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Research on Public Confidence in the Criminal Justice System:

A Compendium of Research Findings from
Criminological Highlights

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Overview of the Research Summaries on Public Confidence in the Criminal Justice System¹

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This overview is designed to provide a ‘road map’ to the set of research summaries from *Criminological Highlights* that are attached. My own recommendation, however, is that time might be better spent reading the research summaries themselves rather than this overview.

Section A: Public Views of the Criminal Justice System

As in any complex public policy area, it is clearly understood that many members of the public do not have a full understanding of the complexities, the goals that sometimes are in conflict with one another, the social and financial costs of various courses of action, and the simple “facts” of the criminal justice system. This section demonstrates that although people are quick to express views about the operation of the criminal justice system, their underlying values and views are almost certainly more complex.

At the same time, when we think about attempting to modify public confidence in criminal justice institutions, it is important to consider the likelihood that simple ‘education programs’ directed at the general public may not be adequate. There are three considerations that may be helpful in thinking about the likely impact of short-term education plans.

- 1) People’s views of something as complex as the criminal justice system may be formed more on the basis of individual high-profile cases and a small number of interactions with the formal system, than they are by aggregate systematic data (which is in any event generally are not available).
- 2) The experience that people have with the criminal justice system – both direct and vicariously through the experiences of others – may be more important than material that they receive through education programs.
- 3) People are influenced by what trusted leaders – defined broadly - say about the criminal justice system. In other words, if trusted spokespeople – whether politicians, police, or others whom they trust – say something, that may be more important than systematic educational information.

¹ The views expressed or implied in this commentary are mine and do not necessarily reflect the views of the International Centre for Criminal Law Reform and Criminal Justice Policy or of funders of *Criminological Highlights*.

I am not suggesting that trying to educate the public about the criminal justice system is not useful. Instead, what I am suggesting is that ‘education’ should be defined more broadly than just a simple ‘information’ campaign of short duration.

Notwithstanding these concerns, we often ask people simple questions about the criminal justice system. These questions often deal with matters that are the subject of a fair amount of controversy for which we know beyond reasonable doubt that people have inadequate systematic information to form a ‘reasoned’ conclusion. Sentencing is the obvious example. Survey companies and governments ask members of the public questions that may be impossible for them to answer in a meaningful way. Few pollsters or politicians would bother asking ordinary members of the public whether they thought “Drug A” or “Drug B” was better at treating some disease, nor would most politicians routinely assert that “Drug A” should be made publicly available simply because the public demands it.

Yet we are perfectly willing to ask members of the public what are, in fact, complex – and largely un-answerable – questions such as “Do you think that sentences handed down by the criminal courts are too harsh, too lenient, or about right?” As was pointed out a few years ago,

The irony ... is that every five years or so, Statistics Canada asks members of the public (in its victimization survey), “In general, would you say that sentences handed down by the courts are too severe, about right or not severe enough?” Unfortunately, one of the alternative responses that is not offered or recorded is the quite reasonable, “How the [expletive deleted] am I supposed to know? You folks don’t make these data available to anyone.” Canadians, instead, are compliant with the Statistics Canada interviewer and generally offer an opinion on something for which [adequate] systematic information does not publicly exist. Only about 9% of Canadians in the 2004 survey refused to venture an opinion on an issue - sentence severity – that is essentially unknowable by any Canadian.

More generally, though, even if a member of the Canadian public did have “full” information, the appropriateness of sentences generally would be impossible to evaluate since the public would not know what the range of cases actually looked like and whether the sentences, in any systematic way, were appropriate for the facts of each case. Furthermore, looking simply at ‘sentencing statistics’ would not adequately inform members of the public whether some combination of purposes that are listed in the Criminal Code would be the same purposes that they would invoke, nor, of course, could they relate the sentence to the purpose or purposes that the judge might have invoked.

What we do know, however, is that the public is not as naïve as the questions that are put to them would imply. Without much encouragement, most members of the public are willing to be much more nuanced in their views of sentences, and probably of other parts of the criminal justice system. As the research described in the attached *Criminological Highlights* summaries demonstrates, sometimes all ordinary people need is a little encouragement to think about a question in more depth.

In the past eight years or so, it has been suggested that Canadians like and want mandatory minimum penalties. The studies summarized on pages A1-A2², however, suggest that they may say that they like *mandatory minimum penalties*, but given a choice they would like these penalties *not* to be mandatory. In essence, members of the public appear to want flexibility in sentencing.

Similarly, the government recently – with support from some opposition MPs – repealed the so-called ‘Faint Hope Clause’ (dealing with parole ineligibility periods for those convicted of murder). Presumably, this was a popular decision, though data would suggest that those members of the public having the closest *first-hand* knowledge of the working of this (former) provision – jurors in Section 745.6 “faint hope” hearings – seem to have been overwhelmingly sympathetic with prisoners’ proposals to reduce parole ineligibility times (Page A3).

Generally speaking, it would appear that the manner in which people are asked questions about the criminal justice system is crucially important as a determinant of what responses are received (Pages A4-A7).

It turns out that, in various ways, attitudes about punishment are more complex than the public is often given credit for. For example, support for harsh sentences (e.g., agreeing with the statement that “If judges would impose higher penalties, we would have fewer criminals”) is essentially unrelated to support for rehabilitative approaches to crime (Page A8).

Even in the US, with its high – and, until recently, growing – overall imprisonment rate, support for prevention and treatment is quite strong (Page A9-A11). Support is, in particular, strong for treating youths differently from adults and for providing preventative programs (page A12-A15).

Part of the opposition to non-prison sanctions appears to be that the public does not necessarily believe that community punishments involve meaningful sanctions that are adequately monitored (page A16, see also A4).

It is sometimes assumed that politicians are attempting to placate an uninformed public with harsh penalties. It also seems that politicians are at least partially responsible for convincing people that ‘tough on crime’ works (page A17).

Knowledge about the criminal justice system.

In many countries (including Canada), people indicate on surveys that they believe that sentences are too lenient. It is interesting to note that jurors in one Australian state (Tasmania) were quite content with the sentences that were handed down in the case that they observed as jurors. Presumably, if the Tasmanian judges had been ‘too lenient’

² Page numbers referred to for the purpose of this commentary are located at the bottom right of each page of the summaries. The summaries are contained in this document immediately after page ix. These summaries are taken directly from the published *Criminological Highlights*, and, therefore, have the original (*Criminological Highlights*) source (and page number within the issue) noted on the top (and sometimes on the bottom of the page).

generally, jurors – who had the whole story about the cases they were hearing – would have said that the sentences were too lenient. There was no overall trend in this direction (Page A18). Not surprisingly, those with the least amount of knowledge about the criminal justice system are the least confident in its operation (Page A19).

Views of the justice system are linked to other concerns.

It would be nice to think that if only people had more knowledge of the justice system, they would conclude that all is well with the criminal justice system. Such an assessment implies, of course, that there are no serious problems with the operation of the system. But in any case, it would appear that people have more complex views even of the courts. Different groups in Canadian society appear to view the problems of the courts in different ways (see Page A20).

More importantly, people's views about how to respond to offenders relate, not surprisingly, to their views of why people commit crime (pages A21-A23). This, in turn, is linked, in part, with religion (A24). In addition, views of the justice system are intimately related to race. In Canada, for example, certain groups hold more negative views of the justice system than do others (Page A25). Race enters the equation in other ways: support for harsh penalties relates also to views that people hold about racialized groups (Pages A26-A28).

In the end, then, *policies* are associated with *politics* (see Page A29 for an example). Not surprisingly, therefore, American prosecutors (many of whom are elected) request harsh sentences in cases that get a lot of press coverage (Page A30). To the extent that pressure from the public comes, in part, from citizens with high levels of fear of crime, the media – in this case local television news – is implicated as an important source of fear (Page A31).

It is important to consider that public views can affect the manner in which the public interacts with the justice system (see Page A32).

Finally, it should *not* be assumed that simple education will convince members of the public that all is well with the justice system. A large scale and rather elaborate study carried out in Australia demonstrates that information campaigns can have an effect, but that the effect is not long-lasting (Page A33). Single, one-shot 'information campaigns' may have few long-lasting effects in part because their impact is over-whelmed by information received on an almost daily basis from other sources.

Section B: Legitimacy, transparency, and effectiveness of the system

Few would argue against the importance of people trusting their justice systems. Most dramatically, when people don't feel that the law is available to them, they may resolve grievances privately through violence (Page B1).

Achieving legitimacy needs to be integrated into everyday operations of criminal justice operations. Attention to ordinary members of the public – victims, for example – has to be meaningful. Receiving - but then ignoring - victim impact statements does not appear to be good policy (Page B2). This is not to suggest, obviously, that to achieve legitimacy, sentences must flow directly from the content of victim impact statements. However, when

the justice system invites people to submit such information, it would seem sensible for those receiving them to demonstrate that they, at a minimum, considered the information that was received.

The criminal justice system clearly cannot assume that its decisions will automatically be seen as legitimate. However, when substantial efforts are made to explain the process by which decisions are made, the public clearly does listen and appears to be influenced by what they hear. In the study described on page B3, a researcher described the issues relevant to sentencing generally and a judge described some serious cases involving serious offending. In three of the four cases described, the members of the public would have sentenced more leniently than did the judge.

Judges in some jurisdictions are realizing that for people to understand what is going on in their courts, they, as judges, need to find some way of communicating directly with the public (Page B4) about these individual cases. More complete communication in ways that does not necessarily depend fully on members of the press (who, themselves, may not fully understand what something means) may be a method of allowing certain decisions to be more fully understood and accepted. Conditional sentences of imprisonment, for example, are not very popular when the public does not know what they are. However, when the actual (punitive) conditions are the focus of a description, conditional sentences are seen in quite a favourable light (Page B5). If the public sees a conditional sentence of imprisonment simply as the absence of a normal prison sentence, and does not believe that the non-custodial conditions imposed on the offender are designed to insure that the sentence is proportionate to the offence and the offender's responsibility for it, then it should not be surprising that, at first blush, this sanction appears to be unpopular. Perhaps all that is necessary for the public to understand this particular sanction is for its actual conditions to be explained adequately and for people to weight the benefits to society of keeping offenders out of prison.

Engaging the public in a respectful way.

Obviously, on a day-to-day basis, most members of the public do not have direct contact with the criminal justice system. Nevertheless, when they do have contact with the justice system, it is important to consider what people might take away from this experience. Many people, for example, have contact with traffic court. There is no good reason for members of the public to differentiate between the treatment that they get in traffic court and the treatment of people in criminal courts.

Courts, themselves, appear sometimes to be designed in a manner that excludes the public (Page B6). People who are in court may well conclude that the public is not really meant to be able to view and hear the proceedings adequately. The court appears to be set up in such a way as to exclude the general public.

Similarly, courts – or the criminal justice system more generally – often use terminology that people do not understand (Page B7). We hold youths criminally responsible for what they have done, but then describe criminal justice processes and personnel in a manner that many youths (and, perhaps sizable numbers of adults) do not adequately understand.

There are things that can be done to ensure that courts run smoothly. At times, courts order people to do things (e.g., to report to certain offices at certain times) without apparently considering the difficulty ordinary people without much money (or without an automobile) may have in doing so. If courts want people to comply with non-custodial programs, for example, they should make efforts to make it easier for people to comply. One way is to ensure that these programs are easily accessible to those required to travel to them (page B8). In this study it was shown that youths were more likely to drop out of a treatment program required of them if they lived far away from the program than if it was very close to where they lived.

Similarly, courts assume that all members of the community are efficient at recording or remembering appointments that they have. If courts want people to show up for court, they can do what many professionals (e.g., dentists) do: send a reminder (Page B9). This obviously is not legally required. But given the cost of a 'failure to appear' to the court system, and the findings that suggest that a post-card reminder (or, these days, an email reminder) can reduce the numbers of failures to appear by about one third, one wonders whether such an ordinary courtesy might not be sensible. There is no reason to believe that people fully appreciate that missing a court appointment is more serious than missing a dental appointment. They may simply assume that the courts, like the dentist, will simply re-book the appointment.

From the perspective of ordinary language, courts have very peculiar ways of getting people to tell them what they know about something. Part of the problem – but perhaps not the whole problem – may relate to rules of evidence. But if courts are truly interested in getting witnesses to tell the court what they experienced, they might consider ways in which they can ask witnesses to recount their experiences in a manner that is meaningful and understandable to the witness (Page B10). As the summary on Page B10 concludes, "given the evidence favouring the accuracy of the narrative approach to gathering evidence, permitting a greater measure of uninterrupted narrative testimony could raise evidential quality and improve lay people's courtroom experience."

It is reasonable to believe, given the research on procedural fairness and on the interaction between members of the public and criminal justice system, that these same 'good practices' might have applicability across different parts of the justice system. Hence I would suggest that the studies on a group of ordinary citizens who routinely interact with the courts – ordinary jurors in criminal trials – might be useful in thinking about how ordinary citizens, more generally, interact with the justice system.

The research on jurors suggests that ordinary people are capable of understanding what is going on and doing what is asked of them. At the same time, however, following some principles of good communication would help citizens (as jurors – or as participants in other ways in court) do a better job (Pages B11-B13). For example, jurors complained that they were not given – at the outset of the case that they heard – an adequate description of the factual and legal framework that they were going to have to apply in the case. Similarly, although judges often ask questions to clarify what is said, jurors are seldom encouraged to do so.

Section C: Treating People Fairly and with Respect

Much, but not all, of the research on ‘fair treatment’ and ‘treatment with respect’ by the justice system focuses on treatment of the public by the police. However, given the research that does exist on other parts of the system, there is no reason that I can see that the general principles would be expected to be different for other components of the system.

Ordinary people judge the justice system largely by whether it appears to be fair in the manner in which it uses its authority. In this context, it may well be that people do not differentiate very much between various actions or parts of the system. The manner in which a police officer responds to a question or the manner in which the officer treats a person in a routine traffic stop may be very important for that person’s overall assessment of the police. Similarly, as noted above, people may not differentiate between various levels of court (traffic court vs. criminal courts) and, for that matter, may not differentiate between the way in which they are treated by court clerks and Judges or Justices of the Peace.

Procedural fairness in the treatment of citizens by the justice system appears to be more important than specific competences or outcomes (Page C1). In one study summarized on page C1, for example, American survey respondents who had been in court were asked whether they felt that they would get a fair outcome and be treated justly if they were to go to court in the future. Ratings of the procedural fairness of their own experience were, in all cases, more important than their perception of having received the desired *outcome*.

Hence, satisfaction with the justice system depends to a significant degree on the manner in which people are treated, not so much other measures (e.g., police ‘effectiveness’ - see Page C2 and C3). Fair treatment and being taken seriously by the police appear to be important in achieving cooperation with the police and being seen in a favourable light (Page C4-C6).

The problem for those working in the criminal justice system is that the concept of “being treated fairly” may be complex. The police, for example, sometimes use language to achieve compliance by members of the public that, in effect, tricks them into doing things that they would not otherwise do (Page C7-C8). Racial profiling, as well, reduces both citizens’ assessments of the legitimacy of police actions and citizens’ general support of the police (Page C9). Unfortunately, it appears that it is *negative* experiences that drive public views of the police (page C10) perhaps because positive experiences are presumed to the norm (and hence do not affect public views very much). In other words, a few negative experiences with the police – and perhaps with the criminal justice system more broadly – may have long-lasting negative impacts on people’s views of the justice system.

In a post-911 age, the research suggests that treating suspects fairly is particularly important (C11-C12) even in situations in which citizens face terrorist threats and attacks (C13). In the study described on page C11 (carried out in New York City after 2001), for example, it was concluded that “Even when police confront grave threats, both minority and majority populations expect law enforcement officers to respect procedural justice values and are more likely to withhold their cooperation if they do not.... Non-Muslims, who rate the threat of terror as larger than do Muslims, are nonetheless sensitive to procedural justice in counterterrorism policing, particularly the targeting and harassment of Muslims. Three elements of procedural justice – neutrality in decision-making, trust in the motives of the

police, and treatment with respect – remain central to the definition of procedural justice and its effect on legitimacy. This is just as true in dealing with terrorism as it is in responding to ordinary crime.”

The problem with poor treatment of members of the public is not just that the poor treatment reflects badly on the criminal justice system. It also seems to lead to an increase in crime in the most disadvantaged neighbourhoods (page C14). Similarly, fair treatment by the police appears to be important in reducing the likelihood that men arrested by the police for assaulting their spouses would offend again (page C15).

Ordinary citizens learn what the criminal justice system is all about in many ways. One study of the operation of a Canadian youth court found that when youths who were in that court waiting for their own cases to be called observed what the researchers *independently* coded as rude and disrespectful treatment of people by officials in court, it had negative effects on them. Youths who observed the court acting badly reported that they felt less reason to obey the law or follow the decisions imposed on them by the court than did youths who, by chance, happened to be in court when the court was treating people in a respectful manner (page C16). Given other research suggesting that single negative experiences can have large and lasting impacts on people’s views of criminal justice institutions (see Page C10), there are clearly reasons to be concerned when courts – or any other part of the criminal justice system – treats people in a disrespectful manner (e.g., by making remarks described by the researchers as “humiliating” about the youth’s attire or where the “Crown Attorney rolls eyes and impatiently sighs at the youth when the youth is trying to explain an issue.”) See Page C16.

Many ordinary citizens who come in contact with the justice system – most notably the courts – do not necessarily know how things work. Courts might also consider the more practical matters in interactions between ordinary citizens and the courts and might attempt to be more considerate of the time that ordinary citizens (e.g., jurors, witnesses, sureties, etc.) spend trying to be good citizens. (see Page C17). One suspects that if studies similar to that described on Page C17 were carried out with sureties in bail court or witnesses more generally, one would find that what gets communicated to members of the public is that the only thing that counts is what is convenient for the court. Similarly, some basic instructions to ordinary citizens on interacting with courts could be useful.

Finally, as with their interactions with the police, one should not assume that those who have offended are much different from ‘ordinary citizens’ on questions about what is fair. Prison inmates appear to look at sentences in a manner that is similar to that of ordinary citizens (C18).

Section D: Success Stories

A number of criminal justice systems success stories have already been described in Part C of this compilation of studies. Some of these studies have been demonstrated with what might be called “positive” examples (e.g., the success of reminders to accused people of upcoming court dates – Page B9 – or practices to ensure that court-ordered programs can be easily accessed – Page B8). In other cases, the manner in which courts can increase the

likelihood that people will respect and obey the law have been illustrated by studies on what not to do (e.g., Page C16).

An obviously important success story – or perhaps more appropriately, a success *process* – is the diversification of police forces in North America. It would appear that broadening the composition of police forces has had important effects on the occupational subculture of the police (Page D1).

By keeping victims (and perhaps other interested people) apprised of the progress and outcomes of cases, police – and the justice system more generally – can demonstrate their interest in the well-being of those outside of the justice system (Page D2). Being responsive to others, however, may mean that those making decisions on how a case should proceed will find that they need to consider victims' (or others') reasons for involving the criminal justice system (Page D3).

Simple education programs – though attractive because they are independent of the justice system and do not demand any important changes in the justice system – have not shown a lot of success. One large, intensive, multi-method, attempt at education seemed to have no clear impact on people's understanding of the system. People did, however, appear to appreciate the fact that the criminal justice system had attempted to reach out to them (Page D4). It may be important, therefore, to think of 'education' as involving a process rather than an event. In the Netherlands, for example, judges have decided that to communicate effectively with the press (and hence with the public), they should have a 'press judge' who can speak to and help explain decisions and court processes (Page D5).

In terms of the effectiveness of court operations, courts in some locations have taken matters into their own hands – at times with quite favourable results. In one American city in which the size of the pretrial detention population had become an issue, court hours in one court were expanded such that initial court hearings (e.g., bail hearings) could be held at any time (24 hours a day, 7 days a week). Obviously this required cooperation of various groups, but the result was that the time to an initial decision was reduced considerably (Page D6).

Successes can be even more local, however. It has been demonstrated that thoughtful judges who are motivated to complete the cases before them can effectively manage long, and unpredictable case lists (Page D7), and they can reduce dramatically the number of adjournments – in this case from about 31% of cases on an average day to about 7% of cases (Page D8).

Perhaps the most dramatic example of what courts can do, if motivated, comes from the experience in the New York City courts in the days immediately following September 11, 2001. With leadership from the top, and creativity and hard work at all levels, the courts located near the World Trade Centre in New York were able to open and make individual decisions about each case on the docket only a few days after September 11, 2001 (Page D9-D10).

Research on Public Confidence in the Criminal Justice System:

Research Summaries from *Criminological Highlights*

The materials on the following pages come from *Criminological Highlights*, an information service produced by the Centre for Criminology & Sociolegal Studies at the University of Toronto. The project is directed by Anthony Doob and Rosemary Gartner.

Criminological Highlights is produced by a group of faculty (at the University of Toronto and at nearby universities), criminology doctoral students, and librarians. To find items appropriate for *Criminological Highlights*, we scan everything that comes into the Centre of Criminology library and over 100 journals that are available electronically. We also consider papers published in journals in related fields and reports from various government and non-government agencies. A short list (typically about 20-30 articles per issue) is chosen and the group reads and discusses each of these papers. For a paper to be included in *Criminological Highlights* it must be methodologically sound and it must have some (general) policy relevance. *Criminological Highlights* is distributed to interested people in about 35 different countries.

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Criminological Highlights is available free for the asking. To receive it regularly by email, contact Anthony Doob [anthony.doob@utoronto.ca].

Beware of the soundbite question. The picture that one gets of the public's views of mandatory sentencing laws depends on the questions which are asked. Simple, general questions tend to portray the public as harsh and vengeful. In contrast, specific questions about particular cases demonstrate a more thoughtful and nuanced set of public attitudes.

Background. Most western nations have at least some mandatory sentencing laws. This legislation has typically been created for political reasons rather than as a result of a careful assessment of justice needs. Indeed, given that public opinion polls in many countries indicate that people perceive sentences to be too lenient (p.486), it could be argued that mandatory sentencing laws – which invariably seem to be *harsh* in nature – are consistent with public wishes. Further, this type of legislation promises certainty and severity – two sentencing principles apparently favoured by the public.

This paper examines the public's views of mandatory sentencing laws. It begins by noting that people in many countries – including Canada – are not able to identify those offences which carry mandatory minimum sentences. Further, opinion polls do not typically ask people to consider the actual or opportunity costs of these sanctions or the fact that many mandatory laws violate the principle of proportionality in sentencing. In addition, survey respondents are rarely given a choice between mandatory sentences and the obvious alternative (*i.e.* allowing judges to determine sanctions).

These initial observations are particularly relevant in light of the fact that some of the support for this type of legislation may come from those who do not consider the implications of mandatory sentences or their alternatives. In one study, it was clear that part of the popular support for 3-strikes sentencing laws is derived from people who only think about this legislation in broad, abstract terms. For instance, 88% of respondents supported the notion of harshly punishing third-time felony offenders. In contrast, only 17% of these same people indicated support for concrete sentences presented to them that would be imposed as a result of 3-strikes laws. Clearly, it would appear that people may not be thinking of actual cases when indicating support for harsh mandatory sentences. As an illustrative example, most people polled in Canada favour the mandatory life sentence for murder. However, approximately three quarters of Canadians also indicated being opposed to this legislation in the Robert Latimer case (*i.e.* an individual charged with killing his severely disabled daughter who was experiencing chronic severe pain). In other words, “[t]he mandatory sentence appeals to the public in principle, but once confronted with actual cases, people quickly [abandon] their position and express a preference for less punitive punishment” (p.501). This phenomenon may be explained – in part – by the fact that consideration of mandatory sentences for individual cases calls attention to violations of proportionality – a principle that the public has been shown to strongly support.

Conclusion. Though “it would be overstating the case to conclude that the public strongly opposes mandatory sentences” (p.505), it would appear that the public responds quite differently to individual cases in which a mandatory sentence might be imposed and to the concept more generally. Given that most members of the public do not immediately consider the full consequences of a mandatory sentencing regime, this apparent inconsistency is not surprising. One might suggest that a legislature which is considering mandatory sentences should go beyond the slogan of being “tough on crime” and take into account both the broader implications of mandatory sentences and the public's response to those cases falling under such a regime.

Reference: Roberts, Julian V. (2003). Public Opinion and Mandatory Sentencing. *Criminal Justice and Behavior*, 30, 483-508.

Canadians do not want strict mandatory minimum sentences of the kind that exist in the Criminal Code of Canada. They prefer to leave some discretion with judges on whether the mandatory minimum sentence should be imposed.

In Canada, as in the U.S. and other countries, legislators from various political parties have been enthusiastically implementing mandatory minimum sentences for certain serious offences. Although they often make the argument that these will reduce crime (by way of general deterrence), the evidence strongly refutes this argument (e.g., see *Criminological Highlights*, 1(6)#7, 3(4)#6, 6(2)#1). But politicians have another justification: they often suggest that the public wants mandatory minimum sentences. For these and other reasons, then, mandatory minimum sentences may be more effective politically than they are as crime prevention measures. It would appear, however, the public's support is more nuanced than the politicians would lead us to believe.

This paper looks carefully at public support for mandatory minimum sentences in the context of a larger inquiry into public attitudes to sentencing. Over the past 30 years, about 60-80% of Canadians have told pollsters that they want the courts to hand down harsher sentences. When asked which specific crimes are sentenced too leniently, about 80% of Canadians in a recent poll answered 'gun crimes.' These are interesting findings in a country in which there are no national sentencing statistics for crimes generally or for crimes involving firearms.

However, Canadians do not appear to be as enthralled with deterrence-based sentencing as some might expect. When asked to rate the importance that they would give to various sentencing purposes, Canadians' most popular choice was "making offenders acknowledge and take responsibility for crime." General deterrence ranked a distant fifth in Canadian citizens' priority of sentencing purposes.

Respondents to a nationally representative survey were given a detailed definition of 'mandatory minimum sentence' and then were asked to name which offences,

other than murder, had mandatory minimums. 43% could not name any of the 31 offences that carry mandatory minimums, and only 19% mentioned impaired driving offences. Only 6% mentioned any of the firearms offences that currently have these penalties. Nevertheless, 58% of the respondents in the national poll indicated that they thought mandatory minimum sentences were a 'good idea' – a finding that echoes similar research in the U.S. and Australia.

After being asked a number of other questions relating to mandatory minimum sentences, respondents were asked whether they "agree or disagree that there should be some flexibility for a judge to impose less than the mandatory minimum sentence under special circumstances" (p. 96). The results show "strong support for the concept of judicial discretion" (p. 96): 74% agreed with the idea (30% strongly agreed, and 44% somewhat agreed). Similarly, 72% agreed with the idea that a court should be allowed to impose a lesser sentence if the judge had to provide a written justification for a decision in which he or she goes below the mandatory minimum sentence. 68% agreed with the idea that judges should be able to sentence

below the mandatory minimum term "if Parliament had outlined clear guidelines for the exercise of discretion..." (p. 97).

Conclusion. It would seem that the Canadian public wants Parliament to give some guidance on sentencing. If told that there are only two choices – no guidance on minimum sentences or mandatory minimums – they will choose the latter. On the other hand, if the public is given a middle ground option of what is in effect a presumptive minimum sentence – an option similar to those available in other countries – Canadians clearly prefer a sentencing structure that blends guidance and discretion. Most Canadian politicians, however, in the past two years of minority governments, appear to have been too busy to listen carefully to Canadians to find out what kind of sentencing structure they prefer. The public, it would seem, agrees with most sentencing scholars that rigid sentencing structures are likely to create unnecessary injustices.

Reference: Roberts, Julian V., Nicole Crutcher and Paul Verbrugge. (2007) Public Attitudes to Sentencing in Canada: Exploring Recent Findings. *Canadian Journal of Criminology and Criminal Justice*, 49, 75-107.

