

## Chapter 9

### Dimension Effects on Sentencing: Immigration, Environmental Crimes, and Civil Rights

The reactions of the American public to the Crime Types discussed in this chapter have not been studied in any detail, if at all, in previous studies. Violations of immigration laws, environmental regulations and civil rights laws have not received much attention in studies of crime seriousness or of the sentencing preferences of Americans.

#### Immigration

Illegal immigration has been front page news of late. Whether it be illegal entry from Mexico, the smuggling of Chinese into major cities on the East and West Coast, or “boat people” from Haiti or Cuba, the mass media has given considerable coverage to this topic. On the political front, there is increasing pressure to exert control over illegal immigration. The issues are complex, and there is certainly no simple set of policy changes that can satisfy all parties to the current controversies.

Some major immigration issues are represented in the vignettes by the following five immigration crimes: 1) “...convicted of smuggling unauthorized aliens into the U.S. for profit;” 2) “...convicted of smuggling family members who were unauthorized aliens into the U.S.,” 3) “...convicted of illegally entering the U.S. using false papers;” 4) “...convicted of illegal re-entering the U.S. using false papers;” and 5) “...convicted of smuggling unauthorized aliens into the U.S. for profit in a way that endangered the safety of aliens.”

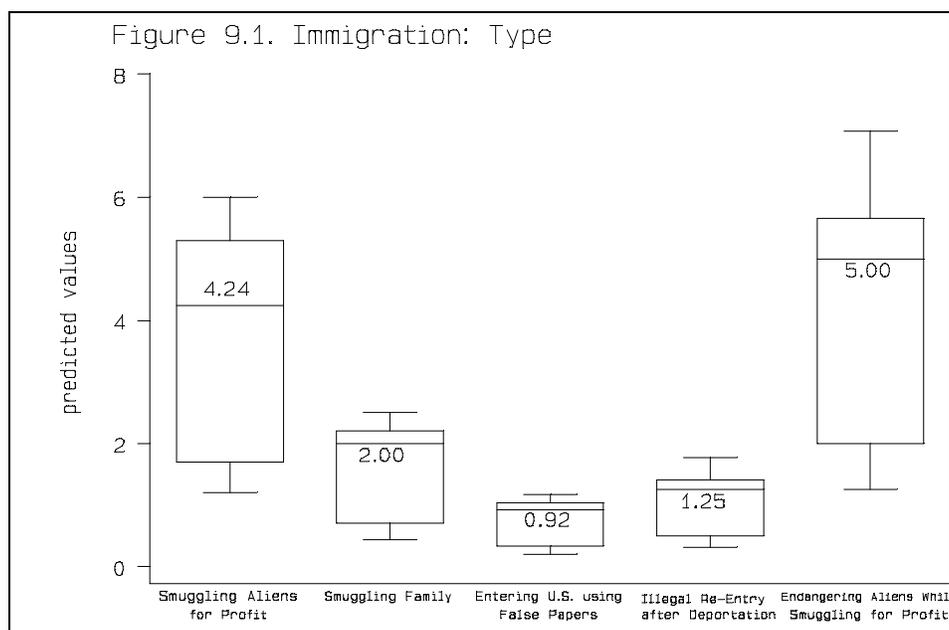


Figure 9.1 shows that although the sentences are modest overall, respondents make distinctions between the different immigration crimes. Smuggling aliens into the U.S. for profit leads to a median sentence of between four and five years (depending on whether the immigrants are placed in physical danger). Illegal immigration by the defendant or by the defendant's family garners a median sentence of about two years or less.

Most of the characteristics of defendants play no roles in respondents' sentencing preferences. All that really matters is prior record. Median sentences increase from about a year to about two years to about three years as the number of prior prison terms increases from zero to two to four.

### **Environmental Crimes - Air Pollution**

The crimes labeled as "environmental" may be regarded as white collar crimes, although unlike conventional white collar crimes, the "victims" are often not only people but also wildlife habitats or endangered species for which there may be no easily ascertained economic value. Furthermore, it is difficult to put a value on public goods such as clean air or national forests. And with environmental concerns on the rise, environmental regulations are also politically controversial, arousing both support and opposition.

