

# Formation and Change in Lay Evaluations of Criminal Sentencing

## Misperception and Discontent\*

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In public opinion polls, a substantial proportion of lay respondents report that judges are too lenient. We examine the factors that contribute to this perceived judicial leniency. The majority of lay respondents in our study said that judges are "too lenient" in their sentencing of burglary offenders; yet, their own sentencing preferences were more lenient than the required minimum sentence for residential burglary. Our survey and experimental data suggest that citizens' opinions are formed by their inaccurate impressions of the seriousness of actual criminal cases as well as actual judicial sentencing practices. Our experimental research indicates that opinions of judicial leniency can be changed by providing respondents with an example of the typical case that comes before the court. Directions for future research are discussed.

The majority of respondents in national opinion polls report that courts do not sentence offenders harshly enough (e.g., Flanagan, McGarrell, & Brown, 1985). This expression of discontent has far-reaching implications. When citizens feel that judges are too lenient with offenders, they may lose confidence in the fairness and effectiveness of the sentencing system (e.g., Cardozo, 1921). Moreover, because public opinion polls are widely distributed, judges and legislators may make

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\* We wish to express gratitude to Patti Vea, who, under the supervision of the first author, collected and entered the data from mass transit riders. We are indebted to Judge Warren Wolfson, Court Administrator Jeff Arnold, Chief Judge Harry Comerford, and Judge Frank W. Barbaro and his jury pool officers who gave us permission and assistance in obtaining juror participation for this research. We would like to thank Tom Tyler and Patrick McAnany for their insightful comments on earlier drafts, and editor Ron Roesch and three anonymous reviewers for their helpful suggestions. Address correspondence to Loretta Stalans, 708 West Bittersweet, Apt. 403, Chicago, Illinois 60613.

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harsher sentencing choices in response to public dissatisfaction. Some empirical research suggests that judges consider public opinion in their sentencing decisions (Gibson, 1980). As well, some researchers have suggested that public opinion polls in part provided the impetus for mandatory prison terms (Cullen, Gilbert, & Cullen, 1983; Diamond, 1989; Flanagan et al., 1985; Goldstein & Hepburn, 1986; Thomson & Ragona, 1987).

Do laypersons actually prefer sentences more severe than those judges typically deliver? Some researchers have found that laypersons give harsher sentencing recommendations than offenders actually serve (Blumstein & Cohen, 1980; Walker, Collins, & Wilson, 1988). Like the questions on national opinion polls, the case descriptions in these studies lack the detail of real cases. When asked global questions, lay respondents also oppose reducing sentences to relieve prison overcrowding (Skovron, Scott, & Cullen, 1988) and support mandatory minimum prison terms (Cullen et al., 1983).

Using detailed cases to study sentencing preferences, other researchers find that laypersons do not favor harsher sentences (Diamond & Stalans, 1989; Hough & Mayhew, 1985; Ragona & Ryan, 1983; Samuel & Moulds, 1986; Thomson & Ragona, 1987; Warr, Meier, & Erickson, 1983). In these studies, laypersons recommended more lenient sentences than judges or required statutory minimum prison terms. For example, Thomson and Ragona (1987) asked 860 Illinois residents to sentence a first-time offender convicted of residential burglary who entered an unoccupied home unarmed and stole \$400 worth of goods. They found that fewer than 7% of the respondents sentenced the offender to even the minimum 4-year prison term required by law.

Three factors may explain why citizens express harsh sentencing preferences in response to abstract cases and express discontent with judicial sentencing in response to global questions. First, they may actually want harsher sentences. Second, they may base their opinions on a set of inaccurate impressions they have received about the characteristics of crimes and criminals. Finally, individuals may hold fundamental political values that shape their opinions.

If the expressed dissatisfaction with judicial sentencing is based largely on a desire for harsher sentences, laypersons who recommend harsher sentences for concrete cases should be more likely to indicate that judges are too lenient. Individuals express discontent because they believe their preferred punishment is harsher than current judicial punishment. Supporting this explanation, laypersons underestimate the percentage of convicted offenders sentenced to prison (Doob & Roberts, 1988; Walker, Hough, & Lewis, 1988). Moreover, they are generally unaware of mandatory minimum prison terms (e.g., Cullen et al., 1988). This lack of information may foster discontent among respondents who prefer harsh punishment.

Laypersons may also express dissatisfaction with judicial sentencing based largely upon their impressions about the characteristics of crimes and criminals rather than sentencing preferences. Researchers examining lay sentencing preferences (Diamond & Stalans, 1989; Doob & Roberts, 1984; Hough & Lewis, 1985), attitudes toward capital punishment (Ellsworth, 1978), and media content concerning crime (Graber, 1980) have suggested that most laypersons perceive

offense characteristics as more severe than the most frequent characteristics of court cases. For example, laypersons often think of burglars as weapon-carrying ransackers of homes rather than the more common unarmed intruders who leave few signs that they entered apart from the absence of a few valuable possessions.

When respondents answer global questions about sentencing, they may say judges are too lenient or support harsher sentences because the cases that they recall were about repeat offenders who caused serious harm. This reliance on the severity of the cases that come to mind may occur through at least one of two processes: recall or construction (Kahneman & Tversky, 1982). Respondents may recall prior knowledge about the characteristics of criminals culled from the mass media, informal conversations, or direct experience. This process is known as an *accessibility bias* (e.g., Taylor, 1982). Alternatively, or in addition, respondents may construct what they consider to be the most plausible scenario for the cases that come through the court and the sentences that are meted out. Respondents create images of criminal events from salient cues in the environment and in the questions rather than from the retrieval of information in memory (e.g., Stalans & Lurigio, in press; Kahneman & Miller, 1986). This process is known as the *simulation heuristic* (Kahneman & Tversky, 1982).

One study has provided preliminary data suggesting that a focus on atypical offenders leads to opinions of judicial leniency. Doob and Roberts (1984) asked respondents whether judicial sentencing was "too lenient," "about right," or "too harsh." Respondents who felt that the courts were too lenient were more likely to be thinking about violent or repeat offenders than were respondents who indicated that the courts were about right. This finding suggests that respondents critical of the courts may focus on atypical offenders. Respondents may be more critical of the courts because of their other beliefs about crime or demographic factors. For example, politically conservative individuals are more likely to believe that crime is caused by negative personality characteristics of the offender and to prefer harsher sentences for criminal offenders than are politically liberal individuals (e.g., Carroll et al., 1987). Moreover, it is difficult to determine whether misperceptions, a particular concern about violent offenses, or both of these explanations are sources of the belief in judicial leniency.

Finally, people's opinions about sentencing may be shaped by their own fundamental, generalized attitudes about the criminal justice system and about criminals. Thus, when asked about judicial sentencing practices, respondents may not think about what they have heard from exchanges with others, learned from their own experience, or culled from the media on judicial sentencing practices or characteristics of cases. Instead, respondents may express a generalized sentiment toward the criminal justice system derived from their deeply held political values (e.g., Tyler & Weber, 1982).

Our study tests whether misperceptions of the characteristics of criminal cases shape assessments of judicial sentencing leniency beyond the effects of respondents' own preferred sentencing severity and generalized attitudes about the criminal justice system and criminals. To examine public views of sentencing more closely, we measured how laypersons' beliefs about the characteristics of typical criminal cases can affect their evaluations of judicial sentencing leniency. We then

manipulated lay information about typical offenders to test whether by inducing these changes in perceptions we could change respondents' opinions of judicial leniency into opinions that judicial sentencing was acceptable.

## OVERVIEW OF STUDY ONE

We focused on residential burglary. On January 1, 1982, Illinois Public Act 82-238 created the offense of residential burglary and required that anyone convicted of this offense be sentenced to a minimum of 4 years in a state penal facility (Illinois Revised Statutes, 1987).<sup>1</sup> Though this law has been attacked as too harsh and some individuals favor eliminating this mandatory minimum prison term for residential burglary to relieve prison overcrowding (e.g., *Chicago Tribune*, February, 1988), it is currently the required penalty for a common property offense.

Illinois adult residents gave their expectations about the details of burglary, their beliefs about the causes of burglary, their sentencing goals, and their sentences to both an abstract and a concrete description of a burglary case. The hypothesis tested was as follows:

Controlling for other beliefs about crimes and demographic variables, respondents who report more severe attributes for the typical burglar and burglary are more likely to indicate that judges are "too lenient" than are respondents who report less severe attributes.

## Method

### *Subjects*

In June of 1987, Illinois adults (132 females, 47 males) completed the questionnaires while riding the Joliet-to-Chicago train line. The response rate was 79.9%. Age ranged from 19 to 80 ( $M = 35.5$ ). Only two respondents had not completed high school, and 66% had completed at least one year of college; 31.9% of these had completed at least 4 years of college.

With permission from the court, Illinois residents (67 males, 65 females) who reported for jury duty to a district courthouse over a two-week period in April of 1987 were randomly selected from the jury pool and asked to participate in a sentencing study. All agreed. Their ages ranged from 20 to 72 ( $M = 40$ ). Ten percent had not completed high school, and 61.5% had attended college; 29.5% of these had completed at least 4 years of college.

### *Measurement of Independent Variables*

The independent variables in the analyses that predict opinion of judicial sentencing in burglary cases are (a) sentencing of the typical burglar, (b) sentencing in response to a concrete case, (c) importance of each sentencing goal, (d)

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<sup>1</sup> With a 50% good time discount, the minimum prison term that may actually be served is 2 years.

beliefs about the causes of crime, and (e) "misperception." The following paragraphs describe the construction of each variable.

*Sentencing Choices for the Typical Burglar and Burglary.* Both sets of respondents indicated their sentencing preference for "the offender who commits the typical burglary." Jurors chose among five sentence categories: (1) fine, (2) straight probation, (3) probation with some months in jail, (4) probation with weekends and nights in jail, and (5) prison. Mass transit respondents chose among four sentence categories: (1) straight probation for 1-4 years, (2) probation for 1-4 years and 80 hours community service, (3) probation for 1-4 years with 1 to 11 months in jail, and (4) prison for 1-15 years. Each respondent indicated the sentence amount or length within the ranges provided.

*Sentencing Choices in Response to a Concrete Case.* Mass transit respondents also sentenced an offender convicted of residential burglary described as follows:

An offender, aged 20, stole a color television worth 900 dollars. The offender was caught when he attempted to sell the television set to a pawn shop owner. The television set suffered damages beyond repair because it had been exposed to the rain. The victims did not have insurance. The offender pleaded guilty. The offender had 1 prior conviction: (1) on 3/4/86—theft—1 year probation. The offender dropped out of high school after completing the tenth grade. The offender works part time as a waiter and is currently taking a GED class to receive his high school diploma. The offender uses alcohol moderately; he drinks on weekends and at social gatherings. The offender shares a moderately close relationship with his parents, who live in Ohio.

Informed that the offender would serve only half of an assigned prison term, respondents used the same options given for the typical burglar and burglary.

*Sentencing Goals.* Respondents in both samples were asked, "Generally, what is the purpose of the sentence you would give to the typical burglar? (If you have more than one purpose, indicate the weight of each one so that they add to 100%.)" Respondents chose among five options: (1) general deterrence (to warn others), (2) individual deterrence (to warn this offender), (3) rehabilitation (to change this offender), (4) punishment (to give this offender what he deserves), and (5) incapacitation (to keep this offender from committing further offenses while he is incarcerated). Because most respondents assigned little or no weight to incapacitation, it was not used in the analyses. To correct for skewedness in these variables, a natural log transformation was performed.

