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USE OF THE SENTENCING GUIDELINES BY
THE MICHIGAN DEPARTMENT OF CORRECTIONS:
A DESCRIPTIVE STUDY

By
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ABSTRACT

USE OF THE SENTENCING GUIDELINES BY THE MICHIGAN DEPARTMENT OF CORRECTIONS: A DESCRIPTIVE STUDY

By

Craig L. Devendorf

This study examines how the sentencing guidelines have been used by the Michigan Department of Corrections. The operation and implementation of the Michigan sentencing guidelines were scrutinized. Interviews and questionnaires were taken from randomly selected probation agents and presentence investigators from around the state. The findings indicate the sentencing guidelines appear to have little impact on the final sentencing recommendations. Such social factors as stability, an ability to support themselves and their families are the very issues considered by the presentence investigators in forming their sentencing recommendations. These issues were removed from the Sentencing Guidelines Commission in the early years of the program.

The second major finding was that there has been no consensus of opinion on whether to score the offence scoring on the basis of the actual offence, or on the offence (as may be mitigated by a plea reduction (ie.- A criminal sexual conduct withholds scoring on penetration, based on a plea to a reduced charge that does not require penetration as an element of the offence.)

Finally, it was evident that there is a lack of sufficient direction or policy on how the Sentencing Guidelines are to be used by the Department of Corrections.

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DEDICATION

This thesis is dedicated to my wife, Catherine, and my sons - Justin and Trevor. Without their sacrifices and patience, this paper would not have been possible.

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CHAPTER I

Chapter I

INTRODUCTION AND THEORY

Purpose of the study.

In an effort to reduce sentencing disparity, the Michigan Supreme Court issued Administrative Order 1984-1 on January 17, 1984. The Order decreed that all Circuit and Records Courts operating in the State of Michigan would begin use of the Michigan Felony Sentencing Guidelines on March 1, 1984. The Order forced all Circuit and Records Courts to use a standardized initial measure when formulating sentencing in their respective courts.

This study examines how the sentencing guidelines have been used by the Michigan Department of Corrections. In the 48-plus months since the guidelines were first implemented, what problems have been experienced? How have the sentencing guidelines been used by the various courtroom workgroup members? How have the guidelines affected sentencing statewide?

Have the sentencing guidelines instrument been used in a random manner; or has there been a standardized application state wide?

Are the measures in the sentencing guidelines reliable and valid; or are they subject to individual interpretations (or perhaps subtle biases) by those courtroom workgroup members that use them at any particular moment?

Concepts and Operationalizations.

Sentencing Disparity

The U.S. Supreme Court (through case law), Frankel (1973), and Hanrahan and Geer (1982), have suggested that collective American law has historically offered little direction in the weights given to the many aggravating and mitigating circumstances of the crime, the offender, or the victim. (See Hanrahan and Greer, 1982: 37-45)

As a result, there is a tendency for judicial scholars to note that discrepancies often occur in sentencings of "similarly situated offenders in similar circumstances." This is commonly referred to as sentencing disparity.

No specific, precise, or generally accepted definition of sentencing disparity appears to exist in the literature. For example, Gottfredson (1975: 56) states that two similar cases could receive grossly disproportionate sentences, yet without a larger body of cases, no disparity exists... (S)entencing disparity would occur only if similar cases did not receive uniform treatment. On the other hand, if one's reference point is statistical patterns, it does not matter that the sentencing is just or proportionate-- only that it is different. (Ibid, 52).

Problems raising themselves in a sentencing disparity study focus on the design and operationalization of the terms. Gottfredson argues that sentencing disparity is a rather continuous variable, and that measurements are difficult (p 59.)

Likewise, Diamond and Zeisel (1978: 119-120) have suggested that the courts are dynamic and "...essentially fluid." "The sentencing practices of individual judges... change and the composition of the courts change as the judges leave the bench and are replaced." To assess the full impact of the sentencing guidelines on the sentencing process, it would be necessary to trace the sentencing terms of the individual judges over time."

The essence of sentence disparity "...is a variation from some norm or standard...Most of the research varies only as to the nature of the norm of determination. Most researchers gauge variation from either a norm of proportionality; or from a statistical pattern of cases. How one conceptualizes the problem guides the developmental techniques, that in turn dictate the nature and extent of the cases identified as disparate." (Wilkins, 1978, vii).

Sentencing Guidelines

One of the most written about sentencing innovations of recent literature has been the concept of structured sentencing-- and about sentencing guidelines. These sentencing guidelines can provide an outline for sentencing practices by communicating sentencing norms for particular crimes to individual sentencing courts.

In legal terms, sentencing guidelines represent rules that structure the exercise of discretion by those legally authorized to make sentencing decisions, without eliminating total discretion. In other words, sentencing guidelines attempt to strike a "proper balance between rule and discretion." (Davis, 1969: 42). To the extent that they assure "that similar persons are dealt with in similar ways in similar situations, sentencing guidelines can

promote consistent sentencing practices and reduce sentencing disparity." (Wilkins et al., 1978: 187).

A sentencing guidelines system helps bring the rule of law to the criminal sentencing process. It also preserves a realistic amount of discretion to vary sentences in individual cases. If it is administered by a sentencing commission, the system increases the likelihood that sentencing rules will be based on reason, rather than on "crime-wave politics." (Ozanne, 1978: 187).

Sparks' critique (1983) of the Michigan Felony Sentencing Guidelines study (Zalman, 1979) indicated that the study was among the most thoroughly planned of the better than thirteen cited in his study. The size of the sample was sufficient to provide statistical validity; and the pre-test phase was correctly done.

The only major complaint Sparks found with the Michigan study was that there were no attempts to validate the final instrument. (Sparks, 1983: 221-43). However, one critical evaluation complained that the guidelines ranges were not strong enough. (Detroit Law Review 1985: p 597; F.N. 40; F.N. 41)

In Sparks' review of the different sentencing guidelines instruments used in the different jurisdictions, he notes that the process of describing past sentencing practices is advisable, but not necessarily mandatory. (He notes for example that the Oregon parole guidelines were enacted by legislative fiat.) However, Sparks' has suggested that there is a higher acceptance and legitimacy afforded to the guidelines instrument, and the philosophy behind their use by the legislature, the courtroom workgroup members, and the public when there has been prior validation of the guidelines instrument. (p 215).

Blumstein's (Op cit) review of literature summarizes the studies that attempt to explain sentencings-- as an outcome variable. "Despite the number and diversity of factors investigated as determinants of sentences, fully two-thirds or more of the variance in sentencing outcomes remain unexplained." (p. 10.)

Zalman noted in the Michigan Felony Sentencing Guidelines Project (1979) that the overall "goodness of fit" indicators suggest that only 50 to 60 percent of the variance was accounted for in the Michigan model. (p. 168-169.) He suggests that one possible explanation for the high degree of the unexplained sentencing variation is that the data are too highly aggregated, and that patterns are present when one looks at specific crimes. p. 186

Of the variables that consistently surfaced in the studies reviewed, the severity of the offence, and the offender's prior record consistently lead all others as the primary determinants of sentences. (Blumstein, p. 11)

In regards to prior (criminal) record, a study will be subject to bias and to inaccurate measures unless: 1.) the record is accurate and reliable; and 2.) the record used in the study is identical to the one used by the sentencing judge in the formulation of the sentencing of that offender (Blumstein, p 12.) Even when the necessary data elements are available, it is not clear how the variables should be combined to develop measures of offence seriousness; or prior record to reflect their effects on sentence outcome. (Ibid, p 12.)

Supportive Theory

The process of communication is by definition a relational one. One party is the sender; the other a receiver (at any particular point in time.) [Hall, 1982: 186]. Elsewhere, Duffee defined communications (sic- information) "...in relation to it's uses... The data is information because it sets constraints for the tasks at hand..." Information is thus tied to purpose. (Duffee, 1980: 165-66.)

Reliability and Validity.

In order to be effective, information must be able to be interpreted in the manner in which it was meant when it was conveyed to written form. Babbie, Campbell and Stanley, and others have referred to this process as reliability and validity:

Reliability is defined as a measurement method that suggests the same data would have been collected each time in repeated observations of the same phenomenon. (Babbie, 1983; 537)

Validity is a descriptive term used of a measure that accurately reflects the concept that it is intended to measure. (Ibid, 539)

Utilizations of Communications.

The amount and kind of communications (sic- information) determine the certainty of the decision-making (sic-) process. The implication is that the more certain the knowledge, the easier and better the decision-making. (ie.- More informed decisions.) ...What is happening inside (or outside) an organization is subject to the perceptions and interpretations of the decision makers. (Duncan, 1972: 313-327; Hall, 178. Emphasis added.)

Duffee has also suggested that the ideology of the personnel responsible for gathering the information and the style in which these personnel are supervised may impact significantly on the willingness and/or the ability of (correctional personnel) to conform their data gathering to the requirements of an informational system. (Ibid, 166).

Zalkind and Costello (1962) stated that what the receiver does with (or to) the communicated message is crucial. He may respond to cues he/she is not aware of; be influenced by emotional factors; use irrelevant cues; weigh evidence in an unbalanced way; or fail to identify all the factors on which the judgement was based. Peoples' personal needs, values, and interests also enter the process.

In other words, what the sender meant to say may not be interpreted in that light. The perception of the sender by the receiver also affects how a person will perceive the communication. (Cited in Hall, 190).

The implication of this dialogue is that the same information may offer different interpretations in its use in different agencies or perhaps even by different members of the same organization. "While information is a key factor, interpretation(s) of it remains a variable that while

usually constant in most organizations, still affects the decisions that are made. (Ibid, 180).

Development of Network Analysis Models.

Both internal and external characteristics affect the centrality of organizational communications. (Emphasis added.) The more an organization is people-or idea-oriented, the more important communications become. (Hall, 185-86).

Perrow (1979) states an organization is faced with multiple environmental pressures and must choose one path among many options toward one of many objectives... (p 73-74.)

Much of the organizational literature (including Weber and Parsons) assumes the (organizational) targeted system of study is closed. If one assumes instead that the system is open to outside influences, one can look at the conditions under which the system "...operates on the whole, opening alternative explanations..."

Eisenstein and Jacobs (1977), and Blumstein et al., (1983) have suggested that sentencing is normally not just done by the sentencing judge, but is a collective input of the various courtroom workgroup members (including the defence counsel, the prosecutor, and the probation agent [normally

by way of the presentence report]) as well as the judge.

Blumstein et al., (1983) have suggested that the background of the other courtroom workgroup members influences their input into the sentencing process in much the same way as it does for the trial judges. (This is an extension of the arguments raised by Hogarth, 1972.)

The interactions between these courtroom workgroup members is but a small study of the way the various groups work among the others. There is the legislature, local political maneuvering, press coverage, case law, to name but a few of the other "feedback mechanisms that involve themselves in the processing of the criminal defendant as he is passed "through the system" This would imply that the system is "open" and vulnerable to outside pressures and events.

This type of courtroom workgroup system was reinforced by the writings of Simon (1976) which suggested that ... "Not all information relevant to a particular decision is possessed by a single individual (or department; or agency). If the decision is dismembered into it's component premises and these allocated to separate individuals, a communication process must be set up for transmitting these components from the separate centres to some point where they can be combined and transmitted in

turn, to those members in the organization who will have to carry them out. (Simon, 1976:, 155.)

Lawrence and Lorch (1967) had earlier defined Integration as the quality of the state of collaboration that exists among departments that are required to achieve unity of effort by the demands of the environment... Organizations are more effective when they meet environmental pressures..." (Cited in Hall, 89).

"...That a system is open means not simply that it engages in interchange with the environment, but that the interchange is an essential factor underlying the systems' viability... The environment has been defined as an important element for those who adopt the open systems model, not only as the social context in which organizations exist, but also as an important determinant of organizational structure and process. (Cook, 1977: 62-63: Hall, 1982: p 240)

Purpose of Networks.

The notion of networks and organizational environments is still fluid. Competing paradigms are still emerging. (Perrow, 201-02; See also Weick, 1979.)

Perrow's text develops a network analysis to study the effects of an organization's environment. He writes that

only by the use of network analysis can one "...properly describe what happened to one of the organizations, or even that organization in it's set." Dynamics at the organizational level (or set) would be seriously misinterpreted without a larger understanding. It is of particular importance to know how tightly (or loosely) connected the systems were; the dependencies of the organization; the circumstances in which very weak links could prove crucial; and the rationalizations and justifications that makes the actual process. (p 233).

By the use of network analysis, political judgements and case histories can be used, laid open, and subjected to scrutiny. It can also examine change over time. Charting networks longitudinally allows for an examination of the shifts in strengths; density; importance;' and social interactions. (Perrow, 225-26)

In inter-organizational (network) analysis, the emphasis is on the effect other organizations have on the "focal organization." Then the examination can explore the networks and workings between the organizations. (Perrow, 217-18).

...The unit of analysis is the network itself, not the particular organizations involved. (Perrow, 225)

"Network analysis presents a figure which is largely visible because of the background from which it is set off

from; dissolve that background, and the figure is no longer visible. The nature of the background highlights the figure, and suggests what should be examined." (Perrow, 234)

In most of the work on networks, conceptual and ideological developments have centered on solving managerial problems within an organization. Network analysis should permit the examination and challenge of the old "givens" and allow the study of new alternatives.

An organization's structure is not just an automatic response to size, technology, and environment. At the same time, the types of response by the organization to the demands of these are limited in number... Each of the factors are important and interactive. (Hage, 1980; Hall, 1982: 75).

The specific form an organization takes is dependent on the environmental conditions it faces. Added to this are the conditions of size, traditions within the organization, and the idiosyncrasies of individual organizations. (Hall, 1982: 88).

Implications.

Because of the highly bureaucratized nature of the Michigan Department of Corrections, Duffee would suggest that the correctional climate "...is not conducive to the sharing of information flow and analysis." Correctional field agencies such as probation and parole offices are geographically dispersed and decentralized in authority structure to the extent that a central office staff, including research and information system units, are relatively dependent on the good will and cooperation of the separate offices in order to obtain information. (Ibid, 172).

Garfinkel and Bitner (1967: 186-207) stated the "deficiencies of the information for research and management decisions about the future of offenders are related to the fact that the same information serves another organizational function: The record serves as a "contractual" record of transactions that have already occurred between staff and clients (sic- patients).

In this latter sense, every record is always complete and accurate because it is constructed in such a way that the entries (or absence of entries) can change in meaning over time as a method of explaining and justifying the current state of negotiations between the staff and clients. The authors conclude that it is this second use of the

information that is of primary importance to front-line staff, and the demands for actuarial precision needed in proper processing will be resisted because such demands constrain the fluidity of meaning that data entries must retain within the people-changing sub-system of the organization.

"...Information recorded about offenders serves two purposes: That the recording of information performed one function for front-line staff and another function for the official concerned with the management of the department, and with the accuracy of the classification... Recorded information about offenders enables an evaluation of the appropriateness of the matches made between types of offenders to the types of programs... The decisions of various counselors to the types of programs... The decisions of various counselors and staff members (the recorded information), has seemed to perform different functions that ranged from protection of the Bureau if an offender created havoc after release; to "licensing" the offender as appropriate for a change in status; to a bother or protective barrier that kept staff busy in paper work and removed them from direct contacts with offenders." (Duffee et al, 175-176).

"The format for entering information in the case files and the policy on what information to gather are normally

controlled by the central office, but the reordering of information has been delegated to the front-line staff." The authors' hypothesis on any significant correctional decision was that "...the recorded data would not predict the decision made, or in other words, the data would not discriminate between those who were chosen for a particular correctional option and those who were denied that option (ie.- probation, as opposed to prison terms.) (This reference is not based on what decisions will be made. Too much information is lacking to base any finding of fact on this. The facts are borne out by the use of univariate and multiple-regression analysis.)

"... Fixed items of information requested of the front-line staff for entry in the record are either not utilized in the decision, or are utilized in a different way".

...Consistent with Daniels, Shover and Garfinkel state, "recorded data as utilized in staff meetings are neither ignored nor explanatory of the decisions made. The recorded data elements simply served as "punctuation points" or coded signals in treatment decision negotiations, the content of which was not retained by front-line staff. (Duffee, 175-176).

"...Information describing the offender will be kept purposefully vague so that the clinicians can retain some control over how future events should change the meaning of

what is recorded. To the extent that restraint is of importance, records should serve as a means of defending the organization from outside complaints about the state of operations. The information that best does this will, as Shover suggests, ascribe sufficient problems to every inmate that inmate idiosyncrasies can be blamed for future disruptions, but will not suggest critical problems that would have required specialized or individualized care for many offenders." (Ibid, 178).

"...The way in which managers organize personnel for the task of making judgements about offenders will influence the type of judgements made. The decision constructions used for reform or restraint policies, for example, are not appropriate for rehabilitation decisions, and the structures that developed for rehabilitation policy are not relevant to the implementation of reintegration programs.

Managers should also be aware of potential conflict between the means that they use for controlling staff behaviour and the quality and accuracy of information that are generated in their organizations... The uses that people-changers make of information are not necessarily the same as the uses of information made by people-processors. ...Consequently, as managers expect the same staff to do both functions, at least in large organizations, the information system is likely to be inaccurate for one purpose or

another... If, however, the classification and changing(sic-supervision) functions are separated, then problems of coordinating the separate units should be expected to increase. (Duffee, 1980: 179)

Problems with Sentencing Guidelines Scorings and Interpretations.

Many problems still surround the sentencing guidelines as presently used by the Michigan Courts. Because of the risk of judicial challenge, Freedom of Information Act (FOIA), and time precedents, either one of two things can occur. First, because of the former, information needed to score a particular item in the sentencing guidelines instrument may be lacking, or incomplete. This causes the investigator to expose him/herself to additional challenge; or to otherwise ignore the new offence, giving the offender less of a scoring than he might otherwise deserve.

Secondly, because many of the notes are selectively removed from the final report, the person eventually gaining supervisory custody of the offender will not have full and complete information for several of the supervisory scoring instruments which determine the offender's level of supervision, the need for additional treatment programming, etc.

There is yet another level of confusion regarding the use of the Sentencing Guidelines by presentence investigators: To wit- a lack of sufficient direction or policy on how the Sentencing Guidelines sheets are to be used.

Hanrahan and Alexander raise two caveats in their sentencing model: First, "...Sentencing laws and rules are not of a limited scope. They are continuous, and evolve over a period of time. As such, they can not be considered set in any one period of study." The second caveat is that the studies cited in their review of literature restricted study to the structure or design of the sentencing codes, and not their operation." (p 40-- Emphasis added.)

In this study, the operation and implementation of the Michigan sentencing guidelines were scrutinized. Interviews and questionnaires were taken from probation agents and presentence investigators from around the state.

Interviews included questions on how the individual courtroom workgroup members use the sentencing guidelines; and how the guidelines affect the handling of a criminal case. What problems have been experienced in the use of the sentencing guidelines? Has the sentencing guidelines instrument been used in random manner; or has there been a standardized application statewide? .

Summary of Study Design

Population.

The population consisted of all felony presentence investigators assigned to the State's Circuit and Detroit Records Courts.

Sample

A stratified clustered sample was prepared according to the Urban; Suburban; and Rural jurisdictional areas of the state. This will follow the model set in the initial 1978 pilot study for the Michigan Sentencing Guidelines project. (Zalman, 1979: pp 58-59).

Efforts to assure that all presentence investigators in each of the above groupings are entered in the pool depended on the degree of cooperation given by the Michigan Department of Corrections. A random number table was used to draw the Agents (by caseload number) in each of the three groupings. This was done to approximate an EPSEM technique.

Procedures.

A final sample of presentence investigators (N= 165) were asked to complete a questionnaire on how the sentencing

guidelines are used in their offices. A total of 63 agents replied. Questions were focused on how the guidelines effect their processing of any particular case.

Are the guidelines used to help develop the recommended sentence (in the case of the presentence investigator) or in the development of the sentence (in the case of the sentencer.) Have the sentencing guidelines assisted in plea negotiations?

CHAPTER II

PLEA BARGAINING- AN OVERVIEW

Frequency of use of Plea Bargaining. (1)

Our criminal justice system has become ever more dependent on processing cases of serious crime through the non-trial procedure of plea bargaining. (Langbein, 1979: p 204.) [See also Blumstein et al., 1983: p 52; and Kraus, 1971: 487-488.]

Estimates on the percentage of criminal cases across the country that are convicted by the Plea Bargaining, or Plea Negotiations method, (as opposed to submitting themselves to trial) range from 75% to over 90%. It is also estimated (2) that a very high percentage of the guilty pleas result from the informal negotiation process and a deal with the prosecutor, rather than from a simple guilty plea on the original "straight up" charge at arraignment. (H. Subin, 1968). (Kraus, 1971. 487-88).

The reasons for our latter-day dependence on plea bargaining are tolerably well understood, although much of the detail of the historical development remains to be traced out. Over the two centuries since the Americans constitutionalized jury trial, we have transformed it, submerging it in such time-consuming complexity that we can now employ it only exceptionally.

Eighteenth-century criminal jury trials were summary proceedings, still largely judge-directed and lawyer-free; the law of evidence lay all but entirely in the future; the extended voir dire was unknown; appeal was as a practical matter unavailable. (cf. Langbein, 1978) Felony trials took place with such remarkable dispatch that judges actually discouraged defendants from tendering guilty pleas.

Plea bargaining is now "an essential component of the administration of justice" because of what the Supreme Court calls "full-scale trial" (meaning jury trials) has become so complicated. [Santobello v New York 404 U.S. 257-260]. The vast elaboration of adversary procedure and the law of evidence has made our constitutionally guaranteed trial procedure so costly that it can be used in only a tiny fraction of cases of serious crimes. (Langbein, 1979: p 206)

According to Langbein, plea bargaining is such a transparent evasion of our cherished common law tradition of criminal trial that it's well-meaning practitioners and proponents feel a deep need for reassurance that what they are doing is not as bad as it looks. (3).

Apologists for American plea bargaining have begun sounding a theme purportedly derived from comparative law. As a corollary to the proposition that plea bargaining is not really so bad, the claim is advanced that everybody else does it too. Plea bargaining is said to be universal, at least in the legal systems of advanced industrial countries. (Langbein, 1979: p 204)

"...By way of preface, the *raison d'être* of American plea bargaining has been nothing more than simple expediency. (Langbein, 1979: p 206). We have indulged in this practice of condemnation without adjudication because we think we have to, not because we want to. We know that plea bargaining lacks foundation in our constitutions and in our legal traditions. (cf. Alschuler, 1970).

Even among proponents of plea bargaining, few would contend that it is an intrinsically desirable mode of rendering criminal justice. The largest claim for plea bargaining is that it may approximate (although it cannot equal) the

outcomes of true adjudication, but at lower costs."
(Alschuler, 1970).

The Supreme Court has explained it feels obliged to treat plea bargaining "...as an essential component of the administration of justice.... If every criminal charge were subjected to a full-scale trial, the States and the federal government would need to multiply by many times the number of judges, and court facilities. [Santobello v New York, 404 U.S. 257, 260 (1971)] (See also- Langbein, 1979: p 205)

Once guilty plea cases are properly understood; and once defendants who plea-bargain know what the cases stand for, we may find that the very decisions intended to promote plea-bargaining actually undermine public acceptance of bargaining because they lessen the punishment imposed upon serious offenders who plead guilty. (Saltzburg (1978): 1268)

Constitutionality of Plea Bargaining:

Unable to adjudicate, we now engage in condemnation without adjudication. Because our constitutions guarantee adjudication, we threaten the criminal defendant with a markedly greater sanction if he insists on adjudication and is convicted. This sentencing differential, directed

towards inducing the defendant to waive his right to trial, is what makes plea bargaining work. It also makes plea bargaining intrinsically coercive. (Langbein, 1979: p 204.)

In *United States v. Jackson* 390 U. S. 570 (1968), the Court did not attack the bargaining process, nor did it consider the question. The Federal "Statutory Plea Bargaining statute" was struck down for inducing the defendant to waive jury trial. (Kraus, 1971: 493)

The statutory inducement to plead guilty involved in *Jackson* is "distinguished from prosecutorial Plea Bargaining which has the effect of inducing a waiver of jury trial. In prosecutorial plea bargaining, the defendant can weigh the risks of going to trial, being convicted, and receiving the maximum sentence against the kinds of leniency which the prosecutor is offering him for a guilty plea." If the leniency being offered is insufficient from the defendant's point of view, then he can go to trial facing the same maximum sentence with which he was confronted when the bargaining began.

The chilling effect on the defendant's right to trial by jury is at least of a different dimension from the situation in *Jackson*, where under a statute, to demand a jury trial may cost the defendant his life. The defendant

in Jackson was not confronted so much with the incentives to plead guilty (as in prosecutorial plea bargaining), but rather with a major disincentive to exercise his right to jury trial. Where one of the choices is death, surely the choice is much less voluntary. (4) [cf. The opinion of J. Brennan, in *Parker v North Carolina* 397 U.S. 790, 809-10 (1970)]; (Kraus, 1971: p 494)

However, the holding in Jackson has not precluded the United States Supreme Court in several cases in the 1970's from implying that Plea Bargaining is a constitutionally permissible procedure. (Kraus, 1971: 494)

"...The defendant might never plead guilty absent the possibility or certainty that the plea will result in a lesser penalty than the sentence that could be imposed after a trial and verdict of guilty... We decline to hold, however, that a guilty plea is compelled and invalid under the Fifth Amendment, whenever motivated by the defendant's desire to accept the certainty or probability of a lesser penalty rather than face a wider range of possibilities extending from acquittal to conviction and a higher penalty authorized by law for the crime charged. (751).

North Carolina v Alford 400 U.S. 25 (1970) tended to reinforce the earlier language of Brady. [People v. Brady 397 U.S. 742 (1970); 404 F 2d 601 (1968)]. (5)

1.) A guilty plea which represented a voluntary and intelligent choice among alternatives available to the defendant especially where he was represented by competent counsel, was not compelled within the meaning of the fifth amendment merely because the plea was entered to avoid the possibility of a death penalty. (400 U.S. 31);

2.) Because of the substantial evidence indicating actual guilt in this case, the lower court committed no constitutional error in accepting a voluntary and intelligent guilty plea despite the defendant's claim of innocence; (400 U.S. 38)

3. The "Court ruled: "...[a]n individual accused of crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is willing or unable to admit his participation in the acts constituting the crime. " (400 U.S. 37)

The court also commented in Alford on the subject of lesser included offences:

The States in their wisdom may take this course by Statute or otherwise and may prohibit the practice of accepting pleas to lesser included offences under any circumstances. But this is not the

mandate of the Fourteenth Amendment and the Bill of Rights. The prohibition against involuntary or unintelligent pleas should not be relaxed, but neither should an exercise in arid logic render those constitutional guarantees counter-productive and puts in jeopardy the very human values they were meant to preserve. (400 U.S. 31)

The language in this decision establishes (or at least reinforces) three propositions. First, plea bargaining at least bargaining for lesser included offences- is acceptable under Federal Constitution. Second, the Federal Constitution does not forbid the states, in their administration of criminal justice, from restricting the availability of plea bargaining. Finally, the Court reaffirms its requirements that a plea be taken voluntarily and intelligently. Thus, the trend emerging in recent United States Supreme Court cases seems to indicate the constitutionality of Plea Bargaining system, under most, if not all, circumstances. (Kraus, 496).

In Tollett v. Henderson, 411 U.S. 258 (1973), the Court used the Brady principle (6) stating that a guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offence with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to

the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the standards set forth in *McMann v. Richardson* 397 U.S. 759 (1970); (Saltzburg (1978): 1273)

In general, the literature is replete with the summary statement that those defendants that choose to plead guilty, and surrender their right to a trial tend by and large to receive greater leniency as compared to their counterparts that wish to maintain their silence and have trial proceedings. These findings began with the President's Crime Commission Report in 1967.

In many jurisdictions even a judge's influence over plea bargaining is limited. ...In others, judges have some authority to decide who goes to prison (or jail), subject to negotiated guilty-plea constraints (ie.- Briggs-Killibrew decision [416 Mich 189]) and mandatory sentencing laws; and for all convictions following trials. Within the constraints of maximum and minimum sentences set by the judge, parole boards (in those jurisdictions that retain parole release) have authority to decide when prisoners are released. By law and tradition, each of these three decision-makers are organizationally and politically separate. Appellate courts, the independent forum for review of administrative and judicial decisions in other

contexts, have traditionally deferred to the decisions of prosecutors, trial judges, and parole boards. (Blumstein et al., 1983: p 52)

The United States Supreme Court (*Bordenkircher v Hayes*, 434 U.S. 357 (1978)) affirmed that most prosecutorial charging and plea bargaining cases are not subject to judicial review. The U.S. Parole Commission's release decisions do not present judicially cognizable substantive issues (*U.S. v Addonizio*, 442 U.S. 178 (1979)).

Although practical considerations and deference to administrative expertise are sometimes invoked as reason for this hands-off approach, the fundamental explanation is rooted in the basic concept of separation of powers: Prosecutors and parole boards are in the executive branch of government and hence not subject to certain kinds of judicial review. (Of course, that both are executive branch agencies does not mean that their processes or policies are coordinated: The two agencies have different origins, different rationales, and different constituencies.) (Blumstein, et al., 1983: pp 52-3.)

Plea Bargaining Typology.

Blumstein (Blumstein, et al., 1983: p. 43) summarized the literature and case law, by developing a plea bargaining typology. In general there are four different types of plea bargaining in his model:

- 1.) Horizontal Charge Bargaining;
- 2.) Vertical Charge Bargaining;
- 3.) Sentence Bargaining; and
- 4.) Fact Bargaining.

In **horizontal charge bargaining**, a prosecutor agrees to drop several charges of an offence type if the defendant pleads guilty to the remaining charge(s) (e.g., three burglary charges are dropped when the defendant pleads guilty to a fourth.)

In **vertical charge bargaining**, a prosecutor agrees to drop the highest charge if the defendant pleads guilty to a less serious charge, (e.g., a narcotics trafficking charge is dropped if the defendant pleads guilty to a charge of possession of a large amount of narcotics. or a charge of armed robbery is agreed to be dropped if the defendant pleads guilty to a charge of strong-armed robbery. [Both of the reduced charges are probationable- the primary charges are not.]

In **sentence bargains**, a prosecutor agrees that the defendant will receive a specific sentence (or at least that the sentence will not exceed "such and such a sentence".)

In fact bargaining, a prosecutor agrees not to introduce evidence of specific aggravating circumstances. Other plea bargaining types may involve the prosecutorial agreements to recommend or not to oppose particular sentence or to dismiss charges in consideration of the defendant's cooperation in other prosecutions or investigations.

Whatever form a plea bargaining takes, the prosecutor (and to a lesser extent the defence counsel) often stands supreme. The judge sometimes has little choice but to ratify their decisions, and constitutionally, prosecutors' plea-bargaining tactics are virtually immune from judicial review (Bordenkircher v Hayes, 434 U. S. 357 (1978); (Blumstein, et al., 1983: p. 43)

CHARGE BARGAINING AND OTHER CIRCUMVENTION.

Lawyers and judges have personal and bureaucratic interests that may be served by the expeditious disposition of cases. Private defence lawyers often operate high-volume practices in which fees per case are (proportionately) low. Public defenders often have large caseloads. Negotiated pleas involve less work for everyone. (Cohen and Tonry, 1983: p 315; See also Saltzburg, 1978; and Westen, 1978.)

Prosecutors are often concerned about keeping conviction rates high, and backlogs low. Judges also typically want to keep backlogs low. In the face of an effective sentence bargain ban, one might expect to see overt or covert charge bargaining, or implicit sentence bargaining. (Cohen and Tonry, 1983: p 316)

The Iowa Law Review (1975), and Church (1976), in an early evaluation of a charge bargaining ban in Michigan found that court participants quickly shifted to a system of sentence bargaining. Cohen and Tonry, (1983) found similar results after evaluating the Alaska ban on plea bargaining. (p 316).

Consequences.

The conventional wisdom about plea bargaining and the processing of criminal cases is that negotiated guilty plea "discounts" are imperative if the flow of cases is to be maintained, if backlogs are not to accumulate, and if the courts are not to be overwhelmed by trials. (7) The common sense premise is that defendants will not give up tactically valuable trial rights for nothing. (Cohen and Tonry, 1983: p 316)

In order to reduce case pressure and to avoid harsh sentences for defendants for whom lenient sentence bargains would have been arranged, prosecutors might reject more arrests at screening, or effect post-screening dismissals, or acquiesce in judicial dismissals. (Cohen and Tonry, 1983: pp 317).

Case processing seems to have changed very little in jurisdictions banning pleas outright (ie.- Alaska has been the most prominent example.) A slight tendency to screen out more cases was noted, and a slight tendency was also found toward earlier dismissal of cases. However, overall dismissal rates were unchanged. Sentencing severity seemed little changed except for cases involving minor offence by inexperienced offenders (they received harsher treatment than before the ban.) Guilty plea rates changed little. Trial rates increased, but the absolute number of trials remained low. The average case-processing time declined. (Cohen and Tonry, 1983: p 317)

The increase in screening that did occur suggests that rather than an increase in the systematic evaluation of evidence and aggravating factors in preparation for trials, there was a deliberate prosecutorial decision that some kinds of cases were expendable. (Cohen and Tonry, 1983: p 319).

Kraus has called for the explicit defining and formalizing the procedure of negotiations. The primary consideration in any situation involving plea bargaining is the constitutional requirement that any guilty plea be voluntary and knowingly made. Additionally, four goals should be rigidly adhered to:

1.) Guilty pleas based upon plea agreements should accurately reflect the approximate degree of the defendant's guilt and his personal and background characteristics. Thus, Plea Bargaining which induces an innocent person to plead guilty should not be sanctioned. Conversely, charge reductions should be carefully scrutinized. (This would help reduce the possibility of over-charging by the prosecutor's office.) (Kraus, 1971: p 502)

2.) The criminal justice system should not only dispense justice but should provide the appearance of justice. Plea bargaining as a part of this system presently falls short in both regards. Accounts of the practice in the media tend to emphasize its negative aspects. As a result an essential element in the proper functioning of the system of criminal justice- the public confidence- is diminished. The goal of legitimizing Plea Negotiations in the public conscience at the very least requires an increase in the visibility of the bargaining process. (Kraus, 1971: p 503)

3). Plea Bargaining is contingent upon the prior selection of a particular sentence or selected range of punishments. (Emphasis added.) The bargain therefore dictates the peno-correctional

decision of the criminal justice system. Under the present system the bargains are not responsive to the defendant's proper correctional needs; for they often provide punishment which is either too harsh or too lenient for the defendant under the circumstances. When sentence concessions are the substance of an agreement the procedure should utilize the same preparation and considerations of a presentence report which occur after conviction at trial. (Kraus, 1971: p 503)

4.) Lastly, any improved system of plea discussions and plea agreements must be responsive to the problem of already congested court dockets. The costs of the proceeding in terms of human resources and money must be weighed against the number of cases which may be processed. (Kraus, 1971: p 503.)

The amount of formality and frequency of close, regular contacts among the courtroom workgroup members (ie.- judges, prosecutors, defence attourneys and probation staff members) determine whether a case will be decided informally through plea negotiations, or formally through the trial process. (Eisenstein and Jacobs: 1977).

These authors cautioned that the severity of the offence (or offences) affect this plea process, but all things being equal, this principle appears to hold. What happens after a finding of guilt (regardless of the means of how

that finding was made)? What determines how the criminal case will be disposed of?

The balance of this paper describes the sentencing process, focusing in particular on the sentencing process in the Michigan Felony (Circuit) Courts.

GENERAL FOOTNOTES

(1) A general discussion in the development and evolution of the plea bargain system in the United States can be found in the writings of Alschuler (1970, and 1979); Kraus (1971); Saltzburg, (1978); Westen (1978); and Langbein (1979). This list is certainly not exhaustive. Most of these writings have focused on the development of the constitutionality of the guilty plea process as it intrudes on the rights of the defendant to maintain his innocence, and the appellate rights retained or surrendered by the use of the plea process.

(2a) See generally--- D. Newman, Conviction: The Determination of Guilt or Innocence without Trial, (1966) xii; H. Subin, Criminal Justice in a Metropolitan Court 44 (1966); Newman Pleading Guilty for Considerations: A Study of Bargain Justice, 46 J. Crim. L.C. & P. S. 780. 788 (1956); Notes and Comments, The Role of Plea Negotiations in Modern Criminal Law, 46 Chi-Kent L. Rev. 116- 120 (1969); Note, Plea Bargaining- Justice Off the Record 9 Washburn L. J. 430 (1970). (Kraus, 1971: 478 , f.n. 4.)

(2) [See also Blumstein et al., 1983: p 52; and Kraus, 1971: 487-488.]

(3) (cf. Alschuler, 1979; 1979a; and Langbein, 1979a)

(4) [cf. The opinion of J. Brennan, in Parker v North Carolina 397 U.S. 790, 809-10 (1970)]

(5) [People v. Brady 397 U.S. 742 (1970); 404 F 2d 601 (1968)].

(6) F.N. 2. Tollett v Henderson 411 U.S. 258 (1973) followed the Brady Trilogy.

{Brady v United States 397 U.S. 742 (1970);
and {United States v Jackson 390 U.S. 570
(1968}};

{Parker v North Carolina 397 U.S. 790 (1970}};
and

{McMann v Richardson 397 U.S. 759 (1970}}).

(7) cf.- Saltzburg, 1978; Kraus, 1971; and Westen, 1978) for further discussion on this topic.

CHAPTER III

REVIEW OF LITERATURE

The Courts have historically had few limits or controls placed on them- other than perhaps those imposed by legislative action, or the Appellate Courts. (cf.- Frankel, 1973; and Sutton (LEAA Report 16) 1978).

Efforts to predict sentencing outcomes continue to elude researchers. Despite continuing refinements in statistical methods and computerized analysis, explanation and prediction of a sentencing outcome is anywhere between 33 and 75 percent. The Michigan Felony Sentencing Guidelines project was only able to predict 50 to 66 percent. (Zalman, 1979.)

Sentencing outcomes are affected by the sentencing model and philosophy of the particular sentencing judge, and that of the jurisdiction or jurisdictions under study. (I do not intend to enter the discussion of judge-specific

orientations further. I only reflect there is mention of it in the literature and that it can play a part in the sentencing process.) (1).

Philosopher H. L. A Hart (1968) has provided a useful framework for considering the normative goals of punishment in his treatise. Observing that debates about the philosophy of punishment are often unnecessarily confused, he proposed that debates devote separate attention to three distinct questions:

- 1.) The general justifying aim—What is the general justification of the social institution's punishment(s)?
- 2.) The question of liability—Who is to be punished?
- 3.) The question of amount— How much?

Likewise, Travis (1978: p 69) dichotomizes sentencing into two conflicting sets of values: 1.) The purposes of sentencing is to control crime for the protection of society. (Offenders must be punished and incapacitated, while would-be offenders should be deterred); and 2.) On the other hand, the rights and treatment of the offenders should be fair and equal.

SENTENCING PARADIGM

The literature suggests a sentencing paradigm- by comparing the sentencing model and the philosophies of the particular jurisdiction(s) under study. Briefly stated, these include the use of the determinate, indeterminate or hybrid sentencing model (See Kramer, 24 Crime and Delinquency 385; Lazony, 1978; Brody, 1978; Tarling, 1978; Kress, 1980; Martin, 1983; and the NCJ Report 1983); and on a second plane, the sentencing philosophies of the Court(s) under study. (Sutherland and Cressey, 1970, Kraus, 1971; O'Leary et al., 1975; von Hirsch, 1975, 1981, and 1982; Coffee, 1978; Tarling, 1978; Singer, 1979; Greenwood (RAND) 1982; Blumstein et al., 1983; Martin, 1983, and Gottfredson and Taylor, 1984.)

SENTENCING MODEL

On the one hand, sentencings are affected by the particular sentencing model in use in the particular jurisdiction where the offender is being sentenced. These can include: (1) The indeterminate sentencing model; 2.) The determinate sentencing model; or 3.) The hybrid sentencing forms using elements and portions from the different "pure" models. (cf.- NCJ Report to the Nation (1983); Lazony, et al.,

24 Crime and Delinquency 385 (1978); and Kress, Theory and Practice of Sentencing Guidelines, (1980).)

Indeterminate Sentencing.

In the indeterminate sentencing model, the sentencing authority places both a minimum, and maximum length of time an offender can be incarcerated. When the minimum time has elapsed, the offender's progress is reviewed by an administrative panel (ie.- the Michigan Parole Board). If the offender's progress is deemed adequate, the offender may be granted whole or conditional release. Otherwise, he/she will serve additional time on that sentence until the Board feels he/she has learned enough to succeed in society; that the offender no longer poses a risk to society; or until the maximum sentence has been served. (cf.- Sutherland and Cressey, 317; 582; Martin, 1983).

Similarly, Hanrahan and Alexander (1976) state that under the indeterminate sentencing model, the sentence is tailored to the specific case at hand. The goal is the rehabilitation of the offender. The sentence is designed to reduce the individual's propensity for further crime.

Martin suggests that "...Under indeterminate schemes, legislatures established very broad policies- generally through statements of purpose; establishment of maximum

sentence, and authorization of general sentencing procedures- and left vast discretion in the hands of sentencing judges and parole boards to decide on the type and amount of punishment appropriate in individual cases.

The goal of this system is to protect society through the rehabilitation until offenders are rehabilitated. It is the principal consideration in deciding whether to incarcerate and in deciding the length of that imprisonment. The severity of the punishment depends more on the individual characteristics of the criminal than on the nature of the crime. It is expected that two offenders who have committed similar offences might serve quite different prison terms, since release is contingent on evidence of reform.

Disparity, or variation in sentences, is an accepted part of a system of individualized treatment for offenders.

(Function of Indeterminate Sentencing) Martin, 1983:

p 267

Such a system for a long time satisfied a wide spectrum of opinion. Liberals liked the purported rejections of the notion of retribution and the possibility of speedy release of offenders amenable to rehabilitation. Judges enjoyed wide authority but were relieved of responsibility for actual release decisions. Prison administrators had flexibility in controlling hostile inmates. Politicians

could act irresponsibly in raising statutory penalties to appease public passion without affecting actual time served. (Martin, 1983: 267)

Historically, the indeterminate sentence was first used in the United States in 1885. It allowed officials to tailor sentencing lengths to meet the needs of the offender. Judges received the authority and discretion to choose the type of sentence within the minimum and maximum terms. Continued adherence to the tenet of "individualized sentencing" appears to be a major reason for wide sentencing variation.

Burns v U.S. 287 U.S. 216 (1932) ruled that the individualization of each case should be tailored to the particular situations of each offender. (Emphasis added.) Similarly, the courts have ruled that retribution should no longer be the dominant objective in criminal law. Reform and rehabilitation- have become the major goals of jurisprudence. Williams v. N. Y. 337 U.S. 241 (1941) states "variations are justifiable and desirable when they reflect the concept of individualized justice; of tailoring their treatment to meet the needs of the offender, rather than to the offence.

Determinate Sentencing.

In the flat, determinate sentencing model, (or presumptive sentence) the offender must serve the entire length of the sentence before he can gain his release.

Martin (1983: 297) has suggested however, that determinate systems are unstable. Indeterminate sentencing systems permit legislative increases in punitiveness by raising maximum sentences in response to public pressure without altering the sentences actually given out. But under a policy of determinacy, the legislature can, and the California experience indicates that the legislature will, under public pressure, increase sentence severity without providing safety valves for increased prison populations. (Martin, 1983: 297)

Hybrid Sentencing Model.

Kramer et al., identified a sentencing model as being determinate, indeterminate, or "hybrid"; and judicial, legislative, or administrative. In his study, the "hybrid model" used mechanics of presumptive sentencing with specific penalties. There is room in this model for the inclusion of mitigating and aggravating variables; and it would offer a limited parole function. (Kramer, 24 Crime and Delinquency, 385).

