Three strikes and you're out in the west: A study of newspaper coverage of crime control in Western Australia

Lyn Hinds*

Introduction

In the United States, the stated targets of *three strikes and you're out, three time loser* and *three strikes for life* laws are habitual, repeat offenders convicted of serious, primarily violent offences (Skolnick 1995; Surette 1996; US Dept of Justice 1998). Three strikes and you're out laws typically mandate life terms of imprisonment for offenders convicted of a third serious crime.

Research indicating that a small number of habitual offenders are responsible for a disproportionately large percentage of offending focused attention on the desirability of incapacitating offenders identified as habitual re-offenders, or 'career criminals', and has provided the theoretical basis for three strike laws (Simon 1996). Three strike laws mandate that conviction for a third nominated offence entails a punishment, the severity of which is out of proportion to the seriousness of the actual offence; punishment targets the offender's past history, not the current offence of conviction. Three strike laws are part of a trend of the legislature taking a direct role in determining sentences by mandating punishments for select offences (Skolnick 1995).

Of the 24 US jurisdictions[1] enacting three strike laws between 1993 and 1996, all but one[2] already had existing statutes that imposed more severe sentences on repeat offenders (Clark et al. 1997). The impact of three strike laws in the majority of US states, therefore, has been minimal; in the majority of US states three strike laws make harsher sentencing of repeat offenders mandatory rather than discretionary (Reske 1996; Gatland 1998; US Dept of Justice 1998). As James Q Wilson observed in 1994: 'judges already send the most serious offenders with the longest records to prison' (quoted in Skolnick 1995:11).

In each of 15 US states, between zero and six people have been imprisoned under a three-strike law since 1993 (Tischler 1999). In contrast, in California more than 40,000 people have been sentenced under two[3] and three-strike laws (Tischler 1999). The impact of three

* Address for correspondence: Dr Lyn Hinds, Research School of Social Sciences, The Australian National University, Canberra ACT 0200. Email: <Lyn.Hinds@anu.edu.au>. Ph: 61–2–6125 5484. Fax: 61–2–6125 1507. The author wishes to acknowledge the support of the Australian Research Council, Grant no. LP0346987

1 Twenty-three states and federally.

2 The exception is Kansas.

3 In California, a 'second strike' doubles the term of imprisonment if the offender has a prior 'serious' or 'violent' felony conviction (Dickey & Hollenhorst 1998).

strikes in California has been disproportionately negative on African-Americans: while comprising only seven per cent of the population of California, African-Americans comprise 37% of two-strike convictions and 44% of three-strike convictions (California Dept of Corrections data as at July 31, 1998, cited in Dickey & Hollenhorst 1998).

In Australia during the 1990s, three strike laws were debated in a number of jurisdictions. While mandatory sentencing provisions existed in all jurisdictions prior to the 1990s for a number of offences, such as driving offences, three strike laws are a specific enhancement to states' existing mandatory sentencing frameworks. As a mandatory sentence, three strike laws confine within narrower limits judicial discretion to take into account the offenders' circumstances and the circumstances of the conviction offence (Morgan 1999).

This paper analyses newspaper reporting on three strikes in *The West Australian*, which is Western Australia's only daily state metropolitan newspaper. In Western Australia, a three strikes law targeting repeat residential property offenders was introduced just prior to a state election in 1996. While *The West Australian* did not manufacture the debate on three strikes, it responded to three strikes in a way that was consistent with themes already entrenched in its reporting of crime. The focus of this paper is the nature of *The West Australian's* reporting on the three strikes story and its implications for future crime control policy in Western Australia.

Media reporting on crime

According to the constructionist account, social problems are defined via an interactive process among individuals, groups and social institutions (Best 1990; Gomez 1997; Spector & Kitsuse 1987). Contrary to the competing objectivist position, according to the constructionist perspective, social problems have an assigned status, they are the sum of how they are subjectively defined, rather than an objective reality (Best 1990). As Surette (1996:183) states, 'social reality (is) a changing, socially created phenomenon, not ... fixed or universal but ... evolving and subjective'. The significance of subjective definitions of social reality lies in its outcomes: 'If men [sic] define situations as real, they are real in their consequences' (Thomas 1928 cited in Merton 1976:175).

A number of studies, including those on the rise of public concern regarding the drug problem (Becker 1963; Beckett 1994), drug-addicted mothers and their crack babies (Gomez 1994), child abuse (Best 1990) and crime generally (Beckett 1994, 1997), have concluded that political elites lead, not follow, public opinion. The term *political elites* refers to individuals and organisations that attempt to influence government activity/decision-making, and include politicians, party organisations, media, lobby and interest groups, professional associations and private businesses. As Beckett (1994:429) argues, in the elite constructionist model:

> ...public concern is conceptualised as fluid and variegated (more) than as fixed and monolithic. This fluidity ... combined with the 'ambiguity of events' and the unequal distribution of motivation, organisational capacity and resources, means that most public issues are brought into being by political elites.

