

Introduction

For years in our criminal justice systems the best and most experienced staff—whether they be defense, prosecution or judiciary—have clustered at the end of the system, at the trial. But both logic and experience tells us that by having the best and brightest involved earlier would reduce jail crowding, reduce the time to trial, leave more time for the prosecution of serious offenses, achieve speedier dispositions, and improve the chances that an offender will tie the consequences to the act: in short, justice would improve. Even more troubling is the unfortunately all-too-frequent occurrence of days or even weeks passing before the decision to charge or not charge the arrestee occurs. Victims and defendants both are left frustrated, and justifiable so.

There are signs that this is changing, as the meeting described in this piece exemplifies. Professionals from across the justice spectrum and the country came together to discuss the critical “front-end” decisions and how they might be improved. The conclusions and recommendations that resulted provide a roadmap for improving justice in the most basic way: achieving fairer, speedier dispositions.

Finally, the joint-sponsorship of the meeting was particularly noteworthy: two federal agencies, the Bureau of Justice Assistance (BJA) and the National Institute of Corrections (NIC) recognized the importance to the topic and were willing to work together to bring about a meeting with an esteemed list of attendees. Two criminal justice professionals were particularly responsible for the success of the meeting, Mr. Tim Murray of BJA and Mr. Al Hall of NIC provided leadership and substantive input on every facet of the meeting.

The Pretrial Services Resource Center was proud to play a part in this effort and the continuing dialogue that has followed. We hope that this is but a first step towards improving the way we deal with the victim and the defendant as each enters our criminal justice system.

*D. Alan Henry
Executor Director
Pretrial Services Resource Center*

Background

Over the past eighteen months, discussions addressing early or "primary" decisions in the processing of criminal cases have been underway at the Bureau of Justice Assistance (BJA) and the National Institute of Corrections (NIC). The discussions have centered on how and when decisions as to the release or detention of arrestees occur.

At NIC the discussions have focused on the impact of such decisions on jail population levels and the appropriate deployment of community alternatives and public safety. At BJA, the discussions evolved from a number of earlier BJA-sponsored focus group meetings that targeted defense services, the issue of fairness and public safety, technical assistance efforts and the development of community courts.

In both agencies' discussions, a number of issues related to primary decisions were identified:

- extensive, credible information exists showing that primary decisions in the criminal justice system impact all subsequent decisions in the justice process;**
- sufficient deployment of resources for these primary decisions has not occurred, given their impact;**
- there are significant information gaps when such decisions are made; and**
- the courts, local corrections and the community are immediately affected by these decisions.**

As a result of these meetings, joint invitations from BJA and NIC were extended to a number of criminal justice professionals familiar with primary decision making including judges, prosecutors, public defenders, police, pretrial program administrators and others to participate in an informal day-long meeting in Washington, D.C. A list of participants appears on page 13.

The purpose of the meeting was to elicit ideas from the practitioners about specific problems that affect primary decision making. The practitioners were also asked to suggest ways federal agencies might help local and state justice systems address the problems identified.

The meeting took place August 17, 1998 in the Office of Justice Programs (OJP) conference room. D. Alan Henry, Executive Director of the Pretrial Services Resource Center, served as facilitator for the day long discussions. In addition to the invitees, a number of federal agency directors and staff attended all or parts of the meeting, including:

**Laurie Robinson, Assistant Attorney General;
Larry Solomon, NIC Deputy Director;
Nancy Gist, BJA Director;
Jeremy Travis, National Institute of Justice Director;
Marilyn Roberts, Drug Court Office Director; and
David Tevelin, State Justice Institute Director**

The morning portion of the meeting involved an open-ended discussion about front-end decision making among the participants. In the afternoon the participants attempted to translate the identified problems into recommendations for federal agencies. While there was insufficient time to develop specific recommendations for various Justice Department offices, five general themes where federal assistance is needed were identified:

- Improving the Quality of Information Available to Decision Makers
- Improving and Expanding Training for Decision Makers
- Defining and Cataloguing Appropriate Options for Decision Makers Based on Fairness to the Defendant and Public Safety for the Community
- Defining and Clarifying Terms Relevant to the Primary Decisions
- Developing Standards and Principals Governing the Decisions

A summary of the discussions that took place among the participants around each of these themes follows.

