PROCEEDINGS

THE NATIONAL SYMPOSIUM ON PRETRIAL SERVICES

1980

This publication is supported by grant number 79-MU-AX-0033 awarded by the Law Enforcement Assistance Administration, United States Department of Justice. Points of view or opinions stated in this publication are those of the Pretrial Services Resource Center and do not necessarily represent the official position of the United States Department of Justice.

Proceedings of the National Symposium on Pretrial Services 1980

Denver, Colorado
June 23-25, 1980

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ACKNOWLEDGEMENTS

The Pretrial Services Resource Center would like to express its warm appreciation to everyone who donated their time and services in conjunction with the 1980 Symposium.

We are particularly appreciative of the assistance provided by Carol Mercurio, the Colorado Association of Pretrial Services Agencies, Steve Siegel, and staff members of the pretrial programs run under the auspices of Nolan Brown, District Attorney of Jefferson County.

Special thanks go, too, to Claude Beller and TVG Associates who made the film Presumed Innocent available for showing at the Symposium.

Finally, we wish to recognize the three Resource Center Visiting Fellows who were always available to help--Terri Jackson, Tim Murray, and Terri Wurmser; Francis Butler, for printing the pictures included; and those colleagues who, as reporters, aided in this edition of the Symposium Proceedings:

Norm Brisson
Jay Carver
Cheryl Cook
Estell Collins
Ray Crowell
David Garms
Angela Grant
Elizabeth Hurlow-Hannah
John Long
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Mark Tully
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FOREWORD

The 1980 Symposium was the fourth national conference on pretrial services sponsored by the Pretrial Services Resource Center with funding from the Law Enforcement Assistance Administration.

The program included two major addresses, three debates on major issues, twenty-five workshops, four discussion groups, and six professional development seminars. These Proceedings include full texts of the keynote and closing speeches, and summaries of other program segments. 1/

Some of the summaries are based on drafts submitted by volunteers who attended the conference. Others were written by Resource Center staff after reviewing cassette tapes of the Symposium. The Resource Center regrets if there are any errors or significant omissions in the reporting.

1/ Two sessions are not covered in this report: Pretrial, Congress and the Eighties is not included because it contained information which was dated by the time the Proceedings were prepared; the peer discussion group on The Future of Pretrial Diversion was not covered by a reporter nor was the cassette tape on the session audible.

INTRODUCTION

For people who work in pretrial services, sometimes it seems that every year is a hard one. And yet, the last year was, in many ways, probably better than others. We saw that pretrial services were progressively being accepted as important components of good criminal justice systems. Increasingly, responsibility for their funding shifted from federal to local government. This year, however the criminal justice field was faced with the probable demise of LEAA and, therefore, with the elimination of the major source of support for new and innovative programs. Further, uncertainty over the future of pretrial services was illustrated in Congress in the debate over continuation of the federal pretrial agencies after the expiration of the Speedy Trial Act. And yet, as hundreds of jurisdictions all over the country face litigation over jail conditions and overcrowding there has been increased interest in pretrial alternatives.

And so, the 1980 Symposium on Pretrial Services was an opportunity for reflection and rededication. Away from daily pressures and in the company of over 300 colleagues, attendees had the time to reconsider many of the issues facing the pretrial field. Allen Breed in his keynote address talked about facing reality. He noted a seemingly endless list of trends which might negate a sense of progress in criminal justice reform: increasing costs, decreasing available resources, public apathy (and even hostility), etc. And he closed by saying that "...the future of pretrial is literally in your hands...Hope, change and progress can come only on the groundswell of individual response and commitment."

This was a challenge that participants would hear many times in their stay in Denver. Strategies and approaches to making that difference were the substance of discussion in workshops, training seminars, and in the exchange that occurred even in the halls between sessions.

But the underlying importance of each individual's participation was perhaps best underscored by the remarks of Reverend Wendell Phillips in his closing address: "Share your vision with others. Get them to understand the difficulties and importance of continuing the flow of justice in this country." That was the subject of the Symposium--and is, in part, the message conveyed in the summaries that follow.

OPENING PLENARY SESSION

OPENING REMARKS

Madeleine Crohn, Director
Pretrial Services Resource Center

Madeleine Crohn opened the first plenary session by welcoming the attendees to Colorado and thanking them for participating in the conference. Noting that there were too many to acknowledge during the opening ceremony, Crohn expressed her appreciation to the numerous persons and organizations that helped the Center sponsor the 1980 Symposium, including the Colorado Association of Pretrial Services Agencies, National Institute of Corrections Jail Center, the National Association of Pretrial Services Agencies, and the Resource Center Board of Trustees.

Crohn spoke briefly of her travels throughout the United States in the last few months, saying that the underlying tone in the country paints a grim picture for the pretrial field. She observed that people are preoccupied with problems that have a direct and economic impact on them--such as energy and inflation--while having little patience or concern for complex social problems that may affect them only indirectly--such as crime. Public opinion seems to favor revenge, imposing harsher sentences--including the death penalty--on criminals rather than using alternatives, termed by some as the "hearts-and-flowers" approach.

What people fail to realize is that in this call for toughness, certain constitutional guarantees are being abused or denied, principles which are the foundation of that for which America stands. "Perhaps it should be easier to prosecute criminals", Crohn said, "but the presumption of innocence is more than a technicality--it is a fundamental right." She suggested, therefore, that the activities of those people whose work is grounded in these rights will become more important than ever before. While it is easier to do a job when everyone agrees with you, it is vital to do that job when the principles for which you work are threatened.

Crohn concluded with the words of Robert F. Kennedy, who said, "Some men see things as they are and say, 'Why?'. I dream things that never were and say, 'Why not?'" Because the pretrial field is comprised of people who also say, "Why not?", Crohn said it was a special honor to welcome the attendees to this year's conference. She urged the audience to continue to be dreamers of a better society and expressed her hope that the Symposium would supply the renewed strength, energy, and faith to continue in the struggle for justice.

WELCOMING

The Honorable William Erickson, Justice
Colorado Supreme Court
Denver, CO.

William Erickson presided over the opening plenary session. Erickson said that as far as pretrial services are concerned, the state of Colorado has always kept pace with the times. He commended the outstanding efforts of the pretrial services agencies in the state as well as the personal contributions of a number of individuals, including Symposium faculty members Nolan Brown and Cal Harvey.

Erickson referred to the origins of the pretrial movement. While the English were the first to recognize the inherent injustice and potential for abuse of the bail bond system, Americans quickly followed the British lead with innovative programs, such as the Manhattan Bail Project, and progressive legislation, such as the federal Bail Reform Act. He applauded the development of standards governing pretrial practices and cited the works of the American Bar Association, National Association of Pretrial Services Agencies, National District Attorneys Association, National advisory Commission on Criminal Justice Standards and Goals, and Institute of Judicial Administration.

Unfortunately, Erickson said, the probable demise of the Law Enforcement Assistance Administration may mean a bleak outlook for the future of funding in the field. He stressed, however, that the importance of pretrial alternatives will expand significantly with the increase in crime and, as a result, the greater demands placed on the criminal justice system. "Indeed", he observed, "you are performing a great service when someone is diverted from the criminal justice system to become a useful member of society." Erickson urged attendees to keep abreast of developments in all spectra of criminal justice. In this way the field might find other funding sources and networks of support to sustain pretrial services agencies through the difficult decade ahead.

"FACING REALITY"

Allen Breed, Director
National Institute of Corrections
Washington, D.C.

I hope you will not be disappointed in what I am going to share with you. It may be somewhat different than many keynote addresses: There will be little in the way of substance, but my remarks will reflect a great deal of feeling and personal commitment.

I was asked to talk about facing reality. Corrections and criminal justice are truly an enterprise in ferment. No one is satisfied with their operation. Critics from the right and the left, from within and without--some highly knowledgeable and some very uninformed--point accusing fingers and demand change. This turmoil is not new, for criticism and the push for reform have been with us since World War II. But the onslaught appears to be intensifying with the years. Sometimes the attack comes in the form of public safety issues, the "get-tough" approach; sometimes in terms of extensive litigation around conditions of confinement and due process issues. Sometimes change itself is attacked as representing the efforts of bleeding hearts and do-gooders. Recently the attack has come in terms of budgetary reductions for anything that cannot be proven cost-effective.

Each of us in the criminal justice area is aware of these attacks and, perhaps in order to survive, counters with a protective facade, often painting a rosier picture than really exists. We talk, for example, about crime having reached a plateau, diversion taking hold, the impact we are having on overcrowding and, "what we could accomplish if we only had a few more dollars!" Perhaps such defense mechanisms are part of the necessary armament for professional survival--I certainly do not want to play our other favorite game of "How Awful It Is". I do believe, however, that especially at conferences like these we allow our enthusiasm and belief in our work to cloud the reality of what is really going on.

Consequently, tonight I would like to set a tone of frank realism and of hope. I firmly believe that we can make progress only to the degree that we recognize the problems facing us and develop constructive strategies to solve those problems. I am not going to further complicate your already-difficult professional lives by emphasizing the recognized and understood, as in the fable of the centipede who was quite happy until asked by the toad:

"Pray, which leg goes after which?"
This worked her mind to such a pitch,
She lay distracted in the ditch,
Considering how to run.

Let me cut through some of the public relations releases--the Rotary and Optimist Club type presentations that we feed to a confused public to foster support--and look at where we really are. Following the efforts of two national crime commissions; numerous criminal justice standards and goals efforts; the

creation of the Law Enforcement Assistance Administration (LEAA); the expenditure of billions of dollars in crime reduction programs; and the dreams, hopes, and aspirations of countless criminal justice workers, where do we actually find ourselves as we enter the decade of the '80s?

First, crime continues to increase. We talk of having reached a plateau. We say the crime increase is negligible because it actually represents better record keeping, but, in fact, our record keeping is now in order. There is data processing in law enforcement agencies, the courts, and probation. In its preliminary 1979 Report in April, the FBI reported an 8% increase in serious crime over last year. Now my social scientist research friends tell me that this is statistically significant. There was an 11% increase in violent crime. Victimization studies show even greater increases, particularly in areas of rape, burglary, and petty theft. And, if you want something to be really worried about, the statistics indicate that the crime increase is even greater in rural areas and cities with populations under 50,000.

Although crime has continued to rise, **clearance rates have decreased.** A clearance rate means that our law enforcement brethren have arrested somebody for an officially reported crime. In the past, clearance rates have never been much above 23 or 24%; but the FBI report said that for the years 1974-79, clearance rates went down in every single offense category and on a national level are now under 20%.

The rate of incarceration has also increased. Historically, America has locked up more people than any western nation except South Africa and Russia. Unfortunately we can now go one step further: discounting political prisoners in those two countries, the United States is now in first place, confining more people than any other nation in the world. Our prison population took almost astronomical leaps between 1970-71 and again between 1974-75. Everybody points to the stabilization period of 1975-77, but from 1978-80 it has increased to where we are now at a new peak of some 310,000 persons in federal and state prisons. The incarceration rate now stands at 60 per 100,000 in this country. Jails have reached the point where, on any given day, there are over 250,000 people incarcerated. As a result, we find our jails and prisons overcrowded beyond capacity and inmates facing deplorable conditions.

Not only has the number of inmates grown, but their **length of institutional stay has also increased.** While the data in this respect is very poor, a study of four states indicates that, on the average, offenders are staying longer in our prisons today than at any time in history. Parole is being used less. The ratio of those on parole to those in institutions is falling monthly; and, if pending legislation is passed regarding both mandatory sentences and increased length of sentences, we will see a continued rise in length of stay.

Along with the greater demands being placed on the criminal justice system, its **costs are also increasing.** Although all government agencies face inflation, we are talking about a field whose costs have risen some 67% in the last four years--faster even than the inflation rate. Last year, the criminal justice cost was some 17.2 billion dollars. The smallest correction expenditure was 5 billion dollars. The state bears 57% of the costs; the local level, 37%; and the federal government, only 5%. Yet to hear the federal people talk about it, you would think the tail is wagging the dog.

The use of pretrial diversion has increased. (You're thinking that Breed has come around with some good news at last.) Certainly, since the day the National Advisory Commission devoted two chapters to diversion (one in the Courts volume and one in the Corrections volume), there has been a tremendous increase in both dollars expended in this area and the number of people being served by the programs. One is concerned, however, when we realize that our jails and prisons are more crowded. Are we truly diverting people out of the system, or have we simply "widened the nets" and brought more people into the system through diversion programs?

More juveniles as well as adults are getting caught up in the system. There is greater use of jails, prisons, and state training schools for juveniles. Despite efforts at the federal, national, and state levels to deinstitutionalize young people, it was estimated that last year over 500,000 were, at one time or another, incarcerated in our jails. Only 9% of them were there for any offense against persons. Last year over 3,000 juveniles were held in the state prisons of this land; yet only 663 of those had committed property crimes or crimes against a person. Similarly, there was an increase of over 2,000 in the number of young people in state training schools. One really wonders how much deinstitutionalizing we are actually doing.

Furthermore, **the conditions of confinement in institutions are generally unacceptable.** One merely has to walk through a jail or a prison in this country to realize how deplorable those conditions are. Last year some 11,800 petitions were filed in the federal courts alone regarding the conditions of confinement. There are 19 states under federal court order to improve conditions that have been judged cruel and unconstitutional and 13 states are currently being litigated. In short, our prisons and jails are overcrowded, antiquated, and understaffed. Few meet any standards, and many are unconstitutional.

There is a **disproportionate placement of minorities in the jails and prisons.** I would think that it would be a political and moral embarrassment that 53% of the nation's prisoners are minorities and that 47% of that number are black. The explanations vary from racism to a higher criminal activity on the part of minorities. The controversy rages, and the facts are few. But regardless of the reason, how can a democratic society tolerate discrepancies of this magnitude without seeking some redress?

Taking a look inside prisons, we find that **rehabilitation has been debunked and along with it indeterminate sentencing and parole.** Now I am not here to argue the theories of crime polarization or the resulting corrective response to those theories, but one can hardly deny that the goal of rehabilitation resulted in services to our prisons that were never there before. Rehabilitation gave meaning to the work of those that were in institutions until the "nothing-works" mentality came along. Corrections was then set back some 25 years as political support for the concept of "reduced expectations" translated into less money.

The fact is that **resources for criminal justice are diminishing.** It all started with tax revolts pioneered in California with Proposition 13 and has reached a pinnacle with the congressional/executive effort to balance the federal budget. Criminal justice, and corrections in particular, has always received less because it has no constituency. It has great difficulty in competing for the dollar with roads, parks, health, welfare, and education. Most recently, Congress is being tempted to eliminate LEAA. If LEAA dies, the field will be

cruelly hurt in terms of the kinds of resources it so badly needs. When the funds are cut the first services to go will be the non-law enforcement and the non-custodial programs--the alternatives programs. From a defensive posture in the battle to survive, pretrial and probation programs could be considered the soft underbelly of criminal justice. In fact, a chief probation officer out in California recently told me that in facing dwindling resources, he feels very much like a turkey waiting for Thanksgiving.

Finally, we are confronted with enormous public apathy. A Gallup poll taken during the first four months of this year asked, "What are the most important problems facing this country?" As you would guess, they were the high cost of living, international affairs, energy, unemployment, and dissatisfaction with government, followed by a string of 17 others. Down at the bottom, with only 2% was crime.

So much for reality. The picture is not a very encouraging one. The important factor in facing a very difficult future is to do so within a framework of reality. I said earlier that I would set a tone of hope. With what, then, do I balance this gloomy picture? I am really not a pollyanna, but I do believe that we make our greatest strides in the face of adversity. I also believe that problems are nothing more than opportunities in disguise.

Diminishing resources, for example, can be an incentive or leverage for change. Personally, I do not believe that we have even begun to work the system, to really tap the resources available. When we begin to click in, as we must, with labor, health, welfare, commerce, and education, the dollars we have been getting from LEAA will look like small change. We might begin practicing the seldom-used art of capacity building. Recently I had the thrill of watching two states which, anticipating the demise of LEAA, developed criminal justice planning agencies out of funds within their respective states--and I put to you that these two organizations will be much stronger than any funded solely by the federal government.

Economic reality will also force the greater use of alternatives. To my way of thinking, the most dramatic public policy change in our field to date occurred under the Probation Subsidy Act in California, where literally hundreds of millions of dollars were diverted from the construction of institutions into probation services. This was not an idealistic, liberal shift in policy, but a reaction to the costs of building institutions. With bed costs now somewhere between $50,000 and $75,000 per bed, and with the cost and care of one incarcerated adult between $12,000 and $14,000 a year, the proponents of the moratorium on prisons will win this one by default. I am suggesting that once we accept the economic reality for what it is, it will become the most marketable strength we have ever had for developing the kinds of programs in which we can believe and operate successfully.

The growing strength of the courts may be another reality-turned-advantage. Many thought a "hands-off" policy would resume with the Supreme Court decision of Bell v. Wolfish. But jails in dozens of cases since Bell have been declared unconstitutional. For the first time, state courts are joining their federal colleagues in reassessing conditions of confinement. Even more hopeful are the consent decrees in Kentucky, Tennessee, and Oregon. Liability issues are forcing correctional administrators to be stronger advocates of improvement than they have ever been before. The most interesting verdict came down on June 20,

1980, and I think we may see a number of similar actions in the years ahead. The United States District Court in the District of Columbia awarded $600,000 in damages--or $1 per day for each day of imprisonment--to 400 inmates at the Lorton Reformatory, a maximum security prison found to be unconstitutional.

Like the courts, the correctional field itself may well grow stronger as standards begin to have impact. It started as a dream in the correctional people's minds that we in criminal justice could be just as professional as our counterparts in medicine and education. Those dreamers never really had any hope anyone would work for accreditation. But today the hottest item in the field is that 500 agencies have contracted with the Accreditation Commission and are currently under review. Some 60 agencies have actually been accredited. The driving force behind this has not been that the correctional administrator just wants that plaque on the wall of his office. Rather, he is using the standards with the governor and legislators to win points on budget issues. More importantly, the courts are referring to them in formulating decrees.

The correctional field will be further strengthed now that leadership for change is being developed. Surely, there is a difference between organizational leadership and initiative leadership. And there is a lot of good organizational leadership in corrections. But there is damn little initiative leadership, correctional administrators being conservative by nature. We are starting to attract bright, creative young people who will not accept answers like "it won't work" or "we tried that once before". They are beginning to speak out on such things as overcrowding, diversion, alternatives, length of stay, and racism. And they are working with their colleagues in the private sector. A new chorus is forming behind the previously lonely cries of the Bill Nagels and the Milt Rectors in the world.

For example, George Wilson, the recently appointed Commissioner of Corrections in Kentucky, was being sued in federal court by inmate plaintiffs. This tremendous class-action suit was settled by a consent decree. I asked Mr. Wilson why he consented to the plaintiffs' demands. Why didn't he fight like the very history of corrections called for him to do. I have never been so inspired as I was when Wilson replied, "Because it was the right thing to do."

For the first time in our field we are also seeing political leadership, governors and legislators who really care. Let me share two more examples with you. A deputy attorney general of the United States has publicly taken the position enunciated at a hearing before Congress, that no children should be jailed. No children should be in jails...period. More recently, after hearing Milt Rector give one of his wonderful speeches up in Toronto, the Canadian Minister of Justice stated publicly that there would be no more penitentiaries built as long as he was in office. I have never heard people at that level of responsibility take such courageous public policy positions.

Finally, a last force for change rises out of cooperation. Coalitions are being formed, wider than an agency, wider than a profession. Did you ever think you would see the day when the ACLU representatives would sit down at the same table with members of the National Sheriffs Association? It happens in the National Coalition for Jail Reform, a collection of some 21 national organizations who have agreed to work toward getting many different people out of jails who do not belong there.

The forces of change are there, but they will be of no avail unless those of us in the field further develop two attributes: Activism in bringing about necessary change and willingness to experiment and even to fail.

What do I mean by activism? I would like to avoid the attitude expressed by English historian Henry Maudsley, who said, "Reform, sir? Don't speak to me about reform. Things are bad enough as they are." By activism I mean standing up for the things in which we believe. It seems to me that we have pushed the concept of consensus to the point of mediocrity. We try so hard not to rock the boat that we have become moral neuters. How long has it been since you heard someone speak out strongly against the accepted, the party line, the boss's position?

When you think of where change has occurred in recent years, the area of civil rights probably comes to mind. But for all the laws and decisions that came down in the civil rights arena, they were bogged down until some people marched through Mississippi. Women's rights saw little progress until such organizations as NOW pioneered new frontiers. Inmate self-help groups were all seen as negative until the Muslims demonstrated their constructive and responsible behavior and are now freely invited into the prisons of America. Despite a lot of concerned people in corrections, prison conditions generally did not improve until the ACLU and poverty law practitioners waged legal battles in the South and the West.

Lately there has been a lack of activism and a dangerous new nostalgia, a longing for earlier days. Personally, there is nothing about the earlier days to which I ever want to return. And I am suggesting that if we do not like the reality of today's conditions, we must be more active in bringing about change. This can be done responsibly and constructively, but it may involve some risk to careers and the satisfaction that comes from being "in favor".

I also said there must be a greater willingness to experiment and even to fail. We are afraid of new ideas; we ask "what if we fail?" Well, what if we do? We may learn a great deal more from failure than we do from success. But it has become almost ingrained in our psyches that, above all, we must not fail. Theodore Roosevelt spoke well to this fear when he said:

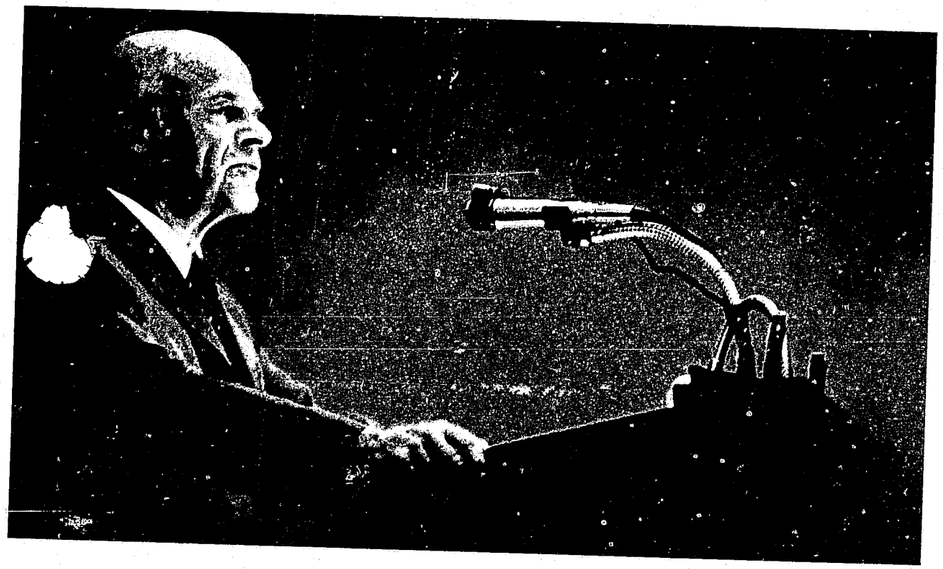
> "It's not the critic that counts. The critic belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood, who, at best, knows in the end the triumph of high achievement, and who, at worst, if he fails, at least fails while daring greatly so that his place will never be with those cold and timid souls who know neither victory nor defeat."

We have reached a point in the development of criminal justice where we must take positions, speak out on issues, campaign, market, sell, lobby--and even take some risks--to divert more, to reduce penetration into the system; to incarcerate fewer; to jail offenders for shorter periods of time; to root out discrimination; to care for all safely, fairly, humanely, and justly. I have never felt so keenly that the future is literally in our hands. We can either build on our knowledge or shrink into the clutches of special-interest groups who prey on public emotions of fear and revenge.

What I am suggesting to you is not an organizational or institutional response, but a personal commitment. Hope, change, and progress come only on the groundswell of individual response and commitment. There is a short poem that goes:

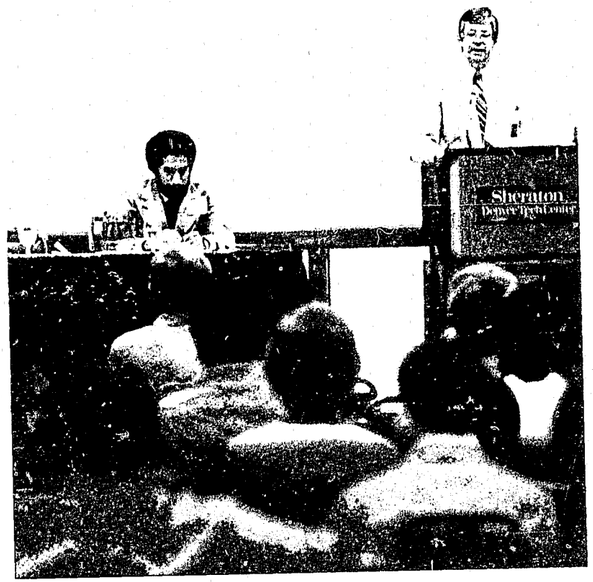
I am only one, but I am one.
I can't do everything, but I can do something.
What I can do, I ought to do.
And what I ought to do, with God's help, I shall do.

As you face the reality of our criminal justice world, may you all be doers in bringing about change.



GENERAL SESSIONS

Frank Carter



Frank Carter, Bruce Beaudin

Bruce Beaudin

IT'S DEBATABLE--DANGER IS A LEGITIMATE CONSIDERATION IN RELEASE DECISION-MAKING

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

Dan Pochoda, President
Correctional Association of New York
New York, NY.

MODERATOR: *Francis Carter, Director*
D.C. Public Defender Services
Washington, D.C.

Preventive detention--the pretrial incarceration of defendants perceived to pose a threat to themselves or others--is one of the hottest issues facing the pretrial field today. There has been much dispute over the adoption of a provision allowing for preventive detention by the National Association of Pretrial Services Agencies (NAPSA). In its Performance Standards and Goals for Pretrial Release NAPSA takes the position that a preventive detention statute would allow the issue of danger to be faced openly and establish controls and safeguards for a practice which already occurs sub rosa. Others believe preventive detention to be unconstitutional and a potential threat to due process rights, as guaranteed by the Fifth Amendment.

Moderator Francis Carter pointed out that the American Bar Association (ABA) also provides for preventive detention in its Standards Relating to the Administration of Criminal Justice. The first section of general rules and principles favors release of defendants pending determination of guilt or innocence. The Standards also outline detailed guidelines for considering danger in making the release decision or by revoking the release of a defendant previously not detained. While he did not feel that the decision to be in favor of or against preventive detention was an easy one, Carter expressed the hope that the issues set forth in this debate would help resolve some of the conflict surrounding preventive detention.

Bruce Beaudin is in favor of preventive detention legislation. He said that while preventive detention is not something that we would seek in an ideal world, its existence is a fact we must face. Beaudin labelled current release decisions resulting in widespread detention as "hypocritical, sophistic justifications which address danger concerns, while speaking only in terms of appearance and flight". A preventive detention statute as proposed by NAPSA, would separate flight and danger considerations and establish accountability for release decisions. Beaudin believes that this regulation would actually reduce the use of preventive detention while providing for the due-process rights of those ultimately detained.

D.C. has had a preventive detention statute since 1970. However, many believe that as long as the option also exists to set money bail, prosecutors find it easier to ask for high bond instead of going through an involved detention hearing.

Further, Beaudin added that although the judge sets the actual bail, too often a bail bondsman ultimately determines who will be released. While the ABA called for restrictions on the use of financial conditions of release and the elimination of compensated sureties NAPSA, however, came out in favor of eliminating money bond.

