

THE PRETRIAL REPORTER

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National Notes

ABA PUBLISHES COMMENTARY TO ITS PRETRIAL RELEASE STANDARDS

In 2002, the American Bar Association (ABA) released the Third Edition of its Black Letter Standards for Pretrial Release. The ABA recently released a document containing the commentary to those standards. As in past editions, the commentary seeks to explain each of the standards.

According to the Introduction to the document, while significant progress has been made in pretrial release decision making over the past several decades, “further improvements are unquestionably needed, because in most states and localities significant problems persist. The problems include continued reliance on financial bail and the accompanying characteristics of unbridled judicial discretion, imprecise and covert goals for judicial decision-making processes, inadequate information for judicial decision makers, and de facto reliance on bondsmen to decide who will get released in many instances.” The Introduction goes on to say that with the “difficult challenges of jail crowding and large numbers of released defendants in the community, whether in a large urban county or a sparsely populated rural area, effective pretrial services cannot be considered a luxury.”

Standard 10-1.10(a) calls upon all jurisdictions to establish a pretrial services program. The commentary to that standard states that pretrial programs play a “central role... in the judicial process,” and have a “growing practical importance.” Part (b) of that standard describes the role of a pretrial services program, including information gathering, risk assessment, and supervision. It also states that pretrial programs should “review the status of detained defendants on an ongoing basis for any changes in eligibility for release options and facilitate their release as soon as feasible and appropriate.” The commentary to that standard states that pretrial programs “should play a proactive role in monitoring detainees’ circumstances and should bring changed circumstances to the attention of the court if it appears that they could affect the individual’s custody status.”

EXECUTIVE DIRECTOR'S LETTER

Dear Friends,

The first edition of this newsletter was published in June 1977, just months after the Pretrial Services Resource Center opened its doors. This is the 174th edition. It marks two important milestones in the life of this organization. It is the first to be published under our new name, the **Pretrial Justice Institute**, and it is the first to be published electronically. I hope you find this new, flexible format useful and convenient. I encourage you to send me your comments (and criticisms) of this layout at tim@pretrial.org. I also welcome any ideas or suggestions you might have for new features or topics you feel need to be addressed. A significant advantage of our new format is our ability to make changes to our layout that simply were not possible with hard copy publishing. I hope you will join me in making the **PTR** a collaborative and responsive publication that meets your needs.

As excited as I am about the information sharing potential of on-line publishing, I cannot help but be concerned about our unmet needs in that regard. As supporters of bail reform we simply don't do a very

EXECUTIVE DIRECTOR'S LETTER (CONTINUED)

good job of sharing information with each other, let alone with those we work with in our local systems. The countless lessons learned through more recent reforms such as drug courts, reentry and evidence based practice rarely seem to make their way to our daily practice. To that end, we at the PJI are now seeking funding to establish an electronic knowledge management system – a fancy way of describing an on-line library and help desk which will contain the tools of our trade such as policies, forms, assessment scales, case law and the like. It would also provide on-line technical assistance via email requests and responses. While this electronic help desk would undoubtedly be of enormous benefit, we cannot simply sit back and wait to see if it comes to fruition. We have to return to our culture of years past when almost every program, release or diversion, had up to date numbers and outcomes ready to be shared and debated at NAPSA and state conferences. Only by exposing our work to the scrutiny of others can we ever hope to improve our outcomes. I hope we at the PJI can be of some assistance in this regard, but the work is ultimately in your hands.



Tim Murray, PJI Executive Director

Addressing the standard calling for the abolition of commercial surety bail (10-1.4(f)), the commentary notes that there are “at least four strong reasons” for doing so. “First, under the conventional money bail system, the defendant’s ability to post money bail through a compensated surety is completely unrelated to possible risks to public safety. A commercial bail bondsman is under no obligation to try to prevent criminal behavior by the defendant. Second, in a system relying on compensated sureties, decisions regarding which defendants will actually be released move from the court to the bondsman. It is the bondsman who decides which defendants will be acceptable risks – based to a large extent on the defendant’s ability to pay the required fee and post the necessary collateral. Third, decisions of bondsmen – including what fee to set, what collateral to require, what other conditions the defendant (or the person posting the fee and collateral) is expected to meet, and whether to even post the bond – are made in secret, without any record for the reasons for these decisions. Fourth, the compensated surety system discriminates against poor and middle-class defendants, who often cannot afford the non-refundable fees required as a condition of posting bond or do not have assets to pledge as collateral.”