If ordinary Canadian citizens really think that sentences and the parole system are not harsh enough for the most serious cases, why don't they act that way?

Background. Public opinion surveys in Canada and elsewhere have suggested, for the past 35 years, that the public is dissatisfied with sentencing and with parole decisions, and would like both processes to be made harsher. In the area of parole, therefore, it would be easy to conclude that the public is “implacably opposed to granting parole [especially] to offenders convicted of those most serious crimes” (p. 104). Most Canadians, in a public opinion poll conducted in 1987 said that murderers should not be eligible for parole (p. 108). Nevertheless, Canadian law allows all those serving life sentences to apply for parole. Those convicted of murder and given parole ineligibility periods of more than 15 years can apply, after they have served 15 years, to go before a jury of 12 citizens and have the parole ineligibility period reduced – from an initial period of up to 25 years down to as little as 15 years.

This study examines the results of the hearings held under S. 745 of the *Criminal Code* – best known in Canada as the “faint hope clause.” Until 1 January 1997, the prisoner was successful in having the parole ineligibility period reduced if at least 8 of the 12 jury members were in favour of this outcome. Only about 25% of those eligible for a hearing applied. But of those cases (before 1 January 1997) in which hearings were held, 80% were successful in achieving at least some reduction in their parole ineligibility periods.

After 1 January 1997, the rules were changed for those serving life sentences such that those convicted of multiple murders are ineligible to apply for an earlier parole hearing and a superior court judge must agree that there was a “reasonable prospect” for success. Finally, the jury of 12 citizens has to be unanimous. These changes were legislated immediately after one of Canada’s most notorious serial killers (Clifford Olson) had applied (unsuccessfully) to have his 25 year parole ineligibility period reduced. The main effect of these changes appeared to have been to reduce the number of hearings: In the first three years after the rules changed, only about 12% of eligible prisoners had hearings. But of those who did apply, 77% were successful.

Conclusion. Most Canadians indicate, in public opinion polls, that, in the abstract, they are in favour of keeping those convicted of murder in prison forever without allowing them to be eligible for parole. Nevertheless, when given a chance to respond to individual cases, juries – by majority vote before 1997 and unanimously thereafter – are very likely to reduce the parole ineligibility period for those convicted of murder, even for those convicted of first degree murder. When placed on juries, members of the public appear to be able to “discharge their duties to react as disinterested decision makers, even in cases involving prisoners serving life terms for the most heinous crimes” (p. 110). “There may be an advantage in allowing jurors, rather than criminal justice professionals to make this decision. If the decision to reduce the time served prior to parole eligibility is made by members of the public, the criticism that the parole system is too lax... loses much of its power” (p. 111). Canadians, it seems, are not as tough as they sometimes sound.

Reference: Roberts, Julian V. (2002). Determining Parole Eligibility Dates for Life Prisoners: Lessons from Jury Hearings in Canada. *Punishment and Society*, 4, 103-113.

Ask Canadians sensible questions about sentencing and they give sensible, measured answers. Canadians do not really expect sentencing judges to keep them safe. They do, however, want their political leaders and judges to use resources sensibly. Sensible sentencing appears to be more important to Canadians than “harsh” or “lenient” sentencing.

Background. Every public opinion poll carried out in the past 35 years that has asked Canadians whether sentences are sufficiently severe has found “discontent” with sentencing: a majority of Canadians always say that sentences in criminal courts are not harsh enough. The irony of this answer is, of course, that almost nobody knows what the sentences in Canada actually are. Only recently have we had any systematic information about sentencing patterns in criminal courts. Part of the problem is that most Canadians think that sentencing can accomplish a great deal: deterrence is seen by most Canadians as being an important purpose of sentencing, notwithstanding the evidence which shows that variation in sentencing practices does not have a significant impact on crime levels.

This study looks at an Ontario public attitudes survey in which respondents were asked questions that focused largely on adult and youth crime issues. For both adults and youth, non-punitive approaches (increasing the availability of social programs, addressing unemployment, increased use of non-prison sanctions) were seen as being better strategies for controlling crime than making sentences harsher. In fact, in addressing both youth and adult crime, most Canadians would prefer to invest in prevention or non-prison sanctions rather than pay the cost of a harsher sentencing structure (more prisons).

Moreover, when Canadians appear harsh, one of the reasons may be that they have not thought about the consequences of their harshness. This same survey found that by reminding Canadians that an offender would, if imprisoned, be released after a few months, prison became a less attractive sentence. Similarly, when Canadians are told the cost of imprisonment, the preferred sanction shifts somewhat away from imprisonment.

Harsh sentences (typically involving prison) appear to people, at first blush, to be attractive for a number of reasons. First, they appear to promise something – incapacitation and punishment, at a minimum. In contrast, community sanctions (e.g., community service orders) are viewed by many Canadians with much skepticism. Over 60% of Canadians think that half or fewer community service orders for adults or youth are actually carried out.

Conclusion. Canadians appear to want a “response” to wrongdoing by adults and youth. It need not involve imprisonment. In fact, a focus on the fact that the offender will soon be in the community makes prison less attractive. However, the sanction must be seen as being carried out. Therefore, it is not surprising that – at least for minor offences – family group conferences are seen as more sensible responses to offending: such “accountability” sessions have the elements that are important to the public. Perhaps what is needed, then, are policies that respond to the public, rather than pander to it.

Reference: Doob, Anthony N. Transforming the Punishment Environment: Understanding Public Views of What Should be Accomplished at Sentencing. *Canadian Journal of Criminology*, 2000, 42, 323-340.

People may not be as punitive as they sound when they answer questions about criminal justice punishment. A Scottish study demonstrates that different ways of asking questions about sentencing and punishment result in quite different findings.

Scottish respondents to a standard public opinion survey indicated overwhelmingly that they thought judges were out of touch with what ordinary people think about punishment (79%) and that sentencing is too lenient (70%). One could easily conclude that Scotland, like many western countries, has fallen prey to populist punitiveness. Though most people (88%) indicated that they are interested in crime and justice matters, most also indicated that they knew little or nothing about levels of crime (59%), or what happens in court (70%) or in prison (83%). At the same time, these same people were willing to answer questions about these matters.

When dealing with actual cases, however the average person made recommendations on sentencing similar to the decisions made by members of the judiciary. In addition to data from a standard survey, this study used focus group discussions and discussions from a large day-long meeting of ordinary citizens to try to understand views about sentencing and punishment. The main finding was that views of sentencing are “more nuanced and contradictory” than they are usually thought to be: “Punitive attitudes exist alongside more liberal views” (p. 246). For example, focus groups favoured “more extensive use of constructive community based [sentences] instead of short prison sentences for less serious offenders” especially when costs were made salient. These results are, in fact, quite similar to Canadian findings (See *Criminological Highlights*, 4 1)#5).

The difficulty for those interested in sensible criminal justice policy is what might be called a “narrative of insecurity” where people believe that crime is a growing problem, especially among young people, and

have lost faith in the institutions of society – judges, courts, and prisons – that they have been repeatedly told can control crime. “This lack of confidence may be, at least in part, a reflection of the loss of faith in authority and expert knowledge more generally and not simply a response to perceived failures of criminal justice institutions in particular” (p. 254). On the other hand, when faced with the task of trying to craft outcomes for an individual case, ordinary citizens were more interested in finding a constructive offending-reducing solution than they were in expressing punitive values. At the same time, people did not appear to make clear distinctions among the causes of crime, crime prevention, and punishment policies. “People’s talk about crime and punishment sometimes reflects anxieties and insecurities about living in the modern world” (p. 252). Hence it is not surprising that attitudes are not based solely on information. Discussion and thinking about crime and punishment, may lead people to express more liberal attitudes toward punishment. This is not because people have more information, but

rather because what is salient to them may change as a result of more thought.

Conclusion. “Politicians should approach survey results with more care. The evidence from the results presented here and elsewhere suggests that the public are not as punitive as survey data suggest. There is evidence of public support for more rational penal policies. There is sadly little evidence of political leadership prepared to argue this case” (p. 254).

Reference: Hutton, Neil. (2005) Beyond Populist Punitiveness? *Punishment and Society* 7 3), 243-258.

The proportion of people who indicate that they think that criminal courts are, in general, too lenient depends on how the question is asked.

Public opinion polls in many western countries have found that most people indicate that sentences in criminal courts should be harsher than they are. Though this finding may be fairly consistent across time and place, it is not clear what it means. For example, few, if any, respondents in any country have sufficient information to evaluate the appropriateness of sentences generally. The desire for harsh sentences is affected by relevant information made available to respondents such as the costs of imprisonment (see *Criminological Highlights*, 4(1)#5). And people may want harsh sentences because they believe, incorrectly, that harsh sentences reduce crime.

This study looks at the effect of different wording of questions about sentence severity on the proportion of people who think that sentences are too lenient. In two earlier surveys in the US, half of the sample was asked a version of the standard 'sentence severity' question: "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?" Even though they were not offered a "Don't know" alternative, in the first of these surveys about 7% volunteered that they didn't know. The other half of the respondents to this survey were asked a question which explicitly encouraged them to think about whether they had enough information: "In general, do you think that the courts in this area deal too harshly, or not harshly enough with criminal, or don't you have enough information about the courts to say?" In this case, 29% indicated that they couldn't say. Looking at the overall findings, 78% of the first sample indicated that they thought that courts were not harsh enough. This dropped to 60% in the other sample which was offered a "Can't say" option. The results of the second survey were similar.

In the current study, equivalent groups of students in Florida were asked about their views of sentences. The respondents, on a random basis, were asked about their views using different questions. When asked a question that focused on harsh treatment – "In general, do you think the courts in this area deal too harshly or not harshly enough with criminals?" – 43% indicated that they thought that sentences were not harsh enough. However, when asked what is logically the same question, except in a form that focuses on leniency – "In general, do you think the courts in this area are not lenient enough or too lenient with criminals" – only 30% of an identical group of students indicated that they thought that courts were too lenient.

There was some indication that the questions were tapping into somewhat different attitudes. For example, there was a significant relationship between politician conservatism and belief that sentences were too lenient when respondents were asked the second question (with its focus on leniency). However, there was no relationship between political conservatism and the question of whether the courts dealt too harshly or not harshly enough with those being sentenced.

Conclusion: These findings, taken in the context of other studies suggesting that expressions of harshness are often based on an inadequate understanding of alternative approaches to sentencing or inadequate information (e.g., *Criminological Highlights* 8(6)#1, 12(8)#5, 12(4)#3, 12(4)#5), suggest that harsh treatment of offenders is unlikely to make the public content with sentencing. Not only do members of the public not know about patterns of sentences (*Criminological Highlights*, 7(6)#4), their assessments of sentences, generally, depend on exactly what they are asked.

Reference: Applegate, Brandon K, and Joseph B. Sanborn (2011). Public Opinion on the Harshness of Local Courts: An Experimental Test of Question Wording Effects. *Criminal Justice Review*, 36(4), 487-497.

The use of custodial sentences for offenders is often justified by the assertion that ‘the public demands it.’ But public support for custodial sentences in many cases may be about as thin as the evidence that custodial sentences deter offenders.

Those responsible for sentencing policy – either as part of sentencing councils as in England & Wales or judges elsewhere – often talk about the need to promote public confidence in the justice system. This assumption is supported by simple surveys that suggest that in many countries (including Canada) the majority of the public responds to simple poll questions by saying that most sentences are too lenient. This study goes beyond these simple surveys to help understand better the circumstances when the public is content to use a sanction other than imprisonment.

A representative sample of 1023 adults in England & Wales read descriptions of one of three different cases: a serious assault, a serious household burglary, or a fraud involving a substantial loss of money. Only about a third of respondents indicated that all such offenders should be imprisoned. Most of the rest of the respondents thought that the decision maker should have discretion as to whether the offender was imprisoned. Respondents were given a list of 13 potentially mitigating factors and were asked, for each factor, whether it justified a more lenient sentence in all, most, some, or no cases. The majority of respondents thought that most factors (e.g., the offender has no criminal record, or the offender was a victim of abuse in childhood) would justify a more lenient sentence in at least some cases. Being a young person (defined as being 18 years old) was the only factor for which a majority thought that it should *never* result in a more lenient sentence. Clearly respondents wanted personal factors to have some weight in determining the sentence.

In another part of the survey, respondents were told that a judge had decided to impose a prison sentence on an offender (for either an assault or a fraud). They were then given a list of factors (e.g., the offender had

no record, the victim did not want the offender to be imprisoned, the offender is caring for young children) and they were asked if the factor justified a community service order instead of prison. The majority of respondents thought that each of 6 mitigating factors would probably or definitely justify the imposition of a community service order instead of imprisonment for the assault. For the fraud, the fact that the offender was young was seen as probably justifying community service instead of prison by only 48% of respondents.

In another part of the survey, respondents had a relatively serious case described to them that would typically have resulted in a prison sentence. Not surprisingly about 4/5 of the respondents chose prison as the preferred alternative (over community service or a fine). However, about half of those who preferred prison found a detailed non-custodial order involving compensating the victim and doing a substantial number of community service hours to be acceptable instead of imprisonment.

The public is pragmatic about criminal penalties: Most respondents thought that the costs of administering sentences should be taken into account when imposing sentences. However, there was more support for

considering costs in the case of a social security fraud than there was in the case of an assault.

Conclusion: The public clearly wants many or most mitigating factors to be considered in most cases. “While the public may ‘talk tough’ in response to opinion polls which ask whether sentencing is harsh enough, when considering specific criminal cases and individual circumstances, there is considerable support for mitigating punishments” (p. 194). When details of non-custodial sanctions are made salient to members of the public, they will tolerate them. Members of the British public appear pragmatic: they generally want costs to be considered when sentences are being imposed. It would appear that “members of the public react thoughtfully to questions relating to sentencing – and not simply with reflexive punitiveness” (p. 195). Those policy makers whose approach to sentencing does not go beyond ‘reflexive punitiveness’ may, therefore, not be representing public sentiment.

Reference: Roberts, Julian V. and Mike Hough (2011). Custody or Community? Exploring the boundaries of public punitiveness in England and Wales. *Criminology & Criminal Justice*, 11(2), 181-197.

When members of the public think about crime policies, their level of support for repressive measures tells you nothing about whether they support rehabilitation.

In jurisdictions in which judges decide which purposes of sentencing to emphasize, they are often encouraged to conceptualize their sentences as primarily focusing on harshness for deterrence purposes (repression) *or* on rehabilitative principles (measures that might improve an offender's life, foster ties with the community, or provide treatment to the offender). Hence it is not surprising that these two constructs are often seen as being polar opposites, where the presence of one implies the absence of the other.

Empirically, however, there is little evidence of a negative relationship between support for repression and support for rehabilitation. This study, using a nationally representative sample of 1,892 Dutch residents surveyed in early 2005, tests the relationship between support for rehabilitation and repression.

Support for 'repression' was measured with 6 questions such as "If judges would impose higher penalties, we would have fewer criminals" and "Minors committing serious crimes should be punished as if they were adults" (p. 827). Support for rehabilitation was measured with 12 questions such as "Offering good educational opportunities prevents people from wrongdoing," "The judiciary should make efforts to prevent ex-convicts from feeling excluded from the community," and "Developing consciousness of norms is a very important form of crime prevention" (p. 828).

Not surprisingly, support for 'repressive' approaches was

considerably stronger among supporters of right-wing political parties and those endorsing authoritarian values than among supporters of left-of-centre parties and those rejecting authoritarian values. However, there were essentially no differences in the support for rehabilitative approaches among supporters of the various political parties or among those who varied on authoritarian values. Furthermore, support for repressive approaches and support for rehabilitative approaches were uncorrelated. People who saw crime as being caused by factors internal to the individual (e.g., those who endorsed such items as "Once a thief, always a thief") tended to support repressive approaches. Those who saw crime as externally caused (endorsing such items as "Criminals often come from broken homes") were more likely to endorse rehabilitative approaches.

Conclusion. "Many criminologists and policy makers conceive of public support for repression and

rehabilitation as two diametrically opposed options" (p. 832). This analysis suggests that such a view is without empirical foundation and that "rehabilitation is equally popular among the constituencies of conservative political parties as among those of progressive ones" (p. 832). It would appear, then, that support for rehabilitative approaches to crime or approaches that improve offenders' life chances is more evenly distributed across the population than previously thought. From the perspective of ordinary people, then, support for repressive approaches does not automatically mean a rejection of rehabilitation.

Reference: Mascini, Peter and Dick Houtman. (2006) Rehabilitation and Repression: Reassessing their Ideological Embeddedness. *British Journal of Criminology*, 46, 822-836.

Americans are beginning to tire of 'tough on crime' policies and are turning to prevention rather than prisons as a more appropriate response to crime.

Background. American politicians have successfully run election campaigns using crime as their vehicle to public office. It appears that things have changed somewhat since the peak of crime in the early part of the 1990s. Since that time, crime – particularly violent crime in the U.S. – has leveled off in many states while imprisonment rates have hit all time highs (with 2 million Americans in state or federal prisons or jails). A recent survey of public attitudes shows the following:

- Preferred approach to crime: 'Tough on crime' strategies (with an emphasis on strict sentencing, capital punishment and less parole) - 42% in favour in January 1994 versus 32% in September 2001. 'Tough on causes of crime' strategies (with a focus on job training, family counseling, etc.) – 48% in favour in January 1994 versus 65% in September 2001. Even Republicans are more likely to be in favour of addressing the causes of crime than simply adopting a tougher approach to crime itself.
- Current top priority for dealing with crime: Prevention - 37%; Rehabilitation - 17%; Enforcement (such as putting more police on streets) - 19%; Longer sentences and more prisons - 20%.
- Support for mandatory sentences: 55% (in favour) in June 1995 versus 38% (in favour) in September 2001.
- A majority (54%) of Americans presently think that America's approach to crime is on the wrong track. In contrast, 35% think that it is in the right direction and 11% are not sure.
- In particular, the war on drugs is currently seen by 70% of Americans as more of a failure than a success. Only 18% thought that it was more of a success while 9% saw good in some parts and not in others. 3% were uncertain.
- People presently view prisons simply as warehouses with 58% seeing attempts at rehabilitation as having been very unsuccessful or somewhat unsuccessful. Only 34% thought that they were successful while the rest (8%) were not sure.

In terms of what to do now, the picture is clear:

- Most (76%) want mandatory treatment rather than prison time for drug possession and 71% also want treatment instead of imprisonment for selling small amounts of drugs.
- Alternatives to prison were favoured for youthful offenders (85% in favour) and non-violent offenders (75% in favour). Other similar programs (e.g., intermittent custody) which reduce prison sentences for non-violent offenders were also favoured by the majority of the American public.
- Most Americans (56%) want to get rid of mandatory minimum sentences. Again, this attitude was even true of Republicans (51%).
- The majority of Americans favour job related rehabilitation programs such as mandatory prison labour (94%), required classes (91%) and job training for released prisoners (88%).
- Most Americans (77%) agree that the expansion of after-school programs and other crime prevention strategies would lead to long term savings by reducing the need for prisons. An equal proportion of the American public believes that treatment programs for drug offenders would save money.
- The events of September 11, 2001 did not alter Americans' views with regard to the best way of dealing with crime.

Conclusion. "There is widespread agreement that the [American] nation's existing approach to criminal justice is off-target" (p.6). It would seem that Americans are looking for effective ways of addressing the real problems of crime. Public opinion surveys in the past year suggest that there has been a shift from punitiveness to effectiveness. In the past, politicians appear to have led rather than followed the public toward harsh policies (see Beckett, *Making Crime Pay*. Oxford, 1997). Currently, they would seem well advised to change direction if they wish to stay in step with their constituencies.

Reference: Peter D. Hart Research Associates (2002). *Changing Public Attitudes Toward the Criminal Justice System*. The Open Society Institute.

A nationally representative sample of U.S. residents report overwhelming support for increased spending on preventing youth crime, for drug treatment for non-violent offenders, and for the police, but they show little support for spending money on building more prisons.

A serious problem with many public opinion polls concerning public policy is that members of the public are typically not forced to make tradeoffs among programs that they favour. For example, a question like “Should more money be spent on the police to reduce crime?” doesn’t offer the respondent any choices of other strategies that they might prefer. It is easy to be in favour of something if nothing has to be given up. If one wants to know what the public would do if faced with real fiscal choices, one needs to ask how they would allocate a fixed budget to various priorities. In an earlier study it was found, for example, that Canadians would generally prefer to invest in the prevention of crime or in non-prison sanctions rather than pay for more prisons (*Criminological Highlights*, 4(1)#5).

In this study, 1300 interviews were carried out during the summer of 2000 with a representative sample of U.S. adults. Respondents were asked to put themselves in the shoes of their local mayor and imagine that the Federal Government had just given their municipality a sum of money which could be allocated to crime control or crime prevention, or it could be given back to local residents in the form of a tax rebate. Five strategies were listed for each respondent and respondents were asked to allocate the money across these strategies. Across the sample, 37% of the money was allocated to prevention programs to keep youths out of trouble, 22% to drug treatment for offenders convicted of non-violent crimes, 21% for more police on the street, and 8% was allocated for more prisons. Residents allocated 12% for a cash rebate to local residents.

Black Americans were more likely than white and Latino Americans to want to allocate funds for programs to keep youths out of trouble, and were less likely than members of

these groups to want to allocate funds for prisons. Those who indicated that they worried a lot about crime indicated that they would spend more of the money on prisons and on drug treatment for non-violent offenders and on the police, and less money on prevention programs to keep youths out of trouble. “It appears that those who currently worry about crime are more concerned about immediate responses to crime at the expense of long-term youth crime prevention” (p. 327). On the other hand, those who had reported having been victims of crime “tended to give less money to prisons and police and more to prevention (though these [effects] are significant only for certain groups of victims)” (p. 330). Income had very little impact on the allocation of funds: “the lowest income levels... had remarkably similar responses to these questions as those with the highest income” (p. 330).

Conclusion. These findings are consistent with other studies carried out with less nationally representative

samples which showed that “despite the overall punitiveness of the public toward criminals, there is also significant support for both rehabilitation of offenders and early intervention programs designed to prevent high risk youth from later engaging in criminal activity” (p. 333). Though the public would spend considerably more of any allocation of funds on the police than they would on the building of more prisons, even the police would not receive as high a proportion of any special ‘crime prevention’ funds as would prevention programs.

Reference: : Cohen, Mark A., Roland T. Rust, and Sara Steen (2006). Prevention, Crime Control or Cash? Public Preferences Towards Criminal Justice Spending Priorities. *Justice Quarterly*, 23 (3), 317-335.

Contrary to the views expressed by the far right, public views suggest that rehabilitation should remain as an integral part of correctional policy.

Context. We are repeatedly told (in Canada as elsewhere) that people want a “tougher” criminal justice system and that prisoners should not be coddled. At the same time, however, there are numerous public opinion polls that suggest that rehabilitation should be valued within a correctional setting. Unfortunately, in Canada, we do not have much carefully conducted research on this issue, though we do know that people would rather spend money on alternatives to prison rather than prison construction (for both adults and for youth).

This study was carried out in Ohio, a state that does not have the reputation of being liberal on criminal justice matters. People were asked “general” questions about the relative weight that should be given to rehabilitation in prison (in contrast with “punishment” and “protecting” society). They were also given short “vignettes” -- that varied on a large number of dimensions (gender of accused, criminal record, drug use, employment history, current offence, sentence, and type of rehabilitation program). They were asked a number of questions about the vignette dealing, in effect, with whether they supported the use of rehabilitation with the offender.

The results are simple. People were more likely to list “rehabilitation” than other factors as what they thought should be the “main emphasis” in most prisons (41% listed “rehabilitation” first; 32% listed “protect society” as the “main emphasis” and 20% listed “punishment” as the “main emphasis”, with 7% indicating they were not sure). At the same time, when asked to indicate how *important* the various purposes were, it should be noted that protection and punishment were each listed as being very important (or important) goals of imprisonment by about 95% of the respondents. Rehabilitation was listed as being important or very important by *fewer* people -- about 83%. It appears that people are, in effect, saying that one must punish and protect -- these come *naturally* from being in prison -- but that rehabilitation is also very important and, therefore, needs to be the “main emphasis” of prisons.

The other more specific findings suggested that people valued rehabilitation more for juveniles than for adults and seemed generally supportive of rehabilitative efforts in prison and in the community. The respondents also generally supported the expansion of rehabilitative programs.

Conclusion. Those who suggest that the public is “fed up” with rehabilitation programs for offenders misrepresent the public view. As the authors suggest, although “the public desires punishment and... people want to be protected from predatory criminals, it appears... that the public still is receptive to treating offenders; the appeal of the rehabilitative ideal remains widespread” (page 253).

Reference: Applegate, Brandon K., Francis T. Cullen, and Bonnie S. Fisher. Public support for correctional treatment: The continuing appeal of the rehabilitative ideal. *The Prison Journal*, Volume 77 (3), September 1997. 237-258.

American politicians are jumping on the “get tough” bandwagon in juvenile justice by increasingly treating youth as adults. At the same time, residents of one of the country’s more conservative states favour putting more emphasis on rehabilitation in juvenile corrections. Are the politicians listening?

Background. Confidence in the juvenile justice system in the U.S. has, apparently, been declining and, perhaps as a result, there has been a widespread erosion of the differences between the juvenile and adult justice systems. At the same time, some national polls have suggested that “the public continues to support the correctional treatment of juveniles... [but] is less willing to support rehabilitation when this option is portrayed as a lenient response to crime or when it is suggested that an emphasis on rehabilitation will lessen the punishment given to youths” (p.43).

This study examined residents of Tennessee. The respondents were primarily white and politically conservative. Respondents overwhelmingly favoured a *rehabilitative* approach over a simple punishment or “public protection” model of juvenile corrections. When asked what the main emphasis in juvenile prisons should be, 63% said it should be rehabilitation compared to 19% who favoured punishment and 11% who favoured “protecting society from future crime [the youth] might commit.” At the same time, most respondents (92%) indicated that they agreed with the statement that “young offenders deserve to be punished because they have harmed society” (p. 48). When asked “whether the main priority... should be to build more prisons... to lock up as many offenders as possible or to invest in ways to prevent kids from committing crimes...” most respondents (94%) chose to invest in preventive measures.

Conclusion. The finding from this survey -- that people prefer to have a justice system which favours prevention and which combines rehabilitation with holding young offenders accountable for their actions -- is not unique to the U.S. Similar results have been reported in Canadian surveys (Sprott: *Crime and Delinquency*, 1998; Doob, Sprott, Marinos, and Varma, 1998; Centre of Criminology). It would seem that people are interested in reducing youth crime and, when given choices about how to respond to crime, they choose prevention over vengeance.

Reference: Moon, Melissa M., Jody L. Sundt, Francis T. Cullen, and John Paul Wright. Is child saving dead? Public support for juvenile rehabilitation. *Crime and Delinquency*, 2000, 46 (1), 38-60.

Even though political leaders sometimes suggest otherwise, members of the public do not generally want youths to be treated as adults in criminal justice matters.

Many youth justice systems have mechanisms whereby young people who commit certain offences can be dealt with as adults – at trial, sentencing, and/or for correctional purposes. In the United States, treating increasing numbers of youths as adults for criminal justice purposes became popular toward the end of the last century, challenging the purpose and the value of having separate justice systems for youths accused of offending.

Simple surveys of ordinary citizens support the conclusion that many people want youths charged with certain serious offences to be dealt with as adults, though this support seems to vary with the age of the offender and certain circumstances of the offence. However, it would appear that support varies somewhat depending on how a question is asked. The public appears to be more punitive in response to ‘global questions’ than to questions in which they are given information on specific characteristics of the youths or the circumstances of their crimes.

