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Crime - Shaming Penalties

It's a Shame We Have None

By DAN M. KAHAN

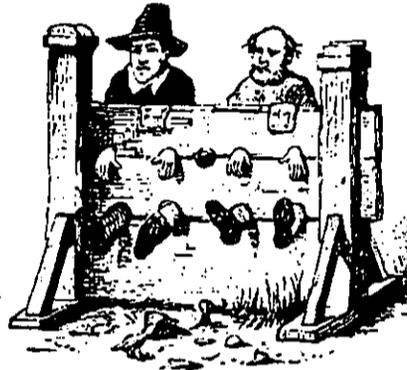
Shame is making a comeback in American criminal law. Courts in New York, Texas and other states have ordered drunk drivers to display brightly colored "DUI" bumper stickers. Florida and Oregon judges require nonviolent sex offenders to post warning signs on their property. In Tennessee, burglars must permit their victims to enter their homes and help themselves; in Hoboken, N.J., people convicted of public urination—even affluent stockbrokers—must sweep city streets.

Judges are counting on the pain of public humiliation to discourage lawbreaking. But a growing chorus of skeptics deride the new punishments as gimmicky and cruel. Their attitude is ill-conceived. In truth, shame's power to express moral condemnation makes it a potentially effective, and politically viable, alternative to imprisonment.

With the majority of inmates serving time for nonviolent crimes, reformers have long contended that cheaper, less severe alternatives, like fines and community service, would be as effective as imprisonment. But the call for "alternative sanctions" has little political resonance. Indeed, legislators have extended prison to many offenses, including white-collar crimes, previously punished only with probation.

It would be a mistake, though, to infer that the public rejects alternative sanctions because they aren't painful enough. The real complaint is that fines and inconspicuous community service send the wrong message. Americans expect punishment not just to protect them from harm, but also to express their indignation about crime. Imprisonment clearly does so,

while the conventional alternatives send a much more ambiguous signal. Fines suggest that offenders may buy the privilege of breaking the law. Community service sends an even more confusing message. Normally, we admire people who educate the retarded, install smoke detectors in nursing homes, restore dilapidated low-income housing and the like. Saying that such services are fit punishments for crim-



inals insults those who serve their communities voluntarily.

The lesson for reformers is that they can't hope to replace imprisonment unless they find alternative sanctions that unambiguously express reproach. Because shaming penalties satisfy the public's demand for condemnation, judges have been able to impose them for a wide range of serious offenses normally punished by imprisonment, from embezzlement and toxic-waste dumping to drunk driving and drug possession—the kinds of offenses for which reformers have long advocated conventional alternative sanctions.

But will shame be an effective deterrent? Yes. Studies show that most people refrain from crime less because they fear formal penalties than because they've internalized community values and value the respect of their peers. Shaming punishments tap these dispositions just as effectively as fines and community service, which have already been shown to be reasonably effective for nonviolent offenses.

The critics' suggestion that shaming is cruel is even harder to credit. To be sure, shame hurts. But it isn't nearly as painful as imprisonment. Not surprisingly, offenders almost always choose shaming over jail time when given the choice.

What makes shame attractive to the public—its power to express moral condemnation—is exactly what makes it objectionable to some critics. We live in an age of relativism and skepticism, in which some view moralizing as an inappropriate function for the law. Those who are squeamish about moralizing may be able to rationalize imprisonment at least in some cases, on the grounds that it removes dangerous individuals from society. No such rationalization is possible when the very purpose of a punishment is to inflict shame.

But discomfort with public moralizing is a singularly unconvincing reason to oppose shaming punishments. The needless brutality—not to mention the financial waste—of imprisoning offenders who could be effectively shamed is too high a price to pay for the fiction that we live in a nonjudgmental society.

Mr. Kahan teaches constitutional and criminal law at the University of Chicago Law School.

To Bruce / Dennis -
Have you seen these?
Do you think there's a
way of scrubbing hooking
into this trend?
Elena

Phoe

Lippo's Chinese Connections

By PETER SCHWEIZER

The many questionable contributions to the Democratic Party and President Clinton's legal defense fund are as much about U.S. national security as they are about White House influence peddling.

Questions swirling around former Deputy Assistant Commerce Secretary John Huang, the Lippo Group of Indonesia and the fund-raising activities of Charles Yan Lin Trie may well be linked by the shadow efforts of the Chinese military to influence U.S. foreign and military policy. Both the Democratic Party and the president's legal defense fund have returned vast contributions, yet considerable security damage will continue to occur unless the matter is fully investigated.