Beaudin proposed the following four-point plan to address the inequities and hypocrisy of the present bail system:

1. The release decision should become a two-pronged process in which the issues of danger and flight are addressed separately.

2. Nonfinancial conditions should be used to protect the community as well as to ensure appearance in court.

3. Pretrial detention should occur only under clearly defined circumstances and when Fifth, Sixth, and Eighth Amendment rights have been observed.

4. Bonding for profit--and perhaps all financial conditions of release--must be eliminated.

With another perspective, Dan Pochoda described preventive detention as "wrong, ineffectual, and discriminatory" and called the position taken by NAPSA a "serious disservice to the organization and to the pretrial services movement in general". Pochoda said that just because conservative legislators, the media, and public opinion are calling for preventive detention, NAPSA need not advocate it as a standard and goal. It is wrong, he maintained, for NAPSA to take the lead in legalizing a practice that is essentially wrong. Instead, he suggested that NAPSA could intervene if a bill were proposed, and push for due process requirements.

Pochoda said there was no evidence either in Beaudin's commentary or in any studies that a preventive detention bill would significantly reduce the crime rate in a community. In fact, for all practical purposes legislatively mandated pretrial detention would result in the incarceration of numerous people who would not commit crimes while on release, in order to detain one or two people who would.

Further, the crimes to which preventive detention would apply would not include dishonest politicians or corporate pollutors but would affect the members of society already victimized by the criminal justice system. "A preventive detention bill would clearly work in a discriminatory fashion against the poor and non-whites in our society."

Pochoda said the due-process provisions, as described by Beaudin, were nothing more than "sugarcoatings" which could ultimately be ignored in the final stages of legislation. Even if due process rights were included, he doubted that appellate courts would ever review the factual determinations of judges.

Pochoda concluded by saying that the field must decide what is right and fight for it, educate the public, and lobby. He urged the repeal of the NAPSA standard allowing for preventive detention or that, at a minimum, it be remanded for further study.

IT'S DEBATABLE--PRETRIAL SERVICES SHOULD BE PROVIDED THROUGH STATEWIDE SYSTEMS

FACULTY: *Maurice Mosley, Representative*
(Chairman, House Judiciary Committee)
Connecticut General Assembly
Hartford, CT.

Denny Weller, Director
Anti-Crime Council
Denver, CO.

MODERATOR: *Nancy Maron, Associate Director for Program Services*
Department of Institutions
Denver, CO.

Some states already have statewide pretrial services systems, while others are either moving in that direction or considering the pros and cons of such a move. Nancy Maron outlined some questions that should be asked before deciding in favor of or against statewide systems: What are the advantages or disadvantages? What are the system models? What is the price tag? Are there guiding principles about statewide systems, or are there just some underlying truths that depend on each jurisdiction? Where do our personal and organizational interests lie?

Maurice Mosley proposed that pretrial services must be offered statewide, not only for reasons of cost-effectiveness, but in order to insure due process and equal protection as guaranteed by the the U.S. Constitution.

As a co-chairman of the Connecticut Pretrial Commission, Mosley became aware of the complex procedures regarding bail which result in unequal and unjust treatment of criminal defendants. He cited bail bonding for profit as one of the major problems and said that the only solution is a statewide system "which would dispense opportunities for release with an even hand".

According to Mosley, statewide systems are the only answer to the problems of cutbacks on federal and local funding. In addition, a statewide program could provide uniform training and record-keeping and lend staff and expertise when necessary.

Finally, and most importantly, Mosley said that statewide systems would establish the credibility with judges and other court personnel often lacking in smaller programs and those which are funded only temporarily or as experiments.

In closing, Mosley said that the move to statewide systems is not easy and will require political sophistication, but that "the time has come where the only alternative to statewide systems is no system at all".

Denny Weller said that statewide programs ignore local attitudes and values and are, therefore, destined to failure. He cited Colorado as a good example of the diversities that exist within state boundaries which would cause statewide programs to encounter operational barriers at the local level. State programs evolve out of need for uniformity and often ignore differences that exist based on various geographical realities (such as being rural versus urban).

According to Weller, crime is a local problem and only local officials can be held accountable for meeting the priorities of the residents they serve. "State agencies are distant, cool, unemotional and, in my experience, unloving."

In conclusion, Weller said that pretrial services programs could be run on a local level by courts, social services agencies, or prosecutor's offices. What is most important is that they serve local needs and at the same time agree on purpose, objectives, policies, procedures, and client eligibility.

IT'S DEBATABLE--THE FUTURE OF PRETRIAL SERVICES

FACULTY: *Irwin "Bobby" Brownstein, Attorney*
La Rosa, Brownstein, and Mitchell
New York, NY.

Norman Early, Chief Deputy District Attorney
Denver, CO.

MODERATOR: *Theodore Newman, Chief Judge*
D.C. Court of Appeals
Washington, D.C.

In the wake of shrinking budgets for alternative programs and public sentiment in favor of even harsher measures for dealing with crime, the future course of pretrial services is uncertain.

Theodore Newman, moderator of the session, cautioned the audience that it is not adequate to only react to these circumstances. He stressed the importance of consciously considering and choosing the path that pretrial services will take.

Norman Early stated that with the cutbacks in federal funding, it is unlikely that pretrial services programs will survive in their present form and number. The question is: "Will the philosophy of pretrial services survive?"

Early feels that pretrial services programs have had an impact on judges, district attorneys, and others in the criminal justice system. Specifically, he credited pretrial services with exposing the abuses of the bail bonding system and establishing the need for 10% deposit and release on own recognizance mechanisms. He also sees pretrial services as an integral part of addressing jail overcrowding.

Early stipulated, however, that the battle for pretrial alternatives will not be won on altruistic or humanistic grounds. The time has come for "aggressive advocacy" in forming new alliances and seeking alternative sources of funding. He believes individual programs will be affected, but the philosophy and concept of pretrial services will not die. With less money to go around, pretrial services will be forced to conform to the cost-effective guidelines of state and local funding sources.

Irwin "Bobby" Brownstein, formerly a New York Supreme Court Judge, agreed that pretrial services programs will be among the first cut when federal funding runs out. He said that other criminal justice actors do not consider pretrial services as an integral part of the system and that we have made ourselves unpopular by thinking that they were.

Although future funding is a major concern, Brownstein challenged the pretrial community to do more than justify its existence by meeting "numbers counts". He expressed a sense of frustration over the pretrial services movement. He felt the commitment and energy that characterized the field five years ago are gone. "Pretrial services programs were born in response to abuses and not out of the need to fill jobs. When we stop worrying about abuses and start worrying about cost-effectiveness, I think we have failed."

Brownstein stressed that regardless of the source of future monies, the people in pretrial services must be willing to fight the "system". "If we do not care, nobody will."

In response, Early agreed that some of the fervor of past years has dissipated and that people in pretrial services should be "clawing" on behalf of defendants as well as fighting for justice. He did take issue, however, with Brownstein's assessment that just because some people have lost their fervor, the pretrial services movement has failed. He sees the criminal justice system as an imperfect system. Just because pretrial services have not righted all the wrongs in the system, does not mean the concept of pretrial services is gone. He told the audience, "Don't give up selling your product because it does have value."

Norman Early

WORKSHOPS

DEBATE ON NAPSA STANDARD VII: PRETRIAL DETENTION

FACULTY: *Irwin "Bobby" Brownstein, Attorney*
La Rosa, Brownstein, and Mitchell
New York, NY.

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

MODERATOR: *Wayne Thomas, Attorney*
Fullerton, Lang, Richert & Patch
Fresno, CA.

To date no single section of the NAPSA Performance Standards and Goals for Pretrial Release and Diversion has generated as much controversy as Standard VII. This standard allows for the pretrial detention of defendants charged with felonies who pose considerable risk of flight or danger to the community. Its advocates believe that the adoption of legislation similar to Standard VII would lend guidelines and structure to a practice which already occurs sub rosa. Opponents feel that such legislation would lead to a sharp increase in the number of defendants detained pretrial and that preventive detention is a form of punishment meted out to persons still presumed innocent. In this workshop sponsored by NAPSA, the merits of Standard VII and preventive detention in general were debated by Irwin Brownstein and Bart Lubow.

Brownstein, a former New York Supreme Court judge and now an attorney in private practice, favors the enactment of legislation along the lines of Standard VII. "The use of preventive detention is widespread", he stated, except that judges couch their fear for community safety in terms of risk of flight and set bail at an amount they assume the defendant will not be able to meet." This is not only hypocritical, but defendants are also denied due process rights. Under Standard VII, however, safeguards are built into the use of preventive detention. For example:

1. A pretrial detention hearing must be held. This hearing is initiated by the prosecutor, who must also show why the defendant should be detained pretrial.

2. The judicial officer must state in writing his or her reasons for ordering detention, and the status of all pretrial detainees held longer than ten days should be reviewed every two weeks.

3. Defendants held pretrial are entitled to an expedited appeal of the detention order.

4. Unless granted a continuance, pretrial detainees must be brought to trial within 60 days of the detention order or 90 days following arrest, whichever is less.

Brownstein also noted that defenders seldom take advantage of present bond review provisions. Defense counsel should aggressively pursue the options

available for appeal and review under the proposed system lest judges make decisions based exclusively on the successful arguments of prosecutors. Brownstein advocated the adoption of legislation which is both consistent with Standard VII and embodying other reforms suggested in the Standards (i.e., presumption toward release and elimination of financial conditions). In this way danger as a factor in release decision-making would be acknowledged as a real and legitimate concern; hypocrisy in the release decision would be eliminated; and pretrial detainees would be guaranteed procedural safeguards.

Lubow, Director of Special Defender Services at the Legal Aid Society in New York City, opposes enacting legislation similar to Standard VII. While he supports the intent of the Standard, Lubow said that in practice it would only serve to detain more defendants pretrial. He agreed that the use of preventive detention is widespread, albeit sub rosa. But defining which defendants may be held pretrial would cause the detention of numerous defendants who fit into the specified categories but who would not commit further crimes if released. Lubow believes, for example, that if research indicated that one out of eight released defendants may actually commit a crime, seven would be unnecessarily detained. He added that it is extremely difficult to predict dangerousness and risk of flight and labeled pretrial detention as an attempt at crime control through faulty logic. Essentially, the decision to detain must be based on a prediction of potential future acts. These detainees will not only be punished before guilt is established, but before they commit the crimes for which they are being detained.

It is Lubow's opinion that the pretrial movement has recently suffered a loss of support in the face of public criticism. As a result, the field seems willing to recoup by accepting and even promulgating a politically popular measure that would result in the unjust detention of many people. Pretrial alternatives and reformers may have lost their vigor, Lubow asserted, but there is still a desperate need for change. Rather than support a preventive detention statute, he urged NAPSA to focus on ensuring the right to be presumed innocent until proven guilty. When the state has the authority to deprive an individual of his freedom through mere accusation, it has power that is easily abused. NAPSA should never endorse a system with such a potential for abuse, especially when there is so much else still to do in the continued struggle for bail reform, concluded Lubow.

Brownstein countered Lubow's remarks, which he described as emotional and irrational. "No one was proposing that everyone should be locked up", he said. Brownstein pointed out that Standard VII specifically states that only those defendants charged with felonies for whom "no condition(s) of release will reasonably minimize risk of flight...or risk of danger" should be detained. He conceded that dangerousness and failure to appear cannot be predicted with great certainty. However, since these are the two most widely considered factors in release decision-making, the pretrial field must do what it can to bring these considerations under fair guidelines. Communities have been demanding the right to be protected. Therefore, what constitutes a danger should be defined and legitimized; and detention orders should be opened to scrutiny. Brownstein sees Standard VII legislation as a means of avoiding financial conditions of release and of ensuring fairness and due process rights.

Lubow, on the other hand, maintained that judges are acting illegally in their present use of pretrial detention and that such a statute is a gesture at crime

control that could backfire. The use of preventive detention as a safeguard against possible future acts has enormous potential for abuse and will cause a majority to be penalized for what a few might do.

It was clear in the workshop and in discussions throughout the Symposium that the issue of pretrial detention was complex and unlikely to be settled for some time.

Jay Carver
President of NAPSA

Wayne Thomas

Bart Lubow

PRETRIAL RELEASE AGENCIES: THE PROBLEM OR THE SOLUTION?

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

Almost three years have passed since the National Association of Pretrial Services Agencies (NAPSA) published Performance Standards and Goals for Pretrial Release and Diversion. Yet today, the philosophy and actual practices of programs often vary considerably among jurisdictions. This poses two important questions to the pretrial field: First, to what extent have the practices suggested in the Standards been adopted? Second, are these goals indeed achievable given political realities and the current conservative trend in this country? This workshop was sponsored by NAPSA and conducted by Donald Pryor at NAPSA's request. It addressed these concerns as they relate to pretrial release.

Pryor noted that the Resource Center examined how program practices reconcile with the NAPSA standards. In Pretrial Issues, "Pretrial Practices: A Preliminary Look at the Data" authors Pryor and Alan Henry, also of the Resource Center, drew several conclusions based on the Standards and data gathered in a survey of 119 release and 131 diversion programs. Pryor discussed findings in six of the areas from the release standards:

1. No group of pretrial detainees should be automatically excluded from being interviewed by a release agency on the basis of charge alone; the program should interview all pretrial detainees.

   Adoption of this practice appears to be minimal. In fact, only 18% of the programs surveyed interview all pretrial defendants with no categorical exclusions.

2. No pretrial detainee should be denied a recommendation for release on own recognizance solely because of the pending charge or any other factor not directly related to flight or pretrial crime.

   Data collected by the Center show that approximately one-third of the release agencies polled do not automatically exclude any defendant from an OR recommendation. This means that, as a matter of policy, almost 70% of the programs refuse to even consider recommending certain categories of defendants for ROR.

3. Release agencies should make specific release recommendations to the judicial officer, not merely provide information on the defendant.

   Research indicates that release programs are largely in compliance with this standard. Approximately 90% of the agencies studied make specific release recommendations to the court.

4. Release recommendations should be based on objective factors.

   Figures obtained from the survey revealed that about 18% of the programs base their release recommendations solely on objective criteria, while another 41% use a combination of objective and subjective factors. It is even more significant to note that about 40% of the agencies ground the release recommendation exclusively on subjective criteria.

5. Release agencies should not recommend financial conditions of release.

   Despite the strong position taken in the Standards by NAPSA against the use of financial conditions of any type, nearly half of the programs examined by the Resource Center still recommend bail (and even specific amounts) in certain cases.

6. The criteria for establishing eligibility for release should be based on research into local conditions and should be periodically reassessed--and modified if necessary--in order to ensure that release criteria are both effective and non-discriminatory.

   It was found that almost 40% of the release agencies questioned have not made changes in their release criteria based on these principles.

Clearly, Pryor said, these findings indicate that, for the most part, programs have not adopted the practices or philosophies outlined in the Standards and Goals. He invited attendees to comment on (a) possible reasons for this lack of compliance, and (b) whether the Standards are impossible to implement and should be modified.

Participants stressed that the Standards should not be changed. As one put it, "To an administrator, the standards represent a goal. I may not be able to implement all of them this year or even next year; but, until I do, I will keep trying." The attendees cited external factors, such as restrictive judges and prohibitive laws, as preventing programs from adhering to the standards.

In many jurisdictions the ultimate release decision is left to the discretion of the judge, sometimes creating a number of barriers to carrying out the Standards set forth by NAPSA. For example, the judge may not want the release agency to provide a recommendation. In addition, a program may have to establish criteria and conditions of release that are acceptable to the judge but which contradict the Standards. Another participant noted that in his state a defendant charged with murder cannot be released pretrial under any conditions. Therefore, it would be a waste of time to even interview these defendants, let alone recommend them for some form of release.

Pryor suggested that perhaps another facet of the release program's role is to try to better educate judges and politicians on pretrial issues and to challenge overly restrictive policies and adverse legislation. It was also suggested that

release programs should interview and make recommendations for all pretrial detainees and encourage judges to rely increasingly on the agency's input.

Pryor also stressed the importance of informing judges of the outcome of their release decisions. Many agencies that provide this kind of feedback have found that judges are more inclined to follow the program's release recommendations.

Pryor concluded by suggesting that perhaps the development of standards is only the first step of an ongoing process. Implementation of better practices and actively seeking to change factors that preclude their adoption is the second, and most challenging step in the movement to bring about a better system of pretrial justice in America.

PRETRIAL RELEASE PRACTICES AND OUTCOMES: A NATIONAL EVALUATION

FACULTY: *Mary Toborg, Associate Director*
The Lazar Institute
Washington, D.C.

Despite the fact that major changes in pretrial release practices have occurred in the United States since 1960, many aspects of the bail system as it existed prior to the reform movement remain intact. The most prominent of these conditions are the consistent overcrowding of jails, the continued use of money bond, and decision-making processes that discriminate against poor defendants.

In order to determine the impact of revisions brought about by the bail reform movement, the National Institute of Justice funded The Lazar Institute to conduct a national evaluation of the pretrial release system. This study is due to be completed in late 1980. In this workshop Mary Toborg discussed the preliminary findings.

The study focused on four major areas: release rates, failure to appear, pretrial criminality, and program impact. The components of the study consisted of a retrospective outcome analysis of eight different jurisdictions: an experimental outcome analysis of four jurisdictions in which defendants were randomly assigned to experimental and control groups; an analysis of two jurisdictions without programs; and a delivery systems analysis of the program sites which analyzed both program operations and criminal justice system relationships. The final report on the study will include conclusions and recommendations summarizing the major study issues and possible changes in pretrial release policies and program operations.

The eight retrospective study sites were Baltimore City, Maryland; Baltimore County, Maryland; Washington, D.C.; Louisville, Kentucky; Dade County, Florida; Pima County, Arizona; Santa Cruz County, California; and Santa Clara County, California. The experimental sites were Baltimore City; Pima County; Lincoln, Nebraska; and Jefferson County, Texas. Milwaukee, Wisconsin, and Richmond, Virginia, were the two jurisdictions without programs that were examined.

An analysis of the data indicates that there has been a decline in pretrial detention rates since the 1960s. Previous studies demonstrated that in the late 1960s and early 1970s, many jurisdictions had pretrial detention rates in excess of 30%. In comparison, none of the eight retrospective sites had pretrial detention rates that high. In fact, several of the Lazar study sites had pretrial detention rates of less than 15%, and the overall rate for the eight sites was 15%.

The study points out, however, that although the number of defendants being detained is declining, many defendants are being detained for longer periods of time. Of those defendants who were detained until disposition of their case, 57% were incarcerated for more than one week; and 20% spent more than three months in jail.

The study confirms the fact that while the use of nonfinancial conditions of release has increased, a sizable number of defendants still have money bond set in their cases. In the eight retrospective sites 61% of the defendants were released on nonfinancial conditions; but 24% had to meet financial conditions in order to secure their release. The remaining 15% were detained until disposition.

The overall failure-to-appear (FTA) rate was 13% in the eight-site portion of the study. This may suggest a slight increase in national FTA rates, although because of lack of common definitions, the evidence is not conclusive. There was mixed evidence about the ability of financial conditions of release to improve appearance rates. Some of the jurisdictions with the highest percentages of financial conditions being set also had the highest FTA rates. Overall, defendants released with no financial conditions appeared slightly more often than did those released with financial conditions.

The overall pretrial rearrest rate for the eight sites was 16%, including violations and other relatively minor charges. As with FTA rates, no systematic differences could be found between defendants released on financial and nonfinancial terms, with a slight tendency again for those released nonfinancially to be rearrested less frequently. Not surprisingly, the study was unable to identify reliable predictors of failure to appear and rearrest. This inability to isolate predictors is consistent with other research that has been completed.

The study also suggests that the activities of pretrial services agencies had an impact on increasing release rates. On the other hand, for those released, questions were raised as to how much of an effect such activities as supervision or notification have on rearrest or appearance rates.

Although not completed, the preliminary findings of the study indicate a number of conclusions that may be drawn. Among them is the fact that pretrial release practices, as opposed to the law, are often based on a presumption of detention; that money bail is still used extensively; that defendants are still being detained needlessly; and that even though the law typically maintains that the sole concern of a judicial officer in setting release conditions should be the risk of flight, often those conditions are set based on the judicial officer's fear that a defendant will commit a crime while on pretrial release.

RELEASE DECISION-MAKING: DOES A GUIDELINES APPROACH MAKE SENSE?

FACULTY: *Dewaine Gedney, Director*
Pretrial Services
Philadelphia, PA.

John Goldkamp, Co-Director
Bail Decision-Making Project
Temple University
Philadelphia, PA.

Like sentencing, release practices vary widely among jurisdictions and even among judges within the same court. A guidelines approach has been implemented in many areas as a framework for post-adjudicatory decision-making. Research in Philadelphia is underway to determine whether guidelines are an appropriate mechanism to apply to pretrial release decision-making.

Dewaine Gedney, director of the Pretrial Services Division in Philadelphia, explained that the guidelines approach is an attempt to structure--not eliminate--judicial discretion through ongoing research into the factors contributing to bail decisions. This is necessary because often the exercise of judicial discretion results in unequal treatment of defendants. To illustrate this, a sample case containing an arrestee's charge and background information was distributed. Attendees were asked to set the bond amount or conditions of release that they thought would be imposed by judges in their local courts or that they themselves would impose. Participant responses reflected the inconsistent pattern of release decisions nationwide: Answers ranged from release on own recognizance and supervised release to financial conditions in a wide range of amounts.

John Goldkamp, co-director of the Bail Decision-Making Project in Philadelphia, explained that use of a guidelines approach can help reduce variations by structuring discretionary decisions to make them more consistent and equitable. He identified the first step in developing guidelines as descriptive, a research-oriented examination into what factors influence judicial release decisions. The second step is prescriptive. Research is undertaken into the consequences of the release decisions under study. Then an outline is developed to predict (to the extent possible) which categories of defendants are more likely to fail to appear or be rearrested while on release. Guidelines are suggested for judges to follow in making future release decisions.

Goldkamp stressed that these guidelines are flexible boundaries within which conditions of release ought to be set and which could be open to exceptions.

The panelists believe that use of the guidelines approach may offer several benefits:

- In reality most judges look at the charge first and consider background information second, if at all. The guidelines approach provides judges with a "map" of objective criteria on which to base their decisions instead of relying on subjective impressions. All of this occurs without dictating any major changes in current court procedures.

- Judges are given a management/evaluation tool through which they are provided an assessment of the outcomes of their decisions. Because the guidelines approach facilitates record-keeping on the consequences of release decisions, judges are also afforded an opportunity to modify those practices as needed.

- The consistency and fairness of judicial release decisions should show significant improvement. The use of overly restrictive conditions and unnecessary detention should decrease as a result. Since fewer defendants would be detained pretrial, the jail population should decrease accordingly--possibly enough to solve a jail overcrowding problem.

The panelists concluded by stressing the importance of involving the judicial branch in any efforts to reform the criminal justice system. It is necessary to safeguard the quality of judicial decision-making, particularly at the release stage, for decisions made pretrial affect all other stages of the criminal justice process. The discussion that followed noted that guidelines are not a panacea, but may be an effective support mechanism in assisting pretrial services agencies in reducing unnecessary pretrial detention.

PRETRIAL ALTERNATIVES AND JAIL OVERCROWDING

FACULTY: *Gene Clark, Consultant*
Jail Overcrowding Project
American Justice Institute
Sacramento, CA.

Anne Bolduc, Co-Director
Jail Overcrowding Research Project
Cincinnati, OH.

Jurisdictions all over the country are struggling with jail overcrowding problems. Coalitions of law enforcement, corrections, and pretrial practitioners are forming in many areas to collectively plan strategies for dealing with the crisis. This workshop concentrated on two major topics: the role of pretrial release in the management of population flow through the jail and research principles in analyzing jail populations.

Gene Clark, a member of the National Program Coordinator Staff for the LEAA "Jail Overcrowding and Pretrial Detainee Program" described the jail as a "dynamic" institution. It undergoes constant population change and flow. He noted that it is important for pretrial release programs to understand this dynamic process in order to maximize the impact of release activity. Release programs should strive to understand the role they currently play in jail population flow, the potential for increased program impact, and the constitutional liabilities of overcrowded jails.

A thorough analysis of the jail population can identify those population sub-groups that can be most appropriately served by the release program. Analysis may lead to an identification of those persons who are highly likely to be released with or without the efforts of the release program and point to sub-groups which may gain release despite failing to qualify under the release program's criteria. This type of analysis may stimulate changes in the structure and focus of release programs to increase their impact on jail populations.

Most critical, however, is the need to direct the attention of major decision-makers on the often unconstitutional conditions of jail overcrowding. The experience of the "Jail Overcrowding and Pretrial Detainee Program" seems to indicate that no single factor motivates the various system components to address jail overcrowding quite as well as a court suit. With this in mind, release program administrators--who are usually very aware of overcrowded conditions--should consider sharing useful information with public defenders, city/county council members, or legal aid staff to at least identify the liability and threat of a potential jail suit.

Clark encouraged pretrial release programs to be active particularly when public funding for new construction and/or renovation of jails is being considered. "Alternatives can be much cheaper than cells."

Anne Bolduc, of the Cincinnati/Hamilton County (Ohio) Criminal Justice Regional Planning Unit, spoke about methods to analyze jail populations. The importance of competent data collection and analysis cannot be overemphasized, she said. To identify current jail population flow and the potential areas for improvement, four population groups should be compared:

1. persons who are incarcerated pretrial and incarcerated upon conviction;

2. persons incarcerated pretrial but not incarcerated upon conviction;

3. persons not incarcerated pretrial and not incarcerated upon conviction; and

4. persons not incarcerated pretrial and incarcerated upon conviction.

This type of analysis can show which persons are being reached by pretrial release services (#3 and #4) and which are not (#1 and #2). It is likely that persons in group #2 do not pose the kind of threat to the community which might justify pretrial incarceration. An in-depth review of this group should focus on the reasons why pretrial release was deemed inappropriate, and program efforts should attempt to overcome these obstacles.

Bolduc advised that each of these groups be analyzed by charge, personal demographics, previous criminal history, disposition upon conviction, and compared against the criteria of the release program. This analysis should indicate where adjustments in the structure and policies of the pretrial release program would result in higher rates of release and, as a result, reduction of the jail population.

It is also important to review social service programs to determine their potential for influencing jail population levels. Often service programs can be identified that could serve clients referred by pretrial programs. Some programs, which may not currently accept criminal justice referrals, have client groups with previous criminal histories. Funding sources for these social service programs should be informed of the importance of targeting these services for clients who might otherwise be detained. Comparative costs arguments (services v. detention) can be persuasive.

Bolduc provided several handouts with information gained from an analysis of the Hamilton County, Ohio, criminal justice system and a list of possible research questions for jail population analysis.

CIVIL LIABILITY: RECENT COURT CASES

FACULTY: *Gary DeLand*
Criminal Justice Consultant
Salt Lake City, UT.

Recent studies indicate that one out of every seven law suits filed in federal courts concerns jail or prison conditions. Through the years liability for the abuses cited in these suits has shifted from the actual individuals who violated inmate rights to their employers and to the jurisdictions and institutions in which the abuse took place. This area of responsibility is known as civil liability. In this workshop Gary DeLand traced the history of civil liability through case law and discussed several recent jail suits.

DeLand, who prior to becoming a consultant was the administrator of the Salt Lake City Jail, said that it is very important for pretrial practitioners to keep abreast of developments in the area of jail litigation. A large number of the cases stem from jail overcrowding, a concern shared by both the pretrial field and those involved in jail suits. Frequently advocates of pretrial alternatives can also use the prospect of jail litigation to sell their cause.

