

Probation Officer Attitudes in the Assignment
of Community Service Hours:
A Survey of Attitudes

By

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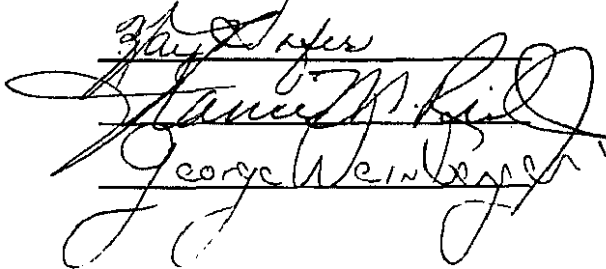

Three handwritten signatures are present, each written over a horizontal line. The signatures are: Gary Taylor, Francis M. Hill, and George Weinberger.

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CHAPTER 1

Introduction

Probation is a rapidly expanding sector of the criminal justice system. Nationally, prisons are reaching capacity, and mandatory sentencing is pushing many states to look for alternatives (Cullen, Clark, Wozniak, 1985, p. 16). Under federal court order in the Ruiz v. Estelle decision, Texas must down size the state's prison population or increase the state's prison space Ruiz v. Estelle, 503 F. Supp. 1265 (D - Tex 1980). To divert offenders from prison, probation programs have rapidly grown to absorb the marginal offenders who are neither low nor high risk. In fiscal year 1992, Texas offered monetary bonuses to judicial districts throughout the state if the districts would sentence fewer offenders to prison than the number the state set as a maximum to be sentenced from the judicial district. Because of such incentives, the Second Twenty-Fifth Judicial District was able to send less than the maximum fifty-five offenders for the year and received \$80,000 in additional grants from the state (Smith, 1992). In order to send fewer offenders to prison, judicial districts must face the issue of how to deal with marginal offenders who would probably have been sentenced to prison but because of the bonus grants, were given alternative sentencing.

Alternative sentences are being developed rapidly to broaden the net of control in the criminal justice system (Miller, J. G., 1986, p. 239). Attempting to protect the public by enhancing control over an offender while leaving the offender in society is the goal of most alternate sentencing. Alternate sentences add to the conditions of

probation and require more interaction between the offender and positive societal role models. Such sentences can include an additional condition of probation such as requiring a probationer to attend school, driving while intoxicated (DWI), enter drug treatment, work at a restitution center, perform community service, or a myriad of other conditions. The potential conditions of probation vary and may be added at the court's discretion to a level deemed appropriate. Individual conditions of probation vary as a factor of the crime committed, the risks and needs of the offender and the discretion of the sentencing judge.

Community service orders are one recently developed means of dealing with the need to provide greater control over offenders who remain free in the community (Morris and Tonry, 1990, p. 4-5). Community service orders are additional conditions to probation which set a minimum number of hours which an offender must work in a designated work site without compensation (Office of Justice Programs, 1990, p. 14). The designated work site must meet stringent requirements and be willing to accept assistance from probationers.

The 1984 Comprehensive Crime Control Act mandated that states establish community service programs and sentence all felons to community service and/or restitution (Statutes at Large, 1984, pgs. 1993-1994). Texas mandatorily required all judicial districts to assign all felon probationers sentenced after January, 1991, the additional condition of probation of community service orders (Vernon's, Code of Criminal Procedure, 1992, pgs. 107-108). At the court's discretion, misdemeanor offenders may receive community service as a condition

of probation. Article 42.12 of the Texas Code of Criminal Procedure delineates the specific ranges of hours which may or must be assigned for each offense level (Vernon's, Code of Criminal Procedure, 1992, pgs. 107-108).

Statement of Purpose

Adult Probation Officers and Community Service Officers of one judicial district will be surveyed to determine whether discrepancies between assignment of punishment exists when the same offender is presented to different officers to determine what level of punishment the offender should be required to bear. During the sentencing period, a probation officer conducts an extensive background check and incorporates the state's recommended length of probation with the officer's recommendation for additional conditions of probation tailored to the individual offender's criminal and social background (Statutes at Large, 1984, pgs. 1988-1989). Although rules and bureaucratic policies exist to attempt to ensure equity, past studies have documented discrepancies between the assignment of punishment for the same offender (Katz, 1982).

Conceptually, criminal justice literature details four distinct models of justice -- rehabilitation, deterrence, just deserts and justice. The models of justice are theoretical frameworks for what is to be accomplished through the assignment of an offender to a certain level of punishment. Since every offender varies and every situation is unique, setting punishment levels at the appropriate level is difficult. The models of justice are belief systems or attitudes under which probation officers work when dealing with offenders. Some offenders

show hope of change; others will always offend; and a range between the two extremes exists.

Discretion is allowed in order to give officers the opportunity to try different approaches toward reintegrating or controlling an offender. The conditions of probation are specifically tailored to provide the probation officer with the opportunity to alter and enforce punishment levels seen as best for achieving the goal of either reintegration or control of the probationer. The probationers who can be rehabilitated receive punishments aimed at reintegration. On the other hand, the probationers who have little hope of reintegration receive punishments aimed at controlling their behavior. However, most probationers fall somewhere along the range between rehabilitatable and non-rehabilitatable. Thus, probation officers are given the discretion to recommend punishments tailored to the individual and to alter punishment later as the offender's needs or risks change (Statutes at Large, 1984, pgs. 1988-1989).

Hypothesis

Because each probation officer has a different internalized model of justice, each officer will react differently in assigning community service hours. Attempting to weigh the probationer's needs and risks will allow a probation officer to devise a model of justice which will seem to appropriately assist in achieving the goals of probation. The goals to be accomplished will be assumed to be to protect the public, to reintegrate the offender, and/or to control the offender.

Discretion will be a key factor in the variance between the number of community service hours assigned for each probationer.

Since no two probationers are alike and since no two probation officers are alike, sentences for the same probationer will vary based on the attitude of the probation officer assigned to recommend an appropriate level of community service hours. Community service can present a hardship to some probationers. Discrepancies between the assignment of hours can result simply from the officer's own perception of the offender's background or criminal history. Each officer carries his/her own attitude which affects how community service hours are assigned. However, vast discrepancies can occur which are the result not of the crime but of the probation officer's attitude and discretion. Even in a judicial district which establishes policies based on one model of justice which is then filtered through the attitude of the probation officer, variances in officer recommendations occur.

As discussed in the literature, the rehabilitation and justice models will be less important than the deterrence and just deserts models. Punitive models of justice are, according to the literature, predominating as the primary reason for assigning punishment. Rehabilitation is not a punitive model (Allen, 1985, p. 68) and is slowly fading as a primary goal of the correctional system (Miller and Anderson, 1986, p. 420). Justice models try to balance the level of the offense and past criminal history to devise a punishment which is individual. The model has not been used much as vast discrepancies between persons committing the same crime are created (Harris, 1984, pgs. 16-17).

Overview of Study

The study will be an exploratory research project to examine the variances between assigned community service hours and the officer's perceived purpose for assigning the level of community service hours. Throughout the literature, making the punishment fit the crime without concern for the rehabilitation of the offender is becoming the predominate model for assigning punishment (Benekos, 1990, p. 53; and Cullen, Cullen and Wozniak, 1988, pgs. 304 and 310). To determine if Texas is moving toward the punitive models of justice, a survey made up of four pre-sentencing investigations (PSI) will be offered to all of the probation officers in one judicial district. The PSIs will be constructed around four actual offenders' social and criminal histories with only alteration in names and places. All PSIs will be for the crime of Burglary of a Habitation. Variances will exist individually between the offenders. Officers will be asked to assign the level of community service hours, between 320 and 1,000, which best fits the probationer.

Additionally, the probation officers will complete a survey asking the officer to name the model of justice that best describes why the officer chose to recommend the level of punishment. The models of justice will be briefly defined in the survey. Based on the short definition, officers will name the model of justice and be allowed to elaborate on why the model was chosen. Discovering whether the literature accurately portrays deterrence and just deserts as the predominate models of justice and determining if rehabilitation and justice are no longer important goals, will be the final outcome of the

survey. The literature depicts the trend of fading justice and rehabilitation models. Still, since the probation officer is afforded a certain level of discretion, the officers of a single judicial district whose judge desires rehabilitation may follow the judge's rehabilitation attitude or may chose to follow the trend toward matching the punishment to the crime regardless of the needs of the offender.

In the following chapter, the historical roots of community service and discretion will be briefly discussed. Community service is the primary focus of the discussions herein contained. As discretion is an important factor to consider in variances in punishment, the development and present status of discretion in public service will be discussed.

Additionally, the models of justice will be reviewed from the literature and compared to determine which models are the dominate models of justice. Chapter 3 will review four models -- rehabilitation, deterrence, just deserts and justice.

Chapter 4 will discuss the background of the unit of government where the study was administered. The model of justice which is predominantly believed to influence officers of the judicial district will be discussed, and the amount of discretion allowed to the officers will be reviewed.

An overview of the various forms of survey research will be discussed in chapter 5. The decision to utilize a survey as opposed to content analysis or fieldwork will be discussed.

The survey will be extensively discussed in chapter 6. Excerpts from the survey will be included and a discussion of the reason for

every aspect of the survey will be discussed at length. The actual survey, pre-sentencing investigations and a break-down of the responses will be contained in the appendices.

Finally, the last chapter will provide an analysis of all the information produced by the survey and how the results compare to the literature.

CHAPTER 2

Historical and Legal Background of Community Service

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States (U.S. Constitution, Amendment 13).

Background

The hatred of indentured servitude has faded in the United States and the revival of a form of indentured servitude now exists in the form of community service orders (Morris and Tonry, 1990, p. 151).

community service orders are similar to indentured servitude in that the convicted offender must perform uncompensated work for a set period of time as a punishment for a crime. During the colonization of America, English law forced convicted offenders to work as servants or in the navy (Morris and Tonry, 1990, p. 151).

Courts may now order felony probationers as a condition of probation to pay restitution to the community in the form of community service (Hudson and Galaway, 1990, p. 4; and Carter, Cocks and Glaser, 1987, p. 4). Community service workers perform services within a tax-exempt or government supported agency for a stated number of hours (Office of Justice Programs, 1990, p. 14). Community service is an intermediate form of punishment, between prison and probation, exacted against an offender's time and energy (Morris and Tonry, 1990, p. 150). The primary distinction that Perrier and Pink (1985, p. 36) draw between community service and forced prison laborers is that the community service workers are not prisoners.

In ancient Rome, offenders were customarily required to repay victims for harm or damages done to the victim. However, as the western states and societies rose to dominance, the custom faded, and the rulers defined all crimes as crimes against the state. Compensating victims seldom occurred in western societies except in the rare occasion of successful civil suits (McDonald, 1988, p. 1).

During the middle ages, western societies viewed humans as naturally evil, depraved and incapable of reforming. Crime was believed to be a form of sinning. As a result, punishment was designed to inflict the most pain and suffering possible to defend society and the moral order (Panel on Research, 1981, p. 4). Slowly, changes took place in the perception of punishment and more lenient forms of punishment began to be devised.

The United States saw the first glimmer of a movement toward probation and the rehabilitation philosophy with a compassionate bootmaker named John Augustus of Boston. Seeing a drunkard one day being sentenced to prison struck Augustus as too harsh of a punishment; he asked the court to release the man into his custody. If the man met certain criteria while in Augustus' custody, the court would indefinitely suspend the man's sentence. The drunkard held to his side of the bargain and successfully avoided the House of Corrections. For the next eighteen years, Augustus was successful in keeping most of his "probationers" out of further trouble by carefully screening offenders whom he felt deserved better than the sentence the offenders would receive. In all, Augustus helped suspend 1,496 sentences (Carney, 1977, p. 207).

During the late nineteenth and early twentieth century, every state slowly adopted the concept of suspended sentences/probation (Carney, 1977, p. 208). Low risk offenders were thus not being punished for crimes with prison as frequently as had occurred in the past. Challenges to the policy arose nationally as questions of the legality of suspending sentences without statutory basis were raised. Each state began to pass legislation which gave courts the discretion to indefinitely suspend sentences of offenders the court felt would not benefit from imprisonment but who only needed an occasional visit to a supervising agency to ensure compliance with the conditions of probation. Violation of the conditions could result in a revocation of the suspended sentence, and the full original sentence could be imposed (Carney, 1977, p. 209 & 214).

Because of the perceived rise of lawlessness throughout the 1960s and 1970s (McDonald, 1988, p. 1), politicians in the late 1960s began incorporating punitive slogans in campaign platforms. The approach was so successful that punitive platforms began spreading nationwide. The punitive movement sought to create changes in the criminal justice system which had strayed from the punitive concept. The criminal justice system of the 1960s had reached the point of attempting to rehabilitate offenders as opposed to just punishing offenders. As a result of political pressure, the system had to crack down on convicted offenders and "get tough" on crime (Cullen, Cullen and Wozniak, 1988, p. 314; and Cullen, Clark and Wozniak, 1985, p. 24).

Prisons rapidly filled and overflowed causing an increase in the number of probationers. In 1983, 1.58 million persons were serving on probation; the number jumped 41.6% to 2.24 million by 1987 (Sluder and Del Carmen, 1990, p. 3). Probation took up the slack for the overflowing prisons; however, politicians saw probation as too lenient a form of punishment. Thus, states and the national government began searching for alternate methods to provide intermediate punishments between prison and probation. The result was the development of community service orders (U.S. Probation Division, 1989, p. 3). Prison overcrowding thus spawned the need for intermediate sentences such as community service orders (Czajkoski and Wollen, 1986, p. 221; Benekos, 1990, p. 52; and Jones, 1991, p. 51).

In 1966, Alameda County in California was the location of the pilot community service program. The program was originally designed to assist indigent women who would have received a jail term. The women were diverted into the community service program where they were required to perform uncompensated work in the community to the level considered appropriate for the offense (McDonald, 1988, p. 1). The program was so successful that soon other white collar offenders were included in the program to teach them the perils of their crime (Morris and Tonry, 1987, p. 152). Originally, the program placed offenders at work sites which linked the crime to the offenders need to rehabilitate. Prominent drug offenders would have to speak to high school students about the dangers of drugs. And, serious traffic offenders would have to work in the

emergency rooms to see the consequences of unsafe driving (Morris and Tonry, 1987, p. 152).

Yet, as probation departments accept more diverse offenders, finding good matches between offenders and work sites becomes more difficult. Linking the work to the offense becomes more difficult as more violent offenders receive probation. Finding a meaningful position for an offender with violent tendencies is difficult when liability is considered. The probation department has a legal duty to ensure that offenders are not placed in a position where the offenders can reoffend or injure other parties. Keeping offenders under close supervision and at work sites which pose the least liability risks becomes a major factor in determining where an offender may work (Del Carmen and Trook-White, 1986, pgs. 4-5). Thus, for many offenders, the assignment of community service may not be meaningful. Community service may simply be another form of punishment as opposed to providing a meaningful experience, which was the original intent of the Alameda program (McDonald, 1988, p. 1).

Benefits of Community Service

Community service offers many benefits. The most important benefit is cost-effectiveness. With more offenders being sentenced to longer periods, an increased need for prison space has arisen. The apparent punitiveness of community service enables courts to direct low risk offenders to such programs without appearing soft on crime and without having to increase prison space (Benekos, 1990, p. 52; Carter, Cocks and Glaser, 1987, p. 4; Gendreau and Ross, 1987, p. 377;

and Jones, 1991, p. 51). As discussed above, community service is a mid-range punishment (Benekos, 1990, p. 53). The offender serving a community service order is not completely free and is providing a time-consuming service for the community. Also, community service provides the opportunity to deal more effectively with certain types of offenders (Jones, 1991, p. 51). Offenders committing crimes on which a monetary value can be placed can repay the community through community service. Additionally, persons needing closer supervision can be monitored through the agency receiving the community service; thus, the probation department bears only a marginal cost to assign persons to community service orders.

The benefits of community service extend to the offender as well. Community service is a way to restore the offender to the community. The offender works within the community for the duration of the ordered hours giving the offender the opportunity for close interaction with positive role models. A study by Allen and Treger (1990, p. 13) found 74% of probationers preferred community service orders as a means of helping others. The interaction between the offender and the community can help to restore the offender to the community and involve the community in the change of the offender (Benekos, 1990, p. 52). McCarthy and McCarthy state that isolation from the community was a major complaint of offenders and found that incarceration only serves to further isolate the offender from the community (McCarthy and McCarthy, 1984, p. 140). Community service creates interaction and may eliminate the feelings of isolation for some offenders.

