

2003

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Repository Citation

Payne, Brian K.; Gainey, Randy R.; Triplett, Ruth A.; and Danner, Mona J. E., "Justifications for the Probation Sanction Among Residents of Virginia--Cool or Un-Cool?" (2003). *Sociology & Criminal Justice Faculty Publications*. 1.
https://digitalcommons.odu.edu/sociology_criminaljustice_fac_pubs/1

Original Publication Citation

Payne, B. K., Gainey, R. R., Triplett, R., & Danner, M. J. E. (2003). Justifications for the probation sanction among residents of Virginia--Cool or un-cool? *Federal Probation*, 67(3), 42-48.

Justifications for the Probation Sanction Among Residents of Virginia—Cool or Un-cool?*

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PERHAPS AS EVIDENCE of a growing cultural gap between our students and ourselves, one of the authors was recently amused when a student asked whether probation was a “cool” sanction. In this study, we begin an investigation into how cool the probation sanction is in the eyes of residents of the Commonwealth of Virginia. Specifically, we use data from a telephone survey of 840 registered voters to explore three questions. First, how often would they recommend the probation sanction in comparison to other sanctions? Second, how do they justify the sanction relative to justifications for other sanctions? Finally, are their justifications and sentencing recommendations consistent across crimes? We address these questions in this study to see whether the sanction is “cool or uncool.” In the review of literature, we discuss punishment justifications in general and probation as a punitive experience.

Sentencing Justifications and Probation

A number of researchers have examined how the public perceives and justifies sanctions. Research on public attitudes toward different sanctions has centered on an examination of how the public perceives various sentencing alternatives. Do they support the death penalty? Is incarceration preferred over probation for certain types of offenders? Do they support specific alternative sanctions? (Brown and Elrod, 1995; Durham, 1993; Payne and Coogle, 1998; Sandys and McGarrell, 1995; Sigler and Lamb, 1995; Zimmerman et al.,

1988). These and other questions have been addressed by researchers interested in how the public perceives criminal justice sanctions.

In contrast, punishment justification research has centered on how various sanctions are justified. Much of this literature focuses on justifications for incarceration. In this area, scholars point to five related punishment justifications: specific deterrence, general deterrence, incapacitation, rehabilitation, and retribution. Though these justifications are most commonly linked in the literature with incarceration, they are also applicable to alternative sanctions such as probation.

Specific Deterrence

Specific deterrence can be traced back at least to Cesare Beccaria’s classic *On Crimes and Punishments* (1963[1764]). This short manuscript contains Beccaria’s views on the importance of punishment—if offenders are punished in a certain, swift fashion with sanctions just outweighing the pleasure of the crime, then offenders will be less likely to commit future criminal acts. The specific deterrence ideal views punishment as a pragmatic, rational instrument that keeps offenders from committing future offenses. The ability of a sanction to deter misconduct is difficult to assess (Bagaric, 2000), but specific deterrence remains among the more popular sentencing justifications (Whitehead and Blankenship, 2000).

General Deterrence

In contrast to specific deterrence, the idea

behind general deterrence is that punishing offenders should prevent other members of society from offending. General deterrence is even more difficult to measure than specific deterrence. In theory, however, some see the most basic purpose of punishment as its role as a general deterrent to others. Those advocating a general deterrence approach to controlling crime argue that the application of the law through punishment is needed to demonstrate societal disapproval and re-enforce societal norms (Moneymaker, 1985).

Incapacitation

Incapacitation is another important function of the criminal justice system. Incapacitation refers to the degree that crime is reduced, and society is kept safe, by keeping offenders away from the general public. Public safety as a justification for punishment is commonly heard, for example, among proponents of the death penalty and increased use of incarceration. According to Zimring and Hawkins (1995), support for incapacitation as a punishment justification emerged in the seventies and eighties, not because of any solid beliefs about its benefits, but out of frustration with other forms of punishment and their justifications.

Policies that keep offenders in prison for offenses they might commit (e.g., selective incapacitation, sexual offenders being kept in prison past their release dates, and “three strikes, you’re out”) are examples of policies justified on incapacitation grounds. It might be suggested that the sanction does not apply to community-based sanctions; however,

* A version of this article was presented at the Sociology and Criminal Justice Research Day at Old Dominion University, Norfolk, Virginia, April 24, 2003.

research shows that some alternative sanctions, such as electronic monitoring with house arrest, are controlling and may meet the ideals of incapacitation (Payne and Gainey, 2000). Moreover, an analysis of the goals of state legal codes for community-based sanctions revealed that states expect sanctions to control offenders in a way that maintains public safety (Johnson et al., 1994).

