



RESEARCH BULLETIN

JUST PUNISHMENT: Public Perceptions and the Federal Sentencing Guidelines

by
Linda Drazga Maxfield,
Willie Martin, and Christine Kitchens
Office of Policy Analysis

survey to assess public opinion about just punishment for federal offenses.

*More than 1,700 citizens throughout the United States provided their opinions on punishment and crime seriousness issues as part of a recent Sentencing Commission study. This first-ever survey of public attitudes toward federal sentences used a series of crime “vignettes” incorporating relevant offense and offender characteristics (e.g., a bank robbery with a gun, injury, and \$10,000 taken). These vignettes were presented at personal interviews, and respondents were asked to record what they considered to be a “just” and appropriate punishment in each case. In addition, respondents completed a short questionnaire describing their experience with, attitudes toward, and opinions about the criminal justice system. This **Research Bulletin** describes the survey and its methodology, and compares public perceptions with the corresponding sentencing guideline ranges for four selected federal offenses: drug trafficking, bank robbery, immigration offenses, and fraud. Under contract with the Commission, Dr. Peter Rossi and Dr. Richard Berk prepared a separate, general report summarizing the survey data.*

The study identified links between the public’s just punishment perceptions and elements of guideline calculations: the crime itself, relevant characteristics of the defendant (e.g., prior criminal history), circumstances surrounding the commission of the crime (e.g., loss amount or weapon use), specific crime features that may enhance or mitigate punishment (e.g., role in the offense or abuse of a position of trust), and the consequences of the criminal act (e.g., injury to a victim).

“Vignette” National Survey Design

This study employed a “vignette” approach for its survey design. The first step was to identify a set of offenses to be included in the data-collection instrument (see Table 1).

Introduction

The Sentencing Reform Act of 1984 charged the U.S. Sentencing Commission with developing the “means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing....”¹ These statutory purposes are: just punishment, deterrence, incapacitation, and rehabilitation. In developing the guidelines, the Commission was instructed to consider both “the community view of the gravity of the offense” and “the public concern generated by the offense.”² To address these directives, the Commission undertook a national

Table 1
Just Punishment Survey Vignette Crimes

Antitrust	Firearms
Bank robbery	Food and drug
Blackmail	Forgery
Bribery	Fraud
Civil rights	Immigration
Counterfeiting	Kidnapping
Drug possession	Larceny
Drug trafficking	Money laundering
Embezzlement	Street robbery
Environment	Tax
Extortion	

Source: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.

¹ 28 U.S.C. § 991(b)(2).

² 28 U.S.C. § 994(c)(4) and (5).

Promulgated in 1987, the U.S. sentencing guidelines take into account both the defendant's count of conviction and the actual nature of the criminal conduct by assigning a base offense level (a number) that serves as a starting point in assessing the seriousness of an offense. This base offense level can increase or decrease based on the circumstances of the particular case. The factors that modify the base offense level ("specific offense characteristics") are enumerated in the guidelines. A base offense level, modified by specific offense characteristics and general adjustments, form one axis of the table used to determine sentencing ranges. The sentencing table's offense axis extends from level 1 (least serious) to level 43 (most serious). The other axis reflects the defendant's criminal history as expressed in one of six criminal history categories (Category I-Category VI). The point at which the offense level and criminal history category intersect on the sentencing table determines an offender's guideline range.

For each of these offense types, two sources of vignette variation were established. The first involved the offense behavior (e.g., weapon use and victim injury). Table 2 illustrates the crime variations developed for bank robbery. Each bank robbery vignette was built by randomly combining these crime elements.³

The second source of variation involved the characteristics of the defendant. Vignettes varied by gender, family ties, employment status, and defendant's prior criminal record.⁴ A computer program generated all possible vignettes resulting from combinations of the survey's various offense and offender characteristics. In total, more than 100,000 unique vignettes were produced.

³ Some combinations of characteristics were logically excluded. For example, when the defendant did not have or use a weapon, the computer program did not generate vignettes with serious injury to a victim.

⁴ Eighty percent of all vignettes contained a male defendant. Irrespective of gender, 80 percent of vignettes employed an unmarried defendant, with the remainder employing a married defendant with two children. Finally, both gender and family ties aside, 80 percent of vignettes featured a currently unemployed defendant, with the remainder featuring a currently employed defendant. Each vignette defendant was assigned one of three criminal histories: (1) never imprisoned before; (2) served two previous prison sentences, each more than a year; and (3) served four previous prison sentences, each more than a year.

Table 2
Bank Robbery Just Punishment Vignettes:
Variations in Crime Characteristics

Characteristic	Variation
Weapon possession	No weapon Gun Bomb
Weapon use	Not fired Fired
Threat	Did not threaten harm Threatened harm
Victim injury	No injury Minor wound Serious wound
Loss	\$900 \$4,000 \$19,000 \$50,000

Source: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.

