A CASE STUDY OF THE IMPACT OF A VOLUNTEER PROGRAM FOR MISDEMEANANTS ON THE OFFENDERS AND THE COURT

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A CASE STUDY OF THE IMPACT OF A VOLUNTEER PROGRAM FOR MISDEMEANANTS ON THE OFFENDERS AND THE COURT

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CHAPTER I

INTRODUCTION

Despite the magnitude of their numbers, misdemeanant offenders have been a neglected aspect of the criminal justice system. Research has been directed to the problem of more serious offenders and their correction. Consequently, not much has been written about misdemeanants and relatively little is known about the consequences of the various means by which misdemeanant cases are handled, or even how prevalent is the use of the various sentencing dispositions available to the courts in misdemeanant cases.

This paper presents a case study of the introduction of a program to provide probation and counseling services to misdemeanant offenders in Payne County, Oklahoma. The research focused on the impact of the program on misdemeanant offenders and the effect of the program on sentencing procedures in the Payne County District Court. Misdemeanant program participants were compared with those who were fined, jailed or received other dispositions before the program was introduced and after it became operational. The sentencing pattern of the court before the program was compared with the pattern after the program was introduced.

Misdemeanant Offenders in the Criminal Justice System

Misdemeanant offenses have been called the "cloacal region" of

the criminal justice system (Mattick and Arkman, 1969). Generally regarded as minor or petty offenses, those who commit misdemeanors have been largely overlooked by researchers, by the correctional and rehabilitation industry, and insofar as possible, by the courts. Yet misdemeanant offenses make up the bulk of cases processed through the criminal justice system each year. It has been estimated that more than ninety percent of the offenders handled by the courts are charged with misdemeanors (Silverstein, 1965). Approximately two-thirds of all commitments to correctional facilities and programs are based on misdemeanor convictions, but because they usually receive shorter sentences, the daily population in misdemeanant corrections is less than that of felons (President's Commission, 1967a).

No one knows how much misdemeanant crime exists, but a general idea of its magnitude can be obtained by looking at statistics from a recent issue of Uniform Crime Reports. More than three and a half million arrests were made on charges for seven types of offenses considered misdemeanors in most jurisdictions. These offenses include prostitution and commercialized vice, liquor law violations, driving while intoxicated, disorderly conduct, drunkenness, vagrancy, and gambling (Federal Bureau of Investigation, 1981).

Because their offenses are generally regarded as less serious, misdemeanants receive less care in the handling of their cases than do felons. Most cases are handled in summary fashion, usually by lower or municipal courts which process high annual caseloads (Subin, 1966; President's Commission, 1967b; Wald, 1967). The rapidity of dispositions and consequent lack of consideration given to cases, as well as extensive use of plea bargaining and general lack of decorum in lower courts has been

widely commented upon by observers (Robertson, 1974; Dash, 1951; Mileski, 1971; Brannon, 1978). Feeley (1978:8) reported that:

> The lower courts are reluctant to treat formally that which has traditionally been treated informally, and they refuse to consider solemnly that which has been taken lightly. They will not regard as crime that which has typically been considered as a nuisance.

In contrast to felony cases, typically, little use is made of pre-sentence investigation, probation, and treatment programs (Sutherland and Cressey, 1978). The most common dispositions of convicted offenders are the jail sentence, fine, suspended sentence, and to a lesser extent, probation (NCCD, 1967).

While there is a tendency to regard misdemeanants as minor offenders, such offenses may portend greater involvement in criminal misconduct. O'Leary (1966) has pointed out that sixty percent of first time felons have had previous misdemeanant convictions. A California study cited by the President's Commission on Law Enforcement and the Administration of Justice (1967a) reported that 73.5 percent of first time felons had a history of misdemeanant offenses. Moreoever, many misdemeanor convictions are the result of plea bargaining which has resulted in reduction of charges from felonies to misdemeanors (Subin, 1966). Many misdemeanant offenders may be nuisances rather than threats to society, but for others misdemeanant offenses may indicate a course of conduct leading to more serious law violation, and for these, effective intervention at the misdemeanant level may divert them from graduating to more serious crime.

A number of programs in various locations have developed to improve the handling of misdemeanant offenders (McCrea and Gottfredson, 1974). The content of the programs commonly includes one or more of the following: individual or family counseling, group therapy, and educational or

vocational training. These programs are often carried out within a jail setting. Increasing use is being made of pretrial diversion and post-conviction referral to treatment programs using community resources. More extensive use of probation for misdemeanants seems to be occurring, using either professional probation officers, citizen volunteers, or a combination of the two. Many of the innovative programs target on offenders of a particular type--first offenders, unemployed, or alcohol problems--and serve only a fraction of the misdemeanant population.

Some of the innovative strategies utilized in misdemeanant programs, such as pretrial diversion and deferred conviction, have been criticized as potentially enlarging the scope of the criminal justice system (Gorelick, 1975; Balch, 1974; Austin and Krisbert, 1981). Referrals which are made before conviction, or made on the condition of a guilty plea, preclude judicial determination of innocence or guilt. Such programs may be used by prosecutors to dispose of cases which are so minor in nature, or the case against the accused so weak, that the case would otherwise be dropped. Many persons, faced with the prospect of trial and possible conviction, may be induced to plead guilty if given assurance that they will be referred to a diversion program and that the case will subsequently be dismissed.

A handicap in the assessment of the effectiveness of programs for misdemeanant offenders is lack of knowledge about the outcomes of traditional sentences. About all that is known is that misdemeanants have a high rate of recidivism. The relative efficacy of various types of sentences to deter further law violation has not been established. Almost no research is reported which explores whether fines, jail sentences, restitution, suspended sentences, and probation are comparatively more or

less effectual in preventing recidivism. Evaluation studies of probation and the use of volunteers frequently do not include comparisons with offenders subjected to traditional sentencing alternatives. It is possible that most misdemeanant first offenders who succeed on probation or in experimental programs would have done equally well with a fine, suspended sentence without supervision, or some other disposition.

Volunteer Services for Misdemeanants

Citizen volunteers are a promising means of providing services to a larger proportion of misdemeanant offenders. Volunteers have been used to expand the capabilities of existing probation services and are providing probation services where none existed before. While the effectiveness of volunteers in correctional programs has not been firmly established, available evidence indicates that they can be at least as effective as professionals (Cook and Scioli, 1976).

The use of volunteers in corrections is not a recent innovation. More than 140 years ago John Augustus began supervising selected offenders in the community as an alternative to confining them in jails (Jorgenson, 1970). Augustus set in motion a movement which eventuated in present-day probation. Along the way, volunteers were superseded by professionals and the focus of probation shifted from misdemeanants to felons. Renewed interest has developed in misdemeanant offenders, and volunteers are an important part of many misdemeanant programs.

Payne County Volunteer Program for Misdemeanants

Oklahoma is one of ten states that make no provision for probation

services for misdemeanant offenders (National Advisory Commission, 1973a). The few programs of court services and probation that do exist in the state are the result of local initiative. Prior to July, 1973 the Payne County District Court had no probation or other court services available for misdemeanants. In 1973, the Payne County Volunteer Program for Misdemeanants, Inc. (hereafter referred to as the Misdemeanant Program) was formed as a nonprofit corporation for the purpose of offering evaluation, supervision, and counseling to adult misdemeanant offenders. It received its initial funding on July 1, 1973 from the Law Enforcement Assistance Administration through the Oklahoma Crime Commission, and from local matching funds (Payne County Volunteer Program, n.d.).

The Misdemeanant Program was initiated for the purpose of diverting misdemeanant offenders from criminal careers by offering evaluation, supervision, and counseling services. Referrals were accepted from authorized agencies of the criminal justice system in Payne County, including law enforcement agencies, city and county attorneys, four municipal courts, and the Payne County District Court. It was structured to receive offenders referred by the courts as part of deferred or suspended sentences. Within the program, clinical nomenclature was used in which referrals were termed "clients", and the service provided was called "treatment". Clients were normally referred for periods of six to twelve months during which time they received counseling and/or supervision as deemed appropriate on the basis of an extensive intake interview and psychological testing. The Misdemeanant Program directed some clients to more specialized programs such as psychological or psychiatric counseling, alcohol treatment, and the like.

After an initial intake interview which elicited information on past

criminal record, alcohol, drug, and tobacco use, friendship and family relationships, employment and educational status, and included completion of the FIRO-B and Cattel 16 PF personality inventories, clients were assigned to one of several treatment alternatives. Treatment modes included individual or group counseling with either professional staff or paraprofessional volunteers, supervision by weekly reporting, supervision by mail, or referral to other agencies.

Each client's file was reviewed every three months to assess his or her progress. After six months of successful counseling or intensive supervision, clients could choose to move to regular (i.e., monthly) supervision. At the completion of the referral period, a final interview and FIRO-B test was completed. This interview covered changes which had occurred in marital and family circumstances, effect of arrest on employment, family relationships, relations with friends, information about future plans, and the client's feelings about the program. After the final interview was completed, the director sent a recommendation regarding disposition of the case to the referring authority.

The philosophy of the Misdemeanant Program emphasized strengthening inner controls in order to deflect the offender from further law violation.

> There is a commitment to the belief that each individual is responsible for himself and as he assumes this responsibility he is then in a position to become a more responsible member of society. He is able to choose positive alternatives to meet his needs rather than adopting self defeating behavior that may lead to a criminal lifestyle. It is important that each client be facilitated in becoming aware of his value as a human being, his unique potential, including his capabilities and limitations. This philosophy is implemented through a client centered treatment program (Payne County Volunteer Program, n.d.).

Although titled the Payne County Volunteer Program for Misdemeanants,

it was not exclusively a volunteer program. Many referrals spent all or part of their time in the program under the supervision of program staff and were counseled or participated in groups led by staff members. However, most participants were placed with volunteers for some part of their referral experience.

At the time data was gathered for this study, the Misdemeanant Program operated with a staff of four full time persons and approximately forty volunteer paraprofessionals. Volunteers came from a variety of sources such as interns from the psychology, counseling, and vocational rehabilitation programs at Oklahoma State University, graduate students from various fields, interested community members, and some former clients. Professional counselors from the community and the university also volunteered their services.

The term paraprofessional was used to describe volunteers who completed the training program required of and provided for volunteer counselors. Initial training involved a thirty-hour sequence over a ten week period, followed by monthly inservice training and special workshops. The training reflected the philosophy of the program and included such areas as awareness of self and others, problem solving techniques, values clarification, communications, assertiveness training, and individual and group facilitation. Each volunteer who was assigned to work with clients was afforded regular consultation with one of the professional counselors who volunteered to work with the program.

During the period from July 1, 1973 to December 31, 1975 the Misdemeanant Program had counseled and/or supervised 919 clients with a claimed recidivism rate of less than two percent. The recidivism rate was based on known offenses committed by persons who completed the

program. This remarkably low recidivism rate had not, at the time of this study, been confirmed by outside evaluation, nor had a comparison been made with non-program or preprogram controls.

The structure of the Misdemeanant Program reflected, in part, the area it served. Payne County is located in north-central Oklahoma. The county seat and largest population center is Stillwater. A trading center and location of several industrial plants, Stillwater had a population of approximately 37,500 persons. It is the location of Oklahoma State University which, at the time of this study, had about 20,000 students on the Stillwater campus. Because of the large number of students living in the Stillwater area, a high proportion of the misdemeanant offenses occurring in Payne County are committed by youthful first offenders. This is reflected in the large number of young adults served by the Misdemanant Program. The makeup of the community is also reflected in the large number of university related persons that were included in the paraprofessional volunteers.

Statement of the Problem

The purpose of the research presented here was to prepare a case study of the introduction of a program to provide counseling, supervision, and other services to misdemeanant offenders in Payne County, Oklahoma. The establishment of the Misdemeanant Program provided an opportunity to determine the effectiveness of a probation program making extensive use of volunteers to provide counseling and supervision to deflect misdemeanant offenders from further unlawful conduct. This event also provided a natural setting in which to observe changes in sentencing practices which occurred when a new sentencing alternative became available to the court.

The data collected made possible a comparison of the relative effectiveness in deterring further law violation of various sentencing alternatives used with misdemeanant offenders. The fact that the Misdemeanant Program was structured to receive pretrial diversion cases and extensive referrals by the court of offenders given deferred sentences made it possible to examine the assertion that such practices lead to expansion of legal control to cases having dubious merit for prosecution.

The research problem can be expressed in four basic questions.

1. Did fines, jail terms, and suspended sentences differ in their efficacy to prevent further law violation?
2. Did referrals to the Misdemeanant Program demonstrate less recidivism than offenders who received other sentencing alternatives?
3. How did the sentencing pattern of the Payne County District Court change after the introduction of the Misdemeanant Program?
4. Did the introduction of the Misdemeanant Program increase the number of misdemeanants treated by the criminal justice system?

Significance of the Study

This case study is one among a number of studies which have examined use of volunteers in various aspects of the criminal justice system. It is somewhat unusual in that it examined recidivism over a period of time after offenders completed a program, and also unusual in the use of comparisons between program participants and offenders not referred to the program. Most of the published reports on volunteer programs have not used comparison groups, and many do not include follow-up data to measure

recidivism. Conclusions about volunteer effectiveness in correctional services for misdemeanants must ultimately be based on the accumulation of numerous studies in a variety of settings.

The Misdemeanant Program is somewhat unusual. Unlike other programs that use volunteers, the Misdemeanant Program was organized and managed apart from the court or a probation department, even though it received public funds. Most volunteer programs in the criminal justice system are agency sponsored, either by the courts, probation departments, or other criminal justice agencies. The Misdemeanant Program serves as an example of what can be accomplished through citizen initiative and support. If shown to be effective, it can serve as a model after which other communities lacking in lower court services can pattern similar programs.

There is a dearth of information on how misdemeanants are commonly sentenced by the courts. Little research has been reported on the outcome of various sentencing alternatives used for misdemeanant offenses. This study presents information on sentencing practices of a court before the introduction of an innovation, and after it became operational. Recidivism information is presented for the various sentences used by the court. Although this represents only one court, the accumulation of this kind of information is essential to more skillful handling of misdemeanant offenders. In sum, while this study is not enormously consequential in its findings nor in its impact on the handling of misdemeanants in the criminal justice system, it documents several aspects of the handling of misdemeanant offenders which have received only fleeting attention in the literature.

Limitations of the Study

This is a case study, and like all case studies, it focuses on a specific occurrance at a particular point in time. Because focus is singular, the results of case studies have limited generalizability. The Misdemeanant Program cannot be considered typical of volunteer programs nor can the practices of the Payne County District Court be assumed common in other courts. However, the results of this case study are suggestive of what might exist in similar situations.

This was an ex post facto study in that the events examined had already transpired before the research began. Unlike an experimental study in which subjects can be assigned to experimental and control groups to fit the needs of the research design, this study relied on the residue of information which remained in public records. This fact limited the ability to introduce desirable controls when examining some of the relationships between variables.

This study examined differences in sentencing practices and recidivism for a period of time before and after the introduction of the Misdemeanant Program. The before and after program populations were considered to be comparable, and differences between the two populations on the variables used here were attributed to effects of the program. It is possible that factors such as changes in law enforcement practices, offender characteristics, nature and severity of offenses, or other factors that were not detectable may have made the two populations somewhat different. Because it was not possible to identify and control for all such possibilities, it was assumed that they did not bias the results reported here.

The data presented and conclusions drawn therefrom are limited to

cases which were contained in the misdemeanant docket of the Payne County District court, and met the criteria for use as outlined in the third chapter of this report. The Misdemeanant Program participants included in this study represent only a part of the total number of referrals to the program during its first year. In addition to the Payne County District Court, the program also received referrals from municipal courts in Payne County, and from jurisdictions from outside Payne County when Payne County residents were involved. Although recidivism data presented have relevance for determining the effectiveness of the program, this study should not be considered to be an evaluation study per se.

Because the number of cases available for use was less than anticipated, only a limited exploration of the relationship between recidivism and some sentence and offense type combinations was possible. Detailed breakdowns of recidivism by offense and sentence type would require a larger number of misdemenanant cases than was processed through the Payne County District Court during the years covered by this study.

Summary

Although misdemeanant offenders make up the largest portion of persons processed through the criminal justice system, relatively little research has been done on the handling of misdemeanants by the courts. Probation and other court services available to felons do not exist for misdemeanants in many localities. Programs have developed in various locations to provide misdemeanant offenders with counseling and training, and increased use is being made of pretrial diversion and post-conviction referral using community resources. Many jurisdictions are

utilizing volunteers to augment probation services, and to provide such service where none existed before.

Relatively little is known about the sentencing practices of courts dealing with misdemeanants, or about the relative effectiveness of sentencing alternatives. Programs offering pretrial diversion and deferred sentencing have been criticized as widening the net of the criminal justice system, incorporating cases that are of dubious merit for prosecution.

The case study presented here focused on the impact of a program utilizing volunteers to provide probation and counseling for misdemeanant offenders in Payne County, Oklahoma. It examined the effectiveness of the misdemeanant Program in reducing further law violation on the part of program participants. Changes in the sentencing practices of the District Court were examined, and the issue of possible increase in numbers of persons processed through the justice system due to diversion and deferred sentencing was explored.

CHAPTER II

REVIEW OF THE LITERATURE

This chapter consists of two parts, the first reviewing the available literature on the nature of misdemeanant crime and the various sentencing alternatives available to the courts. While volunteer programs in courts and corrections do not represent a sentencing alternative, they are included here because they are normally used in conjunction with one of the alternatives to be disucssed. The second part reports the results of various studies of the effectiveness of correctional alternatives available for use with misdemeanant and other offenders. A concluding section will discuss the implications of this literature for the present study.

Misdemeanant Offenses

The commonly understood meaning of misdemeanor (literally, "misbehavior") is minor or petty crime, whereas serious crime is described as being a felony. The legal definition of misdemeanor varies from state to state, generally being defined (1) according to the severity of the penalty, (2) according to the level of government imposing the restriction on conduct, or (3) by specific statutory designation (NCCD, 1967). Violations of city ordinances are often categorically designated as misdemeanors. In some states, misdemeanors are a residual category after felonies have been specifically enumerated, whereas other states define

each misdemeanor offense by statute. A few states differentiate between "high" and "low" misdemeanors, the former having more severe penalties. A trichotomy of felony, misdemeanor, and "summary" offenses is sometimes used, the latter including such behavior as public intoxication, vagrancy, and disorderly conduct (President's Commission, 1967a).

