Jury Sentencing Survey

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Juries do not sentence offenders, but they are interested in the outcome of cases they have tried, and they are well informed about the circumstances of the particular case. The reaction of jurors to sentences imposed on offenders is likely to influence public opinion. It is also likely to provide a useful source of information to courts about public opinion. If governments were concerned to know what the public think about sentencing practice, a survey of the reactions of jurors to sentences imposed in cases which those jurors tried could provide interesting information. That could be a useful practical test of whether there is some systematic failure of the process to meet the expectations of the well-informed members of the public.

THE HONOURABLE AM GLEESON AC (2005: 247)

CONTENTS

LIST OF TABLES:

LIST OF FIGURES:

PART 1

AIMS, OBJECTIVES AND METHODOLOGY

A. AIMS

The study has three immediate aims:

- To investigate a new method of ascertaining public opinion by assessing the feasibility of using juries as a source of informed public opinion.
- To develop a new way of improving public knowledge about sentencing by using jurors as conduits of information.
- To ascertain attitudes to sentencing from an informed sector of the public.

The broader aim of the study is to counter populist penal punitiveness by addressing the 'comedy of errors'; namely, the situation that criminal justice policy and practice is not based on a proper understanding of public opinion, and public opinion is not based on a proper understanding of policy and practice. Public opinion surveys conducted across the world over the last four decades consistently find that between 70 and 80 percent of respondents think that sentences are too lenient. More sophisticated research has led researchers to label this 'a methodological artefact – a result of the way in which public opinion has been measured' (Gelb 2008a: 45). It has been found that people have little accurate knowledge of crime and the criminal justice system, that those who have better knowledge are less punitive and that when given more information, people become less punitive. This suggests that a strategy to counter penal punitiveness is to improve public knowledge about crime and sentencing matters and to devise better methods of ascertaining informed public opinion. The provision of a better measure of informed public attitudes (in contrast to uninformed and flawed public opinion polls) will provide the basis for a reasoned argument for politicians and policy advisers to use when resisting calls made by the popular print and broadcasting media to increase penalties and to get tough on crime.

Providing a source of informed public opinion, which can be fed into the criminal justice system, has the potential to improve public confidence in the system. Because of the relationship between ratings of confidence in the courts and perceptions of severity – those who report that sentences are too lenient are less confident in the courts – improving confidence in the courts can also reduce punitiveness.

The Research Questions: The following six research questions were formulated:

1. How can juries be utilised as a source of public opinion about sentencing?
    - Do they have the willingness and capacity to participate in a study exploring their views on sentencing?
    - How willing are jurors to respond to invitations to stay and listen to sentencing proceedings?
    - Do they have the willingness to read and the capacity to understand briefing information about sentencing?

- Are jurors willing to complete a survey form about sentencing?
- Are jurors willing to respond to requests to be interviewed about their views?

2. How receptive are jurors to learning about crime trends and sentencing?
3. To what extent are jurors (as newly informed members of the public) satisfied with the sentence imposed by the judge?
4. What kind of information affects public satisfaction with sentencing?
    - Listening to the sentencing submissions?
    - Knowledge of crime trends?
    - Information about sentencing law and sentencing patterns?
5. What variables affect jurors' satisfaction with sentence?
    - Variables relating to juror demographics?
    - Variables relating to the offence type?
    - Variables relating to the offender?
    - Variables relating to the victim?
6. To what extent do the views of jurors as members of the public coincide or differ from those of the judge as expressed in the sentencing comments?

B. APPROACH AND METHODOLOGY

1. Research design

The research design envisaged that all jurors in trials with a guilty verdict would be surveyed over a period of two years. It was estimated that two years would produce some 150-160 trials with guilty verdicts. Recruitment of jurors began in mid-September 2007, and finished in early September two years later. In this period there were 162 trials returning guilty verdicts. Approval for the study was sought and obtained from the Chief Justice and the three-stage research design was developed in consultation with him. The Attorney-General's approval was also sought. Although jurors were not asked to divulge the content of their deliberations at any stage, it was decided to ask for exemption from disclosing prohibited matters under the *Juries Act 2003* s 58(6)(e) in the event that a juror did disclose something in relation to their deliberation in the course of an interview. The Attorney-General granted approval for the research. Before the project began, the project team leader briefed judges about the project at a Judges' Meeting. Relevant court staff were also briefed by a circular prepared by the Chief Justice and the Research Team.

The project tracked the attitudes of participants at three stages:

Stage 1 – *Initial response*: after verdict and before sentence via responses to a survey attached to the study consent form.

Stage 2 – *Informed response*: after reading the briefing materials and sentencing remarks via a second survey form.

Stage 3 – *Considered response*: after completing the informed-response survey form via a personal interview with selected numbers of participants (qualitative analysis).

Stage 1: Questionnaire 1

Each time a new jury panel was summoned to the court in Hobart, Burnie and Launceston, the sitting senior judge briefly introduced a member of the research team to the panel expressing the Court's approval and support for the project. The member of the research team then outlined the aims of the study and explained that in the event of a guilty verdict, jurors would be invited to participate by staying to hear the sentencing submissions and then complete a Questionnaire, which was described as Stage 1 of the Study. They were also invited to take part in Stage 2 and to agree to a Stage 3 interview. What each stage involved was briefly explained. There were up to ten jury panels each year in each city. In Hobart, the research team member(s) was always introduced by the judge. However, this did not always happen in Burnie and Launceston where the introductions were sometimes done by the jury officer if the judge was not able to do so. For the last nine months of the study there was no research team member available in Burnie to explain the project, so this was done by the jury officer.

After a guilty verdict, the trial judge invited the jury to participate in the study by staying behind to listen to the sentencing submissions. At the conclusion of the submissions the judge then asked the jury to leave the court with the jury officer to fill in Questionnaire 1. In most cases the handing down of the sentence was adjourned to a later date. However, if it was to be handed down immediately, the jurors left the court before this took place. While the initial plan was for the jurors to complete the Questionnaire before they left the court buildings, in many cases, particularly in the evenings, the court staff preferred to give the jurors the option of completing the questionnaire immediately or taking it with them and posting it to the University in a pre-paid envelope. In an estimated 10 percent of cases the sentencing submissions are adjourned. In this case jurors completed the questionnaire without hearing the sentencing submissions, which were instead transcribed and sent out with Questionnaire 2.

Consent forms were distributed with Questionnaire 1. Questionnaire 1 asked a series of questions covering the following:

- An indication of what the sentence should be (for example, a sentence of imprisonment of X length or a specified non-custodial penalty or don't know).
- Some questions about crime rates and perceptions of risk of victimisation.
- An indication of whether current sentencing practices are generally too lenient, harsh etc, and whether judges are in touch with public opinion.
- Demographic details.
- Contact details (postal address and email or phone number) so that 'briefing materials' including the sentencing remarks, a booklet and a second questionnaire could be sent to the juror.

A copy of Questionnaire 1, the consent form, information sheet and an additional page that was inserted into Questionnaire 1 where there were multiple offenders, is included in Appendix 1. Jury officers were briefed as to what they should say to the jury. They were instructed to tell the jury not to worry about what their first estimate of the sentence should be and to emphasise that they would have the opportunity to revise their view in the second Questionnaire after they had been sent information about crime and sentencing, including the sentencing comments given by the judge. High participation rates depended on the jury officer or court staff having the Questionnaires, consent form and information sheet ready for distribution and handing them out to those jurors who indicated a readiness to participate.

Stage 2

The standard package, which was sent to all jurors who agreed to participate in Stage 2, included:

- A booklet containing some general information on crime rates and sentencing matters (See Appendix 2).
- An insert with data on sentencing patterns about the particular crime for which the defendant had been convicted (Inserts, see samples in Appendix 2).
- The sentencing comments.
- A transcript of the sentencing submissions if these were adjourned in whole or part (these were supplied by the Court).
- Questionnaire 2 and a pre-paid and addressed envelope. There were two versions of Questionnaire 2: one for cases with one defendant only and one for multiple defendants. Copies of both versions of Questionnaire 2 are included (See Appendix 3).

Stage 2 participants were asked to complete Questionnaire 2 and return it to the research team after they had read the briefing materials package. Questionnaire 2 included four sections:

Section A: questions about the sentence in the case, the sentencing remarks, sentencing goals and aggravating and mitigating factors.

Section B: questions about the information package.

Section C: Views about sentencing in general, crime trends and perceptions of risk of victimisation.

Section D: discussion of the sentence or booklet with others.

At the end of the questionnaire respondents were asked to specify whether they were willing to be interviewed. If no response was received in about 21 days, jurors were sent a duplicate package.

Stage 3: Interviews

From the group of jurors willing to participate in interviews, it was planned to select 50 for semi-structured in-depth interviews. The intention was to pick a spread of jurors from Hobart, Launceston and Burnie and to include at least 15 whose opinions had changed and become harsher; at least 15 whose opinions had

changed and become more lenient; and at least 15 whose opinions had remained the same. These were to be selected from a range of offence types. As the study progressed, however, it became apparent that we were not going to be able to find 15 participants whose response to the general question about sentence severity had become unambiguously more punitive. This was because most participants appeared to become more moderate at Stage 2. Consequently it was decided to select jurors so that there was a spread of both offence types and jurors in terms of their sex, age and background. Furthermore, several jurors who had heard more than one case were selected so that the interviews could explore any differences in those jurors' attitudes to different kinds of offenders and offences. In total, 50 jurors who had participated in 62 trials were interviewed:

23 trials involved crimes of violence;

20 trials involved sex offences;

7 trials involved property offences;

10 trials involved drug offences; and

2 trials were classified as 'other'.

The interviews loosely followed the structure outlined below:

The sentence selected: The interviews generally began with a discussion of the sentence and an exploration of the juror's view of how appropriate the judge's sentence was. Jurors were asked why they favoured their chosen sentence, the reasons for any change in view, the goals they thought the selected sentence would achieve and for their response to the aggravating and mitigating factors. If a suspended sentence was imposed in the case, they were asked their views about this sentencing option. The interview also explored their views of the offender in the case. We attempted to get jurors to give their particular case a seriousness score out of ten.

The media response: Jurors were asked if they were aware of whether the media had reported on their trial, and if so, had seen the coverage, and did they believe the media had accurately portrayed the story.

Views about sentencing in general and judges: In this part of the interview, we explored general views about sentencing levels in the abstract and any changes that may have occurred in the juror's view between Questionnaire 1 and 2. We endeavoured to explore the kinds of cases they were thinking of if they said sentences for violent offences were too lenient. Where a juror agreed with the judge's specific sentence in the case of an offence of violence, but had also stated that in general they thought sentences for violent crimes were too lenient, we explored the reasons for the dichotomy in views. We asked jurors for their views about the desirability of structuring the sentencing decision-making process by reducing judicial discretion and introducing grid systems. They were also asked whether they thought jurors might like to be more involved in the sentencing process.

We investigated the jurors' responses to the question: 'how in touch do you think judges are with public opinion on sentencing', by exploring any change between Questionnaire 1 (B6) and Questionnaire 2 (C3) on this issue and asking them to elaborate upon what they meant by 'somewhat in touch' for example. In some cases we linked their response to this question with the question on whether judges should reflect public opinion when sentencing (Questionnaire 2 C10). We tried to explore the impact of the jury experience on their confidence in the criminal justice system.

Juror response to the study: To explore the reasons why the response rate differed between different trials, we asked jurors about the general juror interest in the case, the jury dynamics, length of the trial and their deliberations, and any possible feelings of intimidation. This was particularly valuable when jurors had sat on more than one case and had participated in the study by filling out the questionnaires about one case but not the other.

The booklet: We asked about the booklet and its value; whether they thought jurors and the public would be interested in accessing sentencing remarks. Finally jurors were asked if they had any questions or comments on the jury experience.

2. Other sources of data

In addition to the data from Questionnaire 1 and 2, we gathered information from the courts on all trials with guilty verdicts to ensure that some data from trials with a nil response rate was also collected. To assist in the analysis of the response rate, we also obtained data on the length of each trial and the time of verdict.

Local newspapers were searched for coverage of the trials so that any relevant newspaper story could be discussed with jurors interviewed.

To provide the sentencing data for the Crime and Sentencing booklet and the data sheets for the information package sent out at Stage 2, sentencing data was compiled from the Supreme Court database of sentencing comments into an Excel database of Supreme Court sentences for the years 2001-2006. The Supreme Court database does not have the capacity to show cumulative data on sentencing outcomes or the sentencing ranges for particular crimes. As the study progressed, data from 2007 and 2008 was added to the database and the data sheet inserts were prepared when needed to match the data required for a particular case. Approximately 80 data sheets were prepared for this purpose.

3. Approvals and timetable

It was initially proposed to start recruiting jurors in June 2007. However, delays with the finalisation and signing of the deed delayed the start. Questionnaires were drafted, and the consent forms and the information sheet prepared. Ethics approval was granted by the Chair of the University's Human Research Ethics Committee (Tasmania) on 20 June 2007 (Jury Sentencing Survey No 04/06-07 reference H9487). Approval to proceed was also obtained from the Attorney-General. The *Juries Act 2003* (Tas) s 58 prohibits soliciting or obtaining the disclosure by a juror or former juror of statements made and opinions expressed in the course of deliberations. None of the questions we proposed to ask related to jury deliberations. Rather, they focused on the individual juror's views on matters relevant to sentence, such as the matters they considered aggravated and mitigated offender culpability and offence seriousness. Nevertheless, approval was sought from the Attorney-General for the project under s 58(6)(e). In the interview stage, jurors sometimes volunteered information about the deliberations and as the Attorney-General had approved the project, it was decided jurors could be asked if they had discussed the possible sentence in the course of their deliberations.

The questionnaires were piloted in August 2007 and amendments were made to some of the questions as a result. In particular, the pilot participants resisted answering a

general question in relation to whether current sentences are too tough, about right or too lenient. As a result this question was omitted and it was asked in relation to crime types separately (See Q1 B4). Feedback on the booklet also resulted in some simplification and clarification.

A graphic designer was employed to style the Questionnaires and the Booklet before the final printing.

Recruitment of jurors began on 17 September 2007 and the last jury panel to be included in the study was the panel which was addressed on 18 August 2009. The last trial with a guilty verdict in the study concluded on 1 September 2009. Final follow-up Questionnaires were sent out on 16 October 2009 and the cut-off for return of Questionnaire 2 was 1 December 2009.

Interviews began in late 2007 and by September 2009, 50 interviews had been conducted by three project members. Interviews lasted between 40-90 minutes and were conducted either by single interviewers or by pairs of interviewers. All jurors consented to the recording of the interviews, which were recorded and later transcribed.

4. Analysis

A Statistical Package for the Social Sciences (SPSS) database was established for the data from Questionnaire 1 and 2 in December 2007, and data was entered as it was received. Preliminary analysis was done on the data in December 2007, in August 2008 and in July 2009. The first analysis was done to present some preliminary results at two conferences in early 2008 and the second analysis was completed for an AIC Trends and Issues Paper. As a result the database was refined and additional fields added.

Once the interviews had been transcribed and analysed, the jurors were allocated code names using the Nato Military Phonetic Alphabet (Alfa, Bravo, Charlie, Delta etc) to preserve their anonymity. In this report the interviews are used to complement the discussion of the quantitative findings in Part 4.

PART 2

LITERATURE REVIEW

The literature that is relevant to this study is broad and covers a number of disciplines including law, criminology, sociology and psychology. This review is a brief survey of this literature.

A. WHY DOES PUBLIC OPINION MATTER?

Central to the research questions explored in this study is the issue of gauging public opinion. A preliminary question is why does public opinion matter? The answer to this question is threefold:

First, it matters because it is linked with public confidence in the criminal justice system and critical public institutions (Indermaur and Roberts 2009). Sentencing is the most visible aspect of the criminal justice system and public attitudes to it have a considerable impact on the state of public confidence in the criminal justice system. When asked why they have little confidence in the courts, people typically cite lenient sentencing (Gelb 2008a: 3; Roberts, Crutcher and Verburgge 2007: 84). In turn, public confidence in the criminal justice system matters because it affects the functioning of the system itself: a lack of confidence in the system can reduce the reporting of crime, and may inhibit the co-operation of witnesses and attendance of the public for jury service (Roberts 2007). Moreover, Canadian research shows that there is a correlation between public institutions and a sense of belonging, suggesting that confidence in critical public institutions, such as the criminal justice system, promotes social cohesion (Roberts 2007: 155).

Secondly, it is widely recognised that sentencers (judges and magistrates), as well as policy makers, should have regard to informed public opinion. For example, the seriousness with which society regards a particular offence is something sentences should reflect (Mason 2002; Mackenzie 2005: 138-148). This issue is one which has been considered extra-judicially by a number of judges including Sir Anthony Mason (2002). For example, in 2004, Chief Justice Murray Gleeson (Gleeson 2005) as he was then, acknowledged that judges are expected to know and be responsive to public opinion. He then posed a series of questions: How should they keep in touch? Should they employ experts to undertake regular surveys of public opinion? What level of knowledge and understanding of a problem qualifies people to have opinions that ought to influence judicial decision-making? Who exactly is it that judges should be in touch with?

Thirdly, the public has become a key factor in shaping penal policy (Roberts and Hough 2005: 160; Ryan 2005: 145). Direct political pressure on decision makers to accommodate public opinion is increasing. Ordinary people, it seems, want more ownership of their democracy than in the past (Ryan 2005: 145). The four pillars or axes of justice are the state, the offender, the victim and now the public (Freiberg 2003). Public opinion can have an impact on criminal justice policy development,

forcing changes to the laws (Roberts 2007). In other words 'sentencing matters' (Tonry 1996).

1. Explaining the rise of punitive penal policies and penal populism

This section of the review expands on the third point above. Heightened sensitivity to public opinion underlies 'penal populism' (or 'populist punitiveness') a term coined by Bottoms to describe the 'notion of politicians tapping into and using for their own purposes, what they believe to be the public's punitive stance (Bottoms 1995: 40). It does not simply refer to political responsiveness to popular views, but embodies the idea of taking public expressions of punitiveness at face value and advancing policy without regard to its effects. Misinformed public opinion is exploited to win votes. 'Penal populists allow the electoral advantage of a policy to take precedence over its penal effectiveness.' (Roberts et al. 2003: 5).

One stream of theorising has explained the rise in punitive policies in the concerns of late modernity. A convergence of social, cultural, economic, technological, and ecological change has created increasing public scepticism about the ability of national states to regulate change through the political process. The general insecurity people feel in the face of such change translates to concerns about crime and personal safety. This explanation for punitiveness revolves around the broad social anxieties besetting the middle class (Roberts et al. 2003: 68-75). An environment is created in which the 'criminology of the other' can flourish (Roberts et al. 2003: 68, citing Garland 2000). David Garland (2001) and others such as Aas (2005), have argued that the influence of the expert in criminal justice policy has declined and been replaced by the voice of the public. Research and criminological knowledge has been downgraded and in its place is a new deference to the authority of 'the people', common sense and 'getting back to basics' (Garland 2001: 20). 'From the perspective of populist discourse, criminological discourse is discarded as elitist, as high knowledge, distant from people's feelings' (Aas 2005: 151). This is a theme pursued by Pratt (2002) who claims that a new axis of penal power has emerged 'in which the indifference of the general public is increasingly giving way to intolerance and demands for still greater manifestations of repressive punishment' as well as more 'ostentatious and emotive' forms of punishment (Pratt 2002: 182, cited in Gelb 2006: 5). The democratisation of punishment has its downsides.

2. The influence of the media

The role of the mass media in influencing public opinion and punitive policies is a theme in Garland's work and that of many others. As Garland (2000: 363) succinctly stated, '[i]t has surrounded us with images of crime, pursuit and punishment, and has provided us with regular, everyday occasions in which to play out the emotions of fear, anger, resentment, and fascination that crime provokes.'

Indermaur and Roberts found that only five percent of the Australian Survey of Social Attitudes (AuSSA) survey respondents in 2007 reported any contact with a criminal court in the previous year (2009: 3). Most people do not have direct access to first-hand information about the criminal justice system, either through personal experience or even the experience of family and friends. Instead, they tend to learn about it through the mass media outlets, which play an integral role in the construction of public opinion and the public reality of crime (Gelb 2006: 15). In

reporting crime, the media is quick to seize upon lenient punishment of offenders and use it as a basis of criticism of judges. Too often politicians capitalise on these criticisms when a law and order campaign offers the prospect of political advantage (Mason 2002). Judicial criticism of media reporting of crime has a long history. Over 100 years ago, Stephen noted that '[n]ewspaper reports are necessarily much condensed, and they generally omit many points which weigh with the judge in determining what sentence to pass' (Stephen 1883: 90, cited in Roberts and Stalans 1997: 216; Gelb 2006: 15). More recent Australian judicial critics and observers of media crime reporting include Gleeson (2007), Spigelman (2005), Sackville (2005, 2009) and Lasry (2009).

A great deal of research has explored the way that crime is represented in the news media (Roberts et al. 2003: 77). For example, a study by Graber (1980) found that 25 percent of all crime stories were on murder, although this crime constitutes less than one percent of recorded crime (cited in Roberts and Doob 1990; Gelb 2006: 15). Only a small proportion of sentences involve imprisonment but the Canadian Sentencing Commission found that 70 percent of media reports focus on this sentencing outcome (Gelb 2006: 15).

The way the media creates conditions for a conservative and punitive response to crime has been discussed by many writers (Kennamer 1992; Lovegrove 1998; Indermaur 2000; Bloustein and Israel 2006; Casey and Mohr 2005; Indermaur and Roberts 2005: 148; Schulz 2008; and the authors reviewed in Roberts et al. 2003: 76-92). Gelb explains how the media influences the public to perceive sentencing as too lenient:

> As people are overly influenced by single-case information, people falsely generalise that leniency characterises the entire sentencing process. The media tend to focus particularly on violent crime, which provides a disproportionate emphasis on this type of crime relative to its prevalence in the community. People then perceive this type of event as typical, which affects both their knowledge of the facts about crime as well as their general levels of fear of crime. Both of these in turn have been shown to influence perceptions of leniency in sentencing (Gelb 2006: 15).

A recent Australian study of 300 media headlines found that a distinct pattern of disrespect and disapproval of judicial sentencing was connected with a 'discourse of direction' and demands for increases in penalties (Schulz 2008). Beale (2006) offers two explanations of how the media are able to cause the public to perceive crime to be more serious than it actually is. First, by agenda setting, which involves directing the public's attention to certain issues. The second is by priming, which describes the media's ability to affect the criteria by which viewers judge public policies and public officials.

Despite the fact that the source of most people's information about crime and the criminal justice is the media, most also acknowledge that the media do not provide accurate information (Square Holes 2006 cited in Gelb 2008a: 6).

Survey research has investigated the ways that people gain information about sentencing. A 1986 Canadian Sentencing Commission survey found that 95 percent of people derive their information from the news media (cited by Gelb 2006: 15). In Indermaur's 1990 Perth study, the main source of information about court practices was the media (cited in Gelb 2006: 31). Survey research has also correlated the types of newspaper readers with punitiveness and has found that tabloid newspaper readers

tend to be more punitive (Hough and Roberts 2007). Respondents in the AuSSA 2007 survey identified the media as their most important sources of information, with almost eight out of ten rating TV, radio and newspapers as 'fairly or very important' (Roberts and Indermaur 2009: 9).

The fact that most members of the public derive their information about crime and sentencing from the media has been suggested as a reason why public opinion surveys find that the justice system typically attracts poorer ratings than does the health care system, the educational system or the military (Hough and Roberts 2004). Julian Roberts explains that, while almost everyone has contact with the health or education system, few have direct experience with the criminal courts. Information about the courts is therefore filtered through the news media, which focus on the negative aspects of criminal justice, such as failed prosecutions or lenient sentences (Roberts 2007: 165).

3. Measuring and understanding public opinion, confidence, and punitiveness

Public opinion can be measured by media, polls, representative surveys, focus groups and deliberative polls, and each method has its own advantages and disadvantages (Gelb 2006). It seems a comprehensive picture of public opinion/public judgment can only be obtained by a multi-method approach (Roberts and Stalans 1997). The Victorian Sentencing Advisory Council advocates the development of a flexible 'suite of methodologies' that can be used to answer different kinds of research questions (Gelb 2006: 41). There is literature on such methodological issues as the effects of question order on responses and the design of optimal survey questions (Gelb 2008b) as well as literature on focus groups and deliberative polls (Luskin, Fishkin and Jowell 2002; Connelly, Wagner and Jones 2002; Yankelovich 1991).

Media and representative polls show that, in the abstract, the public thinks that sentences are too lenient. Over three decades and across several countries (from North America and Australia to the United Kingdom) about 70-80 percent of respondents reported that sentences are too lenient with slightly lower rates for Canada in recent years (Gelb 2006, 11). For example, in Indermaur's 1987 Perth study, 76 percent of the sample thought sentences were not severe enough, 19 percent thought they were about right and five percent said they were too severe (Indermaur 1987). The exception to this pattern appears to be Singapore, where only five percent of the public polled held the view that sentences were too lenient and three quarters expressed the view that they were just right (Roberts 2007: note 15). Although increases in the imprisonment rate and the implementation of numerous examples of punitive policies suggest that sentencing policy has in many respects become more punitive over the last two or so decades, public punitiveness itself (as measured by the response to the statement that people who break the law should be given stiffer sentences) has been quite stable or declining (Indermaur and Roberts 2005: 155).

The limitation of using a single question in surveys has been recognised and addressed by adding a follow-up question that asks respondents about the kind of offender that they had in mind when they gave their first response. This has shown that most people were thinking of a violent or repeat offender and those who think sentences are too lenient were most likely to be thinking of violent offenders (Doob and Roberts 1983, cited in Gelb 2006: 12-13; Indermaur 1987, cited in Gelb 2006:

30). Roberts and Stalans (1997) recommend that the question be asked twice – once for non-violent offenders and once for violent offenders. In their Canadian survey this revealed that 80 percent of respondents thought sentences for violent offenders were too lenient but less than half thought so for non-violent offenders (Roberts and Stalans 1997: 208, cited in Gelb 2006: 13).

An important finding from representative surveys is that people have very little accurate knowledge about crime and the criminal justice system. For example, people tend to:

- perceive crime to be constantly increasing;
- over-estimate the proportion of recorded crime that involves violence; and
- under-estimate the severity of sentencing practices for specific offences (Gelb 2006: 13, 30).

The AuSSA 2007 survey confirms that in Australia:

> A large majority of the public have inaccurate views about the occurrence of crime and the severity of sentencing. Consistent with previous Australian and international research, the Australian public perceives crime to be increasing when it isn't, overestimates the proportion of crime that involves violence and underestimates the proportion of charged persons who go on to be convicted and imprisoned (Roberts and Indermaur 2009: ix and see also 24).

The British Crime Survey (BCS) has, since 1996, asked respondents about levels of crime nationally and locally (Thorpe and Hall 2009: 96). Since 2004-05 the gap between perception of change in national and local crime levels have widened. So while in 2008-09 there had been a continued decrease in the proportion of people who thought crime has increased locally (to 36 percent) there had been a marked increase in the proportion of people who thought that crime had increased nationally (from 65 percent in 2007-08 to 75 percent in 2008-09). To better understand the divergence between national and local perceptions of crime trends, the 2008-09 BCS included questions about specific crimes. It found that the proportion of people perceiving an increase in crime nationally was higher for crimes that attract most media coverage, such as knife and gun crime, compared with lower profile crimes such as burglary and motor vehicle theft. It is suggested that perceptions of the former are more likely to be influenced by high profile events and media coverage. Further evidence of differences in perceptions come from the results of a question which showed that around half of people surveyed (51%) thought they lived in a low crime area, 39 percent believed that crime levels in their area were about average and only 11 percent thought crime in their area was higher than average (Thorpe and Hall 2009: 98).

It has also been shown that people tend to over-estimate the risk of being a victim of crimes such as assault, robbery, burglary and motor vehicle theft. For example, the 2008-09 BCS has found that 16 percent of respondents thought they were fairly or very likely to be a victim of burglary compared to an actual risk of two percent (Thorpe and Hall 2009: 99).

Studies have also looked at whether demographic factors affect variations in knowledge. In a Home Office Study on public knowledge, little variation was found in how poorly informed people were, although men did slightly better than woman and those under 65 did better than those older than 65. Those who have had more

contact with the criminal justice system had more knowledge, as do those who are more interested in the criminal justice system (Chapman et al. 2002: 11).

Studies have also explored the extent to which public dissatisfaction with sentencing can be traced to inaccurate perceptions about crime and criminal justice. Using multivariate analysis of responses to the 1996 BCS, Hough and Roberts (1999: 18, cited in Gelb 2006: 14) found that public misperceptions that were significantly associated with a belief that sentences were too lenient included:

- changes in national crime rates (those saying there was 'a lot more crime' were most likely to think sentences were too soft);
- estimated number of convicted muggers who were sent to prison (under-estimators were most likely to think sentences were too soft);
- the proportion of recorded crime involving violence (over-estimators were most likely to think sentences were too soft);
- estimated number of convicted burglars who were sent to prison (under-estimators were most likely to think sentences were too soft).

Australian research findings are broadly consistent with those from other countries. In Indermaur's Perth study, those who correctly estimated lower levels of violence tended to favour less severe sentences (Indermaur 1987). Using the results of the AuSSA 2003, Indermaur and Roberts (2003: 142-143) found that more than two thirds of respondents reported that crime had increased over the past two years; more than one third said it had increased 'a lot' and only one in twenty or five percent of respondents reported that it had decreased. Exploring the links between knowledge and beliefs about criminal justice in the same survey in a later article, they found that people who know more about crime rates are less punitive. However, they also noted the importance of attitudes as well as knowledge, arguing that since confidence in the courts is affected by emotive rather than instrumental concerns, public education must address the symbolic and emotional issues that punitiveness reflects (Roberts and Indermaur 2007: 61-62). Hough and Roberts (1999: 21, cited in Gelb 2006: 14) also found that one-quarter of respondents thought that lenient sentencing was the most important cause of rising crime rates, and almost half thought it was a major cause. Despite significant evidence that factors affecting crimes rates lie largely outside the reach of sentencers, the belief in a direct relationship between sentencing severity and crime rates may lead many to blame judges for failing to control crime (Roberts and Hough 2005: 48, cited in Gelb 2006: 14). Lack of knowledge about crime and the criminal justice system is a significant factor in perpetuating public misperceptions and misunderstanding (Gelb 2006: 14).

Those with high levels of fear of crime are more likely to be punitive (Sprott and Doob 1997; Dowler 2003, cited in Roberts and Indermaur 2007: 58). The 1993 General Social Survey in Canada assessed the effect of people's prior victimisation and fear (measured by feelings of safety walking alone at night and at home alone at night) on crime. A total of 10,385 respondents aged 15 and over were randomly sampled and interviewed by telephone. Of those who reported no fear, 71 percent felt that sentences were too lenient. Of those with the highest levels of fear, 91 percent felt this way. As fear increased, the proportion of people who thought that sentences were too lenient also increased. The result held for victims and non-victims (Sprott and Doob 1997: 281, cited in Gelb 2006: 19). However, Maruna and King (2004) estimate that instrumental variables such as fear account for only four percent in explanatory

power of pro-community sanction attitudes over that provided by demographic variables alone (cited in Roberts and Indermaur 2007: 58).

Several studies from different countries have shown that people with previous experiences of crime victimisation are no more punitive than the general community. For example, in the 1996 BCS, victims were given a crime vignette and asked to impose a sentence. Comparing victims and non-victims showed that 55 percent of the victims and 53 percent of the non-victims favoured imprisonment and even when victims were victims of burglary – the same offence as committed by the offender in the vignette - there was no difference between the groups in levels of punitiveness (Hough and Roberts 1999: 21, cited in Gelb 2006). A survey in the United States of 1,056 adults found that crime victims were more supportive of prevention/rehabilitation as opposed to punishment/enforcement than non-victims (Hart, 2002, 19 cited in Gelb, 2006, 19). A UK survey of crime victims has shown that victims of crime are more interested in prevention and the root causes of crime than retribution (ICM Research 2006).

4. Demographic factors

An Australian Institute of Criminology (AIC) study found greater levels of punitiveness among the less educated, males, lower income groups and the elderly, but age differences were inconsistent (Walker, Collins and Wilson 1987: 3). Data from the AuSSA survey shows that 12.8 percent of the variance in punitiveness is explained by demographic factors although this is only part of the explanation. Increased punitiveness is associated with being male, older and self-described as working class, decreased punitiveness with more years of education (Roberts and Indermaur 2007. For more on the demographic factors associated with punitiveness, see Indermaur and Roberts 2005: 156). Older age groups were likely to favour tougher punishment and women were likely to favour tougher punishment. (Note, this finding was based on a punitiveness scale that was constructed by combining the three survey questions on stiffer sentences, the death penalty and whether sentences should reflect public opinion: Indermaur and Roberts 2005: 156). While the literature reveals there are links between demographic factors and punitiveness, Roberts and Indermaur (2007: 58) stated that they are ‘at best weak predictors of punitiveness’. Their analysis of the 2003 AuSSA data revealed that the number of years of education was the strongest predictor of punitive attitudes. Only 12.8 percent of the variance in punitiveness (as measured by questions asking respondents to agree or disagree with the death penalty as the punishment for murder, that stiffer sentences should be given and that judges should reflect public opinion) was explained by demographic factors.

5. The impact of information on punitiveness

In the light of the evidence that a lack of knowledge about crime and sentencing is related to high levels of punitiveness as measured by a response to a general, abstract question about sentencing, researchers have moved to ask questions that provide much more information before asking for a response. Using case vignettes, either fictional or based on actual cases, has been a popular strategy. A seminal series of 13 studies conducted by Doob and Roberts for the Canadian Department of Justice demonstrated that while sentences described in the media were perceived by most people as too lenient, those described in detail in court transcripts were mostly seen as

appropriate. Study 9, for example, involved a comparison of extensive and detailed coverage of a particular case in a newspaper with a detailed summary of court transcripts. The study participants were 115 visitors to the Ontario Science Centre. The study found that 63 percent of the media respondents felt the sentence was too lenient compared with 19 percent of the transcript respondents. In fact 52 percent of those reading the transcript felt that the sentence was too harsh (Doob and Roberts 1983: 31, cited in Gelb 2006: 18).

In addition to survey research, a number of studies have compared sentences imposed by the judiciary with those imposed by lay members of the public. Diamond and Stalans (1989) used vignettes in four moderately severe cases in which imprisonment was a possibility but not inevitable. Respondents included 116 judges, jurors who reported for jury duty and 55 university students. They were presented with detailed information about each of the four cases including a pre-sentence hearing and video of the sentencing hearing. They were told about the sentencing options available and then completed a questionnaire indicating sentencing preferences. Judges' sentences were as severe, or more severe than those of the lay respondents. No particular differences between the offences in the four cases (a burglary, a robbery, a drug offence and a wounding) were noted in this study. The study also looked at predictors of sentence, such as appropriate goals of sentence, perceived seriousness of the offence, prior record and demographic factors. The study asked lay respondents whether Illinois judges were generally too severe, about right or too lenient. Sixty-six percent thought they were too lenient. Why the standard polls question response differs from the stimulus provided by individual cases was discussed and the answer was found to lie in selective media reporting, social cognition and the way social judgments are made. In asking a general question about court performance, the person has to think about what the courts do and then evaluate the appropriateness of that behaviour. For most members of the public, actual information about crime and sentencing is incomplete and so knowledge is drawn instead from the media, personal victimisation and the reports of others. The news media selectively reports crime and sentencing and focuses on the violent and extreme rather than the ordinary case. Research on social judgement suggests that the vividness of some media stories would have a disproportionate impact on public perceptions, even if the media did accurately portray the range of criminal behaviour (Kahneman and Tversky 1973 cited in Diamond and Stalans 1989: 87). When individuals respond to abstract questions about judicial leniency, they attempt to recall prior cases and are influenced by the severity of offences and offenders they recall. Tversky and Kahneman (1974 cited by Diamond and Stalans 1989: 87) label this biased process of recall, the availability heuristic.

Lovegrove (2007) used judges and real cases in his Victorian study. He aimed to test the populist view of judicial sentencing as lenient, and to trial a method of gauging public opinion that addressed the need for the public to be aware of the principles and factors relevant to sentence and to have a sense of the offender as a real person To this end, Lovegrove provided participants with detailed information about the crime and the offender, as well as information relevant to sentencing in individual cases, for example the sanctions available and their cost. The exercise was presented to the public as a consultation to address the perception that judges are out of touch. Lovegrove arranged for two reserve and two recently retired County Court judges who had each presided over a case to each explain it in detail to eight groups of people. The 32 groups (each of about 15 people) were recruited from work places in

metropolitan and regional Victoria and presented with one of the four cases. In total, 471 members of the public participated. First, Lovegrove addressed each group for about 70 minutes to explain relevant aspects of sentencing law and the sorts of issues that judges are required to take into account when sentencing offenders. A brief account was also given of the available sanctions and their dollar costs. In the second session, the judge presented his sentencing judgment without revealing the sentence he had imposed. Each group was told the maximum sentence and the average sentence for the offence described in the case presented to them. They were then asked to write down what sentence they thought was appropriate from a list of the available sanctions. In three of the four cases where male offenders were imprisoned by the judge (an armed robbery, a rape at knife point and the theft of over a million dollars worth of goods by two employees), the median sentence imposed by the members of the public was well below that imposed by the judge.

In the other case of a stabbing with intent to cause serious injury, the judge's sentence fell just below the median sentence given by the public (Lovegrove 2007: 776). After they were told of the sentence they were asked to rate the adequacy of the sentence on a seven point scale ranging from 'much too tough' to 'much too soft' and to give their views about the matters relevant to sentencing in the case. As would be expected, a majority of those who had chosen a more severe sentence than the judge said that it was too lenient, most strongly for the rape case (88%). But a significant percentage of participants were prepared to defer to the sentence of the judge, particularly in the case of the aggravated robbery (69 percent said it was too lenient, so 31 percent said it was about right). This was even more pronounced for those who had chosen a more lenient sentence with just 29 percent of respondents in the rape case saying it was too harsh (compared with 67 percent in the aggravated robbery case). Lovegrove (2007: 778) notes that the responses were asymmetric for rape, intentionally causing serious injury and theft: 'It is the harsh who are apparently more certain of the correctness of their view and less prepared to tolerate the court's sentence'. He found this to contradict the populist view of sentencing, which holds that the community 'speaks with one voice' and has firm views about what is an appropriate sentence.

Lovegrove (2007: 777-778) also suggests, contrary to the populist view of sentencing, that the public relies on offender factors favouring leniency, not just on offence seriousness. This conclusion was supported by: the expressed wishes of the participants for treatment as well as custody for the offenders with personality problems; the fact that participants imposed a suspended sentence on one offender for whom prison would have been a special hardship; and the fact that participants cited factors favouring leniency in their responses. Lovegrove concludes that people are willing to give weight to mitigating factors even though the offending is serious (Lovegrove 2007).

A recent Dutch study compared judges' choices of sentence with those of members of the public in different surveys that enabled contrasts to be drawn between the public's top-of-the-head opinions, their opinions based on the same case studies that were used by the judges, and their opinions based on a short unbalanced newspaper version. It found that providing the public with detailed information on a case had a strong mitigating effect on severity but members of the public were still significantly harsher than the judges. The authors conclude that there is indeed a gap between lay and judicial punitiveness and that this gap could not be closed by additional or better information (De Keijser, Koppen and Elffers 2007). As Lovegrove notes, while the

case information given to the respondents was detailed, there was no information about the criminal justice system or sentencing (Lovegrove 2007: 772).

The Scottish Justice 1 Committee research aimed to determine if citizens' views on sentencing would change if they were presented with different types of information – the study included survey interviews, focus groups and a type of deliberative poll. The results confirmed that increased information decreases punitiveness but what is particularly interesting about this study is the explanation it gives for why the public tend to say that sentences are generally too lenient, even though, when faced with a specific individual case, they select a sentence that is close to that likely to have been imposed by the judge. Hutton explains this using Garland's distinction between structuralist and individual accounts. Structuralist accounts deal with how the system operates whereas a case scenario tries to find a just solution for an individual case (Hutton 2005: 246). Public opinion about sentencing, it seems, is nuanced and contradictory:

> Punitive attitudes exist alongside more liberal views, perspective varies from the local to the global and discussion about individual cases generates different discourses from the practices of agencies and institutions (Hutton 2005, 246).

Hutton also utilises the idea of a narrative of insecurity: structural accounts of crime are not based on accurate information about crime and risk but on an account which expresses anxieties about broad patterns of social disorder (Hutton 2005: 251). The punitive views expressed by the survey respondents are not less 'real' than the views expressed in the context of an individual case with better quality information (Hutton 2005: 246, 253-254).