General Themes

I. Quality of Information

The participants agreed that a problem common to local systems is incomplete or erroneous information available to front-end decision makers, specifically when deciding whether to release or detain arrestees while their cases are pending. Specific examples of the information desired included: more complete criminal records; drug and alcohol use; current status with the courts, including probation for other charges and pretrial status where other charges are pending; and accurate assessments of the arrestee's reliability. There was a consensus that this information is critical to virtually every decision made early in the process, including charging, release/detention, diversion, granting continuances and accepting pleas. The participants also noted the impact of inaccurate labeling that sometimes occurs during early decision making negotiations; specifically, terms such as "gang member" or "gang member affiliation" were described as labels that sometimes too quickly are assigned to a defendant and remain, often appended to the defendant's permanent record. Finally, the participants agreed that the lack of feedback information to judicial officers as to past decisions was a severe shortcoming that virtually insured inappropriate--dangerous and expensive--decisions would continue.

While the participants noted that pretrial programs are an important ingredient in improving primary decision making, there was recognition that such program operate within a wide range of definitional parameters. Some collect and provide a great deal of information about arrestees to decision makers, while others do less. In addition, it was clear that no one knew how many jurisdictions even had such programs to provide information. While federal assistance supported development of national surveys of pretrial programs in 1979, 1989 and again in 1999 it was the consensus of the group further support from the federal level is needed to move forward. Program standards, research and innovations in this important field have atrophied.

It was agreed that a new focus by the federal government on such programs that highlighted models, new standards, needed research and innovations could result in significant improvements in primary decision making.

II. Training for Primary Decision makers

A 1990 survey of state judicial educators found that only eight states provided any type of pretrial decision making training; participants in the focus group provided numerous examples indicating that the survey findings are still valid. One judicial participant spoke at length of her experience when assuming the bench and being assigned to bail setting court with no real training. But the need for bench training is not limited to the release detention decision. Participants also discussed how judicial officers often knew little about the impact of their decisions on court calendars, jail management and county expenditures. A representative from a Public Defender's Office noted that her training prepared her for the adversary process of defending a case but training for systemic problem solving didn't exist. There was a consensus among the participants that training as to these early decisions and their impact was a particularly important theme for federal officials to consider.

While the primary discussions in this theme related to the release/detention decision, one prosecutor noted the benefits that his system had gained when he began assigning senior, experienced, well-trained prosecutors at intake in his jurisdiction. The benefits were immediate and measurable: a higher rate of reduction in charges and outright dismissals, more pleas earlier on, and reducing the number of cases continuing on the calendar. These in turn reduced the number of pretrial detention beds needed in the county jail.

Finally, the participants strongly urged the Department of Justice to fund similar sessions to the one they were attending. The participants pointed out that if the discussion they were having could take place locally or regionally, they would lead to improvements at the local level, as many local officials simply are not aware of the impact of their agency's decisions in the early stages of case processing on other system actors. "I wish my judges (prosecutor, sheriff, CFO'S, county executive, etc.) were here" was a comment repeated by many of the participants, underscoring the training benefits of focused, facilitated discussions around the topic. The participants felt that such discussions could be an important first step to bringing about change in primary decisions, by demonstrating the critical importance of these decisions on the entire system. The local jurisdictions felt the federal role might also include bringing together political and non-criminal justice leaders to hear about programs that increase public safety.

III. Appropriate Options

The participants felt that for the most part bail decision makers see themselves as limited to releasing a person on recognizance or setting money bail. In the latter instance, the court is not sure if the defendant actually is released or remains in detention until case disposition. There was a consensus among the participants that federal assistance could assist decision-makers in identifying credible options that should be part of an effective system's pretrial menu. Specifically, participants noted the dearth of information about pretrial supervision options; their effectiveness, limitations and cost. Examples discussed included pretrial electronic monitoring in its various designs, clinical assessments, drug testing and treatment, and medication delivery for individuals with mental illness.

Participants agreed that in many instances pretrial supervision options are perceived as lacking credibility. Do they work? Do they actually reduce jail population levels? Can they transfer from one jurisdiction to another? Do re-arrests decrease with the use of certain options more than others? Are there specific options that are more effective with specific types of cases, such as domestic violence incidents or drug testing & treatment? With appropriate federal assistance in the form of demonstration efforts, research projects and a means for quickly disseminating the findings, such questions could be answered.

