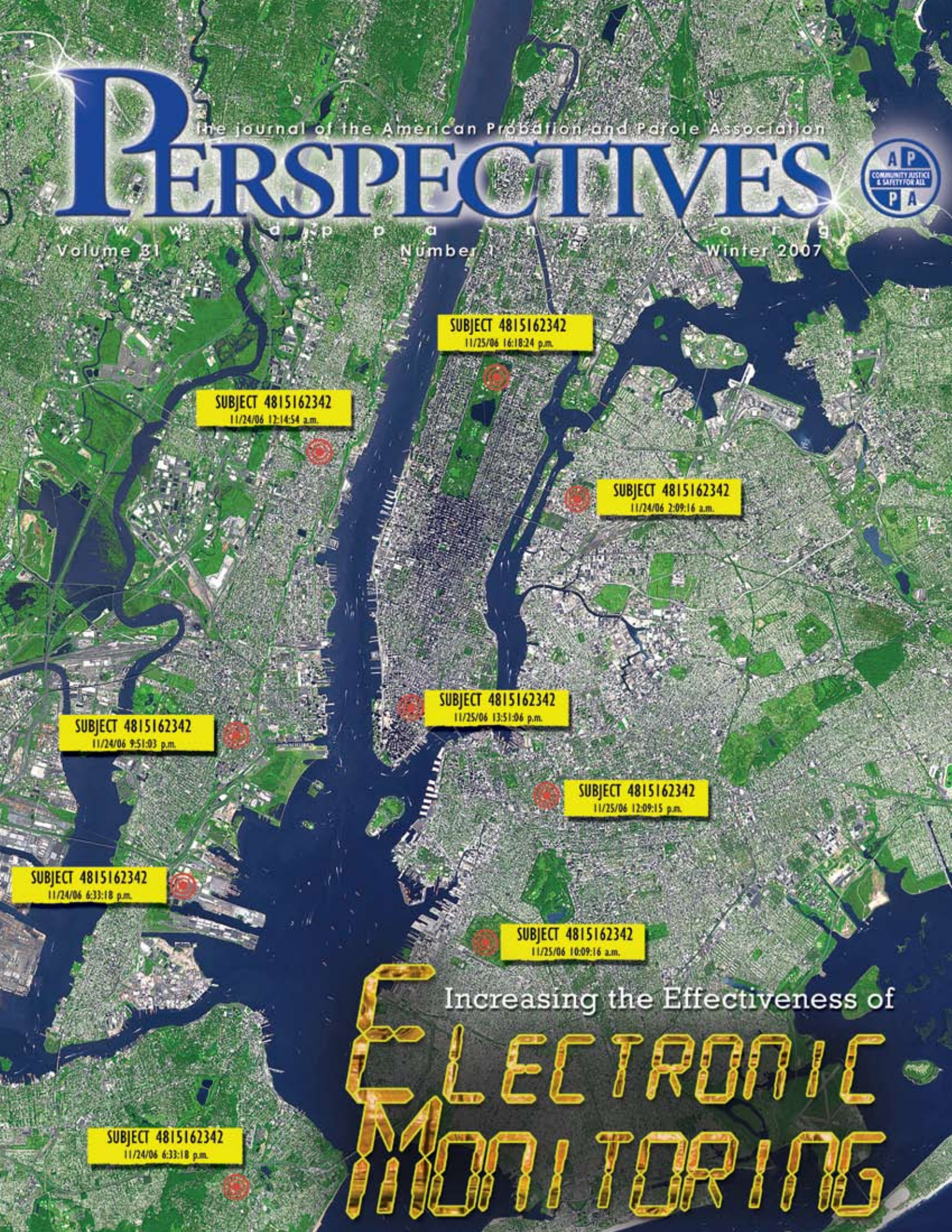
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Increasing the Effectiveness of
ELECTRONIC MONITORING

# President's Message

by Mark E. **Carey**

As I reflect on my twenty-seven years in the community corrections field I best recall certain emotional events that served as "triggers" towards new realizations and insights. They were few in number as memorable events usually go, but powerful in their lasting strength. I remember three: the time I discovered my personal values and how they serve as a plumb line when aligned with those of the workplace; the time I discovered research's enlightening contribution toward reducing crime; and lastly, when I discovered restorative justice (or more accurately, when restorative justice found me). It was through restorative justice that my eyes were first opened to the pain and journey of victims. As I reflect on these twenty seven years, I am moved to remember and honor victims and their message(s) that have shaped community corrections and the justice system. I want to speak to victims first, and then to the corrections professional.

The world of criminal and juvenile justice has changed because of you, victims of crime harmed at the hands of others and the victim advocates who serve you. For decades, you voiced your concerns over your lost voice in this machinery called the criminal or juvenile justice system. You were told that the offenders were the focus, that you were not the primary party to be attended to. You sought to be heard, to be respected, to be involved and for too long you were moved aside so the system could get down to the business of processing defendants. Yet, you persisted. You did not go away. You insisted on being heard. Sometimes you gently prodded; other times you demanded. You courageously held your ground and inserted yourself. You reminded us that true justice is not a single dimension; that harmed parties without a voice do not feel justice; that justice requires participation by all affected parties who so choose; and that the participation must be meaningful and not perfunctory.

The system is a better place because of you. It is not perfect. We still have a long way to go. There are still miscarriages of justice. But, these are becoming less and less common. And we have you to thank for it. The community corrections profession is more sensitive to the needs of victims, more concerned with partnering with you in crafting solutions that work for your experience, your concerns. So, for that, we honor you.

This leads me to the corrections professional. Our experience with victims has elevated the duty we inherited to protect the public and ensure that the justice process is dignified and respectful. It requires us to recognize victims and to listen to their stories. It requires us to work all that much harder to prevent harm from happening again. Now here is the challenge.

Frank Domurad, a long time corrections colleague and business partner was researching a topic for an article when he encountered a corrections' parallel in the medical field. He discovered that the Institute for Healthcare Improvement (IHI) has determined that as many as 98,000 patients die each year due to "medical injuries" caused by medical harm practiced in hospitals or clinics. And according to the Centers for Disease Control and Prevention, another two million patients suffer hospital acquired infections every year. Ninety eight thousand is a small city in size, which collectively represents a lot of pain and great loss. The IHI determined that there are certain evidence based practices that, if administered with diligence, could eliminate these 98,000 deaths. They determined that certain ill-advised medical practices are still occurring in our hospitals and clinics across America and that these practices are preventable. They should never happen in today's world of advanced knowledge and evidence. In fact, they call these harmful actions "never events." IHI has begun a campaign to eliminate these never events in our medical facilities. The goal? Ninety eight thousand fewer deaths. It is called the 100K Campaign.

What a challenge! What an inspiration! This campaign could happen in community corrections as well. What better way to honor victims than to start a campaign to reduce the number of victims at the hands of those who land on our caseloads? Let's look at what is realistic. The meta-analysis is clear that if we apply evidence-based practices (such as use of actuarial risk/need tools, motivational interviewing, focusing on criminogenic needs, and applying responsivity) we could get an average thirty percent reduction of recidivism. We know that there are more than 98,000 individuals who suffer from an illegal and harmful act committed by an offender under community supervision in any given year.

In fact, it is closer to a number well over a million individuals. What this means is that if we were to reduce recidivism by thirty percent, we can reduce the number of victims by ***at least 98,000 and closer to the number of 500,000 per year!*** Corrections has its own "never events" that must be identified and eradicated. And in their place should be strategies that we know can reduce crime committed by those on our corrections caseloads.

To the victims of crime, thank you for your message, thank you for the reminder that crime is largely about you and its devastating effect on your life. We will remember. We will remember your painful experiences. We will remember your persistence. We will remember how you helped us acknowledge you as the injured party who deserves to be included in the solutions. We will remember that for many of you, the crime you experienced represents your darkest hour and that you overcame great obstacles along the way. You are not just survivors, but heroes. We will remember you and in so doing we all need to take a professional oath, an oath to do all we can do to reduce the likelihood that this offender now under our supervision will produce yet another victim. You have made us better as community corrections professionals. You have snatched from us any remaining ignorance about the real-life harm that crime causes. You have connected us to that part of our humanity that reminds us that crime causes damage in an ever-increasing circle, from individuals to families to communities to an entire nation. Your stories inspire us, give us courage, embolden us and humble us. This should be what ultimately propels us to enter our own professional campaign to eradicate future victims, one person at a time. One million less victims! Think about that. We must not rest until we meet this goal. ▷▷▲

"We know that there are more than 98,000 individuals who suffer from an illegal and harmful act committed by an offender under community supervision in any given year. In fact, it is closer to a number well over a million individuals. What this means is that if we were to reduce recidivism by thirty percent, we can reduce the number of victims by ***at least 98,000 and closer to the number of 500,000 per year!***"

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# PERSPECTIVES

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Volume 31 Number 1 Winter 2007

## FEATURES



## DEPARTMENTS



## PLUS!



### 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 a hard copy, to Production Coordinator, *Perspectives* Magazine, P.O. Box 11910, Lexington, KY, 40578-1910, or can be emailed to kmucci@csg.org in accordance with the following deadlines:

**Summer 2007 Issue – February 17, 2007 • Fall 2007 Issue – May 20, 2007 • Winter 2008 Issue – August 21, 2007 • Spring 2008 Issue – November 11, 2007**

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.

# Editor's Notes

by William **Burrell**

Welcome to the Winter issue of *Perspectives*, the first one of the 2007! We start this new year with range of articles that once again shows the incredible range of issues and innovations in the field of probation and parole. Our lead article connects a commonly used technology, electronic monitoring with one of the newest challenges facing our field, evidence-based practices. Robert Gable and Kirkland Gable discuss the use of electronic monitoring technology to deliver positive reinforcement to help change offender behavior. Be sure to read this article and learn about the history of electronic monitoring. I'm sure you'll be surprised.

In their article about the Family Justice project in Oklahoma, Justin Jones and Carol Shapiro show how this new model was implemented. Using another principle of evidence-based practice, staff engaged members of the offender's family as natural allies in the supervision process. The department and its leadership are to be commended on their willingness to be a "learning laboratory", advancing the state of our knowledge about effective strategies for offender supervision. I'm pleased to note the role of APPA as a partner in this project.

Mark Jones and John Kerbs' article on discretionary decision-making provides another example of APPA partnering to advance the state of knowledge in the field. This is an almost explored area. Probation and parole officers have a tremendous amount of discretion, but we know very little about how that is exercised and how it can be used to its best effect. This study provides an interesting portrait of discretionary decision-making by members of APPA. I hope this stimulates further exploration of this important topic.

The use of discretion by probation and parole officers is bounded to some extent by the both statutory and case law. Marc Harrold's article on the recent United States Supreme Court decision in Samson v. California explores the issue of warrantless searches of probationers and parolees. This is the second case on this subject from the Court in recent years, and despite the limitations that Harrold identifies, it is important reading.

The law and discretion figure prominently in the article on anti-fraternization policies by Nairi Simonian and Brenda Smith. This is difficult area, as such policies inevitably are seen by some as infringing on the individual rights of employees. Whether that is true is open to discussion. What should not open to discussion is the position that we can never allow community corrections staff to use their position or authority inappropriately as the result of a personal relationship with an offender. This is an area where the old adage, "the best defense is a good offense" applies. The development of a clear policy with regular training and monitoring will go a long way to minimizing the occurrence of these situations.

The Research Update explores question of violence by girls. The growth in the number of females under correctional supervision continues at a faster pace than males. The emergence of gender-specific research and programming is a positive development, as we are learning a great deal about how males and females differ in their criminal careers and in their challenges for supervision. This is an important area for us to keep current on.

In the Technology Update, Joe Russo announces the availability of a new resource for electronic monitoring. With the increasing popularity of GPS monitoring, particularly with sex offenders, this resource comes at a particularly good time.

With this issue, *Perspectives* welcomes Karen Blackwell Mucci as Production Coordinator. Karen has been with APPA for a while and has stepped in smoothly to assume responsibility for the production of the journal. The Editorial Committee and I look forward to a long and productive relationship.

We at *Perspectives* commit to continuing to provide relevant, timely and informative information to assist you as we undertake the challenge. If you have any ideas or suggestions for this, your professional journal, let us hear from you. ▷▷▲

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

# vision

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

## We seek to create a system of Community Justice where:

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

The American Probation and Parole Association 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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*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.*

*For more information on corporate membership, please contact:*

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# Call for Nominations

## Nomination for executive officer positions:

Nominations for the following executive officer positions will be accepted at the Board of Directors meeting on February 11, 2007 in Atlanta, Georgia:

**President-elect** **Vice President** **Secretary** **Treasurer**

Two candidates for each executive office shall be nominated by members of the Board of Directors. 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.

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 three years.

| Region | States represented in Region | Present Incumbent |
|---|---|---|
| Region 3 | Delaware, New Jersey, Pennsylvania | John Tuttle |
| Region 4 | Maryland, Virginia, Washington DC, West Virginia | Susan Flanigan |
| Region 5 | Ohio | Gary Yates |
| Region 9 | Illinois | Darrell McGibany |
| Region 10 | Iowa, Minnesota, Wisconsin | Tom Roy |
| Region 11 | Arkansas, Kansas, Missouri, Oklahoma | Michael Youngken |
| Region 12 | Texas | Melissa Cahill |
| Region 15 | Alaska, Idaho, Montana, Oregon, Washington | 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 **March 12, 2007.** 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 2007 election:

| | |
|---|---|
| **December - March** | Call for nominations for regional director positions. |
| **February 11** | The Board of Directors selects two candidates for each executive officer position. |
| **March 12** | Cut off date for nominations for regional director positions. |
| **March 19** | Nominations committee selects two candidates for each regional director position from those nominated and prepares ballot. |
| **May 10** | Election ballot, containing candidates for executive officers positions and regional director's positions, is mailed first class to each current member. |
| **June 11** | Last day for ballot postmark. |
| **June 15** | Ballots counted. |
| **July 15** | All candidates notified by mail of election results. |
| **July 11** | Nominations Committee reports results at membership meeting |

All nominations should be sent by **March 12, 2007** to:

Gini Highfield, Chief Probation Officer
2nd District Juvenile Court
P.O. Box 325, Farmington, UT 84025
Phone: (801) 447-3973, ext. 1, Fax: (801) 447-3976
Email: ginih@email.utcourts.gov

# Technology Update

by Joe **Russo**

## The National Electronic Supervision Technology Resource Center

The National Law Enforcement and Corrections Technology Center's Rocky Mountain Region office recently launched the National Electronic Supervision Technology Resource Center (NESTRC).

This no-cost resource center was developed in response to the field's articulated need for the ability to network with colleagues and to have access to a central source of quality, authoritative data and technical assistance for establishing, operating and evaluating electronic supervision programs. The importance of this resource has increased given the recent rash of legislation mandating electronic monitoring of sex offenders.

At the present time NESTRC offers two main services. The first is a web-based discussion forum for electronic monitoring program managers, administrators and line staff to communicate about issues that they are facing in areas such as procurement, workload and response protocols. Many practitioners already interact regularly with their colleagues on these issues. NESTRC will facilitate this interaction and organize it in discussion threads that are easy to follow. This resource will also allow practitioners to expand their small networks and begin to share information with their colleagues across the country. The hope is that with better information sharing comes decision making.

The second main service that NESTRC provides is that of an online repository of information about electronic supervision technology. The scope of data will include the following general areas: technology, legislation, procurement, program administration, legal issues and publications.

Within the technology area will be data on the technologies currently available and in development, vendor contact information, etc. In the legislation area will be laws from various states on issues related to electronic supervision. The procurement area will contain examples of RFPs, RFIs, ITBs and other related documents. The program administration section will contain such important data as examples of forms, policies, procedures, eligibility criteria, offender contracts, response protocols and workload standards. Within the legal issues section will be found documentation on liability issues, admissibility of electronic supervision generated data in court proceedings, etc. Finally, the publications area will contain research, studies, legislative reports, articles and other documents of interest.

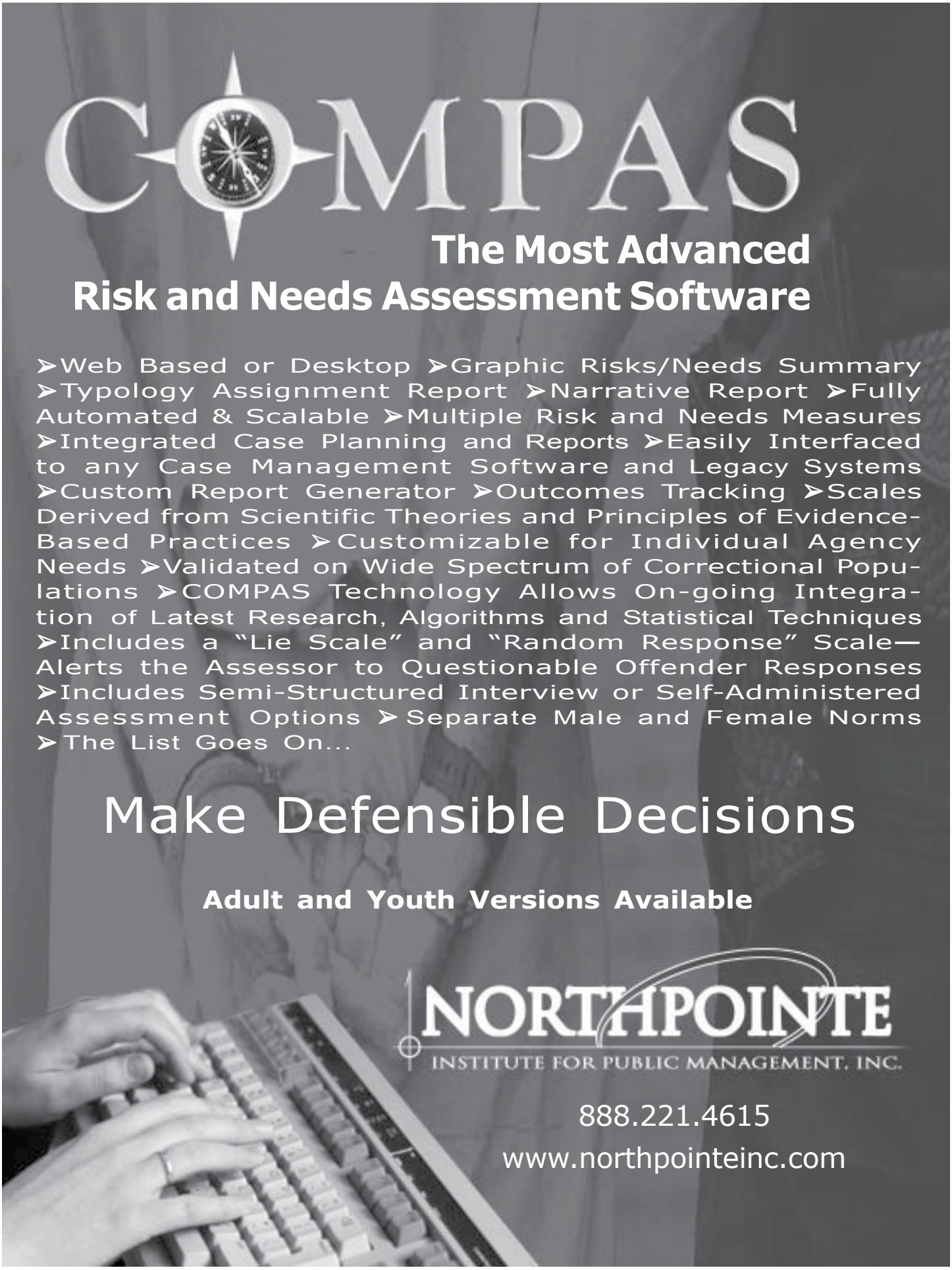
The next phase of the Resource Center, which will be launched in the summer of 2007, will expand services from the online clearinghouse to direct technical assistance and regional training programs on electronic supervision issues.

It should be noted that this resource center will only have value if agencies use it to share information with their colleagues. Every agency has something to learn and every agency has experiences to share. This resource center provides a forum where this can be accomplished. Agencies are strongly encouraged to submit any materials they would like to share.

Participation in the resource center requires enrollment. Please visit www.emresourcecenter.nlectc.du.edu to learn more about this service and to gain access.

