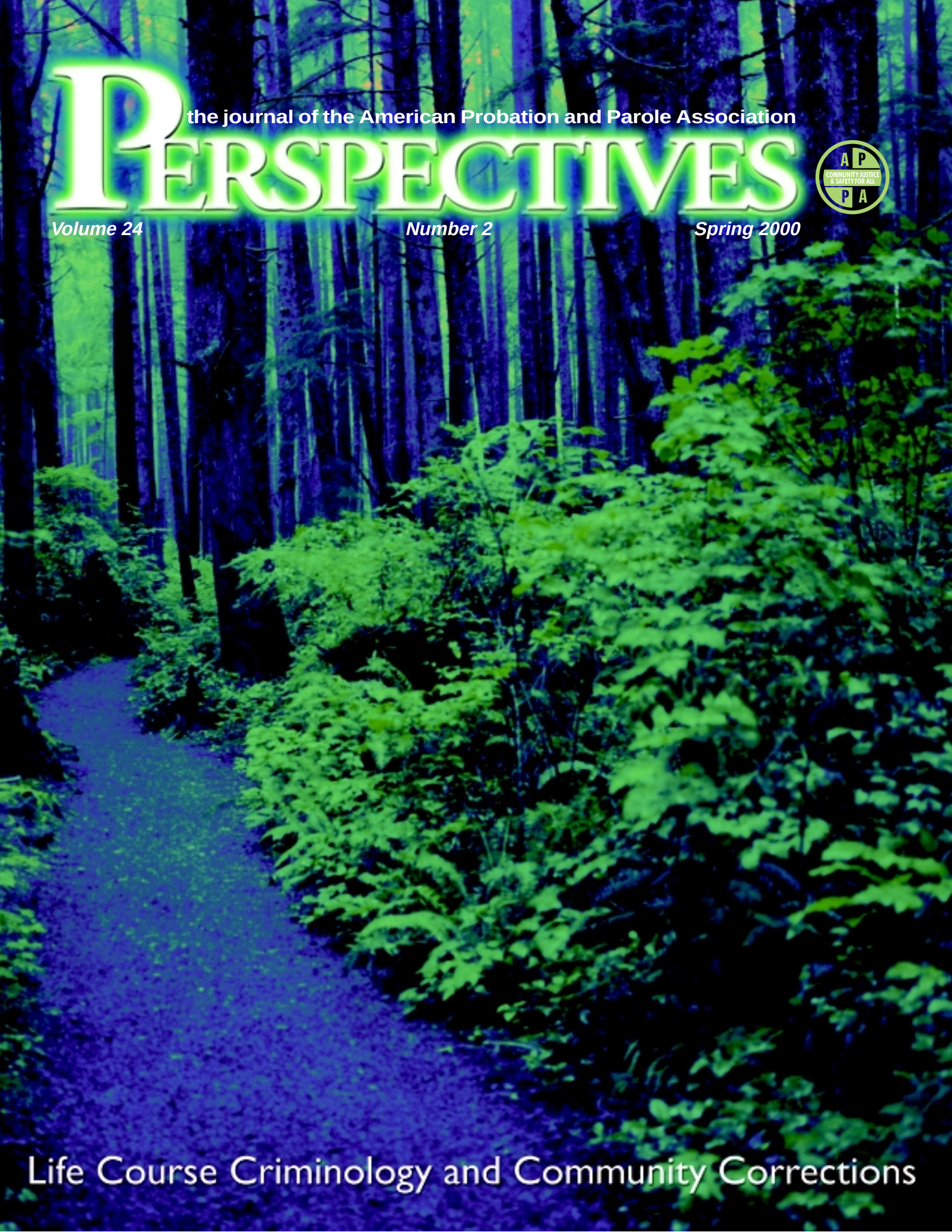

the journal of the American Probation and Parole Association

PERSPECTIVES

Volume 24 Number 2 Spring 2000

Life Course Criminology and Community Corrections

President's Message

I WAS WONDERING the other day about plane crashes. You know that black box that does the flight recording that emergency worker's search for after a crash. Supposedly, it is indestructible. My question is this - Why don't they build the entire airplane out of that material? I really haven't lost it, I was just wondering. Kind of like this—why do they need locks on the doors of the 7-11 store if they are open 24 hours a day, 365 days a year.

The Winter Training Institute in Nashville on February 13-16 was a huge success - Over 700 registrants, the largest exhibit area at a Winter Institute, and southern hospitality combined to make Opryland a great venue. The support of Judge Betty Adams-Green, Judge Leon Ruben, Charles Trauber, and Mick Wallace was appreciated. Linda Layton and her track leaders did a marvelous job on the program. And I will never forget the friendships that I made with Laurel Howell and her committee chairs. For those of you who missed the President's Suite—I have pictures to prove what an incredible place it was. All of you must stand up and take a bow!

Ray A. Wahl

It was a bittersweet moment for APPA to say goodbye to two of our most ardent supporters and good friends. At the opening session in Nashville we had the opportunity to honor Laurie Robinson as she leaves her post as the Assistant Attorney General over the Office of Justice Programs (OJP). Her style and grace never went unnoticed. Also, on a trip to Washington, DC, we said goodbye to Shay Bilchik, the now former Director of the Office of Juvenile Justice Delinquency Prevention. The partnership that he facilitated with APPA in his role as Director has brought a new meaning to leadership. We will miss both of these people very much and can only hope that our paths will cross in their future plans.

I am very excited to tell you about a roundtable on reinventing probation that is being sponsored by OJP under the direction of Marlene Beckman. This will really be the first attempt to take "Broken Windows Probation" to key stakeholders outside the community corrections family and have them react to the contents of the report. Marlene Beckman has truly been a "Special Counsel" to APPA and her wisdom has advanced the APPA vision.

And we now look forward to the 25th Anniversary Celebration in Phoenix, July 23-26. This will be the fourth occasion in recent memory where two of the most progressive probation leaders, Norm Helber and Cherie Townsend, have had APPA come to Arizona. There will be a very special opening session where Dimitria Pope, the program chair and anniversary coordinator, has put together a program to honor our past leaders. You can bet that the attendance will be huge. I hope to see you there!

Let me let you in on a secret, which is starting to leak out There are a lot of groups that want to partner up with APPA on projects. Why is that? There are several reasons:

1) Our vision strikes a chord with them;
2) Our reputation to deliver on grants and commitments is excellent (by and large, we can thank Carl and the APPA staff for that);
3) APPA has not forgotten one of life's important lesson - that people can make a difference; and
4) Last but not least, we have some outstanding leaders in community corrections that are committed to the APPA vision.

The thing is, we haven't really realized our true potential. Can you imagine what it would be like if every member wanted to be on a committee, we all recruited new members, participated in conducting training, etc? It would be the fuel that would allow common people to attain uncommon results—and it is spelled T-E-A-M-W-O-R-K. The Board of Directors is supportive of the Executive Committee goals and we are hopefully on the same page. Let's all hold on because it is going to be a hechuva ride. See you in Phoenix!

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NOTE: As of April 1, 2000, the area code for all APPA office telephone and fax numbers will change to (859).

Communications should be addressed to:

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Website: http://www.appa-net.org

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APPA *We see a fair, just and safe society*

vision

where community partnerships are restoring hope by embracing a balance of prevention, intervention and advocacy.

We seek to create a system of Community Justice where:

A full range of sanctions and services provides public safety by insuring humane, effective, and individualized sentences for offenders, and support and protection for victims;
Primary prevention initiatives are cultivated through our leadership and guidance;
Our communities are empowered to own and participate in solutions;
Results are measured and direct our service delivery;
Dignity and respect describe how each person is treated;
Staff are empowered and supported in an environment of honesty, inclusion, and respect for differences; and
Partnerships with stakeholders lead to shared ownership of our vision.

APPA is an affiliate of and receives its secretariat services from the Council of State Governments (CSG). CSG, the multibranch association of the states and U.S. territories, works with state leaders across the nation and through its regions to put the best ideas and solutions into practice.

Instructions to authors. *Perspectives* disseminates information to the American Probation and Parole Association's members on relevant policy and program issues and provides updates on activities of the Association. The membership represents adult and juvenile probation, parole and community corrections agencies throughout the United States and Canada. Articles submitted for publication are screened by an editorial committee and, on occasion, selected reviewers, to determine acceptability based on relevance to the field of criminal justice, clarity of presentation, or research methodology. *Perspectives* does not reflect unsupported personal opinions. Submissions are encouraged following these procedures:

Articles should be submitted in ASCII format on an IBM-compatible computer disk, along with five hard copies, to Production Coordinator, *Perspectives* Magazine, P.O. Box 11910, Lexington, KY, 40578-1910, in accordance with the following deadlines:

- Fall 2000 Issue – June 20, 2000
- Winter 2001 Issue – September 21, 2000
- Spring 2001 Issue – December 11, 2000
- Summer 2000 Issue – March 19, 2001

Unless previously discussed with the editors, submissions should not exceed 6 typed pages, numbered consecutively and double-spaced. All charts, graphs, tables and photographs must be of reproduction quality. Optional titles may be submitted and selected after review with the editors.

All submissions must be in English. Notes should be used only for clarification or substantive comments, and should appear at the end of the text. References to source documents should appear in the body of the text with the author's surname and the year of publication in parentheses, e.g., (Jackson, 1985: 162-165). Alphabetize each reference at the end of the text using the following format:

Anderson, Paul J. "Salary Survey of Juvenile Probation Officers." Criminal Justice Center, University of Michigan (1982).

Jackson, D.J. "Electronic Monitoring Devices." *Probation Quarterly* (Spring, 1985): 86-101.

While the editors of *Perspectives* reserve the right to suggest modifications to any contribution, all authors will be responsible for, and given credit for, final versions of articles selected for publication. Submissions will not be returned to contributors.

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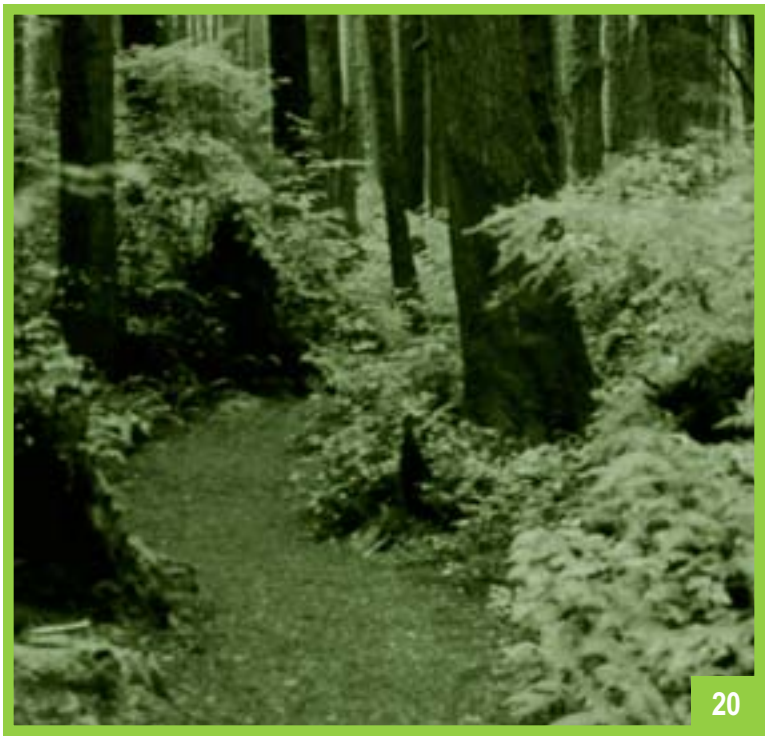
the journal of the American Probation and Parole Association

PERSPECTIVES

Volume 24 Number 2 Spring 2000

FEATURES



DEPARTMENTS

PLUS!

Editor's Notes

All informed criminal justice professionals realize the importance of research, particularly as it relates to crafting correctional policy and influencing practice. This issue of *Perspectives* contains several articles that are firmly based in research and that have relevance to the community corrections profession.

University of Maryland Professor John H. Laub and Leana C. Allen, a graduate assistant, contribute the lead article to this issue – "Life Course Criminology and Community Corrections." This scholarly presentation, which encourages translating theory into practice, draws from the George J. Beto Lecture delivered at the College of Criminal Justice at Sam Houston State University in 1999 and *Crime in the Making: Pathways and Turning Points Through Life*, written by Robert J. Sampson and John H. Laub (Harvard University Press, 1993). Found in this article are a number of suggestions for the development, implementation and restructuring of community corrections programs and strategies.

The experiences of four jurisdictions in the development and use of structured case planning are the subject of our second article, written by Mark Carey, David Goff, Gary Hinzman, Al Neff, Brian Owens and Larry Albert. Highlighted in this article are the efforts of the Sixth Judicial District Department of Correctional Services in Iowa, the Dakota County Community Corrections Department in Minnesota, the Georgia State Board of Pardons and Paroles, and the Ohio Department of Youth Services in bringing a rational approach to influencing offender behavior, restoring public confidence in the criminal justice system and promoting public safety.

Richard D. Sluder, Dennis Cunningham and Dane C. Miller, all with the Criminal Justice Department at Central Missouri State University, contribute our third article – "Revocation of Probation Based on Fraud or Lack of Candor at Sentencing" – in which they examine recent court cases in an "evolving area" of the law. A version of this well-researched article was presented at the 1999 meeting of the Academy of Criminal Justice Sciences, which certainly speaks to its scholarship.

Finally, Sheila Gladstone, an Austin, Texas, attorney whose practice is devoted to assisting public and private sector employers in employment law issues, and who is a regular presenter at the Chief Probation Officers Conference held annually in Texas, provides a fresh look at workplace sexual harassment. Her article, derived from legal research and recent court decisions, offers guidance in addressing and preventing sexual harassment claims.

The information contained in these scholarly articles provides instruction on developing and sustaining effective community corrections operations, and the *Perspectives* Editorial Committee is pleased to commend them to the members of the American Probation and Parole Association.

On a final note, the Editorial Committee encourages all Association members to consider submitting articles for publication consideration in *Perspectives*. There are many innovative programs, successful strategies and commendable practices that have yet "to see the light of day" in print. It is incumbent on all Association members to add to the body of knowledge of the community corrections profession. We look forward to reviewing your submissions.

Dan Richard Beto

The Editorial Committee has recommended to the leadership of APPA that all issues of *Perspectives* published during the year 2000 devote the majority of its pages to what we will call "Millennial Minutes"—that is, brief pieces from our readership that either look back on key events in the last 100 years of community corrections or look forward to likely developments over the next 100 years. We're looking for both historians and prophets! So climb into the time machine and, upon your return, write us.

TRAINING ANNOUNCEMENT

National Youth Court Center Announces Conference

Youth Court Conference 2000

October 22-24

Albuquerque, New Mexico

The National Youth Court Center (NYCC) at the American Probation and Parole Association (APPA) provides training and technical assistance and serves as an information clearinghouse to youth court programs in the United States. The Center was created by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and funded by OJJDP's Juvenile Accountability Incentive Block Grant Program, in collaboration with the National Highway Traffic Safety Administration, U.S. Department of Transportation; Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services; and the Office of Elementary and Secondary Education, U.S. Department of Education. The Center aims to assist communities in developing and operating effective youth court program models that strengthen the ability of the juvenile justice system to hold youths accountable for their behavior, while enhancing public safety through active youth participation in the juvenile justice system.

The implementation of youth court programs in America is a growing phenomenon. To date, there are more than 650 active youth court programs in the United States, with hundreds of jurisdictions poised to develop programs in the near future. Positive peer influence can be a very powerful force for youth that may be headed down the wrong path. Youth courts also offer first-time offenders exposure to positive adult role models.

Although youth court programs base their operations on a similar overall philosophy—holding juvenile offenders accountable and educating youth on the legal system—the ways in which programs structure themselves and operate on a day-to-day basis vary significantly. The National Youth Court Center will serve as a central point of contact for beginning programs, and provide valuable guidance to programs already in operation. NYCC services and products offered or in development include:

- Information Clearinghouse
- Youth Court Guidelines/Resource Compendium
- Student Membership Manuals and Volunteer Instructor Guide
- Youth Court Video
- Regional Training Programs
- Technical Assistance
- National Youth Court Conference
- Youth Court Web Site (www.youthcourt.net)

For more information please contact us at:
National Youth Court Center
c/o American Probation and Parole Association
P.O. Box 11910
Lexington, KY 40578-1910
(606) 244-8209
Fax: (606) 244-8001
nycc@csg.org
NOTE: Effective April 1, Area code will be 859.

Mark Your Calendars
for the
National Youth Court Center's

Youth Court Conference 2000!

Dates: October 22-24, 2000

Location: Albuquerque, New Mexico

Affordable Early Registration Fee! $110 for youths/$140 for adults
(Registration fee includes two continental breakfasts, two lunches and one reception.)

Great Lodging Rates! $60 for single occupancy/$75 for double occupancy at the Albuquerque Hilton
(Rates are per night. Applicable taxes will be added.)

Registration is limited! Watch your mail for the conference registration brochure coming this spring! Visit our web site at www.youthcourt.net for conference updates and more information, or contact us at nycc@csg.org or (606) 244-8209.
NOTE: Effective April 1, Area code will be 859.

Coordinated by the American Probation and Parole Association and
Sponsored by the Office of Juvenile Justice and Delinquency Prevention

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Corporate Member Profile

Allvest Information Services, Inc.

In 1998, the Washington State Juvenile Court Administrators Association (WAJCA) partnered with Allvest Information Services, Inc. to develop and implement a risk assessment and case management software tool for county juvenile justice operations. The tool, entitled "Back On Track" allows users to move away from the highly discretionary process used by probation counselors with varying philosophies about juvenile justice, different levels of professional knowledge and diverse criteria for making disposition recommendations. Back On Track allows users to make realistic predictions about a youth's level of risk for continued delinquent behavior, and make recommendations to the Court that will serve to reduce that risk.