In this study of public attitudes (in the state of Florida), people’s views about whether youths should be handled in a separate system were measured in a number of different ways. They were asked whether “having a separate court system to handle juvenile cases makes good sense” and whether “juveniles who commit violent crimes should be tried as adults” (p. 58). In addition, people were given a specific case described in a short vignette that varied by offence and various characteristics of the youth (age, race, sex, criminal record, whether the offence was committed alone or with other youths, and the relative maturity of the youth).

Most respondents (79%) approved in principle the policy that there should be a separate youth court, but most (73%) also thought that youths who commit serious crimes should be tried as adults. At the same time, by far the most popular sentencing goal for youth sentencing was rehabilitation (95% saw it as “extremely important”). Other goals (retribution, specific and general deterrence, and incapacitation) were seen as relatively important, but the proportion of the population seeing them as extremely important was considerably lower (ranging from 57% for retribution to 22% for incapacitation). The perceived importance of these punishment goals did not, however, relate to the respondents’ views of whether a youth should be transferred to adult court. Youths who were described as having a criminal record or who were perceived as relatively mature for their age were seen as more appropriate candidates for transfer to adult court. Not surprisingly, those who were described as having committed a violent or drug offence also were seen as more appropriately dealt with in adult court.

Even though all of the offenders described in the vignettes were eligible for transfer, only those who

were described as having committed very serious offences and those with extensive criminal record were seen by the majority of respondents as appropriate cases for transfer. Those who believed that adult court would be more likely to impose the punishment that the youth deserved were more likely to want youths to be transferred. Similarly, those who thought that the youth would be more likely to be rehabilitated in the adult system favoured transfer.

Conclusion: It would appear that “People want juveniles who are accused of serious offences to be held responsible for their actions, and they see transfer as a mechanism for achieving this goal. Thus, the extent of transfers in the future may hinge, at least in part, on the capacity of the juvenile justice system to show that is an instrument of accountability” (p. 72-73).

Reference: Applegate, Brandon K., Robin King Davis, and Francis T. Cullen (2009). Reconsidering Child Saving: The Extent and Correlates of Public Support for Excluding Youths From the Juvenile Court. *Crime and Delinquency*, 55(1), 51-77. .

The public wants tougher laws to deal with violent and repeat juvenile offenders, doesn't it? No, not really.

Background. The United States Congress apparently is interested in passing laws to show the public that it takes crime committed by youth seriously. A Senate bill, introduced by two prominent Republicans, would, among other things, allow youth to be imprisoned along with adults, make juvenile records available to colleges that the youth might apply to later in life, provide funds for prison construction, and give federal prosecutors sole discretion to decide whether those youth charged with offences would be tried as adults or as youth.

This paper provides survey results from February 1998 on a representative sample of U.S. adults designed to determine what level of support there is for the various provisions of the bill. The results suggest that “tough” may be “good” in the abstract, but when it comes down to specific provisions, “tough” doesn’t sound so good.

The results show that the American public:

- Disagreed with the proposal that would allow youth to be housed in adult jails on arrest (67% disagreed with this proposal). This finding was similar to that obtained in a survey of 548 American police chiefs, 83% of whom agreed with the view that the focus for youth should be rehabilitation and the avoidance of placing youth with adult criminals.
- Disagreed with the proposal (70% disagreed) to allow the sharing of juvenile records with colleges the youth might apply for later in life.
- Agreed (74%) with the suggestion that the bill should earmark money for prevention.
- Disagreed (72%; mostly strongly) that youth be expelled from school for using tobacco.
- Tended to disagree (56% disagree, 41% agree, 3% undecided) with the proposal to give prosecutors total discretion on whether to try youth as adults or as youth.

One may well hear statements that we should be “tough on crime” but when it comes down to particular ways in which this might be done, people seem more pragmatic than tough. Canadian data on this are quite similar. See, for example, Sprott [*Crime and Delinquency*, July 1998] and Doob, A. N., J.B. Sprott, V. Marinos, and K. N. Varma [An exploration of Ontario residents’ views of crime and the criminal justice system. Centre of Criminology, 1998].

Conclusion. Just because people say that they want to be “tough” on youth crime does not mean that these same people will endorse “tough” strategies. This survey, carried out on a nationally representative sample of Americans, suggests that “tough” federal standards for the youth justice system are not endorsed by the majority of American citizens. We suspect, based on other work (See Doob *et al.* cited above), that people are more interested in effective proposals.

Reference: Schiraldi, Vincent and Mark Soler. The will of the people? The public’s opinion of the violent and repeat juvenile offender act of 1997. *Crime and Delinquency*, 44 (4), October 1998, 590-601.

The public supports the use of tax money to provide social programs aimed at providing help to children at risk of developing into offenders. Data show that, at an aggregate level, children at risk can be identified. Programs exist which can reduce the incidence of delinquency in a community. Those programs that are likely to reduce offending will provide a direct benefit to the children themselves that go far beyond delinquency. So why is it so hard, politically, to invest in the prevention of offending by young people?

Context. Criminologists can sometimes be accused of being overly pessimistic about two aspects of crime prevention. They have a tendency not to be supportive of programs that may show incremental, sometimes small, but beneficial effects on young people. Second, they often are exceptionally concerned about increased state intervention in the lives of children and others. Notwithstanding these views, three empirical conclusions can be supported that suggest that early intervention is to be encouraged:

- “The origins of serious delinquency and adult crime can often be traced to childhood....”(p. 189).
- Researchers can predict who will become delinquent, though obviously such predictions are not perfect.
- “Crime is highly concentrated within [certain] families” (p. 189).

Early intervention has other justifications: “Because of the link between offending and numerous other social problems, any measure that succeeds in reducing crime will have benefits that go far beyond this. Any measure that reduces crime will probably also reduce alcohol abuse, drunk driving, drug abuse, sexual promiscuity, family violence, truancy, school failure, unemployment, marital disharmony and divorce...”(David Farrington, quoted here on p. 189). What is needed, however, is public support. Does it exist?

This study reports survey results of 390 Tennessee residents. They were generally a rather punitive lot: most identified themselves as moderate or conservative, and most favoured capital punishment.

About three quarters of respondents favoured “spending tax dollars on programs that try to prevent crime by identifying youths early in life and rehabilitating them...” rather than “spending tax dollars to build more prisons so that more criminals can be locked up for longer periods of time.” This finding is very similar to recent University of Toronto Centre of Criminology findings from an Ontario survey.

When faced with specific early intervention programs, more than three quarters of respondents favoured each of the following: expanding preschool programs, giving special services to troubled kids, education programs to help parents of troubled kids deal with them effectively, school programs to identify troublesome youth and provide services, after school recreational programs, drug education programs, programs to keep delinquent kids in school, and rehabilitation programs for youths and parents of those convicted of offences.

Conclusion: Even in conservative parts of the U.S., there is enormous support for early intervention programs for youth rather than the building of more prisons. It is hard to imagine that a government in Canada or the U.S. could not achieve public support for progressive crime prevention rather than punitive approaches if it were willing to do so.

Reference: Cullen, Francis T., J. P. Wright, S. Brown, M. M. Moon, Michael Blankenship, B. K. Applegate. Public support for early intervention programs: Implications for a progressive policy agenda. *Crime and Delinquency*, 1998, 44, 187-204.

Community based sanctions are acceptable to members of the public when the public is asked about “real” cases and is not asked, simply, whether “sentences are harsh enough.” The sanctions, however, must have real consequences for the offender in order to be acceptable to the public.

Context. Broad public opinion poll questions about whether people think the courts are harsh enough almost always find that people want harsh penalties. “Given these numbers, it is understandable why virtually every elected official has jumped aboard the ‘get tough’ bandwagon and is wary of supporting policies that appear to treat offenders leniently.” These opinion questions, however, may assess “a general anger at, or a desire for protection from, the stereotypic chronic violent offender often portrayed in the media” (p. 7). These broad questions seldom assess support for rehabilitative approaches, and seldom give any details about offenders.

This study. A survey in Cincinnati, Ohio, asked respondents to read a short vignette describing a crime and the offender. Respondents were asked not only about their preferred sentence, but also which sentences they would tolerate. The vignettes varied across respondents. There were four crimes (two types each of robbery -- a purse snatching -- and burglary of a store). In some vignettes, the offender was described as carrying a gun; in others he was not. In some of the robberies, the victim suffered a physical injury; in some she did not. The amount taken in the burglary varied. Finally, the age, presence of a drug problem, prior record, and employment status of the offender varied.

Findings. Every respondent indicated that there should be some form of punishment imposed. Across vignettes, prison was the preferred option for 34-56% of the cases. Generally speaking, however, the data support the conclusion that “the public is reluctant to tolerate community based sanctions that do not include close monitoring of offenders” (p. 17). The data suggest, then, that community based alternatives are supported (even in a population that typically says that sentences are too lenient) even for relatively serious cases. There were, however, big differences in the preference for, and acceptability of, different community sanctions. “Regular probation” -- where the only real consequence was that the offender had to meet with the probation officer once a month for two years -- was seldom seen as preferred or acceptable. The authors suggest that community based sanctions need to be “developed and applied meaningfully.”

Conclusion: In this survey (as in surveys carried out by the Centre of Criminology, University of Toronto recently in Ontario), ordinary people -- even those who say that they think that sentences are not harsh enough -- are quite supportive of the use of community sanctions. These sanctions must have meaningful consequences. And the public’s support for community sanctions is more evident when they are responding to actual cases.

Reference: Turner, Michael G., Francis T. Cullen, Jody L. Sundt, and Brandon K. Applegate. Public tolerance for community-based sanctions. *The Prison Journal*, 1997, 77, 6-26.

Negative impacts of U.S. imprisonment policies are evident. The public is beginning to understand this. The question is whether political decisions will be made to change crime policies.

U.S. imprisonment rates have increased from about 200 prisoners per hundred thousand residents in 1980 to about 700 in 2002. [Canada's rate is about 100.] This change has "disproportionately affected young African Americans and Latinos" (p. 3). Women also have been increasingly imprisoned. In 1980 women constituted about 4% of the prison population; by 2001 their portion in the prison population had increased to about 6.7%. Research has suggested that politicians led public opinion in the war on crime, convincing people that "tough on crime" policies would reduce crime. The "war on crime" approach, however, is important in part because it appeals to the "ongoing [American] popularity of individualistic understandings of and solutions to complex social problems" (p. 7).

This book presents data showing that high imprisonment is not a result of particularly high crime rates in the U.S. Only America's homicide rates are exceptionally high compared to other western countries. The high homicide rate might be explained as the "catastrophic interaction of... the ubiquity of guns, high rates of economic and racial inequality (especially in the form of concentrated urban poverty), the trade in illegal drugs, and the emergence of a 'code of the streets' that encourages the use of violence" (p. 7). However "by emphasizing the severity and pervasiveness of 'street crime' and framing the problem in terms of immoral individuals rather than criminogenic... social conditions, [American] politicians effectively redefined the poor – especially the minority poor – as dangerous and undeserving" (p. 8). The media supported rather than examined or challenged this view.

The public does not completely accept this explanation for crime, nor is the public content with imprisonment as

a solution to crime. Popular attitudes and beliefs about crime in the U.S., as in Canada [see, *Criminological Highlights*, 41#5], are ambivalent and contradictory: "Even when the get-tough mood was at its peak, most Americans were still eager to see a greater emphasis placed on crime prevention and were willing to support a variety of alternatives to incarceration" (p. 9; See also *Criminological Highlights*, 15#8; 24#5).

Nevertheless the war on crime continues unabated in the U.S. and its consequences have been profound. Drug arrests and incarceration have increased dramatically during a period when drug use appears to be down (p. 163-165). Although illegal drug use rates appear to be similar across racial groups from 1979-2001, the proportion of drug possession charges involving African Americans is about 3 times their proportion in the population. The other proximate causes of American prison growth are well established: changes in sentencing laws, in particular various forms of

mandatory minimum sentences and, in many jurisdictions, the virtual elimination of parole release. All of this is taking place at a time when "the historical evidence... shows no correlation between patterns of incarceration and patterns of crime" (p. 181).

Conclusion. There are viable alternatives to high imprisonment policies. A shift in orientation from a prosecution to a harm reduction approach for drug problems, or a focus on punishments outside of prisons (and a focus on reintegration rather than incarceration) would all appear to be more productive uses of scarce resources. For these to work, however, politicians have to realize that there would be public support for such approaches.

Reference: Beckett, Katherine and Theodore Sasson. *The Politics of Injustice: Crime and Punishment in America (Second edition)*. 2004. Sage Publications. (Chapters 1, 8, 9).

Those citizens – jury members – who have intimate knowledge of specific criminal cases are quite content with sentences imposed by judges in those cases.

Public opinion polls in most western countries suggest that the vast majority of people – typically about 70-80% – say that sentences, in general, are too lenient. Extensive research carried out in many countries suggests that the answers to such questions reflect a belief based on inadequate knowledge of cases and the sentences actually handed down. Instead, the answers that people give to questions about ‘sentence severity’ appear to be based on people’s *beliefs* about sentences or the sentencing process rather than being carefully considered conclusions based on evidence of what goes on in court.

This study – carried out at the suggestion of the Chief Justice of the High Court of Australia – examines how sentences, as handed down by the courts, are perceived by a group of ordinary citizens who have extensive knowledge of a single case: jurors in the Australian state of Tasmania who decided on the guilt of the accused in criminal trials. Before the judge handed down the sentences in 138 trials in which there was a guilty verdict, jurors were asked to indicate the sentence they thought should be imposed. Overall 52% chose a sentence that was more lenient than the sentence actually imposed by the judge, 44% chose a more severe sentence, and 4% gave exactly the same sentence as the judge. There was some variation across offence types but in all cases about half or more of the jurors recommended the same or a more lenient sentence than did the judge. Ninety percent thought that the actual sentence handed down by the judge was very or fairly appropriate.

Those whose preferred sentence was more lenient than the sentence actually handed down by the judge were significantly more likely to say that the judge’s actual sentence was very appropriate than were those who had selected a more severe sentence

than the judge. “In other words, jurors who were more punitive were less tolerant of the judge’s sentence and less malleable in their views than the more lenient jurors” (p. 5).

The responses of the jurors in this study to questions about sentencing *generally* were typical of those who answer such questions on public opinion polls. These jurors were asked their opinion about sentences in general. The majority thought that, in general, sentences were too lenient for all offence types, most notably for sex and violence where 80% and 76%, respectively, thought sentences were too lenient. Though jurors were slightly less likely to say that sentences *generally* were “much too lenient” after they heard the judge’s sentence in “their” case, the majority of jurors still believed that, in general, judges’ sentences are too lenient. Hence it would seem that this one exposure to a ‘complete’ case did not have a dramatic impact on jurors’ overall views of sentencing. Apparently, in general, the 698 jurors who participated in the study saw their case as being exceptional in the sense that the judge handed down an appropriate sentence.

As in other studies, those jurors who thought that sentences, generally, were

too lenient were more likely to think that crime in their state had increased (when, in fact, it had decreased in recent years). Thinking that sentences were too lenient was also correlated with overestimating the proportion of crime that involves violence and underestimating the likelihood of imprisonment for those convicted of rape.

Conclusion: The basic findings – that jurors are *not* more punitive than judges in recommending sentences for actual cases when jurors and judges have the same information – are consistent with other findings on public attitudes to sentencing. These findings underline the importance of responding sensibly to public opinion on sentencing. Most citizens have little if any information about the details of criminal cases. Hence their view that sentences are too lenient is best thought of as a ‘belief’ rather than an attitude based on a careful assessment of information.

Reference: Warner, Kate, Julia Davis, Maggie Walter, Rebecca Bradfield, and Rachel Vermey (2011). Public Judgement on Sentencing: Final Results from the Tasmanian Jury Sentencing Study. Australian Institute of Criminology: *Trends & Issues in Crime and Justice*, No. 407.

People who have little confidence in the criminal justice system and are most critical of sentences being handed down by the courts are likely to have very little knowledge of the operation of the criminal justice system.

A wide range of studies carried out in a number of countries have found that most people think that sentences in their countries are too lenient. Previous research would suggest that when people say this, they are thinking about unusual cases, often cases involving extreme violence. At the same time, it is well known that people have very little information about sentencing practices in court (*Criminological Highlights* 4(1)#5). When they do get adequate information about sentencing and the sentencing process, it appears that they are often quite likely to differ very little from the courts in the sentences they prefer (*Criminological Highlights*, 9(4)#2, 6(2)#6, 8(6)#1, 3(3)#4).

This study looks at the relationship, in a sample of ordinary people, between public confidence in the (Australian) criminal justice system and the public's knowledge about crime and criminal justice. Confidence in the criminal justice system was assessed on the basis of people's answers to questions in five areas: sentence severity, bringing offenders to justice, meeting the needs of victims, treating accused people fairly, and respecting the rights of those accused of crimes.

Knowledge was assessed with six questions about local crime and justice: changes in the level of property crime (actual: a decrease); the proportion of reported crime involving violence (actual=7%); the proportion of burglars brought to court who were convicted (actual = 73%); proportion of those brought to court for assault who were convicted (actual = 74%); proportion of those convicted of home burglary who were imprisoned (actual =61%); and the imprisonment rate for assault (14%). Responses were categorized according to how far (in either direction) they were from the correct answer.

After controlling statistically for education, age, income, and whether the respondent lived in a metropolitan area, high levels of knowledge of these dimensions tended to predict people's confidence in the criminal justice system. For example, those who knew that property crime had decreased and that violence constituted only a small portion of all crime reported to the police, and those who were accurate about assault and burglary conviction rates and burglary imprisonment rates were most likely to think that the severity of sentences was 'about right' even when controlling for demographic variables. This finding also held when factors such as whether the respondent was university educated were controlled for statistically.

Conclusion: It would appear that part of the lack of confidence that people have about the operation of the criminal justice system comes from a general lack of knowledge about how it operates. The impact of knowledge is large and appears to exist when other factors were held constant. For example, of those people in their 40s, who were less

than university educated, earned less than the median income, and had low knowledge about crime and justice, only 4% thought that sentences were about right in their level of severity. About 60% of identically placed respondents with high knowledge thought that sentences were about right. It is not terribly surprising that there is a general lack of knowledge about the criminal justice process and that many people lack confidence in this public institution: much public discourse about crime and criminal justice appears to be ill-informed and, therefore, the public can hardly be held responsible for their lack of knowledge. But clearly judgments about the operation of the criminal justice system from those who know how it operates are likely to be very different from those who express views but do not know how it actually operates.

Reference: : Jones, Craig and Don Weatherburn (2010). Public Confidence in the NSW Criminal Justice System: A Survey of the NSW Public. *The Australian and New Zealand Journal of Criminology*, 43(3), 506-525.

Canadians' views of the criminal courts are more complex than we had previously thought: Wealthy people are more likely than poor people to think that the courts are doing a poor job of helping victims of crime, whereas poor people are more likely than wealthy people to think that courts are doing a poor job of protecting the rights of the accused.

Public support for the criminal justice system is clearly important. Courts are seen as being too lenient by a majority of Canadian adults. Members of racial minority groups in Canada believe that racial discrimination is a problem within the criminal justice system. Victims' groups are often critical of both the manner in which victims are treated and the rights that accused people have in the courts. These views of the courts (or of the police) tend to be expressed in broad terms rather than in terms of specific attitudes. This paper, instead, looks at two specific attitudes of Canadians: views of how well the courts help victims of crime and how well the courts protect the rights of the accused.

This paper starts with the assumption that Canada's upper classes will identify more with victims of crime, suggesting that "the upper classes' identification with victims of crime is based on stereotypes which cast offenders as members of the lower classes" (p.370). On the other hand, "individuals of lower socio-economic status are predicted to identify more closely with accused individuals and [are] also more likely to perceive that the rights of accused individuals are not being protected" (p.370).

The data used in this paper come from the 1993 Statistics Canada *General Social Survey*, a nationwide survey of 10,385 adults over the age of 15. Among other questions, people were asked to "rate the courts in helping victims of crime" and "rate the courts in protecting the rights of accused." Many more people saw courts as doing a poor job in providing help to victims (49%) than in protecting accuseds' rights (13%).

The findings show that members of high and low socio-economic groups had quite different views. Those from higher household income groups were more likely than those from poorer households to think that courts were doing a poor job in helping victims of crime. On the other hand, those from poorer households were more likely than those from richer households to think that courts were doing an inadequate job of protecting the rights of the accused. Similarly, it is the relatively highly educated who are most likely to think that the courts are doing a poor job of providing help to victims of crime. "Income remained a significant predictor of public attitudes, even when other important variables such as victimization, court contact, and perceptions of crime were controlled" (p.379). On the other hand, "consistent with previous studies..., respondents with court contact were also more likely to be dissatisfied with the courts' treatment of victims and accused persons" (p.380).

Conclusion. When we hear concerns being expressed about the courts' treatment of victims and accused persons, we should remember that these concerns are, to some extent, class based: it is disproportionately the wealthy and highly educated who are most concerned about the success of the courts in providing help to victims. Those from poor households are most likely to think that the courts are doing a poor job protecting the rights of the accused.

Reference: Kaukinen, Catherine and Sandra Colavecchia. Public perceptions of the courts: An examination of attitudes toward the treatment of victims and accused. *Canadian Journal of Criminology*, 1999, 441, 365-384.

People differ on how they view crime: some see crimes as varying in how “morally wrong” each crime is; others tend to see crimes as being equally morally wrong, even when the crimes are quite different from one another. This latter group of people tend to identify themselves as “conservative Protestants.”

Context. Survey data in the U.S. has identified a group of people “who did not discriminate among crimes on their perceived wrongfulness” (p. 454). Knowing that such a group exists and are identifiable may help us understand public responses to various crime policies. Various Government of Canada policy statements, for example, differentiate among crimes -- and suggest a more severe response to “more serious” crimes. If, on the other hand, all crimes are seen as equally reprehensible, such policies may not receive support. And, in the context of this paper, particular groups may differ from others on this dimension.

This paper examined public attitudes in Oklahoma City, Oklahoma, in 1993. Respondents to a survey were asked to “indicate how morally wrong [they thought] it was for a person to commit [each of 12 of crimes]” such as shoplifting, breaking into a house and stealing a television, robbing a store and killing two employees, etc. Separate measures were also obtained of “conservative Protestantism” and of more general “religiosity.” “Conservative Protestantism” was operationalized largely in terms of a literal interpretation of events and ideas from the Bible (page 456).

The findings were clear: Those who were most likely to believe in a literal interpretation of the Bible (High on the scale of conservative Protestantism) were most likely to rate the average severity of the 12 crimes very high, but, more importantly, were less likely to differentiate among the different crimes.

Conclusion: An identifiable group of people -- who, typically, would be described as fundamentalist Protestants -- view crime in different ways from others. First they see crime, generally, as being more morally wrong than others see it. Second, they tend not differentiate among crimes: All crimes are equally “wrong.” Other data suggest that this same group believes that sins (which include crimes, presumably) deserve punishment, and they believe in “punishment as retribution, rather than for deterrence or rehabilitation” (p. 462). “This movement represents a shift away from the previous paradigm of rehabilitation, deterrence, and crime prevention through social programs and it presents lengthy incapacitation of criminals (all of them) as the alternative. This message has an appealing ring for a public weary of crime and skeptical of past liberal rehabilitative efforts, as well as for politicians who are eager to exploit fears of crime and who advocate retributive solutions for the crime problem” (p. 462). “Manifestations of increased punitiveness, such as mandatory sentences... and the ‘three strikes and you’re out’ provisions, can be understood as stemming from the successes of the conservative Protestant social movements, which has operated to form public opinion and to influence lawmaking” (p. 462-3).

Reference. Curry, Theodore R. Conservative Protestantism and the perceived wrongfulness of crimes: A research note. *Criminology*, 1996, 34 (3), 453-464.

The desire for tougher laws in the U.S. relates more to factors such as the public's belief in the decline of morality and increases in the diversity of the population than it does to perceptions of fear and risk.

Background. There are two broad, but not mutually exclusive, ways in which punitiveness within the general population might be explained.

- It is possible that people are punitive because they believe that punitive approaches to wrongdoing will create a safer and more secure society. Punitiveness, if this view is correct, should be linked to views about crime and to fear.
- In addition, people may be punitive because they feel the need to reassert social values and to re-establish the obligation to obey the law. Punitiveness, then, would be linked to social values -- such as judgements about the cohesiveness of society and views of the family.

This paper. This was a relatively small scale (166 respondents) survey in Northern California. Although the survey size was small, and the location was quite specific, the respondents appear to be a reasonably representative sample of adults in this area. Furthermore, and most importantly, the respondents were diverse in terms of education, race, etc.

The authors used, as their measure of punitiveness, support for California's Three Strikes law, some measures of "overall punitiveness" and respondents' "willingness to abandon procedural protections" in the criminal law.

They also obtained measures of people's views about crime, the courts, whether their neighbourhood and state are cohesive and caring, as well as measures of whether they feel traditional family values have disappeared and the acceptance of diversity in their state. Finally, measures of authoritarianism and dogmatism were obtained.

Findings. The findings are somewhat complex, but the following results were quite clear:

- Support for three strikes, support for general punitive policies, and willingness to abandon procedural protections were all reasonably related to one another.
- Authoritarianism and dogmatism were strong predictors of support for the three strikes initiative, support for general punitive policies, and the willingness to abandon procedural protections.
- Other concerns about social conditions -- especially the view that traditional family values have disappeared -- predict support for all three types of punitive responses (3-strikes, general punitiveness, no procedural safeguards).
- Above and beyond these concerns, crime-related concerns *at best* have a modest relationship with punitive responses.

Conclusion. We tend to explain views about crime by looking to crime-related beliefs and attitudes. This paper argues that such an approach is not sufficient. Social values, and views of the community and the family are, according to this study, *more* important in explaining punitive attitudes. When we hear members of the Reform Party, for example, arguing for certain punitive policies, we must look beyond the Reformer's views of crime for an explanation. Their punitive views may be related, much more strongly, to their broadly based views that their communities and their country have deteriorated morally.

Reference. Tyler, Tom R. and Robert J. Boeckmann. (1997) Three strikes and you are out, but why? The psychology of public support for punishing rule breakers. *Law and Society Review*, 31, 237-265.

The level of an individual's punitiveness toward offenders depends on that which he/she perceives to be the causes of crime. Indeed, certain beliefs about the roots of criminal behaviour lead people to be more punitive.

Background. It is obvious that those having certain political orientations tend to favour particular theories of crime. For instance, the conservative right perceives offenders as being "short on moral values and self-control" (p.2) and consequently views crime control as being best accomplished through swift, certain, and harsh punishment. On the other hand, the liberal left tends to "see crime as the result of forces external to the individual, such as inequality and discrimination" (p.2) and logically suggests other approaches for crime control.

This study assesses individuals' views of the causes of crime in a survey of Americans conducted in 1996. A number of different theoretical perspectives on both criminal behaviour and fear of crime were assessed. Punitiveness was measured by questions such as "It is important that the criminal justice system keep offenders locked up so that they can't commit more crimes" and "It is important that the criminal justice system discourage others from committing crimes by showing that crime doesn't pay" (p.9).

The results suggest that fear of crime and various demographic measures do not predict punitiveness above and beyond people's theories of crime causation. Those views found to be related to punitiveness were as follows:

- Classical theory – that crime is caused by inadequate punishments and citizens' perceptions that they can 'get away with' crime. Not surprisingly, those who agreed with this perspective were found to be more punitive in nature.
- Social process theories – that crime is the result of such factors as inadequate ties with non-criminal friends and family. Those holding these beliefs were also shown to be more punitive.
- Sub-cultural theory – that crime is rooted in membership of a group that tends to support or encourage crime. People subscribing to this view were more inclined to be punitive.
- Structural positivism – that social/economic factors are responsible for crime. Those agreeing with this theory were found to be less punitive.
- Labelling theory – that contact with the criminal justice system increases people's involvement in crime. Those people who held this belief tended to be less punitive.