SENTENCING PHILOSOPHIES

Four primary sentencing philosophies are identified in the literature (Sutherland and Cressey, 1970 p 497; O'leary, et al, 1975; and Blumstein, et al., 1983: p 48. Additional discussion can be found in Kraus, 1971; 1975; Coffee, 1978; Singer, 1979; Martin, 1983; and S. Gottfredson, and Taylor, 1984: 195.) For a comprehensive discussion of Selective Incapacitation and Just Deserts, see Greenwood's (Rand) Study (1982); Von Hirsch, 1975; 1981 and 1982; and Martin, 1983.) As Gottfredson and Taylor note, there is a "...large and controversial literature on the goals and proper purposes for the sentencing and correctional treatment of criminal offenders. (f.n.-15). Four traditional goals have been central to this debate: rehabilitation or treatment; desert or retributive punishment; deterrence (general or specific); and incapacitation. Each has a long history in practice, in moral philosophy, and in legal discussion and debate. (S. Gottfredson and Taylor, 1984: 195.)

The sentencing philosophies are:

- 1.) Rehabilitation;
- 2.) Incapacitation;
- 2a.) Selective Incapacitation;
- 3.) Deterrence; and
- 4.) Just Deserts (or Retribution model).

Each sentencing philosophy has its own particular approaches to the dilemma of what to do with the defendant once he has been convicted.

Rehabilitation. This model is based on the belief that the offender can be taught to function adequately in society if given proper counsel, education and vocational training and direction. This stems in part from a societal expectation that offenders once identified, can positively change. Rehabilitation models "seldom include the intentional infliction of suffering, as this is seen as detracting from the desired positive treatment atmosphere." Sutherland and Cressey (1970): 497; 607; Blumstein et al., 1983: p. 48; Martin , 1983; and Gottfredson and Taylor, 1984: p 190-201).

Incapacitation. As defined by Sutherland and Cressey, incapacitation does not need to "purposively inflict suffering on a convicted offender," but does subject them to the exposure of rigid discipline and control." The authors state that it is difficult to determine whether the discipline and control are considered part of the routine necessary for gaining the incapacitation objectives, or instead, conditions necessary for obtaining the deterrence and retribution objectives. (Ibid, 498). The authors note that all of the objectives are regarded necessary to meet any of these sentencing philosophies. (See especially Greenwood's (RAND) study prepared for the NIJ, 1982).

Retribution and Deterrence. By definition, Sutherland and Cressey state these two models require infliction of suffering, mainly by the deprivation of liberty and personal freedoms. Further restrictions of movement within the prison walls could be imposed. These systems generally impose rigid rules and punitive controls. The deterrence model hopes to instill a fear into the general citizenry that if they commit an offence, this is what they can expect to get in the way of treatment. Retribution is the societal response to the person that commits the offence. (Ibid, 498)

JUST DESERTS. Von Hirsch's "just desert" approach which seeks to make punishment commensurate with offences is not concerned with random variation per se, but with the establishment of norms, the elimination of unexplained variation from the norm, and the provision of reasons for variation that occurs. (Martin, 1983: 267)

The **JUST DESERTS** theory articulated by Andrew von Hirsch has proven to be a very influential development of rights theory. He argues that the justification of punishment in individual cases rest on the offender's moral culpability and the amount of punishment must be proportional to that culpability rather than being determined by utilitarian considerations. One important corollary of a punishment jurisprudence that emphasizes desert is that equality in sentences imposed becomes a concern of the highest priority. Utilitarian considerations such as deterrent or

incapacitative effects of the defendant's alleged need for rehabilitation cannot be invoked to justify unequal sentences in individual cases. (See Coffee, 1978: Singer, 1979; and von Hirsch, 1981); (Blumstein et al., 1983:p 50)

What is the proper goal of punishment? How should the competing goals of deterrence, incapacitation, rehabilitation, and retribution be ordered or balanced?

Second, what should the criteria be for applying different types of sanctions- incarceration, community supervision, fine, or a combination of these? How severe a sanction is necessary to achieve the goal of the sentencer? Third, who should have authority to establish sentencing standards and to make individual sentencing decisions. (Determines elements of sentencing goals.) (Martin, 1983: p 266.)

"...One can reasonably claim the utilitarian goal of crime prevention as (being) the general justification of punishment but still insist that there be retributive considerations. It requires that punishment be limited to conscious offenders. The amount of punishment must be closely proportional to the offender's moral culpability. Thus, one can consistently accept utilitarian prevention as the social justification of punishment and at the same time argue that moral considerations forbid the imposition of exemplary punishments. Alternatively, one can invoke

retributive consideration to argue that liability to punishment should depend on an individual's conscious offending while the amount of punishment need not be closely proportioned to the culpability but can instead be adjusted to reflect rehabilitative needs, deterrent and incapacitative considerations, and so on. (Blumstein et al., 1983: p 49)

In practice, any sentencing policy is at least partially dependent on external factors such as the cost of sentencing. (Examples of this might be the availability of prison bedspace; or the likelihood of public outcry by the electorate of a particular sentencing decision (ie.- the 1983 UpJohn heir case in Kalamazoo County. The amount or extent of variable sentencing policy is limited by constitutional requirements and the nature of criminal law as a tool to promote social order and societal protection. (Travis: p 70).

As cited above, Frankel (1973) notes that the courts have been left "to go it alone"; to pick the one solution or disposition they felt should be used to meet the needs of the cases at hand. (cf.- Sutton, 1978; and Frankel, 1973).

There is no one perfect answer for every case. If each and every case of "similar" offences were given the same sentence, there would be no distinction between those

needing stronger sanctions, with those having mitigating circumstances. (Consider the man with his seventh larceny conviction; as opposed to the man who had no prior offences that steals a loaf of bread to feed his family.) Either system creates it's own set of inequalities, variations, and disparities.

INDIVIDUALIZED SENTENCING

Greater uniformity of approach was seen as desirable, and to be achieved "only by the various benches following a common policy." This common policy is presented as a list of recommended penalties drawn up after consultation with the (British Magistrate's) Association's local branches. The list which was made publicly available for the first time in 1975, sets out levels of fines and recommended periods of disqualification... The British Magistrates' Association accepts that local branches may want to vary their recommendations from the national ones to take account of such local circumstances, as for example, economic conditions in their area.

Moreover, in sentencing individual offenders, British magistrates are urged not to treat the recommendations as a rigid tariff (or sanction). Instead, they are encouraged to vary them according to the gravity of the offence, its prevalence, the past record of the offender, his present

means, the number of convictions arising from the same incident and the different impact of disqualification on different offenders. In other words, the recommended penalties are intended only as starting points, the severity of the final sentence being increased or decreased according to all sorts of considerations relevant to the individual cases. (Tarling, 1979: p 30-32; See also- Thomas, 1978).

As the characteristics of individual offenders and the circumstances in which offences were committed differed so widely, the notion of an "average" offence was fanciful and the "average" penalty impossible to apply. In some courts it was felt that the practical difficulties of formulating guidance were so formidable that any attempt to do so would be bound to fail. Thus on large benches it was found to be difficult enough to get all the magistrates together at one time to discuss policy issues, let alone to get them to agree on which policies to adopt. Courts with written penalty lists were against extending them to other offences for similar reasons. (Tarling, 1979: p 34.)

The amount of Probation resources available to a Court may influence the Court's decision to consider the use of a probation type of sentence. (Tarling, 1979: p 19-20; and Brady: 1977: 9-38.) Resources need to be available to provide the supervision for this to occur.

In the British studies, Court use of probation was not related to their use of any other disposal. This may be due to magistrates' views of probation as a form of "treatment", whereas other dispositions can reflect other sentencing aims. It could mean that the decision to place an offender on probation is taken to meet his individual needs and is not considered merely as a more or less severe alternative to discharge, fine, custodial and suspended sentence., etc. (Tarling, 1979).

The use of fines was inversely correlated with discharge and custodial and/or suspended sentence: That is, courts which fine a high proportion of offenders tended to order fewer custodial and suspended sentences, while courts which fined relatively few offenders made more use of these other dispositions. The result is perhaps not unexpected. Fines were numerically the most important disposal and therefore courts which fined a high proportion of offenders were unable to use the other disposals to any great extent. (Tarling, 1979: p 7- 24).

SENTENCING DISPARITY.

The indeterminate sentence was first used in the United States in 1885, and allowed officials to tailor sentencing lengths to meet the needs of the offender. Judges receive the authority and discretion to choose the type of sentence with both minimum and maximum terms. Continued adherence to the tenet of "individualized sentencing" appears to be a major reason for wide sentencing variation. (Tarling, 1979: 19-34).

Burns v U.S. 287 U.S. 216 (1932) ruled that the individualization of each case should be tailored to the particular situations of each offender. (Emphasis added.) Similarly, the courts have ruled that retribution should no longer be the dominant objective in criminal law. Reform and rehabilitation have become the major goals of jurisprudence. Williams v. N. Y. 337 U.S. 241 (1941) states "variations are justifiable and desirable when they reflect the concept of individualized justice; of tailoring their treatment to meet the needs of the offender, rather than to the offence.

The Indeterminate Sentencing system has satisfied a wide spectrum of opinion for a long time. Liberals liked the purported rejections of the notion of retribution and the possibility of speedy release of offenders amenable to

rehabilitation. Judges enjoyed wide authority but were relieved of responsibility for actual release decisions. Prison administrators had flexibility in controlling hostile inmates. Politicians could act irresponsibly in raising statutory penalties to appease public passion without affecting actual time served.

Variation in sentences, or Disparity, is an accepted part of a system of individualized treatment for offenders. (This should be viewed as a dysfunction of Indeterminate Sentencing) Martin, 1983: p 267

Unless there is but one mandatory (presumptive) penalty, the sentence of an offender will depend partly on the identity of the sentencing judge. Under American law, the trial judge's views and values can play a particularly important role. The law offers practically no guidelines regarding the weights to be given to many aggravating and/or mitigating circumstances of the crime, the offender, and/or the victim.

Historically, the American judge has not needed to give his reasons for a sentencing decision (Frankel, 1973).

Michigan began to change this with the 1983 decision of *People v. Coles* 417 Mich 523 (1983). The Cole decision now requires judges to articulate on the record the reasons for

the sentencing judge's sentence at the time of that sentencing. (But see *People v Murphy* [146 Mich App 724].

Legislation is pending in both the Michigan House of Representatives, and the Michigan Senate, which would require exactly that- an allocution by the Court of the reasons why the sentence was imposed. (cf.- Proposed Senate Bill 511; and House Bill 4260). Since the legal sentencing frames are normally broad, especially for the serious crimes, similarly situated offenders who commit similar offences under similar circumstances may receive substantially different sentences. (Diamond and Zeisel, 1978, p. 110)

The use of "discretionary power" serves only to blunt or twist the principle of "equal protection of the law," for this is dependent upon the uniform application of rules and principles. (Struggle for Justice, 1971: 125). Several states, including Utah, Minnesota, Oregon, Illinois, Indiana, Maine, and California have initiated programs where the courts have begun "phasing out" the use of the indeterminate sentences.

Many advocates of sentencing reform would abolish indeterminate sentences, and replace it with a sentencing system that is more determinate and presumptive. Their appeal is generally from one of two directions. Either they

ask for additional "certainty" of punishment, or for a reduction in the amount of disparity of sentencing.

A U.S. Attourney General's report (1938) indicated that "wide discrepancies in the sentencing of defendants who had committed identical offences involving similar states of facts. Disparity in sentencing...leads to a sense of injustice..."

The essence of sentencing disparity "...is a variation from some norm or standard... Most researchers gauge variation from either a norm of proportionality, or from a statistical pattern of cases. How one conceptualizes the problem guides the development of measurement techniques, that in turn dictate the nature and extent of the cases identified as disparate." (Wilkins, 1978, vii.)

Some of the researchers have referred to sentencing disparity as statutory penalties authorized by law that are disproportionate to the gravity of the offence. In some instances, penalties do not seem justified given the seriousness of the offence. Peter Low (1968: 29) describes disparity as the "difference between the penalties authorized by law, and the various forms of criminal conduct. He concludes that, "...at the very least," it would seem that these facts should raise doubts to the

extent to which presently authorized sentencing levels are necessary, or justified.

Gottfredson (1975: 56) stated that two similar cases could receive grossly disproportionate sentences, yet without a larger body of cases, no disparity exists... (S)entencing disparity must occur only if similar cases do not receive uniform treatment. (Ibid, 52). If one's reference point is the statistical pattern, it does not matter that the sentence is just, or proportionate- only that it is different.

No specific, precise, or generally accepted definition of sentencing disparity appears to exist... A review of the literature available suggests three dimensions are needed to operationalize sentencing disparity. These are:

- 1.) Classification and compilation of sanctions;
- 2.) Classification and compilation of offences; and
- 3.) Classification and compilation of offenders.

Problems raising themselves in a sentencing disparity study focus on design and operationalization of the terms.

Gottfredson argues that sentencing disparity is a rather continuous variable, and that measurements are difficult.

How long a period of time does one use for making a study?

In a more specific way, what does the researcher use for a period of central tendency? 5 percent? 10 percent? 25 percent? Gottfredson states the decision must be arbitrary, because researchers have failed to develop techniques for weighing relative severity of different combinations. (Gottfredson, 1975: 59).

A second problem is classification. Consider a Robbery/Armed case. Is the use of physical force worse than a case where a threat of injury is made, but no weapon was ever produced? Finer gradations need to be defined and used. (But see McComb, 1988, 863-867). Does the offence conviction agree with the actual offence? (4)

"There are inherent difficulties in measuring reduction in sentencing disparity over time. The sentencing practices of individual judges... change, and the composition of the court will change as judges leave the bench, and are replaced. To assess the full impact of the council on the learning process, it would be necessary to trace the sentencing terms of the individual judges over time.

"There might be ways of improving the effectiveness of (sic- the judges)... One would be to require the sentencing judge to adopt the mandate of the recommended sentence. While such a rule would

effectively reduce disparity, it might also reduce the autonomy of the judges to an unacceptable degree. The ultimate goals of all arrangements to reduce sentencing disparity must not be to average the various sentence recommendation, but to bring the initial recommendations together." (Diamond and Zeisel, 119-120).

In re Lynch 8 C3d 410, 503 P2d 921 (1972) held that a sentence violates the Constitutional prohibition against cruel and unusual punishment "...if the punishment is so disproportionate to the crime for which it is inflicted that it "shocks the conscience, and offends the notions of human dignity." The way the Court operationalized this depended on a subjective evaluation of the seriousness of the offence, given current social and moral norms. It does not depend on the sentencings meted out in similar cases.

Hanrahan and Alexander (1978) raise two caveats in their sentencing model: First, "...Sentencing laws and rules are not of a limited scope. They are continuous, and evolve over a period of time. As such, they can not be considered set in any one period of study." The second caveat is that the studies cited in their review of literature restricted looks to the structure or design of the sentencing codes, and not on their operation. (Op cit, p 40).

Diamond and Zeisel (Op cit, 115-120) are concerned with the disparity issue in their discussion and development of a sentencing continuum. They define sentencing disparity as the disagreement among judges over the type of sentence: Custody (prison or jail); versus non-custody (probation and/or fines and restitution); and a second level, differences in the duration or amount of the imposed sentence.

The authors state disparity can be at the type of sentence; the length, intensity, or duration of that sentence; or a combination of the two. (Ibid, 119-120). They note that sentencing disparity is not simply the fluctuation of sentences that causes sentencing disparity: Some judges are in fact more severe than others. (As a corollary of this, some will likewise be more lenient.) Such differences in sentencing philosophies appear to be "...a cause of the sentencing disparity." (Ibid, 120).

The Michigan Felony Sentencing Guidelines Review Committee report identifies at least three different types of sentencing disparity:

- a.) Disparity based upon Discrimination;
- b.) Disparity based upon personal values and attitudes; and
- c.) Disparity resulting from (unintentional) lack of consistency.

A.) Disparity based upon discrimination. If this type of sentence exists, it identifies an aspect of sentencing disparity that demands correction. While there is no verification that this exists in the Michigan Felony Sentencing Guidelines study, the Sentencing Committee stated it must be corrected immediately wherever it is identified.

Sentencing practices must be fair, and consistently applied to all offenders. (Zalman, 1979: 5-6).

B.) Disparity based upon personal values, and attitudes. Sentencing disparity which is the product of the differing personal value judgements, attitudes and goals of individual sentencing judges may result in significantly disparate treatment of similarly situated offenders in the same jurisdiction... One defendant should not be treated significantly more harshly than another defendant in the same jurisdiction simply because he draws a different judge with a more severe sentencing philosophy. (Zalman, 1979: p 6).

This study suggests that in a court system where the indeterminate sentence is the desired goal, this would be practically impossible to eliminate. The sentencing discretion required because of the broad sentencing ranges set by the legislature accommodate a very wide variety of circumstances that can attend the commission of any crime. They were not intended as acceptable ranges of sentence within which crimes committed under similar circumstances by similarly situated

offenders could be punished. The sentencing disparity possible within the legislatively determined limits, therefore far exceeded what must be allowed to preserve the proper exercise of local discretion in determining the appropriate sentence in a specific cases. (Emphasis added. Zalman, 1979: p 6).

C.) Sentencing disparity resulting from unintentional lack of consistency. Lack of consistency in sentencing practices of an individual judge can result in unjustified disparity of sentence...This is caused by "the fact that judges are without an adequate means of keeping track of sentences which are imposed. It can result either from an inability of knowing how other judges are sentencing similarly situated offenders who have committed similar offences.

There appears to be a lack of consensus on whether community standards, values, attitudes and goals should be allowed to affect sentencing outcomes. The argument against their use corners on the Michigan Constitution (1963: Article 6, 1) which states that there "...is but one penal code in this state." On the one side, law enforcement is a local concern, and the sentencing judiciary is properly responsible, and responsive to the local electorate... Local self-government is one of the essential foundations for a democratic form of government.. Differing community considerations justify different sentencing practices in different jurisdictions because value judgements may be different in one community than in another. (Zalman, 1979: p 6-7).

Returning for a moment to Hogarth's study, (1971), the severity of a criminal sentence depends to some extent on the identity of the sentencing judge. Comparable cases are not likely to receive comparable sentences. Although the literature acknowledges that differences in sentences (sentencing disparity) exists among judges, there is disagreement both about the magnitude of the disparity, and how it might be reduced. (Diamond and Zeisel: University of Chicago Law Review, 1978: 109).

The magnitude of the differences in the sentencing patterns of the various Recorders and Circuit Court judges is great! It is reasonable to infer that the judges' differing sentencing philosophies are a primary cause of the disparity: This inference assumes that the mix of cases in the different Circuits does not vary enough to account for the observed sentencing disparities. (Zalman, 1979)

The Michigan Felony Sentencing Guidelines project (Zalman, 1979) identified two forms of sentencing disparity:

1.) There is a lack of consistency in the assignment of sentences by Michigan judges; and 2.) There were identifiable racial and geographical differences in sentencing patterns of judges sentencing similarly situated offenders convicted of similar offences. A class of similarly situated offenders include all offenders who are being sentenced for the

same crime, in the same fashion, and have the same prior criminal history. (Zalman, 1979).

Inconsistency.

This refers to considerably different sentences being given to apparently similarly situated offenders. This inconsistency can be traced to one, or the other, or both of the following: 1.) The judge's use of different sets of factors or considerations to arrive at an offender's sentence; and 2.) The judge's use of the same set of factors but does not agree upon the relative salience of the factors when applied to the sentence. No attempt has been made to divide the offender population into groups of similarly situated offenders.

Discrimination.

This type of sentencing disparity suggests that there are differences in sentence severity which are caused by the use of legally inappropriate factors. This indicates the existence of bias in the sentencing process. Bias was also found with respect to geography in that similarly situated offenders were receiving substantially different sentences in different jurisdictions. (Zalman, 1979: 4-1/2.)

The central assumption in the sentencing literature is that unregulated discretion is the principle cause of sentencing disparity. (This mirrors the Frankel treatise (1973) cited

above.) The recorded move towards determinacy is in large part a move toward more specificity in sentencing provisions. (cf.- Frankel, 1973; and Sutton, 1978).

The discussion on the efficacy of the indeterminate sentencing (supra, p 13-17; and 25- 28; Tarling, 1979,: 25-35.) are not considered here- just the move toward some more specificity and structure in the sentencing process.

Hanrahan and Greer's study (Op cit, 37- 43) defines sentencing disparity as the difference in criminal sentencing not accounted for by relevant offence, or offender characteristics. When no goal is established for a sentencing system, any characteristic within fairly broad constitutional and ethical limits can be used. The choice of penal philosophies determine a guidance for the sentencing judge, and focuses attention on relevant categories of factors, and excludes others.

The authors suggest that to formulate a sentencing code that would incorporate all the terms, sentencing variables, and the related information would require voluminous material, and would be very unmanageable. As noted in the Minnesota Guidelines Model, the easiest sentencing system is to incorporate a sentencing guidelines system. (Hanrahan and Geer, 1978: 37-43).

The Minnesota Sentencing Guidelines provided much of the modeling for the Michigan Felony Sentencing Guidelines project. The Minnesota model focused on two issues:

1.) Offence severity characteristics; and 2.) Prior criminal history and records. These elements are formed into a two-axis matrix. The individual cells formed in the matrix contain presumptive terms for implementation by the sentencing courts.

A sentencing reform system that prescribes sentencing practices "for similar treatment of similarly situated offenders" needs enough categories and cells to create reasonably homogeneous groupings. If the standards do not make the distinctions fine enough, sentencing disparity will result, or at least continue. The Minnesota sentencing guidelines have been detailed enough to allow for mitigating and aggravating (enhancement) variables to reduce, or increase the sentencing ranges when case-specifics require. These have been reflected in the Michigan model by the presence (or absence) of the weights assigned to the guideline variables and elements.

There are three aspects of sentencing decisions listed in the Hanrahan study:

- 1.) Whether or not to incarcerate;
- 2.) The severity of non-incarcerative dispositions if other decisions are available; and
- 3.) The duration and length of the confinement.

Sentencing disparity could occur at any or all of these three steps. Control would require that sentencing provisions regulate each step. Most of the states that have followed this path are involved in the question of the term of incarceration. (Ibid, 35-37).

Discussion of the Sentencing Guidelines.

In a grant to Rutgers University , Stecher and Sparks (1978) found that sentencing guidelines "...purport to provide a model of sentencing free from the bias that results from judges considering ethically irrelevant factors in reaching sentencing disparities. (Cited in Forst, ed., 1982, pp 112-114.)

All of the sentencing guidelines systems studied had a common intent to affect the decision policies to be made through promulgation of stated decision-making rules. (Ibid, 114). At the simplest levels of construction, empirically derived guidelines purport to describe past

practices by noting factors that are strong predictors of past sentencing practices and decisions.

Sentencing guidelines are (generally) heavily laden with prescriptive measures about sentencing policies. Sentencing guidelines have been consciously modified to reflect policy decisions, not so much based on past practices, but rather on how various elements and factors should be used to create a just sentencing policy in the future. (For a discussion of how the Sentencing Guidelines are being used in Minnesota to control available bedspace, see Knapp: 1982.) Compare this with statements made by Michigan State Supreme Court Justice Patricia J. Boyle that "...Sentencing guideline recommendations might be adjusted down-wards at some future point in time to reflect the availability of prison bedspace." (Interview- Bay City Times 31 October, 1984). For a more recent reflection of this use of the Sentencing Guidelines, see Strasser, 1989: 36-41.

Ozanne writes "...It is impossible to identify sentencing disparity, or determine its significance without knowing which theory of punishment is being pursued as a matter of sentencing policy. Secondly, without such policy guidance, sentences in the first instance have no uniform standards to identify and measure against disparate sentences.

"Some variation appears needed to account for individualization and differences in particular cases. Treating every case the same would be just as disparate as treating everyone differently. The point at which sentencing variation becomes unjustified sentencing disparity is determined by judgements of personal value, and attitudes." (Ozanne, in Forst, 1982: 180).

When variations in sentencing are caused by elements such as race, or social status- values more important than prevention or punishment are at stake. These are practices that have been condemned as "unjustified disparity", in theory, if not in actual practice. (Bullock, 1961: 411; Washington Law Review, 1973: 857; and Wolfgang and Reidel 1973: 119). Rich et al, (1978) noted that these issues were very much on the minds of the developers of the sentencing guideline systems set in Philadelphia, and Denver.

Sentencing guidelines can provide an outline for sentencing practices by communicating sentencing norms for particular crimes to individual sentencing courts. In legal terms, sentencing guidelines represent rules that structure the exercise of discretion by those legally authorized to make sentencing decisions, without eliminating the total discretion. In other words, sentencing guidelines attempt to strike a "proper balance between rule and discretion." (Davis, 1969: 42).

By assuring "that similar persons are dealt with in similar ways in similar situations, sentencing guidelines can promote consistent sentencing practices and reduce sentencing disparity. (Wilkins et al., 1978: 187).

Sentencing guidelines provide a "normal", or presumed sentence recommendation reducing the amount of sentencing disparity. The sentencing guidelines' recommendation appears as a narrow range of punishment, rather than a point; and represents the punishment that is expected in the majority of cases for a particular type of crime. It is ordinarily derived empirically from the prevailing practices in the area (be they State, or Federal court systems.)

Most of the sentencing guidelines systems cited in the literature make the sentencing standards advisory, rather than binding (Wilkins et al., 1978); and sentencings outside the sentencing guidelines range are permitted if reasons for doing so are cited on the record; and extraordinary, or aggravating circumstances (or mitigating ones?) are cited. (cf.- Kress et al., 4 Justice System Journal (10 71-87)).

A sentencing guidelines system helps bring the rule of law to the criminal sentencing process. It also preserves a realistic amount of discretion to vary sentences in individual cases. If it is administered by a similar sentencing commission, the system increases the likelihood

that sentencing rules will be based on reason, rather than on "crime-wave politics." (Ozanne, Op cit, p 187).

Sentencing Guidelines Commissions.

A sentencing guidelines commission can assume the role of the sentencing tribunal, commission or committee. This commission could collate enough data on sentencing information germane to the courts in its jurisdiction. With a large enough data base, central tendencies of sentencing indicators used by the sentencing judges can be determined. From this determination, sentencing ranges can be developed for the use by those courts the sentencing guidelines would serve. (This approach assumes that sufficient variables are present in the sentencing guidelines to sufficiently distinguish real differences in the separate, and distinct offences.)

Disillusion with the rehabilitation philosophy has begun to increase as rehabilitative programs have been evaluated and found to be ineffective. (Cf.- Frankel (1973); Forst (1982); Tarling, 1979; Travis (1979) and (1982); and many others.)

One of the functions offered by a sentencing guidelines system is that it's reference point is a presumptive sentence. (Actually, very few of the states with sentencing

guidelines in place use a presumptive sentencing approach-- the most notable exception is Minnesota (cf.- Knapp, 1982.) which uses the presumptive model. Most of the states (including Michigan) use a prescriptive sentencing range, one recommended for that particular type of offence.) The U.S. Supreme Court ruled on a Texas case that "...In a system where available recourse and our knowledge about what we are doing are so limited, perhaps the equitable distribution of punishment and rational allocation of resources is all we should expect from a criminal sentencing policy." (Jurek v. Texas 428 U.S. 262, 96 S Ct. 2950 (1976)).

Appellate Review.

Perhaps one of the most long-reaching effects of a sentencing guidelines system is that it enables judicial review of the disposition process. Ozanne argues that "...it assures a means of providing fair and accurate sentencing decisions; and serves as a check on the discretion exercised by court personnel." (Ozanne, p 187.)

Appellate courts can perform three important functions in a sentencing guidelines system:

1.) Review of sentences imposed within the ranges prescribed by the sentencing guidelines to determine if the sentencing guidelines were used or applied in error (Incorrect application or assessment.); and in cases where offenders are treated the same when they should be treated differently. In such cases, these can be corrected, and the sentencing disparity is reduced in spite of the sentencing guidelines' "appearance of regularity.". (People v Cox, 77 Ill App 3d 59, 369 N.E. 2d 59 (1979)).

2.) Exceptional sentencing (outside the recommended ranges of the sentencing guidelines) can be reviewed by appellate courts to determine if the listed reasons justify the exceptional treatment it was awarded. These will be treated the same as the indeterminate sentence reviews the courts now must contend with (Ozanne, 189); and

3.) Appellate courts can review sentencing guidelines to determine whether or not as rules of an administrative agency, they comply with policy. An appellate court can serve as a check on a sentencing guidelines commission by holding that agency accountable to the policy under which the legislature delegated its authority to make sentencing law. The review functions again depend on a statement of sentencing policy. "Checks and Balances" may be the most important review the appellate courts can perform in a sentencing guidelines system. (Ozanne: 189).

Ozanne recommends that any jurisdictions considering a sentencing guidelines system also provide for provisions detailing a review process. (Cf.- Harris v Oregon Board of Parole 39 Or App 913, 593 P2d 1292 (1979); 288 Or 495 (1980(a)); and 470 Or App 289, 614 P2d 602 (1908(b))).

The Minnesota statutes (1978- Section 244.11) state that, "...on an appeal pursuant to this section, the Supreme Court may review the sentence imposed or stayed to determine whether the sentence is inconsistent within statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact(s) issued... by the Courts."

Similarly, in U.S. v Di Francesco (1980), the Supreme Court held that governmental (prosecutorial) appeal of cases where the defendant received too lenient a sentence was to be allowed, and did not affect double jeopardy. (U.S. v Di Francesco 604 F2d 769.)

Disparity in Sentencing Guidelines.

In a court system where sentencing guidelines are implemented, sentencing disparity could still occur in any of the following ways:

- 1.) Incorrect application of sentencing guidelines to offenders;

2.) Offenders who should be sentenced within sentencing guideline ranges may receive extraordinary sentences; or

3.) The guidelines administrators may make rules that categorize similarly situated offenders who should be receiving different treatments.

Zalman has stated that "...the issue then is not whether sentence variation is unjust, but whether the present indeterminate sentencing system, with its nearly unfettered discretion in the trial judge to grant probation or to set minimum terms, and the legally open discretion of the parole board to release at any time before the statutory minimum sentence, produces sentences which are not explainable in terms of rational and fair criteria. (Zalman, (1982) pp 3-4.)

The sentencing guidelines form a link between the trial judges and the sentencing commission; the sentencing appeal process forms the link between the trial judge, and the appellate judges. Both links establish guidance, but the guides differ: The appellate process is primarily concerned with ensuring that the trial judges follow the sentencing guidelines; or when they diverge from the sentencing guidelines, that the reasons and the extent of the divergence be acceptable. The commission, on the other hand, is concerned with public policy. Information must be assessed by the commission, (e.g.- the sentencing judges

talk to the commission through their decisions and the commissions must listen. (Ibid, p 45).

The Michigan Felony Sentencing Guidelines.

The Michigan Felony Sentencing Guideline Commission designed the sentencing guidelines as a neutral tool (emphasis added) insofar as penal goals are concerned. As such, sentencing guidelines can be used to orient sentencing in a more or less punitive way, or can be used to promote or delay the use of sentencing alternatives. Perhaps because they have been developed in a time when the rehabilitation ideology and parole release have come under increased attack, sentencing guidelines have been erroneously connected with a retributive, "just deserts" sentencing philosophy. But all sentencing guidelines systems yet devised seek to assess both offence and offender characteristics in discovering sentencing norms.

There is no reason why predictive factors could not be built in the offender axis, although the questionable ability to predict dangerousness clearly suggests caution. (cf.- Eisenstein (1977); and Zalman, (1982) This would be the equivalent of false-positive identification of persons having an identified "trait", when in actuality they did not have it. The sentencing judge, were he to treat the offender as if he did have it, would probably lead to a

harsher sentence, although the offender did not have need of the specialized treatment, vis-a-vis the harsher sentence.) Sentencing guidelines research is a form of social science research, and as such, must be held accountable to the canons of scientific rigor... As such, all phases of the research, including instrument design, sampling design, data collection, coder reliability control, and data analysis were done in a way to meet the "basic standards of scientific inquiry... including replicability." (Zalman, (1979), p 55.)

Sentencing disparity research, fueled by growing social concerns for equal justice has tended to increase dissatisfaction with sentencing practices. This has created the impetus for a new line of research, investigating patterns of sentencing (rather than sentencing disparity alone), and has provided a model for control of sentencing disparity.

One such model is the sentencing guidelines approach, which seeks regularities in sentencing on which a coherent and equitable sentencing policy can be anchored.

How are the sentencing guidelines being utilized in Michigan by the field staff of the Michigan Department of Corrections? The question is explored in the the rest of this study.

GENERAL FOOTNOTES

(1) Hogarth (1971); Eisenstein's study (1977); the Michigan Felony Sentencing Guidelines Project (1978); the Federal Criminal Sentencing Report (1978); and many others have detailed and identified some of the data inputs a judge uses when considering possible sentencing outcomes which may include: Offence characteristics; the experiences, criminal and socio-economic background and orientation of the offender; community standards and expectations; and the background and socio-economic orientation of the judge.

(2) f.n.- 15. Compare for example: Hart, Punishment and Responsibility: Essays in the Philosophy of Law (New York: Oxford University Press, 1968); Kleinig, Punishment and Desert (The Hague: Martinus-Nijhoff, 1973); Morris, The future of Imprisonment (Chicago: University of Chicago Press, 1974); Dershowitz, Background Paper, in Fair and Certain Punishment, Report of the Twentieth Century Fund Task Force on Criminal Sentencing (New York: McGraw Hill, 1976); von Hirsch Doing Justice: The Choice of Punishments (New York: Hill-Wang, 1976); Mueller, Sentencing: Process and Purpose (Springfield, Ill.: Charles C. Thomas (1977); Grossman, ed., New Directions in Sentencing (Toronto CANADA: Butterworth, 1980).

(3) NOTE: Eisenstein's study (Op cit) listed these information feedback elements as among the most important considerations. He is quick to point out that this list is incomplete, and accounts for only

about 63 to 75 percent of the explained variance and predictive qualities found in the court jurisdictions included in his study. The Michigan Felony sentencing Guidelines study addressed the same problem: The explanatory nature of these projects have been rendered ineffective because of the many variables used by the sentencing courts. (Also, cf.- J. Hogarth's study, Sentencing as a Human Process (1971)).

(4) (cf.- U.S., v Duhart 404 U.S. F2d 941 (1974); U.S. v Cluchette 465 F2d 749; U.S. v Tucker 404 U.S. 443 (1972); U.S. v Malcolm 432 F2d 809 (1970); U.S. v Betancourt 405 F Supp 1063 (1975); Horowitz v Henderson 514 F2d 740 (1975); U.S. v Cifarelli 401 F2d 512 (1975); and U.S. v Kolberg 472 F2d 1189 (1973)).

Chapter IV

METHODOLOGY

There is a moderate level of confusion regarding the use of the Sentencing Guidelines by presentence investigators: to wit, a lack of sufficient direction or policy on how the Sentencing Guidelines sheets are to be used.

Hanrahan and Alexander raise two caveats in their sentencing model: First, "...Sentencing laws and rules are not of a limited scope. They are continuous, and evolve over a period of time. As such, they can not be considered set in any one period of study." The second caveat is that the studies cited in their review of literature restricted study to the structure or design of the sentencing codes, and not their operation." (p 40-- Emphasis added.)

The purpose of this study examined how the sentencing guidelines have been used in courtroom sentencings in the 48-plus months since the guidelines were first

implemented. What problems have been experienced? How have the sentencing guidelines been used by the various courtroom workgroup members? (1) How have the guidelines affected sentencing recommendations statewide? Have the sentencing guidelines instrument been used in a random manner; or has there been a standardized application statewide?

Are the measures in the sentencing guidelines reliable and valid; or are they subject to individual interpretations (or perhaps subtle biases) by those courtroom workgroup members that use them at any particular moment?

Geographic Regions.

In the initial Michigan Felony Sentencing study (Zalman, 1979: 59- 61) Zalman divided the State of Michigan into three geographic areas: Metropolitan; Urban; and Rural.

The **Metropolitan area** included the whole of Wayne and Oakland Counties.

The **Urban areas** included the 15 counties of Bay, Berrien, Calhoun, Genesee, Ingham, Jackson, Kalamazoo, Kent, Macomb, Monroe, Muskegon, Ottawa, Saginaw, St. Clair, and Washtenaw.

The Rural Counties consisted of the balance of 66 counties of the State. These included the Counties of Alcona, Alger, Alpena, Allegan, Antrim,. Arenac, Benzie, Baraga, Barry, Branch, Cass, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Crawford, Delta, Dickinson, Emmet, Eaton, Gladwin, Gogebic, Grand Traverse, Gratiot, Hillsdale, Houghton, Huron, Ionia, Iosco, Iron, Isabella, Kalkaska, Keweenaw, Lake, Lapeer, Leelanau, Lenawee, Livingston, Luce, Mackinac, Manistee, Marquette, Mason, Mecosta, Menominee, Midland, Missaukee, Montcalm, Montmorency, Newaygo, Oceana, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, St. Joseph, Sanilac, Schoolcraft, Shiawassee, Tuscola, Van Buren, and Wexford.

The counties in this study were grouped into the same geographic divisions as the 1979 Zalman study. Probation/ presentence investigators from across the state were grouped by county and caseload number into the three geographic classifications. The master case assignment lists from the Michigan Department of Corrections were used for this phase of the selection process.

The Michigan Department of Corrections has divided the State into three Regions.

Region I includes Wayne County and the Detroit area.

Region II (with the exception of Detroit, and the Wayne County) includes the southeastern third of the State from U.S.-27 on the west, and Clare and Gladwin counties on the north south to the Ohio state border. Geographically, the area includes the 22 counties of Monroe, Lenawee, Washtenaw, Livingston, Oakland, Macomb, St. Clair, Lapeer, Genesee, Shiawasee, Clinton, Gratiot, Saginaw, Tuscola, Sanilac, Huron, Bay, Midland, Isabella, Clare, and Gladwin.

Region III includes all of the remaining 56 counties west of U.S. 27 from the Ohio/Indiana borders on the south northwards, and the Michigan Upper Peninsula. Geographically, these include the counties of Berrien, Cass, St. Joseph, Branch, Hillsdale, Jackson, Calhoun, Kalamazoo, Van Buren, Allegan, Barry, Eaton, Ingham, Ionia, Montcalm, Kent, Ottawa, Muskegon, Oceana, Newaygo, Mecosta, Mason, Lake, Osceola, Mansistee, Wexford, Missaukee, Roscommon, Ogemaw, Iosco, Arenac, Benzie, Leelanau, Grand Traverse, Kalkaska, Crawford, Oscoda, Alcona, Alpena, Presque Isle, Cheboygan, Charlevoix, Emmet, Mackinac, Chippewa, Luce, Schoolcraft, Alger, Delta, Marquette, Menominee, Iron, Houghton, Keweenaw, Ontonagon, and Gogebic.

Agent Selection.

Case load numbers were readily available for all but Wayne County and the Detroit area. In the Region I (Detroit area) few agents had case-load numbers assigned. The majority did not.

Outstate (all counties besides Wayne County [Region I]) case-load numbers began at 209. A block of numbers from 100 to 204 were used for case-load representing the Detroit staff that were otherwise unassigned. One problem unforeseen in using this approach was that Region I included all of their staff members in their directory (including their clerical and support staff.) I received four replies from clerical workers indicating they were unable to respond to the questionnaire.

The case-load numbers were assigned into their geographic areas described in the 1979 Zalman study. A random number table was used to generate the case-load numbers. Every time I received a block (i.e.- a case-load number above, below, or already included, I changed the direction in the random number table. A different point in the table was used each time a block was encountered. For instance, if I was reading from left to right, the next reading was diagonally down to the right. The next block would result in a reading downwards. The next diagonally down to the left etc. in a clock-wise fashion.

Each agent selected received a letter of introduction, a questionnaire, a self-addressed stamped envelope, and a separate self-addressed post-card. The agents were asked to complete the questionnaire, and return it in the envelope. At the same time, the agents were asked to complete the post-card and mail it separate from the questionnaire. The post-card was used as a control to know who had responded, but ensure anonymity in their responses.

Construction of the Questionnaire.

After asking each respondent to indicate his/her geographic region and length of service, I began with the development of a profile of what each presentence investigator might use in developing the presentence recommendation, as required by MCLA 771.14. Besides the basic requirements of the Michigan Department of Corrections (OP-BFS 71.01- dated 10-8-85), the CFR 250, and 251 (Risk and Need Assessments/Risk and Need Reassessments) and the individual elements included in the Michigan Felony Sentencing Guidelines.

A Likert-style model was used in the construction of the majority of the questionnaire. (2) (Babbie, 1983; Lazarsfeld et al, 1972; Sellitz et al, 1959; and Likert and Lippitt, 1953). Several open ended questions were included

to allow respondents to explain their answers, or otherwise expound on them.

The purpose for the length of service was to determine if there would be any difference from agents that were trained and practiced in forming sentencing recommendations without the benefit of the Sentencing Guidelines, from those agents that were hired and trained after the sentencing guidelines were in place. A level of six months of experience before the Sentencing Guidelines were implemented (March 1, 1983) was arbitrarily set for measuring whether an agent was grouped in the pre- or post- groupings of each category. This level was arbitrarily chosen but felt sufficient to give the agent experience in formulating sentencing recommendations (by whatever means used), before the intervention of the Sentencing Guidelines programs.

Subsequent questions were directed at how agents assigned to the various courts were using the sentencing guidelines in their offices. The questions were based on the literature, personal experience, and a curiosity of how the Sentencing Guidelines were being used across the state.

Using the selection process described, questionnaires were sent to 44 agents from Region I, 47 agents from Region II, and 53 agents from Region III.

Separating the agents by the three geographic areas resulted in the following table (Table 5.1)

TABLE 5.1
GEOGRAPHIC BREAKDOWN OF SAMPLE
(By Region and Area)

<u>REGION</u>	<u>GEOGRAPHIC DIVISION</u>			
	Metropolitan	Urban	Rural	SUM
Region I	44	-----	---	44
Region II	12	28	7	47
Region III	-----	36	17	53
TOTALS	66	64	24	154

I received a response of 68 percent from the out-state areas. Disappointingly, I received a sum of 6 responses from the Metropolitan areas. Because of this, the responses will not adequately reflect the larger population of Probation/Parole agents and Presentence investigators from across the state.

The problem was generated from Region I's staff directory from which I based my sample selection. It included support and clerical staff, and did not designate field agents,

unlike the directory format for the rest of the state that only listed field agents. As a result, an unknown number of people selected for the sample may not have been qualified to receive them. Based on the responses from this region, there was no way of immediately determining how this might have affected the response rate or outcome.

Two of the respondents failed to identify the date of their hire. Both were from Urban communities, and were excluded from the study.

The respondents were grouped into a matrix that divided each geographical category into pre-sentencing guidelines, and a post-sentencing guidelines leaving a total of 6 sub-groupings. The results are most easiest visualized as follows:

TABLE 5.2

FINAL SAMPLE
(By Region and Longevity)

<u>REGION</u>	<u>GEOGRAPHIC DIVISION</u>			
	Metropolitan	Urban	Rural	SUM
Pre-S-G's	6	21	14	41
Post S-G'	2	17	3	22
TOTALS	8	38	17	63

NOTES

Pre-S-G denotes an investigator that began working prior to 9-1-82. This was the six months before the Sentencing Guide-lines were implemented.

Post S-G's denote an investigator that began working after the 9-1-82 date.

I originally intended to perform chi-square tests on the Likert-model portion of the questionnaire. However, the spread of the responses were too congested, and too compacted to allow the testing. After consulting with Professor John McNamara, Ph.D., it was decided I would restrict testing to uni-variate analyses and focus on the trends of the responses.

GENERAL FOOTNOTES

- (1) Eisenstein and Jacobs, 1977.
- (2) Babbie, 1983; Lazarsfeld et al, 1972; Sellitz et al, 1959; and Likert and Lippitt, 1953.
- (3) But see Rich, 1983 for a discussion of the use of these factors in Philadelphia and Denver.

