

## **Talking to juries about punishment: investigating a new way to gauge public opinion and inform the public**

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*The reaction of jurors to sentence 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 are concerned to know what the public think of sentencing practice, a survey of the reactions of jurors to sentences imposed in cases which those jurors had tried could provide interesting information. [The Honourable AM Gleeson, Chief Justice High Court of Australia, 'Out of Touch or Out of Reach' (2005) 7TJR 241 at 247].*

In 2005, the Chief Justice of the High Court of Australia argued that the reactions of jury members to the sentence imposed by a sentencing judge might influence public opinion and suggested that research into their reactions might yield useful information.<sup>1</sup> Our study picks up these ideas. It has two central aims. First, it explores the possibility of using jurors as a means of ascertaining informed public opinion about sentencing by surveying jury members about the sentencing issues in the cases they have tried. Secondly, it seeks to investigate the usefulness of using the jury as a means of better informing the public about crime and sentencing issues. The paper will begin with a brief overview of the existing methods used for ascertaining public opinion in relation to sentencing matters and explain the advantages of using juries in this exercise. The three-stage methodology adopted for the project is then briefly described. Before outlining some preliminary results, the strategies for improving public knowledge of crime and sentencing are discussed and a role for juries in this endeavour is suggested. Whilst the study has only been underway for a short time, it is argued that the response indicates that using jurors is a promising method of ascertaining informed public opinion about sentencing and informing the public about crime and sentencing issues.

It is generally accepted that those responsible for criminal justice policy and practice have a duty to be responsive to public opinion. For example, the seriousness with which society regards a particular offence is something sentences should reflect.<sup>2</sup> While this may be contested by some, the reality is that politicians respond to

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<sup>1</sup> The Honourable AM Gleeson, Chief Justice High Court of Australia, 'Out of Touch or Out of Reach' (2005) 7TJR 241.

<sup>2</sup> Sir Anthony Mason, 'The courts and public opinion' [2002] *Bar News* 30; G Mackenzie, *How Judges Sentence*, 2005, 138-148.

perceptions of public opinion. It is also accepted that if public opinion is to be taken into account it should be informed public judgement rather than responses given off the top of the head. A brief survey of the literature on ascertaining public opinion about crime and sentencing quickly reveals that there are considerable difficulties in properly ascertaining informed public opinion. Media polls, which inevitably report that the majority of respondents consider that sentences are too lenient, suggest that there is widespread dissatisfaction with the severity of sentences.<sup>3</sup> Judges are portrayed as out of touch and soft on crime on the basis of both selective media reporting of sentencing cases and media polls. For example, results of a recent internet poll in a Tasmanian newspaper on 15 December 2007 reported that 88 percent of respondents believed sentences were too lenient.<sup>4</sup> While these polls are criticised by academics for their inadequacies they inevitably have an impact on politicians and policy makers.<sup>5</sup> Survey research, which is more methodologically robust, suggests that an important factor in the perception that sentences are too lenient is lack of knowledge – lack of knowledge of the range of sentences usually imposed and a lack of information about the offence and the offender. Studies using sentencing vignettes or simulated sentencing exercises suggest that the more that is known about the offence and the offender, the closer the public's view of the appropriate sentence comes to that of the sentencing judge.<sup>6</sup> In other words, the more information the public have the less punitive they are. This was confirmed by Austin Lovegrove's recent study<sup>7</sup> where groups were first addressed about sentencing law and sanctions before a judge presented the group with the facts of a case. They were then asked for a view as to the appropriate sentence. In three of the four cases in which the judge had imposed a prison sentence, the median sentence given by members of the public was less than the judge's sentence. In the remaining case, the judge's sentence fell just below the median of the group's sentence.

Lovegrove's approach used a focus group rather than a representative survey method, an approach that is regarded as a valuable adjunct to the quantitative representative survey.<sup>8</sup> In Lovegrove's study an effort was made to ensure that the sample was a reasonably representative one to avoid the drawback of most focus groups, namely, the difficulty of generalising results to the broader community. Deliberative polls that combine elements of both focus groups and representative surveys are sometimes used to improve the generalisability of results from focus groups. A sub-sample of several hundred respondents from a random sample of the public is brought together for an extended session of small group discussions before filling in a second questionnaire.<sup>9</sup> However, one of the disadvantages of this approach is that it is resource intensive and therefore prohibitive for widespread use.<sup>10</sup>

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<sup>3</sup> K Gelb, *Myths and Misconceptions: Public Opinion versus Public Judgment and Sentencing*, Research Paper, Sentencing Advisory Council, Victoria, 2006, 11.

<sup>4</sup> *The Examiner*, 15 December 2007, p 2.

<sup>5</sup> M Israel, 'What Works in South Australian Newspapers' (2000) 12 *Current Issues in Criminal Justice* 227; D Green, 'Public Opinion versus Public Judgment about Crime' (2006) 46 *British Journal of Criminology* 131.

<sup>6</sup> JV Roberts, 'Public opinion, crime and criminal justice' in M Tonry (ed) *Crime and Justice: A review of research*, Vol 16 Chicago, University of Chicago Press, 1992; M Hough, 'People Talking About Punishment' (1996) 35 *The Howard Journal*.

<sup>7</sup> A Lovegrove, 'Public Opinion, Sentencing and Lenience: An Empirical Study Involving Judges Consulting the Community' [2007] *Criminal Law Review* 769.

<sup>8</sup> Gelb, op cit n 3 at 9.

<sup>9</sup> Gelb, op cit n 3 at 10.

<sup>10</sup> Gelb, op cit n 3 at 10.

Previous studies, whether representative surveys, focus groups or deliberative polls, have not been used in the context of real cases, even though real cases may have been used as the basis for vignettes. The advantage of using jurors and focusing on the case they tried is that they will have a ‘strong sense of the offender as a person’<sup>11</sup> as well as having detailed information about the offence. Moreover, they have had their interest aroused in the case by serving on the jury and should be in a state of mind to absorb relevant sentencing information.

## **Approach and methodology**

The research design for the project was developed in consultation with the Chief Justice of the Supreme Court, Justice Peter Underwood, and has benefited greatly from the involvement of Dr Maggie Walter, a social scientist with expertise in quantitative and qualitative research methods including survey design and analysis. Jurors are recruited from juries returning guilty verdicts over a period of 2 years to ensure an adequate sample of responses. It is estimated that this will yield about 150 trials with guilty verdicts. The research plan is to utilise all of these cases, whether sentence is imposed immediately (which is rare) or on a later occasion, and whether sentencing submissions are made immediately after the verdict (which is usual) or subsequently. The survey consists of three stages. Stage 1 asks jury members for their initial opinions, which are based on their knowledge of the facts of the case. Stage 2 occurs after the judge has imposed the sentence and after jury members have been given the judge’s reasons and have received a wider range of information about the process of sentencing, crime patterns and other contextual matters. Stage 3 involves an interview, which allows for a deeper exploration of the jury members’ reactions to the case and their reasons for their opinions about the sentence.

All persons presenting for jury service are briefed about the study by one of the research team and are invited to participate in the event that they are selected on a jury and the accused is found guilty. When a guilty verdict is returned, the judge invites jurors to participate in the study by staying behind to listen to the sentencing submissions. At the end of the sentencing submissions they are asked to return to the jury room and fill in a questionnaire. If sentencing submissions are adjourned jurors are given the questionnaire to fill in immediately and are sent a transcript of the sentencing submissions if they agree to participate in Stage 2.<sup>12</sup> This is Stage 1 of the three-stage research design. The short questionnaire begins with a question asking for a view as to the sentence that should be imposed. A menu of options is offered to avoid the difficulty of jurors being unaware of the range of sentencing options available. Further questions explore the respondent’s knowledge of crime trends, sentencing patterns and general perceptions of the severity of sentences. At the end of the questionnaire, the juror is invited to participate in the next stage by supplying their name and address to receive an information package and a second (rather longer) questionnaire.