As the primary source of information for the majority of the public, the media are primary claims-makers in the construction of people's understanding of the crime problem. The concept of the *manufacture of news* (Cohen & Young 1973) comprises the range of selection decisions made by newspaper editors and journalists regarding what, and how crime stories are reported. These selection decisions are argued to be an essential element

in increased punitiveness in western democracies (see Beckett 1997; Brake & Hale 1992; Hall et al. 1978; Hogg & Brown 1998; Scheingold 1984). Bottoms (1995) coined the term *populist punitiveness* to describe the rise of political responsiveness to popular demands to get tougher on offenders during the last two decades. The electoral exploitability of harsher punishment is a central element in populist punitiveness. Hogg (1999:264) states that:

> The rationale for such measures is less an instrumental one of reducing crime than it is the symbolic one of tapping and harnessing punitive public opinion behind a new program of draconian penal measures.

A number of studies have analysed the role of the media in creating moral panics about particular types of deviance or deviants: Hall et al's (1978) 'mugging crisis', Pearson's (1983) 'hooligans', Gusfield's (1986) 'symbolic crusade', Cohen's (1987) 'mods and rockers', Gomez's (1997) drug-addicted mothers and their crack babies. These studies attest to the power of the media to fuel public fears by transmitting crime stories of predatory offenders and innocent, randomly chosen victims (see Scheingold 1984; Sparks 1992; Surette 1996).

Surette (1996:185) argues that the introduction of three strikes laws in the United States is the most recent example of a long-term *symbolic campaign* by the media focused on predatory crimes and criminals, which is linked to punitive crime policies. According to Surette (1996:194) the kidnap and murder of 12-year old Polly Klaas, by a repeat violent offender, was the *reference event* for the media's three strikes symbolic campaign in the United States. A reference event is the foundational crime that is used to show that the proposed crime policy is needed, that the underlying model of the predator criminal is correct, and that crimes are increasing (Surette 1996).

Skolnick (1995:5) describes three strikes as 'the most potent conjoining of crime and politics in the history of the (United States)'. Three strikes combines the public's fear for personal safety, perceptions of irredeemable criminals, the appeal of individualistic explanations of deviance, and harsh punishment as a simple answer to the crime problem, packaged in a 90s media-savvy, catchy chant (Benekos & Merlo 1995; Skolnick 1995; Tyler & Boeckmann 1997).

Three Strikes in Western Australia

Three strikes laws were introduced in two Australian jurisdictions during the mid-1990s: Western Australia and the Northern Territory. In both Western Australia and the Northern Territory the target of the three strike laws were repeat property offenders, not repeat violent offenders.

The Northern Territory's three strike law was introduced in 1997 and repealed in 2001.[4] In Western Australia, *The Criminal Code Amendment Act (No. 2)* 1996[5] enacted three strikes; the law only applies to home burglaries. Property offences such as shoplifting,

---

4 Three strikes was repealed in the Northern Territory in 2001 following a change of government. Northern Territory's three strike law (i) targeted 15 and 16 year old juveniles (the age of criminal responsibility in the Northern Territory ranges between 10 and 16 years) (ii) a wide range of property offences counted as a 'strike', including thefts from vehicles, homes and business premises, and motor vehicle offences (Bayes 1999); (iii) a 14 day minimum term of detention was imposed for first time adult offenders (ie., 17 years and over), with 90 days imprisonment for a second conviction, and 12 months for a third (Zdenkowski 1999). Juveniles (15 and 16 year olds) are sentenced to a minimum 28-day period of detention for a second conviction: penalties escalate for subsequent offences (Zdenkowski 1999).

5 The law was proclaimed in November, 1996.

purse-snatching, theft from cars and business premises are not 'strikeable' offences (Bayes 1999). The law applies to a repeat offender who for a third, or more time, has been convicted of a home burglary: a minimum term of 12 months in custody must be served (see Morgan 2000 for limited exceptions).

While WA's three strike law applies to both adults and juveniles, Bayes (1999) and Morgan (2000) argue that its impact on juveniles could be harsher, owing to eligibility for parole criteria and the law's application to children as young as 10 years of age. Bayes (1999:287) states that children as young as 11 years have been sentenced to a 12-month sentence under three strikes. Three strikes is criticised on a number of grounds:

(i) increased court costs and delays in case processing, and increased prison numbers (Zdenkowski 1999);

(ii) ineffectiveness given the lack of effect on crime rates (Morgan 1999);

(iii) injustice: the inability to take into account individual and situational factors in sentencing and the shift from judicial discretion to increased discretion by prosecutors' decision-making pre-trial that is both more private and less accountable (Morgan 2000; Zdenkowski 1999);

(iv) the discriminatory impact on minorities: while Aboriginal children represent one-third of offenders charged in the Children's Court, they represent three-quarters of children (74%) charged with three strike offences (Morgan 2000); and

(v) the negative impact on juveniles: three strike laws arguably contravene provisions of the United Nations Convention on the Rights of the Child, to which Australia is a signatory[6] (Zdenkowski 1999).

At the time reporting on three strikes commenced in *The West Australian* in the 1990s, the themes of out-of-control youth, particularly Aboriginal youth, were already entrenched in media crime stories (see Goodall 1993; Enders 1995; Trigger & Waddell 1990 cited in Sercombe 1995). For example, from a study of a two-year sample of articles published in *The West Australian* newspaper from 1990 to 1992, Sercombe (1995) concluded that the criminal face in Western Australia was young and Aboriginal. Sercombe (1995) does not link *The West Australian's* construction of Aboriginality within a criminal frame of reference to overt racial bias, but to a complex mix of institutional and structural factors. While Goodall (1993) does not dismiss the possibility that media decisions that consistently portray Aborigines as a threatening criminal 'other' are deliberate, like Sercombe she argues that it is more likely that such imagery is unconsciously presented because of its fit with deeply-held, majority white Australian fears of Indigenous criminality.