CHAPTER V

FINDINGS

The questionnaire (Appendix I) began with an attempt to identify how the field agents went about building a sentencing recommendation. Outside of the almost unanimous agreement of the use of prior criminal record (95.23% [$\pm 1.34\%$] of the final sample of 63 field agents), agreement ranged from a high of 81.81% [$\pm 2.5\%$] to a low of 50.79% [$\pm 3.15\%$] for stable home and employment. (See Tables 6a through 6j.)

These issues relate to stability and are admittedly socioeconomic factors. They were purposely omitted from the Michigan Sentencing Guidelines in an effort to avoid any criticisms of bias relating to class or race. (cf. McComb, September, 1988: p 287; Zalman, 1979: 55; Zalman, 1982: 2-11.) (1) However, it may help explain why the

Table 6.1a

Use of criminal record

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	6.000	0.000	0.000	0.000	6.000
METRO	(Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN	(Pre S-G)	21.000	0.000	0.000	0.000	21.000
URBAN	(Post S-G)	15.000	2.000	0.000	0.000	17.000
RURAL	(Pre S-G)	13.000	1.000	0.000	0.000	14.000
RURAL	(Post S-G)	3.000	0.000	0.000	0.000	3.000
Totals		60.000	3.000	0.000	0.000	63.000
Standard Error		0.027	0.027	0.000	0.000	
			AVERAGE-	2.952		

Table 6.1b

Defendant on Probation at time of offence.

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	3.000	3.000	0.000	0.000	6.000
METRO	(Post S-G)	1.000	1.000	0.000	0.000	2.000
URBAN	(Pre S-G)	19.000	2.000	0.000	0.000	21.000
URBAN	(Post S-G)	14.000	3.000	0.000	0.000	17.000
RURAL	(Pre S-G)	9.000	5.000	0.000	0.000	14.000
RURAL	(Post S-G)	2.000	0.000	1.000	0.000	3.000
TOTAL		48.000	14.000	1.000	0.000	63.000
Standard Error		0.054	0.052	0.016	0.000	
			AVERAGE-	2.746		

Table 6.1c

Age of defendant at first arrest

	VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO (Pre S-G)	0.000	4.000	2.000	0.000	6.000
METRO (Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN (Pre S-G)	3.000	10.000	8.000	0.000	21.000
URBAN (Post S-G)	3.000	6.000	7.000	1.000	17.000
RURAL (Pre S-G)	0.000	12.000	2.000	0.000	14.000
RURAL (Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL	6.000	34.000	22.000	1.000	63.000
Standard Error	0.037	0.063	0.060	0.016	
		AVERAGE-	1.714		

Table 6.1d

Importance of prior probation failure(s)

	VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO (Pre S-G)	4.000	2.000	0.000	0.000	6.000
METRO (Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN (Pre S-G)	16.000	3.000	2.000	0.000	21.000
URBAN (Post S-G)	9.000	8.000	1.000	0.000	18.000
RURAL (Pre S-G)	7.000	7.000	0.000	0.000	14.000
RURAL (Post S-G)	2.000	1.000	0.000	0.000	3.000
TOTAL	40.000	21.000	3.000	0.000	64.000
Standard Error	0.061	0.059	0.026	0.000	
		AVERAGE-	2.578		

Table 6.1e

Client response to prior treatment programs

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	2.000	2.000	0.000	1.000	5.000
METRO	(Post S-G)	1.000	1.000	0.000	0.000	2.000
URBAN	(Pre S-G)	8.000	11.000	2.000	0.000	21.000
URBAN	(Post S-G)	5.000	9.000	3.000	0.000	17.000
RURAL	(Pre S-G)	4.000	10.000	0.000	0.000	14.000
RURAL	(Post S-G)	0.000	3.000	0.000	0.000	3.000
TOTAL		20.000	36.000	5.000	1.000	62.000
Standard Error		0.059	0.063	0.035	0.016	
AVERAGE-				2.210		

Table 6.1f

Consideration of defendant's use of alcohol/drugs

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	2.000	3.000	1.000	0.000	6.000
METRO	(Post S-G)	1.000	0.000	1.000	0.000	2.000
URBAN	(Pre S-G)	9.000	8.000	4.000	0.000	21.000
URBAN	(Post S-G)	3.000	11.000	3.000	0.000	17.000
RURAL	(Pre S-G)	1.000	12.000	1.000	0.000	14.000
RURAL	(Post S-G)	0.000	3.000	0.000	0.000	3.000
TOTAL		16.000	37.000	10.000	0.000	63.000
Standard Error		0.055	0.062	0.046	0.000	
AVERAGE-				2.095		

Table 6.1g

Housing stability (number of changes/year)

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	0.000	2.000	3.000	1.000	6.000
METRO	(Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN	(Pre S-G)	1.000	3.000	12.000	5.000	21.000
URBAN	(Post S-G)	0.000	3.000	6.000	7.000	16.000
RURAL	(Pre S-G)	0.000	4.000	10.000	1.000	15.000
RURAL	(Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL		1.000	14.000	34.000	14.000	63.000
Standard Error		0.016	0.052	0.063	0.052	
AVERAGE-				1.032		

Table 6.1h

Employment stability of the defendant

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	0.000	3.000	3.000	0.000	6.000
METRO	(Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN	(Pre S-G)	1.000	6.000	13.000	1.000	21.000
URBAN	(Post S-G)	1.000	9.000	6.000	1.000	17.000
RURAL	(Pre S-G)	1.000	3.000	10.000	0.000	14.000
RURAL	(Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL		3.000	23.000	35.000	2.000	63.000
Standard Error		0.027	0.061	0.063	0.022	
AVERAGE-				1.429		

Table 6.1i

Longest time defendant ever held employment

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	0.000	4.000	2.000	0.000	6.000
METRO	(Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN	(Pre S-G)	1.000	7.000	9.000	4.000	21.000
URBAN	(Post S-G)	1.000	6.000	8.000	2.000	17.000
RURAL	(Pre S-G)	0.000	3.000	11.000	0.000	14.000
RURAL	(Post S-G)	1.000	1.000	1.000	0.000	3.000
TOTAL		3.000	22.000	32.000	6.000	63.000
Standard Error		0.027	0.060	0.063	0.037	
AVERAGE-				1.349		

Table 6.1j

Number of arrests for prior "similar" crimes

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	2.000	4.000	0.000	0.000	6.000
METRO	(Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN	(Pre S-G)	12.000	6.000	1.000	1.000	20.000
URBAN	(Post S-G)	12.000	5.000	0.000	0.000	17.000
RURAL	(Pre S-G)	12.000	2.000	0.000	0.000	14.000
RURAL	(Post S-G)	2.000	0.000	0.000	0.000	2.000
TOTAL		42.000	17.000	1.000	1.000	61.000
Standard Error		0.059	0.057	0.016	0.016	
AVERAGE-				2.639		

initial study by Zalman was only able to explain 50 to 60 percent of the sentencings in his 1979 report.

None of the respondents indicated that the sentencing guidelines figured into their consideration of a sentencing recommendation. 9.67% [$\pm$ 1.75%] of the respondents indicated that the guidelines were always used in forming their sentencing. Only 50% of the sample ($\pm$ 3.15%) indicated that the guidelines were even sometimes useful in their forming a sentencing recommendation. A full 40.32% of the sample ($\pm$ 3.11%) indicated that they were seldom or never helpful, and were not considered in the decision-process. Table 6.2 reflects this information.

Table 6.2

Guidelines helpful in forming sentencing recommendation

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	4.000	1.000	1.000	6.000
METRO (Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN (Pre S-G)	2.000	8.000	7.000	4.000	21.000
URBAN (Post S-G)	2.000	10.000	4.000	0.000	16.000
RURAL (Pre S-G)	2.000	5.000	5.000	2.000	14.000
RURAL (Post S-G)	0.000	3.000	0.000	0.000	3.000
TOTAL	6.000	31.000	18.000	7.000	62.000
Standard Error	0.038	0.064	0.058	0.040	
AVERAGE-			1.581		

Further, Table 6.2 indicates that 82.26% of the respondents indicated that the guidelines never, or only occasionally, affected their approach to their formation of a sentencing [$\pm 2.43\%$]. 17.74% ($\pm 2.456\%$) of the sample answered that they moderately or greatly affected their approach to the sentencing recommendations.

Some of the responses to the open-ended questions on this maintained a neutral stand:

"None really";

"--I am inclined to stay within the Guidelines when I know them."

"--No major changes."

"--I Must articulate specific reasons for going above or below the guidelines. They have generally had the effect of reducing the minimum end of the sentence on many cases (especially property crimes.)

"--When recommending leniency I can use the guidelines to support my recommendations, but at the same time I am not averse to asking the Court to go around the sentencing guidelines when recommending a severe sentence."

"---1.) As Judges and Defense Attorneys are becoming more guidelines oriented, I find myself referring to them more, and at times making

changes in my original feelings toward sentencing, usually lower.

2.) Plea bargains are beginning to deal with the guidelines, such as using the 5 year grid instead of a 10 or 15 year grid."

"--One Respondent indicates that he had never worked without the guidelines, but generally tries to make a recommendation "within the guideline range."

However, most of the responses were either strongly against the guidelines, or strongly approved of them:

Several Non-Metropolitan respondents voiced a concern that the scores on the sentencing guidelines were biased by the Metropolitan Courts. These complaints were focusing on the weights given to assaultive crimes, and were on the whole too lenient. (a) However, even the metropolitan agents complained that the sentencing guidelines were too lenient in their scoring. These complaints may be taken care of, with the advent of the revised sentencing guidelines that went into effect October 1, 1988.

Negative Observations

"--I know our Judges don't like to go outside of the Sentencing Guidelines , so I may change my recommendation to conform."

"--I feel I have to slant my report or sound somewhat more harsh to compensate for the weakness in the very low guideline ranges to support my generally more punitive recommendations."

"--In most cases, the guidelines are not in touch with reality. Other than dictate my report, the guidelines are the last bit of paperwork that I complete."

"--In most cases, the guidelines are not in touch with reality. Other than dictate my report, the guidelines are the last bit of paperwork that I complete."

"--I tend to recommend heavier sentences than the Guidelines suggest, but have felt pressure to recommend sentences closer to the range since the judges usually sentence within the recommended ranges."

The positive responses appear to have more potential for directing agents in their sentencing recommendations if proper direction, and encouragement can be nurtured.

Some of the following replies reflect this:

"--Some recommendations where I am not sure of what to recommend, I will go to the Sentencing Guidelines. However, this is infrequent."

"--If I do not like the defendant or have any problems with him, I will recommend according to the guidelines. They help keep me objective."

"--It forces me to re-examine sentence recommendations that are outside the guidelines."

"--When I'm unsure as to whether I will recommend prison or probation, sometimes the guidelines will assist me in making the decision."

"--It provides a ball park figure as to what a reasonable sentencing range should be."

"--Occasionally I'll fill out the guidelines when I'm debating between two sentencing choices."

"--Depending on the judge, some Judges rarely like to exceed the guidelines. If I'm indecisive regarding the length of incarceration, I might pattern a recommendation within the Sentencing Guidelines."

"--Remaining within the Guidelines /and qualifying those instances where the guidelines are exceeded."

"--If 1st recommendation is somewhat above the guidelines, possibly moderate the recommendation to remain within the guidelines. I think twice if the first recommendation would be a major departure from the guidelines though the recommendation might not change."

"--Borderline Prison cases are usually decided by the Guidelines recommendation."

Agents were given an opportunity to indicate why they did not consult the guidelines during their formation of a sentencing recommendation. The resistance and ill-will seems to be generated from a lack of confidence with the Sentencing Guidelines scorings (too low); feelings that the guidelines are unrealistic and lenient; and too weighted towards the Metropolitan areas. Some of these responses appear here:

"--I have found that the sentencing guidelines are not realistic in the suggested sentences and have lost all credibility with me, my co-workers, and the Circuit Judges."

"--Each case is different and general assumptions or averages can't realistically be applied. Metropolitan areas may allow for more latitude in sentencing- Urban/rural area may be more restrictive in sentencing, but the metropolitan areas was able to contribute larger numbers in the study."

"--I feel that the Agents experience and own Judgement is a better predictor of behaviour and that local politics and wishes of the people should govern sentencing."

"--Because I formulate my recommendation based on my investigation, not on objective questions; but on a subjective appraisal."

"--1.) Important criteria which the guidelines do include are given inadequate weight; and

2.) Criteria which the guidelines omit are often the most relevant."

"--For the most part the guidelines appear inadequate. I base my recommendation on variables such as prior record, the instant offence, weighing of positives and negatives in the defendant's background, protection of the public, etc."

--I find them to be extremely unrealistic. They don't consider all variables. They sometimes do not appear to be logical either being way too lenient, or way too harsh. I don't feel they are reflective of average sentences, but instead are based by the metropolitan area's sentencing practices and legislative idiosyncrasies.

Fully 54.84 percent of the respondents indicated that they were only occasionally impacted on their approach to developing a sentencing recommendation (+/- 3.16%).

Another 27.42 percent indicated that their approach was changed by the guidelines in any significant degree. (See Table 6.3)

A question was directed at any of the individual scoring elements from the guidelines, and problems the agents had in scoring the elements. The majority of the problems and difficulties came from offence variable (OV) 25-- Contemporaneous Offences; OV 8 (Professional/Career Criminal); and OV 7 (Offender Exploitation). Physical attack (OV 1) and presence of a weapon, or injury tend to surface as secondary concerns.

Table 6.3

Sentencing Guidelines impact on sentencing recommendation

		Greatly	Moderate	Occasional	Not at all	SUM
METRO	(Pre S-G)	0.000	2.000	2.000	2.000	6.000
METRO	(Post S-G)	0.000	0.000	2.000	0.000	2.000
URBAN	(Pre S-G)	1.000	2.000	10.000	8.000	21.000
URBAN	(Post S-G)	0.000	3.000	10.000	3.000	16.000
RURAL	(Pre S-G)	1.000	1.000	8.000	4.000	14.000
RURAL	(Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL		2.000	9.000	34.000	17.000	62.000
Standard Error		0.022	0.045	0.063	0.057	
AVERAGE-				0.935		

"--Contemporaneous offences are seldom used.

Subjective, and in my opinion, are not very useful in arriving at a recommendation.

"--OV 2- Physical attack and/or injury. Unsure what the term Victim touched beyond that needed to commit the instant offence really means. OV 25- Contemporaneous Criminal acts- There is a great deal of confusion among P.O.'s regarding this variable. OV 1. (WEAPON) What is a weapon- a stick, a rock, piece of glass, a fist??"

"--Contemporaneous Offences; More force used to commit the crime than necessary; The amount of drugs present."

"--Contemporaneous Offences (OV 25)- It is sometimes hard to glean from police reports when (and if) such acts have occurred."

"--Contemporaneous offences are difficult to apply consciously and accurately throughout the office. Organized crime- consistently lessen term which is interpreted many different ways, by various agents."

"--Contemporaneous offences- allow scores only for those offences which do not result in separate convictions. What about all those that DO result in a conviction and are lumped together as a part of a plea agreement?"

"--Particularly OV 8. Our Judges and the appellate Courts don't seem to have developed a consistent feeling for this variable. I personally have difficulty with the "all or nothing" scoring."

"--Larceny variables are not broken down enough. All offences could use 1 or 2 more weighted variables."

--Contemporaneous offences in drug dealing cases is one sale separate from a lengthy series? Why is joy-riding in all Larceny Variables?

"--OV 2- Ambiguous wording in the term- "...touched beyond that needed..."; OV 7 Instructions too narrowly construe "vulnerability" in offender's favour; OV 8 Uselessly vague! Defence attorneys scream bloody murder! OV 25 Weights should be 1, 2, 3, instead of 0, 1, 2."

"--1.) Offender's exploitation of victim's vulnerability- Despite definitions given- it is

still fuzzy at times. 2.) Offender's role- whether or not defendant is a leader- can be argued either way at times."

"--Contemporaneous Criminal Acts- Defendant's will deny other acts. This sometimes leads to problems if the attorney objects to scoring this variable."

"--- OV 9- Offenders Role-- Leader vs. active participant. OV 25- Contemporaneous Criminal Acts.- Needs more explanation. OV- 7- Especially where there is a weapon involved."

The primary problems with the Prior Record Variables (PRV's) appear to focus on the inability to gather sufficient information on which to score the sentencing guidelines. Prior criminal charges may have not been reported to the Law Enforcement Information Network (LEIN); erroneously recorded by the LEIN, or may not be complete.

(2)

But without even getting to the State or FBI reporting systems, problems can surface at the local level. Several observations were noted that local Court records may or may not reflect all of the information on their reporting forms and dockets. One notable problem in our local courts is that the section for counsel/no counsel or waiver of counsel is often left blank. This generally requires further staff searches of records to determine the status

of the case. (If a defendant has been particularly active over a period of time, this can be quite time consuming. An Agent working in a high density referral area may not have time to accomplish this.) (3)

Concerns were also noted that there was substantial confusion on how to rank and score Out-of-State offences, and how they were to be grouped.

One of the early "minor revisions" limited the misdemeanor offences that could be included in scoring the Misdemeanor section of the report. Convictions for Operating a Motor Vehicle under the Influence of Alcohol/Drugs (OUIL) in a Negligent Homicide; or Department of Natural Resources citations for hunting violations (in the case of a Weapons offence) could not be cited. This concern may be lessened by the recent Court of Appeals case (4) that ruled that an OUIL conviction was a legitimate case to be included in a case and belonged in the Drug group of misdemeanor offences.

Some of the concerns expressed in the scoring difficulties could be eliminated in large measure through the use of case staffings or reviews. However, only 62.55 percent of the sample reported that they ever used this technique to overcome scoring questions or clarifications. Fully 41.94 percent (+/- 3.135%) never used this technique. (Table 6.4)

Table 6.4

Frequency of case staffings on guidelines scorings

	Every Case	>1/month	As Needed	Never	SUM
METRO (Pre S-G)	0.000	0.000	5.000	1.000	6.000
METRO (Post S-G)	1.000	0.000	0.000	1.000	2.000
URBAN (Pre S-G)	0.000	0.000	14.000	7.000	21.000
URBAN (Post S-G)	0.000	1.000	8.000	7.000	16.000
RURAL (Pre S-G)	0.000	1.000	4.000	9.000	14.000
RURAL (Post S-G)	0.000	0.000	2.000	1.000	3.000
TOTAL	1.000	2.000	33.000	26.000	62.000
Standard Error	0.016	0.022	0.063	0.063	
		AVERAGE-	0.645		

When the technique was applied, varying degrees of success were noted. While some consensus was noted in all but 14.71 percent of the respondents (+/- 3.035 percent), only 8.52 percent usually found relief in the scoring problems. See Table 6.5 on the next page for this distribution.

Alternatives to this case-staffing approach was to contact the other officials involved in the case. These officials included the Sentencing Judge, prosecutor, police investigator, and the Sentencing Guidelines Administrator's office.

Table 6.5

Case staffings helpful in resolving scoring problems

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	4.000	0.000	4.000
METRO (Post S-G)	0.000	0.000	1.000	0.000	1.000
URBAN (Pre S-G)	0.000	1.000	12.000	1.000	14.000
URBAN (Post S-G)	1.000	0.000	7.000	2.000	10.000
RURAL (Pre S-G)	0.000	0.000	2.000	1.000	3.000
RURAL (Post S-G)	0.000	1.000	0.000	1.000	2.000
TOTAL	1.000	2.000	26.000	5.000	34.000
Standard Error	0.029	0.040	0.073	0.061	
		AVERAGE-	0.971		

I noted no particular pattern in how these parties were contacted. 93.43 percent of the respondents contacted a colleague about scoring problems on a "Sometimes" basis. Only 18.33 percent ever contacted the investigating police officer(s). 60 percent of the sample contacted the prosecutor's office in the case of a question (+/- 3.16 percent), and 45.76 percent would contact the defence counsel (+/- 3.24 percent). 43.34 percent of the agents responding would contact the sentencing judge (+/- 3.2 percent).

These staffings produced clarifications and changes in the guidelines scorings in all but 9.09 percent of the cases

(+/- 2.5 percent) in at least some of the cases. 81.81 percent (+/- 3.355 percent) reported it sometimes resulted in changes, and another 9.09 percent (+/- 2.5 percent) usually resulted in changes. See Table 6.6

Table 6.6

Contacts with outside agencies for scoring assistance

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	0.000	1.000	1.000
METRO (Post S-G)	0.000	0.000	1.000	0.000	1.000
URBAN (Pre S-G)	1.000	4.000	6.000	3.000	14.000
URBAN (Post S-G)	0.000	2.000	6.000	1.000	9.000
RURAL (Pre S-G)	1.000	1.000	2.000	0.000	4.000
RURAL (Post S-G)	0.000	1.000	0.000	1.000	2.000
TOTAL	2.000	8.000	15.000	6.000	31.000
Standard Error	0.044	0.079	0.090	0.071	
	AVERAGE-		1.194		

However, if the changes increase the chances of surviving judicial and adversarial scrutiny, it would appear that they would well be worth the time and trouble of resolving the scoring problems and interpretations.

The most interesting issue to surface in this study concerns the issue of how to score "plea cases." Some courts in all three geographical divisions appear to be uncertain as to how to agree on scoring: Do the agents score on the base of the full offence (totality of the circumstances)? Or do they limit them to the facts

described in the reduced plea? (ie.- Does the agent that scores a CSC- 3rd reduced to a CSC- 4th include the fact there was penetration?)

Does a plea reduction from Burglary from an Occupied Dwelling to Larceny in a Building reflect the fact the offender was armed and encountered an individual in the building in question.?

"Consider the following case history:

—Two men broke into the home of a man severely stricken with muscular dystrophy. The victim's physical abilities were so impaired that he required special apparatus to communicate with others, and needed a wheel chair to transport himself around his apartment and the community. The offenders held the victim down on his bed and placed a pillow over him while they robbed the apartment. The agent scored the pillow as a weapon in the case given the infirmities of the victim. The judge agreed with the agent, and overruled the protests of the defendant's counsel.

One respondent indicated that the he was ordered to score the cases in favour of the reduced pleas. However, a check with the Sentencing Guidelines office indicates that their intent is to have the case scored on the whole of the case ("totality of the circumstances"), not on the reduced plea.

One of the open-ended questions was directed at how the sentencing guidelines instrument was being used around the state in the development of plea agreements. Some of the responses are almost indicative of the development of a secondary plea-negotiation instrument as listed below:

"--During the arraignment on information stage-Guidelines were prepared in advance by probation officers."

--The Court depends heavily upon them to induce plea agree-ments, to lessen included offences return than go to jury trial."

"--Sometimes, but in this county the prosecutors' office is governed by many rules that limit plea bargaining."

"--Sentencing Guidelines score sheet are in the P. A. files- Obviously scored to agree with plea bargains. The problem is numerous erroneous information used."

"--Sometimes a plea bargain is rejected, but most frequently the Court will simply accept the prosecutor's recommendations and state a reason for the departure."

"--Offers to abide by Guidelines help to induce defendant to plea."

"--Besides prosecutorial usage, occasionally I will be called to the Judge's office to score out a defendant when a plea bargain is "on the table"

and the Judge wants first to know under what constraints he will be sentencing that defendant."

"--I know of one Alternate Judge who accepts a plea based on staying within the sentencing guidelines. I have not seen if this ever takes place with the Prosecutor or defence counsel."

"--Sometimes defence counsel will accept a plea offer based on an agreement by the prosecutor to recommend the bench stay within the guidelines when sentencing."

"--They will sometimes inquire in advance as to what the scoring would be before striking a bargain. Sometimes (when they score them "on their own" they make computational and interpretational errors, and the defendant pleads believing that's what the Guidelines will be. When the PSI is presented, the Guidelines may be for a longer sentence."

"--Generally the guidelines are not computed until after a plea agreement therefore have no direct effect or influence on plea agreements."

"--They all score- especially prosecutor/ defence counsel to work out plea bargain."

"--Unknown- This Probation Agent is not part of the bargaining process."

"--All offer some assurance as to the maximum sentence to the defendant."

"--Never used for pre-conviction by the court. Sometimes a rough scoring is figured by the prosecutor and/or defence counsel to give them a possible sentencing range based upon a specific plea offer."

"--Prosecutor will call me about how a particular defendant will score on the sentencing guidelines. If the score reaches the level that the prosecutor ultimately wants in terms of a sentence, he is willing to reduce the charge. Of course, plea bargains are always contingent on the satisfaction of the defendant and defence counsel."

"--By prosecutor or defence counsel--
Consideration of guideline minimum, minimum risk or maximum penalty without departures being necessary."

"--Prosecutor and defence counsel. Judge never gets involved in plea bargaining."

"Plea" cases and their scorings on the sentencing guideline sheets were evenly distributed across all of the cells. 40.32 percent indicated that they **ALWAYS** scored on the original case; and an equal number indicated that they **ALWAYS** scored on the facts presented in the plea reduction. (Each cell presented a standard error of +/- 3.11 percent). 9.68 percent reported that they **USUALLY** scored

on the face of the original offence; and 9.68 percent reported that they **USUALLY** scored the worksheet on the basis of the reduced charge.) See Tables 6.7 through 6.10.

Table 6.7

Frequency of scoring of reduced "plea" charged on OV's

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	1.000	0.000	1.000	3.000	5.000
METRO (Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN (Pre S-G)	13.000	2.000	3.000	3.000	21.000
URBAN (Post S-G)	8.000	4.000	3.000	1.000	16.000
RURAL (Pre S-G)	6.000	3.000	1.000	3.000	13.000
RURAL (Post S-G)	1.000	2.000	0.000	0.000	3.000
TOTAL	31.000	11.000	8.000	10.000	60.000
Standard Error	0.065	0.050	0.044	0.048	
AVERAGE-			2.050		

Table 6.8

Discounting Contemporaneous Offences in plea-down cases.

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	1.000	3.000	4.000
METRO (Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN (Pre S-G)	12.000	4.000	2.000	2.000	20.000
URBAN (Post S-G)	6.000	4.000	3.000	2.000	15.000
RURAL (Pre S-G)	6.000	2.000	2.000	1.000	11.000
RURAL (Post S-G)	0.000	2.000	0.000	1.000	3.000
TOTAL	26.000	12.000	8.000	9.000	55.000
Standard Error	0.067	0.056	0.048	0.050	
AVERAGE-			2.000		

Table 6.9

Scoring of OV variables limited to the reduced plea.

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	1.000	0.000	0.000	4.000	5.000
METRO (Post S-G)	0.000	0.000	1.000	1.000	2.000
URBAN (Pre S-G)	3.000	2.000	4.000	12.000	21.000
URBAN (Post S-G)	0.000	1.000	5.000	11.000	17.000
RURAL (Pre S-G)	1.000	3.000	3.000	7.000	14.000
RURAL (Post S-G)	0.000	0.000	0.000	3.000	3.000
TOTAL	5.000	6.000	13.000	38.000	62.000
Standard Error	0.035	0.038	0.052	0.062	
		AVERAGE-	0.645		

Table 6.10

Frequency of scoring "to the reduced plead-down" offence

	Always Original	Usually Original	Usually Reduced	Always Reduced	SUM
METRO (Pre S-G)	2.000	1.000	1.000	1.000	5.000
METRO (Post S-G)	0.000	0.000	0.000	2.000	2.000
URBAN (Pre S-G)	8.000	1.000	2.000	10.000	21.000
URBAN (Post S-G)	10.000	1.000	0.000	6.000	17.000
RURAL (Pre S-G)	5.000	3.000	2.000	4.000	14.000
RURAL (Post S-G)	0.000	0.000	1.000	2.000	3.000
TOTAL	25.000	6.000	6.000	25.000	62.000
Standard Error	0.062	0.038	0.038	0.062	
		AVERAGE-	1.500		

From the responses to the questions regarding "plea bargains", it would appear that there has been little or no guidance from the Courts, the Department of Corrections or the Sentencing Guidelines staff regarding how the guidelines are to approach this subject. The issue should be addressed in upcoming in-service training programs for the Courts, prosecutors, trial lawyers, the presentence investigators, and supervisors.

Preparing the Sentencing Guideline Worksheet.

The respondents in my sample strongly agreed that the investigating presentence agent had responsibility for preparing the guidelines worksheet. The sample indicated 98 percent (+/- 1.574 percent) of the agents in the sample had the initial responsibility for preparing the sentencing guidelines worksheet. (This is not to suggest that they are the final step in the process. The final scoring responsibility still remains with the sentencing judge.)

Any challenges from the attorneys must be answered before the final sentencing can be made, and if the challenges withstand, the sentencing guidelines form must be corrected, along with the erroneous (or updated) information contained in the presentence report.

The remaining one case had the sentencing judge prepare the worksheet as part of his/her duties on the case.

GENERAL FOOTNOTES

(1) But see Rich, 1983 for a discussion of the use of these factors in Philadelphia and Denver.

(2) A caveat is cited on each Michigan LEIN Criminal Computer History entry that caution that "...System audits have found serious arrest and disposition reporting problems. Further, it contains less than 15% of misdemeanor conviction data."

(3) The differential use of the same reports by different sections of the same department is cited in the Discussion section (infra) of this report.

(4) cf. People v. Jerovsek. Court of Appeals docket 103999- issued 19 October, 1988.

CHAPTER VI

DISCUSSION

Several of the respondents indicated that they had multiple and repeated difficulties in obtaining necessary information from a defendant's prior criminal record, or even from events relating to the instant offence for which he is appearing before the Court. There were as many of the respondents from the Rural area voicing their concern, as there were from the Urban and Metropolitan areas.

Some of those concerns are reflected in the representations cited below:

"--Defendant has 5 prior felony convictions. Was on parole, and has several pending offences in various counties. He denied any involvement in present offence. As a result, his exact involvement is unknown and variables of the offence are difficult to assess."

"--I recall a case involving a man who purportedly operated an extensive chop-shop ring. This information was based mostly on police information and the scoring of professional/ organized crime variables was difficult to determine. I believe I scored it a 4. In cases where the extent of injury is unknown I contact the complainant to describe his/her injuries."

"-- "Hardest" cases were ones in which I had the least luxury of time to prepare the Sentencing Information Report. (No specific examples.)"

"--Cocaine case. Drug test with One packet- Defendant had many packets. Also, case with convictions from California, etc., Can't tell if conviction was for a felony or a misdemeanor. Description by name does not fit over the guidelines."

"--Most difficult is when Old cases with limited Presentence information as directed come back for guidelines. Clarification problems. People v Kern; People v. Sisk."

"--Defendant had a long record- Several Probation/parole supervisions. Trouble figuring when defendant was actually off supervision (difficult to tell if 10 years had elapsed.) Also, some convictions from out-of-state were hard to tell if felony or misdemeanors."

"--The hardest case I can think of involved a young woman on felony bond, who was arrested (again) for delivering dangerous drugs to her boy friend, who was in jail at the time. He was alleged to be the leader of a multi-million dollar cocaine ring, and the young woman had lived with him as her sole means of support for the three years before the arrest. I gave her 4 points on OV 8 based on this and also a Grand Jury Indictment in which she was prominently mentioned. The Trial Court found in my favour, but on Appellate Court apparently read only the minutes of her sentencing and not the presentence report, disallowed it and ordered her resentenced by another judge."

"--Man (36 years) convicted of Armed Robbery. He was on parole from California. Had several convictions around the United States for B&E, Robbery, and Fraud."

"--Robbery where a gun was used. Was the perpetrator pointing a gun at the victim? or merely displaying it without pointing it at the victim? I review Police reports and speak with victims, about what manner the weapon was used."

"--Assault- 2 or more co-defendants/ Prior record /Leader vs. non-leader issue as a result of the assault money was taken. Co-defendants had no cash some have a link to organized crime. Court ruled against the scorings."

"--Some troubling cases are Delivery of Cocaine in which police alleged drug trafficking over long periods of time involving large amounts, but only one controlled buy where multiple offenders were arrested. Defence counsel claims client had a minor role. A sentencing hearing was held with witnesses, police officers involved in the arrest, and the subject gave testimony about the defendant's activities."

"--A multiple sex offender who pleaded to a lesser charge because the victim's home was fire bombed the night before the trial. Original charge and police investigation, doctors report showed penetration. These factors were used in the Guidelines and challenged in Court. A full blown hearing was conducted and my scoring was held intact."

"--A violent recidivistic offender with primarily property offences who took advantage of a vulnerable victim who does not fit the "vulnerability" profile perfectly; Who is a member of a group of criminals who may not fit the solid "organized" category. He terrorized the victim, but no bodily injury was treated. Plea bargainings stated in part "no charges similar in nature occurring between the dates of _____ an _____ will be brought."

"--An Uttering and Publishing case. The subject had two prior Uttering and Publishings that he went to prison for. He also had several pending and some dismissed charges (per plea). The scoring was difficult in the sense that there were many variables that applied. However, it was not

difficult as I was well versed with the facts. The guidelines reflected a term of sentence that was woefully inadequate to the damage this man had done. The sentencing Judge departed and exceeded the guidelines, bring about a more appropriate sentence. Some fault on this case should be placed with the plea arrangement in this case."

"--The hardest was man with multiple misdemeanor and felony convictions and with incomplete information in the CCH section of LEIN. I scored several misdemeanors as felonies due to plea bargaining having reduced original charges to High Court Misdemeanors."

"--28 year old CSC first, plead to CSC 3rd. Denies penetration- contrary to medical reports. He denies multiple offences contrary to reports of victims and medical reports. only charged with one incident- the one he admits, victim was age 13, going on 20- There was a question of exploitation: the victim claims weapon, defendant denied. No weapon found. Some evidence (medical reports) of a 2nd victim. Defendant denies and was not charged./ Scoring was based on subjective responses- who do I believe?? Is he scored based on offence he plead to or on the total set of facts?? I scored it on all facts- Judge scored it on basis of what he admitted only."

"--CSC case! CSC 1st degree. Plea bargain reduced to Att. CSC 3rd. (5 year maximum) that involved penetration, life threats to the victim, repetitious acts of close to 100 separate acts over a year or two. Mother hostile to daughter and to the Probation Agent and to anyone else involved in the case. One victim dull (Mentally) fogging specific information like dates and locations of offences."

"--CSC case where the defendant had a lengthy criminal record, and also involved multiple (!) victims with contacts of various degrees. Plead to one Count of CSC 2nd. PRV: Defence challenged every prior conviction for legality. OV: My scoring was based on the highest degree of contact considering all victims rather than the one victim/offence plead to. Challenged by defence and required a sentencing hearing involving approximately twelve victims."

"--Defendant involved in several criminal sexual conduct incidents. (Some coerced penetration/ other didn't. Formally charged on some, not charged on others. Victims too young to be good communicators. Defendant denies penetration. Very hard to score."

"--Trial for Kidnapping/CSC-1st. Found guilty by jury of Felonious Assault despite testimony of the victim and co-defendant. In this case, offence variables related to felonious assault with entire incident considered but without additional crimes."

Each of these cases represent a lack of sufficient information to adequately score the sentencing guidelines worksheet, or for that matter- the presentence report itself. (It should be axiomatic that the guidelines information should be included in the presentence report. However, as noted in the above section and in the replies from the various responding agents, there is (realistically) not always the time nor the resources to eke out every scoring element.

Almost as if to reinforce this argument, one agent indicated that he/she is averaging better than 9 presentence referrals per month. This work load is not conducive to effective investigative inquiry if the information is not readily available.

To quote another respondent, "...LEIN, and CCH records in the Tri-County area are 2+ years behind in conviction information. We have to be careful of prosecution conflicts, sometimes we have had to call this to the attention of the Prosecuting Attourney prior to sentence."

Information: Operationalization and Utilization.

In general, information can be defined "...in relation to its uses... The data is information because it sets

constraints for the task at hand." Information is thus tied to purpose. (Duffee et al, 165-66). Additionally, the authors write... "ideology of the personnel responsible for gathering the information and the style in which these personnel are supervised may impact significantly on the willingness and/or the ability of correctional personnel to conform their data gathering to the requirements of an informational system. (Ibid, 166).

Because of the highly bureaucratized nature of the Michigan Department of Corrections, Duffee would suggest that the correctional climate "...is not conducive to the sharing of information flow and analysis. Correctional field agencies such as probation and parole offices are geographically dispersed and decentralized in authority structure to the extent that a central office staff, including research and information system units, are relatively dependent on the good will and cooperation of the separate offices in order to obtain information. (Ibid, 172).

Daniels (cited in Duffee, p 174) found that "officials responsible for entering diagnoses in records consider not only the present symptoms of clients (sic- patients), but also the possible consequences such information may have in the future career of the clients... This situation clearly parallels some correctional situations in which the persons responsible for entering information about an offender in a

file are responsive to potential feedback from other agencies or other bureaucratic subdivisions, especially over politically sensitive matters such as parole release and revocation. (Ibid, 174)

... In addition to organizational constraints on the language entered in the file, the correctional organization delimits the kinds of personnel who become responsible for diagnostic work, filecreation, and file maintenance... Reports on individual offenders are rarely taken seriously, "except as ex-post facto rationalizations for decisions presumably made on the basis of other criteria... Similarly, Shover suggests that systems favour an information system that will ease the flow of correctional process rather than one that will retain relevance to the task of behavioural change. (Ibid, 174)

Garfinkel and Bitner (as cited in Duffee (174-176) stated the "deficiencies of the information for research and management decisions about the future of offenders are related to the fact that the same information serves another organizational function: The record serves as a "contractual" record of trans-actions that have already occurred between staff and clients (sic- patients). In this latter sense, every record is always complete and accurate because it is constructed in such a way that the entries (or absence of entries) can change in meaning over

time as a method of explaining and justifying the current state of negotiations between the staff and clients. The authors conclude that it is this second use of the information that is of primary importance to front-line staff, and the demands for actuarial precision needed in proper processing will be resisted because such demands constrain the fluidity of meaning that data entries must retain within the people-changing sub-system of the organization. (Ibid, 175).

"...Information recorded about offenders serves two purposes: That the recording of information performed one function for front-line staff and another function for the official concerned with the management of the department, and with the accuracy of the classification... Recorded information about offenders enable an evaluation of the appropriateness of the matches made between types of offenders to the types of programs... The decisions of various counselors to the types of programs... The decisions of various counselors and staff members (the recorded information), has seemed to perform different functions that ranged from protection of the Bureau if an offender created havoc after release; to "licensing" the offender as appropriate for a change in status; to a bother or protective barrier that kept staff busy in paper work and removed them from direct contacts with offenders." (Ibid, 175-176).

"The format for entering information in the case files and the policy on what information to gather are normally controlled by the central office, but the recording and reordering of information has been delegated to the front-line staff." The authors' hypothesis on any significant correctional decision was that "...the recorded data would not predict the decision made, or in other words, the data would not discriminate between those who were chosen for a particular correctional option and those who were denied that option (ie.- probation, as opposed to prison terms. (This reference is not based on what decisions will be made. Too much information is lacking to base any finding of fact on this. The facts are borne out by the use of univariate and multiple-regression analysis.)

"... Fixed items of information requested of the front-line staff for entry in the record are either not utilized in the decision, or are utilized in a different way"...Consistent with Daniels, Shover and Garfinkel state, "recorded data as utilized in staff meetings are neither ignored nor explanatory of the decisions made. The recorded data elements simply served as "punctuation points" or coded signals in treatment decision negotiations, the content of which was not retained by front-line staff. (Duffee, 175-176).

"...Information describing the offender will be kept purposefully vague so that the clinicians can retain some control over how future events should change the meaning of what is recorded. (1) To the extent that restraint is of importance, records should serve as a means of defending the organization from outside complaints about the state of operations. The information that best does this will, as Shover suggests, ascribe sufficient problems to every inmate that inmate idiosyncrasies can be blamed for future disruptions, but will not suggest critical problems that would have required specialized or individualized care for many offenders." (Ibid, 178).

Implications.

"...The way in which managers organize personnel for the task of making judgements about offenders will influence the type of judgements made. The decision constructions used for reform or restraint policies, for example, are not appropriate for rehabilitation decisions, and the structures that developed for rehabilitation policy are not relevant to the implementation of reintegration programs. Managers should also be aware of potential conflict between the means that they use for controlling staff behaviour and the quality and accuracy of information that are generated in their organizations... The uses that people-changers make of information are not necessarily the same as the use

of information made by people-processors...Consequently, as managers expect the same staff to do both functions, at least in large organizations, the information system is likely to be inaccurate for one purpose or another... If, however, the classification and changing (sic-supervision) functions are separated, then problems of coordinating the separate units should be expected to increase. (Ibid, 179)

Presentence Report.

Under Michigan Compiled Laws Annotated (MCLA) 771.14, "...Any offender convicted of a felony offence must have a presentence investigation and report before he can be sentenced." American Correctional Association (ACA) standards require that these be completed within three weeks for person denied bond (custodial cases); and four weeks for persons otherwise at large in the community. The Courts have ruled that this report must be completed, and cannot be waived. (People v. Brown (393 Mich 174).

People v Conlin (95 Mich App 740 (1980)) holds that judicial discretion must now be exercised in accordance with the philosophical goals of sentencing; and be based on accurate and rationally related information.

The Michigan Court of Appeals in *People v Tripplett* (407 Mich 510a (1980)) held that "...a reasonable updated presentence report is necessary in resentencing an individual defendant." The Courts have followed similar thinking in *People v Perez* in that, "the manner and circumstances under which an offence is committed may well influence the degree of the sentencing imposed." In *People v Kenneth Anderson*, the Court of Appeals remanded the case for a new presentence investigation in resentencing because the Court did not have at its disposal an official version of the offence and offender's version. Thus, the presentence report has a primary role in providing the Court with accurate, timely, and relevant data. This allows the Court to select the most "appropriate" sentencing alternative.

Duffee et al, indicates that the main source for the information required in any given report is the "central office." The central office of the Michigan Department of Corrections has set the requirements for the information included in the Presentence Report.

The sections of the presentence document include such numerous offender characteristics as: 1.) criminal record (adult and juvenile); 2.) family and marital characteristics; 3.) employment records; 4.) educational attainment and records; 5.) economic factors of debts and income

(especially his or her ability to pay in cases requiring Court Costs, Fines, Fees and Restitution); 6.) physical and mental health history (especially if there are any presenting problems); 7.) and any history of substance abuse. Other elements consist of a description of the offence(s) by both the investigators and the defendant; and an evaluation for a final disposition.

In order to be effective, this information must be included in the presentence report. However, because of time constraints, requirements for security or privacy, and the elimination of "unimportant information", etc., information the Court might otherwise find useful or include in the sentencing will not be presented or considered.

There is a second type of information transfer. Ordinarily, the presentence information is based on fact, and subject to the rigors of judicial scrutiny. At the point where the defendant's criminal activities are considered, there is latitude for the identification of "other significant criminal activities" which the defendant has participated within the past six months of the charge he now appears before the Court on. (2) The defendant may have never been arraigned on the other charges, but was "just clearing paper" with the police.

In any case, there may be no way of immediately determining whether these included charges were, or were not committed by the defendant.

Disclosure and Challenge to Presentence Information.

Under the provisions of General Court Rules (GCR) 785.12, and Public Act 61, 1982, the Court must permit the prosecutor, the defence counsel and the defendant opportunity to review the Presentence Report prior to sentencing. This became effective April 1, 1983. Also, after that date, any state-incarcerated inmate must receive a copy of his presentence report in accordance with the Federal Freedom of Information Act (FOIA). Prior to that time, neither had been the case. Defendants appearing before the Court were not necessarily entitled to view the report themselves, nor were state prisoners entitled to a copy of their report.

The defendant's access to these documents has affected the amount of information that could be (or is) included on occasion. Information can no longer be considered confidential, which closes some of the information sources that had previously been available to the investigating agent. At the same time, this offers additional safeguards to the defendant and his case. Also, because of the

Freedom of Information Act (FOIA), most of the anecdotal and "non-essential" information has been screened (removed) from the body of the report before it goes to the Court for consideration. (3)

If a section of the presentence report is found to be in error, by reason of a sentencing hearing, the proceedings and findings will be made a part of the Court Record. By Court Order, the inaccurate/ irrelevant information will be corrected or stricken from the record prior to it's being distributed.

