EXTEND THE OPERATIONS OF THE PRETRIAL SERVICES AGENCIES

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIME

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

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ON

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EXTEND THE OPERATIONS OF THE PRETRIAL SERVICES AGENCIES

TUESDAY, MARCH 31, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:25 a.m., in room 2257 of the Rayburn, House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes, Hall, and Sawyer.

Staff present: Hayden Gregory, counsel, Virginia E. Sloan, assistant counsel, and Deborah Owen, associate counsel.

Mr. HUGHES. The Subcommittee on Crime of the House Judiciary Committee will come to order.

Today the Subcommittee on Crime is holding the first of two hearings to review the record of the pretrial services agencies [PSA's]. Title II of the Speedy Trial Act of 1974 established a demonstration program that has been operating in 10 U.S. judicial districts for about 6 years. The program was established to assist judicial officers in making the most appropriate decisions concerning the conditions of pretrial release, to assist the courts in supervising and providing necessary services to persons released pending trial and, as a natural byproduct of better release decisions, to reduce rates of failures to appear and pretrial rearrests.

It was the passage of the Bail Reform Act of 1966 that made the PSA program so important. That act, in the words of the House Committee on the Judiciary in reporting the bill, had as its goal "eliminating the evils which are inherent in a system predicated solely on monetary bail."

The Bail Reform Act creates a presumption in favor of release on personal recognizance or an unsecured appearance bond. It provides that when a judicial officer determines that such a release will not insure the appearance of the accused, the judicial officer shall consider, in order of increasing limitation on the defendant's freedom, a number of release conditions set forth in the statute, and shall impose the first condition or conditions that will reasonably assure the appearance of the accused. These conditions include third-party supervision, travel restrictions, secured and unsecured bonds, and part-time custody.

It soon became apparent that, in order to intelligently and effectively carry out the Bail Reform Act, judicial officers needed assistance. They needed information upon which to base a decision on

release conditions, and assistance in monitoring and supervising any nonmonetary release conditions imposed.

The pretrial services agencies were created to perform this function. Reduction of unnecessary and costly pretrial detention is one of the statutory objectives of the PSA's. However, advocacy of liberalized pretrial release practices is not the sole or even the primary function of the PSA's. Their primary function is to assist judicial officers, usually magistrates, in improving the quality of their pretrial release decisions. This of course includes assistance in carrying out the policy of the Bail Reform Act to reduce reliance on monetary bail and to assist in supervision of released persons. However, it also includes providing information and advice which might lead judicial officers to set more demanding conditions of release, if the information gathered by a PSA shows that such conditions are necessary to assure the defendant's appearance for trial.

The subcommittee first considered legislation to establish this program in 1974. At that time it had before it a Senate passed bill which would have established the program as it now exists, with one major difference. This is that the Senate bill called for all 10 PSA's to be administered by a board of trustees outside the administrative hierarchy of the U.S. courts. At that time, the Judicial Conference took the position that pretrial services agencies were not needed, since probation officers already in place could perform any duties required to carry out the Bail Reform Act. This subcommittee developed, and Congress adopted, a compromise approach under which five PSA's would be operated by boards of trustees and five by the probation division. This has given us the opportunity to test and compare the two modalities and, if it is determined that PSA's should continue beyond the demonstration period, to select the better modality or combination of features of the two.

The subcommittee has followed with interest the progress of the program over the years. In August 1977, the subcommittee requested a Government Accounting Office study of the PSA's. That study, released in October 1978, expressed support for the continuation of the programs, and made a number of useful recommendations, which we will be considering today and in our subsequent hearing.

In 1978, the subcommittee held an oversight hearing on the PSA's. As a result of those hearings, it recommended to the full Judiciary Committee an additional authorization for appropriations necessary to complete the demonstration phase of the program.

Title II of the Speedy Trial Act called for a final report on the demonstration PSA's to be submitted to the Congress not later than July 1, 1979, with any recommendations for the future role of the program. This report recommended that statutory authority be created for the expansion of the program to other district courts when the need for such services was shown.

Hearings were held in March 1980 and a bill was reported out of the House Judiciary Committee. The Senate passed a similar bill to expand the PSA's. Unfortunately, the legislation died on the House floor in the crush of postelection business last year.

The Judicial Conference, after a thorough review of the PSA experience, now advocates making PSA's independent agencies within the U.S. courts, and expanding them to all judicial districts.

I have, along with Judiciary Committee Chairman Peter Rodino and my colleague from California, Don Edwards, introduced H.R. 2841, which would expand the PSA program into all Federal judicial districts.

We are here today, therefore, to once again examine the record of the PSA program, to consider the recommendation of the Judicial Conference for its expansion, and to take testimony on H.R. 2841. Our witnesses should be well qualified to address these points, since they include the judge who chairs the probation committee that oversees the PSA's for the Judicial Conference, representatives from the probation and pretrial divisions of the U.S. Courts' Administrative Office, and several people familiar with the operation of pretrial release programs on both the national and local levels. In addition, we will hear from a representative of the Federal Probation Officers' Association, which has a strong interest in any legislation regarding PSA's.

Mr. HUGHES. I would like at this time to welcome to the subcommittee Judge Gerald B. Tjoflat. Judge Tjoflat was appointed judge for the U.S. Fifth Circuit on November 21, 1975, and entered on duty December 12, 1975. Prior to this appointment to the appellate bench, Judge Tjoflat served as U.S. district judge for the middle district of Florida and as a judge of the circuit court for the judicial circuit of Florida. He was appointed Chairman of the Judicial Conference Committee on the Administration of the Probation System in 1978 and to the Advisory Corrections Council in 1976.

Judge Tjoflat is a member of the American Bar Association, the Florida Bar, the Jacksonville Bar Association, the American Law Institute, and the American Judicature Society. He was awarded an honorary degree of doctor of civil laws by Jacksonville University in 1978.

Judge, it is certainly an honor to have you with us today, and on behalf of the Subcommittee on Crime, I extend you a warm welcome.

It's good to see you. We had an excellent conference in Williamsburg several weeks ago, and we're interested in hearing from you and other witnesses today on this most important subject of pretrial services.

Without objection, your statement will be incorporated in the record in toto, and you may proceed any way you see fit.

[Complete statement follows:]

PREPARED STATEMENT OF HON. GERALD B. TJOFLAT, FIFTH CIRCUIT COURT OF APPEALS, CHAIRMAN, JUDICIAL CONFERENCE COMMITTEE ON THE ADMINISTRATION OF THE PROBATION SYSTEM

Mr. Chairman, Committee Members, I am Gerald B. Tjoflat and I have been a United States Circuit Judge for the Fifth Circuit since December, 1975. I served as a United States District Judge for the Middle District of Florida from October, 1970 until my appointment to the appellate bench. From June, 1968 until October, 1970, I was a judge of the Circuit Court, Fourth Judicial Circuit of Florida. Since January of 1977 I have been a member of the Advisory Corrections Council, authorized by 18 U.S.C. §5002.

Since January of 1973 I have been a member of the Committee on the Administration of the Probation System of the Judicial Conference. I was appointed chairman of that Committee in May of 1978. The Probation Committee was established as a standing committee of the Conference in 1963. It has oversight responsibility for the organization and work of the Federal Probation System and for the formulation and conduct of sentencing institutes for judges and others as authorized by 28 U.S.C. §334.

As Chairman of the Probation Committee of the Judicial Conference of the United States, I appeared before this Committee last year (February 13, 1980) to discuss the pretrial services agencies created by Title II of the Speedy Trial Act of 1974. At the conclusion of that discussion I recommended the continuation and expansion of pretrial services. Shortly after those hearings (March, 1980) the Judicial Conference of the United States approved the following resolution:

> "The Committee on the Administration of the Probation System of the Judicial Conference of the United States has reviewed the report of the Director of the Administrative Office of the United States Courts on the experiment with

Pretrial Services Agencies created by Title II of the Speedy Trial Act of 1974.

That report states that judges and magistrates in the demonstration districts have expressed substantial satisfaction with and strong support for the continuation of services rendered by those agencies. These views appear to be grounded in the utility of information provided by pretrial service officers to the judicial officers responsible for setting bail. Judicial officers in the 10 demonstration districts stated that they were able to make better informed decisions as a result of the regular, prompt, and impartial information provided by the agencies. This is consistent with the findings of the 1978 Comptroller General's Report to the Congress regarding the Federal bail process, in which the General Accounting Office cited the need for better defendant related information and supported the continuation and expansion of this particular Pretrial Services Agency function.

The Conference places great reliance on the opinions of the judicial officers. The Conference also places significance in the Director's findings that the operations of the Federal agencies compared favorably with state programs and that they have provided additional services to the courts which have improved the administration of criminal justice."

The Conference therefore recommends the continued funding and expansion of the Pretrial Services operation.

Subsequently (April 17, 1980), H.R. 7084, the "Pretrial Services Act of 1980", was introduced. Unfortunately, the legislation was not enacted by the 96th Congress.

The Federal pretrial services agencies were created as part of an experiment to test the theory that judicial officers could make better bail decisions if they received the assistance of trained personnel who could provide the court with adequate defendant-related information and professional supervision of released defendants. Based upon the findings of the Report of the Director of the Administrative Office, and significant recommendations of the judicial officers who have been associated with the

agencies, the Committee on the Administration of the Probation System and the Judicial Conference of the United States are satisfied that the pretrial services agencies have contributed substantially to the improvement of Federal pretrial release and, therefore, to the administration of criminal justice.

At its March 1981 meeting the Judicial Conference, on the recommendation of my Committee, reaffirmed the earlier resolution calling for the continuation and expansion of pretrial services on a national basis. As Chairman of the Probation Committee, and as a representative of the Judicial Conference of the United States, I am here today to support the need for a legislative proposal that would achieve that goal and provide flexibility in administrative structure at the district court level.

By way of historical development, the Conference at the March 1975 session instructed the Probation Committee to exercise oversight responsibility for the implementation of Title II of the Speedy Trial Act of 1974. That Title provided that the Director of the Administrative Office establish, on a demonstration basis, pretrial services agencies in 10 judicial districts -- five to be administered by the Division of Probation and five to be administered by Boards of Trustees appointed by the chief judge of each of the five districts.

The five districts designated by the Chief Justice, in consultation with the Attorney General, to be administered by the Division of Probation were the Central District of California, the Northern District of Georgia, the Northern District of Illinois, the Southern District of New York, and the Northern District of Texas. The five pretrial services agencies to be

administered by Boards of Trustees were the District of Maryland, the Eastern District of Michigan, the Western District of Missouri, the Eastern District of New York, and the Eastern District of Pennsylvania.

These agencies were established to maintain effective supervision and control over, and provide supportive services to, defendants released pending trial. Their primary functions are:

(1) to collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of persons charged with an offense and recommend appropriate release conditions;

(2) to review and modify the reports and recommendations;

(3) to supervise and provide supportive services to persons released to their custody; and

(4) to inform the court of violations of conditions of release.

Title II required that the Director of the Administrative Office make a comprehensive report to the Congress on or before July 1, 1979, regarding the administration and operation of the pretrial services agencies. At its March 1979 meeting, the Conference, on recommendation of the Probation Committee, authorized the Committee to (1) exercise continued oversight of the completion of the Director's report, (2) approve the final recommendations to be included in the report, and (3) authorize on behalf of the Conference the release of the Director's report to the Congress.

As you are aware, Title II of the Speedy Trial Act of 1974 was enacted to repair a deficiency in the operation of the Federal bail process that

was placing judicial officers in the position of guessing at appropriate bail conditions for criminal defendants. This problem was delineated in the Senate Report on the Speedy Trial Act as follows:

> Defendants in the Federal system are released prior to trial pursuant to the Bail Reform Act of 1966. Although there are no statistics on the operation of the Bail Reform Act outside the District of Columbia, it is common knowledge that many Federal judges are reluctant to release defendants pursuant to the act and all too often when they do, defendants either commit subsequent crimes or become fugitives. This situation exists because district courts do not have personnel to conduct interviews of arrested defendants so that judges can make informed decisions as to whether to release defendants. Furthermore, outside the District of Columbia, there is no agency charged with supervising bail conditions for defendants released prior to trial. Therefore, even if a defendant is released on his own recognizance prior to trial on a condition set by the judge, for example, that the defendant refrain from associating with certain persons or that he not use narcotic drugs, there is no agency charged with assuring compliance with the judge's order.
>
> Judges without sufficient information on a defendant's eligibility for pretrial release either detain the defendant until trial or guess at the defendant's likelihood to remain in the jurisdiction. When the court takes the former course, it, in effect, ignores both Federal law and constitutional requirements that a defendant be released prior to trial. Furthermore, pretrial detention is an enormous fiscal burden upon the judicial system. It costs approximately $7 to $10 a day for the Government to detain a defendant. If a defendant is detained for six months prior to trial, which is not unusual in the Federal system, the total cost to the Government is between $1,250 and $1,800 for just one defendant.
>
> If the court takes the latter course and guesses at the defendant's likelihood of flight, it risks releasing a defendant who will flee the jurisdiction. (See Senate Report No. 93-1021, 93rd Cong., 2nd Sess., at 1.)

The daily cost of detention per defendant referred to above now exceeds $22 in the ten pretrial services agency districts.

The House Committee on the Judiciary, reporting on the Speedy Trial Act, stated that the above problems could best be resolved by enacting "provisions that guarantee a more careful selection of pretrial release options by the courts and closer supervision of releasees by trained personnel." (See House Report No. 93-1508, 93rd Cong., 2nd Sess., at 27.)

The statements quoted above evidence Congress' recognition that the Bail Reform Act had directed judges and magistrates to make informed decisions regarding the pretrial release of criminal defendants without providing the resources for them to carry out that mandate.

Recognition of the problems resulting from the lack of resources for the administration of the bail process has not been confined to the Congress. The National District Attorneys' Association, the American Correctional Association, the National Association of Counties, and the National Advisory Commission on Criminal Justice Standards and Goals have all recommended that mechanisms for providing pretrial services be established in all jurisdictions.

Standard 10-5.3 of the American Bar Association Standards Relating to the Administration of Criminal Justice states that "...Every jurisdiction should provide a pretrial services agency or similar facility to monitor and assist defendants released prior to trial." The standard further provides that those agencies should perform certain functions which are substantially the same as those currently being carried out by the Federal pretrial services agencies.

The commentary to that standard gives the following reasons for creation of such agencies:

No matter how detailed and imaginative the conditions of release imposed pursuant to standard 1-5.2 may be, they are likely to be ineffective if the resources to enforce them are not provided. Unfortunately, however, many jurisdictions provide no meaningful supervision for defendants who are conditionally released prior to trial. It is hardly surprising that, without such supervision, the conditions are openly flouted and are ineffective in preventing either flight or recidivism. When these jurisdictions then suffer from a high rate of crime by defendants on pretrial release, political pressure builds for use of monetary conditions as a sub rosa preventive detention device or for denial of release altogether. In fact, however, pretrial detention is the most costly, least efficient means of dealing with the pretrial crime problem. If a small percentage of the funds necessary to operate jails in a constitutionally permissible fashion were instead allocated for adequate supervision of conditionally released defendants, there is every reason to believe that the pretrial crime and abscondence rates could be reduced to acceptable levels.

This standard is based on the hypothesis that it is unconscionable to resort to a more costly, less equitable system of pretrial incarceration without first exhausting the possibilities of adequate supervision for defendants on conditional release. Conversely, it is equally indefensible for a jurisdiction to release large numbers of criminal defendants pending trial without also taking reasonable steps to protect the community from released defendants who may pose a danger. The standard therefore requires the establishment in every jurisdiction of a pretrial services agency or similar facility with overall responsibility for providing supervision for released defendants.

Further support for the proposition that pretrial services agencies can improve the bail process is found in the 1978 General Accounting Office Report on the Federal bail system, which concludes:

> Judicial officers do not have the necessary information and guidance to evaluate the significance of each of the factors listed in the Bail Reform Act as they relate to the danger of nonappearance posed by the defendant. Until a way of providing complete and reliable information on defendants is available in all districts,

> the soundness of bail decisions will suffer. Also, until guidance and information on the results of bail decisions is available to judicial officers to assist them in evaluating the various factors in the act, some defendants will be detained unnecessarily while others who should be detained will be released.

The General Accounting Office Report goes on to say that "because pretrial services agencies are now providing this information, we support the continuation and expansion to other districts of this particular pretrial services agency function."

Mr. Chairman, this concludes my remarks. I appreciate your courtesy and I shall be pleased to answer any questions you may have.

TESTIMONY OF HON. GERALD B. TJOFLAT, JUDGE, FIFTH U.S. CIRCUIT COURT OF APPEALS OF JACKSONVILLE, FLA., ACCOMPANIED BY WILLIAM A. COHAN, JR., CHIEF, PROBATION DIVISION, GUY WILLETTS, CHIEF, PRETRIAL SERVICES BRANCH, GLENN VAUGHAN, PRETRIAL SERVICES SPECIALIST, AND DANIEL RYAN, PRETRIAL SERVICES SPECIALIST, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Judge TJOFLAT. Thank you very much, Mr. Chairman, for a very warm welcome. With me at the witness table are William Cohan, Chief of the Division of the Probation Service of the Administrative Office of the U.S. Courts; Guy Willetts, Chief of the Pretrial Services Branch of the Probation Division; Glenn Vaughan and Dan Ryan, who are assistants to Mr. Willetts. Mr. Willetts is going to testify with visual aids when I conclude my remarks.

Mr. HUGHES. Glad to have your colleagues with us this morning.

Judge TJOFLAT. Thank you. I will add some comments to the statement that has already been incorporated into the record.

I did appear last February before this committee to discuss pretrial services and the continuation thereof, and then, as you have recited for the record, in the following month, March 1980, the Judicial Conference recommended the continued funding and expansion of the pretrial services operations throughout the system. The Conference also this March, in light of the fact that the legislation was not passed, as you have detailed, in the last session of the Congress, continued to endorse its prior position, and in effect, readopted the March 1980 resolution.

Let me sum up the position of the judiciary by saying this: we think the administration of justice is far better served when a magistrate or judge, setting conditions of bail under the Bail Reform Act of 1966, has sufficient accurate and objective information regarding the defendant, his background, the offense, and all other evidence that relates to the question of whether he will appear for trial. The system is far better served when the judge can make an informed decision and pretrial services has made a major step in that direction.

The system is better served and the judge's decision regarding bail can be far more effectively enforced when the defendant awaiting trial is capable of being supervised by a professional officer. Not only does the appearance of justice benefit from this supervision, but judges are far more able to identify those individuals who ought to be released, thus reducing unnecessary detention and trimming the cost that attends that. Thus, the judge can identify those offenders awaiting trial who ought to have more onerous conditions placed on their bail release and ought to have heavier supervision.

So the bottom line when that is done, is that taxpayer is saved, the system is saved, and we think that in gross numbers, crime on the street committed while defendants are awaiting trial should be reduced and also defendants failures to appear in court.

And it is for these reasons that the Judicial Conference, as well as GAO in its report to the Congress in 1978, as you have indicated, recommended that this pretrial services function be performed in the Federal system.

If you have any questions, I'd be happy to answer them or wait until Mr. Willetts has made his remarks. However you want to handle it.

Mr. HUGHES. Are you under any time constraints, Judge?

Judge TJOFLAT. No.

Mr. HUGHES. I thought then that perhaps what we would do is move on and hear from Mr. Willetts and perhaps some of the other members might arrive, and we can then question both you and Mr. Willetts, and whoever else is going to be testifying for the panel.

Judge TJOFLAT. As long as I'm out of here by 1 o'clock.

Mr. HUGHES. We all have to be out of here by 1 o'clock, but if you have no immediate problems, why don't we just take your direct testimony and that of Mr. Willetts. We're happy to have you aboard today as a witness representing the Office of the U.S. Courts. You are no stranger, as you have testified before this particular subcommittee and I trust, others on many occasions.

Mr. Willetts became Chief of the Pretrial Services Branch in 1975 and prior to that served as a regional probation administrator.

Mr. Willetts, it is a pleasure to see you again and to receive your testimony. As I indicated to Judge Tjoflat, your statement will be received without objection, although there's nobody here to object, so we will take it in toto, and we'll ask that question when we do have somebody here to make sure we're entirely legal in receiving your testimony.

You may proceed as you see fit.

Mr. WILLETTS. Thank you, Congressman Hughes. I would like to introduce Mr. Vaughan and Mr. Ryan, that Judge Tjoflat made reference to. Mr. Vaughan is an attorney. He comes from Federal probation out in Kansas City, Mo., and he's been with the adminstrative office about 6 years now. He's been working with me about 4 years. Mr. Vaughan is over here to my left, and he assisted me in gathering data and preparing the presentation that we will make in a few moments.

Mr. Ryan is from Connecticut. He ran a local pretrial services agency. He is also an attorney. He came to pretrial services in the Federal system to begin the pretrial services agency in the eastern district of New York and has been with us in the administrative office since 1978, I think around late fall.

I will submit my prepared statement for the record and offer some comments, basically from it.

We have been operational now 58 months. We have interviewed approximatly 42,000 Federal offenders. Out of that number we have captured extensive data on over 37,000 Federal offenders, which gives us a substantial data base for preparing the statistical report that was provided by the Director in June 1979 with recommendations, and it gives us further information to provide additional information that has become available to us over the last 2 years since that report.

In looking at the data, I want to explain to you that we elected to use a time series evaluation design in the early stages of the development of the program, since the Congress requested that we evaluate the program based on its ability to reduce unnecessary detention, its ability to reduce crime on bail, its ability to reduce fail-

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ure to appear, its ability to improve chapter 207, the release chapter. We set about to capture extensive data that we hoped and we believe has helped us speak to these primary questions.

The time series design was debated before the Probation Committee about 5 years ago and as opposed to other types of research designs, and the committee supported us and the administrative office supported us in presenting the data in this fashion. We believe that the activity of the pretrial services personnel in 10 districts has had an impact on increasing the release rate of accused persons, while at the same time in many instances reducing crime on bail and failure to appear, and by so doing improving the operation of the release chapter.

Since we are convinced that it has had a positive impact, we would endorse the recommendation of the directors report, the recommendation of the Judicial Conference, and the recommendation of Judge Tjoflat, that these procedures be extended to all judicial districts.

And with that, I'm going to ask Mr. Vaughan, if he will, to show us the statistical information, using the charts and graphs to our left.

We will be happy to answer any questions, as he goes through them.

Mr. VAUGHAN. These charts are of time series design, and we'll go through them rather swiftly, so stop me if anybody has any questions.

It is a time series design and carries a longitudinal study out in time with 2 dead years of baseline study for comparison. The act which provided pretrial services to the 10 demonstration districts and successive 4.8 years that we have been in operation, with percentages as the modulator and time as a longitudinal series.

One of the first directives of the statute was to contact each defendant for a prebail report to be provided to the court. Once a year Mr. Ryan and I go out to the districts, survey the amount of defendants in the district on a quarterly basis and then ascertain through activation sheets exactly how many people that each type of agency is getting to.

In the boards, the five districts operated by the board, of all the defendants coming into the court, those pretrial services officers contacted in excess of 91 percent of the defendants. In the probation districts, the contact rate is 78.1 percent. So the data that we will be presenting right after this, we know is accurate to 91.8 percent of the boards, 78.1 percent of the probation.

The first directive—contact defendants, verify information and report that prior to the bail hearing and to the judicial officer charged with setting bail. These time period representations and these charts we are using today can and will be reproduced for the record in more usable fashion.

Mr. HUGHES. They will be received in full as part of the record, so that our colleagues can see what information is contained in the graphs.

Mr. VAUGHAN. Very good. You see, additionally, probation started interviewing people, of the people that they contacted, at about a rate of 70 percent prebail—prior to the initial bail hearing—and the boards well below that, about 64 percent. These time series

charts track the difference to where the boards are presently achieving almost 90 percent prebail contact rate, while probation is still at 74 percent.

Mr. RYAN. Excuse me, Glen, you might explain the dotted line.

Mr. VAUGHAN. The dotted line in the last year reported represents a trend, not an ironclad result. So we show it as a dotted line. Only one-third to one-half the data are completed on those closed cases right now. But these time periods—3, 4, 5, and 6—1975 through 1979, and into 1980, are good years. There will be a few more data elements as appeals are decided and cases are closed out. But for all intents and purposes, these are fully reported years up to the dotted line.

Mr. HUGHES. Mr. Vaughan, perhaps you can explain why we start out so low in the chart—at about 62 or 63 percent for the boards, as compared with roughly 70 percent for the probation officers.

Mr. VAUGHAN. My experience is that the probation system is a part of the family court, they are used to U.S. attorneys, they know the U.S. marshals and the court structure. Now once this pretrial program came about, they were the first to get organized. They were very swift. They contacted defendants at that 70 percent rate. I can't explain why they didn't get more. The boards were new organizations. They were not familiar with the court system or the court family and had to get acclimated to the system over the first year. Once they did, they contacted defendants at a higher rate than did probation.

Mr. HUGHES. Thank you.

Mr. VAUGHAN. The second portion of that report requirement is to provide a bail recommendation. This was a statutory dictate to the demonstrations districts—provide a recommendation to the judicial officer. These recommendations were provided at the rates shown on the chart. Once again, the dotted line represents the incomplete last year. But they do show trends. Again, the recommendations provided to the judicial officer in charge of setting bail were lower than probation, in the boards, to begin with. However, presently the boards perform that operation at a rate of approximately 90 percent, with probation performing that at less than 70 percent. One of the direct results of the prebail interviews and reports is the initial rate of release, facilitated by the information provided the judicial officer at that time.

Now in the boards we know that in 90 percent of the cases, this has been the release rate at the first bail hearing. There is no detention charge against the Government. This line represents the release rate in probation. The present figures show that 77.5 percent of the defendants coming into the Federal courts in board operated districts are released at the first bail hearing, and about 74.8 percent releases occur in the probation districts.

Mr. HUGHES. Let me just stop you right there. I noticed with both the boards and with the probation office in the early years—the test years T-1 and T-2—that there is a significant decline. Does that indicate that perhaps the records were not complete?

Mr. VAUGHAN. OK. In the first 2 years we had records just on convicted defendants, because the records simply weren't available for nonconvicted purposes.

Mr. HUGHES. So you had no data whatsoever on those that were not convicted?

Mr. VAUGHAN. That's right. We had absolutely none. It's just we couldn't get it. We did have court records available to us for convicted defendants, which is why we have to use convicted cases in the comparison years. The one important thing about the time series that you must look for is definite alteration in trends. When a line changes direction, you know something has happened to cause that response. And in T-3, the pretrial services agencies commence operation, and there's an immediate reversal in the declining release rate in board districts. The release rate continues to decline in the first year of operation in probation districts, but it also eventually reverses.

Another element that we're directed to look at was the failure to appear. Since the inception of the pretrial services agency, both types of agencies have forced at least a 50-percent-or-better decrease in the number and percent of defendants failing to appear for court. Now, these aren't whimsical numbers. We have defined failure to appear to mean a warrant was issued, and some official had to pick these defendants up, or somebody had to go out and make sure they responded to the warrant or arrest them for failure to appear.

Mr. HUGHES. For the record, I note that T-1 and T-2, the test years, show a marked decline in both the boards and the probation offices, and then there's a marked increase between T-2 and T-3 in that timeframe, which is just when the program is getting underway. That would appear to be misleading.

Mr. VAUGHAN. It is misleading.

Mr. HUGHES. Is it possible that if, in fact, we had accurate data, there might have been a steady decline, instead of a marked decrease and increase? Is that a fair assumption?

Mr. VAUGHAN. That's a fair assumption. That's what I believe has happened. Before pretrial services existed, nobody kept records on failures to appear. Only when a defendant was prosecuted for failure to appear, could we find the records. And it took a good year to dig all those records out to provide a base line—T-1 and T-2—in order to look at what happened before the pretrial services. But there just simply was no one keeping track of the failures to appear.

Mr. HUGHES. Otherwise it would appear in both the probation experience as well as the board of trustees experience that there was a steady decline in years T-3, from the beginning of the program, to T-7.

Mr. VAUGHAN. Yes, sir. I would estimate that if we could get accurate data, it would be up here somewhere [indicating]. The board and probation, and across and decline.

Mr. HUGHES. How is that translated into numbers—into percentages?

Mr. VAUGHAN. Yes, I can equate it. In the overall FTA rate, which includes fugitives as well as closed and convicted cases, was 6.9 percent in the third time period. Fifty-three defendants are still fugitives. The fugitives included 321 people, total make-up a 6.9-percent failure-to-appear rate. At present, at the end of these dotted lines, there are 46 people who have failed to appear thus far

in the boards, for a 1.9-percent failure-to-appear rate, and 92 people—twice the number—in the probation districts who have failed to appear and are not accounted for, for 2.5 percent. Yet, in all, that's a 50-percent reduction in all failures to appear, and this survey was completed last week. It covers every outstanding fugitive in those 10 demonstration districts. So they are accurate counts.

Another important element emphasized by the statute was the crime on bail. Again, the charts show that the trends are reversed. Crime on bail is represented in this chart as a steadily decreasing rate in probation. I would estimate that by the time all the records come in on both boards and probation we will be at or below 5 percent crime on bail in this last time period.

Mr. HUGHES. Let me just question you on that. I see, of course, that there's what looks like a significant increase in the frame period T-1 and T-2, in the probation offices.

Mr. VAUGHAN. In these years, we could ascertain the rate of cirme on bail in the dead files of probation. The tendency through these first 2 years was an acceleration in crime on bail. When the pretrial services agencies began operation, that was reversed.

In the boards, it looks like crime on bail was decreasing in those districts when it came about, and it has steadily declined.

Mr. HUGHES. How do you account for the substantial increase in the timeframe T-4 to T-5 in the boards?

Mr. VAUGHAN. I would say the true level of crime on bail is right about here [indicating]. They just did a superb job in picking people at that time. That's all I can account for it, because I have looked at the types of crime being committed across the time periods and they are constant percentages, board to probation. Also, the types of prior record of people coming into the system are equatable, so it's hard to put your finger on why that happened. I could not put a finger on why.

Mr. HUGHES. But were the crimes comparable in those areas you looked at?

Mr. VAUGHAN. Yes. The types of criminals coming into the system were equatable—board and probation.

Mr. HUGHES. Thank you.

Mr. Vaughan, does that complete your presentation?

Mr. VAUGHAN. Yes, sir.

Mr. HUGHES. Mr. Willetts?

Mr. WILLETTS. Congressman, I have a flow chart that I have prepared to illustrate the cost, what happens when certain decisions are made, as a defendant goes through the criminal justice process in the Federal system. I'm sure the chart could be easier to read. Let us start with the charge or arrest. The person is brought in for the pretrial hearing—a bail release hearing—he can do one of two things. He can either be detained, or he can be released on bail. We use the 100 days under the terms of the Speedy Trial Act. If a person is going to be detained, on the average they shouldn't stay over 100 days. Many do, many stay in much less time. The current cost of jail time across the country is $20 per day for Federal offenders. This figure comes from the Bureau of Prisons, that pays the bills, as recently as 3 weeks ago. So if a person stays in detention 100 days, it costs $2,000. If he's released for 100 days, this

figure is derived by taking the number of defendants available and dividing it into the total expenditure of pretrial services for a given period of time. It costs us about $400 per defendant to do all the things we do in pretrial services, give or take more or less than 100 days, but assuming the case is going to get through the system or the pretrial part of it in that 100 days.

If that person is in jail at the time of sentencing—and let's say it's a close case—a close call for the judge—he could go in or he could go out, but because the person may be detained, he's unemployed, he has a prior record, he hasn't been able to demonstrate any degree of cooperation, because he has been locked up, and let's say the judge opts for a year of prison or a 3-year sentence, 1 year in and 2 years parole. Normally, they must serve a third of the time before release in many sentences.

Currently, the rate for minimum detention in the Federal system is $38. The maximum detention rate per day per defendant is $48. If we use an average which gives us a jail cost—a prison cost—of $15,695 for 1 year in prison.

Mr. HUGHES. What was your average?

Mr. WILLETTS. $43 times 365 days.

If the person is imprisoned for 2 years, it's, of course, twice that. Federal parolees in the Federal system are supervised by probation officers. We estimate about $1,200 per year to supervise a person on probation or parole or pretrial diversion release, which I will get to in a minute.

What we have here, if the person is detained from the beginning, $2,000 pretrial detention costs, 1 year of prison $15,695 and $1,200 a year for the parole supervision, it comes to a total of $20,095.

Now all we're talking about is jail time. We're not talking about the arresting agents cost, the judge's cost, the judicial system's cost, the marshals, the prosecutor, defense counsel, none of that. This is just jail time.

Let's take that same case and for some reason, preferably the fact that the judicial officer had all the information available that he needed to make an informed decision, and maybe this was a close case at the bail hearing. Do I take a chance on releasing this defendant, or do I lock him up? Let's say he opts to release him for the 90 to 100 days, and the accused comes back. He's supervised under pretrial under whatever conditions that the judicial officer elects. He comes back for sentencing and because he was on release, he was continuing to work, he hadn't gotten into any further trouble, and had cooperated. Here again, a close case. The judge thinks about prison for a year, but elects to go probation, because he's got a short track record to base a decision on. He elects to opt for probation instead of prison, straight probation, knowing that if the defendant violates, we're going to get him back and recommend violation.

So we have $1,200 for probation for a 3-year period and he exits the system. The complete period—the probation and pretrial period costs the taxpayer $4,000.

Let's take an even less serious case that normally would go to probation, maybe. But let's say that we are actively involved in pretrial diversion. Maybe it's a first offender, maybe it's a youthful offender, maybe it's a bank teller who, for some reason, needed to

make a car payment, and she lifted a few hundred dollars out of the till. Well, the first thing is, she's never going to get a job in a bank or financial institution. I use that as an illustration, because I supervised at one time, seven females who committed that as a type of crime. They never had a traffic ticket in their life, but they were dealing with money and were in a bind financially. We diverted the cases, rather than send them to prison or put them on probation. What happens is, you've got $400 pretrial period, and normally a diversion supervision period is about 12 months, 12 to 18 months, but if he's diverted for 12 months and exits the system, you have spent $1,600 on the case.

Now, if these people can be released and not commit any more crimes and show up for the court process, to me it makes a lot more sense to spend—let's say society is getting what it's going to get anyway, it's not going to run any greater risk by having the person on the street for a time, the court process is not going to run any great risk of being interrupted because the person is going to show up for trail.

It makes sense to me to spend this amount of money, $1,600, or even this amount of money, $4,000, as opposed to the $20,000, which doesn't speak to the issue of continued employment on release, paying taxes, earning a livelihood, taking care of the family, as opposed to not paying anything into the Federal till, as opposed to being on public assistance and getting food stamps, and whatever.

To me, the earlier you make the right decision, two things are going to happen. You're going to detect more of those people who have to be locked up—and I wouldn't argue with anyone that there aren't some that have to be locked up pretrial. There are some that have to be locked up throughout their period of paying their dues to society. The secret to it is deciding which ones, and the quicker you get information, the quicker you make an informed and appropriate decision, the less it's going to cost you, the taxpayer, in the long run and the better, more positive that person's attitude is going to be toward society in general, and particularly the system which controls his activity.

There are a couple of pretrial officers here who, I'm sure, think or at any rate would verify this statement. We have had people coming into the system, say to us, time and time again:

> You are the only person who showed any interest in us at the early stages of this process. You're the only people that explained to us what we were supposed to do next, so we could stay out of trouble. You're the only person who showed an interest in us, knowing for sure where we were supposed to be, and when we were supposed to be there.

I have some of these letters that officers have received from time to time, because they have sent them in. Now that doesn't happen in every case, but it does put a better—it puts the judicial process or the criminal justice process in a better light with those people who are subjected to it. And in my judgment, we probably can reduce slightly this 4 to 6 percent.

Now we didn't break the statistics down between misdemeanors and felonies, but those violations you saw are basically 3½ to 4 percent new felonies on release, and roughly 3 percent misdemeanors. Most people, at least today, are discussing crime on bail, and you're

talking about felonies—serious offenses. What we're talking about here is a violation by 4 out of 100 people who get released pretrial. Maybe we can reduce that if we do a better job. I would hope that we could.

But what we're going to revert back to, if we discontinue this procedure, is magistrates, as they are doing in most districts across the country today, and in many States and local courts, making bail decisions or release decisions "off the seat of their pants," which has been the tradition in the country. That's a term that one of the magistrates used. I didn't make it up. It was in, I guess, Pittsburgh. The magistrate said, "We don't have a pretrial agency." He said, "You know, we have never had any basis for making those decisions. We just make them off the seat of our pants and hope they work out."

That's all I have to say about it, unless you have a question.

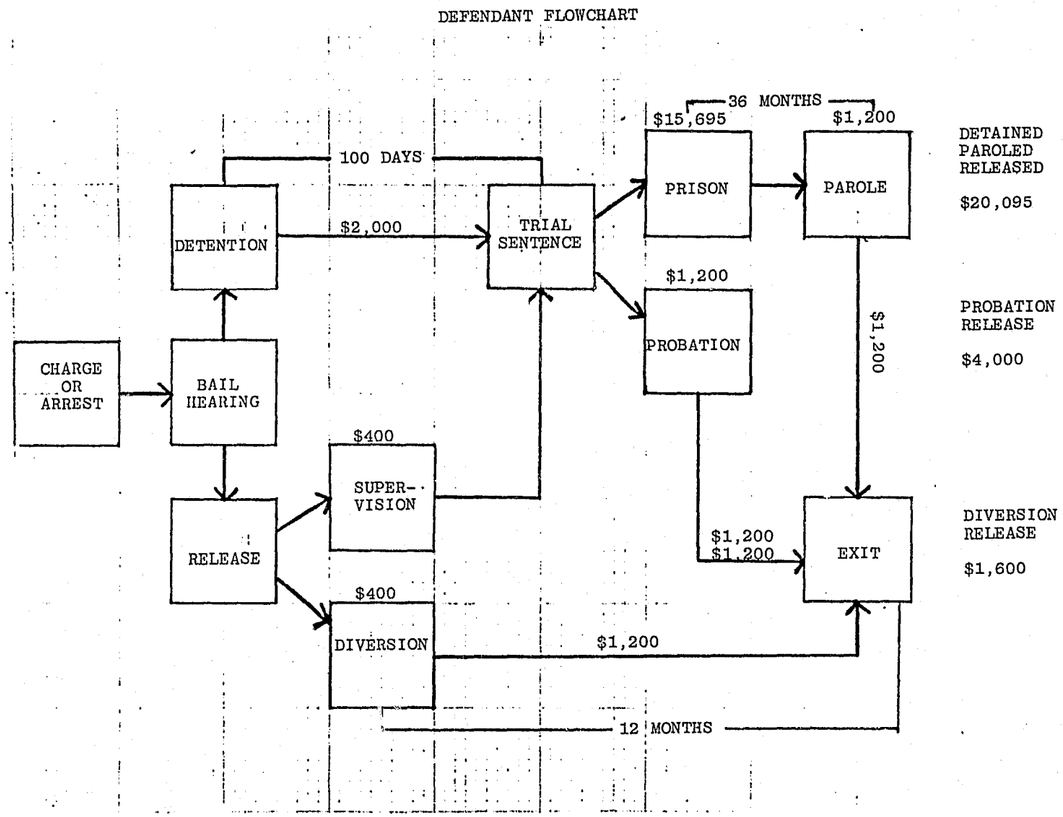
Mr. HUGHES. Well, first let me just note for the record that our colleague, Sam Hall of Texas, has joined us. So the subcommittee has a quorum and we're happy that he could join us. He joined us in the briefing, as you know, a week or so ago. I'm happy he's with us today.

Without objection, I'm going to receive for the record the statements that have been submitted, the graphs that were previously submitted, and the flow chart from which you just testified.

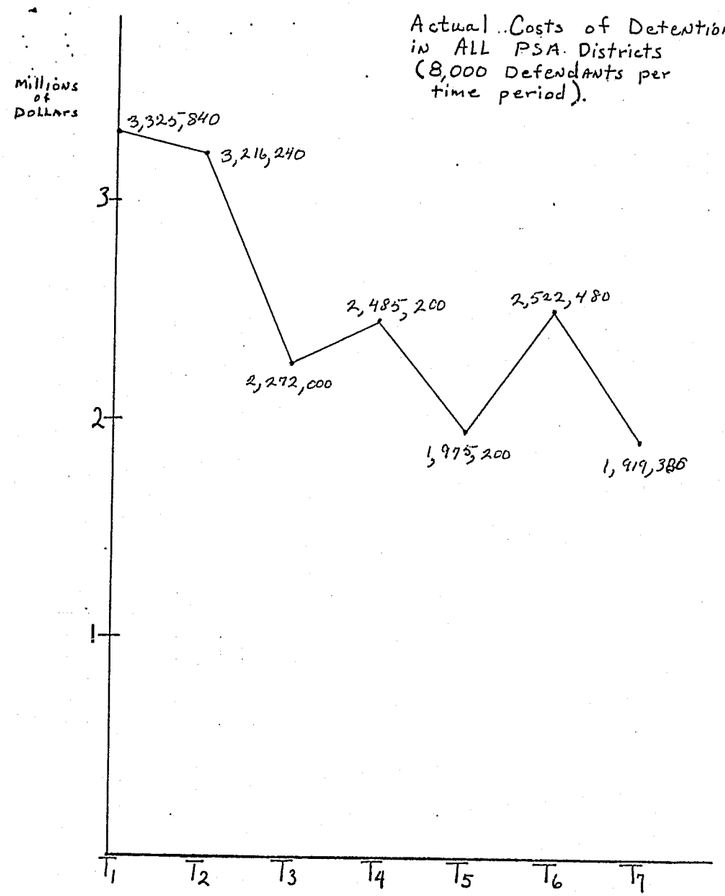
Mr. WILLETTS. I do have 50 copies of this.

Mr. HUGHES. Without objection, they will be received into the record.

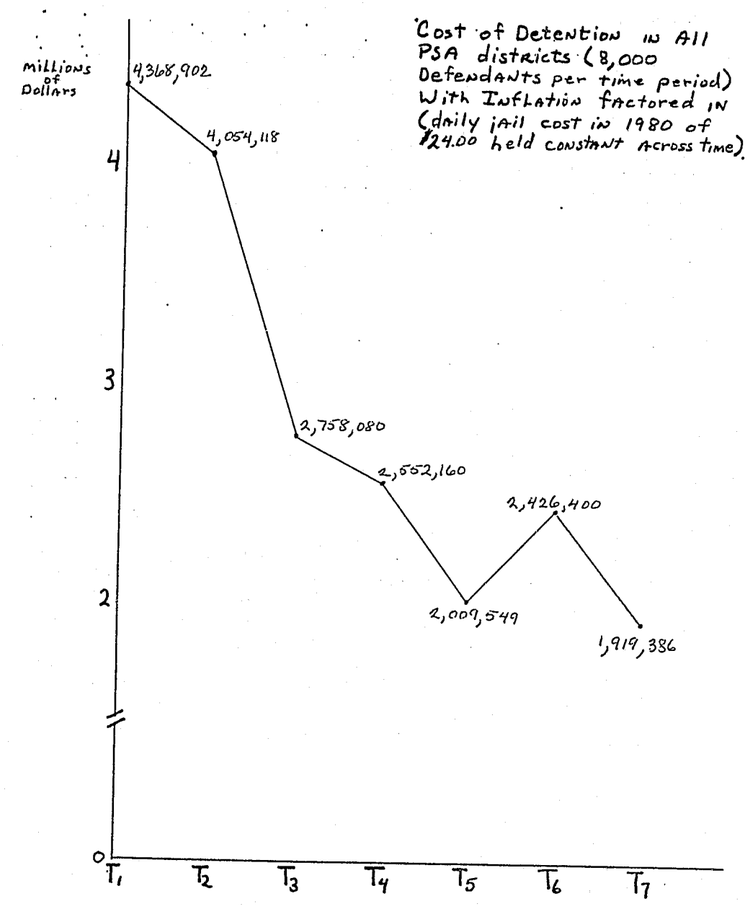
DEFENDANT FLOWCHART



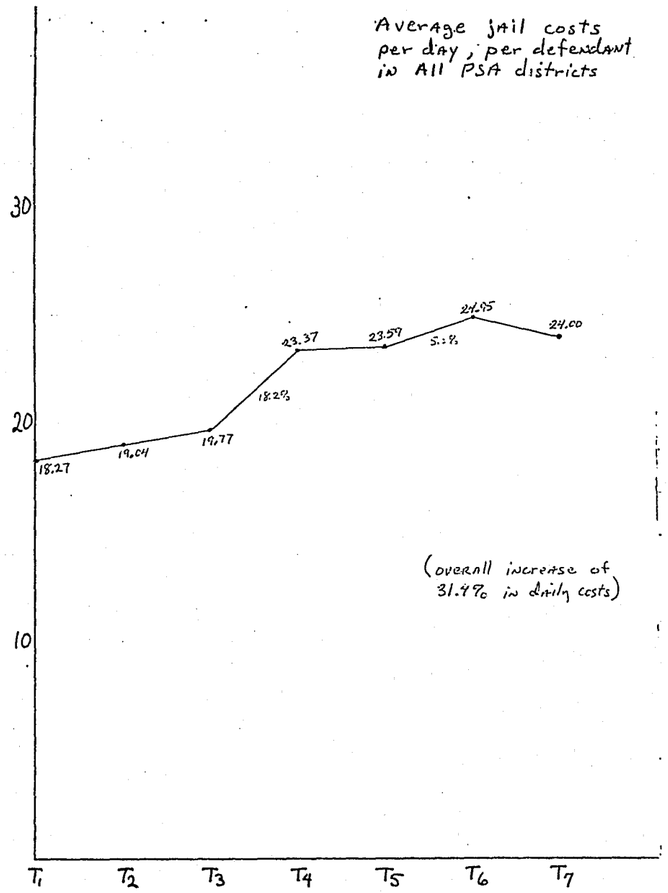
Actual Costs of Detention in ALL PSA Districts (8,000 Defendants per time period).



Cost of Detention in All PSA districts (8,000 Defendants per time period) With Inflation factored in (daily jail cost in 1980 of $24.00 held constant across time).

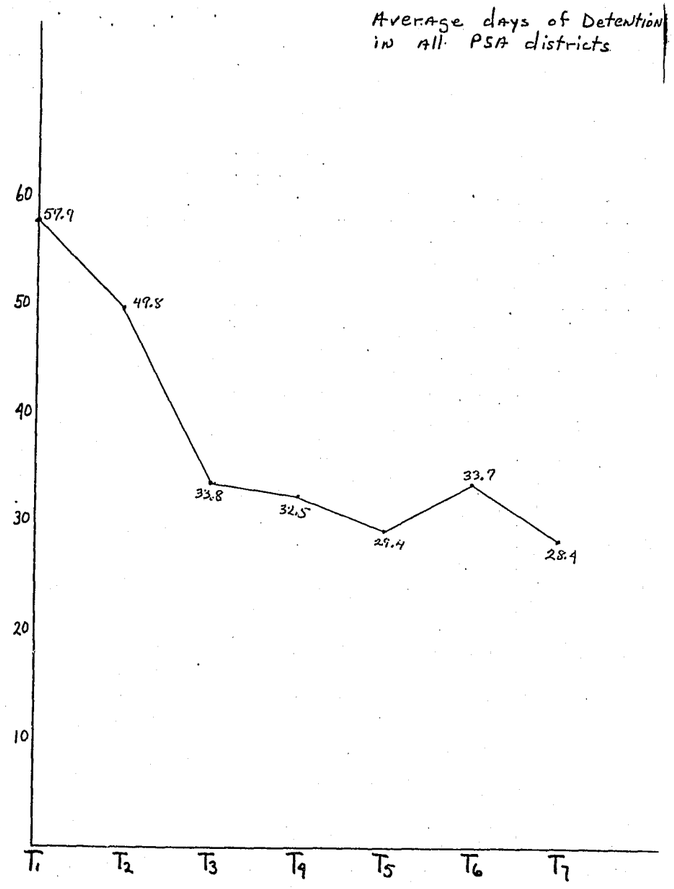


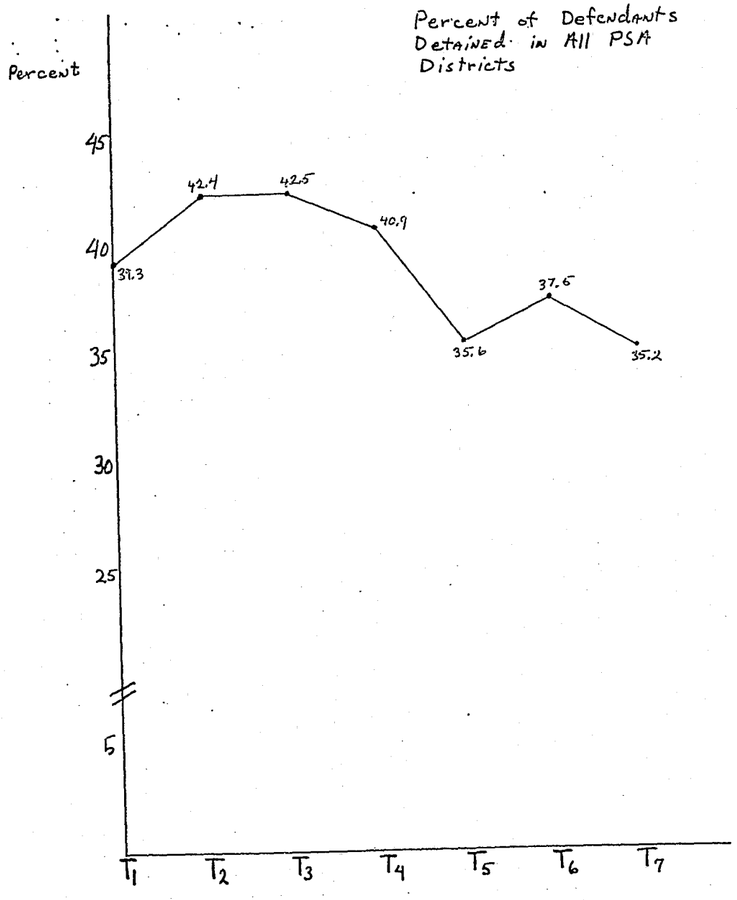
Average jail costs per day, per defendant in All PSA districts

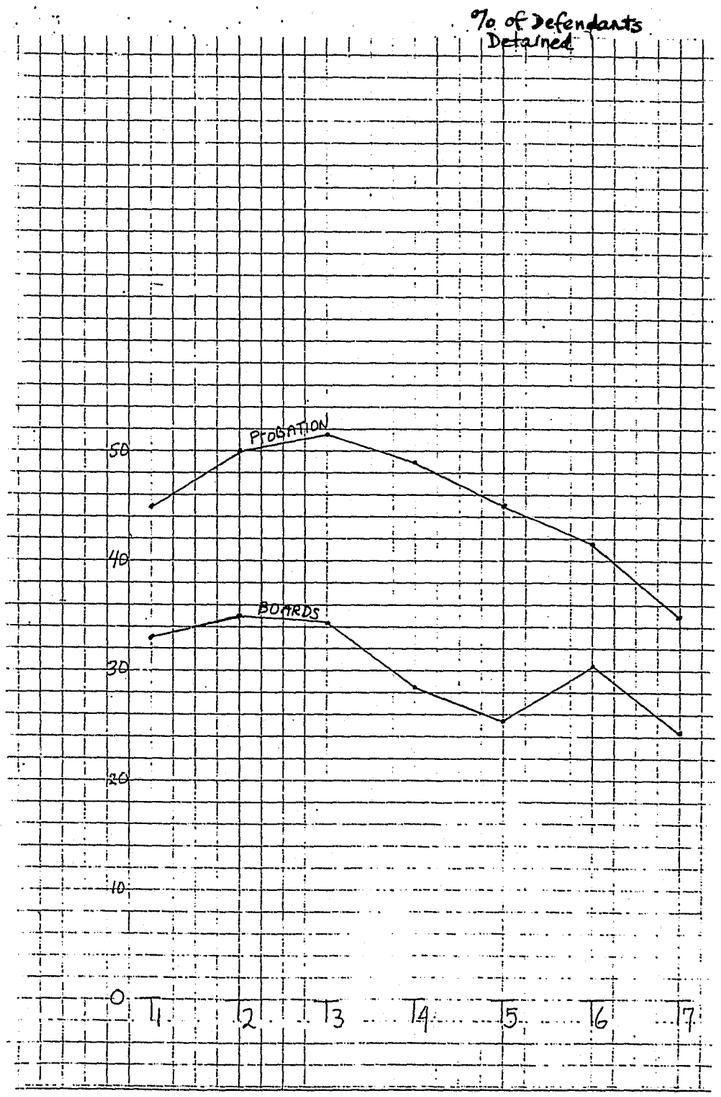


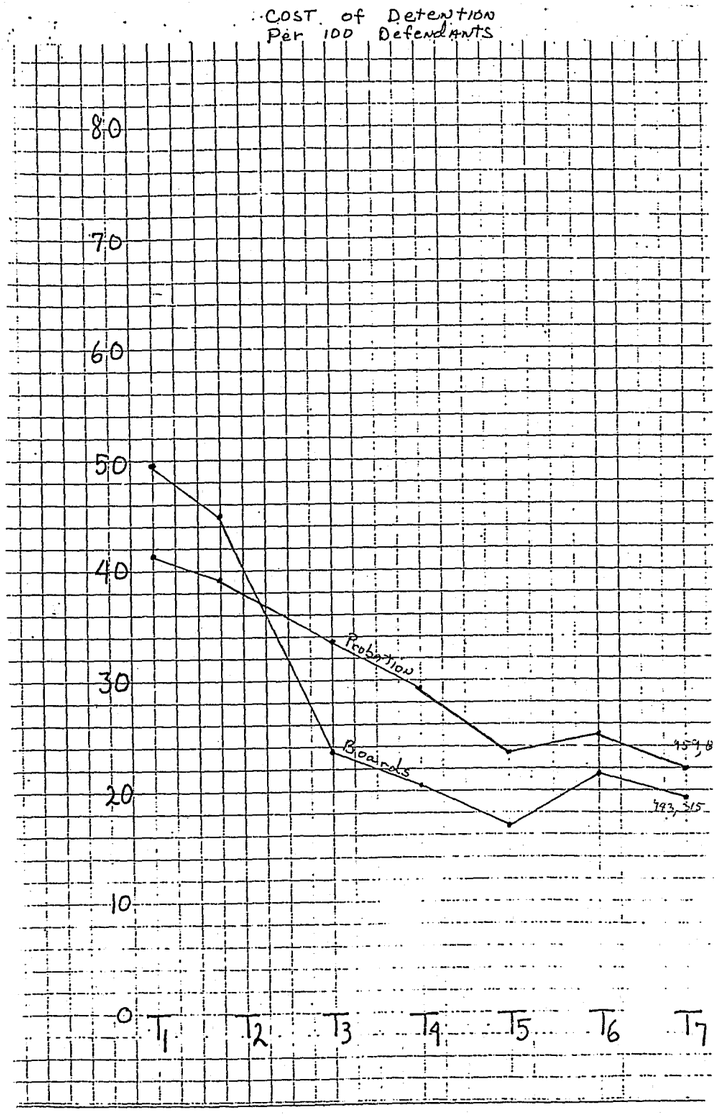
(overall increase of 31.49% in daily costs)

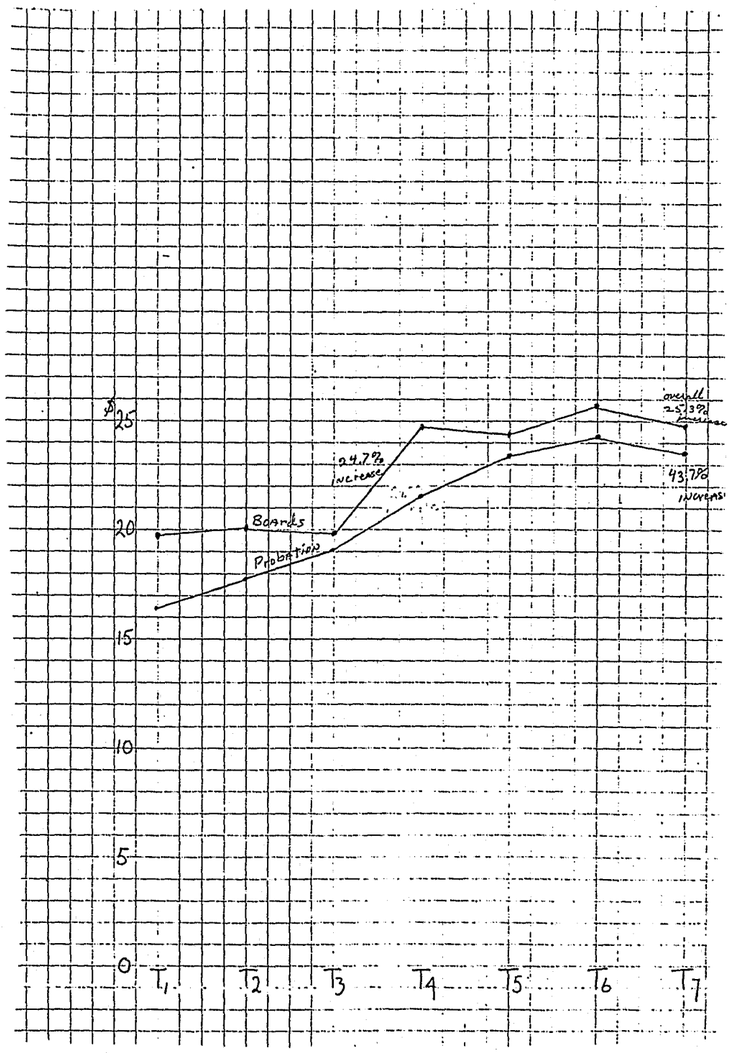
Average days of Detention in All PSA districts

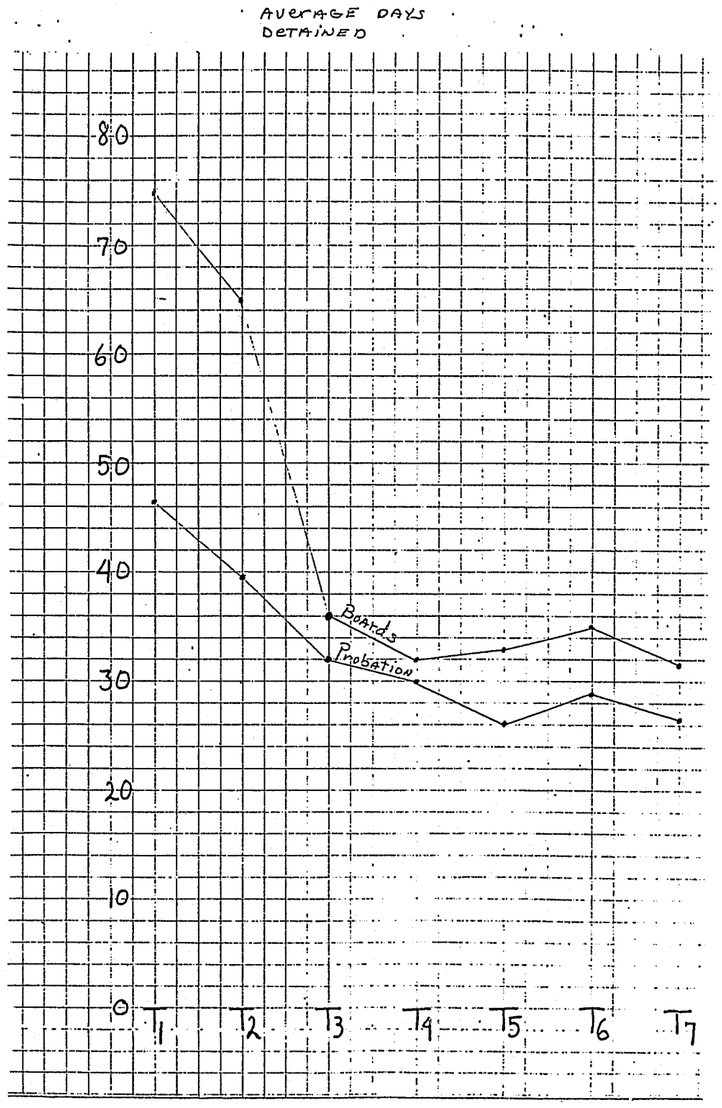


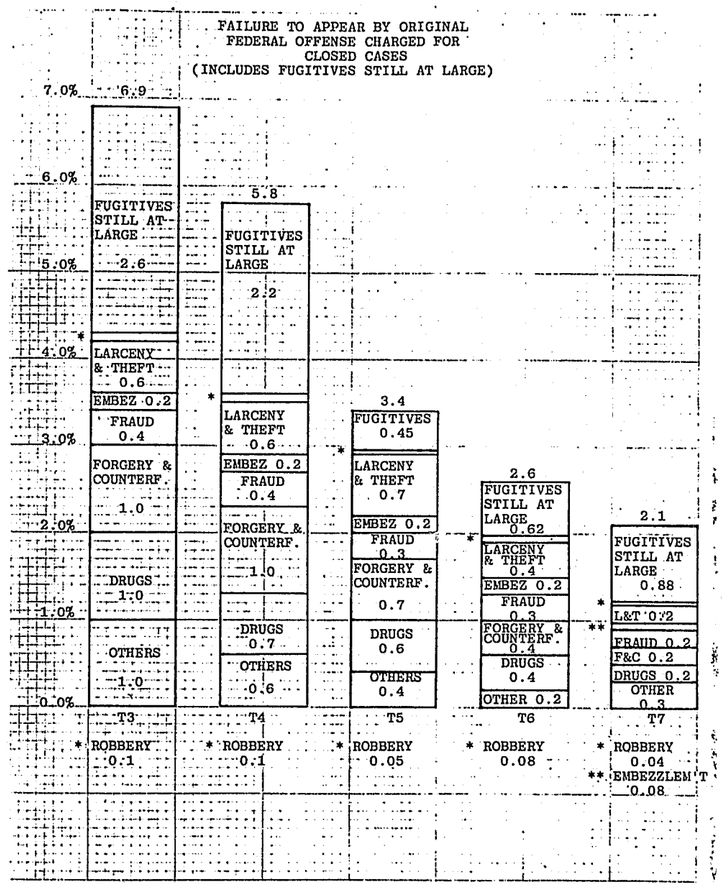

Percent of Defendants Detained in All PSA Districts
Percent
45
40
35
30
25
5
42.4
42.5
40.9
38.3
37.6
35.6
35.2
T1
T2
T3
T4
T5
T6
T7


