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PROBATION FOR CORPORATIONS UNDER THE SENTENCING REFORM ACT

I. INTRODUCTION

Prosecutions of corporate crime\(^1\) are increasing, and convictions of criminal corporations are becoming increasingly commonplace.\(^2\) Sanctions against corporate defendants, however, have historically been too lenient.\(^3\) A corporation has "no soul to be damned, and no body to be kicked,"\(^4\) and therefore cannot be imprisoned. Dissolution of a corporation remains disfavored as a sanction for public policy reasons.\(^5\) Thus until recently, the only direct penal sanction available has been a fine.\(^6\) Current legal literature on the subject of fines as a way of sentencing corporations suggests that fines are not an effective deterrent to criminal corporations.\(^7\)

The record of a single corporation exemplifies the ineffectiveness of fines in controlling illegal corporate activity. In 1965, the Olin Corporation was fined $30,000 for filing false statements to...

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\(^1\) Corporate crime is defined as the "conduct of a corporation, or of individuals acting on behalf of a corporation, that is proscribed and punishable by law." Braithwaite & Geis, On Theory and Action for Corporate Crime Control, 28 CRIME & DELINQUENCY 292, 294 (1982).

\(^2\) Between 1976 and 1979, 574 corporations were convicted of a variety of crimes in federal courts. See Orland, Reflections on Corporate Crime: Law in Search of Scholarship, 17 AM. CRIM. L. REV. 501, 501 n.4 (1980). Fortune magazine reported that between 1970 and 1980, 11% of the 1,043 major corporations it surveyed were involved in a "major delinquency" (a term it defined to include five crimes: bribery, criminal fraud, illegal political contributions, and price fixing or bid rigging antitrust violations). See Ross, How Lawless Are Big Companies?, FORTUNE, Dec. 1, 1980, at 56-57.

\(^3\) See Orland, supra note 2, at 512-13 & n.69.

\(^4\) "Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked?" Edward, First Baron Thurlow (1731-1806), quoted in Coffee, "No Soul to Damn: No Body to Kick": An Unscandalized Inquiry Into the Problem of Corporate Punishment, 79 Mich. L. REV. 386, 386 (1981).

\(^5\) Note, Structural Crime and Institutional Rehabilitation: A New Approach to Corporate Sentencing, 89 YALE L.J. 353, at 373-74 n.119 (1979) [hereinafter cited as Note]. See also infra note 40.


\(^7\) Braithwaite & Geis, supra note 1, at 303; Coffee, supra note 4, at 386-87; Comment, Corporate Probation Conditions: Judicial Creativity or Abuse of Discretion?, 52 FORDHAM L. REV. 637, 637-38 (1984); Orland, supra note 2, at 516-17.
conceal kickback payments. Again in 1978, Olin was fined $45,000 for filing false reports to hide illegal shipments of arms to South Africa. Once more in 1979, Olin filed false statements to conceal the amount of mercury discharged into the Niagara River and was fined $70,000. Unfortunately, Olin’s record is not unique, as fines are viewed by many corporate offenders as merely a cost of doing business.

Initially, courts addressed the problem of the inadequacy of fines in controlling corporate criminal behavior. Some courts used the Federal Probation Act to fashion sentencing alternatives for corporate defendants. These sentences were described as being "creative, innovative, and imaginative." Yet, because the Probation Act did not specifically address corporations, and because there was a lack of definitive sentencing guidelines for corporations, courts which applied the Probation Act to criminal corporations produced varying results. Furthermore, members of Congress, judges, and

11. Orland, supra note 2, at 516.
14. See, e.g., United States v. Mitsubishi Int'l Corp., 677 F.2d 785 (9th Cir. 1982) (defendants required to contribute funds and assign executive to community service organization); United States v. William Anderson Co., 698 F.2d 911 (1982) (contribute funds to charitable organizations) overruled by United States v. Missouri Valley Constr. Co., 741 F.2d 1542 (8th Cir. 1984) (a federal district court may not impose on a willing corporation as a condition of probation, in lieu of a fine, the requirement that it contribute money to a charitable organization that has not suffered actual damages or loss from corporation’s criminal offense); United States v. Danilow Pastry Co., 563 F. Supp. 1159 (S.D.N.Y. 1983) (donate baked goods to charitable organizations).
15. William Anderson, 698 F.2d at 913.
16. See United States v. Atlantic Richfield Co., 465 F.2d 58, 60 (1972). In authorizing probation as a corporate sanction, the court in Atlantic Richfield simply concluded that because corporations are subject to the criminal code and because the Probation Act is part of that criminal code, corporations can be put on probation. Id. at 60-61.
17. The Probation Act was written for individuals, and was only subsequently applied to corporations. "[N]owhere can be found mention of rehabilitating a corporate offender [within the Probation Act] while the record is replete with discussion of youthful and first-time offenders, in addition to references to "he" or "him" and "defendant." These references . . . indicate that Congress meant the Act to apply only to persons and not corporations." Id. at 60.
18. Compare William Anderson, 698 F.2d at 911 (approving contributions to charitable organizations as a condition of probation) overruled by United States v. Missouri Valley Constr. Co., 741 F.2d 1542 (8th Cir. 1984) (a federal district court may not impose on a willing
scholars became critical of the scope of judicial discretion in fashioning remedies.\textsuperscript{10}

On October 12, 1984, Congress passed the Sentencing Reform Act of 1984\textsuperscript{20} (Sentencing Act) as a part of the Comprehensive Crime Control Act of 1984.\textsuperscript{21} The effective date of the Sentencing Act is November 1, 1986.\textsuperscript{22} Although this new law repeals the Federal Probation Act,\textsuperscript{23} provisions for probation are integrated throughout the Sentencing Act.\textsuperscript{24} These provisions explicitly state that a convicted corporation may be given a sentence\textsuperscript{25} of probation\textsuperscript{26} as well as a fine.\textsuperscript{27}

In sentencing a convicted criminal corporation to probation under the Sentencing Act, courts must consider several factors. Among these factors are the nature and circumstances of the offense, the history and characteristics of the offender,\textsuperscript{28} and the purposes of sentencing\textsuperscript{29} (just punishment,\textsuperscript{30} deterrence,\textsuperscript{31} incapacitation,\textsuperscript{32} and

corporation as a condition of probation, in lieu of a fine, the requirement that it contribute money to a charitable organization that has not suffered actual damages or loss from corporation's criminal offense), with United States v. Prescon Corp., 695 F.2d 1236 (10th Cir. 1982) (disapproving contributions to charitable organizations as a condition of probation).