Problems with Sentencing Guidelines Scorings and Interpretations.

Many problems still surround the sentencing guidelines as presently used by the Michigan Courts. Because of the risk of judicial challenge, FOIA, and time precedents, either one of two things can occur. First, because of the former, information needed to score a particular item in the sentencing guidelines instrument may be lacking, or incomplete. This causes the investigator to exposehim/herself to additional challenge; or to otherwise ignore the new offence, giving the offender less of a scoring than he/she might otherwise deserve.

Secondly, because many of the notes are selectively removed from the final report, the person eventually gaining supervisory custody of the offender will not have full and complete information for several of the supervisory scoring instruments which determine the offender's level of supervision, the need for additional treatment programming, etc. (cf.- f.n. 3.)

IN VERSUS OUT

How the Guidelines are used.

At the time the the agents in our office received their initial training in the use of the Sentencing Guidelines, nothing was included on interpreting what would constitute a probationary sentence, as compared to what might constitute local jail time, or prison.

The rule of thumb has been to check if the minimums in the appropriate sentencing grid are at or under 12 (meaning 12 months). 12 months or less qualified the defendant to jail and/or probation (according to the Sentencing Guidelines). Over 12 months- Prison!

Sparks (1983) [cited above] has been more conservative in his approach to the Michigan Guidelines. He states that a score of 0 qualifies a defendant to probation; one to twelve months- jail; and over 12 months- prison.

The Sentencing Guidelines Administrator's Office, the Michigan Judicial Institute, and the Michigan Department of Corrections should initiate a planning meeting to determine what measures should be used; and further, if the agents are to consult with the guidelines during or before formulating their sentencing recommendations as required by MCLA 771.14, and the Michigan Department of Corrections procedures.

Monitoring of the Sentencing Guidelines.

Zalman (1979: pp 38-39) suggested that "...once the guidelines are developed, why should they not simply remain in place without any monitoring or oversight by commission or committee?" His response to that question centered on policy decision-making. "Central to the guidelines approach is the separation of the machinery whereby policy and case decisions are made." (5)

If the two kinds of decisions are mixed, and if decision-makers have discretion, they are able to change policy only by making modifications in

individual cases. It must be realized that sentencing policy does not (and probably should not) remain stable over time. As public concepts of right change, as crime rates shift, and as penal alternatives expand (or contract), sentencing policy is modified. This often takes place at the "line" level in such a way that the change is known informally to operational personnel. The drawback to this is that there is no way to assess the need, impact and success of such changes. Also, when change occurs, the individuals whose cases are being decided are "used", so to speak, as the instruments of policy change. Where there are strict rules, such as mandatory sentencing laws, informal attempts to mitigate what is perceived as unjust tends to be made sporadically, and thus disparately. (Zalman, 1979: 38).

"Without monitoring, then, there is no way to know how sentencing is proceeding, whether guidelines are being followed, and whether reasons offered for divergence are appropriate. With monitoring, this information will be available. Monitoring pre-supposes accountability. (Zalman, 1979: 38).

"Information, however, is not self-actuating. There must be a human agency which analyses information and uses it to make appropriate decisions. Without a sentencing commission or committee given a mandate to modify or re-confirm guidelines, opposite dangers arise. One is stagnation, creating one form of injustice. The other is the uncontrolled drift of policy." (Zalman, 1979: 39)

This report cited earlier the compliance levels of the sentencing judges as monitored by the Sentencing Guidelines staff (approaching 86%). However, they noted that in Assaultive crime categories that the compliance level dropped to 60 percent. (McComb, 1988: pp 386-388).

In 1987, Circuit and Recorders' Courts were asked if they would volunteer to participate in a research program to determine the impact of some proposed revisions for Property and Assaultive programs. (6) Over 100 Circuit Judges participated "with no evident problems." (McComb, 1988: 867). Each study was independent of the other.

The responses received by the Guidelines Office satisfied them that the revisions were "more in keeping" with the sentencings being meted out in the field. (According to Guidelines Staff member McComb, their goal is to encompass "at least 75 percent of the actual sentencings in the state.

On the Guidelines Office's recommendations, the Supreme Court issued Administrative Order 1988-4 on June 7, 1988 directing sentencing felony courts in the State to begin use of the revised sentencing guidelines 1 October, 1988. In part, the Order states:

"Whenever a judge of the Circuit Court or Recorder's Court for the City of Detroit determines that a minimum sentence outside the recommended minimum range should be imposed, the judge may do so. When such a sentence is imposed, the judge must explain on the sentencing information report and on the record the aspects of the case that have persuaded the judge to impose a sentence outside the recommended minimum range."

Sentencing Guidelines Revisions

The major revision of the October 1, 1988 Edition is in the design of the Sentencing Guidelines matrix. It is substantially altered!

The scoring matrix- the most common element in the different sentencing guidelines models- changed! Instead of a 3-by-6 matrix, the scorings have been raised on the minimum ranges on the majority of the Assaultive crime groups. (7)

The Michigan Sentencing Guidelines Project director James McComb writes that this change is premised on two assumptions. The first is that "four levels of prior record are sufficient to divide up the world of offenders. It does not take six levels to separate out those with no

prior record, those with a slight record, those with a significant record, and those who appear incorrigible." (McComb, 1988: 866.)

Prior Record Variables (PRV).

Prior record variables have been assigned levels by points. The points assigned increased as the offender's level of "contact and experience with the system" increases. As presently written, the PRV variable appears as follows:

A	No Prior Record	0 points
B	Low Prior Record	1-24 points
C	Moderate Prior Record	25-49 points
D	Extensive Prior Record	50+ points

In actuality, it is the level of the offender's "experience and contact" with the Criminal Justice system that determines the level of the PRV assigned in the guidelines matrix. The number of contacts, prior convictions (Felony and Misdemeanor on the one face, and Adult and Juvenile on the other) are converted into numerical scorings. The reader converts that score to the appropriate level on the PRV table as indicated above.

Mr. McComb suggest that the "extensiveness of the prior record, as determined by the PRV's is consistent with the

verbal descriptions attached to each of the four levels. Specifically, Level A includes all those offenders who have no prior record points. Level B does not included anyone who has been convicted of a high-severity felony (as defined in the Sentencing Guidelines manual). Level C included all those who have a single high-severity felony or two low-severity felonies. Level D will include all those who have had at least two high severity felonies. (McComb, 1988: 866).

Offence Variables (OV's).

"The second, and perhaps more important assumption is that a fourth level of offence severity is needed to separate out the various degrees of culpability. With this change, the four levels were conceptualized as follows:

I	Low Offence Seriousness	0-9 points
II	Medium Offence Seriousness	10-24 points
III	High Offence Seriousness	25-49 points
IV	Very High Offence Seriousness	50+ points

McComb suggests that the actual point values for the levels were set so that the seriousness of the offence, as determined by the OV's, is consistent with the verbal description attached to each of the four levels of the OV's.

Level I will share the fact that there was no firearm displayed or discharged, no injury, no multiple penetrations (in CSC crimes), and no more than one 5-point category offence.

Level II offenders have committed a slightly more serious version of each crime than the offender in Level I, but the offence did not include the discharge of a weapon, an injury, or multiple penetrations.

Level III offenders have committed a crime with at most one of the following characteristics:
Firearm discharge, bodily injury, or one net penetration.

Level IV offenders have committed an extremely serious version of the offence that may include the death (or serious injury) of one or more victims.

"Each cell within each grid represents a fixed combination of Prior Record extensiveness and offence seriousness. For example, regardless of the particular conviction offence, an offender falling into grid cell III-C committed a relatively high-severity version of the offence and has a moderate prior record. The revisions to the variable point values and to the grids mean that the sentencing guidelines are very similar to existing sentencing decision making." The developers of the Sentencing Guidelines believe that as a result of these changes, "each grid cell contain offenders who are, in fact, similar in terms of those factors that are most salient to the sentencing decisions."

In one recent case, a probationer absconded and committed a series of 7 felony and 3 misdemeanor offences during his absence. He plead guilty to three felony offences, and probation violation charges. All of the other charges were dismissed. The new sentencing guidelines produced a recommended minimum range between 36 and 80 months. With the former sentencing guidelines, a score of 6 to 24 months resulted. This is an increase of better than 500 percent.

Sentencing Guidelines coordinator James A. McComb recently wrote of the changes that the "variables remain non-prejudicial; are uniformly mitigating and aggravating; and the elements are "objective" in the sense that one can write instructions that would lead most people to be able to reach the same categorical decisions."

Many of the respondents in this study cited a cynicism that the Sentencing Guidelines were "too lenient", and that they considered the guidelines to be just "another exercise in paper." It may be that these complaints will be addressed in this last, and I am certain forth-coming revisions of the guidelines. The questionnaire was based on the First Edition, and were sent out in mid-July, 1988. The 2nd Edition of the Guidelines went into effect 1 October, 1988. It is too soon to tell if their concerns will be quickly addressed, or not.

In either case, it is going to take a concerted effort to get the "line" field agents to take either edition to heart, and embrace it in their investigative reporting.

The Sentencing Guidelines document itself has proven to be fluid and changing. This is both it's greatest strength, and it's Achilles Heel. The Guidelines need to be flexible enough to respond to the needs of the Courts, and appellate decisions. At the same time, this flexibility makes them vulnerable to political crises- either to respond to Prison capacity issues as has been suggested by Michigan Justice Patricia Boyle, or to local issues. Examples of the latter might be similar to the outcry of the Kalamazoo area in 1983 in the aftermath of the Upjohn heir's case.

Reliability and Validity.

In order to be effective, information must be able to be interpreted in the manner in which it was meant when it was conveyed to written form. Babbie, Campbell and Stanley, and others have referred to this process as reliability and validity:

Reliability is defined as a measurement method that suggests the same data would have been collected each time in repeated observations of the same phenomenon. (Babbie, 1983; 537)

Validity is a descriptive term used of a measure that accurately reflects the concept that it is intended to measure. (Ibid, 539)

One of the single largest problems I have noted during the implementation of the Michigan Felony Sentencing Guidelines is that the reader scoring the sentencing guidelines may or may not score them the same as another person scoring them.

Our district holds 7 agents, and covers three Judicial Circuits (four geographically rural counties). A staff meeting was held 6 months after the voluntary guidelines were implemented by the Circuit Courts of this district in 1982). All of the agents received initial (and simultaneous) training from the Court Administrators' Office. All of the agents had ample opportunity to acquaint themselves with the use of the sentencing guidelines.

Each agent submitted one particular presentence report that posed some type of scoring difficulty to the other members of the staff. Each case was presented, and was scored independently by each agent. In few cases did all agents agree on the scoring leading to the final sentencing guidelines' ranges. In some cases, the scoring defects were minor, and did not affect the final sentencing range. In others the difference though perhaps minor in interpretation, produced a significant alteration in the guideline range, as determined by the guidelines themselves.

In these and other situations, the scorings determined by the reader and the sentencing courts may or may not be in accord. I had originally intended on selecting a series of presentence reports that posed different degrees of scoring difficulties, and ask a separate sample of Presentence Investigators to score them. From these, I was going to measure the levels of variance on the individual guideline elements, and include those findings in this study. Unfortunately, funding and time was exhausted, with the obvious outcome that that particular phase of the study was not done. It should receive attention in future research efforts.

As the Michigan Felony Sentencing Guidelines committee meets in future discussions to consider additional

refinements of the sentencing guidelines instruments, this problem should be examined.

Results of Implementation.

Kress (1980), Rich (1983) and others suggest that in order to be effective, a sentencing guidelines policy must be mandatory. (4) It cannot be a voluntary system, as appears to be the case in most of the systems where the guidelines system has been used. Michigan recognized this danger, and made the use of the sentencing guidelines instrument prescriptive. While not a mandatory process, it at least requires the sentencing Court to consider the suggested sentencing range as an initial starting point for the minimum term. (Supra)

Since the implementation of the sentencing guidelines was put in place, statistics compiled by the Court Administrator's Office indicates that compliance has been about 86.7 percent, meaning that 86.7 percent of the felony sentencings remained within the sentencing guidelines ranges. Alternative explanations for the compliance may be that the sentences for 86.7 percent of the sentencing judges had been imposing mid-level sentencings, and were unaffected by the sentencing guidelines, (or were minimally affected.)

A second alternative explanation is that the Michigan Felony Sentencing Guideline project is having an effect; and will continue having an effect on the sentencing outcomes of felony cases processed through the Circuit and Records Courts of the State of Michigan.

In working with the first alternative explanation, if such is the case, the balance of 12.3 percent of the sentencing courts failed to comply with the sentencing guidelines were dealing with sentencings more harshly (or less harshly?) than are being called for in the sentencing guidelines, and have to date remained unaffected by the sentencing guidelines implementations. If such is the case, stronger encouragements and sanctions may be needed to insure compliance by the sentencing courts.

In my opinion, the most noteworthy use of the sentencing guidelines is its use by the appellate courts in post-sentence reviews. The onus will now rest squarely on the shoulders of the sentencing courts to insure that the Court has substantiated his reasons for passing the sentence he did in any given case.

FOOTNOTES

(1) It may be argued that how the local Departmental offices use the information they gather may be reflected in local Court expectations, practices and styling.

(2) This appears on the Sentencing Guidelines as OV-25- Contemporaneous Offences. This term was consistently cited by the respondents of my study as the most confusing and tenuous of the variables used in the Sentencing Guidelines.

(3) The most recent victim of this trend is the elimination of the names and addresses of victims as required by the Victims' Right legislation (P. A. 87 [1985]- MCLA 780.751 et seq.), and the Department of Corrections. This information was sometimes helpful to supervising agents that might not have been familiar with the investigation phase of the presentence report. The information was helpful in determining distribution of restitution monies, and contact with them regarding release of the defendant in certain cases.

(4) This finding is consistent with Rich, 1984, and a multitude of other similar studies.

APPENDIX A

APPENDIX A**QUESTIONNAIRE**

1.) Using the directory from the cover page, please check the (one) geographical area that corresponds to the area you are generally assigned to:

METROPOLITAN AREA	[]
URBAN AREA	[]
RURAL AREA	[]

1a.) When did you begin working as a presentence investigator?
(Please indicate month and year.)

BESIDE EACH OF THE STATEMENTS LISTED BELOW, PLEASE INDICATE WHETHER YOU :

- 1.) STRONGLY AGREE (SA);
- 2.) AGREE (A);
- 3.) DISAGREE (D);
- 4.) STRONGLY DISAGREE (SD); OR
- 5.) DON'T KNOW (DK).

PLEASE CHECK THE APPROPRIATE BOX WITH EITHER A CHECK OR AN X. IN SOME QUESTIONS (SUCH AS 2K.), A SHORT ANSWER OF ONE OR TWO WORDS TO DESCRIBE THE CONCEPT FOR EACH ADDED CRITERION SHOULD BE ALL THAT IS NEEDED.

2.) Many probation agents think that the criteria listed below in an individual case are by far the most important criteria to be used in preparing a presentence recommendation. Indicate your agreement or disagreement regarding the importance for each of the criteria listed below.

- | | <u>SA</u> | <u>A</u> | <u>D</u> | <u>SD</u> | <u>DK</u> |
|--|-----------|----------|----------|-----------|-----------|
| a.) Prior criminal record. | [] | [] | [] | [] | [] |
| b.) Defendant was on probation
at the time of the commission
of the instant offence. | [] | [] | [] | [] | [] |
| c.) Age of the defendant at the time
of his first arrest. | [] | [] | [] | [] | [] |
| d.) The number of prior probation
failures. | [] | [] | [] | [] | [] |
| e.) Defendant's response to any prior
probation or treatment
programs. | [] | [] | [] | [] | [] |
| f.) Substance abuse or alcohol
problems noted. | [] | [] | [] | [] | [] |
| g.) The number of changes of
residence in the past year. | [] | [] | [] | [] | [] |
| h.) The number of changes of
employment in the past
year. | [] | [] | [] | [] | [] |
| i.) The longest of the longest job
(in years) held by the
defendant. | [] | [] | [] | [] | [] |
| j.) The number of prior arrests and
convictions for similar offences
(as the offence for which he/she
is now being charged. | [] | [] | [] | [] | [] |
| k.) Other (Please list any other factors you regularly use
that were not included above. | | | | | |

3.) There is not entirely a consensus of opinion on the helpfulness or utility of the sentencing guidelines in achieving a just sentencing recommendation in a case. How do you feel about the existing Michigan sentencing guidelines?

(CHECK THE ONE ANSWER THAT BEST APPLIES TO YOUR SITUATION.)

- a. They are always used to help me
in the forming of my sentence
recommendation. []
- b. They are sometimes helpful to me
in the forming of my sentence
recommendation. []
- c. The sentencing guidelines are
not helpful to me in the forming
of my sentence recommendation. []
- d. The sentencing guidelines are
seldom regarded during the forming
of a sentencing recommendation. []
- e. The sentencing guidelines are
never regarded during the forming
of a sentencing recommendation. []

IN THE NEXT SERIES OF QUESTIONS, PLEASE CHECK THE ONE RESPONSE
THAT BEST DESCRIBES YOUR OFFICE'S SITUATION.

4.) In your own individual experiences, have the sentencing
guidelines changed your approach to how you formulate that sentence or
sentencing recommendation?

Greatly [] Moderately [] Occasionally [] Not at all []

4a. What have been the major changes?

4b. If you answered "Not at all", why not?

5.) Have any of the sentencing guidelines variables caused you any particular problems? In a word or two, please identify and explain.

5a.) Offence variables.

5b.) Prior record variables.

6.) In your office, how often are case staffings and reviews of sentencing guidelines scorings held in your office?

Every case	[]
At least once a month	[]
On an as-needed basis	[]
Never	[]

IF YOU ANSWERED "NEVER" IN QUESTION 6, PLEASE SKIP QUESTION 6a., 6b., 6c., 6d., and 6e., AND PROCEED TO QUESTION #7.

6a.) If your office has participated in case staffings, are there particular difficulties in reaching a consensus of agreement on the scorings of a sentencing guidelines variable?

Always [] Usually [] Sometimes [] Never []

6b.) When there are disagreements or technical questions on case scorings, do you consult with "outside" Criminal Justice personnel (such as police investigators, prosecutors, defence counsels, judges, etc.?)

YES [] NO []

6c.) Please rank by number, the sources of the consultations you go to first, second, etc., as indicated on question 6b.

I do not consult with outside people	[]
Police investigator(s)	[]
Prosecutor	[]
Defence Counsel	[]
Judge	[]
Other (Please specify)	

6d.) Do the outcomes change when case staffings are held?

Always [] Usually [] Sometimes [] Never []

6e.) Think back to your last case staffing. Please give an example of how it did, or did not change the guidelines scores.

7.) Who is responsible for the preparation of the sentencing guidelines worksheets in your office. (Check one.)

- a.) The presentence investigator. []
- b.) The office supervisor (or Agent in Charge.) []
- c.) The Judge's Court Clerk or Secretary. []
- d.) The Sentencing Judge. []

IF YOU ARE NOT RESPONSIBLE FOR THE PREPARATION OF THE GUIDELINES WORKSHEETS, PLEASE SKIP QUESTION 8., AND PROCEED TO QUESTION 9.

PLEASE RANK QUESTION #8 AS FOLLOWS:

- 1- MOST OFTEN
- 2- MODERATELY OFTEN
- 3- LEAST OFTEN

8.) If the presentence investigator does prepare a worksheet, what areas are most often subject to the scoring problems?

- a.) Crime Type []
- b.) Prior Record Variables []
- c.) Offender Variables []

8a.) In a few brief words, what types of problems are encountered?

9.) When there are interpretational problems about scoring a particular guidelines variable, how do you resolve the issue.

(PLEASE CHECK THE ONE ANSWER IN EACH SITUATION THAT BEST DESCRIBES YOUR OFFICES' PROCEDURE.)

a.) I consult with a colleague on how he/she interprets the question.

Always [] Usually [] Sometimes [] Never[]

b.) I consult with the investigating police officer/detective on how they would interpret the sentencing variables in question.

Always [] Usually [] Sometimes [] Never[]

c.) I consult with the prosecuting attorney on how they would interpret the sentencing variables in question.

Always [] Usually [] Sometimes [] Never[]

d.) I consult with the defence attorney on how they would interpret the sentencing variables in question.

Always [] Usually [] Sometimes [] Never[]

e.) I consult with the sentencing judge on how the variable should be scored.

Always [] Usually [] Sometimes [] Never[]

f.) I do not consult with anyone on how the variable should be scored.

Always [] Usually [] Sometimes [] Never[]

10.) When there are interpretational problems, do the challenged areas withstand judicial and adversarial scrutiny? Explain and describe who usually wins out.

11.) How have the sentencing guidelines affected or altered your presentence reports and recommendations in plea bargaining arrangements? If there have been no changes, please note, and proceed to the next question.

12.) In your office, those cases that involve plea agreements focus Sentencing Guidelines scorings on the reduced charges instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never[]

12a.) In your office, cases involving contemporaneous offences focus Sentencing Guidelines scorings on the reduced charges, instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never[]

13.) When scoring the sentencing guidelines in your office, the Sentencing Guidelines scorings are held within the limits of the plea agreement, instead of scoring the case from the police reports and the entire "body of facts"?

Always [] Usually [] Sometimes [] Never[]

14.) In your office, guilty plea cases involving charge reductions keep Sentencing Guidelines scorings within the parameters and limits of the plea agreement (especially in cases where there are plea reductions)?

- a.) I always base the scoring on the original offence. []
- b.) I usually base the scoring on the original offence. []
- c.) I usually limit the scoring to the reduced charge. []
- d.) I always limit the scoring to the reduced charge. []

14a.) Have differences between the descriptions of the actual offence and the case as it was altered by the plea agreement created any scoring or appeal issues for your court? (Please explain.)

Always [] Usually [] Sometimes [] Never[]

15.) In your jurisdiction, are the sentencing guidelines ever used to help decide the acceptance or rejection of a suggested plea offer or agreement?

Always [] Usually [] Sometimes [] Never[]

Don't Know []

16.) How have the sentencing guidelines been used as a help in accepting or rejecting plea offers in your jurisdiction by the prosecutor, defence counsel, or the Bench?

- 17.) Think of the easiest case involving the scoring of a sentencing guidelines case you have handled. Please give a thorough description of the case and your involvement in it.

- 18.) Now think of the hardest case involving the scoring of a sentencing guidelines case you have handled. Please give a thorough description of the case, and your involvement in it.

THANK YOU FOR YOUR TIME, COOPERATION AND PARTICIPATION IN THIS STUDY. PLEASE USE THE ENCLOSED ENVELOPE, AND SEND THE QUESTIONNAIRE TO THE ADDRESS LISTED. AT THE SAME TIME, WOULD YOU PLEASE SIGN THE POST-CARD I HAVE ENCLOSED, AND SEND THE CARD TO THE ADDRESS LISTED APART FROM THE QUESTIONNAIRE. THIS WILL SERVE AS A CONTROL FOR RESPONSES, AND HELP ASSURE YOUR ANONYMITY IN THE SURVEY.

APPENDIX B

LEGEND

M-	--	Metropolitan Area Respondents Started Before Guidelines Implemented
M+	--	Metropolitan Area Respondents Started After Guidelines Were Implemented
U-	--	Urban Area Respondents Started Before Guidelines Implemented
U+	--	Urban Area Respondents Started After Guidelines Were Implemented
R-	--	Urban Area Respondents Started Before Guidelines Implemented
R+	--	Rural Area Respondents Started After Guidelines Were Implemented

APPENDIX B- CHARTS AND TABLES

Question 2a.

The agreement of the respondents on considering the prior criminal record of the defendant on making a sentencing recommendation.

(Range possibility- Very important to Not important).

TABLE B.1

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	6.000	0.000	0.000	0.000	6.000
METRO	(Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN	(Pre S-G)	21.000	0.000	0.000	0.000	21.000
URBAN	(Post S-G)	15.000	2.000	0.000	0.000	17.000
RURAL	(Pre S-G)	13.000	1.000	0.000	0.000	14.000
RURAL	(Post S-G)	3.000	0.000	0.000	0.000	3.000
Totals		60.000	3.000	0.000	0.000	63.000
Standard Error		0.027	0.027	0.000	0.000	
		AVERAGE-		2.952		

Question 2a.

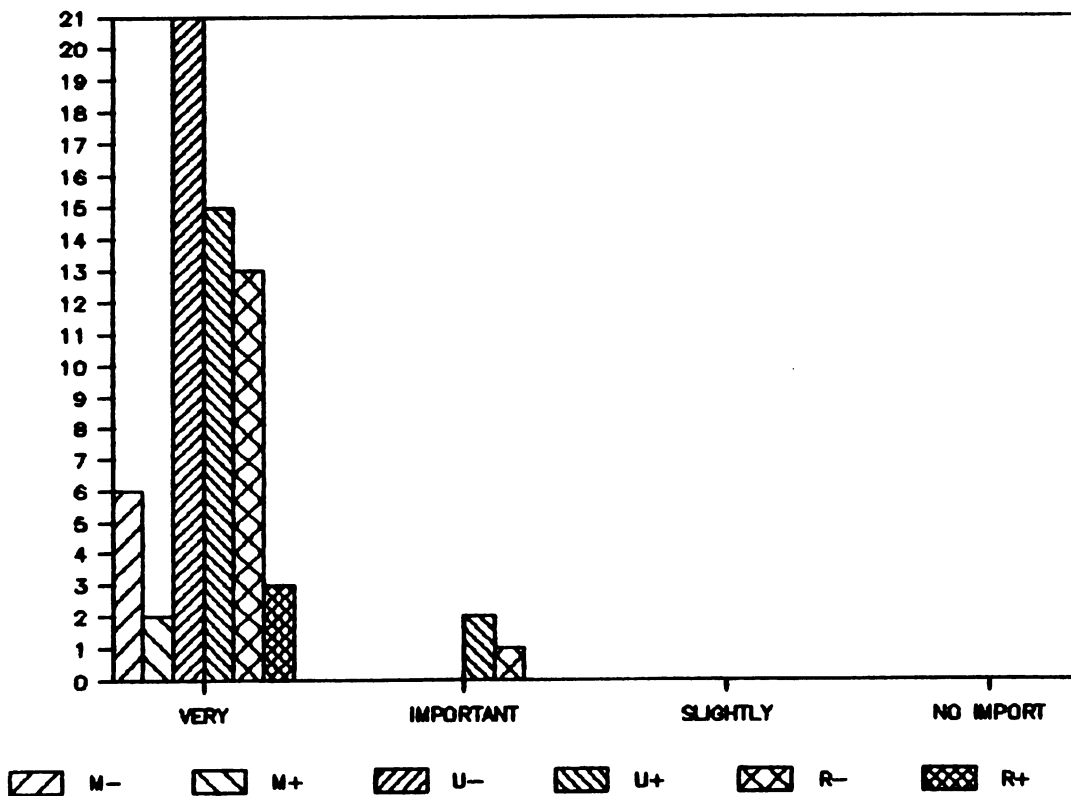
The agreement of the respondents on considering the prior criminal record of the defendant on making a sentencing recommendation.

(Range possibility- Very important to Not important).

GRAPH B.2

Responses presented in Bar graph format

Question 2a:



Question 2a.

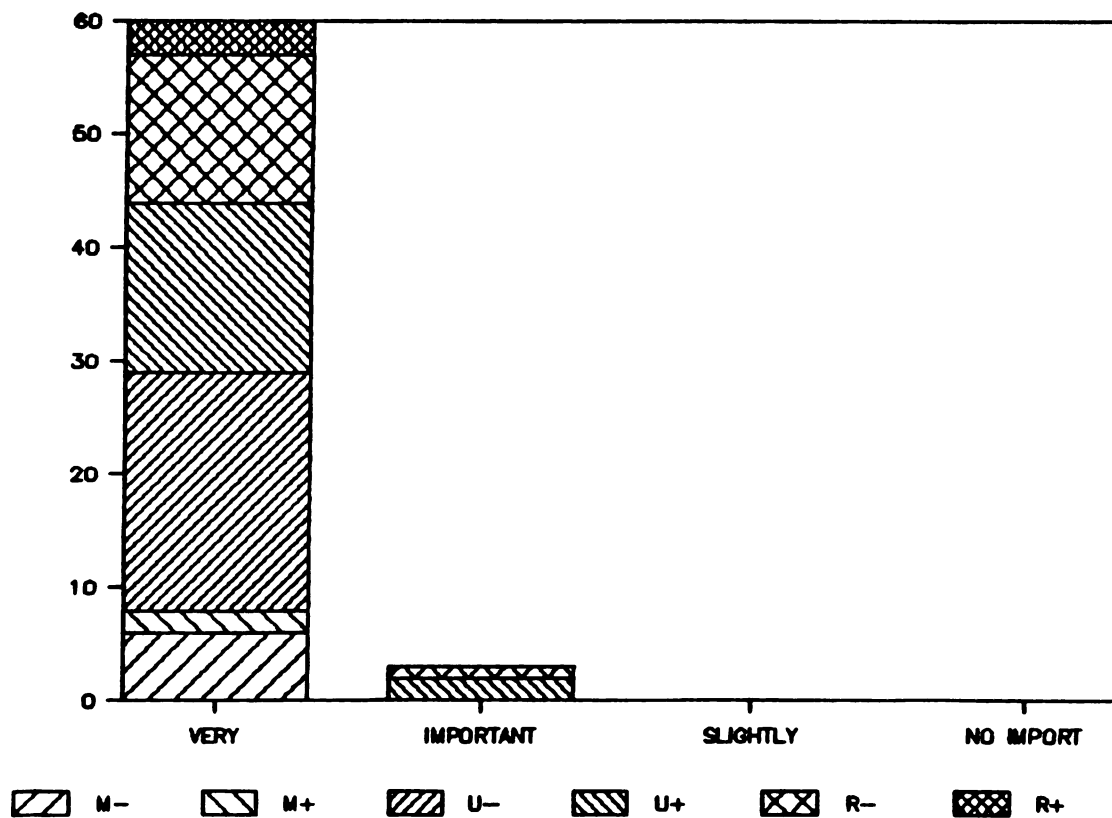
The agreement of the respondents on considering
the prior criminal record of the defendant on
making a sentencing recommendation.

(Range possibility- Very important to Not important).

GRAPH B.3

Responses presented in Stacked Bar graph format

Question 2a:



QUESTION 2b

The agreement of the respondents on the
defendant's being on probation at the time
of the commission of the instant offence.

(Range possibility- Very important to Not important).

TABLE B.4

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	3.000	3.000	0.000	0.000	6.000
METRO	(Post S-G)	1.000	1.000	0.000	0.000	2.000
URBAN	(Pre S-G)	19.000	2.000	0.000	0.000	21.000
URBAN	(Post S-G)	14.000	3.000	0.000	0.000	17.000
RURAL	(Pre S-G)	9.000	5.000	0.000	0.000	14.000
RURAL	(Post S-G)	2.000	0.000	1.000	0.000	3.000
TOTAL		48.000	14.000	1.000	0.000	63.000
Standard Error		0.054	0.052	0.016	0.000	
		AVERAGE-		2.746		

QUESTION 2b

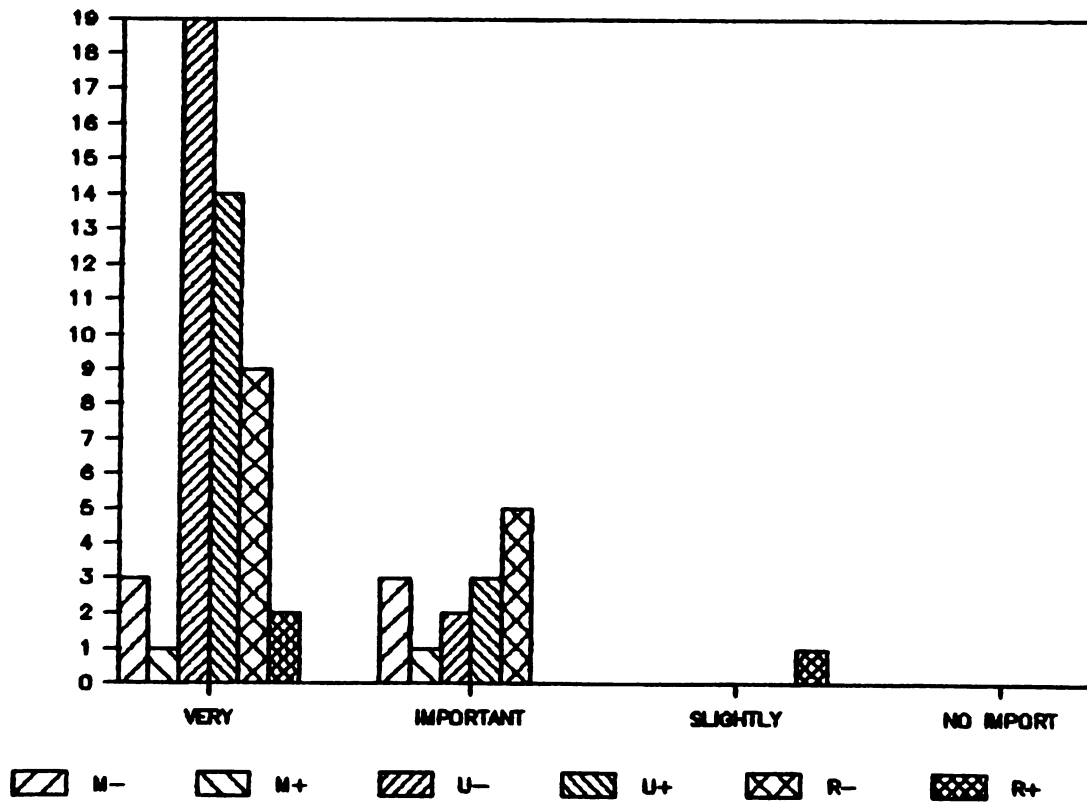
The agreement of the respondents on the
defendant's being on probation at the time
of the commission of the instant offence.

(Range possibility- Very important to Not important).

GRAPH B.5

Responses presented in Bar graph format

Question 2b:



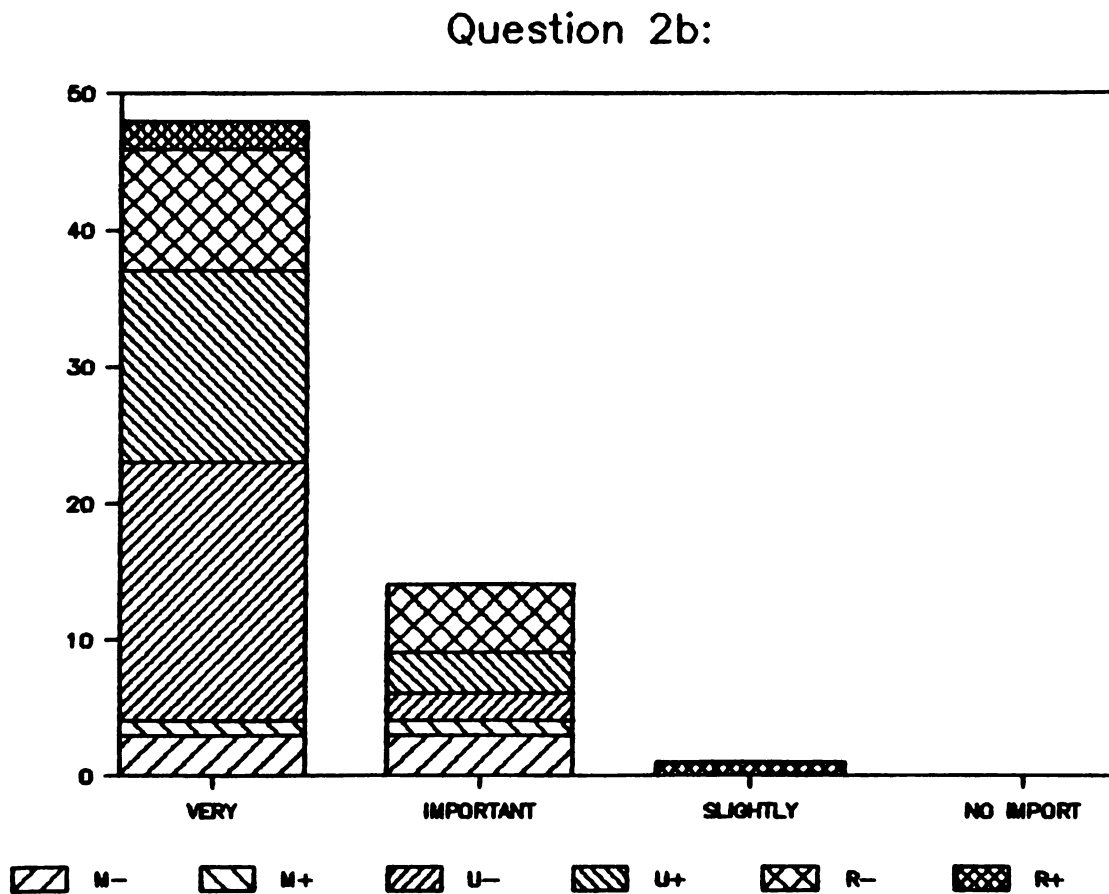
QUESTION 2b

The agreement of the respondents on the
defendant's being on probation at the time
of the commission of the instant offence.

(Range possibility- Very important to Not important).

GRAPH B.6

Responses presented in Stacked Bar graph format



QUESTION 2c

The importance respondents placed on the age of the defendant at the time of his/her first arrest.

(Range possibility- Very important to Not important).

TABLE B.7

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	0.000	4.000	2.000	0.000	6.000
METRO	(Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN	(Pre S-G)	3.000	10.000	8.000	0.000	21.000
URBAN	(Post S-G)	3.000	6.000	7.000	1.000	17.000
RURAL	(Pre S-G)	0.000	12.000	2.000	0.000	14.000
RURAL	(Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL		6.000	34.000	22.000	1.000	63.000
Standard Error		0.037	0.063	0.060	0.016	
		AVERAGE-		1.714		

QUESTION 2c

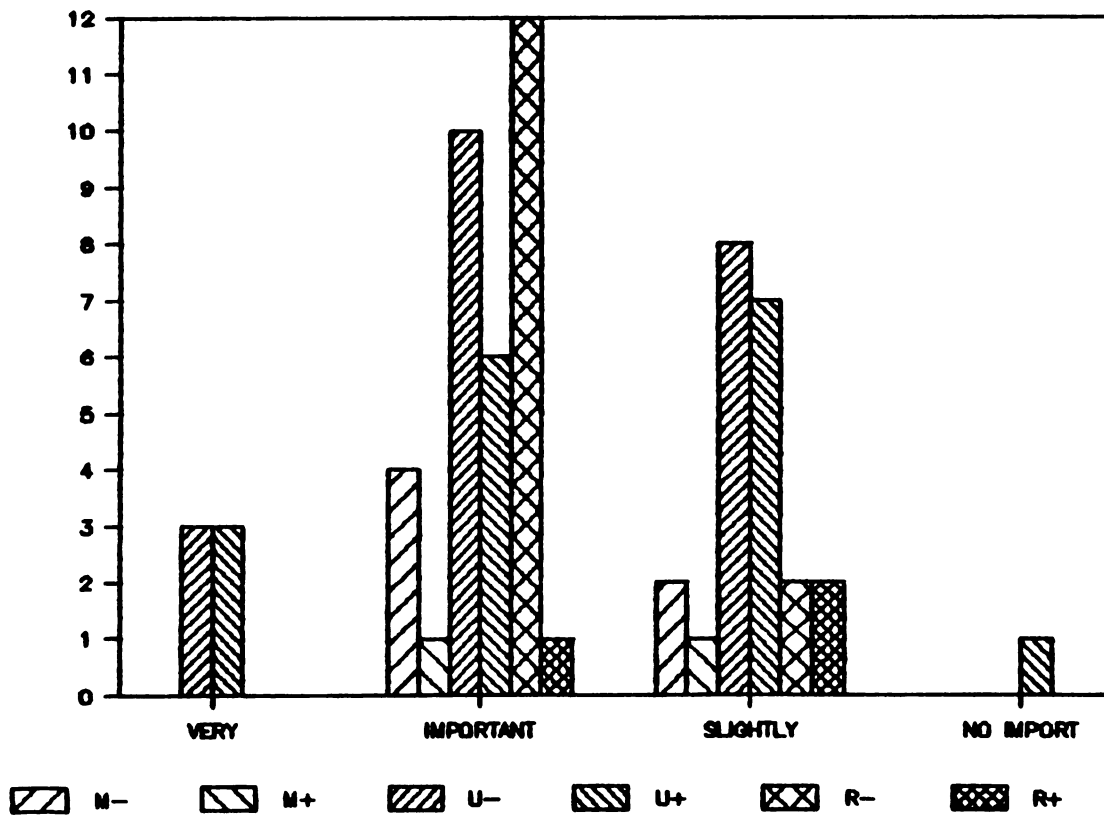
The importance respondents placed on the age of the defendant at the time of his/her first arrest.

(Range possibility- Very important to Not important).

GRAPH B.8

Responses presented in Bar graph format

Question 2c:



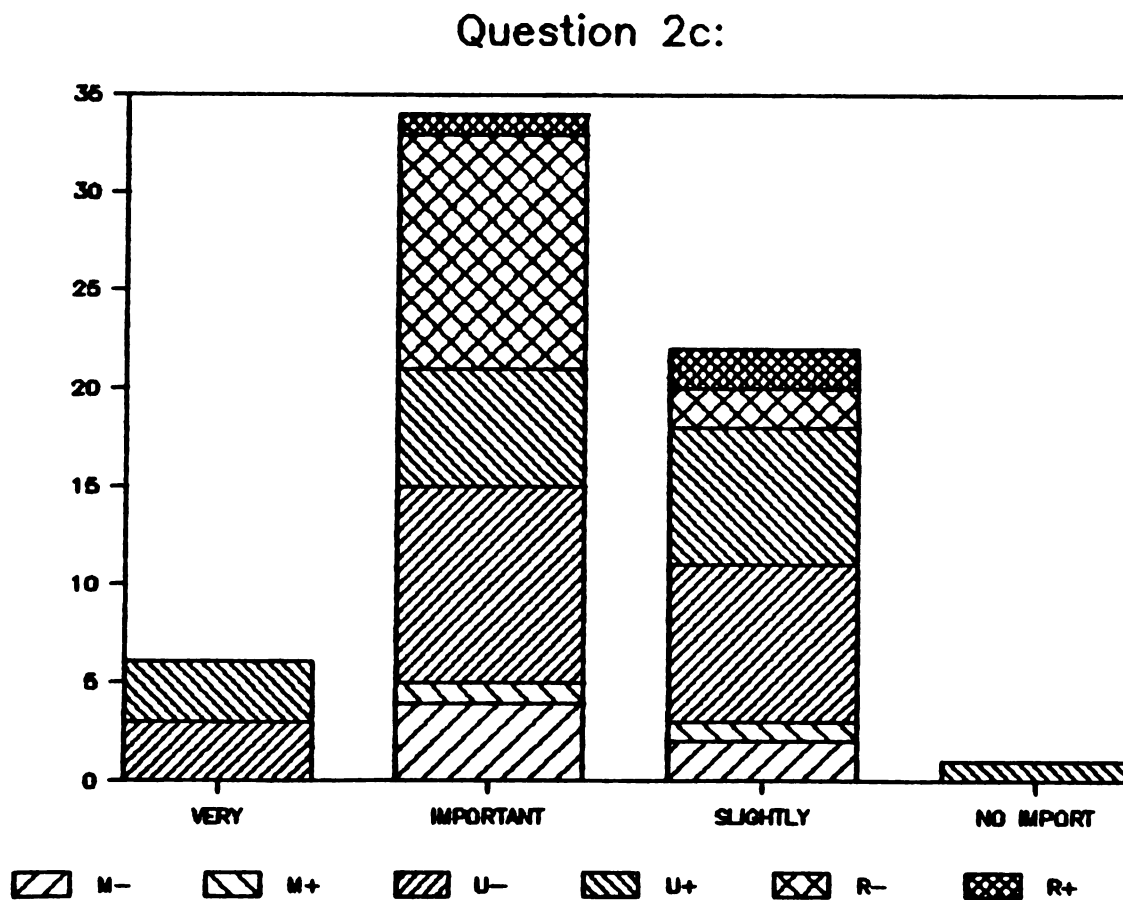
QUESTION 2c

The importance respondents placed on the age of the defendant at the time of his/her first arrest.