The national survey employed a random sample of U.S. households. An interviewer in person contacted the sampled household and randomly selected one household member to respond to the survey.

Each survey respondent was presented with a unique computer-generated booklet containing a set of 40 different vignettes randomly drawn from the overall set of 100,000. Each vignette described a different crime with different offense characteristics and consequences, and a defendant with different personal characteristics. For each vignette, a respondent recorded an opinion of the most appropriate punishment: probation, prison, or the death penalty.⁵ If the punishment involved a prison term, respondents were asked to provide its length. Responses from more than 1,700 interviews generated data on approximately 72,000 vignettes.⁶

⁵ Although the survey did not present these choices, some respondents recorded dispositions of deportation or life imprisonment.

⁶ The survey was conducted between the Fall of 1993 and Spring of 1994. Seventy percent of the eligible sampled individuals completed the survey.

During the study’s analysis phase, the Commission calculated the guideline range for each vignette using the U.S. Sentencing Commission’s Guidelines Manual. This enabled the Commission to compare respondent punishment preferences to the federal sentencing guidelines.

Presented below are the Commission’s in-house findings regarding drug trafficking, bank robbery, immigration offenses, and fraud.⁷

Drug Trafficking

Drug trafficking is the single largest type of federal crime, constituting 37.0 percent of all federal sentencings in fiscal year 1995.

The Just Punishment survey included vignettes that involved trafficking in powder cocaine, crack cocaine, heroin, and marijuana. In 1995, trafficking in these four types of drugs accounted for more than 90 percent (90.6%) of all federal drug trafficking cases: 30.3 percent for powder cocaine; 25.3 percent for marijuana; 25.1 percent for crack cocaine; and 9.7 percent for heroin.

Table 3 presents the distribution of survey punishment preferences above, within, and below the applicable guideline range for drug trafficking cases.⁸ The distribution is shown for each drug type: powder cocaine, crack cocaine, heroin, and marijuana. The survey produced approximately 3,600 drug trafficking

scenarios for each of these four drug types. For both powder cocaine and heroin, the distribution of survey preferences was centered around the guideline range; roughly equal proportions (between 45% and 47%) of survey respondents indicated punishment preferences either above or below the range.

Table 3
Drug Trafficking Just Punishment Vignettes:
Percent of Survey Respondents Preferring
Punishment Below, Within and Above the Guideline
Range

	Relation to Guideline Range		
	% Below	% Within	% Above
Powder Cocaine	45.7	7.8	46.5
Crack Cocaine	69.2	10.0	20.8
Heroin	46.7	8.1	45.2
Marijuana	25.5	6.5	68.0

Source: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.

However, two differing distributions appeared for crack cocaine and marijuana. For crack cocaine, a much greater percentage of survey respondents (69.2%) recorded punishment preferences below the guideline range than above the guideline range (20.8%). Overall, respondents were more likely to give crack cocaine traffickers shorter punishments than called for under the sentencing guidelines.

In contrast, for marijuana, a much larger percentage of survey respondents (68.0%) recorded punishment preferences above the guideline range than below (25.5%). Overall, respondents were more likely to give marijuana traffickers longer punishments than called for under the sentencing guidelines.