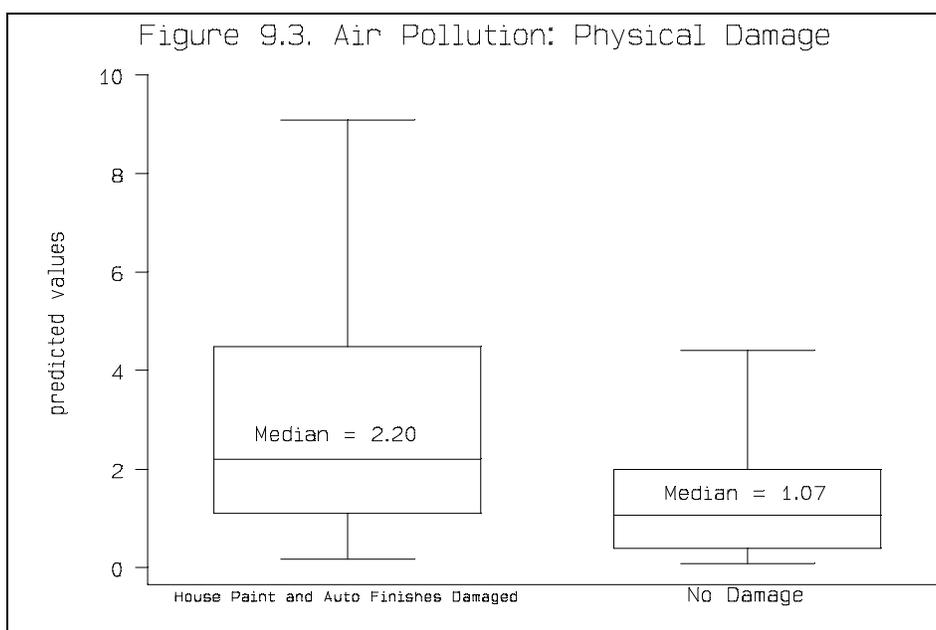
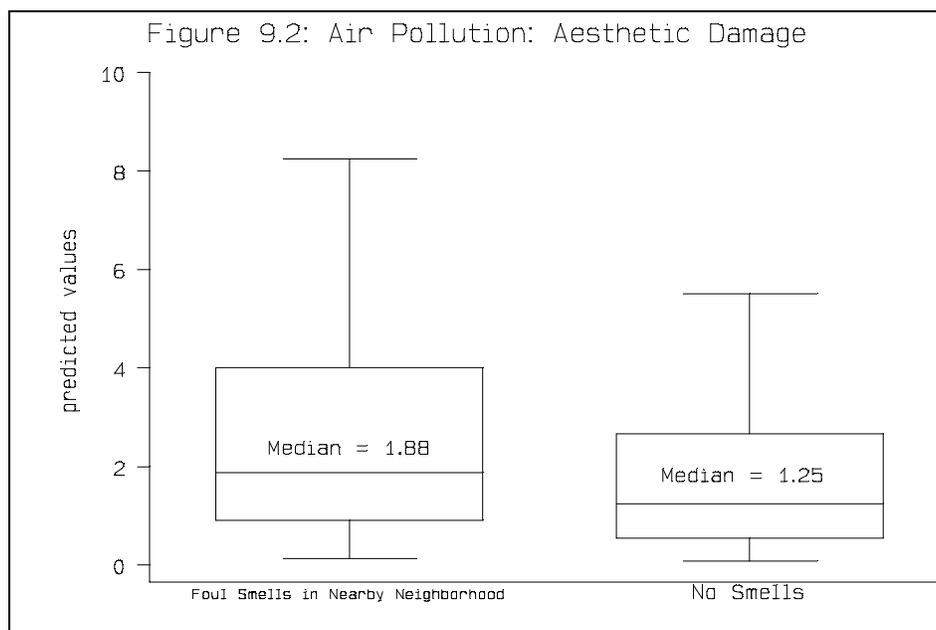
It is difficult to anticipate how the respondents will react to the environmental vignettes. The public's familiarity with environmental crimes may be somewhat limited and, on a number of key issues, the scientific evidence supporting regulations may be equivocal or missing altogether. Yet, the passions on all sides can be very strong. In short, one may anticipate considerable confusion, at least in the aggregate, on how to sentence defendants convicted of environmental crimes.

