



Department of Justice  
Canada

# *Sentencing*

## AN ANALYSIS OF THE PUBLIC'S VIEW OF SENTENCING

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A report to the Department of Justice, Canada

November, 1983

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## Preface

This paper is the first section of a longer report of research carried out during the summer of 1983 for the Department of Justice, Canada. We have included the primary findings from the research program in this report. Although the details of how the research was carried out are not contained in this paper, many of the actual findings are. Part II of the larger report consists of the detailed report on each of the thirteen studies that formed the basis of our conclusions.

Our data-gathering strategy has been two-fold. First, we have employed a nation-wide Gallup poll to get the views of a representative sample of Canadians. These results are presented in detail in Studies 11 and 12. Second, we have questioned visitors to the Ontario Science Centre, as well as members of the public from various locations in Metropolitan Toronto, and have carried out telephone surveys. We have taken care to ensure that people included in these other studies do not hold atypical views on the issues under scrutiny. Comparison data can be examined in Study 13, wherein the responses from the Gallup survey are compared to responses from people recruited from a more restrictively defined population.

We thank all of those who made this research possible. Detailed acknowledgements are contained in the preface to the full report.

The views expressed in this report do not necessarily reflect those of the Department of Justice, Canada.

The task of understanding the public's perceptions of the sentencing process in criminal courts would appear to be a simple one. It would appear that one only has to look at any recent national poll to see how sentences are perceived. Most Canadians (79.5%, in fact, as shown in Study 11) believe that sentences in our criminal courts are too mild. Canadian citizens, however, are not so simpleminded as to stop considering sentences in criminal courts with their almost universal statement "The courts are too lenient." Some might argue that there is no need to probe and understand Canadians' views of their criminal courts. It turns out, as demonstrated in the various studies which form Part II of this report, that Canadian citizens are, when faced with complicated individual cases, quite complex in their analysis of the issues. Indeed, when commentators on sentencing refer to sentencing as being one of the most complex tasks facing a judge, one could extend this statement to the Canadian public as a whole. Citizens of this country, like judges, understand the complexity of the issues involved. However, they, unlike judges, have very little information before them about the nature of sentencing generally in the country. And, as we do in many contexts, when we are asked a simple question by someone running a nationwide poll, we will give a simple answer. As one commentator put it "Surveys tend to generate glib answers to glib questions" (Braithwaite, 1982, p. 738). The purpose of the research program reported here was to get beyond the glib answers to glib questions.

The research reported here could be described as trying to answer two major questions:

- (a) How satisfied is the public with the sentences that are handed down by the criminal courts?
- (b) Does the public have adequate information to evaluate sentences?

It is worth noting that the proportion of U.S. residents that believe the courts are too lenient, while slightly higher, is similar to the Canadian figure. Within Canada, this seems to be a pervasive social attitude, one that is remarkably consistent across various demographic groups (see Part II, Study 11). In addition, while the majority of subjects in our research were Canadians, a substantial minority were U.S. residents. Whenever we made cross-national comparisons the results always showed that there were no significant differences between the responses of Canadians and Americans. We are therefore not dealing with just a national issue.

Our starting point was a paper we prepared last year for the Department of Justice, Canada, entitled "Crime: Some views of the Canadian public" (Doob and Roberts, 1982). On the basis of Gallup poll data collected in February, 1982, we were able to demonstrate that a substantial portion of the Canadian public had a view of crime that differed dramatically from most estimates based on systematic data. As we pointed out in that earlier paper "Canadians vastly overestimate the proportion of crime which involves violence, they think that we are closer in levels of violence to the United States than in fact we are, they see the number of murders as increasing in the past six years when, in fact, they have not, and they think that people released from prison on parole are more likely than, in fact, they are to commit crimes of violence after release" (page 2).

In the area of sentencing, for three different offences, the courts were seen as sending fewer people to prison than, in fact, it is estimated they do. In a related area, the parole board was seen as releasing a higher proportion of prisoners than in fact they do.

Overall, the view that we got of the Canadian public's knowledge of crime in Canada and of the operation of the courts was that these estimates were based on little hard knowledge. A similar conclusion would probably be drawn by carrying out a little exercise. Ask someone you know the simple question: "In general, would you say that the sentences handed down by the courts are too severe, about right or not severe enough?" Most people, our data would suggest, will have no difficulty answering, and most of those who do answer will say "Not severe enough." Then ask this same person "How do you know that?" or "What makes you say that?" The answer you will get will be interesting and instructive. Very few, we suggest, will be of the form "I just happened to be looking over some summary statistics from courts across Canada and after comparing these data to what I know to be the kinds of activities which constitute each criminal offence in Canada, I concluded that the sentences are not those which will accomplish the various and sometimes conflicting aims of sentencing, namely punishment, rehabilitation, individual and general deterrence, and incapacitation." It is much more likely, we suggest that the respondent to this informal survey will answer something like "I read about a case recently where a man was sentenced to 18 months for murder," or, "I heard of a case where a drunken driver who killed three people got probation."

