PROCEEDINGS

THE SYMPOSIUM ON PRETRIAL SERVICES 1981

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Pretrial Services Resource Center
918 F Street N.W., Suite 500
Washington, D.C. 20004

Consultation Centre
Ministry of the Solicitor General
2 St. Clair Ave. West, Suite 12A8
Toronto, Ontario, M4V 1L5

Proceedings of the Symposium on Pretrial Services 1981

Park Plaza Hotel
Toronto, Ontario
July 26-29, 1981

Edited by
Ann Jacobs

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The 1981 Symposium on Pretrial Services and these Proceedings are the work of many. The Symposium sponsors would like to thank everyone whose efforts contributed to the success of this joint effort between Canada and the United States: members of the Planning Committee, advisors to the project, faculty, and volunteers.

It should be noted that it was not possible to tape the Symposium sessions. Therefore, the summaries in this publication are based on the notes and recollections of a number of people. We hope the reports are largely accurate and will be useful to readers. We regret if there are significant omissions or errors.

The people who made time available to produce this report include:

Michael Bassett
Janice Bergin
Dee Durkot
Barbara Dye
Elizabeth Gaynes
John Greacen
Kathryn Harley
Gerald Hoffman
Alan Henry
Derek Jeffreys
Michael Kirby
Sherry Kulman
Sarah Lawley
Gerald Mills
Dorothy Mills
Timothy Murray
Jerry Needle
Kathy O'Boyle
Don Pryor
Mary Ruth
Mary Sonnichsen
Paul Sonnichsen
David Solberg
Brian Snyder
Alan Teichroeb
Helen Vail

Special credit is due Roseanna Kaplan, Susan Lee, Alison Molloy, and Sandra Wolfe for the considerable time and care they took in writing and editing portions of the work.

Ann Jacobs
Editor

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INTRODUCTION

The 1981 Symposium on Pretrial Services was held July 26-29, in Toronto, Ontario. It was the fifth major training conference to be sponsored by the Pretrial Services Resource Center with funding from the United States Department of Justice, Law Enforcement Assistance Administration (LEAA). It was the first, however, to have a dual Canadian and American focus. The 1981 Symposium was special in that it was co-sponsored by the Ministry of the Solicitor General Canada, the Ontario Ministry of Correctional Services, and the Ontario Ministry of Community and Social Services. Assistance was also provided by the Department of Justice Canada and the National Association of Pretrial Services Agencies (NAPSA).

The Symposium program was developed by a Canadian Planning Committee and the Resource Center based on information from more than five hundred responses to a planning questionnaire. Attendees included Canadian and American pretrial practitioners, courts and corrections officials, researchers and planners, and other policy makers. Through a series of general sessions, debates, workshops, training seminars, and discussion groups, participants explored the exercise of discretion in pretrial matters, the administration and delivery of pretrial services, policy making and the allocation of resources to pretrial within the criminal justice system, and related evaluation and research concerns.

These Proceedings are not a comprehensive record of the Symposium but, rather, highlight some of the issues which were discussed in the major sessions and the workshops. The series of sessions that dealt particularly with American concerns are denoted with a star. Reports on the parallel program that focused on Canadian issues are identified by a maple leaf.

Some sessions are not covered either because the format was not amenable to reporting (Peer Discussion Groups and Professional Development Seminars) or because sufficient information on the session was not available with which to develop a summary (Removing Juveniles from Adult Jails, Relocations on Pretrial Services: Their Past, Present and Future). The Canadian workshop on the Appropriate Use of Community Service and Restitution Orders was cancelled at the last minute due to faculty illness.

The Major addresses by the Honourable Bob Kaplan, Solicitor General of Canada, and the Honourable Nicholas Leluk, Ontario Minister of Correctional Services, are included in their entirety in an appendix. Texts of speeches by the Honourable Frank Drea, Ontario Minister of Community and Social Services; Dr. Irvin Waller; and Jeffrey Harris, of the U. S. Department of Justice, were not available for printing.

A lexicon of terminology related to both the Canadian and American systems is reproduced in an appendix to aid readers of these reports.

It is hoped that these Proceedings will be useful both to those who attended the Symposium and to those who were not there. Readers are invited to complete the evaluation of the Proceedings in the back of this publication and return it to the Resource Center.

The Symposium co-sponsors valued the experience of working together and look forward to having similar opportunities in the future.

OPENING GENERAL SESSION
Sunday, July 26

On Sunday afternoon many attendees elected to participate in a pre-conference briefing on the Canadian and United States' systems of justice conducted by David Solberg, of the Department of Justice Canada, and Bruce Beaudin, Director of the Pretrial Services Agency of the District of Columbia, U.S.A. That discussion was followed by a special showing of two films: "Presumed Innocent," a documentary on the Men's House of Detention, Riker's Island, New York, and "Crowded," filmed in the Baltimore City Jail.

Later that evening, Madeleine Crohn, Director of the Pretrial Services Resource Center, formally commenced the Symposium program. She recalled how unlikely it had seemed at the 1980 Symposium in Denver that there would be monies for another conference, let alone the prospect of a joint effort in Canada. She thanked the Canadians for inviting the Symposium to Toronto and for their efforts in making the Symposium possible.

Although the purpose of the opening session was only to greet attendees, Crohn asked the audience to reflect briefly on why they were there:

> "It seems that each time we assemble at this annual event, we discuss how tough things are; how difficult it is to provide for change; how frustrated our efforts sometimes are because we have too little time, too few resources, not enough support. And this is all true.
>
> "What is more, we are going through particularly wrenching major re-evaluations of policies affecting criminal justice. In the United States, those of us who work in pretrial justice are particularly interested in the direction of the new Reagan administration, for it will affect our work. Canada is also experiencing concern over crime and what is perceived to be an increase in criminal activities. It will therefore, be, particularly significant for us to have a dialogue -- to realize, perhaps, that we are not alone in confronting these problems, and that many of these problems transcend frontiers, for they have to do with humanity...
>
> "We may disagree with or, in fact, be quite opposed to some of the things we hear over the next few days. Some ideas will be comforting, and some will create further concerns. The point is that we have to listen, for what is being discussed are the things we must confront with pragmatism -- and with measured responses. Several months ago we were beginning to work on the Symposium. I was reading about Justice Douglas who used to serve on the United States Supreme Court. I found a statement of his which seemed relevant to why we are here and to why we may disagree with or in fact be quite opposed to some of the things we hear over the next few days:
>
> > 'Free speech has occupied an exalted position because of the high service it has given our society. The airing

> of ideas releases pressures which otherwise might become destructive. Full and free discussion, even of ideas we hate, encourages the testing of our own prejudices and preconceptions. Full and free discussion keeps a society from becoming stagnant and unprepared for the stresses and strains that work to tear all civilizations apart.'
>
> "My hopes are that this symposium will bring us together and make us individually and collectively stronger as we explore beyond our disagreements."

Crohn introduced Assistant Deputy Minister Christopher Nuttall, who, on behalf of the Solicitor General, welcomed the attendees to Canada and to the Symposium. He also provided the introduction for the Honourable Frank Drea, Minister of Community and Social Services, Ontario. Drea highlighted the concern his Ministry had for pretrial justice and the many efforts in which it is involved. He noted that a series of workshop topics were related to juvenile justice issues and urged adult and juvenile practitioners alike to attend. "Participate fully," he encouraged.

★ IT'S DEBATABLE: FINANCIAL CONDITIONS OF RELEASE SHOULD BE ABOLISHED

MODERATOR: The Honorable Margaret Maxwell
Tucson City Court
Tucson, Arizona

DEBATERS: John A. Carver, President
National Association of Pretrial Services Agencies
Washington, DC

Tony L. Axam, Esq.
Franklin, Axam & Ashburne
Atlanta, Georgia

Jay Carver, President of the National Association of Pretrial Services Agencies, argued that organization's position that "the use of financial conditions of release should be eliminated". In his opinion, the continued reliance on financial conditions of release explains, in large part, why the United States has a higher rate of pretrial detention than any other Western democracy and why more people are detained pretrial, though presumed innocent, than serve time as a result of conviction.

Carver made three basic points in favor of the proposition to eliminate financial conditions:

- Reliance on financial conditions in any form results in unconstitutional discrimination against the poor. Financial conditions set up a classification scheme based on wealth alone, rather than on any legitimate purpose of bail. This system does not discriminate between those likely to return and those not likely to return; nor does it differentiate between those who can safely be released and those likely to pose a danger to the community if released. As a result, people sit in jail simply because they are poor while other defendants who may present a greater risk are released simply because they have access to money and can make bail.

- The use of money bail lessens the accountability of the judicial process. For instance, a judge might intend to release a defendant on what he thinks is a reasonable money bond and may then simply not know that the defendant remains incarcerated because he can't make bail. Even if the defendant does have some money, often times the final decision release rests with a bondsman who may not wish to cover a relatively low money bond for the minimal fee it would bring.

- Aside from legal and constitutional arguments, reliance on money bail simply makes no sense and serves no legitimate purpose. Studies have shown that release on own recognizance, or supervised release, is as effective--if not more so--in returning people to court. Furthermore, even when bail can be

raised, a defendant will often spend several days in jail until the money can be secured and paid. This short-term detention aggravates the already staggering problem of jail overcrowding and presents needless costs to the taxpayer.

Tony Axam, an attorney with Franklin, Axam & Ashburne in Atlanta, Georgia, opposes the elimination of money bail. He agreed that the use of financial conditions of bail is discriminatory, but said that it was no more discriminatory than many other practices in our system of justice.

Axam argued that the elimination of money bail would not check judges' powers of discretion or eliminate the present hypocrisy in release decision-making. Axam felt that the abolition of financial conditions of release would necessitate the creation of some mechanism for preventively detaining a defendant. Then a defendant, who under the present system would be detained on high bail, would automatically become categorized by judges and prosecutors as a "dangerous" defendant. In actuality, our jails would continue to be overcrowded with the same defendants who are now unable to make bail.

Axam said that, as a defense attorney, he preferred money bail, no matter how high, "because you can chip away at it". He cited several examples where clients of his who were initially detained on high bail were eventually released after several bail applications.

He concluded that under the present system of money bail, a defense attorney can eventually convince a judge to lower a high bail considerably, often to an amount that is reasonable for the defendant or the defendant's family. With the elimination of financial conditions, he said, we would be left with a system with only two extremes and few alternatives.

★ IT'S DEBATABLE: RESTITUTION AND COMMUNITY SERVICE ARE NOT ACCEPTABLE CONDITIONS OF PRETRIAL DIVERSION

MODERATOR: Michael Green, Director
Intake Services, Probation Department
Philadelphia, Pennsylvania

DEBATERS: Diana Gordon, Executive Vice President
National Council on Crime and Delinquency
Hackensack, New Jersey

Charles Sullivan, Director
Pretrial Intervention Program
Columbia, South Carolina

In 1978, the National Association of Pretrial Services Agencies (NAPSA) endorsed the limited use of community service and restitution in pretrial diversion as part of an individual's service plan. Now, however, many programs require community service and/or restitution as a condition of enrollment. Those who advocate its use in pretrial argue that it benefits both the community and the defendant. Others view community service as an inherently punitive measure which is unconstitutional when required of persons presumed innocent, and that as options they are only appropriate as a sentencing alternative.

Diana Gordon, Executive Vice President of the National Council on Crime and Delinquency, argued that restitution and community service are not acceptable conditions of pretrial diversion. She summarized her position by stating that restitution and community service are inappropriate for pretrial programs because they are punishments imposed before adjudication, because they reflect distinctions of class and race in pretrial processing, because they tend to widen the net of impermissible social control and because they render program participation involuntary and thus violate the 13th Amendment.

Gordon emphasized that restitution and community service are, in effect, criminal sanctions. It is a fundamental axiom of due process that punishment cannot be imposed without giving the defendant his or her day in court, she argued. Accordingly, restitution and community service are not appropriate for pre-adjudication programs.

Gordon disagreed with the argument that defendants who participate in restitution and community service programs do so voluntarily. She asserted that if a defendant had not agreed to participate in the program, his or her case might have been dismissed at any one of several points in the adjudication process. According to Gordon, participants in the pretrial diversion restitution and community service programs may also be denied other rights as well. For example, while judges set prison terms, terms for community service are sometimes set by program directors. And if a defendant is returned to the criminal justice process, he/she is not given credit for time served in the diversion program.

Gordon pointed out that the selection of program participants may be discriminatory. A poor, unskilled defendant may be excluded on the grounds that

he/she is unlikely to complete the program successfully. Further, since usually only cases involving minor offenses are referred to restitution and community service programs, many of those cases would otherwise have been dismissed or filed. She argued further that if a defendant's case is returned to court for processing or if the defendant is later prosecuted on a new charge, participation in restitution or community service may prejudice the disposition of the case because implicit in it is a determination of guilt.

Finally, Gordon expressed the fear that pretrial diversion programs, in adopting the requirement that participants do community service or make restitution, will be solving some procedural dilemmas for the traditional criminal justice system at the expense of fundamental liberties.

Chuck Sullivan, Director of the statewide diversion system in South Carolina, stated that the theoretical debate about the appropriateness of restitution and community service at the pretrial stage is largely moot because "at least 90% of all diversion programs require one or both of their clients. He argued that the public demands such service.

According to Sullivan, most arguments against restitution and community service ignore the victims and law enforcers and are concerned only with the defendants' rights. He argued that most defendants would not accept diversion unless they expected an unfavorable outcome from the adjudication of the charge against them. He claimed that rather than being punitive, restitution and community service allow defendants to take moral responsibility for their actions.

Sullivan concluded by emphasizing that restitution and community service are good for diversion programs because they have positive effects on defendants, restore the public's faith in diversion and bring together law enforcers, victims and defendants.

Gordon responded to several of Sullivan's statements, questioning the extent of the impact of restitution on victims and whether, in fact, community service provides defendants with employment. Finally, she contended that restitution and community service are not right simply because they are widely used.

★ IT'S DEBATABLE: PRETRIAL SERVICES PROGRAMS EXACERBATE THE PROBLEMS THEY SHOULD RESOLVE

MODERATOR: Jan Smaby, Chair
Minnesota Sentencing Guidelines Commission
Minneapolis, Minnesota

DEBATERS: Michael Smith, Director
Vera Institute of Justice
New York, New York

Art Wallenstein, Warden
Bucks County Jail
Doylestown, Pennsylvania

It has become somewhat trite--albeit still valid--to ask whether something is part of the solution or part of the problem. This question is particularly appropriate for a discipline which has its origins in reform but whose record of success is not without flaw: many pretrial programs do seem to widen the net, are not cost-effective, etc. Therefore, the general session on the morning of the third and last day of the Symposium was focused on the debate whether "pretrial services programs exacerbate the problems they should resolve".

Michael Smith is Director of the Vera Institute of Justice, the agency which pioneered many of the demonstration pretrial programs, including the Manhattan Court Employment Project and the Manhattan Bail Project. He asked the audience to imagine their response to the following hypothetical situation:

> "Prosecutors all across the country have organized and decided that they are prepared to try all cases within three days. Judges have also agreed that no adjournments will be granted and that cases will be disposed of within one week. In effect, the pretrial would be eliminated."

Smith said he hoped that those in the pretrial field would applaud a development such as this, even though it would do away with the need for pretrial services and diversion programs. Many of the problems in our criminal justice system are artificial ones brought about by the pretrial period itself, he argued. In the absence of unnecessary delays, which are "unjust, inefficient and costly," endless debates concerning preventive detention, financial conditions of bail and jail overcrowding would not exist. The energy, money, personnel and research now being expeded on pretrial programs could be turned toward post-conviction problems, such as the system's over-reliance on incarceration.

Smith challenged pretrial practitioners to work toward the goal of eliminating the pretrial period and to show that what started as a movement has now become its own special interest group "in the business of perpetuating the pretrial period."

Art Wallenstein, Warden of Bucks County Jail, Doylestown, Pennsylvania, sees pretrial services programs as the only solution at this time to one of the most

serious problems in the criminal justice field -- jail overcrowding. Because overcrowding characterizes jails throughout the United States, Wallenstein said, "alternatives must be implemented even at the risk of expanding the 'social net', because in the process, many people will be released."

"As we debate philosophical issues regarding the existence of pretrial release programs, thousands of people are being incarcerated in grossly inadequate and dangerous facilities because of overcrowding," said Wallenstein. "Even if the only rationale for pretrial release programs was population reduction, that would be sufficient justification for the concept and implementation of such programs."

Speaking from the perspective of the prison administrator, Wallenstein said, "there are really only two external strategies for population reduction -- federal litigation and systemic improvements (pretrial services). Federal civil rights litigation takes years and as a result of recent court decisions, may have little impact. Therefore, the day-to-day activities of pretrial release programs offer both immediate advocacy for population reduction and pragmatic implementation of the pretrial services concept."

"In an overcrowded local detention facility, philosophy is interesting, but incarceration is traumatic -- and life -- threatening -- as a result of excessive overcrowding and high population density." Wallenstein believes that if pretrial services programs cease to operate, little or no skilled public advocacy will exist to counteract society's current fascination with maximum use of pretrial detention.

SPECIAL LUNCHEON SESSION
Monday, July 27

Paul Sonnichsen, National Consultant on Community Alternatives for the Ministry of the Solicitor General Canada presided at the luncheon. Sonnichsen was largely responsible for bringing the Symposium to Canada. Through his involvement in a number of areas related to pretrial services, he felt Canadian and Americans could learn a great deal from each other.

Sonnichsen introduced the Honourable Nicholas Leluk, Minister of Correctional Services, Ontario. Leluk spoke of the innovations in bail verification and supervision explored by his ministry in the last two years. He noted that now bail programs are operating in 11 major centres throughout the province. It's expected that these programs will help relieve the jail over crowding problem -- experienced by many jurisdications. Leluk said he was particularly proud of the contribution being made by non-profit volunteer groups. At the time of the Symposium, the Ministry of Correctional Services had over more than two hundred contracts with private agencies totalling over $10 million. (The full text of Leluk's speech is included in the appendices).

Dr. Irvin Waller, professor in the Department of Criminology, University of Ottawa, delivered the keynote address based on his observations of the criminal justice systems of Canada and the United States. Noting such trends as mounting concern with violent crime, increasing levels of incarceration, disproportionately high incarceration rates for minorities, and the soaring costs of current criminal justice practices, Waller drew many parallels between the two countries. But rather than continue to take a reactionary stance and promise what they cannot deliver (i.e., a reduction in crime), he urged people concerned with justice and public safety to look to social changes, not just changes in the law, policing, and incarceration.

According to Waller, our concern about crime should not and cannot be exclusively "after the fact" (to prosecute defendants that are caught, increase police budgets, and build more prisons):

> "We must look to social changes...we must use systematic planning to get better information on the factors associated with the increase, then identify programs that can influence these factors. Political leaders must encourage strategies to implement such programs, and they must involve genuine participation of both the social and justice services. This planning will involve the collaboration of individual citizens and professionals...It cannot be limited to law enforcement but must involve those working on alcohol or employment problems, urban planners, housing specialists and educators, because crime and justice problems come from our communities, not just police, courts, or corrections."

Further, said Waller, this obsession with catching and protecting offenders leaves the victim the orphan of both our social and justice policy. He stressed that meaningful changes must include an acknowledgement of the importance of public perception and of the necessity of caring better for victims.

★ THE POLITICS OF JAIL OVERCROWDING

FACULTY: Robin Ford, Eastern Regional Director
National Criminal Justice Collaborative
Sea Island, Georgia

Ronald R. Welch, Project Director
Mississippi Prisoner's Defense Committee
Jackson, Mississippi

There are three keys to the persistence of jail overcrowding in the United States, according to Robin Ford, and they must be addressed if a solution to the problem is to be found:

- there is no generally accepted definition of overcrowding;
- the political gains that result from overcrowding substantially outweigh the losses; and
- each additional prisoner in an overcrowding situation costs the jurisdiction less to house.

According to Ford's statistics, the definition of overcrowding varies from jurisdiction to jurisdiction. For instance, Ford mentioned a study done that showed overcrowding in Vermont prisons and jails began when the prison population went beyond 80% of design capacity. He contrasted this to a county in Florida with a prison population at 130% of capacity and a jurisdiction in Alabama with a prison population at 160% of capacity. "The message is simple," Ford said, "Capacity in your local jurisdictions is what you let it become."

Although overcrowding seems to be a uniformly negative phenomenon, it should be recognized that political gain from jail overcrowding accrues to sheriffs and prosecutors who can point to full jails as evidence of the good jobs they are doing. Further, county commissioners defer action on sensitive political decisions by waiting until state or federal courts order the construction of more jail space or the establishment of jail population caps.

According to Ron Welch, the public is willing to tolerate spending money for jail construction, even in lean economic times, because they equate more jails with being harder on crime. "That's absolute hogwash," Welch said. "Research indicates that crime does not have to do with the number of jails built and the jail population housed, but with the politics and economics of the situation."

Among the arguments against overcrowding that Welch cited are:

- danger of disease transmitted to inmates and to the outside community;
- overtaxing of facilities leading to high replacement costs;
- increase in tension within the facilities, leading to staff turnover, instability and violence;

- increased inmate damage to institutions; and

- continued criminal behavior by inmates.

"The time has come for corrections people to draw the line on overcrowding," Welch said, "and they have to draw that line in partnership with each other and with policymakers at all levels of responsibility."

★ OVERCROWDING: A STATE AND LOCAL RESPONSIBILITY

FACULTY: Marc Rosen
Deputy Secretary of State
Hartford, Connecticut

Jan Smaby, Chairperson
Minnesota Sentencing Guidelines Commission
Minneapolis, Minnesota

Prison and jail overcrowding are frequently seen as separate problems -- one concerns the state and the other counties. But there are commonalities and an interrelationship between the causes and solutions to crowding at both levels of responsibility.

According to Jan Smaby, in 1979 the state of Minnesota established by legislative mandate, a nine-member Sentencing Guidelines Commission. Members represented all segments of the criminal justice system, including the Commissioner of Corrections, the Chief Justice of the state Supreme Court and the Chairman of the Parole Board. The Commission was charged with developing sentencing guidelines that would (1) reduce disparity in sentences and (2) establish levels of sanctions based on the rationale that the punishment should fit the offense.

In an effort to avert a potential overcrowding crisis in state correctional facilities, the Minnesota Commission focused on the questions of who should be incarcerated and in what instances incarceration in state prisons was appropriate.

Present sentencing guidelines in Minnesota exclude those offenders from incarceration in state correctional facilities who do not represent a major threat to public safety. Confinement in a state prison in Minnesota is viewed as punishment appropriate for violent or repetitive offenders only. Those offenders not sent to prison are given suspended or alternative sentences, placed on probation or committed to local jails.

Before the prison sentencing guidelines were established in Minnesota, Smaby pointed out, commitments by the courts were more frequent. Further, the parole board had caused an increase in the prision population by revoking an increasing number of parole violators and denying parole to offenders still in prison.

Smaby said that, as a result of the new sentencing guidelines, the jail population in Minnesota has increased slightly, but prison populations remain at below 95% of their capacities. There is 94-96% judicial compliance with the guidelines.

Marc Rosen described Connecticut as a small, wealthy state with a unified court system. Like Minnesota, it has also established a task force to address the problem of overcrowding. Its proposed solutions are slightly different from those in Minnesota.

According to Rosen, Connecticut hoped to respond to the current overcrowding by improving the initial pretrial release screening process statewide (thus decreasing the jail populations), and by further developing the post-sentence alternatives to incarceration that have been tested in local jurisdictions within the state. He pointed out that for Connecticut, any plans to impact on overcrowding must necessarily include additional facilities for two reasons. First, court orders detailing conditions and minimal requirements for incarceration left little alternative. And second, the recent passage of determinate sentencing in the state will lead to increased levels of incarceration and those already likely to be incarcerated will now be incarcerated for longer periods of time.

Both Smaby and Rosen concurred on the following:

- Overcrowding must be addressed by the criminal justice system as a whole.

- The solution must take into account the established maximum capacity of the state and local correctional facilities.

- The solution will probably require some political clout to make it work. Although voluntary task forces are useful in gathering information and planning, they may not have the authority to take action which will actually decrease the level of crowding in jails and prisons.

- Prison construction should not be completely ruled out as an option.

- The examination of overcrowding in prisons must focus on sentencing.

★ MAXIMIZING THE USE OF CITATIONS

FACULTY: Jerome A. Needle, Principal Police Specialist
American Justice Institute
Sacramento, California

Hubert Williams, Police Director
City of Newark Police Department
Newark, New Jersey

Citation release is a formal, post-arrest procedure by which an arrestee, usually charged with a misdemeanor, is released by a law enforcement officer in lieu of physical arrest and detention on a promise to appear in court. Supportors of citation release claim it helps "maximize" the effective use of time and resources by defendants, police, and corrections. In fact, its advocates are numerous, including three Presidential commissions, the American Law Institute and the American Bar Association, the International Association of Chiefs of Police, the National Association of Counties, and, of course, NAPSA. But just how widespread is the use of citation release? Is the practice truly successful? What factors inhibit greater use of this procedure, and what can be done to overcome those inhibiting factors?

Panelist Jerry Needle, Police Specialist with the American Justice Institute (AJI) in Sacramento, California, contended that while authorization for the citation release option is widespread, the procedure is substantially under-utilized. Needle explained that there are more than 20,000 police agencies in the United States and, according to a study published by Floyd Feeney in 1977, over three-quarters of them practice citation release. In addition, legislation or court rule authorizing the use of citation release presently exists in at least 37 states. But, while Feeney's data indicate that citation release is used quite extensively, they also show that a sizeable number -- perhaps one quarter -- of law enforcement agencies are not using the procedure at all. Noting that the practice has probably been adopted in some jurisdictions since Feeney conducted his work in 1976, Needle pointed out that such major cities as New Orleans, Louisiana, and Baltimore still do not use citation release.

Utilization rates -- the number of eligible individuals actually cited and released -- reflect considerable diversity of practice among jurisdictions. Many departments reported that utilization is extremely high--over 90 percent in one city; but others reported only moderate or marginal use of citations. The data seem to suggest that the potential for additional citation release is great.

Proponents claim that in addition to maximizing pretrial liberty and protecting the constitutional rights of the accused, citation release offers the following benefits:

- Arrestees are spared embarrassment, cost of bail, and the economic and personal stress associated with even minimal pretrial detention.

- Police agencies experience a reduction in the number of hours that personnel and equipment are out of service to transport and process arrestees. The ill-will and resentment that results from booking and detaining persons arrested for minor infractions is also minimized.

- Jail staff spend less time processing persons ultimately approved for pretrial release. A reduction in the pretrial detainee population leads to subsequent savings in food, laundry, and medical care and affords an opportunity to reallocate bed space, staff time, and materials to the remaining inmates. Other benefits include minimizing confusion in the booking area, the volume of booking records, and other paperwork.

- Because pretrial release programs interview fewer defendants, they can devote more time to verification and supervisory activities.

- Court officials are able to more evenly distribute arraignment work. Judicial involvement in bail adjustment and ROR matters is reduced.

- Prosecuting attorneys are able to reduce the average length of time required to screen and prosecute persons arrested on misdemeanor charges, in part, because police are less likely to overcharge.

Proponents of citation release maintain that these savings can be realized and that individuals can be released on a promise to appear with no measurable increase in FTA rates.

Thus, Needle concluded that despite the significant methodological weaknesses of much of the research done to date, the empirical evidence definitely seems to support the success and potential of citation release.

Hubert Williams, Police Director of Newark, New Jersey asserted that public opinion can be a very definite roadblock to greater police use of citations. For example, in Newark, certain types of burglaries are citable offenses. But, he speculated, most people whose houses have been burglarized would be incensed if the suspect was merely ticketed and released. The police would bear the brunt of that anger. Similarly, if someone just cited for a minor infraction turned around and committed a serious offense, it is the police that would be held responsible.

Williams and Needle believe however, that these inhibiting factors can be overcome. The solution may be three-fold: First, much more information on the results of citation release must be gathered and disseminated to criminal justice actors and politicians. The technology needed to expand citation release programming must be made available. Needle noted that, in fact, two projects are currently underway with precisely these goals. AJI is in the process of developing guidelines to enable practitioners to build new or expand current programs. The guidelines will suggest model program development tools. Similarly, Abt Associates is under contract to prepare a synthesis of model policies and practices for citation release.

Second, jurisdictions must fix responsibility for citation release programming, AJI's Jail Overcrowding Project recommends the establishment of a comprehensive county-wide citation release program to accomplish this.

Finally, Needle and Williams stressed that steps should be taken to overcome police resistance by taking cognizance of police objectives, practices, and problems and by involving police in citation release planning.

★ SHOULD THE STATE OF AMES ADOPT PREVENTIVE DETENTION LEGISLATION?

MODERATOR: The Honorable Theordore R. Newman, Jr.
Chief Judge, District of Columbia
Court of Appeals
Washington, DC

FACULTY: Teri K. Martin, Director of Planning
Moyer Associates, Inc.
Chicago, Illinois

E. Michael McCann, District Attorney
Milwaukee, Wisconsin

James Neuhard
State Appellate Defender
Detroit, Michigan

For a long time, the District of Columbia was the only jurisdiction that had a prevention detention statute. The legality of that legislation was recently challenged in the case of the United States v. Edwards and was upheld by the D.C. Court of Appeals in a decision written by Chief Judge Theodore Newman. Newman believes that, given the current mood of the public, preventive detention statutes are going to become more common throughout the country.

"If you believe your jurisdiction will not adopt such a statute, you are naive in the extreme," Newman said. Although Newman is convinced of the legality of preventive detention, he is not necessarily convinced of the wisdom of the practice. He urged the audience to carefully consider the public policy implications of enacting such a measure.

According to Teri Martin, major problems with preventive detention include defining who is dangerous and then determining to what extent prediction of danger is possible. She maintained that research on prediction of dangerousness has been disappointing. It is not uncommon for a prediction system to identify four "false risks" for every correct indentification it makes. A key question society must ask itself then, Martin says, is, "How many mistakes in violence prediction is society willing to tolerate in order to put away those who are actually violent?"

"Prediction research is valuable," said Michael McCann, District Attorney of Milwaukee, Wisconsin, but the "reality is that the public will consider totally different elements." He said the nation is in a conservative mood, and agreed with Judge Newman that the chances of passing preventive detention statutes are much better in such a conservative atmosphere.

Speaking to the workshop audience, McCann said, "much of the good work you do -- making sure you get people out of jail who don't belong there -- is simply not supported by most of the country."

Jim Neuhard, Michigan Appellate Defender, concurred that the decision whether to adopt preventive detention legislation will be made on emotion rather than

reason. "You could put the most archaic, repressive laws on the ballot now and people would vote for them," Neuhard said, "not because they understand the nuances of such a bill, but because that's the mood of the country."

Neuhard claimed the preventive detention legislation in Washington, D.C. is "fiction" in that it is hardly ever used. In 1980, of 1,500 felony cases in which a preventive detention hearing could have been requested, only 12 were actually requested. "This type of legislation's impact on crime is miniscule," Neuhard said, "while its impact on other areas of society could be great." He speculated on its potential application in times of civil disobedience such as we saw in the 1960s.

Newman closed by telling the audience that he expects the constitutionality of preventive detention to be upheld by the Supreme Court and to see further promulgation of such legislation in the states. He cautioned the audience that its focus should be on limiting the potential for abuse by assuring that the legislation has a restricted scope and adequate due process requirements.

★ PRETRIAL RELEASE, DANGER, AND THE APPELLATE COURTS

FACULTY: Francis D. Carter, Director
District of Columbia Public Defender Service
Washington, DC

Elizabeth Gaynes, Esq.
Technical Assistance Associate
Pretrial Services Resource Center
Washington, DC

Recently, there has been increasing discussion in the media and in the executive and legislative branches of government concerning crimes allegedly committed by defendants on pretrial release. However, the courts have had few opportunties to address the legal ramifications of the consideration of potential "danger" in the release process. Despite the prohibition against excessive bail in the Bill of Rights, a definitive constitutional interpretation of the rights conferred by federal and state constitutional provisions with respect to bail has been noticeably absent. More recent efforts by legislators to amend the bail laws to permit the judge to consider the possible "dangerousness" or future criminal behavior of a defendant have begun to reach the judiciary. A number of recent appellate court decisions suggest that the right to bail may find considerable definition and delineation in the near future. In this workshop, panelists discussed several recent appellate court decisions which attempt to interpret the right to bail, particularly with respect to statutes which limit pretrial release on the basis of predicted future behavior.

Frank Carter, Director of the District of Columbia Public Defenders Service, discussed the decision in United States v. Edwards, in which the District's highest court upheld the constitutionality of the D.C. preventive detention statute. In that case, the D.C. Court of Appeals held that the Eighth Amendment does not create a right to bail: "While the history of the development of bail reveals that it is an important right, and bail in non-capital cases has traditionally been a federal statutory right, neither the historical evidence nor contemporary fundamental values implicit in the criminal justice system requires recognition of the right to bail as a "basic human right...which must then be construed to be of constitutional dimensions."

The Public Defender's office, which had represented the pretrial defendant held under preventive detention, had argued that bail was a fundamental right. Further, they contended that pretrial detention is punishment imposed prior to adjudication of guilt, and that the detention hearing process itself violated due process rights. In arguing the case, Carter's office had cited evidence concerning the inability of pretrial decision-makers to make accurate predictions of future behavior, resulting in inapproprate detention.

Elizabeth Gaynes noted that the Edwards decision concerning the nature of the right to bail was partially inconsistent with a decision of the U.S. Court of Appeals for the Third Circuit issued two months earlier. In Sistrunk v. Lyons the Third Circuit found that "...bail constitutes a fundamental liberty underpinning our criminal proceeding....Our criminal justice system has made a basic choice: crimes are to be deterred by the threat of subsequent punishment,

not by prior confinement." However, although defining the rights conferred by the bail clause as "fundamental", the Sistrunk court was not addressing the issue of preventive detention or dangerousness. The right to bail which it defined as fundamental was merely a right to be free from excessive bail.

In fact, Sistrunk suggested that states could, through their constitutions, limit the right to bail by defining offenses for which there is no right to bail. Yet nearly simultaneously, the U.S. Court of Appeals for the Eighth Circuit overturned a Nebraska constitutional provision which did just that. Hunt v. Roth held that bail is a fundamental right, and that it is binding on the states because the bail clause is incorporated in the liberties protected by the Fourteenth Amendment. The Circuit further held that the Nebraska amendment -- under which bail must be denied to every person charged with forcible sexual offenses where the proof is evident or the presumption great -- constitutes an unreasonable denial of bail. The Court found that, "if the Eighth Amendment has any meaning beyond sheer rhetoric, the consitutional prohibition against excessive bail necessarily implies that unreasonable denial of bail is likewise prohibited. Logic defies any other resolution of the question."

The Court did not suggest that a law which allows the judicial officer discretion in denying bail where he/she finds that the individual defendant poses a danger to the community would necessarily be unconstitional. However, the Nebraska procedures are not discretionary and call for no individual inquiry into the dangerousness of the individual: "The fatal flaw ...is that the state has created an irrebuttable presumption that every individual charged with this particular offense is incapable of assuring his appearance by conditioning it upon reasonable bail or is too dangerous to be granted release. The constitutional protections involved in the grant of pretrial release by bail are too fundamental to foreclose by arbitrary state decree."

Gaynes pointed out that the decision in Hunt v. Roth noted a study conducted by the public defender, which followed the 22 cases that had reached final court disposition and in which bail was denied pursuant to the law in issue. Of the 22, only 2 were convicted of forcible first-dgree sexual assault. Of the remaining 20, 2 were acquitted, 3 had their prosecutions dismissed, and the rest were convicted of (or entered quilty pleas) to lesser bailable charges of sexual or nonsexual offenses. The court indicated it did not base its conclusions on this study, but states, "...it does illustrate the danger about making pretrial assumptions about the likelihood of conviction or the danger posed to the community by a class of individuals."

The panelists agreed that it was likely that some of these issues would reach the Supreme Court, and that many more federal and state courts would be faced with decisions on the constitutionality of various state and federal efforts to include the consideration of potential criminal behavior in the pretrial release decision. [Since the Symposium in July, 1981, the D.C. Public Defender and the State of Nebraska have asked the U.S. Supreme Court to hear the decisions in U.S. v. Edwards and Hunt v. Roth respectively. The high court has agreed to hear Hunt; no decision has been made with respect to Edwards at this time. 12/81.]

★ PRETRIAL RELEASE, DANGER AND THE LEGISLATURE

FACULTY: Tony Axam, Esq.
Franklin, Axam & Ashburne
Atlanta, Georgia

Elizabeth Gaynes, Esq.
Pretrial Services Resource Center
Washington, DC

State legislatures, in search of methods for reducing crime, have recently focused on "crime on bail." Concerned about crimes allegedly committed by defendants already on pretrial release, some states have attempted to limit the right to bail in cases in which it is believed that a defendant, released pretrial, has or will exhibit "dangerous" behavior or commit additional crimes. This workshop presented some of the reasons why legislatures have pursued this course of action, and the methods they have used.

Tony Axam, a partner in the Atlanta law firm of Franklin, Axam & Ashburne, discussed how legislation recently proposed or enacted has resulted from public pressure. He pointed to the obsession that the public and the media has with crime, and more specifically with crime on bail. For example, he noted that if a defendant on pretrial release is arrested for a new offense, the publicity surrounding the case always includes information concerning his previous release on bail. Often this is accompanied by an editorial criticizing the judge who released him, even to the point of suggesting that the judge should have been able to predict the future (alleged) criminal behavior; and should have violated prevailing release laws by detaining the defendant, even in the absence of evidence that the defendant would not have satisfied the statutory purpose of bail, i.e., to appear in court. Axam stated that even though released defendants do not represent a significant percentage of those committing crimes, the public feels that the rate of crime can be significantly reduced by detaining those accused of committing crimes for as long as possible. Legislators, influenced by public concern and afraid to defend traditional notions of justice and civil rights, are willing to sacrifice basic rights such as pretrial release. According to Axam, these rights will continue to take a backseat, as long as laws with short-sighted solutions are enacted to pacify the public and the media.

Elizabeth Gaynes discussed the recent efforts by the states to enact preventive detention legislation, or amend bail laws to allow some consideration of future dangerousness in the release process. She explained that there are the two main methods for changing the laws. In states which have constitutional provisions granting a "right to bail" in some or all cases, laws permitting the detention of defendants because of potential criminal behavior could not be upheld without amending the state constitution. Changes in state constitutional provisions require passage by the legislature and ratification by the people in an election. In states which have no "right to bail" clause in their constitutions, release laws may be changed by the normal legislative process.

Gaynes reviewed some of the efforts of the previous year which had or might still result in changed release laws:

- Tennessee -- In response to concerns about "crime on bail", Tennessee enacted a new law which requires the judge to set bail at twice the amount customarily set, if the defendant is on bail at the time of the new offense.

- Massachusetts -- Legislation was introduced permitting the pretrial detention of defendants charged with certain serious offenses if they were out on pretrial release at the time of the new offense. The law would require a hearing to determine if there were "substantial probable cause" to believe the defendant had committed the crime. Upon such a finding, release would be revoked and detention permitted for up to ninety days. The bill was part of Governor King's crime package, and is likely to be passed by early 1982.

- New York -- New York passed a law similar to that proposed in Massachusetts. The new statute permits detention, for up to ninety days by revoking the initial release order of people charged with certain serious crimes if they were out on release for a prior serious offense at the time.

- Wisconsin -- Wisconsin voters ratified a constitutional amendment which would permit the legislature to enact "preventive detention" legislation which would provide for a hearing, and detention for up to 60 days, based on a finding of clear and convincing evidence that the accused committed the offense and that available conditions of release would not adquately protect members of the community from serious bodily harm.

- Georgia -- Legislation was introduced which would provide for the detention of defendants believed to be dangerous. No time limit for trial is included in the bill.

- California -- A proposed constitutional amendment was introduced in the state assembly which would permit the pretrial detention of allegedly dangerous offenders. If passed by the legislature, it would require a public referendum.

In addition to these actions, detention proposals have been made in a number of other legislatures. Based on the frequency with which these concerns are raised by legislators (and in some cases, county executives or mayors), it is likely that more legislation can be expected. However, because many are introduced for their political value and do not have a rational relationship to crime reduction or constitutional principles, some may be invalidated by the courts or may lose support prior to final legislative approval.

The increased support in the federal system for legislativve changes to permit pretrial detention on the basis of dangerousness has already produced several bills which would amend the Bail Reform Act to include preventive detention. It can logically be anticipated that many states may follow that model.

★ BONDSMEN: WHAT PLACE IN THE SYSTEM?

FACULTY: David Davis, Social Scientist
Attorney General's Task Force on Violent Crime
Washington, D.C.

Roy Flemming
Department of Political Science
Wayne State University
Detroit, Michigan

Many concerned with improving the administration of justice advocate for the elimination of surety bond. They argue that it is "freedom for sale", and that bondsmen rather than judges hold the key to the jail. In spite of the significant opposition to bondsmen, they continue to operate in most jurisdictions. This session was designed to look at the arguments that can be made in favor of commercial bonding.

David Davis is a sociologist currently working with the Department of Justice on the Attorney General's Task Force on Violent Crime. As a graduate student he did extensive research on deviancy and particularly on the deviant image of bondsmen. Davis suggested that bondsmen are scapegoats for failures of the larger criminal justice system.

He noted that prior to the 1960's, bondsmen were considered responsible for the release of dangerous criminals who continued to commit crimes. During the 1960's, with the new emphasis on the constitutional rights of defendants and the passing of the Bail Reform Act, bondsmen were seen as corrupt and uncaring businessmen responsible for the high detention rates in the nation's jails. Davis believes that bondsmen are particulary vulnerable to criticism because they are not organized professionally and because the majority of bail bondsmen are from low-status backgrounds and minority ethnic groups. He has interviewed and studied bail bondsmen and argues that most bail bondsmen are in fact "honest and scrupulous in their business dealings."

Roy Flemming, Professor with the Department of Political Science at Wayne State University, said that he and Davis are two of very few people who have studied bail bondsmen and that little was previously known about their policies, decision-making processes and effectiveness. He stated that there are about 5,000 bondsmen in the United States, largely concentrated in the sun belt states and in Indiana and Pennsylvania. The demand for bondsmen's services are influenced by bail reform, court policy, the size of the bonds set, the financial status of defendants and the rate structure of the surety market.

Citing Wayne Thomas' Bail Reform in America, Flemming explained that the increased use of release on recognizance (ROR) affects the surety system. As the rate of release on recognizance goes up, the rate of detention also goes up. According to Flemming, this results from the fact the higher bonds are set on defendants who are viewed as high risks or because defendants are subject to other detainers that prohibit their release.

Flemming also described the decision-making processes of bail bondsmen. Although there are no formal standards for bonding decisions, bondsmen use three criteria: the offense, the available collateral and a subjective assessment of the defendant's criminal history. If the defendant violates the bond, which is a contract, the bondsman may cancel the bond, retain the premium and collect the established collateral.

Davis and Flemming outlined services provided by bail bondsmen that they believe pretrial services agencies are unable to provide:

-- Bondsmen have a lot of personal knowledge about defendants and a good sense of the risk they present;

-- Bondsmen can sometimes cut the cost of legal fees for defendants with minor cases by advising the defendants when to plead;

-- Bondsmen are on call 24 hours a day while most pretrial agencies are not; and

-- many bondsmen are able to contact judges directly to request that bails be lowered.

Finally, they suggested that as funding for pretrial services becomes more scarce, there may be an increase in the number of privately-funded bail programs.

★ BUILDING A CONSTITUENCY FOR PRETRIAL

FACULTY: Carol Shapiro, Project Director
Alternatives to Jail Project
Offender Aid and Restoration (OAR), USA
Charlottesville, Virginia

It has been said that criminal justice has no constituency. Certainly, spending for criminal justice has never matched the dollars spent on transportation, parks, education, and other services directly affecting the public at large. Therefore -- and especially in light of growing fiscal and political conservatism and calls for more and bigger prisons as the solution to overcrowding and to crime -- it is imperative that pretrial practitioners and other advocates for pretrial alternatives build a constituency. In this workshop, Carol Shapiro discussed strategies for developing support for and minimizing opposition to pretrial services in the community, media, and legislature.

Shapiro stated that paramount to any attempt at building a constituency for pretrial services is identifying a target group. At a minimum the target group should consist of key individuals and organizations involved in civic affairs, criminal justice, politics, and media and the public at large. However, one cannot simply select a group and expect to enlist its support, Shapiro warned. Rather, the builder must first get to know the normative views of the community on concepts and issues key to pretrial services. "Know where they're coming from." At a minimum, it is important to know how the target group representative of the community would respond to the following questions:

- Why are some defendants held in jail and others released?
- What policies govern pretrial release in this jurisdiction?
- What are the procedures by which a defendant is released pretrial?
- What are the state laws pertaining to pretrial release?

Shapiro explained that it is important to get a sense of the community's knowledge and misconceptions about pretrial services because an uninformed or misinformed public often presents the most serious obstacle to pretrial services.

This ignorance is exacerbated by misrepresentation and sensationalism by the press. Hence, there is a need to enlist the media's support, she added. Therefore, a builder must not just seek to "sell" pretrial services to the target group, but must educate its members, who in turn will sell others.

Nonetheless, selling pretrial services does go hand-in-hand with education and is an integral part of the constituency-building process. Shapiro cited three guidelines to follow in promoting pretrial services:

- Remember that a target group is really several targets, in that its members represent various important components of the community. Therefore, the approach must be tailored according to the interests of a particular target group (e.g., talk in terms of costs for legislators, safety for the citizenry, efficiency for planners, etc.).

- Sell the concept, not just specific alternatives. "Get the people to believe in pretrial liberty," she urged.

- Convince the target that the alternative being promoted is viable given community resources.

Shapiro noted that forming a task force can also be useful in building support for pretrial services. The task force would be charged with developing strategies to deal with such issues as overcrowding, costs of incarceration, and inappropriate confinement. Such a task force should include corrections officials, prosecutors, parole and probation staff, planners, judges, law enforcement personnel, legislators, social services providers, defenders, sheriffs, influential business interests, and special-interest groups. Shapiro suggested that known adversaries also be included in the group. At a minimum it will help to neutralize them and it may even be possible to persuade the opposition.

However, Shapiro warned that the task force must be guided. "Do not assume that professionals understand the concept of pretrial alternatives," she said. "Clearly outline the objectives, the need for, and the feasibility of pretrial services for the task force." Shapiro cited several guidelines to bear in mind in working with a task force. For example, the coordinator must facilitate the sharing of responsibility and joint decision-making among the members of the group. He or she must also be prepared to accept certain administrative responsibilities, such as developing realistic goals, developing time frames, assigning tasks appropriately, keeping the members' attention focused on the issues, 'packaging' the findings of the task force, and conveying that information to the media, legislature, and funders. Finally, she added, the organizer should never forget to acknowledge and give credit to those working in the task force.

Shapiro closed by reiterating that the basic purpose of building a constituency for pretrial alternatives is to help sustain such services during the early years before they are institutionalized within a jurisdiction. "Pretrial must be rooted in the community," she said. "Your task is to engage key persons and groups and to nurture their growth. This requires time and constant watch-dog attention and underlines the fact that the process is tantamount to the results."

★ THE PROBLEM WITH SUPERVISED RELEASE . . .

FACULTY: James F. Austin, Research Associate
National Council on Crime and Delinquency
Research Center, West
San Francisco, California

D. Alan Henry
Technical Assistance Associate
Pretrial Services Resource Center
Washington, DC

This workshop examined supervised release as a means of securing the release of defendants who do not qualify for own-recognizance release and for whom additional monitoring might be appropriate. As an alternative to detention, supervised release may help increase release rates and thereby reduce jail populations. Alan Henry, Technical Assistance Associate with the Pretrial Services Resource Center warned, however, that if it is overused or used inappropriately, supervised release may become an additional control on defendants who would otherwise be released with fewer restrictions. In such cases it is neither cost-effective nor likely to increase release rates.

The National Institute of Justice (NIJ) has funded supervised release projects in three cities: Miami, Portland and Milwaukee. The projects seek to determine whether and under what conditions supervised release can effectively increase the number of defendants released without increasing the incidence of failure to appear or rearrest. The projects are using a two-step design, sometimes referred to as the Philadelphia model. At the intial step, the judge makes a simple determination whether or not to release the defendant. Of those defendants who are not released immediately, some may be appropriate for supervised release. At the defendant's second court appearance, a judge is presented with a detailed plan recommending conditions of supervised release for those defendants still on detention.

James Austin is with the National Council on Crime and Delinquency Research Center, which has been funded to evaluate the findings of the NIJ-funded projects. He said that it was too early in the projects' development to make any definitive comments. He did, however, agree that in supervised release cases, there is a tendency to oversupervise. According to Austin, often more conditions are placed on a defendant's release than are necessary. The burden on an agency grows exponentially with each releasee for whom there are on-going conditions. In addition, a program's cost-effectiveness is severely limited if the program does not deal exclusively with those defendants who would otherwise be incarcerated pretrial.

Henry encouraged programs to carefully think through their policies on how violations of the conditions would be handled. He gave examples of how the lack of such policy statements could substantially increase the amount of paperwork for a supervised release program without improving the processing of persons or cases through the system.