% of Defendants Detained
50
40
30
20
10
0
PROBATION
BOARDS
T1
T2
T3
T4
T5
T6
T7

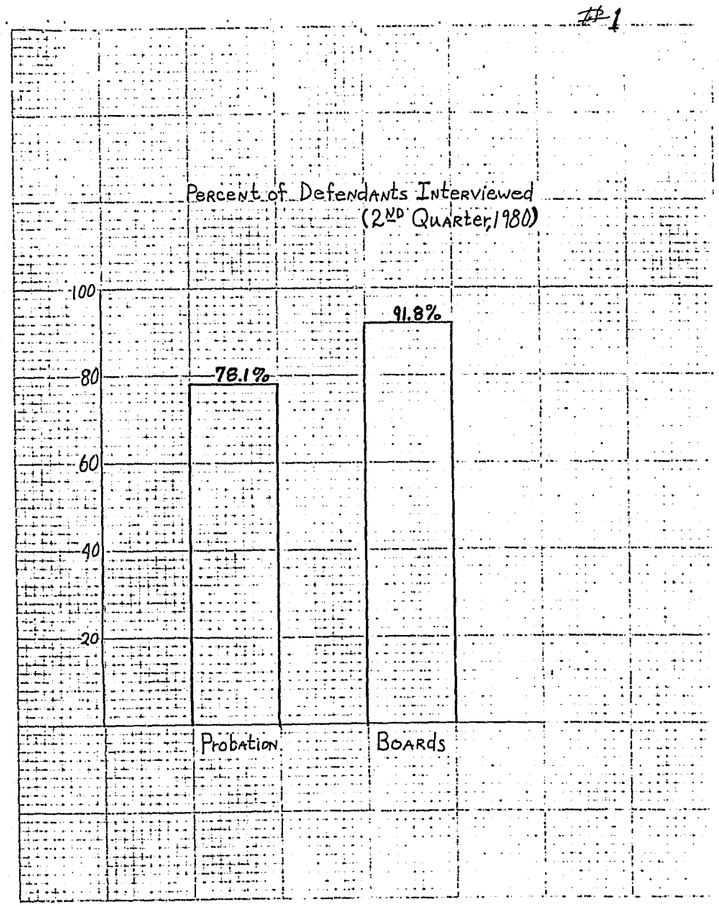

Cost of Detention
Per 100 Defendants
80
70
60
50
40
30
20
10
0
T1
T2
T3
T4
T5
T6
T7
Probation
Boards
1577.8
193.515


Daily Jail Costs*
$25
20
15
10
5
0
T1
T2
T3
T4
T5
T6
T7
Boards
Probation
overall
25.39%
increase
24.7%
increase
43.7%
increase

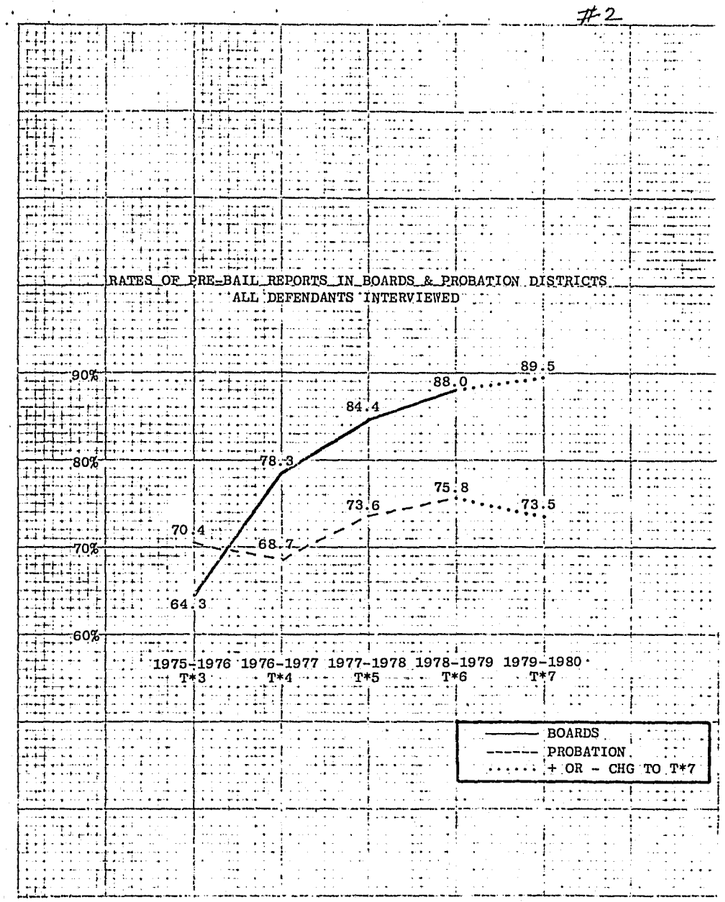

AVERAGE DAYS DETAINED
80
70
60
50
40
30
20
10
0
T1
T2
T3
T4
T5
T6
T7
Boards
Probation


FAILURE TO APPEAR BY ORIGINAL FEDERAL OFFENSE CHARGED FOR CLOSED CASES
(INCLUDES FUGITIVES STILL AT LARGE)
7.0%
6.0%
5.0%
4.0%
3.0%
2.0%
1.0%
0.0%
6.9
FUGITIVES STILL AT-LARGE 2.6
LARCENY & THEFT 0.6
EMBEZ 0.2
FRAUD 0.4
FORGERY & COUNTERF 1.0
DRUGS 1.0
OTHERS 1.0
5.8
FUGITIVES STILL AT LARGE 2.2
LARCENY & THEFT 0.6
EMBEZ 0.2
FRAUD 0.4
FORGERY & COUNTERF. 1.0
DRUGS 0.7
OTHERS 0.6
3.4
FUGITIVES 0.45
LARCENY & THEFT 0.7
EMBEZ 0.2
FRAUD 0.3
FORGERY & COUNTERF. 0.7
DRUGS 0.6
OTHERS 0.4
2.6
FUGITIVES STILL AT LARGE 0.62
LARCENY & THEFT 0.4
EMBEZ 0.2
FRAUD 0.3
FORGERY & COUNTERF. 0.4
DRUGS 0.4
OTHER 0.2
2.1
FUGITIVES STILL AT LARGE 0.88
L&T 0.2
FRAUD 0.2
F&C 0.2
DRUGS 0.2
OTHER 0.3
T3
T4
T5
T6
T7
* ROBBERY 0.1
* ROBBERY 0.1
* ROBBERY 0.05
* ROBBERY 0.08
* ROBBERY 0.04
** EMBEZZLEMENT 0.08

#1

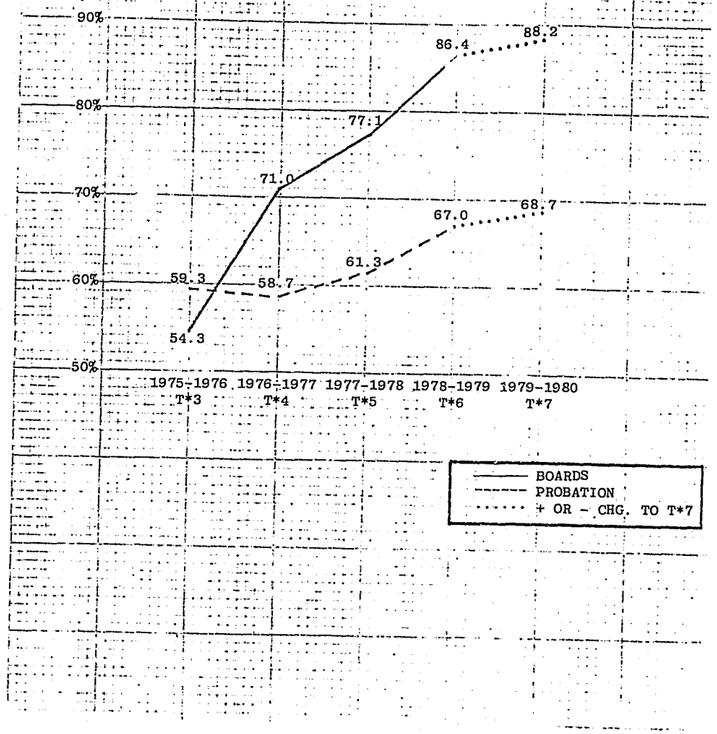

Percent of Defendants Interviewed
(2ND Quarter, 1980)
100
80
60
40
20
78.1%
91.8%
Probation
Boards

#2


RATES OF PRE-BAIL REPORTS IN BOARDS & PROBATION DISTRICTS
ALL DEFENDANTS INTERVIEWED
90%
80%
70%
60%
64.3
70.4
78.3
84.4
88.0
89.5
68.7
73.6
75.8
73.5
1975-1976 1976-1977 1977-1978 1978-1979 1979-1980
T*3 T*4 T*5 T*6 T*7
BOARDS
PROBATION
+ OR - CHG TO T*7

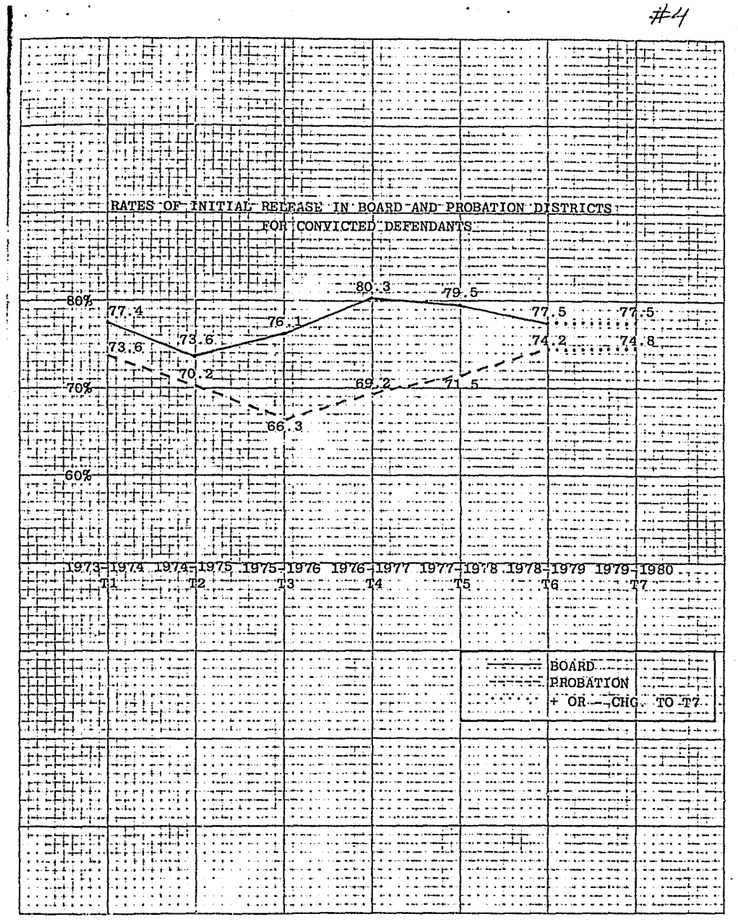
#3

RATES OF BAIL RECOMMENDATIONS IN BOARDS AND PROBATION DISTRICTS
ALL DEFENDANTS INTERVIEWED
(EXCLUDES WRITS AND CONCURRENT DETENTION)



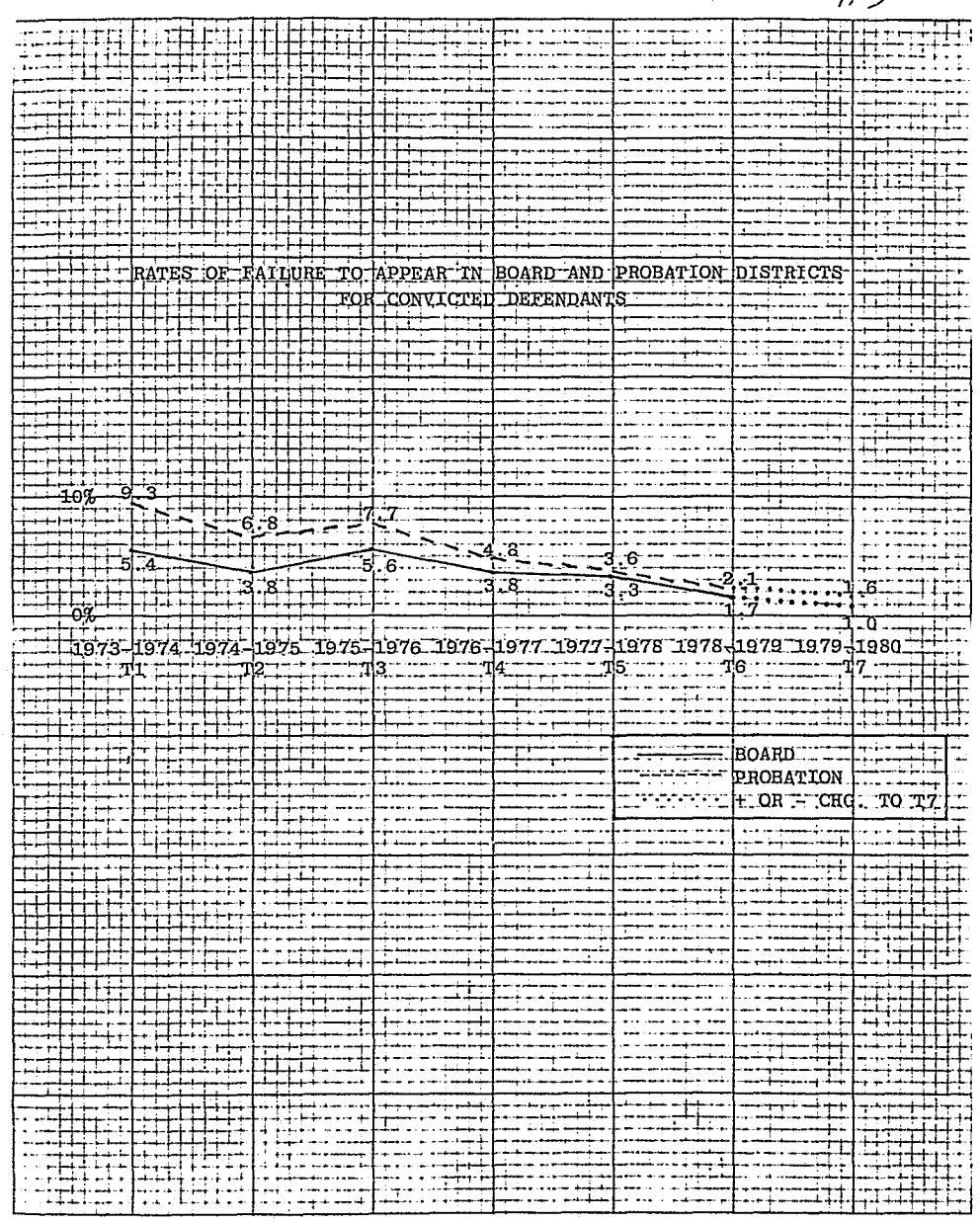
#4

RATES OF INITIAL RELEASE IN BOARD AND PROBATION DISTRICTS
FOR CONVICTED DEFENDANTS



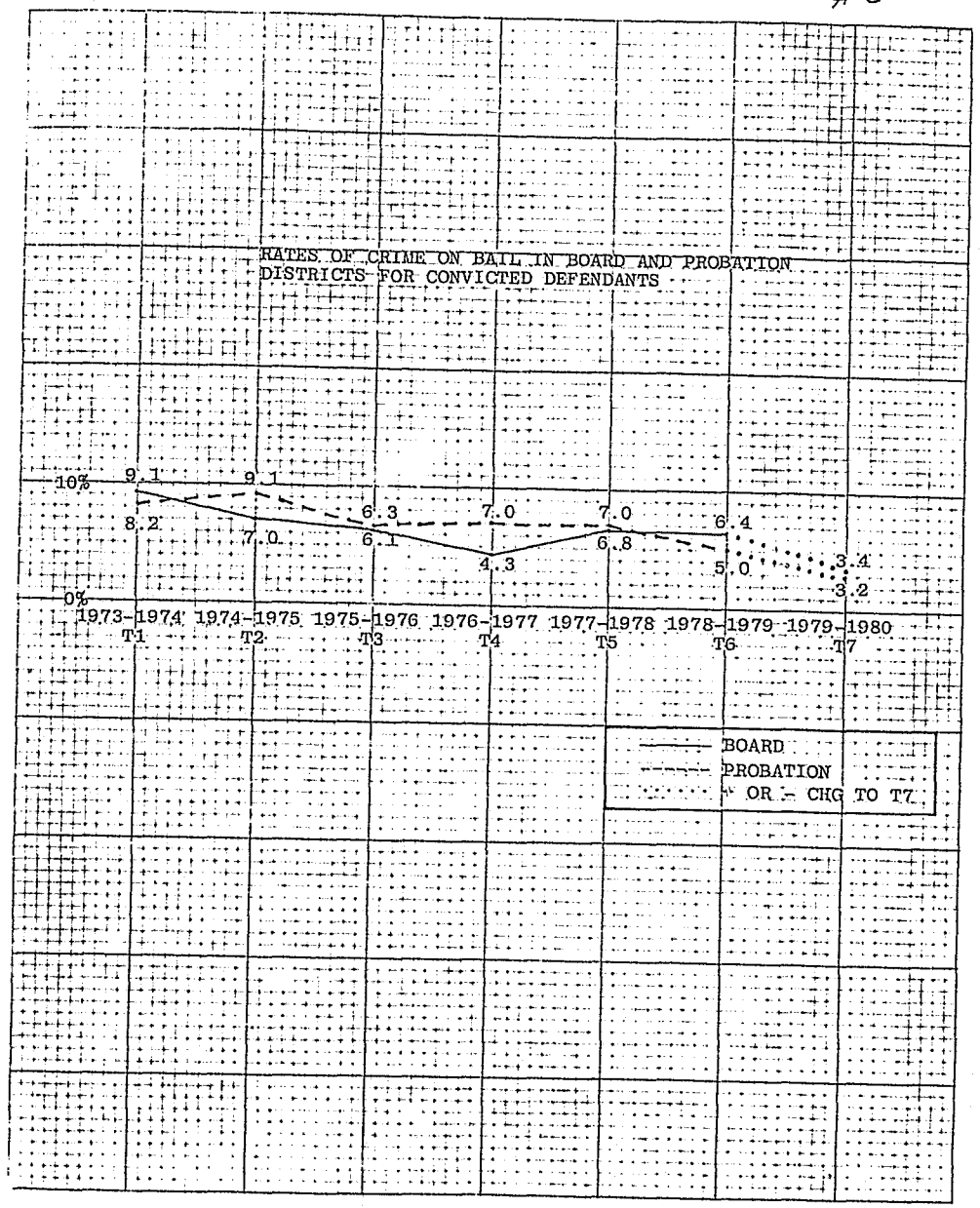
#5

RATES OF FAILURE TO APPEAR IN BOARD AND PROBATION DISTRICTS FOR CONVICTED DEFENDANTS



#6

RATES OF CRIME ON BAIL IN BOARD AND PROBATION DISTRICTS FOR CONVICTED DEFENDANTS



Mr. HUGHES. Does that conclude your testimony?

Mr. WILLETTS. Yes, sir.

Mr. HUGHES. First, I want to thank both you, Judge Tjoflat, and you, Mr. Willetts, in providing Mr. Ryan and Mr. Vaughan to testify. I think it has been very clearly established that the pretrial services experience has been extremely successful.

I think that you said it well, Mr. Willetts, when you said that it makes sense to provide judges with more information, and to do so at the very first moment a defendant enters the criminal justice system. We can do a better job all the way around, in screening those people who should not be released, and in releasing those who should not be in jail.

It makes economic sense, it makes sense from the standpoint of threats to society by those who should not be released, and who are released from time to time—because we don't have enough information to make a good judgment.

Is it fair to say, Judge Tjoflat, that when they don't have sufficient information, judges are often more inclined to set higher bail and detain defendants? Or does the opposite happen?

Judge TJOFLAT. Well, what happens when judges have no information—and what I say has to do with experience, not only in the Federal system, but in the State systems across the country—is that the prosecutor usually suggests the monetary bail figure, and the judge has nothing more to go on than what the prosecutor has suggested. And that is the threshold bail figure.

At any rate, bail is posted. They can't make it. And they are incarcerated. And then begins a series of hearings ad infinitum, to reduce the bail to the point where the person can be released.

Then it becomes a pure guess as to what might happen once release occurs.

But that's basically how it works. I do think the error is on the side of incarceration. They can't set a figure, and they try to set a figure at a high enough point or plateau to assure that the defendant appears. But that starts off by assuring he's probably going to be detained.

That's just a general statement about the bail system. And I draw on my experience in the State court, and as a district judge, for that.

And we, on the courts of appeals, many times get applications for reduction of bail, mandamus petitions, most any kind of extraordinary writ is sought. And we don't have anything more to go on than the judge below.

And, moreover, a great percentage of the Federal judges have little understanding of the operation of the bail system, in the first place. And if they affirm the district court, they're just granting the district court a wider measure of discretion. That's how I see it.

Mr. HUGHES. It would seem from the graphs that were presented as part of Mr. Willett's testimony that there is a relationship between the number of contacts made by the PSA's and the incidence of re-arrests while on bail.

The fact that there seems to be fewer crimes committed where there was more contact, that there was a downward trend in re-arrests while on bail, whether under the probation system or whether under the board of trustees experience, would suggest that the

very fact that we have supervision—from the very first time the defendant enters the criminal justice system until the time of disposition—creates a tendency—because of the supervision, it would seem—of defendants to behave themselves.

I would imagine that, by the same token, when we found that defendants were not behaving themselves—not complying with conditions of bail—the courts were made aware of it sooner.

Is that a fair assumption?

Judge TJOFLAT. That's true. We can assume that that is a true fact.

Mr. HUGHES. Under the present system?

Judge TJOFLAT. As a matter of fact, let me add something Mr. Willetts and Mr. Vaughan did not add; that is, when you compare data in time periods 1 and 2, which involve convicted defendants—we took all data from convicted defendants' records in time periods 1 and 2, where there was no supervision by an officer. The defendant simply was free, pending trial.

In my judgment, there was less capability on the part of the judicial system to detect crime on the street than when the defendant is under supervision.

So that, if you have a reduction in crime on the street, when you're dealing with defendants under supervision, with a greater likelihood to detect it or any unsavory conduct on the part of the defendant, you can reduce it. Notwithstanding the fact that your baseline data had no mechanism for detecting crime, other than police blotters, the benefits are even greater.

Mr. HUGHES. So in essence the testimony shows that the system saves us money, because it enables us to screen early on those defendants who are eligible for pretrial release. And, accordingly, it enables the judge to make an intelligent value judgment.

Judge TJOFLAT. I've got another observation to make. That is this: My experience tells me that a lot of offenders commit a crime, awaiting trial, to pay lawyer's fees or to raise money for a lot of other needs. A well-supervised offender, in my judgment, is less likely to run that risk.

Mr. HUGHES. Burglars are notorious for that habit, as are robbers, and, in fact, it's interesting that as trial approaches there seems to be some direct relationship between crimes while out on bail and the need to come up with dollars to pay their attorneys.

Judge TJOFLAT. I'm not suggesting that the bar encourages that.

Mr. HUGHES. No; I'm not suggesting that either, but it does happen.

Thank you for that observation.

Mr. Willetts, in your testimony from the flow chart you suggested that actually the system saves an inordinate amount of money where we do properly screen out those who are eligible for pretrial release. It appears that we save the difference between as much as $20,095, where the subject goes through the system, is incarcerated for 1 year, with 2 years parole, and $1,600, where the individual is evaluated by a pretrial services agency, then is diverted from the criminal justice system.

In relation to these costs, how much does it cost to operate a pretrial services agency?

Mr. WILLETTS. Well, if you look at the 100 days' detention, it costs about $30,000 a year to support the pretrial officer's position. That sounds high, but that's office space, equipment, travel, salary, secretarial support. So, if that officer impacts on the pretrial release of the 15 individuals during the pretrial stage he has earned his keep.

Now, if he impacts on only two cases sufficient to cause the judicial officer at sentencing to make the in and out decision—only two cases—because the person was on release, because the person by being on release was sentenced to probation instead of prison, it only takes an impact of two to support that position for 1 year.

Mr. HUGHES. And of course if pretrial contact with the defendant early on indicates to a court that the defendant is a menace to society, and the defendent is prevented from causing harm to society, that is a cost you can't quantify.

Mr. WILLETTS. That's the other side of the issue. You know, we spend most of our time talking about how we can release people and save money. The other side of the issue is that knowing those who, based on all of our expertise and information available, should probably be sent to prison or should be detained pretrial under the present system and maybe the judge concludes should be sent to prison is just as important. It's my feeling that even in the presentence report and the recommendation for sentencing, if you have obtained early information, if you have given the person an opportunity for out and to prove himself—there are a lot of people in the system that disagree with me on this, by the way—I think you're in a much stronger position to recommend for or against incarceration at sentencing. It just makes sense.

And when you have to incarcerate it costs money, and if you don't have to, then we shouldn't do it. I don't know if that answers your question.

Mr. HUGHES. It does answer my question. Thank you. I'm well beyond my own 5 minutes.

At this time I'd like to recognize my colleague from Michigan, Mr. Sawyer.

Mr. SAWYER. Having come in late, I'll pass at this time.

Mr. HUGHES. Mr. Hall

Mr. SAWYER. I was over at the Supreme Court moving the admission of a group of my constituents.

Mr. HUGHES. We're happy to have you here.

Mr. Hall.

Mr. HALL. Judge, there's one question I would like to ask, if I may, and I know that there is some pro and con to this question of whether or not the pretrial services agency has certain overlapping with probation, and, for the life of me, I can't see how you could really make a clear distinction that would prevent an overlapping. Where does it not overlap?

Judge TJOFLAT. You mean a duplication of effort?

Mr. HALL. Yes.

Judge TJOFLAT. Well, the traditional functions of a probation officer and a pretrial services officer are different conceptually. Traditionally a probation officer does not enter the scene until he's dealing with a convicted defendant and his first task is to run a presentence investigation and make a report to the judge.

The pretrial services officer enters the scene upon arrest and is furnishing information for bail purposes to the judge and his task thereafter is to supervise the person on bail and his job ends where the probation officer picks up.

Now, that's not to say that both jobs can't be done by the same officer. There are some districts, for example, where probation officers, just because of the way they do business in the district—and that comes essentially from the beginning of presentence investigations shortly after arrest and indictment, with the defendant's consent, without fear of the Government getting the information for prosecutorial purposes. So that when a conviction results, the judge is prepared, almost on the spot, to pronounce sentence.

Now, that is done in 30 percent of the districts, Mr. Willetts says. It started, I think, in North or South Carolina in a couple of districts, many years ago.

Mr. HALL. I'm fairly in favor of this pretrial services agency and I think it, to a point, does a good job, but I know—I can only associate the eastern district of Texas, where I know for an actual fact that when a person is arrested in that district, that the probation officers immediately get into the picture as, as you say, start with the consent of the defendant and work it up to presentence reports.

Judge TJOFLAT. That's because Judge Fisher encourages that practice. Also you have a lot of rural area in the eastern district of Texas and the officers have to do a lot of traveling and they have innovated to perform this function.

Mr. HALL. Well, are you saying in some areas that maybe pretrial services agency would not be necessary?

Judge TJOFLAT. You mean as a separate entity?

Mr. HALL. Yes.

Judge TJOFLAT. Oh, yes, as a separate entity, pretrial services. And that's one of the reasons why, from my view, the flexibility afforded by the bill introduced last year—7084 or 86, and the one introduced now, which is identical, the flexibility is excellent.

In some large metropolitan districts a separate office is desirable. You have that kind of case filings, you have that many officers involved in the pretrial service functions where they are that different.

Mr. HALL. Who do you think should make the determination at that time as to whether or not pretrial services should be utilized in the eastern district of Texas as opposed from the northern district of Texas? Who should make that distinction?

Judge TJOFLAT. Well, I think that function ought to be performed, the function of giving the judge or the magistrate more information for bail setting purposes. My view is it ought to be performed everywhere.

Whether you have a separate agency or not is a decision that ought to be made by the judiciary, and the Congress has drafted legislation that enables it to do so, and a combination of the district court and the circuit council in my judgment can best determine whether or not you ought to have a separate office as it were, or agency, with somebody other than the chief probation office running it.

Legislation drafted in that fashion, such as the bill is now would enable that to occur. I think the greatest saving would be effectuat-

ed that way. In the fifth circuit, with which you are greatly familiar, you wouldn't run the pretrial services function—say, in Miami, or in New Orleans, maybe, or in Tampa or Jacksonville or along the Texas border where you have a tremendous amount of drug importation. You wouldn't run it the same way as you would run it in the northern district of Mississippi or the northern district of Alabama, outside of Birmingham, or in eastern Texas or in places in west Texas, or the northern district, in Lubbock and some of those areas.

There really are no two places in Texas, maybe other than Brownsville and El Paso and maybe San Antonio, where you might have the function performed alike. And you have to have flexibility to allow the function of investigating these defendants for bail purposes to be performed most efficiently.

Mr. HALL. Well, in your statement that may be the chief judge in that district who would be the one to make the decision whether or not he wants to pursue it on the basis of the pretrial services bill here.

Judge TJOFLAT. Well, whether the court uses a probation officer to perform that function or whether it has a separate entity in the court to perform that function, it ought to be determined locally by the chief judge.

Mr. HALL. Well, I agree with that. I think Joe Fisher would agree with that, too.

Judge TJOFLAT. But anywhere judges are setting bail they ought to have better information about the defendant.

Mr. HALL. I understand what you're saying.

Judge TJOFLAT. If Judge Fisher, for example, says I've got a probation staff here, and they could interview these defendants and provide me with all the information I need in the first place by conducting presentence investigations at the same time.

Mr. HALL. That's right.

Judge TJOFLAT. And the pretrial services function is being performed, that is satisfactory.

Mr. HALL. Well, is there any way to make a determination maybe—and we're still speaking going back to the eastern district. And I might ask the staff this question. Is there any provision in this bill that might give someone higher than a chief judge the final authority to say we're not getting enough information about these people and we therefore think that the pretrial services agency should operate separately from the probation department? Is that written into your bill, Mr. Chairman?

Mr. HUGHES. No, it's not, as a matter of fact.

Mr. HALL. Well, who would make, if anyone would, make that decision?

Judge TJOFLAT. There's nothing in this bill. What the Senate did in the bill that died in the last session was to provide that the district court and the circuit counsel could certify the need for a pretrial services agency which would be chaired by somebody other than the chief probation officer. The individual in charge of that function would report straight to the chief judge and to the judges of the court rather than reporting to the probation officer chief and through the chief to the court.

But that would be determined by the local court, for example, Judge Fisher and his colleagues. The fifth circuit council would also approve that kind of a mechanism. Then the eastern district would have probation officers reporting to their own pretrial services chief, and he to Chief Judge Fisher. The House bill does not——

Mr. HALL. It does not do that.

Judge TJOFLAT. No.

Mr. HALL. Thank you very much. It's good to see you again. I yield back the balance of my time.

Mr. HUGHES. Just to clarify the record, the bill does provide that such a decision would be based upon a recommendation of the district court and the judicial council for the establishment of a pretrial services agency.

One of the things that I found extremely interesting was that once the boards of the trustees were constituted and became acclimated, they seemed to take off. I imagine it varied from district to district, and it's something we perhaps ought to look at on a district-by-district basis, but there was a disparity between the contacts and recommendations made by the boards of trustees and the probation officers. It seemed that the boards of trustees did a much better job. Do you agree that this is borne out by the facts and figures?

Judge TJOFLAT. That is borne out, Mr. Chairman, by the gross figures. And may I offer you my thoughts about that, Mr. Chairman?

Mr. HUGHES. Yes, please do.

Judge TJOFLAT. Well, you have a natural inclination in some districts, and especially the larger ones in the metropolitan areas, for folks serving two masters to serve one better than the other. So if you have a probation officer performing both functions—pretrial services and probation—reporting to the chief probation officer, and he to the chief judge, and if the probation work is lagging behind, that work will get done first.

If you have each serving a separate master reporting to the court, then both functions get done to the same extent and better. So it's a management issue, and again, which way you want to go depends on how a particular district is constructed, what its case load is, where it's located and so forth.

Mr. HUGHES. I would imagine that the attitude of the chief judge of that district——

Judge TJOFLAT. The attitude of the judges of the court makes a difference.

Mr. HUGHES. It would make a substantial difference on the priority to be assigned to this particular function.

Mr. Willetts, did you want to make a remark?

Mr. WILLETTS. Well, our experience has shown—I agree the attitude of the judge makes a big difference. The problem is getting the judge involved in day-to-day management. It depends on the person at the lower level, which in the chief probation officer instance is going to call the shots, by and large, and as Judge Tjoflat indicated, the dual role sometimes takes away from the full commitment to getting both functions performed satisfactorily. And I think that it's obvious that where there is a conflict of interest, not

by anyone's desire for it to be that way, but it's just the way things are, if a person who heads up an agency's activities that go to the attention of the judge—like sentencing, presentences, supervising probationers' violations those activities will get priority. Bail matters generally don't get to the attention of the chief judge; they go basically to the magistrate. It's very difficult to effect good management on the chief probation officer because it's difficult to convince the chief judge that he needs some direction in that regard when he's there everyday and you come in once a year and look at what goes on and say to him and the chief judge, well, in order to effectively carry out pretrial procedures, you have to do thus and so, you have to change the way you operate.

Our experience has been that it's rather difficult to bring about those changes.

Mr. HUGHES. Some of the personnel who were hired for the PSA's were obviously committed to the program. Is it fair to assume that that commitment might account for some of the difference in results? In addition, there may have been impediments to success in those districts where we have boards of trustees? Could that account for these results?

Mr. WILLETTS. Let me clarify something here which I don't think the congressional members are aware of. In each instance where we had a probation operation and a board operation, we added as many additional staff to carry out the pretrial function in the probation district as we did in board districts.

Mr. HUGHES. There's no difference costwise?

Mr. WILLETTS. No difference costwise. Now the problem is, those people are getting the support that they need to carry out their functions in the higher echelon, which means in the probation district it's the chief probation officer; in the board district, that's the only reason the supervisor or the chief has for existing, and that is to carry out that function. And I think or we believe that's one of the reasons for the difference in the ratio of contact and the energy put forth.

Mr. HUGHES. Mr. Ryan, do you have something you wanted to say?

Mr. RYAN. I discussed this at the briefing last week, and I think it's probably worth saying for the record. As Mr. Willetts said, I ran the agency in the eastern district of New York when it first got started, and I was paid to make the pretrial services agency operate according to statute. And what that consisted of in the first 6 months was making a general pest of myself around the courthouse.

People cooperated at higher levels, there were other individuals, for example, say, assistant U.S. attorneys, who didn't understand what the agency was all about. There were magistrates who wanted to cooperate but who had been operating with a different system for many years. There were judges doing the same thing. And what I had to do, I'd say, for at least half the time, was to go around and constantly remind people, "Here's the statute; here's a set of procedures that everyone has agreed on; we're not seeing enough defendants because of lack of cooperation."

For example, there's the very issue you raised about contacts. If we weren't in there complaining, fighting, every single day for the

first 6 months, that district in eastern New York would not be seeing 97 percent of the defendants as it is now. It just wouldn't happen. The contact rate would have just stayed at a certain level and not increased. I think that's what Mr. Willetts is talking about.

It's not so much a matter of dedication, maybe, as a matter of setting priorities. If they are to improve the operation of the Bail Reform Act and the Speedy Trial Act, you should do it. I didn't have to worry about completing presentence reports or parole issues. Providing pretrial services was my job, and I directed all of my energies toward that goal.

Mr. HUGHES. Mr. Ryan, since you obviously worked in the field with the program in its infancy, you would be aware of the way matters were handled prior to your arrival, obviously.

Mr. RYAN. Well, I wasn't in the Federal system prior to that.

Mr. HUGHES. When did you actually begin your work with pretrial services?

Mr. RYAN. Well, after the inception of the program, which I started in January 1976.

Mr. HUGHES. I'm sure you learned how those matters were handled in prior years, and I suspect you must have heard from time to time, "Well, that's not the way we did it."

Mr. RYAN. Right.

Mr. HUGHES. I wonder if you could share your own practical experience with how pretrial services worked in the eastern district of New York?

Mr. RYAN. Well, I guess I could start out with talking about my understanding of what went on traditionally in that district. And my understanding is, that the bail decision was very much controlled by the information that the U.S. attorney provided.

One of the problems that I didn't expect—was that we would often make recommendations for more stringent conditions of release than the U.S. attorney wanted. That was because it's helpful for them to have certain people on the street as informants. That was a point of conflict.

But at any rate, the U.S. attorneys traditionally had a great deal of influence at the bail hearing, because they had the only information about defendants, especially indigent defendants. A defendant would be brought in, and, there will be a legal aid attorney or a Criminal Justice Act attorney. They had very little time to talk with the defendant prior to that initial appearance, so the information about the defendant's background was presented primarily by the U.S. attorney. That's not the way it is right now in the eastern district of New York, although the U.S. attorney's information and opinion still carries a great deal of weight, and it probably should.

Mr. HUGHES. In essence, though, your experience was as the graphs have indicated—that indeed you did find that defendants could now be released and others not released, and people incarcerated because they presented a higher degree of risk, on the basis of information that you ascertained early on?

Mr. RYAN. Right.

Mr. HUGHES. And was that the modus operandi in the eastern district of New York prior to pretrial services?

Mr. RYAN. I can't say it was. Generally the way things would operate would be that defendants would be brought in and a great

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deal of attention would be paid to the defendant's record, if it was a criminal record, since there was very little information available about the defendant's background.

Mr. HALL. May I? Doesn't his past record indicate a lot about his background, and should it not be considered by the U.S. attorney?

Mr. RYAN. Oh, it certainly should. I didn't say that. I was saying only that that was the only information available.

Mr. HALL. Well, are you saying——

Mr. RYAN. What I am saying is that it's very difficult to tell, from a rap sheet from the New York City Police Department, and somebody has three arrests for burglary, such things as where the person has lived, who his family is, whether he has a job, whether he supports his family and whether he pays his bills.

Mr. HALL. Well, there's a man who went through an airport security last fall with three pistols and a pocketful of cartridges, and nothing was done about him. Now, I think that—and he's in jail here in Washington today for—we know what he did. He came out of a fine family, you understand, but I think that man's record should be subject to a presiding judge, and I don't think anyone should take any discretion away from them.

I think the discretion of the trial judge who looks at the person and sees him and has that rap sheet before him takes precedence over nobody else. I think that's the man that's going to have to at some point in time make the decision as to whether or not to release the person or keep him. And if at some point in time last fall, some judge had had the discretion or had used his discretion to see that man was put on bail and maybe tried and convicted and put in jail, we wouldn't have the problem today.

Mr. HUGHES. Let me just indicate that there are a lot of nagging issues surrounding that incident. I can't imagine why this individual wasn't known to the Secret Service, and there are a lot of guesses as to how he was present. We'll get into that, I presume.

But the flip side of the coin is that there are a lot of people who enter the criminal justice system who are missiles. I mean, they're absolute time bombs, ready to go off, and the courts know nothing about those individuals. And that kind of information is what pretrial services obviously can present to the courts.

That brings me to something that I'd like to ask you, Judge Tjoflat. How do we identify those individuals who are time bombs? How do we know that they can explode in the community? From all appearances, they might appear before the court at a bail hearing, and they appear when they're summoned for arraignment. They might appear when summoned for trial. But they present a menace to the community, and you can learn that early on.

Do you find that our present bail structure and the criteria used in determining bail under the Bail Reform Act are adequate to address that particular problem?

Judge TJOFLAT. The Bail Reform Act does not allow a judge to take into account danger to the community and detain somebody pending trial. The judge can only take into account that evidence which is relevant to the question of whether or not he is likely to appear. The judge at the bail hearing can, in my judgment, entertain under present law all the evidence in the world about the defendant's propensity to commit crime and so forth, but it is only

relevant to the question of whether or not he is likely to appear for further hearings.

If the judge were to separate that information out and say, "This individual is likely to commit further crime in the community while he's awaiting trial, but he will appear at trial"—as you indicate in your hypothetical—and the judge also finds that he will appear at trial, the Bail Reform Act would render that information irrelevant. The act would not authorize the judge to detain the individual pending trial.

Mr. HUGHES. But does that present some problems to you, that judges can't take that information into account? I suspect that judges really do take it into account.

Judge TJOFLAT. Oh, I think judges everyday take into account the propensity of the accused to commit further crime. They take it into account in assessing the likelihood that he's going to appear at trial. There's a very fine line between the question of whether or not somebody is going to commit further crime and whether or not he's going to appear at trial.

I think most folks who are hell bent to commit violent crimes and have already done so are a risk on appearing at trial. What incentive do they have to appear for trial if they have committed a serious offense and are likely to be incarcerated for a long period of time? And that's been the experience in most of these large drug cases. That's one of the reasons why bail is set so high.

Mr. HUGHES. Well, drug cases present a different problem because of the economic gain.

Judge TJOFLAT. The point is, these folks you know are going to commit further offenses.

Mr. HUGHES. Well, of course I'm concerned about those situations.

Judge TJOFLAT. You're talking about preventive detention.

Mr. HUGHES. Yes, preventive detention. Do you feel that the present statute serves the end of justice?

Judge TJOFLAT. Well, it's an anomaly when you have to lock up witnesses to the offense in order to protect them from the defendant and his friends and then let the defendant go free. But the answer is far from clear, the eighth amendment doesn't provide the answer. The eighth amendment says that excessive bail should not be required, and there's a serious question, long debated, whether or not the framers intended bail to be accorded, in every case or whether they intended bail to be accorded, as was the case in the English system, only in those cases appropriate for bail.

Then you have the constitutional question posed by the fifth amendment due process clause. If you detain somebody just because of what he is going to do tomorrow and not in any respect because of what he did today, the question becomes whether or not he is being detained or punished, as it were, for crimes that he has not committed and not been charged with. So, there's an interplay of several, at least two, constitutional provisions, the due process clause and the eighth amendment prohibition against excessive bail. And there may be, depending upon the case, equal protection implications as well.

I think it's an issue that ought to be debated. The question has not been settled in the courts.

Now, a lot of State bail laws, either emanating from the State constitutions or from statutes, provide that bail will be accorded in every case except a capital case where the proof is evident or the presumption great. And I remember in my days as a State trial judge in capital cases conducting bail hearings to determine whether or not in the case for which the defendant stood accused there was a great deal of evidence to point to guilt. But the Bail Reform Act in effect traces State law and says that bail will be accorded or you will be released on your own recognizance.

So, the question of preventive detention is one that ought to be debated. And I come from a circuit where there's a tremendous amount of drug business being transacted, where you have to go to tremendous lengths—I can recall presiding as a district judge in the middle district of Florida over a case in which, if I may take a moment——

Mr. HUGHES. Sure.

Judge TJOFLAT [continuing]. There was a drug importation episode. A customs agent flew the airplane in undercover, loaded with drugs. Two fellows were in Duval County Jail in Jacksonville, and they wanted to get out, so a lawyer came up from Orlando, representing the organized crime boss, to spring those two fellows.

Well, it was obvious that they weren't going to be alive very much longer, because two other witnesses in the case had been killed in the previous 2 or 3 days. The customs agent who had been undercover was in custody, secluded somewhere by the Government, and those two witnesses were about to disappear.

So, when the lawyer said, "The bail is too high, and we want them out under the Bail Reform Act," I looked at the possible conditions, and I finally said to the lawyer, "I'll release them in your custody, 24 hours a day. Where they go, you will be." And he said, "Your Honor, may we have a brief recess?" We took a brief recess, and he came back and he said, "Your Honor, they're going to stay in jail." The lawyer didn't want any part of the custody of those two chaps who were likely to meet the same fate.

The point I'm making is, it is an anomalous situation where an accused is free and you have to lock up the witnesses. How do you solve that problem and square it with the due process clause and the eighth amendment.

Mr. HUGHES. Well, it's something we're going to have to come to grips with, as you say, because it's very timely and it fits right in with the issue of pretrial services and protecting society.

Judge TJOFLAT. Well, let me say this. If you have a law providing preventive detention in some form or another, in my judgment you couldn't execute that law without good pretrial services functions being performed, because a judge would have to have reliable evidence to make sufficient findings on the record to be sustained on appeal. I mean, the judicial system, in order to manage that kind of program, would have to be able to produce evidence, and I don't see how a preventive detention program could be put together early on without the aid of good investigators.

Mr. HUGHES. Thank you. Mr. Sawyer.

Mr. SAWYER. Obviously, the pretrial investigation for bail setting purposes has to be done very rapidly and in a very short period of time. So, almost of necessity it would be fairly superficial. Wouldn't

the investigators that brought about the arrest probably know as much or more about the individual than would the so-called pretrial services?

Judge TJOFLAT. Congressman, that's true, sometimes they do know. If it's an organized crime case where they have been following the case for a long period of time, for example, they may know the accused backward and forward and inside out. On the other hand, many times they don't, and many times when bail is being set you've got an assistant U.S. attorney standing there who doesn't know much more than what's contained in the indictment or what the FBI agent's report to the grand jury was. Or maybe he's got a 302 statement, for example. But they go to the crime and you don't know a thing about the offender. You know nothing much about his background, especially where the defendant is transient.

And I resort again to the drug cases—refer to those. They come from all over the place. The agents pick them up in Atlanta at the airport. Drug agents that can literally sniff some of these folks, and pick them up with contraband on them, arrest them on the spot and take them downtown. The agents don't know anything more than somebody got on a plane in Fort Lauderdale or Miami or Jacksonville, and went to Atlanta en route to Detroit or Los Angeles, or whatever, with a bunch of cocaine, and they know nothing else about them.

Without the pretrial services officer running some kind of investigation in those cases, to me the judge is powerless to set bail on anything more than the fact that it's a drug case, and that this is a courier or pusher or manufacturer or something.

Mr. SAWYER. I can see that kind of case, but I served as a prosecuting attorney for a period of time. We may not have had many of these total transients, but the police agencies, 9 times out of 10, knew the defendant intimately.

Judge TJOFLAT. That's true, up around Grand Rapids.

Mr. SAWYER. Don't you think on the setting of bail that the judge is very likely to consider the commission of a felony as it affects the defendant's credibility? You know, your earlier bringing out more than that, although the rules are to effect credibility. Don't the judges consider use of the question of likelihood to appear weighted with these other considerations?

Judge TJOFLAT. You mean prior felony?

Mr. SAWYER. Right.

Judge TJOFLAT. Well, a prior felony can be considered for all purposes at a bail hearing.

Mr. SAWYER. I understand that. But I mean the rule in a trial is to effect their credibility.

Judge TJOFLAT. I realize that.

Mr. SAWYER. But, on the other hand, I'm sure it carries in many cases a lot more weight than credibility.

Judge TJOFLAT. For sentencing purposes.

Mr. SAWYER. What I'm wondering is while the prior commission of felonies may be considered in connection their likelihood to appear, whether the judges, while fixing bail, also, give some consideration to their likelihood to commit crime?

Judge TJOFLAT. They might. And I'm sure they do. If a district judge doesn't want to get reversed—and to be candid about it—he puts in the record, "I am setting bail at $1 million that you can make." If the judge says, in effect, "I am detaining you on account of your prior record," hasn't the judge made a case for a quick writ to issue by the court of appeals on the theory that he didn't follow the Bail Reform Act of 1966?

Mr. SAWYER. But, if the rap sheet shows he showed up for trial each of the last 17 times he was convicted, I'm sure that that would be persuasive, maybe against the bail, rather than some risk about showing up.

Judge TJOFLAT. And the judge might put in the record that he finds on all the facts presented that the defendant is not likely to appear for trial, and if the facts are in there in sufficient detail and supported by the record, it's awfully difficult to set a trial judge aside.

Mr. SAWYER. Well, with the little bit the trial judge, even with the pretrial investigation, can know, it's obviously a rather inexact science. Twenty-seven people who had already served considerable time in the Maryland State Penitentiary, were put on some sort of a work-release program and they created a minicrime wave; 26 out of the 27 were indicted for crimes running from murder and rape through armed robbery. They not only went through the presentence investigation, but they actually were under observation in the prison. Obviously, the program was just shut down in Maryland and it was kind of a disaster. It's a pretty inexact science anyway.

Judge TJOFLAT. It's as inexact as sentencing.

Mr. SAWYER. Yes, I suppose so. I was interested in your reference to the State constitutional provision because I was involved with it sometime in the past. It's a strange, nonsensical thing, and almost every State has virtually the identical wording which says, "where the presumption is great." Well, of course, the presumption is of innocence at that point in time. I know we had a statute like this one in Michigan and I was surprised to find most other States just lifted the identical language from somewhere: Bail in all cases except in murder or a felony where proof of guilt is strong or the presumption great.

Thank you.

Mr. HUGHES. Thank you, Mr. Sawyer. Mr. Hall.

Mr. HALL. No questions.

Mr. HUGHES. Thank you very much, Judge, Mr. Willetts, Mr. Ryan, Mr. Vaughan. We appreciate your testimony. You have been most helpful. We'd like to hold the record open so we can submit some formal questions to you.

Judge TJOFLAT. Sure. Anything we can do, we will be happy to do it.

Mr. HUGHES. We would be interested in ongoing studies and in looking at the particular courts and magistrates and the instances of rearrest, which I understand you might have some additional data for us on in the near future.

We would like to hold the record for that particular information also.

We are going to have to recess the hearing until 2 p.m. in this room.

[Whereupon, at 12:05 p.m., the hearing was recessed for lunch.]

AFTERNOON SESSION [2:05 P.M.]

Mr. HUGHES. The first item—first I appreciate Bruce Beaudin's consideration in permitting Madeleine Crohn to testify next. I understand, Ms. Crohn, that you have a professional commitment this afternoon, and we're just delighted to have you here today.

Madeleine Crohn is presently director of the pretrial services resource center. Before this position, she was the deputy director of the court employment project in New York for 7 years, which was one of the first pretrial diversion programs created in this country.

We appreciate your appearance before us today, and invite you to proceed in your own way. Your statement will be entered in the record in full, and you may proceed in any way you see fit.

[The complete statement follows:]

Statement of Madeleine Crohn, Director, Pretrial Services Resource Center

Mr. Chairman and Members of the Subcommittee:

I am honored and pleased that this Subcommittee has given me, and the agency which I represent here - The Pretrial Services Resource Center - another opportunity to testify on the subject of Title II of the Speedy Trial Act of 1974. The recommendations which my colleagues and I had formulated for last year's hearings are unchanged: the proposed legislation is, for the most part, the same. Briefly summarized, our conclusions are that:

- Pretrial Services should be continued and expanded to all federal districts.
- An independant branch, within the Administrative Office of the United States Courts (AOC), should establish and monitor standards for the administration of these agencies; and ensure that the Pretrial Services function is designed as flexibly and as cost effectively as possible.
- Pretrial agencies should be allowed to conduct other pretrial screening functions; new programs however, such as Pretrial diversion, should be developed on a pilot basis only, and evaluated against concrete stated objectives.

Before reviewing in more detail these three recommendations, I would like to stress the importance of this particular legislation which proposes to maintain existing Pretrial Services Agencies and expand them throughout the federal system. The decision of this Congress will have a significant impact on state and local governments: not only is federal law looked to, by states, as a direction which they often follow. But, in the current context of fear of crime, this bill offers Congress an opportunity to set the example of a measured and effective response.

I. IMPORTANCE OF THE PRETRIAL SERVICES AGENCY LEGISLATION IN ENABLING STATE GOVERNMENTS TO DEVELOP A JUDICIOUS RESPONSE TO THE FEAR OF VIOLENT CRIME.

A. THE PROBLEM

Chief Justice Burger's remarks before the American Bar Association meeting in Chicago last year[1], and in Houston, this year[2] echo a widespread sentiment. Most people believe that violent crime has increased significantly: we need only look to the recent covers of our national magazines. The perception affects the quality of life in this country. It leads to a widespread belief that the criminal justice system is not doing all it should to alleviate the situation. Among several proposed responses, the Chief Justice - and many others - suggests a "tightening" of our bail laws; the underlying premise is that if we detained more people pretrial, we would witness a reduction in violent crime.

The problem is further compounded by our general inability to agree on what constitutes dangerous behavior, and to predict future behaviour. The laws of false positives (our incarcerating people who would not commit crimes in order to restrain those who will) lead to unfairness and unnecessary cost. The laws of false negatives (releasing people who will commit crimes) frustrate the public which has a right to expect that the criminal justice system is doing all it can and should to provide for safety.

Finally, we simply can no longer afford, as a society, the ineffective use of incarceration. Detention, whether at the pre- or post-trial stage - has become an almost prohibitive expense; in the face of our diminishing resources, it should be viewed as a scarce commodity and used as sparingly as possible.

The questions which must then be raised - legislative issues aside[3], are:

- How prevalent is, in fact, pretrial crime-and particularly those violent offenses which are of most concern to the public?
- How can we control this behavior?
- Among those options available to us, which ones can we, or should we, afford?

B. THE SIGNIFICANCE OF THE FEDERAL PRETRIAL SERVICES AGENCY EXPERIMENT.

Two of the more striking statistics provided to us by the AOC are:[4]

1. Between 1976 and 1980, pretrial crime in the experimental districts was reduced from 9 to less than 3% for defendants released, at the same time as release rates were increased.
2. Considering that upward of 90% of all defendants arrested are released, more than 97% of those are <u>not</u> rearrested while awaiting trial.

It is regrettable that some of the ambiguities of the research prevent us from directly attributing such reduction to the Pretrial Services Agencies. On the other hand, we find that such a reduction was <u>not</u> witnessed in those districts where there were no Pretrial Services Agencies. Further, the remarkably <u>low</u> re-arrest rate of released defendants is confirmed, time and again, in local jurisdictions where pretrial agencies operate.

The federal experiment does demonstrate that:

--a higher proportion of defendants were released than before and yet:

--failure to appear decreased, and

--pretrial crime decreased.

From both a cost effective viewpoint and one that addresses public concern for safety, we must acknowledge the significance of these findings:

- Pretrial services agencies furnish the judiciary with data otherwise not available thereby assisting in more informed decisions.
- They provide the judiciary with the possibility of applying and monitoring conditions which - even though designed to reduce flight - may also reduce opportunities for the defendant to commit crimes.
- Just as importantly they track data and statistics which place any problem associated with the release decision within an informed and objective perspective.

The point here is that without the assistance of the Pretrial Agency there is no way for us to verify if there is a problem, how extensive it is, and what can be done about it.

C. POTENTIAL IMPACT OF THE LEGISLATION FOR STATE AND LOCAL GOVERNMENTS:

States will be looking to this particular Bill, whether or not it is passed, and if so in what language, for a number of traditional reasons.

- We have repeatedly witnessed how legislation that affects our federal courts eventually shapes or transforms aspects of our state and local courts. A principal example is the Bail Reform Act that led to the adoption of new bail statutes by state legislatures--albeit with some departure from the Act in several instances. Nonetheless, decisions that will be made by Congress as it reviews--and possibly expands--pretrial services agencies at the federal level

will bear consequences for pretrial programs around the country. If endorsed by Congress, the pretrial release concept will gain a legitimacy that should considerably assist local jurisdictions as they decide upon the creation or continuation of pretrial release agencies.

Second, when a magistrate or judge makes a pretrial release decision and determines what conditions should be applied to a particular defendant, the options are essentially the same whether at the federal or local level. The data which has been compiled by the AOC represents the most comprehensive amount of information that was ever collected on that critical stage of decision making in our criminal justice system. Not only can information from the federal experiment be of great value to the development of pretrial programs at the state and local level; but the response by Congress to these findings will influence elected officials' reaction to issues related to the pretrial release decision.

The consequences of what Congress will or will not do regarding this Bill are all the more crucial when one considers the extremely severe situation faced by most states: More than 20 states are under court order because of the overcrowding in or conditions of their institutions. Local facilities in countless jurisdictions are already faced with or about to undergo legal challenges. The picture is even bleaker as one realizes that the overall level of incarceration will continue to rise through this decade; and that construction alone cannot be the answer - both for reasons of cost and of timeliness.

Typically, federal and state institutions turn to local facilities to absorb their overflow; they will do so increasingly, as mandatory and other forms of sentencing reforms add to the number and length of prison sentences. The federal system is already near capacity, with the majority - if not totality - of its detained pretrial population in state or local institutions.

The breaking point has already been reached in many places in this country. Pretrial mechanisms and programs are among the first requested to relieve the pressure. They cannot do so without legitimacy and suport.

These are among the many issues which we believe this Congress must bear in mind when considering this legislation.

I present them here from the perspective of an organization created by the Department of Justice, LEAA, in 1976, and specifically charged with developing an overview of pretrial justice issues in this country. The requests for information and assistance we have received from the states over the last four years have convinced us of the urgency of the issues I just outlined. We are equally convinced - as a neutral, fact-finding organization - that changes in statutes and policies should be grounded in facts, not in perceptions that are sometimes shaped by dramatic but atypical cases. Pretrial agencies furnish those facts and thus assist in reaching responsible and informed decisions - which ultimately benefit the system, policy makers and the country.

The federal system has a unique responsibility to relieve a critical local situation to which it contributes; and to provide leadership to states attempting to reconcile concerns for public safety and for the law with scarce resources.

Given the above context, I wish to elaborate on the three recommendations listed earlier:

II. RECOMMENDATIONS

A. PRETRIAL SERVICES SHOULD BE CONTINUED AND EXPANDED TO ALL OTHER FEDERAL DISTRICTS.

This committee has been provided with extensive information on the accomplishments of the ten pilot pretrial services agencies (PSA's). Judge Gerald B. Tjoflat, Chairman of the Committee on the Administration of the Probation System, U. S. Judicial Conference, Mr. Guy Willetts, chief of the Pretrial Services Branch (U.S. AOC) and agency staff have been or will be reviewing findings of the AOC's report.[5] Their recommendations are supported by the General Accounting Office report[6] that endorses the continuation and expansion of these agencies.

All reviews confirm that judicial officers who have received the support of PSA's in their district consider their services valuable. The data that was compiled in the report[7] submitted by the Administrative Office of the U. S. Courts shows that during the experimental period nonfinancial release rates were increased and that the number of defendants detained pretrial was decreased.[8] It appears that the objectives stated in Title II of the Speedy Trial Act were met at least in part.

We must recognize here some of the ambiguities of the AOC's report. Unfortunately, while it does offer some useful and important statistics, the conclusions are not as definitive as had been hoped. In other words, we know to a certain extent what happened after the implementation of the pretrial agencies; but we are not certain of all the reasons for these differences, nor can we conclude that they were entirely attributable to

the existence of PSAs. The limitations of the research should not preclude, however, the continuation and expansion of the pretrial agencies:

- The data do support the fact that judicial officers make more informed and equitable decisions when aided by pretrial services agency. Options available through the agencies (such as supervision, monitoring of compliance, etc.), help reduce the number of defendants that would otherwise be released on (or possibly be detained because of) financial conditions.
- These positive results are not isolated. When we look at the development of pretrial release programs in state and local courts, we consistently find that well-run release programs or systems can:
  --significantly decrease the number of defendants released through (or detained because of) imposition of financial bond;
  --provide alternatives to pretrial incarceration that will help ensure the appearance of the defendant at trial and the safety of the community;
  --compare favorably with appearance rates and rates of pretrial crime when no such agencies exist and, in fact, have a positive impact on flight and danger.
- As indicated above, the issue of most proficient use of public monies in a time of financial constraints is paramount. In jurisdictions where a new correctional facility is being considered, implementation of a pretrial agency--or mechanism--can save substantial construction costs by reducing the number of pretrial detainees. These findings are applicable

to the federal system: as I indicated earlier, federal institutions already operate near capacity at a time when the number of filings in federal courts is on the increase. Meanwhile, state and local facilities are facing their own crisis and several are already unable to accomodate federal pretrial detainees. A vigorous and responsible program of pretrial services in all districts is imperative.