Rehabilitation

As a punishment justification, rehabilitative ideals are similar to specific deterrence ideals in that the focus is on altering the future behavior of the offender. The difference presumably lies in the strategies used to change the behavior. Deterrence is believed to be achieved strictly through punitive means, while rehabilitation is theoretically achieved through therapeutic and supportive approaches.

A number of studies have considered the rehabilitative potential of various sanctions. Generally, researchers agree that rehabilitation is less likely in prison environments, and more feasible in community settings (Palmer, 2002). The assumptions underlying community-based sanctions with a rehabilitative orientation are that individuals are able to maintain employment, enhance bonds with family members and friends, and avoid the criminogenic prison environment. However, rehabilitation is often not feasible because many probation agencies, with their heavy case loads, are under-staffed and overworked. They are then forced to resort to serving as supervisors rather than counselors (Lynch, 2000).

Retribution

A final justification for punishment is retribution, which one study has found to be the most popular punishment justification (Warr and Stafford, 1984). Justifications based on retribution are based on the belief that offenders deserve punishment and society has a moral obligation to punish them (Von Hirsch, 1986). One study, for example, suggested that retributive ideals are more about revenge than about "just deserts" (Finckelner, 1988). Some moral philosophers go so far as to suggest that the desire for retribution is a natural human emotion. Alternatively, the German philosopher George Hegel argued that criminals have a right to be punished. Through punishment, criminals are redeemed (Tunick, 1992).

For the most part, research on punishment justifications has focused on how sanctions such as the death penalty and incarceration

are justified by members of the public. To our knowledge, no research has considered how members of the public justify the probation sanction. A full understanding of these justifications promotes a better appreciation of the degree of support the public has for probation and why. Before examining how the public justifies this sanction, attention must be given to how the sanction is actually experienced by offenders.

The Probation Experience

Authors have described probation as a process, a status, and a sanction. It is a process in that offenders proceed through the probation stage of the criminal justice apparatus. It is a status, in that offenders are "on probation" and under stricter scrutiny by the criminal justice system than is the average citizen. It is a sanction, in that offenders experience the range of emotions that come along with any type of criminal justice punishment—there is a degree of control over offenders; offenders experience certain losses while on probation; offenders are expected to refrain from certain behaviors legal for other citizens, such as the freedom to move from one jurisdiction to another, while experiencing this sanction.

Historically, it has been assumed that probation was a less severe punishment than incarceration. Recent investigations, however, call into question this assumption. Research has begun to find that some forms of probation, especially when combined with other sentencing alternatives, are experienced by offenders in punitive ways (Crouch, 1993; Payne and Gainey, 1998; Petersilia and Deschenes, 1994; Spelman, 1995; Wood and Grasmick, 1999). In fact, these studies have found that some offenders prefer incarceration to certain types of probation.

For example, a study of 415 inmates in Oklahoma revealed that many of the inmates preferred remaining in prison over being placed on certain alternative sanctions (including probation), because they could limit the amount of time they would be under the control of the justice system (Wood and Grasmick, 1999). In a similar study, two-thirds of 1,027 sampled Texas inmates indicated that they would rather serve one year in prison than be on probation for ten years, and half of them indicated that they would choose one year in prison over five years on probation (Crouch, 1993). Another study of 128 Texas inmates also showed that many inmates preferred prison to communi-

ty-based sanctions (Spelman, 1995). In a similar vein, research by Petersilia and Deschenes (1994) suggests that inmates find intensive probation to be the "more dreaded penalty" as compared to incarceration.

There are several reasons why inmates often prefer incarceration to probation. The two main reasons are time and control. In terms of time, sentences served on community-based sanctions tend to be longer. Thus, those offenders placed on probation are likely to spend more time under the control of the criminal justice system. In terms of control, offenders supervised in the community recognize that probation officers have a great deal of control over the offender's fate. This control can be an especially unnerving situation for inmates who face the uncertain risk of revocation and institutionalization for minor violations such as missing an appointment or having substances detected in their urine screening. In the end, it appears that inmates perceive the sanction as a punishment.