While the stated aim of three strikes in Western Australia is to deter offenders from stealing from people's homes (Fitzpatrick 1997b:4) three strikes has been argued to be about winning votes (Morgan 1999). 'Three strikes' is the archetypal law and order criminal justice policy of the 1990s. It exemplifies the appeal of 'simple' law and order constructions of the nature of the crime problem and how to control it. Consistent with populist punitiveness, three strikes mandates a harsher punishment regime for repeat offenders in Western Australia. Consistent with US experience, the impact of three strikes in Western

6 The conservative Commonwealth Government refused to intervene in either Western Australia or the Northern Territory to curtail the three strike laws, maintaining that sentencing is a matter for state and territory governments (News Release, Commonwealth Attorney-General, Feb 14, 2000).

Australia has been disproportionately harsher on minority groups, specifically Indigenous people. Unlike the US, however, the target of three strikes in Western Australia is repeat property offenders, not violent offenders. This paper analyses newspaper reporting on three strikes to account for the political response to public anxiety attached to residential property theft in Western Australia.

Methodology and Data

Content analysis was used in this study to explore newspaper reporting on three strikes in Western Australia. Content analysis 'uses a set of procedures to make inferences from text' (Weber 1990:9). Inferences may be drawn about a range of textual elements: 'the sender/s of the message, the message itself, or the audience of the message' (Weber 1990:9).

All items analysed in this study were printed in *The West Australian,* which is the only daily metropolitan newspaper published in Western Australia. While it is acknowledged that in contemporary Australian society the majority of the public obtain their news from television and not newspapers, coverage of crime stories in newspapers reflects television coverage (Ericson, Baranek & Chan 1991).

All items in this study were identified via electronic searches. Search terms included 'three strikes and you're out', 'three strikes and you're in', and 'three strikes'. A total of 45 items on three strikes published in *The West Australian* between August 7th, 1996 and January 29th, 1999, are analysed. This time period encompasses the introduction of the three strikes law and coverage of recurring themes related to three strikes during the next two and a half years. The first item in the study, published in *The West Australian* on August 7th, 1996, reports concerns that the government may introduce a three-strike law. Five items on three strikes published in *The West Australian* prior to this are not included in this study because all five items reported events from overseas or another Australian state.[7]

This study commenced with an initial count of the appearance of words/terms in newspaper items across a number of categories, including word length, page of publication, item type (ie., news, feature, editorial or citizen opinion item), details of the sources cited and the location of items, who was targeted, and the rationales for views against and in support of three strikes.

In brief, in the 45 items published in *The West Australian* on three strikes that are analysed in this study, the targets were property crimes (in 32 items), juveniles (in 27 items) and Aboriginality (in 13 items). Consistent with the literature, the most frequently cited sources were criminal justice agents (ie., police, courts, corrections) and other government officials: 46% of all sources (n=36 of 78). Of these, 28 were from the judiciary, one each from the police and corrections, and six from other government agencies. Of the 28 judicial sources, 25 were a single judge (see 'a rogue judge' below). Politicians were cited as sources in 28% (n=22) of items on three strikes published in *The West Australian.*

A total of 124 rationales were published in support or against three strikes in the 45 items analysed. The number of rationales cited per item reveals an average of 1.4 rationales per published item. The views cited most often in favour (+) and against (-) three strikes were (-) too harsh/against human rights of child [10%]; (-) imprisonment is ineffective/won't deter crime [9%]; and (+) the need to protect the community [9%].

---

7 Two items reported events from the United States: May 16th, 1994 and March 6th, 1996. Three items reported events in New South Wales: March 10th and 23rd and April 1st, 1995.

In the remainder of this paper, the nature of the construction of three strikes by *The West Australian* is analysed using five topics: 'the reference event', 'sustaining the story', 'a rogue judge', 'the politics of three strikes', and 'whose voices?'

The reference event

As stated, the murder of Polly Klaas by a repeat violent offender was 'the reference event' that assured the passage of California's three strike law (Surette 1996:194). There is no immediate reference event for the introduction of three strikes in Western Australia. Five items on three strikes were published in *The West Australian* in the two years prior to the introduction of the three strike law: all five reported events from outside Western Australia. While these five out-of-state items published over a 22-month period (from May 16, 1994 to March 6, 1996) familiarised West Australians with the term 'three strikes', they associated three strikes with serious crimes, including robbery, rape, murder, armed robbery and drug trafficking.

The Attorney General justified the narrow application of three strikes to residential property offenders in a speech to Parliament:

> The Government shares the community's concern about the prevalence of *home invasion offences* and acknowledges the devastating effect which such offences can have on the lives of victims. Home burglary is a predatory crime which touches the lives of many people ... (it) leaves victims with the sense that the sanctity of their homes has been violated ... people in Western Australia ... are fearful of being a victim of such (an) offence.
>
> The purpose of this Bill is to: Reflect the gravity of *home invasion offences* by creating a new offence of home burglary, distinct from burglary in any place, with a more severe penalty ... (emphasis added) (Extract published in *The West Australian* on February 12, 1997 p 4).