For further information on the APPA Technology Committee or the proposed National Electronic Supervision Technology Resource Center please feel free to contact Joe Russo at 800-416-8086 or jrusso@du.edu. ▷▷▲

***Joe Russo*** *is Corrections Program Manager for the National Law Enforcement and Corrections Technology Center in Denver, Colorado and is chair of the APPA Technology Committee.*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# Spotlight on Safety

by Robert **Thornton**

## Physical Force Training: It's not an Option

Nothing is more important than assuring our officers receive proper training especially when that training can save their life. However, many community corrections agencies still see physical force training as an option; the court's do not.

While the type of safety equipment provided to parole, probation and community corrections officers varies, there is one form of safety equipment that is available to all officers, their ability to physically defend themselves. We also know that physical confrontations are a foreseeable risk. Studies dating back to 1990 conducted by William Parsonage, through funding by The National Institute of Corrections, show that on average approximately 50 percent of officers experience some type of hazardous duty situation during their career. Of those hazardous duty experiences, from 12 percent to 33 percent depending on the agency studied, are actual physical assaults.

Two questions exist, what is the agencies obligation to train, both from the standpoint of the safety of the officers and the safety, or rights, of the public. The latter is most addressed by the courts, but we will start by addressing the personal safety of our officers.

While many agencies have been proactive in providing some form of safety training for officers, some have not. Where training has not been provided, it has resulted in a "grass roots" movement for both safety training and equipment. This "movement" has taken various forms, review by regulatory agencies such as labor and industries, review by the courts, and in some cases even legislative involvement.

The greatest debate usually comes with the firearm issue. The least debated is the responsibility of the agency to provide physical force training or what is generically referred to as defensive or control tactics training. Statistically, physical force tactics are the most used form of self defense; more than firearms, batons or OC spray.

The question then arises, how to we conduct this training? The courts care little about what form or discipline is used, they only provide guidance on how the training is to be conducted. In *Davis v. Mason County, 927 F.2d 1473 (1991),* which involved the alleged improper use of physical force by sheriff deputies, the Court found that "...training of officers on use of force was a practice that fell

within the sheriff's policymaking authority. While most of the deputies involved had some type of training, even if it was minimal at best, the issue was the adequacy of training. While they may have had some training in the use of force, they received no training in the constitutional limits of the use of force."

When confronted with a threat, officers will, hopefully, respond to the threat in an effort to protect themselves. Since we as administrators know, or should know, that physical attack is a foreseeable risk, there is an obligation to train. The obligation is heightened when we also involve our officers in making arrests, since we know that between two to three percent of all arrests will result in the use of force.

In the 1989 U.S. Supreme Court ruling, *City of Canton, Ohio v. Geraldine Harris 927 F. 2d 1473(1991*) the justices articulated the fact that deliberate indifference would be used when judging department liability in regard to failure-to-train officers. Three areas of deliberate indifference have since been defined.

**1. Moral Certainty Standard Violation.** If the subject area was one of the clearly established laws, of which a reasonable policy-maker knew or should have known that constitutional violations would occur if employees were not trained, liability could arise.

**2. Custom, pattern or practice.** If a custom, pattern or practice demonstrates such an obvious need for more or different training, that policy maker could reasonably be said to have been deliberately indifferent to the need (under the concept of knew or should have known) and liability could arise.

**3. An official policy**. If policy-makers adopt an official policy which violates clearly established laws of which a reasonable person knew or should have known, liability could arise.

In a study by Matthew W. McNamara on the issue of police use of force, he offered that "Departments always train officers in weapons disciplines, expandable baton training and pepper spray issues." However, he states, in studying the most litigated training categories of use of force, "...55 percent of the non-lethal claims arise from physical or hands-on actions, something which departments spend very little training time on. It is the exception and not the rule for officers to receive any defensive tactics or physical skills training after graduating from the academy." McNamara also states that plaintiffs prevailed in approximately one-third of the overall cases, and the average award was estimated to be $450,000.00. An agency can provide a significant amount of tactical training for a fraction of that amount.

The facts at hand reveal that parole, probation, and community corrections officers have been, and will continue to be, physically assaulted and killed. As previously discussed in this column, research shows that of our female officers that have been feloniously killed in the line of duty, 34 percent were beaten to death.

In regards to your department, if you are thinking *it has never happened before,* remember, that was the opinion in the jurisdictions that are now the focus of case law. Physical force training is certainly an area where it is better to be proactive versus reactive. No matter how we approach it, from the aspect of the safety of our officers or the responsibility to the public we serve, the message is clear—hands-on use of force training is not an option! ▷▷▲

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***Robert L. Thornton*** *is the chair of the APPA Health and Safety Committee and the Director of Community Corrections Institute in Springdale, WA.*

# Research Update

by David R. **Karp** and Katherine **Largo**

## Recent Research on Girls and Violence

### An Assessment of Recent Trends In Girls' Violence Using Diverse Longitudinal Sources: Is the Gender Gap Closing?

Darrell Steffensmeier, Jennifer Schwartz, Hua Zhong, and Jeff Ackerman.

Criminology 2005. 43: 355-406.

Violent girls have received increasing public attention and some scholars have recently published books with titles such as *See Jane Hit: Why Girls Are Becoming More Violent and What We Can Do About It* (2006) by James Garbarino, and *Sugar and Spice and No Longer Nice: How We Can Stop Girls' Violence* (2005) by Deborah Prothrow-Stith and Howard R. Spivak. Criminologists have presented several explanations for the rise in girls' violent offenses. Some suggest modern society presents more stress and confusion about appropriate female behavior. Furthermore, modern women are adopting traditionally male traits, such as assertiveness and aggressiveness, and ultimately violence. Criminologists also speculate that the media negatively influences girls by providing violent female heroines in television shows, video games, and movies, such as *Tomb Raider* and *Mr. and Mrs. Smith*. Others suggest that a break down of families, churches, and communities has contributed to girls' violent behavior. The flurry of reports that girls' violence is increasing pave the way for a new round of policy initiatives directed at youth crime.

This Research Update reports focus on a recent research study that calls into question this purported trend, asking if girls really are becoming more violent. They wonder if the trends are simply artifacts of criminal justice policy changes and not truly reflective of a national change in girls' behavior. Steffensmeier and his colleagues argue that arrest policies have become more inclusive of a greater number of crimes, such as minor violent offenses and those committed in private settings, which may account for the increase in female youth arrests. Thus, girls are not becoming more violent; instead the criminal justice system is casting a wider net, catching girls who would not have been arrested in the past.

## Sorting Through Conflicting Data Sources

To examine trends in girls' violence, the researchers considered multiple data sources looking at trends over time and comparisons with boys' violence. They analyzed data from official criminal justice agencies, including local police departments and the FBI, and from independent researchers. These varied data sets provide information based on arrests, victim reports, and offender self-reports. Considering data from the late 1970s to 2003, the authors analyzed the FBI's Uniform Crime Reports (UCR), which focuses on crimes reported to the police and those that led to arrests; victimization reports from the National Crime Victimization Survey (NCVS); and self-reports of adolescents in the Monitoring the Future Survey (MTF). A fourth source, the National Youth Risk Behavior Survey (NYRBS) supplies data from 1991 to 2003. The researchers focused their analyses on boys and girls aged 12 to 18.

The study looks at patterns of simple assault, aggravated assault, and the Violent Crime Index, or the sum of robbery, rape, aggravated assault and homicide data. Whereas much research has assessed the convergence of female and male youth violent crime over a select few years, these researchers examine the trends that occurred over two decades.

Researchers found distinct trends in each of the four data sets. In the Uniform Crime Reports, their analysis revealed a convergence of female and male simple and aggravated assault *arrest* rates. Over the more than two decades of study, a clear trend has emerged for the arrest of girls. By 2003, girls are being arrested in much higher numbers, and are one third of all arrests of youth for simple assault, and a quarter of arrests for aggravated assault.

In contrast to these findings, analyses of victim and offender surveys produced very different results in the same 1980 to 2003 time period. While fluctuations certainly appear from year to year, the overall message is the same. Girls are no more violent in 2004 than they were in 1980. With less severe offending, e.g., simple assaults, girls' violence comes closer to mirroring boys' (but is still substantially less), but when the seriousness increases, e.g., aggravated assault, robbery, homicide, girls' violence remains a small fraction of the youth violence problem. "The rise in girls' violence, it appears then, is more of a social construction than an empirical reality. It is not so much that girls have become any more violent; it is that the avenues to prevent or punish violence have grown so enormously" (p.397).

## Conclusion

Analysis of a variety of data sources over several years provides a more complete understanding of the relationship between gender and youth crime. When studies primarily rely on data gathered by the criminal justice system, such as the UCR, they may miss conclusions that actually implicate the criminal justice system itself. In this case, although UCR data shows that more female adolescents are being arrested, various national studies based on victim and offender surveys confirm that girls' level of violent crime has not significantly changed over the years and the percentage of female-to-male crime has not increased. That said, while the myth of girls' violence can be exploded at the national level, future research could examine if there are some places or subpopulations that are experiencing a rise in girls' violence.

Although the myth of rising female violence is broken, this study was not designed to examine the consequences of increasing violent girls' arrests. The authors are not implying that the girls who are arrested are innocent of the charges. By arresting juveniles for minor crimes and for those that take place within more private contexts such as home and school, the number of female arrests has increased. Does this preventative, pro-arrest policy deter youth from engaging in future crimes? Or does the stigma and record of an arrest decrease their potential success, for jobs or otherwise, in their community? These are questions that future researchers must answer.

"How can it be," the authors ask, "that girls do not appear to be more violent today... when many individuals who write about delinquency and the juvenile justice system assume precisely the opposite" (p.390)? By focusing primarily on arrest data, researchers, the media and members of society have too quickly assumed that a crisis among girls has arisen. This study calls upon all of us to temper our judgments and doubts about the state of girls in American society. ▷▷▲

***David R. Karp*** *is Associate Professor of Sociology at Skidmore College in Saratoga Springs, New York.*
***Katherine Largo*** *graduated from Skidmore College in 2006 with a degree in sociology.*

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# 2006 APPA Award Recipients

The American Probation and Parole Association annually presents several prestigious national awards that recognize your most distinguished professional achievements and allow you to share best practices ideas with your peers. APPA is proud to acknowledge the 2006 recipients who were recognized at APPA's 31st Annual Training Institute in Chicago, Illinois July 24-27, 2006.

## Scotia Knouff Line Officer of the Year

Charles Robert "Bob" Smedley
Senior Community Corrections Officer
Community Corrections Division – Probation Unit
Orlando, Florida

Charles Robert Smedley has over 25 years experience in Florida's Corrections Department. Since 1995, Mr. Smedley has been the Senior Officer/Team Leader of the Orange County Probation Unit's Domestic Violence Team. He provides direction and consultation to several other probation officers on the team in addition to managing a caseload of domestic violence and child abuse offenders. Because of his experience, he was most recently selected to supervise the Unit's sex offender cases. Mr. Smedley's work has insured that offenders are held accountable for completing their court ordered conditions of probation and that crime victims are provided with information regarding their rights, their role in the criminal justice process and personal safety. The dual emphasis on offender accountability and service to victims is evidence of Charles Smedley's dedication to his work in probation.

## University of Cincinnati

Scott T. Walters, Ph.D.
Assistant Professor
University of Texas School of Public Health
Dallas, Texas

Dr. Walters has been an Assistant Professor in Behavioral Sciences at the University of Texas School of Public Health since 2002. He is an expert in the field of motivational interviewing and for the past several years, he has been working with a number of criminal justice agencies to translate this work to the probation field. He has developed a number of useful tools for probation officers such as videotaped interactions of motivational interviewing in a probation setting. Dr. Walters is also working with the National Institute of Corrections to develop a monograph on motivational interviewing within the criminal justice setting. His leadership has helped motivational interviewing become accepted by line officers and supervisors, bringing evidence-based practice into the daily work of probation. Dr. Walters is an accomplished researcher who has managed to bridge the gap between research and practice bringing motivational interviewing into the day to day work of community corrections.

## Walter Dunbar Memorial Award

Mario Paparozzi, Ph.D.
Department Chair
Department of Sociology and Criminal Justice
University of North Carolina – Pembroke
Pembroke, North Carolina

Dr. Paparozzi began his criminal justice career in 1972 as a parole officer trainee and since that time, through his work as parole officer to New Jersey State Parole Board Chairman to his current position as Department Chairman of Sociology and Criminal Justice at the University of North Carolina – Pembroke, he has championed the work of community corrections. In his pursuit for public safety, he advocates for research validated programs that reduce recidivism. He has traveled extensively across the United States and to other nations delivering the message that probation and parole can work and that community corrections professionals have a responsibility to put the best practices into place to reduce crime and enhance public safety. Currently, Dr. Paparozzi's knowledge is shared with a new generation of criminal justice students at UNC-Pembroke.

## Sam Houston State University Award

Richard Callahan
Chief Probation and Parole Officer
Virginia Dept. of Corrections
Radford, Virginia

Richard Callahan is widely known as a pioneer for new technology in community corrections in the state of Virginia. In collaboration with Dr. Michael Kaune, Mr. Callahan authored in 2005 "A Survey of Probation Officers Concerning the Use of Hair Testing for Illicit Substances" that was published by the *International Journal of Drug Testing* at Florida State University. Mr. Callahan's efforts have also resulted in numerous other research projects and significant grant funding for Radford University where he is an Adjunct Faculty member and has taught undergraduate classes in corrections since 2002. He has been employed by the Virginia Dept. of Corrections since 1988.

## 2006 President's Award

Project Empower
Project Representative: Darin Carver, Program Director
Weber Human Services

Project Empower is operated by Weber Human Services in Weber County, Utah-about 25 miles north of Salt Lake City. Weber Human Services was contracted by the 2nd District Juvenile Court to develop and implement the treatment portion of State Supervision services in Weber County. Project Empower determined that the goal was to reduce risk factors and recidivism of youthful offenders using a combination of group and family therapy requiring up to 15 hours of participation each week. By combining therapy with intensive supervision by probation staff, Project Empower has shown impressive behavior change of participants. Yearly outcome evaluations have consistently shown that juveniles participating in treatment at Project Empower are shown to have fewer behavioral problems as well as fewer symptoms of serious mental illness.

## 2006 Joe Kegans Award for Victim Services in Probation and Parole

Sandi Jaynes
Victim Services Manager
WV Division of Corrections
Charleston, WV

Ms. Jaynes' accomplishments on behalf of victims are numerous. She designed and implemented a comprehensive victims services program through the WV Division of Corrections and implemented the state's first Batterers' Intervention Prevention Program—the first of its kind in a maximum security facility. Other accomplishments include formation of the state-wide Crime Victim Empathy Program which has proven to reduce victimization in other states, an assistance program to help victims through the parole board process—prior to which victims had no support through the parole process and facilitation of prisoner activities to recognize Crime Victims' Right Week and Domestic Violence Awareness month. A survivor of domestic violence, Sandi Jaynes has used her life experience and professional talents to help victims cope with the aftermath of their victimization with support through many aspects of the criminal justice system.

# 2007 APPA Awards Nominations Criteria

**The American Probation and Parole Association presents several prestigious awards that recognize your most distinguished professional acheivements and allow you to share best practice ideas with your peers! Everyone is encouraged to participate in the nomination process to assure that community corrections porfessionals as well as community based programs and agencies receive this worthy national recognition.**

**The Scotia Knouff Line Officer of the Year Award** is the most competitive and perhaps the most prestigious practitioner award offered by APPA. This award honors 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. The recipient of the Scotia Knouff Line Officer of the Year Award will receive complimentary registration to attend the APPA 32nd Annual Training Institute held in Philadelphia, PA on July 8-11, 2007 as well as travel expenses associated with acceptance of this award.

**The Walter Dunbar Memorial Award** is the oldest APPA practitioner award. This award recognizes significant contributions by a practicing professional or a retired practitioner in the field of probation and/or parole, and is presented in honor of one of APPA's most distinguished colleagues, the late Walter Dunbar. Mr. Dunbar 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 University of Cincinnati Award** is a non-practitioner award, presented to an individual who has made significant contributions to the field of probation, parole or criminal justice technology. Recipients typically are individuals from an academic research or government agency not engaged in providing probation and parole services.

**The Sam Houston State University Award** honors a practitioner who has published an article concerning probation, parole or community corrections that 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 Joe Kegans Award for Victim Services in Probation and Parole** honors an individual working in community corrections who has provided exemplary services to victims of crime. 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. Nominees for this award may be living or deceased, and preference will be given to community corrections professions or volunteers who have personally experienced criminal victimization and have used that experience to help others.

**The APPA Member of the Year Award** recognizes the work and energy of a worthy APPA member. This award is presented to a current APPA member who has been a member for at least one year and has provided significant contributions to the organization through promotion of the vision and mission of APPA. Any APPA member may submit a nomination for APPA Member of the Year. The recipient of the Member of the Year Award receives a complimentary ten year membership in APPA. Elected members of the APPA Board of Directors or the Executive Committee are not eligible for nomination.

**The APPA Community Awareness Through Media Award** recognizes a media broadcast, publication or film capable of reaching a national audience that broadens the public's awareness and understanding of issues in the American criminal justice system in an accurate, fair and balanced manner, through sharing the vision of APPA. Such media coverage has the potential to improve community awareness and understanding of the community corrections profession.

**The APPA President's Award** recognizes exemplary community corrections programs or projects which serve to advance the knowledge, effectiveness and the integrity of the criminal justice system. APPA seeks to recognize visionary organizations that have exemplified the management and innovations necessary to lead community corrections into the next decade. The APPA President's Award will be given to the community corrections program which meets a combination of the following criteria:

- The program 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 and their effect (impact).
- The program makes a difference that is supported by impact data.
- The elements of the program which make a difference can be replicated by others.
- There is clear evidence of the supportive nature of its environment.
- The program 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; and staff characteristics and evaluation.

**The APPA Award for Excellence in Community Crime Prevention** seeks to recognize community corrections agencies, or community crime prevention programs coordinating with a community corrections agency, that have integrated community crime prevention initiatives into the traditional roles of supervision, intervention and sanctioning of offenders.

# 2007 APPA Award Nomination

Supporting documentation is required for each nomination and is detailed to the right of each award or groupd of awards. The supporting information should be submitted with the completed form on page 21.

## Scotia Knouff Line Officer of the Year Award *(to be presented at the 2007 Annual Institute)*

## Walter Dunbar Memorial Award
*(to be presented at the 2007 Annual Institute)*
NOTE: Recipient must have a national presence and influence and have provided a significant contribution to APPA

## University of Cincinnati Award
*(to be presented at the 2007 Annual Institute)*

## Sam Houston State University Award
*(to be presented at the 2007 Annual Institute)*

## Joe Kegans Award for Victim Services in Probation and Parole
*(to be presented at the 2008 Winter Institute)*

**Education** – Date of degree(s) awarded; school(s) attended. Specify information for all universities attended including course work towards a degree.
**Employment History** – Current job title; location of employment; periods of employment (cover past 15 years of employment).
Professional and Community Activities – Identify memberships, offices held and awards received.
**Note – A Vitae or resume containing this information above may be substituted.*
**Written Justification** – Description of justification and/or contributions the nominee has made that support the award.
**Testimonials** – Two testimonials from a variety of different supporters from the profession, treatment services, law enforcement, victims, clients or the community, as appropriate for each award.
**Photograph** – A 3"x5" or larger, recent photo, will only be required of the award recipient.

## APPA Member of the Year Award
*(to be presented at the 2007 Annual Institute)*

**Membership** – Indicate length of time nominee has been a member of APPA (must be at least one year).
**Justification** – Description of justification and/or contributions the nominee has made that supports the recommended award.
**Photograph** – A 3"x5" or larger, recent photo, will only be required of the award recipient.

## APPA President's Award
*(to be presented at the 2008 Winter Institute)*

**Program/Project Goals** – List the goals of this program/project, population served, staffing and budget.
**Program/Project Description** – Describe the program/project (include methodologies, if any), technologies used, program/project outcomes (site supporting data) and anticipated outcomes, if any.
**Program/Project Benefits** – Describe the benefits of the program/project to the community, "field" and agency.
**Justification** – Describe why this program/project warrants award nomination.

## APPA Community Awareness Through Media Award
*(to be presented at the 2008 Winter Institute)*

**Date** – Publication or broadcast date of nominated project.
**Justification** – Description of justification that supports the media project. Include awards received or reviews.
**Sample Copy** – If possible, provide a copy of the publication or a tape of the broadcast or video. If not available, briefly describe why this media project warrants the award nomination. If applicable, include the name of associated newspaper, magazine, book, TV station or movie.