★ U. S. RELEASE PRACTICES--HOW CAN THEY BE IMPROVED?

FACULTY: Donald E. Pryor
Research Associate
Pretrial Services Resource Center
Washington, DC

Mary Toborg
Associate Director
The Lazar Institute
Washington, DC

In 1977, the Law Enforcement Assistance Administration (LEAA) awarded the Lazar Institute a four-year research grant entitled the National Evaluation of Pretrial Release. Part of the study assessed the effects of recommendation policies of pretrial release programs and arrived at four major conclusions: (1) there is a distinct relationship between program recommendations and eventual release outcome; (2) "neutral" recommendations, or the provision of information on a defendant without an accompanying release recommendation, have an adverse effect on release outcomes; (3) the existence of a program has a favorable effect on release outcomes; and (4) the recommendation policies of many programs are unnecessarily restrictive. The last conclusion is supported by a survey of pretrial release program practices conducted by the Pretrial Services Resource Center, which reveals conservative policies in virtually all aspects of program operations.

Mary Toborg, who is the principal investigator for the National Evaluation, explained that in order to assess the impact of programs' release recommendations, a comparison of release recommendations and release outcomes was made in eight sites. A strong association between program recommendations and eventual release outcomes was found: 92 percent of the defendants for whom non-financial conditions of release were recommended were indeed released on non-financial conditions; 5 percent were released on financial conditions; and 3 percent were detained. Of the defendants recommended for release on financial conditions, 17 percent were ultimately released on non-financial conditions, 43 percent on financial conditions, and 40 percent were detained.

Toborg noted that, of the defendants for whom no recommendation was made, 32 percent were released on non-financial conditions, 40 percent on financial conditions, and 28 percent were detained. She explained that a number of programs made no recommendations for certain defendants -- for example, those on whom information could not be verified. And although the programs viewed these as "neutral" recommendations, in fact, they had an adverse effect on release outcomes. Courts were more inclined to set financial conditions of release for such defendants, and, as a result, a sizeable portion were detained pretrial.

"Findings from a variety of analyses performed in conjunction with the National Evaluation emphasize that program recommendations -- and the existence of the program itself--have an important influence on release outcomes," Toborg stated. When programs studied recommended own recognizance release, the court was most likely to follow their recommendation. But often when financial conditions were

recommended, the defendants were unable to raise the needed funds and, as a result, were detained pretrial.

"Because program recommendations have so great an impact on release outcome, it is crucial that the criteria used are valid," Toborg stressed. However, the National Evaluation found that recommendation policies are too restrictive and that more defendants can safely be released pretrial. To date, no reliable predictors of failure to appear and rearrest have been found; so Toborg asserted that it would be futile simply to revise the "weights" of specific indicators currently used. Rather, it may be more informative to, on an experimental basis, make the criteria necessary for an OR recommendation less restrictive, to lower cutoff scores and to monitor defendant outcomes to determine the impact of the changes.

Don Pryor attested to the importance of modifying existing recommendation criteria. He pointed out that, according to a recent survey conducted by the Resource Center, less than half of the 119 responding release programs used program data to make any changes in their approach to determine release eligibility. Similarly, approximately half of the programs using point systems merely adopted the system of another program, with some modifications to fit local needs. Only 12 percent of the programs reported using objective point scales derived from their own research.

Pryor also concurred with Toborg's assessment that programs' recommendation policies are too restrictive. According to data compiled by the Resource Center, pretrial release operations in general are more conservative than necessary. Pryor is in the process of writing a monograph on pretrial release practices. Which will seek answers to the following questions:

- Are too many defendants unnecessarily excluded by release programs? Although in its Performance Standards and Goals for Pretrial Release and Diversion, NAPSA recommended that no defendants be automatically exluded from an interview, only 23 percent of the programs surveyed have adopted this practice. In addition to those excluded from even being interviewed, many programs excluded certain types of defendants from a recommendation for OR release.

- Do pretrial release programs help speed the release process? Pryor agreed with Toborg's conclusion that release programs have a favorable effect on release outcomes. However, he noted that 21 percent of the programs interview less than 50 percent of defendants prior to their initial court appearance. This means that a significant number of defendants are incarcerated longer than necessary.

- Do too many release programs recommend financial conditions of release? Pryor asserted that there is a significant over-reliance on this form of release. The Resource Center found that 48 percent of the programs indicated that they recommend money bail for certain defendants. In addition, 73 percent of the programs surveyed recommend non-financial conditions of release for 5 percent or fewer of the defendants interviewed.

- The Center's data further support the findings of the National Evaluation regarding the impact of program recommendation on release outcome. The recommendations of 82 percent of the programs studied were followed at least three quarters of the time.

The panelists concluded that pretrial release programs do have a significant and favorable impact on release outcome and that they are useful institutions. However, recommendation policies and practices in general are frequently, overly restrictive and should be modified, at first on an experimental basis, to see how they can be improved.

★ ALTERNATIVE METHODS OF RELEASE DECISION-MAKING

FACULTY: Timothy J. Murray
Director of Pre-Release Services
District of Columbia Pretrial Services Agency
Washington, DC

Skip Riedesel, Deputy Director
Pima County Correctional Volunteer Center
Tucson, Arizona

The Vera Point Scale was among the first and best known recommendation schemes developed by a pretrial release agency to attempt to determine likelihood of appearance. It attached numerical values to indicators of community ties (length of time at a residence, employment, etc.). Many programs adopted the Vera scale wholesale or with minor adaptations. More recently, a number of jurisdictions have begun to experiment with alternative methods of release decision-making.

Timothy Murray, Director of Pre-Release Services at the D.C. Pretrial Services Agency, pointed out that release plans based on schemes already in use by other agencies tend to be very conservative. After a plan has been put into effect by a particular agency, change seldom occurs, and the agency puts little effort into updating their particular release plan. Statistical evaluation is almost never used to verify a scheme.

Further, the agencies have a tendency to "sit on their laurels", happy that they are not being criticized for their efforts. Murray pointed out that most programs are reluctant to change their recommendation schemes because they fear negative reactions on the part of the other actors in their local criminal justice system. As a result of this fear, recommendation plans often reflect release standards in force even prior to the establishment of the release agency. According to Murray, release agencies often protest change with the explanation "My judges won't go along with it", or "I know what kind of bond my judges like to set, so there is no use in recommending something else."

Skip Reidesel discussed the changes brought about by his agency in Tucson. The Pima County Release Program has been given release authority in a large number of cases and has installed a trailer next to the booking area in which to do their work. This arrangement has met with great success, according to Reidesel. He encouraged the attendees to attempt similar approaches.

Reidesel answered several logistical questions from the group regarding security, insurance, funding, etc. He stated that his agency received release authority by citing the economic advantages to the county. Once authority has been granted, the agency is free to experiment with different schemes in its search to find a plan that safely releases the maximum number of defendants at the earliest possible point.

Murray then discussed the changes brought about by his agency, when the D.C. Pretrial Services Agency started making a positive recommendation in every case.

Because Washington, D.C. has legislated preventive detention and danger can be considered by the judges in making their release decisions, the agency recommendation addresses both danger and flight factors. This is the first time the D.C. Agency has tried this approach, although the agency has recommended detention hearings since the detention legislation was passed in 1971. Murray explained that the D.C. Agency has removed all exclusions -- with few repercussions from the community or the rest of the system -- by replacing them with specialized conditional release recommendations. For example, if a defendant's background is not verified, instead of a recommendation against release, the defendant receives a recommendation conditioned on providing verification to the release agency within 24 hours. The new plan is being evaluated by an outside consulting group and changes will be made depending on the research.

Murray and Reidesel challenged the audience to be at the forefront of experimentation and change. "In that way, release agencies can makes the best contributions to the systems."

★ ACCREDITATION OF RELEASE SYSTEMS

FACULTY: D. Alan Henry
Technical Assistance Associate
Pretrial Services Resource Center
Washington, DC

Robin Ford
National Criminal Justice Collabortive, Inc.
Sea Island, Georgia

The standards and goals developed by the American Bar Association and the National Association of Pretrial Services Agencies have made important contributions to the development of the pretrial services discipline and to an understanding of the legal and theoretical issues that the field must address. There is, however, tremendous diversity in pretrial practices among jurisdictions and considerable divergence from the standards as formulated.

An accreditation process has been a successful means in other areas -- like hospitals and correctional institutions -- for achieving some uniformity and subscription to at least minimum standards of operation. As part of its third grant, the Pretrial Services Resource Center agreed to conduct a feasibility study to determine the applicability of accreditation to pretrial release programs and to the pretrial release process. Dr. Robin Ford was selected as a consultant to do the study.

Ford explained that he began his work by reviewing other accreditation processes. He also spoke with criminal justice practitioners around the country to find out what they had learned and to begin to develop tentative evaluation criteria. According to Ford, agencies and systems must be evaluated separately. "For example," Ford noted, "jail overcrowding in a particular jurisdiction might be either the result of poorly run pretrial services or the result of system policies and practices, despite well run pretrial services."

The criteria were developed in two sections. One section assessed the policies and practices of pretrial service agencies; the other assessed the performance of the local and state criminal justice systems such agencies serve. The twenty-six criteria which deal with system performance have been divided into four sections: (1)field citations; (2)summons and warrant procedures; (3)initial appearance; and (4)detention.

The criteria which deal with agency performance have been divided into two sections: (1)agency goals, policies, and procedures; and (2)agency practices and services.

Ford conducted on-site field tests in three jurisdictions and mailed out self-administered tests to a large number of others. The format for the test was based on the Resource Center's position that an accreditation process should meet the following requirements:

- First, it must be a valid and believable examination of agency activity and the impact of the activity on the local criminal

justice system. The examination should include a review of available documents, the statements of those who run and work in the agency and, finally, input from persons outside the agency concerning its impact.

- It must not demand that participants in the accreditation process expend a large amount of time.

- The end-product of the process must be useful to the agencies and systems being examined.

According to Alan Henry, the staff person at the Resource Center coordinating the project, the preliminary findings of the feasibility study tend to indicate that accreditation of pretrial service agencies would, in fact, be feasible. He concluded by pointing out that the final step in developing accreditation procedures is to determine what entity is most appropriate for implementing the accreditation process. The Resource Center's study will be published sometime in 1982.

★ PRETRIAL DIVERSION PRACTICES AND RESEARCH

FACULTY: Donald Pryor
Research Associate
Pretrial Services Resource Center
Washington, D.C.

Lee Wood, President
Monroe County Bar Association
Pretrial Services Corporation
Rochester, New York

Gene Matthews, Director
Ingham County Prosecutor's Diversion Program
Lansing, Michigan

Pretrial intervention is a controversial area of criminal justice in the United States. In the early 1970's when pretrial diversion was beginning to get national attention, proponents of the concept hoped it could contribute significantly to the reformation of the criminal justice system. The limited sound research that has been done, however, raises serious questions. These were enunciated by Gene Matthews and Lee Wood, two diversion program directors active within the National Association of Pretrial Services Agencies (NAPSA):

- Is diversion a sound concept? Has its implementation been imperfect?
- To what extent can we generalize findings concerning pretrial practices from one jurisdiction to another?
- Do pretrial services really make a difference in the outcomes of defendant's cases and in their future lives?
- Which services, if any, are appropriate for which defendants?
- Should pretrial services be focused on defendants in more serious cases?
- Would diversion be more effective as a sentencing option?
- Is it necessary, and possible, for pretrial programs to be cost-effective?

As practitioners, Wood and Matthews expressed concern about actual practices within the field. Don Pryor, Research Associate at the Pretrial Services Resource Center, reported on the survey of 130 diversion programs conducted by the Center. The actual practices of many pretrial services agencies deviate considerably from the standards established by the National Association of Pretrial Services Agencies. Pryor summarized that data in relation to key questions:

- Should programs automatically exclude defendants based on prior record alone?

One quarter of the programs do exclude defendants on arrest record only; 32% of programs exclude defendants with any adult convictions; 38% have no record-related automatic exclusions.

- Should defendants charged with felonies be automatically excluded? Or should defendants charged with felonies be the major focus of the program?

  Only 17% of the programs surveyed exclude, as a matter of policy, all defendants charged with felonies; 31% accept only defendants charged with felonies and exclude all defendants charged with misdemeanors.

- Should pretrial intervention occur only after charges have been filed?

  About half of the programs say that all defendants are diverted post-charge; One of four programs divert at least 75% of their cases prior to filing; About 10% of the programs divert all of their cases prior to filing.

- Should defense attorney involvement be required in formal diversion decisions to protect defendants' rights?

  42% of the programs surveyed say not necessarily so.

- Should an admission of guilt be required for participation in diversion programs?

  7% of the programs say yes; 36% of the programs require an informal admission of guilt.

- Are community service and/or restitution legitimate components of diversion programs?

  93% of the programs include restitution as an option; 61% of the programs include community service as an option.

- Should programs require community service or restitution?

  Two-thirds of the programs require one or a combination of both; 38% of the programs indicate they terminate unfavorably those defendants who fail to pay restitution.

- Is the use of fees for service legitimate in diversion?

  10% require them.

- Should charges be automatically dismissed if defendants successfully complete the program?

  12% of the programs say not automatically.

There are enormous differences in the philosophy, focus and objections of practitioners in the pretrial field. Pryor encouraged practitioners to continue to think carefully about the questions raised in the workshop and to use the information collected through the recent research concerning pretrial practices to approach issues in the future.

★ RESTITUTION: WHAT DOES IT MEAN TO THE OFFENDER?

FACULTY: Elizabeth Gaynes, Esq.
Technical Assistance Associate
Pretrial Services Resource Center
Washington, DC

Kathleen M. Heide
Criminal Justice Research Center
Albany, New York

Restitution is a very popular criminal justice "alternative". But it is one that may be being used without adequate consideration of those situations in which it is an appropriate and potentially effective response.

Kathleen Heide advocated that attention be given to identifying the personality and psychological characteristics of offenders who successfully complete restitution and to question whether this knowledge will make an appreciable difference in our ability to predict which offenders will succeed in a restitution program and under what type of conditions.

The Criminal Justice Research Center in Albany, New York, through a grant from LEAA, has begun a study to assess the relationship between the personality characteristics of offenders and their success or failure in restitution programs, a relationship that to date has been largely ignored in restitution research.

The Criminal Justice Research Center's study employs a theoretical system for classifying people into categories according to their personality development. Called the Interpersonal Maturity Level System, it was developed by C. Sullivan, M. Q. Grant and J. D. Grant. In this workshop Heide discussed her view that the Interpersonal Maturity Level System may provide a useful framework for understanding why some offenders succeed on restitution and why others fail.

The Interpersonal Maturity Level System classifies individuals at one of seven maturity levels (Integration levels or I-levels) according to the perceptual and behavioural characteristics they demonstrate. Heide seeks to relate these I-levels to the likelihood of completing a restitution program successfully. She hypothesizes that offenders who acknowledge responsibility for their actions will be more likely to complete restitution obligations successfully than will offenders who do not see themselves as responsible for their behaviour. Persons for whom personal accountability and responsibility are generally meaningful dimensions are classified in the I-level scheme at levels 4-7; they are considered more likely to be successful in restitution than offenders classified at levels I-3 and lower.

The Interpersonal Maturity Level theory identifies behavioural subtypes within the I-level structure and makes more complex predictions with respect to restitution outcome. For example, an offender who functions comfortably when his/her external structure is clearly defined may succeed in making restitution if the program is clearly supervised, even if the offender's notion of personal accountability is not salient.

Personality data is more difficult to collect than demographic, social and prior record data. Personality data collection can be expected to increase the cost of processing offenders through the criminal justice system due to the required increase in staff time and other programmatic resources. The collection of personality data is also likely to be more intrusive with respect to the offenders' privacy than the collection of other kinds of data. Heide stated that the Criminal Justice Research Center's study, in addition to considering whether the utilization of personality data will make a difference in one's ability to predict restitution outcome, will consider whether the difference is significant enough to justify the expense and intrusion of privacy involved.

★ AN APPROPRIATE USE OF COMMUNITY SERVICE

FACULTY: Michael Smith, Director
Vera Institute of Justice
New York, New York

Michael Smith, Director of the Vera Institue of Justice, has had extensive experience with pretrial and post-adjudication alternatives in this country and in England. He is a cautious supporter of community service as a post-adjudication dispositional alternative. In this regard, he discussed the pilot Bronx Community Service Sentencing Project (BCSSP), a post-conviction community service project.

According to Smith, the BCSSP was established to effect the regular use of community service as a sentencing alternative that would be both more postive and less costly to the offender and the public than incarceration. The community service order was planned to be enforceable and more onerous than incarceration and, therefore, to be more credible with the courts and prosecutors than existing sentencing alternatives. The project also sought to afford its participants an opportunity to do something constructive.

Typically, community-service orders are handed down to white, middle-class, first offenders who need minimal supervision and face little risk of going to jail. In contract, the BCSSP deals primarily with unemployed, unskilled minority offenders with prior records and multiple social problems -- people who most likely would be sent to jail. Between February 1979 and April 1981, almost four hundred offenders fitting this description received community service sentences.

Smith outlined the process by which offenders are chosen to participate in the program. First, project staff members review the prosecutor's files, the Criminal Justice Agency release interview and history records, and the criminal record of every misdemeanor and felony arrestee scheduled to appear before the Bronx Criminal Court. When a case appears to meet the project's eligibility criteria, staff contact the Assistant District Attorney and defense counsel responsible for the case. Then, if the prosecution and defense agree that a community-service sentence is appropriate, the defense attorney discusses this possibility with his or her client. Should the option be acceptable to the defendant, he/she is interviewed by the project staff, who verify that the defendant has no severe drug, alcohol, or other problem that would prevent his or her performing community service. Upon approval by the project, the Assistant District Attorney requests that the judge sentence the defendant to a discharge on the sole condition that he/she perform seventy hours of community service. Usually, the judge states for the record what the sentence would otherwise have been and what the defendant may expect if returned to the court for re-sentencing upon failure to fulfill the community-service obligation. Once the court accepts the defendant's plea and imposes a community-service sentence, a written agreement between the defendant and a project representative is executed to specify the terms and conditions of the sentence.

Participants are closely supervised. They are assigned tasks that are useful to the beneficiaries of the service and that participants are capable of performing

well. In general, physically demanding, manual tasks appear to be best for offenders in the BCSSP, as long as the progress in the work is visible, and there is a clear relationship between the service provided and the beneficiaries' needs. For example, BCSSP participants cleaned up badly neglected centers for senior citizens and youth; helped staff recreational programs for retarded children; and painted and repaired community facilities, nursing homes, alternative schools, and playgrounds.

Project staff are strict in their insistence that the full seventy hours of community service imposed by the court actually be done and, if not, that the case be returned to court for re-sentencing. But, before terminating a participant, the BCSSP staff members make every effort to achieve compliance. When a participant fails to appear for work, the staff tries to contact him by phone, through family and friends and finally in person. Smith pointed out that only 7% of the project participants had to be terminated and re-sentenced.

Although no comprehensive plan for providing support services was designed at the program's outset. Smith said it became apparent that such support was necessary and must be an integral component of the project. The project staff provided counseling to participants and made referrals to social service agencies to address those problems that could not be handled within the scope of the community service projects. The participants' problems included substance abuse and addiction, lack of job skills, psychological problems, and social isolation. The BCSSP developed an index of agencies that could provide offenders with jobs, vocational training, basic adult education and drug and alcohol treatment. For every participant who requested it, the BCSSP staff developed a post-sentence plan. Smith pointed out that as the participants began to trust the project staff, the offenders increasingly sought their help and advice.

Because of the success of the BCSSP pilot project, a formal demonstration community-service project for New York City was initiated on October 1, 1980. If the demonstration project is successful, the community sentence will cost approximately $615/offender, which compares favorably with the cost of short-term incarceration and with even a year on probation with monthly contacts. In the project, Vera will study the impact of the program on recidivism and speed of disposition; the attitude of offenders toward their crimes, the criminal justice system and the community service sentence; participants' use of educational, occupational, and social services and their employment record after completion of the community service sentence; and the attitude of prosecutors, defense counsel, and judges toward the community service sentence. Most importantly, Vera will try to determine whether, without the existence of the program, the community service sentence merely constitutes an additional burden on those whose cases would otherwise have been dismissed or discharged.

★ DISPUTE RESOLUTION AS AN ALTERNATIVE TO COURT

FACULTY: Joseph Stulberg, Associate Professor
Baruch College/CUNY
New York, New York

Dispute resolution is an alternative to prosecuting civil and criminal cases in which grievances are resolved through arbitration, mediation, conciliation, or a combination of those approaches. Over the past few years, numerous dispute resolution programs have been established in the United States and Canada; and in 1980-81 several important evaluations of dispute resolution programs were completed. This workshop, conducted by Joseph Stulberg, focused on the range of current dispute resolution practices and on recent attempts to assess their impact.

Stulberg explained that there are a number of different types of dispute resolution programs, the most common of which is the citizen dispute settlement (CDS) model which focus on minor criminal disputes. There are more than 130 CDS programs in the United States and several in Canada. Although they appear under a variety of names -- Neighborhood Justice Center, Community Mediation Center, Citizen Dispute Resolution Program -- according to research conducted by James Garafalo and Kevin J. Connolly, they are characterized by a number of common features. They all concentrate on interpersonal disputes, as opposed to individual vs. organization, organization vs. organization, etc. All use mediation as the primary dispute resolution technique. Most employ volunteers to serve as mediators (with a nominal stipend to cover incidental expenses). All conduct mediation hearings in a highly informal atmosphere. And finally, all claim to be voluntary, non-coercive alternatives to court processing. However, Stulberg noted that since the alternative to participating in a CDS program in arrest and prosecution, the programs cannot claim to be entirely voluntary or non-coercive.

CDS projects have one or more of three basic objectives: to be of service to individual disputants, to enhance the system (by reducing court backlog and costs, etc.), or to enhance the community. In addition to the CDS type, Stulberg noted that a variety of new dispute resolution programs have recently been established to negotiate disputes involving juveniles, family members, prisoners' grievances, and discrimination complaints; to arbitrate in business matters; or to reduce school problems through student discipline boards. Unfortunately, little research has been done on these programs.

On the other hand, in the last two years, important research on CDS programs has been conducted. Stulberg focused on recently completed evaluations of three mediation programs. Discussion first centered on the Vera Institute evaluation of the Brooklyn Dispute Resolution Center (DRC). The DRC mediates disputes leading to arrest on felony charges and in which the disputants have an on-going relationship. In this study, using a randomized, experimental design, Vera found that (1) program participants felt more positive about the dispute resolution process and outcome than did those defendants whose cases were processed by the courts; (2) slightly more than half of the cases referred to the program resulted in mediation hearings, while 70 percent of the court-processed cases were dismissed; (3) there was little difference between

the rate of subsequent conflicts between disputants in the two groups; (4) although cost-effectiveness was not assessed, the program had an impact in reducing court appearances by arresting officers and also led to a substantial reduction in the number of defendants detained after arraignment, thereby allowing for an important redistribution of resources; and (5) disputants whose cases were processed by the program required slightly more court appearances due to the subsequent appearances of persons whose disputes were not resolved in mediation hearings.

In Florida, the Office of the State Court Administrator evaluated five of the programs in Florida's statewide system of dispute resolution. The study examined 2,600 cases handled by the programs and found that (1) agreements were reached in 45 percent of all cases in which formal mediation hearings were held, with another 8 percent settled prior to a hearing; (2) agreements reached through mediation hearings involved obligations on the part of 98 percent of the respondents and 64 percent of the complainants, supporting the theory that both parties in most disputes are partially responsible; (3) follow-up interviews with a sample of complainants and respondents who had participated in hearings in which an agreement was reached indicated that 69 percent and 52 percent respectively reported that the initial problem was completely resolved six to twelve months after the resolution was reached; (4) disputes involving money or property were the most difficult to resolve and the most likely to result in no-shows, although, when agreements were reached in such disputes, they appeared to be lasting; (5) on the other hand, although disputes in which the parties had a high degree of emotional involvement were more likely to reach a solution through mediation hearings, the likelihood of a long-term resolution appeared to decrease with the degree of emotional involvement; (6) the programs apparently had little impact on court caseload; and (7) similarly, there appeared to be few significant differences in program performance and effectiveness between those using paid mediators versus those using volunteers.

The third research study discussed was an evaluation of the three Neighborhood Justice Centers funded by LEAA. Conducted by the Institute for Social Research, the study attempted to assess the implementation, process, impact, and cost-effectiveness of the centers. The Institute found considerable variation between the three centers in the types of cases handled, referral sources and methods used to attract clients, implementation strategies, and resolution rates. The research further indicates that cases referred by judges and interpersonal disputes (as opposed to civil) are most likely to result in mediation hearings. Disputants appeared to be generally satisfied with the mediation process and outcome. However, no definitive statements about the centers' impact and ultimate cost-effectiveness can be made because of the lack of an adequate control or comparison group.

Regarding future research in the area of dispute resolution, Stulberg stressed that because important decisions affecting the survival of a program are based on program evaluations, the decision as to what to analyze is not a neutral decision as far as program administrators are concerned. Therefore, researchers should be discriminating in choosing which goals will be tested in an evaluation. Certain rewards of dispute resolution program touted during the lobbying stage of a program or in a grant application should be disregarded, as these objectives may be couched in political rhetoric. For example, one of the original goals of the Brooklyn program was to help disputants "learn how to resolve future problems." Obviously, the program's ability to do this in such a

short time -- if at all -- is debatable and, if adopted by a researcher, could distort the nature of the service being provided and the true success of the program.

Stulberg suggested that future topics for study in the area of dispute resolution might include research into the mediation process itself (What is it? Does the process differ according to the particular target group or individuals being served?) and into what constitutes a successful mediation program (When does it have an impact on the disputants? Does the skill of the mediator determine whether a program will be successful? What are the common characteristics of successful mediation programs?).

Stulberg concluded by noting the continued need for experimentation and diversity within dispute resolution programs. Funders must make more long-term commitments to programs so that practitioners can devote more time to fine-tuning their operations rather than being overwhelmed by survival concerns and so that researchers have adequate time to measure the program's accomplishments. Second, researchers must develop sound designs for their evaluations and must devote more focus to evaluating program impact. Finally, practitioners must be less defensive and should be willing to accept criticism, learn from it, and change accordingly.

★ COMMUNITY CORRECTIONS: IMPLICATIONS FOR PRETRIAL SERVICES

FACULTY: Gerald Hoffman, President
Justice Design Associates
Salem, Oregon

Don Murray, Director
Criminal Justice Program
National Association of Counties Research Foundation
Washington, DC

The community corrections concept is predicated on the belief that (1) crime is a community problem and, as such, should be addressed at the local level; and (2) many nonviolent offenders are needlessly committed to state institutions, at great economic and human cost. In this workshop Jerry Hoffman and Don Murray discussed three state's experiences with community corrections and the implications for pretrial services.

The panelists explained that, in 1966, California enacted one of the first substantial community corrections acts, a probation subsidy program. Under this legislation, participating county probation departments were awarded funds for special supervision programs. The subsidy was pro-rated according to the amount the state saved on reduced commitments from each county during the previous year. It is estimated that between 1966 and 1971, responsibility for eleven thousand probationers was retained by counties who would have otherwise sent the defendants to state institutions. The California probation subsidy legislation was replaced in 1978 with a community corrections act (CCA) more like Minnesota's.

Enacted in 1973, the Minnesota CCA authorized the payment of subsidies to paricipating counties to develop alternatives to commitment to state institutions, to expand or upgrade existing correctional services, and to implement new services where necessary. Under this legislation, counties were also charged for each "inappropriate" state commitment (for example all juveniles and those adults convicted of an offense calling for a sentence of less than five years).

The CCA also established requirements for the disbursement of funds under the act:

- In order to receive CCA monies, a county or group of counties must have a minimum population of 30,000. This encouraged the collaboration of neighboring and rural counties to develop more comprehensive and efficient correction systems. Thus far, 27 counties, representing 70 percent of the state's population, have banded together to form 11 community corrections systems.

- Prior to the disbursement of any funds, each county or group of counties must establish a local advisory board responsible for formulating a comprehensive plan for the delivery of alternative community corrections services in the area. As a result of this process, counties have been able to implement local delinquency

prevention programs, group homes, substance abuse treatment centers, special jail programming, and victim-witness services, as well as pretrial release and diversion programs.

- All subsidies to counties are granted with the stipulation that 5 percent be designated for research and evaluation and 5 percent for staff training.

Despite stringent planning requirements and the subsidy "chargeback" provisions of the CCA, an important flaw in the Minnesota approach was soon discovered: its success was dependent on judges. It was found that the chargeback mechanism was penalizing county governments for the decisions of the separate and autonomous judiciary. Therefore, in 1978, the Minnesota Sentencing Guidelines Commission was established to develop sentencing standards. Implemented in May 1980, these guidelines suggest length of sentences, whether the sentence is most appropriately served in a state prison or in the community, and set fixed, presumptive terms of state imprisonment accompanied by provisions for earning good time. The guidelines also take into consideration state prison capacity and local resources. Eight months after they took effect, the sentencing guidelines brought about a 25 percent reduction in commitments to state institutions.

Unfortunately, however, the adult prison population had grown from 1,200 in 1978 (the year the CCA was enacted) to a peak of 2,100 in 1979. The CCA, a recent evaluation of the act contended, did not significantly reduce the rate of commitments to state institutions but did "widen the net", causing sanctions to be placed on offenders who otherwise would have been left alone. The evaluation also indicated that the CCA did not save the state money, a benefit stressed by its proponents when the legislation was first being debated.

Critics of the evaluation dispute not so much its findings, but the way in which the findings were presented. They claim that the report does not give equal weight to the accomplishments of the community corrections legislation. These achievements include improved local corrections planning and administration; a host of new, community-based alternative programs; a 29.5 percent reduction in the juvenile commitment rate; and evidence that diverting offenders to community did not increase the risk to the public.

The panelists pointed out that the principal author of the evaluation of the Oregon Community Correction Act has also criticized the Minnesota findings. The Oregon CCA is very similar to the Minnesota legislation but, unlike Minnesota, the evaluation of the act indicated that it brought about a significant change in sentencing patterns in a much shorter period of time than in Minnesota and was also fairly cost-effective. The author contends that the Minnesota evaluators did not conduct a sufficiently detailed court disposition analysis and that the evaluation did not take into consideration the benefits -- often monetary -- of programs, services, and fees brought about by the CCA. He cites the value of fines, restitution, and community service; victim-witness services, crime prevention projects; and pretrial release and diversion programs.

In Oregon, many counties used their community corrections subsidies for the delivery of pretrial services and jail programs. In Marion County, for example, the funds were used to remodel the jail's basement and to install intake services there. Pretrial release staff interview persons upon admittance to

jail and enter the data into a computer terminal. The computer "scores" the information on the defendant. As a result of this new system, the 70/30 percent ratio of pretrial detainees to sentenced offenders in the jail reversed itself and has increased local options and alternatives for sentencing.

The panelists concluded that while more research needs to be done on the outcome of community corrections legislation, this alternative potentially offers many advantages. Carefully developed and monitored, the use of community-based corrections can be cost-saving, more humane, and a better system of relating to offenders.

★ HIGHLIGHTS OF CRIMINAL JUSTICE REFORM

FACULTY: John Greacen
Deputy Director for Programs
National Center for State Courts
Williamsburg, Virginia

John Greacen, Deputy Director of the National Center for State Courts (NCSC), provided an overview of three areas of criminal justice reform which, while not directly related to pretrial concerns, are of interest to professionals working in the field.

Greacen discussed the court delay reduction program conducted by the National Center for State Courts over the past five years. The project, which has included research, demonstration and training, has yielded encouraging results. One part of the project, a study by the Center's Western Regional Office, concluded that court delays are not the inevitable result of any one particular factor (such as the number of trials, the crime rate, or the size of caseloads), but rather are largely attributable to the pace at which local courts are accustomed to working. Some courts with large caseloads process cases quickly; other courts are simply accustomed to working more slowly.

Greacen cited evidence that courts may be encouraged to process cases more efficiently as seen in experiments conducted in Maricopa County, Arizona and Providence, Rhode Island. A number of steps aided these courts in improving their adjudication process significantly:

- the temporary reallocation of resources to reduce an existing backlog;
- the use of more flexible resources, such as retired and pro tempore judges and the transfer of judges among courts;
- the creation of a simple management structure that would give judges and clerks information about the pace of litigation;
- the establishment of agreed-upon time limits, procedures for meeting them and sanctions for failing to meet them; and
- the establishment of firm trial dates, i.e. setting only the number of cases for trial on a particular day that the court is likely to be able to handle.

The current phase of the court reduction project is a series of training workshops. Over half the states in the country have participated and have begun developing strategies for reducing delays in their courts.

Greacen noted that the major thrust in sentencing reform during the past five years has been to reduce the discretion of judges and other criminal justice officials through four types of changes:

- Mandatory sentencing - Each crime has a set term of imprisonment. A judge has no discretion to sentence to probation or to suspend sentence and there is no parole board discretion to release an offender before his/her term is served in full.

- Determinant sentencing - A judge has no authority to sentence an offender to probation, but must impose an incarcerative sentence. A judge has some discretion with respect to the length of sentence within a given offense class.

- Parole guidelines - Five states have adopted guidelines that structure the way parole boards exercise discretion.

- Elimination of plea bargaining - A few jurisdictions have attempted to eliminate plea bargaining.

The National Center for State Courts, in a recent evaluation of initial experiments with empirically-based sentencing guidelines in four cities, concluded that the guidelines made very little difference in the judges' sentencing practices and identified a number of issues to be addressed by future sentencing guidelines. This was further supported by a recent report by Abt Associates on American prisons and jails which concludes that these various changes in sentencing laws have not produced changes in average sentence lengths.

According to Greacen, Abt's report on Amercian Prisons and Jails also concludes that the United States is facing a crisis in policy with respect to incarceration. Between 1972 and 1978 the national incarceration rate increased 26% over the population rate. Prisons and jails are now vastly overcrowded, and inmates are increasingly confined in substandard conditions. The Abt report suggests that states must develop rational incarceration policies that establish the approved capacity of the state's correctional facilities and develop a mechanism to ensure that the sentencing decisions of individual judges take into account the capacity of the state's prisons. In Minnesota, sentencing guidelines implemented in May, 1980 did take into consideration the capacity of the state's prisons. There has been good judicial compliance with them. The composition of the Minnesota prison population has changed to include more violent offenders and fewer property crime offenders. Minesota's correctional population remains below capacity.

In conclusion, Greacen encouraged pretrial practitioners to stay interested in and informed about developments in all areas of criminal justice.

★ PRETRIAL AND THE JUDICIARY

MODERATOR: Edward J. Schoenbaum
Appellate Court Coordinator
Illinois Supreme Court
Springfield, Illinois

FACULTY: The Honorable Peter Bakakos
Supervising Judge
Surety Section, Circuit Court of Cook County
Chicago, Illinois

The Honorable Rosemary Pillow
City Court Judge
Baton Rouge, Louisiana

The Honorable H. Carl Moultrie I
Chief Judge
District of Columbia Superior Court
Washington, DC

INTERVIEWERS: Estell Collins, Supervisor
Federal Pretrial Services Agency
New York, New York

John Hendricks
Director of Pretrial Services
Administrative Office of the Courts
Frankfort, Kentucky

Pretrial practitioners are used to dealing with judges on a day-to-day, case-by-case basis. But because the judiciary shapes pretrial practice in a very profound way, it is helpful to be reminded of their more global concerns.

Judge H. Carl Moultrie I, Chief of the D.C. Superior Court spoke of why he valued pretrial services in the District of Columbia. He stated that pretrial service agencies provide three enormously valuable services to the court:

- They present information and recommendations concerning defendants thereby allowing judges to make more educated and better-reasoned release decisions.

- While maintaining their neutrality and objectivity in assessing individual defendants, they can appropriately fight against the abuse of money bond and support the safe use of non-financial forms of release.

- By continually studying and reassessing the pretrial process, they can identify weaknesses in the judicial system and improve the overall functioning of that system.

Moultrie indicated that the court wants as much information as is available on each defendant, and, he said, wants it presented fairly and objectively. According to the law in D.C., he said, judges need information that relates to 1) a defendant's likelihood to appear at trial and 2) the threat to community safety posed by a defendant's pretrial release.

He added that most judges in other jurisdictions still do not receive reports and recommendations on all defendants. Further, most pretrial agencies automatically exclude certain types of defendants from interviews and hence prepare no reports on them. But judges must set bail in all cases. Without adequate information about defendants, it is difficult for the court to make well-reasoned decisions concerning their cases. He also pointed out that "no recommendation" from pretrial agencies rarely appears neutral to a judge. When an agency demurs, he said, its silence conveys a rather strong message to the court that the agency has little or no confidence in the defendant.

Moultrie noted that many judges around the country are concerned with what they regard as the predisposition of pretrial services agencies to recommend release in most cases. Judges have an enormous responsibility in making individual release decisions and are accountable to many people for those decisions. Pretrial services agencies, he said, can help the judiciary greatly by presenting balanced recommendations.

He concluded his presentation with a prediction that no matter how tight criminal justice monies become, the judiciary will continue to have the assistance of pretrial services agencies in the future. It is a partnership that he believes works "exceedingly well."

Judge Rosemary Pillow described a diversion program in the Baton Rouge City Court which, in her view, benefits program participants, the community, the courts and the jail system. The program, referred to as City Court Pre-Trial Employment and Training, was founded in 1975 to divert selected defendants.

Prospective program participants must have no prior convictions, be charged with a non-violent misdemeanor, be between the age of 17 and 30, and be a resident of East Baton Rouge Parish.

Participation in the program is voluntary, but requires the consent of both the victim of the offense and the arresting officer. Participants are assessed $70 in court costs unless they are determined indigent. The program is funded under the Department of Labor's CETA program.

Program participants are charged with various categories of non-violent misdemeanors: shoplifting (35%), simple drunk (21%), simple battery (21%), trespassing, etc. (23%).

Participants remain in the program for six months. Criminal charges against those participants who successfully complete the program are then dismissed and records expunged.

The recidivism rate for program participants is extremely low: 2.43% for participants while they are in the program and 4.76% for participants after program termination.

Pillow said she felt that the Baton Rouge project is enormously beneficial to the parties involved: it has given defendants an alternative to criminal prosecution; it has reduced recidivism and prepared offenders for employment; it has reduced the number of cases requiring court processing, saving both time and money; and it has reduced the jail population, thereby providing more correctional space for more serious and repeat offenders.

Judge Peter Bakakos has been active in pretrial issues for a long time. He discussed the role of the judiciary in revising Illinois bail procedures.

There, a judicial commission headed by Bakakos took the lead in evaluating existing pretrial procedures. It recommended the establishment of pretrial services agencies and performance standards for the operation of those agencies. The Study Committee of the Illinois Judicial Conference has made these recommendations with a view toward affecting changes in Illinois legislation and in the Illinois Supreme Court Rules of Criminal Procedures.

Edward Schoenbaum, Coordinator of the Illinois Appellate Courts, summarized by stressing that the goal of pretrial justice demands a continuing exchange between practitioners and the judiciary.

★ PRETRIAL, THE PROSECUTION, AND THE DEFENSE

FACULTY: Francis D. Carter, Director
District of Columbia Public Defender Service
Washington, DC

Rick Wilson, Director
Defenders Division
National Legal Aid and Defenders Association
Washington, DC

Wes Dunfield
Crown Attorney
Edmonton, Alberta

Dennis Murphy, Esq.
Misdemeanor Trials Section
U.S. Attorney's Office
Washington, DC

INTERVIEWERS: Clay H. Hiles, Executive Director
New York City Criminal Justice Agency
New York, New York

Don Dixon, Director
Champaign Diversion Program
Urabana, Illinois

The purpose of this workshop was to review sometimes similar, and frequently conflicting concerns of the prosecutor and defender as they relate to pretrial decision-making and to the expectations of a pretrial services agency.

Rick Wilson, Director of the Defender Division of the National Legal Aid and Defender Association, said that today there are 1200 programs throughout the United States providing counsel for defendants. They operate at a cost of $450 million dollars annually. Further, $20,000 to $30,000 is expended each year on every individual who is incarcerated. It is estimated that currently 60,000 persons are being detained without bail. Wilson suggested that if the jail population was decreased by one third, the available funds could be better allocated for the defense function.

Wilson also warned that there is a serious void of communication between pretrial offices and defenders. This is based, in part, on the fact that pretrial programs do not exist in every jurisdiction; and, even when they do exist, defenders do not always know about them. Wilson also speculated that the relationships between pretrial agenies and defenders were strained because of conflicting views of their respective roles. Defenders push for absolute freedom of their clients. A pretrial agency may, however, feel that something should be done besides let the defendant "just walk out the door". Wilson closed his discussion by citing the problems of confidentiality and privileged communication relating to the pretrial interview.

Frank Carter, Director of the District of Columbia Public Defender Service, examined the use of diversion programs. The concept of alternatives to prosecution may be supported by defenders, but since such programs are usually controlled by the prosecutor, Carter does not see them as generally voluntary.

Further, prosecutors often develop eligibility guidelines for diversion programs that are limited to minor offenses or cases that would be difficult to prosecute. Carter proposed that alternatives should exist for non-violent felons. He further advocated that a defendant's eligibility for diversion should be decided by program personnel; the content of the program and opportunities offered should be wide-ranged to satisfy the diversity of defendants needs and motivation; and defense counsel should participate at crucial stages of the diversion process (notably at intake and in the event of unsuccessful termination).

Wes Dunfield, Crown Counsel in Edmonton, Alberta provided the viewpoint of a Canadian prosecutor. Dunfield emphasized the problem of ever increasing caseloads. He noted that all persons involved in the bail function are overworked as the volume of cases expands. This creates a lack of the coordination necessary for the criminal justice system to perform adequately and with integrity. Dunfield expressed the feeling that, with the growing involvement of pretrial agencies, a new relationship will develop between prosecutors and pretrial officers which will result in more diverse types of alternatives being used at the pretrial stage.

Dennis Murphy, of the United States Attorney's Office in Washington, D.C. described the pivotal role that the prosecution has in pretrial reforms. He stressed that pretrial agencies must become more aware of the prosecutor's function. He also suggested that pretrial officials should educate prosecutors on their agency's day-to-day functions. Yet, the prosecution should not be expected to make recommendations for personal recognizance at bail hearings because he feels this would make them vulnerable to bad press and public reactions. Murphy concluded his remarks by citing the massive numbers that flow through criminal justice process and advised pretrial agencies, defenders, and prosecutors to develop better working relationships.

★ DISCRIMINATION AND ITS IMPLICATIONS FOR CRIMINAL JUSTICE

MODERATOR: Michael Green, Director
Intake Services, Probation Department
Philadelphia, Pennsylvania

FACULTY: Robert Smith, Assistant Director
National Institute of Corrections
Washington, D.C.

Lloyd Street
Center for the Study of Race, Crime and Social Policy
Oakland, California

This workshop explored racism in the criminal justice system and concluded that for several reasons it must be a primary concern for practitioners in the field.

Robert Smith of the National Institute of Corrections discussed a study by a legislative task force in California in 1979 that revealed an enormous disparity in the way white and minority offenders are sentenced. According to the study (1) white defendants are less likely to be charged with felonies; (2) blacks and hispanics are more likely to be sentenced to jail or prison on felony charges; (3) blacks and hispanics are more likely to be involved in cases of questionable charges; and (4) white defendants are more likely to be charged with misdemeanors (rather than felonies) and to receive suspended sentences or probation.

Smith also pointed out that minorities are generally excluded from pretrial services and diversion programs which are available to white defendants. It was suggested, too, that preventive detention and the point scales used in release decisions are often implicitly discriminatory. Blacks and hispanics are often viewed as categorically more violent and threatening. And the indications of community ties and stability, such as employment and residence, used in point scales may be based on assumptions that are unfair to minorities.

Dr. Lloyd Street is with the Center for the Study of Race, Crime and Social Policy in Oakland, California. He pointed out that very little research has been done to examine the problems of racism and discrimination within the criminal justice system. "We do know, however," said Street, "that over 70% of the inmates in prisions and jails in this country are black, hispanic or other minorities." This percentage is vastly disproportionate to the population as a whole. Discrimination in both sentencing practices and parole decisions would be reflected in the racial composition of correctional populations. The Center is beginning a comprehensive research study which will look at decision-making at every level of the criminal justice system to try to get a good understanding of the impact of race.

Both Smith and Street encouraged people in pretrial services to be aware of discrimination and to advocate on behalf of minority defendants where it is appropriate. Smith said that through good case preparation pretrial staff can positively affect the critical decisions of the prosecutor's office. Street told workshop participants that, particularly in small jurisdictions, he has seen direct, coordinated approaches to provide equal justice to be effective.

★ FEDERAL UPDATE

MODERATOR: Laurie Robinson, Staff Director
Criminal Justice Section
American Bar Association
Washington, DC

FACULTY: Bruce Beaudin, Director
D.C. Pretrial Services Agency
Washington, DC

David Davis, Staff
Attorney General's Task Force on
Violent Crime
Washington, DC

Guy Willetts, Chief
Pretrial Services Branch
Administrative Office of the U.S. Courts
Washington, DC

The creation of an Attorney General's Task Force on Violent Crime under the Reagan Administration signaled a reconsideration of federal policy on criminal justice issues. The work of the Task Force was nearing completion at the time of the Symposium and was discussed by Department of Justice staff member, David Davis. He noted that the topic of bail is a major concern of the Task Force. Preventive detention legislation is being discussed as a solution to the problem of crime on bail and also as a way to reduce the incidence of flight in large drug cases where high money bail can be posted.

Also under consideration are suggested solutions to the problems of jail and prison overcrowding. Some of the proposals are that Federal money be allocated to states for new prisons, that jails located near Federal courts be forced to house temporary prisoners and that existing military facilities be used to house prisoners.

Members of the Task Force also seem to favor changes in the exclusionary rule so that evidence now ruled as inadmissible could be used in court in certain circumstances. This, they argue, would result in more convictions in cases where evidence was suppressed due to illegal search or seizure.

The Task Force feels that the confidentiality of juvenile records is too stringent. At present, the FBI doesn't accept juvenile prints so that juvenile records are not available to judges for consideration when sentencing adults.

At the time of this session, Phase I of the Task Force Report was completed and its recommendations focused on solutions within current resource and statutory limitations. Phase II of the report will focus on recommendations that may require changes in legislative authority and appropriations.

Guy Willetts, Chief of the Pretrial Services Branch of the Administrative Office of the U.S. Courts, discussed the history and progress of the pending pretrial services legislation.

Title II of the Speedy Trial Act of 1974, established 10 pretrial services agencies in representative Federal Districts. Due to a compromise between positions in the House and the Senate, five agencies were designated as independant (i.e. run by boards of trustees) and the remaining five were operated by the Probation Department. As directed by the Act, the Administrative Office, in its final report, evaluated the impact of the pretrial services agencies and also compared the accomplishments of the board districts with those run by probation. The final report recommended that Congress grant statutory authority to provide for the continuation and expansion of the pretrial services agencies.

The report was submitted to Congress in June 1979, but final Congressional action has not yet occurred. So far, the Senate bill has passed, but the House bill is being held up by attempts to attach to it amendments to the Bail Reform Act. Willetts said that it is expected that the problems in the House will be ironed out, so that some action should take place within the next three months. (Since that time, the House bills have been separated and passage of the pretrial services bill is predicted for this session of Congress).

Bruce Beaudin, Director of the D.C. Pretrial Services Agency, reported on the recently introduced Senate Bill S1554, sponsored by Senators Thurmond, Laxalt, Hatch and Kennedy. If passed, this bill would, for all practical purposes, eliminate money bail. Under some circumstances, property or collateral could still be required for release if it was determined that it was necessary to ensure the defendant's return to court, but according to Beaudin, a bail which the defendant could not afford could not be set. The bill would provide for the consideration of danger and detention in certain circumstances, but would insure adequate due-process safeguards, he said.

Beaudin described this bill as "the most significant bail reform since 1789, because it would eliminate, once and for all, the primary ingredient of invidious discrimination in the bail system -- money bond".

Moderator Laurie Robinson, Staff Director of the Criminal Justice Section of the American Bar Association, Washington, D.C., commented on a few other developments in Congress. She said that although, since 1973, a number of bills concerning the Federal criminal code have been introduced, none, so far, have been passed. As recently as last year, two bills, HR5619, (sponsored by Congressman Drinan) and S1722 (introduced by Senators Kennedy, Laxalt and Hatch) met with problems and failed to be passed by Congress. She noted, however, that Attorney General William French Smith seems committed to pushing for passage of a criminal code revision.

In addition, she advised that there have been several bills to take over some of the functions of LEAA, which were also pending and that she expected that those functions deemed important would continue to be funded in some form.

PRESCRIPTIONS FOR JAIL OVERCROWDING

CHAIRPERSON: Connie Mahaffy, Probation/Parole Services Liaison Officer
Mimico Correctional Centre, Ministry of Correctional Services
Toronto, Ontario

FACULTY: Nick Demos, Program Manager
Jail Overcrowding and Court Delay Reduction Programs
Law Enforcement Assistant Administration
Washington, D.C.