The Impact of Drug Quantity

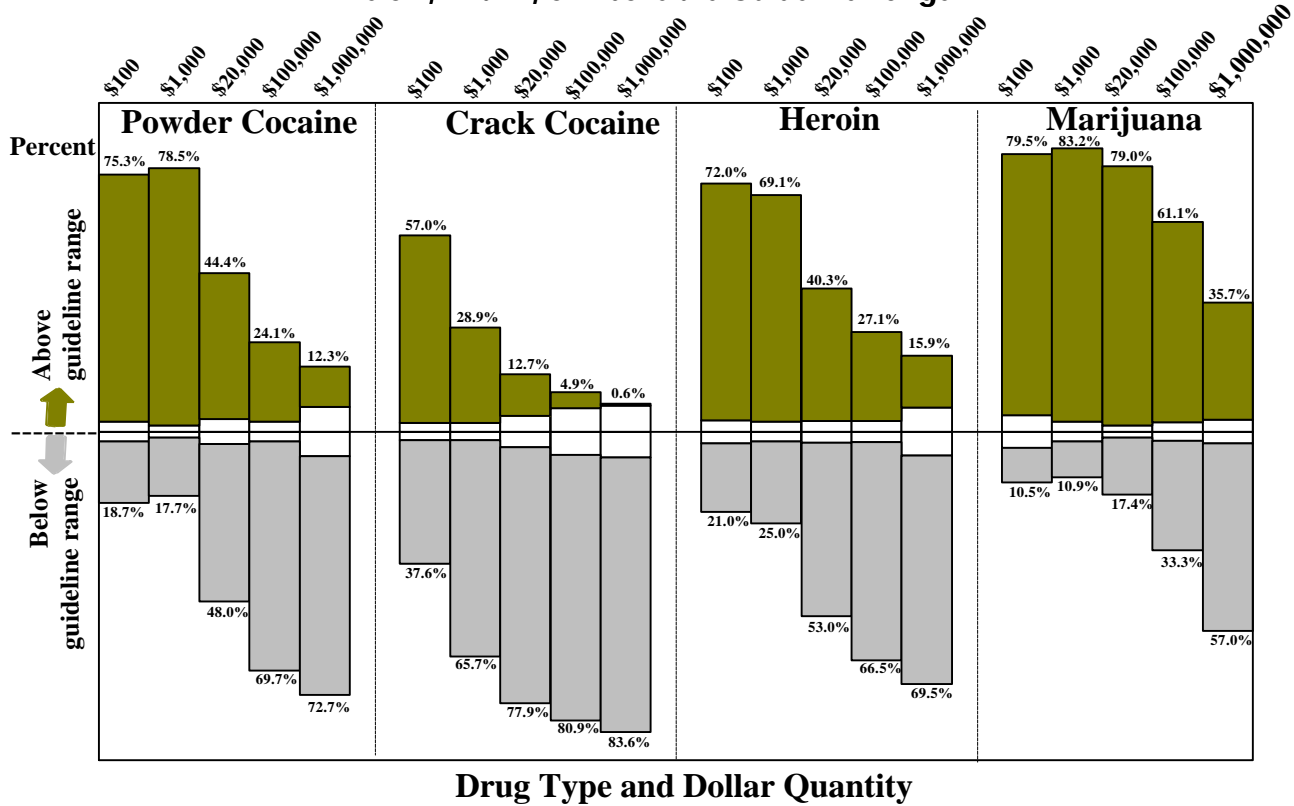
Drug trafficking sentences under the guidelines are linked to drug quantity. As drug quantities rise, guideline sentences increase.

For the Just Punishment survey, the dollar street value of the drug was used as a proxy for quantity. Within a specific drug type, traffickers who were involved with greater dollar values were defined as traffickers involved with greater drug quantities. The

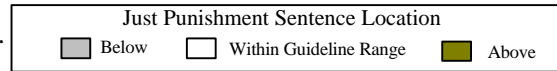
⁷ Note that the comparison of Just Punishment survey responses and guideline ranges must consider two issues. First, survey respondents were not provided with information about the U.S. sentencing guideline ranges corresponding to their crime vignettes. Respondents were provided with crime descriptions only. After reading each description, they were asked to indicate a preferred punishment. Consequently, the survey findings cannot be interpreted as an evaluation of either the guideline structure or the guideline ranges, although some findings may suggest the public’s views towards the guidelines. Second, survey respondents may have been unfamiliar with standard sentencing practices or the differences between the federal and state justice systems (e.g., elimination of parole in the federal system). Without this knowledge, a respondent’s punishment preferences may have been influenced by other factors (e.g., media coverage of both the federal and state justice systems).

⁸ Judges are permitted to depart from the sentencing range when circumstances exist that were not adequately considered by the guidelines, but must state a reason for such departure.

Figure 1
Drug Trafficking Just Punishment Vignettes:
Percent of Survey Respondents Preferring Punishment
Below, Within, or Above the Guideline Range



SOURCE: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.



survey design allowed an examination of how drug type and dollar values (hence, quantities) might vary: would the dollar value of drug “A” have a higher offense severity than the same given dollar value of drug “B”? Five quantity/dollar amounts were incorporated into the various drug trafficking vignettes: \$100; \$1,000; \$20,000; \$100,000; or \$1,000,000.

Figure 1 presents the proportion of survey respondents with punishment preferences below, within, and above the guideline range controlling for the dollar value of the drug being trafficked. The figure displays a striking trend that holds for all four drug types: respondents increasingly recorded preferences below the guideline range as the amount of drugs (measured by dollar value) increased. For powder cocaine, crack cocaine, and heroin, a majority of the survey respondents recorded a punishment preference below the guideline range for each of the two largest drug amounts. For marijuana, the trend is similar, although only for the largest amount did a majority of the respondents record

a punishment preference below the guidelines.

Three summary observations emerge from Figure 1. First, respondents only infrequently recorded a punishment preference falling within the guideline range. This is not surprising since the guideline ranges are relatively narrow and the survey did not provide information about the existing guideline sentence lengths.

Second, at the lower survey drug quantities (*i.e.*, \$100 and \$1,000) the respondents tended to have punishment preferences above the guideline range. For powder cocaine, heroin, and marijuana, more than half of respondents recorded preferences above the guideline range for the \$100 and \$1,000 vignettes. For crack cocaine, a majority of the respondents preferred punishment above the guideline range only at the lowest survey drug amount, while for the \$1,000 amount, almost 66 percent of punishment preferences were below the guideline range.