Interestingly, no relationship was found between punitiveness and two other theoretical explanations for crime: biological theories (*e.g.*, offenders were born that way or are not intelligent) and psychological theories (*e.g.*, offenders have emotional problems, or are emotionally damaged).

Conclusion. It would appear that the way in which a person views crime causation is important in understanding his/her level of punitiveness toward offenders. For example, those believing that criminal behaviour is affected by economic and social factors tend to be less punitive than are those who perceive crime as controlled by the severity of punishments handed down in a society. In this light, politicians (as well as others who speak publicly about crime policy) may affect the level of punitiveness in a society not only as a result of their statements about punishments but by the way in which they conceptualize the causes of crime.

Reference: Sims, Barbara (2003). The Impact of Causal Attribution on Correctional Ideology: A National Study. *Criminal Justice Review*, 28, 1-25.

Religious attitudes, like those of criminal justice, are complex. People who are “religious” may be seen as showing support for rehabilitation as well as for punitiveness. The issue comes down to what we mean by “religious attitudes.”

Background: Religion has never been very far from criminal justice attitudes. On the one hand, the new U.S. president identifies himself closely with organized religion and has brought this into the White House by focusing on religious groups as recipients of federal social service money. This same individual was also responsible for more executions than any other American governor in recent history. On the other hand, Canadians can claim the father of the youth who was killed in the 1999 school shooting in Taber, Alberta. An Anglican minister, he has been speaking out for forgiveness and understanding while also suggesting that the “lesson” from Taber is to comprehend why the shooting took place and to address those causes rather than focus on punishing the boy who killed his son.

This study examines religious attitudes in detail. Data from previous studies differentiate what are typically referred to as “fundamentalist” religious views (e.g., those accepting a literal interpretation of the Bible) and those that are non-fundamentalist. Fundamentalist Protestants, for example, are more favourable toward capital punishment than other religious groups. In this survey of Ohio residents, people were asked a number of detailed questions about their support for punishment (e.g., “Punishing criminals is the only way to stop them from engaging in more crimes in the future”) and rehabilitation (e.g., “It is important to try to rehabilitate juveniles who have committed crimes and are now in the correctional system”). They were also asked about religious forgiveness (e.g., “God teaches that even if someone has lived a life of crime, they should be forgiven for their offences if they are truly sorry”) and Bible literalness (“I believe the miracles described in the Bible actually happened just as the Bible said”), as well as their beliefs in a punitive God and the salience of religion in their lives.

The results show that religious views had effects above and beyond demographic variables (age, sex, race, income, political affiliation, victimization and fear). Religious “forgiveness” predicted lower support for capital punishment, less support for punishment and more support for rehabilitation (generally, and as the main goal of prisons). On the other hand, “Bible literalism” predicted less support for rehabilitation.

Conclusion: Being “religious” is not useful as a way of understanding a person’s criminal justice attitudes. Rather, it appears that the “type” of religion is important: those who support religious forgiveness support rehabilitative goals of imprisonment and are less in favour of simple punitiveness. Belief in the literal interpretation of the Bible appears to describe those least in favour of rehabilitation in prison. With respect to criminal justice attitudes, it is clearly not useful to talk in simple terms about those who are “religious” or not.

Reference: Applegate, Brandon K., Francis T. Cullen, Bonnie S. Fisher, and Thomas Vander Ven. Forgiveness and Fundamentalism: Reconsidering the Relationship between Correctional Attitudes and Religion. *Criminology*, 2000, 38, 719-753.

Black residents of both the U.S. and Canada are more likely than white residents to perceive that the criminal justice system is biased on racial grounds. In Canada, contact with the police or the courts increases the perception of bias for black residents.

Background. It has been suggested that social class has become more important than race in determining perceptions of criminal justice agencies. Some have suggested, for example, that it is class, not race, that determines the targets of “police misconduct” and the perception that the system is biased. These two studies suggest otherwise.

These studies, one carried out in Canada, the other in the U.S., both look at the role of race (and educational achievement) on respondents’ views of discrimination by the police. The American study examined opinions regarding the role of the police in providing security in neighbourhoods, confidence that the police treat people of both races equally, unfair treatment by the police, and the perception of how widespread the problem of racism against blacks is among police officers.

The Canadian study looked at the perception that certain groups are treated worse (e.g., the poor, the young, blacks) by the police and the courts. Generally speaking, Canadian respondents perceive more discrimination by the police than by criminal court judges. In addition, “black respondents are much more likely to perceive police and judicial discrimination than either Chinese or white respondents” (p. 446-7). Canadian blacks “are more likely than their white and Chinese counterparts to report that discrimination is both severe and commonplace” (p.448). The American data are similar: controlling for education, income, age, gender, region of the country, and political orientation, “Blacks are significantly more likely than whites to view themselves as being the brunt of harsh treatment at the hands of the criminal justice system.... and to believe that racism among police officers is very or fairly common” (p. 500).

Education does make a difference. In the US, the more educated a respondent is, the more likely it is that there will be negative appraisals of the criminal justice system’s treatment of blacks generally. Similarly, in Canada, those who were best educated were most likely to perceive the criminal justice system as being unjust.

The most dramatic finding for Canada, however, was that contact with the police or the courts was likely to *increase* perceptions of criminal *injustice*, particularly for blacks. This may not be too surprising given that blacks were much more likely to report that they had been stopped by the police (43% of males reported being stopped at least once in the past two years) than were whites (25%) or Chinese (19%). Hence the problem is not that blacks hold an uninformed stereotype of the police and courts based on no direct experience. When they actually have contact with the criminal justice system, their views become even more negative.

Conclusion. These findings -- that blacks are much more likely than whites to perceive racial bias on the part of the police and courts -- are important for a number of reasons including the fact that “people obey the law [in part] because they believe that it is proper to do so... People are more responsive to normative judgements and appeals than is typically recognized by criminal legal authorities...” (p. 461). Given that most people believe that it is the responsibility of the police and others in the criminal justice system to maintain confidence in the system, these perceptions of injustice cannot be ignored. They are also important because they are one more indicator of differential treatment of blacks by the police and other parts of the justice system.

References. Wortley, Scot. Justice for all? Race and perceptions of bias in the Ontario criminal justice system -- a Toronto study. *Canadian Journal of Criminology*, 1996, 439-467. Weitzer, Ronald and Steven A. Tuch. Race, class, and perceptions of discrimination by police. *Crime and Delinquency*, 1999, 45, 494-507.

It is people, not crime rates, who account for white residents' perceptions of crime. Studies in three American cities show that one's perception of the level of crime is associated with the proportion of young black men in a neighbourhood, even after controlling for the amount of actual criminal activity.

Background. Fear of crime is an important determinant of people's everyday lives as well as their views about the ways in which those who offend should be handled by the criminal justice system. This recognition may be important in shedding light on the tendency of whites to avoid living in neighbourhoods with high proportions of black residents. Indeed, this behaviour raises the question of whether part of this avoidance is due to the perception that black Americans are associated with crime.

This study examines the relationship between the racial composition of a neighbourhood and the perceptions of white residents of neighbourhood crime levels. Unlike neighbourhood crime rates, "[a] neighbourhood's racial composition is a readily observable characteristic" (p.721). Furthermore, evidence suggests that "[t]he stereotype of blacks as criminals is widely known and is deeply embedded in the collective consciousness of Americans, irrespective of the level of prejudice or personal beliefs" (p.722). Data from surveys in three cities – Chicago, Seattle, and Baltimore – were examined in an attempt to understand the way(s) in which people infer their neighbourhood's crime rate. The actual level of crime in the neighbourhood was controlled for by examining official statistics and, in two cities, victimization measures from the survey. The effects of other factors (*e.g.*, income, the physical deterioration of the neighbourhood) were also removed. The study hypothesized that the proportion of young black men in the neighbourhood would be used by residents as an indicator of the crime rate. More specifically, high numbers of young black men would be interpreted as indicating a high level of crime.

The results in all three cities supported this hypothesis. In Chicago, for example, both the proportion of young black men and the crime rate as well as indicators of general disorder or incivilities (*e.g.*, noise problems and insults among persons on the street) were predictors of the perception that crime was a problem (p.740). The results for Seattle were similar. Over and above crime rates and victimization experience, the percent of young black men predicted respondents' perception of neighbourhood crime rates. In addition, individuals who reported numerous teenagers hanging out in the street were also more likely to report that their neighbourhood had a serious crime problem (p.742). Further, the Baltimore data showed that above and beyond crime rates, the percent of black residents as well as personal victimization had an impact on perceived levels of crime. There was some evidence in Seattle and Baltimore that these effects were stronger for white residents than for black residents (p.744).

Conclusion. It would appear that "whites are averse to black neighbours in part because certain neighbourhood problems, namely crime, are perceived to be worse in black neighbourhoods" (p.748). However, the results "contradict the assumption that this perception simply reflects actual differences in neighbourhood crime levels" (p.748). Thus, it seems that whites "systematically overestimate the extent to which perceptible black and neighbourhood crime rates are associated" (p.749). Indeed, it would seem that perceptions of crime levels are still very 'black and white'.

Reference: Quillian, Lincoln and Devah Pager (2001). Black Neighbors, Higher Crime? The Role of Racial Stereotypes in Evaluations of Neighborhood Crime. *American Journal of Sociology*, 107, 717-767.

Those Americans who hold the most punitive attitudes about crime are most likely to see crime as being disproportionately committed by blacks.

Some have suggested that for many middle class white Americans, crime is seen largely as a black phenomenon and have argued that “the support for an increasingly punitive response to crime is grounded in a belief system that constructs crime in terms of race and race in terms of crime...” (p. 360). However, such statements are often made without strong supportive evidence, even though there is some evidence linking fear of crime to the actual or perceived racial composition of a neighbourhood (See *Criminological Highlights* 1 1)#7).

This study examines punitive attitudes of a national sample of Americans, focusing on a complex measure of punitiveness (e.g., support for making sentences more severe, making prisoners work on chain gangs, sending repeat juvenile offenders to adult court) and relates this measure of punitiveness to a measure of the extent to which respondents see crime as a disproportionately black phenomenon.

Focusing largely on white respondents the study shows that those who view crime as disproportionately involving blacks as offenders are more likely to hold punitive attitudes even when the following factors in addition to demographic factors such as age, education, gender) are statistically held constant: concern about crime, the respondent's estimate of the proportion of crime that is violent, fear of crime, racial prejudice, and whether the respondent lives in the southern U.S.

Each of these other factors also predicts punitive attitudes: for example, those who are politically conservative, those who have high concerns and fear about crime, those who think that much of it involves violence, and

those who are prejudiced also are more punitive. However, the overall effect – that those white people who link race to crime (seeing crime as disproportionately caused by blacks) believe that the criminal justice system should be more harsh – holds only for certain types of people. Generally, it is only those from less punitive groups (e.g., from northern states rather than southern states, those not prejudiced rather than more prejudiced) who show the effect. For those already relatively punitive – those more concerned about crime, those who think that a high proportion of crime involves violence, those high in racial prejudice, or from the southern part of the U.S. – there was no added effect of believing that crime was disproportionately caused by blacks.

Conclusion. The “results linking punitive attitudes to the racial typification of crime suggest that there may be a racial overlay to the crime salience issue. Indeed, it is when concern about crime and the perception that crime is violent are “low” that racial typification of crime is a significant predictor of punitiveness. In these contexts a racialized crime threat may be substituting for a generalized threat that is presumed by

crime salience” (p. 379). These results may reflect a “modern racism... [that] eschews overt expressions of racial superiority and hostility but instead sponsors a broad ‘anti-black affect’ that equates blacks with a variety of negative traits, and crime is certainly one of those” (p. 380). For example, “James Q. Wilson’s assertion that ‘it is not racism that makes whites uneasy about blacks moving into the neighbourhoods... it is fear. Fear of crime, of drugs, of gangs, of violence’ ... in one short sentence simultaneously disavows white racism while equating blacks with a list of negative attributes” (p. 380).

Reference: Chiricos, Ted, Welch, Kelly, and Gertz, Marc. (2004) Racial Typification of Crime and Support for Punitive Measures. *Criminology* 42 359-389.

Support for harsh criminal justice policies and opposition to preventive crime policies within the American white community are each associated with symbolic racism.

The media coverage of crime is often tinged with racism. A white victim of a violent crime committed by a black offender is often highlighted (e.g., Toronto's "Just Deserts" killing in the early 1990s or the killing of a young white woman in downtown Toronto in December 2005) but similar killings of black victims, or violent crimes committed by Whites, often receive less coverage. It is suggested that such coverage may support a particular kind of racism – symbolic racism – which, in turn, may lead to support for harsh criminal justice policies.

In contrast with overt racist behaviour, symbolic racism "stems from a blend of anti-Black affect and traditional values" (p. 438) in which Whites attribute high levels of violation of social norms to Blacks (e.g., on such dimensions as work ethic, respect for authority, self-reliance), and in which Whites view Blacks as getting too many special privileges. This study suggests that "symbolic racism is a key determinant of crime policy attitudes" (p. 439). Using data from white respondents to surveys carried out in Los Angeles in the late 1990s, support for tough criminal justice policies was assessed with questions related to the enforcement of the death penalty for persons convicted of murder and "three strikes" sentencing practices. Support for preventative policies was assessed with questions about reducing poverty and providing prison inmates with education and job training as ways of reducing crime.

In addition to symbolic racism, various other possible explanations for support for harsh criminal justice policies (and opposition to preventative policies) were measured, including the perceived seriousness of random street violence, political conservatism,

whether the respondent had been victimized, and the frequency with which the respondent watched local news. Respondents were also asked about their own theories of the causes of crime (e.g., breakdown of family structure, lack of good schools or jobs). Symbolic racism was assessed with such questions as "Blacks are demanding too much from the rest of society" and "Discrimination against Blacks is no longer a problem in the U.S."

When looking at support for punitive policies, the respondents' own explanations for crime correlated with support for such policies. Those who attributed crime to individual deficits (in contrast with structural difficulties such as lack of well-paying jobs) were more supportive of punitive crime policies. Similarly, those who described themselves as conservative and those who watched a lot of local news saw the crime problem as being more serious and in turn were more likely to support punitive policies. However, above and beyond these effects, those who scored high on 'symbolic racism' were more likely to support harsh policies. The effect of symbolic racism on endorsement of

punitive policies was especially strong for those whose income was lowest. Support for preventative policies came from those who attributed crime to structural problems and from those who saw crime as coming from such factors as the breakdown of the family. Political conservatives were less likely to support preventive policies. Once again, however, above and beyond these factors, those who were high on symbolic racism were less likely to support preventive policies.

Conclusion. The findings suggest that "in a present-day society in which there is broad general support for abstract principles of racial equality..., the influence of racism remains important, even on ostensibly race-neutral issues like crime policy" (p. 449).

Reference: Green, Eva G.T., Christian Staerkle, and David O. Sears (2006). Symbolic Racism and Whites' Attitudes Towards Punitive and Preventive Crime Policies. *Law and Human Behaviour*, 30, 435-454.

Increased imprisonment in New Zealand in recent years has more to do with “penal politics” than with crime.

New Zealand's imprisonment rate in 2004 was about 174 per hundred thousand residents, second only to the U.S. among OECD countries. Most of the increase occurred in the previous 15 years – a period during which crime, if anything, decreased. In 1980, the imprisonment rate (per hundred thousand residents) was 88; by 1990 it had risen to 117. In comparison, Canada's imprisonment rate, which has been fairly stable since the early 1960s, was 103 per hundred thousand residents in 2002/3.)

In 1999, a “Citizens Initiated Referendum” obtained 92% support for the view that there should be “minimum sentences and hard labour for all serious offences” p. 305). The referendum results became a standard against which subsequent sentencing legislation could be compared. For example, legislation in 2002 increased some penalties, “exhort[ed judges] to make more use of maximum penalties” p. 305), restricted parole opportunities for violent offenders, made community risk the sole factor to be considered in deciding parole, and allowed victims to attend and/or provide written statements for parole hearings. Prior to 2002, law-and-order politics had been associated mainly with attempts by the police to generate support for their organizations. By 2002, all political parties except the Green Party had formed a consensus supporting punitive approaches: Crime was seen as a serious, central problem to be responded to with tough measures. Academics and a Governor General who had suggested that prisons wouldn't solve the crime problem were denounced as being “anti-populist.” It appears that there were four “distinctive factors, beginning in the mid-1980s... ultimately coalescing and converging in the late 1990s” p. 307) that account for the change in New Zealand's crime policy.

First, economic problems in the 1970s and 1980s combined with dramatic changes in government social policies led to a “widespread decline in trust of politicians... [and] dissatisfaction with the democratic processes” p. 308). Dramatic changes were made in the manner in which governments were elected and it became easier for referendums to be held.

Second, at a time when New Zealand society was changing racially economically socially and politically) “three incidents of mass murder between 1990 and 1992 allowed concerns about the general direction of New Zealand society to surface” p. 311). Reported crime was increasing, and even when reported crime rates stabilized in the mid-1990s, the public appeared to continue to believe that crime was increasing. As in Canada, crime *in one's own neighbourhood* was not seen as being as much of a problem as was crime *elsewhere*. Nevertheless, the public perceived crime as being out of control and the justice system as being too lenient on those who were sentenced.

Third, groups representing victims of crime became more important as a result of a highly publicized brutal attack leading, ultimately to the 1999 referendum referred to above. Harsh punishment was the focus of these groups.

Finally the decline in the importance of government, academic, and judicial experts coincided with an increased acceptance of “personal experience, common sense, and anecdote rather than social science research” as the basis of policy. The families of victims were accorded “expert” status by the media. Social science findings were seen as less persuasive than personal views or accounts.

Conclusion. “What seems to have been particularly important in the New Zealand context was the disenchantment with the existing democratic process...” p. 318). Though the focus of much of the move toward increasing punitiveness was on violent crime, policies dealing with other types of crimes were more moderate. Hence, the overall impact was less than it might have been had the punitive provisions been applied to a broader range of offences. For example, though it became more difficult for violent offenders to be paroled, it became less difficult for others. Consequently even in this context, the punitive effects of these changes were somewhat muted.

Reference: Pratt, John and Marie Clark. 2005) Penal populism in New Zealand. *Punishment and Society* 7 3), 303-322.

American prosecutors are more likely to request harsh sentences in cases that receive large amounts of press coverage.

Previous research suggests that two factors are important in determining the amount of press coverage a case gets. First, the unusual or the spectacular case is more likely to be covered by media outlets than is the mundane case. Second, killings involving victims who are white or female appear to attract more publicity than other killings. In the United States, it is argued that “prosecution is a political process and prosecutors have a political stake in how their actions are perceived... When a case is in the public view, prosecutors may feel pressure to take a punitive stance... [In interviews] many prosecutors indicated that they would not plea bargain a case if it was receiving media attention” (p. 63).

This paper first examined the press coverage of 209 murder cases in Baltimore, Maryland, that met statutory criteria that allowed the prosecutor to ask for “life without parole” rather than the normal sentence of “life.” The focus was on whether or not the prosecutor filed a motion that he or she would seek a penalty of life in prison without parole eligibility. Various predictors of the prosecutor’s decision to seek “life without parole” were examined including the strength of the prosecutor’s case, various characteristics of the victims and of the offenders, aggravating and mitigating factors in the case, the “heinousness” of the crime (e.g., the presence of reports of torture or of there being blood spattered everywhere), and the amount of press coverage that the case had received.

The results showed that the amount of press coverage that a case received was a predictor of the prosecutor’s decision

to seek “life without parole” above and beyond all other factors of the cases that were measured. Holding these other factors constant, it was estimated that for average cases 11% of the cases with no press coverage resulted in a motion from the prosecutor for “life without parole.” If there was one article about the case in the local newspapers, the probability increased to 18%. Cases with 2 or more press articles had a 28% chance of having a “life without parole” motion filed by the prosecutor.

Conclusion. “Prosecutors operate in dual worlds. They are charged with seeking justice, yet they are restrained by such practical considerations as their electable image” (p. 72) in jurisdictions in which prosecutors are elected. In this study, it was shown that even one newspaper article about a case dramatically increased the likelihood that a prosecutor would seek a higher penalty, when all other aspects of the

case were held constant. The question that is, of course, unanswered by this study is whether prosecutors who are appointed, rather than elected, would seek more punitive sentences solely as a result of press coverage when career advancement, reputation among peers and reputation in their home communities, rather than electability could be affected.

Reference: Bierie, David and Kathryn Murphy (2005) The Influence of Press Coverage on Prosecutorial Discretion: Examining Homicide Prosecutions, 1990-2000. *Criminal Law Bulletin*, 41 1), 60-74.

Watching local television news increases viewers' fear of crime, particularly for people who live in high crime areas or who have been victims of crime.

Background. What makes people think that they are likely to be victims of crime? Very few people have enough “direct” experience with crime to allow reasonable inferences about their likelihood of being victimized. It has been suggested that for those most vulnerable – and most fearful –, media influences are “overshadowed by direct personal and interpersonal experience with the reality of crime” (p. 758). Others have suggested that TV representations of crime resonate only with, and therefore only affect, those whose lives are congruent with those images. This would suggest that only those who live in high crime areas or who have been victimized would be influenced by television images of crime. Finally, one could expect that only those who believe that TV images reflect reality would be affected by them.

This study examined fear of crime as measured by responses of Florida residents to questions concerning the likelihood that they would be victimized in six different ways. They were also asked about their television news (local and national) viewing as well as various demographic questions. “Actual crime” was assessed by using official crime rates for the city or county in which the respondent lived.

Several of the control variables – amount of actual crime, age, sex, and being Hispanic – impacted on the person’s perceived likelihood of victimization. The amount of local television news which a person watched had an impact above and beyond these other variables. More interesting is the fact that the effect of TV news viewing seemed to be largest in certain groups. Those who lived in high crime areas, those who had been personally victimized or had a family member who had been a victim of crime, and those who believed that local news reflects the reality of crime were more likely to show “effects” of viewing local TV news. In other words, members of these groups who watched a lot of local television news were more likely to be fearful of being victimized than were members of these groups who watched little local TV news. Those whose beliefs or lives did not resonate with the image of local crime stories (those who lived in relatively safe areas, who had not experienced victimization, or who didn’t believe in the “accuracy” of local TV news) were relatively uninfluenced by the amount of local TV news which they watched.

Conclusion: “Reality and TV are not competing explanations for people’s perceptions about crime...” (p. 780). Instead, they are “factors that interact in the social construction of fear and possibly other meanings about crime” (p. 780). The effects of local TV news on fear of being victimized overwhelmed any effect of viewing national news. “Local news effects are most often significant for viewers who live in high-crime areas, have recent victim experience, or who perceive news accounts as realistic” (p. 780).

Reference: Chiricos, Ted, Kathy Padgett, and Marc Gertz. Fear, TV News, and the Reality of Crime. *Criminology*, 2000, 38, 755-785.

Everyday knowledge -- and everyday misunderstandings of the law -- can affect the way in which decisions are made. Jurors in capital cases in the state of Georgia often have strong, and largely incorrect, views of the likelihood of release of an offender given “life” instead of the death penalty. The legal fiction that the consequences of a decision are not relevant to the jury members is clearly not followed: Death is recommended by juries in part because they do not know what the meaning is of a sentence of life in prison.

Background. Folk knowledge – everyday, taken-for-granted understandings of the world – shapes the way in which people make decisions and can shape the way in which governments respond to people. “Recent public opinion research reveals increasingly punitive attitudes in the United States. Since the claim that punishment is too lenient is embedded in cultural understandings rather than experience with crime [or the criminal justice system], the implication that we are not now imposing enough punishment is a cultural tenet, a value judgement, not subject to empirical refutation” (p. 465).

This study examines citizens’ views of the release of offenders who have been convicted of murder. The public generally believes that dangerous offenders are released soon after their conviction and return to their communities to commit additional crimes. Public opinion polls in the U.S. show that large numbers of people believe that convicted murderers will be released from prison considerably earlier than they actually are under the law. “Citizens clearly do not trust the criminal justice system to act predictably in accord with legal requirements, to the extent that they actually know what state law requires” (p.473). Most people believe that murderers are released too early.

Jurors in capital cases, in the state of Georgia, for example, appear to believe that murderers are released after 7 years when, in fact, some of them are only first *considered* for parole (typically at 15 years. Furthermore, capital murderers not given the death penalty have not been eligible for parole since 1994. The problem is that jurors deciding on whether an offender should be executed want to know what the consequences of a decision *not to* execute would mean. Judges are not able to tell them since the law appears to imply that such “consequences” are irrelevant.

Conclusion. When people are making decisions, the consequences of those decisions are taken into account. When those consequences are misperceived, it is the misperception that will affect the decision. Courts have repeatedly been reluctant to allow “ordinary jurors” to take into account the consequences of their decisions. Thus, for example, when deciding between two possible charges, decision makers may well take into account expectations based on “folk wisdom” rather than facts when crafting a decision that is designed to accomplish a particular goal.

Reference: Steiner, Benjamin D., William J. Powers, and Austin Sarat. Folk knowledge as legal action: Death penalty judgements and the tenet of early release in a culture of mistrust and punitiveness. *Law and Society Review*, 1999, 33, 461-505.

Providing ordinary citizens with authoritative information about crime, the effect of harsh sentences, and mandatory minimum sentences appears to have an *immediate* impact on their general satisfaction with sentences and the courts. However, these effects are *not* long-lasting.

In some western countries (e.g., Canada, the U.S., Australia), most residents, when asked to give their views about sentencing, tell pollsters that sentences are not harsh enough. It has often been asserted – and sometimes demonstrated – that when people are given some information about sentences, their views of sentences become more moderate. For example, when people are given information showing that having the death penalty does not reduce crime, there is an immediate reduction in support for the death penalty. However, a number of such studies suggest that the effect is not long lasting.

Some have suggested that to achieve lasting impact, people need to engage with the information through discussion and deliberation. However, little evidence exists that ‘once only’ engagement with issues surrounding sentencing will have lasting impact. In this study, the impact of discussion and deliberation about sentencing matters is examined over a relatively long time period (5-8 months).

A representative sample of 6005 Australian adults were interviewed (on the telephone) in 2008-9 (Time 1). They were asked questions about three aspects of sentencing: (1) their confidence in sentencing, (2) their preferences for harsh sentences, and (3) their willingness to accept alternatives to imprisonment for certain types of offenders. Most of those interviewed agreed to be interviewed at a later time.

Approximately 9 months later (Time 2) a random sample of 815 of this group were interviewed a second time (the ‘information session’). They were provided information about the purposes of sentencing and given some sentencing scenarios, and then they were asked to indicate which purposes should guide sentences.

Next, they were provided some key facts about sentencing (e.g., relative costs of prison and alternatives, the ineffectiveness of high imprisonment as a crime control technique, problems with mandatory minimum sentences). They were also asked to consider the importance of these facts in directing policy (e.g., whether to build more prisons). Finally, they gave their views on the same three issues they had been questioned about 9 months earlier.

About 7 months later (Time 3) these same people, and a randomly selected control group of people who had not been contacted for the (Time 2) ‘information session’ were interviewed. The views of members of both groups were assessed using the same scales.

The results are quite consistent across measures. The immediate impact of the information deliberation at Time 2 was significant on all three measures. People expressed more moderate views after engaging with sentencing information and sentencing purposes. However, at Time 3 – 7 months after people had been given information and had been induced to think about it – these moderating

effects of information disappeared almost completely: “No substantial differences could be observed between the group exposed to the intervention and the control group some 6-9 months after the intervention” (p. 160).

Conclusion: It would appear that although information and deliberation about sentencing has an immediate impact, its effect is short lived, presumably, in part, because in many communities the assumption that harsh sentences are good is the dominant publicly expressed attitude. “Emotions of fear, anger, and disgust are... easy to elicit on topics of crime and punishment” (p. 161) and these emotions can lead to the expression of punitive attitudes toward sentencing. But a focus on these emotions ignores the fact that, when engaged with the issue of sentencing, the public appears to have more moderate views.

