%, respectively), and the very *low* percentages of prosecutors attributing high achievement to rehabilitation (11%).

A counterpoint to the discussion above addresses the normative beliefs about which goals are the most important in sentencing. The survey responses above reflect the perceptions of goal achievement reported by the differing sentencing stakeholders, but these responses do not indicate which goals are held as most important in sentencing. The data in Exhibit 7 address this topic, displaying the goals which the various sentencing stakeholders believe should be most highly emphasized.

In terms of the importance given to each sentencing goal, two patterns emerge in Exhibit 7. First, judge and prosecutor responses provide the same relative ranking of the goals. The highest percentage of judges and prosecutors name the goal of general deterrence as “extremely” or “very” important, followed by specific deterrence, protecting the public, rehabilitation, and just punishment. Although these ordered rankings are the same for judges and prosecutors, however, the absolute percent values distinguish between them. This finding highlights the second pattern: for each goal, a higher percentage of prosecutors give the goal an “extremely” or “very” importance rating, and usually by a substantial margin. For example, consider the goal of general deterrence, which is the goal with the highest percent

deterrence, 51 percent for general deterrence, 40 percent for just punishment, and 11 percent for rehabilitation. The average of these goal achievement statistics is 43 percent.

of each group reporting high importance. A total of 91 percent of prosecutors report that general deterrence has high importance, compared to 65 percent of judges, a difference of almost thirty percentage points. For the goals of specific deterrence, protection of the public, and just punishment, the percentage statistics for prosecutors is at least 20 percentage points higher than the percent statistics for judges. The conclusion from these data is that although judges and prosecutors have similar normative structures regarding sentencing goals, prosecutors as a group have a higher internal consensus on the relative importance of the sentencing goals.

Exhibit 7 illustrates that defense attorneys and probation officers have different normative structures for sentencing goals, both different from each other and from the congruent rankings of the judges and prosecutors. Approximately two-thirds (63%) of defense attorneys agreed that both specific deterrence and rehabilitation are highly important sentencing goals. The tied ranking of rehabilitation for first place among defense attorneys is unique. The percentages of the other stakeholders all place rehabilitation much lower – in fourth or fifth place – in terms of goal importance. This great emphasis that defense attorneys place upon rehabilitation is consistent with their role as advocates for the offender.

In contrast, the greatest percentage of probation officers cite specific deterrence as the goal with high importance, followed very closely by protection of the public and general deterrence. The top ranking of these three goals for probation officers reflects the same top ranking for judges and prosecutors, except that the relative ranked position of these goals among the probation officers is completely different.

The conclusions drawn from the data in Exhibit 6 and Exhibit 7 relate to the

sentencing goals of deterrence, protection of the public, just punishment, and rehabilitation. The data suggest that among the four sentencing stakeholders, judges and probation officers overall have the most positive assessments of goal attainment, while prosecutors have the lowest assessments of goal attainment. Specific deterrence and protecting the public have the greatest proportion of sentencing stakeholders reporting high achievement, with just punishment and rehabilitation having the smaller proportion of sentencing stakeholders reporting high achievement. Finally, the normative rankings of the sentencing goals do not match the achievement rankings, implying that the goals seen as most important are not those with the perceived highest achievement levels. Specifically, while the greatest proportions of both judges and prosecutors (65% and 91%, respectively) cite that general deterrence has a higher importance, greater proportions of judges and prosecutors report greater achievement levels for specific deterrence and protecting the public.

There is no attempt to argue that the priorities or rankings of 1981 represent the perceptions of judges, prosecutors, defense attorneys, or probation officers today. However, there is every reason to believe that differences still exist today in perceptions among these sentencing stakeholders. Depending on the audience surveyed, it is assumed that those who participate in the sentencing process not only will see differing levels of goal achievement, but will determine these achievement levels from philosophical perspectives that differentially value the relative importance of each sentencing goal.

B. *Sentencing Role and Sentencing Goals under Title 28*

It is useful to examine the results of the earlier survey and to compare, where possible, the findings of that survey with those of the most recent judicial survey. It is still

possible to examine those results in light of the Congressionally articulate purposes of sentencing to determine how, and whether, judicial attitudes have transformed in the interim.