Patrick Madden, Research Associate
Research Services, Ministry of Correctional Services
Toronto, Ontario

Jail overcrowding is an important concern, both in America and Canada. Nick Demos, Program Manager, Jail Overcrowding and Court Delay Reduction Programs, Law Enforcement Assistance Administration (LEAA), presented a systematic approach developed by the LEAA -- the funding body for criminal justice research programs in the United States -- to deal with jail overcrowding.

According to Demos, the size and purpose of a jail in a community in the United States must be recognized as a local policy decision that is political as well as technical. Eliminating overcrowding is primarily a political exercise, and it usually requires a sense of crisis in the community before any attempts are made to solve the problem. A systematic approach involving courts, police, jails, etc. is required. Courts, however, are the key institutions as it is the judiciary which can implement release alternatives, speedy case processing and alternative sentencing. The planning process involves collecting a complete statistical data base. A three-point strategy is necessary: development of a data collection plan that is both technically and politically acceptable; organization of a team to collect and analyze the data; and presentation of the data and findings to the appropriate bodies. Data should include information on incidence of arrests, citation, release, and failure to appear; sources of jail intake; profiles of the jail populations; number of prosecutions; and fallout rates and case processing time. Using these data, it is possible to identify problems in the system and to reveal target groups that could potentially be released.

Actually, reducing jail populations can be seen as a two-phase process. Phase One is "planning" and can last six to twelve months. Phase Two is "implementation" and can last 18 to 24 months. Specific tasks include the following:

- establishment of a system-wide Jail Policy Board that is responsible for policy-making;
- hiring of a project coordinator and a data collection team;
- data collection and analysis;

- establishment of priorities to relieve overcrowding;
- development of a jail population management plan;
- phasing-in of the "central intake" screening option;
- phasing-in of alternatives;
- monitoring and evaluation of the project; and
- adjustment of targets as necessary.

A central intake system may hold the key to system improvements. The main point of this concept is that all key decisions in determining whether to hold someone in jail should be made within the first 24 to 48 hours after the accused is taken into custody. This involves decisions on booking, release on recognizance, supervised release, prosecution charge, provision of a public defender, etc.

Demos explained that the American Justice Institute in Sacramento, California is the National Coordinator for this LEAA programme. It gets block grants and provides technical assistance to projects at various sites across the country. It also works with the Institute for Law and Social Research (Inslaw), which coordinates a computerized information service which can aid in studying jail overcrowding. Every project also has an independent evaluator.

Discussion after Demos' presentation centered on jail overcrowding in Ontario. According to Patrick Madden, Research Associate at the Ontario Ministry of Correctional Services, the Ministry sees it as a problem and has tried to help by providing pretrial services. But those outside corrections tend to view jail overcrowding as a problem to be dealt with solely by corrections. This is part of the problem. "Jail overcrowding is a problem that requires collective action by the entire criminal justice system, as well as involvement of the general public."

There is also a problem concerning lack of data, Madden noted. There is a need for research in Ontario concerning reasons why bail is not granted for certain people. Other research questions could include what percentage of the jail population is on remand, and what percentage was in jail before bail was set.

Finally, it was again emphasized by all the participants that jail size has no direct linkage to increased community safety. In fact, some studies have shown that releasing more people does not necessarily result in increased failure to appear or in higher crime rates.

PRETRIAL AND THE JUDGE

CHAIRPERSON: The Honourable Charles Scullion, Judge
College Park Provincial Court
Toronto, Ontario

FACULTY: David Solberg, Counsel
Department of Justice
Ottawa, Ontario

Linda Reid, Partner
A.R.A. Consultants
Toronto, Ontario

Alex Himelfarb, Professor
University of New Brunswick
St. John, New Brunswick

The panelists discussed the assistance provided to the courts by various pretrial services agencies, issues affecting remands at the national level, current psychiatric remands, and the emerging conservative trend in the Canadian criminal justice system.

Judge Charles Scullion, of College Park Provincial Court, provided an overview of available pretrial services utilized by judicial officers in the College Park Complex. The existing pretrial programmes provide information to the court when determining the issue of potential release at show cause hearings. Scullion cited seven different pretrial programmes that assist the court by providing personal background information on persons presented before the court. In addition, these programmes assist the accused in seeking housing and legal assistance, contacting family members of arrested persons, and supervising those releases according to conditions imposed by the court. In summary, Scullion emphasized the usefulness of pretrial programmes which are presently available to assist the court at pretrial hearings and the resourcefulness of pretrial staff.

Linda Reid of A.R.A. Consultants, continued the discussion with an examination of remands at the national level. The primary issues addressed in determining bail were the philosophical relationship of the right to due process and the availability of fiscal resources. Reid explained that a number of research projects are currently in progress, but to date, the existing information has not been translated into policy. Therefore, procedures must be developed to utilize such data. The major issues presented were the overcrowding of detention facilities, communication gaps within the criminal justice system, and discrimination within the system. A.R.A. is currently studying the inconsistencies and unrealities that beset bail decisions in the Canadian process in light of the Bail Reform Act. Reid further examined the effects of pretrial detention on the accused and the assessment of criteria by judicial officers when determining the accused's suitability for bail.

David Solberg, Counsel for Criminal Justice Policy Planning within the Department of Justice, reviewed the topic of existing psychiatric remands. The

discussion focused on the determination of competency: what criteria are used in the decision and who should decide fitness for trial? Solberg stated that 70% of persons examined for competency were determined to be "fit". He further examined the effects of time restraints, noting that some jurisdictions take as long as 30 days to provide a psychiatric assessment. However, current methods, such as the Competency Screening Instrument, are being used to establish a brief assessment in a day or less. The primary problem that remains concerns definitions for the indicators of mental incompetence.

Dr. Alex Himelfarb from the University of New Brunswick concluded the discussion by exploring the present swing of the Canadian justice system from liberal optimism to conservatism. Himelfarb believes that the concept of dangerousness undermines liberal reforms. Philosophically, pretrial detention reverses the traditional concept of justice that punishment should suit the crime. He posed two questions: "What consitutes a dangerous offender?" and "Can dangerousness be predicted?" Himelfarb highlighted the problem of "false positives", or the overprediction of dangerousness. He emphasized that clinical assessments should take into account the individual and his/her interaction in his/her environment, that individuals change, and that dangerousness is not a lasting characteristic.

THE ROLE OF THE CROWN AND DEFENSE AT THE PRETRIAL STAGE

CHAIRPERSON: Wesley Dunfield, Crown Counsel
Department of the Attorney General
Edmonton, Alberta

FACULTY: David Gorrell, Barrister and Solicitor
Toronto, Ontario

Douglas Heatley, System Analyst
British Columbia Corrections
Victoria, British Columbia

The workshop examined the bail system in Ontario. As outlined in the Criminal Code, two criteria should be addressed in deciding whether an individual should be released before trial:

1. Is detention necessary to ensure his/her attendance in court?

2. Is detention ncessary for the protection of the public?

The Crown's responsibility before trial, said Wes Dunfield, a Crown Attorney from Alberta, is to coordinate information in order to address the question of release as completely as possible.

Dunfield feels that the process of release can be further refined with the aid of services such as bail verification/supervision programmes because they provide the Crown with information which is useful in deciding whether to recommend release of an individual. "There exist many loose ends in the system," said Dunfield, "but if utilized in its wholeness, it works well."

David Gorrell, a former Crown officer and presently a defense lawyer in Toronto, presented a bleak picture of the bail system. People "get lost in the system" when the Crown does not have the means to discover specific facts about them, he said. As well, the bail courts usually employ junior Crown counsel, who are often open to manipulation by senior police officers. Gorrell also referred to the manipulative mechanism of "squeezing pleas" wherein accused persons are detained in jail for a long time in order to force them to plead quilty to some of the charges against them. This method, Gorrell said, is widely used.

Gorrell also questioned the efficacy of three-day remands for psychiatric assessments. He argued that this process usually involved a half-hour meeting between the accused and a psychiatrist at a local jail. On this basis, the accused is often sent to another institution for 30 to 60 days for further assessment. Gorrell told of a case in which a Korean was remanded until it was finally discovered that his difficulty was not psychological, but linguistic.

Gorrell claimed that the bail system has two functions: to clear police files, and to clear Crown dockets. "Only unintentionally does the bail system function in retaining people in custody who deserve to be there."

Douglas Heatley, a systems analyst in British Columbia, has been using computer analysis to investigate pretrial programmes. This analysis attempts to predict whether an accused will appear for his/her next court date and the likelihood of the offender committing further crimes upon his release. "In these times of fiscal restraint, when it costs $100,000 to house an inmate for a year, and the cost of community supervision is low, the trend would seem to be toward community supervision," he concluded.

All panelists were in favor of the alternatives provided by agencies in the pretrial service area. Dunfield concluded by saying, "There is a need for greater sophistication and dedication in the criminal justice system. We must commit ourselves to change, we must take initiative, and we must realize that people are getting the short end of the stick."

PRETRIAL DIVERSION PRACTICES

CHAIRPERSON: Ruth Morris, Director
Metro Toronto/York Bail Programme
Toronto, Ontario

FACULTY: Marie-France DesRosiers, Director
Post-Charge Pretrial Adult Diversion Project
Quebec City, Quebec

Pat Rolfe, Special Advisor
Ministry of the Solicitor General Canada
Ottawa, Ontario

MODERATOR: Dee Durkot, Special Projects Officer
Probation & Aftercare Services, Ministry of Community & Social Services
Dryden, Ontario

Pretrial diversion practices and programmes have been ongoing in Canada for several years. The fact that this has taken place is indicative of the recognition by the public and government of the need for such programmes. The panelists on this workshop gave an overview of the federal policy on diversion and other related pretrial intervention issues.

Pat Rolfe, Special Advisor, Ministry of the Solicitor General Canada presented a federal overview of diversion from its beginnings when the Continuing Committee of Deputy Ministers identified it as an area of interest. Since a task force was established in 1974 to study diversion, programmes have expanded into other pretrial services.

The development of diversion mechanisms has necessitated the consideration of the following legal and operational questions:

- Are diversion projects and processes legal?
- Do they broaden the net of criminal justice rather than reduce the number of people in the system?
- Is diversion less of a deterrent than the court and sentence process?
- Is diversion as cost-effective as the court process?

At present, the federal government is developing guidelines to address the problems of legality, and evaluative information is being compiled concerning the operational issues. But what else needs to be done? Successful juvenile and adult projects must be identified and studied in terms of their deterrent value, cost-effectiveness and community involvement. This information can then be used to set up demonstration projects. The information that is gathered will then be studied in an effort to examine behaviour patterns, as well as casual relationships.

Marie-France DesRosiers, Director of the Post-Charge Pretrial Adult Diversion Project in Quebec City, gave an overview of the conciliatory diversion programme for adults in Quebec City. This diversion programme has its cases referred to it from the police, through the Crown Attorney. If the offender meets the selection criteria, the case is referred for conciliation. This process takes place only if an agreement is made by all parties. Conciliation usually takes one of two forms: restitution to the victim or volunteer work.

This programme has been functioning for two years. This year, more than 400 cases have been referred, and next year 500 cases are expected', DesRosiers explained. Of those cases referred, 85% have been settled satisfactorily. The statistics on recidivism indicate that less than five per cent of the cases appear to have come in conflict with the law again. This programme will be evaluated in its third year of service. The province of Quebec is awaiting this evaluation to determine if programmes such as this one should be ended, or expanded.

Ruth Morris, Director of the Metro Toronto/York Bail Programme, expressed her sense of what new programmes should be: "Someday, they will build a prison with no one to put in it." The alternatives that we will develop -- we hope -- will be that successful. The Metro Toronto/York Bail Programmes is one of those. It provides assistance for the accused at three levels of pretrial service:

> Police Station -- Interviewing the accused, verifying information for bail, and providing alternative services, such as alcohol treatment, bail residence, etc.
>
> Court -- Assistance in all bail courts and bail appeal courts.
>
> Detention -- Assistance to those who cannot meet bail and provisions of alternatives for supervision, etc.

The staff at the Bail Programme have identified many needs and gaps in services and have tried to meet these needs. Housing alternatives are now being set up for clients who would otherwise remain in detention.

Shelter Now Network is a list of available housing in Toronto that has been set up for the use of clients on bail. Morris stated that we are beginning to develop the systems necessary to deal with accused people in alternate ways. She also suggested ideas for the future -- one of which was an "ultimate failure sheet" -- as a way of identifying the needs of clients that the programme is unable to meet.

Morris summarized the workshop and the ideas expressed in it by saying of the justice system and its branches: "If we are not trying to move forward, then we are slipping backward."

PUBLIC SERVICE THROUGH PRIVATE CITIZENS (PRIVATIZATION OR PURCHASE OF SERVICES)

CHAIRPERSON: Art Daniels, Executive Director
Community Programs Division, Ministry of Correctional Services (M.C.S.)
Toronto, Ontario

FACULTY: Sheree Davis, Research Analyst
Community Programs Support Services Branch, M.C.S.
Toronto, Ontario

Sherry Haller, Coordinator
Project P.R.E.P., Criminal Justice Education Center
Hartford, Connecticut

Gillian Sandemen, Executive Director
Elizabeth Fry Society, Toronto Chapter
Toronto, Ontario

"Our organization's success is a result of a high public and politicial profile achieved through years of hard work," said Sherry Haller of the Criminal Justice Education Center (C.J.E.C.) in Hartford, Connecticut. C.J.E.C. serves as a coordinating body, a reference center and a lobbying group for the private social service agencies in the state. This organization was instrumental in establishing the Independent Council of Private Agencies, whose members meet monthly to coordinate their activities and to deal with problems as a unified body. The C.J.E.C. helped to develop a Community Corrections Act, which stressed that increased services to the criminal justice system should be provided through the private sector.

Sheree Davis, a research analyst in the Community Programmes Support Services Branch of the Ontario Ministry of Correctional Services, gave a brief history of the Ontario government's move toward privatization of social services that were previously provided solely by the government. The move was the result of a phenomenal growth in service delivery and demand, the increased caseloads of social workers, and a demand for cutbacks in government spending.

The Ontario government sees privatization as the answer for several reasons: it is economical; it aids the government in keeping the growth of public service to a minimum; and it decreases the caseloads of probation and parole workers. In addition, it decentralizes decision-making; increases accountability; promotes more innovative programs; and returns the responsibility for community problems to the community.

Privatization is not, however, without its problems. Competition between private agencies for contracts can result in a loss of advocacy. The benefits though, appear to outweigh the risks, and the movement toward privatization will continue, Davis concluded.

Gillian Sandeman, Executive Director of the Toronto Chapter of the Elizabeth Fry Society, approached the subject from the perspective of the voluntary agencies. She explained that they are different from private, profit-oriented agencies in that their primary mandate has been, and must remain, one of service to people, rather than service to the system. In addition, the volunteer sector can provide a much broader range of services than those provided by the government. Sandeman further commented that the voluntary sector must ensure that its original mandate is not corrupted by the availability of government contracts and outside interference, but should at the same time periodically question whether its mandate should be expanded in certain areas. The voluntary sector is a vehicle for public education, a political forum, and an agent for change. She pointed out, however, that some of the more important services should still be provided by government, and that the private sector should share with the govenment responsibility for legislated services, such as the provision of a residential setting for Temporary Absence Programme Participants and parole supervision.

RACISM AND PRETRIAL SERVICES

CHAIRPERSON: Richard Nolan, Legal Advisior
Special Projects - Legal Aid
Department of Justice
Ottawa, Ontario

FACULTY: Gail Cyr, Executive Director
Native Courtworkers Association of N.W.T.
Yellowknife, Northwest Territories

Maryka Omatsu, Counsel
Canadian Human Rights Commission
Ottawa, Ontario

Charles Roach, Barrister and Solicitor
Roach and Smith
Toronto, Ontario

Richard Nolan introduced the session by saying that "Racism in the legal process is very hard to document because of the poor statistics." It is known, however, that there is a general problem of racism in Canada. For instance, the incarceration rate in Canada for Native peoples is seven times that of white Canadians, and is similar to rates of incarceration for blacks in South Africa and the United States.

Gail Cyr of the Northwest Territories Native Courtworkers Association spoke of race-related problems between Native people and the police. Cyr emphasized the value of the Native courtworkers who provide lawyers and other agency people with a perspective on Native problems and the Native community. The courtworker was described as a person to whom people could turn to and who is able to provide support on any positive aspects of the situation.

Charles Roach, a Toronto defense lawyer, commented that the real problems of racism are not in the area of pretrial services, since personnel in these agencies are probably the most humane in the criminal justice system.

Roach outlined the difficulty in identifying racism. Complaints of racism in the arrest and detention process have been made, he said, and people have complained that the legal process itself is racist because of the minimal involvement by minorities. Roach suggested that broad discretion and poorly defined laws concerning racism tend to exacerbate the problem; more clearly defined rules and limitations on the use of discretion might lead to better treatment.

Roach also questioned the power of the Crown Attorney in pretrial release. He expressed the opinion that the use of arbitrary discretion by the Crown should be reviewed. "We must also examine the advantages and disadvantages of the use of discretion and aim for a more equal process," he concluded.

Maryka Omatsu, a lawyer with the Canadian Human Rights Commission, reviewed the various organizations that work to remedy racism. These include: the

provincial and federal Human Rights Commissions; the Criminal Injuries Compensation Board; Small Claims Courts; British Columbia's Civil Rights Protection Act; and community organizations, such as urban/race relations citizens groups who independently monitor the treatment of victims and offenders.

Nolan concluded that racism is exacerbated by the stereotyping of racial groups. "Educating people to recognize racism is relatively easy, but altering the situation is very difficult. A new economic policy aimed at the creation of more jobs would be more effective."

PRETRIAL AND NATIVE PEOPLES

CHAIRPERSON: Gail Cyr, Executive Director
Northwest Territories Native Courtworkers Association
Yellowknife, Northwest Territories

FACULTY: Chester Cunningham, Director
Native Counseling Services of Alberta
Edmonton, Alberta

Michael E. McMillan, Chief
Native Programmes, Department of Justice Canada
Ottawa, Ontario

Cynthia Binnington, National Consultant on Natives
Consultation Centre, Ministry of the Solicitor General Canada
Ottawa, Ontario

MODERATOR: Dee Durkot, Special Projects Officer
Probation & Aftercare Services, Ministry of Community & Social Services
Dryden, Ontario

The needs of Native persons in conflict with the law are special. Traditionally, Natives have had very little understanding of the judicial system based on English common law. The expectations and the effect of the system have been misunderstood. This workshop explored some of the resources that have been developed to assist Native people and the areas that still need development. Gail Cyr, Executive Director of the Northwest Territories Native Courtworkers Association, asked the question: "Why do Natives need pretrial services directed toward them?"

In response, Chester Cunningham, Director of the Native Counseling Services of Alberta, cited the reasons that were identified in Edmonton in 1964, when he was the Director of the Native Friendship Centre. He explained that the following points were worth noting:

- sixty per cent of the Natives were charged with alcohol-related offenses;
- there was little communication with the accused who often did not have a fluent understanding of English; and
- frequently bond was not posted because the accused did not understand the requirements for bail.

He went on to explain that these needs led to the development of the Native Counseling Services of Alberta. This service has developed a system involving approximately 30 courtworkers in the province who assist the accused in his/her contact with the judicial system from pretrial to post-disposition. This

programme is typical of the Native courtworker programmes which now exist in most provinces and both territories. Native courtworkers explain the rights to the accused as well as the available options in the judicial system, including: plea, remand, adjournment, etc. They assist the accused in a hearing, help in the application process for legal aid, and frequently make recommendations regarding sentence. Cunningham stated that since the programmes started, the judges have been increasingly utilizing the expertise of the courtworkers and expressing appreciation for their assistance.

At present, the Native Counseling Service also holds legal information workshops for judges, the Royal Canadian Mounted Police, duty counselors and lawyers. These workshops provide cross-cultural exchanges of information between the judiciary and front-line workers, and have proven quite effective in improving the understanding and cooperation of the people involved. The Native Counseling Services of Alberta's pretrial courtworker programme has resulted in a drop in the Native incarceration rate before trial from about 55% to approximately 18-23%. The success of this programme has led to the possibility of expanding it to the area of juvenile diversion.

Michael McMillan, Chief of Native Programmes, Department of Justice Canada, explained how that department became involved with Native people in court. Originally, it was through a cost-sharing programme with the province of Alberta and the Department of Indian and Northern Affairs, which involved a Native courtworkers programme. Now, eight provinces and two territories have Native courtworker programmes funded on a 50% cost-sharing basis between the federal and local government. Consideration is being given to the expansion of the programme to the two additional provinces. The Justice Department has found that it "has a responsibility to explain the laws, not just make them," stated McMillan, "and this is what the Native Courtworkers Programme is designed to do."

Cynthia Binnington, the National Consultant on Natives and the Criminal Justice System, Ministry of the Solicitor General Cananda, explained that the Programmes Branch of the Ministry is responsible for much of the research that is done in new areas, and encourages the development of demonstration projects. Binnington, is, at present, interested in developing innovative programmes in the areas of policing, juveniles and diversion. Her interest in the past has aided the development of pre-charge diversion programmes and she is now encouraging the development of post-charge diversion programmes.

Binnington referred the discussion to Andrew Smith, Regional Consultant, Solicitor General Canada, Saskatoon, Saskatchawan, who gave an example of developing community alternatives. Smith said he finds the "holistic" approach the most feasible in small communities, as they cannot afford separate programmes for each problem. One person acting as a generalist and dealing with several problems -- alcohol, diversion, mediation, community service orders, fine options, etc. -- can be realistic in a small community. This also encourages community participation in its own development.

Gail Cyr concluded from the presentations and the general discussion that Native people do need pretrial services directed toward them, and that the most effective way to implement these is by employing Native people to assist Native people. This approach aids Native people in controlling their own lives and communities.

POLICE DISCRETION

CHAIRPERSON: Staff Sergeant Les Douglas
Metropolitan Toronto Police Force
Toronto, Ontario

FACULTY: Sergeant William Terry Knox
Metropolitan Toronto Police Force
Toronto, Ontario

Isaac Singer, Barrister and Solicitor
Toronto, Ontario

In 1980, the Metropolitan Toronto Police responded to 1,600,000 radio calls, which resulted in 117,000 court appearances, a ratio of approximately one appearance to fifteen contacts. Terry Knox, a Sergeant with the Metropolitan Toronto Police Force, attributed part of this discrepancy to the use of police discretion at various points in the criminal justice process.

One area where the use of discretion is widespread, according to Knox, is in the Youth Bureau, which deals solely with offenders under sixteen. The police have a number of options for dealing with the juvenile depending upon: the seriousness of the offense; the attitude of the individual and his/her parents; and the juvenile's age and any record of previous delinquency. The choices available include charging the juvenile and either detaining the offender, employing the bail provisions of the Criminal Code; charging and then releasing the accused to his/her family's custody; or extending a caution and sending him or her home or to a social service agency, such as the Children's Aid Society. Knox noted that seventy-five precent of juveniles are either given referrals or sent home without being charged by police.

An experimental programme that teams police and social workers in two-person units to deal with domestic disputes is currently being studied by the Metropolitan Police Force. Knox concluded that while the police could only use a "band-aid" approach in these situations, the presence of a social worker might help the two parties to settle their differences in lieu of pressing criminal charges.

Knox also described the measures that are being employed in the area of crime prevention. Various offices have been set up to work in this area. These include the Safety Bureau, Community Service Branches, and the Crime Prevention Branch.

"Discretion is the liberty of suiting one's actions to circumstances," said Isaac Singer, a Toronto defense lawyer. "It can be either positive or negative -- but a negative element should be controlled." Singer commented that the use of discretion is most important at the arrest stage. "This stage is very important and therefore the most open to abuse, relative to the possibilities that are available at the trial and sentencing stages which are controlled by the common law rules of precedent." Singer suggested that police should routinely ask themselves: "Is it worth arresting this person?" and "Am I being totally objective?" This is especially important when dealing with juveniles, he concluded.

COMMUNICATION DE LA PREUVE
(PRETRIAL DISCOVERY)

FACULTY: Samir Rizkalla, Professeur De Criminologie
Palais De La Justice
Montreal, Quebec

The Honourable Jacques Lessard
La Cour Des Sessions De La Paix De Montreal
Montreal, Quebec

Judge Jacques Lessard opened the session with information on the pilot project on pretrial discovery that was instituted in Montreal following a suggestion by the Law Reform Commission. The aim of this project is to reduce the time of procedure without bringing prejudice to the accused. In this project, Lessard explained, the pretrial hearing occurs between the time the accused first appears in court and the actual trial. The purpose of this hearing is to "discover" what evidence exists against the accused so the decisions for further action can be made. People charged with indictable offenses are entitled to such a hearing. It is during the accused's first court appearance that he/she is offered the option of participating in the project's pretrial discovery hearing, which take place as soon as possible following this initial appearance. The procedure is fully explained to the accused and the judge stresses that participation is voluntary. If the accused agrees to take part, a date is set for the hearing, at which the defense, the Crown Attorney and the investigator will be present and a judge will act as a mediator.

During the session, all factors of the offense are discussed to determine what evidence the Crown has against the accused. Lessard further explained that there are several possible outcomes of this hearing. A plea of guilt might be entered upon realization of the strength of case. Alternately, the prosecution may give up further investigation. Further, the number of witnesses and their identities may be determined, and finally, some actual admissions of guilt may be obtained.

Lessard feels pretrial discovery can benefit the Crown, the defense and the witnesses. It provides a forum, prior to the trial, where evidence can be reviewed. This can save the accused from being further involved in the court process if it is unnecessary and therefore helps alleviate congestion in the system, while not compromising the right to due process. It allows time for the case to be carefully considered by both sides and provides the opportunity to "discover" whether there is sufficient evidence to support the charge or whether a lesser charge would be more appropriate. Pretrial discovery is also beneficial in that witnesses are often summoned to trial but not called upon to testify, giving them a negative attitude toward the court process.

Samir Rizkalla, a professor of criminology in Montreal, indicated that pretrial discovery could alleviate problems that now exist in the court process. The police, for instance, do not always give all the information pertaining to a case to the Crown because there is a lack of guidelines for this procedure. Also, information that a client gives a defense lawyer may not be passed on to the Crown. A discovery ensures that both sides receive a more balanced amount of information.

Rizkalla summarized the session by stating that the use of the pretrial discovery hearing contributes to the better implementation of justice. It may obviate the necessity of proceeding with the case, but it does not in any way prevent or damage the fundamental principles of due process.

THE BAIL REFORM ACT:
AN UNWRITTEN PREVENTION DETENTION STATUTE

CHAIRPERSON: Harold Levy, Coordinator
Special Projects, The Ontario Legal Aid Plan
Toronto, Ontario

FACULTY: Bruce Beaudin, Director
District of Columbia Pretrial Services Agency
Washington D.C.

Bart Lubow, Director
Special Defender Services, New York Legal Aid Society
New York, New York

Graham Turrall, Chief Psychologist
Metropolitan Toronto Forensic Service (METFORS)
Toronto, Ontario

"If your jurisdiction were considering the development of a new bail reform act, how would you react to proposals contained in Canada's current Bail Reform Act?" This was the question posed by Harold Levy, Chairperson of this workshop, to the two American panelists as part of an examination of judicial release criteria and its various limitations.

Briefly, the 1971 Bail Reform Act outlines primary and secondary grounds for detaining an accused. The primary grounds cover the issue of whether the accused will reappear before the court to answer the charges while the secondary grounds address the question of future dangerousness.

Bart Lubow, Director of Special Defender Services, New York Legal Aid Society, opposed the secondary grounds on legal and philosophical principles. It is his assessment that to allow a consideration of dangers does not in actuality, meet any preventive goals. Lubow maintained that dangerousness cannot be predicted, but each time we deny someone his/her liberty, we are trying to do just that. "Social scientists say that using the very same criteria, for every truly dangerous person a judge detains correctly, probably three to eight others are detained incorrectly."

Lubow went on to say that a preventive detention clause will not satisfy society's demands. According to statistics, it does not work as a crime control mechanism, which is its main selling point. Further, bail reform should facilitate a reduction in overcrowding, but any clause concerning dangerousness will only lead to more overcrowding, because it gives the judge an additional option to detain the accused. In Lubow's opinion, effective prosecution and speedy trials are more appropriate methods to remove accused persons from society.

Even without statutes explicitly authorizing the consideration of dangerousness, the use of preventive detention in the United States has been widespread for some time, said Bruce Beaudin, Director of the District of Columbia Pretrial Services Agency. It is accomplished by setting bail high enough that a

defendant cannot meet it. As a result, accused persons are being locked up wholesale. Such a process leads to jail overcrowding. However, it is not this issue that makes headlines, but rather the comparatively infrequent cases where an accused is on bail and commits a second offense, he explained.

But, Beaudin went on to say, the Canadian statute is not the answer. "In fact, it is reprehensible, because it has neither safeguards nor definition, and is extremely vague."

Levy then addressed a second question to Graham Turrall, Chief Psychologist at Metropolitan Toronto Forensic Services (METFORS): "Canadian judges often ask for psychiatric opinions on potential danger. If you were judge, how would you receive such evidence, consider it, and use it in Superior Court?"

Turrall said he would strive to uphold the law of the land, but would be concerned about the numbers coming before him. He would rely on other experts like those at METFORS, but would hope for consent on the part of the accused. In his opinion, detention for assessment is in the accused's and the community's interest. Although the psychiatric assessment involves only a very brief examination of the defendant's life, the viva voce evidence presented by psychiatrists and others at the hearing stage is a useful criterion in the decision-making process.

The question period added further fuel to the controversy surrounding the question as to whether dangerousness can be predicted. This is an issue over which personal convictions were very strong.

ALTERNATIVES TO SECURE DETENTION OF JUVENILES

CHAIRPERSON: Paul Siemens, Manager
Children's Policy Department, Ministry of Community & Social Services
Toronto, Ontario

FACULTY: Fred Campbell, Programme Supervisor
Ministry of Community & Social Services
Toronto, Ontario

Merice Walker-Boswell, Executive Director
St. Lawrence Youth Association
Kingston, Ontario

John McGoff, Advocacy Coordinator
Ministry of Community and Social Services
Toronto, Ontario

In 1977, juvenile detention facilities in Ontario were amalgamated under the Ministry of Community and Social Services (COMSOC). Fred Campbell, a programme supervisor with that ministry, explained that at that time, children who were before the court were housed in facilities ranging from emergency foster homes to adult jails. "Basically, no 'system' was in existence. It became a government priority to develop policy and standards for detention homes stressing normalization, decentralization and an individualized approach to children, with emphasis on prevention and diversion. After a province-wide survey that included an exhaustive study of existing detention facilities and a detailed look at the needs of the children involved, a multi-level detention system was developed."

The four levels of detention now used are:

- home supervision -- where the child resides in his own home under the supervision of a detention home worker;
- open detention -- similar to a group home, with no locked doors;
- semi-secure detention -- external doors are not locked, but the facility contains a lockable component for out-of-control children; and
- secure detention -- external doors are locked, and the capacity for locking internal doors exists.

Secure detention home placements are reserved for more serious cases or when protection of either the child or community is a priority.

Merice Walker-Boswell, Executive Director of the St. Lawrence Youth Association, outlined some of the ways of controlling juveniles that developed in open and secure detention homes once the physical limitations were lifted. "While each home developed its own system, it is interesting that almost all of them now use

a behaviour modification approach, which utilizes some system of privileges, points or an allowance which the children earn by behaving appropriately." She commented, "Most children in detention appear to respond well to this type of programme; those who do not behave, lose privileges. In a semi-secure facility, juveniles are only held in lockable components or transferred to a more secure facility as a last resort."

John McGoff, the recently-appointed Advocacy Coordinator, spoke of the need for an advocate within the new detention system and the steps he has taken to provide one. He said that, by definition, a detention facility is meant to accommodate juveniles for a pre-dispositional, short-term period. There are some children who are in these facilities for excessive periods. As he sees it, the advocate's initial task is to understand the child and his/her situation and needs. Once this is understood, the advocate can expedite the court process by conferring with defense counsel and the Crown, convening case conferences and by arranging and following-up on assessment and placement plans. Generally, the advocate ensures that the child's stay in detention is as brief as possible. Children in need of advocates include chronic runners, truants, hard to place children, and children for whom an appropriate placement does not exist. The advocate is also involved in initiating prime worker programmes throughout the province in order to provide advocacy for all children at the local level, McGoff concluded.

Fred Campbell summarized the session by outlining a few of the problems encountered in setting up the multi-level system. "At first, the length of the average stay increased because the children were being studied in the new facilities. In addition, some judges had difficulty accepting the legislated power of detention home superintendents to assign detention levels. Police and the Crown had some difficulty accepting home supervision as an appropriate form of detention. With future changes in legislation and more public education, these problems will be resolved and detention services for children in Ontario will continue to improve in the direction they took five years ago."

JUVENILE JUSTICE AND CHILDREN'S RIGHTS

CHAIRPERSON: Les Horne, Coordinator
Child Advocacy Unit, Children's Policy Development
Ministry of Community and Social Services (COMSOC)
Toronto, Ontario

FACULTY: Barbara Landau, Policy Advisor
Children's Policy Development, COMSOC
Toronto, Ontario

Marion Lane, General Counsel
Justice for Children
Toronto, Ontario

People of any age who lack status and/or skills require help to protect their rights, but children are especially vulnerable because they are essentially without power in the adult world. The focus of this workshop was on current issues pertaining to advocacy for children's rights. The following questions were addressed: "Who is best qualified to represent children's rights?" and "By what processes are chidren's rights represented?"

Barbara Landau, Policy Advisor at COMSOC, questioned whether the advocate is more efficient inside or outside the system. When the advocate is inside the system -- a member of the "old boys' club" -- he/she is more able to obtain useful information, yet is bound by policy not to share it with the people who are being represented. When the advocate is not a member of the system, the information flow is restricted. No conclusion was drawn as to which position is preferred by the advocate.

Marion Lane, General Counsel at Justice for Children, emphasized the importance of informing young people of their right to counsel during the arrest procedure. Since the Juvenile Delinquents Act is criminal legislation, she stated, it is important that counsel be present to see that the young defendant receives the same protection as the adult. The young offender requires counsel to ensure that the agency involved in disposition is held accountable in meeting the needs of the youth. The proposed Youth Offenders Act has codified the right to counsel, which should result in the use of counsel in a greater number of cases, yet Lane expressed concern about the manner in which this right will be implemented. A problem with appointing duty counsel to represent the young person is that there is a minimal amount of time in which to gather information and that counsel is required to give summary assistance without the opportunity to properly investigate. Even Legal Aid cannot ensure competent representation for the youth, because the Legal Aid Certificate is only available at the discretion of the local director. Also, the youth must qualify financially, regardless of the quality of the relationship between the youth and his/her family. According to Lane, solutions to these problems are straightforward: "Change the role of duty counsel and make Legal Aid mandatory."

Lane expressed her belief that, "Kids feel abandoned by their lawyers." Not only are lawyers ambivalent about representing children, she says, but they "waffle" in this role. She described the role as one of maintaining absolute

confidentiality with the children and, secondly, of putting before the court the express wishes of the child and his or her perceptions of his/her own position. Unfortunately, lawyers too often accept reports from any agency, rather than relying only on qualified and appropriate resources. A majority of lawyers are not competent to represent children because they lack the appropriate training, she concluded.

Barbara Landau asserted that the role of the non-legal advocate of the child is "fuzzy" and "similar to the lawyer's role." The mental health professional or case manager is expected to use his/her expertise to decide what's best for the child. This role can conflict with doing what the child wants. Landau concluded that the professional person who has the most viable relationship with the child can best handle the dual role.

The issue of release of records is problematic as records are available to almost anyone without the consent of the child. Yet the onus is still on the child to order his/her criminal records destroyed if he/she has kept a clean slate for five years.

Although concern for children's rights is becoming widespread, the funding that is necessary to implement the concept of advocacy is lacking. More mental health professionals are entering law school however, so there is hope that they will capitalize on their background in order to support the trend toward advocacy of children's rights.

NON-SECURE JUVENILE FACILITIES

CHAIRPERSON: Vicki Bales
Operational Planning, Secure Facilities, Operational Support Branch
Ministry of Community and Social Services (COMSOC)
Toronto, Ontario

FACULTY: David Crowe, Supervisor
Probation and Aftercare Services, COMSOC
Toronto, Ontario

Ken Thomas, Director
Craigwood Centre
Ailsa Craig, Ontario

Ken Kealing, Coordinator, Treatment Programme (House 22)
Thistletown Regional Centre
Toronto, Ontario

Currently, there is a movement away from institutionalization. As a result, the government is being forced to look for alternative facilities for the non-secure detention of juveniles. "There is evidence, however, that we are underutilizing existing facilities," said David Crowe, a supervisor with Ontario's Probation and Aftercare Services. "Although there will always be a need for some control over the child's behaviour," Crowe explained, "any child who does not require constant supervision should be considered for a non-secure facility.

"The needs of the children in these facilities center around consistency and routine. The need to know their limits as well as the consequences of misbehaviour. Relationships with a permanent staff are also essential," Crowe concluded.

Ken Thomas, Director of the Craigwood Centre, summarized the move as a shift from a policy of revenge and incapacitation to one of rehabilitation and reintegration. "Perhaps this is a result of some intuitive optimism," he said, "but a more realistic view is that it probably grew from a concern for cost-effectiveness." The primary goal of non-secure services is still to remove the risk to the community. Guidelines for this are not specific, however, and there is little evaluation of the programmes.

Thomas pointed out that there is a need for a classification system based on conceptual levels. In other words, those individuals with high conceptual abilities need a highly complex system which allows them the opportunity for open expression. Issues of staffing, funding and accountability must be taken into account when defining programmes if they are to be workable, Thomas noted.

"In the past, society has been reluctant to label delinquent behaviour among juveniles," said Ken Kealing, Coordinator of Treatment Programmes at Thistletown Regional Centre. "Is the child in need mad, bad or sad?" Both health and social issues are involved as the child is shifted between mental health and correctional facilities, Kealing suggested. But, we decide we can do something

for these children, we must then decide at what age we can do it. The answer is currently unresolved, pending the enactment of the Young Offenders Legislation. Kealing concluded with his view that if those who deal with juvenile delinquents are to have any input to policy, they have the obligation to demonstrate the impact of their programmes.

PRETRIAL ASSESSMENT AND TREATMENT

CHAIRPERSON: Edward Turner, Director
Metorpolitan Toronto Forensic Service (METFORS)
Toronto, Ontario

PANELISTS: Steven Morrision, Lawyer
Toronto, Ontario

F. Jensen, Deputy Director (Clinical)
Metropolitan Toronto Forensic Service (METFORS)
Toronto, Ontario

The Honourable Charles Scullion, Judge
Provincial Court
Toronto, Ontario

Peter Rickaby, Crown Attorney
Toronto, Ontario

A major obstacle to the fair pretrial assessment of accused offenders is the lack of guidelines in the Criminal Code. It gives the judge no authority to send an accused person for assessment without that person's consent. Furthermore, the Criminal Code fails to outline what the assessment and subsequent report should involve. "Much of the time," said Judge Charles Scullion, of the Provincial Court in Toronto, "I find myself dancing back and forth between provisions of the Mental Health Act and those of the Criminal Code."

During this workshop the four panelists discussed the assessment process, its virtues and flaws.

Dr. Edward Turner, Director of the Metropolitan Toronto Forensic Service explained that the purpose of the assessment is basically to determine whether or not a person is fit to stand trial. If it is felt that an accused person may not be fit, it is up to the judge to ask that person to consent to an assessment. The accused is also asked if he/she consents to the assesment before leaving the correctional centre, and again on arrival at METFORS. Three days is granted for this initial assessment. If, at the end of this period, further time is required to properly evaluate a person, it is recommended that the accused be remanded for a period of not more than 30 days. At the end of this time it is possible to request a further 30 days. Although the Supreme Court judge has the authority to detain a person for this period, the Criminal Code is vague about the Provincial Court judge's power to do so. As a result, the provinical judge often reverts to provisions in the Mental Health Act to find a way to remand a person for this evaluation.

Initial assessments at Toronto's evaluation centre -- METFORS -- are carried out in six hours by a team consisting of a psychiatrist, a psychologist, a social worker, a nurse and a correctional officer. The team tries to establish a person's fitness for bail, fitness to stand trial, and whether he/she is

actually dangerous. Sixty per cent of those people initially evaluated at METFORS require no further assessment. The remaining 40% are either obviously in need of hospitalization or require additional evaluation.

As a Crown Attorney, Peter Rickaby said he is obliged to ensure that the accused understands his/her situation. If, having read the police report, Rickaby feels that the person is in need of assessment, he makes his recommendations to the judge. After the assessment has been made, he receives a copy of the examiners' report and considers whether the accused should be allowed bail, whether the problem is a medical one rather than a legal one, and whether he/she is fit to stand trial.

While stressing that he is supportive of METFORS, defense lawyer Steven Morrison took the system to task. He stated that the Criminal Code fails to detail measures for an accused person's detention for assessment purpose, and provides no guidelines for process or report of the assessment. Pointing out that a person is often remanded for further assessment for a period of 30 days, Morrison said that this is unfair if all 30 days are not required for the process, or if the offense was minor and "the ultimate punishment might not be custodial at all." He was also opposed to the way in which the information resulting from the assessment is given to the court. The report often contains far more psychological information than is necessary to determine whether a person is fit to stand trial. This can prejudice the case. Morrison also added that, by providing this information, doctors are divulging confidential information and are in conflict with the Mental Health Act.

CANADIAN BAIL REFORM ACT

CHAIRPERSON: Bruce Young, Counsel
Ministry of the Attorney General
Toronto, Ontario

FACULTY: William Babe, Assistant Crown Attorney
Toronto, Ontario

Colin Campbell, Barrister and Solicitor
Toronto, Ontario

The Honourable Clare Lewis, Judge
College Park Provincial Court
Toronto, Ontario

The Canadian Bail Reform Act was implemented in 1972 to provide more precise guidelines for bail and pretrial release. This workshop examined the effectiveness of the act and the present bail system.

The Canadian Bail Reform Act was developed as a result of recommendations made in the Ouimet Report, stated Crown Counsel Bruce Young. This report, submitted to the Solicitor General of Canada in 1969, outlined several recommendations concerning arrest and bail. Additional impetus to institute the act was provided by the findings of a 1965 study conducted in the Toronto Magistrate's Court by Martin Friedland. Friedland found that the amount set as bail was of great importance, because 60% of people with bail set as low as $500 could not raise the money. When the act was first implemented, the public was concerned that too many people were being released who might commit further crimes. As a result, in 1975, the Criminal Law Amendment Act was legislated, which required persons accused of more serious crimes to show cause why their detention is not justified.

Prior to implementation of the Bail Reform Act, there was a law for the rich and a law for the poor, said Judge Clare Lewis. Release was only granted to individuals with money. This act, he said, is an attempt to balance the right of the accused to be treated as innocent until proven guilty and the right of the public to protection. Although he acknowledges that some people have been unnecessarily detained and others have been released and then committed further crimes, Lewis feels that the bail system works relatively well.

Lewis said he never imposes a surety that the accused cannot meet and explained that the 30 to 90 day review of a detention order is an important safety valve in the system. He stressed that groups such as Legal Aid, the Elizabeth Fry Society and bail supervision projects are invaluable in assisting an accused through the judicial process.

Crown Attorney William Babe discussed the trial project at Toronto's College Park Court, where an attempt is made to hear all cases within 90 days of the accused's first appearance in court. The project aims to decrease delays for people in custody, and to speed up the process by which the Crown obtains orders to detain individuals.

A major problem in the court is lack of preparation by the Crown and defense, said Colin Campbell, a defense lawyer. He also expressed concern about the lack of time, which frequently precludes counsel from gathering all the necessary information. There is pressure from the client, said Campbell, to get him/her released now and to discuss the case later.

In concluding, Judge Lewis captured the essence of the issues that were presented when he stated, "The bail court is a human institution, subject to human frailties."

LEGAL AID AND PRETRIAL SERVICES

CHAIRPERSON: J. Paul Lordon, Counsel
Department of Justice Canada
Ottawa, Ontario

FACULTY: Harold Levy, Special Projects Coordinator
The Ontario Legal Aid Plan
Toronto, Ontario

Brain Ralph, Executive Director
Legal Services Society of British Columbia
Vancouver, British Columbia

Gordon Williams, Programme Manager
Native Counseling Services of Alberta
Edmonton, Alberta

"Legal Aid is much more effective for Native groups when Native courtworkers are involved in the legal aid process." This was the synopsis of comments by Gordon Williams, Programme Manager for the Native Counseling Services of Alberta.

Since 1976, Native courtworkers have been gaining increasing prominence as they continue to provide a full range of services from the time of arrest to disposition. Courtworkers provide support and assistance to their client and, as well, act as a liaison between the client, the court and the legal aid process. Much of the effectiveness of courtworkers lies in their ability to work with legal aid and other agency personnel, orienting everyone to a specific problem and the community from which it has originated.

Brian Ralph, Executive Director of the Legal Services Society of British Columbia, explained that the new Young Offenders Legislation established a court to deal with youths charged with federal offences. It also sets down several principles which include: Recognizing that measures other than judicial preceedings should be considered for young persons who have committed offences; and that young offenders should have full rights to legal counsel.

But, Ralph says the legislation is vague in outlining the alternatives to the courtroom. The Bill, Ralph stated, defines alternate measures as basically anything other than judicial proceedings.

One factor, which must be carefully considered in defining the involvement of legal aid in pretrial services under the new Young Offenders Act, is the amount of resources available. Ralph identified both the dangers and benefits in extending legal aid into this area. Increased counsel for young offenders will introduce more formalization to the legal proceedings, increase process and administrative costs and require additional defense and prosecution involvement. The benefits include a closer examination of the state's role in the life of a child, more effective counseling for youths and increased development and assessment of criteria surrounding pretrial services. Ralph surmised that some fascinating issues will emerge regarding legal aid and the Young Offenders Act

that will have major implications for pretrial services. The funding of the Act, conflict between parents and children over available legal aid, and the attitudes of the public and court on the value of legal aid, are all issues that will arise in the future.

Harold Levy, Special Projects Coordinator for Ontario's Legal Aid Plan, explained the basic purpose of the Plan and the Duty Counsel's obligations under that Plan. Levy emphasized the effective results of duty counsel and Native courtworkers working together.

Areas in which still greater pretrial involvement by the duty counsel may be necessary are those involving clients with mental difficulties who require special assistance, Levy concluded.

Paul Lordon summarized the session and emphasized that legal services for young offenders are essential in order to guarantee equality before the law. "Legal services in the area of pretrial services will be particularly essential under the new legislation."

CREATIVE USE OF VOLUNTEERS

CHAIRPERSON: Judy Drybrough, Manager
Staff and Volunteer Training, Ministry of Correctional Services
Toronto, Ontario

FACULTY: Warren Hendricks, Probation and Parole Officer
Ministry of Correctional Services
Toronto, Ontario

Rich Partridge, Metro Toronto Coordinator
Juvenile Justice Volunteer Programme
Ministry of Community and Social Services
Toronto, Ontario

Karoul Talaba, Executive Director
Family and Friends Centre
Toronto, Ontario

The value of volunteers in the criminal justice system is something that warrants more attention. This workshop explored examples of innovative ways in which agencies are attempting to increase the amount of service they can provide and to encourage new volunteerism.

Rich Partridge, the Metro Toronto Coordinator of the Juvenile Justice Volunteer Programme, says that volunteer probation officers have existed in Ontario for ten years. They have recently joined with observation and detention home volunteers as well as volunteers working in community alternatives programmes in a juvenile justice volunteer programme. The volunteer probation officers' programme has now expanded to include reporting centres with one officer serving five or six clients. It also staffs a court playroom, runs a volunteer newsletter, and has had two publicity campaigns in the last year to encourage new volunteers to join the organization. Other innovative projects within their programme include a sports association, a photography club, a tutoring programme, and "Project Backpack", which uses volunteers to organize hikes, camping and canoe trips. This project provides follow-up support to graduates from an Ontario Ministry's programme. Volunteers are also going into the observation and detention homes for the first time to assist staff with recreational and crafts activities, and to visit children whose families are unavailable to visit on an on-going basis.

Partridge stressed that volunteers should be used to enrich rather than supplement regular staff duties. There is a danger, he said, of their misuse as a result of government cutbacks. There is also a need for more information-sharing between volunteer agencies and more training and support as the programme develops.

Warren Hendricks, a probation and parole officer from Toronto, gave a slide presentation of a community involvement week, held recently in Belleville, Ontario. Much of the inspiration for the week came from Dr. Ivan H. Scheier's book, Exploring Volunteer Space, in which he speaks of "glad gifts" and of the

notion that for every need within a community, there is a volunteer able and willing to satisfy that need. The slide presentation showed numerous projects undertaken during the week and the renewed feeling of community and neighborhood spirit that was generated in the town. The programme also has served as a public relations device to encourage new volunteerism.

Karoul Talaba, Executive Director of the Family and Friends Centre in Toronto, spoke of the wide range of services provided by her agency, which has only two paid staff. The agency makes extensive use of volunteers which are closely supervised and given responsibilities that enrich their personal growth. All volunteers at the Family and Friends Centre are screened in order to use them in the most effective way. Those with post-secondary education, but lacking the experience necessary to obtain employment are given this experience.

