



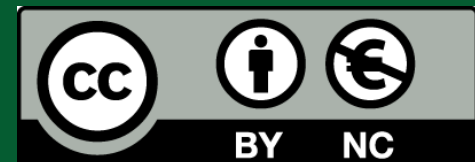
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IS JUSTICE BLIND TO STEREOTYPES AND PREJUDICE?

Some findings from empirical research

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Outline of the presentation

- I. Difficulties in researching effects of stereotyping and prejudice in legal decision-making
- II. Findings on prejudice/bias from previous research
- III. Study on professional legal decision-makers in Slovenia



Vienna Philharmonic Orchestra (2021)

Source: <https://theviolinchannel.com/vienna-philharmonic-to-tour-south-korea-next-month/>



Blind Lady Justice

Legal decision making should be blind to all the factors that are not relevant for a particular decision.

However, cognitive mechanisms of stereotyping, prejudice, and bias are inherent to almost any decision-making.



I. Difficulties in researching effects of stereotyping and prejudice in legal decision-making

- Legal decisions are complex, many parameters to be taken into account
- Difficult to isolate the effect of only one particular factor (bias)
- Final decision of one legal decision maker may result of biased decisions of previous decision makers (e.g. police → prosecutor → investigative judge → trial judge)
- Statistics may give distorted picture: similar cases are not identical cases
- Professional legal decision-makers usually not accessible for experiments
- Mock juries vs. professional decision-makers
- Hypothetical cases vs. real cases

II. Some findings on the effect of prejudice/bias in criminal justice

Focus on four potential bias-invoking factors:

1. defendant's **gender**
2. defendant's **attractiveness**
3. defendant's **social status**
4. defendant's **ethnicity/religion**

1. Defendant's gender

Most research on mock juries.

- Generally, **female defendants treated more leniently than male defendants** (Mazzella & Feingold 1994; DeSantis & Kayson 1997; McCoy & Gray 2007; Pozzulo et al. 2010; Lee et al. 2011; Strub & McKimmie 2016)
- However, **other factors may be relevant**, e.g.:
 - **type/nature of crime** (Mazzella & Feingold, 1994)
 - **gender of the decision-maker** (Ahola et al. 2010)
 - **gender of the victim** (Mazzella & Feingold, 1994)
- **Study on criminal justice professionals** in Sweden (Ahola et al. 2010):
 - **judges and jurors judged defendants of the same gender more harshly** compared to defendants of the opposite gender.
 - only „non-sentencing evaluators“ (police officers, prosecutors, defence attorneys, law students) judged female defendants more leniently than male

2. Defendant's attractiveness

Most research on mock juries.

- Generally, **more attractive defendants treated more leniently than less attractive defendants** (Efran 1974; Sigall & Ostove 1975; Stewart 1980; Gordon 1983; Darby & Jeffers 1988; Esses & Webster 1988; Castellow 1990; Wuensch et al. 1991; Mazzella & Feingold 1994; DeSantis & Kayson 1997; Abwender & Hough 2010)
- However, **other factors may be relevant**, e.g.:
 - **gender of the defendant / decision maker** (Efran 1974; Wuensch et al. 1991; Abwender & Hough 2010; Ahola et al. 2010)
 - **is defendant exploiting good looks** (Sigall & Ostove 1975; Smith & Hed 1979; Yang et al. 2019;)
 - **defendant's age** (Smith & Hed 1979)
 - **defendant's body weight** (Schvey 2013; Yamamoto et al. 2019)

3. Defendant's socioeconomic status

- Generally, **defendants of high socioeconomic status are treated more leniently than defendants of low status** (Hoffman 1981; Nienstedt et al. 1988; Chiricos & Bales 1991; D'Alessio & Stolzenberg 1993; Reiman 1998; Mazzella & Feingold 1994; Volkov 2016)
- However, **other factors may be relevant**, e.g.:
 - **nature of the offence** (D'Alessio & Stolzenberg 1993)
 - **world view of the decision-maker** (belief in a just world, Freeman 2006)

4. Defendant's race /ethnicity / religion

Generally:

1. ethnic minorities are overrepresented in the criminal justice system (Bloomstein 1982; Goodman & Ruggiero 2008; Lawrence 2011 etc.)