## APPA Award for Excellence n Community Crime Prevention
*(to be presented at the 2008 Winter Institute)*

**Program Summary** – Describe the program's mission, goals, timeline, date of inception and evaluation process.
**Community Partners** – Describe how this program involved and partnered with other community agencies and citizens.
**Crime Prevention Principles** – Describe (with appropriate explanation and documentation) how the principles of crime prevention in community corrections are at work in this program by answering the following questions:

- 1. Does the program increase an individual's assets and resiliency?
- 2. Does the program strengthen families?
- 3. Does the program reinforce community norms?
- 4. Does the program promote connectedness?
- 5. Does the program educate? Is education reinforced?

# APPA 2007 Awards Nominations Form

Please use the following entry form for submission of award nominations. The supporting documentation for each award as described on the nomination criteria (see page 20) must also be submitted along with this form.

## Information on Award Nominee:

Award this person/program is nominated for _____

Name (or name of contact person if program/project or media project) _____

Title _____ Agency _____

Address _____

City _____ State _____ Zip _____

Daytime phone ( ____ ) _____ Fax ( ____ ) _____

Email _____

Name of program/project or media project (if applicable) _____

Address (if different from above) _____

City _____ State _____ Zip _____

## Nomination submitted by:

Name _____

Title _____

Agency _____

Address _____

City _____ State _____ Zip _____

Daytime phone ( ____ ) _____ Fax ( ____ ) _____

Email _____

## Eligibility

1. With the exception of the APPA Member of the Year Award, recipients of the APPA awards are not required to be a member of APPA.
2. Members and non-members of APPA may submit multiple entries in each award category.
3. Nomination entry form and all supporting materials must be submitted by March 2, 2007.

## Award Recognition

In an effort to give each recipient the recognition deserved for such outstanding work, APPA has divided the presentation schedule between the Annual and Winter Institutes. The nomination schedule willl not change with all nominations due by March 2, 2007 for awards presented at the Annual and following Winter Institutes. Recipient schedule is noted on the award requirements page.

## Submit this form along with all supporting documentation by March 2, 2007 to:

APPA Award Nominations, American Probation and Parole Association, 2760 Research Park Drive, Lexington, KY 40511-8410, Fax: (859) 244-8001.

Questions concerning APPA Awards may be directed to Diane Kincaid at (859) 244-8196 or dkincaid@csg.org.

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# Editor's Introduction —

It is probably fair to say that most community corrections practitioners with knowledge of the history of electronic monitoring would trace its origins to New Mexico in the late 1970s. A judge in Albuquerque by the name of Jack Love was inspired by a Spiderman cartoon and envisioned an electronic system to monitor offender movements and activities. Judge Love engaged a local electronics expert, Mike Goss, to help him in this endeavor. It took a while, but in 1983, Judge Love sentenced the first offender to house arrest using electronic monitoring. The concept caught the imagination of many jurisdictions that were suffering from serious jail and prison crowding, and electronic monitoring quickly became the "next big thing" in community corrections.

While this was indeed the beginning of the widespread use of electronic monitoring, it came some twenty years after the first operational version of an electronic monitoring system for offenders. The authors of this article, Robert S. Gable and R. Kirkland Gable were the principals in the early work on electronic monitoring.[1] R. Kirkland Gable headed the Harvard research group in the 1960s that developed the first offender location monitoring system. He holds the original patent for offender monitoring technology, along with William S. Hurd (U.S. Patent # 3,478,344, issued November 11, 1969). R. Kirkland Gable's twin brother, Robert Gable, participated in the initial research, and then became the principal investigator of several federally-funded research projects at UCLA and the Claremont Graduate University in California that involved radio telemetry with offenders.

It is interesting to note that the purpose of the original monitoring system was for providing positive reinforcement for pro-social behavior by offenders. Electronic monitoring was not for imposing confinement and determining non-compliance, but rather for supporting rehabilitative efforts and rewarding positive behavior change. This reflects the correctional ideology of the decade of the 1960s, when this pioneering developmental work was done. Rehabilitation was still the predominate purpose of corrections, and the new technology was oriented to assist in achieving that goal.

In the intervening years between the pioneering work of the Gables and the development of Mike Goss's version in 1983, the correctional landscape of the United States shifted markedly. Rehabilitation was discredited and the punitive "get tough" ideology also entered center stage. Electronic monitoring was used to monitor offender compliance with restrictions on movement. It became the essential tool in making house arrest or home confinement programs work. Little, if any attention was paid to rehabilitation in this context.

With the passage of time, the prevailing correctional ideology has once again begun to shift. Rehabilitation, as embodied in the 'what works' literature and evidence-based practices has returned to play an important, if not yet predominate role in correctional policy. In their article, the authors explore how electronic monitoring could be recast to provide positive reinforcement for offenders who are changing their behavior. The potential for expanding the ability of probation and parole officers to provide increased positive reinforcement for prosocial behaviors is significant.

Readers should note that the Gables have a small nonprofit research trust (Life Science Research Group, Inc.) that wants to support an Electronic Monitoring program using positive reinforcers. Interested parties should email Dr. Robert Gable at robert.gable@cgu.edu.

We are very pleased and proud to present this article by the true pioneers of electronic monitoring. We hope that it will stimulate the readers to explore the possibilities of electronic monitoring in an evidence-based practices model.

Bill Burrell


[1] *R. Kirkland Gable and Robert S. Gable are brothers, whose family name was originally Schwitzgebel. The original work was published under the names Ralph K. Schwitzgebel and Robert Schwitzgebel. The family name was legally changed to Gable in 1982.*


by Robert S. **Gable and** R. Kirkland **Gable**

# Increasing the Effectiveness of Electronic Monitoring

The difficult work of probation and parole personnel often goes unrecognized and unacknowledged by the general public. Unfortunately, most media attention occurs after instances of a violation by a supervised offender. Given this social reality, many officers have reasonably come to view their primary task as supervising offenders in a manner that focuses on the enforcement court or parole board orders. Two electronic technologies have helped in that task: radio-frequency (RF) monitoring of offenders sentenced to home detention and global positioning satellite (GPS) systems for real-time tracking offenders in the community.

The appropriate use of electronic monitoring (EM) varies by type of offender. Among first-time low-risk offenders, EM is not likely to reduce recidivism beyond that normally expected with traditional probation. Many of these probationers need only minimal supervision and can be "banked" to receive only periodic visits. For low-to-moderate risk offenders, monitoring increases compliance beyond customary supervision in a manner that emphasizes social disapproval of the crime. This situation was illustrated in 2005 by the highly publicized case of entrepreneur Martha Stewart. Generally, if monitoring is used with these offenders, it should be applied sparingly and briefly.

More intense and prolonged use of EM is appropriate for offenders presenting a moderate or high level of risk. An extensive review of the effectiveness of EM among this group of offenders found that the rate of offending can be significantly reduced *during* monitoring. However, no well-controlled studies have shown a reduction in recidivism *following* EM greater than the rate following incarceration or prison diversion programs (Renzema & Mayo-Wilson, 2005).

This result should not be a surprise for two reasons: First, EM is only a tool and not, in itself, a "program" that provides services necessary for rehabilitation or re-entry into the community. Second, although EM has allowed the criminal justice system to punish offenders more humanely and inexpensively than incarceration, contemporary system configurations have not been designed (with appropriate software) to document prosocial behavior and to encourage the use of incentives.

## Strategies for Intervention

From a psychological perspective, the primary role of probation and parole officers is to serve as a "contingency managers." That is, in their interaction with offenders, officers develop plans and administer punishments and rewards intended to prevent crime and increase socially desirable behavior. There are only four basic punishment and reward strategies for changing behavior. Every action of a officer can be interpreted as using one of the following strategies:

- *Punishment*. Reduces unwanted behavior by applying sanctions (recommending a fine or incarceration).
- *Extinction*. Reduces unwanted behavior by withdrawing rewards (restricting criminal activities by placing a person on monitored home confinement).
- *Positive reinforcement.* Increases desired behavior by applying positive consequences (sending a letter of commendation to an offender).
- *Negative reinforcement.* Increases desired behavior by allowing the person to escape negative consequences (reducing hours of a community work assignment).

Punishment is widely used in the criminal justice system because this strategy can immediately stop unwanted behavior and at least temporarily increase public safety. However, sanctions often fail to have a long-term effect because alternative prosocial behavior is not reinforced. To be most effective, sanctions should be applied immediately after criminal activity and before the rewards of the activity can be enjoyed. Also, punishment should occur after each infraction at a relatively high intensity in an environment where escape is unlikely.

Negative reinforcement is a more practical behavior-change strategy than punishment, assuming that the threat of a sanction remains in effect. In this situation, a person has the option of avoiding an unpleasant consequence by taking action toward an acceptable goal (e.g., avoiding a penalty by paying income taxes on time). When the threat is removed, the previous behavior is likely to return. Consider, for example, the tendency of automobile drivers to increase their speed when a patrol car behind them turns off the highway. The threat must not only be present, the potential offender must also be aware of its presence.

EM allows more frequent detection of rule violations than conventional probation or parole; and hence, has the advantage of increasing the possibility of more immediate punishment. However, one persistent dilemma faced by officers is deciding when to apply additional sanctions (e.g., a curfew or more frequent drug testing) when a rule violation is observed, particularly in situations where such a violation would not have been detected with traditional supervision. A rigid schedule of predetermined sanctions for rule violations is usually unnecessary, ineffective, or surreptitiously ignored. Consider, for example, the difficult situation where a violation may actually be a genuine exception to a steady pattern of improved behavior.

Sanctions are best administered, not in proportion to the severity of the violation, but in proportion to the reasonably presumed effect on the behavior of the offender. Some probationers or parolees respond well to a very mild threat of punishment. In contrast, other individuals who get only a "slap on the wrist" become, over a period of time, increasingly immune to threats of severe punishment. Because EM home confinement is itself quite demanding (Roberts, 2004), there are very few more severe sanctions that can be imposed. Excessively severe punishment is legally prohibited, but even moderate punishment or the threat of punishment can elicit a range of undesirable side-effects such as lying, avoidance, resentment, depression or overt hostility that interfere with rehabilitation. Officers know this all too well, and should have flexibility to exercise professional judgment based on a offender's history and their experience with the individual.

## Positive Monitoring

More than 60 years of behavioral research has established the principle that providing variable positive consequences for desired behavior is the most effective way to produce lasting results. When training a new behavior, rewards should be given initially for what can be objectively described as a "poor" performance of the desired behavior. New behavior is shaped in the same way that music teachers often give encouragement to a person learning to play a musical instrument.

*"Sanctions are best administered, not in proportion to the severity of the violation, but in proportion to the reasonably presumed effect on the behavior of the offender."*

*"Rewarding behavior that is merely rule-compliant is not an ideal program goal. A more optimal strategy is to reward seemingly spontaneous behavior that indicates a desirable change of attitude on the part of the offender."*

The most obvious types of behaviors to reward among offenders are those related to job-skill training and drug treatment. Prompt arrival at appointments, regular attendance to classes and consistently passing drug tests present a major challenge to many offenders. These accomplishments can be reliably measured. Rewards should be front-loaded during the learning process and then tapered-off, using a variable schedule, toward the end of the probation or parole term.

Rewarding the productive activities of probationers or parolees has not been viewed as a primary task of correctional staff. The situation is probably a result of the common perception that offenders should not be rewarded for behavior that is normally expected of the average citizen. The basic justification for rewarding offenders—as disagreeable and counter-intuitive as it may seem—is simply that it works better than any other behavior-change method. Long-term, cost-effective public safety requires it. Doing something "different" than the typical parent, school teacher, or employer may be the key to rehabilitating an offender.

Rewarding behavior that is merely rule-compliant is not an ideal program goal. A more optimal strategy is to reward seemingly spontaneous behavior that indicates a desirable change of attitude on the part of the offender. The focus on behavior is not because observable behavior is more important than a person's emotions and thoughts, but because overt behavior is what we can reliably measure and legally document.

One challenge to implementing a program of positive EM is selecting appropriate, low-cost incentives. Referral to community agencies for social services is an obvious possibility. Letters of commendation and certificates of accomplishment are also obvious options. As simple as letters might seem, it should be noted that most offenders have never received an official and *unexpected* acknowledgement of progress from a government agency. Letters, certificates, and celebrations *after* the satisfactory completion of a treatment program may be gratifying symbols, but do not shape (and probably do not sustain) an offender's accomplishments. Such recognition is a one-time event occurring too late in the behavior-change process to have the greatest effect. Incentives should be given multiple times *during* the learning process.

Other incentives that have been used by correctional agencies include: phone cards, hair cuts, clothing, movie passes, reduction in community work assignments, food coupons, increased flexibility of curfew hours, group ceremonies, merchant prizes, YMCA memberships, movie DVDs, brokered welfare services and bus passes. Inexpensive incentives can be effective if they are unique in a way that acknowledges the personal preferences of the offender. Unique incentives implicitly tell the offender that the officer was listening and remembered details of a conversation.

Creative planning may be needed to meet the cost of incentives. A probation program in Virginia purchased incentives for juvenile offenders from budgeted cost savings by using EM rather than confinement. Other programs have solicited donations, budgeted incentives into block grants, used proceeds from EM fees charged to offenders, or sequestered the proceeds from the sale of offender-manufactured goods. Sometimes the cost of an annual or semi-annual group event can be re-directed into an incentive fund to be dispersed during the course of a year. Raffles are a good way of spreading incentives across offenders at minimal cost. A drug court in Guam uses a fishbowl to draw and announce names of participants who have made outstanding progress. An EM program might arrange for the distribution of free raffle tickets to randomly selected offenders only when offenders are in a specified inclusion area such as a drug treatment center.

In order to sustain behavior after formal supervision ends, a reinforcement program should be designed to blend into natural social systems that reward behavior that competes with criminality (Sulzer-Azaroff & Mayer, 1991). A "community reinforcement approach" (Meyers and Miller, 2001) assumes that each offender has a unique configuration of rewarding and punishing influences that are provided by peers, family members, and acquaintances at school/work/recreational environments. Ideally, incentives should be given under the direction of an officer by a community-based adult. For example, an EM offender might be permitted to go with a friend for a free pizza at a small local restaurant owned perhaps by a member of Alcoholics Anonymous who would act as an informal mentor. At least one study (Loeber and

Farringtom, 1998) found that citizen volunteers with minimal training in contingency management had a significant impact of probationers' attitudes, and produced recidivism rates generally equivalent to those obtained by probation officers. Electronic monitoring can be used in conjunction with the community reinforcement approach as a means of regulating and documenting offender activities with volunteers.

Occasionally the use positive reinforcement can have unwanted consequences. Unless incentives are given in a variable manner with respect to their timing and their value, offenders may come to expect a reward and show resentment when their expectations are not met. The best incentives have an element of surprise. A variable schedule of reinforcement for desired behavior has the advantage for officers of requiring less vigilance than the usual monitoring for violations.

The most common complaint of incentive programs involves complaints by offenders who believe that they have not been treated "fairly" or in the same way as another offender (Marlowe, 2006). The complaint itself is an indication that a particular incentive has value and can be used as a positive reinforcer. Offenders should be informed in advance that everyone is eligible, but that incentives are given in an unpredictable manner because incentives depend on their availability and the particular situation of each offender at the time. Although this explanation will not satisfy most offenders, complaints will usually subside as an increasing number of offenders experience the thoughtfullness conveyed by the rewards.

## Wizards Wanted!

Positive EM can be viewed as an amplification of activities that certain probation and parole staff members already perform on a routine basis. For example, some officers have an intuitive sense when to give an offender more freedom. These officers can be considered correctional "wizards." Their appearance and interaction styles differ, but they always convey optimism that somehow—amid the complex interweaving of emotions, circumstances and self-evaluation—the offender will gradually construct a positive personal identity. Wizards often have a particular type of offender with whom they work best.

Although wizards enforce the conditions of parole or probation with the necessary application of punishment or negative reinforcement, their primary strategy is to reward behaviors that indicate offender imitative and resilience. They do not wait for an offender to "become motivated"; they make it happen. Generally, behavioral contracts with offenders should be avoided because contracts are promises contingent upon the offender's *future* behavior. Reinforcers are given only *after* an approximation to a desired behavior has occurred.

Wizards occasionally enjoy making strategic moves that out-maneuver the offender's old habit patterns. For example, a resistant probationer who reportedly boasted to friends that he never "sucked up to authority" was unexpectedly presented with two tickets to a Globetrotter's basketball game after he (almost) completed a job resume'. A short note attached to the tickets congratulated him on his progress and told him that he could accept the tickets, sell them, give them away, return them, destroy them or do nothing. There was no response the offender could make that would *not* follow these directions. After a few days of confusion, he went to the game.

If an officer has a sufficient knowledge of a particular offender's neighborhood, a GPS contingency map can be constructed that pin-points times and places where the offender usually makes an important decision. A critical decision point, for instance, might be a bus stop where one bus takes the offender toward home (an inclusion area), a different bus takes the offender toward a favorite pool hall (an exclusion area). Sometime before the probation or parole period ends, the offender should be allowed to practice decision-making at various decision points along this "digital pathway." A monitoring bracelet can be conceptualized as a "social prosthetic device" similar to a walker that is down-graded to a crutch, then to a cane, and finally abandoned.

Correctional wizards are made, not born. Line staff can be expected to have a number of failures, simply because making errors is a natural component of any learning process. Wizards-in-training should start small with just one offender. Then expand slowly to allow room for a strategic retreat when a reward strategy is ineffective. Fortunately, inappropriate use of positive reinforcers is likely to have few deleterious effects, and be less controversial than inappropriate use of sanctions.

Officers need feedback on both positive and negative outcomes for their particular offenders similar to the way an entrepreneur or an athlete needs feedback on his or her performance. Over a period of time, the results themselves will shape the skills of staff members. In this way can a program become truly evidence-based. One director of operations of support services for a state court has outlined procedures that would redirect agency priorities toward offender outcome measures. He wrote: "I wonder what would happen if we told our staff that we were not going to measure on an ongoing basis any of their job activities? Rather, their performance was only going to be measured by the recidivism rates of the offenders they supervise" (White, 2006, p. 26).

Electronic monitoring was originally developed in the 1960s for the purpose of rehabilitation, not primarily for surveillance and detection of criminal activity (Note, 1966; Schwitzgebel, 1969). Unfortunately, contemporary electronic monitoring has become basically a misdirected technology that falsely promises long-term public safety by increasing surveillance and punishment. A more effective approach would be to use short-term electronic monitoring in a manner that acts in synchrony with basic human desires—the desire to be happy, to be free of pain and to be socially valued. If, and when, electronic monitoring taps into this reservoir of human aspiration, positive transformative social interactions

will emerge that can enhance the long-term safety and welfare of the community at-large. ▷▷▲

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# THE OKLAHOMA FAMILY JUSTICE PROJECT:

## Improving Community Supervision Outcomes One Family at a Time

Families across America provide critical support to most of the 4.9 million individuals under federal, state, or local probation and parole jurisdictions[1]. By providing housing, emotional assistance, access to community resources and other prerequisites for successful community justice supervision, most families[2] of parolees and probationers form a backbone of informal support for community corrections. Families often provide critical support by helping a loved one cope with the multiple stressors associated with probation or parole supervision. Families are naturally vested in successful reentry; they are often the first to see challenges and most likely to intervene before issues escalate into crisis. Most importantly, families are experts in their own lives; they know what has been successful in the past and what has not.

With a strong commitment to public safety and in view of the increasing number of people leaving jail and prison, the Oklahoma Department of Corrections (DOC) sought new approaches to improve community justice supervision and promote effective reentry. Oklahoma DOC recognized the significant and positive role that families can play in the lives of loved ones on probation or parole. In 2004, the DOC sought to formalize the ways in which community corrections draw upon the strengths and resources of families to promote the shared goals of successful completion of supervision and community safety.

Around the same time that Oklahoma DOC was looking to incorporate families into its work, the national nonprofit organization, Family Justice and the American Probation and Parole Association (APPA) joined forces to create a skill development curriculum to foster the ability of the community justice field to integrate family-focused methods. The curricula incorporated Family Justice's award-winning method, The Bodega Model®, a strengths-based, family-focused method of family case management that taps the strengths of government,

by Justin **Jones** and Carol **Shapiro**

families and communities to break cycles of involvement in the criminal justice system.

