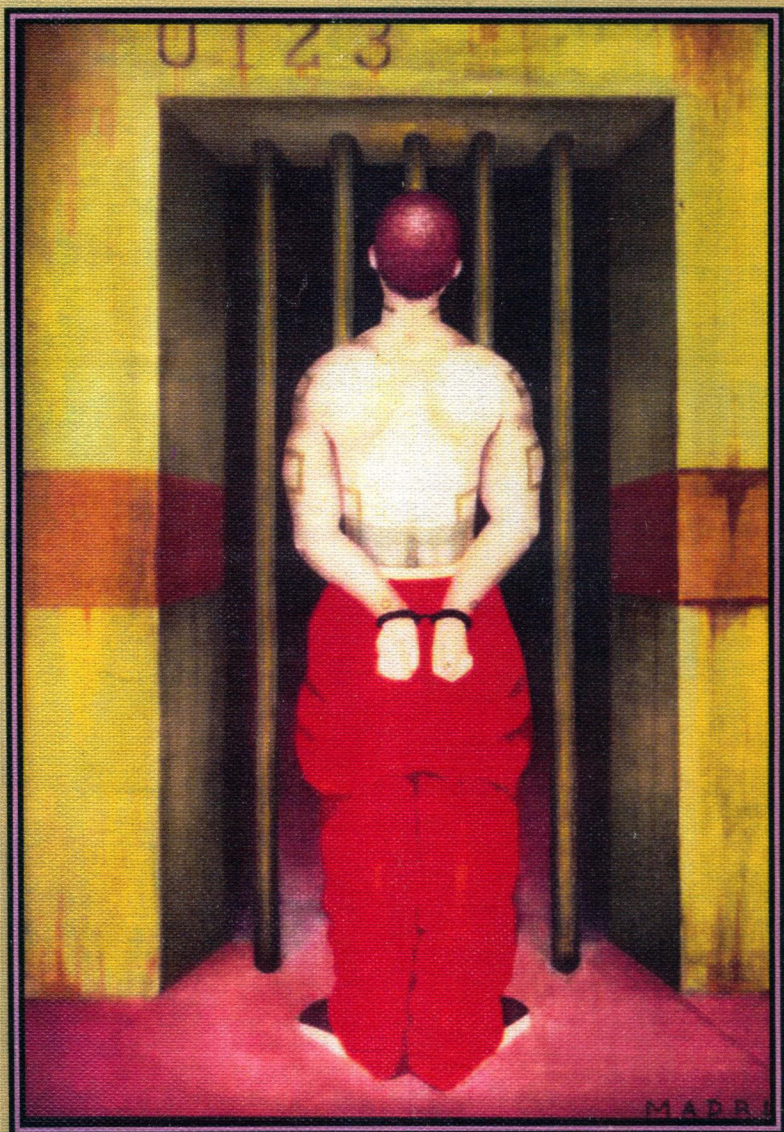


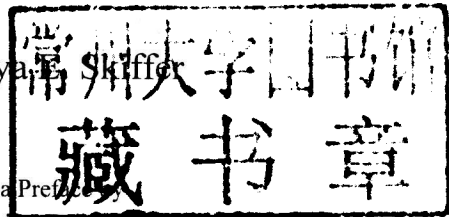
# THE RACE, CLASS, AND GENDER BIAS OF THE AMERICAN JUSTICE SYSTEM



**THE RACE, CLASS, AND GENDER BIAS  
OF THE AMERICAN JUSTICE SYSTEM**  
A Study of California's "Three Strikes" Law

La Tanya E. Skiff

With a Preface by  
Vivian Price



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OF THE AMERICAN JUSTICE SYSTEM**

A Study of California's "Three Strikes" Law

To my mother  
Carolyn Frazier-Barr

## Foreword

This book critically evaluates the media for manifest and latent content of its rhetoric, particularly, as it pertains to California's "Three Strikes and You're Out" legislation. Through a two year content analysis of *US News & World Report*, *The Los Angeles Times*, and *The Washington Post* this work focused on possible ideal type depiction's of crime, criminals, and victims characterized by "three strikes" rhetoric in print media. Additionally, within these three categories possible dimensions of race, class, and gender bias in "Three Strikes and You're Out" rhetoric were investigated. We know that the risk of victimization is highest for specific groups e.g. African Americans, the poor, males, and single individuals, but the question becomes did the media frame a different picture? The implication here being the reinforcement of race, class, and gender based fears.

