

The background of the cover features a stack of books in various colors (brown, red, blue) and some papers with text, creating a scholarly or legal atmosphere.

# **P**ERSPECTIVES

the journal of the American Probation and Parole Association



*Volume 25*

*Number 1*

*Winter 2001*

# Overview of Legal Liabilities

# PRESIDENT'S MESSAGE

To return to something that I mentioned in my last President's Message, I want to spend a moment talking with the membership about the 25<sup>th</sup> Annual Institute in Phoenix, Arizona on July 23-26, 2000. As anticipated, it was a huge success due to the hard work of local hosts led by Cherie Townsend and Carl Fox, the program and anniversary celebration planned by Dimitria Pope and the faithful attendance of over 1,500 people. However, it is important for our membership to understand that the APPA staff, who in my opinion are some of the most dedicated and hard working individuals I have had the pleasure to work with, also had a lot to do with the success of this Institute and all Institutes. I don't apologize at all for singling out Yolanda Swinford, Institute Manager, for her tireless efforts in putting together these Institutes. Occasionally, we make the mistake of not following her advice, and find out that she really knows what she is doing as the Institute comes to fruition. If you have not done so, I would personally appreciate you telling her how much we benefit by her expertise. Yo – you're the best.

The 25th anniversary celebration gave us an opportunity to honor our past presidents. I had many compliments from attendees on how elegant the opening session was. Thank you for those kind words, but be aware that Dimitria, Yolanda and Carl deserve the credit. Activities at Institutes are well scripted for me, and I just cross my fingers and hope that I don't screw them up. Let me also acknowledge those individuals and organizations that were honored with awards for their accomplishments. These are the people who have made an impact in their own community; who carry the torch of probation and parole every day, and sometimes we forget that their recognition acknowledges many years of hard work and tough times. A list of APPA's 2000 award winners can be found on page \_\_\_\_\_ of this issue. And one more time, let me mentioned what an honor it was for me to participate with others in acknowledging the accomplishments of Mr. APPA, Norm Helber, as he retires from the Chief Probation Officer's job in Maricopa County, Arizona. Norm, you will be missed!

As you know, the latest publication of the Broken Windows Report, *Transforming Probation Through Leadership: The "Broken Windows" Model*, was available at the Institute in Phoenix. I have tried to take a step back from the excitement surrounding the release of the initial document and the recent version to determine what impact it is having on the field of community corrections. What I have observed is that people are using the document as a tool to measure the relevance of their organization to the community. People are also using the document to reaffirm the direction of their organization. And lastly, people are using the document as a starting point to critique areas that may have not received enough attention in the report or overstated a strategy. Regardless of how people are using the document, and I believe all of the aforementioned are healthy ways to use the report, it has not been my experience that the report has been put on a shelf to collect dust like so many other reports that could have impacted our profession. Timing is everything in public relations. I can only assume that the field was ready to do a self-examination of its principles, which is why the report is being used. In my opinion, it is very important that as this report gets more widely circulated that we as professionals not act defensively when notions included in the report are challenged. The Reinventing Probation Council never intended this to be an all-inclusive discussion of practices in the field. They intended for this document to provoke a self-evaluation of our profession with the thought that it would generate discussions on how community corrections can make itself more relevant to its customers. For more information about obtaining this document, contact Anita Threet at (859) 244-8204 or refer to page \_\_\_\_\_ for order information.

Let me close this address by acknowledging the hard work and dedication of the editor of this journal. As you may have read in his "Editor Notes," Ron Corbett has moved over to the judicial branch of government in Massachusetts. His very capable understudy, Bill Burrell, will be taking over as editor starting with this issue. This, by the way, was no accident that we had



Ray A. Wahl

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someone waiting in the wings to take over this important assignment. Ron and I discussed this succession even before I took over as president as a way to create a smooth transition. Ron was very modest in his comments to the readers about his contribution to this excellent publication for the field. Our organization prides itself in continuous improvement. *Perspectives* is no exception. Ron led the "charge" to provide quality articles that were researched based, so that the field had access to up-to-date practices. This meant that someone had to keep a close eye on quality, critique many articles (some of which still have not made it into the magazine), and be very conscientious about deadlines. So for Ron to say, "Long before I arrived, *Perspectives* had become a leading publication..." while modest, does not given credit to a person who has really made a contribution to this field and organization. Keep in mind that Mr. Corbett was also one of the key members of the Reinventing Probation Council. Thank you, Ron, for your commitment to this journal and the profession. It has not gone unnoticed! Best of luck in your new job and I believe I may run into you at some judicial conferences.

Let me wish you a joyous holiday season and offer some counsel. While our jobs can be hectic and stressful, the holiday season is a time where we should take a few days off and spend with our family. Right after the holiday season, I hope to see you in Portland for the Winter Institute on January 7-10, 2001. The planning for the program and activities is complete and the Portland folks have guaranteed that there will be no ice storms. Keep your knees loose and think snow!!!



## Correction

In the Fall 2000 issue of *Perspectives*, Loretta J. Stalans, Ph.D., Associate Professor at the Department of Criminal Justice at Loyola University in Chicago, IL was omitted from being listed as an author of the article "Sex Offenders on Probation: An Evaluation of Three Program Models." We apologize to Dr. Stalans for this omission and thank her for her contribution to the editorial content of *Perspectives*.

# EDITOR'S NOTES

Welcome to Volume 25 of *Perspectives*! Just as APPA celebrated its 25th anniversary in Phoenix, its journal now passes a significant milestone as well. It is quite daunting for me to take over as chairman of the Editorial Committee at this point in *Perspectives* history. I assume the chair from Ron Corbett, who recruited me to the committee a short time ago. I have worked with Ron in a number of ways over the years and admire him greatly. The legacy that Ron leaves from his time with *Perspectives* is a top flight journal, both in content and appearance.

Looking forward, I hope to make this journal even better. We have recruited two new members for the Editorial Committee, Ed Rhine and Kermit Humphries. I know these gentlemen quite well, and I am certain that they will add immeasurably to our efforts. At the APPA Institute in Phoenix, I was gratified by the outreach from several APPA committee members and chairs, who want to keep the membership informed about their committee's work by contributing on a regular basis to *Perspectives*. This is an important function for the journal, providing up-to-date information about the many areas of the association's work.

I want all APPA members to feel free to contact me or any of the Editorial Committee members with their thoughts, comments, critiques and observations about *Perspectives*. If you'd like to see something in your journal, let us know!

In this issue, we have a number of important items. The lead article by Rolando Del Carmen and Gene Bonham, Jr. addresses the potential liabilities of probation and parole officers. In the early 1980s, Professor Del Carmen both raised our awareness about this very troubling issue and provided us with sound guidance as to how to reduce our exposure to liability. We are extremely fortunate to publish this article as the first of series drawn from Professor Del Carmen's updating of his earlier monograph. Thanks to Dan Beto and Ron Corbett for arranging this.

The other articles in this issue cover traditional functions, such as court testimony ("Stating Your Case: A Probation Officer's Guide to Report Writing and Court Testimony"), new responsibilities such as truancy mediation ("Truancy Mediation: A Collaborative Approach to Truancy Prevention") and family therapy ("Family Therapy in Community-Based Corrections: A Promising Trend"), as well as new wrinkles on traditional jobs ("The Nose Knows"). These articles demonstrate both the tremendous challenges facing our field and diversity of responses our colleagues have developed, branching out into non-traditional areas to meet the needs of offenders and communities.

Our colleagues are also featured in the APPA annual awards. Take a moment to read these and recognize the tremendous dedication, creativity, excellence and just plain hard work represented by these individuals and organizations. I cannot imagine a greater honor than to be recognized by your peers in this way.

This issue also contains our proposed position statement on privatization, published for your review and comment. Since this will represent our association's position on this provocative issue, we encourage you to read and reflect upon it, and share your thoughts. We also are inviting you to make nominations for regional representatives and annual awards. This is your association, and we want to hear from you!

I must take a moment to acknowledge the huge contribution that the APPA staff make to this journal. To call it only a contribution is surely an understatement, because there wouldn't be a journal without them. We are all very fortunate to have the team of production coordinator Susan Meeks, graphic artist John R. Higgins, editorial assistant Diane Kincaid and of course, executive director Carl Wicklund, who form the backbone of this journal. In my short time as chairman, I have already built up a tremendous debt to these people.

Taking a moment to gaze out upon the future of *Perspectives*, I am both excited by the opportunity and humbled by the challenge. I look forward to working with the Editorial Committee, the staff and the membership as we take *Perspectives* to the next level of excellence.



**William Burrell**

## Editorial Committee

**William Burrell, Chair**  
Chief of Supervision Services  
Administrative Office of the Courts  
P.O. Box 987  
Trenton, NJ 08625  
(609) 292-8925

**Kermit Humphries**  
Correctional Program Specialist  
National Institute of Corrections  
320 1st Street NW  
Washington, DC 20534  
(202) 307-3395

**Dan Richard Beto**  
Director  
Correctional Management Institute of Texas  
Criminal Justice Center  
Sam Houston State University  
Huntsville, TX 77341-2296  
(409) 294-1675

**Arthur J. Luigio**  
Dept. of Criminal Justice  
Loyola University of Chicago  
820 N. Michigan Ave.  
Chicago, IL 60611  
(312) 915-7564

**Edward E. Rhine, Ph.D.**  
Special Projects Administrator  
Division of Parole and Community Services  
Ohio Dept. of Rehabilitation and Correction  
1050 Freeway Drive N  
Columbus, OH 43229  
(614) 995-3599

**Faye S. Taxman**  
Faculty Research Associate  
Dept. of Criminology & Criminal Justice  
Room 2220, LeFrak Hall  
University of Maryland  
College Park, MD 20742-8235  
(301) 405-4781

---

### *Editorial Committee*

---

William Burrell, *Chairman*  
Dan Richard Beto  
Kermit Humphries  
Arthur J. Lurigo  
Ed Rhine  
Faye S. Taxman

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Susan Meeks	Production Coordinator
John R. Higgins	Graphic Designer
Diane Kincaid	Editorial Assistant

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### *Communications should be addressed to:*

American Probation and Parole Association  
c/o The Council of State Governments  
P.O. Box 11910, Lexington, KY 40578-1910  
Fax: (859) 244-8001, E-mail: [appa@csg.org](mailto:appa@csg.org)  
Website: [www.appa-net.org](http://www.appa-net.org)

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



*where community partnerships are  
restoring hope by embracing a  
balance of prevention, intervention  
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### **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;

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**Partnerships with stakeholders** lead to shared ownership of our vision.

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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.

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**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 MS Word or WordPerfect 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:

- **Spring 2001 Issue – December 11, 2000**
- **Fall 2001 Issue – June 20, 2001**
- **Summer 2001 Issue – March 19, 2001**
- **Winter 2002 Issue – September 21, 2001**

Unless previously discussed with the editors, submissions should not exceed 10 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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# JOB ANNOUNCEMENT

## **Sex Offender Management Information Specialist**

### **Council of State Governments/ American Probation and Parole Association (APPA).**

Provides staff support to the U.S. Department of Justice, Office of Justice Programs' Center for Sex Offender Management project managed by the Center for Effective Public Policy & APPA. Must have: 5+ years experience in justice field with demonstrated understanding of issues and policies germane to the management of sex offenders in the community; excellent writing, communication, reading comprehension and analytical skills; the ability to organize and manage diverse tasks and capability to work independently and in teams; a demonstrated understanding of various national justice specific disciplines' policy and practice issues; experience working with policy makers; ability to facilitate strategic planning; and advanced degree (Masters level or higher) in related field, or equivalent education and experience. Travel will be required. Salary range \$40,554 to \$55,000. Excellent benefits. Submit letter, writing sample and resume by January 1, 2001 to: CLJ/ APPA, P.O. Box 11910, Lexington, KY 40578-1910. AA/EOE

### **Specific Job Tasks/Responsibilities:**

- Represent APPA by providing staff support to Center for Sex Offender Management (CSOM) project through researching, compiling and disseminating information germane to the management of sex offenders in the community. Responds to information requests and develops information for dissemination. Prepares information for policy makers, professional justice associations and organizations and coordinates policy and practice initiatives to educate, through information exchange and technical assistance, said groups.
- In concert with the APPA Director, CSOM Project Director and other staff, plans, directs, conducts and coordinates pertinent, up-to-date and ongoing information collection and dissemination.
- Establish and maintain effective working relationships with policy makers, statewide and national agencies or organizations of various justice disciplines in order to facilitate the exchange of information on sex offender management and policy development.
- Provide consultation and/or strategic planning to policy makers, justice agencies, associations, organizations and individuals regarding sex offender management and policy issues.
- Research and draft written materials on sex offender management and policy issues for various organizational and association publications.
- Participate in conferences and training activities of said groups.

# SPOTLIGHT ON SAFETY

The APPA Health and Safety Committee reminds you to think about your health and safety in your working environment. As new initiatives and tasks increasingly place probation, parole, and community corrections officers out of the office and into the community, it is important to consider the following suggestions to protect personal privacy:

- Register your cars, whether you use them on the job or not, to your office—not your home;
- Put your office address or a post office box number instead of your home address on your personal checks and driver's license;
- Maintain your personal phone number as unlisted, list the phone under your spouse's name, or list only your name in the telephone directory, not your address;
- Place your address, but not your name, on your house or mailbox.



## Executive Orientation for New CEO's in Probation and Parole


Executive training has been a goal of the National Institute of Corrections (NIC) since its founding two decades ago. The Community Corrections Division has identified major issues that new probation and parole executives must face during their first year on the job and has developed a one week training and orientation in collaboration with the National Association of Probation Executives (NAPE) and Sam Houston State University, Huntsville, Texas. NIC held two pilot training programs in August 1993 September 1997 and have now schedule the training for March 4-9, 2001 and September 23-28, 2001.

The faculty for this training was recruited from the field and is made up of Dan Beto, Texas; Bernie Fitzgerald, Massachusetts; Diane McGinnis, Arizona; Ron Goethals, Texas; Rich Kipp, Pennsylvania; and Rocco Pozzi, New York. This faculty has planned and designed this training program from surveys and from their combined years of experience.

Sam Houston State University is an excellent location to offer this training because the College of Criminal Justice has so many nationally known leaders in the field including Dr. Rolando del Carmen, Distinguished Professor of Law and Dr. Charles Friel, Professor and Past Dean of the College of Criminal Justice. Sam Houston State University has been and continues to be at the forefront of criminal justice learning, and it is appropriate that this executive training should take place in Huntsville, Texas.

This is not a program of leadership. This program was designed for the new executive to take away a "Survival Kit" for the first years on the job. Key topics include: finance/funding, special interest groups, including victims, personnel issues, operational framework, media relations, strategic planning and communications. Participants will enjoy a peer interaction type of training and, in addition to the formal training, will develop a network of peers to call upon as mentors and advisors. This training is restricted to CEOs of probation and parole who have budget authority and responsibility for agency human resource management, policy

development, supervision and establishment of the mission of the agency. New CEOs should contact NIC in Washington, DC for an application and further information regarding the next two classes on March 4-9, 2001 and

September 23-28, 2001 at (800) 995-6423 ext. 138. 