Thus, a residential property offence, where two persons break into a residence to steal, or one person breaks into a residence not knowing the occupier is inside, was re-packaged by the government as the more serious offence of *home invasion*. In linking residential property offences to home invasion the government attempted to shift the target of three strikes to violent crime: home invasion is associated with images of the targeting of at-home residents and the use of violence designed to terrorise. This attempt by the government to re-package three strikes as a response to violent crime links it to an earlier law in which the dynamics of race and age are very prominent.

Western Australia's *Crime (Serious and Repeat Offenders) Sentencing Act* 1992[8] was a political response to a moral panic over high-speed car chases (Auty & Toussaint 1992; White 1992). The salient, widely reported features of these car chases were three-fold:

(i) the cars were stolen;[9]

(ii) the offenders were juvenile, predominantly Aboriginal; and

(iii) road fatalities occurred in metropolitan areas during a number of chases: in particular, the deaths of a young, pregnant women and her child on Christmas eve in 1991, intensified already strong community demands for punitive responses to juvenile offending (White 1992).

---

8 The Act commenced March 9, 1992.

9 *The Criminal Law Amendment Act* 1991 increased penalties for 'reckless driving' and 'dangerous driving' when committed in a stolen vehicle (White 1992).

The Act provided for mandatory incarceration for a minimum period of 18 months following conviction of a violent offence by a repeat offender (after expiration of the 18 month minimum, the offender could be detained indefinitely pending release by the Supreme Court). A repeat offender was someone with three or more convictions for violent offences, or six convictions for prescribed, non-violent offences (White 1992).

The Acts were widely criticised. In a state of moral panic over car crash deaths and serious injuries, the Act was argued to have been designed to impact on a minimal number of offenders but appeal to a frustrated and angry public (Broadhurst & Loh 1993). This conclusion is borne out by two outcomes noted by Morgan (1995:161):

> (i) a maximum of 12 persons were sentenced under the Act: two juveniles (one was Aboriginal), and eight adults, all of whom were older Aboriginal men from the non-metropolitan area; and
>
> (ii) car theft has not decreased since 1992; a decrease in road fatalities is attributed to other factors.

Reporting on three strikes in *The West Australian* is linked to the previous moral panic centered on the *Repeat Offenders Act* 1992 and images of violence by juveniles, particularly Aboriginal youth. This link is evident in who was targeted in reporting on three strikes: property crimes (in 32 items), juveniles (in 27 items) and Aboriginality (in 13 items). The link between three strikes and the earlier *Repeat Offenders Act* is glimpsed in an article published in *The West Australian* on January 29, 1997 (p 9): the item described how a '14-year-old boy with more than 50 convictions for burglary' faced 'being the first juvenile to be sentenced under "three strikes and you're in" laws'. Details of his current offences were detailed in the item:

> ... the boy and a friend broke into a house in Murdoch in December ... About an hour later, the pair smashed a window of another house in Murdoch ... Less than a week later, the pair broke into a Winthrop house ... They stole property and cash worth $2394 and keys to a car parked outside. The pair loaded their cache into the car and drove off. They were spotted by a police patrol but refused to pull over. They took off but were caught after the car went out of control and smashed into a service station.

The deaths of a young, pregnant women and her child on Christmas eve in 1991, intensified already strong community demands for a more punitive response to juvenile Aboriginal offenders in Western Australia, and led to the introduction of the *Repeat Offenders Act* (1992). This Act is directly linked to the three strikes law via images of violent, particularly Aboriginal juveniles: residential property offences are linked to violent death from high speed police pursuits via the re-definition of theft from residential property as a *home invasion*.

Sustaining the story

The West Australian sustained the three strikes narrative over many years using two primary devices. First, in January 29, 1997, a 'loophole' subplot emerged which was sustained, in 17 of 36 items, over the next two years, until the last item in the study on January 29, 1999 (refer 'A rogue judge' next). Second, a number of items evidenced 'blurring' (Ericson, Baranek & Chan 1991), where minor, single references to three strikes were included in news items on other stories.

Blurring was evident in five items published during the time period October 30th, 1996 to July 4th, 1997: all five were news items. For example an item published on October 30, 1996 (p 1) was a news item on escapes from prison in Western Australia. Three strikes was

mentioned once in the last paragraph: 'If proposed changes to the State's sentencing laws such as "three strikes and you're in" provisions, were enacted quickly, West Australia would need a new jail in the next two years'. Another item published on July 4, 1997 (p 8), was a news item 'on the eve of a national summit' on progress on the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Three strikes was mentioned once at the end of the second last paragraph: 'He (Senator Herron) could not say if the summit would result in changes to sentencing laws, such as West Australia's "three strikes and you're in" policy'.

The West Australian ensured three strikes remained prominent in reporting on crime and its control in Western Australia by using devices that produced 'noise' about three strikes in short, numerous articles over a number of years.

A rogue judge

The single editorial in this study, which was published in *The West Australian* on February 12, 1997 (p 14), did not focus on three strikes: its focus was judicial discretion. Under the heading, 'Judge walks a dangerous path', the editorial described how the President of the Children's Court, Judge Fenbury, 'used a loophole' in the three strikes law 'to avoid sentencing (a) boy to 12 months detention'. The judge was accused of 'thwart(ing) the will of the State Parliament — and therefore the people', and by his actions 'risked lowering the standing of the judiciary in the eyes of the public which is an outcome that judges can ill-afford'.