Many writers have pointed out that any attempts to improve the levels of public knowledge and the quality of the debate about crime and sentencing must be informed by the need to be attuned to the emotional dimensions that construct public opinion. 'The real battle is not over facts and details but over morals and emotions' (Indermaur and Hough 2002: 210). Freiberg (2001) speaks of the difference between effective and affective justice (see also Ryan 2005) and others like Johnson (2009) have explored the need for more research on the relationship between emotions and punitiveness to augment the previous focus on cognitive and demographic factors associated with the desire to punish criminals harshly.

6. Public views on the purposes of punishment

Surveys of public attitudes have sometimes examined people's perceptions of the aims of sentencing (see Gelb 2006: 27 for some examples in the context of juvenile crime). Hutton has reported on the results of the Scottish Justice 1 Committee's study which asked survey respondents to select a sentence for an 18 year-old first offender with a drug habit who committed a burglary and stole a video and then about the aims of sentence in the case. There was more general support for rehabilitative and reparative aims than incapacitation or simple retribution (Hutton 2005: 248). See also Lovegrove (2007) discussed above.

Studies have also examined beliefs about the most effective way of controlling crime. For example, a 2001 survey of 1,056 adults in the US found that 65 percent of the adults surveyed favoured dealing with the root causes of crime and only 32 percent preferred a punitive approach. Respondents reported that they strongly favoured rehabilitation and re-entry programs over incapacitation as the best method of

ensuring public safety (Hart 2002: 4, cited in Gelb 2006: 25). There is also some evidence that members of the public favour reparative options over incarceration (Pranis and Umbreit 1992, cited in Roberts and Hough 2005: 139 and in turn by Gelb 2006: 28).

Indermaur's 1990 study of public attitudes to sentencing in Perth involved 410 members of the community and 17 judges and magistrates. Amongst other things it looked at the most important purposes of sentencing for violent and property crimes. For community members the most important purposes for violent offences were incapacitation (37%), deterrence (24%) and retribution (23%). The responses from judges were: deterrence (41%), incapacitation (24%), and retribution (18%). In the case of property offences, the most important purposes for judges were rehabilitation (71%) and deterrence (24%), whereas for community members, the most important purposes were individual deterrence (49%) and rehabilitation (24%) (Indermaur 1990: 48-50; cited in Gelb 2006:31).

7. Confidence in the Courts and the Judiciary

There are some research findings which bear upon confidence in the judiciary. This is relevant to the question in Questionnaire 1 and 2 which asks: How in touch do you think judges are with public opinion about sentencing? A related question asked only in Questionnaire 2 is: Should judges reflect public opinion about crimes when sentencing criminals?

In Indermaur's 1990 Perth study, 57 percent of the public believed that public opinion should be considered in all or most cases and 81 percent of sentencers believed this (cited in Gelb 2006: 31). In the 2003 AuSSA most respondents (63%) felt that judges should reflect public opinion in their sentencing decisions (Indermaur and Roberts 2003). They also found that 46 percent of respondents had 'not very much' confidence in the courts.

Surveys which have asked whether judges are in touch include the BCS. The 1996 survey found that a substantial percentage (46%) believed judges to be 'very out of touch' and this was correlated with the assertion of judicial leniency (Hough and Roberts 1998). The Scottish Justice 1 Committee study found 79 percent of respondents thought judges were out of touch with what ordinary people think (Hutton 2005: 247). The South Australian study used two statements to explore the judiciary's relationship with the public. Participants were asked to respond to the statement 'the decisions of judges and magistrates reflect the views of the community' – 41 percent agreed and 49 percent disagreed (South Australian Courts Administration Authority 2007: 4, cited in Gelb 2008a: 4). The second statement was '[it is] about time the courts caught up with the real world'; 73 percent agreed with this (Square Holes 2006, cited in Lovegrove 2006: 771). This suggests many members of the public think that judges are out of touch with public perceptions and that they do not make efforts to consider current public views on crime and justice. Lovegrove uses these findings to support his argument for the need for judges to consult with the community. He points out that judges appear remote and have a different sense of justice because they differ from the community in terms of their educational and social background and life experiences. They are not seen to consult the community or to show an interest in what people think (Lovegrove 2007: 771).

Surveys in a number of countries suggest there is a 'crisis in public confidence' regarding criminal justice (Hough and Roberts 2004). Surveys comparing confidence levels across criminal justice agencies have found that people have most confidence in the police and least in the courts and prisons (Hough and Roberts 2004: 18). In the 2007 AuSSA survey, similar results were found: the Australian public has 'greatest confidence in the police, followed by courts and the least confidence in prisons' (Indermaur and Roberts 2009: 4, see also Roberts and Indermaur 2009: 20). When asked why they have little confidence in the courts, respondents typically cite lenient sentencing as the cause (Gelb 2008a: 3). A survey conducted by the South Australian Courts Administration Authority found that 70 percent of respondents reported having confidence in the state's courts, ranking courts fifth behind the police, the medical profession, the public school system and the state government. But only half of all respondents reported that they knew at least a little bit about the courts. So they had an opinion about the courts knowing little about them (Square Holes 2006, cited in Gelb 2008a: 3).

Roberts (2007) has discussed the difficulties of comparing confidence levels across institutions. Reasons why it may be unreasonable to expect confidence levels in courts to match confidence levels in institutions such as health and education, include the different mandate the justice system has (Roberts 2007: 162), the greater influence of ideology on confidence judgments in evaluation of courts than in health care delivery (Roberts 2007: 163), misperceptions about crime trends (Roberts 2007: 164), and differences in direct experience with public institutions – in the case of courts information is usually indirect and filtered through the media (Roberts 2007: 165). Similarly, higher confidence levels for the police than courts can be explained in terms of different mandates and different levels of exposure (Roberts 2007: 173).

It should be noted that confidence levels may differ depending on whether the focus is at the local level or nationally. A survey conducted for the Home Office in England and Wales found that people were generally more confident with the way crime was being dealt with locally than nationally (Page, Wake and Ames 2004).

While Sun and Wu (2006, 465 cited in Gelb 2008a, 3) found that people who have had some recent experience with the courts hold more negative perceptions of the courts, Benesh (2006, cited in Gelb 2008a: 3) has found that people with a high control and low stake in the court system, such as jurors, are more supportive of the court system than those without any experience of the court system, or those with experience as defendants or plaintiffs who have a high stake and low control. The results from the AuSSA 2007 survey indicate that Australians who had contact with the courts over the previous 12 months 'had higher levels of confidence in the courts and were less likely to be in favour of tougher sentencing.' (Indermaur and Roberts 2009: 3).

8. Other questions measuring punitiveness

Questions on whether the public want to see stiffer sentences and support the death penalty have been asked in the AuSSA since it began in 2003 (Gelb 2006: 35). In 2003, stiffer sentences were advocated by 70 percent of respondents with almost half (47%) agreeing that the death penalty should be the punishment for murder. The proportion advocating stiffer sentences has decreased since 1987 (Indermaur and Roberts 2005).

The most recent results from the AuSSA 2007 survey confirm that:

- the majority of respondents (58.4 percent) agreed that judges should reflect the views of the public (Roberts and Indermaur 2009: 20);
- four out of 10 respondents (43.5 percent) agreed with the statement that the death penalty should be the punishment for murder, with just over one-third (34.7%) disagreeing (Roberts and Indermaur 2009: 20); and
- the majority of survey respondents (71.2 percent) agreed that 'people who break the law should be given stiffer sentences' with 'only 6.6 percent disagreeing and a further 22.2 percent neither agreeing nor disagreeing or unable to choose' (Roberts and Indermaur 2009: 18).

9. Social psychological literature on attitude formation and the concept of 'public opinion'

A number of researchers into public opinion refer to the literature on attitude formation. Stalans (2002, cited in Hutton 2005: 245) argues that the social psychological literature demonstrates that attitudes are dependent on a range of factors including the structure of attitude in memory, and the ways in which the public process information. Sparks (2002, cited in Hutton 2005: 245) has argued that survey methods assume that punitiveness is something one can have more or less of, and points out that this assumption conceals the contradictory views that appear when more discursive approaches are used.

Green has noted the difference between mass public opinion and informed public judgement (Green 2006: 132). Top-of-the-head responses to simple polling questions represent mass public opinion, shallow, unconsidered views, as opposed to reflective informed public judgment that emerges once people have engaged with an issue, considered it from all sides, understood the choices it leads to, and accepted the full consequences of the choices made.

In addition to the difference between opinion and judgment, writers have also attempted to clarify the difference between 'opinion' and 'attitude'. 'Attitude is traditionally conceptualised as a global, enduring orientation toward a general class of stimuli, whereas an opinion is seen more situationally, pertaining to a specific issue' (Massen 1997, cited in Gelb 2008b: 3). Opinions are determined by attitudes which are expressed positions or behavioural phenomena, while attitudes are the deeper underlying motives for those behaviours.

Basing their views on the findings of the University of Cambridge Public Opinion Project, Maruna and King (2004, cited in Gelb 2008b) suggest that lay people's beliefs about why people commit crimes (attributional beliefs) may play a greater role than actual experiences with victimisation (instrumental variables) in determining attitudes to punishment such as support for community penalties. Attributional beliefs were divided into two primary types: views that see crime as a choice (classical) or views that see crime as a product of circumstances (situational). A second dimension of attribution is a belief in a person's ability to change – 'redeemability', and this may override classical attributions. This was found to be the strongest predictor of support for community penalties (Maruna and King 2004, cited in Gelb 2008b: 4). Measuring attitude strength is another issue in survey research (Gelb 2008b: 4-5).

10. Jury studies

While jury studies are now quite common, they have not, in the past, addressed sentencing issues. One exception is the English Crown Court Study, undertaken for the Royal Commission on Criminal Justice (Zander and Henderson 1993). This was a general empirical study that explored how the criminal justice system works by examining the views of the main actors in a sample of actual cases. It included a jury questionnaire consisting of in excess of 80 questions in which the jury were asked just one question in relation to the sentence, namely, 'Was the sentence broadly as you expected, based on the evidence in the case?' Only a minority stated the sentence was higher (14%) or lower (23%) than they had expected (Zander and Henderson 1993: 223).

Jury studies are relevant to this project in terms of a comparison of response rates and may also be relevant to the question of how representative jurors are of the general population. Previous jury studies suggest that jurors are prepared to participate in research projects relating to their jury service. In a jury study conducted for the New Zealand Law Commission in 1998, an average of 54 percent of jurors in a total of 48 trials participated in interviews of more than an hour's duration about their understanding of the law, the judge's directions, and their perceptions of the trial process (Young, Cameron and Tinsley 1999). In a New South Wales study, the response rate for completing questionnaires in sexual assault trials was 92 percent but this dropped to between six to eight jurors per trial if they were allowed to take away the questionnaire rather than complete it in the jury deliberation room (Cashmore and Trimboli 2006). A study which examined facets of the quality and scope of the jury experience in New South Wales, Victoria and South Australia achieved a response rate from empanelled jurors of 75 percent (O'Brien et al. 2008). Zander and Henderson's English Crown Court jury survey was completed by 85 percent of jurors from trials for which at least one juror responded (Zander and Henderson 1993). A recent study of juror intimidation in Western Australia, which sent a 24-page survey questionnaire to 2,954 jurors, achieved a response rate of 33% (975), with a further 454 consenting to an interview (Fordham 2009:44)

A possible flaw in using jurors to measure public opinion is that they may not be representative of the general adult population, a bias that may be exacerbated by the self-selection of jurors who are willing to participate in a jury sentencing survey. The jury is promoted as being 'representative' of community members. However, the extent to which the modern jury is truly representative of the public in the sense of being a cross-section of the community has been questioned. The wide range of exemptions from jury service and the ease with which jurors are excused from service are mentioned as reasons why a jury may not be truly representative (Victorian Law Reform Commission 1997). Citizenship and English proficiency requirements mean that jurors do not reflect the ethnic and cultural diversity of the community (Australian Law Reform Commission 1992). Peremptory challenges further interfere with the ability of jurors to be truly representative (Horan and Tait 2007; French 2007).

Early Australian studies showed significant age and gender discrepancies between jurors and the general population (for example, Wilson and Brown 1973). However, a recent study of civil juries in Victoria found that jurors were a fair cross-section of the community in terms of gender and age, jurors from non-English speaking backgrounds were marginally under-represented and university educated citizens were over-represented (Horan and Tait 2007).

Psychological literature on decision-making

Other studies of relevance to this project are psychological studies which explore decision making in relation to sentencing using lay persons and manipulating variables such as victim impact statements and gender (Forsterlee et al. 2004) or offender's awareness of risk (Feather, Boeckman and McKee 2001) and studies which have explored the underlying motivations for punitiveness (Gaubatz 1994; Tyler and Boeckmann 1997).

11. Mechanisms for improving public knowledge about crime and sentencing

In recent years, judges and courts have become more pro-active about improving public information about sentencing. One example is judges' involvement in 'You Be the Judge' sentencing workshops, in which members of the public participate in a seminar with a mock trial component. Participants are asked to discuss what sentence should be imposed (Warner 2007: 359, n 5). Similar events have been conducted by Victoria's Sentencing Advisory Council. Another approach is to publish and disseminate sentencing information. In 2007, the Judicial Conference of Australia released a booklet entitled 'Judge for Yourself: A Guide to Sentencing in Australia', written by Peter Sallman with input from a steering committee and the Sentencing Advisory Council of Victoria (Warner 2007: 359). The aim of the booklet was 'to educate the public and journalists in the face of what it believes is often unwarranted criticism' (Debelle J, cited in Warner 2007: 359). Publicising the booklet's launch in September 2007, Debelle J, the Chairman of the Judicial Conference, was reported as saying it was intended to help the public understand the process of sentencing and to 'weigh criticism in the media. It is also provided for the purpose of educating journalists to be more temperate in their criticism'. Another publication is planned to be 'aimed at a more informed audience' (Debelle J, cited in Warner 2007: 359).

An English study commissioned by the Home Office used three methods of presentation of information (a booklet, a seminar, and a video) to test the impact of the information on knowledge, confidence, and attitudes (Chapman, Mirrlees-Black and Brown 2002). The study found that providing simple factual information about crime and sentencing can improve public knowledge of these matters in the short term at least, and that it has an impact on attitudes and confidence in the criminal justice system. After receiving the information, participants were less worried about being victims of crime, and less likely to say sentencing is currently too lenient. Each of the three information formats tested produced similar improvements in knowledge; although the improvements were significant, only one person got all 11 questions right on the follow-up interview (Chapman et al. 2002: 11-14). The booklet was found to be the most cost-effective of the formats tested and it also reached the widest cross-section of people. Despite financial incentives, participation in the seminar was very low, and there was also a poor participation rate with the video format. The authors

noted that the marked improvement in attitudes to the criminal justice system may not be due to improved knowledge about crime and criminal justice but because of the act of engaging in the exercise (Chapman et al. 2002: 50).

A later study looked at the impact of a 20-page booklet, *Catching up with crime and sentencing* on a sub-section of respondents from the British Crime Survey, who were re-interviewed about two weeks after receiving the booklet. It found that a quarter of respondents said that it had changed their views; reading or flicking through the booklet improved knowledge but knowledge of the proportion of rapists or burglars sent to prison was not improved. Confidence increased in all aspects of the criminal justice system for those who looked at the booklet but some increases were as a result of engaging in the topic through taking part in the interviews (Salisbury 2004).

Improving the level of public knowledge about crime and punishment has been suggested as an obvious remedy to combat 'penal populism', defined as 'allowing the electoral advantage of a policy to take precedence over its penal effectiveness' (Roberts et al. 2003: 5). Roberts et al. have suggested that, governments must provide much clearer information on crime trends and the 'going rate' of sentences for specific sorts of crimes; that audiences need to be identified and targeted; and new technology such as interactive websites used to convey the information (Roberts et al. 2003: 168-174).

12. The limits of public education using information

Not all are convinced about the value of attempting to educate the public by providing accessible information. For example, Green (2006) has argued that the kinds of public education programs embraced by the Home Office, such as distributing booklets or videos are insufficiently bold to make a significant and lasting impact on public knowledge and attitudes. These programs are inherently flawed because they do not help the public work through the ambivalent attitudes that crime and punishment issues often produce, to enable the development of more considered views. Information is a necessary condition for attitude change but it is not sufficient:

> [T]hese educative approaches do not generate the deliberation and dialogue needed to produce a durable public judgment. What is required is the development of informed preferences for which citizens take responsibility and which endure over time in the face of emotive rhetoric and the next high-profile tragedy. Instead, these approaches engage the public on a technical and informational level – an expert's framework – disallowing the release of Yankelovich's "bees in bonnets" before new information is introduced (Green 2006: 146).

For Green, the answer lies in the deliberative poll. Participants, a large stratified random sample of the public, are provided with balanced briefing materials, then gather for a weekend to hear presentations, engage with experts and debate among themselves. In this way, informed public opinion can be obtained by first enabling its creation.

Similarly, Maruna and King have cautioned that 'public education will help, but is no panacea' (2004: 101). Consistently with the Home Office study discussed above, surveys invariably find that providing respondents with more information about sentencing options and the offenders themselves has an immediate impact on reducing punitive tendencies. However, Maruna and King give a number of reasons for their

reservations (2004: 101). First, most research on the impact of education on attitudes shows only very short-term effects or at least that the duration of the effects is unknown. Second, much of the research is plagued by a 'Hawthorne effect', namely 'participants may modify their views on follow-up surveys simply because that is what they are supposed to do'. Finally, the practicality of introducing many of these educational efforts on a large scale is doubtful. The effectiveness of deliberative polling as a means of changing deep-seated attitudes is questioned, as is the practicality of educating the public in general through this method. They argue that attitudes have an emotional dimension as well as a factual one, and suggest that when attitudes to crime, sentencing and penalties are not merely based on information deficits, they are not easily altered (Maruna and King 2004: 102) Others have also argued for the need to address the emotional attitudes to crime and justice (Freiberg 2001). In conclusion, Maruna and King state:

> Schemes to educate and inform the public about the nuances of sentencing, the "facts" about crime, and so forth are noble, well-meaning efforts, but unlikely to have more than marginal impact on either public understanding of crime issues or punitive, prison-centric attitudes (2004: 102).

However, they note that the most promising findings about the impact of education is in the context of active participation by citizens in the criminal justice process, such as serving on a jury or participating in restorative justice work. Research suggests active participation increases satisfaction with the criminal justice system and decreases punitiveness (Maruna and King 2004: 102). This suggests that using jurors as a means of educating the public has some potential. Moreover, they could be used as a source of informed public opinion.

PART 3

RESULTS

A. STAGE ONE

1. Information on the cases in the sample

Quantitative information

The study ran for two years and included 162 trials. All trials in which there was a verdict of guilty on at least one count were included. This section includes some basic descriptive data on the cases in the sample. The type of crime for which guilty verdicts were received is shown in Table 1 below. Where there were multiple counts, the most serious crime is recorded. The Table shows the information for all 162 trials and the 138 trials for which at least one response was received. It shows that the distribution of offence type was very similar for trials with some participation and for all 162 trials in the study.

Table 1: Type of crime

	Sex		Violence		Drugs		Property		Other[a]		Culpable driving	
	%	N	%	N	%	N	%	N	%	N	%	N
162 trials	18.5	(30)	35.2	(57)	22.2	(36)	15.4	(25)	6.8	(11)	1.9	(3)
138 trials	17.4	(24)	36.2	(50)	23.2	(32)	14.5	(29)	7.2	(10)	1.4	(2)

[a] Other includes: fabricating evidence (1); perverting the course of justice (3); making a false declaration (1); corrupting witness (1); attempting to interfere with a witness (2); compounding a crime (1); conspiracy (1) and harbouring (1).

The 182 defendants were predominantly male (86%) and 90 percent of trials involved only the one defendant. Of the 138 trials with at least one response, 12 involved two defendants, and one trial had three defendants. Where there were co-offenders, respondents were asked to select a sentence for each offender.

Table 2 shows the range of penalties imposed by the judge in the case tried. Again, data is shown for all 162 trials and the 138 juror response trials. All jointly charged defendants are included so the total in the rows is greater than the number of trials.

Table 2: Most serious sentencing outcome imposed by judge (for all offenders)

	Custodial sentence		Wholly suspended sentence		Community service order		Probation order		Fine		Disqualified from holding motor vehicle licence		Proceeding adjourned	
	%	N	%	N	%	N	%	N	%	N	%	N	%	N
162 trials, 182 offenders	75	(136)	18	(33)	0.5	(1)	1.6	(3)	3.8	(7)	0.5	(1)	0.5	(1)
138 trials, 153 offenders	73	(112)	18.9	(29)	0.6	(1)	1.9	(3)	3.9	(6)	0.6	(1)	0.6	(1)

In all 162 trials in the study period, 93 percent of the sentences imposed by the judge were custodial, and most were immediate sentences of imprisonment. Eighteen percent of all sentences were wholly suspended prison sentences and just seven percent were non-custodial. This is a smaller proportion of non-custodial sentences and a larger proportion of immediate custodial sentences than one would expect from a sample of all offenders sentenced in the Supreme Court. In 2002-2004, non-custodial orders comprised 14 percent of all sentencing dispositions in the Supreme Court of Tasmania and wholly suspended sentences comprised 29 percent (Bartels 2008: 167). This suggests the cases in the study are more serious than offenders generally dealt with by the Supreme Court. Table 2 also shows that offenders in trials for which responses were received attracted a similar range of sentences as all offenders in the study.

Appeals

In total there were 11 sentencing appeals in the cases in the study, two of which were successful – with the sentence being increased in one and reduced in the other. The sentences were not adjusted in the database. There was no participation in one of the cases and in the other nine jurors participated in Stage 1, three selecting a more severe sentence than the judge and six a more lenient sentence. On appeal the sentence was increased with the result that four of the jurors' sentences were more lenient and five more severe (*Hales v Tasmania* [2009] TASSC 100). In Stage 2, all seven participants said the judge's sentence was very appropriate. It follows that the results of sentencing appeals impact little on the comparison between the Court's sentences and those selected by the jurors.

Were sentencing submissions heard by respondents?

As explained in Part 1, in some cases sentencing submissions are adjourned. They may be adjourned until another day or adjourned for an hour or less. Sentencing submissions are made by the prosecution and the defence. The prosecution's address can highlight the facts in relation to any aggravating features of the offence and may include a victim impact statement which may be read by the prosecution counsel or by the victim. The prosecution will also supply the court with the criminal record of the defendant and information on whether the defendant was on parole, probation or bail at the time of the offence. The prosecution is permitted to make suggestions in relation to the type of sentence that should be imposed. Defence counsel has the duty to make a plea in mitigation. This can include facts in relation to the offence and the offender. The defence may challenge the factual basis of a sentence put forward by the prosecution and argue for a version of the facts consistent with the verdict that is more favourable to the defendant. The defendant's social background and employment history may be explained and submissions made in relation to prospects of rehabilitation.

In this study, if sentencing submissions were adjourned, a transcript was sent to the respondent in Stage 2 with Questionnaire 2 and the information booklet. In Questionnaire 1 jurors were asked whether they had listened to the sentencing submissions. Seventy five percent of Stage 1 respondents said they had stayed to listen to the sentencing submissions. In fact, sentencing submissions were only adjourned or adjourned in part in 13 percent of cases, so it is possible that some of those who said they were not present were in fact present. If submissions were adjourned the participation rate in the study was slightly less.

2. Are jurors willing to be a source of public opinion on sentencing?

The current study was demanding of participants. It required jurors who have already been inconvenienced by jury service to remain in court to listen to the sentencing submissions (if they were heard immediately after verdict) before completing Questionnaire 1. While sentencing submissions generally last no more than 30 or 40 minutes, they can be longer if there is a factual dispute and evidence is called. To participate in Stage 2, jurors were required to read the information booklet, the sentencing remarks and to fill in another Questionnaire. If the sentencing submissions had been adjourned they also had a transcript of the sentencing submissions to read. Stage 3 participation required a face-to-face interview. No incentives were offered to jurors to encourage participation. The study was also demanding of judges, associates and court personnel as the study ran for two years and study fatigue was a possibility. Court personnel were required to ensure they had an adequate stock of questionnaires, consent forms and information sheets for distribution and were asked to contact the research team for replacements. Associates were asked to supply information about length of trial, time of verdict etc.

Table 3 shows a response rate of 36 percent for all of Stage 1 and the response rate for the first 51 trials in the study (42%). This compares with previous jury studies which have achieved response rates from 33 percent (Fordham 2009) to 92 percent (Cashmore and Trimboli 2006).

Table 3: Juror response rate

No. of trials	No. of jurors asked to participate	Response rate		Agreed to Stage 2	
		%	N	%	N
All 162	1944	36	(698)	88	(614)
First 51	612	42	(257)	90	(231)

The response rate for this study was impacted by a number of factors. No jurors participated in 24 trials. In the other 138 trials (85 percent of trials) at least one juror participated. Participation in these trials ranged from 1-12 jurors. The median participation rate for juries with at least one response was five. As participation rates seemed to decline after the first fifty or so trials, the response rate for the first 51 trials was also calculated. This shows that there was a fall-off in participation in Stage 1 after the first 51 trials. As Tables 4, 5, 6, 7 and 8 indicate, response rates also varied by judge, place of trial, time of verdict, length of trial and type of offence.

Juror participation relied on the judge's invitation to jurors to participate in the study after the verdict was announced. While there is no reason to believe that any judge forgot to remind the jury of the study and invite them to participate, the different response rates shown in Table 4 suggests different approaches by the judge in issuing the invitation to jurors to participate in the study may have affected the response rate. Excluding Judge 1, who retired soon after the study commenced, the proportion of jurors responding varied from 27% (Judge 7) to 44% (Judge 2) and the proportion of trials with a nil response varied from 35% (Judge 6 and Judge 7) to 3% (Judge 2).

Table 4: Juror participation by trial judge

	Judge 1	Judge 2	Judge 3	Judge 4	Judge 5	Judge 6	Judge 7	Total
Trials where no juror participated	0	1	4	2	3	6	8	24
Trials where jurors participated	1	32	36	28	15	11	15	138
No. of Respondents	11	173	186	137	61	56	74	698
Participation rate	92%	44%	39%	38%	28%	28%	27%	36%

The data were analysed to see if there was a difference in the response rate between the three cities where trials were heard, Hobart, Launceston and Burnie. As anticipated, (see Table 5) Hobart trials provided the highest proportion of respondents. However, it also provided the best response rate. The response rate was poor in Burnie, a small city on the North West Coast of Tasmania. This was predicted by court staff as the facilities for jurors were said to be poor at the Burnie Supreme Court. It is also possible that the response rate in Burnie was affected by the fact the research team had less personal contact with court staff during the study. In Hobart, court staff were particularly supportive of the project and encouraged juror participation. Moreover, it is possible that jurors may be more inhibited in participating in a study in smaller cities such as Burnie where the chances of seeing the defendant or his or her family after the trial are higher.

Table 5: Juror participation by place

Place of trial	Hobart	Launceston	Burnie	Total
Total No. of trials	75	52	35	162
Total No. of jurors	900	624	420	1944
No. of participants	412	188	98	698
Response rate %	59	27	14	100
Local response rate %	46	30	23	36
No. trials with nil response rate	3	13	8	24
Trials with nil response rate %	4	25	23	15

It was also hypothesised that the type of offence could make a difference to response rates. Jurors may be more interested in certain kinds of trials and/or they may be more interested in stating their views on sentencing in relation to particular types of crime. This was tested by looking at the types of offence for which there was a very good response rate. Table 6 shows that there were no significant differences in the participation rates between offence categories. Juror participation rates for sex, violence and property trials were very similar, and the rates for drug trials only slightly lower. As there were only three trials for culpable driving, little can be drawn from these figures. Examining the measures of participation rate by type of crime suggests that even or median response rates were more likely for violent and drug offences.

Table 6: Juror participation by type of offence

Type of offence	Sex	Violence	Drugs	Property	Culpable Driving	Other	Total
No. of trials	30	57	36	25	3	11	162
Total no. of jurors	360	684	432	300	36	132	1944
No. of participants	128	253	143	113	8	53	698
Offence response rate (%)	36	37	33	38	22	40	36
% with nil response	20	12	11	20	33	9	15

All 12 jurors participated in the cases of:

- *Ridley* (where a woman was convicted of dishonestly acquiring a financial advantage when she applied for six loans and failed to disclose the extent to which she was in debt);
- *Rogers* (both offenders convicted of assault after punching and kicking the complainant and then driving a motor vehicle at the complaint); and
- *Pannala* (19 instances of computer fraud against his employer, involving $1,219,539.05).

11 jurors participated in the cases of:

- *Martin* (attempting to interfere with a witness: a Doctor paid a violent client, to harm a former lover/client and her family, so she would not lodge a professional misconduct complaint); and
- *Morley* (whilst in a jealous rage, Morley assaulted his ex defacto by pushing her off the bed).

As Table 7 suggests, the length of trial had little impact on response rate. Shorter trials had the poorest rather than the best response rate although these trials were less likely to have no response. Nor did length of deliberation have much impact on the response rate although trials where jurors deliberated for less than two hours had a better response rate than longer trials (Table 8).

Table 7: Juror participation by length of trial

	Short trial (1-2 days)	Medium trial (3-5 days)	Long trial (5 + days)	Total
No. of trials	88	51	21	160
Total no. of jurors	1056	612	252	1920
No. of participants	363	236	90	689[a]
Jurors response rate %	34	39	36	36
No. trials where no participation	12	7	5	24
Trials with nil response %	14	14	24	15

[a]Data on two trials (nine jurors) missing.

Table 8: Juror participation by length of deliberation

	Short deliberation (2 hours or less)	Medium deliberation (3 hours or less)	Long deliberation (more than 3 hours)	Total
No. of trials	51	52	57	160[a]
Total no. of jurors	612	624	684	1920
No. of participants	239	231	209	679
Response rate %	39	37	31	35
No. trials where no participation	7	8	9	24
Trials with nil response %	14	15	16	15

[a]Data on two trials (nine jurors) missing.

In addition to the data presented above, we gathered comments from the judges' associates on differential response rates including (some, but not all) nil response trials. These comments suggest that late verdicts, long trials, lack of interest, fear and intimidation may be factors. In one case, the sentencing submissions were adjourned for 45 minutes but no jurors returned to listen to the sentencing submissions. In another they were adjourned until after lunch. Although it seems that almost all jurors returned to listen to the submissions in this case, no questionnaires were returned. We surmise that in both of these cases the questionnaires were not offered to juries.

A high proportion of jurors who completed Stage 1 (88%) agreed to participate in Stage 2. At the end of Questionnaire 1, jurors were invited to explain why they declined to participate further if in fact they had declined. Almost a third of those who declined to participate in Stage 2 responded to this question. There are four themes in these responses. First, the juror was too busy, could not be bothered or felt they had done their duty. Secondly, a lack of confidence in their ability to say anything useful (the questions on crime and sentencing trends may have put them off). Thirdly, a fear of loss of anonymity or breach of privacy by disclosing their name (this was necessary for participation in Stage 2). And finally, two respondents expressed disappointment/dissatisfaction with the criminal justice system.

3. How representative are jurors of the general population?

As discussed in the literature review, one problem with using jurors to measure public opinion is that they may not be representative of the general adult population. In Tasmania, the *Juries Act 2003* (Tas), which commenced on 1 January 2006, has drastically reduced the number of occupations that render a person ineligible for jury service and tightened the grounds for application for excuse. However, the jury pool is unlikely to be representative of the general community in terms of ethnic background because eligibility for jury service depends both on enrolment on the Electoral roll (*Juries Act 2003* (Tas) s 6(1)), which in turn depends on citizenship (*Electoral Act 2004* (Tas) s 31; *Commonwealth Electoral Act 1918* (Cth) s 93) and an adequate ability to communicate in or understand English *(Juries Act 2003* (Tas) s 68(3) Schedule 2, item 10). Successful applications for excuse and deferral could also reduce the representativeness of the jury pool.

There are no studies of the representativeness of Tasmanian juries and the Supreme Court does not collect juror demographic data. However, as demographic data was collected from Questionnaire 1 respondents, it was possible to compare the respondents with the jury eligible population in terms of age to assess how representative they are of the general population.

This comparison is outlined in Table 9 below. In terms of gender and age, the jurors who responded to Questionnaire 1 are reasonably representative of the jury eligible population. Females were a little over-represented, as were persons in the 45 to 64 age group. Not surprisingly, people 65 and over are under-represented because persons over the age of 70 can apply to be excused. The Questionnaire 1 jurors were also more educated, with jurors more than twice as likely to hold a degree qualification.

Data on place of birth was collected from respondents and was regarded as an acceptable proxy for ethnic background. As expected, because of citizenship and language requirements, Australian born respondents were over-represented in the jury respondents (91 percent of juror respondents were Australian born compared with 83 percent of the Tasmanian population). Our juror respondents were also less likely to be unpartnered than the general jury-aged population, and given the under-representation of people 65 and over, they were also less likely to be widowed and not currently partnered.

An accurate comparison cannot be made for income levels because of differences in data collection, but an approximate comparison (not reported here) indicates that jurors are less likely to have a lower income than the general jury-aged Tasmanian population. As a result, it is not surprising that the juror respondents were more likely to be in full-time employment than the jury-aged Tasmanian population and less likely to be unemployed. In terms of current occupation, the juror respondents were very representative of the general jury-aged Tasmanian population.

Overall, while some differences between the juror participants and the jury eligible population were found, the juror respondents provided a basic, but not mirror, reflection of the broader Tasmanian population. Hence, while results from this study can be fully generalised, they may also be cautiously viewed, where relevant, as an indication of broader public sentiment

Table 9: Study jurors and Tasmanian jury eligible population

Socio-demographic variable	Juror respondents %	Jury aged population[a] %
Gender: N = 695		
Female	53.4	51.8
Male	46.6	48.2
Age group: N = 690		
18-24 years	10.1	11.5
25-44 years	33.2	33.4
45-64 years	48.3	35.5
65+ years	8.4	19.7
Education level: N = 698		
Bachelor's degree or above	24.4	11.9
Not stated	0.7	12.3
Country of birth: N = 694		
Australia	91	83.2
Marital status: N = 690		
Single/never married	17.1	25
Married or partnered	71.9	(married only) 53.8
Separated/divorced and not currently partnered	9.4	13.7
Widowed and not currently partnered	1.6	7.5
Employment status: N = 690		
Full time	48.9	34
Part time/casual	20.2	19
Employed away from work	1.4	2
Unemployed looking for work	1.6	3
Not in the labour force	26.8	37
Missing data	1.1	5
Current Occupation: N = 538		
Managers, professionals and paraprofessionals	41.4	42.2
Trades	11	14.4
Clerical	13.9	14.5
Production, labourers, elementary clerical	29.9	27.5
Not stated or inadequately described	3.7	1.4

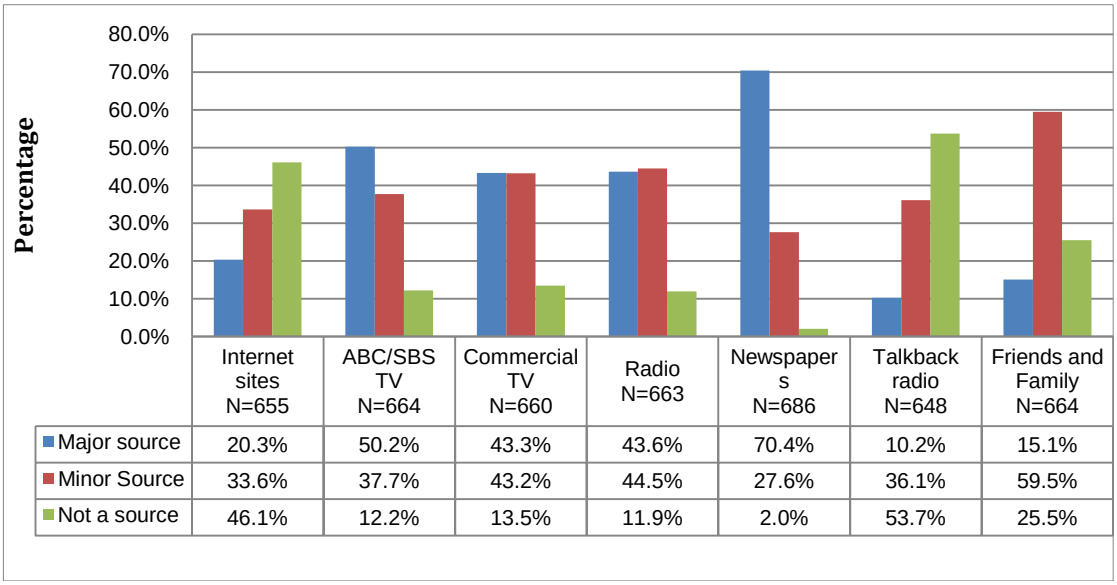
[a] Source: Derived from ABS, 2006 Census of Population and Housing, Tasmania (State) Tables

4. From where do jurors source crime and sentencing information?

To provide a baseline, respondents were asked about where they sourced their crime and sentencing information. The question was phrased as follows: 'People get information about crime and sentencing from a variety of sources. Please indicate whether the following are a major source, a minor source or not a source.' This was followed by seven possibilities. The responses are shown in Figure 1.

The Australian Survey of Social Attitudes (AuSSA 2007) found most Australians rely on broadcast and print media as their most important source of news about crime and criminal justice. Almost eight out of ten respondents rated each of TV, radio and newspapers as fairly or very important (Roberts and Indermaur 2009: 9). Similarly, for jurors, television, newspapers and radio were the most important source of information about crime and sentencing. Internet sites and family and friends were least likely to be an important source for both jurors and AuSSA respondents.

Figure 1: Sources of information about crime and sentencing



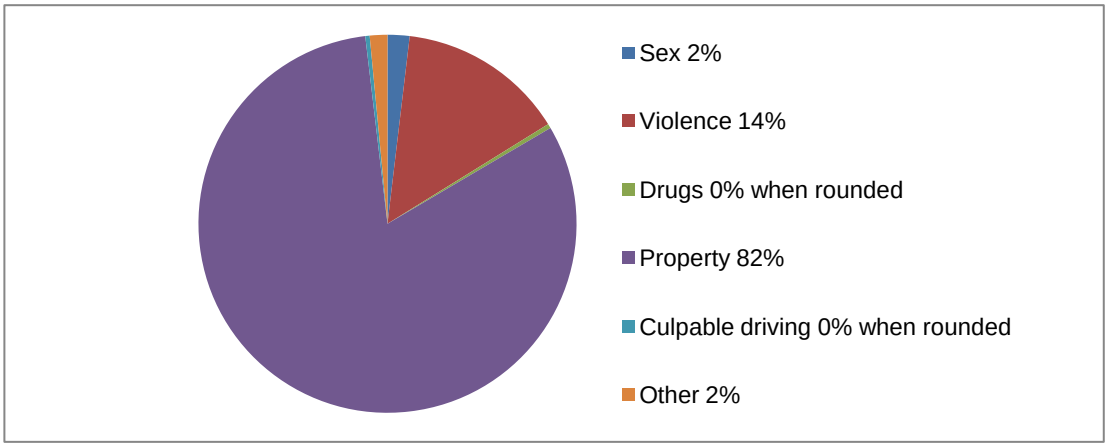
	Internet sites N=655	ABC/SBS TV N=664	Commercial TV N=660	Radio N=663	Newspapers N=686	Talkback radio N=648	Friends and Family N=664
Major source	20.3%	50.2%	43.3%	43.6%	70.4%	10.2%	15.1%
Minor Source	33.6%	37.7%	43.2%	44.5%	27.6%	36.1%	59.5%
Not a source	46.1%	12.2%	13.5%	11.9%	2.0%	53.7%	25.5%

N = 648-686

5. Crime victimisation

Questionnaire 1 asked respondents if they had ever been a victim of a crime that was reported to the police. Forty one percent of participants responded positively. In Figure 2, the responses are classified into six categories: sex, violence, drugs, property, culpable driving and other. On the basis that 13 percent of recorded offences in Tasmania are violent offences and 82 percent are property offences, our jurors would appear to be representative of the general population in terms of type of victimisation.

Figure 2: Type of crime committed against victims



6. Juror's proposed sentence compared with judge's sentence

The third question in Questionnaire 1 asked respondents to indicate what sentence they thought the offender should receive. Questionnaire 1 was completed before the judge imposed the sentence (or at least before the juror knew of the sentence). The question included a menu of sentencing options to ensure that respondents were aware of the alternatives available and did not focus unduly on the better-known sentencing options such as imprisonment and fines. This was done in the light of the research finding that, when given sentencing vignettes, respondents who had to choose a sentence without the benefit of a menu were significantly more likely to favour imprisonment than those who had a menu (Hough and Roberts 1999: 19). In the menu of options discharging the offender without a conviction was not listed as this option is rarely used in the Supreme Court. Nevertheless, it was imposed in one case in the study.