The effect of community service on the offender are difficult to generalize since community service programs vary from one department to the next. Tasks such as assigning hours and the type of work are at the discretion of probation officers (Carter, Cocks and Glaser, 1987, pgs. 6-7; and Hudson and Galaway, 1990, p. 9).

Variations in departmental and individual probation officer philosophies are too great to gage the effect of community service as either positive or negative punishment. Discretion allowed in the assignment of hours can create vast discrepancies and hardships for some community service workers.

Overview of Discretion in Community Service

Over the past few decades, the administrative state has slowly expanded (Rosenbloom, 1983, p. 185). The administrative state may be characterized as the bureaucracy which exists to run government programs. Probation is part of a larger bureaucracy (Lawrence, 1984, p. 20) which includes: state mandated rules, policies and funds; county directives, courts, management and funds; city political structure and funds; and, overall, the guidance of federal policies. As the administrative state grows, citizens become more dependant upon the administrative state's existence, and the government is placed more in a position of dominance (Rosenbloom, 1983, p. 63). Congress assists the growth of government by writing vague and general laws which leave the public administrator in charge of reconciling and clarifying the laws into practice (Dobel, 1990, p. 357). The vagueness of the laws allows administrators to have broad and considerable discretion (MacIntyre, 1986, p. 67). Through the 1970s and 1980s, a

decline in public administration ethics has occurred (Perry and Wise, 1990, p. 367). Abuse of discretion increases with increases in the amount of discretion allowed. Courts have had to hold administrators liable for illegal and unconstitutional actions when administrators exceed discretionary power (Rosenbloom, 1983, p. 185).

The Civil Rights Act of 1871, later codified as section 1983 of Title 42, U. S. Code, protects public administrators when acting under the color of a state statute, ordinance, regulation or custom (p. 15). From the passage of the Civil Rights Act until the early 1970s, the courts were reluctant to broaden the interpretation of the act to allow administrators to be held liable for actions which in many cases exceeded the administrator's grants of power (Rosenbloom, 1983, p. 191). The power to act within the discretionary boundaries was protected at common law. Only ministerial activities, those actions required by law, could be challenged at common law. But actions which were in the gray area of discretion were completely protected. The first case to reach the Supreme Court to test the boundaries of the Civil Rights Act was Spalding v. Vilas 161 U.S. 483 (1895). The court ruled that heads of federal departments would be extended absolute immunity regardless of the motivation behind the action. Now the federal agents were extended the same protection as state employees had under section 1983 to be protected so long as the action was discretionary and a power vested in the agent. All subsequent cases extended similar immunity to all public servants for discretionary actions taken within the administrator's official capacity (Rosenbloom, 1983, P. 189).

Not until 1971 did the courts reverse the previous protection of public administrators. The administrative state had rapidly grown through the 1960s, and abuse had increased with the growth of the administrative state (Rosenbloom, 1983, p. 192). In Bivens v. Six Unknown Named Federal Narcotics Agents 403 U.S. 388 (1972), the Supreme Court reversed the previous immunity extended to public administrators. Narcotics agents entered Biven's home without a warrant or probable cause, searched him and beat him, thus violating his constitutional rights on several points (Bivens v. Six Unknown Named Federal Narcotics Agents). The court was faced with determining whether the erosion of individual rights and liberties should be allowed for the sake of the administrative state (Rosenbloom, 1983, p. 193). The court ruled that there could be a level of discretionary acts which the courts could protect and that these discretionary powers could be transgressed, in which case, the courts could not protect the administrator with immunity. The case was remanded to trial court because room had been left to determine whether the administrator perpetuated the act in good faith (Bivens v. Six Unknown Named Federal Narcotics Agents). If an administrator transgressed discretionary powers in good faith, immunity would still be extended (Rosenbloom, D., 1983, p. 194).

Good faith was replaced in the 1974 Supreme Court case Wood v. Strickland 420 U.S. 308 (1974). After the Wood case, reasonability of actions became the important point to prove or disprove to attach liability. When a reasonable person would have known or should have known that an administrative action violated an individual's

constitutional rights, liability may be attached to the administrator (Wood v. Strickland). With regard to probation officers, the courts have made the important distinction between discretionary activity and ministerial. Discretionary activities, which involve acting within the discretion allowed in each field of administration, are fully protected with immunity. Those actions which are ministerial, meaning required under law, statute, or policy and procedure, are only protected with immunity if the administrator can prove the action was within the required limits and under the proper authority (Watkins, 1989, p. 29). In addition to the protection of ministerial activity is the reasonable person test, which can afford immunity even if the officer/administrator overstepped his/her authority. Overall, probation officers are given a broad net of protection from liability with absolute protection of discretionary activities.

As to the limits of administrative power, distinctions have continued to be drawn since the 1972 case. Trying to balance individuals' constitutional rights with the need for an administrative state which has discretion is now fully involved in the courts. Courts must now determine whether such constitutional guarantees as due process under the Fourteenth Amendment and equal protection can be used to restrain administrative discretion. However, in recent years, the federal courts, led by the U.S. Supreme Court, have begun to remove some of the interference with administration in an attempt to allow flexibility to remain in administration (Cooper, 1985, p. 651). Prior to considering a case, the court must determine that an administrator

violated an individual's constitutional rights (Rosenbloom, 1983, p. 198).

Protection of the use of discretion is no longer being reduced and is once again being extended to administrators (Cooper, 1985, p. 651). Administrators' expertise, efficiency, economy and convenience are once again being used to justify extending immunity (Rosenbloom, 1983, p. 192). The judicial branch has the power now to oversee the administration and ensure that administrators do not abuse their discretion. With discretion, administrators can easily exceed statutory authority, fail to follow procedural policies, act arbitrarily or capriciously, and act without due consideration to the needs of those the administrator has discretion over (Cooper, 1985, p. 643). Thus, administrators must ensure that those who are delegated discretionary power can discipline their own desires, self-interests and prejudices in order to act within the acceptable range of discretion (Dobel, 1990, p. 356).

Administrative laws exist to place constraints on administrative discretion. However, questions linger as to whether such laws can provide justice, fairness, political control and accountability among administrators (Bryner, 1986, p. 50). The discretion of administrators to write administrative law, based upon the vague laws handed down from Congress, is conferred because of the administrator's expertise, both scientific and technical. Law makers lack the specific expertise to anticipate all of the situations and circumstances which an agency may face. Therefore, Congress allows special policies and procedures within the vague, general laws to complement, enhance and create

specific guidance for the bureaucrats of an agency (Bryner, 1987, p. 1). Yet, the discretion to write policies which have the force of law may threaten the democratic ideal of holding elected officials accountable to the people who elected them (Bryner, 1987, p. 2).

Being responsive to citizens needs is the task of elected officials; but, as the administrative state grows, additional layers of bureaucracy remove the direct line of accountability. The administrator is placed in a unique position of being removed from accountability since the administrator is not elected, can only be removed for cause, often does not have built in processes to ensure responsiveness nor responsibility, and is in a position at times to do exactly what the majority of citizens do not want (Cooper, 1985, p. 650). To hold administrators and the bureaucrats of an agency accountable for their actions, citizens must work through the courts or the Congress. Both tasks are difficult and time consuming. Because of their expertise, administrators are granted broad power to act independently to implement public policy (Rosenbloom, 1983, p. 18). Relying on the expertise of administrators to work within their grant of power has not been enough to protect citizens from abuse and has led in some cases, to liability being imposed to protect an individual's constitutional rights. Courts have the power to require administrators to justify seemingly arbitrary actions; however, for a court to review an administrator's potential abuse, a citizen must file charges and provide doubt as to whether the action was arbitrary and beyond the scope of discretion. As such cases are difficult to pursue, few cases exist (Rosenbloom, 1983, p. 18 & 191).

Still, even with the clearly written and mandatorily prescribed rules, at some point, individual bureaucrats must make judgements which amount to discretion to decide a course of action (Dobel, 1990, p. 355). Discrepancies between actions are well documented in the law enforcement field (Acroson, Dienes and Musheno, 1984, p. 484). Personal integrity varies among bureaucrats. Additionally, the personal integrity of an individual is dynamic and may change over time (Dobel, 1990, p. 355). Controls, thus, need to be built in to protect against varying levels of integrity and the potential shifts in integrity.

Texas law enforcement gives broad discretion to officers at all levels. Specifically, with regard to sentencing of offenders, Texas adheres to the policy of providing definite sentences with wide discretion. A judge has a range of sentences for the specific level of crime committed, but there is wide discretion within the range (Abadinsky, 1991, p. 179). Although judges in Texas hand down a sentence, the recommendation for sentences is made through a pre-sentencing investigation written by a probation officer. In addition to monitoring probationers, probation officers act as an administrative branch of the court by investigating felony offenders to be sentenced by the court. Thorough investigations of offenders' criminal and social background are conducted along with interviews of the offender, witnesses and victims if necessary. From the investigation, the officer writes a formal pre-sentencing investigation including an opinion section, the state's recommendation, and the officer's recommended conditions of probation if the state recommends probation (Statutes at Large, 1984, pgs. 1988-1989).

The conditions of probation vary from offender to offender. Officers have the discretion to recommend stringent conditions for high risk offenders and relaxed conditions for low risk offenders, but determining the risk level is a discretionary act. Judges may heavily rely on the recommendations of a probation officer as the probation officer has conducted an in-depth look into the offender's background and the officer is a professional (Carney, 1977, p. 224). Each condition can be tailored to the specific needs or risks of an offender. Some offenders have drug or alcohol problems in which case an officer would most likely recommend drug or alcohol treatment. The condition of community service was mandated in Texas as a condition of probation to be added to all felony probationers who were sentenced after January 1, 1991 (Vernon's, 1992, pgs. 107-108). The result is a sentence which, in addition to probation, has a broad range of assignable hours at each level of felony offense and is essentially based on no standard means of assignment. For a felony one, an officer may assign 320-1,000 hours of community service; the felony two range is 240-800; and the felony three range is 160-600 (Vernon's, 1992, pgs. 107-108). Attempts may be made at assigning hours to the monetary level of damage done in a crime, but many crimes create no discernable level of monetary punishment. Thus, community service is usually arbitrarily assigned with no connection between the crime and the number of hours assigned (McCarthy and McCarthy, 1984, p. 149; Miller, J. G., 1986, p. 236; and Perrier and Pink, 1985, p. 34).

In the Second Twenty-Fifth Judicial District, officers have little in the form of guidance from the Criminal Justice Administrative Division

to assist them in determining what justifies the assignment of 320 hours as opposed to 1,000 hours. With varying backgrounds among the officers and differing social standards, officers must struggle with deciding what level of community service is appropriate, knowing that community service can present a hardship to many offenders. The officers look at the offender and carry their own attitudes and belief systems into the difficult decision of recommending punishment. Disparities exist as a factor of the variety of concepts which probation officers hold about probation (Schultz, 1973, ii, from the Forward by Judge Terry L. Jacks).

A study by Katz in 1982 demonstrated exactly how differing attitudes of officers can affect the assignment of punishment. One hundred eighty-five probation officers in New York were asked to assign probation or prison at varying levels to six offenders based upon a pre-sentencing investigation done for each offender. No consensus could be reached on any offender. Two offenders almost had a perfect fifty-fifty split between probation officers recommending prison or probation (Katz, 1982, p. 459). The study found no systematic manner in which officers responded (Katz, 1982, p. 466). In a system based upon equity, similarly-situated offenders should be treated similarly. But, when the same offender is treated significantly different, depending upon the officer handling the case, then discrepancies in discretion may need to be examined. Officers carry their own attitudes, and such attitudes should not affect the equity of the treatment for offenders. Yet, the study by Katz found individual

probation officer attitudes to be a major factor in the differing treatment of offenders (Katz, 1982, p. 468-469).

Officer attitudes and philosophies can be very important in the treatment of probationers (Harris, Clear and Baird, 1990, p. 233). The emotional experiences that a probationer may have when coming in contact with the criminal justice system may be shaped simply by the officer assigned to the case (Bahn and Davis, 1991, p. 17). Since community service can present a hardship, tempering an officer's discretion with clear guidelines may be important to assure that probationers are handled with equity. Not providing equity before the law, in a sense, violates the equal protection clause of the United States Constitution. However, such charges of constitutional violation are protected in the case of community service assignment of punishment since assignment of hours is a discretionary activity protected at common law (Watkins, 1989, p. 29; and Del Carmen and Trook-White, 1986, pgs. 2-3). Still, providing equity, even if successful suits cannot be pursued, is an important concept of democracy which the administrative state may easily lose sight of as the administrative state is not directly accountable to the public.

Systems to create more accountability and control over the officer's/administrator's discretion may have the effect of stifling officer's/administrator's ability to work with the individual client's needs (Miller, J. G., 1986, p. 237). Striking the appropriate balance of adequately restricting discretion to decrease discrimination and abuse, and still allowing an adequate level of discretion to give officers/administrators the ability to individualize sentences to the needs and

risks of the offender, may be completely unattainable. Somewhere along the line, the decision must be made on how much discretion to allow an officer with regard to the need to protect the clients monitored by the officer.

Officer discretion is an important aspect of community service. In addition to such considerations as discretion are all the other aspects of the penal philosophies. Traditional discussions about the various aspects of the penal philosophies apply equally to community service as to other forms of punishment within the realm of the criminal justice system (Galaway and Hudson, 1981, p. 4; and Perrier and Pink, 1985, p. 34). Penal philosophies can be generally discussed in four forms: the rehabilitative philosophy, the deterrence philosophy, the just deserts philosophy and the justice philosophy.

CHAPTER 3

A Literature Review of the Models of Justice

Penal philosophies can be classified into four major categories (each to be explored in-depth later). The philosophies or models of justice will be discussed as rehabilitative, deterrence, just deserts and justice. The literature continually debates the effectiveness of each model. For a model to be effective in community service, the model would have to demonstrate a reduction in recidivism of probationers punished under the particular model of justice (Lampe, 1985, p. 27; and Morris and Tonry, 1990, p. 164). Hudson and Galaway (1990, pgs. 5-8) described community service as having an overall lower recidivism rate than prison parole. Jones (1991, p. 61), on the other hand, found community service recidivism to be similar to prison recidivism. Recidivism is difficult to eliminate in any model since the repeat offenders must be identified and incapacitated (not assigned community service) (Decker and Salert, 1987, p. 288; and Visser, 1987, p. 515). Even the Greenwood scale, developed after years of research, fails to identify the characteristics of those persons who are repeat offenders. Thus, although low risk offenders are usually the group targeted to serve community service orders, recidivism remains high among community service workers, and no model has been found to successfully reduce recidivism (Decker and Salert, 1987, p. 291; and Visser, 1987, p. 524).

Difficulty identifying the reasons for recidivism and in developing models of justice to limit recidivism creates differences from one community service program to the next. Due to the scant information

about individual community service programs (Gendreau and Ross, 1987, p. 377), policies, objectives, and models of justice which have the best effect on reducing recidivism will be difficult to identify.

Community service officers' philosophies vary since there is no agreed upon objective of community service (Harris, Clear and Baird, 1989, p. 234; Hudson and Galaway, 1990, p. 3; and Morris and Tonry, 1990, p. 154). The objectives or goals of community service officers can be identified utilizing the four general models of justice which can be applied to community service. Since no model has been found to be superior in reducing recidivism, community service programs attempt to tailor policies toward the most viable model for the community which the program serves (McAnany, 1984, p. 55). Thus, each community has a very distinct program with individual successes and failures (Morris and Tonry, 1987, p. 154).

The models of justice, discussed separately below, will be over-viewed in light of the existing literature to present an understanding of the purpose each serves and an understanding of the strengths and weaknesses of each model.

Rehabilitation Model

Slowly, after the Civil War, a movement toward more humane treatment of offenders known as probation, and the services probation spawned, was begun (Panel on Research, 1981, p. 4-5). Prison proved to be more disruptive and only warehoused offenders rather than rehabilitated. Alternate means were being attempted to reach the goal of rehabilitating offenders (Morris and Tonry, 1990, p. 166; and Panel on Research, 1981, p. 4-5). The movement toward probation was

begun with the intent to rehabilitate low risk offenders in the community (Cullen and Gilbert, 1982, p. 7).