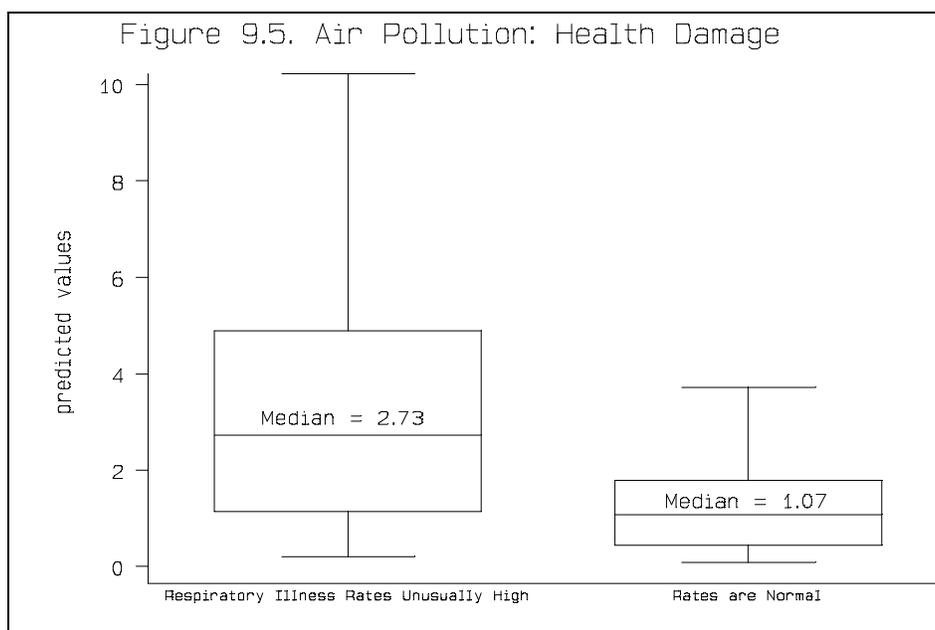
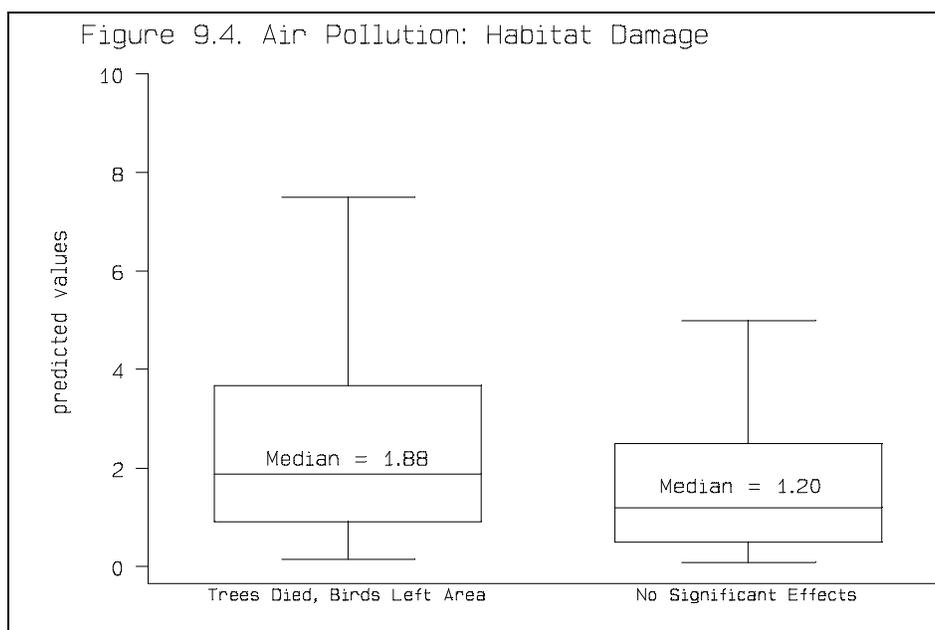
There is no scientific dispute that what is vented by many industrial smoke stacks can affect air quality, especially if the stacks are not equipped with devices to remove noxious emissions. Often there is aesthetic damage involving foul smells but also damages to the surfaces of buildings and monuments, harm to wildlife, and effects on public health. Reducing noxious smoke stack emissions is often costly and those costs can have important social consequences. Although the tradeoffs are often very complex and poorly understood, the price for cleaner air may sometimes be painful adjustments in the local economy.

