CITIZEN JUDGES

Choices made by users of an online legal education tool provide insights into community attitudes to the severity of offences.

By Dennis Byles and Chris Gill

Launched by the Sentencing Advisory Council in October 2010, the interactive online application *Virtual You Be The Judge* (VYBTJ) educates users about sentencing law by putting them at the centre of simulated sentencing processes. It was designed as an educational tool, and was a finalist for an Australian Teachers of Media (ATOM) Award for "Best Secondary Education Resource" in 2012.

Since VYBTJ started in 2010, there have been approximately 28,000 users (including many VCE legal studies students), with nearly 60 per cent of those completing the process to sentencing.

After opening VYBTJ, users choose one of four cases, each based on real-life events although names and other details have been changed. The cases are presented using text, audio narration and video re-enactments by actors. Users select questions to ask the offender, prosecution and/or defence, hear the answers, then select a sentence type and amount. Finally, users can find out what sentence was imposed in the "real-life" case.[1]

Users can choose from the following cases:

- **Richard** – culpable driving causing death (real-life case sentenced in the County Court to five years' imprisonment);
- **Terri** – trafficking a non-commercial quantity of drugs (real-life case sentenced in the County Court to a 12-month community correction order);
- **Dane** – intentionally causing serious injury (real-life case sentenced in the County Court to a 12-month community correction order); and

- **Peter** – burglary (a fictional scenario based on common Magistrates' Court cases. Based on the details of this scenario, a real magistrate "sentenced" Peter to a 12-month community correction order).

Peter's case was added September 2012, At the same time, existing cases were updated to reflect changes to Victorian sentencing law. Community based orders were replaced by community correction orders, and the option to impose an intensive correction order (Dane and Richard) or home detention (Richard) was removed.

Main findings

Analysis of three years of data[2] reveals:

- In three of the four cases (Richard, Terri and Peter), most users imposed sentences roughly consistent with that imposed by the actual judge or magistrate. The case of Richard (culpable driving) was typical. Nearly 75 per cent of users imposed the same sentence type (imprisonment), and nearly half of these imposed a sentence length within a year of that imposed by the actual judge.
- In one case (Dane – intentionally causing serious injury), users consistently imposed a heavier sentence than that imposed by the sentencing judge. He was "imprisoned" by 40 per cent of users and given an intensive correction order by 31 per cent of users. Of the 27 per cent who, like the actual judge, imposed a community order,[3] 73 per cent chose a community order of a longer duration than the 12-month actual sentence.

- In all cases except Richard's (culpable driving), users who asked more courtroom questions were more likely to impose less severe sentence types. This association was strongest for Terri (drug trafficking) and Peter (burglary). For Richard (culpable driving), there was no relationship between the number of questions asked and the sentence type imposed. The more courtroom questions users asked about Dane (intentionally causing serious injury), the less likely they were to impose a prison sentence and the more likely they were to impose a community order.
- The average (mean) term of imprisonment selected for Dane (intentionally causing serious injury) and Richard (culpable driving) was shorter for those users who asked more questions, and longer for those users who asked fewer questions. For Terri (drug trafficking) and Peter (burglary), there was a less significant association between the number of questions asked and the average sentence length.
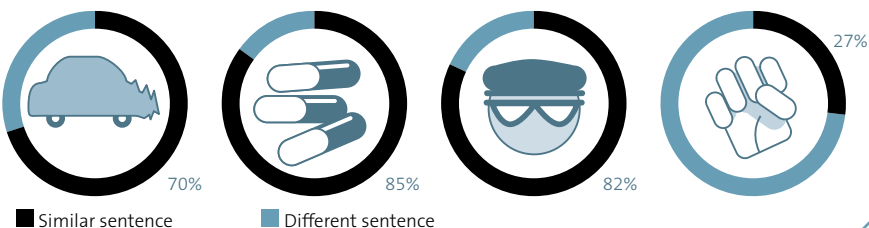
Interpretation

The imposition of heavier sentences for Dane (intentionally causing serious injury) than that imposed by the real life judge suggests community members view intentional violence that causes serious injury as among the most serious of crimes. This interpretation is consistent with other published research.[4]

The association between asking more questions (obtaining more information about an offence) and imposing a less severe sentence type (except for Richard – culpable driving)

CITIZEN JUDGES' FINDINGS

Sentences were roughly consistent with actual sentencing practice except in one category

70%   85%   82%   27%

■ Similar sentence   ■ Different sentence

is consistent with research showing that community members in possession of more information about a case are more likely to see a judge's sentence as appropriate.[5] Another possible interpretation is that the users who are motivated to find out more about a case are predisposed to impose lighter sentences.