2. ethnic minority defendants receive more severe sentences than other defendants (Spohn 2000; Mitchell 2005; Ulmer 2012; Jordan & Freiburger, 2015)

General conclusions on previous research

- Prejudice and bias do seem to influence legal decision making.
- Causal relationships are not always straight forward.
- Little research on professional decision makers warants caution in drawing conclusions.

III. Study on professional legal decision-makers in Slovenia

(Plesničar, Šugman Stubbs, Hafner)



Participants of the study

96 criminal law judges:

83 women, 13 men

81 judges, 15 judicial assistants

Average years of experience: 14,2

66 state prosecutors:

46 women, 17 men, 3 no data

Average years of experience: 9,1

172 law students:

120 women, 52 men, 2 no data

2nd year students
(already taken criminal law classes)

Testing whether and how judges', prosecutors' and students' (implicit) stereotypes bias their sentencing decisions.

Focus on four potential stereotypes:

1. defendant's **social status**
2. defendant's **gender**
3. defendant's **attractiveness**
4. defendant's **ethnicity/religion**

Methodology

Vignettes - hypothetical criminal cases:


- Summary descriptions of relevant case facts
- Each vignette comes in **two variants** → they are **identical, except for one measured variable** (potentially invoking bias).

Task: participants asked to determine an **appropriate sentence** for the hypothetical defendant (not knowing that variants between the groups are different)

- Premise: guilt has been already established

Spoštovani!
Prosim vas, da poskusite po vaši najboljši strokovni presaji določiti ustrezno sankcijo za spodnje primere. Prosim, napišite samo sankcijo brez formalnega izreka. Pri tem upoštevajte: (1) samo okoliščine, ki jih lahko razberete iz primera oziroma (2) da so dejstva, kot so navedena v opisu, neizpodbitno ugotovljena. Zavedamo se, da je opis primerov sumaren in da morda podatki, ki bi vam bili v resničnem primeru na voljo, manjkajo, vendar vas prosimo, da presodite na podlagi podatkov, ki so na voljo.
Na koncu je priložen poseben list, na katerega prosimo napišite predlagano sankcijo.


1. PRIMER



Obtoženec Brečelj, Koper, poročen, na n... znat... nek...
Obtoženec Yumi, pomočnik vodje oddelka. Ka... družinskih razmer hotel presel... plačo. Na razpisu ni bil izbran... izkušen. Obtoženi je zaradi og... pogodbe o zaposlitvi, še pred... pisarne odnesel umetnino v... zasežena.

Na podlagi na glavni obrav... obtoženi kriv kaznivega dej... da pri izbiri sankcije in odm... prizadetost zaradi izbora m... obžaluje kaznivega dejanja

1. PRIMER



Obtožena Aleksandra Košir, hči Marjana Koširja in Alenke Košir roj. Brečelj, rojena 17. 3. 1973, na Jesenicah, stanujoča Sončna pot 12, Koper, državljanica RS, s končano ekonomsko fakulteto, brezposelna, poročena, mati dveh šolobveznih otrok, solastnica stanovanjske hiše na naslovu Sončna pot 12, Koper in lastnica osebnega avtomobila znamke VW, letnik 2014, ni v drugem kazenskem postopku, še nekaznovana, na prostosti.

Obtožena je dvanajst let delala za večje, zelo uspešno podjetje Yumi. Bila je vzorna delavka in je v tem času napredovala do mesta pomočnice vodje oddelka. Kandidirala je za mesto vodje dislocirane enote, ker se je zaradi družinskih razmer hotela preseliti bližje kraju bivanja, računala pa je seveda tudi na precej višjo plačo. Na razpisu ni bila izbrana, pač pa je službo dobil nečak člana uprave, s samo tremi leti delovnih izkušenj. Obtožena je zaradi ogorčenja in razočaranja nad izpeljanim postopkom podala odpoved pogodbe o zaposlitvi, še pred tem pa se je odločila svoj finančni status izboljšati tako, da je iz pisarne odnesla umetnino v vrednosti 55.000 EUR, ki je bila v predkazenskem postopku zasežena. Na podlagi na glavni obravnavi izvedenega dokaznega postopka je sodišče ugotovilo, da je obtožena kriva kaznivega dejanja velike tatvine po drugem odstavku 205. člena KZ-1.