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<sup>11</sup> Lovegrove, op cit n 7 at 770 explains that one of the flaws underpinning the view that sentences are too lenient is that sound judgments can be made having no sense of the offender as a real person.

<sup>12</sup> In four of the 22 trials sentencing submissions were adjourned but in one trial (Woodhouse and Greenland) some jurors returned the next day to listen to them. Questionnaire 1 begins by asking jurors whether they have heard the sentencing submissions so that it can be determined whether they were present. So far 90% of jurors have heard the sentencing submissions before filling in Questionnaire 1.

Jurors agreeing to participate in Stage 2 are sent a booklet containing information on crime and sentencing issues, a transcript of the sentencing submissions if these were adjourned, the judge's comments on passing sentence and the second questionnaire. This explores their opinion about the sentence imposed, the factors considered aggravating and mitigating, the usefulness of the information package as well as repeating questions from Questionnaire 1 on crime trends and sentencing levels.

At the end of Questionnaire 2 respondents are invited to go further to Stage 3 by participating in face-to-face interviews to explore their response to the judge's sentence, any reasons why they changed their view about the sentence in their case or sentencing generally, and their views about the information package.

## **Some Preliminary Results**

We started recruiting jurors in the court sittings that commenced on 17 September 2007. From then until Christmas there were 22 trials which resulted in a guilty verdict on at least one count. All data from Questionnaires 1 and 2 have been entered and a number of interviews have been conducted. To date this has yielded 98 responses to Questionnaire 1 and 62 to Questionnaire 2. At this stage only primary descriptive information about the responses will be presented. When more data are obtained, bivariate analysis will be conducted to cross-tabulate responses and key variables, and more complex statistical techniques will be used.

### ***Are jurors willing to be used as a source of public opinion about sentencing?***

A preliminary research question for the study is the extent to which jurors are prepared to be used as a source of public opinion about sentencing. Are they willing to stay in court after the verdict is delivered, listen to sentencing submissions and then respond to a questionnaire? And how many will go on and read a brochure about crime and sentencing, fill it in and return a second questionnaire and agree to participate in a face-to-face interview in their own time? Jurors who have already been considerably inconvenienced by jury service, may wish to devote no more time to participating in a study relating to the case by attending the sentencing hearing and reading sentencing remarks. Concerns about the willingness of jurors to participate was one of the reasons the Criminology Research Council (CRC) first required the application to be revised and resubmitted and then determined to grant funding for the first 6 months only, with the remainder contingent on a progress report on the response rate. Similar concerns about the burden on jurors were raised as an obstacle to Spigelman CJ's suggestion to consider giving jurors a direct role in sentencing as a means of improving public confidence in sentencing decisions.<sup>13</sup>

Our response to the CRC was that other 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 of 48 trials in 1998, an average of 54 percent of jurors per trial participated in interviews of more than an hour's duration about their understanding of the law and the judge's directions and their

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<sup>13</sup> See New South Wales Law Reform Commission, *Role of juries in sentencing*, Report 118 (2007), 48.

perceptions of the trial process.<sup>14</sup> In an English Crown Court Study exploring how the criminal justice system works, jurors were asked a series of 80 questions in a questionnaire which was completed by 85 percent of jurors.<sup>15</sup> (This study is of particular interest because it is the only jury study we have found that asked a question in relation to the sentence.) In a recent jury study in New South Wales, the response rate for completing questionnaires was 92 percent although this dropped to between 6 to 8 jurors per jury when jurors were allowed to take away the questionnaire rather than complete it in the jury deliberation room.<sup>16</sup>

Our jury sentencing survey requires rather more of jurors than most of these other studies. Participation in Stage 1 requires jurors to stay in court to listen to the sentencing submissions before completing the first questionnaire. Responses ranged from 0 to 11 jurors per trial with an average of 4.5 per jury (or a 38 percent response rate). Of those who completed Questionnaire 1, 92 percent agreed to go on and complete Stage 2 and 65 percent have done so to date. More than half of respondents who have completed and returned Questionnaire 2 have agreed to an interview.

The variable response rate is worth exploring. Why are no jurors willing to participate in some cases whereas in others almost all jurors are prepared to do so? Possible variables include the type of crime, length of trial, length of deliberation, time of day the verdict is reached and place of trial (Hobart, Launceston and Burnie). All of these factors will be analysed. Early indications are that the type of crime does not appear to be relevant but the time of day when a verdict is reached is important. If it is late in the day jurors are less willing/not encouraged by the jury officer to return to the jury room to complete the questionnaire and are allowed to take it home. This affects the response rate. For example in the last trial in Hobart before Christmas, a case of causing death by dangerous driving, the verdict was reached late in the afternoon after many hours deliberation. Sentencing submissions were heard immediately/adjourned and the jurors were allowed to take the questionnaire home. About six did so. None have been returned.

Other factors affecting the response rate that will be explored in the interviews include jury dynamics, how upsetting/disturbing the facts of the case were and how intimidating the offender and his supporters were. Anecdotally we have heard that in one Launceston trial where only two jurors participated, a juror who did not do so gave two reasons for not participating. First, the jury dynamics during deliberations were intimidating because of one particularly overbearing juror. Secondly, the parents of the young offenders convicted of aggravated robbery were visibly and audibly upset and emotional after the verdict. These factors led the juror to want to get away from the court at the first opportunity.<sup>17</sup> In a rape trial in Hobart, where only two jurors completed Stage 1, the case was so upsetting that a juror who had initially intended to participate did not do so because he was so disturbed by the facts of the case that he wanted to leave the court as quickly as possible and try to forget the

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<sup>14</sup> W Young, N Cameron and Y Tinsley, *Juries in Criminal Trials, Part Two: A summary of research findings*, 1999, Law Commission of New Zealand.

<sup>15</sup> M Zander and P Henderson, *The Royal Commission on Criminal Justice: Crown Court Study*, London, HMSO, 1993, 255.

<sup>16</sup> J Cashmore and L Trimboli, 'Child Sexual Assault Trials: A Survey of Juror Perceptions' *Crime and Justice Bulletin*, No 102, 2006.

<sup>17</sup> L 120/07 & 160/07.

case.<sup>18</sup> No jurors in this case agreed to be interviewed about it, however, one juror who had served as a juror in two cases in the sittings (including this jury and another), did agree to an interview in relation to the other case and was willing to discuss both trials. This juror stated that he did not participate in the survey about the rape trial because he felt such disgust for the offender that could not get away from the court quickly enough after the verdict. However, in the trial in which he did participate, he felt sympathy for the defendant and was happy to stay around. It is also possible that the jurors in some cases may be intimidated by the offender and his or her supporters and would not feel comfortable returning to sit in the body of court. Inviting participants to stay in the jury box may relieve their discomfort but they still may prefer to leave the court before the sentencing submissions.