Back On Track combines researched-based risk assessment and easy-to-use case management for juvenile justice systems from small departments to large cities and states. The software enables judges, court administrators, probation counselors and other professionals to objectively assess each youth in their system and effectively track and manage behavior and treatment.

Allvest
Information Services, Inc.

Back On Track is primarily targeted to juvenile justice systems from small departments to large cities and states.

At Allvest, we're dedicated to creating the technology for the modern juvenile justice system. We know information – fast, accurate and complete – is the key. It takes information to identify at-risk kids and assess their risk and needs. We need it to increase objectivity, reduce bias and decide the most effective treatment. To find the best solutions, we have to share information among caseworkers, courts, police, probation counselors and everyone else trying to help a kid remake a life. Our partnering with the APPA will help us expand this vision into the future through our exposure with other organizations working toward this same goal.

For more information contact:

Frank Jones
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Fax (206) 521-4994
http://www.allvest.com

Request for Site Proposals

APPA Institute – Bringing People Together

Our society has a strong tradition of coming together to decide what to do, both individually and collectively, to achieve common goals for ourselves, our workplace, our children and our communities. The APPA Institute unites people together for a common purpose – to boost performance and effectiveness of correctional programs, define national priorities for community corrections, create alternative ways to resolve the overcrowded prison worries, link people with information and answers and build safer communities for our future. Hosting an APPA Institute can be a rewarding and exciting experience. We invite you to join together with APPA as we chart a course for innovation, excellence and growth.

Applications are being accepted to Host Future APPA Institutes

Applications to host future APPA Winter and Annual Institutes are now being accepted. Any board member, affiliate association or state agency wishing to request consideration of a particular city must complete an application. In order to be considered by the site selection committee, APPA must receive completed applications by May 1, 2000.

Further information and applications may be obtained from:

c/o The Council of State Governments
P.O. Box 11910
Lexington, KY 40578
(606) 244-8196
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email: wwatchel@csg.org
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American Probation and Parole Association

Corporate Members

Corporations with an interest in the field of probation, parole and community corrections are invited to become APPA corporate members. Corporate members receive benefits such as enhanced visibility among APPA's nationwide network of community corrections professionals, as well as shared information on the latest trends and issues that specifically affect community corrections.

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Roche Diagnostic Corporation

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Director and Executive Vice President
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Website: www.trackingsystemscorp.com

National Curriculum and Training Institute

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NOTE: Effective April 1, Area code will be 859.

Sentencing and Corrections - Where are They Headed?

Exploring Major Issues

"Fragmented and fracturing," "conflicting and contradictory," describe sentencing and corrections in America today. There is no longer any standard approach. What seems at first glance to be a nearly monolithic set of tough-on-crime policies is really illusory. Some states have abolished parole, but some retain it. Some have presumptive sentencing guidelines; others have a voluntary system. In a climate favorable to determinate sentencing, the indeterminate approach remains widespread. What's more, policies developed in the get-tough climate are being challenged by new approaches based on premises that do not share the assumptions of our current, essentially retributive system of justice.

With the picture so complex, it is not easy to discern the goals of sentencing policy as expressed in correctional practice. That makes it difficult to come to any conclusion about whether goals are being met. The people who develop and carry out these policies are acutely aware that what happens in sentencing and corrections has enormous consequences, not only for resource allocation but also, more fundamentally, for the quality of justice and for public safety. The size of the population under some form of correctional supervision, now approaching 5.9 million, is only the most obvious consequence. Helping policymakers sort out the salient issues could go a long way to maximize their effectiveness.

The Issues

To help policymakers decide if there is a better way to think about sentencing and corrections, the National Institute of Justice (NIJ), the research arm of the Justice Department, along with the Department's Corrections Program Office (CPO), has been holding a series of "executive sessions" to discuss the issues. The goal of the five sessions, which began in 1998 and continue into 2000, is to explore the purposes and functions of sentencing and corrections and their interdependence.

Practitioners and scholars prominent in their fields, who represent a broad cross-section of points of view, come together in the sessions to look at a vast array of issues. Among them are the decline of indeterminate sentencing, the erosion of judicial discretion, the eclipse of parole boards, the introduction of guideline systems, and the increased attention paid to risk-based sentencing. They look also at whether it is possible to reduce disparity in sentencing while accommodating differently situated offenders, how the imperative of public safety can be reconciled with the need for offender rehabilitation, how to address the spectrum of activities that take place when prisoners reenter their communities, and whether the justice system adequately provides for participation by victims and affected communities, how innovations like restorative and community justice can be integrated into the system. They discuss the conflicting values that explain the complexity in sentencing and corrections and whether this conflict can ever be resolved.

Fruits of the discussions

To get the products of the discussions out as soon as possible and into the hands of the people who can use them, NIJ and the CPO have released the first round of the papers from the sessions. The four consist of 1) an overview of the fragmented state of sentencing and corrections today, 2) an exploration of the essentially contradictory sentencing structures that coexist uneasily, 3) an inquiry into whether restorative initiatives can be integrated into the current system of justice, and 4) a proposal for reforming sentencing and corrections to better ensure public safety.

These first four are intended as a kind of conceptual framework or context for the topics dealt with in subsequent papers. In all, NIJ anticipates publishing the full series of discussions – as many as 16 papers – in the coming months.

Is there a better way?

In the 1980s and 1990s, NIJ and Harvard's Kennedy School of Government sponsored a series of "executive sessions" on policing, with a similar goal–to help policymakers sort through and see through a tangle of seemingly impenetrable issues so they could examine the strengths and weaknesses of modern policing and law enforcement. It's been suggested that those sessions played a role in conceptualizing what was at the time a new paradigm–community policing.

The current sessions are modeled on the policing seminars. Whether they will be instrumental in developing a new paradigm for sentencing and corrections remains to be seen. There is today an environment of openness to new ideas in sentencing and corrections, and our hope is that the sessions and the papers from them will provoke comment, promote further discussion and constitute a set of basic resource documents for policymakers. ❐

Jeremy Travis is the Director of the National Institute of Justice, U.S. Department of Justice. Larry Meachum is the Director of the Corrections Program Office, U.S. Department of Justice.

Sentencing and Corrections: Issues for the 21st Century: Papers from the Executive Sessions on Sentencing and Corrections

The four papers now available are:

- *The Fragmentation of Sentencing and Corrections in America*, by Michael Tonry (NCJ 175721).
- *Reconsidering Indeterminate and Structured Sentencing*, by Michael Tonry (NCJ 175722).
- *Incorporating Restorative and Community Justice into American Sentencing and Corrections*, by Leena Kurki (NCJ 175723).
- *Reforming Sentencing and Corrections for Just Punishment and Public Safety*, by Michael E. Smith and Walter Dickey (NCJ 175724).

Copies can be obtained free of charge from the National Criminal Justice Reference Service (NCJRS) by calling 800-851-3420, emailing askncjrs@ncjrs.org, or writing to NCJRS, Box 6000, Rockville, MD 20849-6000. Copies may also be downloading from the NIJ web site – www.ojp.usdoj.gov/nij.

BY JEREMY TRAVIS AND LARRY MEACHUM

NIC Update

NIC Welcomes New Staff for 2000

The Community Corrections Division of the National Institute of Corrections (NIC) is proud to welcome its newest staff member Cranston Mitchell. Cranston is the former chairman of the Missouri Board of Probation and Parole. He is currently on a two year assignment to NIC from Missouri through an intergovernmental personnel act (IPA). We believe that his years of correctional experience will benefit both NIC and the community corrections field. He may be reached at (800) 995-6423 or (202) 307-3106 ext. 153. E-mail cjmitchell@bop.gov.

One of the major program areas for NIC in FY 2000 will be the transition of offenders from secure confinement to the community. NIC will work with selected jurisdictions to help them develop more effective methods of processing offenders and ensuring successful outcomes.

Effective treatment interventions with offenders and effective interventions with female offenders will also play important roles in the Community Corrections Division's program plan for FY 2000. All of these offender-focused measures will assist jurisdictions work more effectively with that one component of the new role that corrections will assume in the 21st century. ❐

Eduardo Barajas, Jr. is a Correctional Program Specialist with the Community Corrections Division of the National Institute of Corrections in Washington, DC.

BY EDUARDO BARAJAS, JR.

American Probation and Parole Association

American Probation & Parole Association Associate member

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Corporations with an interest in the field of probation, parole and community corrections are invited to become APPA associate members. Like corporate membership, the goal of associate membership is to engage our corporate friends in association activities and to share information with each other.

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SPEAK OUT!

Youth Violence: The Root of the Problem

What happened at Columbine and Heritage High Schools is not atypical. Disturbing trends of violence have proliferated our society for years. We search for answers but find few immediate solutions. We discover that all the laws, prisons and quick fixes have shown only marginal results.

We ask lawmakers to heal our societal problems but avoid accepting responsibility ourselves. Many politicians oblige by passing quick-fix laws that divert our attention instead of focusing efforts on long-term goals. Those who obscure the primary issues are motivated by self-serving interests such as money, power, empire-building or winning the next election. Government has systematically usurped the role of parents by assuming more responsibility and limiting parents' authority to discipline. By default, government has become the impersonal parent.

Adolescents have erupted in a reign of violence and we ask why. Some of the primary answers relate to the deterioration of family, loss of conscience, values, responsibility, empathy and spirituality. Children yearn for firm and fair guidance that translates into an expression of love. When their needs go unfulfilled, children react with frustration, anger and then violence. Our children have become confused and desensitized from toxic and mixed messages from our culture and part-time parents. We must begin to treat our children as our number one priority. Let's celebrate parents and volunteers who expend the energy to nurture healthy, happy and well-adjusted children.

Violence is an everyday occurrence in the ghettos of America. Shamefully, it took tragedies in predominately white, rural high schools to cause us to ponder our future. Americans espouse non-violence, but we are addicted to power, sex and brutality. This begs the question: Why does our society legitimize violence as an acceptable way to resolve conflict?

I propose we look beyond secondary factors such as crime, violent video games, guns, gangs and drugs. Those factors merely represent the fatal consequences of the loss of primary influences such as values and responsibility. Secondary factors divert our attention from the painful truth that many have abdicated their responsibility for parenting, educating, disciplining and teaching values to complete strangers. The more we abdicate our responsibilities the more complicated the solutions. We must heal hearts, minds and attitudes.

Progress will occur if we re-engineer our goals, eliminate turf battles, adopt healthy values, respect cultural differences, promote education and volunteer to assist those in need. To re-evaluate our approach requires stamina, honesty, confidence and public participation. We must slowly shift our attention to the primary causes of unrest rather than squandering more money on ill-fated programs and bureaucracy.

It takes courage to change the way we use our resources. Salinas, California Mayor Anna Caballero recently brought together 100 Salinas-area leaders to share their thoughts about our at-risk children. I suggest other cities consider a summit to collectively discuss these important issues.

We are a great society who cares about people. But, in order to cultivate a more healthy and vibrant community, our children and future generations depend on today's unselfish efforts. ❐

Carl Cieslikowski of Salinas, California holds an M.S. degree in Criminal Justice Administration, has 28 year of probation experience, is a governing board member at a local community college and is a member of the Salinas 100.

BY CARL CIESLIKOWSKI

LEGALLY SPEAKING...

Probation and Parole Conditions

This is the fifth in a series of columns discussing common probation and parole conditions and the legal issues associated with enforcement of these conditions. All jurisdictions impose some conditions on probationers and parolees. Imposition of these conditions is justified on several grounds, including rehabilitation, deterrence of criminal and/or inappropriate conduct, and protection of the public.[1] While courts generally allow parole and probation authorities to impose a wide variety of conditions, there are limitations on what types of conditions may be imposed.

In previous columns I discussed probation and parole conditions limiting an offender's association with other persons, conditions affecting the freedom of movement of the offender, conditions limiting the exercise of First Amendment rights, and conditions requiring the offender to participate in an education, job training or treatment program. In this column I examine probation and parole conditions requiring an offender to compensate either the state or the crime victim. Such conditions, generally referred to as restitution or community service, are common, but not without legal limitations.

Conditions Mandating Restitution

A common probation and parole condition is the requirement that the offender make a payment to the offender. Restitution is defined as "an equitable remedy under which a person is restored to his or her position prior to a loss or injury . . . (or) compensation for the wrongful taking of property."[2] It is different from victim compensation, where the money is given to the victim by the state. Restitution is paid by the offender to the victim. Also different from a fine, which is monies paid by the offender to the state and is not treated as compensation. Restitution serves both as an act of atonement by the offender and rehabilitation of the victim.

History

Restitution has a long history. It is mentioned in the Bible as well as the Code of Hammurabi, and received the enthusiastic support of the eighteenth century reformer Jeremy Bentham.[3] Restitution gained prominence as a sentencing option in the modern era in Alameda County, California in 1966.[4] Virtually every jurisdiction allows for the imposition of restitution as a probation condition, while twenty-nine states currently require a court to order restitution to the victim.[5] Restitution has been endorsed in the Model Penal Code and by the American Bar Association and the National Council on Crime and Delinquency.[6]

Restitution is also currently a very popular intermediate sanction.[7] Victim restitution forces the offender to "see firsthand the consequences of their deeds and thus may encourage the development of greater social responsibility and maturity."[8] A 1992 study reported that in a sample of 79,000 probationers, half of all property offenders and a quarter of all violent offenders were ordered to pay restitution as a condition of probation.[9]

It is important to note restitution is often victim initiated—if the victim does not inform the court of any losses suffered, restitution may not be ordered. Thus the victim must become involved in the process, even if there is no trial.

Additionally, several studies of restitution have revealed that the primary determinant of whether an offender was ordered to make restitution was the offender's ability to pay. Consequently, many offenders are excluded from consideration for restitution because they are too poor to be able to make restitution payments. This leads to a criticism of restitution as a sanction reserved only for the well-to-do, who may avoid incarceration simply because they have the resources to make restitution and are thus sentenced to probation.

Purposes

Restitution serves a number of purposes. These include (1) providing redress for victims of crime; (2) fostering rehabilitation of the offender; (3) providing accountability for the offender; (4) deterrence of further criminal activity; (5) an intermediate sanction that is less severe on the offender; (6) reduces demands on the criminal justice system; (7) reduces the need for vengeance.[10]

The sanction is most often used for crimes involving damage to property or economic crimes; it is used much less frequently for violent crimes, as it is difficult to determine the appropriate compensation for such injuries, and it is not seen as an appropriate sanction for such serious offenses.

Legal Issues

The authority to require an offender to make restitution has been repeatedly upheld by the courts. Ordinarily, there must be a finding or plea of guilty before restitution can be ordered, although this does not apply to cases involving restitution ordered during the pretrial diversion process. Courts may specify the amount, method of payment, and other conditions relating to restitution.[11]

Several issues involving restitution arise. First, the specific restitution amount must be set by the judge. Some states set the restitution amount by statute for a specific offense by statute. Most courts require payment of a fixed amount, rather than a general requirement to "compensate the victim for all losses suffered" or some such language.

Second, the judge duty may not delegate the setting of the restitution amount to the probation officer. Instead the judge must set the amount. While the amount cannot be delegated to the probation officer, the court may ask for a recommendation, and may delegate the mode of payment.

Third, the general rule is that restitution can be required only for crimes for which the offender has been convicted. Thus if a person is convicted of one burglary but suspected in several others, restitution can be required only for the conviction. Otherwise, due process issue.[12] Restitution may be required, however, in the absence of a conviction, if the offender admits responsibility for the other crimes.

Fourth, and perhaps most important, the United States Supreme Court, in *Bearden v. Georgia*,[13] ruled that probation cannot be

BY CRAIG HEMMENS

revoked because of an offender's inability to pay restitution as a condition of probation when the failure to pay is a result of indigence and not a mere refusal to pay. In this case Bearden was ordered to pay a $500 fine and $200 in restitution, but was unable to find employment and consequently failed to pay either the fine or thee restitution. His probation was revoked and h was incarcerated. He argued, and the Supreme Court, per Justice O'Connor, agreed, that the Equal Protection Clause of the Fourteenth Amendment barred the revocation of probation for a no-willful failure to pay restitution. The Court determined that revocation was proper only if the failure to pay was intentional and the offender did not make a good faith effort to obtain the means to pay.[14]

As a result of the ruling in *Bearden*, one state court has gone so far as to hold that bankruptcy served to discharge a restitution debt.[15] Another result of this ruling has been that some offenders may have completed all their probation conditions except restitution, and thus have their probation extended to allow them time to pay.[16]

Conditions Mandating Community Service

Many offenders are poor and lack the resources to pay monetary restitution. An alternative sanction is to require the performance of community service rather than the payment of monies, either to the state or the victim. Community service is defined as the performance of unpaid work for civic or nonprofit organizations,[17] and is increasing in popularity. Some states require community service as a condition of probation for virtually all offenses. The number of hours of community service of course varies, depending on the nature and seriousness of the offense. For instance Texas has a range from a minimum of 24 hours (for a misdemeanor) to 1000 hours (for a first degree felony).[18]

There are a few cases limiting the severity of community service. In one case, the court rejected a requirement that the probationer perform 6,200 hours of volunteer work in three years as unduly harsh, and unnecessary to carry out the purpose of the condition.[19] The court reasoned that requiring essentially full time work was not reasonably related to the purpose of the condition.

Conclusion

Probationers and parolees typically agree to abide by a number of conditions. While courts and parole authorities have broad authority to impose conditions, including conditions which mandate the payment of monies to an individual or agency, or the performance of community service, there are limits. Probation and parole conditions must always be both (1) reasonable and (2) related to one or more of the primary purposes of probation and parole: protection of the public, deterrence of criminal activity, and rehabilitation of the offender.

Probation and parole conditions requiring restitution or community service are challenged

(Continued on page 18)

infrequently, and are rarely successful. Such conditions are generally upheld, as they are seen as serving the multiple goals of probation and parole. However, the state must be able to show: (1) some need for the condition, (2) a relationship between the condition and the goals of probation and parole, and (3) that it is possible for the offender to make the payment or perform the service. Otherwise such a condition is both pointless and an invitation to violation of the terms of the probation or parole agreement.