1. Unwarranted Sentencing Disparity

When the Commission conducted a survey in 1991 for its evaluation study, judges were less likely to see disparity as a sentencing problem than were the other sentencing stakeholders. Exhibit 8 indicates that 40.5 percent of judges report that unwarranted disparity occurs only “Every once in a while” or “Never or virtually never,” compared to a much lower percent of prosecutors and defense attorneys (9.4% and 11.6%, respectively).⁴⁸ Also, judges, compared to the opinions of the other sentencing stakeholders, perceive that disparity is a less serious problem: 34.1 percent of judges reported that disparity is a serious or very serious problem, compared to 67.0 percent and 59.0 percent for prosecutors or defense attorneys, respectively.⁴⁹

2. Fairness

The sentencing goal of fairness is covered in the Federal Judicial Center (FJC) survey of 1996 with questions asked of federal judges and chief probation officers. The survey asks the respondents to rate the fairness of selected guidelines on a scale of “1” to “5,” where “1” meant “Too lenient” and “5” meant “Too harsh.” By implication, a “3” response would indicate the maximum level of achievement for the fairness goal. The survey report lists the average fairness responses by guideline and indicates that judges and probation officers shared similar fairness assessments.

Overall, the range of the average ratings is narrow. No average is below 2.5 nor

⁴⁸ Bartolomeo, *supra* note 18 at 21. Percentages cited here are adjusted to exclude nonresponses.

⁴⁹ *Id.* at 22. Percentages cited here are adjusted to exclude nonresponses.

above 3.7. The top of the range for both the judges and chief probation officers is drug trafficking (§2D1.1), with a judge average of 3.6 and a probation officer average of 3.7. Drug trafficking in protected locations (§2D1.2) also has high averages, 3.5 and 3.4 for judges and chief probation officers, respectively. Judges also have an average for drug simple possession (§2D2.1) cases of 3.6. On the rating scale, responses higher than 3 indicate perceived sentencing harshness. In general, based on this 1996 survey, both judges and chief probation officers believe that federal drug cases, relative to cases sentenced under the other guidelines, have sentences that are not fair because the sentences are too long.⁵⁰

At the lowest end of each scale for both judges and chief probation officers are larceny (§2B1.1), fraud (§2F1.1), and tax (§2T1.1) offenses.⁵¹ Also tied for the lowest average score are the judges' responses for robbery (§2B3.1), counterfeiting (§2B5.1), and alien smuggling (§2L1.1). Such scores indicate the judges and chief probation officers believe that sentences for these offenses are relatively the most lenient under the guidelines system. For judges in particular, however, the absolute difference of these averages at 2.8 – just 0.2 points below the “fairness” goal of 3.0 on this survey's evaluation scale – strongly cautions that the judges' responses may not identify a statistically significant perception of unfairness.

Nonetheless, the fact that the judges and chief probation officers have averages below the 3.0 center of the scale does suggest some dissatisfaction with fairness under the guidelines in 1991. Additional information from the survey hints at reasons for these lower

⁵⁰ Johnson and Gilbert, *supra* note 23 at 19 (Table 13).

⁵¹ *Ibid.* These offenses had an average response of 2.8 for the judges, and 2.5 for the probation officers.

leniency ratings for fraud and larceny offenses. There was an apparent widely held perception in 1996 that the loss tables did not work to appropriately punish offenders. Based on responses to the FJC's survey question, approximately two-thirds (66.5%) of judges and three-fourths (73.5%) of chief probation officers object to the punishment appropriateness of then-current loss tables. Of those objecting, judges most frequently cite objections of inappropriately low incremental punishment associated with large loss values, followed by objections to inappropriately high sentencing emphasis placed on loss values. Of the chief probation officers objecting, the majority cited the low incremental punishment associated with large loss values.⁵²

VIII. Setting a Direction for the Commission

The district court judges' perceptions of sentencing goal achievement reflect relatively positive appraisals of the guidelines system. For the sentencing goals under Title 18 – just punishment, deterrence, incapacitation, and rehabilitation – evidence suggests that the judges' may have more positive perceptions of goal achievement now than they had in 1981, prior to the guidelines. These results doubtless may come as surprise to those who believe that judges abhor the guidelines.