*Beliefs about the Causes of Crime.* Respondents were asked to complete the following statement: "The typical burglar committed the crime because . . ." and were given 10 statements. Respondents in the mass transit sample indicated their agreement with each statement using a 7-point scale (1 = *strongly disagree* and 7 = *strongly agree*); jurors checked the choices they believed were true. An orthogonal factor analysis on the items revealed three factors: Factor 1, *Social Causes*, explained 26.1% of the variance. It consisted of the items attributing the crime to family problems, parental neglect, and failure of the school and court system to give needed help. Factor 2, *Economic Causes*, explained 20.3% of the variance. It was made up of items attributing the crime to lack of jobs available and crime as the only means of survival. Factor 3, *Dispositional Causes*, ex-

Table 1. Misperception of Typical Burglary/Burglar Characteristics<sup>a</sup>

|                             |           | Mass transit |                    | Jurors |                    | Court data |
|-----------------------------|-----------|--------------|--------------------|--------|--------------------|------------|
| In the typical burglary     |           |              |                    |        |                    |            |
| the burglarized place,      |           |              |                    |        |                    |            |
| is ransacked                | (1)       | 42.5%        |                    | 61.4%  |                    |            |
| is not ransacked            | (0)       | 41.9%        |                    | 27.1%  |                    |            |
| no idea                     | (missing) | 15.1%        |                    | 11.4%  |                    |            |
| In the typical burglary,    |           |              |                    |        |                    |            |
| the offender does not       |           |              |                    |        |                    |            |
| carry a weapon              | (0)       | 38.5%        |                    | 40.0%  |                    |            |
| the offender carries        |           |              |                    |        |                    |            |
| a weapon                    | (1)       | 43.6%        |                    | 39.3%  |                    |            |
| no idea                     | (missing) | 17.9%        |                    | 20.7%  |                    |            |
| Has the typical burglar     |           |              |                    |        |                    |            |
| ever committed a violent    |           |              |                    |        |                    |            |
| crime?                      |           |              |                    |        |                    |            |
| Yes                         | (1)       | 14.5%        |                    | 22.1%  |                    |            |
| No                          | (0)       | 46.9%        |                    | 44.3%  |                    |            |
| no idea                     | (missing) | 38.5%        |                    | 33.5%  |                    |            |
| As an adult, the typical    |           |              |                    |        |                    |            |
| burglar has committed       |           |              |                    |        |                    |            |
| no crimes                   | (0)       | 0.0%         | 0.0 <sup>b</sup> % | 1.4%   | 1.8 <sup>b</sup> % | 18.8%      |
| 1 crime                     | (1)       | 4.5%         | 5.2%               | 5.7%   | 7.1%               | 22.5%      |
| 2-3 crimes                  | (2)       | 30.2%        | 35.1%              | 42.1%  | 52.7%              | 31.3%      |
| 4 or more crimes            | (3)       | 51.4%        | 59.8%              | 30.7%  | 38.4%              | 27.3%      |
| no idea                     | (missing) | 13.9%        |                    | 20.0%  |                    |            |
| The typical burglar has     |           |              |                    |        |                    |            |
| no juvenile record          | (0)       | 7.8%         |                    | 4.3%   |                    |            |
| one juvenile offense        | (1)       | 36.3%        |                    | 14.3%  |                    |            |
| 2-3 juvenile offenses       | (2)       | 21.2%        |                    | 48.6%  |                    |            |
| 4 or more juvenile offenses | (3)       | 23.5%        |                    | 11.4%  |                    |            |
| no idea                     | (missing) | 11.2%        |                    | 21.4%  |                    |            |

<sup>a</sup> In the juror sample, 88% of the respondents indicated that the typical burglary takes place in a home. The distributions of the variables did not change when only the respondents who thought the typical burglary took place in the home were used. The mass transit sample was not asked this question.

<sup>b</sup> Numbers in this column indicate the percentage of respondents who gave each answer among those respondents who expressed an opinion.

plained 16.4% of the variance and was composed of the items attributing the cause to greed and laziness. Three scales representing these factors were created by taking the mean of the standardized responses of the items loading on a factor.<sup>2</sup>

*Severe Burglary Characteristics: Misperception.* Respondents were asked their impressions of the most frequent burglar and burglary. Burglary was defined for respondents as breaking and entering with the intent to commit a felony. Because respondents may not have had a prior impression about some details before the questions were posed, they were given the option of checking "no idea." A scale of severity of the attributes was formed by using the mean of the standardized responses to the five questions. In forming the scale, a response of "no idea" was treated as missing because individuals may place different emphases on each aspect of the typical case. Table 1 presents the items used to construct a scale of misperception.<sup>3</sup>

<sup>2</sup> Orthogonal and oblique rotations on the items that had appropriate distributions were performed for each sample and revealed the same results. The mass transit solution is presented. These same factors also emerged in research by Carroll et al. (1987).

<sup>3</sup> We also constructed other scales that included the presence of victim, excluded prior violent offense,

Are respondents' perceptions of the typical burglary case incongruent with the typical burglary case sentenced by the Illinois courts? Data collected by the Cook County State's Attorney's Office provide a partial answer to this question (Daley, 1983). They conducted a study of all felony convictions in Cook County between April and June of 1983 ( $N = 80$ ). The column "Court Data" in Table 1 presents their data collected on prior record for residential burglary cases. A majority of the mass transit's respondents and nearly two fifths of the jurors who had an opinion believed that the typical burglar committed at least 4 prior crimes.<sup>4</sup> The court data, however, show that only a quarter of convicted offenders have been previously convicted or have been convicted of at least 4 prior crimes.

Maquire (1984), in a field study conducted in Britain, found that

At least four out of every five cases take place in unoccupied houses during the daytime or evening; contact between victim and offender is rare, and violence even rarer; . . . serious damage or ransacking occurs in under 4% of the cases. (p. 221)

Waller and Okihiro (1978) found in a survey of 116 victims that ransacking occurred in only three incidents and that the cost to repair damages was less than \$50 in four fifths of all incidents. Though 25% of the respondents indicated that they were home at the time of the burglary, the confrontation was relatively peaceful and the victim and burglar were often acquainted. Thus, respondents who perceive severe attributes have a picture of the typical burglary case that is more severe than the burglary cases that normally appear in court. Based on these data from the courts, we have labeled this variable, *misperception*. We should note, however, that misperception is relative to cases of sentenced offenders; respondents' perceptions may accurately reflect the characteristics of offenders who are not arrested, convicted, and sentenced. This variable is used to test the hypothesis that the perceived severity of the case attributes affects opinions about judicial sentencing severity.

### *Opinion About Judicial Sentencing*

A question similar to questions used by national opinion polls measured perceptions of judicial sentencing severity: "In sentencing offenders convicted of burglary, do you believe Illinois judges are generally . . . 'Too Lenient'; 'About Right'; or 'Too Severe'?" Mass transit respondents answered this question before responding to any other questions; jurors answered the question after completing all other questions.

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did not standardize the responses, or recoded the number of prior crimes differently. These alternative scales did not appreciably affect the results presented. Thus, the results are robust across different scale constructions.

<sup>4</sup> The mass transit and juror respondents may have differed in their perceptions of the typical burglar and burglary because, just before completing the questionnaire, the jurors, but not the mass transit respondents, had viewed and sentenced four cases involving minor prior records and moderately serious crimes. This procedure may have led the jurors to a more favorable view of the typical burglar and burglary.

Table 2. Perceived Judicial Leniency in Sentencing Burglary Cases

| In sentencing burglary offenders, do you believe Illinois judges are: | Mass transit<br>(n = 179) | Jurors<br>(n = 132) |
|---|---------------------------|---------------------|
| Too lenient   | 67.0%                     | 61.7%               |
| About right   | 25.1%                     | 30.5%               |
| Too severe  | 0.6%                      | 1.3%                |
| No opinion  | 7.3%                      | 6.5%                |

## Results and Discussion

The majority of the respondents (62%, 67%) indicated that judges are "too lenient" (See Table 2). This percentage is lower than the percentage of respondents in national opinion polls who indicate that judges are too lenient when the question does not specify the offense. This result is also similar to the results of a survey conducted in England in which 54% of the respondents indicated that judges were too lenient in sentencing burglary cases (Walker, Hough, & Lewis, 1988).

Does expressed dissatisfaction with judicial sentencing leniency translate into a demand that burglars be given prison terms? The demand is not great (see Table 3). Consistent with Thomson and Ragona's (1987) findings, only 10.6% gave at least the minimum 2-year prison term required by law to an offender who had a previous theft conviction and stole \$900 worth of goods. Although a greater proportion of respondents (26%, 39%) gave the *typical* burglar the minimum 2-year prison term, the majority of respondents still did not recommend sentences as severe as the legal mandatory minimum. Sentences given to the typical burglar, however, also are associated with the perception of severe case attributes.

Consistent with other findings (e.g., Thomson & Ragona, 1987), our results present a paradox: Respondents gave less severe sentences than legally permitted, but perceived judicial sentencing as too lenient. Can the misperception of the severity of case characteristics shed light on this paradox?

To test the misperception hypothesis, separate maximum likelihood logit analyses were performed for the mass transit and juror samples.<sup>5</sup> Logit analysis transforms a dichotomous dependent variable into the logarithm of the odds ratio of the two categories. In this study, the dichotomous dependent variable is perceptions of judicial sentencing, 0 = *about right*, 1 = *too lenient*. To ease interpretation, we have converted the logistic estimate into the odds of being in the too

<sup>5</sup> Ordinary Least Squares (OLS) regression is not appropriate for dichotomous dependent variables because its assumptions of normality are violated. A logistic analysis is used because it makes fewer assumptions about the distribution of the variables and produces unbiased estimates for a dichotomous dependent variable (Amemiya, 1985). The interpretation of logistic regression is similar to OLS regression. The logistic coefficients have both magnitude and direction. A larger magnitude means a stronger effect. The sign of the coefficient indicates the direction of the relationship. In logistic regression, however, the relationship between the independent and dependent variables is the odds of the log ratio; it is not an intuitively interpretable scale. Thus, to increase interpretability, the coefficients are transformed into the odds of being in the "too lenient" group.

Table 3. Sentencing Preferences for Concrete Case and Typical Burglar

|  | Preferred sentence for: |                 |                 |
|--|-------------------------|-----------------|-----------------|
|  | Mass transit            |                 | Jurors          |
|  | Concrete case           | Typical burglar | Typical burglar |
| Nonincarcerative sentence                            | 39.0%                   | 33.0%           | 27.5%           |
| Jail sentence  | 39.0%                   | 37.0%           | 28.9%           |
| Prison sentence below statutory minimum              | 11.4%                   | 4.0%            | 4.5%            |
| Prison sentence at or above 2-year statutory minimum | 10.6%                   | 26.0%           | 39.1%           |

lenient group. We performed the conversion by taking an antilog of the logistic estimate. Table 4 presents the logistic models with and without the misperception variable. In the table, we also report a measure of the goodness of fit of the model to the observed data, the "reduction in predictive error" which indicates the proportion of variance accounted for by the predictors (DuMouchel, 1976).<sup>6</sup>

The data presented in Table 4 provide support for the misperception hypothesis. In both samples, after controlling for other beliefs, misperception made a significant independent contribution to the model of perceived judicial leniency.<sup>7,8</sup> As can be seen in Table 4, for every increase of one unit in the perceived severity of the attributes associated with the typical burglary, mass transit respondents are four times more likely to be in the group that indicated judges are too lenient, and jurors are more than twice as likely to be in the too lenient group.

An alternative hypothesis that may create a spurious relationship between misperception of case attributes and opinions about judicial sentencing leniency is the respondent's own sentencing severity. This alternative hypothesis, however, is not supported. When mass transit respondents' sentencing severity to the concrete case is entered into the model, misperception explains 5% of the variance

<sup>6</sup> The maximum likelihood chi-square ( $G^2$ ) is not an adequate overall goodness-of-fit measure in the case of maximum likelihood logit regression. DuMouchel (1976) describes a measure of the reduction in predictive error, which compares the probability of misclassification of the dependent variable without the help of the model to that probability with the help of the model. If  $y$  is the variable equaling 1 if judges are perceived as too lenient and 0 otherwise, and  $p = P(y = 1)$ , then reduction in predictive error is

$$\frac{\hat{\Pi}_y - \hat{\Pi}_e}{\hat{\Pi}_y}$$

where  $\hat{\Pi}_y = 1 - p^p(1 - p)^{1-p}$  is the predictive error under the assumption that all coefficients are zero, and  $\hat{\Pi}_e = 1 - e^{-G^2/2N}$ , the predictive error under the estimated model.