Dr. John Goldkamp served as reporter for the standards and Dr. Barry Mahoney, PJI Board Chair, served as editor.

A copy of the document can be purchased from the ABA for \$35.95 through its web site at www.abanet.org.

JAIL POPULATION GROWTH SLOWED LAST YEAR

In the year ending June 30, 2006, the number of persons held in local jails totaled 766,010 – an increase of 2.5 percent from the previous year. This was almost half the increase from mid-year 2005 and the lowest since the 1.6 percent rise in mid-year 2001. The percent of the jail population that is unconvicted rose slightly from 62.0 percent at mid-year 2005 to 62.1 percent at mid-year 2006.

According to the Bureau of Justice Statistics’ Prison and Jail Inmates at Midyear 2006 report, as in recent previous years, the number of adult females grew at a much higher rate than for adult males – a 4.9 percent growth rate for females compared to 2.2 percent for males. Since mid-year 2000, the number of adult females in jail has grown by 40 percent, compared to 22 percent for adult males. Notwithstanding this steady growth in the female jail population, males are still much more likely to be held in jail. Adult males have a jail incarceration rate of 457 per 100,000 U.S. residents, compared to 66 for adult females.

INSTITUTE ACTIVITIES

June and July have been exciting months here as we have worked to complete the transition from the Pretrial Services Resource Center to the Pretrial Justice Institute. The new format for this newsletter, plus the overhauled web site, are just two of the products that have kept staff, particularly Chief Operating Officer Cherise Burdeen, busy. We also submitted a number of proposals under our new name to the Bureau of Justice Assistance on pretrial-related issues, and have several prospects for major projects in the offing.

PJI Executive Director Tim Murray is a member of the American Bar Association's committee that is drafting standards for specialty courts and pretrial diversion. The committee met this summer, and has started the long process of drafting the standards, which should be completed within the next three years. He also conducted a workshop on the role of pretrial services in re-entry efforts at the Annual Training Institute of the American Probation and Parole Association.

In addition, he visited Santa Clara County, California to conduct an assessment of the pretrial services program. This was part of a larger effort involving several organizations to evaluate the efficiencies of criminal justice functions and programs operating in that county.

Director of Technical Assistance John Clark conducted a training session on interviewing techniques for the staff of the Allegheny County Pretrial Services, as PJI continues its technical assistance to that jurisdiction. He also spent a week with the Dallas County pretrial services as part of a technical assistance project with that county.

The percent of the jail population comprised of African Americans dropped slightly from 41.3 percent in 2000 to 38.6 percent in 2006. The percent of Whites grew over the same period from 41.9 percent to 43.9 percent. African Americans have, by far, the highest per capita incarceration rate – 815 per 100,000 compared to 283 for Hispanics and 170 for Whites.

The total rated capacity of local jails rose 2.8 percent in 2006. On June 30, 2006, local jails operated at an average of 94 percent of rated capacity. As in previous years, the largest jails were significantly more crowded than the smallest ones. Jails with 1,000 or more inmates operated at 100 percent capacity, compared to about 65 percent for jails with fewer than 50 inmates. At mid-year 2006, 5.6 percent of jails had average daily populations of 1,000 or more inmates, and these jails held 50 percent of the nation's total jail population. By contrast, 39.5 percent of jails had average daily populations of less than 50 inmates and held 3.1 percent of the total national jail population.

A copy of the report can be downloaded at www.ncjrs.gov.

NEW ORLEANS NEEDS PRETRIAL SERVICES AS IT RE-BUILDS ITS JUSTICE SYSTEM, SAYS VERA INSTITUTE

Eighteen months after Hurricane Katrina destroyed the infrastructure of New Orleans, the city's justice system is still struggling to recover, according to a new report from the Vera Institute of Justice. The New Orleans City Council had asked the Vera Institute to assess the justice system in the aftermath of the hurricane. The institute focused on four areas that could lead to improvements in public safety. They included: providing a wider range of pretrial release options; conducting early triage of criminal cases; providing more sentencing alternatives; and developing more appropriate and cost-effective sanctions for municipal offenses.