It is difficult to determine exactly how much misdemeanant crime occurs in the United States because of variations in definitions, lack of record keeping, and the large number of felony arrests that are subsequently reduced to misdemeanors (President's Commission, 1967a). The Uniform Crime Reports publication does not divide misdemeanor and felony crime, but instead lists arrests by offense categories. For seven common misdemeanor type offenses--prostitution and commercialized vice, liquor law violations, driving while intoxicated, disorderly conduct, drunkenness, vagrancy, and gambling--more than three and a half million arrests were reported in 1980. By including other types of offenses which would be misdemeanors in most jurisdictions, the number of arrests becomes more than seven million (Federal Bureau of Investigation, 1981). Studying misdemeanant crime within a specific local area can prove difficult. For example, a survey of misdemeanant offenses in Westchester County, New York, encountered difficulty in locating basic information about offenders, such as age, address, and the final disposition of cases. It was often necessary to search several different sets of records, and sometimes the information was simply not available (Loth, 1967).

Court Disposition of Misdemeanant Offenders

In most jurisdictions, the courts have several alternatives

available when sentencing convicted misdemeanants. These include jail or other forms of confinement, fines, deferred conviction, suspended sentences, and probation. Great variations occur both between and within court systems regarding use of these alternatives. Probably the two most frequently used dispositions are jail terms and fines. Probation is less commonly used than fines, jail terms, or suspended sentences (NCCD, 1967; President's Commission, 1967a; Loth, 1967). Attention should be drawn to the fact that these observations are based on reports involving a limited number of locations and are more than a decade old, therefore they may not accurately describe the current pattern of misdemeanant sentencing.

Jail Terms

The Task Force on Corrections (President's Commission, 1967a) reported data on misdemeanant dispositions in eight lower court jurisdictions. In two of these, about two-thirds of all offenders were sentenced to jail, and in another, almost half were so sentenced. Overall, the jail term was the most frequent disposition in four of the eight jurisdictions.

Fines

Fines were used somewhat less frequently than the jail sentence. In three of the eight jurisdictions reported by the Task Force on Corrections, fines were used more frequently than other sentencing alternatives, with a fourth jurisdiction making heavy use of a combination of fines and suspended sentences. Convicted offenders are often confronted with a choice of paying a fine or serving a jail sentence. Those without financial resources must serve the jail time, a practice which has raised

the issue of "price tag" justice which discriminates against less affluent offenders (Rock and Reynolds, 1975; Becker, 1968). A large portion of the annual jail population is made up of offenders unable or unwilling to pay fines. A study of the Philadelphia County Jail showed that sixty percent of the inmates had been committed for default in payment of fines (President's Commission, 1967a).

Suspended Sentence

Like the imposition of fines and jail terms, the suspension of sentence is an old and widely used practice in the lower courts (Ancel, 1971). As practiced in many jurisdictions, it involves suspension of the implementation of a sentence, usually a fine or jail term, for a period of time--six months to one year--during which the offender must maintain law abiding conduct. It is sometimes referred to as "summary probation" because it is frequently used without presentence investigation and without supervision. The terms of a suspended sentence may stipulate conditions which must be fulfilled, including specific behavior which must be avoided or tasks which must be completed. Thus, an offender may be ordered not to associate with certain acquaintances, or he may be required to seek psychological counseling, attend Alcoholics Anonymous meetings, or complete a driver's education course (Wallace, 1960; Wold and Mendes, 1974). Although suspended sentences are more widely used than probation for misdemeanant offenders, they are not as extensively used as fully imposed fines or jail sentences (President's Commission, 1967a).

It appears that the suspended sentence, without supervision, can be successfully used with many offenders. Experience with probation indicates that many offenders avoid further misconduct with little or no

active supervision (England, 1957). Many authorities in the judicial and correctional fields now believe that, given adequate presentence investigations, many misdemeanant offenders can safely be given suspended sentences with summary probation because the impact of arrest and conviction is sufficient to deter them from further illegal behavior (McCrea and Gottfredson, 1974). Giving suspended sentences to the essentially "self-correcting" offenders permits probation officers to give more attention to the offenders who are more likely to benefit from their service.

Deferred Sentence

Deferred sentencing, also known as "probation without verdict" and "deferred conviction", is a procedure in which the court withholds verdict or sentencing for a specific period of time. If no other offenses are committed during that period, the conviction is nullified and the case is dismissed. In the Payne County District Court, for example, misdemeanant offenders are often permitted to enter a guilty plea and have sentencing deferred, usually for a six month period. At the end of the deferral period if the defendant has not committed additional offenses and has otherwise complied with the requirements set forth by the court, he is permitted to withdraw his guilty plea and enter a new plea of not guilty whereupon the case is dismissed. Like suspended sentences, deferred sentencing can be used alone, with supervision, or may specify other requirements of the offender. There is little mention of this practice in current correctional literature and no studies have been made of the extent of its use, nor of its effectiveness (NCCD, 1967).

Restitution

In misdemeanant crime, when property loss occurs, it is usually minor. One alternative available to the courts is to order payment of restitution to the victim. Restitution can be incorporated into the court's conditions for probation with suspended or deferred sentences. Although its use has been sporadic in lower courts, some jurisdictions are experimenting with restitution as a sentencing alternative, or its use in conjunction with other types of sentences (Galaway, 1977). In regard to its use, McCrea and Gottfredson (1974:23) conclude:

> While the use of restitution for purposes of punishment, deterrence, and rehabilitation has not been sufficiently widespread to provide usable statistical data, and passes almost unnoticed in the literature on correction, its possibilities as a restorative and reintegrative measure should be thoroughly explored by misdemeanant courts seeking to improve their success ratio with the offenders appearing before them.

Probation

A 1967 report by the National Council on Crime and Delinquency observed that "the outstanding single fact in the survey data on misdemeanant probation is the paucity of the service" (121). The Task Force on Corrections (President's Commission, 1967a) reported that of the eight jurisdictions studied, in only two did probation approach twenty percent of the total dispositions, while the six remaining jurisdications used probation in from less than two percent to ten percent of misdemeanant dispositions. Low usage of probation for misdemeanant offenders is generally not due to lack of provision for it. Only ten states make no provision for misdemeanant probation. In sixteen states, misdemeanant probation is the responsibility of a state correctional agency, in eleven states, the responsibility is divided between state

and local agencies (National Advisory Commission, 1973a). At the time this study was undertaken, Oklahoma was reported as one of the states making no provision for misdemeanant probation.

Where probation service is available, it tends to suffer from high case loads, inadequate supervision, limited financial resources, and lack of rehabilitative programs (NCCD, 1967; President's Commission, 1967a). The National Advisory Commission on Criminal Justice Standards and Goals (1973a:335) set forth the following sentencing standards for misdemeanants:

> Each state should develop additional probation manpower and resources to assure that the courts may use probation for persons convicted of misdemeanors in all cases for which this disposition may be appropriate. All standards of this report that apply to probation are intended to cover both misdemeanant and felony probation. Other than the possible length of probation terms, there should be no distinction between misdemeanant and felony probation as to organization, manpower, and services.

The Commission commented that since misdemeanant offenders often have the same problems as felony offenders, the same services should be available to them. They urged that no misdemeanant be sentenced to confinement without a presentence report supporting the need for that disposition.

Diversion

Diversion refers to suspending criminal proceedings against a person at some point prior to conviction on the condition that he voluntarily participates in a program of rehabilitation or otherwise shows evidence of correction. Diversion may be undertaken by the police as an alternative to arrest, or by the prosecution at any point prior to conviction (Criminal Justice Office, 1979; Nimmer, 1974). Technically, it

is not a sentencing alternative because diversion occurs before the court renders a verdict. However, diversion often involves consultation between prosecution and the magistrate, and the latter's approval of diversion in specific cases. The threat of possible conviction can be used to encourage the accused person to agree to something, such as make restitution, participate in a rehabilitation program, or seek psychological counseling. It requires a discretionary decision on the part of an official of the criminal justice system that a more appropriate way exists to deal with a particular defendant than to proceed with prosecution (National Advisory Commission, 1973b; Loh, 1974; Klampmuts, 1974; Carter, 1972).

Several advantages are held to accrue from diversion. It is argued that early intervention is more effective than post-conviction efforts at rehabilitation because the period shortly after arrest is "the peak moment of contrition and sense of guilt when the offender is most anxious to make amends and set things right" (Whitney N. Seymour, Jr. in U. S. Senate, 1972:30). The disruptive effect of trial and incarceration which could otherwise have permanent consequences for the individual can be avoided (Martinson, 1972). If diversion is successful, the charges against the defendant will be dropped, or the case dismissed, thus avoiding stigmatizing him as a "criminal" (National Advisory Commission, 1973a). Diversion offers another means to manage the large number of cases which are processed through misdemeanant courts. Prosecutors are frequently forced to screen out less serious offenders in order to deal adequately with the more serious cases. Diversion offers an alternative to full prosecution on the one hand and outright dismissal on the other (Miller, 1970).

The National Advisory Commission on Criminal Justice Standards and

Goals (1973a:95) recommended that:

> Each local jurisdiction in cooperation with related state agencies should develop and implement by 1975 formally organized programs of diversion that can be applied in the criminal justice process from the time an illegal act occurs to adjudication.

The Commission also outlined appropriate standards which should guide the operation of diversion programs (1973b).

Diversion presents several problems which should be noted, including extension of the scope of corrections, coerced cooperation, and erosion of due process. Gorelick (1975) has observed that diversion may serve to cast a wider net of judicial intervention into the lives of citizens. The disposition of minor offenders through diversion can increase the likelihood of incorporating persons into rehabilitative efforts who would otherwise be released without prosecution (Feeley, 1975). The small amount of evidence available indicates that only infrequently would an accused person charged with an offense and having a record similar to the ordinary diversion program participant go to trial, and if convicted, would probably not be incarcerated (Loh, 1974; Skolnick, 1967).

The purportedly voluntary nature of diversion is problematic. An element of coercion is present in that the accused person faces the threat of prosecution and possible conviction if he does not agree to participate when diversion is offered (Balch, 1974). The National Advisory Commission (1973b:29) recognized this possibility with the observation that:

> An innocent individual, because of ignorance or other factors, may agree to participate in a diversion program, even though he does not have to because the prosecution cannot establish his guilt. . . The possibility of unjustified diversion must be considered when determining the desirability of such programs.

Some observers have commented upon the threat of diversion to due process rights of accused persons (Goldbert, 1973; Balch, 1974; Nejelski, 1976). The decision to cooperate in a diversion program is, in some respects, similar to plea bargaining in that the decision may result in waiver of legal rights. In many instances, a prerequisite for diversion is that the accused person admit guilt, or at least acknowledge "moral responsibility" for the charged offense (U. S. Senate, 1973). This requirement is made because police and prosecutors tend to feel that admission of guilt is essential to successful rehabilitation, and to protect the prosecutor's case should further legal action become necessary. This practice places the defendant at a serious disadvantage should he choose to withdraw from diversion and have his case tried in court. To protect accused persons from coercion and avoid abrogation of due process rights, the American Bar Association (1971) has emphasized the importance of providing legal counsel during the diversion process. Moreover, in Standard 2.2, on procedure for pretrial diversion, the National Advisory Commission on Criminal Justice Standards and Goals (1973b:39) stressed "the offender's right to be represented by counsel during negotiations for diversion and entry and approval of agreement." Evidence indicates that the opportunity to consult counsel does not regularly occur in most diversion programs (Loh, 1974).

Little data are available on how widely diversion is used with adult offenders. It may be used informally and sporadically to a greater extent than published reports would indicate. Perhaps the best known programs are the Genesee County Citizens Probation Authority, a Michigan program for adult felony offenders, the Manhattan Court Employment Project in New York, and Project Crossroads located in Washington, D. C.

The Manhattan Court Employment Project and Project Crossroads programs were aimed at giving first offenders a chance, through participation in the diversion program, to achieve worthwhile employment with the help of manpower services and training (U. S. Senate, 1973; National Advisory Commission, 1973a; Zimring, 1973). In 1973, pretrial diversion programs existed or were planned in some fifty cities (Nordheimer, 1973). Many of these programs were limited in scope, diverting only a small percentage of the offenders processed by the courts.

Volunteers

Volunteers have become a significant force in the criminal justice system. A 1979 survey estimated that, including juvenile and adult corrections, there are more than 343,000 volunteers serving 3,906 programs in the United States (NCCD, 1979). Scheier and Berry (1972) reported that, exclusive of lower courts and law enforcement agencies, about 60 to 70 percent of criminal justice agencies have volunteer programs. Juvenile and lower courts have relatively few volunteer programs, and many of those reported by other agencies are probably token in nature. Only a distinct minority of programs can claim to be providing regular services to a majority of offenders.

Several benefits are claimed for the use of volunteers in the courts and correctional agencies. Volunteers can help close the gap between need and services available, particularly at the lower court level. Volunteers can be used to relieve the strain of excessively heavy caseloads on professional officers, and provide more intensive, although less professional, contact with offenders (Eskeridge, 1980). The need for additional volunteer programs at all levels of the criminal justice

system has frequently been expressed (Burnett, 1969; Ellenbogen and DiGregorio, 1975; Goddard and Jacobson, 1967; Scheier, 1970). The National Advisory Commission on Criminal Justice Standards and Goals (1973a) endorsed the concept of volunteers in corrections and urged all agencies to begin to recruit, train, and use volunteers as an additional resource in programs and operations. The commission recommended that volunteers serve as a bridge between corrections and the community.

One of the earliest contemporary volunteer programs was that developed in Royal Oaks, Michigan beginning in 1959. Concerned about the lack of counseling and rehabilitation service for offenders processed through the municipal court, eight men--all having professional counseling experience--agreed to take five offenders each for counseling and supervision. The program developed rapidly and within a year, a full-time staff position was created to coordinate and support volunteer efforts. Services were extended, using volunteers, to provide presentence investigations, psychological, psychiatric, and employment counseling (Leenhouts, 1964; 1970). The Royal Oaks volunteer program continues to serve as a prototype for lower courts wishing to introduce probation services when no professional staff is available.

Florida was the first state to develop a statewide volunteer program when, in 1968, the legislature authorized the Probation and Parole Commission to organize and train volunteers to advise and assist probation and parole supervisors, and to stimulate community volunteer programs (Unkovic and Davis, 1969). The Community Service Volunteer Program was designed to augment and assist professional probation and parole officers who were faced with expanding caseloads and heavy demands for presentence reports. Coordinated on a statewide basis, rosters of volunteers were

developed in local communities. These volunteers were assigned to work with adult felons and misdemeanants, and with juvenile offenders.

Descriptions of volunteer programs in misdemeanant probation have been published for San Diego, California (Ellenbogen and Di Gregorio, (1975), Hennepin County, Minnesota (Schwartz, 1971), Denver County, Colorado (Jorgensen, 1970), and Lincoln, Nebraska (LEAA, n.d.; Ku, 1975). These programs share several characteristics and are probably typical of the use of volunteers in misdemeanant probation. In each case, volunteers serve as adjuncts to a regular probation staff which retains responsibility for presentence investigation, selection and training of volunteers, and oversight of the program. Volunteers usually work with a relatively small portion of the total caseload of the probation departments. In all of these programs, the volunteers are carefully selected, given training, and work on a one-to-one basis with probationers. The Denver County and Lincoln programs are exceptional in that volunteers are assigned to work with high risk cases--those with more serious behavioral problems--while low risk probationers are handled by the professional staff. The Lincoln program has been cited as an "exemplary" program by the Law Enforcement Assistance Administration (LEAA, n.d.; Ku, 1975).

Effectiveness of Correctional Alternatives

Evaluation studies of correctional outcomes for adults have tended to focus on felony offenders. The results of such studies may have implications for the handling of misdemeanant offenders, but the two categories of offenders do differ in the nature of their offenses, and there are often differences in prior offense records and other characteristics.

The following paragraphs cover outcomes of correctional alternatives in general, the effectiveness of typical misdemeanant dispositions, probation, and volunteer programs. The most widely used measure of the effectiveness of correctional programs is recidivism, and that measure will receive the most attention here. Other measures that are sometimes used include cost-benefit analysis, gains in psychological adjustment, employment stability, and the like, but they are not reported extensively enough to permit comparisons.

Reports on Correctional Effectiveness

In 1965, Alfred Schnur commented that "no research has been done to date that enables us to say that one treatment program is better than another or that enables us to examine a man and specify the treatment he needs" (28). A number of scholars who have reviewed evaluation research on correctional effectiveness have expressed similar conclusions. It appears that we do not know what does or does not work with regard to offender rehabilitation (Shireman et al., 1972; Bailey, 1966; Robinson and Smith, 1971). Various studies have produced differing results; in some, the experimental group was more successful than the control group; in others, the control group was more successful than the experimental group; and most report that the difference between the experimental and control groups was insignificant.

In a survey of evaluation research in corrections, Lipton, Martinson, and Wilks (1975) evaluated 231 research reports dealing with offender rehabilitation which appeared during the years 1945 to 1967. Various measures of "offender improvement" were used in the studies, including recidivism, vocational success, adjustment to prison life, personality

and attitude change, educational achievement, and adjustment to the outside community. The research was subclassified according to various treatment alternatives, such as vocational training, individual counseling, milieu therapy, medical treatment, sentencing practices, psychotherapy in community settings, and use probation and parole. Lipton and his associates found no treatment that would promise easy and effective reduction of recidivism for all offenders. In a separate article, one of the co-authors of the study has stated:

> I am bound to say that these data . . . give us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation. This is not to say we found no instances of success or partial success; it is only to say that these instances have been isolated, producing no clear pattern to indicate the efficacy of any particular method of treatment (Martinson, 1974:49).

The authors of the survey found that the treatments that were effective, both in terms of reducing system costs and reducing recidivism, were those that assisted the offender in meeting his immediate needs in his home community, pointing to the need to provide differential services to a wide variety of offenders in diverse community settings.

Although the Lipton, Martinson, and Wilks study has been the subject of some criticism (Palmer, 1975), their findings are consistent with those of several others who have surveyed the effectiveness of correctional alternatives. Robinson and Smith (1971) observed that variations in recidivism rates among correctional alternatives are, for the most part, due to initial differences among the types of offenders processed, and the remaining differences in recidivism rates between programs can be accounted for by differences in defining and recording violations. Adams (1975) commented that the number of reports of positive results from experimental programs would probably drop appreciably if

the studies were screened rigorously for selection bias or other conditions that might impair validity. Similar observations have been made by Logan (1972) and Gibbons, Lebowitz and Blake (1976).

Jail, Fine, Restitution and Suspended Sentence

There are few reports of research on the effectiveness in determining further law violation of the sentencing alternatives regularly imposed on misdemeanant offenders. Two studies have been published which report the outcome of misdemeanant dispositions in other nations. An Israeli study of the recidivism of persons incarcerated compared with those given suspended sentences found no overall difference at the end of a five year follow-up period (Shoham and Sandberg, 1964). Misdemeanant type offenders twenty-one years of age and under were somewhat more successful when given suspended sentences, while those over twenty-one did somewhat better when they were given a jail term. First offenders were less likely to commit additional offenses than were recidivists, regardless of whether they were incarcerated or given suspended sentences. A British study compared the use of fines with probation and found fines to be associated with fewer reconvictions than probation for both first offenders and recidivists (Home Office, 1964). These two studies offer evidence contrary to the prevailing assumption in the United States that fines and jail terms should be used less, and suspended sentences and probation used more in handling misdemeanant offenders.