People are going to rely on such knowledge for quite sensible reasons: they are the only data available to all but a few people in Canada. It seems quite reasonable that people would not feel the need to examine their views more carefully: they probably correctly perceive their views to be widely held. The mistake, however, is to ignore the basis of people's beliefs about sentencing. To do so would be to accept glib answers (in response to glib questions) rather than probing to see how Canadians really feel about what actually happens in their criminal courts.

There are several reasons, all well-established by research, why stories such as "18 months for murder" should be generated by people in response to the question "How do you know the courts are too lenient?" First, exceptional, dramatic cases such as these are both vivid and salient, two dimensions that are known to enhance recall and to affect subjects judgements (see Nisbett and Ross, 1980). Second, people tend to seek confirming rather than disconfirming instances (see Snyder and Swann, 1978). Thus if a person believes the courts are overly-lenient he or she will seek, when asked, sentences which support the attitude rather than those which do not support it. Finally, there is also evidence that important social attitudes, of which judicial leniency is surely one, guide our memories of relevant information (e.g., Read and Rosson, 1982; Zanna and Olson, 1982). Thus if a person believes the courts are too lenient, he is more likely to remember sentences that were lenient rather ones that were harsh.

It is important to understand the public's concern about sentencing for a number of reasons. For one thing, as Fagan (1981) has pointed out, in comparison to other criminal justice institutions, "The courts...are most often blamed for the crime problem" (p. 404). In addition, as Boydell and Grindstaff (1974) have noted, it is generally thought that "the criminal law should in some way mirror the attitudes of the general populace" (p. 113). Furthermore, as these same authors point out, "If the sanctions imposed by the legal structure for certain crimes are drastically out of step with the feelings of a large portion of the populace, a general disrespect for the law may develop" (Boydell and Grindstaff, 1972, p. 166).

It is instructive to turn first to the published literature on the public's perception of sentences. First of all, people seem to show a good deal of consensus about the ordering of sentences across crimes. Blumstein and Cohen (1980), for example, looked at different demographic subgroups of their survey respondents and note that "...there is considerable agreement about the relative level of the sentences that should be imposed for the different offences" even though there was "no simple consensus about the appropriate length of prison sentences" (p. 252). This is not too surprising, since, as Sebba (1978) has pointed out, penalties can be scaled quite reliably, just as offences can. Given the similarity in the ranking of appropriate sentences for offences across various socio-economic groupings in society (Thomas, Cage, and Foster, 1976), and given the very high correlations that have been found between rated seriousness of crimes and recommended penalties for them (Hamilton and Rytina, 1980), it would be tempting to suggest that the public's view of sentencing is, in fact, very simple -- that all they really are interested in is that the punishment be commensurate with the judged seriousness of the offence.

The perception of the public -- that they simply want an offender to receive his "just deserts" may, however, be a result of looking at "glib answers to glib questions." Boydell and Grindstaff (1972, 1974) found a good deal of variation among what members of the public in London, Ontario, thought were the appropriate maximum, minimum, and most frequent sentence for all the offences they studied.

Even capital punishment, which, in polls carried out in London, Ontario, would certainly be considered to be "favoured," was not universally desired. Most of the residents of London, Ontario, appeared to want it to be available. Seventy percent of the residents who were questioned felt that capital punishment should be available (by indicating that they felt it, rather than some lesser penalty, should be the maximum permissible penalty for capital murder). However, only 21% of the respondents thought it should be the minimum penalty for that offence, and only 36% thought it should be the most frequent penalty. As in other jurisdictions, then, (see Warr, Gibbs, and Erickson, 1982) there would appear to be support for broad judicial discretion.

Typically reports of polls on the capital punishment issue simply state that the majority of respondents favor re-instatement of the death penalty. However, as recent more detailed studies indicate, the

public do not just subscribe to an all-or-none belief; they have more sophisticated views of the specific conditions under which death is a desirable punishment.

There may be some other regularities in the view of sentencing that members of the general public hold. Vidmar and Miller (1980), for example, suggest that although there may be some agreement about the "basic motives" underlying punishment reactions (i.e., behaviour control and retribution), and although there may be some commonality to the components of these reactions, there may be quite different estimates of how one best goes about accomplishing these aims. McFatter (1982) noted that in addition to differences among individuals in this regard, "...the perceived utility of penalties in serving the purposes [of sentencing] can change dramatically from crime to crime" (p.266). Hence what might be seen as a harsh sentence (e.g., a term of imprisonment) might be seen as differentially serving the various purposes of sentencing, depending on exactly what offence the disposition was being considered for. These studies lend some preliminary support to the hypothesis that the public, if asked more sophisticated questions will, indeed, give more sophisticated answers.

Given the lack of information that Canadians have about the actions of their courts, it becomes clear that the manner in which questions are asked is crucial in understanding their views. Canadians do appear to be interested in information about criminal justice and are open to be persuaded if presented with systematic information. Vidmar and Dittenhoffer (1981), for example, following up research by Sarat and Vidmar (1976), found that giving people material relevant to the capital punishment issue had a dramatic effect on their attitudes -- shifting them from a position favouring capital punishment to being against it.