The sentencing goals of the Sentencing Reform Act under Title 28: certainty, fairness, avoiding unwarranted disparity, and flexibility add a new dimension to the evaluation of sentencing goal achievement. The district court judges report high achievement for the goal of certainty and the avoidance of unwarranted disparities. This finding is particularly significant in light of Congress' stated aim of eliminating untoward disparity. Similarly, the

⁵² Johnson and Gilbert, *supra* note 23 at 78 (Table 7c).

goal of increasing sentencing certainty, also deemed important by Congress, seems to have been attained. However, the judges are quite negative about achievement of the goals of fairness and flexibility. Judicial concerns regarding the fairness of the system cannot lightly be dismissed. Even if the guidelines have attained other important goals, if they are viewed as unfair by those who must impose them, their efficacy may be undermined. It is likely that judges will find ways in which to make them fair (at least in their assessment). Such attempts may serve to bring back many of the sentencing inconsistencies that plagued the pre-guidelines era.

Tellingly, these results highlight the apparent incompatibility of goals within the structured sentencing system. It may be extremely difficult to maximize achievement of two conflicting objectives such as, for example, both certainty and flexibility. Given this conflict, sentencing systems probably cannot simultaneously achieve goals that presuppose inconsistent levels of sentence severity. In such instances of goal conflict, either one goal will be achieved to a substantially greater degree than the other, or both goals will have only middling achievement. Such a circumstance could explain why judges bestow certainty and protection of the public with higher achievement rankings, with the contrasting goal of rehabilitation sinks to the lowest rank. This possibility also suggests that a low ranking of one or several goals in itself may not be cause for corrective action when its apparent failure is the artifact of a priority given to a contrasting goal. The low perceived achievement levels for the goals of rehabilitation and flexibility are possibly explained using this theory.

The low goal achievement rating for rehabilitation must be put aside at present because of the antithetical nature of attainment among rehabilitation and the other sentencing

goals. In fact, the literature has even suggested that rehabilitation is unique among the sentencing goals in that it not meant to be a goal for all sentencings. Instead, the goal of rehabilitation applies only to sentences of incarceration.⁵³ Moreover, the guidelines system itself is not designed to deal with rehabilitation. In enacting the Sentencing Reform Act, Congress expressly eschewed the notion that greater attention should be paid to rehabilitative efforts.⁵⁴ In the end, such efforts must come from Congress, the Department of Justice, and the general legal community. For the most part, rehabilitation programs reside well beyond the Commission's realm. That is not to say that the Commission has no role in effectuating this congressionally adopted goal of sentencing. After all, although the Sentencing Reform Act plainly shifted away from a rehabilitative model.⁵⁵ Rehabilitation of the offender nevertheless remains a goal of sentencing. Perhaps at some point, by means of re-structuring supervised release, the Commission will again take up the cause of rehabilitation.

Crucial challenges remaining for the Commission are the perceived low achievement rates for two other sentencing goals. These goals are just punishment and fairness, which overall only 37.0 percent and 32.3 percent, respectively, of district court judges believe are being met for most of their cases in the 2001 Commission survey. In the cases for both goals, the findings can be parsed to expose some intervening impacts by offense type, but a full

⁵³Theresa Walker Karle and Thomas Sager, "Are the Federal Sentencing Guidelines Meeting the Congressional Goals?: An Empirical and Case Law Analysis" *EMORY LAW JOURNAL* 40 (1991) at 398.

⁵⁴The legislative history to the Act explains that: "In the federal system today, criminal sentencing is based largely on an outmoded rehabilitation model. *** Yet almost everyone involved in the criminal justice system now doubts that rehabilitation can be induced reliably in a prison setting." 4 U.S. Code, Cong. & Admin. News, 3221 (1984).

⁵⁵Indeed, the Senate Report on the Comprehensive Crime Act expressly observed that efforts to adopt a rehabilitative model had failed, and that the new legislation was designed expressly to reject that model and to return to a more punitive system. CITE from U.S. Code Congressional & Administrative News.

explanation remains elusive. For the just punishment goal, the 37.0 percent attainment statistic reflects the even lower goal achievement attributed to drug trafficking: only 25.5 of percent of district court judges believe the goal of just punishment is being met for drug trafficking offenders. This is, however, only a partial explanation because even the highest offense type achievement for just punishment is the 42.5 percent judge statistic for robbery offenses. An understanding of the low just punishment goal achievement is even further muddled by the survey's results for the just desserts philosophy. In 18 U.S.C. § 3553(a)(2)(A), the text combines in one subsection the goals of punishment reflecting the seriousness of the offense and just punishment, as well as the goal of increasing respect for the law. Yet, the survey data shows that more than half (52.4%) of district court judges believe that most of their cases meet the goal of reflecting the seriousness of the offense, but only 37.0 percent believe that most of their cases meet the goal of just punishment. This apparent inconsistency requires further inquiry.