(Range possibility- Very important to Not important).

GRAPH B.9

Responses presented in Stacked Bar graph format



QUESTION 2d

The importance respondents placed on the number
of prior probation failures.

(Range possibility- Very important to Not important).

TABLE B.10

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	4.000	2.000	0.000	0.000	6.000
METRO	(Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN	(Pre S-G)	16.000	3.000	2.000	0.000	21.000
URBAN	(Post S-G)	9.000	8.000	1.000	0.000	18.000
RURAL	(Pre S-G)	7.000	7.000	0.000	0.000	14.000
RURAL	(Post S-G)	2.000	1.000	0.000	0.000	3.000
TOTAL		40.000	21.000	3.000	0.000	64.000
Standard Error		0.061	0.059	0.026	0.000	
		AVERAGE-		2.578		

QUESTION 2d

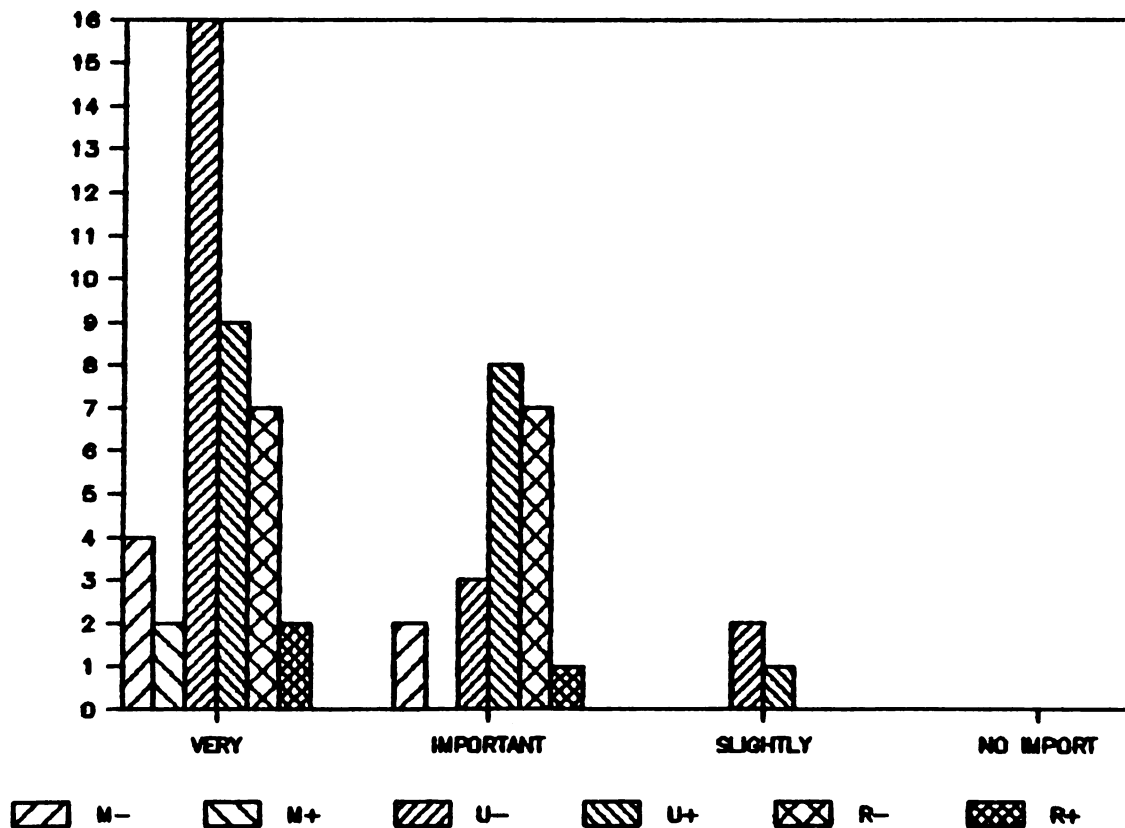
The importance respondents placed on the number of prior probation failures.

(Range possibility- Very important to Not important).

GRAPH B.11

Responses presented in Bar graph format

Question 2d:



QUESTION 2d

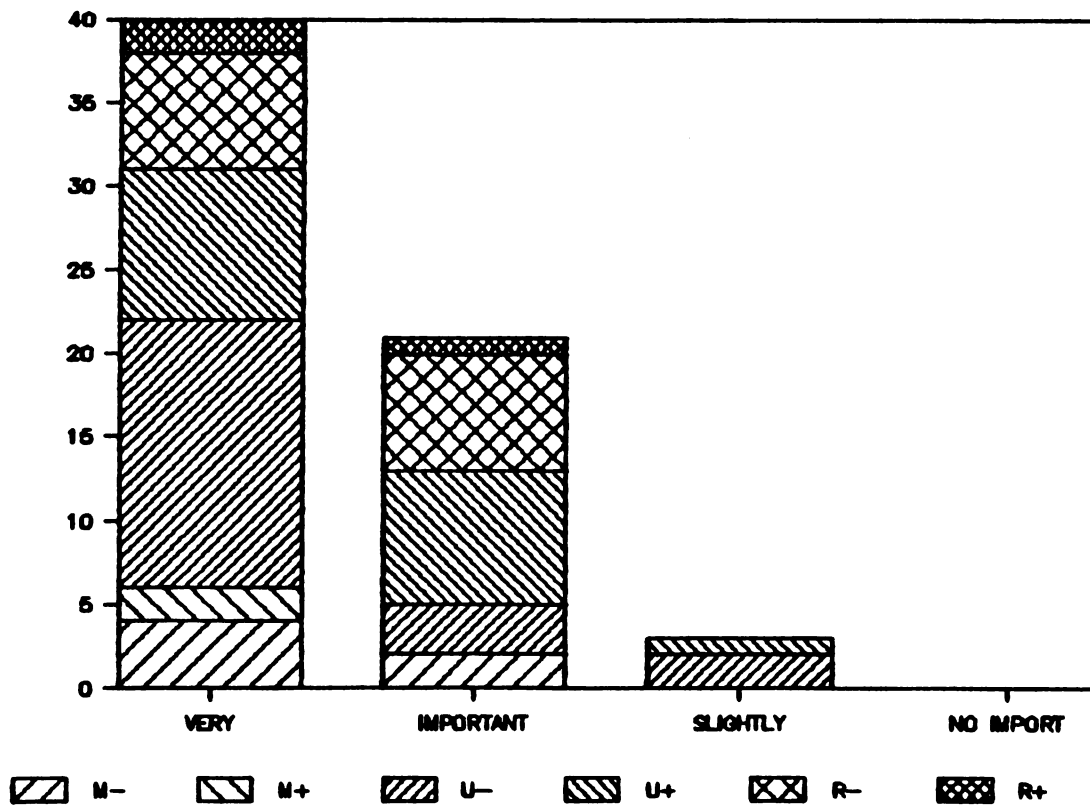
The importance respondents placed on the number of prior probation failures.

(Range possibility- Very important to Not important).

GRAPH B.12

Responses presented in Stacked Bar graph format

Question 2d:



QUESTION 2e

The amount of agreement of respondents on assessing the defendant's response(s) to prior therapeutic programs, when formulating a sentencing recommendation.

(Range possibility- Very important to Not important).

TABLE B.13

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	2.000	2.000	0.000	1.000	5.000
METRO	(Post S-G)	1.000	1.000	0.000	0.000	2.000
URBAN	(Pre S-G)	8.000	11.000	2.000	0.000	21.000
URBAN	(Post S-G)	5.000	9.000	3.000	0.000	17.000
RURAL	(Pre S-G)	4.000	10.000	0.000	0.000	14.000
RURAL	(Post S-G)	0.000	3.000	0.000	0.000	3.000
TOTAL		20.000	36.000	5.000	1.000	62.000
Standard Error		0.059	0.063	0.035	0.016	
		AVERAGE-		2.210		

QUESTION 2e

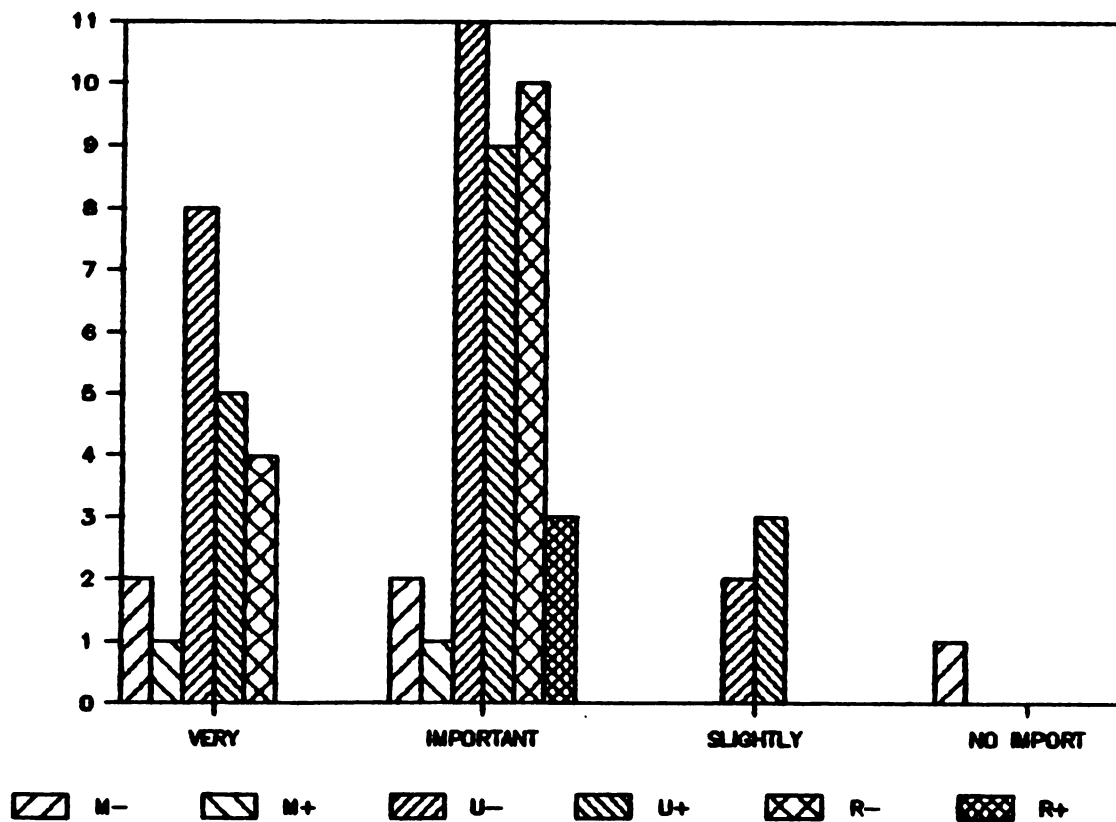
The amount of agreement of respondents on assessing the defendant's response(s) to prior therapeutic programs, when formulating a sentencing recommendation.

(Range possibility- Very important to Not important).

GRAPH B.14

Responses presented in Bar graph format

Question 2e:



QUESTION 2e

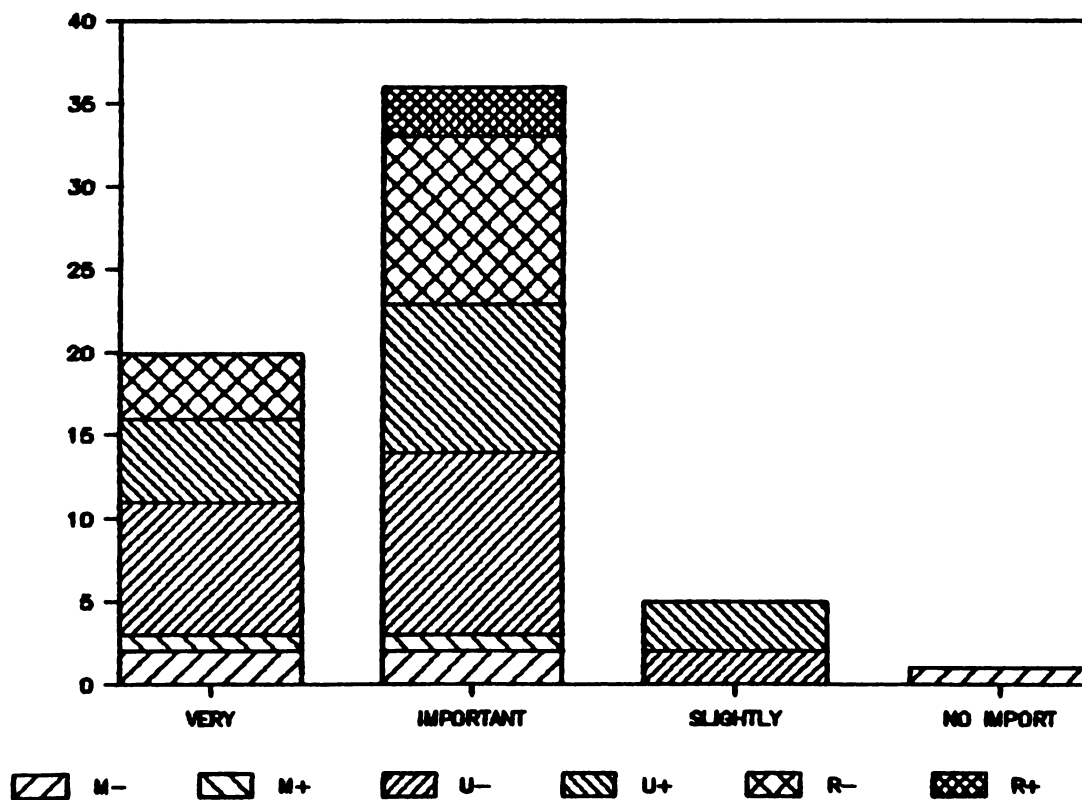
The amount of agreement of respondents on assessing the defendant's response(s) to prior therapeutic programs, when formulating a sentencing recommendation.

(Range possibility- Very important to Not important).

GRAPH B.15

Responses presented in Stacked Bar graph format

Question 2e:



QUESTION 2f

The amount of agreement with the consideration
given to the substance abuse problems of
the defendant.

(Range possibility- Very important to Not important).

TABLE B.16

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	2.000	3.000	1.000	0.000	6.000
METRO	(Post S-G)	1.000	0.000	1.000	0.000	2.000
URBAN	(Pre S-G)	9.000	8.000	4.000	0.000	21.000
URBAN	(Post S-G)	3.000	11.000	3.000	0.000	17.000
RURAL	(Pre S-G)	1.000	12.000	1.000	0.000	14.000
RURAL	(Post S-G)	0.000	3.000	0.000	0.000	3.000
TOTAL		16.000	37.000	10.000	0.000	63.000
Standard Error		0.055	0.062	0.046	0.000	
		AVERAGE-		2.095		

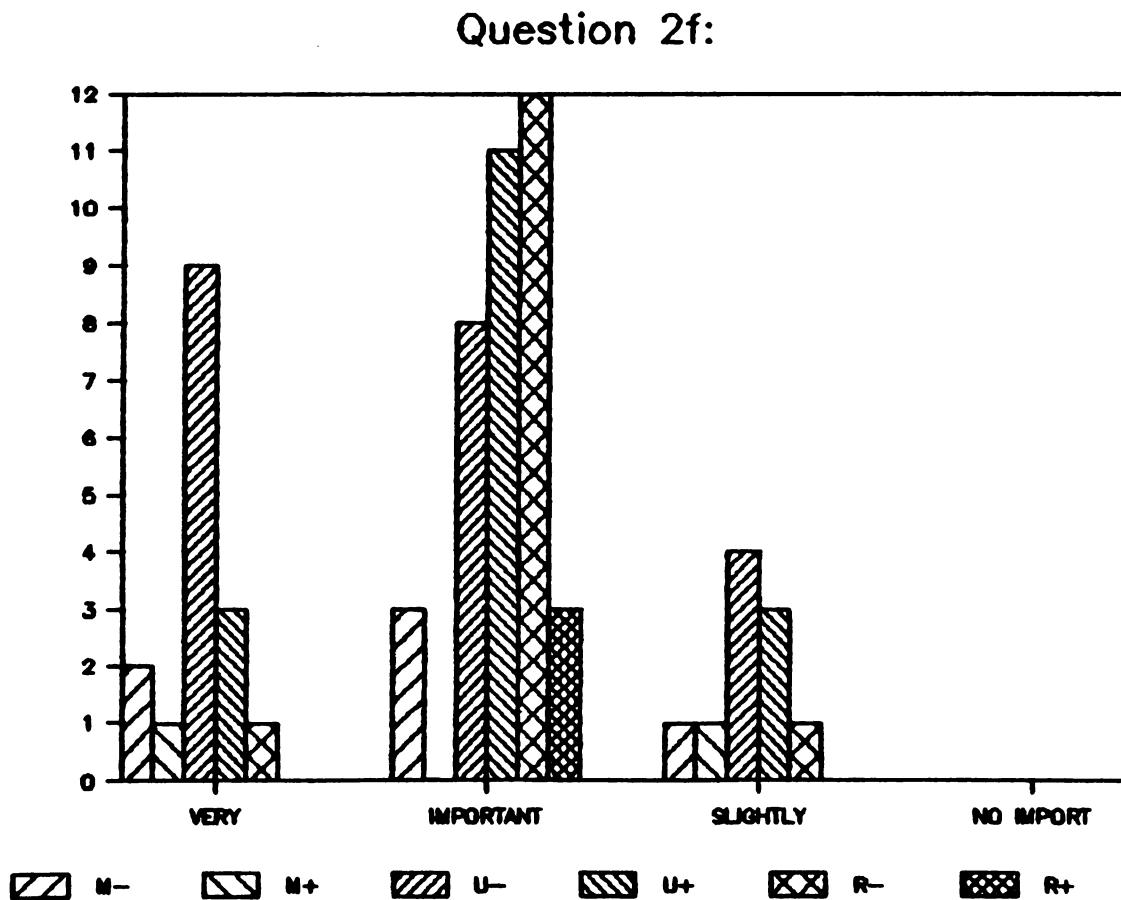
QUESTION 2f

The amount of agreement with the consideration
given to the substance abuse problems of
the defendant.

(Range possibility- Very important to Not important).

GRAPH B.17

Responses presented in Bar graph format



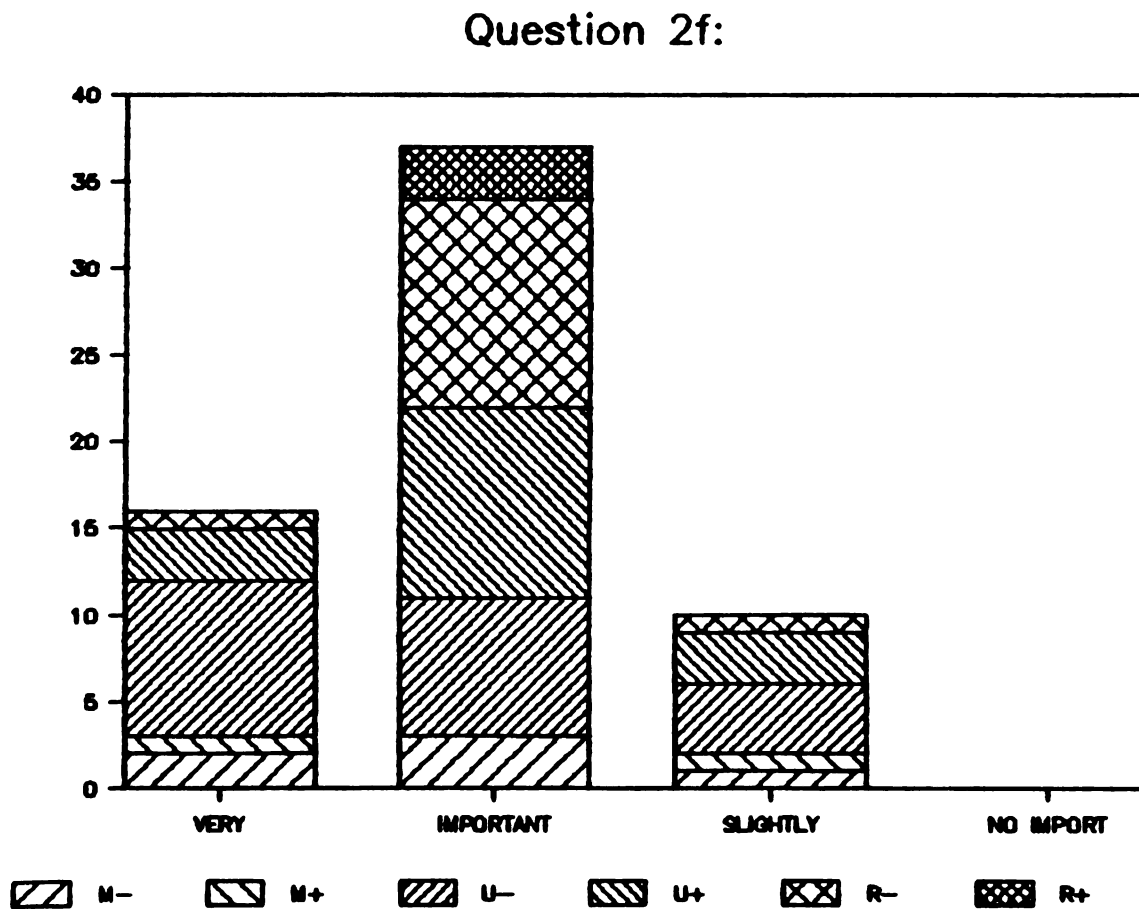
QUESTION 2f

The amount of agreement with the consideration given to the substance abuse problems of the defendant.

(Range possibility- Very important to Not important).

GRAPH B.18

Responses presented in Stacked Bar graph format



QUESTION 2g

The agreement of respondents in considering
residential stability of a defendant, as measured
by the number of housing changes in the past 12 month

(Range possibility- Very important to Not important).

TABLE B.19

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	0.000	2.000	3.000	1.000	6.000
METRO	(Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN	(Pre S-G)	1.000	3.000	12.000	5.000	21.000
URBAN	(Post S-G)	0.000	3.000	6.000	7.000	16.000
RURAL	(Pre S-G)	0.000	4.000	10.000	1.000	15.000
RURAL	(Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL		1.000	14.000	34.000	14.000	63.000
Standard Error		0.016	0.052	0.063	0.052	
		AVERAGE-		1.032		

QUESTION 2g

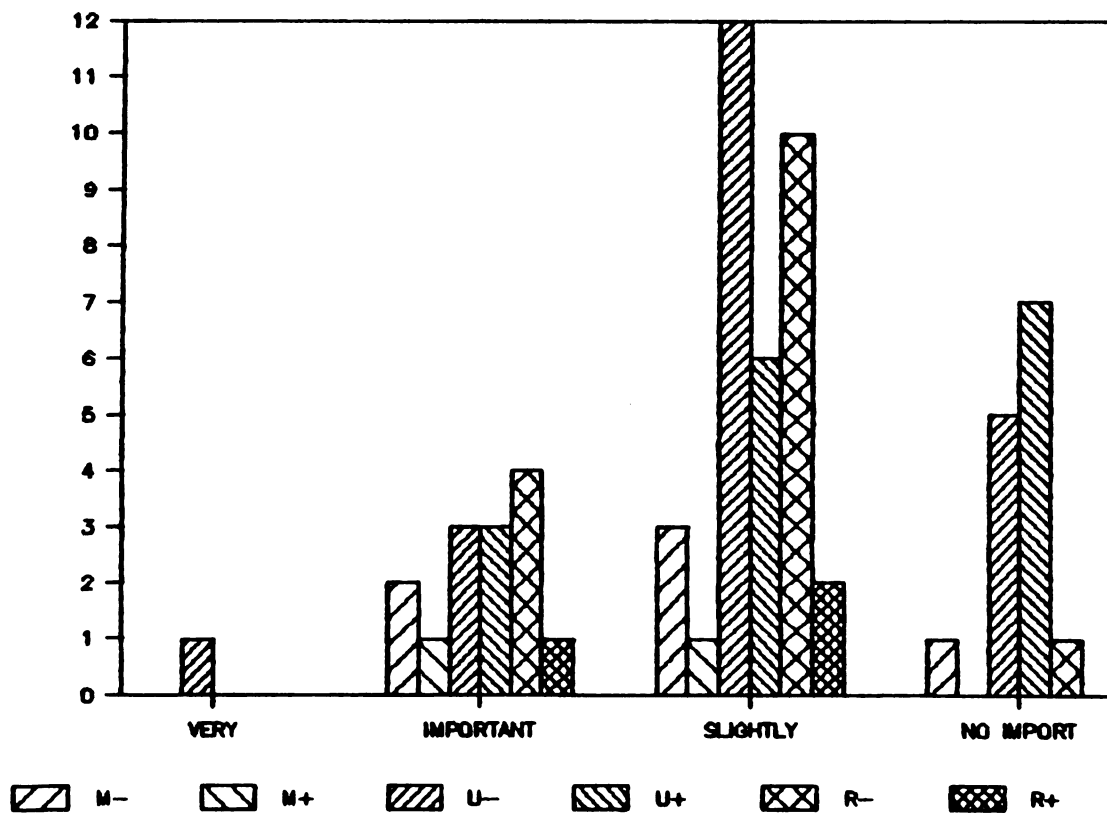
The agreement of respondents in considering residential stability of a defendant, as measured by the number of housing changes in the past 12 month

(Range possibility- Very important to Not important).

GRAPH B.20

Responses presented in Bar graph format

Question 2g:



QUESTION 2g

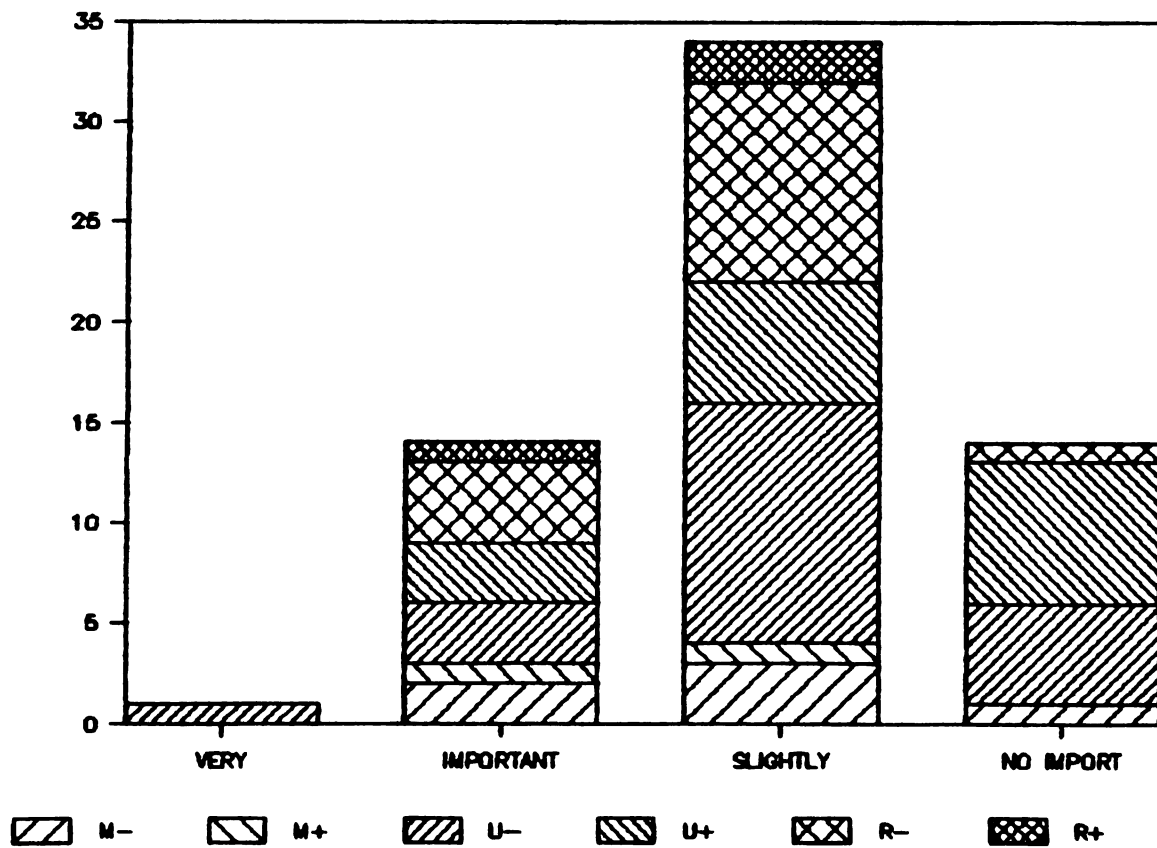
The agreement of respondents in considering residential stability of a defendant, as measured by the number of housing changes in the past 12 month

(Range possibility- Very important to Not important).

GRAPH B.21

Responses presented in Stacked Bar graph format

Question 2g:



QUESTION 2h

The amount of consideration given by respondents
to the employment stability of the defendant.

(Range possibility- Very important to Not important).

TABLE B.22

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	0.000	3.000	3.000	0.000	6.000
METRO	(Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN	(Pre S-G)	1.000	6.000	13.000	1.000	21.000
URBAN	(Post S-G)	1.000	9.000	6.000	1.000	17.000
RURAL	(Pre S-G)	1.000	3.000	10.000	0.000	14.000
RURAL	(Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL		3.000	23.000	35.000	2.000	63.000
Standard Error		0.027	0.061	0.063	0.022	
		AVERAGE-		1.429		

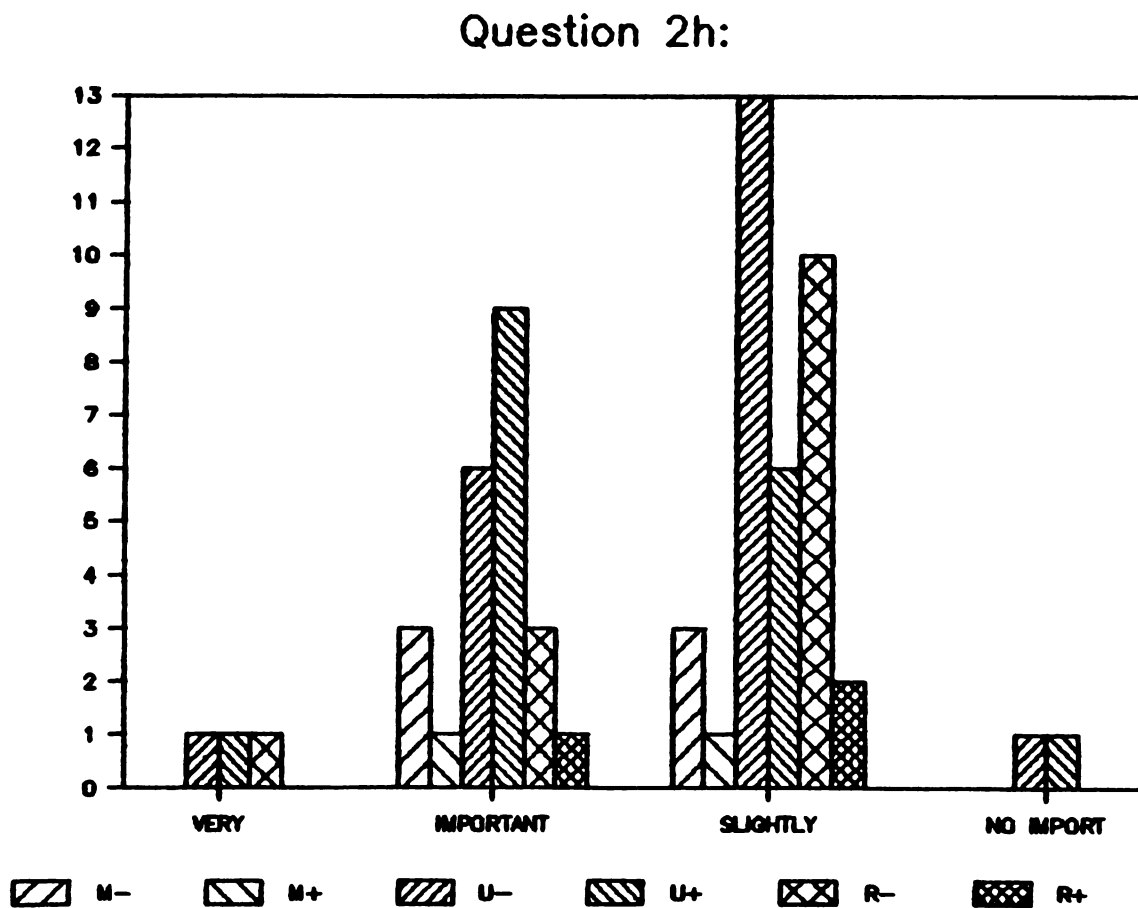
QUESTION 2h

The amount of consideration given by respondents to the employment stability of the defendant.

(Range possibility- Very important to Not important).

GRAPH B.23

Responses presented in Bar graph format



QUESTION 2h

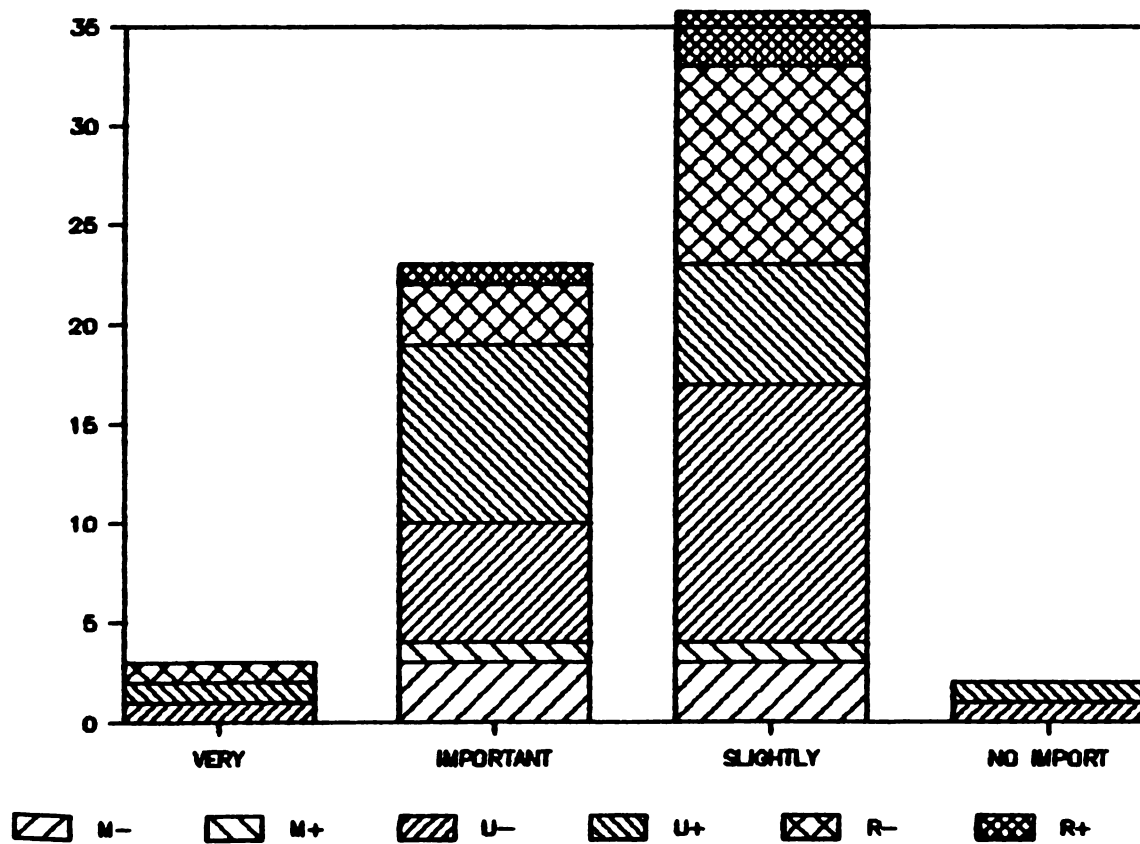
The amount of consideration given by respondents to the employment stability of the defendant.

(Range possibility- Very important to Not important).

GRAPH B.24

Responses presented in Stacked Bar graph format

Question 2h:



QUESTION 2i

The amount of consideration given by respondents to employment stability, as measured by the longest term of employment held by the defendant.

(Range possibility- Very important to Not important).

TABLE B.25

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	0.000	4.000	2.000	0.000	6.000
METRO	(Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN	(Pre S-G)	1.000	7.000	9.000	4.000	21.000
URBAN	(Post S-G)	1.000	6.000	8.000	2.000	17.000
RURAL	(Pre S-G)	0.000	3.000	11.000	0.000	14.000
RURAL	(Post S-G)	1.000	1.000	1.000	0.000	3.000
TOTAL		3.000	22.000	32.000	6.000	63.000
Standard Error		0.027	0.060	0.063	0.037	

AVERAGE- 1.349

QUESTION 2i

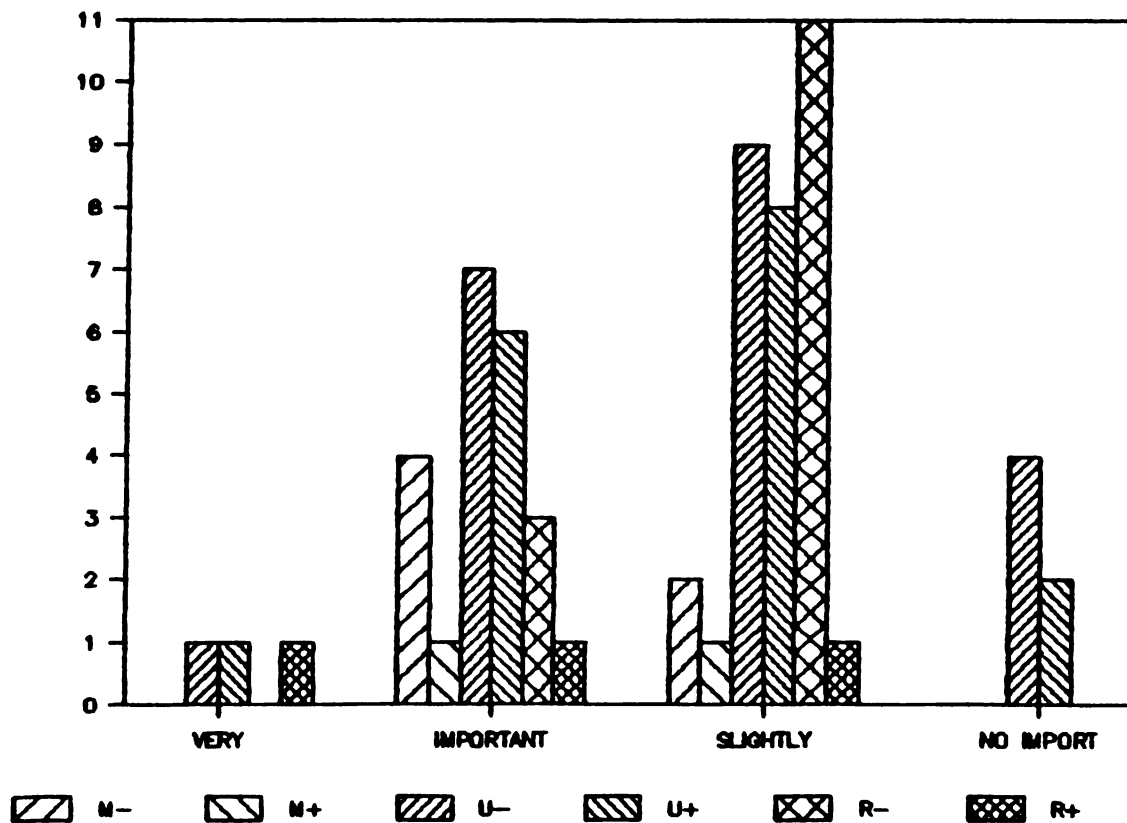
The amount of consideration given by respondents to employment stability, as measured by the longest term of employment held by the defendant.

(Range possibility- Very important to Not important).

GRAPH B.26

Responses presented in Bar graph format

Question 2i:



QUESTION 21

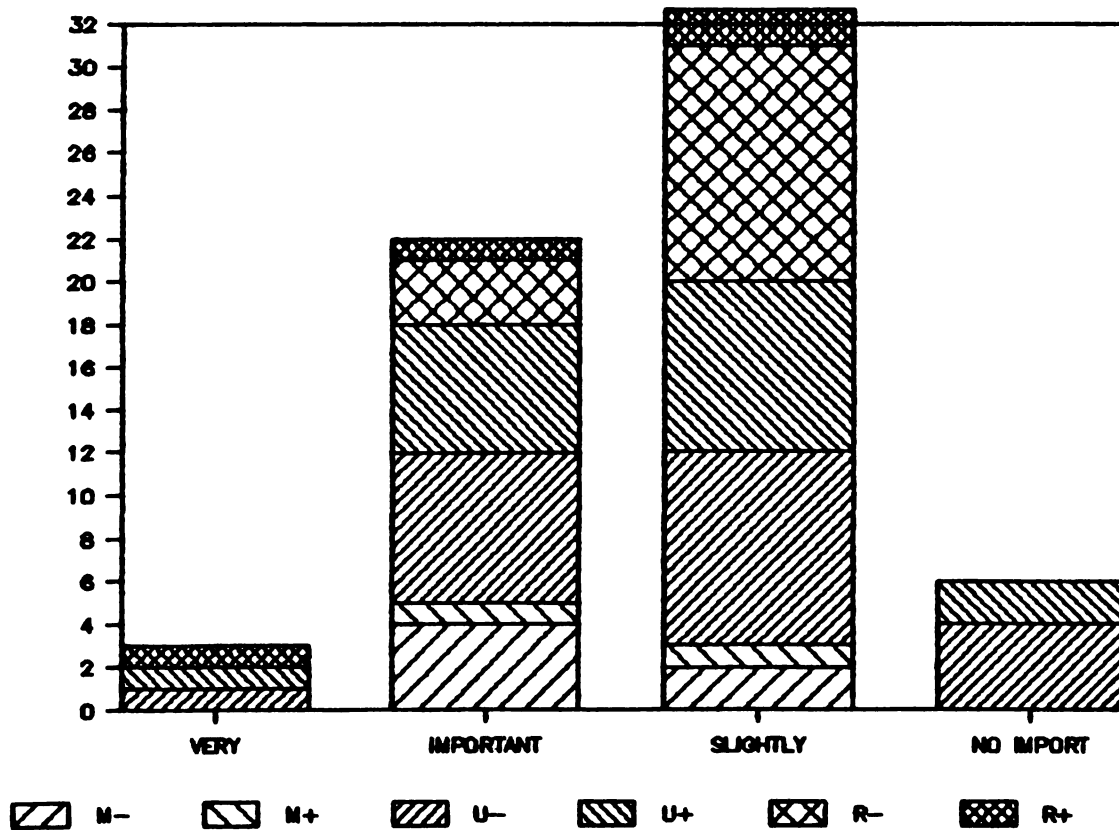
The amount of consideration given by respondents to employment stability, as measured by the longest term of employment held by the defendant.

(Range possibility- Very important to Not important).

GRAPH B.27

Responses presented in Stacked Bar graph format

Question 2i:



QUESTION 2j

The amount of consideration given by the respondents to the defendant's number of prior arrests and convictions for offences similar to the presenting charge.

(Range possibility- Very important to Not important).