It appears, then, from what has been written, that the examination of sentences of the court must be done in a way that people are given an opportunity to express their more complicated and sophisticated views of the sentence of the court. Put differently, it is clear that one lesson must be followed: if we want to know what people think should happen in the sentencing of criminal offenders, we have to give them a decent amount of information.

The difficulty, from the point of view of carrying out research on this topic, is that it is very difficult to imagine how one could systematically give members of the public information about a criminal case that would even approach that available to the judge in an actual case. Even if the accused pleads guilty, the sentencing judge has the benefit of the submissions by counsel as well as anything that the accused might say on his own behalf. It is possible that members of the public, if given something approaching the kind of information available to the court, will indicate that they feel that the sentencing decision should be a more complicated and sophisticated one.

Study 1, involving 82 respondents, asked people to indicate what factors they thought should be considered in determining the sentence for someone who had been found guilty of one or the other of two

offences (criminal negligence causing death or fraudulently obtaining a bank loan). Approximately one-third of the respondents were simply asked to list the factors that they thought should be considered in determining the sentence for the crime. The second form was similar except that it listed a number of possible factors. The third form consisted of a short (approximately half a page) description of a case derived from the actual reported case.

The results were simple and as predicted: when members of the public are given information about the actual facts in a case, they feel that more things should be considered in determining a sentence than if they are simply responding to the offence category. These results would suggest that the member of the public who is asked how "a person should be sentenced for X" will give a simple answer if "X" is simply the offence category. That same member of the public will think that a larger set of factors should be considered if "X" is a real case with all of the complexity that goes along with a real case. In this respect subjects' responses mirrored those of judges, who sentence offenders, not offence categories.

People, it would seem, do respond quite differently to detailed information relevant to sentencing from the way in which they respond to offence categories. One might expect, then, that members of the public would be sensitive to this fact and would withhold judgment about sentences if they knew that they had only minimal information. In another study (Study 3 involving 116 Ontario residents), we, therefore, contrasted the response that people gave to brief descriptions of unusual sentences to more complete descriptions of these same actual cases. We purposely chose two cases where, on the face of it, the trial court had awarded apparently mild sentences. In both instances, the Courts of Appeal upheld the trial judge's sentence. Thus one quarter of the respondents were asked "How would you evaluate a sentence of two years of probation and 120 hours of community service handed down to a man following his conviction on three counts of causing death through criminal negligence in the operation of an automobile?" Another group of people was asked this same question, but was given, in addition, an approximately 500 word summary of the facts as contained in the reported case. In the second case that was used, a third group of respondents was asked "How would you evaluate a sentence of 18 months imprisonment for someone who was charged with second degree murder and found guilty of manslaughter?" The final group of subjects had a more complete account of the facts of the case, based once again, on the reported case.

**Table 1: Evaluation of the Sentence**

Case:	Manslaughter		Criminal Negligence	
	Short form	Long form	Short form	Long form
Condition:				
Evaluation:				
Much/too lenient	80.0%	14.8%	71.0%	57.2%
About right	6.7%	29.6%	9.7%	35.7%
Much/too harsh	0%	44.5%	3.2%	7.1%
Need more info	13.3%	11.1%	16.1%	0%
Total:	100%	100%	100%	100%

The results are shown in Table 1. Two aspects of these findings are worthy of note. In the first place, although a slightly larger portion of the respondents felt that they needed more information to evaluate the sentence when given minimal information, this difference was not significant. Furthermore, in all conditions, the vast majority of respondents were willing to evaluate the sentence. Second, although in both cases the sentence without the accompanying description of the facts was perceived as being too lenient, the sentence in the "long" version of the case was evaluated in a dramatically different way. We would suggest that when given the opportunity to evaluate a sentence on more than a "just deserts" model, members of the public appear quite willing to do so. Indeed almost all respondents who had indicated that they were not content with the sentence told the interviewer that there might be some special circumstances that could make the sentence appropriate. This is an important finding given, for example, that in the manslaughter case 80% of the respondents in the "short" condition had just finishing telling the interviewer that the sentence was too lenient. Canadians, when asked, do understand the complexity of the sentencing process. One might suspect, however, that when they hear about a sentence and are not given information about the surrounding circumstances they assume that they are hearing a "typical" case. If then, the sentence is a relatively light one, it is not surprising that they infer that it is "too lenient."

These findings point out the difficulty in evaluating the meaning of anecdotes or expressions of public concern about specific sentences and of evaluating results of public opinion polls that show that people think that the sentences of the court are too lenient. In this particular instance, equivalent (i.e., randomly assigned) groups of people either thought that the sentence was too lenient or about right or too harsh, depending on the amount of information they were given. It should not be thought that these were a group of people who perceived sentences to be appropriate: over 90% of them had already told the interviewer (in response to an earlier question that they had been asked) that they thought that "In general...the courts are too lenient...in the sentences they give to people convicted of criminal offences."