By the 1960s, an era of attempting to rehabilitate prisoners was in full swing. The "get tough" movement of the late 1960s and early 1970s was launched to combat the perceived lenient nature of the rehabilitation model because the concept of just deserts (highlighted in the determinate sentencing movement) was believed to have been removed over the past two decades from the system (Perrier and Pink, 1985, p. 32; and Cullen and Gilbert, 1982, p. 9). Rehabilitation was successfully removed as the primary goal of the correctional system, and a return to punitive models occurred (Miller and Anderson, 1986, p. 420).

The purpose of rehabilitation is to create a change in the attitudes, behavior and character of offenders, to defend society from future unwanted behavior and to contribute to the offender's welfare and interest (Allen, 1981, p. 2). To accomplish the goal of changing behavior, programs which provide services and assistance must be tailored to the individual needs of an offender (McAnany, 1984, p. 55; and Lawrence, 1991, p. 449). Consideration of the crime committed and the risks of the offender are outweighed by the needs of the offender (Panel on Research, 1981, p. 5; and Perrier and Pink, 1985, p. 37). The person assigning punishment to offenders must have the discretion to tailor the punishment to the offender's needs, and rewards should be offered in the form of services and assistance to help the offender reform (Panel on Research, 1981, p. 5).

When rehabilitation is the primary goal in assigning probation punishment, Lawrence (1991) states that offenders tend to receive longer terms of punishment than if they were punished only for the crime committed because longer interaction with the system may be viewed as necessary to alter the behavior of offenders (p. 452). Thus, drug or alcohol treatment may be part of the conditions of probation for a burglary offender. The treatment may take longer than the probation, so the probation would be extended to ensure the treatment was administered. According to Cullen and Gilbert (1982, p. 136), liberals argue that rehabilitation leads to victimization of some offenders who receive longer periods of punishment than the offenders would under another model of justice.

McAnany (1984, p. 55) believes that punishments can never be solely rehabilitative, since the model would require punishing only to the extent that change in behavior can be reached. For some offenders rehabilitation can never be reached, and, for others, counselling may be all that is needed to assist an offender in rehabilitating. Critics of rehabilitation state that the services offered may reward an offender as opposed to punishing (Lawrence, 1991, p. 454).

Community service is the form of punishment which is flexible enough to assist with the rehabilitative goal, since the program may be able to closely link the offense with the sanction making the punishment more meaningful (McCarthy and McCarthy, 1984, p. 134). Programs can be designed which assist the offender to reintegrate into the norms of the society and offer the offender the opportunity to make

amends for the offense (McCarthy and McCarthy, 1984, p. 133; and Lawrence, 1991, p. 449). The rehabilitative side of community service can be seen when offenders feel increased self worth and feel remorse for the offense (McCarthy and McCarthy, 1984, pgs. 134-135).

However, linking the sanction to the offense with the form of community service work performed is frequently an unattainable goal (McCarthy and McCarthy, 1984, p. 149). Alameda County, which first established a community service program in the United States, was very successful in linking the work performed to the offense committed, and the program was very successful in the rehabilitation goal (Morris and Tonry, 1987, p. 152). Yet, as the program spread, so too did the range and type of offenders who entered the program. Now all felony offenders must perform community service. Attempts to place offenders in a work site which is a valuable experience and thus offers rehabilitation, is difficult to achieve. Trying to tailor a program to deal with the causes of criminal behavior and change the offender into a law-abiding citizen is extremely difficult to accomplish (Lawrence, 1991, p. 449).

Lawrence (1984) studied the attitudes of probation officers with regard to the pre-sentencing investigations the officers have written. He believes officers begin with the belief that offenders can be rehabilitated. However, as officers become more accustomed to working with offenders, he feels officers' attitudes change to fit the realities of the job (pgs. 17-20).

Cullen, Clark and Wozniak (1985) performed a secondary analysis of surveys administered to Texas residents between 1977 and

1982. The analysis found Texans - often described as "law and order" citizens - less preoccupied with crime than researchers believed.

Although rehabilitation was not perceived to be the primary goal of the Texas' criminal justice system, citizens did not reject rehabilitation as a goal of corrections. For community-based corrections, Texans rated rehabilitation as the most important goal. Texas was selected because of the strong punitive background of the state to demonstrate that punitiveness is not all that citizens want. The authors state that Texans demonstrated less punitiveness than the "get tough" movement would suggest exists.

In 1988, Cullen, Cullen and Wozniak surveyed citizens in an Illinois town to determine if rehabilitation was perceived to be a valid model of justice in the citizens' opinions. The citizens strongly supported punitive goals for corrections but did not discount rehabilitation as a goal of corrections. Rehabilitation was found to be strongly supported when the offender voluntarily wished to have help and attempted to rehabilitate.

Harris, Clear and Baird (1989) surveyed probation officers, attempting to replicate a 1972 study. The findings demonstrate that probation officers have moved away from the rehabilitative ideal. Probation officers in the 1972 survey supported rehabilitation over the other goals of corrections. The 1989 study found a significant movement away from rehabilitation toward restraint and authority.

Contrary to the above findings, Allen's 1985 study found probationers to perceive their probation officer as oriented toward rehabilitation (p. 71). Probationers were asked to rank the models of

justice from the most valid to the least valid with regard to probation officers' attitudes, purpose of probation and judges' attitudes. Probationers ranked deterrence as the primary goal of probation; rehabilitation as the primary goal of probation officers; and, just deserts as the primary goal of judges (pgs. 70-71).

The movement away from rehabilitation can be seen with the attempts to create determinate sentences (fitting the punishment to the crime). Dissatisfaction with rehabilitation is felt because of the perceived coddling of offenders and the reduction in the cost and pain endured during the punishment (Cullen and Gilbert, 1982, p. 13). Also, the discretion which is extended to the administrators who oversee the punishment of an offender is vast under the rehabilitation model. Abuse of discretion under the guise of rehabilitation has caused offenders to be treated exceedingly differently, and violations of constitutional rights such as equal protection and due process have occurred with the justification being the need to alter the offender's behavior (Cullen and Gilbert, 1982, p. 15). Fitting the punishment to the criminal without regard to the crime is the primary goal of rehabilitation which is being challenged as a form of victimization of targeted offenders (Cullen and Gilbert, 1982, p. 15).

Rehabilitation is still a viable goal of corrections, as the literature demonstrates. Some authors attempted to proclaim the death of rehabilitation. Table 1 summarizes the studies which claim that rehabilitation is still an integral part of corrections.

Table 1
Summary of Findings and General Definition
of Rehabilitation

| Definition | Authors | Study Findings |
|---|--------------------------|--|
| Punishment individually aimed at creating a change within the future behavior of the offender | Cullen, Clark & Wozniak | Texans view rehabilitation as a goal of corrections. |
| | Cullen, Cullen & Wozniak | Voluntary rehabilitation as a goal of corrections. |
| | Harris, Clear & Baird | Significant movement away from rehabilitation. |
| | Allen | Probationers view officers as having rehabilitative orientation. |

Determining which offenders are low risk and thus deserving of a break (probation and community service) has been a problem which the rehabilitation model has not been able to solve. The movement to more punitive forms of punishment has been in an attempt to reduce the recidivism rate (Cullen and Gilbert, 1982, p. 45).

Deterrence Model

Revival of the deterrence model of justice began in the late 1960s with the assumption that stiff sentences could reduce crime (Miller and Anderson, 1986, p. 418). As the criminal justice system moved toward attempting to rehabilitate offenders, the crime rate rapidly climbed (Cullen and Gilbert, 1982, p. 2). So much flexibility was allowed under the rehabilitation model that a perception of being soft on crime developed. By setting down mandatory sentences, the cost of crime increased; hence, offenders and potential offenders could know the costs, and be informed about the mandatory punishment which would be assigned regardless of circumstances (Cullen and Gilbert, 1982, p. 17). Increased penalties was the result of the punitive movement

because increased punishments were assumed to deter crime (Cullen and Gilbert, 1982, p. 209).

The "get tough" punitive attitude of the 1960s and 1970s era spawned renewed interest in the desire to deter criminal behavior. Akers (1990, p. 654) discusses deterrence as a "rational choice" in that people choose to commit or not to commit crimes as part of a rational decision process. Thus, there is an inverse relationship between the offender's perception of certainty and severity of punishment and the offender's behavior (Paternoster, 1987, p. 174). The deterrence doctrine assumes that most persons wish to avoid prison and will be discouraged from participating in crimes that ensure severe and certain punishment. If the right sanctions can be found that will ensure that criminal behavior is too costly for most persons, then deterrence can be used effectively to reduce crimes (Miller and Anderson, 1986, p. 418). Measures of cost include: length of incarceration, the deprivation of liberty, loss of certain civil liberties, the stigma attached to punishment and the income foregone as a result of punishment (Miller and Anderson, 1986, p. 425). Deterrence attempts to control the future behavior of potential offenders by enforcing mandatory minimum sentences against convicted offenders to serve as examples of the certainty and severity of punishment (Lampe, 1985, p. 25).

Prisons are no longer providing an adequate deterrence (Perrier and Pink, 1985, p. 37). Community service is a form of punishment which is assumed to be deterrent (Menzie and Vass, 1989, p. 204). As provided in the Texas Penal Code, ranges of community service hours

are established with a minimum and a maximum level for each category of offense (Vernon's, Code of Criminal Procedure, 1992, pgs. 107-108). Offenders who are aware that probation requires the additional condition of community service hours may be deterred from committing a crime if the offender feels the level of punishment is too severe.

Deterrence is a multi-dimensional concept in that the laws assume that there is social consensus about what is too expensive a cost to be paid for a crime, that people think rationally, that people are aware of the crime and the punishment, that criminals perceive a chance of being caught and that moral rules exist which affect most people's behavior to avoid crime (Lampe, 1985, p. 26). The means for determining if deterrence is effective can be gauged not only in recidivism but also in self-reported deterrence.

Miller and Anderson (1986) developed a survey which incorporated fifty crime opportunity vignettes, the potential rewards from the crime and the chance of being apprehended. The survey allowed respondents to rank their perceived percent chance of committing the crime on a bar scale. The study found "as the certainty and severity of punishment increases, the perceived probability of illegal behavior decreases" (Miller and Anderson, 1986, p. 431). With regard to race and gender, the study found variations as a result of moderately different normative systems. In general, financial gain had a strong correlation to perceived opportunity; predatory crime, a crime against a person, was strongly influenced by certainty of punishment; and punishment severity (foregone income,

deprivation of liberty and stigmas) had the greatest influence on common crime, i.e., crimes against property. The authors concluded that deterrence based criminal justice policies cannot assume that norms can be agreed upon and, thus, a level of punishment cannot be devisable to deter most offenders.

Paternoster (1987) overviewed twenty-five previous studies on deterrence to determine if the doctrine works best for certain crimes. The studies found great variations of inverse relationships within the same crime category. Certainty and severity of punishment for drug possession had varying levels of effects. Some studies found strong inverse relationships while others found very weak relationships. The author concluded that no study could predict the deterrent effect of certainty and severity of punishment.

Based on a document analysis, Akers (1990) found that variations in norms created varying perceptions of formal and informal costs of crime. Prison is not a bad alternative for all persons; so, the formal cost of imprisonment is not as horrifying for some persons. The informal costs of punishment would include measures of variables such as background, parent's crime, previous learning, upbringing and peer influences. With the vast variations in the norms of subgroups of the society, developing minimum punishments which will adequately deter crime is a difficult task.

Deterrence as a means of decreasing crime is not determinable. Variations in perception across subgroups is too great to determine a successful outcome. The deterrence model is presently receiving strong support within the field of probation. Allen's 1985 survey of

probationers found probationers to perceive deterrence as the primary goal of probation (p. 70). Community service has taken on a deterrent atmosphere as a carry over of the "get tough" movement. The result is strong support for deterrence even though the effects of deterrence are not tangible (Allen, 1985, p. 70).

The findings of the studies discussed under the deterrence model are summarize in Table 2. Also, a general definition was developed based on the various authors' discussion of deterrence. The definition will be utilized in the survey to be discussed in chapter 6.

Table 2
Summary of Findings and General Definition
of Deterrence

| Definition | Authors | Study Findings |
|--|-------------------|--|
| Certainty and severity of punishment will cause rational people to avoid criminal behavior | Miller & Anderson | Norms of criminal behavior cannot be assumed. |
| | Paternoster | No means of predicting deterrent effect of certainty and severity. |
| | Akers | Deterrence cannot work for all subgroups. |
| | Allen | Strong support for deterrence exists. |

Deterrence is not the only punitive model of justice perceived to be a primary goal of the "get tough" movement. Just deserts has also been an integral part of the movement toward more punitive punishment.

Just Deserts Model

The model of justice known as "just deserts" has been gaining substantial support over the past few decades. Punishment prior to the twentieth century was based on fitting the punishment to the crime (Cullen and Gilbert, 1982, p. 10). However, during the twentieth

century, the movement toward rehabilitating offenders did not hold to the promise of decreasing crime by reintegrating the wayward offenders. Rather, crime increased (Cullen and Gilbert, 1982, p. 2-3). The phrase "just deserts" came to mean that in a just society, those that break the law will be made to suffer in a due measure (Pepinsky and Jesilow, 1984, p. 121). The concept of "just deserts" places importance on the punishment being commensurate with the offense (Hamilton and Rytina, 1980, p. 1120). There is to be a matching of crime severity with penal severity based on the assumption that for each offense there can be a fixed and humane punishment (Cullen, Cullen and Wozniak, 1988, pgs. 304 & 310). The just deserts model is rooted in the "eye for an eye" philosophy and is a strongly punitive model (Pepinsky and Jesilow, 1984, p. 121).

To provide "just deserts" would require an agreement on what crimes should receive what levels of punishment-- severity of crime matches severity of punishment. Then, every person regardless of age, race, sex, and such traits, would receive the punishment that was mandatorily set for such a crime; and no other considerations would be viewed as affecting the punishment. Offenders would thus receive equal treatment (Cullen and Gilbert, 1982, p. 17). However, converting the harm the offense caused into a fixed number of days of incarceration or probation time proves difficult (Pepinsky and Jesilow, 1984, p. 121-122). The legislature must deem a specific sanction to be appropriate, and all offenders found guilty of the offense must receive the legislature's codified level of punishment. The concept removes discretion from the sentencing judge to weigh extraneous factors.

Under the just deserts model, the state has no right or obligation to consider the condition or needs of offenders (Cullen and Gilbert, 1982, pgs. 9-10).

The "get tough" movement places pressure on community service programs to match the severity of the crime with lengths of service in community volunteer work (Benekos, 1990, p. 53). With the great variations in crime, problems arise determining what constitutes "just deserts" and in attempting to control recidivism in community service.

Hamilton and Rytina (1980) performed a study on various classes of persons to determine if consensus could be reached on the proper punishment for certain crimes. Three hundred and ninety-one persons were interviewed and asked to fill out an additional questionnaire. Eight city blocks in Boston were selected to be sampled because of the diverse ethnic representation. Respondents were provided with crimes in which they were to choose the punishment that best fit. Based on the results of a questionnaire and personal interviews, Hamilton concluded that blacks and lower-class persons were least able to reach consensus on punishment severity. The black persons had the widest gaps in punishment severity deemed appropriate for certain crimes. High income persons showed a high level of consensus on how severe punishments should be for crimes listed on the questionnaire. The authors found no significant consensus among persons of the same sex or persons of similar education. Surprisingly, the authors found that in the write in section, the respondents offered less penal suggestions. Respondents

mentioned punishments such as restitution and rehabilitation as important goals to be accomplished in addition to just deserts.

Pepinsky and Jeslow (1984), discuss just deserts in light of the myths that supposedly cause crime. If reasons for crime could be determined, then perhaps an equal amount of punishment could be assigned (pgs. 121-122) The authors discuss great variations in responses to just punishments and are only able to document consensus on punishment when the crime is so extraordinary, outrageous and intollerable that most persons would agree life imprisonment or the death penalty are appropriate, such as with Charles Manson (p. 125). Of the studies reviewed, no other instance of agreement on what constituted just deserts could be documented.

Durham III (1988), in a study of students, found that a homogeneous group of students could not agree (even a simple majority of fifty percent) on the proper punishment for vignettes of crime. The questionnaire provided a Likert type scale for severity of crime and asked students from criminal justice classes at one university to assign punishment for various crimes. Some of the groups of similar crimes were consolidated to try to find some form of agreement on punishment severity; the author, however, was unable to achieve even a fifty percent agreement level on any one punishment for a given crime.