Diversion

Pretrial diversion programs are claimed to be effective in reducing recidivism. Project Crossroads, a pretrial diversion project which

provided employment services and counseling for youthful offenders in Washington, D. C. reported additional offenses for 31.4 percent of program participants during a fifteen month period after initial contact with the court. That figure compared to 45.7 percent of a matched control group committing new offenses during the same period of time. Only 22.2 percent of those who completed the program and had the charges against them dismissed committed a new offense during the study period. Another diversion program, the Manhattan Court Employment Project in New York, was established in 1967 to divert defendants, after arraignment on felony or misdemeanor charges, into a program of therapy and employment counseling. It was claimed that only 16 percent of the persons who completed the project experienced a new arrest during a one year follow-up period, compared to 31 percent for project failures and 32 percent for a control group. Combining program successes and failures produced a recidivism rate of 24 percent, compared to 32 percent for the nonparticipant control group. Zimring (1974) questioned the adequacy of the control group, indicating that it was not directly comparable to the project population. The program was ultimately terminated when it was found not to be accomplishing its goals (Potter, 1981).

A Hennepin County, Minnesota pretrial diversion project, known as "Operation de Novo", sought to divert misdemeanant offenders who were unemployed, accused of non-violent offenses, and motivated to self-improvement. Participants in the program were offered vocational training, educational opportunities, and job placement. For those misdemeanants, and a few juveniles and felons, cases were continued during a six month period after which dismissal of charges was recommended if the program requirement had been met. The project reported that about 65

percent of the diversions showed acceptable achievement of the goals set for participants. The remaining 35 percent were said to fail mostly because of low motivation to meet program expectations rather than because of new offenses (McCrea and Gottfredson, 1974).

Some recent studies of diversion projects have not shown favorable results. A report on five such programs in Michigan (Criminal Justice Office, 1979) found lower rates of recidivism, but could not conclude whether the recidivism rates were lower because of the services provided or were due to selective admission of low-risk participants. A San Pablo, California program was found ineffective in reducing recidivism, and it did not reduce the level of criminal justice intervention (Austin, 1980). A diversion program in Kalamazoo, Michigan appeared to have contributed to a large increase in the number of persons processed through the criminal justice system rather than reducing involvement in the system (Friday, Malzahn-Bass, and Harrington, 1981). Although some diversion programs report favorable results, the question remains whether these results are real or whether they are a product of the participant selection process (Roesch, 1978; Gottheil, 1979; Potter, 1981).

Most of the programs cited claimed favorable cost-benefit results. The benefits were variously calculated on the basis of savings obtained from reduction of recidivism, comparisons with alternative dispositions such as jail terms and probation, and financial gains made by participants. Claims of favorable cost-benefit ratios should be accepted with caution inasmuch as they are based on many of the same assumptions as claims of reduced recidivism; that is, there was no bias resulting from selection of offenders least likely to fail, the diversion cases would have otherwise proceeded to trial, and in most cases, a guilty verdict

and some form of punishment would have occurred (Adams, 1975; Austin, 1980).

Probation Studies

Aside from the British study (Home Office, 1964) which compared reconviction rates of offenders who received fines with those given probation, little has been published on the effectiveness of misdemeanant probation. That study found that reconviction rates were lower for offenders who were fined than for those placed on probation. Most probation studies have concentrated on more serious offenders and report generally favorable results.

Recidivism rates ordinarily are highest among offenders discharged from prison at the end of their sentences, lower among paroled offenders, and lowest among probationers (National Advisory Commission, 1973a). The generally favorable findings for probation must be accepted cautiously because it is possible that the lower recidivism rates demonstrated for probationers are an artifact of sentencing decisions rather than the rehabilitative efficacy of probation. Perhaps the offenders commonly sentenced with probation are those most likely to succeed regardless of the sentence given. Most of the studies reviewed here were concerned with felony offenders. The extent to which the results of these studies would apply to misdemeanant situations is questionable since misdemeanants and felons differ in the nature of offenses, age, prior record and other characteristics.

Sandhu (1974) has suggested that, compared with imprisonment, the effectiveness of probation for rehabilitation of offenders has been established. Support for his observation can be seen in a California study

of the relationship between sentence type and recidivism. There Levin (1972) found that offenders who received probation had significantly lower rates of recidivism than those who were incarcerated, and that the differences persisted when controls for socioeconomic variables, offense type, and prior record were introduced. Similar results for probation compared to incarceration have been reported by Beattie and Bridges (1970). Babst and Mannering (1965) compared standard probation to imprisonment with parole for a sample of 7,480 Wisconsin felony offenders. Using violation of parole or probation as their dependent variable, they found that first offenders on probation had significantly lower rates of violation than did first offenders on parole. Offenders with one or more felony convictions who were placed on probation or were paroled did not differ significantly in their rates of violation. Babst and Mannering concluded that for first offenders probation is superior to imprisonment with parole, and that for recidivists probation works as well as the imprisonment with parole alternative. A San Francisco project which probated offenders to community based intensive counseling by professionaly trained workers reported superior results in comparison with incarceration. Although their claim of superior results for probation was expressed in a tentative manner, the authors were more certain in asserting that professionally trained workers can reduce recidivism at least as effectively as incarceration (Northern California Service League, 1968).

Other variables appear to have as much, or even more, effect on recidivism as does probation. Reviewing several research reports Levin (1971) concluded that while probation appears to reduce the rate of recidivism, the offender's prior record and type of offense may have at least as much impact on recidivism. Babst and Mannering (1965) found

in their study of probation and parole violations that violations varied more by type of offense than by whether the offenders were probationers or parolees. They found this to be true regardless of the number of prior offenses the offenders had committed. In a study of the correlates of success or failure on probation, Landis and his associates (1969) found that offenders with a history of anti-social behavior, having lower socioeconomic backgrounds, and lower educational attainment were more likely to experience probation failure. The relationship of offense type, age, and other background characteristics to probation success has also been documented by Davis (1964). Scarpitti and Stephenson (1968) cautioned that the assignment to probation is usually not random, and that the poorer risks are less likely to be placed on probation. They concluded that probation is useful for some offenders but not for all, and that an increase in the proportion of offenders receiving probation would probably result in higher rates of recidivism for probation.

England (1957) suggested that much of the success of probation may be due to factors other than the quality of probation service. He contended that to the extent that probationers are first offenders, or repeaters of minor crimes, they represent a largely self-correcting population. These offenders are likely to be deterred from further crime by the shock of conviction, the impact of being placed under surveillance, and the threat implied in a suspended sentence.

The studies just reviewed do not indicate that probation is less effective than other correctional alternatives, but that it has a differential impact depending on a number of factors. The studies do highlight the need to give careful attention to the composition of the subject population and the controls when doing evaluations of probation

effectiveness lest the apparent success proves to be a by-product of differential sentencing practices on the part of the courts.

Effectiveness of Volunteers

Reports on the effectiveness of volunteers in correctional settings are not readily available. Scioli and Cook (1976) noted that more than 95 percent of the written reports on the effectiveness of the use of volunteers in the criminal justice system are not published in conventional scholarly or professional outlets, but instead appear in the form of in-house documents, staff reports, grant reports, and the like. The reports that are available present a mixed image, some giving a favorable account of volunteer effectiveness and others reporting no difference from professional probation.

The Royal Oak, Michigan program, using volunteers teamed with professionals, reported recidivism to be 14.9 percent, compared to 49.8 percent for offenders receiving regular lower court probation (Leenhouts, 1971). Increases in employment stability, income, and savings were reported for probationers in the volunteer program, but not for those in regular probation.

A study of the use of volunteers in correctional programs undertaken by the California Youth Authority found that officially identified criminal behavior was reduced in six jurisdictions, with the reduction in four of them being statistically significant (Goodwin, 1976). No comparison groups were used in that study, therefore no conclusions about the use of volunteers relative to other alternatives could be made.

Ku (1975) reported that in the Lincoln, Nebraska program, which assigned high risk misdemeanant probationers to volunteers, there were

fewer additional offenses committed during the probationary period by probationers supervised by volunteers than for a control group which received regular probation services by professionals. Additional offenses during probation occurred for 55 percent of those assigned to volunteers compared with 70 percent for those on regular probation. Ku's study did not assess post-probation success.

An evaluation of the Milwaukee County (Wisconsin) Volunteer Counselor Program reported an overall success rate of 75-80 percent for adults and 67-70 percent for juveniles (Criminal Justice Institute, 1974). Success was indicated by completion of the probationary period without revocation due to violation of parole requirements or because of a new offense being committed. In the Milwaukee County study, no comparison group was used, nor was there a study of post-probation recidivism.

Not all programs have been able to achieve the results claimed by the programs mentioned above. Poorkajh and Borkelman (1973) reported on a volunteer program directed to reinforcing conforming attitudes on the part of juvenile offenders. They found no difference between the volunteer group and a control group in terms of further misconduct. In a study of adult misdemeanants, Matson (1973) found that volunteers were no more effective in reducing recidivism than were regular probation counselors. Dowel (1978) reviewed the results of several programs which used volunteers and concluded that such programs were no more effective than traditional probation and parole supervision.

Cook and Scioli (1975, 1976) undertook an extensive search for reports on the effectiveness of volunteers in the courts and corrections. Collecting 250 research reports, books, and articles, they discovered only 43 which met their criteria of validity and usefulness for

evaluation purposes, 26 of which had probationers as the target population. Their primary finding was that there was no valid empirical research to demonstrate that volunteer programs are more effective than other alternatives, such as professional probation. Only ten reports dealing with volunteer impact on clients met their criteria of usefulness for policy considerations. Three of these reports demonstrated a significant positive difference between volunteer program performance and comparison group performance, while two found no significant difference. Because of questions about validity, the remaining five reports were considered to be only "suggestive". Two of the five claimed positive effects for volunteer probation programs, one found no significant difference between volunteers and controls, and the remaining two reported mixed positive, negative, and neutral elements (Scioli and Cook, 1976).

None of the studies reviewed here reported that volunteer efforts were less effective than other program alternatives, while several claimed positive results. It would appear that volunteers can perform as well as, if not better than, many other alternatives in the criminal justice system. It has already been observed that volunteers are mostly used as adjuncts to professional services. In the absence of professional probation or rehabilitation services, volunteers can be a very valuable resource, especially at the lower court level. The studies cited did not attempt to assess the value of volunteers in terms of lowering the costs of probation and rehabilitative services, extension of the capabilities of professional programs to serve clients, or their potential for maintaining closer and more personal contact with offenders.

Summary

Misdemeanants are commonly regarded as minor or petty offenders, and as such, have not received much attention in criminal justice literature. However, the magnitude of misdemeanant offenders, and the tendency of first time felons to exhibit a history of misdemeanant offenses, suggest that greater attention should be given to these offenders. The most commonly used sentences for misdemeanants are jail terms, fines, and suspended sentences. Probation for misdemeanants is limited. Not much is known about the extent of use of other sentencing alternatives such as restitution and deferred sentencing. Much interest has been expressed in pretrial diversion as a technique to intervene early in a person's offense history to divert him from additional offenses. Diversion presents certain problems including the danger that a defendant's legal rights will be compromised by the diversion process, and the possibility that zealous use of diversion will result in more criminalization rather than less.

Volunteers are being used extensively in the criminal justice system, but less so with misdemeanants than with more serious offenders. Volunteers are being used to supplement existing probation services, and to provide services where professional services are unavailable. Where volunteers are used, they normally serve only a small portion of the total number of offenders.

It is difficult to demonstrate that any particular correctional strategy has proven advantageous in reducing recidivism. The use of fines, jail terms, suspended sentences, and other alternatives have not been examined for their effect on recidivism. The effectiveness of probation as a correctional strategy is generally accepted, but has not been

proven conclusively. Diversion programs claim to be very successful in reducing recidivism, but their claims have been questioned. Volunteers used in probation settings have been found to be no less effective than professionals and appear to be very useful where regular probation and court services are not available.

The variety of correctional strategies is large and the settings in which these strategies are applied is diverse. No two studies are undertaken in exactly the same circumstances, so it is not possible to say that a reported outcome could be duplicated in other settings. The findings that are available are merely suggestive of what does seem to work in a given setting.

CHAPTER III

METHOD OF THE STUDY

This was a case study of the introduction in one court jurisdiction of a program for providing counseling and supervision for misdemeanant offenders. The program provided probation services to misdemeanants where none existed before, and it did so through extensive use of trained volunteers. The principal foci of the investigation were the effectiveness of the program in reducing recidivism among misdemeanant offenders, and the overall impact introduction of the program had on the handling and disposition of misdemeanor cases by the district court. The data were also used to compare recidivism for various sentencing alternatives commonly employed in the disposition of misdemeanant cases.

A case study examines closely a single event, subject, or program in the hope that the insight gained will have more general applicability. The National Advisory Commission (1976:51) has commented that "in a field where the state of knowledge is poor, a case study can provide valuable information." Although the case study method presents a weak design for evaluation research, compared to experimental designs, it is sometimes quite strong in its capacity to influence policy (Adams, 1975). The case study is especially useful in situations, like the present one, where the events to be examined have already transpired.

Sources of the Data

Both qualitative and quantitative data were used in the study. The qualitative data consisted of interviews with persons associated with handling misdemeanant cases in various capacities, including judges, defense and prosecution attorneys, and misdemeanant program participants. The author also spent a number of weeks gathering data from files in the Misdemeanant Program office and in the office of the Clerk of the District Court, providing an opportunity to observe the procedures in handling those aspects of misdemeanant cases. The routine of the misdemeanant court was observed by sitting in the courtroom as cases were being heard.

The purpose of using qualitative data is to attempt "to see the world as subjects see it" (Bogdan and Taylor, 1975:2). In this study, the qualitative data were used to gain a better understanding of the process of handling misdemeanant offenders, particularly those referred to the Misdemeanant Program. The interviews and observations were useful in interpreting the quantitative data.

Interviews were conducted in person and by telephone using a focusing set of questions. Follow-up questions were used to encourage respondents to clarify or elaborate upon aspects of their experience, perceptions, or attitudes (Selltiz, Wrightsman, and Cook, 1976).

The quantitative data were archival in nature. They consisted of information obtained from the dockets of the Payne County District Court, files of the Misdemeanant Program, and back issues of the Stillwater New-Press. The Misdemeanant Program files contained extensive information about each client, including age, sex, marital status, education, employment, self-report of prior offenses, and the use of alcohol, tobacco, and drugs. Because comparable data were not available for offenders

not referred to the program, only a limited amount of the case file information could be used. The Misdemeanant Program files were useful in determining the sex of the offender, residence, nature of the offense, type of sentence, referral and termination dates, and information about cases referred without adjudication. The Misdemeanant Program accepted referrals from municipal courts in Payne County as well as the Payne County District Court. Only cases referred from the District Court were used in this study.

The Misdemeanant Docket maintained by the Payne County Clerk of the District Court was the primary source of information for all cases which occurred during the study period. The information contained in the Misdemeanant Docket was limited, consisting of name of the defendant, the charge, and in chronological order, the events of the case such as initial hearing, plea, motions, verdict, and sentence. Both the misdemeanant and felony dockets were examined for instances of recidivism and to establish prior conviction record.

The court dockets do not provide information regarding sex or residence of the defendant. In most instances, it was possible to infer sex from the name of the defendant. Residential status of offenders not included in the Misdemeanant Program was established by consulting city directories, telephone directories, and Oklahoma State University student directories which were current during the study period. News stories and the "public record" section in back issues of the Stillwater News-Press were helpful in identifying residence.

Information was obtained from the Misdemeanant Docket for cases which were recorded between July 1, 1972 and June 30, 1974. This covered a time period extending from one year before the Misdemeanant

Program was introduced, through one year after it became operational. This yielded two comparison groups which were used in addition to the referrals to the Misdemeanant Program. The Preprogram group was composed of cases occurring during a period of one year before the Misdemeanant Program began (July 1, 1972 to June 30, 1974). The Not Referred group consisted of cases occurring from July 1, 1973 to June 30, 1974, but not referred to the Misdemeanant Program.

Certain types of cases were excluded from the data. These included search warrants, hunting and fishing violations, omit to provide, cases placed on the dormant docket due to failure of the defendant to appear in court, cases in which a bench warrant was outstanding due to failure to appear, and cases in which the record was insufficient to determine what occurred in court. The court prohibited taking information from the docket entries when the case had been marked "expunged"; however, information on those cases was obtained from the Misdemeanant Program files or from the public record section of the Stillwater News-Press.

Residence Limitation

Only cases involving residents of Payne County were used when comparing recidivism of Misdemeanant Program participants with offenders in the Preprogram and Not Referred groups. Persons from outside Payne County resided in other court jurisdictions making it impossible to establish prior convictions and obtain comparable recidivism information. Offenders residing outside Payne County, and those in which residence could not be determined were used in that part of the study which reports sentencing patterns of the District Court.

Prior Convictions

Prior convictions were identified by examining the Misdemeanant and Felony Dockets of the Payne County District Court for a period of one year prior to the date on which charges were filed in each case used in this study. The person was counted as having a record of prior conviction if one or more convictions occurred during the one year period. Referrals to the Misdemeanant Program were asked about previous convictions as a part of the intake interview. This information was not used in this study for two reasons. First, it was a self-report and therefore dependent upon the recall of the offender and his willingness to report the information. Second, no comparable information was available for the Preprogram and Not Referred offenders. Therefore, use was made of the single objective measure, based on court records, to establish the prior convictions of all offenders.

Recidivism

To document recidivism, the Misdemeanant and Felony Dockets of the District Court were checked for a two year period, after sentencing in the instance of persons not referred to the program, and after referral for Misdemeanant Program participants. Recidivism was counted for each person whose name appeared on a docket with a new charge during the follow-up period. Recidivism was treated as singular; that is, recidivism was counted if any new charge appeared, rather than counting the number of new offenses during the follow-up period. While it is possible that the subjects committed new offenses outside the jurisdiction of the Payne County District Court and thereby escaped inclusion in the recidivism data, it was assumed that the possibility existed

equally for all categories and did not distort the results of comparisons.

Statistical Procedures

Because this was a case study of one court jurisdiction, there was no attempt to generalize the results to any population other than the one under study. Descriptive statistics were used for presentation and interpretation of most data. Data on recidivism is presented in the form of percentages of offenders in each comparison category committing additional offenses. The Chi square test was used to establish the significance of the distributions. To evaluate the effect of prior conviction and sex had on recidivism, the data were partialed into a series of two-by-two tables to which a measure of association, Yule's Q, was applied. Data on sentencing patterns before and after the introduction of the Misdemeanant Program are presented in the form of percentage distributions.