It would probably be impossible to prepare a catalogue of the

factors that people think should be considered in determining the sentence for an offender. The list of relevant factors will naturally vary greatly from offence to offence: what people may be willing to consider as mitigating in an assault case may not seem appropriate for homicide. As has already been pointed out, the relationship between the perceived appropriateness of a sentence for a particular offence depends in part on the goal that it is supposed to accomplish (McFatter, 1982). However, it is possible that regarding sentencing, members of the public are not consistent in their stated views of what should be considered and their specific recommendations about what a sentence should be.

In another experiment (Study 5) we examined the kinds of factors that people used in assigning sentences themselves. We gave short descriptions of hypothetical criminal cases to 441 members of the public. We varied the way in which the offender was described along three dimensions: his criminal history (some or none), his marital status, and whether he was employed. In both studies, not surprisingly, people felt that criminal record should play a large role in determining the sentence. In general, when the man being sentenced was described as having a criminal record, members of the public thought that he was more deserving of a harsh sentence than when he did not have a record. The other two variables did not have a substantial effect on the sentence. For the two offences we chose, these other variables did not seem to be important.

People are, however, very sensitive to some factors that relate to the overall situation in which the offence took place. In addition to the criminal record of the offender, they appear to be quite concerned with the actual harm done in connection with the offence. In one study (Study 2) involving 158 participants, a case was described involving the offence of driving with over 0.08% alcohol in one's blood. For all subjects in the experiment, the only offence with which the hypothetical accused was charged was this offence. For half of the subjects, the offender was seen as having come into contact with the police as a result of being stopped at random and given a breathalyzer test; for the other half he was described as having been involved in a traffic accident in which the occupants of the other car were severely injured, with one of them dying as a result of the injuries. It was explicitly stated that no charges were laid relating directly to the accident other than the offence relating to the breathalyzer reading. Half of the subjects in each condition read that the arresting officer described the offender as having been driving in a manner that showed impairment; the other half read that the officer thought that the driver was not driving in a manner indicative of impairment.

The participants in the study were asked to recommend a sentence for the offender. The results were simple and straightforward: the actual harm done -- the presence of the accident -- had a dramatic effect on the recommended sentence. The offence may have been the same in the two sets of conditions but members of the public appeared to have assumed that even though it was not formally associated with the charge, if the offender was involved in an accident and had an elevated level of blood alcohol he deserved a heavier penalty than if

there had been no accident. If a fine were recommended, he was seen as more deserving of a heavy one; if probation was seen as appropriate, the man involved in the accident was seen as deserving a longer term of probation. The offender who was also involved in the accident was approximately four times as likely to be seen as deserving imprisonment and was, in addition, more likely to be seen as deserving a long term of imprisonment. Other measures showed similar results.

Potential harm -- in the form of the assessment of the driver as showing impairment or not -- had no appreciable effect on the way in which people made recommendations for sentencing.

We also asked our respondents to rate the importance of each of the five traditional principles of sentencing. Four of the five (punishment, general deterrence, rehabilitation, and incapacitation, but not individual deterrence) were seen as more important where the accused had come into contact with the police as a result of an accident. Although on the face of it these results might seem strange, it is likely that the subjects were, essentially, saying that sentencing generally was more important in these circumstances.

These results suggest that extreme care should be exercised in interpreting the concern that members of the public sometimes express about "drunken drivers." It would appear, from these findings, that the concern is, in reality, with the sentencing of those who actually do harm to others in connection with, as a result of, or coincident with, their drinking and driving. Although the offence in the descriptions was identical, harm done - and whether that harm was caused by drinking or bad luck - appears critical to public views of the appropriate sentence.

Aside from the specific relevance of these findings to understanding the public's reactions to drinking driving, these results are similar to some that are described later in this report: to a large extent, what the public appears to be most concerned about in the area of crime in general and sentencing in particular, is violence.

Thus far we have demonstrated the public's ability and willingness to approach the issue of evaluating sentences in a complex analytical way and to consider a number of different factors simultaneously in coming to a decision as to whether a particular sentence is appropriate. It would also appear from the findings summarized so far that although members of the public might respond to simple questions by saying that they feel that the courts are too lenient, they might well, when faced with information similar to that which the court bases its decisions on, evaluate the sentences of the court quite differently.

Most members of the public seldom if ever find themselves as observers of the criminal courts. Instead of getting their information about the sentences of the court directly, they tend to get it from the mass media. News stories, by their very nature, are summaries in a few, a few hundred, or a few thousand words, of

sometimes days' worth of testimony in court. Whereas the judge handing down a sentence has had the benefit of hearing anything from an agreed upon statement of "facts" read into the record by the Crown to hours of trial and submissions on sentencing, the member of the public in evaluating the appropriateness of the sentence may have the benefit only of a few paragraphs of description chosen by a reporter who, himself, may not have observed the whole case. Although there may not be a conscious attempt to slant a sentencing story in a particular way, the media do not choose cases at random. It is possible that the way the story is written may make sentences look less acceptable to the public than they would if the public chose their own facts.