Talaba's agency has a dynamic view of volunteers. After an initial two or three weeks of supervision, it looks at the direction the volunteer desires and imposes few limits. "People are happiest and most productive when they are doing what they want," she concluded.

YOUNG OFFENDERS LEGISLATION

CHAIRPERSON: Maureen Shea-Desrosiers, Legal Officer
Ministry of the Solicitor General Canada
Ottawa, Ontario

FACULTY: Marc Belanger, Conseiller Au President
Comite De La Protection De La Jeunesse
Montreal, Quebec

The Honourable Peter Nasmith
Provincial Court, Family Division
Toronto, Ontario

Sergeant Robert Taylor
Youth Liaison Section, Ottawa Police Force
Ottawa, Ontario

Jacques Tellier, President
Comite De La Protection De La Jeunesse
Montreal, Quebec

In this workshop, the Young Offenders Act -- Bill C-61 -- was discussed and compared with the present Juvenile Delinquents Act.

Judge Peter Nasmith of the Provincial Court, Family Division in Islington (Toronto), expressed the view that under the present Juvenile Delinquents Act, young offenders are, to a certain extent, being deprived of their right to due process. The Juvenile Delinquents Act provides few safeguards against the unlimited intervention of social services agencies into the lives of young offenders.

The tone of the proposed Young Offenders Legislation, he said, is legislative. The procedural methods are clearly outlined. There are three pretrial services dealt with by the Bill: the transfer of cases from juvenile to the adult system, diversion from court involvement, and bail.

Bill C-61 allows for the transfer of the juvenile offender to adult court under very limited circumstances. Judge Nasmith described the obligation of the criminal justice system in the provision of a pre-disposition report. To ensure that the court fulfills its statutory obligation to the juvenile, the proposed legislation contains a series of codified steps which outline, under the provisions of Bill C-61, the procedure for transfer of offenders from the juvenile to the adult system.

Diversion is suitable for those who have committed less serious crimes. It can reduce the stigmatization of the court process and it handles the needs of the young person and the community. Stressing that participation in diversion is voluntary. Nasmith said that there must exist a case against the youth and that he/she must admit responsibility for the crime. This is not an admission of guilt, however, and it cannot be used in a court. In this sense, it is

privileged. This does not prevent the case from returning to court for disposition if, for example, the agreement made during the diversion process is not fulfilled, Nasmith stressed.

The new Bill more clearly delineates the provisions for the granting of bail. It outlines the necessity of separate facilities for detention of juveniles and adults. A juvenile awaiting trial could be sent to a pretrial detention home or assigned to a home supervision stituation. There is an interplay between the judge and the bureaucracy in deciding the placement of juveniles, Nasmith concluded.

Sergeant Bob Taylor of the Youth Liaison Section (YLS) of the Ottawa Police Force, gave an overview of the section's dealings with juveniles. YLS was formed primarily to handle juveniles under the age of 16 who come into contact with the police. It also works with various social agencies in assisting troubled youths up to the age of 18.

When a young offender is detained, the parents of the youth are immediately contacted and the situation (the offense and possible procedural routes) is fully explained. A decision on how to deal with the offender is made by YLS based on the following factors: past history of the juvenile; attitude of the juvenile; age of the juvenile; attitude of the guardian; juvenile's behaviour at home and at school; the range of referrals available for the particular case; and the type of offense -- injury, damage, degree of planning involved.

If further problems are expected, Taylor explained, the YLS may refer the youth to agencies that can provide assistance. A consent form must be signed by the parents or guardian to permit more appropriate agencies to become involved. The agency works directly with the family and, occasionally, the Community Patrol Division of the YLS may visit the family and the juvenile. The patrol attempts to develop a rapport with young people by visiting their "hang-outs" and by giving presentations at local schools. In this way, the police have been successful in creating a more positive image, Taylor concluded.

Marc Belanger and Jacques Tellier of the Comite de la Protection de la Jeunesse in Montreal, Quebec, discussed the Quebec Youth Protection Act. The Act, they explained is based on the philosophy that the state has a responsibility to all youths in need of protection. After a charge of delinquency is registered, the Director of the Youth Protection Agency takes charge of the child immediately.

There are many points of controversy with regard to this Act. According to Belanger, it is a good piece of legislation except that there are no practical tools provided to implement it. Some critics say that the concept of the Agency itself is a certain kind of blackmail. Presumably, it is easier to work with the Agency than with the courts; but there is enormous potential for intrusion into the private and family life of the youth.

Belanger and Tellier cited a perception that the Act lacks clarity and that, therefore, the people trying to implement it are unable to do so effectively. Further, the extensive use of social agencies has been labelled by some as a new form of disguised social control. They see the power of the police and the varied social interveners as mostly negative, and traumatic to a young person. Belanger and Tellier feel that the constant prying and continual montoring of the youth by the social worker could be as frightening as a courtroom session.

The main complaint about the Youth Protection Act, however, is that it is a mechanism for treating young offenders very seriously but without sufficient guidelines and safeguards, Belanger and Tellier concluded.

In the spirited discussion that followed, participants explored the political and moral issues involved in state intervention of any form into the lives of children who have been identified as delinquent.

RESIDENTIAL ALTERNATIVES TO DETENTION

CHAIRPERSON: Lou Drouillard, Executive Director
St. Leonard's Society of Canada
Windsor, Ontario

FACULTY: Carol Oginski, Executive Director
Reaching Out
Windsor, Ontario

Marty Tourigny, Executive Director
New Beginnings, Inc.
Essex, Ontario

Joan Latchford, Executive Director
Vincenpaul Bail Residence
Toronto, Ontario

David Bower, Director
Cronyn Centre (A St. Leonard's House)
London, Ontario

"A workshop to give ideas on what has happened, what is happening, and what could happen in the future!" With this statement, chairperson Lou Drouillard, Executive Director of the St. Leonard's Society, introduced the session on residential alternatives to detention for adults.

Carol Oginski, of Reaching Out, Inc., described the progress of her programme, which began in 1976. Reaching Out has developed community service order programmes, restitution programmes and, most recently, a bail verification support programme. Oginski discussed the value of more bail houses and hostels to provide better emotional and physical support to clients as well as to reduce the costs of incarceration by reducing the number of people behind bars. Oginski identified the need for residential facilities for varied adult groups at the pretrial stage. She also discussed the problem of the incarceration of mentally handicapped clients.

Marty Tourigny, Executive Director of New Beginnings, gave a quick history of his programme and said that, although the bail verification programme has helped to organize various referrals and contact sources, there is a great need for further coordination. Tourigny distinguished adult and juvenile residential programmes. Young offenders, he commented, need more structure than adults and they require a more individualized programme.

David Bower, Director of Cronyn Centre -- a St. Leonard's House in London -- described his programme and outlined the successful "mix" of people it has. He explained that one house is strictly for federal parolees, while the other houses federal and provincial parolees and persons who have a criminal record, but who are not on parole. The age of the men and their work status varies, making an evaluation of success something to be considered individually in each case.

Joan Latchford of Vincenpaul Bail Residence spoke about their newly-established bail residence in Toronto, and the way in which ad hoc policies were established as the residence developed. Latchford stressed the need for a bail order to be written flexibly so as to allow some freedom of movement of the accused in programmes. Conversely, the programme at such a facility needs flexible planning in order to accommodate the time constraints of ongoing court proceedings.

She explained that a facility such as Vincenpaul works on the premise that people can be motivated to introduce some structure into their lives at the pretrial stage, and that such action can have an impact on sentencing. The problem with many people is the lack of primary group relationships which residences can, to some extent, offer. Latchford also stressed the importance of involving the client in any discussion surrounding support services.

Discussion focused on various residential alternatives and the need for increased numbers of alternatives. The option of using private residences and providing 24-hour support through existing houses was debated. Members of the panel cautioned the participants on the excessive use of this kind of service. The cost/benefit ratio of alternatives needs to be emphasized and legislative action taken. Finally, the opportunity to work at integrating varieties of populations, such as the handicapped, into alternative residential settings was suggested as a goal.

★ ALCOHOL AND DRUG ABUSE ISSUES IN PRETRIAL

CHAIRPERSON: Neil Ruton, Director
Stonehenge Drug Treatment Centre
Guelph, Ontario

FACULTY: Jerry Cooper, Director
Psychiatric Services, York Finch Hospital
Toronto, Ontario

Barbara Zugor, Executive Director
Treatment Alternatives for Street Crime (TASC)
Phoenix, Arizona

Colin Hollidge, Assistant Director
Stonehenge Drug Treatment Centre
Guelph, Ontario

In the face of the escalating costs of incarceration, pretrial decision-making has become a critical component of the criminal justice system. This workshop explored the impact of alcohol and drug abuse on pretrial decision-making.

Jerry Cooper, Director of Psychiatric Services at York Finch Hospital in Toronto, stated that 75% of all crimes are alcohol and drug related. A proper assessment for potential rehabilitation is critical, he argues, as it is a crime in itself to send a person who has an alcohol or drug problem to jail. He believes that the motivation for treatment stems from the anxiety produced when the judge says, "Jail or treatment?" The professional must spell out in detail the necessary treatment and ensure adequate follow-up.

Barbara Zugor, Executive Director of Treatment Alternatives for Street Crime (TASC) in Phoenix, Arizona, described TASC as having been critical in lessening jail crowding. According to Zugor, the initial crisis of arrest is the sole motivator for treatment. Within two hours after arrest in Phoenix, offenders are screened and, if accepted into the programme, take an active role in determining their own treatment. Offenders released on their own recogizance can volunteer to enter the programme. The treatment modalities offered as viable alternatives to incarceration are methadone treatment, the therapeutic community and outpatient counselling, using a reality-oriented approach. During involvement in the programme, the participants are monitored by urinalysis and breathalyzer tests. Their inmate status necessitates close supervision when they are work-furloughed. TASC considers the community needs before those of the client when planning a diversion programme. If the client maintains a clean slate for one year, the charges are dropped; if they are charged again, they could receive a longer sentence. Zugor expressed the concern that the recent changes in the Arizona Criminal Code allow for incarceration of more offenders but for shorter periods of time. She says the result has been that more non-violent offenders are being sent to prison while more dangerous inmates are being released.

Colin Hollidge, Assistant Director of Stonehenge Drug Treatment Centre, stated that both the health care system and the criminal justice system have failed to

prevent drug addiction or to rehabilitate the already addicted person. Society must realize and accept the fact that internal conflicts cause people to turn to drugs and the drug culture is supportive of the behaviour that brings the people in contact with law, he noted.

The panel agreed that after three to four years of working with offenders, it is not difficult for a professional to identify an addiction to alcohol or drugs. Sometimes it is just a "feeling". The suggested indicators to be considered in determining bail release are the amount of impulse control, underlying depression and/or panic that is demonstrated by the offender. Hollidge emphasized that a trusting relationship is necessary to gain information on the roots of the problem. He believes self-admission of addiction is necessary before it is treatable.

The panel concluded by emphasizing the injustice -- both to the addicts and to the taxpayer -- of putting addicts in jail. Society, however, has not yet accepted drug and alcohol addiction as an illness nor made the committment to deal with the substance abuse problem.

★ ✤ VICTIM ISSUES

CHAIRPERSON: Gerald Leger, Chief, Causes and Prevention
Research Division, Ministry of the Solicitor General
Canada
Ottawa, Ontario

FACULTY: Carole Anne Burris, Coordinator
Family Court Clinic
London, Ontario

Don MacDougall, Assistant Crown Attorney
Provinical Court (Criminal Division)
Ottawa, Ontario

E. Michael McMann, District Attorney
Milwaukee, Wisconsin

Irvin Waller, Professor
Department of Criminology, University of Ottawa
Ottawa, Ontario

"The system is designed to deal with the offender," said Don MacDougall, an Assistant Crown Attorney in the Ottawa Provincial Court. "While the offender gets free room and board, the victim loses a day's pay to appear in court and gets only $7.00 compensation." But MacDougall considers the problem as even more complex. He illustrated his point by stating that the victim lives forever with the memory of the event which can lead to a severe emotional disturbance for the victim and his/her family. MacDougall would like to see a comprehensive programme that would involve informing victims of court proceedings, protection for victims and victim involvement in sentencing.

Property loss, physical harm, emotional trauma and the subsequent impact on the victim's family are some of the consequences of criminal victimization, said Irvin Waller, a Professor of Criminology at the University of Ottawa. "We must provide the victim with protection, security for his/her future, and a fair deal in dignity and compassion. While Canada has a better health and welfare programme than the United States, both countries have only token programmes for victims -- band-aid approaches."

"The victims are victimized twice -- once by the crime and then by the system," said Michael McCann, District Attorney of Milwaukee, Wisconsin. "Not only is the fee for being a witness negligible, but the victim is often ill-informed of the case's progress." McCann is involved in a victim assistance programme in Milwaukee that works with the police to ensure that evidence is not kept from owners for long periods, that offers funds to injured persons who do not have insurance coverage, and that guides individuals through the court process. Other victim assistance programmes in the United States are attached to police departments and can even provide such services as carpenters to repair locks or equipment damaged during a crime.

Organizations which offer assistance to the victims of wife beatings have grown as a result of the feminist movement, said Carole Annie Burris of London, Ontario's Family Court Clinic. A study conducted in that city found that wife beating is generally an under-reported crime. This study determined that between 20% and 50% of women who live with men will be beaten during the course of cohabitation. "Eighty-eight percent of women who laid charges in Canada in 1979 had been beaten previously," she said. "This crime is complex in that offenders rarely recognize their act as criminal. Added to this is the fact that the victim often drops the charge because incarceration would mean that her family would lose its breadwinner."

It was generally agreed by both audience and panelists that victim assistance is an area we are just beginning to explore. "Both liberals and conservatives find this issue appealing," McCann concluded.

★ ✤ DE-MYSTIFYING COST ANALYSIS

FACULTY: Michael Kirby, Professor
Southwestern College at Memphis
Memphis, Tennessee

Over the past few years, the growing trend at all levels of government to slash public spending has forced a number of pretrial services agencies to close their doors. In fact, one would be hard pressed to find a pretrial program whose administrator has not had to worry about budgetary concerns. Cost analysis can be useful to programs who seek assistance in their survival struggle as well as to policy makers who must decide how to allocate scarce resources. In this workshop Dr. Michael Kirby explored two major approaches to cost analysis: cost finding and assessing cost-effectiveness.

Kirby defined cost finding as a management tool used to determine the proportion of the budget used for various activities. Cost finding allows a program administrator to make decisions for the agency about the utilization of resources. For example, a release program could calculate the cost of interviewing and verification operations in comparison to the cost of supervision. Similarly, diversion staff could use the cost-finding technique to determine the cost of various services provided. Actual figures could be determined not only as a proportion of the budget, but also on a per-client basis, Kirby added.

Unlike cost finding, cost-effectiveness is an evaluation tool by which an evaluator can ascertain whether a program creates tangible savings in the budget of a jurisdiction. Kirby noted that before pursuing a cost-effectiveness analysis, the evaluator must first determine the non-monetary impact of the program. If a program is designed to effect a decrease in failure to appear, rearrest, or recidivism, it is important to determine the extent to which these goals were realized. Then these changes can be translated into savings. A reduction in recidivism, for example, produces changes in terms of court processing, prosecution, detention, and probation. In cost-effectiveness analysis, these changes are assigned a fiscal value; and the impact of the program on the budget of the jurisdiction is thusly measured.

However, Kirby warned that a common mistake made by evaluators in undertaking a cost-effectiveness analysis is computing average costs in determining the savings brought about by a program. For example, if the program caused a reduction in the jail population, savings would result in terms of food and clothing (called variable costs) but not in terms of guards and utilities (called fixed costs). In order to arrive at a reliable figure, the evaluator must assess which of these costs has been affected by the agency and proceed accordingly. In another scenario, the savings brought about by the agency might exceed the average cost. Kirby explained that some jails must contract with detention facilities in other jurisdictions for space and may be charged more than the average cost for utilizing those facilities. Furthermore, other costs, such as transportation to and from those facilities, are also affected.

Kirby cautioned the attendees that the cost-effectiveness analysis is not appropriate for all programs. Many, he noted, do not have as their goal saving the jurisdiction money.

Kirby closed the session by stressing that a cost study need not be a complex presentation with economic formulae. In fact, the complexity makes it difficult both to prepare and to communicate the results to decision-makers. Cost analysis is merely a logical process, he concluded, requiring common-sence decisions and simple observations.

★ ✤ INTERNATIONAL PERSPECTIVES ON PRETRIAL SERVICES

CHAIRPERSON: Elo K. Glinfort, Director
Planning and Intergovernmental Affairs
Consultation Centre, Ministry of the Solicitor General Canada
Ottawa, Ontario

FACULTY: Diana Gordon, Executive Vice President
National Council on Crime and Delinquency
Hackensack, New Jersey

Christopher Nuttall, Assistant Deputy Minister
Solicitor General Canada
Ottawa, Ontario

To add another dimension to the consideration of pretrial practices in Canada and the United States, this workshop focused on criminal justice in other countries.

Elo Glinfort, Director of the Consultation Centre of the Solicitor General Canada, spoke on the criminal justice system in Scandinavia. "There is a general acceptance in Scandinavia that prisons are ineffective in protecting society and helping the offender," he said. "Since 1973, there has been a consolidated effort to limit the use of prisons."

In Scandinavian countries, petty offenders are frequently fined rather than sent to prison. Day fines are levied for a specified period -- the amount per day being dependent on a person's income. There have been some problems enforcing these fines. There has also been removal of various "fringe crimes" from the statute books, resulting in the decriminalization of certain types of pornography and drunkenness. Also, the Attorneys General now have the power to waive offenders' sentences and transfer these people to the state's welfare system. This is the case especially for young offenders.

Other characteristics of the Scandinavian system were noted by Glinfort: neither Denmark, Norway nor Sweden have bail; plea bargaining is nonexistent; and there are no juvenile courts. Fifteen is the minimum age of criminal responsibility. Glinfort also said that there is extensive use of police discretion in laying charges for offenses as significant as auto theft.

Scandinavian countries have stiff fines for drunk driving. Fifty percent of all offenses in Sweden are for drunk driving. Finally, Glinfort noted that police training in Sweden has, since 1958, included extensive social work training.

Next, Christopher Nuttall, an Assistant Deputy Minister with the Solicitor General Canada, examined pretrial services in England and Wales. "There is a general lack of emphasis on pretrial services," he said, "compared with the area of alternatives to incarceration (e.g. community service orders, restitution, deferred sentencing, probation, bail hostels, etc.)." There is an attitude of suspicion to pretrial services, especially to diversion. Judges and other "due

process" people are concerned that diversion could be used to harass suspected offenders who may not be guilty of any offense. The Probation Officers' Trade Union also added its weight to the constituency opposing pre-court programmes.

In Britain, it is notable that voluntary organizations are less visible than in Canada. Thus, there is less push for pretrial, community action privately run -- programmes. Nuttall noted a few other unique characteristics of pretrial services in Britain. There is the extension use of the formal caution, a warning given by the police to the suspected offender. The accused is brought down to the police station and his/her name is entered into an official ledger. The police will often give a homily or moral story during the formal caution. This type of pretrial action is used especially with juveniles. (More than half the juveniles aged fourteen to sixteen are dealt with by the formal caution.) It is more popular in the non-metropolitan areas than in the cities, where courts, in similar cases, will usually find a person guilty and then discharge him or her.

Cautions are seen as relatively cost-effective as they keep a great number of people out of the courts. However, one study, which is presently under debate, has shown that cautions are often used in cases that would probably not have resulted in the laying of formal charges.

The use of bail in England and Wales is extensive, and thus only seven to eight percent of prison population are people who have been remanded in custody, which is the lowest in any western industrial country, according to Nuttall. This is the result of a number of factors. First, the Criminal Justice Act made bail mandatory for summary offenses. This has had a spillover effect. Now bail is used in 98% of cases, as opposed to 75% prior to 1967. Second, a duty solicitor scheme has been set up, whereby a lawyer is available to the court to help people apply and argue for bail. Third, since 1975, the British Home Office has issued a circular to all judges, informing them of bail provisions. And, fourth, the Bail Act, passed in 1978, has given people the general right to bail. Money is not necessary for bail; a surety is requested and the number of people who cannot obtain a surety is very low.

The result of these innovations in bail has been a constant level of 60,000 remand admissions per year over the period from 1967 to 1978, despite the fact that the number of people admitted on sentence has risen from 42,000 to 79,000 per year.

Diana Gordon, Executive Vice President, National Council on Crime and Delinquency in Hackensack, New Jersey, discussed the situation in China, based on her recent visit there. Gordon was impressed that matters of criminal justice are handled at a low, familial, humane level in China. There is not, however, anything remotely similar to "due process". In spite of this, Gordon felt that it is still possible to exercise one's freedom in China, though it is very different from a western concept of freedom.

Although there are few studies of the Chinese criminal justice system, Gordon estimated that about 80% of all disputes are handled by local mediation committees rather than by the police. The committees also handle non-criminal domestic matters. They hear of local problems by word of mouth, and there is little concern about the appropriateness of the state's intrusion into the private life of the individual.

Only very serious crimes go to court in China. In rural areas, in fact, local committees often handle all crimes. The trials that do occur are more like sentencing hearings, as they are concerned only with determining the appropriate penalty. Often sentencing involved "education", which includes overtly political content. For example, criminals are told, "We can't continue to build a socialist state if you go on like this".

On a final note, Gordon spoke of the recent United Nations resolution that stressed the importance of finding alternatives to incarceration. This resolution was based on the recognition that incarceration does not necessarily benefit the inmate or society. The resolution urges countries to develop alternatives to incarceration and to make more extensive use of local community resources. Gordon praised Canada for the strong support it gave to the resolution.

Gordon explained that although the United Nations has little power to enforce the resolution, the position has important symbolic value. Gordon now hopes to be able to report progress in the area of alternatives in time for the next U.N. Conference.

CLOSING GENERAL SESSION
Wednesday, July 29

The closing general session of the 1981 Symposium on Pretrial Services was hosted by Bruce Beaudin, Chairman of the Board of Trustees of the Pretrial Services Resource Center, and Chris Nuttall, Assistant Deputy Minister to the Solicitor General Canada.

Representing the U. S. Attorney General was Jeffrey Harris, Executive Director of the Attorney General's Task Force on Violent Crime, U. S. Department of Justice. The Task Force was created to develop an agenda to present to the Attorney General on possible federal strategies for reducing violent crime. The Task Force's work was structured with the caveat that they not investigate the causes or roots of crime, but only concern themselves with its effects. Further, the range of their recommendations was necessarily shaped by the relatively limited role of the federal government in dealing with crimes which fall within the purview of state and local authority.

Harris highlighted some of the Task Force's recommendations related to pretrial concerns. He said they would recommend a change in the federal bail laws to allow a "denial of bail" in certain circumstances and for certain kinds of defendants based on a finding of potential danger. He noted that at present, federal law only authorizes likelihood of failure to appear (flight) as grounds for denying release.

Secondly, Harris said that while the Task Force endorses the increased use of alternatives to incarceration for some types of defendants, there is still a pressing need for monies for some prison construction. He cited the large number of institutions with obsolete conditions and serious overcrowding problems. In that regard the Task Force would recommend that federal monies be allocated to aid states and localities in meeting the need for more cells and renovations.

Finally, Harris told the audience that the federal government does have a role to play in aiding states and localities in dealing with a range of criminal justice issues. Although he did not envision a large grant-giving agency like LEAA, Harris said the federal government must support clearinghouse kinds of efforts which provide information, research, technical assistance, and training to the field in a systematic and efficient manner. He cited the Pretrial Services Resource Center as one example of a program meeting this kind of need. Although the Task Force's work was not yet complete, Harris said the public could expect a final report by the end of 1981.

The Honourable Bob Kaplan, Solicitor General of Canada, greeted the attendees on behalf of Prime Minister Trudeau and the federal government. He spoke of an emerging consensus in the Canadian criminal justice system that "our energy must be more directly focused on seeking and expanding alternatives to imprisonment." In this regard, the Ministry sponsored both the Young Offenders Act and a series of amendments to the Criminal Code. According to Kaplan, this legislation was part of:

"...(a) long-term initiative which implies a more profound modification of our criminal justice system: It is our hope that these programs will promote community tolerance and community responsibility for the management of some types of criminal behaviour. We are attempting to promote a more effective use of criminal justice machinery and community resources. Finally, we are seeking to foster the restoration of social harmony between the offender, the victim, and the community."

Kaplan sees diversion as central to this strategy. The Ministry has been involved with diversion since 1974 and has been experimenting widely with the concept since 1977. He noted, however, that diversion has met some "skepticism and criticism." Kaplan announced that many of the concerns over the legality of diversion would be resolved by the adoption of the national guidelines which had been in the works for three years and were just completed. "These guidelines...provide a workable definition of diversion and appropriate operational models which respond to concerns about human rights and community safety."

In his concluding remarks, Kaplan made a statement which aptly summarized the work of the Symposium:

"If I can leave you with anything from our Canadian experience which might be helpful as you consider the future and the need of pretrial services, it is the importance of integrity in the pursuit of innovation, integrity in terms of the law, integrity in terms of our common understanding of justice, and integrity in terms of what our communities are prepared to accept."

(Full text of Kaplan speech is included in the appendices).

APPENDICES

THE 1981 SYMPOSIUM ON PRETRIAL SERVICES

SYMPOSIUM CALENDAR

SUNDAY, JULY 26, 1981

8:00-9:00 p.m. **OPENING GENERAL SESSION**
Empress Ballroom

Madeleine Crohn, Director
Pretrial Services Resource Center
Washington, DC

Christopher Nuttall, Assistant Deputy Minister
Solicitor General Canada
Ottawa, Ontario

The Honourable Frank Drea
Minister of Community and Social Services
Province of Ontario

9:00-11:30 p.m. **CASH BAR RECEPTION**

MONDAY, JULY 27, 1981

8:00-9:30 a.m. **THE EXCHANGE**
Plaza Room

An exhibit area with materials and representatives from a wide variety of agencies in Canada and the United States.

9:30-10:00 a.m. **GENERAL SESSION**
Empress Ballroom

★ **IT'S DEBATABLE: FINANCIAL CONDITIONS OF RELEASE SHOULD BE ABOLISHED**

Moderator:
The Honorable Margaret Maxwell
Tucson City Court
Tucson, Arizona

John A. Carver, President
National Association of Pretrial Services Agencies
Washington, DC

Tony L. Axam, Esq.
Franklin, Axam & Ashburne
Atlanta, Georgia

10:15-11:30 a.m. **WORKSHOPS**

★ **4A. PRETRIAL RELEASE, DANGER, AND THE APPELLATE COURTS**
Plaza

A review of recent appellate court decisions which further interpret the constitutional right to bail.

Francis D. Carter, Director
District of Columbia Public Defender Service
Washington, DC

Elizabeth Gaynes, Technical Assistance Associate
Pretrial Services Resource Center
Washington, DC

★ **15. DISPUTE RESOLUTION AS AN ALTERNATIVE TO COURT**
University

A progress report on the range of current dispute resolution practices and on the research assessing their impact.

Joseph Stulberg, Associate Professor
Baruch College/CUNY
New York, New York

★ **16. COMMUNITY CORRECTIONS: IMPLICATIONS FOR PRETRIAL SERVICES**
Gold

An analysis of the way in which legislative initiatives for community corrections can increase alternatives to pretrial incarceration and to traditional prosecution.

Gerald Hoffman, President
Justice Design Associates
Salem, Oregon

Don Murray, Director
Criminal Justice Program
National Association of Counties Research Foundation
Washington, DC

28. PUBLIC SERVICE THROUGH PRIVATE CITIZENS (PRIVATIZATION OR PURCHASE OF SERVICES)
Dominion

An overview of privatization in Canada and a review of a private/public program in the state of Connecticut, including a discussion of the function and role of private agencies in delivering programs to the criminal justice system.

Chairman:
Art Daniels, Executive Director
Community Programmes Division
Ministry of Correctional Services
Toronto, Ontario

Sheree Davis, Research Analyst
Community Programmes Support Services Branch
Ministry of Correctional Services
Toronto, Ontario

Sherry Haller, Coordinator
Project P.R.E.P.
Criminal Justice Education Center
Hartford, Connecticut

Gillian Sandeman, Executive Director
The Elizabeth Fry Society of Toronto
Toronto, Ontario

32. PRETRIAL DISCOVERY
(Will be presented in French)
Reception

Will explore the interests of the defense, prosecution and judiciary in a pilot project on pretrial discovery in Montreal; the research on that project will be discussed.

Samir Rizkalla, Prof. de Criminologie
Palais de Justice de Montreal
Montreal, Quebec

Juge Jacques Lessard, Juge a la cour des Sessions de la Paix de Montreal
Palais de Justice de Montreal
Montreal, Quebec

35. JUVENILE JUSTICE AND CHILDREN'S RIGHTS
French

Current issues pertaining to advocacy for children's rights.

Chairman:
Les Horne, Coordinator, Child Advocacy Unit Children's Policy Development
Ontario Ministry of Community and Social Services
Toronto, Ontario

Barbara Landau, Policy Advisor
Children's Policy Development
Ontario Ministry of Community and Social Services
Toronto, Ontario

Marion Lane, General Counsel
Justice for Children
Ontario

Joan Riches, Member
Ontario Ministry of Community and Social Services
Training Schools Advisory Board
Toronto, Ontario

10:15-1:00 p.m. **PROFESSIONAL DEVELOPMENT SEMINARS**
(Attendance limited; pre-registration required)

II. STRUCTURING STAFF DEVELOPMENT PROGRAMS (PART 1)
Room 425

Don Evans, Director
Community Programmes Development Branch
Ministry of Correctional Services
Scarborough, Ontario

IVB. ASSESSING THE EFFECTIVENESS OF A DIVERSION PROGRAM
Room 428

James F. Austin, Research Associate
National Council on Crime and Delinquency
Research Center, West
San Francisco, California

V. ANALYZING JAIL POPULATIONS: DEVELOPING REDUCTION STRATEGIES
Rosewood

Anne Bolduc, Fellow
National Institute of Corrections
Cincinnati, Ohio

The Honorable Margaret Maxwell
Tucson City Court
Tucson, Arizona

VII. THE PRETRIAL ADMINISTRATOR IN PERSPECTIVE (PART 1)
Directors

Ernest C. Friesen, Dean
California Western School of Law
San Diego, California

11:45-1:00 p.m. **WORKSHOPS**

★ **4B. "SHOULD THE STATE OF AMES ADOPT PREVENTIVE DETENTION LEGISLATION?"**
Plaza

This discussion will explore the public policy considerations of legislation which would allow a denial of pretrial release on an assessment of a defendant's potential danger to the community.

Moderator:
The Honorable Theodore R. Newman, Jr.
Chief Judge, District of Columbia
Court of Appeals
Washington, DC

Teri K. Martin, Director of Planning
Moyer Associates, Inc.
Chicago, Illinois

E. Michael McCann, District Attorney
Milwaukee, Wisconsin

James Neuhard, Chief
State Appellate Defender
Detroit, Michigan

★ **10. REMOVING JUVENILES FROM ADULT JAILS**
French

A report on the success of the national campaign to eliminate the practice of housing juveniles in adult jails; discussion of strategies that have worked.

James Brown, Director
Community Research Center
Champaign, Illinois

Don Jensen, Staff Consultant
John Howard Association
Chicago, Illinois

★ **17. HIGHLIGHTS OF CRIMINAL JUSTICE REFORM**
Gold

An overview of current initiatives to improve the administration of criminal justice in the United States, including sentencing reform, court unification, and court delay projects.

John Greacen, Deputy Director for Programs
National Center for State Courts
Williamsburg, Virginia

30. PRETRIAL AND NATIVE PEOPLES
Reception

A review of the services presently available to Native persons in Canada, an identification of the gaps in services for Native persons, and a discussion of prevention and diversion programmes.

Chairman:
Gail Cyr, Executive Director,
Northwest Territories Native Courtworkers Association
Yellowknife, N.W.T.

Chester Cunningham, Director
Native Counselling Services of Alberta
Edmonton, Alberta

Michael E. McMillan, Chief
Native Programmes
Department of Justice
Ottawa, Ontario

40. CREATIVE USE OF VOLUNTEERS
University

Examples of the use of volunteers with the families and friends of offenders. The "Belleview Experiment" and the concept of a Community Involvement Week will be discribed and discussed.

Judy Drybrough
Ministry of Correctional Services
Scarborough, Ontario

Warren Hendricks, Probation/Parole Officer
Ministry of Correctional Services
Belleville, Ontario

Rich Partridge, Metro Toronto Coordinator
Juvenile Justice Volunteer Program
Ministry of Community and Social Services
Toronto, Ontario

Karoul Talaba, Executive Director
Family and Friends Centre
Toronto, Ontario

1:00-2:30 p.m. **SPECIAL LUNCHEON SESSION**
Empress Ballroom

Presiding:
Paul Sonnichsen
National Consultant Community Alternatives
Ministry of the Solicitor General
Ottawa, Ontario

The Honourable Nicholas Leluk
Minister of Correctional Services
Province of Ontario

Keynote: "Synergizing Justice: Domestic Tranquility, Restraint and Pretrial Services"
Irvin Waller, Professor
Department of Criminology
University of Ottawa
Ottawa, Ontario

2:30-3:45 p.m. **WORKSHOPS**

★ **4C. PRETRIAL RELEASE, DANGER, AND THE LEGISLATURE**
Plaza

A review of legislative action, including preventive detention measures, in the states and pending in Congress to allow for the consideration of danger in the release decision.

Elizabeth Gaynes, Technical Assistance Associate
Pretrial Services Resource Center
Washington, DC

Tony L. Axam, Esq.
Franklin, Axam and Ashburne
Atlanta, Georgia

★ **6. BUILDING A CONSTITUENCY FOR PRETRIAL**
Dominion

A discussion of strategies for developing support for and minimizing opposition to pretrial services in the community, media, and legislature.

Carol Shapiro, Project Director
Alternatives to Jail Project
Offender Aid and Restoration (OAR), USA
Charlottesville, Virginia

12A. DIVERSION IN THE UNITED STATES—PART OF THE PROBLEM? (PART 1)
Reception

The first of this two-part workshop will review research on pretrial diversion, the questions it answers, and those it does not.

Donald E. Pryor, Research Associate
Pretrial Services Resource Center
Washington, DC

24. PRETRIAL AND THE JUDGE/CANADA
University

Discussion of the important criteria in making release and detention decisions, responsibilities of pretrial services, and what is right/wrong with existing psychiatric remands.

25. THE ROLE OF THE CROWN AND DEFENSE IN PRETRIAL SERVICES
French

This workshop will focus on the issues which relate to the presumption of innocence and the current criminal code provisions for Judicial Interim Release. In addition, cost analysis of pretrial services will be reviewed.

Chairman:
A.W. Dunfield, Crown Counsel
Attorney General-Criminal Justice
Edmonton, Alberta

J.D. Gorrell, Lawyer
Toronto, Ontario

D. Heatley, Systems Analyst
British Columbia Corrections
Victoria, British Columbia

45. DE-MYSTIFYING COST ANALYSIS
Rosewood

Appropriate applications and methodologies of various forms of cost analysis will be explored.

Michael P. Kirby, Professor
Southwestern College at Memphis
Memphis, Tennessee

46. INTERNATIONAL PERSPECTIVES ON PRETRIAL SERVICES
Gold

This workshop will examine the pretrial period in various countries, highlighting different administrative, legal, and philosophical approaches to pretrial services. It will also discuss the role of the U.N. in promoting services.

Elo K. Glinfort, Director
Consultation Centre
Solicitor General Canada
Ottawa, Ontario

Diana Gordon, Executive Vice President
National Council on Crime and Delinquency
Hackensack, New Jersey

Michael Smith, Director
Vera Institute of Justice
New York, New York

2:30-5:15 P.M. PROFESSIONAL DEVELOPMENT SEMINARS
(Attendance limited; pre-registration required)

II. STRUCTURING A STAFF DEVELOPMENT PROGRAMME (PART 2)
Room 425

VII. THE PRETRIAL ADMINISTRATOR IN PERSPECTIVE (PART 2)
Directors

IVC. ASSESSING THE EFFECTIVENESS OF A DISPUTE RESOLUTION PROGRAM
Room 428

Joseph Stulberg, Associate Professor
Baruch College/CUNY
New York, New York

4:00-5:15 p.m. WORKSHOPS

★ **2. OVERCROWDING: A STATE AND LOCAL RESPONSIBILITY**
Dominion

The relationship between prison and jail overcrowding and the impact on overcrowding of state and local policies (including those on pretrial release, diversion, and sentencing) will be discussed.

Marc Rosen
Deputy Secretary of State
Hartford, Connecticut

Jan Smaby, Chair
Minnesota Sentencing Guidelines Commission
Minneapolis, Minnesota

★ **7. THE PROBLEM WITH SUPERVISED RELEASE...**
French

Also known as conditional or third-party release, supervised release has tremendous potential for decreasing levels of detention—if correctly used. This workshop will review its use and abuse across the country.

James F. Austin, Research Associate
National Council on Crime and Delinquency Research Center, West
San Francisco, California

D. Alan Henry, Technical Assistance Associate
Pretrial Services Resource Center.
Washington, DC

★ **12B. DIVERSION IN THE UNITED STATES—PART OF THE PROBLEM? (PART 2)**
Reception

An overview and analysis of diversion program practices based on information from a national survey conducted by the Resource Center.

Moderator:
Donald E. Pryor, Research Associate
Pretrial Services Resource Center
Washington, DC

Gene Matthews, Director
Ingham County Prosecutor's Diversion Program
Lansing, Michigan

Lee F. Wood, Director
Monroe County Bar Association
Pretrial Services Corporation
Rochester, New York

★ **18. PRETRIAL AND THE JUDICIARY IN THE UNITED STATES**
University

Judges will discuss their roles and concerns as they relate to pretrial decision making and their expectations of pretrial services agencies.

Moderator:
Edward J. Schoenbaum, Appellate Court Coordinator
Illinois Supreme Court
Springfield, Illinois

The Honorable Peter Bakakos, Supervising Judge
Surety Section, Circuit Court of Cook County
Chicago, Illinois

The Honorable Rosemary Pillow
City Court Judge
Baton Rouge, Louisiana

The Honorable H. Carl Moultrie I
Chief Judge, District of Columbia
Superior Court
Washington, DC

Interviewers:
Estell Collins, Supervisor
Federal Pretrial Services Agency
New York, New York

John Hendricks, Director of Pretrial Services
Administrative Office of the Courts
Frankfort, Kentucky

29. RACISM AND PRETRIAL SERVICES
Rosewood

A discussion of racism as it relates to pretrial justice in Canada.

Gail Cyr, Executive Director
Northwest Territories Native Court Workers Association
Yellowknife, N.W.T.

Maryka Omatsu, Lawyer
Canada Human Rights Commission
Ottawa, Ontario

Charles Roach, Lawyer
Roach & Smith
Toronto, Ontario

44. VICTIM ISSUES
Gold

An examination of recent developments in victim services and their relation to pretrial services in Canada and the United States.

Chairman:
Gerald Leger, Researcher
Solicitor General Canada
Ottawa, Ontario

Carole-Anne Burris
Family Court Clinic
London, Ontario

Don MacDougall, Assistant Crown Attorney
Provincial Court, Criminal Division
Ottawa, Ontario

E. Michael McCann
District Attorney
Milwaukee, Wisconsin

Irvin Waller, Professor
Department of Criminology
University of Ottawa
Ottawa, Ontario

"PRESUMED INNOCENT"
Plaza

The videotape documentary on conditions at the New York Men's House of Detention at Riker's Island.

5:30-6:30 p.m. **BRIEFING: QUESTION AND ANSWER**
Plaza

An open session in which participants can ask for clarification on the Canadian and United States systems of criminal justice.

David Solberg, Counsel
Criminal Law Policy Planning
Department of Justice
Ottawa, Canada

Bruce Beaudin, Director
District of Columbia Pretrial Services Agency
Washington, DC

7:30-9:30 p.m. **MEETING OF ONTARIO BAIL PROGRAMS**
Directors

TUESDAY, JULY 28, 1981

9:00-9:30 a.m. **GENERAL SESSION**
Empress South

★ **IT'S DEBATABLE: RESTITUTION AND COMMUNITY SERVICE ARE *NOT* ACCEPTABLE CONDITIONS OF PRETRIAL DIVERSION**

Moderator:
Michael Green, Director
Intake Services, Probation Department
Philadelphia, Pennsylvania

Diana Gordon, Executive Vice President
National Council on Crime and Delinquency
Hackensack, New Jersey

Charles T. Sullivan, Director
Pretrial Intervention
Columbia, South Carolina

9:45-11:00 a.m. **WORKSHOPS**

★ **3. MAXIMIZING THE USE OF CITATIONS**
University

A review of the potential for reducing short-term detention by expanding police use of citations in lieu of arrest and barriers to that happening.

Jerome A. Needle, Principal Police Specialist
American Justice Institute
Sacramento, California

Hubert Williams, Police Director
City of Newark Police Department
Newark, New Jersey

★ **13. RESTITUTION: WHAT DOES IT MEAN TO THE OFFENDER?**
French

A theoretical model and preliminary data on offender viewpoints on restitution and community service; discussion of the implications that an offender's personality development has for the success of restitution and community service.

Elizabeth Gaynes, Technical Assistance Associate
Pretrial Services Resource Center
Washington, DC

Kathleen Heide, Research Analyst
Criminal Justice Research Center
Albany, New York

★ **19/20. PRETRIAL, THE PROSECUTION, AND THE DEFENSE**
Gold

The sometimes similar and frequently conflicting priorities and concerns of prosecutor and defender will be discussed as they relate to pretrial decision making and to expectations of pretrial services agencies.

Francis D. Carter, Director
District of Columbia Public Defender Service
Washington, DC

Rick Wilson, Director of Defenders Division
National Legal Aid and Defenders Association
Washington, D.C.

Thomas Petersen, Chief Assistant
Dade Co. States Attorney
Miami, Florida

Dennis Murphy, Esq.
Misdemeanor Trials Section
U.S. Attorney's Office
Washington, DC

Interviewers:
Clay H. Hiles, Executive Director
New York City Criminal Justice Agency
New York, New York

Don Dixon, Director
Champaign Diversion Program
Urbana, Illinois

23. PRESCRIPTIONS FOR JAIL OVERCROWDING
Empress South

Strategies for jail population analysis and programs to alleviate jail overcrowding will be presented from American and Canadian perspectives. The experiences of LEAA's jail overcrowding sites in the United States and Ontario's jail analysis research and community program alternatives will provide the focus for discussion.

Chairman:
Connie Mahaffy, Probation/Parole Services Liaison
Mimico Correctional Center
Ministry of Correctional Services
Toronto, Ontario

Nick Demos, Program Manager
Jail Overcrowding and Court Delay Reduction Programs
Law Enforcement Assistance Administration
Washington, DC

Patrick Madden, Research Associate
Research Services
Ministry of Correctional Services
Toronto, Ontario

37. PRETRIAL ASSESSMENT AND TREATMENT
Plaza

An examination of the clinical and legal issues involved in assessment and treatment of defendants before trial.

Chairman:
R. Edward Turner, Psychiatrist in Charge and Director
Metropolitan Toronto Forensic Service
Toronto, Ontario

A.J. Dacre, Consulting Psychiatrist
Metropolitan Toronto Detention Centres
Toronto, Ontario

F.A.S. Jensen, Deputy Director, Clinical
Metropolitan Toronto Forensic Service
Toronto, Ontario

9:45-12:30 p.m. PROFESSIONAL DEVELOPMENT SEMINARS
(Attendance limited; pre-registration required)

III. NETWORKING
Room 428

C. Peter Morden, Consultant
A.R.A. Consultants
Toronto, Ontario

Linda E. Reid, Partner
A.R.A. Consultants
Toronto, Ontario

IVA. ASSESSING THE EFFECTIVENESS OF A RELEASE PROGRAM
Rosewood

Michael P. Kirby, Professor
Southwestern College at Memphis
Memphis, Tennessee

V. ANALYZING JAIL POPULATIONS
Reception

Anne Bolduc, Fellow
National Institute of Corrections
Cincinnati, Ohio

The Honorable Margaret Maxwell
Tucson City Court
Tucson, Arizona

VI. ADVANCED RELEASE INTERVIEWING AND VERIFICATION TECHNIQUES
Dominion

Timothy J. Murray, Director of Pre-Release Services
District of Columbia Pretrial Services Agency
Washington, DC

9:45-12:30 p.m. PEER DISCUSSION GROUPS
(Attendance limited; pre-registration required)

A. HOW DO YOU KNOW A PROGRAM IS REALLY AN *ALTERNATIVE TO PROSECUTION*? TO A MORE ONEROUS SENTENCE?
Room 525

Facilitator:
Chris Cobb, Program Coordinator
Pretrial Intervention
Anchorage, Alaska

B. *MANAGING PROGRAMS* IN THE FACE OF BUDGET CUTS: SURVIVAL, INTEGRITY, AND OTHER CRUCIAL CONCEPTS
Room 528

Facilitator:
Eddie Harrison, Director
Justice Resources, Inc.
Baltimore, Maryland

C. ARE FINANCIAL CONDITIONS OF RELEASE EVER APPROPRIATE? HOW DO YOU KNOW WHEN A *RELEASE* OPTION IS TRULY AN ALTERNATIVE TO DETENTION RATHER THAN AN "ADD-ON" TO RELEASE CONDITIONS WHICH WOULD OTHERWISE HAVE BEEN LESS RESTRICTIVE?
Room 625

Facilitator:
Estell Collins, Supervisor
Federal Pretrial Services Agency
New York, New York

G. *PRETRIAL AND THE JUDICIARY* (for Canadian and American judges and court administrators only)
Directors

Facilitator:
Edward Schoenbaum, Appellate Court Coordinator
Illinois Supreme Court
Springfield, Illinois

H. PRETRIAL RESEARCH (for researchers only)
Room 425

Facilitator:
Maureen O'Connor, Social Science Program Specialist
National Institute of Justice
Washington, DC

11:15-12:30 p.m. WORKSHOPS

★ 1. THE POLITICS OF JAIL OVERCROWDING
Empress South

Some elected officials benefit from jail overcrowding and, therefore, prefer to postpone solutions. This workshop will examine strategies for dealing with this and other roadblocks to change.

Robin Ford, Eastern Regional Director
National Criminal Justice Collaborative
Sea Island, Georgia

Ronald R. Welch, Project Director
Mississippi Prisoners' Defense Committee
Jackson, Mississippi

★ **14. AN APPROPRIATE USE OF COMMUNITY SERVICE**
French

Using the South Bronx Community Service Sentence Program as an example, this workshop will explore the philosophical, legal, and operational considerations involved in structuring a program that "works."

Michael Smith, Director
Vera Institute of Justice
New York, New York

22. FEDERAL UPDATE
Empress North

The range of recent and pending Congressional measures will be highlighted, including Title II of the Speedy Trial Act, the Criminal Code Revision Act, suggested preventive detention legislation, and proposals for successors to LEAA.

Moderator:
Laurie Robinson, Staff Director
Criminal Justice Section
American Bar Association
Washington, DC

Bruce Beaudin, Director
D.C. Pretrial Services Agency
Washington, D.C.

David Davis, Staff
Attorney General's Task Force on Violent Crime
Washington, DC

Guy Willetts, Chief
Pretrial Services Branch
Administrative Office of the U.S. Courts
Washington, DC

42. RESIDENTIAL ALTERNATIVES TO DETENTION FOR ADULTS
University

Examples of residential alternatives for adults, e.g., bail supervision projects, bail hostels, residences for adolescents, and residences for adults.

Chairman:
Lou Drouillard, Executive Director
St. Leonard's Society of Canada
Windsor, Ontario

Carol Oginski, Executive Director
Reaching Out
Windsor, Ontario

Staff Member
New Beginnings, Inc.
Essex, Ontario

Staff Member
Vincenpaul Bail Residence
Toronto, Ontario

Staff Member
St. Leonard's House
London, Ontario

43. ALCOHOL AND DRUG ABUSE ISSUES IN PRETRIAL
Plaza

Will explore the impact of alcohol and drug abuse on pretrial decision making, e.g., voluntary/court-ordered treatment, likelihood of receiving bail.

Chairman:
Neal Ruton, Executive Director
Stonehenge Therapeutic Community
Guelph, Ontario

Jerry Cooper, Director
Psychiatric Services
York Finch Hospital
Toronto, Ontario

Barbara Zugor, Director
Treatment Alternatives to Street Crime
Phoenix, Arizona

★ **DEBATE ON NAPSA STANDARD VII: PREVENTIVE DETENTION**
Gold

Sponsored by the National Association of Pretrial Services Agencies

12:30-2:00 p.m. **LUNCH BREAK**

OPTIONAL ACTIVITIES

1:45-11:45 p.m. **TOUR OF TORONTO**
A bus tour of metropolitan Toronto, including a stop at the CN Tower, arriving at Ontario Place in time for dinner and entertainment. Bus loads at 1:45 and is expected to return to the hotel around midnight (tickets must be purchased from Group Bookings in advance).

2:00-4:00 p.m. **WORKSHOP: PRETRIAL UPDATE**
Plaza

An overview of significant recent developments affecting pretrial services in the United States.