The Family Justice/APPA partnership sought to enhance the ability of probation, parole and other community corrections professionals across the country to identify and draw on the strengths of families of probationers and parolees to improve community supervision outcomes, reduce future criminal activity and utilize existing community resources more effectively. Once the curriculum was created, Family Justice and the APPA tested its applicability with community corrections agencies across the country. In December 2004, the newly created curriculum was piloted with the Oklahoma DOC as part of the Oklahoma Family Justice Project (OFJP). This paper highlights the objectives of the OFJP, the nature of the skill development sessions, ongoing evaluations, accomplishments of the project and the overall impact on policy and culture at the Oklahoma DOC. The paper also demonstrates the value of partnerships like the OFJP for honing best practices and affecting policy change on a national level.

## ABOUT THE PARTNERSHIP

The Oklahoma DOC demonstrated two critical requirements for the Family Justice/APPA training program pilot selection: strong, invested leadership and a commitment to change. Incorporating a family-focused point of view requires an agency-wide shift in perspective. And without the buy-in on all levels of management, shifting perspectives, a particularly challenging undertaking, will not yield the desired results. An initial meeting revealed the Oklahoma DOC as an ideal candidate for incorporating the Bodega Model. Oklahoma had strong leadership that supported the project. Additionally, the Oklahoma DOC had not only made a commitment to improving outcomes for those leaving jail and prisons, but also to improving the overall well-being of their families as well.

Similarly, Family Justice's Bodega Model was an appropriate match for Oklahoma DOC and offered a proven track record, through which the Oklahoma DOC could accomplish its many objectives. Family Justice had demonstrated the effectiveness of family-focused case management in its own backyard at La Bodega de la Familia in New York City, affecting favorable outcomes of persons involved in the criminal justice system while at the same time enhancing the well-being of families.

The OFJP outlined a four-phase process:

**Phase One**: After establishing short- and long-term program objectives, Family Justice tailored the newly created curriculum for Oklahoma, planning two skill development sessions on incorporating strengths-based, family-focused intervention strategies into policy and daily practice.

**Phase Two**: Once the skill development sessions were completed, Oklahoma supervision officers incorporated the strategies into case management work.

**Phase Three**: To evaluate and refine methods and process, Family Justice performed evaluations of the how the skill development sessions impacted case management services one month and six months after the sessions were completed.

**Phase Four**: The OFJP is currently in phase four which is ongoing integration of a family-focused, strengths-based approach to community corrections. With enhanced methods in place, Oklahoma DOC now is focusing on assessing outcomes and incorporating lessons learned from pilot into organizational practice and culture.

## PHASE ONE: SKILL DEVELOPMENT AND OBJECTIVES

Capitalizing on Oklahoma's strengths was key in how the OFJP framed the first phase. With additional support from Carl Wicklund, the executive director of the APPA and Tom Carter of the Bureau of Justice Assistance -- who spent time in each skill development session -- the OFJP set a clear tone and message that incorporating strengths-based, family-focused methods was endorsed on all levels. With this strong presence of leadership, developing objectives through an upper level management meeting became the first order of business.

Participants in the skill development sessions included high-level Oklahoma DOC staff, mid-level management, line and supervision officer staff as well as technology staff. The inclusion of the technology staff is particularly significant, as they are responsible for transforming the data collections system and software to incorporate the new methods and tools based on the Bodega Model. Two skill development sessions were held: the first was one day long and the second, two days in length. During each session, facilitators spent time drawing upon the existing expertise of staff and the tools they used on a daily basis. Sessions then explored how the Bodega Model could help build upon this work.

The first meeting included a half day training for fifteen high-level staff of the Oklahoma DOC. To help gain a schematic and conceptual understanding of the tools they would be using in applying the Bodega Model, the Oklahoma DOC completed an *organizational ecomap*. An organizational ecomap is a visual representation of the resources to which an agency is connected ~~to~~. It also displays positive and conflicted relationships between service agencies and helps identify sources of support that might be tapped in new ways. In the end, the group identified long-term goals and short-term objectives for the project

## SHORT TERM OBJECTIVES

- Public Safety
- Accountability to victims and the community
- Adopt family intervention tools that enable supervision officers to identify and implement effective intervention strategies
- Identify community networks that currently work with families
- Utilize referral services that currently work with families, specifically targeting faith-based community
- Provide services proven to reduce risk and recidivism
- Increase positive stories involving family support being a contributing factor for successful reentry center

# One Officer Tells How Using the Bodega Model Turned Her Client Around

***Officer Susan Quigley shares her story of how she successfully engaged her client, John,[3] who previously was not responsive to her, through insights gained from a family member...***

"I had a client on my caseload who initially received a deferred probation sentence. He appeared to have a good attitude and was willing to do what was needed from probation. Despite promising at each visit that he would begin to do his community service or attend a drug assessment, John never seemed to follow through. Eventually he stopped showing up and absconded supervision. By chance, when John returned to probation supervision, he was reassigned to me. When it was time to report to the office, he came with his sister, Pamela, because he did not have his own means of transportation. This office visit proved very important. I learned that Pamela did not have financial resources to offer John. She did however provide me with the key to unlock the communication barrier that existed between John and me. First of all, Pamela showed me that she was interested in him and wanted him to be successful. She praised John in front of me and told him that her children look up to him as a role model. She said that she was sad that he was in trouble because she wanted her children to be proud of him. Pamela offered to continue to provide transportation to the office as well as deliver my messages since John did not have a telephone. In a follow up private conversation with Pamela, she revealed something that would change the dynamics my future interactions with John.

Pamela disclosed that John suffered from feelings of depression, because he had been in a car accident with his daughter. Apparently, his daughter was not wearing her seat belt as she was asleep in the back seat of the car. As a result, she was thrown from the vehicle, and she died in his arms. Pamela said John had never gotten over the accident, which also caused his marriage to fall apart, because his wife blamed him for the death of their daughter.

## LONG TERM GOALS

- Yearly reduction in the absconder rate
- Reduction in technical violations and incarceration as punishment for relapse
- Increase in positive stories involving family support as the contributing factor in successful completion rate of community supervision
- Maintain or increase rate of graduation from treatment programs
- Develop quality assurance mechanisms to assure valid and useful data collection
- Linkage with a faith-based partner and establish a family focused reentry

A two-day skill development session for 25 community corrections officers and their supervisors followed the upper-level management skill development session. In this session, community corrections officers learned to use tools such as the family ecomap and strengths-based genogram. These two family intervention tools help contexualize a family and the many positive and challenging elements of a family's history – such as criminal justice involvement, employment, chronic illness, mental health and substance abuse -- as well as illuminate resources that the family as a whole is connected to. In addition, staff learned about other critical tools of the Bodega Model such as supportive inquiry, motivational interviewing and other techniques that can help incorporate the family into the supervision process to improve outcomes.

In theory, the Bodega Model seems an intuitive process. But when caseloads increase, the practicality of strengths-based family-focused methods is not always immediately clear to the supervision officers. Facilitators therefore took ample time to explore with administrative and technical staff how both paperwork and computer software programs could effectively integrate a family-focused approach in a way that enhances daily practice rather than creates additional work.

## PHASE TWO: PILOTING PRACTICE IMPROVEMENT

While the Family Justice/APPA program assessed the quality of its pilot curriculum through a separate evaluation process, the OFJP embarked on its second phase: applying lessons learned in skill development sessions by implementing family-focused intervention strategies into daily practice.

The community corrections officers who participated in the second skill development session were asked to utilize family genograms and ecomaps, supportive inquiry and other Bodega Model tools to assist in assessments and case plans. They were asked to provide case notes highlighting their work, including most effective strategies.

At the same time, high-level management and administrative staff were asked to oversee the implementation of these new methods, and support the inclusion of families in the case management process. They sought out stories where families played a positive role in the supervision process.

To identify the most effective elements of the skill development sessions, Family Justice staff completed a follow-up email survey after the sessions. Family Justice asked correctional officers which, if any, tools they were utilizing in daily practice. The surveys revealed that tools and methods such as the ecomap, genogram and positive inquiry were not only being used, but were enhancing the family work of correctional officers. Decision-makers' responses reflected an increased awareness about their role in supporting line staff to engage families. The integrity of a successful program requires commitment and engagement from the top down. As one participant noted, "the overview let upper managers know what they had to do so that families could be more involved in the case management process."

## PHASE THREE: EVALUATION AND REFINEMENT OF INTERVENTION METHODS

As with any new approach, learning the Bodega Model through skill development sessions is a stimulant to launching new methods into practice, not the end result. Therefore the OFJP began with, rather than ended with, skill development sessions. The heart of the OFJP is implementation and ongoing evaluation to test process and outcomes for effectiveness. For the OFJP, tracking the implementation process was critical to honing sustainable methods and to defining whether these methods were superior to the original techniques of Oklahoma's supervision officers and staff. It is not enough to simply track outcomes; the process must be monitored and refined. Staff had been asked to record their progress in forging partnerships with families in the supervision process.

The data we collected consisted of monitoring officers who were on the pilot teams and asking that they identify family support systems. Once identified,

After learning this information, I referred John for counseling under the guise of counseling for domestic violence (based on a misdemeanor charge against a girl friend, even though this was not required for his supervision). Since John felt he was required to complete this program as part of his probation, he went without question. After two additional meetings, he admitted that he and his counselor spoke about some of his past issues with grief and that he was beginning to feel a lot better after talking about it. He has also been able to make amends with his estranged wife and to see his surviving children. He began working harder and paying back child support (another source of contention between the couple). He completed his requirement for community service and drug treatment as originally requested by the court.

John is proud that he has been able to get treatment and feels proud of himself for having completed the original mandates of probation. Pamela continues to support him and in turn he spends more of his free time with his nephews and tries to talk to them about not making mistakes in life. The client has made several changes in his life and has matured greatly. Although, he is still having a hard time making his scheduled appointments, he manages to come in each month. I believe that if his sister had not become involved in his probation supervision and provided a supportive role, not only would my attitude towards him as an officer be different, but I feel he would not have been nearly as successful in his progress.

None of these interactions took a great deal of my time, nor did they cost any money. A simple visit with Pamela became the catalyst for change and compliance which had not been accomplished before. In this instance, the only thing that changed was that time was taken to talk to and gain insight from a family member. I probably would not have referred John for counseling, if I had just looked at the court requirements, instead of using the flexibility we have as officers to add additional stipulations or make referrals if new problems occur. I know that I work with a lot of people who are just as caring and who are just as capable of accomplishing this type of outcome given the opportunity. Sometimes we get overwhelmed and overlook simple opportunities to obtain help for our clients."

officers were to utilize those supports and document their activities. In addition, case notes were randomly selected and reviewed by the supervisors to ensure officers were utilizing the ecomap and genogram tools and making appropriate referrals. The results of these activities revealed officers were comfortable using the tools presented by Family Justice. Officers responded that these tools have heightened their awareness of family support systems that may have been overlooked or discounted in the past. Officers, who were able to solicit family support, noted an increase in information sharing within the support systems as well as gaining valuable insights into the probationer's behavior.

In addition to this data, Family Justice performed phone interviews with six managers and twelve line staff from the skill development sessions one-month and six-months after the sessions. Interviews focused on assessing the effectiveness of the skill development sessions: How had new methods been integrated into daily practice and were they helpful? To ensure unbiased answers, Family Justice staff and a consultant, all whom were previously uninvolved in the project, conducted the interviews.

Interviewers identified concerns about implementing a family-focused model. Line staff expressed apprehension about the limited time they could devote to engaging family while juggling caseloads of over 100 people. However, line staff noted that they were using tools which did not involve a great increase in time and complemented existing activities, such as the ecomaps and many of the supportive inquiry techniques. These were key results in the OFJP's attempt to understand whether the methods were a cost-effective use of supervision officers' time. It did not necessarily take more time to use tools such as the positive inquiry and the family genogram and ecomap, but the outcomes produced were better.

The OFJP is establishing methods of web-based data collection to develop an outcome based tracking system. By establishing a baseline for comparison between targeted caseloads for whom family-focused methods are used and a control group, the OFJP will be able to demonstrate the effectiveness of family-focused approaches in improved outcomes.

## PHASE FOUR: CHANGING POLICY AND CULTURE ~~CHANGE~~

The final phase, currently underway, is that of changing organizational culture and policy. While the line and management community corrections staff is the real agents of change in phase two and three, the success of phase four depends on the decision-makers of the Oklahoma DOC. A core group of executive decision makers, led by the Director of Oklahoma DOC have made a commitment to support the OFJP initiative. Additionally, by playing a leadership and observational role throughout initial skill development session, implementation and evaluation processes, decision-makers have had a clear sense of what the project was supposed to accomplish, what it did accomplish and how it should be incorporated into permanent policy and practice. Leaders have the opportunity and responsibility to facilitate a culture at the Oklahoma DOC where supervision officers partner with families as a matter of practice because it is a critical component of the supervision process.

The Bodega Model is presented during in-service training for field staff to facilitate and concretize the DOC's commitment to incorporate the support of the supervision process and to describe how these efforts will ultimately improve supervision outcomes. The goal of this training is to provide field staff with both the knowledge and skills needed to partner with families and communities and to cultivate a value for family-focused community supervision.

With a tested approach, the Oklahoma DOC is now able to begin communicating anticipated outcomes and rationales as the first step in implementing formal organizational change. This kind of organizational change takes time. But with the data collection, in addition to the development of outcome and process-based data, formal methods and sustainable change will be created.

## CONCLUSION

Strong leadership, dedicated staff and a secure partnership with the Family Justice/ APPA project has made the OFJP a learning laboratory for better practices in community corrections. As the OFJP continues to work towards its short and long term goals, the project has taken lessons learned in the pilot phases of skill development and used them to refine the skill development facilitation process.

The partnership of the Oklahoma DOC and the Family Justice/ APPA has advanced the use of strengths-based, family-focused methods in community corrections. It has succeeded out of a genuine belief in the critical resource that families can play in community corrections and a commitment to a shift in the perspective of supervision officers. By formalizing how community corrections taps and builds on the strengths of family, Oklahoma is poised to improve recidivism rates, prevent future criminal justice involvement, increase both public and private safety and enhance overall family and community well-being. ▷▷▲

## ENDNOTES

[1] Glaze, Lauren E. and Seri Palla. "Probation and Parole in the United States, 2004". Washington, DC: Bureau of Justice Statistics. 2005.

[2] For the purposes of this article, "family" is broadly defined to include friends, neighbors, and godparents as well as blood relatives.

[3] All client and family member names are pseudonyms.

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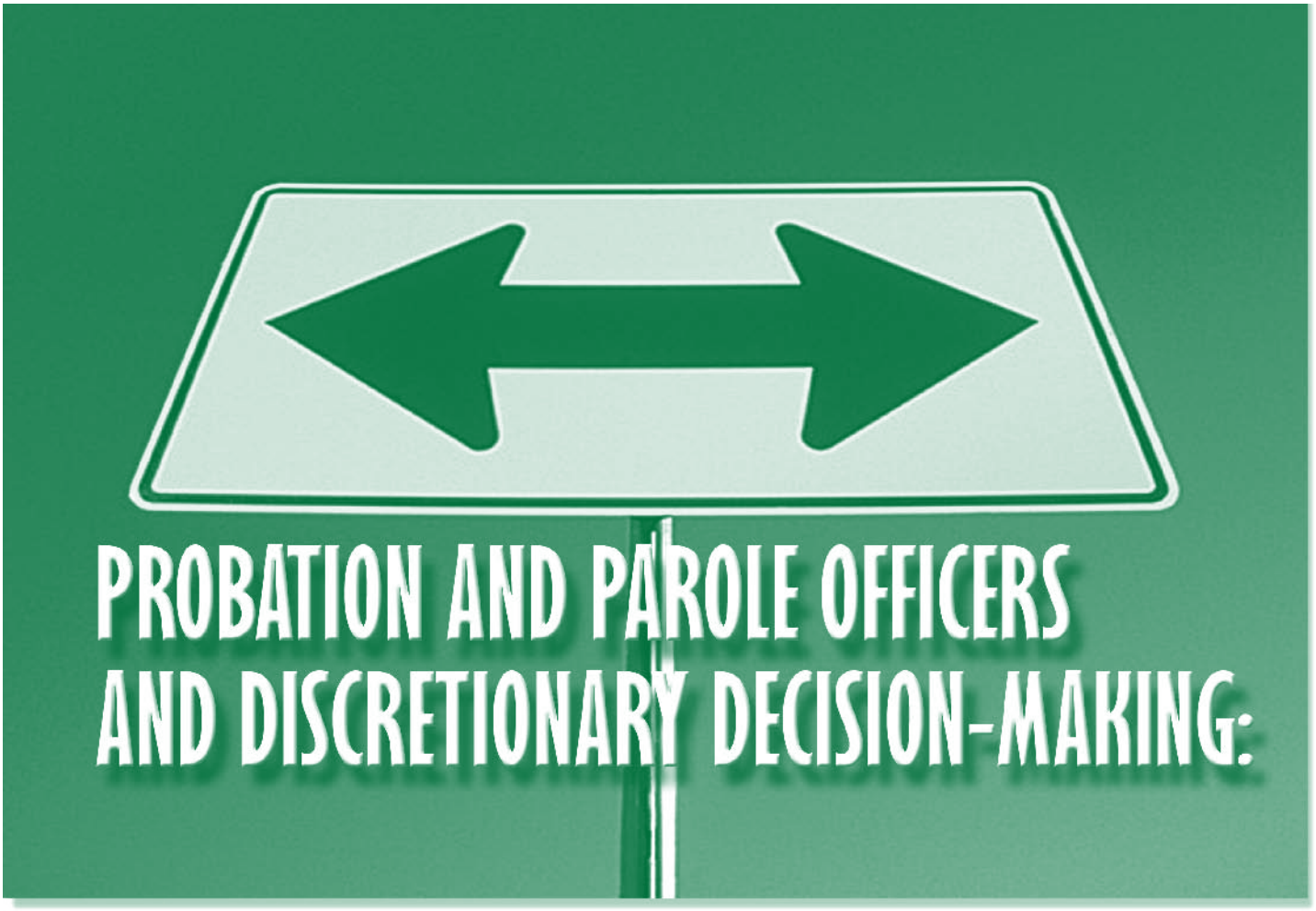


# Responses to Technical and Criminal Violations

In a recent essay Chris Eskridge (2004) identified four necessary elements in the dispensation of perfect justice:

- the absolute ability to identify law violators;
- the absolute ability to apprehend law violators;
- the absolute ability to punish law violators; and
- the absolute ability to identify the intent of law violators.

However, Eskridge recognized that the criminal justice system is far from perfect and that there are few if any absolutes. In this vein, Eskridge noted that multiple factors inhibit the creation of a perfectly just system of justice administration. For example, the innocent are occasionally punished while the guilty escape punishment. Additionally, the guilty are sometimes punished more severely or punished less severely than necessary.

The administration of justice is largely dependent upon the actions of individual human beings who are subject to making procedural and/or mechanistic mistakes in the course of doing their jobs. Police officers may do a poor job of gathering physical evidence; thereafter, prosecutors may make strategic errors in handling a case. Finally, correctional officers may fail to take proper security precautions that result in injuries or escapes.

Human error is not the only reason that the administration of justice is non-uniform in its application. A much larger factor is human *discretion* or the use of personal decision-making and choice when criminal justice professionals carry out their respective duties and responsibilities. While discretion is utilized by all criminal justice professionals engaged in professional decision-making, this paper examines how probation and parole officers (PPOs) working within community-based corrections utilize discretion.

by Mark **Jones** and John J. **Krebs**

A number of factors that may significantly affect PPO discretion include:

- differing philosophical orientations to criminal justice goals like rehabilitation versus retribution;
- scholarly interpretations of the law;
- applied and/or normative interpretations of the law;
- formal organizational and/or community practices; and finally
- personal preferences.

This study focuses on the fifth factor (personal preferences) for PPOs. More specifically, this study examines PPOs' preferred responses to probationers and parolees who breach the conditions of their community supervision by committing technical and/or criminal violations. Because there is a limited but emergent body of literature on discretionary decision-making by criminal justice practitioners, we begin this article with a brief chronology documenting the use of discretion among criminal justice professionals to include police officers, court-related personnel, and correctional staff. Thereafter, we present the results and policy implications of a national survey of discretionary decision-making among members of the American Probation and Parole Association (APPA). Ultimately this study aims to take a modest but important step towards understanding PPO preferences for responding to community-supervised offenders who violate the conditions of their probation/parole.