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*Rick Faulkner is with the National Institute of Corrections in Washington, DC.*

BY RICK FAULKNER



# 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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Website: [www.allvest.com](http://www.allvest.com)



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President  
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Phoenix, AZ 85004-1534  
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Fax: (602) 252-4736  
Email: [gbushkin@NCTI.org](mailto:gbushkin@NCTI.org)  
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Fax: (303) 790-9540  
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Website: [www.t-netix.com](http://www.t-netix.com)



### BI Incorporated

Anita Pedersen  
Corporate Communications Manager  
6400 Lookout Road, Suite 101  
Boulder, CO 80301  
Phone: (800) 241-2911  
Fax: (303) 530-5349  
Email: [anita.pederson@bi.com](mailto:anita.pederson@bi.com)  
Website: [www.bi.com](http://www.bi.com)



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Keith Snyder  
Product and Marketing Manager  
9115 Hague Road  
Indianapolis, IN 46250  
Phone: (317) 576-2073  
Fax: (317) 576-4295  
Email: [Keith.Snyder@Roche.com](mailto:Keith.Snyder@Roche.com)  
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Rick Paul  
Director  
1000 Town Center  
Suite 1800  
Southfield, MI 48075  
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Fax: (248) 208-1001  
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*For more information on corporate membership, please contact:*

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c/o The Council of State Governments  
P.O. Box 11910  
Lexington, KY 40578-1910  
(859) 244-8205 Fax (859) 244-8001  
Email: [smeeks@csg.org](mailto:smeeks@csg.org)

## APPA Past President Selected to Chair New Jersey Parole Board

*Adapted from articles appearing in the Trenton Bureau and Star-Ledger.*



New Jersey Governor Christie Whitman recently nominated Mario Paparozzi to chair the New Jersey Parole Board. "I can think of no one more qualified to head the state parole board than Dr. Paparozzi," Whitman said. If approved by the Senate Paparozzi would take over the 11-member board that oversees parole for the state's 30,200 inmates.

If confirmed for the job, Paparozzi would be the first chairperson to come to the agency with experience as a parole officer.

Many of the positions at the agency are unclassified, meaning state officials do not have to follow civil service rules in filling them. It is not unusual

for board members to lack law enforcement experience. "He [Paparozzi] bring to this important post a remarkable and rare blend of academic study and real life experiences," Governor Whitman stated.

Paparozzi talked about turning New Jersey's parole system into a national model, using "state-of-the-art protocols" to better evaluate the risk of releasing an inmate and "criminogenic needs"—the obstacles to an inmates remaining crime-free after release. Paparozzi said an effective state parole system should result in less crime by ensuring that the right prisoners are released from jail. Paparozzi has been outspoken against critics who have called for the abolishment of parole. "It's not about early release," he said. "It's how we want inmates to go from behind the wall to outside the wall in a manner that stacks the safety deck in the public's favor."

Paparozzi comes to this position in a time of disarray for the parole board. There is currently a backlog of more than 2,000 cases. And it faces a civil rights lawsuit brought by inmates arguing that they are waiting too long for parole hearings. "Yes, there is a cloud now, but I think we have an opportunity to sort that out," Paparozzi stated. Additionally, in recent months the state agency has lost its top leaders in the wake of an investigation into allegations of wrongdoing. Chairman Andrew Consovoy resigned in July 2000 after he became the target of an investigation into allegations that he improperly helped members of organized crime get out of prison early and misrepresented to Whitman's top aides the extent of a major backlog of prisoners waiting for parole hearings.

Paparozzi is the immediate past president of the American Probation and Parole Association. He started in corrections as a parole officer 27 years ago and has rose through the ranks to become one of the nation's top experts on the subject of parole.

He is currently an associate professor teaching criminal justice at the College of New Jersey. Immediately prior, Paparozzi was assistant commissioner for the state's Corrections Department.

## The Collateral Consequences of Conviction

### Introduction

Individuals convicted of crime, whether incarcerated or under some form of community supervision, do not enjoy the same rights as the average citizen. In addition to receiving a sentence, offenders lose some of their rights. The sentence an individual receives upon conviction is sometimes referred to as a direct sanction. Rights lost as a result of conviction are referred to as collateral consequences. These collateral consequences include a variety of items, including the restriction of certain civil rights, such as the right to vote, and other disabilities, such as limitations on the ability to own a firearm.

Virtually everyone on probation or parole suffers the loss of some rights and privileges. In previous columns I have discussed the impact of some of the most common probation and parole conditions on the ability of offenders to reintegrate themselves into society. Probation and parole conditions obviously affect, both positively and negatively, the ability of offenders to succeed in their efforts at reintegration. Reintegration is difficult for offenders because a criminal conviction carries with it a stigma. No matter what the offender does, from here on out they will be thought of primarily as an "ex-con." Many employers will be reluctant to hire them, while others in the community will shun them. These sorts of barriers to successful reintegration are informal in nature. More formal barriers to successful reintegration come in the form of collateral consequences of conviction. In this column I examine some of the most common collateral consequences of a criminal conviction.

### Civil Death and Disabilities

A civil right is a right that belongs to a person by virtue of citizenship. Civil rights are sometimes referred to as rights of citizenship. In *Trop v. Dulles*<sup>1</sup> decided in 1958, the United States Supreme Court held that depriving someone of their national citizenship as punishment for desertion from the military during wartime violated the Eighth Amendment's prohibition on "cruel and unusual" punishment, because it left the

individual entirely outside of civilized society. This was a major shift from the early common law, when a person could be declared outside the protection of the law (literally an "outlaw") and could suffer the loss of all his civil rights and the forfeiture of his property to the sovereign. Such laws were known as Bills of Attainder, and were so disliked by the founding fathers that they were specifically barred in the Constitution, one of only three individual rights mentioned in the text of the Constitution.<sup>2</sup>

Based on the Court's decision in *Trop*, it seems unlikely that a court would uphold the stripping of a person's citizenship upon conviction of a crime. Courts have routinely upheld, however, the stripping of some civil rights as a consequence of conviction. Civil rights that are commonly lost by offenders include the right to vote, the right to hold office, and the right to serve on a jury. Rights such as these, related as they are to participation in democratic government, are sometimes referred to as political rights. These rights are generally lost automatically upon conviction.

Several recent studies have examined the status of civil disabilities today.<sup>3</sup> Unlike in years past, when persons convicted of a crime became literal "slaves of the state"<sup>4</sup> and suffered a total and permanent loss of rights, or "civil death," states today generally restrict only some rights, and often allow those who have lost their rights to petition for their return. Only four states still have a civil death statute on the books, and this punishment is limited, in three states, to offenders sentenced to life imprisonment.

Restrictions on civil/political rights vary among the states. Currently, 47 states restrict the right to vote. Fourteen states permanently deprive convicted felons of the right to vote, while 18 states suspend the right until the offender has completed the imposed sentence, including any term of probation or parole. Thirteen states restrict voting rights only during incarceration.

Limitations on the ability of offenders to hold office are also commonplace. Twenty-five states impose some sort of restriction on holding public office after a conviction. Six

states permanently restrict this right, while 19 others return the right after discharge from probation or parole.

While many in contemporary society may view it as a burden, jury service is considered an important part of a democratic society and a valued right. Thirty-one states permanently restrict the right to serve on a jury for convicted felons. Another ten states restrict this right only during the sentence; four other states restrict the right during the sentence and for an additional fixed term of years beyond.<sup>5</sup>

### Other Collateral Consequences

There are a number of disabilities that accompany conviction but do not affect rights related to the ability to participate in political activity. These disabilities are also considered collateral consequences of conviction. Some of these consequences are really more criminal than civil in nature. Examples include restrictions on the possession of firearms, restrictions on or revocation of driving privileges, and the requirement that the offender register with local authorities. Other consequences include the denial of pension and workers' compensation benefits, control of one's children and marriage.

Unlike the loss of civil rights, these sorts of collateral rights/privileges may be lost either automatically upon conviction, or may be lost according to the discretion of the sentencing judge, the parole board or an administrative agency. As one scholar has noted, loss of these sorts of rights may have a greater impact on the offender than the loss of civil rights such as the right to vote or hold office: "for many criminals [these consequences] are . . . in fact, the most persistent punishments that are inflicted for crime."<sup>6</sup>

Among the most frequent disabilities imposed is the restriction on the possession and/or use of firearms. Federal law prohibits all convicted felons from possessing firearms. In addition, 28 states permanently deprive felons of this right, while five more states deprive felons for a period of years after completion of the sentence. The remaining 17 states limit the restriction to felons convicted of a crime of violence.

BY CRAIG HEMMENS

The disability that has seen the greatest increase in use by the states since 1986 is the requirement that offenders register with local law enforcement authorities. While in 1986 only eight states required any offenders to register, by 1996, 46 states had such a requirement. Of these, 45 states also require registration for sex offenders. This development is no doubt a response to recent Congressional legislation that has encouraged the passage of such state legislation.

A number of states impose restrictions on the family rights of offenders, including matters such as marriage and parental rights. Currently 29 states provide that a felony conviction is grounds for divorce; of these 19 states require a conviction and imprisonment while ten require a conviction alone. A number of states provide that while a conviction is not *per se* grounds for divorce, it may be used in support of a petition for divorce.

Nineteen states permit the termination of parental rights of convicted felons. Some states require that the felony demonstrate that the parent is "unfit," while other states permit termination of parental rights after any felony conviction.

Finally, there are a variety of disabilities imposed on offenders either informally or through operation of an administrative or licensing requirement. Examples include the social stigmatization suffered by "ex-cons," the reluctance of many employers to hire convicted felons, and the exclusion of persons of "poor moral character" from many occupations that require licensing by the state. A criminal conviction is generally considered evidence of poor moral character and acts to bar an offender from becoming licensed in a variety of trades.

### Justifications for and Criticisms of Civil Disabilities

Civil disabilities related to participation in political life have traditionally been justified on the grounds that (1) a loss of such rights is an appropriate form of punishment for a criminal offense, and (2) it is inappropriate to allow someone who has violated the laws of society from participating in the public affairs of society.<sup>7</sup> Other disabilities, particularly those adversely affecting the ability of the offender in the community from achieving rehabilitation and reintegration (such as limits on employment), are harder to justify as serving a rational purpose.

Civil disabilities have been challenged on a number of grounds, including the denial of due process and equal protection of the laws,

and being overbroad. Opponents have also argued that such disabilities interfere with the rehabilitation of the offender. Despite these criticisms, civil disabilities remain a prominent component of the criminal sentence.

### Conclusion

How offenders are managed and supervised is obviously a matter of great concern to the general public, politicians and criminal justice professionals. As the primary goal of probation and parole is the successful reintegration of the offender into society, any barriers to such reintegration must obviously be carefully examined. States frequently place limits on the civil rights of offenders. There are few empirical studies of the impact of these collateral consequences on offenders, but the anecdotal evidence strongly suggests that such disabilities impair the reintegration process.

The restoration of rights lost upon conviction is a distinct possibility in many states. The rights of offenders who have completed their probation, parole or sentence may be restored in a variety of ways, including sentence expungement, sealing of the offender's record, through a pardon or by the passage of a period of time specified by statute. The restoration of offender rights will be discussed

in an upcoming column.

### Endnotes

<sup>1</sup> 356 U.S. 86 (1958).

<sup>2</sup> United States Constitution Article I. The other individual rights are the prohibition on ex post facto laws and the right of habeas corpus. The Bill of Rights, in comparison, contains some twenty-three individual rights.

<sup>3</sup> See generally, United States Pardon Attorney, Civil Disabilities of Convicted Felons. Washington, D.C.: United States Department of Justice (1996). See also, Velmer S. Burton, Jr., Francis T. Cullen, and Lawrence F. Travis III, "The Collateral Consequences of A Felony Conviction: A National Study of State Statutes," 51 *Federal Probation* 52 (1988); Kathleen M. Olivares, Velmer S. Burton, Jr., and Francis T. Cullen, "The Collateral Consequences of A Felony Conviction: A National Study of State Legal Codes Ten Years Later," 60 *Federal Probation* 10 (1997).

<sup>4</sup> *Ruffin v. Commonwealth*, 62 Va. 790 (Virginia, 1871).

<sup>5</sup> For a full discussion of the rights lost upon conviction and a listing of the rights lost by state, see Burton et al., *supra* note 3.

<sup>6</sup> Richard Singer, "Conviction: Civil Disabilities," in Stanford Kadish, editor, *The Encyclopedia of Crime and Justice*, page 243 (1983).

<sup>7</sup> Rolando V. Del Carmen and Paul F. Cromwell, *Community-Based Corrections* (1999). □

*Craig Hemmens, J.D., Ph.D., is with the Department of Criminal Justice Administration at Boise State University in Boise, Idaho*

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# American Probation and Parole Association



## Associate Members

*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.*

### **AverStar Inc.**

Michael Mel  
Manager, Criminal Justice Group  
16490 Harbor Blvd., Suite A  
Fountain Valley, CA 92708-1375  
Phone: (714) 418-0204  
Fax: (714) 418-0221  
Website: [www.averstar.com](http://www.averstar.com)

### **MEDTOX Laboratories**

Jim Pederson  
Government Sales Manager  
402 W. County Road D  
St. Paul, MN 55112  
Phone: (615) 636-7466  
Fax: (615) 636-8284  
Email: [jpederson@medtox.com](mailto:jpederson@medtox.com)  
Website: [www.medtox.com](http://www.medtox.com)

### **Pro Tech Monitoring**

Bill Lockwood  
2708 US Alternate 19 N. #503  
Palm Harbor, FL 34683  
Phone: (727) 785-3425  
Fax: (727) 785-3187  
Email: [bill@ptm.com](mailto:bill@ptm.com)  
Website: [www.ptm.com](http://www.ptm.com)

### **CiviGenics, Inc.**

Thomas G. Rapone  
President and CEO  
100 Locke Dr.  
Marlboro, CT 01752  
Phone: (508) 303-6878  
Fax: (508) 303-6499  
Email: [tcr@civigenics.com](mailto:tcr@civigenics.com)  
Website: [www.civigenics.com](http://www.civigenics.com)

### **Mesabi Academy**

Mark Andrews  
Client Services Specialist  
200 Wanless St.  
PO Box 726  
Buhl, MN 55713  
Phone: (888) 270-5013  
Fax: (218) 258-3807  
website [www.kidspeace.org](http://www.kidspeace.org)

### **Technical Chemicals and Products, Inc.**

Robert M. Morrow  
3341 S.W. 15<sup>th</sup> Street  
Pompano Beach, FL 33069  
Phone: (954) 979-0400 ext. 259  
Fax: (954) 979-1214  
Email: [bmorrow2@compuserve.com](mailto:bmorrow2@compuserve.com)