For the fairness goal, the 32.3 percent attainment statistic again reflects the even lower goal achievement attributed to drug trafficking (only 22.4%). This is not a complete explanation, however, because none of the other offenses types have more than 45 percent – i.e., always less than half – of district court judges believing that the goal of fairness is being met for most of their cases. Further, the low fairness goal results appear oddly in conflict with the much more positive (52.8%) results for the goal of avoiding unwarranted disparity. The only clues from the analysis are the consistent perceptions that the sentences of drug trafficking offenders are too harsh and the sentences of fraud and larceny offenders are too lenient, at least at the time of the 2001 survey. Clearly an investigation to identify the

definite causes of low fairness ratings is necessary.

Important considerations underlying the interpretation of guideline attainment levels from subjective survey data involve the nature of the population surveyed. Two elements of the target survey population are particularly salient for the analyses here.

The first target survey population issue involves the fluid nature of the judicial population. This is evident in the analysis' suggested decline in judicial opposition to the guidelines concept. The generally positive findings from the surveys imply that today the district court judges' antipathy towards the guidelines is perhaps not nearly as high as some commentators historically suggested.⁵⁶ Some leveling of hostility is likely simply due to the passage of time, as judges have had more than a decade to work with the guidelines and understand their nuances. Major policy initiatives such as the Sentencing Reform Act bring expected opposition as stakeholders fear change in policy priorities and loss of established practices.⁵⁷ While this opposition plays a continuing important role in the review of policy decisions to ensure program integrity, its fervor reduces as the new policy becomes the norm. Judges, like all people, tend to resist change. However, as the judges became increasingly familiar with the guidelines, and how to apply them, their resistance to the guidelines concept likely weakened.

Perhaps nowhere is this relationship between the passage of time and the acceptance of new policies more evident than in the response differences observed between newer and more experienced district court judges. One question on the Commission's 2001 survey asked the judges to indicate whether they had sentenced cases under "Old Law," prior to the

⁵⁶ Kate Stith & Jose Cabranes, *Fear of Judging* (1998).

⁵⁷ Terance D. Miethe and Charles A. Moore, "Officials' Reactions to Sentencing Guidelines," *JOURNAL OF*

guidelines. When responses are compared for judges with and without “Old Law” experience, the newer judges were overall more likely to be positive about the goals of sentencing. While true for all the goals discussed in the analysis, it is strikingly true for the goal of certainty⁵⁸ and notable for the goals of fairness and flexibility.⁵⁹ While experience with “Old Law” is correlated with these results, it is still logical to assume that it is the “Old Law” experience itself that makes judges more critical of guideline achievement. Other factors, such as the judge’s age, share this same correlation. By definition, judges with “Old Law” experience are likely years older than judges who have sentenced solely under the guidelines. But if it is experience with “Old Law” that reduces judges’ endorsements of sentencing goal achievement, this implies *ceteris paribus* that over time the ratings of goal achievement will improve, at least somewhat, as the “Old Law” judges retire from the bench.⁶⁰

Just as fewer and fewer “old law” prisoners who were not sentenced pursuant to the guidelines remain behind bars, there are ever-waning numbers of federal judges who sat on the bench prior to the guidelines’ adoption. Indeed, many prosecutors and defense attorneys, not to mention judges, have practiced exclusively under the guidelines system. It remains for

RESEARCH IN CRIME AND DELINQUENCY 25 No. 2 (May 1988) at 185-186.

⁵⁸ The percent of guideline-era-only judges reporting that most of their cases meet the goal of certainty is approximately 20 percentage points higher than that of judges who had sentenced under “Old Law.” Maxfield, *supra* note 8, includes original tabulations by the authors.