CHAPTER IV

FINDINGS: THE QUALITATIVE DATA

Sources of the Data

Both qualitative and quantitative data were used in this study. The qualitative data consisted of interviews with persons associated with the handling of misdemeanant cases, and observations in the Misdemeanant Program office and the office of the Clerk of the District Court. The latter observations were made in the process of gathering data from records kept in those offices. The operation of the misdemeanant court was observed by sitting in the courtroom as cases were being heard. The qualitative data were sought in order to obtain a better understanding of the process of handling misdemeanant offenders, particularly those referred to the Misdemeanant Program.

The data presented in this chapter are based on interviews with twelve persons who were sentenced to, and completed, probation under the supervision of the Misdemeanant Program. Interviews were also obtained with officers of the Payne County District Court, including a former judge of the District Court who heard many of the misdemeanant cases which occurred during the period under study, a current judge of the District Court who had previously served as the Payne County District Attorney, an assistant district attorney, and five attorneys in private practice who were known to represent clients in misdemeanant cases.

The purpose of the interviews was to obtain information about aspects of misdemeanant probation not covered in the data obtained from court records in order to facilitate more accurate interpretation of the quantitative data. The interviews focused on the following points:

1. How offenders and their legal counsel decided to seek a deferred sentence with referral to the Misdemeanant Program rather than try for dismissal of their case or for a not guilty verdict.

2. The process by which referral decisions were made by the prosecuting attorney and the court.

3. Perceptions of attorneys and judges regarding the effect of the option to defer sentencing with referral to the Misdemeanant Program had on the use of plea bargaining.

4. The use of deferral with probation by prosecuting and defense attorneys to dispose of marginal cases.

5. How offenders referred to the Misdemeanant Program felt about their referral experience.

Two sets of questions were used, one with persons who had been referred to the Misdemeanant Program, and the other with the defense and prosecuting attorneys and judges. Follow-up questions were used to clarify comments and encourage elaboration of responses. During the interviews, note taking was limited to writing key words or phrases to aid the interviewer in recalling the content of the interview session. After the interview was completed, a record of the interview was prepared.

Participants in the Misdemeanant Program were asked how they first heard about the program, how they made the decision to seek referral to the program rather than trying for dismissal or for a not guilty verdict, their feelings about how their attorney handled the case, their experience

on probation, and how they felt about their probation experience and the Misdemeanant Program.

Attorneys were asked about the kinds of cases for which they recommend probation to the Misdemeanant Program, whether attorneys use the program as an easy way to handle cases, whether or not the district attorney used plea bargaining and referral to the program as a means to dispose of marginal cases that might otherwise be dismissed, what their perceptions were regarding the effect that the program had on plea bargaining and sentencing, and their assessment regarding benefits of and problems with the program. The same topics were covered with the judges, with an additional question about the possible effect of the program on increasing involvement with the criminal justice system.

Former probationers were selected for interview by preparing a list of names of persons who completed the program in March, April, and May, 1979. The list contained 97 names, and the plan was to select a sample from this list. However, because the address and telephone number could not be located for many of the names, and no response on repeated attempts to call many of the numbers that were located, eventually all 97 names were attempted. Seventeen contacts were accomplished resulting in five refusals and twelve completed interviews.

The former probationers were told that the author was doing research on the handling of misdemeanor cases in the district court and on the court's use of probation. It was explained that most of the research involved the use of court records, but that the author was contacting people who had passed through the court and experienced probation to find out more about how the system worked and to assure proper interpretation of the research findings. It was explained that their

name had been selected through use of the "public record" section in the Stillwater News-Press. An in-person interview was requested, but if hesitancy was detected, or if such an interview was difficult to arrange, a telephone interview was suggested. Four persons agreed to an in-person interview, and the remaining eight interviews were completed by telephone. The interviews ranged in length from fifteen minutes to almost an hour.

The five attorneys were selected because their names appeared frequently on the Misdemeanant Docket as defense counsel, therefore they were known to handle a large number of such cases. The former judge was selected for interview because he served during the time the Misdemeanant Program was introduced, and he handled many of the cases which occurred during the study period. The current district court judge who was interviewed not only represented a judicial point of view regarding the handling of misdemeanant offenses, but had formerly supervised the prosecution of such cases in his role as Payne County District Attorney. The interviews with attorneys and judges were completed in-person in the offices of the respondents. The interviews ranged in length from thirty minutes to an hour.

Getting in the Program

The common pattern that was found in the court records and described in the interviews was for the accused offender to make his initial appearance in court and enter a not guilty plea or request a continuance before making a plea. At the next hearing, the defendant, represented by counsel, would change his plea to guilty with a request for deferred sentencing and referral to the Misdemeanant Program. The district attorney would also recommend a deferred sentence with probation. After the judge

questioned the defendant regarding his understanding of his plea and the legal rights being waived, the guilty plea would be accepted and sentencing set for a date six months to a year later. The defendant then reported to the Misdemeanant Program office for intake and assignment to a probation responsibility, such as report in, meet with a staff or volunteer counselor, or meet with a counseling group. The Misdemeanant Program also handled referral to and verification of completion of any additional conditions for probation which the court had imposed. Examples of additional conditions imposed for probation included driver's school, professional counseling, and alcohol treatment programs.

At the end of the deferral period, the Misdemeanant Program reported to the court whether or not the probation requirements had been met. On the sentencing date, the defendant was permitted to change the plea from guilty to not guilty, and the case was dismissed. In most cases, the judge ordered the record expunged.

There were exceptions to the common pattern. If the probationer did not satisfactorily comply with the requirements of probation, his sentencing date could be moved forward and a sentence imposed. Another alternative used when compliance to probation requirements was considered unsatisfactory consisted of extending the length of probation by resetting the sentencing for a later date. Not all probations ended with a change of plea and dismissal of charges. Sometimes the judge simply imposed a lesser sentence than was common for the offense.

The pattern described above was typical of cases involving deferred sentencing with referral to the Misdemeanant Program. Some of the program participants were received into the program as a condition for a suspended sentence. In cases where the defendant contested the charges

or plead guilty, the deferred sentence and probation were seldom used.

The twelve former participants in the Misdemeanant Program were asked how they first heard about the program. Seven of them first heard about the program from their attorneys, and five had known about the program before they were arrested.

Former participants were asked how they decided to plead guilty and request probation, rather than have their case contested. It was evident that the advice of attorneys was influential in their decisions. A middle-aged male who plead guilty to Driving Under the Influence of Alcohol (DUI) explained his decision in the following manner.

> It was kind of the attorney's idea. When I was arrested I called the attorney. He told me that for $350 he would get it taken care of, that he would get me off with nothing on my record.

A male student, also charged with DUI, said he was following his attorney's advice: "I told him to do the best he could for me and that is what he suggested." Another adult male charged with DUI reported: "My attorney advised me to get into the Misdemeanant Program. I did not specifically ask for this, but I knew about the program and kind of expected it." Seven of the twelve former Misdemeanant Program participants indicated that they pleaded guilty and requested probation on the advice of their attorney.

Five former participants did not act specifically on the advice of attorneys. In three cases, the offenders knew about the program and asked their attorneys about it. As one explained: "I had heard about the program and asked my lawyer about it. The lawyer explained it to me and I let him take care of the arrangements." Another, bitter about his arrest, put it this way: "I had heard about this program from a lot of my friends. Everybody knows that in Stillwater you pay $350 for a

lawyer and it's automatically set up." In one instance, it was not possible to determine whether the participant had asked his attorney about getting in the program, or whether he acted on the attorney's recommendation.

In only one case was a program participant not represented by an attorney during plea bargaining and court proceedings. Charged with public intoxication, this person was very anxious not to have a record of conviction. The district attorney suggested that he enter a guilty plea and request a deferred sentence with probation. He was told that after probation, the case would be dismissed. He decided to follow the district attorney's suggestion rather than risk being found guilty by the court. When interviewed, he expressed resentment about his arrest and vehemently disavowed being guilty of the charge.

The generally accepted criteria for being placed on probation is that the offender have few or no previous arrests, or that there be factors in the offender's situation that would indicate that he could benefit from it. In the interviews, the attorneys and judges did not refer to written or formal guidelines, but all mentioned the rule of few or no prior offenses. They all mentioned that exceptions are permitted. A former judge summarized the exceptions with the statement: "In some instances, people with previous offenses were placed in the program if their situation seemed to indicate that they would benefit from it."

The decision to grant probation is a three-way one involving the offender, or his attorney, the district attorney, and the judge. After a guilty plea has been entered and accepted by the court, the judge asks for sentencing recommendations from the defense and prosecuting attorneys. The defense attorney requests probation, supporting the request with

information on the character and situation of the offender. The district attorney makes his recommendation, based on prior offense record, nature of the offense, amount of damage done, or other considerations which he deems relevant to the recommendation. One of the judges pointed out that the request of the defense and recommendation of the prosecutor are usually consistent because they are negotiated by the prosecuting and defense attorneys before going to court. The judge usually follows the sentencing recommendations presented to him, but he can decide to use another sentencing alternative.

Use of Defense Counsel

Defendants in misdemeanant cases have the right to be represented by an attorney of their choice, or have one appointed for them if they cannot afford the cost of attorney fees. In the cases examined for this study, many accused offenders waived their right to an attorney and either handled their own defense, or, more commonly, pleaded guilty. In many, if not most instances, the cost of an attorney exceeded the amount of fines usually levied. Unless the defendant intended to contest the charge against him, there was little incentive to retain an attorney.

When probation or referral to the Misdemeanant Program was involved, there appeared to be reluctance to permit a defendant to plead guilty without representation by an attorney. In addition to the case mentioned above, three other former probationers made their initial court appearance without legal counsel. In each instance, their cases (all DUI) were continued at the request of the district attorney, and they were told to obtain an attorney to represent them. At that point, they had not intended to plea bargain and seek probation. For them, the expense of an

attorney seemed to outweight potential benefits. One former probationer was particularly cynical about having to retain an attorney, saying, "They don't care whether your'e guilty or not guilty. The lawyer, judge, and D.A. probably get together and split the money."

The attorneys, the assistant district attorney, and the judges were questioned regarding the need for obtaining an attorney in misdemeanant cases, especially those involving referral to the Misdemeanant Program. Since probation with referral to the program was always preceded by a guilty plea, the questioning focused on why it was necessary to have an attorney to make the plea and request probation.

The two judges indicated that representation by an attorney was not essential to obtaining probation. The former Associate District Judge stated: "When I was on the bench I felt that a defendant should be able to enter a plea and request a deferred sentence with probation without counsel." The current District Judge likewise said that an attorney was not essential to get into the Misdemeanant Program, but he added, "the defendant is probably better off with one."

Five different reasons were mentioned to justify requiring representation by counsel in cases considered for probation. Three of these involved an assumption that probation with referral to the Misdemeanant Program must result from a plea bargaining process. The reasons were: (1) without defense counsel, the district attorney is placed in an awkward ethical position when talking with the defendant; (2) the district attorney cannot represent the defendant's interests and his own as well; (3) a guilty plea with request for probation requires waiver of legal rights, and should not be done without adequate legal representation. The remaining two reasons to justify requiring representation by an

attorney were: (4) limitations on the district attorney's time and ability to do a presentence investigation, and (5) providing the defendant with an adequate explanation of probation requirements.

The assistant district attorney expressed dislike for making recommendations for deferred sentences with probation when the defendant was not represented by an attorney because of the possible ethical issues involved. When the defendant was not represented by legal counsel, the district attorney may be placed in the awkward position of receiving information from the defendant which could be harmful to his defense should the plea negotiations fail. The Assistant District Attorney said:

> It amounts to plea bargaining with the defendant. In the process of negotiating the plea, the defendant may reveal information about himself which could be used against him. If the plea bargaining negotiations fail to work out, then the prosecution must avoid using the information they have obtained.

The second rationale for requiring defense counsel in all cases considered for misdemeanant probation centered on the conflicting interests of the defendant and the prosecuting attorney. In the adversary system, the prosecution protects the public interest by seeking to establish guilt and securing punishment of offenders. The accused seeks to establish innocence, or, if guilt is established by plea or verdict, to minimize punishment. The prosecutor, it is argued, cannot look out for both the public interest and the interest of the accused. Representation by an attorney is necessary to protect the interest of the accused, not only in cases to be contested in court, but also in the plea bargaining process. An Attorney stated this point of view succinctly:

> Every charged person should have counsel. You can't serve two masters. A D. A. can't look out for the defendant's interests and his own interests, too.

The third argument for requiring defense counsel centered on protection of the legal rights of the accused. When a defendant enters a guilty plea, he forfeits certain constitutional rights, including protection from self-incrimination, right to trial, right to confront accusers, and the right to subpeona favorable witnesses. In Payne County, defendants seeking probation and referral to the Misdemeanant Program must plead guilty. The Assistant District Attorney pointed out: "To be referred to the program, the defendant must waive certain legal rights and shouldn't do so without counsel." The judge is responsible for insuring that the defendant understands his rights and the implications of a guilty plea. The former District Judge said:

> The defendant must waive certain legal rights, and when I was on the bench I had to insure that the defendant understood what he was doing. When he is represented by an attorney, he is usually coached about the answers to give to waiver questions and the process becomes somewhat of a ritual.

The fourth reason set forth for requiring counsel for defendants is that it provides more time for the district attorney's office to investigate the case. The former District Court Judge indicated that "one of the disadvantages, from the district attorney's point of view of a guilty plea (without counsel) with a request for a deferred sentence, is that it does not provide much time for investigation of the defendant." The time required for the defendant to secure an attorney, and for the attorney to prepare for the case, gives the district attorney more opportunity to secure information needed to make a decision about the defendant. Defense counsel often provides information about the character and situation of the defendant in the plea negotiation process.

A fifth justification given for requiring that a defendant be represented by an attorney was to insure that the defendant understood the

requirements of probation. The former District Attorney commented that:

> Experience has shown that those who ask for referral to the program without an attorney often do not understand what they are getting into, especially students in the early years of the program, and are discontented with program requirements.

Several former probationers mentioned that their attorneys explained the program and its requirements before they decided to plead guilty and request referral. However, not all attorneys are conscientious in preparing their clients for entry into the program. One former probationer who experienced initial difficulty with the program requirements indicated that his attorney did nothing to explain what was expected:

> We went to court once and the attorney asked for time to get more information. When I went to court the next time, the attorney hadn't talked to me about what he was going to do. When my case was called, he just said, 'follow me'. By that time I had seen several cases before mine and figured what was going to happen. The D. A. read the charges and recommended that I be placed in the Misdemeanant Program.

Plea Bargaining and Deferred Sentencing

Plea bargaining is essentially an exchange relationship in which something is given for something gained. Thus, a defendant, by agreeing to plead guilty, forfeits certain rights in exchange for such considerations as a reduced charge, a negotiated sentence, and some certainty about the outcome of his case. The prosecution is spared time and effort in preparing for trial and maintains a good record of convictions. The court can more rapidly process cases and avoids falling behind on its caseload. The nature and number of charges, sentence, and possible suspension or deferral of the sentence are areas subject to negotiation in the plea bargaining process.

The creation of the Misdemeanant Program and extensive use of the deferred sentence with probation introduced new elements in the plea

bargaining process in Payne County. This was noted by a judge who said: "The Misdemeanant Program made more options available to the District Attorney and the Court in dealing with offenders." These options were potentially attractive to both the prosecution and the defense in that they enabled both to achieve at least some of their goals in plea negotiations. The defendant could negotiate to plead guilty, receive a deferred sentence with probation, and at the end of the probation be permitted to change the plea to not guilty and have the case dismissed. In many instances, the record would be expunged. This was an especially attractive option in DUI cases where a conviction might lead to loss of a driver's license. This option enabled first offenders to keep their record free of convictions. On the other hand, the interests of the district attorney are protected by securing a guilty plea and providing some form of punishment or rehabilitation.

The introduction of deferred sentencing with probation to the Misdemeanant Program provided an opportunity to examine what occurred in the plea bargaining process when a new option became available. Judges, the assistant district attorney, and defense attorneys were questioned about changes that occurred in plea bargaining after the Misdemeanant Program was created. The questions focused on the following issues: Did creation of probation with referral to the Misdemeanant Program result in: (1) increased use of plea bargaining; (2) the district attorney plea bargaining more cases in which evidence was weak, cases which previously would have been dismissed; and (3) attorney's use of the probation option as a quick and easy way to handle misdemeanant cases.

The two judges who were interviewed reported that use of plea bargaining increased after the Misdemeanant Program was created. One

judge said: "Probably there are more people pleading guilty now than before the program. The defendant can be more certain of the outcome than by going to trial."

The deferred sentence with probation changed the reward system in plea bargaining, particularly for the defendant. It usually included the opportunity for a change of plea with dismissal of charges at the end of the probation experience. The defendant could reduce the risk of establishing a conviction record by opting for the deferred sentence rather than contesting the charges against him. The risk of contesting charges was expressed by an attorney in the following statement:

> The defendant makes the decision. If he wants to try the case, he needs to realize that you get twelve people on a jury, and that putting on a robe does not make a man infallible.

Another attorney noted that:

> If the person is eligible, the district attorney usually goes along with it. The client has nothing to gain [by contesting the charges]. But he can get his record clean. By taking a deferred sentence with probation, he can have his record expunged.

One attorney reported that:

> Before the program, with a .15 blood alcohol test, you either plead guilty or took a jury trial. There were seldom acquittals. The only other option was to delay, to keep the case from trial.

Before the Misdemeanant Program began, suspended sentences were used extensively. Increased use of deferred sentencing with probation to the program may have caused a reduction in the use of the suspended sentence. The former district judge observed that:

> One effect of the program is less use of suspended sentences. We were suspending people to report to a bailiff who acted as a kind of probation officer. After the program, we could put a person on probation with the promise of something more than report in.

For a defendent, the deferred sentence with probation offered advantages when compared with a suspended sentence because of the possibility of ultimately having charges dismissed and the record expunged. From the prosecutor's point of view, the deferred sentence with probation required the offender to do more than simply report in to a bailiff.

Increased use of plea bargaining after the Misdemeanant Program was introduced raises the question of its use to encourage plea bargaining in cases which would have been difficult to prosecute, or difficult to defend. The former district judge felt that this occurred:

> Lots of marginal cases are resolved through plea bargaining. When I was on the bench, there were instances where people plead guilty to DUI to get in the program. Later, when the blood alcohol test results came in, the tests showed that they were not guilty.

Thus, a possible consequence of the introduction to deferred sentencing with referral to the Misdemeanant Program was that more cases were filed and prosecuted that were marginal in nature, cases in which the evidence of guilt might not have been sufficient to convince a judge or jury. Prosecutors have little incentive to invest time and energy in prosecuting cases in which the probability of conviction is low, particularly misdemeanant cases. The deferred sentence with probation may have made it possible to negotiate guilty pleas in more such cases.

Assuming that defendants seek to minimize vulnerability to conviction and sentencing, they could be expected to contest charges when the evidence is marginal. With increased use of deferred sentencing, probation, and record expungement, the risk of conviction and punishment could be reduced by means of a negotiated plea.

