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Out of Touch?
Public Attitudes toward the Lay Magistracy and The Sentencing Council Guidelines

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Abstract

Public opinion surveys have long documented public criticism of ‘lenient’ sentencers. There are two principal perceptions contributing to negative attitudes: a lack of community input the view that sentencers determine sentence according to their own views. This study embeds an experimental design within a representative survey of respondents in England and Wales (n=1,004), supplemented by laboratory-based work (n=230) and focus groups. Results demonstrated that the public is ill-informed about both the magistracy and the sentencing guidelines. In addition, providing information about sentencing changed public attitudes to sentencing and reduced public punitiveness. Respondents were less critical of disposals and less punitive in their own sentence recommendations when they had been given context about the structure of sentencing.

Introduction

Public opinion surveys in Britain and other Western nations have for many years documented low levels of public confidence in sentencing, as well as intense public criticism of allegedly overly lenient sentencers (for reviews see Roberts and Hough, 2005b). A recent poll in Britain found, for example, that approximately three-quarters of the public held the view that sentencing was too lenient, a statistic that has changed little over 25 years (Dawes et al., 2011). Research also suggests that negative attitudes to sentencing (and sentencers) reflect a perceived lack of community input into sentencing, along with the view that courts determine sentence according to their own views. Thus the British Crime Survey has repeatedly shown that four out of five members of the public regard judges as being “out of touch with what the ordinary person thinks” (Roberts and Hough, 2005a). Two paradoxes are evident here.

First, although many people believe that sentencing is divorced from the community, in 2009 fully 93% of all offenders were sentenced by members of the public sitting as magistrates (Ministry of Justice, 2010). The community – represented by the lay magistracy -- has a much greater influence over sentencing in this jurisdiction than any other. In all other common law countries sentencing is the exclusive preserve of professional judges, not laypersons. The limited research to date (discussed below) suggests that people in Britain are unaware of the true extent of the public’s involvement in sentencing. The public may also fail to appreciate the increasingly representative nature of the contemporary magistracy; recruitment in recent years has led to a considerable diversification in the magistracy.

Second, as a result of the work of the Sentencing Council of England and Wales and its predecessor bodies (the Sentencing Advisory Panel and the Sentencing Guidelines Council), sentencers now have more detailed guidance than ever before; there is more structure to sentencing in this country than in any other jurisdiction except the US (see von Hirsch et al., 2009). Moreover, the English guidelines are presumptively binding: courts in this country are required by statute to follow the sentencing guidelines, unless it would be contrary to the interests of justice to do so. There is also a link between the community and the guidelines. Prior to issuing a guideline the Council conducts a lengthy public consultation as well as empirical research into public attitudes to sentencing the offence covered by the guideline (e.g., Dawes et al. 2011; Hough et al., 2008). These steps are taken to ensure a degree of correspondence between the guideline sentences and the views of the community.

Public misperceptions about the magistracy and the guidelines give rise to an empirically testable hypothesis: if people knew more about these two fundamental elements of sentencing in England and Wales -- lay involvement and detailed guidelines - -- there might be less criticism of sentences and higher levels of confidence in the sentencing process. This article put this proposition to empirical test.

Research into the effects of information on attitudes

Researchers in several countries have evaluated the effects of providing information about the justice system on public attitudes. The hypothesis usually tested is that if knowledge levels improve, attitudes will become more positive. One approach to changing attitudes – or to increasing public confidence – is simply to dispel some of the most persistent and prevalent misperceptions. The general research strategy involves providing members of the public with information about a particular issue such as the death penalty, community sentencing, or parole and then measuring attitudes. These peoples' attitudes are then compared to those held by the general public, or to views held by other participants who have not been provided with information. Since many of these studies have used an experimental approach – involving random assignment to condition – we can confidently attribute differences in attitudes or changes in opinions to the role of information.

Two studies are illustrative. The first involved a 'deliberative poll' carried out in England in which almost 300 people spent a weekend together, hearing lectures, receiving information on crime and punishment and being given opportunities to 'deliberate' on the issues. Researchers explored the extent to which public views differed from 'top of the head' opinions, and to see if attitude changes were more than transitory. Analysis of 'before and after' surveys – including a follow-up survey ten months after the event – showed significant and lasting change, at least on some issues (see Hough and Park, 2002). More recently Mitchell and Roberts (2011) explored the role of knowledge in shaping public attitudes to sentencing for murder. Participants who were given information about sentencing were less critical of sentencing practices and less punitive in their sentencing preferences.