*For more information on associate membership, please contact:*  
**Susan Meeks, APPA (859) 244-8205 Fax (859) 244-8001 Email: [smeeks@csg.org](mailto:smeeks@csg.org)**

## JOB ANNOUNCEMENT

### **Juvenile Court Administrator – Yakima County, Washington.**

Responsible for the overall administration and operation of Juvenile Court Services in Yakima County including the Juvenile Court, Juvenile Detention, Juvenile Probation and volunteer advocacy programs. Performs critical administrative work in planning, organizing, directing and supervising staff and activities to provide juvenile court, detention, custody and visitation, and domestic services for offender and non-offender juveniles. **Minimum Qualifications:** Equivalent to a Bachelor's Degree in a related field and seven years progressively responsible experience including two years in a supervisory and managerial capacity in a juvenile court services environment. **Salary Range (Under Review):** \$63,965 - \$83,460 DOQ, excellent benefits including merit pay eligibility. **Closing date, January 4, 2001** (received, postmarked or e-mail) Apply to: Yakima County Human Resources Department, 128 N. 2<sup>nd</sup> Street, Yakima, WA 98901. **Internet:** [www.pan.co.yakima.wa.us](http://www.pan.co.yakima.wa.us) **E-Mail:** [human.resources@co.yakima.wa.us](mailto:human.resources@co.yakima.wa.us) Telephone: (509) 574-2220 EOE

# APPA POSITION STATEMENT

## Proposed Position Statement on Privatization

*On August 22, 1999 the APPA Board of Directors approved a position statement on privatization at their meeting in New York, New York. However, due to various comments received from the membership, the position statement was sent back to the Issues, Positions and Resolutions Committee to be rewritten. The APPA Board of Directors at their meeting in Phoenix, Arizona on July 23, 2000 approved the following rewritten version of the position statement. The APPA Constitution stipulates that positions and resolutions must next be submitted to the general membership for adoption at the membership meeting in Portland, Oregon on January 10, 2001. The purpose of presenting this position statement in Perspectives is to seek comments and feedback from the membership before seeking such approval. Please be aware that the APPA membership approved a position statement on privatization in 1987. Since that time, much has changed in the field of community corrections, and it is the opinion of the APPA Issues, Positions and Resolution Committee and the APPA Board of Directors that the 1987 position should be updated to reflect current industry trends. Therefore, if the proposed privatization position statement listed below is adopted at the membership meeting in Portland, it will replace the existing position statement. To review a copy of APPA's existing position on privatization, please visit APPA's website at [www.appa-net.org](http://www.appa-net.org) or call Karen Fuller at (859) 244-8196.*

### Introduction

The American Probation and Parole Association (APPA) has the vision of a fair, just and safe society where community partnerships are restoring hope by embracing a balance of prevention, intervention and advocacy. APPA acknowledges that in order to achieve this vision, community supervision organizations must face and manage the continued demand for enhanced or specialized services and programming. This demand has spurred community supervision agencies to design both responsive and innovative programs to meet their specific organizations' evolving needs, while maintaining full compliance with state laws and agency policies. The demand has also created a commercial market for the delivery of a broad range of specialized services related to probation and parole supervision. Consequently, community supervision agencies and policymakers continue to be confronted with the need to define the purpose, role and scope of involvement of private sector service providers in the delivery of community supervision services. APPA recognizes that the availability of specialized private sector services offers community supervision decision makers additional tools and/or options that, when utilized appropriately, can serve to assist an organization in addressing documented needs and achieving its missions. [APPA does not support or promote, however, the wholesale privatization of probation, parole and/or community-based corrections]. APPA believes that at no time should a private entity be able to make the decision to detain or incarcerate. APPA further believes that at no time can a public sector agency contract its primary responsibility for offender management, victim responsibility and community accountability to a private sector agency.

### Position Statement

APPA acknowledges that public entities and policy makers retain the fundamental legal responsibilities assigned to them through legislation by the courts or governing boards. These government jurisdictions and their representatives are ultimately accountable for the quality and efficacy of private sector services delivered under contractual agreements, and retain all authority and responsibility to ensure that the missions, goals, objectives, compliance responsibilities and professional standards of their individual agencies are met.

APPA recognizes the responsibility of private sector service providers to uphold the missions, goals, objectives and professional standards of the accountable public agency. By operating within established parameters, standards, regulations and laws, private sector service providers can contribute to the ability of a government agency to serve the public and to responsibly and humanely supervise offenders placed under its jurisdiction. It remains the responsibility of the public agency to provide oversight of private sector providers to maintain accreditation standards.

In considering privatization, a jurisdiction must employ a systematic approach to evaluating whether the private sector provision of services is the alternative of choice in addressing specific identified needs. This must also take into consideration whether the staff of the private provider meets the same criteria (i.e., background and training) as public staff. The decision to privatize programs or services should be based on a thorough review of the experience of other jurisdictions' privatization successes and failures, as well as on a thorough cost and benefit analysis. Prior to the decision to enter into a contract with a private sector service provider, there is an inherent burden to demonstrate that profit does not come at the expense or detriment of public safety, acceptable levels of service, professionalism or existing professional staff. APPA recognizes that all levels of public officials including executive, managerial and line staff offer perspectives that must be considered in evaluating the costs and benefits of privatized services based on a jurisdiction's specific needs. It is also important to solicit input from community, advocacy and special interest groups, when this input is relevant to the service or program under consideration.

If it has been determined that private sector services will allow for a more immediate, more efficient, more economical and/or more effective response to individual jurisdiction needs, it is imperative that community supervision officials and other decision makers plan carefully and meticulously for the procurement, implementation and evaluation of commercial service delivery. Accountable community supervision agencies must establish clear parameters and specific outcome measurements for the evaluation of the quality and efficacy of private sector service delivery. These expectations must be expressly conveyed to potential private service providers through the bid solicitation process in

advance of the awarding of a service contract or the execution of an agreement with the provider. It is incumbent on the accountable jurisdiction to ensure that a comprehensive implementation plan is developed that delineates service delivery activities and time lines. It is also the responsibility of the accountable jurisdiction to oversee, manage, monitor, collect data on and comprehensively evaluate contractual program/service activities and to share results of the evaluations with other jurisdictions.

APPA recognizes the potential of commercial service providers to offer viable options to community supervision agencies as part of an agency's strategic plan. Private sources may make accessible expertise or specialized services with which the jurisdiction has had little experience or involvement. Private service providers may also enable a jurisdiction

to become involved with more creative service practices and advanced technologies, paving the way for other operational innovations. ☐

It is important that members wishing to comment on this position statement send any comments by January 1, 2000 to:

Issues, Positions and Resolutions Committee  
c/o American Probation and Parole Association  
P.O. Box 11910  
Lexington, KY 40578-1910  
Fax: (859) 244-8001  
*Email: cwicklund@csg.org*

# JOB ANNOUNCEMENT

## Hamilton County Adult Probation – Chief Probation Officer

The Hamilton County Adult Probation Department has an excellent opportunity available for a Chief Probation Officer. This highly responsible position functions as the senior executive of the Probation Department of the Court of Common Pleas (General Division) and the Municipal Court. Candidates must possess a Bachelors degree from an accredited college or university, with emphasis in correctional work (including law enforcement, probation or parole), or the social science field. Those possessing a Masters or other advanced degree are desired. Ten years experience as a probation, parole or law enforcement officer, including a minimum of 3 years experience in a supervisory position, is desired. Certification as a certified chemical dependency counselor, or a general counseling certification granted through the State of Ohio is preferred. Annual certification in the use of a firearm is needed.

### Job Duties:

- responsibility for the operation of the Probation Department in conformity with existing federal and state laws and regulations, rules of the Courts and established theories and practices of corrections
- directs the day-to-day operation of the Probation Department
- supervises the planning and execution of the Department's budget
- interviews prospective employees and recommends employment to the appropriate Court
- supervises staff, including scheduling, assigning and reviewing work, and evaluating and making recommendations for corrective measures, merit increases/promotions
- responds directly to the Courts on case specific requirements
- provides regular reports of Probation Department activities to the Court Administrator
- coordinates the activities of the Probation Department with other County departments/agencies, municipal and state organizations, and appropriate non-government organizations
- supervises the planning/implementation of training for all Probation Department personnel
- oversees the application and administration of grants from state and/or federal governments
- responsible for the creation and maintenance of the Probation Department Policy and Procedure Manual
- ensures that all policies comport with applicable federal, state and municipal laws and regulations, and that no such policies contradict the Court personnel policies
- represents the Probation Department and the Court on various related boards and commissions, and in related seminars and meetings
- researches, develops, supervises, and operates special Court service programs for the Probation Department such as community service and drug treatment.

### Additional Information:

**Salary:** \$61,576.00 to \$78,125.00 per year

**Position Type:** Full Time

### Contact Information

Julie Bissinger, Personnel Director  
Jbissinger@cms.hamilton-co.org  
Hamilton County Court Administrator  
1000 Main Street, Suite 410  
Cincinnati, OH 45202  
Fax: (513) 946-5809



# CALL FOR NOMINATIONS

## APPA Elections

### Nomination for executive officer positions:

Recent changes to the APPA Constitution have altered the nomination procedure for executive officer positions. In accordance with the APPA Constitution, Article V, Section 13:

- Candidates for an executive office shall be nominated by members of the APPA Board of Directors.
- The board of directors shall select at the regularly scheduled board of directors meeting prior to the Annual Training Institute two candidates for each executive officer position to run for each designated office.
- The slate of candidates selected by the board of directors will then be presented to the full membership for selection during a regularly scheduled election.

Nominations for the following executive officer positions will be accepted at the APPA Board of Directors meeting on January 7, 2001 in Portland, Oregon:

- President-elect
- Vice President
- Secretary
- Treasurer

Candidates for president-elect are required to be a member of the APPA Board of Directors for a minimum of two years prior to election. Candidates accepting a nomination for executive officer must provide a black and white photograph and formal statement of approximately 500 words outlining their interest in becoming an officer; accomplishments to be performed during their term and their future directions for the organization for insertion on the ballot.

### Nomination for regional director positions:

All active individual, affiliate or agency members are encouraged to nominate individuals to serve as regional directors from the following regions for a period of six years.

Region	State(s) Represented	Present Incumbent
Region 1	Maine, Vermont, Massachusetts, New Hampshire, Connecticut, Rhode Island	Paula Keating
Region 3	Deleware, New Jersey Pennsylvania	Robert Czaplicki
Region 4	Maryland, Virginia, West Virginia, District of Columbia	Amanda Bass
Region 5	Ohio	Gary Yates
Region 9	Illinois	Darrell McGibany
Region 10	Minnesota, Wisconsin, Iowa	Mark Carey
Region 11	Arkansas, Kansas, Missouri, Oklahoma	Robert Sanders
Region 12	Texas	Dmitria Pope
Region 15	Washington, Oregon, Idaho, Montana, Alaska	Faye Fagel

According to the APPA Constitution, Article V, Section 9: To qualify for elected office in this association, the candidates must be:

*(a) an active member in good standing, willing and able to fulfill the duties of the office for which nominated, and be willing and able to serve in the office for the length of time necessary to fulfill the duties of the office.*

Nominations must be received in writing by May 4, 2001. Members are encouraged to nominate themselves for regional director positions. This position offers members an opportunity to present and discuss issues germane to the field and set the course for future initiatives for your association. Candidates accepting a nomination for regional director must provide a biography or statement of fewer than 150 words, which will be included on the ballot.

The schedule below will be followed for the 2001 election:

December, January, February, March, April	Call for nominations for regional director positions.
January 7	The APPA Board of Directors selects two candidates for each executive officer position.
May 4	Cut off date for nominations for regional director positions.
May 7	Nominations committee selects two candidates for each regional director position from those nominated and prepares ballot.
June 15	Election ballot, containing candidates for executive officers positions and regional directors positions, is mailed first class to each current member.
July 27	Last day for ballot postmark.
July 30	Ballots counted.
August 6	All candidates notified by mail of election results.
August 29	Nominations committee reports results at membership meeting

**All nominations should be sent by May 4, 2001 to:**

Amanda Bass  
Virginia Dept. of Corrections  
829 N. 17<sup>th</sup> Street , Richmond, VA 23219  
Fax: 804-786-0252 Phone: 804-786-0251, ext. 120

# CALL FOR NOMINATIONS



## 2001 APPA Awards



### Deadline: March 1, 2001

*The Awards Committee of the American Probation and Parole Association is actively seeking nominations for four awards that are to be presented at the APPA Annual Training Institute. APPA does not require that the recipients be members of the American Probation and Parole Association. APPA considers it essential for members to participate in the nomination and selection process to assure that award recipients deserve such recognition from our probation and parole profession.*

#### Scotia Knouff Line Officer of the Year Award

The most competitive and perhaps the most prestigious practitioner award, is the Scotia Knouff Line Officer of the Year Award. This award is given to a probation, parole or community corrections officer who has performed assigned duties in an outstanding manner and/or made significant contributions to the probation, parole or community corrections profession at the local, regional or national level. The recipient may also have brought credit or honor to the profession through participation or involvement in community activities or programs.

community corrections, which provides new information and insight into the operation, effectiveness or future of the community corrections profession. For such recognition an article must have been published in a national or regional journal.

#### Joe Kegans Award for Victim Services in Probation and Parole

The Joe Kegans Award for Victim Services in Probation and Parole was first presented in 1998. This distinguished award was established as a tribute to the late judge Joe Kegans, a founding member of APPA's Victim Issues

Committee, who devoted her career as a jurist to bettering the lives of all with whom she came into contact. This award honors the individual working in community corrections who has provided exemplary services to victims of crime.

Nominees for this award may be living or deceased; preference will be given to community corrections professionals or volunteers; preference will be given to those who themselves may have experienced criminal victimization and have used that experience to help others. APPA members are encouraged to honor the memory of this wonderful colleague by nominating deserving individuals for the Joe Kegans Award.

#### Walter Dunbar Memorial Award

The Walter Dunbar Memorial Award is the oldest APPA practitioner award. It is presented in honor of one of APPA's most distinguished colleagues, the late Walter Dunbar, who served as director of the California Department of Corrections, chairman of the U.S. Parole Commission and director of the New York State Division of Probation. The award is presented for significant contributions by a practicing professional or a retired practitioner in the field of probation and/or parole.

#### University of Cincinnati Award

The University of Cincinnati Award is not a practitioner award. It is presented to an individual who has made significant contributions to the probation and parole field or criminal justice technology. Recipients typically are individuals from an academic research or government agency not engaged in providing probation and parole services.

#### Sam Houston State University Award

The Sam Houston State University Award is presented to a practitioner who has published an article concerning probation, parole or In 1993, the American Probation and Parole Association established the President's Award to

### APPA Award Nomination Format

**Nomination Submitted by:** Name, address and telephone.

**Nomination for:** Identify the specific APPA award

#### A. Nominee Personal Data:

Name, title, agency, address

Telephone (home), Telephone (business), Date of Birth

**B. Education:** Indicate date of degree(s) awarded; school attended; date of award. Specify information for all universities attended; or work on degree.