## Literature Review

### Police Discretion

Police discretion plays a large role in determining if a person is released without action, cited or arrested for an alleged infraction of the law. The first recognition of police officer discretion in criminal justice writings appeared in 1963. Herman Goldstein, then an executive assistant to Chicago Police Chief O.W. Wilson, wrote on the topic of discretion. He documented the officers' routine use of discretion when deciding whether to make an arrest or issue a ticket (Goldstein, 1963). Considered cutting edge at the time of publication, Goldstein's article contained information and ideas that are common knowledge in policing circles today - - namely that officers routinely ignored or issued warnings for certain minor offenses, and these offenses were alternately enforced or ignored because of certain precinct practices and individual officer discretion.

While writing about police discretion, Ho (2003) noted that discretion is a manifestation of selection bias, which rests upon many factors to include the individual exercising discretion. Wortley (2003) examined two views on the durability of discretion. The first view represented an enlightened and flexible (*service-oriented*) way of dealing with social problems; in contrast, the second view represented a selective (*legalistic*) approach to enforcement, and one that ultimately allowed officers to define justice in accordance with their own priorities and individual prejudices. Wortley also wrote on the difficulty of measuring discretion since criminal justice decisions are seldom based on a single rationale, such as race, gender, or age. In fact, many variables enter a police officer's mind when making the decision to take formal action against an accused offender. Finally, Wortley highlighted the need for policies and procedures to be in place to insure the appropriate use of discretion. This is easier said than done. The use of individual discretion is an inevitable part of the justice system process, which ultimately informs the generation of citations and arrest reports for alleged infractions that are subsequently processed by prosecutors and judges.

### Discretion with Court-Related Personnel

The use of discretion among court-related personnel is perhaps most evident among prosecutors and judges. With regard to prosecutorial discretion, a highly visible use of their discretion is found within plea negotiations, the process of deciding which cases to present before a grand jury and which cases should receive priority in prosecuting. Plea negotiating or plea bargaining was not recognized as a significant part of America's criminal justice system until after the American Civil War (1865), and it has been studied and analyzed repeatedly since then (Alschuler, 1979; Bond, 1975; Friedman, 1979; Durose & Langan, 2005). Ultimately, the decision to plea bargain cases rests on (among other things) a mix of prosecutorial and judicial priorities and how crowded court calendars are on any given day. When court calendars become crowded or bogged down, judges can put pressure on prosecutors to plea cases quickly. Thus, prosecutors do not act in isolation when it comes to plea bargaining.

Judges, by the very nature of the job they perform (i.e., potentially depriving people of their liberty or their life), have always been viewed as the ultimate decision makers in the criminal justice system. For this reason citizens in democratic societies would like to think that judges possess, at a minimum, the characteristics of fairness and wisdom. In spite of the recognition that judges must utilize discretion when handing down their sentences, the past three decades have brought structured sentencing to many jurisdictions. Structured sentencing serves as an obstacle to a judge's ability to fully exercise discretion and can limit a judge's ability to select and hand down certain types of sentences. Structured sentencing was also designed to help control and limit prosecutorial discretion because grand juries have often been dominated by prosecutors and have served as rubber stamps for prosecutors. Despite

*"The use of individual discretion is an inevitable part of the justice system process, which ultimately informs the generation of citations and arrest reports for alleged infractions that are subsequently processed by prosecutors and judges."*

the limits that structured sentencing places upon prosecutorial and judicial discretion, academics, researchers and policy makers agree that discretion will always play a role in the judicial system because judges will always consider many differing and contextual factors (organizational, occupational, and situational) before rendering a decision (Davis, 1969; Gelsthorpe & Padfield, 2003).

### Discretion and Corrections

Once courts sentence guilty offenders, correctional personnel use their discretion to coordinate the court-ordered supervision of offenders in community-based programs and secure settings such as jails and prisons. Prison and jail officers have exercised discretion in deciding when to write disciplinary reports. Infractions or perceived infractions may be viewed differently among various prison staff and disciplinary measures for similar infractions may be treated differently, even within the same institution (Poole & Regoli, 1980; Tischler & Marquart, 1989).

Once released from jails or prisons, most offenders report to probation or parole officers in the community. Like all other officials in the criminal justice system - - police, prosecutors, judges, and correctional officers - - probation and parole officers use their discretion as they provide community-based supervision. Historically, parole was imported to the United States from Australia, Great Britain and Ireland in the 19th century and was designed to remove political considerations from prison release decisions by vesting such authority in an independent board instead of governors, because governors were subject to political pressure and cooptation (Friedman, 1992). Parole achieved that result, but it did not eliminate individual discretion from release decisions (Abadinsky, 1978; Dershowitz, 1976; Jones, 2004).

Today community corrections officers exercise discretion in multiple domains, from pretrial decisions to post-sentence supervision. Pretrial officers utilize discretion in making pretrial release decisions. Officers who conduct pre-sentence investigations utilize discretion in deciding what to include in a report and, most importantly, what sentence to recommend. Community corrections officers have some discretion in setting reporting requirements and the strictness of supervision; however, the mandatory use of risk and need assessment instruments in recent years has limited the amount of discretion available to community corrections officers (Schneider et al., 1996). Perhaps the most important exercise of discretion for a community corrections officer is deciding when to initiate formal proceedings that would potentially deprive someone of his/her liberty (Jones, 2004).

Whether the liberty of an offender under community supervision is revoked can often depend upon which officer is supervising the case. There have been many instances in which "Offender A" commits an infraction and has formal action taken against him/her, while "Offender B" commits the same infraction and receives no formal action. Instead, "Offender B" receives a warning and clearly benefits from an officer, who, when exercising discretion, believes a warning to be the better intervention.

As early as 1975, McCleary wrote about the significant impact that personal preferences have upon the professional decisions of individual parole officers. In fact, McCleary believed that individual personal preferences were as likely to inform decision-making as were standard structural or organizational factors (McCleary, 1975). Differential outcomes for similar violations are most visible in multi-state studies. In a recent four-state study of parole violators by Burke (2004), she found that regardless of the state examined there was "a similar percentage of those on parole involved in technical violations – 75 to 80 percent" (p.4). Nonetheless, all states differed dramatically in how each responded to violations. For example, depending on the degree to which violations were handled in the community, "admissions to prison as a result of parole violations ranged from 3 percent to 45 percent" (Burke, 2004, p. 4).

While the exercise of individual discretion has many drawbacks, it also has its advantages. The use of discretion provides a counterpoint to a system embedded in a rigid set of rules; furthermore, an individual's ability to think critically and to make an informed individual choice is at home in a society that seeks to balance individual rights with public safety. In a study conducted by Slabonik and Sims (2002), 78 percent of a total of 61 probation officers in Pennsylvania agreed that probation officers use discretion in a manner that is consistent with public interest; however, this belief was more predominant among White than African-American probation officers. A larger percentage of female officers viewed discretionary decisions as based upon an officer's personal preferences rather than public interest. Only 23 percent of the total sample (61 probation officers) agreed that probation officers should be allowed extensive discretion in dealing with violations (Slabonik & Sims, 2002).

Currently the literature does not provide even a single study on the role discretion plays in the initiation of judicial action that may result in the offender's incarceration. Moreover, studies have yet to examine the roles that personal preferences play in the decision-making process exercised by probation and parole officers. Professional decisions significantly impact the offender and can lead to revocation of probation or parole. Therefore, it is important for criminal justice scholars and practitioners to study how professional decisions are ultimately made.

## Study Population

This article is based on a survey of members from the American Probation and Parole Association (APPA). More specifically, this survey targeted *line officers* and *middle managers* who supervised *adult* offenders under pretrial release, probation, parole, or post-release supervision. A membership list was obtained courtesy of the American Probation and Parole Association. This list included all APPA members as of October, 2003. At that time the APPA had 2,895 members. The APPA membership roster included the member's name, job title, agency name, and address (personal or work, whichever the member preferred). The members' job title and address were used to help us select whom we targeted and whom we excluded from the survey.

## Table 1

Descriptive Statistics for the Sample of Respondents from the American Probation and Parole Association (n =332 Cases After List-Wise Deletion)

| Variable Description | Percent | Mean | SD |
|---|---|---|---|
| **Gender** | | | |
| Male | 55.7% | | |
| Female | 44.3% | | |
| **Race** | | | |
| White | 89.5% | | |
| Non-White | 10.5% | | |
| **Educational Background** | | | |
| 4-Year Degree or Less | 50.9% | | |
| Graduate-Level Education | 49.1% | | |
| **Avg. Years of Exp as Officer (Range: 1-37)** | | 13.3 | 8.3 |
| **Officer's Job Title** | | | |
| Regular Line-Level Officer | 62.3% | | |
| Middle Manager | 37.7% | | |
| **Type of Caseload** | | | |
| Pretrial Defendants Only | 9.3% | | |
| Probationers Only | 64.8% | | |
| Parolees Only or Parolees and Probationers | 25.9% | | |
| **Age of Caseload** | | | |
| Adults Only | 85.8% | | |
| Adults and Juveniles | 14.2% | | |
| **Average Number of Offenders Supervised (Range: 0-4000)** | | 141.0 | 385.2 |
| **Agency Region** | | | |
| Northeast | 15.4% | | |
| South | 21.7% | | |
| Midwest | 44.0% | | |
| West | 19.0% | | |
| **Agency Funding** | | | |
| County/Municipal | 53.0% | | |
| State | 47.0% | | |
| **Agency Administrative Setting** | | | |
| Judiciary | 52.4% | | |
| Correctional Department or Parole Authority | 47.6% | | |
| **Community Setting** | | | |
| Rural or Small Town | 34.9% | | |
| Suburban | 21.7% | | |
| Urban | 43.4% | | |
| **Number of Officers (Range: 1-800)** | | 39.5 | 97.7 |
| Policy to Inhibit Formal Actions for Certain Violations (% Yes) | 10.8% | | |
| Policy Requiring Formal Actions for Certain Violations (% Yes) | 62.3% | | |
| Social Pressure to Inhibit Formal Action for Certain Violations (% Yes) | 32.8% | | |
| Social Pressure to Take Formal Action (% Yes) | 42.8% | | |

Members were excluded from this study if they were listed in the APPA roster as: 1) holding a strictly administrative or research position; 2) working for educational institutions; 3) practicing within a federal or private agency (most probation and parole officers work within state or county/municipal systems); or 4) working solely with juvenile offenders (the inclusion of officers who worked *solely* in the juvenile system would have taken the study in a very different direction given the differences between the criminal and juvenile justice systems). A few cases were also excluded due to missing data.

A detailed description of the surveyed respondents is presented in Table 1. Although 417 community corrections officers returned surveys for analysis (a 39.7 percent response rate), we only examined 332 surveys from respondents in 40 states after cases were excluded because of missing data and the reasons noted previously. This resulted in a 31.6 percent response rate for the final analysis. The socio-demographic backgrounds of the respondents were proportionally congruent with other national studies of the probation and parole workforce in the United States. Proportionally speaking, a majority of the sample (56 percent) was male, while a somewhat smaller segment (44 percent) was female; these findings were fairly consistent with the proportion of males (48 percent) and females (52 percent) surveyed by Camp and Camp (2002) in their 24-state study of probation and parole staff. The racial breakdown of our sample indicated that a relatively small proportion of respondents were non-white (10.5 percent), while the vast majority of study participants were white (89.5 percent). Again, these results were fairly congruent with the findings of Camp and Camp (2002), who found that the vast majority of their sample was also white (80 percent). About half (51 percent) of the sample had a four-year college degree or less, and the remaining 49 percent had graduate-level educations.

The average officer had worked for 13.3 years in probation and/or parole; furthermore, there was a wide range of experience with some officers being in their first year of employment while others reported a maximum of 37 years on the job. As for position titles, most respondents were "regular line-level officers" (62 percent), but slightly more than a third were "middle managers" (38 percent), which makes sense given the near majority of respondents with graduate-level educations. With respect to caseloads, most community corrections officers (65 percent) worked exclusively with probationers, but a fourth (26 percent) worked with parolees only or with parolees *and* probationers; the remaining 9 percent worked with pretrial defendants only. With caseloads that contained an average of 141 offenders and a maximum of 4000 offenders, most officers (86 percent) worked exclusively with adults, but a small minority of respondents worked with both adults and juveniles (14 percent).

In terms of the organizational characteristics of the respondents' respective workplaces, there were fairly similar proportions of study participants in the Northeast (15 percent), South (22 percent), and West (19 percent), but a larger proportion came from the Midwest (44.0 percent). This may be due to the fact that the membership roster was obtained in the fall of 2003, and the 2003 APPA annual Training Institute was held in Cleveland, Ohio. APPA institute attendees are typically disproportionately from the area where the institute is being held.

In terms of agency funding sources, the majority of agencies were funded by counties and municipalities (53 percent) while the remaining agencies were state funded (47 percent). Given that a majority of the officers surveyed (65 percent as noted previously) oversaw caseloads that consisted of probationers only (i.e., offenders who were supervised by agencies commonly administered at the county level), it makes sense that a majority of agencies were funded by counties and municipalities (Jones, 2004). The sample's high proportion of probation caseloads was also consistent with the majority of respondents indicating that they worked in judicial settings (52 percent) as compared to the proportion (48 percent) working in correctional departments or in parole authorities, the latter being more traditionally oriented towards parolees. Finally, 43 percent of respondents worked in urban settings, 35 percent worked in rural settings or small towns, and the remaining 22 percent worked in suburban settings. On average, each agency had approximately 40 probation and/or parole officers, but there was a wide range. Some agencies had only one officer and some had as many as 800 officers.

Within the officers' work environment, there were policies and social pressures that may have affected the making of discretionary decisions. For example, about 11 percent of all respondents reported that they worked in agencies that had policies to *inhibit* formal actions for certain violations. At the same time, a majority of respondents (63 percent) reported that their agencies had policies that *required* formal actions for certain violations. Hence, it would appear as if respondents were more likely to work in agencies that have policies to mandate rather than suppress formal action.

This study also documented a certain amount of social pressure that affected officers' discretionary decisions. To determine if an officer had ever been socially pressured to inhibit formal actions against an offender, this survey asked the following question: "*How often do you want to **take formal** action against an offender, but do not because you feel pressured by someone in your agency or an official outside your agency?*" About 67 percent said "never," but 28 percent said "occasionally" and 5 percent said "often." Hence, in the aggregate, about 33 percent had been pressured against taking formal actions against offenders. This survey also asked about pressure to take formal actions as follows: "*How often do you want to **withhold** taking formal action against an offender, but take action anyway because you feel pressured by someone in your agency or an official outside your agency?*" About 57 percent said "never," but 40 percent said "occasionally" and 3 percent said "often." Thus, in the aggregate, about 43 percent had been pressured to take formal action. In sum, it would appear as if a larger proportion of respondents were pressured to take formal action as compared to inhibiting formal actions (43 percent versus 33 percent, respectively).

Beyond the effect of policies and pressures in the discretionary decision-making process, this study also asked officers to state their preferred response to scenarios for technical and criminal violations

## Table 2

**Percent of Respondents Supporting Administrative or Judicial Interventions with Offenders who Violate the Conditions of their Community Supervision (N=332 After List-Wise Deletion)**

| Question | % Supporting Administrative Intervention [a] | % Supporting Judicial Intervention [b] |
|---|---|---|
| Question 1: The offender is required to work at suitable employment to the best of his/her ability. The offender has been unemployed ever since being placed under your supervision and makes no effort to seek or obtain employment, despite being physically able to do so. | 78.3 | 26.2 |
| Question 2: An offender has been instructed to report to your office once each month. The offender has missed two consecutive appointments with no attempt to explain the absence. No other violations have come to your attention. | 71.4 | 28.6 |
| Question 3: An offender ordered to perform community service work each Saturday has failed to appear for work for the past three Saturdays without explanation. When you confront the offender, no legitimate excuse is offered. | 66.0 | 34.0 |
| Question 4: An offender who has been under supervision for an alcohol-related offense for two months reports for the second office visit smelling of alcohol. You administer a Breathalyzer and the offender registers .15 BAC. | 60.2 | 39.8 |
| Question 5: An offender under electronic house arrest has violated curfew three times during the past month, with no other known violations. | 47.3 | 52.7 |
| Question 6: Despite a court order and a verbal warning not to associate with a former co-defendant, you have seen an offender in the company of the former co-defendant three times. Once, the two came to your office in the same car. | 37.3 | 62.7 |
| Question 7: The offender has been under supervision for possession of cocaine for nine months. The offender had no known violations for the first six months, but within the past three months has twice tested positive for marijuana. After the first positive test, the offender was instructed to submit to substance abuse treatment and did not. | 29.2 | 70.8 |
| Question 8: The offender has been under your supervision for six months, with no known violations. The offender has now been arrested for drunk driving (.14 BAC). Assuming the new charge has merit, which action would you take? | 24.4 | 75.6 |
| Question 9: The offender has been under supervision for a misdemeanor traffic offense for three months with no known violations. The offender is arrested for a felony shoplifting charge. Assuming that the new charge has merit, which action would you take? | 22.3 | 77.7 |
| Question 10: The offender has been under your supervision for two months and has missed one bi-weekly appointment and has tested positive for marijuana on one occasion. Now the offender has been arrested on a felony vandalism charge. Assuming that the new charge has merit, which action would you take? | 9.9 | 90.1 |

NOTES:

[a] An administrative intervention means that the officer would handle the violation by himself or herself as an agency-based sanction (e.g., a verbal or written reprimand, increased reporting requirements, required counseling, or some other "in-house" sanction that represents an officer's administratively initiated/controlled sanction).

[b] A judicial intervention would entail a formal sanction (e.g., requesting an arrest warrant or setting up a formal hearing and recommending that a formal sanction be imposed).

(see Table 2). For each scenario, the surveyed officers indicated whether they supported *administrative* or *judicial* interventions. Administrative interventions were defined as approaches that required the officer to handle the violation by himself or herself as an agency-based responses (e.g., a verbal or written reprimand, increased reporting requirements, required counseling, or some other "in-house" sanction that represents an officer's administratively initiated/controlled sanction). Judicial interventions were defined as court-based responses (e.g., requesting an arrest warrant or setting up a formal hearing and recommending that a formal sanction be imposed).

All scenarios in the tables were presented in order of increasing support for judicial interventions. For example, in the first four scenarios, only a minority of all respondents supported judicial interventions in situations involving technical violations where an offender: 1) failed to secure employment (26 percent); 2) missed meetings with supervising officers (29 percent); 3) failed to perform community service (34 percent); and 4) registered a .15 BAC on a breathalyzer test administered while under supervision for an alcohol-related offense (40 percent). In contrast with the first four scenarios, the fifth scenario represented a line in the sand where a majority of officers (53 percent) supported judicial interventions for those under electronic house arrest who violated curfews three times in the past month. A majority of officers also supported judicial interventions with offenders who directly disobeyed an officer's verbal warnings to: 1) avoid associations with a co-defendant (63 percent); or 2) attend substance abuse treatment after submitting positive urines for marijuana (71 percent). Thus, the surveyed officers had little tolerance for probationers and parolees who ignored verbal warnings.

Finally, the vast majority of surveyed officers supported judicial interventions with offenders who picked up new charges for: drunken driving (76 percent), felony shoplifting (78 percent), and/or felony vandalism (90 percent). Conversely, even when new misdemeanor or felony charges were present (see questions 8-10), there was still a sizeable minority of officers who would prefer to handle such criminal violations with administrative interventions for drunken driving (24 percent), felony shoplifting charges (22 percent), and felony vandalism charges (10 percent). This suggested that some officers were comfortable using administrative sanctions when faced with offenders who pick up new charges that have merit.