The air pollution regulation violations described in the vignettes is a defendant "...convicted of failing to install proper anti-pollution devices on factory smoke stacks." Four different kinds of urban impacts are depicted. Under aesthetic impacts were: 1) "There are foul smells in nearby neighborhoods;" and 2) "There are no bad smells in nearby neighborhoods." Under physical impacts were: 1) "House paint peeled off prematurely, and some automobile finishes were damaged;" and 2) "There was no visible damage to house paint or automobile finishes." Under habitat destruction was: 1) "Large numbers of trees died and most of the local birds left the area;" and 2) "Local trees and birds were unaffected." And finally, under human impact were: 1) "Asthma and other respiratory illness rates were unusually high;" and 2) "Asthma and other respiratory illnesses rates were not higher than in other nearby neighborhoods."

The findings are shown in Figures 9.2 through 9.5. In each figure, the effects are in the same direction; evidence of a harmful impact leads to an increase in the median sentence of from about six months to about 18 months, depending on the kind of impact. These effects can be ordered by size. Aesthetic effects are the smallest, followed by habitat damage, and then by physical destruction, and

finally by public health effects. At the very least, it is no surprise that property damage and public health impacts should be considered more serious than aesthetic effects and habitat destruction. Still, the public health effects are modest and differ from earlier findings in which putting people in jeopardy typically led to dramatic increases in median sentence. Perhaps the jeopardy involved was not viewed as very serious because life was not threatened.



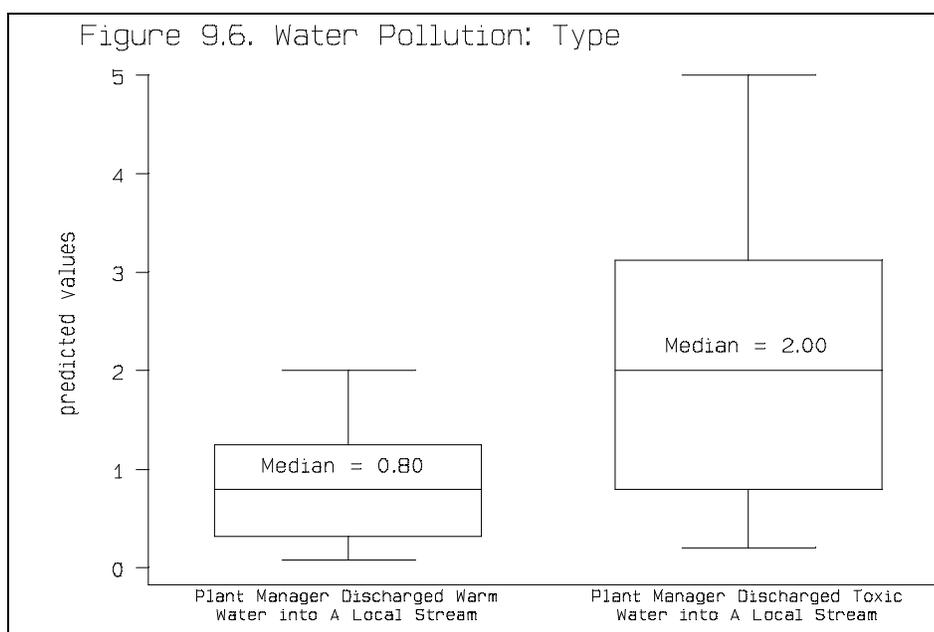


As usual, the defendant's background characteristics had no important impact, with the exception of prior record. With the standard increases in prior record, median sentences increased from approximately one to two to three years.

## Environmental Crime - Water Pollution Violations

For most of urban America, water for domestic use is purchased; it is not a public good available to all with no user charges. For that reason, environmental violations directed at the abuse and misuse of water resources, such as rivers, lakes or sea coasts that are more properly regarded as public goods, are likely to be treated similar to rather conventional white collar crimes much like those associated with the sales of food and pharmaceuticals. The implicit view taken in the approach to environmental crime used here is that environmental commodities are public goods. Hence, the concern here is with the pollution of water that is not sold by water purveyors: freshwater streams, rivers and lakes, and saltwater harbors, beaches and bays.<sup>1</sup>

Water as a public good raises many of the same pollution issues as air quality. Accordingly, two kinds of water pollution crimes were included: 1) "...a plant manager, convicted of violating the terms of the plant's water discharge permit by discharging waste water that was 20 degrees warmer than allowed into a stream;" and 2) "...a plant manager, convicted of violating the terms of the plant's water discharge permit by discharging waste water containing a toxic chemical." Two kinds of outcomes were described: 1) "As a result, thousands of fish were killed;" and 2) "But, there was no damage to fish in the river."