⁵⁹ The percents of guideline-only judges reporting that most of their cases meet the goals of fairness and flexibility are approximately eight and six percentage points, respectively, higher than that of judges who had sentenced under “Old Law.” Maxfield, *supra* note 8, includes original tabulations by the authors.

⁶⁰ The more positive perspective of guideline-only judges carries over to beliefs about the guideline system as a whole. In rating the overall achievement of the guidelines in furthering the purposes of sentencing, guideline-only judges specify higher achievement (43.3%) compared to “Old Law” judges (35.3%). Maxfield, *supra* note 8, includes original tabulations by the authors.

lively debate whether the departure of retiring, pre-guideline judges will provide judicial surveys with a more, or less, accurate measure of perceived sentencing goal attainment under the guidelines.

A second survey target population issues underscores the importance of incorporating all perspectives when analyzing goal attainment levels. A major feature of this sentencing goal analysis is the strong correlation observed between the stakeholder role in the sentencing process – judge, prosecutor, defense attorney, or probation officer – and the perceptions of goal achievement. Compared to the other stakeholders, judges generally reported the highest levels of achievement, while prosecutors reported the lowest levels of achievement. If this is in fact the true general case, and if only judicial opinions are solicited, the analysis of how well the guidelines meet the congressionally mandated goals of sentencing will be biased. The fact that different stakeholders perceive different levels of achievement reflect both their differing roles during the sentencing process and their differing consensus on the importance attached to the pursuit of specific goals. Stakeholders who prioritize the goals of protection of the public and just punishment will pursue more lengthy sentences, while stakeholders who prioritize deterrence and rehabilitation will pursue shorter sentences.⁶¹

Clearly, then, the perceptions of how well sentencing goals are being met may well depend on the audience queried. This is highlighted conspicuously in the data of Exhibit 7: judges were more than four times more likely than prosecutors, and more than three times more likely than defense attorneys, to report only minimal unwarranted sentencing disparity in 1981. Further, they were approximately only half as likely to see disparity as a serious

⁶¹ Margaret Marcus Hale, *THE INFLUENCE OF SENTENCING GOALS ON JUDICIAL DECISION-MAKING* (Baltimore, MD: The Johns Hopkins University, Ph.D. Dissertation, 1984) at 91.

problem. It is an open empirical question whether perception differences exist today, and if so, the magnitude of those differences. But until the relationship between stakeholder roles and perceptions is understood, it must be assumed that there are multiple subjective “truths” underlying the level of guideline goal achievement, with those truths resting at distinct locations along the measurement scale of achievement. The resulting action item is to design surveys which perceive sentencing goal attainment to represent as many different stakeholder categories as possible.

Some final observations are necessary to bring to a close this stage of the sentencing goal analysis. First, the comparison data used in the analysis spring from different survey instruments. Observed differences can suggest only possible trends and serve as input in the design of further investigations. Closely related is a second observation that refutes any assumption that the federal sentencing guidelines are the sole cause of any real differences in goal achievement measures taken prior to, and subsequent to, the enactment of the Sentencing Reform Act. Over the past twenty years, a myriad of criminal justice factors have changed, some specifically related to guideline implementation and others related to non-guideline social, economic, or policy events. Nothing reported in this analysis can be used to attribute the findings solely to presence of the guidelines.

Finally, the assumption underlying this research postulates that documenting stakeholder perceptions of sentencing goal achievement provides true insight for evaluation of the criminal justice system’s performance. The validity of this assumption becomes unambiguously evident based upon the policy implications revealed during analysis, and is

further enhanced when the survey provides comparative data for all stakeholders' perceptions. Survey research is not the only type of analysis that can, or should, be used to investigate the performance success of federal sentencing procedures. In fact, the information gathered from survey research can itself strengthen and inform complementary analyses using micro data or administrative empirical data files. Survey findings on stakeholder perceptions provide the rich backdrop against which policy performance issues can be evaluated. It is hoped that this survey will be repeated in the future in order to track judges' attitudes towards the sentencing guidelines over time. This will enable policy makers to assess continually the attitudes of those in the field tasked with making the sentencing determination.