## Discussion

This study has several limitations that should be noted. First, this survey experienced a "words versus deeds" challenge. Officers could only predict what they would do given a certain scenario. What they would actually do may have been another matter. Second, the scenarios that were presented were very brief and many other factors not presented could have been relevant in decision-making. Third, this survey did not present officers with any choices about what sort of formal intervention they might have taken. Merely stating that the officer would have initiated formal sanctions or actions did not indicate whether such action would have included a recommendation for incarceration or some lesser sanction. Fourth, these results cannot be generalized because this study did not utilize a random sample; moreover, the APPA membership may not have been representative of all probation and parole officers in the United States, largely because the APPA roster (as evidenced by database examined herein) is top heavy with administrators and is short on line-level officers. Hence, future research should aim to replicate and advance these findings with random samples that can be generalized to the county, state and/or federal levels.

Despite these limitations, there are a few policy implications that stem from this analysis. For example, this study found that only a small proportion (10.5 percent) of probation and parole officers were non-white (a finding that was congruent with past multi-state studies as discussed previously). Given that Glaze and Palla (2004) found that minorities represented 45 percent of all probationers and parolees in 2004 (i.e., minorities were overrepresented in the system). Continued efforts are needed to diversify the current workforce of line-level officers who oversee community supervision. Such cultural diversification would help to maintain current efforts aimed at advancing the cultural sensitivity of community supervision in the United States.

This study also documented the presence of high caseloads for some probation and parole officers. With average caseloads of 141 offenders and maximum caseloads of 4,000 offenders, policy makers and other advocates for community safety should be concerned about this system's capacity to properly supervise offenders and maintain public safety. This finding suggests that continued efforts are needed to reduce the size of caseloads, which would enhance the quality of community supervision.

Finally, this study has philosophical implications for community corrections officers. Given that sizeable proportions of the sample reported that agency staff and/or people outside of their agency pressured them to inhibit or initiate formal action against offenders, one must question whether internal or external politics are diverting line officers from making discretionary decisions that they feel are in the best interests of community safety and offender rehabilitation. Given that line officers are in the best position to know the offenders because of their close working relationships with offenders, one must also question whether internal or external pressures help or hinder their discretionary decisions regarding the inhibition or initiation of formal actions.

## Conclusion

The United States incarcerates its citizens at a rate that is now the highest in the world (The Sentencing Project, 2005). As of the midyear for 2004, U.S. jails and prisons incarcerated 2,131,180 persons (Harrison & Beck, 2005). In terms of incarceration rates for 2004, the U. S. had 726 inmates per 100,000 U.S. residents, and this figure was far greater than the rate for Russia, which came in second place with 532 inmates per 100,000 residents (Harrison & Beck, 2005). Interestingly, a

significant number of inmates in U. S. jails and prisons were imprisoned due to probation and parole violations for criminal offenses or technical infractions (i.e., rule violations like drug use, failing to avoid contact with other offenders, failing to maintain employment, and missing meetings with probation or parole officers). For example, 16 percent of the more than two million adult probationers discharged from probation supervision in 2003 were incarcerated due to criminal or technical violations (Glaze & Palla, 2004). Of the more than 470,500 parolees discharged from prison in 2003, 38 percent returned to prison due to criminal or technical violations (Glaze & Palla, 2004). Such figures highlight the importance of this study and the need to critically examine the revocation process for probationers and parolees who transgress the terms and conditions of their community supervision.

We do not argue for a uniform system of enforcement, even at a state level, let alone a national level. Not only would this be an impossible task to accomplish, but it would be undesirable as well, because a uniform system of enforcement would eliminate individualized justice. The results of this study should inspire local probation officers and administrators to be sensitive to the possibility that there may be great discrepancies in the exercise of officer discretion in their agencies; with deprivation of freedom and the safety of the public at stake, the importance of these decisions cannot be overestimated. ▷▷▲

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# A Tool to Address Staff Sexual Misconduct in Community Correction Agencies

*"Courts have long recognized that, while the off-duty conduct of employees is generally of no legal consequence to their employers, the public expects peace officers to be above suspicion of violation of the very laws [they are] sworn . . . to enforce. Historically, peace officers have been held to a higher standard than other public employees, in part because they alone are the guardians of peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them. To maintain the public's confidence in its police force, a law enforcement agency must promptly, thoroughly and fairly investigate allegations of officer misconduct; if warranted, it must institute disciplinary proceedings."*[1]

by Nairi M. **Simonian** and Brenda V. **Smith**

**Georgia's law** *specifically references community corrections agencies: Ga. Code. Ann. § 16-6-5.1(a): A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person.*

**Iowa's law** *implicitly covers community corrections since community corrections is under the jurisdiction of the Iowa Department of Corrections: I.C.A. § 709.16(1): An officer, employee, contractor, vendor, volunteer or agent of the department of corrections or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.*

## I. Introduction

Community corrections agencies have the difficult responsibility of regulating and sanctioning relationships that develop between persons under community corrections supervision and community corrections personnel. Individuals under supervision include ex-offenders, parolees, probationers, pre-trial defendants, and their family and friends. Supervisory personnel can include probation or parole officers, volunteers and contractors. This responsibility is particularly challenging in a community corrections setting where employees may not work within a facility; work alone in unsupervised locations away from superiors and peers; have contact with offenders in homes, jobs or other isolated settings; have random, unanticipated contact while in the community; and have difficulty determining who is under supervision since offenders once in the community may not be in a uniform or confined in a facility. These factors can make it more difficult for community corrections personnel to determine appropriate boundaries between personal and professional associations. Thus, leaders must develop policies which protect the proper functioning of community corrections agencies, but do not violate employees' constitutional right to associate with whomever they please.

With the passage of the Prison Rape Elimination Act in 2003 (PREA)[2], the importance of addressing relationships – sexual and otherwise -- between corrections staff and offenders has increased. PREA specifically addresses the sexual abuse of persons in custody. While titled the *Prison* Rape Elimination Act, the Act's application is not limited to individuals incarcerated in prisons. The act applies to "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of *parole*, *probation*, *pretrial release*, or *diversionary program[s]*".[3]

Currently, all fifty states have laws that prohibit correctional staff from having sex with persons in custody.[4] Additionally, 27 states and the District of Columbia specifically reference community corrections agencies in the language of their custodial sexual misconduct laws, while in another 10, community corrections staff is covered implicitly. Community corrections will be covered implicitly under a state law if the language of the law broadly covers all employees who engage in custodial supervision of offenders or if the state's community corrections division is under their Department of Corrections and the language of the law covers the Department of Corrections. Additionally,

This article outlines the different constitutional standards that courts apply when analyzing agency restrictions on relationships between ex-offenders and community corrections staff. The article also details the various factors that courts, in particular cases, consider in determining whether correctional policies which prohibit staff/ex-offenders relationships are constitutional. Finally, the article concludes with recommendations about how agencies might develop policies in this area that both protect community corrections agencies and are constitutional.

## II. Constitutional Standards for Freedom of Association Cases

The First Amendment of the U.S. Constitution states that "[c]ongress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances". The courts have further interpreted this language to mean that every person has the right to freely associate with whomever they choose.[5] This applies to all persons, regardless of their employment. However, this right is not absolute and can be restricted under certain circumstances. In determining the constitutionality of agency restrictions on employee associations, courts first determine the appropriate constitutional

standard to apply to evaluate the prohibited conduct. The Supreme Court has laid out three standards for analyzing government conduct which restricts or prohibits rights guaranteed by the Constitution, in this case the right to intimate association. Those three standards are

- rational relation;
- intermediate scrutiny; and
- strict scrutiny.

The strict scrutiny standard is the hardest constitutional standard to satisfy. The strict scrutiny standard requires that the rule and/or prohibition be narrowly tailored to serve a ***compelling*** government interest. Usually, courts apply the strict scrutiny standard to fundamental interests, like the right to marry, conceive or to rear children in a particular way.[6] The intermediate level of scrutiny is less rigorous than strict scrutiny and balances the interests of the employee and the interests of the state when the government employee's association affects the greater public.[7] Moreover, this standard of scrutiny requires that governmental rules that restrict constitutional behavior be tailored in a reasonable manner to serve a ***substantial*** state interest. The lowest constitutional standard is the rational relation standard. To meet the rational relation standard, the agency rule must ***rationally*** relate to the government's interest. Courts use this lower standard when no fundamental interest -- like the right to marry or bear children -- is involved. When using this lower standard, courts generally uphold government conduct.

## III. Factors Courts Considered When Balancing the Right to Freedom of Association Against Community Corrections Agencies' Interests

In most jurisdictions, correctional employers limit or regulate relationships between correctional staff and offenders. Moreover, many courts have held that correctional policies that prohibit these relationships and/or require employees to report them do not violate employees' constitutional right of freedom of association.[8] In the context of community corrections, however, the situation may be more complicated. A court may find that a correctional policy or code of conduct is proper, yet may also determine that the nature of the relationship is protected from government intrusion. Then prohibiting the relationship or punishing the employee because of it is unconstitutional. In these situations, the nature of the relationship – marriage, familial, sexual -- overrides the government interest in either regulating or prohibiting it.

Factors that courts consider when analyzing the constitutionality of a specific policy aimed at prohibiting staff/ex-offender relationships include, but are not limited to:

- Nature of the relationship (i.e. marriage, dating, friends);
- Nature of the government interest -- is it a very important or strong interest such as ensuring the impartiality of probation/parole officers and their treatment of probationers and parolees;
- Degree to which the regulation burdens the right to associate freely – Can the officer marry anyone else?; Can the officer buy a car from anyone else?;
- Degree to which the regulation promotes the efficiency of the government service provided -- Does the policy advance the functioning of community corrections?;
- Whether the conduct regulated would have a significant negative impact on the individual's job performance – Does it affect on-duty, job related conduct or is it primarily private? ;
- Are operations of the government agency involved potentially or actually adversely affected?;
- Is the public perception and reputation of the agency affected?

The weight that the court gives to these factors will determine whether it will uphold the agency policy.

## IV. Case Law

Courts have consistently held that states may regulate the off-duty conduct of correctional personnel in custodial and non-custodial contexts. While there have been a few cases where the courts have sided with correctional staff over the agency, the facts of these cases are very distinct and do not represent a majority view.[9] The large majority of cases make clear that community corrections personnel are held to an extremely high standard of professional conduct, and personal relationships with offenders that could jeopardize the proper functioning of community corrections agencies will be prohibited.[10] While these cases have involved both institutional and community corrections settings, in this article we will solely focus on case law involving community corrections agencies.

In *Montgomery v. Stefanaik*,[11] a Seventh Circuit case,[12] a probation officer was fired after her supervisors learned that she and her fiancé had purchased a car from a dealership employing a probationer whom she supervised. Though the vehicle was not purchased from the probationer, the officer had still violated the agency's code of conduct. The agency's code of conduct forbade probation officers from transacting business with any company employing probationers under their supervision. Martina Montgomery, the probation officer, was suspended and eventually fired for violating this policy. Montgomery claimed that her termination infringed upon her right of intimate association with her fiancé, and deprived her of procedural and substantive due process. The court applied a two-part test.[13] First, does the challenged policy impose a direct and substantial burden on an intimate relationship, such as marriage. If so, the court would apply the higher **strict scrutiny** standard. However, if the policy did not impose a direct and substantial burden on an intimate relationship, the court could apply the **rational basis** review standard to the restriction.

Applying this test in *Montgomery*, the court found that the agency code of conduct prohibited purchasing a car from a probationer, and not from associating with her fiancé. The court found that Ms. Montgomery

*An employee shall not live with, nor provide lodging for, an offender, except if the offender is a family member of the employee, including a spouse where the employee's marriage to the offender existed prior to the employment date or where the spouse became an offender after the employment date. In all cases where the employee lives with or provides lodging to an offender who is a family member, this must be immediately reported in writing to the employee's Warden, Regional Prison Administrator, Field Operations Administration Regional Administrator or Central Office Administrator, as applicable.*

*(Excerpt from Michigan Department of Corrections Rule 46)*

was free to purchase a car for her fiancé from any dealership that did not employ one of her probationers and that she could associate with her fiancé in any way she chose. In short, the agency prohibition did not substantially affect the employee's intimate relationship with her fiancé and only needed to bear a rational relationship "to the agency's interest in ensuring the impartiality of its probation officers".[14] This is because "[p]robation officers have significant discretion when making sentencing recommendations and supervising probationers, and their decisions can greatly impact the liberty of convicted individuals."[15] Additionally, the court found that the agency had a legitimate interest in ensuring that probation officers conduct themselves in a professional manner.

In another case, *Akers v. McGinnis*[16], the Michigan Departments of Corrections (MDOC) had a rule on "Improper Relationships with Prisoners, Parolees or Probationers, Visitors or Families." Plaintiff, Ms. Akers, a bookkeeper at a correctional facility in Chippewa County, Michigan, befriended a male prisoner clerk. Shortly after the male prisoner's release, Ms. Akers gave him a ride in her car to a job interview. Ms. Akers was terminated by MDOC for its anti-fraternization rule. Another plaintiff in the case, Ms. Loranger, a Wayne County probation officer, was contacted by a man she had dated before becoming an MDOC employee. The man was then serving a life sentence without parole in a prison in another state. Ms. Loranger exchanged several letters with him. Ultimately, she realized that she was in violation of the MDOC rule and approached her supervisor about the matter. Four months later, MDOC also terminated her for the rule violaion.

The Sixth Circuit[17] found that MDOC had a legitimate interest in preventing fraternization between MDOC employees and offenders' families and that MDOC's rule was a rational means for advancing that interest. The court reasoned that the potential for exploitation by both MDOC employees against offenders and offenders against MDOC employees was great. The court also noted that officers were not the only employees who possessed the power to exploit the offenders. "Even clerical workers without any penal authority can by the mere manipulation of paperwork greatly affect an offender's status for better or worse, or at least be pressured into attempting to do so."[18] The court also agreed with forbidding contact between employees and offenders' visitors and families since third parties are often used to circumvent the prohibition on direct contact. Given that, the court concluded that the MDOC's termination of the two employees was permissible and constitutional. The court upheld the constitutionality of MDOC's anti-fraternization policy and granted qualified immunity to the individual management defendants, even though labor arbitrators had already set aside the discharges of both plaintiffs and instead imposed relatively brief suspensions on both women.. The Sixth circuit upheld maintaining the rule infractions on the employees' disciplinary record and refused to award monetary damage to the two plaintiffs - - Akers and Loranger.

In a third case, *Clark v. Alston*,[19] Lisa Clark, an applicant for a probation officer position, filed a claim against Judge Craig Alston alleging that he violated her First Amendment right to freedom of intimate association when he withdrew an offer of employment after learning that she had resigned from the Michigan Department of Corrections and later married an inmate who she supervised while employed as a correctional officer. Ms. Clark had applied for a probation officer position with the Court Probation Department. In her application, she only listed employment from 1999-2004. During her interview with Judge Alston, Judge Timothy Kelly, the chief probation officer (CPO) and a probation officer, she was asked about her work experience prior to 1999. Ms. Clark indicated that she had been employed by the MDOC but had left on bad terms. She revealed that she resigned from her position at MDOC pending investigations of allegations that she had an improper relationship with an inmate.

Concerned about this information, the CPO confronted Plaintiff about the incidents at MDOC and asked that Plaintiff sign a waiver to allow the court to employment file from MDOC. At trial, the CPO stated that "any personal relationship with an inmate is a concern."[20], and explained, "when you are in a position of authority, whether it be a prison guard or a probation officer, you are not allowed to have any personal relationships with people that you are supervising".[21]

In upholding the withdrawal of employment, the U.S. District Court for the Eastern District

of Michigan reasoned that "the mere fact that an employer uses an individual's marital relationship in an employment decision will not always constitute an undue or impermissible intrusion into the marital relationship."[22] The court stated that a judge's concern about such a relationship which began while the plaintiff was employed at the prison is a legitimate business reason for denying employment. The court concluded that if the prospective employee's marriage to a particular individual may legitimately adversely affect the employment, the consideration of such a factor does not violate a person's constitutional rights of intimate associaton.

These cases, though factually distinct, demonstrate that a state can terminate a community corrections' officers' employment as a result of their association with an offender. Moreover, even when the prohibition restricts the community corrections employees' right of intimate associate, as was the situation in *Clark*, a court is more likely to side with the state than the employee. Finally, the court upheld all of the terminations not just because they were between a community corrections officer and an offender, but because the relationships could ultimately adversely affect the officers' employment either by compromising the impartiality of the probation officer or because the probation officer held a position of authority that could be exploited to the benefit or detriment of the employee and adversely affect the agency.[23]

## V. Policy Considerations

The discussion above makes it clear that while the case law is very fact- specific, the large majority of decisions support agency prohibitions on correctional employees forming personal relationships – including romantic, sexual and business -- with probationers, parolees and ex-offenders. Moreover, in light of PREA, community corrections agencies will need to be more aware of how these issues affect community corrections staff, persons under supervision and the agency. Finally, several recurring themes appear in the case law which can serve as a helpful guide in evaluating your own policies on relationships between community corrections personnel and offenders. The following list highlights many of these themes and provides a starting point for evaluating your agency anti-fraternization policy.

### 1. Draft Narrow and Clear Policies:

From a policy point of view, agencies should draft narrow, clear and specific policies regarding prohibited behavior or relationships. The policies should clearly define the prohibited behavior – exchanging letters, having a business relationship, dating, and marriage.

### 2. Notify Employees, Volunteers and Contractors About Correctional Policies During Training:

The agency should inform employees about the anti-fraternization policy during training. The agency should also communicate to the employees that once they are aware that they have engaged in prohibited behavior, they should inform the agency. Failure to provide notice of a prohibited relationship or interaction should be a separate violation.

### 3. Design a Procedure Which Requires Reporting and Evaluation on a Case-by-Case Basis:

The agency should create a mechanism for employees to report a prohibited relationship or interaction. The mechanism could also provide a process for guidance or approval of the interaction. Courts are likely to analyze the nature of the relationships and the correctional policies on the relationships on a case-by-case basis. An agency should also have a procedure which requires evaluation and response to these relationships on a case-by-case basis. Some factors the agency should consider include: determining whether the:

- behavior is truly private;
- behavior is likely to affect operations of community supervision functions or the behavior of the employee; or
- behavior affects the proper reintegration of the offender back into the community.

*If you would like a copy of the full-length memorandum addressing anti-fraternization in correctional settings, and for information on anti-fraternization policies in settings other than community corrections, go to www.wcl.american.edu/nic/resources.cfm and under "Corrections Publications" view:*

*Simonian, Nairi and Smith, Brenda V. A memo regarding Anti-Fraternization policies and case law in the Ninth Circuit. The Department of Justice/ National Institute of Corrections Project on Addressing Prison Rape. Washington, DC. January 2006.*

### 4. Restrict Relationships which Affect Important Agency Interests:

Policies should address relationships which affect the agency's interests. These include: the employee's on-the-job performance; proper supervision of the offender; the reputation of the agency; the impact on discipline and respect for the chain of command.

### 5. Have a Legitimate Agency Purpose:

Any rule prohibiting staff-ex-offender relationships must have a legitimate agency purpose – meaning there must be some connection between the rule and the harm it seeks to address within the agency. Examples of the harm the rule might seek to address include safety, security, reintegration, integrity and morale of the community corrections agency. When the rule reasonably and legitimately addresses one or more of these harms, courts are likely to uphold the rule as constitutional.

### 6. Enforce/Apply the Policy Uniformly:

Failure to apply the rule uniformly could subject the agency to claims of discrimination, put the agency at risk for civil liability and can endanger the viability of the entire policy.

### 7. Monitor the Policy at a High Management Level:

Finally, effective implementation of the policy requires monitoring and consistent implementation of policies at a high management level. This requires management truly taking on a leadership role in their respective agencies.

In the final analysis, community corrections leaders need to use all the tools at their disposal to address staff sexual misconduct with persons under supervison. Agency policies on anti-fraternization are important tools, particularly given that they can be drafted to meet specific agency needs. We hope that this article provides guidance to you in your efforts to address the issue of employee/offender relationships. As always, you should consult your organization's legal advisor as you review, evaluate or modify your policies. You can also contact either Nairi Simonian, simonian@wcl.american.edu, 202-274-4386 or Brenda V. Smith, bvsmith@wcl.american.edu, 202-274-4261 for further information about this issue. ▷▷▲

## Endnotes

[1] *See* Pasadena Police Officers Assoc. v. City of Pasadena, 51 Cal.3d 564, 571-572 (1990).

[2] 42 U.S.C. 15601 et seq. (2003).

[3] 42 U.S.C. 15609.