We would argue that the response rate is sufficient to continue with the study. A reasonable proportion of jurors are willing to participate in a study exploring their views in relation to the sentence. In particular, there is a good continuation rate once a juror has agreed to participate in Stage 1. Moreover, there are changes that can be made to increase the response rate when verdicts are reached late in the day. Efforts will be made to encourage jurors to stay and complete the forms and where this is not possible jurors will be given a pre-paid envelope with the questionnaire. The names of jurors who take a form will be recorded so they can be followed up if they do not return the questionnaire.

### ***Stage 1: Questionnaire 1***

In Questionnaire 1 jurors were asked a series of questions relating to their specific case and a set of broader questions about their views on crime trends and sentencing.

#### **Jurors' views as to sentence**

In Questionnaire 1 jurors were asked to state what sentence they considered to be appropriate. They were given a menu of options that ranged from simply recording a conviction to imposing a fully served term of imprisonment. These results were compared with the sentence that was actually imposed by the judge to determine if the juror's sentence was less or more severe than the judge's sentence. At this stage they did not know what the judge's sentence was. As Table 1 shows, the majority of respondents (52 percent) suggested a sentence that was less severe than the judge's sentence, around 40 percent suggested a more severe sentence and only around nine percent proposed the actual sentence given by the judge.

**Table 1: Severity of juror's proposed sentence compared to judge's sentence**

<b>Sentence Proposed by Jury Member</b>	<b>Percentage N = 89*</b>
Less severe than judge's sentence	51.7
The same as judge's sentence	9.2
More severe than judge's sentence	39.1
Total*	100.0

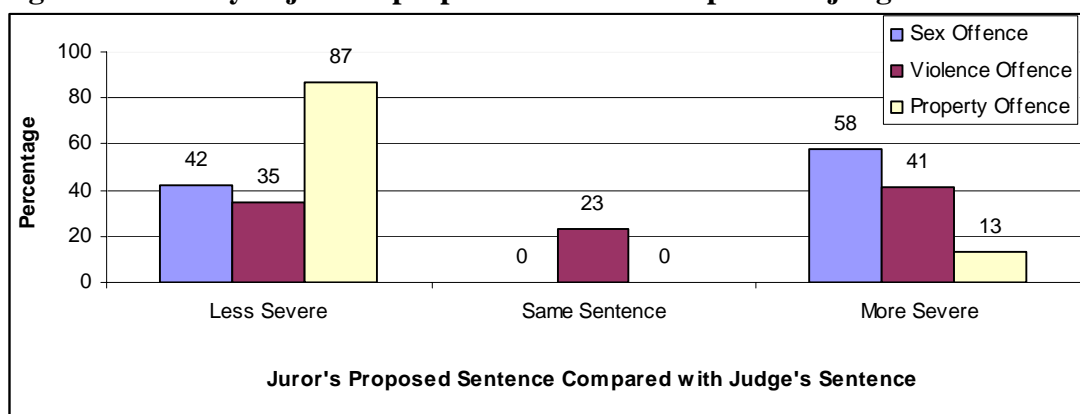
Data Source: University of Tasmania Jury Study 2008

\* In 9 cases there is missing data due to jurors not answering this question

<sup>18</sup> Page H 183-07.

These data were then cross-tabulated with the type of crime variable. These were sex offences, property offences and offences of violence. Drug offences were excluded at this stage as there were not enough responses for analysis. The aim was to determine if jurors are more likely to propose more severe sentences than the judges in certain kinds of cases. Although the results are preliminary, there are a number of identifiable trends. As shown in the figure below, jurors were significantly more likely to propose a more severe sentence than the judge for sex offences, significantly less likely to propose a more severe sentence for property offences, and more measured in their response to offences of violence (where nearly a quarter proposed the same sentence as the judge in the case).

**Figure 1: Severity of juror’s proposed sentence compared to judge’s sentence**



Data Source: University of Tasmania Jury Study 2008

\* Chi square test indicates that differences are significant at  $p > .000$

**Jurors’ satisfaction with sentencing severity in the abstract**

Questionnaire 1 also explored jurors’ views of current sentencing practices. In representative surveys when respondents are asked whether sentences are too harsh, about right or too lenient, about 70-80 percent of respondents report that sentences are too lenient.<sup>19</sup> However, when asked what kind of offender they were thinking of when they said that sentences are too lenient, it is revealed that respondents tend to be thinking of violent offenders or repeat offenders rather than property offenders or first offenders.<sup>20</sup> Replicating Doob and Roberts’ Canadian research in Australia, Indermaur found that seven out of ten respondents were thinking of a murderer, rapist or other violent criminal when responding to a general question about satisfaction with sentencing.<sup>21</sup> In other words, when stating that sentences are too lenient, most respondents are not thinking of the kind of offenders who typically come before courts. For this reason jurors were asked the question about current sentencing practices in relation to four categories of offences: violence (not sexual), property, drugs and sex.<sup>22</sup>

<sup>19</sup> Gelb, op cit n 3 at 11; responses have remained consistent over time and across countries including Australia.

<sup>20</sup> A Doob and J Roberts, *Sentencing: An Analysis of the Public’s View of Sentencing, 1983, Ottawa: Department of Justice, Canada*, 15.

<sup>21</sup> D Indermaur ‘Public Perception of Sentencing in Perth, Western Australia, (1987) 20 Australian and New Zealand Journal of Criminology 163 at ?

<sup>22</sup> We initially intended to replicate the more general question used in other surveys, however, when testing the survey instrument, we discovered that our testers either refused to answer the question or insisted on qualifying their answer by discriminating between different kinds of offences.

Preliminary results show that while jurors were of the opinion that sentences were too lenient overall, the patterns varied by type of crime. As shown in Table 2 below, jurors were most likely to consider current sentences for sex offences as too lenient, followed in order or strength of opinion by sentences for crimes of violence, drugs and property crimes. In relation to property crime for example, only 12 percent thought sentences are much too lenient compared to 51 percent of respondents in relation to sex offences. As can also be seen from Table 2, only a tiny minority of respondents regarded current sentences as too tough.

**Table 2: Are current sentencing practices too tough/lenient?**

<i>Opinion on Sentence</i>	<i>Type of Crime</i>			
	<i>Sex</i>	<i>Violence</i>	<i>Drugs</i>	<i>Property</i>
<i>N = 92</i>				
<i>Much too tough</i>	0	0	1.1	1.1
<i>A little too tough</i>	1.1	1.1	4.3	1.1
<i>About right</i>	15.2	17.2	38.0	44.6
<i>A little too lenient</i>	32.6	55.9	32.6	39.1
<i>Much too lenient</i>	51.1	25.8	23.9	12.0
<i>Total (n=98)</i>	100	100	100	100

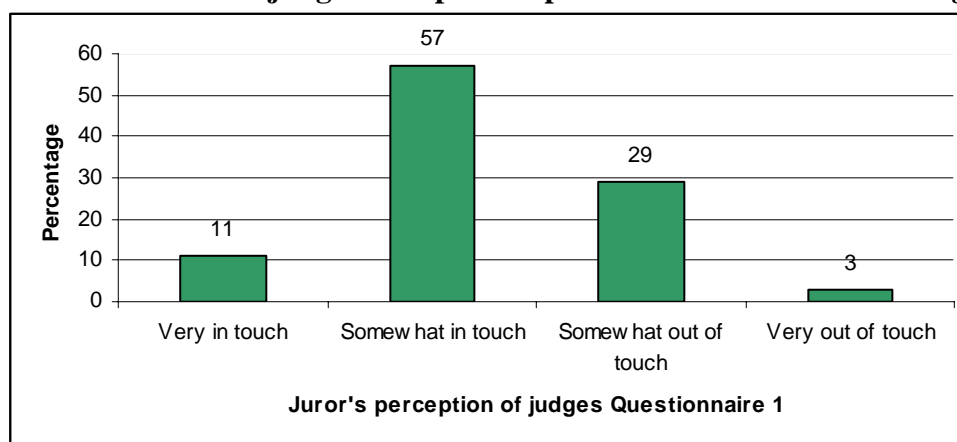
Data Source: University of Tasmania Jury Study 2008

\* Cases who nominated 'do not know' omitted from analysis (n=6)

### Perceptions of judges' alignment with public opinion

In an apparent contradiction, given that a majority of jurors thought sentences were too lenient on all four crime types assessed, most jurors rated judges as being in touch with public opinion in relation to sentencing. As shown in the figure below, while only ten percent of jurors thought judges were very in touch with public opinion, a further 57 percent thought them somewhat in touch and only three percent rated judges as being very out of touch.