TABLE B.28

Responses presented in Tabular format

		VERY IMPORTANT	IMPORTANT	SLIGHTLY IMPORTANT	NO IMPORT DONT KNOW	SUM
METRO	(Pre S-G)	2.000	4.000	0.000	0.000	6.000
METRO	(Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN	(Pre S-G)	12.000	6.000	1.000	1.000	20.000
URBAN	(Post S-G)	12.000	5.000	0.000	0.000	17.000
RURAL	(Pre S-G)	12.000	2.000	0.000	0.000	14.000
RURAL	(Post S-G)	2.000	0.000	0.000	0.000	2.000
TOTAL		42.000	17.000	1.000	1.000	61.000
Standard Error		0.059	0.057	0.016	0.016	
		AVERAGE-		2.639		

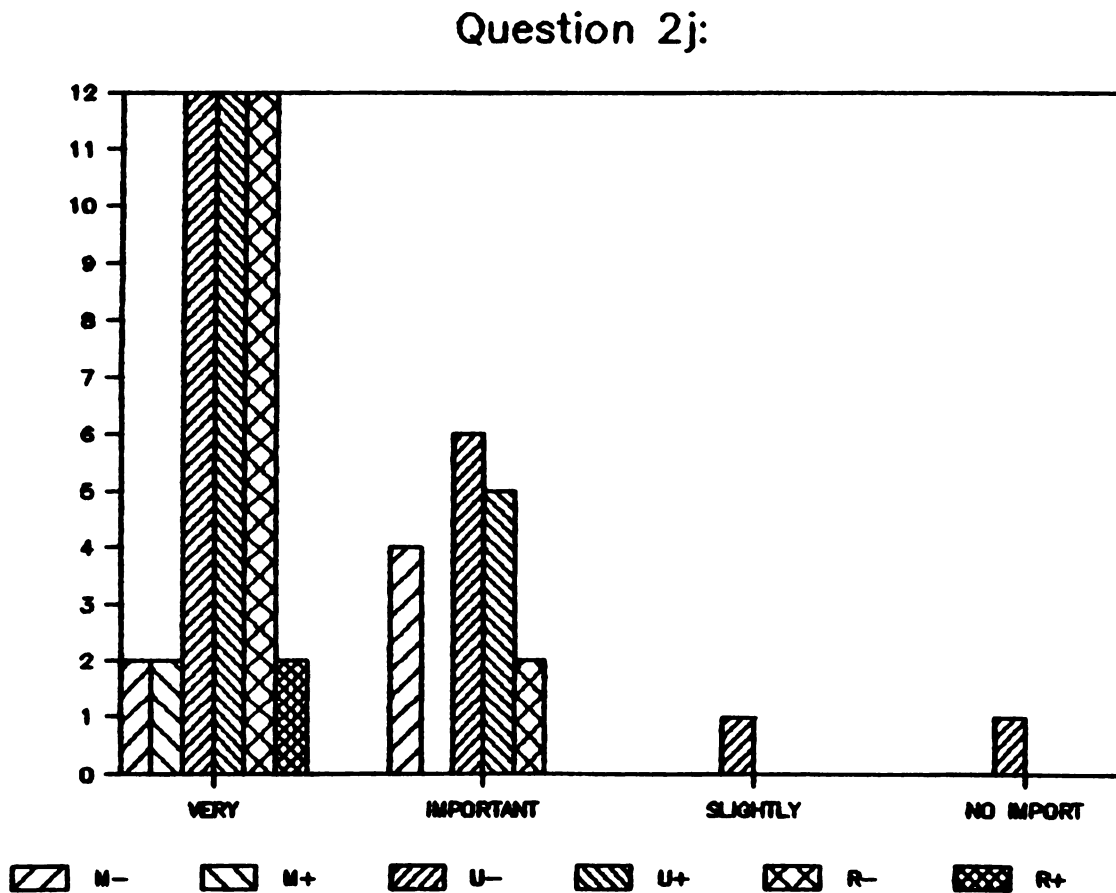
QUESTION 2j

The amount of consideration given by the respondents to the defendant's number of prior arrests and convictions for offences similar to the presenting charge.

(Range possibility- Very important to Not important).

GRAPH B.29

Responses presented in Bar graph format



QUESTION 2j

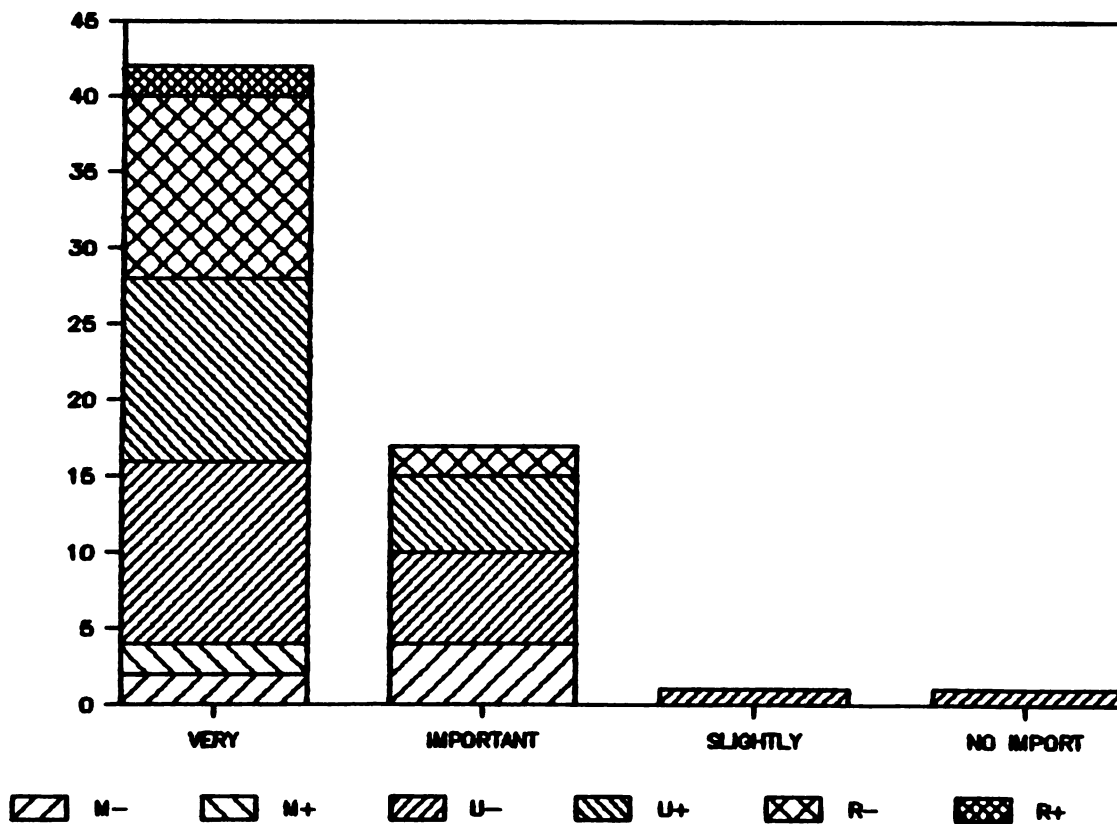
The amount of consideration given by the respondents to the defendant's number of prior arrests and convictions for offences similar to the presenting charge.

(Range possibility- Very important to Not important).

GRAPH B.30

Responses presented in Stacked Bar graph format

Question 2j:



QUESTION 3

An indicator of how often the sentencing guidelines are consulted as a sentencing recommendation is being formed.

(Response range: Always to Never)

TABLE B.31

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	4.000	1.000	1.000	6.000
METRO (Post S-G)	0.000	1.000	1.000	0.000	2.000
URBAN (Pre S-G)	2.000	8.000	7.000	4.000	21.000
URBAN (Post S-G)	2.000	10.000	4.000	0.000	16.000
RURAL (Pre S-G)	2.000	5.000	5.000	2.000	14.000
RURAL (Post S-G)	0.000	3.000	0.000	0.000	3.000
TOTAL	6.000	31.000	18.000	7.000	62.000
Standard Error	0.038	0.064	0.058	0.040	
AVERAGE-			1.581		

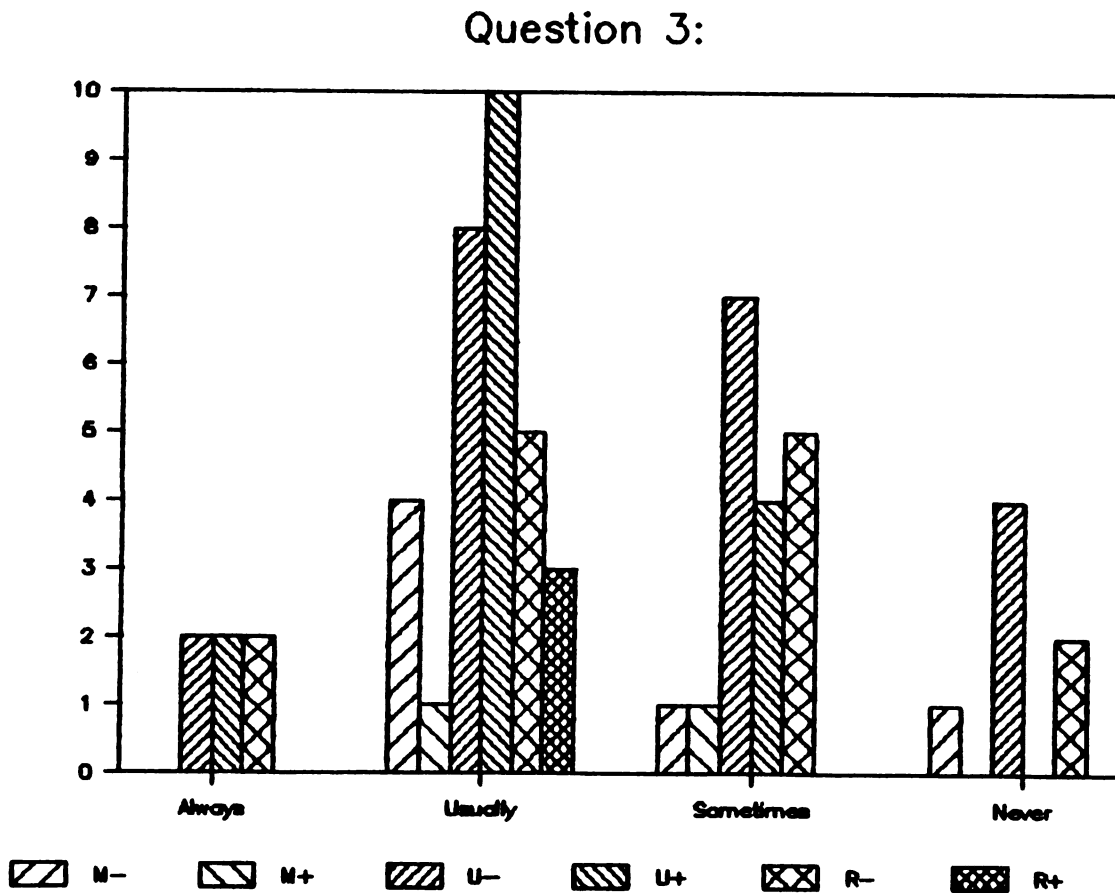
QUESTION 3

An indicator of how often the sentencing guidelines are consulted as a sentencing recommendation is being formed.

(Response range: Always to Never)

GRAPH B.32

Responses presented in Bar graph format



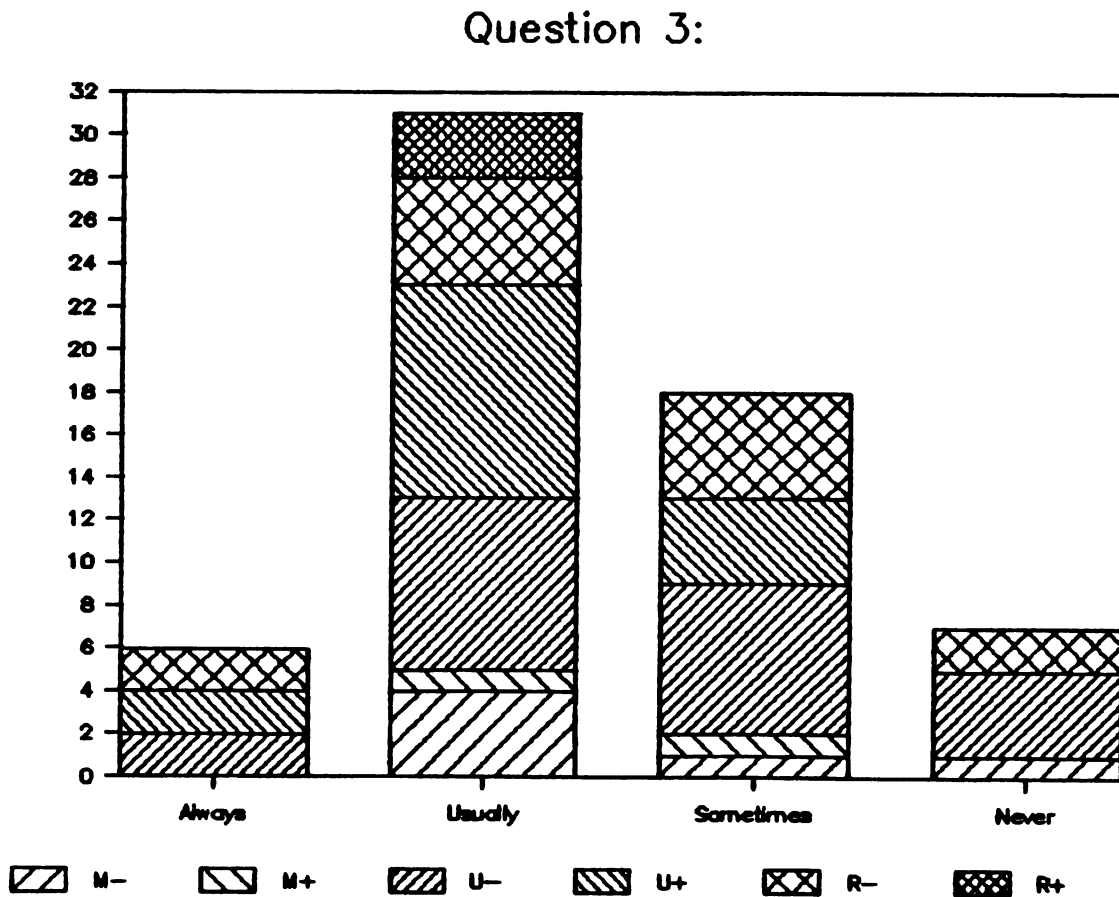
QUESTION 3

An indicator of how often the sentencing guidelines are consulted as a sentencing recommendation is being formed.

(Response range: Always to Never)

GRAPH B.33

Responses presented in Stacked Bar graph format



QUESTION 4

The amount of change the Sentencing Guidelines have made in the formulation of a sentencing recommendation.

TABLE B.34

Responses presented in Tabular format

		Greatly	Moderate	Occasional	Not at all	SUM
METRO	(Pre S-G)	0.000	2.000	2.000	2.000	6.000
METRO	(Post S-G)	0.000	0.000	2.000	0.000	2.000
URBAN	(Pre S-G)	1.000	2.000	10.000	8.000	21.000
URBAN	(Post S-G)	0.000	3.000	10.000	3.000	16.000
RURAL	(Pre S-G)	1.000	1.000	8.000	4.000	14.000
RURAL	(Post S-G)	0.000	1.000	2.000	0.000	3.000
TOTAL		2.000	9.000	34.000	17.000	62.000
Standard Error		0.022	0.045	0.063	0.057	
		AVERAGE-		0.935		

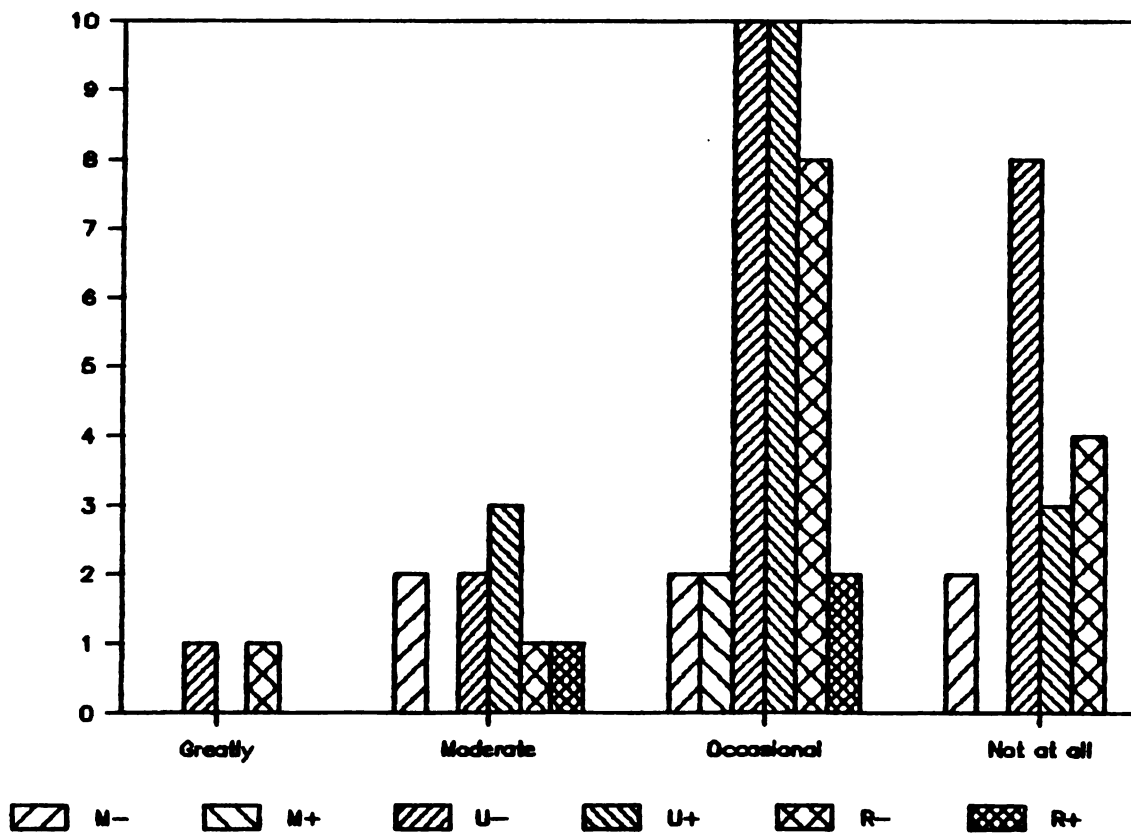
QUESTION 4

The amount of change the Sentencing Guidelines have made in the formulation of a sentencing recommendation.

GRAPH B.35

Responses presented in Bar graph format

Question 4:



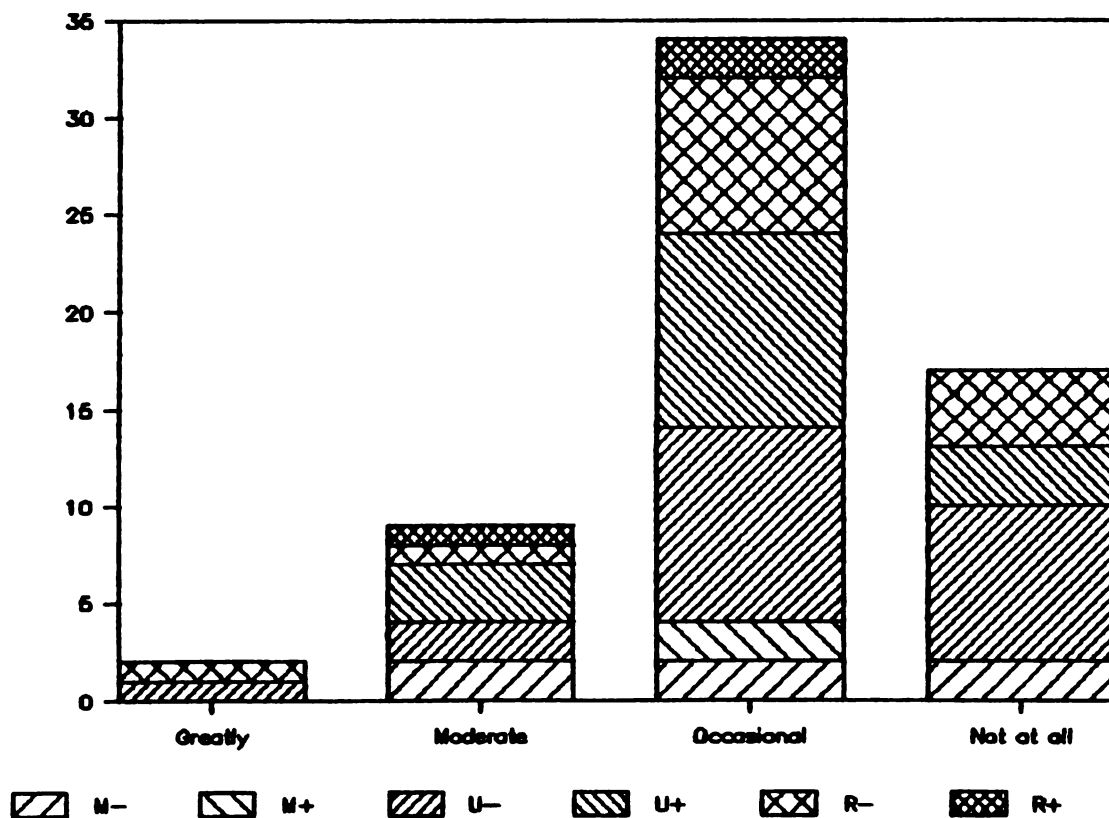
QUESTION 4

The amount of change the Sentencing Guidelines have made in the formulation of a sentencing recommendation.

GRAPH B.36

Responses presented in Stacked Bar graph format

Question 4:



QUESTION 6

An indicator of how often case staffings are held in the individual offices regarding scoring problems or concerns with the Sentencing Guidelines.

TABLE B.37

Responses presented in Tabular format

		Every Case	>1/month	As Needed	Never	SUM
METRO	(Pre S-G)	0.000	0.000	5.000	1.000	6.000
METRO	(Post S-G)	1.000	0.000	0.000	1.000	2.000
URBAN	(Pre S-G)	0.000	0.000	14.000	7.000	21.000
URBAN	(Post S-G)	0.000	1.000	8.000	7.000	16.000
RURAL	(Pre S-G)	0.000	1.000	4.000	9.000	14.000
RURAL	(Post S-G)	0.000	0.000	2.000	1.000	3.000
TOTAL		1.000	2.000	33.000	26.000	62.000
Standard Error		0.016	0.022	0.063	0.063	
			AVERAGE-	0.645		

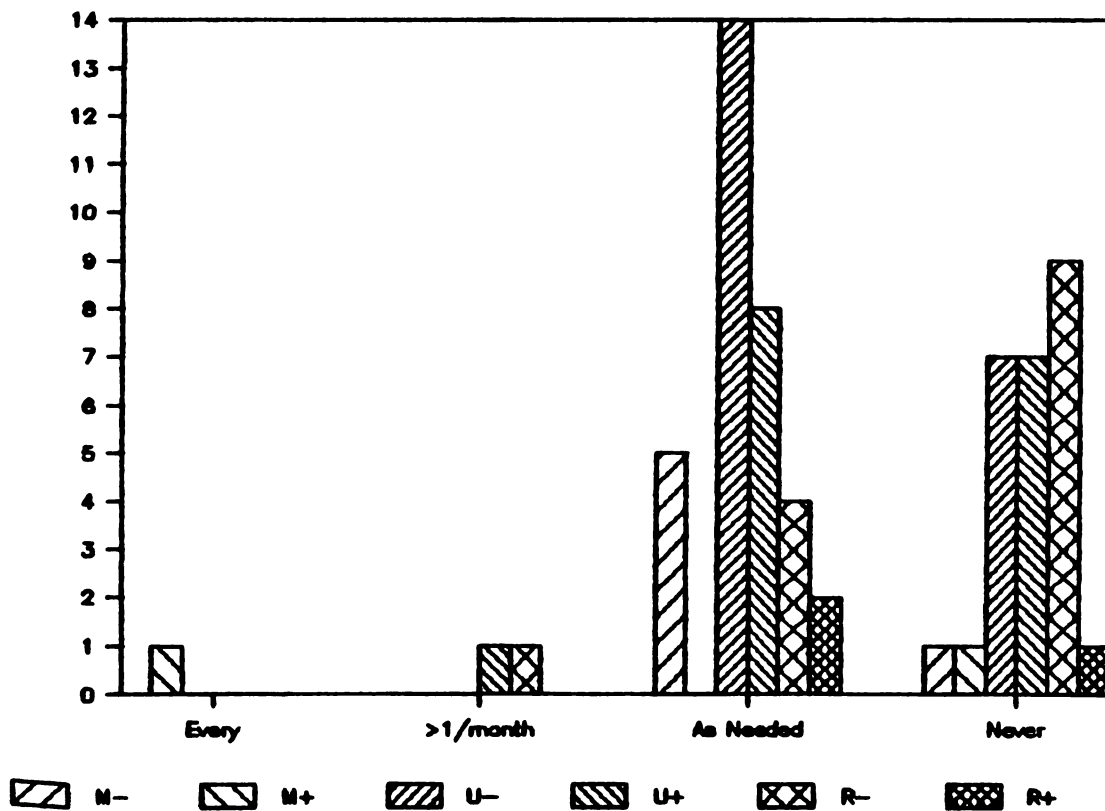
QUESTION 6

An indicator of how often case staffings are held in the individual offices regarding scoring problems or concerns with the Sentencing Guidelines.

GRAPH B.38

Responses presented in Bar graph format

Question 6:



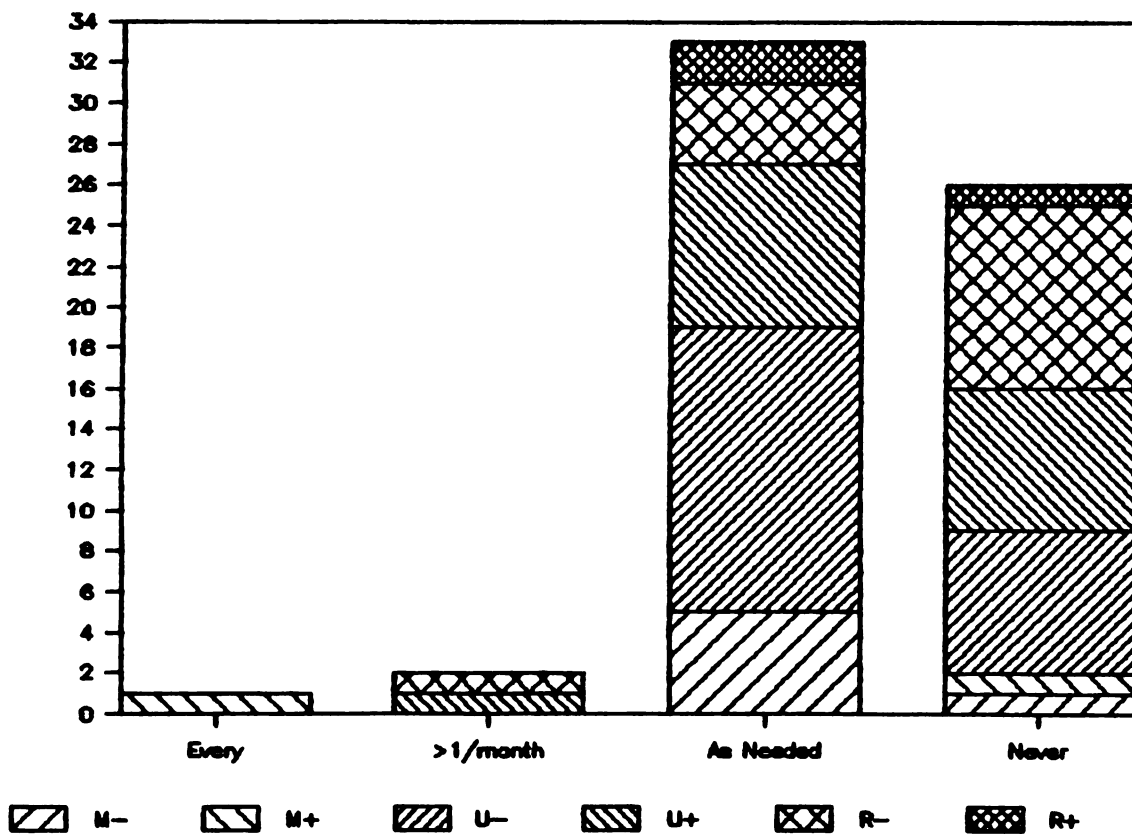
QUESTION 6

An indicator of how often case staffings are held in the individual offices regarding scoring problems or concerns with the Sentencing Guidelines.

GRAPH B.39

Responses presented in Stacked Bar graph format

Question 6:



QUESTION 6a

How often difficulties are noted in
reaching a consensus of agreement
when case staffings are held.

TABLE B.40

Responses presented in Tabular format

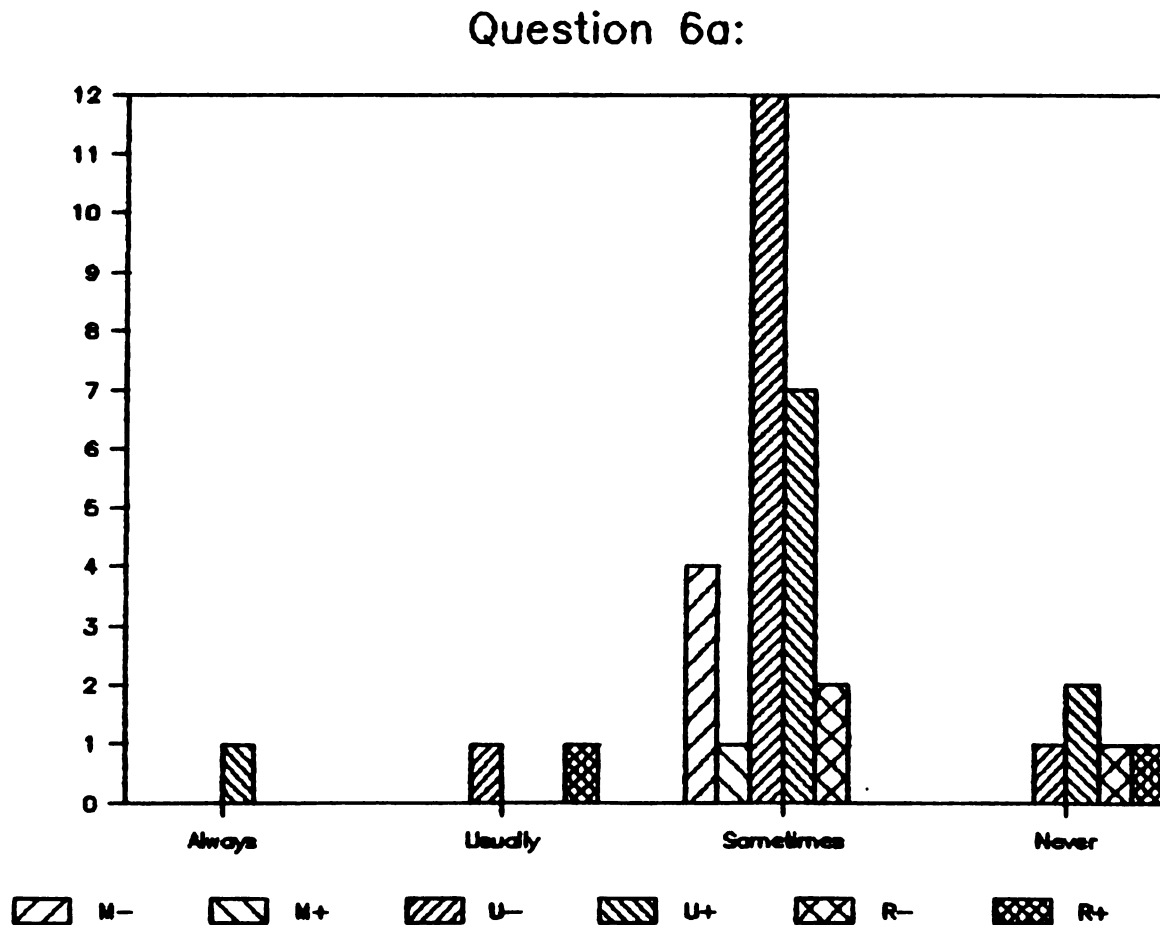
		Always	Usually	Sometimes	Never	SUM
METRO	(Pre S-G)	0.000	0.000	4.000	0.000	4.000
METRO	(Post S-G)	0.000	0.000	1.000	0.000	1.000
URBAN	(Pre S-G)	0.000	1.000	12.000	1.000	14.000
URBAN	(Post S-G)	1.000	0.000	7.000	2.000	10.000
RURAL	(Pre S-G)	0.000	0.000	2.000	1.000	3.000
RURAL	(Post S-G)	0.000	1.000	0.000	1.000	2.000
TOTAL		1.000	2.000	26.000	5.000	34.000
Standard Error		0.029	0.040	0.073	0.061	
		AVERAGE-		0.971		

QUESTION 6a

How often difficulties are noted in reaching a consensus of agreement when case staffings are held.

GRAPH B.41

Responses presented in Bar graph format



QUESTION 6a

How often difficulties are noted in reaching a consensus of agreement when case staffings are held.

GRAPH B.42

Responses presented in Stacked Bar graph format

Question 6a:



QUESTION 6b

An indicator of how often a presentence investigator seeks assistance on interpretational problems from persons outside his/her own office.

--- Examples are police, judges, prosecutors, etc.

TABLE B.43

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	0.000	1.000	1.000
METRO (Post S-G)	0.000	0.000	1.000	0.000	1.000
URBAN (Pre S-G)	1.000	4.000	6.000	3.000	14.000
URBAN (Post S-G)	0.000	2.000	6.000	1.000	9.000
RURAL (Pre S-G)	1.000	1.000	2.000	0.000	4.000
RURAL (Post S-G)	0.000	1.000	0.000	1.000	2.000
TOTAL	2.000	8.000	15.000	6.000	31.000
Standard Error	0.044	0.079	0.090	0.071	
		AVERAGE-	1.194		

QUESTION 6b

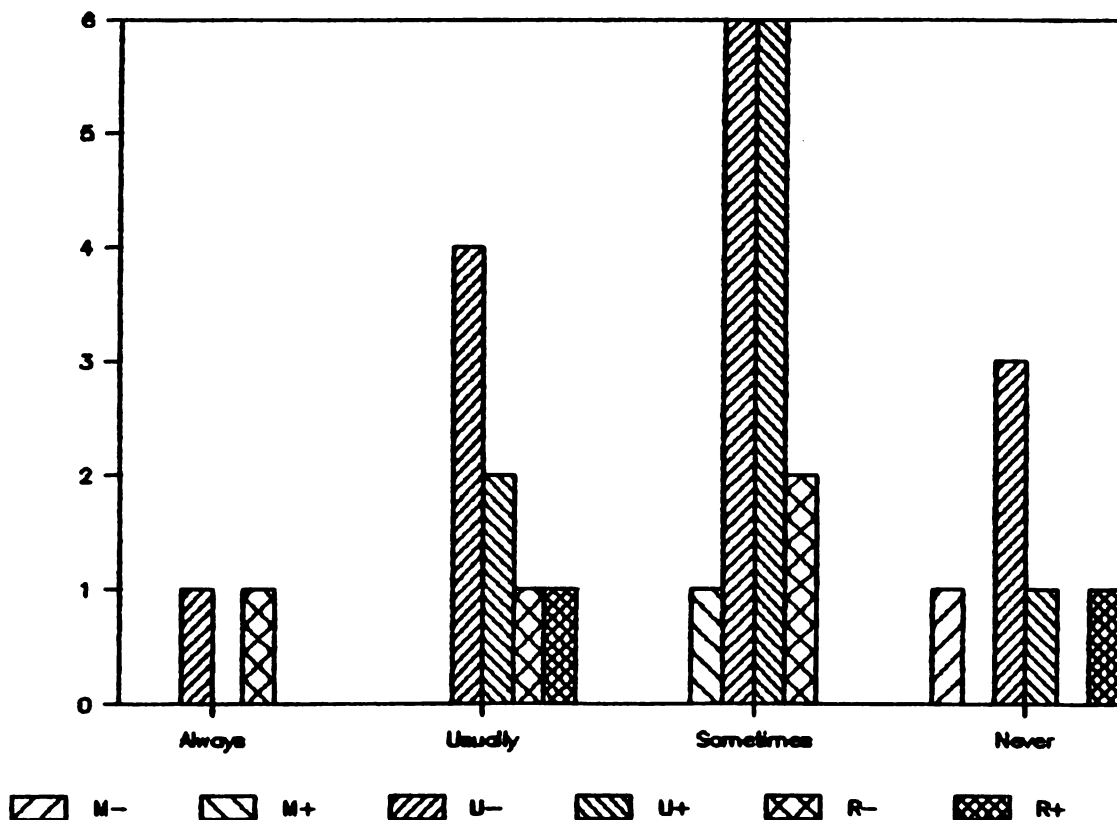
An indicator of how often a presentence investigator seeks assistance on interpretational problems from persons outside his/her own office.

-- Examples are police, judges, prosecutors, etc.

GRAPH B.44

Responses presented in Bar graph format

Question 6b:



QUESTION 6b

An indicator of how often a presentence investigator seeks assistance on interpretational problems from persons outside his/her own office.

— Examples are police, judges, prosecutors, etc.

GRAPH B.45

Responses presented in Stacked Bar graph format

Question 6b:



QUESTION 6d

An indicator of the amount of change on the Sentencing Guidelines scoring elements after a case staffing.

TABLE B.46

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	3.000	1.000	4.000
METRO (Post S-G)	0.000	0.000	1.000	0.000	1.000
URBAN (Pre S-G)	0.000	0.000	11.000	2.000	13.000
URBAN (Post S-G)	0.000	2.000	7.000	0.000	9.000
RURAL (Pre S-G)	0.000	1.000	3.000	0.000	4.000
RURAL (Post S-G)	0.000	0.000	2.000	0.000	2.000
TOTAL	0.000	3.000	27.000	3.000	33.000
Standard Error	0.000	0.050	0.067	0.050	
		AVERAGE-	1.000		

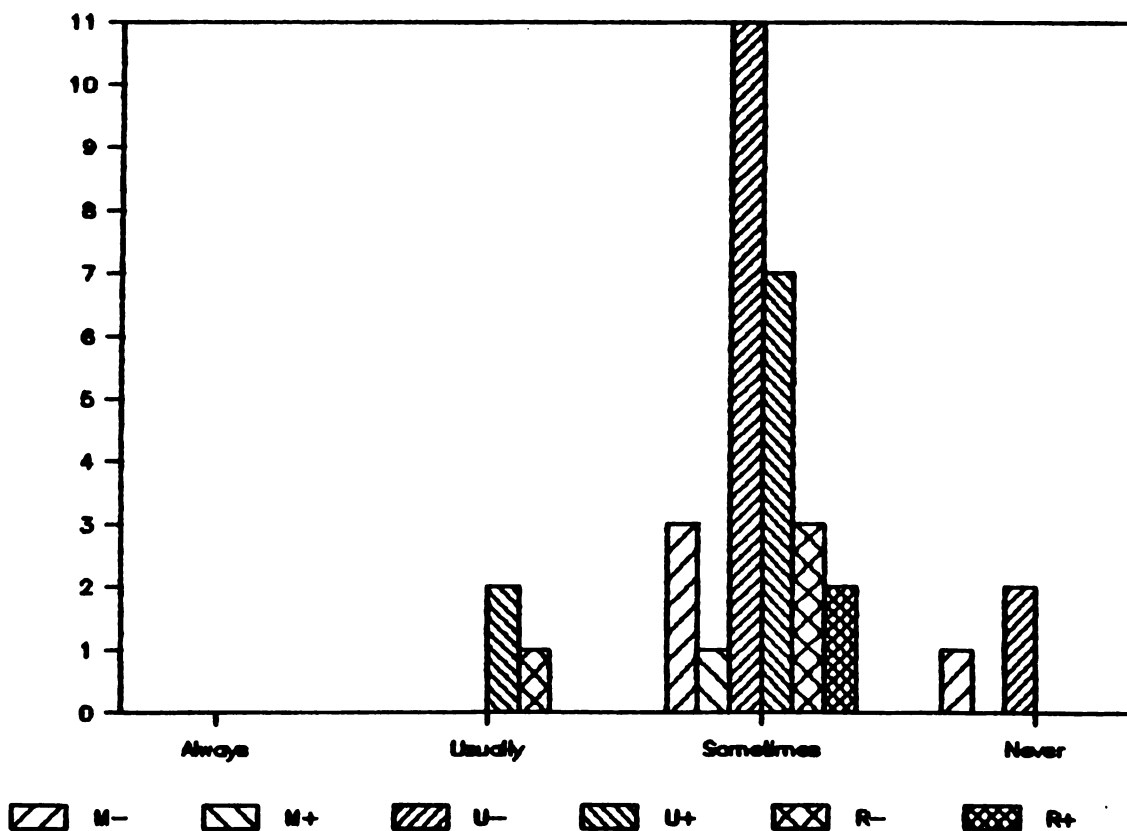
QUESTION 6d

An indicator of the amount of change on the Sentencing Guidelines scoring elements after a case staffing.

GRAPH B.47

Responses presented in Bar graph format

Question 6d:



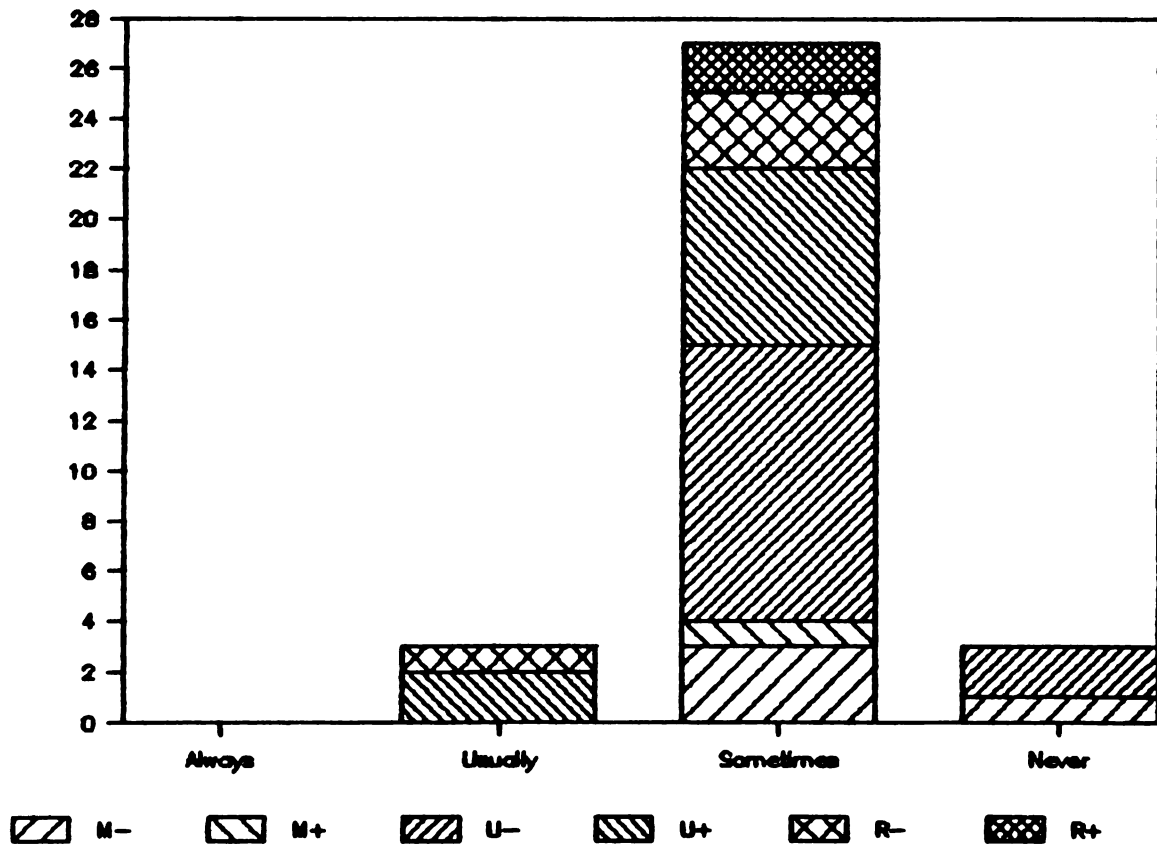
QUESTION 6d

An indicator of the amount of change on the Sentencing Guidelines scoring elements after a case staffing.