Research has also demonstrated that when comparing general public views about the leniency of sentences with their evaluation of case-specific scenarios more information results in less punitive reactions (for a review, see Cullen et al., 2000; Sprott, 1999). Other studies have demonstrated the effects of information on attitudes in Britain and elsewhere include: Singer and Cooper (2008); De Keijser, van Koppen and Ellfers (2007); Hough and Roberts (2005b); Salisbury (2004); Gainey and Payne (2003); Chapman, Mirrlees-Black and Brawn (2002); St. Amand and Zamble (2001); Doble (2002). These (and other) studies demonstrate that it is possible to change attitudes and improve public confidence through the provision of information.¹

Previous research on public knowledge of the Magistracy and guidelines

Despite the central role of the magistracy in English criminal justice – the Magistracy celebrated its 650th anniversary in 2011 – little research has been conducted into community attitudes to magistrates. The only research into public opinion and the Magistracy was conducted over a decade ago now (in 2000, see Morgan and Russell, 2001; Sanders, 2001). Morgan and Russell found relatively low levels of public knowledge about the nature and function of the lay magistracy. For example, less than half the polled public were aware of lay magistrates and fully 20% disagreed with the

statement that ‘...most criminal cases are dealt with in magistrates’ court rather than the Crown Court.’ In fact, the average estimate of the percentage of all criminal cases handled by the magistrates was 55% when, as noted, in reality the figure has long been in excess of 90% (Ministry of Justice, 2010). Morgan and Russell also found that one third of the polled public believed that magistrates were qualified lawyers, while Sanders (2001) found that over one third of his respondents thought that magistrates were remunerated professionals.

Although a great deal of research on public attitudes to sentencing has now accumulated, reaction to structuring sentencers’ discretion has generally been ignored by researchers. No research that we are aware of in this (or any other) jurisdiction has ever explored public knowledge of or attitudes toward sentencing guidelines. The research reported here breaks new ground in both areas: namely, public knowledge of and attitudes towards the lay magistracy and the sentencing guidelines. The contribution of this study is to empirically assess the effects of providing information about the Magistracy and the sentencing guidelines. We varied the amount of information that people have about the decision-maker (the sentencer) and the decision-making framework (the sentencing guidelines) to see what effects this might have on attitudes and sentencing preferences.

Methodology

Research objectives

We address three research questions in this article:

- How much do the public know about the sentencing guidelines in England and Wales and the lay magistrates’ role in the sentencing process?
- Are attitudes to sentencing affected by information about the sentencing guidelines and the lay magistracy?
- Are public evaluations of sentences or public sentencing preferences affected by information about the sentencing guidelines and the lay magistracy?

The research program contained three elements:

1. Large-scale experimental survey

We commissioned an internet-based public survey using a representative (1,004) sample of respondents. Using a conventional public opinion poll for this purpose would not have permitted the provision of information, or the extensive use of experimental manipulations. Such surveys are increasingly common in the field of academic public opinion research (e.g., Keller et al., 2010). The survey was conducted by the *Oxford Centre for Experimental Research (CESS)*, a ‘state of the art’ polling facility located at the University of Oxford. A quota sample was drawn to be representative of the

population in England and Wales between 16 and 74; differences between census and sample; characteristics were within 1% (see CESS, 2011, for further details²). By comparing the responses of respondents to this survey to findings from published research using face-to-face surveys (such as the British Crime Survey – see below) we were able to verify that these respondents' held attitudes similar to the general population.³ Respondents were assigned at random to one of three experimental conditions: Control; Magistrates; Guidelines.

- *Control*: Participants responded to questions about sentencing and were asked to impose sentence in vignettes without receiving any additional information about magistrates or sentencing guidelines.
- *Information on Magistracy*: Before responding to the same questions, participants in this condition were given a description of the magistracy. The information was derived from materials available on the Magistrates' Association website, and was reviewed by a senior member of the MA for accuracy. In order to be comprehensive, this material included some information about the sentencing guidelines, although the primary focus was on the lay magistracy.
- *Information on Sentencing Guidelines*: Participants made sentencing decisions after having read a description of the sentencing guidelines in England. This information was derived from materials provided by the Sentencing Council of England and Wales⁴ and was reviewed by members of the Sentencing Council.⁵

The two information sheets were brief, each being approximately 700 words in length. In this sense it constitutes a modest information 'manipulation' compared to some previous studies such as the Deliberative Poll, where participants were exposed to information over the course of an entire weekend (see Hough and Park, 2002).