I argued, as others have (Conklin, 1975; Sherizen, 1978; McCombs, 1995) that the mass media has the ability to identify certain groups and their roles as crime fighters or crime doers. This is the hypothesis of agenda setting. Although it has been determined that the media produces minimum attitude change in audiences, there is evidence that the media are shaping people's views of the major problems facing the world today. This research extends the agenda setting hypothesis to non-political issues to determine whether race, class, or gender bias were present in print media's depiction of crime, criminals, and victims in the rhetoric of California's "Three Strikes and You're Out" legislation.

I am particularly indebted to my sister colleagues in the Emerging Scholars Interdisciplinary Network (ESIN), with special thanks to Drs. Chavella Pittman, Denise Carty, and Erica Bumpers. The ESIN fellows were invaluable and I could not have completed this project without their editorial guidance and expertise.

## Preface

This book critically evaluates the media for manifest and latent content of its rhetoric, particularly, as it pertains to California's "Three Strikes and You're Out" legislation. Through a two year content analysis of *US News & World Report*, *The Los Angeles Times*, and *The Washington Post* Professor Skiffer focused on ideal-type depictions of crime, criminals, and victims characterized by "three strikes" rhetoric in print media. Additionally, within these three categories, dimensions of race, class, and gender bias in "Three Strikes and You're Out" rhetoric were investigated. We know that the risk of victimization is highest for specific groups e.g., African Americans, the poor, males, and single individuals, but this study suggests that the media constructs a limited picture, focusing on these groups as criminals, rather than victims.

Professor Skiffer is arguing here, as other have (Conklin, 1975; Sherizen, 1978; McCombs, 1995) that the mass media has the ability to identify certain groups and their roles as crime fighters or crime doers, following the theory of agenda-setting. There is strong evidence that media shapes the public's views of the major problems facing the world today. Dr. Skiffer's thorough research extends the agenda setting framework to trace how race, class, or gender bias are present in print media's depiction of crime, criminals, and victims associated with the rhetoric of California's "Three Strikes and You're Out" legislation. It's an important study that will be read with interest by a wide audience, and contribute a critical dimension to media and criminology scholarship.

Professor Skiffer's interest in criminology is both personal and professional. Both of her brothers were gang members as adolescents. This decision eventually led to one of them spending approximately 15 years of his life behind bars and the other going in and out of the criminal justice system. This experience led her to focus her education and professional development on criminology, sociology, as well as gangs and adolescent subcultures. Professor Skiffer is currently an assistant professor of criminology and sociology at

California State University, Dominguez Hills. Her research interests include gangs and adolescent subcultures, black female offenders as well as race, class, and gender inequality. She has also served on Mayor Villaraigosa's Gang Reduction and Youth Development grant proposal review team and serves as a consultant for the Long Beach Boys & Girls Clubs.

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## Chapter One

### A Case for the Escalating Fear of Victimization

Although the direct impact of newspapers and other media on human behavior continues to be the subject of disagreement and debate, few would argue against the idea that the media shape the way people think about the world (Conklin, 1975; Drechsel, 1983; Altheide & Michalowski, 1999; Aday, 2006). Researchers have long noted the power of the media to define both criminals and victims (Davis, 1951; Garofalo, 1981; Freng, 2007; Griffin & Miller, 2008), and the power of the media to define crime fighters or crime doers is also well documented (McCombs & Shaw 1995). This study was particularly interested in how print media portray criminals and their victims, especially as it related to race-, class-, and gender-based stereotypes of these two groups. This research focused on California's "Three Strikes and You're Out" legislation. Specifically, I focused on newspaper portrayals of criminals and their victims through an examination of three periodicals, *US News & World Report*, the *Los Angeles Times*, and *The Washington Post*.

Crime is a major social problem in America. But the question arises: Was fear of crime in the 1980s and 1990s more of a problem than crime itself? A 1994 survey revealed that 46 percent of Americans were afraid to walk within a mile radius of their homes. This fear is particularly prevalent in urban America where close to 50 percent of adults said they are afraid to be out at night (Lewis &

Maxfield, 1980). Hindelang, Gottfredson, and Garofalo (1978) reported that 86 percent of those surveyed believed crime in America had increased, and 47 percent cited a notable increase in their neighborhoods.

