NATIONAL SYMPOSIUM ON PRETRIAL JUSTICE

CONVENED BY THE U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS AND THE PRETRIAL JUSTICE INSTITUTE

May 31–June 1, 2011 – Washington D.C.

Summary Report of Proceedings

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PRETRIAL JUSTICE INSTITUTE

BJA Bureau of Justice Assistance U.S. Department of Justice

ACKNOWLEDGEMENTS

The Pretrial Justice Institute (PJI) is the nation's only independent, nonprofit organization staffed by pretrial justice experts dedicated to informed pretrial decision making. PJI promotes safer communities by providing training and technical assistance to criminal justice stakeholders, advocating for evidence-based pretrial laws, and educating the public about the public safety and financial impact of pretrial decisions.

Over the last several years, many people have worked diligently to raise awareness of and support for the improvement of pretrial justice practices. That work culminated in the 2011 National Symposium on Pretrial Justice. PJI would like to thank the following individuals from the Office of Justice, US Department of Justice:

- Laurie O. Robinson, Assistant Attorney General
- Marlene Beckman, Counsel to the Assistant Attorney General
- James H. Burch, II, Deputy Assistant Attorney General, Office of Justice Programs, US Department of Justice
- Kim Ball, Senior Policy Advisory for Adjudication, Bureau of Justice Assistance, OJP, DOJ

PJI would like to thank the distinguished moderators and panelists who contributed to the Symposium. PJI would also like to provide a special thanks to Timothy R. Schnacke, Criminal Justice Planner, Jefferson County, Colorado, for his work in preparing this Symposium Report.

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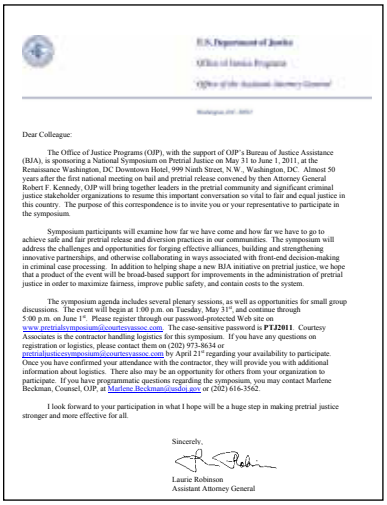

U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

Dear Colleague:

The Office of Justice Programs (OJP), with the support of OJP's Bureau of Justice Assistance (BJA), is sponsoring a National Symposium on Pretrial Justice on May 31 to June 1, 2011, at the Renaissance Washington, DC Downtown Hotel, 999 Ninth Street, N.W., Washington, DC. Almost 50 years after the first national meeting on bail and pretrial release convened by then Attorney General Robert F. Kennedy, OJP will bring together leaders in the pretrial community and significant criminal justice stakeholder organizations to resume this important conversation so vital to fair and equal justice in this country. The purpose of this correspondence is to invite you or your representative to participate in the symposium.

Symposium participants will examine how far we have come and how far we have to go to achieve safe and fair pretrial release and diversion practices in our communities. The symposium will address the challenges and opportunities for forging effective alliances, building and strengthening innovative partnerships, and otherwise collaborating in ways associated with front-end decision-making in criminal case processing. In addition to helping shape a new BJA initiative on pretrial justice, we hope that a product of the event will be broad-based support for improvements in the administration of pretrial justice in order to maximize fairness, improve public safety, and contain costs to the system.

The symposium agenda includes several plenary sessions, as well as opportunities for small group discussions. The event will begin at 1:00 p.m. on Tuesday, May 31st, and continue through 5:00 p.m. on June 1st. Please register through our password-protected Web site on www.pretrialsymposium@courtesyassoc.com. The case-sensitive password is **PTJ2011**. Courtesy Associates is the contractor handling logistics for this symposium. If you have any questions on registration or logistics, please contact them on (202) 973-8634 or pretrialjusticesymposium@courtesyassoc.com by April 21st regarding your availability to participate. Once you have confirmed your attendance with the contractor, they will provide you with additional information about logistics. There also may be an opportunity for others from your organization to participate. If you have programmatic questions regarding the symposium, you may contact Marlene Beckman, Counsel, OJP, at Marlene.Beckman@usdoj.gov or (202) 616-3562.

I look forward to your participation in what I hope will be a huge step in making pretrial justice stronger and more effective for all.

Sincerely,

Laurie Robinson
Assistant Attorney General

In 1964, then Attorney General Robert F. Kennedy convened the first National Conference on Bail and Criminal Justice. The conference was called to address the many shortcomings in the bail system that existed at that time and to showcase proven alternatives. The conference led to many improvements in pretrial release decisionmaking, including the re-writing of federal and state statutes to list all the factors judges must take into consideration in making pretrial release decisions, the establishment of a presumption of release on the least restrictive conditions reasonably calculated to assure public safety and court appearance, and the listing of a range of options available to the court in making its pretrial release decisions.

Nearly half a century later, despite these improvements, the pretrial release decisionmaking process remains deeply flawed. In most instances throughout the country, pretrial release decisions are being made based solely upon the charge that has been lodged, rather than the risks posed by each individual defendant. Moreover, criminal defendants are routinely required to post a money bail to be released during the pretrial period. The effect of these two practices is that those defendants who have access to money are able to purchase their release, regardless of the risks they may pose to the safety of the community; those defendants who do not, many of whom are low risk, must sit in jail until trial—at enormous public expense.

Current economic realities facing governments at all levels require a different approach to pretrial release decision making practices. Approaches that rely on individualized assessments of risk and setting non-financial conditions of pretrial release individually tailored to address the identified risks have been attempted and found to be successful. They protect public safety, assure the appearance of defendants in court, and reduce the costs to taxpayers of unnecessary detention.

Just as the 1964 Conference drew attention to the many problems caused by the bail practices of that era and pointed to viable, effective alternatives, the 2011 National Symposium on Pretrial Justice convened by the Office of Justice Programs of the U.S. Department of Justice, together with the Pretrial Justice Institute (PJI), highlighted the major shortcomings in current pretrial release decision making practices and showcased efforts to improve those practices.

The Symposium brought together representatives of associations from a broad array of stakeholder groups, including law enforcement, judges, prosecutors, public defenders, jails, and victims, as well as county, state, and federal legislative and executive branch officials, and private funders. This document presents the summary proceedings of that Symposium.[1]

1 For a complete, verbatim record of the Symposium, please visit www.pretrial.org/symposium.html to order a video disk set. Selected speeches have also been posted.

WELCOME AND OPENING REMARKS

***Timothy J. Murray**, Executive Director, Pretrial Justice Institute; **James H. Burch, II**, then Acting Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice; **The Honorable Laurie Robinson**, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice; **The Honorable Pedro R. Pierluisi**, Resident Commissioner of Puerto Rico, U.S. House of Representatives; **William T. (Bill) Robinson III**, President Elect, American Bar Association.*

TIMOTHY J. MURRAY

David Y. Lee for Public Welfare Foundation

In welcoming Symposium participants, Mr. Murray stressed that there are many challenges facing pretrial justice. Those challenges, according to Mr. Murray, include the fact that courts incarcerate countless defendants who will be released from jail *only* after they are convicted or *after* their charges are dropped—notwithstanding their presumption of innocence. "All too often," Mr. Murray said, "our current system permits the unfettered release of dangerous defendants while those who pose minimal, manageable risk are held in costly jail space. All too often, we see pretrial release decisionmaking built upon a one-dimensional model, which neither supports the legislative presumption in favor of release, nor takes into account the individual strengths and risks of each defendant."

Accordingly, Mr. Murray said, while officials struggle to find solutions to the challenges of pretrial justice, the Symposium itself is evidence that addressing these challenges is possible. Indeed, he stated, there are many key advantages today that were unavailable to those attending the first national conference: "With the advantage of modernized bail laws in the majority of states, with the advantage of evidence-based practice to guide and inform our work, with the advantage of jurisdictions that have confronted these issues head-on, and shown that safe, effective, and fair pretrial justice can be a reality, this time more than ever is our turn to get it right."

JAMES H. BURCH, II

Mr. Burch began his opening remarks by emphasizing the "remarkable partnership" between the U.S. Department of Justice and PJI to move the pretrial field forward and to further their shared missions of ensuring the fair administration of justice. The partnership began in the early 1980s, he stated, with the Bureau of Justice Assistance (BJA) funding the first supervised release demonstration program. That effort was followed by initiatives to implement enhanced and stringent performance measurements for pretrial release, as well as to fund the national survey of pretrial programs, which has been conducted every 10 years since its inception.

As noted by Mr. Burch, BJA's recent accomplishments in the pretrial field include: (1) publishing with PJI and the National Association of Counties the document titled, *Jail Population Management: Elected*

County Officials' Guide to Pretrial Services[2]; and (2) publishing with PJI and the International Association of Chiefs of Police the document titled, *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process*,[3] the first document in history to acknowledge and explore in depth law enforcement's role and interest in pretrial justice. In addition, BJA is currently working with PJI and the American Probation and Parole Association to develop a document describing promising practices in providing pretrial services functions in probation agencies.

Partnering in-house, BJA worked with the National Institute of Justice to convene a focus group of experts in the field of evidence-based risk prediction to explore how the current science can assist in pretrial release decisionmaking. Based on that endeavor, Mr. Burch said, BJA and PJI published the document titled, *State of the Science of Pretrial Risk Assessment*,[4] which discusses (1) critical issues related to pretrial release, detention, and risk assessment; (2) challenges to implementing evidence-based risk assessment; (3) methodological challenges associated with prediction of risk; and (4) recommendations for further research and practice. Mr. Burch noted that the same focus group also recommended developing and disseminating more information about evidence-based practices in pretrial supervision, a recommendation that led directly to the document titled, *State of the Science of Pretrial Release Recommendations and Supervision*,[5] which comprehensively discusses both legal issues and research results surrounding a variety pretrial release conditions and interventions.

Mr. Burch also emphasized BJA's role in practical application through helping dozens of local jurisdictions and communities to implement pretrial services programs, including (with the help of the Vera Institute of Justice) helping the City of New Orleans, Louisiana, plan its first ever such program. "We do this," Mr. Burch explained, "because we know that for our justice system to be fair, to be safe, and to be effective, that we must have pretrial services in place and they must be evidence based or evidence driven."

Further emphasizing BJA's philosophy of working both nationally and locally on issues of pretrial justice, Mr. Burch commented on the success of the Justice Reinvestment Initiative, a data-guided approach to reducing corrections and related criminal justice spending and reinvesting savings in strategies designed to increase public safety.[6] Going forward, Mr. Burch indicated his intention to replicate that initiative's successes at the state level to counties and cities across America.

Overall, Mr. Burch credited much of his agency's success to the support of Congress, which gives the Department of Justice discretionary funding to focus on emerging and chronic issues (such as those being discussed during this Symposium), as well as to the current leadership at the Department's Office of Justice Programs, who, he said, incorporate equal measures of vision, ability, and conviction.

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2 Cherise Fanno Burdeen, *Jail Population Management: Elected County Officials' Guide to Pretrial Services* (NACo, BJA, PJI, Sept. 2009), *available at http://www.pretrial.org/Reports/Pages/default.aspx.*

3 Susan Weinstein (principal author) *Law Enforcement's Leadership Role in the Pretrial Release and Detention Process* (IACP, BJA, PJI, Feb. 2011) *available at http://www.pretrial.org/OurServices/Advocacy/Pages/default.aspx* [hereinafter *Law Enforcement's Role*].

4 Cynthia A. Mamalian, Ph.D., *State of the Science of Pretrial Risk Assessment* (BJA, PJI, Mar. 2011) *available at http://www.pretrial.org/Pages/bail-decision.aspx.*

5 Marie VanNostrand, Ph.D., Kenneth Rose, Kimberly Weibrecht, J.D., *State of the Science of Pretrial Release Recommendations and Supervision* (BJA, PJI, June 2011) *available at http://www.pretrial.org/Pages/bail-decision.aspx*

6 A summary of the initiative can be found at http://www.ojp.usdoj.gov/BJA/topics/justice_reinvestment.html.

THE HONORABLE LAURIE O. ROBINSON

David Y. Lee for Public Welfare Foundation

Calling the Symposium "historic" and "a remarkable gathering" of experienced and influential participants, Assistant Attorney General (AAG) Robinson began her opening remarks by formally renewing the Justice Department's commitment to the important issue of pretrial justice. AAG Robinson stated that the goals of the Symposium were "to push the issue of pretrial justice back out into the open," and "to determine how we can move the field closer to safe, effective, and fair pretrial justice systems" by focusing especially on the decision to release or detain a defendant prior to trial, a decision with critical importance in terms of public safety, fairness, and cost.

The Department of Justice's decision to recommit to the issue of pretrial justice, she said, comes partly as a result of its own data showing both (1) high numbers of pretrial defendants unnecessarily incarcerated due to lack of funds to post financial conditions of release, and (2) increasing use of pretrial detention despite declining crime rates. Pretrial detention, she stressed, has significant consequences. "One huge consequence of this is that pretrial detention comes at enormous fiscal costs to already strapped local governments—and it has profound social costs to our communities. It doesn't have to be this way, because research suggests that many of those who are detained could be safely released."