Cullen, Cullen and Wozniak (1988), in a questionnaire to determine the support for "just deserts" model of punishment among common citizens of west Illinois, found strong support for "getting tough" on crime. Two hundred households were randomly selected.

Seventy-eight percent were returned. Respondents expressed a desire to see not only just deserts but an incorporation of just deserts with offenders voluntarily attempting rehabilitation. The perception of a strictly punitive public wanting only just deserts is challenged by the authors.

Perrier and Pink (1985) state that even if the public were out to achieve just deserts, matching punishment severity to crime severity is a difficult task, especially if consensus were to be viewed as the means for deciding which punishment fits which crime.

The studies discussed above (and summarized in Table 3) demonstrate that consensus on what constitutes "just deserts" is difficult, if not impossible, to achieve. Although there is support for the model, viewing the public as solely retributive is not supported by the literature. Community service programs based solely on just deserts would be difficult to achieve, due to consensus problems. In addition, just deserts fails to account for variations in offenders, since just deserts would determine punishment solely on the crime committed. With such great variations in offenders, mandatory minimum sentences as "just deserts" implies leave out considerations of risk of recidivism.

Table 3
Summary of Findings and General Definition
of Just Deserts

| Definition | Authors | Study Findings |
|--|--------------------------|---|
| Punishment should fit the crime and a balance between the crime and the punishment is attainable | Hamilton & Rytina | Found some consensus on what constituted the offense. |
| | Pepinsky & Jesionow | Found no consensus on what are just deserts. |
| | Durham III | Found no consensus on what are just deserts. |
| | Cullen, Cullen & Wozniak | Found strong public support of the just deserts model |
| | Perrier & Pink | Found disparity between courts in application |

Justice Model

The least-discussed model of justice in the literature is the justice model. Justice can be viewed as a means of resolving a problem between an offender and the victim in a fair and just manner (Allen and Treger, 1990, p. 9). Punishment is based on an individual case-by-case basis. Offender's background, special problems and propensity for recidivism are utilized to tailor a punishment (Harris, 1984, pgs. 16-17). Within community service, the justice model would give great flexibility in sentencing and conditions attached to probation orders. The offender is assumed to owe a debt to the community for the crime committed; thus, the punishment would balance all factors proportionally to ensure the offender does not receive too harsh a punishment while ensuring that the community would find the punishment appropriate. Justice has also been called the reintegration/restoration model (Lampe, 1985, p. 26; and Harris, Clear and Baird, 1989, p. 237). Justice is discussed less frequently in the literature than the other models of justice.

Studies to determine the degree of support for the justice model have found decreased support for justice as decreased support for rehabilitation occurs. Harris, Clear and Baird (1989) surveyed probation officers to determine if there was a shift in attitudes about reintegration, rehabilitation, reform and restraint. Utilizing a 1962 Authority/Assistance survey, Harris, Clear and Baird were able to document the shift in probation officers' attitudes away from reintegration as a goal of the individual officer. Balancing the needs of both the offender and the community is the primary goal behind reintegration which is similar to the justice model. A questionnaire closely resembling the 1962 and later 1974 questionnaire with a few alterations was administered to 233 probation officers in towns in Texas, Minnesota and Wisconsin. A Likert type scale requiring officers to respond from "occasionally" to "often" was devised to measure officers' attitudes. Reintegration attitudes from 1974 to the 1983 survey demonstrated a significant decrease in officers desire to aid in reintegrating the offender, and, thus, to provide justice (pgs. 237-239).

Restitution centers are a form of justice, exacting payment from the offenders proportional to the value of the crime (Lawrence [b], 1990, p. 28). Lawrence (1990 [b]) found a high rate of employment for offenders after completing the assigned time in the restitution center. Through these centers, the offender is capable of viewing a direct link between the crime and the punishment by having to repay the crime. The offender works in the community at a normal job and lives at the restitution center when not working. The center receives the offender's pay check each pay day and divides the money between

the costs of the center, the person's family and the probation fines which are to be repaid to the victim. The fines collected were equal to the monetary value of the crime plus probation costs.

Another study to measure justice found community service to be justice oriented. Allen and Treger attempted to determine whether community service provided justice by being perceived by probationers as resolving the problem between the probationer and the victim in a fair and just manner (p. 9). Over a period of a year, probationers from one department after being released from community service orders were interviewed to determine probationers' attitudes about the community service punishment. Probationers expressed positive attitudes about the punishment received. The probationers felt that the punishment was not too harsh and gave them an opportunity to help others. Justice was the prevailing model of justice found to be applicable to community service (pgs. 12-13).

Leibrich, Galaway and Underhill (1986, p. 61) had similar findings when interviewing probationers in New Zealand. Probationers were selected who were completing community service orders. Seventy-one percent felt that community service was a positive experience and beneficial to both themselves and the community, offering the opportunity for justice to be served. The flexibility and individuality of community service was discussed as being the cause of the probationers' positive feelings about the community service program.

The justice model does not set mandatory punishment levels but provides a flexibility and individuality to each case. The attitudes of

probationers being given an individualized punishment may be a good measure of how well the model works; however, Jones (1991, p. 59) finds a similar recidivism rate between those receiving community service and those incarcerated. Table 4 summarizes the findings of each study and offers a general definition which was a culmination of each author's discussion of justice to be utilized in the survey discussed in chapter 6.

Table 4
Summary of Findings and General Definition
of Justice

| Definition | Authors | Study Findings |
|--|----------------------------------|---|
| Developing sentences which balance past criminality and severity of committed crime. | Harris, Clear & Baird | Found decreasing desire to reintegrate offenders |
| | Lawrence | Restitution centers provide employment opportunities. |
| | Allen & Treger | Probationers can have positive experiences |
| | Leibrich, Galaway & Underhill | Punishment be carried out with positive feelings. |

Conclusion

In conclusion, each model of justice does not exist individually. Although the rehabilitation model is found in some studies to be fading, other studies find rehabilitation to still be a viable model of justice. As people vary, so too does each individual's perception of the goals of the criminal justice system. Above, each model was discussed separately; yet, the models are not mutually exclusive. Individuals' attitudes do not necessarily match a perfect model. Rehabilitation and justice were closely linked in studies while just deserts and deterrence were closely linked (Cullen and Gilbert, 1982, pgs. 30 & 127; Harris, Clear and Baird, 1989, p. 237; and Allen and Treger, 1990, p. 9).

Movements and changes in philosophies according to the literature does not necessarily hold true for each individual. As individuals vary, discovering which model of justice is most viable is difficult.

Still, discovering if models of justice have an effect on recidivism of community service probationers is an important issue. Community service orders have a certain flexibility which can allow for many outcomes. Community service can be utilized to deter future offenders, rehabilitate present offenders, provide a "just desert" punishment for crime, balance the offender's past record with a punishment, or any combination of the four models. The four models are incongruent in some respects; justice and deterrence are not highly compatible; and, rehabilitation and just deserts are not compatible.

Perrier and Pink (1985, p. 34) suggest that punishments can be punitive, reparative, and rehabilitative in equal measures. Finding a balance between goals such as deterrence and rehabilitation may be difficult but worthwhile. Increasingly, authors are discussing the models as coexisting as opposed to discussing one model as existing completely and no other model having an influence (Allen, 1985 p. 68; Perrier and Pink, 1985, p. 34; and Lampe, 1985, p. 31). Variations between community service programs provide an opportunity to measure the variations in attitudes toward punishment and the rate of recidivism for the probationers serving under varying departmental philosophies. Table 5 summarizes the models of justice as discussed in the literature to highlight the differences and similarities in the goals, orientation, strategies, and implications.

Table 5
Summary of Models of Justice*

| | Rehabilitation | Deterrence | Just Deserts | Justice |
|------------------------------|--|---------------------------|----------------------------------|---------------------------------------|
| Goals | Reintegrate offender to community | Make crime less desirable | Let the punishment fit the crime | Balance the punishment proportionally |
| Model Concerns | Treatment oriented | Punitive | Punitive | Punitive |
| Strategy for Behavior Change | Care and Control | Threats | Monitoring of the individual | Monitoring of the individual |
| Policy Implications | Offender treatment primary concern, sentence tailored for offender treatment | Mandate minimum sentence | Mandate ranges of sentences | Scale punishment to severity of crime |

*Allen, 1985

Variations between department philosophies (the perceived model of justice which prevails in a department) may be so great that the same offender may receive different treatment only because the offender got a probation officer with a significantly varied philosophy than another probation officer. The fact that perceived models of justice differ from department to department is not a significant revelation; but, when models of justice vary within the same department and every officer's recommendations are not questioned, then an offender may be punished harsher depending on the officer assigned to write the pre-sentencing investigation. The department may perceive all officers as adhering to the same model of justice as the department, but significant variations between punishments may be a factor of the officers' personal interpretation of the

model, the officers' discretion; and an officer may adhere to a different model than the department.

Thus, to determine whether the models of justice affect the assignment of punishment, one judicial district will be the focus of a survey. The department's philosophy will be determined and discussed in chapter 4 to establish a background environment for the survey which is discussed in chapter 6.

CHAPTER 4

Research Setting

Texas is considered to be a strongly punitive "law and order" state (Cullen, Clark, Wozniak, 1985, p. 16; De Luca, Miller, and Wiedemann, 1991, p. 37). Still, the rehabilitation model is not a rejected model of justice (Cullen, Clark, Wozniak, 1985, p. 16). Some judicial districts are strongly in favor of supporting the rehabilitation model over the more punitive models such as just deserts, deterrence and justice (Smith, 1992). As more community-based forms of punishment are developed, determining the models of justice to be achieved becomes an important factor in punishments such as community service.

State Environment

Mandates for the implementation of community service programs nationally have forced local probation agencies which did not previously use community service orders to develop a program and existing community service programs to come into line with the guidelines of both national and state governments. Prison overcrowding has become a national problem. Specifically, Texas has one of the highest prison populations in the nation and is under court order by Ruiz v. Estelle, 503 F Supp 1265 (D - Tex 1980) to down size the population or build more prisons (Lawrence [a], 1990, p. 208). The state budget has been so strained that Texas has not been able to increase the number of prisons fast enough as a single cell can cost from \$80,000 to \$100,000 (McDonald, 1988, p. 3). The result has been an attempt to divert offenders to community-based programs. Texas diverts approximately 800 offenders per year, and, instead of paying

out for prison space, the state collects about two million in restitution and fees from working probationers (Lawrence, 1990 [a], p. 208).

Diversion of offenders from prison has not been to reintegrate the offenders but to relieve the prison overcrowding problem (Lawrence, 1991, p. 453). Thus, in Texas, persons with more extensive criminal backgrounds are being released on probation. Presently, there are approximately three probationers for every prisoner (Travis, 1985, p. 3). Controlling probationers is rapidly becoming a more important aspect of probation as the crime rate failed to be significantly reduced throughout the 1980s (Durham III, 1991, p. 30). The national government has led the way to building more control into probation and getting even tougher on crime (Durham III, 1991, p. 30). The 1984 Crime Control Act requires states to increase control over probation by adding community service as a condition of probation. Section 3563 of the 1984 Crime Control Act requires all felons to pay restitution and/or serve community service. Subsequent acts have increased the net of control and required more persons be incorporated into community service programs. With the full force of the punitive movement under way for the last decade, recidivism has not been significantly altered, and deterrence is not being achieved (Durham III, 1991, p. 31).

Many Texas counties experimented with community service orders, but, not until early 1991, did the state mandate community service programs and require all probation departments to assign ranges of hours established for different levels of offense (Vernon's , Code of Criminal Procedure, 1992, pgs. 107-108). Probation officers write a pre-sentencing investigation (PSI) which includes an in-depth

look at the defendant's history. The PSI includes information such as the defendant's work history, education, criminal record, offense statements, family history and other pertinent data. The probation officer incorporates the state's recommended punishment with the officer's evaluation of the defendant. For offenders that the state recommends receive probation, the officer is required to add recommended conditions of probation based on the officer's evaluation of the offender. Each county is different in that some county judges frequently stray from officers' recommendations, and, in some counties, the judge rarely or never strays from the officers' recommendation.

Second Twenty-Fifth Judicial District

In the Second Twenty-Fifth Judicial District, the judge has almost never strayed from an officer's recommendation. Thus, officer's opinion of punishment is usually indicative of what the offender will receive as punishment (Smith, 1992).

The Second Twenty-Fifth Judicial District includes three permanent county seat offices (Lavaca, Colorado, and Gonzales). Eight additional satellite offices exist which probation officers periodically visit for the convenience of the probationers as the areas are too small to support full-time officers (Community Justice Plan, 1991, p. 3). Community Corrections in the Second Twenty-Fifth Judicial includes adult supervision, literacy teachers, employment specialists, alcohol and drug counselors, juvenile supervision and a Chief of Administration appointed by the judge of the district to oversee the functioning of all three county offices. Each adult officer must have a

minimum of a Bachelor's degree in no specific field but preferred in criminal justice, receive certification training within one year of employment and receive an additional forty hours of training each subsequent year. The adult officers presently supervise 295 felony offenders and 257 misdemeanor offenders and are responsible for an additional 569 indirect cases (Community Justice Plan, 1991, p. 26). Officers must supervise cases at varying levels of intensity and are required to perform all tasks set out by the state agency, the Criminal Justice Assistance Division, including writing pre-sentencing investigations, attending court, intake of probationers, supervision of every aspect of assigned probationers for both felony and misdemeanor cases, assuring compliance with conditions of probation to include community service, counseling and revocation procedures (Community Justice Plan, 1991, pgs. 26-30).

Each officer receives in-house training prior to certification training. Certification training may not be offered until a year into employment. In-house training is offered by officers who have time to explain the position and the requirements for the position. Usually, the officer in charge tries to train new officers; but, when the officer in charge does not have time to train new officers, other officers in the office assist with training. The Chief is located in one of the three counties, depending on which county is chosen as the home base and attempts to monitor all three offices from one office. Officers learn the department philosophies through interaction with other officers who impress the philosophies upon them (Smith, 1992).

In general, the Chief and the judge of the Second Twenty-Fifth Judicial District perceive the dominant model of justice which the district conforms to as the rehabilitation model. All punishment is supposed to be geared toward the needs of the offender as opposed to the risks. Officers with diverse backgrounds are assumed to understand and conform to the rehabilitation model. As a result, the judge rarely strays from an officer's recommendation (Smith, 1992).

The district agreed to allow a survey of all adult officers' attitudes to be performed. A survey was chosen as the best methodology for measuring attitudes. Other methodologies were not viewed as appropriate for the reasons detailed in chapter 5.

CHAPTER 5

Methodology

The survey was established as a means of determining the attitudes of probation officers toward the assignment of punishment. As probation officers are charged with recommending conditions of probation (Statutes at Large, 1984, pgs. 1988-1989), the officers' attitudes toward the assignment of punishment significantly reflects the actual conditions of probation which ultimately are assigned to a probationer. With regard to community service, the literature discussed in previous chapters gives little insight into officers' attitudes in the recommendation of the community service hours. Community service is a relatively new concept and has only recently been mandated as a condition of probation (Statutes at Large, 1984, pgs. 1993-1994). As a result, very little information about the models of justice and assignment of community service exist. Therefore, to determine which model of justice is perceived to be most integral in the assignment of community service hours, exploratory research in the form of a survey of attitudes was believed to be necessary to establish a link between the literature and the new criminal justice program known as community service. Of the methodologies available, survey research was chosen over other potential methods such as fieldwork or content analysis.

Fieldwork

Fieldwork is a method which requires a researcher to enter a natural social setting to observe and/or review cases and documents with regard to the phenomenon which may affect the hypothesis

(Babbie, 1989, p. 262; and Brewer and Hunter, 1989, p. 44). With fieldwork, measurements can be achieved to provide information pertinent to test the hypothesis and measure the variables (Brewer and Hunter, 1989, p. 44). In the natural setting attitudes and behaviors which may not be visible in an artificial survey may be best measured through field observation (Babbie, 1989, pgs. 262-263). Yet, data sufficient to answer all of the questions with regard to validity can not be attained (Brewer and Hunter, 1989, p. 44). Fieldwork was not selected as the best means for testing the hypothesis.