22. The Sentencing Act was passed on October 12, 1984. All pertinent portions of the Sentencing Act, with the exception of those portions regarding the Sentencing Commission, take effect on November 1, 1986. The portion of the Sentencing Act establishing the Sentencing Commission took effect on the date of the enactment, October 12, 1984. The guidelines and policy statements promulgated by the Commission will take effect within two years of the enactment date, pending congressional review. Sentencing Act, supra note 20, § 235(a)(1) (98 Stat.), at 2031-33.


24. The main probation provisions are in Chapter 227, subchapter B. Id. at 1992-95 (to be codified at 18 U.S.C. 3561-66)

25. Under the Sentencing Act, probation constitutes a sentence. Under the preceding law of the Federal Probation Act, probation was imposed by the court after it had suspended sentence. Senate Report, supra note 19, at 67.


27. Id. at 1993 (to be codified at 18 U.S.C. § 3563(b)(2)).

28. Id. at 1989 (to be codified at 18 U.S.C. § 3553(a)(1)).

29. Id. at 1989 (to be codified at 18 U.S.C. § 3553(a)(2)). See infra note 126.


31. Id. at 1989 (to be codified at 18 U.S.C. § 3553(a)(2)(B)).
rehabilitation\textsuperscript{38}). The legislative history of the Sentencing Act emphasizes that courts have the authority to impose any probationary condition which may be appropriate for a particular defendant.\textsuperscript{34} Procedural provisions contained in the Sentencing Act, such as the presentence report,\textsuperscript{38} Sentencing Commission guidelines,\textsuperscript{36} and appellate review,\textsuperscript{37} will ensure that probation as a sanction will not be abused.

This comment examines the application of probation to criminal corporations under the Sentencing Act. In the following section, the traditional sanctions for corporations convicted of criminal conduct are discussed. Section III presents a brief history of the attempts to impose conditions of probation on corporations. Section IV analyzes the Sentencing Act as it pertains to probation for criminal corporations. Guidelines for sentencing criminal corporations to probation

\begin{itemize}
\item \textsuperscript{32} Id. at 1989 (to be codified at 18 U.S.C. § 3553(a)(2)(C)).
\item \textsuperscript{33} Id. at 1989 (to be codified at 18 U.S.C. § 3553(a)(2)(D)).
\item \textsuperscript{34} Senate Report, \textit{supra} note 19, at 95-99.
\end{itemize}

The list is not exhaustive, and it is not intended at all to limit the court's options—conditions of a nature very similar to, or very different from, those set forth may also be imposed. \ldots The conditions \ldots are simply designed to provide the trial court with a suggested listing of some of the available alternatives which might be desirable in the sentencing of a particular offender. [footnote omitted] It is anticipated that \ldots the court will review the listed examples in light of the Sentencing Commission's guidelines and policy statements, weigh other possibilities suggested by the case, and, after evaluation, impose those that appear to be appropriate under all the circumstances.

\textit{Id.} at 95.

\begin{itemize}
\item \textsuperscript{36} Sentencing Act, \textit{supra} note 20, at 2019-24 (to be codified at 28 U.S.C. § 994).
\end{itemize}

Section 994 provides in pertinent part:

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of this title and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System—(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case. \ldots (2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of Title 18, United States Code. \ldots

\textit{Id.}

\begin{itemize}
\item \textsuperscript{37} Id. at 2011-13 (to be codified at 18 U.S.C. § 3742). Section 3742 provides in pertinent part:
\end{itemize}

(a) \textbf{APPEAL BY A DEFENDANT.}—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence. \ldots

(b) \textbf{APPEAL BY THE GOVERNMENT.}—The Government may file a notice of appeal in the district court for review of an otherwise final sentence. \ldots

\textit{Id.}
are proposed in Section V. Finally, Section VI presents the author's conclusion that the implementation of the guidelines proposed in Section V will assist judges in fashioning appropriate conditions of probation in sentencing criminal corporations under the Sentencing Act.

II. SANCTIONS FOR CRIMINAL CORPORATIONS

Historically, the only practical sanction available for corporations convicted of a criminal offense has been a fine. Essentially, there are two reasons for this limitation in sentencing. First, corporations are legal fictions, and as such have not been subject to sanctions designed for individuals (i.e. prison and probation). Second, courts are reluctant to use dissolution of a criminal corporation as a sanction. The result is that fines have been the primary method used to control corporate criminal behavior.

The rationale behind the use of fines in sentencing is deterrence. Corporations are presumed to act rationally in their profit-making ventures. The establishment of a system of fines was designed to make corporate crime unprofitable, thus deterring rational corporations from criminal conduct. Unfortunately, the use of fines as a deterrence is rendered ineffective through a phenomenon known as the "deterrence trap." The "deterrence trap" occurs when the size of the fine that is necessary to deter criminal conduct by a corporation is larger than that which the corporation is able to

38. Note, supra note 5, at 354.
40. Note, supra note 5, at 373-74 n.119. Dissolution is not considered an option for several reasons:

First, a court of one jurisdiction will lack authority to revoke the charter of a corporation chartered under the laws of another. Second, as to small or closely held [corporations], dissolution alone does not prevent the controlling parties from simply regrouping in a new form. Finally, as to large corporations, the socially disruptive effects of the dissolution of a whole corporation would generally be so great as to outweigh its benefits.