We first can address ourselves to the question of whether someone getting news of sentences only from the newspapers would be likely to think that the sentences were too short. This is conceptually a simple question to answer; in practical terms, however, it is very difficult. Two classes of items have to be sampled: newspaper stories dealing with sentencing and people to evaluate them. Ideally it would have been good to identify from a large sampling of newspapers over a long period of time all of those stories in which a sentence for a criminal matter (in Canada) was mentioned. From this large pool of stories, we could then have taken a rather large random sample to study in more detail. Each of these stories would then be given to a random sample of Canadian residents to evaluate. Although such a study would be possible; it was not practical. Instead, as described elsewhere (See Study 10), we took all of the relevant stories from the first six issues of each of the three Toronto newspapers in July 1983 (a total of 16 stories) and had them read by ninety-nine visitors to the Ontario Science Centre.

Ontario Science Centre visitors clearly are not representative of all Canadians. However, with respect to their views of sentencing specifically and crime in general, they are quite similar to most Canadians. On the question of how they evaluate the sentences of the courts generally, they are almost identical to a representative sample of Canadians (See Study 10, Table 1). Furthermore, as shown in Study 13, they are very similar to a representative sample of Canadians on other questions related to crime.

Thirteen of the sixteen stories were rated, on balance, as describing sentences that were too lenient. Equally relevant are the findings that almost everyone for each story that he/she read was at least somewhat confident about his/her rating. Indeed, 58% of the ratings of the stories were made by people describing themselves as being "very confident" about their rating. Even though a good many of the stories were very short, it would appear, when members of the public were faced with evaluating the story, that they felt they could decide with confidence whether the sentence was appropriate on the basis of very little information. Indeed, those stories in which the sentence was most likely to be rated as too lenient tended to be those about which the readers were most confident. Finally, and not surprisingly, those people who indicated that generally they thought that sentences were too lenient also tended to be the ones who rated the particular sentences in the news stories as being too lenient.

This last finding is important because it suggests a self-perpetuating aspect to the leniency attitude. A person believes the courts are too lenient, he then reads a selection of sentences and his attitude influences his evaluation of these new instances, which then confirm the original opinion. In this way the general attitude sustains itself (see also Lord, Ross, and Lepper, 1979).

These findings support the notion that the newspapers contribute to the public's view that sentences are too lenient. Either by choice of cases or by the way in which the cases are described, the newspapers tend to picture criminal sentences as being too lenient.

It may be, however, that cases that are worthy of coverage are, in fact, those in which the public, even if they had all of the information that is before the courts, would view the sentences as being too lenient. There is no practical way in which this hypothesis could be completely tested. However, a very good approximation to the ideal test would be to compare the public's perception of the appropriateness of sentences as described in newspaper articles to their view of those same sentences as described in court based materials. Similarly, if there is variation across newspapers on the evaluation of the same sentence in the same case, a strong argument can be made that the manner in which the sentence is presented determines the evaluation of it.

Four independent experiments (Studies 6, 7, 8, and 9) involving 568 different people compared different accounts of the same sentencing decisions. In each of the cases, there were significant differences in the rated appropriateness of the sentence as a function of who was describing the sentence. In three of the studies, court-based materials (or transcripts) were compared to newspaper accounts.

In Study 6, one newspaper account gave the public approximately the same impression of the appropriateness of the sentence as did the transcript. In both cases, the sentence was rated as being very slightly harsher than it should have been. The other news account gave the reader the impression that the sentence was too lenient.

In Study 7, three news accounts were compared. Although all three described the sentence in terms that made the public feel it was too lenient, there were significant differences among the three accounts. Readers of one of the papers would have formed the impression that the sentence was more inappropriately lenient than would readers of the other two accounts.

The results of Study 8 were similar to the previous two studies: There was a good deal of variation in the evaluation of the sentences, but none of the four news accounts that were evaluated were seen as describing a sentence to be as appropriate as the same sentence as described by the judge in the transcript of the court hearing.

The last of the studies in this series had the most impressive results, in part because the case that it involved was one where the newspaper had not only given the case a good deal of prominence but it had also criticized the judge in an editorial (the following day) for

giving the sentence he did. As shown in Table 2, there is no doubt whatsoever that readers of the newspaper would feel that the sentence was too lenient. What is important, however, is that people evaluating exactly the same sentence for the same man for the same offence, when given the kind of information that the court had available to it, saw this same sentence as too harsh. As shown in Table 3, the respondents were not happy with the manner in which the judge arrived at his decision if they read the news account. If, however, they had the court-based information available to them, they were considerably more content with the judge's decision.

**Table 2: Evaluation of the sentence given to Beaucage**

	Too harsh	About right	Too lenient	Total
Transcript	52%	29%	19%	100%
Newspaper	13%	24%	63%	100%

Chi square = 28.11,  $p < .001$

**Table 3: Evaluation of whether the judge considered all appropriate factors**

	Yes	Can't say	No	Total
Transcript	59%	17%	24%	100%
Newspaper	29%	25%	46%	100%

Note: Chi Square = 11.26,  $p < .01$

The accused in this case appealed his sentence notwithstanding the fact that his hometown newspaper had said it was already too light. It seems safe to assume that the newspaper was not happy to report that the Court of Appeal had "nearly halved" his sentence. The irony, of course, is that the readers of the news account probably agreed with the editorial stand taken by the newspaper and were probably quite upset to hear that the Ontario Court of Appeal had reduced the sentence. The Court of Appeal, on the other hand, would seem to have been quite well in step with public opinion based on court documents in that they, like the public who had access to court based information, thought that the original sentence was too harsh. The Court of Appeal, however, would appear to have been out of step with public opinion about the case as created by the newspaper account.