The staff of the Pretrial Services Resource Center

2:00-4:00 p.m. **TOURS OF LOCAL CRIMINAL JUSTICE AND SOCIAL SERVICES AGENCIES**

Must have been arranged in advance. Details on transportation included in registration packets.

1. Toronto Jail and Families and Friends Centre;

   Gerrard House Community Resource Centre—a pre-release centre.

2. Toronto West Detention Centre—a new facility for men and women.
3. Vanier Centre for Women—a prison for provincial prisoners with sentences of less than two years;

   Ontario Correctional Institution—a medium-security facility offering assessment, classification, and treatment services for prisoners serving sentences of less than two years.
4. Old City Hall Court and the Metropolitan Toronto-York Bail Program.
5. Addiction Research Foundation—an institute doing research, education, community development, patient assessments, referral, and treatment in alcohol and drug abuse.
6. Metfors—unit for psychiatric assessment of mentally disordered offenders.
7. Centre of Forensic Sciences—analyzes exhibits submitted by police and lawyers prior to their submission as evidence in a court of law.
8. Juvenile Detention Facilities—maximum, semi-secure, and open.

WEDNESDAY, JULY 29, 1981

9:00-9:30 a.m. **GENERAL SESSION**
Empress South

★ **IT'S DEBATABLE: PRETRIAL SERVICES PROGRAMS EXACERBATE THE PROBLEMS THEY SHOULD RESOLVE**

Moderator:
Jan Smaby, Chair
Minnesota Sentencing Guidelines Commission
Minneapolis, Minnesota

Michael Smith, Director
Vera Institute of Justice
New York, New York

Art Wallenstein, Warden
Bucks County Jail
Doylestown, Pennsylvania

9:45-11:00 a.m. **WORKSHOPS**

★ **2. OVERCROWDING: A STATE AND LOCAL RESPONSIBILITY**
Plaza

(See page 8 for description)

★ **5. BONDSMEN: WHAT PLACE IN THE SYSTEM?**
University

A look at the positive and negative aspects of commericial sureties in the pretrial release process.

David Davis, Social Scientist
Attorney General's Task Force on Violent Crime
Washington, DC

Roy Flemming
Department of Political Science
Wayne State University
Detroit, Michigan

★ **8A. U.S. RELEASE PRACTICES—HOW CAN THEY BE IMPROVED? (PART 1)**
Empress North

A review of major research on pretrial release, including the recently completed National Evaluation sponsored by the National Institute of Justice.

Donald E. Pryor, Research Associate
Pretrial Services Resource Center
Washington, DC

Mary Toborg, Associate Director
The Lazar Institute
Washington, DC

★ **21A. DISCRIMINATION AND ITS IMPLICATIONS FOR CRIMINAL JUSTICE (PART 1)**
Gold

The first of this two-part series will give an overview of the extent to which racism is apparent in the criminal justice process and the reasons why this should concern practitioners. Two efforts currently underway in this area will be discussed.

Moderator:
Michael Green, Director
Intake Services, Probation Department
Philadelphia, Pennsylvania

Gwen Ford
National Association of Blacks in Criminal Justice
Silver Spring, Maryland

Robert Smith, Assistant Director
National Institute of Corrections
Washington, DC

Lloyd Street
Cornell University's Center for the Study of Race, Crime, and Social Policy
Oakland, California

26A. PRETRIAL DIVERSION RESEARCH
Empress South

Report on significant findings on diversion in Canada

Stan Divorski, Research Office
Criminal Justice Policy
Solicitor General Canada
Ottawa, Ontario

Mary E. Morton
Assistant Professor of Sociology
Queen's University
Kingston, Ontario

William G. West, Assistant Professor of Sociology
Ontario Institute for Studies and Education
Toronto, Ontario

33. PRE-TRIAL ISSUES—THE BAIL REFORM ACT: AN UNWRITTEN PREVENTIVE DETENTION STATUTE
Dominion

An examination of the judicial release criteria most often leading to unwarranted detention and a study of the means to draw this to the attention of the courts.

Chairman:
Harold J. Levy, Coordinator
Special Projects
The Ontario Legal Aid Plan
Toronto, Ontario

Bruce D. Beaudin, Director
District of Columbia Pretrial Services Agency
Washington, DC

Bart Lubow, Director
Special Defender Services
New York Legal Aid Society
New York, New York

Graham Turrall, Chief Psychologist
Metropolitan Toronto Forensic Service
Toronto, Ontario

41. YOUNG OFFENDERS LEGISLATION
(Will be presented in French)
Reception

Presentation of Young Offenders Act (Bill C-61) comparing the present Juvenile Delinquents Act; outline of youth services delivered by the Youth Liaison Section of the Municipal Force; and presentation of the Youth Protection Act (Quebec bill), its implications, etc.

Continued

Chairman:
Maureen Shea-DesRosiers
Solicitor General Canada
Ottawa, Ontario

Marc Belanger, Conseiller au President
Comite de la Protection de la Jeunesse
Montreal, Quebec

The Honourable Peter Nasmith
Provincial Court (Family Division)
Islington, Ontario

Sgt. Bob Taylor
Youth Liaison Section
Ottawa Police Department
Ottawa, Ontario

Jacques Tellier, President
Comite de la Protection de la Jeunesse
Montreal, Quebec

9:45-12:30 p.m. PROFESSIONAL DEVELOPMENT SEMINARS
(Attendance limited; pre-registration required)

I. *MANAGING PROGRAMS IN THE FACE OF BUDGET CUTS*
French

Robert C. Shaw, Executive Director
Dellcrest Children's Centre
Downsview, Ontario

VI. *ADVANCED RELEASE INTERVIEWING AND VERIFICATION TECHNIQUES*
Rosewood

Timothy J. Murray, Director of Pre-Release Services
District of Columbia Pretrial Services Agency
Washington, DC

VIII. *DISPUTE MEDIATION: SKILLS AND STRATEGIES*
Directors

Conrad Brunk, Director
Peace and Conflict Studies
University of Waterloo
Waterloo, Ontario

Dean E. Peachey, Coordinator
Community Mediation Service
Kitchener, Ontario

Mark Yantzi, Coordinator
Victim Offender Reconciliation Project
Kitchener, Ontario

9:45-12:30 p.m. **PEER DISCUSSION GROUPS**
(Attendance limited; Pre-registration required)

D. STRATEGIES FOR *DEVELOPING A CONSTITUENCY* FOR PRETRIAL SERVICES: DEALING WITH THE PRESS, PUBLIC, AND LEGISLATURE
Room 425

Facilitator:
Ann Singleton, Project Director
Community Alternatives Methodology Program
Aurora Associates
Washington, DC

E. DANGER AND THE RELEASE DECISION
Room 428

Facilitator:
Vance Arnett, Staff Director
Governor's Task Force on Criminal Justice System Reform
Tallahassee, Florida

11:15-12:30 **WORKSHOPS**

★ **8B. U.S. RELEASE PRACTICES—HOW CAN THEY BE IMPROVED (PART 2)**
Empress North

This session will focus on release agency practices and ways in which they could be changed to increase levels of release without increasing FTA or the incidence of pretrial crime.

Donald E. Pryor, Research Associate
Pretrial Services Resource Center
Washington, DC

Mary Toborg, Associate Director
The Lazar Institute
Washington, DC

★ **10. REMOVING JUVENILES FROM ADULT JAILS**
University

(See page 5 for description)

★ **16. COMMUNITY CORRECTIONS: IMPLICATIONS FOR PRETRIAL SERVICES**
Plaza

(See page 2 for description)

★ **21B. DISCRIMINATION AND ITS IMPLICATIONS FOR CRIMINAL JUSTICE—A DISCUSSION (PART 2)**
(Previously Peer Discussion Group F)
Gold

This open discussion will focus on the ways in which discrimination can be addressed by pretrial practices.

Facilitator:
Michael Green, Director
Intake Services, Probation Department
Philadelphia, Pennsylvania

26B. PRETRIAL DIVERSION PRACTICES
Empress South

This workshop will address federal concerns about diversion; an operational diversion program in Quebec and bail programs as pretrial intervention mechanisms will be discussed in relation to the broader issues and concerns raised about diversion.

Chairman:
Ruth Morris, Director
Metro Toronto-York Bail Program
Toronto, Ontario

Marie-France Des Rosiers, Director
Post-Charge Pretrial Adult Diversion Project
Quebec City, Quebec

Pat Rolfe, Special Advisor
Canada Solicitor General
Ottawa, Ontario

39. LEGAL AID AND PRETRIAL SERVICES
Reception

This panel will focus on the role of legal aid in the pretrial process and on the relationship between legal aid and pretrial services agencies.

Chairman:
J. Paul Lordon
Department of Justice
Ottawa, Ontario

Harold Levy,
Special Projects Coordinator
Ontario Legal Aid Plan
Toronto, Ontario

Brian Ralph, Executive Director
Legal Services Society of British Columbia
Vancouver, British Columbia

Gordon Williams, Program Manager
Native Counseling Services of Alberta
Edmonton, Alberta

2:00-5:00 p.m. **REFLECTIONS ON PRETRIAL SERVICES: THEIR PAST, PRESENT, AND FUTURE**
Plaza

Panelists from Canada and the United States will be questioned on the track record of pretrial services to date and the implications that the current political, economic, and social climate has for the future of the field.

Moderator:
Robert Smith, Assistant Director
National Institute of Corrections
Washington, DC

Panelists:
Paul Copeland, Esq.
Copeland, Liss
Toronto, Ontario

Eddie Harrison, President
Justice Resources, Inc.
Baltimore, Maryland

Hans Mohr, Professor
Osgoode Law School
Toronto, Ontario

Michael Smith, Director
Vera Institute of Justice
New York, New York

Hubert Williams, Police Director
City of Newark Police Department
Newark, New Jersey

Interviewers:
Michael Serrill, Editor
Corrections and *Police* Magazines
New York, New York

Marg Allen, Researcher
Liberal Caucus Research Bureau
Ottawa, Ontario

12:30-2:00 p.m. **LUNCH BREAK**

2:00-3:30 p.m. **WORKSHOPS**

★ **5. BONDSMEN: WHAT PLACE IN THE SYSTEM?**
University

(See page 19 for description)

★ **6. BUILDING A CONSTITUENCY FOR PRETRIAL**
Rosewood

(See page 7 for description)

★ **11. ACCREDITATION OF RELEASE SYSTEMS**
French

A presentation of the results of a recent effort to test the feasibility of accrediting pretrial release programs and systems.

Robin Ford, Eastern Regional Director
National Criminal Justice
Collaborative, Inc.
Sea Island, Georgia

D. Alan Henry, Technical Assistance
Associate
Pretrial Services Resource Center
Washington, DC

27. APPROPRIATE USE OF COMMUNITY SERVICE AND RESTITUTION SERVICE ORDERS IN CANADA
Gold

A discussion of the use of community service orders in diversion, evaluating success or failure, and solutions to possible problems.

Gerald Gallant, Assistant to the Executive Director Responsible for Special Projects
Probation Services, Department of Justice
Province of Quebec

31. POLICE DISCRETION
Reception

This session will review the extent to which discretionary power is used and abused in the criminal justice system; consequences to the offender will be discussed.

Chairman:
Staff Sgt. Les Douglas
Metropolitan Toronto Police Force
Toronto, Ontario

Sgt. William Terry Knox
Metropolitan Toronto Police Force
No. 55 Division Youth Bureau
Toronto, Ontario

Isaac Singer, Lawyer
Defense Counsel
Toronto, Ontario

34. ALTERNATIVES TO SECURE DETENTION OF JUVENILES
Dominion

An overview of detention policies in Ontario, innovative approaches to the "open" detention concept, and strategies and activities that reduce stay in secure or locked facilities.

Chairman:
Paul Siemens, Manager
Children's Policy Development
Ontario Ministry of Community and
Social Services
Toronto, Ontario

Fred Campbell, Program Supervisor
Ontario Ministry of Community and
Social Services
Toronto, Ontario

John McGoff, Advocacy Coordinator
Ontario Ministry of Community and
Social Services
Toronto, Ontario

Marie Walker-Boswell, Executive Director
St. Lawrence Youth Association
Kingston, Ontario

2:00-5:00 p.m. **PROFESSIONAL DEVELOPMENT SEMINARS**
(Attendance limited; pre-registration required)

VIII. DISPUTE MEDIATION: SKILLS AND STRATEGIES (PART 2)
Directors

3:45-5:30 p.m. **WORKSHOPS**

★ **1. THE POLITICS OF JAIL OVERCROWDING**
French

(See page 15 for description)

★ **9. ALTERNATIVE METHODS OF RELEASE DECISION MAKING**
University

A review of jurisdictions where release authority has been designated to nonjudicial personnel and of agencies using innovative recommendation schemes.

Timothy J. Murray, Director of Pre-Release
Services
District of Columbia Pretrial Services Agency
Washington, DC

Skip Riedesel, Deputy Director
Pima County Correctional Volunteer Center
Tucson, Arizona

36. NONSECURE JUVENILE FACILITIES
Dominion

Discussion of the types of children requiring non-secure facilities; characteristics of non-secure programs, service difficulties and supports necessary when dealing with this population.

Chairman:
Vicki Bales, Operational Planner—Secure
Services
Operational Support Branch
Ontario Ministry of Community and Social
Services
Toronto, Ontario

David Crowe, Supervisor
Probation and Aftercare Services
Ministry of Community and Social Services
Toronto, Ontario

Ken Thomas, Director
Craigwood Centre
Ailsa Craig, Ontario

Richard Barry, Director
Home Care Crisis Services
Thistletown Regional Center
Toronto, Ontario

38. CANADIAN BAIL REFORM ACT
Gold

Essential features of the Canadian Bail Reform Act, its application to the ordinary case, and a general assessment of its impact.

45. DE-MYSTIFYING COST ANALYSIS
Rosewood

(See page 7 for description)

7:00-10:00 p.m. **CLOSING GENERAL SESSION**
Empress Ballroom

CASH BAR RECEPTION

BANQUET

Bruce Beaudin, Chairman of the Board of
Trustees
Pretrial Services Resource Center
Washington, D.C.

Christopher Nuttall, Assistant Deputy Minister
Solicitor General Canada
Ottawa, Ontario

Jeffrey Harris, Executive Director
Attorney General's Task Force on Violent Crime
U.S. Department of Justice
Washington, D.C.

The Honourable Bob Kaplan
Solicitor General Canada
Ottawa, Ontario

LUNCHEON ADDRESS
MONDAY, JULY 27, 1981

The Honourable Nicholas Leluk
Minister of Correctional Services
Province of Ontario

It is a pleasure for me to join you today at this fifth Symposium on Pretrial Services. On behalf of the Government of Ontario and The Ministry of Correctional Services, I would like to welcome all of you to our beautiful province and to wish you every success in your discussions over the next few days. I would like to extend a particulary warm welcomc to those of you who are from outside Ontario and especially to our American friends.

We are deeply honoured to co-host a symposium of such scope and magnitude. Pretrial services are of critical importance to the entire criminal justice system.

A forum which allows experts from across the continent to share their experiences and views is invaluable in the development and implementation of new programs in this field.

Our bail verification and supervision programs, which we initiated here in Ontario only two years ago, provide a good example of how we can learn from each other and build upon our collective knowledge.

Currently, we are operating bail programs in eleven major centres throughout the province. The 1979 Symposium on Pretrial Services in Louisville was fundamental to the development of these programs. Several senior members of my staff attended this conference and so learned first hand about the numerous pretrial service programs available. Following the conference, we received assistance from both the Pretrial Services Resource Center and the National Association of Pretrial Services Agencies.

In our opinion, we have one of the most progressive of bail programs. It draws upon the risks and needs assessment systems of the Manhattan Program, the Intensive Supervision Practices of the District of Columbia, Britain's Bail Hostel Concept, and the Supervision Program run by the Province of British Columbia.

We are continually seeking ways however to broaden our knowledge, and to find new techniques that will improve our system. This conference provides an excellent opportunity to exchange ideas and approaches which will no doubt improve our respective programs.

I would now like to take a few moments to comment on the pretrial programs offered by my ministry.

Jail overcrowding is a serious problem in many correctional systems. Our province is no exception. Recently, there have been more than 5,600 inmates in our various institutions, which have a total capacity of 6,100 beds. However, this population is far from evenly distributed geographically or by program

type. As a result, in South central Ontario we are double bunking inmates in our front-line institutions -- the jails and detention centres. Increasing pressures of both short sentence and remand inmates are basic to our overcrowding.

I am very concerned about this critical situtation. Overcrowding places a heavy strain on staff and inmates alike. We cannot afford to ignore the potential consequences of these overcrowded conditions.

Pretrial services can help ease overcrowding by dealing directly with alternatives to remands. It is interesting to note that remands represent about 40 percent of our jail population. This translates into a staggering 30,000 admissions annually. I would like to emphasize here that 30,000 people is equivalent to a sizeable community in our province.

We have found that nearly 70 percent of these accused persons eventually are discharged or receive community services orders as a condition of probation. Furthermore, nearly 10 percent of remanded inmates are incarcerated because they are unable to meet the bail requirements set by the court. This is particularly significant in light of the fact that only 6% of all crimes committed in Ontario are of a violent-nature.

Quite clearly, it is unacceptable that so many people who are minor, non-violent and non-dangerous individuals should be held in custody prior to trial.

As Minister of Correctional Services, one of my primary responsibilities is to ensure that the community is protected from dangerous offenders. I must also make sure that the taxpayer's dollar is efficiently and productively spent in the provision of correctional services. At $62.50 per inmate per day, I see little logic in detaining so many non-violent, and non-dangerous individuals who stand accused of minor offenses.

Our bail programs have proven to be a successful solution to this dilemma. On an average, 1,200 to 1,500 accused people per month undergo bail verification.

Information relating to residence, employment or educational history, family commitments and financial resources is recorded by a bail worker prior to the initial court hearing. This information is then verified by the bail worker and is presented to the presiding judge.

We find that bail verification assists the judge in assessing the background of the accused. It also provides the information necessary for the setting of reasonable and attainable conditions of release.

Bail supervision is a natural extension of bail verification. Bail supervision is offered to the court as a viable alternative in those cases where the bail worker determines that the accused will be unable to satisfy the financial and surety requirements of release.

Approximately 600 individuals are on bail supervision in Ontario on any given day. I would like to emphasize, however, that we apply strong sanctions to those who violate any conditions of supervision, such as failing to report. Often, these offenders are reincarcerated.

We have found that the use of bail supervision involving trained workers is much superior to the supervision usually provided by friends or relatives of the accused. Many of the people who sign as sureties are not fully aware of their legal responsibilities and accountability to the court.

Ontario's first community residence for accused persons on bail supervision was established by the St. Vincent De Paul society in early June in Toronto. My ministry has committed more than $100,000 to this pilot project. Called the Vincenpaul Bail Residence, the new hostel can accommodate up to 10 accused persons per day. We project it will handle several hundred individuals annually, depending on the length of stay. The Shelter Now Network (an umbrella organization dedicated to the housing needs of people in conflict with the law) has been chosen to operate the residence on a daily basis.

We hope to expand this program to other communities in the near future, depending on the success of this first hostel and the availability of funds during a period of fiscal restraint.

I am particularly proud to report that many of the more than 2,000 people placed on bail supervision last year used their pretrial period to find employment. In fact, the unemployment rate dropped by 13 percent at the end of the supervision period.

A significant proportion of the success of our pretrial services is due to the efforts of many non-profit volunteer agencies working under contract with my ministry: Groups like the John Howard and Elizabeth Fry societies and the Salvation Army, just to name a few.

As part of our policy of privatization of services, we have entered into contracts valued at nearly $1 million for the provision of bail programs in this province.

We firmly believe that strong community involvement and support is essential for the success of many correctional programs. As a matter of fact, we currently have over 200 contracts for various correctional services with private sector agencies. The total value of these service contracts exceeds 10 million dollars.

At this point, I would like to mention a few examples of new programs handled by these capable volunteers: Victim restitution, community service orders, crime prevention (such as shoplifting and driving while impaired) and the recently proposed fine option program. Not only does the use of such agencies make economic sense, but it also directly involves the private citizen in the justice system. This involvement encourages a better understanding by the community in correctional matters. Such knowledge can only lead to the betterment of our service -- and of our society.

A week ago today, an editorial in the Toronto Star quite succinctly that the public is ready for prison alternatives. The newspaper reported that at a recent conference of the Canadian Congress for the Prevention of Crime in Winnipeg, a study was released which provided some unexpected findings. I would like to share with you a very interesting observation made in this report and quoted by the star: "Canadians want prisons reserved for rapists, murderers and armed robbers--perpetrators of violent crimes...Many non-violent lawbreakers...don't belong in jail".

Pretrial programs assist judges in making appropriate decisions. As administrators of justice, we are morally obligated to see that these and similar programs are maintained and expanded. We have accomplished a great deal in the last two years, and look forward to doing even more.

I would like to conclude with an encouraging comment we recently received from a senior official at the Toronto Crown Attorney's office regarding the bail program. He said: "I was pleased to see that many accused have fulfilled their trial obligations and I was surprised at the number of failures to appear, which have been minimal."

It is my Ministry's intent to provide our clientele with the best possible programs. This goal can only be achieved through the kind of sharing and cooperation that we are seeing at this symposium.

I hope that your stay in our fair city is a pleasant one and that you do find some time for sightseeing and relaxation. I would also like to invite all of you to come back again when more time permits for a relaxing holiday and to discover the true beauty of our province and its hospitality.

Thank You.

CLOSING GENERAL SESSION
WEDNESDAY, JULY 29, 1981

The Honourable Bob Kaplan
Solicitor General Canada
Ottawa, Ontario

"Diversion: A Canadian Perspective"

It is an honour to be here tonight and to be invited to address the subject of pretrial services from my perspective as Solicitor General of Canada. But before I begin, let me just confirm the welcome which I know our American friends have already received here in Toronto. I am pleased that you have come to Canada for the first international symposium on this important question. On behalf of Prime Minister Trudeau and the national government, I extend my greetings and my best wishes as you come to the end of your stay with us.

There is an emerging consensus in the Canadian criminal justice community that our energy must be more directly focused on seeking and expanding alternatives to imprisonment. Judges, lawyers, academics and community workers are increasingly convinced that such a thrust must become more of a public priority. In times of fiscal restraint by governments it has become a matter of serious concern that it now costs more than $30,000 to incarcerate an offender in federal prisons every year. There has also been a loss of faith in the rehabilitative potential of incarceration. Few of us still believe prisons, even if they are among the most progressively managed, can effectively accomplish a successful reintegration of most offenders into the community. Perhaps even more importantly, there is a growing awareness that incarceration is simply not an appropriate response for many offenses and many offenders.

This theme of seeking alternatives to imprisonment is one which I enthusiastically endorse. It is a basic premise in the over-all policy direction of my ministry. Some time ago, I introduced legislation in Parliament which establishes appropriate alternative responses to juvenile offenders. The Young Offenders Act, which I am confident will become law this fall, enables us to take advantage of a whole range of options including community service orders, restitution, and compensation to the victim. Our commitment is also expressed in support for community-based programs to expand and improve these alternatives all across Canada. It is further reflected in a series of proposed amendments to the Criminal Code which will greatly improve and increase the sentencing alternatives now available to judges.

In discussing alternatives to imprisonment, however, the question of sentencing is only one side of the story. It is our view that the whole area of the pretrial disposition of offenses can be equally fruitful in achieving our objectives.

And, what are our objectives?

Well, in spite of what I said earlier, we are not just interested in keeping people out of jail. In fact, we are committed to a long term initiative which implies a more profound modification of our criminal justice system. It is our

hope that these programs will promote community tolerance and community responsibility for the management of some types of criminal behaviour. We are attempting to promote a more effective use of criminal justice machinery and community resources. Finally, we are seeking to foster the restoration of social harmony between the offender, the victim and the community.

Diversion is a pretrial response which is central to that strategy. As an alternative, not only to incarceration but also to the traditional process of criminal justice, the diversion of offenders where appropriate, offers significant potential in terms of meeting those objectives. It is an alternative which, at least for the national government, has been a priority for some time.

My ministry has been involved in this area since 1974 when a sub-committee of federal and provincial deputy ministers was formed. Since 1977, we have experimented widely with the concept across Canada. In that year, we sponsored a National Conference on Diversion and we have continued to support and monitor a number of demonstration projects ever since.

In Canada, we have chosen to support the implementation of diversion projects which are community-service oriented rather than treatment oriented. In adult diversion, we find it not only necessary, but also desirable, to enlist the cooperation and ongoing support of the police in the reconciliation of the victim and the offender. One of our most successful demonstration projects has been the District 34 Conciliation Project in Montreal. This police-based program handles about 300 cases a year. Although some individuals are referred to other social service agencies for treatment, the heart of the program is in the process of settling the offense, either through restitution, community service or other means. Possibilities of treatment, where appropriate, are now considered only once the conciliation process is complete and apart from the process itself. We are pleased with the results of this particular program. It represents a workable scheme for the diversion of offenders which, I believe, has tempered concerns about widening the net of our criminal justice system. The project recently completed the three-year demonstration phase and is now an ongoing service of the Centre des Services Sociales of the Metropolitan Montreal community. It is a model for expanded service in Montreal and our other urban communities.

It must be admitted, however, that diversion has met with a certain amount of skepticism and criticism. Indeed, some of our provincial governments have been reticent to embrace the concept.

Much of that criticism has been well founded. It is based on a legitimate concern for protecting both the human rights of the offender and the safety of the community. There has even been concern with the legality of the process itself. Whenever one departs from the traditional course in the disposition of offenses, immediately issues of due process arise. Diversion does not take place in the public eye and is not subject to public scrutiny in quite the same way as normal criminal proceedings. There are no entrenched checks and balances such as those which control the actions of a regular court of law. Finally, the accused may be placed in a sort of double jeopardy in that even though he has met most of the requirements of his diversion agreement, he may still be brought before the courts. These are problems which diversion projects in Canada had to face in the earlier stages. In fact, they led to a provincial court decision in

1977 (R.V. Jones) which ruled that diversion, as an alternative not established by legislation, was illegal. We, in Canada, are just now approaching the stage where we will have an entrenched Bill of Rights like that of our American friends, so these are concerns which exist regardless of the established merits of diversion.

Our own experience and involvement with demonstration projects has been instructive. I believe we are close to a satisfactory resolution of most of the problems and I am convinced of our capacity to resolve difficulties where the answers are not already clear.

I am pleased to announce tonight that we have achieved a significant step forward in this area with the conclusion of a three-year effort to arrive at national guidelines for diversion. These guidelines, which have been produced through the cooperation of my ministry and the Department of Justice, remove the problem of illegality from our agenda. They also provide a workable definition of diversion and appropriate operational models which respond to concerns about human rights and community safety. The guidelines should erase much of the skepticism associated with this particular pretrial innovation. They are available now for the use of provincial officials and those involved in demonstration projects.

In formulating these guidelines, we were wedded to the principle that public trust and confidence in the procedures of each diversion project must be equal to the public trust and confidence in the procedures of a criminal trial and sentence. The procedures must offer, and be seen to offer, as much protection to the community as exists through the normal sentencing of a court. As a result, the mechanics of each diversion project should be as open to public scrutiny as is possible without infringing on the rights of the individual who has opted for the diversion project and has met the project eligibility criteria. Put simply, the process of diversion must meet all of the standards in terms of the victim and the community afforded by the criminal process without, at the same time, prejudicing the position of the divertee. These are the objectives I think we have achieved.

I also want to let you know that another legal problem associated with diversion will be resolved this fall when we introduce the Omnibus Bill to amend the Criminal Code. It is our intention to amend section 129 in order to remove any question of liability for compounding a felony on the part of parties to a diversion agreement.

I am pleased about these developments because I think they indicate the unique role of my ministry in terms of other jurisdictions. As Solicitor General, I am responsible for both the R.C.M.P., on the one hand, and our correctional system, including the National Parole Board, on the other. Offenders come in touch with my department at both ends of the process -- you might say I get them coming and going. But from this perspective, we are in a position to provide over-all coordination and direction in the criminal justice policy field. Our mandate is national in scope and is reflected, not only in the promotion of alternatives to incarceration, but also in such things as our rigorous gun control legislation, our crime prevention programs and our law as it applies to juveniles. This broad area of national policy coordination is handled by the Ministry Secretariat. The Secretariat makes it possible to overcome the inevitable fragmentation of any criminal justice system which is structured so as to

preserve natural justice for every individual who comes within its net. It is a vehicle for ensuring that issues which have an impact which is system-wide can be resolved in a way that does not undermine the fundamental independence of each stage in our criminal justice process.

The operational component of my Secretariat is known as the Consultation Centre. The guidelines on diversion I mentioned earlier are a reflection of this coordinating mandate which were developed by personnel in the Consultation Centre in cooperation with the Department of Justice. As the arm of the Secretariat responsible largely for policy implementation, the Consultation Centre serves as an agent for change. Diversion and the promotion of diversion is but one of their concerns. They oversee demonstration projects, make direct financial assistance available and provide an important technical and advisory resource. Although the Consultation Centre consists of only 22 people, they are spread all across the country at five regional offices, as well as at the national level.

The very existence of the Consultation Centre ensures that a "state of the art" assessment is built in to policy formulation. Moreover, it is a means of guaranteeing a national perspective which is rooted in regional realities. Finally, it fulfills the important role of encouraging national standards in a whole range of programs.

I believe that the 1980's herald significant changes in our criminal justice system. Diversion, as an alternative, represents only one of many avenues we will be pursuing. If I can leave you with anything from our Canadian experience which might be helpful as you consider the future and the need for pretrial services, it is the importance of integrity in the pursuit of innovation; integrity in terms of the law, integrity in terms of our common understanding of justice, and integrity in terms of what our communities are prepared to accept. In our pursuit of alternatives to imprisonment, these are the factors which are prerequisite to long term success. I am proud of the role my ministry has played in pursuing and achieving those objectives.

We in Canada still have much to accomplish. Even in the area of diversion, for example, we have a long way to go in providing services for adult offenders. We have learned a great deal from our American friends over the past few days. I only hope my brief remarks this evening have contributed to that important dialogue.

Thank you.

Arrest

Arrest is the taking of physical control or custody of a person with intent to detain. In Canada there is a limited citizen's power to arrest. The police officer's power to arrest without a warrant is also limited by the Criminal Code. For many Criminal Code offences, a police officer may not arrest a suspect unless the police officer has reasonable grounds to believe that the suspect will fail to appear in court and that the public interest requires an arrest in order to establish identity, secure evidence, or prevent the continuation of an offence. When there are no grounds to arrest a suspect, the police officer may issue an appearance notice, release the suspect with the intention of applying to a justice for a summons, or release the suspect unconditionally. Even when the police officer does have grounds to make an arrest, he is required by law to release the suspect as soon as practicable by issuing an appearance notice.

Appearance in Court

Appearance of a suspect in court may be secured by the issuance of an appearance notice, applying to a justice for a summons, obtaining a promise to appear which is given to the officer in charge by the suspect at the police station, a recognizance (with or without sureties or deposit) given to the officer in charge or justice of the peace or judge of the provincial court.

Appearance Notice

A notice issued by the police at the scene of the alleged crime or the police station requiring the accused to appear in court on a specified date to answer to the stated charge.

An appearance notice is designed to reduce (a)the number of court appearances which are secured by arrest, summons, and warrant and (b)the use of pretrial custody. Appearance notices are also used to require attendance for criminal identification purposes (i.e., fingerprints, etc.).

Bail Appeal (Review)

At any time before the trial of the charge, the accused may apply to a judge of a higher court for a review of the original Order made by the Justice of the Peace, be it a detention order or a Release Order which has resulted in the accused's detention because of an inability to comply with certain conditions.

The first order may be upheld or vacated and another made in its place. The Criminal Code also contains provisions for automatic reviews of detention where trial is delayed.

Bail Estreatment (Forfeiture Proceedings)

Legal proceedings which are instituted against a surety (or sureties) for the forfeiture of a recognizance if the accused fails to appear for trial.

Bail Hostel

A community residence where accused persons live as a condition of pretrial release.

Bail hostels enable judges to grant release to people who might otherwise be detained because they have no fixed address or whose lifestyles are so disorganized that they are not expected to appear at trial.

The first bail hostel in Ontario opened June 1, 1981, in Toronto.

Bail Reform Act (1972)

The Bail Reform Act places limits on police powers to arrest and to detain suspects.

Specifically, Section 454 provides that when there are grounds to arrest, the accused must be taken before a Justice without unreasonable delay. There is a positive obligation to take an arrested person before a justice to determine whether further detention is justified. The fact that an accused has not enquired about bail is not relevant. Another important reform of the Bail Reform Act is that (with five exceptions) the onus is placed on the prosecution to show why further detention before trial is justified.

Section 457 (7) states that the detention of an accused in custody before trial is justified only upon the primary ground that his detention is necessary to ensure attendance in court and on the secondary grounds (which only apply if it is determined that detention is not justified on the primary ground) that detention is necessary in the public interest or for the protection of the public having regard to all the circumstances, including any substantial likelihood that the accused may commit a criminal offence or interfere with the administration of justice.

Bail Supervision

Community supervision of an accused who is not able to meet the traditional release conditions imposed by the court, such as cash or surety bail.

Bail supervision programs often permit the release of people who would otherwise be detained because without supervision there is substantial doubt that they would appear for trial (e.g., no fixed address, disorganized lifestyle, etc.).

Cash Bail

The Criminal Law Amendment Act (1975) authorizes a Justice (with the consent of the prosecutor) to allow an accused to deposit cash bail in lieu of finding a surety to facilitate his release from custody. An officer in charge is restricted to an upper limit of $500 cash bail. The case of R. v. Carrington et al, decided that all of the circumstances must be considered in setting a cash amount, but it should not be in such a large amount that the result is equivalent to a detention order.

Community Resource Centre

A community residential facility which accommodates minimum-security inmates serving federal or provincial sentences.

Community Alternatives

Programs designed as viable, more humane, and cost-effective options to the traditional ways of managing offenders (i.e., fines and incarceration).

These programs may be pretrial or post-sentence.

Crown Attorney (The Prosecutor)

A Prosecutor is defined in Section 2 of the Criminal Code as meaning the Attorney General or, where the Attorney General does not intervene, the person who institutes proceedings to which the Criminal Code applies and includes counsel acting on behalf of either of them. This would include a private person prosecuting or the police officer who swears to an information and indicates to the Justice that he desires to show cause why an accused ought not to be released on his own undertaking.

Detention Order

A court order which results after a show cause hearing, where the prosecutor has demonstrated (according to the primary or secondary grounds) why the accused should be detained in custody to await trial.

Disposition

The decision or adjudication of the court after a finding of guilt has been made.

Diversion

Diversion is an alternative to the traditional process of court appearance and sentence but is still part of the formal criminal justice process.

It is a formal procedure (1)whereby the processing of designated persons through the formal criminal justice is suspended, and these persons are dealt with through an alternative program; (2)undertaken at any point after a person has been arrested or charged and prior to commencement of a trial; (3)undertaken on the condition that future justice processing will be terminated if the diverted

person fulfills the obligations specified by the alternative program; (4)which focuses on the offence and on restoring the harm done; and (5)which involves interaction between the victim, offender, and community and promotes the involvement of lay people in its development and management.

Duty Counsel

Free counsel who are present in court to give immediate legal assistance to accused who appear without representation. Administration of duty counsel differs from province to province, but generally duty counsel are appointed and paid by the provincial legal aid plan.

Failure to Comply

The charge laid against an accused who violates one or more of the conditions of his release.

A Failure to Comply (FTC) charge may also arise as a result of noncompliance with a probation or other court order.

Federal Sentence

Any prison sentence of two years or more which is served in a penitentiary. In Canada the distinction between provincial and federal is related to the length of sentence, not the type of offense or jurisdiction. (Capital punishment in Canada was abolished on July 26, 1976.)

First Court Appearance

If a justice is available within twenty-four hours, an arrested person shall be taken before that Justice without unreasonable delay and, in any event, as soon as possible within the twenty-four hours. If the Justice is not available within twenty-four hours, the person shall be taken before a Justice as soon as possible (see Section 454, Criminal Code).

Foster Home

A home where parental care and guidance is provided at the expense of a local authority to one or more children sharing no blood relationship with those filling the parental role.

Group Home

A community residential placement for juveniles.

Indictable Offence and Summary Conviction Offence

In the Criminal Code of Canada, the main difference between an indictable offence and summary conviction offence is the procedure for processing the two kinds of offences (i.e., the mode of trial, the appeal procedure, and the range of sentences provided).

The maximum penalty for summary conviction offences is six months jail and/or a $500 fine, unless otherwise specified. For example, it is higher for narcotic and drug offences.

The difference between indictable offences and summary conviction offences is not just a question of offence seriousness, but also includes questions of procedural rigor, appeal rights, elections as to trial court, etc.

Also, there is no right to fingerprint for a pure summary conviction offence (as opposed to a "hybrid" offence).

Judicial Interim Release Order — A conditional bail/release order issued by the court at the bail hearing. Compliance with conditions results in release from custody.

Original Peoples — Native Indians and Inuit Peoples.

Police Custody — Post-arrest detention by police is governed by the Bail Reform Act. Section 454 requires the Police Officer in charge to take the arrestee before a Justice without unreasonable delay. There are no formal provisions in the Criminal Code which authorize extended periods of detention in police custody for the purpose of assisting the police with their enquiries.

A practical problem may arise as to what is to be done when the police informally refuse counsel access to the prisoner or resort to other infringements of the accused's civil rights. Three possibilities are:

1. the usual civil remedies (e.g., damages when there has been an assault, etc.);

2. the extraordinary remedies (i.e., habeas corpus with certiorari in aid, to determine the legality of detention);

3. later at trial, evidence of the refusal by police to allow counsel to see the accused would be relevant on a voir dire as to the voluntariness and, therefore, admissibility of any statements made by the accused.

Precourt Hearing

A precourt hearing refers to the release/detention decision concerning an accused who has been arrested with or without a warrant and who has not been released by a police officer or by an officer in charge and who must be taken before a Justice of the Peace (J.P.) without unreasonable delay. A Justice is defined in Section 2 of the Criminal Code as "A Justice of the Peace or Magistrate" (in some provinces called a provincial court judge). They have authority to issue warrants and summonses, may hear cases involving offences against municiipal statutes, and may hold certain preliminary hearings. Two Justices of the Peace may try certain minor summary conviction offences.

In certain large communities there may be a precourt hearing held before a Justice of the Peace to determine whether continued detention is justified of an accused who has been arrested and not released by a peace officer or by an officer in charge. However, in many communities in Canada, the decision whether continued detention is justified or not is made at the same time as the first appearance in provincial criminal court.

Precourt Intervention

Refers to programming options available to juveniles at the pre-charge and post-charge levels of the juvenile justice system.

Pretrial Release

The Bail Reform Act places a duty to release, at each of four stages in the process of apprehending a suspect, specifically on:

1. the police officer,
2. the police officer in charge of the station,
3. the Justice,
4. the judge reviewing detention.

The primary duty upon a Justice before whom an accused is initially taken is to release the accused without conditions, unless the prosecutor (having been given a reasonable opportunity to do so) shows cause why the detention of the accused in custody is justified or why conditional release should be imposed on the accused.

Primary Grounds for Detention

Detention of an accused is justified on primary grounds to ensure (his) attendance at court.

Privatization

The process whereby government contracts with the private/voluntary sector for the provision of services.

Promise to Appear

A notice to appear at court which is given by officers in charge at police stations who release persons accused of committing certain categories of offences and any other offence that is punishable by imprisonment for five years or less.

It is similar to an appearance notice in that it is designed to promote noncustodial approaches to obtaining a suspect's appearance in court.

Provincial Sentence

A custodial sentence of less than two years, which is served in a provincial correctional institution/facility.

Release on Recognizance

Conditional pretrial release; an acknowledgement without deposit of money or other valuable security that the person entering into the recognizance is indebted to the Crown in the amount specified therein, which is no longer to be due if there is compliance with conditions set out in the recognizance.

Remand in Custody

A court may order a remand in custody (not to exceed three days without the accused's consent) to give a prosecutor an opportunity to develop a case to show cause why the accused should be detained in custody to await his trial. It may also refer to the detention of a person who has been convicted, but not yet sentenced.

Reverse Onus

Ordinarily, the Crown has the affirmative duty to show cause justifying continued detention or conditional release of the accused. If, on the balance of probabilities, the Crown does not show just cause, the Justice has no choice but to release the accused on an undertaking without conditions.

It was decided that placing the onus on the Crown was not appropriate in all cases, in that it may have resulted in a number of bail abuses. The main problems identified were:

1. the failure to appear of an accused as required, or

2. the committing of further crimes by those out of custody on bail.

In 1975 the Criminal Law Amendment Act made certain changes in the judicial release process to reduce such bail abuses. The onus shifts to the accused to show cause why he should be released in five instances; namely, where he is charged with:

1. an indictable offence pending trial of another indictable offense,

2. an indictable offense when the accused is not resident in Canada,

3. a failure to appear in court,

4. certain narcotic control offenses,

5. murder or conspiracy to commit murder.

In the new reverse onus situation, the accused must satisfy the court, on a balance of probabilities, that he or she will attend court as required. Having satisfied this first condition, the accused must show that his detention is neither necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances, including any substantial likelihood that he will, if released, commit a crime or interfere with the administration of justice.

Secondary Grounds for Detention

Detention of an accused is justified on secondary grounds to ensure the interest, protection, and safety of the public; only after it is determined that detention on the primary ground is not justified can the Crown proceed to seek a detention order on secondary grounds.

Show Cause Hearing

After an accused is arrested and detained, he is brought before a Justice who must determine whether further detention is justified. The primary duty of the Justice is to release the accused on his undertaking, but the prosecutor must be given a reasonable opportunity to demonstrate to the court, i.e., show cause why further detention is justified. Unless the accused consents, the Justice may, at the request of the prosecutor or the accused, adjourn a hearing for a period not exceeding three clear days. In those cases where the onus to show cause shifts to the accused, the accused must also be given a reasonable opportunity to show cause why his detention in custody is not justified.

In many communities the judicial release/detention decision is made at the time of the first appearance in provincial court. In other words, the accused who was arrested the previous day is brought into provincial court in custody to make his first appearance. When his case is called, the prosecutor indicates that he intends to show cause for detention then and there; and there is no need for a three-day remand and separate show cause hearing.

Bail verification/supervision programs attempt to reduce the frequent use of three-day and longer remands in areas where jail overcrowding is problematic.

Summons

A summons is an order of a Justice of the Peace or a provincial court judge addressed to an accused person, directing him to appear at a certain time and date to answer a charge. A summons may not be issued until an information has been sworn out against the accused. Service of a summons must be made personnally on an accused by a police officer. Exceptionally, if the accused person cannot conveniently be found, service may be effected by leaving it for him at his usual place of abode with someone who appears to be more than sixteen years of age.

The issuance of a summons occurs in lieu of the execution of a warrant for arrest.

Surety

In criminal law a surety is a person who acknowledges a responsibility to the Crown in the form of a certain amount of money or property, but without deposit of money or other valuable security, to ensure that an accused is released from custody and complies with pretrial conditions ordered by the court.

Undertaking

The least restrictive form of pretrial release, whereby the accused assumes individual responsibility for his/her subsequent appearance at court.

Verification

Confirmation of factual information about an accused (usually by telephone) prior to his/her first court appearance or show cause (bail) hearing.

Offenses

Each state, the District of Columbia,* and the federal government has criminal laws, the violation of which are prosecuted in its own court system. FEDERAL OFFENSES (e.g., bank robbery, anti-trust, and postal violations) are tried in a federal District Court according to federal laws and rules of criminal procedure, including the UNITED STATES CONSTITUTION, the BAIL REFORM ACT, and the SPEEDY TRIAL ACT. The prosecution of most traditionally "illegal" activities (robbery, burglary, homicides, assaults, larceny, sex offenses, etc.) is left to the states.

Offenses may be FELONIES, generally punishable by more than one year imprisonment; MISDEMEANORS, generally punishable by up to one year in jail; and VIOLATIONS or INFRACTIONS, generally usually carrying fines. Felonies and misdemeanors may be broken down further, depending on the jurisdiction, into "classes," e.g., Class A Felony, Second Class Misdemeanor, etc. CAPITAL OFFENSES or CAPITAL CASES involve charges for which the maximum penalty is death.

Court System

Each state, the District of Columbia, and the federal government has its own court system (see Appendix 1).

JUDGES may be appointed or elected. Federal judges are all appointed.

PROSECUTORS - In most state level criminal cases, the prosecutor is a city or county official (appointed or elected) known as the DISTRICT ATTORNEY. FEDERAL PROSECUTORS are U. S. ATTORNEYS (in some cases, the state may be represented by the state ATTORNEY GENERAL). The prosecutor (analogous to "The Crown") may also be referred to as THE GOVERNMENT, THE STATE, THE COMMONWEALTH, or THE UNITED STATES, depending on the jurisdiction.

DEFENSE - All defendants in criminal actions who face incarceration are entitled to representation by counsel. INDIGENT defendants, who cannot afford RETAINED (private) COUNSEL are entitled to have counsel appointed to represent them. Depending on

* The District of Columbia is a unique entity which has features, laws, and institutions similar to a city, a state, a county, or the federal government, depending upon the circumstances.

the jurisdiction, the court may assign private lawyers on a case-by-case basis (ASSIGNED COUNSEL); or the defendant may be represented by the office of the PUBLIC DEFENDER, which is funded by the federal, state, or local government. [In some jurisdictions indigents are represented by LEGAL AID--Legal Aid should not be confused with LEGAL SERVICES offices, which provide free legal services to indigent persons on civil matters only and which may represent indigent inmates in civil suits against jail or prison officials contesting the conditions of confinement.]

Institutions

Most counties, all states, the District of Columbia, and the federal government maintain institutions for the confinement of persons. PRETRIAL DETAINEES facing state charges are nearly always held in local JAILS (also called detention centers, holding centers, and correctional centers). In most jurisdictions jails also house convicted misdemeanants serving sentences of less than one year. Defendants convicted of felonies and sentenced to more than on year are generally sent to state PRISONS (usually administered by the state's Department of Corrections and referred to as state penitentiaries, correctional facilities, etc.). In the federal system pretrial detainees are housed in local jails or METROPOLITAN CORRECTIONAL CENTERS (MCC). Federal prisoners serving sentences of more than one year are incarcerated in federal prisons and penitentiaries.

Constitution and Federal Statutes

The United States and each state have written constitutions. The U. S. Constitution has 25 amendments. The first 10, known as the Bill of Rights, are part of the original document ratified in 1789. Provisions relevant to criminal justice include:

> THE FIRST AMENDMENT, which prohibits the federal government (Congress) from making any law restricting the fundamental rights of freedom of speech, press, religion, and assembly.
>
> THE FOURTH AMENDMENT, which guarantees citizens the rights to be free from unreasonable search and seizure of their persons and property.
>
> THE FIFTH AMENDMENT, which prohibits the federal government from, among other things, depriving any person of his or her life, liberty, or property without

due process of law. The process or procedure which is "due" to a person varies according to the situation and the legal standard which applies to that situation.

THE SIXTH AMENDMENT, which provides every defendant with the right to a fair and speedy trial and the assistance of counsel.

THE EIGHTH AMENDMENT, which provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

THE THIRTEENTH AMENDMENT, added in 1865, which abolished slavery and prohibited involuntary servitude, except for persons convicted of a crime.

THE FOURTEENTH AMENDMENT, which prohibits a state from denying any person life, libery, or property without due process of law. This has been interpreted to mean that the fundamental rights guaranteed in the Bill of Rights and the due process entitlement of the Fifth Amendment are binding upon the states, i.e., a state cannot pass a law taking away from a citizen a fundamental right conferred by the federal constitution. A major question not definitively decided by the U. S. Supreme Court is whether the Eighth Amendment bail clause confers a "fundamental right" which the Fourteenth Amendment protects from state infringement.

The Fourteenth Amendment, which also forbids the states from denying to any person the equal protection of the laws.

Most STATE CONSTITUTIONS have provisions similar or identical to the above guarantees. Most state constitutions also have a provision which guarantees that all persons shall be bailable by sufficient sureties, unless for capital offenses "when the proof is evident or the presumption great."

Congress has also passed other legislation which us relevant to pretrial services:

THE CIVIL RIGHTS ACT OF 1871, Section 1983 (Volume 42 of the United States Code) provides a federal civil remedy to persons who are discriminated against or deprived of their constitutional rights by any person acting under color of state law. This statute has been invoked by prisoners and pretrial detainees seeking federal intervention in the conditions of their confinement.

THE BAIL REFORM ACT OF 1966 (18 U.S.C.A., Sections 3146, et seq.) was passed by Congress to reform the federal bail system by attempting to eliminate some of the inequities which resulted from a money-based system in which the affluent were released, and the poor remained in jail awaiting trial. It codified the tradition that conditions of release were to be related solely to concerns of "flight", i.e., to ensuring "appearance." "Danger" or community safety were not to be considered. Since 1966 the basic provisions of the Act have been replicated in three-fourths of the states (see Appendix 2).

SPEEDY TRIAL ACT OF 1974 - TITLE II (PRETRIAL SERVICES) was passed to provide for the establishment of pretrial services agencies in ten federal judicial districts on an experimental basis. The agencies were charged with screening and supervising federal criminal defendants. Reauthorization for continued and/or expanded federal pretrial services is currently before Congress.