Judge Fenbury was established as a principal claimsmaker early in *The West Australian* reporting on three strikes. Analysis of the types of sources cited in items revealed the judge was the single most oft-cited source (n=25) published in *The West Australian*. The context within which Judge Fenbury is reported, in all items except one, is in relation to a *loophole* used to avoid sentencing a number of offenders to detention.

The *loophole* narrative was used in four items published before the single editorial on February 12, 1997. It is first used in a news item on Page 1 of *The West Australian* on January 29, 1997: 'New youth crime laws in jeopardy'. Two days after the editorial on February 12th, in a 'Letter to the Editor', the Vice-President of The Law Society of West Australia stated, 'There is no loophole' in the legislation (O'Brien 1997:13). Despite this factual correction of an error in the paper's editorial, *loophole* was used in a further 11 items after February 14: it was used in 17 items in the two years between January 29, 1997 and in the last item in this study published in January 29, 1999. *Loophole* continued to be used after a news item announced that Judge Fenbury had 'stepped down from court duties' (Meertens 1997:6). Some examples drawn from the 17 items over two years:

> (i) March 20, 1997 (page 5): 'The State Government's three-strikes legislation imposes a mandatory one-year jail term for third-time home burglars but a loophole allows this to be reduced to a community service order';
>
> (ii) December 9, 1997 (page 3): 'Judge uses detention loophole again'. 'Perth Children's Court judge Allan Fenbury has again used a loophole ...';
>
> (iii) December 12, 1997 (page 3): 'Judge frees burglar, 12'. 'Judge Fenbury used a loophole to avoid the mandatory 12-month detention for third-time home burglars specified under the "three strikes and you're in" law'.

The reporting on a *loophole* illustrates the *wrapping* of items to sustain a narrative (Ericson, Baranek & Chan 1991). The older, firmly established frame of reference of judicial discretion as a cause of lenient sentences, became a vehicle for the dramatisation of the three strikes law. The second item published that used the word *loophole*, which was published on Page 1 under the banner: 'Foss vows to act on jail law gaps', stated that:

> The State Government will force judges to toe the line on its tough 'three strikes and you're in' laws ... Mr Foss said Parliament had made it clear that all third-time home burglars — adult and juvenile — should be sentenced to a minimum of 12 months jail. The Government would introduce legislation until the courts accepted that (Fitzpatrick 1997a:1).

The editorial published the next day provided the framework for the narrative that was sustained over the next two years: a renegade judge using a 'loophole' to 'get around' the law and 'the will of the State Parliament, and therefore the people' (February 12, 1997 p 14).

Wrapping is also evident in other items, not directly connected with the judge, but which sustained the *loophole* narrative. For example:

> (i) *loophole* continued to be used after the item announcing that Judge Fenbury was stepping down was published on December 13, 1997. On May 15, 1998, an item reported the mandatory detention for 12 months of a 13 year-old boy: it was the same boy Judge Fenbury had 'used a loophole to avoid jailing' the previous December (Caccetta 1998:3).
>
> (ii) in an item published in April 1997 under the headline 'Longer sentences as Victoria gets tough', the Victorian Attorney-General was quoted as having 'not considered three strikes and you're out laws' although 'I can understand jurisdictions who feel that courts are not taking notice of what the legislature is saying' (*West Australian* 1997). The quote supports *The West Australian's* editorial stance on limiting judicial discretion: the central theme in the *loophole* story.

The political appeal of attacking judicial discretion is consistent with public opinion poll data from the United States, Australia, Britain and other countries that consistently shows that the public believes punishments are too lenient. According to Roberts and Stalans (2000:207) 'the question concerning sentencing severity generates a more consensual response than any other issue in criminal justice, including capital punishment'. In the United States since the early 1980s over 70% of respondents have consistently answered 'not harshly enough' to the question: 'Do you think the courts deal too harshly or not harshly enough with criminals?' (US Dept of Justice 1983, Table 2.40; US Dept of Justice 1999, Table 2.50). In Australia, Gallup Polls in 1963, 1975 and 1987 reported 72%, 67% and 87% respectively of respondents said court-imposed penalties for violent crimes were too lenient (McNair Anderson 1963, 1975, 1987).

The story of a loophole is a contrived device designed to ensure not only that three strikes remained a prominent story over time, but also that the newer story on three strikes was connected to an already popular theme of lenient sentencing by the judiciary. The theme of too-lenient judges has proved to be not only publicly appealing, it is of course a prominent justification for the increased political appeal of mandatory sentencing regimes that are embodied in three strikes laws.

The politics of three strikes

Three strikes has been criticised in both the United States and Australia as a highly politicised weapon in a punitive law and order approach to crime control aimed at winning elections (see Surette 1996; Morgan 1999). As Morgan (1999:279) notes, however, when

citing examples of the defeat of the Labor Government in West Australia in 1992 and the Conservative government in Britain in 1997, punitive law and order policies do not guarantee electoral success. While punitive law and order policies may not guarantee electoral victory, they can, however, be a cause of electoral defeat. For example, the crimes committed by Willie Horton, a convicted murderer, while on release from prison on a weekend pass are widely considered to have been critical to the defeat of Dukakis by Bush in the 1988 presidential campaign in the United States (Anderson 1995).