AAG Robinson reminded Symposium participants that they would be asked to make realistic and workable recommendations for reaching the Symposium's goals. It is a challenging task, she noted, "but no less challenging today than it was in 1964—and surely no less important." Nevertheless, she said, "armed with enlightened data-driven practices and . . . a renewed commitment to [pretrial justice] issues . . . I am optimistic that, working together, our shared vision of safe, effective pretrial justice for all can at long last become a reality."

THE HONORABLE PEDRO PIERLUISI

Commissioner Pierluisi (House of Representatives, Puerto Rico) prefaced his opening remarks by making a promise: "Count on me to help you on the Hill for anything, to help you do even better in helping all those who interact with the American justice system." In making this commitment, Commissioner Pierluisi noted an increasing recognition among policymakers that their current approach to criminal justice, including pretrial practices, is in need of reform.

To Commissioner Pierluisi, the current motivating factor for a re-examination of pretrial practices comes from budgetary concerns at every level of government, with legislators across the country seeking to cut spending without harming worthy programs. Observed through a budgetary lens, he stated, the cost of unnecessary detention is "breathtaking." Accordingly, he said, "[a]s budgets are scrutinized for cost savings, all of us should push our elected officials to make the connection between reforming pretrial practices, on the one hand, and saving taxpayers' money, on the other."

Recalling his work in criminal sentencing as an illustration, Commissioner Pierluisi explained how "one-size-fits-all" solutions that limit judicial discretion can often lead to negative consequences, such as

unnecessary incarceration and growing numbers of people forced to navigate their world with stigmatizing criminal convictions. Instead, he stated, increased discretion and various alternatives to incarceration should be explored, especially those diversionary programs that result in no record of conviction.

WILLIAM T. (BILL) ROBINSON, III

Speaking directly to his constituency, Mr. Robinson called on the 400,000 members of the American Bar Association (ABA), as lawyers and officers of the court, to make access to justice a top priority, and to recognize that "dealing with that issue at the pretrial level of justice is critical to the future of this country."

The ABA works through collaboration, Mr. Robinson said, and much of its important work is done through its Criminal Justice Section, which "brings over 20,000 members together including prosecutors, defense lawyers, judges, academics, parole and probation officers, forensic accountants, and countless others to work together on the common goal of improving criminal justice" and to make the ABA Standards on Pretrial Release a reality across the country. Those standards call for the assignment of the least restrictive bail conditions and the release of defendants pending trial. Although the Standards recognize that detention is an appropriate response if releasing a defendant endangers public safety and leads to flight risk, such detention should be implemented only after clear identification of relevant risk factors by adequate pretrial service agencies.[7] The Standards also urge state bail reform through legislation modeled after the Standards.[8]

In his remarks, Mr. Robinson announced that the Criminal Justice Section recently launched a major project identifying pretrial release as one of five broad policy changes to save states money. The other four areas were: decriminalization of minor offenses, reentry, parole and probation, and community corrections.

Mr. Robinson described the criminal justice system as "broken," and he used a number of statistics showing America's high incarceration rate to punctuate his point. Nevertheless, he referred to various bipartisan state-level reforms in Texas, Oklahoma, and Kentucky as demonstrating "[that] legislators can make changes that safeguard the public and save money." Echoing James Burch's comments on justice reinvestment, Mr. Robinson concluded by emphasizing that funding the courts is an important prerequisite to pretrial justice: "By utilizing the savings from criminal justice reform, state legislatures can reinvest more into the court system to ensure proper staffing and efficient court dockets to better achieve access to justice and equal justice under law."

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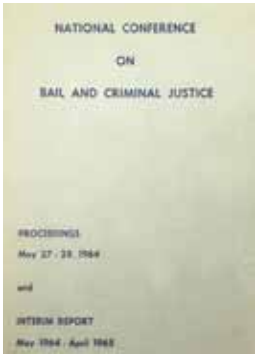
7 *ABA Urges Pre-Trial Release Reform to Save States Money, Reduce Recidivism and Protect the Public,* available at http://www2.americanbar.org/sections/criminaljustice/CR203800/PublicDocuments/pretrialdetention.pdf; see also *Dialogue on Strategies to Save States Money, Reform Criminal Justice & Keep the Public Safe,* available at http://www.americanbar.org/content/dam/aba/events/criminal_justice/dialogpacket.authcheckdam.pdf.

8 See Amer. Bar Ass'n, *ABA Standards for Criminal Justice, Pretrial Release* 32 (3rd Ed. 2007) [hereinafter ABA Standards].

PANEL – THE ATTORNEY GENERAL'S 1964 CONFERENCE ON BAIL REFORM: CONTEXT, ASPIRATIONS, AND IMPACT

Moderator: ***Barry Mahoney****, President Emeritus, Justice Management Institute, Denver, Colorado. Panelists:* ***Herbert Sturz****, Senior Adviser for the Office of the Senior Adviser Program, Open Society Foundations, New York, New York;* ***The Honorable Patricia Wald****, Chief Judge, U.S. Court of Appeals, Washington, D.C. Circuit Court (Retired), Washington, D.C.*



The 1964 National Conference on Bail and Criminal Justice was the genesis for some of the nation's most dramatic improvements in the administration of pretrial justice. These panelists were intimately involved with the first Conference and thus were asked to highlight the context, aspirations, and impact of that event. **Herbert Sturz** was Director of the Vera Foundation (now the Vera Institute of Justice) from its founding in 1961 until 1978, and his early work there was pivotal in shining a light on prevailing bail practices, as well as in introducing potential solutions for discussion during the 1964 Conference, of which he was a co-director with Daniel Freed. Among other notable accomplishments, **Judge Patricia Wald** (permanent staff member for the 1964 Conference) researched and co-wrote the comprehensive report titled, "Bail in the United States: 1964," which became the centerpiece of discussion during that Conference. Moderator **Barry Mahoney** is a pretrial pioneer in his own right, having served as the London Director of Vera, as a member of the American Bar Association's Task Force on Pretrial Release, and as commentary editor for the current edition of the American Bar Association's Criminal Justice Standards on Pretrial Release.

David Y. Lee for Public Welfare Foundation

Herb Sturz, Anne Rankin, and Barry Mahoney.

According to **Mr. Mahoney**, the 1964 Conference on Bail and Criminal Justice was a "major catalyst to significant improvements to pretrial justice." Thus, he said, to assess the state of pretrial justice in 2011, it is important to look back at the context in which the earlier Conference was held, the hopes and aspirations of its organizers, and its impacts.

Mr. Mahoney started the panel discussion by asking Herbert Sturz why he and the Vera Foundation initially looked into changing the surety bail system. He asked, "What was wrong with that system?" **Mr. Sturz** replied that it was Louis Schweitzer, well known industrialist and philanthropist, who first questioned detaining people for lack of money to pay bail. According to Mr. Sturz, Schweitzer, a Russian immigrant, had read the U.S. Constitution's Excessive Bail Clause and believed that a $10 bail amount was excessive to someone having only five dollars. When Schweitzer asked him to look into the issue in 1961, Mr. Sturz said, he found thousands of persons in New York who were convicted of no crime and were mostly indigent (as they are today, he noted) and who were detained in jail for lack of money. That finding, he said, was the genesis of the Vera Foundation and the "journey" that has led to today's Symposium.

As Mr. Sturz further explained, in early 1961, he and Schweitzer had met with Robert Kennedy, who expressed "dismay" at what the pair had found concerning bail. Kennedy asked the two to work with others in the field to help remedy the situation. Unfortunately, as Kennedy's advisor David Hackett explained to the Attorney General, there was no one else working in the field—there was, essentially, no field. Undeterred, Mr. Sturz stated, he and Schweitzer moved forward and were quickly introduced to District of Columbia Circuit Court Judge David Bazelon through their mutual acquaintance, pioneering bail researcher Caleb Foote. Judge Bazelon, in turn, introduced Mr. Sturz and Mr. Schweitzer to Supreme Court Justices William Brennan and William Douglas, who suggested the creation of an advisory group to inquire into bail practices.

Mr. Sturz said that Louis Schweitzer had first proposed creating a public bail fund to pay people's bail amounts in particular cases, but that idea was quickly set aside to work on ways to give the court what it did not have: verified information on defendants. Thus, the Manhattan Bail Project, which involved interviewing defendants who were held on bail, identifying those at good risk of coming back to court, and recommending to the court that they be released, was born. To Mr. Sturz, the real strength of the project came from its experimental design, which allowed meaningful comparison among defendants, and which helped the researchers to conclude that when courts had verified information about defendants concerning their risk of flight, those defendants were three times *more* likely to be released on recognizance and three times *less* likely to go to prison if convicted.

As for the 1964 Conference, **Judge Wald** reminded Symposium attendees that the original impetus in the 1960s was poverty and the impact of poverty on defendants in the criminal justice system, a topic that was foremost on the mind of the Attorney General. Moreover, she stated, the climate of the 1960s itself fostered a powerful sense of hope that things could and would change. At the time, she noted, Earl Warren was Chief Justice of the United States, and even Sam Ervin, a conservative Senator from North Carolina, was a vocal champion of bail reform. The climate for change is somewhat different now, she said, and the country may be less sympathetic toward poverty. Instead, it appears to be more pragmatic and concerned with what works, which has focused our attention on workable, evidence-based risk assessments.

Judge Wald added that a limitation on the strategies of the 1960s was caused by uncertainty about what to do if money were completely eliminated in the administration of bail. Because at the time, the only valid constitutional purpose of bail was to provide a reasonable assurance of court appearance, she said, the issue of public safety and preventive detention created tension among civil libertarians and others who wondered what might happen in a world without money bail. Nevertheless, she said, the 1964 Conference: (1) put the subject of bail reform on the national table as something that had to be recognized; (2) put up for discussion alternatives to the traditional money bail system, many of which showed up in the Bail Reform Act of 1966; (3) encouraged the formation of, and gave direction to, various institutions and still-active bail and pretrial projects; and (4) "helped to create world-wide recognition" of pretrial justice.

Mr. Sturz noted that significant progress has been made since the 1960s in the numbers of people released on recognizance, at least in New York. Nevertheless, he stated, there are still thousands of persons who cannot afford their "low" bail amounts, and there are many innovative but underutilized practices (such as providing access to phones) that can also reduce unnecessary incarceration.

When asked about his hopes for this Symposium, **Mr. Sturz** stated that he hopes to see more focus on front-end criminal justice issues, especially for those charged with minor offenses, and on different forms of supervised pretrial release. **Judge Wald** said that she hopes to see less use of money bail, and more use of risk assessment devices that can be used at every criminal justice decision-point by every criminal justice decisionmaker.

In closing, **Mr. Mahoney** read aloud the following two passages from Judge Wald's 1964 publication, *Bail in the United States*: *1964*, which, he noted, is still pertinent to the pretrial field today:

> All available studies confirm two dominant characteristics in the national bail pattern: In a system which grants pretrial liberty for money, those who can afford a bondsman go free; those who cannot, stay in jail.[9]
>
> The trouble with the present system is that by relying on money, it jails too many of the poor; it also protects too little against the dangerous.[10]

9 Daniel J. Freed and Patricia M. Wald, *Bail in the United States, 1964* (Prepared as a working paper for the National Conference on Bail and Criminal Justice), *supra* note 12, at 21.

10 *Id.* at 110.

PANEL – 1964 TO THE PRESENT: 50 YEARS OF BAIL REFORM

***Timothy J. Murray**, Executive Director, Pretrial Justice Institute; **Dr. James Austin**, President, JFA Institute.*

Despite the initial success of the 1964 Conference, subsequent decades have seen a steady increase in pretrial detention. This session explored the development of significant pretrial legislation, the emergence of pretrial service professionals, and the availability of data that reflect the enormity of the challenges ahead. During this panel, Timothy J. Murray and Dr. James Austin took turns presenting why, 50 years later, a renewed commitment in the area of pretrial justice is needed.

TIMOTHY J. MURRAY

Mr. Murray described the 1964 Conference as the "pivotal moment" in bail reform, with "all lines" tracing back to the work done for and in that Conference. He then summarized the various reforms that found their genesis in that gathering.[11] Shortly after the Conference, he stated, Congress passed the Federal Bail Reform Act of 1966. That Act (the first major reform of the federal bail system since the Judiciary Act of 1789) established, among other things, a presumption in favor of pretrial release under the least restrictive conditions, factors for courts to consider in making the release decision, and a range of options that courts should use to respond to the risks posed by each individual defendant. Using that Act as a model, he explained, most states passed laws with similar provisions, and four states went further, abolishing commercial bail bonding. In the 1970s and 1980s, 34 states, the District of Columbia, and the federal system added public safety as a legitimate purpose of bail in addition to court appearance, and that purpose, along with the federal preventive detention provisions designed to address it, was upheld as constitutionally valid by the United States Supreme Court in 1987.[12]

As in today's Symposium, Mr. Murray stated, the 1964 participants represented a broad array of influential organizations, and many of those organizations soon issued important statements on bail and pretrial release. In 1968, the American Bar Association published its *Criminal Justice Standards on Pretrial Release*. That was followed by other national standards, such as those issued by the National District Attorneys Association, each reflecting the view that the traditional bail system was flawed, primarily due to its emphasis on money bail bonds and commercial sureties. Other influential persons and organizations started bail projects modeled after the Manhattan Bail Project, he added, and soon hundreds of pretrial services programs and agencies existed across the country.