As to the need for a wider range of pretrial release options, the report noted that the bail-setting judicial officer has little or no information about defendants when setting bail. Furthermore, the only decision to be made is the amount of the bail, not whether or not the defendant can be released with non-financial conditions. "The typical result of a system where virtually everyone is bonded is that whether people are held in jail depends on whether they or their family have the money to post bond," noted the report. "Some poor people who would appear for court and not threaten public safety remain in jail even on low bonds, while others who may pose a threat to the public but who have the means to post a high bond can go free." The report recommends that New Orleans establish a

INSTITUTE ACTIVITIES (CONTINUED)

On the research front, PJI has been awarded a grant from the National Institute of Justice to measure pretrial release decisions pertaining to Latino and other immigrant groups in state courts. Dr. David Levin is the Project Director. Staff are busy processing data for the 2006 series of the State Court Processing Statistics (SCPS) project, which we have administered for the Bureau of Justice Statistics since 1988. This series represents a marked departure from previous ones in that most of the counties are submitting the data electronically using an on-line data collection tool. Becky Mensch, Jess Young, and Tracy Loynachan staff this project, with a big assist from Dr. Levin.

PJI's newest staff person, India Ochs, is administering the electronic JDAI Help Desk for the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). If you have any questions about juvenile detention, please visit the JDAI Help Desk at www.jdaihelpdesk.org. If you do not find your answer there, contact India through the "Ask a Question" link provided.

*Information is
the currency
of democracy.*

~Thomas Jefferson

pretrial services program that would gather and verify information about defendants, objectively assess their risks of pretrial misconduct; and provide a range of release options from personal recognizance to restrictive non-financial conditions.

Addressing the need for early triage of cases, the report notes that under Louisiana law, the prosecutor's office has 60 days in felony cases and 45 days in misdemeanor cases to determine what charges, if any, to bring. If the prosecutor fails to file charges on time and the defendant is still in custody, he or she must be released. The report noted that since the hurricane, prosecutors are routinely surpassing the time limits, leading to the release of "a significant number of people charged with serious crimes." The report cites lack of effective communication between police and the prosecutor's office for the delays. It recommends that New Orleans establish a practice where the police and prosecutor meet to discuss a case within 24 hours of arrest.

Regarding the need to for more sentencing alternatives, the report notes that New Orleans "does not make a significant use of sanctions" other than incarceration and probation. The report recommends a number of additional efforts, including community service, expansion of the drug and mental health courts, and restorative justice.

Finally, as to municipal offenses, the report notes that after the hurricane caused such destruction to the justice system, New Orleans Chief Judge Calvin Johnson issued an order that persons facing municipal charges be released on citation. According to the report, this apparently is not happening – the overwhelming majority of municipal offenders are arrested and taken into custody rather than cited. Additionally, the report states that even though the maximum penalty for most municipal offenses is a fine, many municipal offenders are locked up for failure to pay the fine. The report recommends that police make custodial arrests in municipal cases only when there is a significant risk to public safety, and that New Orleans adopt a system of Day Fines, whereby poorer offenders would receive a fine that they could afford to pay.

A copy of the report, "Proposals for New Orleans' Criminal Justice System: Best Practices to Advance Public Safety and Justice," can be downloaded at the Vera Institute's web site at www.vera.org.

IOWA SUPREME COURT AMENDS BOND SCHEDULE TO EASE JAIL CROWDING

A person arrested in Iowa for an offense that is not a forcible felony and at a time when the courts are not in session can be bailed out

*Maine
Governor
John Baldacci
signed into
law legislation
that adds
community
safety as a
consideration
in pretrial
release
decision
making.*

by referencing a bond schedule that is set by the Iowa Supreme Court. Citing crowding in jails throughout the state, that court recently lowered the bail amounts required by the bond schedule.

Beginning August 15, 2007, defendants charged with a Class B Felony will be able to post \$25,000 instead of \$32,500. The bond amount for a Class C Felony drops from \$13,000 to \$10,000, for a Class D Felony from \$9,750 to \$5,000, for an Aggravated Misdemeanor from \$6,500 to \$2,000, for a Serious Misdemeanor from \$1,950 to \$1,000, and for a Simple Misdemeanor from \$325 to \$300.

“For some of the less serious charges, it would be nice to see those individuals get out and not have to stay for an initial appearance before a judge the next morning,” said Black Hawk County Jail Captain Mark Johnson. But Captain Johnson was not optimistic that the change would lead to significant reductions in crowding. “Normally, those that have the financial resources to post the bond will post it no matter what it is. Those individuals that get arrested that are of low income or indigent, they are not going to be able to post it anyhow.”