Id.
41. Id. at 354.
42. Id. at 354 n.8. See also C. Stone, supra note 39, at 35-37 (the law has responded to the growth of corporations simply by transferring theories and sanctions previously applied to individuals instead of developing a new body of law which would be more applicable to a corporation).
44. See generally Coffee, supra note 4, at 389-93 (describing the "deterrence trap").
pay. A description of the "deterrence trap" is as follows:

The crux of the dilemma arises from the fact that the maximum meaningful fine that can be levied against any corporate offender is necessarily bounded by its wealth. Logically, a small corporation is no more threatened by a $5 million fine than by a $500,000 fine if both are beyond its ability to pay. In the case of an individual offender, this wealth ceiling on the deterrent threat of fines causes no serious problem because we can still deter by threat of incarceration. But for the corporation, which has no body to incarcerate, this wealth boundary seems an absolute limit on the reach of deterrent threats directed at it. If the "expected punishment cost" necessary to deter a crime crosses this threshold, adequate deterrence cannot be achieved. . . . In short, our ability to deter the corporation may be confounded by our inability to set an adequate punishment cost which does not exceed the corporation's resources.

Even if adequate fines are imposed, however, other problems arise when monetary penalties are the sole sanction used to control corporate criminal behavior.

The use of fines may also work injustice on innocent parties. The real cost of a fine may be borne not by the corporation, but by the shareholders through lower dividends and by the consumers through higher prices. Neither of these parties has significant control over corporate-decision making. Furthermore, depending on the characteristics of the relevant market, heavily fining a corporation may lead to non-management employee layoffs as well as to other forms of detriment to innocent third parties. Thus, raising the level of fines will not prevent a corporation from passing along the penalty.

Profit maximization is not a complete explanation of corporate criminal behavior. People still make the decision and take the ac-

45. Id. at 390.
46. Id. (footnotes omitted).
47. Coffee, supra note 4, at 401-02; Note, supra note 5, at 362-63; Orland, supra note 2, at 516; see Atlantic Richfield, 465 F.2d at 60.
48. Note, supra note 5, at 355-57. See also C. Stone, supra note 39, at 47-48 (in most major corporations the shares are divided among so many people that the shareholders are relatively incapable of concerted action to remove management).
49. Coffee, supra note 4, 401-02. See also United States v. Danilow Pastry Co., 563 F. Supp 1159, 1166-67 (S.D.N.Y. 1983) (fines large enough to achieve the appropriate measure of deterrence would bankrupt the corporate defendants and cause widespread unemployment among the bakeries' employees as well as damage the economies of the communities in which the plants were located).
50. See C. Stone, supra note 39, at 36-38; Coffee, supra note 4, at 393; Note, supra
tion for criminal conduct. An individual manager may perceive illegal conduct to be in his interest, even if such conduct exposes the corporation to potential costs which far exceed the potential benefits. Thus, the behavioral perspective suggests that "it may be extraordinarily difficult to prevent corporate misconduct by punishing only the firm [with a fine]."

The multi-divisional and often radically decentralized structure of the modern corporation also acts to weaken the deterrence value of fines. While it is the top management which sets the directives of the corporation, it is often up to the middle-level managers to meet those directives. This tends to insulate the top management (which may well desire that the sordid details of "meeting the competition" not filter up to its attention) and intensify the pressures on those below. As a result, the top management, which is generally the most concerned with profit maximization, is often unaware of the criminal conduct by the middle-level managers. This dilemma may be explained in the following manner:

For the middle-level official the question is not whether the behavior is too risky to be in the interests of the corporation from a cost/benefit standpoint. Rather, it is: which risk is greater — the criminal conviction of the company or his own dismissal for failure to meet targets set by an unsympathetically demanding senior management. Because the conviction of the corporation falls only indirectly on the middle manager, it can seldom exceed the penalty that dismissal or demotion means to him.

In fact, the threat of a fine does little to deter middle-level criminal

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Note 5, at 364.
51. This point is often forgotten in the difficulty of identifying the people within the structure of the corporation responsible for the offense. See Coffee, supra note 4, at 393; Note, supra note 5, at 357-58.
52. Coffee, supra note 4, at 393.
53. Id.
54. See C. Stone, supra note 39, at 43-44; Coffee, supra note 4, at 399; Note, supra note 5, at 357-59.
55. Other factors which weaken the deterrence include a variety of penalties and incentives (such as salary and fringe benefits, increased or diminished staff and budget, and the threat of dismissal or demotion) of the people within the corporation. See generally Coffee, supra note 4, at 393-400.
56. Id. at 398.
57. Id.
58. C. Stone, supra note 39, at 60-62; Coffee, supra note 4, at 397-98; Note, supra note 5, at 357-58.
59. C. Stone, supra note 39, at 60-62; Coffee, supra note 4, at 397-98; Note, supra note 5, at 357-58.
60. Coffee, supra note 4, at 399.
conduct.

Fines alone do not address the complexities of corporate criminal behavior. Although a monetary penalty is a useful sanction in sentencing a criminal corporation, it is not adequate as a sole remedy to control corporate criminal activity. In response to this inadequacy, new sanctions must be developed and employed in sentencing criminal corporations. Probation is one such sanction.

III. CASES APPLYING PROBATION AS A SANCTION TO CRIMINAL CORPORATIONS

In 1972, a new form of sanction for corporate crime was authorized in United States v. Atlantic Richfield Co. In Atlantic Richfield, the Seventh Circuit Court of Appeals held that a corporation could be placed on probation. Unfortunately, the court did not provide any rationale for placing corporations on probation. In authorizing probation as a sanction for criminal corporations, the court simply reasoned that because corporations are subject to the criminal code, and because the Probation Act was part of the criminal code, corporations can be put on probation. After authorizing probation as a sanction for criminal corporations, however, the Seventh Circuit Court of Appeals reversed the district court's order of probation. The appellate court summarily determined that the conditions of the probation were unreasonable and went beyond what was intended by the drafters of the Probation Act.

The authorization of probation and the accompanying discretion to set the terms and conditions of probation had the potential to expand a trial court's flexibility in sentencing criminal corporations. The Atlantic Richfield decision, however, ultimately limited that potential in its failure to clarify to what extent a trial court could exercise its discretion when placing a corporation on probation.