While restitution is widely supported, it must be noted that the effectiveness of restitution as a deterrent is apparently nonexistent—several studies have in fact shown that those ordered to pay restitution had slightly higher failure rates than those who did not.[20] Also, most of those who were ordered to pay restitution would likely have received probation anyway, so the sanction does not serve to lessen prison overcrowding or increase the efficiency of the criminal justice system.[21]

Endnotes

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[18] Id.

[19] Gobert and Cohen, supra note 10.

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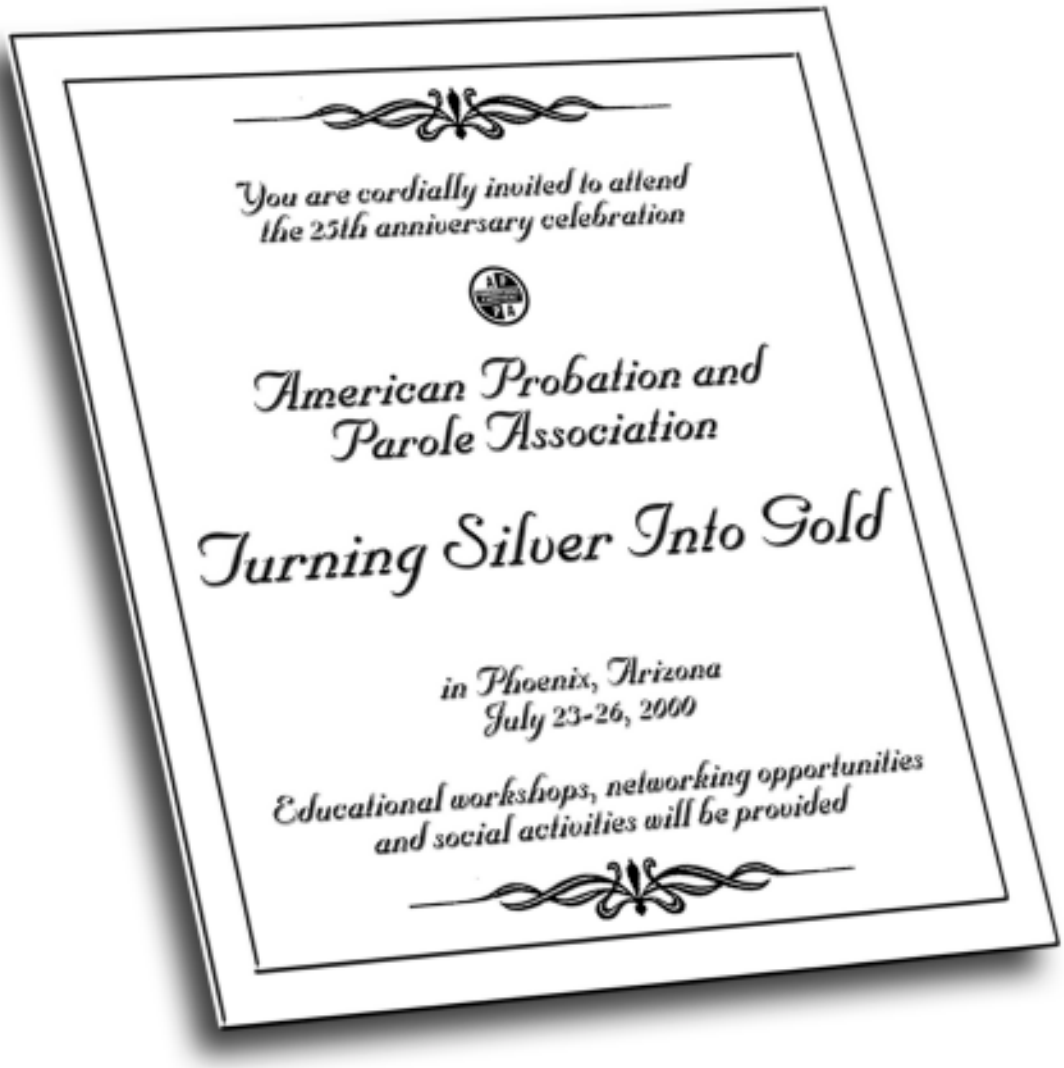

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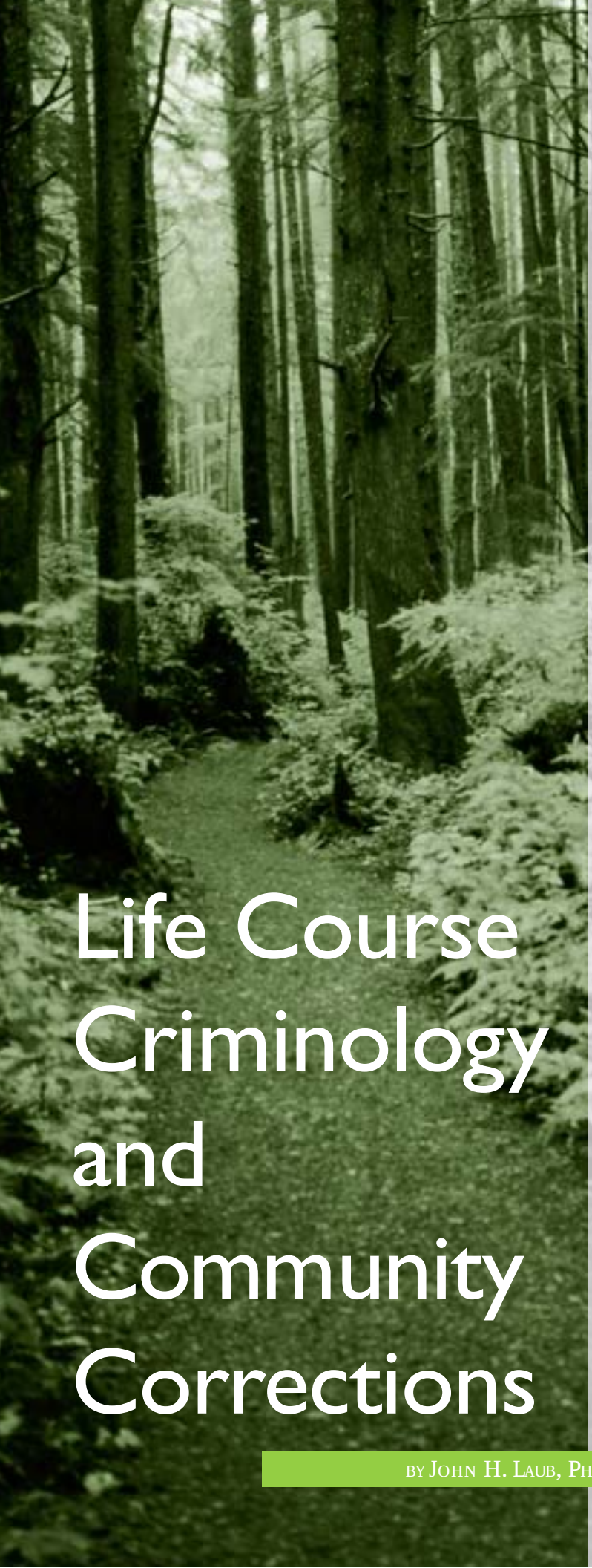

Life Course Criminology and Community Corrections

BY JOHN H. LAUB, PH.D AND LEANA C. ALLEN

THERE HAS BEEN A GENERAL SCHISM between theoretical criminology (explaining why people commit crime) and criminal justice practice (strategies to prevent or control criminal behavior). The reasons for this schism are complex and varied. This paper is an attempt to bridge the divide by examining the implications of life course criminology, particularly Sampson and Laub's (1993) Age-Graded Theory of Informal Social Control, for criminal justice, generally, and in the realm of community corrections, specifically.

We begin by explicating the life course perspective and Sampson and Laub's (1993) theory of crime, including a brief description of the empirical support for the theory. Second, we discuss general implications for the criminal justice system, especially in the domain of community corrections. We will make the case that certain strategies currently in use are compatible with Sampson and Laub's life course theory of crime and should, in turn, be effective in reducing criminal behavior. Other strategies that are being employed are incompatible with the theory and are less likely to be effective in reducing recidivism. Finally, we present suggestions for restructuring community corrections to create effective alternative sanctions based on important concepts from life course criminology. The overriding goal is to demonstrate the relevance of life course criminology for criminal justice practice and to reshape the emerging vision of what community corrections should be.

The Life Course Perspective

The life course may be defined as pathways through the life span involving a sequence of culturally defined, age-graded roles and social transitions enacted over time (Elder, 1985). For example, in American culture one dominant pathway for an individual to follow is to attend school, often through college, to find employment that may develop into a career, to marry and to have children. Though variation is possible in both the order of these events and the age at which an individual may experience them, the described sequence is, for the most part, the traditional, culturally defined pathway for many individuals. Some life course events may be characterized as age-graded, while others are not. In the United States, for example, states have passed laws specifying the minimum age at which individuals may legally be married or employed. Thus, these events are age-graded in the sense that the opportunity to experience them is defined by age.

Two central concepts underlie the analysis of life course dynamics; trajectories and transitions (Elder, 1985). Trajectories may be described as pathways or lines of development throughout life. These long-term patterns of behavior may include work life, marriage, parenthood or even criminal behavior. Transitions, on the other hand, are short term events embedded in trajectories which may include starting a new job, getting married, having a child or being sentenced to prison. Because transitions and trajectories are so closely connected, transitionary events may lead to turning points, or changes in an individual's trajectory or life course path. For example, getting married may have a significant influence on one's life and behavior, from changing where a person lives or works to changing the number and type of friends with whom they associate. In short, turning points are closely linked to role transitions and are helpful in understanding changes in human behavior over the life course.

At the individual level, the life course perspective emphasizes the extent of stability and change in an individual's behavior and personality attributes over time through the connection of trajectories and transitions. While the long-term view embodied by trajectories implies a connection

between childhood events and experiences in adulthood (continuity), the simultaneous shorter-term view implies that transitions or turning points can modify (change) the course of life trajectories by redirecting pathways. To address these phenomena, life course researchers study individual lives through time using longitudinal data.

Age-Graded Theory of Informal Social Control

One of the richest data sources for studying lives through time is that compiled by Sheldon and Eleanor Glueck at the Harvard Law School. Begun in 1940, the original sample involved a comparison of 500 officially defined delinquents from two Massachusetts reform schools for boys and 500 nondelinquent boys from the Boston public schools (See Glueck and Glueck, 1950, for details of this study). Nondelinquent status was determined on the basis of official record checks and interviews with teachers, parents and the boys themselves. A unique aspect of this study was the matching design. Specifically, the delinquents and the nondelinquents were matched case by case on age, race/ethnicity, measured intelligence and neighborhood socioeconomic status. That 500 of the boys were persistent delinquent and the other 500 avoided delinquency in childhood, thus, cannot be attributed to age differences, ethnicity, IQ or residence in slum areas.

The initial period of data collection for the Gluecks' study took eight years. The original sample of 1,000 boys was also followed up at two later points – at the age of 25 and again at the age of 32 (see Glueck and Glueck, 1968, for details). As a result, extensive data are available for nearly 90 percent of the original sample throughout childhood, adolescence and young adulthood. The Gluecks collected a wide range of data for analysis relating to criminal career histories, criminal justice interventions, family life, school and employment history and recreational activities for both delinquents and nondelinquents.

For many years, Laub and Sampson have been restoring, recoding and reanalyzing the Gluecks' longitudinal data on juvenile delinquency and adult crime. The overriding goal of this project was to examine crime and deviance in childhood, adolescence and adulthood in a way that recognized the significance of both continuity and change over the life course. To do so, they synthesized and integrated the criminological literature on childhood antisocial behavior, adolescent delinquency and adult crime with theory and research on the life course. By uniting a developmental, life course perspective with research on antisocial and criminal behavior and social control theory, Sampson and Laub (1993) have developed a new theory of the initiation, continuation and cessation of crime and delinquency over the life course, the Age-Graded Theory of Informal Social Control.

The organizing principle of Sampson and Laub's (1993) theory is social control—the idea that delinquency is more likely when an individual's bond to society is weak or broken. Somewhat different from Hirschi's (1969) traditional social control theory, Sampson and Laub focus more on social bonding over the life course, suggesting that the institutions of both formal and informal social control vary throughout life largely due to age. Particularly important to this theory are informal social controls, which are reflected in the structure of interpersonal bonds that link members of society to each other and to larger social institutions, such as school, work and family. These social relations between individuals (e.g., parent-child, teacher-student, employer-employee) at each stage of the life course are characterized as a form of social investment or social capital (Coleman, 1988). In other words, strong social capital derives from strong social bonds that provide social and psychological resources that individuals may draw on as they move through life transitions. The concept of social capital also conveys the sense that the stronger an individual's bond to others and to societal institutions, the more that person stands to lose by engaging in delinquent or criminal behavior.

In addition to the central concept of informal social control, this theory also draws from a large body of literature on continuity and change in delinquent and criminal behavior over the life course. From these various sources, Sampson and Laub's (1993) theory recognizes the importance of both stability and change in the life course and proposes three thematic ideas regarding age-graded social control. The first concerns the mediating effect of structural and bonding variables on juvenile delinquency; the second centers on the consequences of delinquency and antisocial behavior for adult outcomes; and the third focuses on the explanation of adult crime and deviance in relation to adult informal social control and social capital.

Structure and Process in Adolescent Delinquency

In explaining the onset of delinquency, criminologists have typically embraced either structural factors [e.g., Shaw and McKay's (1942) social disorganization theory] or process variables [e.g., Hirschi's (1969) social control theory]. The Age-Graded Theory suggests that such a separation is a mistake and joins structural and process variables along with individual characteristics, like temperament and early conduct disorder, into a single theoretical model. Thus, the first building block of the theory focuses on both structural factors, such as poverty or broken homes, and process variables, including attachment to family or school. Specifically, this theoretical model proposes that structural context influences dimensions of informal social controls by the family and school, which in turn explain variations in delinquency.

Recently, research in criminology has begun to refocus its attention on the role of the family in explaining delinquency. Consistent with a theory of informal social control, Sampson and Laub (1993) suggest that delinquency in childhood and adolescence results from weak bonds to the family. Informal social controls derived from the family include the consistent use of discipline and monitoring by parents and attachment to the family. The key to these three components lies in the extent to which they facilitate linking the child to family and ultimately society through emotional bonds of attachment and direct forms of control, monitoring and punishment. Like the family, the school is also considered to be an important socializing institution in the prevention of delinquency. Therefore, this theory proposes that weak attachment to school and poor school performance increase delinquency.

In addition to the direct effects of social bonds to family and school, this theory proposes that social structural factors, such as family disruption, unemployment, residential mobility and socioeconomic status, play an indirect role in delinquency by influencing social bonds. Some authors have argued that socioeconomic disadvantage has potentially adverse effects on parents, such that parental difficulties are more likely to develop and good parenting is impeded (e.g., McLoyd, 1990). Similarly, factors related to socioeconomic disadvantage such as poverty and household crowding may disrupt bonds of attachment between the child and school and may lead to educational deficiencies. If true, one would expect poverty and disadvantage to have their effects on delinquency transmitted through parenting. Therefore, this theory predicts that the effects of structural background factors on delinquency will be mediated by family and school bonding.

The theoretically predicted relationship between social bonds to family and school and delinquent behavior in childhood is supported by a great deal of empirical research. Some evidence has indicated that social bonds in childhood, as determined by parenting variables, consistently predict delinquency. In an extensive review, Loeber and Stouthamer-

Loeber (1986) report that the strongest family predictors of delinquency were parental involvement, monitoring, discipline and rejection. Moreover, parenting variables continue to have a direct effect even after controlling for other predictors found to be important determinants of delinquency. Results from Sampson and Laub's (1993) analysis of the Glueck data also find that when bonds to family or school are weak or broken, delinquency is more likely. Regardless of early childhood propensity, parental discipline, supervision and attachment consistently influence delinquent conduct. Additionally, school attachment is found to be an important inhibitory force in delinquency causation.

In addition to the importance of ties to family and school, the theoretical prediction of an indirect effect of structural factors also finds support in the empirical literature. A study by Larzelere and Patterson (1990) finds that the effect of socioeconomic status on delinquency is mediated entirely by parental discipline and monitoring. Analysis of the Gluecks' data also finds that structural factors, including residential mobility, socioeconomic status and family disruption, influence delinquency primarily through family bonds. In other words, structural factors influence how parents and children relate and how families function (Sampson and Laub, 1994). These family relationships then influence delinquency such that children are more likely to be delinquent if they are poorly monitored by, supervised by, or attached to their parents. Overall, the empirical evidence is consistent with Sampson and Laub's first theoretical prediction that both structural factors and bonds to family and school predict childhood and adolescent delinquency and that the influence of structural factors is primarily mediated by family bonding.

The Importance of Continuity Between Childhood and Adulthood

Sampson and Laub's (1993) theory also incorporates the considerable evidence that antisocial behavior is relatively stable across stages of the life course. The second proposition contends that childhood and adolescent antisocial behavior, like delinquency, conduct disorder and violent temper tantrums, extend throughout adulthood across a variety of life's domains, including crime, deviance and drug or alcohol abuse. In other words, antisocial behavior in childhood predicts a wide range of troublesome adult outcomes as well as dimensions of adult social bonding, including economic dependency, educational attainment, attachment to the labor force and quality of marital experiences. Finally, these outcomes occur independent of traditional sociological and psychological variables such as social class background, ethnicity, IQ and even the family and school factors suggested to predict the onset of delinquency.