- Finally, the mechanism of pretrial release screening should be available to the defendants and the judicial officers in each district. In addition to the efficiency-related principles enumerated above equal access to such an opportunity is consistent with our constitutional principles.

B. THERE SHOULD BE AN INDEPENDENT BRANCH WITHIN THE ADMINISTRATIVE OFFICE OF THE U. S. COURTS THAT ESTABLISHES AND MONITORS STANDARDS FOR THE ADMINISTRATION OF THESE AGENCIES AND ENSURES THAT IMPLEMENTATION OF THE PRETRIAL RELEASE SERVICES FUNCTION IS AS FLEXIBLE AND AS COST EFFECTIVE AS POSSIBLE.

1. The complexities which continuously face judicial officers and prosecutors include their having to predict human behavior. This is true of the pretrial release decision: Will this person return to court? And will this person commit a crime while on pretrial release?[9] Prediction of any form of human behavior is--at best--a hazardous one. It requires intense study and continuous reassessment--if only to ensure that the decision is neither capricious nor discriminatory. Further, when the defendant has been released, and more or less intensive conditions placed upon

him or her, it is imperative to assess whether these conditions are effective, suffisient or superfluous.

It follows that to be of value, the pretrial agencies should never cease to question, reassess, and modify the basis for their recommendations and supports. To properly serve the courts, they should be able to verify that they indeed recommend for release the maximum number of defendants (in other words, they should question whether their recommendations are unnecessarily conservative); when and what forms of conditions are needed (as opposed to OR) and most efficient; which factors are better predictors of the pretrial behavior of the defendant. In sum, to be useful, the pretrial release agencies need to be capable of reassessment and thereby be agents of responsible and informed change.

Unless the central administration that will govern the PSA's is allowed to focus exclusively on these developments and takes the necessary actions with a full understanding of the special nature of the population it deals with (e.g., defendants that are still presumed innocent), the federal courts will be deprived of the excellence which they deserve. Again, while the AOC report shows that some differences did exist between the probation-run and board-run PSA's, we regret that the report does not indicate why such differences existed. It has been suggested by both Judge Tjoflat and Mr. Willetts that the disparities may be grounded in philosophical, policy-oriented, and procedural differences.

Common sense tells us that this assessment may indeed be correct. But whether the data is definitive or not, we can still presume that a central administration, which solely concentrates on the progressive development of this discipline, and is not affected by conflicting priorities, has a better chance to ensure the increasing success of the programs.

2. The central agency should develop minimal standards that govern the programs at the district level. These standards should define how the agencies are expected to perform and assist in the monitoring of their performance. They should be in keeping with the national standards developed by the National Association of Pretrial Services Agencies and by the American Bar Association, reflect the philosophy and principles of the Bail Reform Act, and be reassessed on a regular basis as new information develops.

The concept of standards, monitoring, and compliance should be at the root of local operational structures. It seems to us that the question of who will be in charge of local implementation of the pretrial release service is less important than the existence and enforcement of mechanisms to assess how well the local unit functions. While creation of a new agency with new staff may be the most viable option in some districts, it may not be so in some districts with a small or scattered population. Existing mechanisms and resources should not be ignored. For example, we have found at the local level that a large range of resources can be

assigned the pretrial release functions in a cost-effective manner and in keeping with the professional mandates of the task: volunteers, community-based organizations with a good track record, a local university which provides a pool of students.

Therefore, the suggestion made by Mr. Willetts in his testimony last year,[10] i.e., that the central office be allowed to subcontract with a variety of existing agencies, is an important one. As long as there are provisions for accountability and monitoring, the decision of assigning the pretrial release function should be dictated by the particular needs and situation of the district, not by uniformly applying a model that may be too costly and rigid.[11]

C. PRETRIAL AGENCIES SHOULD BE ALLOWED TO SCREEN DEFENDANTS, NOT ONLY TOWARDS RECOMMENDATIONS FOR PRETRIAL RELEASE, BUT ALSO FOR OTHER FUNCTIONS, SUCH AS ALTERNATIVES TO PROSECUTION. NEW PROGRAMS, HOWEVER PARTICULARLY IN THE AREA OF PRETRIAL DISPOTIONAL ALTERNATIVES, SHOULD BE DEVELOPED ON A PILOT BASIS; AND THEIR SUCCESS IN MEETING STATED GOALS SHOULD BE ASSESSED BEFORE THEY ARE REPLICATED IN OTHER DISTRICTS.

Again, as we look to local experiments, we find that--once the infrastructure of a pretrial release mechanism has been set--additional functions can be incorporated into the pretrial release agency. Recent developments in Kentucky are a good example. The statewide pretrial agency, created under the auspices of the Kentucky Administrative Office of

the Courts when bail bonding for profit was eliminated in the Commonwealth, is now expanding some of its units into mediation and pretrial diversion functions.

Again, this development is suggested by common sense: the pretrial release staff interviews all defendants and, at that time, can obtain information which might be necessary for other decisions as well. This avoids the duplication of interviews (by multiple programs each with a different purpose) that are both costly to the system and potentially alienating to the defendant. By legislatively allowing for these additional functions, another useful and flexible mechanism can then be set—enabling the pretrial agency to meet other needs as they develop.

For instance, the central-intake concept could be explored at the federal level. This function is currently being tested in some local jurisdictions. One central collection of data and screening function can identify—in addition to pretrial release information—eligibility for alternatives to prosecution or adjudication; eligibility for indigency programs; jail intake information. In the federal system a similar procedure could be effective accomplished by the PSA's.

This information can also be useful if a decision to handle the case in a noncriminal fashion seems appropriate. Two primary methods of noncriminal disposition come to mind: mediation and diversion. Pretrial diversion has existed in local jurisdictions for a number of years, and legislation that would implement this concept in federal courts has been introduced several times. Mediation and dispute resolution mechanisms have been gaining popularity.

While we recommend that the Pretrial Services Agencies be allowed to screen for alternatives, we wish to urge great caution as to the actual development of these other alternatives.

The balance sheet is still ambiguous on the merits of the various forms of noncriminal dispositions. Their impact (on cost, recidivism, and on the criminal justice system caseloads) has yet to be conclusively demonstrated. Further, since these options are provided to nonadjudicated defendants, a number of serious legal issues need to be considered. For these reasons, if such alternatives are indeed developed at the federal level, we would recommend that this happen on a pilot basis; that objectives and criteria which would guide the operations and assessment of these programs be clearly spelled out; and that their replication be authorized only after sound and methodologically viable research demonstrates their effectiveness. Also, if these programs are developed, the actual operations of those programs should not necessarily be assigned to the PSA's; and subcontracting for service delivery to existing resources should take place whenever possible.

SUMMARY

A pretrial release program or system can assist the courts in making more equitable and fairer pretrial release decisions. To be effective, however, the program must be capable of and required to re-assess continuously the basis for and success of its recommendations; it must be flexible enough to change accordingly; and it must be sensitive to the special needs and status of pretrial defendants.

For these reasons, despite some of the regrettable ambiguities of the AOC's report to Congress, we recommend that 1) pretrial service agencies be continued in the federal system and expanded progressively to all federal districts; 2) that they be placed under a central and independent agency within the Administrative Office of the Courts; 3) that this agency, with the sole purpose of verifying the efficient administration of programs at the district level, issue standards, monitor compliance, and identify those changes necessary for optimal services; and 4) that prior to the establishment of pretrial agencies throughout all district courts, the central administration review more definitively the data which it has compiled and use this information when establishing these standards.

We also recommend that pretrial services agencies be allowed to augment their screening functions for purposes other than pretrial release recommendations; but that if programs (such as alternatives to prosecution and adjudication) are developed they be first tested on a pilot basis before replication occurs.

Finally, we urge this Subcommittee to be mindful of the context within which this legislation will be introduced. We must be concerned with violent crime. We must also remember that every headline that declares the arrest of a person pending trial diverts our attention from the thousands released who are not rearrested. The wise and considered leadership from your committee and from Congress can be the cornerstone on how well, or how poorly, we shape pretrial decisions in this decade.

Thank you for your consideration of these few remarks.

FOOTNOTES

1 "There is a special category of criminal conduct that has increased significantly in recent years which might be called "bail crime". Remarks of Chief Justice Warren Burger at the Midyear Meeting of the American Bar Association, Chicago, Illinois, February 3, 1980, p. 8.

2 "It is clear that there is a startling amount of crime committed by persons on release awaiting trial..." Chief Justice Warren Burger's annual address to the American Bar Association, Houston, Texas, February 8, 1981.

3 Such as the appropriateness of detaining on grounds of future dangerousness, someone who has not been convicted of a crime-an issue on which the Supreme Court has, to date, been silent.

4 "Fourth Report on the Implementation of Title II of the Speedy Trial Act of 1974", Administrative Office of the United States Courts, Washington, D.C. June 1979.

5 ibid

6 "Statistical Results of the Bail Process in Eight Federal District Courts", General Accounting Office, Washington, D.C., November 1978.

7 see supra

8 We should note here, however, that similar improvements were also found in federal jurisdictions that had no pretrial agencies. For more in-depth discussion on the study of the Federal Pretrial Services Agencies, please see Pretrial Issues, "Current Research: a Review", Vol. 1, by Dr. Donald Pryor, Pretrial Services Resource Center, Washington, D.C., 1980.

9 Even though the Bail Reform Act does not allow the judicial officer to consider danger, the possibility of danger remains--if only subliminally--in the judicial officer's mind.

10 Page 8 of his testimony presented before this Subcommittee on February 13, 1980.

11 We would further recommend that before programs are developed in other districts, the central office be required to further review the data it has accumulated--and which has the potential for yielding more definitive assessments than those generated to date.

TESTIMONY OF MADELEINE CROHN, DIRECTOR OF THE PRETRIAL SERVICES RESOURCE CENTER

Ms. CROHN. Thank you, Mr. Chairman, members of the committee, for inviting me to testify on this bill and for welcoming me so kindly. And I do thank Mr. Beaudin for allowing me to be first on the agenda so I can present to you a few brief remarks at the beginning of this afternoon session.

Our dialog today is particularly important in that it comes in the wake of an attack on President Reagan's life; and in the context of the concerns which this Nation has over violent crime. I personally welcome this opportunity because we are talking here about a bill which can provide leadership in this country as a measured and concerted response to violent crime.

First let me give you a little of background and context for my remarks. The organization I represent here—the pretrial services resource center—has been charged for the past 4 years with the task to develop an overview of pretrial justice issues around the country; and based on the information acquired, to provide assistance to the States and to local government. Our ongoing dialog with countless jurisdictions around the country, has convinced us that: Pretrial release systems and programs are keyed to help relieve the severe overcrowding in our jails; that this must be done responsibly and objectively in order to respond to issues of community safety; and finally that whether or not this legislation is passed, and the final language of the bill, if passed, will greatly influence how the State and local governments will address their problems, and whether or not they will support pretrial release agencies at the local level.

Last year I had the privilege to testify before the subcommittee and I made three recommendations on behalf of my colleagues and of my organization:

First, that pretrial services should be continued and expanded to all Federal districts.

Second, that an independent branch within the administrative office of the U.S. courts should establish and monitor standards for the administration of these agencies, and insure that the pretrial services function is defined as flexibly and as cost effectively as possible.

And the third recommendation, somewhat a side issue—is that the pretrial agencies should be allowed to conduct other pretrial screening functions; new programs, however; such as, pretrial diversion, should if developed be implemented on a pilot basis only and evaluated against stated and concrete objectives.

I will be glad to elaborate in a couple of minutes on those three points, and certainly respond to any questions you might have. But first I would like to go back to my previous statement, that is, why this legislation is so important for the States.

As I mentioned earlier, violent crime is uppermost I think in the minds of many people around this country. We have seen it reflected in Chief Justice Burgers' remarks before the ABA and we have seen it on the cover of national magazines. In the media it's front-page news. One of the recommendations is that we should tighten our bail laws.

However, we have additional problems. For example—and it has been pointed out in this morning's testimonies we can predict, but we can't predict very well. As a result we both unnecessarily detain some people in order to lock up who might commit crimes during the pretrial period—and that's certainly costly and somewhat unfair for those who would not have committed a crime. On the other hand, we also release people that will engage in criminal activity during the pretrial stage. And that's because basically we don't know how to predict with any great accuracy.

In addition, to further compound the problem, we are faced with diminishing resources. This is again confirmed by most people that we talk to at the local level: we can't afford to use any longer and indiscriminately one of the costliest methods of restraining people, that is, incarceration. The local governments just don't have that kind of money. This is where pretrial agencies can make a significant difference.

The data that was provided by the Federal PSA's is crucial to the point I am trying to make here. And by the way, that type of data is confirmed time and again in those States or those local jurisdictions where effective pretrial programs are operating.

If you recall, where pretrial services agencies operate in the Federal districts, pretrial crime was reduced from 9 or 10 percent to less than 3 percent; and when you consider that in those districts upward of 90 percent of the people who have been arrested are released, what this means is that more than 95—almost 97 percent of all released defendants—are not rearrested during the pretrial stage. I think this is significant first because it says that we can release the largest majority of pretrial defendants at very little risk to the community; and I think there are very few systems that can claim that kind of success. Second, and perhaps even more importantly the pretrial agency provides us with information that can be shared with the communities so that we can say what is being done, what the risks are, and what the options are for that community. It is our general assessment that responsible policies are developed on a base of credible information. Without the existence of pretrial services agencies, that kind of possibility disappears.

In summary, in terms of what this can mean for local jurisdictions, and for the States, we think that at a time when local facilities are facing legal challenges for overcrowding or because of inappropriate conditions; when overall levels of incarceration are going to continue to increase through the decade; when the Federal system itself is adding and contributing to the local pressure because most pretrial defendants in the Federal system are housed in State and local jurisdictions; and when construction alone will be too expensive a solution and probably not even timely enough to redress the situation, a clear message should be sent and we hope that this Congress will send that clear message: that pretrial agencies can be effective, are the best answer for controlling pretrial criminal behavior, short of detention, and that they should be supported.

The information provided by Judge Tjoflat this morning and by Mr. Willetts and his colleagues attests to these conclusions.

Now, in order for these objectives to be met also some basic principles need to be observed.

First, there should be an ongoing mechanism that helps the agency monitor the performance of the programs at the district level. This includes the ability and the will to continuously assess guidelines and approaches and challenge what has been done. This is why we recommend that an independent branch within the AOC be charged with establishing standards of performance; with monitoring compliance or at least assessing whether those objectives have been met in each district; and with candid and ongoing questioning of what the pretrial service agencies are doing.

Second, should also be understood that an effective agency is one in the pretrial field which is not afraid to "take the heat" when atypical but unfortunate incident occurs. This assumes that there will be information available to the judiciary so that it can explain how and why recommendations are made, what the track record is, what the options are. And without that capacity for providing information, support to the judiciary, the pretrial agency is useless.

As long as those principles are included in the guidelines that will formulate the pretrial services agencies in the Federal system, we then believe it can be safely suggested that at the Federal level PSA's should be maintained; further, that they be progressively expanded to each district in order to provide the entire Federal system with a mechanism for improved and efficient pretrial release decisions.

If you wish me to elaborate later for I don't know how much time you wish to devote to some of these issues, I will be glad to explain why we think that diversion programs should be implemented on a pilot basis only. Details are provided in my written testimony.

But, in summary, I believe that the proposed bill should be supported and that it's essential that it be passed.

The wise and the considered leadership that this committee and that Congress can provide in this area can be the cornerstone on how well, or how poorly, we shape pretrial decisions in this decade.

Mr. HUGHES. Thank you very much, Ms. Crohn, for a very comprehensive and important statement.

The Chair recognizes Mr. Sawyer, the gentleman from Michigan.

Mr. SAWYER. I have no questions.

Mr. HUGHES. Ms. Crohn, although the goal of the resource center has not been to afford direct assistance to Federal PSA's, do you see this as a possibility?

Ms. CROHN. Well, frankly, I don't know what the possibilities are, since our funds will probably run out as of the end of September 1981. As you may know, we were created specifically by the Law Enforcement Assistance Administration 4 years ago to work with local governments around the country so that they would be able to have access to information which otherwise would be unavailable to them; in other words, to help people learn about experiences in other states that may be applicable at the local level. Because this primary mission of central information was designed for benefit of the state and local governments, assistance to the Federal system was pretty much excluded from the concept behind the creation of the resource center. But the collaboration of the center with the Federal system has been very useful, because we find that the pretrial release decision whether in a local court or in the Federal system is essentially the same. And the data and experience acquired by the Federal PSA can be very useful to the States as well.

Mr. HUGHES. What effect do the pretrial release programs have on the ultimate decision in the case—the sentence imposed upon defendants that are, in fact, convicted?

Ms. CROHN. Well, most of the studies, including some of the recent ones, have confirmed time and again that whether or not the person is detained pretrial will have an impact on whether or not the person is convicted and how severally. More recent research suggests that in particular whether or not the offender will be sentenced to incarceration will be related to whether or not the defendant was held in pretrial detention.

Mr. HUGHES. One of your recommendations would be to insure that the pretrial service functions are designed to be flexible. Do you find that the legislation that we are discussing provides that flexibility?

Ms. CROHN. Yes. As I read the bill, I do. What I meant by a central agency combined with local flexibility is that two principles must be considered: first, that the type of access and services which are provided in one district should be available in another district; in order to offer equality in opportunities, objectives have to be stated, they have to be implemented, they have to be looked at and assessed. On the other hand, to reach these objectives, flexibility is crucial since local resources and needs will change greatly from one district to the next; and as I read the bill, it will be possible for the district to decide what is the best method to implement these objectives. We find, by the way, that in some States this type of flexibility translate into greater reduction of costs through the availability of volunteers and students.

Mr. HUGHES. The facts that were adduced in the hearing this morning would indicate that the boards of trustees had a higher success ratio than the probation offices. Do you have any views on probation versus independent boards?

Ms. CROHN. Yes. I think that the statistics which were compiled by the AOC do suggest that probation run agencies did not reform quite as well as the independent agencies run by the board of trustees; however, the data has not been able to tell us exactly why—but I think that the suggestions which were made last year and again this morning by Mr. Willetts, by Judge Tjoflat and by other colleagues, may indeed be accurate: when you serve two masters you unnecessarily serve one less well than the other.

On the other hand, the real key is not necessarily who actually performs the pretrial task at the local level. For instance, creating a brandnew agency in every single district might be something which we cannot afford or which is not cost effective.

However, there must be a capacity for monitoring that whoever delivers the service is doing it well. Only then the lesson we have learned from the presentation this morning can be gained from. This is why I think more important than anything else, is insuring the independence of the central agency and its capacity to set and uphold standards of performance. Then we will witness a continuation of the results that you look to in the board of trustee's experiments.

Mr. HUGHES. Well, thank you very much. You have been very helpful, and we appreciate your taking the time in your busy schedule to testify here today.

Ms. CROHN. Thank you very much.

Mr. HUGHES. Our next witness is Mr. Bruce Beaudin. Mr. Beaudin has served as Director of the District of Columbia Pretrial Services Agency since October 1968. Mr. Beaudin has served as Deputy Director and Acting Director of the Legal Aid Agency of the District of Columbia and has authored and lectured on the subject of pretrial release.

Mr. Beaudin, we are just delighted to have you with us here this afternoon. We have your statement, which will be received without objection in full in the record, and we hope that you can summarize your testimony for us, so we can get to the questions.

TESTIMONY OF BRUCE BEAUDIN, DIRECTOR, DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY

Mr. BEAUDIN. Mr. Chairman, I appreciate very much the chance to be here. I neglected to attach to the statement two very important letters, and I have supplied counsel with those letters. What they are, are letters from the magistrate here in the District of Columbia who has worked with our agency since 1967, when we came into existence; and a letter from the chief judge of the local court system, in both of which letters a description of how our services are viewed, is contained. Since I referred to those letters in my statement, I thought it appropriate that you have them. I didn't know they weren't attached until I got here this morning.

Mr. HUGHES. Without objection, they will be admitted for the record.

[Complete statement follows:]

PREPARED STATEMENT OF BRUCE D. BEAUDIN, ESQ., DIRECTOR, D.C. PRETRIAL SERVICES AGENCY

SUMMARY

H.R. 7084 provides in general for a long overdue reform in the criminal justice process. Since the Bail Reform Act of 1966 became law, there has been no mechanism to assist the courts in the federal system with the implementation of that law. To the extent that 7084 would provide this service, it is, as I said, long overdue.

Based upon my 15 years of experience in administering a Pretrial Services Agency in the District of Columbia, an agency which provides services to both the federal and local courts, I think that the Bill could be strengthened in the following aspects:

(1) Section 3152 should mandate the delivery of services in every federal district whether or not the District and Circuit Courts have recommended their establishment;

(2) The Chief Pretrial Services Officer should be appointed by a panel consisting of a representative of the Circuit Court of Appeals, a representative of the District Court, and a Magistrate;

(3) The Chief Pretrial Services Officer should be an attorney; and

(4) An additional exception to the confidentiality section should be added to permit testimony at condition violation hearings, contempt proceedings, and bail jumping prosecutions, and the section should be amended to provide that no information can be used in civil proceedings (e.g. deportation hearings, etc.).

It is a privilege to be invited to testify before this Committee concerning Title II of the Speedy Trial Act of 1974 and its impact on the Bail Reform Act of 1966. As Director of this Agency since 1968, Director of the Public Defender Service and Staff Attorney with that Office from 1964 until 1968, as a Member of the original staff of the D.C. Bail Project, as founder and Chairman of the Board of Trustees of the Pretrial Services Resource Center and as founder, first President, and Co-Chairman of the Advisory Board of the National Association of Pretrial Services Agencies, and as a person concerned with the problems posed by the release of certain defendants, I hope that my experiences of the past 17 years can be of benefit to the deliberations of this Committee.

Recognizing that the primary purpose for my testimony today is to provide information that will assist in the very important decision of whether to continue the existence of the pilot agencies or not, I find that it is impossible for me to do this without first addressing the issues that remain unanswered in the Bail Reform Act itself.

BACKGROUND AND HISTORY

In 1966 Congress passed the Federal Bail Reform Act. This law was the culmination of many studies of the overwhelmingly complex problems posed by the release of people pending trial. Because many people were indigent and because the bail system that had grown up in the United States usually required access to fairly large sums of money in order to secure release, many people were detained solely because of inability to raise the necessary funds.

The original purpose for the enactment of the Bail Reform Act was to provide less restrictive and alternative methods of release for persons awaiting trial than the traditional surety option. Without recounting the evils of the surety system, the inadequacies of financial conditions to address the specific problems posed, etc., suffice to say that the main goal of the Act was to effect the safe release of more people and to change the release methods from financial to less restrictive nonfinancial means.

Unfortunately, during hearings on the bills, the issue of community safety, although addressed in testimony, was never mentioned in the law. The sole criterion by which any release condition could be measured remained "will the condition imposed reasonably assure the appearance of the defendant as required?" Indeed, under the Eighth Amendment, any condition that did not fit this definition would be declared "excessive". I will have more to say about the issue of safety later in this statement.

At the time that the Bail Reform Act was being designed and debated, a parallel bill to create the D.C. Bail Agency, was also being debated. Since the District of Columbia was a federal jurisdiction to which the Bail Reform Act would apply, and since the District of Columbia federal courts had jurisdiction over crimes that would have been state crimes in other jurisdictions, testimony was overwhelming that an agency should be created to assist in the implementation of the Bail Reform Act. As a matter of history the Bail Reform Act and the D.C. Bail Agency Act became effective in September of 1966.

Between 1966 and 1970 the Act as it was implemented in the District received careful scrutiny as did the Agency created to assist in its implementation. As the result of this scrutiny, in 1971, the size of the Agency was tripled, its budget was tripled, and its functions were expanded to permit a number of services not mandated in the original law. Those services are provided today and are similar to the services described in Title II of the Speedy Trial Act of 1974.

Prior to 1971 most of the D.C. Bail Agency's work took place in the United States District Court for the District of Columbia. During the five years between 1966 and 1971 the system witnessed a drastic change in the release practices of the courts. The proportion of people released on personal recognizance increased from only 5 percent in 1966 to nearly 60 percent in 1971. The overall release rate jumped from 45 to 70 percent. The detention population in the D.C. Jail diminished despite an overall increase in the number of cases coming into the criminal justice system. In addition, failure to appear rates and rearrest rates were studied. Because of the difficulty of obtaining sufficient data no one could really say whether these rates increased. At the same time, there was a "feeling" that the rearrest rate was climbing although the failure to appear rate seemed to be constant.

Since 1971 we have continued to serve the Federal courts in the District of Columbia. The value of this Agency's work can best be described by reference to the attached letter dated February 22, 1980 by one of the United States Magistrates in the District of Columbia. The most important of the statistics cited in that letter is the fact that better than 90 percent of the defendants charged in the United States District Court are released and more than 95 percent appear as required.

At the local level, the Agency's work in the Superior Court for the District of Columbia, while higher in terms of actual numbers of cases processed, has about the same results. The D.C. Pretrial Services Agency, with a staff of 44, a budget of

slightly over one million dollars, utilizing a fully automated system, law students and graduate students as its main professional work force, conducted more than 24,000 interviews, supervised more than 14,000 conditions of release (an average of 3 conditions for the nearly 4,500 people on release at any given time) prepared reports in every case prior to setting of bail by the Magistrates, generated 35,000 notification letters, recorded 76,000 check-in calls from releases, recorded 16,000 check-in's by people who appeared in person, and submitted information for use in the presentence reports of all defendants convicted for whom presentence reports were prepared in Calendar 1979.

THE BAIL REFORM ACT ITSELF

As mentioned, the initial purpose of the Bail Reform Act was to provide alternatives to the surety system to permit the release of more people pending trial while at the same time eliminating discriminatory practices based on financial ability to "pay out." Yet, the Act did not address the practice of setting bail not so much to assure appearance as to protect society. The issue of community safety was subsumed into risk of flight considerations. Many bail setters used high bail to detain dangerous persons but justified the bail on risk of flight grounds. Many judges follow that practice today. Unless the issue is addressed the bail process will continue to be criticized for its apparent inefficiency.

A. COMMUNITY SAFETY

During the past 5 years there has been an increased demand by the community to deal with the issue of danger at the bail setting proceeding. That outcry, perhaps reflective of the District of Columbia's introduction of the danger issue into law in 1971, has had some interesting results. At least 5 states have authorized pretrial detention. Many states have authorized the consideration of danger in fixing bail. In the District of Columbia danger can be considered in fixing any condition except money bail (although the use of money bail is permitted to assure appearance) even the condition of pretrial detention.

The Bail Reform Act does not permit the court to consider the issue of danger in the fixing of conditions of release. This shortcoming must be addressed.

Much can be said about the issue of danger. On the one hand, no one has yet been able to provide us with a formula that will enable us to predict with any degree of certainty or preciseness who may be dangerous. As far as future activity is concerned, studies that conclude that dangerous acts are predictable are non-existent. Past activities which may be an indication of present danger and which may have been dangerous thenselves do not reliably predict that their perpetrators will again commit dangerous acts.

At the same time, it is abundantly clear that the community at large, concerned for its safety, does not intend to tolerate behavior of a violent nature. Given the present inability of our system of criminal justice to deal swiftly, fairly, and effectively with alleged criminal behavior there is increasing pressure on legislators and courts to use bail procedures to deal with the issue of danger.

Subsequent to the Judiciary Act of 1789 and the Eighth Amendment to the Constitution, no American could be denied Bail (pretrial) in non-capital cases. It is true that many offenses carried capital punishment then and people accused of Burglary, Rape, Murder, Armed Robbery, etc. could be denied bail. Since capital punishment exists in only a few instances today, those same people are eligible for bail. The theory on which Bail was denied was one which presumed that a defendant facing the ultimate in punishment (death) if convicted would be so motivated to flee that no bail could be set that would insure appearance. If that theory is correct then expansion of the denial of bail from capital to dangerous non-capital crimes may be invalid.

Despite the lip service paid to the principle that "risk of flight is the only proper purpose for bail" every Magistrate who has ever set bail has done so with a concern for danger. Although unarticulated, danger has played and continues to play the most significant role in the fixing of bail.

On June 1 of 1979 the Honorable Edward M. Kennedy, in an address to the National Governor's Conference in Crime Control said:

"Our current bail procedures are not working. In particular, the pose an unnecessary threat to the safety of the community. It is time to recognize that these procedures need substantial revision, within the scope of what is permissible under the Constitution.

Most federal and state bail statutes now specify that, in deciding whether to permit a suspect's release on bail, judges must consider only what is necessary to

secure the suspect's appearance at trial. Flight is the stated test. The law does not permit a judge to consider the defendant's potential dangerousness to the community in reaching the bail decision. Bail is designed only to insure the presence of a defendant in court. Preventive detention—the jailing of people not for what they have done in the past, but for what they might do in the future—is contrary to most existing bail statutes and offends the Bill of Rights.

For the Nation as a whole, however, the problem of crimes committed by persons on bail continues to be a critical one. Statistics show that the likelihood of a person committing additional crimes while on bail is much higher than flight of the suspect. Although federal and state bail laws largely ignore this fact, the judges do not. Although they publicly deny it, many judges *concede* in private that they set high bail or jail a suspect because they feel the suspect is dangerous and will commit another crime if released. In effect, they nullify the law. They jail offenders because of danger, while adopting the transparent pretext that the offenders pose a risk of flight. But this approach is neither candid nor fair. Almost forty percent of the persons jailed in lieu of bail in the District of Columbia were deemed in one study to pose *little risk* of committing additional crimes if released."

In short, though laws speak about risk of flight, bail setters think about risk of danger. The time for permitting an honest approach to the danger issue is ripe. We must look to alternatives that will insure the protection of the community and the pretrial release of those accused of crime.

While I do not necessarily subscribe to all of the pretrial detention provisions that exist in the laws governing release in the District of Columbia, I do believe that the issue of danger is addressed openly and honestly and that proper avenues of appeal and review of any decision to release or detain based on a finding of danger are available. The law permits the system to analyze the risks of danger and flight and deal with each separately.

I commend to our attention D.C. Code § 23-1321-1332 (particularly § 1322-1332). These statutory sections provide a comprehensive release law that includes the presumption of release, consideration of danger, protection of the rights of those accused held in pretrial detention without bail, and a total approach to the problem posed by trying to predict danger, flight, appearance, etc.

To be prefectly candid, when the law was first proposed in 1969 and 1970 I was adamantly opposed to the idea of openly permitting detention without bail and to allowing danger to be a criterion in fixing conditions of release. My reasons included: a belief in a Constitutional right to release (a right which derives from a combined reading of the Judiciary Act of 1789, the Eighth Amendment to the Constitution, and the words of the United States Supreme Court in *Carlson* v. *Landon* and *Stack,* v. *Boyle*); a then recent study commissioned by the Department of Justice of the United States at a cost of $360,000 which concluded that danger could not be predicted; and a belief that wholesale detention without bail would occur. Subsequent reflection has convinced me that although there are some minor flaws in the law, for the most part, it is a good one. It is the only statute I have seen that provides the means to eliminate the hypocrisy that permits the unfettered pretrial detention of the poor under the fiction of a money bond "high enough to insure appearance." To be sure, the law has not been used as intended. The retention of the surety option has permitted the judges to continue the practice of detaining dangerous persons by employing the illegal but effective method of setting high money bail.

Finally, there would seem to be little that would offend the Constitution if conditions designed to protect the community were imposed as conditions of release once a determination had been made that the defendant should be released and once that release was accomplished. It is my belief that the issue of danger is one which deserves very careful consideration and analysis. Studies commissioned by the United States Department of Justice, the Law Enforcement Assistance Administration, various states and various independent organizations are presently under way to determine whether there are effective methods for determining danger at the bail hearing.

B. APPEARANCE IN COURT

The traditional approach to the bail setting process has presumed that the purpose of bail is to assure the presence of the defendant in court to answer to the charges preferred. Traditionally, denial of bail in capital cases has been premised upon the belief that a person facing the ultimate punishment (death) has such overpowering motivation to flee that nothing could guarantee that person's appearance. This rationale, when extended to its logical end, should have as it corollary that

those who face little or no punishment will appear. Unfortunately, experience has shown both suppositions to be faulty.

Since implementation of the Bail Reform Act of 1966 in the Federal system and its progeny in various states, experience has shown us that alleged murderers who are released pretrail do not flee while those charged with minor crimes have a much higher incidence of failure to appear. Even when those convicted are permitted to remain on release pending sentence their appearance rates have rivaled and in most cases exceeded the appearance rates of those charged with minor crimes. Data available from the D.C. Pretrial Services Agency shows a failure to appear rate for defendants charged with soliciting for prostitution nearly double that of the failure to appear rate of those charged with various violent felonies.

Studies completed in the Federal system pursuant to Title II of the Speedy Trial Act of 1974, studies conducted in various states, and data available through the Pretrial Services Resource Center all bear out the fact that failures to appear generally occur with much more frequency in misdemeanor cases than in felonies. These studies also confirm the fact that those defendants charged with violent crimes and released pretrial have an exemplary record of appearance.

Based on these data the rationale upon which bail in capital cases has been denied is nothing short of erroneous. Community ties and appropriate conditions insure appearance irrespective of the crime charged.

We can conclude from experience and from confessions made by bail setting magistrates that the issue of flight is neither the first nor the most important consideration at the bail hearing.

The American Bar Association, the National Advisory Commission on Criminal Justice Standards and Goals, the National Association of Pretrial Services Agencies, and the States of Wisconsin, Kentucky, Oregon, and Illinois have all concluded that the surety option of release serves absolutely no purpose. Both associations have recommended abolition of surety for profit. In the states named, the surety option has been eliminated and data reveal that neither recidivism as measured by rearrest nor failures to appear have increased while the percentage of people who have been able to secure release has increased. In fact, the commonwealth of Kentucky has made it a crime to post bond for profit and the Kentucky Supreme Court has upheld the validity of that law.

The surety bondsman has existed in our criminal justice society as an independent business person who exists to make a profit. In most cases, a surety charges 10 percent of the bond set as his fee for effecting release. That fee, once paid, is nonrefundable. We have permitted this enterprise on the theory that the bondsman, having a substantial monetary stake in the defendant's appearance (he may be liable for the face amount of the bond if the defendant fails to appear) will insure the appearance of his bailees. Again, data being collected by various pretrial services agencies, courts, and independent organizations is revealing. Most defendants who fail to appear are brought back into the system by law enforcement officers executing warrants not by bondsmen. In addition, where forfeitures are ordered, they are seldom, if ever, collected.

What has been recommended and what has replaced the surety system is an option which permits the defendant to post 10 percent of the bond amount with the court. Consider that the defendant who posts such a bond has a real stake in his own appearance since all or most of the money posted will be returned upon completion of the case. It only makes sense that the elimination of the surety option and the substitution of the 10 percent option will result in a better appearance rate for the simple reason that the defendant owns an interest in his appearance.

In conclusion it is my belief that if the Act is amended to permit judges to protect the safety of the community by imposing conditions designed to accomplish that, we can virtually eliminate the need for surety and other financial conditions.

THE ROLE OF THE PRETRIAL SERVICES AGENCY

Under the terms of the Speedy Trial Act of 1974, the experimental agencies were to interview, verify, present reports, provide social services directly or referrals to community based agencies that could provide those services, provide information at sentencing, monitor conditions of release, and perform other functions as designated. It is obvious that these services were designated so that as many people as possible could be released pretrial with conditions that would insure their appearance (and protect the community although this purpose is illegal under the present law.) How an agency approaches these tasks can dramatically affect its impact on the ultimate implementation of the Bail Reform Act. If, for example, an attitude prevails that there is really no need to interview every defendant or to provide information

to the bail setter in every case, then, the bail setter has no choice but to follow old practices and rely upon incomplete information. At the same time, unless the Agency carries out its function under a philosophy that each defendant is entitled to release on the least restrictive conditions possible its standards will fall short of the innovative thinking necessary to convince and cajole a criminal justice system used to other practices to change.

As was noted in the General Accounting Office report there is confusion among the judiciary with respect to the issues of danger and flight. Bail is not set with any consistency. As long as there are individual judges and individual defendants bail probably should not be based upon things such as heinousness of crime, etc., nor should conditions be the same for each case. It is only an agency, however, that can provide the consistency of approach and uniformity of process that will ultimately persuade a system to change. Thus, it is important that an agency not only carry out its statutory mandates but also act as a catalyst, otherwise, the program is probably doomed to fall.

In Title II the Congress apparently intended to test the differences between implementation of the Act under probation directed agencies versus implementation under independent board directed agencies. From the testimony that I have read and by the standards under which I would judge the relevant effectiveness of the agencies, I would conclude that independent agencies are far superior.

Key questions that should be asked and answered concerning effectiveness must include:

1. Out of the universe of those arrested and presented for bail hearings what percent had Pretrial Services Agency reports ready at the time of the hearing?
2. Was there a difference between trustee and probation districts?
3. Did the percentage of personal recognizance releases increase as a result of the agency's presence? Even if the total released population increased it is critical to know whether there was a shift in the percentage of those who secured release through surety and those who were released on personal recognizance. Remember, the Act directs that the least restrictive conditions be used.
4. Was there a difference between trustee and probation districts?
5. Was there a percentage change in the failures to appear before and after the agencies began work? And was there a difference between trustee and probation districts?
6. What about detention rates? Did the percentage increase or decrease?

Based on what I have observed in my role as a consultant to the Law Enforcement Assistance Administration I can categorically say that an agency that concerns itself first with the philosophy of release based upon constitutional and statutory presumptions of innocence and the right to release will be more effective than will those agencies with other concerns.

STRUCTURE AND STAFF OF AGENCIES

As should be plainly evident by now, it is my belief that without an agency to assist with implementation of the Bail Reform Act the system will do little or nothing to change its practices. The American Bar Association and the National Association of Pretrial Services Agencies both are explicit and emphatic in their recommendations that pretrial services agencies must exist if we are to correct the widespread practices that result in wholesale detention of people pretrial. Assuming that this is true, a decision as to how these agencies should be structured, the authority under which they should function, and the requirements for the type of staff best qualified to deal with the problems posed may really become critical.

For nearly 15 years this Agency has accomplished its work utilizing primarily law and graduate students under the immediate supervision of a lawyer who answers to a Board composed of Judges of the several courts. While it may seem a most self-serving statement I have seen no other Agency that has the independence of movement, the enthusiasm or the philosophical outlook required for effective implementation of a law which requires release. I believe that the ultimate objective of the existence of an Agency such as ours and such as those created under Title II should be the release of as many people as possible. The attached letters of Chief Judge Newman and Magistrate Dwyer should be the best evidence that our Agency is accomplishing that objective.

Mr. Willetts in his testimony referred to the role our Agency played in assisting the Administrative Office of the United States Courts with its initial training of staff for the new agencies. It was of concern to me then and remains of concern to me now that the higher standards for employment imposed by the Administrative Office require people with substantially more degrees and education than those of

our Agency. While it is true that certain training disadvantages result with the employment of students, the benefits far outweigh any disadvantages. Enthusiasm, constant turnover, fresh approach and lower salaries argue strongly for staff patterns such as we utilize when the final product is one that seems to be closer to that sought under the terms of the Bail Reform Act. Cost effectiveness is important.

In October of 1980, the D.C. Pretrial Services Agency was awarded an Exemplary Program designation by the U.S. Department of Justice. Since 1973, only 34 programs out of the 630 that applied were selected as exemplary. In its award letter, the Department said:

"* * * the Board noted its success in implementing a wide range of procedures and innovations for assuring the constitutional right of release for defendants while maintaining a low failure to appear rate. The Board was also impressed with the screening and processing procedures used to identify and monitor eligible clients. In addition, it noted the close working relationship between the Pretrial program, the police department, judges and community service agencies and its ability to be an accepted part of the criminal justice community. The Board also commended the staff of the program for demonstrating a willingness to experiment with new and innovative techniques."

In addition, the Department also awarded the Agency a Grant of $150,000 to study its unique program of identifying separately danger and flight concerns.

As I stated in my testimony last year, I believe that the structure of this Agency (an Executive Committee composed of Judges; a Director, who is an attorney; and a staff composed principally of law and graduate students) is the reason that we have achieved this level of performance.

SUGGESTIONS FOR CHANGE

§ 3152 presently directs the establishment of pretrial services in those districts other than the District of Columbia where the Circuit and District Courts have concluded that the services are necessary. I believe that the services should be mandated in all Federal Districts to avoid potential problems of equal protection under the VIII, XI, and XIV Amendments.

§ 3153 provides that Probation Officers may serve as Chief Pretrial Services Officers. I believe Chief Pretrial Services Officers should be attorneys for a number of reasons:

Attorneys have been trained to reconcile differences between V and VIII Amendment rights. This conflict must be addressed constantly in the daily operations of an Agency;

An attorney will have no specific allegiance to another Agency already operating within the system. A Probation Officer's concern will be the carrying out of probation services and his training is one that presumes guilt as opposed to a lawyer's training, which presumes innocence;

The lawyer will possess training in advocacy, a necessary prerequisite to overcome the built-in inertia of the justice system.

§ 3153 should also be amended with respect to the confidentiality provisions to;

preclude the use of information in any civil proceeding (e.g., deportation hearings and the like); and

permit the use of information in proceedings concerning condition violation hearings, and prosecutions for bail jumping and contempt.

Since the Agency will be charged with monitoring conditions of release and providing notices of required appearances, the best evidence of willful violation or failure to appear will be the information contained in the Agencies files; it is, therefore, important to permit testimony in these types of criminal proceedings in order to enforce the sanctions outlined in the Bail Reform Act.

CONCLUSION

To achieve the safe release of the greatest number of persons possible on the least restrictive conditions possible should be the goal of the Bail Reform Act and of those charged with its implementation. Stumbling blocks to achieving that goal include such things as the inability under the present law to set conditions designed to protect the community, the existence of financial conditions which preserve the potential for discriminatory practices that are based on financial ability, adequate information upon which intelligent decisions can be based, supervision that will insure appearance in court when required and acceptance by those charged with implementing the law of the principles upon which it is based. The existence of pretrial services agencies drastically affects the bail setting practices of those charged with that responsibility. The philosophical orientation of the administrators of the agencies dramatically affects the design and implementation of the operations of those agencies. I believe that the agencies must be independent in structure, in philosophy, in ideology, and in practice. I also believe that this independence is more likely to be insured if the Director is a member of the bar trained in the legal principles which must take precedence at the bail decision. I also believe that the ultimate governing authority must provide some insulation from direct individual judge control while at the same time assuring responsiveness to the group responsible for setting bail.

I appreciate your consideration in inviting me to testify, apologize for the length of my statement, and offer my sincere assurance that I will assist in this very important project in whatever way that I can.

DISTRICT OF COLUMBIA COURT OF APPEALS
WASHINGTON, D. C.

CHAMBERS OF
CHIEF JUDGE THEODORE R. NEWMAN, JR.

February 26, 1980

Frank Shults
Program Monitor
Model Program Development Division
Office of Development Testing and Dissemination
NILE CJ
LEAA
U.S. Department of Justice
Washington, D.C. 20531

Dear Mr. Shults:

I understand that the District of Columbia Pretrial Services Agency has applied for selection as an Exemplary Project in the "Alternatives to Pretrial Detention" category. It is my purpose to urge favorable consideration for their application.

My support for this honor for the agency is based upon my particular experiences at two levels: national and local. At the national level, as a member of several organizations--including the Board of Directors of the National Center for State Courts and the Board of Trustees of the Pretrial Services Resource Center--I review descriptions of many experiments, projects, and the like in the court and bail reform areas. Based upon my personal knowledge of the work accomplished by the D.C. Pretrial Services Agency as compared with what I have seen and read about other programs, I have yet to discover one that carries out as many functions with the highly significant result of the pretrial release of 70% of all accused.

At the local level, as Chief Judge of the District of Columbia Court System, as a former trial judge in this city, and as a practicing attorney for many, many years, I have known of few other agencies that enjoy the reputation for hard, accurate, and effective work that can be attributed to this agency.

While I am certain that their application describes in detail their overall goals, programs, operations, automated system, and research efforts, I doubt that it can convey the aura of what the agency really accomplishes. For example, at the appellate level, many of our opinions have referred explicitly to the work of the agency while many others have relied upon its work in part. At the trial level, it is a mark of singularity that no judge would even attempt to fix bail absent a report from the agency. As you might suspect, such was not always the case.

The key factor, however, upon which I base my conclusion that this program indeed merits your favorable action is the results it achieves. As head of the District of Columbia Judicial Planning Committee and, more important, as the Chief Judge of the court responsible ultimately for the oversight of criminal justice matters in the city, I am concerned about the rights of its citizens and any situation that impacts upon those rights. Pretrial detention is an awesome prospect, yet one with which we are all faced and must deal. It is truly remarkable to me that in the face of a statute which permits the outright detention of certain defendants, the agency is instrumental in fostering an atmosphere in which over 70% of all persons brought before the courts are released. Given the proportion of felonies charged and the large number of persons already on some type of release at the time of arrest (over 30%), the result is even more remarkable.

Finally, I have experienced the work of the agency first-hand, in cases reviewed in this court and in many cases brought before me as a trial judge. I believe that their work has been and continues to be instrumental in leading our system to have faith in the principle of innocent until proven guilty--particularly as it applies to the bail process. Our city is fortunate that its judges have the confidence to apply this principle and this confidence exists in large part because of the effective work of the D.C. Pretrial Services Agency.

Yours truly,

Theodore R. Newman, Jr.
Chief Judge

UNITED STATES MAGISTRATE
UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA
WASHINGTON, D. C. 20001

JEAN F. DWYER
UNITED STATES MAGISTRATE

February 22, 1980

Frank Shults, Program Monitor
Model Program Development Division
Office of Development, Testing,
and Dissemination
NILE CJ
Law Enforcement Assistance Administration
U.S. Department of Justice
Washington, D.C. 20531

Dear Mr. Shults:

I am writing this letter in support of the application by the District of Columbia Pretrial Services Agency for status as an Exemplary Project in the "alternative to pretrial detention" category.

Under the terms of the various U.S. Magistrates' Acts, Federal Magistrates bear primary responsibility for the setting of the terms and conditions of release for all defendants arrested on Federal charges, under the conditions set down in the Bail Reform Act. This is not an easy task, requiring as it does the determination of what conditions of release will be sufficient to ensure that the defendant reappears before the court when required. In order to make the most intelligent decision, we need as much information as possible about the individuals before us. This information needs to include community ties; criminal history; record of compliance, or non-compliance with earlier release orders; employment history; parole or probation status; etc. The Pretrial Services Agency provides us with data; verifies it, if possible; and supervises the conditions set; and notifies the defendant of his next appearance date.

I know that there are agencies throughout the country which provide some or all of the services we receive here. In 1975, Congress created 10 pilot programs within the Federal system, patterned after the D.C. system. I am told that, even as I write, hearings are being conducted to determine whether these agencies should continue, and under what conditions and supervision. I also understand that the Judicial Conference of the U.S. is recommending their continuation in a form substantially similar to the D.C. Agency. Thus, it serves as a model for Federal and state agencies throughout the country, as well as a training facility for staff directors and members.

Prior to my appointment as a U.S. Magistrate, I was in private practice for twenty years; primarily in criminal trial work, in the local and Federal courts in this area. When the Agency was first started in D.C., I welcomed it with open arms, since it was of such value to the clients I represented, and to me in attempting to represent them effectively. To my knowledge, it has always been the only organization that serves both Federal and local court systems, with their different needs, different types of offenses, and their different bail laws.

I don't think, however, that I fully appreciated the value of the Agency's work until I went on the bench in 1972, and was faced with the responsibility not of representing a client, but of making decisions which would be both legal, and fair to the best interests of all parties. Without the help of the Agency my job would be infinitely more difficult. I have discussed this with Magistrates throughout the country, who are most envious of me for having this resource available.

Although I am sure the Agency's application contains a detailed description of its procedures, I wonder if it fully depicts their impact. Speaking as a judge, I can say that it is great. When I set a bond, I need the best and most complete information possible. In my view, the bail setting function is almost the most vital part of the entire judicial process. Certainly in many ways it has the greatest impact on the future of the person involved. Not only my own legal experience, but many studies have shown that the defendant on bond stands a greater chance of being acquitted; or of being placed on probation if convicted. Meanwhile, of course, family ties, employment, etc. can be maintained, with all the advantages this implies, including the dollar savings to the community.

Only complete and accurate information can produce an intelligent bail setting; and this I get from the Agency each time. As a result, somewhat more than 90% of the defendants are released; and of these, more than 95% return as instructed.

Both as an attorney and as a judge I believe that the D.C. Agency more than deserves formal recognition as an Exemplary Program. It has earned that status in this city among everyone connected with the criminal justice system, as a result of its fine work. If you have any questions, or if I can be of assistance, please do not hesitate to contact me.

Very truly yours,

Jean F. Dwyer

JEAN F. DWYER
United States Magistrate

Mr. BEAUDIN. I would like to summarize my statement by hitting four or five points very quickly. One, on the need for services, there is no need for me to say anything, because Mr. Willetts and Judge Tjoflat and everyone else who will testify concedes that there is a need for those services to have a more cost-effective system of criminal justice, at least in its administration of bail.

The only fault that I find in the bill is that I think the services should be mandated in every Federal district. I don't think a district should have the option to choose whether to make the service available or not, and it may be that I don't have an updated version of the bill, but I thought I remembered a section that said it would be up to a particular district to decide whether or not there should be those services. If that were true, I do think there would be equal protection problems, and I think no matter what form the services ultimately should take, the testimony that you heard today and other testimony that will be presented, will indicate the absolute cost efficiency of having this service, that is, interview, verification, and information presented to a bail setter.

Incidentally, I suspect you and the subcommittee will be interested in what our agency did with Mr. Hinckley. You may know that everybody that's charged with crime in the District of Columbia is brought to our agency for an interview and we, by statute, must make recommendations in those cases. Now when Mr. Hinckley came in late last night, the FBI arranged that we conduct an interview with the defendant. We were able to verify through arrangements with the FBI, information he gave us with his family and with some of his doctors that he had had in the past, and we made a recommendation before the magistrate considering the case, that he be committed immediately for mental examination or mental screening by the Forensic Psychiatry Department of the District of Columbia.

My understanding is that Magistrate Burnett ordered that procedure and the forensic people will report on Thursday, at the next scheduled hearing, on whether or not the defendant should be committed for a full examination.

Mr. HUGHES. Let me just interrupt here. What options did the magistrate have in determining bail?

Mr. BEAUDIN. The one thing I would like to talk about later, Mr. Hughes, is that the Bail Reform Act needs to be amended. You may not want to talk much about that now, but I have been arguing——

Mr. HUGHES. I don't know why not.

Mr. BEAUDIN. Well, there are other issues that are probably more important. The options he had, really, were to set bail. The Bail Reform Act really doesn't provide that he can commit a defendant without bond. But as a matter of fact, I don't even know that legally he can be committed for this temporary period during which an examination is being conducted without bond.

Mr. HUGHES. That's the reason I asked. It's an interesting point.

Mr. BEAUDIN. Well, it happens all over the country that defendants are committed and are held. Now the Bail Reform Act provides that somebody can be held in 24-hour custody for specific purposes, so that it could be that under that provision the defendant was held with no bond set, and since he's not charged with a capital offense at this minute, there's no way legally that bail could be denied. Some bail has to be set. Now I did not see the order myself, but I would suspect that the order would have in it something to the effect that he would be committed in 24-hour custody for the purpose of the conduct of this mental examination.

Mr. HUGHES. That 24-hour custody runs from the time of arraignment, I would presume.

Mr. BEAUDIN. Well, I don't know. I honestly don't know. As far as I know, there aren't any decisions on it. I take it he will be back Thursday, and at that point if the report were to be that he should be committed, there is a statutory provision under which he can be committed for full examination and in that case, bail would not be set.

Granting the need for the services, the next question is, Under what form? There's no doubt in my mind that to put this in any form in any way other than an independent form would be to kill the program. And I'll have more to say about that in a few minutes. We should talk about cost efficiency. The most cost-efficient way to accomplish pretrial services, has already been explained, and it's been demonstrated that it's cost effective to release as many people as possible, consistent with the safety of the community; as opposed to detaining those that are questionable, even if we have to put some extra supervision on a certain number of people. The least costly way in the long run is to supervise rather than to have people detained at the cost of building institutions and maintaining them.

The most effective way, then, of releasing these people is still at issue, and I'll give you some facts about that in a few minutes. I suggest that we compare what our agency has done, not only against the board run districts, and the probation run districts, but against the whole program that was run as a pilot by the Federal system.

Specifically, our statute directs that we use law students and graduate students in our services. You heard testimony today that in 48 months, 42,000 interviews were conducted, 22,000 defendants were supervised, and it cost $12 million to do that, using 106 professionals, now 88, and 58 clerical people.

In the same time period we have interviewed over 100,000 defendants. That's more than twice as many. We have supervised over 48,000 defendants. That's over twice as many. And it cost $4 million in 4 years.

I would submit that a 300-percent increase in cost to accomplish half the work product indicates questionable efficiency.

One thing that the experiment did not do that would have been of substantial value to this committee and anybody else in Congress was to contract out services with existing State agencies. There are agencies in place in all of the major jurisdictions, in Philadelphia, in New York, in San Francisco, and in Washington to name but a few places where the State-run agency could have conducted exactly the same series of services for the Federal system, and it would have cost a hell of a lot less than it cost to put a whole new organization into place.

Since no contract-for-services attempts were made, there is no data to compare whether such methods would have been efficient

and that's one of the reasons that I wanted to know what our record was. We serve both the Federal and the local jurisdictions in the District of Columbia and comparison of our operations with those conducted by the administrative office of the courts might give you data from which you could make value, cost-efficiency judgments.

With respect to efficiency let me echo Judge Tjoflat's statements about serving two masters. In many jurisdictions at the State level the development of pretrial services agencies, where those agencies have begun under VISTA or LEAA funding or whatever means has been troublesome. When funding ends and they become part of a governmental agency, whether that be probation, correction, or what have you, the general efficiency measured in terms of the number of interviews conducted, number of recommendations made and the followthrough, has declined.

To some extent the whole notion of bail reform began in New York City. As soon as it was turned over to probation, the system came to a grinding halt. The number of recommendations releases declined. The Vera program went back in and started a new agency. In Alameda County, as there were funding cuts as a result of proposition 13, the first thing that went was the pretrial services aspect of the probation division, because the first inclination and first loyality was for postconviction services.

So, that in echoing what Ms. Crohn and others said, the opinion that I hold without any shakiness at all, is that no matter what vehicle you pick, there has to be a separation between that vehicle and an existing governmental unit, in order to make it succeed. You heard Dan Ryan talk about what he did every day. I spent lots of days in my life, at the beginning of the time of the District of Columbia pretrial services, cajoling the system to get it to do what it has a right to be doing anyway.

One last thing before I would ask if you have any questions of me. When I was brought in to assist in the training of the original pretrial services officers appointed under this act, I expressed my opinion on what the Bail Reform Act was set in place to do. Stated very simply, it was to eliminate discriminatory factors between rich and poor people. Based on everything I read, when Sam Ervin was introducing the legislation; statements by Kennedy, by Hruska, and others in the Senate, and by Peter Domenici, by Rodino, the chairman of this committee and others; the whole notion was that the jails in this country were full of people who simply could not afford to post bail, and there must be another way to deal with this.

A measurement of the success of the Federal program is not just—or should not be just, did the release rate stay the same? Whether the release rate stayed the same is irrelevant. The critical question is whether the mode of release changed. If we saw a difference between the rate at the start of these programs and the end it might be significant to assume that the release rate stayed a constant 50 percent. If 40 percent of that group in the first place posted bail, and 40 percent of the group at the end were released on recognizance without having to post bail, then the Bail Reform Act was being implemented as intended.

If on the other hand, the release rate stayed the same and the release mode had not changed, then I don't think the experiment accomplished anything. Many of the people charged with administering the program believe that all we had to do is maintain a constant rate. I think there are questions that were not asked. I think there are questions that should have been asked. It's too late to ask them now, and I would just offer to you the experiences of the States which, interestingly enough, are ahead of the experiences in the Federal system.

Ms. Toborg from the Lazar Institute has just finished conducting a study of what has happened in States and will be able to provide you with much more accurate information in that regard.

To summarize, I feel it's absolutely vital to have the service, that the service should be independent. And I also believe that the Bail Reform Act should be amended and amended soon.

Mr. HUGHES. Thank you very much, Mr. Beaudin, for an excellent statement. You have given us a great deal of insight into the District of Columbia experience, and we are grateful.

The gentleman from Michigan. The Chair grants you 5 minutes.

Mr. SAWYER. Just to change the subject for a moment, in what particulars do you feel the Bail Reform Act should be amended?

Mr. BEAUDIN. I believe that the Bail Reform Act should be amended to permit the judge to consider danger to the community in fixing conditions of release. Senator Kennedy proposed a good bill in S. 1722 which would permit consideration of danger. In the bill, once a the defendant could satisfy the court that he could secure his release, then the judge would be mandated to consider whether or not the release would pose a threat to community safety. If he felt that way, he could suggest conditions or order conditions imposed that would protect the community.

The anomaly that we face under the Bail Reform Act is that a judge may consider—as you heard Judge Tjoflat say—he can consider only whether the defendant will appear. But if he considers danger, he can only consider danger as it impacts on his probability of appearing or not. Our present data show that no matter how heinous the crime charged, no matter the stage of the proceeding, the defendants appear. Therefore, we are hamstrung. We, as a system, are hamstrung in that we cannot provide conditions that would protect the community. The fifth circuit has said in a 1971 case, called *Cramer* v. *United States,* but anyway, that a condition set that has no relationship whatsoever to whether the defendant will appear, must be removed.

If the bail format were amended along the lines that Senator Kennedy suggested, short of having a preventive detention provision, but containing provisions under which conditions could be set to protect the community, then the defendants who were released could have additional conditions put on them that would strictly be there for community protection. The process would be out in the open and it could all be challenged as a matter of record. As things stand now, it's not.

Mr. SAWYER. Do I understand—I'm not that well acquainted with the functioning of the Bail Reform Act—but do I understand that a fellow who tries to assassinate the President has the right to be released on bond?

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Mr. BEAUDIN. Yes, sir, he does. He's not charged with a capital offense. Under the Bail Reform Act, since he's not charged with a capital offense, he must be admitted to bail and the eighth amendment says it must be bail which is not excessive and that has been interpreted to mean more than is necessary to insure his appearance.

Mr. SAWYER. Well, is assault with intent to kill in effect not a capital crime?

Mr. BEAUDIN. It's not a capital crime, no, sir.

Mr. SAWYER. That's all I have.

Mr. HUGHES. Just a followup on that. It seems to me from what you say that the magistrate has some flexibility to commit an individual for psychiatric tests or other functions for 24 hours, and under those rules it would seem that, as of perhaps today, the defense counsel would have every right to seek the release of Hinckley.

Mr. BEAUDIN. I think so. I don't know that he can seek release, Mr. Chairman, but I think that it provides——

Mr. HUGHES. Setting of bail, in any event.

Mr. BEAUDIN. If I'm not mistaken, the act also provides under its review provisions, that anybody detained as a result of an inability to meet whatever condition was set after 24 hours may petition the court that set the condition to review that decision. So he has an automatic right of review if he is still detained at the conclusion of that 24-hour period. He then has a right to appeal to the appellate court.

Mr. HUGHES. So that there is an overlap because apparently there is a 24-hour timeframe within which the magistrate can commit for psychiatric tests.

Mr. BEAUDIN. I'm hedging a bit. I haven't seen the order. If I had seen the order, I'd feel much more comfortable in telling you what I think happened.

Mr. HUGHES. Well, we don't want to pursue that anyway. Let me just ask you how the District of Columbia handles the question of protecting the community from individuals who might present a threat to the community, but who would probably appear in court when summoned?

Mr. BEAUDIN. There are two ways. There is, for lack of a better word, a bifurcated approach to bail in the District of Columbia. The first issue that's decided is will the defendant appear or not. After that determination is made and the appropriate recommendation made from our office, we then look at the record to determine the potential for dangerous behavior, and that leaves two options.

If the defendant presents the kind of danger that under a very clearly defined statutory set of procedures amounts to a danger for which he should be detained without bail, then the court will conduct a hearing, make such a determination, and put its findings in writing and the defendant will be detained with no bail.

If, on the other hand, his background is not such that it provokes the U.S. attorney to request detention, the U.S. attorney can ask for any one of a number of conditions—house arrest, narcotics maintenance, even 24-hour living in a particular address, curfew—any one of a number of things that are clearly community protection oriented. He can ask for any one of those conditions and the

court can impose them. There is a case pending in the District of Columbia Court of Appeals right now called Edwards against the United States. It's the first direct challenge to the preventive detention section. Edwards was detained—preventively detained—charged with a serious offense, and it's my information that the court of appeals is close to issuing its opinion. I suspect that that court is going to sustain the constitutionality of the statute.

Mr. HUGHES. Obviously it was upheld in the district court.

Mr. BEAUDIN. Well, since the change of jurisdiction what will happen is that I suspect the public defender will petition for a writ of certiorari to the Supreme Court because it doesn't go through the Federal system, and whether or not the Supreme Court will accept cert, I don't know, but I have my guess about what happens if they do.