GRAPH B.48

Responses presented in Stacked Bar graph format

Question 6d:



QUESTION 7

An indicator of who is responsible for
preparing the Sentencing Guidelines Worksheet.

TABLE B.49

Responses presented in Tabular format

		Probation Agent	Supervisor	Ct. Clerk/ Secretary	Judge	
METRO	(Pre S-G)	6.000	0.000	0.000	0.000	6.000
METRO	(Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN	(Pre S-G)	21.000	0.000	0.000	0.000	21.000
URBAN	(Post S-G)	16.000	0.000	0.000	1.000	17.000
RURAL	(Pre S-G)	14.000	0.000	0.000	0.000	14.000
RURAL	(Post S-G)	3.000	0.000	0.000	0.000	3.000
TOTAL		62.000	0.000	0.000	1.000	63.000
Standard Error		0.016	0.000	0.000	0.016	

QUESTION 9A

An indicator of how often a colleague is contacted when scoring problems are encountered.

TABLE B.50

Responses presented in Tabular format

		Always	Usually	Sometimes	Never	SUM
METRO	(Pre S-G)	0.000	4.000	2.000	0.000	6.000
METRO	(Post S-G)	0.000	0.000	2.000	0.000	2.000
URBAN	(Pre S-G)	3.000	7.000	9.000	1.000	20.000
URBAN	(Post S-G)	4.000	8.000	5.000	0.000	17.000
RURAL	(Pre S-G)	2.000	3.000	5.000	2.000	12.000
RURAL	(Post S-G)	1.000	1.000	1.000	1.000	4.000
TOTAL		10.000	23.000	24.000	4.000	61.000
Standard Error		0.047	0.062	0.063	0.032	
			AVERAGE-	1.639		

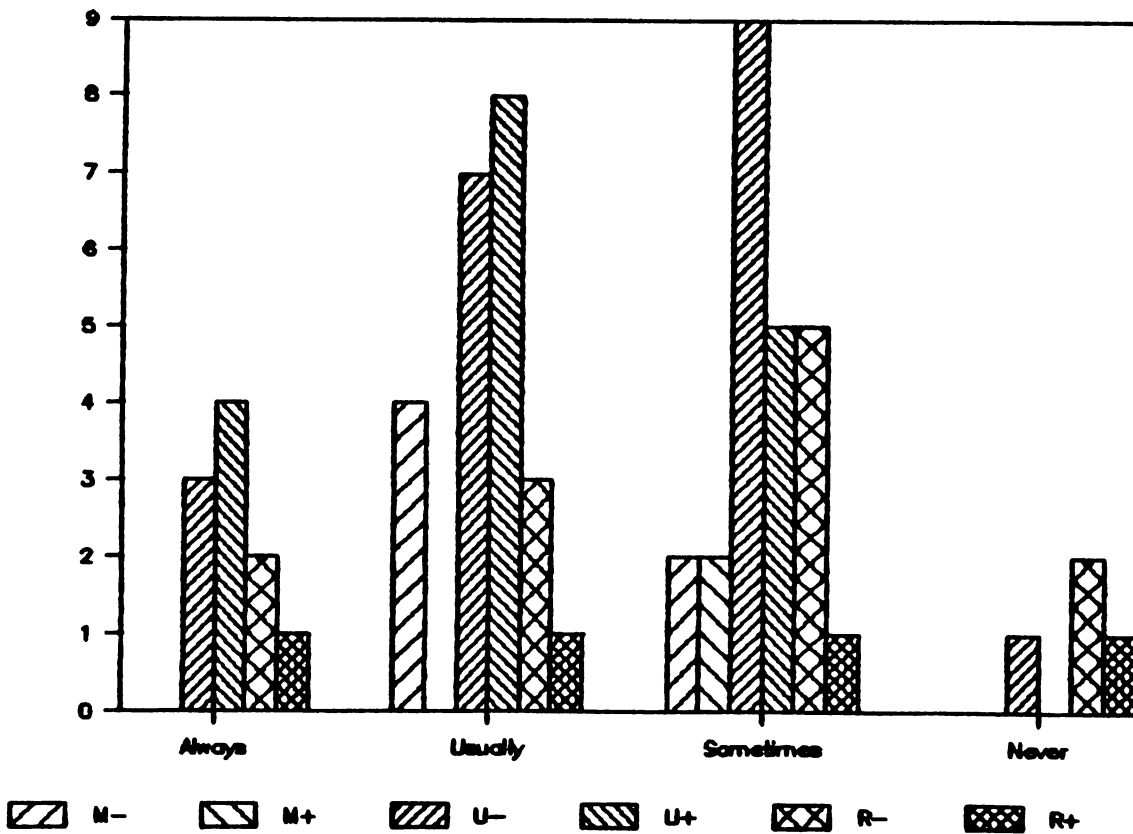
QUESTION 9A

An indicator of how often a colleague is contacted when scoring problems are encountered.

GRAPH B.51

Responses presented in Bar graph format

Question 9a:



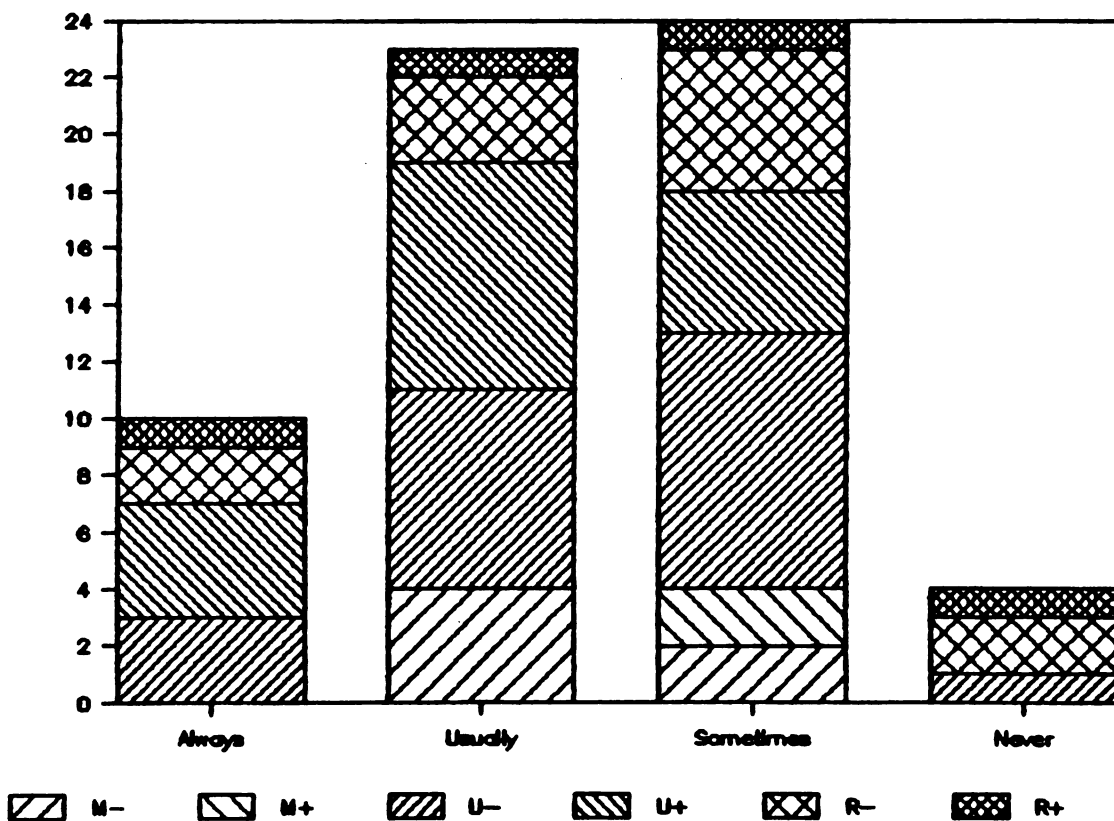
QUESTION 9A

An indicator of how often a colleague is contacted when scoring problems are encountered.

GRAPH B.52

Responses presented in Stacked Bar graph format

Question 9a:



QUESTION 9b

An indicator of how often police investigators are contacted when scoring problems are encountered.

TABLE B.53

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	0.000	6.000	6.000
METRO (Post S-G)	0.000	0.000	1.000	1.000	2.000
URBAN (Pre S-G)	0.000	0.000	2.000	18.000	20.000
URBAN (Post S-G)	0.000	0.000	5.000	12.000	17.000
RURAL (Pre S-G)	0.000	0.000	3.000	9.000	12.000
RURAL (Post S-G)	0.000	0.000	0.000	3.000	3.000
TOTAL	0.000	0.000	11.000	49.000	60.000
Standard Error	0.000	0.000	0.050	0.050	
		AVERAGE-	0.183		

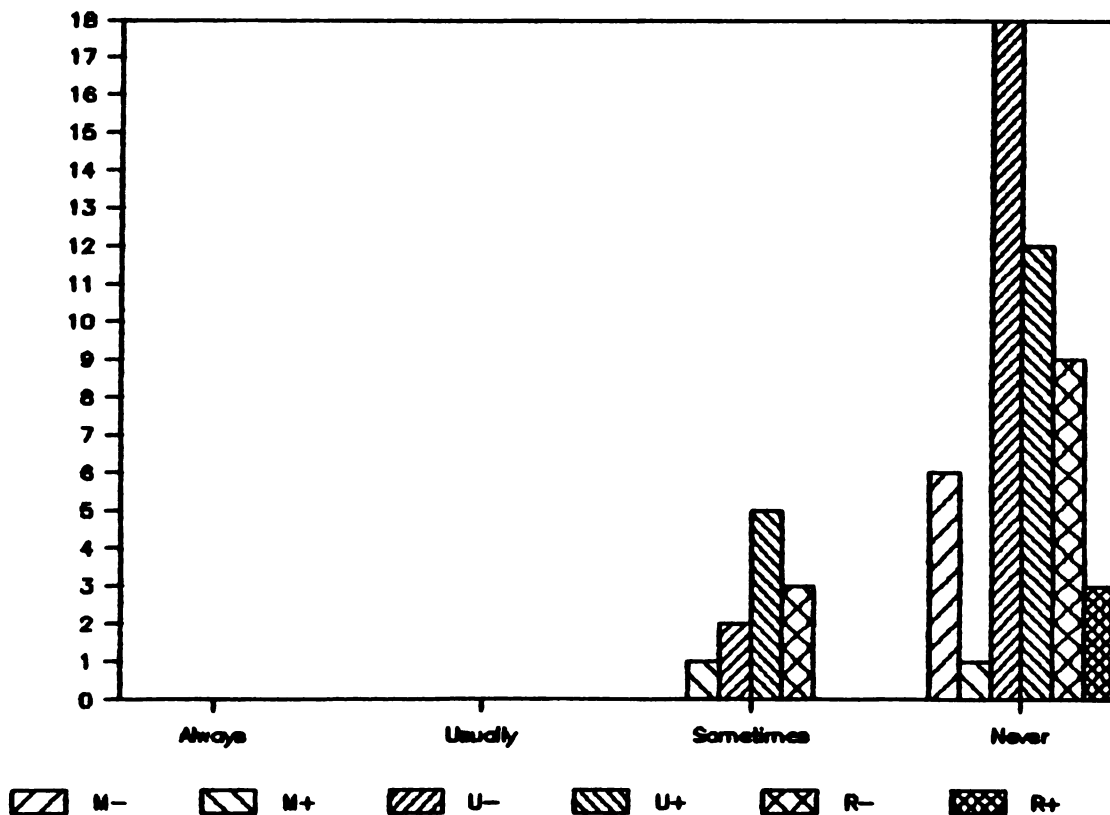
QUESTION 9b

An indicator of how often police investigators are contacted when scoring problems are encountered.

GRAPH B.54

Responses presented in Bar graph format

Question 9b:

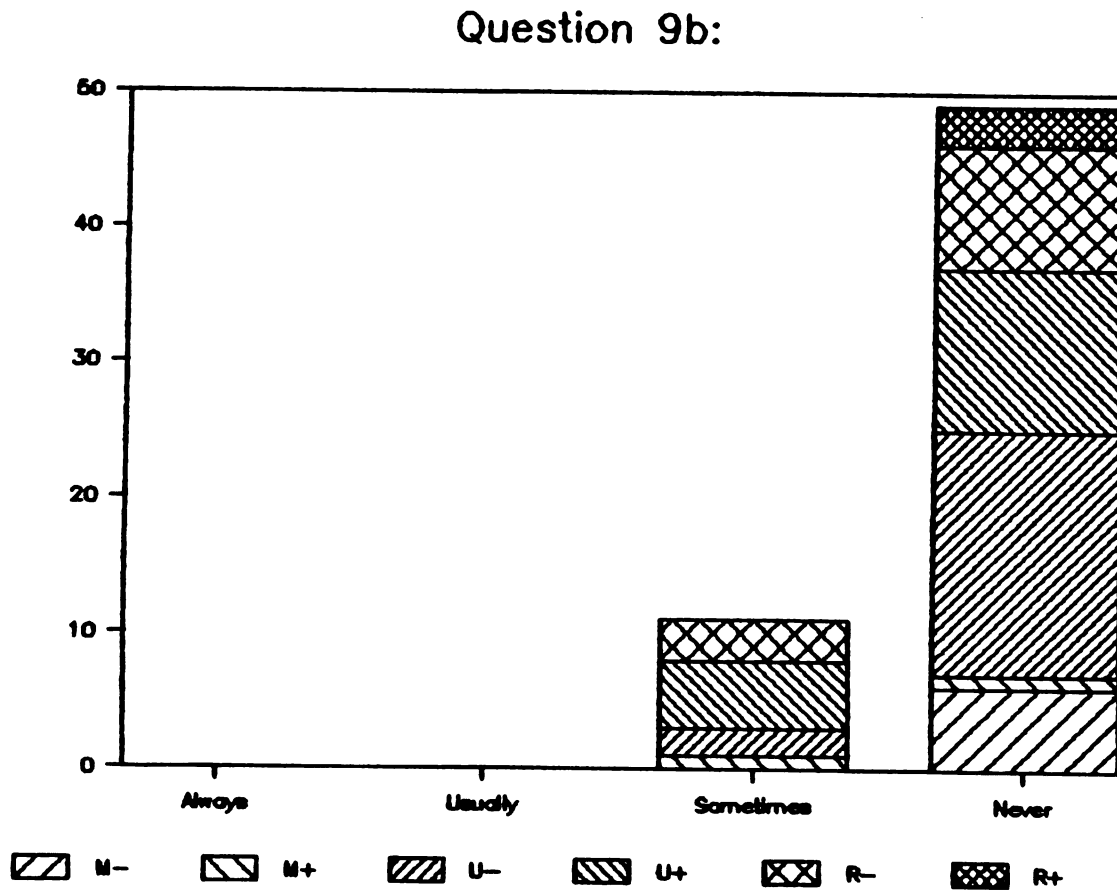


QUESTION 9b

An indicator of how often police investigators are contacted when scoring problems are encountered.

GRAPH B.55

Responses presented in Stacked Bar graph format



QUESTION 9c

An indicator of how often the prosecutor's office is contacted when scoring problems are encountered.

TABLE B.56

Responses presented in Tabular format

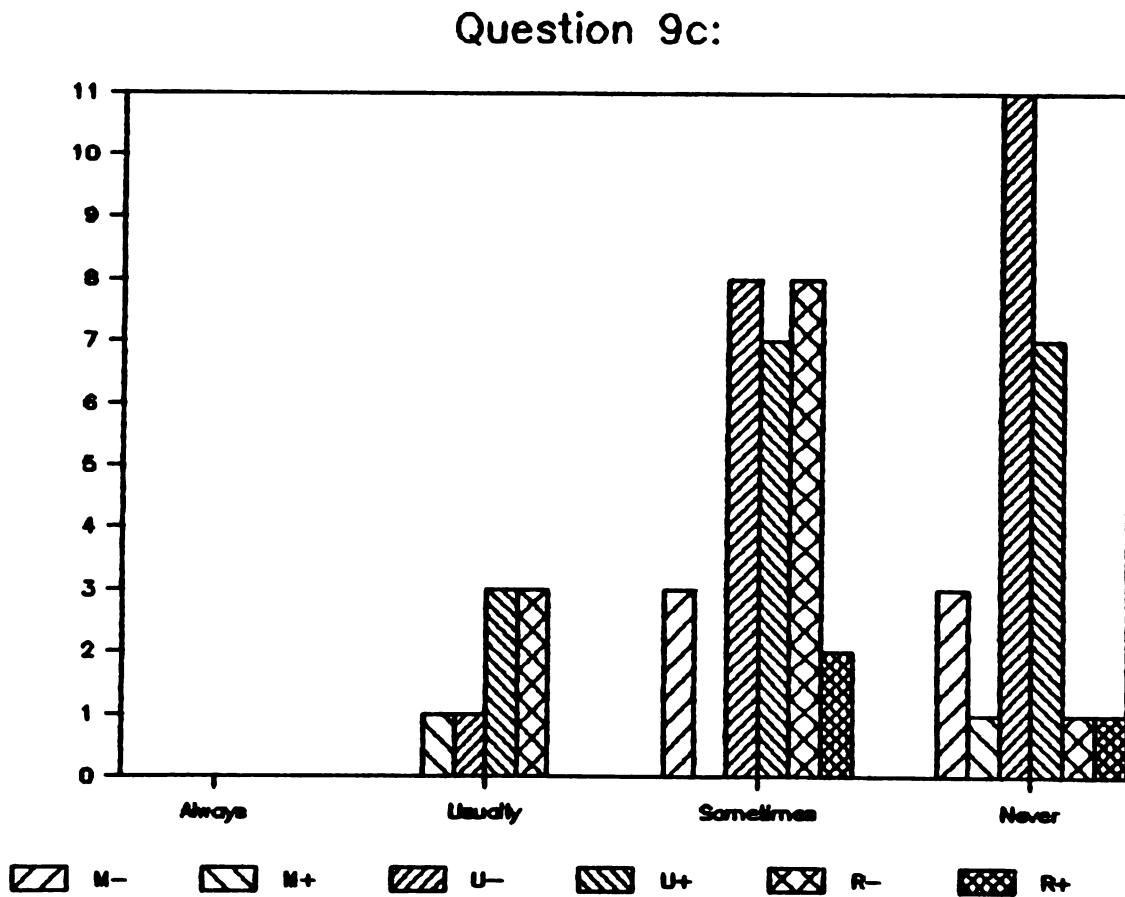
	Always	Usually	Sometimes .	Never	SUM
METRO (Pre S-G)	0.000	0.000	3.000	3.000	6.000
METRO (Post S-G)	0.000	1.000	0.000	1.000	2.000
URBAN (Pre S-G)	0.000	1.000	8.000	11.000	20.000
URBAN (Post S-G)	0.000	3.000	7.000	7.000	17.000
RURAL (Pre S-G)	0.000	3.000	8.000	1.000	12.000
RURAL (Post S-G)	0.000	0.000	2.000	1.000	3.000
TOTAL	0.000	8.000	28.000	24.000	60.000
Standard Error	0.000	0.044	0.064	0.063	
		AVERAGE-	0.733		

QUESTION 9c

An indicator of how often the prosecutor's office is contacted when scoring problems are encountered.

GRAPH B.57

Responses presented in Bar graph format

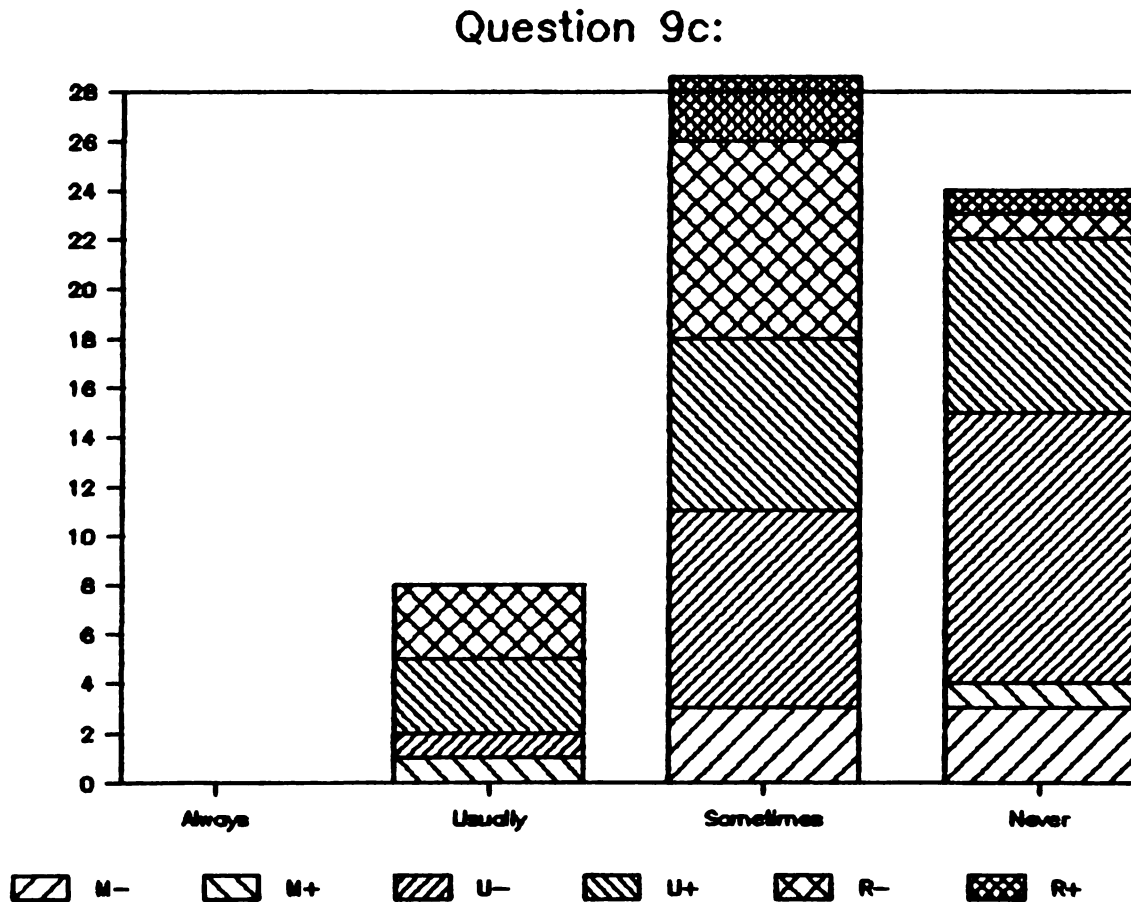


QUESTION 9c

An indicator of how often the prosecutor's office is contacted when scoring problems are encountered.

GRAPH B.58

Responses presented in Stacked Bar graph format



QUESTION 9d.

An indicator of how often the defence counsel is contacted when scoring difficulties are encountered.

TABLE B.59

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	1.000	5.000	6.000
METRO (Post S-G)	0.000	1.000	0.000	1.000	2.000
URBAN (Pre S-G)	0.000	1.000	7.000	11.000	19.000
URBAN (Post S-G)	0.000	0.000	6.000	11.000	17.000
RURAL (Pre S-G)	0.000	2.000	8.000	2.000	12.000
RURAL (Post S-G)	0.000	1.000	0.000	2.000	3.000
TOTAL	0.000	5.000	22.000	32.000	59.000
Standard Error	0.000	0.036	0.063	0.065	
		AVERAGE-	0.542		

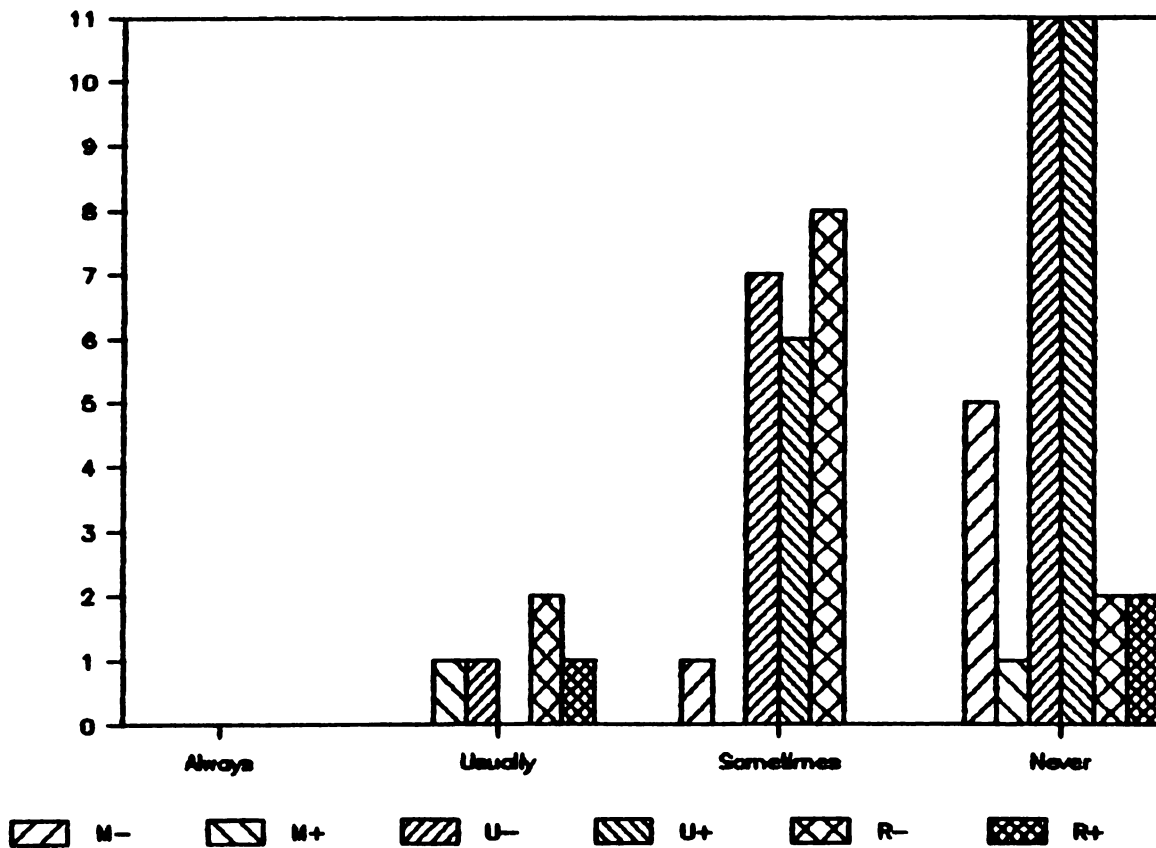
QUESTION 9d.

An indicator of how often the defence counsel is contacted when scoring difficulties are encountered.

GRAPH B.60

Responses presented in Bar graph format

Question 9d:



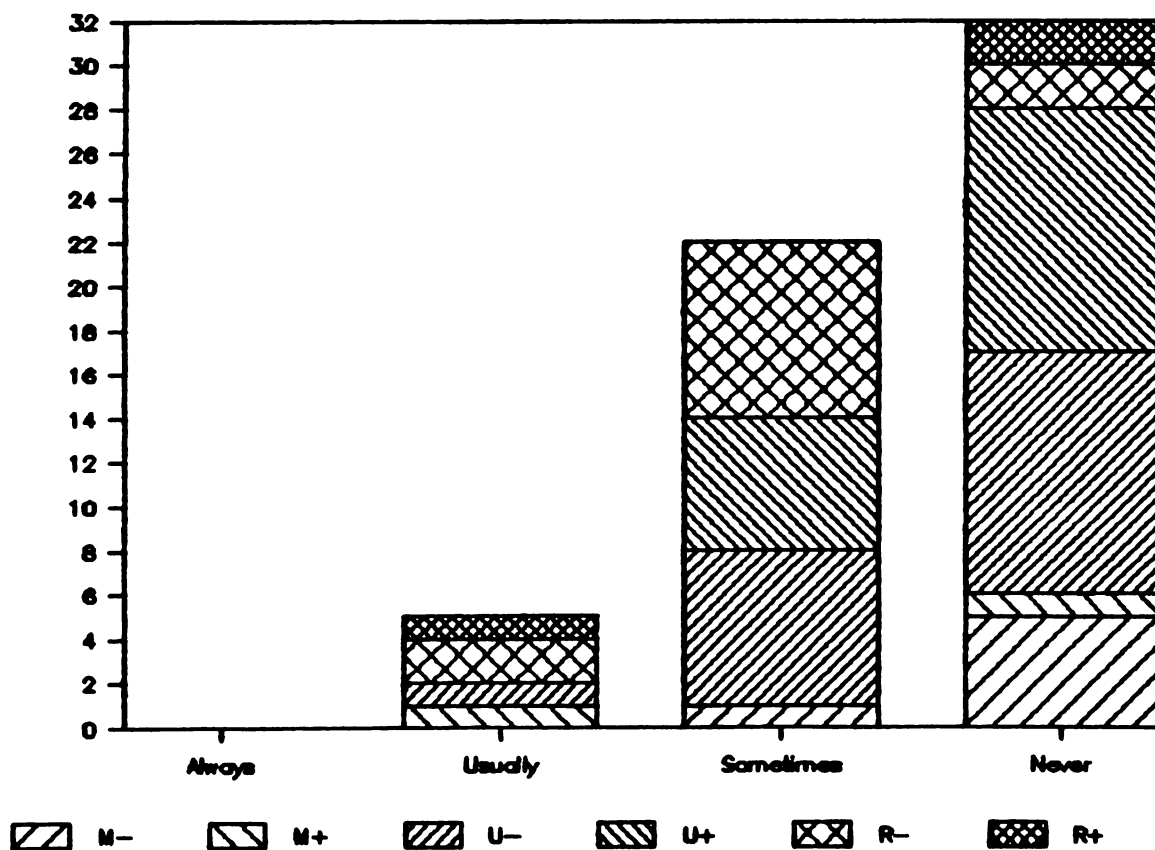
QUESTION 9d.

An indicator of how often the defence counsel is contacted when scoring difficulties are encountered.

GRAPH B.61

Responses presented in Stacked Bar graph format

Question 9d:



QUESTION 9e

An indicator of how often the sentencing judge is contacted when scoring issues are encountered.

TABLE B.62

Responses presented in Tabular format

		Always	Usually	Sometimes	Never	SUM
METRO	(Pre S-G)	0.000	0.000	2.000	4.000	6.000
METRO	(Post S-G)	1.000	0.000	1.000	0.000	2.000
URBAN	(Pre S-G)	0.000	1.000	3.000	16.000	20.000
URBAN	(Post S-G)	0.000	1.000	7.000	9.000	17.000
RURAL	(Pre S-G)	0.000	3.000	6.000	3.000	12.000
RURAL	(Post S-G)	0.000	1.000	0.000	2.000	3.000
TOTAL		1.000	6.000	19.000	34.000	60.000
Standard Error		0.017	0.039	0.060	0.064	
		AVERAGE-		0.567		

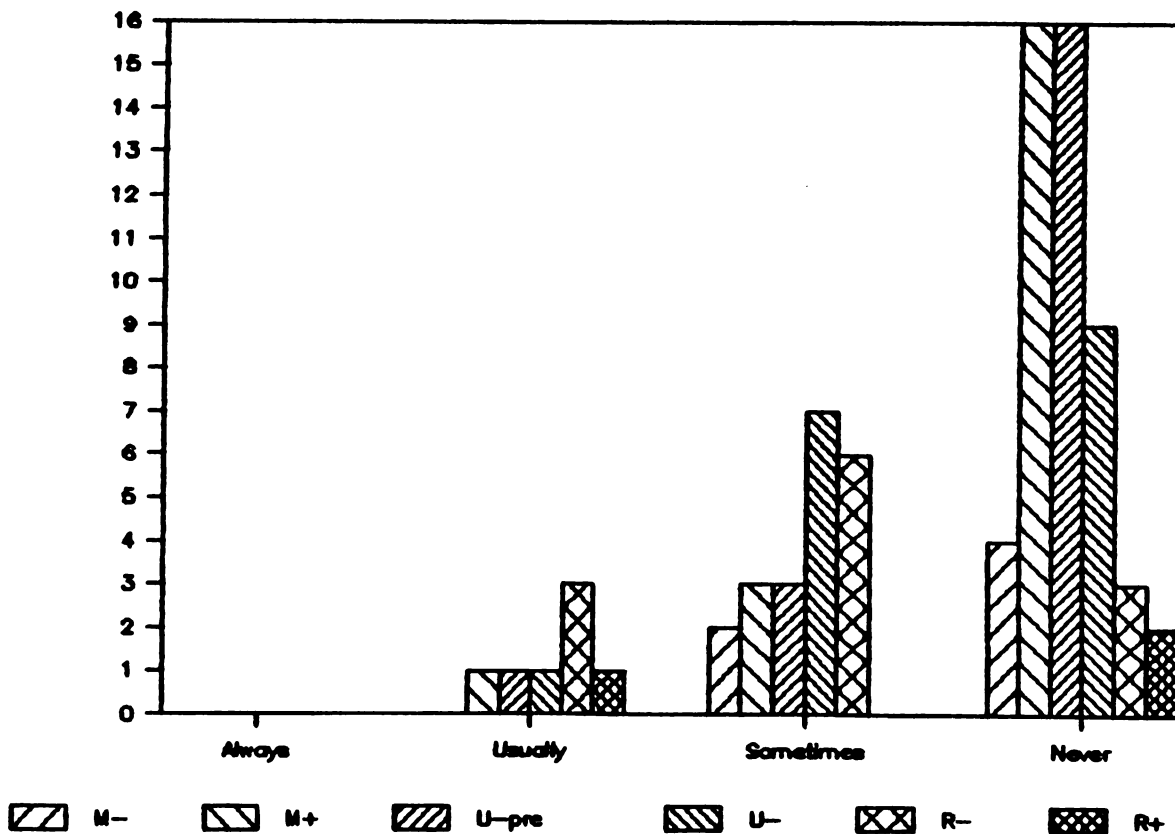
QUESTION 9e

An indicator of how often the sentencing judge is contacted when scoring issues are encountered.

GRAPH B.63

Responses presented in Bar graph format

Question 9e:



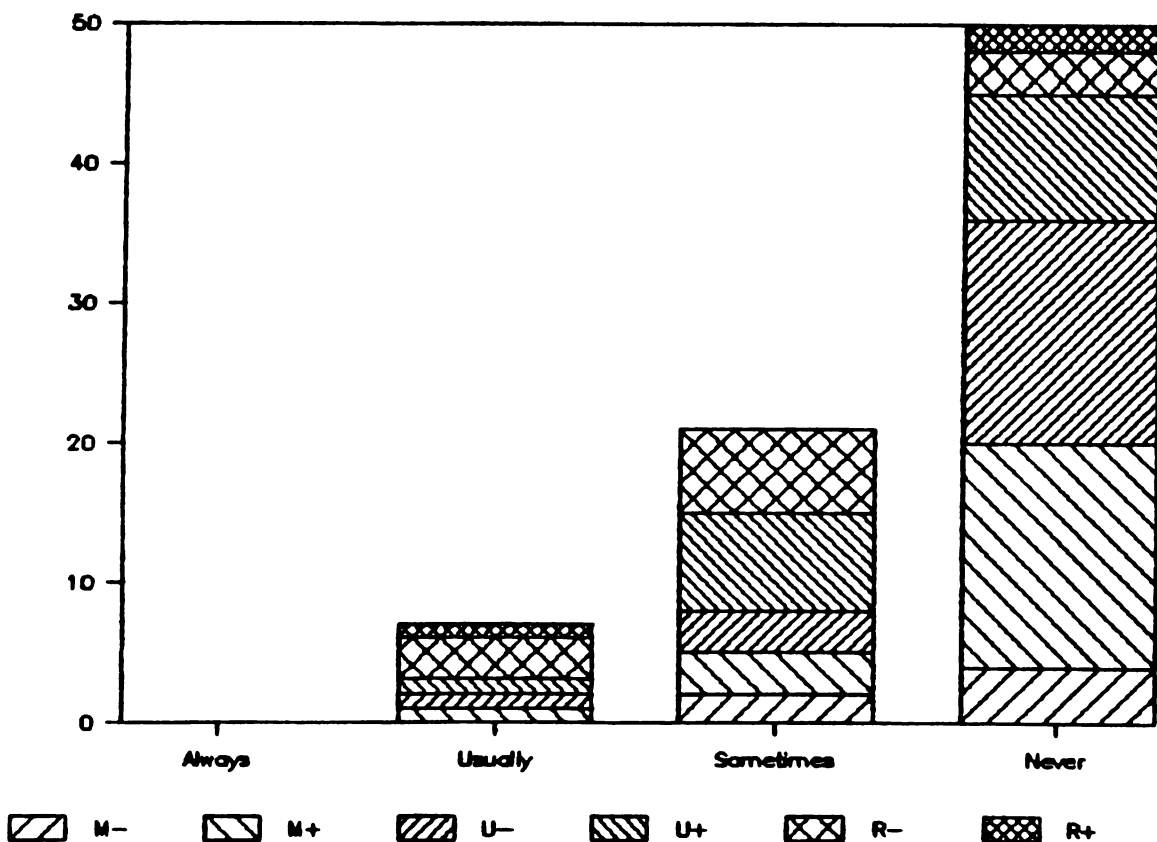
QUESTION 9e

An indicator of how often the sentencing judge is contacted when scoring issues are encountered.

GRAPH B.64

Responses presented in Stacked Bar graph format

Question 9e:



QUESTION 9f

An indicator of how often no one is contacted
when scoring problems are encountered.

TABLE B.65

Responses presented in Tabular format

		Always	Usually	Sometimes	Never	SUM
METRO	(Pre S-G)	0.000	0.000	0.000	2.000	2.000
METRO	(Post S-G)	0.000	0.000	1.000	1.000	2.000
URBAN	(Pre S-G)	1.000	4.000	8.000	4.000	17.000
URBAN	(Post S-G)	0.000	1.000	5.000	8.000	14.000
RURAL	(Pre S-G)	2.000	3.000	3.000	4.000	12.000
RURAL	(Post S-G)	0.000	0.000	0.000	2.000	2.000
TOTAL		3.000	8.000	17.000	21.000	49.000
Standard Error		0.034	0.053	0.068	0.071	
		AVERAGE-		0.857		

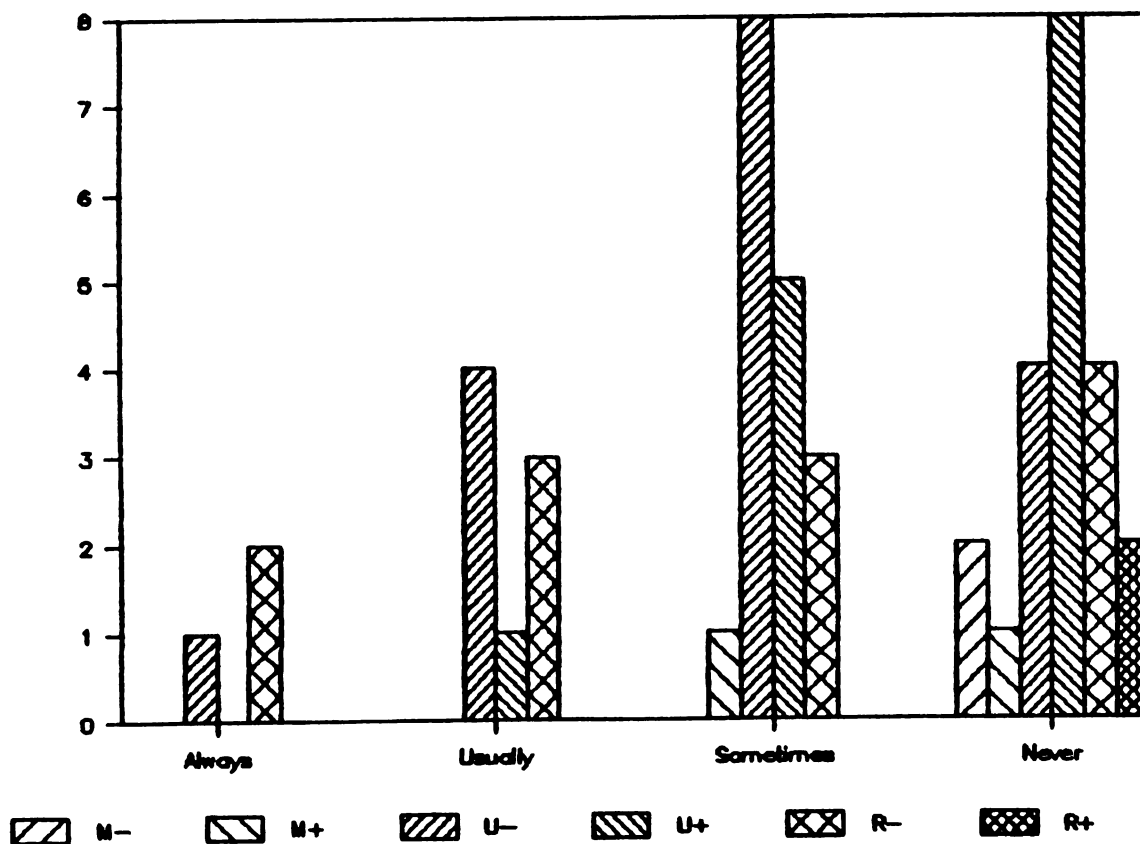
QUESTION 9f

An indicator of how often no one is contacted
when scoring problems are encountered.

GRAPH B.66

Responses presented in Bar graph format

Question 9f:



QUESTION 9f

An indicator of how often no one is contacted
when scoring problems are encountered.