There are many explanations for the link between delinquency and crime over time. The population heterogeneity perspective suggests that childhood delinquency has no causal influence on adult crime; instead, both are caused by an underlying criminogenic trait (see for example, Gottfredson and Hirschi, 1990 who argue that self-control is the latent trait). The state dependence perspective, on the other hand, points to a causal influence of prior delinquency in facilitating future crime (Nagin and Paternoster, 1991). State dependence may occur in many ways; however, Sampson and Laub (1993, 1997) emphasize a developmental model of cumulative continuity. This process suggests that delinquency continues into adulthood because of its negative consequences for future life chances. For example, arrest, official labeling, incarceration and other negative life events associated with delinquency may lead to decreased opportunities, including failure in school and unemployment. Delinquent activities are also likely to sever informal social bonds to school, friends and family and to jeopardize the development of adult social bonds. In this way, childhood delinquency has an indirect effect on adult criminal behavior through the weakening of social bonds. Thus, the theory proposes that crime, deviance and informal social control are intimately linked over the full life course.

The second theoretical prediction, that there is continuity in delinquent and antisocial behavior from childhood to adulthood, also receives support from the empirical literature. There is much research spanning several decades which indicates a great deal of stability and continuity in criminal behavior over time. In fact, Robins (1978) demonstrates that childhood delinquency is almost a prerequisite for adult offending. More recently, Caspi and Moffitt (1993) note that continuities in antisocial behavior have also been replicated in nations other than the United States (e.g., Canada, England, Finland, New Zealand and Sweden) and with multiple methods of assessment (e.g., official records, teacher ratings, parent reports, peer nominations). Taken as a whole, these different studies across time, space and method yield an impressive generalization that is rare in the social sciences. Results from the Glueck data also find that independent of age, IQ, socioeconomic status and ethnicity, both the delinquents and the nondelinquents displayed behavioral consistency well into adulthood (Sampson and Laub, 1993). Thus, a large body of research supports Sampson and Laub's contention that childhood delinquency leads to adult criminal behavior.

Research has also demonstrated that childhood and adolescent delinquency are related to a variety of other troublesome adult outcomes, including economic dependence and marital instability. Robins (1966) found strong relationships between childhood antisocial behavior and adult occupational status, job stability, income and residential mobility. Analysis of the Gluecks' data also indicates that childhood delinquency predicts educational, economic, employment and family status well into adulthood (Sampson and Laub, 1993). Continuity in behavior may also be fueled by the negative effects of official sanctions on opportunities in adulthood, and research supports this contention. Specifically, analysis of the Gluecks' data found that adult social ties to work and family were influenced by prior delinquency and official sanctions. Incarceration as a juvenile and as a young adult was negatively related to later job stability, which in turn was negatively related to continued involvement in crime over the life course (Laub and Sampson, 1995). Although this analysis found little direct effect of incarceration on subsequent criminality, the indirect criminogenic effects through job stability appear substantively important. Recent research also supports the cumulative continuity thesis, finding a detrimental effect of delinquent behavior on the labor market prospects of young males (Hagan, 1993). Overall, the evidence suggests that delinquent behavior is relatively stable across stages of the life course

and that antisocial behavior predicts a wide range of troublesome adult outcomes.

The Significance of Change in the Life Course

The concept of change has not received the same attention in the social sciences as its counterpart, continuity. Sampson and Laub's (1993) theory recognizes that the two concepts are not mutually exclusive, and the third focus of the theory is change in deviance and offending throughout the life course. Despite significant continuity in behavior, Sampson and Laub argue that salient life events and social bonds in adulthood, especially attachment to work and to a spouse, can counteract, at least to some extent, the trajectories of early child development. These events and the social capital they provide can change an individual's path from a delinquent trajectory to a nondelinquent one or vice versa. In other words, pathways to both crime and conformity are modified by key institutions of social control in the transition to adulthood independent of prior differences in criminal propensity.

Contrary to the emphasis of many life course researchers, Sampson and Laub argue that the mere occurrence of an event (e.g., getting married or getting a job) or the timing of that event are not the determining factors. Rather, the changes in social bonds and social capital that occur in conjunction with a transition may cause the change in behavior. Similarly, the mere presence of a relationship between adults is not sufficient to produce social capital. Instead, adult social ties are important insofar as they create interdependent systems of obligation and restraint that impose significant costs for translating criminal propensities into action. For example, marriage per se may not increase social control, but close emotional ties and mutual investment increase the social bond between individuals and, all else being equal, should lead to a reduction in criminal behavior. Sampson and Laub (1993) believe that adults, regardless of delinquent background, will be inhibited from committing crime to the extent that they have social capital invested in their work and family lives. By contrast, those subject to weak informal social control as an adult are freer to engage in deviant behavior, even if nondelinquent as a youth.

Though this focus on change may seem to be at odds with the earlier discussion of the stability of criminal behavior over time, evidence indicates that continuity is far from perfect. Additionally, lives are often unpredictable, and change is ever present. Sampson and Laub (1993; Laub and Sampson, 1993) propose a dynamic theory of social capital and informal social control that at once incorporates stability and change in criminal behavior. This theoretical framework implies that adult social ties can modify childhood trajectories of crime despite general stability. Specifically, adult social bonds are suggested to have a direct negative effect on adult criminal behavior, controlling for childhood delinquency.

The stability of criminal behavior patterns, especially aggression, throughout the life course is one of the most consistently documented patterns found in longitudinal research. However, not all delinquent children grow up to be criminal or antisocial as adults. Somewhat paradoxically, while studies show that antisocial behavior in children is one of the best predictors of antisocial behavior in adults, most antisocial children do not become antisocial adults. In a review of the literature, Loeber and LeBlanc (1990) report that despite continuity, studies also show great change in behavior across the life course. Sampson and Laub's (1993) theory suggests that this change is the result of important life events and social bonds in adulthood, particularly job stability and attachment to a spouse. There is evidence supporting this prediction as well. Strong adult bonds to work are predicted to decrease the likelihood of offending. Farrington and colleagues (1986) find that individuals are more likely to commit property crimes during periods of unemployment. Sampson and Laub's (1993) study of the Gluecks' data demonstrates that job stability is consistently and negatively related to crime and deviance.

Similarly, Sampson and Laub (1993) predict that strong marital attachment decreases offending. In a study of incarcerated offenders, Horney and her colleagues (1995) report that regardless of their overall level of offending, men were less likely to be involved in crime when they were living with a wife or attending school. Farrington and West (1995) also found that staying married and having children, indicators of a strong marital bond, were related to decreased offending; however, separation from a spouse led to increased offending. Sampson and Laub's (1993) analysis of the Gluecks' data also supported this prediction, finding that strong marital attachment was related to changes in adult crime despite differences in early childhood delinquency (see also Laub, Nagin and Sampson, 1998).

In sum, the Age-Graded Theory of Informal Social Control brings together a focus on continuity and change. A major concept in this theoretical framework is the dynamic process whereby the interlocking nature of trajectories and transitions generates turning points or changes in the life course. Sampson and Laub (1993) found that some positive turning points in the life course were a cohesive marriage, meaningful work and serving in the military. A clear negative turning point was prolonged incarceration and subsequent job instability during the transition to young adulthood. Overall, a growing body of empirical literature supports the Age-Graded Theory of Informal Social Control. Research suggests that the strongest and most consistent effects on delinquency flow from the social bonds derived from family and school. At the same time, structural background factors have little direct effect on delinquency, but instead are mediated by intervening sources of informal social control. Additionally, individuals display behavioral consistency in offending or nonoffending patterns well into adulthood, and some evidence indicates that this occurs through a process of cumulative continuity. Consistent with the predictions of Sampson and Laub's (1993) theory, however, social ties in adulthood, especially job stability and marital attachment, are related to changes in adult criminal behavior. These results overall support the theoretical explanation of the onset of delinquency as well as the dual concern of the theory with continuity and change in behavior over the life course.

Rethinking Criminal Justice Practice

One important, and often unrealized, function of criminological theory is to provide some direction for controlling or preventing crime

(Wellford, 1997). Sampson and Laub's theory of crime, based on a life course perspective, offers new ways of thinking about crime control policy. Since the mid-1970s, the United States has embarked on a policy of unprecedented incarceration (MacKenzie, 1997), and from all appearances, the major thrust of current crime control policy is to lock up offenders regardless of age. For those offenders with extensive prior records, the public and the criminal justice system call for even longer sentences of incarceration (e.g., Three Strikes policies, mandatory sentences). Such policies assume that either individual deterrence or incapacitation will reduce further violence. However, there is little evidence that the increased use of incarceration has reduced crime (Cullen, 1994). In fact, Rose and Clear (1998) argue that an increasing reliance on state-imposed controls, such as incarceration, may have detrimental effects for both the offender and the community. For example, a reduction in informal social control in social networks may decrease the community's ability to regulate the behavior of its members.

The Age-Graded Theory of Informal Social Control makes it apparent that it is time to rethink current social policies like incarceration. Our current policies ignore the structural context of crime and the importance of informal social control and social capital derived from the basic institutions of society like family, school and work. This is not to say that imprisonment is unnecessary nor undeserved, nor even that it has no deterrent effect on crime. Rather, the emerging evidence suggests that these policies do not necessarily reduce crime and may in fact be counterproductive in the long run (Laub and Sampson, 1995; Rose and Clear, 1998).

"Community-based sentences can satisfy the important principle of just deserts without the devastating impact on employability that comes with a prison sentence."

One implication of Sampson and Laub's theory is that current policies of incarceration may produce unintended criminogenic effects by further damaging an offender's already weak social bonds. Sampson and Laub's (1993) research offers some pointed findings on the negative effects of lengthy prison sentences. In their reanalysis of the Gluecks' data, Sampson and Laub (1993) demonstrated that social bonds to employment were directly influenced by state sanctions (see also Laub and Sampson, 1995). That is, incarceration as a juvenile and as an adult had negative effects on later job stability, and this in turn increased the likelihood of continued involvement in crime over the life course. Simply put, lengthy prison terms severely damage the future job prospects of offenders.

Two strategies for ameliorating this situation are required. First, those who must be imprisoned should be able to update their education and participate in occupational programs in prison so that the potential for postrelease employment is maximized. Sampson and Laub's (1993) analysis revealed that individual change is possible, and therefore it is critical that individuals have the opportunity to reconnect to institutions such as family, school and work after a period of incarceration. Second, we must seriously rethink our current over-reliance on prison terms and examine the possibility that credible, strict punishments may be available in the community.

Sampson and Laub have argued that despite strong continuities between delinquency and adult antisocial behaviors, change is possible largely through the development of adult social bonds, including attachments to the labor force and cohesive marital bonds. The key concept here is the development of social capital in interpersonal relationships in adulthood (e.g., social bonds to a spouse or to work). To illustrate, it may not be enough to have a spouse or a job; more important is the quality of interpersonal ties. One strategy is the reduced use of incarceration and the greater use of community-based corrections. These may take the form of traditional or intensive-supervision probation, use of electronic monitoring and greater use of furloughs and parole to assist the offender in his or her reintegration into the community. Community-based sentences can satisfy the important principle of just deserts without the devastating impact on employability that comes with a prison sentence.

Viable Community Corrections Programs

According to Sampson and Laub's theory, effective sanctions would involve some method of building social bonds to family, employment and the community without incarcerating them. Some existing community corrections programs are able to do this and thus have the potential to be effective in reducing recidivism. These programs share similar features, a combined emphasis on surveillance and treatment, particularly job training and employment, education, family counseling and reconnecting with the community. Such programs include residential community corrections programs, day reporting centers and home confinement. Additionally, restorative justice, a relatively recent movement in the juvenile justice system, may be effective for both juvenile and adult offenders for some of the same reasons.

Residential and Semi-Residential Sanctions. Residential community corrections programs, home confinement programs and day reporting centers are very similar in their program content with the exception of where and how the offender is supervised. These types of programs should be successful in reducing recidivism because they provide a structured environment in which program participation requirements may be enforced to ensure that offenders take advantage of the opportunities to enhance their social capital. Residential and semi-residential strategies strongly encourage offenders to participate in the types of programs necessary to create meaningful social bonds with important institutions, including school, family, work and community. These programs also maintain the offender in the community rather than in prison, which may avoid the further weakening of an offender's social bonds.

As originally designed, residential community corrections programs (often referred to as halfway houses) have two goals: to reduce recidivism and to increase the prosocial behavior of offenders (Latessa and Travis, 1991). As a result of these goals, residents typically receive more services than traditional probationers, including vocational training, employment counseling, education and family counseling (Latessa and Travis, 1992). In general, participation in these services may foster change in criminal trajectories by increasing the employability and education of offenders as well as by improving their relationships with their family and their connection to the community. Some evidence suggests that these programs may facilitate readjustment into the community, providing participants with the ability to find and maintain employment and to reconnect with their families and communities. Additionally, in some programs, participants exhibited a somewhat decreased likelihood of being rearrested (Turner and Petersilia, 1996).

Similar to residential programs, the goals of home confinement include reducing recidivism and facilitating the internalization of informal controls for offenders (Renzema, 1992). Individuals in these programs are confined to their homes, but in reality, they may leave their residence often for employment purposes or to engage in a variety of authorized programs, including job training, education or community service. Interviews with program participants suggest that they view their sentence as an opportunity to review their lives, to develop better relationships with their families, and to obtain jobs or to develop better job attendance or performance (Baumer and Mendelsohn, 1992). If they take advantage of these opportunities and adhere to the requirements of the program, offenders may be able to reestablish or create strong bonds to work and to families, increasing their social capital. This, in turn, should decrease an offender's future criminal behavior.

Day reporting centers are similar to residential community corrections programs and home confinement in that offenders are required to report to the center during the day. However, they are not confined to their homes or to another facility at other times. Most day reporting centers emphasize program participation as well as surveillance through highly formalized scheduling and frequent contact with probation officers (McDevitt and Miliano, 1992). The earliest day reporting centers included community service requirements, employment opportunity programs, literacy training and education (McDevitt and Miliano, 1992). Proponents of this type of sanction believe that participation forces offenders to change aspects of their lifestyle and to engage in more prosocial behavior, rebuilding their social capital. While no rigorous evaluations of these programs have been conducted, some preliminary evidence indicates that nearly 80 percent of participants complete their sentences successfully (Clear and Braga, 1995).

Restorative Justice. Restorative justice is a relatively new strategy implemented in the juvenile justice system in some jurisdictions. In this process, offenders may avoid formal processing and formal sanctions by agreeing to participate in an informal community conference. The main principle of restorative justice is that crime does not just injure the victim, but also the offender and the community. For this reason, all those involved should be a part of the criminal justice system response (McElrea, 1996). Similar to Sampson and Laub's theory, proponents of restorative justice believe that punishment alone is ineffective and creates adjustment problems through weakened social bonds to the community, poor job prospects and poor family relationships (Bazemore, 1996). The goal of restorative justice is to create productive and responsible members of the community by strengthening social bonds to conventional groups, by recognizing the important role of relationships with families and other members of the community, and by repairing the bonds disrupted by the criminal act (Levrant, Cullen, Fulton and Wozniak, 1999; McElrea, 1996).

To accomplish all of these goals, conferences typically bring together the offender, the victim, family members of both offenders and victims, representatives of the community and law enforcement officials to determine how best to repair the harm done by the commission of a criminal act. The type of sanction an offender receives is determined by the group as a whole and may include restitution to the victim, volunteer community service and job training or employment. Though these programs are very recent and have not been subjected to evaluation, restorative justice may be successful in reducing offending by restoring the social bonds that are disrupted by criminal behavior. Additionally, preliminary research on the implementation of this type of program in New Zealand suggests that criminal behavior by adult repeat offenders may be reduced by about 10-20 percent (McElrea, 1996).

Community Corrections Strategies That Shouldn't Work

According to Sampson and Laub's theory of crime, several community corrections strategies currently in use may not be successful in restoring social bonds, which in turn reduces criminal behavior. These programs predominantly emphasize surveillance, with little or no attention to programs that may be capable of building social capital or social support (Cullen, 1994). These programs include boot camps and intensive supervision programs (ISP). Additionally, traditional probation as it is implemented today provides neither surveillance nor treatment.

Boot Camp Prisons. Boot camp prisons were modeled after military basic training and emphasize physical labor, military drill and ceremony and strict discipline (MacKenzie, Brame, McDowall and Souryal, 1995; Morash and Rucker, 1990). All boot camp programs share one common

factor, the military model, but other components of the programs vary widely. Some facilities attempt to combine the military style with programming like drug treatment, job training or education, but the amount of time devoted to these components versus work and military drill varies (MacKenzie et al., 1995; Morash and Rucker, 1990).

One purpose of boot camp programs is to deter offenders through a severe punishment while also providing a supposedly reintegrative, community framework in which the offender feels as if they have achieved an important goal (Morash and Rucker, 1990). Though boot camps are considered community correctional strategies or intermediate sanctions, most are not much different from spending time in prison, and some are even run on the grounds of correctional facilities. Though some boot camps provide greater access to employment or educational programs than traditional prison, the predominant focus of the sanction is discipline and control (MacKenzie et al., 1995). Some authors argue that if military service changes people for the better, it is probably because of the period of extended support and structure that they receive throughout their career rather than the brief period of basic training (MacKenzie and Parent, 1992). Additionally, the military provides employment and educational opportunities that enhance an individual's bonds to society (Sampson and Laub, 1996). Most boot camp prison graduates, on the other hand, spend only a brief period in a pseudo-military environment and return to their previous life with few educational or employment opportunities and with little follow-up, which may result in further criminal behavior.

The empirical evidence generally supports the suggestion that boot camps are not likely to be successful, finding that boot camp participants are no less likely to be rearrested or returned to prison than parolees (MacKenzie et al., 1993). In an analysis of boot camp programs in eight states, recidivism results varied between programs, suggesting that the military component, which is common to all programs, does not reduce recidivism (MacKenzie et al., 1995). This study also contrasts one program in which boot camp graduates recidivated more often than parolees or probationers with three programs in which boot camp graduates performed more successfully. The boot camp program that produced higher recidivism rates focused almost exclusively on military training and physical labor. On the other hand, the more successful programs spent a significant amount of time on treatment activities such as job training and education, suggesting that these types of programs may be the important component (MacKenzie et al., 1995).