We are left then with a serious and unresolved problem. The public, it would appear, is getting information about the sentences of the court which leads them to feel that sentences are too lenient. These same members of the public, it would appear, when they are given

access to more complete or less selected accounts of the sentences are more content with the decisions made by the trial judges. Public opinion about sentencing is likely to be shaped more by the news media than directly by events as they take place in courts. In short, people appear to be reacting less to the sentence (because that is constant across accounts) and more to the context in which the sentence is placed. Most fundamentally, it does seem that policy makers have to be very careful in interpreting the stated desire of the public for harsher sentences.

It seems reasonably clear that the news media contribute to the generally held view that the sentences of the courts are too lenient. Thus it is not too surprising that in previous research there do not seem to be overwhelming differences across demographically distinct groups in their assessment of the sentences being handed down for various crimes (e.g., Newman, 1957; Thomas, Cage, and Foster, 1976). In our own nationwide sample (Study 12) as well, there were no important differences in the percent of Canadians thinking that sentences were not severe enough across groupings by sex, age, mother tongue or income. Most Canadians, as shown in Table 4, reported that they thought that the sentences of the courts were too lenient.

**Table 4: In general, would you say that the sentences handed down by the courts are too severe, about right, or not severe enough?**

Too severe	1.4%
About right	16.7%
Not severe enough	79.5%
Don't know, not stated	2.4%
Total:	100%

There was, however, a small effect on education: University educated respondents were slightly less likely to think that sentences were not severe enough (74.1%) than were those reporting themselves as having somewhat less formal education (80.6%). Even the regional differences, as shown in Table 5, though statistically significant, are not enormous.

**Table 5: Percent believing sentences are not severe enough**

Atlantic	74.3%
Quebec	77.3%
Ontario	78.6%
Prairies	81.7%
B.C.	88.1%

There is some research (e.g., Fagan, 1981; Lotz and Regoli, 1980; Viney, Waldman, and Barchilon, 1982) that suggests that views on such matters as the appropriate disposition of the courts may relate to other views of the criminal justice system. It is, therefore, worthwhile to look at the context in which these beliefs are held. We have already pointed out one important aspect of Canadians' views of crime: they tend to overestimate the amount of crime that involves violence. Table 6 contains the data from this year's and last year's nationwide polls.

**Table 6: "In your opinion, of every 100 crimes committed in Canada, what percentage involve violence — for example, where the victim was beaten up, raped, robbed at gunpoint, and so on?"**

	1983	1982
Accurate (0-9%)	3.1%	3.8%
Small overestimate (10-29%)	14.7%	15.1%
Large overestimate (30-100%)	73.8%	73.9%
Don't know, not stated	8.4%	7.2%
TOTAL	100%	100%

People also tend to see offenders as an identifiable group of individuals likely to repeat their offences. It is estimated that approximately 27% of first-time property offenders and about 13-17% of first-time violent offenders will be reconvicted within five years of their first conviction. Substantial numbers of Canadians, as shown in Tables 7 and 8, overestimated these figures.

**Table 7: "Of 100 first time offenders convicted of property offences, what percentage do you think will be convicted again for any criminal offence within the next five years?"**

Underestimate (0-19%)	9.4%
Correct (20-39%)	21.3%
Small overestimate (40-59%)	28.5%
Large overestimate (60-100%)	33.7%
Don't know/no response	7.1%
Total:	100%

**Table 8: Of 100 first time offenders convicted of crimes involving violence, what percentage do you think will be convicted again for any criminal offence within the next five years?"**

Underestimate (0-9%)	2.4%
Correct (10-29%)	11.7%
Small overestimate (30-59%)	34.7%
Large overestimate (60-100%)	44.7%
Don't know, no response	6.5%
Total:	100%

As in the earlier study (Doob and Roberts, 1982) people's estimates of the proportion of people going to prison for two different offences were not very accurate. Inaccuracy seems to be the rule rather than the exception. Gibbons (1969) noted that a survey in California suggested that "most citizens had only hazy notions about current sentencing, while some of them underestimated the severity of imposed sentences" (p. 392). In our Study 11, however, we found that for one offence (robbery) Canadians underestimated the proportion currently receiving prison sentences; for the other offence, they overestimated the proportion being imprisoned. It is difficult to know what these estimates were based on. What is reasonably clear, however, is that people's knowledge is at best incomplete.