DeLand stated that in order for civil liability to be established in a jail or prison suit there must be (1) a violation of specific rights guaranteed by state or federal constitution or by statute on which inmates can petition; (2) inmate remedies; that is, procedures through which grievances may be brought to court; and (3) attorneys and courts concerned about conditions in detention facilities.

Inmate remedies have been established through case law over the last century. In the years following the Civil War, the Ku Klux Klan was very active in the South and enjoyed the clandestine support of numerous public officials. To combat this, the Ku Klux Klan Act of 1871 (42 U.S. Code 1983) was passed and became the basis for inmate remedies. Although not specifically related to inmates, the Act stated that any violation of the rights of individuals under color of authority could be remedied by suit for damages or by injunctive or declaratory relief.

The application of this decision was expanded in 1961 by the case of Monroe v. Pope, in which the Supreme Court ruled that racial prejudice was not a necessary ingredient of suits filed under the Ku Klux Klan Act. Liability, however, was limited to the individual who actually violated the rights of the plaintiff. Gradually, the number of targets for these suits grew as the courts spelled out the affirmative duties of administrators to hire, train, and supervise employees as well as the responsibility of the administrator for the actions of his or her employees.

In 1978 Monnell v. New York Social Services became a landmark case in the development of civil liability. In Monnell the court held that cities and counties could be sued under the Ku Klux Klan Act if rights were violated by policy or practice of the facility involved. Also in 1978, in the case of Hutte v. Finney, it was found that a defendant must compensate the plaintiff for attorney fees if the latter should win the case. This served to encourage the representation of inmates by lawyers who would otherwise be afraid that they would not be paid. In some cases lawyers have even received more payment than

requested as the courts seek to ensure the availability of top-flight counsel. Furthermore, U.S. Senate Bill 11, now under consideration, would authorize the Department of Justice to intervene on the behalf of inmates.

Finally, the April 1980 decision in Owen v. The City of Independence had a significant impact on the rights of inmates. In this case the court found that certain statutes providing immunity to officials were unconstitional when rights had been violated. In addition, a county or municipality cannot be protected from suit by invoking the "good faith" acts of its officials, although this defense may apply to individual officials.

Along with changing concepts of civil liability, the scope of inmate rights has expanded greatly over the years. Even after the passage of the Thirteenth Amendment, inmates remained "slaves of the state". For a long time the courts took the position that presiding over the affairs of prisons and jails was not a function of the judiciary. Yet the involvement of the courts has grown as abhorrent institutional conditions are made more public. For example, the Attica uprising of 1970 was one catalyst for judicial concern.

DeLand concluded by noting that most detention facilities were built before the concept of jail standards was ever conceived. Unconstitutional prison conditions have existed for centuries, but reform efforts were a dismal failure until the advent of civil liability jail suits. "Civil liability", he contended, "has become the moving force behind jail and prison reform."

CITATIONS: THE MOST EFFECTIVE WAY TO DECREASE SHORT-TERM DETENTION

FACULTY: *Ron Obert, Director*
Office of Pretrial Services
San Jose, CA.

In the face of court orders to decrease jail overcrowding and spiraling costs of both confinement and the administration of justice, it is imperative that alternatives to pretrial detention be explored and implemented. One alternative, the focus of this workshop, is the use of citation release. Many jurisdictions have found that the citation release process is extremely effective in reducing short-term jail populations and offers economic, operational, and social advantages as well.

Ron Obert defined the citation process as a pretrial release mechanism in which a defendant is released on personal recognizance by a law enforcement officer, and is issued a written order to appear at a specified time and place to answer the criminal charge. Obert suggested that most persons arrested for misdemeanors could be released via the citation process with no jeopardy to judicial proceedings or the community. He pointed out that since the overwhelming majority of misdemeanor defendants are released on their own recognizance at the initial court appearance, it is wasteful to transport them to jail and to detain them prior to arraignment.

Although a slight increase in failure-to-appear rates is sometimes detected in communities employing citation release, it has been minimal, and when balanced against the savings associated with the process, appears to be a worthwhile investment. Specifically, Obert stated that use of citation release offers the following advantages:

- The expenses of booking, fingerprinting, photographing, feeding, and supervising short-term detainees are eliminated.
- The potential is reduced for jail overcrowding, court orders to reduce jail populations, and law suits concerning jail conditions.
- Employers are spared the loss of their employee's services. In addition, the defendant is able to continue to honor any other obligations--financial, social, or volunteer work--(s)he may have.
- The defendant is not punished while still presumed innocent. The expense of posting bail is avoided. The defendant is able to better arrange for his/her defense and has the opportunity to demonstrate responsible behavior pending trial, thereby reducing the likelihood of confinement if convicted.

Obert noted that while 45 states employ some form of citation release, the extent and consistency of utilization varies between--and even within--states. In implementing a citation release process, Obert stressed that all participating agencies performing similar functions within a jurisdiction should adhere to a single set of procedures and forms. For example, all police agencies should use identical citation forms. All prosecutors should use the same criteria for requesting that the courts issue a warrant for failure to appear. All courts should follow the same procedures and measures for dealing with defendants who do not appear as specified.

It was further emphasized that each jurisdiction should monitor and periodically evaluate its citation release process in order to assess whether (1) arresting officers are accurately determining eligibility for release; (2) there is a notable increase in the failure-to-appear rate; (3) the process results in any savings or additional costs to the system; and (4) the use of citation release increases the efficiency of system operations.

Obert concluded that the use of citation release should be explored as a viable alternative to physical arrest and incarceration of persons arrested for misdemeanor offenses prior to the initial court appearance. Carefully administered, monitored, and modified where necessary, citation release can result in savings to the criminal justice system, defendants, and taxpayers alike.

CENTRAL INTAKE—MODEL FOR THE EIGHTIES?

FACULTY: *David Bennett*
Criminal Justice Consultant
Salt Lake City, UT.

Robin Ford
National Institute of Corrections Jail Center
Boulder, CO.

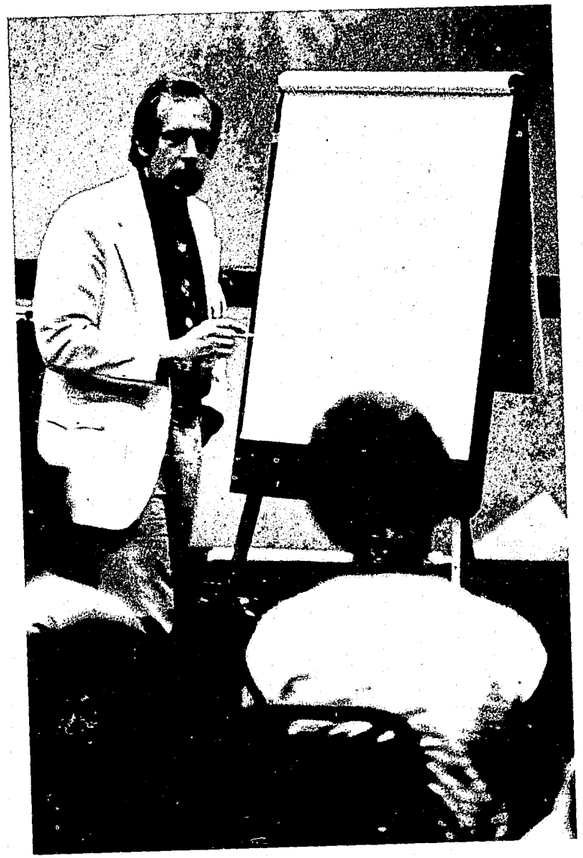
Many view the criminal justice system as a classic example of a "nonsystem". It is composed of different agencies which may be funded by the city, county, state, or federal government. Some of the agencies are headed by elected officials, others by independently appointed department heads. In most jurisdictions there is very little coordination among agencies on a day-to-day basis. Mechanisms for long-term planning usually do not exist. The result is a fragmentation of services, inefficiency, and inconsistency. The system is forced to react to problems instead of actively managing the flow of defendants. As the number of defendants caught up in the system increases each year--and the budgets allocated to the criminal justice system do not increase proportionately--it becomes even more necessary to institute new management procedures.

Many jurisdictions are exploring a process known as central intake in order to organize the information gathering and decision-making that occur as defendants are moved through the criminal justice process. The central intake system (CIS) is a system or mechanism, not necessarily a new agency. The CIS is grounded in a commitment by all of the involved agencies to share the information that is collected. Defendant data gathered by intake screeners at the jail are used throughout the system. These data become the basis for a series of decisions relating to release conditions, indigency determinations, jail classification, as well as substance abuse and mental health problem identification.

The system is coordinated through a management information system (MIS) that monitors the flow of defendants through the system. The MIS provides regular reports about how the system is operating, showing such data as the period of time from arrest to sentencing and details on delays. The MIS can be used to measure the effectiveness of a jurisdiction's release procedures and provide the data necessary to adjust criteria. The MIS can monitor the jail population and provide regular reports on how the jail is being used.

In all of these ways a CIS can contribute significantly to the reduction of unnecessary pretrial detention and its consequent costs. The gathering and dissemination of information under a CIS is subject to all existing federal, state, county, and city confidentiality regulations. Jurisdictions beginning such an operation are urged to work out procedures in conjunction with legal counsel. There are many complex questions of confidentiality which need to be carefully worked out.

Much of the workshop was spent discussing the operation of the CIS and the many agency linkages necessary under such a system. The model an individual jurisdiction may choose to implement will depend greatly on its system's needs. However, it is felt that use of the central intake system warrants considerable attention in the eighties.

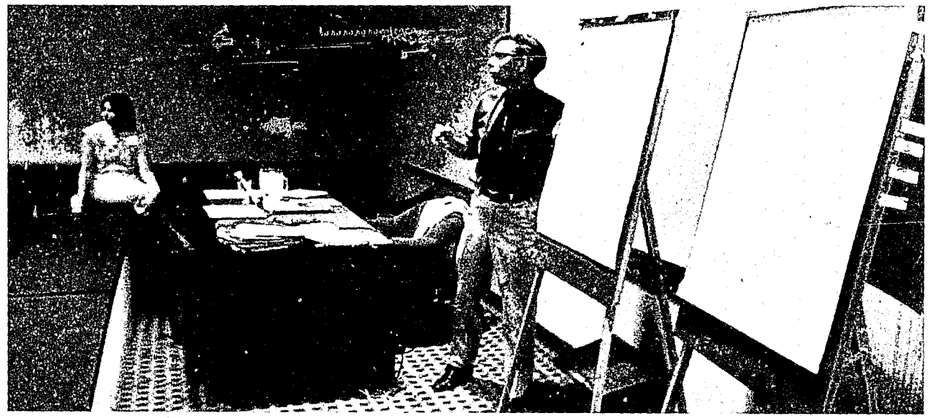


Robin Ford discusses elements of a central intake system

PRETRIAL SERVICES--ARE STATEWIDE SYSTEMS THE ANSWER?

As officials across the country explore ways of improving their criminal justice systems, the area of pretrial services still stands out as in special need of reform. Common problems are jail overcrowding, unnecessary pretrial detention, and a lack of dispositional alternatives for the large number of cases in which adjudication may not be the most appropriate response.

In a handful of states, policymakers have chosen to establish statewide systems of pretrial services to improve the efficiency and quality of pretrial justice. This two-part series of workshops was to highlight (a) the administrative aspects of statewide systems and (b) the experiences of several states who have implemented pretrial services on a statewide basis.



Nancy Maron and Barry Mahoney

PART I: ISSUES AND IMPLICATIONS

FACULTY: *Barry Mahoney, Research Director*
Institute for Court Management
Denver, CO.

Nancy Maron, Associate Director for Program Services
Department of Institutions
Denver, CO.

Panelists Barry Mahoney and Nancy Maron first noted that although "statewide systems" is a frequently used term, it refers to very different kinds of structures in different states. For example, in Kentucky, a statewide system of pretrial release was authorized by statute and operates under the Administrative Office of the Courts. It is fully state funded and pretrial officers are employees of the AOC. There is a small central staff in the AOC which coordinates administration of pretrial throughout the state. They are responsible for planning, evaluation and training. The two urban jurisdictions,

Louisville and Covington, have good-sized programs which also offer some diversion and mediation services. The rural counties are served by pretrial officers who cover several courts.

In New Jersey, a statewide system of pretrial intervention was first established by court rule and then mandated by statute. Oversight responsibilities rest in the Administrative Office of the Courts, but services in all but two counties (which have independent programs) are provided through existing probation departments. The AOC does sponsor yearly training conferences for pretrial intervention staff but the system is much more decentralized than in Kentucky.

Through statute the state of Iowa has established a statewide system of release and diversion in the Department of Community Corrections. Services are locally administered and subject to state accreditation standards.

Panelists discussed the benefits and shortcomings of various approaches to statewide services and felt that two models warranted serious consideration: 1) a state funded and administered agency or 2) a state funded central administration and locally funded service staff.

The panelists also suggested that adoption of a statewide system might offer a number of advantages in the provision of pretrial services. They included:

1. Funding for pretrial services would undoubtedly be more secure under such a system and may even allow for more dollars to be allotted to pretrial services than would be possible under local funding.

2. Resources could be distributed more equitably. Programs with greater demands would receive according to need, not what their communities can afford. In addition, services would be expanded and other "poor" areas where they do not now exist.

3. Because programs in a statewide system are uniformly run, agency planning and policy development can be planned comprehensively on a statewide basis. This could be particularly helpful to smaller programs with otherwise limited staff and resources for such activities. Similarly, training and methodologically sound research could be devised and performed regularly. Also, services would be better coordinated; there would be less duplication.

4. With the advent of regular evaluation, more information would be made available on system and program performance as would opportunities for implementing change.

5. Service delivery and data collection would be consistent between jurisdictions, providing even services to defendants, enabling their transfer to another district, and decreasing the likelihood of equal protection suits.

6. Pretrial services would gain credibility with other branches of the criminal justice system. Innovations might be more easily accepted.

7. There would be greater opportunity for local programs to receive technical assistance, either from the central agency or outside sources. A statewide system would also facilitate the transfer of resources.

8. A statewide system could easily allow for compliance with the standards promulgated by NAPSA by adopting the practices, procedures, and objectives suggested in the Standards.

9. Programs would be insulated, or at least cushioned, from public pressure to "lock 'em up".

On the other hand, the panelists noted that there were several potential disadvantages associated with statewide systems of pretrial services:

1. Such a system may result in a bureaucracy of increased paper work and minimal sensitivity and responsiveness to local problems. In the push for uniformity, local programs would become less autonomous; and efforts to address community values, changing needs, and problems could be hampered.

2. The delivery of uniform pretrial services could prove difficult in states with a fragmented state court system.

3. Pretrial agencies may suffer from reduced vitality or the "civil service mentality". Innovation could be stifled under a distant and removed state administration.

4. Integration of existing programs into a statewide system could prove difficult as could the selection or creation of a host agency.

5. State funding levels may be insufficient to meet program mandates, and salary differences between state and local or independent programs could potentially discourage veteran staff from remaining with the agency.

6. It was suggested that the creation of a statewide agency may be a cop out, a way of avoiding serious issues or of perpetuating jobs.

As panelists and attendees discussed the pros and cons of statewide systems it became clear that the majority favored the statewide approach to pretrial services for their jurisdictions.

PART II: THE EXPERIENCE OF SEVERAL JURISDICTIONS

FACULTY: *Angela Grant, Counsel*
Connecticut Pretrial Commission
Hartford, CT.

John Hendricks, Co-Director
Pretrial Services Agency
Frankfort, KY.

Donald Phelan, Chief
Pretrial Services
Administrative Office of the Courts
Trenton, NJ.

Stephen Wheeler, Co-Director
Pretrial Services Agency
Frankfort, KY.

MODERATOR: *Barry Mahoney, Research Director*
Institute for Court Management
Denver, CO.

This session focused on the experiences of three states that have implemented pretrial services on a statewide basis. Moderator Barry Mahoney introduced the workshop by relating some background information on New Jersey, Kentucky, and Connecticut.

The New Jersey judicial system is centrally administered by the Administrative Office of the Courts, with statewide rulemaking authority resting with the state Supreme Court. In 1970 the court promulgated rules authorizing the development of pretrial diversion. These were later incorporated into the state penal code. As a result, a pretrial services division of the AOC was established to coordinate and oversee the provision of services related to pretrial intervention, mediation, detection and diversion of substance abusers. In all but two counties actual delivery of these services is handled by the probation department.

In Kentucky statewide pretrial services were mandated in 1976 by the same legislative session which outlawed bail bonding for profit. Overall responsibility for this statewide system rests with the Pretrial Services Agency of the Kentucky Administrative Office of the Courts. Central staff coordinate all aspects of programming, conduct evaluations, and provide technical assistance to local programs.

In Connecticut the initiative to improve the system of pretrial justice was taken in 1979 when the General Assembly formed the Pretrial Commission composed of legislators and criminal justice actors. The Commission was asked to study programs and procedures and to report back to the legislature with recommendations for improving pretrial services. Legal counsel was hired to assist the Commission and to coordinate Phase I of the LEAA Jail Overcrowding and Pretrial Detainee Project. Although planning is still in the early stages, the Commission is urging the passage of legislation which would create a statewide system of pretrial services.

Donald Phelan, chief of Pretrial Services at the Administrative Office of the Courts in Trenton, New Jersey, cited several advantages of implementing pretrial services on a statewide level. First, funding is available from a variety of sources--local, state, and federal--which can be used singly or in combination. For example, the central pretrial division is run on monies from the state, while local programs are funded by county governments. Secondly, through statewide planning, uniform eligibility criteria has been developed in the areas of release, intervention, and mediation. Thirdly, data collection and evaluation have been centralized through a statewide registry. Finally, the statewide system has facilitated the sharing of ideas and information, the identification of local needs and ability to follow up with special projects, and the transfer of defendants to diversion programs between jurisdictions.

Phelan pointed out that going the statewide system route means making tradeoffs. For example, a loss of autonomy for local programs is exchanged for uniformity of practice gained by compliance with mandated policies and procedures.

John Hendricks and Steve Wheeler, co-directors of the Kentucky Pretrial Services Agency, said that these necessary tradeoffs could cause ill will and emphasized the important role of advisory boards in creating an atmosphere favorable to the success of statewide pretrial services. Shortly after legislation was passed in Kentucky establishing the Agency, two blue-ribbon committees were formed to consider problems which might arise as a result of expanded pretrial release. One committee was composed of state criminal justice officials and the other of "experts"--judges and pretrial practitioners--from across the country. In addition, committees were established to work with each of the 120 local offices to resolve problems within the community. These panels functioned as sounding boards, enabling officials and lay persons to voice concerns about pretrial release and providing them with a sense of participation in the resolution of problems.

Hendricks and Wheeler concluded by listing a host of benefits derived from instituting a statewide system in Kentucky, noting that statewide systems can aid the community, courts, and defendants alike. Besides the obvious advantages of institutionalized funding, centralized data collection, and uniform release criteria, there has also been a marked improvement in communication between offices for the purpose of verifying information obtained from defendants. The statewide system has also provided for smoother transfer of resources, both funds and manpower, from one part of the state to another. In fact, through reassignment of pretrial officers and monies to the jurisdiction involved, the program was able to avert a near crisis when a recent miners' strike resulted in 200 arrests in one county. Local offices have also reported a lessening of political pressure as well as enhanced job stability and benefits for classified staff positions.

Angela Grant, counsel to the Connecticut Pretrial Commission in Hartford, explained that her presentation would be somewhat different from those it followed because Connecticut has not yet instituted statewide pretrial services, although the Commission has urged its adoption. Grant said that Connecticut has a poor track record in the area of bail reform. Although laws exists mandating the use of nonrestrictive conditions of release and a prompt review for defendants who cannot make bail, the intent of these statutes is not followed. It was hoped that the Commission might succeed where other reform efforts had failed because its members represent a cross-section of criminal justice actors

involved at the pretrial stage. Further, as a legislative body, the Commission is part of the "system". Its members are politically astute and cannot be dismissed out of hand as liberal "do-gooders".

Rather than recommending an array of new programs, the Commission elected to take a practical approach to its study of pretrial issues and to formulate proposals which would put teeth into existing pretrial alternatives. (The one exception was a pilot mediation project, which will operate for a year in order to test the viability of the mediation alternative.) As a result, three bills were introduced in the 1979 session of the General Assembly which would:

- Expand the use of the 10% bail deposit system (presently available by court rule) to all misdemeanors and Class D Felonies, unless the prosecutor or judge objects.
- Require certain changes in the practices of bail commissioners, including the use of uniform release criteria, in order to reflect the statutes' emphasis on nonmonetary conditions of release.
- Continue the Pretrial Commission for one year to oversee the implementation of the proposals as they were enacted into law.

Predictably, the 10% bill was strongly opposed by bail bonding interests, whose most powerful Connecticut spokesman is a long-time member of the legislature. After passing the Senate by a substantial margin, the bill was defeated in the House by two votes, following a vigorous challenge led by the bondsman-legislator.

The second bill on bail commissioners died in the fall-out from the 10% vote. The bill to continue the Commission was enacted into law, and the Commission and the Judicial Department have applied jointly for federal funding to implement the upgrading of the Bail Commission. Grant assured attendees that the Pretrial Commission is still committed to the success of the Bail Commission project, mediation programs, and to bringing to the 1980 General Assembly a legislative package that will mandate pretrial reform in Connecticut.

In closing, the panelists agreed that pretrial services in their states had benefitted from the implementation of a statewide system and that they would not be in favor of returning to localized programming. However, they stipulated that each system had been tailored according to the unique requirements of their state and that although certain features may apply, no single model should be adopted in toto as the ideal for every state.

Mahoney then asked for a show of hands of those favoring statewide pretrial services in their jurisdictions. The "ayes" won by an overwhelming margin.

RURAL PRETRIAL SERVICES

FACULTY: *William Morrison*
Administrative Office of the Courts
Frankfort, KY.

Tom Snow, Jail Administrator
Pitkin County
Aspen, CO.

Melinda Wheeler, Director
Pretrial Services Agency
Covington, KY.

MODERATOR: *Alan Henry, Technical Assistance Associate*
Pretrial Services Resource Center
Washington, D.C.

Pretrial services agencies originated in the 1960's in response to the challenge issued by the bail reform movement: to improve the system of pretrial justice in the United States. However, pretrial programs are primarily located in urban jurisdictions, and are generally not found in rural areas. Yet people are arrested in rural areas, too, creating some of the same problems faced in urban jurisdictions--jail overcrowding, system backlog, unnecessary detention, etc. This workshop explored some of the experiences and problems of rural pretrial services.

In addition to his role as jail administrator of the Pitkin County Jail in Aspen, Colorado, Tom Snow also performs duties traditionally associated with a pretrial services agency. Faced with an average jail population of 7.5 people in a 5-person capacity cell, Snow and his staff implemented a personal recognizance program. Although persons charged with first- or second-degree felonies are excluded from consideration, Snow said 80% of those eligible are released on their own recognizance following booking. Of that number, 95% appear in court as scheduled. Additionally, Snow is now working toward extending release services to pre-sentence detainees and promoting the use of community service as an alternative to jail sentences.

The Commonwealth of Kentucky, like Pitkin County, is largely rural. Kentucky, however, has adopted a statewide system of pretrial release, supervised by a separate pretrial services branch of the Administrative Office of the Courts. William Morrison works in the central administration of the agency. Melinda Wheeler has worked in a rural pretrial office and is now director of one of the metropolitan programs. Together they described some of the roadblocks to providing pretrial services in rural Kentucky which might also be applicable to other jurisdictions:

- People perceive crime and, therefore, the need for pretrial services, to be an urban problem.
- Jailers and judges are elected officials. They are inclined to make decisions which will be popular but which may not always be the most just. While this is frequently true of urban jurisdictions too, it is accented in rural locales where people often know everyone else in the area.

- There is only one pretrial officer per district. This officer is on call 24 hours a day and must interview every defendant within 12 hours of arrest. Rural districts consist of between one and four counties, each containing at least one jail. This situation is very challenging in terms of travel and time for the pretrial services officer.

- Most jailers are paid on a fee schedule based on the number of prisoners in their care. Defendants are a source of income to the jail, creating a conflict between the jailers who have a stake in keeping defendants in jail, and pretrial staff who advocate for defendants' release.

- Although part of a statewide agency, to the greatest extent possible each program must strive independently to coordinate community support and services.

It was pointed out that community support is extremely important to the success of a rural pretrial services agency. The local press was suggested as an important vehicle for educating and recruiting the public.

In conclusion, panelists maintained that the development of pretrial services in rural locations is imperative, since arrests are not made in urban areas alone. Therefore, the involvement of the criminal justice system and the arguments for the use of pretrial alternatives are applicable to both rural and urban jurisdictions. Although problems unique to rural locales may surface, it is incumbent upon the pretrial field to address them so that services to defendants may be provided equally to all persons arrested in the United States--not just those living in cities.

SCREENING FOR SUBSTANCE ABUSE

FACULTY: *Peter Regner, Chief of Offender Services*
Law Enforcement Assistance Administration
Washington, D.C.

Jack Lemley, Criminal Justice Coordinator
Bureau of Alcoholism and Drug Abuse
Wilmington, DE.

Barbara Zugor, Director
Treatment Alternatives to Street Crime
Phoenix, AZ.

In his introduction to the workshop, Peter Regner noted that substance abuse in the United States is a problem of major proportions. Its effects are not confined to any race, class, or even to the addicts and alcoholics themselves. At a time when crime is a major public concern, studies show that a significant number of persons arrested (75% in one state) have a substance abuse problem or were under the influence of drugs and/or alcohol when the crime was committed. Consequently, Regner said, the importance of recognizing and treating substance abusers as they are processed through the criminal justice system cannot be underestimated. This workshop focused on how arrestees in two jurisdictions are screened for substance abuse.

Jack Lemley described the Criminal Justice Service Center in Wilmington, Delaware, the state agency to which suspected substance abusers are sent for evaluation. The Service Center is strictly a service-delivery agency. It relies on the other branches of the system to do initial screening. Lemley has developed a training package and referral procedure to guide criminal justice agencies in recognizing and referring substance abusers. He noted that the police and pretrial services agency refer the majority of defendants for evaluation and offered the following example of how a substance abuser might proceed through the criminal justice system in Delaware:

1. As part of his official report, the arresting officer includes information on whether the person was under the influence of drugs and/or alcohol at the time of arrest as well as whether it was known to the officer that the arrestee was a substance abuser.

2. The defendant is then interviewed by the pretrial services agency. If a substance abuse violation is involved or substance abuse is suspected (either by the arresting or pretrial officer), the Service Center is notified. As a condition of release, the defendant must undergo evaluation by the Center.

3. At the Service Center the defendant is evaluated for substance abuse by a team consisting of a psychiatrist, doctor, criminal justice officer, and two treatment program staff. If a problem is detected, the Service Center devises and recommends a treatment plan based on the defendant's needs.

4. A report on the Center's findings is sent back to the referring pretrial officer within ten days. If treatment is recommended, the information and recommendation are presented to the judge. Upon consent of the judge, the attorney general, defense counsel, and defendant, a release is signed and the substance abuser is diverted to a treatment program.

Lemley believes that the hammer of criminal justice can motivate substance abusers to get help. He feels that the threat of full prosecution and imprisonment deters substance abusers from dropping out of treatment or not complying with the program's rules.