IX. Conclusion

Although the federal sentencing guidelines have often been targeted for criticism, it is interesting to see that those on the front line of sentencing--the judges--appear largely to have accepted their existence and to have embraced them as being beneficial in many areas. Myth often contains a kernel of truth, however, and such is the case here. The guideline system, as with any human endeavor, remains imperfect, and, in the judges' view, does not give full effect to the principles Congress has articulated to guide sentencing determinations. Nevertheless, contrary to received wisdom, the judges seem to believe that the guidelines have done much to eliminate untoward disparity in sentencing and to provide greater certainty to all those involved in the criminal justice system. The first question in any analysis of the guidelines system is to determine whether it improved upon the situation that previously existed. The judges seem to have answered that question with a qualified "yes."

At minimum, the judges appear to believe that the guidelines have actually accomplished some of the more important goals Congress set out for the guidelines to achieve.

The survey has proven to be a useful, albeit imperfect, tool by which to gauge judicial attitudes towards the sentencing guidelines. It is vital, if Congress is to see its sentencing policy pronouncements take effect, for the judges to *believe* in the guidelines system. After all, if the judges do not believe that the guidelines are fundamentally just, and accurately represent congressional intent, it will be difficult, if not impossible to maintain respect for federal sentencing and to ensure that federal criminal defendants, regardless of where they may be situated, will be treated similarly. In many respects, this guarantee of similar treatment was the great, if not yet fully realized, purpose behind the federal sentencing guidelines' creation. Hopefully, the survey data will be used to further refine the guidelines, to inform judicial opinion and to encourage academic debate. Such debate is an on-going, and important, part of the process to ensure fairness in the criminal justice system.

Exhibit 1
**Projects That Include
 Sentencing Goal Topics**

Pre-Guideline Survey Data

1978	National Center for State Courts, THE PUBLIC IMAGE OF COURTS: HIGHLIGHTS OF A NATIONAL SURVEY OF THE GENERAL PUBLIC, JUDGES, LAWYERS, AND COMMUNITY LEADERS. (WASHINGTON, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, 1978).
1980	Yankelovich, Skelly, and White, Inc., SENTENCING GOALS AND THEIR APPLICATION IN FEDERAL COURTS (Washington, D.C.: Federal Sentencing Guidelines Project, Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice, August 1980).
1981	John Bartolomeo, JUDICIAL REACTIONS TO SENTENCING GUIDELINES (Washington, D.C.: Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice Publication FJRP-81/005 under a contract award to Inslaw, Inc., May 1981)
1981	John Bartolomeo, Kevin Clancy, David Richardson, and Paul Berger, SENTENCING DECISION-MAKING: THE LOGIC OF SENTENCE DECISIONS AND THE EXTENT OF SOURCES OF SENTENCING DISPARITY (Washington, D.C.: Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice, Publication FJRP-81/006 under a contract award to Inslaw, Inc., May 1981).
1981	Inslaw, Inc., and Yankelovich, Skelly, and White, Inc., FEDERAL SENTENCING: TOWARD A MORE EXPLICIT POLICY OF CRIMINAL SANCTIONS (Washington, D.C.: Federal Justice Research Program, Office for Improvements in the Administration of Justice, U.S. Department of Justice, May, 1981).
1984	Margaret Marcus Hale, THE INFLUENCE OF SENTENCING GOALS ON JUDICIAL DECISION-MAKING (Baltimore, MD: The Johns Hopkins University, Ph.D. Dissertation, 1984)

Post-Guideline Survey Data

1988	Terance D. Miethe and Charles A. Moore, "Officials' Reactions to Sentencing Guidelines," JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY 25 No. 2 (May 1988)
1989	Alschuler, Albert W., and Stephen J. Schulhofer. "Judicial Impressions of the Sentencing Guidelines". FEDERAL SENTENCING REPORTER (September 1989).
1990	Federal Courts Study Committee, "Chapter 7 – Sentencing," REPORT OF THE FEDERAL COURTS STUDY COMMITTEE, reprinted in FEDERAL SENTENCING REPORTER 2 (February/March 1990).
1991	U.S. Sentencing Commission, "Judges and Practitioners General Impressions of the Guidelines. Chapter Three," Part D in THE FEDERAL SENTENCING GUIDELINES: A REPORT ON THE OPERATION OF THE GUIDELINES SYSTEM AND SHORT-TERM IMPACTS ON DISPARITY IN SENTENCING, USE OF INCARCERATION, AND PROSECUTORIAL DISCRETION AND PLEA BARGAINING, Volume I (December 1991), and U.S. Sentencing Commission. "Preliminary Sentencing Commission Survey Results: Additional Views from the Field." Chapter Six, Section D in MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (August 1991).
1994	Federal Judicial Center, Planning for the Future: Results of a 1992 Federal Judicial Center Survey of United States Judges (Washington, D.C.: Federal Judicial Center, 1994).