Third, for the higher survey drug amounts, the respondents tended to prefer punishment below the guideline range. This inclination is revealed in the number of scenarios in which more than half of respondent punishment preferences fell below the guidelines: twice for powder cocaine, three times for heroin, and three times for crack cocaine.⁹ For marijuana, however, a majority of respondents had punishment preferences below the guidelines only once, for the highest survey drug quantity vignettes (\$1,000,000).

It is important to note that Figure 1 does not provide information on the **degree** to which survey responses were below or above the guideline range. It does not answer the question of whether the differences were of a minor magnitude (measured in months) or a major magnitude (measured in multiple years).

To answer this question, Figure 2 computes the median survey punishment preference in comparison to the guideline range. Figure 2 indicates that the difference between public perceptions and the guideline range varies by the amount of the drug:

■ *Low drug trafficking amounts.* For powder cocaine, heroin, and marijuana, public perceptions of appropriate sentencing lengths were generally consistent for traffickers at lower drug quantity amounts (\$100 or \$1,000). At the \$100 amount, the median survey punishment for these drugs ranged from 39-44 months above the guideline range, while at the \$1,000 drug quantity level it ranged from 45-69 months above the guideline range. Even for crack cocaine, at the \$100 drug quantity level, the survey punishment median was higher than the guideline range by 19 months.

■ *High drug trafficking amounts.* At the higher drug trafficking quantity amounts, the four drug types sort into two distinct patterns. One pattern holds for powder cocaine, crack cocaine, and heroin. For powder cocaine and heroin, the survey punishment medians showed approximate consistency (between 0-1 months difference) with the guideline ranges for the \$20,000 drug trafficking vignette. The median differences between the punishment preferences and the guideline ranges were also similar for powder cocaine and heroin for the \$100,000 and \$1,000,000 scenarios. The punishment medians ranged from 55-58 months below the range for the \$100,000 scenario. For the \$1,000,000 vignette, both punishment medians were the same at 115

months below the guidelines. Figure 2 data on crack cocaine also reveal a comparable pattern, although the degree to which median punishment preferences were below the guideline range was markedly greater.

The second pattern involved marijuana drug traffickers. At all drug quantity amounts except the highest, the median of respondent punishment preferences was higher than the guideline range by approximately three-to-five years (ranging between 34 and 63 months). Only at the highest drug quantity amount (\$1,000,000) did the median survey preference for marijuana fall below the guideline range, and then only by six-and-a-half months.

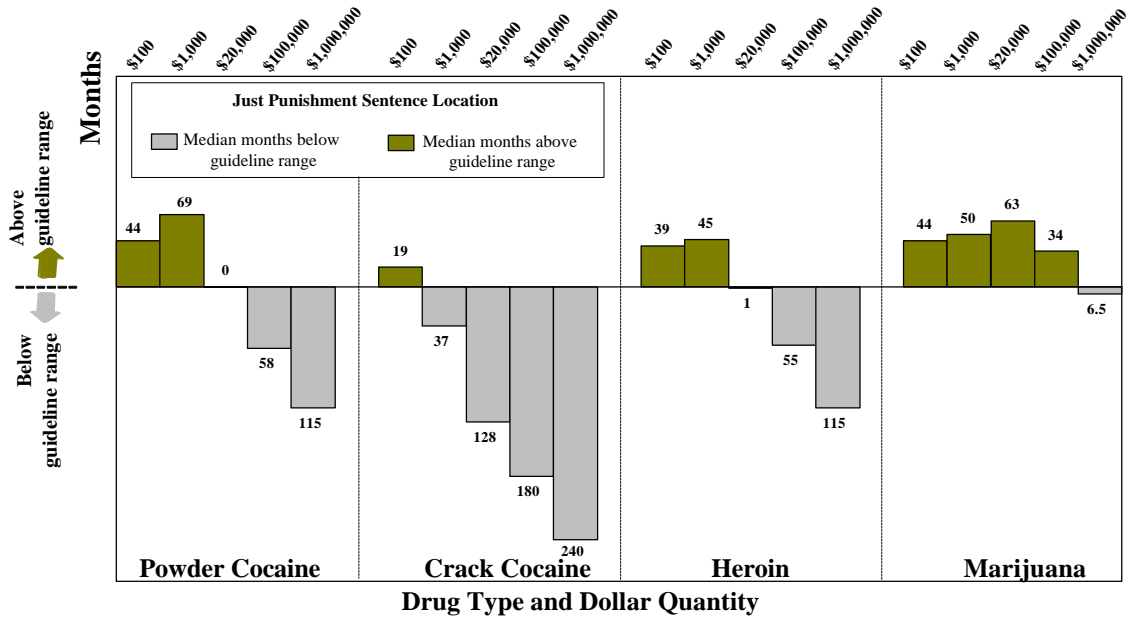
Because the survey respondents were not provided with the guideline ranges while responding to the vignettes, it was not possible to conclude how they would have evaluated the guideline ranges (*i.e.*, whether they would have judged them to be too high or too low). However, the survey results suggest that the public evaluates the link between drug quantity and crime severity from a perspective different than that of the sentencing guidelines. The guidelines provide sentencing enhancements for 17 different drug amount categories, with sentences increasing with greater drug amounts. The respondent data presented here imply that the public does differentiate between drug quantity, although likely with fewer quantity differentiations and quantity-related penalty enhancements than do the guidelines. The data suggest that a public-opinion-based drug sentencing model from these survey data would continue to provide increments to prison sentences for greater drug quantities, but would adjust the current quantity-punishment balance by raising penalties for lower-level drug traffickers and lowering penalties for higher-quantity drug traffickers.