Fieldwork does provide the ability to comprehensively overview one group or organization (Babbie, 1989, p. 262) and offers flexibility in the means of data collection (Brewer and Hunter, 1989, p. 45; and Babbie, 1989, p. 275). The study was performed in one judicial district which was relatively small in that only twelve officers are employed to work with community service. However, to observe the actions and attitudes of the twelve officers would require much traveling as the three offices in the judicial district are located seventy-five miles apart. Additionally, as a means of working within the field, case studies of actual files from the district would have revealed little information about the attitude of the officer at the time of assignment of community service.

Community service as a condition of probation was mandated within ranges just a year ago. Therefore, to document attitudes toward assignment of community service hours, only cases in the last year would be applicable to a case study, thus limiting the number of case to be studied. Since the documents are court records, openly

discussing the contents and various decisions in each is not appropriate behavior for a non-probation employee. The documents are not open to the public and are not publishable in a format which discloses the confidential information. Hence, any information to try to measure attitudes by examining actual cases and asking the officer to discuss their reasoning would not be publishable in actual format or practical for time purposes. Requesting discussions of why the level of punishment was recommended would not have disclosed a disparity between officers over the same probationer unless all officers were asked to look at the same pre-sentencing investigation and discuss personal reasoning for the recommended level of punishment.

Finally, the information gathered from fieldwork raises questions of the influence the researcher's presence may have had upon the subjects, precludes experimental techniques in that fieldwork is qualitative as opposed to quantitative, and is obtrusive to the group (Brewer and Hunter, 1989, p. 46; Babbie, 1989, pgs. 286-288). Also, information outside of the actual group is not considered applicable to be utilized as information in determining how the group acts. Thus, historical documents and past studies of phenomenon being studied may interfere with analysis of the particular group and should be avoided. As well, the information from the group is not considered generalizable (Brewer and Hunter, 1989, p. 45; and Babbie, 1989, p. 287). Since much of the information needed to determine attitudes by categorizing penal philosophies into four categories and the discussion of past studies was important, field research was not determined to be the best method for testing the hypothesis.

Content Analysis

Content analysis is also a means for performing a study. Past records and statistics are gathered in an unobtrusive means (Babbie, 1989, p. 309). Secondary analysis of existing information and data about the topic are compared, discussed, summarized and used to support or reject a hypothesis (Babbie, 1989, pgs. 308-309; and Cooper, 1989, p. 12).

However, to successfully utilize content analysis and provide an adequate summary of the data available, many documents discussing the subject must be available to compare and discuss (Babbie, 1989, p. 310; and Cooper, 1989, p. 15). Officers' attitudes could not be identified with such a methodology. Several studies of officers' attitudes were found; but, no study tested the hypothesis to be tested herein. The hypothesis could not be validly tested without material precisely in the form needed (Babbie, 1989, p. 310). Community service is so relatively new to the criminal justice field that scant information exists.

Although information is available on the models of justice, discretion, attitudes and community service, no studies could be found which integrated and linked the concepts sufficiently to provide adequate secondary research. Therefore, a method which tested existing philosophies and interjected the philosophies on to the new field of community service had to be utilized.

Survey

Survey research was selected as the best means for testing the hypothesis. Surveys offer the ability to generate information which

can be used to test a hypothesis or measure a variable (Brewer and Hunter, 1975, p. 44). Still, surveys do not necessarily offer all of the information needed to test the hypothesis and count out other variables (Brewer and Hunter, 1975, p. 44).

The method utilizes verbal or written questionnaires to test a hypothesis (Babbie, 1989, p. 238 & 244). A self-administered questionnaire offers the least obtrusive means for testing the hypothesis; yet, returns on self-administered questionnaires and confusion over questions cause monitoring problems and may cause false results (Babbie, 1989, pgs. 238-242). Survey research is an appropriate methodology for exploratory research of large populations which are not easily observed (Babbie, 1989, pgs. 237-238). As one judicial district was selected but was still too difficult to easily observe, survey research presented the best alternative.

Although survey research tends to be highly generalizable (Brewer and Hunter, 1989, p. 45), a large enough sample size is necessary to be truly reflective of the entire population (Babbie, 1989, p. 254). Also, surveys tend to be artificial in that the true feelings of a person cannot be discussed and reviewed because the person is faced with a few alternatives (Babbie, 1989, p. 255). The survey is not a flexible tool and cannot be modified as conditions change (Babbie, 1989, p. 255). What the respondent actually thinks or what the motivation actually is behind an action can seldom be fully understood by a researcher utilizing survey research (Babbie, 1989, p. 255). Finally, the information gathered must be viewed in the light that the

respondent only provides information that the respondent is able or willing to report (Brewer and Hunter, p. 45).

From the survey, statistics can be generated (Brewer and Hunter, 1989, p. 46). The statistics are subject to correlation problems and experimental control problems which may create correlation problems between variables as opposed to causal relationships (Brewer and Hunter, 1975, p. 46).

Conclusion

Although there are many strengths and weaknesses associated with each methodology, survey research was chosen as the most appropriate means for testing the hypothesis. Field research was not chosen because of the obtrusiveness, the lack of generalizability and the lack of ability to generate statistics. Content analysis was not feasible because attitudes could not be measured. As discussed above, survey research has many weaknesses; but, the primary strengths of generalizability, statistical generation and applicability to exploratory research were the reasons for selecting survey research.

In the next chapter the survey performed in the Second Twenty-Fifth Judicial District will be analyzed. In light of this chapter, the strengths and weaknesses will be reviewed to point out potential weaknesses in the final findings.

CHAPTER 6

Analysis of Research

Survey research was chosen as the most effective means for discovering the potential variances in officer attitudes, the affect such variance may have on the assignment of community service, each officer's opinion of the justice model which affected the decision to recommend the particular number of community service hours to be served and the factors which contributed to the decision. Compared to other methods of testing a hypothesis, a survey offered the benefit of allowing officers to be presented with a realistic situation. Officers frequently are asked to look at pre-sentencing investigations and recommend punishment.

Analysis of Survey

The entire population of Adult Probation Officers and Community Service Officers of one judicial district was surveyed. The district was chosen because the Chief and Judge were amicable to the survey and held similar concepts that the district essentially attempted to rehabilitate offenders. As the rehabilitation model may not be indicative of other localities, the point of surveying only one entire district was to demonstrate that although the leaders held one attitude, the officers may vary in their attitude; yet, the judge never strays from the recommended punishment because the judge assumes the officers are professional and make sound judgements (Smith, 1992).

Four pre-sentencing investigations (PSI) were selected from the past records of a probation department. Appendices B through E contain the PSIs selected to accompany the survey which is contained

In Appendix A. The format of the PSI has changed in the past six months; however, the older format was utilized as the documents selected were already in the older format, and more in-depth information on the defendant was provided. Already, many judges are challenging the new format for the PSI. Many districts are requiring that additional information accompany the new format. As the old format contains information which judges complain is lacking from the new format (Smith, 1992), the older, more-established format was utilized for the survey.

Each PSI was carefully selected to be only for the felony one offense Burglary of a Habitation. Since the files were replete with instances of the offense and the offense carries the harshest punishment (320 to 1000 hours of community service), Burglary of a Habitation provided the best opportunity to select very diverse offenders. The difference between the offenders is believed to be the most significant factor officers will rely upon to determine the level of punishment. If all offenders receive the same punishment, then the officers will have found the offense to be the most significant factor which will reflect the attitude of just deserts, receiving a set punishment for each level of crime regardless of extenuating circumstances. Therefore, since each PSI is for Burglary of a Habitation, each offender would receive the same number of hours.

In addition, each PSI was changed. Defendants' and other persons' names in the PSIs were replaced with generic terms such as "defendant" and "victim." The purpose of the alteration was to protect a court document. The PSIs are court documents which may not be

read by the general public in order to protect the offender and the victim. The survey needed to be authentic and based upon realistic offenses and persons. Therefore, alterations were cosmetic enough to protect the court, the defendants and the victims while still offering realistic situations.

Four defendants were chosen. This number was selected because of the extensive length of the documents. Each document is three to five pages in length, and some officers prefer to read the document in-depth before deciding on what level of punishment to recommend. Hence, only a small number of PSIs could be offered in the survey without unduly burdening the officers. As the largest number of PSIs was needed to offer the best comparison, four PSIs were chosen as being enough to offer an adequate comparison between the offenders. The survey, when administered, takes from twenty to thirty minutes with the four PSIs. The judicial district works on a very tight schedule; hence, twenty to thirty minutes was the longest period that the officers could spare.

The differences between the social, criminal and personal backgrounds were key factors in the survey. PSIs were located which offered officers the most diversity that could be discovered in the past records. Two female and two male defendants were chosen to represent the population in general. Ethnic differences were believed to be important; thus, two Anglo, one Hispanic and one black were chosen. In addition, two offenders had only the one offense while the other offenders had extensive criminal backgrounds. Each offender had extremely different social backgrounds, and each had a differing

level of drug or alcohol usage. Also, two defendants were indicated to be poor risks for probation which meant, if sentenced to probation, the two defendants would require higher levels of supervision. Finally, the state's recommendation was five years probation for three defendants and ten years for one defendant. Such differences between offenders was felt to be important for the survey to offer officers the most disparity between offenders so the officer requiring varying levels of punishment would have to explain the reason for the variation.

The survey, contained in full length in Appendix A, consisted of three questions for each of the four offenders. Officers read a PSI and answered the three questions for the corresponding defendant. The first question asked officers to recommend the number of community service hours the defendant should be required to complete. The range of 320 to 1000 was noted in parentheses after each question. For each defendant, the mean and range of hours assigned could be computed to demonstrate the variance across offenders. The standard deviation could be computed to demonstrate the variance in punishment assigned for the same offender.

The second question asked officers to identify and circle the model of justice which most closely portrays the reason the officer recommended the level of punishment. Officers were allowed to choose one or multiple models of justice. By asking the officers to identify the models of justice which reflect the officers' reasoning, later analysis could determine which model was most frequently cited as an important factor in determining punishment and, thus, perhaps explain the variances between the offenders' range of hours recommended.

For the first defendant, the models of justice to be selected in question two were defined. Each subsequent defendant referred officers to defendant one for more elaborate definition of the models of justice. The models were defined utilizing the information from the literature review. Each definition was a culmination of the clearest understanding that could be achieved from the literature review. Unfortunately, no matter how carefully sculpted a definition is, there is still room for misinterpretation. The definitions were offered as:

- a. **Rehabilitation** - Utilizing the punishment which is most likely to assist the offender accept the norms of society and come into line with the perceived appropriate behavior of the society.
- b. **Deterrence** - Making committing crimes less desirable to the offender and the persons who know of the offender by making the punishment severe enough to make the crime not worth doing.
- c. **Just Deserts** - Making the punishment fit the crime. Try to determine the appropriate level of punishment to fit the crime committed with no consideration to the individual's needs or past criminal history.
- d. **Justice** - Balance the punishment proportionally. Weigh the past criminal record and the severity of the crime committed to determine the level of punishment for the individual.

Finally, the last question on the survey asked the officers to name what factors were most significant in determining the appropriate level of punishment. The question was asked to determine what factors may be more important in the different models of justice. The just deserts model only relies on the crime committed to assign punishment while the rehabilitative model may look more at need for counseling and change in behavior.

Of the twelve officers asked to participate in the survey, twelve officers responded. The response rate was one-hundred percent of the Adult Probation Officers and Community Service Officers of the Second Twenty-Fifth Judicial District.

As all pre-sentencing investigations included the same offense, Burglary of a Habitation, the range of hours assignable on each of the four pre-sentencing investigations was the same - 320 to 1000. The mean number of hours and the range of hours recommended (from highest to lowest number recommended) was computed for each defendant's pre-sentencing investigation. Table 6 demonstrates the difference between the means, the range assigned for the individual defendant and the variance found for each defendant:

Table 6
Comparison of Hours Assigned

| | Mean Hours Assigned | *Range of Hours Assigned | Standard Deviation** |
|-------------|---------------------|--------------------------|----------------------|
| Defendant 1 | 519 | 320-1000 | 221 |
| Defendant 2 | 356 | 320-480 | 58 |
| Defendant 3 | 585 | 320-820 | 197 |
| Defendant 4 | 407 | 320-500 | 84 |

*Potential Assignable range for all defendants was 320-1000

** Computed in Appendix G

The range of hours assignable for each defendant was the same; yet, the mean number of hours recommended for each defendant was significantly different. Defendant two had the lowest mean (356) while defendant three had the highest mean (585). Generally, officers assigned higher levels of punishment for defendant three than defendant two. Officers tended to select near the low range for both defendants two and four. Defendants one and three had more recommendations toward the higher end of the scale which left one and three with a higher mean score.

Defendant one had the largest range of hours to be assigned (320-1000) while defendant two had the smallest range (320-480). More consensus for the appropriate level of punishment was reached on both defendant two and four. For defendants one and three, officers varied greatly on which end of the scale the punishment fell -- high or low. Defendants two and four had only punishment recommendations that fell on the low side of the scale (under 500).

The standard deviation for defendants two and four was more closely grouped to the mean. The standard deviation for defendants one and four were much further from the mean and demonstrate the lack of consensus which exists when differing officers are asked to recommend punishment for the same offender. Officers viewed the appropriate level of punishment differently. As each defendant was charged with the same crime (Burglary of a Habitation), the variance between punishment assigned to different defendants was based on the officers' perceptions of different characteristics of the defendants and the differing models of justice which the officer perceived as important in the punishment of the offender.

Four models of justice were offered to the officers in the survey. Each officer was asked to choose the model of justice that most influenced the officer to recommend the level of punishment. More than one model of justice could be chosen for each defendant because the models are not mutually exclusive. The models may coexist. Table 7 details the percent of officers relying on each model of justice for each defendant's recommended community service.

Table 7

The Percent of Responses*

| | Rehabilitation | Deterrence | Just Deserts | Justice |
|-------------|----------------|------------|--------------|---------|
| Defendant 1 | 75%** | 25% | 17% | 75% |
| Defendant 2 | 92% | 33% | 0% | 33% |
| Defendant 3 | 67% | 58% | 8% | 42% |
| Defendant 4 | 92% | 42% | 0% | 50% |

* Each officer could choose more than one model of justice for each defendant.

** Percent of 12 officers responding.

The models of justice selected most frequently were rehabilitation and justice, with deterrence being a less important goal, and just deserts only marginally being mentioned. Ninety-two percent of the respondents chose rehabilitation as the primary goal with justice and deterrence as important secondary goals for defendants two and four. As demonstrated in Table 6, defendants two and four had the smallest range of recommended hours and the smallest standard deviation. Officers more closely agreed on the level of punishment which was appropriate for defendants two and four and the model of justice (rehabilitation) which would influence the officer's recommendation. Defendant two (Appendix C) is a young Anglo female with no prior record. Defendant four, a black male, had no prior record.

No consensus was reached on the level of punishment or the model which was primary for defendants one and three. Seventy-five percent of the recommendations for defendant one included both rehabilitation and justice as the reason for the level of punishment. Defendant one also had the largest range of recommended hours (320-1000) and the greatest standard deviation. Defendant one was an Anglo male with an extensive prior record and a recommended state punishment of ten years probation. Defendant three, a Hispanic female with a failure to complete a past probation and an extensive criminal history, had a similar spread in the range of hours recommended (320-820), and the goal of rehabilitation only received sixty-seven percent support with deterrence closely trailing and justice just slightly behind. (The actual responses of each probation officer for each defendant are detailed in Appendix F.)

Since consensus can be said to have been reached on defendants two and four, the fact that officers strongly acknowledged the rehabilitation model as being important indicates that consensus on the goal to be achieved may have contributed to the consensus on the level of punishment. No consensus was reached on either the goal to be achieved or the level of punishment for defendants one and three. If the recommendation of each officer went forward, defendants two and four would receive close to the same punishment regardless of the officer assigned to recommend punishment. Defendants one and three, on the other hand, would receive vastly different levels of punishment as a factor only of the officer recommending the punishment.

The final question asked was for the officers to identify the factors in the pre-sentencing investigation which most influenced the recommendation. Officers are offered the discretion to recommend punishment without having to justify why the level was chosen. Looking at the factors which officers list as important may offer insight into how discretion, punishment and the models of justice interrelate. If officers are attempting to rehabilitate the same offender, then the same factors should be important. For all models of justice, a pattern of factors should be discernable which assists in determining what factors could be objectively selected and utilized by all officers to assign punishment similarly under that model of justice. However, the question of discretion is a variable which is difficult to measure and may be the explanation for the variance in punishment.