**Fig 2: How in touch are judges with public opinion in relation to sentencing?**



Data Source: University of Tasmania Jury Study 2008

### Jurors' knowledge of crime trends and sentencing patterns

Research has repeatedly shown that public knowledge about crime and sentencing matters is poor. The public perceives crime to be constantly increasing, over-estimates the proportion of crime that involves violence, over-estimates the percentage of offenders who re-offend and under-estimates the severity of sentencing practices.<sup>23</sup> Survey research also suggests that an important factor in the perception that sentences are too lenient is a lack of knowledge of crime trends and a lack of knowledge of the range of sentences usually imposed. Those who are less punitive tend to be better informed about crime and sentencing matters.

In Questionnaire 1, jurors were asked about their opinion on the level of recorded crime over the last 5 years, first generally and then specifically in relation to burglary, robbery, rape, motor vehicle theft and murder. Recorded crime has in fact decreased over the last 5 years in Tasmania and nationally. As can be seen from Table 3 below, juror's knowledge of Tasmanian crime trends was limited and mostly incorrect. In line with previous research, most jurors thought that crime in general had increased, with only one percent correctly stating that crime had decreased in the last 5 years.

**Table 3: Jurors' perceptions of crime trends**

Crime Type	Juror's Perception of Crime Trends			
	More Common %	Stayed the Same %	Less Common %	Don't Know %
<b>Overall crime</b>	<b>62.5</b>	<b>15.6</b>	<b>1.0</b>	<b>20.8</b>
<b>Burglary</b>	<b>63.5</b>	<b>20.8</b>	<b>5.2</b>	<b>10.4</b>
<b>Robbery</b>	<b>56.3</b>	<b>30.2</b>	<b>4.2</b>	<b>9.4</b>
<b>Rape</b>	<b>17.7</b>	<b>47.9</b>	<b>9.4</b>	<b>25.0</b>
<b>MV theft</b>	<b>56.3</b>	<b>28.1</b>	<b>5.2</b>	<b>10.4</b>
<b>Murder</b>	<b>12.5</b>	<b>53.1</b>	<b>15.6</b>	<b>18.8</b>

Data Source: University of Tasmania Jury Study 2008

Most jurors also thought that burglary, robbery and motor vehicle theft had increased although recorded crime for burglary and motor vehicle theft has decreased over the last 5 years and robbery rates have fluctuated but not returned to the 1998-99 level.<sup>24</sup> However, juror responses in relation to rape and murder were more correct. In Tasmania, murder rates have been stable and rape peaked in 2001-02 but has since fluctuated. Most respondents though that recorded crime in these two categories had not increased over the last 5 years.

Jurors were also asked about their perceptions of what proportion of crime involves the threat of violence. Only 18 percent answered this correctly by responding 'one quarter or less'. They were also asked to estimate the risk of being a victim of burglary, motor vehicle theft, assault and robbery in the next 12 months.

**Table 4: Crime victimisation rates as percentages of all households and victims**

<sup>23</sup> Gelb, op cit n 3 at 13.

<sup>24</sup> Tasmania Police, Annual Reports (2001-2006); Australian Bureau of Statistics.

Crime type	Tasmania		Australia	
	2002 %	2005 %	2002 %	2005 %
<b>Household Victims</b>				
Break and enter	5.2	2.1	4.7	3.3
Motor vehicle theft	1.6	0.9	1.8	1.0
<b>Personal victims:</b>				
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 shown in Table 4 above, crime victimisation rates in both Tasmania and Australia wide are less than 6 percent of households (for burglary and motor vehicle stealing) or victims (for assault and robbery).<sup>25</sup> However, as Table 5 shows, a majority of juror respondents substantially overestimated the risk of being a victim of burglary, motor vehicle theft and robbery and almost half overestimated the risk of being a victim of assault.

**Table 5: Perception of risk of victimisation**

Level of Risk	Burglary	M/V theft	Assault	Robbery
Less than 6 percent	31.9	38.3	51.1	41.5
6-10 percent	26.6	26.6	29.8	36.2
11-30 percent	19.1	18.1	13.8	11.7
31-50 percent	13.8	11.7	3.2	7.4
>50 percent	8.5	5.3	2.1	3.2
Total	100	100	100	100

Data Source: University of Tasmania Jury Study 2008

These findings accord with other research findings. The Australian Survey of Social Attitudes (AUSSA 2003) has found that the public is not well informed about trends in crime – only one in 20 (or 5 percent of respondents) responded that crime levels had decreased (over the last 2 years).<sup>26</sup> In a study of perceptions of the risk of criminal victimisation in Australia in 1995, Weatherburn, Matka and Lind found that

<sup>25</sup> Australian Bureau of Statistics, 2006, *Crime and Safety, Australia 2005*, ABS cat no 4906.0.

<sup>26</sup> D Indermaur and L Roberts, 'Perceptions of Crime and Justice; in Wilson S et al, *Australian Social Attitudes: The First Report*, Sydney, University of New South Wales Press, 2005.

Australians greatly exaggerated the risk of being a victim of crime.<sup>27</sup> The percentage of respondents who regarded the risk of falling victim to break and enter, motor vehicle theft, assault and robbery over the next 12 months as being higher than 30 percent ranged from 12 percent in the case of robbery to 26 percent in the case of break and enter. As Table 5 shows, the percentage of our jurors who estimated the risk as greater than 30 percent ranged from 5 percent for assault to 22 percent for burglary. Similar percentages in the two studies estimated the risk correctly at less than 6 percent, except for robbery where Weatherburn's respondents were more likely to be accurate (61 per cent compared with 41.5 per cent).

Just as perceptions of crime are notoriously inaccurate, so too is public knowledge of sentencing practices. Jurors were asked to estimate the proportion of offenders who are sent to prison for burglary and rape. In Tasmania about 90 percent of rapists are sent to prison and about 60 percent of burglars. However, jurors underestimated the imprisonment rate for both crimes, with only 32 percent correctly stating that more than 75 percent of rapists and between 51 and 75 percent of burglars were sent to prison (not shown here).

When more data become available, any differences between perceptions of crime and sentencing by particular demographic groups will be analysed, as will any variations related to victimisation experience and fear of crime. The interaction between media and crime perceptions will also be explored by examining the main sources of media that respondents rely on for information.