Barbara Zugor concurred with this assertion, suggesting that the crisis of being arrested can catalyze many substance abusers to decide to get treatment. Zugor, who directs the Maricopa County Treatment Alternatives to Street Crime (TASC) Project in Phoenix, Arizona, also noted some similarities between the screening process in Delaware and Maricopa County. For example, in both jurisdictions the police and pretrial services agency make official comments, which are passed on to TASC, on whether they suspect the defendant is a substance abuser and whether (s)he is eligible for TASC.

Zugor pointed out, however, that unlike the Service Center, the TASC Project does both the initial screening and an in-depth, follow-up evaluation. Two TASC screeners are at the Maricopa County Jail eight hours a day. They are responsible for interviewing all defendants arrested for nonviolent offenses and must do so before the initial appearance.

Zugor said that the hardest part of screening is dealing with the arrestees' paranoia about jail and what is going to happen to them. Therefore, throughout the interview the screeners stress that the goal of TASC is to help defendants. The screener tells the defendant that if (s)he has a problem with drugs and/or alcohol (s)he can receive treatment for the problem through TASC. The screener further points out that defendants who successfully complete the program almost always get reduced sentences.

During this first interview by the TASC program, the screener collects information and makes observations on the following:

- Physical appearance - Does the defendant exhibit symptoms of being under the influence of any kind of drug and/or alcohol? Is (s)he beginning or in any of the stages of withdrawal? Are there track marks on his/her body?

- Attitude - Does the defendant appear to be sincere in his answers? Is (s)he cooperative, belligerent, scared, defensive?

- Past criminal activity - Has the defendant been previously arrested/convicted? Was the offense drug- or alcohol-related?

If, on the basis of the interview, a defendant is determined to have a substance abuse problem, (s)he is offered the option of entering TASC. In Maricopa County, about 60% of the arrestees are released pretrial. If a defendant chooses to participate in TASC, (s)he is released on the condition that (s)he successfully completes the program; and TASC signs a third-party custody form assuming responsibility for his/her release.

Zugor concluded by stressing the importance of treatment versus incarceration for substance abusers. "With the rapid growth of drug/alcohol-related crime and the expense of prisons, we can hardly ignore the social, fiscal, and human costs of not treating substance abusers."

HAVE WE FAILED IN RESPONDING TO ALCOHOL-RELATED OFFENSES?

FACULTY: *Mark Fontaine, Program Manager*
National Association of State Alcohol and Drug Abuse Directors
Washington, D.C.

Lee Wood, Deputy Director
Monroe Co. Bar Association Pretrial Services Corp.
Rochester, NY.

The single most common offense for which American adults are arrested each year is public drunkenness, accounting for approximately one out of every five arrests. This figure is closely followed by arrests for driving while intoxicated (DWI). Additionally, the number of defendants charged with committing crimes under the influence of alcohol is on the rise. Quite often a defendant fitting into any of these three categories is an alcoholic, a problem which criminal justice agencies are frequently ill-equipped to handle. In this workshop panelists discussed the inadequacies of the justice system in dealing with alcohol-related problems and suggested alternatives to traditional processing.

Mark Fontaine defined the public inebriate, also called "street bums", "alkies", or "winos", as someone who is habitually drunk in public. Society is generally not tolerant of drunks on the streets and demands that they be kept out of sight. The most convenient place to "keep" them is in jail, since few jurisdictions have detoxification centers sufficient to cope with the problem. Fontaine noted that alcoholism is not a crime but an illness, and it has been decriminalized in 34 states. Unfortunately, decriminalization has not reduced the number of inebriates in the jail population, nor has it led to a significant increase in the number of treatment programs. Instead, inebriates are arrested on other charges, such as vagrancy and trespassing.

Fontaine cited some interesting data on the public inebriate gathered by a Chicago program. He said that 70% of those studied are between ages 41 and 60: 60% are high school graduates; 57% are divorced/separated; 30% are first time offenders; and 28% have been arrested four or more times.

In coping with the problem of the public inebriate, it is important to understand the complexity of the needs involved. They include residence, food, social stability, employment, and counseling. It is also imperative that goals for dealing with inebriates be formulated. Is the goal simply to move the drunk from the jail to a different facility, or is it to effect change in his or her life?

Fontaine suggested several alternative facilities for inebriates more appropriate than jail:

1. Detoxification Centers, where alcoholics can "dry out" under medical supervision.

2. Post-detoxification treatment programs providing medical, vocational, and social assistance.

3. Shelters for the homeless, at which the inebriate will at least receive food and clean clothes and have a bed for the night.

4. Halfway houses, a dwelling for rehabilitated alcoholics designed to aid in the transition into the mainstream of the community.

5. Domiciles or hotels where inebriates can drink off the streets.

There are alternatives to jail for the inebriate, Fontaine concluded. He suggested that the question is whether society will realize that these options can be less costly than jail, in both economic and human terms.

Lee Wood noted that unlike the definition of public inebriate, which is fairly consistent and subject to common sense, what is considered too drunk to drive varies from one area to another. Enforcement of DWI laws, prosecution, and sentencing in DWI cases are also irregular. Whatever standard is used, however, Wood maintained that the DWI presents a significant danger to the community:

- Drunk drivers kill more people than do handguns.
- The likelihood of an accident increases with blood-alcohol level.
- Approximately 98% of those repeatedly arrested for DWI are alcoholics.

Studies done in Rochester, New York, revealed some interesting traits of DWI offenders. They are usually bar drinkers as opposed to home drinkers. They generally have poor inter-personal skills and drink to be with people. It is reasonable, therefore, to infer that these people must drive, since they get drunk away from home. DWI offenders are typically middle-aged, married, and usually have the means to pay for treatment. Through a DWI charge, the problem drinker can be identified about five years before (s)he would normally reach a crisis level (loss of job, family, etc.). Unfortunately, denial of alcohol problems is more than common at this stage.

What can be done with these offenders? Services available to the alcoholic through the criminal justice system are often inadequate. In most states first offenders are sentenced to an education program (movies, etc.) not treatment. While there is some validity to this approach, it is certain that subsequent arrests indicate a serious problem which must be addressed through treatment.

Apart from DWI offenders, Wood asserted that there is a large number of defendants for whom alcohol is at least partially responsible for their arrest. According to the 1978 Special Report on Alcohol and Health, 83% of the jail population indicated that alcohol was involved in the crime. The criminal justice system is geared to deal with crimes not defendant problems, so the alcohol-related crime often becomes part of a repeating pattern. Wood cited the following obstacles in recognizing and treating defendants who are problem drinkers:

1. If the charge does not specifically involve alcohol, the alcohol problem is hard to recognize and criminal justice actors with whom the defendant has initial contact are not trained to detect it.

2. Prosecutors and the courts are unwilling or unable to consider defendant problems; they focus on crimes.

3. In most cases treatment is more time-consuming than the punishment. The defendant may not choose a treatment program when the sentence is only five days in jail.

Wood suggested several solutions to the inability of the legal system to respond to defendants and offenders with alcohol-related problems. First, the whole criminal justice system must be sensitized to the problems of alcoholism, especially those having initial contact with defendants, such as police and pretrial screeners. In addition, the provision of treatment must be accepted as a viable alternative. The court should use the incidence of repeated arrests for alcohol-related charges to mandate more intensive treatment. Finally, progress in programs should be reported to the court.

In closing, Wood urged attendees to educate themselves about alcoholism, especially as it related to the criminal justice system, and work to improve communications between alcohol treatment staff and criminal justice actors.

HAVE WE FAILED THE MENTALLY DISABLED DEFENDANT?

FACULTY: *Carole Morgan, Project Director*
Training Associates
Carmel, CA.

It has been estimated that there are as many as 600,000 mentally ill and mentally retarded persons in American jails today. Many of these mentally disabled individuals were not arrested for serious crimes but rather for offenses such as vagrancy or being a public nuisance. Whatever the charge, the jail setting can easily exacerbate the mental condition of the unstable or retarded defendant. But what alternatives are there? It was the opinion of Carole Morgan that there are insufficient resources to cope with this problem and that the mental health field has failed the mentally disabled caught up in the criminal justice system.

Morgan said that historically there has always been a distinct relationship between facilities for the mentally disabled and correctional institutions. People are shuffled continuously between the two. Hence neither the criminal justice system nor the mental health field can be viewed in isolation. Both must be examined in order to understand and solve this problem.

Society demands that people who do not behave "normally" be controlled or removed from sight. In the past, the mental health system was charged with the responsibility. People exhibiting unacceptable behavior were warehoused in state hospitals. Involuntary commitments were common and, according to Morgan, there was minimal care and no cures for the committed.

With the advent of psychotropic medication in the 1950s, the push for deinstitutionalization began. Patients, stabilized on medication, were released into the community. As this process began, many abuses were uncovered. Arbitrary commitments, questionable or deficient treatment, and terrible institutional conditions were exposed.

The judiciary system then became involved, imposing strict limitations on the circumstance in which persons could be confined in mental hospitals. Although today the only grounds on which someone may be involuntarily committed is if a mental health professional deems the person a danger to self or others, many are inappropriately committed. This shift in the law resulted in a flux of formerly hospitalized patients being released to outpatient care, with little or no transitional support. Often the required medication and outpatient therapy were neglected. In any event, unacceptable behavior was not controlled and continued to be viewed as a problem by society.

During the 1970s the jails became the warehouses for the mentally disabled, and law enforcement officials became the controlling agents. Police began issuing "nuisance" charges in order to clear the streets of people displaying behaviors society found intolerable. A noticeable change in the composition of the jail population evolved, with subsequent increase in suicides, assaults, and disruptive behavior. Jails were ill-equipped to provide treatment to these arrestees, and correctional personnel were not trained to detect mental illness or retardation in their wards. Upon release, these mentally disabled persons faced the same scarcity of mental health care as in previous years.

Morgan predicted that in the 1980s society will become increasingly dissatisfied with existing mental health services. The problem is that people are being released from institutions who are not prepared to cope with the demands of everyday life and the systems to provide this necessary support are lacking. Incarceration and mental health intervention have proven ineffective. The necessary facilities, legal authority, and training are lacking in both arenas. Also, the theory that involuntary treatment is ineffective further discourages mental health staff from working within the criminal justice system. The problem is compounded by the long-standing antagonism between the two systems, especially between jail personnel and mental health workers. Further, the prisoner's expanding right to mental health care often conflicts with the typical jail custodial attitude.

In addition, Morgan cited the following obstacles to providing mental health services to jailed defendants:

- Standards concerning mental health services are inconsistent.
- Legal and medical definitions of mental illness are conflicting.
- Changes in jails thus far have been court ordered and reactionary, not necessarily effective.
- Funding resources and liability considerations limit progress.
- Communication and cooperation between the mental health and criminal justice systems are limited.
- There are insufficient facilities for treating the mentally disabled.

In order to respond more effectively to the demands of mentally disabled defendants, task forces have been recently formed to address their needs. These task forces evaluate existing programs, make recommendations, and assist in developing new, individualized programs. One concept under consideration is accrediting jails as mental health facilities that can offer a full battery of services. Although this concept has been adopted by some jails, Morgan feels that, ideally, the mentally disabled should be diverted from jail before booking. Juveniles, public inebriantes, and the mentally disabled do not belong in jail, in her estimation.

According to Morgan, pretrial services could be an effective intervention tool on behalf of the mentally disabled defendant, identifying those in need of mental health services before they are booked into jail and making appropriate referrals. This system would be cost-effective and reduce jail overcrowding and liability suits. Morgan also views the judiciary as a key factor in facilitating change because they are also frustrated with the present practice of incarcerating the mentally disabled. More importantly, judges have the power to order necessary changes.

In conclusion, Morgan emphasized that much of the failure of current mental health services is caused by fragmentation and the territorial nature of individual agencies. Cooperation is essential as is training in the detection of mental illness and retardation for all branches of the legal system. Morgan stated that any solution to present difficulty in responding to mentally disabled defendants must include consciousness for all social services and criminal justice staff.

Elaine Edinberg and Willie Turner on Domestic Violence

Mark Fontaine discusses Alternatives for Alcohol Abusers

Anne Bolduc on Reducing Jail Overcrowding

William Wachob advises attendees on Selling Pretrial Services

ALTERNATIVES TO JUVENILE DETENTION

FACULTY: *Jack Phelan*
Division of Youth Services
Department of Institutions
Denver, CO.

Claus Tjaden
Planning and Evaluation Unit
Department of Institutions
Denver, CO.

MODERATOR: *Anne Rankin Mahoney*
Department of Sociology
University of Denver
Denver, CO.

Moderator Anne Rankin Mahoney pointed out that unlike adults, juveniles are frequently detained because there is simply no place else for them to go. Because of the shortage of shelters and foster homes, juveniles charged with crimes (as well as status offenders and other youth who have been removed from their parents' care) are placed in secure detention facilities for lack of alternative settings. In addition to the overcrowding of these facilities, detention has been shown to have a deleterious effect on juveniles. This workshop focused on the Detention Alternatives Project in Arapahoe County, Colorado, whose purpose is to remove from secure detention facilities youths who could either be placed in less restrictive settings or sent home.

Claus Tjaden explained that the Project's first task was to determine what measures are effective in trying to deinstitutionalize juveniles. In studying the experiences of several states, it became clear that providing alternatives to detention, such as shelter facilities, does not in itself reduce the number of youths detained or the average length of stay. However, the combination of alternatives plus the use of criteria for determining who will be detained was found to result in reductions both in the number of youths detained and length of stay. Tjaden noted that the American Bar Association, the Law Enforcement Assistance Administration, and the California Advisory Committee all urged the development of criteria for juvenile detention.

Jack Phelan pointed out that the development of the criteria was a collaborative effort. Moreover, the success of the Project hinged on the support and cooperation of the criminal justice agencies in Arapahoe County as well as of the community at large. Project staff first set about garnering this support by meeting separately with the Juvenile Court judge and the Placement Alternatives Commission, a group of 15 officials and citizens who also serve as the Advisory Board to the Project. The Judge and Commission members were provided with drafts of the criteria for their comment; each suggested changes which were incorporated into the criteria. Staff tried to be particularly sensitive to the concerns of the judge in order to develop a positive relationship between the judiciary and the Project.

Project staff then met with the Probation Department to clarify the criteria and establish a cooperative relationship. Meetings were also set up with the 10 separate police departments in the county. Staff spent several hours at each department explaining the criteria, learning what the police perceived to be problem areas, and beginning to establish a personal relationship with youth officers.

Finally, staff met with social services personnel as well as the private agency which runs the county's shelter facilities to explain the Project and procedures.

Phelan described the Project's services and procedures:

- Presently there are six full-time staff, including two intake screening counselors who work out of the Arapahoe Youth Center, a secure detention facility where all arrested juveniles are brought for screening.

- Usually the arresting officer calls the Center to explain the details of the case before bringing in a juvenile. At this point the counselor will often recommend a course of action to the officer.

- The arrestee is then brought to the Center and screened for detention. Severity of the charge and prior record are taken into consideration as part of the criteria.

- Intake counselors also interview juveniles to assess their awareness of and attitude toward the criminal justice process. Questions are also asked concerning the youth's family, home situation, desire to return home or be placed elsewhere, and the social or probation services previously received.

- The counselor then decides whether the youth could be best served in a setting other than a secure detention facility. If so, the counselor chooses from among the following options: 1) return the youth to the care of his/her parents or another adult without services; 2) return the youth to the custody of his or her parents with ongoing supervision by the counselors; 3) place the youth in a foster home or shelter under the supervision of the counselors.

In addition, counselors often act as mediators for youths and their parents as well as providing options to parents and police for dealing with a specific youth.

Tjaden concluded the workshop by discussing the results of a recent evaluation of the Project. In one year there has been a 33% reduction in number of youths referred by outside sources, a 51% reduction in actual admissions to detention, and a comparable reduction in the average length of stay. Through the use of criteria for detention, the Project has been able to sizeably reduce the juvenile detainee population and, more importantly, provide a better alternative to over 50% of the youths they processed.

JUVENILE DIVERSION—WHAT HAVE WE LEARNED?

FACULTY: *Franklyn Dunford, Associate Director*
Behavioral Research Institute
Boulder, CO.

Margaret Wood, Director
Technical Assistance & Policy Analysis
National Council on Crime & Delinquency
Hackensack, NJ.

In the early seventies, pretrial diversion was widely heralded as a "solution" to many of the problems of the juvenile and criminal justice systems. Its advocates said it would reduce court caseloads, recidivism, and costs. In the past ten years, much of this initial enthusiasm has waned. Although there are a significant number of diversion programs in operation, there is an increasing body of information which indicates that diversion has not had the positive impact that was expected. Instead it appears that some of the problems with diversion are as troublesome as those it hoped to address. Both ethical and performance concerns were discussed in this workshop.

Margaret Wood worked in pretrial services before joining NCCD. She identified racism and classism as major philosophical and legal problems associated with juvenile diversion. She explained that just as courts and juvenile institutions are primarily populated by the poor and minorities, the majority of participants in diversion programs are white and middle class. Wood ascribed this imbalance primarily to eligibility criteria which are biased in application. Some of these factors--such as education, employment, and community ties--work to exclude the poor and minorities who often have less formal schooling, are unable to secure long-term employment, and move more often for economic reasons. Moreover, these criteria are not necessarily predictive of successful participation in a diversion program, Wood asserted.

Wood maintained that steps must be taken to rectify this situation. She proposed that, in addition to hiring more minority screeners, the administrators of juvenile diversion programs should examine the screening processes of their agencies for discriminatory trends and modify them where necessary. A citizens advisory board might be helpful in this regard. The federal government should also scrutinize the programs it funds to ensure that poor and minorities are not being unduly denied entry. Funders should threaten to withdraw support if biased practices are not eliminated.

Wood also cited unbridled discretion as denying many defendants access to intervention programs. She pointed out that few laws exist to structure the admissions policies of juvenile diversion programs. Wood spoke to the necessity for clear guidlines for acceptance or denial of entry into diversion, saying that if statutes are not forthcoming, provisions should be made through court rule. Arbitrary decision-making might be eliminated through "void for vagueness" challenges. Void for vagueness is a term used by courts in striking statutes as unconstitutionally vague. In legal terms vague means that a law is so unspecific that people are not sure what standard is being defined. Wood said this kind of challenge could easily be applied to juvenile diversion criteria, under which, for example, a youth can be committed if "it is in the best interests of the child". One solution might be to conduct a pre-diversion

hearing for the purposes of reviewing all the pros and cons of diverting a particular youth. Wood added that this mechanism could also serve to weed out those defendants who would not penetrate the system further if there were no diversion program.

Problems of misused discretion and arbitrariness surfaced in regard to termination decisions as well. Wood stated that often there are no written criteria for termination. Also, the determination that a client is not "working", a prime explanation for termination, is in itself subjective. Wood suggested that in order to solve this problem, written guidelines must be developed and that a hearing should be held with the participation of the juvenile's attorney before a youth can be dismissed from the program.

Since termination usually results in the resumption of prosecution, the issue of confidentiality is also a concern to juvenile diversion practitioners. While any certified social worker or psychologist working with diverted youth is protected from subpoena, line staff are not. It was argued that diversion administrators and associations like NAPSA should work toward statutes and court rules that would grant immunity to all diversion staff from testifying against its clients in subsequent legal proceedings.

Finally, Wood noted that frequently diversion staff do not come from a variety of ethnic backgrounds. Thus, they may not be aware of certain cultural variations and may incorrectly perceive them as negative behavior in a client. For instance, "hanging out on the streets" is as common to the urban youth as "playing outside" is to children in suburbia and is not necessarily negative. Many children in southern black and chicano families are taught to lower their eyes when talking to adults as a sign of respect. Therefore, such youngsters with poor eye contact do not necessarily have bad attitudes or psychological problems. Wood stressed that staff must continuously be sensitized as part of their training to cultural differences which could affect admission, evaluation, or termination decisions.

Wood concluded by urging attendees to read "Legal Issues Raised by Juvenile Diversion", by Kevin O'Brien. She said that this article, published in the Spring 1977 edition of the New England Journal on Prison Law, provides a good discussion of the legal problems which advocates of juvenile diversion need to address.

Frank Dunford, associate director of the Behavioral Research Institute in Colorado, stated that in addition to basic ethical and legal concerns, research on performances is another of the field's long-standing problems. Dunford explained that although numerous studies of juvenile diversion programs exist, almost all have methodological flaws which render the findings suspect. It is important to note, however, that while the results are mixed and imperfect, the bottom line does not seem to favor diversion.

Partly because of the scarcity of defensible research, the Office for Juvenile Justice and Delinquency Programs (OJJDP) requested that the Behavioral Research Institute conduct an evaluation of the 11 juvenile diversion projects it funded. Of these, four programs, located in Kansas City (Missouri), New York City, Memphis, and Orlando, were chosen as evaluation sites. Dunford said that arrested juveniles were randomly assigned to one of three groups: (1) released to their parents' custody with no services, (2) referred to the diversion

project, or (3) passed on to the next step of the justice process. Each was interviewed three times in a one-year period: within two weeks of the presenting offense and six and twelve months after the first interview.

It is Dunford's opinion that too much emphasis is placed on recidivism in research, which, he insisted, is not a measure of behavior but of official reaction. So, in addition to recidivism, for which self-reported delinquency measures as well as official records were used, participants were also tested for labelling. Because one of the precepts of diversion is that many offenders suffer from the stigma of a criminal record, Dunford felt this was an important area to study. Labelling by parents, teachers, and peers was examined. Other factors studied included social isolation, commitment to peers, self-esteem, and relationship with parents.

Dunford reported that, while the findings are preliminary (the evaluation is due to be completed in late 1980), by and large no consistent differences were found among the three groups that favored any particular group of juveniles. In the areas of both labelling and recidivism, there were no findings to substantiate the effectiveness of juvenile diversion programs.

"It would seem that juvenile diversion programs are not fulfilling their expectations", he concluded. "Perhaps such programs should try instead to change institutions, such as the family, schools, and communities."

Marge Wood and Frank Dunford

COMMUNITY SERVICE AND RESTITUTION: ISSUES

FACULTY: *Glenn Cooper, Research Associate*
University of Denver
Denver, CO.

Burt Galaway
School of Social Development
University of Minnesota
Duluth, MN.

Anita West
Denver Research Institute
University of Denver
Denver, CO.

Like some other so-called criminal justice innovations, community service and restitution are actually old concepts that have been recently rediscovered and popularized. And like other "alternatives", they raise a number of complex issues which should be carefully evaluated before the practices are widely implemented. A few major research efforts currently underway may answer some unresolved questions on the use of restitution and community service. In this workshop, representatives of two of these studies discussed their findings to date. It is difficult to assess their implications for pretrial services because the issues raised are somewhat different, and the experience to date is still somewhat limited.

Burt Galaway pointed out that the terms "community service" and "restitution" are not synonomous and should not be used interchangeably. In fact, some observers attach different philosophical foundations and purposes to each. Restitution is the monetary repayment by the defendant to the victim for losses suffered as a result of the crime. On the other hand, community service (or symbolic restitution as it is sometimes called) is reparation to the community through some form of public service. Supporters of community service and restitution disagree on whether the rationale for either concept rests primarily in terms of reparations, rehabilitation, punishment, or criminal justice system expediency. Moreover, some advocates propose the practices as alternatives to more onerous (and costly) treatment--like incarceration. Others view them as ways to increase the sanctions that would otherwise be imposed--like adding a community service or restitution requirement to a probation sentence.

Galaway stressed that to be successful, an agency must have clearly and carefully defined its program purpose and processes. For instance, a program would likely be doomed to fail if it intended to reduce jail or prison populations but focused on pretrial defendants who, were the program not there, would have their charges dismissed or be placed on probation.

In fact, many question whether, under any circumstances, community service and restitution are appropriate at the pretrial stage. They argue that both are inherently punitive and should not be imposed on defendants who have not been adjudicated. Further, their use creates a potential for increased social control and presents complex legal and operational questions. For example, if a

defendant does not successfully complete the program, is the agreement to restitution or community service judged as an admission of guilt?

Advocates of community service and restitution in pretrial diversion programs point to the increased public support they garnered as a result of including victim-oriented components in their programs. It was Galaway's opinion that community service and restitution are punitive and that only under some conditions might they be appropriately imposed pretrial.

Anita West is directing an evaluation of seven community service programs in the United States. Only two of these have pretrial components. The initial goal of the study was to evaluate the various programs in terms of cost-effectiveness, client exposure to new experiences (jobs, volunteer work, etc.), reduction of jail populations, and the development of referral system networks. According to West the research concentrated on five areas:

- the acceptance of the projects by the judiciary and by the existing social service agencies;
- the effectiveness and the constitutionality of the projects;
- program design (including underlying service philosophy, i.e., whether punitive or rehabilitative; length and kinds of placement; etc.);
- defendant characteristics; and
- likely disposition of the case if the community service option had not existed (i.e., dismissal, probation, fine, incarceration, etc.).

Because most of the programs being evaluated had been in existence for a relatively short period of time, conclusions from the study were incomplete at the time of the Symposium. The results were expected to be released in the Spring of 1981.

Glenn Cooper, a colleague of West's, summarized some of the data collected during the first six months of the survey. Of the 700 persons who entered the programs, 92% successfully completed their assigned hours. The great majority of clients reported that the program was a fair and rewarding experience. Evaluation results showed the typical client to be a young, white male. Most were employed at their time of entry into the program; 93% had been referred on misdemeanor charges. At the time of the evaluations, judges and district attorneys were still reluctant to refer more serious charges.

Assigned community service hours ranged from less than 10 to over 200, with the average being around 50-59 hours. The judges set the total assigned time. Each project then worked with the individual clients on the logistics of completing the required time. Generally, the judges did not specify a certain period in which to complete the assigned hours; but it was generally felt by the projects that it was important to set a time limit. Often the projects made use of existing social service and volunteer agencies for client supervision, or a specific group was formed to work with community service projects. With one exception, it was found that the community service projects do not provide many supportive services.

Cooper reminded the audience that these results reflected post adjudication programs and should not be generalized to pretrial. He urged persons interested in the application of community service and restitution to look carefully at their goals and to proceed with the implementation of programs cautiously.

Galaway and West discussing the workshop

MEDIATION: EMERGING LEGAL ISSUES

FACULTY: *Larry Ray, Staff Director*
Special Committee on Resolution of Minor Disputes
American Bar Association
Washington, D.C.

Robert Saperstein, Director
Community Mediation Center
Coram, NY.

In the last few years there has been a noticeable expansion of the concept of minor dispute resolution as an alternative to prosecution of criminal cases. Concurrent with that, there has been increasing attention to the subsequent legal issues which relate to this largely informal process. Among these, confidentiality is probably of primary concern. As it gets resolved, others will undoubtedly surface as requiring attention.

Many consider the open, noncoercive atmosphere in which mediation programs operate to be not only conducive but essential to the willingness of disputants to negotiate their differences. Vital to this environment of trust is the assurance that the proceedings of the mediation hearings will be held in confidence. Certainly, the oral and written statements of mediators and disputants should be barred from use in any subsequent legal action. But, what safeguards are there to ensure this protection? Unfortunately, panelists Larry Ray and Robert Saperstein said that the provisions of some mediation programs are not adequate.

A number of mediation programs, for example, those in Ohio and Florida, operate on informal agreements between the center and the court or district attorney. They usually stipulate that oral and written statements emanating directly from the mediation hearing will not be used in subsequent legal actions. However, these agreements are not enforceable; and in the exceptional but highly controversial or political case, a judge or prosecutor may disregard the informal agreement and demand confidential information. In addition, these informal agreements only relate to those with whom the agreement was reached and do not apply to other courts, prosecutors, or attorneys.