To compare the juror's sentence choice with the judge's sentence we constructed an imputed variable 'Stage 1 comparative sentence severity'. This unique variable was used to gauge punitiveness in the study. The following rules were used to code the variable. Sentencing options were ranked in ascending order of severity:

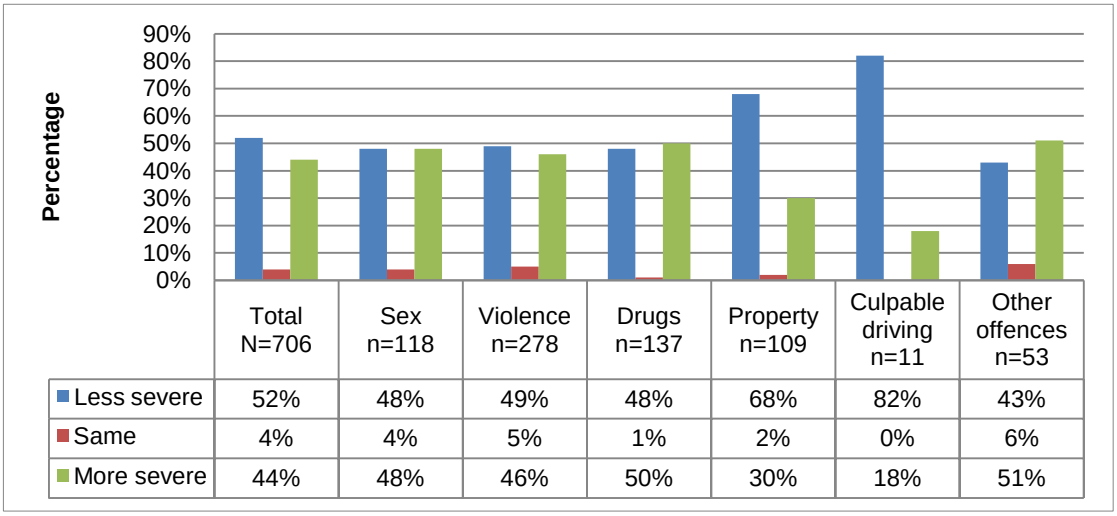
- Conviction recorded and discharge
- Fine
- Probation Order
- Rehabilitation Program Order
- Community Service Order
- Wholly suspended sentence of imprisonment
- Imprisonment

Under this categorisation, if the juror selected a wholly suspended sentence (of whatever length) this was counted as less severe than an immediate term of imprisonment (of whatever length). If the juror selected more than one sentencing order, the most severe was compared with the judge's (most severe) sentencing order. If the juror's sentencing option was the same as the judge's, then severity depended on the length, number or amount of the order. In the case of partly suspended

sentences, severity depended on the immediate term served. Because the jurors were not given the option of a discharge without a conviction, in the one case this was ordered (*Tasmania v Cooper*, 12 September 2007) it was coded as the most lenient sentencing option listed, namely a 'conviction recorded and discharge'. In the one case where a sentence to the rising of the court was ordered (*Tasmania v Hume*, 5 February 2009), this was coded as a sentence of imprisonment but where jurors selected a conviction recorded only or a wholly suspended sentence this was recorded as the same as the judge. Where a sentence of imprisonment was imposed but backdated, this was still counted as a sentence of imprisonment and whether it was coded as more or less severe than the juror's sentence depended on the term of imprisonment from the date of the sentence.

Comparing the juror's sentence with the judge's sentence, as detailed in Figure 3, showed that 52 percent chose a more lenient sentence than the judge and 44 percent chose a more severe sentence. Figure 3 cross-tabulates the responses by type of crime. The low 'Same' figures are an artefact of the wide menu of alternatives available.

Figure 3: Judge and juror's sentence compared by type of Offence



	Total N=706	Sex n=118	Violence n=278	Drugs n=137	Property n=109	Culpable driving n=11	Other offences n=53
Less severe	52%	48%	49%	48%	68%	82%	43%
Same	4%	4%	5%	1%	2%	0%	6%
More severe	44%	48%	46%	50%	30%	18%	51%

N = 706. This figure includes all jurors' responses for all offenders

These results indicate that:

- Jurors were more likely to be less severe than the judge than more severe for all offence types except for drugs, where 50 percent were more severe and 49 percent less severe. For 'other offences' they were also more likely to be more severe.
- Jurors were most likely to be less severe than the judge for property offences and culpable driving. However, for culpable driving there were just three trials and 11 respondents, so it is difficult to draw conclusions in relation to this offence category.
- Jurors were evenly split between more and less severe sentences than the judge for sex, violence and drug offences and were least likely be less severe than the judge for 'other offences'.

A bivariate analysis of the severity of the proposed sentence compared to judge's sentence (Stage 1 comparative sentence severity) with offender characteristics found that:

- females were less likely than males to select a more lenient sentence (49-56 %);
- those in the 18-24 age group were more severe than those in the 45-64 age group;
- no relationship was found between marital status, income level or education level and comparative sentence severity.

As detailed earlier, one quarter of respondents said they had not listened to the sentencing submissions before indicating their choice of sentence and therefore were not informed of victim impact or criminal history information. Nor had they listened to the plea in mitigation. Comparing the Stage 1 comparative sentence variable of those who were present for the sentencing submissions with those who were not, showed that 47 percent of those present chose a more severe sentence than the judge compared with 44 percent of those who said they were not present – statistically, a non significant difference.

7. Jurors' knowledge of crime trends and sentencing patterns

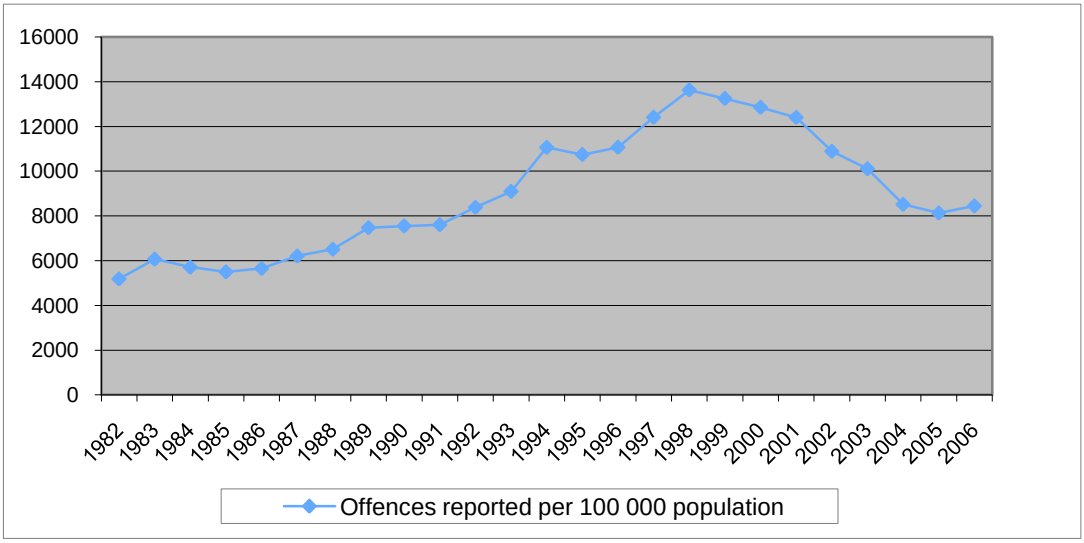
Four questions tested participant's knowledge of crime and sentencing. The first was, 'Do you think that recorded crime over the last 5 years has increased a lot, increased a little, stayed about the same, decreased a little, or decreased a lot?' More than a third thought it had increased a little and more than a quarter thought it had increased a lot. Jurors' responses to this question are juxtaposed below with the pattern of recorded crime in Tasmania between 1981 and 2006.

Table 10: Jurors' perception of overall recorded crime trends

Increased a lot %	Increased a little %	Stayed the same %	Decreased a little %	Decreased a lot %	Don't know %
27	36	15	6	1	15

As shown for the last five years displayed in Figure 4 there was a decrease in the recorded crime rate. This downward trend has continued to present (Department of Police and Emergency Management 2009: 79, 81). This trend is also evident nationally with declining crime rates for property and violent crimes (for example, robbery and homicide) (Australian Institute of Criminology 2009, *Facts and Figures 2008*). Therefore, contrary to what the overwhelming majority of respondents indicated they believed, recorded crime decreased in the last five years.

Figure 4: Rate for recorded crime, Tasmania, 1981-82 to 2005-06.



Compiled from recorded crime data in Tasmania Police Annual Reports and ABS Population by Age and Sex, cat no 3201.0; note: recorded crime data covers offences collected for national statistics for the ABS and does not include all criminal offences, notable exclusions are offences with no identifiable victim - so drug offences and driving offences are not included.

In relation to crime trends for specific crimes recorded in Tasmania over the last five years, jurors were asked whether the following crimes had become more or less common: burglary, robbery, rape, motor vehicle theft and murder. Again, the responses shown in Table 11 do not align with current data with less than 10 percent of jurors accurately estimating the direction of recorded crime across most categories. In relation to burglary, respondents were most likely to say that it had stayed the same, although the number of recorded burglaries of houses and commercial premises has declined since 1998 (Department of Police and Emergency Management 2009). The number of robberies peaked in 1998-1999, and since 2005-2006 there have been fluctuations but the trend has been more downwards than upwards or stable. For rape the trend is less clear, but the most accurate response is that it has stayed the same (Weatherburn and Indermaur 2004: 4). In relation to motor vehicle theft, most respondents said that it had become more common although the general trend for motor vehicle theft is downwards. The number of motor vehicle thefts fell from 2,375 in 2002-2003 (Department of Police and Public Safety 2004, *Annual Report 2003-2004*) to 1,618 in 2006-2007 and 1,382 in 2008-2009 (Department of Police and Emergency Management, 2009).

Table 11: Jurors' perceptions of crime trends

Crime Type	Juror's perception of crime trends			
	More common %	Stayed the same %	Less common %	Don't know %
Burglary (N = 690)	57	29	6	8
Robbery (N = 687)	57	31	4	8
Rape (N = 681)	17	47	15	20
Motor vehicle theft	57	27	7	9

This finding of poor knowledge about crime trends is broadly consistent with other Australian research and with international findings. Most members of the public think crime rates are rising even when they have been falling over a number of years (Gelb

2006: 13, 30). For example, using AusSSA 2003 data, Indermaur and Roberts (2005: 143) found that 39 percent of respondents thought that crime rates had increased a lot over the last two years, 31 percent thought it had increased a little, 21 percent thought it had stayed the same, 4 percent thought it had decreased a little, and 1 percent thought it had decreased a lot. The state-by-state breakdown indicated that for most states the most common response was 'increased a lot'. Consistent with our results, for Tasmania and Victoria it was 'increased a little'. AuSSA 2007 results are similar but report even less respondents (2.9%) correctly identifying that crime rates had reduced (Roberts and Indermaur 2009: 9). Weatherburn and Indermaur (2004) studied perceptions of crime trends over the previous two years in New South Wales and Western Australia and found that respondents have a proclivity to perceive crime is rising. In a more recent New South Wales study, Jones, Weatherburn and MacFarlane (2008: 6) found that only 11 percent correctly identified that property crime had decreased in the five years prior to interview.

The third crime knowledge question asked was 'What percentage of recorded crime do you think involves violence or the threat of violence?' Respondents had the choice of one quarter or less, between one quarter and a half, between a half and three quarters and more than three quarters. The Crime and Sentencing booklet explained that crimes of violence comprise only about 13 percent of crimes recorded by the police. All traffic offences were excluded from this calculation, although drink-driving offences could legitimately be regarded as criminal offences if not crimes.

Figure 5: Recorded crime in Tasmania: distribution of offences and perceptions of crimes of violence

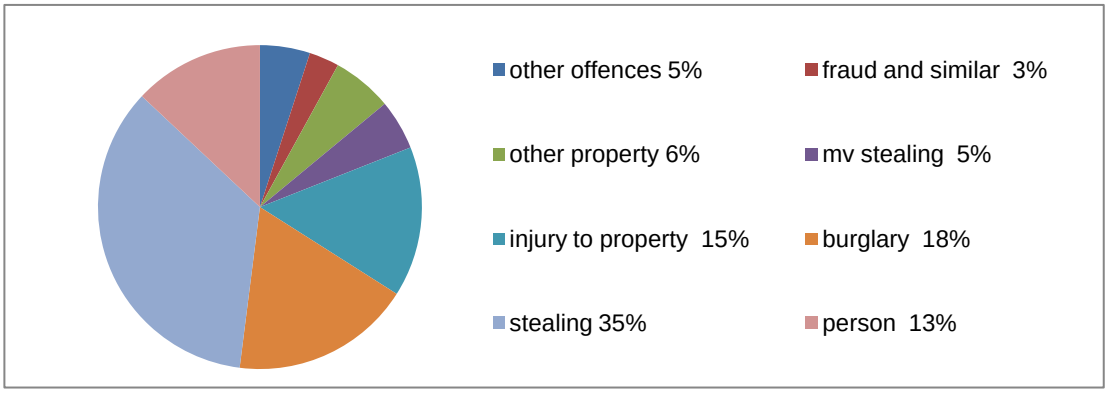
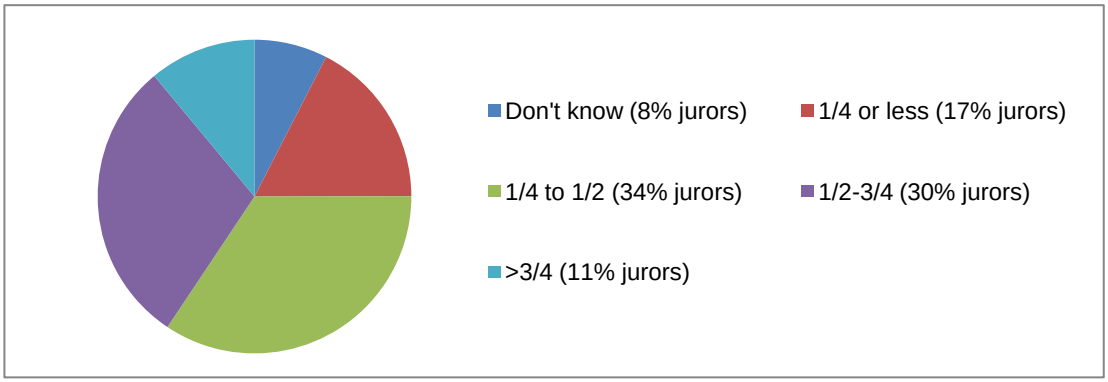


Figure 6: Perceptions of proportion of crime that is violent



Source: recorded crime data from Tasmania Police 2005-2006.

As can be seen in Figures 5 and 6, respondents thought a far larger proportion of crime involved violence than is the case. Similar misperceptions have been found in other studies (Gelb 2006: 13, 30). For example, in a New South Wales study, Jones et al (2008: 6) found that more than 96 percent overestimated the proportion of crimes that involve violence (they were asked to nominate the proportion of police recorded crime that involved violence rather than being offered a range). In Indermaur's (1987) Perth study, 73 percent of respondents substantially overestimated the proportion of crimes involving violence. And AuSSA 2007 found that less than four percent of survey respondents were accurate in their knowledge of the proportion of crime that involves violence (Roberts and Indermaur 2009: 10).

Respondents were asked about their knowledge of sentencing practices, namely the proportion of convicted offenders who were sent to prison for burglary and rape. Table 12 indicates that 71 percent of respondents under-estimated the immediate imprisonment rate for rape and 80 percent did so for burglary. Similar under-estimates of imprisonment rates have been reported in other studies. In the 2008 New South Wales study noted above, 89 percent of respondents nominated a figure lower than the correct proportion (61%) (Jones et al 2008: 7).

Table 12: Perception of imprisonment rates for burglary and rape, percent

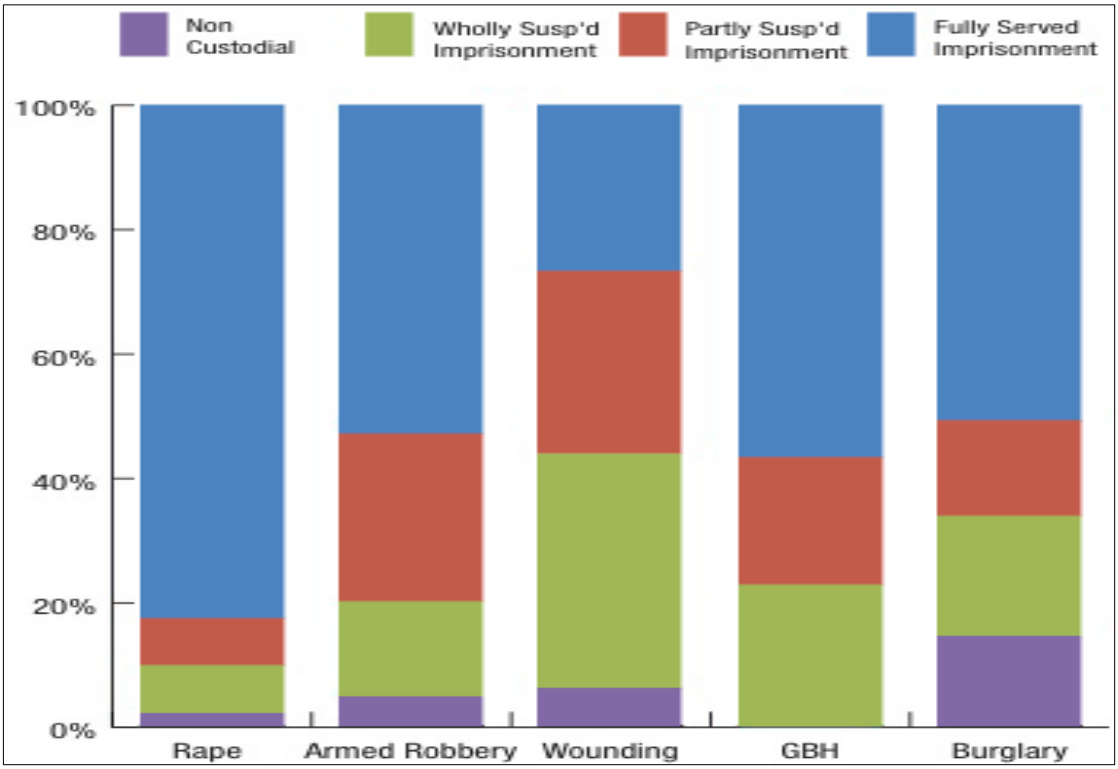
	Proportion of convicted offenders sent to prison			
Crime	0-25%	26-50%	51-75%	75% +
Burglary	36	44	17[a]	3
Rape	11	28	32	29[a]

[a] accurate response

To get an indication of the degree of overestimation by jurors, the figure below shows the actual penalty range created using the Supreme Court's sentencing database of individual sentencing comments. The figure shows that the immediate imprisonment rate for rape is more than 90 percent and for burglary it is more than 60 percent.[1]

[1] Burglary is a crime that is triable summarily if the defendant so elects and the value of the property stolen is not more than $20,000. So there are many cases of burglary that are heard in the Magistrates Court. However, data on sentencing patterns for one incident of burglary in Magistrates Courts is available and shows that the rate of immediate imprisonment is 50.1 percent (Tasmania Law Reform Institute 2008: 64). It follows that, notwithstanding the fact that there are less burglaries heard in the Supreme Court, the immediate imprisonment rate for burglary is 51-75 percent.

Figure 7: Sentences types by offence 2001-2006



What is the relationship between crime and sentencing knowledge and sentencing patterns and sentencing preference?

Is there a relationship between those who think crime rates are rising and those who chose a tougher sentence than the judge? Is there a relationship between those who under-estimate sentencing severity and their choice of sentence? Previous research has shown that public misperceptions are associated with a belief that sentences are too soft. People who know more about crime rates are less punitive, (Roberts and Indermaur 2007: 61-62) and this variable (thinking there is a lot more crime) was the most powerful predictor of a belief that sentences were far too soft in the 1996 British Crime Survey (BCS) (Hough and Roberts 1999: 18).

A bivariate analysis found that those jurors who thought recorded crime had increased in the last five years were a little more likely to have selected a more severe sentence than the judge compared with those who thought it had stayed the same or decreased, however, the difference was not statistically significant. Table 13 shows that those who accurately responded that one quarter or less of recorded crimes involved violence were more likely to have chosen a more lenient sentence than the judge than those who over-estimated incidence of violent crime. Therefore, on these measures of knowledge (recorded crime rate trends, imprisonment rates and proportion of crime that involves violence), the more knowledgeable participants were not significantly less punitive than the less knowledgeable using Stage 1 comparative sentence severity as the measure of punitiveness.

Table 13: Perception of crime that involves violence and severity of sentence

	Pre information comparative severity (all offenders and all jurors)		
Assessment of proportion of crime that involves violence	Less severe %	Same %	More severe %
Accurate estimate (N = 127)	57.5	4.7	37.8
Over-estimate (N = 571)	50.4	3.5	46.1
Total (N = 698)	51.7	3.7	44.6

8. Perceptions of risk of victimisation and fear of crime

In Questionnaire 1 respondents were asked to estimate the risk of being a victim of burglary, motor vehicle theft, assault and robbery in the next 12 months with interval responses in five categories. The actual risk is depicted in the following table. The risk of being burgled is likely to be two - five percent, the risk of motor vehicle theft is lower and the risk of robbery is even lower still. For assault the risk is about five percent or 1 in 20 but the risk decreases from the age of 20 and is lower for females.

Table 14: Crime victimisation rates for households and individuals

	Tasmania		Australia	
As percentage of all households	2002 %	2005 %	2002 %	2005 %
Household victims				
Break and enter	5.2	2.1	4.7	3.3
Motor vehicle theft	1.6	0.9	1.8	1.0
Personal victims				
Assault	5.0	4.4	4.7	4.8
Robbery	0.3	0.1	0.6	0.4

Data Source: ABS, Crime and Safety Australia 2005.

As Table 15 indicates, jurors tended to overestimate their risk of being a victim of crime on all categories with nearly 20 percent of respondents thinking they had a 50 percent or higher risk of being burgled.

Table 15: Juror Perception of Risk of Victimisation

Level of Risk	Burglary %	M/V theft %	Assault %	Robbery %
Less than 6 percent	33	38	55	41
6-10 percent	31	28	27	33
11-30 percent	18	19	12	16
31-50 percent	12	10	5	7
>50 percent	7	5	2	3
Total	100[a]	100	100[a]	100

[a]totals do not equal 100% due to rounding

A combined risk of victimisation variable was constructed for comparing whether respondent's estimated risk of victimisation was associated with punitiveness as measured by the Stage 1 comparative sentence severity variable. Bivariate analysis showed no statistical link between this measure of punitiveness and perceptions of the risk of victimisation.

Jurors were also asked about their feelings of personal safety in two questions: 'How safe do you feel walking alone in your area after dark?' (C2). And, 'How safe do you feel at home alone at night?' (C3). As the table below shows, respondents most commonly felt 'fairly safe' walking alone after dark and 'very safe' at home alone at night, with one third feeling unsafe walking alone at night.

Table 16: Perceptions of safety

	Very safe %	Fairly safe %	A bit unsafe %	Very unsafe %
Walking alone after dark	20	47	27	6
Home alone at night	48	43	8	1

Sprott and Doob (1987) found that as fear increased, the proportion of people thinking sentences were too lenient increased. Similarly, results from AuSSA 2007 showed a statistically significant (although weak) relationship between fear of crime measures and agreement with a need for stiffer sentences (Roberts and Indermaur 2009: 16). In the present study, cross-tabulating levels of fear with punitiveness as measured by the Stage 1 comparative sentence variable showed no significant differences. For example, of those who felt very safe walking alone at night, 58 percent chose a less severe sentence than the judge and 38 percent a more severe sentence. But those who felt very unsafe selected very similar proportions of less severe (54%) and more severe sentences (39%). Similarly, those who felt very safe at home alone at night chose similar proportions of less severe (56%) and more severe (41%) sentences as those who felt a bit unsafe (53% and 45%). Nor was a significant link found between sentence choice and fear when the two questions were used to create a fear scale.

The relationship between fear and beliefs about crime trends and sentencing was also examined. Those who felt safe walking at night were significantly more likely to think that crime had decreased or stayed the same (p=.017). They were also more likely to accurately estimate the proportion of reported crime that involves violence (p=.005) and to answer the rape imprisonment rate correctly (p=.000). There was a similar relationship between feelings of safety at home alone at night and crime and sentencing knowledge. The relationship between fear and perceptions of risk of victimisation was also examined. Those who were less fearful were more likely to accurately estimate the risk of being a victim of home burglary, motor vehicle stealing, assault or robbery.

9. Jurors' general opinion of current sentencing practices

In the light of the limitations of answering a single question about the severity of sentencing levels (Roberts and Stalans 1997), the study asked: 'In general would you say that current sentences for the following crime types are much too tough, a little too tough, about right, a little too lenient or much too lenient?' Table 17 shows that, across all offence types, the majority responded that sentences were too lenient. This was most pronounced for sex and violent offences with 80 percent and 76 percent of responses saying sentences were too lenient. Few respondents thought sentences were too tough, although drug offences attracted a higher 'too tough' response than the other offences. Jurors were most satisfied with sentences for property offences. This suggests that the public is more divided about drug offences than the other categories, with a more even split between about right, a little too lenient and much too lenient

responses. These results are consistent with other research (see Doob and Roberts 1983; Indermaur 1987) which found that respondents who felt that sentences were too lenient, tended to have in mind the worst kind of offenders such as sex or violent offenders.

Table 17: Are current sentencing practices too tough/lenient?

Opinion on Sentence	Type of Crime			
N = 674-681[a]	Sex	Violence	Drugs	Property
Much too tough	1	0	2	0
A little too tough	1	1	6	4
About right	18	23	36	42
A little too lenient	39	53	35	39
Much too lenient	41	23	21	15
Total	100	100	100	100

[a]N = 674 (sex), 681 (violence), 677 (drugs) and 674(property).

Do jurors' opinions differ depending on the crime type of their trial?

Juror respondents differ from respondents in representative surveys in that they are being asked about sentencing leniency in the context of a real trial. The type of crime that they tried may influence their response to the general question about sentencing severity. In other words, what is the response of sex offence jurors, for example, to the general question about sentencing sex offences? Does it differ from the responses of the other jurors? Being involved in a trial of a sex offender may have an impact on the juror's perception of a stereotypical sex offender and affect the answer to the abstract question about sentencing severity for sex offenders.

Table 18 shows that sex offence trial jurors were a little less likely to say sentences for sex offences were too lenient compared with other jurors. The same is true for drug and property offences but not for violent offences. The interpretation of this finding will be further explored below in Part B of this Part and in Part 4.

Table 18: General perceptions of sentencing leniency by respondent's trial type

Juror's trial type	Jurors	Too tough %	About right %	Too lenient %
Sex offence	Sex offence trial jurors	2.4	23.6	73.9
	Other jurors	1.3	17.2	81.5
	All jurors	1.5	18.4	80.1
Violent offence	Violent trial jurors	0	22	78
	Other jurors	1.3	23.9	74.7
	All jurors	0.9	23.2	75.9
Drug offence	Drug trial jurors	7.9	41.4	50.7
	Other jurors	7.8	34.1	58.1
	All jurors	7.8	35.6	56.6
Property	Property trial jurors	0.9	49.5	49.5
	Other jurors	4.7	40.6	54.7
	All jurors	4.2	42.0	53.9

Table 19 looks at the relationship between general attitudes to sentencing severity and the Stage 1 comparative sentence severity variable. It is reasonable to assume that the two are correlated; that those who chose a more severe sentence than the judge are more likely to have said sentences are too lenient than those who chose a less severe sentence. The results of this analysis confirm that this is indeed the case. Those who chose a less severe sentence than the judge were less likely to say sentences for each of the categories of offences were too lenient.

Table 19: Comparative severity of juror's sentence by view on current sentencing patterns

		Too tough %	About right %	Too lenient %	Total N
Severity of juror's sentence compared to Judge	**Q1: Are current sentences for violence offences too tough/lenient? (all offenders)**				
	Less severe	0.6	26	73.5	(358)
	Same	0	26.9	73.1	(26)
	More severe	1.3	18.2	80.5	(308)
	Totals	0.9	22.5	76.6	(692)
Severity of juror's sentence compared to Judge	**Q1: Are current property sentences too tough/lenient? (all offenders)**				
	Less severe	5.1	41.9	53	(353)
	Same	0	53.8	46.2	(26)
	More severe	3.3	40.7	56.1	(305)
	Totals	4.1	41.8	54.1	(684)
Severity of juror's sentence compared to Judge	**Q1: Are current drug sentences too tough/lenient? (all offenders)**				
	Less severe	11.2	37.4	51.4	(356)
	Same	0.0	48.0	52.0	(25)
	More severe	5.6	32.4	62.1	(306)
	Totals	8.3	35.5	56.2	(687)
Severity of juror's sentence compared to Judge	**Q1: Are current sex sentences too tough/lenient? (all offenders)**				
	Less severe	1.7	19.3	79.0	(353)
	Same	0.0	26.9	73.1	(26)
	More severe	1.6	16.7	81.6	(305)
	Totals	1.6	18.4	80.0	(684)

A punitiveness scale was created using jurors' responses as to whether sentences were too tough, about right or too lenient across the four offence categories (the Stage 1 general punitiveness index). A comparison of mean scores on this index with the Stage 1 comparative sentence severity variable showed that those who wanted a more severe sentence than the judge had statistically higher mean scores on the general punitiveness index than those who wanted a less severe sentence than the judge (p=.006). In other words they were more likely to consider current sentencing too lenient. Mean general punitiveness index scores were also compared with levels of knowledge about crime, sentencing, perceptions of risk and fear. This showed that:

- those who thought crime had decreased had a lower punitive score than those who thought it had increased (p=.000);
- those who over-estimated the percentage of crime that involves violence had a higher score on the general punitive index than those who correctly estimated it (p=.000);
- those who correctly estimated the proportion of convicted rape offenders who were sentenced to prison had a lower score than those who under-estimated it (p=.018), but there was no significant correlation between estimates of burglary imprisonment rates and mean scores on the general punitive index;

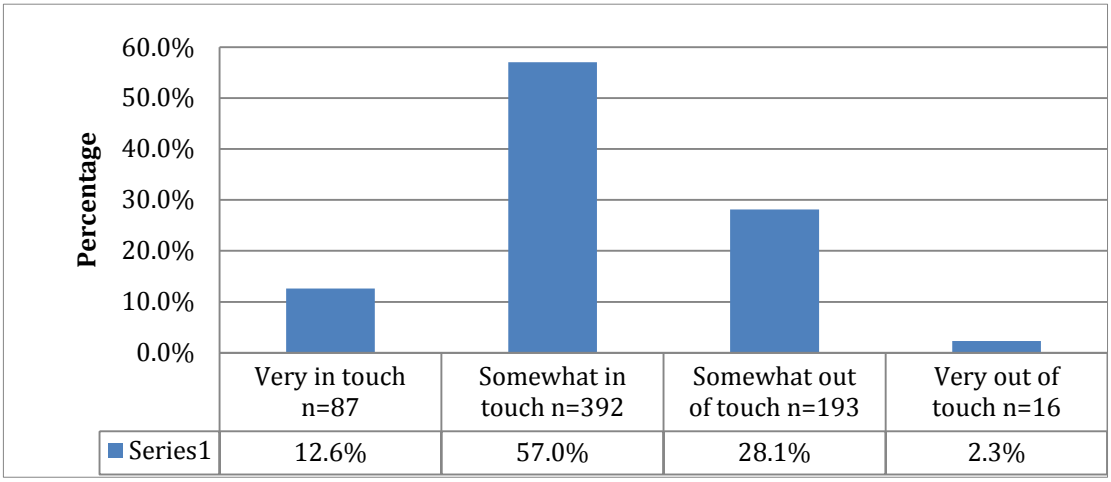
- those who were more accurate in their estimation of the risk of victimisation had lower punitiveness scores (p=.000); and
- those who were more fearful were more punitive than those who were less fearful (p=.000).

These findings are consistent with previous research which showed that public misperceptions were associated with a belief that sentences were too lenient. Misperceptions associated with a belief that sentences were too lenient in Britain included a belief that there was a lot more crime; over-estimating the proportion of crime that involves violence; and under-estimating the proportion of convicted muggers and burglars who go to prison (Hough and Roberts 1999: 18). In Australia, results from AuSSA 2003 (Roberts and Indermaur 2007) and AuSSA 2007 showed similar findings. For example, AuSSA 2007 showed the desire for stiffer penalties was significantly positively correlated with beliefs that crime was increasing and with the number of reported crimes that involved violence, and negatively correlated with the proportion of men convicted for assault and home burglary who were imprisoned (Roberts and Indermaur 2009: 19).

10. Jurors' opinions of judges before sentence (Stage 1)

A common question in representative surveys such as the BCS asks respondents how 'in touch' judges are with what ordinary people think (Hough and Roberts 1998; Mirrlees-Black 2001). This question is asked in the context of questions about the criminal justice system and sentencing. Our question asked, 'How in touch do you think judges are with public opinion on sentencing?' Figure 8 below shows the response given by the jurors to this question (B6) in Questionnaire 1. It shows that the majority, 57 percent, responded that judges are 'somewhat in touch' and that more than two thirds of respondents thought judges were 'in touch' (either very or somewhat). Only 30 percent responded that they were 'out of touch'. This contrasts with findings from two studies of the BCS which found a high proportion of respondents, 46 percent, thought judges were very out of touch (Hough and Roberts 1998: 3) and 41 percent (Mirrlees-Black 2001: 5). Only 18 (Hough and Roberts 1998: 3) and 20 percent (Mirrlees-Black 2001: 5) reported that judges were in touch. Perceptions of judicial remoteness have also been reported in Scotland (75 percent of respondents thought judges were out of touch with what ordinary people think, (Hutton 2005: 247)) and South Australia, with 73 percent of respondents in that State agreeing with the statement 'it is about time judges caught up with the real world (Square Holes 2006). It is unsurprising, but nevertheless reassuring, that jurors have a more favourable view of judges than the general public (see Benesh 2006).

Figure 8: How in touch are judges with public opinion in relation to sentencing



Juror's perception of how in touch judges were with public opinion on sentencing was then cross-tabulated with the juror's comparative sentence choice. Hough and Roberts (1990: 15) have found that views regarding sentencers as being out of touch were associated with a belief that sentences were too lenient. Thus, of the minority who believed judges were in touch with society, 57 percent also felt that sentences were too lenient. However, 90 percent of the respondents who thought that judges were out of touch also felt that sentences were too lenient. As shown in Table 20, punitiveness measured by sentence choice (Stage 1 comparative sentence severity) showed a much weaker relationship with a belief that judges were out of touch in our study.

Table 20: Jurors view of in/out of touch and comparative sentence choice

Severity of proposed sentence compared to judge imposed sentence				
	Less severe %	Same %	More severe %	Total % (N)
Very in touch all offenders	55.7	4.5	39.8	100 (88)
Somewhat in touch all offenders	51.6	4.0	44.3	100 (397)
Somewhat out of touch all offenders	50.6	2.8	46.6	100 (178)
Very out of touch all offenders	44.1	2.9	53.0	100 (34)

But what of the relationship between views that judges are out of touch and a belief that sentences are too lenient? Table 21 shows that our study produces similar results in this comparison to those of Hough and Roberts (1990). Of the minority who thought judges were very in touch with public opinion on sentencing, two thirds said sentences for sex offences were too lenient compared with 94 percent of those who said judges were very out of touch. Similar patterns were found for other crime types.

Table 21: Relationship between judicial remoteness and perceptions that sentences are too lenient (Stage 1)

Remoteness of Judges from Public Perceptions on Sentencing	Sex %	Violence %	Property %	Drugs %
Very in touch	66.3	57.6	38.8	40.0
Somewhat in touch	78.9	72.6	49.9	52.2
Somewhat out of touch	87.4	89.6	66.7	71.4
Out of touch	93.8	87.5	75.0	68.8
Total (too lenient)	80.1	75.9	53.8	56.5

Note: The percentages in this table are percent of total in/out of touch opinion for that offence.

B. STAGE 2

1. Who were the Stage 2 respondents?

Nearly two thirds, or 64 percent, (N = 445 jurors), from Stage 1 participated in Stage 2 by returning Questionnaire 2. Of these, 212 also offered to be part of the interviewing phase of the study, and 50 of these jurors were subsequently interviewed. As these jurors were from 104 of the 138 trials in which at least one Stage 1 response was received, the question of whether the response rate for offence type would differ between Questionnaire 1 and 2 arose. As shown in Table 22 the Stage 2 response rate was much the same for sex, violence, drug and property offences although the rate for violent offences was a little stronger. The response rate was the poorest for culpable driving but with just three culpable driving trials in the study, the numbers were small for this offence category.

Table 22: Participation by type of offence, Stage 1 and Stage 2 compared

Type of offence	Sex	Violence	Drugs	Property	Culpable Driving	Other	Total
Number of Q1 responses	128	253	143	113	8	53	698
Q1 response rate %	35.6	36.9	33.1	37.7	22.2	40.2	35.9
Number of Q2 responses	91	153	94	69	6	32	445
% of responses	20.4	34.4	21.1	15.5	1.3	7.2	100

The socio-demographic profile of the two groups was also compared. As shown in the Table below, female jurors were more likely to complete Questionnaire 2 than males, increasing the over-representation of females in Stage 2. The same tendency for ages 18-24 and 25-44 to be under-represented also increased in Stage 2, as did the tendency for the age group 45-64 to be over-represented. However, the under-representation of the 65 + age group decreased slightly. In summary, female jurors and those aged over 45 seemed to be more willing to participate in Stage 2 as did those with more education.

Table 23 Comparison on jurors who completed only Questionnaire 1 with those that also completed Questionnaire 2

		Respondents who completed Questionnaire 1 only		Respondents completed Questionnaire 1 & 2	
		%	n	%	n
Gender	Male	52	(130)	43.6	(194)
	Female	48	(120)	56.4	(251)
	Total	100	(250)	100	(445)
Age	18 – 24	17	(42)	6.3	(28)
	25 – 44	37.7	(93)	30.7	(136)
	45 – 64	40.5	(100)	52.6	(233)
	65+	4.9	(12)	10.4	(46)
	Total	100	(247)	100	(443)
Education	Year 10 or below	27.3	(68)	18.7	(83)
	Year 11	6.8	(17)	3.6	(16)
	Year 12	16.1	(40)	10.6	(47)
	Trade	10.8	(27)	11.9	(53)
	Certificate or Diploma	22.1	(55)	26.4	(117)
	Bachelor's degree or above	16.9	(42)	28.8	(128)
	Total	100	249	100	444

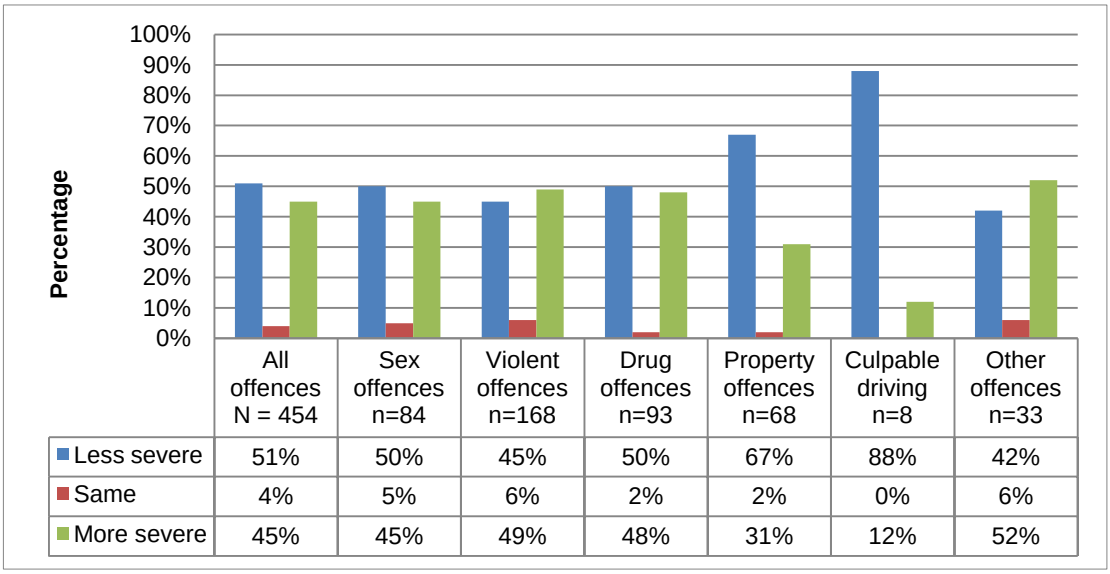
Punitiveness of Stage 2 Respondents

A comparison of Stage 1 and Stage 2 respondents on comparative sentence severity found an almost identical pattern of responses. This suggests that on this measure (Stage 1 comparative sentence severity) there was minimal difference between Stage 1 respondents and Stage 2 respondents. Therefore, results from Questionnaire 2 are unlikely to be skewed significantly by the lower sample numbers from Questionnaire 1.