Although, officially, the national crime index remains relatively stable across time, the 1980s and 1990s are associated with a dramatic increase in fear, which most likely resulted from several highly publicized crimes, such as the Klaas, Denny, Jordan, and Central Park murders, and the school shootings across the United States (Best, 1987; Thompson, 2002; Ogle, Eckman, & Amoroso, 2003). Violent crime involves an obvious social cost, but there are deleterious psychological consequences, too. Today, Americans fear the escalating violent crime rate almost as much as they fear victimization itself.

Furthermore, Americans are willing to put their money where their fears are. Mark Warr (1995) reported that when polled in 1994, 75 percent of citizens believed we were spending too little on crime, and 84 percent believed tax dollars should be spent on reducing violent crime rates. In addition, whereas 85 percent of Americans polled believed that the courts were too lenient, only 3 percent believed that the courts were too harsh (Warr, 1995). These statistics show why Americans are often quoted as being “fed up with crime” and “paralyzed by fear.” Public opinion polls about crime and criminals point to intolerance, impatience, and partiality to severe penalties (Warr, 1995). Attitudes toward the death penalty in America are particularly illustrative of this phenomena: In 1995, 77percent were in favor of capital punishment for those convicted of murder, the most serious of violent crimes (Sourcebook of Criminal Justice Statistics, 1995).

According to Lewis and Maxfield (1980), this fear can be attributed to the level of incivility in each neighborhood, which in turn creates a sense of danger and decay that increases individuals’ perceived risk of victimization. Community residents’ perceptions of neighborhood crime levels are typically higher than in actuality and many residents regard crime in their neighborhoods as increasing and fear for their safety (Reiss, 1967). Further, researchers found that there is a marked dichotomy in perceptions of crime along race and gender lines: women

and blacks are more anxious about the crime situation (Reiss, 1967; Wesely & Gaarder, 2004). For blacks, this may be a consequence of the unique structural disadvantages that these minorities experience.

The aforementioned discussion does not imply that Americans' fear is completely unfounded and unjustified. In 1995 the homicide rate in the United States was 8.2 per 100,000 inhabitants, the highest of any industrialized nation (Uniform Crime Reports for the United States, 1995). According to a 1991 report by the U.S. Department of Justice, 6.4 million individuals became violent crime victims in that year alone. African Americans are particularly overrepresented in these figures. The homicide rate for black males per 100,000 people in 1986 was 52, and was 31 for the overall African American community. The statistics for black males age 25–34 are even more distressing: the homicide rate for this group is 104 per 100,000. This means that more than 1 percent of all black males at age 25 will die from homicide before reaching the age of 34 (Whitaker, 1990). However, it is important to qualify these numbers. Even though the homicide rate is high, the majority of Americans will never experience any form of violent crime—although this fact does not tend to diminish these fears.

Fear is particularly high among Americans residing in areas with high crime rates, many of whom believe crime was the most critical problem facing the nation today (Reiss, 1967). On average, 44 percent of Americans polled between 1993 and 1996 cited crime and violence as the most important problem facing this country. Similarly, 77 percent of those polled believed the country is “losing ground” in the area of crime, whereas only 19 percent express having “a great deal” “or “quite a lot” of confidence in the U.S. criminal justice system (Sourcebook of Criminal Justice Statistics, 1995). Where demographic characteristics are concerned, 40 percent of whites and 55 percent of blacks and other groups reported feeling “somewhat” to “very unsafe” about being alone in their neighborhoods at night. Statistics like these led pioneering researchers such as Hindelang, Gottfredson, and Garofalo (1978) to conclude that fear and the crime rate may be independent variables, separate from and measurable

independent of each other.

Another set of critical questions this research raised is whether this ubiquitous fear has affected the lifestyle of Americans, and if so in what ways. Many Americans have begun to alter their lifestyles because of the real and perceived fear of victimization. Some individuals forgo various traditional activities—walking or jogging after dark, after-hour socials, driving through unfamiliar neighborhoods, and the like—because of this pervasive fear. Eighty-three percent of those surveyed reported that they know people who now limit or have changed their activities because of crime, and across demographic characteristics, 52 percent of women and 37 percent of men say they have personally limited their activities. These findings are consistent with the literature. Research has long established that personal crimes engender more fear than other forms, whereas the public views white-collar and victimless crimes as not particularly serious, and thus not warranting behavior modification (Rossi, Waite, Bose, & Berk, 1974).