Attorneys, the assistant district attorney, and the judges were asked whether the district attorney's staff was more likely to file and

press charges in marginal cases after deferred sentencing with probation became available. The replies were mixed, some expressed the belief that more cases of dubious merit were being prosecuted than before, and others felt that no change had occurred.

The view that the number of marginal cases filed and plea bargaining had increased was shared by the former district judge and by one attorney. The view was pointedly stated by the attorney:

> The District Attorney's office--particularly the people who are there now--are filing a lot of borderline cases. The [defense] attorneys take the safe way. A person has a lot to lose by contesting, but can get clear through the program.

According to the Assistant District Attorney, plea bargaining is now easier, but a case is not filed and prosecuted unless there is good evidence to support the charge:

> We do not prosecute if we do not have a good case. Having the option of deferred sentence makes plea bargaining easier, but the defendant doesn't reach that point without the D. A. having a good case.

The District Court Judge, who had previously served as district attorney, commented that some marginal cases have been prosecuted and have resulted in negotiated guilty pleas with referral to the Misdemeanant Program. He felt that the defendants in those cases were usually guilty of illegal conduct, although conclusive evidence to establish guilt might have been lacking. He said:

> No one has plea bargained into the program who did not earn their place in it. That is, they have morally and technically violated the law even though some might have had charges dropped or the case dismissed because of a legal technicality or problem with the evidence.
>
> There are a certain percentage of marginal cases where the district attorney might find it difficult to obtain a conviction, but where guilt is certain. Probably, eighty percent of these marginal cases result in a plea bargained guilty with referral to the program.

The Assistant District Attorney opined that it is not just a matter

of establishing innocence or guilt in the court, but of insuring that persons who engage in illegal behavior are duly punished. If an offender evades punishment on a legal technicality, then he is encouraged to disrespect the law. He stated:

> The interest of society is not served by people who are guilty getting off because of legal technicalities. That encourages an 'I can do it again and beat them' attitude. Plea bargaining to the program tends to minimize this and more guilty persons get some kind of punishment.

Most of the interviewees denied that the deferred sentence with probation option resulted in increased prosecution of marginal cases, but it was evident from their comments that the district attorney's staff does use plea bargaining to the program in some cases that might not have resulted in conviction on the basis of evidence. It is not possible to conclude from the interview data whether there was a substantial increase in the use of plea bargaining in such cases. The rationale for the use of plea bargaining in marginal cases was expressed by the assistant district attorney and by the district court judge. Such plea bargaining existed before the Misdemeanant Program was created. The new option made plea bargaining easier for the district attorney and somewhat more palatable to defendants.

If the district attorney's staff could use the deferred sentence with probation to handle marginal cases, it is also possible that attorneys used the bargained plea with deferred sentence and probation as an expedient way to resolve cases that were not easy to defend. All the interviewees were asked about attorney's use of plea bargaining. Former participants in the Misdemeanant Program were asked how they felt about their attorney's handling of their own case. The judges, assistant district attorney, and defense attorneys were asked how attorneys used

deferred sentencing with probation in settling cases.

The former district judge noted that from the point of view of an attorney the deferred sentence with probation was easy to recommend to a client. Easy in the sense that the defendant could be somewhat sure of ultimately having the case against him dismissed. He observed that it has the added attraction for attorneys of freeing them from investigation and litigation that would be necessary in a case to be tried in court. On the other hand, the attorneys and the assistant district attorney contended that defense attorneys did not use deferred prosecution as an easy way to dispose of cases. One attorney stated:

> It has encouraged plea bargaining, but plea bargaining is not a dirty word. Without it the courts would be so jammed that they couldn't function. It has not led to abuse of plea bargaining by the D. A. or attorneys. It gives another choice in the handling of a case, another option.

Attorneys were inclined to stress that deferred sentencing enables defendants to avoid the risk of being found guilty in a trial. When asked what were the circumstances under which he would recommend a client plead guilty and request deferred sentencing, one attorney responded:

> Cases that are marginal--where there are questionable grounds for a case. Some clients plea, they avoid the risk of a jury not believing them.

In response to the same question, another attorney replied:

> Everyone, you hope. If he is eligible, first offense and no other things to disqualify him, and he is charged with Actual Physical Control or Driving Under the Influence, there is no way to defend him. But by taking a deferred sentence, he can protect his driver's license and have his record expunged.

Like attorneys, former participants in the Misdemeanant Program cited the greater certainty of avoiding a conviction by pleading guilty and requesting probation. This was true even for those who felt that they were not guilty. As one former probationer expressed it:

> Things are stacked against you. [At the initial hearing] the policeman gave testimony that was not true, but it was his word against my wife's. I could see that they would believe the policeman rather than my wife. I changed my plea and the lawyer got me in the program.

Another former probationer, charged with DUI, said "I might have beat the charge, but I didn't want to take the chance of getting something on my record." He felt the risk of conviction outweighed the chance of acquittal.

On the whole, the interviews did not reveal support for the notion that attorneys used plea bargained deferred sentencing as an easy way of disposing of misdemeanant cases. Most attorneys expressed sentiments similar to the one expressed by the Assistant District Attorney who stated that "If there is a question of evidence, attorneys will go for dismissal or a not guilty verdict." One attorney indicated reluctance to assist a client to plea bargain a deferred sentence when the client felt that he was really innocent:

> The person has to admit guilt in an unqualified way. If the person says 'I'm not guilty but . . .' 'I say, hold on, the program is not for you. I don't want anyone pleading guilty to get on the program when they actually think they are innocent.

Based on the interviews, it appeared that attorneys were more likely to recommend that clients contest charges under two circumstances: first, when the evidence tended to favor the defendant; and second, when the evidence was questionable enough to make dismissal or acquittal a fairly probable event. Attorneys appeared more likely to recommend plea bargaining when the client was clearly guilty, or when the evidence was such that the outcome of the case could not be predicted with reasonable certainty. All the former probationers who were represented by an attorney felt, in retrospect, that pleading guilty and requesting probation was the best

alternative available to them. Even the three who insisted that they were not guilty of the charges against them felt that the decision to plead guilty and seek probation was the best they, or their attorneys, could do under the circumstances in which they found themselves.

Probationers' Feelings About the Misdemeanant Program

Former probationers were asked to reflect how they felt about their probation experience and their referral to the Misdemeanant Program. All twelve responded with favorable comments about the deferred sentence with probation option, and nine of the twelve reported that the Misdemeanant Program had been helpful to them. Four persons mentioned the opportunity to avoid a conviction record. An example of that point of view was a person who had been charged with DUI who described the Misdemeanant Program as a "heck of a good program." When asked about the aspect he most liked, he replied:

> The chance to keep a clean slate. Everyone makes a mistake once in a while. It kept me from messing up my auto insurance.

He went on to say that the program was a

> Heck of a good deal, it should be available everywhere or at least in all Oklahoma counties. In western Oklahoma where I grew up, they either slap your wrist or throw the book at you, but they don't do much to help a person.

Four of the former probationers cited help with alcohol problems as a benefit of the Misdemeanant Program. One said "It was helpful to me. I was drinking too much and it was causing a problem which the program helped." Having someone to talk to was mentioned as a positive factor of probation by two persons. A college student said that "it

was good to be able to talk to somebody every week or ever how often we could arrange appointments." Another student observed:

> One thing was that I knew someone was kind of looking out for me and cared for me. I felt more responsible. Also, my [volunteer] counselor would call me up and ask me how I was doing and encourage me in my studies. It was real nice, kind of like having a mom here in Stillwater.

Cases involving drunken driving usually required attendance at a driving improvement school as a condition for probation. Two persons cited the driving improvement school as particularly helpful.

Although all former probationers approved the deferred sentence with probation alternative, three claimed that the Misdemeanant Program was not helpful to them. One, who at his own request had been assigned to report in by mail, complained that he was not given enough counseling. Another who had met with a staff counselor claimed little benefit from the sessions, and reported difficulty because the appointments often conflicted with out-of-town work responsibilities. The third person was assigned to a volunteer counselor and said that they soon ran out of anything to discuss. He felt that his time had been wasted.

Probation and the Misdemeanant Program were criticized, even by former probationers who expressed overall satisfaction with their probation experience. The criticism focused on two points, the time required to fulfill probation requirements, and the expense involved. Several persons said that too many meetings with counselors were required. One stated:

> The counselor was okay at first, but after I got over the shock and began to feel normal again, I resented the time it took. Also, we ran out of anything to talk about, that is, anything significant.

There were two factors mentioned in the complaints about the expense

of the program. The first had to do with attorney's fees. Four persons expressed anger and dismay about the fact that their attorney fees were greater than a fine would have been if they plead guilty without an attorney. One said, "What really burned me is that I had to pay the lawyer much more than a fine would have been in my case."

Another expense involved in probation was a five dollar monthly fee paid by participants in the Misdemeanant Program. The fee was assessed to help pay for the operation of the program. One person whose probation was to report in to the Misdemeanant Program office monthly cynically stated "They don't care what you do as long as you keep your appointment and pay your five dollar fee." Another said, "I am very angry at the expense, especially the lawyer fee. The fee for my lawyer plus the probation fee amounted to much more than I would have spent on a fine."

The complainants associated the attorney fees with the process of obtaining the deferred sentence and probation. However, attorney costs would have been equal, if not greater, had the charges been contested. Interviews with attorneys revealed a fairly standard fee for handling a type of case, a simple DUI, for example. If extensive litigation was involved, then the charges for legal services increased.

Court Officers' Feelings About the Misdemeanant Program

Attorneys, the assistant district attorney, and the judges were asked to assess the Misdemeanant Program. Their responses were uniformly favorable. The attorneys were pleased that it provided an alternative to established sentences such as fine, jail term, or suspended sentence.

In outlining the benefits of the program, the Assistant District Attorney said:

> It provides offenders another chance. It helps them exercise self restraint and law abiding behavior. It provides an opportunity for first offenders to avoid getting a criminal record.

The district judge felt that the greatest success of the program was its impact on the lives of offenders, for example, alcoholic offenders who had been rehabilitated. The former district judge cited the involvement of volunteers as a benefit of the program. He said, "People get to know what is going on in the court and with offenders."

The District Court Judge expressed concern that the Misdemeanant Program relied too much on counseling, requiring it where it was not really needed. The effect was to make the program punitive.

> The program may have expanded too large, trying to take in more than it needs to handle. For example, the great reliance on counseling. Counseling may be good for special cases, such as persons with alcohol type offense, but not everyone needs specialized treatment.

> Maybe they should use more report in for those who do not have special problems. I am not convinced that everyone who commits petty larceny--especially first offenders--has a psychological problem and therefore needs counseling.

An attorney stated a similar concern about requiring too much "treatment". He felt that most of the people who go into the program are not going to commit another crime. "Ninety percent of the misdemeanants prosecuted aren't going to commit any more crime, they are afraid and embarrassed," he said. He contended that the program was needed

> because the police and the D. A. are too involved in paperwork. Most of these misdemeanants just need a good talking to. If the police and the D. A. weren't so wrapped up in paperwork, making a good record, there wouldn't be need for that much of a program.

Summary

The data presented in this chapter were secured through interviews with twenty persons who had, in some way, been involved with the Misdemeanant Program. The interviews included twelve former probationers who received deferred sentences, five attorneys who had handled misdemeanant clients, a former district court judge, a current district court judge, and an assistant district attorney. The interviews covered how accused persons and their attorneys made the decision to negotiate a guilty plea and seek referral to the Misdemeanant Program, how referral decisions were made by the district attorney's office and the court, changes in the use of plea bargaining by attorneys and the district attorney after deferred prosecution with probation was introduced, and how former probationers felt about their probation experience.

Most of the probationers learned about the Misdemeanant Program from their attorney, and made the decision to plead guilty and seek probation based on their attorney's advice. A common motivation for plea bargaining and entering the program was to minimize the risk of a guilty verdict in court.

The decision to grant a deferred sentence with probation was a three way one involving the defendant and his attorney, the prosecutor, and the judge. Normally, the prosecutor and defense counsel negotiated the terms of the plea and sentencing recommendation before going to court. The judge usually accepted the defendant's plea and the sentencing recommendation, although he could have done otherwise.

Defendants were urged, if not required, to be represented by legal counsel in the plea negotiation process. Among the arguments for

requiring misdemeanants to be represented by counsel during the plea bargaining process were: (1) important legal rights should not be waived by the defendant without legal advice; (2) without defense counsel, the district attorney was placed in the awkward position of bargaining directly with the defendant, potentially jeopardizing prosecution and defense of the case should the negotiation process fail; (3) the district attorney had more time to investigate the case when there was delay to permit the defendant to secure an attorney and prepare the defense; and (4) defense attorneys bore part of the responsibility for informing the defendant about probation requirements. The contention was that the interests of the defendant were best served when he was represented by counsel, and that the outcome of probation was more satisfactory.

Deferred sentencing with probation represented a new option in the plea bargaining process in Payne County, an option open to possible abuse by the district attorney and defense attorneys. A possible abuse was that the district attorney's staff might file more cases that were marginal in nature, thereby increasing the number of cases plea bargained. Another possibility was that attorneys might recommend plea bargaining as an easy resolution to cases that otherwise would have been contested in court. The prevailing view of officers of the court was that neither the district attorney's staff nor attorneys have abused the plea bargaining possibilities of the deferred sentencing option.

Former participants in the Misdemeanant Program endorsed the idea of deferred sentencing with probation. Some did express dissatisfaction with their own probation experience. One of the principal complaints was not about the Misdemeanant Program itself, but about the expense of getting into the program, particularly the cost of attorney fees.

Another complain concerned the amount of time required to fulfill probation requirements. Even so, most former Misdemeanant Program participants were satisfied with their probation experience.

The various officers of the court felt that the deferred sentence with probation, and the Misdemeanant Program operation, had been very successful and produced positive results. Some reservation was expressed about the extensive use of counseling as a probatiion requirement in the program.

CHAPTER V

FINDINGS: THE QUANTITATIVE DATA

Sources of the Data

The Misdemeanant Docket of the Payne County District Court was the primary source of information about charges, pleas, disposition of cases, prior convictions, and recidivism. Information was obtained from the Misdemeanant Docket for cases which were recorded between July 1, 1972 and June 30, 1974. This covered a period of time from one year before the Misdemeanant Program was introduced through the first year of its existence. This made it possible to compare cases which occurred before the program was introduced (Preprogram) with those which occurred during the first year of the program's existence. Cases which occurred during the first year that the Misdemeanant Program was in operation were categorized according to whether the sentencing disposition included referral to the program (Referred), or did not include referral (Not Referred).

Recidivism was determined by comparing names which appeared on the docket during the study period with names on both the Misdemeanant and Felony dockets for a period of two years following the disposition of each case. Recidivism was counted if a person was arrested on a new charge within the two year period following sentencing in the instance of persons not referred to the Misdemeanant Program, and after referral for the program participants.

The Misdemeanant and Felony dockets were examined for evidence of prior conviction. If a defendant had been convicted on a misdemeanor or felony charge during a period of one year before the entry of his case during the study period, then a prior conviction was counted. For the purposes of this study, both prior convictions and recidivism were counted in a singular way; that is, in terms of the presence or absence of previous convictions or subsequent charges, rather than counting the number of such convictions or charges.

Certain cases which appeared in the Misdemeanant Docket were excluded from the study. Docket entries pertaining to search warrants, hunting and fishing violations, appeals from municipal courts, extradition proceedings, omit to provide, and cases transferred to the Juvenile Docket were not included in the data used in the study. Search warrants, game law violations, omit to provide, and appeals made up the bulk of the excluded cases.

During the year prior to the introduction of the Misdemeanant Program (July 1, 1972 to June 30, 1973), there were 1,092 entries on the docket. Eighty-four of those entries were excluded because they were cases of the types mentioned above. During the period July 1, 1973 to June 30, 1974--the first year the Misdemeanant Program was in operation--there were 876 entries on the docket, ninety-five of which were excluded.

Docket entries sometimes contained charges against more than one person. This produced a greater number of names than there were docket entries (after the aforementioned exclusions). During the preprogram year, 1,074 names were entered on the docket, and 821 names were entered on the docket during the first year of the program.

Only residents of Payne County were used in that part of the study

which made comparisons of recidivism and prior convictions. The rationale was that persons from outside Payne County lived in other court jurisdictions, and it was not possible to determine prior convictions or obtain comparable information on recidivism. Of the 1,895 offenders named on the docket during the two year period, 1,328, or 70 percent, were found to be Payne County residents. It was found that 407 lived outside Payne County, and the residential location of 160 could not be established.

Some names appeared on the docket several different times, and a few appeared a great number of times during the period covered by the study. The actual number of individuals involved is considerably smaller than the number of names or number of docket entries would indiciate. Among Payne County residents, after elimination of the duplication of names for persons who committed more than one offense, 524 individuals were found to have been charged at least once during the preprogram year, while the number was 397 for the program year.

Comparison of Recidivism

To determine whether referrals to the Misdemeanant Program demonstrated a lower occurrence of recidivism than offenders who received other sentencing alternatives, a comparison was made of the recidivism of persons referred to the Misdemeanant Program during its first year of operation (Referred) with that of offenders during the same period of time who experienced other sentencing dispositions (Not Referred), and with offenders whose cases came before the court in the year before the program was introduced (Preprogram). Recidivism was indicated by an arrest on a new charge within a two year period after conviction for persons not referred to the program, and after the referral date for

program participants. This comparison was based on all cases involving Payne County residents. Because this comparison is based on cases, individuals who committed more than one offense are represented more than once in this data.

Table I presents a comparison of the percent of recidivism which occurred in each category during the follow-up period. Referrals to the Misdemeanant Program showed a lower percentage of recidivism (25.38) than the Preprogram (46.48) and the Not Referred (45.76) categories. The results of this comparison could be taken as evidence that the Misdemeanant Program was effective in reducing recidivism. However, new and innovative programs often select for participation only those offenders most likely to succeed; consequently, the results of this comparison can not be considered conclusive. Selectivity in the referral process will be explored later in this chapter.

Utilizing the same data, Table II presents a comparison of the percent of recidivism in each category for seven offense types. The percentage of recidivism was lower in the Referred category than in the Not Referred category for all offense types except one. For offenses against the person, there was a higher percentage of recidivism in the Referred category (40.00) than in the Not Referred category (33.33). However, only five persons were referred to the Misdemeanant Program because of offenses against the person. A number that small cannot be considered stable because a change of even one person can produce a large change in the percentage for the category. In like manner, the numbers in each category for the Other offense type were too small to permit comparison.

Except for Public Order and Alcohol-Driving offenses, for each offense type in Table II, the Referred category showed less recidivism

TABLE I

PERCENT RECIDIVISM BY CATEGORY: PAYNE COUNTY, OKLAHOMA RESIDENTS ONLY*

Category	Recidivism	
	%	
Preprogram Year	46.48	(596)
During Program Year		
Referred to Program	25.38	(197)
Not Referred to Program	45.76	(295)
$X^2 = 28.0944$ 2 df $p < .001$		

Numbers in parentheses are total on which percentages are based.