TITLE I OF THE SPEEDY TRIAL ACT was designed to reduce the overall length of time from arrest to final disposition, including specific restrictions on the length of time within which a defendant must be tried.

Pretrial Services Agency

Agencies have developed over the last twenty years at the federal and state levels and may be authorized by statute or agreement. Program staff interview and screen defendants to assess their qualifications for pretrial release and also perform other functions (e.g., offer alternatives to prosecution--diversion, etc.) These programs may be independently or part of other governmental or criminal justice agencies (for example, probation, the prosecutor's office).

Pretrial Release

The federal and state governments have laws and court rules regulating who may be released pretrial and under what conditions and circumstances. Conditions of release may be financial (bail) or nonfinancial but were traditionally tied to ensuring appearance in court, not to a consideration of danger.

The pronouncement by the police, bail commissioner, or judicial officer of the conditions precedent to pretrial release is generally referred to as SETTING BAIL (like the Canadian judicial interim release order). The colloquial term "setting bail" is used to refer to the pretrial release decision-making process, even when no financial conditions are set. Bail (or other conditions) may be set at or prior to the FIRST APPEARANCE in court. When the decision occurs in court, the process is normally referred to as the BAIL HEARING. If financial conditions are set and the defendant cannot MAKE BAIL (satisfy the conditions imposed), he or she may have BAIL REDUCTION HEARING or make a written motion to lower the bail which has been set.

Types of pretrial release and terms used in the procedure of determining release include:

SUMMONS - An alternative to an arrest warrant, a summons constitutes a request that the defendant appear in court to face charges. Summonses may be delivered in person or mailed. While they usually do not have any specific conditions of release attached, failure to respond to a summons does constitute failure to appear.

FIELD CITATION - Field citations are issued by law enforcement officers in lieu of the actual arrest and booking of a defendant, thus substantially reducing the costs associated with arrest. In some jurisdictions pretrial release agencies cooperate with law enforcement officers by aiding in a telephone check of background information about the defendant. A number of jurisdictions now use field citations widely for misdemeanor charges, and some are using field citations for low-level felony charges.

STATIONHOUSE RELEASE OR STATIONHOUSE CITATION (in New York, DESK APPEARANCE TICKET OR DAT) - Stationhouse release generally refers to release on personal recognizance authorized by personnel at the booking facility before or after an arrestee is booked. Release is contigent upon the written promise of the defendant to appear in court as specified.

RELEASE ON RECOGNIZANCE - Release on recognizance or release on personal recognizance (ROR, PR, OR) refer to release of a defendant on his promise to appear. Stationhouse release, field citations, and summons-to-appear are all forms of release on recognizance. As the term is used here, ROR implies no additional conditions of release other than that the defendant appear in court as required. It appears similar to the Canadian "undertaking."

UNSECURED BAIL - Release on an unsecured bond is similar in practice to release on recognizance, with the exception that a bail amount is set by the court for which the defendant may be held liable should he or she fail to appear. While unsecured bonds do not impose any roadblocks to release (such as posting money), they do set a bail amount. Unsecured bonds may be administered through release by a judicial officer or as a form of stationhouse release. It appears similar to the Canadian "release on recognizance."

CONDITIONAL RELEASE - Conditional release refers to a form of nonfinancial release in which the defendant is required to meet specified conditions during the pretrial period. These conditions may include checking in with a pretrial release agency, maintaining a specified place of residence, avoiding complaining witnesses, etc.

SUPERVISED RELEASE - As opposed to conditional release, supervised release implies more frequent and intense contact between the pretrial release agency or supervising agency and the defendant. For example, the defendant may be required to participate in counseling, to attend a drug abuse treatment program, or to work with vocational counselors to secure employment.

THIRD-PARTY RELEASE - In third-party release, another person or organization assumes the responsibility of assuring that the defendant will appear in court. Third party releases may involve release to the custody of a parent, relative, or other individual, or to an organization, such as a halfway house or treatment program.

DEPOSIT BAIL - Deposit bail, also known as 10 percent bail, differs from surety bond in that the defendant (or friends or family) post a specified portion of the face value of the bond (often 10 percent) with the court. At the disposition of the case, the amount posted is returned to the defendant (usually minus a 1 - 3 percent administrative fee). In some jurisdictions it is the defendant's option to satisfy money bail in this way; in other jurisdictions the court decides whether bail may be satisfied by "10 percent" or whether a surety bail is required.

CASH BAIL - Cash bail requires that the defendant post the full amount of the face value of the bail bond to secure release. The money posted is returned to the defendant following disposition of the case, if the defendant appears as required.

SURETY BAIL - Still the most commonly used form of pretrial release still, surety bail is necessary when the defendant is unable to post the full amount of the bail and does not have the deposit bail option. Under this arrangement, a "third party" with no relation to the defendant agrees to pay a specified sum of money to the state if the accused fails to appear as required. This security is usually provided in the form of a BAIL BOND.

BAIL BONDSMAN - In most cases the bail bond is posted by a professional surety known as a BAIL BONDSMAN, who charges a fee for the service of posting bail on behalf of a defendant. The bail bond business is a component of the insurance industry--the bondsman's fee is essentially an insurance PREMIUM. In the event of loss--bail forfeiture due to the defendant's failure to appear as required--the bondsman is theoretically responsible to the court for the full face value of the bond. The risk is supposed to be the bondsman's. However, the

premium/fee paid by the defendant is not returned, regardless of whether he or she makes all court appearances and regardless of the verdict. The premium is usually upwards of 10 percent of the bail amount, and additional collateral of real or personal property may be required, thus minimizing actual risk to the bondsman. It is within the discretion of the bondsman whether to post bail for an individual. As a result a judge may not know after the defendant is ADMITTED TO BAIL (bail set) whether there has been a TAKING OF BAIL (wherein the court clerk or other official accepts the bail offered, i.e., whether the surety qualifies), or whether the defendant has been RELEASED ON BAIL.

PRIVATELY SECURED BAIL - Privately secured bail works in much the same way as bail bondsman, except that the person or organization posting the funds does not charge the defendant for the service.

PROPERTY BAIL - In some jurisdictions the defendant may post property or other assets in the place of cash. In many instances bail bondsmen will require that the defendant post collateral for the loan in the way of property or other kinds of assets.

DETENTION prior to trial is permitted for one or more of three reasons, depending on the jurisdiction:

- The defendant poses a serious risk of flight from prosecution.
- The release of the defendant would be likely to result in the disruption of the judicial process; such as destruction of evidence, threats or harm to witnesses or jurors, etc.
- The release of the defendant would be likely to result in serious harm to another person or in the commission of a criminal offense. Detention on the third basis is usually referred to as PREVENTIVE DETENTION and must be explicitly authorized by statute or constitutional amendment.

The following terms relate to aspects and functions of a pretrial release agency:

COMMUNITY TIES - Recommendations made to the court by a pretrial release program are usually based on some evaluation of the defendant's probability of appearance. This evaluation usually includes an analysis of the ties the defendant has to the community. Specifically, community ties may include the length of time the defendant has resided in the community, whether other family members or relatives live in the area, whether the defendant is employed in the area, whether he or she has a home telephone, etc.

POINT SCALE - The first ROR program, the Manhattan Bail Project, based its recommendations on an objective system of assigning a certain number of points for different defendant background characteristics. For instance, if a defendant lived in the jurisdition for a long time, he might receive 2 "residence" points as opposed to the defendant who lived in another jurisdiction, who would receive no "residence" points. The total number of points earned by the defendant on all scales (community ties, criminal history, etc.) would be tallied, and those defendants with more than a certain number of points would receive a recommendation for release on recognizance. Theoretically, the point scale is based on those factors which are good indicators of appearance.

RECOMMENDATION SCHEME - Some programs base their recommendations on point scales, but others rely on the intuition of their interviewers. Some use a combination of "objective" points and "subjective" criteria. The particular modifications which form the basis of an agency's method are known as its recommendation scheme.

NOTIFICATION - The process of communicating to a defendant where and when he or she is to appear in court next is called notification. Notification may be accomplished in a number of ways--either by the pretrial release agency, by the court, or by a combination of efforts; by letter, by telephone, by notice given the defendant at the end of a court appearance, etc.

★

SUPERVISION - As opposed to notification, supervision of defendants usually involves more frequent contact between the program and the defendant, and contact directed toward some type of behavioral goal, such as refraining from using drugs, finding a job, etc.

VERIFICATION - Before finishing an assessment of a defendant's apparent probability of appearance in court, pretrial release programs usually attempt to check the accuracy of at least some of the information gathered in the interview. Verification is generally accomplished through checking the records of other information sources (such as verifying criminal history information by checking police records) and through cross-checking with personal references (for example, verifying that the defendant lives at a certain address by telephoning other residents at that address).

Diversion

DIVERSION programs are generally designed as DISPOSITIONAL ALTERNATIVES. Theoretically, they offer an alternative to full prosecution by suspending or deferring prosecution whle the accused satisfies certain conditions. In many jurisdictions, if the conditions are met, the case is DISMISSED; and the charge removed from the defendant's record (EXPUNGED). If the conditions are not satisfied, the case may be returned for continued prosecution.

Pretrial diversion is referred to in some jurisdictions as PRETRIAL INTERVENTION (PTI), PROBATION BEFORE JUDGMENT, PRE-PROSECUTION DIVERSION, etc. and may be specifically authorized by statute or exist simply under the doctrine of prosecutorial discretion (i.e., DEFERRED PROSECUTION). The procedure may also be referred to as SUSPENDED PROSECUTION or ADJOURNNMENT IN CONTEMPLATION OF DISMISSAL (ACD). These statutes authorize the defendant to waive his right to a speedy trial so that the prosecution is delayed. During the delay period, the defendant fulfills some requirement or enters a program and is "diverted" out of the system for some period of time. Programs may be independent or in the prosecutor's office.

Diversion practices vary widely from one jurisdiction to the next. In New York, for example, an ACD defers prosecution for six months.

Usually, if the defendant is not rearrested during that period, the charge is dismissed. In other jurisdictions conditions may include not being rearrested and any or all of the following: enrollment in a program, payment of a fee for admission, informal admission of guilt, payment of restitution, community servvice, urine testing, etc. Depending on the jurisdiction, successful program completion may or may not result in dismissal or expungement of the case. Most diversion programs are only available to defendants who have no prior convictions (FIRST OFFENDERS) and/or are charged with minor, nonviolent offenses.

DISPUTE RESOLUTION or MEDIATION is a dispositional option in which charges arising from interpersonal disputes are mediated by a third party (or program) in an attempt to reach an agreement and avoid full prosecution.

LIST OF ABBREVIATIONS
LIKELY TO BE USED DURING THE SYMPOSIUM

ABA	American Bar Association
AG	Attorney General
DA	District Attorney
DOC	Department of Corrections
DOJ	Department of Justice
DOL	Department of Labor
DWI	Driving While Intoxicated; also DUI (Driving Under the Influence) and PI (Public Intoxication or Inebriation)
FTA	Failure to appear
LEAA	Law Enforcement Assistance Administration
NACo	National Association of Counties
NAPSA	National Association of Pretrial Services Agencies
NCSC	National Center for State Courts
NDAA	National District Attorneys Association
NIC	National Institute of Corrections, a component of the Federal Bureau of Prisons
NIJ	National Institute of Justice
OJARS	Office of Justice Administration, Research, and Systems
OJJDP	Office of Juvenile Justice and Delinquency Programs
PD	Public Defender
PO	Probation or Parole Officer
PSA	Pretrial Servides Agency
PSI	Pre-sentence investigation
PTI	Pretrial intervention, or diversion
TASC	Treatment Alternatives to Street Crime Project (intervention programs generally serving substance abusers)

APPENDIX 1

THE UNITED STATES COURT SYSTEM*
(FEDERAL AND STATE)

State | **Federal**

SUPREME COURT OF THE UNITED STATES

STATE SUPREME COURT

Court of final resort. Some states call it the Court of Appeals or the Supreme Court of Appeals.

UNITED STATES COURTS OF APPEALS

Eleven Circuits, referred to as the First Circuit through the Tenth Circuit, and the District of Columbia Circuit.

INTERMEDIATE APPELLATE COURTS

Nearly half of the states have such courts.

SUPERIOR COURT

Highest trial court with general jurisdiction. Some states call it Circuit Court, District Court, Court of Common Pleas, and, in New York, Supreme Court.

UNITED STATES DISTRICT COURTS

There are 91 districts in 50 states, the District of Columbia, and Puerto Rico.

COUNTY COURT

Also called District or Common Pleas;in New York, Criminal Court. Limited criminal jurisdiction; may be separate courts or part of trial court of general jurisdiction.

DOMESTIC RELATIONS COURT

Also called Family or Juvenile Courts.

JUSTICE OF THE PEACE and POLICE MAGISTRATE: TOWN and VILLAGE JUSTICES

Limited jurisdiction.

* Refers only to courts with jurisdiction in criminal cases.

BAIL REFORM ACT (1966)
18 U.S.C. §3146-3151

§3146. Release in Noncapital Cases Prior to Trial

(a) Any person charged with an offense, other than an offense punishable by death, shall at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) place the person in the custody of a designated person or organization agreeing to supervise him;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 percentum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, and length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

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Did you find the reports largely accurate? _____

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SYMPOSIUM STAFF

Symposium Coordinator and in charge of American program:
Ann Jacobs with the assistance of Roseanna Kaplan

Canadian Coordinator and in charge of Canadian program:
Paul Sonnichsen with the assistance of Helen Vail and Susan Lee

Logistics Coordinator and Liaison with hotel: Roseanna Kaplan

The Exchange: Stephanie Milgram with the assistance of Nancy Waggner

Tours: Connie Mahaffy with the assistance of Stephanie Milgram

Registration: Celia Dunayer

Accounts: Celia Dunayer and Bill Jamieson

CANADIAN PLANNING COMMITTEE

Ministry of the Solicitor General Canada	*Paul Sonnichsen, Committee Chair* *Susan Lee* *Stephanie Milgram, Intern* *Mary Ruth, Intern* *Helen Vail* *Michel Vallee*
Ontario Ministry of Correctional Services	*Connie Mahaffy*
Ontario Ministry of Community and Social Services	*Derek Jeffreys*
Department of Justice Canada	*Don Piragoff* *David Solberg*

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Technical Assistance	*Elizabeth Gaynes* *D. Alan Henry* *Nancy Waggner*
Training	*Ann Jacobs* *Roseanna Kaplan*
Research	*Donald Pryor*
Administration	*Celia Dunayer* *Michael Bassett*

LIST OF ATTENDEES

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Additional copies of the Proceedings can be requested of the:

Pretrial Services Resource Center
918 F Street N.W., Suite 500
Washington, D.C. 20004

Consultation Centre
Ministry of the Solicitor General
2 St. Clair Ave. West, Suite 12A8
Toronto, Ontario, M4V 1L5

ALPHABETICAL LISTING

MARG ALLEN, Researcher
Liberal Caucus
P. O. Box 1019
House of Commons
Ottawa, Ontario K1A 082
(613)995-0886

MARIE ANDERSON, Information and Volunteer Coordinator
Toronto/York Bail Programme
Rm. 303, 60 Queen St., West
Toronto, Ontario M5H 2M4
(416)965-3336

DENIS ANDRE, Probation/ Parole Officer
Ministry of Corrections
100 Wellington Square
Brantford, Ontario N3T 2M3
(519)752-6505

SUSAN F. ANDREWS, Executive Director
Court Consultation Services
50 Mineola Blvd.
Mineola, NY 11501
(516)741-3110

ANTONIO G. APODACA, Counselor
Pima County Attorney's Adult Diversion Program
45 West Pennington
Tucson, AZ 85710
(602)791-3580

HON. RAYMOND ARATA
Municipal Court of San Francisco
San Francisco, CA

JEFFREY M. ARNOLD
Administrative Director
Circuit Court of Cook County
2600 Richard J. Daley Center
Chicago, IL 60602
(312)443-6116

AUGUSTINE E. ASHAWASEGA
Native Courtworker
Parry Sound Friendship Centre
40-42 Gibson Street
Parry Sound, Ontario P2A 1W9
(705)746-2691

CARL ASPLER, Manager
Management Training
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3475

DENA L. ATKINS, Manager
Memphis Probation and Diversion Department
Central Police Building, Room 118
128 Adams
Memphis, TN 38103
(901)528-2846

JAMES F. AUSTIN, Research Associate
National Council on Crime and Delinquency
Research Center, West
760 Market Street, Suite 433
San Francisco, CA 94102
(415)956-5651

TONY L. AXAM, Esq.
Franklin, Axam & Ashburne
1290 South Omni International
Atlanta, GA 30303
(404)688-2233

KENNETH C. L. BABB, Executive Director
The San Francisco Institute for Criminal Justice
San Francisco Bail Project
Room 304, Hall of Justice
850 Bryant Street
San Francisco, CA 94103
(415)552-2202

CHARLES C. BAILEY
Assistant General Counsel
Governor's Office
P. O. Box 12428, Capital Station
208 Sam Houston Building
Austin, TX 78711
(512)475-4444

HON. PETER BAKAKOS
Circuit Court of Cook County, Illinois
Richard J. Daley Center, No. 2631
Chicago, IL 60602
(312)443-7993

EUGENE S. BALDWIN, Director
Genesee County Criminal
Justice Coordinating Council
Galliver Building, 932 Beach Street
Flint, MI 48502
(313)257-3486

VICKI BALES
Operational Support Branch
Ministry of Community and
Social Services
9th Fl., 700 Bay St.
Toronto, Ontario M5G 1Z6
(416)965-2432

ANTHONY T. BARCLAY, Probation
and Aftercare Officer
Ministry of Community
and Social Services
194 Gerrard Street, East
Toronto, Ontario M5A 2EG
(416)923-4516

RICHARD BARNHORST, Director
Children's Policy Dev't. - COMSOC
Room 355, Hepburn Block,
Queen's Park
Toronto, Ontario M7A 1E9
(416)965-6231

KARL M. BARON
O + D Homeworker II
COMSOC - O + D Home
354 George Street
Toronto, Ontario M5A 2N3
(416)923-6780

RICHARD BARRY, Director
Home Care Crisis Services
Thistletown Regional Centre
51 Panorama Ct.
Rexdale, Ontario M9V 4L8
(416)741-1210

STEPHANIE BARTH, Director
of Technical Assistance
National Council on Crime
and Delinquency
411 Hackensack Avenue
Hackensack, NJ 07601
(201)488-0400

JOHN W. BATES, Senior Planning Analyst
Connecticut Justice Commission
75 Elm Street
Hartford, CT 06115
(203)566-3500

ILENE R. BAYLINSON, Research Associate
Koba Asssociate, Inc.
2000 Florida Avenue, NW, Suite 100
Washington, DC 20009
(202)328-5728

HARRY A. BEATTY, Legal Counsel
Ontario Association for the
Mentally Retarded
1376 Bayview Avenue
Toronto, Ontario M4G 3A3
(416)483-4348

BRUCE D. BEAUDIN, Director
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2911

MARC BELANGER, Conseiller
Comite de la Protection de la Jeunesse
505 Ouest, rue Dorchester
Montreal, Quebec H2Z 1A8
(514)873-5428

JOHN R. BELLASSAI, Director
Criminal Justice Division
Koba Associates, Inc.
2000 Florida Avenue, NW
Washington, DC 20009
(202)628-5728

JANICE C. BERGIN, Pretrial Services
Interviewer/Investigator
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2940

NUMA V. BERTEL, JR., Director
Orleans Indigent Defender Program
Criminal Courts Building
2700 Tulane Avenue, Room 112
New Orleans, LA 70119
(504)821-8101

FRANK BIASUCCI, Supervising Probation and Aftercare Officer
Ministry of Community and Social Services
38 Pine Street, North
101 Mall
Timmins, Ontario P4N 6K6
(705)267-7965

JOAN O. BLOOMFIELD
Bail Supervisor-Alcoholism Counselor
Toronto/York Bail Programme
Rm. 303, 60 Queen St., West
Toronto, Ontario M5H 2M4
(416)965-3336

ANNE BOLDUC
National Institute for Corrections
320 - 1st Street, NW
Washington, DC 20001
(202)724-3106

SUSAN J. BOOKMAN, Director
Berkeley OR Project
2400 Bancroft Way
Berkeley, CA 94704
(415)548-2438

MARIE WALKER BOSWELL
Exec. Dir., St. Lawrence Youth
Three Cassidy Street
Kingston, Ontario K7L 2P1
(613)542-5987

RONALD BOURNE, Training Researcher
Royal Canadian Mounted Police
1200 Alto Vista Drive
Ottawa, Ontario K1A OR2
(613)824-8219

MARTHE A. BRAMLEY
Assistant Director Courts
Pretrial Services
219 N. Broad
Philadelphia, PA 19107

SUSAN J. BRANNEN, Supervisor of Interviewers
Monroe County Bar Association
Pretrial Servies Corporation
65 West Broad Street, Room 610
Rochester, NY 14614
(716)454-7350

SALLY A. BRENNAN, Director
Court Referral Program
460 California Avenue
Palo Alto, CA 94306
(415)327-2640

MIKE L. BRIDENBACK, Director
Dispute Resolution Alternatives
Office of the State Courts Administrator
Supreme Court Building
Tallahassee, FL 32301
(904)488-8621

SUSAN E. BRIGGS, Pretrial Release Coordinator
Circuit Court Services
251 J Hall of Justice
353 Monroe
Grand Rapids, MI 49503
(616)774-3990

ARSENIO BRITO, Coordinator
Metropolitan Criminal Justice Coordinating Council
1429 Central, NW
Albuquerque, NM 87104
(505)766-4240

YVONNE BROUGH, Jail Interviewer
Toronto/York Bail Program
550 Gerrard Street, East
Toronto, Ontario M4M 1X6
(416)466-2164, ext. 325

DOUGLAS G. BROWN, Probation and Aftercare Officer
Ministry of Community and Social Services
48 Fifth Street, 2nd Floor
Chatham, Ontario N7L 4V8
(519)352-1115

JAMES BROWN, Director
Community Research Center
505 East Green, Suite 210
Champaign, IL 61820
(217)333-0443

CONRAD BRUNK, Director
Peace and Conflict Studies
Conrad Grebel College
University of Waterloo
Waterloo, Ontario N2L 3G6
(519)885-0220

FRANK BUMPS, Supervisor
Treatment Services
Shawbridge Youth Centres
7200 Hutchison
Montreal, Quebec H3N 1Z2
(514)274-9351

JAMES W. BUNTON, Probation
and Aftercare Officer
Ministry of Community
and Social Services
1719 Lawrence Avenue, East
Scarborough, Ontario M1R 2X7
(416)751-9042

CAROLE-ANNE BURRIS
Family Court Clinic
P.O. Box 5600, Terminal A
London, Ontario N6A 2P3
(519) 679-7250

CHRIS R. BURTCHALL, Classification
Counselor
Mimico Correctional Centre
Box 75, Station N
Toronto, Ontario M8V 3S9
(416)255-0131, Ext. 23

KENNETH C. BURTON, Area Manager
Probation/Parole Services
477 Queen Street, East, Basement
Sault Ste. Marie, Ontario P6A 5L2
(705)253-1182

WALTER H. BUSHER, Project Director
American Justice Institute
1007 Seventh Street
Sacramento, CA 95814
(916)444-3096

NANCY J. BYE-CARSON, Probation
and Aftercare Officer
Community Alternatives Coordinator
Ministry of Community
and Social Services
Waterloo Square, Suite 501
Waterloo, Ontario
(519)886-4911

PEGGY BYRNE, State Representative
Minnesota House of Representatives
State Office Building, Room 290
State Capitol
St. Paul, MN 55155
(612)296-4229

GAIL CAGNEY, Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

FRED CAMPBELL, Program Supervisor
Ministry of Community
and Social Services
1st fl., 110 Eglington Ave., West
Toronto, Ontario M4R 2C9
(416)965-0232

TRINELA CANE, Probation/
Aftercare Officer
Ministry of Community and Social
Services, Children's Services
650 King St. E.
Oshawa, Ontario L1H 1G5
(416)723-1119

CATHERINE CAREY, Research Off.
Ministry of Correctional Serv.
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3350

PAM F. CARLETON, Probation/
Aftercare Officer
Ministry of Community and
Social Services
713 Davis Drive, Suite 202
Newmarket, Ontario L3Y 2R3
(416)895-1800

ALFRED R. CARLONE, Resource Developer
Philadelphia Pretrial Services
219 N. Broad Street
Philadelphia, PA 19149
(215)331-5708

FRANCIS D. CARTER, Director
District of Columbia Public
Defender Service
451 Indiana Avenue, NW, No. 219
Washington, DC 20001
(202)628-1200

JAMES E. CARTER, Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

JOHN A. CARVER III, Deputy Director
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2911

IRENE M. CAUL Area Manager
Toronto/York Bail Programme
1000 Finch Avenue, W., Room 1025
Downsview, Ontario M3J 2U5
(416)667-0999

TERRENCE D. CAUL, Jail Coordinator
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

CAROLYN CHAMBERLAIN, Pretrial
Services Supervisor
John Howard Society
10 Queen Street, E.
Brampton, Ontario L6V 1A2
(416)459-2205

LILY CHIRO, Bail Project Counselor
Toronto/York Bail Project
670 Queen Street, West, Third Floor
Toronto, Ontario M6J 1E7
(416)368-0658

MURRAY W. CHITRA, Barrister
and Solicitor
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3319

ALEC P. CHRISTOFF, Supervisor
San Mateo County ROR Project
234 Marshall, No. 3
Redwood City, CA 94063
(415)363-4181

ELLEN G. CLARKE-SAYER, Member
North Carolina Commission on
Alternatives to Incarceration
c/o Prison and Jail Project
604 West Chapel Hill Street
Durham, NC 27701
(704)253-1136

CHRIS A. COBB, Program Coordinator
PreTrial Intervention Project
Department of Law
550 West Eighth Street, Suite 207
Anchorage, AK 99501
(907)278-3508

ALEXANDER COCALIS
Deputy County Attorney
Ft. Lauderdale, FL

M. JOANNE COCKLIN, Bail Supervisor
Toronto/York Bail Program
80 The East Mall, Room 147
Toronto, Ontario M8Z 5X6
(416)252-3735

ESTELL L. COLLINS, Supervising U. S.
Pretrial Services Officer
Southern District of New York
Pretrial Services
2 Lafayette Street, Sixth Floor
New York, NY 10007
(212)791-0203

PATRICK CONHEADY
Pouch KC
Juneau, Alaska 99811

LESLIE A. CONWAY, County Jail
Project Specialist
New York State Association of Counties
150 State Street
Albany, NY 12207
(518)465-1473

DR. JERRY COOPER, Director
Psychiatric Services
York/Finch Hospital
2111 Finch Ave., W.
Toronto, Ontario M3N 1N1
(416)744-2500

LOUIS P. COOPER, JR., Director
Dane County District Attorney
Room 305, 210 Monona Avenue
Madison, WI 53709
(608)266-4211

PAUL COPELAND, Partner
Copeland, Liss
31 Prince Arthur Avenue
Toronto, Ontario M5R 1B2
(416)964-8126

KEITH A. COUSE, Associate Professor
School of Human Justice
University of Regina
Regina, Saskatchewan S4P 1V1
(306)584-4033

DANIEL J. COVE, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M4T 1B3
(416)763-5491

MARY G. CRAIG, Supervisor
Probation and Aftercare
114 Worsley Street
Barrie, Ontario L4N 2T9
(705)737-3801

JEFFREY W. CROTTY, Director
Pretrial Services
Elkhart Probation Department
315 South Second Street
Elkhart, IN 46516
(219)294-1688

DAVID CROWE, Supervisor
Probation and Aftercare Services
900 Dufferin St.
Toronto, Ontario M6H 4B1
(416)965-5177

JULIE A. CROWELL, Pretrial Counselor
Arapahoe County Pretrial Services
5606 South Court Place, No. 22
Littleton, CO 80120
(303)798-9431

CHESTER CUNNINGHAM, Director
Native Counseling Services of Alberta
9912 - 106th St.
Edmonton, Alberta T5K 1C5
(403)423-2141

GAIL P. R. CYR, Executive Director
NWT Native Court Workers Association
P. O. Box 2706
Yellowknife, NWT XOE 1HO
(403)873-3678

RICHARD J. DACKOW
Classification Diagnostic Specialist
Sheriff's Department
1 Center Drive
Riverhead, New York 11901
(516)727-2176

DR. J. DACRE, Consulting Psychiatrist
Ministry of Correctional Serv.
Rm. 441, 999 Queen St. West
Toronto, Ontario M6J 1H4
(416)535-8501

BILL DADE, Asst. Crown Attorney
College Park Court - Room 221
444 Yonge Street
Toronto, Ontario M5B 2H4
(416)965-7500

ROBERT S. DANDO, Interviewer/Verifier
The Chester County Bail Agency
Chester County Courthouse Annex
17 North Church Street, Third Floor
West Chester, PA 19380
(215)431-6886

ART F. DANIELS, Executive Director
Community Programmes
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3495

DAVID S. DAVIS, Social Scientist
Department of Justice
Tenth Street and Constitution Avenue
Washington, DC 20530
(202)633-4423

LARRY DAVIS
Broward County Courthouse
201 Southeast Sixth Street
Ft. Lauderdale, FL 33301
(305)765-8367

SHEREE DAVIS, Research Analyst
Ministry of Correctional Services
Suite 500, 1240 Bay Street
Toronto, Ontario M5R 2A7
(416)965-6506

BARBARA DEMAYO, Borough Director
New York City Criminal Justice Agency
16 Court Street
Brooklyn, NY 11201
(212)330-1504

NICHOLAS L. DEMOS, Courts
Program Manager
Law Enforcement Assistance
Administration
633 Indiana Avenue, NW
Washington, DC 20531
(202)724-7685

WILLIAM DERRINGER
Director Diversion Services
Philadelphia Adult Probation Department
1317 Filbert Street
Philadelphia, PA 19107
(609)983-6217

MARIE-FRANCE DESROSIERS, Lawyer
Service de Readaptation Sociale, Inc.
1279 Boulevard Charest Ouest, Suite 900
Quebec, Quebec G1N 4K7
(418)687-1441

JAMES DINSDALE, Assistant
Bail Supervisor
Toronto/York Bail Program
444 Yonge Street, Room 290
Toronto, Ontario M5E 1G7
(416)965-9983

STAN DIVORSKI, Assistant Chief
Criminal Justice Policy Research
Ministry of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)593-6381

DONALD S. DIXON, Director
Champaign County Diversion Program
110 South Race, Room 201
Urbana, IL 61801
(217)384-3802

CARL R. DOMBEK, Director
of Legal Services
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3319

STAFF SGT. LES DOUGLAS
Metropolitan Toronto Police
590 Jarvis Street
Toronto, Ontario M4X 2J5
(416)967-2222

RUBY DRISCOLL, Administrator
Pleasantville School - Social Services
P. O. Box 5085, East End P. O.
St. John's, Newfoundland A1C 5V3
(709)753-8712

JAMES B. DROEGE, Attorney
Hearing Examiner, EEOC
5107 North Park
Indianapolis, IN 46205
(317)269-6635

LOUIS DROUILLARD, Executive Director
St. Leonard's Society of Canada
Suite 3, 1787 Walker Road
Windsor, Ontario N8W 3P2
(519)254-9430

JUDY M. DRYBROUGH, Manager
Staff and Volunteer Training
Ministry of Correctional Services
2001 Eglinton Avenue, East
Toronto, Ontario M1L 4P1
(416)750-3475

KATHRYN H. DUBOSE, Senior
Research Assistant
Office of the State Courts Administrator
Supreme Court Building
Tallahassee, FL 32303
(904)488-8621

JAMES DUNCAN, Superintendent
Minstry of Correctional Services
2244 Innes Road
Ottawa, Ontario K1B 4C4
(613)746-2312

A.W. DUNFIELD, Crown Attorney
Dept. of the Attorney General
9833 - 109th Street
Edmonton, Alberta T5K 2E8
(403)427-4992

ROMAN DURANCZYK, Director
San Mateo Co. ROR Project
234 Marshall Street, #3
Redwood City, CA 94063
(415)364-5600, Ext. 4181

DEE DURKOT, Probation and Aftercare
Ministry of Community
and Social Services
Box 3000, Ontario Gov't. Bldg.
Dryden, Ontario P8N 3B3
(807)223-3322

EDDIE DUTKA, Deputy Superintendent
Thunder Bay Jail
P.O. Box 2806
285 McDougall St.
Thunder Bay, Ontario P7B 5G3
(807)345-7364

WILLIAM EDMONDS
Police Executive Research Forum
1909 K Street, NW, Suite 400
Washington, DC 20006
(202)466-7820

YVONNE EDWARDS, Assistant Pretrial Release Commissioner
7064 Lillian
St. Louis, MO 63121
(314)382-8103

TERRY EGAN, Director
Community Pretrial Service
Fourth Floor, 40 Powell Street
Vancouver, B. C. V6A 1E7
(604)668-3106

LORETTA D. ELEY
Classification Counselor
Ministry of Correctional Services
55 Civic Road
Scarborough, Ontario M1L 2K9
(416)750-3513

DAVID ETHIER, Probation and Aftercare Officer
Ministry of Community and Social Services
121 Kennedy Avenue
Toronto, Ontario M6S 2X8
(416)762-7381

DON EVANS, Director
Community Programmes Development Branch
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3521

MARGARET F. FILLMORE, Jail Interviewer
Toronto/York Bail Programme
Toronto West Detention Centre
P.O. Box 4950
Rexdale, Ontario M9W 5L6
(416)675-1806

JOHN P. FINNERTY, Sheriff
Sheriff's Department
1 Center Drive
Riverhead, New York 11901
(516)727-2176

JEAN C. FISHER, Chief Counselor
Community Release
Broward Sheriff's Office
210 South New River Drive, East
Ft. Lauderdale, FL 33310
(305)765-5805

DR. ROY FLEMMING
Department of Political Science
Wayne State University
Detroit, MI 48202
(313)577-2637

TERESA J. FLYNN, Community Release Supervisor
Calgary Remand Centre
335 Sixth Avenue, SE
Calgary, Alberta T2N 0V8
(403)261-3281

NORMAN E. FOGLE, First Judicial Circuit Solicitor
Solicitor's Office
P. O. Box 1525
Orangeburg, SC 29115
(803)533-1000

DR. ROBIN FORD, Eastern Regional Director
National Criminal Justice Collaborative, Inc.
P. O. Box 1046
Sea Island, GA 31561
(912)638-1289

ERNEST C. FRIESEN, Dean
California Western School of Law
350 Cedar Street
San Diego, CA 92101
(714)239-0391

GERALD GALLANT, Special Projects
Department of Justice
1200 Route de l'Eglise
Ste-Foy, Quebec G1V 4M1

NICK GANTES, Tracking Supervisor
TASC, Inc.
1439 S`. Michigan Avenue
Chicago, IL 60605
(312)663-0440

LINTON S. GARNER, Diversion Coordinator
West Island Juvenile Diversion Program
West Island YMCA
Pointe Claire, Quebec H9E 2A8
(514)694-8724

DEWAYNE L. GEDNEY, Director
Pretrial Services
219 N. Broad St., 6th Floor
Philadelphia, PA 19102
(215)686-7410

NORBERT J. GERNES, Executive Director
Operation De Novo
321 South Third Street
Minneapolis, MN 55415
(612)336-1731

MARIAN GEWIRTZ, Research Director
New York City Criminal Justice Agency
305 Broadway
New York, NY 10007
(212)577-0516

PAUL GIBSON, Investigator
Ontario Ombudsman's Office
125 Queen's Park Cres.
Toronto, Ontario M5S 2C7
(416)596-3408

RONALD GIROUARD, Director
Tempe Adult Diversion Program
P. O. Box 5002
Tempe, AZ 85281
(602)968-8210

HON. JOSEPH R. GLANCEY, President Judge
Philadelphia Municipal Court
360 City Hall
Philadelphia, PA 19107
(215)686-7901

ELO GLINFORT, Director
Consultation Centre
Ministry of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)992-7601

DIANA GORDON, Executive Vice President
National Council on Crime
and Delinquency
411 Hackensack Avenue
Hackensack, NJ 07601
(201)488-0400

J. D. GORRELL, Barrister
100 Richmond St., W.
Toronto, Ontario M5C 2P9
(416)361-1261

JOHN GREACEN, Deputy Director
for Programs
National Center For State Courts
300 Newport Avenue
Williamsburg, VA 23185
(804)253-2000

MICHAEL L. GREEN, Director
Diversion Services
332 North 13th Street
Philadelphia, PA 19107
(215)MU6-2544

NANCY L. GREENAWAY, Victim-Offender
Reconciliation Program Coordinator
John Howard Society
19 Albert Street
Hamilion, Ontario L8M 2Y1
(416)545-4040

ROBERT J. GUTTENTAG, Division Manager
The Gillette Company
Gillette Park
Boston, MA 02106
(617)463-2173

SHERRY HALLER, Executive Director
Criminal Justice Education Center
410 Asylum Street, Room 211
Hartford, CT 06103
(203)525-4020

HON. GERARD J. HANSEN, Magistrate Judge
Criminal District Court
2700 Tulane Avenue
New Orleans, LA 70125
(504)586-4056

KATHRYN HARLEY
c/o 5-455 Albert Street
Waterloo, Ontario N2L 5A7
(519)884-3594

JEFFREY HARRIS, Executive Director
Attorney General's Task Force on Violent Crime
U.S. Department of Justice
Washington, D.C.

SHARON L. HARVEY, Counselor
Champaign County Adult Diversion Program
110 South Race Street, Room 201
Urbana, IL 61801
(217)351-7031

JOHN T. HAYES, Director
POIC Pretrial Diversion
Seventh Judicial Circuit
P. O. Box 5025
Spartanburg, South Carolina 29304
(803)585-2239

DOUGLAS HEATLEY
535 Yatts Street
2nd Floor
Victoria, B.C.

KATHLEEN HEIDE, Research Analyst
Criminal Justice Research Center
12203 Alton Road
Albany, NY

JOHN HENDRICKS, Director of Pretrial Services
Kentucky Administrative Office of the Courts
403 Wapping Street
Frankfort, Kentucky 40601
(502)564-7486

WARREN HENDRICKS
Probation/Parole Officer
180 Front Street
Belleville, Ontario K8N 5B6
(613)968-5737

MITCHELL HERRON, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M6N 3C6
(416)763-5419

MICHAEL S. HETHERINGTON, Diversion Coordinator
New Brunswick Dept. of Justice Canada
Rm. 110 Justice Bldg., Queen St.
Fredericton, NB E3B 5M7
(506)453-3928

JOHN HILDENBRANDT, Superintendent
Niagara Reg. Detention Centre
P. O. Box 1050
Thorold, Ontario L2V 4A6
(416)227-6321

CLAY HILES, Executive Director
New York City Criminal Justice Agency
305 Broadway
New York, NY 10007
(212)577-0505

DR. ALEX HIMELFARB, Professor
U. of New Brunswick
P.O. Box 4400
Fredericton, N. B. E3B 5A3
(506)453-4849

GERALD HOFFMAN, President
Justice Design Associates
3472 Broken Arrow, NW
Salem, OR 97304
(503)838-1632

DARLA J. HOFMEIR, Alternative Services Counselor
Arapahoe County Pretrial Services
5606 South Court Place, No. 22
Littleton, CO 80120
(303)798-9095

LES HORNE, Coordinator
Child Advocacy Unit
Ministry of Community and Social Services
2nd fl., 700 Bay St.
Toronto, Ontario M7A 1E9
(416)965-7006

WENDY M. HUEBNER, Director
Greater Cincinnati Bail Project
222 East Central Parkway
Cincinnati, OH 45202
(513)381-5020

JAMES P. HUGHES, Jail Planning Coordinator
Genessee County Board of Commissioners
1101 South Beach Street
Flint, MI 48502
(313)257-3020

GERRI HUNKING, Court Coordinator
The Elizabeth Fry Society
215 Wellesley Street, East
Toronto, Ontario M4X 1G1
(416)924-3708

HARRY C. HUTCHISON, Executive Director
for Special Programs
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3313

HON. L. J. HYMEL
Baton Rouge City Court
100 Laurel Street, Room 218
Baton Rouge, LA 70802
(504)389-3025

RUSS IMMARIGEON
New Jersey State Coordinator
Partnership for Alternatives
National Council on Crime
and Delinquency
411 Hackensack Avenue
Hackensack, NJ 07601
(201)488-0400

JUDITH A. JACKSON, Program Director
Citizens Dispute Program
Minneapolis City Attorney's Office
A-1700 Hennepin County Government Center
Minneapolis, MN 55487
(612)348-7496

MARGARET A. JACKSON, Senior
Research Associate
Centre of Criminology
Eighth Floor, Roberts Library
University of Toronto
Toronto, Ontario M5S 1A1
(416)978-4868

THERESA A. JACKSON, Director
AID Program
101 West Jefferson, Fifth Floor
Phoenix, AZ 85003
(602)262-8575

BILL JAMIESON
1208 Don Mills Road, Unit 9
Toronto, Ontario, M3B 2W2
(416)486-0360

DEREK W. JEFFREYS, Area Supervising
Probation and Aftercare Officer
Ministry of Community
and Social Services
240 Birchwood Street
Sault Ste. Marie, Ontario P6A 6G4
(705)949-0551

GORD JENES, Bail Supervisor
Toronto/York Bail Programme
60 Queen Street, West, Rm. 303
Toronto, Ontario M5H 2M4
(416)965-3336

DON JENSEN, Staff Consultant
John Howard Association
67 East Madison Street, Suite 1216
Chicago, IL 60603
(312)263-190

F. A. S. JENSEN, Deputy Director
Metropolitan Toronto Forensic Service
999 Queen St., W.
Toronto, Ontario M6J 1H4
(416)535-8501

BEVERLEY A. JOHNSTON
Deputy Superintendent
Ministry of Correctional Services
1430 River Street
Kenora, Ontario P9N 1K5
(807)468-3168

JOHNNY T. JORDAN
Director of Evening Operations
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2921

JOSEPH W. JOYCE, JR., Managing
Investigator
Philadelphia Common Pleas Court
219 N. Broad Street
Philadelphia, PA 19144
(215)586-7410

GRACE JUTZI, Administrative Assistant
Community Mediation Service
27 Roy Street
Kitchener, Ontario N2H 4B4
(519)893-4922

HONOURABLE ROBERT KAPLAN
Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)996-0220

KENNETH J. KEALEY, Probation/
Aftercare Officer
Dept. of Community and Social Services
900 Lady Ellen Place
Ottawa, Ontario K1Z 5L5
(613)722-6507

MYRTIS KELLUM
Deputy Court Administrator
Broward County Courthouse
Room 880
201 SE 6th Street
Fort Lauderdale, FL 33301
(305)765-8367

DR. MICHAEL P. KIRBY
Southwestern College At Memphis
Department of Political Science
2000 North Parkway
Memphis, TN 38112
(415)493-3586

PAUL KITCHER, Assistant
Bail Supervisor
Toronto/York Bail Program
80 The East Mall, Room 147
Toronto, Ontario M87 5X6
(416)252-3735

JOHN KNOWLES, Correctional
Officer
Salvation Army
Box 3355
Thunder Bay, Ontario

SGT. WILLIAM TERRY KNOX
Metropolitan Toronto Police
No. 55 Division Youth Bureau
590 Jarvis Street
Toronto, Ontario M4X 2J5
(416)967-2222

PETER D. KOMARINSKI
Project Director - PAPA
New York State Commission of Correction
Tower Building, 23rd Floor
Empire State Plaza
Albany, New York 12223
(518)474-8768

BILL D. KROMAN, Supervisor
Cuyahoga County Adult Probation
1200 Ontario Street, Justice Center
Cleveland, OH 44113
(216)623-7900

PETER KULENDRAN, Deputy Director
Community Resource Centre Branch
Ministry of Correctional Services
2001 Eglinton Avenue, East, Second Floor
Scarborough, Ontario M1L 4P1
(416)750-3400

SHERRY M. KULMAN, Student of
Criminology
University of Ottawa
345 Laurier, East, No. 503
Ottawa, Ontario
(613)234-0661

JAMES KYL-HEKU, Probation and
Parole Officer
Ministry of Correctional Services
3 Beachwood Drive
Parry Sound, Ontario P2A 1J2
(705)746-5809

SUZANNE M. LAJAMBE, Pre-Trial
Services Coordinator
John Howard Society
224 Queen Street, East
Sault Ste. Marie, Ontario
(705)256-2808

DR. LEAH LAMBERT, Policy Coordinator
Justice Secretariat
Room 1341, Whitney Block, Queen's Park
Toronto, Ontario M7A 1A2
(416)965-9535

BARBARA LANDAU, Policy Advisor
Children's Policy Development
Ministry of Community and
Social Services
Toronto, Ontario

MARION LANE, General Counsel
Justice for Children
455 Spadina Avenue
Toronto, Ontario M5S 2G8
(416)596-1349

PIERRE LANGELIER, Investigator
Ontario Ombudsman's Office
125 Queen's Park
Toronto, Ontario M5S 2C7
(416)596-3464

JUDITH A. LAPOOK, General Counsel
New York City Board of Corrections
51 Chambers Street
New York, NY 10021
(212)964-6307

JOAN C. LATCHFORD, Director
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario, M6N 3C6
(416)921-8565

SARAH LAWLEY
1210-55 Maitland Avenue
Toronto, Ontario M4Y 1C9
(416)968-6774

DARLENE E. LAWSON
Assistant Director
Toronto/York Bail Program
60 Queen Street West
Toronto, Ontario, M5H 2M4
(416)965-3336

JANET S. LEE, Victim/Witness
Assistance Coordinator
Salvation Army
120 Carling Street
London, Ontario N6A 1H6
(519)438-8580

SUSAN A. LEE, Assoc. Reg'l. Consultant
Ministry of Solicitor General
2 St. Clair Avenue, West, #12A8
Toronto, Ontario M4V 1L5
(416)966-8107

GERALD LEGER, Researcher
Chief, Causes and Prevention Research
Ministry of Solicitor General Canada
340 Laurier Ave., West
Ottawa, Ontario K1A OP8
(613)593-6375

JOHN C. LEGGE, Administrator
Whitbourne School for Boys
P.O. Box 40
Whitbourne, Newfoundland A0B 3K0
(709)759-2050

HON. JACQUES LESSARD
Court of Sessions of the Peace
Palais de Justice
1 Notre-Dame Street, East
Montreal, Quebec H2Y 1B6
(514)873-5686

HAROLD LEVY, Special Projects
Coordinator
Ontario Legal Aid Plan
145 King Street, West
Toronto, Ontario M5H 1J8
(416)361-0766

HIS HONOUR JUDGE CLARE LEWIS
College Park Court
444 Yonge Street
Toronto, Ontario M5B 2H4
(416)965-7420

PHIL J. LEWIS, Supervisor of
Probation and Aftercare Officers
710 Victoria Avenue
Thunder Bay, Ontario P7C 5P7
(807)475-1485

JOHN W. LIQUORI, Executive Director
Criminal Justice
Coordinating Council
1 Center Drive
Riverhead, New York 11901
(516)727-4700

SUZANNE B. LONGACRE
Criminal Justice Planner
Atlantic County Justice Planning Unit
25 Dolphin Avenue
Northfield, NJ 08225
(609)645-7700, ext. 645

J. PAUL LORDON, Special
Advisor, Legal Aid
Department of Justice
Kent & Wellington Streets
Ottawa, Ontario K1A OH8
(613)992-8932

BRYAN M. LOUCKS, Researcher
Ontario Native Council on Justice
100 Adelaide Street, W., Suite 510
Toronto, Ontario M5H 1S3
(416)367-1640

HELEN M. LOWE, Probation
and Aftercare Officer
Ministry of Community
and Social Services
County Court House
Peterborough, Ontario K9H 3M3
(705)743-4206

MELVENA LOWERY
Community Release Agency
Arrott Building, #1102
401 Wood Street @ 4th Avenue
Pittsburgh, PA 15222
(412)391-8848

LYNN E. LOWRY, Social Worker
Brookside School
390 King Street, East
Cobourg, Ontario K9A 4K6
(416)372-5451

BART K. LUBOW, Director
Special Defender Services
Legal Aid Society
15 Park Row
New York, NY 10038
(212)577-3400

WILLIAM D. LUCAS, Community Program
Consultant II
Kansas Department of Corrections
535 Kansas Avenue
Topeka, KS 66603
(913)296-5475

SANDRA F. MACDONALD
Classification Counselor
Toronto Jail
550 Gerrard Street, East
Toronto, Ontario M5V 2A7
(416)466-2164

DON MACDOUGALL, Assistant Crown Attorney
Provincial Court - Criminal Division
One Nicholas Street
Ottawa, Ontario K1N 7B7
(613)238-1261

ROBERT C. MACEROLLO, Director
Ontario Ombudsman's Office
125 Queen's Park
Toronto, Ontario M5S 2C7
(416)596-3416

DAVE MACKEY, Investigator
Ontario Ombudsman's Office
125 Queen's Park
Toronto, Ontario M5S 2C7
(416)596-3464

CAMILE J. MACPHERSON, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M6N 3C6
(416)691-9876

PATRICK MADDEN, Research Assoc.
Planning and Research
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3350