There are critics, such as Graber (1980) and Edelman (1985), who believe that this fear is socially constructed. Graber cautions against completely acquiescing to the public perception of crime in America, arguing that the public lives in a world of unreality when it comes to criminals, victims, and the criminal justice system. Hindelang, Gottfredson, and Garofalo (1978) note the following characteristics of perceptions of crime in the United States:

Crime is something removed from themselves: crime is increasing *elsewhere*; other neighborhoods are more dangerous; the activities of other people are more affected by crime; *outsiders* are mostly responsible for local crime. Although response patterns do show variability in relation to certain demographic characteristics of respondents and to actual experiences with victimization, the overall patterns remain strong.

In summary, there is a great deal of fear of victimization in the United States, although it varies across demographic variables. Some factors that appear to mitigate this fear are income (fear of crime decreased as income increased),

race (whites are less fearful than blacks and others), segregation (high segregation has a negative relationship to fear of crime for whites and a positive relationship for blacks and others), sex (females are much more afraid than males), and age (for both sexes, fear was greater for older respondents).

### *Consequences and Causes*

High rates of imprisonment and legislative cure-alls are both consequences and further causes of this fear. The first result was the 1986 Sentencing Reform Act. The United States has the highest rate of imprisonment in the entire world, 2,310,984 people (Bureau of Justice Statistics, 2008a). In fact, the number of people incarcerated and/or under some form of correctional supervision in the United States increased more than threefold between 1980 and 2002 (Bureau of Justice Statistics, 2003). From 1981 to 1991 the prison population more than doubled, from 330,000 inmates in state and federal prisons to 804,000 (Duster, 1995). Overwhelmingly, this exorbitant increase in confinement rates is because of low-level drug abuse violations, such as sale, manufacture, or possession, which led to approximately 1.5 million arrests in 1996 alone. 1995 marked a record high in illegal drug activity for the nation. Currently, California is the second largest jailer in the nation, with 169,988 prisoners (Bureau of Justice Statistics, 2008). Following this state's enactment of new penal legislation in 1994, more than 26,000 additional offenders were imprisoned by 1996 (Clark, 1997). Despite much talk about such punitive legislation taking violent offenders off of the streets, in 2002 the majority of incarcerated people in the United States were nonviolent offenders (Bureau of Justice Statistics, 2003).

Legislative cure-alls include mandatory minimum sentencing and habitual offenders statutes as well as abolishment of parole board hearings and good time credits. Mandatory minimum and habitual offender statutes have been resuscitated as of late. In 1970 Congress repealed most of the mandatory minimum terms because of their ineffectiveness; but by 1984, citizens were again calling for

tougher punishments, and Congress answered by enacting new mandatory minimum statutes (Vincent & Hofer, 1994). With such statutes, Congress determines minimum punishment with no allowance for parole, and judges are required to impose it for offenders fitting certain criteria. The crucial difference between the old and new mandatory minimum statutes is that the latter severely limit judicial discretion in sentencing. Prosecutors are required to push for maximum sentences and judges are required to issue maximum sentences.

### ***Most Recent Cure-All***

Citizens' escalating fears of victimization, a purported skyrocketing crime rate, high rates of imprisonment, and strong public and political support for punitive legislative cure-alls set the stage in California for pioneering a new criminal justice policy termed "Three Strikes and You're Out." Three-strikes legislation has been the tool of legislative bodies and politicians seeking (re)election as a symbolic response to public fears. The issue of crime and criminal justice policy often becomes crucial during elections where local, as well as national, law and order concerns can be disastrous to candidates' prospects of (re)election. Thus, it is unsurprising that between 1993 and 1995 24 states, most notably California and Washington, and the federal government enacted legislation increasing penalties for violent crimes, most of them three-strikes laws.

The fervor over three-strikes legislation was due, in part, to its touted certainty of punishment. Proponents argued that the only way to halt the violent crime wave was through swift, severe, and guaranteed sanctions, and three-strikes legislation serves as that, as it removes prosecutorial and, in some cases, magistrate discretion. Altogether, three-strikes laws require courts to impose the statutory sentence for habitual offenders (Edwards, 1995).

California's three-strikes legislation, penned by former Secretary of State Bill Jones, mandates 25 years to life in prison for an offender convicted of any felony following two prior convictions for serious crimes (Edwards, 1995). The governor signed this law on March 7, 1994, and voters later ratified it in a state