2. Laboratory-based replication

The survey was supplemented by laboratory-based sessions involving 230 participants who completed the same questions as respondents in the survey. Members of the public in Oxfordshire were recruited from the CESS database and invited to take part in an experiment at the CESS lab facilities where groups of 25 participants in ten sessions answered the questionnaire in fully partitioned work-stations. They were paid £12 for their participation. They were randomly assigned to one of same three information conditions (Control; Magistrates; Guidelines). The laboratory component allowed us to incorporate a replication of the hypothesis tested in the main survey within a more controlled environment and to incorporate a 'deliberative' and qualitative component to the research via subsequent focus group interview. As expected, the laboratory sample was significantly younger (average age 26) than the internet survey (average age 40) and also reported significantly higher levels of educational achievement: 27% of the internet sample but 59% of the laboratory sample reported a first or graduate degree. This reflects the fact the CESS facility draws heavily on the student population in Oxford.

3. Focus groups

Focus groups were conducted at the CESS laboratory. Ten participants from each of the 10 experimental sessions were invited to stay on to participate in the focus groups. Ten focus groups in all were conducted, involving 100 individuals. The discussions focused on participants' knowledge of, and attitudes towards two principal issues: (i) the identity of the sentencing authority and (ii) the sources of guidance for sentencers. The sessions lasted about half an hour. They were moderated by the first author and were recorded for the purposes of transcription.

Dependent Measures

- Perceptions of sentencing severity were measured asking participants “*In general, would you say that sentences handed down by the courts are too tough, about right, or too lenient?*”
- Knowledge of sentencing was measured asking participants: (a) who determines the sentence given to offenders in court, (b) whether they could identify the primary function of the sentencing council, (c) who magistrates were, and (d) if they had heard of the Sentencing Council.
- Attitudes to magistrates were measured by asking participants whether magistrates shared the same values as people like them.
- After the experimental manipulations, participants were asked whether they thought that having laypersons/sentencing guidelines was a good idea. They were also asked to evaluate how much confidence they had in the sentencing process in the country and how consistent sentences were across the country.
- To evaluate responses to specific crimes respondents were asked to make sentencing decisions about a series of cases described in vignettes. For some questions respondents were given a crime to consider and asked to provide a specific sentence, for others they were told the sentence imposed by the court and asked to rate the disposal on the dimension of leniency-severity. The disposals described in the scenarios were consistent with current sentencing practices and the sentencing guidelines in England and Wales⁶ and were reviewed by a High Court judge and member of the Sentencing Council to ensure their accuracy. (Appendix A provides an example of one of the cases used).

Results

Since our principal interest in this research was the effect of information on the attitudes of the general public, the most important component of the research was the large-scale survey. Since the laboratory sample is less representative of the general public the responses of this ‘elite’ sample are less likely to reflect attitudes of the population at large. Similarly, since the focus group participants were also less likely to be representative, they were used to explore certain issues in greater depth rather than to

document population trends. The laboratory study and the focus groups may therefore be regarded as providing information to supplement findings from the main survey.

1. Perceptions of leniency: survey trends

We first compared the reactions of the survey sample to responses from previous polls. The critical question here is whether our survey respondents share the perceptions of sentence severity held by the general public. To answer this question we can compare responses from our sample to responses from other samples of the general public. The standard sentencing-related question used in polls over the past 40 years is the following: “*Are sentences too harsh, about right, or too lenient?*”.

Table 1 compares responses of our sample to recent surveys which posed this question. As can be seen, the responses are remarkably consistent across the polls. Fully 75% of our sample expressed the view that sentencing was too lenient – slightly higher than the percentage expressing this view in another survey of the British public conducted a few months earlier. Dawes et al. (2011) found that 65% of the public held this view of sentencing. The most recent administration of the BCS found exactly the same percentage of respondents expressed this view. We can therefore be confident that our respondents are not atypical in some way that is related to the issue under investigation, namely attitudes to sentencing.⁷

Table 1 also provides the distribution of attitudes for the laboratory study sample. It reveals that, in contrast, they held views about sentencing that are discrepant from the general population: they were significantly less likely to rate sentencing as being too lenient. For this reason for the rest of this article will principally report findings from the survey and focus groups, noting results from the laboratory sample when they add to the emerging portrait of public attitudes.

Table 1 about here

2. Knowledge of sentencing

Survey and laboratory findings

Before reviewing findings relating to attitudes, we summarise trends in public knowledge of sentencing in our two samples. To all respondents we posed a number of questions about sentencing, first asking them to identify who sentenced offenders in this country. Respondents were given four choices – one of which was correct – to respond to the question about who is responsible for sentencing. Less than half the sample (44%) chose the correct answer, namely that sentencing was determined by both professional judges and members of the public serving as magistrates. Approximately the same percentage (41%) believed that sentencing was exclusively conducted by professional judges, while 6% believed that only members of the public or panels of criminal justice professionals (such as Probation officers) were responsible for sentencing. (9% responded ‘don’t know’).