<sup>7</sup> Moreover, because the question of perceived judicial leniency was asked first in one sample and last in the other sample, the result cannot be due to an order effect.

<sup>8</sup> For the mass transit sample, measures of prior direct and indirect property and violent victimization, perceived likelihood of property and violent victimization, and fear of property and violent victimization did not predict perceptions of judicial sentencing severity. These nonsignificant findings are consistent with prior studies on support for the courts (Fagan, 1981; Flanagan et al. 1985).

Table 4. Effects of Misperception on Perceived Judicial Leniency (Logistic Estimates)

|   | Juror sample                  |  | Mass transit sample           |                               |
|---|-------------------------------|--|-------------------------------|-------------------------------|
|   |                               |  |                               |                               |
| Demographics  |                               |  |                               |                               |
| Age   |                               |  | .050 <sup>b</sup><br>(1.05:1) | .04 <sup>a</sup><br>(1.04:1)  |
| Education   | .99 <sup>c</sup><br>(2.69:1)  | 1.04 <sup>c</sup><br>(2.82:1) <sup>d</sup> |                               |                               |
| Sentencing goals                                    |                               |  |                               |                               |
| General deterrence                                  |                               |  | .54 <sup>a</sup><br>(1.71:1)  | .30 <sup>a</sup><br>(1.35:1)  |
| Rehabilitation                                      | -.43 <sup>c</sup><br>(1.54:1) | -.03 <sup>b</sup><br>(1.03:1)              |                               |                               |
| Punishment  | .23 <sup>b</sup><br>(1.26:1)  | .25 <sup>b</sup><br>(1.28:1)               |                               |                               |
| Causal attributions                                 |                               |  |                               |                               |
| Economic  | -.53 <sup>c</sup><br>(1.70:1) | -.58 <sup>c</sup><br>(1.79:1)              |                               |                               |
| Social  |                               |  | .54 <sup>a</sup><br>(1.72:1)  | .22 <sup>b</sup><br>(1.24:1)  |
| Misperception                                       |                               |  | .81 <sup>a</sup>              | 1.35 <sup>c</sup><br>(3.85:1) |
| Reduction in predictive error                       | .16                           | .22<br>(2.25:1)                            | .08                           | .13                           |
| Maximum likelihood X <sup>2</sup> (G <sup>2</sup> ) | 113.8                         | 115.35                                     | 157.9                         | 151.72                        |
| DF  | 108                           | 119  | 144                           | 147                           |
| Probability   | .33                           | .58  | .20                           | .38                           |

<sup>a</sup>  $p < .05$ .<sup>b</sup>  $p < .01$ .<sup>c</sup>  $p < .001$ .<sup>d</sup> Represents the odds of being in the "too lenient" group for every unit increase in the independent variable.

independent of the 4% of the variance accounted for by their own sentencing severity. That is, beyond the effect of respondent's own sentencing severity, the perceived severity of the typical case significantly shaped opinions about judicial sentencing severity.

The misperception effect was replicated across the two samples, across different data collection procedures, and across different item ordering. Moreover, independent of other beliefs about crime, and sentencing severity to a concrete case, misperception of case attributes modified opinions about judicial sentencing practices. These data thus indicate that the actual desired sentencing severity of the respondent is only one component that shapes perceptions of judicial sentencing severity; citizen reactions are also formed by their misperceptions of typical case severity and actual judicial sentencing practices.

## STUDY TWO

Even when the offense type is specified, some individuals imagine the criminal case to have extremely severe characteristics, and this misperception leads to

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The majority of respondents in national opinion polls report that courts do not sentence offenders harshly enough (e.g., Flanagan, McGarrell, & Brown, 1985). This expression of discontent has far-reaching implications. When citizens feel that judges are too lenient with offenders, they may lose confidence in the fairness and effectiveness of the sentencing system (e.g., Cardozo, 1921). Moreover, because public opinion polls are widely distributed, judges and legislators may make

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harsher sentencing choices in response to public dissatisfaction. Some empirical research suggests that judges consider public opinion in their sentencing decisions (Gibson, 1980). As well, some researchers have suggested that public opinion polls in part provided the impetus for mandatory prison terms (Cullen, Gilbert, & Cullen, 1983; Diamond, 1989; Flanagan et al., 1985; Goldstein & Hepburn, 1986; Thomson & Ragona, 1987).

Do laypersons actually prefer sentences more severe than those judges typically deliver? Some researchers have found that laypersons give harsher sentencing recommendations than offenders actually serve (Blumstein & Cohen, 1980; Walker, Collins, & Wilson, 1988). Like the questions on national opinion polls, the case descriptions in these studies lack the detail of real cases. When asked global questions, lay respondents also oppose reducing sentences to relieve prison overcrowding (Skovron, Scott, & Cullen, 1988) and support mandatory minimum prison terms (Cullen et al., 1983).

Using detailed cases to study sentencing preferences, other researchers find that laypersons do not favor harsher sentences (Diamond & Stalans, 1989; Hough & Mayhew, 1985; Ragona & Ryan, 1983; Samuel & Moulds, 1986; Thomson & Ragona, 1987; Warr, Meier, & Erickson, 1983). In these studies, laypersons recommended more lenient sentences than judges or required statutory minimum prison terms. For example, Thomson and Ragona (1987) asked 860 Illinois residents to sentence a first-time offender convicted of residential burglary who entered an unoccupied home unarmed and stole \$400 worth of goods. They found that fewer than 7% of the respondents sentenced the offender to even the minimum 4-year prison term required by law.

Three factors may explain why citizens express harsh sentencing preferences in response to abstract cases and express discontent with judicial sentencing in response to global questions. First, they may actually want harsher sentences. Second, they may base their opinions on a set of inaccurate impressions they have received about the characteristics of crimes and criminals. Finally, individuals may hold fundamental political values that shape their opinions.

If the expressed dissatisfaction with judicial sentencing is based largely on a desire for harsher sentences, laypersons who recommend harsher sentences for concrete cases should be more likely to indicate that judges are too lenient. Individuals express discontent because they believe their preferred punishment is harsher than current judicial punishment. Supporting this explanation, laypersons underestimate the percentage of convicted offenders sentenced to prison (Doob & Roberts, 1988; Walker, Hough, & Lewis, 1988). Moreover, they are generally unaware of mandatory minimum prison terms (e.g., Cullen et al., 1988). This lack of information may foster discontent among respondents who prefer harsh punishment.

Laypersons may also express dissatisfaction with judicial sentencing based largely upon their impressions about the characteristics of crimes and criminals rather than sentencing preferences. Researchers examining lay sentencing preferences (Diamond & Stalans, 1989; Doob & Roberts, 1984; Hough & Lewis, 1985), attitudes toward capital punishment (Ellsworth, 1978), and media content concerning crime (Graber, 1980) have suggested that most laypersons perceive

offense characteristics as more severe than the most frequent characteristics of court cases. For example, laypersons often think of burglars as weapon-carrying ransackers of homes rather than the more common unarmed intruders who leave few signs that they entered apart from the absence of a few valuable possessions.

When respondents answer global questions about sentencing, they may say judges are too lenient or support harsher sentences because the cases that they recall were about repeat offenders who caused serious harm. This reliance on the severity of the cases that come to mind may occur through at least one of two processes: recall or construction (Kahneman & Tversky, 1982). Respondents may recall prior knowledge about the characteristics of criminals culled from the mass media, informal conversations, or direct experience. This process is known as an *accessibility bias* (e.g., Taylor, 1982). Alternatively, or in addition, respondents may construct what they consider to be the most plausible scenario for the cases that come through the court and the sentences that are meted out. Respondents create images of criminal events from salient cues in the environment and in the questions rather than from the retrieval of information in memory (e.g., Stalans & Lurigio, in press; Kahneman & Miller, 1986). This process is known as the *simulation heuristic* (Kahneman & Tversky, 1982).

One study has provided preliminary data suggesting that a focus on atypical offenders leads to opinions of judicial leniency. Doob and Roberts (1984) asked respondents whether judicial sentencing was "too lenient," "about right," or "too harsh." Respondents who felt that the courts were too lenient were more likely to be thinking about violent or repeat offenders than were respondents who indicated that the courts were about right. This finding suggests that respondents critical of the courts may focus on atypical offenders. Respondents may be more critical of the courts because of their other beliefs about crime or demographic factors. For example, politically conservative individuals are more likely to believe that crime is caused by negative personality characteristics of the offender and to prefer harsher sentences for criminal offenders than are politically liberal individuals (e.g., Carroll et al., 1987). Moreover, it is difficult to determine whether misperceptions, a particular concern about violent offenses, or both of these explanations are sources of the belief in judicial leniency.

Finally, people's opinions about sentencing may be shaped by their own fundamental, generalized attitudes about the criminal justice system and about criminals. Thus, when asked about judicial sentencing practices, respondents may not think about what they have heard from exchanges with others, learned from their own experience, or culled from the media on judicial sentencing practices or characteristics of cases. Instead, respondents may express a generalized sentiment toward the criminal justice system derived from their deeply held political values (e.g., Tyler & Weber, 1982).

Our study tests whether misperceptions of the characteristics of criminal cases shape assessments of judicial sentencing leniency beyond the effects of respondents' own preferred sentencing severity and generalized attitudes about the criminal justice system and criminals. To examine public views of sentencing more closely, we measured how laypersons' beliefs about the characteristics of typical criminal cases can affect their evaluations of judicial sentencing leniency. We then

manipulated lay information about typical offenders to test whether by inducing these changes in perceptions we could change respondents' opinions of judicial leniency into opinions that judicial sentencing was acceptable.

## OVERVIEW OF STUDY ONE

We focused on residential burglary. On January 1, 1982, Illinois Public Act 82-238 created the offense of residential burglary and required that anyone convicted of this offense be sentenced to a minimum of 4 years in a state penal facility (Illinois Revised Statutes, 1987).<sup>1</sup> Though this law has been attacked as too harsh and some individuals favor eliminating this mandatory minimum prison term for residential burglary to relieve prison overcrowding (e.g., *Chicago Tribune*, February, 1988), it is currently the required penalty for a common property offense.

Illinois adult residents gave their expectations about the details of burglary, their beliefs about the causes of burglary, their sentencing goals, and their sentences to both an abstract and a concrete description of a burglary case. The hypothesis tested was as follows:

Controlling for other beliefs about crimes and demographic variables, respondents who report more severe attributes for the typical burglar and burglary are more likely to indicate that judges are "too lenient" than are respondents who report less severe attributes.

## Method

### *Subjects*

In June of 1987, Illinois adults (132 females, 47 males) completed the questionnaires while riding the Joliet-to-Chicago train line. The response rate was 79.9%. Age ranged from 19 to 80 ( $M = 35.5$ ). Only two respondents had not completed high school, and 66% had completed at least one year of college; 31.9% of these had completed at least 4 years of college.

With permission from the court, Illinois residents (67 males, 65 females) who reported for jury duty to a district courthouse over a two-week period in April of 1987 were randomly selected from the jury pool and asked to participate in a sentencing study. All agreed. Their ages ranged from 20 to 72 ( $M = 40$ ). Ten percent had not completed high school, and 61.5% had attended college; 29.5% of these had completed at least 4 years of college.

### *Measurement of Independent Variables*

The independent variables in the analyses that predict opinion of judicial sentencing in burglary cases are (a) sentencing of the typical burglar, (b) sentencing in response to a concrete case, (c) importance of each sentencing goal, (d)

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<sup>1</sup> With a 50% good time discount, the minimum prison term that may actually be served is 2 years.

beliefs about the causes of crime, and (e) "misperception." The following paragraphs describe the construction of each variable.