The Black Hawk County Jail has a capacity of 272 inmates. That capacity is routinely exceeded, forcing jail officials to send inmates to neighboring Bremer County. (*Waterloo/Cedar Falls Courier*, 8/5/07.)

MAINE GOVERNOR SIGNS LAW AFFECTING PRETRIAL

On June 21, 2007, Maine Governor John Baldacci signed into law legislation that adds community safety as a consideration in pretrial release decision making. The legislation also establishes a new funding process from the state to the counties for community corrections programs. The legislation follows the recommendations of the Corrections Alternatives Advisory Committee, created by the Maine legislature in 2005 to examine ways to improve the efficiency and effectiveness of state and local corrections systems.

Prior to the passage of this law, judicial officers making pretrial release decisions were to take into consideration only those factors that “will reasonably ensure the appearance of the defendant as required and will otherwise reasonably ensure the integrity of the judicial process.” Under the new language, safety of the community is inserted as the first consideration. (Title 15, MRSA, § 1026.2.)

The law requires each county to establish a Criminal Justice Planning Committee, comprised of county commissioners, judges, prosecutors, defense attorneys, sheriffs, jail administrators, victim

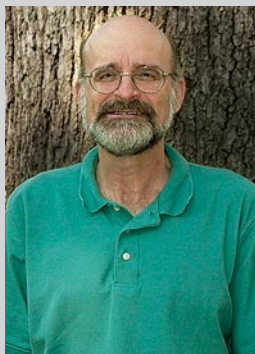
ANNOUNCEMENTS

Diversion documents available

Two new PJI publications, both focusing on pretrial diversion, can be found at the PJI web site, www.pretrial.org. The first, *Pretrial Diversion and the Law: A Sampling of Four Decades of Appellate Court Rulings*, reviews approximately 80 state and federal appellate court decisions on a range of pretrial diversion issues from 21 different states plus the federal system. The second, *The Role of Traditional Pretrial Diversion in the Age of Specialty Treatment Courts: Expanding the Range of Problem Solving Options at the Pretrial Stage*, describes the similarities of and differences between diversion and specialty courts, and the role that each can play in providing a range of pretrial diversion options.

Web site on electronic monitoring now available

With a grant from the National Institute of Justice, the National Law Enforcement and Corrections Technology Center has developed a web site dedicated to sharing information and exchanging ideas regarding the use of electronic monitoring of criminal justice populations. The site contains numerous materials on many facets of electronic monitoring, including legal issues, legislation, research, technology, and program administration. Use of the site is limited to criminal justice professionals. To register for access to the site, go to <https://emresourcecenter.nleetc.du.edu>.



John Clark, PJI Technical Assistance Director

advocates, and members of the public, to coordinate efforts for implementing evidence-based community corrections practices, including pretrial services. The committees will be responsible for assessing county correctional needs, determining what community corrections programs best meet those needs, and planning, funding, and evaluating programs to meet those needs. (Title 30-A, MRSA, § 1671.) The law also requires each committee to make a full financial accounting of all programs funded to a newly-established State Sentencing and Corrections Practices Coordinating Council. This Council, comprised of representatives appointed by the governor and chief justice, will be responsible for establishing strategic goals and outcomes to guide decisions regarding expenditures on community corrections programs for both convicted offenders and pretrial defendants. (Title 34-A, MRSA, § 1209-A.)

FUGITIVES GO TO CHURCH TO RESOLVE WARRANTS

In a program established by the U.S. Marshals Service, persons wanted for failure to appear in court or on arrest warrants in five cities around the country can turn themselves in at a church rather than the courthouse. The program, called Fugitive Safe Surrender, was established in 2005 after a Cleveland police officer was killed while trying to arrest a man with an outstanding warrant.

The purpose of the program is to allow for the safe surrender of fugitives in a neutral setting. “That’s the bottom line,” said Peter J. Elliott, the United States Marshal for northern Ohio. “We don’t have to go kicking in doors to find these people that are wanted. They come to us.”

The program, which relies heavily on church volunteers, transplants the court apparatus to the safe setting of a church. Fugitives arrive at the church, pass through a metal detector, and are given an armband by church volunteers, who also collect information about each fugitive. The fugitives then meet with a public defender, who will discuss plea possibilities with a prosecutor, who is also present. Next they go before a judge, who is typically set up in a Sunday School classroom. The judge generally dismisses the warrant and sets a new date.