### ***Stage 2: The crime and sentencing booklet and Questionnaire 2***

As outlined above, in Stage 2 of the study jurors are sent a package of information to read before completing the second survey questionnaire. This covers the crime and sentencing booklet; the judge's comments on passing sentence; a transcript of the sentencing remarks if these were adjourned and Questionnaire 2, which explores jurors' opinions of the sentences imposed, the mitigating or aggravating factors, the usefulness of the information package and a review of jurors' perceptions of crime and sentencing trends from Questionnaire 1. To date, 62 responses have been received to Survey 2. The results presented here represent initial results only. When more data are available jurors' perceptions before and after reading the booklet will be analysed in more detail.

The booklet contains information about measuring crime; crime trends over time; the prevalence of crime types; the risk of victimisation; a brief description of the sentencing process including the purposes of sentences, relevant sentencing factors and an overview of current sentencing practices including statistics on the proportion of penalties imposed for a number of selected crimes and the sentencing range for custodial sentences for those crimes. Each booklet also contains an insert with sentencing data which relate to the crime for which the offender was found guilty in the case tried by the juror. A graphic designer was employed to make the layout of the booklet as attractive and easy to read as possible.

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<sup>27</sup> D Weatherburn, E Matka and B Lind, 'Crime Perception and Reality: Public Perceptions of the Risk of Criminal Victimization in Australia' (1996) 28 *Crime and Justice Bulletin*.

One of the aims of the study was to investigate a new way of improving public knowledge about crime and sentencing by using jurors as conduits of information. In recent years a number of attempts have been made to counteract media portrayals of crime as constantly rising and judges as out of touch. ‘You be the Judge’ sentencing workshops are an example, and the Judicial Conference of Australia’s booklet entitled ‘Judge for Yourself: A Guide to Sentencing in Australia’ released in 2007 is another.<sup>28</sup> There is some empirical support for the suggestion that public education about crime and sentencing matters can improve confidence in the criminal justice system and reduce punitiveness. An English study commissioned by the Home Office used three methods of presenting information: a booklet, a seminar and a video.<sup>29</sup> 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 a victim of crime, and less likely to say sentencing is currently too lenient. Each of the three information formats tested produced similar improvements in knowledge and had some influence on attitudes. The booklet was found to be the most cost-effective of the formats tested and it also reached the widest cross-section of people.<sup>30</sup> Despite financial incentives, participation in the seminar was very low, and there was also a poor response to the video format.

Improving the level of public knowledge about crime and sentencing has been suggested as an obvious remedy to combat penal populism by international and local scholars.<sup>31</sup> However, others are more sceptical of the effectiveness of public education. Green, for example, argues that any changes in attitude by such measures as information booklets are unlikely to be durable:

These 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.<sup>32</sup>

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 are brought together for a weekend to hear presentations, engage with experts and debate amongst themselves. In this way informed public opinion can be obtained by first enabling its creation. Maruna and King also have reservations about the effectiveness of public education on enduring attitude change. However, they question whether the deliberative poll is the answer. They argue that attitudes have an emotional dimension

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<sup>28</sup> For more detail of these endeavours see K Warner, ‘Sentencing Review 2006–2007’ (2007) 31 *Criminal Law Journal* 359 at 359–361.

<sup>29</sup> B Chapman, C Mirrlees-Black and C Brown, *Improving public attitudes to the Criminal Justice System: The impact of information*, Home Office Research Study 245 (2002).

<sup>30</sup> See Appendix B for the booklet ‘*Catching up with crime and sentencing*’.

<sup>31</sup> See J Roberts, L Stalans, D Indermaur and M Hough, *Penal Populism and Public Opinion: Lessons from Five Countries* (Oxford University Press, 2003) at 168–174; A Ashworth and M Hough, ‘Sentencing and the Climate of Public Opinion’ [1996] *Crim LR* 776 at 786.

<sup>32</sup> D Green, ‘Public Opinion versus Public Judgment about Crime’ (2006) 46 *British Journal of Criminology* 131 at 146; and see Ashworth and Hough, op cit n 31 who have doubts about whether attempting to reach the ordinary citizen directly will have any impact.

as well as a factual one, and when attitudes to crime, sentencing and penalties are not merely based on information deficits they are not easily altered. They state:<sup>33</sup>

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.

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.<sup>34</sup> The importance of engaging the emotions has been a theme pressed by a number of scholars including Arie Freiberg.<sup>35</sup> This suggests that using jurors as a means of educating the public has some potential. For jurors, serving on a jury is a significant and memorable task. Jurors have an interest in the sentence that is to be imposed.<sup>36</sup> They frequently voluntarily stay behind to listen to the sentencing submissions. They have listened to all the evidence in relation to guilt or innocence and are likely to respond to and absorb sentencing information relevant to the case they have tried. Having done so, they could be used a source of informed public opinion about matters relating to sentence as well as a conduit of information to the public.

Stage 2 and Stage 3 of the study explore the effect of the additional information provided to inform jurors of crime and sentencing matters.

### **Jurors’ attitudes to the sentence imposed**

After having read the Crime and Sentencing booklet and the judge’s sentencing comments, jurors were asked to give their view of the appropriateness of the sentence. There was a very high degree of satisfaction with the sentence imposed. More than 90 percent of respondents rated the judge’s sentences as appropriate (41 percent very appropriate; 50 percent fairly appropriate). Only nine percent thought the judge’s sentence was fairly inappropriate and no respondents rated the sentence as very inappropriate. Later analysis will cross-tabulate comparative severity and sentence satisfaction data to determine what proportion of those who initially suggested a more severe sentence later thought that the sentence judge’s sentence was appropriate. At this stage, of those who thought the sentence was fairly inappropriate and had suggested a sentence (n=4), all had suggested a sentence that was more severe than the judge.

Respondents were also asked whether the sentence was what was expected. The purpose of this question was originally included for comparison with the English Crown Court Study which asked jurors: ‘Was the sentence broadly as you expected, based on the evidence in the case?’ This question was said to be possibly ambiguous: ‘Some jurors may have thought it related only to the evidence given before they

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<sup>33</sup> S Maruna and A King, ‘Public opinion and community penalties’ in A Bottoms, S Rex and G Robinson, *Alternatives to Prison: Options for a Secure Society*, Willan Publishing, 2004, 83 at 102.

<sup>34</sup> Maruna and King, op cit n 33 at 102.

<sup>35</sup> A Freiberg, ‘Affective versus effective justice: Instrumental and emotive criminal justice’ (2001) 3 *Punishment and Society* 265.

<sup>36</sup> Justice James Spigelman, Chief Justice of New South Wales, ‘The Power of Twelve: A New Way to Sentence for Serious Crime’ (2005) 86 *Reform* 51.

retired to consider their verdict. Others may have thought it included also material that became known during the plea in mitigation after verdict.<sup>37</sup> For this reason we changed the question to read: 'Now that you know the sentence which the judge gave, was it what you expected? In response to this question, 60 percent of jurors said it was close to expected, and 14 percent said it was exactly as expected; with 21 percent saying it was a little different and 5 percent saying it was completely different. In the English Crown Court study, one third said it was as they had expected; the same proportion said they had no expectations and the remainder were divided between those who thought it was 'more severe' (14 percent) or 'less severe' (23 percent). In hindsight our question should have given the same response options as the English study.<sup>38</sup>

### **Impact of the booklet on general knowledge of crime and sentencing**

About two thirds of jurors who participated in Stage 2 stated that they read the booklet in full (68 percent) or partly (21 percent), the rest either flicked through it (10 percent) or did not read it at all (2 percent). Most planned to keep it (77 percent), some planned to give it to a friend (8 percent). Most also found it easy to understand, informative and helpful. About half said it made them feel more confident about the criminal justice system and most said they had learnt a lot from it. A majority also reported that it had changed their views about crime and sentencing, at least to some extent. Almost all thought other jurors in general would be interested in receiving the booklet. The interviews will further explore reactions to the booklet. Positive feedback has already been received, with one juror suggesting that the booklet should be distributed more widely throughout the community, for example, to schools.<sup>39</sup>

### *General crime and sentencing information*

A number of the questions asked in Questionnaire 1 were repeated in Questionnaire 2 to assess the extent to which the information in the booklet had been absorbed.