[4] U.S. Dep't of Justice, National Institute of Corrections, 50 State Survey of Criminal Laws Prohibiting the Sexual Abuse of Individuals in Custody, Developed Under Cooperative Agreement 06S20GJJ1, Washington, D.C. (2006).

[5] *See e.g.* Roberts v. United States Jaycees, 468 U.S. 609, 617-618, 82 L. Ed. 2d 462, 104 S. Ct. 3244 (1984).

[6] *See generally* Loving v. Virginia, 388 U.S. 1 (1967).

[7] *See generally* Pickering v. Board of Education of Tp. High School Dist. 205, Will county Il., 391 U.S. 563 (1968).

[8] *See generally* Keeney v. Heath, 57 F.3d 579 (1995(holding that rules which prohibit a jail "guard" from dating an inmate who is in or out of jail do not violate the Fourteenth Amendment Due Process Clause); Fleisher v. City of Signal Hill, 829 F.2d 1491 (1987)(holding that a probationary police officer's constitutional rights were not violated when he engaged in sexual conduct with a 15 year old girl prior to being hired); Wolford v. Angelone, 38 F. Supp. 2d 452 (1999)(holding that a Virginia Department of Corrections anti-fraternization policy did not completely obstruct a state prison guard's employment opportunities or impose absolute restrictions on the right to marry when she was terminated for marrying an ex-convict).

[9] *See* Via v. Taylor, 2004 U.S. Dist. LEXIS 11246 (2004)(finding that a relationship between former correction's department employee and a parolee did not affect the officer's job performance, did not have a security impact, did not adversely affect the institution, and the relationship itself resembled a family relationship which deserved heightened scrutiny); *see also* Reuter v. Skipper, 224 F.Supp. 2d 753 (D.Del. 2002)(holding that a female corrections officer's personal association with an ex-felon was protected by the First Amendment because correctional policy did not prohibit the employee's conduct at the time she began her relationship with the ex-felon, the officer did not supervise the ex-felon and reported her conduct when she learned of his status, and Oregon, unlike other states, did not have a law criminalizing sexual relations between staff and offenders at the time this case was decided).

[10] *See* supra note 8 and infra note 24.

[11] 410 F.3d 933 (2005).

[12] The Seventh Circuit includes Illinois, Indiana and Wisconsin.

[13] Montgomery *supra* note 12, at 938 (citing Zablocki v. Redhail, 434 U.S. 374, 383-387 (1978)).

[14] *Id*. at 938.

[15] *Id*.

[16] 352 F.3d 1030 (6th Cir. 2003).

[17] The sixth circuit includes Kentucky, Michigan, Ohio and Tennessee.

[18] *Id*. at 1039.

[19] 2006 U.S. Dist. LEXIS 46586.

[20] *Id*. at 19.

[21] *Id*. at 20.

[22] *Id*. at 13.

[23] *See* Weiland v. City of Arnold, 100 F. Supp. 2d 984 (2000)(holding that a city had an interest in order and efficiency that outweighed a law enforcement officer's associational and/or privacy interest in continuing his dating relationship with a felony probationer).

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# Suspicionless Searches in Probation and Parole in Light of Samson v. California:

## The Ruling, its Distinction and its place in Fourth Amendment History

by Mark **Jones** and John J. **Krebs**

### Introduction

The Fourth Amendment's ban on unreasonable searches or seizures goes to the very heart of the ideals and discontent that stirred the American Revolution. Unreasonable searches and seizures caused the type of outrage that had colonists throwing tea in the Boston Harbor.[2] Specifically, the colonists complained about the practice of 'general warrants' also known as 'writs of assistance.' This type of warrant or writ gave the King's agent unfettered authority and discretion to conduct searches or seizures against the Colonial citizenry. This practice led directly to the Fourth Amendment's language demanding that a warrant "particularly describ[e] the place to be searched, and the persons or things to be seized."[3]

In his famous 1761 speech James Otis spoke out against general warrants or 'writs of assistance' stating: "A man's house is his castle; and *[whilst] he is quiet*, he is as well guarded as a prince in his castle."[4] Although Otis only mentions the privacy afforded an individual who is in their home or "castle" his speech has been viewed by many as calling for a more general privacy protection

where "it is the citizen who controls one's own security"[5] and this security should not be violated in the absence of some type of individualized suspicion and particularity.

On June 19, 2006, the United States Supreme Court handed down its ruling in *Samson v. California,*[6] a case involving a California parole statute that some considered the equivalent of a general warrant against a parolee.

This article is the third publication stemming from my research into the Fourth Amendments boundaries of computer monitoring of probationers with a prior conviction for child sexual exploitation. The first article was a comprehensive examination of the Fourth Amendment jurisprudence related to this type of computer monitoring.[7] The second article[8] (mentioned in Part I(i), *below*) provided an update to this material that included general information about the *Samson v. California* case and an update on the technology related to probationary computer monitoring. This article will review the holding of *Samson* in detail and describe its place in the more general legal framework involving warrantless searches of probationers and parolees. It will further address the Court's most recent discussion of where probation and parole, as distinct entities, fall on the hypothetical continuum of rights afforded to different individuals depending on their status. Finally, it will place this discussion into the historical framework of the Fourth Amendment and conclude that probationer and parolees are not the type of "[whilst] quiet" citizen Mr. Otis envisioned or argued so diligently and eloquently for.

## Part I – *Samson v. California*

### i. Samson v. California –

Justice Thomas' opinion in *Samson v. California*[9] is unsatisfying for those who have long awaited the decision as the Court's opportunity to answer some of the questions left open in the 2001 *United States v. Knights* decision.[10] Beyond unsatisfying, its value as precedent is somewhat limited.

### ii. The Facts

The facts giving rise to the *Samson* case are straightforward. In September 2002, Donald Curtis Samson, a parolee with a prior conviction for being a felon in possession of a firearm, was walking down the street with a woman and a child in San Bruno, California.[11] Police Officer Alex Rohleder observed Samson and, knowing he was on parole, and believing (at the time of the initial stop) that he was "facing an at large warrant"[12] he stopped Samson. Samson denied that there was any at large warrant and Officer Rohleder confirmed this by radio dispatch.[13]

With actual knowledge that there was not an existing parole warrant for Samson, Officer Rohleder decided to search Samson pursuant to California law.[14] Officer Rohleder stated that he had searched Samson pursuant to California statute and "solely on petitioner's status as a parolee."[15] Unlike other related caselaw[16] this case gave the U.S. Supreme Court the opportunity not only to consider a warrantless search in the context of probation or parole, but, a completely suspicionless search where the warrantless search was conducted solely because of the search target's status as a probationer or parolee.[17]

### iii. The Court's Ruling

There are three basic approaches the U.S. Supreme Court takes in evaluating a warrantless search of a probationer or parolee: (1) consent; (2) the 'special needs' exception to the Fourth Amendment; and (3) general 'reasonableness' under a totality of the circumstances analysis; (the approach employed by the *Samson* Court.) I will deal with each in turn.

#### *(a) Consent*

When I first encountered this area of law, especially as a former police officer, my gut reaction was: probationers waived their Fourth Amendment rights when they accepted probation in lieu of incarceration. In other words, they consented to it. Further, they could be in jail where they could be searched *at any time for any reason or no reason at all*. In this regard I generally followed Justice Scalia's sentiment, if we can do more, we can certainly do less. I find this to be almost intuitive – that someone who is enjoying the privilege of probation or parole should be subject to being searched by law enforcement.

However, the Court has neither accepted or rejected this line of reasoning and, has instead, avoided it (or just failed to reach it) altogether. In *Knights*, the Court expressly avoided the consent analysis. In *Knights*, the Court stated "[w]e need not decide whether Knights' acceptance of the search condition constituted consent...."[18] In the more recent *Samson* case, the Court held "[b]ecause we find that the search at issue here is reasonable under our general Fourth Amendment approach, we need not reach the issue whether 'acceptance of the search condition constituted consent...'"[19]

Personally, I feel that this is the proper analysis in the context of probation or parole and an analysis that would provide a great deal more precedential value and direct guidance than the more *de facto* reasonableness approach utilized by the Court in *Samson*.

#### *(b) 'Special Needs'*

It appeared, at least after *Griffin v. Wisconsin*,[20] that 'special needs' would be the approach that would carry the day with regards to warrantless probation (or parole) searches. The special needs doctrine is an amorphous doctrine that is subject to valid criticism.[21] The special needs doctrine seems, in many ways, to simply be another layer of reasonableness; or, put another way, simply one of the "circumstances" that could adequately be considered by a "totality of circumstances" analysis. What is "special" could be fully and efficiently considered as part of the general "reasonableness" approach (*see* C, *below*) instead of creating a new doctrine (that has not been fully developed) and, instead, appears to be a pragmatic tool of the Court to reach its intended ends in certain types of cases (*i.e.,* drug testing).

The *Samson* Court expressly avoided any special needs analysis,

holding, "[n]or do we address whether California's parole search condition is justified as a special need under *Griffin v. Wisconsin*... because our holding under general Fourth Amendment principles renders such an examination unnecessary."[22]

### *(c) Reasonableness*

The *Samson* Court applied a general reasonableness analysis to the facts before it and held that "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee."[23] Given that the Court held that such a search was reasonable for a police officer whose interest was in procuring evidence to be used in a future prosecution it seems clear that this type of search would be deemed reasonable for a probation or parole officer whose interest is supervisory instead of purely investigative.

The Court reviewed the manner in which it determines reasonableness under the Fourth Amendment:

> *"[U]nder our general Fourth Amendment approach" we "examin[e] the totality of circumstances" to determine whether a search is reasonable within the meaning of the Fourth Amendment. Id., at 118 (internal quotation marks omitted). Whether a search is reasonable "is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy, and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." Id., at 118-119 (internal quotation marks omitted)*[24]

Specifically, in this instance, the Court balanced a parolee's diminished expectation of privacy against the "substantial" interests of the government.[25]

What makes the U.S. Supreme Court's 'balancing' in this case interesting is not the result; *it is that it occurred at all*. The Court seems to put the cart before the horse in this instance. This type of 'totality of circumstances' balancing only occurs where the government intrudes into something that an individual has a "reasonable expectation of privacy" (REP) in. It seems undisputed that a probationer or a parolee has a diminished expectation of privacy than that of an ordinary citizen.

In *Samson*, Justice Thomas seemed to indicate that Mr. Samson had no reasonable expectation of privacy at all stating: "[w]e conclude that [Samson] did not have an expectation of privacy that society would recognize as legitimate."[26] If society would *not* recognize the expectation of privacy as legitimate (the objective prong of the test for REP) this would render any balancing unnecessary as the government's action would not invoke Fourth Amendment protection to begin with.

## Part II
## Understanding Probation and Parole's Place on the Continuum after *Samson*

### i. The Continuum—Generally

The Court has found that the statuses of probation and parole can be placed on a hypothetical continuum. The Court has identified "a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service."[27]

### ii. Probation vs. Parole

The status of an individual (*e.g.,* parolee or probationer) will be a highly relevant factor in whether or not a search is reasonable because this balancing *should* only occur where the individual has a reasonable expectation of privacy. Further, the reasonableness will be gauged on the government's interest in conducting the search. Therefore, since the Court, in *Samson*, held that probation and parole are not equal statuses, an examination of these statuses as separate entities becomes necessary.

The Court expressly compares probation to parole and holds that probationers have a greater (albeit still reduced) reasonable expectation of privacy than parolees. Finding that parole is "an established variation on imprisonment"[28] the Court held:

> *"On this continuum, parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment."*

The First Circuit Court of Appeals has also directly analyzed the place of probation and parole on the 'continuum' stating:

> *"[O]n the Court's continuum of possible punishments, parole is the stronger medicine; ergo, parolees enjoy less of the average citizen's absolute liberty than do probationers."*[29]

The Court's view of these two statuses may become relevant in instances where a court is attempting to determine whether or not an individual had a reasonable expectation of privacy against which the government's intrusion can be balanced against for purposes of Fourth Amendment analysis. The Court has held that both statuses cause an individual's reasonable expectation of privacy to be diminished, the Court has not, to date, held that either status alone completely eliminates an individual's reasonable expectation of privacy. As the Court has placed probation and parole on different points along the continuum, it is possible that the Court could eliminate reasonable expectation of privacy for parolees without doing so for probationers. Only time will tell.

## Part III
## *Samson v. California* in the Historical Context of General Warrants

### Are there really any '*Whilst quiet*' Probationers?

Two questions generally come to mind when a U.S. Supreme Court case, especially a highly anticipated case such as *Samson,* is handed down: (1) *What does it say*; and (2) *What will it mean?*

Parts I & II, *above*, detail what I think the case *says*. Now I turn

to a more speculative and predictive examination of what the case *will mean* in the future, given how it fits into the existing jurisprudence and history of the Fourth Amendment.

At first glance, it seemed that this decision would translate, in a practical sense, into an 'open season' on parolees as law enforcement officers would seize on this as a tool to conduct warrantless searches without any level of individualized suspicion (assuming that an state statute exists that allows them to do so). While some have compared this 'open season' to a general warrant, I do not find the outcome or effect of *Samson* to be troubling in this regard.

First, no search of a probationer or parolee is completely without individualized suspicion. The suspicion is grounded in the fact that the individual is on probation or parole. That is why the terms of probation and parole are fixed and, at some point, expire. A much better argument for a general warrant could be made if law enforcement was attempting this type of search on every individual who had a felony conviction. While the terms of probation or parole are in effect, no search can be deemed completely suspicionless. Courts have noted both the high recidivism rates of probationers and parolees and their interest in avoiding detection.[30]

Next, it is not clear, given the willingness of the Court to distinguish between probation and parole, that the Court would reach the same decision if a similar statute—as applied to a probationer—were tested under the Court's general reasonableness analysis. Until this determination is specifically made, claims of a 'general warrant' seem especially premature in the context of probation.

In its historical context, I also do not find *Samson* troubling. Individuals who could (and in many cases should) be incarcerated are simply not the type of "quiet" individuals James Otis had in mind.[31] If laws that prohibit felons from voting or possessing firearms for the rest of their terms of probation or parole (or, in many cases, much longer) can pass Constitutional muster, it does not seem unreasonable, in any sense, to diminish the Fourth Amendment rights of probationers and parolees for a fixed term when they could, in fact, instead be incarcerated. ▷▷▲

## Endnotes

[1*] Senior Counsel, National Center for Justice and the Rule of Law (NCJRL) and Visiting Professor of Law, University of Mississippi School of Law. Views expressed are solely those of the author and do not necessarily represent the views of the National Center for Justice and the Rule of Law (NCJRL) or any other party. As always, thanks go to Dr. James Tanner for his insight and advice.

[2] Generally referring to the incident in Boston, Massachusetts in 1773 where approximately 200 men, dressed as Indians, marched two-by-two to the wharf and threw tea into the harbor in protest of excessive Colonial taxation by Great Britain.

[3] U.S. Const. Amend. IV.

[4] James Otis, *Against the Writs of Assistance* (1761), reprinted in M.H. Smith, The Writs of Assistance Case 548-55 (1978) (emphasis added).

[5] Scott Sundby, *Protecting the Citizen "Whilst He Is Quiet": Susicionless Searches, "Special Needs" and General Warrants*, 74 Miss. L.J. 501 (2004).

[6] 547 U.S. __ (2006).

[7] *Diminished Privacies, 'Special Needs' & "'Whilst Quiet' Pedophiles"—Plugging the Fourth Amendment into the 'Virtual Home Visit,'* 75 Miss. L.J. 1, 273 (2005).

[8] *Update on Computer Monitoring of Probationers & The Fourth Amendment, (placed in)* Sex Offender Law Report (winter 2006; upcoming publication)

[9] *Samson v. California*, 547 U.S. __ (2006).

[10] 534 U.S. 112, 118 (2001).

[11] *Samson,* 547 U.S. at __.

[12] *Samson*, 547 U.S. at __.

[13] *Samson*, 547 U.S. at __.

[14] *See* Cal. Penal Code Ann. §3067(a) (West 2000).

[15] *Samson*, 547 U.S. at __.

[16] *See e.g., United States v. Knights*, 534 U.S. 112 (2001); *Griffin v. Wisconsin*, 483 U.S. 868 (1987).

[17] *Samson*, 547 U.S. at __.

[18] *United States v. Knights*, 534 U.S. 112, 118 (2001).

[19] *Samson*, 547 U.S. at __ n.3.

[20] 483 U.S. 868 (1987).

[21] Tracey Maclin has stated, correctly in my view, that "[w]hile the Court has issued several rulings under its 'special needs' analysis, these cases do not form a coherent doctrine." *See* Tracey Maclin, *Is Obtaining an Arrestee's DNA a Valid Special Needs Search Under the Fourth Amendment? What Should (and Will) the Supreme Court Do?,* 33 J.L. Med. & Ethics 102, 107 (2005); *see also* Thomas K. Clancy, *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 U. Mem. L. Rev. 483, 597 (1994) (indicating some confusion in the name and actual application of the [special needs] doctrine.)

The Supreme Court has also not required individualized suspicion when a "special need" of the government is present. The term "special need," however, is misleading. The Court is not referring to any "need" in the sense of necessity; rather it speaks of a special *interest*. Also, although the initial cases adopting the concept involved governmental regulatory interests unrelated to criminal penalties, the Court has now excised from the definition of a special need the requirement that the interest must be unrelated to criminal law enforcement. What is considered a special need has evolved to include some very mundane criminal law enforcement concerns.

*Id.* (emphasis added).

[22] *Samson*, 547 U.S. at __ n. 3.

[23] *Samson*, 547 U.S. at __.

[24] *Samson*, 547 U.S. at __.

[25] *Samson*, 547 U.S. at __.

[26] Samson, 547 U.S. at __.

[27] *Samson*, 547 U.S. at __ (additional internal citations omitted) Note: It seems that capital punishment would be the furthest reach of the continuum, not solitary confinement in a maximum-security facility; the death penalty is not mentioned. *Id.*

[28] *Samson*, 547 U.S. at __ .

[29] *United States v. Cardona*, 903 F.2d 60, 63 (1st Cir. 1990) (internal quotation marks and citation omitted).

[30] *See generally, Samson*, 547 U.S. at __; *Pennsylvania Bd. of Probation and Parole*, 524 U.S. 357, 365 (1998).

[31] Further, Otis seemed to only be speaking of the privacy an individual has in his home, not in his person that would affect the street-search at issue in *Samson*.

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***Mark Harrold*** *is the Senior Counsel for the National Center for Justice and the Rule of Law. He is a visiting professor at the Mississippi School of Law.*

# APPA Professional Development Training

**Each highly interactive and skill-based training topic will be open for registration nationally; but may be limited to 30 participants – REGISTER EARLY!!**

**Needed: Agency or affiliate to host an APPA Selected Training**

- **Each sponsoring group agreeing to provide the appropriate training space and assist with registration will receive one free registration.**

- **Each group attending the training and registering ten or more participants will receive one free registration.**

## Current Trainings Open for Registration

### Supervising the Sexual Offender

- March 27-28, 2007 - Phoenix, AZ

### Facilitator Training for Delivering Cognitive Behavioral Curricula

- January 22-26, 2007 - San Diego, CA
- January 29-February 2, 2007 - Santa Ana, CA
- Febrauary 26-March 2, 2007 - Bakersfield, CA
- March 5 - 9, 2007 - Georgetown (Austin Area), TX
- April 30 - May 4, 2007 - Fairfield, CA
- May 7 - 11, 2007 - Chicago, Illinois

### Motivational Interviewing

**Part 1: Motivation and Human Behavior Change: Increasing the Change Conditions of Desire, Ability, Reason & Need**

- February 13 – 14, 2007 - Martinez, CA (Sacramento Area)

**Part 2: Motivational Interviewing & Change Talk: Increasing Importance, Confidence and Readiness to Change**

- February 15 – 16, 2007 - Martinez, CA (Sacramento Area)

Register online or for a complete list of available topics, please visit our website at www.appa-net.org - click on the button "Professional Development Training Opportunities."