Respondents were then asked to correctly identify the status of magistrates, given four response options: lawyers serving as part time judges; part time professional judges; unpaid members of the public; and panels of criminal justice professionals such as probation officers. Once again less than half the sample (40%) chose the correct response. Fully one-quarter of respondents believed that magistrates were part-time professional judges and 8% thought they were criminal justice professionals such as probation officers. 16% responded ‘don’t know.’

Knowledge of the Sentencing Council was measured by asking people to state whether they had heard anything about the Council. Only one in seven (14%) of the sample reported having heard of the Council.⁸ Respondents who stated that they had heard of the Council were then asked to identify the primary function of the Sentencing Council. They were provided with a list of three incorrect and one correct answer. Half of this small sub-sample chose the correct answer, although it is worth noting that with only four options, chance performance would result in one quarter of respondents being correct. Clearly, then, there is little evidence of public knowledge of this important element of the sentencing process.

Comparisons with the laboratory sample

In light of the fact that the laboratory subjects were more educated than both the general population and our survey respondents, we would expect them to be more knowledgeable about sentencing. This expectation was confirmed, although for some questions the differences in levels of knowledge were far from striking. For example, approximately half of the laboratory group gave the correct answer to the question about magistrates, compared to 40% of the internet sample. Similarly, 84% of the lab group – but only half the survey respondents – provided the correct answer to the question about the Sentencing Council’s primary function.

Focus group discussions

Discussions in the focus groups again revealed lower levels of knowledge about sentencing and guidelines. Participants were asked to identify the sources of guidance for courts at sentencing or the influences on sentencing decisions. Few suggestions were made, although a few participants noted ‘previous cases’, ‘landmark cases’ or ‘earlier court decisions’. Some participants expressed considerable surprise at learning about magistrates and their role in sentencing. Upon being informed about the lay magistracy, one participant observed: *To tell you the truth, I was totally unaware that magistrates are members of the public and I found that very interesting.* Another participant then added: *I think they just decide whether someone is guilty, they don’t do sentencing do they?*

Although most participants were aware of the existence of lay magistrates, knowledge of recruitment and training was poor. A significant minority believed that magistrates were recruited at random, in a manner similar to jurors. Others were unsure how magistrates were appointed, as the following comments illustrate:

I don't really know how they get there.

You have got to have some sort of private income [to be a magistrate].

The idea [of lay magistrates] seems good, but I wonder how they are appointed?... (To which another participant responded: ... I think they are appointed at random.)

Please don't tell me they are drawn at random?

They are recommended; [they are] people who have done good work in the community.

Everyone has a duty to be a magistrate -- but you have to register to become a magistrate.

Participants were generally unaware of the high proportion of sentences imposed by magistrates. When asked to estimate the caseload breakdown between the magistrates and Crown Courts, most estimates were in the range of 60%--40%. The highest ratio suggested was 90% to 10%. A significant minority believed that Crown Courts processed the majority of criminal cases. These trends are consistent with the findings from research over a decade ago reported by Sanders (2001) who found that the average estimate of the percentage of criminal cases handled by the magistrates was 55%. Finally, few participants had any idea about the powers of magistrates compared to judges in the Crown Courts, although there was a general feeling that the latter had greater sentencing powers. When pressed about the limit of magistrates' sentencing powers, few participants offered a response.

When asked about the sources of guidance for sentencers, no-one in any focus group spontaneously noted the existence of guidelines. For this reason, specific questions were posed to explore their knowledge. Approximately one participant in ten had heard anything about the guidelines. Participants who claimed some knowledge of the guidelines were asked where they had heard about the guidelines and what they had learned. All of these individuals cited the news media as their source; they all referred to the controversy over the guilty plea discount proposals advanced by the government at the time.⁹ For example, one noted: *I heard a snippet on the news about some guidelines.. it was Ken Clarke I think....he was talking about guidelines when he got into trouble.* None of the other participants reported having read or heard anything about the Sentencing Council or the sentencing guidelines.

3. Attitudes to magistrates and guidelines

Survey and laboratory findings

Prior to receiving any information, all respondents were asked whether they believed that magistrates shared their views. Most individuals believed that magistrates share the same

values as the public: around two-third of the sample held the view that magistrates definitely or probably ‘share the same values as people like you,’ leaving around one third (32%) to express the view that magistrates probably or definitely do *not* share the same values as the public. Individuals in the laboratory sample were even more likely to subscribe to the view that magistrates shared their values.¹⁰

Focus group discussions

The majority reaction to lay magistrates in the focus groups was very positive. Participants stressed the importance of non-professional sentencers rather than the notion of promoting community input into sentencing. A typical comment was the following:

Judges come from a privileged background; magistrates do not.

It's a good thing -- it helps keep a balance -- so that you don't have all 'Judge Jeffrey' types.

It's a good idea [to have lay magistrates] because you can have community empowerment.