Although most officers chose rehabilitation as the primary goal or model for all four defendants, great variations in punishment level are recorded with regard to defendants one and three. The factors which were listed as influencing the officers' recommendations are part of the discretion to recommend punishment based on the judgement of the officer. The officer is not required to look at certain factors. Whatever factor the officer chooses to base the recommended punishment upon is within the officer's discretion. Prior record was cited most as influencing the officers' decisions with the actual offense being the next most cited factor. No other factor is highly visible, and factors such as race, sex, ethnic origin or social status are not mentioned. Infrequently, officers cite drug and alcohol usage, victim impact statements, remorse, employment, personal history and other such factors detailed in Appendix F.

For defendants one and three, officers selected the most diverse factors as influencing the recommended punishment. Attitude was even listed as a factor for defendant three. On the other hand, some officers chose such factors as remorse as strongly influencing the recommended punishment for defendants two and four. Officers selected more similar factors for defendants two and four. The divergence of factors for defendants one and three plus the lack of consensus on what model of justice is to be achieved probably explains the lack of consensus.

The study demonstrates that consensus may be close at hand for some offenders but that other offenders (such as defendant one and three) receive punishment solely as a factor of the recommending

officer's discretion to determine the goal to be accomplished and to subjectively weigh factors. Objective factors do exist in the literature and can be utilized to design methods for assigning punishment which will create less variance among officers' recommendations.

Overview of Objective Standards

Braithwaite (1989, pgs. 44-49) overviewed the important factors which should influence the level of punishment. After reviewing the literature extensively, Braithwaite recommended the following list of factors as being high risk factors which should influence the level of punishment.

1. Male
2. 15-25 years old
3. Unmarried individual
4. Persons in or from a large city
5. Highly mobile persons
6. Persons of low educational level
7. Persons who do poorly in school
8. Persons with weak bonds to their parents
9. Persons whose peers are criminal
10. Persons who do not strongly believe in complying with the law
11. Persons from low socio-economic status - frequently unemployed or of poor financial status
12. Persons of oppressed racial groups

Although the last two factors could infringe upon civil rights, the above named factors are well documented throughout the literature as

affecting a person's risk for reoffending. Each factor is the result of extensive review of past empirical criminological studies which demonstrate that the factors increase offenders' risks for reoffense (Braithwaite, 1989, p. 44). To devise a scale to curb discretion and create objective factors upon which to standardize a means for assigning community service hours, the above factors can be integrated with existing means to curb officer's discretion.

Presently, the Criminal Justice Administration Division (CJAD) requires officers to compute the level of supervision for probationers based upon a Supervision Needs and Risks Analysis (SNRA) form. The form is a scale which is used to determine how often a probationer should be required to report to the probation department. The SNRA form is administered periodically to reevaluate the supervision level for all probationers. The SNRA form contained many of the risk factors which Braithwaite discussed. The only factors from Braithwaite's list not considered in the SNRA form are sex, age, racial group and geographic location of offender.

The form presented in Table 8 is a proposed modification of the SNRA form to devise objective standards (Braithwaite lists potential objective factors) upon which to assign community service hours. The proposed form includes three additional factors not discussed in Braithwaite but which were in the SNRA form. Both alcohol and drug usage are weighed in the SNRA form to determine an offender's risk level. The final factor drawn from the SNRA form allows the officer the discretion of inserting an opinion. Braithwaite did not discuss these three factors as increasing risk for reoffense; but, the factors are

already an integral part of the SNRA form which is used to determine risk levels of offenders. The other eight factors utilized in Table 8 to devise the proposed scale for assigning community service hours were in both Braithwaite's factors and the SNRA form.

The SNRA form utilizes an objective numbering system. As risks and needs increase, the weight given to the factors increases. In the SNRA form, weights are disproportionately distributed across the factors. Generally, most factors in the SNRA form were weighed on a zero, two, and four numbering scale with slight variations. Each factor was given equal weight in the proposed form contained in Table 8 because Braithwaite did not state that any one factor was more significant in determining risk for reoffense.

More factors were utilized in the SNRA form than are offered in Table 8. Only factors which seemed to be applicable to community service were selected to create a sample form for objectively computing need for positive interaction and risk for reoffense. Since persons with greater risk for reoffense need more supervision, more hours would be assigned to such offenders.

Table 8

| Assigning Community Service: Recommended Standard | | POINTS |
|--|--|--------|
| 1. Age at first Adjudication of Guilt | 0 - 24 or older 2 - 20 -23 4 - 19 or younger | ----- |
| 2. Companions | 0 - No adverse companions 2 - Occasional adverse companions 4 - Almost completely adverse companions | ----- |
| 3. Percentage time Employed in the last 12 Months | 0 - 60% or more 2 - 40 - 59% 4 - Under 40% | ----- |
| 4. Academic/Vocational Skills | 0 - Adequate Skills 2 - Low Skills: minor adjustment problem 4 - Minimal Skill: major adjustment problem | ----- |
| 5. Number of Address Changes in the last 12 Months | 0 - None 2 - One 4 - Two or more | ----- |
| 6. Marital/Family Relationships | 0 - Relatively Stable relationships 2 - Some disorganization in relationships 4 - Major disorganization in relationships | ----- |
| 7. Financial Management | 0 - No current difficulties 2 - Situational or minor difficulties 4 - Severe difficulties | ----- |
| 8. Number of Prior Felony Adjudications of Guilt | 0 - None 2 - One 4 - Two or more | ----- |
| 9. Alcohol Usage | 0 - No evidence of alcohol usage and criminal behavior 2 - Probable relation between usage and crime 4 - Definite relation between usage and crime | ----- |
| 10. Drug Usage | 0 - No evidence of Drug usage 2 - Probable relation between usage and crime 4 - Definite relation between usage and crime | ----- |
| 11. PO's impression of risk for reoffense | 0 - Low risk 2 - Moderate risk 4 - High risk | ----- |
| TOTAL | | ----- |

Equal weight of a score of zero, two or four was given to each of the eleven items, thus giving no factor in the formula greater weight. The numbering system (zero, two or four) was based on the numbering system from the SNRA. Significant alterations of the Supervision Needs and Risks form numbering system were not deemed to be necessary because the numbering system offered the advantage of giving two points greater weight everytime needs or risks increased.

Based on the existing needs and risks assessment, items which were covered in the literature as increasing the potential for reoffense and items which emphasized the need for positive role models were selected to assist in deciding what percentage of community service hours to assign. Since each level of felony offense has a different range of hours, turning the objective points into actual hours could only be achieved through percentages. Percentage break downs are demonstrated in Table 9 and would most easily assist officers in objectively assigning community service hours.

Table 9

Proposed Scale for Assigning Hours

| Total Points | Percent of hours to be assigned | Felony 1 320-1000 | Felony 2 240-800 | Felony 3 160-600 |
|--------------|---------------------------------|----------------------|---------------------|---------------------|
| 33-44 | 75-100% | 830-1000 | 660-800 | 490-600 |
| 22-32 | 50-74% | 660-829 | 520-659 | 380-489 |
| 11-21 | 25-49% | 490-659 | 380-519 | 270-379 |
| 0-10 | Min-24% | 320-489 | 240-379 | 160-269 |

Table 9 gives a break down of total points into percentages and then into actual hours to be assigned at each level of felony. Through

a similar process, the total points from the proposed form could be translated into smaller ranges of hours by computing the chart at ten percent intervals as opposed to twenty-five percent. The manner in which the percentages were calculated began by dividing forty-four (total number of possible points) by the total score achieved on the form. The answer was the percent of hours to be assigned. Then the highest number in the range (1000 for felony one) was subtracted from the lowest number in the range (320 for felony one). The number represents the range of hours (680 for felony one). The range of hours was then multiplied by the percentage of hours to be assigned and added to the lowest number in the range (680 may be multiplied by fifty percent to equal 340 and 340 was added to 320 giving the assignable hours to be 660). A score of twenty-two is fifty percent of the points, and fifty percent of the felony one hours is 660. Although the form seems like extra busy work, officers are already familiar with the information on the above sample form and utilize the information in the pre-sentencing investigation. The purpose of such a scale (Table 9) would be to increase the equity in assignment of community service hours and to place objective standards on the assignment of hours.

Conclusion

The study demonstrated a clear variance in recommended level of punishment for two of the offenders. Such a variance could unduly burden the individual assigned to perform the community service. For the two defendants, officers listed dissimilar factors from the PSIs that affected the decision to recommend punishment. Variances in punishment could not be explained by either the model of justice

selected or the factors discussed since great variances in the factors and models existed. Only the officer's discretion to subjectively view the defendant and recommend punishment can explain the variance demonstrated for two of the offenders.

Even though consensus was close at hand for two of the offenders, tempering officers' discretion to recommend punishment may become important as more equity in punishment is being sought. The clear lack of equitable punishment for two of the defendants demonstrates the need for means to temper discretion in order to increase equity.

CHAPTER 7

Conclusion

Constantly, agencies must implement new programs from the vague guidance given from Congress. The agencies are expected to provide equity, fairness, political control, justice and accountability. As programs go into effect, more policies and procedures to strike the proper balance between uncontrolled discretion and completely-restricted discretion can be written. Discretion, in the interim between the broad policies and the narrow more instructive policies, is at the highest level.

Probation officers have received very little in the way of guidance on how to determine the appropriate level of community service hours to recommend. Officers' attitudes, penal philosophies and belief systems can be more important than objective standards in the decision on what to recommend for a sentence. Since the Criminal Justice Administration Division already utilizes objective standards for other aspects of probation, the foundation for equity has already been laid. The mandated community service program is only a year and several months old. The lack of guidelines in assigning community service hours leaves equity in punishment up to the individual officer assigned to make the recommendation. As community service can present a hardship, tempering the officer's discretion may provide citizens with a more equitable criminal justice program.

For a judicial district which adheres to a singular model of justice and clearly expects officers to adhere to the same model of justice, tempering officers' discretion by creating objective standards upon

which to determine punishment may be a reasonable goal. Officers were presented with four offenders. Consensus was almost reached on two of the low risk offenders, and rehabilitation was noted as the most important model to be accomplished. The fact that rehabilitation was viewed as important for all defendants is contrary to the literature, which shows rehabilitation as a fading model. However, when presented with two high risk offenders, consensus could not be reached, and the primary model became less clear. In the hypothesis, the variation was predicted and demonstrated. The model of justice of the individual officer and the discretion to determine which factors are important created a large variance in assigned punishment for two of the offenders. The models of justice may or may not be effective. The literature is very unclear because the effectiveness of models can only be measured through the recidivism rate. No model was found in the literature to be more effective than another. Thus, variations will occur among departments in the criminal justice field depending upon which model is dominate in that department.

The primary weakness of the study was that the findings were not highly generalizable. The sample size was small in consideration of the number of officers in the state of Texas. Also, the sample was of officers in one judicial district which widely disseminated the belief that offenders should be rehabilitated. The literature contends that most persons in the criminal justice system adhere to one of the more punitive models of justice. In a district under another model of justice, the survey may have found more consensus. Multiple districts were not surveyed because of time and economic constraints. But, the

findings demonstrate that even in a district which widely disseminates the model of justice to be used when determining a level of punishment significant lack of consensus can be documented on high risk offenders.

When a department adheres to one model, large variances in the assignment of punishment may be considered to be a factor of the individual officer's discretion as opposed to the model of justice. The models of justice have clear goals which can be articulated in objective standards upon which to rest punishment. Devising such standards will require a clear understanding of the model to be achieved. The just deserts model would require the same punishment for all offenders in the survey. Defendant one through four each committed Burglary of a Habitation. Under the just deserts model, each offender would receive the same punishment. Similarly, the deterrence model would require some form of mandatory punishment with little discretion to consider the defendant's circumstances in the punishment decision. The justice model requires a weighing of factors from past and present. Likewise, the rehabilitation model requires consideration of the defendants needs and circumstances.

Determining what factors or needs from the past and present are to be weighed and how much weight each factor should be given could allow for the creation of objective standards which can be articulated and disseminated.

The form recommended in table eight was devised with the rehabilitation model in mind. The needs of the offender were considered with the inclusion of drug, alcohol and education.

Offenders who score high in such categories may benefit from close contact with positive role models. Also, financial management and employment were considered in the form since community service offers an opportunity to work in the community near role models who are successful at both. Attempting to teach probationers something and provide a learning experience is one of the goals of the rehabilitation model. As the Second Twenty-Fifth Judicial District adhered to the rehabilitation model, such a form may be useful to ensure the variances noted for two of the offenders does not occur and that more objective standards are utilized to determine the level of punishment.

APPENDIX A

Survey

INSTRUCTIONS: After over viewing each of the accompanying Pre-sentencing Investigations, please answer the questions applicable to the appropriate Pre-sentencing Investigation.

DEFENDANT # 1:

1. How many hours of Community Service would you recommend accompany Defendant 1 (Range for the offense is 320 to 1000)? _____.
2. Which Model of Justice most closely portrays the reason you would assign the number of hours you choose? (Circle one or all applicable)
 - a. **Rehabilitation** - Utilizing the punishment which is most likely to assist the offender accept the norms of society and come into line with the perceived appropriate behavior of the society.
 - b. **Deterrence** - Making committing crimes less desirable to the offender and the persons who know of the offender by making the punishment severe enough to make the crime not worth doing.
 - c. **Just Deserts** - Making the punishment fit the crime. Try to determine the appropriate level of punishment to fit the crime committed with no consideration to the individual's needs or past criminal history.
 - d. **Justice** - Balance the punishment proportionally. Weigh the past criminal record and the severity of the crime committed to determine the level of punishment for the individual.
3. What factors in the Pre-sentencing Investigation did you rely on most to decide the appropriate level of Community Service hours? _____

_____.

DEFENDANT # 2:

1. How many hours of Community Service would you recommend accompany Defendant 2 (Range for the offense is 320 to 1000)? _____.
2. Which Model of Justice most closely portrays the reason you would assign the number of hours you choose? (Circle one or all applicable) (Defined above under Defendant # 1)
 - a. Rehabilitation
 - b. Deterrence
 - c. Just Deserts
 - d. Justice
3. What factors in the Pre-sentencing Investigation did you rely on most to decide the appropriate level of Community Service hours? _____

_____.

DEFENDANT # 3:

1. How many hours of Community Service would you recommend accompany Defendant 3 (Range for the offense is 320 to 1000)? _____.
2. Which Model of Justice most closely portrays the reason you would assign the number of hours you choose? (Circle one or all applicable) (Defined above under Defendant # 1)
 - a. Rehabilitation
 - b. Deterrence
 - c. Just Deserts
 - d. Justice
3. What factors in the Pre-sentencing Investigation did you rely on most to decide the appropriate level of Community Service hours? _____

_____.

DEFENDANT # 4:

1. How many hours of Community Service would you recommend accompany Defendant 4 (Range for the offense is 320 to 1000)? _____.
2. Which Model of Justice most closely portrays the reason you would assign the number of hours you choose? (Circle one or all applicable) (Defined above under Defendant # 1)
 - a. Rehabilitation
 - b. Deterrence
 - c. Just Deserts
 - d. Justice
3. What factors in the Pre-sentencing Investigation did you rely on most to decide the appropriate level of Community Service hours? _____

_____.

APPENDIX B**Pre-sentencing Investigation**

DEFENDANT 1 (23 year old/Male/Anglo)

OFFENSE

- Official Court Version:

In October, the victim reported to the Big Lug Sheriff's office that he found four guns missing from his gun cabinet. He believed they had been stolen the night before. The case was turned over to the Big Lug Police Department. A week later, another gun was allegedly stolen from the victim's residence. Police learned through a confidential informant that the guns had been sold to a fence. Statements were received, and the Police discovered that the defendant had taken the guns from the victim's residence and had sold each of them. In November, the defendant turned himself in to the P.D. and confessed to the burglary in October stating that five guns were taken at this time. All the guns were returned to the victim.

In June, the defendant was indicted by the Big Lug Grand Jury for the offense of Burglary of a Habitation - two counts. The defendant pled guilty to the first count before the Judge. The second count is to be waived if the plea agreement made by the District Attorney and the defendant's attorney is accepted by the court.