*Crime:* The Booklet explains that in the last 5 years, total recorded crime has decreased. In particular, burglaries and motor vehicle theft have declined in Tasmania and nationally. Whilst recorded crime rates for assault have increased in Tasmania, the murder rate has been stable and robbery and rape have fluctuated rather than increased.

Jurors' knowledge about crime trends had increased substantially between the first and second survey. In Questionnaire 2, 62 percent of respondents correctly answered that recorded crime rates were falling, compared with no correct responses in Questionnaire 1.<sup>40</sup> However, 31 percent still maintained that recorded crime had increased in the last 5 years despite the booklet explaining that it had decreased. While those who read the booklet in full had the most accurate response rate to this

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<sup>37</sup> Zander and Henderson, op cit n 15 at 222-223.

<sup>38</sup> However, 'broadly as expected' could be equated with close or exactly as expected. In any event there are problems with 'expected'. It is not clear whether it means what the juror thought appropriate or what the juror thought would happen (whether they agreed with it or not). It seems our original question was 'lost in translation'. The difficulty of devising questionnaires should not be taken for granted!

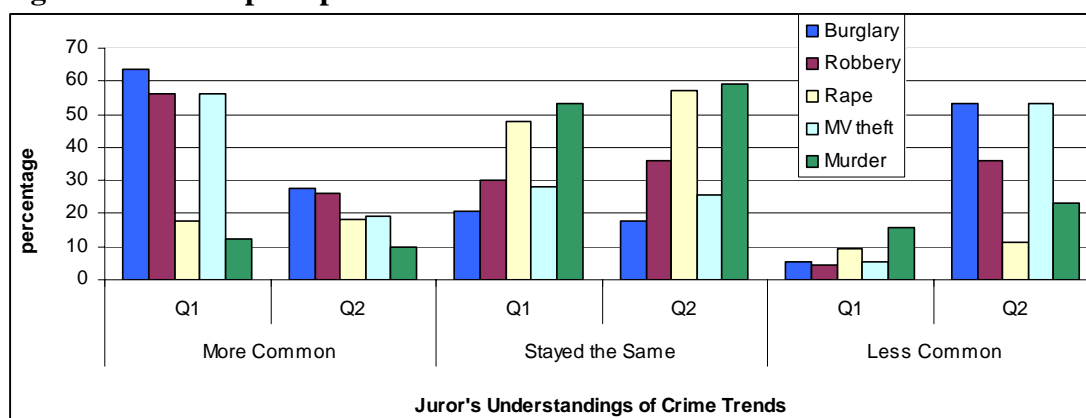
<sup>39</sup> Medcraft H 271-2007, Juror 2.

<sup>40</sup> Comparisons of Questionnaire 1 and 2 responses are done on the basis of those who completed both Questionnaires.

question, a quarter of those who did read the booklet in full still maintained that recorded crime had increased.

The booklet also explains that burglary and motor vehicle stealing have decreased over the last 5 years. As shown in Figure 3 below, which compares jurors' responses from Questionnaire 1 and 2, more than half of respondents answered this question correctly compared with less than 10 percent in Questionnaire 1. The booklet explained that only about 13 percent of crime recorded by the police involves violence. After reading the booklet the jurors' accurate response rate on this question increased from 18 to 63 percent (not shown here).

**Figure 3: Jurors' perceptions of crime trends: Before/after booklet**



Data Source: University of Tasmania Jury Study 2008

Understandings around the risk of being a victim, however, did not demonstrate the same level of improvement between Questionnaires 1 and 2. Despite the fact that the booklet sets out the risk of becoming a victim of burglary, motor vehicle theft, assault and robbery, jurors' estimates of the risk of becoming a victim of crime were not much more accurate in the responses to Questionnaire 2. While the correct response rate increased for all offence categories, for burglary still only a third answered the question correctly. It would seem that the public have very entrenched views about the risk of being burgled in particular or that the information on risk in the booklet was not easily absorbed. Nevertheless the responses suggest that perceptions of risk were lower than they were before receiving the booklet and they are lower than the 1995 ABS survey reported by Weatherburn et al.<sup>41</sup>

**Table 6: Perception of risk of victimisation**

LEVEL OF RISK	Burglary		M/V Theft		Assault		Robbery	
	Q1	Q2	Q1	Q2	Q1	Q2	Q1	Q2
Less than 6 percent	23.7	32.8	31.1	50.0	46.7	59.0	38.3	62.3
6-10 percent	33.9	42.6	32.8	21.7	35.0	18.0	36.7	16.4
11-30 percent	16.9	13.1	18.0	21.7	13.3	14.8	13.3	13.1
31-50 percent	15.3	8.2	11.5	6.7	1.7	6.6	8.3	4.9
>50 percent	10.2	3.3	6.6	0.0	3.3	1.6	3.3	3.3
<b>TOTAL (n=62)</b>	100	100	100	100.1	100	100	99.9	100

Data Source: University of Tasmania Jury Study 2008

<sup>41</sup> Weatherburn et al, op cit n 27 at 2.

*Sentencing:* As noted above, in Stage 1 most jurors underestimated the proportion of offenders sent to prison for rape and burglary. In Stage 2 this question was repeated. The comparison of responses is shown below. The proportion of jurors who underestimate the imprisonment rate for rapists and burglars decreased with more accurate responses in Stage 2. While the sentencing information from the booklet would appear to be better absorbed than the information on the risk of victimisation, there is still a significant proportion of respondents who underestimate the severity of sentences in practice.

**Table 7: Perception of proportion of offenders imprisoned**

Proportion of Offenders Imprisoned Response	Burglary		Rape	
	Q1 %	Q2 %	Q1 %	Q2 %
0-25 percent	28.3	23.3	11.7	13.3
26-50 percent	45.0	20.0	28.3	6.7
51-75 percent	21.7	46.7	23.3	10.0
>75 percent	5.0	10	36.7	70.0
<b>Total (n=60)</b>	100.0	100.0	100.0	100.0