In 1973, Mr. Murray stated, pretrial practitioners joined together to create the National Association of Pretrial Services Agencies, an organization dedicated to developing and supporting pretrial services programs nationwide. Moreover, in 1974, the federal government began a pilot project to create pretrial services functions in the federal courts, which was ultimately expanded to its current use in all 94 federal districts. And in 1977, he said, the U.S. Department of Justice funded the establishment of the Pretrial Services Resource Center (now PJI) to act as a clearinghouse and centralized source of information for pretrial services programs.

11 A comprehensive history of bail and pretrial release may be found on the Symposium website at http://www.pretrial.org/materials.html.

12 See *United States* v. *Salerno*, 481 U.S. 739 (1987).

Overall, stated Mr. Murray, since 1964 "a lot went right," with multiple stakeholders working on different paths toward meaningful bail and pretrial reform. Nevertheless, he said, the data show that there is a significant distance to go to achieve pretrial justice. Moreover, legislation is being introduced in statehouses across the county that is decidedly different from the legislation seen in the wake of the 1964 Bail Conference. He provided the following examples: (1) bills seeking to eliminate judicial discretion to grant non-financial release and pretrial services supervision to virtually all arrestees, using instead release on a surety bond; (2) bills seeking to impose onerous reporting conditions on pretrial services programs to limit their effectiveness; and (3) bills seeking to prohibit any state or county funding of pretrial services programs. These bills, said Mr. Murray, favor the creation of one system of justice for one class of defendants and another system for everyone else, reminiscent of the "separate but equal" laws and policies of an earlier America.

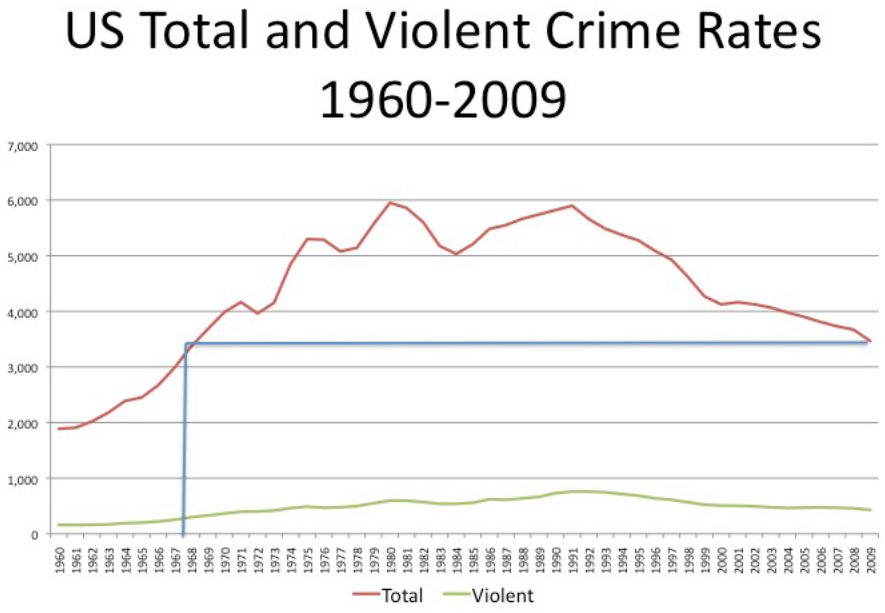
As in 1964, he added, there is key stakeholder input on, and support of, critical elements of pretrial justice. Today, those stakeholders include, among others, the National Association of Counties, the American Probation and Parole Association, the Association of Prosecuting Attorneys, the International Association of Chiefs of Police, the American Jail Association, the American Bar Association, and the American Council of Chief Defenders of the National Legal Aid and Defender Association. Moreover, Mr. Murray stated, today there are pretrial services programs and agencies across the country completing risk assessment validation studies and continually working on evidence-based programmatic elements. In addition, the National Association of Pretrial Services Agencies has begun developing accreditation procedures, and the National Institute of Corrections continues to provide week-long training sessions for pretrial services professionals.

And yet, Mr. Murray said, many pretrial services programs across the country are underfunded, understaffed, undertrained, and handcuffed by special interests who seek to target their use to only indigent or the most "safe" defendants. Across the country, prosecutors are routinely asking for financial conditions of release in virtually every case, sometimes treating an alternative release mechanism with pretrial supervision as a "favor" to be bestowed on a chosen few. When they are even present in the room, Mr. Murray explained, public defenders are desperately trying to get judges to focus on their client's financial means because a money bond "is, in fact, inevitable." And across the country, he said, judges are setting incapacitating money bonds due to concerns about public safety, but with no hesitation of releasing those same defendants on probation once they are ultimately convicted. Indeed, "[t]he naming of a dollar amount, in many cities printed on a laminated card next to the charge type, is seen as . . . the best we can do."

Nevertheless, Mr. Murray said, there are jurisdictions with highly efficient and functional pretrial services programs that work closely with judges, prosecutors, and public defenders who take leadership roles in pretrial justice. Thus, he concluded, "our report card over the past 50 years is a mixed one, at best." "It is clear to me," he added, "that safe and effective, fair pretrial justice will only come as a result of the change of culture in the courtrooms." But although pretrial justice as it is currently practiced in most of America's courtrooms may seem stuck, it has the law, the data, and even common sense on its side. Moreover, he noted, America's criminal justice systems have already witnessed legal cultural change by being shown a "better way" in other areas of the law, such as with drug addiction, mental health issues, and reentry. "The 1964 conference showed the country a better way," Mr. Murray stressed. "I challenge you to do the same here."

JAMES AUSTIN, PH.D.

Dr. James Austin provided an overview of important trends in jail and pretrial release to provide further context for the last 50 years. With his first slide,[13] Dr. Austin proclaimed that the "war on crime is over," with the overall national crime rate hovering about where it was in the mid-1960s and showing signs that it will continue to decline.



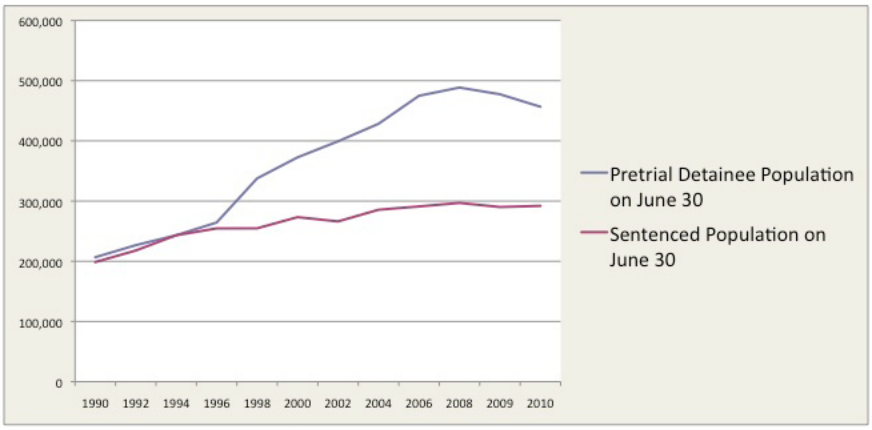
Source: Federal Bureau of Investigation, Uniform Crime Report

According to Dr. Austin, punishment in the criminal justice system is currently being meted out through jail admissions, a process that happens to roughly 13 million persons per year, compared to only 675,000 persons who are admitted to prisons. On average, persons booked into jail stay about 21 days (about one-third are released within 2 to 3 days, but those who are not stay in much longer, with obvious ramifications for pretrial justice).[14] On any given day, he stated, 61 percent of jail inmates are defendants awaiting trial, most of whom are felony defendants. Nevertheless, he said, the vast majority of defendants released pretrial (approximately 80–85%) do not get re-arrested during the pretrial phase, and if they do, they are arrested almost completely for non-violent offenses.

13 Dr. Austin's PowerPoint presentation is available on the Symposium website, found at http://www.pretrial.org/materials.html.

14 In a later panel, Arthur Wallenstein explained that in his studies of jail populations, he had determined that inmate length of stay was the driving determinate (at about five to one in importance, as compared with jail admissions) of jail population, and that we could tolerate significantly higher numbers of arrests if we increased the efficiency of the pretrial process through evidence-based practices designed to lower the average length of stay.

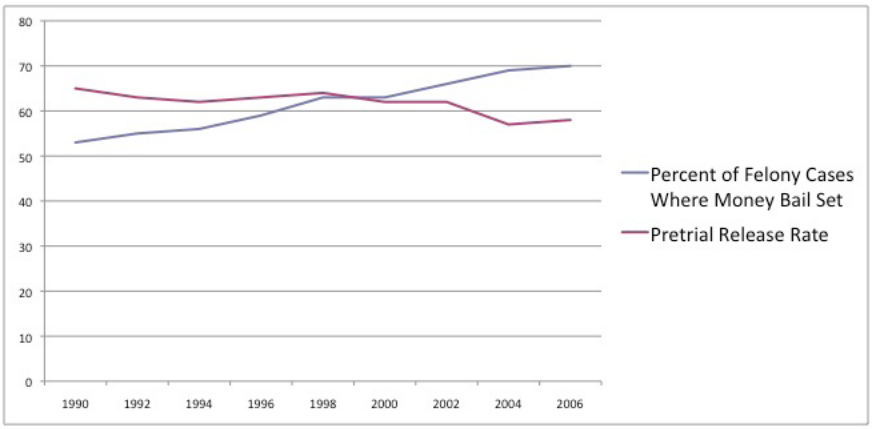
Who is in Jail?



Source: Bureau of Justice Statistics, Jail Inmates at Midyear Series

Over time, he said, the number of pretrial releases is trending down. This is especially notable, said Dr. Austin, given the additional trend showing that the number of persons ordered released on financial conditions is actually increasing.

Shift in Type of Release Ordered



Source: Bureau of Justice Statistics, State Court Processing Statistics Series

If we have won the war on crime, Dr. Austin said, we have decidedly lost the war on reducing jail populations. In another slide, Dr. Austin showed that if the nation's incarceration rate was reduced to the 1980 rate (a time during which the crime rate was actually higher than it is today), there would be about 500,000 fewer inmates in our jails on any given day. "To me, that's our goal," he said. "If we don't have this in our mind, [then] why do it?"

According to Dr. Austin, there were more felony releases in 1971 than today (even though money releases were about the same). He cited several possible reasons for that. First, despite the drop in crime, there has been neither a comparable reduction in the adult arrest rate, nor a reduction in the nation's law enforcement work force. Second, defendants who are detained pretrial are more likely to accept guilty pleas, and more likely to do so sooner, than those who are released—giving an incentive to the system to keep defendants detained. Third, most pretrial felons have criminal records that cause system concern, despite the fact that those defendants may be manageable in the community. Fourth, we have increased the number of classes of people ineligible for bail, despite whatever individual risk they may pose. Fifth, case processing inefficiencies are extending defendants' lengths of stay. Sixth, judges often pay no attention to the risk assessments that are being done; as mentioned earlier, 80% of defendants will not be re-arrested, and three out of four will not get into any trouble at all, a statistic that should lead to more comfort with higher release rates. Other reasons include mental health, drug, and immigration issues, and, of course, wealth and money.

Three out of every four felony defendants are returned to our communities within a few months of their detention, Dr. Austin noted, often sentenced to probation—sometimes after their charges have been dismissed. In short, he said, they are not going to prison, calling into question whether compelling reasons existed to keep them detained during the pretrial period.

Dr. Austin then stressed that special consideration should be given to the "horrific" and "embarrassing" issue of race in our criminal justice system. As he illustrated in one slide, throughout the country, racial disparity increases as one travels through the criminal justice system. Accordingly, he said, all justice system officials should strive to ensure that they are at least not exacerbating that problem.

In closing, Dr. Austin stressed, "Pretrial justice has hit a wall in the United States, and unless we do something, we are going to stay where we are at, which is not acceptable." Crime will continue to decline, he said, but the size of our correctional response will not drop in proportion to the drop in crime because there will be "substantial system pushback on any kind of reform that tries to drop that correctional population significantly." To counter this, he advised, we should stop focusing on "low-risk/nonviolent offenders," and instead focus on high-risk persons who are arrested for violent crimes. But perhaps more importantly, he stated, in addition to their traditional work of supervising manageable defendants, pretrial services agencies and programs should work with law enforcement to keep lower risk people from coming to jail to begin with. Our national "numbness" to the experience of imprisonment, and its somewhat casual use for so many offenses must change, he stated. Finding a solution other than needlessly incarcerating persons for whom jail is an improper response will be the "ultimate solution to bringing that jail population back to where it is supposed to be."