- Defendant's Version:

The defendant reported that he went into the victim's house only once in October. He said he entered the house at 8:00 a.m. The victim was his neighbor, and the door was open. The defendant reported that he was high on crack and that he was not sure what he was doing. He admits that he did know the guns were in there, and, after he stole them, he found people to buy them. He went on to say that three days later he told his father what he had done. The defendant's father was instrumental in obtaining and returning the guns to the victim. The defendant also reported that he did call the victim to apologies for what he had done.

- Weapons/Violence: None indicated.

VICTIM IMPACT STATEMENT

Several attempts were made to contact the victim. A Victim Impact Statement was also mailed to his address, but the statement has never been returned. According to the Police Department, all of the guns

were returned, and there does not appear to be a need for restitution in this case.

PRIOR RECORD

- Juvenile Court History: None indicated.

- Adult Misdemeanor Court History:

| DATE | LOCATION | OFFENSE | DISPOSITION |
|--------|----------|----------------------------------|------------------|
| Sep 82 | Big Lug | DWI | 1 Year Probation |
| Jun 83 | Big Lug | Possession of Drug Paraphernalia | Fine |
| Nov 87 | Big Lug | DWI | 1 Year Probation |
| Apr 88 | Big Lug | DWLS | Fine |
| Jun 88 | Big Lug | Drinking After Hours | Fine |

-Adult Felony Court History:

| DATE | LOCATION | OFFENSE | DISPOSITION |
|--------|----------|--------------------|-----------------|
| Oct 87 | Big Lug | Burglary of Hab | Instant Offense |
| Sep 88 | Old Town | Theft of Livestock | Pending |

PERSONAL HISTORY

- Juvenile History:

The defendant is the oldest of three children. The defendant described his childhood as happy; his only regret was that he wished he could have finished school. The defendant's parents separated four years ago, and the defendant described this as a hard period in his life. The defendant reports that he is close to both of his parents. The defendant, however, has not seen his mother in over a year. She lives up north.

- Living Arrangements:

The defendant is living in New Town with his father and his father's girlfriend. The defendant reports that his father's girlfriend is not much older than he.

- Education:

According to records obtained from the Little Town Independent School District, the defendant dropped out of school after completing the eighth grade. The defendant reported that he did not like school and did not pay attention. He made C's and D's.

- Marital History:

The defendant married in June three years ago. He was divorced in August two years later. The defendant cites his ex-spouse's infidelity as the reason for the divorce. The defendant stated that he became very involved with drugs after the divorce.

- Employment History:

The defendant is employed with Standard Corporation. He has been employed for one month. He runs a stacking machine at \$5.00 an hour. Prior to this employment, he was employed on a ranch for one year doing ranch work. The defendant reported that ranch work was not very stable work, and his father helped him get the job because the year prior to working on the ranch he was not working - just roaming around.

- Physical/Mental Health History: No Problems Indicated.

- Drug/Alcohol Usage:

The defendant reported that he began drinking at the age of 16. He admits that he has abused alcohol, marijuana, and crack. The defendant is currently on a DWI probation, and all test indicators, from the DWI school, suggest that the defendant is a problem drinker. The defendant has not yet been exposed to A.A. and would benefit from an Advanced Alcohol Course and/or outpatient treatment. The defendant does not feel he has a problem, however. He does admit that he continues to drink and has used alcohol and drugs as a way to deal with problems.

EVALUATION/PROGNOSIS

The defendant is a 23 year old anglo male charged in a Big Lug Grand Jury Indictment for the offense of Burglary of a Habitation - two counts. In October of this year, he pled guilty to the first count before the Judge of Big Lug District court of Texas.

The offense occurred in October of last year. Since the offense, the defendant has been arrested for DWI, DWLS, Drinking after hours and

theft of cattle. Although the defendant is a poor risk for probation, the defendant may benefit from some of the programs designed to assist probationers. The defendant has not been successful on his misdemeanor DWI probation due to these arrests and has only begun to address his alcohol problem. If the defendant is granted probation, he should attend an Advanced Alcohol/Drug Course and A.A. at least twice a week. It would also be helpful for the defendant to have a psychological/substance abuse evaluation and follow recommendations especially dealing with personal problems.

STATE'S RECOMMENDATION

The State recommends 10 year probation, \$1,000 fine, and the 2nd count waived.

APPENDIX C**Pre-sentencing Investigation**

DEFENDANT 2 (23 year old/Female/Anglo)

OFFENSE

- Official Court Version:

In March of the current year, the victim returned home and discovered his television, stereo, and wall clock had been stolen. Deputy Coaltrain checked with a neighbor and obtained the description of a car and several people she saw at the mobile home the day before. The witness also told Deputy Coaltrain the defendant had a car matching the description given. Further investigation showed the defendant was at the house earlier that month in the suspect car described by witnesses. A warrant was issued for the defendant and her co-defendants.

- Defendant's Version:

The defendant stated she drove the co-defendants to Big Lug to try to locate the co-defendants' parents. They went to the mobile home where the parents were living and discovered the parents had moved. They went to the neighborhood store and found out where the parents had moved. They proceeded back to the mobile home and took the clock, stereo, and TV. The defendant further stated it was the co-defendants' idea, and she tried to talk the others out of it, but they insisted. The defendant stated all the co-defendants were intoxicated. The co-defendants concurred with the defendant's version.

- Weapons/Violence: None indicated.

VICTIM IMPACT STATEMENT

A Victim Impact Statement was sent to the victim earlier, and, at the time of this writing, the statement has not been returned. This officer tried to contact the victim by phone, but to no avail.

PRIOR RECORD

- Juvenile Court History: None indicated.

- Adult Misdemeanor Court History: No record exists.

-Adult Felony Court History:

| DATE | LOCATION | OFFENSE | DISPOSITION |
|-------|-------------|---------|-----------------|
| March | Big Lug, TX | Bur/Hab | Instant Offense |

PERSONAL HISTORY

- Juvenile History:

The defendant is the youngest of 7 children born to her parents who currently reside in Nextown, TX. She states she is very close to her father, but is presently having many problems with her mother. The defendant said she had a child out of wedlock 3 years ago, and her mother has been trying to get legal custody. Her mother does not know about the offense because the defendant feels the offense would give her more reason to get custody.

- Living Arrangements:

Defendant still lives at home with both of her parents.

- Education:

The defendant graduated from Big Lug High School in January two years past. She also attended Texas Career School and obtained a Nursing Assistant Certificate. She scored above a 9th grade level on the API.

- Marital History:

Defendant states that she has never been married but has one dependant child born to her out of wedlock. The defendant further states that she has lost contact with the father and has never received support from the father.

- Employment History:

The defendant presently works as a nurse's assistant at the Care All Nursing Home in Big Lug. She has been there for approximately one year. Her past employment all dealt with nursing. However, defendant is still dependant upon her parents for financial support as she only makes \$400.00 per month.

- Physical/Mental Health History: No Problems Indicated.

- Drug/Alcohol Usage:

Defendant states she occasionally drinks alcohol and was intoxicated at the time of the offense.

EVALUATION/PROGNOSIS

The defendant is a 23 year old female before the Court for sentencing after pleading guilty to Burglary of a Habitation. She admits her involvement in the offense and shows remorse for her actions. The defendant is very concerned about how this will affect her and her child's life. She has realistic goals set and seems determined to succeed. She wants to further her nursing career by attending LVN school and become financially independent from her parents.

Because of her remorse, her cooperation during the PSI process, and her desire to succeed in furthering her career, the defendant appears to be a good risk for probation.

STATE'S RECOMMENDATION

The State recommends 5 years Deferred Adjudication, \$500.00 fine, and restitution.

APPENDIX D**Pre-sentencing Investigation**

DEFENDANT 3 (23 year old/Female/Hispanic)

OFFENSE

- Official Court Version:

In November, the Big Lug Sheriff's Deputy observed one woman and one man cross a fence and enter onto the victim's ranch property. At 17:50 hours, one of the persons shot, presumably at a deer and walked in the direction of the shot. The Parks and Wildlife Game Warden was called as possible violations of game laws were in progress. At 18:20 hours, the two suspects headed down the pasture road carrying a load and entered into a Plymouth Sedan. The vehicle was stopped, and two females were observed in the front seat and two males in the back. Also observed was a VCR recorder and one rifle in a carrying case. The defendant was read her rights. She admitted to the burglary of the victim's residence. The subject was transported to the Big Lug County Jail.

- Defendant's Version:

The defendant agrees with the official version of the offense. She admits to the intent of poaching deer but states the shot missed the deer. They saw the isolated cabin and saw the cabin as an easy target. The defendant admitted to breaking the window and taking the VCR and gun. She confided that her intent was to sell them.

- Weapons/Violence

At the time of the offense, the defendant was carrying a Remington .243 loaded. One Remington .22 rifle and one buck folding knife #110 were stolen from the victim's property.

VICTIM IMPACT STATEMENT

The Victim Impact Statement was returned by the victim. As all items were recovered the victim is only asking for restitution in the amount of the broken window - \$10.00. Additionally, the victim recommends that the defendant pay back his expenses and that the defendant perform 80 hours of Community Service with a sign on her back saying "I'm a convicted thief."

PRIOR RECORD

- Juvenile Court History: None indicated.
- Adult Misdemeanor Court History:

| DATE | LOCATION | OFFENSE | DISPOSITION |
|--------|------------|------------------------------------|---|
| Apr 86 | Ols County | DWI | 6 mo. Probation Unsuccessfully Discharged |
| May 86 | Gue County | Criminal Trespass of Habitation | Fine |

- Adult Felony Court History:

| DATE | LOCATION | OFFENSE | DISPOSITION |
|--------|------------|-----------------|-----------------|
| Nov 88 | Big Lug | Burglary of Hab | Instant Offense |
| Apr 88 | Gue County | Theft | Pending |

Summary: Gue County Police records indicate that the defendant has an extensive driving violation record. She has, also been suspect in several disturbances, possession of a stolen saxophone, and illegal use of a weapon. The Ols County Probation Department reported that while on DWI probation, the defendant never paid nor reported. An outstanding capias pro-fine exists.

PERSONAL HISTORY

- Family History:

The defendant is the youngest of three children. Her father is employed as a fabricator, and her mother is the owner of a flower shop. The defendant stated her parents always provided well for the family. The defendant described her childhood as happy; she confided that her parents were strict but would let her get away with things because she was the only girl. She admitted to being rebellious to her parents' rules.

- Living Arrangements:

The defendant has resided with her parents almost all of her life. She continues to live with them on the weekends and infrequently during the week. She has an apartment which is close to her job site, in New Town, Texas.

- Education:

The defendant dropped out of New Town High School in the 12th grade (verified). This was her second attempt at 12th grade since she was lacking credits to graduate. The defendant is not interested in obtaining a GED.

- Marital History:

The defendant has never been married. The defendant states she goes out with many men and has no intention of marrying until she gets tired of her present way of living. The defendant does have a seven month old daughter. According to the defendant, she and the father still have somewhat of a relationship.

- Employment History:

The defendant is presently employed with a local company and has been with the company for two months. Prior to her present employment, the defendant was unemployed for one year.

She was very candid in saying that she supported herself through the year by gambling and dating married men for money. Prior to the one year unemployment period, her jobs consisted of odd jobs.

- Physical/Mental Health History: No Problems Indicated.

- Drug/Alcohol Usage:

The defendant admits to periods of heavy alcohol usage. She has one prior DWI, and she did not attend the required alcohol education course. The defendant confided she drinks to forget problems. She complained that the condition of no alcohol and staying away from bars may be difficult if granted probation.

The defendant admitted to marijuana usage prior to her present employment. The defendant abstains from drugs, at the present time, as the company conducts random urine screens. She reports no difficulties abstaining.

EVALUATION/PROGNOSIS

The defendant is a 23 year old Hispanic female charged in a Big Lug Grand Jury indictment for the offense of Burglary of a Habitation. In March, she pled guilty to the charge before the Judge of Big Lug District Court of Texas.

The defendant was indicted in March by the Gue County Grand Jury for Felony Theft. The case is still pending. The defendant's past history includes a Criminal Trespass conviction and a six month DWI probation that was discharged unsuccessfully as the defendant never reported nor paid fines. The defendant also has a poor driving record and has been involved in several disturbances.

The defendant admits to continued heavy usage of alcohol and confides such usage may be a problem while on probation. The defendant appears to be very irresponsible in relationships.

The defendant is a poor risk for probation because of her prior record, new arrest, and alcohol usage. She does have the support of her family and is employed in a stable job. If the defendant is to succeed, she needs to address her responsibilities and receive education on alcohol abuse. Also, she needs to become respectful of the law and receive counseling in values clarification.

STATE'S RECOMMENDATION

Five years TDC probated five years, \$1,000 fine, restitution and no opposition to Deferred Adjudication.

APPENDIX E**Pre-sentencing Investigation**

DEFENDANT 4 (25 year old/Male/Black)

OFFENSE

- Official Court Version:

According to the offense report, on or about December of the past year, the defendant entered a camp house in Winepig Lake belonging to the victim. Taken during the Burglary was a 19" color TV, a water ski, and two wet suits.

- Defendant's Version:

In a statement given to the Sheriff's Office the defendant admitted he had spent the night at the camp house. The next morning he stated he took the items from the house and pawned them. The defendant gave the names and addresses of the pawn shops.

During the PSI interview, the defendant restated his version, adding he volunteered the information while being questioned for other Burglaries that he was alleged to have committed. The defendant stated he was wrong; he knows he should have not done what he did and he accepts the blame for what he did.

- Weapons/Violence: None Indicated.

VICTIM IMPACT STATEMENT

A Victim Impact Statement was sent to the victim two months ago and a month ago the victim replied. The victim stated he is not seeking any restitution since all of the stolen merchandise was returned unharmed. He further stated he was impressed with the way the local Law Enforcement Official handled the case since they had the crime solved and property was recovered before he knew the offense had happened.

PRIOR RECORD

- Juvenile Court History: None Indicated.

- Adult Misdemeanor Court History:

| DATE | LOCATION | OFFENSE | DISPOSITION |
|--------|----------|------------------|-------------|
| Apr 88 | Big Lug | No Driver's Lic. | Dismissed |

-Adult Felony Court History:

| DATE | LOCATION | OFFENSE | DISPOSITION |
|--------|----------|-----------------|-----------------|
| Dec 89 | Big Lug | Burglary of Hab | Instant Offense |

PERSONAL HISTORY

- Juvenile History:

The defendant is the oldest of three children. He stated when he was seven years old he was placed in a foster home by DHS because he was physically abused by his father. His father had whipped him with a belt. He stated he did not feel like he was abused. He was vague about the amount of time he spent in the foster home, but stated he was with his parents throughout his teenage years. His two sisters, ages 21 and 14, were placed in foster homes several years ago because his father sexually abused them. He has lost all contact with his sisters, which seems to bother him a great deal. He is not convinced his father did sexually abuse the girls. He stated his father is an alcoholic and is now completely disabled. His father is unable to feed himself, dress, or walk without assistance. The mother is currently taking care of his father. The defendant believes his mother and uncle neglect his father's needs, and he feel tremendous resentment toward his mother for this.

- Living Arrangements:

The defendant, his wife and child live in a small rental home in Big Lug.

- Education:

The defendant completed the 9th grade at Big Lug High School. He stated he quit school because he got in with the wrong crowd. He does not have a GED. This officer administered the API and the defendant scored above a 9th grade reading level.

- Marital History:

The defendant has been married to his wife for three years, and they have one child - a two year old boy. He claims the marriage is stable, but suffers from financial and family difficulties.

- Employment History:

The defendant has had numerous jobs lasting anywhere from a month to a year, mostly as a clerk in a grocery store. The store verified his employment but refused to give his reason for leaving without a subpoena from the court. He is currently employed at Buy for Less Grocery Store in Big Lug, earning approximately \$400.00 a month.

- Physical/Mental Health History: No Problems Indicated.

- Drug/Alcohol Usage:

His wife stated he was beginning to drink a lot but has quit all together since this offense. She also stated she told him to quit and threatened to leave him if he ever started again.

EVALUATION/PROGNOSIS

The defendant is a 25 year old black male before the court for sentencing after pleading guilty to Burglary of a Habitation. He admits committing the offense, but emphasized excuses, including he did it because he was drunk and wanted the merchandise. The only other previous offense he has was driving without a driver's license, which was dismissed. He does not have a high school education, but should be able to obtain a GED. His employment record is very unstable. The defendant expressed a desire to receive vocational training to get better employment and support his family.