Case law, on the other hand, can be more effective in establishing confidentiality. Two cases of particular interest were cited. In National Labor Relations Board v. Joseph Macaluso (No. 77-3748, U.S. Court of Appeals), the strict confidentiality policy of the Federal Mediation and Conciliation Service (FMCS) was upheld. This policy prohibits mediators from introducing in subsequent legal proceedings oral statements and written documents generated as a result of the mediation hearing. This case is significant because the decision is based on the necessity of confidentiality in the mediation process. Previous decisions focused on procedural guidelines of FMCS, making applicating to other dispute-resolution centers difficult.

In Florida, the "Whittington decision" was hailed as a major step forward in establishing confidentiality for the Citizens Dispute Settlement Programs. In Joseph R. Francis v. Doris Abben (Civil Division 78-0088-46, Sixth Judicial Circuit, Pinellas County) the subpoena of a mediation program director quashed. Judge Whittington concluded that "...statements made by participants of the Citizens Dispute Settlement Program shall be considered privileged and not admissable in the Small Claims Division of the County Court."

The panelists identified court rule as one of the swiftest means of establishing confidentiality of the mediation process. A Kentucky state court ruling on confidentiality has met with no substantial challenge to date.

According to common law--that is, law established through case law, custom, and accepted procedure--oral statements made in offers of compromise have long been held confidential. It is debatable, however, whether the mediation process can be construed as "offers to compromise". Moreover, rather than to preserve confidentiality of the proceedings this common law practice was established primarily in order to avoid civil liability cases.

Legislation was singled out as perhaps the most effective method of providing confidentiality for dispute-resolution centers, although it is a time-consuming and fairly political process. Such legislation has been introduced in the California, Florida, and New York legislatures. However, the California bill was the only one which passed; and it was subsequently vetoed (the appropriations provision was cited as the reason for the governor's veto).

In the discussion that ensured, other legal issues surfaced as a concern to the mediation field. With regard to the right to counsel, it was suggested that although centers should not bar attorneys from the mediation hearings, the Sixth Amendment right to counsel does not apply to mediation proceedings. The right to counsel has been held to pertain only to "critical stages in criminal prosecutions".

Similarly, due process rights as guaranteed in the Fifth and Fourteenth Amendments have been held to attach when either party is deprived of property rights, privileges, freedoms, or when "state action" is involved. None of these factors apply in the majority of cases resolved at minor dispute centers, thus due process rights probably are not germaine. It was noted, however, that most centers have incorporated the due process considerations of fair notice, the right to be heard, and impartiality of the hearing officer.

The participants of the workshop speculated that as the movement grew, there would be considerable development in the law related to dispute resolution.

THE DISPUTE RESOLUTION MOVEMENT: A PROGRESS REPORT

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Special Committee on Resolution of Minor Disputes
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Despite the scarcity of federal funding, interest in creating dispute resolution centers continues to flourish. Presently there are more than 100 minor dispute centers operating in 32 states, and another 12 centers are envisioned in the near future. Although dispute resolution programs vary considerably in sponsorship, funding, and procedures, they have a single purpose: to aid citizens in resolving disputes without formal, adversarial legal proceedings.

Faculty members Larry Ray and Robert Saperstein cited articles from periodicals across the nation which refer to dispute resolution centers. Included was an article from Time Magazine entitled, "Cutting Courts: Settlement Without Judges", and an item from a newspaper in Austin, Texas, entitled, "Local Justice Centers Offer Quick, Cheap Mediation".

The panelists pointed out that because innovation has been encouraged in the development of minor dispute centers, characteristics of dispute resolution programs vary greatly from center to center. They described how these differences fit into the various facets of program operations:

- Types of Disputes: While most minor dispute centers handle both criminal and civil disputes between parties with an ongoing relationship, some programs do focus on a particular area. The Columbus Night Prosecutor's Program and the Kansas City Neighborhood Justice Center, for example, concentrate on criminal misdemeanor disputes. On the other hand, the Institute for Mediation and Conflict Resolution in Brooklyn is involved with criminal felony disputes. A minor dispute center in San Jose deals exclusively with small claims cases, while in Denver on center mediates in landlord/tenant disputes and another focuses on custody battles.

- Case referrals: Referrals to minor dispute centers come from many sources--judges, clerks of court, prosecuting attorneys, law enforcement officials, community agencies, elected public officials, and private citizens.

- Sponsorship: A large percentage of the existing centers are sponsored by either the courts, as are the network of programs in Kentucky and Florida, or the district attorney, as are programs in Memphis, Colorado Springs, Cincinnati, and Columbus. Other centers are run by nonprofit corporations, as in Coram, NY, and Atlanta.

- Techniques/Procedures: As in the preceding categories, the format for resolving disputes also differs among programs. Dispute centers usually use one or a combination of the following techniques:

  Arbitration — Proceess in which a neutral third party settles a dispute. The decision may or may not be binding.

  Mediation — Process in which a neutral third party assists in reaching a compromise to resolve a dispute.

  Conciliation — Process in which a neutral third party helps disputants to arrive at a common definition of the problem and set terms for its resolution.

  Of particular interest in the examples cited by faculty were the Denver Landlord/Tenant Project, which conciliates many disputants over the phone, and the San Francisco Community Boards Program, which utilizes panels of mediators and holds open-to-the-public hearings.

- Staff: Most minor dispute centers recruit citizens from a variety of backgrounds as mediators. For instance, programs in Ft. Lauderdale and Sanibel, Florida primarily use retired citizens. Others, however, employ law and social work students or even attorneys as mediators.

The panelists suggested, and attendees agreed, that the procedural differences between programs does not pose a problem to advocates of minor dispute centers. Today two major questions concern the dispute resolution field:

1. Where are the funding sources for creating and sustaining centers?

2. Can centers receiving funding from the criminal justice system remain innovative, informal, and free of bureaucratic red tape?

Many workshop participants were concerned about funding because they felt there was little hope that the Department of Justice will implement the Dispute Resolution Act, and a large number of minor dispute centers now operate at least partially on federal monies.* As a result, programs in Massachusetts have turned to private foundations; and in Houston to corporate grants. Many other centers have been included within the prosecutor or court budgets.

Proof that the minor dispute centers do reduce court costs and time seems to have the most impact on funding sources. Increased access to justice and party satisfaction seem to be of secondary importance and more difficult to prove. Evaluations of the three federal Neighborhood Justice Centers in Atlanta, Kansas City, and Los Angeles, as well as the Dorchester and Des Moines programs, do not prove that the Centers reduce court caseload and time. However, the funding

sources of programs in Ohio, Florida, and Tennessee appear to be satisfied that the programs are indeed accomplishing this objective. It was decided that time and more careful evaluations would enable interested persons to answer these questions more fully.

In conclusion, both panelists and participants agreed that minor dispute centers have a bright future in store and that the creation of informal mechanisms to resolve interpersonal disputes is becoming more widespread. The criminal justice system and society as a whole are now ready to accept the use of mediation, arbitration, and conciliation in resolving interpersonal criminal disputes, small claims, ordinance violations, landlord/tenant problems, and custody disputes.

* In February 1980 President Carter signed the Dispute Resolution Act into law, allowing for $40 million, over four years, in grants to state and local governments and nonprofit groups to improve or establish new minor dispute resolution centers. However, funds to implement the Act were not authorized by Congress.

Saperstein and Ray

DOMESTIC VIOLENCE

FACULTY: *Willie Turner*
Center for Women's Policy Studies
Washington, D.C.

Elaine Edinberg, Attorney
Denver, CO.

Domestic violence was defined by the faculty as the physical or psychological abuse of a family member or other intimate person. This workshop dealt specifically with one aspect of domestic violence: the battered wife. Although the problem has existed for centuries, many are still unaware of its severity. In fact, domestic violence is widespread. A recent national survey estimates that at least 1.8 million women are battered each year. Furthermore, treatment of the problem is compounded by a number of common misconceptions.

Willie Turner identified five myths surrounding wife abuse:

- "Battered women bring it upon themselves." Many people believe that abused women are beaten because they endlessly nag their husbands. The husband is, therefore, justified in beating his wife to get her off his back.

- "Women who remain in abusive situations must be masochists, or they would terminate the relationship." In fact, other factors play key roles in a woman's decision to remain in an abusive relationship. They vary from financial dependency and social pressure to make the marriage work to fear that the husband will fight her for custody of the children or even try to kill her. Additionally, research shows that a startling proportion of battered women were sexually or physically abused in childhood, indicating that perhaps being victimized is the learned--or "normal"--environment to some women.

- "Violence is a male characteristic; it is a man's right to beat his wife." Domestic violence is a social problem. Men are socialized or taught that there are situations in which violence is necessary and justified. Men are also taught to be strong, aggressive, and the dominant partner in a relationship. They are taught to deny such feelings as fear, hurt, and insecurity. If a woman is perceived as jeopardizing the male position or evokes in him emotions that he has been taught not to acknowledge, violence may erupt. Finally, it is not a man's "right" to beat his wife: Assault is a criminal offense.

- "Men who abuse women usually abuse alcohol as well." According to a study by the National Institute on Alcohol and Alcoholism, alcohol is not a cause of domestic violence. Alcohol may trigger violence or release a man (in his mind) from responsibility for his actions; but it is not a cause of family violence in itself.

- "Domestic violence is primarily confined to the poor and culturally deprived." This is totally false. Family violence cuts across racial, economic, and ethnic boundaries. In fact, a 1979 Harris poll done in Kentucky found that abuse is far more prevalent among the middle and upper classes.

Turner feels that the solution to domestic violence is two-fold. First, women in abusive situations must seek help. There are a growing number of agencies which provide shelter, advocacy, counseling, and other services. The second and more complex facet of the solution is to change the way in which men and women are socialized. Men must be allowed to be fully human, to express and feel the emotions all human beings have. Along these same lines, training must be provided to people in helping professions, elected officials, criminal justice actors, and to the general public so that we as a nation might have the political and social understanding to effectively deal with the problem.

Elaine Edinberg, a private attorney working with battered women, also believes there is a need to educate others in this area and offered the following three-phase theory--the "cycle of violence" developed by Lenore Walker in her book The Battered Woman--as a guide to understanding the battered wife relationship:

> PHASE 1 is the anxiety- or tension-building stage. Pressures begin to mount on the man for which he has no outlet or release mechanism. This phase is characterized by frequent quarreling between the couple, the man's anger escalating with each argument.
>
> PHASE 2 is the acute battering incident. The assaults, rapes, and murders actually take place during this period. Phase 2 is the most dangerous period in the cycle because both the man and woman are totally out of control.
>
> PHASE 3 is the love/contrition stage. The man is appalled at his behavior and remorseful about what he has done. He promises that he will never harm his wife again. During this phase the man is at his best--bringing his wife roses, taking her to dinner at her favorite restaurant. Part of what causes women to stay in abusive relationships is that in Phase 3 she is experiencing her ideal of marriage and husband. In Phase 3 the man is the perfect friend, lover, father, etc.; and she wants to believe that he will never again hurt her. Frequently, however, Phase 3 behavior reverts to Phase 1.

Edinberg stated that it is extremely rare for the cycle to be broken without concrete intervention, counseling for both parties, and intensive therapy for the man. It is estimated that most battered women go through this cycle four or five times before they realize that Phase 3 will always be followed by Phase 1 again.

The theory of "learned helplessness" may provide another clue as to why battered women remain in violent relationships. In an experiment, puppies were left in

cages with the doors open and given electrical shocks. If they tried to leave the cages, they were further shocked. In short, no matter what the puppies did, they were punished. Soon they became passive; they no longer sought to leave their cages but simply accepted the pain. Some commentators analogize this theory to battered women who are beaten regardless of what they do. Finding they have no control over the situation, these women "learn" to be helpless and do not seek to leave the relationship even when the "doors are open".

But Edinberg pointed out that some battered women do attempt to get out of these violent situations and are confronted by roadblocks constructed by the criminal justice system. First, society generally refuses to look upon wife abuse as a crime. Instead it is treated as a marital problem. This attitude is reflected in the unresponsiveness of the criminal justice system. Countless women call the police for protection or to report being assaulted by their husbands and are told to file for divorce or to go to court for a restraining order. There is frequently nothing the police can or will do about it.

The courts present a second obstacle to battered wives. If a man assaults a woman who is not a family member, the state automatically assumes responsibility for prosecuting the case in criminal court. On the other hand, if the woman is his wife, the matter is categorized as civil. It becomes her responsibility to press charges, to be the complaining witness. If the woman does so and her husband is not physically kept away from her, there is a real threat that he will beat her further and/or threaten her if she does not drop the charges.

Finally, many states will not issue a restraining order to keep abusive husbands away from their wives unless the woman files for divorce or separation. This presents a problem in that many women do not want to permanently terminate their marriages for a variety of reasons, including the fact that they still love their husbands.

Therefore, Edinberg believes that in order to end the cycle of violence (1) a battered wife must press charges; and (2) the criminal justice system must change the way in which it deals with battered women.

This is not to suggest that every man who beats his wife should be sentenced to jail. But without some impetus, however, there is little chance that an abusive husband will ever change his ways or seek help. Edinberg advocates the use of alternatives to prosecution, providing that there is a mechanism for protecting the woman from her husband while he is in a diversion program and that physical evidence that would otherwise be used in trial (such as torn clothes, photographs of the wife in her battered condition) is carefully collected and preserved. She perceives the threat of criminal charges as motivation for the man to successfully complete the diversion program and to end the cycle of violence.

Finally, criminal justice actors must put an end to the double standard pertaining to abused wives and assaulted strangers. The police must afford immediate protection to battered women and their children. The state and the courts must treat it as they would any other type of violent assault, taking responsibility for prosecuting the case in criminal court.

"When a man assaults his wife, a crime has been committed", Edinberg concluded, "and society cannot leave these victims unprotected."

JOB READINESS FOR DEFENDANTS

FACULTY: *Cal Harvey, Director*
Employ-Ex
Denver, CO

Employ-Ex is a job training and employment service designed specifically for the ex-offender. Based in Denver with several offices in other parts of Colorado, the program is considered highly successful in the preparation and placement of ex-offenders in the private sector. Employ-Ex takes a comprehensive approach to improving an individual's chances of employment including job preparation workshops, emergency assistance (e.g., food, clothing, transportation, etc.), vocational and educational placement, and supportive services after placement. In this workshop, faculty member Cal Harvey discussed the precepts on which Employ-Ex was founded and the job-readiness training package developed by the program.

Based on both personal and professional experience, Harvey believes that individuals without employment who have a choice between welfare and crime are likely to choose crime, but given the choice between crime and a job most will choose to be employed. Hence, the purpose of Employ-Ex is to bring about a decrease in criminal activity by upgrading the employability of ex-offenders and accused defendants. This is a unique challenge for a variety of reasons:

- The job market in most places is already tight.
- Offenders are often undereducated and inexperienced in the world of work.
- Employers are frequently hesitant to hire someone with the stigma of a criminal record.

Harvey stressed that key to the strategy for successfully placing offenders is the relationship the agency cultivates with potential employers. They must be educated, their fears addressed, and they must be provided with realistic expectations. Furthermore, employers must be made to feel that they can call upon the referring agency for support in making the placement work. In fact, the credibility of a pretrial agency will be in direct proportion to the care it takes in ensuring that its clients are job-ready.

In order to prepare its clients for work, the staff of Employ-Ex developed a job-readiness program called Entrance into Private Industry Careers (EPIC). The objectives of EPIC are four-fold:

- To evaluate and monitor participant perceptions of themselves and their future in the job market.
- To enhance each participant's self-esteem, self-image, and desire for success in the working world.
- To maximize participant awareness of their existing skills.

- To instruct participants in specific methods of looking for a job and of self-placement.

Harvey shared an outline of the EPIC curriculum to provide a better sense of the areas that agencies contemplating such a program should address:

I. DAY 1

A. Orientation
1. Introducing Program Content
2. Resources and Opportunities
3. Group Process

B. Building a Positive Self-Image Through Self-Assessment

1. Previous Experience
2. Qualifications and Skills
3. Interests and Goals
4. Life Circumstances

II. DAY 2

A. Self-Assessment (continued)

1. Identifying Barriers to Employment
2. Prioritizing Barriers to Employment
3. Prioritizing Solutions
4. Developing an Action Plan

III. DAY 3

A. Job Preparation Workshop

1. Job Seeking Skills
2. Controlling the Interview
3. Job Maintenance Skills

IV. DAY 4

A. Employer Expectations

1. Motivation
2. A Good Self-concept
3. Responsibility to the Job
4. Pride in One's Work
5. Respect for the Employer
6. The Desire to Learn
7. The Ability to Accept Criticism

B. Job Retention Skills

1. The Employee and His/Her Supervisor
2. Attitude and Work Behavior
3. Being Human Relations Smart

V. DAY 5

A. Simulation Laboratory: Role-Play and Mock Interview

1. Job Leads
2. Tele-trainer
3. Videotaping Mock Interviews
4. Finalization of Job Search and Interview

VI. DAYS 6-10

Days 6-10 are used to work with clients on their telephone skills, researching the companies, and preparing for the interviews. The participants will then go on the actual job interviews and return to class to discuss the results--what mistakes were made and what worked. At this point, the job-survival and job-seeking skills are reiterated.

Harvey noted that when the job market is bad, it is particularly easy to despair of employment opportunities for offenders. He challenged the audience, however, to be energetic and diligent in working with clients and private industry to better meet the needs of both. Harvey maintained that providing defendants with the means to escape the "revolving door" of criminal justice--job skills--is one of the most valuable services that advocates of alternatives can provide.

PROFIT FROM WORKING WITH THE PRIVATE SECTOR

FACULTY: *Sheila Cook, Coordinator*
Regional Ex-Offender Program
National Alliance of Business
Orange, CA

The National Alliance of Business (NAB) was organized in 1968. As part of its mandate, NAB seeks to find jobs for those whom employers would not ordinarily hire, including the ex-offender. It is the opinion of NAB that the most common cause of recidivism is the inability of ex-offenders to find employment. That employers are reluctant to hire offenders is an understatement; they fear for their safety and that of their staff and doubt the integrity of a "proven criminal". To combat this fear and distrust, the NAB formed the Ex-Offender Program, whose mission is to create jobs for ex-offenders.

Sheila Cook, a national coordinator of the program, said that the strategy for fulfilling this mission is three-fold. The first component is employer awareness. Representatives of NAB use sales techniques to interest potential employers in learning more about the criminal justice system and in considering the hiring of ex-offenders. NAB sponsors prison tours, one-day seminars in the community, and invites businessmen to speak at prisons. The underlying purpose is to impress upon the business community the practical reasons why it should be involved in the criminal justice system, such as the cost of incarceration, recidivism by unemployed, and wasted talent. Costs, in both economic and human terms, are stressed.

Cook suggested that the private sector represents a vast, untapped resource. People in business can supply invaluable advice on updating institutional training programs, are excellent emissaries to other as yet unconvinced employers, and offer a source of guidance and support to individual offenders. In some jurisdictions, they sponsor ex-offenders within the community, advise them on credit, and assist with placements in jobs or schools.

The second aspect is improving the employability of offenders. Cook stressed that in addition to technical skills, individuals must possess the attitude and interpersonal skills necessary to get and maintain a job. This preparation should start early and include mock interviews, practice in filling out applications and resumes, and problem-solving exercises of common work problems that arise, for example, between co-workers and supervisors. The NAB has initiated a number of programs for developing life skills (how to deal with transportation, establishing credit, re-establishing oneself in the community). Transitional support is provided to the offender placed on the job.

Finally, clearinghouse activities can make or break a jobs campaign. There is a need to coordinate the efforts of the many agencies and organizations involved in creating jobs for offenders and in contacting potential employers. A fragmented approach will alienate the business community and exhaust scarce resources. A coalition of groups can organize themselves so that they support each other's efforts. Together they can anticipate and address problems, maximize services available while reducing duplication, provide a larger pool of qualified applicants for openings, and develop a highly effective system of educating and "selling" the business community.

Cook concluded by noting that employers can benefit in many ways from cooperating with ex-offender projects such as the ones sponsored by NAB. There are also several financial incentives for which these employers may be eligible, including the Targeted Jobs Tax Credit. She stressed that the process described in this session can be applied to pretrial programs in the development of employment projects for defendants and advised pretrial practitioners to use NAB to stay informed on developments which could affect job opportunities for their clients.

PRETRIAL SERVICES: THE RESPONSIBILITIES OF THE DEFENDER

FACULTY:

Francis Carter, Director
D.C. Public Defender Services
Washington, D.C.

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

Dennis Murphy, Courts Specialist
Law Enforcement Assistance Administration
Washington, D.C.

Ray Weis, Director
Pretrial Services Agency
Louisville, KY.

MODERATOR:

Robert Spangenberg, Director
Criminal Defense Technical Assistance
Abt Associates
Cambridge, MA.

An important, but seldom-discussed topic is the responsibility that the defender has in the provision of quality pretrial services to defendants. As research continues to show a distinct relationship between pretrial detention and case disposition and sentencing, it becomes increasingly clear that criminal defense lawyers should take an aggressive role in trying to secure pretrial release for their clients. In this workshop, panelists attempted to define the pretrial responsibilities of defenders as well as to discuss present inadequacies in the fulfillment of these duties.

Francis Carter, director of the D.C. Public Defender Service, stated that while the role of pretrial services agencies is vital to the public defender, the goals of pretrial programs and public defender offices are not identical. It is the responsibility of the pretrial services agency to seek the release of all eligible defendants based upon criteria related to the likelihood of appearance in court and, in some jurisdictions, of rearrest. On the other hand, it is the duty of the public defender to seek the release of his/her client on the least restrictive conditions without regard to objective criteria. In Carter's opinion the public defender should seek to minimize the negative aspects of his client's background and stress the positive. Carter believes that public defenders may come into conflict with pretrial services staff over conditions of release. For example, the defender may prefer conditions that will aid the defendant at the time of sentencing, such as drug or alcohol treatment, while the pretrial services agency may not have those concerns.

However, Ray Weis, director of Jefferson County Pretrial Services in Louisville, noted that the relationship between his agency and the local office of the public defender has been devoid of conflict. In fact, the relationship between the two agencies has developed to the point that the pretrial program now completes indigency investigations to determine the defendants' eligibility for public defender representation. He believes this is primarily due to the fact that public defenders feel the pretrial services agency is an advocate for the

defendant. Bart Lubow, director of Special Defender Services with the Legal Aid Society in New York City, was critical of the general performance of defense attorneys in the area of pretrial release. He explained that the attorneys he has observed usually make weak arguments on bail matters, seldom challenge the legal basis of release decisions, and rarely seek bond reviews. Lubow said that his unit, which prepares in-depth bail reports on defendants who are initially detained, has demonstrated that such efforts can be successful if they establish credibility with the courts by providing a superior quality of services.

Dennis Murphy, Defense Specialist in the LEAA Adjudication Division, also identified several areas in which public defenders were deficient in dealing with pretrial services issues including: jail overcrowding, bail forfeitures, alternatives to detention, and overreach of diversion programs. He suggested that these problems might best be addressed by a uniform office management approach rather than through the piecemeal efforts of individual public defenders.

The panelists agreed that the involvement of defenders in obtaining pretrial release for their clients is crucial. Countless defendants are awaiting trial in jail--in effect being punished although still presumed innocent because they are unable to pay the price set on their freedom. This results in tremendous financial and human costs to defendants and system alike. Further, these defendants suffer harsher verdicts and sentences than their counterparts who are released pretrial. At present, few defenders take advantage of the opportunities at their disposal to fight restrictive release decisions. If the goal of lawyers is to defend their clients to the fullest extent possible, increased advocacy for their pretrial release is imperative.

Panel: Weis, Lubow, Spangenberg, Carter, Murphy

PRETRIAL SERVICES: THE RESPONSIBILITIES OF THE DISTRICT ATTORNEY

FACULTY: *Nolan Brown, District Attorney*
Jefferson County
Golden, CO.

Norman Early
District Attorney's Office
Denver, CO.

Alex Hunter, District Attorney
Boulder County
Boulder, CO.

MODERATOR: *Tom Petersen, Chief Assistant for Administration*
Dade Co. State's Attorney
Miami, FL.

One of the primary responsibilities of prosecutors is to review the evidence and decide when it is in the public's interest to prosecute. Similarly, the prosecutor plays a key role in the diversion process: determining defendant eligibility and suitability for pretrial intervention. In this workshop prosecutors from four jurisdictions discussed the diversion process in their districts.

Moderator Tom Petersen, an assistant district attorney in Dade County, Florida, cautioned attendees that the active involvement of prosecutors with a diversion program may be limited. He said that being closely associated with a pretrial diversion program can be a political liability. In Dade County a diversion program participant once committed a murder. Hence, Petersen said, some prosecutors may be unwilling to play an innovators role in the expanded use of diversion.

Nolan Brown, district attorney of Jefferson County, Colorado, challenged overly cautious prosecutors to help chart a progressive coarse for diversion. "The prosecutor has to be the moving force."

In Jefferson County the defendants who are diverted are those most likely, without help, to re-enter the criminal justice system. Brown claimed that 87% of the participants successfully complete the diversion program, adding that in its first four years no incidence of recidivism was reported. Based on guidelines, defendants are referred for diversion by the District Attorney's Office. The prospective divertees are then interviewed by an adult diversion board comprised of experts in mental health and nine other disciplines, as well as an ex-offender. The board determines whether a defendant should be admitted to diversion and rejects only about 10% of those it reviews.

Brown concluded by warning attendees that the federal "goose that laid the golden egg" is a dying species. He suggested that administrators of diversion programs cement themselves in the system by securing local funding, perhaps from county commissioners or city councils.

Norman Early, of the District Attorney's Office in Denver, suggested another ingredient for success: only defendants whose cases would have been prosecuted were they not diverted should be referred for diversion. Early said that all participants in the diversion program in Denver meet this requirement. In addition, clients must accept moral responsibility for their actions but are not required to plead guilty to the charge. Prosecution is reinstated if a participant is rearrested or violates the terms of the diversion contract.

Alex Hunter, the District Attorney of Boulder County, Colorado, said that the diversion program in Boulder also requires no guilty plea. Defendants are selected for the program through a review of the police case files and a subsequent conference with the police officers and defense attorneys involved. The program handles defendants charged with felonies and misdemeanors. Many are assigned to community service programs in the county.

In the general discussion that followed, Petersen suggested that diversion programs reach out for other target populations. He further advised attendees to take a practical, saleslike approach to dealing with prosecutors and others whose cooperation is key to program success. "Prosecutors by and large are not Ramsey Clark", he said. "Tell the prosecutor your program is cost effective. Tell the police your program will allow them to be on the street. Tell the victims they'll get restitution."

Early brought the session to a close by noting that prosecutors and diversion staff share a common objective: to see to it that justice is meted out by the system. "That", he concluded, "should be everybody's goal."

PRETRIAL SERVICES: THE RESPONSIBILITIES OF THE JUDGE

FACULTY: *James Chenault, Judge*
Richmond, KY.

Frederick Kessler, Judge
Circuit Court Milwaukee County
Milwaukee, WI.

Theodore Newman, Chief Judge
D.C. Court of Appeals
Washington, D.C.

MODERATOR: *Edward Schoenbaum, Director of Training*
Center for Legal Studies
Sangamon State University
Springfield, IL.

The pretrial stage is said to be cross-disciplinary, requiring the involvement of a range of criminal justice actors. From the police to pretrial practitioners, from judges to prosecutors, an efficient pretrial process demands close cooperation between each of these sectors. Workshop faculty stressed that this cooperation is especially important between the judge and the pretrial program. Further, in order to ensure the quality of pretrial justice, judges must recognize and assume certain responsibilities.