Intensive Supervision Programs. Many reasons are cited for the development of Intensive Supervision Programs (ISP), including the perception that traditional probation is too soft on crime and the need for some intermediate between prison and probation that would reduce prison crowding and maintain community safety (Lurigio and Petersilia, 1992). The one common characteristic of the wide variety of ISPs is greater intensity of supervision than routine probation. Most programs require multiple weekly contacts, small caseloads and strict enforcement of conditions, and some programs include employment or community service as participation requirements (Petersilia and Turner, 1993). Despite the availability of these programs and some requirements to participate, most ISPs place much greater emphasis on monitoring and strict enforcement (Petersilia and Turner, 1993).

The developers of ISP assumed that the program would provide an intermediate between prison and probation that is cost effective, that provides stronger control than probation and that would avoid the criminogenic effects of prison (Petersilia and Turner, 1993). Despite the goal of avoiding the weakened social bonds that accompany prison, surveillance and monitoring are traditionally emphasized almost to the exclusion of programs that might be successful in increasing social bonds. As a result of the greatly increased surveillance and monitoring, more technical violations are uncovered, bringing more participants to the attention of the criminal justice system and often resulting in revocations. Additionally, most ISPs are probation enhancement programs, in which offenders who would normally receive traditional probation are assigned to ISP (Petersilia and Turner, 1993). Thus, the higher rates of technical violations that accompany the increased surveillance during ISP will actually result in more people experiencing prison (Clear and Braga, 1995). Empirical evidence supports the assertion that ISP will not be successful in reducing recidivism. Offenders who are assigned to ISP are no less likely to be arrested for new crimes (Petersilia and Turner, 1993).

Traditional Probation. As originated in 1841, the concept of probation should be successful in reducing recidivism. John Augustus began the practice of probation by taking custody of offenders awaiting trial who would otherwise be held in jail. After bailing them out, Augustus helped the men find employment, education and a place to live, and he claimed to be very successful in rehabilitating them (Petersilia, 1997). As originally developed, probation adheres to many of the concepts suggested to be important in Sampson and Laub's theory of crime. The practice of probation was capable of rebuilding an offender's social capital by providing employment opportunities without the detrimental effect of prison.

Currently, however, about two-thirds of those under correctional supervision are on probation, and caseloads average more than 100 offenders per probation officer (Petersilia, 1997). Some authors estimate that about 20 percent of probationers nationwide are on caseloads requiring no supervision, no personal contact and no services (Petersilia, 1997). If, as these estimates suggest, most individuals on probation receive no supervision and no treatment, it is impossible to increase their social bonds to reduce the likelihood of recidivism.

Empirical evidence also supports the assertion that probation as currently implemented does not comply with the theoretical principles of Sampson and Laub's theory of crime. In addition to the increasing numbers of individuals serving sentences of probation, the proportion successfully completing their sentence is declining (Petersilia, 1997). Some evidence, however, suggests that attention to Sampson and Laub's theory may produce better success. For example, some studies show that living with family and being employed while on probation reduces the likelihood of recidivism (Morgan, 1993). Additionally, those who participate in job training or educational programs and receive surveillance while on probation have a decreased likelihood of recidivism (Petersilia and Turner, 1993).

Restructuring Community Corrections

According to current empirical evidence and Sampson and Laub's theory, the implementation and success of community corrections programs is not as hopeless as many may think. To create programs that work in reducing the likelihood that offenders will recidivate while maintaining them within the community, many different factors are important. First, surveillance is a necessary part of all community corrections programs to ensure that offenders comply with the requirements of their sentence and to provide better community safety. However, programs aimed at increasing social capital and social support should receive equal emphasis (Cullen, 1994).

Surveillance may be a necessary component of community corrections programs in order to force offenders to comply with certain conditions. Many programs that have the potential to increase an offender's social bonds have difficulty convincing offenders to participate and experience high dropout rates as well (Bushway and Reuter, 1997). The drug treatment literature suggests that participation may be successful whether it is voluntary or coerced (Tonry and Lynch, 1996), so participation in job training or education programs may also be successful, even if it is forced. Surveillance is important both to ensure community safety and especially to force participation in programs that may be successful in increasing an officer's social bonds and thus reducing recidivism.

Though it is unquestionably an important component of community corrections programs, increased surveillance of offenders will undoubtedly result in a higher number of technical violations because offenders are monitored more closely. These programs must determine a more effective method of dealing with technical violations than through revocation and return to prison (Clear and Braga, 1995). This is especially important with enhancement programs which include offenders who otherwise would not have received a prison sentence. If officials respond to technical violations with prison time, a larger group of people will be exposed to prison and the related weakening of social capital. Additionally, studies of ISP have found a very weak correlation between technical violations and the commission of new crimes while under supervision (Petersilia and Turner, 1993). This implies that the commission of minor violations should be expected but may not necessarily lead to serious crimes. Thus, programs may be able to respond to technical violations with a series of graduated sanctions without jeopardizing community safety or the perception that these programs are "tough on crime."

A large body of research has documented that prison inmates typically have low levels of education and poor employment histories (Batiuk, Moke and Rountree, 1997). Additionally, a recent review of the research on job training programs suggests that former inmates who obtain employment commit fewer crimes than those who do not (Bushway and Reuter, 1997). Certain educational programs offered during incarceration have shown some promise in reducing postrelease recidivism. For example, precollege and college education programs and vocational training both increased postrelease employment and decreased recidivism rates (Batiuk et al., 1997; Bushway and Reuter, 1997). In fact, Batiuk and colleagues (1997) find that educational participation during incarceration indirectly decreases recidivism by increasing an offender's employment success. Translating these programs into a community corrections setting may be beneficial both in the reduction of recidivism and in the avoidance of the negative effect of prison.

Programs aimed at increasing job stability should also prove useful in a controlled community corrections setting that would minimize the criminogenic effects of imprisonment. Bushway and Reuter (1997) provide one example of a community-oriented program that focused on improving job stability, the Court Employment Project. In this program, offenders spent 90 days in job training and placement programs, and if they successfully completed the program, their charges were dismissed (Bushway and Reuter, 1997). In this way, offenders avoided any formal sanction and the resulting negative effect on social capital, and they were able to obtain important skills that may actually increase employability and job stability. Some evidence also indicated a reduction in recidivism for program participants.

There is very little research about community service programs and their effectiveness. These programs may serve a variety of purposes, including the creation of social bonds between the offender and his or her community. One study of the effect of community service programs found that while there was no difference in recidivism between those who participated and those who did not, the community received many important benefits in the labor performed by the offender (McDonald, 1992). By providing a necessary service and benefitting their community, offenders may feel more connected, may increase their social capital, and may also be less likely to recidivate. To maximize this potential, community service programs should attempt to assign offenders to work

"By providing a necessary service and benefitting their community, offenders may feel more connected, may increase their social capital, and may also be less likely to recidivate."

within their own neighborhood, increasing the likelihood of rebuilding social bonds.

One example of a program that incorporates several of these important components is "Operation Night Light," developed in Boston during the early 1990s (Corbett, 1998). This criminal justice response to a surge in violence, especially related to gang activity, attempted to increase probation enforcement through a partnership with police. Judges began to require curfews and area restrictions as conditions of probation, and police and probation officers together visited probationers in the evenings to enforce these conditions. While this enhanced the credibility of a probation sentence by increasing surveillance, the program also involved components that might rebuild an offender's bonds to family, work and the community. Police officers were able to refer certain probationers to a summer job training program in which offenders received work experience, life skills training, and if they completed the summer portion successfully, they were assigned a part-time job. The church community and other non-church based advocates also became involved in "Operation Night Light," providing programs, counseling, referrals to other services and mentoring for offenders. These types of programs may develop social bonds both between individuals as well as between an offender and his or her community. While no direct evaluation of the Boston program has been conducted, rates of violent crime in the area declined after its implementation. Thus, it appears that this strategy may be successful by providing a balance of surveillance, monitoring and programming designed to enhance social bonds.

Though many programs appear to have promise in reducing recidivism by addressing informal social controls as described in Sampson and Laub's theory of crime, only a few studies have empirically examined their effectiveness. Most research in community corrections has focused on boot camps and intensive supervision programs with little attention to other forms of alternative sanctions, including residential and semi-residential programs and community service. In light of Sampson and Laub's theory of crime and the generally consistent findings that boot camps and ISPs do not significantly reduce recidivism, researchers should direct their attention to other, potentially more effective, strategies. Evaluations should focus on the implementation and effectiveness of these programs and their individual components, such as job training and education, to determine their potential success in reducing recidivism.

Conclusions

The principles of life course criminology, especially Sampson and Laub's Age-Graded Theory of Informal Social Control, provide a variety of directions for the development, implementation and restructuring of community corrections. First, crime is caused by multiple factors, and this variety of factors must be addressed in attempts to control criminal behavior. Sampson and Laub also highlight the importance of age-graded informal social controls. The potential for the successful administration of community corrections programs may derive from a focus on rebuilding these informal social controls and reconnecting individuals to institutions in society. Finally, the concepts of continuity and change provide a context from which to view the potential success and failure of community strategies.

If uninterrupted, Sampson and Laub's theory would predict a continuation of criminal involvement from childhood antisocial behavior to serious juvenile delinquency to adult crime. These troublesome behaviors may also carry over into other domains of adult life, including problems with marriage, employment or drugs and alcohol. However, while continuity may be likely, change is also possible through formal and informal interventions. For example, Sampson and Laub (1996) demonstrate that for some individuals, participation in the military and utilization of the benefits of the G.I. Bill enhanced their socioeconomic status. Similarly, community corrections programs may provide the opportunity for offenders to experience a significant break from their previous lifestyle while receiving treatment that may increase their employability, education and social capital, thus decreasing their criminal behavior.

While highlighting the importance of treatment for the reduction of criminal behavior, we explicitly reject the common perception that community alternatives are necessarily soft on crime while prison is the only "tough on crime" sanction available. Through the components we have outlined, community corrections strategies may provide effective surveillance and control of offenders, maintaining the safety of the community while avoiding the placement of offenders in the criminogenic environment of prison. Moreover, community sanctions can promote offender accountability to their victim and the community at large. At the same time, program components aimed at improving informal social controls and providing social support may reduce criminal behavior, thus reducing the need for future incarceration or surveillance of these individuals.

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The Revocation of Probation Based on Fraud or Lack of Candor at Sentencing

Introduction

Sentencing has been described as the most difficult and complex decision made by a judge (Allen & Simonson, 1995). The sentencing function is made even more crucial to the administration of justice when one considers that approximately 90 percent of criminal defendants waive trial related rights and enter pleas of guilty in exchange for sentencing considerations (Reid, 1993). Over the past 20 years, increasing emphasis has been placed on the sentencing process and the rights attendant thereto. Accordingly, the task of the criminal defense lawyer has subtly, but profoundly, shifted from its focus on issues at the guilt-innocence phase of criminal proceedings, to the vagaries that surround the sentencing decision.

Numerous cases emphasize the importance of gaining complete and accurate information during the sentencing phase of criminal proceedings. And, it is not only the defendant that has an interest in the accuracy of information used at sentencing. The risk that dangerous offenders will be released into the community–or that those most deserving of punishment will escape justice–continue to be major social concerns. Indeed, a long recognized reason for the confidentiality of presentence reports is so that the government will have wide access to the array of information that is relied upon to formulate an appropriate sentence in any given case (*see, e.g., United States v. Huckaby*, 1995).

While an abundance of precautions exist in the rules of criminal procedure, statutes and case law to assure the accuracy of sentencing information, the general rule is that remedies are only applicable before sentencing (*see, e.g.*, *Federal Rules Criminal Procedure*, 1998). When a defendant is aggrieved by erroneous information in the sentencing process, most jurisdictions have post-conviction remedies in place to address the complaint. But what happens when it is the government who is the aggrieved party? For example, what remedies are available to the sentencing court or the prosecutor to set aside a sentence already commenced if that sentence is found to be based on false, fraudulent or incomplete information?

This paper examines recent cases in criminal sentencing that address the issue of whether, and under what authority, a sentencing court may in effect recall or revoke probation based on information obtained after the sentence has commenced. Although there are many streams of case law in this area, we focus on situations wherein a defendant is granted probation and the court thereafter seeks to revoke that probation based on information that was unknown to the court at the time of sentencing. Here, the legal analysis is usually contingent on the extent to which the court has been misled, or not completely informed, with regard to the defendant's situation. Hence, judges are confronted with making revocation decisions premised on a "fraud on the court" doctrine. The revocation of probation based on this form of pre-probation activity has generated some interesting issues and a considerable body of case law has now evolved from which theorists and practitioners may take guidance.

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Revocation of Probation Based on Fraud at Sentencing

There are two major lines of cases wherein courts have undertaken to set aside or revoke probation based on the subsequent discovery of information not known at sentencing. The first line of cases generally gives courts little problem and deals with those situations in which the sentencing court subsequently determines that its original sentence was void because it was not permitted under pertinent statutes. The second genre of cases presents more complex issues since they involve situations where a sentencing judge seeks to revoke a term probation based on theories of fraud or misrepresentation.

Recission of Probation Because the Original Sentence was Improper Under Governing Statutes

The decision in *People v. Wade* (1987) illustrates the common approach taken when a defendant fails to provide a sentencing court with information about prior convictions that, if known at sentencing, would have proscribed a sentence of probation under governing state statutes. In *Wade*, the defendant was accused of robbery. Pursuant to a stipulation that he had no prior convictions, the defendant was allowed to enter a plea of guilty and he was granted probation for a period of three years. Approximately nine months later the trial court was informed by a probation officer that the defendant had previously been convicted of armed robbery and rape. These offenses made him ineligible for probation under Illinois law as it existed at the time of sentencing. Acting on this information, the trial court vacated its previous order of probation and allowed the defendant to withdraw his plea of guilty. After a jury trial, the defendant was convicted and sentenced to a term of nine years imprisonment.

The defendant's subsequent appeal claimed the trial court was without jurisdiction to vacate its previous grant of probation and that the order voiding the original sentence to probation improperly allowed the state to reopen its case against the defendant. Rejecting the appellant's arguments, the Illinois Supreme Court held that the original grant of probation was invalid. In so holding, the court noted that a trial court has an obligation to order the criminal penalties mandated by the legislature. Because probation was not an authorized sentence, the original term of probation was void. Furthermore, because both parties stipulated at the first sentencing that the defendant had no previous convictions, it was not improper to allow the state to reopen its case when that stipulation was demonstrated to be inaccurate (*People v. Wade*, 1987).

Bumpus v. State (1996) makes the same point more vividly. Under Oklahoma law as it existed at the time of Bumpus' sentencing, a suspended sentence was impermissible for any individual who was being sentenced upon a third or subsequent conviction of a felony. Bumpus was sentenced to a term of probation; however, the trial court later learned the defendant had been convicted for two previous felonies. Thus, the defendant was ineligible for probation under governing state law. At rehearing, the trial court revoked the defendant's probation and sentenced the defendant to a term of incarceration. The defendant appealed.

On review by the Oklahoma Court of Criminal Appeals, the court held that remand was required. The court found it clear that the defendant was ineligible for the sentence he received from the trial court. Under these circumstances, the suspended portion of the defendant's sentence was voidable at its inception. By voidable, the court meant that the order suspending the defendant's original sentence was, from the moment it was entered, subject to being set aside upon proof the trial court was without authority to enter the order. The appellate court found that the suspended portion was voidable because there was no evidence of the previous convictions prior to the defendant's sentencing in the instant case. Rather, extrinsic evidence of the defendant's prior convictions arose at the revocation hearing after the appellant admitted under oath without objection that he had at least two prior felony convictions. This disclosure made the suspended portion of the defendant's sentence voidable. The appellate court further reasoned that to allow probation to be granted in derogation of the statutory requirements would constitute an invasion upon the power of the legislature.

Similarly, in *State v. Aucoin* (1986), the Louisiana Court of Appeals rejected the defendant's claim that it was improper for the trial court to resentence the defendant and deny probation after learning of the defendant's prior felony conviction. In *Aucoin*, the defendant was convicted of burglary, issued a five year suspended sentence and placed on three years supervised probation. The sentencing court was subsequently informed that Aucoin had previously been convicted of a felony in another state. Aucoin was thereafter resentenced to a five year period of incarceration.

On appeal, the Louisiana Court of Appeal noted that the state sentencing statute provided for a mandatory term and/or an enhanced penalty for repeat offenders. Furthermore, state law permitted the trial judge to issue a suspended sentence only for first time offenders. Thus, the original sentence authorizing probation was illegal. Because the court can correct an illegal sentence at any time under Louisiana law, it was not improper for the sentencing court to correct the improper sentence and deny the defendant probation (*State v. Aucoin*, 1986).

The holding in *State v. Harris* (1997), although involving a sentence to a term of incarceration, reinforces the decisions reported above. In *Harris*, the defendant, using an alias, was sentenced for intent to deliver cocaine to a concurrent term of imprisonment in the state department of corrections. More than a year later, a corrections employee notified the court of the defendant's true identity and stated that a consecutive sentence should have been imposed because the defendant was on escape status at the time of the drug offense. The prosecutor subsequently moved for resentencing. Following an evidentiary hearing, the sentencing court held that the original sentence imposed was invalid because it was based on inaccurate information and was thus improper under state law. The defendant was thereafter sentenced to eight to 20 years, to be served consecutively.

On appeal, the Michigan Court of Appeals held that state statutes provided the trial court with full authority to correct an invalid sentence. Citing its holding in another case *(People v. Miles*, 1997), the appellate court noted, "A sentence may be invalid no matter who is benefited by the error, because sentencing not only must be tailored to each defendant, but must also satisfy society's need for protection and interest in maximizing the offender's rehabilitative potential" (p. 527).