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<sup>1</sup> Ground water can be either a public or private good depending on the property rights with which it is associated.

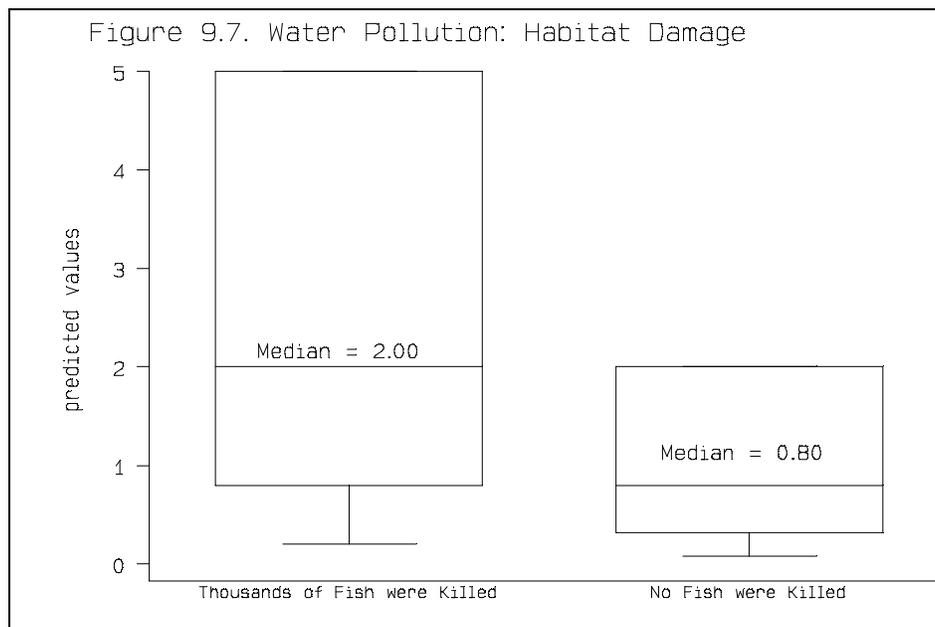


Figure 9.6 shows that although median sentences are short overall, respondents take the kind of pollution into account. The median sentence for discharging water that is too warm is nearly ten months, whereas the median sentence for discharging water containing a toxic chemical is two years.

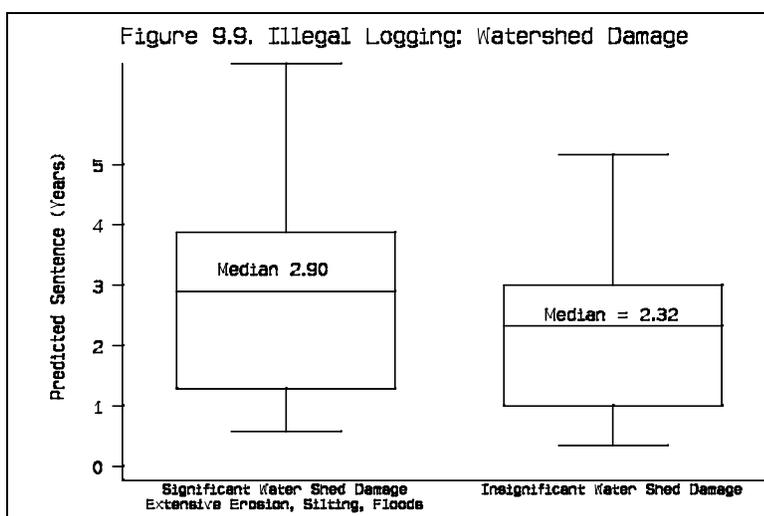
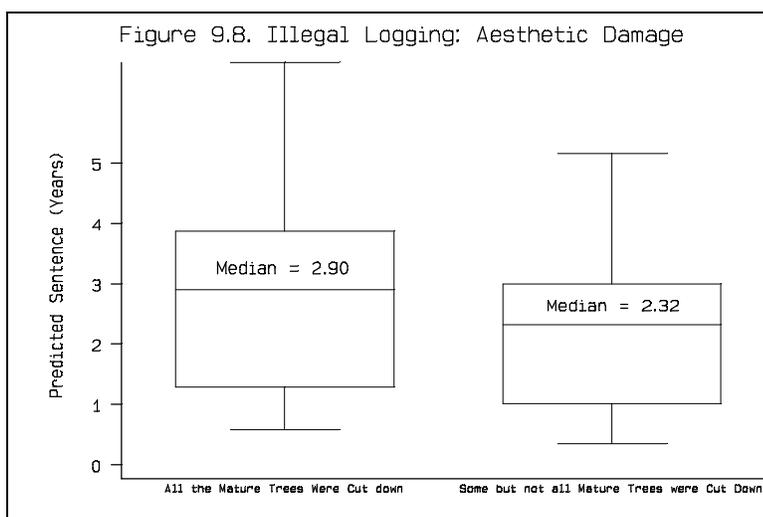
Figure 9.7 indicates that the median sentence also responds to the environmental impact of the violation. When no fish are killed, the median sentence is less than one year. When thousands of fish are killed, the sentence is two years. The increment is large at least in relative terms; the median sentence is effectively doubled.