Comparing the judge's sentence with Stage 1 juror's sentence choice by type of crime, showed (see Figure 3) that less than half of jurors were more severe than the judge for sex, violence and property offences and just 50 percent more severe than the judge for drug offences. Figure 9 looks at Stage 2 respondents only and indicates Stage 2 jurors were:

- less severe than the judge for most offence categories but the exceptions are violence and 'other' rather than drugs and other in Figure 3;
- more lenient than the judge for property and culpable driving offences to the same degree as Stage 1 respondents; and
- least likely to be less severe than the judge for 'other' offences and a little less likely than Stage 1 jurors to be less severe for violent offences.

Figure 9: Severity of juror's proposed sentence compared with judge's sentence (percent) by type of offence



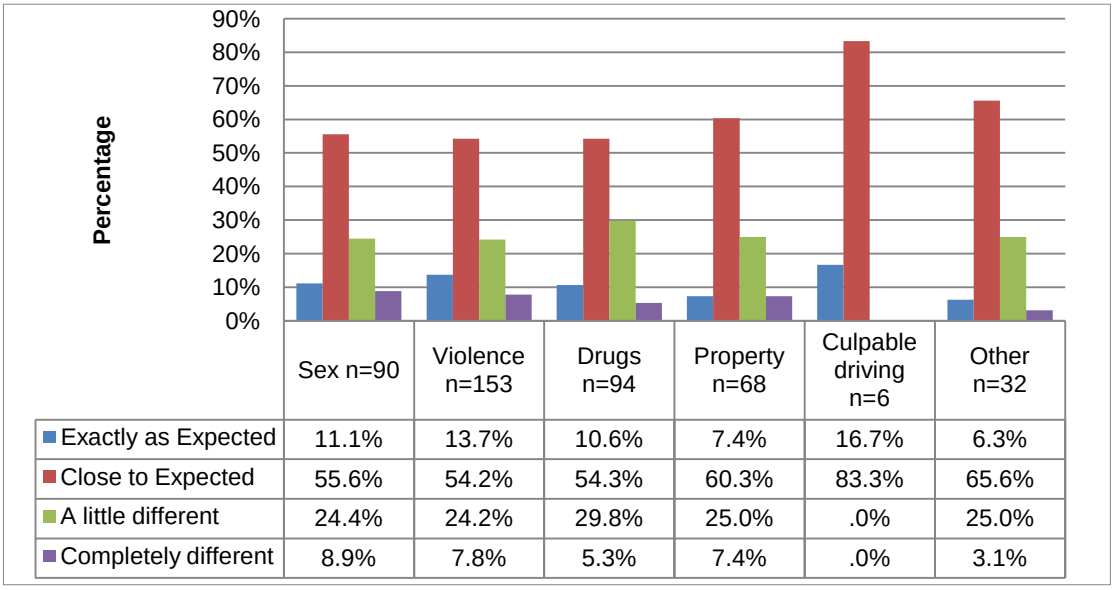
	All offences N = 454	Sex offences n=84	Violent offences n=168	Drug offences n=93	Property offences n=68	Culpable driving n=8	Other offences n=33
Less severe	51%	50%	45%	50%	67%	88%	42%
Same	4%	5%	6%	2%	2%	0%	6%
More severe	45%	45%	49%	48%	31%	12%	52%

2. Jurors' views of the judges' sentences

The first question in Questionnaire 2 asked, 'Now that you know the sentence the judge gave, was it what you expected?' with answer categories of 'exactly', 'close to expected', 'a little different', or 'completely different'. For two thirds of Stage 2 jurors, the actual sentence was about what they expected (exactly as expected 11 percent and close to expected 57 percent). Around a quarter reported that they expected the sentence to be 'a little different' and only seven percent thought the sentence would have been completely different. Approximating our responses to fit those from the UK Crown Court Study (Zander and Henderson 1993: 223), similar proportions stated that the sentence was expected.

Given the differences between the crime categories in the comparison between judge and juror sentences (see Figure 3), it might be expected that Stage 2 respondents would also be more likely to find property offence sentences different than expected when compared with sex, violent and drug sentences. Figure 11 shows that this was not the case. There was little difference in the major categories of sex, violence, drugs and property in expectations.

Figure 10: Was the sentence expected by jurors? (by offence type)

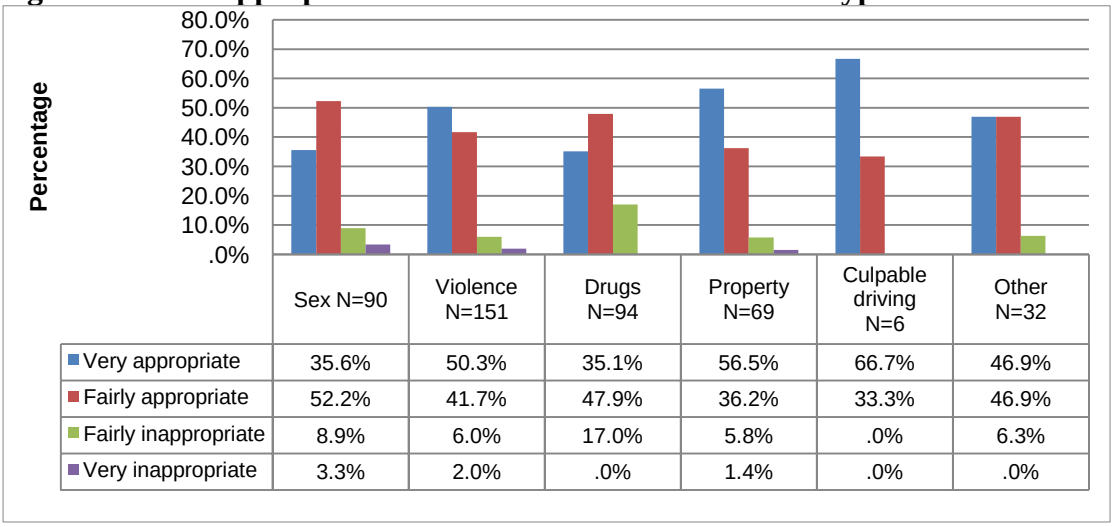


	Sex n=90	Violence n=153	Drugs n=94	Property n=68	Culpable driving n=6	Other n=32
Exactly as Expected	11.1%	13.7%	10.6%	7.4%	16.7%	6.3%
Close to Expected	55.6%	54.2%	54.3%	60.3%	83.3%	65.6%
A little different	24.4%	24.2%	29.8%	25.0%	.0%	25.0%
Completely different	8.9%	7.8%	5.3%	7.4%	.0%	3.1%

Jurors were next asked about their views as to the appropriateness of the sentence. Almost 90 percent of Stage 2 respondents rated the judge's sentence as appropriate, with responses evenly split between very appropriate and fairly appropriate. Almost half were 'very satisfied' with the sentence and only a very small percentage (1.6%) thought it 'very inappropriate'. This result is interesting in that it indicates that overall satisfaction levels are high even though almost half of jurors had selected a more severe sentence than the judge.

Comparison of satisfaction with sentence across offence type indicated some differences in attitude. The data summarised in Figure 11 suggests that respondents were less satisfied with drug and sex offence sentences than those for property and violence. A smaller proportion of 'very appropriate' responses were made for drugs and sex offences and there were smaller proportions of 'very appropriate' and 'fairly appropriate' sentences combined. However, the differences were not significant (p=.057). In addition, there were more 'inappropriate' responses for drug offences.

Figure 11: How appropriate was the sentence for each crime type

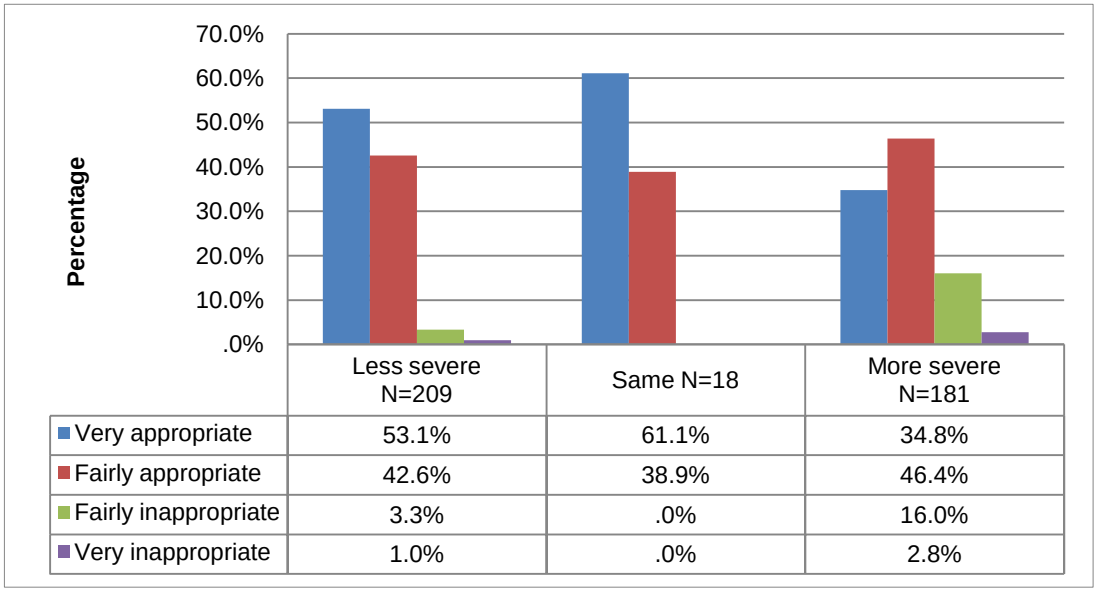


	Sex N=90	Violence N=151	Drugs N=94	Property N=69	Culpable driving N=6	Other N=32
Very appropriate	35.6%	50.3%	35.1%	56.5%	66.7%	46.9%
Fairly appropriate	52.2%	41.7%	47.9%	36.2%	33.3%	46.9%
Fairly inappropriate	8.9%	6.0%	17.0%	5.8%	.0%	6.3%
Very inappropriate	3.3%	2.0%	.0%	1.4%	.0%	.0%

The data were further analysed to see if the greater dissatisfaction with drug offences was due to the fact that respondents were more divided about whether they were too tough and too lenient. However, analysing the sentence choice of the 'inappropriate' responses suggests that the majority (11/14) of 'fairly inappropriate' responses to drug offence sentences was because they were too lenient with most respondents having selected a more severe sentence than the judge.

The next question that arose was whether satisfaction level varied between those who chose a more lenient sentence than the judge, and those who chose a more severe sentence. Analysis shows (see Figure 12) that those who selected a more lenient sentence were more likely to say the judge's sentence was 'very appropriate' than those selecting a tougher sentence. They were also less likely to say the sentence was inappropriate. This suggests that jurors are more tolerant of differences between the judge's sentence and the juror's sentence if the judge was tougher than they were but less tolerant of a sentence that was more lenient. Of course jurors were most satisfied if the judge's sentence was the same[2].

Figure 12: Satisfaction levels and sentence choice (all offences)



	Less severe N=209	Same N=18	More severe N=181
Very appropriate	53.1%	61.1%	34.8%
Fairly appropriate	42.6%	38.9%	46.4%
Fairly inappropriate	3.3%	.0%	16.0%
Very inappropriate	1.0%	.0%	2.8%

The next table looks at levels of satisfaction with the judge's sentence and Stage 1 comparative sentence severity (or sentence choice) for the four main offence categories. As Table 24 shows, for each offence type, those selecting a less severe sentence were more likely to say the sentence was 'very appropriate' compared with those selecting a more severe sentence. This is particularly so for sex offences where nearly half of those who had selected a more lenient sentence at Stage 1 said that the judge's sentence was 'very appropriate' compared to 19 percent of those who had selected a more severe sentence. It was least likely for property offences. Moreover, those who selected a more severe sentence were more likely to say that the sentence was fairly or very inappropriate compared with those who selected a more lenient sentence. For example, in drug offence cases 27 percent of those selecting a more severe sentence said the sentence was fairly inappropriate compared to seven percent who had selected a more lenient sentence.

[2] Before exploring these findings for different offences it should be noted that a small proportion of respondents (6/408) had selected the same sentence and said that it was fairly appropriate. Five of these at Stage 2 had changed their mind and now would have preferred a more severe sentence and one comment related to the verdict rather than the sentence.

Table 24: Juror's response to judge's sentence by sentence choice

Offence type N = 378	Sentence choice	Very appropriate %	Fairly appropriate %	Fairly inappropriate %	Very inappropriate %	Total
Sex n=83	Less severe	48	48	2	2	100
	More severe	19	57	19	5	100
	Same sentence	25	75	0	0	100
Violence n=140	Less severe	59	33	5	3	100
	More severe	44	42	10	4	100
	Same sentence	60	40	0	0	100
Drugs n =93	Less severe	41	52	7	0	100
	More severe	32	42	27	0	100[a]
	Same sentence	50	17	33	0	100
Property n=62	Less severe	54	46	0	0	100
	More severe	43	38	14	5	100[a]
	Same sentence	100	0	0	0	100

[a] Due to rounding some totals do not equal 100%.

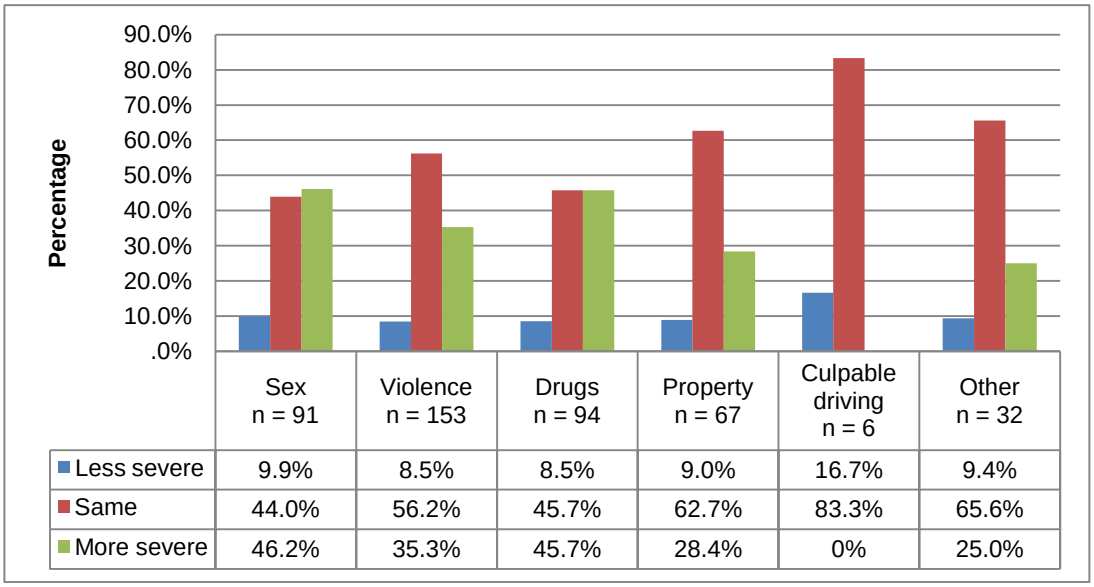
As a follow-on from the question about the appropriateness of sentence, jurors were asked, unless they thought the sentence was very appropriate, to indicate what they thought the sentence should have been (A3). A variable was constructed from the responses comparing the severity of judge's sentence with the juror's view. This variable is called 'Stage 2 comparative sentence severity'. Within this variable, those who said the sentence was very appropriate or added a supportive comment were entered as the 'same' as the judge. Those who indicated that a longer prison sentence, larger fine or a more severe sentencing option was appropriate were entered as 'more severe'. If an additional sentencing option was indicated then this was classified as 'more severe'. And those who indicated a shorter prison sentence, more suspension than the judge or a more lenient sentencing outcome were entered as 'less severe'. The distribution of the categories on the Stage 2 comparative sentence severity variable are 'less severe' = 9 percent; 'same' = 53.5 percent; and 'more severe' = 37.5 percent.

Cross-tabulating this variable by type of offence shows that in Stage 2:

- a majority were satisfied with the same sentence as the judge for violence and property offences;
- less than 10 percent of respondents wanted a less severe sentence than the judge across the four major offence categories;
- a significant proportion of respondents wanted a more severe sentence for sex offences and drug offences; and
- respondents were least likely to want a more severe sentence for property offences.

This variable confirms the results from Figure 11 that jurors are least satisfied with sex and drug offence sentences and are most satisfied with property offence sentences.

Figure 13: Stage 2 comparative sentence severity by offence type



	Sex n = 91	Violence n = 153	Drugs n = 94	Property n = 67	Culpable driving n = 6	Other n = 32
Less severe	9.9%	8.5%	8.5%	9.0%	16.7%	9.4%
Same	44.0%	56.2%	45.7%	62.7%	83.3%	65.6%
More severe	46.2%	35.3%	45.7%	28.4%	0%	25.0%

Figure 12, detailed earlier, found a greater acceptance of more lenient sentences than more severe sentences using the responses about appropriateness of the sentence. Table 25 confirms this finding. Using the Stage 2 comparative sentence variable as the independent variable, it was found that those whose sentence choice was more lenient in Stage 1 were more likely to agree with the judge's sentence compared with those who were more severe. Specifically, 57 percent of those who selected a more severe sentence still wanted a more severe sentence after knowledge of the judge's sentence and receipt of the booklet compared with 18 percent of those who still wanted a more lenient sentence. This suggests that those who are more punitive have less malleable views than those who are more lenient. Interestingly, of those who had chosen a less severe sentence than the judge, one fifth subsequently decided they wanted a more severe sentence than the judge. The fact that some of those who had selected the same sentence as the judge subsequently changed their minds and wanted a more severe sentence has been adverted to above in the discussion of Figure 12. That jurors who selected a more lenient sentence than the judge in Stage 1 are more likely to agree with the judge's sentence than those selecting a more severe sentence also means that on this measure (Stage 2 comparative sentence severity) some respondents became more punitive. In total 43 percent of respondents have become more punitive in Stage 2 than they were at Stage 1 with 19 percent becoming less punitive than they were at Stage 1.

Table 25: Stage 1 comparative sentence severity compared with Stage 2 juror response to judge's sentence

Offender 1 data only p =.000		Stage 2 response to judge's sentence							
		Less severe %		Same %		More severe %		Total %	
Stage 1: comparative sentence severity	Less severe	17.3	(36)	60.6	(126)	22.1	(46)	100.0	(208)
	Same	0.0	(0)	72.2	(13)	27.8	(5)	100.0	(18)
	More severe	2.2	(4)	40.4	(74)	57.4	(105)	100.0	(183)
	Total	9.8	(40)	52.1	(213)	38.1	(156)	100.0	(409)

All offenders		Stage 2 response to judge's sentence							
		Less severe %		Same %		More severe %		Total %	
Stage 1: comparative sentence severity	Less severe	18.0	(41)	59.6	(136)	22.4	(51)	100	(228)
	Same	0.0	(0)	73.7	(14)	26.3	(5)	100	(19)
	More severe	2.4	(5)	40.2	(82)	57.4	(117)	100	(204)
	Total	10.2	(46)	51.4	(232)	38.3	(173)	100	(451)

Judges' sentencing remarks

Questionnaire 2 asked respondents about the judge's sentencing comments. In answer to 'Was there anything in the judge's sentencing remarks that you particularly disagree with?', only 17 percent of Questionnaire 2 jurors (N = 445) indicated disapproval of the judge's sentencing comments. Many of these comments did not relate to sentence, e.g. 'We as jurors were not made aware of the convicted man's prior convictions and outcomes'. The most common criticism disagreed with the judges interpretation of the facts, another attacked the severity of the sentence imposed, and others disagreed about whether a factor should have been aggravating or mitigating, for example, one suggested the offender's record should have been aggravating and another that more weight should have been given to the offender's vulnerability. The same respondent thought the judge should have shown more compassion by his tone of voice. A couple of respondents disagreed with the purpose of sentencing expressed by the judge, two suggested the judge should have condemned the offence in stronger terms and one wanted an alternative sentencing option.

In answer to Questionnaire 2 A5, 'Was there anything in the judge's sentencing remarks that you particularly agree with?' about a third either expressly stated that there was nothing they specifically agreed with or this was implied by their failure to complete the question. Another third particularly agreed with the judge's summary of the facts (including appraisal of the accused), some stated general approval of the comments, others mentioned the appropriateness of the judge's sentence, and a few expressed agreement with the sentencing goals referred to by the judge.

3. Sentencing Goals

In Questionnaire 2 jurors were asked to rank sentencing goals from a list of seven commonly recognised goals from the most important (1) to the least important as they thought they pertained to their case (7). As shown in Table 26 punishing the offender was the most important sentencing goal, followed by specific deterrence. Denunciation (expressing community disapproval), general deterrence and rehabilitation were each regarded as most important by about 10 percent of respondents. Specific deterrence was most often ranked second, general deterrence third, followed by rehabilitation and denunciation fourth. Not surprisingly our jurors ranked as the most important goals: punishment, specific deterrence and general deterrence.

Table 26: Ranking of sentencing goals

	Rank 1	Rank 2	Rank 3	Rank 4	Rank 5	Rank 6	Rank 7
Punishing the offender	40.6	13.8	9.8	10.4	9.0	10.7	6.2
Separating the offender from society	6.0	12.4	6.3	10.6	16.1	19.7	28.7
Expressing community disapproval	10.6	12.9	17.1	17.6	16.4	13.5	11.6
Assisting the offender's rehabilitation	8.3	13.1	14.1	17.6	16.4	16.9	13.7
Deterring others from committing similar crimes	9.2	18.0	23.4	16.7	13.5	14.5	4.7
Deterring the offender from re-offending	21.8	25.1	19.4	15.1	11.6	4.8	2.4
Compensating the victim(s) or the community	3.7	4.7	9.8	12.0	17.1	20.0	32.7

Darker cells indicate highest ranking of item.

The next series of diagrams look at the most important sentencing goal for the offence categories of sex, violence, drugs and property. They show that the pattern of responses was similar for sex and violent offences, with punishment and specific deterrence most often selected as the most important sentencing goal. For drug offences, specific deterrence was the most commonly selected sentencing goal followed by punishment and general deterrence and for property offences, it was punishment followed by denunciation and rehabilitation.

Figure 14: Most important sentencing goal for sex offenders

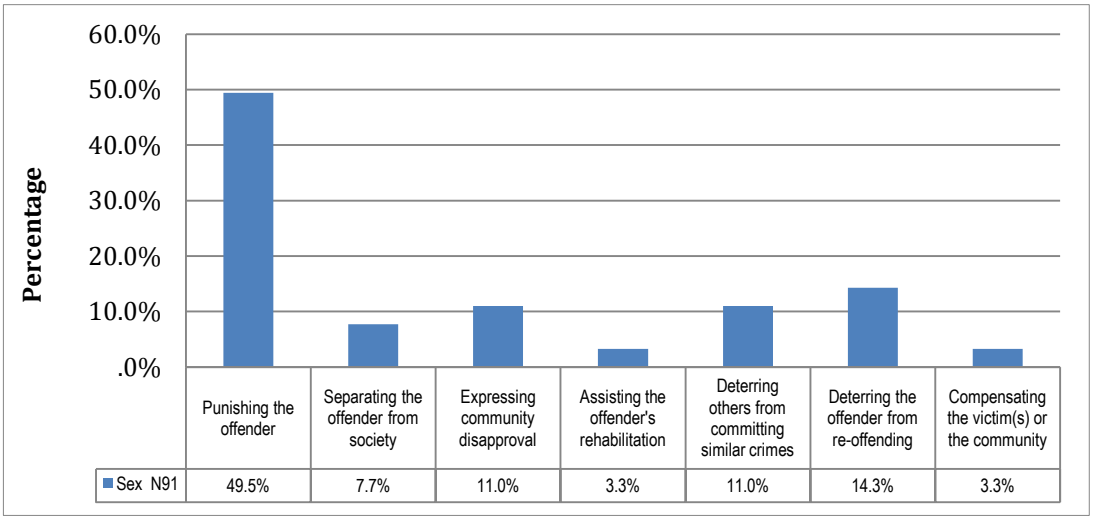


Figure 15: Most important sentencing goal for violent offenders

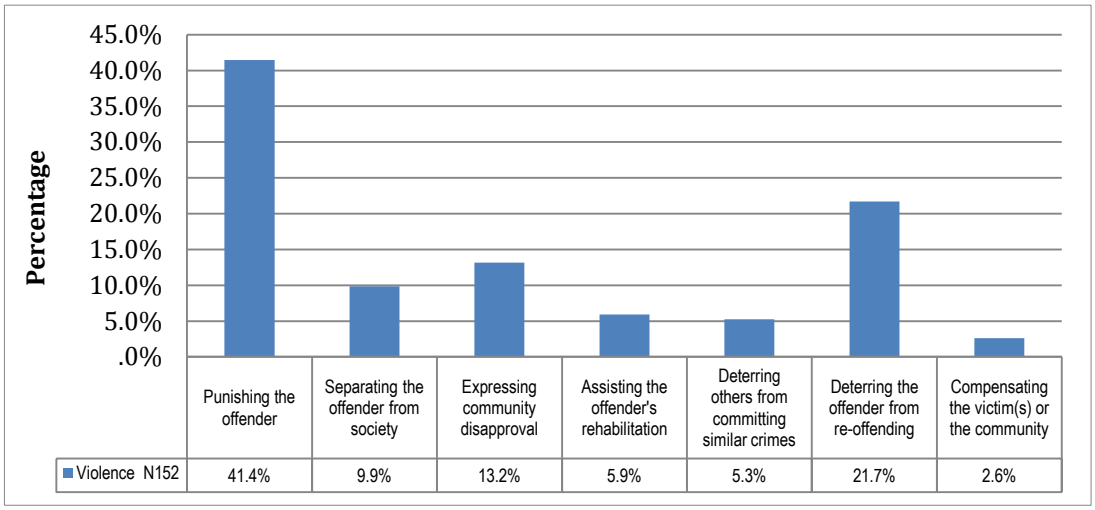


Figure 16: Most important sentencing goal for drug offenders

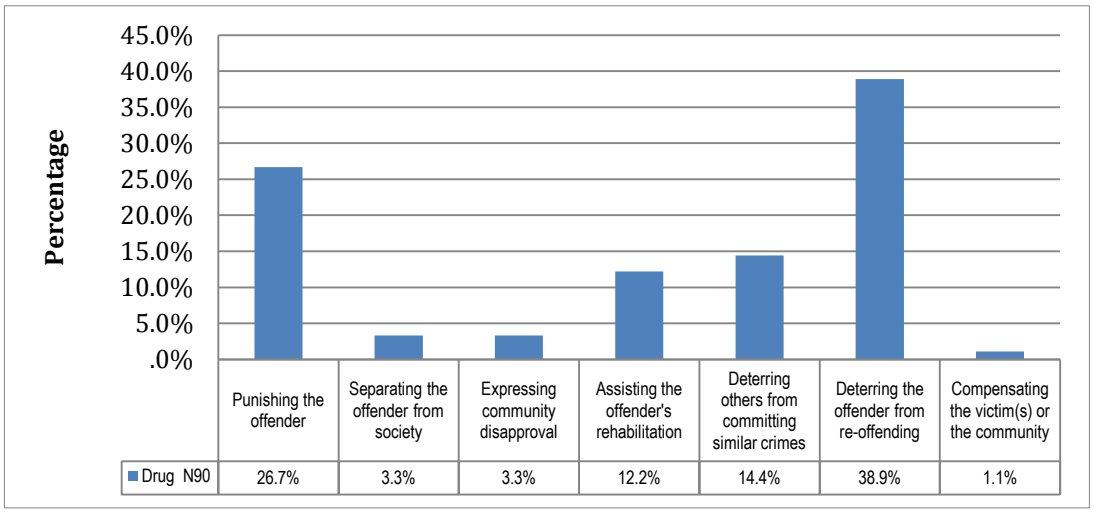
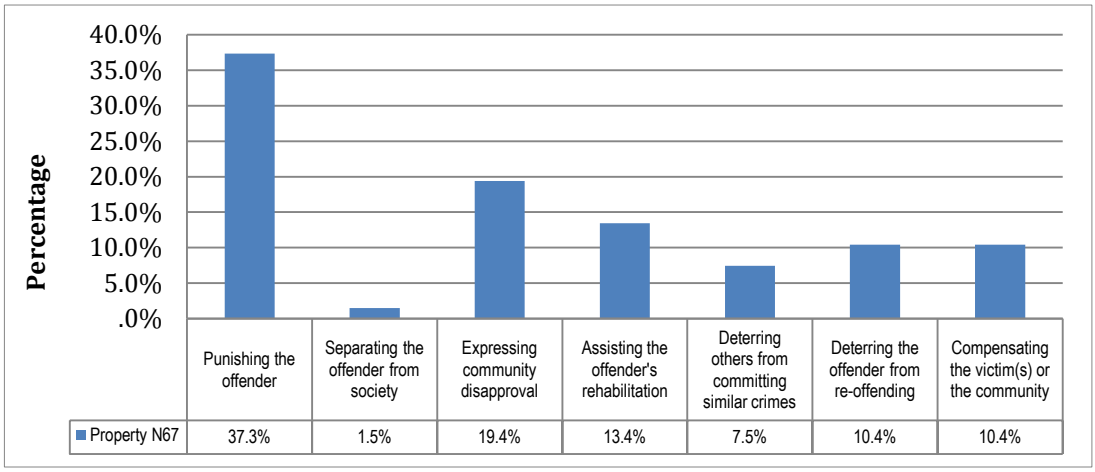


Figure 17: Most important sentencing goal for property offenders



4. Aggravating and Mitigating Factors

In Questionnaire 2 (A7) the most commonly recognised aggravating and mitigating factors were listed and respondents were asked to go though the lists and indicate whether the factor was very important, quite important, not very important, unimportant or did not arise. The table below lists the aggravating factors in order of those most commonly occurring and shows the degree of importance or weight of each factor by indicating the percentage of respondents who rated it as very important, quite important and so on.

Table 27: Aggravating Factors, relative importance, percent

	Juror indicated a factor %	Very Important %	Quite Important %	Not very Important %	Unimportant %
k. The injury, emotional harm, loss or damage caused by the offence was substantial	76.2	46.8	34.5	11.4	7.2
m. The offender had prior offences	65.5	44.2	35.1	11.6	9.1
a. The offence involved the use of actual or threatened violence	50.9	70.0	22.0	4.9	3.1
g. The offender abused a position of trust or authority in relation to the victim	49.8	58.0	25.6	8.2	8.2
l. The offence was part of a planned or organised criminal activity	46.8	44.3	36.9	10.8	7.9
o. Other factors a juror considered aggravated the seriousness of the offence	46.0	45.5	31.5	7.7	15.4
i. The offence(s) involved multiple victims or a series of criminal acts	45.7	39.8	42.8	11.9	5.5
f. The victim was vulnerable because very old, very young, or because of a disability	45.1	46.7	20.8	16.8	15.7
e. The offence was committed without regard for public safety	42.2	34.1	34.1	18.9	13.0
c. The offence involved more than needed violence	40.6	56.8	26.1	11.9	5.1
j. The offence was committed in the company of other offenders	39.3	34.7	38.7	15.0	11.6
b. The offence involved use of a weapon	31.9	76.4	16.4	5.0	2.1
d. The offence was motivated by hatred or prejudice against a member of a group to which the offender believed the victim belonged	20.0	29.5	28.4	22.7	19.3
n. The offender was on parole, subject to a suspended sentence or on bail	18.4	49.4	33.7	9	7.9
h. The victim was a police officer or a person exercising other public or community functions and the offence arose because of the victim's occupation	11.4	40.0	34.0	12.0	14.0

The four most frequently mentioned aggravating factors were that (k) the injury, harm, loss or damage caused by the offence was substantial; (m) the offender had prior convictions; (a) the offence involved actual or threatened violence, and (g) the offender abused a position of trust or authority in relation to the victim. The factors given the greatest weight when they did arise were (b) the offence involved use of a weapon; (a) the offence involved actual or threatened violence; (g) there was abuse of trust or authority; and (c) the offence involved gratuitous use of violence. Analysing these four factors by type of offence showed that injury, harm, loss or damage and breach of trust were most important in cases of sex offences. Prior convictions were most important in cases of violent offences.

Table 28: Mitigating Factors, relative importance, percent

	Juror indicated a factor %	Very Important %	Quite Important %	Not very Important %	Unimportant %
h. The offender has good prospects of rehabilitation either because of age or otherwise	85.4	20.2	48.4	18.3	13
g. The offender is unlikely to reoffend	80.4	24.4	37.2	19.2	19.2
e. The offender was a person of good character	74.7	14.9	33.1	27.5	24.5
d. The offender does not have any record (or any significant record) of prior convictions	65.6	27	34.9	17.3	20.8
a. The injury, loss or damage was not substantial	65.5	15.7	29.5	24.9	29.9
k. The offender provided assistance to law enforcement authorities	59.6	23.3	36.6	19.5	20.5
b. The offence was not part of a planned or organised criminal activity	58.6	18.8	31.8	25.1	24.3
i. The offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner	52.6	28.5	34	22.7	14.8
f. The offender was young (under 21) or old (over 65)	47.8	12.9	25.0	28.4	33.6
j. The offender was not fully aware of the consequences of their actions because of the offender's age, mental disorder or other disability	47	19.2	28.8	19.7	32.3
c. The offender was provoked by the victim	39.4	16.3	30.2	23.3	30.2

The five most frequently mentioned mitigating factors were (h) good prospects of rehabilitation; (g) the offender is unlikely to re-offend; and (d) the offender has no, or no significant prior record and (a) the injury loss or damage was not substantial. The highest rating factors for ‘very important’ were (i) remorse; (d) no criminal record; (g) the unlikelihood of re-offending; and (k) assistance to law enforcement authorities. Good prospects of employment were more likely to be most important for property and drug offences than for violence and sex offences and good character was least important for sex offences.

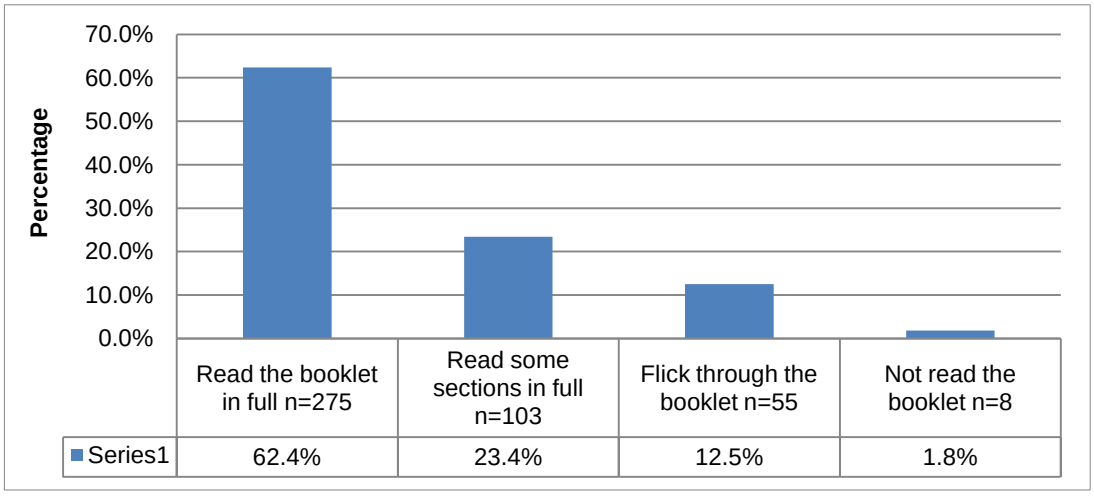
To assist in answering the sixth research question (the extent to which the views of jurors in the sentencing comments coincided or differed from those of the judge) it was hoped to compare the jurors' responses in relation to the importance of aggravating and mitigating factors with the views of the judge as indicated in the Comments on Passing Sentence. However, an analysis of the sentencing comments showed that while it was possible to see which factors the judge had mentioned, it was not easy to determine the weight given to them by the judge. To determine this would require that the judge, as well as the jurors, respond to the same question about aggravating and mitigating factors and this was not done in this study.

5. The Booklet

The booklet 'Crime and Sentencing' was sent out to jurors, who agreed to participate in Stage 2, with Questionnaire 2 and the judge's sentencing comments. A copy of the nine-page booklet is attached in Appendix 2. It has sections on measuring crime, trends in recorded crime levels, the proportion of crime that involves violence and the risk of victimisation. The sentencing section of the booklet includes a discussion of the purposes of sentencing, relevant sentencing factors, the range of sentencing options and some information on current sentencing practice. This sentencing information was supplemented by a data sheet setting out the range of penalties imposed for the particular crime for which the juror's defendant had been found guilty.

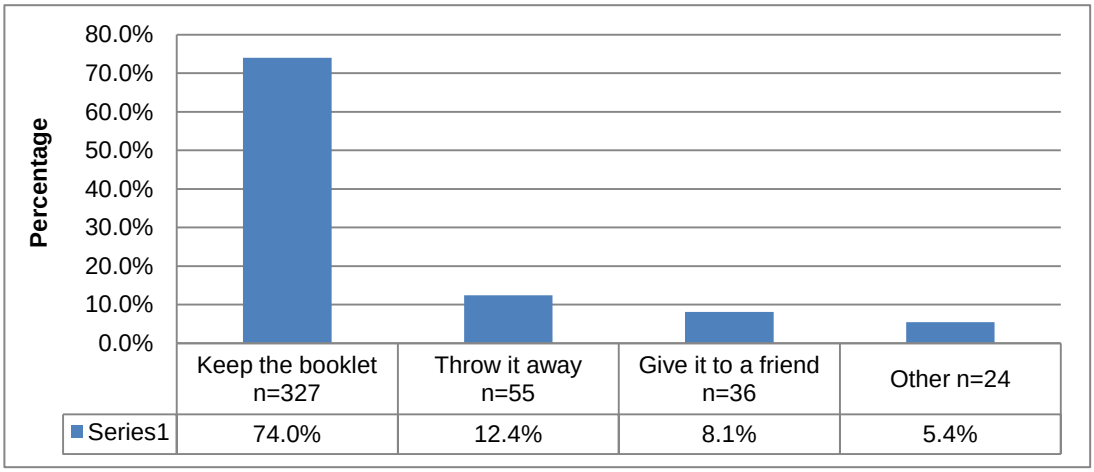
A series of questions addressed the response of participating jurors to the booklet. They were first asked (B1) about how well they had read the booklet. More than 60 percent read it in full and just two percent did not read it.

Figure 18: How well was the booklet read?



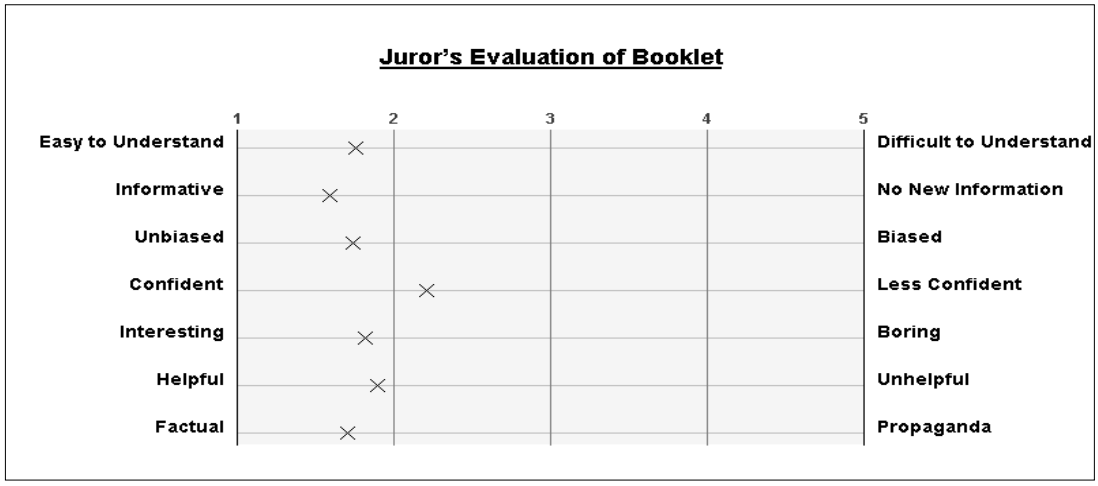
As a measure of how informative and useful the booklet was, participants were asked (B2) what they planned to do with the booklet and as shown in Figure 19, most planned to keep it.