Mr. HUGHES. How frequently is preventive detention utilized in the D.C. system?

Mr. BEAUDIN. Since the law was put into effect in 1971, between 1971 and about 1978 or 1979, maybe 20 times was it sought, simply for one reason. In drafting the law, the Congress left in a provision that said a money bail could not be used to protect the community, but it could be used on the issue of flight. The U.S. attorney there has said it was much simpler to just ask for a high money bail and detain the defendant on high money bail than it was to go through the preventive detention hearing. Since 1979 the prosecutor's office has started to use the preventive detention statute a great deal more. Interestingly enough, in the cases in which preventive detention is requested I would say that in roughly half of them, detention is not ordered. The statute requires that the Government do more than stand and say "this man has been identified by 17 witnesses in a lineup." There's a little more than a proffer that has to be made, and the defendant has a chance to challenge some of that evidence.

Chuck Ruff has made a statement as recently as, I think, about a month ago that his office intends to use the preventive detention provision a great deal more in the coming months, and indeed, we have seen an increase in the number of times it has been requested.

Mr. HUGHES. The gentleman from Texas is recognized.

Mr. HALL. I have no questions.

Mr. HUGHES. Well, thank you very much, Mr. Beaudin. I do want to note before you leave us that you have recommended also that we modify the confidentiality section of H.R. 2841 to permit testimony at certain hearings—contempt proceedings and what have you.

Mr. BEAUDIN. Yes. The reason I request that, Mr. Chairman, is this: If the agency that's ultimately selected to provide the services, provides notification to defendants and if the agency also supervises the conditions of release, the best evidence—and you know this, as a prosecutor, Mr. Sawyer—the best evidence available as to whether or not that defendant willfully violated his condition or willfully failed to appear is going to come from the records of the agency. The general confidentiality provision contemplated the need to have this information available to protect fifth amendment problems.

When you contrast the fifth amendment rights against incrimination against the eighth amendment right to bail, the notion was it's of more importance to have the bail information, than to be able to use information against the defendent later on.

The statute that you propose anticipates additional services. Those services, in a sense, develop additional information beyond what has been provided by the defendant. Information in the files will be the best evidence in a prosecution, for example, for bail jumping. Not to have that evidence available in a bail jumping prosecution would be to thwart the statute.

Mr. HUGHES. I think your point is well taken. You also recommend that the chief pretrial services officer be an attorney. Can you tell us what you have in mind there?

Mr. BEAUDIN. This is a controversial statement, I know. I'm biased and I'm biased because——

Mr. HUGHES. We like lawyers also.

Mr. BEAUDIN. Well, I've run into lots of people who don't, and since I am one, I guess I can criticize those who are, but an attorney is trained, as you know, in advocacy in what the fifth amendment versus the eighth amendment means, and what the due process provisions require. It's my belief that when an attorney administers a program such as this one, if he or she concentrates on the legal implication of what's being done rather than being worried about administering social services, is not what the Bail Reform Act is supposed to be all about—that the ultimate efficiency of the agency in meeting the stated goals will probably be enhanced. I think it's attributable to the fact that he or she has been trained as an attorney.

Now, that is not to denigrate training that anyone else has or to say that only a lawyer can do the job. I just think that, based on what I have seen in my 15 years, lawyers have done a better job than have nonlawyers in these jobs.

Mr. HUGHES. Thank you very much. You have been most helpful and we appreciate your taking time from your very busy schedule to testify here. We would be very interested in learning a little more about the order that was entered just yesterday in the Hinckley matter.

Our next witness is Mary A. Toborg, associate director of the Lazar Institute, a public policy research firm in Washington, D.C. She is an expert in evaluating criminal justice and social programs. Ms. Toborg received a bachelor's degree from the University of Texas and a master's degree in public administration from Harvard University. She has directed an evaluation of pretrial release programs, analyzing the operations of pretrial release programs and the interactions between such programs and other parts of the criminal justice system. She is the coauthor of "Pretrial Release: An Evaluation of Defendant Outcomes and Program Impact."

Ms. Toborg, it's a pleasure to welcome you to the subcommittee. We do have your statement. We have read it, and we would appreciate very much if you would endeavor to summarize your observations and recommendations.

TESTIMONY OF MARY A. TOBORG, ASSOCIATE DIRECTOR, LAZAR INSTITUTE, WASHINGTON, D.C.

Ms. TOBORG. Thank you, Mr. Chairman and members of the subcommittee. As you indicated, I have directed a national evaluation of pretrial release. I'd like to emphasize that it was at the State court level. The study is now nearing completion. The draft was finished just within the last week, and it is available for review. The study involves a detailed analysis of 12 jurisdictions, located around the country, that looked at quite a broad range of topics. One of those topics was program impact. That is, what difference does it make if you have a pretrial release program? Because the pretrial release programs at the State court level have many of the same functions as the Federal pretrial services agencies, I believe that our findings about program impact are relevant to your deliberations about the future of the Federal agencies.

I'd like to summarize only three points from my prepared statement, but before I do that, I want to say a little bit about how we looked at program impact. Our major analysis of program impact is based on experimental tests that we conducted in four cities. The cities were Baltimore, Md., Tucson, Ariz., Lincoln, Nebr., and the Beaumont/Port Arthur area of Texas.

What we did in each of these jurisdictions was to look at what happened to a group of defendants who received the full program processing of a pretrial release program, as compared with what happened to a control group of defendants who did not receive that processing. We were concerned about not denying services to any defendant who might otherwise been processed by a program, so what we did in each of these four cities was to support a temporary expansion of program activities into a group of defendants that would otherwise not have been processed at all.

As a result of doing that, we were able to get a group of defendants who received full program processing and to compare them with a control group that did not, while at the same time not decreasing the total level of defendants who were processed by a program.

That's a fairly strong research design, and because of that, we have considerable confidence in the findings that I will share with you.

First of all, we found that the programs had positive impact on release rates. That is, when the programs operated, more defendants secured release prior to their trials.

Second, even though more defendants were released, there were no increases in the failure to appear or the pretrial arrest rates of those persons who were processed by the programs.

Third, I will say a little bit about program followup and supervision activities. We were able to do an experimental test in two of the jurisdictions. The tests were very limited in scope. In one case we looked at the impact of providing notification of coming court dates to the defendants. And in the second case, we looked at the difference between providing a very minimal level of supervision, consisting of the defendants, calling the program once a week or providing a more intensive level of supervision that consisted of defendants, calling the program more often, coming in on some days

for personal counseling, and also in many cases being referred to various treatment services for drug, alcohol, mental health or employment assistance.

In both of these cases, we found that the defendants who received greater supervision did not do any better in terms of failure to appear or pretrial arrest rates than the group that received the lesser program followup or supervision.

I hasten to add that these are very limited analyses of the impact of program followup and supervision and certainly should not be taken as any sort of definitive statement about the effect of supervision nationwide. However, I think they do suggest—and other studies, I think, suggest this as well—that there needs to be very careful evaluation of any supervision or program followup activities that are undertaken, to make sure that they are, in fact, having the impact that you would like for them to.

I might also say that while our major analysis of program impact was based on these four jurisdictions, we did do some analyses for the other eight sites that we studied, and the findings were very consistent with the findings from the experimental analysis; that is to say, there was strong evidence that programs were having a major impact on release decisions and on release outcomes. There was much less evidence that they were having strong impact through their followup activities on either failure to appear or pretrial arrest.

That's a very brief summary of our findings concerning program impact. I would be happy to respond to any questions you might have about that or about other parts of our study.

Mr. HUGHES. Were the backgrounds or crimes in the test group similar to those in the group that was being serviced by a pretrial services agency? Were they comparable?

Ms. TOBORG. Yes. Because of the fact that we were able to use a random assignment procedure, we were able to control for everything except the program involvement in one case, and the lack of it in the other case. We did test that after the fact. We looked at the two groups in terms of about 20 characteristics, including personal background, criminal record and nature of the charge, and generally, they were comparable.

Mr. HUGHES. Did you also look at the manner in which the pretrial services program was implemented in various State jurisdictions and determine which of those particular approaches seemed to be more successful than others?

Ms. TOBORG. We looked at that only in a descriptive way. With 12 sites, there wasn't that much that we could look at in a quantitative sense.

Mr. HUGHES. When you indicate that your study of the rearrest record in relation to the degree of supervision did not show a marked difference, you suggest it was a limited case study, so not a great deal of significance should be attached to it. How deeply did you look into it?

Ms. TOBORG. We looked deeply, but we looked in only two cases: In one case we looked at the effect of notification—mail or telephone notification of coming current dates—and in the other case, because of some constraints in the jurisdiction, we looked at minimal versus more intensive supervision, so we don't have a pure test

of supervision versus no supervision. I think that the proper interpretation to put on the findings is, that they raise questions about the impact of supervision.

Mr. HUGHES. It does, because it would seem to me that you have a whole range of options including releasing defendants on bail and just periodically sending them notices, which is the procedure in many jurisdictions. That's what we're doing in the Federal system in many instances, aside from those areas where you have a pretrial services program, and where you have very strict supervision and conditions of release which provide day-to-day supervision, such as has been suggested by some of the testimony this morning. And it would seem to me that the stricter the supervision, the less likely that the defendant would involve himself in criminal wrongdoing once again. Your suggestions fly in the face of that.

Ms. TOBORG. Correct. I think the whole area is one that needs a great deal more attention and more study than we gave it or anyone else so far has given it. There's another study underway right now that's being conducted by the National Council on Crime. Delinquency that looks specifically at the issue of the impact of supervision. They're looking, again using a controlled experiment, at three jurisdictions around the country. The study has just started, so it will be a couple of years before they have the results. But I do think it's an area that needs further study, partly because it is very expensive to engage in supervision as compared with other activities that pretrial release programs normally would undertake.

Mr. HUGHES. In how many States do we have some form of pretrial services release program?

Ms. TOBORG. I would think in every State there is some formally established program.

Mr. HUGHES. In varying degrees?

Ms. TOBORG. Very much so.

Mr. HUGHES. Did you take a look at that particular aspect? Did you look at how many States? Have you compiled a study?

Ms. TOBORG. No, we have not looked at how many programs there are around the Nation. I know the pretrial services resource center does periodically provide a directory of the programs that they know about. I think that, as formally established programs, there are probably somewhere between 100 and 120.

Mr. HUGHES. Thank you very much. Mr. Sawyer, I'll grant you 5 minutes.

Mr. SAWYER. You say in your statement there was little evidence that followup activities after release for the program studied affected failure to appear or pretrial arrest rates.

Ms. TOBORG. That's correct.

Mr. SAWYER. Apparently, you would agree with GAO's statement that the need for and benefits of pretrial services agencies' supervision and social services have not yet been clearly demonstrated.

Ms. TOBORG. Well, I think I would agree with that. I would like to know a little more about the Federal system. Our study was limited to programs that operate at the State court level, and certainly, in general, our study suggests any time you're looking at a program providing supervision, you should take a close look at what its impact was. I might also say that there are some major differ-

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ences between the Federal system and the Sate court system in terms of the level of supervision that's provided. I am under the impression that the level of supervision is much greater in the Federal system than it was in the programs that we looked at. But, in general, I would say that I agree.

Mr. SAWYER. Well, you say that the programs you studied or used as your control in your experiment accomplished a higher release rate.

Ms. TOBORG. Yes.

Mr. SAWYER. How much higher?

Ms. TOBORG. It was considerably higher.

Mr. SAWYER. Well, what does considerably mean?

Ms. TOBORG. In one case, 86 percent of the defendants in the experimental group were released as compared with 57 percent in the control group. In another case, 77 percent were released in the experimental group, as compared with 47 percent in the control group. In another case it was 97 and 92 percent; and in the fourth case, there was no difference. There was a difference in three of the four sites.

Mr. SAWYER. Now you say that this was done without an increase in either failure to appear or rearrest?

Ms. TOBORG. That's correct. In the experimental group, where there were more people released, the rates of failure to appear and pretrial arrest were the same as in the control group, where fewer people were released.

Mr. SAWYER. Are we talking in term of numbers or percentages?

Ms. TOBORG. Percentages. These are rates.

Mr. SAWYER. Well, then if it's the same percentage of, let's say, we have 100 people, to keep it simple, you would have 86 percent or 86 people arrested, as the same percent of, say, 46, if that was the number in the other group.

Ms. TOBORG. It is true that there would be a change in the actual number of people, by virtue of releasing more.

Mr. SAWYER. If there's no change in the percentage, how does it get us anywhere? In other words, the percentages are reduced by the screening and recommendations, so what does it accomplish?

Ms. TOBORG. You might expect that the people being detained would have worse outcomes, if you released them. But in fact, this does not seem to be the case. They seem to have the same outcomes. They're not any worse.

Mr. SAWYER. You're saying, in effect, that the percentage of error by the screening group isn't any worse than the percentage of error by the judge—the ones he decided without advantage of screening?

Ms. TOBORG. That's correct. The major difference found was in the detention rates for the two groups, not in their postrelease outcomes.

Mr. SAWYER. I guess that's all I have. Thank you, Mr. Chairman.

Mr. HUGHES. The gentleman from Texas, Mr. Hall, is recognized for 5 minutes.

Mr. HALL. No questions.

Mr. HUGHES. I would be very interested in seeing the final study. I understand there are a number of particular case studies. Tell us how many.

Ms. TOBORG. Altogether, the study looked at 12 jurisdictions. In four of them, we did experimental tests of the nature that I described earlier. Basically, a program group that got full program services was compared with a control group that did not. That was done in four jurisdictions. In addition to that, in two of those four jurisdictions, we also were able to do an experimental test, looking at the impact of supervision.

Mr. HUGHES. In your study, did you actually go in and take a look at the degree of supervision?

Ms. TOBORG. Yes. We can describe in those two cases what the degree of supervision was.

Mr. HUGHES. Can you tell us for the record just what the degree of supervision was?

Ms. TOBORG. In one case, it was very little. It was notification of coming court dates.

Mr. HUGHES. That's the sending of a letter?

Ms. TOBORG. Either sending a letter or contacting the person over the phone.

Mr. HUGHES. And that was the extent of supervision?

Ms. TOBORG. That was it. As described to us, it was a very limited sort of thing. Also it was done only for defendants at the misdemeanor level. In the other case, the test was minimal——

Mr. HALL. Is that misdemeanor level?

Ms. TOBORG. In case where we were just looking at the notification. In the other case, it included misdemeanor and felony cases both, and the test of a minimal supervision versus more intensive supervision. We were not able to look at a situation with no supervision at all. The minimal supervision consisted of a defendant's calling the program once a week, and calls were monitored in a rather perfunctory manner.

In the more intensive case, the program took a look at each defendant and, at a minimum, would require the person to call in twice a week. In a number of other cases, they thought this level of supervision would not be sufficient, and in those cases, they would have the person either come in and report to the program, or if there was a need, they would refer the person to some kind of services. They would refer them to drug treatment programs or for alcohol, mental health, or in some cases, employment services.

Mr. HUGHES. In any of the controlled situations, did anyone from pretrial services actually go out to the reported place of employment? Did he or she ever go to the home unannounced to see if the defendant was there?

Ms. TOBORG. Not to my knowledge.

Mr. HUGHES. You see, I don't consider sending a notice to be supervision. When I suggest that's mimimal, I think that's very minimal supervision, and I'm not so sure that I would even consider it supervision, to require a defendant to call in, because these burglars can call from Mr. Smith's home while they're getting counsel fees together. So I think that without that type of a check, I'm not so sure that it's a very meaningful comparison.

Ms. TOBORG. I think that's true, that the comparisons between State court program activities and Federal court activities are hazardous, where supervision is concerned.

Mr. HUGHES. Well, thank you very much. We appreciate your testimony.

[The statement of Ms. Toborg follows:]

PREPARED STATEMENT OF MARY A. TOBORG

SUMMARY

As director of a national evaluation of pretrial release programs that serve state courts, I am happy to testify in connection with pending legislation on the federal Pretrial Services Agencies. Our study, now nearing completion, analyzed pretrial release practices and outcomes in twelve jurisdictions located around the country. Four broad topics were considered: (1) release, including overall rates of release and types of release; (2) failure to appear; (3) pretrial arrest; and (4) the impact of pretrial release programs.

Major findings related to program impact include:

The programs studied had an important impact on release outcomes. In experimental tests conducted in four jurisdictions, more defendants were usually released when programs provided their full range of services than when they did not Additionally, statistical analyses of data from eight jurisdictions, where experimental tests of program impact were not implemented, confirmed that program activities had a significant effect on release outcomes (i.e., whether defendants secured release and, if so, whether their release conditions involved money).

The increase in release rates in the experimental sites, with attendant savings in detention costs, was accomplished with no increases in failure to appear or pretrial rearrest rates.

There was little evidence that followup activities after release, for the programs studied, affected failure to appear or pretrial rearrest rates.

One implication of these findings is that programs' supervision activities should be carefully evaluated. The relatively high costs of supervision, when compared with interview-verification-recommendation activities, and the mixed findings of other studies concerning the impact of supervision make such evaluation particularly important.

STATEMENT

Mr. Chairman and Members of the Subcommittee: I wish to thank you for the opportunity to testify on the legislative proposal concerning Pretrial Services Agencies for the federal court system. Under funding from the National Institute of Justice, U.S. Department of Justice, I have directed a national evaluation of pretrial release programs that serve state courts. The activities of these programs are usually very similar to those of the federal Pretrial Services Agencies. Typically, program staff interview defendants about their community ties, verify the information provided, and present this information and a release recommendation to a judicial officer who makes the release decision. Often, program staff will also notify released defendants of coming court appearances and offer other followup services during the release period.

The evaluation encompassed detailed analysis of pretrial release practices and outcomes in twelve jurisdictions around the country; this included data collection and analysis for a sample of approximately 6,000 defendants arrested in those jurisdictions. The study considered four broad topics:

Release—What percentage of defendants are released pending trial? What are the most common types of release? Which defendant or case characteristics have the greatest impact on release decisions?

Court Appearance—To what extent do released defendants appear for court? How well can failure to appear be predicted?

Pretrial Criminality—During the pretrial period, how many defendants are rearrested; and of those, how many are convicted? What are the charges? How well can pretrial rearrest be predicted?

Impact of Pretrial Release Programs—To what extent do pretrial release programs affect release decisions? How do the programs affect defendant behavior during the release period; for example, does notification of court dates increase appearance rates, or does supervision reduce pretrial criminality?

I will focus my remarks primarily on the findings regarding program impact, although I would be happy to discuss any other parts of the study that might also be of interest to you. I would like to point out that the draft of the study has been completed only recently and is now being reviewed. The conclusions I will present

should be viewed in that context. In addition, these conclusions may not be shared by the National Institute of Justice or the pretrial release programs that participated in the evaluation.

Our major analysis of program impact was based on experiments conducted in four jurisdictions: Pima County (Tucson), Arizona; Baltimore City, Maryland; Lincoln, Nebraska; and Jefferson County (Beaumont-Port Arthur), Texas. In each case the outcomes of a group of defendants who received full program processing were compared with the outcomes of a randomly selected control group of defendants who did not receive such processing. To avoid "denial of service" to defendants, the experiments involved the *expansion* of program operations to reach persons not previously processed. As a result of this expansion, programs were able to select a control group without decreasing the number of defendants who received full program services. The specific way in which the experiments were implemented varied across the four sites, because of different local circumstances that the general research had to accommodate.

Three types of possible program impact were of major interest:

First, the effect of programs' interview, verification and recommendation activities on release outcomes, that is, the overall release rate, the type of release (nonfinancial or financial) and the speed with which release was secured;

Second, program impact on failure to appear rates; and

Third, program impact on pretrial rearrest rates.

In general, programs had a positive impact on release outcomes. Specifically, release rates were usually higher when defendants received full program processing than when they did not.

Although more defendants were released when programs operated, those defendants had the same rates of failure to appear and rearrest as other defendants. Thus, the increased release rates were accomplished without offsetting increases in failure to appear or rearrest rates.

We also conducted limited experimental analysis of the impact of program followup activities on failure to appear and pretrial rearrest rates. In one site the effect of program notification of court dates for defendants charged with misdemeanors was tested, and in a second site the impact of minimal versus more intensive supervision was analyzed. In both cases the defendants without the special followup services had the same failure to appear and rearrest rates as the defendants who recieved the services. Because these tests of the impact of followup services were quite limited in scope, the findings cannot be considered conclusive. They suggest, however, that programs' post-release followup activities should be carefully evaluated to determine whether they are producing the desired results.

These findings from the four experimental sites were consistent with other findings from the study. Besides the experimental analyses, we analyzed release outcomes, failure to appear and pretrial rearrest in eight sites without use of experimental designs. These sites were Baltimore City, Maryland; Baltimore County, Maryland; Washington, D.C.; Dade County (Miami), Florida; Jefferson County (Louisville), Kentucky; Pima County (Tucson), Arizona; Santa Cruz County, California; and Santa Clara County (San Jose), California.

In these eight sites, we studied a sample of defendants from point of arrest to final case disposition and sentencing. Existing records were used to collect extensive data on the backgrounds of defendants, release decisions, program involvement, case outcomes, court appearances and pretrial arrests.

In statistical analyses of these data designed to identify the most important factors related to release outcomes—both whether defendants secured release at all and, if so, whether their release conditions involved money—we found that program recommendations were very important. When similar analyses of failure to appear and pretrial rearrest were conducted, program activities—such as followup efforts—were not among the most important factors affecting those outcomes.

Thus, as in the experimental analyses, program activities were found to be highly significant for release outcomes but to have relatively little impact on failure to appear and pretrial rearrest. I would also like to point out that the analyses of failure to appear and pretrial rearrest were on the whole not very successful in identifying good predictors of these events. Nor have other studies been able to isolate accurate predictors of them.

We also conducted a brief cost-effectiveness analysis of pretrial release programs. This analysis, based on data from the four experimental sites, was done from the viewpoint of the criminal justice system, not that of defendants, the public at large or another group. Thus, costs were included in the analysis only if the criminal justice system incurred them; similarly, benefits were counted only when the criminal justice system accrued them.

Four broad categories of costs were considered: (1) detention; (2) failure to appear; (3) pretrial rearrest; and (4) program costs. Cost-effectivness was assessed by estimating and summing the costs in these broad categories first for the group of defendants who did not. The group with the lower costs was then judged to reflect the more cost-effective mode of operation, that is, either with or without a pretrial release program.

Many problems were encountered in the development of this cost-effectiveness analysis. A major difficulty was the relatively poor cost data available. Because the cost estimates were often very rough ones, the results of the analysis should be considered suggestive, rather than definitive.

Fairly large differences were found across sites in terms of cost-effectiveness. In general the more cost-effective programs processed felony level defendants, although not necessarily exclusively. These programs also had minimal followup of defendants after release.

In summary, our evaluation of pretrial release programs at the state court level found that:

The programs studied had an important impact on release outcomes: usually, more defendants were released when programs operated than when they did not;

The increase in release rates, with its attendant savings in detention costs, was accomplished with no increases in failure to appear or pretrial rearrest rates; and

There was little evidence that followup activities after release, for the programs studied, affected failure to appear or pretrial rearrest rates.

One implication of these findings is that programs' supervision activities should be carefully evaluated. The relatively high costs of supervision, when compared with interview-verification-recommendation activities, and the mixed findings of other studies concerning the impact of supervision make such evaluation particularly important.

Mr. Chairman, my thanks to you and the Members of the Subcommittee for your interest in our study. I shall be happy to respond to any questions you may have about it.

THE LAZAR INSTITUTE

Mary A. Toborg
Associate Director

April 27, 1981

The Honorable William J. Hughes
Chairman, Subcommittee on Crime
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hughes:

Thank you for the opportunity to testify on March 31 in connection with the pending legislation about the Federal Pretrial Services Agencies. I am writing to clairfy a matter raised during the hearing that may not have been fully explained at that time.

Concerning the impact of program followup acitivities upon defendant behavior after release (i.e., failure to appear and pretrial arrest), I would like to stress that our study of this topic was very limited in scope. In one experimental test, we looked at the effect of mail/telephone notification of coming court dates on defendants' failure to appear and pretrial arrest rates. In the other experimental test, we analyzed the effect of "minimal" supervision (i.e., a weekly telephone call by the defendant to the program), as compared with "more intensive" supervision (i.e., at least two calls-per week by the defendant and often face-to-face contact and/or referral to services—drug, alcohol, mental health or employment—as well). Thus, in this case we did not test the effect of "some" supervision as compared with "no" supervision, but rather analyzed the effect of different levels of supervision.

Because of the limited nature of our study, the findings (i.e., that defendants with "less" program followup did as well in terms of failure to appear and pretrial arrest rates as defendants with "more" program followup) should not be viewed as a definitive analysis of the effects of supervision. A reasonable conclusion from the findings is that the impact of supervision should receive additional study in more jurisdictions. It would not be reasonable to conclude from a limited analysis of limited followup activities in two sites that supervision would be ineffective in other sites or when delivered in other ways.

Indeed, other studies (also limited in scope) of supervision have found it effective. Supervised defendants in Monroe County, New York, were found to have slightly higher court appearance rates than unsupervised defendants; supervised defendants in a Philadelphia study experienced lower rates of failure to appear and pretrial arrest than other defendants; and supervision in the District of Columbia was found in a recent study to have a favorable effect on court appearance rates.

Additionally, supervision at the State court level seems in general to be much less extensive than supervision at the Federal level. For this reason also, the findings about the impact of program followup activities from our study may have limited applicability to the Federal system.

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THE LAZAR INSTITUTE

The Honorable William J. Hughes
Chairman, Subcommittee on Crime
U.S. House of Representatives
April 27, 1981
Page Two

In summary, while I would urge that the impact of supervision on defendant outcomes receive additional study and evaluation at both the Federal and State levels, I would not recommend that supervision be eliminated pending the completion of such analyses. Rather, I would suggest that supervision activities be continued, while further study of their impact is undertaken.

I hope that these additional comments about the findings from our study and the conclusions that we would draw from them are helpful to you in your consideration of the Federal Pretrial Services Agencies' legislation. Please do not hesitate to let me know if there is any additional information you would like to have about our study.

Thank you again for your consideration.

Sincerely,

Mary A. Toborg

Mary A. Toborg
Associate Director

MAT:vah

Mr. HUGHES. Our next witness is Mr. Robert Ault, supervising U.S. probation officer for the Eastern District of Virginia, Richmond Division. He has ably served in that position for 5 years. Prior to that appointment he served as a line probation officer for 3 years.

Mr. Ault is the president of the Federal Probation Officers' Association, and he has just taken office on January 1. He has been designated by the national board of the Federal Probation Officers' Association to testify on behalf of their membership.

Mr. Ault, we have your statement, and without objection it will be received for the record. Please introduce your colleagues for us, and proceed to summarize, if you will, your testimony.

[The complete statement follows:]

PREPARED STATEMENT OF ROBERT AULT, PRESIDENT, FEDERAL PROBATION OFFICERS' ASSOCIATION

Mr. Chairman, members of the committee, I am Robert B. Ault, President of the Federal Probation Officers Association. On behalf of our Board and the members of our association, I want to thank you for giving us this opportunity to address you on the issue of Pretrial Services. Our association consists of more than 1,350 members including Federal Probation Officers, Pretrial Services Officers and Probation Officer Assistants. We have been in existence for more than twenty-six years during which time our membership has steadily increased. We are the only professional organization whose purpose and activities are concerned exclusively with the Federal Probation System and its multiple responsibilities. As such, we seek to develop and improve the services rendered by our members to the United States Court, the U.S. Parole Commission, the U.S. Bureau of Prisons, the U.S. Attorneys Office and other agencies comprising the Federal Criminal Justice System. To achieve these goals, we advocate continuing professional development through education, training, and related activities on the part of our members.

Our association is also concerned with the administration of justice in the federal system in keeping with the Constitution and laws of the United States and in the best interests of all citizens. Thus, we view the issue of Pretrial Services as one of major importance. As you are aware, our association has been actively involved in past discussions and debate concerning the development and implementation of Pretrial Services. We have also gathered information and conducted surveys in an effort to determine the best means by which these services can be provided.

Just last week at our National Board meeting here in Washington, D.C., we discussed Pretrial Services with representatives of the Administrative Office. We also heard from a delegation of Pretrial Services Officers representing one of the probation operated pretrial demonstration districts. We feel there is a commonality of purpose and intent by all concerned parties. The Federal Probation Officers Association strongly favors the implementation of Pretrial Services by all federal judicial district as well as a Pretrial Diversion Program.

The Federal Probation Officers Association believes that the overall administrative responsibilities should be administered by the Director of the Administrative Office of the United States Courts. Our association believes that the direct administration of Pretrial Services should be administered by the Division of Probation, Administrative Office, United States Court. The Federal Probation Officers Association believes that rights of the accused must be protected and to unnecessarily detain these individuals is economically unwise and morally unjust. We also maintain that in supporting the rights of the accused we must also be cognizant of the rights of the community to be protected from the violent and repeated offender.

The Federal Probation Officers Association presents the following rationale to place Pretrial Services with the United States Probation System:

1. The U.S. Probation Offices nationwide (94 districts with 300 different locations) are prepared to deliver the services required by the Pretrial Serices Act of 1981. The United States Probation Officer has available a wealth of community resources as well as contractual resources for those released in bail status who are in need of assistance.

2. Last year, this Committee was presented with budget proposals by both the Administrative Office and the Federal Probation Officers Association. Rather than argue the merits of either proposal, the Association relies on simple logic to con-

clude that with ninety-four (94) districts and approximately three hundred (300) offices, already staffed, nationwide, the Federal Probation System can implement Pretrial Services, immediately, at a very limited expense.

3. Research was presented to this Committee by the Administrative Office that supported the idea that the five (5) Independent Demonstration Districts were more effective in administering Pretrial Services than the five (5) U.S. Probation based demonstration districts. The Report that accompanied the Pretrial Services Act of 1980, suggested that although both types (Independent v. Probation) showed improvement for the six categories measured. The Probation districts showed greater reductions in two important categories, rearrest and failure to appear for trial. In fact, the only independent study completed on Pretrial Services Agency by the Federal Judicial Center determined that there was no difference in effectiveness between the Independent and Probation Districts.

4. A position has been previously raised that the Probation Officers have a prejudicial attitude towards the accused as these officers only work with people in convicted status. The Federal Probation Officers Association believes that the reverse of this position is true. First, Federal Probation Officers are encouraged to obtain higher degrees in the fields of sociology and psychology. They have entered their choosen careers because they believe there is an inherent good in all people. U.S. Probation Officers do work with those in pre-adjudication status and they deliver the same service without prejudice. Second, although the "probation mentality innuendo" had been raised, hard evidence was never submitted to the subcommittee during last year's hearings. In fact, Congressmen Sensenbrenner in his dissenting view believed that this option was fallacious.

5. The Federal Probation Associations did take the initiative to survey all Chief Judges and Chief U.S. Probation Officers. The results determined that seventy-six (76) of ninety-four (94) Chief Judges responded in favor of Pretrial Services Agency, being administered by the Probation Office. We note that two Chief Judges favored the independent agency and sixteen (16) did not respond. Ninety-two (92) of ninety-four (94) Chief Probation Officers favor Pretrial Services Agency as a probation function with one Chief Probation Officer, opposed and one did not respond. The Federal Probation Officers Association has concluded from the survey that Pretrial Services Agency is a wanted and necessary function with the majority believing it should be administered by U.S. Probation.

CONCLUSION

The Federal Probation Officers Association wants to see Pretrial Services become a reality in all federal judicial districts. We trust that the views and information presented in this statement will assist this committee and the Congress to prepare legislation toward that end. The Federal Probation Officers Association stands ready to assist in this process. We reaffirm our dedication to the fulfillment of our duties and responsibilities to the United States Courts and to the citizens of our communities.

TESTIMONY OF ROBERT AULT, PRESIDENT OF THE FEDERAL PROBATION OFFICERS' ASSOCIATION, ACCOMPANIED BY RALPH ARDITO, JR., SECRETARY, FEDERAL PROBATION OFFICERS' ASSOCIATION

Mr. AULT. Thank you, Mr. Chairman. My colleague is Mr. Ralph Ardito, who is the national secretary for the Federal Probation Officers' Association. He is here with me today.

I would like to amend or add to my qualifications just a little bit, if I may, so it won't appear that I'm speaking only from my perspective or experience in the Federal probation system. In addition to that, I have served in the Virginia Adult Probation System, I have served in the Virginia Juvenile Court System, and I have also worked with a delinquency prevention program for the Virginia Division of Youth Services, Department of Corrections.

Mr. Chairman, I'd like to address several points in my statement and frame this within certain perspectives. First of all, I would like the committee to be aware that in speaking for the Federal Probation Officers' Association, that we have been in existence for 26

years, that our membership is approximately 1,350 persons, and that membership does include pretrial service officers and probation officer assistants, not just probation officers.

As the committee may be aware, U.S. probation officers perform a variety of functions. We also serve as agents for the parole commission. We perform pretrial diversion services for the U.S. attorney's office. We perform services for the U.S. Bureau of Prisons. We perform certain services as parole agents for the military parole authorities, and we have our duties with the U.S. courts as probation officers for the district and magistrate courts.

I think it's important to mention this because there has been a comment today and testimony to the effect that there may be some role conflict with the probation officers performing pretrial service functions, at least there seems to be a conflict with priorities, and I would like the committee to take this into consideration—that, in addition to our probation duties, when the parole commission needs someone to supervise parolees, we are called on and we do that job. When they need someone to serve as a hearing officer in certain types of violations, they have called on U.S. probation officers.

We are performing those functions. When the U.S. attorneys need someone to perform pretrial diversion services, we act in that capacity and we do that job well. When the Bureau of Prisons needs someone to verify the conditions of a furlough or other background information, we are their contact, and we are their contact with community treatment centers. I'm not trying to impress you, Mr. Chairman, with the many things we do, but I do want the committee to be aware that we do perform a variety of roles and I would submit to this committee or to anyone that we are capable of performing those services impartially and to the best professional standards, and I would submit this would be true for pretrial services as well.

Mr. HUGHES. I'd like to say parenthetically that I have always been impressed by the outstanding work done by probation officers.

Mr. AULT. Last week, our Federal Probation Officers' Association had our national board meeting here in Washington. During that meeting, 1 week ago today, we met with persons from the administrative office. We talked with Mr. Foley, and with Mr. Cohan, and Mr. Willetts was there. We discussed pretrial services to some degree with them, and pending legislation. Later on in the week, during our deliberations, we heard from a delegation of pretrial service officers from the southern district of New York and they have a probation operated agency. We talked among ourselves as board members both during our formal session and afterward. We talked about pending legislation and past legislation, and we have considered this issue and the need for pretrial services at length. And I want to state for the record here that I do feel there is a commonality of purpose, whether it's coming from the probation division or the administrative office, from pretrial services agencies, or now existing, or from our association, or from U.S. probation offices. We have a common purpose here today, and with the statistics that were presented this morning, and the testimony, I don't need to debate or discuss statistics further with this committee.

I do feel the need for pretrial services has been amply demonstrated. Our association does take a position as to how we feel the

services can be implemented, and I would like to review several points briefly with the committee with certain perspectives in mind.

I have already addressed the need for pretrial services, but the administrative form has been at issue here and in past legislation—in what form would these services be administered? Who would perform them, regardless of the administrative form—probation officers or pretrial service officers? Who would the administrative head be? A chief probation officer? A chief pretrial service officer? There was testimony this morning to the effect that the larger jurisdictions would best be served by an independent agency, that the smaller jurisdictions—approximately 60 percent of them, I believe—could go with probation services. That may be true. But I think that is inconsistent, and I think pretrial services as they are implemented need to be consistent throughout the Federal system with regard to form as well as to substance. We need to concern ourselves with the quality of the staff and the people who administer pretrial services, and we need to consider cost effectiveness, and there have been some points addressed along that line today.

Now, the Federal Probation Officers' Association strongly, Mr. Chairman, endorses the implementation of pretrial services in all Federal judicial districts.

Mr. HALL. Whether they want them or not?

Mr. AULT. No, sir, I would not impose—I'm not saying they should be, regardless, Mr. Hall, whether the district wants it or not. Certainly the districts should have a say in that. I don't think it should be mandatory in that sense. But we feel the value of the service is such to judicial officers that they can benefit from good prebail investigations, recommendations, and so forth.

Now, we have some points here that we think tilt the scale in favor of pretrial services being administered through the U.S. probation system. First of all, we feel that the administrative structure would be appropriately placed, within the administrative office of the U.S. courts for overall responsibility and therein with the division of probation. As you may be aware, in the 94 Federal districts we have approximately 300 probation offices established and staffed, and they could be very easily used or equipped to administer pretrial services.

Last year the merits of whether or not pretrial services could be effectively implemented through probation services was argued, and I submit that it can be. The question is expense and startup time. And some of the data this morning suggested it was a quicker startup time in probation. I'm going to comment in just a minute on the expense factor.

There has been testimony before this committee today that it would be no more expensive one way or the other, whether it went independent or whether it went with the probation system. I suggest this—that in addition to just bodies performing jobs, there's a question beyond that, Mr. Chairman. It's a question of the qualifications of these people. You can hire people and you can put them in jobs, but it's training—the training that they have before they come to the job, the training they have on the job, the familiarization they have with the Federal probation system, and not just

that, but the whole system of Federal criminal justice is something you can't buy easily right off the street.

Something that needs to be addressed also is the perspective that seems to have been almost a dichotomy here. That is probation officers performing probation functions versus pretrial service officers performing just pretrial service functions. Stop and consider for a moment, gentlemen, if you will, who is the one person in the Federal probation—excuse me—who is the one person in the criminal justice system, the Federal system, who has contact routinely with the case agent, with the prosecutor, in conference with the judge, with the defendant, the defendant's family and other people in the community, with the people in the Bureau of Prisons, with psychiatrists and others who may perform a study, with employers? Who is the person that is constantly at the hub of this particular wheel with regard to the defendant? Who is it that has responsibility for drug treatment, for placing people in jobs with other community agencies. These persons are the U.S. probation officers.

They are able to take a broad view, if you will, of the entire community and the impact of their decisions, whether those decisions be recommendations for probation, for incarceration, or in cases of pretrial diversion, or pretrial services.

I have one comment with regard to the statistics this morning. That it is true that board operated agencies have conducted more interviews. They submitted more bail recommendations and they had a higher rate of release on bail. That I won't dispute. Significantly, though, probation operated agencies have a better record with regard to rearrest or crime on bail and with the failure to appear rate. What does this suggest? That the decision that must be made with regard to pretrial needs to be a quality decision. It's not just simply interviewing x number of people and putting as many as you can back out. That's an important consideration, but it's the quality of that consideration, who you're putting back out and other circumstances.

And that's where probation operated, agencies, came through with a better rate with regard to rearrest and failure to appear. They had four persons fail to show.

Mr. HUGHES. Let me just interrupt you here. As I recall the testimony this morning, there was a 20 percent differential between the recommendations of board and probation run PSA's. That means that in a very high percentage of the cases—90 percent of the time in board districts—there was a recommendation before the judge, compared to 70 percent of the time in probation districts. That means that in probation districts, roughly 30 percent of the time, the judge was not informed of the relevant facts, I would presume.

Mr. AULT. I don't know if that meant the judge was flying blind or in fact that the interview may not have been conducted because of the nature of the case—that is, a white collar case or a person had detainers pending, or immigration. And therefore interviews were not conducted.

Mr. HUGHES. But the next statistic was that the rearrest record was different between boards of trustees and probation operated programs. And yet it represented 20 percent more recommendations by the boards of trustees.

Mr. AULT. They did give more recommendations and conduct more interviews, yes, sir. They did do that.

Mr. HUGHES. Well, I just think that's significant. Go ahead.

Mr. AULT. All right, sir. I think perhaps I have already addressed the point that the prejudicial position by U.S. probation officers—maybe that's too strong a word, but let's say that they would not perform the pretrial service function with the same clarity of purpose or with the same orientation that pretrial service officers would. There are large U.S. probation offices in this country that have specialized staffs, if you will, those that have drug caseloads and other caseloads, and perform specialized functions in addition to supervision. In the smaller offices it's like a country doctor. Everybody does a little bit of everything. I think with the proper training and the proper specialization necessary that pretrial services could be appropriately administered there, too.

Finally, Mr. Chairman, as you may be aware—and I believe this was presented to the committee last year—the Federal Probation Officers' Association has made an attempt to find out how judges and chief probation officers feel about implementing pretrial services.

With 94 chief judges, 76 of them stated that they would prefer that pretrial services be operated by probation agencies; 16 of them did not respond. Two of these judges—two of the remaining judges stated they would favor an independent agency. Of the 94 chief probation officers, 92 favored it go to probation; 1 favored independent; and 1 did not respond.

And that may not be anything remarkable, because the inference I think is that probation—chief probation officers are territory oriented, that they do want to keep what they have or add to what they had, and this is an implication that I raise here, but I am aware that has been made earlier.

In conclusion, Mr. Chairman, I just want to say that I feel that through the existing resources—let me put it that way. Not just manpower—the resources total of the Federal probation system, with the quality staff we have and the qualifications that we hold our people to, both for entrance into service and for standards for performance while in service, that this is a priceless benefit that takes years to build up, that it's compatible with the continuation of quality services.

And this will be true for pretrial services, but from a cost-effective standpoint. It would show up there, too. In today's economic climate of which we all are keenly aware, if we have to go out and hire 276 or so additional people—that is, professional people to perform pretrial services—and that's one estimate given to this committee last year, to staff the service plus clerical people, I question whether the dollar value you're going to get is equal to or superior to what we have to offer in the existing system.

Thank you very much.

Mr. HUGHES. Thank you very much. Do I take it that your organization supports H.R. 2841?

Mr. AULT. Our organization is largely in favor of 2841, sir. I must tell you that some question was raised last week as to, I believe, the Gudger amendment last year, the flexibility clause. In response to Mr. Hall, we would find no fault with that.

Mr. HUGHES. If the choice were between mandating boards of trustees and H.R. 2841, I trust you would be in favor of 2841?

Mr. AULT. I would, indeed, sir.

Mr. HUGHES. The Chair recognizes the gentleman from Michigan for 5 minutes.

Mr. SAWYER. In the western district of Michigan, we don't have anything we call pretrial services. As a matter of fact, I never heard that expression until I heard it down here in the committee. But the judge and the U.S. district attorney routinely call our probation-parole office and have them run just the kind of investigation we're talking about.

Mr. AULT. Yes.

Mr. SAWYER. It seems to work fine. I wondered why we needed a new program when they do that now. If they have to add some people to the staff of a given probation office because they can't accommodate the workload, why do we have to give it a big title and a whole act? I'm not clear on that.

Mr. AULT. I don't think that your observation and our orientation is really that far apart, Mr. Sawyer. I'm from the eastern district of Virginia, and I have experienced the same thing. We have had people under what amounts to bail supervision. We don't have a pretrial services program per se, and we have had cases referred to us prior to any adjudication, not only for presentence reports but for, if you will, bail supervision. It's done on a very limited basis, and I suspect if it were done on a routine basis, certainly we would have to have additional staff, and perhaps in the western district of Michigan also.

Mr. SAWYER. Yes. I'm not arguing the question of additional staff. Why haven't we got everything in place that we need right now, and where we need some personnel, just add them?

Mr. AULT. You mean within the Federal system?

Mr. SAWYER. Yes.

Mr. AULT. I think the reason—certainly my reply to that would be, it was the purpose of the 10 demonstration districts to evaluate the methodology without trying to implement until we have a reading on that and until the supporting legislation were developed. And besides, I question whether you could put it into place effectively with existing staff.

Mr. SAWYER. As I say, my impression is that that's what we're going in the western district of Michigan, although maybe not as far as you would like, but the probation office handles that, and I'm not aware of any problems.

Mr. HUGHES. Will the gentleman yield?

Mr. SAWYER. Certainly.

Mr. HUGHES. One of the problems, aside from the demonstration district setup, is that there is no present authorization to set up pretrial services programs.

Mr. AULT. I believe that's a comparatively small Federal probation staff in that district, too. There's more flexibility in some ways.

Mr. SAWYER. There is a population of about 3½ million, so I assume it's comparable to any other area. There are some eight cities with over 100,000 people and urban problems, too. I'm not familiar with the staffing of the district, but we have four U.S. dis-

trict judges operating there. But I guess it kind of puzzles me that we're handling the thing now. It would just be a question of whether as a result of these pilot projects, more of the districts wanted to do more of it. So, I'm not clear why we have to call it pretrial services or create some new operation when we seem to be able to do it now.

Mr. AULT. I think the concern, as I understand it, Mr. Sawyer, is that the spirit of the Bail Reform Act is not being fully carried out, that we're not making sufficient utilization of bail and conditions of bail, and that people are perhaps unnecessarily being detained.

This, I think, would be much more applicable to State systems than Federal. My own experience with the Federal system is that the use of bail—and in many instances in our district nonmonetary bail is extensive.

Mr. SAWYER. Thank you, Mr. Chairman.

Mr. HUGHES. Thank you, Mr. Sawyer. The gentleman from Texas is recognized for 5 minutes.

Mr. HALL. Mr. Ault, on page 2 of your prepared statement, you make this statement: "The Federal Probation Officers Association believes that the rights of the accused must be protected, and to unnecessarily detain these individuals is economically unwise and morally unjust."

Where does the person who has been—well, let me preface it. I'm not sure I understand fully what you mean by that statement.

Mr. AULT. That really is a philosophical statement, if you will, Mr. Hall. We put that statement in there because I wanted it understood that we are concerned with due process rights of accused persons, and that to consider them from any standpoint other than a presumption of innocence at the stage of arrest, would violate due process, and if they were detained without what we have been talking about here today, pretrial services, that it would be unwise from an economic standpoint because of the money involved in detention.

Mr. HALL. Well, crime is expensive.

Mr. AULT. Yes, it is.

Mr. HALL. Detention is expensive.

Mr. AULT. Yes, it is.

Mr. HALL. But where do you balance the equities between detention and releasing people on bond or through probation where you may end up having the community receive the bad end of the deal?

Mr. AULT. You have hit precisely on the point that I was getting at when I said "quality of that decision." Where do you balance who goes free and who does not, at least at the bail stage, and later on who might be a good probation risk as opposed to incarceration? That is where quality of your staff comes in.

Now I realize this decision is made by judicial officers, but probation officers and pretrial officers make recommendations which I suspect comes down to a subjective assessment more than an objective one, and that if it's a deadlock, my own personal view is that you tilt the balance in favor of the good of the community rather than of the individual, and that might seem drastic, but our responsibility as probation officers, first and foremost, is protection of the community. In the statement here I did not mean to imply in any way that the morally correct thing to do and the economically

sound thing to do is to get people out on bail without consideration of the community. Perhaps I should have made an additional statement in there.

Mr. HALL. Thank you for your clarification. I yield back the balance of my time.

Mr. HUGHES. I think that you put your finger on a tremendous concern earlier on in your testimony today. It was observed that the earlier that we can know as much as possible about an individual, the more likely it is that we're going to make the right decision. Right now, many courts have nothing whatsoever except recommendations by the U.S. attorney on which to make a bail decision.

In Philadelphia within the past few days, a judge issued an order, as a result of a request for constitutional relief, indicating that Philadelphia should empty out some 400 prisoners from its system. New Jersey right now has such crowded conditions that judges are instructed to only incarcerate people where it is absolutely essential. So any system that's going to enable us to make the right value judgment at the very beginning of the process would seem to make not only economic sense but perhaps would also be the best way to protect society.

Mr. HALL. Will the gentleman yield?

Mr. HUGHES. I'd be happy to yield.

Mr. HALL. You indicated that the judges in New Jersey are being instructed not to put people in jail. Who is instructing the judges not to do that?

Mr. HUGHES. The Supreme Court.

Mr. HALL. Really?

Mr. HUGHES. Yes; because of the constitutional rights that are now being claimed by prisoners, who indicate that the overcrowded conditions are violating their constitutional rights. I don't know what Philadelphia has done, but an order came down within the past few days indicating that it had to free 400 prisoners in the Philadelphia system, and there's such a leadtime in the building of prisons and so much furor over where prisons are going to be located, that there's no way in the world that we can secure relief in the near term to address the problems of overcrowding.

But in any event, let me just make one final observation before you leave, and that is your remark that we should not force Federal courts into the system. I have some difficulty with that, because in the Federal system, as in every system, we have prima donnas who don't want any change. If in fact the system isn't good, what is it about the different areas that would suggest that we should let a Federal judge or chief judge decide whether he or she is going to embark on a pretrial services program? If, in fact, it makes economic sense? If, in fact, we can better protect the community? If, in fact, there's some question as to whether or not some jurisdictions should have complete services and others don't, which opens up a whole area of constitutional challenge to that type of discrepancy from court to court. Why shouldn't we say, if in fact it works, that it's something that should be implemented in all jurisdictions where it's not presently implemented?

Mr. AULT. I suppose I reacted to the word "force," that we should force a district to do this or that, and that is perhaps what I react-

ed to. And I have said, I feel that pretrial services, value as it has been discussed here today, I think pretty well stands on its own two feet.

If you're talking about simply presenting a bill that requires development of these services, maybe it's just the way it's phrased, Mr. Chairman.

Mr. HUGHES. I think that the way the bill is drafted, it's going to have to be a phased-in program in any event.

Mr. AULT. Yes; we can't just stimulate a pretrial services system systemwide. Some jurisdictions already have it. Texas already has it. It's operating in many of the State jurisdictions fairly well, and the 10 demonstration projects, it seems to me, have clearly established that it's been extremely productive, and the testimony indicates that it will save money in the long pull. We make better value judgments early on, and we get to know the defendants early on.

The judge at the time of sentencing is going to have a lot more information because we kept in touch with that individual during the time between the arrest and the time of trial. So it seems to me that all the way around, the system is better served.

I would just like to make one observation in return, if I may. I have yet to meet a judge, whether he's a Federal judge or any other judge, who says that he does not have a problem with sentencing in criminal cases, what to do with the defendants, regardless of whether first offender or multiple offender. And whether you're talking about criminal sentencing or a bail decision, you're making a judgment on human behavior, and if a person says you're not predicting human behavior, at least you're making a determination as to how this person will respond, given the benefit of bail or some other form of release later on in the adjudicatory process. Unfortunately, that judgment, if you will, is subject to all the frailties of human thinking, and we don't have an absolute predictive device. We do the best we can. Judges do the best they can, and I suspect that concurs with your assessment that early on, to learn something of a given—I don't know if we could even say "offender" at this point, because there is the presumption of innocence of the person charged with a crime, and to make a determination as to what is the best way to treat them, at least at the initial phase, and that gets back to what Mr. Hall was commenting on.

Where do you construct the balance between what is in the best interest of the individual and that of the community? That boils down, I think, to a subjective determination based on what facts you can gather, what your training is, and perhaps more than one mind bearing on that determination.

Mr. HUGHES. Well, we thank you very much, Mr. Ault. You have been most helpful to us, and we appreciate your testimony.

That concludes the witnesses for today's hearings, and the subcommittee stands adjourned.

[Whereupon, at 3:40 p.m., the subcommittee was adjourned.]

EXTEND THE OPERATIONS OF THE PRETRIAL SERVICES AGENCIES

MONDAY, APRIL 6, 1981

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE HOUSE COMMITTEE ON THE JUDICIARY,
Brooklyn, N.Y.

The subcommittee met, pursuant to notice, at 9:10 a.m. in courtroom 3, second floor, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, N.Y.; Hon. William J. Hughes (chairman) presiding.

Present: Representatives Hughes and Fish.

Also present: Hayden W. Gregory, counsel, Virginia E. Sloan, assistant counsel, and Deborah K. Owen, associate counsel.

Mr. HUGHES. This meeting of the Subcommittee on Crime of the House Committee on the Judiciary will come to order.

Today we're conducting our second hearing on the operations of the pretrial services agencies in 10 demonstration districts in our Federal courts.

Last Tuesday, we heard testimony from those with experience with the pretrial services agencies on a national level, including the judge who chairs the Judicial Conference Committee with oversight responsibility for the pretrial services agencies, the national staff of the Administrative Office of the United States Courts as well as the head of the District of Columbia agency, and two people who have conducted significant research and studies on the effect of the pretrial services agencies program.

Our witnesses today include those with experience with the pretrial services agencies on the field level. We will hear testimony from judges, magistrates, prosecutors, defense attorneys, and probation and pretrial services officers representing the eastern and southern Districts of New York.

Our first witnesses will be Judges Jack Weinstein, Morris Lasker, and Thomas Platt; and gentlemen, if you will come forward and take seats, we can begin.

Welcome. First, let me just thank you for taking time from your own busy schedules to join us today at this field hearing.

The Pretrial Services Act, as you know, became somewhat controversial in the closing days of the 96th Congress, and so it is important, I think, for us to take a look at the act to see whether or not it makes sense to continue with pretrial services agencies. We appreciate your testimony.

Judge Weinstein, we have your testimony without objection, and it will be received in the record in full. You may proceed in any way that you see fit.

I might also note that the Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods. In accordance with subcommittee rule 5-A, permission will be granted, unless there is an objection.

Hearing no objection, such coverage will be permitted.

Judge Weinstein, we're happy to have you.

TESTIMONY OF HON. JACK B. WEINSTEIN

Judge WEINSTEIN. Congressman, it's a great pleasure to welcome you here to Brooklyn at these very significant and important hearings. These are the fifth anniversary hearings of the establishment of our own pretrial services agency.

I have lifted our own rules on television and cameras. In our courthouse, we do not allow television and cameras, but in view of the independence of the three branches, we felt that for today, the second floor shall be considered as part of the congressional halls, and not the Federal District Court.

Mr. HUGHES. Thank you. We appreciate that courtesy.

Judge WEINSTEIN. If we can do anything to make your stay more pleasant, or to assist you in any way with information, please do call on us.

[The prepared statement follows:]

PREPARED STATEMENT OF HON. JACK B. WEINSTEIN, CHIEF JUDGE, U.S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

Ladies and gentlemen, it is a pleasure and honor to welcome you to Brooklyn, to this courthouse and to these very significant hearings this morning. It is altogether fitting that we meet today since this coming Thursday marks the fifth anniversary of the establishment of our own Pretrial Services Agency.

If we can do anything to make your stay more pleasant or to assist you in your important work, please let me know. I and my staff are entirely at your disposal. We appreciate the difficulty you face in traveling away from your homes to make your inquiries and to try to assist us. We share the mutual task of protecting people against crime while affording due process and constitutional protections to all persons, including those accused of criminal acts. The people who will testify here today are intimately concerned with the day-to-day operation of our pretrial services. It is therefore necessary only that I open with a very short review of the history of pretrial services in this court and with one or two of my own impressions regarding its function.

When Congress passed the Speedy Trial Act of 1974 it provided in Title II for the establishment of experimental Pretrial Services Agencies in ten of the judicial districts. 18 U.S.C. § 3152. The legislative history makes it clear that the purpose of Title II was to strengthen the supervision over persons released before trial. 1974 U.S. Code Cong. and Admin. News 7420. Five of the Agencies were to be administered by the Division of Probation of the Administrative Office of United States Courts. 18 U.S.C. § 3153(a). The five others, including the agency for this court, were to come under boards of trustees appointed by the local chief judges. The statute provides that the members of these boards be drawn from the bench (in our case the Honorable Thomas C. Platt, who serves as chairman), the United States Attorney, the Chief Probation Officer, and representatives of the local bar and community organizations. 18 U.S.C. § 3153(b).

The question of jurisdiction over the Pretrial Services Agencies is, of course, one for Congress and involves a weighing of numerous factors. I am in no position to address it one way or the other since I do not know how the experiment in the ten courts has worked in detail. I do know that the program in this court works well and the function should be continued in some form.

At present our own Agency is staffed by eleven professionals including the Chief of Pretrial Services, Mr. John J. Flynn, and the Supervisor, Mr. Thomas Kearney, and five clerical personnel. During 1980 the Agency conducted 1,269 interviews of defendants (Annual Report 1980), and each officer at present maintains a load of over one hundred cases. The total number of interviews conducted by the Agency is up about forty-five percent from the figure for the first twelve months of our Pretrial Services Agency's existence.

The Agency's operations follow the guidelines that are promulgated by the board of trustees.

The guidelines, which have the force of court rules, set out generally the task of the Agency, and in particular, deal with the important problem of interview confidentiality.

In my experience as a District Judge, I have found the Pretrial Services Agency to perform a very useful function. From the vantage point of any judicial officer, pretrial Services is primarily a source of information that is vital for the proper operation of the bail determination process. Because a full-blown probation report would not be available prior to conviction, it is very helpful to have a voluntary program such as this through which the court can learn significant facts about the defendant. Such information makes possible the informed decisions that Congress clearly had in mind when it passed the Bail Reform Act of 1966.

In our court the Pretrial Services Agency also assists in the supervision of persons before trial. For example, officers seek to help defendants through employment referrals, and drug and alcohol counseling. The Pretrial Services Agency also has the linguistic capacity to deal with various non-English speaking defendants. The purpose of post-arrest supervisory programs is not to rehabilitate defendants—a goal that would in any case be impermissible—but to make it more likely that defendants will appear for trial.

My sense is that the service in this district has the confidence of the defense trial bar, the prosecutor and the judges and magistrates. All of us, I think, believe the Pretrial Services Agency is fair, conducts accurate investigations quickly and well, will not break confidences and takes a realistic and hard headed view of the need to prevent flight while reducing unnecessary incarceration prior to trial.

From my necessarily detached perspective, it is not possible to evaluate the actual success of these supervisory programs. I, for one, am looking forward to reading comparative studies that will definitively show the results achieved by Pretrial Services Agencies in their attempt to secure their all-important goals.

Judge WEINSTEIN. In this district, as you know, Congressman, we face a very serious problem because we have been short two judges for a long time. We received emergency permission to extend slightly the period when the speedy trial rules would operate before dismissal.

This is particularly relevant, I think, in connection with these hearings today, because without the help of the pretrial services agency, which has saved us a good deal of time, and has made it easier for us to adjust our calendars, I think our problem would be even greater.

Although the pretrial services agency, in and of itself will not ameliorate the great difficulties we face, it does assist us not only in saving time and permitting us to devote our energies to litigation rather than to some pretrial hearings that otherwise would be required, but it has served, I think, to reduce the load on the jails; it has served, I think, to make the whole operation fairer and to make it work more easily.

One of the chief problems, I know, for you, is the issue of whether there shall be a pretrial services agency, or whether probation shall control. I have no doubt that we must have this assistance, or our metropolitan corrections center will be so overburdened that we will be unable, really, to handle our present load.

We have got to be able, before the trial starts, right at the outset of the case, to winnow out those defendants who can be controlled

and kept out of a place of incarceration and be available for trial, and those that must be incarcerated.

That's a particularly difficult problem for us, because we have so many drug cases involving foreigners who were caught coming in through Kennedy Airport. We have an enormous number of these international type of complex crimes.

Sometimes, we keep people in jail unnecessarily, because we have had a very bad experience in connection with these crimes, drug related cases, where we've allowed people out, and then they hadn't shown up, either for trial or for sentencing.

I myself take no position on the question of whether it should be pretrial services, as in independent agency, or probational. I know my brother, Judge Platt, has fairly firm views on the matter, and he will certainly address you on it.

From the point of view of the Chief Judge, there is an advantage in having probation handle it, because then I deal with only one head of department instead of two; and that simplifies my life slightly.

But from the point of view of independence, since the problems are different, and from the point of view of assuring the defendant and counsel that nothing said will leak back through probation to the court, and because of the requirements of the rules of criminal procedure, which prevent us, as trial judges, from knowing anything about a possible presentence report at the early stage, there are obvious advantages in the separate system.

I'll be very happy to respond to any questions. My statement, I think, covers the rest of the matter.

Mr. HUGHES. Thank you very much. Judge, are you pressed for time, or can we hear from the other panelists before we ask questions?

Judge WEINSTEIN. My calendar will wait. Nothing starts in my court until I arrive.

Mr. HUGHES. Thank you very much.

Judge Platt, we're happy to have you with us this morning.

TESTIMONY OF HON. THOMAS C. PLATT

Judge PLATT. Congressman, I'm very pleased to be here. As I think you know, I appeared at your subcommittee's invitation last year in Washington, and gave you my recommendations then. I've incorporated those recommendations again into essentially the same statement that I filed with you last Friday.

[The prepared statement follows:]

PREPARED STATEMENT OF HON. THOMAS C. PLATT

I want to begin by thanking you for giving me this opportunity to express my views on the value of Pretrial Services Programs. At the outset I want to emphasize that the Pretrial Services officers in our District have done and are doing a very commendable job. They are efficient, hard working, loyal and dedicated public servants who have performed the services requested of them with diligence, skill and cheerfulness. I think I am safe in saying that we are all very fond of them and appreciate the work they have done.

As you know, the Eastern District of New York is one of the five Pretrial Services Agencies administered by a Board of Trustees consisting of me (I was designated by then Chief Judge Mishler as the Judge in charge), the United States Attorney, the Chief U.S. Probation Officer, the Public Defender, a private attorney and two representatives of community organizations.

The first recommendation that I made last year—i.e., the abolition of the present Boards of Trustees and supervision by the Chief Judge or his designee which might be another Judge or a Magistrate—has apparently been accepted and adopted and I will say no more on the subject.