“I was going to turn myself in at the courthouse, but then I heard about this,” said Jerice Bryant, who was wanted for missing a court date on a driving charge. “I felt more comfortable turning myself in at a church.” In the past two years, 4,500 fugitives have surrendered through the program in the five cities – Phoenix, Arizona; Indianapolis, Indiana; Cleveland, Ohio; Akron, Ohio; and Nashville, Tennessee. (*The New York Times*, 8/6/07.)

Cases

MAINE V. FELCH, MAINE SUPREME JUDICIAL COURT, 2007 ME 88, 7/12/07

When Frederick Felch was arrested and charged with violation of a protection order and possession of drugs, a bail commissioner set bail at \$250 with the conditions that Felch “not possess or use any alcoholic beverages or illegal drugs,” and “submit to chemical tests and searches... at any time and without probable cause...” Felch signed the bond and was released. Several months later, while this charge was still pending, the subject of the protection order sought to remove some possessions from Felch’s home. Police officers escorted her to his home for that purpose. While in the home, police smelled alcohol on Felch’s breath and then conducted a search of the home pursuant to the bail conditions. During that search, police found alcoholic beverages. Felch was then arrested for violating his bail condition.

Felch was released on bail on this new charge, with the same conditions as before – i.e., that he not possess or use alcohol or any illegal drugs and that he submit to a search of his person, vehicle or home at any time. He again signed this bond and was released. A few weeks later police went to Felch’s home to investigate complaints that he was making harassing telephone calls. Once again, police found alcoholic beverages in the home and arrested Felch a second time for violating bail conditions. Felch then filed a motion with the court to have the bail violation charges dismissed because the conditions were issued in an unconstitutional manner. Specifically, Felch maintained that the bail commissioner did not interview him before setting these conditions. The Maine statute states that: “In setting bail, the judicial officer shall, on the basis of an interview with the defendant,...” set the most appropriate conditions. (15 M.R.S. § 1026(4).) The court rejected this motion and Felch appealed.

The Maine Supreme Judicial Court upheld the trial court’s denial of the motion. In doing so, the court noted that Felch failed to seek the remedies that were available to him if he felt that the bail conditions were unreasonable or unreasonably set. “He did not attempt to revoke his agreement to the conditions, he did not seek reconsideration of the conditions, he did not file a motion for review of the bail conditions, and he did not undertake any manner of appeal. On the contrary, while represented by counsel, he signed the bail bonds and proceeded upon his way until his subsequent behavior violated the terms of the bond. Only then did he belatedly

The trial court was correct in denying a defendant’s motion to remove his conditions of pretrial release on the grounds that they were improperly set, because he waited until after he had already violated them before challenging those conditions, rules the Maine Supreme Judicial Court.

*Being able to post
a high money
bail is not of
itself proof that a
defendant is poor
for the purposes
of determining
eligibility for
indigent defense,
holds the Alaska
Court of Appeals.*

complain of the conditions in the form of a motion to dismiss.” The court concluded that this was “too late.”

**BENSON V. ALASKA, COURT OF
APPEALS OF ALASKA, NO. A-8765, 7/15/07**

The issue presented in this case is whether the trial court was correct in deciding that the defendant was not indigent for the purposes of hiring his own attorney because he was able to post a high bond. Jamon Benson was in court on several charges relating to an alleged domestic assault of his girlfriend and her two children. Bail was set at \$50,000, which Benson posted. Moreover, around the same time, Benson pleaded guilty to another, unrelated, charge and had his \$11,500 cash bail from that case refunded to him. When Benson asked for indigent counsel in the domestic assault case the trial court denied the request, reasoning that if Benson could post a \$50,000 bail and had just received an \$11,500 refund from his bail in the other case he was not indigent. Continuing to claim that he was unable to hire his own attorney, Benson represented himself at trial and was convicted by a jury. Benson appealed on the grounds that he was denied indigent counsel.