Judge Frederick Kessler identified one judicial responsibility as taking an active role in educating the public, media, and elected officials on pretrial issues. He pointed out that, in fact, this role is mandated by the Judicial Code of Ethics. To make real progress in the area of bail reform, pretrial alternatives must be made legitimate both in the eyes of the public and through legislation. Bail reform, Kessler asserted, cannot be achieved solely through changes in court procedure and by court action on a case-by-case basis.

Court rule cannot address, for example, the problems caused by the decision not to prosecute when there is a lack of services to those diverted defendants. Specifically, Kessler pointed to the nationwide effort in the last few years to deinstitutionalize the mentally ill--to divert them from the criminal justice system and into community treatment settings. Unfortunately, he said, there is a dire shortage of community treatment facilities. Consequently, mentally ill persons are being returned to the streets without supervision, resources, or services--sometimes to commit crimes. One sensational case can lead to community outrage and, as a result, reduced political and fiscal support for so-called "alternatives".

Kessler estimates that 10-15% of the defendants charged with felony offenses in his court should not be charged under criminal law but instead should be diverted to a mental-health facility--were one available. Kessler concludes that judges must, therefore, go public with the case for pretrial alternatives and for increased resources for community health facilities.

Judge James Chenault has actively embraced the notion that judicial officers should take part in reforming bail practices. He has taught on pretrial release

at the National Judicial College and was asked to testify in support of 10 percent deposit bail before the Wisonsin legislature.

Chenault noted that, unfortunately, many criminal justice actors have a tendency to view their particular function as separate and distinct from the other branches with which they work. He thinks this is particularly true of judges, who seem to feel that, since the final decision is left to their discretion, they must possess unique and superior judgment. But, in fact, it is the responsibility of the judge to cooperate with other criminal justice actors, especially the pretrial program.

Further, judges should continually reassess and, if necessary, improve their release decisions. Rather than place the burden on the defendant to prove why he should be released, Chenault believes the state should be required to show why an individual is not a good risk. While potential flight is generally the only factor that can legally be considered in setting release conditions, judges often consider danger to the community and available jail space when setting bail. Chenault even believes judges occasionally release defendants in the hope that they will flee, i.e., that Kentucky's problem will become Ohio or Indiana's problem.

Chenault recalled the skepticism and concern that many had when Kentucky outlawed bondsmen and set up its statewide release system. Now, he has many opportunities to testify to how well the reforms have worked. "It is time to revise our judicial thinking--there is still much room for improvement."

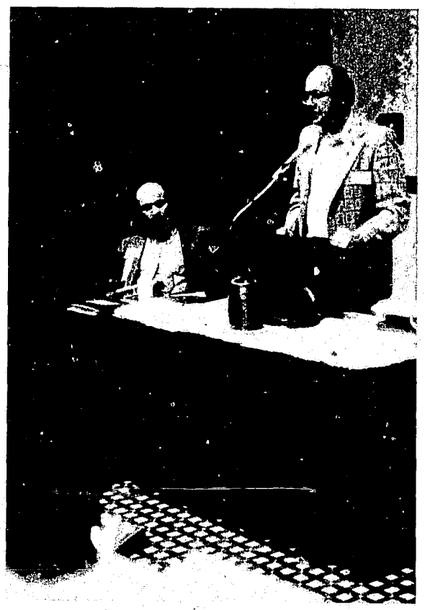
Judge Theodore Newman is the Chief Judge of the District of Columbia Court of Appeals, the highest court in the nation's capital. He pointed to the potential damage to the bail reform movement presented by Bell v. Wolfish. In that 1979 decision the Supreme Court found that:

> --The presumption of innocence is nothing more than a procedural safeguard at trial and does not apply to the pretrial process.
>
> --That the Constitution grants the government authority to detain a defendant pretrial; therefore, conditions and restrictions placed on pretrial detainees do not constitute punishment if their purpose is to ensure the effective management and security of the institution.

Clearly, questionable motives sometimes surround the decision to release or detain a defendant pending trial. Consequently, Newman believes that the fundamental pretrial responsibility of judges is to ground their release decisions in the law. However, he conceded that obeying the law is not always popular, citing an instance in which he presided over at the arraignment of a defendant charged with first-degree murder. The Judge referred to the information and recommendation sheet provided by the D.C. Pretrial Services Agency: The defendant was eighteen years old, born and raised in the District, and lived at home with his mother. The offense report indicated it was a senseless "macho" killing of a lawyer in Georgetown to impress the woman with whom the defendant was walking. Satisfied that the defendant, "who quite likely had never been out of the District in his life and probably could not even find his way across the Potomac River", posed no risk of flight, Newman released him on his own recognizance with certain conditions.

That weekend the Judge's decision made the headlines of the newspaper. On Monday the then-Junior Senator from North Carolina used the floor of the Senate to deliver a diatribe against the Judge. In dealing with the case neither the media nor the Senator's fellow legislators put Newman's action into the context of the law--in this case, the Bail Reform Act of 1966 which mandated the defendant's release because there was absolutely no evidence that the defendant would flee. In fact, the defendant appeared a half hour early for each court appearance.

"My whole point is", Newman summarized, "that judges should find out what the statutes are and comply with them by their every thought, word, and deed."



Schoenbaum and Kessler

SELLING PRETRIAL: THE PUBLIC, THE MEDIA, THE LEGISLATURE

FACULTY: *Robert Guttentag, Division Manager*
The Gillette Company
Boston, MA.

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

William Wachob, Representative
Pennsylvania General Assembly
Harrisburg, PA.

MODERATOR: *Eddie Harrison, Director*
Justice Resources Inc.
Baltimore, MD.

Crime has continued to increase as has the rate, length, and cost of incarceration. There is a disproportionate placement of minorities in institutions, and studies indicate that more people spend time in jail prior to conviction than after adjudication. There is clearly a pressing need for pretrial services; yet increased demands on the criminal justice system are being met with dwindling resources. Therefore, it is not only necessary to devise programs employing pretrial alternatives, it is also important for those involved in pretrial services to gain financial and political support for their programs--to "sell" pretrial.

Robert Guttentag said that many of the same principles used in marketing commercial products can be applied to pretrial. He described the process as having three steps:

- First, the product must be defined. Since appropriate definitions may vary from target group to target group, it is wise to first pick a market and tailor the approach accordingly. Define the product so that it will be meaningful to the public: Talk consumer benefits, not program features.

- Cost and competition are also important considerations. The public must be convinced that pretrial alternatives are cost effective. It might be emphasized that pretrial can save money in a variety of ways: pretrial alternatives cost less than incarceration; successful pretrial programs keep defendants in the working world as contributors to their families and society; etc. Guttentag stressed that, to compete with the entire spectrum of welfare/human services program vying for the dollar, pretrial must be "attractively packaged". People must be taught why they should support pretrial services over some other innovative idea.

- Quality control, the third ingredient of the marketing formula, may be the weakest area in selling pretrial. Poor evaluation designs and tracking problems have made it difficult to make definitive quality statements about pretrial. Further, unless quality standards and criteria for success are fully delineated and accepted by the public, pretrial programs will be subject to the public's definition of failure each time they fall short of perfection.

Ronald Welch talked about importance of "networking" to successfully selling pretrial services. He identified consensus building and communication as the key elements involved in the process of making friends and winning over opponents.

An important tool in creating alliances is using community resources. Ideally, needs should be identified and defined as specifically as possible. Aid can then be solicited from an array of individuals and groups who can best meet each need. Welch noted, however, that since it is impossible to sell everybody, it is best to start with the key people or organizations. He further pointed out that asking for help, even from those who may disagree, can be invaluable. "There are many different ways to speak the truth and get ideas across."

When talking with politicians, it is important to define the issues and educate them, not to give the answers or try to dictate the results. According to Welch, focusing on processes and not on conclusions decreases the likelihood of confrontation between legislators and supporters of pretrial alternatives. He likened the relationship between advocates of pretrial services and legislators to that of parents and educators working with children. The rule of thumb with both is to manipulate the environment, not the individual. Welch suggested keeping decision makers informed by sending them pertinent news clippings and handouts.

William Wachob attested to this need for information on the part of elected officials. He noted that it is impossible for legislators to be knowledgeable about everything. It is important to keep them informed so that they in turn may inform and convince other legislators.

Wachob further stressed the concept of networking. He suggested it may be more effective to touch base at the local level first: to contact community groups, such as the League of Women Voters, and have them establish connections with legislators.

Finally, Wachob advised that in dealing with legislators, it may be useful to remember that politicians are constantly concerned with costs. A positive cost analysis may be effective in winning political support for pretrial services.

CONTINUED

1 OF 2

PEER DISCUSSION GROUPS

ADMINISTRATORS OF LARGE URBAN AGENCIES

FACILITATOR: *Michael Green, Director*
Diversion Services, Adult Probation Department
Philadelphia, PA.

Administrators of large urban agencies face special responsibilities and challenges specific to the size of their programs and of the jurisdictions they serve. They must manage large staffs. Budgets run into hundreds of thousands of dollars annually. The program may process thousands of clients a year. Almost automatically, the context becomes political and bureaucratic. This discussion group was organized to allow participants to share concerns and learn from each other.

In convening this session, Facilitator Michael Green first asked participants to develop and prioritize an agenda for discussion. The following general areas of concern emerged: agency mission, appropriate agency locus, and the role of research. Other areas which were identified but not discussed included implications of resource reductions, personnel, and public relations.

Attendees expressed the belief that formulating a mission statement is hampered by the fact that the criminal justice system does not currently dispense justice. Money bail and racism ensure that pretrial detention is not a burden imposed equally upon all defendants. Should the pretrial agency then take an advocacy stance; or should it act as an objective information-gathering arm of the court? The consensus of the group was that the use of nonfinancial conditions of release benefits not only the individual defendant, but the entire criminal justice system and the community.

Because it determines program philosophy, operational constraints and prospects for permanent funding, the organizational location or locus of a program is extremely important. Most of this discussion centered on the pros and cons of various program loci. Independent agencies with their own board of trustees probably have the fewest problems with dilution of program philosophy, credibility with defendants, and cumbersome civil service personnel requirements. The independent agency faces continual funding uncertainties and often suffers from a lack of clout within the system.

Under the aegis of the courts, the pretrial agency would be most able to maintain a systems-approach and enjoy considerable credibility with judges and respect from other branches of the system. However, it might also lose some control over its philosophy and may not have much status within the court hierarchy itself, leaving pretrial services vulnerable to funding cuts and political shifts. Additionally, the program would be forced to cope with civil service regulations.

As part of the corrections department, pretrial programs would enjoy a great mobility in the jail but would also become subject to a generally conservative philosophy. As a component of the local probation department, pretrial would gain credibility with the courts and quick entry into an existing network of service agencies. On the other hand, the probation philosophy is markedly different from that of pretrial in that it traditionally deals with convicted persons. Also, the pretrial program would be likely to suffer, as in the jail, from a low status within the parent organization.

Should the pretrial program be located within the prosecutor's office, it would enjoy important political support. However, it is very likely that such a locus would create serious conflict over program purpose and philosophy. Should it be a part of the public defender's office, the pretrial services would gain in the area of ideological compatibility with original goals of the movement, but might lose credibility in the courtroom. In addition, program staff might be pressured to recommend release for unsuitable defendants.

In addition to locus, the role of research surfaced as a key concern of pretrial administrators. Because of its unique tracking and supervisory functions, the pretrial agency must collect systemwide information. Proper use of this data allows for evaluation and improvement of the entire system. It was noted that the researcher's position should be made distinct and secure in order to ensure that analysis of program operations is performed regularly.

Finally, participants expressed some anxiety over shrinking resources. It was noted that research could assist in fighting budgetary reductions by demonstrating program and cost effectiveness. Clearly defined measures of success and failure and vigorous community education are also essential to garnering support and resources for pretrial agencies. Attendees also pointed out that a beleaguered pretrial agency can survive by taking on another function useful to the system, such as jail classification. Also helpful is the tactic of achieving "identification" with other good causes and working to reflect praise of individual staff back upon the parent agency.

Michael Green facilitates group discussion

IN WHAT CASES DOES MEDIATION MAKE SENSE?

FACILITATOR: *Joseph Stulberg, Director*
Dispute Resolution Institute
Pelham Manor, NY.

Mediation is an alternative to adjudication which seeks resolution of conflicts among parties usually with ongoing personal relationships. The role of mediator or negotiator is as a neutral facilitator of the process: to clarify issues and help explore possible solutions.

People working in or considering the development of mediation programs met with Joseph Stulberg to discuss common concerns. It was noted that most of the existing programs represented focused on misdemeanor charges of an interpersonal nature. Harassment, criminal mischief, and lesser assault charges are typical of the type of "surface" problems that are referred to dispute settlement by prosecutors and courts. In addition, programs sometimes mediate civil controversies such as landlord/tenant and consumer/merchant disputes and support cases.

Program administration and locus vary considerably among the more than 100 mediation programs presently in operation. For example, Neighborhood Justice Centers were established by the Department of Justice on an experimental basis in Atlanta, Kansas City, and Los Angeles. These private, nonprofit agencies operate on an 18-month budget in excess of $200,000 each. In Kentucky and New Jersey citizen dispute-settlement programs operate within the state pretrial services unit, utilizing existing courtrooms and government offices for program operations. On the other hand, the Center for Dispute Settlement in Rochester, New York, is a separately incorporated not-for-profit agency primarily funded by local government revenues and maintains separate office space and hearing rooms. Finally, a number of programs in Pennsylvania are run entirely by volunteers in donated office space. (In fact, with the growing scarcity of LEAA funding and Congress's refusal to fund the Dispute Resolution Act, there is considerable pressure on mediation programs to reduce staff size and overhead.)

Recruitment and training of volunteers to serve as mediators is essential to program success. While training programs for potential mediators have been developed by national organizations, they are often financially prohibitive for smaller programs. It was noted, however, that the Office of the State Court Administrator in Florida is developing videotape training materials and resource books for use by local programs. Additionally, the Special Committee on the Resolution of Minor Disputes of the American Bar Association has compiled a list of available training and technical assistance resources.

Considerable discussion focused on whether mediators can be subpoenaed to testify on statements made during mediation hearings. Legislation exists establishing a mediator-party privilege, although in one Florida case the court supported the right of a citizen dispute-settlement program not to divulge case materials in subsequent criminal proceedings involving the same parties.

Attendees also explored the pros and cons of whether agreements reached through mediation should be put in writing and signed by the parties. In many programs the only record of the outcome of the hearing is the mediator's notes. In other programs agreements are typed and signed at the conclusion of the hearing. While there may be a psychological advantage in having tangible evidence of success in resolving their problem, the value of the agreements would be negligible if there were no effective mechanism for enforcement of the writing.

Participants discussed the evaluation studies of the Neighborhood Justice Centers as the most recent contribution to research in the area of mediation. Furthermore the Ford Foundation was cited for its effort to establish a dispute-resolution clearinghouse through which information on program design and evaluation could be collected and disseminated.

Michael Kirby, facilitator of the research discussion group, sits in on another session

WHAT SHOULD BE THE RESEARCH PRIORITIES IN PRETRIAL?

FACILITATOR: *Michael Kirby, Professor*
Southwestern College at Memphis
Memphis, TN.

Many administrators of pretrial programs shudder at the sound of the word "research". Contrary to popular opinion, however, research need not entail an expensive consulting firm, complex designs, and confusing statistics. It can be done in-house by staff or volunteers through analysis of data routinely collected by the program. Moreover, sound research can be an invaluable tool to administrators in planning, evaluating, and even obtaining funding for their programs. Yet many are still confused or at least have questions about research. This peer discussion group focused on research priorities and concerns as they relate to the pretrial field.

A number of participants were interested in research methodologies, since the method chosen has an impact on all other areas of research and on the outcome itself. Questions were raised regarding representative samples, the need for common definitions of terms, the value of national averages and their minimal relevance at the local level, and the research design.

The second area of concern was that of point scales, criteria, guidelines, and validation. It was suggested that pretrial programs work with judges to release some defendants on an experimental basis whom they normally would be inclined not to recommend and monitor this group for failure to appear and rearrest in order to determine whether more people might be safely released on a permanent basis in the future. The effectiveness and merits of guidlines and validation as compared to point scales was also discussed.

It was further suggested that the development of a "cookbook" type manual for conducting research might be helpful. The manual could contain "how to" guidelines (e.g., how to define recidivism, how to use randomization, etc.) as well as suggestions on when and what to research. Don Pryor, research associate at the Pretrial Services Resource Center, indicated that this type of manual may be developed in the future by the Center.

Michael Kirby, professor at Southwestern University in Memphis, concluded the workshop by stressing the importance of ongoing research in planning for and promoting pretrial programs. Research can be used to evaluate the effectiveness of program services, the outcome of its recommendations, etc. Furthermore, once an agency has demonstrated its effectiveness through sound research, an administrator can use the research as a weapon for proving the programs's worth to funders.

PROFESSIONAL DEVELOPMENT SEMINARS

TURNING THINGS AROUND: MAKING REFERRALS THAT WORK

FACULTY: *Robin Ford*
National Institute of Corrections Jail Center
Boulder, CO.

David Bennett
Criminal Justice Consultant
Salt Lake City, UT.

Many pretrial programs rely on community organizations to provide necessary services to their clientele. However, in some jurisdictions the relationship between criminal justice and social services agencies is strained and referrals are frequently unsuccessful--from everyone's point of view.

This seminar focused on two facets of making referrals that work, i.e., the relationship that the pretrial services agency has with the defendant and its relationship with the agency to which the defendant is being referred. It is important to recognize that a good referral takes time. It will usually require a series of meetings with the client and ongoing contact with the community agency.

Persons involved in the criminal justice system have, typically, had negative experience with social service agencies. At some time, they've been "processed" by the bureaucracy and felt as if they've been reduced to just a number and a case folder. Further, there are special problems which go along with being referred by the criminal justice system. Some agencies attach a stigma to accused persons. Clients may also be suspicious of so-called "helping people" and feel staff from these agencies are there primarily to monitor their behavior.

Key to the success of the referral is that the client understand the diagnostic process and feel that (s)he has choices to make in the matter. This seminar stressed that the needs assessment and referral process should not be unilateral. Assessment of client needs must be a "co-examination", involving both the counselor and defendant. In order for a referral to be successful, the client must agree with the conclusions being drawn, understand the consequences, and choose to seek services or assistance. Discussion focused on techniques for building trust and confidence between pretrial personnel and defendants.

Faculty suggested that the assessment and referral process be done in the course of three successive interviews with a defendant:

1. INTRODUCTORY--In this initial conference of approximately thirty minutes in length, the client is told what (s)he can expect. The trainers stressed the importance of having the client understand the framework in which they would be working (whatever conceptual model is chosen).

2. INTERVIEW/NEEDS ASSESSMENT--This meeting ranges from forty minutes to two hours, depending on the extent of problems facing the defendant and the objectives and scope of the program. Subsequent to this interview, the counselor selects the proper agency for referral and schedules an appointment for the defendant.

3. REFERRAL MADE--In this final interview lasting only about thirty minutes, the counselor informs the client of the community agency selected. The client should be given the agency name, address, contact person, appointment time, and as much information as possible on what the defendant can expect when visiting the agency.

While faculty noted that ultimate responsibility for making the referral work rests with the defendant and referral agency, it is the duty of the pretrial services agency to inform to the fullest extent possible both the client and the service delivery agency about each other.

The basic working relationship between the pretrial agency and the service agency is also an important component of a successful referral and one which warrants considerable project time, attention, and care. It is recommended that the pretrial agency develop written contracts for those agencies to which it will refer defendants regularly. The contract should outline the referral process itself, identify contact persons (people authorized to speak for the agency), include a description of the clients to be served, and specify the conditions under which a client would be terminated from the program (rearrest, nonparticipation, etc.). It is particularly important that the agreement detail monitoring responsibilities, the relationship of the service agency to the pretrial and criminal justice system, and issues of confidentiality.

Mechanisms should also be developed to provide feedback to the participating agencies. The pretrial agency needs to be made aware of any appropriate referrals; the service agency should be informed of levels of satisfaction with services provided. The agencies' ability to work together may well depend on a common understanding of what is a success--which may change periodically.

In selecting referral agencies, pretrial projects may wish to visit, talk with several members of staff, and compare philosophy and perspective on potential clients. Similarly, it is important to provide the referral agency with an opportunity to visit the pretrial agency and to understand the goals of the pretrial program. Some agencies regularly schedule reciprocal "brown bag" lunches to encourage this interchange.

Faculty concluded by suggesting that the ability to make effective referrals may be the critical factor between success and failure for pretrial, both in terms of impact on clients and best utilization of scarce resources.

THE RELATIONSHIP OF GOOD MANAGEMENT TO SURVIVAL: THE DANGER OF CHASING RABBITS

FACULTY: *Joseph Stulberg, Director*
Dispute Resolution Institute
Pelham Manor, NY.

Many pretrial services agencies receive initial funding from sources which are not permanent, frequently in the form of a grant from the Law Enforcement Assistance Administration. Thus, program directors must not only oversee the implementation and development of a new program but must simultaneously seek out future sources of funding in order to survive past the experimental stage. This seminar, for directors, staff, and board members with planning and grantsmanship responsibilities, focused on strategies for obtaining ongoing funding for a pretrial program.

Based on case histories of a number of programs, Joseph Stulberg identified nine different approaches for acquiring continued funding for an existing program:

1. Advocate complete adoption of the program on the basis of demonstrated cost effectiveness.

2. Sustain the program by expanding the geographical area it serves.

3. Extend the program for a specified time in order to allow a thorough outside evaluation to be conducted.

4. Sustain the program by developing ties to research, evaluation, or replication efforts.

5. Sustain the program by building upon the findings and recommendations of program evaluations.

6. Sustain the program by shifting the primary project focus to accommodate possible sources of future funding (e.g., from a criminal justice to a manpower focus).

7. Establish a fee for services.

8. Transfer program locus to an agency that is able to incorporate the pretrial program into its ongoing operation (e.g., an independent agency might become part of the probation department).

9. Sustain the existing program by initiating a new, related pretrial services program for which funding is available (e.g., add a specially funded restitution component to a diversion program).

It was stressed that these approaches are by no means mutually exclusive and that several tactics may be employed at once. Stulberg briefly explained how each strategy could affect program focus, priorities and constituent support,

and he then discussed the last strategy in detail. There is great temptation for directors of programs operating on limited and nonrenewable grants to look around for new funds wherever they might be found and then redesign the program so as to become eligible to receive the funds. The need for program administrators to follow this course of action often seems pressing as it appears that monies for "new" programs are available while continued funding for the original program effort is disappearing. However, Stulberg cautioned that such an approach may compromise objectives and commitments of both the program both as presently administered and as envisioned. There is also a tremendous potential for conflicts of interest:

- Can the same agency effectively administer, for example, both a diversion and a victim/witness assistance program, when in any given case it might have to serve both the defendant and the victim?

- Should an agency administering a diversion program (which by definition is defendant oriented) apply for funds to administer a mediation program that requires an impartial posture of judgment?

Guidelines for program planning, focusing on both program design and administrative structure, may be helpful in avoiding those dilemma. One mechanism for evaluating the appropriateness of a particular merger of programs would be to compare the answers to the following questions for both programs (the one presently administered and the proposed new program) in order to ensure both conceptual consistency and administrative compatibility.

Based on the objectives of both programs:

- What assumptions are made regarding the criminal justice system?

- What target populations are serviced by the program?

- What type of service is offered to the recipient?

- What constituencies have an interest in the program's implementation?

From a review of the administrative structures for the program as it presently exists:

- Are the implicit administrative commitments compatible with the new program's goals, client population, and constituencies?

- What type of staff skills and resources are required for effective implementation of each program?

- What constraints on the administration of the present program would also apply to the new program (e.g., hiring practices, salary guidelines); and what impact would they have on the capacity to implement the new program?

Stulberg said that charting the direction and development of a program is both an enormous challenge and responsibility for program directors. He stressed that this planning process must not be circumvented or compromised in order to sustain the agency's existence "in any way possible". Neither should it be skewed by the understandable desire to "reward" dedicated employees by finding them a job in a new program but for which they might not be well suited.

It is the duty of those responsible for program administration and development to concentrate on what their agencies do best and then build upon that foundation. In the most ideal of worlds, this might lead to taking on new responsibilities. In less favorable environments, it requires the courage to focus firmly on program priorities and client needs--even if this brings the initial experiment to its conclusion.

Carol Mercurio, President of the Colorado Association of Pretrial Services Agencies

Melvena Lowery and Terri Jackson, NAPSA Board Members

PUBLIC RELATIONS FOR PRETRIAL

FACULTY: *Elizabeth Hurlow-Hannah, Consultant*
Washington, D.C.

Too often, under the pressures of a small budget and overworked staff, the job of "public relations" gets pushed aside until a crisis occurs. Then people scurry to assemble the background information that will prove the necessity for and worth of the services provided by the program. In this seminar Elizabeth Hurlow-Hannah focused on the need for pretrial agencies to develop long-range public relations programs.

Criminal justice agencies need to take time out from day-to-day problems--even if it requires a night session--to formulate a public relations strategy that identifies the spokesperson for the agency and approaches to soliciting community involvement. As Allen Breed, director of the National Institute of Corrections, noted in the opening address of the Symposium: "...criminal justice agencies have to begin to look outside the public sector for support...federal and state funds are drying up, and it is up to [practitioners] to bring the community into your project."

Developing corporate support and criminal justice coalitions within the community are valuable strategies. It was also proposed that major problems facing pretrial agencies should be examined from the perspective of the community as well as that of criminal justice professionals. An "Active Support Network" was suggested. This would develop a communications link between the pretrial agency and:

- the media
- funding sources
- criminal justice actors
- local non-profit organizations
- private industry
- educational institutions
- clients
- the general public

The "Who Cares Continuum" was discussed, and strategies were developed to turn the "Who Knows?" types into those "Who Care!". Getting to know hometown reporters in both print and electronic media is an absolute must to develop the image of a credible, respectable program. Methods of furnishing them with the facts and figures that they need were discussed. Participants offered a number of suggestions; and, through creative problem-solving, new approaches to old problems were carefully examined and considered.

PERSONNEL MANAGEMENT

FACULTY: *David Fletcher, Professor*
School of Management and Public Administration
University of Denver
Denver, CO.

While the differences between any two successful organizations are numerous, they all share on common characteristic: effective personnel management. As research continues to confirm the importance of personnel management, it is incumbent upon those in supervisory positions to develop an awareness of their responsibilities in this area. In this seminar, led by David Fletcher, the rationale for and complexities of a good personnel management were discussed.

Topics specifically covered were:

1. The role of the personnel department as it relates to the supervisor/manager, the functions of each, and the necessary division and balance of authority and responsibility between the two.

2. Federal legislation which has influenced personnel practices over the last 100 years, with particular attention to the most recent of these.

3. A case which served to highlight some of the common problems encountered by persons working in personnel management.

The final phase of the session focused on the future of personnel management in the public sector. Fletcher predicted several positive outgrowths of effective personnel management, including the potential for growth in the public sector of labor organizations, union security agreements, and collective bargaining in the public sector.

David Fletcher

Outgoing NAPSA President, Robert Donnelly, talks with Henrietta Falconer

Dan Ryan and NAPSA Board Member, David Forrest

The exchange of information occurred in many ways

MANAGEMENT AND SUPERVISION

FACULTY: *Eloise Peters, Manager*
Training and Development
Sun Electric Company
Crystal Lake, IL.