Figure 19: Juror plans for booklet



The booklet was designed to be easy to understand and accessible with an attractive layout, and attempted to provide a factual and unbiased account of the material covered. Participants (in Question B3) were asked to rate the booklet across a number of dimensions from 1 (strongly agree) to 5 (strongly disagree). The mean rating on each of these dimensions is shown in Figure 20. On five of the six scales respondents rated the booklet higher than two. Jurors also indicated that the booklet made them feel more confident in the criminal justice system.

Figure 20: Mean ratings for the booklet on various dimensions



Participating jurors were asked how interested jurors (in general) would be in receiving the booklet after participating in a trial which resulted in a guilty verdict. Most thought jurors would be very/quite interested (97%). To the next question on whether jurors would be interested in knowing how to access the judge's sentencing comments in their case, most thought jurors would be interested. They responded as follows:

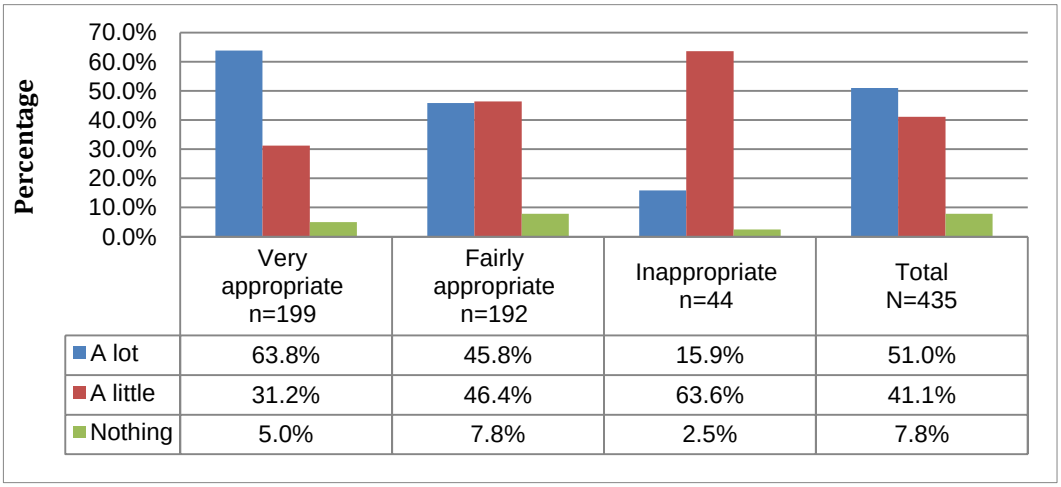
- Very interested - 64%
- Quite interested - 34%
- Not at all interested - 2%

Participants were also asked about the usefulness of the booklet in forming their judgment about the appropriateness of the sentence (B8(a)). Most found it useful:

Very useful - 37%; Fairly useful - 53%; Not very useful - 9%; and Not at all useful - 1%. More than 90 percent of respondents also stated that knowing the reasons the judge gave for sentence affected their view of the appropriate sentence.

Figure 21 cross-tabulates responses on the juror's view of the appropriateness of the judge's sentence with the impact of the sentencing comments. As shown, the more appropriate the respondent thought the sentence was, the more impact the sentencing comments had. Nearly two thirds who said the judge's sentence was very appropriate also reported that the sentencing comments impacted a lot.

Figure 21: Impact of sentencing comments



	Very appropriate n=199	Fairly appropriate n=192	Inappropriate n=44	Total N=435
A lot	63.8%	45.8%	15.9%	51.0%
A little	31.2%	46.4%	63.6%	41.1%
Nothing	5.0%	7.8%	2.5%	7.8%

Participants were also asked to estimate the effect of the information on crime levels and trends on their judgment of the appropriateness of the sentence. The relationship between these two items was less definitive with only 74 jurors (18%) saying it affected their judgement 'a lot'. Most thought it affected their judgement on the sentence 'a little' (50%) or 'not at all' (32%).

6. Jurors' general opinion of current sentencing practice after sentence

In Questionnaire 2, after they had been informed of the sentence and received the booklet, participants were again asked whether, in general, sentences across a range of offence types were too tough or too lenient (using a five-point Likert scale). Comparing the responses to the item in Questionnaire 1 with those to the identical item in Questionnaire 2 reveals a number of interesting results:

- 'Too lenient' responses decreased for all crime categories.
- This applies to 'much too lenient' and 'a little too lenient' responses as well.
- As a result 'about right' responses increased across all crime categories.
- Interestingly, too tough responses increased for drug offences (to 10 percent).
- The most common response across all offence categories remained 'too lenient' except for property offences for which the most common response was 'about right'.
- 'Much too lenient' was no longer the most common response for sex offences.
- At Stage 2, around two thirds considered sentences for sex and violent offences were 'too lenient'.

The following tables illustrate these findings by comparing Questionnaire 1 responses, first with all Questionnaire 1 respondents, and then with Stage 2 respondents only (omitting those who did not go on to Stage 2 of the study).

Table 29: Jurors' views on sentencing Stage 1 and Stage 2 compared

Juror's opinion (all respondents)	Type of Offence							
	Sex		Violent		Drugs		Property	
	Q1	Q2	Q1	Q2	Q1	Q2	Q1	Q2
Much too lenient	41	33	23	18	21	20	15	12
A little too lenient	39	37	53	48	35	29	39	34
About right	18	29	23	33	36	41	42	50
A little too tough	1	1	1	1	6	8	4	3
Much too tough	1	0	0	0	2	2	0	0

Q1: Violent N=681, Property N=674, Drugs N=677, Sex N=674.
Q2: Violent N=434, Property N=432, Drugs N=431, Sex N=429.

Table 30: Jurors' views as to sentencing in general, Stage 1 and Stage 2 compared (Stage 2 respondents only)

Juror's opinion – Respondents who completed Q1 and Q2	Type of Offence							
	Sex		Violent		Drugs		Property	
	Q1	Q2	Q1	Q2	Q1	Q2	Q1	Q2
Much too lenient	40	33	23	18	21	20	15	12
A little too lenient	38	37	50	48	33	29	39	34
About right	20	29	26	33	37	41	42	50
A little too tough	1	1	1	1	7	8	3	3
Much too tough	1	0	0	0	2	2	0	0[a]

[a] Due to rounding percentages do not equal 100%.

Comparing the results for Stage 1 respondents (excluding those who completed Questionnaire 1 only) with the responses for all Stage 1 respondents showed a very similar pattern. However, Stage 2 respondents as a group were a little less likely in Stage 1 to say sex, violent and drug offences were too lenient, more likely to say they were about right and more likely to say drug offences and property offences were too tough. This raises a question about those respondents who only completed Questionnaire 1. The following table shows the responses for those respondents only and compares them with Stage 2 respondents.

Table 31: Jurors' views as to sentencing in general, Questionnaire 1 responses compared for Stage 1 only and Stage 2 respondents

Questionnaire 1 – responses of those who only completed Questionnaire 1 and those who completed Questionnaire 1 & 2	Type of Offence							
	Sex		Violent		Drugs		Property	
	Q1 only	Q1 & Q2	Q1 only	Q1& Q2	Q1 only	Q1 & Q2	Q1 only	Q1 & Q2
Too lenient	84	78	81	73	61	54	54	54
About right	15	20	18	26	32	37	41	42
Too tough	1	2	1	1	7	9	5	4

These results suggest that Stage 2 respondents were less punitive at Stage 1 than those who completed Stage 1 only. For all offence types other than property offences the Stage 1 only participants were more likely to say sentences for sex, violence and drug offences were too lenient and less likely to say they were about right.

The important point from the analysis of changes in jurors' opinions of sentencing levels is that in Stage 2, after learning of the sentence imposed and receiving the Crime and Sentencing booklet, respondents were less likely to say sentences were too lenient. However, in Stage 2, 70 percent and 66 percent of respondents still considered that sentences for sex and violent offences were too lenient. This is so even though 50 percent of respondents in violent offence cases said the sentence was very appropriate and 51 percent had suggested a more lenient sentence than the judge. For property offences 46 percent said sentences were too lenient but only 30 percent had suggested a more severe sentence than the judge. Interestingly, there was no such clear dichotomy in the case of drug offences with 49 percent saying sentences were too lenient and just 46 percent preferring a more severe sentence at Stage 2.

Do jurors' opinions differ depending on the crime type of their trial?

The obvious question is whether juror's opinions differ depending on the crime type of the trial that they themselves participated in. Table 32 shows some interesting results. The fact that jurors were on a sex offence trial did not appear to have any impact on their general view about sex offender sentencing. They were just as likely as other jurors to say sentences for sex offences were too lenient. Similarly, for drug offences, the responses of the drug trial jurors to sentencing patterns for drug offences were almost identical to the pattern of responses for all jurors. However, jurors on violent offence trials were more likely to say sentences for violent offences were about right and less likely to say they were too lenient than other jurors. And property offence jurors were more likely to say that sentences for property offences were about right and less likely to say they were too lenient than other juror respondents.

Table 32: General perceptions of sentencing leniency by respondent's trial type

Juror trial type (Q2 respondents only)	Too tough %	About right %	Too lenient %	Total %
Sex offence N = 428				
Jurors on sexual offence trial n = 89	1	29	70	100
Other jurors	1	29	70	100
Total	1	29	70	429
Violent offence (not sexual) N = 434				
Jurors on violence trial n = 151	1	37	62	100
Other jurors	1	31	68	100
Total	1	33	66	100
Drug offence N = 431				
Jurors on drug trial n = 90	11	41	48	100
Other jurors	10	41	49	100
Total	10	41	49	100
Property offence N = 432				
Jurors on property trial n = 67	3	61	36	100
Other jurors	4	49	47	100
Total	4	50	46	100

Why does opinion in relation to sentencing leniency in general change? Knowing the sentence (in many cases it was more severe than the juror's sentencing choice) and knowledge of sentencing patterns from the booklet may be important in changing general views. One could hypothesise that this would have a greater impact in relation to the type of crime that the juror tried.

This association holds for violent and property offences. Violent and property offence jurors were more likely to say sentences in general were about right and less likely to say they were too lenient than other jurors. The opinions of property offence jurors as to the sentence choice and their general attitudes to sentencing leniency for property offences also appear to be quite consistent with 31 percent suggesting a more severe sentence at Stage 1 (see Figure 9) and 36 percent stating sentences for property offences were too lenient. This is not the case, however, for violent offence jurors with 49 percent suggesting a more severe sentence but 62 percent of jurors saying sentences were too lenient. In the case of sex and drugs, while opinions became more lenient overall, the fact that jurors had experienced a trial and sentencing for a sex offence or a drug offence did not seem to affect their general attitudes to sex or drug offences more than other jurors. For sex offences, even though only 45 percent suggested a more severe sentence than the judge (see Figure 9), 70 percent of sex offence jurors said sentences or sex offences were too lenient (the same proportion of other jurors who had this view). So, in summary, the type of crime tried by the juror themselves only seemed to have an impact on attitude change for violent and property offences.

Changing Levels of Punitiveness?

The next question is whether those who selected a more lenient sentence at Stage 1 were less likely to have said sentences were too lenient at Stage 2 than those who selected a more severe sentence. To measure this, a second general punitiveness index was created from juror responses as to whether sentences were too tough, about right or too lenient across the four offence categories (the Stage 2 general punitiveness index). This variable showed that those who had selected a more severe sentence than the judge at Stage 1 had statistically higher mean scores on the Stage 2 general punitiveness index than those who had chosen a less severe sentence than the judge ($p=.01$). So while those who selected a more lenient sentence than the judge in Stage 1 are less likely to have said sentences are too lenient at Stage 2 than those who selected a more severe sentence, as the discussion of Table 32 suggests, there are clearly some sex and violence offence jurors, in particular, who selected a more lenient sentence than the judge but who have persisted with the view that sentences, in general, are too lenient. We have also seen that, except for property offences, the offence type of trial has only a marginal impact on the general question about sentencing severity.

7. Changes in jurors' knowledge of crime and sentencing trends

The questions about crime trends and sentencing patterns were repeated in Questionnaire 2 after jurors had received the booklet, which contained information on each of the questions asked within the surveys. As shown in the Table below, while the number of accurate responses increased to 50 percent (combining decreased a little and a lot), a significant proportion of jurors (38%) still thought that recorded crime had increased, with 11 percent saying that it had increased a lot. So even though

62 percent of respondents stated that they read the booklet in full, only 50 percent used that information to develop a more accurate response to the trends in crime questions.

Table 33: Changes in jurors' perceptions of overall recorded crime trends

	Increased a lot	Increased a little	Stayed same	Decreased a little	Decreased a lot	Don't know
Q1 N=442	26	37	15	6	1	15
Q2 N=438	11	27	10	31	19	2

However, our data do indicate that greater access to information can make a difference to juror attitudes. As shown in Table 34, those who read the booklet in full were statistically significantly more likely to answer the question in relation to crime trends accurately compared with those who read some sections in full or those who said they flicked through it (p=.000).

Table 34: Reading the booklet and assessment of overall crime trends

		In relation to the booklet did the juror…?				
		Read the booklet in full %	Read some sections in full %	Flick through the booklet %	Not read the booklet %	Total %
Assessment of general crime trends	accurate	56.8	44.0	23.6	50.0	49.5
	inaccurate	43.2	56.0	76.4	50.0	50.5
	n =	271	100	55	8	434

Chi Square Test statistically significant p=.000

Jurors' levels of knowledge improved across all offence categories between Questionnaire 1 and Questionnaire 2. However, as indicated in Table 35, below, a significant proportion still believed that crime for burglary, robbery, rape and motor vehicle theft is rising. For example, 30 percent of respondents responded that motor vehicle theft was becoming more common even though the booklet explained quite clearly that the general trend was downwards.

Table 35: Changes in jurors' perceptions of crime trends for selected offences

Juror's opinion – Respondents who completed Q1 and Q2	Type of Offence									
	Burglary		Robbery		Rape		MV Theft		Murder	
	Q1 N439	Q2 N437	Q1 N439	Q2 N434	Q1 N436	Q2 N434	Q1 N441	Q2 N435	Q1 N438	Q1 N434
More Common %	58.8	20.8	56.0	23.7	15.8	17.3	57.6	29.9	15.8	6.9
Stayed about the same %	27.3	23.8	32.1	39.9	47.9	54.1	26.8	20.5	47.7	66.6
Less common %	5.9	52.6	4.3	33.9	17	18.2	6.6	47.4	21.2	18.7
Don't know %	8.0	2.7	7.5	2.5	19.3	10.4	9.1	2.3	15.3	7.8

As shown in Table 36, this pattern was also evident in jurors' beliefs about the level of crime that involved violence. Knowledge improved, however, a significant proportion of the sample were still inaccurate in their estimation of violent crime despite the booklet details.

Table 36: Changes in perception of proportion of crime that involves violence

Questionnaire	1/4 or less	Between 1/4 and 1/2	Between 1/2 and 3/4	More than 3/4	Don't know
Q1 N=443	19.6	32.5	28.4	12.0	7.4
Q2 N=434	62.7	17.7	8.8	4.1	6.7

The obvious question from these data is whether the continuation of distorted views of crime is related to the level of attention given to the information booklet by the juror. Table 37 correlates these responses with the responses in relation to how well the booklet was read. As can be seen, those who read the booklet in full were much more likely to answer the question in relation to the proportion of crime that involves violence more accurately compared with those who only read some sections in full (p=.000). Persistent misconceptions about crime may therefore be explained in least in part by lack of reliable information.

Table 37: Reading the booklet and correct assessment of the proportion of crime that involves violence

		In relation to the booklet did the juror…?				
		Read the booklet in full %	Read some sections in full %	Flick through the booklet %	Not read the booklet %	Total %
Assessment of proportion of crime that involved violence	accurate	72.7	53.5	32.1	37.5	62.6
	inaccurate	27.3	46.5	67.9	62.5	37.4
	n =	(271)	(99)	(53)	(8)	(431)

Chi Square Test statistically significant p=.000

The pattern displayed in previous data in this section continued on the items relating to perceptions of crime rates and sentencing. As shown in the table below, while the proportion of respondents with an accurate answer about imprisonment rates for rape increased to 65 percent and a greater improvement was seen in relation to the burglary imprisonment rate perceptions, almost half of the participants in Stage 2 still underestimated the imprisonment rate for burglary.

Table 38: Changes in perception of imprisonment rates

Crime	Questionnaire	Perception of imprisonment rate			
		0-25%	26- 50%	51-75%	75% +
Burglary	Q 1 N=436	37.6	41.1	18.1[a]	3.2
	Q 2 N=417	23.7	25.4	43.9[a]	7.0
Rape	Q 1 N=432	9.7	27.8	30.6	31.2[a]
	Q 2 N=418	8.6	12.9	13.4	65.1[a]

[a]Indicates accurate response.

Further analysis of these data showed that there was an inter-correlation between the answers to the questions on imprisonment rates. Those who answered the burglary imprisonment rate accurately were more likely to answer the rape imprisonment question accurately and vice versa. For example, nearly 90 percent who answered the burglary imprisonment rate accurately answered the rape rate accurately compared with 65 percent overall who were accurate.

Table 39: Use of the booklet and knowledge of burglary imprisonment rate

		In relation to the booklet did the juror…?				
		Read the booklet in full %	Read some sections in full %	Flick through the booklet %	Not read the booklet %	Total %
Assessment of burglary imprisonment rate	accurate	50.4	41.7	22.4	0.0	44.3
	inaccurate	49.6	58.3	77.6	100.0	55.7
	n =	(262)	(96)	(49)	(6)	(413)
Assessment of rape imprisonment rate	accurate	73.0	55.2	44.9	33.3	65.0
	inaccurate	27.0	44.8	55.1	66.7	35.0
	n =	(263)	(96)	(49)	(6)	(414)

Chi Square Test indicates that differences between different attention paid to the booklet are statistically significant p=.000.

Figure 18 (above) showed that almost two thirds read the booklet in full, almost a quarter read some sections in full and nine percent flicked through it. Table 38 shows that in Stage 2, 44 percent of respondents accurately answered the question about burglary imprisonment rates. Table 34 shows a correlation between those who read the booklet and knowledge of crime trends. As expected, Table 39 shows a similar correlation between use of the booklet and knowledge of imprisonment rates.

There were no significant differences in gender, age, income or marital status between those who answered the imprisonment rate questions accurately and those who did not. However, as Table 40 shows there were significant differences between education levels of those who answered the questions correctly – 77 percent of those with a bachelor degree or above answered the rape question correctly compared with 47 percent of those educated to Year 10 or lower.

Table 40: Knowledge of imprisonment rates and education level of respondent

		Highest level of education completed						
		Year 10 or below %	Year 11 %	Year 12 %	Trade or Apprentice ship %	Certificate or Diploma %	Bachelor's degree or above %	Total %
Knowledge of imprisonment rate for burglary	accurate	33.3	23.1	44.4	33.3	48.1	52.8	43.8 (182)
	inaccurate	66.7	76.9	55.6	66.7	51.9	47.2	56.3 (234)
	n =	(78)	(13)	(45)	(51)	(104)	(125)	(416)
Knowledge of imprisonment rate for rape	accurate	47.4	53.8	57.8	69.2	66.3	76.8	65.0 (271)
	inaccurate	52.6	46.2	42.2	30.8	33.7	23.2	35.0 (146)
	n =	(78)	(13)	(45)	(52)	(104)	(125)	(417)

8. Changes in jurors' perceptions of the risk of victimisation and safety

Questionnaire 2 also repeated the question on juror's estimation of their own risk of victimisation for burglary, motor vehicle stealing, assault and robbery. Table 41 shows that after receiving the booklet, estimations of the risk of victimisation over the next 12 months were more accurate but still only about half of the participants managed to correctly estimate the risks for burglary (having your home, garage or shed broken into) and motor vehicle theft.

Table 41: Estimation of the risk of victimisation for various offences, percent.

Crime	Questionnaire	Estimation of risk				
		Less than 6%	6-10%	11-30%	31-50%	50% plus
Burglary	Q1 N = 440	33.2	32.0	17.0	12.5	5.2
	Q2 N = 440	49.5	25.5	11.1	10.5	3.4
MV theft	Q1 N = 442	39.4	28.1	18.1	10.4	4.1
	Q2 N = 439	55.8	22.3	13.0	6.2	2.7
Assault	Q1 N = 438	57.3	26.5	10.7	3.9	1.6
	Q2 N = 440	67.0	17.3	10.7	3.6	1.4
Robbery	Q1 N = 439	43.3	33.0	15.5	7.3	.9
	Q2 N = 440	62.0	19.3	12.3	4.3	2.0

The perceptions of safety question from Questionnaire 1 was also repeated in Questionnaire 2. As shown in Table 42 below, there was some, but limited change in juror's perception of their own safety, from less safe to more safe, after receiving the booklet.

Table 42: Perceptions of safety

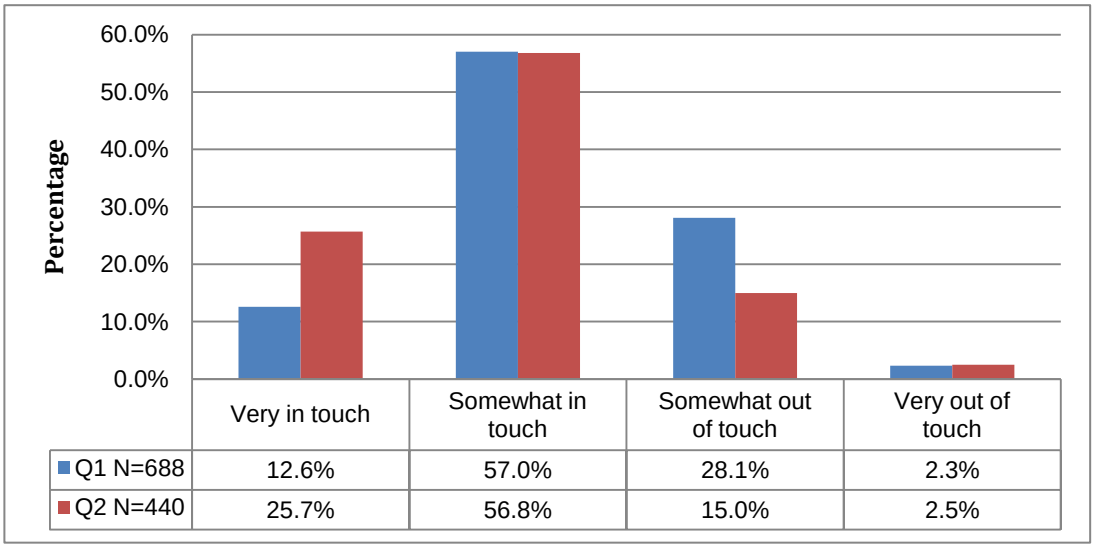
How safe when:	Questionnaire	Very safe %	Fairly safe %	A bit unsafe %	Very unsafe %
Walking alone after dark	Q1	20.9	45.3	28.6	5.2
	Q2	26.4	48.0	20.5	5.2
At home alone at night	Q1	48.6	44.6	6.1	.7
	Q2	52.7	41.2	4.5	1.6

N = 444

9. Jurors' opinions of judges after sentence (Stage 2)

In Questionnaire 2, participating jurors were again asked whether judges were in touch about public opinion on sentencing. Figure 22 shows that in Stage 2 the proportion of those who responded that judges were very in touch doubled from 13 percent to 26 percent, the proportion of those who responded somewhat in touch was the same and the 'somewhat out of touch' responses decreased. The data was run using Questionnaire 2 respondents only. The pattern of responses was very similar between all Questionnaire 1 respondents and the Stage 2 participants' answers to Questionnaire 1. In other words, the differences between Questionnaire 1 and Questionnaire 2 responses were not due to the fact that the two groups were differently constituted. It can be concluded, therefore, that the change in jurors' perceptions of judge's level of being in touch with public opinion is associated with knowledge of the sentence and the information received.

Figure 22: How in touch are judges, changes in response (all respondents)



Not surprisingly, as Table 43 shows, those who said judges were very in touch were more likely to say the sentence was very appropriate than fairly appropriate or fairly inappropriate. Those who said that judges were somewhat in touch or somewhat out of touch were more likely to say the sentence was fairly appropriate than very appropriate or fairly inappropriate.

Table 43: The Relationship between perceptions of judicial remoteness and the appropriateness of the sentence.

How in touch are the Judges?	How appropriate was the sentence?				
	Very appropriate %	Fairly appropriate %	Fairly inappropriate %	Very inappropriate %	Total %
Very in touch	59.8	38.4	.9	.9	100 (112)
Somewhat in touch	42.7	49.6	7.3	.4	100 (248)
Somewhat out	30.3	39.4	24.2	6.1	100 (66)
Very out of touch	36.4	18.2	36.4	9.1	100 (11)
Total	45.1	44.4	8.9	1.6	100 (437)

The next question is how do views of judicial remoteness relate to general views as to sentence and to sentence choice? Table 29 showed that in Stage 2, two thirds or more of respondents thought sentences for sex and violent offences were too lenient and for drug and property offences a little less than half were of this view. Table 44 shows that for sex, violent, drug and property offences the more in touch the judge was said to be, the less likely sentences were said to be too lenient and the more likely they were said to be about right. For all but sex offences, respondents with the view that judges were very in touch were more likely to say the sentence was about right than too lenient. However, for sex offences, even those who said judges were very in touch were more likely to say that sex offence sentences were too lenient than about right. This relationship between whether or not judges are perceived to be in touch seems to be a measure of punitiveness. Similarly, there appears to be a relationship between whether or not judges are perceived to be in touch and punitiveness as measured by sentence choice in Stage 1 (Stage 1 comparative sentence variable).

Table 44: Relationship between perceptions of judicial remoteness and general attitudes to sentences (Stage 2)

Q2: Are current sentences too tough/lenient? Sex offence			
How in touch are Judges:	Too lenient %	About right %	Too tough %
Very in touch n = 111	58.6	39.6	0.8
Somewhat in touch n = 241	70.5	28.2	1.2
Somewhat out of touch n = 66	81.8	18.2	0.0
Very out of touch n = 10	100.0	0.0	0.0
Total N = 428	69.9	29.0	1.2
Q2: Are current sentences too tough/lenient? Violent offence (not sexual)			
How in touch are Judges:	Too lenient %	About right %	Too tough %
Very in touch n = 112	48.2	50.9	0.9
Somewhat in touch n = 243	67.1	31.7	1.2
Somewhat out of touch n = 66	86.4	13.6	0.0
Very out of touch n = 11	100.0	0.0	0.0
Total N = 432	66.0	33.1	0.9
Q2: Are current sentences too tough/lenient? Drug offence			
How in touch are Judges:	Too lenient %	About right %	Too tough %
Very in touch n = 113	32.7	54.9	12.4
Somewhat in touch n = 240	48.8	41.7	9.6
Somewhat out of touch n = 66	71.2	19.7	9.1
Very out of touch n = 11	90.9	9.1	0.0
Total N = 430	49.1	40.9	10.0
Q2: Are current sentences too tough/lenient? Property offence			
How in touch are judges?	Too lenient %	About right %	Too tough %
Very in touch n = 112	31.3	63.4	5.4
Somewhat in touch n = 242	44.6	51.7	3.7
Somewhat out of touch n = 66	69.7	27.3	3.0
Very out of touch n = 10	80.0	20.0	0.0
Total N = 430	45.8	50.2	4.0

The next table suggests that the more in touch judges were perceived to be the more likely it was that respondents had chosen a less severe sentence than the judge. For example, 57 percent of those who said judges were very in touch also selected a more lenient sentence than the judge in Stage 1 compared with 35 percent who said judges were somewhat out of touch. However, the results were not significant.

Table 45: The Relationship between perceptions of judicial remoteness and sentence choice at Stage 1

How in touch are Judges?	Stage 1 comparative sentence severity			
	Less severe %	Same %	More severe %	Total %
Very in touch	56.6	4.7	38.7	100 (106)
Somewhat in touch	52.2	3.9	43.9	100 (228)
Somewhat out of touch	34.9	6.3	58.7	100 (63)
Very out of touch	55.6	.0	44.4	100 (9)
Total	50.7	4.4	44.8	100 (406)

Table 46 shows the relationship between whether judges are perceived to be in or out of touch and sentence preference at Stage 2 (the Stage 2 comparative sentence variable). It shows the more in touch judges were perceived to be, the less punitive was the respondent (p=.015). For example, of those who said judges were somewhat out of touch, 54.5 percent preferred a more severe sentence, whereas of those who said judges were very in touch, only 24.8 percent preferred a more severe sentence.

Table 46: Relationship between perceptions of judicial remoteness and sentence preference at Stage 2

How in touch are judges?	Stage 2 comparative sentence severity			
	Less severe %	Same %	More severe %	Total %
Very in touch	12.4	62.8	24.8	100 (113)
Somewhat in touch	8.9	53.6	37.5	100 (248)
Somewhat out of touch	4.5	40.9	54.5	100 (66)
Very out of touch	9.1	36.4	54.5	100 (11)
Total	9.1	53.7	37.2	100 (438)

Chi Square Test statistically significant p=.015

10. Attitudes to public opinion, punishment and law breaking

Questionnaire 2 asked jurors (C10) how much they agreed with each of four statements. This question is duplicated from an item used in the AuSSA 2003 and AuSSA 2007, although the statement, 'People who break the law should be given stiffer sentences' was excluded because that question, in a different form, had already been asked in the question about whether sentences were too tough or too lenient (question C1). Indermaur and Roberts (2005: 152-153) found that majority of AuSSA 2003 respondents (63%) agreed that judges should reflect public opinion about crimes when sentencing criminals. In 2007, this dropped slightly to 58.4 percent (Roberts and Indermaur 2009: 20).

Our data, outlined in Table 56, show a similar response although our juror respondents were less likely to strongly agree than AuSSA 2003 respondents (20% compared with 31%). Interestingly, in AuSSA 2007, those who had contact with a criminal court in the past 12 months were significantly less likely to agree that judges should reflect the views of the public when sentencing (53.6% versus 70.8%) (Roberts and Indermaur 2009: 20).

In AuSSA 2003, almost half agreed the death penalty should be the punishment for murder and in AuSSA 2007 the response was about 4 out of 10 in contrast with just

25 percent in this study. Roberts and Indermaur (2009: 18) report that in AuSSA 2003 and 2007, seven out of 10 believed that those who break the law should be given stiffer sentences – a similar response to our Questionnaire 1 jurors' response to the too tough or too lenient question in relation to sex and violent offences (see Table 19). In 2003, those who agreed that judges should reflect public opinion were about twice as likely to agree with stiffer sentences and that the death penalty should be the punishment for murder (Indermaur and Roberts 2005: 153).

Table 47: Attitudes to public opinion, punishment and law breaking (percent)

	Strongly agree %	Agree %	Neither agree nor disagree %	Disagree %	Strongly disagree %
Judges should reflect public opinion when sentencing (N = 437)	20	45	18	14	3
Death should be the punishment for murder (N = 440)	10	15	24	23	28
The law should always be obeyed even if it is wrong (N = 441)	6	33	31	25	5
Breaking the law to protect a family member or friend is sometimes justified (N = 439)	9	38	29	20	5

The next Table shows that those who agree that judges should reflect public opinion in sentencing were three times more likely to agree with the death penalty than those who disagreed.

Table 48: Agreement with death penalty for murder by agreement that judges should reflect public opinion in sentencing, percent

		Should death penalty be punishment for murder		
		Yes %	Neither agree or disagree %	No %
Should judges reflect public opinion	Judges should reflect public opinion (N = 284)	30	27	43
	Neither agree or disagree (N = 79)	20	28	52
	Judges should not reflect public opinion (N = 72)	10	8	82

Were our respondents who agreed that judges should reflect public opinion more punitive on other measures? We have derived measures of punitiveness from comparing the juror's sentence preference with the judge's sentence and from jurors' general views as to the severity of sentencing. Table 49 looks at the Stage 1 comparative sentence variable (the comparison between the judge and juror's sentence).

Table 49: Agreement that judges should reflect public opinion in sentencing by choice of more or less severe sentence at Stage 1

Judges should reflect public opinion	Stage 1 comparative sentence severity		
	More severe %	Same %	Less severe %
Agree n= 291	47	4	49
Neutral n= 77	48	6	45
Disagree n=79	66	2	32
Total N = 447	51	4	45

In Stage 1, 51 percent of Stage 2 jurors were more lenient than the judge and 45 percent were more severe (see Figure 9). While those who agreed that judges should reflect public opinion were quite evenly split between those who selected a more severe and a less severe sentence, those who disagreed that judges should reflect public opinion were half as likely to have chosen a more severe sentence than the judge. While these results are not statistically significant (p=.099) there is a trend suggesting that, on this measure, those who favour the judge taking public opinion into account are more punitive than the judges.

The next table uses the Stage 2 comparative sentence severity variable. At Stage 2, of those who answered the question about judges' responsiveness to public opinion, only nine percent wanted a more lenient sentence, 53 percent agreed with the judge's sentence and 38 percent wanted a more severe sentence. Table 50 shows that respondents who agreed judges should reflect public opinion in sentencing were more likely than those who disagreed with the statement to have preferred a more severe sentence than the judge.

Table 50: Agreement that judges should reflect public opinion in sentencing by sentence preference at Stage 2.

Judges should reflect public opinion in sentencing	Stage 1 comparative sentence severity		
	Less severe %	Same %	More severe %
Agree n = 283	9.2	50.5	40.3
Neither agree nor disagree n = 80	6.3	57.5	36.3
Disagree n = 72	12.5	58.3	29.2
Total N = 435	9.2	53.1	37.7

Using the Stage 2 general punitiveness index, the mean punitiveness scores of respondents were compared by how strongly they agreed or disagreed with the statement that judges should reflect public opinion in sentencing. The results indicate that there was a positive linear association between the respondents' punitiveness score and their level of agreement with the statement. The mean score of those who strongly agreed with the statement (n = 85) was 16.2 (in a range of 7-20) compared with a mean score of 12.9 (n = 12) for those who strongly disagreed with the statement. The difference in mean punitiveness score by the public opinion item was statistically significant (p = .000). In summary, those agreeing that judges should reflect public opinion were more punitive on each of our three measures of punitiveness, namely, Stage 1 comparative sentence severity, Stage 2 comparative sentence severity and the Stage 2 general punitiveness index.

The statement, 'Judges should reflect public opinion about crimes when sentencing criminals' is also related to the idea of whether judges are in touch.

Table 51: Agreement that judges should reflect public opinion in sentencing by how in touch judges are with public opinion, percent

Judges should reflect public opinion	Are judges in or out of touch with public opinion on sentencing		
	Very in touch %	Somewhat in touch %	Out of touch %
Agree n = 283	21	58	21
Neutral n = 79	32	56	13
Disagree n = 71	41	49	10
Total N 433	26	56	18

Chi Square Test statistically significant p=.000

Whether respondents agreed, were neutral or disagreed that judges should reflect public opinion, they most commonly responded that judges were somewhat in touch. However, those who agreed that judges should reflect public opinion were more likely than those who were neutral or disagree to say judges were out of touch and those who disagreed were more likely than those who agree or were neutral to say judges were very in touch. This finding was statistically significant (p=.000).

11. Did jurors discuss the sentence or study with family or friends?

The final question asked jurors participating in Stage 2, if they had discussed the sentence, the information on crime trends or sentencing patterns with family or friends. This was to assess if jurors could operate as conduits of public opinion about sentencing in a way that might help improve knowledge of crime and sentencing among the general public. The results show that:

- 68% discussed the sentence
- 33% discussed the information on crime trends
- 28% discussed the information on sentencing trends

The finding that 68 percent discussed the sentence is an important one in the light of the fact that 90 percent of Stage 2 respondents thought the sentence was appropriate. The following table shows that those who would have preferred a more lenient sentence and those who agreed with the judge's sentence were a little more likely to have discussed the sentence with family and friends than those who would have preferred a more severe sentence, although the result was not statistically significant. However, it is interesting that it is not just those who feel a sentence was too lenient who are likely to discuss the sentence with others.

Table 52: Whether discussed the sentence by sentence preference at Stage 2

		Have your discussed with family and friends: The sentence		
		No %	Yes %	Total %
Stage 2 comparative sentence severity	Less severe	22.5	77.5	100 (40)
	Same	31.5	68.5	100 (235)
	More severe	35.5	64.5	100 (166)
	Total	32.2	67.8	100 (441)

PART 4

DISCUSSION

A. MAJOR FINDINGS

In this Part of the report the major findings are discussed, the research questions posed at the outset of the project are addressed and policy implications are explored.

1. Jurors are willing to be used as a source of public opinion

The response rate of 35 percent of jurors for Questionnaire 1 suggests that at least a third of jurors are willing to participate in a sentencing survey designed to elicit public opinion about sentencing. This result is broadly similar to the Western Australian Jury Intimidation Project, which asked jurors to fill out a 24 page survey form and which attracted a response rate of 33 percent (Fordham 2009). Once jurors had agreed to participate in Stage 1, the take up rate for Stage 2 was quite strong with 64 percent of Stage 1 respondents completing Stage 2. Moreover, almost half of the Stage 2 respondents were willing to be interviewed (see Table 24). The key to a good response rate is capturing jurors at Stage 1.

The degree of interest a particular case aroused, rather than offence seriousness, appeared to be the critical factor in a achieving a good response rate. For example, a high response rate (ten jurors) was achieved in an early assault trial where the outcome was conditional release without a conviction. And in another assault case, which attracted a wholly suspended sentence of three months, 11 jurors participated.

In the same way that offence seriousness did not appear important as a determinant of response rate, neither did the type of crime (sex, violence, drugs, property or other), the length of trial, the time taken to deliberate nor the adjournment of sentencing submissions. However, both the presiding judge and the place of trial had an effect. Discounting the response rate of 92 percent for one judge who presided over only one trial, response rates varied between judges from 44 percent down to 27 percent. Quite why the judge was a relevant factor is not clear. It may be that the judge's perceived interest in and endorsement of the project was important. This is supported by the fact that eleven jurors responded in the only trial presided over by Judge 1, who was the judge who initially approved the project, but who subsequently retired from the Court. Place of trial was a relevant factor attributed, at least in part, to different standards of jury facilities and perhaps to differences in support and commitment of court staff. The lower response rate in Burnie, 14 percent compared with 46 percent in Hobart, suggests that it may be difficult to obtain a high response rate in small cities or centres. Jurors in such places may feel less anonymous, and may not want to be associated with the sentencing process by responding to a request to stay to listen to the sentencing proceedings. The higher response rates that have been achieved in some other jury studies and the relatively strong response rate in Hobart in this study suggest that there is potential to improve the response rate. A shorter time frame, which would be possible in jurisdictions with more trials per month, would also assist in improving participation.

2. Jurors are reasonably representative of the general population

Juror respondents were found to be reasonably representative of the Tasmanian population in gender and age with a slight over-representation of respondents in the 45-64 age group and an under-representation of those of 65 and over. As anticipated, Australian born respondents were over-represented because of the requirements of enrolment on the jury panel. Juror respondents were less likely to be unemployed than the general population and more likely to be better educated and have a higher income than the general population. However, in terms of current occupation, they were closely representative of the jury-aged population.

3. Informed public opinion is not as punitive as the populist view of public opinion suggests

The finding that jurors were slightly more likely to be more lenient than the judge rather than more severe in their sentence choice at Stage 1 (52 percent were more lenient and 44 percent were more severe) contrasts strikingly with the findings in representative surveys which indicate that about 70 percent of the public think that sentences are too lenient (Gelb 2006: 11) or that those breaking the law should receive stiffer sentences (Indermaur and Roberts 2009: 18). Instead, it accords more with the findings of studies which have compared judicial sentences with those selected by members of the public by using vignettes (Diamond and Stalans 1989; Lovegrove 2007). Diamond and Stalans (1989), who surveyed persons presenting for jury duty and university students in Canada, found the judges' sentences were as severe or more severe than those of the members of the public. In Lovegrove's study, a majority of respondents selected sentences less than the judges for theft (71%) aggravated robbery (86%) and rape (63%). For the fourth case, intentionally causing serious injury, a majority were more severe than the court (65%) (Lovegrove 2007: 776). Our findings, like those of Diamond and Stalans and Lovegrove, contrast with those of De Keijser, Koppen and Elfers (2007) who found that the choice of sentence of members of the public who had been given the same case study as judges, were not as harsh as those given shorter accounts but were still significantly harsher than the judge.