1997	Molly Treadway Johnson and Scott A. Gilbert, THE U.S. SENTENCING GUIDELINES: RESULTS OF THE FEDERAL JUDICIAL CENTER'S 1996 SURVEY (Washington, D.C.: Federal Judicial Center, 1997).
2003	Linda Drazga Maxfield, SURVEY OF ARTICLE THREE JUDGES ON THE FEDERAL SENTENCING GUIDELINES (Washington, D.C.: U.S. Sentencing Commission, 2003), available at http://www.ussc.gov/judsurv/judsurv.htm .
2003	Michael Edmund O'Neill, Surveying Article III Judges' Perspectives on the Federal Sentencing Guidelines, 15 Fed. Sent. Rep. 3, 220 (2003)

Exhibit 2

**Ordered List of District Court Judge Perceptions
of Sentencing Goal Achievement**

Majority Opinion of Goal Attainment	Sentencing Goals 18 U.S.C. § 3553(a)(2)	Percent¹	Guideline Goals 28 U.S.C. § 991(b)(1)(B)
	Deterrence	61.5	
		55.0	Certainty
	Protection of Public	54.8	
		52.8	Avoid Disparities
	Reflect Seriousness	52.4	

	Just Punishment	37.0	
		32.3	Fairness
	Rehabilitation	27.7	
		24.4	Flexibility

¹Using a six-point scale from “1” (“Few”) to “6” (“Almost All”), the percent of federal district court judges responding “5” or “6” for how often their guideline sentences meet the sentencing goal.

Source: Maxfield, supra note 19 at B-1 through B-6.

Exhibit 3

District Court Judge Relative Rankings of Goal Achievement by Offense Type

RANK			Firearms		Fraud		Theft		
	Goal	% ¹	G						
1	Deterrence	67.5	Protect Public	61.0	Unwarranted Disparity	49.9	Unwarranted Disparity	51.0	Unw
2	Protect Public	67.1	Certainty	56.8	Certainty	47.0	Certainty	48.6	C
3	Certainty	54.3	Unwarranted Disparity	55.3	Deterrence	38.8	Deterrence	39.4	Ser
4	Unwarranted Disparity	46.0	Deterrence	54.1	Protect Public	35.1	Protect Public	36.7	De
5	Reflect Seriousness	41.8	Reflect Seriousness	54.0	Reflect Seriousness	32.7	Reflect Seriousness	36.3	Protec

6	Rehabilitation	28.9	Just Punishment	39.4	Fairness	30.0	Fairness	32.1	
7	Just Punishment	25.5	Fairness	37.2	Just Punishment	28.9	Just Punishment	30.4	Pun
8	Fairness	22.4	Flexibility	26.3	Flexibility	26.3	Flexibility	26.8	FL
9	Flexibility	16.5	Rehabilitation	24.0	Rehabilitation	24.3	Rehabilitation	23.0	Rehab
MEAN		41.1		45.3		34.8		36.0	
MEDIAN		41.8		54.0		32.7		36.3	

¹Using a six-point scale from “1” (“Few”) to “6” (“Almost All”), the percent of federal district court judges responding “5” or “6” for how sentences meet the goal.

Exhibit 4

Judge Rating of Goal Achievement

	1980 Survey		2001 Survey	
	<i>Rank</i>	<i>Percent</i> ¹	<i>Rank</i>	<i>Percent</i> ²
Specific Deterrence	<i>I</i> ³	77 (71%)	2	79.8
General Deterrence		65		
Protecting the Public	2	69	1	82.2
Just Punishment	3	54	3	61.6
Rehabilitation	4	32	4	45.2

¹Percent of judges reporting that the goal is achieved “Extremely well,” “Very well,” or “Somewhat” on a five-point response scale.

²Using a six-point scale from “1” (“Few”) to “6” (“Almost All”), the percent of federal district court judges responding “4,” “5,” or “6” for how often their guideline sentences meet the sentencing goal.