PANEL: PERSPECTIVES ON TODAY'S PRETRIAL JUSTICE

Moderator: ***Stephen A. Saltzburg****, Professor, Wallace and Beverley Woodbury University, George Washington University School of Law, Washington, D.C.*

Panel Participants: ***Dennis Bartlett****, Executive Director, American Bail Coalition, Fairfax, Virginia;* ***The Honorable James Carr****, Senior Judge, United States District Court, Northern District of Ohio, Toledo, Ohio;* ***Ed Monahan****, Chair of the American Council of Chief Defenders, National Legal Aid and Defenders Association, Frankfort, Kentucky;* ***The Honorable Ron Machen****, United States Attorney for the District of Columbia, Washington, D.C.;* ***Will Marling****, Executive Director, National Organization of Victim Assistance, Alexandria, Virginia.*

Victims, defendants, jail staff, law enforcement, and many others feel the impact of the decisions made at the front-end of the criminal justice system by policymakers and practitioners. Each stakeholder has a perspective on the challenges and opportunities presented by legal and evidenced-based pretrial justice. These must be understood for reform to be renewed. This roundtable discussion provided an opportunity to examine various perspectives and to contribute to the development of priorities. Moderator Stephen Saltzburg questioned the panel about their individual perspectives.

Professor Saltzburg started the session by reading a quote from U.S. Supreme Court Justice Robert Jackson, taken from his concurring opinion in the 1951 case of *Stack v. Boyle* (342 U.S. 1): "The practice of admission to bail . . . is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty." Professor Saltzburg asked Judge Carr for his impressions of why, 60 years after Justice Jackson wrote those words, bail is still being used as a device to keep so many defendants in jail.

Judge Carr responded that money bail is ingrained in the system. When judges are new to the bench, he said, they simply continue the practice of their colleagues by setting money bails, without questioning whether that is the best practice. To move forward, he stated, will require convincing state, municipal, and other judges that money bail is not needed to assure appearance and protect the safety of the community. Complicating this effort, he said, is the political influence of the bail bonding industry, which has a vested financial interest in perpetuating the use of money bail.

Professor Saltzburg asked **Ed Monahan** what public defenders could do to help ensure that bail is not a device to keep defendants in jail. Mr. Monahan responded that the problem is that, due to funding, public defenders might not even be present at the bail hearing and, if they are, they might have hundreds of cases to handle. Any strategy that is pursued for pretrial justice, he said, must take into account the critical need for public defenders to be present and to have the ability to competently do the work at first appearance.

Turning to **U.S. Attorney Ron Machen**, Professor Saltzburg noted that many states have statutes that

allow for the detention without bail of defendants who pose unmanageable risks, but judges and prosecutors do not use them, choosing instead to set high money bails. This is so, he said, because the procedural requirements to hold a defendant without bail are viewed as being too cumbersome, and it is so much easier to just set a high bail and hope that the defendant doesn't post it. In both the federal system and in the District of Columbia, he noted, the detention provisions are invoked frequently. Professor Saltzburg asked Mr. Machen what D.C.'s experience has been in using the detention provisions of the statute to hold defendants at high risk of danger rather than relying on money bail.[15]

Mr. Machen responded that his office processes 20,000 to 25,000 cases per year, and when his prosecutors file those cases, which occurs before the initial appearance in court, they make decisions on whether to ask for a hold, taking into account the two primary factors: risk to public safety and not showing up to court. Using the statute, he said, prosecutors obtain holds on about 15% of arrestees, with about 85% released on nonfinancial conditions. He noted that the long list of nonfinancial conditions designed to address risk that are available make him comfortable in supporting release in such a high percentage of cases. This not only is the correct way to do things, he said, but it is also a necessity, noting that he did not understand how other jurisdictions can afford the jail bed space required to hold as many people as they do.

Professor Saltzburg then asked **Will Marling** what role victims should play in the pretrial release decisionmaking process. Mr. Marling responded that while there has been progress in many states, there is a general lack of awareness in the victim community about pretrial practices. Victims are experts in their victimization, he said, but they are not experts in the criminal justice system, so it makes sense that we would educate them and include them. While there is a presumption of innocence for the accused, he noted, with rare exceptions there is virtual certainty that someone has been victimized. He stated that victims are not adequately included, but that they want to contribute and to offer their perspective.

U.S. Attorney Machen joined this discussion, noting that through the assessment of danger, the interests of the victim are paramount. The ability to meet a money bond, he said, does nothing to help his prosecutors assess danger to the victim, so they ask for holds, when appropriate. He noted that his office is fortunate to have a victim/witness assistance unit, which talks to victims, provides a conduit to the court decisionmaking process, and provides services to victims.

Professor Saltzburg then asked **Dennis Bartlett** whether bail bonding agents provide a necessary ser-

15 Although some states have one or more provisions similar to the D.C. and federal statutes, the practical administration of bail in those states is unlike the D.C. system, and to a lesser degree the federal system, in that the states still have not adequately addressed the issue of money in their processes. For example, the D.C. statute facilitates a more risk-based approach through various provisions that mirror recommendations found in the American Bar Association's *Criminal Justice Standards on Pretrial Release.* Important statutory provisions include: (1) a presumption of release on recognizance on the least restrictive conditions required to provide a reasonable assurance of public safety and court appearance; (2) a prohibition on using financial conditions (money) to protect public safety; (3) a meaningful and transparent preventive detention section, which is based on individual defendant risk and includes due process elements like those approved by the United States Supreme Court in *United States* v. *Salerno,* 481 U.S. 739 (1987); (4) a prohibition on pretrial services supervision for anyone given a surety-option bond; and (5) a prohibition on using financial conditions (money) to reasonably assure court appearance if that condition results in the preventive detention of any particular defendant. In addition to these statutory provisions, the D.C. Superior Court also benefits from its incorporation of extensive judicial training on bail and pretrial practices for new judges.

vice—one that should not be easily discarded in bail reform efforts. Mr. Bartlett responded that the commercial bail bond industry has approximately 15,000 bail agents and 10,000 support personnel, and commercial sureties write about $13.5 billion face-value in bail per year. The industry is highly unstructured and competitive, he said, but also highly accountable. Noting that approximately 330,000 persons are bonded out of jail each month from jails, he stated that the commercial bail bonding industry must be taken into consideration.

Professor Saltzburg concluded the panel discussion by offering the following suggestion for consideration: In Canada, he said, there is a provision forbidding law enforcement officers from arresting a person on a minor crime, instead issuing a citation, unless that person poses a real danger to the community. The failure to appear rate of those released on citation is low. One of the things that should be considered, he suggested, is cutting back on custodial arrests by using more citation releases. We currently allow law enforcement officers to act as judge and jury, he said, by allowing them to incarcerate defendants on minor offenses that do not normally lead to jail as punishment.

CLOSING REMARKS FOR DAY ONE

***The Honorable Eric T. Washington**, Chief Judge, District of Columbia Court of Appeals, Washington, D.C.*

THE HONORABLE ERIC T. WASHINGTON

Judge Washington began his remarks by promising, as President-elect of the Conference of Chief Justices,[16] to bring the important issue of pretrial justice before that group to debate and discuss what should be done to support reform in this area. "It is really interesting to me," he said, "that it took 50 years for us to reconvene a national symposium on the issue that is so critical, so important to the fair administration of justice." Judge Washington stated that while he was fortunate to preside in the District of Columbia—a jurisdiction that has seen much pretrial reform and that is in the vanguard of the bail reform movement—he recognized that jurisdictions like D.C. are in the minority.

It was in D.C. in 1970, the judge stated, that an American jurisdiction first enacted a meaningful preventive detention provision to openly address danger to the community at bail. Rather than continue the "hypocrisy" of allowing judges to set unaffordable money bail amounts to protect the public while espousing a presumption of release, the D.C. Bail Reform Act went further than the federal bail act by allowing prosecutors to petition the court to detain certain defendants, without bail, through the use of careful, restrictive detention categories. This statute, he explained, has resulted in only the truly dangerous defendants being incarcerated pretrial because detention occurs only if no condition or combination of conditions can provide reasonable assurance of either court appearance or public safety. "As a result of our current practice," he said, "the number of individuals unnecessarily detained, particularly nonviolent and low-risk persons, has been significantly reduced." Specifically, he noted, 85% of defendants in the District of Columbia are released pretrial.

Judge Washington stated that jurisdictions should recognize that some up-front money is likely necessary to enhance pretrial justice. Nevertheless, he noted, money saved in the long run will be substantial, as the cost to supervise persons in the community "pales" in comparison to the cost to incarcerate them. With five-sixths of pretrial felony defendants unable to meet the financial conditions of their bail bonds, he said, local governments are spending more and more to house defendants who can be supervised in the community at a much lower cost.

These practices are now a part of the culture in the District of Columbia, the judge explained, but it took time for that culture to change. Only after an evaluation of the quality of the D.C. Pretrial Services Agency did the prosecutors and judges become comfortable with the new system. Nevertheless, he said, "[w]hat is being done here in the District can be done in jurisdictions nationwide. Cash-based bail systems institutionalize economic discrimination against the poor. Persons who can afford their freedom are able to work, meet with their counsel, and actively participate in the preparation of their defense."

16 The Conference of Chief Justices is made up of the highest judicial officers of the 50 states, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

In conclusion, Judge Washington stated that this conversation should not take place another 50 years from now. "What we have learned . . . is that it is time for reform." As long as you can protect the community and assure court appearance, he said, you have met community expectations for dealing with persons who have been charged but not convicted, who are presumed innocent, and who should not be forced to serve a sentence before they are found guilty.

PANEL – EVIDENCE-BASED REFORM

Moderator: ***Jeremy Travis****, President, John Jay College of Criminal Justice, City University of New York, New York, New York.*

Panel Participants: ***John Goldkamp, Ph.D.****, Professor, Temple University, Philadelphia, Pennsylvania;* ***Christopher Lowenkamp, Ph.D.****, Probation Administrator, Administrative Office of the United States Courts, Washington, D.C.;* ***Marie VanNostrand, Ph.D.****, Justice Project Manager, Luminosity Inc., St. Petersburg, Florida.*

Criminal justice system policy has entered a new era of evidence-based decisionmaking, and this notion is critical to the pretrial phase of a defendant's case. During this session, the panelists, all experts in the pretrial field, presented the implications of working solely on instinct, tradition, and political concerns, and provided promising evidence-based alternatives being used by jurisdictions nationwide to advance pretrial justice.

In the opening session of the second day of the Symposium, Moderator **Jeremy Travis** welcomed panel presenters who had assembled to discuss the role of evidence, science, research, and predictive models to assist judges in pretrial decisionmaking. These panelists are here, he said, to help answer questions that have consistently been at the core of the bail reform movement—that is, what is the role of science and evidence, and how far has the evidence carried us over the last 50 years?

DR. JOHN GOLDKAMP

David Y. Lee for Public Welfare Foundation

Dr. Goldkamp began by noting that the application of science to questions of pretrial release and detention has a long history stemming from action research. However, when bringing science or empirically driven reform to problems in justice, he said, we must remember that "data are not self-evident, data do not tell us the answer, [and] risk is not the same as evidence-based reform."

"Bail reform," he stated, "is a problem of judicial decisionmaking," and, with the exception of those in the federal and District of Columbia justice systems, judicial decisionmaking is complicated by the dollar, because money keeps judges from making direct decisions, which, in turn, makes evaluation of those decisions difficult. On a larger level, the connection between race, class, and confinement is perhaps our biggest problem, he said. Our concern with re-arrest and failures to appear is also real, as those issues, left unresolved, cause communities to become alienated and even to actively resist the justice system.

Dr. Goldkamp noted that researchers dating back 90 years, from Roscoe Pound and Felix Frankfurter,[17]

17 Roscoe Pound and Felix Frankfurter, *Criminal Justice in Cleveland*. The Cleveland Foundation, 1922; reprinted, Montclair, N.J.: Patterson Smith, 1968.

and Arthur Beeley[18] in the 1920s, to Caleb Foote[19] in the 1950s, to the Vera Institute[20] in the 1960s, identified the same issues that we face today. Yet, in Philadelphia and in other studies, he said, he worked with judges to create pretrial release guidelines—built on data—to address many of these persistent issues at bail in a meaningful way.[21] And by doing this, he said, we learned how to measure effectiveness. Dr. Goldkamp explained that in a perfect world, pretrial justice might be demonstrated by releasing all defendants with no pretrial "failures." There would be empty jails, full streets, no crime, and everyone would appear for court. But in real life, he said, effective pretrial release is relative—we use some pretrial detention, we release some people with error, and we systematically attempt to make that error less and less. Thus, in the work that he did in Philadelphia, he noted, the approach focused the judges on defining their own risk. This approach did not say, "Would you like to look at this risk recommendation scheme?" Rather, he said, it engaged the judges in the complicated task of assessing their own notions of risk. Given the current Philadelphia framework of categories of defendants with risk built into it, he stated, the system is now experimenting with finding supervision options to appropriately address each category.

In conclusion, Dr. Goldkamp listed nine principal challenges to evidence-based reform in the pretrial field. First, he said, we must "skip the dollar game" and move state systems to direct decisionmaking with mechanisms for feedback and review. Second, we must involve the judges and other principal players in creating their own reform—the system cannot be imposed on them. Third, we must continue to actively research risk, as it is central to improving judicial decisionmaking. Fourth, as in guidelines, we should look at specific categories of defendants and work to improve our response to risk in those categories. Fifth, we should strive to empirically assess release options and supervision approaches—a concept probably already familiar to probation and parole practitioners. Sixth, he stated, we must have a measure of the effectiveness of pretrial release that we can begin to use to dynamically compare similar categories of defendants across jurisdictions and within jurisdictions. Seventh, we need decisionmaker, defendant, and system accountability. Eighth, we must use targeting strategies that might be based on such things as geography or stage-of-process considerations. And ninth, we must transform the culture of resistance among defendants who believe that there is no meaningful penalty for crime or for failing to appear for court. Until now, he said, we have looked at things very narrowly—now we must look at things more broadly, involving more system actors.