As the above cases suggest, courts readily rescind probation when the probationary sentences imposed are deemed improper under governing state law. As the cases discussed in the next section show, however, the issue is more problematic when a sentencing judge seeks to revoke a term of probation based on theories of fraud or misrepresentation.

Recission of Probation Because of Fraud or Lack of Candor at the Time of Sentencing

The decision in *State v. Brimacomb* (1991) is illustrative of the rationale applied when sentencing courts discover that a defendant was not completely forthcoming about previous convictions at the time of sentencing. In *Brimacomb*, the defendant pleaded guilty to a charge of

driving while intoxicated. At sentencing, the court questioned the defendant about previous driving convictions. The defendant admitted a previous arrest for driving under suspension and the court cautiously granted deferred judgment in the driving while intoxicated case. Unknown to both counsel and the court, however, the defendant had actually been convicted twice previously for driving under suspension. The next day, upon learning that it had been misinformed, the court revoked the deferred judgment and imposed sentence. Evidence in the record indicated the defendant was aware the court was relying on false information when it imposed sentence. On review by the Iowa Supreme Court, the court found no impropriety in the order of revocation. The court found it clear that orders to defer sentences were interlocutory in nature and did not constitute final judgments. When a sentencing judge's intention is clear, an increase in the sentence to make it conform with that intention is constitutional (also, see *United States v. Guevreino*, 1987). In this case, the trial court clearly indicated its intention to sentence the defendant if he had been convicted of driving with a suspended license. Because that was in fact the case, the defendant should have been sentenced accordingly (*State v. Brimacomb*, 1991).

But the court did not stop there. An alternative ground supporting the trial court's revocation existed in the court's authority to revoke the probation of a defendant who fraudulently conceals his criminal record during sentencing. Citing *State v. Darrin* (1982), the appellate court held that the power to revoke probation extended to conduct that occurred prior to the probationary term (also, see *ALR*, 1985). In light of Mr. Brimacomb's tacit encouragement of the court's misunderstanding regarding his prior record, the sentencing court could properly revoke the defendant's sentence (*State v. Brimacomb*, 1991).

The decision in *People v. Minott* (1997) produced a similar result, but with more serious outcomes in terms of the sentencing implications. In *Minott*, the defendant was found guilty of first degree manslaughter. The court adjudicated the defendant as a youthful offender, vacated his conviction and sentenced him to a period of five years probation. During the sentencing hearing, the prosecutor advised the court that since the verdict in the manslaughter case had been delivered, the defendant had been arrested and indicted for the alleged robbery of a restaurant. The prosecution further argued that the defendant's indictment should be considered as an aggravating factor in making a sentencing determination.

Although not requested or mandated to do so, the defendant's counsel advised the court that, as the attorney of record in the armed robbery case, he was fully familiar with the facts and circumstances in the matter. Defense counsel informed the court that the defendant had not been identified in a lineup, that he had an alibi and that another person had taken the defendant's coat and committed the robbery. The court thus declined to consider the indictment as an aggravating factor for imposition of sentence in the manslaughter case.

Several months later the court was advised that the defendant had pleaded guilty to charges in the armed robbery case. At rehearing, the court vacated the defendant's adjudication as a youthful offender on the basis that the court had been fraudulently misinformed about the defendant's status in the robbery case. The court found that it had the authority to vacate the defendant's sentence because both criminal and civil courts possess the inherent power to correct judgments that have been obtained by fraud or misrepresentation. Citing *Hazel-Atlas Co. v. Hartford* (1944), the court noted that this inherent power is deeply rooted in the common law. The court did not consider it important that the defendant remained silent at sentencing, as his attorney provided what was later determined to be incorrect information to the court. "Moreover, a defendant's purposeful failure to reveal information which he knows would engender a different judgment can be as much a fraud upon the court as is an affirmatively stated falsehood intended to conceal such dispositive matter" (*People v. Minott*, 1997, p. 321). "A defendant has no expectation of finality in a judgment obtained through his own fraud on the court" (*People v. Minott*, 1997, p. 323).

In *State v. Foster* (1992), the defendant, using an alias, was sentenced for aggravated assault and terrorizing to three years in the penitentiary, suspended with credit for 125 days served and placed on supervised probation. The defendant's probation was subsequently revoked and he was ordered to serve the balance of the previously imposed sentence in the state penitentiary. Corrections personnel, after learning the defendant's true identity, advised the sentencing court of the information. After a presentence report was prepared using the defendant's true identity, he was resentenced by the court to five years in the state penitentiary, on both counts, to be served consecutively. On appeal to the North Dakota Supreme Court, the defendant alleged violation of the Fifth Amendment's double jeopardy clause, arguing that the original court had no authority to resentence him under any North Dakota rule or statutory provision. The appellate court disagreed, noting that a sentence does not have the same constitutional qualities that attend an acquittal. There is no double jeopardy protection when an offender's probation is revoked and a sentence of imprisonment imposed. Citing *United States v. Jones* (1983), the court noted:

> For the purpose of determining the legitimacy of a defendant's expectations, we draw a distinction between one who intentionally deceives the sentencing authority or thwarts the sentencing process and one who is forthright in every respect. Whereas the former will have purposely created any error on the sentencer's part and thus can have no legitimate expectation regarding the sentence thereby procured, the latter, being blameless, may legitimately expect that the sentence, once imposed and commenced, will not later be enhanced (pp. 7-8).

The court was thus easily able to conclude that the defendant had no legitimate expectation of finality in his original sentence. A person cannot avoid the consequences of his criminal record simply by assuming the identity of another. Any other interpretation would encourage the use of aliases to defeat justice (*State v. Foster*, 1992; *also, see Bryce v. Commonwealth*, 1992).

State v. Lumley (1998) involved a somewhat different form of fraud on the part of the probationer at sentencing but produced results similar to the cases reported above. In *Lumley*, the defendant pleaded guilty to three counts of aggravated indecent liberties with a child and one count of criminal sodomy. Under Kansas Sentencing Guidelines, the penalty for the offenses included presumptive imprisonment. The defendant requested a dispositional departure of probation. At sentencing, the court reviewed information submitted by treatment providers who suggested that the defendant continue to be closely supervised in a community-based sex offender treatment program. After sentencing Lumley to 102 months imprisonment, the court granted the departure from sentencing guidelines and placed the defendant on probation. Explicit conditions of probation stated that the defendant was to submit to a polygraph at least every six months and that he was not to have any contact with any child younger than 16 years of age.

The court subsequently issued a warrant for the defendant for violating terms of his community corrections program. The violation was based on information that the defendant provided an untruthful answer to a polygrapher's question regarding contact with a child. At the probation revocation hearing, the defendant's attorney would not stipulate to the admission of any polygraph evidence and argued that it was inadmissible. Finding that the community corrections program was

impossible without the polygraph examinations, the sentencing court revoked the defendant's probation, ordering the defendant to serve the 102-month term of imprisonment originally imposed.

On appeal, the Kansas Court of Appeals affirmed the revocation of probation. The appellate court noted that "when a defendant is granted probation in reliance upon misrepresentations made to the court by or on behalf of the defendant, the probation may be summarily revoked without evidence that the terms or conditions of probation have been violated" (*State v. Lumley*, 1998, p. 1241). The defendant did not object to the polygraph condition at the time of sentencing. In essence, Lumley was granted probation by misrepresenting his willingness to comply with the polygraph requirement. Because of the defendant's fraud, the revocation of his probation–even without evidence that the conditions of probation had been violated–was not an abuse of discretion (*State v. Lumley*, 1998).

Discussion and Conclusion

If anything, the cases discussed above show courts are unequivocally prepared to correct sentences to probation when they are the result of fraud or lack of candor by the defendant at sentencing. In some instances, judges easily rescind probation because the original sentence imposed was impermissible under prevailing state statutes. In three of the cases cited above (*People v. Wade*, 1987; *Bumpus v. State*, 1996; *State v. Aucoin*, 1986), courts rescinded probation because defendants failed to disclose previous convictions at the time of sentencing. Because the original sentences were impermissible by state statute, the defendants were ineligible for probation. Sentencing courts thus voided the original sentences to probation, imposing sanctions congruent with governing statutory law. Similarly, a sentence is also voidable if a defendant uses an alias, thus concealing previous criminal convictions. In *State v. Harris* (1997), for example, the court rescinded the original sentence because it was invalid under such circumstances. The more severe sanction imposed was affirmed because of the need to tailor sentences for societal protection and facilitate the objectives of rehabilitation.

The second line of cases discussed in this paper also involved instances where defendants provided false, fraudulent or incomplete information at the time of sentencing. Even though the probationary sentences may not have been illegal under state statutes, it is unlikely probation would have been granted if all relevant information about the defendant had been known at sentencing. In such cases, sentencing courts nonetheless had few reservations in vacating the original probation sentence and imposing more severe sanctions. In every instance, appellate courts affirmed such decisions on the basis of a "fraud on the court" doctrine. As such, courts possess the inherent power to correct judgments that have been obtained by fraud or misrepresentation. This was true whether the fraud or lack of candor at sentencing involved failing to admit previous convictions (*State v. Brimacomb*, 1991), using an alias and thus concealing previous convictions (*State v. Foster*, 1992), or when a defendant misled the court about his willingness to submit to regular polygraph examinations as a condition of probation (*State v. Lumley*, 1998). Because the defendants were not completely forthcoming–and at times were even untruthful–about their situations at sentencing, courts were able to justify vacating the original sentences because of the defendants' backgrounds, the need to protect society and to maximize rehabilitation. From a practical perspective, these decisions make sense since to hold otherwise would provide defendants with a variety of avenues to escape justice.

Although the above cases are relatively straightforward, other instances involving lack of candor at sentencing present more complex issues. For example, defendants continue to enjoy Fifth Amendment protections against self incrimination at sentencing for other pending criminal matters. This issue was at least peripherally addressed in *People v. Minott* (1997). In *Minott*, the prosecution noted at the time of sentencing that the defendant had been indicted for a serious crime after having been found guilty of the instant offense. At that point, "the defendant enjoyed an absolute privilege not to say anything about the intervening crime and the imposition of an adverse ruling based upon his silence would clearly constitute a violation of his constitutional right to said privilege" (*People v. Minott*, 1997, p. 17). Although not requested by the court, nor bound to do so, defense counsel chose to provide additional information about the pending case. Because defense counsel misrepresented his client's status in the pending matter, the court was able to revoke the original sentence to probation because fraudulent information had been provided (also, see *Goene v. State*, 1991; *Stombaugh v. State*, 1998).

On a final note, it is clear that a more thorough analysis of the issues raised by the revocation of probation based on pre-probation activity is needed. While the above cases make it abundantly clear that courts are willing to revoke or rescind probation based on pre-probation activity, two major issues remain unanswered. First, to what extent may a court rely on implied conditions to revoke probation based on pre-probation activity? Secondly, to what extent will reliance on the "fraud on the court" doctrine present self-incrimination problems at the sentencing phase? Future analysis should seek to address these questions and thus provide even more guidance to sentencing judges and legal practitioners in this fast evolving area of the law.

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The New Era of Sexual Harassment Law

In the 1970s, courts first acknowledged that employees were within their rights to sue their employer when they were subjected to unlawful sexual harassment under Title VII. Throughout the 1990s, the courts continue to define different types of behavior that constitute actionable sexual harassment. Employers may feel as if they are on the outside looking in at a hazy collection of decisions where the courts, sometimes with no clear guidance from the Supreme Court, have struggled with problems such as same-sex harassment. Many of these "next generation" sexual harassment issues blur the lines defining acceptable and unacceptable behavior or, more importantly, what is or is not actionable conduct leading to employer liability. Even then, what is not actionable today may be actionable tomorrow. E-mail and the Internet bring a whole new meaning to the term "hostile environment" and bring new challenges for employers struggling to minimize the risk of liability for workplace sexual harassment.

In 1998, the United States Supreme Court decided several landmark cases that dramatically changed the already bumpy workplace harassment landscape. These new cases set forth new and broader standards for holding employers liable when management-level employees engage in conduct that creates a hostile environment for subordinates. Also in the same term, the Supreme Court found that same-sex harassment can create employer liability, a ruling which has pervasive implications for all sorts of workplace conduct, such as all-male horseplay and all-female personal talk.

Employers are caught in the crossfire of evolving sexual harassment law and the fact that your agency or department may be the next test case, underscores the importance of continual and effective management training. Employers must ensure that their workplace harassment prevention policies and all other policies are up-to-date and that they are effectively communicated to each employee. Heightened awareness is

BY SHELIA GLADSTONE

one of the best methods of preventing sexual harassment. A pro-active stance reinforces the employer's commitment to eliminating this behavior in the workplace. Sexual harassment claims are preventable.

Quid Pro Quo and Hostile Environment Theories

The law of sexual harassment actionable under Title VII, began with two broad-based theories of recovery: *Quid Pro Quo* and Hostile Environment. The Equal Employment Opportunity Commission has defined sexual harassment as "unwelcome sexual conduct that is a term or condition of employment." *Quid Pro Quo* sexual harassment claims arise when an employee must choose between submitting to demands for sexual favors or losing job benefits, promotions or employment—in other words, when an employee suffers a tangible adverse employment consequence because of a superior's discriminatory behavior. The employer has always been held strictly liable for conduct of a supervisory employee which causes an employee tangible job detriment. This means that an employer cannot avoid liability by showing that it could not have prevented the conduct.

Hostile environment sexual harassment can occur under an almost unlimited variety of circumstances. Some of the factors that courts consider when evaluating allegations of this form of harassment are:

- whether the conduct was verbal or physical, or both;
- how frequently it was repeated;
- whether the conduct was hostile or patently offensive;
- whether the alleged harasser was a coworker or a supervisor;
- whether others joined in perpetrating the harassment; and
- whether the harassment was directed at more than one individual.

Recent case law has now blurred the lines between these two theories of recovery, looking more at the supervisor's use of authority rather than the consequences of the harassment itself. The United States Supreme Court has given new guidance on the issue of when employers are liable for supervisors' *quid pro quo* and hostile environment sexual harassment of their subordinates. The law prior to these cases held that an employer is always liable for the *quid pro quo* harassment of its employees, because the supervisor is using his or her authority with the employer to obtain the sexual favors. In contrast, the employer was not liable for supervisors' hostile environment-type harassment unless the victim could show some act on the part of the employer contributed to the situation, such as knew or should have known the harassment and failed to address it, or the employer failed to take necessary steps to avoid the harassment. The two new cases further refine the liability standards.

On June 26, 1998, the United States Supreme Court decided *Burlington Industries, Inc. V. Ellerth*, which addressed the issue of whether an employer was automatically liable when a supervisor threatened an employee's job opportunities if she did not comply with his sexual advances, but then did not follow through with the threats after her refusal. The question before the Court was whether such situation should be addressed under the *quid pro quo* strict liability standard, or under the negligence standard previously used to assess hostile environment cases. Instead of choosing one or the other standard, the Court combined the two terms and created a somewhat new test.

Kimberly Ellerth was a salesperson in one of Burlington's divisions in Chicago. She claimed that her supervisor, Ted Slowik, subjected her to constant sexual harassment consisting of boorish comments about her body, sexual invitations, and sexual touching. These comments and actions were combined with statements such as, "you know, Kim, I could make your life very hard or very easy at Burlington," and "are you wearing shorter skirts yet because it would make your job a whole heck of a lot easier." At a promotion interview, Slowik expressed reservations, stating Ellerth was not "loose enough" and then reached over and rubbed her knee. Ellerth did in fact receive the promotion, but when Slowik told her about it, he said that the men out there like women with pretty butts and legs.

Ellerth never complained about the harassment even though she knew Burlington had a policy against sexual harassment. The trial court found that Slowik's behavior was enough to create a hostile environment for Ellerth, but because there was no actual adverse action taken against her, the employer would not be liable, as it neither knew, nor should have known, about the harassment. On appeal, the Seventh Circuit Court of Appeals reversed, although each member of the *en banc* panel had different reasons for doing so. Basically, the appellate court found that threats were enough to follow the *quid pro quo* standard of strict liability.

The Supreme Court affirmed, also holding in favor of Ellerth being able to go to a jury on her claim. The Court held that when a supervisor, someone with control over an employee's terms and conditions of work, makes unfulfilled threats, he or she is using his position of authority to effectuate the harassment. Therefore, the employer will be liable for that harassment, without further showing of negligence, unless the employer can affirmatively prove: a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and b) that the plaintiff-employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. The employer has the burden of proof on these defenses. These defenses are only applicable when a supervisor uses his or her authority to create a hostile environment but does not carry through on *quid pro quo* threats. If no authority is used, such as coworker harassment, then the old "knew or should have known" standard applies, and if the threats are effected, then the employer is liable with no chance to use the affirmative defenses.

In the companion case of *Faragher v. The City of Boca Raton*, also decided on June 26, 1998, the Supreme Court reached a consistent

"you know, Kim, I could make your life very hard or very easy. . ."

holding. A female lifeguard, Beth Faragher, alleged she was subjected to constant vulgar and offensive sexual harassment by her direct supervisor, David Silverman, and by Bill Terry, the top level supervisor in the city's Marine Safety Department. Terry's boss, the Recreation Superintendent, was not someone that Faragher would have come into regular contact with in her job. The sexual harassment was over a five-year period, and included uninvited touching, simulated sexual motions (humping) and numerous sexual comments and invitations. Although the city had adopted a sexual harassment policy near the beginning of the five-year period, it completely failed to disseminate the policy to any employee or supervisor in the Marine Safety Department.

The Eleventh Circuit Court of Appeals dismissed Faragher's claim, holding that, although the conduct was severe and abusive, the city could not be liable because the supervisors were not acting within the course and scope of their duties. Additionally, the city had no real or constructive knowledge of the hostile environment.