*240 dismissed cases excluded from this comparison.

TABLE II

PERCENT RECIDIVISM BY CATEGORY AND OFFENSE TYPE, PREPROGRAM YEAR AND DURING PROGRAM YEAR: PAYNE COUNTY, OKLAHOMA RESIDENTS*

Offense Type	Category		
	Preprogram Year	During Program Year	
		Referred	Not Referred
	%	%	%
Public Order	27.08 (48)	27.78 (18)	34.29 (35)
Property	40.74 (54)	10.00 (30)	32.35 (34)
Against Person	47.06 (17)	40.00 (5)	33.33 (9)
Alcohol-Driving	29.28 (181)	29.90 (97)	44.30 (79)
Other Alcohol	65.90 (261)	42.86 (14)	58.47 (118)
Drugs	27.27 (33)	15.15 (33)	25.00 (20)
Other	0.00 (2)	0.00 (0)	0.00 (0)

Numbers in parentheses are totals on which percentages are based.

*240 dismissed cases excluded from this comparison.

than the Preprogram category. For the Alcohol-Driving offenses, the percentages in each category were about equal--29.28 in the Preprogram and 29.90 in the Referred. For the Public Order offenses, the percentages were 27.08 in the Preprogram and 27.78 in the Referred categories.

With the aforementioned exceptions in the data presented in Table II, a comparatively lower percentage of recidivism was shown for Misdemeanant Program referrals for the various offense types. The greatest differences were found for the Property, Drugs, and Other Alcohol offense types. The variation in magnitude of the differences suggests that the program may have been more successful with some offense types than it was with others.

Tables I and II were based on all cases that appeared on the Misdemeanant Docket involving charges against Payne County residents, excluding cases dismissed. Because some offenders committed more than one offense during the period covered by this study, there was duplication of names in the data. The 1,328 cases filed against Payne County residents were based on charges filed against 921 individuals. Only one case was recorded for 786, or 85.34 percent, of those individuals. Some names accounted for a large number of the cases filed. For example, the name of one person appeared on the docket thirty-four times, another appeared nineteen, and yet another appeared fourteen times, during the two year period. The duplication which resulted from using cases as the data base, rather than individual offenders, might have distorted the recidivism comparisons. A few individuals may have contributed inordinately to recidivism in one or more categories.

To examine what the recidivism comparison would look like with duplication of offenders eliminated, offenders were assigned to the

categories on the basis of the first case for which their name appeared on the docket during the study period. Thus, if a name first appeared on the docket between July 1, 1972 and June 30, 1973, they were counted in the Preprogram category, and if their name first appeared between July 1, 1973 and June 30, 1974, they were counted in either the Referred or Not Referred categories. Subsequent cases were not considered in the resulting comparisons.

Tables III and IV are based on the first case entered on the docket for each offender. Sixty-three dismissed cases are excluded from these comparisons. Table III presents the percent of recidivism in each of the comparison categories. The Referred category had a lower percentage of recidivism than did either the Preprogram or the Not Referred categories. Fifteen percent of the offenders referred to the Misdemeanant Program were charged with one or more new offenses during the follow-up period, compared to 34.13 percent in the Preprogram category and 29.27 percent in the Not Referred category. The major effect of eliminating duplications was to reduce the percentage of recidivism shown in each of the categories. The finding of lower recidivism for Misdemeanant Program participants in Table I was repeated in Table III. The difference between the Preprogram and Not Referred categories was larger than that shown in Table I, probably a result of the method used to assign offenders to the categories. Offenders who were charged with several offenses throughout the study period were disproportionately represented in the Preprogram category.

A comparison of the percentage of recidivism by offense type is found in Table IV. The recidivism percentages were smaller than those in Table II because offenders, rather than cases, are the basis for the

TABLE III

PERCENT RECIDIVISM BY CATEGORY: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS*

Category	Recidivism %	
Preprogram Year	34.13	(419)
During Program Year		
Referred to Program	15.00	(160)
Not Referred to Program	29.27	(164)

$X^2 = 20.6705$ 2 df $p < .001$

Numbers in parentheses are total on which percentages are based.

*179 dismissed cases excluded from this comparison.

TABLE IV

PERCENT RECIDIVISM BY CATEGORY AND OFFENSE TYPE, PREPROGRAM YEAR AND DURING PROGRAM YEAR: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS*

Offense Type	Category		
	Preprogram Year	During Program Year	
		Referred	Not Referred
	%	%	%
Public Order	11.76 (35)	14.29 (14)	26.32 (19)
Property	32.56 (43)	4.17 (24)	17.39 (23)
Against Person	40.00 (15)	25.00 (4)	28.57 (7)
Alcohol-Driving	27.39 (157)	17.33 (75)	32.08 (53)
Other Alcohol	49.26 (136)	27.27 (11)	36.17 (47)
Drugs	29.03 (31)	12.50 (32)	20.00 (15)
Other	0.00 (2)	0.00 (0)	0.00 (0)

Numbers in parentheses are totals on which percentages are based.

*179 dismissed cases excluded from this comparison.

tabulation. The basic pattern found in Table II recurred. The Referred category had less recidivism than either of the other two categories for Public Order, Property, Alcohol-Driving, Other Alcohol, and Drug offenses. For the Against the Person offense type, the Referred type category recidivism was slightly lower than the Not Referred category, and was less than the Preprogram category.

It was previously mentioned in this chapter that new and innovative programs in the criminal justice system often select for participation those offenders least likely to commit another offense. This selectivity is often revealed when the criteria for admission to such programs are examined. In the present instance, it appeared that neither the district attorney nor the district court judges systematically employed formal criteria in determining which offenders were to be referred to the Misdemeanant Program. Being a first offender was mentioned in the interviews as a factor in selection for referral. First offenders are generally regarded as less likely to recidivate than are offenders having prior convictions.

It was possible to determine whether Misdemeanant Program referrals were disproportionately selected from first offenders. Information on prior conviction was obtained for each person charged with a misdemeanor offense during the study period. This information was obtained by examining the misdemeanant and felony dockets for a period of one year before the date on which charges during the study period were entered on the docket. If a person had been convicted of any offense during that time, he was counted as having a prior conviction record.

Considering only the 397 Payne County residents charged during the first year, the Misdemeanant Program was operational, 330 (83.12 percent)

had no prior conviction, and 67 (16.88 percent) had one or more such convictions. As shown in Table V, approximately the same percentage of offenders with prior convictions (41.97) were referred to the program as were those who had no prior convictions (40.00). It appeared that being a first offender was not a crucial factor in the selection of referrals. As indicated in the previous chapter, the referral decision often resulted from a plea bargaining process between the district attorney and defense counsel in which a variety of factors about the offender and his crime were considered.

Table VI presents the percentage of first offenders and those having prior convictions in each of the comparison categories. Consistent with the information presented in Table V, the Referred category showed about the same percentage of prior convictions (17.50) as the Not Referred category (16.46). The Preprogram category had a slightly larger percentage of persons with prior convictions (24.95). The higher figure of prior convictions in the Preprogram category may reflect the fact that the data in this table is based on individuals assigned to categories according to the date of their first recorded offense, therefore habitual offenders tended to be counted in that category when actually they committed offenses throughout the study period.

A comparison of the distribution of prior offenders in each of the comparison categories based on all cases which appeared on the docket, rather than individual offenders, presented a somewhat different image than that shown in Tables V and VI. Earlier, the observation was made that some individuals committed a large number of offenses during the period of time covered by this study. While first and repeat offenders were referred to the Misdemeanant Program in about equal percentages,

TABLE V

PERCENT REFERRED TO MISDEMEANANT PROGRAM DURING FIRST YEAR BY PRIOR CONVICTION STATUS: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Prior Conviction Status	Referred to Program	
	%	
No Prior Convictions	40.00	(330)
One or More Prior Convictions	41.79	(67)
All Cases	40.30	(397)

Numbers in parentheses are totals on which percentages are based.

TABLE VI

PERCENT HAVING ONE OR MORE PRIOR CONVICTIONS BY CATEGORY, PREPROGRAM AND DURING PROGRAM YEAR: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Category	Prior Conviction	
	%	
Preprogram Year	24.95	(525)
During Program Year		
Referred to Program	17.50	(160)
Not Referred to Program	16.46	(237)

$X^2 = 8.805$ 2 df $p < .01$

Numbers in parentheses are totals on which percentages are based.

offenders who committed a large number of offenses were less likely to have their cases end in referral to the program. Table VII shows the record of prior conviction and referral status for cases which occurred during the first year the Misdemeanant Program was in operation. Altogether, the 397 individuals which were reported in Table V accounted for 597 cases which appeared on the Misdemeanant Court Docket. In Table VII, it can be seen that when all cases were considered, cases in which the offender had no record of prior conviction, were more likely to result in referral to the program. In cases involving offenders having no record of prior convictions, 38.75 percent were referred to the program, compared to 24.80 percent of the cases in which a prior conviction existed.

The persistent offenders were commonly charged with offenses involving alcohol and were usually sentenced with a fine or short jail term. Several such offenders were, at some point, referred to the Misdemeanant Program with the condition that they participate in a treatment regimen. If additional offenses were committed after their probation period, the court did not return them to the program but used the traditional sentencing alternatives of fine or jail term. The cases of the chronic offenders contributed to the higher percentage of cases involving prior convictions that occurred in the Not Referred category. Their repeat offenses also contributed to the higher recidivism percentage for the Preprogram category which was shown in Table III, a comparison based on first recorded offense.

The data presented in Tables V, VI, and VII can be summarized by saying that the Misdemeanant Program did not appear to receive a disproportionate share of first offenders during the first year of its

TABLE VII

PERCENT REFERRED TO MISDEMEANANT PROGRAM DURING FIRST YEAR BY PRIOR CONVICTION STATUS: PAYNE COUNTY, OKLAHOMA RESIDENTS

Prior Conviction Status	Referred to Program	
	%	
No Prior Convictions	38.75	(351)
One or More Prior Convictions	24.80	(246)
All Cases	33.00	(597)

$X^2 = 12.7297$ 2 df $p < .0005$

Numbers in parentheses are totals on which percentages are based.

operation. Only in the comparison based on all cases, without taking into consideration multiple offenses by persistent offenders, did it appear that the program received more first offenders than the Preprogram and Not Referred categories. A comparison of recidivism based on total cases could be biased in favor of showing lower recidivism on the part of program referrals. When individual offenders were considered, it was shown that the Referred and Not Referred categories had about the same proportions of first offenders. The effect of record of prior conviction on recidivism will be explored further in the next section of this paper.

It would have been desirable to examine characteristics of offenders--such as education, occupation, income, age, and race--for differential selection to the program, and for effect on recidivism. Information about the socio-economic characteristics of offenders referred to the program was available in the Misdemeanant Program files, but comparable information could not be obtained for offenders not referred to the program. Because comparable information could not be obtained, it was not possible to investigate the effect of offender characteristics. Only prior conviction record, determined by the method discussed earlier, and sex of the offenders, could be determined.

The effect of prior offense record and the sex of offenders on recidivism during the first year the Misdemeanant Program was in operation was explored through the process of elaboration. A measure of association, Q, developed by Yule and Kendall, was used to determine the strength of the relationship between variables. This statistic was particularly appropriate for use here because it is independent of the relative proportions in the independent and dependent variables (Yule and Kendall, 1964). The Q statistic can be used only on dichotomized data which fits

the present situation because sex forms a natural dichotomy and prior conviction record was counted in a dichotomous way.

Earlier, it was observed that offenders referred to the Misdemeanant Program had a lower percentage of recidivism in the follow-up period than did preprogram offenders and those not referred to the program (see Table III). That information is again reflected in Table VIII which shows the relationship between referral status and recidivism during the first year the Misdemeanant Program was in operation. The data shown in Table VIII and the following tables was for individual offenders rather than for cases. The Q value for Table VIII was .3541.

The effect of prior offenses on the relationship between recidivism and referral was tested by partialing the information in Table VIII according to prior offense record. Table IX presents the results of partialing. The partials essentially replicate the relationship between recidivism and referral which was described in the unified table. The Q values of the partials were similar to the Q value of the unified table. It appeared that record of prior conviction did not affect the original association between referral and recidivism. The partial based on offenders having no record of prior conviction produced a Q of .4009, which was slightly larger than the Q of .3548 for offenders having a record of prior conviction, however, the differences were not found to be significant ($W^2 = 2.2291$ $p > .10$). Since the difference between the Q values of the partials was not significant and neither partial differed greatly from the value for the unified table, it was concluded that prior conviction record did not affect the overall relationship between referral status and recidivism exhibited in Table VIII.

It was evident in Table IX that a higher percentage of offenders

TABLE VIII

PERCENT RECIDIVISM FOR CASES OCCURRING DURING PROGRAM YEAR BY REFERRAL STATUS: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Referral Status	Recidivism	
	%	
Referred to Program	15.00	(160)
Not Referred to Program	27.00	(237)
All Cases	22.17	(397)

$Q = .3541$

$X^2 = 7.978$ 1 df $p < .005$

Numbers in parentheses are totals on which percentages are based.

TABLE IX

PERCENT RECIDIVISM FOR CASES OCCURRING DURING PROGRAM YEAR, REFERRAL STATUS BY PRIOR CONVICTION RECORD: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Referral Status	No Prior Conviction*		Prior Conviction**	
	%		%	
Referred to Program	10.61	(132)	35.71	(28)
Not Referred to Program	21.72	(198)	53.85	(39)

*Q = .4009; X^2 = 6.8428 1 df $p < .01$.

**Q = .3548; X^2 = 2.1554 1 df $p > .01$.

Numbers in parentheses are totals on which percentages are based.

having a record of prior conviction recidivated than did offenders having no prior convictions. This was even more apparent in Table X which presents the marginal, a comparison of prior conviction record and recidivism. The Q value of .6097 obtained for this comparison was considerably larger than the value reported in Table VIII. This would indicate that a more accurate prediction of future recidivism could be made with knowledge of prior conviction record than could be made with knowledge of referral status.

While there is clearly a strong relationship between prior conviction record and recidivism, the association between referral to the Misdemeanant Program and lower recidivism exists independently of prior conviction record. That association persisted when prior conviction record was held constant. The relationship between prior conviction and recidivism did not affect the original compairson of referral status and recidivism because the Referred and Not Referred categories contained about the same proportions of offenders having prior conviction records. This can be seen in Table XI which presents the marginal, referral status by prior conviction record. The Q value for Table XI is -.0370, indicating a negligible association between prior conviction record and referral.

The data reported in Table VIII, showing recidivism by referral status, was partialed according to the sex of the offender. As shown in Table XII, the Q value of .6383 for females was higher than the Q value of .3501 for males, and it also exceeded the Q of .3541 for the unified table. Although the Q value for females was considerably larger than that for males, a W^2 test of the difference between the two values established that it was not significant ($W^2 = .6823$ $p > .10$). Females had a lower percentage of recidivism than males in both the Referred and the Not Referred categories, but the difference between the percent of

TABLE XI

PERCENT REFERRED BY PRIOR CONVICTION RECORD FOR CASES OCCURRING DURING PROGRAM YEAR: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Prior Conviction Record	Referred %	
No Prior Conviction	40.00	(330)
One or More Prior Convictions	41.79	(67)
All Cases	40.30	(397)

$Q = -.0370$

$X^2 = .074$ 1 df $p > .70$

Numbers in parentheses are totals on which percentages are based.

TABLE XII

PERCENT RECIDIVISM DURING PROGRAM YEAR BY REFERRAL STATUS AND SEX: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Referral Status	Female*	Male**
Referred to Program	4.45 (23)	16.79 (137)
Not Referred to Program	17.07 (41)	29.53 (193)

*Q = .6383; X^2 = 2.1815 1 df p > .10.

**Q = .3501; X^2 = 7.0870 1 df p < .01.

Numbers in parentheses are totals on which percentages are based.

recidivism in the Referred and Not Referred categories was virtually the same for both sexes. For both males and females, there was approximately 12 percentage points difference in recidivism between the Referred and Not Referred categories. If women had made up a larger share of the total offender population, the overall percentage of recidivism might have been lower, but the relationship between referral status and recidivism would have remained about the same.

The marginal table showing percent of recidivism by sex (Table XIII) reflects the lower incidence of recidivism of females compared to males. The Q value for this table is .3827, approximately the same as that for Table VIII. With the discussion in the previous paragraph in mind, it was concluded that the sex of the offender did make a difference in recidivism, but that the relationships of sex and referral to recidivism were independent of each other.

Females made up 16.24 percent of the offenders considered in these comparisons. Both the percentage comparison and the Q value (-.1171), shown in Table XIV, indicate that females were slightly less likely than males to be referred to the program. But the difference is so small, and the number of females in the total of offenders so few, that a minor change in any category would produce fairly large changes in the percentage distribution and Q value.

One of the objectives of this research was to determine whether the Misdemeanant Program was more effective in reducing recidivism among misdemeanant offenders than were other sentencing alternatives. One approach was to compare recidivism of program referrals with that of offenders before the program was introduced, and with that of offenders not referred to the program during its first year of operation.

TABLE XIII

PERCENT RECIDIVISM FOR CASES OCCURRING DURING PROGRAM YEAR BY SEX: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Sex	Recidivism %	
Female	12.50	(64)
Male	24.24	(330)
All Cases	22.34	(394)

$Q = .3827$

$X^2 = 4.2609$ 1 df $p < .05$

Numbers in parentheses are totals on which percentages are based.

TABLE XIV

PERCENT REFERRED BY SEX FOR CASES OCCURRING DURING PROGRAM YEAR: FIRST RECORDED OFFENSE FOR PAYNE COUNTY, OKLAHOMA RESIDENTS

Sex	Referred %	
Female	35.94	(64)
Male	41.52	(330)
All Cases	43.96	(394)

$Q = -.1171$

$X^2 = .6804$ 1 df $p > .30$

Numbers in parentheses are totals on which percentages are based.

Comparisons between program referrals and the Preprogram and Not Referred categories consistently showed a lower percentage of recidivism for program referrals. Although being a first offender was mentioned as a criterion for referral to the program, in practice, the Referred and Not Referred categories contained about the same percentages of first offenders. Being a first offender was found to be associated with lower recidivism, but the relationship between referral to the program and lower recidivism persisted when prior offense record was taken into consideration. Likewise, female offenders experienced less recidivism than male offenders, but the relationship between referral to the program and lower recidivism continued to be manifest when sex of the offender was controlled for.