18 Arthur Beeley, *The Bail System in Chicago*. University of Chicago Press, 1922; reprinted, Chicago: University of Chicago Press, 1966.

19 Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia." 102 *University of Pennsylvania Law Review* 102(8) (1954): 1031.

20 Charles E. Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report of the Use of Pretrial Parole." *New York University Law Review* 38(1) (1963): 67–92.

21 John S. Goldkamp and Michael R. Gottfredson, *Policy Guidelines for Bail: An Experiment in Court Reform.* Philadelphia, PA: Temple University Press, 1985.

DR. MARIE VANNOSTRAND

David Y. Lee for Public Welfare Foundation

Dr. VanNostrand began her remarks by noting that her earlier intense focus on pretrial risk assessment was really only the beginning of her current work in pretrial justice, which is now aimed at achieving improvements in actual pretrial practices. Although the law guides us, she stated, it does not tell us how to honor the legal principles in practice. "For those answers," she said, "we look to the research." Dr. VanNostrand then explained that one promising practice is the application of the "risk principle," which aims evidence-based practices and interventions toward moderate and higher risk defendants and away from lower risk defendants (to whom such resources may actually cause harm) to produce better pretrial outcomes. By applying this principle, she stated, "agencies can develop limited resources where they will provide the most benefit to public safety." Empirical research in the federal system examining some 500,000 cases has confirmed this, she added. Thus, at least in the federal system, "the law tells us that a person has the right to release on the least restrictive terms and conditions, and the research tells us that [such release is] going to produce the best outcomes."

Dr. VanNostrand noted, for example, that the Southern District of Iowa applied the risk principle and was able to: (1) increase pretrial services release recommendations by 16%; (2) increase actual releases by 15 %; and (3) improve pretrial outcomes (no-new crime rates, court appearance rates, and technical violations), saving roughly $2 million over the first two years of implementation. Likewise, she stated, in Summit County, Ohio, officials created guidelines for a risk-based (not money-based) system, followed those guidelines, and significantly increased releases to the community with no changes in pretrial outcomes. By doing so, she said, Summit County also solved its jail crowding problem. Other jurisdictions have introduced differential, risk-based supervision "guidelines" or other mechanisms based on the risk principle (one even adopting the slogan, "better decisions, safer communities") with great success.

Ironically, she noted, some of the most impressive research is being done in jurisdictions that have legislation pending that is inconsistent with both the empirical research and the law. These legislative efforts include bills to eliminate unsecured (no up-front money required) bonds, to prevent magistrates from releasing defendants to pretrial supervision, and to require magistrates who wish to release a defendant to pretrial supervision to: (a) determine that the defendant is indigent; and (b) require a secured (up-front money) bond for release. One bill, introduced in North Carolina, contained a clause that would prohibit both state and local funding of pretrial services programs, she said.

Overall, she concluded, "There is no doubt that we are making progress in identifying effective practices to manage risk—yet there is so much work to be done." Next steps, she stated, must include true experimental research to assess the impact of pretrial practices. In the meantime, she said, our criminal justice system must change from charge-based decisionmaking to risk-based decisionmaking, which would determine release and detention based on defendant risk and not defendant wealth, and which will reduce disparity and related injustices to everyone in the community. Using objective risk assessments, criminal justice systems must identify the practices that are effective in reducing unnecessary pretrial detention while assuring court appearance and public safety. And finally, she stated, we must not only change state laws, but also prevent bills to amend state laws that are themselves unlawful and inconsistent with the evidence.

DR. CHRISTOPHER LOWENKAMP

David Y. Lee for Public Welfare Foundation

Dr. Lowenkamp concluded the formal panel presentations with a slide show titled, "Evidence Based Reform."[22] Evidence-based practice, he began, is a process for making decisions that derives from the field of medicine. It is perhaps best defined as the "the intentional and unbiased use of the best evidence available to make policy- and individual-level decisions about treatment," which is different from talking about a specific treatment. It is a process, he stated, to make policy and individual decisions rooted in evidence. Indeed, he added, "[t]here is no 'evidence-based practices' store," which means that the concept of simply going out shopping for various evidence-based items or programs (which one may not even use) is faulty. Moreover, "imitation-based practice," which involves implementing what other jurisdictions do because they like it (albeit without evaluation or measured outcomes) is not "evidence-based practice." Instead, he said, evidence-based practice "requires a bottom line," such as clearly articulated primary goals surrounding concepts like pretrial justice, before looking for the evidence to support those goals.

Discussing actual evidence currently found in the pretrial field, Dr. Lowenkamp summarized three important studies. The first of these involved a meta-analysis of risk predictors from 13 studies meeting certain criteria. That analysis found, among other things, that static factors are better at predicting risk than dynamic factors are, a finding that is somewhat different from relevant findings from the post-conviction literature. Second, the analysis found that a risk instrument (a composite scale) predicts better than any individual risk factor, but that the prediction is not as strong in pretrial instruments as it is in post-conviction instruments. And third, potentially competing interests in the pretrial field (such as increasing public safety along with reducing unnecessary detention) might account for the need for different predictors for each pretrial goal. Overall, he said, the strongest predictive factors in risk assessments were factors related to criminal history, employment, and residence. And while the good news is that the constructs that one measures for risk assessment instruments are consistent across time and outcomes, he stated, "the bottom line . . . is that you have to validate your own risk assessment."

The second study looked at overall post-conviction re-arrest rates for low-, moderate-, and high-risk federal offenders who either: (1) had no pretrial supervision; (2) had successfully completed pretrial supervision; (3) had failed pretrial supervision; or (4) had been detained. What is clear from that study, Dr. Lowenkamp explained, is that being detained or failing on pretrial supervision is related to poor post-conviction outcomes, but successfully completing pretrial supervision is apparently correlated (causation is unclear) with better outcomes post-conviction, all of which calls for research aiming, perhaps, toward better continuity on a continuum of justice.

The third study he summarized was a federal evaluation of STARR (Strategic Techniques Aimed at Reducing Re-arrest), which assigned pretrial officers randomly to either the training protocol (the experimental group) or to no training (the control group) and then looked at case outcomes both before and after the training. Before any training, 30% of the experimental officer group's and 34% of the control

22 The presentation is available at http://www.pretrial.org/materials.html.

officer group's moderate- and high-risk defendants failed on pretrial release (no statistically significant difference). After training, only 20% of the experimental officer group's moderate- and high-risk defendants failed, compared to 42% of defendants supervised by the untrained control group (statistically significant), which shows, he said, that "we can actually impact outcomes." That is especially important, Dr. Lowenkamp stressed, if how a defendant performs under pretrial supervision is also somehow related to post-conviction outcomes.

In summary, Dr. Lowenkamp said, criminal justice systems must define their bottom lines (which tell you what research to conduct and to consider); they must decide how pretrial fits into the larger justice system (if it does at all) in terms of continuity; and they must consider the existing research, generate their own evaluation research, and follow the evidence.

During followup questions to the panel, Mr. Travis noted that a recent Pretrial Justice Institute survey showed that there were roughly 400 pretrial programs, covering only 13% of the country, and only 42% of them used validated risk assessment instruments. He asked the panel if this should be viewed as encouraging or discouraging. "Is the glass half-full, half-empty, or do we have the wrong-sized glass?"

Dr. Goldkamp responded that having a good risk assessment instrument might make no difference at all, if it is not incorporated into the judicial decisionmaking process. His experience is that having judges involved can either make or break reform efforts.

Dr. VanNostrand stated that we should aspire to have validated risk assessments, but we must go beyond that. In Mecklenburg, North Carolina, she said, it took a full year to successfully re-engineer the bail process because it required involving the entire criminal justice system. Nevertheless, after a year, that criminal justice system created a bail policy (with some sacrifices and compromises) that everyone supported.

Mr. Travis then asked Dr. Lowenkamp what resistance he has faced in getting risk assessments validated and whether risk assessment is the "Holy Grail for pretrial justice?" Dr. Lowenkamp noted that resistance is typical, so it is important to get everyone on the same page. As to reliance on risk assessment to address all the challenges to pretrial justice, he said that risk assessment is just the beginning of effective pretrial justice, and an incomplete solution on its own.

PANEL – SUCCESS AT THE LOCAL LEVEL

Moderator: ***Arthur Wallenstein****, Director, Montgomery County Department of Corrections and Rehabilitation, Rockville, Maryland.*

Panel Participants: ***Bart Lubow****, Director, Juvenile Justice Strategy Center, Annie E. Casey Foundation, Baltimore, Maryland;* ***Seth Williams****, District Attorney, Philadelphia, Pennsylvania;* ***Susan Weld Shaffer****, Director, Pretrial Services Agency, Washington, D.C.;* ***Cathy L. Lanier****, Chief of Police, Metropolitan Police Department of the District of Columbia;* ***Timothy R. Schnacke****, Criminal Justice Planner/Analyst, Jefferson County Justice Services, Golden, Colorado.*

Many jurisdictions have implemented evidence-based pretrial strategies and have experienced positive results. During this session, the panelists presented results from their jurisdiction's pretrial efforts, focusing specifically on building alliances and partnerships, implementing evidence-based practices, and collecting data and measuring program outcomes. As in 1964, efforts that illustrate "a better way" are encouraging to jurisdictions only now beginning to move toward more effective pretrial justice.

As he introduced the panel, **Mr. Wallenstein** recalled a 1999 meeting convened by Attorney General Janet Reno concerning persons with mental illness in the criminal justice system, which brought that particular issue to light, and which spurred a number of advancements and improvements in that area. He noted that the topic of reentry has recently seen similar momentum, and now the topic of pretrial justice seems to be gathering significant interest. Nevertheless, he said, what we ultimately do during this Symposium must be translated into understandable operating principles that can be used at the local level.

For example, he noted, understanding the research literature, which shows that inmate length-of-stay primarily drives jail populations, could help local jurisdictions to engage process elements to reduce average length of stay by a fraction of a day and thus significantly drive down overall jail populations without using early releases. In pretrial justice, then, a key point is similarly "taking the research and translating it down to the local level." Moreover, he stated, the pretrial process is seemingly "low-hanging fruit," carrying none of the political veneer of high-profile sentencing issues, and with increasingly diminished costs. In the end, he said, if this Symposium can create the same kind of interest in pretrial justice that other, similar symposiums have created for other issues, "then this meeting will have been enormously successful."

BART LUBOW

Mr. Lubow described the Annie E. Casey Foundation's decision in the 1990s to focus on juvenile justice reform by addressing the issue of overreliance on secured juvenile detention. The Foundation's Juvenile Detention Alternatives Initiative (JDAI), he said, was really the "grandchild" of the adult pretrial justice movement, as it relied on the cornerstone innovations of adult bail reform to inform its work with juveniles. JDAI is somewhat different, though, in that its efforts have been comprehensive, addressing a wider array of systemic issues beyond merely implementing better screening techniques and conditional release options.

Mr. Lubow explained that JDAI is now the most widely replicated juvenile justice reform project in the country, with a presence in 33 states (it will be close to 40 states by the end of the year) and with "extremely promising" results, including data showing that the use of secure juvenile detention in participating jurisdictions is down an average of 42 percent since the strategies were introduced—and with no reductions in public safety measures. A further benefit, he stated, has been a reported 35-percent reduction in juveniles sent to youth corrections following conviction in the sites implementing JDAI. Those who are interested in this topic, he stated, can go to the "JDAI Help Desk"[23] for literature, information about JDAI sites, and sample documents.

In thinking about the next 50 years, Mr. Lubow concluded, we must answer the questions, "[w]hy is it, that in the aftermath of the hopes of the bail reform movement, we entered the era of mass incarceration," and "is there anything to learn from the recent experiences of JDAI that might make a difference?" He then offered the following two points: First, he said, often we have confused programmatic innovation with genuine system reform, but it is clear that programmatic innovation itself does not necessarily produce the results we desire. Second, he stressed, the JDAI experience has shown that collaborative planning will produce more "wins" than individual actions not necessarily embraced by the entire system.

SETH WILLIAMS

David Y. Lee for Public Welfare Foundation

Mr. Williams discussed his numerous efforts aimed at achieving pretrial justice in a jurisdiction of roughly 1.5 million residents, and in an office that prosecutes as many as 75,000 to 80,000 cases per year. Previous prosecutors' "get tough" punitive policies had led only to crowded detention facilities, he said, with no corresponding increase in public safety. Moreover, those policies did nothing to solve system inefficiencies. Mr. Williams explained that his "success," in the form of dramatic changes that he made in his office, can be attributed to three things: (1) given a new prosecutor, people in his city were willing to reconsider the prosecutorial role; (2) the *Philadelphia Inquirer* had done a lengthy series of articles on the criminal justice system, portraying it as "broken"; and (3) the suffering economy created a need for collaboration to address systemic criminal justice issues.