For additional information regarding APPA Professional Development Program, Selected Trainings contact:

Karen L. Dunlap, Training and Technical Assistance Coordinator
American Probation and Parole Association
PO Box 11910, Lexington, KY 40511
Phone: (859) 244-8211, Email: kdunlap@csg.org

# 2007 WINTER TRAINING INSTITUTE

**February 11-14, 2007 Atlanta, Georgia**

## ACTIVITIES AT A GLANCE

### Saturday, February 10

| | |
|---|---|
| 12:00 p.m. - 5:00 p.m. | Institute Registration |

### Sunday, February 11

| | |
|---|---|
| 8:00 a.m. - 8:00 p.m. | Institute Registration |
| 1:00 p.m. - 4:00 p.m. | APPA Board of Directors Meeting |
| 4:00 p.m. - 6:00 p.m. | Resource Expo Viewing |
| 6:00 p.m. - 7:30 p.m. | Opening Session |
| 7:30 p.m. - 9:00 p.m. | Opening Reception in the Resource Expo |

### Monday, February 12

| | |
|---|---|
| 7:30 a.m. - 5:00 p.m. | Institute Registration |
| 8:30 a.m. - 10:00 a.m. | Plenary Session |
| 10:00 a.m. - 11:00 a.m. | Resource Expo Viewing |
| 11:00 a.m. - 12:30 p.m. | Workshops |
| 12:30 p.m. - 1:45 p.m. | Lunch in the Resource Expo |
| 1:45 p.m. - 3:15 p.m. | Workshops |
| 3:30 p.m. - 5:00 p.m. | Workshops |
| 4:00 p.m. - 6:00 p.m. | Resource Expo Viewing |
| 5:00 p.m. - 6:00 p.m. | Reception in Resource Expo |

### Tuesday, February 13

| | |
|---|---|
| 8:00 a.m. - 5:00 p.m. | Institute Registration |
| 8:30 a.m. - 10:00 a.m. | Workshops |
| 9:00 a.m. - 11:00 a.m. | Resource Expo Viewing |
| 11:00 a.m. - 12:30 p.m. | Workshops |
| 1:45 p.m. - 3:15 p.m. | Workshops |
| 3:30 p.m. - 5:00 p.m. | Workshops |

### Wednesday, February 14

| | |
|---|---|
| 8:30 a.m. – 9:30 a.m. | APPA Membership Meeting |
| 9:45 a.m. – 11:15 a.m. | Closing Session |

Agenda is subject to change.

## Where It All Happens

All APPA workshops, intensive sessions, general sessions, resource expo and receptions will take place in the Sheraton Atlanta Hotel, 165 Courtland Street, Atlanta, Georgia 30303.

### How You Will Benefit!

- Learn fresh, new ideas from well-known, national experts.
- Experience innovative programming from all across the nation.
- Participate in stimulating discussions with your peers.
- Enhance your current abilities and qualifications.
- Discover "what works" from professionals in the field.
- Network with your peers and learn from their diverse experience.
- View and compare the newest correctional products, technologies and services.
- Increase your current program's effectiveness.
- Take part in exciting and fun social events.

## Who Should Attend?

This Institute is not to be missed if you are a corrections professional involved in:

- probation
- parole
- juvenile justice
- treatment
- social work
- education or training
- victim services
- residential programs
- judicial system
- pre- and post-release centers
- restitution
- law enforcement
- public policy development

## Co-Sponsored by the Georgia Probation Association

THE AMERICAN PROBATION AND PAROLE ASSOCIATION is an international non-profit organization committed to innovative and effective probation, parole and community-based correctional programming. Membership is comprised of probation and parole line staff, supervisors, administrators, educators, volunteers and supportive friends from throughout the United States and worldwide. For further information about APPA, call (859) 244-8207 or visit our website at www.appa-net.org.

# WORKSHOPS AT A GLANCE

## Monday, February 12, 2007

### 11:00 a.m. – 12:30 p.m.

Leading From the Front: No Excuse Leadership Tactics for Women
Make My Day: Critical and Special Incident Data Collection
Putting the Stars in Alignment: Performance Measures and Data Quality for Evidence-Based Practices (EBP)
Ensuring Continuity of Care for Youth Released from Regional Youth Detention Centers in Georgia
Interstate Compact for Adult Offender Supervision
Treatment Combined with Alcohol Monitoring: Judicial and Community Supervision Viewpoints
Welcome to Our World! Generation Xers and Millennials in the Workforce

### 1:45 p.m. – 3:15 p.m.

Legal Implications for Deaf and Hard of Hearing Offenders in Corrections: Risks and Opportunities
Community Based Prevention Practices Using Evidence Based Programs for Juvenile Offenders
Evidence Based Practices in Georgia
What Weapons Do I Have Free?
The Fourth Amendment and the Virtual Home Contact
Reducing Disproportionate Minority Confinement: The Santa Cruz Story
Leading the Way, Lighting the Path: Lessons of Leadership from Trailblazers

### 3:30 p.m. – 5:00 p.m.

GET A JOB! Employment Readiness for Job Seekers
Worship and the Sex Offender
Firearms Carry – Decisions Regarding a Work Requirement for Probation Officers in Georgia
Providing Effective Community Supervision of Impaired Driving Offenders
Day Treatment for Mentally Ill Juvenile Offenders
The "SMART" Caseload Management Information System
What's Your Charisma Quotient?

## Tuesday, February 13, 2007

### 8:30 a.m. – 10:00 a.m.

Working with Muslim and Arab American Communities
Reducing the Incidence of High Profile Crimes: Using Performance Accountability to Improve Successful Parole Outcomes
Tough Times for Sex Offenders in Georgia
Involvement of Probation and Parole in Project Safe Neighborhoods
GPS Technology for Offender Monitoring: Lessons Learned
Enhancing Home-Based Outcomes with Community Based Partnerships
It's Lonely at the Top! Executive Coaching for Leaders

### 11:00a.m. – 12:30 p.m.

Diversity - Daring to Deal with the "Noise of Difference"
Focus Group for Women in Probation and Parole
Making Mandated Motivational Interviewing Training Work
POM Plus DRC: A Recipe for Success
Community Corrections Research at the Bureau of Justice Statistics: Recent Findings and Data Collection Initiatives
Rapid Fire Setting Assessment: An Innovative Short-Term Residential Model
21st Century Leadership: Tools for the Toolbox

### 1:45 p.m. – 3:15 p.m.

Fostering Responsivity in Clients from Culturally Diverse Populations
APPA Reentry Initiative: Policy to Practice - Some of the Best
The Pandora's Box of Evidence-Based Management
Innovative Community Service Projects in Georgia
Framing the Picture: Developing a Plan for Achieving Recidivism Reduction
Slippery "SOAP" – Juvenile Sex Offender Assessment Protocol

### 3:30 p.m. – 5:00 p.m.

Why Should I Care? Understanding the Need for Female Responsive Values
Polygraphy, Probation and Domestic Violence
Think Exit at Entry
Consular Notification: An International Obligation
Uniting Technology with Evidence-Based Practices through Partnerships
School-Based Probation
TASER®s and Officer Safety in Community Supervision

# REGISTRATION INFORMATION

## New! Student Registration — Attend Tuesday, February 13

Student registration includes all workshops and exhibit hall entrance for Tuesday, February 13. Student registration is available to full-time students not employed in the corrections field for a special day rate of $99.00. Copy of student ID required with registration form. **Student registration ends January 16, 2007.**

## Three Ways to Register!

By Mail – Registration for the APPA Institute can easily be done by mail. Just send your check, government purchase order or credit card information with your completed APPA registration form to the address shown on the form. All registrations postmarked by **January 16, 2007** will be confirmed by mail.

By Fax – When payment is by credit card, you may fill out the APPA registration form and fax it to: (859) 244-8001, Attention — APPA Institute. All registrations faxed by **January 16, 2007** will be confirmed by mail.

Online – Register for the APPA Institute on-line at www.appa-net.org with your credit card information. All registrations received by **January 16, 2007** will be confirmed by mail.

## Agency Members — How to Register for Your Membership Discount

If your agency is a current APPA agency member, you can attend the Institute at the member rate. Your agency's membership must be valid through January 2007. Registration forms must be completed for each individual, mailed to APPA as a group with your agency's name clearly marked on the registration forms. Agency memberships will be verified. You are required to pay the regular registration fee if your agency is not a current APPA agency member. For additional information, contact Kris Chappell at (859) 244-8204.

## Family Institute Registration

A special low registration fee is available to immediate family members of Institute registrants. Only immediate family members not employed in the corrections field qualify for this special rate. The fee is only $75 and allows the family member to attend workshops, general sessions and the resource expo.

## Payment

Payment in full for all Institute activities must accompany your registration form. Check, money order, VISA, Master Card or American Express are accepted as payment for the Institute's registration fees. Checks must be made out to the American Probation and Parole Association and payable in U.S. dollars. Payments received in Canadian dollars will be invoiced for the conversion difference plus a $10 service fee. Registrations postmarked on January 17, 2007 or later are not eligible for the early registration fee and must include the regular registration fee. Agencies required to use a purchase order should submit the registration form with the purchase order in lieu of a check. Invoicing will be processed immediately upon receipt of the purchase order and, in all cases, payment will be due immediately.

## Cancellation/Refund Policy

A full refund, less a $50 processing fee, is available until January 16, 2007. No refunds are available after January 16, 2007. In order to receive a refund, written requests must be sent the APPA Institute, c/o The Council of State Governments, P.O. Box 11910, Lexington, KY 40578-1910 or faxed to (859) 244-8001. All requests for refunds must be postmarked or faxed by January 16, 2007. Registrations are not transferable.

## Institute Dress

All activities of the Institute are casual dress. A sweater or light jacket is recommended since meeting room temperatures tend to vary.

## IMPORTANT DATES TO REMEMBER

| | |
|---|---|
| January 12 | Deadline to make lodging reservations at special Institute rates. |
| January 16 | Last day to take advantage of early bird registration rates. |
| January 16 | Deadline for registration fee refund. |
| February 11 | Institute activities begin. |

## DIRECTORY

Institute Registration ..... (859) 244-8204
www.appa-net.org

Resource Expo ..... (859) 244-8205

Sheraton Atlanta ..... (404) 659-6500
(800) 833-8624
http://www.starwoodmeeting.com/book/appa

Hertz ..... www.hertz.com
(800) 654-2240

Sightseeing ..... www.atlanta.com

# Registration Form

## APPA Winter Training Institute February 11-14, 2007

Please use a photocopy of this form for each registrant. Please print clearly.

Last Name: _____ First Name: _____

Title: _____ Agency/Organization: _____

Business Telephone: _____ Business Fax: _____

Address: _____
*(location where confirmation should be sent)*

City: _____ State: _____ Zip: _____

Email Address: _____

## Registration Fees

| Includes general sessions, exhibit receptions and workshops. (All fees are per person.) | Early Rate Before Jan. 16 | On or After Jan. 17 | Amount |
|---|---|---|---|
| **Member of APPA or GA Probation Association** | $315 | $365 | $ _____ |

To qualify for this rate you must be a member of APPA or GA Probation Association. Please indicate your membership category and your membership number.

❒ APPA Individual member ❒ APPA Agency member ❒ Georgia Probation Association

Membership # |_|_|_|_|_|_|_| Expiration Date |_|_| — |_|_|_|_|

| | | | |
|---|---|---|---|
| **Non-member** | $375 | $425 | $ _____ |

If you are not a member of APPA or Georgia Probation Association, you are required to pay the regular registration fee. Memberships will be verified.

| | | | |
|---|---|---|---|
| **New! Student Registration – Attend 2/13** | $99 | N/A | $ _____ |

Student registration includes all workshops and exhibit hall entrance for Tuesday, February 13. Student registration is available to full-time students not employed in the corrections field. Copy of student ID required with registration form. Student registration ends January 16.

| | | | |
|---|---|---|---|
| **APPA Accredited Contact Hours** | $10 | $10 | $ _____ |

**Special Training* - A Family Support Model for Community Corrections Officers** ❒ I will be attending.

*Sunday, February 11, 2007; 8:30 a.m. – 12:30 p.m.*

*Must be a paid registrant to attend.

| | | | |
|---|---|---|---|
| **Family Registration** | $75 | $75 | $ _____ |

This rate is available to immediate family members not employed in the corrections field. Allows entry into general sessions, exhibit receptions and workshops.

Specify Family member's name _____

| | | | |
|---|---|---|---|
| **APPA Membership** One year of individual membership. | $50 ❒ New Member | $50 ❒ Renewal | $ _____ 61-16-00-1000-40200 |

**Grand Total Enclosed** $_____ 61-16-00-2071-44010

**Is this your first attendance at the APPA Institute?** ❒ Yes ❒ No

**Please indicate the number of years worked in Community Corrections** ❒ 9 or less ❒ 10-24 ❒ 25+ years

## Payment

❒ Check Enclosed ❒ Government Purchase Order Enclosed; PO # _____

Charge to: ❒ VISA ❒ MasterCard ❒ American Express

Card Number: _____ Vcode: _____ Exp. Date: _____

Signature: _____ Date: _____

## Special Assistance

❒ Please check if you require special provisions to fully participate in this Institute. Attach a written description of needs.

## Confirmation/Refund Policy

A full refund, less a $50 processing fee, is available until January 16, 2007. **No refunds are available after** *January 16, 2007.* In order to receive a refund, written requests must be sent to the APPA Institute, c/o The Council of State Governments, P.O. Box 11910, Lexington, KY 40578-1910 or faxed to (859) 244-8001. All requests for refunds must be postmarked or faxed by January 16, 2007.

## Mail this form to:

APPA Institute
c/o The Council of State Governments
P.O. Box 11910, Lexington, KY 40578

## or Fax to:

(859) 244-8001

## or register online at www.appa-net.org

To better plan Institute workshops and activities, please supply us with the following information.

**Job Jurisdiction**
- ❒ Federal
- ❒ State
- ❒ County
- ❒ City
- ❒ Private firm/business
- ❒ Academic Institution
- ❒ Province
- ❒ Nonprofit organization
- ❒ Other _____

**Primary Work Area**
- ❒ Juvenile Probation & Parole
- ❒ Adult Probation & Parole
- ❒ Adult Probation
- ❒ Adult Parole
- ❒ Juvenile Probation
- ❒ Juvenile Parole/Aftercare
- ❒ Residential
- ❒ Non - Residential
- ❒ Treatment Provider
- ❒ Academia
- ❒ Other _____

**Length of Experience in Corrections**
- ❒ Less than 2 years
- ❒ 2-5 years
- ❒ 6-10 years
- ❒ 11-15 years
- ❒ 16-20 years
- ❒ 21-25 years
- ❒ More than 26 years

**Highest Level of Education**
- ❒ Graduate Equivalency Diploma(GED)
- ❒ High School Diploma
- ❒ Associate's Degree
- ❒ Bachelor's Degree
- ❒ Master's Degree
- ❒ Doctorate

**Geographical Area**
- ❒ Urban (pop. over 50,000)
- ❒ Rural (pop. under 50,000)

**Gender**
- ❒ Male
- ❒ Female

**Professional Category**
- ❒ Line Personnel
- ❒ Commissioner/ Director/Chief
- ❒ Administrator
- ❒ Consultant
- ❒ Trainer
- ❒ Parole Board Member
- ❒ Judge
- ❒ Attorney
- ❒ Educator/ Researcher
- ❒ Private Sector/ Corporate
- ❒ Retired
- ❒ Student
- ❒ Other

**Race/Ethnicity**
- ❒ African American
- ❒ Caucasian
- ❒ Hispanic
- ❒ Native American
- ❒ Asian
- ❒ Other

**Mark all Expenses that are Reimbursed**
- ❒ Registration
- ❒ Travel-Air
- ❒ Travel-Ground
- ❒ Meals

**Mark Past Attendance at APPA Annual Institute**
- ❒ First Time
- ❒ 2-4
- ❒ 5-6
- ❒ 7-9
- ❒ 10 or more

APPA Federal ID # 56-1150454

# Calendar of Events

## 2006 - 2007 - 2008

| | |
|---|---|
| January 8-10, 2007 | BJA Regional Conference Series Midwest Region - Nashville, TN Visit www.ncja.org to register. For questions, contact Marilyn Bassett-Lance, NCJA at 202-628-8550 or mbassett@ncja.org. |
| January 22-26, 2007 | APPA Professional Development Training: "Facilitator Training for Delivering Cognitive Behavioral Curricula". San Diego, CA. Call Karen Dunlap at (859) 244-8211 or email at kdunlap@csg.org |
| **February 11-14, 2007** | **2007 APPA Winter Training Institute Atlanta, GA, Sheraton Atlanta Hotel. Register Online at www.appa-net.org** |
| Febraury 13-14, 2007 | APPA Professional Development Training: "Motivational Interviewing, Part 1: Mativation and Behavior Change: Increasing the change conditions of desire Ability reason and need". Martinez, CA. Call Karen Dunlap at (859) 244-8211 or email at kdunlap@csg.org |
| Febraury 15-16, 2007 | APPA Professional Development Training: "Motivational Interviewing, Part 2: Motivational Innterviewing and change talk: Increasing importance, confidence and readiness to change". Martinez, CA. Call Karen Dunlap at (859) 244-8211 or email at kdunlap@csg.org |
| March 5-9, 2007 | APPA Professional Development Training: "Facilitator Training for Delivering Cognitive Behavioral Curricula". Georgetwon, TX. Call Karen Dunlap at (859) 244-8211 or email at kdunlap@csg.org |
| March 27-28, 2007 | APPA Professional Development Training: Supervising the Sexual Offender, Phoenix , AZ. Call Karen Dunlap at (859) 244-8211 or email at kdunlap@csg.org |
| March 27-29, 2007 | Innovations in Justice: Information Sharing Strategies and Best Practices - BJA Regional Information Sharing Conference Minneapolis, MN www.search.org |
| April 30-May 4, 2007 | APPA Professional Development Training: "Facilitator Training for Delivering Cognitive Behavioral Curricula". Fairfield, CA. Ccall Karen Dunlap at (859) 244-8211 or email at kdunlap@csg.org |
| May 7-11, 2007 | APPA Professional Development Training: "Facilitator Training for Delivering Cognitive Behavioral Curricula". Chicago, IL. Call Karen Dunlap at (859) 244-8211 or email at kdunlap@csg.org |
| **July 8-11, 2007** | **APPA 32nd Annual Training Institute - Philadelphia, PA. Philadelphia Downtown Marriott, www.appa-net.org** |
| **February 10-13, 2008** | **2008 APPA Winter Training Institute Hyatt Regency Phoenix - Phoenix, AZ. Visit www.appa-net.org or call Kris Chappell at 859-244-8204 for more information.** |

To place your activities in Calendar of Events, please submit information to:
Darlene Webb, American Probation and Parole Association, P.O. Box 11910, Lexington, KY 40578
fax (859) 244-8001, email dwebb@csg.org

# APPA News

## APPA Executive Director Receives National Merit Award

*Carl Wicklund (left), with Congressman Ted Poe.*

The American Probation and Parole Association (APPA) is proud to announce that its Executive Director, Carl Wicklund, was recipient of the 2006 United States Congress Victims' Rights Caucus Allied Professional Award on Friday, April 21 in Washington, D.C.

Mr. Wicklund was presented the award by Congressman Ted Poe (R-TX) who lauded his work for victims; "Carl Wicklund is a unique individual. While most people associate probation and parole with convicted offenders, Carl is a victim advocate in every sense of the word. Through Carl's leadership and vision, community corrections agencies have realized the importance of a 'victim-centered' approach to all they do." Representative Poe is the founder and co-chair of the Congressional Victims' Rights Caucus. The Caucus is responsible for facilitating discussions, organizing meetings,and disseminating information on the causes of victimization to achieve greater understanding and to formulate sensible solutions.

Mr. Wicklund accepted the award on behalf of the thousands of probation, parole and community corrections professionals who have recognized the importance of addressing the needs of victims. He also thanked the APPA Board of Directors for their vision and support and the APPA staff for their quality work, concern for victims and understanding of his time away from the office not only representing probation and parole, but the needs and concerns of crime victims. He ended his acceptance by adding, "When we can accept the reality that we are all victims of crime, then perhaps we will unquestioningly accept the responsibility of meeting the needs of those most directly harmed by crime."

Members of APPA's Executive Committee also congratulated Mr. Wicklund: "You are the consistent voice of APPA. You are so deserving of this recognition," from Linda Layton, At-Large Member. Denny McFarland, At-Large Affiliate Member adds, "From a fellow victim advocate - my heartfelt congratulations. The APPA family is very proud of you." The APPA staff would like to add its congratulations, "we are proud to have Carl's strong voice at the table for victims, probation and parole, as well as all those involved in the work of making our communities better places to live." ▷▷▲

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