The most recent revelation concerns the fact that Charlie Trie arranged for President Clinton to meet with Wang Jun, a Chinese arms merchant, at a Feb. 6, 1996, White House coffee social. Mr. Wang is chairman of Poly Technologies, which is owned and run by the Chinese People's Liberation Army. Poly Technologies is a front company under China's General Staff Department's Equipment and Technology Department, and the Chinese Commission of Science, Technology and Industry for National Defense. The latter, known as Costind, is in charge of military research and development, testing and production. Among Costind's more important state functions is control of the technical and professional work at the PLA's strategic missile force.

Almost all high-level Costind officials have military rank. PLA Gen. Ding Heng-gao has been the director since June 1985 and has the bureaucratic rank of a minister. Four of the five deputy directors of Costind are lieutenant generals. Costind

and front companies such as Poly Technologies, Yuanwang Group Corporation, New Era Corporation and Galaxy New Technology Corporation have three important functions.

First, they manage arms sales to countries such as Iran, Iraq, North Korea and Pakistan. Second, they acquire advanced dual-use technologies to assist in modernizing the PLA. Finally, they serve as conduits for intelligence operations. The U.S. Defense Intelligence Agency reports that these organizations are "key to supporting the uniformed services and China's industrial base and to acquiring military and dual-use technology." DIA officer Nicholas Efitimiades identified Poly Technologies as a cover for such activities in his book "Chinese Intelligence Operations."

The PLA's links extend to the Lippo Group; Costind, through the Yuanwang Group Corp. and New Era Corp., has run several joint ventures with Lippo. Recently, Lippo and a U.S. firm, Entergy Corp., signed a \$1 billion deal to build a nuclear power plant in China. The deal was negotiated with help from the U.S. Commerce Department and Costind, which also runs the Chinese nuclear research program.

Given the PLA's link to these fund-raising scandals, what could it possibly be after? The most direct answer is access to high technology, particularly so-called dual-use technologies, which have both civilian and military applications. The Commerce Department, where Mr. Huang worked, is responsible for licensing exports of U.S. dual-use items. And by any measure, the Clinton administration has been very willing to grant the PLA access to such critical technologies.

On Sept. 14, 1994, the Commerce De-

partment approved the export of machine tools to China, "despite the strong warnings from U.S. military and intelligence officials," notes South Carolina Rep. Floyd Spence, chairman of the House National Security Committee. The machine tools were to be used to produce parts for commercial aircraft that would be built in China under a contract with McDonnell



John Huang

Douglas. According to the General Accounting Office, however, some of the more sophisticated machine tools were shipped to the Nanchang Aircraft Co., which produces fighter aircraft and cruise missiles for the PLA. As the principal deputy assistant commerce secretary with a strong interest in Asian commercial affairs, Mr. Huang would have played a significant role in this decision.

Even after officials became aware of this diversion, the wheels of enforcement moved very slowly. The Commerce Department did not formally investigate the export-control violations until six months after they were first reported, the GAO noted in a recent report.

The Commerce Department's Los Angeles field office recommended that Commerce issue a temporary denial order against the PLA's China National Aero-Technology Import & Export Association and its subsidiaries. Commerce rejected that recommendation; the Los Angeles office subsequently referred the case to the Department of Justice for consideration. An investigation is pending.

In April 1994 the Commerce Department created a new general license category, allowing nearly all dual-use telecommunications items to be exported to civilian customers in China without licenses. AT&T sold advanced asynchronous transfer mode and synchronous digital hierarchy telecommunications equipment without review to HuaMei, a joint venture partly owned by Galaxy New Technology; several members of its board are PLA officers. Pentagon officials warned Commerce that such dual-use technologies would be enormously beneficial for the Chinese military in sharing intelligence, imagery and video among several locations, as well as in command and control of military operations. Again, the warnings fell on deaf ears.

These and other possible links between PLA-managed companies and the White House and Democratic Party fund-raising occur alongside the Clinton administration's inaction in the face of dangerous activities by the Chinese military. In addition to passing sensitive ballistic-missile and nuclear-weapons-related technologies to rogue states, the PLA is operating under the assumption that the U.S. is a rival, not a friend. In 1993 the PLA High Command published a textbook titled "Can the Chinese Army Win the Next War?" In it, the U.S. is identified as the "principal adversary"; most of its war scenarios center on armed conflict with America.

Mr. Schweizer is co-author, with Reagan administration Defense Secretary Caspar Weinberger, of "The Next War," just released by Regnery.

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By JAN HOFFMAN

PITTSFIELD, Ill. — In the gray winter light, the views along the road into this small town in western Illinois are severe but serene — stretches of brown, stubbled cornfields interrupted only by the occasional farmhouse. Abruptly a driver's reverie is jolted by the green plywood and white-lettered sign at the end of Glenn Meyer's driveway. "Warning," it reads. "A Violent Felon Lives Here. Travel At Your Own Risk."