The electoral exploitability of harsh punishment, and three strikes specifically, was a prominent theme in the first 'within state' item published in *The West Australian*, which reported West Australian lawyers feared 'a law and order bidding war in the lead-up to next year's State election' (Lang 1996:10). While the item stated 'both leaders rejected the notion that the parties would try to outbid each other with tougher penalties', an item published the following year outlined what happened:

> Labor was the first to outline its crime policy in the lead-up to the 1996 State election. It included a minimum sentence of six months for a third offense and tougher penalties for home invasions. Four months later, the Court government introduced Criminal Code amendments in the Legislative Council that imposed a year's jail for third-time home burglars. The three strikes laws won support from both major parties and became law the day Premier Richard Court called the State election (Fitzpatrick 1997c:14).

Although three strikes was termed a political ploy in items published in *The West Australian* reporting its introduction, the paper did not mention this theme after three strikes became law. The Premier of Western Australia announced the next state election on the day three strikes became law (Fitzpatrick 1997c:14). The Labor opposition did not oppose the introduction of three strikes in items published in *The West Australian*; it was effectively neutered from criticising the government's law and order credentials because of its support of the three strikes bill. *The West Australian* did not mention the three strikes law during the 1996/7 state election campaign.

What accounts for this? One explanation is that it evidences *The West Australian* positioning itself as an institution of social conformity: once enacted, the three strikes law ceased to be a subject of political contestation in *The West Australian*. Ericson, Baranek and Chan (1991:343) argue that the media tell stories of social order: the creation of law provides the opportunity to re-state preferred social values in the maintenance of social order. State preparedness to punish punitively appears fundamentally linked to the legitimacy of the state and enforcing social order. This may be particularly significant in an era characterised by a crisis in state legitimacy as an explanation for the rise of populist punitiveness. Lacking legitimacy to protect the community via ownership of the crime problem, the state demonstrates its willingness to punish certain offenders more punitively (Pratt 1995; Garland 1996). In the next section, a more plausible account is presented.

Whose voices?

The *West Australian* conformed to tradition and allocated space for public commentary on three strikes in the 'Letters to the Editor' section. Individuals as news sources, compared to institutional sources, however, have a minor voice on three strikes in *The West Australian*. Of the three letters published in *The West Australian*, two were from representatives of legal associations: the Vice-President of the Law Society of West Australia and the President of the Criminal Law Association (Feb 14, 1997, p13). Thus, in a forum traditionally reserved for the people's voice, *The West Australian* published in effect only one citizen opinion item.

Each of the three items published in 'Letters to the Editor' focussed on the issue of judicial discretion in sentencing and not three strikes specifically. Both letters from the legal association representatives criticised the paper's February 12 editorial as uninformed and unfairly critical of Judge Fenbury's actions (O'Brien 1997:13; Wager 1997:13). The author of the third letter conformed to the view of the paper's editorial: 'it appears ... at times that judges sometimes become confused about their position in the community' (Purdue 1997:13).

Individuals as sources are often used by the media in a second primary way: the voices of victims, offenders and their relatives provide a personal account of the impact of crime (Ericson, Baranek & Chan 1991). The clearest voice of a crime victim in reporting on three strikes was that of a 78-year old woman: parts of her victim impact statement, which had been read in court, were printed in an item titled 'Three-strike law blamed' (Reed 1998:3). The irony is that the offender had snatched the victim's handbag on a street: as three strikes only applies to residential burglary, the offender was not sentenced under three strikes. The three strike law was blamed for displacing crime from homes into streets.

Given the appeal of get tougher law and order approaches to crime, the relative lack of citizen voices is initially surprising. Also curious is that the most prominent victim's voice is linked to criticism of three strikes. Both these features, and the non-reporting on three strikes during the WA state election campaign (see discussion in the previous section), are consistent with *The West Australian's* pursuit of strategies to enhance its own authority. Ericson (1991) argues that newspapers function to create their own authority in the process of interacting and negotiating amongst diverse and competing claims-makers. *The West Australian* interacts with a range of competing claims-makers, such as criminal justice agencies, including the police, courts and corrections, other government organisations and the community, to construct a preferred version of crime and its control (Cohen & Young 1983; Ericson 1991). As the primary written source of individuals' daily state-wide knowledge of crime and its control, *The West Australian* occupies a pivotal and privileged position among claims-makers in Western Australia. Reporting on three strikes by *The West Australian* to enhance its own authority includes both active and passive strategies.

One strategy used to promote the prestige of journalists and in turn, media outlets, as knowledgeable and authoritative is the naming of particular journalists in items (Ericson 1991). Most items published on three strikes in *The West Australian* were attributed to a journalist by name; often a photo of the reporter was also printed.

A more significant strategy in *The West Australian's* reporting on three strikes is its criticism of government policy and activity as inadequate to control crime, which is evident in reporting on the bag-snatch story (above), where three strikes was criticised for its narrow application to home burglaries only. In this item, *The West Australian* is an active claims-maker in criticising government policy. This contrasts with reporting during the state election campaign when *The West Australian* did not mention three strikes. In this case, where there was a consensus on three strikes between the government and opposition, *The West Australian* accommodated three strikes using devices such as wrapping, while continuing the story by linking it to the long-running dramatisation of judges' lenient sentencing of offenders.