There are important differences between Lovegrove's Victorian study and our study which can explain why more of our participants in this study were more severe than the judge compared with Lovegrove's sample. The first difference lies in the timing and process of informing the survey participants. Lovegrove's participants first received a 70 minute lecture about sentencing to give them an idea of the law's sense of justice and then the judge gave them data on current sentencing practice before they selected the sentence. In contrast, our juror respondents selected the sentence after knowing only the facts about the offence and the offender and without being briefed about sentencing or current sentencing levels. The second difference relates to the nature and variety of the cases that were used: Lovegrove's four test cases were all selected so that the offenders had 'potentially strong claims to mitigation' (Lovegrove 2007: 773), whereas none of the cases in our study were selectively chosen. Every case was included simply on the basis that it had been held in the Supreme Court of Tasmania during the survey period. Another important difference is that rather than using a small number of different cases (Lovegrove had four cases, a theft, an aggravated robbery, a rape and a case of intentionally causing serious injury) our

study had 138 cases which were an assortment sex, violence, drugs and property trials. This method is therefore better able to pick up broad differences between offence types than the standard vignette methodology. Our results show a striking difference between types of offence. For property offences, juror respondents were more than twice as likely to be more lenient than the judge rather than more severe, with 68 percent suggesting a more lenient sentence and 30 percent a more severe sentence. For sex, violent and drug offences the split between less and more severe was much more even. Respondents in culpable driving cases were also much more likely be more lenient than the judge. However, with just three culpable driving trials and 11 respondents, little can be drawn from this finding.

This difference between offence types was born out in Stage 2. When respondents were asked how appropriate the sentence was after receiving the sentencing comments and the Crime and Sentencing booklet, they were most satisfied with sentences in property offence cases and least satisfied with sex and drug offence sentences. Perhaps surprisingly, half of respondents thought sentences for violent offences were very appropriate and 42 percent said they were fairly appropriate. Comparing the judge's sentence with the respondent's preferred sentence at Stage 2 (which we called the Stage 2 comparative sentencing variable) also showed a difference between offence types. While a majority were happy with the same sentence as the judge in property and violent offence cases, a significant proportion (but less than half) wanted a more severe sentence in sex and drug offence cases. Stage 2 results provide strong support for the finding that informed public opinion is not as punitive as general questions in representative surveys suggest with 90 percent of respondents stating that the sentence was appropriate, evenly split between very and fairly appropriate and only 38 percent preferring a more severe sentence than the judge.

An interesting finding in Stage 2 is that those who were more *lenient* than the judge at Stage 1 were significantly more likely to agree with the judge's sentence than those who had selected a more *severe* sentence. This finding was replicated using the Stage 1 comparative sentence variable and the responses to the question about the appropriateness of the sentence. So, those who selected a more lenient sentence than the judge in Stage 1 were more likely to respond in Stage 2 that the sentence was very appropriate and less likely to say it was inappropriate than those who had selected a tougher sentence. Similarly, those whose sentence was more lenient than the judge's sentence at Stage 1 were less likely to still want a more lenient sentence (18%) compared with those who had chosen a more severe sentence at Stage 1 but who still wanted a more severe sentence at Stage 2 (57%). In other words, the more punitive respondents were less tolerant of the judge's sentence and were less malleable in their views than those who were less punitive as measured by sentence choice at Stage 1. This finding has relevance in terms of assessing the impact of information on attitude change and helps to explain why it is that general attitudes seem to favour tougher sentences. Those who may tend to leniency are nevertheless content with sentences that are tougher, but those who tend to want a more severe sentence in an individual case are less tolerant of lighter sentences.

4. Members of the public are more punitive when punitiveness is measured by answers to abstract questions about sentencing than when asked about a sentence in a particular case

As reported above, when responding to the stimulus provided by an individual case, 52 percent of respondents in Stage 1 chose a sentence that was more lenient than the judge's sentence and 44 percent a more severe sentence. For property offences only 31 percent proposed a more severe and yet in response to the general question about sentencing 54 percent said sentences were too lenient. For sex offences and violent offences, the contrast was rather more marked: almost 50 percent had chosen sentences which were less severe than the judge but in their response to the general question, 80 percent said that sentences for sex offences were too lenient and 76 percent said that sentences for violent offences were too lenient. This dichotomy or gap diminished somewhat in Stage 2 but was even more striking at this second Stage because respondents knew the judge's sentence and so were aware that in many cases it was more lenient than their selected sentence. And yet for property offences (where only 31 percent had chosen a more severe sentence at Stage 1), at Stage 2, 46 percent still said sentences were too lenient. For violent offences (where around half selected a more severe sentence than the judge at Stage 1) at Stage 2 two thirds still said sentences for violent offences were too lenient, although 50 percent of jurors with a violent offence case said it was very appropriate and only 35 percent would have preferred a more severe sentence. Similarly, for sex offences (where 45 percent selected a more severe sentence at Stage 1) there were still 70 percent of respondents who said that sentences for sex offences were too lenient although less than half would have preferred a more severe sentence. For drug offences the gap was less and all but disappeared in Stage 2. At Stage 1, 50 percent had chosen a more severe sentence and 54 percent said that sentences for drug offences were too lenient. At Stage 2, just 49 percent said sentences were too lenient for drug offences and 46 percent would have preferred a more severe sentence. (See Figure 9, Figure 13 and Table 30).

The data were analysed to see if the dichotomy was still apparent when the general views of respondents were separated into the types of offence tried. This was because while respondents gave their general views for each offence category, they necessarily only selected a sentence for one offence type in their own sentencing exercise. For example, what did jurors who sat on a sex case think of sentencing for sex offences at Stage 2? The data revealed that there was no difference between sex offence jurors and other jurors, the perception gap or dichotomy remained the same with 70 percent of sex offence jurors saying sentences for sex offences were too lenient. For violent offence jurors the gap diminished but remained. Violent offence jurors were less likely to say sentences for violent offences were too lenient, but still 62 percent thought sentences for violent offences were too lenient (see Table 32) even though only 35 percent wanted a more severe sentence at Stage 2 (see Figure 13). For property offence jurors the gap almost disappeared. Jurors were less likely to say sentences for property offences were too lenient than other jurors with only 36 percent saying sentences of property offences were too lenient (and 31 percent had selected a more severe sentence at Stage 1). In summary, there is a clear contrast between responses to general abstract sentencing views and responses to the stimulus provided by an individual case for all offence categories except drug offences. Once

respondents became more informed this gap all but disappeared for property offences, remained for sex offences and narrowed but remained for violent offences.

This dichotomy has been observed with social surveys in other contexts. There is a 'perception gap' or disparity between personal experience and societal views. A British survey showed that 81 percent of respondents said that they were happy with their last visit to hospital, but only 47 percent were able to say that the National Health Service was providing a good service nationally (Taylor 2008). And the perception gap is not restricted to assessments of government services. In a BBC poll, 93 percent of respondents described themselves as optimistic about their own family life, yet 70 percent believe families are becoming less successful overall (Taylor 2008). In relation to confidence in criminal justice, confidence levels have been shown to differ depending on whether the focus is local or national. In a Home Office study, people have been found to be generally more confident with the way that crime is being dealt with locally, than nationally (Page, Wake and Ames 2004). The same applies to crime rates, where a decreasing proportion of people believe that crime is increasing locally but an increasing proportion believe that it is increasing nationally (Thorpe and Hall 2009: 66).

Our study is not the first to observe this disjuncture between responses to the abstract question 'are sentences too tough, about right or too lenient' and views about a specific case. In the Diamond and Stalans (1989) study, which used vignettes to compare the sentence choice of judges with lay respondents, the lay respondents were not generally more severe than the judges, but two thirds of them said that judges were too lenient in response to the abstract question. Similarly, in the Scottish Justice 1 Committee study, which used representative surveys, focus groups and a 'civic participation event', the responses to the general abstract question (70 percent saying sentences were too lenient) contrasted with sentence choices in sentencing scenarios which were not too far away from the sentence likely be imposed by a judge.

Explaining the perception gap

Varying explanations for the differences between responses to the abstract question and to the stimulus presented by an individual case have been suggested. Diamond and Stalans (1989: 87) focus their explanation on the way that social judgments are made. An abstract question about judicial leniency requires a respondent to formulate a picture of what the courts do and then to evaluate it. This picture will be based on a knowledge of crime and sentencing that is distorted first by the media, which selectively reports crime, and then by a biased process of recall, which ensures people remember the violent and the extreme rather than the ordinary. Hutton (2005) uses Garland's distinction between structuralist and individual accounts to explain the difference. Structuralist accounts, dealing with how the system operates, are not based on accurate information about crime and risk but on an account which expresses anxieties about broad patterns of social disorder. In contrast, individualised accounts elicit a distinctive response and with a case scenario, the respondent tries to find a just solution for an individual case. These theories help explain why in our study, despite improved levels of knowledge and their own recommended sentence being the same or less severe than the actual sentence imposed, many respondents still tend to the belief that, in general, sentences are too lenient.

Insights from the interviews

The advantage of our study is that we could examine this gap at three different stages: first *before* the respondents knew of the sentence, secondly, *after* they knew of the sentence and had more knowledge of sentencing patterns from the booklet, and finally in the interviews. Stage 1 showed that there was a dichotomy between punitiveness as measured by sentence choices in the individual case and abstract views as to sentences in general. Stage 2 showed that, for sex and violent offences, the dichotomy persisted between these measures of punitiveness after jurors were better informed. The interview phase of our study provides insights into why some jurors were able to bridge the perception gap and some were not. The following two case studies, drawn from our interviews, illustrate these differences.

Alfa 1 was a juror on a 'motor manslaughter' case. At Stage 1 she had selected sentences for the two co-offenders which were very similar to the judge's sentences but which were marginally more lenient in respect of the time which had to be served before eligibility for parole. Her Questionnaire 1 responses indicated that she thought sentences for violent and property offences were about right, but that sentences for drug offences were much too lenient, and that sentences for sex offences were a little too lenient. At Stage 2 her responses were that sentences for violent, drug and property offences were about right but, in the case of sex offences were a little too lenient. At the outset of her interview Alfa 1 said that after the trial and learning of the sentence imposed by the judge, she no longer thought that in general sentences were too light. Alfa 1 said that she had been quite traumatised by the trial experience. She had not expected to feel sympathy for the offenders yet she had felt sympathy for 'both sides'. She said:

> I thought I was going to [say], 'Yes, that person, they need to go to jail. That was really bad.' But I thought I was going to be like that but I wasn't at all. It was like, 'This is terrible'. This person's [the defendant] only 21. They've barely moved out of home. …
>
> They're just normal people. [The offender's] mother did not raise her son to kill someone else. And I'd look at her and think how devastating it must be for her to sit through this every day. She didn't raise her son to abuse alcohol. Like she didn't want that when she had a son.

Alfa 1 saw real people in the courtroom and this made her more lenient towards the offenders than she had expected. It also impacted on her general attitudes to sentencing. Alpha 1 was clearly one of those who could extrapolate from her increased knowledge and experience. At Stage 2 she answered all the crime and sentencing knowledge questions accurately. She said:

> So you generally – well, I know that I generally feel that sentencing is too light. But sitting through this case every day and listening to complete backgrounds… But then when I'd done the survey before sentencing actually happened and then it was – it [the sentence] was in the kind of area that I thought it should be – is that – it's not – I don't think it is lenient. It's just that you are privy to so much more information and there is so much more to it than the sensationalist stuff you hear at six o'clock.

And then later when discussing changes in her general views as to sentence, she said:

> They're not lenient – I mean they're too lenient I would have said beforehand.

In contrast, Charlie 2 was not an extrapolator but rather an 'exception maker'. His views were particularly striking because he was on two trials and reacted in much the same way to each. Despite the fact that he had not chosen a more severe sentence than the judge and agreed with the sentence imposed, in Stage 2 and in the interview he maintained his view that sentences for sex, violent, drug and property offences were too lenient. Offender 1, who was on trial for assaulting his partner, had prior convictions for assaulting women. Offender 2, who was on trial for cultivating a controlled drug for sale, also had prior drug convictions. However, Charlie 2 saw neither as a 'real criminal'. In relation to the defendant convicted of assaulting his partner, he said:

> He did not come across as a dangerous criminal. … I saw a human situation that had gone off the rails for various reasons and no criminals really involved, is what I saw.

Of the drug offender, he said:

> But this fellow, he'd just got into hard times and he could see a way out. He wasn't – he wasn't similarly, he wasn't a bad sort of person, I didn't think. He was just a smoker and he saw a way of – I mean it's obviously wrong and the jury agreed that it was definitely wrong to be doing it but – oh look, he was just a chancer, really.

And later he added:

> So, in this case, you know, I've almost got a bit of fondness for this bloke in a kind of rough diamond sort of way.

His views of the offenders and the sentences in these two cases contrasted with his general view that sentences were too lenient. In discussing his general views, Charlie 2 explained that he had a different picture in mind of the kinds of people who were being let off too lightly for crimes of sexual violation and drug trafficking.

In the case of sex offenders:

> I wasn't thinking about the trivial thing we had seen. [Offender 1 was charged with sexually assaulting his partner but was acquitted on this count.] I was thinking about the nightclub bloke who slips someone a drink and then takes them up and there's a gang rape going on. To me that's absolutely diabolical.

And in the case of drug offence sentences that he considered too light:

> I probably wasn't thinking about this bloke who was an amateur. … So I'm thinking about the people that are in it to make huge amounts of money quickly and with no thoughts of human misery or anything like that.

This explanation was illuminating. It resonated with suggestions made by other researchers that members of the public who respond to polls tend to construct stereotypical pictures of the worst kinds of offenders that reflect the images disseminated in the media and popular culture of violent, ruthless, pathologically evil predators who are 'sick, mad or bad' (Roberts 1997: 113; Unnever and Cullen 2009). Charlie 2, like many others interviewed, clearly recalled the violent and the extreme rather than the ordinary (Diamond and Stalans 1989: 87). Others, like Echo 1, also distinguished between the offender in her case, who had been convicted of maintaining a sexual relationship with a young person, and those whom she thought of as typical sex offenders:

> [He] wasn't pure evil, that kind of, you know the way that you would usually look at a paedophile or ... the ones that seek victims out and plan quite nastily to do degrading or nasty or forceful things to them ... he was atypical of what I was expecting.

Likewise, Foxtrot 1 was able to make an exception for her case:

> I mean this was an odd case really. You know, a lot of us probably, I felt, that it shouldn't have been in the court and yet, once it was in court, yes it was an assault case but with a difference.

Mike 1 also made a distinction between the offender in her case, who had been convicted of attempted murder, and the 'criminals you see on TV, you see them as repeat offenders.' Oscar 2 also contrasted the images from television with the 'silly' offender in the dock who had 'a poor family life:

> [Y]ou see dreadful things on television don't you and you think, oh they're a terrible type, but he didn't really fit that picture in my opinion.

X-Ray 1 said of the offender, who had been convicted of a sex crime, that he was 'certainly not a criminal in the true sense of the word':

> [I]t's not like he was a – it's not like – some people are perpetual re-offenders and [you] probably can't ever help some of those people. They've obviously got a problem, you know. It probably is a really mental problem some of these perpetual rapists or whatever. They've obviously – whereas this guy didn't come across like that at all. He was just an idiot.

We have called Charlie 2 an 'exception maker' because he, like many other jurors interviewed, made an exception for his two cases, which did not seem to involve 'real' crimes or 'real' criminals and he sought to distinguish them from what he saw as the more typical serious cases where judges were too lenient. The contrast between these views and those of Alfa 1 showed that there is more to changing public opinion than seeking to expose members of the public to more information about actual cases. Both Alpha 1 and Charlie 2 recognised real people in their trials and sympathised with them as individuals caught up in difficult situations. They were not in any way excessively punitive towards them. However, Alfa 1's case involved a serious and prolonged piece of dangerous driving that resulted in the gruesome death of an innocent motorcyclist, whereas Charlie 2 saw two cases that did not fit in with his picture of serious crime. The seriousness of Alfa 1's case did not give her the opportunity that Charlie 2 had to make an exception for her experience even if she had been inclined to do so.

These reactions suggest that seeing the offender as a real person and being given more information about sentencing practices and processes is not the only key to changing perceptions. Charlie 2 answered the crime and sentencing knowledge questions correctly at Stage 2. He knew that his sentence was less than the judge's. He no longer had misperceptions about crime and sentencing. He was not fearful about crime (he said he felt very safe at home alone at night and fairly safe walking alone at night). But still he thought that sentences were too lenient. Hutton's explanation for the difference between structural and individual accounts does not entirely explain the perception gap in Charlie 2's case. His 'structural account' was not based on misperceptions about crime or risk and he appeared to have no anxieties about social disorder. Rather, his misperceptions lay in what saw as a real sex or drug crime as reported by the media.

As well as exception-making, we saw examples of respondents who tried to find 'a just solution' for their own individual case (Hutton 2005) that was often more lenient than the judge's sentence, but who at the same time maintained their general views about sentencing leniency. So, jurors often adopted a practical problem solving approach that was aimed at reforming individual offenders and encouraging them to turn way from their criminal behaviour. Golf 1, for example, did not want to see the offender in her case locked up, rather:

> I just thought she had a bit of an insular outlook and, sort of, she needed to get out a bit more. ... I just thought it would be good for her. I just thought she was a bit self absorbed. ... She needed to get out a bit more and it'd be good for her to contribute a bit.

Juliett 1 also wanted to see the offender perform community service:

> I don't think he saw outside his own four walls, really. I do believe that he'd gotten a bit wiser as he aged because the offence had happened a number of years beforehand, but I still perceived a "poor me" kind of attitude from him so that was part of the reason for the community service idea.

Oscar 1 thought that general sentencing levels for violent offenders were a little too lenient; for property offenders, a little too lenient; for drug offences, much too lenient and for sex offences, much too lenient. However, in the drugs case that he decided, Oscar 1 wanted to see a wholly suspended sentence and community service for the 71 year old offender on the grounds that 'it wouldn't be human' to send him to gaol.

5. Informed members of the public do not consider judges are as 'out of touch' as populist public opinion suggests

Judges are often portrayed not only as being too lenient, but also as being out of touch. Top-of-the-head responses from representative surveys in the UK show that a high proportion of respondents state that judges are very out of touch and only 18 to 20 percent responded that they were in touch (Hough and Roberts 1998; Mirlees-Black 2001: 5). Our participants, who sat through one or more trials in a courtroom, had at least some first-hand knowledge of judges. Rather than responding that judges are out of touch, more than two-thirds of respondents in Stage 1 said that they were in touch (very or somewhat). And after the sentence was imposed and they had received the judge's comments, the response improved to 82 percent. This result accords with research which suggests that jurors have more confidence in the criminal justice system than other members of the public (Maruna and King 2004: 12). This finding also suggests that there may be some benefit in sending the judge's sentencing comments to jurors because it may add to the improvement in public confidence in criminal justice that jury service brings.

Other studies have found that perceptions that judges are out of touch are correlated with perceptions of judicial leniency (Hough and Roberts 1998; Hough and Roberts 1999). Unsurprisingly, in this study, the more in touch judges were perceived to be, the less likely sentences in general were said to be too lenient (see Table 44) and the less likely participants were to want a more severe sentence than the judge in the case they tried (Table 46). In fact, on all five measures of punitiveness (Stage 1 comparative sentence severity, Stage 2 appropriateness of sentence, Stage 2 comparative sentence variable, and jurors' views as to sentencing in general at Stage 1 and Stage 2) the more in touch judges were perceived to be, the more lenient were

the respondents. The relationship was strongest for general attitudes to sentence. It follows that improving perceptions about judicial remoteness can impact both on perceptions of judicial leniency and on public punitiveness.

The interviews provided the opportunity to further explore the responses to this question. Many jurors had responded that judges were 'somewhat in touch'. Some respondents thought that the judge's role may have desensitised them from realising the seriousness of crime, especially when compared with the community's view. Hotel 1 explained that it was:

> [B]ecause they're involved in so many [trials] I think they do become a little bit hard and blasé about it. … Nothing surprises or shocks them any more so it becomes a bit of a matter of course through the day.

Discussion of this question led some respondents to question what is meant by 'public opinion', to wonder whether there was such a thing, and in some cases, participants who had newly become aware of the misperceptions about crime and sentencing that so many people have, were led to question the value of judges taking public opinion into account. Zulu 1 said that his view changed after reading the book:

> So, it's a bit hard to reflect public opinion when public opinion's not informed, as mine wasn't before reading the book.

India 1, who thought that judges were very in touch with public opinion, was nevertheless very sceptical about judges taking public opinion into account, because it is not informed:

> What I meant by that was sometimes public opinion is really swayed by sensational nonsense in newspapers. So we are swayed, the public can be swayed and then, if we are swayed, if judges then should reflect, then I think that's really dangerous.... They shouldn't because, you know, if huge percentage of the public are watching Today Tonight and A Current Affair, then God help us if the judges then need to follow their opinions because it's just for ratings. It's just sensationalised....

Other respondents were driven by their jury experience to question whether they themselves were in touch with public opinion and to defer to the wider experience that judges have. Tango 1 thought that judges were 'somewhat out of touch' in Questionnaire 1 and then, in Questionnaire 2, he moderated his view to 'somewhat in touch' but – although he maintained that, because of their isolated role, judges by necessity have got to be out of touch – he also doubted whether he, as a member of the public, was any better placed:

> [I]f the courts are way out of kilter from what the public thinks the punishment should be, the people have contempt for the process. ... but then again, I was quite surprised when I read these figures, so it shows how out of touch I am with what the courts do.

Alfa 2 said that 'public opinion is largely over rated' and wondered whether the views that are 'whipped up by the media' were truly reflective of what the public actually thinks. Consequently, Alfa 2 thought that, because of their experience, judges were better equipped than ordinary members of the public to withstand media manipulation. Golf 1 strongly agreed that judges should reflect public opinion and although she initially wondered whether, because of their age, judges might have been only somewhat in touch with public opinion, said, on reflection:

> But then again, I'm sure they're very exposed to all elements of society, so maybe they're more in touch than I am.

Other interviewees made a distinction between judges in general and their judge. While in general they thought that many judges were somewhat out of touch, because of their privileged position in society, their stage of life, and the relative narrowness of their circle of acquaintances etc, jurors nevertheless felt that the judge in their trial did a very good job. Oscar 1 thought that judges in general were too lenient and were somewhat out of touch with public opinion, but maintained that his judge 'was certainly in the ballpark as to what he was saying.' Papa 1 found her judge to 'be very fair' and 'not so austere as they used to be' and Papa 2, who thought that judges were affected by 'the ivory tower type thing' and were 'not in the real world' nevertheless thought that the judge 'certainly seemed to be in full grasp of exactly what happened.' In the first questionnaire, X-Ray 1 thought that judges were 'very in touch', but by the second, he had changed his view to only 'somewhat' in touch. However, he maintained that:

> Look, I must confess I thought that [the judge] was terrific. Very balanced and fair so it's hard to say because he's the only judge that I've been in front of.

This is a further demonstration of the 'perception gap' and the difference between general perceptions of judges as an anonymous group and responses to individual judges and their personal performance during the trial.

The issue of judicial remoteness is obviously linked with the issue of the responsiveness of judges to public opinion. In Stage 2, 65 percent of jurors thought judges should reflect public opinion when sentencing. This was similar to the results of the 2003 and 2007 Australian Survey of Social Attitudes (AuSSA), although juror respondents were less likely to strongly agree with this statement than AuSSA 2003 respondents (Indermaur and Roberts 2005: 153; Roberts and Indermaur 2009: 20). Those who agreed judges should reflect public opinion were more likely, after knowing the sentence imposed by the judge and receiving the information booklet, to have:

- preferred a more severe sentence;
- said sentences in general were too lenient;
- said judges were out of touch.

The interviews provided participants more opportunity to reflect on this question and some qualified or altered their views as a result. For example, Charlie 2, a juror who at Stage 2 had agreed that judges should reflect public opinion, later said:

> I think they need to be aware of public opinion. So therefore I might question the word 'reflect'. I think 'be aware of' might be better. … Public opinion's often quite dodgy I think.

Another juror, Victor 1, said in the survey that she thought that judges were somewhat in touch, but explained in the interview that she did not necessarily think that this was a bad thing. She did not want judges to sentence 'at the whim of popular opinion.' So, this juror's assessment that judges were not completely in touch with public opinion was not meant as a criticism:

> I don't think judges should be responding a hundred percent to popular opinion because they do have a set of criteria that they're working to. However, if overall there's not a reasonable degree of overlap of those two then there's a serious problem in our society. So, in the big picture, the scheme of things, judge's sentences need to be broadly aligned with community views, but not with regard to a specific case.

So, the mere fact that some members of the public suggest in their survey responses that judges are not in touch with public opinion, cannot necessarily be interpreted as a criticism of judicial sentences. At least some of those responses can be explained by the fact that these members of the public have confidence in the judiciary and trust them to sentence fairly – and distrust the views of their fellow citizens.

6. Jurors, in common with other members of the public, are poorly informed about crime and sentencing

Our study showed that jurors, like other members of the public, are poorly informed about crime and sentencing. The misperceptions at Stage 1 included:

- that crime levels are rising (63%);
- that burglary and motor vehicle theft are rising (57%);
- overestimating the proportion of crime that involves violence (75%);
- underestimating the imprisonment rate for burglary (80%) and rape (71%); and
- overestimating the risk of being a victim of burglary (67%), motor vehicle theft (62%), assault (45%) and robbery (69%).

Given that electronic and print media are the public's main source of news (Denemark 2005: 223; Roberts and Indermaur 2009: 9) and that our jurors' major sources of information about crime and sentencing were also newspapers, television and radio, their misperceptions revealed at Stage 1 are not surprising. The media focuses on the violent crime and sensational crime stories rather than ordinary crime, and on lenient sentences rather than harsh sentences, thereby leading the public to overestimate the amount of crime that is violent and to underestimate the severity of sentencing. Once they have been given the opportunity to reflect on their knowledge – and the sources of their knowledge – our jurors readily admitted in the interviews that their opinions were not based on any detailed sources of information.

> Bravo 1: Well, I have no idea really about these things.
>
> Delta 1: It's just a perception. It's not based on any facts. It's a feeling.
>
> Lima 1: [N]o particular reports –I'm just generalising.
>
> Hotel 2: I have to preface my remarks by saying that I'm really no expert on this and these are really just impressions.
>
> Tango 2: Pure, uninformed speculation I guess ... I'm thinking of the great, the lines, the constant themes that we're fed by the media, really, because I have no personal experience in any of those. .... Yes, because if you ask me the last rape case that was in front of the court here, what the sentence was; no idea. I'm not following any specifics. I have no data to back up my opinion.

> X-Ray 2: I'm not really up on what's actually happening, but just a general sense of, you know, my, my gut feeling....

Lima 2 reflected on the media sources of information and contrasted them with the Booklet:

> I suppose it laid out some facts, more than anything else. It gave me a probably truer indication of, of sentencing and crime and statistics of crime and, and trends or otherwise. Because it's easy to fixate on the last thing that was, that was high in the media and maybe two of those incidents occurred in one week and you suddenly think, you know we're at a period of, of a lot of home invasions, when in actual fact they're probably down ten percent on previous years so, to actually see the, the figures and see the trends was really good because the perception, and it's not pushed by the media, but there's just, it's at the forefront of your ... consciousness at the time.

This suggests that the combination of jury service and the provision of better information can lead some members of the public to reassess their views. The issue of whether this can lead to a drop in punitiveness is discussed below.

7. The better informed (and the least fearful) are the least punitive

Our study confirms the findings of previous studies (Gelb 2006: 15) that crime misperceptions influence perceptions of leniency in sentencing. People who know more about crime are less punitive (Roberts and Indermaur 2007: 61-62; Roberts and Indermaur 2009: 19). A belief in rising crime, for example, is often coupled with a belief that lenient sentencing is the major cause, thus perpetuating the perception that sentences are too lenient (Roberts and Hough 2005: 48). Our results showed that perceptions of lenient sentencing at Stage 1 were associated with the beliefs that crime had increased, with overestimates of the proportion of crime that is violent, with under-estimating the imprisonment rate for rape, and overestimating the risk of victimisation. Uniform 1, for example, who thought that judges were very much too lenient for all types of offences, was also misinformed about sentencing levels, saying: 'I mean, like, you go and murder someone and you what? You get two years?'

Additionally, those who were more fearful walking home after dark or being home alone at night were significantly more likely than those who were less fearful, to perceive sentences as too lenient. This also conforms with the findings of previous studies. Those who were more fearful were also more likely to have misperceptions about crime and sentencing suggesting that removing misperceptions could have a positive impact on reducing fear as well as on punitiveness.

8. Information improved knowledge about crime and sentencing

After respondents had received the crime and information booklet, their knowledge improved. However:

- 38 percent of respondents still said that recorded crime rates had increased;
- 37 percent still over-estimated the proportion of crime that involves violence;
- 35 percent still under-estimated the imprisonment rate for convicted rapists; and

- about half still over-estimated the risk of being a victim of burglary or motor vehicle theft.

This was despite the fact that 62 percent had read the booklet in full and an additional 23 percent had read at least some sections. Moreover, respondents indicated the booklet was easy to understand. Sceptical reactions to declining crime rates have been consistently reported from Canada, the US, the UK and Australia. 'These statistics can't be right!' is a common response. Moreover, accepting the view that crime rates are decreasing can be seen by some respondents as being complacent and unconcerned with current levels of crime (Roberts et al 2003: 13). In the interviews we made the conscious decision not to test participants' knowledge of crime and sentencing because we did not want make them feel uncomfortable. However, remarks of some of the respondents made it clear that no faith was placed in official statistics.

Hotel 1, for example, still responded that recorded crime had increased a lot in Questionnaire 2 even though he had read the booklet in full. In his interview he gave examples of witnessing young people shoplifting and rudely brushing of security staff to demonstrate his belief that 'crime is starting at a younger age, 12, 13, 14 and they're not allowed to be touched.' His personal experience supplied the proof that crime rates were rising. The view that 'The statistics can't be right' explains his response. Another respondent who had read the booklet in full and responded that crime had increased a lot, added the comment on the questionnaire that it 'appears to have increased the media reports more crime'. Even if respondents' knowledge improved so they could correctly answer the question in Stage 2 and respond that *recorded* crime had decreased, they could still be sceptical as to what this means in terms of crimes *actually committed*. For example, one respondent who responded recorded crime had decreased added the note: 'I know people don't report crime because cops don't come.' These responses probably reflect a deeper scepticism among some sections of society of whether recorded crime is a good reflection of actual crime.

9. In some respects punitiveness dropped after receiving more information but respondents are not always consistently punitive

After jurors had received the judge's sentencing remarks and the Crime and Sentencing booklet, punitiveness dropped in the sense that fewer respondents wanted a more severe sentence than the judge. At Stage 1, 45 percent of jurors who went on to participate in Stage 2 selected a more severe sentence than the judge. But at Stage 2 this had dropped to 37 percent. This drop was clearly apparent for violent offences with 49 percent selecting a more severe sentence at Stage 1 and 35 percent doing so at Stage 2. Similarly 50 percent said that the sentences for violent offences at Stage 2 were very appropriate. Of those who had said that the sentence for the violent offence was very appropriate, 44 percent had selected a more severe sentence. However, for sex offences there was no such drop in punitiveness with 45 percent selecting a more severe sentence at Stage 1 and 46 percent preferring a more severe sentence at Stage 2. (Only 36 percent said the sentence was very appropriate, of whom only 19 percent had chosen a more severe sentence). (See Figs 9, 11 and 13).

Whilst the views of respondents had moderated for all offence categories except sex offences, there was a difference, as noted above, between those who had selected a

more lenient sentence and those who had selected a harsher sentence. Those selecting a more severe sentence were less likely to defer to the judge's sentence than those who selected a more lenient sentence. This accords with Lovegrove's (2007) findings. As also discussed above, it appears to suggest that while the harsh may moderate their views, their views are less malleable than those who are more lenient. This was confirmed by an analysis of preferred sentence at Stage 2. Those who had chosen a more severe sentence in Stage 1 were less likely to endorse the judge's sentence in Stage 2. Because of this it cannot be categorically stated that in general respondents had become more lenient. Some (19%) had become more lenient, but because others endorsed the judge's more severe sentence, they had, in this sense, become more punitive at Stage 2 (43%).

Punitiveness as indicated by abstract views (based on the question about whether sentences are too tough, about right, or too lenient) decreased after the receipt of the judge's sentence and the information booklet. Across all four offence types, respondents were less likely to say sentences are too lenient (see Table 29 and Table 30). Of course it is not possible to say that this was because of improved knowledge only (Chapman et al 2002, 50). The change in attitude may be because of the process of engaging in the study, the 'Hawthorne effect' or other unknown reasons. As discussed above, another demonstration of decreased punitiveness is the change in response to the question about whether judges are in touch. Figure 22 shows that 'out of touch' responses decreased and respondents were more likely to say judges were 'very in touch' in Stage 2 after receiving the sentencing comments and booklet.

The interviews were able to explain some of these shifts in apparent punitiveness. Some jurors, who had imposed a much more severe sentence than the judge at Stage 1, appeared on this measure to be highly punitive. However, once they were asked to elaborate upon the reasons for their choice, it became apparent that they were not necessarily motivated by punitive attitudes at all. India 1, who had suggested a sentence of seven years in a case where a father had sexually abused his daughter, explained that she had selected the number as a symbolic statement. The father had abused his daughter over a period of seven years and so India 1 chose that penalty to match the period of abuse, not really thinking that it should actually be imposed. In fact, India 1, who had been given a glimpse of the prison system by sitting through an inquest into deaths in custody, was very much opposed to imprisoning offenders merely for the sake of punishing them:

> Look, I hate the idea of anyone going to jail. ... I really hate it. So having seen the inside of what the jail is like and listened to – you know, it is a horrendous place.

India 1 strongly expressed support for rehabilitation and for restorative practices:

> Jail shouldn't be the punishment. ... Actually, if I thought that when they were incarcerated they were going to get an education, learn a trade, steered in a different direction ... But as it is, I don't believe in – I don't believe in long sentences.

Sierra 2, who had also imposed a more severe sentence than the judge, was motivated by a strong view that the offender needed rehabilitation and that a longer period of detention would allow for a greater degree of rehabilitation. Sierra 2 said that the offenders needed not just 'prison' but some 'corrective services' so that 'there's a little glimmer of hope for the criminals that go in.'

> You can't just put them in for two years. They're going to go through a process that takes, probably, six to eight months just assimilating them into the system. ... Therefore I say ... that he ... would not have long enough to (rehabilitate) – not that you can probably redress it to a great degree, but you might nurture and help something in him further.

So, some jurors who appeared to be harsh at Stage 1, were in fact motivated by more positive pro-social emotions. Others, like India 2, who appeared at Stage 1 to be rather more lenient than the judge but who became harsher at Stage 2, had a different explanation for the change. India 2 explained that her initial response at Stage 1 had been influenced at the time by the fact that she had had 'terrible trouble' coming to her decision and had experienced an upsurge of emotion when she had to give her verdict. She also sympathised with the offender's family and felt very sorry for the defendant, who seemed like 'just an average Joe'. However, after the emotions had subsided and she had taken some time to think about the sentence, she decided that the judge's harsher sentence was the more appropriate one.

> I'm the sort of person that, if someone tells me something, I can often sleep on it, come back the next day and I know clear in my mind. I just need that little bit of extra time. Yes, I just didn't feel as though I had enough time to make that decision. Where now, I sort of – I'm happy with the result and that, but at the time I sort of walked away a bit unsure, you know. But now I've had the time to think about it, I'm happy.

Another juror, November 1, also reported that she had been influenced in her Stage 1 sentencing decision by her emotions and by the pressure that she felt from other jurors who had expressed harshly punitive views about the offender. However, by contrast with India 2, who became harsher with the passage of time, November 1 became more lenient.

> You go home; you're full of emotion and all that and then I let them, I guess, tell me things which I didn't believe in my mind. So I guess when I then got them out of my mind and thought about it I thought, "No, well..."

These examples show once again that attempts to measure public opinion must take into account the fact that it is nuanced and complex – and that a single respondent's views may appear to shift markedly over a fairly short time, depending on the kinds of questions that are asked. Many of our respondents cannot be described as being unequivocally 'harsh' or unambiguously 'lenient' in their attitudes to criminal sentencing and so, while an individual juror's views could readily be understood once we had examined the detailed responses given in the interviews, the statistics when considered on their own, can, in many cases, be ambiguous or misleading.

In summary, on a number of measures, punitiveness dropped with improved information. Respondents were less likely to say sentences in general were too lenient; fewer respondents wanted a more severe sentence than the judge in the case they had heard, and respondents were more likely to say judges were in touch. But because many of those who had selected a more lenient sentence than the judge at Stage 1, then agreed with the judge's sentence at Stage 2, we have to conclude that those participants had become more punitive with more information – at least in that respect.

10. Providing more information and improving knowledge is not a panacea

Our study shows that, overall, improving information about crime and sentencing reduces punitiveness in sentencing attitudes but not in a uniform way. The provision of information is not always enough to change attitudes. This is because attitude formation is a complex process and is not simply a function of lack of knowledge. For some respondents the belief that sentences are too lenient is firmly entrenched and is not shaken by the knowledge that sentencing practice is tougher than they thought, or that in a real case in which they determined guilt they would have selected a more lenient sentence than the judge did. This study suggests that there is more to be learnt from exploring the reasons why some participants could not 'jump the perception gap'. One reason we propose from our results in this study is that such a failure is not a lack of knowledge of crime or sentencing trends but the misperception that the stereotypical offender is the typical. This, however, does not make the views of such people less real or relevant. Even when fully informed, they may consider sentences for the type of offender they had in mind are too lenient. This can only be properly tested by further research. But it does mean that surveys of public opinion, which suggest that the general sentencing levels for a particular type of offence are too lenient, cannot be taken at face value.

11. Jurors can act as conduits of information to the wider community

Results from the surveys and the interviews suggest that there would be benefits in both improving the information given to jurors and in providing them with the sentencing comments made by the judge in their case (or in the alternative, knowledge about how to access those comments). Ninety seven percent of the sample thought jurors would be interested in receiving the Crime and Sentencing booklet. Others thought it should be more widely available. Zulu 1 suggested:

> That's something that I think could probably even get some circulation within schools or later years of school life.

Victor 1 also thought that:

> Overall I thought it was an excellent book and I would like to find that sort of book in my doctor's waiting room. … If these sorts of things were available in the courts I think it would be helpful.

As reported above, about half of the juror participants in the study said that knowing the judge's reasons for sentence affected their view of the appropriateness of the sentence 'a lot'. Almost all participants (98%) also thought that jurors would be interested in knowing how to access the judge's sentencing comments. Jurors tend to become very engaged in their case and this stimulates their receptiveness to knowledge about crime and sentencing information as the comments of November 1 and Whiskey 2 show:

> November 1: When you watch TV and read the papers they make it out to sound a lot worse. … It's interesting because I've gone through a few of [the judge's] other cases trying to determine if I agreed with the judge.
>
> Whisky 2: I actually looked back at similar cases that were on at the Supreme Court at the same time as well, just out of interest.

The results also suggest that jurors can act as conduits of information to the general public. A third of the respondents discussed the information about sentencing in the

booklet with colleagues and friends and more than two thirds discussed the sentence. The following comments from interviews illustrate how jurors can act in this way:

> Delta 1: I worked with a very flippant group of people and I walked into work and they said, "Oh God, you let him off. You didn't hang him." But when you actually talk to them they were all satisfied with the result.
>
> Foxtrot 1: My father is in Melbourne and I told him I had been on a jury. … He said, "Oh that was one of those sensationalist current affairs stories." … He was very unsympathetic about both people [offender and victim] and I said, "Dad, you had to be there".
>
> India 2: As soon as I told people what it was about afterwards, it was a 49 year-old and a 17 year-old. "He should have been castrated," they said. … I got the [comments] up on the Internet and said, "Look, read this".

B. ANSWERS TO THE RESEARCH QUESTIONS

The results of the study suggest the following responses to the six research questions formulated for the application.

1. How can juries be utilised as a source of public opinion about sentencing?

A good proportion of jurors are willing to participate in a study that explores their views about sentencing. Many of them are willing to stay after the verdict and listen to the sentencing submissions and then complete a questionnaire, notwithstanding the fact that they also report feeling the burden of jury duty. Once they have participated in this way, many are willing to continue to participate and to read the information provided and complete another questionnaire. Many agreed to be interviewed and some even welcomed the opportunity.

Both the willingness of jurors to participate in the sentencing survey and the fact that they appear to be fairly representative of the Tasmanian population, suggests that jurors are a good source of public opinion. Using jurors also has the advantage that the jury is a well-respected institution and so their views are likely to be given some weight. Another advantage is that jurors are not merely well informed about the facts of the offence, they have also had the opportunity to observe the defendant through the course of the trial. This gives them a sense of the offender as a real person, something that became very apparent in the course of the interviews. These features give the jury survey method an advantage over studies that use sentencing vignettes which, even if they use real cases, cannot impart this personal element.

The second advantage this method has over surveys or focus groups that use vignettes, is the element of responsibility for decision-making that the jurors have shouldered. This responsibility means that they have a real sense of the burden of decision-making that the judges normally experience when they must sentence the guilty offender. In the literature these two aspects of decision-making have been identified as important.