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61. 465 F.2d 58 (7th Cir. 1972).
62. Id. at 61.
64. Probation System Act, supra note 13, at § 3651.
65. Atlantic Richfield, 465 F.2d at 60-61. "It is not logical . . . to subject corporations to certain criminal statutes and yet exclude them from others for, after all, the Probation Act is but a portion of the United States' codified criminal laws under Title 18 of the United States Code." Id. at 60.
66. Id. at 61.
67. Id.
68. After authorizing probation as a sanction for criminal corporations, the Seventh Circuit Court of Appeals summarily overruled the trial court's probationary conditions and held:
In *United States v. Allied Chemical Corporation*, 69 Allied Chemical was fined $13.24 million after pleading no contest to charges of water pollution 70 resulting from the escape of Kepone, a pesticide, into the waterways of Virginia. 71 The trial court, however, stated that it would be inclined to reduce the sentence if Allied Chemical took steps to alleviate the damage it had caused. 72 Allied Chemical agreed to spend $8.35 million to establish the Virginia Environmental Endowment, a nonprofit corporation empowered to "fund scientific research projects and implement remedial projects and other programs to help alleviate the problem that Kepone had created . . . and . . . enhance and improve the overall quality of the environment in Virginia. . . ." 73 The fine was then reduced to $5 million. 74

The results of this sentence were both immediate and long lasting. First, Allied Chemical established an organization to clean up the toxic pollution quickly and efficiently. Moreover, the sentence apparently caused Allied Chemical to develop a number of effective systems of internal environmental control. 75

In *United States v. Mitsubishi International Corp.*, 76 three corporate defendants were indicted and pled guilty to numerous counts of violating the Elkins Act. 77 At first, the maximum fine was imposed as a penalty on each of the defendants. 78 Later, however, all but one thousand dollars of the fine for each count was suspended, and each defendant was placed on probation for three years. 79 The terms of probation required that each corporation loan a company executive for one year to the National Alliance for Business in its Community Alliance Program for Ex-Offenders, and make a $10,000 donation to the program for each offense. 80

"[W]hen probation is used as a means of imposing unreasonable standards to the extent that the probationer may not know when they are satisfied, we must object to such unauthorized use. It is for that reason we reverse. . . ." *Id.* at 61.

70. The charges were violations of the Refuse Act, 33 U.S.C. § 407 (1976).
73. Fisse, supra note 71, at 974 (quoting Stone, supra note 72, at 8).
74. Stone, supra note 72, at 8.
75. Fisse, supra note 71, at 975 n.29.
76. 677 F.2d 785 (9th Cir. 1982).
77. *Id.* at 786.
78. *Id.*
79. *Id.*
80. *Id.* at 787 n.1.
In sentencing the defendants in *Mitsubishi*, the district court was concerned that the large corporations could "just write a check and walk away." It was for this reason that that court designed the unique and creative conditions of probation. Although the defendants objected to the conditions, the prosecution strongly supported both conditions, stating:

To suggest . . . that community service would be of no rehabilitative or deterrent value, is quite presumptuous. That suggestion would be valid . . . only if defendants were conclusively proven not to be in need of rehabilitation or if it was unreasonable to assume that corporate concern for compliance with the law would be encouraged by corporate community service.

The Ninth Circuit Court of Appeals upheld the probationary conditions. In justifying its decision, the court stated that a judge has a wide discretion in determining what sentence to impose, and as long as that sentence is within statutory limits, it will generally not be disturbed.

An important case in applying probation to corporations was *United States v. William Anderson Co.* In *William Anderson*, the corporate defendants and individual officers of the corporations pleaded guilty to violations of the Sherman Antitrust Act. The Eighth Circuit Court of Appeals considered the various recommended sentences, and imposed fines upon each of the corporate defendants. Thereafter, the court suspended the sentences and placed all the defendants on probation. The terms of probation required that each corporation make a contribution to a specified public or charitable organization in lieu of the fines imposed. Generally, the donees were the organizations for whom the convicted officers were

81. Id. at 788.
82. Id.
83. Brief for Appellee at 42-43, United States v. Mitsubishi Int'l Corp., 677 F.2d 785 (9th Cir. 1982).
84. *Mitsubishi*, 677 F.2d at 788.
85. Id.
86. 698 F.2d 911 (8th Cir. 1982), overruled by United States v. Missouri Valley Constr. Co., 741 F.2d 1542 (8th Cir. 1984) (a federal district court may not impose on a willing corporation as a condition of probation, in lieu of a fine, the requirement that it contribute money to a charitable organization that has not suffered actual damages or loss from the corporation's criminal offense).
87. 698 F.2d at 911.
88. Id. at 912.
89. Id.
90. Id.
required to work as part of their individual sentences.\textsuperscript{91} The required contributions were equal to the amount of the original fines levied.\textsuperscript{92}

In its sentencing memorandum, the court of appeals expressed the purpose of rehabilitation and deterrence\textsuperscript{93} in fashioning the conditions of probation.\textsuperscript{94} Moreover, the court held that the contention that corporate entities were incapable of rehabilitation “smack[ed] of medieval antiquarianism” in that it ignored the fact that the decision-making was made by people.\textsuperscript{95} The court determined that such decision-making could be affected through appropriate conditions of probation.\textsuperscript{96} The court stated that insistence on the fiction of a corporation as being a bloodless entity was a fiction in itself.\textsuperscript{97}

In \textit{United States v. Danilow Pastry Co.},\textsuperscript{98} six wholesale bakeries in the New York metropolitan area and six individuals who were principals of those bakeries were indicted on violations of the Sherman Antitrust Act.\textsuperscript{99} The defendants entered a plea of \textit{nolo contendere}, and were convicted.\textsuperscript{100} The sentences were fines, which were partially suspended, and the companies were placed on probation.\textsuperscript{101} As a condition of probation, the defendants were required to donate specified amounts of fresh-baked goods to various needy and charitable organizations.\textsuperscript{102} The amount of goods donated by a particular defendant over a period of time would equal the amount of the suspended fine for that defendant.\textsuperscript{103}