Bank Robbery

Bank robbery is another of the more common federal crimes. In 1995, there were 1,523 sentencing (4.0% of all federal cases) for bank robbery. The Just Punishment bank robbery vignettes varied by gun possession and use, injury, and theft amount. The vignettes selected for this analysis compare the public perceptions of bank robbery at five different gun and injury combinations: “no weapon/no injury”; “gun not fired”; “gun fired/no injury”; “gun fired/minor injury”; and “gun fired/serious injury.” Note that for each vignette involving a gun, the robber pointed the gun at a teller. Each gun/injury grouping contained approximately 600 vignettes for analysis.

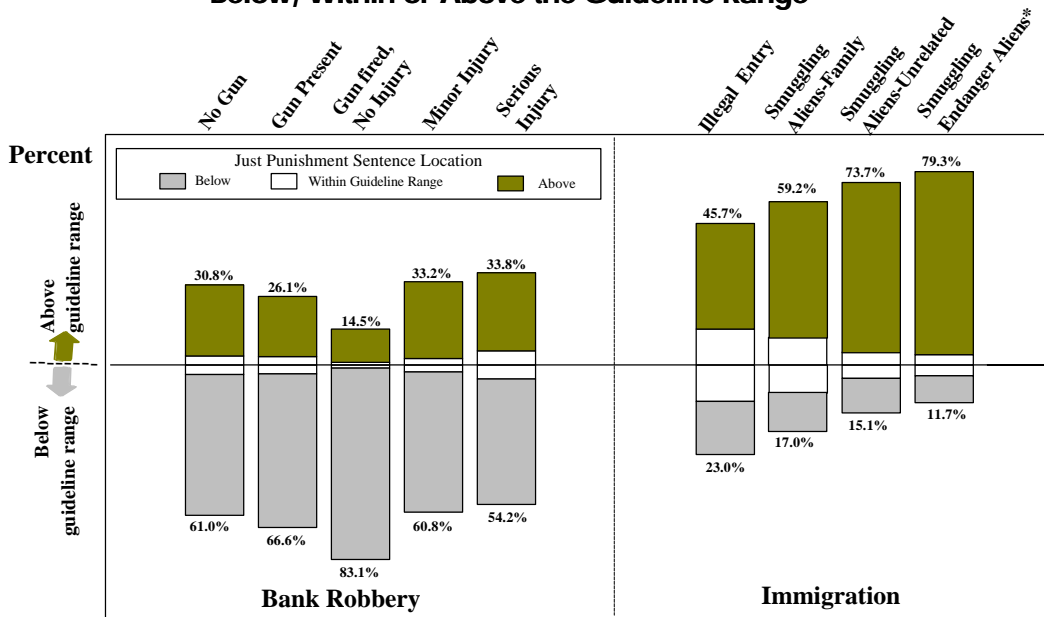
⁹ For the \$1,000 crack cocaine vignette, also, more than half of the respondent preferences fell below the guidelines.

Figure 2
Drug Trafficking Just Punishment Vignettes:
Median Differences Between Preferred Punishment and the Guideline Range
by Drug Type and Quantity