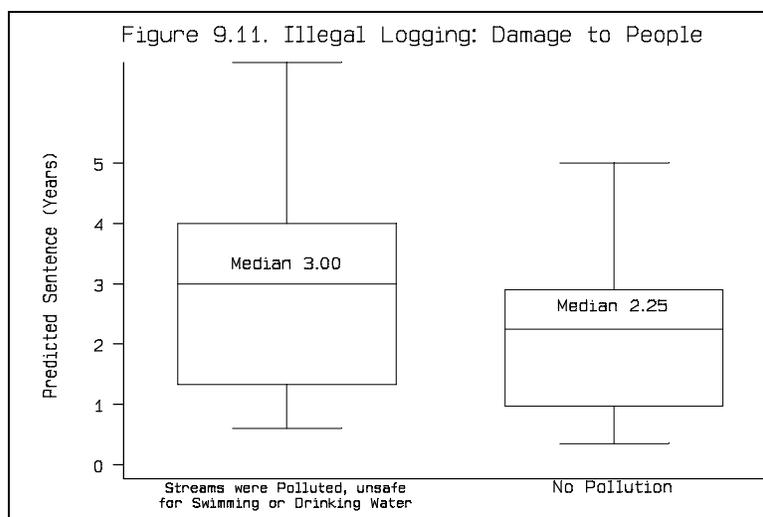
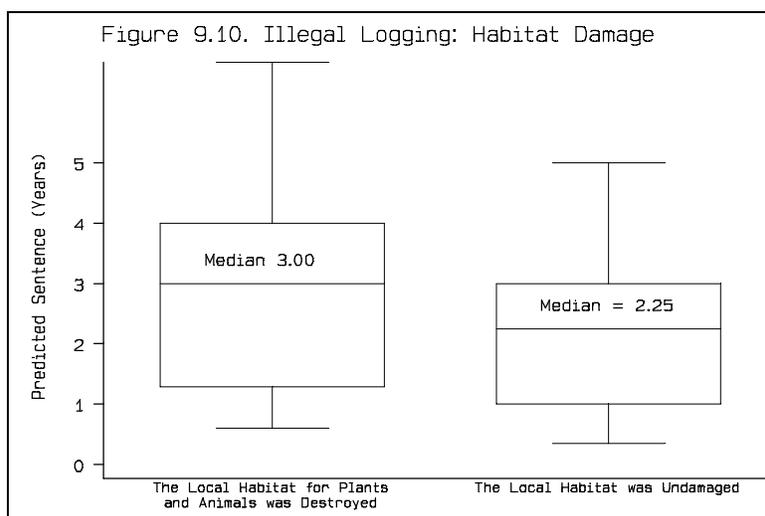
The story for the defendant's background variables is now familiar. The only important effect is for prior record. The median sentence for defendants with no prior record is about six months, while the median sentences for defendants with two or four prior prison terms is about two years.