When they were asked what they thought should happen to those convicted of assault causing bodily harm (an obviously violent offence) people recommended that a very high proportion of those convicted be imprisoned. The same was true for robbery, although the desired rate of imprisonment was somewhat lower than it was for the assault conviction. We expect that this is due to the assessment of assault causing bodily harm as involving more severe injuries than it usually does.

**Table 9: "We'd now like to ask you about your own opinion of what should happen to people who are convicted of assault causing bodily harm, for example, beating up a person. Of every 100 persons convicted of assault causing bodily harm, what percent do you think should be sent to prison?"**

Fewer than at present (0-29%)	4.6%
As at present (30-49%)	5.5%
More than at present (50-89%)	33.2%
Almost everyone (90-100%)	51.1%
Don't know, not stated	5.6%
Total:	100%

**Table 10: "We'd now like to ask you about your own opinion of what should happen to people who are convicted of robbery. Of every 100 persons convicted of any type of robbery, what percent do you think should be sent to prison?"**

As at present (80-100%)	43.0%
Somewhat fewer than at present (60-79%)	14.7%
Many fewer than at present (0-59%)	31.9%
Don't know, not stated	10.4%
Total:	100%

Violence seems to be an important preoccupation of people when thinking about crime, criminals, and sanctions. After giving their views of sentences as a whole, respondents were asked what kind of offender they were thinking of when they answered the question. As shown in Table 11, about a third were thinking of all criminals, but over half were thinking of either violent or repeat offenders. More extreme results were found in the G.R.A.C. survey: 57.1% were thinking of a violent person when answering a similar question.

**Table 11: What type of criminal were you thinking of when you answered this last question?"**

Violent offenders	38.0%
Repeat offenders	16.0%
All criminals	31.2%
First offenders	3.8%
Those who have committed property offences such as theft	3.1%
Juvenile delinquents	2.8%
Don't know/not stated	5.1%
Total:	100%

Similarly, when asked what factors they thought should be paramount in determining the sentence, those which were most likely to be mentioned were those involving offence seriousness or offence history of the offender.

**Table 12 "Which of the following do you think should be the single most important factor [second most important factor] to be considered by a judge in sentencing someone convicted of a criminal offence?"**

	% listing factor	
	first	second
Whether the crime was premeditated or planned	22.4%	15.9%
Whether the offender had committed criminal offences in the past	16.3%	18.0%
The harm done to the victim	16.1%	13.4%
Whether the offence involved violence	14.5%	16.7%
Whether the offender is seen as likely ever to commit an offence again	10.9%	8.9%
Age of the offender	4.0%	4.8%
Whether this particular kind of crime is occurring frequently in the community	3.4%	3.1%
Whether the offender shows remorse for his crime	3.0%	5.0%
Whether the offender has repaid or in some way made amends to the victim for the crime	2.7%	4.4%
Whether the crime was racially motivated	1.1%	2.2%
Whether the offender is working	0.3%	0.5%
Don't know/not stated	5.2%	7.1%
Total	100%	100%

When asked about the appropriate disposition for a non-violent property offence, we found that fewer than a third of Canadians felt that the offender should be imprisoned.

**Table 13: "Which of the following sentences would you most prefer to be given to a first offender convicted of breaking and entering into a private home and stealing things worth \$250?"**

Probation	39.1%
A fine	25.6%
A fine and probation	3.1%
Prison	29.2%
Don't know/Can't say	3.0%
Total:	100%

And, although those desiring prison for the property offender described in this question were less likely to tolerate a reparative sanction, most Canadians were quite willing to consider this possibility for such an offender.

**Table 14: "Now instead of [answer chosen in preceding question] would you be in favour of having the offender be ordered by the court to do a certain number of hours of work beneficial to the community or the victim or in some other way pay back the victim for the harm done?"**

	% giving this response	cumulative %
Yes, in all cases	30.4%	30.4%
Yes, in most cases	30.9%	61.3%
Yes, in some cases	26.6%	87.9%
Only in very rare cases	6.0%	93.9%
Never	3.6%	97.5%
Don't know/not stated	2.5%	100%
Total:	100%	

The findings from this last question are important for a number of reasons. First of all, the results suggest that, at least as far as some property offenders go, the public would appear to prefer sentences not involving imprisonment. We do not know what the reasons for the public's preference for this type of sentence nor do we know the range of offender-offence combinations for which it would receive a high degree of acceptance. It would appear, however, that at least when violence is not involved, the public does not consider imprisonment to be the only alternative.

A second important aspect to this finding is an obvious, but important one: the only way to find out how the public feels about non-obvious alternatives is to ask about them. It may be the case that "work beneficial to the victim or the community" can be a legitimate part of a probation order. However, when the public is asked to choose among alternatives including probation, it does not seem that they consider the variety of things that might at present be permissible as terms of probation. There are at least two possible ways of dealing with this apparent failure on the part of the public to consider the full range of options available to the judge. One would be to educate them directly on what could be done with a probation order. The second, and probably better way, would be to educate them about the alternatives available to the judge by making these real options in

and of themselves. Over time, it would at least be possible for people to be educated about the full range of sentences that would be possible under our law.