Prosim, da pri izbiri sankcije in odmeri kazni upoštevate sledeče okoliščine: nekaznovanost, čustveno prizadetost zaradi izbora manj kvalificiranega kandidata, družinske okoliščine, dejstvo, da ne obžaluje kaznivega dejanja in druge okoliščine, ki lahko po vašem mnenju vplivajo na kazen.

Velika tatvina 205. člen KZ-1

(1) Storilec tatvine iz prvega odstavka prejšnjega člena se kaznuje z zaporom do petih let ...

(2) Enako se kaznuje storilec tatvine, če je ukradena stvar posebnega kulturnega pomena ali naravna vrednota ali če je ukradena stvar velike vrednosti in si je storilec hotel prilastiti tako stvar ali stvar take vrednosti.

(1) Storilec tatvine iz prvega odstavka prejšnjega člena se kaznuje z zaporom do petih let ...

(2) Enako se kaznuje storilec tatvine, če je ukradena stvar posebnega kulturnega pomena ali naravna vrednota ali če je ukradena stvar velike vrednosti in si je storilec hotel prilastiti tako stvar ali stvar take vrednosti.

Skupina 2

1. Defendant's **social status**

Variable: **defendant's social status**

Case concerning aggravated bodily harm resulting in death.

GROUP 1: **High social status**

- university professor
- head of a department
- good earnings
- owns a house in Ljubljana & a holiday apartment at the seaside
- drives Audi



GROUP 2: **Low social status**

- primary education only
- no property
- unemployed
- lives on minimal social benefits

Main hypothesis



High social status defendant



less punitive response

Low social status defendant



more punitive response

Results: JUDGES

HIGH SOCIAL STATUS



SENTENCE	% decisions	MEAN (month)	MEDIAN	SD	
Prison sentence	78% (ALT: 9%)	22,3	24	9,7	
Conditional sentence	20%	Probation period	41,3	48	10,6
		Length of sentence	17,3	18	8,7

N = 45



LOW SOCIAL STATUS

SENTENCE	% decisions	MEAN (month)	MEDIAN	SD	
Prison sentence	81% (ALT: 26%)	25,9	24	15,9	
Conditional sentence	19%	Probation period	32,7	30	14,4
		Length of sentence	15,1	12	6,3

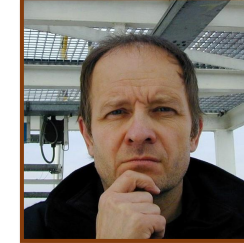
N = 47

Results: JUDGES v. PROSECUTORS



**HIGH SOCIAL
STATUS**

SENTENCE	% decisions	MEAN (month)	MEDIAN	SD
Prison sentence	78% (ALT: 9%)	22,3	24	9,7
	88% (ALT: 13%)	27,8	24	14,5



**LOW SOCIAL
STATUS**

SENTENCE	% decisions	MEAN (month)	MEDIAN	SD
Prison sentence	81% (ALT: 26%)	25,9	24	15,9
	86% (ALT: 32%)	21,8	22	10,8

JUDGES v. PROSECUTORS v. LAW STUDENTS



HIGH SOCIAL STATUS



LOW SOCIAL STATUS

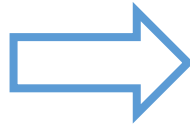
SENTENCE	% decisions	MEAN (month)	MEDIAN	SD
Prison sentence	78% (ALT: 9%)	22,3	24	9,7
	88% (ALT: 13%)	27,8	24	14,5
	98%	38,5	36	20,4

SENTENCE	% decisions	MEAN (month)	MEDIAN	SD
Prison sentence	81% (ALT: 26%)	25,9	24	15,9
	86% (ALT: 32%)	21,8	22	10,8
	95%	32,1	24	19,7



RESULTS

JUDGES:



No significant differences in sentences between high and low social status defendant.

H not confirmed.