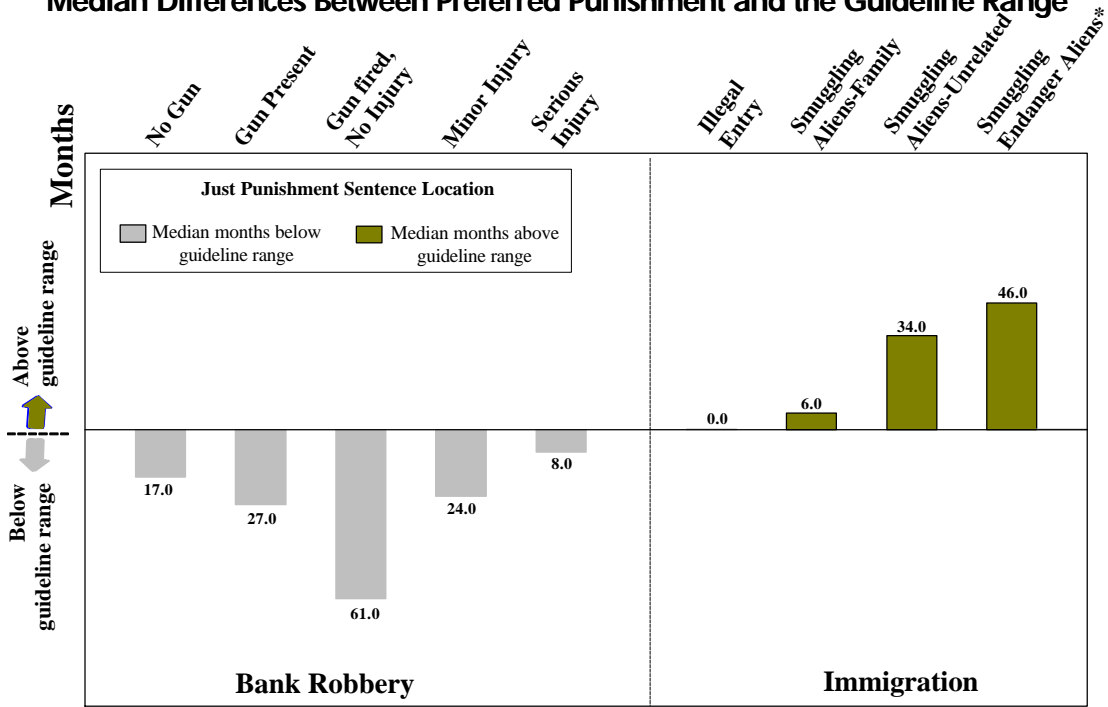
SOURCE: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.

Figure 3
Bank Robbery and Immigration Just Punishment Vignettes:
Percent of Survey Respondents Preferring Punishment
Below, Within or Above the Guideline Range



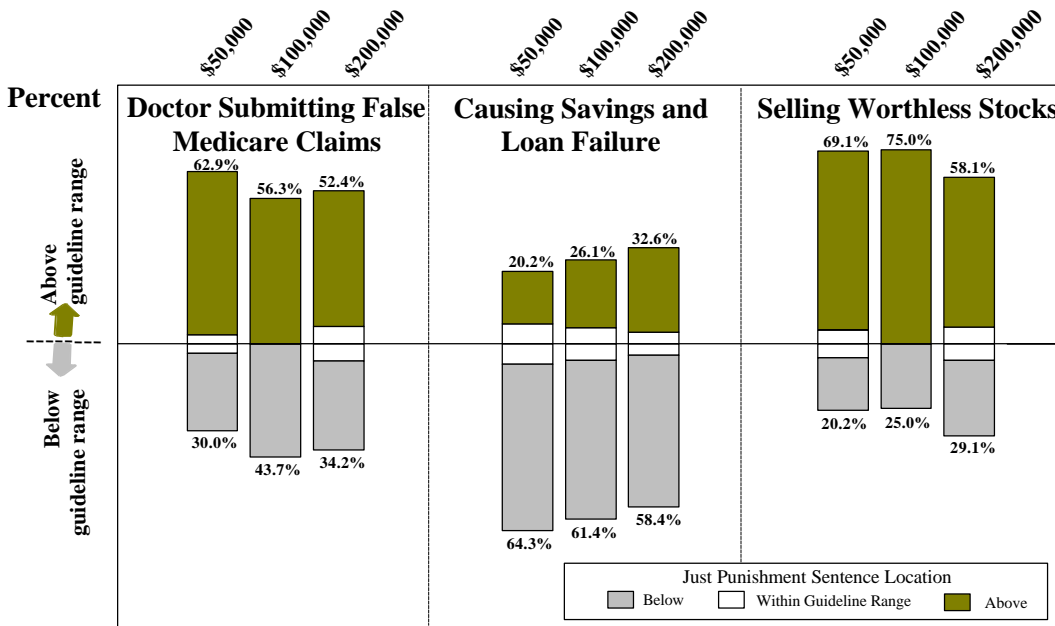
SOURCE: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.
 *Endangerment may be grounds for an upward departure from the guideline range.

Figure 4
Bank Robbery and Immigration Just Punishment Vignettes:
Median Differences Between Preferred Punishment and the Guideline Range



SOURCE: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.
 *Endangerment may be grounds for an upward departure from the guideline range.