**C. Employment History:** Indicate job title; location of employment; periods of employment (cover past 15 years of employment or period of employment if less).

**D. Professional and Community Activities:** Identify memberships, offices held and awards received. (Note - A vitae or resume containing items A through D may be substituted.)

**E. Justification:** Written justification that supports the recommended APPA award.

**F. Testimonials:** There should be three testimonials from a variety of different supporters from the profession, treatment services, law enforcement, victims, clients or the community.

**G. Photograph of nominee, 3" x 5" or larger, black and white or color.**

All nominations for APPA awards must include all information specified above.

#### Nominations must be sent to:

Barbara Broderick

Arizona Supreme Court

Director, Adult Probation Division

1501 West Washington Street, Suite 344

Phoenix, AZ 85007

Fax: (602) 542-9673

**Deadline: March 1, 2001**

Photographs and summaries of APPA award recipients will be included in the APPA awards luncheon bulletin. Other nominee photographs and summaries will be provided to the APPA Secretariat for use in whole or in part, in *Perspectives*.

# CALL FOR NOMINATIONS



## APPA President's Award



**Deadline: May 1, 2001**

*But the final answer can never be a scientific one. Though science must surely inform our options, the ultimate choices we make must come from our values, for these are the moral home from which we act.*

— Todd R. Clear, PhD

*What is already passed is no more fixed, than the certainty that what is future, will grow out of what has already passed.*

— George Cheever

In 1993, the American Probation and Parole Association established the President's Award to recognize exemplary community corrections programs which serve to advance the knowledge, effectiveness and the integrity of the system. APPA acknowledges the growing responsibilities of the profession in meeting the ever present demands by celebrating the successes of our constituents. Successes are the product of collaboration, teamwork and organizational spirit. To this end, APPA seeks to recognize visionary organizations who have exemplified the management and innovations necessary to lead community corrections into the next decade.

APPA realizes that nothing is as dangerous as *the* right answer or the *only* answer available. As a profession, we must continue searching for a second or even a third or fourth "right" answer. These searches take place when individuals choose to have them happen and take personal responsibility to make them happen. Successes are the product of collaboration among such individuals, teamwork and organizational spirit. These risk-taking organizations provide the strong environments needed to encourage, support and nurture experiences which lead us to the discovery or exploration of new paradigms.

In recognizing our association's past leadership, APPA will recognize through the President's Award those visionary organizations who have exemplified the management and innovations necessary to lead community corrections toward our future.

### Selection Criteria

The APPA President's Award will be given to the community corrections program which meets all or a combination of the following criteria:

- The program/project either changes or contributes to the broad "field" of community corrections and helps to move the "field" forward.

- There is a clear correlation between the goals of the program/project/agency and their effect (impact).
- The program/project/agency makes a difference which is supported by impact data.
- The elements of the program/project/agency which make a difference can be replicated by others.
- There is clear evidence of the supportive nature of its environment.

- The program/project/agency will be qualitatively evaluated on the following characteristics:
  - program implementation process;
  - client assessment practices;
  - program characteristics which match the client's needs;
  - therapeutic integrity;
  - relapse prevention techniques;
  - staff characteristics and evaluation.

### APPA President's Award Nomination Format

- Agency name  
Address  
Jurisdiction  
Name of person submitting nomination  
Address & telephone number
- Program/project title  
Program/project director's name  
Address & telephone number
- Describe goal(s) of program/project  
Population(s) served  
Staffing/Budget  
Description of program/project (include unique methodologies, if any)  
Technologies used  
Program/project outcome (cite supporting data)  
Anticipated outcomes, if any
- Project/program benefits: Describe the benefits of the program/project to your community, "field," and agency.
- Conclusion: Describe why this program/project warrants this award.

Nominations must be sent to the chair of the awards committee in written form by **March 1, 2000**. Nominations must include **all** of the information specified in the APPA President's Award Nomination Format.

#### Nominations must be sent to:

Barbara Broderick  
Arizona Supreme Court  
Director, Adult Probation Division  
1501 West Washington Street, Suite 344  
Phoenix, AZ 85007  
Fax: (602) 542-9673

**Deadline: May 1, 2001**

# CALL FOR NOMINATIONS

## APPA Member of the Year

### APPA Awards

*Recognizing Accomplishments*

*The APPA Member of the Year is an award open to any APPA member who meets the award criteria. This award is intended to recognize the work and energy of a worthy APPA member.*

#### Award Criteria

The APPA Member of the Year must have been a member of APPA for at least one year with a current membership. The APPA Member of the Year must have provided significant contributions to the organization through promotion of the vision and mission of APPA. The APPA Member of the Year cannot be an elected member of the APPA Board of Directors or the Executive Committee.

Any APPA member may submit a nomination for APPA Member of the Year by

providing the following information:

- Name, address and telephone number of nominee
- Name, address and telephone number of nominator
- Length of time nominee has been a member of APPA (must be a member for at least one year)
- Description of contributions the nominee has made to APPA and/or their affiliate association (provide a list of specific contributions).

Submit the nomination by **March 1, 2000** to the following address via mail or fax:

James Sinclair  
Assistant Director  
Tarrant County CSCD  
200 West Belknap  
Ft. Worth, TX 76196-0255  
(817) 884-1704  
Fax (817) 884-1862

## APPA Community Awareness Through Media Award

### APPA Awards

*Recognizing Accomplishments*

*The APPA Community Awareness Through Media Award is an award that wishes to recognize a media broadcast, publication or film capable of reaching a national audience, which broadens the public's awareness and understanding of issues in the American criminal justice system through sharing the vision of APPA.*

Those of us in the field of probation and parole sometimes complain that the general public has a pervasive misunderstanding of community corrections. Many times, public perceptions of our mission are fueled by inaccurate media reports based on inadequate information.

The Community Awareness Through Media Award, sponsored by the American Probation and Parole Association Public Relations Committee, seeks to recognize outstanding reporting through broadcast, film or publication, which contributes to a better understanding of the issues in the American criminal justice system.

APPA is asking for your help in calling attention to media, which in 1998 advanced public awareness, nationally, of the APPA vision. Please help us identify media coverage

of the American criminal justice system which is accurate, fair and balanced. Such coverage has the potential to improve community awareness and understanding of the work to which we are committed.

You are urged to nominate a recipient for this award by providing the following information:

- Title of article, publication, program or movie
- Name, title, agency, address, phone and fax of person directly associated with the article, publication or program
- Date published or broadcast
- Name of newspaper, magazine, book, TV station or movie
- Supporting documentation (e.g., reviews or awards)

- Name, title, agency, address, phone and fax of person submitting nomination

If possible, a copy of the publication or tape of the broadcast or video should be included with your nomination. If not, briefly describe why you believe it meets the above criteria. The nomination should have reached a national audience.

Submit the nomination by **March 1, 2000** to the following address via mail or fax:

Pamela Kirkby  
Office of Adult Probation  
643 Maple Avenue  
Hartford, CT 06114  
(860) 566-8350  
Fax: (860) 566-7443



# 2000 APPA AWARDS

## APPA Awards

*Recognizing Accomplishments*

*The annual awards of the American Probation and Parole Association were presented during APPA's 25<sup>th</sup> Annual Training Institute in Phoenix, Arizona, July 23-26, 2000. Congratulations to the award recipients in recognition of their contributions and dedication to the probation and parole profession.*

### Scotia Knouff Line Officer of the Year Award



**Molly Fitzgerald**  
Adult Probation Officer  
Hamilton County Probation Dept.  
Cincinnati, Ohio

*The most competitive, and perhaps the most prestigious practitioner award is the Scotia Knouff Line Officer of the Year Award. This award is given to the probation, parole and/or community corrections officer who has performed assigned duties in an outstanding manner and/or has made significant contributions to the probation, parole or community corrections profession at the local, regional or national level and/or has brought credit to the profession through participation or involvement in community activities or programs.*

Molly Fitzgerald is a highly competent professional who has served her department for more than 17 years. Not only has she handled her caseload effectively, she has contributed substantially to the profession on a local and national level. She has been actively involved in educating the community and other members of the criminal justice system about issues pertaining to probation and supervision of adult offenders.

### President's Award

#### Georgia Parole Board Field Operations Division

*In 1993, the American Probation and Parole Association established the President's Award to recognize exemplary community corrections programs which serve to advance the knowledge, effectiveness and integrity of the system. APPA acknowledges the growing responsibilities of the profession in meeting the ever-present demands by celebrating the success of our constituents. Successes are the product of collaboration, teamwork and organizational spirit. To this end, this award recognizes visionary organizations that have exemplified the management and innovations necessary to lead community corrections into the future.*

The Georgia Parole Board's Field Operations Division has developed an innovative and proactive approach to supervising adult offenders that emphasizes outcome over processes. The Results-Driven Supervision (RDS) program targets high-risk/high-needs parolees and matches them with intervention programs proven to reintegrate the parolee and reduce the likelihood of recidivism.

### Community Awareness Through Media Award

#### Colorado Forum on Community and Restorative Justice and Colorado Office of Probation Services

*In 1997, The American Probation and Parole Association established the Community Awareness Through Media Award. This distinguished award recognizes a media broadcast, publication or film capable of reaching a national audience, which broadens the public's awareness and understanding of issues in the American criminal justice system. The recipient will have shared the vision of APPA, in which community partnerships are restoring hope by embracing a balance of prevention, intervention and advocacy, or have covered the American criminal justice system with accuracy, fairness and balance.*

The Colorado Forum on Community and Restorative Justice and the Colorado Office of Probation Services created the film, "Beyond Just-Us" in an effort to celebrate and extend the many statewide efforts to advance the principles of restorative and community justice. The film highlights the statewide endeavor at the community level, celebrating success stories from urban settings to the Native American communities of Colorado.

### University of Cincinnati Award



**Dr. John Hepburn**  
Professor of Justice Studies  
Arizona State University

*The University of Cincinnati Award is a non-practitioner award. It is presented to an individual who has made significant contributions to the probation and parole field or technology. Recipients are typically individuals from academic research or government agencies not engaged in providing probation or parole services.*

Dr. John Hepburn, Professor of Justice Studies at Arizona State University (ASU), has been providing technical assistance, program evaluation and research to the criminal justice system in Arizona since the late 1980s. His tireless efforts to bridge the gap between academia and practice have benefited the community through collaborations with the sheriff's department, the county attorney's office, the courts, treatment providers, local law enforcement and adult probation.

## Sam Houston State University Award

### Center for Civic Innovation at the Manhattan Institute

*The Sam Houston State University Award is a practitioner's award given to an individual who has published an article concerning probation, parole or community corrections which provides new information and insight into the operation, effectiveness or future of the community corrections profession. For such recognition an article must have been published in a national or regional journal.*

The concerted efforts of the members of the Reinventing Probation Council, created and sponsored by the Center for Civic Innovation at the Manhattan Institute, resulted in the monograph, *"Broken Windows - Probation: The Next Step in Fighting Crime"*. It calls on the field to implement research supported practice and bring public relevance to probation and parole while outlining both ineffective current practices and promising strategies for the future.

## Walter Dunbar Memorial Award



### Rocco A. Pozzi

Commissioner of Probation and Corrections  
Westchester County  
White Plains, New York

*The Walter Dunbar Memorial Award is the oldest APPA practitioner award. It is presented in honor of one of APPA's most distinguished colleagues, the late Walter Dunbar, who served as Director of the California Department of Corrections, Chairman of the U.S. Parole Commission and Director of the New York State Division of Probation. The award is presented for significant contribution by a practicing professional or retired practitioner in the field of probation and/or parole.*

Rocco Pozzi has, throughout his 27-year career, continually sought improvements to the field of community corrections and continues to showcase best practices in key local, state and national forums. He works diligently to increase the visibility and viability of probation in the community through tireless lobbying efforts, promotion in the media and by emphasizing field work.

Mr. Pozzi is a past president of the APPA and current president of the New York Council of Probation Administrators.

## Joe Kegans Award for Victim Services in Probation and Parole



### Karin Ho

Administrator, Office of Victim Services  
Ohio Dept. of Rehabilitation and Correction  
Columbus, Ohio

*The Joe Kegans Award for Victim Services in Probation and Parole was first presented in 1998. This distinguished award was established as a tribute to the late Judge Joe Kegans, a founding member of the APPA's Victim*

*Issues Committee, who devoted her career as a jurist to bettering the lives of all with whom she came into contact. This award honors the individual working in community corrections who has provided exemplary services to victims of crime.*

Karin Ho has worked for nine years to balance the scales of justice on behalf of the victims of crime, and to ensure that victims in Ohio are treated with dignity and respect. Ms. Ho is herself a survivor of an extremely violent crime, and she graciously (and single-handedly) took on the challenge of establishing victim services in the country's fifth-largest correctional system. Her efforts have resulted in a correctional and parole system that recognizes the important role of victims in the rehabilitation of offenders.