Mr. Williams emphasized his belief that "certainty" of punishment was more important than "severity" of punishment and that being "smart on crime" was more important than just being "tough." Thus, he looked for best practices in every area, including pretrial, he said, and ended up (1) improving his charging unit by having it take a more proactive role in assessing charges and assisting with bail setting; (2) reducing the case processing time between arrest and sentencing; (3) changing the office practices concerning pleas; (4) increasing diversionary programs; and (5) changing policies concerning prosecuting low-level drug offenses. Being smart on crime, he said, does not mean being soft on criminals, but it does mean making meaningful attempts to prevent crime, to better serve the victims of crime, and to reduce recidivism. In the end, he stated, "There has to be a greater role for the district attorney . . . a role in pretrial justice, and I think that we can make the greatest changes, systemic changes, that both make the society safer and better serve defendants, and as a byproduct, save money by having a much more efficient pretrial system."

23 The website for the JDAI Help Desk is found at http://www.jdaihelpdesk.org/Pages/Default.aspx.

SUSAN WELD SHAFFER

Ms. Shaffer began her presentation by explaining that the D.C. system's non-reliance on money bail and ability to largely follow the ABA *Criminal Justice Standards on Pretrial Release* is due significantly to a change in its statute. The statute that was in effect during the 1970s and 1980s contained many important provisions, including a presumption of release under the least restrictive conditions and a meaningful preventive detention section, she said, but D.C. was still using money bail in many cases. Soon the criminal justice system collectively recognized that the courts would continue to use money so long as it was allowed. Accordingly, she stated, various system officials, including the prosecutors and public defenders, got together and proposed a change in the statute to read that a financial condition could not be imposed to protect the public, and if a financial condition is imposed to reasonably assure court appearance, it must not result in the preventive detention of the accused. That one line, she explained, essentially means that if money is used, it must be set in an amount that the defendant can meet. "This is critical to the success of the eradication of money in the District of Columbia," she said. "It is really the single most important reason that . . . money has disappeared from our system."

Ms. Shaffer noted that another important statutory provision states that the Pretrial Services Agency shall supervise only non-surety bonds, which, she said, gives judges the ability to use a surety bond if they wish. Currently, however, most judges prefer the assessment and supervision techniques of the Pretrial Services Agency over those offered by the commercial bail bondsmen.

Ms. Shaffer then recounted key agency statistics.[24] The D.C. Pretrial Services Agency has one of the highest pretrial release rates in the country, she said, at about 85%, which is typically secured within 24 hours after arrest. But despite this high release rate, she noted, 88% of those released make all scheduled court appearances, and 88% complete the pretrial release period without new arrests (with only 3% of defendants re-arrested for felonies, and 9% for misdemeanor violations). Ms. Shafer cited five reasons for the District of Columbia's ability to accept the ambitious statutory provisions and, ultimately, for this "success" at the local level: (1) the Pretrial Services Agency's ability to provide accurate information about defendant risk to the court; (2) prosecutors making quick charging decisions (so that risk can be based on "strong" charges actually filed, rather than on charges at arrest); (3) defense counsel being present at first appearance; (4) judges making appropriate and transparent decisions, focusing on responses to the individual risk factors; and, (5) all system actors committing to tracking results through the criminal justice coordinating council.

Not having to "mess" with money, she said, has allowed the District of Columbia to better use evidence-based practices to determine individualized, differential supervision techniques, to work on pretrial diversion efforts, and to better attain due process for defendants. "It's through collaboration, it's through information sharing, and it's through looking at data . . . [and] I think our model can work for anyone in the criminal justice system," she stressed. Overall, she concluded, an up-front investment similar to the investment made in D.C. "pays off in terms of achieving fairness, protecting the integrity of the judicial process and the safety of the community, and providing overall cost savings for those expensive jail beds."

24 A detailed case study, titled *The D.C. Pretrial Services Agency: Lessons from Five Decades of Innovation and Growth,* is available on the Symposium website at http://pretrial.org/Reports/Pages/default.aspx.

CHIEF CATHY L. LANIER

David Y. Lee for Public Welfare Foundation

Chief Lanier noted that information sharing is difficult among justice system agencies but it is important to any endeavor that seeks to improve pretrial justice. She said that the information shared between the D.C. Pretrial Services Agency and the Police Department has been crucial to her work on current, pressing criminal issues such as reducing violent crime. She stated, "[w]e have reduced violent crime and homicides here in Washington last year to the lowest level we've seen of homicides since 1963 . . . and I credit a lot of that to the work that's been done by the Pretrial Services Agency." Now, she added, with the big issue being gang retaliation, the Pretrial Services Agency helps to avoid further violence and protect the public by assisting the police in reacting more quickly and focusing on the most violent and repeat offenders. Ongoing communication and collaboration is essential, she said, and because so many jurisdictions are facing the same challenging budget issues, it only makes sense to focus resources on the most violent, dangerous, repeat offenders when it comes to identifying whom to detain – those roughly 5 to 6 percent of defendants who are creating 80 percent of the problems.

In summary, Chief Lanier stressed that everyone in the system must continually commit to maintaining an effective pretrial services system and to developing a flexible response to changes in criminal behavior and other dynamic issues that affect risk. As a police officer, she said, "I really can't say enough about a [risk-based] system that allows us to strategically hold those who create the most problems in our community and who are the most dangerous."

TIMOTHY R. SCHNACKE

Mr. Schnacke described two efforts at attaining pretrial justice in his local jurisdiction, both of which came out of the collaborative work of the jurisdiction's Criminal Justice Strategic Planning Committee.[25] The first, the Jefferson County Failure to Appear Pilot Project, used a controlled experiment to demonstrate that calling defendants to remind them of their court dates either before or after those court dates can reduce a jurisdiction's failure-to-appear rate by one-half or better for certain defendant populations. The county's resulting Court Date Notification Program continues to improve its court appearance rates, he said, while expanding the program to include more defendants and more serious cases.

The second project, the Jefferson County Bail Project, is a good example of a jurisdiction educating itself on legal and evidence-based practices in the administration of bail, collaboratively discussing the research, and then making and monitoring agreed-upon improvements. The process has taken 4 years, including two pilot projects designed to collect original research, he stated, but the overall significance of the endeavor is illustrated by the following improvements in a county that was previously "immersed" in the traditional money bail system: (1) eliminating the monetary bail bond schedule based on charge alone (in its place is now a process document, which uses guiding principles supporting risk-based, individualized bail determinations with less emphasis on money); (2) holding weekend advisements; (3) having defendant representation at first advisement; (4) relying less on secured bonds and commercial sureties; and (5) hav-

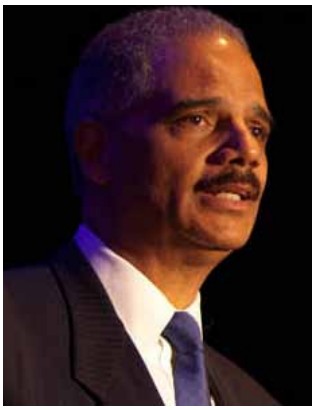
25 Both projects are summarized in more detail in papers submitted to the Symposium and may be found at http://pretrial.org/materials.html.

ing more open discussions about defendant risk with an emphasis on pretrial release under least restrictive, mostly nonfinancial conditions. What we learned, Mr. Schnacke said, is that "you don't need money to help protect public safety and increase court appearance rates and, in fact, money just gets in the way. All we learned about money is that it keeps otherwise manageable defendants in jail." Generally, he concluded, the county learned that even major improvements are possible at the local level. Education about the law, the social science research, and the best practice standards on pretrial release, however, is perhaps the biggest key to success. With that education, he stated, "jurisdictions can make significant improvements toward pretrial justice that the entire criminal justice system can embrace."

REMARKS FROM THE HONORABLE ERIC H. HOLDER, JR., ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

***Mary Lou Leary**, the Principal Deputy Assistant Attorney General for the Office of Justice Programs, introduced Attorney General Eric Holder, "the man who is leading the Department of Justice's efforts in pretrial justice"—a topic, she said, that the Attorney General "stands for . . . cares about . . . and what he will fight for." His remarks are reproduced here in their entirety.*

ATTORNEY GENERAL ERIC HOLDER, JR.



David Y. Lee for Public Welfare Foundation

Thank you, Mary Lou Leary, for your kind words, for your years of service to the Justice Department, and for the extraordinary leadership that you—and Assistant Attorney General Laurie Robinson—are providing to the Office of Justice Programs. You and your team have done a great job of bringing so many critical partners together for this symposium.

It's a privilege to join with top federal officials; members of the bench and of the bar; federal, state, and local law enforcement and corrections officers; jail and prison administrators; victims; prosecutors; former defendants; and advocacy organizations as we examine, discuss, and—ultimately—work to improve the state of pretrial justice in America.

Your insights and expertise are essential to this work. I want to thank each of you—especially Tim Murray, Judge Truman Morrison, and their colleagues at the Pretrial Justice Institute—for your participation. Like Tim and Judge Morrison, many of you have been on the front lines of efforts to strengthen and reform the pretrial process for decades. And your work has helped to ensure fairness, efficiency, and public safety.

But—as you've discussed this morning—we have much more to do. This symposium marks an important step forward in what I know—and what I pledge—will be an ongoing conversation about how we can achieve safe and fair pretrial release and diversion practices in our communities—and, in so doing, make our justice system both more effective and more efficient.

As extraordinary as this gathering is, it's important to note that it is hardly unprecedented. Nearly half a century ago, our nation's 64th Attorney General, Robert Kennedy, launched the national dialogue we're extending today when he convened the first-ever National Conference on Bail and Criminal Justice here in Washington.

That landmark gathering helped to raise awareness about the need for pretrial justice reform, and to usher in a wave of meaningful changes—most notably, the Federal Bail Reform Act of 1966, which constituted the first major restructuring of the federal system since the year George Washington was sworn in as president.

Before Robert Kennedy's historic conference, there was limited understanding about the cost and public safety benefits of allowing for the release of defendants on their own recognizance, pending trial. And few states had established such policies. But soon after Attorney General Kennedy helped to shine a light on this issue, there was a flurry of activity in state legislatures nationwide as proposals were formulated, considered, and implemented. By 1999, in one form or another, virtually every state had put these policies into effect.

Policymakers, law enforcement officers, and judges across the country helped to design appropriate procedures to detain without bail those defendants who were deemed too dangerous for release—or who posed a flight risk—while at the same time safeguarding due process and civil rights. Today—after decades of study, analysis, and cooperation—there is no doubt that, compared to Kennedy's time, current pretrial release and diversion programs are not only more effective, but more just.

And yet—serious problems, as well as significant inefficiencies, remain.

As we speak, close to three-quarters of a million people reside in America's jail system. When they are sent home or sentenced to prison, they will cycle out, and others will cycle in—so that, by the end of the year, 10 million individuals will have been involved in nearly 13 million jail admissions and releases.

Across the country, nearly two-thirds of all inmates who crowd our county jails—at an annual cost of roughly 9 billion taxpayer dollars—are defendants awaiting trial. That's right, nearly two thirds of all inmates.

Many of these individuals are nonviolent, non-felony offenders, charged with crimes ranging from petty theft to public drug use. And a disproportionate number of them are poor. They are forced to remain in custody—for an average of two weeks, and at a considerable expense to taxpayers—because they simply cannot afford to post the bail required—very often, just a few hundred dollars—to return home until their day in court arrives.

This link between financial means and jail time is troubling in its own right. But it's compounded by the fact that many inmates become ineligible for health benefits while they're in jail—imposing an additional burden on taxpayers when they're released, and often are forced to rely on emergency rooms for even the most routine medical treatments.

Now, the reality is that it doesn't have to be this way. Almost all of these individuals could be released and supervised in their communities—and allowed to pursue or maintain employment and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice. Studies have clearly shown that almost all of them could reap greater benefits from appropriate pretrial treatment or rehabilitation programs than from time in jail—and might, as a result, be less likely to end up serving long prison sentences.

But, within the confines of the current system, we too often find ourselves with few, if any, viable alternatives to incarceration.

This is where today's conversation begins—and why this symposium is so important. By competently assessing risk of release, weighing community safety alongside relevant court considerations, and engaging with pretrial service providers—in private agencies, as well as in courts, probation departments, and sheriff's offices—we can design reforms to make the current system more equitable, while balancing the concerns of judges, prosecutors, defendants, and advocacy organizations. We can help those serving on the bench make informed decisions that improve cost-effectiveness and preserve safety needs, as well as due process. And we can spark, as Robert Kennedy did, not only a vital discussion—but unprecedented progress.

I'm proud to report that, already, the Department of Justice is working to support pretrial services—and evidence-based decision making—in jurisdictions across the country. Together with our partners at the Pretrial Justice Institute and the National Association of Counties, we're providing guidance to elected officials at the local level, and soliciting perspectives from experienced pretrial management professionals. We're examining new ways to ensure that risk assessment is an integral part of the conversation. And, to that end, we've published a report—based on the research and recommendations of experts from across the country—on how to improve our capabilities and manage defendant risk when it comes to detention and release decisions.

At the same time, we're working to improve reentry policies, so we can have an impact on both ends of the process—from pretrial justice, to the smooth reintegration of those we release from custody. In January, I chaired the first meeting of the Interagency Reentry Council, composed of seven Cabinet Members and other top Administration officials—which, last year, awarded almost $100 million under the Second Chance Act to support substance abuse treatment, employment assistance, housing, mentoring, and other reentry services. In total, we now support some 250 reentry programs, and have launched rigorous evaluations to measure the degree to which they reduce recidivism.