While inmates experience probation as a punishment, policy makers tend to select incarceration as the sanction that meets punitive ideals and probation as the sanction that meets rehabilitative ideals (De Luca et al., 1991; White, 1989). Research has yet to be done, though, on the public's perception of probation and the justification for using it. The current study examines whether members of the public hold similar beliefs.

Why Study Punishment Justifications for Probation?

Three reasons warrant an examination of punishment justifications offered for the probation sanction. First, as Warr and Stafford (1984) point out, a great deal of cultural awareness can be found through empirical examinations of punishment justifications. Individuals from different backgrounds tend to have different punishment philosophies (Gordon, 1999). Also, the primary reasons individuals think others should be punished have shifted over time, and these shifts are related to broader cultural values, beliefs, mores, and norms. The age of Reformation, for instance, was characterized by general rehabilitative values, whereas the age of Enlightenment called for punishment proportionate to the harm created by one's misdeeds. Generally, these punishment rationales have been considered for broader sanctions. Punishment rationales for the probation sanction, however, can be just as telling about our culture and the diversity within it.

Second, it is important for proper program evaluation to determine whether societal goals for use of a sanction are being fulfilled. While any sanction would include among its goals reduction of crime and increased public safety, other goals vary across sanctions. For example, if society thinks a punishment should be primarily rehabilitative, evaluators should use rehabilitation as a measuring stick. Beyond reduction of crime and increased public safety, goals might well include such indicators of rehabilitation as increased job stability, improved relationships and reduction in dependency on drugs. Conversely, if the sanction is justified on primarily retributive ideals, then evaluation criteria might include a measure of the proportionality of the sentence to the crime, and the perceptions of victims. The point is that one must know what the goals of the sanction are in society's eyes in order to determine if the sanction is fulfilling societal expectations.

Third, probation is a growing sanction across the United States. In 1990 there were nearly 2.7 million persons on probation, in 2001 there were nearly four million—an increase of approximately 47 percent (Bureau of Justice Statistics, 2002). The use of probation has thus greatly expanded and that expansion is expected to continue. One might say that probation is the “sanction of choice” among judges for many less serious offenders. In fact, the sanction is pivotal to the justice system's effectiveness. It is imperative then to come to some understanding of the way that probation goals are perceived by the public and determine how those goals fit in with the broader goals of the justice process.

The current study focuses on how individuals perceive the goals of the probation sanction in comparison to goals of other sanctions. The questions include: how often do residents of the Commonwealth of Virginia recommend probation in comparison to other sanctions? How do residents of the Commonwealth of Virginia justify the probation sanction relative to other sanctions? Do their justifications vary across offense types? Addressing these questions will shed some light on strategies to evaluate the probation sanction, and help us understand the role of the probation sanction in the criminal justice system.

Methods

As part of a broader political poll, a telephone survey was conducted to assess support for probation and determine how respondents

TABLE 1. Crime Measures

<i>Crime</i>	<i>Scenario</i>
Drunk Driving (Death)	An individual driving under the influence crashes a car and a passenger is killed.
OSHA Violation (Death)	A manufacturer violates occupational safety and health standards causing the death of an employee.
Marijuana Distribution	An offender sells 100 pounds of marijuana.
Heroin Distribution	An offender sells 2.2 pounds of a substance containing a detectable amount of heroin.
Drug Possession	An offender is found in possession of illegal drugs for personal use.

TABLE 2. Punishment Justification Measures

<i>Justification</i>	<i>Measure (Why do you support this sentence? Because...)</i>
Specific Deterrence	It will keep the offender from committing another crime.
General Deterrence	It will keep other people from committing that crime.
Retribution	It punishes the offender.
Rehabilitation	It treats or punishes the offender.

justified the probation sanction. The survey instrument consisted of five crime scenarios (See Table 1). The political poll was commissioned by a newspaper (*The Virginian Pilot*); thus, we had to select offenses that were “newsworthy.” These scenarios were chosen because they represented events that were receiving widespread news coverage at the time.

Scenario 1 (drunk driving) asks respondents how they would sanction an offender who killed someone as the result of a drunk driving accident. Scenario 2 (OSHA violation) asks respondents how they would sanction an offender whose workplace actions resulted in the death of an employee. Scenarios 3 (marijuana distribution) and 4 (heroin distribution) assessed how respondents would punish offenders distributing these drugs. The scenarios for these two drug offenses were based on drug kingpin legislation promoted by former Governor James Gilmore in 1999. Specifically, the governor recommended changing Virginia law so that those convicted of possession of 100 pounds of marijuana or 2.2 pounds of heroin would receive life sentences. Scenario 5 (drug possession) asked respondents how they would sanction an offender in possession of drugs for personal use.