GRAPH B.67

Responses presented in Stacked Bar graph format

Question 2f:



12.) In your office, those cases that involve plea agreements focus Sentencing Guidelines scorings on the reduced charges instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never []

TABLE B.68

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	1.000	0.000	1.000	3.000	5.000
METRO (Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN (Pre S-G)	13.000	2.000	3.000	3.000	21.000
URBAN (Post S-G)	8.000	4.000	3.000	1.000	16.000
RURAL (Pre S-G)	6.000	3.000	1.000	3.000	13.000
RURAL (Post S-G)	1.000	2.000	0.000	0.000	3.000
TOTAL	31.000	11.000	8.000	10.000	60.000
Standard Error	0.065	0.050	0.044	0.048	
		AVERAGE-	2.050		

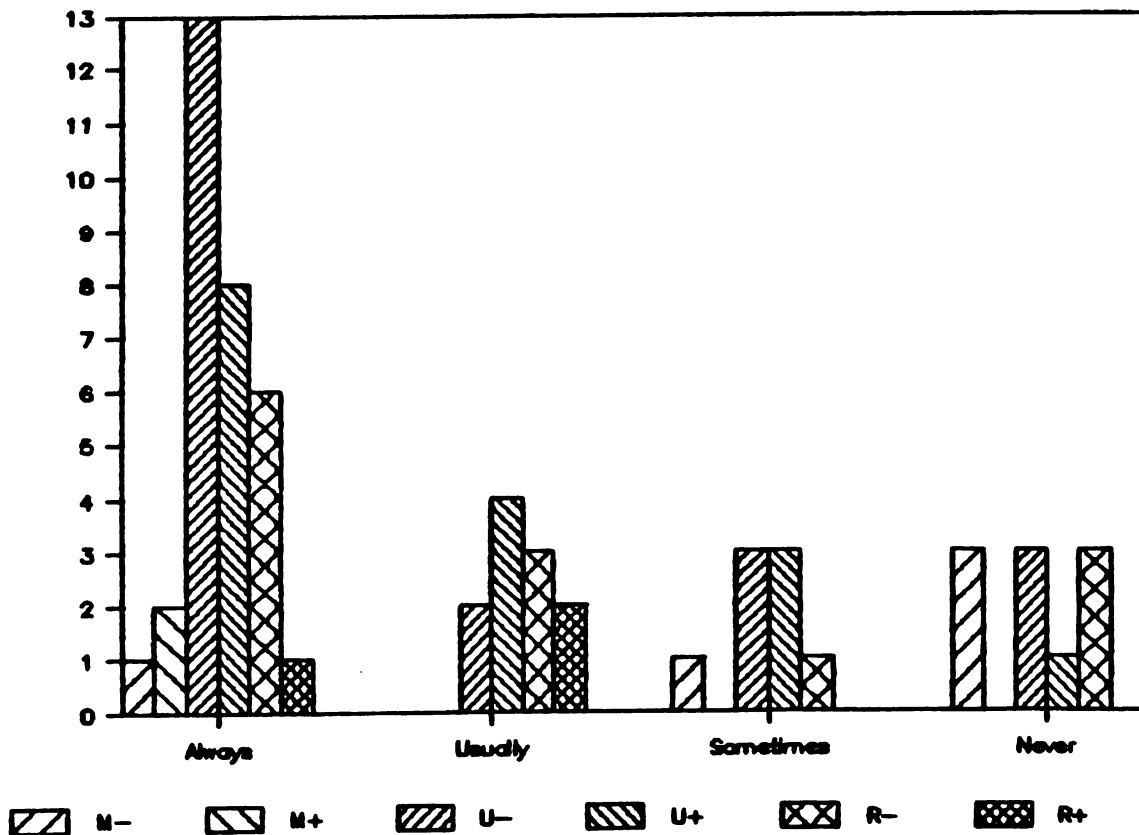
12.) In your office, those cases that involve plea agreements focus Sentencing Guidelines scorings on the reduced charges instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never []

GRAPH B.69

Responses presented in Bar graph format

Question 12:



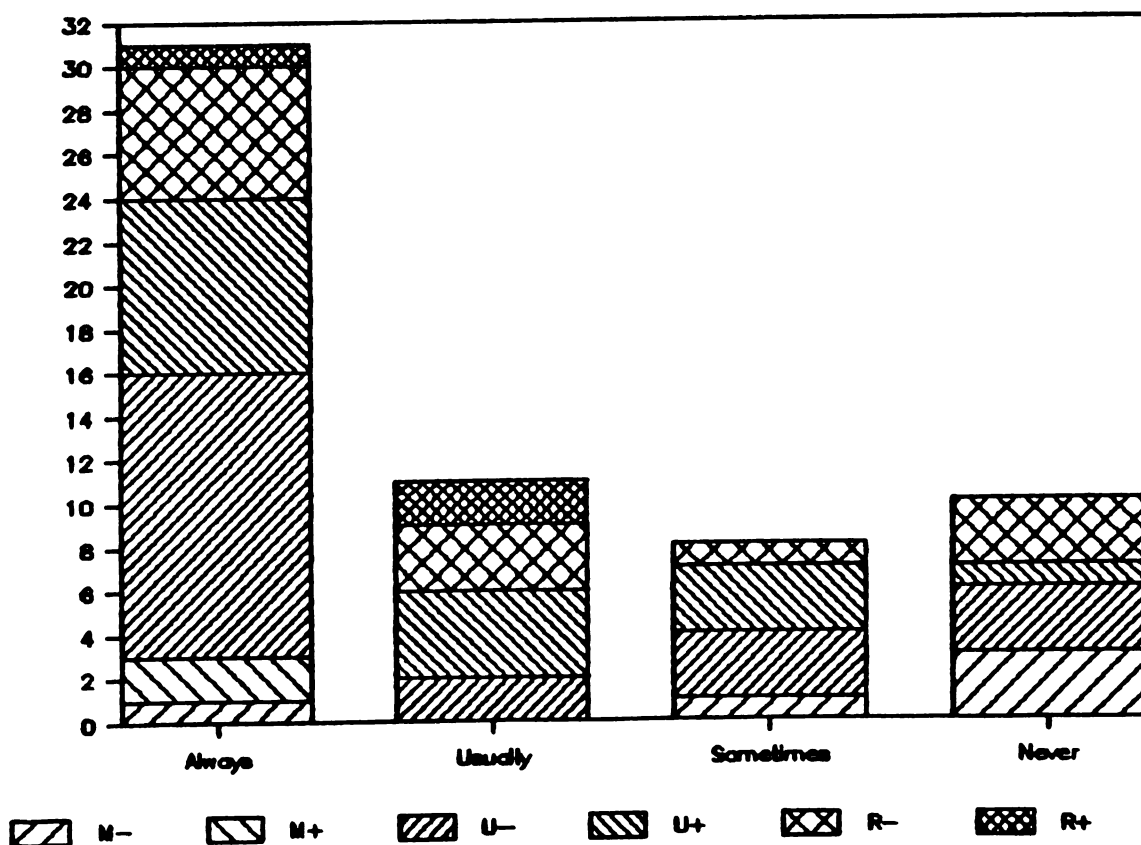
12.) In your office, those cases that involve plea agreements focus Sentencing Guidelines scorings on the reduced charges instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never []

GRAPH B.70

Responses presented in Stacked Bar graph format

Question 12:



12a.) In your office, cases involving contemporaneous offences focus Sentencing Guidelines scorings on the reduced charges, instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never []

TABLE B.71

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	1.000	0.000	1.000	3.000	5.000
METRO (Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN (Pre S-G)	13.000	2.000	3.000	3.000	21.000
URBAN (Post S-G)	8.000	4.000	3.000	1.000	16.000
RURAL (Pre S-G)	6.000	3.000	1.000	3.000	13.000
RURAL (Post S-G)	1.000	2.000	0.000	0.000	3.000
TOTAL	31.000	11.000	8.000	10.000	60.000
Standard Error	0.065	0.050	0.044	0.048	
AVERAGE-			2.050		

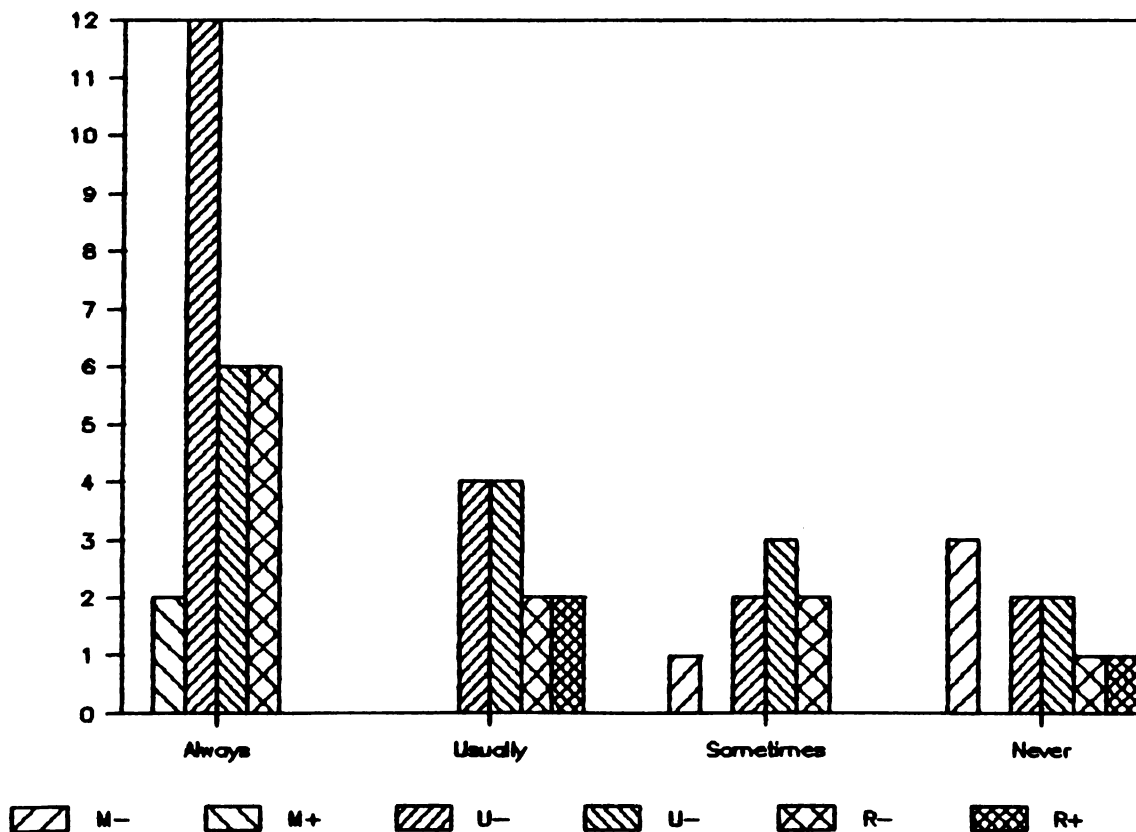
12a.) In your office, cases involving contemporaneous offences focus Sentencing Guidelines scorings on the reduced charges, instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never []

GRAPH B.72

Responses presented in Bar graph format

Question 12a:

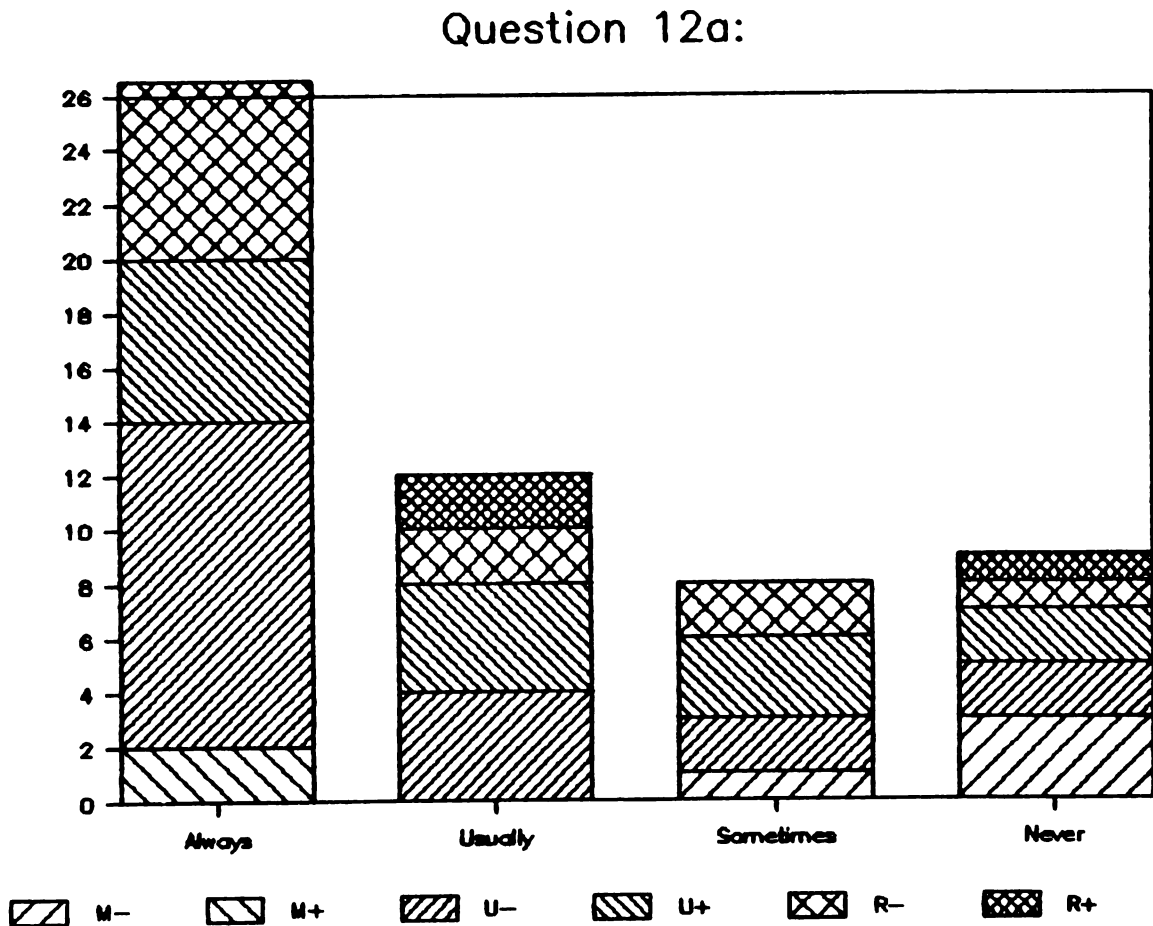


12a.) In your office, cases involving contemporaneous offences focus Sentencing Guidelines scorings on the reduced charges, instead of the original charge(s)? (Check the one which best applies.)

Always [] Usually [] Sometimes [] Never []

GRAPH B.73

Responses presented in Stacked Bar graph format



13.) When scoring the sentencing guidelines in your office, the Sentencing Guidelines scorings are held within the limits of the plea agreement, instead of scoring the case from the police reports and the entire "body of facts"?

Always [] Usually [] Sometimes [] Never []

TABLE B.74

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	1.000	3.000	4.000
METRO (Post S-G)	2.000	0.000	0.000	0.000	2.000
URBAN (Pre S-G)	12.000	4.000	2.000	2.000	20.000
URBAN (Post S-G)	6.000	4.000	3.000	2.000	15.000
RURAL (Pre S-G)	6.000	2.000	2.000	1.000	11.000
RURAL (Post S-G)	0.000	2.000	0.000	1.000	3.000
TOTAL	26.000	12.000	8.000	9.000	55.000
Standard Error	0.067	0.056	0.048	0.050	
		AVERAGE-	2.000		

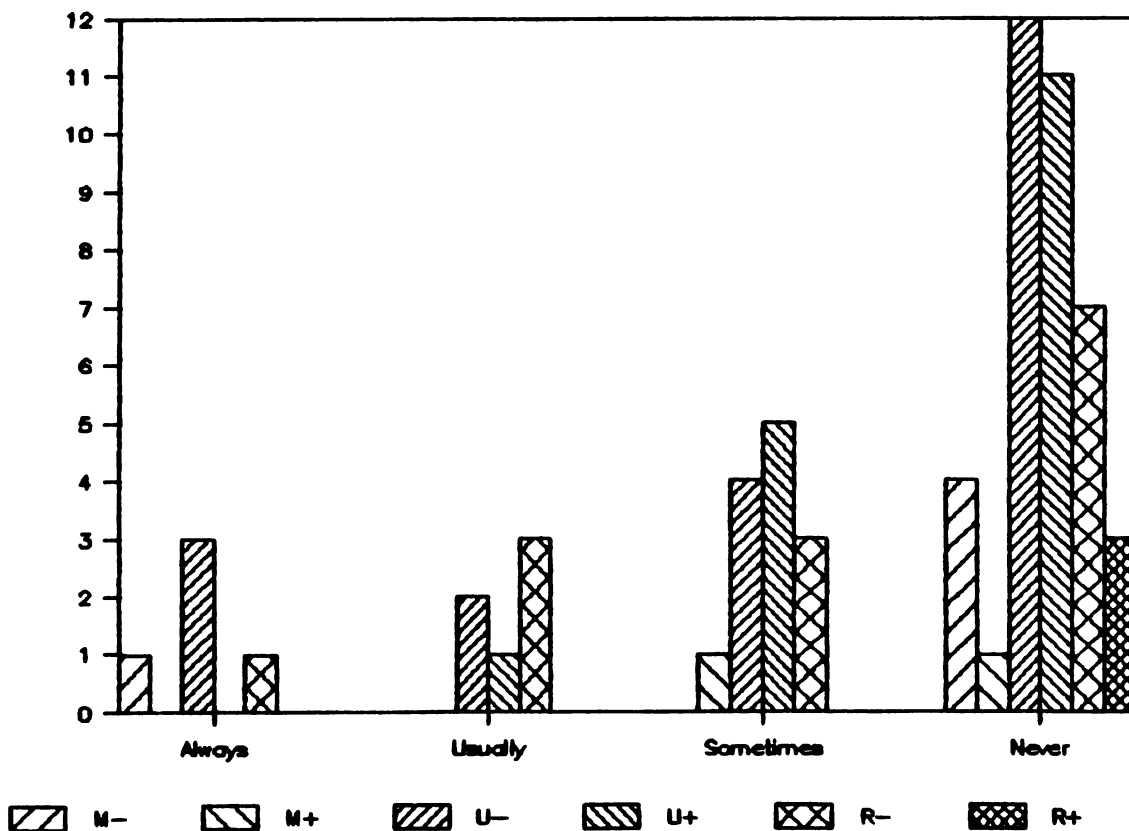
13.) When scoring the sentencing guidelines in your office, the Sentencing Guidelines scorings are held within the limits of the plea agreement, instead of scoring the case from the police reports and the entire "body of facts"?

Always [] Usually [] Sometimes [] Never []

GRAPH B.75

Responses presented in Bar graph format

Question 13:

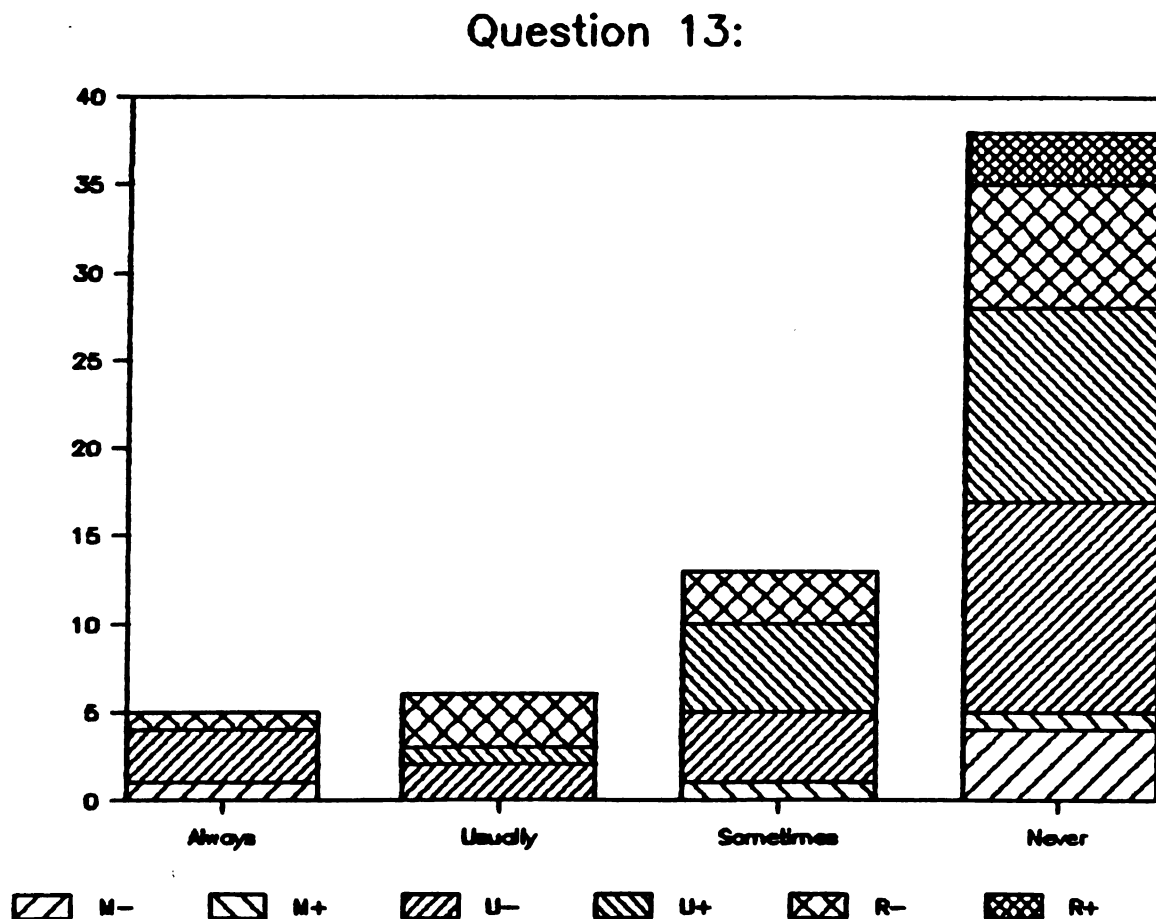


13.) When scoring the sentencing guidelines in your office, the Sentencing Guidelines scorings are held within the limits of the plea agreement, instead of scoring the case from the police reports and the entire "body of facts"?

Always [] Usually [] Sometimes [] Never []

GRAPH B.76

Responses presented in Stacked Bar graph format



14.) In your office, guilty plea cases involving charge reductions keep Sentencing Guidelines scorings within the parameters and limits of the plea agreement (especially in cases where there are plea reductions)?

- a.) I always base the scoring on the original offence. []
- b.) I usually base the scoring on the original offence. []
- c.) I usually limit the scoring to the reduced charge. []
- d.) I always limit the scoring to the reduced charge. []

TABLE B.77

Responses presented in Tabular format

		Always Original	Usually Original	Usually Reduced	Always Reduced	SUM
METRO	(Pre S-G)	2.000	1.000	1.000	1.000	5.000
METRO	(Post S-G)	0.000	0.000	0.000	2.000	2.000
URBAN	(Pre S-G)	8.000	1.000	2.000	10.000	21.000
URBAN	(Post S-G)	10.000	1.000	0.000	6.000	17.000
RURAL	(Pre S-G)	5.000	3.000	2.000	4.000	14.000
RURAL	(Post S-G)	0.000	0.000	1.000	2.000	3.000
TOTAL		25.000	6.000	6.000	25.000	62.000
Standard Error		0.062	0.038	0.038	0.062	
AVERAGE-				1.500		

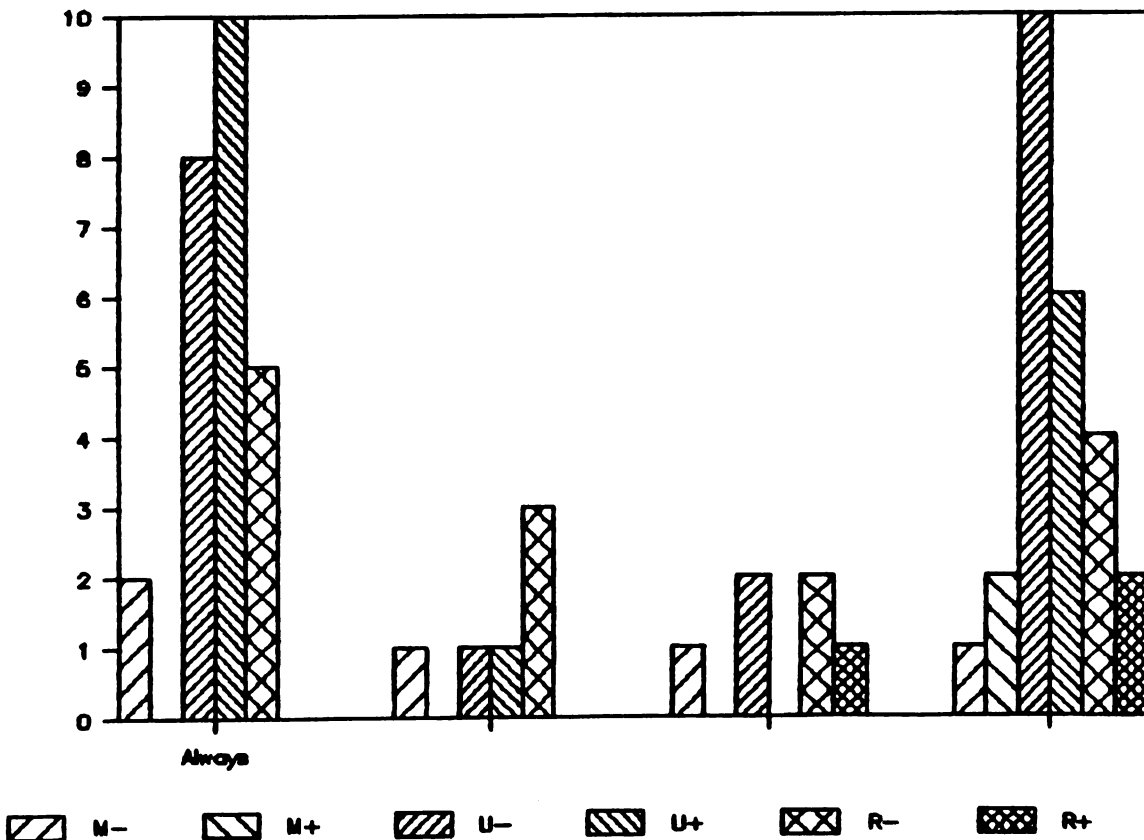
14.) In your office, guilty plea cases involving charge reductions keep Sentencing Guidelines scorings within the parameters and limits of the plea agreement (especially in cases where there are plea reductions)?

- a.) I always base the scoring on the original offence. []
- b.) I usually base the scoring on the original offence. []
- c.) I usually limit the scoring to the reduced charge. []
- d.) I always limit the scoring to the reduced charge. []

GRAPH B.78

Responses presented in Bar graph format

Question 14:



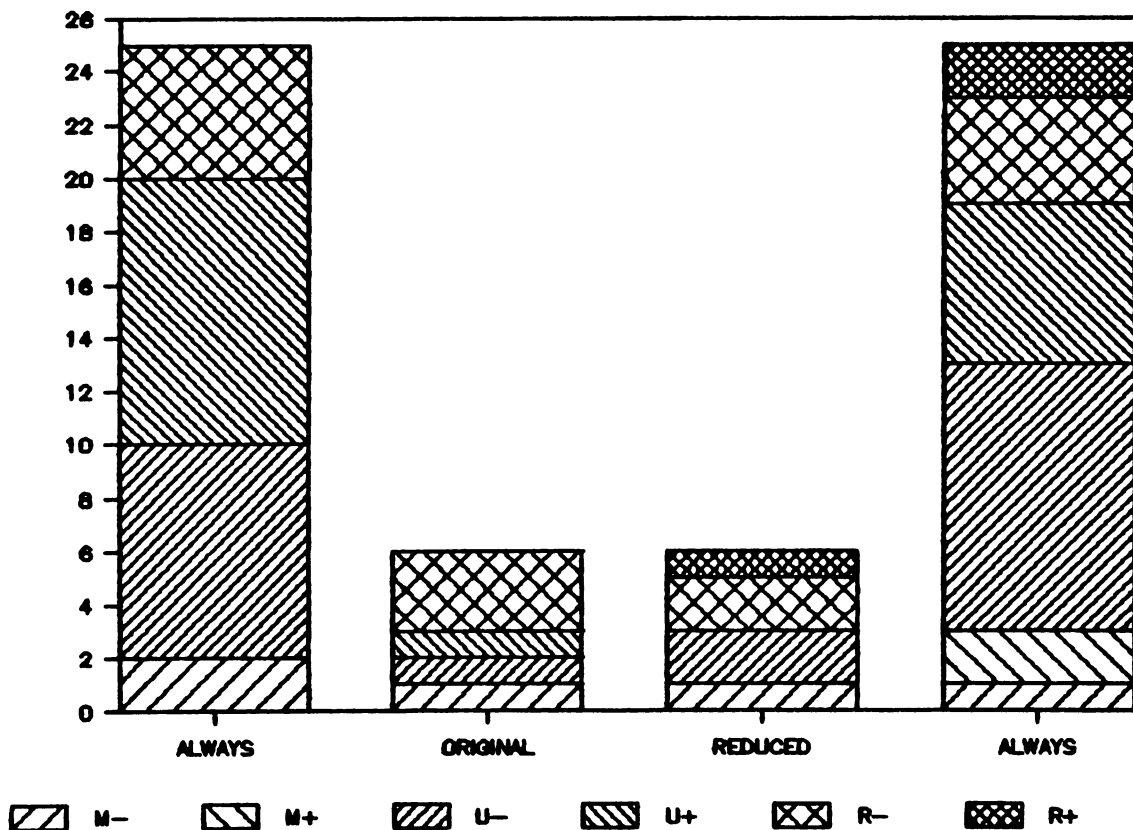
14.) In your office, guilty plea cases involving charge reductions keep Sentencing Guidelines scorings within the parameters and limits of the plea agreement (especially in cases where there are plea reductions)?

- a.) I always base the scoring on the original offence. []
- b.) I usually base the scoring on the original offence. []
- c.) I usually limit the scoring to the reduced charge. []
- d.) I always limit the scoring to the reduced charge. []

GRAPH B.79

Responses presented in Stacked Bar graph format

Question 14:



14a.) Have differences between the descriptions of the actual offence and the case as it was altered by the plea agreement created any scoring or appeal issues for your court? (Please explain.)

Always [] Usually [] Sometimes [] Never []

TABLE B.80

Responses presented in Tabular format

	Always	Usually	Sometimes	Never	SUM
METRO (Pre S-G)	0.000	0.000	1.000	4.000	5.000
METRO (Post S-G)	0.000	0.000	1.000	1.000	2.000
URBAN (Pre S-G)	0.000	0.000	8.000	13.000	21.000
URBAN (Post S-G)	1.000	0.000	4.000	12.000	17.000
RURAL (Pre S-G)	1.000	2.000	4.000	7.000	14.000
RURAL (Post S-G)	0.000	0.000	1.000	2.000	3.000
TOTAL	2.000	2.000	19.000	39.000	62.000
Standard Error	0.022	0.022	0.059	0.061	
		AVERAGE-	0.468		

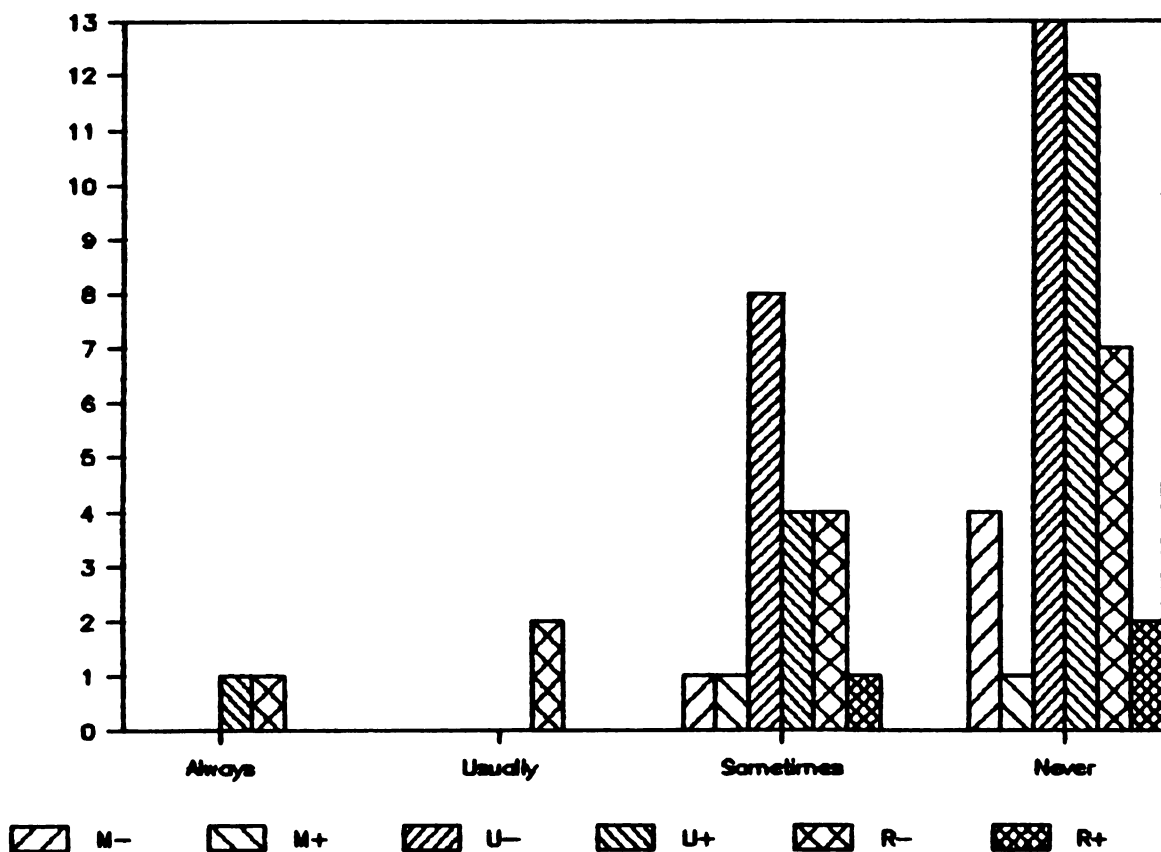
14a.) Have differences between the descriptions of the actual offence and the case as it was altered by the plea agreement created any scoring or appeal issues for your court? (Please explain.)

Always [] Usually [] Sometimes [] Never []

GRAPH B.81

Responses presented in Bar graph format

Question 14a:



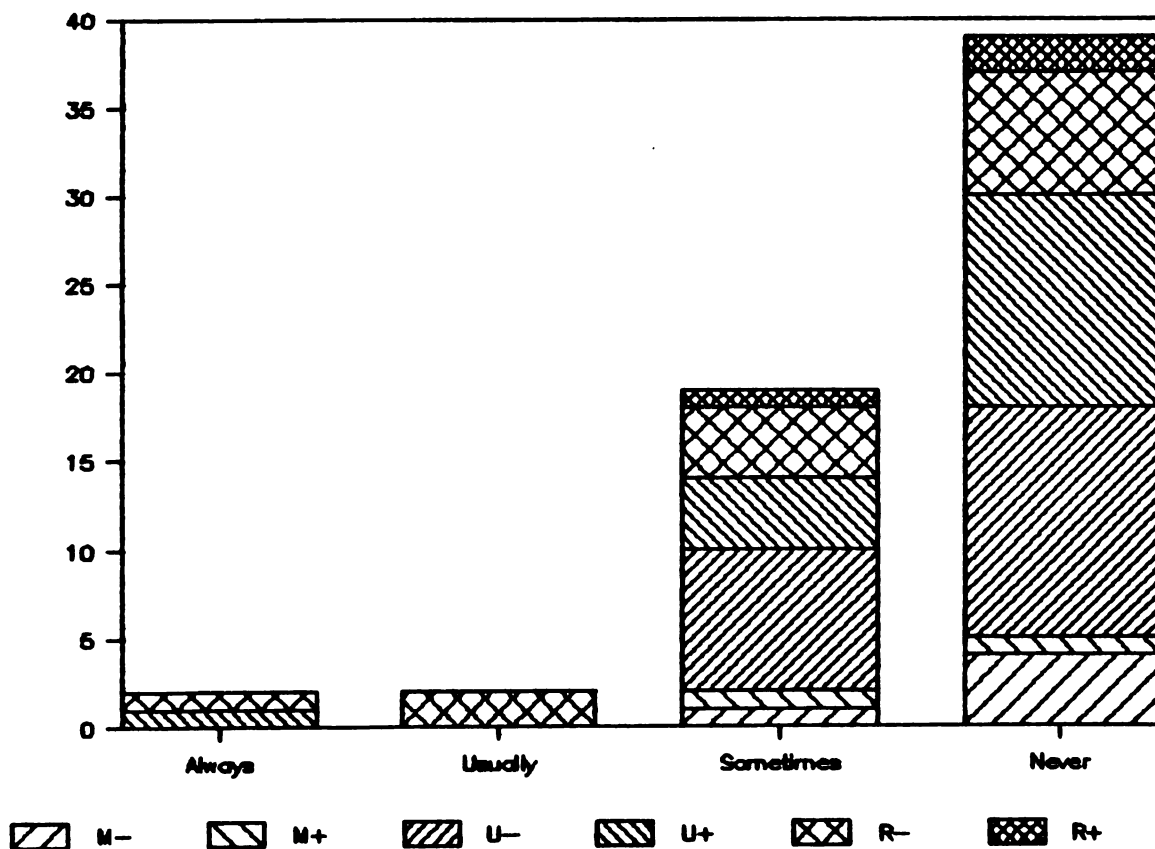
14a.) Have differences between the descriptions of the actual offence and the case as it was altered by the plea agreement created any scoring or appeal issues for your court? (Please explain.)

Always [] Usually [] Sometimes [] Never []

GRAPH B.82

Responses presented in Stacked Bar graph format

Question 14a:



15.) In your jurisdiction, are the sentencing guidelines ever used to help decide the acceptance or rejection of a suggested plea offer or agreement?

Always [] Usually [] Sometimes [] Never[]

Don't Know []

TABLE B.83

Responses presented in Tabular format

	Always	Usually	Sometimes	Never/ Dont Know	SUM
METRO (Pre S-G)	0.000	0.000	3.000	2.000	5.000
METRO (Post S-G)	1.000	1.000	0.000	0.000	2.000
URBAN (Pre S-G)	0.000	3.000	4.000	14.000	21.000
URBAN (Post S-G)	0.000	0.000	6.000	11.000	17.000
RURAL (Pre S-G)	0.000	2.000	6.000	6.000	14.000
RURAL (Post S-G)	1.000	0.000	1.000	1.000	3.000
TOTAL	2.000	6.000	20.000	34.000	62.000
Standard Error	0.022	0.038	0.059	0.063	
		AVERAGE-	0.613		

15.) In your jurisdiction, are the sentencing guidelines ever used to help decide the acceptance or rejection of a suggested plea offer or agreement?

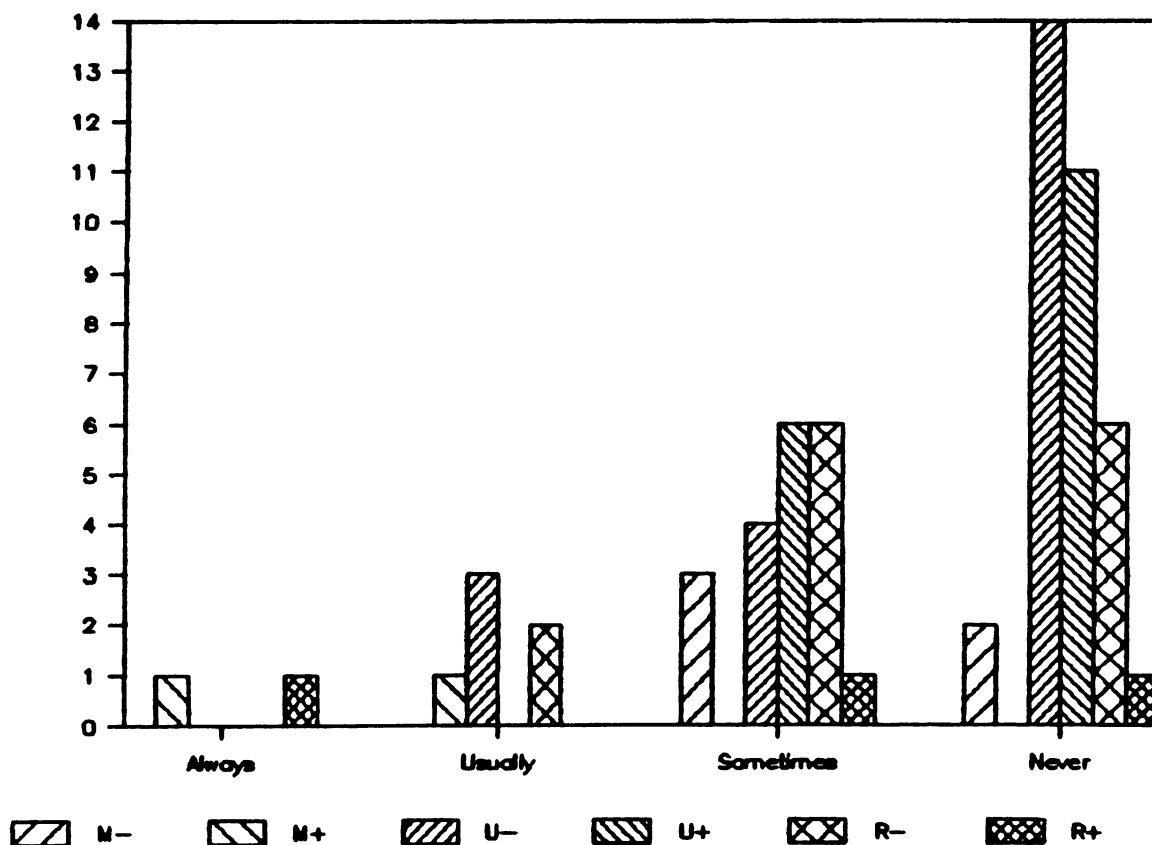
Always [] Usually [] Sometimes [] Never []

Don't Know []

GRAPH B.84

Responses presented in Bar graph format

Question 15:



15.) In your jurisdiction, are the sentencing guidelines ever used to help decide the acceptance or rejection of a suggested plea offer or agreement?

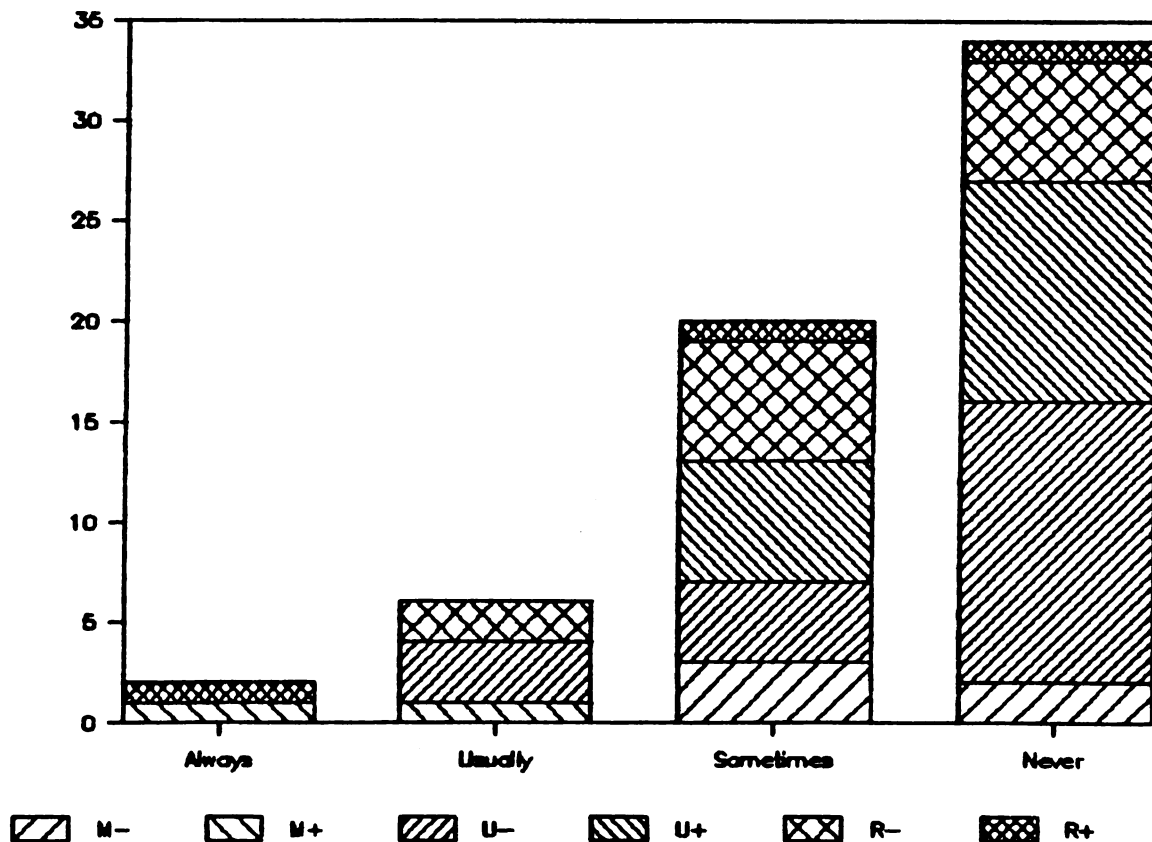
Always [] Usually [] Sometimes [] Never []

Don't Know []

GRAPH B.85

Responses presented in Stacked Bar graph format

Question 15:



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