Reference: Indermaur, David, Lynne Roberts, Caroline Spiranovic, Geraldine Mackenzie and Karen Gelb (2012). A Matter of Judgement: The Effect of information and Deliberation on Public Attitudes to Punishment. *Punishment & Society*, 14(2), 147-165.

Variation across neighbourhoods in legal cynicism – i.e., lack of support for the legitimacy of laws and lack of confidence in the police – helps explain why some Chicago neighbourhoods maintained high homicide rates even when homicide rates elsewhere were decreasing.

Previous research has shown that residents of socially disadvantaged neighbourhoods with high rates of violent crime have low levels of tolerance for violence or crime. However, “while individuals may believe in the substance of the law, antagonism toward and mistrust of the agents of the law may propel some individuals toward violence simply because they feel they cannot rely upon the police to help them resolve grievances” (p. 1191), an argument similar to that made to explain the relative reduction, over time, of homicides by the elite (see *Criminological Highlights* 1(3)#3). Legal cynicism is part of the culture of a neighbourhood. This conceptualization of culture views it “not as values but as a repertoire of tools that ultimately serve as a guide for action” (p. 1195).

Residents of a neighbourhood “acquire culture relationally, through their interactions in social networks” (p. 1195). Thus, for example, “cynicism toward the law does not directly cause neighbourhood violence....” Instead, the culture of a neighbourhood may be one of mistrust of agents of the law, such that “individuals will resort to illegal violence to redress a problem instead of abiding by the letter of the law” (p. 1203).

This study examines the homicide rate of 342 neighbourhoods in Chicago, looking at characteristics of neighbourhoods rather than of individuals. In Chicago, in the early 1990s, there was, not surprisingly, a positive correlation between concentrated poverty of a neighbourhood and legal cynicism, but a small negative relationship between legal cynicism and tolerance for deviance.

The level of legal cynicism was positively related to the homicide rate in the late 1990s above and beyond the impact of concentrated poverty, tolerance for deviance and other neighbourhood characteristics. More importantly, although the neighbourhood homicide rate in the early 1990s was a predictor of the neighbourhood homicide rate in the late 1990s, legal cynicism (measured in the middle of the decade) remained a predictor of late-1990s homicide rates even after controlling for the earlier homicide rate. In fact, the level of legal cynicism of the people in the neighbourhood predicted the change in homicide rates from the early 1990s to the early 2000s: neighbourhoods in which the culture was one in which the law and police were not trusted tended to be those whose homicide rates remained high, while neighbourhoods not characterised by legal cynicism tended to have decreased homicide rates.

Conclusion: It is important to remember that ‘legal cynicism’ and ‘tolerance for deviance or violence’ are quite separate constructs. But “when the law is perceived to be unavailable – for example, when calling the police is not a viable option to remedy one’s problems – individuals may instead resolve their grievances by their own means, which may include violence... In this sense, cultural frames have a constraining influence; cynicism constrains choice if individuals presume that the law is unavailable or unresponsive to their needs, thus pushing individuals to engage in their own brand of social control” (p. 1128).

Reference: Kirk, David S. and Andrew V. Papachristos (2011). Cultural Mechanisms and the Persistence of Neighbourhood Violence. *American Journal of Sociology*, 116 (4), 1190-1233.

Completing a victim impact statement does *not* make victims more satisfied with the criminal justice system. Those victims who expected the victim impact statement to have an effect, but did not believe it had, were particularly dissatisfied with the sentence. Dissatisfaction with the sentence was the main determinant of dissatisfaction with the criminal justice system as a whole.

Background. It is often presumed that allowing victim impact statements will ensure that victims are more satisfied with the criminal justice system because they are no longer legally excluded. On the other hand, some have argued that giving victims an opportunity to express their views may create the expectation that their advice will be followed. If their advice is then not followed, it may lead to increased disillusionment with the system.

This paper. Cases with an identifiable individual victim were chosen from the South Australian higher courts. Some had filed a victim impact statement, some had not. A survey questionnaire was sent to them by the Director of the Office of Crime Statistics in the Attorney General's office.

Findings. Not surprisingly, most victims (96%) said that they wanted their victim impact statements used in sentencing, and most (71%) indicated that they expected it to have an impact on the sentence. Fewer than half (46%), however, thought it had affected the sentence. The net result was that for 34% of the victims, their expectation that they would have an impact was, in their view, unfulfilled. Most importantly, there was no significant difference between those who had filled out a victim impact statement and those who had not, in the mean satisfaction rating of the way in which the criminal justice system had handled their case.

Satisfaction with the sentence was the main determinant of their overall satisfaction with the criminal justice system. Satisfaction with the sentence was *not* significantly affected by whether or not the victim had filled out a victim impact statement. However, those victims who expected the victim impact statement to have an impact on the sentence but believed it had not had such an impact (i.e., those with unfulfilled expectations) were particularly dissatisfied with the sentence. And, of course, dissatisfaction with the sentence was the main determinant of dissatisfaction with the criminal justice system as a whole.

Conclusion. Some might believe that regardless of whether victim impact statements are helpful to the court, they may help demonstrate to the victim that the system is responsive to their concerns. This does not seem to be the case. The paper's authors suggest that "if the victim impact statement practice is continued, efforts to prevent raised expectations, which result in a decrease in satisfaction with justice need to be taken" (p. 56). The authors also noted that "although the victims wanted more and longer prison sentences than were actually imposed..., they also desired more orders of restitution, community service and license revocations than the court provided.... It suggests that other, more constructive outcomes such as restitution and compensation... or community service... are of considerable importance to the victims" (p. 56-7).

Reference: Erez, Edna, Leigh Roeger, and Frank Morgan (1997). Victim harm, impact statements and victim satisfaction with justice: An Australian experience. *International Review of Victimology*, 5, 37-60.

Ordinary citizens who are fully informed about the sentences that are handed down in criminal cases are likely to be relatively content with those sentences.

Survey data collected in Great Britain, Canada, and Australia, among other countries, suggest that a majority of ordinary citizens think that criminal sentences are too lenient. Though these surveys undoubtedly suggest real dissatisfaction on the part of citizens with the sentences of the court, the reasons for this dissatisfaction are not clear. Previous research shows quite clearly that people do not know much about sentencing principles, sentencing practices, or the various factors that traditionally are part of judges' decisions on the appropriate sentence. Nevertheless, British and Australian survey evidence suggests that a substantial portion of people think that judges are out of touch with the views of the public.

In this study, carried out in Victoria, Australia, actual cases were presented to ordinary members of the public by the judge who handed down the sentence. Cases were chosen that involved serious offending (an armed robbery with minimal violence with an unloaded gun, rape at knifepoint by a neighbour of the victim, multiple stabbings, and a theft of a million dollars worth of goods from a company by two employees).

Employees in 32 workplaces participated by attending two sessions, typically a week apart. In the first, the employees listened to a 70-minute general talk about sentencing. In the second, the judge presented his sentencing judgement which included the facts of the case, the circumstances of the offender, and information about the law and current sentencing practice. The judge did not point to a particular sentence or possible range of sentence. Participants were told that they were not bound by sentencing law or practice.

In three of the four cases, the median of the sentences imposed by over 100 participants per case was *less* than the court's actual sentence. In these three cases between 63% and 86% of the respondents would have handed down a sentence more lenient than the sentence of the court. In the fourth case (in which only 35% suggested a sentence more lenient than the actual sentence) the median sentence recommended by ordinary people was 3.2 years compared to the court's sentence of 3 years. There was huge variation among the participants as to what the appropriate sentence was. In addition, many participants wanted offenders with personality disorders to receive a program of treatment along with a custodial sentence. "The community does rely on offender factors favouring leniency, not only offence seriousness" (p. 777).

Conclusion: "The results cast doubt on the populist view of judicial sentencing as lenient, and, hence, the wisdom of increasing the severity of

sentences to satisfy what was believed to be a harsher public.... What the present study also says about the move to harsher sentencing [in many countries] at least for certain types of offence, is that it may not represent the general public's sense of justice" (p. 779).

Reference: Lovegrove, Austin (October 2007). Public Opinion, Sentencing and Lenience: An Empirical Study Involving Judges Consulting the Community. *Criminal Law Review*, 769-781.

Judges in the US appear to be considering the possibility of being more active in speaking publicly about their roles. Most American judges who responded to a recent survey believe that they are under more pressure to be accountable to public opinion, and there appears to be a growing belief that judicial independence does not necessarily require judicial public silence.

Background. A recent survey of federal and state judges in the Midwestern United States “demonstrates the difficulties for courts in relying on third parties to represent their functioning to the public” (p. 113). The suggestion is made that “in contemporary society the ability of courts to act as *independent* decision makers depends on their *involvement* in local communities through various public outreach efforts” (p. 113). As many commentators have pointed out (in the US and in Canada) judges have a difficult time, when they act as if they have sworn an oath of public silence, in responding to irresponsible or uninformed criticism of their judgements. There is questioning of the traditional view of judges roles, that “when individual judges render decisions fairly, responsibly, and competently, the courts as an institution will presumably enjoy the respect and goodwill of the citizens” (p. 113). The opposing view appears to be gathering support: “isolation from society is increasingly insufficient for maintaining support” (p. 113).

This survey of judges suggests that most (91% of those surveyed) judges would feel comfortable speaking with a reporter about an area of law or judicial process that is generally misunderstood. This is obviously quite different from defending a specific decision, but does suggest that these judges would be comfortable venturing down from their benches. Part of the reason that so many judges may be willing to take the plunge into public debate is that most (73%) reported that there had been recent attacks on judges in their states and most (81%) feel that these attacks do serious harm to the public’s opinion of the judiciary. Judges in the US, like those in this country, generally do not respond publicly to criticism: only 9 of the 88 judges who had been “recently and publicly criticized” responded in any way to the criticism. Only two felt that their responses were effective.

Judges think that the future looks bleak unless they do something. Most (84%) thought that courts “should devote more resources to public relations” (p. 116). It would appear that US judges are not satisfied with leaving their defence to others (e.g., lawyers).

Conclusion. Clearly there is tension between judicial independence and public accountability. However, the argument is made that the “court’s legitimacy rests on their independence and fairness.... At the same time, simply asserting the importance of judicial independence and accountability... rings hollow given democratic expectations for accountability. Judicial independence itself is vulnerable to the claim that judges are ‘out of touch.’ The problem of public criticism of courts exposes this circularity -- that judicial independence rests on judicial legitimacy and vice versa -- and implies that courts’ best institutional response is to promote both responsiveness and independence through greater involvement in the community and through public education and outreach efforts” (p. 117). Clearly the issues are not simple ones. One wonders whether Canadian judges would, as a group, be comfortable speaking publicly about what they do.

Reference: Esterling, Kevin M. Public outreach: the cornerstone of judicial independence. *Judicature*, November-December 1998, 82 (3), 112-117.

All conditional sentences are not created equal: The public is much more likely to accept a conditional sentence as a substitute for prison if there are conditions attached that are clearly punitive.

Background. The controversy surrounding the conditional sentence of imprisonment did not end with the recent Supreme Court of Canada decisions on the appropriateness of this sanction. Part of the controversy involves questions of what a conditional sentence “looks like.” It is understandable that for many members of the public a conditional sentence may look remarkably like a term of probation since, after all, both involve sanctions served in the community. What courts seem to be saying is that a conditional sentence must involve a visible component of “punishment.” The punishment, in turn, is meant to serve the purposes of denunciation and deterrence – sanctions typically associated with prison.

This study examined, in a national public opinion survey, the public acceptability of a conditional sentence. The sentence was described (to different groups of people) in two different ways. One group of respondents was told that a judge was deciding whether to sentence an offender found guilty of a break, enter, and theft to a 6 month prison sentence or to 6 months to be served in the community as a conditional sentence. The other (equivalent) group was given the same choice but was told that the conditional sentence would include, as conditions imposed by the judge, each of the following: a weekend and evening curfew, restitution and community work.

The results demonstrate that a little bit of punitiveness went a long way. When choosing between prison and the conditional sentence (without punitive conditions) only 28% indicated that the conditional sentence was their choice. With the additional punitive sanctions, the conditional sentence was endorsed by 65% of the respondents. “The creative use of appropriate optional conditions can have a dramatic impact on community reaction to the imposition of a conditional sentence” (p.119).

Part of the difficulty with conditional sentences, then, may be that punitive optional conditions are not routinely imposed. The data from a sample of conditional sentences and probation orders in Ontario suggest that most optional conditions are as likely to be imposed in the case of probation as they are for conditional sentences. The exceptions to this generalization are that abstaining from drugs and observing a curfew (both of which are no doubt seen as being punitive) are more likely to be used for conditional sentences. Weapons restrictions were also more likely to be imposed in the case of conditional sentences (perhaps because of the severity of the offences involved). There was also provincial variation in the imposition of optional conditions.

Conclusion. Punitive non-carceral conditions made part of a conditional sentence order can have dramatic effects on the acceptability of a conditional sentence. While the public might not like the idea of a conditional sentence in the abstract, these sanctions can be made acceptable if conditions are attached to them that appear to be capable of fulfilling the purposes traditionally attributed to imprisonment.

Reference: Roberts, Julian V., Dan Antonowicz, and Trevor Sanders. Conditional sentences of imprisonment: An empirical analysis of optional conditions. *Criminal Reports*, 2000, 30, 113-125.

Courtrooms are designed in a fashion that has (purposefully?) led to the demise of the notion of the 'public' trial.

Perhaps because of lawyers' "obsession with the word" (p. 384) there has been little research on the internal space of the courtroom. This paper argues that the configuration of the criminal courts, including such matters as the nature and height of various barriers, reflects a particular view of the role of the various participants. More specifically, this paper suggests that 'the public' has been marginalized by the architecture of the courtroom.

Certain symbols are simple and their meaning is unambiguous. "When a royal coat of arms is placed behind a judge's chair it makes clear that the full authority of the state and legitimate force is behind the judge" (p. 385). Such placement is not accidental: In England, for example, there is an 813 page guide on court standards and design that imposes a detailed template on designers of new courts. Less obvious than the placement of the coat of arms is the manner in which the space for the public has become more peripheral and contained over time. Indeed it is argued that as the role of the press has increased over the years, the role of the public has been diminished. For example, while the author of this paper was sometimes questioned about taking notes, she never noticed members of the press being required to explain their note-taking.

The design of courts suggests that courts are more concerned with the visibility of the spectators than they are with the visibility of the proceedings by the public. One exception is that "spectators are expected to have a clear

view of the judge but are destined to get no more than a 'general view' of the proceedings" (p. 396). Indeed, English courts are designed so as to minimize the ability of the public to have direct eye contact with jurors, just as they are designed so as to make lawyers and accused almost unidentifiable. Courts are also designed to prevent the public from seeing the defendant while seated (p. 396). When electronic screens are used to display evidence, they are often placed in a way that makes it impossible for the public to view the evidence. In addition, it would appear that courthouses are constructed on the basis of fear of the public: the English guide to court architecture includes separate 'zones' for various groups, most of which are to restrict the accessibility of the public. "The sophisticated forms of segregation and surveillance employed allow things to be arranged in such a way that the exercise of power is not added on from the outside but is subtly present in ways which increase its efficiency and transform spectators into docile bodies" (p. 399).

Conclusion: "Since the only person a member of the public is sure to have a clear view of is the judge, it would seem to be the case that the observation of justice is now limited to observation of the adjudicator rather than evaluation of evidence and the weight which should be afforded it. It is process rather than substantive argument that the public is encouraged to observe" (p. 396). The author argues that "the use of space within the courtroom tells us much about the ideologies underpinning judicial process and power dynamics in the trial.... Perhaps most significantly it helps members of the judiciary to maintain control over who, and what, is likely to be heard" (p. 398).

Reference: Mulcahy, Linda (2007). Architects of Justice: The Politics of Courtroom Design. *Social & Legal Studies*, 16(3), 383-403.

Adolescents who are old enough to be held criminally responsible are not likely to understand courtroom terminology.

Lawyers who deal with young people often use age-appropriate terminology when speaking with very young children. However, they tend to believe that when a child enters adolescence there is no longer a need for adults to use special language when trying to communicate with them. If older children (i.e., those age 12 or older) do not adequately understand legal terminology, the problem may not be noticed since “younger children are more likely to admit their lack of knowledge than older children who will often try to give an answer even when they are unsure” (p. 654).

This study tested youths in two Irish schools: one for youths who largely came from poorer single-parent homes and lived in relatively high crime areas; the other school had youths who were predominately from middle class families. Youths (age 12, 13 or 15) were asked to indicate whether they recognized a legal term, and then were asked for a description of what the term meant. Each description was then coded according to how complete and adequate it was. The difference in the understanding of the terms between schools was not significant. There were, however, large age differences both in terms of ‘recognizing’ the legal term and in providing a description of what it meant. For example:

- Only 26% of 12-year-old youths reported recognizing the word “summons” compared to 67% of 15-year-old youths. None of the 12-year-olds was able to provide any kind of description of what it means. The average rating of this term for the 15-year-olds was in the “poor” range, but was higher than for the younger children.

- The term “defendant” was recognized by most children (71% of the 12-year-olds and 98% of the 15-year-olds). The descriptions provided by the 12 year olds were rated as being quite inadequate. The 15-year-olds did better, with their average ratings being “poor or inadequate, but correct.” The term ‘defendant’ was sometimes confused with a lawyer (e.g., “Someone who tries to defend the accused person and prove they are innocent” – a response from a 15 year old female). The confusion between the “defendant” and the defence lawyer replicates findings from other studies.
- The terms for other people in court – magistrates, defence and prosecution lawyers, and judges – showed similar effects.
- Other legal terms were described poorly by all groups. For example, “cross examination” was described as “When they examine the person on trial, i.e., their clothes, hair traces, finger prints.”
- The term “allegation” was understood by almost no 12 or 13 year olds.

Fifteen-year-olds did better, but the average rating of their descriptions was less than adequate.

One can only imagine what a young witness for the prosecution might think if she were told that as a result of her *allegation* against the *defendant*, she would have to testify and then be *cross examined* by the *prosecution*. All four of the italicized terms were not well understood by youths of all ages.

Conclusion. The results of this study show that young people have a very poor understanding of everyday legal terminology that many lawyers apparently assume is well understood. It would appear, therefore, that not only accused youths, but witnesses more generally, may suffer as a result of their inadequate understanding of what is happening around them.

Reference: Crawford, Emma and Ray Bull (2006). Teenagers’ Difficulties with Key Words Regarding the Criminal Court Process. *Psychology, Crime & Law*, 12 (6), 653-667.

If courts want youths on probation to complete non-custodial treatment programs, it would be helpful to ensure that the program was administered at a location close to the youth's home.

Juvenile courts often spend considerable effort trying to determine which treatment programs are most appropriate for youths appearing before them. Given that treatment programs are expensive and there are often more potential clients than there are spaces in the program, it is important to use these services wisely. In the context of scarce program resources, it may be important to choose youths who are likely to attend the program as required.

This paper looks at a simple, easily-available, predictor of successful completion of a program that can be easily determined by the court (or probation service) that is ordering the program – the distance that the youth must travel to attend the program. Other possible predictors of successful completion of programs – person variables such as race, offence history, or characteristics of the neighbourhood in which the youth lives – were also examined and used as control variables to see whether ‘distance to the treatment from the youth's home’ was a significant predictor of successful completion of the program above and beyond other traditional predictors of program completion.

This study examined the predictors of program completion for 6208 youths in Philadelphia who had been assigned to attend one of 24 different treatment programs. Failures to complete an assigned program were divided into two types: those youths who were expelled from the program for reasons such as being arrested or violating the rules of the program, and those youths who did not complete it because they didn't attend the program as required.

The main independent variable was simple: how far was the youth's home from the location of the treatment facility. In addition, factors such as the youth's age, sex, race, prior offence history, and parents' criminal history were used as control factors, as were various measures of neighbourhood disadvantage.

On average, youths lived about 7 km from the treatment facility that they were expected to attend (range about 32 metres to about 33 km). 13% of the youths were expelled from the program they were enrolled in. There was no impact of the youth's distance from the treatment program on whether or not the youth was expelled from a program. However, when looking at the question of whether or not a youth dropped out, two independent program effects emerged: dropouts were more common among youths required to attend many hours per week. In addition, youths were more likely to drop out of treatment if they lived further away from the treatment facility.

Conclusion: Previous work has found a relationship between the density of rehabilitative services in a community and the likelihood of successful

reintegration of those released from prison on parole (*Criminological Highlights* V11N6#3). It may well be that the importance of the density of services is that those parolees released into well serviced neighbourhoods don't need to go far to receive services. In this study, simply living close to the location of the rehabilitative program meant that the youth was more likely to complete the program. These findings suggest that those responsible for rehabilitative services should consider two things. First, services should be located in close geographic proximity to the clients that the service is meant to serve. Second, judges and probation officers who require youths to attend services should take into account the distance from the youth's home and the service. Those assigning youths to rehabilitative services should be cautious in requiring youths to attend services that are distant from their homes.

Reference: Lockwood, Brian (2012). The Influence of Travel Distance on Treatment Noncompletion for Juvenile Offenders. *Journal of Research in Crime and Delinquency*, 49(4), 572-600.

Those who invoke criminal sanctions for accused people who don't show up on time for court might take a lesson from North American dentists and send out reminder cards.

Many North American dentists, who often make regular dental appointments weeks or months in advance of the scheduled appointment, send out postcards reminding their patients to show up for their appointments. Some even mention that there will be penalties for those who don't show up. This study examines whether courts could learn from the experience of dentists. It examines whether sending out reminder cards to those required to come to court reduces the 'failure to appear' rate.

Accused people are punished for not appearing, when required, for court appearances on the assumption that – like most criminal offences – the act of not appearing for court is a motivated one. The alternative perspective is that people may simply forget, or do not realize that showing up for court is seen, by courts, to be a serious matter. If either of these is the case, then reminding them of their obligation to appear and explaining the consequences of failing to appear in court might be a way of reducing the number of failures to appear. Studies suggest that many defendants “lead disorganized lives, forget, lose the citation [the written notice they receive from the police] and do not know whom to contact to find out when to appear, fear the justice system and/or its consequences, do not understand the seriousness of missing court, have transportation difficulties, language barriers, are scheduled to work, have childcare responsibilities, or other reasons...” (p. 178).

This study, carried out in 14 counties in Nebraska, randomly assigned 7,865 accused adults who were charged with non-traffic misdemeanour offences to one of four experimental conditions. One group was treated normally (and not given a reminder). A second group was

sent a post-card simply reminding them of their hearing date, time, and place. The third group was given the reminder and was told that there could be serious criminal consequences of not appearing. The fourth group got the reminder and the explanation of sanctions but was also told that the courts try to treat people fairly.

The results were simple. All reminders worked, but explaining the sanctions that could be imposed for a failure to appear (with or without the 'justice' message) worked better. The proportion of failures to appear were as follows:

No reminder:	12.6%
Reminder only:	10.9%
Reminder & sanction:	9.1%

These findings would suggest that there could be substantially fewer failures to appear if simple reminders were sent out that included the time and place of the court hearing and warnings about the criminal consequences of failing to appear. For example, if 1000 reminders were sent out in these jurisdictions, a reminder containing an explanation of the penalties for failure to appear in court would reduce the number of these 'failures' from 126 (with no reminder) to 91 (with this reminder and message).

Whether this is cost effective depends on how various cost estimates are made. For example, using the actual data on the effect of the reminder, one could compare the cost of mailing 1000 reminders to the savings (criminal justice and social) from having 35 fewer failures to appear within this group of 1000 people.

Conclusion: It appears that simple reminders to those charged with criminal offences combined with educational material about the consequences of failing to appear for court can significantly reduce the rate of failures to appear. The benefits, of course, accrue not only to the police and court system but also to accused people who otherwise might not appear in court. The results suggest, therefore, that courts can contribute to 'crime control' by simply adopting the business model of some dentists.

Reference: Rosenbaum, David I., Nicole Hutsell, Alan J. Tomkins, Brian H. Bornstein, Mitchel N. Herian and Elizabeth M. Neeley. (2012) Court Date Reminder Cards. *Judicature*, 95(4), 177-187.

If courts are interested in hearing what witnesses experienced during an offence, they might want to consider encouraging witnesses to give an uninterrupted narrative of what happened.

“Procedures for giving testimony taken as normative by... judges and lawyers run against the way accounts of such events are given in normal social interaction” (p. 287). Quite often, however, court business is conducted “according to procedural conventions and in language that many lay people find bewildering and even unjust” (p. 288).

The challenge for the courts in receiving evidence from ordinary witnesses is to accomplish separate purposes simultaneously: receiving only the evidence that is legally admissible and, at the same time, giving witnesses the “opportunity to help the court see events from their perspective.” The origin of the conflict is simple: courts have rules that regulate testimony. These rules do not exist in ordinary conversations and make the presentation of evidence quite unnatural to most witnesses.

Part of the difficulty is that the limits on what witnesses can talk about – e.g. prior assaults that may have been declared inadmissible – make no sense to witnesses because they are, from the witness’ perspective, relevant to understanding the behaviour in question: why everyone acted in the manner that they did. Similarly, ordinary questions that might be asked in cross examination also make no sense from the perspective of the witness. For example, in one of the 65 crown court trials in England observed for this study, the following exchange occurred:

Defence lawyer: I suggest it was only 2 punches that you saw.

Witness: No, it was a fury of punches [demonstrating with her fists]... Why are you calling me a liar? You were not there. It was awful. You were not there.

Judge: ... Counsel is not suggesting he was there.... You are being cross-examined in a normal way....

Or in another assault case:

Crown: What eye was hurt?

Witness: I don’t know, as this wasn’t the first time I have received a black eye from [him]. He has quite a temper.

From the witness’ perspective the presence of multiple incidents explains her failure to remember which eye had been blackened. From the court’s perspective, the witness is introducing evidence, perhaps inadmissible, related to incidents not then before the court.

In addition, witnesses frequently feel that they did not have sufficient opportunity to respond to questions from the other party, often because the lawyer interrupted the flow of the narrative or because the witness had been asked to answer ‘yes’ or ‘no’. “A feeling that they should have said more, that important things were not elicited, was a common feature in witnesses’ post-trial interviews” (p. 301).

Although courts have a responsibility to establish what happened, they appear, for various reasons, to shun free narrative testimony. This is, of course, quite different from the police who often ask witnesses, victims, and accused people to

start by telling what happened in their own words. Aside from anything else, this is clearly quite different from the often fragmented, unnatural (e.g., non-chronological) manner in which evidence is elicited in court in which explanations for behaviour are often excluded.

Conclusion: Given the evidence favouring the accuracy of the narrative approach to gathering evidence, “permitting a greater measure of uninterrupted narrative testimony could raise evidential quality and improve lay people’s courtroom experience...” (p. 288). To some extent, there may be a trade-off between, on the one hand, allowing witnesses to recount their experiences in their own words, and, on the other hand, structuring the evidence strictly according to rules of evidence (e.g., by forcing people to respond with to questions with a ‘yes’ or ‘no’ rather than allowing them to explain the nuances of their answers).

Reference: Fielding, Nigel G. (2013). Lay People in Court: The Experience of Defendants, Eyewitnesses, and Victims. *British Journal of Sociology*, 64 (2), 287-307.

Ordinary jurors can understand complex evidence at a trial. But it would help if certain basic techniques of good communication were applied to the presentation of evidence at trials.

Context. Concern about jurors' abilities to understand complex evidence sometimes comes from prosecutors who have conducted spectacular, but failed, prosecutions. In the U.K., for example, the Home Office released a consultation paper in 1998 suggesting that non-jury trials should be considered for certain, as yet undefined, complex cases. However, earlier research that showed that jurors *did not understand* or recall certain evidence did not examine whether they *could be helped to understand* and recall this evidence if issues surrounding comprehension were addressed (p. 764).