³The deterrence rank of “1” is based upon the average (71%) of 77 percent for specific deterrence and 65 percent for general deterrence.

SOURCE: Yankelovich, Skelly, and White, supra note 27 at 31; Inslaw et al., supra note 27 at III-8; Maxfield, supra note 19 at B-2, B-3, B-6.

Exhibit 5

Judges Opinions On Sources of Unwarranted Guideline Sentencing Disparity

Factors Cited As Source of Unwarranted Sentencing Disparity	Total	All/Many Cases (%)	Some Cases (%)	Few/No Cases (%)
		Percent	Percent	Percent
Adjustments for Role in Offense	100.0	6.6	25.3	68.1
Substantial Assistance Motions	100.0	18.4	31.7	49.9
Plea Agreements	100.0	21.9	38.1	40.0
Prosecutor Charging Decisions	100.0	25.1	42.0	32.9
Mandatory Minimums	100.0	38.9	38.1	23.0

SOURCE: U.S. Sentencing Commission, supra note 33, original datafile tabulations by the authors.

Exhibit 6

Rating of Goal Achievement of Criminal Justice System

	Judges		Prosecutors		Defense Attorneys		Probation Officers	
	<i>Rank</i>	<i>Percent</i> ¹	<i>Rank</i>	<i>Percent</i> ¹	<i>Rank</i>	<i>Percent</i> ¹	<i>Rank</i>	<i>Percent</i> ¹
Protecting the Public	2	69	1	61	1	76	1	79
Specific Deterrence	1	77	2	52	2	60	2	63
General Deterrence	3	65	3	51	4	40	3	56
Just Punishment	4	54	4	40	3	49	4.5	49
Rehabilitation	5	32	5	11	5	27	4.5	49

¹Percent of column respondents who reported that the goal is achieved “Extremely well,” “Very well,” or “Somewhat” on a five-point response scale.

SOURCE: Yankelovich, Skelly, and White, supra note 27 at 31; Inslaw, et al., supra note 27 at III-8.

Exhibit 7

Rating of Importance of Sentencing Goal

	Judges		Prosecutors		Defense Attorneys		Probation Officers	
	<i>Rank</i>	<i>Percent</i> ¹	<i>Rank</i>	<i>Percent</i> ¹	<i>Rank</i>	<i>Percent</i> ¹	<i>Rank</i>	<i>Percent</i> ¹
Protecting the Public	3	51	3	71	3	48	2	73
Specific Deterrence	2	62	2	84	1.5	63	1	75
General Deterrence	1	65	1	91	4	46	3	72
Just Punishment	5	23	5	45	5	24	5	40
Rehabilitation	4	49	4	53	1.5	63	4	68

¹Percent of column respondents who reported that the goal is “Extremely important” or “Very important” on a five-point response scale.

SOURCE: Inslaw et al., supra note 27 at III-6.

Exhibit 8 Perceptions of Frequency and Seriousness of Unwarranted Sentencing Disparity		
Respondent Type	Reporting Low Level of Unwarranted Disparity ¹	Reporting Unwarranted Disparity as a Serious Problem ²
	Percent	Percent
Judges	39.9	34.1
Prosecutors	9.4	67.0
Defense Attorneys	11.6	59.0
<p>¹Percent of given respondent group reporting that, in the federal court system as a whole, unwarranted sentence disparity occurred “Every once in a while” or “Never/Virtually never” on a five-point response scale.</p> <p>²Percent of given respondent group reporting that, for the criminal justice system, unwarranted disparity was “A very serious problem” or “A serious problem” on a five-point response scale.</p> <p>Source: Bartolomeo, supra note 31 at 21 (Table 3), 22 (Table 4).</p>		

Exhibit 9
Evaluations of Current Sentence Decision-Making Process

	<u>1981 Survey</u> Evaluation of Then- Current Sentence Decision Making Process	<u>2001 Survey</u> Evaluation of Guideline & Statutory Sentencing Goals
	Percent	Percent
Total	100.0	100.0
More Positive	39.8	38.4
Middle	36.2	38.6
Less Positive	24.0	22.9

SOURCE: Bartolomeo, supra note 31 at 19; Maxfield, supra note 19 at 24.