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The Effect of Victim Bias on Length of Defendant Sentencing

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ABSTRACT

This research examined the effects of victim bias on the determination of the length of prison sentence given to perpetrators convicted of assault and battery. Three victim characteristics (gender, race, and sexual orientation) were targeted to determine whether they would evoke discrimination in sentencing. Forty subjects were asked to read nine brief crime scenarios and impose prison sentences on the convicted perpetrators of each of the crimes. Three target scenarios were intermixed within the nine crime scenarios. They depicted the crimes of assault and battery of a victim who was either black or white or homosexual. The targeted scenarios were all the same, except that for half of the subjects, the victims were female; for the other half, the victims were male. It was expected that the perpetrators of assault and battery against the two minority groups (the groups with black and homosexual victims) would receive more lenient prison sentences because of the victim characteristics. It was also expected that, overall, perpetrators of crimes against female victims would receive harsher sentences, but that differences would still result due to victim characteristics. Results indicated that female subjects gave significantly harsher sentences than male subjects. Perpetrators of female victims also received harsher sentences from both male and female subjects. However, an interaction showed that while males showed no differences in their sentences as a function of victim characteristics, females gave harsher sentences when the victims were female than when they were male for both white and black victims, but not for homosexual victims.

INTRODUCTION

Numerous studies examining the various types of discrimination and bias practices that exist in this country have documented the fact that racism, sexism, ageism, and homophobia are widespread and have a detrimental impact on victims. Because of the pervasiveness of the problem, Meyers and Talarico (1986) suggested that we acknowledge at the onset that biases exist and direct research toward understanding who exactly is being discriminated against and where it is likely to occur. According to this view, it might be more productive to focus attention on the contextual circumstances surrounding discriminating practices.

Meyers and Talarico collected and analyzed data from a random sample of 16,798 felons convicted between 1976 and 1982 in the state of Georgia. They examined such characteristics as race, gender, age, marital status, and rural or urban background as well as the demographic makeup of the community to determine if this information impacted the type of sentence (probation or prison), and length of sentence these felons received. The results of their study indicated that there were no significant differences in sentencing practices for whites and blacks. Meyers and Talarico's suggest that because of the predominantly black demographic makeup of the communities of Georgia, that prison sentences were handed down more equitably.

Herek (1989) reports that legislation and government commissioned reports are now being mandated in several states for the collection of data documenting bias crimes and that of particular interest is the increased incidence of so called hate crimes, "words or actions intended to harm or intimidate members of a minority group" (p.948), especially those crimes committed against lesbians and gay men. According to Herek, a report by the National Institute of Justice describes homosexuals as the most frequent victims of hate violence.

In a more recent article, Berrill and Herek (1990) specifically addresses hate crimes. The authors suggest that lesbians and gay men suffer primary and secondary
victimization in our society: first through the act of violence, then through discrimination by the law enforcement system in responding negatively to the victims' sexual orientation. Discrimination by the law enforcement system may include harassment, rejection, or treating the crime as though it lacks importance. Specific incidents were cited in this article, describing judges who publicly vocalized their discriminating views.

Berrill and Herek acknowledge the lack of research in the area of hate crimes and call for the collection of more empirical data to help prompt government and legislators to take these acts of violence and discriminatory practice seriously.

Most studies, however, focus on the biases related to the conviction and sentencing of minority offenders. For example, Bodenhausen (1990) examined jury bias in regard to stereotypic judgments about guilt of the defendant in criminal cases. Bodenhausen investigated stereotypic influences on people's decision-making processes by asking subjects to estimate the probability of the guilt of a defendant based on evidence from court cases. The cases were different in regard to the type of offender and the type of crime. In crime scenarios of assault and sexual molestation, stereotypic and non-stereotypic offenders were described. An example would be the crime of assault being committed by someone with an Hispanic name as opposed to the use of a non ethnic name. The key to the study was that subjects were also given specific outcomes to these crime scenarios at three levels: guilty, not guilty, and no information. Bodenhausen found that subjects' stereotypic expectations of presumed guilt could not be swayed, even when defendants were found not guilty of the alleged offenses. This suggests that stereotypic patterns run deep and can have a major impact on the decision-making processes of jurors.

Further, a study by Silverman, Smith, Nelson, Dembo, (1984), clearly shows bias in sentencing based on age and the perceived attributes of the offender. In their study, subjects were presented with simple, non-violent crime scenarios to read. They were then asked to assign degrees of positive or negative attributes to the perpetrator of the crime (such as honest, kind, polite, cruel, violent, or disobedient), based on a four-point Likert scale. Subjects then handed down a punishment drawn from a list of possible sentences such as: none, strong warning, or more than one year in jail. The variables examined in this experiment were gender and perceived age of the perpetrator (juvenile delinquents, adult offenders, and elderly offenders). Silverman et al's results indicated that elderly criminals were viewed more positively overall and received more lenient punishments than either the adult or juvenile offenders. This supports the notion that perceived attributes or characteristics about perpetrators directly impact decision making processes with regard to prison sentencing.

Currently, there is little research examining discrimination against the victims of crimes in any capacity. These stereotypes, biases, and misconceptions about different minorities are worth examining from the perspective of the victim. If it is true that hate crimes are committed just because a person is part of a recognized minority, it may be that people would also display leniency in the sentencing of the perpetrators of such hate crimes. This was the issue explored in this experiment. It was expected that victim characteristics such as gender, race, or sexual orientation would influence the decision subjects made regarding the length of sentences given to the perpetrators of the crime of assault and battery.