In addition to the provision of information and the assumption of responsibility, the third aspect of deliberation, is (partly) achieved by the opportunity that is given to

participants to reflect on their decision after reading the sentencing remarks and the information in the Crime and Sentencing booklet. The Stage 3 interviews give further opportunities for discussion and deliberation, and are useful to flesh out and explain the quantitative results from the first two stages.

2. How receptive are jurors to learning about crime trends and sentencing?

The answer to this question is that jurors are quite interested in learning more on both these areas. Over 60 percent of Stage 2 participants read the Crime and Sentencing booklet in full. A further 23 percent read some sections in full. Most found the information easy to follow and interesting. While jurors' knowledge of crime and sentencing matters improved considerably as a result of reading the booklet provided, many still retained common misperceptions about crime trends in particular. There was some evidence from the interviews that this was because of a general scepticism and mistrust of official crime statistics.

3. To what extent are jurors (as newly informed members of the public) satisfied with the sentence imposed by the judge?

Our study found that ninety percent of jurors were satisfied with the sentence and half of these were very satisfied with it. Jurors were less satisfied with sex and drug offence sentences and almost half of jurors on sex and drug offence trials would have preferred a more severe sentence. This result indicates that when jurors are aware of the complexities of a case and the judge's reasons for imposing sentence, the majority will then agree with the sentence imposed by the judge.

4. What kind of information affects public satisfaction with sentencing?

Our study aimed to test three specific types of information for their impact on sentencing satisfaction:

- Listening to the sentencing submissions.
- Knowledge of crime trends.
- Information about sentencing law and sentencing patterns.

The results suggest knowledge of crime trends and sentencing information can operate to affect sentencing attitudes but our methodology had limitations. For example, we could not fully assess the impact of the above factors on satisfaction with sentencing because participants were only asked about the sentence at Stage 2. By this stage all had heard or read the sentencing submissions, and had read the booklet with the information about crime trends and sentencing patterns. It was not feasible to split the sample into those who heard (or received) the sentencing submissions and received the booklet and those who did not. However, Stage 2 participants were asked about whether the sentencing information in the booklet was useful when they formed their judgement of the appropriateness of the sentence. Only 10 percent did not find it useful and 37 percent found it very useful. They were also asked about the impact of the judge's sentencing comments and the information on crime levels on their judgement of the appropriateness of the sentence. While most respondents said that

knowledge of crime levels and trends did not have a lot of impact on their judgement, a half said it affected it a little. However, for half (51%) the sentencing comments affected their judgement of the sentence a lot and another 41 percent said it had some effect. This suggests that there are advantages in making sentencing comments publicly available.

5. What variables affect jurors' satisfaction with sentence?

Given that 90 percent of participants were satisfied with the judge's sentence and less than two percent thought it was very inappropriate, there seemed little point in seeking to determine if variables relating to demographic, offender or victim characteristics affected satisfaction with sentence. However, differences between offence types were explored. Jurors were less satisfied with sex and drug offence sentences, with smaller percentages of very appropriate sentences (36% and 35%) compared with violent and drug offences (50% and 57%). Moreover, almost half of participating jurors on sex and drug offence trials would have preferred a more severe sentence compared with 35 percent and 28 percent for violence and property. Respondents were most satisfied with property offence sentences with just 28 percent wanting a more severe sentence, and nine percent a less severe sentence. In fact, comparing the sentence choice of respondents with the judge's sentence showed that 68 percent of property offence participating jurors selected a sentence that was more lenient than the judge.

6. To what extent do the views of jurors as members of the public coincide or differ from those of the judge as expressed in the sentencing comments?

The research methodology proposed to explore this question in three ways: by analysing the answers to open-ended questions asking whether there was anything the participant particularly agreed or disagreed with; by comparing the judge's main sentencing goal with the goal identified by the respondent as most important; and by comparing the aggravating and mitigating factors identified by jurors with those identified by the judge. The methodology proved to be not appropriate to answer this research question. First, the response to the open-ended questions was poor. Only 17 percent indicated disapproval of anything in the sentencing comments and the responses were difficult to categorise. Agreement with the comments tended to be general rather than related to specific matters. Comparing the judge's aggravating and mitigating factors with the juror's proved difficult. As explained in Part 3, while analysis of the sentencing comments was capable of revealing the factors mentioned by the judge as relevant, to determine to what extent the factor was very important, quite important, not very important or unimportant proved too subjective for comparison with a juror's opinion in the same case. Moreover, in the interviews it became apparent that the 'did not arise' column in Questionnaire 2 (see Question A7) could be misunderstood. Alfa 1, for example, ticked 'did not arise' in relation to prior convictions because she read this as meaning 'did not arise in the trial' rather that at sentencing. Further refinements to the methodology are needed to analyse differences between judges and jurors as to sentencing goals and aggravating and mitigating factors. For example, rather than relying on interpreting the judge's sentencing remarks, the judge needs to be asked the same question as the juror.

C. CONCLUSIONS AND POLICY IMPLICATIONS

The results of this study demonstrate that:

- Jurors can be used as a source of informed public opinion;
- Jurors can be used as conduits of information to better educate the general public; and
- Jury surveys can be an effective strategy to counter apparent public punitiveness.

1. Using jurors as a source of informed public opinion

Asking jurors about sentencing is a useful approach both to measuring public opinion and to understanding it. Jurors are willing to participate in reasonable numbers in such a survey and in this study at least, they were reasonably representative of the general population. This method has a number of advantages over representative surveys, focus groups and deliberative polls, such as cost, engagement and legitimacy. Because it can cover numerous examples of different offence types it provides a better method of investigating differences in public opinion in relation to sentences for categories of offence, than the traditional vignette methodology.

2. Jurors can be used as conduits of information to better educate the general public

Jurors in this study were willing to read the sentencing comments and a booklet about crime and sentencing. The fact that this not only improved their knowledge of such matters and had an impact on their views about the appropriateness of the sentence, but also that they had discussed the sentence in their case with others, demonstrates that jurors can be used as a means of better educating the public about crime and sentencing. However, there are limitations on the effectiveness of any strategy based on providing better information to jurors in order to improve public confidence and change attitudes. First, jury trials are rare and many members of the public do not have the opportunity (or burden) of sitting on a jury. So, while a significant proportion (68%) of jurors discussed the sentence with friends, the impact that this might have on the wider community would not be a large one. Secondly, our results revealed a ‘dichotomy’ or ‘perception gap’ between responses to an abstract question about sentencing leniency and their responses to an individual case. This has implications for the effectiveness of information as a means of attitude change. Some respondents were shown to be unable to jump the gap from their own experience to modify their perception of wider sentencing trends. These jurors would not necessarily be effective ambassadors to the wider public.

3. The jury survey can be an effective strategy to counter public punitiveness

The key finding of this study is that, *informed members of the public overwhelmingly approve of the sentences given by our judges.* Based on the findings from 138 trials, jurors who have judged the defendant guilty are more likely to select a more lenient

sentence than a harsher sentence than the judge. Moreover, when they are informed of the sentence, they are highly likely to endorse it. The fact that this is the judgement of jurors makes it a strong endorsement of judicial sentencing. It is an important finding which should be heeded by politicians and policy makers. It suggests strongly that jury surveys can help counter the 'comedy of errors' – the situation in which policy and practice is not based upon a proper understanding of public opinion and public opinion is not based on a proper understanding of policy and practice (Allen 2002: 6).

Finally, in addition to the suggestion that jury sentencing surveys should be added to the suite of methodologies used for measuring public opinion, the results of this study suggest that there are advantages to providing better information to all jurors in the form of a booklet about crime and sentencing after their deliberations. In cases where juries have returned a guilty verdict, jurors should always be invited to stay and listen (or to return and listen) to the sentencing submissions. And after the sentence is imposed, jurors should be sent a copy of the sentencing remarks. In jurisdictions where this is possible, they should also be informed about how to access sentencing remarks from the court's website.

The jurors participating in this study were impressed with the judges who were presiding over their trials and they felt more confident in the criminal justice system as a result of their jury experience. This phenomenon has been remarked upon before (Maruna and King 2004: 12), but our jury members, who stayed behind to hear the sentencing submissions gained an extra measure of confidence, not only in the criminal justice system itself, but also in their own verdict in the case and in the judge's sentence as well. India 2, a juror who did not believe in the usefulness or reliability of public opinion, explained that when she went into the jury she initially thought: 'Oh this is going to be difficult.' However, her experience was very positive and she was reassured by having stayed behind to listen to the aftermath once the verdict had been given.

> It wasn't at all difficult. It was actually – I came away from it thinking, "Yes, the jury system is excellent." Because you do get perspectives that you wouldn't – even if it was a jury of ten I don't think it would work as well as the twelve … Having participated and gone through the whole process and simply having stayed … really helped because I got to see the victim's reaction … it was enough that she was believed. It seemed like she was (believed) – and then I felt okay then. And, hearing the Judge's reaction to the lawyers' submissions for sentencing I thought, "No, it will be – it is going to be fairly dealt with here."

Our findings suggest jury retrials should not be phased out. Rather, the trend for increasing the jurisdiction of lower courts at the expense of jury trials should be reversed. And the public should be encouraged to participate in jury service by improving compensation and conditions.

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State of Tasmania v Aaron Barry Morley (Unreported, TASSC 22 August 2008)

State of Tasmania v Jaya Krishna Pannala (Unreported, TASSC 12 December 2008)

APPENDIX 1

CONSENT FORM

JURY SENTENCING SURVEY

1. I have read and understood the 'Information Sheet' for this study.
2. The nature of the study has been explained to me.
3. I understand that this study involves three stages: first, responding to attached questionnaire (Questionnaire 1); secondly, responding to a second questionnaire (Questionnaire 2) after I have read some information including the judge's sentence and comments. The third stage involves interviews by a member of the research team of a sample of those responding to Questionnaire 2. You will have the opportunity to consent or decline an interview later. There are no foreseeable risks involved in participating in this study
4. I understand that all research data will be securely stored on the University of Tasmania premises for 5 years and will then be destroyed.
5. Any questions that I have asked have been answered to my satisfaction.
6. I agree that research data gathered from me may be published provided I cannot be identified as a participant.
7. I understand that the researchers will keep my identity confidential and that any information I supply will be used only for the purposes of the research.
8. I agree to participate in this study by answering the questions on the attached questionnaire.
9. By writing my postal address and contact details on the questionnaire I also agree to being sent the judge's sentencing comments, some sentencing information and Questionnaire 2.
10. I understand that I may withdraw at any time from this study and that if I wish, I may request any data I have supplied to date be withdrawn from the research.

Name of Participant:

Signature: Date:

Dear Juror,

You are invited to take part in a jury sentencing research project conducted by a team of researchers from the University of Tasmania. The principal researchers are Professor Kate Warner, Dr Julia Davis, Dr Maggie Walter and Dr Rebecca Bradfield. The research has been approved by the University Research Ethics Committee and the Chief Justice and judges of the Supreme Court of Tasmania. It is being funded by the Australian Criminology Research Council.

What is the purpose of this research?
It is:

- To ascertain public attitudes to sentences imposed by the Courts
- To ascertain and improve public knowledge of how the sentencing system works and of crime trends
- To ascertain the level of confidence in the criminal sentencing system

What do I have to do?

Jurors are being asked to take part because they will have heard all the evidence in the case and thus will be fully informed. The research will involve three separate stages.

- Stage 1 asks you to sign a consent form and to answer some short questions on the attached form entitled "Jury Sentencing Survey Questionnaire 1".
- Stage 2 asks you to complete a questionnaire where you can review your sentence after you have read some sentencing information including the judge's sentencing comments. It will also ask you some related questions about the criminal justice system.
- Stage 3: respondents who complete the stage 2 questionnaire will be asked whether they are willing to take part in a face-to face interview, further exploring their views as to sentencing issues.

Frequently Asked Questions.

- *Will the survey be anonymous?*
  Although we need your name and address in order to send you the material for Stage 2, the published results will not identify any participant.

- *How will you ensure my responses remain confidential?*
  The questionnaires and interviews will be coded for data entry e.g. Juror 45. Any material with your name (such as Questionnaire 1 and the consent form) will remain in a locked cabinet at the University for 5 years and then destroyed.

- *Do I have to take part in the research?*
  No. Participation is entirely voluntary. Obviously the more jurors who take part, the better the results.

- *Will I be disclosing jury deliberations?*
  No. No question will seek an answer that will involve you disclosing the deliberations in the jury room.

- *Who can I contact if I have any questions*?
  Professor Warner: Ph 62262067; email: kate.warner@utas.edu.au
  Dr Davis: email: julia.davis@utas.edu.au
  Dr Bradfield: email: rebecca.bradfield@utas.edu.au

- *Who can I contact if I have any complaints?*
  Any concerns of complaints about the conduct of the research should be directed to the Ethics Executive Officer on 03 62267479 or human.ethics@utas.edu.au

- *How can I find out the results of this research?*
  Publication details about the research will be provided on the Law Faculty's website at www.law.utas.edu.au

We would very much appreciate your assistance with this project.

Yours sincerely

Professor Kate Warner
(on behalf of the research team)

Jury Sentencing Survey Questionnaire 1

UTAS

File No.

How To Fill Out This Questionnaire

1. To answer most of the questions you need only to tick a box. Please tick the box which is closest to your view.

2. Sometimes you are asked to write an answer – in that case simply put your answer in the space provided.

3. Sometimes additional information that will help you answer the question will appear next to this symbol.

Section A: The Case You Tried

A1. What was the offender (s) found guilty of ?

_____

_____

A2. Were you present for the sentencing submissions by the prosecution and defence? Yes ☐ (1) No ☐ (2)

A3. Please indicate by ticking below what sentence you consider the offender _____ should receive in this case?

We don't expect you to guess what the judge will do; we would like your own view and so there is no right or wrong answer. You may tick more than one box to create a combination of sentences. If there is more than one offence, your sentence should cover them all.

Record a conviction and discharge the offender ☐ (1)

Fine ☐ (2)
Suggested amount _____

Compensation Order ☐ (3)
Suggested amount _____

Probation Order (supervision plus bond) ☐ (4)
Suggested length of supervision *(max is 3 years)* _____

Rehabilitation Program Order ☐ (5)
(for domestic violence offenders only)

Community Service Order ☐ (6)
Suggested number of hours of unpaid work
(max is 240 hours) _____

Fully served Imprisonment ☐ (7)
Suggested length: Years _____ Months _____ *(max is 21 years)*

Partly suspended Imprisonment ☐ (8)
Suggested total length: Years _____ Months _____
Suggested period suspended: Years _____ Months _____

Wholly suspended Imprisonment: ☐ (9)
Suggested length: Years _____ Months _____

1

Jury Sentencing Survey Questionnaire 1

UTAS

Section B: Crime Trends In Tasmania & Sentencing Practice

B1. Recorded crime is crime that is recorded by the police. Do you think that recorded crime over the last 5 years has:

- Increased a lot ☐ (1)
- Increased a little ☐ (2)
- Stayed the same ☐ (3)
- Decreased a little ☐ (4)
- Decreased a lot ☐ (5)
- Don't know ☐ (6)

B2. This question relates to crime trends for specific crimes recorded in Tasmania over the last 5 years. During this period, do you think that the following crimes have become more common, stayed about the same or become less common?

	more common	stayed about same	less common	don't know
a. Burglary	☐	☐	☐	☐
b. Robbery	☐	☐	☐	☐
c. Rape	☐	☐	☐	☐
d. Motor vehicle thefts	☐	☐	☐	☐
e. Murder	☐	☐	☐	☐
	(1)	(2)	(3)	(4)

B3. What percentage of recorded crime do you think involves violence or the threat of violence?

If you are not sure give your best guess.

- One quarter or less ☐
- Between one quarter and a half ☐
- Between one half and three quarters ☐
- More than three quarters ☐
- Don't know ☐

This section relates to your views about current sentencing practices

B4. In general would you say current sentences for the following crime types are: Much too tough, A little too tough, About right , A little too lenient, Much too lenient

	much too tough	a little too tough	about right	a little too lenient	much too lenient
a. Violent offence (not sexual)	☐	☐	☐	☐	☐
b. Property offence	☐	☐	☐	☐	☐
c. Drug offence	☐	☐	☐	☐	☐
d. Sex Offence	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

B5. In relation to the following crimes, please indicate the proportion of convicted offenders you think are currently sent to prison:

	0 - 25%	26% - 50%	51% - 75%	greater than 75%
a. Convicted burglary offenders	☐	☐	☐	☐
b. Convicted rape offenders	☐	☐	☐	☐
	(1)	(2)	(3)	(4)

B6. How in touch do you think judges are with public opinion on sentencing?

- Very in touch ☐ (1)
- Somewhat in touch ☐ (2)
- Somewhat out of touch ☐ (3)
- Very out of touch ☐ (4)

2

Jury Sentencing Survey Questionnaire 1

UTAS

Section C: Perceptions Of Safety

C1. a. Have you ever been a victim of a crime that was reported to the police?

Yes ☐ (1)

No ☐ (2)

b. If yes, please specify the crime _____

C2. How safe do you feel walking alone in your area after dark?

Very safe ☐ (1)

Fairly safe ☐ (2)

A bit unsafe ☐ (3)

Very unsafe ☐ (4)

C3. How safe do you feel at home alone at night?

Very safe ☐ (1)

Fairly safe ☐ (2)

A bit unsafe ☐ (3)

Very unsafe ☐ (4)

C4. Please estimate your risk of being a victim of the following types of crime in the next 12 months:

	less than 6%	6% - 10%	11% - 30%	31% - 50%	greater than 50%
a. your home, garage or shed being broken into	☐	☐	☐	☐	☐
b. your vehicle being stolen	☐	☐	☐	☐	☐
c. being assaulted	☐	☐	☐	☐	☐
d. being robbed	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

C5. People get information about crime and sentencing from a variety of sources. Please indicate whether the following sources are a major source, a minor source or not a source for you?

	major source	minor source	not a source
a. Internet sites:	☐	☐	☐
b. ABC and or SBS television:	☐	☐	☐
c. Commercial television:	☐	☐	☐
d. Radio:	☐	☐	☐
e. Newspapers and news magazines:	☐	☐	☐
f. Talkback radio:	☐	☐	☐
g. Friends and family:	☐	☐	☐
	(1)	(2)	(3)

Section D: Questions About You

Please provide us with some important information about yourself. Remember that this information is totally confidential.

D1. First, are you: Female ☐ (1) or Male ☐ (2)

D2. What was your age on 1 January 2007? _____

D3. What is the highest level of education you have completed

School Year 10 or below ☐ (1)

School Year 11 ☐ (2)

School Year 12 ☐ (3)

Trade/Apprenticeship ☐ (4)

Certificate/Diploma ☐ (5)

Bachelor's degree and above ☐ (6)

D4. In which country were you born? Australia ☐

Other _____ *please write which country*

Jury Sentencing Survey Questionnaire 1

UTAS

D5. What is your current marital status?

- Single and never married ☐ (1)
- Married or partnered ☐ (2)
- Separated or divorced and not currently partnered ☐ (3)
- Widowed and not currently partnered ☐ (4)

D6. Last week what was your employment status?

- Working full-time for pay ☐ (1)
- Working part-time/casually for pay ☐ (2)
- On annual or other leave from a paid job ☐ (3)
- Unemployed - looking for work ☐ (4)
- Retired from paid work ☐ (5)
- Household duties ☐ (6)
- Full-time student ☐ (7)
- Other _____ ☐ (8)

D7. What is your current or most recent occupation?

Please write your occupation here _____

D8. Finally, is your total household gross annual income (ie before tax) from all sources:

- Under $25,000 ☐ (1)
- $25,0000 - $50,000 ☐ (2)
- $50,001 - $75,000 ☐ (3)
- $75,001 - $100,000 ☐ (4)
- $100,000 - $150,000 ☐ (5)
- More than $150,000 per annum ☐ (6)
- Not sure ☐ (7)

It would be very helpful if you agreed to participate a little further in this research. If you are willing to do so we will send you the judge's sentencing comments in this case and some information about crime and sentencing in Tasmania.

We would like you to read this information (this will only take about 20 minutes) and then complete another short questionnaire. If you are willing to participate in this way please enter your contact details below:

Name: _____

Postal Address: _____

Email: _____

You will be sent a prepaid envelope with your materials.

If you have not included your contact details it would help if you explained why you have declined to participate further.

_____

_____

_____

_____

Thank you very much for completing this questionnaire.

Your responses will help us to better understand how jury members feel about crime and sentencing matters.

4

Jury Sentencing Survey Questionnaire 1

UTAS

A4. What sentence do you consider the offender _____ should receive in this case?

- Record a conviction and discharge the offender ☐ (1)
- Fine ☐ (2)
  - Suggested amount _____
- Compensation Order ☐ (3)
  - Suggested amount _____
- Probation Order (supervision plus bond) ☐ (4)
  - Suggested length of supervision *(max is 3 years)* _____
- Rehabilitation Program Order ☐ (5)
  - (for domestic violence offenders only)
- Community Service Order ☐ (6)
  - Suggested number of hours of unpaid work *(max is 240 hours)* _____
- Fully served Imprisonment ☐ (7)
  - Suggested length: Years _____ Months _____ *(max is 21 years)*
- Partly suspended Imprisonment ☐ (8)
  - Suggested total length: Years _____ Months _____
  - Suggested period suspended: Years _____ Months _____
- Wholly suspended Imprisonment: ☐ (9)
  - Suggested length: Years _____ Months _____

A5. What sentence do you consider the offender _____ should receive in this case?

- Record a conviction and discharge the offender ☐ (1)
- Fine ☐ (2)
  - Suggested amount _____
- Compensation Order ☐ (3)
  - Suggested amount _____
- Probation Order (supervision plus bond) ☐ (4)
  - Suggested length of supervision *(max is 3 years)* _____
- Rehabilitation Program Order ☐ (5)
  - (for domestic violence offenders only)
- Community Service Order ☐ (6)
  - Suggested number of hours of unpaid work *(max is 240 hours)* _____
- Fully served Imprisonment ☐ (7)
  - Suggested length: Years _____ Months _____ *(max is 21 years)*
- Partly suspended Imprisonment ☐ (8)
  - Suggested total length: Years _____ Months _____
  - Suggested period suspended: Years _____ Months _____
- Wholly suspended Imprisonment: ☐ (9)
  - Suggested length: Years _____ Months _____

1a

Jury Sentencing Survey Questionnaire 1

UTAS

A6. What sentence do you consider the offender _____ should receive in this case?

- Record a conviction and discharge the offender ☐ (1)
- Fine ☐ (2)
  - Suggested amount _____
- Compensation Order ☐ (3)
  - Suggested amount _____
- Probation Order (supervision plus bond) ☐ (4)
  - Suggested length of supervision *(max is 3 years)* _____
- Rehabilitation Program Order ☐ (5)
  - (for domestic violence offenders only)
- Community Service Order ☐ (6)
  - Suggested number of hours of unpaid work *(max is 240 hours)* _____
- Fully served Imprisonment ☐ (7)
  - Suggested length: Years _____ Months _____ *(max is 21 years)*
- Partly suspended Imprisonment ☐ (8)
  - Suggested total length: Years _____ Months _____
  - Suggested period suspended: Years _____ Months _____
- Wholly suspended Imprisonment: ☐ (9)
  - Suggested length: Years _____ Months _____

A7. What sentence do you consider the offender _____ should receive in this case?

- Record a conviction and discharge the offender ☐ (1)
- Fine ☐ (2)
  - Suggested amount _____
- Compensation Order ☐ (3)
  - Suggested amount _____
- Probation Order (supervision plus bond) ☐ (4)
  - Suggested length of supervision *(max is 3 years)* _____
- Rehabilitation Program Order ☐ (5)
  - (for domestic violence offenders only)
- Community Service Order ☐ (6)
  - Suggested number of hours of unpaid work *(max is 240 hours)* _____
- Fully served Imprisonment ☐ (7)
  - Suggested length: Years _____ Months _____ *(max is 21 years)*
- Partly suspended Imprisonment ☐ (8)
  - Suggested total length: Years _____ Months _____
  - Suggested period suspended: Years _____ Months _____
- Wholly suspended Imprisonment: ☐ (9)
  - Suggested length: Years _____ Months _____

1b

APPENDIX 2

Assault police: sentencing statistics

Assaulting a police officer may be tried in the Magistrates Courts or in the Supreme Court. More serious charges are heard in the Supreme Court. The table below shows the range of sentences for one count and global or aggregate sentences when the sentence is imposed for more than one count. It shows that most sentences are custodial and that the median global sentence is 5 months but has ranged from 1 month to 2 years. A sentence of 21 months was imposed on an offender in the 1990-2000 period where an offender with relevant priors assaulted a hotel licensee and investigating police officers, apparently knocking one unconscious and punching another a number of times, fracturing his cheek bone and breaking his nose. About a third of custodial sentences are wholly suspended.

Assaulting police: Custodial Sentences 1978-2008						
year	single/global	no	min	med	max	% cust
1978-89	single	12	14d	3m	18m	66
	global	11	3m	6m	24m	92
1990-00	single	2	4m	-	12m	100
	global	11	1m	6m	21m	92
2001-08	single	10	1m	5m	24m	100
	global	6	1m	5m	6m	83

Indecent assault (two counts): sentencing statistics

Global sentences for two counts (usually two counts of indecent assault or one of indecent assault and one of an indecent act with a young person are shown below. The data shows that in recent years the majority of sentences have been short custodial sentences and that the median sentence is around 6 months. In the period 2001 to 2008 about 55% of custodial sentences were wholly suspended. Non-custodial sentences such as fines are not unknown for this offence.

Indecent assault: Custodial Sentences (Two counts) 1990-2006					
year	no	min	med	max	% cust
1990-2000	16	2	6	15	94
2001-2008	18	2	5/6	30	86

UNLAWFULLY INJURING PROPERTY: sentencing statistics

As the table below indicates there are relatively few convictions for injury or damage to property in the Supreme Court. This is because this offence is usually heard in the Magistrates Court. However, where the offence is particularly serious the charge will be laid under the Criminal Code and the matter will heard in the Supreme Court.
Most sentences in the Supreme Court for this crime are custodial with a median sentence of 6 months.

Using a car as a weapon to ram into buildings has attracted sentences towards the top of the range. The sentence of 24 months in the second period was imposed on an offender, who with co-offenders, stole three vehicles and used them to in a 'demolition derby' causing considerable damage. The fifteen-month sentence in the 2001-2008 period was imposed on an offender for an attempt to damage a government building containing forensic evidence which failed but filled the building with petrol vapour creating a dangerous situation.

Unlawfully Injuring Property: Custodial Sentences (Single count)					
year	no	% cust	min	med	max
1978-1989	18	58	1	6	12
1990-2000	17	53	1	6	24
2001-2008	14	57	3	5/6	15

STEALING: sentencing statistics

For one count of stealing, statistics show that between 60 and 80 per cent of sentences imposed have been custodial (this includes suspended prison sentences). The median sentence is 6 months. Warner (*Sentencing in Tasmania*, 2002 at p 344) states that in cases of stealing in the course of employment where between $10,000 and $50,000 is stolen, the sentences are invariably custodial and range from 4 months to 2 years with a median of 15 months. The longest sentence, one of 6 years 6 months (78 months), was imposed on a solicitor who pleaded guilty to stealing more than $3million from his clients.

Stealing Custodial Sentences (Single count) 1983-2008					
year	no	% cust	min	med	max
1983-1989	74	61	stroc*	6	45
1990-2000	85	77	1	6	32
2001-2008	53	85	1	6	78

*sentenced to the rising of the court (this is technically a sentence of imprisonment that last s until the court adjourns)

This project is funded by the Criminology Research Council

CRIME and SENTENCING

Crime is a topic that interests many people. As a juror you have been involved in a criminal trial and you will probably know more about the criminal process than most members of the public.

But how much do you know about crime in general?

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Measuring Crime

Statistics about crime levels come from two sources:

- recorded crime figures, which are documented and recorded by the police, and
- victim surveys, which ask members of the public about their experiences.

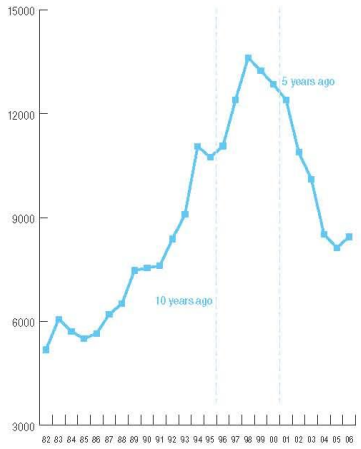
Recorded crime statistics are based on crimes which are recorded by the police after being reported by the public or being detected by the police. They are an underestimate of total crime levels because not all crime is reported to the police. However, for crimes that have high reporting rates such as homicide, motor vehicle theft and burglary, they are regarded as a reasonably reliable index of crime rates. For crimes against the person such as rape and assault, the changes in recorded crime levels can reflect changes in reporting and recording practices – so recorded crime data is not a reliable indicator of changes in the crime rates for these offences.

Victim surveys ask members of the public to disclose whether they have been a victim of various crimes. They also explore the extent to which victims of crime report the matter to the police. Weaknesses of these surveys include both under-reporting (a failure to disclose or recognise the conduct as a crime) and possible over-reporting (by reporting incidents which may not satisfy the legal definition of the crime in question). However, they provide a useful supplement to recorded crime data.

Has Recorded Crime increased or decreased?

Recorded crime statistics in Tasmania for the last 25 years reveal a general increase in crime until 1997-1998. Thereafter the crime rate decreased although it increased slightly in 2005-2006. However, the crime rate is lower than it was 10 years ago and quite a bit lower than it was 5 years ago. In general terms the Tasmanian trend is in accord with national trends.

Fig 1: Rate for recorded crime per 100,000 of population, Tasmania, 1981-82 to 2005-06



[Compiled from recorded crime data in Tasmania Police Annual Reports and ABS Population by Age and Sex, cat no 3201.0; note: recorded crime data covers offences collected for national statistics for the ABS and does not include all criminal offences, notable exclusions are offences with no identifiable victim - so drug offences and driving offences are not included.]

Burglaries, robberies, homicide, rape and assault are probably the crimes that most concern members of the public. Have these crimes decreased along with the general trend for recorded crime?

The number of recorded **burglaries of buildings** (dwellings and commercial premises) has declined since 1998 along with the total number and rate of property offences.

Motor vehicle (mv) stealing has shown a similar trend and although numbers for this offence increased in the last financial year (but decreased in the 2006 calendar year on ABS figures), the general trend in the last 5 years has been downwards.

The number of recorded **robberies** peaked in 1998-1999 and has since fluctuated but has not returned to the 1998-1999 level.

The number of **rapes** reached a peak in 2001-2002 and, like robbery, has fluctuated since then. However, rape is known to be under-reported – Australian victim surveys suggest that only about 20% of women who experience a sexual assault have reported it.

The number of recorded **assaults** has steadily increased in Tasmania over the last 10 years – but whether this reflects a true increase in the number of actual assaults is unclear.

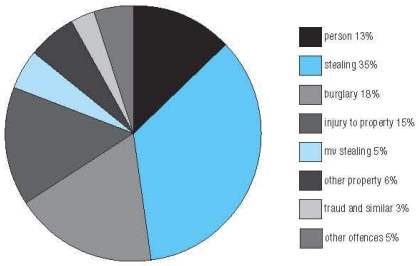
The **homicide** rate has remained largely stable over the last 25 years except for the year of the Port Arthur massacre (1996). The picture of fairly stable homicide rates has been the case in Australia for almost a century.

The trends in recorded crime in Tasmania more or less mirror the national trends which show a drop in property crimes in recent years; specifically, burglary has declined since 2001, as has motor vehicle stealing. The national recorded crime rate for robbery has also declined since 2001. Victim surveys also confirm these trends – with the 2005 ABS Crime and Safety Survey reporting decreasing rates for burglary and motor vehicle theft, and a slight decrease for robbery (see Table 1 on page 4). The rate for assault and sexual assault was stable (compared with the 2002 survey). The 2005 Crime and Safety Survey suggests that Tasmania has the lowest victimisation rate for household crime (burglary and motor vehicle stealing) and the lowest after Victoria for personal crime (robbery, assault and sexual assault).

Most crime does not involve violence

When we think of crime, most of us think of violent crime: homicide, robbery, assault and rape and other sexual assaults. However, crimes of violence (or crimes against the person) comprise only about 13% of crime recorded by police.

Fig 2: Recorded crime in Tasmania: distribution of offences



(Source: recorded crime data from Tasmania police 2005-06.)

What is your risk of becoming a victim of a household or personal crime within the next 12 months?

Victim surveys can help us answer this question. Table 1 is based on data from the 2002 and 2005 ABS national crime victim surveys. An estimated 2.1% of households in Tasmania in the 2005 survey reported being a victim of burglary in the previous 12 months – down from 5.2% in 2002. From these figures it would seem that in Tasmania the risk of a household being burgled in the next 12 months is likely to be between 2% and 5% or somewhere between 1 in 20 and 1 in 50.

Table 1: Crime victimisation rates, household and personal victims as percentages of all households and victims

	Tasmania		Australia	
	2002	2005	2002	2005
Household victims:				
Break and enter	5.2	2.1	4.7	3.3
Motor vehicle theft	1.6	0.9	1.8	1.0
Personal victims:				
Assault	5.0	4.4	4.7	4.8
Robbery	0.3	0.1	0.6	0.4

The risk of robbery is even lower than the risk of being burgled or having your motor vehicle stolen. The 2005 survey suggested that the risk in Australia was 0.4% or 1 in 250, and in Tasmania it is less. Victim surveys suggest that the risk of being assaulted is now higher than the risk of being burgled or having your vehicle stolen. While this sounds rather frightening it needs to be looked at in context. Whilst any assault is of concern, most assaults reported in crime surveys are not serious assaults: 77% of victims of assault in the 2005 survey were not injured and 69% did not report it to the police – and the most common reason for not reporting was that it was too trivial or unimportant.

For personal crimes (assault and robbery) victimisation rates depend on age. Young persons between the age of 15 and 19 have the highest victim prevalence rate and from the age of 20 the rate decreases.

Fig 3: Crime victimisation rate by age for assault and robbery

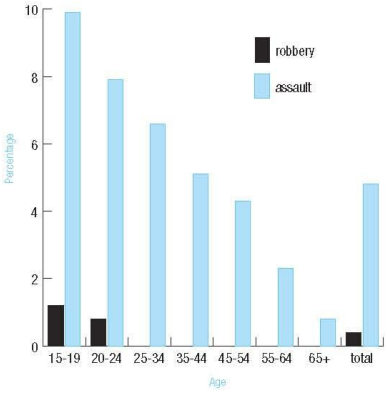


Fig 3 suggests that once a person is over the age of 44 the risk of becoming a victim of assault is less than the overall rate.

For personal crimes, victimisation rates also vary depending on gender. The 2005 ABS Personal Safety Survey found that 3% of adult women experienced assault in the 12 months prior to the survey compared with 7% of men, but women were more likely to report having experienced sexual assault in the previous 12 months – 3% of women compared with less than 1% of men (17% of women experienced sexual assault since the age of 15 compared with 5% of men).
We have seen that not all crime is reported to the

police. And of course not all recorded crime results in the detection and prosecution of the offenders responsible. Furthermore, even when prosecuted, not all offenders are convicted. So, when courts come to sentence convicted offenders, they are dealing with quite a small proportion of those who have actually committed offences.

Fig 4: How many criminals are caught and convicted?

[Source: Mukherjee et al, (1987), The Size of the Crime Problem in Australia, AIC]

The numbers in Fig 4 are estimates only. It should also be noted that the fact that 60 people are arrested for each 1000 offences does not mean that 930 (1000 minus 60) get off. It is likely that the 60 arrested offenders committed many more offences than one each.

If you would like to find more about crime statistics the following websites are useful:
www.police.tas.gov.au:
Tasmania Police, *Annual Reports*.
www.aic.gov.au:
Australian Institute of Criminology,
see *Australian Crime: facts and figures 2006*.
www.abs.gov.au:
Australian Bureau of Statistics: see *Recorded Crime – Victims Australia*, 2006, cat no 4510.0 *Crime and Safety Australia*, 2005 cat no 4509.0; *Personal Safety Survey Australia*, 2005, cat no 4906.0.

Sentencing

The sentencing of convicted offenders is often in the news and judicial officers (ie, judges and magistrates) are sometimes criticised because a particular sentence is said to be too lenient. Rarely are they criticised because sentences are too tough. We would like you to read the sentencing information in this booklet so that you can give us your informed and considered view about the sentence in the case you tried.

Sentencing: who is responsible?

While it may appear that judicial officers are solely responsible for sentencing, what they do is guided by laws made by parliament and principles laid down by appeal courts. A judge cannot simply choose a sentence as a matter of personal preference. Sentencing is a matter for Parliaments, Courts and the Executive.

- **Parliaments** create offences, specify maximum penalties, specify purposes for which sentences can be imposed and create the sentencing options available to the courts.
- **Courts** decide specific sentences within the legislative framework, taking into account sentencing principles laid down by superior courts and sentencing practice.
- The **Executive** (the government, through government agencies) gives effect to sentences by administering prisons and community options and by determining release through agencies such as the Parole Board.

However, the judicial role is central to sentencing. The judges make decisions within the limits fixed by Parliament and in accordance with the appeal court's principles.

The sentencing hearing

Provided the sentencing hearing was not adjourned, most of you will have heard the prosecution and the defence address the judge in relation to sentence. The prosecution will have addressed the judge, detailed the impact of the offence on any victims, and drawn the judge's attention to any prior record of the offender. Defence counsel will have addressed the judge about the offender's background and circumstances.

[If the matter was adjourned, the transcript of the sentencing hearing is enclosed with your information package.]

The main issues

The main issues that a judge must consider in imposing sentence are:

- The **purposes** of sentencing;
- Relevant sentencing **factors**;
- The range of sentencing **options**; and
- Current sentencing **practices**.

The purposes of sentencing

The main purposes of sentencing are:

- **Punishment:** imposing a sentence that inflicts some kind of pain or loss on the offender.
- **Incapacitation:** separating the offender from society.
- **Denunciation:** expressing community disapproval for the offending conduct.
- **Rehabilitation:** assisting in the offender's reform.
- **General deterrence:** deterring (discouraging) others from committing similar crimes.
- **Specific deterrence:** deterring the offender from re-offending.
- **Restorative justice:** restoring relations between the community, the offender and the victim, for example, by compensating the victim(s) or the community.
- **Protection of society:** this is a term which can cover any one or more of the following purposes, namely incapacitation, denunciation, general and specific deterrence and rehabilitation.

Sentencing purposes and crime levels

The impact of sentences on crime rates is limited by the small proportion of offenders who come before the courts for sentence (see Fig 4). Moreover, research demonstrates that while the criminal justice system as a whole (police, laws, courts) acts as a deterrent, increasing the severity of sentence (say the median sentence for armed robbery from about 2 years to 3 or 4 years) does not reduce crime by deterring those who may be tempted to offend (general deterrence).

Limiting principles: parsimony and proportionality

A court must not impose a sentence that is more severe than necessary to achieve the purpose or purposes for which the sentence is imposed. So, for example, it follows that a court must not impose a prison term if a non-custodial sentence would be appropriate. This is the **principle of parsimony**.

The **principle of proportionality** states that the sentence must match the seriousness of the offence. This means that none of the above purposes of sentencing can justify the imposition of a sentence that is disproportionate to the gravity of the offence. So, once the judge has determined the nature and gravity of the offence, this determines the upper limit of the sentence.

Balancing the purposes

Often the purposes of sentencing overlap and a sentence may reflect a balance of more than one purpose, for example: general deterrence, specific deterrence and punishing the offender. In these

circumstances the judge designs a sentence that balances the purposes. However, sometimes two purposes that seem to be appropriate may suggest sentencing options that are incompatible with each other: for example rehabilitation may suggest a non-custodial option with a treatment condition, but punishment for the crime and denunciation may suggest an immediate prison sentence. The judge always has to try to find the right balance between competing purposes.

Relevant sentencing factors

There are a number of matters that the courts must take into account when imposing a sentence. These include: the nature and circumstances of the offence, the circumstances of the offender, the offender's response to the charges and other post-offence factors.

The nature and circumstances of the offence

Different offence types vary in seriousness – for example, most murders are more serious than most assaults. The seriousness of a particular offence type will depend upon the way it was committed and the impact of the crime. Factors which add to the seriousness of the crime include whether:

- The crime was **planned or premeditated** rather than committed on the spur of the moment;
- The crime was committed by a **gang or group**;
- The offender was the **ring-leader** rather than having a minor role;
- The crime involved a **breach of trust**; or
- A **weapon** was used.

To assess the seriousness of the crime, the judge must weigh up the degree of loss or the extent of injury to the victim. Some victims may be very young or very old or more vulnerable for other reasons. Such factors may warrant a more severe sentence.