IV. Standardization of Terms

From the start of the discussions participants grappled with the differing definitions that existed in the group for similar terms. In some instances the problem was the lack of an agreed upon glossary--"failure to appear;" "bench warrant," "pretrial supervision," and "pretrial services," were some of the terms that had very different meanings within the group. There was a consensus that this was probably representative of jurisdictions across the country and that a basic glossary of definitions of terms affecting primary decisions could be an important federal contribution.

V. Standards and Principles for Primary Decisions

This theme applied both nationally and locally. At the local level, participants agreed that more should be done to insure that some standardization based on equitable treatment for all arrestees and victims occurred. In many jurisdictions the decisions made early in the process differ significantly, not based on different defendant characteristics or arrest information, but on the particular judicial decision-maker involved. The participants felt that in most instances this was simply a result of the lack of feedback to judicial officers as to the results of their decisions.

At the regional and national level, participants discussed whether federal agencies should investigate and/or design measurable standards governing outcomes, similar to the ABA's time standards for case processing. For example, could benchmarks be developed that describe the percentage of cases that might be expected to be released pending trial? No consensus was reached, but the group felt that further discussions could be fruitful.

The group spent time discussing how the intent of primary, decisions appears to have changed in recent years, from the traditional release/detention/probable cause purposes to a broader, aggressively rehabilitative stance, where early on the courts were trying to quickly assign defendants to mechanisms that would rehabilitate. As BJA Director Gist noted in her letter of invitation to the participants,

"Today, with the role of traditional system actors rapidly evolving, early decisions are even more critical and present new challenges. In particular, the emergence of specialty courts, including drug courts, community courts, and domestic violence courts have significantly affected the decision making process. "

Some discussants felt that the presence of such specialty, courts and the emphasis on their functions locally was inadvertently changing the purpose of primary decisions.

This is not necessarily an undesirable outcome; what was disconcerting to some was that there

appeared to have been little discussion as to whether this should occur, whether the presumption of innocence was in some way diminished when the courts were seeking to “cure” a person before adjudication. The group felt that an examination of this dichotomy by the Department could be fruitful in clarifying the two goals and their relationship to each other.

Attendees

**Susan Brannen, Executive Director
Pretrial Services Corporation of the Monroe County Bar Association
Rochester, NY**

**Honorable Bruce Beaudin (ret.)
D.C. Superior Court
Washington, DC**

**John DuPree, Assistant Court Administrator
Seventh Judicial Circuit Court
Daytona Beach, FL**

**James Fox, District Attorney
San Mateo County
Redwood City, CA**

**Dr. John S. Goldkamp, President
Criminal and Justice Research Institute
Philadelphia, PA**

**Thomas A. Henderson, Executive Director, ICM
National Center for State Courts
Arlington, VA**

**John Hendricks, General Manager
Kentucky Pretrial Services
Frankfort, KY**

**Michael Th. Johnson, District Attorney
Merrimack County
Concord, NH**

**Michael Judge, Public Defender
Los Angeles
Los Angeles, CA**

**Linda Kinikin
Prince George's County Pretrial Services
Upper Marlboro, MD**

**E. Michael McCann, District Attorney
Milwaukee County**

Milwaukee, WI

**Jerome E. McElroy, Executive Director
Criminal Justice Agency
New York, NY**

**Mike Mahoney, President
John Howard Association
Chicago, IL**

**Honorable Tomar Mason, Presiding Judge
Municipal Court
San Francisco, CA**

**Perry Mitchell, Administrator
Maricopa County Pretrial Services
Phoenix, AZ**

**Wendy Nichaus, Director
Department of Pretrial Services
Cincinnati, OH**

**Robert Phillips, Assistant Director for Grants
Office of Community Oriented Policing Services
Washington, DC**

**Kelly Rae Lee, Supervisor
Pretrial Services Shawnee County
Topeka, KS**

**Cynthia E. Tompkins, Senior Attorney
American Prosecutors Research Institute
Alexandria, VA**

**David Walchak, Senior Advisor
Office of Community Oriented Policing Services
Washington, DC**

**Marilyn Walczak, Pretrial Program Administrator
Wisconsin Correctional Services
Milwaukee, WI**

**Jo-Anne Wallace, Director of Public Defender Service
National Legal Aid and Defender Association
Washington, D.C.**