PROSECUTORS:

LAW STUDENTS:



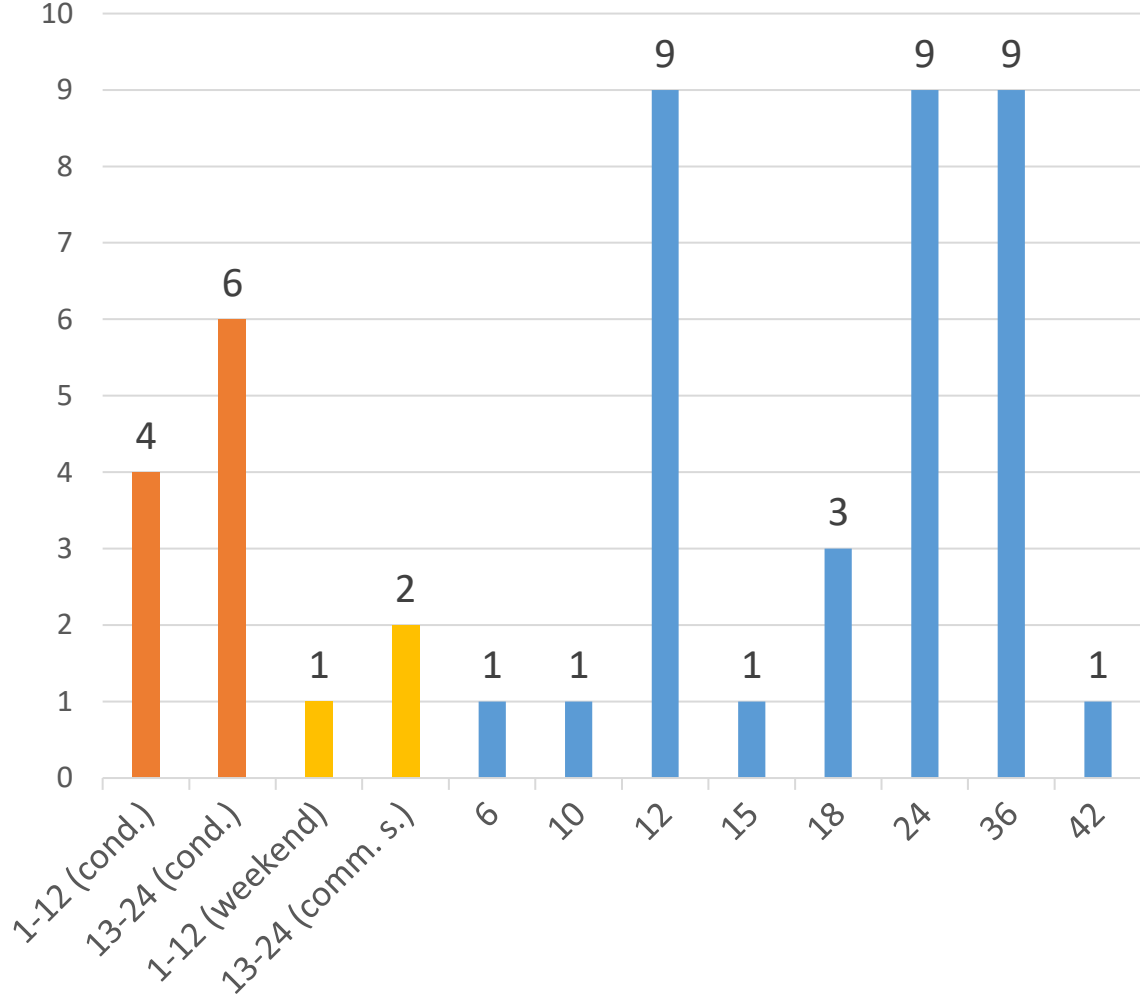
High social status defendant received considerably **longer prison sentence** compared to low social status defendant.

Contrary to H!