In formulating the sentences, the \textit{Danilow} court sought punishment that would compensate for the reduced deterrent effect of the \textit{nolo} pleas.\textsuperscript{104} The court, after reviewing the extensive financial data submitted by the parties, concluded that the fines necessary “to achieve the appropriate measure of deterrence would bankrupt the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{91} Id.
\item \textsuperscript{92} Id.
\item \textsuperscript{93} “The alternative sentences will be designed to be firm, specific, unpleasant for the defendants and constructive for them and others.” Id.
\item \textsuperscript{94} “If the community service features of the sentences are correctly devised they will not have decreased the amount of punishment, but will have increased the usefulness and decreased the expensiveness of it.” Id.
\item \textsuperscript{95} Id. at 914.
\item \textsuperscript{96} Id.
\item \textsuperscript{97} Id.
\item \textsuperscript{98} 563 F. Supp. 1159 (S.D.N.Y. 1983).
\item \textsuperscript{99} Id. at 1161.
\item \textsuperscript{100} Id. at 1162.
\item \textsuperscript{101} Id. at 1163.
\item \textsuperscript{102} Id.
\item \textsuperscript{103} Id.
\item \textsuperscript{104} Id. at 1166.
\end{itemize}
\end{footnotesize}
corporate defendants. Such a sentence would cause widespread unemployment among the bakeries' employees, and damage the economies of the communities in which the plants were located.

The Danilow court noted that rehabilitation and specific deterrence against future price fixing by the six corporations would be enhanced in that the executives and workers of the companies would be made aware, on a continuous basis during the term of the probation, of the violations perpetrated by their company, the need for restitution, and the need to guard against similar violations in the future. Furthermore, the wrongdoings of the defendants would be called to public attention; the public would be made aware of the community service and symbolic restitution; the punishment would be increased beyond what fines could extract; and the needs of the innocent employees, customers, and communities would be secured.

The benefits of the use of probation in sentencing criminal corporations are exemplified by the above cases. The sentences in these cases are laudable in that the courts recognized the inadequacies of existing sanctions and fashioned new sentences using probationary conditions that were more responsive to the needs of the communities and the defendants. The cases may be criticized, however, in that they often failed to justify the conditions of probation and to provide guidelines for the conditions of the sentence. Furthermore, the cases illustrate that the courts were constrained by the sentencing options available in the Probation Act.

105. Id.
106. Id. at 1166-67.
107. Id. at 1167.
108. Id.
109. See United States v. Prescon, 695 F.2d 1236 (10th Cir. 1983).
110. See Atlantic Richfield, 465 F.2d at 58.
111. The statute elaborated on the general grant of discretion by specifying a number of different conditions of probation that the trial court may impose. With respect to monetary payments, the statute provided that:

While on probation and among the conditions thereof, the defendant—
May be required to pay a fine in one or several sums; and
May be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had; and
May be required to provide for the support of any persons, for whose support he is legally responsible.

Probation System Act, supra note 13. Though the statute did not expressly forbid the imposition of other kinds of monetary payments than those enumerated, courts concluded that the enumeration should be construed as a limitation on the authority of the courts to exact monetary payments as a condition of probation. See generally United States v. Wright Contracting Co., 728 F.2d 648 (4th Cir. 1984); United States v. Prescon Corp., 695 F.2d 1236 (10th Cir.
Although the foregoing cases indicate that probation is a suitable and effective sanction in sentencing criminal corporations, the cases also indicate that the limitations of the Probation Act had to be addressed. Definitive guidelines that would not inhibit a trial court’s discretion in fashioning appropriate conditions of probation were needed. In answer to this need, Congress passed the Sentencing Reform Act.\textsuperscript{112} The Sentencing Act’s sweeping provisions were designed to structure judicial sentencing discretion, eliminate indeterminate sentencing, and make criminal sentencing fairer and more certain.\textsuperscript{113}

IV. THE SENTENCING REFORM ACT OF 1984

The Sentencing Reform Act of 1984\textsuperscript{114} represents the first comprehensive sentencing law to be applied by the federal courts.\textsuperscript{115} The Act is “the culmination of a reform effort begun more than a decade ago by the National Commission on Reform of Federal Criminal Laws.”\textsuperscript{116} Noting the importance of this sentencing reform, Attorney General William French Smith stated:

Of the improvements [under consideration by the Committee] . . . perhaps the most important are those related to sentencing criminal offenders. These provisions introduce a totally new and comprehensive sentencing system that is based upon a coherent philosophy. They rely upon detailed guidelines for sentencing similarly situated offenders in order to provide for a greater certainty and uniformity in sentencing.\textsuperscript{117}

The Sentencing Act is effective as of on November 1, 1986.\textsuperscript{118}

A. Legislative History of the Sentencing Act

The legislative history of the Sentencing Act notes that the laws which governed sentencing had been inflexible in providing judges with a range of options from which to fashion an appropriate sentence.\textsuperscript{119} For example, under former laws, the maximum fines im-
posed were generally too small to provide punishment and deterrence to major offenders, and frequently did not come close to the amount the defendant had gained by committing the offense. The legislative history further notes that shameful disparity in sentencing had been a major flaw in the criminal justice system.

In answer to these problems, the Sentencing Act provides a comprehensive statement of the federal law of sentencing. It outlines the purposes of sentencing, describes in detail the kinds of sentences which may be imposed to carry out those purposes, and prescribes the factors that should be considered in determining the kind of sentence to impose in a particular case.

B. Presentence Report

To insure the appropriateness of the sentence imposed, a presentence report is required by section 3552 of the Act. The presentence report is prepared by a probation officer in accord with the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, unless the trial court finds that it has sufficient information to enable the meaningful exercise of authority pursuant to section 3553 of the Act. The provisions of section 3552 will thus provide a court with the resources necessary to acquire adequate information about a convicted offender, including recommendations from the probation system. Section 3552 also assures that the defendant and the government have sufficient information concerning the basis for a sentencing decision to enable them to prepare for the sentencing hearing.