The Alaska Court of Appeals noted that court rules make it clear that when a defendant claims indigency, the court is to determine the accuracy of that claim by “placing the defendant under oath and asking about the defendant’s financial status, or by requiring the defendant to complete a signed sworn financial statement.” (Alaska Criminal Rule 39.1(e).) The trial court failed to do this, noted the court. Additionally, according to the court, “while the \$50,000 in bail money that Benson posted in this case might well have indicated that Benson had significant assets at his disposal, the American Bar Association Standards for Criminal Justice make clear that a defendant’s ability to post bail should not be determinative of his or her eligibility for court-appointed counsel.” The court remanded the case to the trial court with the instructions to properly ascertain Benson’s ability to have hired an attorney while his case was pending, and to vacate the conviction if the trial court determined that Benson was indeed indigent.

**LEU V. TELB, COURT OF APPEALS OF OHIO, SIXTH
APPELLATE DISTRICT, NO. L-07-1217, 6/29/07**

Shane Leu was released on personal recognizance after being charged with assault. On three separate occasions, Leu appeared in court on the charge but the victim did not. After the third non-appearance of the victim, Leu’s attorney asked that the case be

*Ohio appeals
court holds
that trial court
was incorrect
in revoking
personal
recognizance
release absent
any proof
of changed
circumstances.*

dismissed. The court denied this request and set a new date. Upon hearing this, Leu began staring at the judge. Stating that the defendant was “attempting to stare me down,” the judge revoked Leu’s personal recognizance release and set bail at \$20,000. Leu then filed a writ of habeas corpus with the Court of Appeals.

That court cited Ohio case law, which holds that “where the trial court setting the original bail has considered all the required factors in determining the amount of bail, and there is no showing of any changed circumstances of the accused or his surroundings, the bond as set must continue as a matter of right.” (*State v. Marte*, 8th Dist. No. 69587.) The court held a hearing *de novo* on Leu’s writ, and, based on that hearing concluded that, “we find no evidence of any changed circumstances that would warrant the alteration of petitioner’s bond.” The court found that the trial court abused its discretion in revoking Leu’s personal recognizance bond, and ordered that bond reinstated.

**U.S. V. SABHNANI, U.S. COURT OF APPEALS
FOR THE 2ND CIRCUIT, NO. 07-2567-CR(L), 7/6/07**

A husband and wife, Mahender and Varsha Sabhnani, were arrested and charged in U.S. District Court with two counts of forced labor. The two were alleged to have held two Indonesian women for five years in their home as unpaid servants, physically abusing them, and denying them freedom of movement. The bail hearing for the two stretched over a period of several weeks as prosecutors, defense and the court worked to understand the extent of the Sabhnani’s considerable wealth – and thus their means of fleeing – and to attempt to fashion release conditions that would minimize risk of flight. Complicating matters was the fact that the two, while both naturalized U.S. citizens, had substantial family and business ties in countries that do not have extradition treaties with the United States.

During the extended bail hearing and in negotiations in between sessions of the hearing, the Sabhnani’s attorneys agreed to a number of restrictive conditions that would be used in combination to assure their appearance in court. These included a money bail of \$2.5 million for Varsha and \$1 million for Mahender, restraining orders on all property and personal accounts controlled by the defendants, and all their business accounts except as needed to meet daily operating expenses, home detention with electronic monitoring, electronic monitoring of all their telephone calls and computer transactions, including e-mail, around the clock supervision by private security officials who were to be selected by the U.S. Attorney’s Office and paid by the Sabhnani’s, and

*U.S. appeals
court overturns
trial court's
decision
that no
combination
of conditions
could
reasonably
assure the
appearance of
the defendants.*

unrestricted access to their home by Pretrial Services. Ultimately, the district court ordered the detention of the defendants, concluding that there were no conditions or combination of conditions that would reasonably assure their appearance. What troubled both the court and the government was the fact that the Sabhnani's had failed to disclose all their financial assets in their interviews with Pretrial Services. The Sabhnani's appealed.

At oral argument before the U.S. Court of Appeals for the Second Circuit, the government claimed that several of the conditions that were being discussed were ambiguous. For instance, the government said, it was not clear that the private security guards would accompany the Sabhnani's on approved travel outside the home, including to religious services. The defense then agreed that they would. Based on what the court felt was the defense's willingness to allow the government to define the conditions to its satisfaction, the court asked the government to amend its latest bail proposal to incorporate any conditions it felt necessary to mitigate the flight risk. The government did so, and the defense agreed to accept those conditions, which involved a substantial increase in bail and other conditions making it more difficult for the Sabhnani's to access their wealth.