This paper reports the results of three studies using a representative sample of 207 adults who met the criteria for jury service in the U.K. Various measures of the quality of the reasoning used by the participants in the studies were examined. In addition, jurors were asked how difficult they found the presentation of the evidence to be.

Results. Most participants "did not use poor quality reasoning" (p. 768). For example, on three different measures of jurors' "quality of reasoning" no more than 10% used what were seen as poor reasoning. On a fourth indicator -- the use of "weak or indirect considerations" (e.g., "it seems unfair to blame one person" [when it is clear that more than one were involved in the offence]) -- 25% of participants used poor reasoning. Furthermore, depending on the criterion used, between 10% and 46% of participants reported some difficulty in understanding the evidence. Repetition of key evidence, however, appeared to increase comprehension (p. 769). It appeared that various techniques could also have been used to increase comprehension and adequate reasoning.

Participants in the studies -- whether they had difficulties or not -- suggested that summaries of the evidence at key points and visual aids would have been helpful. It would also have been helpful if the court had summarized the evidence and put it in a coherent order. The authors note that "this last point is important because where jurors are simply presented with a list of information without clear structure... this is likely to make it difficult for them to (a) retain it, and (b) interpret it meaningfully." In the absence of a "structure" on which to place the evidence, jurors "may impose their own -- possibly inappropriate or inaccurate -- structure ("story") in order to interpret the evidence as it is being presented" (p. 771).

Conclusion. The authors believe that 80% of their representative group of English adults were competent to serve on a major fraud trial. Obviously some screening would increase this number, but better presentation techniques and "interactive pre-instruction" of jurors to establish key terms and ideas would also have been beneficial. When courts of appeal focus solely on whether the instructions to juries were "right" and ignore whether they could be understood correctly, it is inevitable that juror's understanding will suffer. In other words, juror "performance" could be improved. The only impediment is our failure to address this problem. It should be noted that the authors did not speculate about, nor did they test, the ability of ordinary *judges* to comprehend complex evidence and to come to a conclusion using adequate reasoning.

Reference: Honess, R. M., R. Levi, and E. A. Charman. Juror competence in processing information: Implications from a simulation of the Maxwell trial. *Criminal Law Review*, 1998, 763-773.

Jurors need help to do an effective and efficient job. Most jurors are competent to do their job, but “many of them confronted significant difficulties in doing so because they were not provided with adequate tools” (p. 89).

Background. Juries may not be used very often, but they are seen as being a “cornerstone of the criminal justice system.” In Canada, we know little about the operation of actual juries in part because of statutory rules prohibiting the disclosure of information about what goes on during deliberations.

This study examines juries in 48 New Zealand trials in a variety of ways: pre-service questionnaires given to jurors, observations and examinations of transcripts, and interviews with the judge and with jurors.

Jurors, generally, “felt unprepared for the nature of the task and expressed concerns about the responsibilities inherent in jury duty” (p. 90-91). One difficulty is that jurors’ jobs -- “passive observers and recorders of information who suspend judgement on the evidence and issues until they retire for deliberations” (p. 91) -- do not reflect the way in which research shows that people normally make judgements. “It is scarcely surprising, therefore, to find that a significant number of jurors were critical of the fact that they failed to receive an adequate factual and legal framework at the commencement of the trial” (p. 91). Various straightforward ways of providing jurors with an adequate legal framework exist but are not typically used in trials (see p. 92). Part of the problem jurors have is in following and remembering details of the evidence. Hence there is clear support for addressing the manner in which jurors get and retain information. Almost 80% of the jurors said that they wanted to ask at least one question but, given that they are discouraged from doing so, few did.

The deliberations in a number of trials were described as “unstructured, disorganized and inadequately facilitated. As a result the jury often foundered.... Success in [the role of the foreperson] rested on the extent to which the foreperson was able to bring some coherent structure to [the jury’s] discussions” (p. 96). Compromises by jurors “to produce guilty verdicts on some charges and not guilty verdicts on other charges” (p. 97) occurred in five of the 48 cases. At the same time, “Jurors were, with few exceptions, highly conscientious, took the role very seriously, and were extremely concerned to ensure that they did the right thing” (p. 97). “Despite the fact that jurors generally found the judge’s instructions... clear and helpful..., there were widespread misunderstandings about aspects of the law in 35 of the 48 trials which persisted through to, and significantly influenced, jury deliberations” (p. 98). However, “by and large these errors were addressed by the collective deliberations of the jury and did not influence the verdict of the majority of the cases” (p. 98). It appeared, however, that in 4 of the 48 cases, the verdict was affected by misunderstandings of their legal instructions.

Judges were asked, before the jury returned, what their verdicts would have been. The most notable disagreement relates to 3 of the 48 trials where the disagreement was complete: in 2 cases the jury acquitted and the judge would have convicted, and in one case the jury convicted and the judge would have acquitted.

Conclusion: The quality of jury deliberations, and perhaps verdicts, could be improved if the difficulties facing the jurors -- difficulties which trial judges typically do not have -- were addressed. “If [the necessary tools] were provided... most of the problems identified here would be overcome or substantially mitigated.” It appears that legal change is, for the most part, not required. A change in mindset is, however.

Reference: Young, Warren, Yvette Tinsley, and Neil Cameron. The effectiveness and efficiency of jury decision-making. *Criminal Law Journal*, 2000, 24, 89-100.

Allowing jurors to discuss evidence before the beginning of formal deliberations appears to have no harmful effects on the civil trial process. In particular, it does not increase the likelihood that the jury will arrive at a verdict different from that which the judge would hand down.

Background: Most common law jurisdictions do not allow jurors to discuss evidence amongst themselves until formal deliberations have begun. This practice is based on the theory that during a trial jurors “passively absorb all of the evidence and law presented to them... without making any judgments about it until told to do so by the judge” (p.361). The difficulty with this theory is that it is almost certainly wrong. Jurors appear to take an active approach, constructing “stories or narratives from the trial evidence” (p. 362) so as to create coherent accounts of what occurred. It appears from the evidence that deliberations serve as “a valuable corrective to idiosyncrasy and error” (p.362) on the part of individual jurors.

This study, with civil juries in Arizona, investigated the benefits and drawbacks of allowing pre-deliberation discussion of the evidence. In 161 cases, jurors were *randomly* assigned by judges either to the “standard” (no discussions before formal deliberations) condition or were told that they could discuss evidence before formal deliberations.

The findings of the experiment suggest that there would be little harm in allowing jurors to discuss the evidence as it is presented:

- The reports of jurors regarding the moment at which they were first favouring one side or the other and when they made up their mind showed no differences between the two groups (those encouraged or discouraged from discussing the evidence prior to deliberations).
- Given the concern that the first witness might have undue influence for jurors who are allowed to discuss the evidence, an important finding concerned the ratings by jurors of the

first witness’ influence. These ratings showed no difference between the discussion and no discussion juries. Juries who were told *not* to discuss the evidence did, however, indicate that their memory of the second half of the trial was greater than for those encouraged to discuss the evidence.

- Those who had discussed matters with other jurors were less likely to indicate that they were unsure of whom they favoured. In particular, they were more likely to indicate that they favoured the plaintiff. However this effect only occurred in one of two locations in which the experiment took place.
- Those who were allowed to discuss the evidence were, however, more likely to report greater conflict and less agreement on the final ballot (Arizona civil juries do not have to be unanimous).
- The trial judge’s view of the evidence tended to be consistent with that of the jury. The level of judge-jury disagreement did not vary between the two conditions. Disagreements were also not related to the apparent complexity of the cases.

Conclusion. Jurors who are allowed to discuss evidence see this as useful. It does not seem to affect the verdicts (as measured by judge-jury disagreements). “The results... fulfill neither the fondest hopes nor the worst nightmares of supporters and critics of the trial discussions jury reform” (p. 379).

Reference: Hannaford, Paula L., Valerie P. Hans, and G. Thomas Munsterman. Permitting jury discussions during trial: Impact on the Arizona reform. *Law and Human Behaviour*, 2000, 24, 359-382.

The justice system is judged largely on whether it is perceived as being *fair* in the manner in which it uses its authority. Drawing from a number of different surveys, it appears that procedural fairness is more important than specific outcomes.

Background. “People often assume that the outcomes received when dealing with specific police officers and judges shape reactions to those encounters. In contrast... research consistently suggests that people actually react to their personal experiences primarily by judging the procedures used by the authorities” (p. 215). The manner in which people are treated, as well as whether they feel that decisions are made fairly appear to be of crucial importance. “People are willing to accept the decisions of police officers, judges, mediators, and other third party authorities when they think that those authorities are acting in ways they view as fair” (p. 216). Hence, the public’s views of criminal justice institutions are linked more to perceived justice than to specific outcomes or utilitarian concerns.

This study suggests that confidence in the police and the courts is related less to judgments about cost, delay, and performance than it is to perceptions of procedural justice. The findings are drawn from a number of different sources and can be summarized as follows:

- A study of Chicago residents’ views of the police and the courts compared the importance of the quality of services (competence) of these institutions with the quality of the treatment that citizens were perceived to receive (fairness). Both competence and fairness are seen as important, but “the primary influence [on the overall evaluations of the police and courts] is from the quality of the treatment” (p. 218). One’s sense of obligation to obey the law is influenced by the perceived fairness of the institution, not by its performance.
- A study of high crime areas - predominantly minority neighbourhoods in Oakland, California - during a period of aggressive policing showed, once again, that the quality of police treatment of citizens (e.g., judgments about police honesty and respect for rights) rather than law enforcement performance (e.g., the impact of the police on crime) dominates the evaluations of the police, as well as residents’ willingness to pay more taxes for increased police services.
- A (U.S.) national study of people’s views of the courts found that “the primary influence on overall evaluations and overall ratings of performance [of the courts] come through judgments about the fairness of the outcomes... and the quality of the treatment they provide to members of the public” (p. 226).
- In another national study in the U.S., respondents who had been to court in the previous year were asked whether they felt that they would get a fair outcome and be treated justly if they were to go to court in the future. Ratings of the procedural fairness of their own experience were, in all cases, more important than their perception of having received the desired *outcome*.

Conclusion. In four different studies, it was found that the quality of the treatment which people receive, or perceive in the community, is the most important factor in determining people’s views of criminal justice institutions. Although specific outcomes are important, they are not as decisive as procedural fairness. These findings were confirmed for both white and minority groups. Results such as these serve as a reminder that it is not just what the criminal justice institutions do that is important but how they are perceived as doing it.

Reference: Tyler, Tom R. Public Trust and Confidence in Legal Authorities: What do Majority and Minority Group Members want from the Law and Legal Institutions? *Behavioural Sciences and the Law*, 2001, 19, 215-235.

Citizens' level of satisfaction with the police depends primarily on how the police treat them.

There are a number of reasons for caring how the police are perceived by the community. One reason is obvious: "Positive views of the police make the work of the police easier and more effective" (p. 317). In addition, "The degree to which people view the police as legitimate influences whether they comply with police orders or requests. More generally, people accept the decisions of police when they believe the police have acted fairly and openly with them" (p. 317).

This study, then, examines what, in an encounter between a citizen and the police, determines how the police are perceived by citizens. The conclusions are drawn from a survey carried out in 2001 of 2513 citizens of Chicago, Illinois. Respondents were asked about their contacts with the police in the previous 12 months (e.g., who initiated contact and for what purpose or in what situation) and they were asked to assess the quality of that interaction. The likelihood of being stopped by the police (in a car or on foot) was related to gender (being male), age (being young), and race (being Latino, or more dramatically, being black). Not surprisingly, those whose encounters with the police were citizen initiated were more favourable toward the police than were those who experienced police-initiated encounters. Generally speaking, there was very little variation across racial groups, age, or gender in satisfaction with citizen-initiated encounters. In other words, for citizen initiated encounters, race, gender, and age had little effect on the ratings of the police on dimensions such as whether the police responded quickly or on time, whether the police listened to the citizen, whether the police explained

their actions adequately, and whether the police were polite and helpful. For police-initiated encounters, however, African-Americans and non-English speaking Latinos were less likely to be satisfied with the encounter than were whites in terms of dimensions such as whether the police were fair and polite.

For citizen-initiated encounters, overall satisfaction with the police was related to whether the citizen thought that the police had behaved well (e.g., had been helpful, polite, thorough in their explanations, etc.) and not to age or race. For police-initiated contact, there was a 'race' effect, but it was considerably smaller in magnitude than were the effects of the quality of the encounter itself (whether the police officers explained their actions, or whether they were perceived as fair and polite). The data would suggest, then, that the impact of race on ratings of the police is largely due to differential ratings of the quality of the police-initiated contact.

Conclusion. The findings suggest that the quality of police-citizen contacts can have important effects on how the police are seen by ordinary citizens. Giving citizens

an opportunity to explain their situation and communicate their views, fair and polite treatment by the police, each have a direct impact – on all demographic groups – on how the police are perceived. "Unlike many of the outcomes of policing, including safer streets and healthier communities, these are factors that recruitment, training, and supervision by police departments can assuredly affect... Process based reactions benefit the police, because they cannot always provide desirable outcomes, but it is almost always possible to behave in ways that people experience as being fair" (p. 318).

Reference: Skogan, Wesley (2005). Citizen Satisfaction with Police Encounters. *Police Quarterly*, 8 (3), 298-321.

Offensive language by police officers is at least as important as their behaviour in determining the way they are seen by ordinary citizens.

What are the important dimensions of misconduct by the police from the perspective of ordinary citizens? Traditionally police misconduct in relation to interactions with citizens has been categorized as involving three dimensions: the use of unnecessary force (e.g., hitting or beating a citizen), abuse of authority (e.g., threats or the refusal of the officer to give his/her badge number/name), and discourtesy or the use of inappropriate language (e.g., racial slurs, insulting language). This paper examines the relative importance of these dimensions in determining how police are seen by ordinary members of the public.

Eleven hundred New York City residents were each read a set of short vignettes describing an interaction between a police officer and a citizen. The officer's language was described in neutral terms or in a range of different discourteous or obscene terms such as by calling the citizen a "fuckin' piece of trash" (p. 686) or using a racial slur. Abuse of authority was manipulated by simply stating that the officer threatened to arrest the citizen or engaged in a range of different forms of abuse such as "threatening to grab or kick the civilian", or "refusing to provide a name or badge number" (p. 686). The use of unnecessary force was injected into some scenarios by saying such things as the officer "punched the civilian" or "drew his or her gun and aimed it at the civilian" (p. 687). The event precipitating the citizen-police interaction was also described in various ways. Some were ambiguous (e.g., the police officer was described as simply stopping the car and asking the citizen for his or her driver's licence, etc.) while in other cases the citizen was described as having been observed committing an offence.

One might have expected that the rated seriousness of the misconduct would increase incrementally as one moved along a continuum from offensive language through abuse of authority to the use of unnecessary force. This was not the case. Independent of the reason for the encounter the description of the civilian's response to the officer and various other factors, "a police officer's discourtesy or offensive language remained highly salient as an explanation of the respondent's evaluation of the seriousness of misconduct" (p. 691). Language, it seems, matters and it matters a lot. In particular, "unnecessary force in the presence of offensive language has a greater impact on... ratings" (p.692) than did abuse of authority (though abuse of authority did add significantly to the rated seriousness of the misbehaviour).

Conclusion: Offensive language "may be part of everyday speech [but] it carries a very different meaning when voiced by police officers" (p. 702) in an encounter with a citizen. Along with abuse of authority and use of unnecessary force, language turns

out to be very important in shaping citizens' views of the police. At the same time, however, non-cooperative behaviour on the part of the citizen does lessen, somewhat, the rated seriousness of police misbehaviour. The mitigating impact, however, is small compared to effects of police misbehaviour. Though the public may under some circumstances, tolerate police misconduct, "the public's tolerance for [police] misconduct in an encounter with a civilian does *not* extend to unnecessary use of force" (p. 703).

Reference: Seron, Carroll, Joseph Pereira, and Jean Kovath. 2004). Judging Police Misconduct: "Street-Level" versus Professional Policing. *Law and Society Review* 38, 665-710

People judge the legitimacy of the police by whether the police follow the law, whether the police have been procedurally fair in their dealings with citizens, the fairness of the outcome of encounters with the police, and the effectiveness of the police. The perceived fairness of the police predicts voluntary cooperation with them.

The willingness of citizens to volunteer information to the police about crime and disorder in their communities is seen generally as enabling the police to carry out their function (see, for example, *Criminological Highlights* 12(5)#2, 7(1)#4, 4(4)#1, 11(4)#1).

People may obey police either because they consider the police to be legitimate, or because they are afraid of the costs of non-obedience to the police. From the police perspective, it is clearly preferable if ordinary citizens believe in the legitimacy of the police and comply with them because they think it is the right thing to do rather than because they are afraid of being punished if they don't. Previous research has suggested that "legality or lawfulness [is] the first and most basic level of legitimacy" (p. 108). But in addition, procedural justice – that decisions within the rule of law should be impartial, consistent, and should allow citizens to "make representations of their side of the case before decisions are made" (p. 108) – is also seen as important.

A survey of residents of London, England, was carried out in which people were asked questions related to police legitimacy. In addition, they were asked about their feelings of obligation to obey the police as well as their willingness to provide the police with information voluntarily. It would appear that there are four separate, but somewhat related, aspects of police

legitimacy: (1) Lawfulness: assessed by questions including "When the police deal with people in my neighbourhood, they always behave according to the law"; (2) Procedural fairness – e.g., "The police provide opportunities for unfair decisions to be corrected." (3) Distributive fairness – e.g., "People usually receive the outcomes they deserve under the law", and (4) Effectiveness – assessed by asking respondents how well the police address various kinds of crime.

Voluntary cooperation with the police (e.g., by offering to provide them with information) appears to be related to some extent with feelings of *obligation* to obey the police. But in addition, high ratings of the police on lawfulness, procedural fairness and distributive fairness were also associated with the citizens' willingness to voluntarily provide the police with crime-related information. For people who had experienced a criminal victimization in the previous 12 months, those who believed the police were generally effective in dealing with crime were more likely to indicate they were willing to cooperate with the police. For non-victims, however, the opposite relationship was found. It would

appear that non-victims thought it was less important for them to voluntarily cooperate with the police if the police were, without their help, already doing a good job.

Conclusion: Belief in the legitimacy of the police (acting lawfully, procedural and distributive fairness) affected people's willingness to cooperate voluntarily with the police. This effect was over and above the effect of any feelings that people had of legal obligation to help the police fight crime. Though these factors are, generally, important, the various factors that determine cooperation with the police vary across groups in society. Considering the population as a whole, then, cooperation with the police is likely to be highest if the police are seen as acting in a manner that is both lawful and fair.

Reference: Tankebe, Justice (2013). Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy. *Criminology*, 51(1), 103-135.

The police have direct control over how favourably they are seen by crime victims. Although victims generally think less favourably about the police than non-victims, the police can mitigate this effect by taking victims' concerns seriously.

It has been suggested that there are at least three somewhat distinct components of the community's evaluation of the police: effectiveness in dealing with crime, fairness or integrity of the police, and police engagement with the community. Using measures of each of these somewhat separate components of the public's view of police, this paper examines the impact of different types of police-citizen contact on each of these constructs in a sample in London, England.

One of the most common reasons for citizen-initiated contact with the police is that the citizen was a victim of crime. The most important single determinant of citizens' assessment of the quality of the contact with the police was whether the police appeared to take the citizen's concerns seriously. Two other factors predicted citizen satisfaction with the specific contact they had with the police: whether the citizen believed that the police followed up on the call and whether the citizen thought that the time he or she had to wait for the police was reasonable.

Both citizen- and police-initiated contact with the police were related to lower ratings of police effectiveness, even when the citizen was, overall, satisfied with the quality of the particular encounter. Not surprisingly, people who had unsatisfactory recent contacts with the police were more likely to rate the police, generally, as being unfair and not involved with the community. But victims' contacts with police that were seen as favourable did have positive impacts

on ratings of fairness and engagement of the police (compared to people who had not had recent contact with the police).

Perhaps the most important findings are those that suggest that individual police officers can enhance the overall ratings of the police. When crime victims believe that their concerns are being taken seriously by the police, they see police as not only being more engaged in the community, but also as more fair and effective. When the police follow up in any way with the crime victim, ratings of effectiveness and community engagement are higher.

Conclusion: The data suggest that individual officers can either enhance or damage perceptions that the public holds of the police. "While opinions about police effectiveness may be challenged by any contact – whether it is satisfactory or unsatisfactory – ideas about fairness and community engagement appear to be amenable to change in either a positive or a negative direction" (p. 41). "Fairness and community engagement ... are

the aspects of overall confidence [in the police] that are most related to personal treatment during the [police-citizen] encounter" (p. 42). Effectiveness in dealing with crime, on the other hand, is largely out of the control of the individual officer who interacts with the public, although police officers who communicate that the citizen's victimization is being taken seriously can have a positive impact even on this dimension of effectiveness.

Reference: Bradford, Ben, Jonathan Jackson, and Elizabeth A. Stanko (2009). Contact and Confidence: Revisiting the Impact of Public Encounters with the Police. *Policing & Society*, 19 (1), 20-46.

Citizen satisfaction with the police is determined largely by how citizens are treated rather than by how successful the police are in locating or charging an offender.

These days, the police, as with other public service agencies, are expected to do more with less. Some police managers have suggested that if fewer resources translates into a reduced ability to 'get results' (e.g., locate an offender) the public will lose confidence in the police. The findings in this paper suggest that the police are more in control of how the public views them than they might have thought.

Previous research (e.g., *Criminological Highlights* V8N2#1, V8N5#5) has suggested that the quality of the interaction between police officers and members of the public has an important effect on how the police are rated, but that this effect is asymmetric: Encounters in which citizens believe police have not shown them appropriate respect have a much larger impact than positive encounters.

In one study, residents of 16 English neighbourhoods were interviewed in 2003/4 and again a year later. In citizen-initiated contacts that took place between the two interviews (in which citizens were victims of a crime or initiated contact with the police for any other reason), being satisfied with the interaction with the police had very little impact on whether citizens thought their local police were doing a good job. Being dissatisfied with the interaction with the police, however, was a strong predictor of reduced ratings of the police.

In a second study, using British Crime Survey data from 2008/9, victims whose victimizations came to the attention of the police were asked how satisfied they were with how the police handled their personal crime incident.

Respondents were asked about whether the police seemed to show interest in the victim's incident and whether the offender was identified and charged. For property crimes, victims were also asked whether the police recovered the stolen property.

"Respondents who felt that police did not show enough interest were much less likely to be satisfied... regardless of whether the offender had been identified and/or charged. Those who felt the police had shown enough interest, by contrast, were more likely to be satisfied... regardless of what had happened in relation to the offender" (p. 413). Outcomes did matter, but the positive impact of the outcome was considerably less in cases where police seemed uninterested in the case compared to cases where citizens thought police showed appropriate interest. "If officers did not show enough interest, there was no significant difference in the probabilities of satisfaction predicted for cases where the offender was identified and charged and those cases where the offender was not identified at all. However, if officers did show enough interest, knowing that a charge had been brought appeared to boost the chance of being very satisfied..." (p. 413).

Conclusion: Obviously, victims do care about the outcome of their cases. However, "a criminal justice outcome alone... appears less likely to result in overall satisfaction than good interpersonal treatment and a tailored response" (p. 416) on the part of the police. Hence, police officers or police organizations that focus solely on "getting a result" (p. 417) run the risk of losing the support of the public they serve. A policing style oriented toward procedural justice is likely to have a positive impact on public satisfaction. "Policy makers and police managers might do well to emphasize the key role played by the public both in helping to detect crime and in cooperating with the police to build and maintain social order" (p. 419). If the police find it is important to have public trust and cooperation to help them apprehend offenders, then the evidence would suggest that it would be helpful for them to attend carefully to the nature of their interaction with victims and other citizens.

Reference: Myhill, Andy and Ben Bradford (2012). Can Police Enhance Public Confidence by Improving Quality of Service? Results from Two Surveys in England and Wales. *Policing & Society*, 22 (4), 397-425.

U.S. courts have used different rules to interpret ‘requests’ by the police to carry out a ‘voluntary’ search of a suspect and ‘requests’ from suspects who want to speak to a lawyer.

Background. How should the following be interpreted?

- Police officer to driver (whom he has just stopped): “Do you mind if I check [your luggage]?” “Do you mind if I check your person?” “May I see your driver’s licence?” “May I look in your trunk?” (p. 230). Are these requests that can be refused or are these polite forms of commands which, if refused, will escalate into clear commands?
- Police officer to driver: “Does the trunk open?” Is this a question about whether the trunk opens (the literal interpretation) or a request, or is it a command? If there is an affirmative answer by the driver and he opens the trunk, was this done voluntarily or because he was ordered to do so by the police? The problem is that while “courts have little trouble using pragmatic information to determine that an officer’s informational question... can function as a request or command” (p. 231), distinguishing a command from a request depends on other contextual information and cannot be determined by the words alone.

Linguistic theory would suggest that courts have used “selective literalism” (p. 231) in interpreting the language of police and accused people. The difficulty in separating commands from requests is that for reasons of politeness, we often make requests and commands indirectly. Nobody thinks that the words, “Could you pass the salt?” is a request for information about the ability of the listener to pass the salt. Yet the meaning of “Don’t you think it would be a good idea to shine those shoes?” (p. 236) depends completely on whether the statement comes from a sergeant in the army who is inspecting his troops or a friend talking to someone who is about to go to a job interview. The sergeant inspecting his troops is not asking a question; he is giving a command. “No” is almost certainly not an acceptable answer in this context. The friend may be either asking a question or giving advice. And when the police officer asks “Can I have a look in your trunk?” (p. 237) it seems likely that the officer isn’t asking the driver whether the driver thinks the officer has the ability to look in the trunk. Similarly, when a police officer asks a suspect if he “minded” if the officer searched his person, it seems likely that few people would interpret this as a request for information about the suspect’s preferences. Even the imperative form is often not a command: While “Ready, Aim, Fire” is a command, “Shut the door, please” is usually seen as a request, and “Come in and sit down” is normally an invitation, “Watch out” is probably a warning, and the words “Enjoy your meal”, coming from a waiter in a restaurant, is almost certainly more likely to be a wish than a command (p. 240). “The most common way to make a polite command is to phrase it as a request.” A judge might issue a command to a law clerk by saying “Could you draft me a memo” (p. 241), and few law clerks would try to turn an affirmative reply into a statement of the clerk’s memo-writing ability.

In U.S. courts, however, judges have been selective in the manner in which they interpret language. “May I see your driver’s licence” is almost certainly, coming from a police officer, an order (p. 241). “When a person in a position of power ‘asks’ or ‘requests’ us to do something, it will normally be interpreted as a command” (p. 241). In part, this is the case because many people will assume that it is a legitimate command.

A similar problem occurs when police officers ask about illegal substances (e.g., drugs, guns). When a suspect indicates that he has none, and then the officers asks, “Would you mind if I search your vehicle and contents to be sure there is no contraband in the vehicle?” (p. 246) this statement, which literally is a request for information about the suspect’s feelings, is not likely to be interpreted in those terms. In such a case, the citizen is primed to agree to the search in part because “Refusing consent will only make them appear suspicious, so that if the officer did not have a legal reason to search them previously, he would certainly have one now. Add to this the inherent coerciveness of the situation, and it ceases to be surprising that such large numbers of people consent to searches

during traffic stops” (p. 246). “It was only if the occupants of the car were aware that the police had no authority to order them to open the trunk that the ‘request’ to search the trunk could be interpreted as a true request with an option of refusal” (p. 247). Courts in the U.S., however, have tended to interpret words that are almost certainly *received* as commands as being requests. As if by magic, the context disappears and words which are heard as commands are turned into requests.