In order to understand my second recommendation a description of the situation in our District is in order. Our Agency commenced operations in December of 1975 and our Agency presently consists of a Chief, a Supervisor and nine Pretrial Services officers who are supported by an Administrative Assistant and four secretaries.

During the calendar year 1980 our Pretrial Services officers interviewed 1,269 defendants and activated some 1,197 defendants. A total of 312 of these defendants, or 26.2 percent, were detained in custody following initial arraignment. Of these 312, 101 or 32.3 percent were released from detention at a subsequent court appearance either because they were able to make bail or the Pretrial Services officer was able to provide sufficient information to the Court to justify release. A total of 35 or 2.9 percent failure to appear warrants were issued for defendants during 1980. There were a total of 28 or 2.3 percent rearrested while on bail and a total of 60 or 5 percent bail violations including the rearrests. The great majority of the 312 detained defendants were and are defendants who were charged with narcotics violations, bank robberies, and acts of violence and in many cases guns or other arms were used and the defendants were aliens.

Of the 1,197 total, 139 defendants were placed under Pretrial Services supervision following initial arraignment and they were required to make personal or telephonic contact with their Pretrial Services officer from time to time to insure their later presense in court.

The significant figure that I will return to later in my comments, however, is that of the 1,197 cases handled by the Pretrial Services Agency, approximately 1,058 defendants were released on personal recognizance bonds or otherwise without being subject to any Pretrial Services supervision.

According to the most recent figures, our District's Pretrial Services Agency's officers had the highest case load per officer among the 10 experimental districts; each of our officers presently being responsible for 118 cases.

I give you these figures to furnish you with a basis for the next recommendation I am going to make with respect to what to do with the Pretrial Services Agency in each district.

Let me begin by saying that there are a number of judges in our district who have serious doubts as to the efficacy of and need for any pretrial services in the Federal System but I should hasten to add that I am not one of them. As I understand their position, it is that they question whether the services are worth the cost which is not insubstantial particularly where the Agency has separate facilities and separate supervisory personnel. Their view is that while Pretrial Services officers may serve a very much needed function in the New York City and State Criminal Courts, there is not the same need in the Federal Courts and to the extent that there is any need, it can and should be handled through other existing agencies, such as the Probation Department.

My brethren's opposition on these grounds led me to examine and discuss this problem with them and with my Board of Trustees in an attempt to come up with a compromise proposal that might be acceptable to all.

In the first place, there is merit to their contention that there is not the same need for pretrial services officers in the Federal Courts as there is in the State and City Criminal Courts. As the figures indicate, approximately 90 percent of our defendants are released on their own recognizance and really have no need for supervision pending the disposition of their cases. This is understandable when one examines the nature of many of our criminal cases which turn out to be of the so-called white collar crime variety, e.g., income tax evasion, bank embezzlement, perjury, false statements to government agencies and banks, counterfeit recordings, passing counterfeit currency, alcohol offenses, business fraud, anti-trust violations, etc.

From our standpoint, the principal function or role of the Pretrial Services officer is to make recommendations to the Judge or Magistrate who arraigns a defendant with respect to whether the defendant is a good bail risk and whether the officer feels that the defendant would be a good subject for supervision pending the disposition of his case. Secondarily, with respect to those who are placed under the supervision of a Pretrial Services officer, his role is to attempt to find them any necessary employment, counseling, medical, legal or social services, or drug or alcoholic programs during the pretrial interval.

Given the foregoing facts, it would seem that in our District, and in the other experimental districts, we could reduce the number of pretrial services officers by at least one half if there were a provision in the law limiting the officers concern with

those cases in which the Government was going to request bail or the Court believed that supervision might be indicated. In other words, in the normal income tax or business-type crime pretrial services would not be called upon to interview the defendant, attend the arraignment, open the file, communicate on occasion with the defendant regarding appearances in Court, etc., and a great deal of time and paper work could be eliminated. This would result in substantial savings for the programs throughout the country, particularly if the Department of Justice pursues its current course of turning most bank robberies and many narcotics cases over to the local authorities and concentrate on the so-called white collar criminal.

I am aware that the way Section 3154 is presently drafted each district court might arguably make that modification for its own district but as to any such suggestion I would say that it is not all that clear that a particular function of an agency such as that prescribed in 3154(1) may be rewritten in that fashion as distinguished from a specification by the Courts as to which of the nine functions they wish to be performed and secondly in any event it should not be optional but mandatory that the great majority of cases which do not need supervision should not incur such expense. In practical terms, in our District, for example, this would cut the staff to one chief or supervisor and three or four officers who would be charged with a manageable caseload.

I should add that there is some sentiment among our judges for keeping the Pretrial Services officers intact and using them for other court purposes. Their thesis, as I understand it, is that the extra officers in our District, assuming my proposal were to be adopted, could and should be used for more intensive work with the defendants who are on release and work supervision, spending more time with them and working longer on appropriate employment, counseling, medical, legal, or social services or drug or alcoholic programs for them. I personally fail to see the need for this. If the released but supervised defendants in our District were spread between the reduced force of three or four officers envisaged in my proposal, his or her actual supervision case load at any one time would be a relatively small number of defendants and each officer should have ample time for intensive placement work.

The principal complaint against Pretrial Services Agencies in the Federal Courts is the cost. At present in most Judges' view the cost is too great for the return involved. This program, like all Government programs which cost money, should be cut to the bone if the Government's anti-inflation statements are to be given any credence. Most reputable economists agree that government spending and its attendant increases in the money supply are the major causes of inflation.

Let me be brutally frank about the Program itself. In perhaps one case out of twenty is a piece of material information furnished to a Judge in a bail hearing by a Pretrial Services officer that would not have been furnished to him by the Government or the defendant's lawyer under the old system. Fifty percent of the time such information is more favorable to the Government, the other 50 percent inures to the benefit of the defendant. Most would agree that the officers efforts are worth the expenditure of the time, effort and money in the one out of forty cases in which a defendant's prospects for release are enhanced, but not at the cost of the present program where so much time, effort and money is being expended on what ultimately amounts to nothing but statistics.

In short, there is a need for Pretrial Services officers; it is not a critical need and it is only in those cases where there is a genuine issue of release or no release. In the great majority of cases, i.e., in the great majority of our cases, and we are not atypical, there is no such issue and there is no need to do all the interviewing, reporting, verification, etc., that is being done.

My recommendation is that Pretrial Services be placed in the Probation Department and the positions and roles of the officers be limited in the manner that I have indicated. This should save in excess of fifty percent of the cost presently being incurred.

Thank you.

Judge PLATT. As Judge Weinstein says, I have some very definite ideas, perhaps because I've had some fairly close association with the Pretrial Services Association over the last 5 years, having been designated as the judge in charge here 5 years ago by the then Chief Judge Mishler.

I am delighted to see in the new bill that the board of trustees issue is no longer an issue, and that that recommendation has been adopted, and the board is going to go by the board, so to speak,

which is all well and good; because I don't think that they're necessary for the effective operation of pretrial services.

As I said to the subcommittee last year, and I'll say it again, my feeling, and the members of my board's feeling, and indeed, I think the general consensus is that there is a need for the pretrial services offices and services; but I think the way it's presently being conducted here and elsewhere is unnecessary.

In other words, I think you only need pretrial services in the cases where the Government comes in and asks for bail. And in the Federal court system, unlike the State and city and county systems, that probably represents maybe 25 percent of the cases.

Stated another way, most of our cases, a great majority of our cases are what you call nonbail cases, income tax evasion, Government fraud, businessmen, white-collar crime, types of securities frauds, antitrust violations, that sort of thing.

In, I would say, 75 percent of the cases, and I think statistics bear this out, the Government comes in and says, no bail, personal recognizance bond, no need for supervision, no nothing.

And yet, all of those cases are being processed, interviews are being conducted, records are being made, statistics are being filed, and so forth and so on; and all that expense is being incurred.

I think, and I think I speak for a unanimous board, we all feel that this is unnecessary; and if Congress is serious about saving money, as they're reported to be in the press, this is one place where a substantial saving can be made with respect to one agency.

You could, I think without any difficulty at all, cut by requiring in the law that only those cases where the Government is going to ask for bail be subject to the pretrial services agency. You could cut the personnel involved in this and all other districts by at least a half, if not by three-quarters.

I think, under those circumstances, certainly in this district and I think in all districts, if you have a staff of only three or four pretrial services officers and one supervisor, we'll say, I don't think there's a need for an independent agency.

I don't see why, under those circumstances, the right move wouldn't be to put them into the probation department and perhaps create a separate division; at least, so that we don't have this leak problem that everybody seems to be worried about, which I don't really think presents any great concern. If you have a good responsible head of the probation department, he can keep the information from being disseminated around the two separate divisions.

So, that was the substance of my remarks last year, and I give them to you again in the hope that maybe after one or two repetitions, they might take hold.

Mr. HUGHES. Thank you, Judge Platt; and your statement will be received in the record in full, without objection.

Judge Lasker, it's good to have you before us this morning. Again, your statement will be received for the record in full, and you may proceed in any way that you see fit.

TESTIMONY OF HON. MORRIS E. LASKER

Judge LASKER. Thank you, Mr. Chairman. I regret that I wasn't able to deliver my statement until this morning; and that's because I was the emergency judge in our court for the last 2 weeks, and it was a fairly busy time.

[The prepared statement follows:]

PREPARED STATEMENT OF HON. MORRIS E. LASKER

Mr. Chairman, members of the committee, I am pleased to appear before you this morning with regard to HR 2841, the proposed Pretrial Services Act of 1981.

I am present as a proxy for Chief Judge Lloyd MacMahon of the United States District Court for the Southern District of New York, whom you had invited but who is unable to attend. He concluded that because I am Chairman of the Probation Committee of our court, in which pretrial services have existed for five years, it was appropriate for me to comment.

The pretrial services project within our court has at all times been subject to the direction of the Chief Probation Officer. We have been very satisfied with this arrangement and with its results. It is difficult for me to compare the advantages of a pretrial service operation which is subject to the direction of the Chief of Probation with pretrial services which are directed by a Board of Directors because my experience has been only with the former. However, I am in a position to attest to the advantages of a pretrial services arrangement directed by the Chief of Probation.

Last year Chief Judge MacMahon wrote to Senator Biden on this subject in connection with the then pending S 2705. He said then and I believe his words are equally apt now:

"[The Pretrial Services Agency] is now a part of our Probation Department and is working very effectively with the court at the pretrail stage of criminal cases.

We strongly feel that there should be no change in the present jurisdictional structure and that that agency should remain part of the Probation Department. The last thing this busy court needs toward the efficient administration of justice is yet another bureaucracy."

As Chairman of the Probation Committee of the United States District Court for the Southern District of New York, I share Judge MacMahon's views. I have observed the operation of the pretrial services agency in our court with great interest and am personally persuaded that it is making useful contributions to the bail decisions made by the judges of the court, to the clients or defendants whom it supervises and, in general, to the interest of justice. I stress that my views are personal because it has not been possible since receiving your invitation to conduct a survey of the views of the twenty-six judges of my court.

I am aware that some thinkers on the subject believe that a pretrial services agency should not be directed by a probation officer because, so the argument goes, probation officers have historically dealt with convicted persons whereas pretrial services agency, as the name indicates, deals with persons who have not been convicted. I believe such an analysis to be superficial. The essential task of a probation officer is to deal with people in trouble, to assemble the facts relating to that person and to recommend to the judicial officer as objectively as possible, a disposition of the case which will be in the interest of justice. The person who performs pretrial services performs very much the same kind of task. Nor do I see any inherent difficulty for one person in dealing with both convicted and nonconvicted defendants. Judges are constantly called upon to do so and find no difficulty in recognizing the distinction between the status of the unconvicted and the convicted.

Fortunately, in our court, the largest trial court in the country, the staff is sufficiently numerous that we are able to assign certain persons solely to the task of pretrial services: that is pretrial services officers deal only with persons whose cases have not yet been tried. However, it does not seem to me that if any of our probation officers were called upon to deal both with convicted and nonconvicted defendants, he or she would be unable to make just recommendations in both types of cases.

My enthusiastic support of the structure which presently exists in our court, does not mean that I am criticizing the concept of a pretrial services operation subject to a Board of Directors. As I said earlier, I cannot do so because I have no personal experience of such an operation.

I do, however, agree with Judge MacMahon's view that the last thing that a busy court needs toward the efficient administration of justice to deal with "yet another bureaucracy," and I think that this is a point in favor of the operation of a pretrial

services agency as part of the Probation Department. In the last analysis, however, the determination whether the pretrial services agency should be an adjunct of the Probation Department or subject to an outside Board of Directors should be left for decision by the particular court in question to make.

* * * * * * *

I have been sitting as a Judge for nearly thirteen years. Before the creation of the Pretrial Services Agency the information as to the background of a defendant available to the judge or magistrate in reaching a bail decision at arraignment was often limited. The services performed by pretrial officers goes far toward remedying this deficiency by assembling background information for the use of the judicial officer at arraignment.

As a result of the availability of such information to the judicial officer and his or her knowledge that pretrial services can and will supervise a defendant where appropriate previous to the time of trial, the judicial officer feels much easier about releasing a defendant on bail, and experience has shown that the risks of nonappearance are minimal under such circumstances. The result is, as it should be, that persons who might otherwise be detained pending trial need not be and are not detained, thereby enabling the defendant to continue to support and live with his family, and, a not inconsequential by-product, saving the taxpayer the considerable sums which it costs to house a detainee.

There may be still another contribution made by pretrial services officers, the value of which is difficult to measure but is certainly real: that is, the contact between pretrial service officers and defendants whose cases they handle. In many cases even if a person has committed an offense for which he may thereafter be convicted, his future conduct can be influenced for the better so that the lapse in question may not be repeated. The hope of such influence is certainly increased by objective, fair minded, yet interested treatment on the part of a pretrial services officer. I am myself aware of a number of cases in which such contacts by the pretrial service officers and the defendant seem to me to have had a tangible beneficial influence on the defendant. I don't want to overstate the matter because I, of course, have not been in a position to conduct follow up examinations on all the cases that have come before me. But my experience had led me to believe that such contacts can be very useful indeed.

I hope these observations are helpful to you in the work of your committee and will be glad to answer any questions.

Judge LASKER. I am not quite as intimately involved in the proceedings of pretrial services as Judge Platt, who has a direct responsibility in his court, or Judge Weinstein, who is the Chief Judge of his court; but I am here today as proxy for Chief Judge MacMahon, whom you had invited but is unable to attend.

He concluded that because I am chairman of the probation committee of our court, in which pretrial services have existed for 5 years, it was appropriate for me to comment.

I suppose that my message could be boiled down today to the proposition that, after 5 years of experience in the southern district of New York, of which I am a judge—it's the largest trial court in the country—that we are quite satisfied with the system that does operate there.

Our system is one which does operate under the auspices of the probation department, the chief of probation, direction of probation; and frankly, we believe that no problem has been created by the fact that the chief of probation heads the pretrial services agency as well as, of course, heading the probation department.

As I see it, the function of a pretrial services officer has many characteristics in common with those of a probation officer. He searches out facts, he makes recommendations as to the disposition of behavioral problems, and he acts as objectively as he can.

These are the same talents that seem to me that are called for by a probation officer, and persons who have had the kinds of training that a probation officer has can uniquely fill the position of a pretrial services officer.

Of course, I agree with Judge Platt that arrangements have to be made to see to it that confidential material is preserved in accordance with the statutes, and I believe in the validity of those confidential assurances.

I am not in a position to comment on the virtues or not of a board-directed agency, because we simply have not operated under a board. But we are, and I want you to understand that we are, satisfied with the arrangements that exist at the present time.

I should say also that, although figures are very difficult to analyze, such figures that do exist, I believe, establish that the pretrial services agency in our court has—its work has resulted in the fact that less people have been detained in pretrial detention than were detained previous to the time when pretrial services went into effect.

Now, I say that figures are difficult to analyze because there are so many variables in a proposition of that kind, that one can't be sure whether it's the mix of offenses, whether it's the fact of the Speedy Trial Act which means, at least in our district, that there have actually been less indictments filed in the last several years than there were before.

But in any event, it is consistent with the conclusion that the pretrial services agency has helped us keep people out of jail. And to the extent that it does help keep people out of jail, it not only seems to me to be in the interest of justice, but it's socially and economically constructive that people should be able to stay with their families until their cases are determined.

It also saves a good deal of money, because you know how much it costs to house a person in any kind of detention these days.

Finally, as I pointed out in my comments here, I believe that the pretrial services officer can make a significant contribution now and then, although it's very difficult to measure the value of that contribution, by the kind of contact that he has with a pretrial defendant, in supervision as distinct from surveillance, so to speak.

I believe that there are at least occasionally, and perhaps more than occasionally, contacts between pretrial services officers who are well-trained and defendants, which can make a difference in the life of the defendant, even if the defendant is thereafter proven guilty.

We have a lot of first offenders, and people in a position of this kind seem to be able to make a significant impact on at least a certain number of defendants.

I think there is virtue in the suggestion that Judge Platt made that we might, if economizing is necessary, review the extent to which we could call for less reports by the pretrial services officer, and it may be that in obvious nonbail cases, at least some of those reports may be unnecessary.

You'll be hearing from probation chiefs and probation officers here today, and my impression would be that they believe that there may be some role for pretrial services even in nonbail cases.

Like the other judges, I'll be glad to answer any questions.

Mr. HUGHES. Thank you very much, Judge.

I'm going to ask a series of questions, and I'll try to direct them to one of the specific panelists, and if the other judges have something that they want to add to it, please feel free to do so; or if there is disagreement, please volunteer that.

First, Judge Weinstein, do you feel that the Bail Reform Act should be amended to permit the courts to consider dangerousness to the community?

Judge WEINSTEIN. Well, it's hard to know what you mean by consider dangerousness. If you mean, should we incarcerate people who have not been proven guilty, because of allegations that they are dangerous, when there's no danger that they will not appear for trial, my answer would be, "No," that this would be a serious derogation of basic constitutional concepts and rights.

If you mean that dangerousness is a factor in determining the reliability of the defendant, and therefore the probability that he will appear when required; or in determining whether he may be himself endangered because he may be involved in various activities of a violent kind, then the answer is, "Yes," we do consider the character of the defendant in trying to predict how he will react prior to trial.

My own view is that, in the case of such a person, he should be tried very quickly. And if he will appear, and there's no question about that, he should not be incarcerated.

One of the reasons we cannot try such cases as quickly as I would like to try them is that, under the Speedy Trial Act, we cannot set a case down in less than 30 days.

Prior to the Speedy Trial Act, and this is somewhat paradoxical, in a case such as the one you hypothesize, I would set it down sometime a week after arraignment, or 10 days after arraignment, and avoid a great many of these problems.

Under the present practice, as mandated by the second circuit in its interpretation of the Speedy Trial Act, I cannot set down a case before 30 days after arraignment; and the result has been that I have been delayed in trying dangerous criminals, sometimes for a long period of time, because of this very Speedy Trial Act.

Mr. HUGHES. Well, of course, the defendant can waive; but he has to waive that 30-day requirement.

Judge WEINSTEIN. The defendant, as you know, being yourself a very experienced prosecutor, does not ordinarily waive. They want delay.

Mr. HUGHES. That's quite true. The difficulty that we've experienced, it's been suggested by many judicial officers, is that, even though present standards forbid judges from considering danger to the community except as relevant on the subject of whether or not the defendant will appear before the court when summoned, they still do take that into account.

So we've seen a dual standard evolve; and every now and then, you're faced with a situation where you have a time bomb before the court. You're on notice that a defendant has a job, he's otherwise reliable, he appears when summoned, he has sometimes a series of arrests on the same subject; and so, if you look at his past record, he will appear before the court, but he's a menace to society.

The question is whether or not, in those situations, whether or not you should have the flexibility as a judge to consider dangerousness in deciding whether you should impose conditions of release.

Judge WEINSTEIN. Well, on the conditions for release, it seems that that's a related and relevant issue, but a separable one, I have no hesitation in setting conditions for release when I have such a person before me.

I want to distinguish between the psychotic defendant, who is unable to control himself, who presents a special problem; I don't have any question that I would keep him incapacitated, whatever the theory, for purposes of study, or for some other purposes.

But we're talking about, for example, the professional drug dealer, or the professional organized crime person. Now, in the case of such a person, I say right at the outset when I release that, during this period up to trial, if in any way I get any information, directly or indirectly, suggesting that he is engaged in criminal activities, he will be sent right back to jail.

I have no questions about that kind of condition; and normally, that is sufficient to prevent criminal activity. It probably cuts down some of the kinds of criminal activity that I'm sure you faced when you were a prosecutor, where the defendant would be released and would have to go out and commit further crimes to pay for his counsel. We don't have quite that kind of problem here.

I don't have any doubt about that as a condition. When we release somebody, I expect that person, pending trial, to lead a life free of crime; and if there's any question about it, I will throw him into jail. That seems to me to be a condition that's perfectly——

Mr. HUGHES. The difficulty with that is, if in fact you do receive notice from the pretrial officer or otherwise that the defendant has continued a pattern of antisocial behavior, you're still locked in with the same criteria, and that is the question of whether or not the defendant will appear when summoned for trial.

Judge WEINSTEIN. I understand that that might be theoretically true, but it's a theory that doesn't really prevent dealing with the problem.

I myself have not found that people released under those conditions become involved with crime. Now, it may be that we do not have the information, and it may be that the threat is illegal; but we have not, at least in my court, experienced situations where I released somebody, said that "You are not to be involved with crime," the lawyer understands it, the defendant understands it—the threat perhaps is illegal, but it is quite effective, and we do not really have a serious problem, so far as I am aware.

Mr. HUGHES. Thank you. Judge Platt.

Judge PLATT. I wouldn't disagree with anything that Judge Weinstein says. As a practical matter, if a man shows violent propensities and/or any likelihood that he's going to be out committing crimes, I think most judges here would exercise such discretion as they have, and put pretty tight reins on them, or leave them in jail.

Mr. HUGHES. Judge Lasker.

Judge LASKER. I'm glad to find everybody in such a high degree of unanimity here, and I think experience on the bench does lead to the conclusions we've been talking about.

In regard to your point, which is well taken, that the question of danger is often considered, at least subconsciously, it seems to me the answer to that is, to the extent that it's considered legitimately, and I think it is sometimes, when for example, you consider the type of case you have before you.

If you have an armed robber before you, that's a very serious case, and it is one in which there may be considerable sentence, and it is one in which, therefore, the judge is entitled to believe that there is less likelihood that the defendant will show up than if he faces a lesser sentence, and so on. That's one legitimate treatment of the subject.

On the other hand, if the statute were to be amended to specify that dangerousness could be considered, putting aside what I think—as apparently Judge Weinstein does, too—are serious constitutional questions that are raised by that inclusion, it seems to me that you would dignify the very process that you imply is unsatisfactory, by stating that it's considered sub rosa.

There are a lot of things that go through judges' minds, because we're human, which we do consider, but which are not from a purist's point of view, relevant to the considerations; and I would hesitate to see dangerousness enacted, sanctioned legislatively.

I have to be frank to say, too, that if the sponsors of such suggestions in the past, of preventive detention and so forth, had, it seems to me, a more thorough grasp of the rights which are protected by the Constitution, I'd feel more comfortable about it.

I suppose that I do disagree with the philosophy of many of the sponsors of preventive detention. That may color my view, although I hope not.

Judge WEINSTEIN. I'd just like to pick up one of Judge Lasker's points. As a practical matter, since we have the individual assignment system, the defendant and his counsel facing the judge at the bail question hearing know that that judge will sentence if he is found guilty.

The range of discretion in most crimes of the kind that we're now concerned with is so great, and the possibility of consecutive sentences in the case of the man or lady on the charge presently before the court, plus the possibility of further charges, means that that defendant is under great restraint; because if the judge gets the impression that he is a man of such bad character that he cannot even be trusted to stay away from criminal conduct for the short period when he is out pending the trial, the effect on the sentence is going to be tremendous.

Therefore, as a practical matter, dealing with these people and their attorneys, we don't have the problem. The attorney understands quite well what the situation is, and he will tell his client, as the judge will, in the firmest way, to stay away from his criminal companions, not to threaten witnesses, not to engage in crime, and to do no further acts of that character, up to and including the time of trial.

Now, if I could advance the trial, as I cannot at the present time because of limitations of the second circuit and Congress, I could reduce the period of danger even further.

Mr. HUGHES. Judge, the difficulty is that—as a practical matter, I'm sure you're probably correct that most defendants take into account the fact that they're going to have to perhaps appear before that court sometime down the road and face sentence—but there are always those in the criminal justice system who believe that they'll get no consideration down the line.

It doesn't happen in the Federal system perhaps as much as it happens in the State systems, where, for instance, you are on notice that a five-time loser, a burglar, once he's cut loose on bail, is going to be back making counsel fees by burglarizing.

When that individual is busted again while out on bail, and the media picks that up, why, it just undermines the criminal justice system. The judges in those instances can't take into account the danger to the community.

The only question is whether or not that defendant will appear before the court when summoned to do so; and defendants often will do that. They're reliable in that their pattern of conduct over the years that they've been before the court demonstrates that they'll be there when summoned; nonetheless, they're a menace to the community.

Judge WEINSTEIN. Well, Mr. Chairman, I would hope that the problem in the State courts, or even in the District of Columbia—and I do not speak to those problems, because I have not sufficient familiarity to do so—do not result in the kind of legislation you are now referring to, which will apply to the general jurisdiction district courts, such as the eastern district or the southern district.

I believe, based on 15 years of service here, and the trial of hundreds and hundreds of these cases, that there is absolutely no need for this kind of legislation; and the net effect would be to seriously reduce our constitutional protections, with no gain whatsoever in the practical administration of justice.

I understand that legislators, members of the executive, and others, have public relations problems; but I take a view of the Constitution that requires us to address constitutional problems, not as a public relations gimmick. Therefore, I would strongly oppose any legislation of this kind.

Judge PLATT. Mr. Congressman——

Mr. HUGHES. The District of Columbia—I'm sorry; go ahead, Judge.

Judge PLATT. I might point out to you on page 2, I guess it is, of my statement, that there are a total of 28 out of some 1,200 people released who were rearrested during the period between the arraignment and the trial.

I'm not saying it's de minimus, obviously it's an important figure, the 28; but it isn't the kind of problem—and I think Judge Weinstein is absolutely right—it isn't the kind of problem that they face in the State court system. We don't have quite the same problem that they do.

Mr. HUGHES. I suspect that part of that is because we've reemphasized white-collar crime, and we've deemphasized violent crime.

Judge LASKER. That's undoubtedly true.

Mr. HUGHES. That perhaps might have some relevance to that statistic.

Judge WEINSTEIN. I believe that it applied during the period when we were doing a great many more bank robbery and other cases here, too. Obviously, if we have a bank robber before us who has committed a stickup with a gun, and he is not a person who just did it on the spur of the moment but who has been doing this kind of thing, that person faces such a long term in this court—depending on the number of counts, 25 to 50 years—the chance of his showing up is sufficiently reduced by his dangerous character.

We do take it into account; and I think myself that that is a proper view of our discretion. He is not being kept in to punish him. He is being kept in because the huge penalty that he faces means that there is a risk that he will not appear.

Therefore, even in the kind of crimes you hypothesize, this has not been a problem in our district. I do not, again, speak for the District of Columbia or the State courts, or even for my learned colleague in the southern district or in New Jersey, Chief Judge Lacey.

Judge LASKER. Our experience in the southern district, I'd say, had been entirely consistent with that here in the eastern district. I've served almost as long as Judge Weinstein; and it's hard for me to remember defendants who did not show up after they had been indicted.

There have been plenty of fugitives—or, not plenty, but a noticeable number of fugitives who could not be picked up at the time of indictment; but anybody who was picked up or who surrendered voluntarily, is almost certain to show up.

Moreover, I'm very impressed by the ability of the FBI and other police agencies to pick up, at least Federal defendants when they have fled, and the number of people who violated probation or something of that kind are brought in, and this is a plenty big city to go looking for people. And some people have been brought in from all over the country.

I don't want to merely duplicate what Judge Weinstein has said, because he said it so well, but I wouldn't want to let the opportunity pass without stressing my strong feeling, as he does, that I think it would be an extreme mistake to solve whatever problems exist at the Federal level—and I don't think that they're very serious—on the basis of the problems that may exist at some other level.

This is altogether putting aside the constitutional question, which I think is a serious one as well.

Mr. HUGHES. Well, of course, the District of Columbia has its own approach in dealing with it, as you well know, because problems are a little different there, just like they vary from district to district throughout the country.

The District of Columbia addresses it by utilizing conditions of bail. Is that something that you have the flexibility to do?

Judge LASKER. Absolutely. I'm not sure that I agree with Judge Weinstein's fear that it's an illegal approach; that is to say, if you say to somebody, I'm going to put you on bail on one condition, that you don't commit any crimes. Because it does seem to me not only that there's a certain contractual validity to something of that sort, but also that if a person is shown to you probably or actually

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to have committed a crime during that time, it just indicates a lack of trustworthiness, which also seems to me to justify to some extent the conclusion that, if you commit a crime while you're out, maybe you won't show up while you're out.

I don't feel concerned, and I guess Judge Weinstein doesn't, either, about bringing somebody back in who violates bail conditions; not assuming, however, that that's what you're referring to, I'm assuming that what you're talking about is legislative dangerousness as a factor, taken into account at the original bail decision.

Mr. HUGHES. That's what I'm talking about, and as the old adage goes, difficult cases or hard cases make bad law.

Judge LASKER. Let me say, too, that I'm not so sure that even if it were legislative, it would end in such a terribly different result than we have today. What I guess we've all been trying to say is that, one way or another, there are existing approaches which constitute a very satisfactory safeguard.

Our failure-to-appear record, I think, demonstrates that that is so. I don't know how it compares with districts throughout the country, I haven't studied it; but it certainly is not anything that's worrisome in this part of the country.

Mr. HUGHES. It's interesting to hear the dialog today, because at the judicial conference in Williamsburg, where the Chief Justice was in attendance, as were other Federal district court judges, there was profound concern expressed. Apparently we do have some judges who feel compelled to follow the law's explicit guidelines when setting bail, and who apparently do not take into account the seriousness of the offense.

You've suggested a practical way of addressing that problem, by increasing the bail in proportion to what you think might be the seriousness of the offense.

Judge LASKER. It's very hard for me to believe that a judge of any experience wouldn't consider the seriousness of the offense as a significant factor in determining what the bail ought to be.

Mr. HUGHES. The difficulty is when you have situations like the Hinckley situation, that is presently before the court.

Judge LASKER. Well, that's a capital crime, of course, so there's no problem there.

Mr. HUGHES. Pardon me?

Judge LASKER. That's a capital crime.

Mr. HUGHES. It is not a capital crime.

Judge LASKER. It isn't?

Mr. HUGHES. No.

Judge LASKER. I see.

Mr. HUGHES. Attempted assassination of a President is not a capital offense.

Judge LASKER. I'm sorry.

Mr. HUGHES. Can you imagine the clamor that would be heard throughout this land if, in fact, the defendant had been able to make bail?

Judge LASKER. But I think the *Hinckley* case is a good case in point, because there you have a defendant who is obviously, at least at the particular stage of his existence, of questionable stability.

A judge has every right to require that he be examined, and the examination takes 3 months. As a practical matter, that probably is going to be a solution to the question.

I realize that if you didn't do that, if you literally released him and made him put up a very high bond, which he probably could furnish through his family, you'd have a hell of a problem.

Mr. HUGHES. Suppose the defendant in this instance had not had that particular background? Apparently under the D.C. Code, a defendant can be held for 24 hours to pursue a psychiatric evaluation; but suppose you have a defendant who just has a history of shooting at prominent people, and the one thing you can point to in his record where he's exemplary is that he appears when summoned to appear?

Judge LASKER. Well, let me say, Congressman, I think—you pointed out about hard cases before—that extreme cases should not be the ones upon which a rule is based. I think that in extreme cases, our society finds some practical and sensible way to deal with the situation.

I don't know how much better I can put it.

Judge PLATT. One of the judges said this a moment ago, but in the last analysis, Congressman, I think all of the judges look to the trustworthiness of the person, and if there's an indication that this is a fellow who's had several crimes in his background or any such indication, they're going to doubt his trustworthiness, and they're not going to let him out on bail.

Judge WEINSTEIN. I think the *Hinckley* case is really a straw man. I do not think any district judge in this country who was wise enough to have been considered by the President on recommendation of a Senator from his State, and to have been appointed to the Federal bench is going to release a man like that.

It's simply not a question, it seems to me, that's a reasonable one. And in fact, if he——

Mr. HUGHES. You're suggesting that all judges are reasonable.

Judge WEINSTEIN. They certainly go through sufficient screening to insure that, and they have to live with their own families and community. A person who appeared on time, but did only shooting of Congressmen, or judges, or Presidents, would show sufficient psychiatric problems, I think, to warrant keeping him.

I really don't think we have a problem here. I don't know what the Chief Justice's views are; but, of course, we sit in daily proximity to these defendants, and I really think our views deserve some attention. There is no problem, in my opinion.

Mr. HUGHES. I might say that the Chief Justice's views, I believe, are just the opposite, as are the views of a number of other Federal judges I've talked to, who feel that even though they do take danger into account, they would feel a lot more comfortable if, in fact, the standard that was utilized was one that enabled them to take that factor into consideration. That's why I pursued it at some length.

Mr. Fish of New York, we're happy to have you with us. The Chair recognizes you.

Mr. FISH. Thank you very much, Mr. Chairman. I'm sorry I was late. It says something about the law-abiding citizens of the bor-

ough of Brooklyn that the 50 people here from whom I asked directions to the Federal courthouse didn't have a clue where it was.

Judge Weinstein, it's nice to be back with you. The last time I was here, you will recall, was for the ceremony for Emanuel Celler over which you presided. I did want to take this opportunity to thank you for your many courtesies to the delegation from Washington on that occasion. It was very impressive.

Mr. Chairman, I have a brief opening statement. I wonder if this could be submitted for the record.

Mr. HUGHES. Without objection, it will be so received.

[The prepared statement follows:]

STATEMENT OF HON. HAMILTON FISH, JR.

Mr. Chairman, I want to welcome you to New York and commend you on your decision to hold the first field hearing of the Subcommittee on Crime during the 97th Congress here.

Recently released FBI figures indicate that violent crime in the United States rose at a rate of 13 percent in 1980. In New York, one estimate suggests an astonishing increase of almost 20 percent! Of course, none of us needs to be told that crime is sweeping through our streets. All too many of us have been touched by it personally. Regrettably, this crime wave has been accompanied by a reduction in police forces because of budget constraints.

As the Chief Justice recently pointed out in his widely praised speech to the American Bar Association, "bail crime reflects a great hole in the fabric of our protection against internal terrorism." Certainly, this "revolving-door" approach to so-called justice, which frees habitual criminals to wreak havoc on innocent citizens, undermines our faith in the criminal justice system. Furthermore, it destroys any incentive for police officers to vigorously pursue these dangerous offenders.

One important question is whether this deplorable situation is exacerbated by the Federal Bail Reform Act, which prohibits judges from considering the likelihood that the defendant will pose a "danger to the community" in making bail decisions. I hope, Mr. Chairman, that we will devote serious attention to this problem during the course of these hearings and our consideration of your bill, H.R. 2841.

Commonsense suggests that judges must have the information they need in order to make reasoned and safe bail decisions. Pretrial Services Agencies could provide this information, both as to failure to appear and danger to the community. I believe that the testimony of our New York witnesses, who represent a wide range of experience and expertise in these matters, will prove most beneficial in resolving the concerns I have mentioned.

Mr. Chairman, again, I welcome you to New York and I welcome our witnesses here today. I hope that these hearings will serve as an announcement to the criminal element that serious efforts are underway to arrest the distressing crime wave in this country.

Mr. FISH. Just to followup on what the chairman has been asking, if consideration is given to the seriousness of the crime, and, as past witnesses have told this subcommittee, if danger, too, is considered in evaluating the failure to appear, then what is the problem, other than constitutional, with permitting this?

Judge WEINSTEIN. Well, of course, Congressman, some of the problems of the Constitution are subtle, and there are distinctions, it seems to me. We do not have the system of this continent and most of the countries of the rest of the world, which have what amounts to preventive detention.

They take people in and they hold them, whether for 24 hours in some of the continental countries, or indefinitely in the Iron Curtain countries, or for 48 hours in some of the Mideastern countries.

The difference is that our concern is primarily with getting the defendant tried promptly, and insuring that he's here. These other factors are fed into the consideration of whether he will be here;

and in the case of a dangerous person who presents future danger, we do consider the fact.

The preventive detention provisions will operate, in my opinion, to punish people for their prior bad conduct and their bad character, rather than for a specific charge, or one that they are likely to commit during the short period prior to trial.

So rather than propose such preventive detention, I agree with my fellow judges that we will not have a serious problem in this district during the period of release if the law remains as it is.

Mr. FISH. Judge Lasker, did I sense an inference in your remarks that, while you support the chief judge's position, that this may be a tool that would be valuable in State courts, for example, that deal a lot more without violent crime than the Federal courts?

Judge LASKER. Well, I didn't mean to take a position with regard to the State court situation, I simply wanted to be sure that the Federal situation was distinguished from the State situation.

The chairman had pointed out that this was a much more serious problem at the State level, and I assume that it probably is. We deal with very, very few crimes of violence, and we deal, therefore, with very few people who I would consider literally dangerous, even if the term were inserted in the statute.

My objections are based on, I guess, three points, in the course of this discussion; the first is the Constitution. And when you say, what are the problems other than the Constitution, I think that's one that we can't pass idly by, but we can put it aside for purposes of analysis, to determine whether there are any other objections.

The second objection I have, or the second caution, I think, is that we don't pass a statute at the Federal level because of a problem at the State level; unless the problem exists at the Federal level, and it does not exist, I'm convinced, in the southern district of New York.

The third concern that I have really is as to what the symbolic significance would be of amending the statute. I really am not sure that the practical difference is going to be very great, but it seems to me that what it would constitute would be a message from Congress to judges for judges to be tough about keeping people in on pretrial detention.

I don't think we should either be tough or lenient, I think we should call the shots the way we see them; and I think we have the tools to do it right now.

Mr. FISH. Mr. Chairman, are you planning to devote time at this point to a discussion of the constitutional objections?

Mr. HUGHES. I hadn't planned on it, but there will be other hearings where we'll be getting into it.

Mr. FISH. So it would be more appropriate at another time?

Mr. HUGHES. Yes.

Mr. FISH. Thank you, Mr. Chairman.

Mr. HUGHES. Thank you, Mr. Fish.

Judge Platt, you indicated, and I think aptly so, that there are a lot of cases where we're committing pretrial service resources that really contribute nothing whatsoever. You gave as an example some of the typical white-collar crimes—fraud cases—where actually the risk of the defendant fleeing or committing acts of violence—rearrest potential—is practically deminimus, or nil.

Can we pretty accurately determine those categories of cases where it just doesn't make sense to commit pretrial service resources?

Judge PLATT. I wouldn't do it by that. I think you could, but I think it presents some dangers.

I think a far better way would be to do it as I've suggested, in the cases where the U.S. attorney asks for bail.

There are so many borderline cases; for example, I had an antitrust case about 2 years ago. They couldn't get the defendant on anything else, so they brought antitrust charges against him, and pursued it on that basis.

This fellow was allegedly a member of the Mafia, and a very high risk defendant. The normal antitrust case—that's not a normal antitrust case; that is to say, they couldn't figure out any other charge.

And if you w uld put it by category, he would go out on bail, where he shouldn't go out on bail, because of the circumstances. But that's just illustrative. If you do it by category, you're missing the point.

What you want to do is say, in those cases where the U.S. attorney is going to ask for bail, that he must first present the defendant to the pretrial services officer, and let the process proceed.

In those cases where he's not going to ask for bail, then there's no need for it, there's no need for statistics, no need for supervision, no need to invoke the process at all.

Mr. HUGHES. Judge Platt, a study in this district showed that defendants in nonarrest cases have a higher failure to appear rate than do defendants who are arrested, that is, in more serious cases. How then can we determine which cases need PSA bail and/or supervision services?

Judge PLATT. I don't know as I follow that question, Congressman. I think you need supervision in those cases where it's a borderline case, where the man, the armed bank robber, or the alien involved in drug importation, or what-have-you, you're normally not going to have any bail, or a very high bail anyway, it's going to be a very high bail situation—in the borderline case, the U.S. attorneys almost invariably ask for some bail, and maybe the judge will let them go, and then in those cases, you're going to need some supervision.

Those are the two categories of cases that I think do require pretrial services officers, and I think you ought to have them.

Mr. HUGHES. Well, I think that the point that I was trying to make was that in the eastern district, the cases where the Government has not asked for bail show a higher percentage of failure to appear than do the others.

If, in fact, we rely entirely upon the recommendations of the Government, how do we address the issue of trying to get the failure to appear record down?

Judge PLATT. Let me put it this way. It's the Government's primary responsibility to make sure that the defendant not only appears, but is prosecuted, and so forth and so on. If the Government goofs, that is, the Justice Department, the U.S. attorney's office, in misjudging whether a fellow is going to appear or not, that's their fault; that's their responsibility, and it's their problem, primarily.

It's very nice for them to have this added factor of somebody helping them supervise, but if they don't ask for it, and they don't think it's necessary, and they let them go, that's a prosecutory function, as I see it; and I don't think we should be concerned with it.

Judge WEINSTEIN. I would question those statistics. Are those cases where there has actually been an arraignment? There are many cases which are not arrest cases, because the person was indicted but never showed up.

Mr. HUGHES. Well, this was a management study by the administrative office of the courts.

Judge WEINSTEIN. Well, I do not say this in criticism, but the administrative office, but some of their statistical studies, we find, are not accurate.

I have not found situations where the Government, defense counsel, and the defendant have agreed that no bail should be required, and then the defendant fails to show up. That almost never occurs.

Mr. HUGHES. The Government sometimes has all kinds of reasons for not asking for bail.

Judge WEINSTEIN. Yes, but usually the Government doesn't want bail because the defendant is involved in some kind of undercover activity. If the defendant does not show up, it is usually because the defendant is dead.

Mr. HUGHES. Let me just move you on to another area. Is monetary bail relevant in drug cases today?

Judge WEINSTEIN. It depends on the drug case. There are all kinds of drug cases. If you take an importation case, you have people from Colombia coming up, they don't get bail, or the bail will be set sufficiently high so that they are never released.

There are some drug cases where you have an ultimate vendor of an ounce or less, somebody who has been a messenger, somebody who has been brought in by the D.A. who otherwise has a stable job, family, and the like, where bail is possible. So I would say that there are instances where bail is desirable. Any foreigner coming in is almost never placed on bail.

Mr. HUGHES. As I recall, in Operation Grouper, which hit the newspapers a couple of weeks ago, one of the defendants, an alleged class 1 violator, ha bail of $21 million set.

The fugitive records t ughout our system indicate that there is an inordinate number of fugitives in drug-related cases, and it's been a trial and error practice trying to determine what is the cost of doing business.

In many districts, we thought that a million dollars was sufficient to insure the appearance of the defendant, only to learn that that was not really very much. They could post that by midday when they were arrested in the morning.

How do you propose that we deal with that particular problem?

Judge WEINSTEIN. We come from a rather modest borough; it's poor, but there are some of us who love it. Unlike Miami and other more affluent drug-related sections, we don't have too many $21 million defendants here.

In a case like that, I simply would not go through the charade of fixing money bail; I would not set bail at all.

Judge LASKER. I'm not sure it's not a good way to raise money for the budget, to get $21 million.

The problem does not seem to be serious in the southern district, although the question that you raise is a perfectly appropriate question. We, although we probably have richer areas than the borough of Brooklyn does, do not seem to run into cases where money means literally nothing.

We have a lot of cases at the lower end, of small dealers, where a low bail seems to do the trick.

Mr. HUGHES. Judge Platt, you've indicated in your testimony, as have the other witnesses, that you feel that the pretrial services agency has worked, that it performs a vital function in providing information to judges in setting bail at the early stages.

Then you go on to indicate that you prefer that it be kept within the probation system, as opposed to under a separate board of trustees or other vehicle. I wonder if you can elaborate a little more on why you feel that this makes more sense?

Judge PLATT. Well, there's no need for a separate board of trustees, let's begin with that. We've had the board now for 5 years; I think we've had about five meetings. There isn't that much for them to be concerned with. We've discussed the annual report and so forth and so on, and we've helped the executive director, the chief of the pretrial services officers; but there is no need for that kind of supervision as I see it.

As I've tried to indicate to you in my statement, if we're talking about the limited number of cases, say one-quarter in this district, which I think is one of the busiest criminal districts in the country, we're talking about a need for maybe three or four pretrial services officers.

And to set up a separate department, agency, both here and in Washington, to handle that number of people, frankly Congressman, it's just in my mind wasteful. That's the principal reason, money wasteful.

Mr. HUGHES. Well, in either instance, I would assume that you would have to have more personnel, certainly in the probation office, I would think. The eastern district had to take on additional personnel to administer pretrial services.

Judge PLATT. I'm told that if you adopt this proposal and put them into probation, no existing employees are going to be hurt, they're all going to be relocated in the system. Out of the 10 experimental districts, 5 presently operate independently. And if you add two or three additional people in the probation department, you will, however, I think save on clerical help, you will save on at least one supervisor; you won't need to have two supervisors as you have now.

You will save on independent space that they occupy, and since they have their own whole separate unit, you'll save on all the supervisional work that's being done in Washington by a whole separate agency.

I just can't see the need for it if you adopt my premise, that the only cases where it's needed are those cases where the U.S. attorney is asking for bail.

Mr. HUGHES. Judge, the final budget report of the administrative office for the fiscal year 1980 shows that the eastern district handled 1,137 different defendants last year, with a budget of $421,000 and a staff of 11 professionals and 4 clericals.

In comparison, the southern district handled 1,137 defendants, virtually the same number, with a budget of $577,000 and a staff of 14 professionals and 6 clericals. The probation-run district needed a larger budget and more staff than did the board of trustees district.

Mr. PLATT. But I think that both those staffs could be cut in half, if not more.

Mr. HUGHES. Well obviously, if in fact we're spinning wheels, if we're dealing with matters that pretrial services should not be dealing with because they present little risk to the system, I think your assumption is correct.

Judge PLATT. But I think that both those staffs could be cut in half, when the board of trustees first met, I can remember every single member of that board's name—we don't understand what the need for this is.

The reasons that were given to us at that time were, "Well, we have to make a record for Congress," so we have to interview everybody, we have to get all these statistics together to persuade, to show Congress what is actually being done with respect to all defendants.

It was a reason, really what I would call a make-work reason. And that reason no longer exists; you have the statistics.

Mr. HUGHES. Let me tell you why, in my judgment, we wrote the bill this way. It was a compromise between the Senate and the House, and that's why we set up five demonstration districts run by probation and five run by a board of trustees.

But the belief on the part of a number of people involved in this legislation was that it's difficult to get probation officers, who are trained to do one particular aspect of a job, to really make the commitment or find the time needed to make something else work.

Judges have a way of doing things, probation officers have a way of doing things, and if it's worked in the past, why try something new? And it was felt that we ought to find out whether it would make a difference to have probation, as opposed to a board of trustees, run PSA.

Now, the facts and figures submitted to this subcommittee last week demonstrated that there was a marked difference between the two approaches; that in fact, a new board of trustees could be a little slow in getting started, but once they got started, there was a marked difference between the number of pretrial arrest interviews, and right across the board, the number of rearrests, and the number of apparently successful pretrial service contacts was markedly different between the two districts.

Let's just take a look at the difference between the southern district and the eastern district. If you just look at the number of pretrial interviews in the eastern district, that is, those interviewed just in the last 3 months, 94 percent of defendants entering the system were interviewed, as opposed to 56 percent in the southern district.

Judge PLATT. That's the U.S. attorney's fault in the southern district, Congressman; it isn't the difference between the two systems. We had a very difficult time in the first year with the U.S. attorneys; they refused to take their prospective defendants to the pre-

trial services agency right from the start. We finally had to lay down the law and make them do it, and that's the reason for the difference in the number of interviews.

Let me point something out to you which I'm not sure is entirely clear. You know, you say there's a difference in mentality, but even in this district, where we have defendants who need supervision that come from some other district—and this happens in a great many cases—who does the supervision where there are no pretrial services offices—not one of the 10 experimental districts.

Probation officers do the supervision. A great many cases that are being handled out of this district court are being handled by Probation officers right now, because there are no pretrial services offices.

I think that this business of saying that the probation officers have different mentalities, and they couldn't take half of our present pretrial services officers and make a separate division and work them into the department, saving this kind of money—I think it's just doubletalk, to put it very bluntly. I don't think it has any meaning.

Judge LASKER. May I add a word there?

Mr. HUGHES. Yes, please.

Judge LASKER. Our chief probation officer, Mr. Kuznesof, is here, and I think he's going to testify.

Mr. HUGHES. He'll be testifying later on.

Judge LASKER. I'll leave it to him to explain the differences in the figures between the southern district and the eastern district, about which I don't pose as an expert; but I really find it very difficult to accept this view also, that because a man is a probation officer, and dealt with human beings in a certain way, he can't approach it in another way when it comes to this job.

This is pretty basic stuff. And judges have to deal with people before they're convicted, and after they're convicted, and have a different point of view, different function, different relationship.

It seems to me quite possible that a probation officer can handle such matters especially when, in some of the districts that we're talking about, such as this district and the southern district, we have enough pretrial services officers so that they can work exclusively in that field if it's desired that they do so.

Mr. HUGHES. Thank you.

Judge PLATT. Congressman, if you really have doubts on this, I think you should not only talk to the southern district probation officer, but also talk to our probation officer, Mr. Haran, who is on our board of trustees; and he's here in this audience. I think they'll both tell you the same thing.

Mr. HUGHES. Yes, it is a major concern, and unquestionably, one of the reasons for advancing the board approach was the fear that chief probation officers would not want to buck the system; they've run their offices a certain way over a long period of time, and Federal judges, like all judges, have their own way of doing things.

This was another approach, a different approach; and we've had testimony from people in pretrial services about the difficulty they had, day in and day out, trying to get cooperation from all the players in the system.

And unquestionably, the project manager becomes important, whether he's the chief probation officer, or whether he's independent. So, we are interested in talking to some of the people in the probation office in the southern district, and we will talk to the people in the board of trustees-run eastern district.

Mr. Fish.

Mr. FISH. No further questions, thank you, Mr. Chairman.

Mr. HUGHES. Well, thank you again for your testimony. You have been most helpful, and we appreciate your taking time from your busy schedules to be with us. Thank you very much.

Our next panel is Magistrate Nina Gershon of the southern district of New York, and Magistrate Aaron S. Chrein of the eastern district of New York. We're just delighted to have you with us this morning. Your prepared statements will, without objection, be admitted in full for the record, and you may proceed in any way that you see fit.

Magistrate Chrein, would you want to begin for us, please?

TESTIMONY OF MAGISTRATE AARON S. CHREIN

Magistrate CHREIN. Yes. I regret that my statement did not reach the committee, though it was mailed in a timely manner. I think that it might be best if I just recapitulated some of the points that I made in my written statement.

Mr. HUGHES. That would be fine.

Magistrate CHREIN. I hesitate to take a position on the question of whether or not pretrial diversion should be the responsibility of the probation department or an independent agency.

I also hesitate to take a position on the question of whether or not there should be an autonomous pretrial services agency, or one managed by the probation department.

I am sensitive to some of the arguments that are raised both for and against probation management, but my perspective as a magistrate perhaps has not given me the insights to want to go out on either of those limbs.

On the question of the utility of some form of pretrial service agency, it's clear that they are unquestionably valuable. If I were to just start from the beginning, I would in essence be repeating some of the material that you have already heard from district judges.

But I have had some experience that a district judge might not often have, which I would like to share with the committee. A magistrate's role in the bail process often starts at an earlier stage than that of a district judge, especially in a case where a defendant is arrested long before his indictment.

Usually, the defendant who is brought into court is one who is represented by a public defender or a legal aid lawyer, who has met him scarcely one-half hour before he appears before the magistrate.

Where we are unable to obtain counsel, and this often happens in situations where more than one defendant is arrested at the same time and the hour is either late or it's a weekend, and it's totally impossible to find separate counsel, we very often find that

defendants wish to intervene in a bail determination, very often to their possible detriment.

There is some authority to support the view that a statement made by a defendant in connection with a bail hearing might be admissible against him in the event the case goes to trial, and it's my usual practice to discourage these interventions by defendants.

If a defendant is unrepresented, and I don't have the benefit of an impartial statement of his backgound and his bailability, it's very hard to keep a defendant from making some presentation which might come back to haunt him at a later stage of the proceeding.

But where a defendant knows that he's been interviewed by a pretrial service officer, and he knows that the statements he would make to the magistrate are filtered through the medium of the pretrail service report, he is less likely to intervene, and as an added benefit, the pretrial services report has the advantage over the presentation of either the U.S. attorney or the defense counsel of having been verified to some extent.

I don't have to discount what I get from pretrial services as advocacy, and in many cases, rely in very great part on what I receive from a pretrial service officer.

On the other hand, as Judge Platt and as a number of other judges have stated, it's been the practice in this district to interview every defendant who is brought into the magistrate's office for arraignment.

A number of these defendants are unquestionably without any bail risk, or don't represent risks of flight. Some of them on the surface are clearly defendants who could not present a bail question.

In fact, the U.S. attorney, on many occasions, comes into my hearing room with the release bond already filled out before the arraignment starts, and the pretrial services officer's report comes running in seconds after I've already had the application by the U.S. attorney for release of the defendant.

This happens in a very large number of cases. It happens in a very large number of cases that do not reach the district court level because they're either disposed of as misdemeanors before the magistrate or as deferred prosecutions.

So I would venture to say that the overwhelming bulk of defendants who are brought into this district do not require any prearraignment investigation, and to expend resources in this area is clearly wasteful.

In summary, pretrial services performs a vital, an unquestionably vital function; on the other hand, they mine the area a little too thoroughly.

As far as the supervision of persons arrested, and as yet unconvicted, I recognize that to a certain extent in a borderline case, or where the equities of bail are in equilibrium, a magistrate or a judge could take a chance and release a defendant on the assurance that there will be some reporting.

On the other hand, my own practice is to minimize the imposition of supervision on people who are as yet unconvicted. The act, or the proposed act, does speak in terms of setting guidelines ultimately for the imposition of supervision or pretrial monitoring of defendants.

I suspect that in some subtle way, if guidelines were established, even though they're expressed in terms of a policy that seeks to minimize pretrial supervision, it might have the subtle effect of causing more expenditure of funds and imposition on defendants, for the reason that, once you have criteria that would suggest the need for some supervision, there might be a temptation to fill in the grids and require supervision just because the defendant fits within a certain pattern that would seemingly permit supervision.

I feel that guidelines may have a subtle effect of imposing more of a burden on pretrial services, or whatever agency fills that role; and for that matter, on the courts and the defendants.

In essence, that's my statement; and I thank the committee for the opportunity to be heard.

Mr. HUGHES. Thank you very much for your statement, Magistrate Chrein.

[Magistrate Chrein's statement follows:]

PREPARED STATEMENT OF A. SIMON CHREIN, U.S. MAGISTRATE, EASTERN DISTRICT OF NEW YORK

I am grateful for the opportunity to address this Committee and will limit these comments to areas where my experience as an attorney and United States Magistrate have created impressions that might be of some use to this Committee. I do not feel that I have any particular expertise that would justify my commenting on the question of whether or not a Pretrial Services Agency should be autonomous or administered by the United States Probation Service. I am also unable to express a view as to whether or not the pretrial diversion program would be best administered by a Pretrial Services Agency or a Probation Department. I will confine these remarks to the subject of the value of Pretrial Services to a Magistrate in the determination of bail and the economies that could be achieved by the elimination of unnecessary activities on the part of the Pretrial Services Agency.

There is no question but that the Pretrial Services Agency in the Eastern District of New York has provided a useful service to the Court. In a number of cases a Pretrial Service investigation has meant the difference between pretrial incarceration or liberty for a defendant who has ultimately made all of the required Court appearances. Pretrial release where pretrial incarceration is not required to assure the presence of a defendant achieves a number of obvious desirable ends not the least of which is the economy of not maintaining a prisoner who may not even be incarcerated at the conclusion of the criminal case. The interests of justice are also furthered where a defendant is at liberty and need not be tried within the ninety days provided for in 18 U.S.C. § 3164. This often permits both the prosecution and the defense to more intelligently prepare their cases when not laboring under the deadlines of the "90 day rule".

The value of the Pretrial Services Agency is best demonstrated in cases where the equities of pretrial release or incarceration are in near equilibrium. A significant number of defendants who are arraigned and in whose cases the United States Attorney requests some bail that might result in pretrial incarceration are represented by the Federal Defenders Office. The Federal Defender usually has met the defendant no more than an hour prior to the initial bail determination. For that reason he seldom knows more about the defendant and his background than the Magistrate. Any representations made by the defense counsel under these circumstances have to be viewed as advocacy and discounted to some extent. In these cases a report prepared by an impartial agency with some degree of verification can permit the Judge or Magistrate to make a more informed decision concerning pretrial release. In a small number of cases I have had the experience of setting a bail that was higher than that requested by the Assistant United States Attorney. This has occurred in situations where an Assistant United States Attorney knowing little more about the accused than the Magistrate or his newly assigned defense lawyer has made a bail request without the benefit of information that had been unearthed in a brief and routine Pretrial Services investigation.

The value of an impartial factual report is best demonstrated in cases of defendants who appear without the assistance of counsel. This happens in a significant number of cases. The appearance of an unrepresented defendant is often the result of a defendant being arrested at a time when his retained attorney is unable to appear in the Court or in cases where a defendant is arrested and brought to Court at a late hour when it is impossible to obtain assigned counsel. This can occur on weekends when more than one defendant is arrested on a particular case and though the Federal Defender is available I am unable to assign the Federal Defender to all defendants because of a potential conflict of interest. Where a defendant appears without counsel and the Government does request bail I find myself relying in large part on the material provided by the Pretrial Services report. I tend to discourage unrepresented defendants from arguing bail applications because of the possibility that their remarks might be admissible against them should their cases go to trial (See *U.S.* v. *Dohm*, 618 F.2d 1169, 1174 (5th Cir. 1980)). Where I have the benefit of a Pretrial Services report, where this report was prepared and the defendant advised that his remarks to the Pretrial Services Agency would be respected as confidential, a defendant is less inclined to volunteer at a bail hearing relying on the fact that his statements have been presented to the arraigning Magistrate through the medium of the Pretrial Services report. In this way the existence of a Pretrial Services Agency not only assures a fairer bail determination but also satisfies the defendant that he has been dealt with fairly.

Though I feel that the Pretrial Services Agency performs a vital and necessary function in the operation of the Criminal Justice System, I do believe that certain economies are possible without any appreciable reduction in the effectiveness of the agency. The overwhelming number of defendants brought to the Magistrates for arraignment involve cases in which the Government has reasonably determined to request the release of the defendant on his own recognizance or on an unsecured bond. In many of these cases the defendant is ready for arraignment before he or she has had the opportunity to be interviewed by the Pretrial Services Agency. In many of these cases the Assistant United States Attorney appears in the Magistrate's hearing room having already prepared a release bond. It has been the practice of the Pretrial Services Agency to interview all defendants who are brought to the Magistrate's office for arraignment. Pretrial Services Agency expends considerable time and effort in interviewing defendants whose release is all but inevitable. Interviews are even held of elderly first offenders who are charged with an offense that will almost certainly be disposed of as a misdemeanor. I recognize that some utility may exist in the coalition of statistics and I am aware that the Congress is considering a statistics gathering function for the Pretrial Services Agency (See proposed section 18 U S.C. 3154(10)). While in the best of all possible worlds it might be desirable to overutilize the Pretrial Services Agency in connection with roles unrelated to the bail setting function, the fact remains that in a period of heightened sensitivity to Government spending and at a time when many Government programs of unquestioned utility are curtailed due to the need for economies it would seem hard to justify an overuse of this agency. I would suggest that a useful approach would be to have a Pretrial Services officer available to interview defendants in whose cases the United States Attorney indicates an intention of requesting bail that could result in incarceration. While a few defendants have had bails set in amounts that were higher than requested by the Government due to Pretrial Services investigations, these incidents were "too few and far between" to justify the expense attendant on interviewing every defendant brought to Court for arraignment.

Another area in which economies are possible is the area of supervision of released defendants. An unconvicted defendant enjoys the presumption of innocence and my own approach is to impose only those conditions of supervision that I view as absolutely essential to assure the presence of that defendant in Court. The proposals in proposed 18 U.S.C. § 3154(3) that guidelines for supervision be set may have the effect of, not withstanding its stated purpose, of increasing unnecessarily the numbers of defendants who are placed under supervision. Where criteria are set for persons not to be supervised there is a strong likelihood that a Pretrial Services Agency might recommend supervision in a greater proportion of cases in which the criteria for supervision are met than would be the case if the discretion as to Pretrial Services supervision were left entirely within the discretion of the judicial officer setting bail with recommendations for supervision being made on an ad hoc basis. Even if economies did not attend the leaving of the question of supervision in the hands of the bail setting Judge or Magistrate it would still be desirable if the judicial offcer setting bail had the discretion to impose pretrial supervision where in his or her view it was necessary due to the peculiar factors of a given case. While the proposed guidelines for pretrial supervision would probably not bind a Judge or

Magistrate the setting of formal standards could have a subtle effect on bail decisions.