Noting that "in this case, the statutory presumption (18 U.S.C. § 3142(e)) is in favor of release unless the government demonstrates that no conditions of release can be imposed to assure the defendants' appearance in court," the court vacated the district court's detention order and remanded the case for the setting of bail conditions consistent with the government's amended bail proposal.

Research

STUDY FINDS DIFFERENT OUTCOMES FOR ASSIGNED COUNSEL VERSUS PUBLIC DEFENDERS

In 1964, Congress passed the Criminal Justice Act, which established a system of indigent defense in the federal courts. Since its establishment, that system has relied upon two mechanisms for delivering indigent defense – through public defenders, who are salaried government workers, and through court-appointed private counsel, who are paid by the hour. Both mechanisms are used in all 96 federal districts, with assignments made based upon a pre-determined ratio. In most of the districts, these assignments are done on a random basis. Taking advantage of that randomization, Harvard University economist Radha Iyengar recently conducted

Indigent defendants assigned court-appointed counsel were more likely to be found guilty and more likely to receive harsher sentences than indigent defendants assigned public defenders.

a study that compared case outcomes and sentence lengths for defendants who had public defenders to defendants who had court-appointed counsel.

Sample selection for the study began with all criminal cases coming into all 96 districts between 1997 and 2002. After eliminating districts where assignments are not done on a randomized basis, the final sample consisted of about 45,000 cases from 45 districts. Two main outcomes were considered: the percentage of cases ending in a guilty verdict; and the average sentence length.

The study found that defendants with court-appointed counsel were slightly more likely to be found guilty. They were also less likely to plead guilty, choosing instead to bring their cases to trial. Looking at sentence length, those represented by court-appointed counsel were sentenced to eight months of additional jail time when compared to those represented by public defenders. Looking specifically at sentence length by charge type, those with violent offenses who were represented by court-appointed counsel received about five months additional time while those with weapon offenses received about 18 months more time. The study's author speculated that the additional incarceration time for those represented by court-appointed counsel may be due to either poor decisions by court-appointed counsel about which cases to bring to trial and which to plead, or poor plea negotiation skills.

The author also noted that the fee structure for court-appointed counsel may also be contributing to the fact that they plead out less cases. Since court-appointed counsel are paid by the hour, they have a financial incentive, according to the author, to take longer to dispose of cases. The author noted that cases represented by court-appointed counsel take 20 days longer to reach disposition than cases represented by public defenders.

A copy of the study, "An Analysis of the Performance of Federal Indigent Defense Counsel," can be purchased for download for \$5 from the National Bureau of Economic Research by going to <http://papers.nber.org/papers/w13187>.

LONG-TERM IMPACT OF MULTNOMAH COUNTY'S DRUG COURT EXAMINED

In 1991, Multnomah County, Oregon became the second jurisdiction in the country to establish a drug court. A recent study examined the impact of that court over its first ten years of operation. The study included all 11,102 defendants who were identified as eligible for drug court by the Multnomah County District Attorneys

*The study
found that
drug court
participation
reduced the
incidence
of rearrest
by nearly 30
percent.*

Office between 1991 and 2001. Of all eligible defendants, 6,502 participated in the drug court and comprised the study group. The comparison group consisted of the 4,600 defendants who, though eligible for drug court, went through the traditional court process.

The study was designed to test the impact of the drug court on recidivism, defined as rearrests – regardless of whether the rearrest resulted in a conviction – after entry into the drug court. Rearrest data was collected in early 2006, allowing a minimum of a five year follow-up.

The study found that drug court participation reduced the incidence of rearrest by nearly 30 percent. In the five years after drug court entry, drug court participants averaged 4.2 rearrests, and the comparison group averaged 5.9 rearrests. The study also found a wide range of rearrest reductions among the various judges that presided in drug court during the study period, going from a four percent reduction for one judge to a 42 percent reduction for another. Generally, the study found, judges who presided in the court during the latter part of the study period had more success in reducing rearrests than the early drug court judges. “These data suggest that over time the drug court learned from experience and improved its success rate,” noted the study. Looking at cost savings resulting from the reductions in rearrests, the study estimated that for every dollar spent on the drug court, the criminal justice system receives a return of \$2.63. Over the ten-year study period, the study estimates that taxpayers saved approximately \$88 million.

A copy of the study, “Impact of a Mature Drug Court Over 10 Years of Operation: Recidivism and Costs,” can be downloaded at www.ncjrs.gov.

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