When a patron in a restaurant says “I’d like the salmon special” or “I feel like trying the salmon” it would be the waiter who was ideologically opposed to tips who would interpret this as being mere expressions of desire and reply, “That’s interesting. What would you like to order me to bring you?”. Similarly, it would be our same tip-free waiter who would think that “Could you bring me a glass of water?” (p. 249) was a question about his ability to carry water across the room.

When a person being interrogated for 6 hours without break suddenly says, “I need to use the toilet” (p. 250), the chances are that this is interpreted as a request, and perhaps even an urgent request. But when a defendant says that he “might need to see a lawyer” or “would like to have a lawyer” courts have said that this is not the invoking of the right to counsel because (in the latter case) it is a statement of desire, not a request. Thus when the question arises as to whether an accused person has invoked his or her right to counsel, U.S. courts suddenly force the speaker to use words whose meaning is not dependent on the context. The words, “I think I might need a lawyer” or “Maybe I need a lawyer” or “If I’m going to be charged with murder maybe I should talk to an attorney” (p. 251-2) are not seen, by U.S. courts, as invoking the right to a lawyer because they are hedged just as “Didn’t you say I have the right to an attorney” was deemed by an appeals court not to be an invocation of the right because it merely asked a question.

“Research by linguists over the past two or three decades has shown that an indirect speech style and greater use of hedging tends to be associated with people of lower socioeconomic status” (p. 253). Furthermore, while “men are more likely to make direct orders or requests, such as “close the door” or “Please close the door” women tend to use what are considered more polite formulations, “Will you close the door?” or “Won’t you close the door?” (p. 253). This use of less powerful speech tends to be located primarily among those of lower social status. Hence, the U.S. Supreme Court’s decision that “Maybe I should talk to a lawyer” was not an invocation of a right is likely to disadvantage certain groups within society.

Conclusion. “Judges are selective in [their decisions about] when they take pragmatic factors into consideration... Their interpretive practices tend either to ignore or to take into account pragmatic information when it benefits police and prosecutors. The utterances that police officers make in seeking consent to a search are almost invariably interpreted as requests, even if the officer poses what is literally an informational question or if the circumstances are such that the suspect is likely to interpret the utterance as an order that should not be refused.... In contrast people subject to interrogation are held to a higher linguistic standard than are the police: they must be quite literal in invoking their right to counsel” (p. 256).

Reference: Tiersma, Peter M. and Lawrence M. Solan. (2004) Cops and Robbers: Selective Literalism in American Criminal Law. *Law and Society Review*, 38, 229-265.

The perception that racial profiling by police takes place can have broad effects in the community at large: It can reduce both citizens' assessments of the legitimacy of police actions and citizens' general support of the police.

There is substantial evidence that "racial profiling" takes place in many locations (see *Criminological Highlights* 5 4)#2). In any police questioning of a citizen it seems likely that the citizen will make attributions on why the stop took place. This paper looks at two questions: What are the consequences that flow from a situation in which a citizen explains police behaviour by attributing it to profiling? What factors shape a citizen's conclusion that profiling takes place?

Using four separate surveys, this paper examines the hypothesis that "people will evaluate police actions using procedural justice criteria" p. 255: See *Criminological Highlights* 4 4)#1). In the first study roughly equal numbers of whites, blacks, and Hispanics who had recently been stopped by the police took part in the survey assessing the citizen's willingness to accept the legitimacy of the police actions. The predictors of the assessment of the police actions were the same for both minority and white respondents. Not surprisingly those who attributed the stop to profiling (on the basis of race, age or sex) were less willing to see the stop as being legitimate. But those "who experience high quality interpersonal treatment [from the police] – politeness, respect, acknowledgement of their rights – are also less likely to feel that they have been profiled" (p. 259).

A second study of 18-26 year olds in New York) showed that both white and non-white respondents believe that profiling is prevalent and unjustified. For non-white respondents, the belief that they themselves had been racially profiled led to poor ratings of the police. The perception by young people of whether they had received

respectful treatment at the hands of the police shaped both their views of whether they had been profiled and their views of the police. The third survey of New York residents) showed, not surprisingly that minorities were more likely than whites to believe that profiling takes place. This survey also demonstrated that for whites and non-whites the quality of the treatment that they felt they could expect from the police affected their view of whether profiling takes place. Finally a telephone survey of New York residents found, once again, that "support for the police is undermined if the police are believed to engage in profiling" (p. 273).

Conclusion. It would appear that the belief that profiling takes place can undermine the perceived legitimacy of the police. However these same data suggest that "the police can maintain their legitimacy by exercising their authority fairly" p. 273). The data do not support the view that the public thinks that profiling is the result of prejudice: only 12% of whites and 33% of nonwhites thought that "when the police do stop minorities more frequently than whites, they are doing it out of prejudice" p. 275). However for both white and black respondents,

if a police officer profiles, that officer's behaviour is seen as less legitimate. "When people indicate that they have experienced fairness from the police and/or when they indicate that the police are generally fair in dealing with their community they are less likely to infer that profiling takes place" p. 276). Three aspects of procedural fairness – quality of decision making, quality of treatment, and inferences about trustworthiness – were found to significantly affect the inferences people make about their interactions with the police" (p. 277).

Reference: Tyler Tom R. and Cheryl J. Wakslak. 2004). Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority. *Criminology* 42, 253-281.

Negative experiences with the police have large negative impacts on the way in which the police are rated by ordinary citizens. Positive interactions with the police, however, have little, if any, impact.

Most police administrators would agree with the assertion that it is important that the public have confidence in the police. There are data that suggest that individual level factors (e.g., race and age), neighbourhood-level factors, as well as individual experiences with the police affect the way in which the police are evaluated. This paper explores the hypothesis that the relationship between how people feel that they have been treated by the police and their evaluations of the police are asymmetrical. That is, citizens may have expectations that they will be treated fairly and appropriately by the police which would mean that positive encounters with the police would have little (additional) impact on their evaluations of the police. On the other hand, a single bad experience with the police may “deeply influence people’s views of [police] performance and even legitimacy” (p. 100).

Research on various types of encounters with the police suggests that citizens (e.g., victims) are less affected by the outcome of the encounter with the police than they are by the process – how they are treated by the police. If the public expects professional and respectful treatment from the police, it would follow that encounters that are consistent with this expectation would have relatively little impact. However, bad experiences with the police would be expected to have large, and lasting, impacts on people’s evaluation of the police. Psychological research has suggested that “The lessons of bad things are learned more quickly, and forgotten more slowly, than the lessons of positive experiences” (p. 106).

In this study, residents of Chicago were surveyed and asked a number of questions about how good a job they thought their local police were doing on such matters as responding to community concerns, preventing crime, keeping order, and helping victims. They were also asked questions about interactions with the police and

how satisfied they were with the way in which the police handled the issue that led them to have contact with the police.

Various factors known to affect evaluations of the police were “held constant” statistically: race, age, income, marital status, level of fear of crime, the perception of the extent of the local drug and gang problem, the perception of disorder and whether any recent interactions with the police were initiated by the citizen or the police. After taking account of these factors, positive experiences with the police had essentially no impact on confidence in the police. Negative experiences, however, had substantial impacts on reducing confidence in the police. This asymmetrical effect – positive interactions with the police having little if any impact on confidence in the police, and negative interactions with the police reducing dramatically the evaluations citizens give of the police – was replicated in seven other surveys – Seattle, New York, St. Petersburg (Florida), St.

Petersburg (Russian Federation), Indianapolis, Washington, D.C., and an urban sample in England & Wales.

Conclusion. “For both police-initiated and citizen-initiated encounters [with the police], the impact of having a bad experience is four to fourteen times as great as that of having a positive experience. The coefficients associated with having a good experience – including being treated fairly and politely, and receiving service that was prompt and helpful – were very small and not statistically different from zero” (p. 100). It would appear that it is more important for police administrators interested in improving citizens’ assessments of the police to focus on avoiding negative interactions with the public than on creating opportunities for positive interactions.

Reference: Skogan, Wesley G. (2006) Asymmetry in the Impact of Encounters with Police. *Policing & Society*, 16 (2), 99-126.

Treating suspects fairly is important even in the war against terrorism.

A substantial amount of research suggests that the manner in which people are treated by the police is important in understanding how legitimate the police and other authorities such as the courts (*Criminological Highlights* 11(5)#1) are seen to be (*Criminological Highlights*, 4(4)#1, 7(1)#4). More recently it has been shown that the willingness of members of the Muslim community in New York to work voluntarily with the police in combating terrorism is determined, in part, by how Muslims are treated by the police and others in the community (*Criminological Highlights* 11(4)#1). This paper explores the question of whether “procedural justice” (e.g., neutrality in decision making, trust in the motives of the police, and treatment with respect) is as important in responding to threats of terrorism and in dealing with Muslim groups as it is in responding to ordinary criminal activity.

Since 2001, policing strategies in the US have changed to include concern about terrorism in addition to ordinary crime. Furthermore, policing has often focused on a new group – Muslim Americans. Using data from four different New York City surveys, this study compares Muslim Americans’ perceptions of the policing of terrorism to their perceptions of policing of ordinary crime. In addition, it examines non-Muslim views of police counterterrorism efforts. Hence it allows comparisons of the importance of procedural justice in two different domains (crime and anti-terrorism) as well as comparisons of those most affected by anti-terrorism policing (Muslim Americans) with those less likely to be targeted.

Looking at the willingness to cooperate with the police (e.g., in reporting dangerous or suspicious activities to the police and in encouraging members of the community to cooperate with the police), for all groups (Muslims, non-Muslim minorities, and whites), the perceived legitimacy of the police was related to willingness to cooperate for both ordinary policing and anti-

terror policing. Perceived legitimacy of the police – for all three groups – was influenced by how fair and professional the police were seen to be. But the effects of perceptions of legitimacy relate to more than just the perceptions of the treatment of one’s own group: white respondents view the police as less fair if they target minority groups in addressing ordinary crime. Furthermore, “non-Muslims view the police as unfair and less legitimate if they target the Muslim community and if they treat Muslims disrespectfully” (p. 429). Suspicion of Muslims itself was not viewed as being unfair by Muslims or non-Muslim respondents, but targeting the Muslim community reduced the legitimacy of the police.

Conclusion: “The shift in policing from crime control to counterterrorism does not appear to have changed public expectations of police behaviour or to have altered the basis on which police are evaluated...” (p. 435). Procedural justice mechanisms are just as important for Muslim Americans as they are for non-Muslim minorities and for whites. “Even when police confront grave

threats, both minority and majority populations expect law enforcement officers to respect procedural justice values and are more likely to withhold their cooperation if they do not.... Non-Muslims, who rate the threat of terror as larger than do Muslims, are nonetheless sensitive to procedural justice in counterterrorism policing, particularly the targeting and harassment of Muslims” (p. 436). “Three elements of procedural justice – neutrality in decision making, trust in the motives of the police, and treatment with respect – remain central to the definition of procedural justice and its effect on legitimacy” (p. 437). This is just as true in dealing with terrorism as it is in responding to ordinary crime.

Reference: Huq, Aziz Z., Tom R. Tyler, and Stephen J. Schulhofer (2011). Why Does the Public Cooperate with Law Enforcement? The Influence of the Purposes and Targets of Policing. *Psychology, Public Policy, and Law*, 17(3), 419-430.

The willingness of members of the Muslim community in New York to work voluntarily with the police in combating terrorism is determined, in part, by how Muslims are treated by the police and others in the community.

As in some other countries since September 11, 2001, “Muslim American communities have become a focus for anti-terror policing efforts in the United States” (p. 366). Hence it is not surprising that there is interest in “what circumstances are associated with voluntary cooperation by Muslim Americans in anti-terror policing efforts and in particular, which policing strategies enhance or diminish that cooperation” (p. 366). This study addresses this issue with data from a 2009 survey of 300 randomly selected Muslim Americans living in the New York City area.

The study focuses in large part on issues surrounding procedural justice. Research on procedural justice suggests that people are more likely to comply with the police and cooperate with them when they believe that the police authorities are acting in a legitimate and fair manner. Previous research (*Criminological Highlights*, 4(4)#1, 7(1)#4) has demonstrated that the more police and other justice authorities are viewed as legitimate, the more likely it is that their rules and decisions are accepted.

Muslim Americans’ views of police legitimacy in fighting terrorism were assessed by the level of agreement with statements such as “You should trust these law enforcement agents to make decisions that are good for everyone when they are investigating and prosecuting terrorism” (p. 390). Police legitimacy in fighting terrorism was greatest for those respondents who saw the police as acting in a procedurally fair manner (e.g., making decisions based on facts rather than opinions, applying the law consistently, giving people a chance to express their views before making decisions). Police legitimacy was, however, also related to the extent to which respondents identified with being American and expressed support for U.S. policies in fighting terrorism.

Those respondents who indicated that they thought that the police acted in a procedurally fair manner within their (Muslim) communities were more likely to indicate their willingness to alert the police to possible terrorism threats. In addition, those respondents who believed that anti-terrorism policies had been created in a legitimate fashion (e.g., that the community had been given an opportunity to provide input and community views were considered) were more likely to cooperate with the police in averting terrorism and they were more willing to alert the police to possible terrorism activities. Those Muslim Americans who reported experiencing discrimination at school, work, or in dealing with authorities, were less likely to be willing to cooperate with the police or report possible terrorism activities to the police. Finally, those respondents who had strong identification with America (e.g., who agreed with the statement that “Being an American is important to the way I think of myself as a person”) were more likely to be willing to alert the police.

Conclusion: Most New York Muslim respondents indicated that they would engage in cooperative actions if asked to do so by the police, and most indicated that they would report

possible terrorist related activities to the police. The variation that did exist in Muslims’ willingness to combat terrorism appears to be in large part affected by the degree to which Muslims have had positive versus discriminatory interactions with others in American society. Those who felt excluded from American society through overt discrimination, for example, as well as those who reported that the police did not treat them fairly were less likely to be cooperative on terrorism matters. If the cooperation of the western Muslim communities is important, therefore, it appears that western societies have the opportunity to increase that cooperation in large part by examining and addressing aspects of their own treatment of Muslims in their communities.

Reference: Tyler, Tom R., Stephen Schulhofer, and Aziz Z. Hug (2010). Legitimacy and Deterrence Effects in Counterterrorism Policing: A study of Muslim Americans. *Law & Society Review*, 44(2), 365-401.

Even in situations in which citizens face terrorist threats and attacks, the legitimacy of the local police is determined, in large part, by whether the police are perceived to be treating people in a procedurally just fashion.

“Increasing public evaluations of the legitimacy of the police is considered one of the most important goals of policing in democratic countries” (p. 5). A number of studies have highlighted the importance of perceptions of procedural justice – the fairness and appropriateness of police interactions with ordinary citizens – in understanding public assessments of, and cooperation with, the police (*Criminological Highlights*, V4N4#1, V7N1#4, V11N4#1, V12N5#2). The suggestion is sometimes made, however, that in situations in which people feel under severe threat – e.g., acute crises or terrorism threats – it is police efficacy rather than fairness that is seen as important.

The data for this study come from a study of public attitudes in the jurisdictions of 6 Israeli police stations, one of which (Sderot) has been “a primary target for missile threats and attacks originating from the Gaza Strip” (p. 10). It was expected that “in situations of high threat and insecurity... concerns for safety [would] take priority over issues of fair processes such as respect, dignity and participation [the main ‘pillars’ of procedural justice]” (p. 11). The five other ‘comparison’ districts had not experienced recent security threats. Only members of ‘majority communities’ were included in the analysis (i.e., Israeli Arabs, Ultra-Orthodox Jews, and other minorities were excluded).

Police legitimacy – the main dependent variable – was assessed with four questions: “The police are guided by the public’s well-being;” “The police carry out their job well;” “If a relative/friend was a victim of a crime I would encourage them to turn to the police;” and “I have trust in the Israeli police” (p. 15). Police performance/efficiency was operationalized with two questions: “The Police efficiently handle crime in my area of residence;”

and “Police presence in my area of residence is adequate” (p. 16).

Perceptions of procedural justice were measured with four questions: “The police allow citizens to express their opinion before making a decision...;” “The police explain their activities well...;” “The police treat all citizens equally;” and “Officers treat citizens they encounter with respect” (p. 15). Various other controls were also included (e.g., previous contact with the police, whether the respondent had been a crime victim, and demographic characteristics of respondents).

The results were quite straightforward. The performance/efficiency of the police was important in both the ‘high terrorism’ area and in the comparison areas, but, as predicted “under conditions of threat, evaluations [of performance] play a significantly larger role in predicting police legitimacy than when there is no specific threat in the background” (p. 18). More interesting, however, is the fact that procedural justice was *equally* important in predicting police legitimacy in both the ‘high threat’ and the ‘low threat’ areas.

Conclusion: “The results of the present study suggest that the desire for procedural justice is an enduring, stable trait, regardless of the security situation. Under conditions of security threats, individuals do value police performance to a greater extent when forming evaluations of police legitimacy. However, there does not seem to be a zero-sum game between performance and procedural justice: under threat, while performance increases in importance, procedural justice does not decline in importance and indeed remains the primary antecedent of legitimacy, as is the case when there is no security threat in the background” (p. 19). In more mundane terms, the police cannot afford to minimize the importance of dealing with citizens in a procedurally just fashion just because the community is facing serious external threats.

Reference: Jonathan-Zamir, Tal and David Weisburd (2013). The Effects of Security Threats on Antecedents of Police Legitimacy: Findings from a Quasi-Experiment in Israel. *Journal of Research in Crime and Delinquency*, 50 (1), 3-32.

Police misconduct in highly disadvantaged neighbourhoods can lead to increases in violent crime.

“Conflict between the police and public in structurally disadvantaged neighbourhoods may undermine police legitimacy ... If members of disadvantaged communities perceive mistreatment and marginalization by the police then they may rely on informal methods to redress conflict rather than seek police assistance. Such a response to compromised police legitimacy may lead to increases in violence... as some residents cease their cooperation with formal legal authorities” (p. 470).

In this study, data from 74 local police precincts in New York City for the 22 year period from 1975 through 1996 were examined. An index of structural disadvantage was created by combining data on the proportion of female headed households with children, the percent of black residents, the proportion of households receiving public assistance, the unemployment rate, and the proportion of residents with low educational achievement. Police misconduct was operationalized as the number of officers compulsorily separated from the department due to misconduct including the number of officers allowed to resign under “questionable circumstances” e.g., while under suspension or after having been charged). The dependent measure was the violent crime rate.

The results are quite straightforward. Precincts were divided into low, high, and extreme (structural) disadvantage.

Within high and extreme disadvantage precincts, the level of police misconduct predicted the violent crime rate. The effect of police misconduct was higher in the extremely disadvantaged communities. There was no impact of police misconduct on violent crime rates in precincts characterized by low structural disadvantage.

Conclusion. The results of this study suggest that police misconduct can lead to increases in crime in the most disadvantaged neighbourhoods. The findings are consistent with the view that formal institutions, as well as informal institutions, can be important determinants of the crime rate in certain neighbourhoods. “In [the poorest] communities, residents may feel the most marginalized and socially dislocated and they may respond the most adversely to (real or apparent) violations of procedural justice norms by the police, who

represent the most visible agents of official social control” ... These findings suggest the importance of police departments meeting procedural justice expectations, specifically in extremely disadvantaged communities” (p. 492).

Reference: Kane, Robert J. (2005) Compromised Police Legitimacy as a Predictor of Violent Crime in Structurally Disadvantaged Communities. *Criminology* 43 (2), 469-498.

Treating accused people fairly can reduce the likelihood that these same people will re-offend in a similar way. Men arrested for assaulting their wives were less likely to assault them again if they had been treated fairly by the police.

Background. In the early 1980s a study was done in Minneapolis, Minnesota, the results of which have been interpreted as supporting the notion that arresting those men who have apparently assaulted their spouses will make them less likely to repeat this crime. There have been six attempts to replicate this finding (in six other American cities) and the results are, at best, equivocal showing different patterns of results in different cities. As this paper (which includes, as one of its authors, the first author of the original Minneapolis study) points out “other than questioning the wisdom of a mandatory arrest strategy for spouse assault, policy makers are currently provided little or no guidance from this line of research as to how they should respond to such cases” (p. 164-5).

Relevant findings. There is some evidence that procedural fairness is important in determining people’s attitudes toward authority. There is also a little evidence that procedural fairness affects behaviour. Researchers in a previous study “found that litigants in small claims court were more likely to comply with even unfavourable judgments if they believed the process to be fair” (p. 171).

This paper. The original study was not designed to look at procedural fairness. However, measures of perceived fairness of treatment were available. The measures -- available only on those arrested for wife assault -- consisted of such things as whether the person arrested answered “yes” to the question, “Did the officers take the time to listen to your side of the story?” (p. 177). Another item was whether the accused reported the use of physical force (p. 178). The interest, of course, was whether those who reported being treated “fairly” were less likely to commit subsequent wife assaults.

Findings. “Repeat spouse assault [was] higher for those arrestees who perceived that they had not been treated fairly” (p. 190), and the effect of procedural fairness seemed to be equally evident for those who received short or long periods of detention.

Conclusion. This study suggests that a sensible “crime control” strategy would include concerns about procedural fairness. There is a tendency of certain police spokespeople to focus solely on results (e.g., success in arresting someone, or success in convicting someone). This paper suggests that it may be just as important -- or even more important -- to address the question of *how* people are treated. Fair treatment pays dividends.

Reference: Paternoster, Raymond, Robert Brame, Ronet Bachman, and Lawrence W. Sherman. Do fair procedures matter? The effect of procedural justice on spouse assault. *Law and Society Review*, 1997, 31(1), 163-204.

Youth courts can affect youths' perceptions of the legitimacy of the law: keeping people waiting without explanation and general rude behaviour on the part of court personnel lead youths to be more likely to conclude that the courts don't deserve their respect and that there is no reason to obey the law.

Courts in Canada have rules that appear to be designed to induce respect. Courts can order people to appear before them even if nothing is likely to happen at the court hearing. They can punish people who are late to court. They typically require people to stand up when a judicial officer enters the room to demonstrate, one assumes, respect for the judicial officer. And they require people to behave in particular ways (e.g., removing hats or caps) that are not normally required. This study examines the manner in which courts undermine their own legitimacy and lead youths to believe - among other things - that they should not try to obey the laws.

Researchers in a large youth court in Toronto systematically observed, during a 9-month period, the 'atmosphere' in a 'first appearance' court, presided over by a Justice of the Peace. The ordinary events on each day were coded as being 'standard' or 'sub-standard'. A standard rating would involve such things as the court starting on time, no confusion about the court process, court personnel having the appropriate documents for the case that was called, "the justice of the peace clearly and courteously [explaining] the court process and/or issues in the case to the youth and/or the parents" (p. 534).

Events which would contribute to the day being described as 'substandard' would include an extremely late court starting time, delays caused by the absence of court staff when court was in session, "justice of the peace makes humiliating comments about the attire worn by the youth", "Crown attorney rolls eyes and impatiently sighs at youth when the youth is trying to explain an issue" or "court clerks yell out into the body of the court making excessive comments about what is allowed when court is already in session." As such, the observed phenomenon - court atmosphere - was neither elicited by, nor necessarily directed at, any particular accused

youth. It was simply that there were some 'good' and some 'bad' days in court. Youths, then, were exposed to a 'good' or 'bad' day in court essentially randomly. This study then examined the impact of good vs. bad days in court on youths.

Youths were asked - by a researcher who was not responsible for the coding of 'court atmosphere' - about two aspects of their experience. First they were asked about procedural justice (see *Criminological Highlights* 4(4)#1, 7(1)#4) - how they felt they, themselves, were treated by their own lawyer, the Crown attorney, and the Justice of the Peace presiding over the court. Second, they were asked about the legitimacy of the justice system by assessing their agreement with statements such as "In general, our laws make Canada a better place", "People are treated fairly by the Canadian courts", "People should support the decisions made within the Canadian courts", "I try to obey the laws" (p. 536).

Not surprisingly, the youths' ratings of their own treatment affected their views of the legitimacy of the court: those who didn't think that they were treated fairly rated the legitimacy of the court lower than those who thought that their treatment was fair. However, both for youths who

thought that they themselves were treated fairly and for youths who did not, experiencing a 'substandard' court day reduced significantly the rating of the legitimacy of the court. In other words, compared to those youths who were in court on a 'good day', youths who experienced 'bad days' in court were more likely to indicate that they saw no reason to obey the law or support the decisions of the court. Said differently, when courts misbehave, youths are less likely to believe that they should respect the law or the courts.

Conclusion: If courts want youths to respect them, it would appear that it is necessary for them to act in a manner that deserves respect. Courts that treat people in a disrespectful manner by starting late, taking "15 minute breaks" that last 45 minutes, and allow court personnel to act rudely to those in court, get the respect that they deserve. More importantly, however, they teach youths that the law and the courts are not worth obeying.

Reference: Greene, Carolyn, Jane B. Sprott, Natasha S. Madon, and Maria Jung (2010). Punishing Processes in Youth Court: Procedural Justice, Court Atmosphere and Youths' Views of the Legitimacy of the Justice System. *Canadian Journal of Criminology and Criminal Justice*, 52(5), 527-544.

Jurors in at least one long complex fraud case appear to have been able to understand and evaluate the evidence that was presented to them. They could have used some help, however, with practical matters.

The Jubilee Line case in England – a case involving multiple charges of corruption and conspiracy to defraud against 5 defendants in relation to large construction contracts for the London Underground – ended in March 2005 after 21 months of hearings without going to the jury for a decision. This case is often cited when the suggestion is made that certain kinds of cases need to be heard by a judge sitting without a jury.

Previous research has shown that members of English and New Zealand juries take their jobs seriously. When asked about any problems they encountered as jurors, they generally only cite such problems as practical employment issues (losing one's job or source of income) or poor treatment by the courts. Simulation studies suggest that most individual jurors are quite competent in major fraud trials. The problems that do arise appear to relate to the manner in which evidence is presented to them. In addition, there is evidence that juror competence can easily be improved if certain simple practices (e.g., note taking or discussion amongst jurors) were encouraged.

In the Jubilee Line case, interviews were carried out with all of the jurors after the case was aborted. The jurors themselves were adamant they "had a very good understanding of the evidence" (p. 259). Furthermore, the interviews revealed that a year after the case was aborted, they "displayed quite impressive familiarity with the charges, issues and evidence..." (p. 259), though there was obviously some variability across jurors. These results are consistent with other studies of jurors' understanding of evidence (*Criminological Highlights*, V2N2#8). Those jurors who had difficulty were able to rely on other jurors (e.g., those who took copious notes) for information. The jurors discussed evidence and witnesses frequently "and were unanimous that the understanding of the jury as a

whole was greatly enhanced thereby" (p. 261). They found their ability to ask questions to be helpful. Note taking was seen generally as helpful, though only some jurors took notes (and they varied in the detail of their notes). The main problem faced by the jurors with respect to the actual trial was not in understanding the evidence, but the slow pace and tediousness of the trial – in particular, some of the questioning by the defence. The jurors were unclear – as were, it turned out, some of the barristers – as to what the relevance of certain evidence was.

The most serious problems faced by the jurors related to the fact that the trial took so long. There were special compensation rules in place for this jury but the rules relating to such matters as lost overtime, increments, or bonuses were never made clear to them. The jurors who were employed indicated that their employers were unhappy with the long trial; yet the court was unwilling to communicate directly with employers. A related problem was the court's inability or unwillingness to communicate adequately when the jury would be needed. Jurors wasted enormous amounts of time travelling to court when they were not needed. More generally, it appeared that the court was unwilling to address systematically the problems for jurors of being involved in long trials. Essentially nobody considered adequately the impact of the trial on the jurors' lives. Perhaps the largest insult to the jurors was their perception that they

were treated as "jury fodder" – "on tap, but not informed" of what was happening (p. 265). On the day that the prosecution conceded that the trial was no longer viable, they were at court. They waited 5 hours before they were brought into the court and formally discharged by the judge with no explanation as to what had happened. It was clear to the jurors that everyone in the courtroom except them knew what had happened. They only learned about the details (that the defendants had been acquitted) on the evening news, and some of that news implied that the trial had collapsed because of problems with them – the jury (which was not true).