Magistrates are more in touch, whereas the judges are not, magistrates have a more holistic view.

In terms of the justifications for using lay magistrates, comments fell into two categories: some form of “judgment by one’s peers” (including reflecting community values); and the achievement of cost savings:

It helps to bring in the community's values.

The goal is to be tried by one's peers.

Same reason we have juries -- people get tried by their peers.

It's cheaper to pay the expenses of the magistrates...

Taking the survey, laboratory and focus group findings together, these results suggest that support for the lay magistracy is stronger in this jurisdiction than in others. For example, research with members of the Dutch public has generally found the population to be more opposed than in favour of lay participation in sentencing (e.g., Klijn and Croes, 2007). The opposition of the Dutch public was founded upon the perception that a professional judiciary was more appropriate to determine sentencing.

Turning to focus group respondents' views on the guidelines, clear parallels emerged in responses to the guidelines and the lay magistracy: although knowledge was poor or sketchy, attitudes were positive. A brief description of the guidelines was

provided by the moderator and people were asked for their reactions to the concept. The general response to the guidelines was supportive, as the following comments indicate:

It's a good idea.. [the courts] need to have a framework.

Without guidelines there would be complete discretion for one person.

They certainly should exist -- You need them [guidelines] to be consistent.

There might be a tendency for judges to be subjective and so to maintain consistency across the country.

4. Effects of information on public attitudes

At this point we turn to the effects of information on public attitudes.

Effects of information on general attitudes

We begin by noting the effect of the information about magistrates and guidelines on general perceptions of the sentencing process. First, we summarise reactions to two questions asking respondents whether it was good or a bad idea to have members of the public sitting as magistrates and to have sentencing guidelines. These questions were posed immediately after the information had been provided to the experimental participants and before they were asked to react to specific sentencing decisions.¹¹ In the absence of statistically significant differences between the two experimental conditions we have combined the responses of the two groups of respondents, treating them as an 'informed' sample.

As can be seen in Table 2, respondents who had been provided with information about the magistracy or the sentencing guidelines were significantly more positive in their reaction to the use of laypersons – although it is worth noting that the control condition subjects were themselves much more positive than negative about the concept of lay adjudication (by a ratio of approximately 3 to 1). This latter finding – the positive reaction from people who had not been given information about the magistrates – may be explained by the fact that most people subscribed to the view that magistrates reflect the same values as the respondents. In short, there was a high 'baseline' level of support for the magistracy that was further enhanced by the provision of factual information.

Table 2 about here

The information had no effects on attitudes towards sentencing guidelines. One explanation for the equivalence across all three conditions with respect to this issue is that baseline attitudes were very positive to begin with – almost 95% of respondents in the control (no information) condition held the view that guidelines at sentencing were a good idea. This created a 'ceiling effect,' which prevents significant shifting in opinions.

The laboratory results are presented in the next Table (3). As can be seen, the pattern was the same: subjects provided with information about the magistrates and the sentencing guidelines were more positive about both, although once again the effect was only statistically significant for the question about the magistrates.

Table 3 about here

The focus group discussions help to explain why the effects of the information about guidelines were not stronger. We had expected that most members of the public were unaware of the existence of the guidelines, and in this respect we were correct: no one in the focus groups reported *knowing* about the guidelines. However, we did not anticipate people making the assumption that some form of guidance existed; the consequence is that any communication informing respondents about guidelines would have the effect of confirming what they knew, rather than providing totally novel information.

The last general questions related to confidence in sentencing and perceptions of consistency in sentencing. Respondents were asked the following question: “*How much confidence do you have in the sentencing process in this country?*” and were asked to rate their level of confidence in the sentencing process using four response options (a great deal, some, a little, or very little), and also whether sentences imposed across the country were very, rather, slightly or not at all consistent. Once again we have combined subjects in the two information conditions to contrast them with the control subjects’ responses. Table 4 reveals that the ‘informed’ subjects expressed more confidence in the sentencing process, and were significantly more likely to hold a favourable perception of consistency in sentencing (see Table 4).¹²

Table 4 about here

These findings demonstrate that it is possible to change attitudes to sentencing of members of the public using a short, factual communication. Having established that information influences attitudes we now examine the influence of information upon reactions to specific sentencing decisions.

Effects of information on ratings of sentences

It will be recalled that respondents were randomly assigned to Control, Magistrates information, or Guidelines information conditions. All respondents were first asked to react to three sentencing decisions imposed in cases of burglary, robbery, and benefit fraud. Respondents were asked to rate the severity of the sentence imposed by the court. Table 5 compares the responses of the three conditions. For two of the three offences, respondents who had been provided with general information about either the lay magistrates or the sentencing guidelines were significantly less likely to see the sentence as being too lenient. No significant differences between experimental conditions emerged for the third sentence imposed for a case of benefit fraud.