Figure 5
Fraud Just Punishment Vignettes:
Percent of Survey Respondents Preferring Punishment
Below, Within, or Above the Guideline Range



Fraud Crime and Loss Amounts

SOURCE: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.

The left panel (“Bank Robbery”) of Figure 3 displays the percentage of survey punishment preferences above, within, and below the applicable guideline range. In four of the groupings (all except for “gun fired/no injury”), more than half of respondents preferred a punishment below the guideline range, while one-fourth to one-third (26.1% to 33.8%) of respondents preferred a punishment higher than the guideline range. These same findings were supported by the data in the left panel of Figure 4 (“Bank Robbery”), where the median respondent preference ranged from eight to 27 months below the range. Again, the “gun fired/no injury” vignette showed a greater variation from the guideline range; the median respondent preference for this vignette was 61 months less than the guideline range.

These results for the “gun fired/no injury” vignette may be due to the different ways in which survey respondents and the guidelines assess severity. The guidelines for bank robbery cumulatively increase severity of punishment when a weapon was present, was used, or caused injury. Consequently, the guideline range for the “gun fired/no injury” vignette is higher than for the “gun present” vignette; there is a guideline severity enhancement for the discharge of the weapon, independent from any resulting injury. This is one explanation for the largest observed discrepancy of the bank robbery “gun fired/no injury” vignette: the guidelines increased the sentence level for a discharged weapon without injury, while the public discriminated less between the firing or not firing of a gun if no injury was involved.

Immigration Offenses

Immigration crimes comprised the third most frequent federal offense sentenced in fiscal year 1995 (3,170 cases or 8.3% of the federal caseload). Four Just Punishment vignettes cited here involved immigration: “illegal entry” into the U.S. using false papers; “smuggling family members” who were unauthorized aliens into the U.S.; “smuggling unrelated aliens” into the U.S. for profit; and smuggling unrelated aliens into the U.S. for profit in a manner that endangered the safety of the aliens (“smuggling endanger”). Between 640 and 720 responses were available for analysis in each of the four vignettes.

The right panel (“Immigration”) of Figure 3 displays the percentage of Just Punishment respondent punishment preferences that were above, within, or below the guideline range for the four immigration vignettes. The immigration vignettes separated into two analytical groupings.

The first grouping involved personal or family non-

profit motivations: “illegal entry” and “smuggling family members.” Figure 3’s right panel shows that for these two vignettes, a comparatively large percentage of survey preferences were within the guideline range – 31.2 percent of “illegal entry” responses and 23.9 percent of “smuggling family members” responses. Further, the right panel (“Immigration”) of Figure 4 shows that the median preferred punishments differed little from the guideline ranges. The median preference for “illegal entry,” in fact, fell within the guideline range, while the median preference for “smuggling family members” was six months higher than the guideline range.

The second grouping (containing the profit-motivated vignettes, “smuggling unrelated aliens” and “smuggling endanger”) exhibited a tendency of the public to prefer longer punishments than the guidelines currently provide.¹⁰ The right panel of Figure 3 shows that for these offenses three-quarters of respondents were more likely (73.7% to 79.3%) to prefer punishments that were higher than the guideline range. This was also evident in Figure 4’s median respondent punishment lengths; median preferences were nearly three-to-four years (34 months to 46 months) longer than the guideline range. The Just Punishment survey suggests that the public would give longer punishments than the guidelines to profiteering defendants who smuggle unrelated aliens into the country.

Fraud

Fraud offenses were the second most common category of sentences in the federal system (5,909 cases or 15.4% of cases in fiscal year 1995), and the Just Punishment survey contained a wide variety of fraud offense vignettes. Three are selected for comment here: a doctor submitting false Medicare claims to the government (“Medicare fraud”); an individual causing the failure of a savings and loan association (“Savings failure”); and an individual selling worthless stocks and bonds as valuable assets (“Stocks/bonds”). In the vignettes, the loss amounts associated with each of these crimes were \$50,000, \$100,000, or \$200,000. The survey generated 70 to

¹⁰ In response to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, signed into law by President Clinton on September 30, 1996, the Commission is now in the process of amending the sentencing guidelines for alien smuggling, document fraud, and involuntary servitude offenses. The Commission will also be considering amendments for other immigration-related offenses in future amendment cycles.

90 responses for each of these separate crime/loss combinations.

Figure 5 reveals two differing relationships between the punishment preferences and the guideline ranges. The first involved punishment preferences that were higher than guideline ranges; for both the “Medicare fraud” and “Stocks/bonds” vignettes, more than half of the respondents (between 52.4% to 75.0%) preferred punishment longer than the guideline range. Figure 6 indicates that the median preferred punishment was also higher than the guideline range for these two types of vignettes. The preference medians for the “Stocks/bonds” vignettes were from 15-24 months longer than the guideline range. For the “Medicare fraud” vignettes, the median preferred number of months above the guideline range was three to 12.