Sentencing Pattern Before and After the Program

One of the questions to be considered in this study was the change that occurred in the sentencing practices of the District Court after the Misdemeanant Program was introduced. The advent of the Misdemeanant Program brought two new elements into the sentencing procedures of the Payne County District Court. One was the Misdemeanant Program itself in that, for the first time, the court had available an organized program of misdemeanant probation, and the other was extensive use of deferred sentencing. Probation for misdemeanant offenders and deferred sentencing existed before the Misdemeanant Program was introduced, but use of both was limited. The court sometimes granted probation with the condition that the probationers report to the court bailiff or other designated person. The lack of an organized probation program and the limited time of the bailiff to supervise probationers restricted use of

probation for misdemeanants. Likewise, the court used deferred sentencing in some cases, but deferred sentencing usually includes probation-like supervision which was not readily available. After July 1, 1973, the Misdemeanant Program was available to provide supervised probation for misdemeanant offenders, and with probation service available, the use of deferred sentences increased dramatically.

Knowledge of changes that occurred in the use of traditional sentences, such as fines and jailing, is important to understanding the impact of a new program, such as the Misdemeanant Program, on offenders and on the justice system. For example, if it were found that as use of the deferred sentence increased, the use of the suspended sentence decreased, then the conclusion may be that the new formal probation was replacing the loosely structured probation that existed before. If after the program was introduced, fewer cases were being summarily dismissed, then it could mean that defendants who formerly would have avoided further involvement with the justice system were becoming more enmeshed in it as a result of the program. On the other hand, if it were found that when use of the deferred sentence increased there was a decline in the use of fines and jailing, the conclusion would be that, in many cases, deferred sentencing was replacing the traditional sentencing alternatives.

In the literature review it was reported that some observers have express concern that programs similar to the one in Payne County have resulted in increased occurrence of bargained guilty pleas in many cases that would have been dismissed had the programs not been available. People associated with the court in Payne County denied that had occurred, as reported in the last chapter. There is no evidence here to support the contention that cases which formerly would have been dismissed

ended with plea bargained deferred sentences with probation after the Misdemeanant Program was created.

Use of the suspended sentence increased after the Misdemeanant Program was introduced. Compared to the preprogram year, larger percentages of fines, jail sentences, and fine and jail combinations were either partially or completely suspended (Table XV). There was no evidence to support the idea that use of the deferred sentence supplanted the suspended sentence. The higher percentage of suspended sentences during the first year of the program reflected the court's greater willingness to use suspended sentences, as well as deferred sentences, after a program of supervised probation became available.

The greatest changes which occurred in disposition of cases after the Misdemeanant Program was introduced were increased use of the deferred sentence and corresponding declines in use of fines and in the use of the fine and jail combination (Table XV). In the year before the program, the deferred sentence made up 6.88 percent of dispositions, but in the first year of the program, the percentage increased to 29.60, making the deferred sentence the most frequently used method of handling cases. The use of fines declined from 41.02 percent of all dispositions in the preprogram year to 24.12 percent in the first year of the program. Use of the fine and jail combination sentence declined by about half, from 17.40 percent to 9.01 percent. Almost no change occurred in the percentage of jail sentences, except that a larger share of them were suspended. In sum, the data presented in Table XV indicated that use of the deferred sentence replaced a large portion of the traditional sentences, and had no major impact on dismissals and on suspended sentences. Introduction of the Misdemeanant Program seemed to facilitate an

TABLE XV

PERCENTAGE DISTRIBUTION OF DISPOSITION OF CASES OCCURRING DURING PREPROGRAM AND PROGRAM YEARS: ALL CASES

Disposition	Preprogram Year	Program Year
	%	%
Dismissed	18.14	17.90
Jail	12.93	13.52
Suspended	8.63	12.61
Part Suspended	12.23	18.02
Fine	41.02	23.12
Suspended	1.13	6.57
Part Suspended	3.40	1.52
Fine and Jail	17.40	9.01
Suspended	1.07	4.05
Part Suspended	10.70	16.22
Deferred	6.88	29.60
Other	3.63	5.85
N =	1075	821

increased use of both deferred and suspended sentences.

Increased use of the deferred sentence occurred for all offense types (Table XVI). The largest percentage increases occurred for alcohol-driving offenses (from 2.31 percent deferred before the program to 43.20 percent after) and offenses involving illicit use of drugs (from 26.56 percent before the program to 50.63 percent after). The use of fines declined for all offense types, although declines were minimal for the Other Alcohol offense type and for drug offenses. Fines were seldom used in drug cases before or after the program. Jail sentences occurred less frequently for three offense types, including offenses against the person, other alcohol, and drug offenses. The drop in the use of jail sentences was especially evident for drug offenses.

Perhaps the most significant demonstration in Table XVI is the decline in the percentage of dismissals for offenses involving alcohol-driving and drug offenses. Of all the offense types, offenders found guilty of alcohol-driving and drug offenses received the most severe penalties during the preprogram year. Alcohol-driving offenders were generally sentenced with a large fine and a jail term (usually 10 days); moreover, if the offender had previous alcohol-driving offenses, possible loss of driver's license was involved. The most common penalty for drug offenders was a sentence of up to one year in jail. These two offense types generated the most docket activity in terms of appearances, motions, continuances, and the like. An attorney who was interviewed commented that before the program became available, the best strategy in cases like these was to delay. The finding that fewer cases involving these offenses were dismissed after the Misdemeanant Program was introduced could indicate a greater willingness for defendants accused of

TABLE XVI

PERCENTAGE DISTRIBUTION OF CASES OCCURRING DURING PREPROGRAM AND PROGRAM YEARS BY TYPE OF OFFENSE: ALL CASES

Disposition	Public Order		Property		Person	
	Pre-program	Program Year	Pre-program	Program Year	Pre-program	Program Year
Dismissed	25.00	30.00	30.16	32.35	31.70	50.00
Jail	13.04	13.00	21.43	24.26	19.51	10.53
Suspended	16.67	23.08	14.81	12.12	0.00	0.00
Part Suspended	41.67	15.38	7.41	12.12	25.00	0.00
Fine	44.57	21.00	26.98	9.56	21.95	13.16
Suspended	2.44	14.29	5.88	23.08	0.00	0.00
Part Suspended	4.88	0.00	2.94	0.00	0.00	0.00
Fine and Jail	4.35	6.00	0.00	0.74	4.88	0.00
Suspended	0.00	0.00	0.00	0.00	50.00	0.00
Part Suspended	100.00	16.67	0.00	0.00	0.00	0.00
Deferred	8.70	21.00	12.70	25.74	9.76	18.42
Other	4.35	9.00	8.73	7.35	12.20	7.89
N =	92	100	126	136	41	38

TABLE XVI (Continued)

Disposition	Alcohol-Driving		Other Alcohol		Drugs	
	Pre-program	Program year	Pre-program	Program year	Pre-program	Program Year
Dismissed	18.60	6.64	8.47	7.85	29.69	20.25
Jail	3.23	7.01	13.49	13.09	42.19	21.52
Suspended	25.00	15.79	3.92	8.00	3.70	11.76
Part Suspended	8.33	42.11	1.96	4.00	22.22	29.41
Fine	24.53	12.18	70.11	65.45	1.56	0.00
Suspended	0.00	3.03	0.75	4.80	0.00	0.00
Part Suspended	7.69	9.09	1.89	0.00	0.00	0.00
Fine and Jail	47.98	24.72	0.79	0.00	0.00	0.00
Suspended	0.56	4.48	0.00	0.00	0.00	0.00
Part Suspended	8.99	16.42	0.00	0.00	0.00	0.00
Deferred	2.43	45.02	5.29	9.42	26.56	50.63
Other	3.23	4.43	1.85	4.19	0.00	7.59
N =	371	271	378	191	64	79

alcohol-driving and drug offenses to plea bargain for a deferred sentence with probation when that option became available. For alcohol-driving offenders, pleading guilty with the promise of a deferred sentence with probation could be the surest way to avoid jail time, and the practice of dismissing deferred cases at the end of probation enabled such offenders to protect their driver's license. In the case of drug offenders, bargaining a guilty plea with a deferred sentence and probation offered the most certain way to avoid a jail sentence.

In the discussion of Table XV, it was observed that there was no difference between the percentage of dismissals in the preprogram and program years. The drop in percentage of dismissals for the alcohol-driving and drug offense types was concealed by the fact that the public order, property, and against the person offense types showed an increase in dismissals during the first year of the program. There was also a change in the distribution of offenses. In the first year of the program, the public order and property offense types made up a larger proportion, and the alcohol-driving offense types made up a smaller proportion of the total offenses compared to the preprogram year.

The conclusion drawn in the discussion of Table XV that deferred sentencing with probation had no effect on the occurrence of dismissals should be qualified. The fact that the percentage of dismissals increased for public order, property, and against the person type offenses, and decreased for alcohol-driving and drug offenses, indicated that introduction of the program may have had a differential impact depending on offense type. Sentence types for which traditional sentences were most severe, in terms of fines and jail time, declined in percentage of dismissals. The deferred sentence with probation to the Misdemeanant

Program provided an alternative for defendants and their attorneys to bargain for, an alternative that reduced the risk of jail time, loss of driver's license, or loss of some other value. On the other hand, the fact that other offense types increased in percentage of dismissals could indicate that attorneys and the district attorney were not systematically using deferred sentencing as an easy way to dispose of cases.

Effect of Diversion and the Deferred Sentence on Involvement in the Justice System

An issue which this research sought to address was whether the availability of pretrial diversion and deferred sentencing increased the likelihood that persons suspected of law violation would be treated by the justice system. The Misdemeanant Program was structured to receive referrals from police and prosecutors, as well as referrals from courts. Diversion occurred when an accused person accepted referral to the program in lieu of formal charges being filed. It was reported in the literature review that some observers feel that such referrals frequently involve persons who, in fact, would not have been charged, or those for whom charges would have been dismissed, thus involving them in the justice system to a greater extent than would have occurred if diversion were not a possibility.

The present study approached this issue by means of a comparison of the number of misdemeanant cases which occurred in the year before the Misdemeanant Program was introduced with the number of cases which occurred during its first year of operation plus the number of referrals the program received that were from agencies other than the courts. The rationale for this comparison was that if the total of court cases plus

nonadjudicated referrals was a larger number than the number of court cases the preceding year, then the increase could be taken as evidence that diversion was an added factor ensnaring people in the justice system. On the other hand, a reduction in the number of court cases by about the same number as the frequency of diversion cases could indicate that diversion worked as intended, to handle law violators outside the judicial process without the stigma of public acknowledgement of guilt.

The district court handled 1,075 cases (the number of cases that remained after the exclusions indicated at the beginning of this chapter) in the year prior to the introduction of the Misdemeanant Program. During the first year the program was in operation, the district court handled 821 cases, and the Misdemeanant Program received 20 referrals without adjudication. The rationale for making the comparison was based on an assumption that the level of misdemeanant offenses remained somewhat constant from year to year. The fact that the volume of cases declined by more than 200 from the preprogram to the program year demonstrated that the assumption was false. No conclusion could be drawn regarding the effect of diversion on involvement of accused persons in the justice system.

Twenty persons entered the Misdemeanant Program without formal charges resulting in docket entries. The Payne County District Attorney referred 19 of these, and one was referred by the Stillwater City Attorney. It was not possible to determine whether, without referral, formal charges would have been filed against the people who were referred without adjudication.

The district court referred offenders to the Misdemeanant Program for probation as a condition of either deferred or suspended sentences,

and of these, most were deferred sentences. As noted in a previous section, some observers have cautioned that deferred sentences may function to encourage plea bargaining and that offenders who receive such sentences may be disproportionately drawn from defendants who would otherwise have experienced dismissal of the case against them. In the discussion of changes that occurred in the court's use of the various sentencing alternatives after deferred sentencing with probation became available, it was reported that deferred sentencing did not appear to have resulted in reduced usage of suspended sentences, and that aside from alcohol-driving and drug offense types, there was no evidence that fewer cases were dismissed.

This study also covered the effect that deferred sentencing with probation to the Misdemeanant Program had on the adjudication process of the court. Both before and after the creation of the program, most misdemeanant cases were decided on the basis of a guilty plea. In Table XVII, it can be seen that 78.42 percent of all cases coming before the court in the preprogram year were decided on the basis of a guilty plea, and that 76.25 percent were so decided during the first year the program was in existence. While the percentage of guilty pleas accepted was slightly smaller during the program year, more cases were left unresolved because the defendants failed to appear and bench warrants were issued. The percentage of dismissals for the preprogram and first year of the program were almost identical. In the preprogram year, 17.77 percent of the cases ended with dismissal, whereas 17.66 percent so ended during the first year of the program. The data presented in Table XVII supports a conclusion that increased use of the deferred sentence and the availability of a program of supervised probation did not produce an increase

TABLE XVII

PERCENTAGE DISTRIBUTION OF JUDGEMENT FOR CASES OCCURRING DURING PREPROGRAM AND PROGRAM YEARS: ALL CASES

Judgement	Preprogram Year	Program Year
	%	%
Guilty Plea Accepted	78.42	76.25
Adjudged Guilty	1.02	0.73
Adjudged Not Guilty	0.74	0.61
Other	0.09	0.48
Dismissed	17.77	17.66
Bench Warrant	1.95	4.26
N =	1075	821

in the percentage of cases concluded with a guilty plea by the defendant, nor was there a reduction in the percentage of cases which ended in dismissal.

Although there was no significant change between the two years in the extent to which judgements resulted from guilty pleas, changes did occur in the pleading process. A larger percentage of defendants entered an initial plea of not guilty during the first year of the program (Table XVIII). In the preprogram year, 43.26 percent of the defendants entered an initial plea of not guilty, compared to 52.01 percent during the program year.

An even higher percentage of offenders who were referred to the Misdemeanant Program initially pleaded not guilty (Table XIX). During the first year the program was in operation, 64.81 percent of offenders referred to the program began with an initial plea of not guilty, compared to 46.94 percent of those not referred to the program.

Since the percentage of judgements based on guilty pleas did not change between the preprogram and program years, yet more defendants entered an initial plea of not guilty during the first year of the program, then the docket should have shown more plea change activity during that year. Table XX demonstrates that the percentage of defendants with no change of plea dropped from 73.30 percent in the preprogram year to 60.41 percent in the first year of the program. In the preprogram year, the most common change of plea was not guilty to guilty (23.44 percent). During the first year of the program, the percentage of not guilty to guilty (19.98) was almost the same as the total of changes of pleas that ended with a pleading of not guilty (guilty to not guilty, 5.72 percent; and not guilty to guilty to not guilty, 13.64 percent). These figures

TABLE XVIII

PERCENTAGE DISTRIBUTION OF INITIAL PLEA FOR CASES OCCURRING IN PREPROGRAM AND PROGRAM YEARS: ALL CASES

Initial Plea	Preprogram Year	Program Year
Not Guilty	43.26	52.01
Guilty	52.28	42.51
Bench Warrant	1.02	2.07
Other	3.44	3.41
N =	1077	821

TABLE XIX

PERCENTAGE DISTRIBUTION OF INITIAL PLEA BY CATEGORY FOR CASES OCCURRING DURING PRE-PROGRAM AND PROGRAM YEARS: ALL CASES

Offense Type	Category		
	Preprogram Year	During Program Year	
		Referred	Not Referred
Not Guilty	43.26	64.81	46.94
Guilty	52.28	35.19	45.41
Bench Warrant	1.02	0.00	2.89
Other	3.44	0.00	4.76
N =	1075	233	588

TABLE XX

PERCENTAGE DISTRIBUTION OF PLEA CHANGES FOR CASES OCCURRING IN PREPROGRAM AND PROGRAM YEARS: ALL CASES

Plea Changes	Preprogram Year	Program Year
No Change	73.30	60.41
Not Guilty to Guilty	23.44	19.98
Guilty to Not Guilty	1.21	5.72
Not Guilty to Guilty to Not Guilty	2.05	13.64
Other	0.00	0.24
N =	1075	821

reflect the procedure whereby offenders receiving deferred sentences entered a guilty plea and were usually permitted to change their plea to not guilty at the end of the probation period, whereupon the court dismissed the case against them.

The result of the plea change procedure for deferrals is more clearly seen in Table XXI which shows change of plea by category. Sixty-three percent of offenders referred to the program changed pleas to not guilty before the final disposition of the case against them--including 17.60 percent guilty to not guilty and 45.49 percent not guilty to guilty to not guilty. Since the offender normally appeared in court each time a change of plea occurred, a consequence of the increased plea change activity was more court appearances for offenders, defense counsel and the prosecution, compared with offenders who pleaded guilty and received traditional sentences.

Summarizing what was reported in this section of the study, no evidence was found of an overall increase in the involvement of accused persons in the justice system as a result of introduction of the Misdemeanant Program with the diversion and deferred sentence with probation options. Increased use of deferred sentencing did not affect the overall percentage of cases dismissed, although there was change for certain offense types. The change in percentage of cases resolved by guilty pleas was minimal, with a slightly lower percentage occurring after the program was introduced. The pattern of pleading did change. The percentage of initial not guilty pleas increased, and there was an increase in the percentage of changed pleas. This was especially evident for the plea changes that ended with a final plea of not guilty, due mostly to the court's practice of permitting deferred sentence offenders to change to a not guilty

TABLE XXI

PERCENTAGE DISTRIBUTION OF PLEA CHANGES BY CATEGORY FOR CASES OCCURRING DURING PRE-PROGRAM AND PROGRAM YEARS: ALL CASES

Offense Type	Category		
	Preprogram Year	During Program Year	
		Referred	Not Referred
No Change	73.30	20.60	76.19
Not Guilty to Guilty	23.44	15.88	21.60
Guilty to Not Guilty	1.21	17.60	1.02
Not Guilty to Guilty to Not Guilty	2.05	45.49	1.02
Other	0.00	0.43	0.17
N =	1075	233	588

plea at the end of deferral and receive a dismissal of the case against them. The effect of the change in pleading pattern was to increase the number of court appearances and consequent docket entries over what occurred in the preprogram year.

Recidivism by Type of Sentence

An aspect of this study was comparison of recidivism for various sentencing alternatives used by the court in misdemeanant cases. The comparison was prepared for both the preprogram year and the first year of the program. The purpose was to identify sentencing alternatives that appeared especially efficacious for reducing recidivism.

The data proved inadequate to effectively accomplish the purpose for which the comparisons were made. The number of Payne County cases, those for which recidivism could be established, was not large enough to permit extensive comparison of suspended and partially suspended sentences with fully imposed fines and jail terms. The table which resulted from the breakdown of recidivism by sentence type produced many cells containing frequencies of less than 10, and producing percentages of questionable reliability.