Table 5 about here

Effects of information on public sentencing preferences

All participants were next asked their view of the appropriate disposal in two additional cases. The first involved a significant fraud: Participants were provided with a guidelines range of between four and 30 months and were then asked to choose a sentence in months.¹³ Respondents who had been provided with information were less punitive; they recommended significantly shorter terms of custody than respondents in the control condition. The average number of months imposed was as follows: Control: 34 months; Guidelines: 30 months; Magistrates: 29 months ($F(2, 951) = 11.8; p. < 001$).

The last question asked respondents to impose a sentence (in months) for a robbery. No guidelines context was provided for any respondents in order to see if the effect of guidelines would carry over to a fresh decision. Once again the respondents who had previously received information were less punitive in their sentencing preferences, suggesting that the information effect carried over to other cases. Average sentence lengths were as follows¹⁴: Control: 33 months; Magistrates: 28, and Guidelines: 30 months ($F(2, 951) = 14.2, p. < 001$).

Table 6 confirms the effects of the information manipulation on public punitiveness using a multiple regression: it reveals significant effects on the dependent variable of number of months' imprisonment recommended by respondents, both for the magistracy information and the guidelines information. The effect of information on reducing punitiveness was stronger for the magistracy information (Table 6). Age, educational level and employment status were also all independently associated with less punitive recommended sentences. Taken together, these results demonstrate that providing information – even the modest amount provided here – can attenuate public punitiveness.

Table 6 about here

Absence of experimental effects in the laboratory study

There were no statistically significant experimental effects on the evaluations of sentences or sentencing preferences of the 230 laboratory subjects. Perceptions of the sentences were unaffected by whether the laboratory participants had been provided with information about the sentencing guidelines or the magistrates. Nor were there any significant differences in the severity of assigned sentences in response to the two last questions where respondents were asked to assign a specific number of months imprisonment.¹⁵ One reason for this discrepancy between the responses of the laboratory subjects and the survey respondents involves the very different nature of the two groups. The laboratory sample contained a higher proportion of students who were better informed about the issue of sentencing – which meant that the information manipulation would be less likely to have an effect. A second possibility is that the smaller sample size was responsible for the absence of a statistical effect.

Discussion and conclusions

In this article we have described findings from a study whose general purpose was to explore levels of public knowledge of the lay magistracy and the sentencing guidelines in England and Wales. We also tested the hypothesis that providing information to the public changes their attitudes to sentencing. A number of conclusions can be drawn.

First, we have demonstrated that the public is ill-informed about both the lay magistracy and the sentencing guidelines, but in particular about the latter. Many people were unaware of the true extent of lay involvement in sentencing. There was almost no awareness of the sentencing guidelines issued by the Sentencing Council. Second, the survey showed that providing information about sentencing changes public attitudes to sentencing and reduces public punitiveness. Respondents were less critical of specific disposals and less punitive in their own sentences. Previous research has shown that providing more information about specific cases makes people less punitive towards the offenders in question. In the present research we have shown that providing information about the organisation and process of sentencing also has an impact. Asking people to impose sentence having been provided with a guideline also attenuates punitiveness; the guideline serves as a frame of reference to constrain more punitive reactions to cases.

Our findings carry the clear implication that if the public were better informed about the sentencing process, public attitudes would change and public confidence in sentencing would improve. We do not underestimate the practical problems in achieving this improvement. Whilst it is possible to demonstrate the ‘information effect’ experimentally, it is hard to replicate this process on a wider scale. There are problems in reaching the audiences that are least informed, and in delivering information that already sceptical people will find credible. These problems are hardest when the information is delivered by agencies with a vested interest in the outcome – the Ministry of Justice and the Courts Service. However, these challenges need to be confronted. The legitimacy of the criminal justice system is demonstrably damaged by public lack of understanding about the sentencing process.

With respect to the variation in the impact of information across cases, it is significant that the effect was strongest for the first case, weaker (but still statistically significant for the second crime) and absent for the third. This may suggest an order effect, with the effect of the information attenuating over successive sentencing decisions. But it does not undermine the significance of the findings; evaluating a series of sentences is a highly atypical task. In everyday life we generally react, in conversation or while reading a newspaper report, to a single sentencing decision. Another explanation for the variation across cases is that public sentencing preferences for certain offences are more amenable to contextual factors such as the existence of guidelines. Without exploring the issue in more depth we cannot know whether, for example, the deeply held public antipathy towards ‘benefit cheats’ means that sentencing preferences for this category of offending are less likely to be affected by knowledge of guidelines. Future

research could resolve these issues by the use of more cases, and by the use of techniques such as “cognitive interviewing” to uncover subjects’ motivations for their responses.