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120. Id.
121. Id.
122. Id. at 65.
123. Id. at 50.
124. Id.
Section 3552(a) provides:

Presentence Investigation and Report by Probation Officer.—A United States probation officer shall make a presentence investigation of a defendant that is required pursuant to the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, and shall, before the imposition of sentence, report the results of the investigation to the court.

Id.

127. Senate Report, supra note 19, at 71.
128. Id.
129. Id. at 74.
C. Purposes of Sentencing

The Sentencing Act recognizes four purposes of sentencing: (1) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment; (2) the need to afford adequate deterrence to criminal conduct; (3) the need to protect the public from further crimes of the defendant; and (4) the need to provide the defendant with educational or vocational training, medical care, or other corrective treatment in the most effective manner. 130

The Sentencing Act explicitly states that an organization may be sentenced to a term of probation or a fine, or to a combination of both. 131 Sections 3561 to 3566 govern the imposition, conditions, and possible revocation of a sentence to a term of probation. 132 In keeping with modern criminal justice philosophy, probation is described as a form of sentence rather than, as in the former law, a suspension of the sentence. 133

D. General Provisions of the Sentencing Act

Section 3561 authorizes the imposition of a sentence to a term of probation in all cases, unless the case involves a Class A or B felony, an offense for which probation has been expressly precluded, or unless the defendant is already sentenced at the same time for an offense. 134 The section also specifies the maximum permissible terms

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130. Sentencing Act, supra note 20, at 1989 (to be codified at 18 U.S.C. § 3553(a)(2)).

Section 3553(a)(2) provides:

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
(B) to afford adequate deterrence to criminal conduct;
(C) to protect the public from further crimes of the defendant; and
(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Id.

131. Sentencing Act, supra note 20, at 1988 (to be codified as 18 U.S.C. § 3551 (c)). Section 3551(c) provides:

ORGANIZATIONS.—An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—(1) a term of probation as authorized by subchapter B; or (2) a fine as authorized by subchapter C. A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

Id.

132. Senate Report, supra note 19, at 88.

133. Id.

134. Sentencing Act, supra note 20, at 1992 (to be codified as 18 U.S.C. § 3561). Section 3561 provides:

(a) IN GENERAL.—A defendant who has been found guilty of an offense may be
of probation and requires a minimum of one year’s probation for a felony conviction.\textsuperscript{138} Separate terms are set forth for felonies (not less than one nor more than five years),\textsuperscript{136} misdemeanors (not more than five years),\textsuperscript{137} and infractions (not more than one year).\textsuperscript{138}

Section 3562 sets forth the criteria to be considered by the court in determining whether to impose a sentence of probation and in determining the length of the term and the conditions of probation.\textsuperscript{139} The application of the specific considerations requires the court first to consider the nature of the offense and the history and characteristics of the offender.\textsuperscript{140} With those in mind, the court must then consider the four basic purposes of sentencing as established in section 3553(a)(2)\textsuperscript{141} to the extent that one or more of them are applicable to the case,\textsuperscript{142} and must examine the sentencing guidelines

\begin{itemize}
  \item \textbf{Id.} (to be codified at 18 U.S.C. § 3561(b)(1)). \textit{See supra} note 134.
  \item Id. at 1992.
  \item Id. (to be codified at 18 U.S.C. § 3561(b)(2)). \textit{See supra} note 134.
  \item Id. (to be codified at 18 U.S.C. § 3561(b)(3)). \textit{See supra} note 134.
  \item Id. (to be codified at 18 U.S.C. § 3562). Section 3562 provides:
    \begin{itemize}
    \item (a) \textbf{FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF PROBATION.—The} court, in determining whether to impose a term of probation, and, if a term of probation is imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 3553(a) to the extent that they are applicable.
    \item (b) \textbf{EFFECT OF FINALITY OF JUDGMENT.—Notwithstanding the fact that a sentence of probation can subsequently be}—(1) modified or revoked pursuant to the provisions of section 3564 or 3565; (2) corrected pursuant to the provisions of rule 35 and section 3742; or (3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.
    \end{itemize}
  \item Id. at 1989 (to be codified at 18 U.S.C. § 3553(a)(1)).
  \item Id. (to be codified at 18 U.S.C. § 3553(a)(2)). \textit{See supra} note 130.
  \item Senate Report, \textit{supra} note 19, at 77. "In setting out the four purposes of sentencing, the Committee has deliberately not shown a preference for one purpose of sentencing over another in the belief that different purposes may play greater or lesser roles in sentencing for different types of offenses committed by different types of defendants." \textit{Id.}
and policies\textsuperscript{143} of the Sentencing Commission.\textsuperscript{144} The effect of these considerations is to require the court to focus carefully upon both the needs of the corporate defendant and the needs of society.\textsuperscript{145}

Section 3563 sets forth the conditions of probation.\textsuperscript{146} Subsection (a) delineates the mandatory conditions of probation.\textsuperscript{147} It specifies that the court must provide (as a condition of probation for a defendant convicted of any Federal offense) that the defendant not commit another Federal, State, or local crime during the term of probation,\textsuperscript{148} and (as a condition of probation for a defendant convicted of a felony) that the defendant pay a fine or restitution, or engage in community service.\textsuperscript{149} Subsection (b) sets out the discretionary conditions which may be imposed, the last of which makes it clear that the enumeration is suggestive only, and is not intended to be a limitation on the court's authority to consider and impose any other appropriate conditions.\textsuperscript{150} Subsection (c) permits the court, after a hearing, to modify or enlarge the conditions during the term of probation, pursuant to the provisions applicable to the initial setting of the conditions of probation.\textsuperscript{151} Subsection (d) requires that the de-

\begin{itemize}
\item 143. Sentencing Act, supra note 20, at 1990 (to be codified at 18 U.S.C. § 3553(a)(5)).
\item 144. Id. at 2017 (to be codified at 28 U.S.C. § 1991).
\item 145. Senate Report, supra note 19, at 75.
\end{itemize}