After each of these scenarios, respondents were asked to indicate the sanction they preferred. Options for scenarios 1-4 included the death penalty, life in prison without parole, 10 years in prison, and probation with treatment. Options for scenario 5 included life in prison

without parole, 10 years in prison, 5 years in prison, 1 year in prison, and probation with treatment. The life in prison without parole option was the sanction recommended in the drug kingpin legislation. Ten years in prison was roughly the equivalent sentence provided by the state sentencing guidelines at the time the survey was conducted.

After indicating their sanction preference for each offense, respondents were asked, “Why do you support this sentence?” Close-ended response options included specific and general deterrence, retribution, and rehabilitation (see Table 2).

Sample

Table 3 describes the demographic characteristics of the sample. Just over 80 percent of the respondents were white and over half were female. Respondents came from a variety of socio-economic classes, as indicated by the substantial variation in education and income. The average age of respondents was just over 50 years. Though they were slightly older than Virginia residents as a whole, this is not uncommon in telephone surveys.

Results

The first question addressed asks how often probation is recommended as an appropriate sanction for the crimes described in the five scenarios. Table 4 provides descriptive statistics regarding the recommended sanctions for each of the crime scenarios. As shown in the table, the Virginia residents tended to be

TABLE 3. SAMPLE DEMOGRAPHICS

Gender	#	%
Male	341	40.6
Female	499	59.4
Race		
White	678	80.7
Black	125	14.9
Other	37	4.4
Education		
< high school	37	4.4
High school/GED	128	15.2
Vocational	58	6.9
Some college	260	31.0
College degree	214	25.5
Graduate degree	142	16.9
Family Income		
< \$20,000	79	9.4
\$20,000-\$33,000	124	14.8
\$33,001-\$49,000	150	17.9
\$49,001-\$72,000	179	21.3
over \$72,000	179	21.3
Age		
Mean	52.2	
Standard Deviation	16.9	

somewhat punitive, although they did not generally support life sentences for the drug offenses. A small percentage of the respondents recommended the death penalty for each crime scenario. The order of punishment preferences was the same for the drunk driving, OSHA violation, and marijuana dealing scenarios—ten years in prison was the most commonly supported sanction, followed by probation, life in prison, and then the death penalty. For the scenario describing heroin dealing, ten years in prison was the most com-

mon sanction supported, followed by life without parole, probation with treatment, and the death penalty. In the marijuana possession scenario, probation was the most commonly supported sanction, with over half the sample recommending this sanction. Probation was followed by five years in prison, ten years in prison, and life without parole. As might be expected, we found that probation is a fairly common recommended sanction, though its popularity varies across crimes.

Cross-tabulations were conducted to address the second questions: how is probation justified, relative to other sanctions.[†] Those few who selected the death penalty were omitted from the analysis because their justification could not theoretically be characterized as for rehabilitation and including those respondents would have biased the results. Table 5 outlines the results of these analyses.

For each crime scenario, punishment preference was strongly related to punishment justification. Across the board, those choosing life in prison without parole were most likely to justify that sentence based on specific deterrence ideals. Percentages ranged from 33 percent for the OSHA violation to 62.5 percent for the possession of drugs. As might be expected, people who chose life in prison without parole were least likely to support the goal of rehabilitation.

Interestingly, those recommending 10 years of prison tended to base that decision on retribution or simply punishment of the offender. Percentages ranged from 33.8 for the drunk driving scenario to 42.6 for the scenario concerning the marijuana dealer.

However, if specific and general deterrence were combined into a general deterrence category, this would also amount to a strong justification, suggesting that Virginia residents may be more pragmatic than retributive in terms of their justifications for punishing offenders. That is, they support sentences of 10 years in prison because they think they are effective, not simply to punish deserving criminals.

Finally, and across the board, those endorsing probation were most likely to base that sentence on rehabilitative goals. Percentages were large, ranging from 51.5 percent for the OSHA violation to 82.1 percent for the scenario involving the possession of drugs. Clearly, people who support probation as an important sanction available to the criminal justice system tend to support the goal of rehabilitation.