The defendant appears to be a good risk for probation since this is his first offense and he seems to have realistic goals set.

STATE'S RECOMMENDATION

The State recommends 5 year Deferred Adjudication, \$500.00 fine, and restitution.

APPENDIX F

Survey Findings

| Defendant 1 | | | Defendant 2 | | | Defendant 3 | | | Defendant 4 | | |
|-------------|-------|---|-------------|-------|---|-------------|-------|---|-------------|-------|--|
| Hour | Model | Factors | Hour | Model | Factors | Hour | Model | Factors | Hour | Model | Factors |
| P01 | 500 | A* Prior Rec Offense Employment | 380 | A | Prior Rec Defend version Marital His | 600 | A | Prior Rec Employment Attitude | 400 | A | Juvenile |
| P02 | 800 | A,B,D Reoffense | 450 | A,B,D | Remorse Prior Rec Future Plans | 900 | A,B,D | Prior Rec Drug/Alcohol Life style | 500 | A,B,D | Remorse Future Plans Family Support |
| P03 | 500 | A,D Prior Rec Offense | 400 | A,B,D | Prior Rec Offense Employment | 500 | A,D | Prior Rec Offense Employment | 400 | A,B,D | Prior Rec Offense Employment |
| P04 | 750 | A,D Prior Rec Offense Drug/Alcohol | 480 | A,D | Prior Rec Offense | 750 | A,B | Prior Rec Offense Eval/Prognosis | 480 | A,D | Prior Rec Offense |
| P05 | 500 | A Prior Rec Offense | 320 | A | Prior Rec Offense | 750 | A | Offense | 500 | A | Offense |
| P06 | 1000 | A,B,D Prior Rec Victim Statement | 320 | A,D | Prior Rec Victim Statement Personal His | 500 | A,B,D | Prior Rec Victim Statement Personal His Employment | 500 | A,B,D | Prior Rec Victim State. Personal His |
| P07 | 320 | A Remorse | 320 | A | Prior Rec State Recommend | 640 | B | Prior Rec State Recommend Violate Probation | 320 | A | Prior Rec State Recom |
| P08 | 320 | D Prior Rec Drug/Alcohol | 320 | A | Remorse Future Plans | 320 | A | Violate Probation | 500 | A | Personal His |

*Models coded A = Rehabilitation B = Deterrence C = Just Deserts D = Justice

APPENDIX G

Computed Standard Deviation

| | Defendant 1 | | | Defendant 2 | | | Defendant 3 | | | Defendant 4 | | |
|-----|-------------|----------|-----------------|-------------|----------|-----------------|-------------|----------|-----------------|-------------|----------|-----------------|
| PO | Hours | X Dev | Mean Squared | Hours | X Dev | Mean Squared | Hours | X Dev | Mean Squared | Hours | X Dev | Mean Squared |
| PO1 | 500 | 19 | 361 | 380 | 24 | 576 | 600 | 15 | 225 | 400 | 7 | 49 |
| PO2 | 800 | 281 | 78961 | 450 | 94 | 8836 | 900 | 315 | 99225 | 500 | 93 | 8649 |
| PO3 | 500 | 19 | 361 | 400 | 44 | 1936 | 500 | 85 | 7225 | 400 | 7 | 49 |
| PO4 | 750 | 231 | 53361 | 480 | 124 | 15376 | 750 | 165 | 27225 | 480 | 73 | 5329 |
| PO5 | 500 | 19 | 361 | 320 | 36 | 1296 | 750 | 165 | 27225 | 500 | 93 | 8649 |
| PO6 | 1000 | 481 | 231361 | 320 | 36 | 1296 | 500 | 85 | 7225 | 500 | 93 | 8649 |
| PO7 | 320 | 199 | 39601 | 320 | 36 | 1296 | 640 | 55 | 3025 | 320 | 87 | 7569 |
| PO8 | 320 | 199 | 39601 | 320 | 36 | 1296 | 320 | 265 | 70225 | 500 | 93 | 8649 |
| PO9 | 320 | 199 | 39601 | 320 | 36 | 1296 | 320 | 265 | 70225 | 320 | 87 | 7569 |
| P10 | 400 | 119 | 14161 | 320 | 36 | 1296 | 320 | 15 | 225 | 320 | 87 | 7569 |
| P11 | 500 | 19 | 361 | 320 | 36 | 1296 | 320 | 215 | 46225 | 320 | 87 | 7569 |
| P12 | 320 | 199 | 39601 | 320 | 36 | 1296 | 320 | 265 | 70225 | 320 | 87 | 7569 |

| | | | | |
|----------------|----------------------|--------------------|---------------------|--------------------|
| Total | <u>537,692</u> 11 | <u>37092</u> 11 | <u>428500</u> 11 | <u>77868</u> 11 |
| Square Root | 48,881.091 | 3,372 | 38,954.545 | 7,078.9 |
| Standard Dev = | 221 | 58 | 197 | 84 |

Bibliography**Books**

Aaronson, David E., C. Thomas Dienes and Michael C. Musheno. Public Policy and Police Discretion. New York: Clark Boardman Company, 1984.

Abadinsky, Howard. Probation and Parol: Theory and Practice. New York: Prentice Hall, 1991.

Allen, Francis A. The Decline of the Rehabilitation Ideal. New Haven: Yale University Press, 1981.

Babbie, Eral R. The Practice of Social Research. California: Wadsworth Publishing Company, Inc., 1989.

Braithwaite, John. Crime, Shame and Reintegration. New York: Cambridge University Press, 1989.

Brewer, John and Albert Hunter. Multimethod Research. California: Sage Publications, Inc., 1989.

Bryner, Gary C. "Administrative Law and Discretion." pp. 50-64. In Administrative Discretion and Public Policy Implementation. Eds. Douglas H. Shumavon and H. Kenneth Hibbeln. New York: Praeger Publishers, 1986.

Bryner, Gary C. Bureaucratic Discretion: Law and Policy in Federal Regulatory Agencies. New York: Pergamon Press, 1987.

Carney, Louis P. Corrections and the Community. New Jersey: Prentice-Hall Inc, 1977.

Cooper, Harris M. Integrating Research: A Guide for Literature Reviews. Second Edition. California: Sage Publications, Inc., 1989.

Cullen, Francis T. and K. E. Gilbert. Reaffirming Rehabilitation. Ohio: Anderson Publishing Company, 1982.

Harris, M. Kay. "Rethinking Probation in the Context of a Justice Model." In Probation and Justice: Reconsideration of Mission. Eds. Patrick D. McAnany, Doug Thomson and David Fogel. Massachusetts: Oelgeschlager, Gunn and Hain, Pub. Inc., 1984.

- Lawrence Richard. "Restitution as a Cost-Effective Alternative to Incarceration." In Criminal Justice, Restitution and Reconciliation. Eds. Burt Galaway and Joe Hudson. New York: Criminal Justice Press, 1990 (a).
- MacIntyre, Angus. "The Multiple Sources of Statutory Ambiguity: Tracing the Legislative Origins to Administrative Discretion." In Administrative Discretion and Public Policy Implementation. Eds. Douglas H. Shumavon and H. Kenneth Hibbeln. New York: Praeger Publishers, 1986.
- McAnany, Patrick D. "Mission and Justice: Clarifying Probation's Legal Context." In Probation and Justice: Reconsideration of Mission. Eds. Patrick D. McAnany, Doug Thomson and David Fogel. Cambridge, Massachusetts: Oelgeschlager, Gunn and Hain, Pub. Inc., 1984.
- McCarthy, Bernard J. and Belinda R. McCarthy. Community-Based Corrections. Monterey, California: Brooks/Cole Publishing Company, 1984.
- Morris, N. and M. Tonry. Between Prison and Probation: Intermediate Punishment in a Rational Sentencing System. New York: Oxford University Press, 1990.
- Panel on Research on Rehabilitative Techniques. New Directions in the Rehabilitation of Criminal Offenders. Eds. Susan Ehrlich Martin, L. B. Sechrest and R. Redner. Washington D.C.: National Academy Press, 1981.
- Pepinsky, Harold E. and Paul Jesilow. Myths that Cause Crime. Washington D.C.: Seven Locks Press, 1984.
- Rosenbloom, David H. Public Administration and Law: Bench V. Bureau in the United States. New York: Marcel Dekker, Inc., 1983.
- Travis, Lawrence F. Ed. Probation, Parole and Community Corrections: A Reader. Illinois: Waveland Press, Inc., 1985.
- Schultz, Clarence C. Practical Probation: Handbook for Probation Workers. San Marcos, Texas: Report prepared for the Probation Department of the 22nd Judicial District 1973.

Journals

- Akers, Ronald L. "Rational Choice, Deterrence and Social Learning Theory in Criminology: The Path Not Taken." The Journal of Criminal Law & Criminology 81 no. 3 (1990): 653-676.
- Allen, G. Fredrick, and Harvey Treger. "Community Service Orders In Federal Probation: Perception of Probationers and Host Agencies." Federal Probation 54 no. 2 (September 1990): 8-14.
- Allen, G. Fredrick. "The Probationers Speak: Analysis of the Probationers' Experiences and Attitudes." Federal Probation 49 no. 3 (September 1985): 67-75.
- Bahn, Charles, and James R. Davis. "Social-Psychological Effects of the Status of Probationers." Federal Probation 55 no. 1 (March 1991): 17-23.
- Benekos, Peter J. "Beyond Reintegration: Community Corrections in a Retributive Era." Federal Probation 54 no. 1 (March 1990): 52-56.
- Carter, Robert M., Jack Cocks and Daniel Glaser. "Community Service: A Review of the Basic Issues." Federal Probation 51 no. 1 (March 1987): 4-10.
- Cooper, Phillip J. "Conflict or Constructive Tension: The Changing Relationship of Judges and Administrators." Public Administration Review 45 (November 1985): 643-652.
- Cullen, Francis T., Gregory A. Clark and John F. Wozniak. "Explaining the Get Tough Movement: Can the Public Be Blamed?" Federal Probation 49 no. 1 (March 1985): 16-24.
- Cullen, Francis T., John B. Cullen and John Wozniak. "Is Rehabilitation Dead? The Myth of the Punitive Public." Journal of Criminal Justice 16 no. 4 (1988): 303-317.
- Czajkoski, Eugene H. and Laurin A. Wollan, Jr. "Creative Sentencing: A Critical Analysis." Justice Quarterly 3 no. 2 (June 1986): 215-229.
- Decker, Scott H. and Barbara Salert. "Selective Incapacitation: A Note on Its Impact on Minorities." Journal of Criminal Justice 15 no. 4 (1987): 287-299.

De Luca, H. R., Thomas Miller and Carl F. Wiedeman. "Punishment Vs. Rehabilitation: A Proposal for Revising Sentencing Practices." Federal Probation 55 no. 2 (September 1991): 37-45.

Dobel, Patrick J. "Integrity in the Public Service." Public Administration Review 50 (May-June 1990): 354-366.

Durham III, Alexis M. "Then and Now: The Fruits of Late 20th Century Penal Reform." Federal Probation 55 no. 2 (September 1991): 28-36.

Durham III, Alexis M. "Crime Seriousness and Punitive Severity: An Assessment of Social Attitudes." Justice Quarterly 5 no. 1 (March 1988): 131-153.

Gendreau, Paul and Robert R. Ross. "Revivification of Rehabilitation: Evidence from the 1980s." Justice Quarterly 4 no. 3 (September 1987): 349-407.

Hamilton, V. Lee and Steve Rytina. "Social Consensus on Norms of Justice: Should the Punishment Fit the Crime?" American Journal of Sociology 85 no. 5 (March 1980): 1117-1144.

Harris, Patricia M., Todd R. Clear and S. Christopher Baird. "Have Community Supervision Officers Changed their Attitudes Toward their Work?" Justice Quarterly 6 no. 2 (June 1989): 233-247.

Hudson, Joe and Burt Galaway. "Community Service: Toward Program Definition." Federal Probation 54 no. 2 (June 1990): 3-9.

Jones, Peter R. "The Risk of Recidivism: Evaluating the Public Safety Implications of a Community Corrections Program." Journal of Criminal Justice 19 no. 1 (1991): 49-66.

Katz, Janet. "The Attitudes and Decisions of Probation Officers." Criminal Justice and Behavior 9 no. 4 (December 1982): 455-475.

Lampe, Philip E. "Assessing Treatment of the Offender from Probation to Capital Punishment." Federal Probation 49 no. 1 (March 1985): 25-31.

Lawrence, Richard. "Diverting Offenders from Prison to Restitution Centers." Journal of Crime & Justice 13 no. 1 (1990 [b]): 27-41

- Lawrence, Richard. "Professionals or Judicial Civil Servants? An Examination of the Probation Officer's Role." Federal Probation 48 no. 3 (September 1984): 14-21.
- Lawrence, Richard. "Reexamining Community Corrections Models." Crime & Delinquency 37 no. 4 (October 1991): 449-464.
- Leibrich, Julie, Burt Galaway and Yvonne Underhill. "Community Service Sentencing in New Zealand: A Survey of Users." Federal Probation 50 no. 1 (March 1986): 55-64.
- Menzies, Ken and Antony A. Vass. "The Impact of Historical, Legal and Administrative Differences on a Sanction: Community Service Orders in England and Ontario." The Howard Journal 28 no. 3 (August 1989): 204-217.
- Miller, Jerome G. "Sentencing: What Lies Between Sentiment and Ignorance?" Justice Quarterly 3 no. 2 (June 1986): 231-239.
- Miller, J. L. and Andy B. Anderson. "Updating the Deterrence Doctrine." The Journal of Criminal Law & Criminology 77 no. 2 (1986): 418-438.
- Paternoster, Raymond. "The Deterrent Effect of the Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues." Justice Quarterly 4 no. 2 (June 1987): 173-217.
- Perrier, David C. and Steven F. Pink. "Community Service: All Things to All People." Federal Probation 49 no. 1 (March 1985): 32-38.
- Perry, James L. and Lois R. Wise. "The Motivational Bases of Public Service." Public Administration Review 50 (May-June 1990): 367-373.
- Sluder, R. D. and Del Carmen. "Are Probation and Parole Officers Liable for Injuries Caused by Probationer and Parolees?" Federal Probation 54 no. 4 (December 1990): 3-11.
- U.S. Probation Division. "Implementing Community Service: The Referral Process." Federal Probation 53 no. 1 (March 1989): 3-9.

Visher, Christy A. "Incapacitation and Crime Control: Does the 'Lock'em Up' Strategy Reduce Crime?" Justice Quarterly 4 no. 4 (December 1987): 515-543.

Watkins, John C., Jr. "Probation and Parole Malpractice in a Noninstitutional Setting: A Contemporary Analysis." Federal Probation 53 no. 3 (September 1989): 29-34.

Pamphlets

Del Carmen, Rolando V. and Eve Trook-White. Liability Issues in Community Service Sanctions. U.S. Department of Justice: National Institute of Corrections, June 1986.

Galaway, Burt and Joe Hudson. National Assessment of Adult Restitution Programs: Executive Summary. Minnesota: School of Social Development, University of Minnesota, April 30, 1981.

McDonald, Douglas C. Restitution and Community Service. U.S. Department of Justice: National Institute Of Corrections, 1988.

Office of Justice Programs. Survey of Intermediate Sanctions. United States Department of Justice, 1990.

Government Documents and Court Cases

Bivens v. Six Unknown Named Federal Narcotics Agents 403 U.S. 388 and 456 F2d 1339 (1972).

"Civil Rights Act of 1871." U.S. Code Title 42, section 1983: 15-1271.

"Comprehensive Crime Control Act of 1984." Statutes at Large vol 98 pt 2 (1984): 1976-2125.

Constitution of the United States. Amendment 13.

Ruiz v. Estelle, 1980, 503 F Supp 1265 (1980).

Spalding v. Vilas, 161 U.S. 483, (1895).

Texas. Community Justice Plan for the 2nd 25th Judicial District. 1991.

Vernon's Texas Statutes Annotated Code of Criminal Procedure. 1978 with pocket parts for 1992.

Woods v. Strickland, 420 U.S. 308 (1974).

Interview

Smith, Linda. Interview with Chief Administrator of the Second
Twenty-Fifth Judicial District. January 9, 1992.