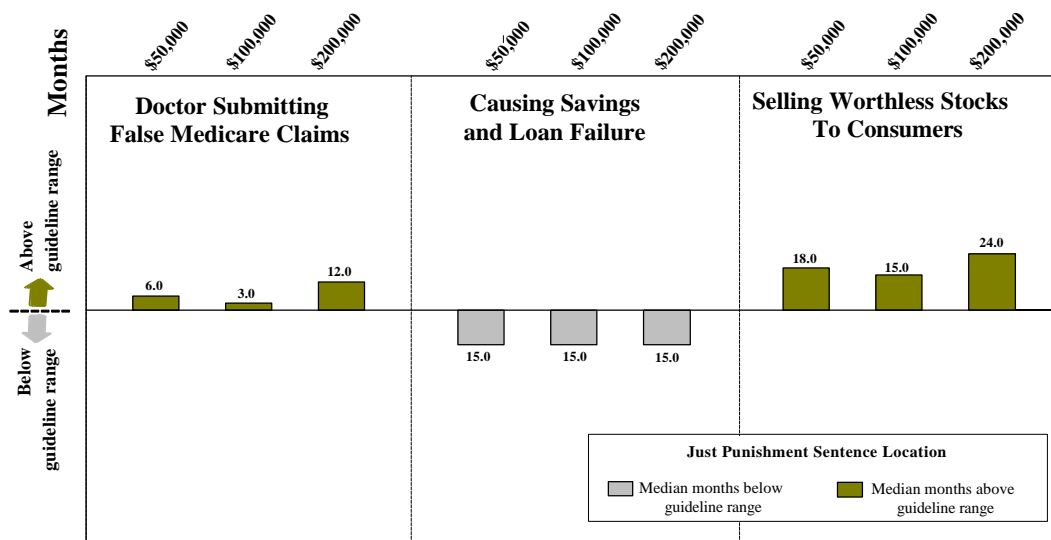
The second relationship in Figure 5 was for the “Savings failure” vignette. More than half of the respondents (58.4% to 64.3%) preferred punishment shorter than the guideline range. The amount of loss associated with the savings and loan failure scenario, however, did not affect the median preference differences from the guideline range (see Figure 6). Regardless of loss amount, the median Just Punishment respondent preference was 15 months less than the guideline range.

It is important to note that the patterns of public punishment preferences above the guidelines for

“Medicare fraud” and “Stocks/bonds” – compared to below the guidelines for “Savings failure” – in part may have reflected the guideline structure itself. The computed guideline range for the “Medicare fraud” and “Stocks/bonds” vignettes were analogous: 12-24 months (depending on the loss amount) at Criminal History Category I. For these vignette crimes, the survey data indicated that more than half of the public preferred punishment higher than the guidelines. In contrast, for “Savings failure,” the computed guideline range at Criminal History Category I was 51-63 months — more than double the range of the other scenarios. Comparing the responses from the “Savings failure” vignette to this higher guideline range, it was found that more than half of the survey’s respondents preferred punishment below the guidelines.

The federal sentencing guidelines increase sentence lengths as fraud loss amounts increase. The Just Punishment fraud vignettes also varied loss amount. However, Figure 5 illustrates that the effect of loss amount showed no consistent pattern across the vignettes reported here. Only for the “Savings failure” vignettes were the increasing loss amounts correlated with an increased tendency for survey punishment preferences longer than the guidelines. However, as stated above, Figure 6 demonstrates that even for these vignettes, the median difference from the guideline range was 15 fewer months, regardless of loss amount.

Figure 6
Fraud Just Punishment Vignettes:
Median Differences Between Preferred Punishment and the Guideline Range



SOURCE: U.S. Sentencing Commission, Just Punishment National Survey 1993-94.

Postscript

Analysis of public perceptions of guideline sentences is only one possible focus of the Just Punishment survey data. For the crime types listed in Table 1, criminal justice researchers can study offense seriousness, defendant characteristics, and punishment decisions. Other factors available for analysis include the 1,700 survey respondents' answers to a separate set of questions regarding personal demographic and employment characteristics, personal victimization, experiences with the criminal justice system, and attitudes toward social programs.

The U.S. Sentencing Commission plans to make available the dataset resulting from the Just Punishment project on the Commission's Internet home page located at www.ussc.gov. Also on the Internet will be a report summarizing other survey findings that was compiled for the Commission by contract with Dr. Peter Rossi and Dr. Richard Berk ("Public Opinion on Sentencing Federal Crimes"). The field survey work for the Just Punishment project was performed under contract by Response Analysis Corporation, Inc., directed by Lynne Firester. ■



United States Sentencing Commission

One Columbus Circle, N.E.

Suite 2-500

Washington, DC 20002-8002