In conclusion I would note that the Pretrial Services Agency in the Eastern District of New York has provided me with considerable assistance in the performance of my duties as an arraigning Magistrate. I must however, note that there has been a substantial overmining of the area in the sense that much work has been done that is unneeded and that a leaner agency could discharge its responsibilities in a manner that would vindicate the purposes of the Speedy Trial Act and not impose an unnecessary burden on the taxpayers.

Thank you again for this opportunity to be heard.

Mr. HUGHES. Magistrate Gershon, we have your statement. We'll receive it for the record in full, without objection; and you may proceed in any way that you see fit.

TESTIMONY OF MAGISTRATE NINA GERSHON

Magistrate GERSHON. I welcome the invitation to appear here today.

What I would like to emphasize, which will in part duplicate Magistrate Chrein's statement, is the practical impact of the pretrial services agency at the time of making the bail decision, which as you know, is an extremely difficult decision to make.

One of the things I wanted to remind you of is why it is difficult, and the nature of the circumstances at the time the decision has to be made. It's unlike other decisions that have to be made later in the process.

Counsel for the defendant has just been appointed or retained. He usually doesn't know very much about the case or about the bail circumstances. The Government agents and attorneys also usually have very limited information at that time.

In addition, the usual evidentiary rules applicable to factfinding later in the proceeding don't apply. What that means is that, in the absence of the pretrial services agencies, the magistrate or the judge making the bail decision is making it solely on information which has been provided by counsel for the Government and counsel for the defendant. This information is limited in quantity, and often it's unreliable.

In my experience, the pretrial services agency has performed, and performed very well, the essential function for which it was created, namely minimizing those two problems. The officers are professionally trained to elicit and independently verify the facts which form the basis of an informed bail decision.

I'd like to point out the distinction, at least in our district, between the pretrial services officer and the way similar kinds of programs have operated in various States. My understanding is, although I'm not an expert on the State practices, that often, becasue of the large number of people involved, there are stock questions that are asked of the defendant; there's a checklist.

The pretrial services officer or equivalent does not appear in the courtroom; and accordingly, the value of the report of that person is diminished.

In our district, in contrast, I get to know the individual officers; I know what information I can rely on. They don't simply say that the information is verified; I know how it was verified, whether it was verified in a reliable way, or in an unreliable way.

The pretrial services officer is available at the presentation when I'm making a decision, so that I can ask any additional questions that are necessary.

In addition, it's important that the pretrial services officer is a neutral person. I consider that officer an adjunct of me, who I can call upon at any time to give me additional information; and who, as Magistrate Chrein has indicated, is a much more reliable source than the other sources available at that particular time.

One example of the recognition accorded to the pretrial services officer's work is that while it does not eliminate disputes between the U.S. attorney and defense counsel, very often, once the pretrial services officer has given his report, there is a dramatic reduction in the disputes between counsel, and in fact, very often they will confer between themselves right there, and say, based upon that report, we have reached the following agreement as to bail.

I think that's a very significant indication of the value that's perceived by everyone in the courtroom.

Another example is that, on occasion, we will have to have a presentation hearing late in the day; unfortunately, it's more than on occasion. There isn't time, very often, to have the full verification that I would like to have.

That's when I really appreciate pretrial, because of the situation where I would be if they didn't exist.

Very often, a defendant is remanded that night, and it's only the next day, after full verification, that I can make what I consider to be a legitimate, proper bail decision.

Finally, there is the additional function, which I don't think has been stressed enough this morning, which is that, where an officer has been assigned to supervise a defendant, that supervision both insures that the conditions of bail are being met, and that if they are not being met, that the court is immediately notified. And I think that's a vital function.

The notion that you can set conditions of bail and then release the defendant without having any supervision seems to me to be pie in the sky. It doesn't mean anything unless you can bring that defendant in as soon as you find out that there's been a violation. And I think our system operates extremely well in that respect.

The only other thing that I would like to address this morning is the concepts that remain with respect to whether or not the pretrial services officer may be mining the field too much, as Magistrate Chrein suggests.

I think it's true that there are some cases which cry out for pretrial services interview and supervision, and others where it's much less important.

My own view as to how this should be handled is that it can be handled within the agency, and very often in fact it is. When I'm presiding, quite frequently, the U.S. attorney and defense counsel will come to me and say, this is a defendant where it doesn't seem necessary to have pretrial services interview. The defendant is a postal employee, he's been working for the post office for 25 years; that means that he has not been arrested in all that time; and he has a wife and family, and he was arrested taking $3 from an envelope.

Obviously, it would be a waste of pretrial services' resources if they get involved in any extensive interview, and I think their resources can be better used elsewhere.

But I don't know if there's any simple way to legislatively define when they should be involved, and when they should not.

What I think should be done, though, is to encourage the pretrial services officer, in conjunction with the court, to work out, as a practical matter, and case by case, when it's necessary and when it is not.

That concludes my statement.

[The prepared statement of Magistrate Gershon follows:]

STATEMENT OF NINA GERSHON, U.S. MAGISTRATE, SOUTHERN DISTRICT OF NEW YORK

Mr. Chairman and members of the committee, my name is Nina Gershon and I have been a U.S. Magistrate in the Southern District of New York since August 1976. I welcome your invitation to discuss with you my views on the operation of the Pretrial Services Agency.

Among my duties is the setting of bail in misdemeanor and felony cases. The importance of the bail decision, both to society and to the defendant, is matched only by its difficulty. Typically the decision is made at a time when the defendant has just been arrested. Counsel for the defendant has just been appointed or retained and therefore has limited information to present on the issue of bail. The Government agents and attorneys also usually have only limited information about the defendant at the time of the initial appearance. In addition, the usual evidentiary rules applicable to factfinding at trials, of necessity, do not apply at a bail hearing. Accordingly, a judicial officer making a bail determination based solely on the information provided by counsel for the Government and counsel for the defendant is faced with making a very crucial decision on facts which are limited in quantity and often subject to serious questions of reliability.

In my experience, the Pretrial Services Agency has performed—and performed well—an essential function in minimizing both of these problems. The Pretrial Services Officer is professionally trained to elicit and independently verify the facts which form the basis of an informed bail decision—the defendant's prior record including any indications of failure to appear in prior proceedings, and the defendant's character, physical and mental condition, family and community ties, record of employment and financial resources. (The nature and circumstances of the offense charged and the weight of the evidence against the defendant, also important elements of any bail decision, are of course the subject of argument by counsel and not of analysis by the agency.) Moreover, the Pretrial Services Officer is not an advocate, but a neutral adjunct of the Court with one loyalty and one goal, providing the Court with as much information as possible.

The verified information provided by a Pretrial Services Officer vastly reduces the guesswork which otherwise pervades the bail decision. Indeed, while the pretrial services agency's work has not eliminated bail disputes between prosecutor and defense counsel, in many cases the verified facts which the Pretrial Services Officer adduces present a sufficiently clear picture as to the defendant's risk of flight that the disagreements between counsel either are dramatically reduced or disappear altogether. This indicates both the importance of the kinds of information which the agency is able to provide and the general regard for their professionalism by counsel.

On occasion a sufficient inquiry by the Pretrial Services Agency has not been possible prior to initial presentation. This occurs, for example, where the interview does not take place until very late in the day and it is no longer possible to get the essential verifications. It is on those occasions, when I am confronted with setting bail without a full pretrial report, that I am most aware of the value of the agency's assistance. While a truly appropriate bail may then have to be put off until the next day, I am grateful for the availability of the Pretrial Services Officer who I can direct to inquire further into those areas which seem at initial appearance to be most significant.

The Pretrial Services Officer also serves another vital function. Where an officer has been assigned to supervise a defendant who is released on bail—either on some form of personal recognizance or on a cash bond—that supervision both assures that the conditions of bail are being met and, if they are not being met, that the Court

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will be promptly advised so that appropriate action can be taken. Without this, the fixing of conditions of bail would be in large measure a meaningless gesture.

Of course the value of an agency, whatever its goals, depends upon the training and ability of the individuals who actually do the work. I have been most impressed with the skills, professionalism and dedication of the Pretrial Services Officers with whom I work. I demand a lot from them and I have found them responsive. Not only can I call on individual oficers for expeditious and detailed reports, but I have also worked with the supervisors of the agency to establish improved procedures where needed. They have been an invaluable resource.

In sum, the Pretrial Services Officer cannot save the Judge or Magistrate from making the often difficult decision of what bail to fix. However, the officer, when trained and professional as they are in the Southern District of New York, can make it possible for that decision to be an informed and responsible one.

Thank you for inviting me to present my views.

Magistrate CHREIN. If I might just intervene with a brief remark—it has been suggested that the best way of determining when a pretrial interview might be appropriate is to have such interviews where the U.S. attorney is going to request bail.

I've had, perhaps, three incidents in the past 5 years in which I have, based on a pretrial services report, set bail higher than that requested by the U.S. attorney; I emphasize, it was perhaps three occasions.

This was due to the fact that an assistant, who had perhaps first met the defendant within 1 hour before the arraignment might not have had the benefit of some material that was unearthed in a pretrial services investigation.

But I still believe that these incidents are so few and far between, not to justify universal interviews.

Mr. HUGHES. So you would agree with Judge Platt, that in just those instances where a request for bail is made pretrial services interviews should be conducted?

Magistrate CHREIN. Yes.

Mr. HUGHES. The Chair recognizes the gentleman from New York for 5 minutes.

Mr. FISH. Thank you. I was going to ask you something along the same lines. I thought you were saying that you felt it was only in the borderline cases that the agency services would be available to you. In your response to the chairman, you just said they should be provided whenever bail is requested.

Magistrate CHREIN. Yes, whenever bail is requested; because very often, you can't determine the borderline case unless you have the benefit of some information.

Very often, I've had a number of experiences where the U.S. attorney has asked for high bail, has treated the case as if it were one in which pretrial incarceration was inevitable; and where the defense attorney, because he had only a very brief opportunity to familiarize himself with the defendant and his background, has really had very little to offer.

In may cases, too numerous to count, pretrial services has meant the difference between the almost inevitable incarceration prior to trial, and a release under terms that were compatible with both the defendant's freedom and his appearance in court.

So, I would suggest that in every case where the U.S. attorney requests pretrial incarceration that there be an interview and an investigation.

Mr. FISH. I understand that the percentage of cases supervised in the eastern district is quite low, 12 percent, I believe. Is that correct?

Magistrate CHREIN. I don't have the facts at my fingertips. I would suggest that it might very well be due to either the attitudes on the parts of judges and magistrates.

There are two magistrates who set bail in this district, and of course, a significant amount of the bails are set before the cases reach the district court level.

My own view, and I believe it's shared by my colleague, is that, unless absolutely essential to assure the presence of the defendant in court, pretrial supervision is an infringement on the liberty of a person, as yet presumed innocent.

Mr. FISH. Well, I will talk to your colleague, because that's not what I understood her to say. I think she thought that——

Magistrate CHREIN. No; I was referring to my colleague in this district.

Mr. FISH. Oh, I see. I thought that Magistrate Gershon was telling us that this type of supervision was very appropriate.

Magistrate GERSHON. I don't share Magistrate Chrein's view. I agree, of course, that it is an infringement, it's some degree of restriction; but as a practical matter, it's certainly a much milder restriction than jail, which may be the alternative.

In fact, I have found that it's extremely useful. I assume you'll hear from defense counsel, and maybe they'll have a different view of its restrictiveness. But I have found that it's not only useful to the court; it can be very useful to the defendant.

It's not good for defendants to go out on bail and to jump bail or to commit other crimes. It's not good for them, either.

The pretrial services officer very often can help a defendant avoid that, through the supervision. Many defendants who are released on bail who are, let's say marginal members of the community, who have committed a variety of crimes, but they're not necessarily serious crimes, they do not have the highest sense of responsibility about reporting to court.

On the other hand, they are not what I would consider fugitives in the sense that they're about to run off to Venezuela. They may be neglectful, they may be very transient in their lifestyles.

The requirement of pretrial reporting means that if a defendant does not report to pretrial within the fixed period, and we have a system of both routine supervision which is once-weekly calls; we have varieties of strict supervision, which is much more strict.

If a defendant fails to report, pretrial is immediately in action. A bail review can be fixed; or if it looks like there's an immediate flight situation, a warrant can be issued. The defendant is brought in, and I can then issue another stern warning to the defendant.

And usually, that is sufficient to make sure that the defendant not only keeps his appointment with pretrial, but also makes the court appearance, which is the ultimate goal.

So, I find that pretrial supervision is a minimal restriction on the defendant, which can be extremely useful not only to the court, but also to the defendant himself.

Mr. FISH. I understand that in your southern district, there has been a very high percentage of supervision of persons on bail. Has

it been your experience that this has at least gone part of the way toward resolving the issue of dangerousness to the community?

Magistrate GERSHON. I can speak only of impressions, because I don't have the kind of factual data that would prove my impressions; but certainly it would be my impression that supervision does help.

For one thing, where a defendant gets into trouble, feels unstable, he has a person to turn to. For example, if he loses his job, one of the things that pretrial attempts to do is either help the defendant find employment, or sometimes to help the defendant find emergency welfare, which will keep him from needing to commit another crime.

I think one of the things that we are all aware of is that the crime rate is much higher among the unemployed than the employed, and this is a very significant fact.

Mr. FISH. Do we have figures that would show historically the number of bail crimes committed during a time when supervision was not as great as it is today—compared with the crimes committed today?

Magistrate GERSHON. Well, I understand that there was in 1979 a major report from the administrative office, which indicated that the crime rate while on bail, the felony crime rate while on bail, had dropped significantly from the time prior to pretrial to the time that pretrial was involved.

As I say, I'm just not sure how much we can rely on those.

Mr. FISH. Well, we can get those figures.

I know my time is going to run out in a minute, but I don't think that you expressed a preference as to whether pretrial services should be operated by probation or by some other group.

Magistrate GERSHON. Like most of my colleagues, I really do not have any position to take on that. I'm simply unfamiliar with the operation under the independent board.

All I can say is that the system seems to be working satisfactorily under probation. But I really have not done any kind of full-scale analysis of that.

Mr. FISH. Thank you, Mr. Chairman.

Mr. HUGHES. Thank you, Mr. Fish.

I gather both of you have served as magistrates since about 1976?

Magistrate CHREIN. That's correct.

[Magistrate Gershon nodding affirmatively.]

Mr. HUGHES. What was the practice in the magistrates' court prior to the commencement of the pretrial service agencies?

Magistrate GERSHON. That was before we were appointed.

Mr. HUGHES. Yes. What was the practice, do you know offhand?

Magistrate GERSHON. I really don't know.

Magistrate CHREIN. While I wasn't a magistrate prior to 1976, I was the attorney in charge for the Federal Defender Office, for years, practically, before I took office. And my impression was at that time, though I was standing in the well rather than on the bench, my impression was that the overwhelming bulk of defendants brought to this district were released, most of them on uncontested bail applications for pretrial release.

It's also been my experience that, where bail was contested and the defendant was not charged with the sort of crime that almost always presents a significant risk of flight, even in contested bail applications, a significant number of releases have taken place. But this, of course, is visceral.

Mr. HUGHES. I understand. In your judgment, what would be the practice if we do not continue pretrial services?

Magistrate CHREIN. The practice would be to rely almost exclusively on the statements made at bail hearings by the defense attorney, who invariably, almost invariably, would have little prior contact with his client, and would be unable to give us, even if he were not limited by the bounds of advocacy, he would not be able to give us an objective statement.

And while the U.S. attorney might have certain responsibilities beyond those of an advocate, his presentation also would be affected by his peculiar responsibilities; and I'm afraid an awful lot of mistakes would be made.

Mr. HUGHES. In your own judgment, do the U.S. attorneys have sufficient information at that stage to be able to give you reliable, helpful information when you are trying to set bail?

Magistrate CHREIN. In certain types of cases, they have a fund of information; usually where you have a repeated offender or one who has been under investigation for some period of time. But where you have the arrest of opportunity, for want of a better term—the person who was apprehended stealing a bundle of letters, the person apprehended coming through customs at Kennedy Airport—the U.S. attorney has no fund of information, as a rule, and a pretrial services background check is of invaluable aid.

Mr. HUGHES. There's no question from your testimony and the testimony of most of the witnesses we've heard to date, both at this hearing and at the previous hearing, that pretrial services have been helpful.

The question is, is it worth the commitment of resources that we have to make? We're talking in terms of $3 to $4 million additional, to extend this to other districts. Is that worth the investment, in your judgment? Does it provide you with that much helpful information?

Magistrate CHREIN. Well, let me say that I feel that if restricted—if interviews and investigations were restricted to the cases of defendants where the U.S. attorney would request bail, there would be a smaller commitment of funds. And I believe there is a certain savings when people are released who would ordinarily be confined, where they present no risk of flight; obviously the maintenance of a prisoner would cost something.

The burdens on society would also be increased if defendants had to be tried within the 90 days required by statute for persons held in custody. The U.S. attorney may not have the time to prepare his case with the thoroughness that he would otherwise be able to, and the defense lawyer would find himself rushed into trial, and the result might be unfortunate.

Magistrate GERSHON. I would first repeat what was the thrust of my basic statement; that I think that information, verified information, is absolutely essential. And it has to come from some source in order for a judge or magistrate to make an informed and responsible decision about bail.

That's a value that can't be quantified, but it is of enormous value, and I don't think it can be neglected.

On the other side, though, if you're just talking about straight financial gain, insofar as with pretrial, more people are released than detained, it's clearly an economic advantage; because the cost of 1 day in jail is enormous, and multiplied day after day—I don't have figures, but I would imagine that if one did them, it would be clear that the cost of pretrial would be modest.

In addition, insofar as pretrial supervision cuts down on failures to appear, you're also cutting down on the expenses of other Federal agencies, the marshals, FBI, and so on, who have to go out and look for defendants who become fugitives. I think that's an additional cost saving that can be attributed to pretrial.

Mr. HUGHES. Magistrate Gershon, I take it from your testimony that you would accord to the pretrial services agency the flexibility to determine which matters required supervision and to what degree?

Magistrate GERSHON. No, I wouldn't leave it to pretrial. I would leave it to the magistrate or the judge.

Now, there are times when I delegate part of that responsibility to pretrial but I think the decision should be the judge's decision or the magistrate's decision.

I don't think that there's anything—what pretrial does does not replace the judge or the magistrate; it just gives the judge or magistrate information.

For example, I may say to pretrial that I want strict supervision of this defendant. Then, if after 2 or 3 weeks, it appears that the defendant is constantly appearing and reporting and so on, and everything is going well, send me a memo, send a copy to the U.S. attorney and to defense counsel, that you propose that your resources could be better spent meeting this person only once a week.

If I approve of it, then you could do that; but I wouldn't leave the entire question of whether there should be supervision, or the extent of the supervision, to the pretrial services officer. It's not his job.

Mr. HUGHES. I do take it, however, that you feel that to develop guidelines for use by magistrates and pretrial service agencies would not be advisable because of the differences between, and the need for flexibility in dealing with, individual defendants.

Magistrate GERSHON. I would be opposed to legislative guidelines, because I don't think that they could effectively deal with all the possibilities in all the districts. Even in our own district, there are a lot of possibilities that come up.

I think that we could probably do better in communicating within the district to set guidelines.

Mr. HUGHES. As a result of your ability to use pretrial services and to direct the supervision as you've indicated, can you point to situations where the defendants would have had unnecessarily high bail set, and perhaps be detained if you didn't have the benefit of that pretrial service agency's report and information, and potential supervision?

Magistrate GERSHON. Oh, unquestionably. As I indicated in my previous statement, very often the U.S. attorney will come in with a high cash bail request for the reason that he doesn't know anything about the defendant. He wants to protect the interests of the prosecution, to make sure that the defendant will appear, and he is erring on the side of being cautious, which is an appropriate thing for him to do in the absence of information.

The defense attorney, of course, comes in and says that the defendant is a model community citizen, and should be released without bail.

Pretrial services then gets involved, and comes back with a report that indicates something in between those two positions, and it's sufficiently compelling as indicated by the fact that the Government attorney himself says, "Yes, I change my recommendation from $50,000 cash or surety to a $50,000 personal recognizance bond signed by the defendant's mother."

That's the difference between being in jail and being out of jail; and it's a difference which, as I say, even the Government attorney will frequently acknowledge as being a reasonable thing once these facts are out.

Mr. HUGHES. My colleague, Mr. Fish of New York, touched upon the issue of dangerousness to the community. Do you have any views on the present restrictions in the Bail Reform Act of 1966 and the need, possibly, to change it to permit magistrates and judges to take danger to the community into account when setting bail?

Magistrate GERSHON. Well, imposing a new standard of dangerousness which would be similar, if not identical, to preventive detention, raises issues, including constitutional issues, which are very separate and distinct in my mind from the basic issue of bail.

Frankly, it was my understanding that this morning's hearing would be focusing on the effectiveness of pretrial services with regard to bail, and I was not prepared to discuss an issue like preventive detention.

Mr. HUGHES. We understand that.

Magistrate GERSHON. However, having listened to my colleagues this morning, the three district judges, I can simply say that there is no significant disagreement with what those three judges had to say on the subject; and I would rest on their statements.

I would like to say one thing, though, in addition, which is that regardless of what standard may be used for pretrial detention and release, somehow or other, the judge or the magistrate has to be given the facts by which to know whether or not the standard has been met; and that's what pretrial services can do.

Mr. HUGHES. The difficulty is that, unfortunately, it's often the hard cases that we direct and focus our attention on; and it's the situations where a defendant has a good background from the standpoint of appearing when summoned, but who is a danger.

It's where perhaps a judge, just a little bit, goes beyond the question of whether or not the defendant will appear, in order to protect the community; it's that dual standard that gives some judges concern.

You can call them purists; call them what you want, but it's an inconsistency that, I suppose, that we are going to have to deal with.

Magistrate GERSHON. I think what the judges this morning were getting at is that, as a practical matter, the inconsistency and the

difficulty disappears. There may be an inconsistency of more serious proportions in other court systems; but in the Federal system, where there are very few violent crimes, it's a rare circumstance.

I would also say, where you've described a defendant as a missile, someone about to explode in violence, you're talking about a defendant whose other characteristics are going to also reflect untrustworthiness, and therefore a poor bail risk.

Therefore, since the two things are reflected, it's not really an inconsistency, and I think it can be handled under the existing law.

Magistrate CHREIN. On a number of occasions, defendants have been brought into my hearing room, who have had a fairly consistent record of appearing in court, and have had bail set, if only for the reason that, by this later arrest, taken into conjunction with the defendant's previous record, I've had to consider the likelihood that a sentencing judge, when confronted with a probation report that will reflect this later arrest added on to a history of other arrests, might take the view that the defendant is deserving of a higher sentence.

I also have to consider that the defendant is sensitive enough to this fact to appreciate that he stands a greater risk of a jail sentence. And in effect, a repeated offender who has a history of reporting in court, who has now raised the level of his criminal activity, might become, for that reason alone, a greater bail risk.

As the district judges pointed out, as a practical matter, there will be very few incidents where there would be any tension between the presumption of innocence and the existing Bail Reform Act standards.

I do feel that once we've declared that we're no longer committed to the presumption of innocence, we've lost something more than we'll gain by any preventive detention scheme.

Mr. HUGHES. Well, thank you very much. Mr. Fish.

Mr. FISH. No further questions.

Mr. HUGHES. Well, thank you. We certainly appreciate your testimony, and we're delighted that you would take time from your own busy schedule to be with us today.

Magistrate CHREIN. Thank you very much.

Mr. HUGHES. The next panel is Mr. John Martin, Jr., U.S. attorney for the southern district of New York, and Mr. Raymond Dearie, first assistant U.S. attorney for the eastern district of New York.

Mr. Martin has been the U.S. attorney for the southern district of New York since May 1980; he began his legal career in the U.S. attorney's office as an assistant, and then as chief of appeals, and assistant chief of the criminal division.

Before he became the U.S. attorney, he was in private practice and lectured at Columbia University. He has also been the Assistant to the Solicitor General of the United States.

Mr. Dearie has been the chief assistant to the U.S. attorney for the eastern district of New York since July 1980. He's been an assistant U.S. attorney, as well as chief of the criminal division, and executive assistant to the U.S. attorney.

He has also practiced law in the private sector, giving him a wide breadth of experience.

Welcome; it's nice to see you this morning. Without objection, your statements will be received in full in the record, and you may proceed in any way that you see fit. Why don't we begin with you, Mr. Martin?

TESTIMONY OF JOHN MARTIN, JR., U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. MARTIN. The statement is part of the record. Let me abbreviate what is there, and start by saying, I think which is true of both Ray and I, that to some extent, it has to be recognized that we are at times in an adversarial relationship with pretrial services, of course; we may take a different position on bail than they do.

I say that not to denigrate what they do, but to put the committee on notice that perhaps some bias is going to slip into our presentation.

The first point that I wanted to make is one that has apparently been made by most of the people who are here this morning, and that is, that the bill, as drafted, provides, I think, for Pretrial Services interviews in each case.

That seems to me to be inappropriate and unnecessary. There are many cases where, by the time you get to go to the magistrate, before the Pretrial Services process, the Government is ready to take the position that the defendant should be released upon his own recognizance; or you have been in contact with the defense lawyer, and have agreed upon an amount of bail.

There is no reason to go to Pretrial Services in that case; and one of the problems we have with Pretrial Services is that, very often, particularly when we have some large arrests that go on, there's a tremendous delay that occurs at that end of the process, because there may be more defendants arrested than there are Pretrial Services officers.

So, if you could cut down on the number of instances in which the Pretrial Services officers will have to interview a potential defendant, you will save time and avoid delays in releasing people whom the Government is prepared to release.

There is also, I think, a class of cases where, even though the Government is going to be requesting bail, the Pretrial Services may not provide any useful function, because you may have a well-represented defendant, and there is no dispute as to the roots in the community, but there is simply a real dispute between the defense lawyer and the Government as to what the bail should be, given the crime that is charged.

What you're really talking about is not a factual dispute, but a judgmental dispute. And again, that's an area where a Pretrial Services interview is not going to add anything to the process.

So, I see those situations as being ones where it's not necessary to have the Pretrial Services function, and would suggest some change in the language, to simply indicate that Pretrial Services shall conduct interviews in an appropriate case, leaving that, I suppose, to be worked out on a local basis, what the criteria would be.

The other area that we have some concerns with is the confidentiality of the informaiton in the Pretrial Services files. We have found, under the existing regulations, that sometimes Pretrial

Services will not advise us when there has been a default by a defendant in meeting a condition of his release.

It may be a single failure to report, which they consider not significant as to require aciton by the court; and it may come about that we do not get contacted until the court is contacted, after there have been two or three defaults.

That causes some problems, because if the defendant has fled, the amount of time intervening obviously adds to the difficulty of recapture.

The only other comment I have on the bill as written is that I think that the provision saying that the evidence in the files may be used at a trial only in connection with guilt of a crime committed in obtaining release, should be broadened to include not only obtaining release, but the violation of release, and also any crime committed while on release.

In fact, I think that is consistent with the current practice, and I think that broadening is certainly appropriate, as consistent with the purpose of Pretrial Services.

Mr. HUGHES. Thank you very much. Mr. Dearie.

[Mr. Martin's statement follows:]

STATEMENT OF JOHN S. MARTIN, JR., U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK

Let me preface my remarks by noting that, in assessing the reaction of my office to pretrial services, it must be recognized that we are, at least in some instances, in an adversarial relationship with pretrial service with respect to issues of bail. Often the recommendations that we make are at variance with those made to the court by the Pretrial Service Officer. I say this not to denigrate the work that they do, but rather to put this Subcommittee on notice that our reactions may be colored to some extent by this relationship.

Further, it seems to me that statistical surveys done throughout the various districts in which pretrial service projects have been operated on a demonstration basis can give a more accurate picture of the success or failure of pretrial services in lessening the frequency with which defendants fail to appear for trial, shortening intervals between initiation of a case and disposition, and increasing the percentage of defendants released on bail pending final disposition.

With this background, I would like to bring to the Subcommittee's attention some of the concerns which we have with respect to the proposed legislation. Let me start with a specific item in the proposed bill itself. Page 18 of the House Report Number 96-1312 indicates that § 3154 will provide that the Pretrial Services Agency shall make a report to the judicial office prior to that release hearing of each individual charged with an offense. Our experience indicates that it is a mistake to have Pretrial Services conduct an investigation in each case which is to come before a magistrate or district judge. In many instances, by the time an arrest has taken place and a defendant has been processed by the arresting agency and our office, we have already made a determination that it is appropriate to release the defendant on his own recognizance. In other instances a decision as to a specific amount of bail may have been reached between the government and the attorney for the defendant. In these instances the requirement that a Pretrial Services Officer interview the defendant and undertake an investigation of the information he provides simply adds unnecessary delay to the arraignment process without contributing any additional information or validation of existing information to the release decision.

Indeed, one of the problems that we have found with the existing pretrial service operation is that it often causes substantial delays in the arraignment process. It has been our experience that the practice of having a defendant interviewed in advance by a pretrial service officer can, in instances where the fact that the defendant will be released is essentially undisputed, result in an additional delay in the defendant actually being released.

There are many instances where there are two or three times the number of defendants to be arraigned than there are pretrial service officers available to conduct interviews and investigations. In these circumstances, there are often substantial

delays in the arraignment process because of the delays at the pretrial service level. Such delays are particularly unnecessary where a decision has already been made by our office, either alone or with defense counsel as to a particular bail recommendation that will result in the release of the defendant.

In other instances, there may not be an agreement between the prosecutor and defense counsel as to the amount of bail or other condition of release, but there may be no dispute as to the factors relating to the defendant's roots in the community. In these cases there is no benefit to be derived from a Pretrial Service interview.

In most of the cases I have mentioned there is also no concern by prosecutor or the court that the defendant requires specific counselling or direction in order to assure his or her appearance at trial, nor does the potential service provided by a pretrial officer supplement the range of options already available to the defendant through his counsel for demonstrating to the court his reliability as a bail risk.

Thus, I would suggest that the language of Section 4 of the proposed bill be changed by inserting the words "in appropriate cases" on line 2 of page 5 before the word "collect" and changing the word "each" on line 5 of that page to "an."

Another area of concern that we have relates to the provisions regarding confidentiality of the files of any Pretrial Services Agency found in Section 3153(d) (2) and (3) on page 17 of the Report.

The Pretrial Services Agency in our district has taken the position that it can not inform my office of the fact that a defendant has failed to comply with a condition of release until such time as the court is notified of that fact and the court consents or directs disclosure thereof to the prosecutor. Thus, it has happened that we have not learned of a defendant's failure to meet a condition of his release until some two or three weeks after the initial default occurred. Obviously, this makes the task of locating a fugitive defendant more difficult.

It appears that subsection (B) of the proposed bill is broad enough to justify our access to this information but it may be better to include a separate statement indicating that the fact that a person under supervision has failed to meet a condition of his release should be brought to the attention of the United States Attorney immediately.

Another significant problem in the legislation is that it makes information contained in the files of pretrial services admissible only on the issue of guilt for a crime committed in the course of obtaining pretrial release. We believe that this standard is far too restrictive. It is wholly consistent with the underlying purposes and objectives of the establishment of pretrial services to allow information acquired by the agency during the course of supervision of a defendant to be used additionally on the issue of guilt in connection with a prosecution for willfully failing to comply with the conditions of his release, as well as, in prosecutions for crimes committed while on release.

The Pretrial Services Agency program was initially designed to make release on bail more readily available by improving the quality of bail determinations through increasing the amount and reliability of information available to the judicial officer making the release decision. It is consistent with that purpose to penalize a defendant for providing false information to the pretrial services agency or the court, for violating the conditions of his release, and for committing other crimes while released. Any different approach could permit defendants in some cases to be immunized from sanctions for abusing or misusing the release process.

I therefore believe that the language of Section 3153(d)(3) beginning on line 21 of page 4 of the proposed bill should be amended to provide that information in the files of a Pretrial Services Agency "may be admitted on the issue of guilt for a crime (1) committed in the course of obtaining pretrial release, (2) involving a violation of the conditions of release or (3) committed after obtaining pretrial release and prior to the final disposition of the charges on which release was granted."

I am happy to answer any questions that the Subcommittee has.

TESTIMONY OF RAYMOND DEARIE

Mr. DEARIE. Thank you, Mr. Chairman. I think, at the outset, I should advise the committee that needless to say, I do support what I guess we can now call the Judge Platt-Judge Chrein-U.S. Attorney Martin-and now Assistant U.S. Attorney Dearie proposal, which is to limit the amount of interviews conducted by pretrial services to those cases wherein the Government is going to request substantial bail.

I could go further and support, as Mr. Martin has pointed out, the concept that the vast majority of the small percentage of cases that involve high bail are easy calls, not only for the Government, but for the presiding magistrate or judge.

In this district, as I've attempted to point out in my statement, because of some peculiarities in the eastern district, and because of circumstances that are common to the U.S. attorneys' offices throughout the country in 1981, there are precious few cases wherein a tough decision, or close call, must be made by the presiding magistrate or a judge.

I think realistically, in that area only, the need for some additional input, as the judges have stated, ought to be provided.

As I have noted in my statement, in 1981, given the impact of the Speedy Trial Act, given the change or thrust of our current investigative efforts, the number of cases that involve these difficult tough calls, if you will, probably range in the area, to be generous, of approximately 10 percent of the cases.

As you are well aware now, here in the eastern district, as far as I understand, interviews are conducted in approximately, or approaching 100 percent of those cases of most defendants passing in and through the eastern district of New York.

From our point of view, biased indeed, but nevertheless, we find it difficult to justify or understand the need to continue that kind of practice.

In summary, I would state simply that if the judges and magistrates of this court see this service as a valuable one, that they are, of course, in the very best position of all to make the ultimate determination as to whether or not some value exists in continuing the concept that is offered here in pretrial services.

I think because of the numbers involved, and the relatively few number of cases that would require this input, a serious question has to be raised, and I think has been raised repeatedly here this morning, as to whether the effort required for the establishment of implementation—and now, with this pending legislation, perhaps an extension of a separate pretrial services agency, as we have known it here in the eastern district.

I think with the exception of any further comments that I've made in my statement, such as confirming Mr. Martin's comments on the question of confidentiality, I might make one other very brief comment; and I make it because there does seem to be a wide disparity between the practice in this, the eastern district, and the southern district, on the question of the supervision while on release.

The practice that existed before the enactment of the Speedy Trial Act and the adoption of pretrial services, accommodated the occasional need or interest expressed by either the prosecutor or the arraigning magistrate to provide some special circumstances wherein a particular defendant, for some unusual reason, ought to be required to report on a daily, weekly, or monthly basis; in the hope that pressure or presence, if you will, would enable or insure the defendant's continuing presence throughout the process of the criminal proceeding.

It has been my personal experience, I believe shared with the magistrates of this court, one of whom, as you already know, is a former Federal defender, and one of whom is a former U.S. attorney, that in the main, those efforts do not supply a sufficient or substantial deterrent to defendants to flee courts of this jurisdiction during the pendency of these cases.

I'm quite apparently at odds with my brother, Mr. Martin, in the southern district of New York; that has been our practice. We have not been able to uncover, or arrive at any conclusive statistics that might disprove that theory.

I think, for all practical purposes, the reason why it is not adopted here is because the magistrates, generally, in the eastern district of New York, are not utilizing it as an effective weapon.

Thank you.

Mr. HUGHES. Thank you very much, Mr. Dearie.

I think your testimony is that you understand the need for this type of a service, but that we should limit pretrial services to those cases where there is risk, where high bail is being set, or other circumstances would dictate a need for the services.

Is that, in essence, what both of you would agree to?

Mr. MARTIN. I think that's a fair summary. Certainly there are situations where further verification may be required of what the defendant's roots are, but certainly not in all cases.

Mr. DEARIE. I would say in candor, Mr. Chairman, that if the judge requests this kind of information from a third source, the mechanism should be available to them; my personal view, I do not believe that the agency concept, as we've understood it for the past 5 years, is necessary to insure the aims for purposes of the Bail Reform Act.

Mr. HUGHES. Well, doesn't the U.S. attorney often have this background information available that could be furnished to the court?

Mr. DEARIE. In the vast majority of cases in this district, the answer is yes. Again, alluding briefly to my statement, which has been submitted, just by the nature of the business that we conduct here in the eastern district, with the exception of two classifications of cases, the vast majority of defendants arraigned here in the eastern district have been the subject of ongoing, and in many cases extensive, investigation.

The two cases that I except from that, one is a relatively small class of cases, which was at one time or another a sizable class of cases, is bank robbers. It does occur from time to time that without any leadtime, so to speak, we are in the process of arraigning a bank robber or robbers with very little information about them or their criminal history.

By virtue of the fact that the crime involves—and I assume that this question would come up—involves a matter of violence, to say the very least, in armed bank robberies, bails are generally set, as you might anticipate, at fairly high levels, ordinarily precluding release.

The other group of cases that may draw an exception to that is in one area of our narcotics work, and that is in the area of what has commonly become known as mule cases; the kind of low-level case usually——

Mr. HUGHES. You said mule cases, M-u-l-e?

Mr. DEARIE. Mule; in other words, an individual who will carry on his or her back, or any other place——

Mr. HUGHES. Is that an eastern district word?

Mr. DEARIE. Well, we are blessed, depending upon your point of view, we are either blessed or cursed with an international airport, and as a result, we experience in any given workday, and certainly in a given week, a sizable number of cases involving foreign nationalists, usually of very low economic means, who have been carrying illicit drugs on their person through Customs at Kennedy Airport.

Mr. HUGHES. Well, doesn't the pretrial services agency secure much of their information right from your office?

Mr. DEARIE. It is my experience that they do. I don't mean to say that we are the sole front. I think that the value that the magistrates alluded to here today is in the area of their being able to confirm certain information provided to them by some of these defendants.

In those areas where we have had no leadtime and know very little about these particular defendants, I think the factfinding function is a valuable one, not only to the arraigning magistrate, but in essence, depending upon the magistrate's recommendation, or pretrial's recommendations, to the Government itself.

Mr. HUGHES. Aside from all of the obvious reasons why magistrates and judges would like to rely upon an agency like pretrial services, which perhaps could be considered an extension of the court, what other reasons can you suggest to justify such a service, if in fact, the U.S. attorney's office can provide the information?

Mr. DEARIE. I know of no other reasons, but I don't, as I said before, claim to be the sole source for reliable information in every case for the magistrate to make an informed judgment on the question of bail.

Mr. MARTIN. I could just add on that, one of the functions that they serve is a supervisory function after release——

Mr. HUGHES. Mr. Dearie doesn't feel that that contributes very much.

Mr. MARTIN. Well, I was just about to say that that is something that we—going back to my earlier association with the U.S. attorney's office, was often worked out in terms of reporting to an agent involved, or to the U.S. attorney's office as far as keeping a contract.

We used to provide basically that same type of service in a case where some contact with the defendant was thought appropriate.

Mr. HUGHES. How much of a job do your investigators do in working up background information before a case is ready for an initial appearance before a magistrate?

Mr. MARTIN. It depends so much upon the nature of the case. You may have in a narcotics case, a very lengthy investigation coupled with a great deal of surveillances. In other cases, something comes up, somebody is caught stealing mail at a particular time; you have no information. So it depends upon the nature of the case.

The whole shift in Federal emphasis to the larger cases that has occurred, I think, in recent years, indicates that in more and more cases we will have more information than we might have had in the past.

Mr. HUGHES. I don't want to put words in your mouth, but it sounds to me like what you're saying is that there are situations where the U.S. attorney's office doesn't really have a lot of background information, and they may be run-of-the-mill cases.

And if in fact the tendency is to set bail instead of releasing the defendant on personal recognizance, or to set high bail instead of low bail when the court doesn't have background information, there could be a different reason for having this particular service available, particularly when it would be an independent arm of the court and not part of the prosecutor's office, where you're given to the adversary type of relationship.

Is that a fair assessment?

Mr. DEARIE. Yes.

Mr. HUGHES. And both of you would agree that if that's the case, such services ought to be provided by probation, and not some separate agency?

Mr. MARTIN. Certainly in these districts, I think—my experience with the Department of Justice in Washington for a couple of years did indicate that the experience in one district was often not the same as in other districts throughout the country.

So certainly, here, with the types of probation departments that we have, that function can be and has been, in our district, done very well.

Mr. HUGHES. Can you tell us briefly how you feel about judges being able to consider dangerousness to the community when setting bail?

Mr. MARTIN. My own personal view on that is that it seems to be appropriate; I think that, in fact, it happens, because you do have, when you combine the seriousness of the offense and the prior record of the defendant as being factors considered in bail determination, that really comes down, in many instances, to dangerousness.

Mr. HUGHES. Well, you haven't disappointed me; I expected the U.S. attorney to say that.

How about you, Mr. Dearie?

Mr. DEARIE. I won't bother to repeat the words, but I support the position that John has enunciated.

I think one of the problems, very briefly, is that when people approach this issue, as soon as they have anything that borders on danger to the community, they quickly draw a very hard, indelible line, and they segregate those concepts from the other.

But as Judge Lasker and Judge Weinstein pointed out earlier this morning, in good, down-home commonsense, practical ways, the nature of the offense, if it be a violent offense, is a legitimate, appropriate, logical factor to be considered by any arraigning magistrate in setting bail, because of the attendant circumstances.

The penalties involved, the degree of desperation of the individual defendant involved, they're all—so to answer the question that has been asked, I don't see the need for any change in the Bail Reform Act. And I do certainly agree with what John said about his personal experience.

Mr. HUGHES. I suppose that if all of the judges were to use good commonsense, we probably wouldn't have problems from time to time on many issues, and the difficulty is that there are some

judges in the country who feel that they've got to take a look at the defendants past behavior, and the only issue for them is whether or not the defendant is going to appear before the court.

The Chair recognizes the gentleman from New York.

Mr. FISH. Thank you. Gentlemen you indicate that danger to the community is in the back of the mind of the judge. Does he get input on this issue from your offices?

Mr. MARTIN. Certainly; because we will be describing the nature of the offense. For example, if a bank robbery is done with a note and no gun, there is a difference, rather than if the case was where a man goes in with a gun and sticks up a bank.

So, all of the circumstances are going to be laid out in the presentation. We will also be laying out the defendant's criminal record.

Mr. FISH. You both have spoken in favor of confining the application of pretrial services. Let's address the scope for a minute. What about some things that are carried on that we haven't mentioned, such as social services, counseling, and drug treatment, that I understand go on?

Is this all relevant to the fundamental informational role that they are supposed to be playing?

Mr. MARTIN. Well, I think it is relevant to the purpose of trying to insure that the defendant will appear when necessary in the court.

Mr. FISH. So, these services are only done when he is under supervision, then; they are not initiated before that?

Mr. MARTIN. That's right, it's when he's under some kind of supervision.

Also, the pretrial services does provide another service, which is in connection with deferred prosecution. In a number of instances, where the nature of the offense and the defendant's prior record makes it appropriate, we will defer bringing charges.

If, during a period, 6 months to 1 year, the defendant has been under supervision by pretrial services, and has behaved well in those circumstances, the charges will ultimately be dropped.

Mr. FISH. I'm sure you both have witnessed situations where defendants you considered to be dangerous were released on bail. In dealing with the police officers, what reaction have you observed? Do you think this in any affects their incentive?

Mr. MARTIN. There are obviously situations when the investigative agents are disturbed by the bail that is set, and a defendant being released. I cannot say that it has impeded their willingness to carry out their job.

Mr. FISH. Can you?

Mr. DEARIE. I agree with the last comment. I think that you have to understand, particularly on the Federal side, as I'm sure you do, many of the agencies—and the drug area is a perfect example—involve months and months of investigation by numerous agents. They invest a lot of effort, all of their imagination.

And the fact of the matter is that when the ultimate date comes, and an arrest is effected, if a particular defendant is released on bail which, in the minds of the enforcement officers, is considered unreasonable, it has psychologically, emotionally, an impact on

that officer, and I guess causes him to question whether or not his efforts have been wisely invested.

Ultimately, however, the bottom line is the outcome of the particular case, which we are to experience assuming and only assuming that the bail requirements that are established are effective in producing that gentleman to court.

In many instances, in that area, as long as the example is being brought up, the experiences have been very fortunate. Our greatest rates of bail fugitives are in the common area of serious narcotics violators. Again, the cost of doing business.

I do think it impacts to a certain extent, but I don't think it impacts the nature or zest with which they carry out their duties.

Mr. FISH. Thank you.

Mr. HUGHES. Is monetary bail relevant in those class 1 type of narcotics cases?

Mr. DEARIE. That's a very difficult question. It's certainly relevant; whether it accomplishes the stated goal is a different story.

I can cite a personal experience of mine, of a defendant who—this is back during my first tour of the U.S. attorney's office—which was, and still is, considered somewhat legendary in the area of narcotics.

I guess the highest bail that was ever set in this court was set for this individual, and he was required, I might also add, to report, in those days, believe it or not, to the U.S. attorney every Friday at 11 o'clock.

And he religiously reported, having met the bail of approximately $1 million; religiously reported to the U.S. attorney's office every Friday at 11 o'clock promptly, until the day he decided to leave. He hasn't been seen since.

We are $1 million richer; we are one defendant poorer.

Mr. HUGHES. I notice that in the eastern district, 33 percent of all defendants remain in custody following the initial bail hearing. That seems like an extraordinary number of defendants in custody. Is there a reason for that?

Mr. DEARIE. I'm sorry, did you say 33 percent?

Mr. HUGHES. Thirty-three percent.

Mr. DEARIE. It is extremely high, according to my understanding of it; and the key word may be the word "initial." Oftentimes, if there is a legitimate dispute as to one's availability for bail, the matter would be put over.

It's a simple mechanism that I don't think has been mentioned here this morning. It is put over for the balance of the day, or put over for 24 hours, to allow the pretrial services, defense counsel, and the Government to attempt to locate information that would impact on that question.

I would be very surprised if the figure of 33 percent was obtained within 2 or 3 days of the initial appearance before the arraigning magistrate.

Mr. HUGHES. Well, according to data we have from the administrative office of the U.S. courts, that's reduced to something like 15 percent.

Mr. DEARIE. And of that 15 percent, Mr. Chairman, I would suggest that a good portion, and I would be guessing at the figure, but I would guess that the majority of that 15 percent are not close

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calls. They are cases that require on their face, for whatever reason, substantial bail.

So that you come down to the difference being, whatever the number—7, 6, 5, 4, 3 percent, that involve the area that the pretrial services is able to and had performed services to be provided.

Mr. HUGHES. How much time, ordinarily, does pretrial services have to prepare a pretrial service report?

Mr. DEARIE. In the eastern district, not much; frankly, it depends upon how quickly we are able to prepare the complaint and the other papers.

Mr. HUGHES. Is it often a matter of hours?

Mr. DEARIE. It can be a matter of hours; yes. It's usually a minimum of 1 hour, probably more in the nature of 2 to 3 hours.

Whatever time it takes to prepare; what they prepare is prepared thoroughly. Nobody in my office is going to question the effort and what they're able to accomplish in precious little time.

Mr. HUGHES. OK, so your general feeling is positive? If we restrict the scope of their activities and try not to have pretrial service interviews for defendants who present no problem, it can be productive and helpful to the courts and all concerned?

Mr. MARTIN. Yes, sir.

Mr. HUGHES. Thank you very much. We appreciate your testimony, especially since you took time from your very, very busy schedules. Thank you.

[Mr. Dearie's statement follows:]

STATEMENT OF RAYMOND J. DEARIE, CHIEF ASSISTANT, U.S. ATTORNEY, EASTERN DISTRICT OF NEW YORK

Mr. Chairman, ladies and gentlemen, I appreciate the opportunity and privilege to appear before this Subcommittee and share the experiences of our office during the five years since the experimental pretrial services agency was established in this district.

At the outset, we do join others in acknowledging that the Pretrial Services Agency has provided the magistrates and judges of this District with information not otherwise available which directly influenced the decision to permit pretrial release. Nevertheless our experiences do indicate that the services now provided impact on a relatively small number of cases brought by this office. While we do believe that a form of pretrial services should be available to the court in those limited instances when a close question as to a particular defendant's eligibility for release exists, we suggest to this Committee that the availability of such input may not require the continuation of pretrial services in its present or any expanded form in this district.

By way of explanation, I should advise the Committee that the character of the criminal docket in this district has changed rather markedly over the past five to seven years when the notion of pretrial services was first being seriously considered. In the Eastern District of New York (and most "major city" districts throughout the country), priorities began to shift and resources were geared toward the investigation and prosecution of economic or so-called white collar crimes. To accommodate this new emphasis, some areas of federal enforcement were deferred to local authorities via their concurrent jurisdiction. Inevitably the number of arrests dropped; and, with the arrival of the Speedy Trial Act arrests were made very selectively to avoid triggering unnecessarily the speedy trial clock and inflicting thereby threatening time limitations on the court and prosecution. In those relatively few cases requiring arrest, every effort was made to release the defendant with appropriate bail conditions so as to avoid the more demanding time limitations established by the Act for so-called "jail cases."

As a result of these changing substantive priorities plus the ingredient of Speedy Trial, we arrived at today's relevant conclusion, noted earlier by Magistrate Chrein, that the vast majority of defendants (approximately 74 percent according to recent Pretrial report) in this district are admitted to bail routinely with the concurrence

or suggestion of the United States Attorney. Of the remaining 26 percent detained at the initial appearance, a majority of such defendants present situations which for a variety of circumstances require significant bail. Most importantly, then, only a small percentage of cases (probably less than 10 percent) involve "close calls" where additional, verified information may prove influential in the final bail determination. And even in this group, the government throughout its investigation is likely to have pertinent information on a number of such defendants for more extensive than could be secured during a pre-arrangement interview.

Despite these generally accepted facts, Pretrial Services Agency interviews all defendants, an exercise which we find difficult to understand or justify. For the obvious reasons, we believe that such practice should be discontinued.

Turning to the question of confidentiality, we note the changes in the proposed Act and suggest to the Committee that the limitation on admissibility of pretrial information to "crimes committed in the course of obtaining pretrial release," be specifically expanded to include prosecutions for bail jumping related to that particular case.

On the question of structure of the agencies, within or without the Probation Department, I too do not feel competent to speak to this issue without a review of comparative studies except to offer the Committee my tentative conclusion that the needs of this district do not seem to warrant a separate agency. And, of course, this Committee is well aware of the fact that two cannot live as cheaply as one.

Finally, I want to emphasize that I do not draw across-the-board conclusions as to the desirability or necessity of pretrial services as a concept. I have used this occasion to share with you our experiences and impressions in the hope that this information may guide you in this important task.

Mr. Chairman, ladies and gentlemen, thank you.

Mr. HUGHES. We're going to take a 5-minute recess and stretch. The hearing is recessed.

[Whereupon, at 11:30 a.m., the hearing was recessed, resuming at 11:40 a.m. as follows:]

Mr. HUGHES. Our next panel consists of Mr. John Corbett and Mr. Thomas Concannon.

Mr. Corbett has been a criminal lawyer for some 30 years. Presently, Mr. Corbett is an attorney in the firm of John Corbett and Associates. In 1978 and 1979, he was president of the Brooklyn Bar Association.

Mr. Corbett is a member of the board of trustees for the pretrial services agency of the eastern district. He is an active member of the Grievance Commission of the Appellate Division of the Second Department of New York.

Mr. Thomas Concannon is the Attorney-in-Charge of the Federal Defenders Unit of the Legal Aid Society in the Eastern District of New York. He has also practiced in the Federal Defenders Unit in the southern district, so he has a somewhat unique vantage point from which to view pretrial services.

Gentlemen, it's good to have you today. Without objection, your statements will be received in full in the record, and you may proceed as you see fit. Why don't we begin with you, Mr. Corbett? It's good to have you before us today.

TESTIMONY OF JOHN CORBETT, ATTORNEY, JOHN CORBETT AND ASSOCIATES

Mr. CORBETT. I'm appearing here today on behalf of the private defense bar, and I've practiced in the eastern district since 1947, as a practical matter, and I've had a great deal of experience before the existence of the pretrial services agency; and since they've been in existence for the past 5 years, I've had the opportunity of taking advantage of their work.

Now, there's no question in my mind that prior to the pretrial services agency, when the question of bail was presented to a U.S. magistrate, or a U.S. district judge, he had to rely on statements made by the prosecutor.

The prosecutor had certain information that his investigative agencies had found for him, and he would present that. The judicial officer who was called upon to set bail was, of course, bound by that information.

Defense counsel, as somebody said earlier, generally comes into a case, he has just met the defendant perhaps 1 hour or 2 beforehand, and naturally whatever he says—and let me say that he's expected to say something and say it vigorously as an advocate, because for the first time, the defendant and his family are looking at him and expecting to see wonders.

Mr. HUGHES. And something nice, I hope.

Mr. CORBETT Yes, sir. And they expect that he's going to say a few words, and the judge is going to bow and turn the defendant out.

Now, here we have with the pretrial services agency, and agency which operates almost as an arm of the court. They've interviewed the defendant, they've done whatever investigation they had time for during that period when they were waiting for the U.S. attorney to type up his complaint and get his agents down to the magistrate's court.

Now, what the pretrial services agency is able to present to either the magistrate or the U.S. district judge is accepted by that judge. The burden is taken off defense counsel, and also there's no question about the suspicion in the minds of the defendant and defense counsel that the prosecutor is perhaps laying on a bit when they give their opinion as to how much bail.

We have an independent agency, which has interviewed the defendant, made what investigation was possible, and has arrived at a situation where they can be a guide to the magistrate or U.S. district judge.

I think it's an excellent system. I've seen it function, and it takes a great deal of burden off defense counsel and the court. In other words, if the court merely had to listen to the prosecutor, fix a bail, and then defense counsel was burdened with the question of making motions to reduce bail, the court is tied up with two or three of these motions to possibly reduce bail.

Here, we're in a situation where we can tell the defendant and his family, look, an independent agency, a pretrial services agency has investigated this matter, and they have determined that x amount of dollars, or x amount of bond, or whatever arrangement it is, would be a fair bail in this case.

There's no way that I can go around or change their opinions on it, and making motions to the judge will have no effect. So, we do save judicial time, a great deal of judicial time.

When an individual is in jail he and his family are going to do everything possible to get him out. And the only way of doing that is by making bail motions.

Now, we must remember also that when pretrial services makes a recommendation and gives it to the magistrate or the U.S. district judge so that a defendant is admitted for bail, we save a great deal of money.

Now, I have heard, and I have no way of verifying this figure, that it costs about $20,000 to maintain a defendant, $20,000 a year to maintain a defendant in the Metropolitan Corrections Center [MCC] here in New York.

Also, overcrowding causes a great deal of problems. Many of these people belong out on bail.

This is a Federal court. We do not have the type of criminals that appear in the State court. I've had a great deal of experience in the State courts. Here in the Federal court, we don't have in most cases, dangerous criminals.

If we have an individual who comes in for an armed bank robbery, regardless of anything, he's not going to get a bail that he can make from a magistrate or a U.S. district judge.

When we have heavy narcotics cases, we find that bail will be fixed high enough; and I might stop and say that money is a commodity in the narcotics trade, so that questions will be asked if bail is fixed at a $100,000 for Juan Gonzalez who just came up from Colombia with a few kilos of cocaine, and somebody wants to post it, we're going to end up with a hearing, with the U.S. attorney wanting to know where the $100,000 came from.

So we have a situation where the question of danger to the community does not come up in cases like this, because the matter is taken care of. No one is allowed out who commits crimes of violence, as in bank robberies or things of that sort; the few crimes of violence that are committed under Federal jurisdiction.

As I can recall from my years of experience here, we've had only one instance where a bank robber was allowed out on bail, and he promptly went over to Jersey and held up another bank, and was recognized by the FBI agents there from his photograph taken by the surveillance cameras.

That's the only instance that I know of in over 30 years of active criminal practice. So, we don't have a danger to the community in the Federal court.

In the State courts, yes; every day, I see individuals go out on $2,500 for robbery in the first degree, robbery armed, a mugging, and so forth, and they commit other crimes. We don't have that in the Federal court.

Now, my own personal reaction to the pretrial services agency is that it is an excellent organization in the way it functions here in the eastern district. I'd like to see it as a separate agency, and not part of the probation department, for the very simple reason that as a member of the board of trustees, I've been able to meet pretrial service officers here in the eastern district, and I admire the skill with which they conduct their work.

They are also able to sense problems, perhaps that the U.S. attorney doesn't see; a question of drug addiction in the family, questions which would come up. They do a certain amount of counseling to these individuals, and keep them out of trouble.

They exercise the supervision, which is very important, I think, to keep the individual out of trouble.

Now, under the circumstances, I think the pretrial services agency should be continued here as a separate organization, and

not made part of the probation department. The probation department has its own problems and its own attitudes, which are different than the pretrial services agency's.

I'm very much in favor of the system that we have in the eastern district.

Mr. HUGHES. Thank you very much, Mr. Corbett. Mr. Concannon.

[The prepared statement follows:]

STATEMENT OF JOHN A. CORBETT

Since the creation of Pre Trial Services Agency in the United States District Court for the Eastern District of New York most of the problems relating to bail for defendants have been eliminated.

The Pre Trial Services Agency of the Eastern District is staffed by competent individuals who are all experienced and well qualified for their work.

When a defendant is arrested in the Eastern District he is interviewed by an Officer of the Pre Trial Services Agency as to his roots in the community, the location of his relatives and financial situation of both the defendant and his family. If he states a place of employment that is checked by the officer assigned to his case. If he gives an address and states that he lives with members of his family that too is checked out by the interviewing officer. In short all of the information needed to assist the United States Magistrate or a United States District Judge in fixing bail is prepared by the interviewing officer and verified. At the same time, the officer's assigned to this work are experienced in dealing with persons accused of crimes. They are able to penetrate to the truth behind any statements made by defendants as to their responsibility and eligibility for bail. When their reports are finished the court is prepared to make an intelligent appraisal of a defendant for bail purposes. My day to day contacts with the Pre Trial Services Agency are those made in my capacity as a member of the defense bar. The Agency is exceedingly helpful to the defense bar in that cases which would puzzle a judge called upon to set bail within a few minutes of the defendant being brought before him are solved by the preparation of the Agency's report. It must be remembered that in the federal court and particularly a District Court in a seaport city as New York wherein defendants may be foreigners travelling to this country, it would be almost impossible for the judges to evaluate the eligibility of the defendant for bail. This is the type of service rendered by Pre Trial Services Agency.

The advantage of this Agency and its personnel is that it is not tied in with the Probation Department but has its own separate pre trial service officers who will concentrate on the work of the Agency. In the five years it has been operating in this fashion in the Eastern District I have personally observed may instances of their functioning. I can recall one incident wherein I represented a defendant who was a free lance airplane mechanic employed as needed by airlines operating out of Kennedy Airport. He had no permanent employment with any airline but was known to the chief mechanics in that airport. When a heavy job which had to be done at once came to the individual airlines they would call on my client as well as others to assist in the work. I was retained by the client who merely informed me he was an airplane mechanic who worked at Kennedy Airport. He could give me only the names of a few people to call to verify. The matter was turned over to a Pre Trial Service officer who interviewed the defendant, called each and every airline and verified his employment. Within a matter of a few minutes an experienced Pre Trial Services officer had drawn up for the United States Magistrate a picture of the man's occupation and where he was known. The man was able to be admitted to bail by the Magistrate who was able to make an intelligent decision in that regard.

Again I can recall an incident in which a client who was an illegal alien in the country was picked up a violation of his probation. We would think that this type of individual would automatically be incarcerated awaiting the disposition of his case. Again the Pre Trial Service officer was able to verify that he had regular employment, checked out his home life and that of his wife so that he too was able to be admitted to bail pending the disposition of his probation violation.

It must be remembered that the operation of this Agency saves the United States Government a great deal of money. If persons who are able to be properly admitted to bail are released on bail, the government is not obliged to support them at great expense in a detention center. At the same time, the court is relieved of the burden

of deciding bail motions. Anyone for whom bail is fixed and cannot make the bail, will insist that his defense counsel bombard the court with constant written motions for the reduction of bail. This is a waste of time of the clerks of the court in handling these motions as well as a waste of judicial time in passing on them. With the functioning of the Pre Trial Services Agency of the Eastern District we of the defense bar are able to point out to defendants that all they have to do is satisfy the Pre Trial Services Agency as to their ties in the community and the fact that it is the opinion of that Agency they will return to the jurisdiction of the court and bail will be possible for them.

In the Eastern District the Agency keeps close track of individuals who are released on bail and requires them to report regularly to Pre Trial Services officers so that the Pre Trial officer in charge of each case is in a position to inform the court as to where the bailed defendant is, what he is doing and to bring him back to court whenever he is needed.