## APPA Member of the Year



### Virginia (Gini) Highfield

Utah Division of Youth Corrections  
Salt Lake City, Utah

*The APPA Member of the Year Award recognizes the work and energy of an APPA member. It is open to current APPA members who have been members for at least a year and who have provided significant contributions to the organization through promotion of the vision and mission of APPA. Elected members of the APPA Board of Directors or the Executive Committee are not eligible to receive this award.*

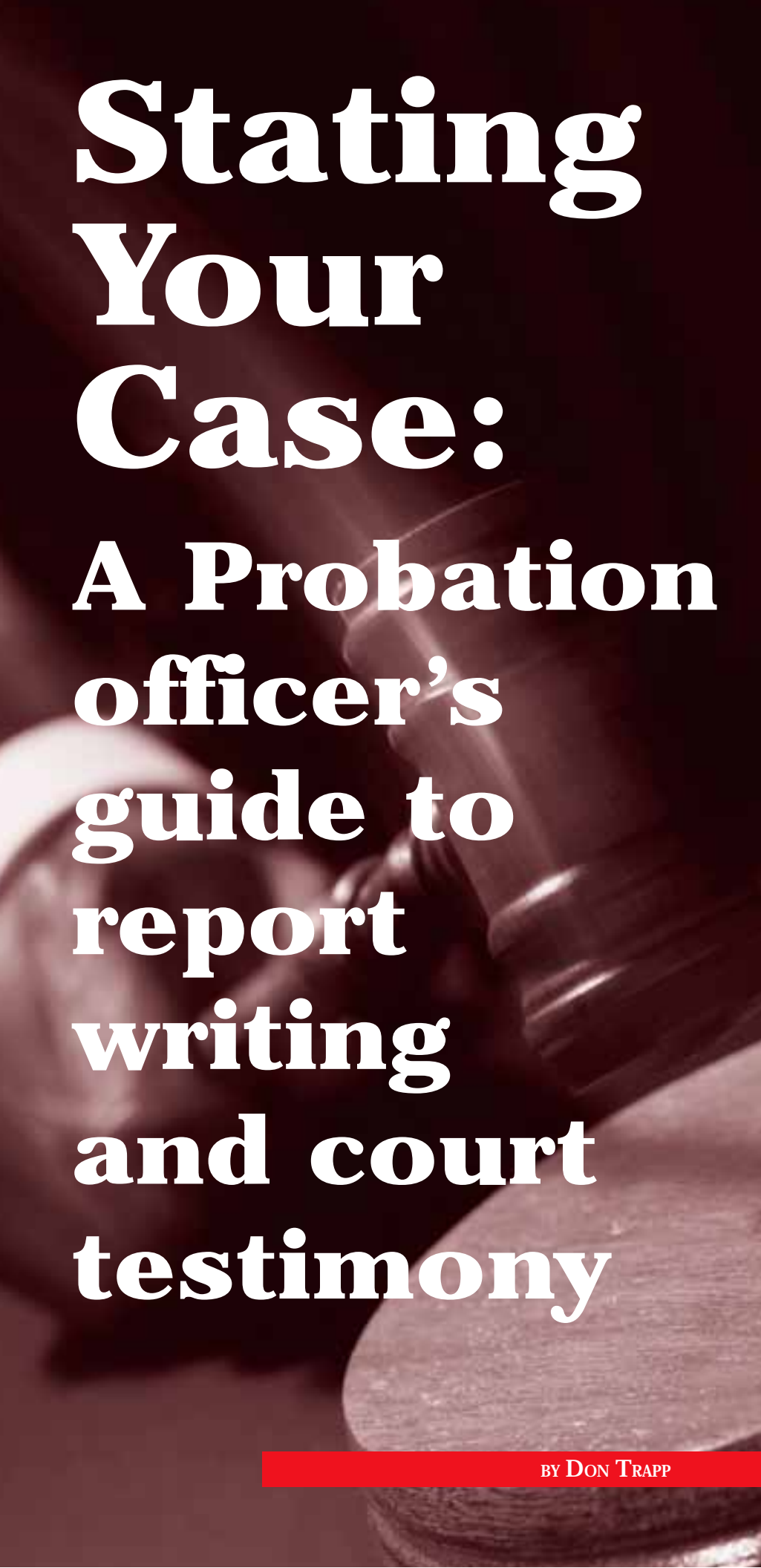
Virginia (Gini) Highfield has been involved with APPA for 17 years, serving as a juvenile justice track chair for eight national training institutes, local program chair for the 1987 APPA Annual Training Institute in Salt Lake City and serving on the juvenile justice and the prevention subcommittees since their inception. She has been involved in many special assignments through APPA. She currently serves as the APPA affiliate representative for Utah Correctional Agency on the APPA Board of Directors.

For a more detailed description of the award winners, visit the APPA website at [www.appa-net.org](http://www.appa-net.org) and select "Awards" under the "About APPA" section.

## Sponsors

APPA extends a special appreciation to the following companies for their gracious and generous support and assistance during the APPA 25<sup>th</sup> Annual Training Institute in Phoenix, Arizona, July 23-26, 2000. Only through this support can APPA maintain its high standards of Institute training.

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# Stating Your Case: A Probation officer's guide to report writing and court testimony

**TESTIFYING IN COURT** can be an anxiety-laden experience for probation officers. Aside from the pressure of public speaking, a probation officer's knowledge, training and judgment may be questioned. In some instances, it may seem that the department itself is on trial. Experience may help to ease the anxiety, but what can a probation officer do to really prepare for a hearing? What kind of information should be in the violation report? How can a probation officer effectively present allegations and substantiations of violations? How does a probation officer know their recommendation is appropriate? The following guidelines are the results of ongoing discussions with judges, district attorneys and defense attorneys. These guidelines provide a systematic approach to the violation process from the violation report to the hearing.

## **The Violation Report**

The violation process begins with the violation report. Though the format may differ by jurisdiction, the essential elements remain the same

### *Allegation and Substantiation of Violation*

This section is the essence of the violation process, and as such, it must clearly detail two issues: What specific condition of supervision is alleged to be violated? and, how specifically was it violated? For example, an allegation of failure to report should detail how exactly the offender was directed to report (e.g. letter, phone call, etc.). Further, many jurisdictions require that a finding of violation must be willful on the part of the offender. Therefore, the report must describe and detail that the offender was aware of a specific condition.

### *Conformance (Evaluation)*

This section allows the supervising officer to assess an offender's compliance to supervision thus far. It is usually a less structured section that allows information that may not be included in the allegation section, such as a large number of police contacts or concerns from neighbors or family members. It is an opportunity for the officer to detail what efforts have been made to gain the compliance of the offender, including treatment and program opportunities and previous sanctions for non-compliance. In some circumstances, and when temporally related, it may be appropriate to include information about prior supervisions.

The conformance section, when adequately detailed should become a guide for the officer's



courtroom testimony. When preparing this section, the officer should address the following three issues:

1. What is the offender's ability to comply with community supervision? That is, are there mental health, substance abuse or general stability issues that are serious impediments to the offender's success on supervision?
2. What is the offender's willingness to comply with community supervision? Has the offender demonstrated, directly or indirectly, that he/she is unwilling to be supervised or otherwise comply (e.g., failing to appear in court, failing to report, statements by the offender, prior supervisions, etc.)?
3. Is the community at any undue or increased risk if the offender continues on community supervision? What danger or level of risk does the offender pose to him/herself or the community?

## **Recommendation**

The recommendation is more than just a suggested outcome for the proceedings. The recommendation is a melding of the law, the collective knowledge of the profession on effective offender management, and your department's policies. The recommendation will be the subject of the most intense debate during a violation hearing, and the officer will most certainly be asked to defend it. In developing the recommendation, the officer should consider the following:

### *A. What do you want to accomplish?*

Are you seeking to remove a violent offender from the community for the longest possible time, or do you want to briefly "sanction" an offender for a positive urinalysis? The officer should also contemplate the benefits of alternative sanctions such as: work release, community service, inpatient treatment or house arrest.

### *B. Given the recommendation, is this intended outcome possible?*

A probation officer should be aware of available resources and programs— especially if they are to be part of the recommendation. Further, the probation officer should be able to advise the court if the offender is a viable candidate for such a program.

### *C. Does the recommendation follow logically from the violations and evaluation?*

Is the sanction commensurate with the violations? Is it consistent with the law and local sentencing practices?

Finally, your recommendation should be specific. This is particularly important when an offender has several cases and/or counts to each case. In addition, some jurisdictions, including Oregon, expect the probation officer to recommend a specific sentence (e.g., 30 days jail) and to include recommendations for credit for time served, work release or inpatient treatment options. In the courtroom, there is no such thing as too much clarity.

## **The Hearing**

The protocol for probation violation hearings may vary by jurisdiction. Whether a probation officer testifies as a witness for the state or presents evidence and oral argument from the counsel table, the officer should be aware of the role they will play.

## **Pre-hearing Preparation**

Review the file. Although the officer may be supervising this offender, that alone is not enough to say that they are familiar with the case. This

offender may be one in 50 or 100 cases that the officer is currently supervising, or the officer could have just received this case (or caseload), or could be covering for another officer due to illness, vacations, etc. In reviewing the file, the officer should become familiar with the history of the case and should anticipate questions regarding the offender's employment status/history, current living situation or significant skills or deficits. In most hearings, the officer may bring the file to the witness stand for reference. Whether or not this is the case, a few prepared notes may be helpful.

If a complicated hearing with several witnesses or a contentious issue is anticipated, the officer should contact the district attorney assigned to the case in the days before the hearing. This will help the district attorney prepare their case. They may also have helpful advice to the officer regarding legal procedures or issues of law. This is good advice even for what appear to be uncomplicated hearings. Be advised however, that the district attorney's office may have their own recommendation—not based on a critical assessment of the offender's supervision history or sanctioning options, but based on internal policies or political issues.

Similarly, the officer should not be discouraged from discussing the case with defense counsel. This discussion may not alter the officer's recommendation, but it may offer additional information as to the client's abilities or deficits. This information could be helpful in developing and/or refining the recommendation. In addition, just as the district attorney may aggravate or embellish the offender's non-compliance, so may defense counsel mitigate or obfuscate it.

To the extent possible, the officer should use these pre-hearing discussions to negotiate an agreement between all parties. This is not to say that the officer should amend the recommendation to simply avoid conflict. The intent of such a negotiation is to communicate to both parties the intent or purpose of the recommendation. These discussions should not be about what the recommendation is, but why. Open discussions such as these foster trust, encourage cooperation and, when empirically based as opposed to politically or personally, enhance the officer's credibility.

## **At the Hearing**

With the aforementioned preparations and a well-written report, the officer should be able to answer the questions of the district attorney, defense counsel and the court. In response to all questions, the officer should speak clearly, answer the questions directly and focus their remarks towards the judge. It is important to reiterate that personal or political bias has no place in the officer's testimony. In addition, the officer should be mindful that at a probation violation hearing, the court seeks the answer to two questions: in what way did the offender violate the conditions of his probation; and what is the most appropriate remedy for this situation?

A probation violation hearing is a public forum. As such, it is more than the adjudication of a single case. It is an opportunity to demonstrate to the court and the community the commitment of your department to the values of public safety and offender rehabilitation. It is an opportunity to demonstrate that their confidence in you and your department is not misplaced. A probation officer is in fact a "street-level administrator" furthering their department's mission. The officer's pre-hearing preparations and discussions are not insignificant extensions of that mission. Being well prepared for a hearing is more than good advice—it is good policy. □

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*Don Trapp is the Court Liaison at Multnomah County Adult Community Justice in Portland, Oregon.*





# The Nose Knows

**I LOOKED AT THE FELONY PROBATIONER** sitting in the back seat of the patrol unit and thought, “There must be a better way.”

She was facing violation of probation charges following a search revealing narcotics and other paraphernalia concealed between the walls of a shed behind her home. The probationer was three months pregnant, addicted to methamphetamine and the mother of two other toddlers still in the home. The toddlers would remain in the home with their father while she was taken into custody. Possibly, there were more narcotics inside the residence, yet officers had already searched the home at length, finding nothing. A K9 team was requested. However, none was readily available.

I spoke with the probationer the following day at the jail. When asked if there were more narcotics in her home, she replied, “Yeah, they’re hidden under the dresser.”

“Are they accessible to your children?” I asked. There was no response.

That was the day planning for a K9 team began. Several months later, a new pup was roaming the halls of the Glenn County Probation Department. With his incredible scenting ability, hiding drugs and drug use was suddenly a lot more difficult. Kilo, an 18-month-old Belgian Malinois, answers to 12 commands in Dutch. He is the first “passive” alert canine assigned to the Glenn County Probation Department and is one of only a handful of drug detection canines assigned specifically to a probation department in the state of California. A “passive” alert canine sits upon the detection of the odor of narcotics. This is in contrast to the “aggressive” alert canine that barks or scratches at the area upon the detection of the odor of narcotics.

Many narcotic detection canines, in addition to searching for drugs, are trained for patrol and protection; these dogs are

BY MICHELLE A. BELTRAN

referred to as "dual-purpose" canines. Typically, a canine with this training would be assigned to a police department, where training in protection and the apprehension of criminal offenders is necessary. Such training includes "bite work." While a dual-purpose canine was not necessary for the Probation Department, a single purpose canine was just the right ticket. The beauty of having a single purpose narcotic detection canine is that they are not trained in protection, apprehension or bite work. The job of a narcotic dog is to find drugs. The underlying concept behind a narcotic dog's search for drugs is that it be fun! Liability concerns are minimal at best. What's more, since Kilo sits passively upon the odor of detection, there is no chance of destruction of the property where narcotics are found, and there is no intimidation factor present.

When Kilo and I leave work for the day, we have a relationship much like that of any other dog and owner. Kilo mixes and mingles with co-workers, family and friends as if he were a pet. Kilo is not only a useful tool during narcotic searches, he is an asset to our department in that he boosts office moral and is a wonderful avenue for outreach, especially to the impressionable children and youth of Glenn County.

Since the inception of the Glenn County K9 Team, on May 1, 2000, Kilo has shown that he "nose" how to get the job done. The K9 Team has enhanced the department's ability to increase probationer compliance and deter probationers from possession of controlled substances. Because of his superior sense of smell and hearing, probation searches are more effective, thorough and safe. A narcotic dog easily searches areas difficult for law enforcement officers to reach, such as cluttered or small areas.

The K9 Team has been cost effective in that it has decreased the number of probation officers needed to conduct a narcotics search. Normally, it would take numerous officers several hours to complete a quality search of a medium to large sized building and they would only be able to say that they think there are no narcotics present. When Kilo has completed a search, we can say with a high degree of probability whether there are narcotics in the building or not thanks to a scenting ability 100 times more effective than the human nose. In a recent probation search, search time was cut to approximately one fourth of the usual time taken by officers.

Although an allied agency canine was available through law enforcement agencies in close proximity, we realized that when considering the increase in the number of probation searches at unpredictable hours, shared use of an allied agency canine extended exposure time for law enforcement officers in the field and deprived allied agencies of enforcement time in their own jurisdictions. Borrowing a canine team simply removed law enforcement officers from regular duties and created a shortage in their jurisdiction, becoming burdensome to allied agencies.

Kilo provides assistance to other law enforcement agencies upon request. In his first week of service, Kilo assisted local drug enforcement agents in a felony probation search in which 19 grams of methamphetamine were found. The following week he alerted to over \$300,000 in currency believed to have been used in drug trafficking. The monies were seized, pursuant to asset forfeiture protocol, and the department anticipates a percentage of the assets.

We hope that asset forfeiture will ensure continued success of the program. Monies acquired through these asset forfeiture cases will not only fund the continued operation of the K9 Team but will become a powerful tool for other valuable purposes such as helping crime victims, providing the development of programs to help resurrect crime-plagued neighborhoods, make donations of goods to charities and bolster law enforcement capacity and cooperation.

As a result of the shared use of the K9 Team, we have a closer relationship with other law enforcement agencies. Forfeiture funds will allow us to share equitably among all agencies that have contributed to investigations leading to forfeiture.

The K9 Team has provided the public relations tool that the probation department was missing. The K9 Team is used to introduce anti-drug education programs at local schools as well as in the community at-large, educating teachers, students and the public about the dangers of drug use and abuse.

Training for the K9 Team and ongoing costs such as equipment and dog food are paid for by Glenn County, grant money and donations from pet-related companies. Our department was fortunate to receive Kilo as a donation. Kilo received initial training by Officer Oscar Gonzales, K9 trainer and handler at a South Florida Police Department. Kilo was flown to California where he and I continued our training at Makor K9 Center in Napa, California.

Our department is very pleased with the success of the K9 Team. The passive alert method is non-intrusive, effective and thorough, and we hope that other probation departments consider a narcotic detection canine as their next officer. □

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*Michelle A. Beltran is a Deputy Probation Officer I and K9 Handler for the Glenn County Probation Department in Willows, California.*



## In Memoriam

Jonathan S. Winker  
Justice Court Probation Officer  
Winslow Field Office  
Holbrook, Arizona

The membership and staff of the American Probation and Parole Association, and probation, parole and community corrections professionals across the nation, wish to extend our deepest sympathy and condolences to the family, friends, and co-workers of Jonathan S. Winker. Jonathan died October 21, 2000 of an accidental gunshot wound. Jonathan was the dog handler in the Canine Drug Detection Program in Navajo County.