*Sentencing Choices for the Typical Burglar and Burglary.* Both sets of respondents indicated their sentencing preference for "the offender who commits the typical burglary." Jurors chose among five sentence categories: (1) fine, (2) straight probation, (3) probation with some months in jail, (4) probation with weekends and nights in jail, and (5) prison. Mass transit respondents chose among four sentence categories: (1) straight probation for 1-4 years, (2) probation for 1-4 years and 80 hours community service, (3) probation for 1-4 years with 1 to 11 months in jail, and (4) prison for 1-15 years. Each respondent indicated the sentence amount or length within the ranges provided.

*Sentencing Choices in Response to a Concrete Case.* Mass transit respondents also sentenced an offender convicted of residential burglary described as follows:

An offender, aged 20, stole a color television worth 900 dollars. The offender was caught when he attempted to sell the television set to a pawn shop owner. The television set suffered damages beyond repair because it had been exposed to the rain. The victims did not have insurance. The offender pleaded guilty. The offender had 1 prior conviction: (1) on 3/4/86—theft—1 year probation. The offender dropped out of high school after completing the tenth grade. The offender works part time as a waiter and is currently taking a GED class to receive his high school diploma. The offender uses alcohol moderately; he drinks on weekends and at social gatherings. The offender shares a moderately close relationship with his parents, who live in Ohio.

Informed that the offender would serve only half of an assigned prison term, respondents used the same options given for the typical burglar and burglary.

*Sentencing Goals.* Respondents in both samples were asked, "Generally, what is the purpose of the sentence you would give to the typical burglar? (If you have more than one purpose, indicate the weight of each one so that they add to 100%.)" Respondents chose among five options: (1) general deterrence (to warn others), (2) individual deterrence (to warn this offender), (3) rehabilitation (to change this offender), (4) punishment (to give this offender what he deserves), and (5) incapacitation (to keep this offender from committing further offenses while he is incarcerated). Because most respondents assigned little or no weight to incapacitation, it was not used in the analyses. To correct for skewedness in these variables, a natural log transformation was performed.

*Beliefs about the Causes of Crime.* Respondents were asked to complete the following statement: "The typical burglar committed the crime because . . ." and were given 10 statements. Respondents in the mass transit sample indicated their agreement with each statement using a 7-point scale (1 = *strongly disagree* and 7 = *strongly agree*); jurors checked the choices they believed were true. An orthogonal factor analysis on the items revealed three factors: Factor 1, *Social Causes*, explained 26.1% of the variance. It consisted of the items attributing the crime to family problems, parental neglect, and failure of the school and court system to give needed help. Factor 2, *Economic Causes*, explained 20.3% of the variance. It was made up of items attributing the crime to lack of jobs available and crime as the only means of survival. Factor 3, *Dispositional Causes*, ex-

Table 1. Misperception of Typical Burglary/Burglar Characteristics<sup>a</sup>

|   |           | Mass transit |                    | Jurors |                    | Court data |
|---|-----------|--------------|--------------------|--------|--------------------|------------|
| In the typical burglary the burglarized place, is ransacked   | (1)       | 42.5%        |                    | 61.4%  |                    |            |
|   | (0)       | 41.9%        |                    | 27.1%  |                    |            |
|   | (missing) | 15.1%        |                    | 11.4%  |                    |            |
| In the typical burglary, the offender does not carry a weapon | (0)       | 38.5%        |                    | 40.0%  |                    |            |
|   | (1)       | 43.6%        |                    | 39.3%  |                    |            |
|   | (missing) | 17.9%        |                    | 20.7%  |                    |            |
| Has the typical burglar ever committed a violent crime?       | (1)       | 14.5%        |                    | 22.1%  |                    |            |
|   | (0)       | 46.9%        |                    | 44.3%  |                    |            |
|   | (missing) | 38.5%        |                    | 33.5%  |                    |            |
| As an adult, the typical burglar has committed                | (0)       | 0.0%         | 0.0 <sup>b</sup> % | 1.4%   | 1.8 <sup>b</sup> % | 18.8%      |
|   | (1)       | 4.5%         | 5.2%               | 5.7%   | 7.1%               | 22.5%      |
|   | (2)       | 30.2%        | 35.1%              | 42.1%  | 52.7%              | 31.3%      |
|   | (3)       | 51.4%        | 59.8%              | 30.7%  | 38.4%              | 27.3%      |
|   | (missing) | 13.9%        |                    | 20.0%  |                    |            |
| The typical burglar has                                       | (0)       | 7.8%         |                    | 4.3%   |                    |            |
|   | (1)       | 36.3%        |                    | 14.3%  |                    |            |
|   | (2)       | 21.2%        |                    | 48.6%  |                    |            |
|   | (3)       | 23.5%        |                    | 11.4%  |                    |            |
| no idea   | (missing) | 11.2%        |                    | 21.4%  |                    |            |

<sup>a</sup> In the juror sample, 88% of the respondents indicated that the typical burglary takes place in a home. The distributions of the variables did not change when only the respondents who thought the typical burglary took place in the home were used. The mass transit sample was not asked this question.

<sup>b</sup> Numbers in this column indicate the percentage of respondents who gave each answer among those respondents who expressed an opinion.

plained 16.4% of the variance and was composed of the items attributing the cause to greed and laziness. Three scales representing these factors were created by taking the mean of the standardized responses of the items loading on a factor.<sup>2</sup>

*Severe Burglary Characteristics: Misperception.* Respondents were asked their impressions of the most frequent burglar and burglary. Burglary was defined for respondents as breaking and entering with the intent to commit a felony. Because respondents may not have had a prior impression about some details before the questions were posed, they were given the option of checking "no idea." A scale of severity of the attributes was formed by using the mean of the standardized responses to the five questions. In forming the scale, a response of "no idea" was treated as missing because individuals may place different emphases on each aspect of the typical case. Table 1 presents the items used to construct a scale of misperception.<sup>3</sup>

<sup>2</sup> Orthogonal and oblique rotations on the items that had appropriate distributions were performed for each sample and revealed the same results. The mass transit solution is presented. These same factors also emerged in research by Carroll et al. (1987).

<sup>3</sup> We also constructed other scales that included the presence of victim, excluded prior violent offense,

Are respondents' perceptions of the typical burglary case incongruent with the typical burglary case sentenced by the Illinois courts? Data collected by the Cook County State's Attorney's Office provide a partial answer to this question (Daley, 1983). They conducted a study of all felony convictions in Cook County between April and June of 1983 ( $N = 80$ ). The column "Court Data" in Table 1 presents their data collected on prior record for residential burglary cases. A majority of the mass transit's respondents and nearly two fifths of the jurors who had an opinion believed that the typical burglar committed at least 4 prior crimes.<sup>4</sup> The court data, however, show that only a quarter of convicted offenders have been previously convicted or have been convicted of at least 4 prior crimes.

Maquire (1984), in a field study conducted in Britain, found that

At least four out of every five cases take place in unoccupied houses during the daytime or evening; contact between victim and offender is rare, and violence even rarer; . . . serious damage or ransacking occurs in under 4% of the cases. (p. 221)

Waller and Okihiro (1978) found in a survey of 116 victims that ransacking occurred in only three incidents and that the cost to repair damages was less than \$50 in four fifths of all incidents. Though 25% of the respondents indicated that they were home at the time of the burglary, the confrontation was relatively peaceful and the victim and burglar were often acquainted. Thus, respondents who perceive severe attributes have a picture of the typical burglary case that is more severe than the burglary cases that normally appear in court. Based on these data from the courts, we have labeled this variable, *misperception*. We should note, however, that misperception is relative to cases of sentenced offenders; respondents' perceptions may accurately reflect the characteristics of offenders who are not arrested, convicted, and sentenced. This variable is used to test the hypothesis that the perceived severity of the case attributes affects opinions about judicial sentencing severity.

### *Opinion About Judicial Sentencing*

A question similar to questions used by national opinion polls measured perceptions of judicial sentencing severity: "In sentencing offenders convicted of burglary, do you believe Illinois judges are generally . . . 'Too Lenient'; 'About Right'; or 'Too Severe'?" Mass transit respondents answered this question before responding to any other questions; jurors answered the question after completing all other questions.

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did not standardize the responses, or recoded the number of prior crimes differently. These alternative scales did not appreciably affect the results presented. Thus, the results are robust across different scale constructions.

<sup>4</sup> The mass transit and juror respondents may have differed in their perceptions of the typical burglar and burglary because, just before completing the questionnaire, the jurors, but not the mass transit respondents, had viewed and sentenced four cases involving minor prior records and moderately serious crimes. This procedure may have led the jurors to a more favorable view of the typical burglar and burglary.

Table 2. Perceived Judicial Leniency in Sentencing Burglary Cases

| In sentencing burglary offenders, do you believe Illinois judges are: | Mass transit<br>(n = 179) | Jurors<br>(n = 132) |
|---|---------------------------|---------------------|
| Too lenient   | 67.0%                     | 61.7%               |
| About right   | 25.1%                     | 30.5%               |
| Too severe  | 0.6%                      | 1.3%                |
| No opinion  | 7.3%                      | 6.5%                |

## Results and Discussion

The majority of the respondents (62%, 67%) indicated that judges are "too lenient" (See Table 2). This percentage is lower than the percentage of respondents in national opinion polls who indicate that judges are too lenient when the question does not specify the offense. This result is also similar to the results of a survey conducted in England in which 54% of the respondents indicated that judges were too lenient in sentencing burglary cases (Walker, Hough, & Lewis, 1988).

Does expressed dissatisfaction with judicial sentencing leniency translate into a demand that burglars be given prison terms? The demand is not great (see Table 3). Consistent with Thomson and Ragona's (1987) findings, only 10.6% gave at least the minimum 2-year prison term required by law to an offender who had a previous theft conviction and stole \$900 worth of goods. Although a greater proportion of respondents (26%, 39%) gave the *typical* burglar the minimum 2-year prison term, the majority of respondents still did not recommend sentences as severe as the legal mandatory minimum. Sentences given to the typical burglar, however, also are associated with the perception of severe case attributes.

Consistent with other findings (e.g., Thomson & Ragona, 1987), our results present a paradox: Respondents gave less severe sentences than legally permitted, but perceived judicial sentencing as too lenient. Can the misperception of the severity of case characteristics shed light on this paradox?

To test the misperception hypothesis, separate maximum likelihood logit analyses were performed for the mass transit and juror samples.<sup>5</sup> Logit analysis transforms a dichotomous dependent variable into the logarithm of the odds ratio of the two categories. In this study, the dichotomous dependent variable is perceptions of judicial sentencing, 0 = *about right*, 1 = *too lenient*. To ease interpretation, we have converted the logistic estimate into the odds of being in the too

<sup>5</sup> Ordinary Least Squares (OLS) regression is not appropriate for dichotomous dependent variables because its assumptions of normality are violated. A logistic analysis is used because it makes fewer assumptions about the distribution of the variables and produces unbiased estimates for a dichotomous dependent variable (Amemiya, 1985). The interpretation of logistic regression is similar to OLS regression. The logistic coefficients have both magnitude and direction. A larger magnitude means a stronger effect. The sign of the coefficient indicates the direction of the relationship. In logistic regression, however, the relationship between the independent and dependent variables is the odds of the log ratio; it is not an intuitively interpretable scale. Thus, to increase interpretability, the coefficients are transformed into the odds of being in the "too lenient" group.