The sign is a condition of the probation sentence given to Mr. Meyer, a 62-year-old farmer, for having bashed another farmer in the face with a truck fuel pump. The judge intended the sign to alert people about Mr. Meyer's dangerous streak and to shame him into behaving. But Mr. Meyer is unrepentant. [On Tuesday, he went before the Illinois Supreme Court to challenge the imposition of the sign.]

Judicially created public humiliations like this are being introduced in courtrooms across the country, usually as alternatives to incarceration. Known as shaming penalties — after punishments like the stocks favored by 17th-century Puritans — they usually take the form of a mea culpa message to the community.

Drunk drivers have to put special license plates on their cars. Convicted shoplifters must take out advertisements in their local newspapers, running their photographs and announcing their crimes. And men in cities around the country who are convicted of soliciting prostitutes are identified on newspapers, radio shows and billboards.

In November, a judge in Port St. Lucie, Fla., ordered a woman to place an advertisement in her local paper saying she had bought drugs in front of her children. This summer, at the behest of a judge in Houston, a man who pleaded guilty to domestic violence stood on the steps of City Hall, facing lunchtime workers, reporters and battered women's advocates, and apologized for hitting his estranged wife.

Proponents of shaming penalties say they address the needs of a public weary of crime, frustrated by the failures of the criminal justice system and yet unwilling to pay for prison expansion.

"The penalties can satisfy the public's need for dramatic moral condemnation in a way that's effective

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and just," said Prof. Dan Kahan of the University of Chicago law school. "And they result in the outcome you want: less imprisonment."

Critics say the penalties have a bread-and-circuses quality that blunts whatever rehabilitative function they may have and often cross the line into ridicule. Judith Libby, Mr. Meyer's lawyer, offered her bottom-line critique. "Mostly," Ms. Libby said, "they're just mean."

Judge Seeks Balance In the Punishment

When it came time to sentence Mr. Meyer, whom a jury convicted of aggravated battery in June 1995, Judge Thomas L. Brownfield had a difficult decision. Mr. Meyer had a previous conviction for aggravated battery for stomping an insurance adjuster on his farm and an acquittal for scuffling with a collection agent.

In the 1995 episode, Gary Mason, a farmer from nearby Beardstown, had tried to return a truck fuel pump to Mr. Meyer, who runs a modest salvage yard. In the ensuing argument, Mr. Meyer swung the metal-encased pump at Mr. Mason, smashing his nose and eye socket.

The state's attorney urged incarceration. By law, Mr. Meyer could have received a sentence ranging from 2 to 10 years. But many in Pittsfield, with a population of 4,500, saw Mr. Meyer as a good-hearted, thoughtful neighbor. Dozens wrote letters to the judge on his behalf.

"He's as mild a mannered man you'd ever want to meet," said Bruce Lightle, the former chairman of the Pike County board. "We've been friends for more than 40 years and I've never seen him angry."

A social worker testified at a hearing that Mr. Meyer, who was taking antidepressant medication, seemed capable of controlling his temper.

Still, Judge Brownfield said that if Mr. Meyer had not had an elderly mother at home, he would have sentenced him to the maximum. In trying to balance retribution with compassion, the judge gave Mr. Meyer probation but confined him to his home for a year, allowing him to leave only to keep doctors' appointments and to attend church.

In addition, he had to pay a \$7,500 fine and Mr. Mason's medical bills, which reached nearly \$10,000. And Mr. Meyer had to make and post the warning sign for 30 months, of which about 16 remain.

"I try to take rehabilitation into consideration as well as protecting the public," the judge said. "I certainly feel more comfortable knowing that someone who may not know Mr. Meyer will have some warning."

The judge added that since the sign went up, there have been no other incidents of violence.

If the setting for a modern shaming penalty could approximate that of the early American colonists, Pittsfield might qualify. With something of the intimacy of 17th-century rural towns like Salem, Mass., Pittsfield is a church-going farming community with a village green and coffee shop waitresses who serve the regulars scrambled eggs with a side

of fresh gossip.

But Colonial towns were bound even more tightly than Pittsfield: An offender would be put in stocks in front of neighbors who shared a church, a leader and iron-clad values. The most frequently prosecuted offense was fornication.

Jail as punishment was relatively unknown in America. A penalty was intentionally exacted in full view of the community, which represented an ideal of behavior that the shamed one should emulate.

Penalties That Shame Reflect Nostalgic Urges

"The point of the punishment was to teach them a lesson and also make it possible to reintegrate themselves into the community," said Lawrence Friedman, a Stanford law professor.

By the 19th century, public punishment was looked down upon as undignified spectacle. The community was no longer a paragon of morality, and now understood to have corrupting influence as well. Prisons were established, and offenders were sent there for their own good.