### **Environmental Crime - Illegal Logging on Federal Land**

Access to federal forests is highly regulated. Federally owned lands are held in trust for public use, but there are also provisions for certain kinds of economic exploitation under regulated licensing procedures: mining is one example, grazing is another, and logging is still another. The vignettes used logging on public lands, which, like mining and grazing, is believed to have important implications for wildlife habitats. The law attempts to balance the country's need for timber and the viability of the timber industry on the one hand, with a host of environmental concerns on the other. Controlled logging of federal lands is allowed under licenses granted to timber firms: cutting trees without licensed permission is a felony.

For logging violations, the vignettes described the following crime: "...convicted of illegal logging on federal lands." Four kinds of consequences were shown. Under aesthetic effects were: 1) "All of the mature trees were cut down;" and 2) "Some mature trees were cut, but not all." Under physical damage were: 1) "The water shed was damaged, causing extensive soil erosion, resulting in more flooding and the filling in of local lakes with silt;" and 2) "The water shed was not significantly damaged." Under habitat destruction were: 1) "The local habitats for native plants and animals were destroyed;" and 2) "The local habitats for native plants and animals were not significantly damaged." Impact on people included: 1) "Local streams and lakes were polluted, making them unsafe for swimming and drinking water;" and 2) "Local streams and lakes were not polluted."





Figures 9.8 through 9.11 show the impact on sentence length of the four different kinds of environmental impact. In each case, greater damages lead to longer sentences of about nine months. The median sentence when no damages result is a little over two years, and the median sentence when there is damage approaches three years. And all four effects are about the same size.

The now familiar story for the background variables resurfaces. Median sentences increase from about eighteen months to about three years to about four years with the three levels of prior record.

### **Environmental Crimes - Endangered Species Violations**

In addition to environmental laws that address air and water pollution, there are those that seek to protect endangered species. Protecting the American bald eagle is one of the most well-known examples. One of the vignettes was designed to measure public reactions to the following violation: "...convicted of killing a bald eagle, protected by law as an endangered species." The crime was not specified further and no varying dimensions about the crime were included. The median sentence was about a year, roughly comparable to the more minor environmental violations we have already considered. With hindsight, it might have been useful to determine how the sentence varied with the defendant's motivation: whether the defendant knew the bald eagle was protected as an endangered species and if so, what motivated the crime. (In order to save space, no graphs are presented for this environmental crime.)

Once again, prior record is the only background variable that makes an important difference. When the defendant has no prior record, the median sentence is less than six months. When the defendant has two prior prison terms or four prior prison terms, the median sentence is well over a year.

### **Civil Rights Crimes - Police Use of Unnecessary Force**

In the United States, civil rights are secured by the Constitution, its amendments, and by various acts of Congress expanding on those constitutional guarantees. They include such rights as trial by jury, freedom of contact and equal protection under the laws. The vignettes used focus on violations of equal protection.

A set of vignettes were concerned with civil rights crimes committed by police officers: 1) "A police officer has been convicted of beating a motorist who was found driving a car with no registration and with expired license plates. The motorist resisted the police officers attempts to examine his license and registration;" 2) "A police officer has been convicted of beating a motorist who was found driving a car with no registration and with expired license plates. The motorist did not resist the police officers attempts to examine his license and registration." (No graphs are presented for civil rights crimes.)

The findings can be stated simply. The median sentence when the driver resisted was about six months, whereas the median sentence when the driver did not resist was about 18 months. It should be noted that both medians are much lower than the federal sentences given to convicted police officers in the Rodney King case.

For police officers, prior record is not relevant; police officers cannot have prior felony convictions. And all of the other biographical variables did not substantially affect the median sentence.

Another pair of police abuse crimes was also included which varied the minority status of the motorist instead of varying whether or not the motorist resisted the police officer. Minority status made absolutely no difference in the median sentence given to the police officer. The median sentence given to the abusing officer was essentially the same whatever minority status was given to the motorist.

In summary, the major message is really in the overall median. The sentence for police violence is rather low, especially when one recalls that violence perpetrated in street crimes was treated far more harshly by our respondents. Clearly, police officers are being held to a different standard than civilians.