The West Australian occupies a prominent role as a claims-maker in the construction of the problem of crime and its control in Western Australia. Reporting on three strikes in *The West Australian* illustrates the selective use of both active and passive strategies to enhance its own authority (see Ericson 1991). The examples discussed in this study suggest *The West Australian* selectively positions itself to enhance its own authority on the contemporary

populist get tougher law and order agenda. *The West Australian's* position as a claims-maker is enhanced because it is the only daily, state-wide newspaper. This also potentially enhances the negative impact of the newspaper's adoption of populist punitiveness as a guide to decision-making on reporting on crime control in Western Australia.

Conclusion

Three strike laws are the archetypal example of populist *get tougher* crime control legislation. Consistent with populist punitiveness, *The West Australian* constructed a story of three strikes around the politicised appeal of harsher punishment as a solution to the crime problem. The crime themes of sudden violent injury at the hands of young Aboriginal Australians and judges' misuse of their discretionary powers, which had been adopted earlier by *The West Australian,* form a core around which the story of three strikes was constructed. The race-specific nature of the construction of the story of three strikes in *The West Australian* perpetuates imagery of threat from criminals who are young and Aboriginal. Reporting focussed on a *loophole* exploits popular perceptions of lenient judicial sentencing. *The West Australian's* enhanced position as a claims-maker ensures its use of strategies designed to enhance its own authority as a paper of record will influence crime control policy in Western Australia. This study on three strikes suggests *The West Australian* will continue to select the entrenched themes of racial violence and judicial leniency in actively pursuing a central place as a claims-maker on the problem of crime and what to do about it.

References

Anderson, DC (1995) *Crime and the Politics of Hysteria: How the Willie Horton Story Changed American Justice*, Times Books, New York.

Auty, K & Toussaint, S (1992) 'Juvenile Crime: In Defence of Human Rights', *Alternative Law Journal*, vol 17, no 1, pp 44–45.

Bayes, H (1999) 'Punishment is blind: Mandatory sentencing of Children in Western Australia and the Northern Territory', *University of New South Wales Law Journal*, vol 22, no 1, pp 286–294.

Becker, HS (1963) *Outsiders: Studies in the Sociology of Deviance*, Free Press, New York.

Beckett, K (1994) 'Setting the Public Agenda: "Street Crime" and Drug Use in American Politics', *Social Problems*, vol 41, no 3, pp 425–447.

Beckett, K (1997) *Making Crime Pay: Law and Order in Contemporary American Politics*, Oxford University Press, New York.

Benekos, PJ & Merlo, AV (1995) 'Three Strikes and You're Out!: The Political Sentencing Game', *Federal Probation*, vol 59, no 1, pp 3–9.

Best, J (1990) *Threatened Children: Rhetoric and Concern about Child-Victims*, Aldine de Gruyter, New York.

Bottoms, AE (1995) 'The philosophy and politics of punishment and sentencing' in Clarkson, C & Morgan, R (eds) *The Politics of Sentencing Reform*, Clarendon Press, Oxford.

Brake, M & Hale, C (1992) *Public Order and Private Lives: The Politics of Law and Order*, Routledge, London.

Broadhurst, R & Loh, N (1993) 'Selective Incapacitation and the Phantom of Deterrence' In Harding, RW (ed) *Repeat Juvenile Offenders: The Failure of Selective Incapacitation in Western Australia*, Crime Research Centre: Report No 10, University of Western Australia, Nedlands.

Caccetta, W (1998) 'Luck Goes as Three-Strikes Boy Gets Jail', *The West Australian*, 15 May, p 3.

Clark, J, Austin, J & Henry, DA (1997) *'Three Strikes and You're Out': A Review of State Legislation*, US Dept of Justice, National Institute of Justice.

Cohen, S (1987) *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, Basil Blackwell, Oxford.

Cohen, S & Young, J (eds) (1973) *The Manufacture of News: Social Problems, Deviance and the Mass Media*, Constable, London.

Dickey, W & Hollenhorst, PS (1998) 'Three Strikes Law: Massive Impact in California and Georgia, Little Elsewhere', *Overcrowded Times*, vol 9, no 6, pp 2–8.

Enders, M (1995) 'Putting a price on life: a propaganda approach to media coverage of Aboriginal deaths in custody', *Australian Journalism Review*, vol 17, no 1, pp 1–16.

Ericson, RV (1991) 'Mass Media, Crime, Law and Justice: An Institutional Approach', *British Journal of Criminology*, vol 31, no 3, pp 219–249.

Ericson, RV, Baranek, PM & Chan, JBL (1991) *Representing Order: Crime, Law and Justice in the Media*, Open University Press, Milton Keynes.

Fitzpatrick, C (1997a) 'Foss Vows to Act on Jail Law Gaps', *The West Australian*, 11 February, p 1.

Fitzpatrick, C (1997b) 'Thefts defy jail law', *The West Australian*, 12 February, p 4.

Fitzpatrick, C (1997c) 'Three Strikes — You Pay', *The West Australian*, 15 February, p 14.

Gans, HJ (1979) *Deciding What's News: A Study of CBS Evening News, NBC Nightly News, Newsweek and Time*, Constable, London.

Garland, D (1996) 'The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society', *British Journal of Criminology*, vol 36, no 4, pp 445–471.

Gatland, L (1998) 'Three Strikes a Soft Pitch: Most states will send few to prison under new laws', *ABA Journal*, February, p 29.