Jonathan presented at the American Probation and Parole Association's 25<sup>th</sup> Annual Training Institute in Phoenix on July 24<sup>th</sup>, 2000. The training, "Narcotics Detection Dog: Is It Right For Your Department?", was recognized as one of the most outstanding workshops of the institute with standing room only. Jonathan will be greatly missed as a trainer and as a community corrections professional.

The American Probation and Parole Association would like to express our gratitude for Jonathan's service with the community corrections field. His enthusiasm and dedication will be greatly missed. Jonathan is survived by his wife, Maggie, and his parents (Tom and Bobbie). He worked with Navajo County Probation for five years.





# Overview of Legal Liabilities

BY ROLANDO V. DEL CARMEN AND GENE BONHAM, JR.

## Introduction

The array of legal liabilities to which probation/parole officers may be exposed are many and varied. They range from state to federal laws and from civil to criminal laws. For purposes of an overview, legal liabilities may be classified as follows:

	I. Under State Law	II. Under Federal Laws
A. Civil Liabilities	1. State Tort Law  2. State Civil Rights Laws	1. Title 42 of U.S. Code, Section 1983- Civil Action for Deprivation of Civil Rights  2. Title 42 of U.S. Code, Section 1985- Civil Action for Conspiracy  3. Title 42 of U.S. Code, Section 1981- Equal Rights Under the Law
B. Criminal Liabilities	1. State Penal Code Provisions Specially Aimed at Public Officers  2. Regular Penal Code Provisions Punishing Criminal Acts	1. Title 18 of U.S. Code, Section 242- Criminal Liability for Deprivation of Civil Rights  2. Title 18 of U.S. Code, Section 241- Criminal Liability for Conspiracy to Deprive a Person of Rights  3. Title 18 of U.S. Code, Section 245- Violation of Federally-Protected Activities

Note that in addition, the officer may be subject to agency administrative disciplinary procedure that can result in transfer, suspension, demotion, dismissal, or other forms of sanction. Disciplinary procedures are defined by state law or agency policy.

The above legal liabilities apply to all public officers, and not just to probation/parole officers. Police officers, jailers, prison officials, juvenile officers, and just about any officer in the criminal justice system may be held liable for any or all of the above provisions based on a single act. For example, assume that a parole officer unjustifiably uses excessive force on a parolee. Conceivably, he or she may be liable under all of the above provisions. He or she may be liable for conspiracy if he or she acted with another to deprive the parolee of his civil rights, as well as for the act itself, which constitutes the deprivation. The same parole officer may be prosecuted criminally and civilly under federal law and then be held criminally and civilly liable under state law for the same act. The double jeopardy defense cannot exempt him from multiple liabilities because double jeopardy applies only in criminal (not civil) cases, and only when two criminal prosecutions are made for the same offense by the same jurisdiction. Criminal prosecution under state and then under federal law for the same act is possible. If this is done, it indicates that the second prosecuting authority believes that justice was not obtained in the first prosecution.

All of the above types of liability are discussed briefly in this article. As indicated, liability can be classified according to federal or state law.

### I. Under State Law

There are two basic types of liability under state law: civil and criminal.

#### *A. Civil Liability Under State Tort Law*

##### *1. State Tort Law*

Tort is defined as a wrong in which the action of one person causes injury to the person or property of another in violation of a legal duty imposed by law. Torts may involve a wrongdoing against a person, such as assault, battery, false arrest, false imprisonment, invasion of privacy, libel, slander, wrongful death, and malicious prosecution; or against property, such as trespass. A tort may be intentional (acts based on the intent of the actor to cause a certain event or harm) or caused by negligence. Probation/parole officers may therefore be held liable for a tortuous act that causes damage to the person or property of another. Note that Section 1983 actions, federal cases, are sometimes referred to as tort cases, but the reference is to federal instead of state torts.

##### *2. State Civil Rights Laws*

Many states have passed civil rights laws of their own, either replicating the compendium of federal laws that have been enacted, or devising new categories of protected rights. For example, the Federal Civil Rights Act of 1964 prohibits discrimination on the basis of race, religion, color, national origin, sex and pregnancy. These laws are enforceable by the federal government, but they may also be enforceable by the state if enacted as state statutes. The penalty or punishment imposed, therefore, is on the state level and enforcement of the law may be done by the state.



## **B. Criminal Liability Under State Law**

### **1. State Penal Code Provisions Aimed Specifically at Public Officers**

State criminal liability can come under a provision of the state penal code specifically designed for public officers. For example, Section 39.03 of the Texas Penal Code contains a provision on “Official Oppression” that states that a public servant acting under color of his office or employment commits an offense if he:

- a. Intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful; or
- b. Intentionally denies or impedes another in the exercise of enjoyment of any right, privilege, power, or immunity knowing his conduct is unlawful; or
- c. Intentionally subjects another to sexual harassment.

A questionnaire sent to state attorneys general and probation/parole agency legal counsel asked if their states had statutes providing for criminal liability for probation, parole, and public officers in general. The results show that only a few states have statutes pertaining to liability for probation/parole officers specifically, eight percent in both cases, but 84 percent of the states have statutes concerning the criminal liability of public officers in general.

### **2. Regular Penal Code Provisions Punishing Criminal Acts**

In addition to specific provisions, probation/parole officers may also be liable just like any other person under the provisions of the state criminal laws. Under Texas criminal code, for example, they may be liable for murder, manslaughter, serious physical injury, etc., done to any probationer or parolee.

## **II. Under Federal Law**

### **A. Civil Liabilities**

#### **1. Title 42 of the U.S. Code, Section 1983 - Civil Action for Deprivation of Civil Rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

#### **2. Title 42 of the U.S. Code, Section 1985 - Civil Action for Conspiracy. Section 1985 (3) provides a civil remedy against any two or more persons, who:**

- a. Conspire to deprive a plaintiff of the equal protection of the law or equal privileges and immunities under the law, with
- b. A purposeful intent to deny equal protection of the law,
- c. When defendants act under color of state law, and

- d. The acts in furtherance of the conspiracy injure the plaintiff in his person or property, or deprive him of having and exercising any right or privilege of a citizen of the United States.

This section, passed by the United States Congress in 1861, provides for civil damages to be awarded to any individual who can show that two or more persons conspired to deprive him of civil rights. Note that a probation/parole officer may therefore be held civilly liable not only for actually depriving a person of his civil rights (under Section 1983), but also for conspiring to deprive that person of his civil rights (under Section 1985). The two acts are separate and distinct and therefore may be punished separately. Under this section, it must be shown that the officers got together and actually agreed to commit the act, although no exact statement of a common goal need be proven. In most cases, the act is felonious in nature (as opposed to a misdemeanor) and is aimed at depriving the plaintiff of his civil rights. The plaintiff must also be able to prove that the officers purposely intended to deprive him of equal protection that is guaranteed him by law. This section, however, is seldom used against public officers because the act of conspiracy is often difficult to prove except through the testimony of co-conspirators. Moreover, it is limited to situations in which the objective of the conspiracy is invidious discrimination, which is difficult to prove in court. It is difficult for a plaintiff to establish in a trial that the probation/parole officer's action was discriminatory based on sex, race, or national origin.

#### **3. Title 42 of the U.S. Code, Section 1981 - Equal Rights Under the Law:**

- a. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
- b. For purposes of this section, the term “make and enforce contracts” includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship.
- c. The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

This section was passed in 1870, a year earlier than Section 1983. Until recently, the plaintiff had to show that he was discriminated against because of his race, thus limiting the number of potential plaintiffs.

Section 1981 has been widely used in employment and housing discrimination cases (under its contracts and equal benefits provisions). However, currently the equal punishments provision is of greatest significance for probation and parole authorities.<sup>1</sup>

### **B. Criminal Liabilities**

#### **1. Title 18 of the U.S. Code, Section 242 - Criminal Liability for Deprivation of Civil Rights**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person of any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties

on account of such person being an alien, or by reason of his color, or race than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

This section provides for criminal action against any officer who actually deprives another of his civil rights. An essential element of this section is for the government to be able to show that the officer, acting "under color of any law," did actually commit an act that amounted to the deprivation of one's civil rights. Essential elements of Section 242 are: (a) the defendant must have been acting under color of law; (b) a deprivation of any right secured by federal laws and the United States Constitution; and (c) specific intent on the part of the defendant to deprive the victim of rights.

## ***2. Title 18 of the U.S. Code, Section 241 - Criminal Liability for Conspiracy to Deprive a Person of Rights***

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with the intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured-

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both or may be sentenced to death.

As interpreted by the courts, this section requires: (1) the existence of a conspiracy whose purpose is to injure, oppress, threaten, or intimidate; (2) one or more of the intended victims must be a United States citizen; and (3) the conspiracy must be directed at the free exercise or enjoyment by such a citizen of any right or privilege under federal laws or the United States Constitution.

The main distinction between Section 242 and Section 241 is that Section 242 punishes the act itself, whereas Section 241 punishes the conspiracy to commit the act. Inasmuch as conspiracy, by definition, needs at least two participants, Section 241 cannot be committed by a person acting alone. Moreover, while Section 242 requires the officer to be acting "under the color of law," there is no such requirement under Section 241; hence, a private person can commit Section 241.

## ***3. Title 18 of the U.S. Code, Section 245 - Federally Protected Activities. This section is aimed at private individuals but is also applicable to public officers who forcibly interfere with such federally protected activities as:***

- Voting or running for an elective office
- Participating in government-administered programs

- Applying for or enjoying the benefits of federal employment
- Serving as juror in a federal court
- Participating in any program receiving federal financial assistance

Violations of Section 245 carry a fine or imprisonment of not more than one year, or both. Should bodily injury result from a violation, or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosive, or fire, the violator may be fined or imprisoned not more than ten years, or both. Should death result from the acts committed in violation of this section, or if such acts include kidnapping, attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, may be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death. This is a more recent federal statute, passed in 1968, which seeks to punish private individuals who forcibly interfere with federally protected activities. Therefore, it applies to probation/parole officers who act in their private capacity. The first part of the law penalizes a variety of acts, as already noted. The second part refers to deprivations of such rights as attending a public school or college; participating in state or locally sponsored programs; serving on a state jury; interstate travel; or using accommodations serving the public, such as eating places, gas stations, and motels. The third part penalizes interference with persons who encourage or give an opportunity for others to participate in or enjoy the rights enumerated in the statute. It is distinguished from Sections 241 and 242 in that a person acting singly and in a private capacity can violate it. This law is seldom used at present.

## **III. May an Officer Be Held Liable Under all of the Above Laws? Yes.**

The whole array of laws outlined above may apply to a probation/parole officer based on a single act, if the required elements for liability are present. For example, an act of an officer that leads to the wrongful death of an offender may subject the officer to liability under state and federal laws. Under each, the officer may be held liable civilly, criminally, and administratively.

The defense of double jeopardy does not apply in these cases because double jeopardy applies only if there are successive prosecutions for the same offense by the same jurisdiction. Civil and criminal penalties may result from a single act because "successive prosecution" requires that both cases are criminal, hence it does not apply if one case is criminal and the other civil. Criminal prosecutions may also take place in state court and federal court for the same act. There is no double jeopardy because of the "same jurisdiction" requirement. State and federal prosecutions take place in different jurisdictions; therefore there is no double jeopardy. There is no double jeopardy either if an employee is dismissed from employment and then prosecuted later, or held civilly liable, for the same act. This is because dismissal by the agency is administrative in nature and is neither a civil nor a criminal proceeding.

An example of the applicability of these laws is what happened to the police officers (who are public officials like probation/parole officers) in the infamous Rodney King beating case. In that case, the officers were first suspended and then dismissed from employment by the agency (administrative liability). They were then tried for criminal acts (in Simi Valley) in state court, but were all acquitted. After acquittal, they were tried again for criminal acts (in Los Angeles) in federal court. Two of the four defendants were acquitted, but the other two were convicted and served time in a federal institution. The officers raised the double jeopardy defense on appeal, but that did not succeed because they were tried by

two different jurisdictions. The officers were also held liable for civil damages, in addition to the administrative and criminal proceedings.

## IV. Different Results if Held Liable

Civil liability results in payment of money by defendant to the plaintiff for damages or injury caused. In civil liability cases, therefore, the plaintiff seeks money although, in Section 1983 (federal) cases, the plaintiff may also seek changes in agency policy or practice in addition to monetary compensation. Sanctions imposed in criminal cases include time in jail or prison, probation, fine, restitution, or other sanctions authorized by law and imposed by the judge. Administrative sanctions include dismissal, demotion, transfer, reprimand, warning, or other sanctions agency policy or state law authorize.

## V. Possible Defendants in Civil Liability Cases

Using the “deep pockets” approach (meaning that plaintiffs usually include as defendants those who are in a better position to satisfy a monetary judgment against them because they have more money), plaintiffs generally include as defendants anybody who might possibly have anything to do with a case. This might include the probation/parole officer, the supervisors, and the governmental agency that is the employer of the alleged offending officer. The assumption is that probation/parole officers have a shallow pocket, while supervisors and agencies have deep pockets. Who is responsible for which amount is usually determined by state law.

### A. Government Agency as Defendant

In lawsuits against the agency, immunity usually attaches if the defendant is a state agency. This is because states (and the federal government) enjoy sovereign immunity, a doctrine stemming from the common law concept that “the King can do no wrong,” hence cannot be sued or held liable. Sovereign immunity, however, may be waived through law or judicial decision, and many jurisdictions have waived it. When sovereign immunity does exist in a state, the question arises whether the particular function involved was governmental - for which there is immunity, or proprietary - for which there is no immunity. This is a complex area of law and decisions vary from state to state.

The rule concerning local governments is different. Local governments are subject to liability under *Monell v. Department of Social Services*.<sup>2</sup> They have been deprived of the sovereign immunity defense which was available to them until the *Monell* decision in 1978. Therefore, counties, judicial districts, municipalities, or other non-state units of government may be sued and held liable for what their employees do.

### B. Individual Officers as Defendant

#### 1. State officers

Although state agencies are generally exempt from liability for their governmental activities unless waived, immunity ordinarily is unavailable to individual state officers who are sued. Therefore, members of state probation/parole boards may be sued as individuals. The fact that a state provides counsel, or indemnifies the officer if held liable, does not mean that the state has consented to be sued. It simply means that, if held liable, the officer pays the damages and the state indemnifies or reimburses him. All officers, state or local, may therefore be sued in their individual capacity under Section 1983.

#### 2. Officers of non-state agencies

Officers of counties, judicial districts, municipalities, or other non-state governmental units may be sued in their official or individual capacities. As in the case of state officers, however, plaintiffs will likely sue officers in their official capacities so they can include their supervisors and agencies as defendants.