### **Civil Rights Crimes - “Hate” Crimes**

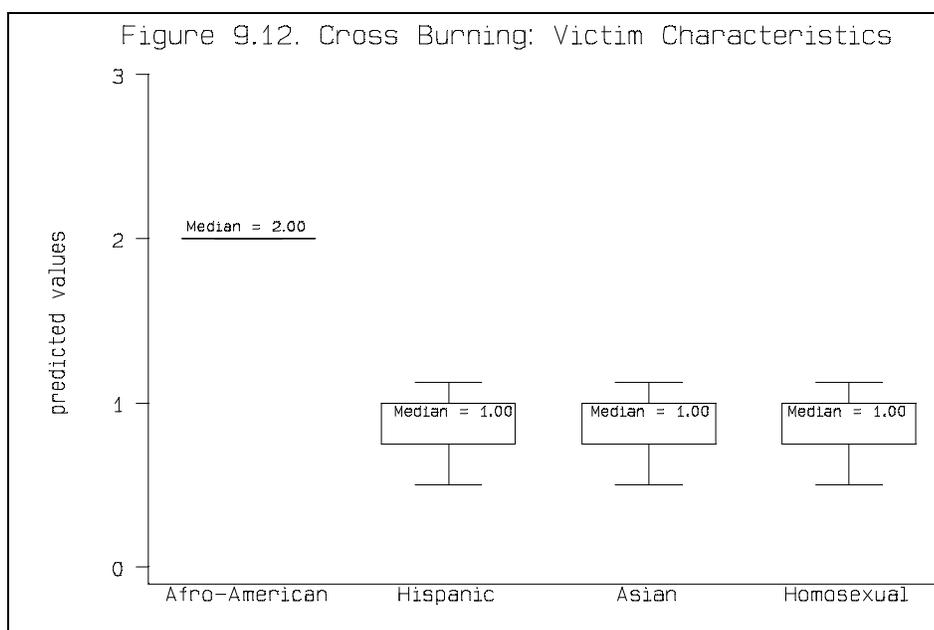
Over the past decade, “hate-motivated” crimes have been increasingly covered in the media and recognized as a crime by being written into both state and federal penal codes. A hate crime is defined by the motives of the offender; the object of the crime (person or property) is picked because it is identified with a particular race or ethnic group, religious group, nationality, or sexual orientation. Vandalism of a Jewish graveyard is one example; “gay-bashing” is another.

Two kinds of hate crimes were used in the vignette. One described an offender as “...convicted of painting threats or obscenities on a... .” Four religious buildings were described: 1) a Protestant church, 2) a Catholic church, 3) a Jewish synagogue, and 4) a Muslim mosque.

The results are interesting because respondents did not make much of the differences among the several targets. The median sentence for vandalism of a Protestant church was about nine months, while the median sentence for vandalism of each of the other houses of worship was about a year. Although this is not a big difference in absolute terms and perhaps of little practical importance, it may imply that respondents are more concerned about hate crimes directed at minority religions. There is nothing about the definition of hate crimes that precludes the victimization of non-minorities. However, hate crimes have risen to prominence because of minorities who are victimized and, in some sense, hate crimes have been popularly defined only in those terms. In any case, the target of the vandalism was the only important effect on sentence that we found.

The second hate crime was harassment by cross-burning. For each vignette there was one of four possible minority group victims: 1) African-American; 2) Hispanic-American; 3) Asian-American; and 4) a homosexual. The crime was “trying to get a [one of the four] couple who just moved into the neighborhood to move out by burning a cross on their lawn.”

The median sentence given for harassing minority couples, except African-American couples, was one year. For harassing an African-American couple, the median sentence was two years. This difference is not big in absolute terms, but is large relatively. The difference in median sentences may stem from the way race relations traditionally have been characterized in the United State. Until quite recently, race relations may have meant primarily black-white relations. The experience of Native-Americans has perhaps long receded from popular consciousness, and for much of the United States, there may be too few Hispanic-Americans, Asian-Americans and homosexuals to constitute a recognized minority. In addition, the civil rights movement of the 1960s was primarily a movement for the rights of African-Americans. Only recently have other minorities visibly identified themselves with a current version of the civil rights movement. In short, it may be hard for some respondents to appreciate that minority groups include more than African-Americans.



There are small effects for different kinds of offenders. As usual, with the exceptions of prior record and occasionally gender, background variables did not show a large or consistent impact.

To summarize, much like the results for police use of unnecessary force, the sentences for hate crimes are short, and the dimensions have a very modest impact. But unlike the police results, the directions of the effects were totally unanticipated. For both kinds of hate crimes, the respondents seemed to distinguish between the targets in ways that may reveal a lag in popular consciousness between the minority relations of the 1960s and the minority relations of the 1990s.