Table XXII shows recidivism by type of sentence for the preprogram year and the first year of the program. The highest percentage of recidivism was found for jail sentences, followed by fines and then the jail plus fine combination. The deferred sentence showed the lowest recidivism of all sentence types during the first year of the program. The small number of deferred sentences which occurred in the preprogram year produced a percentage of recidivism (38.89) almost twice as large as that which occurred during the first year of the program (20.59). All

TABLE XXII

PERCENT RECIDIVISM BY DISPOSITION FOR CASES OCCURRING DURING PREPROGRAM AND PROGRAM YEARS: PAYNE COUNTY, OKLAHOMA RESIDENTS ONLY

Disposition	Preprogram Year	Preprogram Year
Jail	68.13 (91)	59.38 (64)
Jail Suspended	40.00 (10)	72.73 (11)
Jail Part Suspended	40.00 (10)	50.00 (20)
Fine	45.05 (293)	45.00 (120)
Fine Suspended	20.00 (5)	22.22 (9)
Fine Part Suspended	77.78 (9)	33.33 (3)
Jail and Fine	35.16 (91)	34.04 (47)
Jail and Fine Suspended	50.00 (2)	50.00 (4)
Jail and Fine Part Suspended	26.67 (15)	71.43 (14)
Deferred	38.89 (54)	20.59 (170)
Other	56.25 (16)	30.00 (30)
Dismissed	34.18 (135)	35.24 (105)

Numbers in parentheses are totals on which percentages are based.

but 16 of the deferral cases which occurred in the program year were referred to the Misdemeanant Program for probation.

The problem of small numbers in the data was especially acute when suspended sentences were considered. Taking into account only those suspensions where the number in each category was greater than 10 (jail, suspended and part suspended; jail and fine, part suspended), it was found that in each instance the percentage of recidivism was greater in the first year of the program than in the preprogram year. Moreover, the suspended sentences did not consistently show less recidivism than full imposition of the sentence they were related to.

In the comparison of recidivism by offense and sentence type (Table XXIII), the data for suspensions was combined with that of related sentence types. This comparison was particularly plagued by low numbers in that half of all cells in the table showed frequencies of less than 10. Three things are demonstrated in Table XXIII. First, a high percentage of misdemeanant cases were alcohol related. In the preprogram year, 74.16 percent of all cases in which a sentence was imposed involved either alcohol-driving or other alcohol related charges. The comparable figure for the first year of the program was 62.60 percent. The second thing to be noted was that during the program year, the deferred sentence showed the lowest percentage of recidivism in each of the offense types. Third, the percentage of recidivism for the deferred sentence in almost every offense type was lower during the first year of the program than the comparable figure for the preprogram year. Recidivism for the deferred sentence was even lower than that for defendants whose cases had been dismissed.

About 35 percent of all defendants who experienced dismissal of the charges against them appeared on the docket again with a new charge. New

TABLE XXIII

PERCENT RECIDIVISM BY DISPOSITION AND OFFENSE TYPE FOR CASES OCCURRING DURING PREPROGRAM AND PROGRAM YEARS: PAYNE COUNTY, OKLAHOMA RESIDENTS ONLY

Disposition	Public Order		Property		Person	
	Pre-program	Program Year	Pre-program	Program Year	Pre-program	Program Year
Jail	50.00 (8)	45.16 (13)	60.87 (23)	50.00 (22)	50.00 (4)	33.33 (3)
Fine	20.00 (30)	20.00 (15)	35.29 (17)	16.67 (6)	33.33 (6)	50.00 (4)
Jail and Fine	66.67 (3)	75.00 (4)	0.00 (0)	0.00 (0)	33.33 (3)	0.00 (0)
Deferred	0.00 (8)	18.75 (16)	16.67 (12)	3.33 (30)	50.00 (2)	33.33 (6)
Other	50.00 (2)	40.00 (5)	0.00 (2)	16.67 (6)	100.00 (2)	0.00 (1)
Dismissed	44.44 (18)	37.50 (24)	43.75 (16)	30.00 (30)	44.44 (9)	30.00 (12)

TABLE XXIII (Continued)

Disposition	Alcohol-Driving		Other Alcohol		Drugs	
	Pre-program	Program Year	Pre-program	Program Year	Pre-program	Program Year
Jail	14.29 (7)	87.50 (16)	91.49 (47)	76.00 (25)	30.00 (2)	31.25 (16)
Fine	25.76 (66)	31.82 (22)	58.29 (187)	51.19 (84)	0.00 (1)	0.00 (0)
Jail and Fine	31.31 (99)	40.98 (61)	100.00 (3)	0.00 (0)	0.00 (0)	0.00 (0)
Deferred	60.00 (5)	23.19 (69)	66.67 (18)	50.00 (16)	25.00 (12)	15.15 (33)
Other	25.00 (4)	20.00 (5)	88.33 (6)	80.00 (5)	0.00 (0)	0.00 (4)
Dismissed	29.79 (47)	9.09 (11)	37.93 (29)	75.00 (12)	20.00 (15)	25.00 (12)

Numbers in parentheses are totals on which percentages are based.

Other offense type omitted due to small number (3 Preprogram, 4 Program year).

charges occurred for about 44 percent of defendants dismissed of public order, property, and against the person charges. An attorney who was interviewed expressed the opinion that being arrested and having to appear in court was a sufficient shock to most misdemeanant offenders that they would avoid future misconduct. That may be true for many offenders, particularly first time offenders, but given that more than a third of defendants whose charges were dismissed later appeared in court with another charge, it would seem that, for many, the experience was not so shocking, or it lacked deterrent effect.

Only limited conclusions could be drawn from the comparisons presented in this section. Jail sentences showed the greatest recidivism, followed by fines and then the jail plus fine combination. Overall, the deferred sentence showed less recidivism than the traditional sentences. That one sentence type showed less recidivism than another did not necessarily mean that it was more effectual than another. Recidivism may have been as much a product of the offense to which the sentence type was applied as it was a characteristic of the sentence type itself. The jail sentence may have shown the highest recidivism because it was more commonly used with alcohol type offenses which commonly show high recidivism.

The deferred sentence with probation to the Misdemeanant Program appeared to be the most effectual of the various sentencing alternatives in preventing further law violation. That was true for almost all offense types, including alcohol offenses. Since recidivism for the deferred sentence was lower during the program year, the reduced recidivism appeared to be a program effect rather than a characteristic of the deferred sentence.

Summary

Recidivism by misdemeanant offenders whose cases came before the district court in the twelve months preceding introduction of the Misdemeanant Program was compared with that by offenders who were referred, and by those not referred, during the first year of the program's operation. Comparisons were made based on all cases which came before the court, which duplicated the names of repeated offenders, and on first recorded offense, which did not duplicate names. In each comparison, offenders referred to the program showed a lower percentage of recidivism than the preprogram and Not Referred categories. With few exceptions, the Referred category showed the lowest recidivism when comparisons were made by offense type. When prior offense record was taken into account, the Referred category again showed lower recidivism than the other two categories. The same pattern held when sex of the offender was considered.

Overall, the percentage of dismissals did not decline after use of the deferred sentence with probation became common; however, some changes appeared when court disposition by type of sentence was considered. Compared with the preprogram year, the percentage of dismissals was greater in the program year for public order, property, and against the person offenses, and lower for alcohol related and drug offenses. Since alcohol and drug offenses generally received the most severe penalties meted by the court, it was suggested that the availability of the deferred sentence with probation may have increased the incidence of plea bargaining into the program to avoid the risk of trial for those offenses.

Use of the Misdemeanant Program for pretrial diversion was limited

and it was not possible to determine whether the persons involved in such diversion would have been formally charged had they not agreed to enter the program. There was no evidence that the deferred sentencing option increased overall use of the guilty plea. Almost all cases that were not dismissed were adjudicated on the basis of a guilty plea before and after the program was introduced. The pattern of pleading did change, with more initial not guilty pleas which were later changed to guilty. More change of pleas were recorded on the docket after the program became available, particularly those which ended with a final plea of not guilty. This reflected the practice of permitting offenders who received a deferred sentence to change their plea at the end of probation and have their case dismissed.

With regard to recidivism by sentence type, jail sentences showed the highest percentage of recidivism, followed by fines, jail and fine, and deferred sentences. Recidivism for the various sentence types may have reflected an effect of the offenses for which they were commonly used rather than being something intrinsic of the sentence types. Jail terms showed high recidivism, but a large portion of the jail sentences were issued to alcohol offenders. Alcohol offenders characteristically show high recidivism.

CHAPTER VI

SUMMARY AND CONCLUSIONS

Overview of the Study

The research presented here represents the results of a case study of what happened when a program to provide supervision and counseling of misdemeanant offenders was established in Payne County, Oklahoma. In July, 1973 the Misdemeanant Program began accepting referrals from criminal justice agencies in Payne County. Referrals were accepted for pretrial diversion and for probation supervision on suspended and deferred sentences. Making extensive use of trained volunteer counselors, the Misdemeanant Program provided a program of counseling, supervision, and other services. No formal arrangement for misdemeanant probation existed before the introduction of the program.

This study sought to identify the effect of the program on recidivism, sentencing procedures, and involvement of accused persons in the criminal justice process. Four aspects of the program and the court's handling of misdemeanant offenders were targeted for investigation. The first centered on whether probation under supervision of the Misdemeanant Program resulted in less recidivism than did other sentencing alternatives. The second was specification of changes which occurred in the sentencing procedures used by the court after probation became available. The third related to the effect of diversion and deferred sentencing on involvement of accused persons in the justice system. The fourth aspect

concerned the relative effectiveness of various sentencing alternatives, including the deferred sentence with probation, in the prevention of further law violation.

Findings of the Study

Perhaps the most significant change that occurred as a result of the Misdemeanant Program was that a program of supervised probation became available for misdemeanant offenders. Before the program was introduced, only summary probation was used, with the requirement to report in to the court bailiff in some cases. According to the attorneys which were interviewed, obtaining probation was problematic, in many cases, due to the lack of probation services. The court's use of probation with suspended and deferred sentences increased substantially after the program became available.

In the interviews, the various officers of the court expressed strong support for the Misdemeanant Program. It was organized as a nonprofit corporation for the purpose of offering evaluation, supervision, and counseling to adult misdemeanant offenders. It received initial funding from the Law Enforcement Assistance Administration and local matching funds. To maintain the program, participants were required to pay a monthly fee while receiving probation services. An unexamined aspect of the program was whether the desire on the part of attorneys and judges to support the program by expanding its population was a factor in referral decisions.

Comparative Recidivism

Misdemeanant Program participants showed lower recidivism than did

offenders sentenced in the twelve month period before the program, and lower than offenders sentenced during the first year of the program but not referred to it. The lower percentage of recidivism was not accounted for in terms of differential referral of first offenders, nor in terms of the sex of offenders referred or not referred. Although program referrals did show variations in recidivism between offense types similar to nonreferrals, program participants also showed lower recidivism than nonreferrals within the various offense types. The fact that offenders receiving deferred sentences before the program was introduced recidivated more than offenders receiving deferred sentences with probation to the program provided some evidence that the supervision and counseling offered by the program contributed to reducing law violation on the part of participants.

Changes in Sentencing Procedures

The court made greater use of deferred sentencing after the Misdemeanant Program was introduced. There was no evidence that the deferred sentence supplanted use of the suspended sentence. The percentage of sentences which were suspended actually increased after the program became available. Existence of a program of supervised probation apparently encouraged the use of both suspended and deferred sentences. Increased use of the deferred sentence was accompanied by a corresponding decline in use of fines, jail sentences, and fine/jail combinations.

Involvement in the Justice System

No indication was found that greater use of deferred sentencing caused more people to be processed through the justice system. Only

twenty nonadjudicated cases were received by the program during its first year of operation. It was not possible to determine whether those cases would have otherwise resulted in formal charges being filed. On the other hand, it was not possible to determine the extent to which informal diversion and referral to other agencies occurred before the program became available.

There was some evidence that increased use of deferred sentencing with probation resulted in plea bargaining of cases which would otherwise have been dismissed. The overall percentage of cases dismissed was comparable for the preprogram and program years. For certain offense types--alcohol-driving and drug offenses--the percentage of cases dismissed declined during the program year, but the declines were offset by an increased percentage of dismissals in other offense types. In both the preprogram and program years, alcohol-driving and drug offenders were given the most severe punishments meted out in misdemeanant cases. The decline in dismissals in these two offense types could indicate that defendants opted to bargain a guilty plea in exchange for a deferred sentence with probation, an alternative made more attractive by the court's practice of permitting a change of plea to not guilty at the end of successful probation, with the case then being dismissed.

Use of the guilty plea did not increase during the program year. Almost all cases which were not dismissed were decided on the basis of a guilty plea in both the preprogram and program years. During the program year, a larger percentage of defendants entered an initial plea of not guilty. This resulted in a larger percentage of plea changes to guilty. Overall, there was much more plea change activity during the program year, often several changes for each offender. This was largely

because the court permitted offenders with deferred sentences to change their plea to not guilty at the end of the probation period. The effect of increased plea changing was more court appearances for offenders and their legal counsel.

Sentence Type and Recidivism

The jail sentence showed the highest percentage of recidivism, followed by the fine, jail-fine combination, and the deferred sentence respectively. The original research goal was to identify the relative effectiveness of the various sentencing alternatives in preventing recidivism. This could not be fully accomplished because of the small number of cases that remained after various exclusions, and the fact that cases tended to concentrate in alcohol related offense types. It was observed that the rate of recidivism found for a particular sentence type was influenced by the type of offenses for which it was used. In this study, jail sentences showed the highest percentage of recidivism, but the jail sentence was used disproportionately with alcohol offenders and alcohol offenders characteristically have high recidivism.

The deferred sentence with probation showed lower recidivism than other sentence types. This was true not only for the overall comparison, but was true in each offense type as well. The general conclusion was that deferred sentencing with probation was more effectual than other sentencing alternatives. This conclusion should be qualified by the recognition that some of the comparisons involved small numbers and may not be reliable.

User Response to the Misdemeanant Program

General satisfaction with the Misdemeanant Program was expressed by judges, prosecutors, attorneys, and most program participants. The various officers of the court were especially pleased to have a formal probation program available for misdemeanants. On this point, it seemed that satisfaction with the program rested as much on its availability as an alternative to what existed before as on the content of the program itself. Some expressed concern about overemphasis on the "treatment" approach by the program.

The principal complaints of former probationers were the cost of attorney fees, and the amount of time required to fulfill probation requirements. The issue of attorney fees was especially problematic because the fees often were equal to or greater than the usual fine that would have been meted out had the defendant simply pleaded guilty. The district attorney was reluctant to agree to the deferred sentence with probation for offenders not represented by legal counsel, arguing that it involved pleading guilty for considerations and amounted to plea bargaining directly with the defendant. This raised ethical and tactical concerns for the district attorney.

Some probationers complained of the amount of time needed to fulfill probation requirements set by the Misdemeanant Program. The opinion was that being required to meet weekly with a volunteer counselor, or attend group meetings, lost purposefulness after the first few weeks and that greater use of report-in would fulfill the need for probation supervision just as effectively. It was beyond the scope of this research to examine the effectiveness of the various treatment modes utilized by the program. Such information could be valuable to the program

in utilizing resources most effectively, and might provide a basis for reducing the requirements imposed on probationers.

Qualification Regarding Findings

While this study included comparisons intended to determine recidivism of Misdemeanant Program referrals relative to other sentencing dispositions, it was not, per se, an evaluation study. The information used in the comparisons was drawn from the Misdemeanant Docket of the Payne County District Court--supplemented by examination of the Felony Docket in documenting prior convictions and recidivism. The docket was used in order to have a standard source of information concerning case history, record of prior convictions, and recidivism. The program also received referrals from various municipal courts in Payne County, referrals without adjudication, and referrals from agencies outside Payne County but involving county residents. A comprehensive evaluation study would have to include consideration of all referrals.

The size of the data base proved to be a limitation in making some comparisons, particularly those involving recidivism by type of offense and sentencing disposition. The docket contained almost 2,000 cases. For various parts of the study, cases were eliminated for reasons including not being pertinent to the study, lack of information about residence, involving a nonresident of Payne County, and being a dismissed case. The individual cells in some tables contained small numbers, therefore, those comparisons were considered unreliable. Any subsequent study of this kind, in this court jurisdiction or one of a similar size, would do well to enlarge the time period covered in order to include more cases in the study.

Conclusions

The limitations of this study not withstanding, the following comments are offered regarding implications for handling misdemeanant offenders in the justice system. First, a probation program utilizing trained citizen volunteers can be an effective alternative when professional services are not available. Second, that the deferred sentence with probation is effective when used with misdemeanant offenders, resulting in lower recidivism than traditional sentencing alternatives. Third, deferred sentencing will not necessarily result in greater involvement of accused persons in the criminal justice system. In this study, the attorneys and district attorneys denied that this had happened, and the case data supported their position. The case data showed no evidence of more guilty pleas and no reduction in the proportion of cases dismissed. Finally, use of deferred sentencing does not reduce the load on the court, nor on offenders. In this study, there were more court appearances and plea changes on the part of defendants than was true before the deferred sentencing and probation came into extensive use. Deferred sentencing with probation as used in this court jurisdiction offered offenders certain advantages over traditional sentences, especially the opportunity to maintain a record free of conviction. On the other hand, offenders were more heavily obligated in terms of time when placed on probation, and in many cases experienced greater monetary cost than would have been true for traditional sentences.

This study has reported that offenders referred to the Misdemeanant Program for probation under a suspended or deferred sentence showed less recidivism than offenders who received other types of sentences. It was beyond the scope of this study to attempt to identify which aspects

of the program were more effective in producing the lower recidivism. Probationers typically experienced two or more types of probation assignment during the course of probation.

It is possible that lower recidivism was not so much the result of the specific "treatments" used by the program, but due to the nature of the probation experience itself. Probation to the Misdemeanant Program differed from fines and jail terms in very significant ways. Whereas fines and jail terms have an immediate, and sometimes harsh, impact, that impact is short in duration. Once the jail term is served, or the fine paid, the offender has no further obligation to social control agencies. Probation is experienced over a longer period of time, usually six months to a year. This is a period of heightened awareness of external control in that further law violation could result in imposition of a fine or jail term. The result can be heightened awareness of social restrictions on conduct, and a period of patterning behavior in accordance with those restrictions.

Probation provides an opportunity to talk with someone about the experience of arrest, court experience, and sentencing--especially someone symbolic of authority. The contact with a probation officer, whether volunteer or professional, provides probationers a way to manage their "spoiled identity" by talking about their feelings and their behavior. This may hasten restoration of a self-image of being a "normal" member of society, and have this image accepted and validated by the probation counselor who symbolically represents the society. Opportunity to process feelings about the offense, arrest, and punishment in a context that is favorable to law abiding attitudes and conduct may reinforce elements in the self-concept which discourage further misconduct.

Rather than any particular treatment--individual or group, volunteer or professional counseling--reduced recidivism may result from the process of being made aware of social restraint over a period of time, with interaction with persons representative of law-abiding norms who can encourage self-monitoring and control. If it is the more general characteristics of probation that result in less recidivism, rather than specific treatment approaches, knowledge of this effect could have important implications for the structuring of probation programs. Further research could productively be directed to exploring this suggestion.

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VITA 2

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