Data Source: University of Tasmania Jury Study 2008

**Changes in views as to the sentence, sentencing severity and whether judges are in touch.**

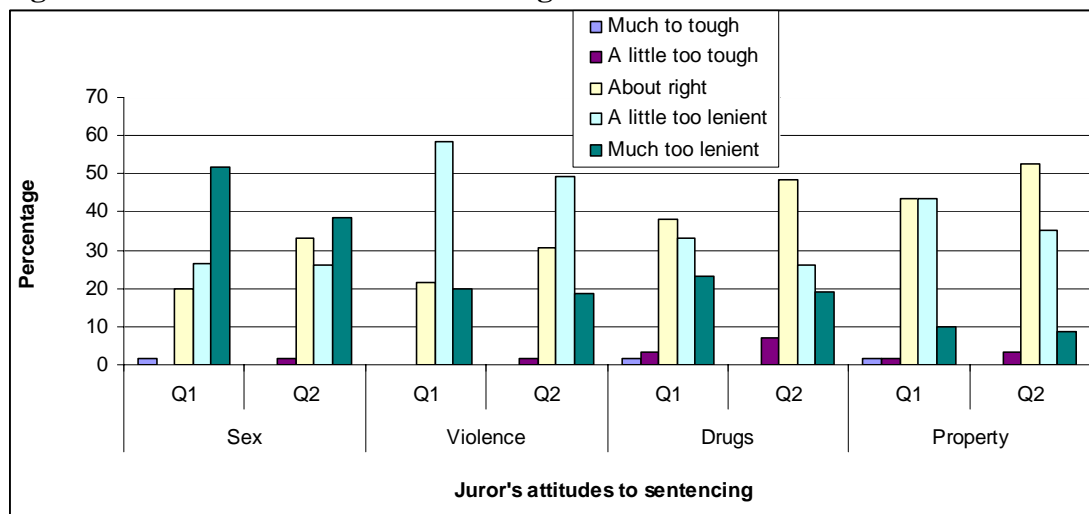
It has already been seen that almost all jurors considered the judge’s sentence appropriate. Questionnaire 2 asked jurors about the usefulness of the information package in answering questions about the appropriateness of the sentence imposed. Most responded that they found the sentencing information in the booklet useful for this purpose, with 39.3 percent finding it very useful and 52.5 percent fairly useful. Jurors were also asked about how much their knowledge of the judge’s reasons for sentence affected their view of the appropriateness of the sentence. Again, most responded that it did affect their view, with more than half (53.2 percent) saying that it affected them a lot. A smaller percentage reported that the information on crime levels in the booklet had some effect on their judgement about the appropriateness of the sentence, with 21.4 percent responding that it had affected them a lot, 42.9 percent a little and 35.7 percent not at all.

It would appear that knowing the reasons for sentence is an important factor in assessing the appropriateness of the sentence. In Tasmania, judges’ sentencing comments are available from the Supreme Court website by 5 pm on the day the sentence is imposed and they remain available for a period of 3 weeks. In responding to the question, ‘Do you think jurors would be interested in knowing how to access the judge’s sentencing comments in the case they tried?’, 57.4 percent said that they would be very interested, with only 3.3 percent saying that jurors would not be at all interested. This is being followed up in interviews, with jurors being asked whether they plan to access the internet to read judges’ comments in the future.

In Questionnaire 2 jurors were again asked about the severity of current sentencing practices. The results are displayed in Figure 4 below. For each crime type the

proportion of respondents who stated that current sentences are about right increased. However, a majority of respondents still stated that sentences for sex offenders and violent offenders were too lenient, with the most common response about sentences for sex offenders stating that they were much too lenient.

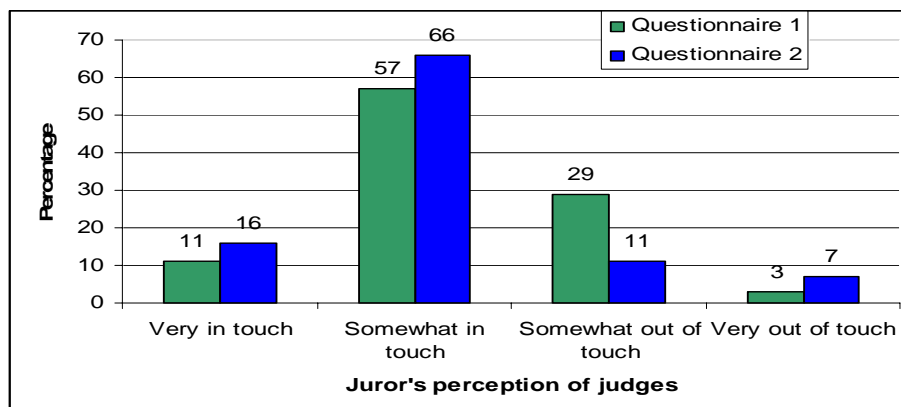
**Figure 4: Are current sentences too tough/lenient?**



Data Source: University of Tasmania Jury Study 2008

In Stage 2 jurors were again asked whether judges are in touch with public opinion on sentencing. As Figure 5 shows, the proportion of respondents who thought judges were in touch with public opinion increased, with more than 80 percent saying that judges were in touch. While the percentage of respondents who said judges were very out of touch increased, the numbers are small at this stage - only 4 respondents to Questionnaire 2 said judges were out of touch.

**Figure 5: How in touch are judges?**

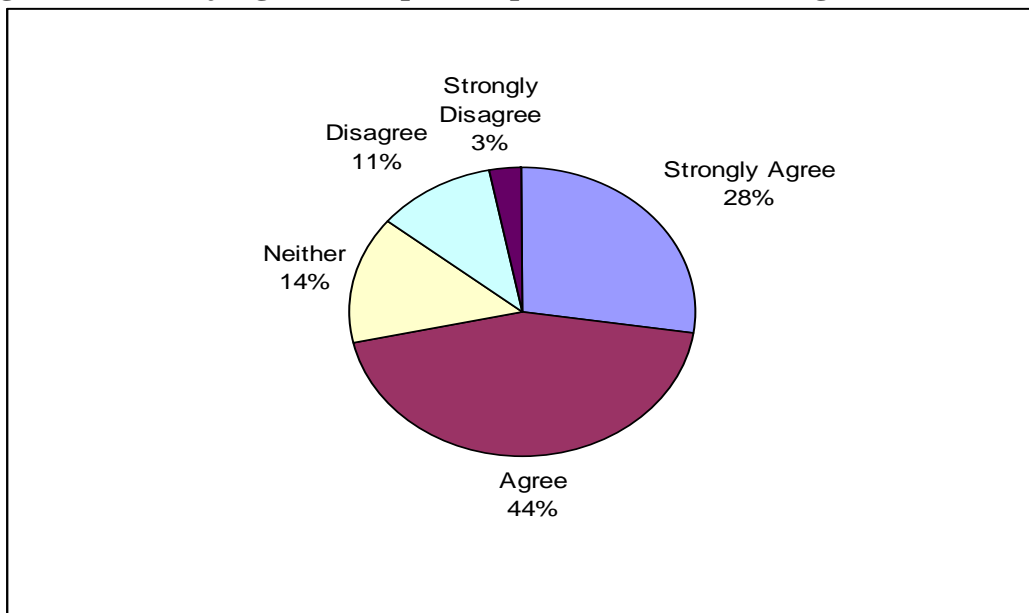


Data Source: University of Tasmania Jury Study 2008

### Should judges take public opinion into account?

It is generally agreed by commentators that judges should respond to public opinion in sentencing. In Stage 2 jurors were asked whether they agreed that judges should do so. Most agreed with this statement. This question will be followed up in interviews. A number of jurors, who were asked about their statement that judges should not take public opinion into account, explained that public opinion was uninformed and that the matter was best left to the judges.

**Figure 6: Should judges reflect public opinion when sentencing?**



### Jurors as conduits of information to the general public

Chief Justice Gleeson has suggested that the reaction of jurors to the sentence imposed is likely to influence public opinion. A number of questions were designed to elicit responses to try to assess the extent to which jurors could operate as a means of disseminating information about crime and sentencing to other members of the public. In Stage 2 jurors were asked if they had discussed the sentence. Most (76 percent) said that they had discussed it with family and friends. Some (36 percent) had also discussed the information on crime trends with family and friends and a quarter had discussed the information on sentencing patterns. These responses suggest that jurors are indeed a promising vehicle for disseminating information about crime and sentencing.