Table 3. Sentencing Preferences for Concrete Case and Typical Burglar

|  | Preferred sentence for: |                 |                 |
|--|-------------------------|-----------------|-----------------|
|  | Mass transit            |                 | Jurors          |
|  | Concrete case           | Typical burglar | Typical burglar |
| Nonincarcerative sentence                            | 39.0%                   | 33.0%           | 27.5%           |
| Jail sentence  | 39.0%                   | 37.0%           | 28.9%           |
| Prison sentence below statutory minimum              | 11.4%                   | 4.0%            | 4.5%            |
| Prison sentence at or above 2-year statutory minimum | 10.6%                   | 26.0%           | 39.1%           |

lenient group. We performed the conversion by taking an antilog of the logistic estimate. Table 4 presents the logistic models with and without the misperception variable. In the table, we also report a measure of the goodness of fit of the model to the observed data, the "reduction in predictive error" which indicates the proportion of variance accounted for by the predictors (DuMouchel, 1976).<sup>6</sup>

The data presented in Table 4 provide support for the misperception hypothesis. In both samples, after controlling for other beliefs, misperception made a significant independent contribution to the model of perceived judicial leniency.<sup>7,8</sup> As can be seen in Table 4, for every increase of one unit in the perceived severity of the attributes associated with the typical burglary, mass transit respondents are four times more likely to be in the group that indicated judges are too lenient, and jurors are more than twice as likely to be in the too lenient group.

An alternative hypothesis that may create a spurious relationship between misperception of case attributes and opinions about judicial sentencing leniency is the respondent's own sentencing severity. This alternative hypothesis, however, is not supported. When mass transit respondents' sentencing severity to the concrete case is entered into the model, misperception explains 5% of the variance

<sup>6</sup> The maximum likelihood chi-square ( $G^2$ ) is not an adequate overall goodness-of-fit measure in the case of maximum likelihood logit regression. DuMouchel (1976) describes a measure of the reduction in predictive error, which compares the probability of misclassification of the dependent variable without the help of the model to that probability with the help of the model. If  $y$  is the variable equaling 1 if judges are perceived as too lenient and 0 otherwise, and  $p = P(y = 1)$ , then reduction in predictive error is

$$\frac{\hat{\Pi}_y - \hat{\Pi}_e}{\hat{\Pi}_y}$$

where  $\hat{\Pi}_y = 1 - p^p(1 - p)^{1-p}$  is the predictive error under the assumption that all coefficients are zero, and  $\hat{\Pi}_e = 1 - e^{-G^2/2N}$ , the predictive error under the estimated model.

<sup>7</sup> Moreover, because the question of perceived judicial leniency was asked first in one sample and last in the other sample, the result cannot be due to an order effect.

<sup>8</sup> For the mass transit sample, measures of prior direct and indirect property and violent victimization, perceived likelihood of property and violent victimization, and fear of property and violent victimization did not predict perceptions of judicial sentencing severity. These nonsignificant findings are consistent with prior studies on support for the courts (Fagan, 1981; Flanagan et al. 1985).

Table 4. Effects of Misperception on Perceived Judicial Leniency (Logistic Estimates)

|   | Juror sample                  |  | Mass transit sample           |                               |
|---|-------------------------------|--|-------------------------------|-------------------------------|
| Demographics  |                               |  |                               |                               |
| Age   |                               |  | .050 <sup>b</sup><br>(1.05:1) | .04 <sup>a</sup><br>(1.04:1)  |
| Education   | .99 <sup>c</sup><br>(2.69:1)  | 1.04 <sup>c</sup><br>(2.82:1) <sup>d</sup> |                               |                               |
| Sentencing goals                                    |                               |  |                               |                               |
| General deterrence                                  |                               |  | .54 <sup>a</sup><br>(1.71:1)  | .30 <sup>a</sup><br>(1.35:1)  |
| Rehabilitation                                      | -.43 <sup>c</sup><br>(1.54:1) | -.03 <sup>b</sup><br>(1.03:1)              |                               |                               |
| Punishment  | .23 <sup>b</sup><br>(1.26:1)  | .25 <sup>b</sup><br>(1.28:1)               |                               |                               |
| Causal attributions                                 |                               |  |                               |                               |
| Economic  | -.53 <sup>c</sup><br>(1.70:1) | -.58 <sup>c</sup><br>(1.79:1)              |                               |                               |
| Social  |                               |  | .54 <sup>a</sup><br>(1.72:1)  | .22 <sup>b</sup><br>(1.24:1)  |
| Misperception                                       |                               |  |                               |                               |
| Reduction in predictive error                       | .16                           | .22<br>(2.25:1)                            | .81 <sup>a</sup>              | 1.35 <sup>c</sup><br>(3.85:1) |
| Maximum likelihood X <sup>2</sup> (G <sup>2</sup> ) | 113.8                         | 115.35                                     | 157.9                         | 151.72                        |
| DF  | 108                           | 119  | 144                           | 147                           |
| Probability   | .33                           | .58  | .20                           | .38                           |

<sup>a</sup>  $p < .05$ .

<sup>b</sup>  $p < .01$ .

<sup>c</sup>  $p < .001$ .

<sup>d</sup> Represents the odds of being in the "too lenient" group for every unit increase in the independent variable.

independent of the 4% of the variance accounted for by their own sentencing severity. That is, beyond the effect of respondent's own sentencing severity, the perceived severity of the typical case significantly shaped opinions about judicial sentencing severity.

The misperception effect was replicated across the two samples, across different data collection procedures, and across different item ordering. Moreover, independent of other beliefs about crime, and sentencing severity to a concrete case, misperception of case attributes modified opinions about judicial sentencing practices. These data thus indicate that the actual desired sentencing severity of the respondent is only one component that shapes perceptions of judicial sentencing severity; citizen reactions are also formed by their misperceptions of typical case severity and actual judicial sentencing practices.

## STUDY TWO

Even when the offense type is specified, some individuals imagine the criminal case to have extremely severe characteristics, and this misperception leads to

# Formation and Change in Lay Evaluations of Criminal Sentencing

## Misperception and Discontent\*

Loretta J. Stalans† and Shari Seidman Diamond†

In public opinion polls, a substantial proportion of lay respondents report that judges are too lenient. We examine the factors that contribute to this perceived judicial leniency. The majority of lay respondents in our study said that judges are "too lenient" in their sentencing of burglary offenders; yet, their own sentencing preferences were more lenient than the required minimum sentence for residential burglary. Our survey and experimental data suggest that citizens' opinions are formed by their inaccurate impressions of the seriousness of actual criminal cases as well as actual judicial sentencing practices. Our experimental research indicates that opinions of judicial leniency can be changed by providing respondents with an example of the typical case that comes before the court. Directions for future research are discussed.

The majority of respondents in national opinion polls report that courts do not sentence offenders harshly enough (e.g., Flanagan, McGarrell, & Brown, 1985). This expression of discontent has far-reaching implications. When citizens feel that judges are too lenient with offenders, they may lose confidence in the fairness and effectiveness of the sentencing system (e.g., Cardozo, 1921). Moreover, because public opinion polls are widely distributed, judges and legislators may make

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harsher sentencing choices in response to public dissatisfaction. Some empirical research suggests that judges consider public opinion in their sentencing decisions (Gibson, 1980). As well, some researchers have suggested that public opinion polls in part provided the impetus for mandatory prison terms (Cullen, Gilbert, & Cullen, 1983; Diamond, 1989; Flanagan et al., 1985; Goldstein & Hepburn, 1986; Thomson & Ragona, 1987).

Do laypersons actually prefer sentences more severe than those judges typically deliver? Some researchers have found that laypersons give harsher sentencing recommendations than offenders actually serve (Blumstein & Cohen, 1980; Walker, Collins, & Wilson, 1988). Like the questions on national opinion polls, the case descriptions in these studies lack the detail of real cases. When asked global questions, lay respondents also oppose reducing sentences to relieve prison overcrowding (Skovron, Scott, & Cullen, 1988) and support mandatory minimum prison terms (Cullen et al., 1983).

Using detailed cases to study sentencing preferences, other researchers find that laypersons do not favor harsher sentences (Diamond & Stalans, 1989; Hough & Mayhew, 1985; Ragona & Ryan, 1983; Samuel & Moulds, 1986; Thomson & Ragona, 1987; Warr, Meier, & Erickson, 1983). In these studies, laypersons recommended more lenient sentences than judges or required statutory minimum prison terms. For example, Thomson and Ragona (1987) asked 860 Illinois residents to sentence a first-time offender convicted of residential burglary who entered an unoccupied home unarmed and stole \$400 worth of goods. They found that fewer than 7% of the respondents sentenced the offender to even the minimum 4-year prison term required by law.

Three factors may explain why citizens express harsh sentencing preferences in response to abstract cases and express discontent with judicial sentencing in response to global questions. First, they may actually want harsher sentences. Second, they may base their opinions on a set of inaccurate impressions they have received about the characteristics of crimes and criminals. Finally, individuals may hold fundamental political values that shape their opinions.

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When respondents answer global questions about sentencing, they may say judges are too lenient or support harsher sentences because the cases that they recall were about repeat offenders who caused serious harm. This reliance on the severity of the cases that come to mind may occur through at least one of two processes: recall or construction (Kahneman & Tversky, 1982). Respondents may recall prior knowledge about the characteristics of criminals culled from the mass media, informal conversations, or direct experience. This process is known as an *accessibility bias* (e.g., Taylor, 1982). Alternatively, or in addition, respondents may construct what they consider to be the most plausible scenario for the cases that come through the court and the sentences that are meted out. Respondents create images of criminal events from salient cues in the environment and in the questions rather than from the retrieval of information in memory (e.g., Stalans & Lurigio, in press; Kahneman & Miller, 1986). This process is known as the *simulation heuristic* (Kahneman & Tversky, 1982).

One study has provided preliminary data suggesting that a focus on atypical offenders leads to opinions of judicial leniency. Doob and Roberts (1984) asked respondents whether judicial sentencing was "too lenient," "about right," or "too harsh." Respondents who felt that the courts were too lenient were more likely to be thinking about violent or repeat offenders than were respondents who indicated that the courts were about right. This finding suggests that respondents critical of the courts may focus on atypical offenders. Respondents may be more critical of the courts because of their other beliefs about crime or demographic factors. For example, politically conservative individuals are more likely to believe that crime is caused by negative personality characteristics of the offender and to prefer harsher sentences for criminal offenders than are politically liberal individuals (e.g., Carroll et al., 1987). Moreover, it is difficult to determine whether misperceptions, a particular concern about violent offenses, or both of these explanations are sources of the belief in judicial leniency.

Finally, people's opinions about sentencing may be shaped by their own fundamental, generalized attitudes about the criminal justice system and about criminals. Thus, when asked about judicial sentencing practices, respondents may not think about what they have heard from exchanges with others, learned from their own experience, or culled from the media on judicial sentencing practices or characteristics of cases. Instead, respondents may express a generalized sentiment toward the criminal justice system derived from their deeply held political values (e.g., Tyler & Weber, 1982).

Our study tests whether misperceptions of the characteristics of criminal cases shape assessments of judicial sentencing leniency beyond the effects of respondents' own preferred sentencing severity and generalized attitudes about the criminal justice system and criminals. To examine public views of sentencing more closely, we measured how laypersons' beliefs about the characteristics of typical criminal cases can affect their evaluations of judicial sentencing leniency. We then

manipulated lay information about typical offenders to test whether by inducing these changes in perceptions we could change respondents' opinions of judicial leniency into opinions that judicial sentencing was acceptable.

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We focused on residential burglary. On January 1, 1982, Illinois Public Act 82-238 created the offense of residential burglary and required that anyone convicted of this offense be sentenced to a minimum of 4 years in a state penal facility (Illinois Revised Statutes, 1987).<sup>1</sup> Though this law has been attacked as too harsh and some individuals favor eliminating this mandatory minimum prison term for residential burglary to relieve prison overcrowding (e.g., *Chicago Tribune*, February, 1988), it is currently the required penalty for a common property offense.

Illinois adult residents gave their expectations about the details of burglary, their beliefs about the causes of burglary, their sentencing goals, and their sentences to both an abstract and a concrete description of a burglary case. The hypothesis tested was as follows:

Controlling for other beliefs about crimes and demographic variables, respondents who report more severe attributes for the typical burglar and burglary are more likely to indicate that judges are "too lenient" than are respondents who report less severe attributes.

## Method

### *Subjects*

In June of 1987, Illinois adults (132 females, 47 males) completed the questionnaires while riding the Joliet-to-Chicago train line. The response rate was 79.9%. Age ranged from 19 to 80 ( $M = 35.5$ ). Only two respondents had not completed high school, and 66% had completed at least one year of college; 31.9% of these had completed at least 4 years of college.