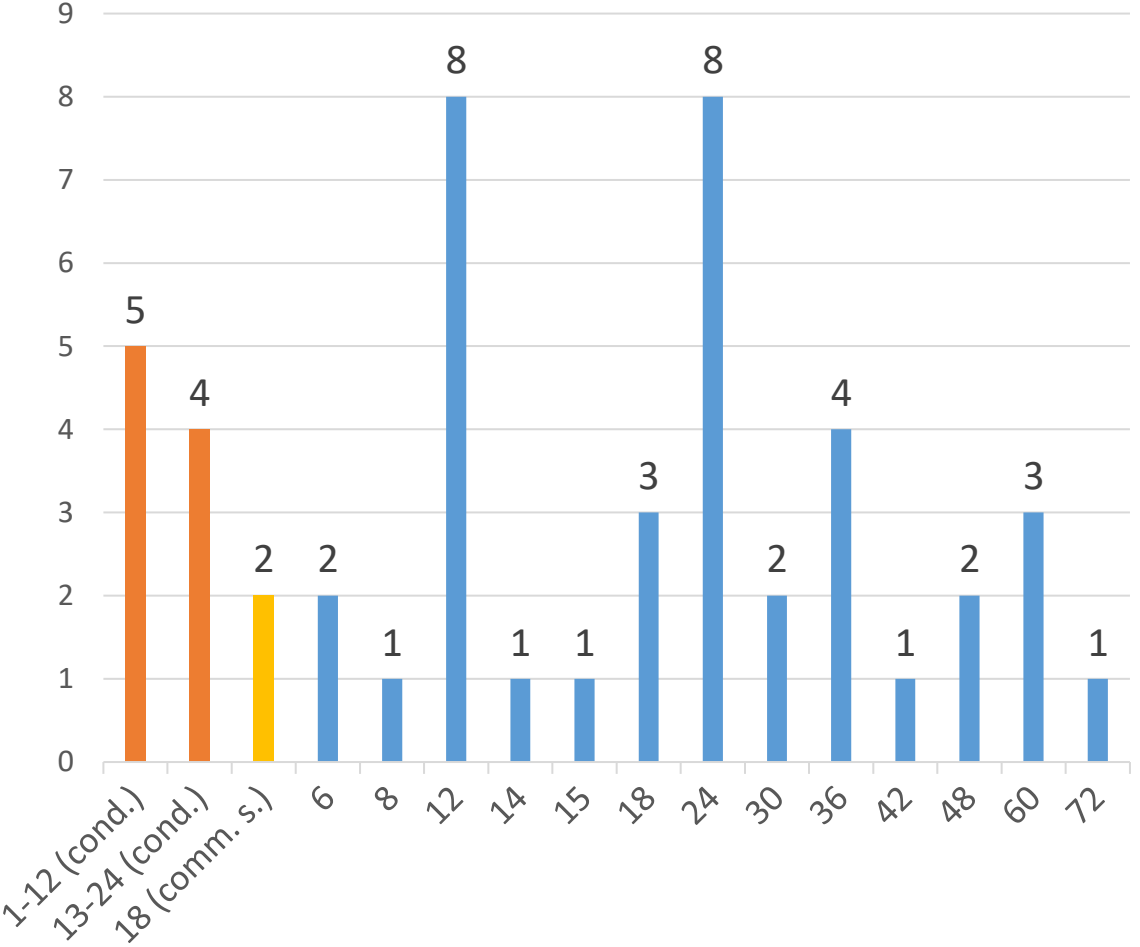
Large disparities in sentences within all groups of respondents.

Disparity in sanctions – noise

Judges: Group 1



Judges: Group 2



2. Defendant's gender

Variable: **defendant's gender**

Case concerning **grand larceny**



Main hypothesis



Male defendant



more punitive response

Female defendant



less punitive response



Defendant's gender RESULTS



JUDGES:

PROSECUTORS:

LAW STUDENTS:

No statistically relevant differences in sentences between male and female defendant.

H not confirmed

Large disparities in sentences within all groups of respondents.

3. Defendant's **attractiveness**

Variable: **defendant's attractiveness**

Case concerning **negligent medical treatment**



Main hypothesis



More attractive defendant



less punitive response

Less attractive defendant



more punitive response



RESULTS



JUDGES:
PROSECUTORS:



No statistically relevant differences in sentences between more and less attractive defendant.

H not confirmed.

LAW STUDENTS:



More attractive defendant received slightly **less punitive response** (difference more pronounced with male students).

H confirmed.

Large disparities in sentences within all groups of respondents.