We must realize that a great deal of interest arose in the United States on the question of bail reform. Although at the present day there is criticism of all bail systems, we must remember that the average individual who is arrested and charged with a crime is presumed to be innocent under our system. He is entitled under the United States Constitution to a reasonable bail and only an agency such as Pre Trial Services Agency can arrive at a bail which is reasonable under the circumstances. Without this Agency we would have a great deal of floundering and hit or miss guessing on a proper bail for each defendant. I can say unequivocally that the Pre Trial Services Agency of the Eastern District is most careful in the recommending of bail and follows through so that no one who is entitled to bail will go without it and those for whom there is any element of risk of their failing to appear will not be recommended for bail by this Agency.

I heartily recommend that this Agency continue in the manner in which it is functioning at the present time.

TESTIMONY OF THOMAS J. CONCANNON

Mr. CONCANNON. Well, I also think that the agency should continue, and that legislation should permit the expansion of the operation of agencies such as this in other places in the country.

In my opinion the bail decisions that are made by judicial officers are significantly more intelligent and informed since pretrial services offices have been assisting the court in making these decisions. There's no question about that.

As you indicated, Mr. Chairman, I have practiced on both sides of the river, that is, in New York, both in Manhattan in the southern district and here in Brooklyn and I do not believe that the operational differences between the agencies and the various methods through which they're structured, are not so apparent to the practitioner.

I found that offices on both sides have really been excellent, and have done an outstanding job in assisting the court in making these decisions; and beyond that, in supervising people where it has been ordered.

The proposed legislation does indicate that guidelines should be established for helping to determine just which defendants should be supervised. I think that would be of enormous benefit.

I can't begin to imagine how one gets to develop these guidelines, but I think it does become important, for this reason. It was my experience in the southern district that supervision was often routinely ordered, often in situations where it was not needed.

But here in the eastern district, there are more than occasional instances where perhaps it should be ordered, when it is not. It's done, in my judgment, perhaps less frequently than it should be.

There are people who—well, perhaps I should step back. Of course, I'm in a unit of the Legal Aid Society, and we represent approximately 750 people a year who come into this court.

They are indigent; and they have problems which you can well imagine, that I'm sure you're familiar with, that develop from, at least in part, that status.

So, I do get to know the drug addicts and I get to represent the people with drug problems, and people who have great difficulty in dealing with welfare agencies. Especially when times are tough, people who don't know how, for example, to begin to get a birth certificate in order to make appropriate applications for welfare, are in positions where they're compromised more readily to commit crimes.

I think too few of these people are supervised. I agree with the magistrates and the judges, and I guess the U.S. attorneys who have testified, that there are situations where defendants are interviewed unnecessarily.

There are also, however, I think, a significant number of occasions when information not apparent to the U.S. attorney's office, and not apparent to defense counsel, has developed through pretrial services offices; and that becomes significant for the court, not only in deciding bail, but what the conditions of release should be.

I agree that it would be unfortunate, we'd lose an awful lot more than we'd gain to include dangerousness in any legislative fashion as a bail consideration. And I've had the very good fortune, I must say, never to have met a judge with little enough imagination to know how to approach bail situations, given the present legislation, given the present options in fixing bail.

As to whether or not the organizations should be maintained separate from the probation department, I believe that they should be separate from the probation department. It's not because of any incapacity of the probation officers. I think they are, by and large, responsible and helpful and effective people.

It's not a question in my judgment as to whether or not the probation department can do it. I think they can manage the pretrial services function. The question really is, where can it be done better and how can it be done better?

I think that people operating as they do here, independently of the probation department, is really the better practice. I think people whose responsibilities are not inconsistent with the presumption of innocence should maintain this function.

I really pretty much have the same position that Judge Platt does on whether or not there should be a board of trustees. And I am, incidentally, a member of the board of trustees of the pretrial services agency in this district.

I don't see that we accomplish very much as a board; but nevertheless, I think it still should be an agency which operates independently of the probation department.

I thank you for the opportunity to be heard.

Mr. HUGHES. Well, thank you very much.

[The prepared statement follows:]

STATEMENT OF THOMAS J. CONCANNON, ATTORNEY-IN-CHARGE, FEDERAL DEFENDER SERVICES UNIT, THE LEGAL AID SOCIETY, EASTERN DISTRICT OF NEW YORK

Thank you, Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee. I speak on behalf of the Federal Defender Services Unit of The Legal Aid Society, and I am in charge of our Eastern District of New York office.

I have worked in the Southern District of New York office as well, so that I have had experience in working with Pretrial Services officers under both a Board of Trustees structure (I am a member of the Board in the Eastern District) and as it exists in the Southern District of New York, as part of the Probation Department.

I believe that legislation should be enacted to continue and expand the Pretrial Services Agency on a permanent basis.

Statistically, it has been demonstrated that, compared with the experience prior to the establishment of the Agency, the number of pretrial detainees, as well as the average number of days spent in jail prior to release, have been reduced significantly. In addition, the number of released defendants who committed crimes while on bail has decreased, and the rate of warrants for failure to appear has declined as well.

We find that judicial officers' bail decisions are measurably more informed and intelligent than previously, through the efforts of Pretrial Services officers. We also believe that sentencing judges get an important addition to the material upon which a sentence is based when a supervised defendant's Pretrial Services report is available for reference or inclusion in presentence reports—i.e., where supervision has been ordered, the Pretrial Services officer has significant opportunity to measure responsiveness, which often is very useful in determining the ultimate sentence to be imposed.

We have found Pretrial Service officers in both districts exemplary in their efforts to help our clients with drug, alcohol, psychiatric or gambling problems, with administrative difficulties in dealing with social agencies such as Welfare and Housing, and with efforts to secure employment and education. As a result, we find that clients are more likely to make timely court appearances and avoid further criminal activity while on bail and, again, the degree of responsiveness to these efforts becomes useful to the sentencing court in those cases which result in convictions.

As you know, our clients are indigent and often are less likely to be conscious of supporting community resources to deal with their problems than others. Pretrial Services officers are imaginative in their suggestions and generally show a genuine concern, not often demonstrated by impersonal government agencies.

Some features of the proposed legislation which is before this Subcommittee do warrant specific comment.

The proposed amendment to 18 U.S.C. § 3154 mandating the issuance of guidelines for Pretrial Services Agency supervision and the need therefor would improve present practice and encourage efficiency.

In the course of my experience in the Southern District of New York, supervision was ordered routinely, often resulting in the unnecessary supervision of defendants. On the other hand, in the Eastern District of New York, supervision is orderd significantly less often and frequently it is not ordered in situations where it is needed.

In formulating the guidelines, however, it is of the utmost importance that the purposes and policies of the Bail Reform Act be given primary regard. The guidelines should, therefore, adhere to the basic principle that, in determining conditions of a defendant's release, the least restrictive alternative which is adequate to assure the defendant's appearance in court should be adopted.

We also believe that the proposed legislation's provision that Pretrial Services officers be responsible for pretrial diversion programs constitutes an improvement over present practice. Traditionally, the Probation Department has served as an agent of the court, supervising and, to a substantial extent, policing the conduct of persons convicted of criminal activity. In contrast, diversionary programs serve accused persons who have not been convicted and the vast majority of whom have no criminal records at all. We feel that the purposes of the diversionary programs are best served where defendants are supervised by officers whose responsibilities do not require intrusions into individual privacy to the degree necessary in supervising defendants under sentence.

This leads me to a final comment regarding the question of whether the Pretrial Services Agencies should operate as independent bodies or as divisions of Probation Departments. While the proposed statute would leave that decision to local District and Circuit Courts, it is my view and the Federal Defender Services Unit's view that Pretrial Services Agencies should operate independently of Probation Departments.

The duties and responsibilities of Pretrial Services officers are consistent with the presumption of innocence. They are responsible for assuring court appearances and assisting defendants with personal problems. as noted above, this is significantly different from the responsibilities of the probation officers, who are charged with supervising individuals who have been convicted of criminal activity. It is especially important that accused, but unconvicted, individuals not be put in a position of perceiving that they are being treated in the same manner as convicted defendants.

For these reasons, we believe that Pretrial Services Agencies should be independent of the United States Probation Department.

Thank you for the opportunity to appear before you.

Mr. HUGHES. Aside from getting the program underway, what else does the board of trustees do? What services do they provide?

Mr. CONCANNON. Well, Mr. Chairman, since I've been in this district, which is since the fall of 1979, I guess it was about 3 months after that that I was appointed by then Chief Judge Mishler to the board of trustees, so that would have been early 1980—we've had only one meeting.

And I think that our major concern at that time was whether or not we should be in existence, we being the board of trustees. But I don't think that anybody took the position at that meeting that pretrial services should not exist.

I've had nothing to do with the operation of the agency. I see them regularly in my practice, of course; I'm here just about every day. But as a board, I don't see that we add anything to the structure. We're not an expense, of course, but I don't think that we assist in any real fashion.

Mr. HUGHES. So, aside from getting the program off the ground, which is what the board of trustees has done in other districts, there's no other function that you see the board performing?

Mr. CONCANNON. None that I see.

Mr. HUGHES. Mr. Corbett, you've indicated your preference for the independent board, but you haven't shared with us the reason for that belief. Would you do that?

Mr. CORBETT. Well, I've been a member of the board of trustees for approximately 4 years. I was appointed by the recommendation of Judge Platt; and I have attended meetings in that time. As a matter of fact, as Judge Platt said, we've had only about one meeting a year.

Other than the meeting Mr. Concannon speaks of, in which he said that our main discussion at that meeting was whether we should continue as a board, we had worked on certain personnel problems which had come up in the meetings prior to that, and arrived at conclusions.

But frankly, aside from that, we performed no other function. We don't get involved in the operation of the agency.

Mr. HUGHES. So why do you have a preference for the independent approach, as opposed to having PSA run by the probation office?

Mr. CORBETT. As I said, Congressman, the probation department or probation officers have one point of view. My experience with the pretrial services officers is that they had to have a different point of view, in that they are considering each and every case from the point of view of bail, and whether or not bail is proper, what problems would come up if the individual goes out on bail, the problem of recommendations as to supervision.

These are things which I don't think should be put into the probation department. They have their own function.

Mr. HUGHES. One of the concerns I often hear expressed about this issue of board of trustees or independent agency versus probation is that as our caseload increases, and the probation office is less and less able to cope with all of their many functions, the new man on the block, that is, pretrial services, would be neglected.

Do you see any substance to that argument at all?

Mr. CORBETT. No, I do not, Congressman; I do not.

Mr. HUGHES. How about you, Mr. Concannon?

Mr. CONCANNON. Well again, I don't think that the probation department is incapable of dealing with these functions. I see no figures by any organization, the General Accounting Office or any other, to indicate that there would be a cost saving by making the agency a part of the probation department.

If somebody can demonstrate a cost saving, I suppose then it makes sense to see whether or not foregoing that saving, by keeping the agency separate, is justifiable.

But absent a cost saving, I think that we lose nothing, and we do gain something, by having this function performed by people whose responsibilities are consistent with the presumption of innocence.

They do their jobs very well in this court. I don't know whether or not their perspective would change if they were attached to the probation department.

But I believe that the function should be performed by officers whose only interest is to report to a court making a bail decision and not a sentencing decision. It should be done by someone who does not have that traditional supervisory, somewhat policing, function associated with people under sentence. Of course, information gathered may be useful ultimately in the sentencing process.

Mr. HUGHES. Do you attach any significance to the argument that one hears occasionally, that if you permit the probation office to perform pretrial services, you are dealing with the same agency that would have to follow that defendant through the criminal justice system, including any presentence investigation that might be conducted?

Mr. CONCANNON. Well, under the proposed legislation, as I understand it, the information prepared by the pretrial services officer eventually would get to the probation department should there be a conviction.

Should that information be needed, it is available to the probation officer, so that part doesn't trouble me. Again, it doesn't trouble me that probation officers would have to make the kind of judgments that pretrial services officers have to, but only that their perspective must be different. Their responsibilities are different; they are dealing with people who are convicted, and they're asked by the court to help make a decision as to what should be done.

Should this person be confined? Not just for bail purposes, but for a long stretch of time. Or should he be placed on probation, should we take a chance with him? Judgments very different, I believe, from the ones which pretrial services officers have to make when they present their views to the judge or the judicial officer making a bail decision.

Mr. HUGHES. Apparently both of you agree that perhaps we ought to look at the scope of cases where pretrial services is warranted. There are obviously some cases when pretrial services might not be required.

Can you share with us any views you might have on how we can determine which cases these are? How do we best identify those cases? Can it be done by category, or is it something that should be left to the probation officer, or to a pretrial services board to determine? How should we decide that?

Mr. CORBETT. Well, Congressman, if the U.S. attorney feels that there shouldn't be any bail, it might be advisable to eliminate the position of the pretrial services agency in that particular case.

But I think it should be limited to cases where the U.S. attorney feels that they could allow the individual to go out on his own recognizance, without any bail whatsoever. Other than that, I would certainly recommend that the pretrial services agency perform its function.

Mr. HUGHES. Mr. Concannon, before you address that issue, you indicated in your testimony that there were situations where pretrial services had information not available to the U.S. attorney and I presume that that would mean that the U.S. attorney perhaps might be more predisposed to demand bail if, in fact, he had more information at that stage of the proceeding.

Do you have a different response, or do you agree with your colleague?

Mr. CONCANNON. I both agree and disagree. I don't agree that the decision should be left entirely to the U.S. attorney's offices. They make their determination before getting to a magistrate's court or a district court that they're not going to ask for bail. I don't think that's enough. I've seen too many situations where pretrial services officers develop information which becomes very useful to a court in fixing bail.

Magistrate Chrein indicated that there were only three instances in his recollection where he actually increased bail; but the increase or decrease of bail is only one of the factors that really need be considered at that stage.

Let's assume that you say this person should be released. Well, that's fine; but what should happen between then and the next 2 or 3 months when the case is ultimately disposed of? Does the person have drug problems that an agent may not be aware of, and consequently, the U.S. attorney's office is unlikely to be aware of?

A pretrial services officer may be able to find that out, in part because of their professionalism, but largely, because they make efforts to verify information of a personal nature, which is of no interest to the agents. What agents cull for their purposes is not always what a court needs to make an informed bail decision.

For an example, take the situation of a postal employee, for all apparent purposes, he wouldn't be in the post office if he had any criminal record. So, he's likely to be a good bail risk.

What often is not clear is that many post office employees have problems with drug and alcohol abuse, or gambling problems which lead to the problems which get them in trouble. And those are things which pretrial services officers are able to determine, if by

nothing else than by a phone call to a spouse. Does he live there as he says? Does he stay there regularly?

Reluctance or hesitation on the part of somebody responding in these telephone calls is indicative of something, and sometimes that is useful because it's an early warning sign. It's too late in the sense that the person is already in trouble, but it's an early warning sign to the court that if the person is to be released, something additional is needed.

A judge can say, I'd like you to refer this person for gambling problems, or for housing problems for people who are living on the street. Such guidance would have something to do with whether or not they make their way into this building as criminal defendants again.

I hope I've been responsive.

Mr. HUGHES. Yes, and it would be most helpful if you could share with us just how you would develop a methodology to identify those cases that should receive pretrial services treatment.

Mr. CONCANNON. Until a better methodology is developed, everybody should be interviewed unless both the defense attorney and the U.S. attorney's office agree that it is clearly an inappropriate situation; this happens occasionally. Since these organizations are structured now the way they are, I don't think that we lose anything by having everybody interviewed.

Right now, in this district, the pretrial services officers do not interview people who come into this court for purposes of removal to another district. The assumption is that they're not going to stay here, so there's not much that can be done in terms of bail. However, some of these removal cases would be appropriate situations for release if a pretrial services officer had interviewed them to recommend a bail position.

Often, I've asked a court to refer someone to pretrial services for an interview, when it has not yet been done. I might do this because I have discovered through my interview with the person that it would be unfair to detain the defendant. Someone, such as a pretrial services agency officer, ought to be able to advise the court without the advocacy problems, without selling anything, so the court can make an impartial and informed judgment. In such cases, I don't know what to recommend myself, and I know that the prosecutor is standing there in an adversarial posture, as I must, and we're both trying to do the essentials of our jobs, but nobody has an verified information to assist the court. There are various other routine situations where defendants are not interviewed but should be.

Therefore, I think that not much is lost by having everybody interviewed. As to how many people should be supervised, these guidelines will be critical. I believe that too many are supervised in the southern district, and too few here.

I don't know how the guidelines should be structured. The agency is new, and it is trying to become more efficient and to develop statistical guides. Surely they will be able to recommend guidelines as they develop some experience with each year. But right now, as I see it, virtually everybody should be interviewed.

It takes a few hours, but it's not a very costly thing just to interview defendants, and the benefits to the court in informed decision-making are enormous.

Mr. HUGHES. Thank you very much. Mr. Fish?

Mr. FISH. Thank you. The Pretrial Services Act contains certain confidentiality requirements with respect to the pretrial services files and defendants. What do you think of these requirements?

Mr. CONCANNON. Mr. Corbett, do you——

Mr. CORBETT. No, go ahead.

Mr. CONCANNON. Keeping this information confidential is critical. If the court is to make an informed judgment based upon something that it can rely on, defendants have to be assured that this information is not going to hurt them further in the course of their cases.

The pretrial services officer is the first person they come in contact with after an arrest, when they arrive in this building. I'm sure they're distrustful of everybody in this building, including myself; so defendants must have confidence that in giving information about themselves to pretrial services agency officers they do it without making their situations worse.

If the defendant is assured that these reports are kept confidential, I think it helps to insure that the information going to the court will be truthful and reliable. There are exceptions to this confidentiality in the act, or the proposed legislation, which I think are adequate.

Mr. FISH. Do you have a copy of H.R. 2841 with you?

Mr. CONCANNON. I'm not familiar with the numbers, but is that the one that came attached to my invitation to appear here?

Mr. FISH. Yes, that's the bill we're addressing—the one that the chairman introduced on March 25.

Mr. CONANNON. Yes, I do.

Mr. FISH. Well, starting at the bottom of page 3, it says, "The Director shall issue regulations establishing the policy for release of information," and it goes on about "access to such information." Then, on page 4, it starts with "by qualified persons for purposes of research related to the administration of criminal justice," and on line 10, it says, "in certain limited cases, to law enforcement agencies for law enforcement purposes."

I wondered if you thought those two particular——

Mr. CONCANNON. Perhaps—we are on page 4?

Mr. FISH. Yes.

Mr. CONCANNON. I see line 7, "by qualified persons for purposes of research related to the administration of criminal justice"—and beyond that, Mr. Fish, I'm sorry?

Mr. FISH. Yes, that's A, look down to E.

Mr. CONCANNON. OK.

Mr. FISH. You may have last year's copy of the bill, because it was mailed to you before the 25th. That's probably why.

Mr. CONCANNON. That's perhaps the case; but I think that both A and E are, in this form, drafted in such a way so that they're not very useful to anybody in making a decision as to whether or not the information can be disclosed.

I think that they are drawn too broadly. With respect to E, any law enforcement agency would be able to get their hands on these things, by filing the appropriate affidavits.

That would be unfortunate; and ultimately, it would defeat the purposes of this proposed legislation, because I don't think it takes very long for defense counsel to come to tell their clients that, whatever they say to anybody in this building is going to operate ultimately to some disadvantage of theirs.

It seems to me that the purposes of the pretrial services agency really, the essential purpose, is to assist the court in making informed bail judgments.

Mr. FISH. So, you would tighten up these loopholes in the confidentiality provisions?

Mr. CONCANNON. That's correct. I'm somewhat less troubled by A, or course.

Mr. FISH. Mr. Corbett, do you feel the same?

Mr. CORBETT. I feel the same way, Congressman. I don't think that if these things are left in there, and news was going to get out, defense counsel is going to be in no position to tell his client that whatever he tells the pretrial services officer is confidential.

I certainly would like to see those eliminated from the bill.

Mr. CONCANNON. May I interject here. I mentioned briefly before, there are occasions when I ask that pretrial services be assigned to interview a client, which is some indication, of course, that I have some confidence in their professionalism and their judgment.

I can't imagine myself doing that if I had any concern that this had any potential for putting my clients in a worse position later on.

Mr. FISH. Referring to the Speedy Trial Act, how is information on which the judge will base his bail decision disseminated or communicated to the judge?

Mr. CORBETT. Well, I think as I stated before, Congressman, the only way that the judge could get any information from which he'd make his bail decision was the information given to the U.S. attorney by his investigative people, who come in and tell it to him, and he'd repeat it to the court.

The court had nothing other than statements made by defense counsel. And as I said, they had to be looked at, not with suspicion because of the unreliability of defense counsel, but defense counsel appears as an advocate; he's trying to sell the court something.

Under the circumstances, the court would perforce rely on the statements made by the U.S. attorney.

Mr. FISH. Yes, I'm sorry. I was out of the room when you made your initial statement, Mr. Corbett.

What I have difficulty with is why you feel it's necessary to have two separate entities: the existing probation officer, plus some other group supplying these services.

I think you mentioned professionalism too, I'd be interested to know how they get professional. You've had probation officers, for some time. I assume they are trained professionals.

What is the training given to the people that your board of trustees supervises?

Mr. CONCANNON. Well, I don't think that there's any discernible difference between the training a probation officer receives in this district and the training and education accumulated by a pretrial services officer who comes to practice here.

I'm quite sure that they are college graduates, and I believe most of them have advanced degrees, or are working on them. Again, I don't mean to suggest that probation is incapable of performing these functions.

They are professionals, and they are effective in doing their jobs. Most often, frankly, I agree with the judgments they come up with in their presentence probation reports.

But what I'm saying is this. I understand that nobody has been able to project any cost saving whatsoever by attaching this function, or having this function absorbed by the probation department.

Absent some demonstrable cost difference, there is some advantage to having the functions separate. That is because the pretrial services officer's functions, making bail recommendations and assisting people with problems in the community, are consistent with the presumption of innocence.

By contrast, probation officers are responsible for supervising, and to some extent policing people under sentence in these courts. Their perspective is different. There are cases, in fact I've seen quite a few recently, involving the degree to which probation officers are permitted to search and seize contraband from people they are responsible for supervising. They are burdened with the responsibility of supervising some people in difficult situations. Pretrial services officers don't have that duty. So again, I think absent some proven significant cost saving, there is an advantage in having the functions separate.

Mr. FISH. Well, I commend you for your sensitivity to the difference, and of course, it is very important to this subcommittee what the cost of the whole program is.

When one is on probation, and he has a probation officer, wouldn't you say the mere fact that we assign probation officers to these people is because we want to keep them straight, and to give them a helping hand to get back into society, and during the period of probation, at least, to get all the assistance they can so they won't get into trouble again?

Mr. CONCANNON. Absolutely. I have had no question that probation officers make effort to help, are encouraged to help and they see themselves in that role, more as helping parolees or probationers, than as policemen.

They nevertheless do have, to some degree at least, a policing function. I have probation violators who were brought into this court because marihuana plants were seen in homes. I don't say that this shouldn't be done; this just happens to be one of their functions. It's legitimate and it's important.

But the pretrail services officers, again, are dealing with people who, at that stage, are presumed innocent. That's significant; and it's significant if they are going to be supervising people and trying to encourage them to do the right thing before their cases are disposed of in this court.

There are five lawyers in my office, and we represent 750 people that come into this court each year. I would like to be able to tell

our clients that "this is a person you can count on to help you and who is responsible for recommending the least restrictive bail on your case."

I refer people to pretrial services for job counseling and for drug counseling. I'd like to see them develop a dependable record, something I can ultimately point out to a sentencing judge to show that this person surely has done wrong, but has made significant progress.

I think that if I had to deal in the same fashion with the probation department, frankly, I'd be a little bit more cautious about it.

Mr. FISH. Thank you.

Mr. HUGHES. Thank you, Mr. Fish. I might say for the record that the language on confidentiality is existing law. It is loose, and I don't think anybody would quarrel with the need to permit us to share information with law enforcement agencies in certain selected instances; for instance, where a defendant assaults the pretrial services agent. Or where, in fact, the conditions of release have been violated, that information would often have to be furnished to law enforcement agencies, to process either at a bail hearing, or at another determination by the court as to whether the bail should be revoked.

So there are instances where that area of confidentiality is going to have to give way to the interests of justice; but we've noted your concern.

Do you, from a practical standpoint, agree that the supervision by pretrial services is important in reducing rearrests while on bail?

Mr. CONCANNON. I'm sorry, I'm not sure I understand.

Mr. HUGHES. In other words, do you believe that the fact that a defendant is supervised is relevant to whether or not he's going to get into trouble again before he's back before the court?

Mr. CONCANNON. I definitely do. I have seen many such situations. I did practice in the southern district before there were pretrial services offices. And this is also, to some extent, why I say that I think that perhaps too few people here are supervised by pretrial services offices.

There are problems that are apparent in people who are brought in here as defendants, that do not quite surface in the 1 day or so that they are rushed in and out of this court on arraignment.

I think that pretrial services officers can be very useful in helping people: if they're penniless and without work, to help them look for work; if drugs are the problem, to refer them. Later pretrial services agency officers measure the response to their help; they call the drug program, and say, did he or she go to the drug program?

There's a pretrial services officer in this district who is a work counselor, a job counselor. One of her responsibilities, I believe her primary responsibility, is to maintain files, and be aware herself, of community resources for employment and education which are likely to be available to defendants. Many defendants need some way to earn a legitimate income, to put oneself in a better position. This may keep him from having to steal to support himself while waiting for trial or to provide his wife with some money during the time a defendant assumes he will be in jail. I think that pretrial

services agency officers can have a very positive influence on avoiding the use of drugs; on determining whether or not somebody is using drugs; in helping defendants apply for work.

And again, all of these things have utility after a case is disposed of because a sentencing judge may be able to measure a person's responsiveness to efforts to help him. In other words, it can be enormously significant to a judge if he has a report of 6 weeks to 3 months' worth of performance, measured by a pretrial services officer rather than just having a presentence report between the time of conviction and sentence.

For a report to indicate that someone was sent 10 times for job interviews by a pretrial services officer, and appeared once and then it was late, that tells the court a great deal about whether or not it makes any sense to burden the probation department with placing this person on probation. You might as well give a jail sentence, either short or long, and be done with it; because he's just not going to respond to any efforts to help him.

On the other hand, there are people who have done some pretty awful things, but who are very responsive when somebody does begin to help them.

I find it useful to be able to say, "This Pretrial Services Agency officer is going to try to help you, and if you respond, that will be significant to a judge in sentencing." It's nice to be able to say that.

Mr. HUGHES. Thank you. Mr. Fish.

Mr. FISH. I have no questions, Chairman.

Mr. HUGHES. Thank you very much. We appreciate your testimony. You've been most helpful to us today.

Our next and final panel consists of Mr. Daniel Ryan, Pretrial Services Specialist, Administrative Office of the U.S. Courts, Washington, D.C.; Ms. Estelle L. Collins, Supervising Pretrial Services Officer, Southern District of New York; Mr. Morris Kuznesof, Chief Probation Officer, Southern District of New York; Mr. Tom E. Kearney, Supervising Pretrial Services Officer, Eastern District of New York; Mr. Jack J. Flynn, Chief, Pretrial Services Agency, Eastern District of New York; and Mr. James F. Haran, who is the Chief Probation Officer for the Eastern District of New York.

Gentlemen and ladies, would you come forward and take seats? We're very happy to have you here this morning, and we appreciate your taking time from your very busy schedules to testify before this subcommittee today.

We have statements from most of you, and those statements, without objection, will be received into the record in full. Please try to summarize your testimony, if you would, so that we can get into questions and answers.

Why don't we begin, if there's no objection, in the manner in which you're listed on the agenda. Mr. Dan Ryan first.

TESTIMONY OF DANIEL B. RYAN

Mr. RYAN. Thank you, Mr. Chairman. I guess this is about the third or fourth time I've been before this panel, and I always wonder if you're going to run out of questions; but it doesn't look that way.

You have my written statement, and I would like to summarize it briefly, and then make some other comments.

First let me say that the substance of H.R. 7084 has been supported by the Administrative Office of the Courts in the Director's report. As the former chief of the Pretrial Services Agency in the Eastern District of New York, I believe that the experience in this district, is indicative that pretrial services agencies can be of value in improving the bail system in the United States.

There was a good deal of skepticism in this district regarding the potential value of the pretrial services agency when it first got started.

However, I should say that many of those people who had expressed doubts in the beginning were the most helpful in assisting me in establishing the agency.

Probably the most difficult problem that will be faced in any district in establishing a pretrial services agency, is that when you set up a pretrial services agency, you interpose procedures on a system that most individuals believe to be operating fairly well.

What I mean specifically is that you are asking pretrial services officers to interview, verify, and prepare reports in a brief period of time, when formerly those procedures didn't occur. What happens is, unless you have the cooperation of all parts of the courts system, the agency isn't going to operate.

It's been the experience in this district, both when I was chief, and subsequently that cooperation was forthcoming, both from the chief judge, Judge Platt, who headed up the board of trustees, from the U.S. attorney's office, from the marshal's office and from the legal aid office.

I believe this cooperation is reflected in what the results have been in this district. For example, once a year we go out from the administrative office and perform an office audit.

We look at certain indicators that demonstrate how well the agency is meeting the goal of the Speedy Trial Act.

When the report was prepared on this district, 97 percent of the defendants coming into the district were being interviewed by pretrial services. Of that number, 98 percent had prebail reports prepared, and 98 percent had recommendations made to judges.

As I said, these measurements indicate that the PSA has been doing the job in this district; and also that it has received the cooperation necessary to get the job done from all members of the court family.

I don't believe that it's an accident that, as the agency has interviewed and contacted a greater number of defendants, the detention rates have declined in this district and the incidence of crime on bail has been cut by almost 60 percent, as has the rate of failure to appear.

There are also some collateral benefits that have accrued to the court that haven't been mentioned. The pretrial services agency in this district provides the clerk's office with information on tracking defendants for purposes of title 1 of the Speedy Trial Act.

It has on occasion provided that same information on individual defendants to the U.S. attorney's office. It has also made informal recommendations at the behest of the U.S. attorney's office regarding the pretrial diversion of certain defendants.

The agency also provides the U.S. marshal with detailed information to assist them in executing the warrants for defendants who abscond.

I think that with respect to what has gone on in the district, the numbers certainly indicate that the agency has operated extremely well in this district.

I'd like to make a couple of comments about the issue of the scope of what pretrial services should be doing, since that issue was raised earlier.

I think it's certainly an important issue that should be examined, but before we take for granted that there are certain types of defendants that don't need to be interviewed or that the U.S. attorney should decide who is to be interviewed. I think there are some things that the committee ought to know.

In this district in the time period of 1978 to 1979 the rate of bail violations for narcotics defendants was 4 percent. Now, I presume that's the kind of defendants that the U.S. attorney's office would say we should be interviewing.

During the same time period, the rate of bail violations for larceny and theft, a number of which—would probably be called white-collar cases—was 9.3 percent. Forgery and counterfeiting for the same time period had bail violations of 3.4 percent.

So, I think that it may be a mistake to say to take specific categories of offenses, and say that those defendants don't need to be interviewed or supervised by pretrial services.

On the issue of leaving the initial recommendation up to the U.S. attorney's office, we have statistics on the 10 districts, which indicate that when the judicial officer took only the U.S. attorney's recommendation, and rejected the pretrial services agency's recommendation, 58 percent of the bail violations occurred.

When the judicial officer took the pretrial services officer's recommendation, and rejected the U.S. attorney's recommendation, 8.8 percent of the violations occurred.

I can only guess at what the reasons for results are, and I don't think my guesses would be particularly valuable to the committee; but that's what the data indicates.

Mr. HUGHES. What was the total sample?

Mr. RYAN. The number of violations was 3,675.

Mr. HUGHES. Are you saying that in those instances where the U.S. attorney's office made a recommendation, and that recommendation was accepted by the court, that 58 percent of those recommendations were not——

Mr. RYAN. No, sir. What I'm saying is, if the universe of violations is 100 percent, 58 percent of those violations occurred when the pretrial services agency recommendation was rejected and the U.S. attorney's recommendation was accepted.

Mr. HUGHES. So you're talking about a class of about some 500 violators?

Mr. RYAN. We're talking about a class of 3,675 violators.

Mr. HUGHES. I see.

Mr. RYAN. I would like to make one other observation regarding the statement which was made on this issue of scope; that probably only 10 percent of the cases are the tough decisions.

We've seen no evidence that the tough decisions have gotten more frequent or less frequent; in other words, there has been no change in the types of cases that have come into this court since PSA began operating.

If you accept the estimate that was offered this morning, that only 10 percent of the cases involve tough decisions, you would have to wonder why crime on bail and failures to appear have been reduced by almost 60 percent since the agency started.

I think some of the observations today were based on gut feelings. That's not to say that gut feelings aren't valuable sometimes; but I think that on the issue of the scope of what a pretrial services agency should be doing, it would be wise for us to look a little more at the numbers, because we really haven't analyzed that yet, and maybe not rely too much on what people's gut feelings are.

Thank you.

Mr. HUGHES. Thank you, Mr. Ryan. Ms. Collins?

[The prepared statement follows:]

STATEMENT OF DANIEL B. RYAN, PRETRIAL SERVICES SPECIALIST, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

SUMMARY

H.R. 7084, if it became law, would result in the extension of new procedures relating to pretrial release practices throughout the Federal court system. While efforts at reform are generally subject to resistance by established systems, there is no reason to believe that the United States courts would do other than expeditiously incorporate the procedures called for in H.R. 7084 into the existing process:

1. United States court and court-related personnel are dedicated to the implementation of the laws of the United States.

2. Experience in districts such as the Eastern District of New York has demonstrated that court personnel will willingly cooperate to assure that whatever problems arise regarding the implementation of procedures relating to pretrial services can be overcome.

I feel privileged to be testifying before this committee concerning H.R. 7084, a bill which would provide for the expansion of pretrial services to each Federal district court. I am currently a pretrial services specialist in the Administrative Office of the U.S. Courts. Prior to my appointment to that position, I was the first chief pretrial services officer for the Eastern District of New York from December 1975 through November 1978. It is my hope that my experience in both of those positions will be of assistance to this committee.

To be more specific, I believe that the most significant contribution I could make to these hearings would be to address the problems that had to be dealt with during the early development of the pretrial services agency here in the Eastern District of New York and to explain how those difficulties were resolved. While it is true that every Federal district court is unique to some extent, I think that many of the lessons learned by those of us associated with the development of the pretrial services agency in the Eastern District of New York will be applicable to other districts that may be attempting to establish pretrial services if H.R. 7084 becomes law.

At the outset let me state that the major problem associated with the creation and establishment of the pretrial services agency in the Eastern District of New York was that Title II of the Speedy Trial Act of 1974 called for a new set of procedures to be interposed within a system that had previously operated fairly well without them.

While such attempts at reform often fail because of the inertia of an established system, such was not to be the case in the Eastern District because of the determination of all of the major members of the court family that the law would be carried out.

That is not to say that several members of the same court family did not have a healthy skepticism regarding the value of the agency. Nevertheless, those individuals who expressed the most doubt often provided the agency with the most support. The primary role of a pretrial services agency is to provide judicial officers with as much information as possible that is relevant to the pretrial release of each defend-

ant. Experience has shown that given the limited amount of time available to prepare a pretrial report, it is essential that much of the information be gathered from the defendant. From that point verification of the interview information is performed by checking with family, friends, employers, law enforcement officers, etc. Therefore, it follows that in order for a pretrial services agency to have any impact on the pretrial release process, the agency must have access to defendants prior to their initial appearance before a judicial officer.

Both Title II of the Speedy Trial Act and HR 7084 mandate that all defendants have pretrial reports provided to the judicial officer setting bail. Nevertheless, while it may seem like a simple task to have defendants interviewed and reports prepared in time for a bail hearing, the effective interposing of such a procedure without the close cooperation of the judicial officer, U.S. attorney, clerk, U.S. marshal, and law enforcement officers would be impossible.

In the Eastern District of New York, that cooperation was demonstrated from the outset. The chief judge assured me that it was his intention that Title II of the Speedy Trial Act be fully implemented in the district and that I could expect the same attitude from the rest of the court.

Judge Platt who was the court representative on the board of trustees made me the same assurances and backed them up by acting as a mediator in those instances when conflict arose between the pretrial services agency and other members of the court family.

In a courthouse with space so limited that well-established agencies were forced to seek office space at other locations, pretrial services agency was afforded an interview room adjacent to the magistrate's courtroom.

With the assistance of the U.S. attorney, meetings were held with members of his staff and members of law enforcement agencies to familiarize them with the procedures that would be going into effect.

The U.S. attorney and members of his staff spent a good deal of time assisting me in drafting the rules of confidentiality that were outlined in the statute and in devising a process which assured that a maximum number of defendants would be screened by pretrial services agency.

At the same time, the clerk and his staff were establishing procedures that would assist pretrial services officers in tracking the progress of defendant's cases.

Discussions with the Probation Office quickly led to the development of a two-way information sharing system that aids the preparation of presentence reports and helps PSA in data collection.

With the passage of time of the establishment of PSA within the district, this support of cooperation has resulted in benefits that have flowed from PSA to the rest of the court family in ways not anticipated by the Speedy Trial Act.

Pretrial services agency currently provides the clerk's office with information that assists in keeping track of the time limits established by Title I of the Speedy Trial Act.

Whenever a bench warrant is issued for a fugitive, the pretrial services agency provides extensive information on the defendant's background to the U.S. marshal which can assist in execution of the warrant.

PSA has on occasion made informal recommendations at the request of the U.S. attorney's office, on the issue of whether a defendant should be diverted. It has also provided that office with information related to Speedy Trial Act time limits on specific defendants.

It has come to my attention that there have been in addition to those examples of mutual cooperation and benefits listed above, a great many others.

This cooperation has resulted in the development of a service in the Eastern District of New York that has substantially met the stated goals of Title II of the Speedy Trial Act. Detention has decreased in the district as have the incidence of crime on bail and failure to appear. The results of the last office audit conducted by the Pretrial Services Branch of the Administrative Office revealed that the agency was interviewing 97 percent of the defendants coming into the court, preparing prebail reports on 98 percent of those defendants, and making recommendations on 98 percent of those same defendants.

Given the quality of personnel in the U.S. courts and their commitment to implementation of the law, there is no reason to believe that H.R. 7084 could not bring about the same results in the U.S. court system.

TESTIMONY OF ESTELLE L. COLLINS

Ms. COLLINS. I would like to thank you, Mr. Chairman, and the members of your committee for entering my written testimony into

the record, and for inviting me to testify today concerning the Speedy Trial Act of 1974.

The Pretrial Services Agency in the Southern District of New York has been actively involved in providing pretrial services for the past 5 years. We began our operation with the primary objective of providing sufficient bail-related information to the court in order to assist the judicial officers in making better informed bail decisions.

Our ultimate goal is to secure the release of the greatest number of persons possible, on the least restrictive conditions.

Our experience and growth over the past 5 years have served to demonstrate the severity of the bail problems in our criminal justice system. After more than a decade of bail reform, our courts continue to have an overwhelming reliance on financial conditions of release.

The creation and existence of pretrial services, however, proved that judicial officers want and need verified prebail information. They want to have optional and followup services when considering release.

We feel that the existence of pretrial in the southern district of New York has helped to encourage and aid in the fair, equitable, and consistent implementation of the Bail Reform Act.

The availability of prebail information has assisted the court in the early identification of a poor, questionable, and good bail risk defendant. The southern district's rate of failure to appear, detention, and crime on bail has been reduced.

The issue dealing with the appropriate structure for the effective operation of pretrial services, in my opinion, has a great deal of merit. There is need for an organizational structure that is sensitive to the legal position of pretrial defendants, who are presumed innocent and entitled to be released under the least restrictive conditions.

The Southern District of New York Pretrial Services Agency operates under the umbrella of the probation department. We have concerns unique to our district; however, we have been effective in the performance of pretrial functions as cited under the title 18, section 3154.

I feel that pretrial services can operate effectively under either a probation department, or independent of probation. It appears that the effective operation of a pretrial services agency is primarily dependent upon the establishment of administrative guidelines and a court move specifically geared toward the implementation of pretrial services as a standard procedure of the bail-setting process.

I would strongly urge the continuation of the 10 demonstration pretrial services agencies, and the expansion of pretrial services throughout the district courts.

I appreciate having the opportunity to testify before this committee, and I will be happy to answer any questions.

Mr. HUGHES. Thank you, Ms. Collins.

[Ms. Collins' statement follows:]

STATEMENT OF ESTELLE L. COLLINS, SUPERVISING PRETRIAL SERVICES OFFICER, SOUTHERN DISTRICT OF NEW YORK

Mr. Chairman and members of the Subcommittee, my name is Estelle L. Collins. I serve as a Supervising Pretrial Services Officer for the Southern District of New York. I am on the Board of Directors for the National Association of Pretrial Services as an At-Large-Director and serve as Vice-President of Release on the Board of Directors for the New York Association of Pretrial Services. It is a privilege to be invited to testify before this committee concerning the Southern District of New York Pretrial Services Agency operation and its impact on the Bail Reform Act of 1966.

The Pretrial Services Agency for the Southern District of New York commenced operations on February 17, 1976. The Southern District of New York Pretrial Services Agency is one of the 10 demonstration districts and operates under the auspices of the Division of Probation of the Administrative Office of the United States Courts under the general supervision of the Chief of Probation. We have been in operation for a little over five (5) years. Initial staffing consisted of six (6) pretrial services officers, one (1) clerk/stenographer, one (1) supervising pretrial services officer and one (1) chief pretrial/probation officer. Today, the staff consists of 12 pretrial services officers, seven (7) clerk/stenographers, one (1) agency chief clerk, two (2) pretrial supervisors and one (1) chief pretrial/probation officer. The Southern District encompasses eight (8) counties with a population in excess of 10 million. We have 33 judges and seven (7) magistrates serving in the Southern District Federal Court.

The establishment of Pretrial Services in the Southern District of New York appears to have significantly impacted on the judicial officer's ability to set bail, by providing substantially more verified background information. The availability of verified bail related information, in accordance with the Bail Reform Act (U.S.C. 18:1346), at the time of the initial bail hearing appears to have improved the courts ability to:

(1) Better identify those cases falling in the category of a questionable bail risk therefore requiring some degree of supervision when and if released on bail;

(2) Readily identify those cases reflecting a good probability of returning to court if released on no money bail, requiring no supervision in order to assure their return to court;

(3) Identify defendants with significant psycho/social problems that may impinge on their ability to successfully return to court, indicating a need for extensive supervision and follow-up subsequent to being released on bail;

(4) Identify defendants who have previously demonstrated a failure to comply with their bail conditions, indicating the high probability that they may be a poor bail risk.

The important factors that appear to have contributed to the standard practice in the Southern District of New York of using pretrial prebail information at the time of the initial bail hearing are:

(1) The Pretrial Services Agency is an impartial independent body operating in the court system.

(2) The Pretrial Services Agency prebail summary reports are unbiased and the recommendations are in accord with the Bail Reform Act.

(3) The Pretrial Services Agency provides follow-up investigations of all unverified information obtained at the time of the initial bail proceeding bringing to the court's attention any subsequent information that would appear to have an impact on bail.

(4) The Pretrial Services Agency provides supervision of all cases that have been designated by the court as questionable bail risks and/or those cases where the court is of the opinion that the availability of resources are needed to assist the defendant with psycho/social problems in order to better assure his/her return to court.

Over the past five years, judicial officers have come to rely upon Pretrial Services for verified prebail information. They have expressed a need to have options at their disposal when considering the release of a defendant, with some degree of assurance that he/she will return to court. They want to know that once a defendant is released, follow-up services will be available, if needed, to assure a defendant's appearance in court.

According to the conclusion of the Comptroller General Report to the Congress entitled "The Federal Bail Process Fosters Inequities":

"Because judicial officers do not have the guidance and information they need to make sound bail decisions, the Bail Reform Act has been inconsistently applied. On occasion, defendants have been treated unfairly or society has been exposed to unnecessary risks. Judicial officers need information and guidance on the purposes of bail and in understanding and evaluating how the criteria listed in the act relate to determining the bail conditions which will reasonably assure a defendant's appearance. They also need complete and accurate personal information on defendants to help them in making bail decisions. Once judicial officers are supplied with this information, they should be in a better position to establish a defendant's risk of nonappearance. In addition, the use of blanket conditions of release imposed without regard to the defendant's danger of flight and excessive reliance on financial conditions of release need to be eliminated.

"Because the bail process dramatically affects the lives and families of defendants and society, concerted efforts are needed to better assure that this process is carried out as uniformly and as fairly as possible."

Our experience in the Southern District has shown that Pretrial Services can play a major role in addressing the issues stated in the Comptroller General Report. The presence of the Pretrial Services Agency during initial bail hearings and the use of bail related information appears to have had some significant impact in fostering a degree of uniformity in making reliable pretrial release determinations.

Title 18 U.S.C. 3115 indicates that Pretrial Services Agencies shall "collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person . . ." Our objective is to assist the judicial officer in the bail setting process by interviewing defendants in order to obtain and verify background information so that we can recommend any necessary conditions of release and thereafter provide such supervision as is needed by defendants released on bail prior to trial. The standards for release have been set out in the Bail Reform Act (18 U.S.C. 3146). Our agency has interviewed approximately 6131 defendants, of which 5490 were conducted prior to the initial bail hearing and 641 were post bail. We have had approximately 3646 of these defendants on supervision.

The effective operation of Pretrial Services in the Southern District of New York and the agency's ability to have a profound impact in the area of assisting the judicial officer in making better informed bail decisions, are dependant upon several important factors:

(1) Pretrial Services must have access to a defendant prior to the time that the defendant appears before the judicial officer for the setting of bail.

(2) Pretrial Services must be permitted sufficient time to conduct a prebail interview and investigation.

(3) Pretrial Services should submit a prebail report and bail recommendation, on all arrest cases.

(4) Pretrial Services should be advised of all bail changes which involve cases that are known to the Agency and/or newly assigned cases by the judicial officer.

(5) Pretrial Services should be advised of all bail review hearings involving Pretrial Services Agency cases.

Unique to the Southern District of New York system of processing defendants prior to the initial bail hearing, the overwhelming majority of our arrest cases are interviewed first by the United States Attorney's office for the purposes of obtaining background pedigree information (we are the only district out of the 10 demonstration districts where this procedure exists).

Typically, upon arrest the defendant is taken to the United States Marshal's office for processing. Following the completion of this process, the defendant is escorted by the agents to the United States Attorney's office for the assignment of an Assistant United States Attorney. The Assistant United States Attorney interviews the arresting agent and the defendant, and prepares the complaint. At the completion of the Assistant United States Attorney's interview, Pretrial Services is notified. The defendant is brought to the Pretrial Services Agency office where he/she is interviewed. The Pretrial Services Officer, in accord with the Bail Reform Act, obtains and verifies information concerning the defendant's employment, residential and family ties, financial resources, health, prior convictions and record of court appearance.

We do not discuss the nature of the offense with the defendant but obtain a copy of the complaint, indictment, information, etc. from the United States Attorney's office.

Following the prebail investigation, the pretrial services officer submits a typed report with recommendation to the judicial officer responsible for setting bail. It time does not permit, an oral report is given. The bail summary report is not made available to the government or defense counsel unless permission is granted in open court by the judicial officer setting bail. All copies of the report are retrieved at the close of the bail hearing. The pretrial services officer is in attendance.

For many years now there has existed an excellent working relationship between various court agencies (judicial officers, United States Attorney's office arresting agents, marshals, clerk of the court, etc.) and this department. This relationship has been built upon a mutual respect of each office for the other. Each office has vigorously and effectively accomplished the role assigned to it within the framework of the Criminal Justice System. As can always be the case, when agencies have different roles to play and different objectives that they are asked to achieve, there may arise from time to time difference of opinion about how specific situations could, or should, be handled. Since this is true there is always a need to continue to maintain open lines of communication so that reasonable and responsible procedures can be created which will be beneficial to both parties. With this in mind, we are attempting to delineate some of the areas of concern that are important for the continued effective operation of our agency. The following concerns continue to be of paramount importance to the Pretrial Services Agency in the Southern District of New York.

First, we are concerned by the fact that on a consistent basis, we have been unable to acquire sufficient time to conduct prebail interviews and investigations. A defendant is in custody in the Southern District of New York on the average of about 13 hours. Of those 13 hours, only 2½ hours are at the disposal of the Court for the purposes of setting bail. The Pretrial Services Agency requires some 20 to 25 minutes to interview a defendant in pursuit of reporting to the Court as much bail related information as is possible. As can be seen from the data (see the attached chart), we have very little time to perform our function as cited in U.S.C. 18:3154. The Government, on the other hand, has a defendant in custody on the average of about 10¾ hours before presenting him/her to the Pretrial Services Agency. The Government has the defendant under its control for almost 5 times as long as the Court/Pretrial Services Agency.

Secondly, we feel that it is important for us to be made aware of bail changes which involve cases that are either already known to this agency or which the court desires to become known to this agency. There are many courtrooms in the Courthouse and at any one moment many criminal cases are being heard. We presently have a staff of 12 Pretrial Services Officers and it is impossible for us to be aware of all changes being made in Bail Conditions (especially, as they might impact on our agency's supervision of defendants while they are being release on bail). There have been situations (thankfully not too many) when defendants have been released and one of the changes in their bail conditions has been that the court has directed specific modifications relative to supervision by this agency. We have not always become promptly aware of that. We would be remiss if we were not to follow the court's direction and yet that has happened only because we have been uninformed.

This agency has an ongoing investigation procedure and there are many occasions when we have developed significant new information which the Court would find useful as bail is being reviewed. There have been occasions when bail review hearings have been conducted at which we could have given the court information which would have readily assisted a Judicial Officer in more easily arriving at an informed bail decision, and we have not been able to be of assistance only because we were not made aware of the time and place of such a hearing.

There have also been times at which the court has issued a Bench Warrant and this agency might have had significant information which could have assisted in prompt remedy of a defendant's failure to appear.

Experience shows that for the better part, the Pretrial Services Agency discovers and remedies bail violations more than any other agency in the court.

It is important to note that the Pretrial Services Agency has had a significant impact on the reduction of the Failures to Appear. From a high in 1973 of 66 percent of all bail violations revolving around Failure to Appear in Southern New York Pretrial Services Agency has helped to bring that down to a low of 21 percent.

It is our great hope that as a result of a greater understanding of each other's concerns, we can better create new procedures to help us perform our functions. These procedures can only be established once each better understands the constraints incumbent upon the other. However, should we fail to resolve (on our own) some of our differences perhaps it would be best that we approach the Judiciary for some resolution of those difficulties.

The majority of arrest cases appear before the magistrate for their initial bail hearing. A large percentage of cases however enter the court system as non-arrest cases (defendants who have not been arrested and who are appearing voluntarily for arraignment, pleading, and the setting of bail on an indictment or information). They generally appear before a U.S. District Judge. All non-arrest cases receive a letter from our agency inviting them to be interviewed by Pretrial Services prior to

their initial appearance in Court. The percentage of defendants who respond to our letter has decreased over the years. Perhaps this can be attributed to the fact that most non-arrest cases appear to be viewed by the court as reasonably good bail risks. A number of defendants even though they were not initially interviewed by Pretrial Services are placed under Pretrial Services Agency supervision by a judicial officer.

We are extremely active in the Bail setting process. Frequently, the information provided by Pretrial Services Agency played a significant role in helping the court to establish whether a defendant is a questionable, reasonable or poor bail risk. The court appears to feel more comfortable in releasing a questionable bail risk due to the existence of Pretrial Services Agency supervision.

We have two types of pretrial supervision, routine and strict. Strict supervision is imposed by a judicial officer. The degree and extent of the supervision is solely determined by the judicial officer. Routine supervision is that supervision imposed by the Pretrial Services Officer. The degree of supervision imposed on a defendant is in accordance with his/her prior arrest and bond record, residential stability, employment history, health history and family ties.

Recent statistics received from the Administrative Office of the United States Courts Pretrial Services Branch indicates that the Southern District of New York rate of failure to appear has significantly decreased over the past five years.

Our detention rate, according to recent statistics received from the Administrative Office of the United States Courts Pretrial Branch has decreased since the end of our first year in operation. The Southern District of New York rate of short-term detention up to 3 days has decreased from 33.4 percent to 23.5 percent during the five years of our operation. Our rate of initial release has increased from 75.9 percent to 81.6 percent.

It appears that a large portion of the Southern District of New York's detention rate is partially attributable to the type of cases brought before our court. Generally, the type of serious offenses committed in the Southern District of New York which result in high money bail are narcotic, bank robbery and offenses committed by illegal aliens. This position appears to be supported by the 1979 Federal Judicial Center Pretrial Services Agency Data analysis:

"The analysis revealed no statistically significant differences between Pretrial Services Agency and other districts in rates of detention and only minor differences in the number of defendants who commit crime while on bail. A second central finding was that although there were differences in detention between those Pretrial Services Agencies managed by an independent board of trustees and those managed by the district's probation office, those differences might be explained by the different kinds of cases that two sets of Pretrial Services Agency districts processed. In particular, although board-managed districts had greater reduction in detention than probation-managed districts, they also had fewer serious offenses, which might have accounted for the detention differences."

The Pretrial Services Agency of the Southern District of New York performs a number of bail related functions that were not a part of the original research project. However, we feel these added functions have contributed to our efforts towards compliance with the Bail Reform Act in this district.

(1) We interview and make bail recommendations at the request of judicial officers for a large number of cases outside of the Southern District of New York (defendants who are wanted in other federal/state jurisdictions). These defendants account for about .08 percent of cases heard before the judicial officer for bail purposes. On numerous occasions, we have been requested after a defendant's release on bail, to supervise him until he has satisfactority returned to the "wanting" district. These cases generally involve difficult bail situations. Many times we are unable to verify background information before the bail hearing. The judicial officer, therefore, becomes dependent upon our Agency's ability and willingness to perform additional follow-up verification and make subsequent bail recommendations. We supervise a number of these type cases, until disposition, following their removal back to the original district. If the case did not originate from one of the 10 demonstration districts, it is not counted in the research data.

(2) The Southern District has also been involved in performing courtesy pretrial supervision for cases in which the criminal filing originated outside of the Southern District of a defendant who resides in the Southern District of New York area. These cases are likewise not counted statistically unless the criminal filing is in one of the 10 demonstration districts.

In the fall of 1979, with the expansion of the sentencing power of United States Magistrates in misdemeanor matters, Pretrial Services Agency bail summary reports have been used for sentencing purposes. We provide an average of five reports

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per month to be used for sentencing. This procedure has enhanced our ability to assist the court in the speeding of the disposition of cases with a minimum of "bench time" involved.

SUMMARY

The Pretrial Services Agency of the Southern District of New York has been actively involved in providing pretrial services for the past five years. We began our operation with the primary objective of providing sufficient bail related information to the court in order to assist judicial officers in making better informed bail decisions. Our ultimate goal is to secure the release of the greatest number of persons possible on the least restrictive conditions. Our experience and growth over the past five years have served to demonstrate the severity of the bail problems in our Criminal Justice System. After more than a decade of Bail Reform, our courts continue to have an overwhelming reliance on financial conditions of release. The creation and existence of Pretrial Services in the Southern District of New York, however, has proved that judicial officers want and need verified prebail information. They want to have optional and follow-up services when considering release. We feel that the existence of Pretrial in the Southern District of New York has helped to encourage and aid in the fair, equitable, and consistent implementation of the Bail Reform Act.

The availability of prebail information has assisted the court in the early identification of the poor, questionable and good bail risk defendant. We feel that the bail process has been significantly improved by the existence of Pretrial Services.

The issue dealing with the appropriate structure for the effective operation of Pretrial Services Agency has a great deal of merit. There is a need for an organizational structure that is sensitive to the legal position of pretrial defendants who are presumed innocent and entitled to be released under the least restrictive conditions. There is a need for an agency that will promote the concept that defendants should be released under the least restrictive conditions possible. The Southern District of New York Pretrial Services Agency operates under the umbrella of the Probation Department. We have concerns unique to our district; however, we have been effective in the performance of the pretrial function as cited under U.S.C. 18:3154. I feel that Pretrial Services can operate effectively under either a probation department or independent of probation. It appears that the effective operation of a Pretrial Services Agency is primarily dependent upon the establishment of Administrative Guidelines and court procedure specifically geared towards the implementation of Pretrial Services as a standard procedure of the bail setting process.

I would strongly urge the continuation of the 10 demonstration Pretrial Services Agency and the expansion of Pretrial Services throughout the district courts.

Thank you for inviting me to testify before your Committee today.

	Arrest[1] to PSA interview (1980)	Interview[2] to bail hearing (1980)
February	21.25	1.0
	21.5	3.0
	18.25	1.5
	16.25	1.5
	3.5	1.25
	1.25	2.25
	13.25	1.25
	2.25	1.25
	15.25	3.75
March	5.0	1.25
	13.0	3.75
	1.5	1.0
	2.5	1.0
	2.25	1.5
	3.0	2.5
	6.5	1.0
	22.5	2.0
April	13.75	2.75
	20.75	2.25
	1.0	2.5
	3.5	2.25
	22.25	0.75

	Arrest[1] to PSA interview (1980)	Interview[2] to bail hearing (1980)
	15.0	4.0
	3.25	5.0
	6.25	3.5
	22.75	1.75
May	6.0	1.0
	3.75	0.75
	1.25	5.25
	1.25	0.25
	11.5	3.25
	10.25	2.25
	20.75	3.25
	19.25	3.0
	19.75	2.75
	3.5	1.25
June	3.25	3.25
	20.75	2.0
	14.5	2.75
	20.5	1.75
	19.75	1.75
	3.0	3.5
	22.25	1.25
	0.5	0.75
	19.25	2.0
	3.5	2.0
July	3.25	1.5
	19.5	3.25
	2.5	3.0
	4.0	4.25
	15.75	2.0
	6.5	1.0
	2.0	2.25
	15.0	2.75
	3.75	1.75
	2.75	2.25
August	18.5	3.75
	2.0	3.25
	5.5	1.25
	3.25	3.75
	1.75	3.75
	4.0	2.5
	3.5	3.25
	50.75	1.0
	9.75	1.25
	3.25	4.0
September	11.0	3.5
	21.75	3.5
	5.25	1.5
	15.5	3.0
	3.5	2.5
	4.25	1.5
	18.25	2.0
	3.0	1.75
	1.0	1.25
	6.25	3.0
October	21.25	3.25
	19.5	1.75
	4.0	.50
	3.5	1.25
	18.5	4.0
	18.5	1.0
	19.0	2.0
	12.25	4.5
	3.5	3.25
	17.0	4.0

	Arrest[1] to PSA interview (1980)	Interview[2] to bail hearing (1980)
	17.0	2.5
Totals	933.0	202.75
Average	10.75	2.25

[1] Number of hours rounded to nearest quarter hour. Computation of hours excludes Saturdays, Sundays and holidays when pretrial was not normally operational.
[2] Number of hours rounded to nearest quarter hour. Time computed from the beginning of PSA interview which "on average" consumes some 25 minutes of time allotted to the PSA.

Mr. HUGHES. Mr. Morris Kuznesof. Welcome.

TESTIMONY OF MORRIS KUZNESOF

Mr. KUZNESOF. Congressman, I wish to thank you for permitting me to appear before your committee.

A written statement has been submitted, and I will now expand upon it.

First, I firmly believe that pretrial services are needed in Federal courts on a national basis. The 10 demonstration districts, and the other probation departments which volunteered to provide these services during the past 5 years, have proven that pretrial services are needed by the Federal judicial system.

They have proven that pretrial services can reduce crime committed by defendants—by the way, we didn't work together, though we apparently are on the same wavelength—referring to Ms. Collins—can reduce crime committed by defendants released on bail, can reduce the failure-to-appear rate, and can reduce pretrial detention.

In addition, both board of trustees and probation operated pretrial services agencies, and are equally effective. The validity of this statement is perhaps best demonstrated through the independent study of pretrial services which was conducted by the General Accounting Office in their report entitled "The Federal Bail Process Fosters Inequities."

The GAO specifically notes that "Our review also indicates that there is no clear operational distinction between PSA's managed by probation offices, and those managed by boards of trustees."

It should also be recognized that the vast majority of pretrial services officers and probation officers are trained in the same behavioral sciences and helping professions, and utilize the same practical skills, community resources, and others.

Judges, magistrates, probation officers, attorneys, and others involved in the criminal justice field have advocated that pretrial services should be expanded throughout the Federal judicial system. This should be the first objective of this subcommittee, and it is hoped that this bill is passed so that this goal will be accomplished.

The dispute that exists is whether pretrial services should be a probation department function, or should be administered by independent agencies.

I firmly believe that it should be a probation department function, as does the Chief Judge in the Southern District of New York, who wrote on May 12, 1980, in his letter addressed to the Honorable Joseph R. Biden Jr., U.S. Senator, then chairman of the Senate Subcommittee on Criminal Justice, the following:

I am advised that your subcommittee is considering pending legislation affecting the operation of the Pretrial Services Agency. That agency is now part of our Probation Department, and is working effectively with the court at the pretrial stage of criminal cases.

We strongly feel that there should be no change in the present jurisdictional structure, and that that Agency should remain part of the Probation Department. The last thing this busy court needs toward the efficient administration of justice is yet another bureaucracy.

No added bureaucracy is needed in the Southern District Court of New York, or any other court.

Last year, this dispute prevented the passage of a bill pertaining to pretrial services agencies, and it should not deter the enactment of a pretrial services bill this year. I believe a bill must be passed this year, if we are to continue these services to the courts and to the defendants.