With permission from the court, Illinois residents (67 males, 65 females) who reported for jury duty to a district courthouse over a two-week period in April of 1987 were randomly selected from the jury pool and asked to participate in a sentencing study. All agreed. Their ages ranged from 20 to 72 ( $M = 40$ ). Ten percent had not completed high school, and 61.5% had attended college; 29.5% of these had completed at least 4 years of college.

### *Measurement of Independent Variables*

The independent variables in the analyses that predict opinion of judicial sentencing in burglary cases are (a) sentencing of the typical burglar, (b) sentencing in response to a concrete case, (c) importance of each sentencing goal, (d)

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<sup>1</sup> With a 50% good time discount, the minimum prison term that may actually be served is 2 years.

beliefs about the causes of crime, and (e) "misperception." The following paragraphs describe the construction of each variable.

*Sentencing Choices for the Typical Burglar and Burglary.* Both sets of respondents indicated their sentencing preference for "the offender who commits the typical burglary." Jurors chose among five sentence categories: (1) fine, (2) straight probation, (3) probation with some months in jail, (4) probation with weekends and nights in jail, and (5) prison. Mass transit respondents chose among four sentence categories: (1) straight probation for 1-4 years, (2) probation for 1-4 years and 80 hours community service, (3) probation for 1-4 years with 1 to 11 months in jail, and (4) prison for 1-15 years. Each respondent indicated the sentence amount or length within the ranges provided.

*Sentencing Choices in Response to a Concrete Case.* Mass transit respondents also sentenced an offender convicted of residential burglary described as follows:

An offender, aged 20, stole a color television worth 900 dollars. The offender was caught when he attempted to sell the television set to a pawn shop owner. The television set suffered damages beyond repair because it had been exposed to the rain. The victims did not have insurance. The offender pleaded guilty. The offender had 1 prior conviction: (1) on 3/4/86—theft—1 year probation. The offender dropped out of high school after completing the tenth grade. The offender works part time as a waiter and is currently taking a GED class to receive his high school diploma. The offender uses alcohol moderately; he drinks on weekends and at social gatherings. The offender shares a moderately close relationship with his parents, who live in Ohio.

Informed that the offender would serve only half of an assigned prison term, respondents used the same options given for the typical burglar and burglary.

*Sentencing Goals.* Respondents in both samples were asked, "Generally, what is the purpose of the sentence you would give to the typical burglar? (If you have more than one purpose, indicate the weight of each one so that they add to 100%.)" Respondents chose among five options: (1) general deterrence (to warn others), (2) individual deterrence (to warn this offender), (3) rehabilitation (to change this offender), (4) punishment (to give this offender what he deserves), and (5) incapacitation (to keep this offender from committing further offenses while he is incarcerated). Because most respondents assigned little or no weight to incapacitation, it was not used in the analyses. To correct for skewedness in these variables, a natural log transformation was performed.

*Beliefs about the Causes of Crime.* Respondents were asked to complete the following statement: "The typical burglar committed the crime because . . ." and were given 10 statements. Respondents in the mass transit sample indicated their agreement with each statement using a 7-point scale (1 = *strongly disagree* and 7 = *strongly agree*); jurors checked the choices they believed were true. An orthogonal factor analysis on the items revealed three factors: Factor 1, *Social Causes*, explained 26.1% of the variance. It consisted of the items attributing the crime to family problems, parental neglect, and failure of the school and court system to give needed help. Factor 2, *Economic Causes*, explained 20.3% of the variance. It was made up of items attributing the crime to lack of jobs available and crime as the only means of survival. Factor 3, *Dispositional Causes*, ex-

Table 1. Misperception of Typical Burglary/Burglar Characteristics<sup>a</sup>

|   |           | Mass transit |                    | Jurors |                    | Court data |
|---|-----------|--------------|--------------------|--------|--------------------|------------|
| In the typical burglary the burglarized place,                |           |              |                    |        |                    |            |
| is ransacked  | (1)       | 42.5%        |                    | 61.4%  |                    |            |
| is not ransacked  | (0)       | 41.9%        |                    | 27.1%  |                    |            |
| no idea   | (missing) | 15.1%        |                    | 11.4%  |                    |            |
| In the typical burglary, the offender does not carry a weapon | (0)       | 38.5%        |                    | 40.0%  |                    |            |
| the offender carries a weapon                                 | (1)       | 43.6%        |                    | 39.3%  |                    |            |
| no idea   | (missing) | 17.9%        |                    | 20.7%  |                    |            |
| Has the typical burglar ever committed a violent crime?       |           |              |                    |        |                    |            |
| Yes   | (1)       | 14.5%        |                    | 22.1%  |                    |            |
| No  | (0)       | 46.9%        |                    | 44.3%  |                    |            |
| no idea   | (missing) | 38.5%        |                    | 33.5%  |                    |            |
| As an adult, the typical burglar has committed                |           |              |                    |        |                    |            |
| no crimes   | (0)       | 0.0%         | 0.0 <sup>b</sup> % | 1.4%   | 1.8 <sup>b</sup> % | 18.8%      |
| 1 crime   | (1)       | 4.5%         | 5.2%               | 5.7%   | 7.1%               | 22.5%      |
| 2-3 crimes  | (2)       | 30.2%        | 35.1%              | 42.1%  | 52.7%              | 31.3%      |
| 4 or more crimes  | (3)       | 51.4%        | 59.8%              | 30.7%  | 38.4%              | 27.3%      |
| no idea   | (missing) | 13.9%        |                    | 20.0%  |                    |            |
| The typical burglar has                                       |           |              |                    |        |                    |            |
| no juvenile record  | (0)       | 7.8%         |                    | 4.3%   |                    |            |
| one juvenile offense  | (1)       | 36.3%        |                    | 14.3%  |                    |            |
| 2-3 juvenile offenses   | (2)       | 21.2%        |                    | 48.6%  |                    |            |
| 4 or more juvenile offenses                                   | (3)       | 23.5%        |                    | 11.4%  |                    |            |
| no idea   | (missing) | 11.2%        |                    | 21.4%  |                    |            |

<sup>a</sup> In the juror sample, 88% of the respondents indicated that the typical burglary takes place in a home. The distributions of the variables did not change when only the respondents who thought the typical burglary took place in the home were used. The mass transit sample was not asked this question.

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*Severe Burglary Characteristics: Misperception.* Respondents were asked their impressions of the most frequent burglar and burglary. Burglary was defined for respondents as breaking and entering with the intent to commit a felony. Because respondents may not have had a prior impression about some details before the questions were posed, they were given the option of checking "no idea." A scale of severity of the attributes was formed by using the mean of the standardized responses to the five questions. In forming the scale, a response of "no idea" was treated as missing because individuals may place different emphases on each aspect of the typical case. Table 1 presents the items used to construct a scale of misperception.<sup>3</sup>

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# Formation and Change in Lay Evaluations of Criminal Sentencing

## Misperception and Discontent\*

Loretta J. Stalans† and Shari Seidman Diamond†

In public opinion polls, a substantial proportion of lay respondents report that judges are too lenient. We examine the factors that contribute to this perceived judicial leniency. The majority of lay respondents in our study said that judges are "too lenient" in their sentencing of burglary offenders; yet, their own sentencing preferences were more lenient than the required minimum sentence for residential burglary. Our survey and experimental data suggest that citizens' opinions are formed by their inaccurate impressions of the seriousness of actual criminal cases as well as actual judicial sentencing practices. Our experimental research indicates that opinions of judicial leniency can be changed by providing respondents with an example of the typical case that comes before the court. Directions for future research are discussed.

The majority of respondents in national opinion polls report that courts do not sentence offenders harshly enough (e.g., Flanagan, McGarrell, & Brown, 1985). This expression of discontent has far-reaching implications. When citizens feel that judges are too lenient with offenders, they may lose confidence in the fairness and effectiveness of the sentencing system (e.g., Cardozo, 1921). Moreover, because public opinion polls are widely distributed, judges and legislators may make

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\* We wish to express gratitude to Patti Veal, who, under the supervision of the first author, collected and entered the data from mass transit riders. We are indebted to Judge Warren Wolfson, Court Administrator Jeff Arnold, Chief Judge Harry Comerford, and Judge Frank W. Barbaro and his jury pool officers who gave us permission and assistance in obtaining juror participation for this research. We would like to thank Tom Tyler and Patrick McAnany for their insightful comments on earlier drafts, and editor Ron Roesch and three anonymous reviewers for their helpful suggestions. Address correspondence to Loretta Stalans, 708 West Bittersweet, Apt. 403, Chicago, Illinois 60613.

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harsher sentencing choices in response to public dissatisfaction. Some empirical research suggests that judges consider public opinion in their sentencing decisions (Gibson, 1980). As well, some researchers have suggested that public opinion polls in part provided the impetus for mandatory prison terms (Cullen, Gilbert, & Cullen, 1983; Diamond, 1989; Flanagan et al., 1985; Goldstein & Hepburn, 1986; Thomson & Ragona, 1987).

Do laypersons actually prefer sentences more severe than those judges typically deliver? Some researchers have found that laypersons give harsher sentencing recommendations than offenders actually serve (Blumstein & Cohen, 1980; Walker, Collins, & Wilson, 1988). Like the questions on national opinion polls, the case descriptions in these studies lack the detail of real cases. When asked global questions, lay respondents also oppose reducing sentences to relieve prison overcrowding (Skovron, Scott, & Cullen, 1988) and support mandatory minimum prison terms (Cullen et al., 1983).

Using detailed cases to study sentencing preferences, other researchers find that laypersons do not favor harsher sentences (Diamond & Stalans, 1989; Hough & Mayhew, 1985; Ragona & Ryan, 1983; Samuel & Moulds, 1986; Thomson & Ragona, 1987; Warr, Meier, & Erickson, 1983). In these studies, laypersons recommended more lenient sentences than judges or required statutory minimum prison terms. For example, Thomson and Ragona (1987) asked 860 Illinois residents to sentence a first-time offender convicted of residential burglary who entered an unoccupied home unarmed and stole \$400 worth of goods. They found that fewer than 7% of the respondents sentenced the offender to even the minimum 4-year prison term required by law.

Three factors may explain why citizens express harsh sentencing preferences in response to abstract cases and express discontent with judicial sentencing in response to global questions. First, they may actually want harsher sentences. Second, they may base their opinions on a set of inaccurate impressions they have received about the characteristics of crimes and criminals. Finally, individuals may hold fundamental political values that shape their opinions.

If the expressed dissatisfaction with judicial sentencing is based largely on a desire for harsher sentences, laypersons who recommend harsher sentences for concrete cases should be more likely to indicate that judges are too lenient. Individuals express discontent because they believe their preferred punishment is harsher than current judicial punishment. Supporting this explanation, laypersons underestimate the percentage of convicted offenders sentenced to prison (Doob & Roberts, 1988; Walker, Hough, & Lewis, 1988). Moreover, they are generally unaware of mandatory minimum prison terms (e.g., Cullen et al., 1988). This lack of information may foster discontent among respondents who prefer harsh punishment.