Goodall, H (1993) 'Constructing a Riot: Television News & Aborigines', *Media Information Australia*, vol 68, May, pp 70–77.

Gomez, LE (1997) *Misconceiving Mothers: Legislators, Prosecutors and the Politics of Prenatal Drug Exposure*, Temple University Press, Philadelphia.

Gusfield, JR (1986) *Symbolic Crusade: Status Politics and the American Temperance Movement*, 2nd Ed, University of Illinois Press, Urbana.

Hall, S, Critcher, C, Jefferson, T, Clarke, J & Roberts, B (1978) *Policing the Crisis: Mugging, The State and Law and Order*, Macmillan, London.

Hogg, R (1999) 'Mandatory Sentencing Laws and the Symbolic Politics of Law and Order', *University of New South Wales Law Journal*, vol 22, no 1, pp 262–266.

Hogg, R & Brown, D (1998) *Rethinking Law and Order*, Pluto Press, Annandale, NSW.

Lang, M (1996) 'Sentence Bidding War Feared', *The West Australian*, 7 August, p 10.

McNair Anderson (various years) Australian Gallup Polls.

Meertens, G (1997) 'Exhausted judge takes court break', *The West Australian*, 13 December, p 6.

Merton, RK (1976) *Sociological Ambivalence and Other Essays*, Free Press, New York.

Morgan, N (1995) 'Postscript: The Young Offenders Act 1994 and Repeat Serious Offenders' in Harding, RW (ed) *Repeat Juvenile Offenders: The Failure of Selective Incapacitation in Western Australia*, Crime Research Centre, Report No 10, University of Western Australia, Nedlands.

Morgan, N (1999) 'Capturing Crims or Capturing Votes? The Aims and Effects of Mandatories', *University of New South Wales Law Journal*, vol 22, no 1, pp 286–294.

Morgan, N (2000) 'Mandatory Sentences in Australia: where Have We Been and Where Are We Going?', *Criminal Law Journal*, vol 24, no 3, pp 164–183.

O'Brien, K (1997) 'Media's role must be seen to be fair and accurate', *The West Australian*, 14 February, p 13.

Pearson, G (1983) *Hooligan: A History of Respectable Fears*, Macmillan Press, London.

Pratt, J (1995) 'Dangerousness, Risk and Technologies of Power', *Australian and New Zealand Journal of Criminology*, vol 29, no 1, pp 3–30.

Purdue, B R (1997) 'Positions confused', *The West Australian*, 14 February, p 13.

Reed, D (1998) 'Three strikes Law Blamed', *The West Australian*, 4 August, p 3.

Reske, HJ (1996) 'Hardly Hardball', *ABA Journal*, December, p 26.

Roberts, JV & Stalans, LJ (2000) 'Public Opinion, Crime and Criminal Justice' in Tonry, M (ed) *Crime and Justice: A Review of Research*, vol 16, pp 99–180, University of Chicago Press, Chicago.

Scheingold, SA (1984) *The Politics of Law and Order: Street Crime and Public Policy*, Longman, New York.

Sercombe, H (1995) 'The Face of the Criminal is Aboriginal: Representations of Aboriginal Young People in the West Australian Newspaper' in Bessant, J, Carrington, K & Cook, S

(eds) *Cultures of Crime and Violence: The Australian Experience*, La Trobe University Press, Melbourne.

Skolnick, J (1995) 'What Not to do about Crime', *Criminology*, vol 33, no 1, pp 1–14.

Sparks, R (1992) *Television and the Drama of Crime: Moral Tales and the Place of Crime in Public Life*, Open University Press, Buckingham.

Spector, M & Kitsuse, JI (1987) *Constructing Social Problems*, Aldine de Gruyter, New York.

Surette, R (1996) 'News from Nowhere, Policy to Follow: Media and the Social Construction of 'Three Strikes and You're Out' in Shichor, D & Sechrest, D (eds) *Three Strikes and You're Out: Vengeance as Public Policy*, Sage, Thousand Oaks.

Tischler, E (1999) 'Three Strikes Striking Out?', *Corrections Today*, vol 61, no 1, p 19.

Tyler, TR & Boeckmann, RJ (1997) 'Three Strikes & You're Out, but why? The Psychology of Public Support for Punishing Rule Breakers', *Law & Society Review*, vol 31, no 2, pp 237–265.

US Dept of Justice (1983) 'Sourcebook of Criminal Justice Statistics, 1982', NCJ–86483, Bureau of Justice Statistics, Washington DC.

US Dept of Justice (1998) '1996 National Survey of State Sentencing Structures' NCJ–169270, Bureau of Justice Statistics, Washington DC.

US Dept of Justice (1999) 'Sourcebook of Criminal Justice Statistics, 1998', Bureau of Justice Statistics, Washington DC.

Wager, J (1997) 'Judiciary reputation at risk', *The West Australian*, 14 February, p 13.

Weber, RP (1990) *Basic Content Analysis*, Sage, Newbury Park.

West Australian (1997) 'Longer sentences as Victoria gets tough', 24 April, p 42.

White, R (1992) 'Tough Laws for Hard-Core Politicians', *Alternative Law Journal*, vol 17, no 2, pp 58–60.

Zdenkowski, G (1999) 'Mandatory Imprisonment of Property Offenders in the Northern Territory', *University of New South Wales Law Journal*, vol 22, no 1, pp 302–314.