## VI. Kinds of Damages Awarded in Civil Liability Cases

In general, there are three kinds of damages that may be awarded in civil liability cases, particularly those who file under state tort law. These are:

### 1. Actual or compensatory damages

These damages reduce to monetary terms all actual injuries shown by the plaintiff. Consequential damages, such as medical bills and lost wages, are termed special damages and are included in the category of compensatory damages.

In *Byrd v. N. Y. City Transit Authority*,<sup>3</sup> a compensatory award was ultimately reduced from \$950,000 to \$250,000 for false arrest and assault when a plaintiff suffered “minor scarring” and there was insufficient evidence of loss of earnings.

### 2. Nominal damages

These are an acknowledgement by the court that the plaintiff proved his cause of action, usually in the amount of \$1.00. When the plaintiff was wronged but suffered no actual injury, nominal damages would be appropriate.

In one case, *Brooker v. N. Y.*<sup>4</sup>, for example, a plaintiff who was arrested by state police officers, was grabbed by the neck and pulled out of a tavern. In a claim alleging assault and battery, the court awarded \$1.00 in nominal damages, finding that the plaintiff suffered “no injury” from the use of force and made “embarrassingly phony” moans of pain only when someone started to videotape the events. Similarly, in *Floyd v. Law\$*, a civil rights plaintiff was found to be entitled to judgment and award of nominal damages of \$1.00 when a jury found her civil rights had been violated but awarded no actual or punitive damages.

Where nominal damages vindicate the plaintiff as wronged, the door to punitive damages is opened, with or without a compensatory damage award. Nominal damages also lay the basis for awarding 1983 attorney fees in that they identify the prevailing party.

### 3. Punitive or exemplary damages

These damages are designed to punish or make an example of the wrongdoer, as well as deter future transgressions. Punitive damages awarded can at times be quite high. In one case, the U. S. Supreme Court held that a \$10 million punitive damage award did not violate due process requirements of the fourteenth amendment. In making its decision, the Supreme Court noted that the absolute or relative size of a punitive award was not the test of excessiveness, but rather whether an award reflects bias, passion, or prejudice by the jury.<sup>6</sup> Punitive damages are awarded only against willful transgressors. However, the Supreme Court has ruled that no punitive damages may be awarded against local governments.<sup>7</sup>

## Summary

Probation/parole officers may be exposed to legal liabilities under federal and state law. Legal liabilities may also be classified into civil and criminal. This article discusses the various laws and damages to which



an officer may be exposed in connection with his work. These liabilities are not mutually exclusive; in fact, one serious act may expose the officer to a number of civil and criminal liabilities under federal and state law. In addition, the officer may be subject to administrative disciplinary proceedings that can result in transfer, suspension, demotion, dismissal, or other forms of sanction.

The constitutional protection against double jeopardy does not apply to the above cases because the cases are not all criminal in nature, the criminal prosecutions discussed here do not refer to the same act, and the prosecutions are by different jurisdictions. Double jeopardy applies only where criminal prosecutions of the same offense are made by the same jurisdiction.

In addition to the probation/parole officer, a plaintiff, using the "deep pockets" approach, may include as defendants anybody who had anything to do with the case. This could include supervisors as well as the government agency, either state or federal, which is the employer of the probation/parole officer. However, a state or federal agency normally will enjoy sovereign immunity unless waived through law or judicial decision. If sovereign immunity does exist in a state, it then becomes important to determine whether the particular function involved was governmental-for which there is immunity, or proprietary-for which there is no immunity.

Local governments, such as counties, judicial districts, municipalities, or other non-state units of government may be sued and held liable for the actions of their employees, under *Monell v. Department of Social Services*.

In civil liability cases, there are essentially three kinds of damages that may be awarded. These include actual or compensatory damages,

in which damages are reduced to a monetary amount for actual injuries shown by the plaintiff. A second type of damage award is nominal damages. Here the court acknowledges that the plaintiff has proved his/her cause of action, but no actual injury was sustained. In this case, a nominal damage award of \$1.00 would be appropriate. Finally, a third type of damages awarded in civil cases is punitive or exemplary damages. These damages are awarded to punish or make an example of the wrongdoer, as well as deter transgressions by others in the future.

### Notes

\* This is a chapter in the revised edition of the Potential Liabilities of Probation and Parole Officers book, last revised in 1985, and which will soon come out in a new edition, to be published by the National Institute of Corrections and the National Association of Probation Executives.

<sup>1</sup> See unpublished manuscript of Charles E. Walker, Jr., General Counsel Board of Pardons and Paroles, Austin, Texas, "Legal Liabilities of Probation and Parole Authorities."

<sup>2</sup> *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

<sup>3</sup> *Byrd v. N. Y. City Transit Authority*, 568 N. Y. S. 2d 628 (A.D. 1991).

<sup>4</sup> *Brooker v. New York*, 614 N. Y. S. 2d 640 (A.D. 1994).

<sup>5</sup> *Floyd v. Laws*, 929 F.2d 1390 (9th Cir. 1991).

<sup>6</sup> *TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993).

<sup>7</sup> *City of Newport v. Fact Concerts, Inc.*, 435 U.S. 247, 101 S. Ct. 2748, 79 L. Ed. 616 (U.S.S.C. 1981). □

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*Rolando V. del Carmen is Distinguished Professor of Criminal Justice (Law) in the College of Criminal Justice, Sam Houston State University. Gene Bonham, Jr. is currently a Doctoral Fellow in the College of Criminal Justice, Sam Houston State University.*



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# Truancy Mediation

## A Collaborative Approach to Truancy

**TRUANCY CONTINUES TO BE A MAJOR CONCERN** facing juvenile courts, schools and society. Statistics show that youth who are not in school during the day are at high risk for delinquency and are likely to be engaged in criminal activity (OJJDP, 1997). "Many research studies have revealed that truant students are more likely to join gangs, use drugs and alcohol and engage in other criminal and violent activity than students that stay in school" (OJJDP, p. 1, 1999). Justice officials, administrators, teachers, parents, police officers and legislators struggle with the issue of truancy and are consistently trying new policies and program interventions aimed at keeping students in school. The purpose of this article is to describe a pilot truancy mediation program, discuss how it works, and examine its effectiveness in reducing truancy problems in secondary schools thereby diverting youth from the juvenile justice system. Precautions for those considering this type of intervention are also outlined.

### **An Alternative Approach to Truancy Interventions**

Mediation, as a dispute resolution process, has many advantages over the formal court process:

- 1) Mediation is informal and confidential;
- 2) Mediation proceeds more quickly than the formal court process;

- 3) The final agreement is not imposed upon the parties by a judge, but instead designed in their own best interests by the parties involved; and

- 4) Mediation is non-adversarial since the solution is designed by both parties and has the potential to preserve the relationship once the process has concluded (Administrative Office of the Court, 1999).

The advantages of alternative dispute resolution processes extend to all forms of mediation programs, including truancy mediation (BEST Conference, 1999).

Mediation, as a truancy intervention program, places the focus on student decision-making, goal-setting and performing to certain standards autonomously. Providing students with the freedom to choose from a variety of options, the choice of taking the responsibility to act independently, and the prerogative of setting goals to accomplish higher level tasks lead to the probability of student success and increased motivation (Baumrind, 1967; Coopersmith, 1969; Felker, 1974; Purkey, 1970). The mediation process allows the student to explore optional activities, be autonomous in making decisions about his or her life, and be a willing participant in the process.

Truancy mediation also gives the parties involved the opportunity to enhance discussion about the "core issues" or real reasons the student



is not coming to school. The symptoms of truancy are often buried beneath other problems such as substance abuse, neglect, family dysfunctions or other social problems.

### **Collaborative Pilot Program in Place**

During the 1998-1999 and 1999-2000 school years, Jordan School District and the Administrative Office of the Courts in Utah collaborated in an interagency, pilot, truancy mediation intervention program. The program was implemented as an intervention, hoping to divert truancy cases from entering the juvenile court system. Mediation, as an intervention program for resolving truancy, incorporates aspects of motivation theory (Naylor, 1983) and aspects of alternative dispute resolution theory making it a viable alternative to solving traditional truancy problems and concerns. Mediation utilizes the presence and skills of a neutral third party who promotes cooperation between disputing parties and provides the parties the opportunity to resolve their differences without court intervention. The mediator helps identify the interests of the parties involved, facilitates discussion of those interests in a productive way, assists the parties in creating possible solutions to the conflict, and helps test the feasibility of those solutions until the parties in dispute can agree on an outcome that serves the interests of all involved.

In the Jordan School District, students in the schools participating in the truancy mediation pilot program were given the option of participating in truancy mediation before they were formally referred to

juvenile court for habitual truancy. The student, the student's parents and a team from the school (usually consisting of an assistant principal, a counselor and the attendance secretary) participated in the mediation session. The mediators in the program were trained community volunteers recruited and supervised by the Administrative Office of the Courts. The mediator's role was to equalize the power at the table by being a third party neutral who ensured that all parties felt comfortable discussing the truancy issue. The mediator also encouraged dialogue around options which helped to solve the truancy problem.

An illustration of this type of intervention for resolving truancy problems is exemplified in the following story:

A ninth grade girl was having problems attending her classes and getting to school on time. The traditional interventions of conferences, phone calls home, detention, contracts, suspension and counseling were implemented. The assistant principal was not having any success convincing the student to come to school.

Truancy mediation was discussed with the student as an option before a court referral would be made. The student and parent agreed to the idea. As the student, her mother and the school officials discussed the problem at the mediation table, it came to their attention that the young lady was having the most problems in two of her classes. As the dialogue continued, it was revealed that this student was classified as special education and the two classes she was struggling in were her mainstreamed classes. This was not necessarily new or surprising information to the group, but the student was very honest in her disclosure to the mediator that the problem was that both of the teachers in these classes had a procedure whereby class assignments were corrected during class time by exchanging papers with peers in the class. The student shared with the mediator that she was a poor speller and that other classmates would make comments when they would correct her papers. This was very embarrassing to her, so she had stopped attending those classes or would always turn her work in late so that the teacher would have to correct it. The special education team leader, who was part of the mediation team from the school, offered to meet with the two teachers and the student and talk about the student's need for accommodations in the classes. The young lady appeared relieved and agreed that she would be more committed to attending those classes if she did not have to fear embarrassment in them.

The next issue which came to the attention of the mediation team was the fact that this students' parents were in the middle of a difficult divorce. The student felt comfortable sharing her feelings about the situation with the mediator and said that she would be willing to meet with the school psychologist on a regular basis to help her cope with the stresses at home. The student committed that with the changes in the school and support of the school, she could improve her attendance.

### **Program Outcomes**

The pilot truancy mediation program in Jordan School District proved to be very successful during the 1998-1999 and 1999-2000 school years. In the first year there were 19 cases referred from one pilot school, and all but two of the youth improved their attendance. During the second year there were 75 cases referred to the mediation program, and only 16 of the cases resulted in a referral to juvenile court. This intervention kept 59 students out of the court system due to their improved attendance. As a group, the students who participated in the mediation intervention were missing 32.2 percent of their classes per week prior to the mediation session. After mediation, the students'

absences were reduced to a composite of only 19.7 percent of their class periods per week. Students improved their attendance an average of 12.5 percent after mediation.

Other positive outcomes noted in the pilot program were:

- 1) The mediation program created a "team approach" to resolving the truancy problem rather than an adversarial approach;
- 2) Relationships between the student and school staff were formed and/or strengthened as well as relationships between the school and the parents were strengthened;
- 3) The mediation process offered an opportunity for those involved to discuss the "core issues" involved in the truancy problem (i.e. drug use or parent-child conflict);
- 4) The agreements were individualized to meet the needs of the students and the school.
- 5) The students were empowered to "buy in" to their agreements;
- 6) Community mediators were brought into the school and viewed the school as more willing to help and assist students;
- 7) The process forced an "equalization of power" at the table for negotiating agreements;
- 8) Administrators in the schools were more likely to pursue truancy cases, rather than let the students "fall through the cracks" because court processes are so laborious; and
- 9) If the student violated the mediated agreement, he/she was fast-tracked through the court process.

Parents, students and administrators commented on the effectiveness of the program when they completed surveys following the mediation sessions. The overall evaluation surveys indicated that all parties felt that the student was held accountable for his/her behavior. Over 95 percent expressed that they were satisfied with the agreement reached in mediation. Parties agreed that during the mediation process, they were able to freely express their thoughts and feelings. Some of the parent comments included:

- "It was nice to have someone try and come up with some solutions, rather than just giving up."
- "It was comfortable knowing that the school personnel were here to listen and help the student, along with the mediator to help with communication."
- "I appreciate having a choice of mediation or court. The school was very helpful and accommodating and went above and beyond what I had expected of them."

### Program Precautions

Since this is still a pilot program, we suggest some of the following precautions to schools and districts interested in learning more about the program:

1) The program has to be voluntary for families and schools. It is very important that those involved see the potential benefits of the program and go to the table willingly. Schools must view the program as a way to help the student and not just another "hoop to jump through" before taking the student to court.

2) Trained volunteer mediators from the community should be utilized in the program. In our pilot program, all volunteer mediators have had 32 hours of basic mediation training and have attended a 90 minute orientation on truancy mediation. The volunteers have also

observed two other mediation sessions in the schools as well as co-mediated until the coordinator of the program feels the volunteer is ready to be placed on the roster for truancy mediation.

3) Schools who participate in this program must have a philosophy conducive to mediation which involves family, student and school as equal partners in problem solving. The trained volunteer mediator is truly a "third party neutral" and assures that all parties at the table are equal in status. The volunteer brings credibility to the intervention by being skilled at conflict resolution processes and is able to guarantee that all parties' ideas are adequately expressed and taken seriously.

4) School personnel need to be open to a variety of options for students' successes and have the attitude that students should be given a chance. The approach within the mediation session must be that students do not have to "earn what they need, but rather they are given a chance with the expectation that their attendance improve in order to keep what has been negotiated.

5) The school district and court promoting the program must agree to fast-track students to truancy court if students do not honor the mediated agreement. The schools need to be rewarded for taking the extra time and effort to mediate with the students and families. Fast-tracking the students to court if they do not improve their attendance helps the schools feel the time spent in mediation is worthwhile. Also, court officials see the mediation process as an attempt to get to the "roots of the problem" and acknowledge that all alternatives have been exhausted leaving truancy court as the appropriate "next step."

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*Kathy Elton is the Director of Alternative Dispute Resolution Programs for the Administrative Office of the Courts in Salt Lake City, Utah. Kerrie Naylor is the Principal at West Hills Middle School in Salt Lake City, Utah.*



# Book ANNOUNCEMENT



## TRANSFORMING PROBATION THROUGH LEADERSHIP: THE "BROKEN WINDOWS" MODEL

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# Family Therapy in Community Based Corrections: *A Promising Trend*

## Introduction

When individuals are convicted and sentenced for criminal offenses, they begin to live some sort of correctional experience. This experience may involve being fined, receiving probation, incarceration in prison or a community based facility, or a combination of the above. Recent literature has focused upon the fact that the families incarcerated offenders leave behind also have a correctional experience (Beatty, 1997; McDermid, 1995).