We found that the information about sentencing guidelines tended to have a greater impact than the information about the lay magistracy, but that the two groups of respondents were on some measures equally affected. We would explain this trend in the following way. First, in light of the fact that people knew less about the guidelines than about the magistracy, we can expect the information to be more novel, and to have attracted more interest. This heightened level of attention will have enhanced any attitude change tendencies. Future research might usefully explore the amount of time respondents spend on reading and considering different kinds of information, and whether this is related to the degree of attitude change.

Second, the lack of greater distinction between the two experimental conditions (magistrates; guidelines) may well reflect the fact that the communications were not purely about one issue. As noted, in order to ensure that the material was realistic the magistrates’ information package contained some reference to the guidelines, while the guidelines communication referred to the nature of the decision-maker. A natural consequence of this overlap would obviously be to harmonise the effect of the two communications -- which is what we found. Our intention in providing information was ultimately to see whether information about the decision-maker or the sentencing environment would influence judgments, and this was in fact the case.

Conclusions

We draw three practical lessons from this research. First, agencies responsible for collecting and disseminating information about sentencing – including the Sentencing Council and the Ministry of Justice – should increase their efforts to inform the public about the sentencing process. There would be clear benefits in terms of public confidence in justice if the general public acquired a firmer grasp of who is responsible for sentencing, as well as the way in which sentencing decisions are taken. Despite the long tradition of lay involvement in sentencing in this country, significant proportions of the British public are ill-informed about the lay magistracy – even though attitudes towards magistrates are positive. This suggests that organizations such as HMCS and the Magistrates Association should renew their efforts to promote greater public understanding of the magistracy.

Second, news media reports of sentencing decisions should refer to the relevant guidelines range. When evaluating a given disposal members of the public need to know what the guideline range was for the crime being sentenced. Criticism of the specific sentence may remain, and the public may find the guideline range to be too lenient, but our results suggest that providing the guideline range reduces criticism of the sentence. This is consistent with earlier research which found that when members of the public are asked to sentence offenders their sentences often – but by no means always – fall within or near the guideline range (Roberts et al., 2008). Third, and finally, individual sentencers can also make a contribution to promoting public understanding by referring to the guidelines in their sentencing decisions or reasons for sentence. Such a step is likely to

have a salutary effect on public reactions to sentencing decisions, as the public will then have some context in which to consider the sentence.

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Appendix A:

Example of Crime Vignette

The crime:

Tom T. pleaded guilty to a charge of robbery. The offender wore a disguise and used a knife to rob a jeweller's shop. The owner tried to prevent the offender from taking some expensive watches. The offender then slashed at the victim, causing a slight wound. The offender has three prior criminal convictions, for theft, assault and robbery. He is 35, unemployed and living with his wife and a 10 year-old son. He has expressed remorse for his crime.

According to the **sentencing guidelines**, the range of sentence for a case of this kind is between 2 and 7 years in prison. After hearing from lawyers representing the offender and the prosecution, the judge imposed a sentence of **five years imprisonment**. The court took many factors into account including:

- * The offender's prior convictions which increases the sentence;
- * The fact that a knife was used;
- * The harm to the victim;
- * The early guilty plea –which saved the costs of the trial and the victim and witnesses from having to give evidence – this lowers the sentence.

Q. In your view, is this sentence of 5 years imprisonment:

Much too harsh

Too harsh

About right

Too lenient

Much too lenient

Table 1
Perceptions of Sentencing: Comparisons between Samples

	Nuffield Survey 2011 ¹	British Crime Survey 2009	Ipsos-Mori Survey (Dawes et al.) 2011	Nuffield Laboratory Sample
Too lenient	75%	75%	65%	45%
About Right	17%	20%	23%	46%
Too severe/ Much Too severe	7%	5%	4%	9%
	100%	100%	100%	100%

Q: In general, would you say that sentences handed down by the courts are too tough, about right, or too lenient?

Table 2
Survey Responses to Magistrates and Guidelines

	No Information Controls	'Informed' Subjects ²
<i>Q: Is it a good idea to have laypersons in the justice system?</i>		
Definitely a good idea	26%	43%
Probably a good idea	54%	44%
Probably or definitely not a good idea	20%	13%
<i>p</i> < .001	100%	100%
<i>Q: Is it a good idea to have sentencing guidelines?</i>		
Definitely a good idea	54%	60%
Probably a good idea	39%	33%
Probably or definitely not a good idea	7%	7%
<i>not statistically significant</i>	100%	100%

¹ Except where indicated otherwise survey analyses are based upon 1,004 respondents.

² i.e., Magistrates and Guidelines groups combined.