### *The Interviews*

So far, more than half of the jurors who returned Questionnaire 2 have agreed to an interview. Not all willing jurors are interviewed. The research plan was to interview 50 jurors selected from Hobart, Launceston and Burnie juries from a range of offence types in three groups: those whose opinions have changed and become more lenient; those whose views have remained the same and those whose views have become more harsh. This was decided on the basis that a focus of the interviews would be

exploring reasons for opinion change. However, using this selection criterion has proved not to be straightforward and will yield a different result depending on whether the opinion relates to sentences in general<sup>42</sup> or the offence in the case tried.<sup>43</sup> To date 12 jurors have been interviewed in Hobart, Launceston and Burnie. In the first instance this has been done on the basis of offence type. It may be that a better basis for selection would be simply offence type and age of juror. At this stage it appears that young jurors are less likely to participate in the study and retirees are over-represented in those agreeing to interview.

The face-to-face interviews are conducted at the court. They are semi-structured interviews conducted by the three legal academics in the research team. To begin with we used two interviewers to ensure consistency in the approach and questions asked. The interview begins by exploring the sentence proposed and the juror's views about the appropriateness of the judge's sentence. If a suspended sentence is proposed or was imposed questions are asked about this sanction, such as its place in the sentencing hierarchy. Questions are also asked about aggravating and mitigating factors. The following matters are also covered in the interview:

- Any media response to the trial.
- Views about sentencing in general:
  - The kinds of cases the juror was thinking about when giving views about severity of sentencing in general
  - Whether judges should reflect public opinion
  - Views about limiting judicial discretion.<sup>44</sup>
- Feedback about the booklet.
- The response rate in the juror's trial.
- Whether jurors should have a role in sentencing.
- Views about the sentencing task.
- Impact of the jury experience on perception of the criminal justice system.

The interviews conclude with giving the juror the opportunity to ask any questions in relation to the criminal justice system or to make any comments.

### **Some early results**

Interviews last for 40 to 70 minutes. They are taped and transcribed. They will be analysed using thematic analysis with a program called NVivo. Jurors interviewed take their responsibility as jurors seriously and regard it as an important civic duty. They are very interested in the sentencing process and are receptive to general information about crime and sentencing. The following has emerged from interviews to date:

- In some cases some jurors were very critical of the media coverage, eg 'Teen bash Mum walks free' because it was unfair and stigmatising to the defendant

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<sup>42</sup> Determined by comparing responses to the questions in relation to current sentencing practice (Q1 B4 and Q2 C1).

<sup>43</sup> Determined by comparing whether the juror was more lenient or tough than the judge in Questionnaire 1 with their view as to the appropriate sentence in Questionnaire 2 (Q2 A2).

<sup>44</sup> To date, most jurors have preferred a discretionary individualised approach to a standardised grid system, and appear to agree with the preferences stated by the judiciary: see Gleeson CJ 'Out of Touch or Out of Reach' op cit n 1 at 248-249.

in the case to describe her in this way.<sup>45</sup> One juror reported defending the sentence in a discussion with her father who had seen a brief item about the sentence on 'A Current Affair', when she said 'Dad, you had to be there.'

- Reservations about whether judges as a class are in touch with public opinion do not necessarily apply to the judge in the juror's case. Jury members appear to be able to discriminate between assessing the judge as a person (who may be seen as isolated by social background, age and gender) and assessing the judge as a professional (whose long experience in the court exposes them to a wide range of perspectives and gives them a broader knowledge about crime and those who commit crimes than most ordinary members of the public.)<sup>46</sup>
- Some jurors ranked suspended sentences below community service orders, below a fine or equivalent to a probation order.
- Jurors are appreciative of the job judges do.
- In some cases jurors discuss the sentence that is likely to be imposed.<sup>47</sup>

The following misunderstandings were explained to jurors:

- Why there was a preliminary hearing in the Magistrates Court and the matter transferred to the Supreme Court.<sup>48</sup>
- Why the three judges were in the courtroom before their trial resumed one morning.<sup>49</sup>

Jurors also made suggestions in relation to the jury deliberations including: that they should be informed about appointing a foreperson at an earlier stage; there should be time for smoking breaks; more written information both about their role and jury room procedure; and that some written information about the survey be given to jurors when they are summoned for jury service to alert them of the survey.

## Concluding comments

In reporting crime, the media are quick to seize upon lenient punishment of offenders and use it as a basis for criticism of judges. Too often politicians capitalise on these criticisms when a law and order campaign offers the prospect of political advantage.<sup>50</sup> In this way the media creates conditions for a more conservative and punitive response to crime<sup>51</sup> despite the fact that in many areas crime rates are decreasing

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<sup>45</sup> Cooper H 142-2007, Juror 1.

<sup>46</sup> See the comment by Gleeson CJ in 'Out of Touch or Out of Reach' op cit n 1at 241?: 'It is difficult to understand why the judiciary as a class might be regarded as isolated from reality.' Some of our interviewees have echoed this sentiment: 'I'm sure they're exposed to all elements of society, so maybe they're more in touch than I am.' Cooper H 142-2007, Juror 7.

<sup>47</sup> Pelikan L 26-07, Juror 1: Some jurors were concerned that if they convicted the accused would be sent to gaol and asked the judge what would happen if they did. This supports the argument that giving the jury a role in consulting with the judge in relation to sentence may distract them from their central fact finding role in relation to guilt, see NSW Law Reform Commission, op cit n 13at 45.

<sup>48</sup> Cooper H 142-2007 Juror 7.

<sup>49</sup> Cooper H 142-2007 Juror 1.

<sup>50</sup> Sir Anthony Mason, 'The courts and public opinion' [2002] *Bar News* 30.

<sup>51</sup> G Bloustein G and M Israel, 'Crime and the Media' in A Goldsmith, M Israel and K Daly, *Crime and Justice: A Guide to Criminology*, 3<sup>rd</sup> ed, Sydney. Lawbook Co, 2006; S Casey and P Mohr, 'Law and Order Politics, Public Opinion Polls and the Media' (2005) 12 *Psychiatry, Psychology and the Law* 141.

rather than increasing.<sup>52</sup> Informing the public about crime and sentencing matters and ascertaining informed public opinion have been suggested as responses to penal populism. Early results from our jury study suggest that using jurors to do these things has considerable potential. There appear to be enough jurors willing to participate by listening to sentencing submissions, filling in questionnaires and agreeing to be interviewed. The results promise to be interesting and informative and the methodology has potential for wider use and development as a means of both informing the public and gauging public opinion. The Chief Justice of the High Court has argued that it is easy to overlook the fact that most people never have an opportunity to think about issues like sentencing.<sup>53</sup> This jury study gives some members of the public a unique chance to think more deeply about crime and sentencing and to experience firsthand some of the difficulties and nuances inevitably associated with making the onerous decision to alter someone else's life.<sup>54</sup> It promises to yield a wealth of insights and statistical information from an informed section of the community that can be used to challenge some of the popular 'myths and misconceptions' about how the public views judges and their sentences.

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<sup>52</sup> A Freiberg, 'Twenty Years of Change in the Sentencing Environment and Courts' Responses' Paper delivered at Sentencing Conference, Principles, Perspectives and Possibilities', Canberra, 2006.

<sup>53</sup> Gleeson CJ, *op cit* n 1 at 253.

<sup>54</sup> Transcript of interview, Cooper H 142-2007, Juror 7: 'We're changing someone's life ... a lot of them were laying awake at night thinking about it.'