Discussion

The first finding of this study is that probation is a sanction that, even in a state where the public is seen as punitive, is often supported, though levels of support vary across type of crime. The results further indicate that punishment preferences are strongly related to punishment justifications. Probation is justified by and large by rehabilitation. On the other hand, those who supported life sentences, such as those called for in the drug kingpin legislation, tended to offer specific deterrence ideals, while those supporting probation tended to offer rehabilitative ideals. Critics might dismiss these findings as obvious. However, we believe our findings have important implications for policy and research.

Three policy implications arise from our study. First, given that past research shows that probation and other community-based sanctions are experienced as a punishment by offenders (Payne and Gainey, 1998; Petersilia and Deschenes, 1994; Spelman, 1995), with some seeing it as more punitive than incarceration, it seems necessary to educate the public about the punitive nature of the probation sanction. As it is, probation tends to be justified primarily on rehabilitative grounds, and rarely on punitive grounds. Expanding societal understanding about the punitive nature of probation would likely increase support for the sanction. Others have recommended education as a strategy to increase the use of certain sanctions (Lane, 1997; Whitehead and Blankenship,

TABLE 4. Recommended Sanctions

Offense	Punishment											
	Death Penalty		Life w/o Parole		10 years in prison		Probation w/ treatment		Don't know			
	N	%	N	%	N	%	N	%	N	%		
Drunk driving (death)	27	3.2	136	16.2	382	45.5	240	28.6	55	6.5		
OSHA Violation (death)	18	2.1	92	11.0	373	44.4	196	23.3	161	19.2		
Dealing Marijuana	19	2.3	156	18.6	427	50.8	181	21.5	57	6.8		
Dealing Heroin	25	3.0	188	22.4	437	52.0	137	16.3	53	6.3		
Drug Possession	Life w/o parole		10 years in prison		5 years in prison		1 year in prison		Probation w/ treatment		Don't know	
	N	%	N	%	N	%	N	%	N	%	N	%
	24	2.9	70	8.3	112	13.3	159	18.9	436	51.9	39	4.6

[†] Because of small cell sizes these analyses were replicated excluding the persons who responded “don't know” and “other.” The substantive findings were consistent.

TABLE 5. SANCTIONS BY PUNISHMENT JUSTIFICATIONS

							Chi Square	Significance		
	Life W/O Parole		10 years prison		Probation					
	N	%	N	%	N	%				
Drunk Driving (Death)							322.22	.000		
Specific Deterrence	54	39.7	87	22.8	15	6.3				
General Deterrence	25	18.4	68	17.8	4	1.7				
Retribution	38	27.9	129	33.8	21	8.8				
Rehabilitation	4	2.9	66	17.3	183	76.3				
Other	12	8.8	26	6.8	13	5.4				
Don't know	3	2.3	6	1.6	4	1.7				
OSHA Violation (death)							217.69	.000		
Specific Deterrence	30	32.6	74	19.8	27	13.8				
General Deterrence	14	15.2	98	26.3	14	7.1				
Retribution	32	34.8	149	39.9	26	12.2				
Rehabilitation	5	5.4	26	7.0	101	51.5				
Other	9	9.8	19	5.1	24	12.2				
Don't know	2	2.2	7	1.9	6	3.1				
Dealing Marijuana							376.01	.000		
Specific Deterrence	83	53.2	113	26.5	18	9.9				
General Deterrence	29	18.6	73	17.1	2	1.1				
Retribution	32	20.5	182	42.6	25	13.8				
Rehabilitation	3	1.9	34	8.0	120	66.3				
Other	7	4.5	24	5.6	16	8.8				
Don't know	2	1.3	1	.2	0	0.0				
Dealing Heroin							335.30	.000		
Specific Deterrence	97	51.6	139	31.8	13	9.5				
General Deterrence	30	16.0	68	15.6	2	1.5				
Retribution	43	22.9	176	40.3	35	12.4				
Rehabilitation	4	2.1	35	8.0	89	65.0				
Other	12	6.4	17	3.9	15	10.9				
Don't know	2	1.1	2	.5	1	.7				
Possession of Drugs							321.05	.000		
	Life w/o		10 yrs prison		5 yrs prison		1 yr prison		Probation w/treatment	
	n	%	n	%	n	%	n	%	n	%
Specific Deterrence	15	62.5	23	32.9	27	24.1	20	12.6	29	6.7
General Deterrence	3	12.5	8	11.4	8	7.1	10	6.3	2	0.5
Retribution	4	16.7	25	35.7	37	33.0	50	31.4	24	5.5
Rehabilitation	1	4.7	8	11.4	30	26.8	17	44.0	358	82.1
Other	0	0.0	6	8.6	7	6.3	9	5.7	22	5.0
Don't know	1	4.2	0	0.0	3	2.7	0	0.0	1	.2

2000; Gainey and Payne, 2003), so this recommendation has some merit.