The circumstances of the offender

The personal circumstances of the offender will be taken into account, including:

- Character, including **prior convictions**;
- **Cultural background**;
- **Age**: a youthful offender (up to 21 or so), particularly a first offender, will be given every reasonable opportunity to reform;
- **Mental disorder or disability** may reduce the offender's degree of responsibility and hence the severity of sentence;
- **Alcohol or drug abuse** is not an excuse for committing a crime but may be relevant to show the offence is out of character; and
- Only in cases of **exceptional hardship** can the judge take into account the effect of imprisonment on an offender's family.

Response to the charges and post-offence factors

The behaviour of the offender and other matters occurring after the offence may be relevant. These factors include:

- **Remorse**: this factor reduces the severity of the sentence and it may be evidenced by any reparation made prior to sentencing for any loss or damage caused by the offence.
- **Co-operation with the authorities** is a mitigating factor: the offender may have assisted the police in the investigation of the offence or assisted the prosecution (for example, by giving evidence against any co-offenders).
- A **plea of guilty** is a mitigating factor.
- **Parity**: any sentence imposed on a co-offender will be taken into account to avoid a justified sense of grievance or any appearance of injustice.

The range of sentencing options

The range of sentencing options is set out by the *Sentencing Act 1997* in section 7.

Imprisonment: if the sentence is longer than 9 months, the judge will also have to consider the appropriate 'non-parole period'. This is the period for which the offender must remain in custody before release on parole. The minimum non-parole period is 6 months or half the sentence, whichever is the longer.

In the Supreme Court about 57% of convicted offenders are sentenced to immediate imprisonment. However, in magistrates courts, about 6% are sentenced to immediate imprisonment.

Suspended term of imprisonment: the term may be wholly suspended or partly suspended.

In the Supreme Court about 30% of prison sentences are wholly suspended. In magistrates courts about 10% of sentences are wholly suspended.

Rehabilitation program order: a person convicted of a family violence offence may be required to participate in a program designed to address their offending.

Community service order: this requires the offender to perform unpaid work in the community or attend educational or rehabilitative programs.

In the Supreme Court about 4% of sentences are community service orders (as the principal or most serious sanction) – the percentage in magistrates courts is similar.

Probation: this requires an offender to be supervised by a probation officer and not commit an imprisonable offence for a specified period.

Probation orders are very rarely the principal sentence in the Supreme Court, and in magistrates courts they are about 1% of cases.

Fine: this requires the payment of a sum of money. It is the principal financial penalty – others are compensation orders and forfeiture orders in relation to the proceeds of crime.

Fines are also rarely the principal sentence in the Supreme Court, but in magistrates courts they account for about 70% of cases.

Conditional and absolute discharge: three kinds of order of this nature are available - adjournments with an undertaking; discharge with a conviction recorded, discharge with no conviction.

Conditional and absolute discharge are imposed in about 9% of cases in magistrates courts.

Compensation for personal injury (pain and suffering and for medical or other costs incurred as a result of the injury) or for property loss or damage. For some offences (burglary, stealing, robbery, and injuring property) the court is required to make an order for compensation for property loss.

Disqualification from holding a driver's licence.

Forfeiture: for drug offences in particular the court may order forfeiture of things used in connection with the offence and of the proceeds of the crime.

Current sentencing practices

"Like cases should be treated alike."

Consistency in punishment is regarded as an important principle of fairness in the administration of criminal justice. For this reason, when judges impose sentence they do so in the light of the range of sentences that are usually imposed for a particular offence, and they use this range as a yardstick or guide.

Below are displayed some statistics on the penalties imposed for a selected number of crimes, namely, rape, armed robbery, wounding, grievous bodily harm and burglary in the years 2001-2006.

Fig 5: Sentence types per offence 2001-2006

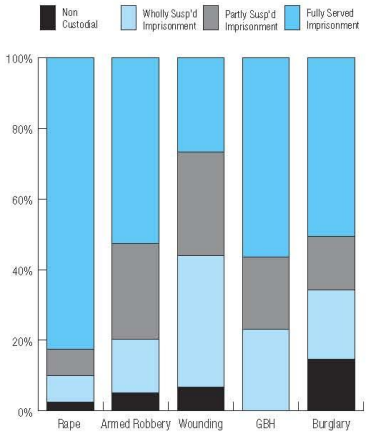


Fig 5 indicates that over the last 5 years non-custodial sentences for rape were almost unknown (1 out of 40 or 2.5%) and there were none at all for grievous bodily harm. Rape had the greatest proportion of immediate prison sentences (partially suspended and fully served imprisonment) with 90% of all sentences, followed by armed robbery (80%) and grievous bodily harm (77%).

Fig 6: Sentencing range for custodial sentences (single and global) 2001-2006

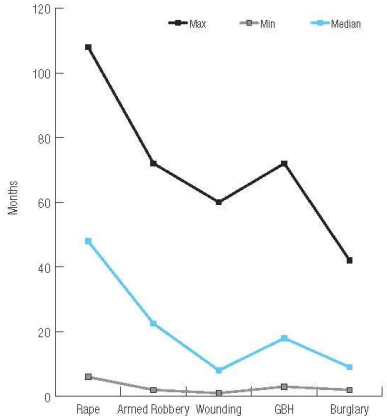
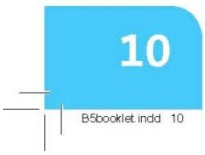


Fig 6 shows that for these five crimes, rape is the most serious. It had the highest median sentence of 48 months or 4 years; it also had the highest minimum sentence (6 months) and the longest maximum sentence (108 months or 9 years). Armed robbery is the next most serious with a median sentence of 22.5 months, a maximum sentence of 72 months (6 years) and a minimum of 2 months. Grievous bodily harm is of a similar level of seriousness.

You will find additional sentencing data about the principal crime in your trial attached to page 11 of this booklet.



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CRIME and SENTENCING

11

This is a project supported by a grant from the Criminology Research Council. The views expressed are the responsibility of the researchers and are not necessarily those of the Council.

APPENDIX 3

Jury Sentencing Survey Questionnaire 2

Version 1 - Single Offender

UTAS

File No.

How To Fill Out This Questionnaire

1. To answer most of the questions you need only to tick a box. Please tick the box which is closest to your view.

2. Sometimes you are asked to write an answer – in that case simply put your answer in the space provided.

3. Sometimes additional information that will help you answer the question will appear next to this symbol.

4. Please feel free to consult your booklet when answering.

Section A: The Case You Tried

A1. Now that you know the sentence which the judge gave, was it what you expected?

- Exactly as expected ☐ (1)
- Close to expected ☐ (2)
- A little different ☐ (3)
- Completely different ☐ (4)

A2. Having read the judge's comments on passing sentence, how appropriate do you think the sentence was?

- Very appropriate ☐ (1)
- Fairly appropriate ☐ (2)
- Fairly inappropriate ☐ (3)
- Very inappropriate ☐ (4)

A3. Unless you thought the sentence was very appropriate, please indicate what you think the sentence should have been?

A4. Was there anything in the judge's sentencing remarks you particularly disagreed with? *Please write down what those remarks were about.*

A5. Was there anything in the judge's sentencing remarks you particularly agreed with? *Please write down what those remarks were about.*

1

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Jury Sentencing Survey Questionnaire 2

UTAS

A6. Sentences can reflect a variety of goals or justifications. The following is a list of seven commonly recognised sentencing goals. Please rank them giving your view of the most important in the case you tried, from 1 (the most important to you) to 7 (the least important to you):

- Punishing the offender ☐ (1)
- Separating the offender from society ☐ (2)
- Expressing community disapproval ☐ (3)
- Assisting the offender's rehabilitation ☐ (4)
- Deterring others from committing similar crimes ☐ (5)
- Deterring the offender from re-offending ☐ (6)
- Compensating the victim(s) or the community ☐ (7)

A7. In deciding a sentence, a judge is required to consider a number of factors. This question lists commonly recognised aggravating and mitigating factors. Please go through the lists and indicate your own views on the importance of these factors in the case you tried.

Many of the factors may not have arisen in the case, if so indicate this in the 'did not arise' box.

Please respond to each item.

(a) Aggravating factors: these are matters that increase the culpability of the offender, and therefore usually have the effect of increasing the severity of the sentence.

A7 (a) cont.	very important	quite important	not very important	unimportant	did not arise
a. The offence involved the use of actual or threatened violence	☐	☐	☐	☐	☐
b. The offence involved use of a weapon	☐	☐	☐	☐	☐
c. The offence involved more than needed violence	☐	☐	☐	☐	☐
d. The offence was motivated by hatred or prejudice against a member of a group to which the offender believed the victim belonged	☐	☐	☐	☐	☐
e. The offence was committed without regard for public safety	☐	☐	☐	☐	☐
f. The victim was vulnerable because very old, very young or because of a disability	☐	☐	☐	☐	☐
g. The offender abused a position of trust or authority in relation to the victim	☐	☐	☐	☐	☐
h. The victim was a police officer or a person exercising other public or community functions and the offence arose because of the victim's occupation	☐	☐	☐	☐	☐
i. The offence(s) involved multiple victims or a series of criminal acts	☐	☐	☐	☐	☐
j. The offence was committed in company with other offenders	☐	☐	☐	☐	☐
k. The injury, emotional harm, loss or damage caused by the offence was substantial	☐	☐	☐	☐	☐
l. The offence was part of a planned or organised criminal activity	☐	☐	☐	☐	☐
m. The offender had prior convictions	☐	☐	☐	☐	☐
n. The offender was on parole, subject to a suspended sentence or on bail	☐	☐	☐	☐	☐
o. Are there any other factors that you consider aggravated the seriousness of the offences	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: _____

2

Jury Sentencing Survey Questionnaire 2

UTAS

(b) Mitigating factors these are generally matters that decrease the culpability of the offender with the effect of reducing the severity of the sentence.

	very important	quite important	not very important	unimportant	did not arise
a. The injury, loss or damage was not substantial	☐	☐	☐	☐	☐
b. The offence was not part of a planned or organised criminal activity	☐	☐	☐	☐	☐
c. The offender was provoked by the victim	☐	☐	☐	☐	☐
d. The offender does not have any record (or any significant record) of prior convictions	☐	☐	☐	☐	☐
e. The offender was a person of good character	☐	☐	☐	☐	☐
f. The offender was young (under 21) or is old (over 65)	☐	☐	☐	☐	☐
g. The offender is unlikely to reoffend	☐	☐	☐	☐	☐
h. The offender has good prospects of rehabilitation either because of age or otherwise	☐	☐	☐	☐	☐
i. The offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner	☐	☐	☐	☐	☐
j. The offender was not fully aware of the consequences of their actions because of the offender's age, mental disorder or other disability	☐	☐	☐	☐	☐
k. The offender provided assistance to law enforcement authorities	☐	☐	☐	☐	☐
l. What other factors do you consider mitigated the seriousness of the offence?	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

*please specify:*_____

Jury Sentencing Survey Questionnaire 2

UTAS

Section B:
The Information Package

These questions are to give us some feedback on the general usefulness of the information package sent to you.

B1. In relation to the booklet on general crime and sentencing information, did you

- Read the booklet in full ☐ (1)
- Read some sections in full ☐ (2)
- Flick through the booklet ☐ (3)
- Not look at the booklet ☐ (4)

B2. What do you plan to do with the booklet

- Keep the booklet ☐ (1)
- Throw it away ☐ (2)
- Give it to a friend ☐ (3)
- Other (specify) _____ ☐ (4)

B3. We want to know how you felt about the booklet. In the table below are pairs of statements and we would like you to indicate which applies to the booklet. Circle the number that most closely represents your view. For example, if you strongly agree with the statement on the left, circle 1, if you strongly disagree circle 5. If you can't decide or if both statements apply equally, circle 3.

a. Easy to understand	1	2	3	4	5	Difficult to understand
b. Informative	1	2	3	4	5	Did not give any new information
c. Unbiased	1	2	3	4	5	Biased
d. Made me feel more confident about the criminal justice system	1	2	3	4	5	Made me feel less confident about the criminal justice system
e. Interesting	1	2	3	4	5	Boring
f. Helpful	1	2	3	4	5	Unhelpful
g. Factual	1	2	3	4	5	Propaganda

(1) (2) (3) (4) (5)

B4. How much did you learn from the booklet?

- A lot ☐ (1)
- A little ☐ (2)
- Nothing ☐ (3)

B5. Has reading the booklet changed your views about crime and sentencing?

- A lot ☐ (1)
- A little ☐ (2)
- Not at all ☐ (3)

Jury Sentencing Survey Questionnaire 2

UTAS

B6. Do you think jurors would be interested in receiving this booklet after a verdict of guilty?

- Very interested ☐ (1)
- Quite interested ☐ (2)
- Not at all interested ☐ (3)

B7. Judges' sentencing comments are available from the Supreme Court website. Do you think jurors would be interested in knowing how to access the judge's sentencing comments in the case they tried?

- Very interested ☐ (1)
- Quite interested ☐ (2)
- Not at all interested ☐ (3)

We now want you to think about the usefulness of the information package in answering the survey questions about the sentence.

B8. (a) How useful to you was the general information in relation to sentencing in forming your judgment about the appropriateness of the sentence?

- Very useful ☐ (1)
- Fairly useful ☐ (2)
- Not very useful ☐ (3)
- Not at all useful ☐ (4)

(b) How much did knowing the reasons the judge gave for sentence affect your view of the appropriateness of the sentence?

- A lot ☐ (1)
- A little ☐ (2)
- Not at all ☐ (3)

(c) How much did the information on crime levels and trends affect your judgment about the appropriateness of the sentence?

- A lot ☐ (1)
- A little ☐ (2)
- Not at all ☐ (3)

Jury Sentencing Survey Questionnaire 2

UTAS

Section C: Your Views About Sentencing In General, Crime Trends And Your Perceptions Of Safety

C1. In general, would you say current sentences for the following crime types are: Much too tough, A little too tough, About right , A little too lenient, Much too lenient?

	much too tough	a little too tough	about right	a little too lenient	much too lenient
a. Violent offence (not sexual)	☐	☐	☐	☐	☐
b. Property offence	☐	☐	☐	☐	☐
c. Drug offence	☐	☐	☐	☐	☐
d. Sex Offence	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

C2. In relation to the following crimes, please indicate the proportion of convicted offenders who are currently sent to prison

	0 - 25%	26% - 50%	51% - 75%	greater than 75%
a. Convicted burglary offenders	☐	☐	☐	☐
b. Convicted rape offenders	☐	☐	☐	☐
	(1)	(2)	(3)	(4)

C3. How in touch do you think judges are with public opinion on sentencing?

- Very in touch ☐ (1)
- Somewhat in touch ☐ (2)
- Somewhat out of touch ☐ (3)
- Very out of touch ☐ (4)

C4. How safe do you feel walking alone in your area after dark?

- Very safe ☐ (1)
- Fairly safe ☐ (2)
- A bit unsafe ☐ (3)
- Very unsafe ☐ (4)

C5. How safe do you feel at home alone at night?

- Very safe ☐ (1)
- Fairly safe ☐ (2)
- A bit unsafe ☐ (3)
- Very unsafe ☐ (4)

C6. Please estimate your risk of being a victim of the following types of crime in the next 12 months.

	less than 6%	6% - 10%	11% - 30%	31% - 50%	greater than 50%
a. Your home, garage or shed being broken into	☐	☐	☐	☐	☐
b. Your vehicle being stolen	☐	☐	☐	☐	☐
c. Being assaulted	☐	☐	☐	☐	☐
d. Being robbed	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

Jury Sentencing Survey Questionnaire 2

UTAS

C7. Recorded crime is crime that is recorded by the police. Do you think that recorded crime over the last 5 years has:

- ☐ Increased a lot (1)
- ☐ Increased a little (2)
- ☐ Stayed the same (3)
- ☐ Decreased a little (4)
- ☐ Decreased a lot (5)
- ☐ Don't know (6)

C8. This question relates to crime trends for specific crimes recorded in Tasmania over the last 5 years. During this period, have the following crimes become more common, stayed about the same or become less common?

	more common	stayed about same	less common	don't know
a. Burglary	☐	☐	☐	☐
b. Robbery	☐	☐	☐	☐
c. Rape	☐	☐	☐	☐
d. Motor vehicle thefts	☐	☐	☐	☐
e. Murder	☐	☐	☐	☐
	(1)	(2)	(3)	(4)

C9. What percentage of recorded crime involves violence or the threat of violence?

- ☐ One quarter or less (1)
- ☐ Between one quarter and a half (2)
- ☐ Between one half and three quarters (3)
- ☐ More than three quarters (4)
- ☐ Don't know (5)

C10. How much do you agree with following statements

	strongly agree	agree	neither agree nor disagree	disagree	strongly disagree
a. Judges should reflect public opinion about crimes when sentencing criminals	☐	☐	☐	☐	☐
b. The death penalty should be the punishment for murder	☐	☐	☐	☐	☐
c. The law should always be obeyed even if a particular law is wrong	☐	☐	☐	☐	☐
d. Breaking the law to protect a family member or a friend is sometimes justified	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

Section D

D1. Have you discussed any of the following aspects of the case or study with family or friends?

a. The sentence	☐ Yes	☐ No
b. The information on crime trends	☐ Yes	☐ No
c. The information on sentencing patterns	☐ Yes	☐ No
	(1)	(2)

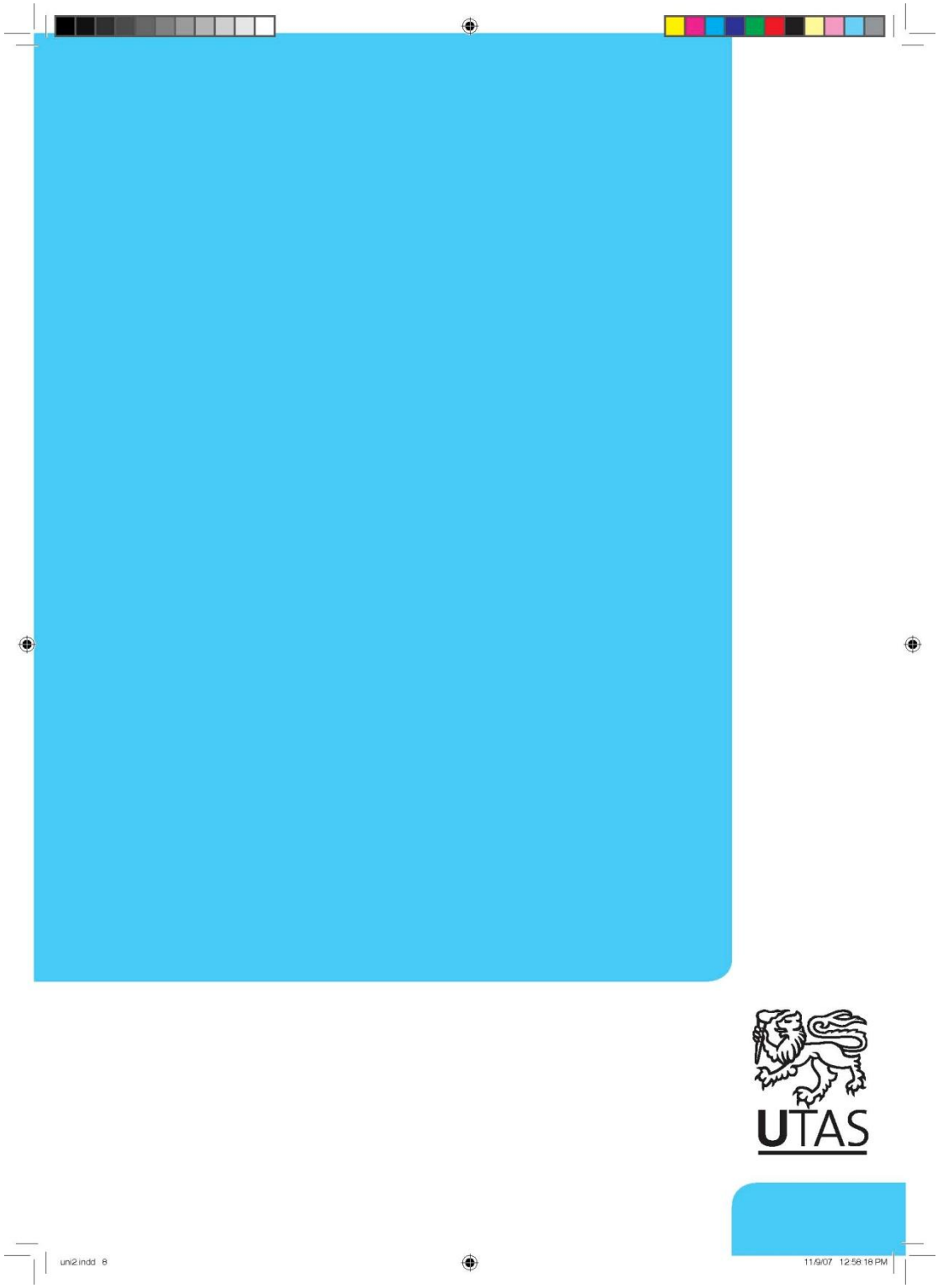
This is the end of the questionnaire.

Please put the questionnaire in the pre-paid envelope and post it back to us.

We really appreciate your co-operation and effort!

If you are willing to participate in a face-to-face interview please tick the box below and we will contact you to arrange a time and place. This interview will further explore your views in relation to the sentence in this case and your views in relation to sentencing more generally.

☐ I am willing to be interviewed.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Jury Sentencing Survey Questionnaire 2

Version 2 - Multiple Offenders

UTAS

File No.

How To Fill Out This Questionnaire

1. To answer most of the questions you need only to tick a box. Please tick the box which is closest to your view.

2. Sometimes you are asked to write an answer – in that case simply put your answer in the space provided.

3. Sometimes additional information that will help you answer the question will appear next to this symbol.

4. Please feel free to consult your booklet when answering.

Section A: The Case You Tried

A1. Now that you know the sentence which the judge gave, was it what you expected?

- Exactly as expected ☐ (1)
- Close to expected ☐ (2)
- A little different ☐ (3)
- Completely different ☐ (4)

A2. Having read the judge's comments on passing sentence, how appropriate do you think the sentence was?

- Very appropriate ☐ (1)
- Fairly appropriate ☐ (2)
- Fairly inappropriate ☐ (3)
- Very inappropriate ☐ (4)

A3. Unless you thought the sentence was very appropriate, please indicate what you think the sentence should have been?

_____

_____

A4. Was there anything in the judge's sentencing remarks you particularly disagreed with? *Please write down what those remarks were about.*

_____

_____

_____

_____

A5. Was there anything in the judge's sentencing remarks you particularly agreed with? *Please write down what those remarks were about.*

_____

_____

_____

_____

Jury Sentencing Survey Questionnaire 2

UTAS

A6. Sentences can reflect a variety of goals or justifications. The following is a list of seven commonly recognised sentencing goals. Please rank them giving your view of the most important in the case you tried, from 1 (the most important to you) to 7 (the least important to you):

Punishing the offender	☐ (1)
Separating the offender from society	☐ (2)
Expressing community disapproval	☐ (3)
Assisting the offender's rehabilitation	☐ (4)
Deterring others from committing similar crimes	☐ (5)
Deterring the offender from re-offending	☐ (6)
Compensating the victim(s) or the community	☐ (7)

A7. In deciding a sentence, a judge is required to consider a number of factors. This question lists commonly recognised aggravating and mitigating factors. Please go through the lists and indicate your own views on the importance of these factors in the case you tried.

Many of the factors may not have arisen in the case, if so indicate this in the 'did not arise' box.

Please respond to each item.

(a) Aggravating factors: these are matters that increase the culpability of the offender, and therefore usually have the effect of increasing the severity of the sentence.

A7 (a) cont.

a - l: relate equally to all offenders.
m - o: must be filled out for each offender.

	very important	quite important	not very important	unimportant	did not arise
a. The offence involved the use of actual or threatened violence	☐	☐	☐	☐	☐
b. The offence involved use of aweapon	☐	☐	☐	☐	☐
c. The offence involved more than needed violence	☐	☐	☐	☐	☐
d. The offence was motivated by hatred or prejudice against a member of a group to which the offender believed the victim belonged	☐	☐	☐	☐	☐
e. The offence was committed without regard for public safety	☐	☐	☐	☐	☐
f. The victim was vulnerable because very old, very young or because of a disability	☐	☐	☐	☐	☐
g. The offenders abused a position of trust or authority in relation to the victim	☐	☐	☐	☐	☐
h. The victim was a police officer or a person exercising other public or community functions and the offence arose because of the victim's occupation	☐	☐	☐	☐	☐
i. The offence(s) involved multiple victims or a series of criminal acts	☐	☐	☐	☐	☐
j. The offence was committed in company with other offenders	☐	☐	☐	☐	☐
k. The injury, emotional harm, loss or damage caused by the offence was substantial	☐	☐	☐	☐	☐
l. The offence was part of a planned or organised criminal activity	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

Offender: _____

2

Jury Sentencing Survey Questionnaire 2

UTAS

	very important	quite important	not very important	unimportant	did not arise
m. The offender had prior convictions	☐	☐	☐	☐	☐
n. The offender was on parole, subject to a suspended sentence or on bail	☐	☐	☐	☐	☐
o. Are there any other factors that you consider aggravated the seriousness of the offence(s)	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: ____________________

Offender: ____________________

m. The offender had prior convictions	☐	☐	☐	☐	☐
n. The offender was on parole, subject to a suspended sentence or on bail	☐	☐	☐	☐	☐
o. Are there any other factors that you consider aggravated the seriousness of the offence(s)	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: ____________________

Offender: ____________________

m. The offender had prior convictions	☐	☐	☐	☐	☐
n. The offender was on parole, subject to a suspended sentence or on bail	☐	☐	☐	☐	☐
o. Are there any other factors that you consider aggravated the seriousness of the offence(s)	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: ____________________

Offender: ____________________

m. The offender had prior convictions	☐	☐	☐	☐	☐
n. The offender was on parole, subject to a suspended sentence or on bail	☐	☐	☐	☐	☐
o. Are there any other factors that you consider aggravated the seriousness of the offence(s)	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: ____________________

Jury Sentencing Survey Questionnaire 2

UTAS

(b) Mitigating factors these are generally matters that decrease the culpability of the offender with the effect of reducing the severity of the sentence.

a - c: relate equally to all offenders.
d - l: must be filled out for each offender.

	very important	quite important	not very important	unimportant	did not arise
a. The injury, loss or damage was not substantial	☐	☐	☐	☐	☐
b. The offence was not part of a planned or organised criminal activity	☐	☐	☐	☐	☐
c. The offender was provoked by the victim	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

Offender: _____

	very important	quite important	not very important	unimportant	did not arise
d. The offender does not have any record (or any significant record) of prior convictions	☐	☐	☐	☐	☐
e. The offender was a person of good character	☐	☐	☐	☐	☐
f. The offender was young (under 21) or is old (over 65)	☐	☐	☐	☐	☐
g. The offender is unlikely to re-offend	☐	☐	☐	☐	☐
h. The offender has good prospects of rehabilitation either because of age or otherwise	☐	☐	☐	☐	☐
i. The offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner	☐	☐	☐	☐	☐
j. The offender was not fully aware of the consequences of their actions because of the offender's age, mental disorder or other disability	☐	☐	☐	☐	☐
k. The offender provided assistance to law enforcement authorities	☐	☐	☐	☐	☐
l. What other factors do you consider mitigated the seriousness of the offence?	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: _____

4

Jury Sentencing Survey Questionnaire 2

UTAS

Offender: _____

	very important	quite important	not very important	unimportant	did not arise
d. The offender does not have any record (or any significant record) of prior convictions	☐	☐	☐	☐	☐
e. The offender was a person of good character	☐	☐	☐	☐	☐
f. The offender was young (under 21) or is old (over 65)	☐	☐	☐	☐	☐
g. The offender is unlikely to reoffend	☐	☐	☐	☐	☐
h. The offender has good prospects of rehabilitation either because of age or otherwise	☐	☐	☐	☐	☐
i. The offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner	☐	☐	☐	☐	☐
j. The offender was not fully aware of the consequences of their actions because of the offender's age, mental disorder or other disability	☐	☐	☐	☐	☐
k. The offender provided assistance to law enforcement authorities	☐	☐	☐	☐	☐
l. What other factors do you consider mitigated the seriousness of the offence?	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: _____

Offender: _____

	very important	quite important	not very important	unimportant	did not arise
d. The offender does not have any record (or any significant record) of prior convictions	☐	☐	☐	☐	☐
e. The offender was a person of good character	☐	☐	☐	☐	☐
f. The offender was young (under 21) or is old (over 65)	☐	☐	☐	☐	☐
g. The offender is unlikely to reoffend	☐	☐	☐	☐	☐
h. The offender has good prospects of rehabilitation either because of age or otherwise	☐	☐	☐	☐	☐
i. The offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner	☐	☐	☐	☐	☐
j. The offender was not fully aware of the consequences of their actions because of the offender's age, mental disorder or other disability	☐	☐	☐	☐	☐
k. The offender provided assistance to law enforcement authorities	☐	☐	☐	☐	☐
l. What other factors do you consider mitigated the seriousness of the offence?	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

please specify: _____

Jury Sentencing Survey Questionnaire 2

UTAS

Offender: _____

	very important	quite important	not very important	unimportant	did not arise
d. The offender does not have any record (or any significant record) of prior convictions	☐	☐	☐	☐	☐
e. The offender was a person of good character	☐	☐	☐	☐	☐
f. The offender was young (under 21) or is old (over 65)	☐	☐	☐	☐	☐
g. The offender is unlikely to reoffend	☐	☐	☐	☐	☐
h. The offender has good prospects of rehabilitation either because of age or otherwise	☐	☐	☐	☐	☐
i. The offender has shown remorse for the offence by making reparation for any injury, loss or damage or in any other manner	☐	☐	☐	☐	☐
j. The offender was not fully aware of the consequences of their actions because of the offender's age, mental disorder or other disability	☐	☐	☐	☐	☐
k. The offender provided assistance to law enforcement authorities	☐	☐	☐	☐	☐
l. What other factors do you consider mitigated the seriousness of the offence?	☐	☐	☐	☐	☐
please specify: _____	(1)	(2)	(3)	(4)	(5)

6

Jury Sentencing Survey Questionnaire 2

UTAS

Section B:
The Information Package

These questions are to give us some feedback on the general usefulness of the information package sent to you.

B1. In relation to the booklet on general crime and sentencing information, did you

- Read the booklet in full ☐ (1)
- Read some sections in full ☐ (2)
- Flick through the booklet ☐ (3)
- Not look at the booklet ☐ (4)

B2. What do you plan to do with the booklet

- Keep the booklet ☐ (1)
- Throw it away ☐ (2)
- Give it to a friend ☐ (3)
- Other (specify) _____ ☐ (4)

B3. We want to know how you felt about the booklet. In the table below are pairs of statements and we would like you to indicate which applies to the booklet. Circle the number that most closely represents your view. For example, if you strongly agree with the statement on the left, circle 1, if you strongly disagree circle 5. If you can't decide or if both statements apply equally, circle 3.

a. Easy to understand	1	2	3	4	5	Difficult to understand
b. Informative	1	2	3	4	5	Did not give any new information
c. Unbiased	1	2	3	4	5	Biased
d. Made me feel more confident about the criminal justice system	1	2	3	4	5	Made me feel less confident about the criminal justice system
e. Interesting	1	2	3	4	5	Boring
f. Helpful	1	2	3	4	5	Unhelpful
g. Factual	1	2	3	4	5	Propaganda
	(1)	(2)	(3)	(4)	(5)	

B4. How much did you learn from the booklet?

- A lot ☐ (1)
- A little ☐ (2)
- Nothing ☐ (3)

B5. Has reading the booklet changed your views about crime and sentencing?

- A lot ☐ (1)
- A little ☐ (2)
- Not at all ☐ (3)

Jury Sentencing Survey Questionnaire 2

UTAS

B6. Do you think jurors would be interested in receiving this booklet after a verdict of guilty?

- Very interested ☐ (1)
- Quite interested ☐ (2)
- Not at all interested ☐ (3)

B7. Judges' sentencing comments are available from the Supreme Court website. Do you think jurors would be interested in knowing how to access the judge's sentencing comments in the case they tried?

- Very interested ☐ (1)
- Quite interested ☐ (2)
- Not at all interested ☐ (3)

We now want you to think about the usefulness of the information package in answering the survey questions about the sentence.

B8. (a) How useful to you was the general information in relation to sentencing in forming your judgment about the appropriateness of the sentence?

- Very useful ☐ (1)
- Fairly useful ☐ (2)
- Not very useful ☐ (3)
- Not at all useful ☐ (4)

(b) How much did knowing the reasons the judge gave for sentence affect your view of the appropriateness of the sentence?

- A lot ☐ (1)
- A little ☐ (2)
- Not at all ☐ (3)

(c) How much did the information on crime levels and trends affect your judgment about the appropriateness of the sentence?

- A lot ☐ (1)
- A little ☐ (2)
- Not at all ☐ (3)

Jury Sentencing Survey Questionnaire 2

Section C: Your Views About Sentencing In General, Crime Trends And Your Perceptions Of Safety

C1. In general, would you say current sentences for the following crime types are: Much too tough, A little too tough, About right , A little too lenient, Much too lenient?

	Much too tough	A little too tough	About right	A little too lenient	Much too lenient
a. Violent offence (no sexual)	☐	☐	☐	☐	☐
b. Property offence	☐	☐	☐	☐	☐
c. Drug offence	☐	☐	☐	☐	☐
d. Sex Offence	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

C2. In relation to the following crimes, please indicate the proportion of convicted offenders who are currently sent to prison

	0 - 25%	26% - 50%	51% - 75%	greater than 75%
a. Convicted burglary offenders	☐	☐	☐	☐
b. Convicted rape offenders	☐	☐	☐	☐
	(1)	(2)	(3)	(4)

C3. How in touch do you think judges are with public opinion on sentencing?

- Very in touch ☐ (1)
- Somewhat in touch ☐ (2)
- Somewhat out of touch ☐ (3)
- Very out of touch ☐ (4)

C4. How safe do you feel walking alone in your area after dark?

- Very safe ☐ (1)
- Fairly safe ☐ (2)
- A bit unsafe ☐ (3)
- Very unsafe ☐ (4)

C5. How safe do you feel at home alone at night?

- Very safe ☐ (1)
- Fairly safe ☐ (2)
- A bit unsafe ☐ (3)
- Very unsafe ☐ (4)

C6. Please estimate your risk of being a victim of the following types of crime over the next 12 months:

	less than 6%	6% - 10%	11% - 30%	31% - 50%	greater than 50%
a.Your home, garage or shed being broken into	☐	☐	☐	☐	☐
b.Your vehicle being stolen	☐	☐	☐	☐	☐
c.Being assaulted	☐	☐	☐	☐	☐
d.Being robbed	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

Jury Sentencing Survey Questionnaire 2

UTAS

C7. Recorded crime is crime that is recorded by the police. Do you think that recorded crime over the last 5 years has:

- Increased a lot ☐ (1)
- Increased a little ☐ (2)
- Stayed the same ☐ (3)
- Decreased a little ☐ (4)
- Decreased a lot ☐ (5)
- Don't know ☐ (6)

C8. This question relates to crime trends for specific crimes recorded in Tasmania over the last 5 years. During this period, have the following crimes become more common, stayed about the same or become less common?

	more common	stayed about same	less common	don't know
a. Burglary	☐	☐	☐	☐
b. Robbery	☐	☐	☐	☐
c. Rape	☐	☐	☐	☐
d. Motor vehicle thefts	☐	☐	☐	☐
e. Murder	☐	☐	☐	☐
	(1)	(2)	(3)	(4)

C9. What percentage of recorded crime involves violence or the threat of violence?

- One quarter or less ☐ (1)
- Between one quarter and a half ☐ (2)
- Between one half and three quarters ☐ (3)
- More than three quarters ☐ (4)
- Don't know ☐ (5)

C10. How much do you agree with following statements

	strongly agree	agree	neither agree nor disagree	disagree	strongly disagree
a. Judges should reflect public opinion about crimes when sentencing criminals	☐	☐	☐	☐	☐
b. The death penalty should be the punishment for murder	☐	☐	☐	☐	☐
c. The law should always be obeyed even if a particular law is wrong	☐	☐	☐	☐	☐
d. Breaking the law to protect a family member or a friend is sometimes justified	☐	☐	☐	☐	☐
	(1)	(2)	(3)	(4)	(5)

Section D

D1. Have you discussed any of the following aspects of the case or study with family or friends?

a. The sentence	☐ Yes	☐ No
b. The information on crime trends	☐ Yes	☐ No
c. The information on sentencing patterns	☐ Yes	☐ No
	(1)	(2)

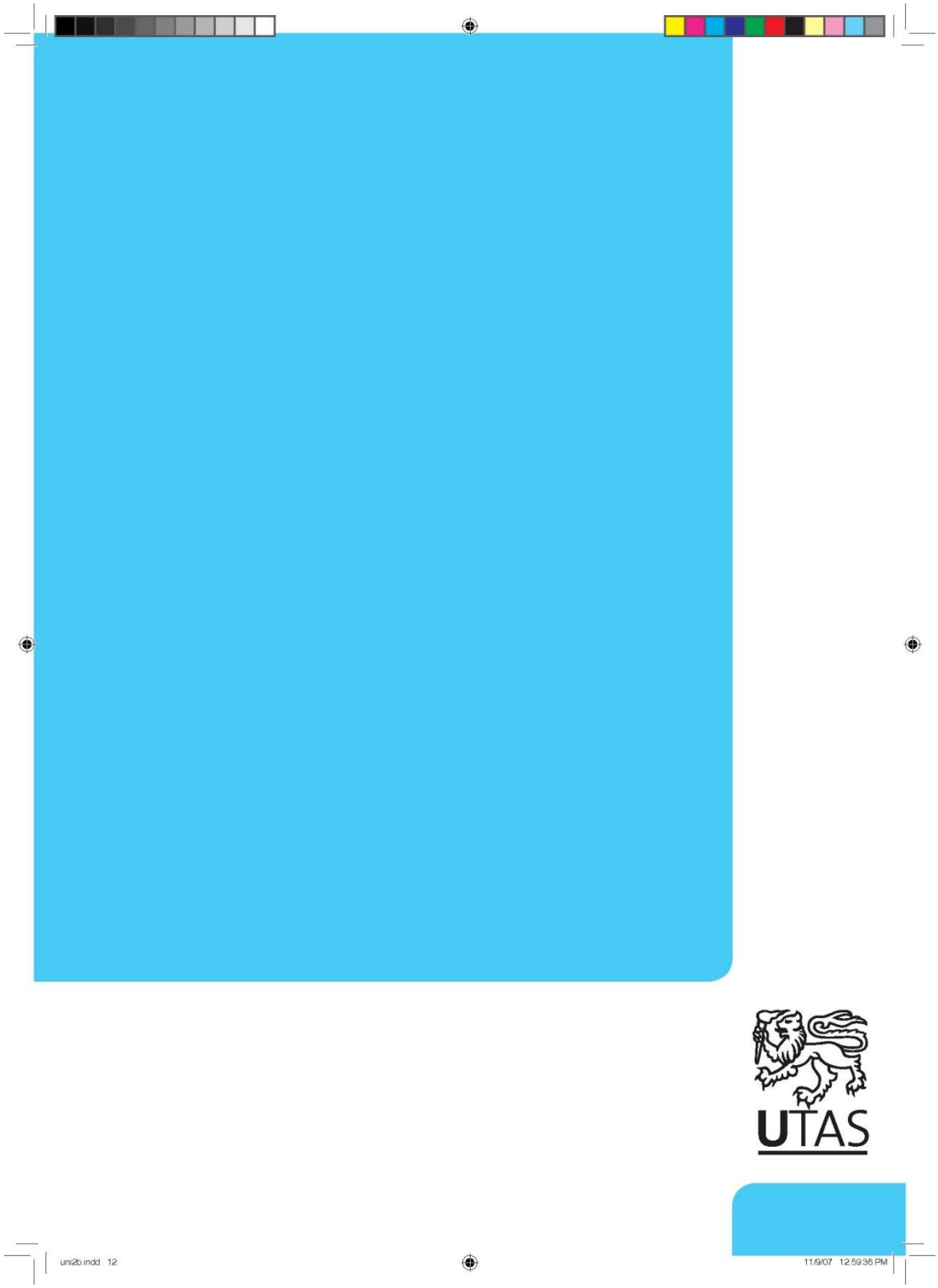
This is the end of the questionnaire.

Please put the questionnaire in the pre-paid envelope and post it back to us.

We really appreciate your co-operation and effort!

If you are willing to participate in a face-to-face interview please tick the box below and we will contact you to arrange a time and place. This interview will further explore your views in relation to the sentence in this case and your views in relation to sentencing more generally.

☐ I am willing to be interviewed.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