That the choices of sentence type (as opposed to length) for Richard (culpable driving) were unaffected by the number of questions asked, may reflect how seriously community members feel about offences resulting in death, regardless of motive or intent.[6] Another possible interpretation is that culpable driving is a much-publicised offence about which community members have already formed views or gained awareness of actual sentencing practice.

Sentences handed down

The differences in the VYBTJ sentences with the "real life" sentences of the judge were:
- Only 27 percent of users who sentenced Dane (intentionally causing serious injury) chose the same sentence type (a community order) as that imposed by the judge. Forty per cent of users chose imprisonment, and 31 per cent chose an intensive correction order.[7]
- In contrast, when sentencing Peter (burglary) and Richard (culpable driving), a large majority of users chose the same sentence type imposed by the judge, with 82 per cent choosing a community order for Peter (burglary) and 70 per cent choosing imprisonment for Richard (culpable driving).
- For Terri (drug trafficking), a large majority of users (85 per cent) chose a community order as had been imposed in real life.

Users seldom chose fines as a penalty for any of the four offenders. The least fined case was Richard (culpable driving) at 1.5 per cent. The most fined case was Terri (drug trafficking) at 7 per cent. This is broadly consistent with actual sentencing practice.[8]

Impact of number of questions on sentence type

Prior to choosing a sentence, each user has the opportunity to ask questions and obtain further details on the case. Nine possible questions are available per case – three questions each to the offender, the defence and the prosecution. Each user must ask a minimum of four questions before being able to progress to the next stage.

In three of the four cases, there was an association between the number of questions asked and the sentence type given.

For Dane (intentionally cause serious injury), Peter (burglary) and Terri (drug trafficking), users who asked a higher number of questions were less likely to impose imprisonment. However, for Dane there were a significant number of users who asked a lot of questions and still chose imprisonment (a more severe sentence type than the community based order imposed by the actual judge).

For Richard, asking a higher number of questions was not associated with the sentence type chosen. This may be because users feel culpable driving warrants a custodial sentence regardless of any mitigating factors revealed during questioning, or because users are more aware of real life sentencing practice for this high-profile offence.

For all the cases, the percentage of users choosing a fine remained low, regardless of how many questions users asked.

Impact of number of questions on sentence length

While associated with sentence type, the number of questions asked was not associated with the length of community sentences imposed by users.

Of users who chose imprisonment for Dane (intentionally causing serious injury) and Richard (culpable driving), those who asked more questions imposed a shorter average sentence than those who asked fewer questions.

Conclusion

While designed as an education tool, software that gathered anonymous data about user behaviour allows insight into community attitudes to offence seriousness.

The findings are broadly consistent with research showing that the more information people have about an offender and their offence, the more likely they are to agree with the sentence imposed by the court.

The data also suggest that for offences involving injury or death, community members may be less likely to be swayed by mitigating factors revealed through questioning than they are for property or drug offences.

VYBTJ is available through the Sentencing Advisory Council website www.sentencing-council.vic.gov.au. ●

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1. The three initial VYBTJ cases were adapted from real cases and real sentences. However, sentences for Terri and Dane were "resentenced" in September 2012 in line with the new sentencing orders available in Victoria by presenting a summary of their cases to a County Court judge.
2. This article is based on anonymous VYBTJ user data collected from 1 October 2010 to 3 September 2013.
3. "Community order" refers to a community-based order (for users before the September 2012 update) and a community correction order (for later users). Elsewhere in this article, the term "community order" refers to the current community correction order and the previous non-prison orders: community based order, intensive correction order and home detention.
4. *Community Attitudes to Offence Seriousness*, Sentencing Advisory Council 2012.
5. Public judgment on sentencing: Final results from the Tasmanian Jury Sentencing Study, Trends & issues in crime and criminal justice no.407, Kate Warner et al, ISSN 1836-2206, Canberra: Australian Institute of Criminology, February 2011.
6. Other research suggests community members have divergent views on the seriousness of offences that unintentionally cause serious injury or death. See Community Attitudes to Offence Seriousness, Sentencing Advisory Council 2012.
7. As an ICO is not served in prison, it could be said that 58 per cent of users who sentenced Dane imposed a sentence that could be served in the community.
8. Over roughly the same period as these VYBTJ user data, no one sentenced in Victorian higher courts for culpable driving or intentionally causing serious injury received a fine. In the same period, 1.7 per cent of those sentenced in Victorian higher courts for trafficking a non-commercial quantity of drugs received a fine (nine people in total) and, in the Magistrates' Court, 3.1 per cent of those sentenced for burglary received a fine (398 people in total).