An organization is a living organism, in a constant state of growth and change. Like human beings, it must have direction or it will drift aimlessly and probably fail. It is the responsibility of the manager to chart the course of the organism--the plan for its future--and to cope with the problems of adaptation as the organism changes and is changed by the environment. This seminar, conducted by Eloise Peters, focused on the role of the manager and discussed some of the basic principles of supervision.

Peters explained a great deal is expected of the modern manager. First, those in supervisory slots must stay on top of developments within the organization, such as daily operations, and outside factors which may affect the program. They must plot strategies for attaining goals, choosing priorities and establishing balance between short-term gains and long-term results. An effective manager continuously assesses utilization of staff, space, facilities, and other resources. With an eye on efficiency, the manager evaluates and implements when necessary new approaches, unafraid of change yet cautious. In addition, those in management should seek to reinforce working relationships, especially with outsiders who can be of assistance to the organization. Finally, successful managers are concerned with solutions, not blame, guilt or fault.

Peters said that the word "manager" is synonomous with "leader" and leadership is not who you are, but what you do. Effective leadership combines technical, human, and conceptual skills to varying degrees at different levels of responsibility. The leader has to persuade others to work conscientiously and enthusiastically toward defined objectives. To do this, a leader must be respected. Respect is achieved through competence, ideas, contribution, and character. Leaders whose authority is earned are likely to surpass those for whom authority is merely conferred.

Many managers have difficulties exercising authority over others. Problems include abuse of power; lack of clarity about formal, conferred authority and informal, assumed authority; overlap of authority between individuals at different levels; authority assumed by staff officials which really belongs to those with line responsibility; authority inconsistent with assigned responsibilities; inability to delegate sufficiently; reluctance to accept authority; and inconsistency in exercise of authority.

In addition to formal authority, the manager also has the power to exert an extraordinary influence on his/her other staff. While many managers are unaware of this influence, psychologists have confirmed that the power of expectation alone can affect the performance of others. This theory, called self-fulfilling phrophecy states that sometimes people become what others expect them to be. It has been suggested that self-fulfilling phrophecy exists because people are reassured by predictive accuracy; they do not like to be surprised. People feel secure when others turn out to be as they expected.

Some managers do treat their employees in a way that leads to superior performance. Many others treat those under their supervision in a way that fosters low achievement. If a manager's expectations are high, productivity is likely to be excellent. If expectations are low, performance is likely to be poor. This theory was confirmed in a study commissioned by A.T. & T. in which two researchers studied the careers of 47 young managers. They found the expectations of higher management greatly affected the subsequent performance and success of these college graduates. There was a .72 correlation between company expectations and the contributions of the new managers over a five year period. Those who were given demanding and challenging jobs performed better and were more successful in the next several years than the new managers who received less demanding assignments.

A young person's fir manager can be one of the most influential persons in his or her career. If this manager is unable or unwilling to help the new trainee develop the skills necessary to perform effectively, the trainee will set lower standards than he or she is capable of achieving. Such a trainee is likely to develop a negative attitude toward his or her job, supervisor, and even his or her career. On the other hand, if the supervisor assists the new employee in achieving his or her maximum potential, the new trainee will build the foundation for a successful career.

Peters concluded that many managers are able to provide this kind of support and to stimulate superior performance. Certainly psychologists have long realized the necessity of creating management patterns that foster motivation and increased productivity and communication. Some managers are threatened by subordinates with high potential, fearing they will be replaced by these "newcomers". These men and women will never be successful in management, for the unique characteristic of superior managers is their ability to create high performance expectations that their employees fulfill.

MANAGEMENT AND SUPERVISION:
SPECIAL ISSUES FOR WOMEN IN SUPERVISORY ROLES

FACULTY: *Eloise Peters, Manager*
Training and Development
Sun Electric Company
Crystal Lake, IL.

Although women constitute nearly half of the work force, they hold only 6% of all managerial and supervisory positions. The reasons for this lie in both the attitudes of men toward women and in the ways in which women are socialized to perceive themselves. Self-confidence and self-image, sexism and discrimination are all contributory factors to the scarcity of women in supervisory roles. In this seminar, Eloise Peters discussed these barriers, as well as ways for women in business to overcome them. In order for women to succeed in business, they must first learn the system, about themselves, and about their male counterparts.

The business game demands assertiveness, competition, a cooperative spirit, analytical skills, logic and a compulsion to assume and achieve power. These traits have been discouraged in women; women exhibiting this type of behavior are labelled "aggressive", unladylike, unfemine, and even "bitchy". Women have been conditioned to be dependent and passive and, as such, often lack the self-confidence, self-image, and motivation or drive necessary for promotion.

Many women have poor career concepts and often enter the job market relatively late due to family demands on their time. They tend to view their careers as things that just happen and are usually reactive instead of proactive. They wait to be selected and fear taking the risks necessary in choosing a career and setting goals. Stereotyping can prevent the selection and development of female managerial talent and distort performance evaluation. It can also become self-fulfilling: If a woman believes she is less capable, she is.

However, even a woman who is not adversely affected by conditioning and/or has formulated career goals, must contend with the irrational and sexist attitudes of men with whom she works--with equals, superiors, or subordinates. Many men believe women are too emotional to succeed in business. They see women in careers as there to support the more dominant male.

Men are faced with a dilemma in dealing with women who aspire to management roles. They are unprepared to compete with someone they are supposed to protect and respond by either ignoring her, complimenting her to put her back in her place, or by becoming sexually competitive.

There are many fallacious stereotypes regarding the superiority of males in business. Among these are that men are intellectually superior and emotionally more stable; that they value achievement, promotion, and meaningful work more than women; and that they are inherently more assertive. These conceptions are disputed by the results of many university studies which indicate that men and women managers are very much alike. There are no identifiable differences in critical thinking, temperament, values, intelligence, verbal abilities, or leadership style. Men are slightly superior in quantitative reasoning, and

women excell slightly in energy, drive, and determination. In addition, the research has clearly established that there is no single pattern of abilities and temperament possessed by successful managers. However, an interesting finding of these studies is that female managers are more energetic, egocentric, aggressive, and less sociable than other women of similar educational backgrounds who did not have management responsibilities.

Women fall into traps such as over compensating in job knowledge to justify being in the positions they hold, not knowing how to develop relationships to help get ahead. They fear that any behavior considered "feminine" will be perceived as manipulative and, therefore, overly scrutinize their actions or suppress or discard certain facets of their personalities. Peters urged the attendees to recognize that as an achiever, the female manager will face considerable inner conflict if she attempts to structure her behavior around traditional attitudes. Also, women often underestimate the importance of both formal and informal corporate power structures, relying exclusively on the strength of the official policies and mechanisms for advancement.

In closing, Peters noted that the residue of differences between men who run businesses and women who want to run them will remain for many years. Yet if a woman decides she wants a successful career, she must be willing to confront the problems and manage the interaction between who she is and the environment in which she works. She must assess her potential, set career goals, anticipate and handle roadblocks, and set up an informal network of relationships to help her career. The successful woman is neither cold and calculating, nor meek and mild. She is a self-made woman as much as her successful male counterparts are self-made men. No one has "made" her a success; she did it herself.

Eloise Peters

CLOSING PLENARY SESSION

Murphy is honored by Beaudin

The Honorable Theodore Newman

Brownstein receives award from Donnelly

CLOSING

The Honorable Theodore Newman, Chief Judge
D.C. Court of Appeals
Washington, D.C.

Theodore Newman was master of ceremonies at the closing banquet of the 1980 National Symposium on Pretrial Services. He acknowledged the guests of honor, including the Resource Center Board of Trustees and present and former members of the NAPSA Board of Directors.

Newman introduced three individuals who made special presentations:

- As outgoing president of NAPSA, Robert Donnelly presented a certificate of appreciation to Irwin "Bobby" Brownstein, co-chair of the NAPSA Advisory Board and a Resource Center trustee, for his "continuous and unselfish efforts to further the standards and goals" of NAPSA. Brownstein had recently left his position as a judge to return to private practice.

- Bruce Beaudin, director of the D.C. Pretrial Services Agency and former president of NAPSA, presented the Ennis J. Olgiati Award to producers Claude Beller and Stefan Moore for their documentary "Presumed Innocent".

- Beaudin then presented Dennis R. Murphy, LEAA grant monitor of the Resource Center, with an award, which read, "It is with admiration and appreciation that the trustees, staff, and constituents of the Pretrial Services Resource Center acknowledge Dennis R. Murphy for having the vision, commitment, and energy to transform the concept of a resource center into a reality." Murphy had been instrumental in the initial funding of the Center as well as in giving it direction through its first three funding cycles.

- Finally, Madeleine Crohn, director of the Resource Center, assumed the podium to present a second award to Brownstein, a plaque which read, "The Pretrial Services Resource Center gratefully acknowledges the contributions made by Irwin "Bobby" Brownstein as a judge, trustee, advisor, and friend."

Newman also introduced the Rev. Wendell Phillips, the keynote speaker. Newman noted that Phillips is a "doing" preacher, one who takes the word of the Bible and applies it to the social issues of the day.

After Phillips' speech Newman recognized the efforts of the staff of the Resource Center, NAPSA, and the Colorado Association for making the conference a success. He urged those present to respond to the challenge issued by Breed in his opening address and to harken to the message of Phillips that a dream is not worth having unless you make it come true. "As we leave this place", Newman concluded, "let us recommit ourselves to making our vision a reality and rededicate ourselves to the work necessary to make it so."

"A VISION FOR THE FUTURE"

Rev. Wendell Phillips, Delegate
Maryland General Assembly
Baltimore, MD.

It is encouraging to participate in a gathering such as this Symposium. In fact, it has been good being with you all week. And it is a big plus for me to say that because conferences are not my thing. But this Symposium has reaffirmed my faith in this whole struggle for justice. This week has reminded me over and over again of the difficult task before us.

The criminal justice system is much like the educational system. We talk about the front end of the system, the tail end of the system, the middle of the system, about fault, and we frequently fail to see the whole picture. It is similar to the educational system: The college professor says, "Such rawness in a student is a shame, but high school preparation is to blame." To which the high school teacher responds, "From such youth I should be spared; they send them up here so unprepared." The elementary school teacher asks, "A cover for the dunce's stool? Why was he ever sent to school?" While the kindergarten teacher whispers, "Never such a lack of training did I see. What kind of person must the mother be?" And the mother sighs, "Poor child, but he's not to blame--all his father's folks are just the same." We must remind ourselves to keep things in their total perspective, to look at the criminal justice system as a whole.

Now I am encouraged when I see such a gathering of folk who still give a damn and have not given up because, let me tell you, the numbers of those who have thrown in the towel are growing more and more. When we look at the kind of garbage legislation being proposed, it gives you a real fright to think about the direction in which we are moving and the absence of people who will stand up for that which is just.

I am not here to talk about pretrial services--you are the experts in that area, and I am a mere novice. But I did want to say a few words about the vision from which you were born, that whole crucible of pain and suffering out of which you emerged as a movement. I want to say a word about that vision, about commitment and agitation, for without these attributes I am convinced that no real progress can be made. Although I am presently in the state legislature, I am by no stretch of the imagination a politician. I am what they call a preacher man and will always be a preacher man. My top priority is justice, and doing all that I possibly can to halt the building of prisons and the caging of people. It is true that the more effectively we do our work, the more unpopular we become. And the more unpopular we become, the less money our programs get. Nevertheless, the work must be done; and there are several facts we must understand and accept in order to get this work done.

First of all, we are at war--at war with one of the most powerful industries in this country, the prison industry. Now let me tell you, to be at war with the prison industry is not a game. It is not something you can take up and put down at your convenience. And the price is high. Why, in Baltimore City I have been put through the whole gamut--police surveillance, outsiders trying to disrupt my relationship with my congregation--by the police commissioner and others in power because of my unpopular stance concerning this whole business of justice. Bail bondsmen are but a part of the prison industry, and those of you familiar with bail reform have had a taste of the awesome power of that tiny segment of a much bigger prison industry. If we do not understand this, then our work is doomed. You know, it is the old story of the hound and the hare. The hound seldom catches the hare because the hound is running for the hell of it. The hare is running for his life. So, believe me, we are talking about some serious business.

Now, we also have to understand that the American public has long been--and still--is morally confused and self-contradictory about what they want to do with prisons. Consequently, we have also long been uncertain how to treat accused and convicted persons. So, if our system of criminal justice is to be made well, we must decide what is just. If we are really serious about turning around our whole criminal justice system, we must stop permitting others to define justice for us because justice is an <u>ethical</u> question. It does not spring from popular opinion, nor does it come from consensus. In fact, whenever it is thrown into the equation, justice becomes rather unpopular because people are just not used to it. Yet, at the same time, I am saying that without struggle and risk, justice will never exist. And whenever justice is fractured, it is our responsiblity to rise up in righteous indignation, even if we must rise alone and be unpopular and disliked by everyone around us. It needs to be understood that if you are going to carry the torch for justice, you are going to be unpopular wherever you work--whether it is in the legislature, courts, or pretrial services. We need to be willing to pay that price.

For legislators--people who have been elected to lead--our constituents must, at one time, have thought there was something just about us. We owe it to them to see that justice flows like a mighty stream, even if the price is that we are not elected next term. Surely we are all aware of the fickleness of crowds. The whole problem is that politicians get caught up in the bag where the most important thing is to get elected. What also happens to politicians is that they get away from home, the legislature becomes a nice substitute family. A lot of personal relationships are built. That is fine. But then those who were

elected as spokesmen for the people become mouthpieces of the system because no one wants to hurt the other guy's feelings. If you are into that headset, worried about whether you are going to be elected or will hurt feelings, there are certain risks you will never take in the name of justice or anything else.

The biggest danger confronting us is not the return to the streets of alleged criminals but the encroachment of our civil rights--the taking away of our constitutionally guaranteed rights--and the subtle but swift transformation into a police state here in this country. One of the ethical norms of any criminal justice system must be to take special care to protect the rights of the poor, weak, and unpopular and to uphold one of the cornerstones of our system: the presumption of innocence. The bottom line is that the police, courts, and correctional procedures cannot bear the principal burden of maintaining an orderly or just society. If the much-publicized concern about crime is anything more than self-centered fear and vindictive anger, then we must be willing to assume most of the responsibility for maintaining a just and orderly society. People must realize that they have a big stake in the order of the day and must voluntarily cooperate to create a way to sustain this smooth flow. Let me assure you that some of these creative ways will indeed entail inconvenience, moderating personal advantage, and renouncing opportunities to exploit the weak--and that's saying a whole lot.

But back to these prisons. We need to understand that the state has no right to enslave human beings. In fact, there is a movement afoot to change, repeal, or amend the Thirteenth Amendment, which still reads that slavery shall be abolished in these continental United States <u>except as a punishment for crime</u>. We need to understand the experience of prisons and their relation to slavery and what is happening to the human beings and the lives that are caught up in these cages. We must always retain our sensitivity to the hurt, pain, and dehumanizing experiences that our brothers and sisters in these institutions are going through. This is what keeps the fires kindled and reminds us that we cannot stop, that we are not really tired no matter how long the road may be.

So what am I talking about then? I am talking about total commitment, a sense of life-and-death struggle and mission that forces us to heed the call of justice. Unless we do this out of a sense of mission, we cannot and will not win the battle. We must have a vision of justice and freedom to which we are entirely wedded and for which we are willing, if necessary, to die. For without vision our work is drudgery and as tiring as hell. A vision without work is a dream. And if we are dreaming all the time, it means that we are asleep.

The work in which we are involved, I assure you, is thankless. To most folk, you are either naive, dumb as hell, or both. To others, you are a menace or a nuisance or, as one of my colleagues in the legislature referred to me in good theological terms, just a pain in the ass. But, thank God, there are folks still hanging in there. In this room alone there are enough folk to turn things upside down and inside out all across this country--<u>if</u> the commitment is there, if we really believe in our movement.

Let me tell you that I am the first to admit that bringing about this flow of justice is truly a miracle. Given our present system and the false, irrational premises, and ungodly compromises on which it is based, whenever you are able to keep one person out of prison, you have indeed performed, with God's help, a miracle comparable to walking on water.

But just try to reason with some of the folk on the other end of this spectrum and especially some of those legislators who are hell-bent on sending anybody to jail that can crawl. It is like reasoning with the man who knew he was dead. This man told his wife and family that he was dead. They tried in vain to convince him that he was not dead and finally took him to a psychiatrist. He told the psychiatrist he knew he was dead, there was no question about it. So the psychiatrist asked him whether dead men bleed. "No", he replied, "dead men don't bleed", whereupon the psychiatrist took out a knife and cut the man. And when, indeed, he began to bleed, the man exclaimed, "Dead men do bleed!" This is the mentality you face when you deal with people who feel we need to build prisons and to lock people up.

As I said, when you keep someone out of prison, you are talking about a miracle comparable to walking on water, and everyone knows that before you can walk on water you first have to get out of the boat. Whenever the boat is rocked by storms of change and protest, the majority of those in the boat spend their energies trying to steady the boat, concerned first about their own private programs and own agenda. Some want to drop anchor, and there are even those who attempt to row backwards to the "good old days", whatever the hell they were.

But thank God there are always a few who dare to get out of the boat, face the mighty winds of change and chaos, and walk the water. There are those of you who dare to care enough about your fellow human beings to risk yourself and your credibility. I say credibility because the more you get into and give to this effort, the crazier folk may think you are. But you march to a different drummer, and thank God you permitted yourself to get caught up in the vision that brought this whole movement into being. The boat of our criminal justice system and prison industry is being rocked in the midst of these stormy waters of protest, and those in the boat are fighting like hell to keep everything as it was. And let me tell you, they understand what it's about because in those waters we're not fighting "Charlie the Tuna", we're talking about "Jaws".

The sails of freedom have been lowered, and anchors of distrust have been dropped. Those inside are retrenching; but those of you with any sense of vision can see through the storm, the disappointment, and setbacks. Your eyes focus not on the stormy waters of change, but on the horizon where a new day of justice is about the break. You have got to hang on to your vision and see that the new day breaks through. It's right over the horizon; there's just no turning back. As one poet so eloquently put it:

For he who would strive for distant goal
Must always have courage deep within his soul
And courage is not a dazzling light
That flashes and passes away from sight
It is slow, unwavering, ingrained trait
With patience to work and the strength to wait.

Courage is the quality it takes to look at yourself with candor, your adversaries with kindness, and your setbacks with serenity.

Now, why are we at war with the prison industry? The prison industry has one agenda: to build more and bigger prisons and to feed the folk in them. You're trying to correct the system and to keep folk out. Now I have a double concern about what's happening because most of the folk caught up in that system are

people of color. You are trying to keep them out; and it is a battle because you are up against a vast, entrenched network of power. They also have the media on their side to tell their story and spread further illusions and myths, making our job even harder. In fact, if the juvenile population in the prisons of this country gets any worse parents are going to have to start posting a $10,000 bail bond upon the birth of every child.

The whole business of building more prisons to stop crime is pure insanity. What does it say about our civilization? After several thousand years, civilization has advanced to the point where we who are civilized build prisons and bolt doors and windows at night, while we call jungle natives who sleep out in the open in their huts at night "uncivilized". The system is crazy. When you have an upset system or an upset stomach, what happens? You usually develop a case of diarrhea--then your choices become either to clear up your system by making the changes necessary, or forget about the change and just build johns all over the place. This is true of the criminal justice system. People are saying to hell with correcting the system, let us build jails all over the damn place. They would rather spend millions on building prisons than on solving the problem of crime; and that is why, in the midst of this illogical phenomenon, I am committed, as was my namesake, to agitation in the best sense of the word.

I refer to my namesake, Wendell Phillips the abolitionist of yesteryear and one of the greatest agitators in American history, along with Fredrick Douglass, Malcolm X, and Martin Luther King. Phillips believed that in a free country all real progress comes through agitation. He accepted Sir Robert Peele's definition of agitation, which is the martialing of the conscience of a nation. This is the only real means by which a people can be set free or be satisfied with the institutions they have created. A people that worships its past and refuses to think creatively has already ceased to be free. That is why I feel the ever-restless ocean has got to be our symbol--pure, because it is never still, constantly moving and agitating.

My friends, I assure you I know the frustration and weariness of the cause in which you are engaged. I also understand that there is no promised land in the business of reform. There is no rest. It is all wilderness, for you are pioneering on the cutting edge. There are new maps, new horizons. And if there is anyone here who does not like a good fight, quarrelling, confrontation, and debate, I advise you to get back in the boat and join the others, for advocates of justice are always in the midst of a tempest. As I see it, God is shaking the structures of our society to test whether we are sufficiently flexible to aid mankind's progress toward freedom. I affirm it as a truth self-evident, well established by history that if our criminal justice system goes to pieces as a result of dissent from within, it will be because it deserved to go to pieces and not for any other reason.

What you are doing in pretrial services is comparable. You are inserting a bit of truth and justice into a system that is not used to dealing justly with those who come through it. It's like planting an oak in a flowerpot. If the oak tree grows, the flowerpot is going to burst wide open. If that flowerpot stays whole, you can bet your bottom dollar that that oak tree is not growing, is diseased, or has been dwarfed. In the process of agitating, you must share your vision with others involved in the system. Confront your elected officials, your judges, your community. One of our biggest problems is that too many folk are morally timid. But just remember: Nothing that is morally wrong or unjust can ever be politically right, no matter what politicians may say or think.

Secondly, I want to stress that we need to regain the offensive in our struggle. We cannot be content to hold the ground we have gained, but we must risk that ground to gain new ground and make new inroads. Unless we take that risk, the illusions regarding crime being spread by the media and by the prison industry will continue as will the emotional, ill-considered case for overriding our rights as citizens for the sake of order. We stand to learn too late--as have many other people in the history of this world--that tyranny legalizes what we feared as crime. There will be no police to call in such a state, where the police and the rules are the criminals.

My friends, hang on to your vision and rekindle the spark that is inside you because there are a lot of folk caught up behind bars, a lot of human beings that are literally betting their lives on the work that we are doing. If you want something to keep your batteries charged, just continue to go in and out of these prisons on a regular basis and see the hope that you give. For many folk the only reason for living while behind bars is the hope that we have been able to give them, that there are those outside who give a damn and are willing to risk their lives to salvage those inside. So have faith in your vision. Be committed to it; be willing to die for it if necessary; and keep agitating others so that your vision might always be sharply focused. As Martin Luther King so aptly put it, "If a man ain't got a cause for which he is willing to die, he ain't fit to live." Share your vision with others, and get them to understand the difficulty and importance of continuing the flow of truth and justice in this country.

Also remember that in every movement is a soul. This week I have found that the relationship that exists among you and the warmth that I felt among your group has been a kind of nurturing of the very depths of my soul. It has given me a sense of hope that there are people within the system who are committed to doing what is just and to stay involved in this whole struggle. You have shown well that you have the spirit to struggle, the will to survive, the daring to care, and the courage to love even the most unlovable.

You know, it is not difficult to love folk who love you. It is not difficult to love folk who think like you think. But it is difficult to love those who are unlovable. And yet it is when folk are at their unlovable worst that they need to be loved the most. In accepting her Nobel Peace Prize, Mother Theresa said she was unworthy. This is not the mandatory disclaimer expected when great awards are handed out. Mother Theresa had been saying it all along, "Let there be no pride or vanity in the work. The work is God's work; the poor are God's poor." Since 1950, she has labored in the slums of Calcutta, and the folks that she works with are so destitute and deprived one can hardly say that they are living. In many respects they would be better off dead; they prey on each other. But in the midst of this decadence, disease, and death, you discover a gem like Mother Theresa. She reminds us that to love is to listen and to hear the cries of those caught up in the ungodly web of pain, misfortune, and injustice.

One of the greatest lessons I learned was shortly after seminary, some 20 years ago, when I was visiting a young girl eighteen years of age who had cancer. The disease gave off a terrible stench, and one of the nurses was having a problem going in to attend to her. I heard one of the other nurses say to her, "Remember that behind all of that stink, there is a human soul. There is a person who has been created by the same God who created each of us."

We, too, are bound together as brothers and sisters, those inside and those outside of prison. Our purpose is to raise and to carry the torch of justice, unpopular though it may be. And let me assure you, as time goes on, the calls for justice become more and more unpopular and the torch becomes heavier and heavier to carry. But a bell ain't a bell till you ring it, and a song ain't a song until you sing it. A thought ain't a thought till you think it, and justice ain't justice till you dispense it. I have dreamed many dreams that never came true, and I have seen many dreams vanish at dawn. But I have realized enough of my dreams, thank God, to make me want to dream on. I prayed many prayers, and no answer came, though I waited patient and long. But answers have come to enough of my prayers to make me keep praying on. I have trusted in many a friend that failed me and left me to weep alone, but enough of my friends have been true blue to keep me trusting on. I have sown many seeds that have fallen by the way for the birds to feed upon, but I have held enough golden cheese in my hand to keep me sowing on. I have drained the cup of disappointment and pain and gone many a day without a song, but I sipped enough nectar from the roses of life to make me committed to fighting on.

We need to live our lives so that we can close each day with the prayer that the old Negro slave used to pray, "Lord, I ain't what I ought to be. Lord, I ain't what I want to be. Lord, I ain't what I gonna be. But thank God I ain't exactly what I used to be."

SPECIAL EVENT: "PRESUMED INNOCENT"

Through the courtesy of TVG Documentary Arts Project (New York City), attendees of the 1980 National Symposium on Pretrial Services were able to see a special showing of "Presumed Innocent", a 60-minute videotape documentary on pretrial detention and conditions at the House of Detention for Men on Rikers Island, New York City. The film broadcast in the New York City metropolitan area over WNET/13 on December 13, 1979. It met with acclaim from both the criminal justice community and television critics such as John O'Connor of the New York Times who wrote: "Undeniably distinguished...Offering sharp insights into poverty and powerlessness." The program was selected by the Public Broadcasting System (PBS) for national airing on June 18, 1980.

After the Symposium showing on June 22 attendees discussed "Presumed Innocent" with one of its producers, Claude Beller.

Madeleine Crohn asks audience a question

Producer Claude Beller discusses making the documentary

Several hundred people attended the evening showing of "Presumed Innocent"

APPENDIX

THE NATIONAL SYMPOSIUM ON PRETRIAL SERVICES 1980

SYMPOSIUM CALENDAR

SUNDAY, JUNE 22, 1980

8:00-9:30 p.m. OPENING GENERAL SESSION

Empire Rooms 3 and 4

PRESIDING:
The Honorable William Erickson, *Justice*
Colorado Supreme Court
Denver, CO.

WELCOME:
Madeleine Crohn, *Director*
Pretrial Services Resource Center
Washington, D.C.

KEYNOTE SPEECH—*"Facing Reality"*
Allen Breed, *Director*
National Institute of Corrections
Washington, D.C.

9:30-Midnight CASH BAR

MONDAY, JUNE 23, 1980

8:00-9:15 a.m. THE EXCHANGE

Empire Foyer

COORDINATOR:
Nancy Waggner, *Staff Assistant*
Pretrial Services Resource Center
Washington, D.C.

9:15-10:00 GENERAL SESSION

Empire Rooms 3 and 4

IT'S DEBATABLE—DANGER IS A LEGITIMATE CONSIDERATION IN RELEASE DECISION MAKING

MODERATOR:
Francis Carter, *Director*
D.C. Public Defender Service
Washington, D.C.

Bruce Beaudin, *Director*
D.C. Pretrial Services Agency
Washington, D.C.