Second, and on a related point, legislators, policy makers, and practitioners should consider ways to enhance the general deterrent potential of the probation sanction. As the most common community-based sanction, the probation sanction should ideally

help to fulfill multiple goals of the justice process. So long as the public does not see it as punitive, and does not justify it on general deterrent ideals, the versatility of the sanction is minimized. It is not uncommon for incarcerated offenders and correctional officers to serve as speakers in classrooms in an attempt to help young people steer clear

of crime (Bravin, 2000; Brown, 1998). It is certainly plausible that probation officers and probationers could play a similar role in spreading the word about this sanction. In fact, some argue that it is the role of criminal justice professionals to educate the public about the system's applications (Andring, 1993; Hawk, 1994; Kniest, 1998). Better

awareness of the sanction should increase general deterrence.

However, there is another way to think about the findings of the study that relates to a third and final implication. This implication concerns the apparent widespread support of rehabilitation as a sentencing ideal. Public attitudes toward criminals are usually described as primarily punitive, retributive, and pro-incarceration, without drawing distinctions in public attitudes according to the nature of the crime. Indeed a large proportion of the sample did favor lengthy prison terms and some based their sentencing decision solely on retribution. Characterizing the public as purely interested in retribution or deterrence is misleading, however, because a substantial proportion of Virginia residents supported probation and justified this on rehabilitative ideals. Indeed a majority based their sentencing decision in the marijuana possession scenario on the goal of rehabilitation.

What this means is that the public attitude can be seen as punitive for offenders committing serious offenses, but rehabilitative for less serious offenses. The simplicity of this finding potentially undermines its import in terms of policy implications. However, it needs to be stressed that the public will support rehabilitative sanctions such as probation in some circumstances (Shichor, 1992). What does it mean that the public justifies probation in terms of rehabilitation while many offenders seem to see it as punitive? We can increase public awareness of the punitive aspects of probation as suggested above. This strategy fits well with trends towards mere supervision in probation fostered by high caseloads and few resources. On the other hand, we can work to actually increase the rehabilitative aspects of probation.

Furthermore, if it makes theoretical sense to combine the general and specific deterrence responses, and we believe it does, then "deterrence" would be the most frequent justification by respondents to this survey and would suggest that the public is more pragmatic than retributive. However, research shows that length of sentence is not strongly related to recidivism and the relationship is not always in the expected negative direction (Gainey, Payne and O'Toole, 2000; Song and Lieb, 1993). The public should be made aware that lengthy jail and/or prison terms are not the only answer and that incarceration can have many deleterious consequences (Clear and Rose, 1998). The main point, however, is

that basing criminal policies on the belief that the public is primarily retributive is a dangerous and costly strategy.

Our findings also have important implications for theory. In particular, recall that the relationship between justifications and punishment preferences is largely consistent across crimes. Behaviors do not cause justifications, but the sanctions appear to do so. If someone thinks a certain type of offender should be punished to achieve deterrence, that individual will likely think other types of offenders should be punished for the same reasons. This tells us a lot about our culture and the way norms are defined, enforced, and promoted. It is not the violation of specific rules that evokes a response from society, but rule-breaking in general.

A number of questions remain for future research. Our sample came from just one state and it is not clear whether the relationships uncovered in this study would be found in other states. Furthermore, we focused on a handful of offenses and it may prove fruitful to examine other sanctions and justifications for other types of crime. We also did not include the "just deserts" and incapacitation justifications, although retribution comes close to "just deserts." Finally, research needs to determine which comes first—the sanction recommendation or the punishment justification. We know that they are related, but we cannot say for sure that there is a causal relationship between the two.

In the end, were our student to ask us again, "Is probation cool?" we would tell him that it is absolutely "cool" in some circumstances and that the sanction has widespread rehabilitative appeal to members of the public. The task at hand is to better educate the public and policy makers about the versatility of the probation sanction.

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