There's no reason why we can't—or shouldn't—adopt a similarly broad-based approach to the pretrial justice system. But, with federal, state, and municipal resources in high demand and short supply, the simple truth is that government simply can't solve these problems alone. We need to engage key partners and innovators across the country to guide our efforts, to bring an expanded network of stakeholders to the table, and to push for responsible reform.

So, to be blunt—we need your expertise. We need your ideas. And we need your help.

Our discussions must be grounded in rational and transparent risk assessments—built on evidence-based tools, and predicated on the presumption of innocence—but ever mindful of the need to keep our neighborhoods safe.

Each of you can play a key role in this effort. You can help us find ways to support the growth of pretrial service agencies and diversion programs in the more than 300 jurisdictions where they already exist—and encourage their creation where they do not. You can fight to ensure that, for every defendant who enters the system, our judges have access to the best information possible—along with a range of supervision and service options, as well as sound guidelines to inform their decisions.

And you can broaden our engagement with other experts on the ground, raising the profile of this work—and igniting, once again, a movement for meaningful change.

The call for such a movement was first issued nearly half a century ago, at the very first gathering of this kind, when Robert Kennedy challenged this nation, "to see to it that for the poor man, the word 'law' does not mean an enemy, a technicality, an obstruction. Let us see to it that law, for all men, means justice."

This is the mission, the legacy, and the cause that we now must carry forward.

As we rededicate ourselves to this work, I can't help but feel optimistic about where we'll arrive—and what we will achieve—together. Not only do I look forward to hearing about the discussions that you will have—and the recommendations that you will develop—during this symposium, I look forward to our continued partnership, our continued progress, and our continued pursuit of security, opportunity, and justice for all.

Thank you.

LUNCHEON SPEAKERS

***The Honorable Bruce Beaudin**, Senior Judge, Superior Court, Washington, D.C.; **The Honorable Ronald Weich**, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice; **Kenneth Feinberg**, Feinberg Rozen, LLP, and Administrator of the BP Deepwater Horizon Disaster Victim Compensation Fund.*

During the working lunch, Assistant Attorney General Ronald Weich and Kenneth Feinberg offered historical perspectives on pretrial justice, both having been key advisors to the late Senator Ted Kennedy, as well as their own insights on today's justice system.

Introducing the lunch speakers, **Judge Beaudin** briefly traced the recent history of bail and pretrial justice, emphasizing the need for judges to take responsibility for learning about the subject of bail and following the mandates of the U.S. Supreme Court opinion in *Stack v. Boyle*, 342 U.S. 1 (1951), which stated that pretrial release decisions be based upon the risks posed by each individual defendant.

RONALD WEICH

Calling the current gathering "historic," AAG Weich asked Symposium participants to provide recommendations and to give the Justice Department the tools that it needs to help jurisdictions across the country. Although federal aid to state and local agencies is often on the "chopping block," he stated that he is committed to including the recommendations from this Symposium in his own work with Congress. Having worked with Daniel Freed (a pioneer in 1960s bail reform) and with Senator Ted Kennedy on bail reform issues in the 1980s, AAG Weich said that he learned much about the need to improve a system of bail administration that he witnessed first-hand as a young New York District Attorney—a system in which defendants without money were sent to jail, lost their jobs, and were unable to adequately assist with their defense.

KENNETH R. FEINBERG

In his remarks, Mr. Feinberg drew parallels between his current work in civil justice and the work being discussed by Symposium participants. Three common themes, he noted, were: (1) discretion; (2) transparency; and (3) prediction (what he called "the first cousin" of numbers one and two), each of which is important, but each of which contains its own dangers in implementation. Implementing pretrial services in a time of shrinking budgets "encourages creative thinking," he said, but attaining a proper balance between criminal process and civil liberties requires such thought.

ANSWERING THE CHALLENGES – BREAKOUT SESSION SUMMARIES

Moderator: ***Cherise Fanno Burdeen****, Chief Operating Officer, Pretrial Justice Institute.*

Panel Participants: ***Kim Ball****, Senior Policy Advisor for Adjudication, Bureau of Justice Assistance, U.S. Department of Justice, Washington, D.C.;* ***William Dressel****, President, National Judicial College, Reno, Nevada;* ***Elaine Nugent-Borokove****, President, Justice Management Institute, Denver, Colorado;* ***Gwyn Smith-Ingley****, Executive Director, American Jail Association, Hagerstown, Maryland.*

During the afternoon breakout sessions, Symposium participants met separately in four groups to develop recommendations for improving pretrial justice in America. To the extent possible, the small groups were divided into combinations of various constituencies—such as law enforcement, county government, victims and victims' representatives, or private funders—to allow each perspective a meaningful voice. Pretrial Justice Institute Chief Operating Officer Cherise Fanno Burdeen tasked the groups with making recommendations for moving forward, and with developing action steps for reaching the groups' collective goals. The recommendations are presented at the end of this report.

David Y. Lee for Public Welfare Foundation

PANEL: THE NEXT 50 YEARS

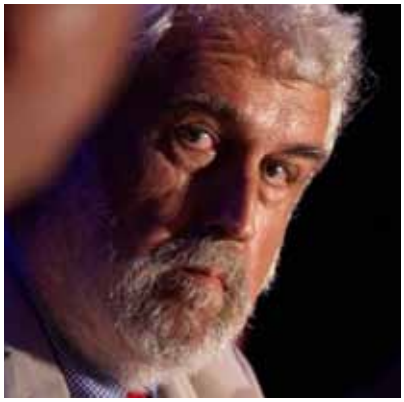
Moderator: ***Alex Busansky****, President, National Council on Crime and Delinquency, Oakland, California.*

Panel Participants: ***The Honorable Truman Morrison, III****, Senior Judge, Superior Court, Washington, D.C.;* ***The Honorable Laurie O. Robinson****, Assistant Attorney General, Office of Justice Programs, U.S. Department of Justice;* ***Cynthia Jones****, Associate Professor of Law, American University, Washington College of Law, Washington, D.C.;* ***Michael Jacobson****, President and Director, Vera Institute, New York, New York.*

In this closing panel, presenters discussed how lessons from the past 50 years could inform future pretrial justice strategies and policies.

Mr. Busansky introduced the final Symposium panel, which addressed the important question of what must be done in the future to address persistent issues of pretrial justice.

THE HONORABLE TRUMAN MORRISON, III



David Y. Lee for Public Welfare Foundation

Judge Morrison focused his comments on the overreliance on money bail. "What has the last 50 years taught us that might inform pretrial justice strategies in the future?" he asked. "First and foremost, that national pretrial decisionmaking practices will not meaningfully change as long as America continues to rely on money bond." He went on to state that in the end, no matter what we have learned about better ways to help judges inform the decision of pretrial issues, if money bonds are there, judges are going to continue to use them. If money bonds are there, prosecutors are going to continue to ask for them. If money bonds are there, defense attorneys will frequently continue to end up arguing about nothing more than amounts. Potentially dangerous people will continue to buy their way of jail *or* be improperly incapacitated without the process that even they are due. And low-risk persons will remain incarcerated pretrial just because they are poor."

If judges are allowed to set "high" money bonds, he asked, what chance is there that they will take the time to use a proper preventive detention process? Likewise, if we implicitly approve of "low" money bonds, why should judges worry that those low amounts might unnecessarily detain defendants? Money bail, he stated, is "the durable enemy of law-based and rational pretrial policy," causing untold collateral damage in the form of unnecessary and likely unconstitutional pretrial detention, and "all the more indefensible since just, fair, and effective public policy alternatives are today readily at hand." Judge Morrison noted that jurisdictions such as the District of Columbia have shown that the elimination of money bail is not some utopian dream, and there is no reason to believe that the D.C. experience cannot be replicated. In the end, he said, we must admit that with money bail we have been mistaken in our thinking. "Until we can come to accept our mistake, and reject money once and for all as a proper dynamic of our pretrial decisionmaking, our true reform successes will inexorably be limited in scope and temporary in duration."

THE HONORABLE LAURIE O. ROBINSON

Based on her reading of the proceedings from the 1964 Conference, AAG Robinson observed that "our nation has been slow to address these very considerable challenges. Bail reform has been very much an evolutionary, not a revolutionary process. Even today, a half-century removed from the first bail conference, fewer than 1,000 of the 3,000 counties in the United States benefit from services provided by some 300 pretrial programs." Nevertheless, she stated, even in times of fiscal challenges, there are certain concrete ways to create a smarter, more effective system of justice, which involves "taking the guess work out of the pretrial process and replacing it with sound, evidence-based decisionmaking."

The key to this, she stated, is to focus on evidence-based practices and approaches, such as individualized assessments of defendant risk through cost-effective pretrial services agencies using appropriate and effective validated risk instruments instead of bond schedules. Also, we can look to "success stories," such as the District of Columbia's and other local jurisdictions' evolution to an evidence-based culture, to serve as models for the rest of the country. Finally, she stressed, we need education (through many means, including technical assistance and programmatic training) to overcome a pervasive lack of understanding about even basic pretrial issues. In the end, she said, we must be persistent and diligent in attempting "to instill in the system an evidence-based mindset—one in which reliable data, rather than politics or gut feelings—form the foundation for action."

As she stressed in her concluding her remarks: "We need to keep going. We need to make sure we're collecting the right data to help local decisionmakers determine what works best and with whom. We need to strengthen research on which supervision modalities work best when matched with specific risk factors. And we need to highlight practices that work—especially with regard to costs and outcomes—so that jurisdictions have a solid base of experience to work from."

PROFESSOR CYNTHIA JONES

Professor Jones stressed the need to recognize and address the issue of racial disparity in any future discussion of pretrial justice.[26] "There is no just way for us to discuss the issue of reforming pretrial justice without discussing racial justice," she stated, and "to divorce the two would be doing a disservice." Research has already documented significant disparities (controlling for other variables) in detention and bail amounts based on race that are not limited just to the traditional black/white comparisons—even though, she said, there is no question that being black makes one twice as likely to be preventively detained. Other racial groups, such as Native Americans, have the same issues of over-detention and over-use of high money bail leading to detention. As another example, she noted, one national study found that "being Hispanic is the single best indicator of unfavorable pretrial release decisions." Overall, the results of this and other studies show the same thing: "Racial disparities persist in the pretrial justice system, and need to be addressed."

Professor Jones noted that the ABA's Racial Justice Project is attempting to remedy racial disparity by creating policy changes, through training, guidelines, and standards, that can eliminate racial disparity in post-conviction practice, but much of that work translates to pretrial justice.

26 In her presentation, Professor Jones referred to two articles that have been posted on the Symposium website: Stephen Demuth, Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees, *Criminology* 41(3) (2003): 873–908; and Traci Schlesinger, Racial and Ethnic Disparity in Pretrial Criminal Processing, *Just. Quarterly* 22(2) (June 2005): 170–192. Both are available at http://pretrial.org/materials.html.

Racial impact, however, should not automatically be equated with racism, she stated. Most decisionmaking appears not to be racist; decisions, instead, appear to be benign, albeit leading to significant racial impact. Nevertheless, she concluded, [u]ntil we begin to dissect, examine, and validate the kinds of factors that we take into account, and examine whether they are having a racial impact, I don't think that we are going to have true pretrial justice."

MICHAEL P. JACOBSON

Mr. Jacobson emphasized that while the use of data and evidence, and the use of arguments about improved justice, efficiency, fairness, and disproportionality, are all necessary and important to pretrial justice, "they are not remotely sufficient to do any sort of long-term significant reform."

There is perhaps no greater gap between what we know and what we do than in the area of criminal justice, he stated. Unlike perhaps in the 1960s, criminal justice is now a "hyper-political" topic, requiring an "explicit political and fiscal strategy [combined with a public opinion and public education strategy] to push this issue forward." Today represents "a moment," he said, but there must be a commitment from those outside this room, including both private and public funders, and other groups not normally included in these efforts (such as business and faith-based groups) to create this larger political and fiscal national strategy that is capable of bringing local reform.

Mr. Busansky ended the panel discussion by asking the question, "If money is the problem, then what is the 'charge' of the Symposium?" What can people do? **AAG Robinson** answered that she believed this Symposium could act as a catalyst to create a local strategy that could be united with a federal strategy that focuses on pretrial justice and fairness. **Professor Jones** stressed the need to analyze data (including data on racial disparity) and to better infuse data into any discussion of pretrial justice. **Mr. Jacobson** noted that combining the larger, philosophical issues with practical issues can be a powerful tool for making progress; nevertheless, he stated, we must spend time to educate stakeholders on all of the issues. And finally, **Judge Morrison** observed that "there is no constituency in America for poor people charged with crime." Accordingly, he said, whenever we talk of efficiency, effectiveness, and community safety, we should be equally mindful that unnecessary pretrial detention is an "immense human tragedy" and that "we should never apologize for . . . talking about fairness."

CLOSING REMARKS

The Honorable Laurie O. Robinson, Assistant General, Office of Justice Programs, U.S. Department of Justice, introduced The Honorable James M. Cole, Deputy Attorney General, U.S. Department of Justice. Timothy J. Murray of PJI offered the final remarks of the Symposium.