The Supreme Court reversed and remanded the case to the district court for judgment. The Court reached a conclusion similar to its holding in the *Burlington* case and stated that an employer can be liable when its supervisors use their authority to create a hostile environment, even when the employer neither knew nor should have known of the harassment. Again, the Court set out the affirmative defenses available to employers in such situations to avoid liability: a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and b) that the plaintiff-employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Same Sex Harassment

On March 4, 1998, the United States Supreme Court rendered its decision in the Fifth Circuit Court of Appeals same-sex sexual harassment case, *Oncale v. Sundowner Offshore Services, Inc.*, No. 96-568 (March 4, 1998). In *Oncale*, a male supervisor and two male company-workers sexually harassed Joseph Oncale, an offshore rig employee, on several occasions. Among other things, they restrained him while sexually assaulting him, they threatened him with homosexual rape and they pushed a bar of soap into his anus. Despite the severity of this harassment, the Fifth Circuit, relying on its decision in *Garcia v. Elf Atochem North America*, 28 F.3d 446 (5th Cir. 1994), reasoned that Oncale's claims for *quid pro quo* and hostile work environment sexual harassment were not cognizable under Title VII because they involved same-sex sexual harassment. In *Garcia*, a male employee complained that a male coworker was harassing him by engaging in offensive horseplay of a sexual nature. In rejecting the plaintiff's claim, the Fifth Circuit held that harassment of a male employee by another male employee does not constitute "gender discrimination" under Title VII, even if the harassment has sexual overtones. The Supreme Court reversed the Fifth Circuit and held that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII. The Court ruled that "Title VII's prohibition of discrimination 'because of . . . sex' protects men as well as women." The Court found "no justification in Title VII's language or the Court's precedents for a categorical rule barring a claim of discrimination 'because of . . . sex' merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex." The Court also reenforced the importance of an analysis from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances.

Undirected Sexually-Oriented Atmosphere

Sexually intimate invitations or proposals toward a particular person are not prerequisites to valid sexual harassment claims. Many forms of conduct, depending on their frequency and severity, can constitute actionable sexual harassment. Some examples of this type of conduct are:

- distributing or posting sexually explicit pictures;
- creating sexually offensive drawings or graffiti;
- telling sexually-related jokes;
- making offensive sexually-related comments or derogatory references regarding members of the opposite sex;
- holding company functions at strip clubs;
- having strippers attend company functions; or
- giving inappropriate sexually-related gifts.

Again, basically any unwelcome conduct of a sexual nature or conduct based on sex could constitute actionable sexual harassment depending on its frequency and severity. The following case is an example of non-intimate harassment, as well as a good example of the effect of a failure to respond in a timely manner or take action that could be reasonable thought to remedy the problem:

In *Smith v. St. Louis University*, No. 96-2519EM, 1997 U.S. App. Lexis 5495, (8th Cir. 3/24/97), Dr. Vicki Smith, an anesthesiology resident at St. Louis University's Hospital and Medical School, alleged claims of discrimination and harassment on the basis of her sex and retaliation when she complained about the unwelcome behavior. The district court dismissed both her claims, and Smith appealed to the Eighth Circuit Court of Appeals.

Smith argued that the pervasiveness and severity of comments by her Department Chairman (Schweiss) created a hostile work environment. She testified that the harassment began at the outset of her orientation and continued through the duration of her residency. She claimed Schweiss regularly referred to her and other female residents by their first names, while referring to male residents using the title "Doctor" with their last names. Smith argued that this treatment was one example of behavior which demonstrated Schweiss did not "consider her deserving of recognition as a fellow professional." Smith also testified Schweiss referred to her and another female resident as the "anesthesia babes," and that colleagues told her she was selected to fulfill a female quota. Schweiss referred to Smith as an attractive and "beautiful young lady" and allegedly told her she should consider a career in modeling. When working with Smith, Schweiss allegedly would say "he was stuck with Vicki again" and "had to work with another female resident."

In the operating room Schweiss asked Smith why she had gone into medicine rather than nursing or getting married. He also asked why she was so assertive and why she polished her nails. At another time, Schweiss opined to her that women ought to be married and home nursing babies, but further suggested, however, that Smith, because of her age and medical training, would not be able to find a husband. Smith also stated that Schweiss altered his rotation schedule so that he would be around her in order that he might subject her to additional ridicule or, as another doctor put it, "to get to" her.

Smith claimed she was hospitalized twice because of the stress and that she suffered emotional trauma and frequent crying spells because of the harassment. She also argued that Schweiss delivered negative

performance reviews to two prospective employers after her residency had ended because she had complained about his unwelcome behavior. Neither of these employers extended an offer to Smith, who claimed that the chairman's conversations with them "led them to question Smith about the nature of her relationship with Schweiss at their interviews of her." One of them asked whether Smith was considering legal action, after noting that Schweiss had not had very nice things to say about her.

Smith did not complain about the unwelcome behavior until the final year of her residency when Schweiss referred to her marital status in a letter of recommendation. Smith claimed she did not complain about the behavior sooner because she was afraid she would be fired and that would be disastrous to her career. She complained to the dean of student affairs, who met with her two months later and the following month referred her to the dean of the medical school. About a month later, the dean of the medical school admonished Schweiss and instructed him to "monitor the department for discriminatory comments and prevent their recurrence." One month later Smith learned about the dean's meeting with Schweiss.

The district court held that the complained-of conduct was "not sufficiently severe or pervasive...and that the absence of sexually explicit comments lessened the severity of the harassment." The court held that Schweiss's comments "were not threatening, but that they were merely offensive and not gender-based." The district court also found that the conduct did not interfere with Smith's work performance, with the exception of emotional harm. This district court also dismissed the retaliation claim, finding that the "remedial action taken by the University was both prompt and adequate, and thus created a defense to liability."

The Eighth Circuit Court of Appeals rejected all of the lower court's findings and reinstated both claims for a jury trial. The appeals court found that the evidence Smith submitted created triable issues of fact on the severity and pervasiveness of the harassment, the adequacy of the University's response and the evidence of retaliation. The appeals court specifically rejected the district court's finding that the harassment was not pervasive because it was not sexually explicit, noting that many of Schweiss's comments included gender-conscious terms.

The appeals court also rejected the district court finding that the University's response was adequate and held that this was also a fact question for the jury:

[F]our months elapsed from the time Smith initially complained to when the Dean of the Medical School met with Schweiss and seven weeks from the time she detailed her complaints to the Dean to the Dean-Schweiss meeting. The response was by no means immediate, and Smith should have the opportunity to argue to a jury that the response was not prompt enough (given all the circumstances), and thus made it not "proper" for some reason (such as, as she notes, because Smith's residency ended in June).

The appeals court also held that there was a fact question for the jury to decide, as to the remedial action taken, whether asking Schweiss to monitor himself and his own department for harassment was appropriate and "reasonably calculated to end the harassment." In addition, the court noted that "[P]lacing the alleged harasser in charge of stopping the harassment may well have been inadequate especially if, as Smith alleges, the harassment did not stop and Schweiss subsequently provided negative references to Smith's potential employers. This, like promptness, is a factual dispute to be resolved by a jury."

Finally, the appeals court rejected the district court dismissal of Smith's retaliation claim. The appeals court held that Smith may be entitled to recover for retaliation which occurred after her residency ended based on the Supreme Court holding in *Robinson v. Shell Oil*, 117 S.Ct. 843 (1997). "If Schweiss provided negative references to Smith's potential employers, as she contends, and she demonstrates that he did so because she had complained about his harassment, then a jury could reasonably conclude that the University was liable under Title VII for retaliation."

Be Careful When Dealing With Alleged Harasser

In this environment of fear surrounding sexual harassment claims, employers must take care not to overreact when dealing with employees accused of sexual harassment. Some employers, especially those recently involved in litigation for not reacting quickly enough to complaints, run the risk of violating the rights of the accused. It is crucial not to forget basic progressive discipline concepts and the need to conduct a full and fair investigation before taking action against the alleged harasser. The following case illustrates an extreme (and well-publicized) example of what can happen when an employer acts without a full investigation.

In *Mackenzie v. Miller Brewing*, WisCirCt 940CV-010871 (7/15/97), Mackenzie sued his former employer when he was terminated after discussing a risque episode of the popular sit-com *Seinfeld* with a female coworker. Mackenzie argued that he brought the subject up at work because he was amazed the episode passed muster with television censors. He discussed it with one coworker, who reported the comments, but not necessarily the context, and the company summarily terminated him without investigation. The employer argued that the *Seinfeld* incident was the last of a series of workplace problems with Mackenzie which also included an earlier complaint alleging sexual harassment. Mackenzie sought $9.2 million in his lawsuit, but the ten woman, two man jury awarded him $26 million. After the verdict was delivered the company stated that the matter was simply about "common sense behavior" in the workplace and also commented that the "pendulum has swung too far."

Circuit Judge Louise Tesmer later reduced the amount to $24.7 million and the company was ordered to post a $30 million bond pending appeal of the decision.

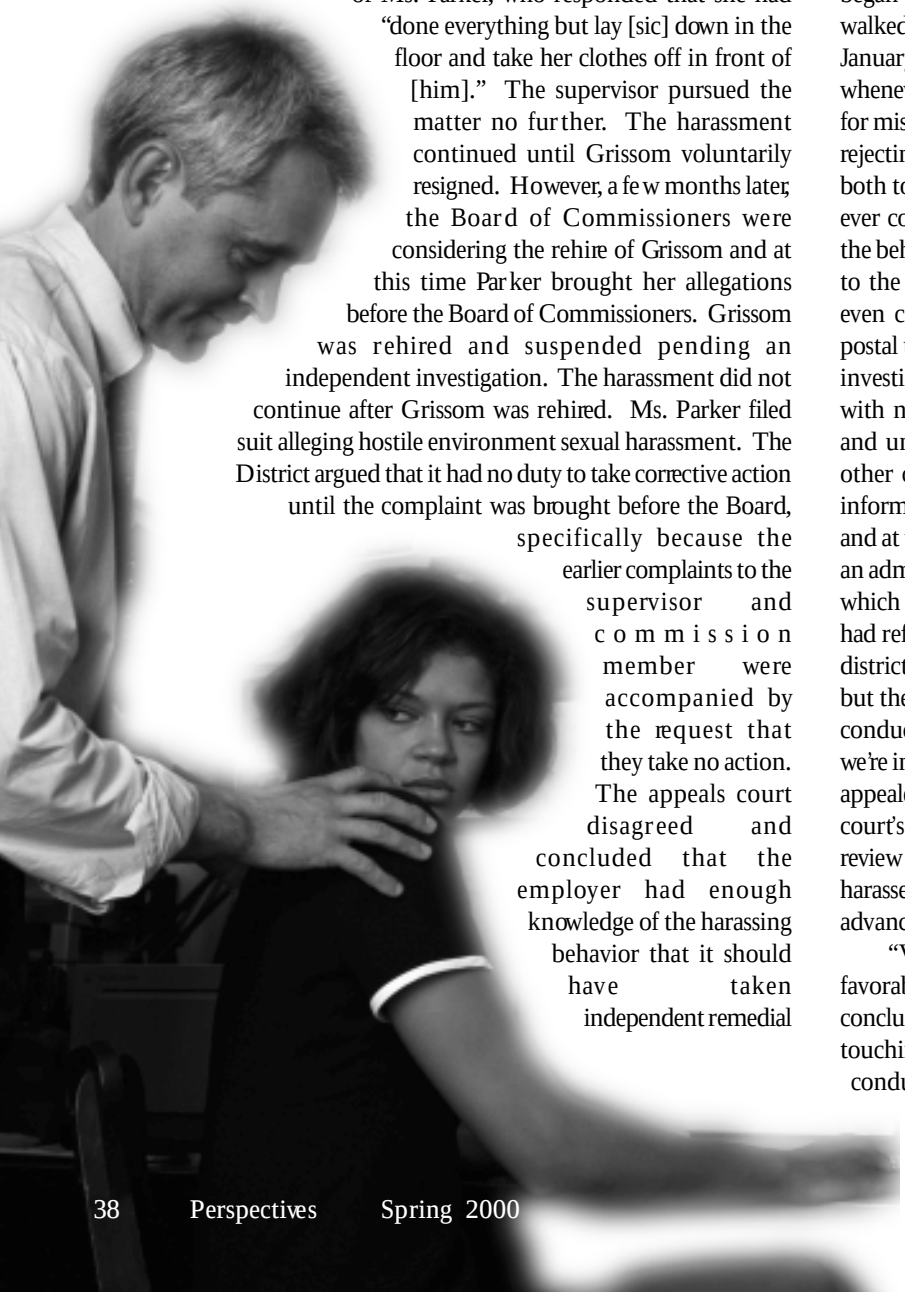
Employer Liability When Employee Reports Harassment But Requests Inaction

One of the most common mistakes managers make is to promise employees that they will keep the complaint entirely confidential, and thus do not follow the company's policy on reporting and investigating complaints of sexual harassment. The law requires a prompt and thorough investigation whenever an employer knows or has reason to know of the problem, and to take prompt, remedial action when harassment is discovered. There is no exception in the law for cases when the employee asks that no investigation occur.

In many cases, the supervisor who does not report or investigate the incident ends up creating liability problems for the employer when a later lawsuit is filed. One type of claim is when the employee claiming harassment states that she had to quit her job because she made a complaint and nothing was done. She will either deny that she requested inaction or she will state that she requested inaction only because she was fearful of retaliation — and the employer is responsible for preventing and avoiding retaliation. The second type of claim resulting from inaction is when a different employee is subject to sexual harassment from the same person. It becomes a problem when it is later discovered that the employer had already received information that the harasser was a problem, and did not do anything about it. An employer has a responsibility to protect all employees from harassment, not just the employer.

In *Parker v. Warren County Utility District*, No. 01A01-9704-CH-00175 (Tenn.Ct.App. 1/9/98) a female employee who informally

reported her complaints of sexual harassment to employer officials with a request that they do nothing because she feared that she would lose her job was permitted to bring her claims to trial. Parker complained to her supervisor that the District's general manager was sexually harassing her. She complained that he subjected her to unwelcome touching, attempted kissing, rubbing his body against hers, rubbing her neck and shoulders, unwelcome comments about the way her clothes fit and whispering sexual remarks in her ear while she was working the drive-in window. Her supervisor took the allegations seriously because she too had been subjected to the general manager's "undressing her with his eyes" and advances at an off-site conference hotel room where she was pushed onto a bed and he started "hunching" on her. There was also testimony that the manager's alleged sexual harassment of Parker was a common topic of discussion among the female employees in the office. The supervisor initiated no investigation and advised Parker "to try to avoid Grissom and '[n]ot to dress in a manner that might cause him to act the way he acted, that would give him ideas.'" Ms. Parker continued to complain about the harassment however, because it occurred on an almost daily basis. The supervisor did discuss the allegations with a member of the Utility District's Board of Commissioners, who also agreed that "Parker would probably lose her job if she pursued the allegations." The supervisor also discussed informally with Grissom his treatment of Ms. Parker, who responded that she had "done everything but lay [sic] down in the floor and take her clothes off in front of [him]." The supervisor pursued the matter no further. The harassment continued until Grissom voluntarily resigned. However, a few months later, the Board of Commissioners were considering the rehire of Grissom and at this time Parker brought her allegations before the Board of Commissioners. Grissom was rehired and suspended pending an independent investigation. The harassment did not continue after Grissom was rehired. Ms. Parker filed suit alleging hostile environment sexual harassment. The District argued that it had no duty to take corrective action until the complaint was brought before the Board, specifically because the earlier complaints to the supervisor and commission member were accompanied by the request that they take no action. The appeals court disagreed and concluded that the employer had enough knowledge of the harassing behavior that it should have taken independent remedial action. The appeals court found that the District could be held liable for the manager's behavior which took place on the premises during work hours and that the conduct was foreseeable because of the manager's past history of similar behavior.



We conclude that summary judgment was precluded in this case because a genuine issue of material fact exists as to whether the Utility District responded promptly, adequately, and effectively to Parker's informal complaints of sexual harassment. It is undisputed that Parker consistently maintained that she did not 'want to make an official complaint' because she feared she would be fired. Nevertheless, Parker's refusal to pursue a formal complaint did not relieve the Utility District of its duty to respond to her allegations.

Employer Liability for Ineffective Remedial Action

In *Hathaway v. Runyon*, No. 96-4241, (8th Cir. 12/29/97), a female postal worker sued her employer claiming sexual harassment and retaliation under Title VII. Hathaway, a 12-year employee of a Nebraska postal facility alleged a coworker subjected her to unwelcome sexual conduct and when she confronted him about it his conduct became even more aggressive. She then stopped working with the coworker and tried to avoid all contact with him. The harassment continued, however, in a different manner. "After Hathaway rebuffed Norris' advances he began to snicker and laugh at her, making guttural noises when she walked by him. He also stared at her with a menacing look. Starting in January of 1993, a coworker and friend of Norris...began to act similarly whenever he saw Hathaway." Both alleged harassers reported Hathaway for mislabeling mail, which Hathaway alleged was further retaliation for rejecting Norris' advances. Despite her repeated reports of the behavior, both to her supervisor and the lead plant manager, no investigation was ever conducted. Hathaway had been advised by the EEOC to report the behavior to the supervisor but the supervisor refused to acknowledge to the EEOC that Hathaway had reported the incidents. Hathaway even contacted her state senator as well as the president of her local postal union, who both contacted her supervisors asking for review and investigation. Still no investigation was conducted, but a status report with no substantive information was transmitted both to the senator and union president. Postal management never interviewed the two other coworkers, whom Hathaway had identified as individuals with information to corroborate her allegations. The EEOC investigated, and at the conclusion Hathaway was given the option of a hearing before an administrative judge or a final agency decision from the postal service which she requested. The postal service decision found that Hathaway had refused to establish her claims. Hathaway then filed suit in federal district court. A jury awarded her $75,000 in compensatory damages, but the district court overturned the verdict concluding, "if that type of conduct can rise to the level of a sexual harassment claim in this country, we're in deep trouble because it does go on in the workplace." Hathaway appealed the decision to the Eighth Circuit which rejected the district court's finding. The Eighth Circuit held that the district court did not review the sufficiency of the evidence under the assumption that the two harassers' pattern of conduct was related to Hathaway's rejecting Norris' advances.