4. Defendant's **ethnicity / religion**

Variable: **defendant's ethnicity/religion**

Case concerning **domestic violence**

Main hypothesis

GROUP 1:

- defendant ethnically **Slovenian**



less punitive response



GROUP 2:

- defendant of **Bosnian** ethnicity and **Muslim** religion



more punitive response



RESULTS

JUDGES:

PROSECUTORS:



No statistically relevant differences in sentences between ethnically Slovenian and non-Slovenian defendant.

H not confirmed.

LAW STUDENTS:



Non-Slovenian defendant received only slightly **shorter sentence** compared to the Slovenian one.

Contrary to H!

Large disparities in sentences within all groups of respondents.

General conclusions

Judges do not seem to be prone to any of the tested prejudice.

Prosecutors seem to treat low social status defendants more favourably compared to high social status defendants. No other influence of prejudice was confirmed.

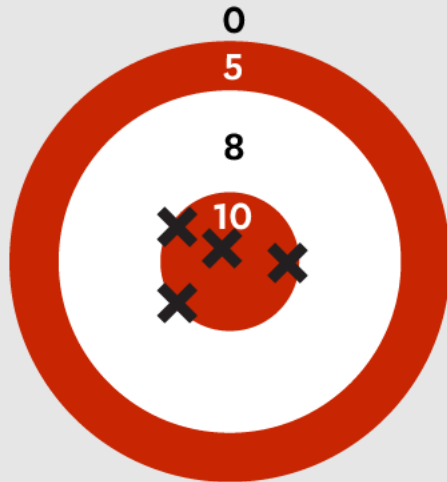
Law students seem to be more lenient to low social status defendants, more attractive defendants and ethnic minority defendants.

 „rooting for the underdog“?

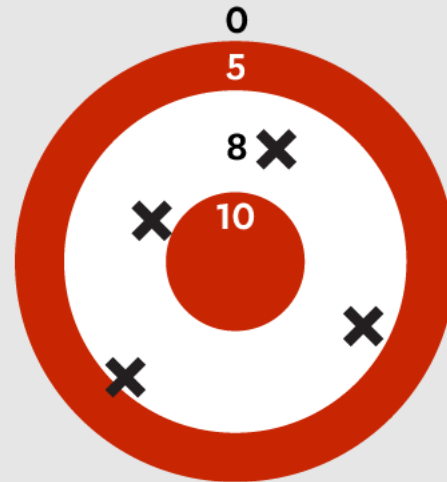
However, the influence of prejudice might be hidden behind the noise (large disparities in sentences in all groups and all types of respondents).

The problem of „noise“

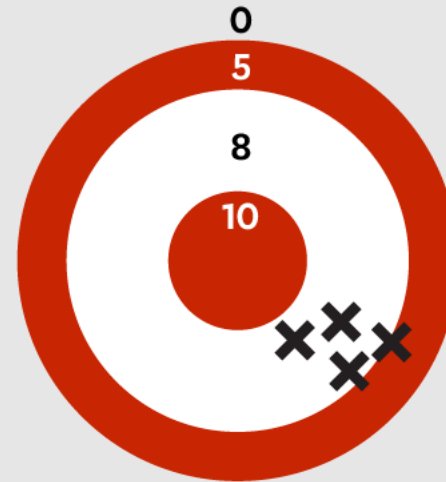
How Noise and Bias Affect Accuracy



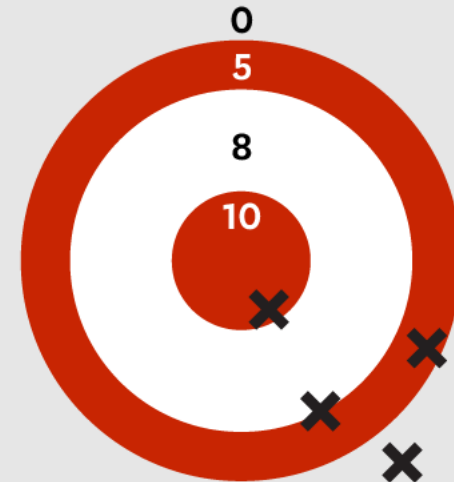
A. Accurate



B. Noisy



C. Biased



D. Noisy and biased

FROM "NOISE: HOW TO OVERCOME THE HIGH, HIDDEN COST OF INCONSISTENT DECISION MAKING,"
BY DANIEL KAHNEMAN ET AL., OCTOBER 2016

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