Laypersons may also express dissatisfaction with judicial sentencing based largely upon their impressions about the characteristics of crimes and criminals rather than sentencing preferences. Researchers examining lay sentencing preferences (Diamond & Stalans, 1989; Doob & Roberts, 1984; Hough & Lewis, 1985), attitudes toward capital punishment (Ellsworth, 1978), and media content concerning crime (Graber, 1980) have suggested that most laypersons perceive

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The independent variables in the analyses that predict opinion of judicial sentencing in burglary cases are (a) sentencing of the typical burglar, (b) sentencing in response to a concrete case, (c) importance of each sentencing goal, (d)

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|   |           | Mass transit |                    | Jurors |                    | Court data |
|---|-----------|--------------|--------------------|--------|--------------------|------------|
| In the typical burglary the burglarized place, is ransacked   | (1)       | 42.5%        |                    | 61.4%  |                    |            |
| is not ransacked  | (0)       | 41.9%        |                    | 27.1%  |                    |            |
| no idea   | (missing) | 15.1%        |                    | 11.4%  |                    |            |
| In the typical burglary, the offender does not carry a weapon | (0)       | 38.5%        |                    | 40.0%  |                    |            |
| the offender carries a weapon                                 | (1)       | 43.6%        |                    | 39.3%  |                    |            |
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| Has the typical burglar ever committed a violent crime?       |           |              |                    |        |                    |            |
| Yes   | (1)       | 14.5%        |                    | 22.1%  |                    |            |
| No  | (0)       | 46.9%        |                    | 44.3%  |                    |            |
| no idea   | (missing) | 38.5%        |                    | 33.5%  |                    |            |
| As an adult, the typical burglar has committed                |           |              |                    |        |                    |            |
| no crimes   | (0)       | 0.0%         | 0.0 <sup>b</sup> % | 1.4%   | 1.8 <sup>b</sup> % | 18.8%      |
| 1 crime   | (1)       | 4.5%         | 5.2%               | 5.7%   | 7.1%               | 22.5%      |
| 2-3 crimes  | (2)       | 30.2%        | 35.1%              | 42.1%  | 52.7%              | 31.3%      |
| 4 or more crimes  | (3)       | 51.4%        | 59.8%              | 30.7%  | 38.4%              | 27.3%      |
| no idea   | (missing) | 13.9%        |                    | 20.0%  |                    |            |
| The typical burglar has                                       |           |              |                    |        |                    |            |
| no juvenile record  | (0)       | 7.8%         |                    | 4.3%   |                    |            |
| one juvenile offense  | (1)       | 36.3%        |                    | 14.3%  |                    |            |
| 2-3 juvenile offenses   | (2)       | 21.2%        |                    | 48.6%  |                    |            |
| 4 or more juvenile offenses                                   | (3)       | 23.5%        |                    | 11.4%  |                    |            |
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<sup>a</sup> In the juror sample, 88% of the respondents indicated that the typical burglary takes place in a home. The distributions of the variables did not change when only the respondents who thought the typical burglary took place in the home were used. The mass transit sample was not asked this question.

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*Severe Burglary Characteristics: Misperception.* Respondents were asked their impressions of the most frequent burglar and burglary. Burglary was defined for respondents as breaking and entering with the intent to commit a felony. Because respondents may not have had a prior impression about some details before the questions were posed, they were given the option of checking "no idea." A scale of severity of the attributes was formed by using the mean of the standardized responses to the five questions. In forming the scale, a response of "no idea" was treated as missing because individuals may place different emphases on each aspect of the typical case. Table 1 presents the items used to construct a scale of misperception.<sup>3</sup>

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Are respondents' perceptions of the typical burglary case incongruent with the typical burglary case sentenced by the Illinois courts? Data collected by the Cook County State's Attorney's Office provide a partial answer to this question (Daley, 1983). They conducted a study of all felony convictions in Cook County between April and June of 1983 ( $N = 80$ ). The column "Court Data" in Table 1 presents their data collected on prior record for residential burglary cases. A majority of the mass transit's respondents and nearly two fifths of the jurors who had an opinion believed that the typical burglar committed at least 4 prior crimes.<sup>4</sup> The court data, however, show that only a quarter of convicted offenders have been previously convicted or have been convicted of at least 4 prior crimes.

Maquire (1984), in a field study conducted in Britain, found that

At least four out of every five cases take place in unoccupied houses during the daytime or evening; contact between victim and offender is rare, and violence even rarer; . . . serious damage or ransacking occurs in under 4% of the cases. (p. 221)

Waller and Okihiro (1978) found in a survey of 116 victims that ransacking occurred in only three incidents and that the cost to repair damages was less than \$50 in four fifths of all incidents. Though 25% of the respondents indicated that they were home at the time of the burglary, the confrontation was relatively peaceful and the victim and burglar were often acquainted. Thus, respondents who perceive severe attributes have a picture of the typical burglary case that is more severe than the burglary cases that normally appear in court. Based on these data from the courts, we have labeled this variable, *misperception*. We should note, however, that misperception is relative to cases of sentenced offenders; respondents' perceptions may accurately reflect the characteristics of offenders who are not arrested, convicted, and sentenced. This variable is used to test the hypothesis that the perceived severity of the case attributes affects opinions about judicial sentencing severity.

### *Opinion About Judicial Sentencing*

A question similar to questions used by national opinion polls measured perceptions of judicial sentencing severity: "In sentencing offenders convicted of burglary, do you believe Illinois judges are generally . . . 'Too Lenient'; 'About Right'; or 'Too Severe'?" Mass transit respondents answered this question before responding to any other questions; jurors answered the question after completing all other questions.

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did not standardize the responses, or recoded the number of prior crimes differently. These alternative scales did not appreciably affect the results presented. Thus, the results are robust across different scale constructions.

<sup>4</sup> The mass transit and juror respondents may have differed in their perceptions of the typical burglar and burglary because, just before completing the questionnaire, the jurors, but not the mass transit respondents, had viewed and sentenced four cases involving minor prior records and moderately serious crimes. This procedure may have led the jurors to a more favorable view of the typical burglar and burglary.

Table 2. Perceived Judicial Leniency in Sentencing Burglary Cases

| In sentencing burglary offenders, do you believe Illinois judges are: | Mass transit<br>(n = 179) | Jurors<br>(n = 132) |
|---|---------------------------|---------------------|
| Too lenient   | 67.0%                     | 61.7%               |
| About right   | 25.1%                     | 30.5%               |
| Too severe  | 0.6%                      | 1.3%                |
| No opinion  | 7.3%                      | 6.5%                |

## Results and Discussion

The majority of the respondents (62%, 67%) indicated that judges are "too lenient" (See Table 2). This percentage is lower than the percentage of respondents in national opinion polls who indicate that judges are too lenient when the question does not specify the offense. This result is also similar to the results of a survey conducted in England in which 54% of the respondents indicated that judges were too lenient in sentencing burglary cases (Walker, Hough, & Lewis, 1988).

Does expressed dissatisfaction with judicial sentencing leniency translate into a demand that burglars be given prison terms? The demand is not great (see Table 3). Consistent with Thomson and Ragona's (1987) findings, only 10.6% gave at least the minimum 2-year prison term required by law to an offender who had a previous theft conviction and stole \$900 worth of goods. Although a greater proportion of respondents (26%, 39%) gave the *typical* burglar the minimum 2-year prison term, the majority of respondents still did not recommend sentences as severe as the legal mandatory minimum. Sentences given to the typical burglar, however, also are associated with the perception of severe case attributes.

Consistent with other findings (e.g., Thomson & Ragona, 1987), our results present a paradox: Respondents gave less severe sentences than legally permitted, but perceived judicial sentencing as too lenient. Can the misperception of the severity of case characteristics shed light on this paradox?

To test the misperception hypothesis, separate maximum likelihood logit analyses were performed for the mass transit and juror samples.<sup>5</sup> Logit analysis transforms a dichotomous dependent variable into the logarithm of the odds ratio of the two categories. In this study, the dichotomous dependent variable is perceptions of judicial sentencing, 0 = *about right*, 1 = *too lenient*. To ease interpretation, we have converted the logistic estimate into the odds of being in the too

<sup>5</sup> Ordinary Least Squares (OLS) regression is not appropriate for dichotomous dependent variables because its assumptions of normality are violated. A logistic analysis is used because it makes fewer assumptions about the distribution of the variables and produces unbiased estimates for a dichotomous dependent variable (Amemiya, 1985). The interpretation of logistic regression is similar to OLS regression. The logistic coefficients have both magnitude and direction. A larger magnitude means a stronger effect. The sign of the coefficient indicates the direction of the relationship. In logistic regression, however, the relationship between the independent and dependent variables is the odds of the log ratio; it is not an intuitively interpretable scale. Thus, to increase interpretability, the coefficients are transformed into the odds of being in the "too lenient" group.

Table 3. Sentencing Preferences for Concrete Case and Typical Burglar

|  | Preferred sentence for: |                 |                 |
|--|-------------------------|-----------------|-----------------|
|  | Mass transit            |                 | Jurors          |
|  | Concrete case           | Typical burglar | Typical burglar |
| Nonincarcerative sentence                            | 39.0%                   | 33.0%           | 27.5%           |
| Jail sentence  | 39.0%                   | 37.0%           | 28.9%           |
| Prison sentence below statutory minimum              | 11.4%                   | 4.0%            | 4.5%            |
| Prison sentence at or above 2-year statutory minimum | 10.6%                   | 26.0%           | 39.1%           |

lenient group. We performed the conversion by taking an antilog of the logistic estimate. Table 4 presents the logistic models with and without the misperception variable. In the table, we also report a measure of the goodness of fit of the model to the observed data, the "reduction in predictive error" which indicates the proportion of variance accounted for by the predictors (DuMouchel, 1976).<sup>6</sup>

The data presented in Table 4 provide support for the misperception hypothesis. In both samples, after controlling for other beliefs, misperception made a significant independent contribution to the model of perceived judicial leniency.<sup>7,8</sup> As can be seen in Table 4, for every increase of one unit in the perceived severity of the attributes associated with the typical burglary, mass transit respondents are four times more likely to be in the group that indicated judges are too lenient, and jurors are more than twice as likely to be in the too lenient group.

An alternative hypothesis that may create a spurious relationship between misperception of case attributes and opinions about judicial sentencing leniency is the respondent's own sentencing severity. This alternative hypothesis, however, is not supported. When mass transit respondents' sentencing severity to the concrete case is entered into the model, misperception explains 5% of the variance

<sup>6</sup> The maximum likelihood chi-square ( $G^2$ ) is not an adequate overall goodness-of-fit measure in the case of maximum likelihood logit regression. DuMouchel (1976) describes a measure of the reduction in predictive error, which compares the probability of misclassification of the dependent variable without the help of the model to that probability with the help of the model. If  $y$  is the variable equaling 1 if judges are perceived as too lenient and 0 otherwise, and  $p = P(y = 1)$ , then reduction in predictive error is

$$\frac{\hat{\Pi}_y - \hat{\Pi}_e}{\hat{\Pi}_y}$$

where  $\hat{\Pi}_y = 1 - p^p(1 - p)^{1-p}$  is the predictive error under the assumption that all coefficients are zero, and  $\hat{\Pi}_e = 1 - e^{-G^2/2N}$ , the predictive error under the estimated model.

<sup>7</sup> Moreover, because the question of perceived judicial leniency was asked first in one sample and last in the other sample, the result cannot be due to an order effect.

<sup>8</sup> For the mass transit sample, measures of prior direct and indirect property and violent victimization, perceived likelihood of property and violent victimization, and fear of property and violent victimization did not predict perceptions of judicial sentencing severity. These nonsignificant findings are consistent with prior studies on support for the courts (Fagan, 1981; Flanagan et al. 1985).