Specifically, it was expected that perpetrators of crimes of assault and battery against black or homosexual victims would receive more lenient prison sentences than the perpetrators of the same crime when the victim was white. It was also believed, that overall, the perpetrator of a crime against female victims would receive harsher sentences than the perpetrators of the same crime when males were the victims.

**METHOD**

**Subjects**
Forty subjects were tested individually in this experiment (20 male, 20 female). They were of varying ages and resided in the Fitchburg, Massachusetts area.

**Materials**

Materials included brief descriptions of nine different crime scenarios involving a variety of offenses and ethnic groups. Intermixed within these scenarios were three target crimes involving a perpetrator convicted of assault and battery against a victim who was either black or white or homosexual. These three target crimes were exactly the same, except that for half the subjects, the victims were female; for the other half, victims were male. An example of a target crime scenario would be:

A black female, 27 years old, was physically assaulted in front of a movie theater in Arlington. She suffered a dislocated shoulder and a cut above her eye, requiring stitches. The perpetrator, a 33-year-old white male, was convicted of assault and battery. LENGTH OF PRISON SENTENCE — (MAXIMUM 20 YEARS)

Target crimes were rotated within each grouping to eliminate order effects. Victims and perpetrators were all depicted as between the ages of 25 and 35. All of the perpetrators were white males, and all of the injuries received by the victims were to arms (broken wrist, dislocated shoulder) and head or face (cuts, bruises). There was space below each of the individual scenarios for subjects to write in a prison sentence (with a maximum sentence of twenty years).

**Design and Procedure**

This experiment employed a 2 (sex of subject) x 2 (sex of victim) x 3 (characteristic of victim) split plot design, with sex of subject and sex of victim as the between subjects variable. Equal numbers of male and female subjects were assigned to each of the levels of the latter two variables.

All subjects were instructed to read and make judgments about the length of prison sentences, in months or years, for the convicted perpetrators of the nine different crime scenarios. Allowable prison sentences ranged from 0 to 20 years, with a 0 designated if the subject wished to give the perpetrator probation.

Thus, there were three independent variables: a) victim characteristics, with three levels (white, black, and homosexual); b) sex of the victim; and c) sex of subject. The dependent variable was the length of prison sentences assigned by the subjects.

Subjects were given the individual crime scenarios to read one at a time and asked, when completed, to place them in an envelope to ensure subject confidentiality and help increase the likelihood of honest responses.

**RESULTS**

The mean scores in years for the length of prison sentencing as a function of sex of victim, sex of subjects, and victim characteristics, are presented in Table 1.

<table>
<thead>
<tr>
<th>Characteristics of the victims</th>
<th>Mean Female Subjects</th>
<th>Mean Male Subjects</th>
</tr>
</thead>
<tbody>
<tr>
<td>White Female</td>
<td>7.15</td>
<td>1.41</td>
</tr>
<tr>
<td>White Male</td>
<td>3.85</td>
<td>1.42</td>
</tr>
<tr>
<td>Black Female</td>
<td>6.25</td>
<td>1.95</td>
</tr>
<tr>
<td>Black Male</td>
<td>4.16</td>
<td>1.41</td>
</tr>
<tr>
<td>Homosexual Female</td>
<td>5.55</td>
<td>2.25</td>
</tr>
<tr>
<td>Homosexual Male</td>
<td>4.00</td>
<td>1.11</td>
</tr>
</tbody>
</table>

A three-way split-plot analysis of variance indicated that overall, female subjects (M= 5.16 yrs., SD= 3.30) gave significantly harsher sentences than male subjects, (M= 1.59 yrs., SD= 1.55) F(1,36)= 24. p < .0001. Also, sentences were significantly longer when the victims were female (M= 4.09 yrs., SD= 3.45) than when they were male, (M= 2.62 yrs., SD= 2.62) F(1,36) = 3.95, p < .05. However, an interaction showed that while males showed no differences in their
sentences as a function of victim characteristics, females gave harsher sentences when the victims were female than when they were male for both white and black victims but not for homosexual victims, $E(2,72) = 3.19, p < .047$.

**DISCUSSION**

These results suggest that males tend to be unbiased in their sentencing and that females appear to be more sympathetic when the victims are female unless they are also homosexual. This sex difference for subjects supported the hypothesis which predicted harsher sentences by females, but as not supportive to the expectation that biases would be displayed more uniformly for both male and female subjects as a function of victim characteristics. Based on Berrill and Herek's discussion on hate crimes male subjects were expected to show biases in all categories. Males, however, tended to be the most consistent with their sentencing across the board.

The overall expectation that biases would be displayed more in connection with victim characteristics was not fully realized. Only female subjects gave more lenient sentences to the perpetrators of female homosexual victims. Recall that in Silverman et al's (1984) study, mock Jurors took into consideration the perceived attributes or characteristics of the defendant when determining the length of prison sentence for crimes. However, the type of overall bias demonstrated by Silverman et al may be specific to the age variable.

In general, there has been little research done in the area of victim bias, although the need for consideration of the victims' view is evident. Future research might expand on these results by including a broader cross-section of the population as subjects, and by focusing on other minority groups, such as Asian and Hispanic people.

**REFERENCES**


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