As revealed in hundreds of interviews with offender's families, the correctional experience of children whose parent is incarcerated involves an emotional roller coaster ride. They feel abandoned and worry that they will never see the parent again. They often experience great sadness, anger and guilt. The anger tends to be directed, initially, toward the parent for committing the criminal offense that led to the family being separated. Frequently, however, this anger eventually gets redirected toward "the criminal justice system" that "locked my parent up." This redirected anger often contributes to a deep distrust, dislike and disregard for the overall criminal justice system. Children also may believe that

their own behavior in some way contributed to their parent's incarceration, thus there are feelings of guilt. Perhaps the most worrisome emotion experienced by children of incarcerated parents is that of oppressive sadness. This feeling seems to often go unrecognized as children withdraw into fantasies and denial that their parent is indeed incarcerated. Children sometimes create jobs, trips and adventures to explain their parent's absence.

Behaviorally, children with an incarcerated parent may respond in a variety of ways depending on age, health of the remaining family,<sup>1</sup> available support systems, length of sentence, and effectiveness of their internalized coping skills. Generally, though, these children may develop physical symptoms (i.e. headaches, lethargy, stomach aches); emotional symptoms (i.e. anger/aggression towards others, disobedience and defiance at home and school, involvement in delinquent activity in the community); or mental symptoms (i.e. inability to concentrate, escape into fantasy worlds of alcohol and drugs).

Ultimately, the correctional experience of children whose parent is incarcerated, though unique to each individual child, has a common

denominator of tremendous anxiety and personal destabilization. It has also been well documented that children who experience repeated disruptions because of parental incarceration are at risk themselves for delinquency and/or incarceration.

In addition to the correctional experience children endure, the remaining caregiver also must withstand the burdens of their own correctional experience. Although the parent has departed to begin his/ the period of incarceration, the caregiver<sup>2</sup> and the charges continue to have the same needs, but now there is one less person to potentially meet those needs. Childcare is still essential and expensive. Nurturing, supervision, discipline and teaching is still required and exhausting. Money is still necessary to provide some level of security and stability and to meet "critical care" needs. "Me time" is still a major factor in the caregivers' ability to maintain their own mental and physical health. Actually the self-sufficiency bar is raised as new pressures and expectations are placed upon the families of offenders. Offender's request/demand regular visits regardless of transportation costs or time commitments. They also tend to plead for money to be sent, ignoring how this drains already scarce financial resources available to their family. Often requests for legal fees for protracted litigations are made of the extended and immediate family. In short, the families of incarcerated offenders are asked to do more with less.

Unfortunately, like victims of crime and their families, offenders' families have traditionally received little attention and few services. Although incarceration often adversely affects families with the least available resources and support to deal with the stresses, losses and role changes that occur as a result of the imprisonment of a family member; many of these families are ostracized rather than helped. (Rocco and McCleese, 1989) This situation represented a serious gap in services for offender's and their families. In 1992, the National Institute of Corrections sponsored a project to identify programs designed to assist children and families of incarcerated parental figures. As a result of this project, a *Directory of Programs Serving Families of Adult Offenders* was developed, and it serves as a referral source across the United States and Canada (see this web site: [www.ifs.univie.ac.at/uncjin/mosaic/famcorr/fmccordir.html](http://www.ifs.univie.ac.at/uncjin/mosaic/famcorr/fmccordir.html)). In addition to facilitating an understanding of, and providing solutions to, the gap in services available to families of incarcerated adult offenders, the current interest in these families has highlighted them as support systems for newly released offenders. Often the families of origin, marital families and cohabitating significant other family systems of offenders exhibit serious dysfunction and are unhealthy. Nevertheless, these family systems remain the most indigenous support systems available to offenders and they will be reengaged when the offender is released.

## Purpose

In early 1996, the Sixth Judicial District Department of Correctional Services began a program designed to serve offenders and their families. The basic premise was simple: offender family systems that have been restored to health can be engaged in the offender rehabilitation process as a more knowledgeable and positive support system. Thus, the offender is more likely to successfully complete the correctional program and return to a pro-social lifestyle. By years' end, the district had launched a "brief therapy" based program, which emphasized the involvement of offender families in the rehabilitative and therapeutic process.

Although the therapy services provided by the district were originally intended for post-institutional residential clients<sup>3</sup> and their families where family reunification was in progress; almost immediately it became evident that pre-institutional (field service) clients might also benefit from these

services.<sup>4</sup> Additionally, the scope of the intended outcome to be achieved by providing therapy was adjusted upwards.<sup>5</sup> Through the use of therapy and social skill building techniques, it was hoped that this program would effectively reduce "next generation" criminality and related problems at the individual, family, school and community level among the children of offenders' households (Johnston, 1996). The therapeutic intervention strategies utilized were made culturally relevant by using considerations outlined in Nancy Boyd-Franklins and McGoldrick, Pearce and Girodano's, which present models of the use of culturally specific family therapy to enhance the functioning of family systems.

## Methods and Description

The district has employed two, masters-level family/individual therapist with correctional backgrounds. These therapists:

- Apply psychosocial theory to the provision of professional individual/family therapy services to community-based correctional clients/client families.
- Provide professional family mediation as appropriate to community-based correctional clients.
- Provide social skill-development services to community-based correctional clients and their families.
- Develop and facilitate various specialized group-counseling situations for community based correctional clients and their families (i.e. ADHD, conduct disorder, gang intervention groups).
- Help community-based correctional clients and their families understand, think through and resolve problems encountered in adjusting to correctional supervision.
- Work with treatment staff to formulate service plans for community-based correctional clients.
- Maintain written records as required by the Sixth Judicial District Department of Correctional Services policies and procedures.
- Participate in appropriate professional development opportunities and maintain appropriate licensure requirements.
- Assist in public presentations regarding Sixth Judicial District Department of Correctional Services as appropriate.
- Provide in-service training regarding psychosocial theory and methods as required.

The specific, short-term, goal of the district's therapy program is to decrease the number of Sixth Judicial District Community-Based Correctional clients who are revoked by enlisting their families as positive and knowledgeable support systems through the use of brief therapy techniques. In the longer-term, the program is also designed to enhance the functioning of clients and their families, and increase their viability as pro-social family systems.

Clients are referred to the program in three basic ways: 1) A history of family/couple dysfunction becomes apparent during a Life Skills or Psychological assessment. 2) The supervising probation/parole agent becomes aware of family/couple dysfunction that is likely to have a negative impact on client correctional program success. 3) The client indicates that family/couple dysfunction is occurring, and requests therapy services.

After the referral is made, an initial assessment interview is conducted utilizing Motivational Interviewing (MI) techniques. Based upon this assessment, clients/client families are involved in weekly or bi-weekly therapy sessions for approximately six weeks. After this primary phase of therapy, clients/client families participate in therapy sessions as needed

until they can be graduated to the “self-referral” level of service. A flexible therapy treatment plan is designed for each client/client family. This level allows clients/client families to reactivate therapy services if a situation arises that does not respond to their problem-solving efforts. The treatment plan is intended to:

- To assist the client in understanding and accepting the natural consequences of his/her behavior.
- To provide client’s family with a clear understanding of the rules and regulations of pre/post institution residential settings.
- To enlist client family support of client’s correctional requirements.
- To address the reasons, behaviors and attitudes from a family systems perspective, that resulted in client’s involvement in the criminal justice system.
- To explore client’s family’s feelings surrounding this involvement.
- To reintegrate the client into the family system and to define client’s role in that system.
- To promote pro-social attitudes, values and behaviors in the client and his/her family members.
- To assist the client in maximizing benefits of various correctional programs/referrals.

Although all district clients/client families are eligible to receive therapy services, those who have been diagnosed as having substance abuse or mental health issues (DSM-IV) must be involved in appropriate programming to address those issues.

## Results

During January through December of 1999, 71 clients/client families received therapy services, and in most (75 percent) cases the identified client was a male. Half of the referrals came from field services, and this suggests that a more effective engagement of field services officers might result in greater referral numbers due to the large number of clients in the field population. Of the identified clients serviced, 15 (21 percent) were successfully discharged from their correctional program, four (5.6 percent) were revoked and 50 (70.4 percent) remained active on parole, probation or some other correctional program. One of the identified clients was revoked due to absconding, and three were revoked because of a new offense.

Of the 71 clients who received therapy services during 1999, 35 (49.3 percent) reached maximum benefit regarding these correctional services and were closed or referred to longer term community mental health or family strengthening services.<sup>6</sup>

## Conclusion

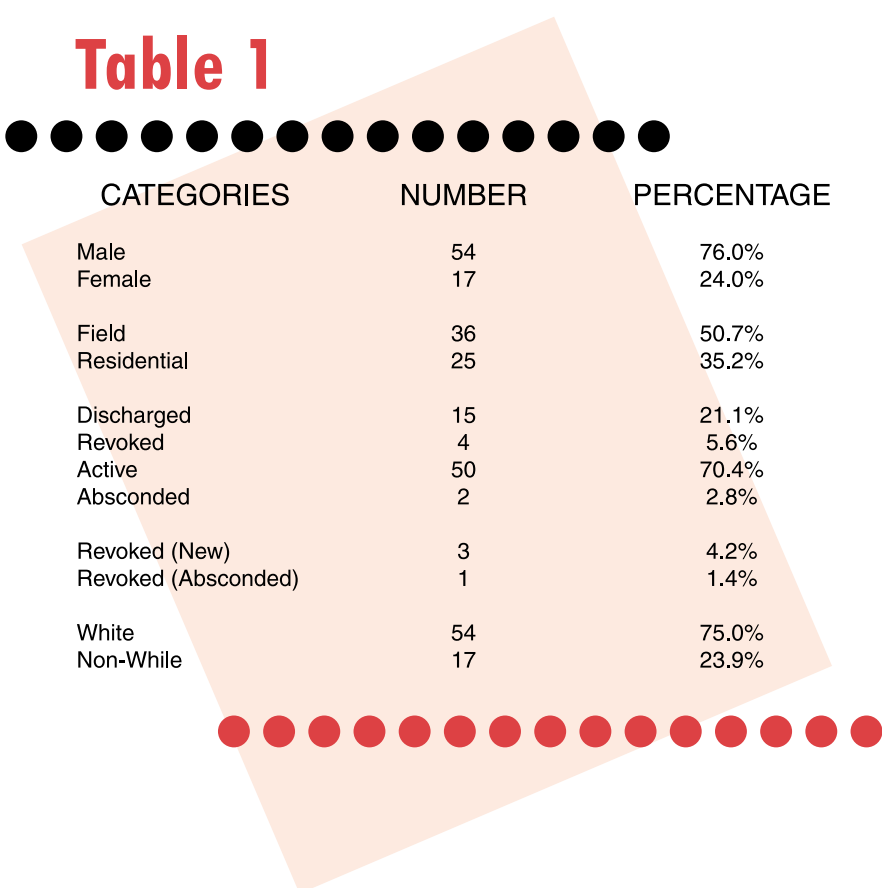
It is too early to be able to ascertain any direct relationship between clients receiving family/individual therapy and their success in correctional programming. However, it seems clear that they and their families can be engaged in the therapy process. The rate of missed appointments and failure to follow through on therapeutic suggestions has been extremely low. This seems rather significant since disciplinary consequences have never been utilized to assure cooperation/

compliance. A simple, self-reporting client satisfaction survey has been developed, and initial results indicate that clients, as well as their families, find the therapy services that have been provided were helpful. They report that their parenting skills, couple communication, anger management, problem-solving efficiency and family goal setting abilities have been enhanced. Family members have also reported a better understanding of the correctional system and the requirements of their significant others correctional programming. During 2000, instruments are being developed in an effort to gather more specific information regarding the use and usefulness of family/individual therapy with community correctional clients and their families.

Given the promising results of the districts initial effort to engage the family in client’s correctional programming through family centered services, additional therapeutic interventions are now being utilized. The *Family Unit Model*,<sup>7</sup> which identifies and activates “natural” support systems available to families, as well as institutional service providers, is the cornerstone of the district’s Partners In Accountability program. This model, when used with correctional client families, allows family members and others to view the family from a position of strength and it is solution-focused.

The Family Group Conference<sup>8</sup> has also been adopted by the district as a preferred format when families are involved in “non-system” problem solving or when planning is needed to provide for the safety and best interests of children at risk for abuse or neglect. Again, this format empowers the correctional clients and their families to recognize and utilize their problem-solving skills rather than send them the message that others will solve problems for them, thus disempowering the client’s family. Additionally, this format can often re-establish ties with extended family members which have dissipated or have been severely strained as a result of the client’s offense or other circumstances.

# Table 1



CATEGORIES	NUMBER	PERCENTAGE
Male	54	76.0%
Female	17	24.0%
Field	36	50.7%
Residential	25	35.2%
Discharged	15	21.1%
Revoked	4	5.6%
Active	50	70.4%
Absconded	2	2.8%
Revoked (New)	3	4.2%
Revoked (Absconded)	1	1.4%
White	54	75.0%
Non-White	17	23.9%



The use of family/individual therapy, the family unity model, and family group conferences are therapeutic interventions that comprise valuable additions to strategies for correctional programming. They activate natural support systems that have generally been untapped, and encourage collaborations between corrections professionals and other human service providers. They also motivate correctional clients to participate in their own rehabilitation by taking responsibility for their own actions and their effects upon their families. The introduction of non-family community support systems and related community services into correctional intervention attempts, family unity meetings and family group conferencing, reflect the district's desire to be a leader in the major community initiative toward following restorative justice practices.

## End Notes

- <sup>1</sup> Emotional, mental, social, financial, as well as physical.
- <sup>2</sup> Most often we are talking about a mother who is now parenting alone.
- <sup>3</sup> The word "client" replaces "offender" for the remainder of this piece because it is more therapeutic in tone.
- <sup>4</sup> Five of the six counties which comprise the Sixth Judicial District have referred field clients for therapy services.
- <sup>5</sup> Engagement in the rehabilitation process.
- <sup>6</sup> Follow-up statistics obtained the end of June 2000 indicates that the discharge rate for clients in the original study was 21.6%, the revocation rate was 11.8%. It should be noted that 3.9% of the clients were revoked for committing a new offense while 7.9% were revoked for technical violations.
- <sup>7</sup> First presented in the State of Oregon's Children's Service Division by Larry

Garber in 1989.

<sup>8</sup> Originated in New Zealand and is based upon traditional practices of the indigenous Maori people.

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*Virgil A. Gooding, Sr., is a licensed Independent Social Worker (L.I.S.W.) and is a Treatment Coordinator/Family Therapist for the Sixth Judicial District Department of Community-Based Corrections located in Cedar Rapids, Iowa. He is also the Clinical Supervisor for Foundation II which is also located in Cedar Rapids, Iowa, as well as being in private practice.*





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