Table 3
Laboratory Subjects' Responses to Magistrates and Guidelines

	<i>No Information Controls</i>	<i>'Informed' Subjects³</i>
<i>Q: Is it a good idea to have laypersons in the justice system?</i>		
Definitely a good idea	22%	43%
Probably a good idea	57%	45%
Probably or definitely not a good idea	21%	13%
<i>p</i> < .001	100%	100%
<i>Q: Is it a good idea to have sentencing guidelines?</i>		
Definitely a good idea	60%	73%
Probably a good idea	33%	25%
Probably or definitely not a good idea	7%	2%
<i>not statistically significant</i>	100%	100%

Table 4
Public Confidence Ratings and Perceptions of Consistency

	<i>No Information Controls</i>	<i>'Informed' Subjects⁴</i>
A great deal of confidence	4%	7%
Some confidence	34%	38%
A little confidence	31%	32%
Very little confidence	31%	24%
<i>p</i> < .05	100%	100%
Very consistent	4%	5%
Rather consistent	21%	28%
Slightly consistent	37%	36%
Not at all consistent	38%	31%
<i>p</i> < .05	100%	100%

*Questions: Q1: How much confidence do you have in the sentencing process in this country?
Q2: How consistent are sentences imposed in courts across the country?*

³ i.e., Magistrates and Guidelines groups combined.

⁴ i.e., Magistrates and Guidelines groups combined.

Table 5
Ratings of Sentence Severity by Information Condition

	<i>Control</i>	<i>Magistrates Information</i>	<i>Guidelines Information</i>
<i>Burglary</i>			
Too harsh	7%	8%	8%
About Right	36%	55%	58%
Too lenient	57%	37%	34%
<i>p</i> < .001	100%	100%	100%
<i>Robbery</i>			
Too harsh	9%	6%	6%
About Right	55%	70%	64%
Too lenient	36%	24%	30%
<i>p</i> < .05	100%	100%	100%
<i>Benefit Fraud</i>			
Too harsh	16%	12%	15%
About Right	68%	70%	72%
Too lenient	16%	18%	13%
<i>not significant</i>	100%	100%	100%

Table 6
Multiple Regression on Public Punitiveness (Number of Recommended Years Custody)

	Unstandardised Coefficient
Gender (Male)	1.427 (1.047)
Education: A levels or above	-3.541 (-2.491)*
Age	0.131 (2.561)*
Occupation: employed	-3.818 (-2.616)**
Treatment: Magistrates	-4.317 (-2.581)*
Treatment: Guidelines	-2.344 (-1.407)
Constant	33.927 (10.127)**
R-squared	0.032
Adj. R-squared	0.026
Observations (n)	897

Notes: Absolute value of t-statistics in parentheses; *p* < .05; ** *p* < .01

Notes

¹ For a review of research see Roberts and Hough (2005a), pp. 154-162.

² The only exception to this pattern is that the survey oversamples the higher educational qualification categories – a reflection of the fact internet access is skewed in this way.

³ The complete survey instrument including the information about magistrates and guidelines is available from the first author: julian.roberts@crim.ox.ac.uk.

⁴ <http://sentencingcouncil.judiciary.gov.uk/>

⁵ Since the material described the nature of the decision-maker, this condition also included reference to the magistrates, although the primary focus was on the guidelines.

⁶ These are all available at <http://sentencingcouncil.judiciary.gov.uk/>.

⁷ The perception of sentencing leniency also emerged clearly from the focus groups.

⁸ The percentage was only slightly higher in the laboratory sample (19%).

⁹ At the time the sessions were conducted the government had floated proposals to increase the reduction for a guilty plea from one third to one half.

¹⁰ Over four fifths of the lab sample held the view that magistrates ‘definitely’ or ‘probably’ share the same values as them.

¹¹ In this sense these two questions may be regarded as a verification that the subjects had attended to the information about magistrates or guidelines.

¹² The trends were in same direction in the laboratory study, although not statistically significant. For example, 16% of the “informed” laboratory subjects expressed a great deal of confidence in sentencing, compared to only 7% of the control subjects.

¹³ Since we were interested in public punitiveness it was unnecessary to give respondents a choice of sanction, although some participants may have chosen a non-custodial disposal had they been given the opportunity. The issue explored was not the absolute levels of punishment, but whether the levels of punitiveness differed between conditions.

¹⁴ This analysis includes all responses within the 98th percentile sentence in the sample; we excluded the 2% who provided sentence lengths in excess of 1,000 months.

¹⁵ While not statistically significant, the average sentence lengths imposed across the groups in the laboratory study were in the direction predicted by the hypothesis: control subjects imposed on average longer terms of custody than the subjects who had received information about the magistrates or the sentencing guidelines.