Section 3563 provides in pertinent part:

(a) **Mandatory Conditions.**—The court shall provide, as an explicit condition of a sentence of probation—(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation; and (2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13). If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

(b) **Discretionary Conditions.**—The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553 (a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2). . . .

\begin{itemize}
\item Id. at 1993 (to be codified at 18 U.S.C. § 3563(a)). See supra note 146.
\item Id. at 1993 (to be codified at 18 U.S.C. § 3563(a)(1)).
\item See supra note 146.
\item Sentencing Act, supra note 20, at 1993 (to be codified at 18 U.S.C. § 3563(a)(2)).
\item See supra note 146.
\item Id. at 1994 (to be codified at 18 U.S.C. § 3563(c)). Section 3563(c) provides:
\textbf{Modifications of Conditions.}—The court may, after a hearing, modify, re-
\end{itemize}
fendant be provided with a written statement clearly describing the probation conditions.\textsuperscript{152}

Section 3564 governs the commencement of a term of probation, the effect of other sentences upon the running of the term, and the court's power to terminate or extend a term of probation.\textsuperscript{158}

Section 3565 provides that probation may be revoked if the defendant violates a condition of probation, and specifies the period during which such revocation may take place.\textsuperscript{154}

E. Sentencing Commission and Guidelines System

The Sentencing Act creates a United States Sentencing Commission\textsuperscript{158} (Sentencing Commission), which has the duty to promulgate sentencing guidelines and policy statements.\textsuperscript{158} The Sentencing Commission is part of the judicial branch and consists of seven members appointed by the President with the advice and consent of the Senate.\textsuperscript{157}

\begin{itemize}
  \item Reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the conditions of probation.
\end{itemize}

Id.\textsuperscript{152} \textit{Id.} (to be codified at 18 U.S.C. § 3563(d)). Section 3563(d) provides:

\begin{itemize}
  \item Written Statement of Conditions.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for defendant's conduct and for such supervision as is required.
\end{itemize}

Id.\textsuperscript{153} \textit{Id.} at 1994 (to be codified at 18 U.S.C. § 3564).

Id.\textsuperscript{154} \textit{Id.} at 1995 (to be codified at 18 U.S.C. § 3565).

Id.\textsuperscript{155} \textit{Id.} at 2017-18 (to be codified at 28 U.S.C. § 991).

Id.\textsuperscript{156} \textit{Id.} at 2018 (to be codified at 28 U.S.C. § 991(b)). Section 991(b) provides:

\begin{itemize}
  \item The purposes of the United States Sentencing Commission are to—
  \begin{itemize}
    \item establish sentencing policies and practices for the Federal criminal justice system that—(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code; (B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and (C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and
    \item develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.
  \end{itemize}
\end{itemize}

Id.\textsuperscript{157} Senate Report, \textit{supra} note 19, at 63.
The Sentencing Act further creates a sentencing guidelines system that is intended to treat consistently all classes of offenses committed by all categories of offenders consistently.\textsuperscript{158} The sentencing guidelines will recommend to the sentencing judge an appropriate type and range of sentence.\textsuperscript{159} These guidelines will be supplemented by policy statements that will address questions concerning the appropriate use of sanctions.\textsuperscript{160}

The sentencing guidelines system will not remove all of the trial court's discretion.\textsuperscript{161} Instead, it will guide the court in determining the appropriate sentence.\textsuperscript{162} If the court finds an aggravating or mitigating circumstance in the case that was not adequately considered in the formulation of the guidelines, the court may sentence the defendant outside the guidelines.\textsuperscript{163} A sentence outside the guidelines may be appealed by both the defendant\textsuperscript{164} and the state.\textsuperscript{165} The case law that is developed in these appeals may, in turn, be used to refine the guidelines.\textsuperscript{166}

Similarly, the guidelines are not intended to be imposed in a mechanical fashion.\textsuperscript{167} The Sentencing Act recognizes that the sentencing judge has an obligation to consider all the relevant factors in a case and to impose a sentence outside the guidelines if appropriate.\textsuperscript{168} The purpose of the sentencing guidelines is to provide a structure for evaluating the fairness and appropriateness of the sentence for an individual offender, not to eliminate the thoughtful imposition of sentences narrowly tailored to the needs of the defendant and the community.\textsuperscript{169} Indeed, compared to the former law, the use of sentencing guidelines under the Sentencing Act will actually enhance judicial discretion in fashioning appropriate probationary conditions.\textsuperscript{170}

One of the best features of the Sentencing Act is the broad discretion given to the judge.\textsuperscript{171} In fact, broad judicial discretion is es-
sential to the Sentencing Act. The Sentencing Act is based on the realization that all criminal corporations are not alike; some need to be sentenced with fines while others do not. Because each corporate offender is unique, judges need flexibility to tailor a sentence to the particular circumstances of the offense. The discretion provided by the Sentencing Act provides that flexibility. Within the flexibility of judicial discretion, however, guidelines are necessary to achieve a just and equitable application of probation to criminal corporations.

V. GUIDELINES FOR APPLYING PROBATION TO CRIMINAL CORPORATIONS

This comment proposes three guidelines to assist trial courts in fashioning conditions of probation under the Sentencing Act. The proposed guidelines are consistent with the goals of the Sentencing Act as well as with the considerations of the Sentencing Commission. Thus, the guidelines proposed below will assist trial courts in determining the most effective kinds of probationary conditions for each corporate offender, as well as provide guidance in fashioning consistent conditions of probation for criminal corporations.

A. Reasonable Relation

The first proposed guideline is that there must be a reasonable relation between the condition of probation imposed and the goals of the Sentencing Act. This "reasonable relation" guideline was judicially formulated in Porth v. Templar to aid courts in determining the validity of the proposed conditions of probation on appeal. This "reasonable relation" guideline has also been enunciated by the American Bar Association in its Standards Relating to Probation, which provides a more concise definition: "The conditions must achieve a balance between oppression and necessity, between interference and utility."