CONNIE MAHAFFY
Mimico Correctional Center
Probation/Parole Services
P.O. Box 75
Toronto, Ontario M8V 3S9
(416)255-0131

JOHN MAIN, Regional Director
Ministry of Correctional Services
2 Dunbloor Street, Suite 312
Islington, Ontario, M9A 2E4
(416)248-3901

PEARL A. MALL, Executive Director
PROBE
86 Hawley Street
Binghamtom, NY 13901
(607)772-8912

JOCEYLN MARSHALL, Editor
Liaison Magazine
Min. of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)996-5268

TERI K. MARTIN, Director of Planning
Moyer Associates, Inc.
One East Walker Drive
Chicago, IL 60657
(312)822-9480

WILLIAM G. MATTHEWS, Director
Ingham County Prosecutor's
Diversion Program
303 West Kalamazoo
Lansing, MI 48910
(517)882-5886

HON. MARGARET MAXWELL
Tucson City Court
P. O. Box 27210
161 West Alameda
Tucson, AZ 85701
(602)791-3260

RICHARD S. MAZUR
Diversion Chairman
Waterloo Region Diversion Program
1190 King Street, East
Kitchener, Ontario N2G 2N4
(519)579-6898

DAVID R. MCCAGHERTY, Supervisor
Probation & Aftercare Office
900 Lady Ellen Place
Ottawa, Ontario K1Z 5L5
(613)722-6507

E. MICHAEL MCCANN, District Attorney
821 West State Street
Milwaukee, WI 53233
(414)278-4646

S. MCCARTHY, Supervisor
Ministry of Correctional Services
146 Simcoe Street, North
Oshawa, Ontario L1G 4S7
(416)571-3772

LINDA MCCLEOD, Policy Analyst
Ministry of Solicitor General
340 Laurier Ave., West
Ottawa, Ontario K1A OP8
(613)992-2898

RAYMOND F. MCCOOL, Grand Jury
and Bond Commissioner
Cleveland Court of Common Pleas
1200 Ontario, 12th Floor
Cleveland, OH 44113
(216)941-1837

JOHN MCGOFF, Advocacy Coordinator
York Observation Centre
354 George Street
Toronto, Ontario M5A 2N3

KAREN A. MCLAUGHLIN, Director
of Communications
District Attorney, Essex County
1 Brown St. Court
Salem, MA 01970
(617)631-1717

MICHAEL E. MCMILLAN, Chief
Native Programmes, Dept. of Justice
Justice Bldg. - Kent & Wellington Sts.
Ottawa, Ontario K1A OH8
(613)996-9649

DON R. MCPHAIL, Superintendent
Morton Youth Services
46 Toronto Street
Barrie, Ontario K4N 1T9
(705)737-2441

BRAM MEAKINGS, Major
The Salvation Army
59 Brentcliff Road
Toronto, Ontario M4G 3Y5
(416)598-2071

RUTH MEAKINGS, Major
The Salvation Army
57 Brentcliffe Road
Toronto, Ontario M4G 3Y5
(416)422-4760

EDWIN C. MEINEKER, Probation
Officer - Pretrial Release
Department of Correctional Services
711 Fisher Building
Dubuque, IA 52001
(319)557-7244

HON. PERKER MEEKS
Municipal Court of
San Francisco
San Francisco, CA

DONALD F. MIKEL
Classification Counselor
Toronto West Detention Centre
P.O. Box 4950
Rexdale, Ontario M9W 5L6
(416)675-1806

STEPHANIE MILGRAM
31 Francine Drive
Willowdale, Ontario M2H 2G5
(416)493-6003

FREDERICK MILLS, Area Administrator
The Salvation Army Correctional Services
192 Somerset Street, West
Ottawa, Ontario K2P 0J4
(613)236-9615

GERALD L. MILLS, Criminal Justice
Diversion Specialist
Wisconsin Department of Health
and Social Services
Bureau of Alcohol and Other Drug Abuse
One West Wilson, Room 434
Madison, WI 53707
(608)266-0962

KENNETH H. MITCHELL, Regional
Administrator
Ministry of Correctional Services
106 N. Cumberland
Thunder Bay, Ontario P7A 4MZ
(807)345-3309

HANS MOHR, Professor
Osgoode Hall Law School
4700 Keele St.
Downsview, Ontario M3J 1P3
(416)667-3961

ALISON MOLLOY, Regional Coordinator
Ministry of Solicitor General
Suite 12A8, Two St. Clair Ave., W.
Toronto, Ontario M4V 1L5
(416)966-8107

C. PETER MORDEN, Senior Consultant
A.R.A. Consultants
151 Bloor Street, West, Suite 701
Toronto, Ontario M1K 2B4
(416)961-1474

EDWARD MORRIS, Area Manager
Probation and Parole Services
180 Front Street, 2nd Fl.
Belleville, Ontario K8N 2Y7
(613)968-5737

RUTH R. MORRIS, Director
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

STEVEN MORRISON
Six Twichenham Ct.
Thornhill, Ontario L3T 5T7
(416)889-0294

WILLIAM C. MORRISON
Assistant Director
Kentucky Pretrial Services Agency
403 Wapping Street
Frankfort, Kentucky 40508
(502)564-7486

MARY E. MORTON
Assistant Professor of Sociology
Queen's University
Kingston, Ontario K7L 3N6
(613)547-6256

HON. H. CARL MOULTRIE I
Chief Judge, District of Columbia
Superior Court
500 Indiana Avenue, NW
Washington, DC 20001
(202)727-1600

ELLEN J. MOWBRAY; Associate
Aurora Associate, Inc.
1140 Connecticut Avenue, NW
Washington, DC 20034
(202)659-0480

R. LEE MUNN, Planner
South Carolina State Pretrial
Intervention
P. O. Box 11549
Columbia, SC 29211
(803)758-8820

DENNIS MURPHY, Esq.
Misdemeanor Trials Section
U. S. Attorney's Office
Superior Court Building, No. 5290
500 Indiana Avenue, NW
Washington, DC 20001
(202)724-6210

JAMES MURPHY
Schenectady County Legislator
Coordinator Jail Ministry
Diocese of Albany
401 Summit Avenue
Schenectady, NY 12307
(518)346-6848

DONALD MURRAY, Director
Criminal Justice Program
National Association of Counties
Research Foundation
1735 New York Avenue, NW
Washington, DC 20006
(202)783-5113

TIMOTHY MURRAY, Director of
Pre-Release Services
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-4830

HIS HON., JUDGE A. P. NASMITH
Provincial Court - Family Division
160 Silverhill Drive
Islington, Ontario M9C 3W7
(416)236-2553

JERRY A. NEEDLE, Director
Citation Release Development Project
American Justice Institute
1007 Seventh Street
Sacramento, CA 95814
(916)444-3096

LYNDON NELMES, Superintendent
Ontario Correctional Institute
P. O. Box 1888
Brampton, Ontario L6V 2P1
(416)457-7050

CANDACE NENOW, Assistant Director
Pre-Trial Services
460 South 400 East
Salt Lake City, UT 84111
(801)535-5100

BRYANT NERO, Assistant Director
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M5C 1C6
(416)469-4857

JAMES R. NEUHARD, Esq.
State Appellate Defender
1200 Sixth Avenue
North Tower, Third Floor
Detroit, MI 48226
(313)256-2814

HON. THEODORE R. NEWMAN, JR.
Chief Judge, District of Columbia
Court of Appeals
500 Indiana Avenue, NW, Sixth Floor
Washington, DC 20001
(202)638-4392

TERRY W. NIMETTE, Senior Counselor
Department of Social Services
Provincial Correctional Centre
Regina, Saskatchewan S4P 3A6
(306)352-0641

ANN P. NOON, Principal
Probation Officer II
Essex County Probation Department
110 South Grove Street
East Orange, NJ 07018
(201)961-7580

CHRISTOPHER P. NUTTALL, Assistant
Deputy Minister
Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)992-4782

KATHLEEN O'BOYLE
Pretrial Services Division
189 Montague Street, Room 900
Brooklyn, NY 11201
(212)330-7533

MAUREEN O'CONNOR, Social
Science Program Specialist
National Institute of Justice
633 Indiana Avenue, NW, No. 370
Washington, DC 20531
(202)724-2942

CAROL A. OGINSKI, Executive Director
Reaching Out, Inc.
1787 Walker Road, Suite 4
Windsor, Ontario
(519)254-5441

MARYKA OMATSU, Lawyer
Canadian Human Rights Commission
275 Slater Street
Ottawa, Ontario K1A 1E1
(613)995-1277

WILLIAM T. O'NEILL, Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

SILVIO J. ORLANDO, Director
Treatment Services
Shawbridge Youth Centres
7200 Hutchison
Montreal, Quebec H3N 1Z2
(514)274-9351

DONALD M. PAGE
Regional Administrator
Probation and Parole Service
2 Dunbloor Road, Suite 312
Islington, Ontario M9A 2E4
(416)248-3901

BERNARD C. PARKER, Superintendent
Ministry of Correctional Services
Walkerton Jail
209 Cayley Street
Walkerton, Ontario N0G 2V0
(519)881-3448

DAVID A. PARKER
Regional Administrator
Ministry of Correctional Services
146 Simcoe Street, North
Oshawa, Ontario L1G 4S7
(416)571-3772

DR. PETER PARRADO, Exec. Director
Juvenile Services Program, Inc.
3435 1st Avenue
St. Petersburg, FL 33710
(813)821-2433

RICH PARTRIDGE, Metro Coordinator
Juvenile Justice Volunteers Centre
194 Gerrard Street, East
Toronto, Ontario M5A 2E6
(416)923-4516

DEAN E. PEACHEY, Coordinator
Community Mediation Service
27 Roy Street
Kitchener, Ontario N2H 4B4
(519)742-0922

LARRY H. PEARSON, Coordinator
Community and Counseling Services
John Howard Society of British Columbia
2307 - 43rd Street
Vernon, B. C. V1T 6KF
(604)542-4041

FRANK P. PETRONE
Assistant Deputy County Executive
County of Suffolk, New York
32 Campbell Drive
Dix Hills, New York 11746
(516)360-4014

JOHN J. PHILLIPS, Director
Pretrial Release Services
132 South 4th Street
Las Vegas, NV 89101
(702)386-4284

HON. ROSEMARY PILLOW
Baton Rouge City Court
1100 Laurel Street, Room 217
Baton Rouge, LA 70802
(504)389-5006

DONALD PIRAGOFF, Legal Counsel
Policy Planning and Criminal
Law Amendments
Department of Justice
Justice Bldg., Kent & Wellington Streets
Ottawa, Ontario K1A OH8
(613)995-6409

RUTH PITMAN, Policy Development Officer
Justice Secretariat
Room 1343, Whitney Block, Queen's Park
Toronto, Ontario M7A 1A2
(416)965-0579

DAN POCHODA, President
Correctional Associaton
135 E. 15th Street
New York, NY 10003
(212)254-5700

ALAN A. W. PODSADOWSKI
Executive Director
Alternative Program
892 A Marine Drive
N. Vancouver, B. C. VTP 1R9
(604)984-0255

LARRY J. POGEMILLER
State Representative
Minnesota House of Representatives
State Office Building, Room 292
St, Paul, MN 55155
(612)296-4229

MICHEL POIRIER
Directeur Projets Speciaux
Centre D'accueil Le Portage
3418 Drummond
Montreal, Quebec H3G 1Y1
(514)282-0404

HON. MICHAEL E. PONDER
Baton Rouge City Court
1100 Laurel Street, Room 202
Baton Rouge, LA 70802
(504)389-3021

BLANCHE F. PROHASKA, Personnel Officer
Corrections Division - Multnomah County
818 Multnomah County Courthouse
1021 Southwest Fourth Avenue
Portland, OR 97204
(503)248-3000

BYRON R. PULSIFER, Assistant Director
Ontario Ombudsman's Office
125 Queen's Park Cres.
Toronto, Ontario M5S 2C7
(416)596-3464

BRYAN PURCELL, Assistant Director
Juvenile Corrections
Government of Newfoundland, Department
of Social Services
P.O. Box 4040
St. John's, Newfoundland A1C 5Y6
(709)364-2298

BRYAN RALPH, Executive Director
Legal Service Society of
British Columbia
Post Office Box 12120
Vancouver, B. C. V6B 4N6
(604)689-0741

LINDA E. REID, Partner
A.R.A. Consultants
151 Bloor St. W., Suite 701
Toronto, Ontario M1R 2B9
(416)961-1474

GUILLERMO REYES, JR.
Pretrial Service Specialist
Santa Cruz County Pretrial Services
701 Ocean Street, Room 512
Santa Cruz, CA 95060
(408)425-2601

BARRY A. RHODES, Court Interviewer
Greater Cincinnati Bail Project
222 East Central Parkway, Room 602-A
Cincinnati, OH 45202
(513)381-5020

RON J. RICHER, Special Projects Officer
Ministry of Community and Social
Services, Children's Services
2197 Riverside Drive, Room 705
Ottawa, Ontario K1H 7X3
(613)523-7466

JOAN RICHES - Member, Training
Schools Advisory Board - M.C.S.
2nd Floor, 700 Bay Street
Toronto, Ontario M7A 1E9
(416)965-1871

INGRID RICHTER, Coordinator
St. Philip's Resource Centre
201 Caribou Road
Toronto, Ontario M5N 2B5
(416)782-1131

PETER RICKABY, Crown Attorney
Ministry of the Attorney General
8 King Street, East
Toronto, Ontario M5C 1C5
(416)965-4377

WALTER K. RIEDESEL, Deputy Director
Correctional Volunteer Center
45 West Pennington Street
Tucson, AZ 85701
(602)791-3310

SAMIR RIZKALLA, Coordinator
College de Maisonneuve
Dept. Techniques Auxiliares Justice
380 Sherbrooke Street, East
Montreal, Quebec H1X 2A2
(514)254-7131

CHARLES ROACH, Partner
Roach & Smith
688 St. Clair Avenue, West
Toronto, Ontario M6C 1V1
(416)657-1465

ANITA U. ROBERTS, Deputy Director
Human Rights Commission
419 W. Onondaga St., Director
Syracuse, NY 13202
(315)425-3567

LAURIE O. ROBINSON, Staff Director
Criminal Justice Section
American Bar Association
1800 M Street, NW, Second Floor
Washington, DC 20036
(202)331-2260

JOHN ROE, Area Manager
Ministry of Correctional Services
470 Hensall Circle
Mississauge, Ontario L5A 3V4
( )276-2117

PAT ROLFE, Special Advisor
Solicitor General Canada
Ottawa, Ontario
340 Laurier W.
Ottawa, Ontario K1A OP8
(613)995-2507

MARC ROSEN
Deputy Secretary of State
30 Trinity Street
Hartford, CT 06475
(203)566-4136

WILLIAM H. ROY, Classification
Counselor
Sudbury Jail
181 Elm Street, West
Sudbury, Ontario P3C 1T8
(705)675-4150

BOBBIE A. RUSHING, Administrative
Secretary
Champaign County Adult Diversion
110 South Race Street
Urbana, IL 61801
(217)344-8779

MARY RUTH
2085 Islington Avenue
Toronto, Ontario M9P 3R1
(416)245-3139

NEAL RUTON, Director
Stonehenge
147 Delhi Street
Guelph, Ontario N1E 4J3

CAROLYN SAINT-DENNIS, Policy Advisor
Ministry of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)992-3014

GILLIAN SANDEMAN, Executive Director
The Elizabeth Fry Society of Toronto
215 Wellesley Street, East
Toronto, Ontario M4X 1G1
(416)924-3708

ANNE SCACE, Program Manager
John Howard Society
168 Isabella Street
Toronto, Ontario M4Y 1P6
(416)925-4386

EDWARD J. SCHOENBAUM, Appellate
Court Coordinator
Illinois Supreme Court
527 East Capitol, Suite 920
Springfield, IL 62701
(217)782-3337

GEORGE C. SCHULER, Court Representative
Greater Cincinnati Bail Project
222 East Central Parkway
Cincinnati, OH 45202
(513)861-8730

JAMES R. SEELEY, Bail Commissioner
Allen Superior Court
Room B-12 City/County Building
Ft. Wayne, IN 46802
(219)423-7337

GEORGE SERPA, Pre-Trial
Services Coordinator
John Howard Society
10 Queen Street, E.
Brampton, Ontario L6V 1A2
(416)459-2205

MICHAEL SERRILL, Editor
Corrections Magazine
116 W. 32 St.
New York, NY 10001
(212)947-2700

RUTH SHADGETT, Bail Supervisor
The Salvation Army
192 Somerset Street, West
Ottawa, Ontario K2P 0J4
(613)236-9615

MARY SHANTZ, Social
Development Consultant
Native Community Bureau
Ministry of Culture and Recreation
77 Bloor Street, West, Fifth Floor
Toronto, Ontario L6V 1A2
(416)965-5003

STEPHEN H. SHANTZ, Chief Public Defender
Bucks County Public Defender
Court House
Doylestown, PA 18901
(215)348-2911

CAROL J. SHAPIRO, Project Director
Alternatives to Jail Project
Offender Aid and Restoration, USA
409 East High Street
Charlottesville, VA 22901
(804)295-6196

JOEL SHAPIRO, Area Manager
Court Liaison Services - M.C.S.
1240 Bay Street, Suite 506
Toronto, Ontario M5R 2A7
(416)965-6434

ROBERT C. SHAW, Executive Director
Dellcrest Children's Centre
1645 Sheppard Avenue, West
Downsview, Ontario M3M 2X4
(416)633-0515

MAUREEN SHEA-DESROSIERS
Legal Officer, Young Offenders
Ministry of Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)996-3874

KEVIN SHEARD, Interviewer
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

VICTORIA A. SHEEHY, Director
Yorklea Lodges
1117 O'Connor Drive
Toronto, Ontario M4B 2T5
(416)757-6122

STEPHANIE L. SHEPHARD, Researcher
Pretrial Services
219 Broad St., 4th Floor
Philadelphia, PA 19107
(215)686-4576

ROD SHROUT, Jails/Courts Specialist
Kentucky Youth Advocates
2024 Woodford Place
Louisville, KY 40205
(502)456-2140

STEVEN R. SIEGEL, Director
Adult Diversion Program
Jefferson County District
Attorney's Office
607 Tenth Street
Golden, CO 80220
(303)277-8371

PAUL SIEMENS, Manager
Children's Policy Development
COMSOC - 11th Floor
700 Bay Street
Toronto, Ontario M7A 1E9
(416)965-5339

PATRICIA SIMPSON, Probation Officer
Essex County Probation Department
110 South Grove Street
East Orange, NJ 07018
(201)961-7580

DON SINCLAIR, Deputy
Provincial Secretary
Justice Secretariat
Whitney Block, No. 1355, Queens Park
Toronto, Ontario M7A 1A2
(416)965-2838

ISAAC SINGER, Barrister & Solicitor
2395A Bloor Street, West
Toronto, Ontario M6S 1P6
(416)766-1135

BRYAN SLIGHTE, Area Manager
Toronto/York Bail Program
444 Yonge Street, Room 290
Toronto, Ontario M5E 1G7
(416)596-0999

JAN SMABY, Chairperson
MN Sentencing Guidelines Commission
Office of Planning and Development
A-2308 Government Center
Minneapolis, MN 55487
(612)348-5242

FLORENCE SMITH, Jail Interviewer
Metro East Detention Centre
Toronto/York Bail Program
55 Civic Road
Scarborough, Ontario M1L 2K9
(416)750-3513, ext. 230

J. ANDREW SMITH, Associate
Regional Consultant
Ministry of Solicitor General
#8, 1505 - 8th Street, East
Saskatoon, Saskatchewan S7H 0T2
(306)665-4262

JEFFREY O. SMITH, Principal
Research Analyst
Center for Governmental Research
37 South Washington Street
Rochester, NY 14608
(716)325-6360

MICHAEL SMITH, Director
Vera Institute of Justice
30 East 39th Street
New York, NY 10016
(212)986-6910

ROBERT SMITH, Assistant Director
National Institute of Corrections
320 First Street, NW, Room 200
Washington, DC 20534
(202)724-3106

STAN SMITH, Director
Gerrard House
John Howard Society
562 Gerrard Street, East
Toronto, Ontario M4M 1X8
(416)463-5929

BRIAN SNYDER
c/o 5-455 Albert Street
Waterloo, Ontario N2L 5A7
(519)884-3594

DAVID P. SOLBERG, Counsel
Department of Justice
Kent and Wellington Streets
Ottawa, Ontario K1A OH8
(613)992-2630

MARY S. SONNICHSEN
111 Main Street
Osgoode, Ontario KON 2WO
(613)826-2503

PAUL Q. SONNICHSEN, National Consultant
on Community Alternatives
Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)995-4811

VINCE J. SPARKS, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M5C 3C6
(416)691-9876

BARBARA E. STEIN, Chief
New York State Division Criminal
Justice Service
80 Centre Street
New York, NY 10013
(212)587-4497

MARGARET STRECKER, Social
Services Administrator
Ministry of Community and
Social Services
195 Dufferin, 5th Floor
London, Ontario N6A 1K7
(519)438-8344

DR. LLOYD STREET
Center for the Study of Race,
Crime, and Social Policy
1419 Broadway, Suite 404
Oakland, CA 94612
(415)839-2310

GERRY STUART, Investigator
Ontario Ombudsman's Office
125 Queen's Park Cres.
Toronto, Ontario M5S 2C7
(416)596-3413

JOSEPH B. STULBERG, Associate
Professor of Management
Baruch College/CUNY
17 Lexington Avenue, Box 517
New York, NY 10010
(212)725-7125

CHARLES T. SULLIVAN, Director
South Carolina Pretrial Intervention
Program
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803)758-2152

STEPHEN B. SWIGART, Associate Director
Wisconsin Correctional Service
436 West Wisconsin
Milwaukee, WI 53203
(414)271-2512

MARTIN G. SZEIGIS, Director
Pretrial Services
Davidson County Sheriff's Pretrial
506 2nd Avenue
Nashville, TN 37201
(615)259-5605

ALAN J. TADDIKEN, Principal
Research Analyst
Center for Governmental Research
37 South Washington Street
Rochester, NY 14608
(716)325-6360

KAROUL TALABA, Executive Director
Families and Friends Centre
558 Gerrard Street, East
Toronto, Ontario M4M 1X8
(416)466-3852

SGT. BOB TAYLOR, Youth Section
Ottawa Police Department
60 Waller Street
Ottawa, Ontario K1N 7G5
(613)236-0311

DICKSON E. TAYLOR, Director
Probation and Parole
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3440

ALAN TEICHROEB
c/o 5-455 Albert Street
Waterloo, Ontario N2L 5A7
(519)884-3594

ANDREW P. TELEGDI, Director
Youth in Conflict with the Law
159 1/2 Frederick Street
Kitchener, Ontario
(519)745-6591

JACQUES TELLIER, President
Comite de la Protection de la Jeunesse
505 Dorchester Street, West
Montreal, Quebec H2Z 1A8
(514)873-5428

JOAN TEMPLE, Development Officer
Portage Ontario
111 Avenue Road, Concourse Level
Toronto, Ontario M5R 3J8
(416)968-0257

KEN THOMAS, Director
Craigwood Centre
P.O. Box 100
Ailsa Craig, Ontario NOM 1A0
(519)232-4301

ROBIN B. THOMEN, Director
Pre-Prosecution Diversion
215 West San Francisco
Santa Fe, NM 87501
(505)827-5477

GLENN R. THOMPSON, Deputy Minister
Ministry of Correctional Services
2001 EGLINTON AVENUE, EAST
Scarbough, Ontario M1L 4P1
(416)750-3301

MARILYN J. THWAITTERS, Assistant
Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

MARY A. TOBORG, Associate Director
The Lazar Institute
1529 - 18th Street,NW
Washington, DC 20036
(202)232-2400

ELMER B. TOFFELMIRE, Regional
Administrator
Probation and Parole Services
Ministry of Correctional Servies
1055 Princess Street
Kingston, Ontario K71 1H3
(613)547-3464

KIM M. K. TOI, Bail Supervisor
John Howard Society
19 Albert Street
Hamilton, Ontario L8M 2Y1
(416)545-4040

BEVERLY A. TOLSON, President
Canadian Research Institute for
Public Affairs
100 Adelaide Street, West, Suite 1601
Toronto, Ontario M5H 1S3
(416)485-5080

SUSAN M. TOUHSAENT, Senior
Research Analyst
Center for Governmental Research
37 South Washington Street
Rochester, NY 14608
(716)325-6360

RICHARD H. TREGO, Director
Conestoga Community Clinic
Provincial Courthouse, Family Division
Frederick Street, Second Floor
Kitchener, Ontario N2H 6N9
(519)576-6120

RIVERS R. TRUSSELL, Judicial
Administrator
Criminal District Court
2700 Tulane Avenue
New Orleans, LA 70119
(504)586-4027

DR. EDWARD TURNER, Director
Metro Toronto Forensic Service
999 Queen Street, West
Toronto, Ontario M6J 1H4
(416)535-8501, ext. 319

GRAHAM TURRAL, Chief Psychologist
Metropolitan Toronto Forensic Service
999 Queen Street, West
Toronto, Ontario M6J 1H4
(416)535-8501

HELEN M. VAIL, Regional Consultant
Solicitor General Canada
2 St. Clair Avenue, West, Suite 12A8
Toronto, Ontario M4V 1L5
(416)966-8107

MICHEL VALLEE, Regional Consultant
Solicitor GGeneral Canada
#210, 66 Sherbrooke Street, West
Montreal, Quebec H3A 1E7
(514)283-7362

THOMAS S. VANCE, Project
Coordinator
Genesee City Central Intake Project
Galliver Building, 932 Beach St.
Flint, MI 48502
(313)257-3486

JOHN G. VANDERBURG, Bail Supervisor
Toronto/York Bail Program
444 Yonge Street, Room 290
Toronto, Ontario M5E 1G7
(416)596-0999

KATHRYN VOLF, Probation
and Aftercare Officer
Ministry of Community
and Social Services
199 Larch Street, Main Floor
Sudbury, Ontario P3E 5P9
(705)675-4241

JAMES M. WAKEFIELD, Superintendent
El Paso County Division of
Community Corrections
3808 North Nevada
Colorado Springs, CO 80907
(303)471-5829

L. SCOTT WALLACE
PTI Circuit Director
Solicitor's Office
P.O. Box 58
Charleston, SC 29402
(803)723-5083

ART WALLENSTEIN, Warden
Bucks County Jail
Department of Corrections
138 South Pine Street
Doylestown, PA 18901
(212)348-9056

IRVIN WALLER, Professor
Department of Criminology
University of Ottawa
75 Laurier Avenue, East
Ottawa, Ontario K1N 6N5
(613)231-4070

SUSAN WAYNE, Executive Director
Justice Resource Institute
530 Atlantic Avenue
Boston, MA 02210
1-(617)482-0006

RUTH C. WEDDEN, Executive Director
Advocate Program, Inc.
2206 Northwest 27th Avenue
Miami, FL 33142
(305)634-2611

APRILL D. WEIL, Probation
and Parole Officer
Ministry of Correctional Services
384 Parliment Street, Second Floor
Toronto, Ontario M5A 2Z7
(416)965-0420

HON. LOUIS WEISSING, Chief Judge
Broward County Courthouse
201 Southeast Sixth
Ft. Lauderdale, FL 33301

RUBY WELBOURN, Court Coordinator
Toronto/York Bail Program
80 The East Mall, Room 146
Toronto, Ontario M82 5X6
(416)252-3735

RONALD R. WELCH, Project Director
Mississippi Prisoners' Defense Committee
Milner Building, Suite 750
210 South Lamar Street
Jackson, MS 39201
(601)944-0089

PHILIP W. H. WEST, Probation Officer
Verification/Supervision Unit
Calgary Remand Centre
335-6 Avenue, Southeast
Calgary, Alberta T2N 0V8
(403)261-3316

WILLIAM G. WEST, Assistant Professor
Ontario Institute for Studies
and Education
252 Bloor Street, West
Toronto, Ontario M5S 1V5
(416)923-6641

LAVINIA WHETUNG, Executive Secretary
Ontario Native Council on Justice
100 Adelaide Street, West, Suite 510
Toronto, Ontario M5H 1S3
(416)367-1640

SUSAN A. WHITAKER
Principal Management Analyst
Office of Court Administration
270 Broadway
New York, NY 10044
(212)488-5938

LAWRENCE W. WILES, Superintendent
Peterborough Jail - M.C.S.
P. O. Box 1480
Peterboro, Ontario
(705)743-7331

GUY WILLETTS, Chief
Pretrial Services Branch
Administrative Office of the
U. S. Courts
1030 - 15th Street, NW, Suite 1000
Washington, DC 20544
(202)633-6208

GORDON WILLIAMS, Program Manager
Native Counseling Services of Alberta
9912 - 106th Street
Edmonton, Alberta T5K 1C5
(403)423-2141

HUBERT WILLIAMS, Police Director
City of Newark Police Department
520 Highland Avenue
Newark, NJ 07104
(201)733-6007

JOHN WILSON, Director
Pretrial Intervention Program
Solicitor's Office
214 Newberry Street
Aiken, SC 29801

OLIVIA K. WILSON, Bail Supervisor
Toronto/York Bail Programme
1000 Finch Avenue, West
Downsview, Ontario M3J 2U5
(416)667-0999

RICK WILSON, Director
Defender Division
National Legal Aid
and Defender Association
1625 K St NW
Washington, DC 20006

RUSSELL J. WILSON, Bail Supervisor
Toronto/York Bail Programme
1000 Finch Avenue, West
Downsview, Ontario M3J 2V5
(416)667-0999

MS. LEE F. WOOD, Director
Monroe County Bar Association
Pretrial Services Corporation
65 West Broad Street, Room 610
Rochester, NY 14614
(716)454-3491

B. JAMES WRIGHT, Director
Genessee County Citizens
Probation Authority
210 West Fifth Street
Flint, MI 48502
(313)257-3480

MARK D. YANTZI, Coordinator
Victim Offender Services
2-27 Roy Street
Kitchener, Ontario N2H 4B4
(519)578-3453

RONNY YARON, Bail Supervisor
Toronto/York Bail Program
444 Yonge Street
Toronto, Ontario M5E 1G7
(416)965-9983

BRUCE YOUNG, Counsel
Ministry of the Attorney General
18 King Street, East
Toronto, Ontario M5C 1C5
(416)965-3912

MAUREEN HRON ZITZ, Coordinator
Pre-Trial Services of Jefferson County
1204 1/2 Washington Avenue
Golden, Co 80401
(303)279-9320

BARBARA A. ZUGOR, Executive Director
Treatment Alternatives to
Street Crime
1313 North Second Street, No. 25
Phoenix, Arizona 85004
(602)254-7328

LISTING BY STATE/PROVINCE

UNITED STATES

ALASKA

CHRIS A. COBB, Program Coordinator
PreTrial Intervention Project
Department of Law
550 West Eighth Street, Suite 207
Anchorage, AK 99501
(907)278-3508

PATRICK CONHEADY
Pouch KC
Juneau, Alaska 99811

ARIZONA

ANTONIO G. APODACA, Counselor
Pima County Attorney's
Adult Diversion Program
45 West Pennington
Tucson, AZ 85710
(602)791-3580

RONALD GIROUARD, Director
Tempe Adult Diversion Program
P. O. Box 5002
Tempe, AZ 85281
(602)968-8210

THERESA A. JACKSON, Director
AID Program
101 West Jefferson, Fifth Floor
Phoenix, AZ 85003
(602)262-8575

HON. MARGARET MAXWELL
Tucson City Court
P. O. Box 27210
161 West Alameda
Tucson, AZ 85701
(602)791-3260

WALTER K. RIEDESEL, Deputy Director
Correctional Volunteer Center
45 West Pennington Street
Tucson, AZ 85701
(602)791-3310

BARBARA A. ZUGOR, Executive Director
Treatment Alternatives to
Street Crime, Inc.
1313 North Second Street, No. 25
Phoenix, Arizona 85004
(602)254-7328

CALIFORNIA

HON. RAYMOND ARATA
Municipal Court of
San Francisco
San Francisco, CA

JAMES F. AUSTIN, Research Associate
National Council on Crime
and Delinquency
Research Center, West
760 Market Street, Suite 433
San Francisco, CA 94102
(415)956-5651

KENNETH C. L. BABB, Executive Director
The San Francisco Institute for
Criminal Justice
San Francisco Bail Project
Room 304, Hall of Justice
850 Bryant Street
San Francisco, CA 94103
(415)552-2202

SUSAN J. BOOKMAN, Director
Berkeley OR Project
2400 Bancroft Way
Berkeley, CA 94704
(415)548-2438

SALLY A. BRENNAN, Director
Court Referral Program
460 California Avenue
Palo Alto, CA 94306
(415)327-2640

WALTER H. BUSHER, Project Director
American Justice Institute
1007 Seventh Street
Sacramento, CA 95814
(916)444-3096

ALEC P. CHRISTOFF, Supervisor
San Mateo County ROR Project
234 Marshall, No. 3
Redwood City, CA 94063
(415)363-4181

ROMAN DURANCZYK, Director
San Mateo Co. ROR Project
234 Marshall Street, #3
Redwood City, CA 94063
(415)363-4181

ERNEST C. FRIESEN, Dean
California Western School
of Law
350 Cedar Street
San Diego, CA 92101
(714)239-0391

HON. PERKER MEEKS
Municipal Court of
San Francisco
San Francisco, CA

JERRY A. NEEDLE, Director
Citation Release Development Project
American Justice Institute
1007 Seventh Street
Sacramento, CA 95814
(916)444-3096

GUILLERMO REYES, JR.
Pretrial Service Specialist
Santa Cruz County Pretrial Services
701 Ocean Street, Room 512
Santa Cruz, CA 95060
(408)425-2601

DR. LLOYD STREET
Center for the Study of Race,
Crime, and Social Policy
1419 Broadway, Suite 404
Oakland, CA 94612
(415)839-2310

COLORADO

JULIE A. CROWELL, Pretrial Counselor
Arapahoe County Pretrial Services
5606 South Court Place, No. 22
Littleton, CO 80120
(303)798-9431

DARLA J. HOFMEIR, Alternative
Services Counselor
Arapahoe County Pretrial Services
5606 South Court Place, No. 22
Littleton, CO 80120
(303)798-9095

STEVEN R. SIEGEL, Director
Adult Diversion Program
Jefferson County District
Attorney's Office
607 Tenth Street
Golden, CO 80220
(303)277-8371

JAMES M. WAKEFIELD, Superintendent
El Paso County Division of
Community Corrections
3808 North Nevada
Colorado Springs, CO 80907
(303)471-5829

MAUREEN HRON ZITZ, Coordinator
Pre-Trial Services of Jefferson County
1204 1/2 Washington Avenue
Golden, CO 80401
(303)279-9320

CONNECTICUT

JOHN W. BATES, Senior Planning Analyst
Connecticut Justice Commission
75 Elm Street
Hartford, CT 06115
(203)566-3500

SHERRY HALLER, Executive Director
Criminal Justice Education Center
410 Asylum Street, Room 211
Hartford, CT 06103
(203)525-4020

MARC ROSEN
Deputy Secretary of State
30 Trinity Street
Hartford, CT 06475
(203)566-4136

DISTRICT OF COLUMBIA

ILENE R. BAYLINSON, Research Associate
Koba Asssociate, Inc.
2000 Florida Avenue, NW, Suite 100
Washington, DC 20009
(202)328-5728

BRUCE D. BEAUDIN, Director
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2911

JOHN R. BELLASSAI, Director
Criminal Justice Division
Koba Associates, Inc.
2000 Florida Avenue, NW
Washington, DC 20009
(202)628-5728

JANICE C. BERGIN, Pretrial Services
Interviewer/Investigator
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2940

ANNE BOLDUC
National Institute for Corrections
320 - 1st Street, NW
Washington, DC 20001
(202)724-3106

FRANCIS D. CARTER, Director
District of Columbia Public
Defender Service
451 Indiana Avenue, NW, No. 219
Washington, DC 20001
(202)628-1200

JOHN A. CARVER III, Deputy Director
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2911

DAVID S. DAVIS, Social Scientist
Department of Justice
Tenth Street and Constitution Avenue
Washington, DC 20530
(202)633-4423

NICHOLAS L. DEMOS, Courts
Program Manager
Law Enforcement Assistance
Administration
633 Indiana Avenue, NW
Washington, DC 20531
(202)724-7685

WILLIAM EDMONDS
Police Executive Research Forum
1909 K Street, NW, Suite 400
Washington, DC 20006

JEFFREY HARRIS, Executive Director
Attorney General's Task Force on
Violent Crime
U.S. Department of Justice
Washington, D.C. 20004

JOHNNY T. JORDAN
Director of Evening Operations
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-2921

HON. H. CARL MOULTRIE I
Chief Judge, District of Columbia
Superior Court
500 Indiana Avenue, NW
Washington, DC 20001
(202)727-1600

ELLEN J. MOWBRAY, Associate
Aurora Associate, Inc.
1140 Connecticut Avenue, NW
Washington, DC 20034
(202)659-0480

DENNIS MURPHY, Esq.
Misdemeanor Trials Section
U. S. Attorney's Office
Superior Court Building, No. 5290
500 Indiana Avenue, NW
Washington, DC 20001
(202)724-6210

DONALD MURRAY, Director
Criminal Justice Program
National Association of Counties
Research Foundation
1735 New York Avenue, NW
Washington, DC 20006
(202)783-5113

TIMOTHY MURRAY, Director of
Pre-Release Services
District of Columbia Pretrial
Services Agency
400 F Street, NW, Third Floor
Superior Court Building B
Washington, DC 20001
(202)727-4830

HON. THEODORE R. NEWMAN, JR.
Chief Judge, District of Columbia
Court of Appeals
500 Indiana Avenue, NW, Sixth Floor
Washington, DC 20001
(202)638-4392

MAUREEN O'CONNOR, Social
Science Program Specialist
National Institute of Justice
633 Indiana Avenue, NW, No. 370
Washington, DC 20531
(202)724-2942

LAURIE O. ROBINSON, Staff Director
Criminal Justice Section
American Bar Association
1800 M Street, NW, Second Floor
Washington, DC 20036
(202)331-2260

ROBERT SMITH, Assistant Director
National Institute of Corrections
320 First Street, NW, Room 200
Washington, DC 20534
(202)724-3106

MARY A. TOBORG, Associate Director
The Lazar Institute
1529 - 18th Street, NW
Washington, DC 20036
(202)232-2400

GUY WILLETTS, Chief
Pretrial Services Branch
Administrative Office of the
U. S. Courts
1030 - 15th Street, NW, Suite 1000
Washington, DC 20544
(202)633-6208

FLORIDA

MIKE L. BRIDENBACK, Director
Dispute Resolution Alternatives
Office of the State Courts
Administrator
Supreme Court Building
Tallahassee, FL 32301
(904)488-8621

ALEXANDER COCALIS
Deputy County Attorney
Ft. Lauderdale, FL

LARRY DAVIS
Broward County Courthouse
201 Southeast Sixth Street
Ft. Lauderdale, FL 33301
(305)765-8367

KATHRYN H. DUBOSE, Senior
Research Assistant
Office of the State Courts Administrator
Supreme Court Building
Tallahassee, FL 32303
(904)488-8621

JEAN C. FISHER, Chief Counselor
Community Release
Broward Sheriff's Office
210 South New River Drive, East
Ft. Lauderdale, FL 33301

MYRTIS KELLUM
Deputy Court Administrator
Broward County Courthouse
Room 880
201 SE 6th Street
Fort Lauderdale, FL 33301

DR. PETER PARRADO, Exec. Director
Juvenile Services Program, Inc.
3435 1st Avenue
St. Petersburg, FL 33710
(813)821-2433

RUTH C. WEDDEN, Executive Director
Advocate Program, Inc.
2206 Northwest 27th Avenue
Miami, FL 33142
(305)634-2611

HON. LOUIS WEISSING, Chief Judge
Broward County Courthouse
201 Southeast Sixth
Ft. Lauderdale, FL 33301

GEORGIA

TONY L. AXAM, Esq.
Franklin, Axam & Ashburne
1290 South Omni International
Atlanta, GA 30303
(404)688-2233

DR. ROBIN FORD, Eastern
Regional Director
National Criminal Justice
Collaborative, Inc.
P. O. Box 1046
Sea Island, GA 31561
(912)638-1289

ILLINOIS

JEFFREY M. ARNOLD
Administrative Director
Circuit Court of Cook County
2600 Richard J. Daley Center
Chicago, IL 60602
(312)443-6116

HON. PETER BAKAKOS
Circuit Court of Cook County, Illinois
Richard J. Daley Center, No. 2631
Chicago, IL 60602
(312)443-7993

JAMES BROWN, Director
Community Research Center
505 East Green, Suite 210
Champaign, IL 61820
(217)333-0443

DONALD S. DIXON, Director
Champaign County Diverson Program
110 South Race, Room 201
Urbana, IL 61801
(217)384-3802

NICK GANTES, Tracking Supervisor
TASC, Inc.
1439 S. Michigan Avenue
Chicago, IL 60605
(312)663-0440

SHARON L. HARVEY, Counselor
Champaign County Adult Diversion Program
110 South Race Street, Room 201
Urbana, IL 61801
(217)351-7031

DON JENSEN, Staff Consultant
John Howard Association
67 East Madison Street, Suite 1216
Chicago, IL 60603
(312)263-190

TERI K. MARTIN, Director of Planning
Moyer Associates, Inc.
One East Walker Drive
Chicago, IL 60657
(312)822-9480

BOBBIE A. RUSHING, Administrative
Secretary
Champaign County Adult Diversion
110 South Race Street
Urbana, IL 61801
(217)344-8779

EDWARD J. SCHOENBAUM, Appellate
Court Coordinator
Illinois Supreme Court
527 East Capitol, Suite 920
Springfield, IL 62701
(217)782-3337

INDIANA

JEFFREY W. CROTTY, Director
Pretrial Services
Elkhart Probation Department
315 South Second Street
Elkhart, IN 46516
(219)294-1688

JAMES B. DROEGE, Attorney
Hearing Examiner, EEOC
5107 North Park
Indianapolis, IN 46205
(317)269-6635

JAMES R. SEELEY, Bail Commissioner
Allen Superior Court
Room B-12 City/County Building
Ft. Wayne, IN 46802
(219)423-7337

IOWA

EDWIN C. MEINEKER, Probation
Officer - Pretrial Release
Department of Correctional Services
711 Fisher Building
Dubuque, IA 52001
(319)557-7244

KANSAS

WILLIAM D. LUCAS, Community Program Consultant II
Kansas Department of Corrections
535 Kansas Avenue
Topeka, KS 66603
(913)296-5475

KENTUCKY

JOHN HENDRICKS, Director of Pretrial Services
Kentucky Administrative Office of the Courts
403 Wapping Street
Frankfort, Kentucky 40601
(502)564-7486

WILLIAM C. MORRISON
Assistant Director
Kentucky Pretrial Services Agency
403 Wapping Street
Frankfort, Kentucky 40508
(502)564-7486

ROD SHROUT, Jails/Courts Specialist
Kentucky Youth Advocates
2024 Woodford Place
Louisville, KY 40205
(502)456-2140

LOUISIANA

NUMA V. BERTEL, JR., Director
Orleans Indigent Defender Program
Criminal Courts Building
2700 Tulane Avenue, Room 112
New Orleans, LA 70119
(504)821-8101

HON. GERARD J. HANSEN, Magistrate Judge
Criminal District Court
2700 Tulane Avenue
New Orleans, LA 70125
(504)586-4056

HON. L. J. HYMEL
Baton Rouge City Court
100 Laurel Street, Room 218
Baton Rouge, LA 70802
(504)389-3025

HON. ROSEMARY PILLOW
Baton Rouge City Court
1100 Laurel Street, Room 217
Baton Rouge, LA 70802
(504)389-5006

HON. MICHAEL E. PONDER
Baton Rouge City Court
1100 Laurel Street, Room 202
Baton Rouge, LA 70802
(504)389-3021

RIVERS R. TRUSSELL, Judicial Administrator
Criminal District Court
2700 Tulane Avenue
New Orleans, LA 70119
(504)586-4027

MASSACHUSETTS

ROBERT J. GUTTENTAG, Division Manager
The Gillette Company
Gillette Park
Boston, MA 02106
(617)463-2173

KAREN A. MCLAUGHLIN, Director of Communications
District Attorney, Essex County
1 Brown St. Court
Salem, MA 01970
(617)631-1717

SUSAN WAYNE, Executive Director
Justice Resource Institute
530 Atlantic Avenue
Boston, MA 02210
1-(617)482-0006

MICHIGAN

EUGENE S. BALDWIN, Director
Genesee County Criminal
Justice Coordinating Council
Galliver Building, 932 Beach Street
Flint, MI 48502
(313)257-3486

SUSAN E. BRIGGS, Pretrial Release Coordinator
Circuit Court Services
251 J Hall of Justice
353 Monroe
Grand Rapids, MI 49503
(616)774-3990

DR. ROY FLEMMING
Department of Political Science
Wayne State University
Detroit, MI 48202
(313)577-2637

JAMES P. HUGHES, Jail Planning Coordinator
Genessee County Board of Commissioners
1101 South Beach Street
Flint, MI 48502
(313)257-3020

WILLIAM G. MATTHEWS, Director
Ingham County Prosecutor's Diversion Program
303 West Kalamazoo
Lansing, MI 48910
(517)882-5886

JAMES R. NEUHARD, Esq.
State Appellate Defender
1200 Sixth Avenue
North Tower, Third Floor
Detroit, MI 48226
(313)256-2814

THOMAS S. VANCE, Project Coordinator
Genesee City Central Intake Project
Galliver Building, 932 Beach St.
Flint, MI 48502
(313)257-3486

B. JAMES WRIGHT, Director
Genessee County Citizens Probation Authority
210 West Fifth Street
Flint, MI 48502
(313)257-3480

MINNESOTA

PEGGY BYRNE, State Representative
Minnesota House of Representatives
State Office Building, Room 290
State Capitol
St. Paul, MN 55155
(612)296-4229

NORBERT J. GERNES, Executive Director
Operation De Novo
321 South Third Street
Minneapolis, MN 55415
(612)336-1731

JUDITH A. JACKSON, Program Director
Citizens Dispute Program
Minneapolis City Attorney's Office
A-1700 Hennepin County Government Center
Minneapolis, MN 55487
(612)348-7496

LARRY J. POGEMILLER
State Representative
Minnesota House of Representastive
State Office Building, Room 292
St, Paul, MN 55155
(612)296-4229

JAN SMABY, Chairperson
MN Sentencing Guidelines Commission
Office of Planning and Development
A-2308 Government Center
Minneapolis, MN 55487
(612)348-5242

MISSISSIPPI

RONALD R. WELCH, Project Director
Mississippi Prisoners' Defense Committee
Milner Building, Suite 750
210 South Lamar Street
Jackson, MS 39201
(601)944-0089

MISSOURI

YVONNE EDWARDS, Assistant Pretrial Release Commissioner
7064 Lillian
St. Louis, MO 63121
(314)382-8103

NEVADA

JOHN J. PHILLIPS, Director
Pretrial Release Services
132 South 4th Street
Las Vegas, NV 89101
(702)386-4284

NEW JERSEY

STEPHANIE BARTH, Director
of Technical Assistance
National Council on Crime
and Delinquency
411 Hackensack Avenue
Hackensack, NJ 07601
(201)488-0400

DIANA GORDON, Executive Vice President
National Council on Crime
and Delinquency
411 Hackensack Avenue
Hackensack, NJ 07601
(201)488-0400

RUSS IMMARIGEON
New Jersey State Coordinator
Partnership for Alternatives
National Council on Crime
and Delinquency
411 Hackensack Avenue
Hackensack, NJ 07601
(201)488-0400

SUZANNE B. LONGACRE
Criminal Justice Planner
Atlantic County Justice Planning Unit
25 Dolphin Avenue
Northfield, NJ 08225
(609)645-7700, ext. 645

ANN P. NOON, Principal
Probation Officer II
Essex County Probation Department
110 South Grove Street
East Orange, NJ 07018
(201)961-7580

PATRICIA SIMPSON, Probation Officer
Essex County Probation Department
110 South Grove Street
East Orange, NJ 07018
(201)961-7580

HUBERT WILLIAMS, Police Director
City of Newark Police Department
520 Highland Avenue
Newark, NJ 07104
(201)733-6007

NEW MEXICO

ARSENIO BRITO, Coordinator
Metropolitan Criminal Justice
Coordinating Council
1429 Central, NW
Albuquerque, NM 87104
(505)766-4240

ROBIN B. THOMEN, Director
Pre-Prosecution Diversion
215 West San Francisco
Santa Fe, NM 87501
(505)827-5477

NEW YORK

SUSAN F. ANDREWS, Executive
Director
Court Consultation Services
50 Mineola Blvd.
Mineola, NY 11501
(516)741-3110

SUSAN J. BRANNEN, Supervisor of
Interviewers
Monroe County Bar Association
Pretrial Servies Corporation
65 West Broad Street, Room 610
Rochester, NY 14614
(716)454-7350

ESTELL L. COLLINS, Supervising U. S.
Pretrial Services Officer
Southern District of New York
Pretrial Services
2 Lafayette Street, Sixth Floor
New York, NY 10007
(212)791-0203