We have already suggested that when Canadians think about crime, they are really thinking about violence. They overestimate the amount of violence that exists in Canadian society. When they express concern about the sentences that are given in court, many of the them, in reality, are thinking about violent offenders, not all offenders. Indeed, when concern is expressed about apparent leniency in sentencing, almost nobody is thinking directly about property offenders.

Members of the public who think that sentences are too lenient are most likely to be thinking of violence when they indicate that sentences are too lenient. Even though violence is infrequent in Canadian crime, it is violence (and repeat offenders) that people are thinking of when responding to questions by saying that the courts are too lenient.

**Table 15: Type of offender in mind when evaluating sentences**

	Violent	Repeat	Various*	All	Total
View of sentences:					
OK/Too harsh	21.4%	10.4%	28.9%	39.3%	100%
Too lenient	44.7%	18.1%	5.9%	31.3%	100%

Chi square=103.0, df=3, p<.001

\* "Various" includes juvenile delinquents, first offenders, and property offenders

Furthermore, these same people -- those who view sentences in criminal courts as being too lenient -- are most likely to overestimate the amount of crime in Canada that involves violence.

**Table 16: Relationship of evaluation of sentences to perception of the amount of crime that involves violence.**

View of sentences:	Estimate of amount of crime involving violence:				Total
	0-9%	10-29%	30-59%	60-100%	
OK/too harsh	5.6%	20.7%	37.6%	36.3%	100%
Too lenient	2.7%	15.2%	35.1%	47.0%	100%

Chi square = 10.22, df=3, p<.02

Obviously, however, those who view sentences as too lenient also tend to suggest harsher penalties for many specific offences (See Study 12, Tables 6, 7, 8). However, when we turn to the question of

the preference for a work order as a sentence for a first offender convicted of break, enter, and theft from a private dwelling, we find that those viewing sentences as too lenient are no more likely to favour or oppose this option.

**Table 17: Preference for work as alternative to fine, probation, or prison for first offence break, enter, and theft from a private dwelling**

	Yes, in all cases	Yes, in most cases	Yes, in some cases	Only in very rare cases	Never	Total
View of sentences:						
OK/Too harsh	32.4%	35.2%	25.8%	5.5%	1.1%	100%
Too lenient	31.6%	30.4%	27.4%	6.0%	4.5%	100%

Chi square=5.66, df=4, p=.23

When thinking about crime, people summon to mind images of violent offenders, of repeat offenders, and of an identifiable group of people who, once they commit an offence, will come back into the criminal justice system over and over again. It is, therefore, not surprising, given this image of crime, that people desire more punitive sanctions. If people believe that the criminal justice system does not cure criminals and if it is perceived that communities can do little themselves to avoid crime, then members of the public are left with three potentially useful functions of sentencing -- incapacitation, and general and individual deterrence. Even these, the public may feel (supported by experts) are not very efficient ways of dealing with crime. How then should offenders be sentenced people may ask? What principles should be followed? To punish the offender is just about the only answer that is left.

If this is the salient view of sentencing for most members of the public when they are first asked about sentences in criminal courts, it does not necessarily follow that members of the general public would overwhelmingly ask for heavier sentences. However, they overestimate recidivism rates. They have seriously incomplete information about the present severity of sentences in criminal courts (and, perhaps, they may have incomplete information about what "average" or normal offences look like in criminal courts). They overestimate the amount of crime that involves violence. In the context of these incomplete or incorrect beliefs, stiffer sentences would appear to make a lot of sense.

Much of the problem seems to derive from the fact that the public's view of crime and the criminal justice system is shaped by information that does not, itself, give a representative view of the issues. Members of the public rarely are given information about crime and the criminal justice system that allows them to get a reasonable overall picture of the issues. Their major source of information is the mass media and the mass media appear to project an image of crime which is not meant to be representative of crime. In

the area of sentencing, the newspapers, from our studies, would appear to project an image of judicial leniency toward offenders. It is no wonder that members of the public, when asked whether sentences are too lenient, answer in the affirmative. Our data show, however, that this well-documented desire for more punitive sentences recedes significantly in light of additional information. But how often is additional information provided?

One dimensional survey questions lead to interesting, but one-dimensional, answers. More sophisticated analyses of the view that the courts are too lenient suggest that the cry for increased severity reflects an understandable but real information deficit rather than a philosophical disparity between the public and the courts. One reason why top-of-the-head reactions may be more punitive than those based on substantial data is that the first response of most people to a brief description of a serious offence is moral outrage. Mitigating factors do not spring readily to mind, but there are mitigating factors in most cases. These affect the judge and the public when the information is available to them. Our initial reaction frequently is to respond to the gravity of the offence, and to ignore the circumstances surrounding the act and relevant characteristics of the offender.

Those, then, who would urge that the policy maker and the court follow the one-dimensional cry for judicial harshness in sentencing are not taking into account the willingness of Canadians to consider the complexity of each case on its own and the willingness of Canadians to temper their calls for harshness if the full facts of the case warrant it.

Public opinion about the criminal justice system is important, but only the naive politician or judge would urge that a badly informed public be followed blindly.

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