MONDAY CONTINUED

Dan Pochoda, *President*
Correctional Association of New York
New York, NY.

10:15-11:30 WORKSHOPS

PRETRIAL ALTERNATIVES AND JAIL OVERCROWDING

Theatre

Gene Clark, *Consultant*
Jail Overcrowding Project
American Justice Institute
Sacramento, CA.

Anne Bolduc, *Co-Director*
Jail Overcrowding Research Project
Cincinnati, OH.

PRETRIAL SERVICES, CONGRESS, AND THE EIGHTIES

Empire Room 1

MODERATOR:
Estell Collins, *Supervisor*
Federal Pretrial Services Agency
New York, NY.

Hayden Gregory, *Counsel*
Committee on the Judiciary
Subcommittee on Crime
House of Representatives
Washington, D.C.

Dennis Murphy, *Courts Specialist*
Law Enforcement Assistance Administration
Washington, D.C.

SELLING PRETRIAL: THE PUBLIC, THE MEDIA, THE LEGISLATURE

Empire Room 2

MODERATOR:
Eddie Harrison, *Director*
Justice Resources Inc.
Baltimore, MD.

Robert Guttentag, *Division Manager*
Gillette Safety Razor
Boston, MA.

continued...

Ronald Welch, *Director*
Mississippi Prisoners' Defense Committee
Jackson, MS.

William Wachob, *Representative*
Pennsylvania General Assembly
Harrisburg, PA

THE DISPUTE RESOLUTION MOVEMENT: A PROGRESS REPORT
Paramount Room 1

Larry Ray, *Director*
Special Committee on Resolution of Minor Disputes
American Bar Association
Washington, D.C.

Robert Saperstein, *Director*
Community Mediation Center
Coram, NY.

SCREENING FOR SUBSTANCE ABUSE
Paramount Room 2

Peter Regner, *Chief of Offender Services*
Law Enforcement Assistance Administration
Washington, D.C.

Jack Lemley, *Criminal Justice Coordinator*
Bureau of Alcoholism and Drug Abuse
Wilmington, DE.

Barbara Zugor, *Director*
Treatment Alternatives to Street Crime
Phoenix, AZ.

10:15-1:00 PROFESSIONAL DEVELOPMENT SEMINARS
(Pre-registration required)

PERSONNEL MANAGEMENT (III-A)
Seminar Room 1

David Fletcher, *Professor*
School of Management and Public Administration
University of Denver
Denver, CO.

MONDAY CONTINUED

MANAGEMENT AND SUPERVISION (IV-A)
Seminar Room 2

Eloise Peters, *Manager*
Training and Development
Sun Electric Company
Crystal Lake, IL.

PUBLIC RELATIONS FOR PRETRIAL (I-A)
Seminar Room 3

Elizabeth Hurlow-Hannah, *Consultant*
Washington, D.C.

11:45-1:00 WORKSHOPS

CIVIL LIABILITY: RECENT COURT CASES
Theatre

Sponsored by the NIC Jail Center

Gary DeLand
Criminal Justice Consultant
Salt Lake City, UT.

DOMESTIC VIOLENCE
Empire Room 1

Lisa Lerman
Center for Women's Policy Studies
Washington, D.C.

Elaine Edinberg, *Attorney*
Denver, CO.

HAVE WE FAILED IN RESPONDING TO ALCOHOL RELATED OFFENSES?
Paramount Room 1

Mark Fontaine, *Program Manager*
National Association of State Alcohol and Drug Abuse Directors
Washington, D.C.

Lee Wood, *Deputy Director*
Monroe Co. Bar Association Pretrial Services Corp.
Rochester, NY.

MONDAY CONTINUED

CITATIONS: THE MOST EFFECTIVE WAY TO DECREASE SHORT TERM DETENTION
Empire Room 2

Ron Obert, *Director*
Office of Pretrial Services
San Jose, CA.

MEDIATION: EMERGING LEGAL ISSUES
Paramount Room 2

Larry Ray, *Staff Director*
Special Committee on Resolution of Minor Disputes
American Bar Association
Washington, D.C.

Robert Saperstein, *Director*
Community Mediation Center
Coram, NY.

1:00-2:30 SPECIAL LUNCHEON SESSION
Empire Rooms 3 and 4

Cosponsored by:
NATIONAL ASSOCIATION OF PRETRIAL SERVICES AGENCIES
and
COLORADO ASSOCIATION OF PRETRIAL SERVICES AGENCIES

2:30-3:45 WORKSHOPS

ALTERNATIVES TO JUVENILE DETENTION
Empire Room 1

Sponsored by the Colorado Department of Institutions

Moderator:
Anne Rankin Mahoney
Dept. of Sociology
University of Denver
Denver, CO.

Jack Phelan
Division of Youth Services
Department of Institutions
Denver, CO.

continued...

MONDAY CONTINUED

Claus Tjaden
Planning and Evaluation Unit
Department of Institutions
Denver, CO.

CIVIL LIABILITY: RECENT COURT CASES
Theatre

Sponsored by the NIC Jail Center

Gary DeLand
Criminal Justice Consultant
Salt Lake City, UT.

RELEASE DECISION MAKING: DOES A GUIDELINES APPROACH MAKE SENSE?
Empire Room 2

Dewaine Gedney, *Director*
Pretrial Services
Philadelphia, PA.

John Goldkamp, *Co-Director*
Bail Decision Making Project
Temple University
Philadelphia, PA.

PRETRIAL SERVICES: THE RESPONSIBILITIES OF THE DEFENDER
Paramount Room 1

Moderator:
Robert Spangenberg, *Director*
Criminal Defense Technical Assistance
Abt Associates
Cambridge, MA.

Francis Carter, *Director*
D.C. Public Defender Service
Washington, D.C.

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

Dennis Murphy, *Courts Specialist*
Law Enforcement Assistance Administration
Washington, D.C.

Ray Weis, *Director*
Pretrial Services Agency
Louisville, KY.

DOMESTIC VIOLENCE
Paramount Room 2

Lisa Lerman
Center for Women's Policy Studies
Washington, D.C.

Elaine Edinberg, *Attorney*
Denver, CO.

PROFIT FROM WORKING WITH THE PRIVATE SECTOR
Paramount Room 3

Sponsored by the National Alliance of Business

Sheila Cook, *Coordinator*
Regional Ex Offender Program
National Alliance of Business
Orange, CA.

2:30-5:15 PROFESSIONAL DEVELOPMENT SEMINARS
(Pre-registration required)

PERSONNEL MANAGEMENT (III-B)
Seminar Room 1

David Fletcher, *Professor*
School of Management and Public Administration
University of Denver
Denver, CO.

MANAGEMENT AND SUPERVISION (IV-A CONT.)
Seminar Room 2

Eloise Peters, *Manager*
Training and Development
Sun Electric Company
Crystal Lake, IL.

PUBLIC RELATIONS FOR PRETRIAL (I-B)
Seminar Room 3

Elizabeth Hurlow-Hannah, *Consultant*
Washington, D.C.

2:30-5:15 PEER DISCUSSION GROUP

IN WHAT CASES DOES MEDIATION MAKE SENSE?
Seminar Room 4

Joseph (Josh) Stulberg, *Director*
Dispute Resolution Institute
Pelham Manor, NY.

4:00-5:15 WORKSHOPS

DEBATE ON NAPSA STANDARD VII: PRETRIAL DETENTION
Theatre

Sponsored by NAPSA

Moderator:
Wayne Thomas, *Attorney*
Fullerton, Lang, Richert & Patch
Fresno, CA.

Irwin (Bobby) Brownstein, *Attorney*
La Rosa, Brownstein, and Mitchell
New York, NY.

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

CENTRAL INTAKE—MODEL FOR THE EIGHTIES?
Empire Room 1

Sponsored by NIC Jail Center

David Bennett
Criminal Justice Consultant
Salt Lake City, UT.

Robin Ford
National Institute of Corrections Jail Center
Boulder, CO.

HAVE WE FAILED THE MENTALLY DISABLED DEFENDANT?
Paramount Room 1

Carole Morgan, *Project Director*
Training Associates
Carmel, CA.

PRETRIAL SERVICES—ARE STATEWIDE SYSTEMS THE ANSWER?
THE EXPERIENCE OF SEVERAL JURISDICTIONS
Empire Room 2

Moderator:
Barry Mahoney, *Research Director*
Institute for Court Management
Denver, CO.

Angela Grant, *Counsel*
Connecticut Pretrial Commission
Hartford, CT.

Donald Phelan, *Chief*
Pretrial Services
Administrative Office of the Courts
Trenton, NJ.

Stephen Wheeler, *Co-Director*
Pretrial Services Agency
Frankfort, KY.

JUVENILE DIVERSION—WHAT HAVE WE LEARNED?
Paramount Room 2

Franklyn W. Dunford, *Associate Director*
Behavioral Research Institute
Boulder, CO.

Margaret Wood, *Director*
Technical Assistance & Policy Analysis
National Council on Crime & Delinquency
Hackensack, NJ.

5:30-6:30 PROGRAM PRACTICE FORUMS

Coordinator:
Nancy Waggner, *Staff Assistant*
Pretrial Services Resource Center
Washington, D.C.

ADULT DIVERSION
Empire Room 1

JUVENILE DIVERSION
Empire Room 1

CONDITIONAL AND SUPERVISED RELEASE
Paramount Room 1

continued...

COMMUNITY SERVICE/RESTITUTION
Paramount Room 2

DISPUTE RESOLUTION
Empire Room 2

9:00-11:00 p.m. GENERAL SESSION
Empire Rooms 3 and 4

"PRESUMED INNOCENT"
A documentary produced and directed by Claude Beller and Stefan Moore.

Discussion with:
Claude Beller
TVG
New York, NY

TUESDAY, JUNE 24, 1980

8:45-9:30 a.m. GENERAL SESSION

Empire Rooms 3 and 4

IT'S DEBATABLE—PRETRIAL SERVICES SHOULD BE PROVIDED THROUGH STATEWIDE SYSTEMS

Moderator:
Nancy Maron
Associate Director for Program Services
Department of Institutions
Denver, CO.

Maurice Mosley, *Representative*
(Chairman, House Judiciary Committee)
Connecticut General Assembly
Hartford, CT.

Denny Weller, *Director*
Anti-Crime Council
Denver, CO.

9:45-11:00 WORKSHOPS

PRETRIAL SERVICES—ARE STATEWIDE SYSTEMS THE ANSWER?

ISSUES AND IMPLICATIONS

Theatre

Barry Mahoney, *Research Director*
Institute for Court Management
Denver, CO.

Nancy Maron
Associate Director for Program Services
Department of Institutions
Denver, CO.

PRETRIAL ALTERNATIVES AND JAIL OVERCROWDING

Empire Room 1

Gene Clark, *Consultant*
Jail Overcrowding Project
American Justice Institute
Sacramento, CA.

Anne Bolduc, *Co-Director*
Jail Overcrowding Research Project
Cincinnati, OH.

ALTERNATIVES TO JUVENILE DETENTION

Empire Room 2

Sponsored by the Colorado Department of Institutions

Moderator:
Anne Rankin Mahoney
Dept. of Sociology
University of Denver
Denver, CO.

Jack Phelan
Division of Youth Services
Department of Institutions
Denver, CO.

Claus Tjaden
Planning and Evaluation Unit
Department of Institutions
Denver, CO.

THE DISPUTE RESOLUTION MOVEMENT: A PROGRESS REPORT

Paramount Room 1

Larry Ray, *Staff Director*
Special Committee on Resolution of Minor Disputes
American Bar Association
Washington, D.C.

Robert Saperstein, *Director*
Community Mediation Center
Coram, NY.

RURAL PRETRIAL SERVICES

Paramount Room 2

Moderator:
Alan Henry, *Technical Assistance Associate*
Pretrial Services Resource Center
Washington, D.C.

Tom Snow, *Jail Administrator*
Pitkin County
Aspen, CO.

Melinda Wheeler, *Director*
Pretrial Services Agency
Covington, KY.

PROFIT FROM WORKING WITH THE PRIVATE SECTOR

Paramount Room 3

Sponsored by the National Alliance of Business

Sheila Cook, *Coordinator*
Regional Ex Offender Program
National Alliance of Business
Orange, CA.

9:45-12:30 PROFESSIONAL DEVELOPMENT SEMINARS

(Pre-registration required)

THE RELATIONSHIP OF GOOD MANAGEMENT TO SURVIVAL: THE DANGER OF CHASING RABBITS (V-A)

Seminar Room 1

Joseph (Josh) Stulberg, *Director*
Dispute Resolution Institute
Pelham Manor, NY.

MANAGEMENT AND SUPERVISION—SPECIAL ISSUES FOR WOMEN IN SUPERVISORY ROLES (IV-B)

Seminar Room 2

Eloise Peters, *Manager*
Training and Development
Sun Electric Company
Crystal Lake, IL.

PUBLIC RELATIONS FOR PRETRIAL (I-C)

Seminar Room 3

Elizabeth Hurlow-Hannah, *Consultant*
Washington, D.C.

9:45-12:30 PEER DISCUSSION GROUP

(Pre-registration required)

WHAT SHOULD BE THE RESEARCH PRIORITIES IN PRETRIAL?

Empire Room 3 (rear)

Michael Kirby, *Professor*
Southwestern College at Memphis
Memphis, TN.

11:15-12:30 WORKSHOPS

JOB READINESS FOR DEFENDANTS

Paramount Room 3

Peg Leming Ries, *Service Coordinator*
Employ-Ex
Denver, CO.

JUVENILE DIVERSION—WHAT HAVE WE LEARNED?

Empire Room 1

Franklyn W. Dunford, *Associate Director*
Behavioral Research Institute
Boulder, CO.

Margaret Wood, *Director*
Technical Assistance & Policy Analysis
National Council on Crime & Delinquency
Hackensack, NJ.

PRETRIAL RELEASE AGENCIES: THE PROBLEM OR THE SOLUTION?

Empire Room 2

Sponsored by NAPSA

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

Jay Carver, *Deputy Director*
D.C. Pretrial Services Agency
Washington, D.C.

PRETRIAL SERVICES: THE RESPONSIBILITIES OF THE DISTRICT ATTORNEY

Paramount Room 2

MODERATOR:
Tom Petersen, *Chief Assistant for Administration*
Dade Co. State's Attorney
Miami, FL.

Nolan Brown, *District Attorney*
Jefferson County
Golden, CO.

continued...

TUESDAY CONTINUED

Norman Early
District Attorney's Office
Denver, CO.

Alex Hunter, *District Attorney*
Boulder County
Boulder, CO.

PRETRIAL RELEASE PRACTICES AND OUTCOMES: A NATIONAL EVALUATION
Paramount Room 1

Mary Toborg, *Associate Director*
The Lazar Institute
Washington, D.C.

12:30-2:00 p.m. LUNCH BREAK

OPTIONAL ACTIVITIES

2:00-4:00 p.m. PRETRIAL UPDATE—AN OVERVIEW OF RECENT SIGNIFICANT DEVELOPMENTS
Empire Room 2

The Staff of the
Pretrial Services Resource Center

2:00-11:45 p.m. TOUR OF THE ROCKIES

Will tour the mountains, stop at Central City, and arrive at Heritage Square in time to roam among the shops before the buffet and show. Bus loads at 1:45 and is expected to return to the hotel around midnight. *(Tickets must be purchased in advance.)*

2:00-4:30 p.m. TOURS OF LOCAL CRIMINAL JUSTICE AGENCIES

These must have been arranged in advance an on an individual basis. Details are posted on the main Message Board

5:30-11:00 p.m. HERITAGE SQUARE BUFFET AND SHOW
(Tickets must be purchased in advance)

4:00-7:00 p.m. MEETING OF TASC AGENCIES
Seminar Room 2

WEDNESDAY, JUNE 25, 1980

8:45-9:30 a.m. GENERAL SESSION
Empire Rooms 3 and 4

IT'S DEBATABLE—THE FUTURE OF PRETRIAL SERVICES

Moderator:
Allen Hellman, *Attorney*
Criminal Justice Consultant
San Jose, CA.

Irwin (Bobby) Brownstein, *Attorney*
La Rosa, Brownstein, and Mitchell
New York, NY.

Norman Early, *Chief Deputy District Attorney*
Denver, CO.

9:45-11:00 WORKSHOPS

PRETRIAL SERVICES—ARE STATEWIDE SYSTEMS THE ANSWER?
ISSUES AND IMPLICATIONS
Theatre

Barry Mahoney, *Research Director*
Institute for Court Management
Denver, CO.

Nancy Maron
Associate Director for Program Services
Department of Institutions
Denver, CO.

HAVE WE FAILED IN RESPONDING TO ALCOHOL RELATED OFFENSES?
Empire Room 1

Mark Fontaine, *Program Manager*
National Association of State Alcohol and Drug Abuse Directors
Washington, D.C.

Lee Wood, *Deputy Director*
Monroe Co. Bar Association Pretrial Services Corp.
Rochester, NY.

WEDNESDAY CONTINUED

PRETRIAL ALTERNATIVES AND JAIL OVERCROWDING
Empire Room 2

Gene Clark, *Consultant*
Jail Overcrowding Project
American Justice Institute
Sacramento, CA.

Anne Bolduc, *Co-Director*
Jail Overcrowding Research Project
Cincinnati, OH.

PRETRIAL RELEASE PRACTICES AND OUTCOMES: A NATIONAL EVALUATION
Paramount Room 1

Mary Toborg, *Associate Director*
The Lazar Institute
Washington, D.C.

JOB READINESS FOR DEFENDANTS
Paramount Room 2

Peg Leming Ries, *Service Coordinator*
Employ-Ex
Denver, CO.

9:45-12:30 PROFESSIONAL DEVELOPMENT SEMINARS
(Pre-registration required)

MANAGEMENT AND SUPERVISION (IV-C)
Seminar Room 4

Eloise Peters, *Manager*
Training and Development
Sun Electric Company
Crystal Lake, IL.

TURNING THINGS AROUND: MAKING REFERRALS THAT WORK (II)
Paramount Room 3

Robin Ford
National Institute of Corrections Jail Center
Boulder, CO.

David Bennett
Criminal Justice Consultant
Salt Lake City, UT.

WEDNESDAY CONTINUED

9:45-12:30 PEER DISCUSSION GROUP
(Pre-registration required)

ADMINISTRATORS OF LARGE URBAN AGENCIES
Seminar Room 2

Michael Green, *Director*
Diversion Services, Adult Probation Department
Philadelphia, PA.

11:15-12:30 WORKSHOPS

PRETRIAL SERVICES—ARE STATEWIDE SYSTEMS THE ANSWER?
THE EXPERIENCE OF SEVERAL JURISDICTIONS
Theatre

Moderator:
Barry Mahoney, *Research Director*
Institute for Court Management
Denver, CO.

Angela Grant, *Counsel*
Connecticut Pretrial Commission
Hartford, CT.

John Hendricks, *Co-Director*
Pretrial Services Agency
Frankfort, KY.

Donald Phelan, *Chief*
Pretrial Services
Administrative Office of the Courts
Trenton, NJ.

RELEASE DECISION MAKING: DOES A GUIDELINES APPROACH MAKE SENSE?
Empire Room 2

Dewaine Gedney, *Director*
Pretrial Services
Philadelphia, PA.

John Goldkamp, *Co-Director*
Bail Decision Making Project
Temple University
Philadelphia, PA.

COMMUNITY SERVICE AND RESTITUTION: ISSUES

Empire Room 1

John Bellassai, *Director*
Criminal Justice Division
KOBA Associates
Washington, D.C.

Burt Galaway
School of Social Development
University of Minnesota
Duluth, MN.

Anita West
Denver Research Institute
University of Denver
Denver, CO.

RURAL PRETRIAL SERVICES

Paramount Room 1

Moderator:
Alan Henry, *Technical Assistance Associate*
Pretrial Services Resource Center
Washington, D.C.

William Morrison
Pretrial Services Agency
Frankfort, KY.

Tom Snow, *Jail Administrator*
Pitkin County
Aspen, CO.

SCREENING FOR SUBSTANCE ABUSE

Paramount Room 2

Peter Regner, *Chief of Offender Services*
Law Enforcement Assistance Administration
Washington, D.C.

Jack Lemley, *Criminal Justice Coordinator*
Bureau of Alcoholism and Drug Abuse
Wilmington, DE.

Barbara Zugor, *Director*
Treatment Alternatives to Street Crime
Phoenix, AZ.

12:30-2:00 LUNCH BREAK

2:00-3:30 WORKSHOPS

PRETRIAL RELEASE AGENCIES: THE PROBLEM OR THE SOLUTION?

Empire Room 1

Sponsored by NAPSA

Bruce Beaudin, *Director*
D.C. Pretrial Services Agency
Washington, D.C.

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

PRETRIAL SERVICES: THE RESPONSIBILITIES OF THE JUDGE

Empire Room 2

Moderator:
Edward Schoenbaum, *Director of Training*
Center for Legal Studies
Sangamon State University
Springfield, IL.

James Chenault, *Judge*
Richmond, KY.

Frederick Kessler, *Judge*
Circuit Court Milwaukee County
Milwaukee, WI.

Theodore Newman, *Chief Judge*
D.C. Court of Appeals
Washington, D.C.

CITATIONS: THE MOST EFFECTIVE WAY TO DECREASE SHORT TERM DETENTION

Paramount Room 1

Ron Obert, *Director*
Office of Pretrial Services
San Jose, CA.

HAVE WE FAILED THE MENTALLY DISABLED DEFENDANT?

Paramount Room 2

Carole Morgan, *Project Director*
Training Associates
Carmel, CA.

2:00-5:15 PROFESSIONAL DEVELOPMENT SEMINARS

(Pre-registration required)

THE RELATIONSHIP OF GOOD MANAGEMENT TO SURVIVAL: THE DANGER OF CHASING RABBITS (V-B)

Seminar Room 3

Joseph (Josh) Stulberg, *Director*
Dispute Resolution Institute
Pelham Manor, NY.

MANAGEMENT AND SUPERVISION (IV-C CONT.)

Seminar Room 4

Eloise Peters, *Manager*
Training and Development
Sun Electric Company
Crystal Lake, IL.

2:00-5:15 PEER DISCUSSION GROUP

(Pre-registration required)

WHAT IS THE FUTURE FOR PRETRIAL DIVERSION

Seminar Room 2

Lee Wood, *Deputy Director*
Monroe Co. Bar Association Pretrial Services Corp.
Rochester, NY.

3:45-5:15 WORKSHOPS

DEBATE ON NAPSA STANDARD VII: PRETRIAL DETENTION

Theatre

Sponsored by NAPSA—Continuation of Monday afternoon's discussion

COMMUNITY SERVICE AND RESTITUTION: ISSUES

Empire Room 1

John Bellassai, *Director*
Criminal Justice Division
KOBA Associates
Washington, D.C.

Burt Galaway
School of Social Development
University of Minnesota
Duluth, MN.

Anita West
Denver Research Institute
University of Denver
Denver, CO.

SELLING PRETRIAL: THE PUBLIC, THE MEDIA, THE LEGISLATURE

Empire Room 2

MODERATOR:
Eddie Harrison, *Director*
Justice Resources Inc.
Baltimore, MD.

Robert Guttentag, *Division Manager*
Gillette Safety Razor
Boston, MA.

Ronald Welch, *Director*
Mississippi Prisoners' Defense Committee
Jackson, MS.

William Wachob, *Representative*
Pennsylvania General Assembly
Harrisburg, PA.

WEDNESDAY CONTINUED

CENTRAL INTAKE—MODEL FOR THE EIGHTIES?
Paramount Room 2

Sponsored by NIC Jail Center

David Bennett
Criminal Justice Consultant
Salt Lake City, UT.

Robin Ford
National Institute of Corrections Jail Center
Boulder, CO.

7:00-Midnight CLOSING GENERAL SESSION
Empire Room

CASH BAR
Open throughout evening

BANQUET

PRESIDING:
The Honorable Theodore Newman, *Chief Judge*
D.C. Court of Appeals
Washington, D.C.

KEYNOTE SPEAKER:
Rev. Wendell Phillips, *Delegate*
Maryland General Assembly
Baltimore, MD

DANCE
Steve Halpin Orchestra

Symposium Calendar

SUNDAY

8:00 to 9:30 p.m.	OPENING GENERAL SESSION
9:30 to Midnight	CASH BAR

MONDAY

8:00 to 9:15 a.m.	EXCHANGE/LATE REGISTRATION	
9:15 to 10:00 a.m.	GENERAL SESSION "IT'S DEBATABLE—DANGER"	
10:15 to 11:30 a.m. WORKSHOPS		10:15 a.m. to 1:00 p.m. *PROFESSIONAL DEVELOPMENT SEMINARS: IV-A, III-A, I-A
11:45 a.m. to 1:00 p.m. WORKSHOPS		
1:00 to 2:30 p.m.	LUNCHEON *cosponsored by* NATIONAL ASSOCIATION OF PRETRIAL SERVICES AGENCIES *and* COLORADO ASSOCIATION OF PRETRIAL SERVICES AGENCIES	
2:30 to 3:45 p.m. WORKSHOPS	2:30 to 5:15 p.m. *PEER DISCUSSION GROUP: MEDIATION	2:30 to 5:15 p.m. *PROFESSIONAL DEVELOPMENT SEMINARS: IV-A (cont.), III-B, I-B
4:00 to 5:15 p.m. WORKSHOPS		
5:30 to 6:30 p.m.	PROGRAM PRACTICE FORUMS	
9:00 to 11:00 p.m.	VIDEO SPECIAL *"Presumed Innocent"*	

TUESDAY

8:45 to 9:30 a.m.	GENERAL SESSION "IT'S DEBATABLE—STATEWIDE SYSTEMS"	
9:45 to 11:00 a.m. WORKSHOPS	9:45 a.m. to 12:30 p.m. *PEER DISCUSSION GROUP: RESEARCH	9:45 a.m. to 12:30 p.m. *PROFESSIONAL DEVELOPMENT SEMINARS: I-C, IV-B, V-A
11:15 a.m. to 12:30 p.m. WORKSHOPS		
12:30 to 2:00 p.m.	LUNCH BREAK—ON YOUR OWN	
Alternate Activities		
2:00 to 4:00 p.m.	WORKSHOP—Pretrial Update	
2:00	TOUR—Local Criminal Justice System	
2:00	TOUR—Mountains and Central City	
5:30 to 11:00 p.m.	HERITAGE SQUARE BUFFET/SHOW	
4:00 to 7:00 p.m.	MEETING OF TASC AGENCIES	

WEDNESDAY

8:45 to 9:30 a.m.	GENERAL SESSION "IT'S DEBATABLE—FUTURE OF PRETRIAL SERVICES"	
9:45 to 11:00 a.m. WORKSHOPS	9:45 a.m. to 12:30 p.m. *PEER DISCUSSION GROUP: ADMINISTRATION	9:45 a.m. to 12:30 p.m. *PROFESSIONAL DEVELOPMENT SEMINARS: II, IV-C
11:15 a.m. to 12:30 p.m. WORKSHOPS		
12:30 to 2:00 p.m.	LUNCH BREAK—ON YOUR OWN	
2:00 to 3:30 p.m. WORKSHOPS	2:00 to 5:15 p.m. *PEER DISCUSSION GROUP: DIVERSION	2:00 to 5:15 p.m. *PROFESSIONAL DEVELOPMENT SEMINARS: IV-C (cont.), V-B
3:45 to 5:15 p.m. WORKSHOPS		
7:00 to Midnight	CLOSING GENERAL SESSION CASH BAR/BANQUET/DANCE	

*Pre-registration required

END