In determining whether a condition of probation is permissible, the purpose of probation should be balanced against the harshness of the condition imposed. When a condition serves a substantial pur-
pose of the Sentencing Act and is not disproportionate to the offense, the condition is valid. For example, in *United States v. Allied Chemical*\(^{179}\) the defendant corporation was convicted and fined $13.24 million for water pollution which resulted from the escape of its pesticides into Virginia waterways.\(^{180}\) The trial court, however, stated that it would be inclined to reduce the sentence if Allied Chemical took steps to alleviate the damage it had caused.\(^{181}\) The imposed probation sentence incorporated three of the purposes set forth in the Sentencing Act. Retribution was accomplished through the clean-up of the pollution. Rehabilitation and protection of the public were accomplished through the requirement that Allied Chemical employees work towards rectifying the damage caused by their corporation by establishing an environmental protection program. These conditions imposed were clearly "reasonably related" to several purposes of sentencing under the Act,\(^{182}\) and would therefore be valid under this proposed guideline.

B. *Work Within The Corporation*

The second proposed guideline is that a condition of probation should affect the people of the corporation. Corporations are not "bloodless entities"\(^ {183}\) but consist of people who make decisions and take actions which lead to criminal conduct by the corporate entity.\(^ {184}\) When a condition of probation works with the people responsible for the offense, the effect is to internalize the punishment within the structure of the organization. This is opposed to the effect of a fine, which may be externalized by passing the penalty onto shareholders or consumers.\(^ {185}\) Thus, in order for probation to be effective, a condition of probation must involve those people within the corporation who were responsible for the offense.


\(^{180}\) Fisse, *supra* note 71, at 974.

\(^{181}\) Stone, *supra* note 72, at 8.

\(^{182}\) *See* Senate Report, *supra* note 19. *See also* *supra* note 130 and accompanying text.

\(^{183}\) William Anderson, 698 F.2d at 914.

\(^{184}\) *See supra* notes 56-57 and accompanying text. *See also* William Anderson, 698 F.2d at 914.

\(^{185}\) *See generally* Coffee, *supra* note 4, 400-02.
The effectiveness of this proposed guideline is exemplified in *Danilow*\(^{186}\) where six wholesale bakeries were convicted of price fixing.\(^{187}\) In *Danilow*, one of the probationary conditions of the sentence required the corporations to perform community service by providing their products at no charge to needy members of the community.\(^{188}\) In sentencing the defendant corporations, the court noted that rehabilitation and specific deterrence against future price fixing would be enhanced by the participation of the executives and workers in satisfying the conditions of probation. Through their individual community service, the executives and workers would be made aware of the violations committed by their corporations, and of the need to guard against similar violations in the future.\(^{189}\)

C. "Tailored" Conditions

The third proposed guideline for sentencing criminal corporations to probation is that the conditions of probation should be "tailored" to the needs of the defendant and to the needs of the community. This guideline was first enunciated in *United States v. Tonry*.\(^{190}\) The court stated that "probation conditions must be tailored to meet the special problems of a particular defendant.\(^{191}\) In applying this guideline, a trial court should first consider the history and characteristics of the defendant corporation,\(^{192}\) then the nature and circumstances of the offense,\(^{193}\) and finally the defendant's need for educational or vocational training, medical care, or other correctional treatment.\(^{194}\)

The importance of this guideline was expressed in the concerns of the sentencing judge in *United States v. Mitsubishi International Corp.*\(^{195}\) In *Mitsubishi*, the corporate defendants were guilty of numerous violations of the Elkins Act.\(^{196}\) Although a substantial fine could have been imposed, the judge expressed his concern that the large corporation could just "write a check and walk away."\(^{197}\) It

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187. *Id.* at 1162.
188. *Id.* at 1163.
189. *Id.* at 1167.
190. 605 F.2d 144 (5th Cir. 1979).
191. *Id.* at 148.
193. *Id.*
194. *Id.* at 1989 (to be codified at 18 U.S.C. § 3553(a)(2)(D)).
195. 677 F.2d 785 (9th Cir. 1982).
196. *Id.* at 786.
197. *Id.* at 788.
was for this reason that the trial court tailored the sentence to fit the needs of society as well as those of the defendants. Essentially, the probation conditions required each defendant corporation to loan an executive for one year to the National Alliance for Business in development of its Community Alliance Program for Ex-Offenders (CAPE). The defendants were also required to submit for court approval an operating plan as well as annual reports regarding the use of funds and the performances of the defendant corporations in support of the CAPE program. By tailoring these "unique and creative" conditions of probation to the circumstances of the case, the trial court imposed a meaningful sentence that better served the purposes of sentencing.

VI. Conclusion

This comment has analyzed and discussed the application of probation to criminal corporations under the Sentencing Reform Act of 1984. The factors of consideration have been the traditional sanctions for criminal corporations, a brief history of attempts to impose probationary conditions, and the Sentencing Act. The traditional sanctions of fines and dissolution have been ineffective to control corporate criminal behavior. Although the cases in which probation has been applied to corporations have demonstrated the viability of probation as a sanction, they too have remained ineffective due to the limitations of the former law and the lack of definitive guidelines for future courts to follow.

The Sentencing Reform Act of 1984 provides a comprehensive and coherent Federal sentencing law which addresses the limitations of the preceding law. It contains procedural requirements that will prevent abuses of probation as a sanction. The Sentencing Act also establishes a Sentencing Commission responsible for promulgating guidelines to assist a judge in sentencing criminal corporations.

This comment has proposed guidelines to be adopted by the Sentencing Commission and the judiciary. These guidelines adhere to the Sentencing Act's stated purpose of sentencing as well as to the spirit of the application of probation to corporations in past case law. The implementation of these proposed guidelines will enhance the development of probation as a sanction against a criminal corpora-

198. Id.
199. Id. at 787 n.1.
200. Id. at 787.
201. Id. at 788.
tion. Above all, these guidelines will assist courts in fashioning appropriate conditions of probation in sentencing criminal corporations under the Sentencing Act.

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