In modern times, Americans no longer associate prison with rehabilitation; its purpose is strictly punitive. Still, the public complains about defendants serving short sentences in prisons that offer television, weight rooms and the opportunity to learn advanced criminal skills.

The return to shaming penalties, which began in the 1980's with mortified Wall Street traders appearing on the nightly news in handcuffs, is to some extent a nostalgic longing for an era when a community and its principles were so uniform that people could police themselves.

"The penalties bring the community back into sentencing and punishing policies," said Robert Teir of the American Alliance for Rights and Responsibilities, a public-interest group that filed a brief supporting Mr. Meyer's warning sign. "And they give the community a sense of empowerment that jailing or letting someone go without a punishment does not do."

Florida Judge Likes Public Confessions

Local judges, many of whom are elected, have seized on shaming penalties as an alternative to prison. Judges in Arkansas and Wisconsin have ordered shoplifters to parade in front of the stores they have robbed, carrying placards admitting their guilt. A Memphis judge has given thieves probation if they permit victims to pluck something from the thief's home. An Ohio judge ordered a man convicted of harassing his ex-wife to let her spit in his face.

In recent months, the judge in Port St. Lucie, Fla., Larry Schack, has structured many sentences to include a public confession.

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In October, Judge Schack ordered a man who had admitted molesting prepubescent girls to put a warning sign on his front door that had to be printed in block print capitals, large enough to fill the entire sign and at the height of five feet from the floor.

The judge also recently announced plans to sentence defendants to apologize to victims in speeches of at least a minute on the courthouse steps at noon, and to give the news media 48 hours notice.

Appellate courts rarely review such sentences, because they usually come as a result of a guilty plea. Florida and Oregon appellate courts have upheld isolated shaming penalties. But in 1995, New York's Court of Appeals rejected a Nassau County judge's efforts to compel a drunk driver to carry special license plates. And last May, the Tennessee Supreme Court struck down the requirement that a man who pleaded guilty to molesting teen-age boys post a warning at his Memphis home.

Professor Kahan of the University of Chicago said such punishments were preferable to fines, which make a defendant appear as if he is buying his way out of an offense, or community service, which, he said, sends an ambiguous message.

"People have positive associations with community service," he said. "How can you be condemning a person if you make him fix dilapidated housing? And people who do that for a living are terribly insulted."

Even those skeptical of the penalties, whose effectiveness has never been studied, concede that they have value in cohesive communities. Bar organizations publish lists of lawyers who have been sanctioned, because peers consider publicity a humiliating deterrent. Some Native American tribes and the Amish use a form of shaming known as shunning.

"But it's understood in these communities that there is something the shamed one can do to get back in," said Toni Massaro, a law professor at the University of Arizona.

By contrast, Professor Massaro added, most penalties by local judges are whimsical, coarsely drafted and do not have restorative components.

"They are merely expressions of disgust," she said. "We can get behind it, but it's not likely to stop the behavior."

And most communities include diverse groups with different responses to crimes and punishment. Fine-tuning a punishment to elicit shame can be difficult. During the Vietnam War, a draft dodger's peers considered him a hero, not a criminal; urban high school students might applaud a teen-ager for stealing a Mercedes, not condemn him.

Shame itself, say legal philosophers and psychologists, is a volatile, primal and poorly understood emotion. June Tangney, a professor of psychology at George Mason University who has studied over 10,000 people to distinguish feelings of shame from guilt, said such penalties, when crudely applied, could backfire. People made to feel ashamed can react angrily and blame others. But if defendants can feel guilt, Professor Tangney said, they are more likely to want to make reparation.

Here in Pittsfield, Mr. Meyer's warning sign has met with strong but mixed reactions. Friends of the family say it is too harsh. Some people who have tasted his temper say he got off easy. Mr. Mason, the farmer who caught the fuel pump in his eye, said he was simply relieved that others were being cautioned about Mr. Meyer.

Vicki Thayer, a waitress at the Red Dome Inn, said that she did not think that the sign was unjust but that it was unfair.

"Half the town beats up their wives, Ms. Thayer said, "and gets off with a slap on the wrist."

Mr. Lightle, the former county board chairman, said his friend was angry and embarrassed by the sign. The family resented it deeply, he said; Mr. Meyer's wife moved out.

Whether the sign will change Mr. Meyer's behavior remains to be seen. He failed to report to probation several times and missed some restitution payments, court records show.

Ms. Libby, who spoke on her client's behalf, said he did not feel ashamed about the dust-up that led to the punishment. On the contrary. "Mr. Meyer says he feels that the sign is illegal and that the court knows it's illegal," she said. "He has always professed his innocence and he still does."