David Y. Lee for Public Welfare Foundation

Deputy Attorney General Cole began his closing remarks by thanking Symposium participants for providing ideas and recommendations to help the Department make the pretrial process smarter and more effective. "You are the ones who wield the greatest influence in this area. You are the ones to whom people listen. And I am thankful and grateful that you have allowed us to actually leverage your credibility for our own selfish purposes."

His own work on the American Bar Association's Standards Committee, Mr. Cole stated, has shaped his philosophy of a justice system based on fairness and efficiency. Moreover, it continues to guide him in his work to this day, as "[t]he concept of ensuring fair and impartial administration of justice for *all* Americans is central to the mission of the Department of Justice."

"We are seeing a growing number of these [pretrial services] programs throughout the country," he said, "but we would like to see more. We need to make these innovative practices the rule, and no longer the exception." Indeed, he stated, "a sound pretrial infrastructure is not just a desirable goal—it is vital to the legitimate system of government and to safer communities."

Decisions made during the pretrial stage must be evidence-based, he stressed. This means moving from criminal justice systems making decisions based on intuition, custom, or a fixed bond schedule, to systems making decisions by using determinations of risk and safety that rely on data and individually based assessments. "In other words," he concluded, "we need an evidence-based approach to pretrial justice that realizes the system's full potential."

Mr. Murray closed the proceedings by noting that while the Symposium seemed to be a success—with influential speakers making a strong case for the need to improve pretrial justice—its true success can only be judged over time. If years from now the challenges that were raised during the two 2 days of the Symposium have been addressed, he said, then the Symposium will be seen as a watershed event. He noted that it was up to those attending the Symposium to make sure that the issues of pretrial justice remain at the forefront of discussions. "The time for you to listen to speeches is over," he told the attendees. "The time for you to begin making speeches has just begun. The time for you to sit through presentations is over. The time for you to include pretrial justice in every presentation you make to your constituent groups has come."

RECOMMENDATIONS OF SYMPOSIUM PARTICIPANTS

There was a consensus among the participants at the Symposium that the pretrial justice systems in place in jurisdictions across the country should have all of the following features:

- Use of citation releases by law enforcement in lieu of custodial arrests for non-violent offenses when the individual's identity is confirmed and no reasonable cause exists to suggest the individual may be a risk to the community or any other individual, or to be a risk to fail to appear in court.
- Eliminating the use of the automatic, predetermined money bail set with regard only to the arrest charge, and requiring all arrestees to be assessed for risk of rearrest and flight, prior to any pretrial release.
- Screening of criminal cases by the prosecutor's office before the initial appearance to make sure that the charge before the court at that first appearance is the charge on which that the prosecutor is moving forward.
- Presence of a defense counsel at the initial appearance who is prepared to make representations on the defendant's behalf for the court's pretrial release decision.
- Presence of a judicial officer at the initial appearance who has received thorough training on pretrial release decisionmaking, including on the laws that govern how the decisions are to be made and the research showing evidence-based decisionmaking practices.
- Existence of a pretrial services program or similar entity that:
  - » Interviews all defendants who are in custody before the initial court appearance;
  - » Compiles the information that the court is required by law to take into consideration in making a pretrial release decision;
  - » Assesses each defendant's level of risk to be a danger to the community and to fail to appear in court using scientifically validated risk criteria;
  - » Recommends to the court viable, least restrictive release options to address identified risks; and,
  - » Provides crime victims and others with mechanisms for reporting apparent violations of pretrial release conditions.
- Availability and use of detention without bail for defendants who pose unmanageable risks to public safety.

These same features have been a part of the American Bar Association's Pretrial Release Standards since they were first promulgated in 1968. Participants recognized that simply pointing to those standards, and to the good results achieved by the jurisdictions that have moved to implement them, has not been sufficient to persuade most jurisdictions to adopt more than just a few of these features, if any at all. Changing prevailing pretrial justice practices in this country requires changing the culture that supports those practices. Thus, the recommendations that follow seek to lay the necessary groundwork to change the culture that believes current practices are delivering effective pretrial justice.

RECOMMENDATIONS FOR OJP

Participants felt that, as the convener of the national symposium, the Office of Justice Programs is in a unique position to move the field forward. Accordingly, several recommendations were made involving OJP.

Establish a multidisciplinary Pretrial Justice Working Group.

It was the consensus of the participants that the current national momentum supporting pretrial justice reform must not end with the Symposium but rather should advance as a result of the Symposium. A working group of select multidisciplinary, influential national leaders is a logical and essential follow-up to the Symposium. This panel should meet regularly, review, and synthesize the efforts underway by DOJ, private foundations, and others to advance pretrial justice. The group should receive appropriate staff support from DOJ and publicly report on their work.

Provide regional pretrial justice symposium.

Participants felt the success of the national pretrial justice Symposium should be recreated at the state or regional level. In order to support change, local practitioners must have the benefit of an agenda like that of the national Symposium that examines pretrial justice in the context of public safety, cost, and fairness. This would include conducting state or local data collection and analysis; legal analysis of state bail laws, administrative court orders or county resolutions; and a consensus-driven agreement on pretrial justice system goals and a roadmap to achieving those outcomes.

Convene a judicial roundtable to develop a strategic approach to training and educating jurists and judicial support systems.

Participants felt that judicial education and training are key to pretrial justice reform, as fundamentally and legally, judges set bail. As a result, there should be a national strategy to engage the judiciary at every level. This approach would involve working through a variety of venues—including state judicial educators, associations of judges such as the Council of Chief Justices—to identify a set of nationally respected judges that can convene a meaningful dialogue on the issue. Supporting this roundtable would require staffing resources to conduct legal and social science data and information collection and synthesis. The goal would be to have this roundtable provide a roadmap for change.

Take full advantage of OJP's communications assets by highlighting the need for pretrial justice reform while showcasing best practices.

The participants felt that pretrial justice reform should be included whenever possible in the speeches given by department officials as well as the publications, webinars, and other communications supported by OJP. As many noted, educating stakeholders on the issues and problems facing pretrial justice is a primary ingredient for pretrial reform, and OJP is in a unique position to do so.

Demonstrate the effectiveness of pretrial justice best practices through a dedicated Bureau of Justice Assistance grant program.

Such a program would not only underscore the importance of pretrial justice to OJP but would provide interested communities the opportunity to facilitate change while serving as a model for others. Demonstration sites would also serve as likely providers of pretrial data for the Bureau of Justice Statistics, while providing ideal opportunities for National Institute of Justice-sponsored research.

Collect a comprehensive set of pretrial data needed to support analysis, research, and reform through the Bureau of Justice Statistics.

The Bureau of Justice Statistics should collect the data needed to quantify the dimensions of pretrial success and failure. This would include expanding the current State Court Processing Statistics series to incorporate the redesigned data collection instrument completed in 2009, as well as include data on misdemeanors. This effort should be coordinated with the information technology technical assistance and investments provided to local jurisdictions by the Bureau of Justice Assistance.

Embark upon a comprehensive research strategy that results in the identification of proven best pretrial justice practices through the National Institute of Justice.

Discussants agreed that little gold-standard, rigorous research has been conducted in this area and that work supported by NIJ will have the added benefit of stimulating the interest of the criminal field research community. NIJ should encourage applications to its various fellowship awards and open solicitations, as well as offer a focused pretrial justice solicitation. This work requires a foundational discussion and exploration with researchers at conferences such as the American Society of Criminology, the NIJ Research Conference, and others. It also would require an introduction of this work to the academic community in support of thesis and dissertation work.

RECOMMENDATION FOR LEGISLATORS

Review proposed pretrial bills for their compatibility with the policies and practices for pretrial release decision-making outlined by the American Bar Association in its Standards on Pretrial Release.

The law, professional standards and science have demonstrated pretrial release decisions should be guided by risks, not the defendant's access to money, that money bail is not designed to and does nothing to address concerns for community safety, and that jurisdictions should establish a pretrial services function to provide information and viable options to the court in every case.

Participants were concerned about bills that have been introduced in recent years that serve to circumvent the use of evidence-based pretrial risk assessment and supervision. These bills have, among other things, sought to: require that the courts set a financial bail if the defendant is found not to be an indigent; require the court to set a financial bail if the defendant is charged with certain violent or other serious offenses; and prohibit counties from using their own funds to operate pretrial services programs. It is recommended that legislators review any bills governing pretrial release and detention policy for compatibility with evidence-based practices, the law and standards of legal practice.

Introduce and pass bills that require commercial bail bonding for profit companies to report to the court and to the appropriate licensing and regulatory authorities on bail bond forfeiture activities.

There was a consensus among the participants that very little is known about the bail bond forfeiture activities of commercial bail bonding for profit companies, and that without such information it is difficult to determine whether these companies are being held accountable for defendants who have failed to appear. Bonding companies should be required by law to report on the number of bails that have been ordered forfeited by the court, the face value of each of these bails, the number of forfeitures that have been

paid, the amount that has been paid, and the number and face value of forfeitures that remain outstanding. This information should be publicly available through the regulatory agencies in each state.

County legislative bodies should ensure that any local ordinances pertaining to pretrial release decisionmaking are compatible with the state law.

Participants were concerned about the pressures being brought to bear on county government officials to restrict non-financial release options and maximize the use of financial release through county action in ways that stand in direct violation of state law. It is recommended that county officials ensure all county ordinances are reviewed for compatibility with state law prior to their introduction.

RECOMMENDATIONS FOR STAKEHOLDER GROUPS

Stakeholder groups and constituent organizations should maintain a policy statement or resolution calling for the reform of pretrial justice practices.

A common theme throughout the Symposium was that pretrial justice reform could only succeed through the collaborative mobilization of all stakeholders within jurisdictions. As evidenced by the American County Platform and Resolution on Pretrial Justice both issued by the National Association of Counties, as well as statements issued by the American Probation and Parole Association, American Jail Association, and American Council of Chief Defenders, stakeholders are bolstered by the support of their membership associations' public positions. Other groups should follow suit and all statements should be updated as evidence-based practices advance.

Stakeholder groups and constituent organizations should educate their members regarding pretrial justice through conferences, publications, and trainings.

Participants recognized the importance of supporting the policy statements and resolutions of stakeholder associations and constituent groups with education efforts for their members. Publications, presentations at conferences, articles in newsletters and use of websites not only reinforce the message but also allow for specifically tailored and operational information to be disseminated. Participants also believed that stakeholder groups that have continuing education requirements, such as state and local bar associations, judicial officers, etc., include pretrial justice as a mandatory topic for receiving continuing education credit.

RECOMMENDATION FOR THE PHILANTHROPIC COMMUNITY

Convene a comprehensive philanthropic roundtable to identify areas that federal support cannot address.

The participants agreed that the involvement of the full range of the philanthropic community investing in criminal justice reform is essential to the success of pretrial justice reform for at least three reasons. First, the current and projected fiscal environment offers limited financial investment opportunity by the federal government. Second, it is important to show that the commitment to reform is shared across a broader spectrum of parties, beyond the federal government. This means that philanthropic groups from all sides of the political spectrum should at least come together to discuss the issue. And third, an uncoordinated focus on a reform effort can yield duplicative investments, or an over emphasis on one aspect of the issue. Participants hoped that such a philanthropic roundtable would result in a multi-year commitment to a national pretrial justice reform strategy.

Examine state statutes relating to pretrial release decisionmaking and develop a Model Code.

Just as the 1964 Conference was instrumental in moving Congress toward passing the Bail Reform Act of 1966—the first law to create a presumption of release on the least restrictive conditions, and to list the factors that the court must consider in the pretrial release decision and the range of release options available to the court—participants felt that this Symposium should lead states to examine their statutes. While many states did model their statutes after the federal Bail Reform Act, many others have not. Ideally, the Model Code would contain the following provisions:

- Prohibit the use of automatic, predetermined money bail amounts set with respect only to the arrest charge that allow for the release of any defendant with the means prior to an initial appearance.
- Require the empirically validated, individual assessment of risk of each defendant prior to the initial appearance in court.
- Provide for the imposition of proven and accountable conditions of supervision designed to mitigate measured risk of flight and/or crime while on release, or that results in detention.
- Prohibit the use of monetary bond for reasons of community safety.
- Authorize the preventive detention of certain defendants (modeled after current federal bail legislation) to provide an element of public safety protected by appropriate and required due process.

RECOMMENDATIONS FOR THE ACADEMIC COMMUNITY

Develop and seek funding for research proposals relating to pretrial justice.

Participants lamented the fact that research on pretrial justice issues has drawn so little attention from the academic community, compared with other aspects of the criminal justice system. The number of academics who have shown interest over the past several decades has been limited to a few, depriving the pretrial justice field of the rich range of scholarship that other areas of study have enjoyed. Participants felt, however, that there is much to be learned in the pretrial justice area, such as understanding what conditions of pretrial release work best for each population of defendants.

Prepare future practitioners and leaders to effectively address pretrial justice issues in a fair, safe, and effective manner.

The participants called upon law schools to include pretrial justice in their curricula and clinics. Colleges and universities should ensure that pretrial justice is included in their course offerings at the undergraduate and graduate levels. The development of a college-level textbook focused on pretrial justice was identified as a crucial and feasible product.