Table 4. Effects of Misperception on Perceived Judicial Leniency (Logistic Estimates)

|   | Juror sample                  |  | Mass transit sample           |                               |
|---|-------------------------------|--|-------------------------------|-------------------------------|
| Demographics  |                               |  |                               |                               |
| Age   |                               |  | .050 <sup>b</sup><br>(1.05:1) | .04 <sup>a</sup><br>(1.04:1)  |
| Education   | .99 <sup>c</sup><br>(2.69:1)  | 1.04 <sup>c</sup><br>(2.82:1) <sup>d</sup> |                               |                               |
| Sentencing goals                                    |                               |  |                               |                               |
| General deterrence                                  |                               |  | .54 <sup>a</sup><br>(1.71:1)  | .30 <sup>a</sup><br>(1.35:1)  |
| Rehabilitation                                      | -.43 <sup>c</sup><br>(1.54:1) | -.03 <sup>b</sup><br>(1.03:1)              |                               |                               |
| Punishment  | .23 <sup>b</sup><br>(1.26:1)  | .25 <sup>b</sup><br>(1.28:1)               |                               |                               |
| Causal attributions                                 |                               |  |                               |                               |
| Economic  | -.53 <sup>c</sup><br>(1.70:1) | -.58 <sup>c</sup><br>(1.79:1)              |                               |                               |
| Social  |                               |  | .54 <sup>a</sup><br>(1.72:1)  | .22 <sup>b</sup><br>(1.24:1)  |
| Misperception                                       |                               |  |                               |                               |
|   |                               | (2.25:1)                                   | .81 <sup>a</sup>              | 1.35 <sup>c</sup><br>(3.85:1) |
| Reduction in predictive error                       | .16                           | .22  | .08                           | .13                           |
| Maximum likelihood X <sup>2</sup> (G <sup>2</sup> ) | 113.8                         | 115.35                                     | 157.9                         | 151.72                        |
| DF  | 108                           | 119  | 144                           | 147                           |
| Probability   | .33                           | .58  | .20                           | .38                           |

<sup>a</sup>  $p < .05$ .

<sup>b</sup>  $p < .01$ .

<sup>c</sup>  $p < .001$ .

<sup>d</sup> Represents the odds of being in the "too lenient" group for every unit increase in the independent variable.

independent of the 4% of the variance accounted for by their own sentencing severity. That is, beyond the effect of respondent's own sentencing severity, the perceived severity of the typical case significantly shaped opinions about judicial sentencing severity.

The misperception effect was replicated across the two samples, across different data collection procedures, and across different item ordering. Moreover, independent of other beliefs about crime, and sentencing severity to a concrete case, misperception of case attributes modified opinions about judicial sentencing practices. These data thus indicate that the actual desired sentencing severity of the respondent is only one component that shapes perceptions of judicial sentencing severity; citizen reactions are also formed by their misperceptions of typical case severity and actual judicial sentencing practices.

## STUDY TWO

Even when the offense type is specified, some individuals imagine the criminal case to have extremely severe characteristics, and this misperception leads to

perceptions of judicial leniency or recommendations that abstract cases receive severe sentences. Given that individuals rely in part on their perception of case characteristics, their perceptions of judicial leniency may be changed by substituting perceptions of the typical burglar with an example that is more representative of the cases that come before the court. Lord, Lepper, and Mackie (1984) proposed this general approach for reducing discrimination.

Laypersons also are uninformed about statutory minimum prison terms (e.g., Cullen et al., 1983); thus, their perceptions of judicial leniency might be changed by providing information about actual judicial sentencing practices. If their sentencing preferences are not within the legal limits, this approach obscures an important question: What does the public really want? As our findings from Study 1 indicated, laypersons are willing to give less severe sentences than those required by the law. Responses of judicial leniency are not clear cries to build more prisons or jails and "get tough on crime." Moreover, although the preference for incarcerative sentences (jail or prison) is related to perceptions of judicial sentencing, misperceptions about the offenders that come before the courts also contribute to the formation of perceptions of judicial leniency.

We informed laypersons about the minimum 4-year prison term required by law. We then tested whether opinions of judicial sentencing leniency in residential burglary cases could be changed by providing respondents with an example of the typical case that may come before the court.

## Method

### *Subjects*

In the fall of 1987, students from an introductory psychology course ( $N = 209$ ) participated in exchange for credit toward the class.

### *Materials*

We created two sets of presentence reports on residential burglary cases to manipulate lay perceptions of the typical burglary case. To the extent possible, all presentence reports were identical in length, realism, reading time, and style. Each set consisted of one case that contained attributes that favored the offender receiving a less severe sentence (lenient) and one case that contained attributes that favored the offender receiving a more severe sentence (severe).<sup>9</sup> The lenient and severe cases represented the manipulation of the severity of the typical burglary case. Two sets of cases were used to test whether the findings replicated with different cases. Table 5 presents a synopsis of one set.

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<sup>9</sup> A pretest was used to select the lenient and severe cases from a pool of cases. Students who did not participate in the main study sentenced four randomly ordered cases. Each case was sentenced by at least 40 students. The students were instructed to assume that they were actually sentencing the offender and that Illinois law requires that burglary offenders receive a sentence between 4 and 15 years. The selected lenient and severe cases received significantly different mean sentences (5.0 and 12.0, respectively).

Table 5. Description of Lenient and Severe Prototype Cases

| Case characteristics | Type of case  |  |
|----------------------|---|--|
|                      | Severe prototype  | Lenient prototype  |
| Crime                | Four offenders; house was ransacked; stole 9 items worth \$13,700                             | One offender; stole a \$900 stereo system                        |
| Adult record         | Seven property felonies; in prison 3 times  | Four misdemeanors; 1 felony; fine, probation, jail               |
| Juvenile record      | Three thefts; burglary; shoplifting; 1 year in juvenile detention                             | Theft; disturbing peace; probation                               |
| Drug use             | Alcoholic and refuses treatment   | Does not use drugs or alcohol                                    |
| Mental health        | Very anxious; fails to express remorse  | Expresses sincere remorse; anxious                               |
| Relationships        | Married at the age of 20 and divorced at 22   | Married in 1983; 2 children ages 1 and 3                         |
| Time at residence    | 3 weeks   | 8 years  |
| Employment           | Unemployed; last full-time job in 1981; has taken temporary jobs as a laborer since that time | Laid off 7 months ago; employed as a welder since time of arrest |
| Custody status       | In custody  | Released on own recognizance                                     |
| Education            | 11th grade  | 12th grade and welder certificate                                |
| Age                  | 35  | 25   |

## Procedure

At the beginning of the fall quarter, as part of a general mass testing of all students in introductory psychology, students completed a battery of questionnaires in which one of the questions was, "In sentencing offenders convicted of residential burglary, do you believe Illinois judges are . . . [using a 7-point Likert scale] 1 = 'extremely lenient'; 4 = 'about right'; 7 = 'extremely severe'?" Five weeks later, students participated in the main study with no connection to the pretesting. Students were randomly assigned to a lenient or severe case. They were told in part that:

This study concerns judicial decision-making. Your task is to assume you are the judge and are actually sentencing this offender. Illinois law requires that offenders convicted of residential burglary be sentenced for a minimum of 4 years in prison and a maximum of 15 years in prison. The offender will serve one-half of the sentence you assign. Illinois judges judged the case you are receiving as the *typical* case of residential burglary. . . . This typical case of residential burglary describes the most frequent criminal record, employment history, drug and alcohol use, and other demographic characteristics. Thus, the case you are receiving is a description of the *most frequently occurring* case composition of offenders convicted of residential burglary in the state of Illinois.

After reading their assigned case, they sentenced the offender and indicated their opinion of judicial sentencing severity using the same question they had responded to in the mass testing session 5 weeks earlier.

## Results

Individuals who received the lenient and severe cases did not differ in their perception of judicial leniency at the pretest ( $M = 3.18$ ). A 2 (severe case, lenient case) by 2 (set one, set two) analysis of covariance revealed that individuals who read a lenient case changed their perception of judicial sentencing severity toward "about right" ( $M = 3.64$ ), while individuals who read a severe case did not change their opinions ( $M = 3.18$ ),  $F(1,204) = 9.70$ ,  $p < .001$ . Perceived judicial leniency at the pretest, serving as a covariate, contributed significantly to the model and did not interact with the manipulation. No other effects were significant.

## GENERAL DISCUSSION

These two studies attempted to explain the paradoxical finding that a majority of laypersons perceive judicial sentencing as too lenient, but favor sentences less than the minimum sentence required by law. We focused not only on the *content* of their responses, but also on the *processing strategies* used to sentence abstract cases and to answer abstract questions about judicial sentencing severity. The national opinion polls and most prior research have focused exclusively on what the public wants in sentencing. Our findings from both the survey and the experiment indicate that beyond generalized attitudes and own sentencing preferences, individuals imagine the characteristics of the typical criminal case in responding to abstract questions about judicial sentencing severity. A comparison of the survey data with official data revealed that some respondents' images of typical cases are inconsistent with the cases that come before the court. Thus, dissatisfaction with judicial sentencing severity is not a clear demand for tougher sentences for convicted offenders.

As our experiment demonstrated, perceptions of judicial leniency can be changed by informing the public about the typical features of cases that come before the court and challenging their image of criminal cases. Laypersons exposed to the lenient case changed their opinion about judicial sentencing toward "about right." Moreover, the cases used to change perceptions of judicial sentencing toward about right did not involve first-time offenses in which little harm was done; the offenders in these cases had at least three prior convictions, had served time in jail, had juvenile records, and had stolen at least \$900 worth of property. These legal factors as well as the extralegal factors such as the need for drug treatment and remorse may have contributed to changes in their opinion about judicial sentencing. Future studies should examine the characteristics that have the most influence on opinion change.

We did not address the lasting impact of the manipulation of perceived case severity on opinions about judicial sentencing leniency. Some research indirectly suggests that educating the public about the attributes of typical court cases can have some lasting effects on perceptions. Stalans and Lurigio (1988) controlled for differences in prior beliefs and individual characteristics and found that layper-

sons were more likely than probation officers to perceive the typical burglar as having a longer adult and juvenile record, carrying a weapon at the time of the offense, and having the potential of committing physical harm in the future. They suggest that the differences in experience with offenders produced the differences in prior knowledge. Because probation officers have direct and frequent contact with offenders, they have more realistic images of burglary cases than do laypersons. Unlike probation officers, laypersons are less likely to find their images challenged by direct contact with offenders. If laypersons had more information about offenders, they might discover that many offenders and offenses are not as harmful and provide less threat of future harm than they originally thought. In our study, laypersons' impressions of criminal behavior may have been especially malleable because of their limited exposure to offenders and the court system. Some social psychological findings (e.g., Zanna, Olson, & Fazio, 1980) suggest that these impressions of criminal behavior may be more resistant to change as experience with criminal offenders and the court system increases.

The incongruity between responses to abstract and specific cases also has been noted for attitudes about capital punishment. Ellsworth (1978) found that substantially fewer respondents supported capital punishment when they were given a detailed case (15%) than when they responded to the abstract question, "Do you believe in capital punishment or are you opposed to it?" (66%). Justice Marshall in his concurrence in *Furman v. Georgia* (1972) suggests that individuals may change their attitudes about capital punishment if they learn more about the inhumanity and ineffectiveness of the punishment. He thus intimates that concrete information about the administration and effectiveness of the punishment can bring about changes in attitudes toward capital punishment. In this study, we have shown how opinions about judicial sentencing leniency can be changed by using a representative case to portray an offense category.

These studies point to future avenues of needed research. More research is needed to determine the extent to which individuals have similar images of typical criminal behavior that exaggerate severe and extreme behaviors (Diamond & Stalans, 1989; Ellsworth, 1978; Graber, 1980). Systematic individual differences in images of crime may arise from differences in experience and values (Stalans & Lurigio, in press). In our study, individuals clearly did differ in their perceptions of the typical burglary case (see Table 1). It is important to examine the antecedents that influence the evaluative nature of the images of crime. Moreover, research should examine the processes through which respondents form their images of crime. An important next step is to examine how availability and simulation heuristics help to form beliefs about criminal events and expressed punishment preferences to global survey questions. Research using both experimental and survey methods is now underway to assess the strength of the availability heuristic explanation (Stalans, 1989).

How individuals process information has implications for the assessment of public opinion (Tourangeau & Rasinski, 1988) and for how lay opinions can be shaped and changed. Respondents who employ a simulation heuristic derive cues from the context of the question and cues in the environment; respondents who rely on this mechanism are active constructors of reality and fill in the missing

pieces to create the most plausible scenario. If respondents rely on the ease to which features come to mind, we must understand the structure of their memory in order for change to have lasting impact. Our empirical evidence and call for additional research bears on an important point made by Sarat (1977): "The failure to come to grips with the way people think about the law can result in considerable distortion in the conclusions we reach about what they think" (p. 455).

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