Conclusion. It would appear that courts could, if they wished, make it much easier for jurors in long trials. Cases like this one were found not to be overly complex nor was the evidence beyond the capability of the jurors to understand. Comprehension and memory problems were easily overcome by the fact that the jury acted as a group. Many of the practical problems for jurors could be overcome if the courts were more respectful of the jurors as participants in the criminal justice process rather than treating them as 'jury fodder'.

Reference: Lloyd-Bostock, Sally (2007). The Jubilee Line Jurors: Does their Experience Strengthen the Argument for Judge-only Trial in Long and Complex Fraud Cases? *Criminal Law Review*, 255-273.

Inmates in a medium security prison, when asked what the appropriate sentence would be for a number of different crimes, gave sentences which, on average, are not different from what they thought the courts would give. However, inmates see members of the general public as being more punitive than themselves (or the courts). More interestingly, most inmates think that other inmates “would reject a coherent system of legal sanctions” even though they, themselves, do not.

Background. For some time we have believed that inmates reject general societal values -- particularly as they relate to crime and deviance. The traditional notion, held by some, is that inmates “support one another in rejecting society’s norms regulating crime and punishment... They are said to reject their rejectors. In doing so, they are said to adhere to an unconventional or alternative set of norms” (p. 482). This paper challenges this view.

This study. A random sample of inmates in a Massachusetts medium security correctional facility were interviewed. They were given a series of vignettes about crime, giving information about the current crime, the offender’s race and criminal history, and the apparent motive for the crime. Each inmate was asked: “If you personally were allowed to decide what should happen with this man, and could decide anything you wanted, what would you decide?” In other words, prison or punishment was not required by the question. They were then asked to estimate “In court today what would his sentence be?” “What would the general public like to see happen to this man?” and “What would most of the inmates here like to see happen with this man?” (p. 489). Each inmate “rated” 25 vignettes.

Findings. Most (89%) of the sanctions seen as “ideal” by inmates were punitive. They saw the courts as almost invariably (99%) giving punitive sanctions. Inmates thought that members of the public would give punitive sanctions in most (95%) of the cases. The interesting finding, however, was that inmates thought that other inmates would give punitive sanctions in only 49% of the cases. Generally speaking, inmates thought the offender should be incarcerated (84% of the cases), thought that the courts would incarcerate almost everyone, and also thought that the general public would incarcerate most (86%) of the offenders. Again, of course, inmates thought that other inmates would be soft on offenders -- indicating that they thought that other inmates would incarcerate in only 39% of the cases. Inmates themselves were responsive to crime seriousness and criminal record, and indicated that they thought that the courts and the general public would also respond to these factors. They thought that other inmates would not sanction according to crime seriousness and thought that other inmates would give only slight weight to criminal history.

Conclusion. It is clear that inmates, as a group, are likely to have ideas about punishment which are not too different from what (it is likely) members of the public and the courts want. Certainly their view that punishment should be proportionate to the seriousness of the offence and the criminal record of the offender is consistent with what the courts do and with what the public wants. The paradox, however, is that “There appears to be a myth of inmate lawlessness *to which even inmates* subscribe. The individual inmate, in general, adopts the larger society’s stereotype of the typical inmate as relatively lawless, while empirical analysis indicates that as an aggregate of individuals, they reject this notion of themselves.” (p. 505).

Reference: Benaquisto, Lucia and Peter J. Freed. The myth of inmate lawlessness: The perceived contradiction between self and other in inmates’ support for criminal justice sanctioning norms. *Law and Society Review*, 1996, 30 (3), 481-511.

Changes that have taken place in the composition of American police departments – most notably increased proportions of visible minorities and women – have probably had their most important effects on the internal workings of the departments, and not on the ability of the police to do their jobs or on police-community interactions.

Police forces in the U.S. and in many other countries look different from the way they looked 40 years ago: they employ many more members of visible minority groups and women than they did in the 1960s.

These changes are dramatic. In Washington, D.C., for example, the proportion of minority police officers increased from about 20% in 1967 to about 70% in 2000. Boston's proportion of minority police officers increased from fewer than 5% to over 30% during the same period. To some extent, minority police officers tend to be concentrated in lower ranks but this effect is not large and may reflect the fact that the changes have come relatively recently. For women, the change is similar except for the fact that the proportion of women in police forces generally does not exceed 25%. They, too, tend to be concentrated in the lower ranks, but on this dimension as in all others, there is a great deal of variation across police departments.

The effects of these changes are, of course, harder to assess. But when one looks at studies that compare black and white police officers, for example, there do not appear to be dramatic or consistent changes that occur when a police department becomes more diversified. "The scholarly consensus is that no evidence suggests that African American, Hispanic, and white officers behave in significantly

different ways" and that "police behaviour is determined by situational and departmental factors not by race" (p. 1226). The evidence on the effects of increases in the number of women on police forces is equally equivocal. When one looks at the effects of increased diversity on the credibility of the police in a neighbourhood, it would appear that the effects are not consistent.

There does, however, appear to be some evidence that the "unified occupational subculture of policing is being replaced by workplaces marked by division and segmentation" (p. 1231). It is notable that "The decline in solidarity [of the police] does not seem to have impaired police effectiveness... [Though] police officers are a less cohesive group than they used to be...[this change] makes the internal cultures of police departments less stifling and opens up space for dissent and disagreement.... Investigators rarely find a single police perspective on any given issue, but rather a range of conflicting perspectives" (p. 1232).

Conclusion. Police forces appear to be "a striking success story for affirmative

action" (p. 1234). "By weakening the social solidarity of the police, the growing diversity of law enforcement workforces makes it more likely that departments will be able to take advantage of the special competencies of minority officers, female officers, and openly gay and lesbian officers. And by weakening the political solidarity of the police, and the uniformity of viewpoints within police departments, police diversity greatly facilitates other reforms – including civilian oversight, community policing, and systematic efforts to ameliorate racial bias in policing" (p. 1240).

Reference: Sklansky, David Alan (2006). Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement. *Journal of Criminal Law and Criminology*, 96 (3), 1209-1243.

Victims want to be recognized as participants in the criminal justice process. Police can improve victim satisfaction and support for themselves by keeping victims apprised of developments in “their” case.

Background. In the Netherlands, as in many other countries, crime is seen as a key social problem. As in many other countries, most members of the public in that country think that sentences are too lenient. Policy responses are predictable: “get tough” practices have been implemented. “Both the number and the length of custodial sentences have increased dramatically in recent years” (p. 168). Inmate populations have increased dramatically.

The major concern of victims, however, is “a lack of interest by police and their failure to inform the victim of the developments in their case” (p. 169).

This study reports on interviews with 640 victims of property crimes or minor assaults. Although most victims (80%) wanted to be kept informed about their cases, only 33% of those who wanted the information actually obtained it.

The results of the study are simple: Those who were kept informed about the progress of their case were more satisfied with the performance of the police, showed more support for the police, and indicated that they were more in agreement with sentencing practices of judges. This last finding “may be a result of the improved satisfaction and support for the authorities. However, it may also be the result of the fact that notification provides victims with accurate information about sentencing” (p.176). As the authors point out, “notification has advantages for criminal justice authorities and policy-makers. It provides authorities with a simple means to enhance victim satisfaction and support without changing the [structure of the] existing criminal justice system” (p. 176).

Conclusion. One humane way of treating victims that also enhances victims’ assessment of the criminal justice process is to keep victims informed about what is happening with their cases. When this is done by the police, the victims not only see the police in a more favourable light, but also see various aspects of the criminal justice system -- particularly sentencing – more positively.

Reference. Wemmers, Jo-Anne M. Victim notification and public support for the criminal justice system. *International Review of Victimology*, 1999, 6, 167-178.

Women who call the police in cases of wife assault do not necessarily want their abuser arrested. Their decisions to invoke the law are part of a process in which they negotiate their own safety and that of their children. Thus, they are active agents who make decisions about the most effective response to their situation. As a result, intervention in these cases – legal and otherwise – needs to be perceived as a process instead of a single event that encompasses brief or sporadic contact between these women and the criminal justice system.

Background. Since the early 1970s when public awareness grew about the problem of domestic violence in our society, a number of legislative and policy changes have been implemented to improve legal responses to these crimes. What is striking about much of the research that examined the effects of these changes is the absence of the main actors' voices – the women who experience the violence. When women have been asked about their satisfaction with legal interventions, the primary research focus has been on the outcome of the intervention. It is often the case, however, that when the outcome is viewed as negative by those who engage the law, the entire process is automatically deemed to be negative as well. This precludes the recognition that women's use of the law may be prompted by various concerns and objectives, only one of which is the arrest of their abuser.

The Research. Two studies address the neglected question of why abused women invoke the law, focusing on them as active agents rather than passive victims. Landau showed that a large group of women (40%) did not have arrest on their minds when they called the police (p. 147). Rather, both studies indicated that women reported a variety of reasons for calling the police, ranging from protection (warning the abuser against further violence, removing the abuser from the home or helping the woman leave safely) and prevention (deterrence through charging) to rehabilitation (medical or psychiatric care for the abuser or counseling for

both parties). Their interest in protection, prevention and rehabilitation generally did not include a desire for their abuser to be punished. Instead, Lewis *et al.* suggest that these women are engaging in a "process of negotiating their own and their children's safety during which they make decisions based on judgements about the more effective responses" (p. 191). In addition, Landau indicated that "many (women) wanted to work together on changes in their relationship that would put an end to the violence and keep the family intact" (p. 150). Criminal prosecution was perceived as a threat to this end.

Conclusion. This research demonstrates that abused women want protection and deterrence in conjunction with rehabilitation of the abuser. This cannot be provided by legal intervention alone. Future research and policy should consider how sets of interventions – legal structures, social welfare services and support of informal networks and communities – can work simultaneously to provide a unified, effective response to men's violence against women.

References. Lewis, R., Dobash, R.P., Dobash, R.E., & Cavanagh, K. (2000). Protection, prevention, rehabilitation or justice? Women's use of law to challenge domestic violence. *International Review of Victimology* 7: 179-205. Landau, T.C. (2000) Women's experiences with mandatory charging for wife assault in Ontario, Canada: A case against the prosecution. *International Review of Victimology* 7: 141-157.

A multimedia campaign to inform the public about crime and crime control did not educate the public, nor did it alter their fear of crime. However, the campaign did manage to make people evaluate the criminal justice system more positively. This demonstrates that educating the public about crime and crime control is a complex process. One cannot simply give people an extensive amount of non-specific information and expect changes in attitudes or behaviours.

The Context. The criminal justice system needs the support of the public in order to function adequately. However, most people appear to be ill-informed about the limits of the criminal justice system – seeing it as “the solution” to crime. People also have little knowledge of the way the law works, the types of sanctions offenders receive, etc. Moreover, the public usually has inaccurate perceptions of crime rates. Thus, the belief that the criminal justice system is the “solution” to crime coupled with insufficient information about the law has two unfortunate effects. First it creates resentment toward the system for not decreasing crime. Second, it can lead to apathy on the public’s part to engage in preventive behaviours.

This study examined a program that sought to inform the public about the nature of crime and the criminal justice system. It had three goals. First, by providing accurate information about the nature of crime, the designers of the program hoped to decrease the public’s level of fear. Second, by providing information about the nature of crime and the role communities and individuals play in preventing crime, it was hypothesized that people would initiate prevention efforts. Third, by providing information about the limited role the criminal justice system plays in reducing crime, it was hypothesized that people would develop more realistic expectations about the system and therefore would not be as negative in evaluations of the justice system.

Two similar communities were chosen – one received information, the other did not. Information about crime and crime prevention was disseminated to individuals by police officers, over the radio and through two regional daily newspapers. There were also community meetings, press releases, posters, etc. informing people about the campaign to increase knowledge of crime and the criminal justice system. There was also a “crime prevention” van which gave out information about crime and crime prevention.

Conclusion. The campaign was largely unsuccessful. The results indicated that although the community that received the information was aware of the campaign, they were no more knowledgeable than the community that did not receive the information. There were no differences in knowledge of the criminal justice system or in fear of crime. The only effect of the campaign was that people who received the information appeared to evaluate the criminal justice system more positively.

These findings demonstrate that educating the public about crime and crime control is a complex process. One cannot simply give people an extensive amount of non-specific information and expect changes in attitudes or behaviours. The public thinks about crime and crime control with a degree of sophistication which requires a thoughtful plan to educate.

Reference: Kuttschreutter, M. & Weigman, O. (1998). “Crime prevention and the attitude toward the criminal justice system: Effects of a multimedia campaign”. *Journal of Criminal Justice*, 26(4), 441-452.

How might judges explain to representatives of the mass media why specific decisions were made in criminal cases? Judges in the Netherlands use a “press judge” – a judge whose responsibility it is to act as a spokesperson for the court.

One hardly needs research to discover that the public does not have a very deep understanding of the manner in which decisions are made in court, nor does one need to do a content analysis to conclude that mass media stories seldom do an adequate job of describing the complexities of criminal (or other) cases. How might these related problems be addressed? The Dutch have institutionalized the position of a “press judge” – a fully qualified judge whose role it is to discuss individual cases and the law with the mass media.

Media criticism of judges has been described by an Australian judge as being “a universal phenomenon” (p. 452). The suggestion has been made that “judges should shoulder part of the blame for inaccurate media reporting [of judicial proceedings] if they fail to actively involve themselves in the way in which public information about the courts is disseminated” (p. 453). The typical approach to addressing this issue is to encourage largely abstract public legal education about the law.

In 1974, courts in the Netherlands first appointed press judges, but they did not take an active public role until the late 1980s. In the late 1990s, communication advisors to support press judges were recruited. These communications advisors “have a predominantly supportive role; stepping into the limelight is a monopoly reserved for press judges” (p. 471).

In their discussions with the media, press judges typically took what might be called an “orientation role” – in which they attempted to give meaning or direction to “raw information.” In a given judgement, then, their role

would be to help the journalist frame a story in a manner which was consistent with the court judge’s judgement. Hence the judge must “resort to a calculation exercise allowing him to determine what form of presentation gives... the best chance of getting the message across in all its integrity” (p. 464). Judges tried to draw a line between explaining and commenting. Given their role as “translators” of judgements from the court to the media, it is not surprising that in some instances press judges “suggest to a presiding judge improvements to the text of a judgement so that it would be easier to explain to the media” (p. 466).

Conclusion. “The institutionalization of the press judge as a function which deserves recognition through a partial exemption from ordinary judicial responsibilities is an indication that the Dutch judiciary is acknowledging the importance of embracing a wider audience.... Addressing a media audience is seen as an almost natural extension of judicial communication, despite the obvious struggle of some press judges to conquer the obstacle of ruthless media editing” (p. 471).

The institution of the press judge is not seen as an attempt of the court to become part of popular culture. Instead it is seen as a move “from an isolationist position to [one in which judges take] a much more outward looking yet nevertheless controlling stance” (p. 471-2).

Reference: Gies, Lieve. (2005) The Empire Strikes Back: Press Judges and Communication Advisers in Dutch Courts. *Journal of Law and Society* 32(3), 450-72.

There are ways to control pretrial detention populations. A separate processing centre with around-the-clock, seven-day-a-week processing of cases reduced processing times dramatically for most of those who were arrested for offences.

Jail populations (those in pretrial detention and those serving 'short' sentences) in the U.S. have increased from about 182 thousand in 1980 to about 748 thousand in 2005. "The most commonly adopted [American] response [to this increase] was to expand jail capacity" (p. 273).

This study reports on one U.S. county's efforts to control jail and police lock-up populations in a mid-size midwestern city. A new facility was created in which arrestee processing, case screening, contact with defence counsel, and initial court hearings were to be conducted on a 24-hour-a-day, 7-day-a-week basis for misdemeanours and minor nonviolent felony offences. The idea was that these matters would be dealt with immediately rather than over a period of days or weeks. Prior to the opening of this special centre, cases had been processed much as they are elsewhere: screening, initial hearings, etc., only happened periodically during normal court hours. Since accused people are unable to schedule their arrests to occur only during normal court hours, there is obviously a mismatch between efficient court processing and the time of arrest. On the assumption that it would be easier to change the court schedule than the timing of arrests, this project was created to deal more effectively with initial court processing.

The changed system involved around-the-clock screening of cases such that

a decision could be made almost instantly about whether a case should be prosecuted. Rather than scheduling all cases for one or two times a day (on weekdays), initial court hearings were scheduled for approximately 20 different times a day. Police officers were required to file all paperwork within four hours of arrest. Prior to the implementation, this process took an average of 27 hours with a great deal of variation; after implementation it required an average of about 4 hours with relatively little variation. Prior to starting the new program, about 71 hours (approximately 3 days) would elapse between the time that case screening took place and the initial court appearance. Some cases took much longer. Under the new program, this process took only four hours (with little variation). When one looks at the time spent in custody by those for whom no charges were ultimately filed, the average person spent a total of 24 hours in custody prior to the new program. After the program, the average time was reduced to about 9 hours. For those released on recognizance, people spent an average of 24 hours in custody prior to the program and 10 hours after.

Those who had bond set by the court and who had to meet this bond to be released spent about the same amount of time in custody under the new program as they had under the earlier system.

Conclusion: Under the new procedure, initial processing times for those who are arrested and brought to court were reduced considerably. While there are large numbers of such people, they do not, because of fast turnover, consume a proportionately large portion of jail space. Nevertheless, the most important factor may be that a large portion of those arrested were released quickly on a recognizance or did not have charges filed against them, dramatically reducing their time in pretrial detention.

Reference: Baumer, Terry L. (2007). Reducing Lockup Crowding with Expedited Initial Processing of Minor Offenders. *Journal of Criminal Justice*, 35, 273-281.

Clever criminal court judges are able to manage long and unpredictable case lists.

Judgecraft – or how judges go about their tasks in the courtroom – is a practical skill that is limited by the nature of judicial authority. “Conventional adversarial norms require a formally passive judicial role...” and thus “active judicial intervention can be in tension with this principle.” Yet “the legitimacy of judicial authority rests in part on the extent to which people perceive that they are treated fairly by judicial officers they encounter. This suggests that a more active engagement by judicial officers is required for legitimacy” (p. 342).

This observational study of Australian magistrates’ criminal courts notes that active management of the court takes the judge outside the safe passive role and “may risk the legitimacy of adversarial authority,” but also requires cooperation of the other parties in the court. Nevertheless, research has demonstrated that “perceptions that the police or judges tried hard to be fair and were polite emerge as especially important in citizen contacts with the police and courts” (p. 345). The problem is that being fair and sensibly managing the activities of the court conflict with the classic passive role of the judge in adversarial proceedings.

Effective magistrates appear to have searched for ways to move each case through the court process. For example, active magistrates were able to turn requests for adjournments into delays until later in the day when progress could be made to move the case along. Nevertheless, of the 1287 matters that were observed as part of this study, about a third were adjourned. The most common reason for adjournment related to getting legal representation for the accused (26%), the need for more information (10%) or providing

disclosure to the defence (12%). But in 17% of the adjourned cases no reason was offered or given in open court. Standing a matter down until later in the day was done most often to ensure that relevant parties (e.g., the lawyer) or required information was available (37%). Although magistrates relatively rarely initiated adjournments (15%), “the striking characteristic of standing matters down was that it occurred most commonly at the suggestion of the magistrate” [62% of all stand-downs] reflecting the magistrates desire “to get through the list in a way that does not delay other matters which are ready to go, and to move cases along toward final resolution” (p. 353). Of those matters that were stood down until later in the day 68% were completed or set for another procedure (e.g., trial or sentence). Though this ‘success’ rate is not dramatically higher than that of all other matters (61%), it is dramatically better than simply adjourning the case to another day. Had that been done, the success rate would have been zero.

Conclusion: In exercising ‘judgecraft’ by suggesting solutions to problems that would otherwise keep a case from going forward, magistrates

obviously run the risk of undermining the legitimacy of the adversarial process. Nevertheless “when active intervention is used to consider the defendant’s circumstances more carefully, it may enhance judicial legitimacy to the extent that it rests on the fairness values exhibited when judicial officers engage with those whose claims they adjudicate... The ways in which these magistrates exercised judgecraft sometimes effectively created a limited space for more meaningful interactions” (p. 358). In accomplishing effective time management goals, it would appear that magistrates were able to “create space for a more engaged and therefore more legitimate decision-making process within the limits of conventional adversarial norms and practices. This achievement is especially important in the highly interactive context of the criminal list where most members of the public encounter the court system” (p. 359).

Reference: Mack, Kathy and Sharyn Roach Anleu. (2007) ‘Getting Through the List’: Judgecraft and Legitimacy in the Lower Courts. *Social & Legal Studies*, 16(3), 341-361.

Adjournments in court appear to have more to do with “court culture” than with the case itself. If judges create a culture in which court adjournments are permitted, these delays will inevitably occur. If they want cases to be dealt with quickly and efficiently, that, too, is within their power.

Background: Adjournments - requested by either party in a court case - can be important in that they interfere with the efficient resolution of disputes. In criminal trials, adjournments can not only impact the accused but also constitute an inconvenience for victims and other witnesses. Some adjournments are clearly necessary. Studies of court delay have identified certain predictable factors associated with case processing speed (e.g., case complexity, strength of evidence, plea decisions). However, these studies also show variation in case processing times between courts that cannot be explained by these structural factors.

This study examines the importance of “court culture” – “beliefs and practices shared by personnel, such as judges, solicitors and clerks, working in a particular court” (p. 43) - in four Scottish Sheriff’s Courts in 1999-2001. In the context of adjournments, it is suggested that court culture includes “shared views about ways of doing things (such as what constitutes an acceptable speed of case processing) and shared expectations and norms (such as solicitors’ expectations regarding the likely judicial response to an adjournment request)” (p. 43).

The basic findings are easy to describe. One of the courts was dramatically different from the other three. In “Court D”, 7% of the cases were adjourned on the day that trial was set. The average for Courts A, B, and C was 31% (range: 28-33%). The judge has the power to adjourn or refuse to adjourn a case “in the interests of justice” (p. 47). In Courts A, B & C, requests for adjournments were rarely questioned and seldom opposed. Judges intervened only if the adjournment requests were disputed. There was an expectation that the first trial date would be adjourned. Adjournments were often agreed to in advance by the lawyers and presented to the court as “a done deal” (p.48). Conversely, judges in Court D asked for reasons as to why an adjournment was being requested, even if the adjournment was not opposed by the lawyer on the other side. These judges, who are described as working closely with one another, indicate that they try to deal with as many cases as possible and see adjournments as impediments to this goal. Lawyers indicated that they had to “work in a different way in order to cope with the court culture in Court D” (p. 50).

Conclusion: Court culture – shared expectations about how things should work – clearly can affect the efficiency of the criminal justice system. “Something *can* be done to prevent unnecessary adjournments and the power to effect change lies primarily with judges ... The prevailing culture [in these four courts] was not ‘shared’ as such but was judge-led... [supporting] the conclusion ... that the attitude of judges is critical in setting court culture” (p. 51). “The incidence of unnecessary adjournments can be lessened by a willingness on the part of judges to question both disputed and undisputed adjournment requests more thoroughly” (p. 52). Judges, it would seem, can lead the way toward more effective court processes, but only if they wish to do so.

Reference: Leverick, Fiona and Peter Duff. (2002). Court Culture and Adjournments in Criminal Cases: A Tale of Four Courts. *Criminal Law Review*, 39-52.

The courts in New York City were able to re-open shortly after September 11 largely because judges took control of the judicial system and challenged the views of other criminal justice officials who argued that the courts would have to remain shut. Judges succeeded in demonstrating that justice was not to be another victim of terrorism.

Background. The court system in New York City was severely threatened by the events of September 11. Many of Manhattan's principal courthouses are located near the World Trade Centre. Criminal courts depend on police as witnesses. Witnesses, jurors, lawyers, and others need to get to court. The judicial response came from New York's Chief Judge, Judith S. Kaye who has administrative responsibility for all courts in the state. Her decision, announced mid-morning on September 11, was simple: The attack had been an assault on America's values (including justice) and the court system had an obligation to open as soon as possible. That statement set the tone for what happened in the next few weeks. The situation was helped by a dramatic decrease (40%-64% across the 5 boroughs of NYC) in arrests in the month following September 11 as compared to the previous year.

Re-opening the courts. Individual judges and court administrators did not have to make any decisions about when to re-open: the "unambiguous imperative to open as soon as practicable" (p. 5) from Judge Kaye meant that individual "administrative judges did not have to weigh arguments about whether to open the courts and could instead focus on how to accomplish that goal" (p. 5). Initially, the courts were told that *no* police would be available in court for a month. However, this total ban was lifted several days later. Given that police were involved in rescue efforts, and because of the difficulty in getting cases organized, prosecutors asked for blanket delays. Following Judge Kaye's statement, judges decided on September 12 that *justice* required that cases be dealt with on a case-by-case basis. The Mayor's Criminal Justice Coordinator was based at the Mayor's Emergency Command Centre - the result of a prior decision made in anticipation of Y2K computer problems. In this way, a mechanism existed to communicate the importance of police appearances in court for more pressing cases. The number of police officers who would be authorized to appear in court was determined by this office in consultation with the chief administrative judge.

Some of the work of the criminal courts in Manhattan was moved to other locations. Much of this redistribution was made possible as a result of the leadership of the supervising judge who, along with several prosecutors, had remained in the court during the night of September 11. Defendants who were in pretrial custody on September 11 were scheduled to be heard within days. Decisions on whether to proceed with a hearing were made on a case-by-case basis. In this way, delays were allowed only if the prosecutor clearly had tried but could not proceed. "What was unacceptable to the judges, however, was the blanket adjournment of all cases of jailed defendants without an individualized determination of the inability of the district attorney to move *that* case forward" (p. 15). Prosecutors asked the governor to suspend the requirement that cases of detained accused be dealt with within strict statutory limits. The governor declined, leaving the judges in charge.

On September 19, the administrative judge for the Manhattan courts had a court list of over 300 cases, 245 of which were jail-related. An assistant district attorney asked for a blanket extension of the statutory limits on dealing with these cases, noting that her office had no telephones, fax or computer communications. She noted that many police officers were not available. Judge Martin Murphy, who had slept in the courthouse on the night of September 11 in order to be open the next day, denied the request. He noted that "I think we owe it to everyone to do each case [individually], as laborious as it may be... I think that at some point we have to realize that people have to move forward.... This is a very important institution in the City...." (p. 15). The

court completed all cases at 9:30pm that evening, hearing every case. None of the release applications were granted over the objection of the prosecutor, but 15 of them were, in fact, conceded (with consent). An additional 29 cases were resolved by a guilty plea. As a result of this judicial decision to show leadership in providing “justice as usual”, 90% of the cases had been dealt with in their entirety by the date that the prosecutor had suggested for the blanket extension. A senior prosecutor and the Criminal Justice Coordinator indicated that “no major injustices had been done” (p. 16).

Conclusion. Leadership, in this case from the judges, was crucial. The initial decision by the Chief Judge to have “justice as usual” was also critical. Equally important was the “local leadership [that] emerged among both the local administrative judges and senior prosecutors” (p. 24). Similarly, the firm resolve manifested throughout the system to plan for “business as usual” was fundamental. For example, one of the difficult matters to resolve was that of communication (e.g., of the location of court hearings) which would reach all of those involved. In this case, some creativity (e.g., posted information) and hard work were helpful as were many firm decisions simply to do things, leaving the details to be worked out as they went along.

Reference: Root, Oren. 2002. *The Administration of Justice under Emergency Conditions: Lessons Following the Attack on the World Trade Center*. New York: Vera Institute of Justice, Inc.