LESLIE A. CONWAY, County Jail
Project Specialist
New York State Association of Counties
150 State Street
Albany, NY 12207
(518)465-1473

RICHARD J. DACKOW
Classification Diagnostic Specialist
Sheriff's Department
1 Center Drive
Riverhead, New York 11901
(516)727-2176

BARBARA DEMAYO, Borough Director
New York City Criminal Justice Agency
16 Court Street
Brooklyn, NY 11201
(212)330-1504

JOHN P. FINNERTY, Sheriff
Sheriff's Department
1 Center Drive
Riverhead, New York 11901
(516)727-2176

MARIAN GEWIRTZ, Research Director
New York City Criminal Justice Agency
305 Broadway
New York, NY 10007
(212)577-0516

KATHLEEN HEIDE, Research Analyst
Criminal Justice Research Center
12203 Alton Road
Albany, NY

CLAY HILES, Executive Director
New York City Criminal Justice Agency
305 Broadway
New York, NY 10007
(212)577-0505

PETER D. KOMARINSKI
Project Director - PAPA
New York State Commission of Correction
Tower Building, 23rd Floor
Empire State Plaza
Albany, New York 12223
(518)474-8768

JUDITH A. LAPOOK, General Counsel
New York City Board of Corrections
51 Chambers Street
New York, NY 10021
(212)964-6307

JOHN W. LIQUORI
Executive Director Criminal Justice
Coordinating Council
1 Center Drive
Riverhead, New York 11901
(516)727-4700

PEARL A. MALL, Executive Director
PROBE
86 Hawley Street
Binghamtom, NY 13901
(607)772-8912

JAMES MURPHY
Schenectady County Legislator
Coordinator Jail Ministry
Diocese of Albany
401 Summit Avenue
Schenectady, NY 12307
(518)346-6848

KATHLEEN O'BOYLE
Pretrial Services Division
189 Montague Street, Room 900
Brooklyn, NY 11201
(212)330-7533

FRANK P. PETRONE
Assistant Deputy County Executive
County of Saffolk, New York
32 Campbell Drive
Dix Hills, New York 11746
(516)360-4014

DAN POCHODA, President
Correctional Associaton
135 E. 15th Street
New York, NY 10003
(212)254-5700

ANITA U. ROBERTS, Deputy Director
Human Rights Commission
419 W. Onondaga St., Director
Syracuse, NY 13202
(315)425-3567

MICHAEL SERRILL, Editor
Corrections Magazine
116 W. 32 St.
New York, NY 10001
(212)947-2700

JEFFREY O. SMITH, Principal
Research Analyst
Center for Governmental Research
37 South Washington Street
Rochester, NY 14608
(716)325-6360

MICHAEL SMITH, Director
Vera Institute of Justice
30 East 39th Street
New York, NY 10016
(212)986-6910

BARBARA E. STEIN, Chief
New York State Division Criminal Justice Service
80 Centre Street
New York, NY 10013
(212)587-4497

JOSEPH B. STULBERG, Associate Professor of Management
Baruch College/CUNY
17 Lexington Avenue, Box 517
New York, NY 10010
(212)725-7125

ALAN J. TADDIKEN, Principal Research Analyst
Center for Governmental Research
37 South Washington Street
Rochester, NY 14608
(716)325-6360

SUSAN M. TOUHSAENT, Senior Research Analyst
Center for Governmental Research
37 South Washington Street
Rochester, NY 14608
(716)325-6360

SUSAN A. WHITAKER
Principal Management Analyst
Office of Court Administration
270 Broadway
New York, NY 10044
(212)488-5938

MS. LEE F. WOOD, Director
Monroe County Bar Association Pretrial Services Corporation
65 West Broad Street, Room 610
Rochester, NY 14614
(716)454-3491

NORTH CAROLINA

ELLEN G. CLARKE-SAYER, Member
North Carolina Commission on Alternatives to Incarceration
c/o Prison and Jail Project
604 West Chapel Hill Street
Durham, NC 27701
(704)253-1136

OHIO

WENDY M. HUEBNER, Director
Greater Cincinnati Bail Project
222 East Central Parkway
Cincinnati, OH 45202
(513)381-5020

BILL D. KROMAN, Supervisor
Cuyahoga County Adult Probation
1200 Ontario Street, Justice Center
Cleveland, OH 44113
(216)623-7900

RAYMOND F. MCCOOL, Grand Jury and Bond Commissioner
Cleveland Court of Common Pleas
1200 Ontario, 12th Floor
Cleveland, OH 44113
(216)941-1837

BARRY A. RHODES, Court Interviewer
Greater Cincinnati Bail Project
222 East Central Parkway, Room 602-A
Cincinnati, OH 45202
(513)381-5020

GEORGE C. SCHULER, Court Representative
Greater Cincinnati Bail Project
222 East Central Parkway
Cincinnati, OH 45202
(513)861-8730

OREGON

GERALD HOFFMAN, President
Justice Design Associates
3472 Broken Arrow, NW
Salem, OR 97304
(503)838-1632

BLANCHE F. PROHASKA, Personnel Officer
Corrections Division - Multnomah County
818 Multnomah County Courthouse
1021 Southwest Fourth Avenue
Portland, OR 97204
(503)248-3000

PENNSYLVANIA

MARTHE A. BRAMLEY
Assistant Director Courts
Pretrial Services
219 N. Broad
Philadelphia, PA 19107

ALFRED R. CARLONE, Resource Developer
Philadelphia Pretrial Services
219 N. Broad Street
Philadelphia, PA 19149
(215)331-5708

ROBERT S. DANDO, Interviewer/Verifier
The Chester County Bail Agency
Chester County Courthouse Annex
17 North Church Street, Third Floor
West Chester, PA 19380
(215)431-6886

WILLIAM DERRINGER
Director Diversion Services
Philadelphia Adult Probation Department
1317 Filbert Street
Philadelphia, PA 19107
(609)983-6217

DEWAYNE L. GEDNEY, Director
Pretrial Services
219 N. Broad St., 6th Floor
Philadelphia, PA 19102
(215)686-7410

HON. JOSEPH R. GLANCEY, President Judge
Philadelphia Municipal Court
360 City Hall
Philadelphia, PA 19107
(215)686-7901

MICHAEL L. GREEN, Director
Diversion Services
332 North 13th Street
Philadelphia, PA 19107
(215)MU6-2544

JOSEPH W. JOYCE, JR., Managing Investigator
Philadelphia Common Pleas Court
219 N. Broad Street
Philadelphia, PA 19144
(215)586-7410

ALFRED T. LITTLE, Trial Services Director
District Attorney's Office
2300 Centre Square, West
Philadelphia, PA 19150

MELVENA LOWERY
Community Release Agency
Arrott Building, #1102
401 Wood Street @ 4th Avenue
Pittsburgh, PA 15222
(412)391-8848

STEPHEN H. SHANTZ, Chief Public Defender
Bucks County Public Defender
Court House
Doylestown, PA 18901
(215)348-2911

STEPHANIE L. SHEPHARD, Researcher
Pretrial Services
219 Broad St., 4th Floor
Philadelphia, PA 19107
(215)686-4576

ART WALLENSTEIN, Warden
Bucks County Jail
Department of Corrections
138 South Pine Street
Doylestown, PA 18901
(212)348-9056

SOUTH CAROLINA

NORMAN E. FOGLE, First Judicial Circuit Solicitor
Solicitor's Office
P. O. Box 1525
Orangeburg, SC 29115
(803)533-1000

JOHN T. HAYES, Director
POIC Pretrial Diversion
Seventh Judicial Circuit
P.O. Box 5025
Spartanburg, South Carolina 29304
(803)585-2239

R. LEE MUNN, Planner
South Carolina Pretrial
Intervention Program
P.O. Box 11549
Columbia, SC 29211
(803)758-8820

CHARLES T. SULLIVAN, Director
South Carolina Pretrial
Intervention Program
Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803)758-2152

L. SCOTT WALLACE
PTI Circuit Director
Solicitor's Office
P.O. Box 58
Charleston, SC 29402
(803)723-5083

JOHN WILSON, Director
Pretrial Intervention Program
Solicitor's Office
214 Newberry Street
Aiken, SC 29801

TENNESSEE

DENA L. ATKINS, Manager
Memphis Probation and
Diversion Department
Central Police Building, Room 118
128 Adams
Memphis, TN 38103
(901)528-2846

DR. MICHAEL P. KIRBY
Southwestern College At Memphis
Department of Political Science
2000 North Parkway
Memphis, TN 38112
(415)493-3586

MARTIN G. SZEIGIS, Director
Pretrial Services
Davidson County Sheriff's Pretrial
506 2nd Avenue
Nashville, TN 37201
(615)259-5605

TEXAS

CHARLES C. BAILEY
Assistant General Counsel
Governor's Office
P. O. Box 12428, Capital Station
208 Sam Houston Building
Austin, TX 78711
(512)475-4444

UTAH

CANDACE NENOW, Assistant Director
Pre-Trial Services
460 South 400 East
Salt Lake City, UT 84111
(801)535-5100

VIRGINIA

JOHN GREACEN, Deputy Director
for Programs
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
(804)253-2000

CAROL J. SHAPIRO, Project Director
Alternatives to Jail Project
Offender Aid and Restoration, USA
409 East High Street
Charlottesville, VA 22901
(804)295-6196

WISCONSIN

LOUIS P. COOPER, JR., Director
Dane County Deferred Pros.
District Attorney Office City-Co. Bldg.
Room 305, 210 Monona Avenue
Madison, WI 53709
(608)266-4211

E. MICHAEL MCCANN, District Attorney
821 West State Street
Milwaukee, WI 53233
(414)278-4646

GERALD L. MILLS, Criminal Justice
Diversion Specialist
Wisconsin Department of Health
and Social Services
Bureau of Alcohol and Other Drug Abuse
One West Wilson, Room 434
Madison, WI 53707
(608)266-0962

STEPHEN B. SWIGART, Associate Director
Wisconsin Correctional Service
436 West Wisconsin Rm. 400
Milwaukee, WI 53203
(414)271-2512

CANADA

ALBERTA

CHESTER CUNNINGHAM, Director
Native Counseling Services of Alberta
9912 - 106th St.
Edmonton, Alberta T5K 1C5
(403)423-2141

A.W. DUNFIELD, Crown Attorney
Dept. of the Attorney General
9833 - 109th Street
Edmonton, Alberta T5K 2E8
(403)427-4992

TERESA J. FLYNN, Community Release Supervisor
Calgary Remand Centre
335 Sixth Avenue, SE
Calgary, Alberta T2N 0V8
(403)261-3281

PHILIP W. H. WEST, Probation Officer
Verification/Supervision Unit
Calgary Remand Centre
335-6 Avenue, Southeast
Calgary, Alberta T2N 0V8
(403)261-3316

GORDON WILLIAMS, Program Manager
Native Counseling Services of Alberta
9912 - 106th Street
Edmonton, Alberta T5K 1C5
(403)423-2141

BRITISH COLUMBIA

TERRY EGAN, Director
Community Pretrial Service
Fourth Floor, 40 Powell Street
Vancouver, B. C. V6A 1E7
(604)668-3106

DOUGLAS HEATLEY
535 Yatts Street
2nd Floor
Victoria, B.C.

LARRY H. PEARSON, Coordinator
Community and Counseling Services
John Howard Society of British Columbia
2307 - 43rd Street
Vernon, B. C. V1T 6KF
(604)542-4041

ALAN A. W. PODSADOWSKI
Executive Director
Alternative Program
892 A Marine Drive
N. Vancouver, B. C. VTP 1R9
(604)984-0255

BRYAN RALPH, Executive Director
Legal Service Society of British Columbia
Post Office Box 12120
Vancouver, B. C. V6B 4N6
(604)689-0741

NEW BRUNSWICK

MICHAEL S. HETHERINGTON, Diversion Coordinator
New Brunswick Dept. of Justice Canada
Rm. 110 Justice Bldg., Queen St.
Fredericton, NB E3B 5M7
(506)453-3928

DR. ALEX HIMELFARB, Professor
U. of New Brunswick
P.O. Box 4400
Fredericton, N. B. E3B 5A3
(506)453-4849

NEWFOUNDLAND

RUBY DRISCOLL, Administrator
Pleasantville School - Social Services
P. O. Box 5085, East End P. O.
St. John's, Newfoundland A1C 5V3
(709)753-8712

JOHN C. LEGGE, Administrator
Whitbourne School for Boys
P.O. Box 40
Whitbourne, Newfoundland A0B 3K0
(709)759-2050

BRYAN PURCELL, Assistant Director Juvenile Corrections
Government of Newfoundland, Department of Social Services
P.O. Box 4040
St. John's, Newfoundland A1C 5Y6
(709)364-2298

NORTHWEST TERRITORIES

GAIL P. R. CYR, Executive Director
NWT Native Court Workers Association
P. O. Box 2706
Yellowknife, NWT XOE 1HO
(403)873-3678

ONTARIO

MARG ALLEN, Researcher
Liberal Caucus
P. O. Box 1019
House of Commons
Ottawa, Ontario K1A 082
(613)995-0886

MARIE ANDERSON, Information
and Volunteer Coordinator
Toronto/York Bail Programme
Rm. 303, 60 Queen St., West
Toronto, Ontario M5H 2M4
(416)965-3336

DENIS ANDRE, Probation/
Parole Officer
Ministry of Corrections
100 Wellington Square
Brantford, Ontario N3T 2M3
(519)752-6505

AUGUSTINE E. ASHAWASEGA
Native Courtworker
Parry Sound Friendship Centre
40-42 Gibson Street
Parry Sound, Ontario P2A 1W9
(705)746-2691

CARL ASPLER, Manager
Management Training
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3475

VICKI BALES
Operational Support Branch
Ministry of Community and
Social Services
9th Fl., 700 Bay St.
Toronto, Ontario M5G 1Z6
(416)965-2432

ANTHONY T. BARCLAY, Probation
and Aftercare Officer
Ministry of Community
and Social Services
194 Gerrard Street, East
Toronto, Ontario M5A 2EG
(416)923-4516

RICHARD BARNHORST, Director
Children's Policy Dev't. - COMSOC
Room 355, Hepburn Block,
Queen's Park
Toronto, Ontario M7A 1E9
(416)965-6231

KARL M. BARON
O + D Homeworker II
COMSOC - O + D Home
354 George Street
Toronto, Ontario M5A 2N3
(416)923-6780

RICHARD BARRY, Director
Home Care Crisis Services
Thistletown Regional Centre
51 Panorama Ct.
Rexdale, Ontario M9V 4L8
(416)741-1210

HARRY A. BEATTY, Legal Counsel
Ontario Association for the
Mentally Retarded
1376 Bayview Avenue
Toronto, Ontario M4G 3A3
(416)483-4348

FRANK BIASUCCI, Supervising
Probation and Aftercare Officer
Ministry of Community and
Social Services
38 Pine Street, North
101 Mall
Timmins, Ontario P4N 6K6
(705)267-7965

JOAN O. BLOOMFIELD
Bail Supervisor-Alcoholism
Counselor
Toronto/York Bail Programme
Rm. 303, 60 Queen St., West
Toronto, Ontario M5H 2M4
(416)965-3336

MARIE WALKER BOSWELL
Exec. Dir., St. Lawrence Youth
Three Cassidy Street
Kingston, Ontario K7L 2P1
(613)542-5987

RONALD BOURNE, Training Researcher
Royal Canadian Mounted Police
1200 Alto Vista Drive
Ottawa, Ontario K1A OR2
(613)824-8219

YVONNE BROUGH, Jail Interviewer
Toronto/York Bail Program
550 Gerrard Street, East
Toronto, Ontario M4M 1X6
(416)466-2164, ext. 325

DOUGLAS G. BROWN, Probation
and Aftercare Officer
Ministry of Community and
Social Services
48 Fifth Street, 2nd Floor
Chatham, Ontario N7L 4V8
(519)352-1115

CONRAD BRUNK, Director
Peace and Conflict Studies
Conrad Grebel College
University of Waterloo
Waterloo, Ontario N2L 3G6
(519)885-0220

JAMES W. BUNTON, Probation
and Aftercare Officer
Ministry of Community
and Social Services
1719 Lawrence Avenue, East
Scarborough, Ontario M1R 2X7
(416)751-9042

CAROLE-ANNE BURRIS
Family Court Clinic
P.O. Box 5600, Terminal A
London, Ontario N6A 2P3
(519) 679-7250

CHRIS R. BURTCHALL, Classification
Counselor
Mimico Correctional Centre
Box 75, Station N
Toronto, Ontario M8V 3S9
(416)255-0131, Ext. 23

KENNETH C. BURTON, Area Manager
Probation/Parole Services
477 Queen Street, East, Basement
Sault Ste. Marie, Ontario P6A 5L2
(705)253-1182

NANCY J. BYE-CARSON, Probation
and Aftercare Officer
Community Alternatives Coordinator
Ministry of Community
and Social Services
Waterloo Square, Suite 501
Waterloo, Ontario
(519)886-4911

GAIL CAGNEY, Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

FRED CAMPBELL, Program Supervisor
Ministry of Community
and Social Services
1st fl., 110 Eglington Ave., West
Toronto, Ontario M4R 2C9
(416)965-0232

TRINELA CANE, Probation/
Aftercare Officer
Ministry of Community and Social
Services, Children's Services
650 King St. E.
Oshawa, Ontario L1H 1G5
(416)723-1119

CATHERINE CAREY, Research Off.
Ministry of Correctional Serv.
2001 Eglinton Avenue, East
Sca borough, Ontario M1L 4P1
(416)750-3350

PAM F. CARLETON, Probation/
Aftercare Officer
Ministry of Community and
Social Services
713 Davis Drive, Suite 202
Newmarket, Ontario L3Y 2R3
(416)895-1800

JAMES E. CARTER, Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

IRENE M. CAUL Area Manager
Toronto/York Bail Programme
1000 Finch Avenue, W., Room 1025
Downsview, Ontario M3J 2U5
(416)667-0999

TERRENCE D. CAUL, Jail Coordinator
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

CAROLYN CHAMBERLAIN, Pretrial
Services Supervisor
John Howard Society
10 Queen Street, E.
Brampton, Ontario L6V 1A2
(416)459-2205

LILY CHIRO, Bail Project Counselor
Toronto/York Bail Project
670 Queen Street, West, Third Floor
Toronto, Ontario M6J 1E7
(416)368-0658

MURRAY W. CHITRA, Barrister
and Solicitor
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3319

M. JOANNE COCKLIN, Bail Supervisor
Toronto/York Bail Program
80 The East Mall, Room 147
Toronto, Ontario M8Z 5X6
(416)252-3735

DR. JERRY COOPER, Director
Psychiatric Services
York/Finch Hospital
2111 Finch Ave., W.
Toronto, Ontario M3N 1N1
(416)744-2500

PAUL COPELAND, Partner
Copeland, Liss
31 Prince Arthur Avenue
Toronto, Ontario M5R 1B2
(416)964-8126

DANIEL J. COVE, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M4T 1B3
(416)763-5491

MARY G. CRAIG, Supervisor
Probation and Aftercare
114 Worsley Street
Barrie, Ontario L4N 2T9
(705)737-3801

DAVID CROWE, Supervisor
Probation and Aftercare Services
900 Dufferin St.
Toronto, Ontario M6H 4B1
(416)965-5177

DR. J. DACRE, Consulting Psychiatrist
Ministry of Correctional Serv.
Rm. 441, 999 Queen St. West
Toronto, Ontario M6J 1H4
(416)535-8501

BILL DADE, Asst. Crown Attorney
College Park Court - Room 221
444 Yonge Street
Toronto, Ontario M5B 2H4
(416)965-7500

ART F. DANIELS, Executive Director
Community Programmes
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3495

SHEREE DAVIS, Research Analyst
Ministry of Correctional Services
Suite 500, 1240 Bay Street
Toronto, Ontario M5R 2A7
(416)965-6506

JAMES DINSDALE, Assistant
Bail Supervisor
Toronto/York Bail Program
444 Yonge Street, Room 290
Toronto, Ontario M5E 1G7
(416)965-9983

STAN DIVORSKI, Assistant Chief
Criminal Justice Policy Research
Ministry of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)593-6381

CARL R. DOMBEK, Director
of Legal Services
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3319

STAFF SGT. LES DOUGLAS
Metropolitan Toronto Police
590 Jarvis Street
Toronto, Ontario M4X 2J5
(416)967-2222

LOUIS DROUILLARD, Executive Director
St. Leonard's Society of Canada
Suite 3, 1787 Walker Road
Windsor, Ontario N8W 3P2
(519)254-9430

JUDY M. DRYBROUGH, Manager
Staff and Volunteer Training
Ministry of Correctional Services
2001 Eglinton Avenue, East
Toronto, Ontario M1L 4P1
(416)750-3475

JAMES DUNCAN, Superintendent
Minstry of Correctional Services
2244 Innes Road
Ottawa, Ontario K1B 4C4
(613)746-2312

DEE DURKOT, Probation and Aftercare
Ministry of Community
and Social Services
Box 3000, Ontario Gov't. Bldg.
Dryden, Ontario P8N 3B3
(807)223-3322

EDDIE DUTKA, Deputy Superintendent
Thunder Bay Jail
P.O. Box 2806
285 McDougall St.
Thunder Bay, Ontario P7B 5G3
(807)345-7364

LORETTA D. ELEY
Classification Counselor
Ministry of Correctional Services
55 Civic Road
Scarborough, Ontario M1L 2K9
(416)750-3513

DAVID ETHIER, Probation
and Aftercare Officer
Ministry of Community
and Social Services
121 Kennedy Avenue
Toronto, Ontario M6S 2X8
(416)762-7381

DON EVANS, Director
Community Programmes Development Branch
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3521

MARGARET F. FILLMORE, Jail Interviewer
Toronto/York Bail Programme
Toronto West Detention Centre
P.O. Box 4950
Rexdale, Ontario M9W 5L6
(416)675-1806

PAUL GIBSON, Investigator
Ontario Ombudsman's Office
125 Queen's Park Cres.
Toronto, Ontario M5S 2C7
(416)596-3408

ELO GLINFORT, Director
Consultation Centre
Ministry of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)992-7601

J. D. GORRELL, Barrister
100 Richmond St., W.
Toronto, Ontario M5C 2P9
(416)361-1261

NANCY L. GREENAWAY, Victim-Offender
Reconciliation Program Coordinator
John Howard Society
19 Albert Street
Hamilion, Ontario L8M 2Y1
(416)545-4040

KATHRYN HARLEY
c/o 5-455 Albert Street
Waterloo, Ontario N2L 5A7
(519)884-3594

WARREN HENDRICKS
Probation/Parole Officer
180 Front Street
Belleville, Ontario K8N 5B6
(613)968-5737

MITCHELL HERRON, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M6N 3C6
(416)763-5419

JOHN HILDENBRANDT, Superintendent
Niagara Reg. Detention Centre
P. O. Box 1050
Thorold, Ontario L2V 4A6
(416)227-6321

LES HORNE, Coordinator
Child Advocacy Unit
Ministry of Community and
Social Services
2nd fl., 700 Bay St.
Toronto, Ontario M7A 1E9
(416)965-7006

GERRI HUNKING, Court Coordinator
The Elizabeth Fry Society
215 Wellesley Street, East
Toronto, Ontario M4X 1G1
(416)924-3708

HARRY C. HUTCHISON, Executive Director
for Special Programs
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3313

MARGARET A. JACKSON, Senior
Research Associate
Centre of Criminology
Eighth Floor, Roberts Library
University of Toronto
Toronto, Ontario M5S 1A1
(416)978-4868

BILL JAMIESON
1208 Don Mills Road, Unit 9
Toronto, Ontario, M3B 2W2
(416)486-0360

DEREK W. JEFFREYS, Area Supervising
Probation and Aftercare Officer
Ministry of Community
and Social Services
240 Birchwood Street
Sault Ste. Marie, Ontario P6A 6G4
(705)949-0551

GORD JENES, Bail Supervisor
Toronto/York Bail Programme
60 Queen Street, West, Rm. 303
Toronto, Ontario M5H 2M4
(416)965-3336

F. A. S. JENSEN, Deputy Director
Metropolitan Toronto Forensic Service
999 Queen St., W.
Toronto, Ontario M6J 1H4
(416)535-8501

BEVERLEY A. JOHNSTON
Deputy Superintendent
Ministry of Correctional Services
1430 River Street
Kenora, Ontario P9N 1K5
(807)468-3168

GRACE JUTZI, Administrative Assistant
Community Mediation Service
27 Roy Street
Kitchener, Ontario N2H 4B4
(519)893-4922

HONOURABLE ROBERT KAPLAN
Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)996-0220

KENNETH J. KEALEY, Probation/
Aftercare Officer
Dept. of Community and Social Services
900 Lady Ellen Place
Ottawa, Ontario K1Z 5L5
(613)722-6507

PAUL KITCHER, Assistant
Bail Supervisor
Toronto/York Bail Program
80 The East Mall, Room 147
Toronto, Ontario M87 5X6
(416)252-3735

JOHN KNOWLES, Correctional
Officer
Salvation Army
Box 3355
Thunder Bay, Ontario

SGT. WILLIAM TERRY KNOX
Metropolitan Toronto Police
No. 55 Division Youth Bureau
590 Jarvis Street
Toronto, Ontario M4X 2J5
(416)967-2222

PETER KULENDRAN, Deputy Director
Community Resource Centre Branch
Ministry of Correctional Services
2001 Eglinton Avenue, East, Second Floor
Scarborough, Ontario M1L 4P1
(416)750-3400

SHERRY M. KULMAN, Student of
Criminology
University of Ottawa
345 Laurier, East, No. 503
Ottawa, Ontario
(613)234-0661

JAMES KYL-HEKU, Probation and
Parole Officer
Ministry of Correctional Services
3 Beachwood Drive
Parry Sound, Ontario P2A 1J2
(705)746-5809

SUZANNE M. LAJAMBE, Pre-Trial
Services Coordinator
John Howard Society
224 Queen Street, East
Sault Ste. Marie, Ontario
(705)256-2808

DR. LEAH LAMBERT, Policy Coordinator
Justice Secretariat
Room 1341, Whitney Block, Queen's Park
Toronto, Ontario M7A 1A2
(416)965-9535

BARBARA LANDAU, Policy Advisor
Children's Policy Development
Ministry of Community and
Social Services
Toronto, Ontario

MARION LANE, General Counsel
Justice for Children
455 Spadina Avenue
Toronto, Ontario M5S 2G8
(416)596-1349

PIERRE LANGELIER, Investigator
Ontario Ombudsman's Office
125 Queen's Park
Toronto, Ontario M5S 2C7
(416)596-3464

JOAN C. LATCHFORD, Director
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario, M6N 3C6
(416)921-8565

SARAH LAWLEY
1210-55 Maitland Avenue
Toronto, Ontario M4Y 1C9
(416)968-6774

DARLENE E. LAWSON
Assistant Director
Toronto/York Bail Program
60 Queen Street West
Toronto, Ontario, M5H 2M4
(416)965-3336

JANET S. LEE, Victim/Witness
Assistance Coordinator
Salvation Army
120 Carling Street
London, Ontario N6A 1H6
(519)438-8580

SUSAN A. LEE, Assoc. Reg'l. Consultant
Ministry of Solicitor General
2 St. Clair Avenue, West, #12A8
Toronto, Ontario M4V 1L5
(416)966-8107

GERALD LEGER, Researcher
Chief, Causes and Prevention Research
Ministry of Solicitor General Canada
340 Laurier Ave., West
Ottawa, Ontario K1A OP8
(613)593-6375

HAROLD LEVY, Special Projects Coordinator
Ontario Legal Aid Plan
145 King Street, West
Toronto, Ontario M5H 1J8
(416)361-0766

HIS HONOUR JUDGE CLARE LEWIS
College Park Court
444 Yonge Street
Toronto, Ontario M5B 2H4
(416)965-7420

PHIL J. LEWIS, Supervisor of Probation and Aftercare Officers
710 Victoria Avenue
Thunder Bay, Ontario P7C 5P7
(807)475-1485

J. PAUL LORDON, Special Advisor, Legal Aid
Department of Justice
Kent & Wellington Streets
Ottawa, Ontario K1A OH8
(613)992-8932

BRYAN M. LOUCKS, Researcher
Ontario Native Council on Justice
100 Adelaide Street, W., Suite 510
Toronto, Ontario M5H 1S3
(416)367-1640

HELEN M. LOWE, Probation and Aftercare Officer
Ministry of Community and Social Services
County Court House
Peterborough, Ontario K9H 3M3
(705)743-4206

LYNN E. LOWRY, Social Worker
Brookside School
390 King Street, East
Cobourg, Ontario K9A 4K6
(416)372-5451

SANDRA F. MACDONALD
Classification Counselor
Toronto Jail
550 Gerrard Street, East
Toronto, Ontario M5V 2A7
(416)466-2164

DON MACDOUGALL, Assistant Crown Attorney
Provincial Court - Criminal Division
One Nicholas Street
Ottawa, Ontario K1N 7B7
(613)238-1261

ROBERT C. MACEROLLO, Director
Ontario Ombudsman's Office
125 Queen's Park
Toronto, Ontario M5S 2C7
(416)596-3416

DAVE MACKEY, Investigator
Ontario Ombudsman's Office
125 Queen's Park
Toronto, Ontario M5S 2C7
(416)596-3464

CAMILE J. MACPHERSON, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M6N 3C6
(416)691-9876

PATRICK MADDEN, Research Assoc.
Planning and Research
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3350

CONNIE MAHAFFY
Mimico Correctional Center
Probation/Parole Services
P.O. Box 75
Toronto, Ontario M8V 3S9
(416)255-0131

JOHN MAIN, Regional Director
Ministry of Correctional Services
2 Dunbloor Street, Suite 312
Islington, Ontario, M9A 2E4
(416)248-3901

JOCEYLN MARSHALL, Editor
Liaison Magazine
Min. of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)996-5268

RICHARD S. MAZUR
Diversion Chairman
Waterloo Region Diversion Program
1190 King Street, East
Kitchener, Ontario N2G 2N4
(519)579-6898

DAVID R. MCCAGHERTY, Supervisor
Probation & Aftercare Office
900 Lady Ellen Place
Ottawa, Ontario K1Z 5L5
(613)722-6507

S. MCCARTHY, Supervisor
Ministry of Correctional Services
146 Simcoe Street, North
Oshawa, Ontario L1G 4S7
(416)571-3772

LINDA MCCLEOD, Policy Analyst
Ministry of Solicitor General
340 Laurier Ave., West
Ottawa, Ontario K1A OP8
(613)992-2898

JOHN MCGOFF, Advocacy Coordinator
York Observation Centre
354 George Street
Toronto, Ontario M5A 2N3

MICHAEL E. MCMILLAN, Chief
Native Programmes, Dept. of Justice
Justice Bldg. - Kent & Wellington Sts.
Ottawa, Ontario K1A OH8
(613)996-9649

DON R. MCPHAIL, Superintendent
Morton Youth Services
46 Toronto Street
Barrie, Ontario K4N 1T9
(705)737-2441

BRAM MEAKINGS, Major
The Salvation Army
59 Brentcliff Road
Toronto, Ontario M4G 3Y5
(416)598-2071

RUTH MEAKINGS, Major
The Salvation Army
57 Brentcliffe Road
Toronto, Ontario M4G 3Y5
(416)422-4760

DONALD F. MIKEL
Classification Counselor
Toronto West Detention Centre
P.O. Box 4950
Rexdale, Ontario M9W 5L6
(416)675-1806

STEPHANIE MILGRAM
31 Francine Drive
Willowdale, Ontario M2H 2G5
(416)493-6003

FREDERICK MILLS, Area Administrator
The Salvation Army Correctional Services
192 Somerset Street, West
Ottawa, Ontario K2P 0J4
(613)236-9615

KENNETH H. MITCHELL, Regional
Administrator
Ministry of Correctional Services
106 N. Cumberland
Thunder Bay, Ontario P7A 4MZ
(807)345-3309

HANS MOHR, Professor
Osgoode Hall Law School
4700 Keele St.
Downsview, Ontario M3J 1P3
(416)667-3961

ALISON MOLLOY, Regional Coordinator
Ministry of Solicitor General
Suite 12A8, Two St. Clair Ave., W.
Toronto, Ontario M4V 1L5
(416)966-8107

C. PETER MORDEN, Senior Consultant
A.R.A. Consultants
151 Bloor Street, West, Suite 701
Toronto, Ontario M1K 2B4
(416)961-1474

EDWARD MORRIS, Area Manager
Probation and Parole Services
180 Front Street, 2nd Fl.
Belleville, Ontario K8N 2Y7
(613)968-5737

RUTH R. MORRIS, Director
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

STEVEN MORRISON
Six Twichenham Ct.
Thornhill, Ontario L3T 5T7
(416)889-0294

MARY E. MORTON
Assistant Professor of Sociology
Queen's University
Kingston, Ontario K7L 3N6
(613)547-6256

HIS HON., JUDGE A. P. NASMITH
Provincial Court - Family Division
160 Silverhill Drive
Islington, Ontario M9C 3W7
(416)236-2553

LYNDON NELMES, Superintendent
Ontario Correctional Institute
P. O. Box 1888
Brampton, Ontario L6V 2P1
(416)457-7050

BRYANT NERO, Assistant Director
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M5C 1C6
(416)469-4857

CHRISTOPHER P. NUTTALL, Assistant
Deputy Minister
Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)992-4782

CAROL A. OGINSKI, Executive Director
Reaching Out, Inc.
1787 Walker Road, Suite 4
Windsor, Ontario
(519)254-5441

MARYKA OMATSU, Lawyer
Canadian Human Rights Commission
275 Slater Street
Ottawa, Ontario K1A 1E1
(613)995-1277

WILLIAM T. O'NEILL, Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

DONALD M. PAGE
Regional Administrator
Probation and Parole Service
2 Dunbloor Road, Suite 312
Islington, Ontario M9A 2E4
(416)248-3901

BERNARD C. PARKER, Superintendent
Ministry of Correctional Services
Walkerton Jail
209 Cayley Street
Walkerton, Ontario N0G 2V0
(519)881-3448

DAVID A. PARKER
Regional Administrator
Ministry of Correctional Services
146 Simcoe Street, North
Oshawa, Ontario L1G 4S7
(416)571-3772

RICH PARTRIDGE, Metro Coordinator
Juvenile Justice Volunteers Centre
194 Gerrard Street, East
Toronto, Ontario M5A 2E6
(416)923-4516

DEAN E. PEACHEY, Coordinator
Community Mediation Service
27 Roy Street
Kitchener, Ontario N2H 4B4
(519)742-0922

DONALD PIRAGOFF, Legal Counsel
Policy Planning and Criminal
Law Amendments
Department of Justice
Justice Bldg., Kent & Wellington Streets
Ottawa, Ontario K1A OH8
(613)995-6409

RUTH PITMAN, Policy Development Officer
Justice Secretariat
Room 1343, Whitney Block, Queen's Park
Toronto, Ontario M7A 1A2
(416)965-0579

BYRON R. PULSIFER, Assistant Director
Ontario Ombudsman's Office
125 Queen's Park Cres.
Toronto, Ontario M5S 2C7
(416)596-3464

LINDA E. REID, Partner
A.R.A. Consultants
151 Bloor St. W., Suite 701
Toronto, Ontario M1R 2B9
(416)961-1474

RON J. RICHER, Special Projects Officer
Ministry of Community and Social Services, Children's Services
2197 Riverside Drive, Room 705
Ottawa, Ontario K1H 7X3
(613)523-7466

JOAN RICHES - Member, Training Schools Advisory Board - M.C.S.
2nd Floor, 700 Bay Street
Toronto, Ontario M7A 1E9
(416)965-1871

INGRID RICHTER, Coordinator
St. Philip's Resource Centre
201 Caribou Road
Toronto, Ontario M5N 2B5
(416)782-1131

PETER RICKABY, Crown Attorney
Ministry of the Attorney General
8 King Street, East
Toronto, Ontario M5C 1C5
(416)965-4377

CHARLES ROACH, Partner
Roach & Smith
688 St. Clair Avenue, West
Toronto, Ontario M6C 1V1
(416)657-1465

JOHN ROE, Area Manager
Ministry of Correctional Services
470 Hensall Circle
Mississauge, Ontario L5A 3V4
( )276-2117

PAT ROLFE, Special Advisor
Solicitor General Canada
Ottawa, Ontario
340 Laurier W.
Ottawa, Ontario K1A OP8
(613)995-2507

WILLIAM H. ROY, Classification Counselor
Sudbury Jail
181 Elm Street, West
Sudbury, Ontario P3C 1T8
(705)675-4150

MARY RUTH
2085 Islington Avenue
Toronto, Ontario M9P 3R1
(416)245-3139

NEAL RUTON, Director
Stonehenge
147 Delhi Street
Guelph, Ontario N1E 4J3

CAROLYN SAINT-DENNIS, Policy Advisor
Ministry of Solicitor General
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)992-3014

GILLIAN SANDEMAN, Executive Director
The Elizabeth Fry Society of Toronto
215 Wellesley Street, East
Toronto, Ontario M4X 1G1
(416)924-3708

ANNE SCACE, Program Manager
John Howard Society
168 Isabella Street
Toronto, Ontario M4Y 1P6
(416)925-4386

GEORGE SERPA, Pre-Trial Services Coordinator
John Howard Society
10 Queen Street, E.
Brampton, Ontario L6V 1A2
(416)459-2205

RUTH SHADGETT, Bail Supervisor
The Salvation Army
192 Somerset Street, West
Ottawa, Ontario K2P 0J4
(613)236-9615

MARY SHANTZ, Social Development Consultant
Native Community Bureau
Ministry of Culture and Recreation
77 Bloor Street, West, Fifth Floor
Toronto, Ontario L6V 1A2
(416)965-5003

JOEL SHAPIRO, Area Manager
Court Liaison Services - M.C.S.
1240 Bay Street, Suite 506
Toronto, Ontario M5R 2A7
(416)965-6434

ROBERT C. SHAW, Executive Director
Dellcrest Children's Centre
1645 Sheppard Avenue, West
Downsview, Ontario M3M 2X4
(416)633-0515

MAUREEN SHEA-DESROSIERS
Legal Officer, Young Offenders
Ministry of Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)996-3874

KEVIN SHEARD, Interviewer
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

VICTORIA A. SHEEHY, Director
Yorklea Lodges
1117 O'Connor Drive
Toronto, Ontario M4B 2T5
(416)757-6122

PAUL SIEMENS, Manager
Children's Policy Development
COMSOC - 11th Floor
700 Bay Street
Toronto, Ontario M7A 1E9
(416)965-5339

DON SINCLAIR, Deputy
Provincial Secretary
Justice Secretariat
Whitney Block, No. 1355, Queens Park
Toronto, Ontario M7A 1A2
(416)965-2838

ISAAC SINGER, Barrister & Solicitor
2395A Bloor Street, West
Toronto, Ontario M6S 1P6
(416)766-1135

BRYAN SLIGHTE, Area Manager
Toronto/York Bail Program
444 Yonge Street, Room 290
Toronto, Ontario M5E 1G7
(416)596-0999

FLORENCE SMITH, Jail Interviewer
Metro East Detention Centre
Toronto/York Bail Program
55 Civic Road
Scarborough, Ontario M1L 2K9
(416)750-3513, ext. 230

STAN SMITH, Director
Gerrard House
John Howard Society
562 Gerrard Street, East
Toronto, Ontario M4M 1X8
(416)463-5929

BRIAN SNYDER
c/o 5-455 Albert Street
Waterloo, Ontario N2L 5A7
(519)884-3594

DAVID P. SOLBERG, Counsel
Department of Justice
Kent and Wellington Streets
Ottawa, Ontario K1A OH8
(613)992-2630

MARY S. SONNICHSEN
111 Main Street
Osgoode, Ontario KON 2WO
(613)826-2503

PAUL Q. SONNICHSEN, National Consultant
on Community Alternatives
Solicitor General Canada
340 Laurier Avenue, West
Ottawa, Ontario K1A OP8
(613)995-4811

VINCE J. SPARKS, Youth Worker
Vincenpaul Bail Residence
88 Mulock Avenue
Toronto, Ontario M5C 3C6
(416)691-9876

MARGARET STRECKER, Social
Services Administrator
Ministry of Community and
Social Services
195 Dufferin, 5th Floor
London, Ontario N6A 1K7
(519)438-8344

GERRY STUART, Investigator
Ontario Ombudsman's Office
125 Queen's Park Cres.
Toronto, Ontario M5S 2C7
(416)596-3413

KAROUL TALABA, Executive Director
Families and Friends Centre
558 Gerrard Street, East
Toronto, Ontario M4M 1X8
(416)466-3852

SGT. BOB TAYLOR, Youth Section
Ottawa Police Department
60 Waller Street
Ottawa, Ontario K1N 7G5
(613)236-0311

DICKSON E. TAYLOR, Director
Probation and Parole
Ministry of Correctional Services
2001 Eglinton Avenue, East
Scarborough, Ontario M1L 4P1
(416)750-3440

ALAN TEICHROEB
c/o 5-455 Albert Street
Waterloo, Ontario N2L 5A7
(519)884-3594

ANDREW P. TELEGDI, Director
Youth in Conflict with the Law
159 1/2 Frederick Street
Kitchener, Ontario
(519)745-6591

JOAN TEMPLE, Development Officer
Portage Ontario
111 Avenue Road, Concourse Level
Toronto, Ontario M5R 3J8
(416)968-0257

KEN THOMAS, Director
Craigwood Centre
P.O. Box 100
Ailsa Craig, Ontario NOM 1AO
(519)232-4301

GLENN R. THOMPSON, Deputy Minister
Ministry of Correctional Services
2001 EGLINTON AVENUE, EAST
Scarbough, Ontario M1L 4P1
(416)750-3301

MARILYN J. THWAITTERS, Assistant
Bail Supervisor
Toronto/York Bail Program
Room 303, Old City Hall
60 Queen Street, West
Toronto, Ontario M5H 2M4
(416)965-3336

ELMER B. TOFFELMIRE, Regional
Administrator
Probation and Parole Services
Ministry of Correctional Servies
1055 Princess Street
Kingston, Ontario K71 1H3
(613)547-3464

KIM M. K. TOI, Bail Supervisor
John Howard Society
19 Albert Street
Hamilton, Ontario L8M 2Y1
(416)545-4040

BEVERLY A. TOLSON, President
Canadian Research Institute for
Public Affairs
100 Adelaide Street, West, Suite 1601
Toronto, Ontario M5H 1S3
(416)485-5080

RICHARD H. TREGO, Director
Conestoga Community Clinic
Provincial Courthouse, Family Division
Frederick Street, Second Floor
Kitchener, Ontario N2H 6N9
(519)576-6120

DR. EDWARD TURNER, Director
Metro Toronto Forensic Service
999 Queen Street, West
Toronto, Ontario M6J 1H4
(416)535-8501, ext. 319

GRAHAM TURRAL, Chief Psychologist
Metropolitan Toronto Forensic Service
999 Queen Street, West
Toronto, Ontario M6J 1H4
(416)535-8501

HELEN M. VAIL, Regional Consultant
Solicitor General Canada
2 St. Clair Avenue, West, Suite 12A8
Toronto, Ontario M4V 1L5
(416)966-8107

JOHN G. VANDERBURG, Bail Supervisor
Toronto/York Bail Program
444 Yonge Street, Room 290
Toronto, Ontario M5E 1G7
(416)596-0999

KATHRYN VOLF, Probation
and Aftercare Officer
Ministry of Community
and Social Services
199 Larch Street, Main Floor
Sudbury, Ontario P3E 5P9
(705)675-4241

IRVIN WALLER, Professor
Department of Criminology
University of Ottawa
75 Laurier Avenue, East
Ottawa, Ontario K1N 6N5
(613)231-4070

APRILL D. WEIL, Probation
and Parole Officer
Ministry of Correctional Services
384 Parliment Street, Second Floor
Toronto, Ontario M5A 2Z7
(416)965-0420

RUBY WELBOURN, Court Coordinator
Toronto/York Bail Program
80 The East Mall, Room 146
Toronto, Ontario M82 5X6
(416)252-3735

WILLIAM G. WEST, Assistant Professor
Ontario Institute for Studies
and Education
252 Bloor Street, West
Toronto, Ontario M5S 1V5
(416)923-6641

LAVINIA WHETUNG, Executive Secretary
Ontario Native Council on Justice
100 Adelaide Street, West, Suite 510
Toronto, Ontario M5H 1S3
(416)367-1640

LAWRENCE W. WILES, Superintendent
Peterborough Jail - M.C.S.
P. O. Box 1480
Peterboro, Ontario
(705)743-7331

OLIVIA K. WILSON, Bail Supervisor
Toronto/York Bail Programme
1000 Finch Avenue, West
Downsview, Ontario M3J 2U5
(416)667-0999

RUSSELL J. WILSON, Bail Supervisor
Toronto/York Bail Programme
1000 Finch Avenue, West
Downsview, Ontario M3J 2V5
(416)667-0999

MARK D. YANTZI, Coordinator
Victim Offender Services
2-27 Roy Street
Kitchener, Ontario N2H 4B4
(519)578-3453

RONNY YARON, Bail Supervisor
Toronto/York Bail Program
444 Yonge Street
Toronto, Ontario M5E 1G7
(416)965-9983

BRUCE YOUNG, Counsel
Ministry of the Attorney General
18 King Street, East
Toronto, Ontario M5C 1C5
(416)965-3912

QUEBEC

MARC BELANGER, Conseiller
Comite de la Protection de la Jeunesse
505 Ouest, rue Dorchester
Montreal, Quebec H2Z 1A8
(514)873-5428

FRANK BUMPS, Supervisor
Treatment Services
Shawbridge Youth Centres
7200 Hutchison
Montreal, Quebec H3N 1Z2
(514)274-9351

MARIE-FRANCE DESROSIERS, Lawyer
Service de Readaptation Sociale, Inc.
1279 Boulevard Charest Ouest, Suite 900
Quebec, Quebec G1N 4K7
(418)687-1441

GERALD GALLANT, Special Projects
Department of Justice
1200 Route de l'Eglise
Ste-Foy, Quebec G1V 4M1

LINTON S. GARNER, Diversion Coordinator
West Island Juvenile Diversion Program
West Island YMCA
Pointe Claire, Quebec H9E 2A8
(514)694-8724

HON. JACQUES LESSARD
Court of Sessions of the Peace
Palais de Justice
1 Notre-Dame Street, East
Montreal, Quebec H2Y 1B6
(514)873-5686

SILVIO J. ORLANDO, Director
Treatment Services
Shawbridge Youth Centres
7200 Hutchison
Montreal, Quebec H3N 1Z2
(514)274-9351

MICHEL POIRIER
Directeur Projets Speciaux
Centre D'accueil Le Portage
3418 Drummond
Montreal, Quebec H3G 1Y1
(514)282-0404

SAMIR RIZKALLA, Coordinator
College de Maisonneuve
Dept. Techniques Auxiliares Justice
380 Sherbrooke Street, East
Montreal, Quebec H1X 2A2
(514)254-7131

JACQUES TELLIER, President
Comite de la Protection de la Jeunesse
505 Dorchester Street, West
Montreal, Quebec H2Z 1A8
(514)873-5428

MICHEL VALLEE, Regional Consultant
Solicitor GGeneral Canada
#210, 66 Sherbrooke Street, West
Montreal, Quebec H3A 1E7
(514)283-7362

SASKATCHEWAN

KEITH A. COUSE, Associate Professor
School of Human Justice
University of Regina
Regina, Saskatchewan S4P 1V1
(306)584-4033

TERRY W. NIMETTE, Senior Counselor
Department of Social Services
Provincial Correctional Centre
Regina, Saskatchewan S4P 3A6
(306)352-0641

J. ANDREW SMITH, Associate
Regional Consultant
Ministry of Solicitor General
#8, 1505 - 8th Street, East
Saskatoon, Saskatchewan S7H 0T2
(306)665-4262

SYMPOSIUM STAFF

Symposium Coordinator and in charge of American program:
Ann Jacobs with the assistance of Roseanna Kaplan

Canadian Coordinator and in charge of Canadian program:
Paul Sonnichsen with the assistance of Helen Vail and Susan Lee

Logistics Coordinator and Liaison with hotel: Roseanna Kaplan

The Exchange: Stephanie Milgram with the assistance of Nancy Waggner

Tours: Connie Mahaffy with the assistance of Stephanie Milgram

Registration: Celia Dunayer

Accounts: Celia Dunayer and Bill Jamieson

CANADIAN PLANNING COMMITTEE

Ministry of the Solicitor General Canada	*Paul Sonnichsen, Committee Chair* *Susan Lee* *Stephanie Milgram, Intern* *Mary Ruth, Intern* *Helen Vail* *Michel Vallee*
Ontario Ministry of Correctional Services	*Connie Mahaffy*
Ontario Ministry of Community and Social Services	*Derek Jeffreys*
Department of Justice Canada	*Don Piragoff* *David Solberg*

RESOURCE CENTER STAFF

Director	*Madeleine Crohn*
Technical Assistance	*Elizabeth Gaynes* *D. Alan Henry* *Nancy Waggner*
Training	*Ann Jacobs* *Roseanna Kaplan*
Research	*Donald Pryor*
Administration	*Celia Dunayer* *Michael Bassett*