"Viewing all the facts and reasonable inferences in the light most favorable to Hathaway, there was sufficient evidence for the jury to conclude that the entire pattern of hostile conduct arose from the physical touchings and Hathaway's rejection of a sexual overture, that this hostile conduct was based on sex, that it intimidated her and made it more difficult for her to do her job, and that management did not take appropriate remedial measures."

Effective Remedial Action

In *Blankenship v. Parke Care Centers*, No. 96-3084 (6th Cir. 1997, *cert denied* 2/27/98), a 17-year-old dietary aide, working with Parke as part of a work-study program, alleged she was sexually harassed by a 37-year-old coworker with a history of carrying a concealed weapon and substance abuse. Blankenship complained to her immediate supervisor of five instances of alleged harassment, "four kisses on the cheek, a tickle, three hugs and a declaration by Malcom that he was "falling in love." The supervisor immediately asked all other members of the dietary department whether they had witnessed any of this behavior and they all responded that they hadn't. The supervisor then formulated "an observation network" designed to separate the two individuals and watch out for any problem between them. Malcom's work area was moved to minimize interaction with Blankenship and Malcom's direct supervisor was instructed to monitor Malcom's whereabouts and behavior periodically. In addition, Blankenship's supervisor ensured that she was seldom alone in the workplace and she walked Blankenship to her car after work and inquired daily whether she experienced any problem with Malcom. Shortly thereafter, Blankenship complained on two occasions within two weeks of two more incidents where Malcom allegedly grabbed Blankenship's breasts. Another dietary aide made a complaint of "lewd touching, gestures and language on the part of Malcom." The chief administrator and supervisors then met with Malcom who denied the allegations. He was issued a "one and only warning" reminding him that harassment was not tolerated and would result in termination. Four days later Blankenship became upset because Malcom allegedly "kept coming around." She complained that he "was around" and that she "didn't want to be near him." Blankenship was advised that the employer could not guarantee that she could work and never come into contact with Malcom and that if she could not accept that, she would have to resign, which she did. She then filed suit alleging federal and state claims of sexual harassment. The district court found no evidence to support the state law claims and held that Blankenship was unable to prove the elements of a hostile environment claim or *respondeat superior* liability. Blankenship appealed only her sexual harassment claim to the Sixth Circuit Court of Appeals. The appeals court found that the employer responded to the charges of co-worker harassment and held that it could only be liable:

> *"If its response manifests unreasonableness in light of the facts the employer knew or should have known. The act of discrimination by the employer in such a case is not the harassment, but rather the inappropriate response to the charges of harassment. Upon the facts before the district court, the employer's good-faith response was entirely sufficient to escape liability....*

Parke was aware of Blankenship's complaints and had already implemented several steps in good faith to correct the problem. Preventing Malcom from coming near Blankenship was not yet a necessary step. If Malcom's harassment of Blankenship had further escalated, Parke might have been under a duty to prevent Malcom from being near Blankenship —indeed, it might have been under a duty to fire him."

Employer Liability for Off-Site Sexual Harassment

Employers can be held liable for sexual harassment that occurs outside of the working environment. The court in *Huitt v. Market Street Hotel Corp.*, 62 FEP Cases 538 (D. Kan. 1993), held that sexual harassment does not have to take place in the workplace to be actionable as long as there is some reasonable connection to the job. In the Huitt case, the plaintiff alleged she had been raped by her supervisor when he gave her a ride home from work. The court found that the fact that the supervisor knew that the plaintiff did not have transportation and that he was the one who scheduled her to work when only he would be available to drive her home, created enough of a "causal nexus" to justify sending the case to the jury. The court explained its reasoning:

> Defendant contends that plaintiff was not subjected to any harassment while "at work," thus suggesting that actionable harassment must occur at the place of business. The Court rejects this suggestion. "For purposes of summary judgment motions, the court cannot exclude from its consideration those allegations of sexual conduct which occurred after work hours." The question, rather, is whether there are sufficient facts from which to infer a nexus between the sexual conduct and the work environment. Plaintiff alleges that her supervisor raped her while driving her home immediately after her shift. Moreover, accepting plaintiff's evidence, her supervisor was able to place himself in a position to drive plaintiff home by using his authority in order to make it more difficult for plaintiff to make other arrangements for a ride. The context in which the alleged rape took place is thus sufficiently related to plaintiff's work that a causal nexus between the two may be inferred.

In *Himaka v. Buddhist Churches*, 917 F.Supp. 698 (N.D. Cal. 1995), the plaintiff served as the National Director of the Department of Buddhist Education for the Buddhist Churches of America. In 1991 she began receiving "heavy breathing" phone calls at home even though her telephone number was unlisted and was changed several times. In 1993 she attended the annual meeting of the Buddhist's Minister's Association where she received heavy breathing phone call in her hotel room. The hotel management traced one of these calls to one of the Buddhist minister's hotel rooms. The plaintiff reported the incident to her superior, Bishop Seigen Yamaoka. The Bishop conducted an investigation and then disciplined the offending minister. Although the court found that the conduct in this case did not rise to the level of actionable hostile environment sexual harassment, the court expressly noted that it "does not reject outright the idea that conduct of a sexual nature which occurs outside of the workplace . . . might contribute to a hostile work environment for the plaintiff."

Third-Party Harassment

Employers are responsible for ensuring that their employees work in a harassment-free environment even if that harassment stems from a third party that the employee must come into contact with as part of the employee's job. The employer must take reasonable steps to protect employees from client, customer, vendor and other harassment. These steps might include talking to the offending individual, notifying that person's boss, calling the police or removing the employee from the situation. Although the employer is sometimes limited in what can be done to a third party, the employer must show that it took reasonable action when it knew or should have known about the harassment.

A casino dealer in *Powell v. Las Vegas Hilton Corp.*, 841 F. Supp. 1024 (D. Nev. 1992) alleged that customers made sexually explicit comments, stared at her body and made rude gestures. She further alleged that the hotel refused to take any action against the customers when these events were brought to its attention. The district court, recognizing that the case was "one of first impression," denied the hotel's motion for summary judgment based on the EEOC's guidelines on sexual harassment which state that an employer may be held liable for acts of non-employees if the employer knew or should have known about the harassing conduct and failed to take immediate action. *See* 29 C.F.R. § 1604.11(e).

The case of *Sparks v. Regional Medical Center Board*, 792 F. Supp. 735 (N.D. Ala. 1992) involved a medical secretary/histotech who claimed that a doctor, who was an independent contractor, sexually harassed her by teasing her about her breasts, calling her apartment a "sex pad," swearing and other conduct. The court noted that the case was "close" and asked the parties to more fully brief the issues; however, the court found that the fact that the doctor was an independent contractor did not matter because the EEOC guidelines contained in 29 C.F.R. § 1604.11(e) state that employers can be held liable for sexual harassment of their employees committed by non-employees.

In *Folkerson v. Circus Circus Enterprises, Inc.*, No. 96-16035, 1997 WL 71763 (9th Cir. 2/21/97), the district court initially granted the employer's summary judgment motion on the basis that Folkerson was an independent contractor. The Ninth Circuit Court of Appeals reversed that decision and the employer, again before the district court, filed a second Motion for Summary Judgment arguing that Folkerson was unable to state a prima facie case of retaliatory termination for her "protected oppositional conduct." The district court granted the employer's motion and Folkerson again appealed.

Folkerson had signed a contract to perform as a "wind-up doll," a strolling entertainer in areas where patrons occasionally waited in long lines. The contract contained a two-week notice termination clause that the employer violated when it dismissed Folkerson. The event leading to her dismissal was the result of her striking a patron who ignored a notice not to touch the large "wind-up" key on her back as well as ignoring reported warnings from a nearby employee. The patron, determined to "find out whether she was real," approached her with his arms extended. Remaining in character, Folkerson raised her arms and struck the patron, who reportedly laughed at the incident as the nearby patrons applauded.

On appeal, Folkerson continued to argue that she had engaged in "protected oppositional conduct." The appeals court noted however, that in order to prove she engaged in this protected conduct, Folkerson must first demonstrate that the "opposition [was] directed at an unlawful employment practice of an employer, not an act of discrimination by a private individual." The appeals court found that Folkerson submitted no facts to prove that her employer "in any way ratified or acquiesced in the patron's alleged sexual harassment. Instead, the facts indicate that Circus Circus took reasonable steps to ensure Folkerson's safety from customer harassment." The appeals court affirmed the summary judgment granted by the district court.

The employer should reinforce a zero-tolerance response and outline the range a disciplinary consequences for harassers.

What the Future Holds: Sexual Harassment via the Internet

A large percentage of recent workplace harassment cases involve communications occurring over the Internet or the employer's e-mail system. Employees can misuse these resources by sending sexual propositions, sex related jokes, pornographic pictures obtained through the Internet and other inappropriate sexual commentary to other employees via the e-mail system. Employees can also engage in sexually harassing conduct through "chat rooms" on the Internet. Because of the potential for misuse, employers must adopt clear policies that outline acceptable and unacceptable use of their Internet and e-mail systems.

In *Petersen v. Minneapolis Community Development Agency*, 1994 Minn. App. Lexis 834 (Minn. Ct. App. 8/23/94), a female employee told a male employee that she loved him, she touched him at work, she offered him massages, she asked him out on dates, and she offered him the use of her apartment. The male employee informed the female employee that conduct was unwelcome. The physical contact stopped, but the female employee began harassing the male employee via e-mail. She sent him an e-mail message stating that she was going to continue pursuing him. Then she continued on to send him inappropriate e-mail messages asking him for "more than a friendship." He again asked her to stop harassing him. The next day, she sent him another e-mail requesting that he consider her to be more than just a friend. Based on this evidence, the court held that sufficient evidence of sexual harassment existed to permit the matter to proceed to trial.

In *Knox v. State of Indiana*, 93 F.3d 1327 (7th Cir. 1996), Stewart, a male employee sent Knox, a female employee, several e-mail messages asking her, in an often graphic manner, for sex. In this particular case, the jury found against the plaintiff on her harassment claim. However, the discussion in this case is useful because it demonstrates how copies of employee e-mail messages can be used by the employer in its investigation of sexual harassment complaints. This is illustrated by the following quote from the case: "Stewart initially denied any knowledge of why Knox would have filed a complaint against him, but his tune changed when he found out that the investigator had copies of the e-mails he had sent to Knox. He then admitted that he understood how his behavior could be interpreted as sexual harassment."

Preventing Workplace Sexual Harassment: Employer Action Plan

In order to ensure compliance with the new standards and be in the best position to take advantage of the new affirmative defenses against the unlawful conduct of supervisors, employers should:

- Implement and enforce an anti-harassment policy to prevent, investigate and remedy sexual harassment in the workplace. The policy should be written in plain English (as well as any other language common in your workforce). The policy should be widely disseminated, especially the portions on how to complain. Maintain documentation, such as a signed acknowledgment of receipt or a sign-in sheet at training that every employee has received a copy of the policy.
- Conduct mandatory training for *all* employees, not just supervisors, on what is prohibited under the policy, how to complain and what

will be done about it. Include in the supervisor's training how to recognize what types of complaints may constitute sexual harassment and how to respond to complaints.

- Conduct prompt, thorough and effective internal investigations of all complaints of harassment and take consistent remedial action when appropriate.

The information presented in this article only hints at a fraction of the costs associated with defending an employment-related lawsuit. Indiscernible costs devour productivity, while the quality of life for all parties is diminished from the outset of harassing behavior to the reading of the verdict. With the average cost to try an employment lawsuit reaching and exceeding $100,000 in many locales across the country, employers engaged in defending claims quickly learn it is far more cost-effective to implement and enforce effective policies and emphasize the importance of employee and supervisory training than to defend a lawsuit.

The sexual harassment policy should clearly define what constitutes harassing behavior. The Employer should reinforce a zero-tolerance response and outline the range of disciplinary consequences for harassers. Employers should provide simple reporting procedures and enable victims to choose among several paths for reporting policy violations Employers should assure complainants there will be no retaliation for good faith complaints. Be sure that the policy applies to all unlawful harassment (racial, disability, etc.), not just sexual harassment.

An employer's quick, uniform and effective response minimizes the liability for sexual harassment. Consider hiring an outside investigator experienced in these particular types of issues to support the impartiality and professionalism of the investigation and to alleviate concerns that the investigator will be a good witness should litigation arise. After conducting and documenting an impartial, exhaustive investigation, the employer should discipline proven harassers pursuant to established policy and past practice, if applicable.

An EEOC administrative judge in the Chicago district office, Damien Lee, recommends that employers should continually "revisit" and examine their anti-harassment policies to determine whether they are achieving the desired result. "You have to view this as a living plan and it has to adjust to workplace reality." Judge Lee also noted that courts generally hold employers strictly liable for incidents of sexual harassment if they fail to maintain and uniformly enforce their policies. When the objective is ending workplace sexual harassment, employers must ensure their employees understand what it is, how it happens and what it means to them. ❐

Sheila Gladstone is an Attorney at Law specializing in employment law at her private law practice in Austin, Texas.

CAUTION

Before employers read employees' e-mail (or otherwise use their employees' e-mail against them), they must inform each employee and receive in return a signed acknowledgment that they understand they have no privacy interest in their e-mail. The acknowledgment should also notify the employee that their e-mail messages are the property of the employer and that the employer reserves the right to review or use the messages at any time, for any reason.

Calendar of Events

2000

Mar. 19-22	27th National Conference on Juvenile Justice, "Juvenile Justice in 2000: Accentuate the Positive." Contact the National Conference on Juvenile Justice National District Attorneys Association at (703) 549-9222.
Mar. 20-24	Probation & Parole Officers Training, Adult and Juvenile. Contact the Center for Public Administration and Public Policy at (330) 672-7148 or the College of Continuing Studies at (330) 672-3100.
Mar. 22-25	2000 National Restorative Justice Training Institute, "Victims of Severe Violence Meet the Offender: A Journey Toward Healing and Strength," University of Minnesota, St. Paul. Contact 651-624-4923.
Mar. 25-28	National Crime Prevention Council and Youth Crime Watch of America's Thirteenth National Youth Crime Prevention Conference, "Building on the Dream with Prevention," Hyatt Regency, Atlanta, GA. Contact the National Crime Prevention Council at (202) 261-4165 or the Youth Crime Watch of America at (305) 670-2409.
Mar. 29-Apr. 2	Meeting the Challenges of the 21st Century: Opportunities for Women Leaders in Law Enforcement, Omni Inner Harbor Hotel, Baltimore, MD. Contact the National Center for Women & Policing at (323) 651-2532.
Apr. 5	The National Institute of Justice 1999-2000 Perspectives on Crime and Justice Lecture Series, "The Case for Zero Prison Growth," Capitol Hill at the Hyatt Regency Washington Hotel. Contact at (703) 684-5300 or email at nijpcs@ilj.org.
Apr. 9-15	National Volunteer Week. Contact LaShaun Hargrove at (202) 729-8199 or at seasons@pointsoflight.org.
Apr. 14	2000 National Restorative Justice Training Institute, "Community Justice Circles: A Pathway to Peace," University of Minnesota, St. Paul, MN. Contact 612-625-8224.
Apr. 18-19	Domestic Violence Arrest Investigation Training, " Improving Strategies in the New Millennium, Beyond the Obvious," Wyndham Hotel, Colorado Springs, CO. Contact (800) 524-4765 or CAADV@CWO.com.
Apr. 26-27	Tenth Annual Utah Gang Conference, Salt Palace Convention Center, Salt Lake City, UT. Contact (801) 535-5640 or (801) 718-6043.
Apr. 26-28	The GAINS Center Year 2000 National Conference, Wyndham Miami Biscayne Bay Hotel. Visit at www.prainc.com/gains.
Apr. 27-30	21st Annual International Disaster Management Conference, Omni Rosen Hotel, Orlando, FL. Contact (800) 766-6335 or email info@fcep.org.
Apr. 30-May 4	American Jail Association's 19th Annual Training Conference & Jail Expo, "Mining Resources . . . Going for the Gold," Sacramento Convention Center, Sacramento, CA. Contact (301) 790-3930.
May 3	The National Institute of Justice 1999-2000 Perspectives on Crime and Justice Lecture Series, "Reinventing Evaluation to Build High Performance Child and Family Interventions," Capitol Hill at the Hyatt Regency Washington Hotel. Contact at (703) 684-5300 or email at nijpcs@ilj.org.
May 5	2000 National Restorative Justice Training Institute, "Peacemaking and Spirituality: Touching the Soul of Restorative Justice," University of Minnesota, St. Paul, MN. Contact 651-624-4923.
May 6-13	National SAFE KIDS Week. Contact Field Team at (202) 662-0600.
May 7-10	Economic Crime Summit, "Economic Crime… Moving at Internet Speed," Renaissance Austin Hotel, Austin, TX. Visit www.summit.nw3c.org or call 877 693-2874.
Jun. 1-2	Ohio Chief Probation Officers Association 2nd Annual Training Institute for Line Staff, "Line Officers Making a Difference II," Columbus, OH at Holiday Inn Worthington. Contact Cheryl Taylor at (740) 477-8884.
Jul. 23-26	American Probation and Parole Association 25th Annual Training Institute, Hyatt Regency, Phoenix, AZ. Contact Krista Chappell at (606) 244-8204. *NOTE: Effective April 1, Area code will be 859.*

To place your activities in Calendar of Events,
please submit information to:
Susan Meeks
American Probation and Parole Association
P.O. Box 11910, Lexington, KY 40578
or fax to (606) 244-8001
NOTE: Effective April 1, Area code will be 859.
Information needs to be received no later than four months prior to event to be included in the calendar.