Therefore, I firmly believe the function of pretrial services should be delegated to probation departments already existing throughout the country, approximately 300 in number. I believe the chief judges, including the District of Columbia, should be allowed to decide whether pretrial services functions are to be administered by the respective probation departments, or by independent agencies.

Perhaps I am willing to make this compromise because I feel certain that only two to three chief judges will select an independent agency, as indicated by a survey which was made in 1980.

Today, we just heard two judges, Judge Platt and Judge Lasker, indicate that they prefer that it remain in probation; and Judge Platt is with a board-operated agency.

Therefore, I hope this committee will make every effort to have this bill passed. I think that the dispute should stop, and we should have a bill.

Now, as to some of the comments made this morning, the southern district of New York has guidelines; we do have bail guidelines. We are the only 1 of the 10 demonstration districts that have guidelines.

These guidelines were found acceptable by the GAO, and it was recommended that they be adopted by the other demonstration districts. Our guidelines are flexible; they can be changed according to the needs of defendants, society, or the judge and the officer.

These guidelines were developed to stop disparity of recommendations among our officers, and to give them some idea of what people would experience, and should make on bail recommendations.

We are an integrated agency, and yet we are separate. The pretrial services agency group is a unit within the probation department. There have been no lateral transfers from one section to the other. They know their job, and they stick to their job.

So, this argument that the probation department cannot wear two hats, cannot be a pretrial officer and cannot be a probation officer, does not work. It's a bad argument, because it has worked in the southern district of New York.

Mr. HUGHES. Thank you very much, Mr. Kuznesof.

[The prepared statement of Mr. Kuznesof follows:]

STATEMENT OF MORRIS KUZNESOF, CHIEF U.S. PROBATION AND PRETRIAL SERVICES OFFICER

Thank you for the opportunity to appear here today and to share with you my views on H.R. 2841.

I am Morris Kuznesof, Chief Probation and Pretrial Services Officer of the Southern District of New York, and have held this position since September, 1976. Since that time, I have served on the Planning Committee for the Implementation of the Speedy Trial Act of 1974 in the Southern District of New York. My total service within the federal probation system is over 30 years, and I have held every rank: probation officer, supervisor and deputy chief probation officer. As the Chief Pretrial Services officer of the Southern District of New York, my comments will be restricted to Administrative concerns and philosophy.

I sincerely believe that federal pretrial services are vitally needed and I endorse the agency permanency this bill permits. What I herein offer are not objections, but recommended improvement. The need of passage of a bill this year is vital if pretrial services are to be continued as effectively as present in districts which already provide these services. Dedicated, industrious, well-trained and experienced pretrial services officers are fearful that any failure of passage will result in job dislocation; and they are in the process of seeking permanency elsewhere. As case in point, five of the twelve pretrial service officers of the Southern District of New York are presently seeking transfers, as probation officers, in other districts, because of lack of job security. Their loss will affect operations of the Court adversely.

It should be recognized that the vast majority of pretrial service officers and probation officers are trained in the same behavioral sciences and "helping" professions, and utilize the same practice, skills, community resources, etc.

In my testimony before Senator R. Biden, Jr., regarding Senate Bill 2705, on May 14, 1980, I contended pretrial services can best be provided by the federal probation system. Moreover, my position was the same as that stated by Chief U.S. District Judge Lloyd F. MacMahon who signified in his letter of May 12, 1980 that there was no need for another bureaucracy within the court family. At that time, I proposed that each Chief Judge should be allowed to decide whether to have an independent agency or to utilize the court's probation department for pretrial services. This was a reluctant compromise on my part since I felt that the ongoing conflict of an independent agency vs. probation system control was endangering the achievement of a much needed governmental service. I believed then, as I do now, that pretrial services correctly belongs with the existing probation system.

I feel very strongly that the most efficient way, and by far the most economical way, of providing pretrial services is through the various probation offices of the District Courts. With trained professionals on duty in over 300 different locations around the country, the Federal Probation System is capable of immediate response at almost any location where federal prisoners are detained. In many districts, probation officers have been providing pretrial services for years. They currently monitor people under bail supervision imposed by Judges and Magistrates and they make bail investigations as desired by Judges and Magistrates.

The creation of separate independent agencies in order to provide pretrial services would be financially wasteful and certainly not in the best interest of a concerned taxpaying citizenry. The Probation System is fully capable of providing top quality pretrial services. It appears to me that setting up a separate agency within the court would involve a waste of money. As one example, the provision for a Chief Pretrial Services Officer in each district at an average entrance salary of JSP 13, $32,048, would cost the taxpayers almost $3,000,000 per year, while Chief Probation Officers could provide these services at no increase.

Every effort should be made to avoid jurisdictional disputes and conflicts between independent agencies and probation offices, or between probation offices in different districts and circuits. Officers should not be required to receive directions from a Chief Pretrial Services Officer, whether they are representing a probation office or an independent agency from another district or circuit.

The integrated system operates well, and the Judges, Magistrates and others involved in the judicial process of the Southern District Court of New York are satisfied. Information is exchanged, programs are shared, probation personnel help train and provide assistance to Pretrial Service Officers. The Fingerprint Identification System staffed by the Pretrial Services Agency provides criminal records to the probation officers of the Southern District of New York, and to the pretrial service officers (a board agency) of the Eastern District of New York. Treatment plans developed by pretrial service officers are used by probation officers, etc. Integration permits for both a philosophic and pragmatic continuity. Probation and pretrial services agencies of the Southern District of New York are service orientated, and there has never been a complaint from a defendant or his counsel, during pretrial services supervision.

We in the Southern District of New York believe we have accomplished most of the goals of Part II of the Speedy Trial Act of 1974, as proven by statistics provided by the Administrative Office of the U.S. Courts. These statistics indicates there have been a lessening of pretrial detention, there have been fewer warrants issued for failure to appear and there have been fewer felony arrests of those out on bail supervision or personal recognizance bond pending disposition of federal charges.

I do not stand alone in this view. In 1980, 77 out of 79 Chief Judges and 92 of 94 Chief Probation Officers expressed belief that the administration of the pretrial functions should be the responsibility of the probation service.

One of the reasons House Bill is considerably superior to Senate Bill 2705 is an adverse provision in Senate Bill 2705 which permits employment of staff which may be "drawn from law school students, graduate students, and such other available personnel."

(Senate Bill 2705-(18 USC 3153(2)(d)—Page 2, Lines 9 and 10).

Employees of the Court should be required to work full-time. Judges and Magistrates should not be allowed to depend upon part-time, temporary, or non-professional individuals. All personnel assigned to this task should be cleared by the Federal Bureau of Investigation, which is the practice at this time. There should be no lowering of the qualifications of a pretrial services officer, or their pay.

The vague terminology of Senate Bill 2705 of "or such other available personnel" may permit the employment of high school graduates or paraprofessionals and should be avoided.

As stated previously, I firmly believe pretrial services should be a probation department function. In my opinion, H.R. 2841 is superior to Senate Bill 2705. Nevertheless, it is hoped the Committee will accept the following changes to improve H.R. 2841.

(I) SECTION 3152

Remove—(other than the District of Columbia):

Rationale.—The U.S. District Court for the District of Columbia is a Federal Court and its Chief Judge should decide if pretrial services should be part of that Court. No outside agency, particularly one which is out of their jurisdiction, should be imposed upon them.

The Chief Judge of the District Court, regardless of location, should maintain the authority to change department heads within the Court and should not be prevented from selecting anyone he may wish to choose as a departmental administrator.

(II) SECTION 3153

Add to (a):

* * * Director and the Probation Division of the Administrative Office of the U.S. Courts.

Rationale.—There should not be two divisions within the Administrative Office, one probation and the other pretrial services. This will cause conflicts, confusion and jurisdictional disputes.

Offenders are in need of services in all locales. Funds should be provided for pretrial service agencies, independent or probation administered.

Again, thank you for the opportunity to appear before you. I hope I have been of assistance.

SUMMARY: WRITTEN STATEMENT PREPARED BY MORRIS KUZNESOF REGARDING H.R. 2841

(1) Pretrial Services should be declared a success and should be integrated into the federal judicial system on a national basis.

(2) Chief Judges of the District Courts, including the U.S. District Court of Columbia, should decide whether Pretrial Services functions are to be administered by the respective probation department or an independent agency.

(3) Pretrial Services should be under the Director of the Administrative and its Probation Divisions.

Mr. HUGHES. Mr. James F. Haran? Mr. Haran, it's good to have you with us today.

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TESTIMONY OF JAMES F. HARAN

Mr. HARAN. Thank you, Mr. Chairman. I greatly appreciate the opportunity to address this panel.

I'm not going to beat to death the many things that were said before, but I have two points that I would like to make, that Mr. Kuznesof and some of the others touched on.

One was the business of, can the probation officer possibly do this type of pretrial service job? And I think this is a completely false issue, and I don't know who continues to attribute this psychological set to us.

It's about the same argument that's saying that you can never be a judge because you were a prosecutor; or you were a defense counsel, therefore you can never prosecute.

The people that are employed in probation are employed primarily to help those who have broken the law, so that they'll reach a point in their development that they will be more law abiding.

Mr. HUGHES. I might interrupt and say that the only time I hear that is when a judge wants to become prosecutor at the same time he's judging a case. I hear that from time to time.

Mr. HARAN. That can happen, but I hope not too often.

Mr. HUGHES. Go ahead.

Mr. HARAN. For example, the probation staff in the eastern district of New York, which helps us do this job that we're doing, we have 42 of our 54 people now with graduate degrees, and many othes are still working on them.

We're very much service-oriented. We have a complete employment program, we developed a complete drug program, we have a followthrough program, as we call it, where we contact families of those who have been in prison, to help them through the trauma of the sudden failure of the breadwinner to come home, we have marital counseling services.

We have all types of services for these members of the community that become involved with the Federal criminal justice system. And even pretrial diversion was started in this district in the late thirties, and has continued to present a great deal of service to the court.

As I said, I really don't know how probation is attributed this psychological set: that we can't somehow objectively handle people at the stage in the process where they're not already considered guilty. I hope I might contribute something to laying that to rest.

The other thing that I would like to mention, and this is an area that's come up frequently, of course, is the money factor involved.

I've looked at this from my own point of view, operating one of the largest probation departments in the Federal system in the country; and what would I need in terms of personnel to operate pretrial in this district?

Well, I have a lot less overhead than a separate agency has, because we're already in existence, we have equipment, personnel, and so forth; and I would feel that, without any exaggeration, we could do the job with about one-third of the personnel presently employed.

This is based primarily on the contention that there's a great deal of unnecessary interviewing done; and the amount of services

that are rendered could be increased, however, because we have set up and in place all these programs for defendants in the area.

The amount of services that are available for probationers and parolees in this district, under that umbrella, could be presented for pretrial detainees.

So, with that, I reiterate what many others have said, that I feel that probation could do this job. I'm not saying this because there's any personal improvement in my salary status or my grade, or anything like that; nor am I asking for greatly increased staffing, building any type of an empire.

I'm simply saying, from my viewpoint as an administrator of a probation department in the Federal criminal justice system, that we certainly could do the job, and we could do it at much less expense to the taxpayers.

I'm not saying this with any reflection on the present setup of agencies, but simply that this would be possible, and could be done uder the present probation services.

I thank you, Mr. Chairman.

Mr. HUGHES. Thank you, Mr. Haran, for your contribution.

[Mr. Haran's statement follows:]

STATEMENT ON PRETRIAL SERVICES BY JAMES F. HARAN, CHIEF U.S. PROBATION OFFICER, E.D.N.Y.

I address myself to the question of the Pretrial Services Agency and its continued existence from the perspective of the Chief Probation Officer of the third largest probation office in the federal system and as a member of the Board of Trustees of the Pretrial Services Agency in the Eastern District of New York.

Let me first address the question of the usefulness and necessity of pretrial services being supplied to the Courts. From my own observations and from the testimony of the judges, magistrates, and prosecutors in both Eastern and Southern Districts of New York there is overwhelming support for the supplying of pretrial services to the Courts.

Should this pretrial service be supplied to every defendant appearing before the judicial officers? This is another question on which there was equal unanimity that pretrial services should be used with considerably more selectivity and only in those cases where the judicial officer requests the assistance to make a fair bail decision. This was estimated at somewhere between only 10 to 20 percent of all the defendants interviewed and processed by the existing pretrial agency. Remember these estimates are based on the working experience of the court officers in two of the largest metropolitan districts, which have the highest criminal caseloads in the country. These experienced-based observations indicate that pretrial "services" as they are currently applied could be greatly reduced for a substantial savings to the taxpayers, with no loss of service to the Court or prejudice to the vast majority of defendants at arraignment. Therefore, although I would recommend that pretrial services continue to be supplied to the Courts, I would also advocate strongly that the services be supplied only on the knowledgeable request of the judicial officer and not as a result of a routine, mindless and expensive procedure. As we pointed out in our testimony before the subcommittee hearing in Brooklyn on April 6, 1981, bail investigations were a costly and unnecessary expense in the not unusual cases currently on trial before the Eastern District of New York Court viz, two businessmen of high standing in the community (the Sam Goody case); a high government official (Senator Williams); a local, a long time Republican party chairman (the Margiotta case); and a long time fugitive drug dealer (Clymer case). Either no bail was required by the prosecutor or the Court, or bail was set without a pretrial investigation.

It is additionally my contention and that of the Board of Trustees, E.D.N.Y., that pretrial services can be supplied by the probation departments attached to the Federal Courts. Some question has been raised in previous testimony that the probation officer cannot do pretrial work. This is a gratuitous assertion and is totally unsupported by any facts. To claim such a psychological set in the minds of probation officers or others is ludicrous and would be laughed "out of court" by psychologists. Can not a lawyer be a prosecutor, a judge, a defense counsel or a legislator depend-

ing on the role he is called upon to play? United States Probation Officers are first and foremost professionals. In the Eastern District of New York of the 52 probation officers presently on staff two-thirds have masters degrees and all have substantial experience in social service positions. They regularly submit objective reports to the Courts prior to sentencing. They are not law enforcement oriented as has been intimated. For example, the original pretrial diversion program originated in the Eastern District of New York in the late 1930's under the name of the Brooklyn Plan. This was and is a probation created and sponsored alternative to prosecution and incarceration which has since spread throughout the federal system and into many state justice systems. Additionally, the Eastern District of New York Probation Department in its efforts to assist clients and to avoid recommendations for incarceration has devoted much of its resources to employment assistance; a total drug-care service agency; prison liaison to assist the reentry of people to the community; thru-care service to maintain family ties while a person is incarcerated, and other programs to keep people on the streets and law-abiding. The probation department is well aware of the destructive impact of incarceration even at the pretrial stage of court procedures. Further, the probation department is already in a position, without any further cost, to render the entire panoply of its contacts and services to the pretrial detainee without the costly duplication of such services that pretrial agencies attempt to supply. The pretrial service probation officer would in all likelihood be a specialist in pretrial services. This would probably only occur in a relatively few urban areas where the volume of this work warranted it. Advocates of separate pretrial service agencies admit that in the overwhelming majority of U.S. District Courts pretrial services would still have to be supplied by probation officers. It is a fact that the majority of the trustee operated pretrial agencies were headed up by U.S. Probation Officers and even staffed to some extent with U.S. Probation Officers. Surely it can not be maintained that these men underwent some type of psychological restructuring in order to do their new tasks.

Finally, to address the cost factor with respect to separate pretrial service agencies, in my opinion, based on 25 years in probation services and some 14 years as Chief Probation Officer, there is no doubt in my mind that adequate pretrial services could be rendered by existing probation departments. Further, this could be accomplished for 25% or less of the cost of the current experimental agencies' budgets. If probation were to assume responsibility for pretrial services the overhead for the agency both as to its administrative staff, separate housing, office equipment and clerical staffing would be eliminated. Staffing could also be considerably reduced by as much as two-thirds to three-quarters of the present agency staffing pattern, again at a very substantial savings to the taxpayers. Who states this so? In a recent poll, 88 of 91 chief probation officers stated they were willing and able to assume such responsibility. The chief probation officers who stated they can supply pretrial services are not self serving. They have no promotions to get for the added service and they are not asking for any great increase in staff. Probation is willing and able to assume another opportunity to be of service to the criminal justice system as it has in the past when it assumed parole services for the parole commission, supervision services for the military, pretrial diversion services for the U.S. attorneys, and prerelease and community contact for the Bureau of Prisons. Pretrial services can function tomorrow at little cost to the taxpayer simply by assigning such responsibility to the nationwide and highly professional federal probation service. Ask the chief probation officers who are in the field already working. Their answer is overwhelmingly in favor of assuming pretrial functions and in opposition to the creation of a new and costly agency in the government.

Mr. HUGHES. Mr. Tom E. Kearney, supervising Pretrial Services officer for the Eastern District of New York? We thank you for coming.

TESTIMONY OF THOMAS E. KEARNEY

Mr. KEARNEY. Thank you, Mr. Chairman.

You have already received a copy of my prepared statement. With your permission, I should now like to summarize and highlight some of those remarks.

The Committee on the Judiciary is hearing testimony today relevant to the continuation and expansion of pretrial services throughout the Federal court system. In considering this motion, let the committee be ever mindful of the accomplishments made in the original 10 demonstration districts.

Due to the groundwork laid in those 10 districts, and based on a study of the comprehensive statistical data supplied to and compiled by the administrative office of the U.S. courts, previous testimony points to the success of these programs, and to the present call for continuation and expansion.

We in the eastern district are proud of the contributions made by the pretrial services agency, contributions to the criminal justice system in general, and to the bail process in particular.

In each of the years since its inception, pretrial services has served not only an increasingly higher number of defendants, but has increased the quantity and quality of services rendered to the court, and to the defendants appearing before it.

In addition to quality performance of functions mandated by law, in the preparation of informative, objective and professional bail recommendations and progress reports, the pretrial services agency continues to expand its efforts with specific goals in mind, the reduction of crime committed by persons on bail, as well as the reduction of unnecessary pretrial detention.

The ability and dedication of the officers in making available to all defendants services such as employment referral, treatment for alcohol and drug abuse, the execution of CJA forms for indigent defendants, social service referrals, and defendant and family counseling, are but some of the steps taken to maintain contact with defendants, developing a rapport with them, tending to reduce the amount of crime committed on bail, and reducing the risk of flight.

The constant review of bail status on detained defendants has led to a noticeable decrease in overall detention rates. The in-house study on failure to appear cases presently being undertaken by our agency will lead us to the development of a profile study on FTA's, and allow for a more realistic analysis of factors impacting on this vital question.

With more than 5 years' experience in the area of bail, our pretrial services agency continues to grow in experience. It is prepared to be innovative and flexible in its daily operations.

No one can deny that the entire question of bail is one that is of deepest concern to members of the criminal justice system, as well as to the public at large; and that concern is felt most deeply by us.

Our pretrial services agency, in its present structure, has a singular unobstructed function to perform. We are able to dedicate all of our efforts toward one common goal. Our skill, experience and training are centered in one area, the area of bail and the overall improvement of the bail process.

If our courts are to be properly served in the question of bail, if the rights of defendants and the concerns of the community are to be protected, then pretrial services in our district must preserve its identity, and continue to serve the court in those specialized programs it was privileged to establish.

Thank you very much.

Mr. HUGHES. Thank you, Mr. Kearney.

[The prepared statement follows:]

STATEMENT BY THOMAS E. KEARNEY, SUPERVISING PRETRIAL SERVICES OFFICER, EASTERN DISTRICT OF NEW YORK

I am pleased to have this opportunity to share with you some of my thoughts as well as the thoughts of the individual Pretrial Services Officers of the Eastern District of New York, the line officers who day after day dedicate themselves to the service of the Court in a never-ending effort to improve the criminal Justice System especially in the sensitive matter of Bail.

While the Committee is in fact hearing testimony relevant to the future status of Pretrial Services, the committee should not lose sight of past efforts and labors which had led to a discussion not only of the continuation, but the expansion of Pretrial Services throughout the Federal Court System.

The Pretrial Services Agency in the Eastern District of New York was one of the original ten demonstration districts established by law in 1975. It is an Agency under a Board of Trustees. While the concept of an agency established for the sole purpose of preparing pre-bail reports for Judicial Officers and an agency involving itself only with matters pertaining to Bail had been in vogue in many state and local jurisdictions throughout the country prior to 1975, this type program was new to the Federal system. Like so many new programs, it was not readily received by the entire court family. The predictable roadblocks were present and each Demonstration District had to endure the growing pains of an infant agency.

Thanks to the dedicated professionalism of the entire staff of Pretrial Services in the Eastern District of New York, our agency has flourished and has made a contribution to the administration of justice in general, and to the Bail Process in particular.

We have especially devoted our efforts to the goals of Pretrial Services:

(a) The reduction of crime committed by persons on bail; (b) reducing the volume and cost of unnecessary pretrial detention, as well as; and (c) reducing the Failure to Appear rate for all released defendants.

Pretrial Services in the Easterm District of New York is presently staffed by a Chief Pretrial Services Officer, Supervising Pretrial Services Officer, nine (9) Pretrial Services Officers and a Clerical Staff consisting of an Administrative Assistant, three full time and one part-time Clerk/Typist.

It is our policy to assign one Officer full time to our office in the Courthouse, and that Officer acts as a liaison with other Court Personnel and coordinates the interviewing process. Officers are assigned on a rotating basis to assist the Court Liaison Officer so that three Officers are on court duty each day. The non-assigned Officers do follow-up work on their cases, make field visits as mandated by the Judicial Officer, make field visits when necessary to maintain defendant contact, and prepare updated progress reports for the Judicial Officers. One of our Officers is assigned to the Satellite Court in Westbury, Long Island and this Officer supervises defendants from the distant counties. On our staff, we have three Officers fluent in Spanish, one in Italian, one in Greek, while other Officers have a working knowledge in French, German and Yiddish.

The most important function of Pretrial Services Officers is the interviewing of defendants prior to arraignment and the collecting of verified information concerning the defendant so that the Judicial Officer might receive a report indicating the defendant's community ties as well as other data pertinent to the question of Bail Release. It has been the policy of our Agency to consistently recommend the least restrictive conditions of release, and supervise only those defendants who present or seem to present some possible risk of flight. It is likewise our policy to interview all defendants accused of violating a Federal Statute. (cf. T. 18 USC 3154 (1)). Following the initial arraignment, each Officer assigned to a specific case is responsible for the post arraignment verifications so vital in the monitoring of a defendant. Criminal record check, military verification, alcohol or drug counseling when mandated by the court or requested by the defendant, and the preparation of progress reports for subsequent court appearances. Defendants detained at initial arraignment receive special attention and review. Our agency has consistently been instrumental in securing post-arraignment releases without a serious increase in Failure to Appear Warrants.

There are some who challenge the notion of interviewing all defendants, pointing out the fact that so many defendants are released on their Personal Recognizance with no reporting conditions. Many of these defendants voluntarily appear at our office to secure our assistance in the matter of employment, drug or alcohol counseling, educational referrals, and referrals to other Social Service Agencies. Contact with these defendants allows us to develop a closer relationship with the defendant, and this type of contact may be one of the reasons for the low percentage of defendants in the Eastern district who are arrested while on Bail. These additional contacts are indeed very helpful not only in monitoring such a defendant, but is an aid in tracking a defendant who eventually Fails to Appear. Many of the defendants who are released with no supervisory conditions are defendants who have no prior arrest, and look to the Pretrial Services Agency for a simple explanation of the steps in the Criminal Justice System.

In addition to the on-going preparation of Bail Reports, the Supervision and monitoring of defendants, Pretrial Services Officers in the Eastern District of New York perform many other functions.

One Officer, with prior experience in the matter of Employment Referral, has had notable success in the area of employment referral. Most of these referrals represent defendants who are under no court mandated supervision, but freely choose to avail themselves of this service.

For defendants who admit to a drinking problem, an Officer acts as a liaison with a community based hospital which has an out-patient alcoholic clinic.

Pretrial Services, Eastern district of New York is presently making an indepth study on all Failure to Appear cases, hopeful of being able to more accurately profile the type of defendant more likely to become an FTA statistic. The Officer conducting this study also acts as a liaison with the U.S. Marshals, and transfers file information to the Marshals regarding defendants who become the subject of FTA warrants. It often happens the Pretrial Services has additional information which is helpful in apprehending a fugitive. It often happens that the Marshals request FTA information:

(i) On defendants never interviewed by PSA because someone saw no need for PSA contact; (ii) on defendants whose initial complaint was dismissed, but whose case has been re-opened by the United States Attorney; (iii) on Probation violators who failed to appear for a Probation Violation hearing; (iv) on defendants referred to the U.S. Probation Department for Deferred Prosecution; and (v) on defendants interviewed by PSA and on whom PSA maintains an active file.

Spanish speaking Officers are called upon to explain to Spanish speaking defendants, especially foreign nationals, the manner in which a Criminal case progresses through the court system. They are often called upon to notify defendants telephonically of uncalendared Court appearances.

Pretrial Services, in cooperation with the Court, is implementing a Diversion Program for selected Juvenile Offenders.

During recent weeks, many public officials, concerned with an alarming increase in crime, have spoken of the necessity of a sound approach to the question of Bail. We fully concur. The Pretrial Services Agency in the Eastern District of New York takes pride in the progress made in the philosophical and realistic approach to the whole question of Bail. We feel that we have been pioneers in the approach to Bail in the Federal System in general, and in the Eastern District of New York in particular. We feel that the entire Bail Process and all that it entails is an all important matter and deserves the undivided attention of an agency established, designed, and experienced in the matter of Bail; an Agency with proven effectiveness whose prime concern is not only the continuation, but the steady improvement of the Bail Process. As a group which has for the last five years dedicated all of its efforts and professionalism toward this goal, we are hopeful that, as a vital and integral part of the Criminal Justice System, we may continue to serve the Eastern District of New York and share in this court's constant pursuit of justice for all.

Mr. HUGHES. Mr. Jack J. Flynn, Chief, Pretrial Services Agency for the Eastern District of New York? Mr. Flynn, it's good to have you with us today.

TESTIMONY OF JOHN J. FLYNN

Mr. FLYNN. Thank you, Mr. Chairman.

Mr. HUGHES. Again, without objection, your statement will be received in full, and we'd appreciate it if you'd summarize your testimony.

Mr. FLYNN. Mr. Chairman, you have heard many a statement this morning concerning the future existence of pretrial services. I would just like to relate to you one or two items, as time is growing late. I think the two that I'm going to be speaking about are rather important.

I was a probation officer in this court for 17 years prior to my transfer to the pretrial services agency in January 1976. For the last 4½ years of my tenure as a probation officer, I was assigned to the magistrate part of the court as a liaison officer.

I had the opportunity of being close to the scene of seeing what happened, particularly at arraignments, hearings, at pleadings, and sometimes at sentencing. On many occasions, defendants did not appear.

When the magistrate would ask, does anyone here know where the defendant is, the answer was negative; no one had any idea where the defendant was, or why he wasn't there at that particular time.

In my opinion, pretrial services has filled that void. We are present in the magistrate's part of the court, where the great bulk of arraignments takes place. And I think we're able to make statements to the arraigning judicial officer as to what the situation is.

If the defendant doesn't show up—and by the way, he may not be able to show up; he may be in the hospital, he may be on a job and was unaware that he had to appear that date. I think we can answer those questions which could not be answered in the past.

The other thing I want to say is this—and in fact, there's one more after that—someone has said, in fact, many of us have said it here this morning, including the judges who preceded us and others, that we should not interview every defendant.

No. 1, 183154(1) says we should, the board of trustee regulations says we should, and there are many reasons why we should. There are a lot of things happening between an arraignment, a hearing, a pleading, and sentence. Something is going to radically change the man's background.

For example, he may move. We usually know when he does, because he tells us. He may have a health problem which may develop during the course of time; he usually tells us. He may need a job situation; he comes into the office and asks our specialization officer who handles employment, can she help him?

In other words, these things do occur over the period of time between arraignment and sentence. Before, there was no agency here to do this. There was no agency to monitor it. Again, pretrial services has filled that void.

Another reason why we should monitor every defendant, or interview and monitor every defendant—I'm not saying now, supervise every defendant. The Bail Reform Act says release them on the least restrictive conditions, which is personal recognizance and an unsecured bond. Failing those two, you go up the ladder and try with a monetary bond.

We should monitor everybody, for the simple reason, things, as I say, have happened and do occur during that period of time. The most important thing is too, we monitor them because we can follow them in the area of whether or not they're going to commit a crime on bail.

You might ask, how do we do this? We telephone them. I don't think that's a restriction on their liberty, to telephone a defendant. They come into the office requesting help. On many occasions, we've been able to assist them in that area.

I think we've, to this point, fulfilled the mandate of the Bail Reform Act in that regard, and also improved title 2 of the Speedy Trial Act.

There might be a question, do I believe that everyone should be placed under supervision? I do not; because I've seen many a defendant who was not directly under supervision conditions imposed by a judicial officer, sail right through from arraignment to sentencing without any problems.

I think it's a waste of time to supervise every single defendant. But I do believe that we should see everybody, because there is information that can be developed, that at some future date, can be used; for example, by the probation department once a defendant pleads guilty.

It is true that in a case where there isn't direct supervision, maybe there's not that plethora of information. But certainly, I know that two or three officers in my agency, when they have somebody under supervision, they got a lot of information, which is helpful to them in the preparation of their presentence report.

One last item, and I will answer any questions that you have with regard to my own statement. It was brought up here long before I'm testifying today; as to how I think this operation should be managed.

I think the members of the committee are well aware of other prior testimony as to how it should go. My own personal feeling is based on law and based on philosophy.

On the law, each one should be given due process. The law also indicates the eighth amendment, no excessive bail. Now, what do you mean by that? Well, that question has been hassled over for many a period of time.

The second thing is that the probation department deals principally with convicted people. They're dealing with probationers, parolees, mandatory releasees, people sentenced under the Youth Corrections Act or the Federal Juvenile Delinquency Act; all convicted individuals.

I cannot see putting presumed innocent people under that approach, because I happen to know the attitude of probation officers; I was one. It took me 6 months from my transfer from probation into pretrial in order to get that idea out of my mind, despite the presence of FBI sheets showing a history of criminality. I had to say to myself, this is another ball game here.

So, my feeling on that score is that it should be a separate unit, under the direction of the administrative office, and under the immediate supervision of the chief judge of this court or his designee.

As I say, I don't want to run on too long, but I wanted to get that on the record. Thank you very much.

Mr. HUGHES. Thank you. We appreciate your remarks very much, Mr. Flynn.

[The prepared statement follows:]

STATEMENT OF JOHN J. FLYNN, CHIEF, PRETRIAL SERVICES OFFICER, EASTERN DISTRICT OF NEW YORK

I first would like to express my appreciation to the Subcommittee for being allowed to express some opinions concerning Pretrial Services.

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As a former member of the U.S. Probation Department in this District for some 17 years prior to my transfer to the Pretrial Services Agency in January, 1976, I believe I am in a position to offer some valid opinions concerning the continuing efficacy and value of Pretrial Services in this District. I firmly believe that the judicial officers and other entities in this Court are now well aware of our existence, our capabilities and our proven worth in the total bail process. I can remember well, prior to the inception of Pretrial Services, in my capacity, for 4½ years, as Liaison U.S. Probation Officer for the U.S. Magistrates, how the bail process worked at that time. Since I was close to the scene, I observed, on many occasions, defendants failing to appear for arraingments and hearings and warrants were issued. Also, defendants failed to present themselves for pleading and/or sentence, resulting in issuance of warrants. Neither the AUSA or defense counsel, at that time, seemed to be in a position to explain satisfactorily the non-appearance of defendants. Since the initiation of Pretrial Services, the situation has been immeasurably corrected. We have filled a void that was urgently needed. Pretrial Services has provided a mechanism for a more equitable determination of bail for defendants; a means of monitoring defendants while on bail; the capability of reducing unnecessary pretrial detention; and a lessening of the commission of new crimes by defendants while on bail.

As we all know, Title II of the Speedy Trial Act of 1974 was established as a corollary to the Bail Reform Act of 1966. Its two (2) basic functions are "the compilation and verification of background information on persons who are charged with Federal crimes and the supervision of individuals who are released from pretrial custody, including the provision of counseling and pretrial services." The objectives of Title II are to insure the presence of defendants in Court when directed; to reduce the volume and cost of unnecessary detention; to reduce the commission of new crimes by those released on bail; and, in general, improve the operation of the Bail Reform Act.

On February 13, 1980, the Chairman of the Probation Committee of the Judicial Conference which has oversight responsibilty for Pretrial Services, cited the success of the 10 demonstration district agencies already established. He said in part "I can say that without exception those involved in the everyday workings of pretrial services agencies in these ten districts, those being judges, magistrates, probation officers, defense counsel and prosecutors, all are testifying to these things; One, the considerations mandated in the Bail Reform Act which go to the issue of bail. Those factors are now being brought to the attention of the judicial officer before a bail decision is made, a final bail decision. Secondly, the quality of justice is being improved because the law is being carried out."

As far as our own operation in this Court is concerned, I think that the major contribution provided by Pretrial Services to the bail process has been the capability of interviewing and presenting to judicial officers verified summary or bail reports on over 90 percent of all defendants who appear at the initial arraignment. Some individuals have previously indicated that Pretrial Services need not interview all defendants who have been arrested for a Federal crime. While it might be true that a defendant may have committed a "non-serious" or "non-violent" crime and could be safely released into the community, it is precisely this type of defendant who might constitute a possible failure-to-appear risk in the future. Because of various factors involved such as no stable residence, unemployment, prior non-appearances for court, and a history of drug or alcohol abuse, we are careful to monitor these cases, particularly if the individual has a prior criminal history.

Another good reason for interviewing all defendants rather than a selected group provides Pretrial Services with the opportunity to monitor any future potential criminality. We are able to record any distinct changes in the defendant's background such as residence, employment, health, or even a status change in the Court process. Certainly after a plea or verdict of guilty, the likelihood of non-appearance increases, the defendant knowing that certain sentencing awaits him.

Additionally, Pretrial Services should interview every one for arraignment on a criminal offense because it provides a more equitable basis for reaching an informed decision on bail. More accurate information is now available than heretofore for judicial officers with respect to the poor or disadvantaged who should receive the same treatment as the monied/represented individual. For example, public assistance may be as firm a root in the community as a mortgaged home; a common-law relationship may prove to be a solid condition for release than a sour or broken marriage.

With respect to detained defendants who are incarcerated after the initial arraignment, it is the ongong practice of Pretrial Services in this District to reappear in Court with an updated, verified package of release conditions that would allow judicial officers to realistically re-evaluate the bail originally set on the defendant.

Alternatives for release are indicated and stringent conditions are recommended when the situation demands it, should the defendant be released. At the same time, detention costs are substantially reduced when the defendant is returned to the community. While there is no know reliable predictability factor available to indicate what crime might potentially be committed by a person on bail, whether released initially or post-arraignment, it has been demonstrated that supervision, combined with a referral service for employment, housing, drug abuse treatment etc., has reduced the possibility of potential crime while on bail.

For the past five years since Pretrial Services had been active in this District, the incidence of new crime by bailed defendants has decreased dramatically. For example, during 1980, from the total of 1,197 cases, 28 defendants or 2.3 percent were rearrested while on bail. During this same time-frame, 60 defendants or 5 percent were reported as having committed bail violations. This overall figure represents the number of defendants who were rearrested, failed to appear, and did not fulfill the conditions as imposed by the judicial officer. In each instance, these infractions were reported to the Court for appropriate action.

What then has been some of the benefits and results that has accrued to the Federal criminal justice system by the installation of Pretrial Services in this District? We thoroughly believe that through our combined efforts over the past five years, crime has been reduced on the part of bailed defendants; there has been a simulataneous decrease in detained defendants; there has been an actual reduction in the failure-to-appear rate coupled with an increase in the release rate; there has been substantial cost savings to the government by the early identification of defendants who potentially could be considered for diversion from the criminal justice system as well as the release of detained defendants into the community with supervision. Pretrial Services may not be the answer or panacea for all the ills and problems that plagues the criminal justice system. However, to this point, it has become a conduit of information for judicial officers and other members of the Court family without whose cooperation we would not have progressed as far as we have. We have fulfilled the mandates of Title II of the Speedy Trial Act and have conformed to the meaning and spirit of the Bail Reform Act although we are always looking to the future for ways to improve our function and operation. Pretrial Services is really an attempt to bring fairness to all defendants in the initial stages of their entry into the criminal process. It is also an effort to assist the Court in coordinating activities which leads to rendering justice to defendants and at the same time, protecting the rights of society and the Government.

I have one last observation or comment to make. It concerns the structure of Pretrial Services for this District and how it should be managed. My own personal belief, based upon prior experience, is that is should be an independent unit of the Court based upon legal grounds. Whereas the Probation Department concerns itself with convicted individuals, it would seem to me, predicated upon the presumption of innocence of arrested individuals prior to convictions, a separate pretrial services unit would better serve the defendant's interests on contitutional grounds and due process. Further, it should be managed under the aegis of the Administrative Office and directly supervised by the Chief Judge or his designee.

Mr. HUGHES. First, let me just say to you, Mr. Kuznesof, and you, Mr. Haran, as probation officers, I worked with probation officers for about 10 years when I served in law enforcement many years ago, and I have nothing but the greatest respect for probation officers and the tremendous job that they do throughout the country.

I just hope that you and you colleagues do not take the dispute over whether PSA's should be run by an independent agency or by probation as any indication that we, or some of our witnesses in these hearings, do not hold probation in the highest esteem, because that's not the case.

But the statistics, and that's one of the things that we're looking at, very clearly show that the boards have done a significantly better job, that they were a little slower in getting started because they were new, but once implemented, the independent boards interviewed more people, prebail hearing; there were more recommendations by the boards; the rearrest record did not significantly

increase—indeed, it was a moderate or declining, as were the records in probation departments.

So it makes those of us who are trying to decide this issue take a long, hard look. And I have a question for you, Mr. Kuznesof, which gives me some concern, because I compared the southern district with the eastern district with regard to the number of cases inteviewed, and there is a marked disparity.

Maybe you can tell me, for instance, why in the southern district it seems that your office interviewed only 56 percent of the caseload this past year; in comparison, the eastern district had an interview record of 94 percent.

What is the reason for that?

Mr. KUZNESOF. I think Ms. Collins made a statement unique to the southern district, and it's really got nothing to do with the pretrial service agency, except for the poor statistics. And you heard this morning the magistrate from the eastern district also refer to the uniqueness of the southern district, and that they have a certain problem there.

The problem is that we don't get the person as fast as the eastern district does. We get as much as 21½ minutes, and many times less, to do the interview.

Mr. HUGHES. There is a problem with notice before the arraignment?

Mr. KUZNESOF. Before the arraignment. In fact, this has been a concern of our judges, of our probation committee, which just finished a research project on that.

We found out that the agents have the individual for about 14 hours before they even touch the courthouse. Then the U.S. attorney has them for about 2 to 3 hours, and then many times the U.S. attorney will bring the man down to the magistrate, and only then are we notified to, "Come on down, we're ready for the bail determination.

And we may get as much as 5, 10, 15, or 25 minutes. This has been a problem from the start. The magistrates have brought it to the attention of the circuit. There has been a case on it, I think it's the *Norton* case, something that pertains to pedigree hearings of the U.S. attorneys for the southern district.

We've been trying to get them to change this, to let us have the man as soon as he walks into the courthouse; but that is part of the problem. The problem is, we cannot get the man.

It's amazing that we do as many investigations as we do, in so short a time that we do have.

Mr. HUGHES. Obviously, if in fact you don't have ample time to actually conduct a pretrial interview, that's not something that you have complete control over. But if I understand the statistics, even in the cases where detention was the result, there was no postbail hearing review in one-third of the cases.

That means that, if the information I have is accurate, where there has been detention, there is no followthrough with those cases where detention resulted, in one-third of the caseload.

Mr. KUZNESOF. No, I don't think that's correct, Congressman. I think we have a fine record of bail review. In fact, we may have three or four or five bail reviews. Am I correct?

Ms. COLLINS. [Nodding affirmatively.]

Mr. HUGHES. So you would dispute that data?

Mr. KUZNESOF. I dispute those records; I dispute that fact. In fact, we're the only one also that has direct access to the FBI and to Albany, and now, within the next week, or the next week or two, direct access, to the New York State Police for criminal records.

If we have these individuals in time, or if they just brought us their criminal records, we would have a criminal record for the magistrate in relatively few hours.

Many times, we may receive the fingerprints card 1 day after bail has been set. Now, we're the only ones in this country who has this type of facility. We planned it actually before the passage of the Pretrial Services Act; we anticipated that we would be one of the districts chosen.

At that time, we didn't know whether we were going to go board or go probation; but former Chief Judge David Edelstein, and John Connally, the former chief probation officer, and I worked it out, and we knew that we had to have criminal records.

Now, because we have criminal records very quickly, and most probation departments around the country get their criminal records 10 weeks after the man's fingerprints are taken—we get it within a day—our bail summaries are now being used for sentences.

If a man pleads the week after on arraignment, he can be sentenced right then and there. So, it has speeded up the judicial process. We do have bail summaries.

Also, we refuse to make a recommendation when we don't have enough time to investigate and study.

Mr. HUGHES. Well, that's understandable.

Let me ask you this. How do you secure the defendant for an interview, Do you do it by letting him know you'd like to inteview him? Do you telephone him, do you send him a letter where you have time? What is the practice?

Mr. KUZNESOF. There are a number of types of situations. I'll let Estelle Collins speak on that. I can also, but——

Mr. HUGHES. All right. Ms. Collins, can you answer that for me?

Ms. COLLINS. First, Mr. Chairman, I'd like to follow up on Mr. Kuznesof's response with respect to the number of prebail interviews.

In my initial statement, I indicated that there was a need for administrative guidelines and court rules making pretrial services a part of the bail-setting process; and I think this is especially true if pretrial services is to operate under the probation department.

This is not to be critical of our agency. However, the U.S. attorney's office, it appears, and it seems to be characteristic throughout the 10 districts, has developed a certain relationship with the probation department; and I think it is necessary in the preparation of a presentence investigation, which requires a discussion of the events, talking about the case itself.

This relationship does not exist between the pretrial services officer and the U.S attorney's office, because we are on opposing ends. However, there is a tendency to attempt to transfer this relationship to the pretrial services agency when it operates under the umbrella of the probation department.

And for that reason, I think many times we have been unable to conduct initial interviews, because there is a tendency to kind of pass over us and we will kind of understand that.

With respect to detention, in my written testimony I made mention of the fact that there are a number of things that should be taken under consideration in order to assure that a pretrial services agency can be effective in its operation.

One of those, of course, was that pretrial services must be notified of bail review hearings, in order that we can bring forth our information to the court that possibly could have an impact on bail.

There have been a number of occasions where the pretrial services agency in our district had not been notified of bail review hearings, which means that the court did not receive the benefit of this information, which could have possibly led to a defendant's release.

Mr. KUZNESOF. Excuse me, let me expand. It would make no difference whether it would be probation or independent, the relationship with the U.S. attorneys, which is basically a very good one.

The southern district of New York has always held pedigree hearings. It's the only district in the country that does it. The judges, the magistrate, the probation officers, everybody, the defense attorneys, have complained about it, but they insist upon these pedigree hearings.

One of the reasons why they will not let us have the individual first is that they fear we may advise them of their rights to a greater degree than they would; or they may misunderstand some of our statements.

Now, this matter is being considered by the judges of the courts; as I said before, they're going to take it up to the circuit committee. It's been a very great concern. We've had this problem right from the onset.

We've had people from Washington come up and meet with the U.S. attorney a number of times. We have had many, many meetings, but this is one thing that they will not give up.

As I said, it's the only district in the country that has it, and that's the reason for the low number of interviews.

Mr. HUGHES. I see.

Mr. KUZNESOF. But those we get, I think we do a very good job, and we provide good information to the judges and to the magistrates.

Mr. HUGHES. I thank you for that response.

Do any members of the panel believe that it's not essential to interview all defendants in the system? Does anybody subscribe to the belief that we should be selective?

Mr. HARAN. I do.

Mr. HUGHES. Do you want to comment on that, Mr. Haran?

Mr. HARAN. Well, let me give you an example right from this court. Taking place today, we have an Abscam case, we have a white-collar case, Mr. Goody, who is pirating tapes of rock stars, and we have a politician on Long Island, Mr. Manigotta, who is on trial for some type of misapplication of funds.

I don't think pretrial services are needed in any of those cases, and I don't think the interview is necessary for the bail. I don't think the prosecutor is asking any bail in cases similar to that.

Mr. HUGHES. Did you want to contribute to that, Mr. Flynn?

Mr. FLYNN. Yes, I would like to counter by saying that even people who are released on personal recognizance or an unsecured bond, and then are referred to probation for what we call pretrial diversion, or deferred prosecution; there are the two.

But there are occasions when that person doesn't show up, even for the interview. And we've gotten letters back, copies of letters that went to the U.S. attorney, indicating that so-and-so did not show up for the interview, we are returning the case back to your office for whatever action you wish to take.

Now, that's a case with no supervision; and that's not a white-collar situation, either.

Mr. HUGHES. I suppose it depends on what you perceive pretrial services can do during that period from the time a defendant enters the system until some disposition is made, either by a dismissal of the indictment, or sentence, or what-have-you.

There are some who believe that pretrial services can perform a myriad of functions such as supervision, because defendants, when they enter the system, change—their attitudes change. They get caught up in economic problems and social problems in the community, and their attitudes change, and sometimes they become more of a risk than when the defendant first came in contact with law enforcement agencies.

There are others who feel that all pretrial services should do is determine what bail should be set.

So do you think that perhaps the answer is to try to decide, first of all, what we expect pretrial services to do? What kind of functions are they going to perform? Are they going to be helpful to us in learning more about that defendant at every stage of the proceeding?

Are they going to be helpful through the entire process, including sentencing, if in fact the defendant is convicted?

Mr. HARAN. Well, undoubtedly some cases need some social service assistance; but as I said, many don't.

Mr. HUGHES. Well, I'm sure that this committee can't sell social services at a time when we're going to be cutting back on social services—that would be the worst thing we could do for pretrial services.

I think you can convince my colleagues in the Congress of the need to try to make more intelligent decisions early on about a defendant; such as, is he or she a good risk, is he or she a poor risk? Does he need help early on? Can we learn more about the defendant that possibly will save us money in the long pull?

Can we learn enough about the defendant in that pretrial period, which has previously not given us much information? As the defendant enters the system and we see him or her over a period of months, can we learn something about him or her that might save us some dollars down the line?

More importantly, can we learn something about the defendant that would enable us to do a better job in understanding the defendant and seeing what he or she needs? These are questions I

think we have to ask ourselves in determining how to evaluate pretrial services.

Mr. HARAN. Well, we would agree with that totally, even a, let's say, probation-run agency. It would be the same thing; we want to get that information, too.

Mr. HUGHES. I have some concerns, that I have heard many times from other people as well, that one of the difficulties pretrial services faces is that there is a certain amount of reluctance or inertia about pretrial services, because it's relatively new.

You know, we get comfortable with the old system. So, for this new idea to work, why, we're going to have to change attitudes. It's been suggested that perhaps if and as we order priorities in an existing department, whether it's probation or anything else, and you start deciding where your resources, which are always short, are going to be committed, it's going to be the new man on the block that's going to suffer early on, as you commit resources to the other end of the criminal justice system.

Do you find that that's a legitimate criticism, Mr. Haran, or Mr. Kuznesof?

Mr. HARAN. I don't think so, Congressman. I think that whatever functions are designated to the probation department, that as an administrator, you of course allocate your personnel with some degree of priority.

But for example, if I can, to the eastern district, which I'm most familiar with—for example, we have an unemployment rate among those under supervision of 18 percent. So I have worked out two of my men who do nothing but employment counseling, pre-employment interviews, and so forth. And they even go out and do job development.

Now, I didn't need a law to tell me that that particular need should be fulfilled. Nobody's giving any directions as to how many should be put in there.

This is the type of thing if, for example, probation was to take over the pretrial functions, certainly I'd tell you right now, that however many men we felt were needed for that, that's what they would do in any specialized unit.

Mr. KUZNESOF. And to expound on your point, Congressman, one of the reasons for the passage of the pretrial services bill in 1974 was to provide services in the hope that, while a man is out on bail, he will not only receive the proper supervision, but services, so that during that interim, he would not have to go out and commit another crime because of need or various problems.

Now, we are very service oriented, both in pretrial and in probation. In fact, we have funds given to us from some foundations, given to probation which pretrial uses. This is not coming out of our country's Treasury.

We have drug programs. If a judge wants to know whether a man is using narcotics, we can find out within 2 hours. This was a probation program which we also transferred and gave to pretrial.

So, there are many, many services that can be just given and done by pretrial, because of the fact that it's in a larger organization.

Mr. HUGHES. Well, it's getting rather late. I'm sorry that we spent a great deal of time on what—obviously it's a very important

issue, probation versus the board. But that really isn't the issue before the Congress, I hesitate to tell you.

The issue before the Congress is pretrial services or no pretrial services. It's not a question of whether or not we're going to administer under one program or another. That's something that I'd like to have a little clearer answer to than I have to date, because there seems to be a genuine conflict on that issue.

The only question is whether or not this noble experiment that we've embarked on with these 10 demonstration districts is going to be a part of our criminal justice system. That's the issue.

And what, as a practical matter, is important to my colleagues is, does it work? Is it needed? And can it be cost efficient? Obviously, if we can get a little information, it's going to be helpful in the criminal justice system. You can't really quantify that.

But in these days of austere budgets, you're talking about a new program. The thing that you can point to which I think sells the program is that we know much more about this defendant at the early stages of the proceeding.

So, a judge has a lot more information on which to make a very important decision on bail. Should the defendant be released on bail; under what circumstances, under what conditions?

We have the potential of supervision for somebody who was a marginal case, and that's an individual that you're going to look at from time to time; and if need be, call the judge or bring to his attention the fact that we have a defendant who is not behaving and who presents some additional problems to the community.

You also have the question of rearrest, and if we can reduce the incidence of rearrest, then we've served society. And it's also a contributing factor to understanding that defendant all the way along the line, as I've indicated previously.

Those are the things that are of interest particularly to this subcommittee. And even though Congressman Fish had to go to another meeting, he has a series of questions, as do we, which will bear on these issues in particular, that we'd like to address to you.

Time isn't going to permit us today to get answers to some of the things that we'd like to know to help us better understand this pilot program and get some hard data that we can take back to our colleagues as we try to debate this issue in the Congress.

So, if you would be willing, I'm going to hold the record open so that we can direct questions to you in those areas in particular, because those are the things that I think are going to be of immense concern to my colleagues.

So with that, I want to thank each and every one of you for giving us your time today. I appreciate the time you've put into your formal statements. You've made major contributions, and we appreciate it.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned.]

ADDITIONAL MATERIAL

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., July 8, 1981.

Hon. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HUGHES: Attached are our responses to the questions raised in your letter of May 13, 1981, following the hearings on pretrial services. If we can be of further assistance, please advise.

Sincerely,

GUY WILLETTS,
Chief, Pretrial Services Branch.

Attachments.

1. If pretrial services were to become a function of the probation department, would this involve new training for current probation officers?

Yes. Experience with the ten demonstration districts and the six volunteer districts has shown that for effective pretrial procedures to be established by existing staff, training is essential. In fact, some CPO's and line officers have said "that it is easier to train a new employee than it is to retrain probation officers to perform pretrial services."

2. During the trial period for the ten demonstration districts, did any probation districts, other than the demonstration districts, attempt to provide pretrial services? If so, with what results?

Yes. Seven districts attempted to provide pretrial services with varying degrees of success. Three of the seven in our judgment were ineffective. (See attachment 1.)

3. In a nonprobation run PSA, would the chief pretrial services officer do only supervisorial work, or would he or she also do "line" work?

We project that a chief or supervising pretrial services officer in a nonprobation run PSA would perform "line" work in over 60 percent of the districts.

4. Is there a difference in the number of staff members required to run a pretrial services agency in a board district as opposed to a probation district?

Experience has shown that staff needed to perform pretrial services in board districts and probation districts is essentially the same.

5. Have there been any estimates of staffing needs of probation-run, as opposed to independent, agencies to conduct pretrial services? If so, who made the estimates and what were the results?

The Probation Division of the Administrative Office has examined very carefully the projected workload that would be generated in each judicial district if pretrial services are established either in probation or separate from probation and concluded that the number of staff members required would be essentially the same. (See attachment 2.)

6. Are there defendants who are currently being released on personal recognizance or other nonmoney bonds who, in your opinion, would not have been but for the report, recommendation, or other intervention of PSA?

Yes. Judicial officers have stated and the experience of the ten demonstration districts confirmed that providing verified information to the judicial officer results in more equitable release decisions. Without sufficient verified information judicial officers may set release conditions that are too stringent or too lenient.

7. Do you think that most of the information currently supplied by PSA could have been adequately supplied by the defense and the government instead?

No. The prosecution (government) may have a tendency to provide information to substantiate high bail or more restrictive release conditions except in those instances where they want a defendant released. The defense on the other hand may tend to emphasize those areas that would cause less restrictive release conditions than are appropriate. The availability of information that has been verified and objectively presented provides the judicial officer with an opportunity to base his decision on more reliable information. The priorities and resources of most law enforce-

ment agencies and/or defense counsel would not allow them to provide the judicial officer with the necessary information. In addition, our examination of non-PSA districts revealed that this type information is not being provided to the judicial officer.

8. What is the effect, if any, of money bonds as opposed to nonmoney bonds in terms of failure to appear rates and pretrial rearrests?

We have not been able to discover any significant statistical correlation between FTA or crime on bail and money bond vs. nonmoney bond for those defendants released.

9. What is the relationship, if any, between the seriousness of the crime charged and the likelihood that the defendant will fail to appear in court?

Available statistical information does not indicate that seriousness of offense is a reliable predictor of FTA. (See attachment 3.)

10. If PSA does not interview all defendants, how would you suggest distinguishing between those who will and who will not be interviewed?

In view of the answers to preceding questions there is obviously no general way to determine who would and who would not be interviewed. However, if a decision had to be made we advocate interviewing all defendants charged with felony offenses.

11. In probation-run pretrial districts, does the same person conduct the pretrial investigation as does the presentence report if the defendant is convicted?

No. Generally in the five probation-operated pretrial services districts the pretrial services procedures have been carried out exclusively by a separate unit in the probation office with exception of one district where probation officers in branch offices conducted the bail interview and subsequently conducted the presentence investigations. In two of the seven volunteer districts the officer who conducted the bail interview would also conduct the presentence investigation.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,
Washington, D.C., June 4, 1981.

Hon. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime,
Cannon Office Building, Washington, D.C.

DEAR CONGRESSMAN HUGHES: Enclosed you will find my responses to the questions you sent me regarding the operations of the Pretrial Services Agencies.

If I may be of any further assistance to you or the Subcommittee on this matter please contact me.

Very truly yours,

DANIEL B. RYAN,
Pretrial Services Specialist.

Enclosure.

1. What percentage of working time is spent on each PSA function?

45 percent is spent interviewing, verifying, preparing reports, and attending hearings; 30 percent is spent on supervision activities; 5 percent is utilized reviewing detention cases and bail violations; and 20 percent is spent on miscellaneous activities, including reviewing case files, reviewing worksheets, gathering followup information and completing the data requirements.

2. What contribution does PSA make toward preventing crime by defendants who present danger to the community?

PSA identifies potentially dangerous defendants which results in recommendations for special conditions of release, such as travel restrictions, reporting requirements, and participation in treatment programs.

3. May a judicial officer revoke bail for a defendant who presents a danger to the community after they are released?

At the present time, a judicial officer may not revoke bail on a defendant who presents a danger to the community after release because under the Bail Reform Act a judge may only consider a defendant's likelihood of appearance when setting conditions of release.

4. Would changing the bail law to allow a judicial officer to take danger to the community into consideration improve its operation?

As long as the purpose of bail is to assure the appearance of a defendant at trial it is not likely that allowing a judicial officer to take danger to the community into consideration will improve the Bail Reform Act, since potential flight risk and potential danger constitute two different issues.

5. What efforts have been made to prevent PSA from supervising unnecessarily? For example, what is the reason for the disparate rates of supervision between the Eastern and Southern Districts of New York?

The Pretrial Services Branch has recommended through training sessions and formal memoranda that PSA's recommend the least restrictive conditions consistent with the Bail Reform Act.

The Southern District of New York is a probation-operated PSA and may be influenced by the philosophy generally subscribed to in probation that supervision is "inherently good." The agency tends to recommend supervision as a condition of release where its value may be limited. In contrast, the PSA in the Eastern District of New York was established independent of probation with a strong commitment to recommending supervision consistent with the mandate of the Bail Reform Act and relevant case law.

6. What percentage of defendants have had previous contact with Federal probation? In those cases, does probation provide defendant information to the PSA? If probation performs the PSA functions, would it provide an advantage in this area?

A. A recent review of the five probation-operated PSA's reveals that 2 percent to 3 percent have had prior contact with the probation office in four of the districts. In the fifth district, 6 percent had prior contact but in most cases these were probation violators from other districts.

B. Where prior contact has been made, information is provided by probation to PSA. However, the same is true in the five board-operated districts. Any advantage to probation-operated PSA based on this area of concern would be negligible.

7. What outside factors effect PSA's ability to provide PSA information to judicial officers?

The failure of law enforcement agencies or United States Attorneys to notify PSA in a timely fashion is one major factor. The lack of scheduled bail hearings in some districts is another factor. Lack of efficient criminal history retrieval systems is still another factor.

8. How often do PSA's bail recommendations differ from those of the United States Attorney?

The recommendations of the PSA differ from those of the United States Attorney in 25 to 30 percent of the cases.

9. Why do the Eastern and Southern Districts of New York have such relatively high failure to appear rates?

The failure to appear rate in Eastern and Southern Districts of New York are only slightly higher than the overall rates. However, possible reasons are (1) New York City is close to two international airports and a third domestic airport, (2) has a relatively high percentage of defendants who are aliens, and (3) has a highly transient population.

10. Why are PSO prohibited from discussing the elements of the crime with the defendants when the judicial officer must take such elements into consideration when setting bail?

PSO's are prohibited from discussing the elements of the crime with defendants because they are not trained to weigh evidence. The judicial officer is best able to do this after he or she receives that type of information relating to the crime from the U.S. attorney and the law enforcement agents.

11. What is the general procedure for notifying the court about bail violations?

When a defendant has violated the conditions of his or her release, a memorandum which explains the violation and recommends an appropriate action is prepared by the pretrial services officer in charge of the case. The memorandum is immediately reviewed by a supervisor and sent to the judicial officer. In some districts the memorandum is sent to the assistant U.S. attorney and defense counsel at the same time.

12. What is a technical violation?

A technical violation takes place when a defendant fails to follow the conditions of release as set by the judicial officer. An example would be the failure of a defendant to attend a drug treatment program.

U.S. DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK,
PRETRIAL SERVICES AGENCY,
Brooklyn, N.Y., June 3, 1981.

Representative WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Judiciary Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HUGHES: Reference is made to your letter of May 13, 1981 in which you ask that I respond to the enclosed questionnaire which accompanied your letter on matters pertaining to Pretrial Services Agencies. Please excuse the tardiness of my letter to you as I was attending the Chief U.S. Probation Officers Management Seminar in St. Louis, Missouri the week of May 17, 1981. I will, however, provided a brief response to each question and number them accordingly.

(1) Percentage wise, it would be difficult to assess the amount of time spent by each PSO on the collective bail process and more specifically on information-gathering, supervision, providing social services and diversion programs. Each case that comes before PSA is unique and may present problems that require more intensive work and investigation than the ordinary "run-of-the-mill" type of case. The process of opening and closing a PSA case is also time-consuming and may require more time e.g. the compilation of verification reports and the chronological status recording of persons who are placed under our jurisdication. When not directly involved in the bail process, PSOs in this Agency have certain other duties such as counseling, job referral, liasion with community agencies, cooperation with the U.S. Marshal's Service in the apprehension of defendants on warrants and FTAs (failures-to-appear) cases etc. Thus it would be hard to place a "handle" on the exact amount of time each PSO requires for the fulfillment of their duties. I might mention here that we have not been involved in the diversion program. This function is being handled by the Probation Department at the present time.

(2) After five years of experience dealing in pretrial and bail issues, our staff is adept and quite aware of the "danger to the community" issue. However, I would like to emphasize that EDNY Pretrial is not in the "business of wholesale release" of defendants. By law, Judicial Officers, at present are guided by the Bail Reform Act and are required to weigh the evidence of the offense against the defendant as well as the background of the defendant's prior criminal activity, if any. Particular emphasis is directed to the defendant's prior history of non-appearances in court, probation or parole violations, and the seriousness of the offense committed. Violation of conditions of release and re-arrests are always reported to the Judicial Officer and the U.S. Attorney for appropriate action. One would, however, be naive to think that Judicial Officers, at one time or another, have not thought of the "danger to the community" issue when considering bail on certain type defendants. In view of the community's increased pressures and feelings regarding crime in general, possibly the Congress should take into consideration this issue but not at the expense of due process and the defendant's rights under Constitutional guarantees.

(3) The provisions of the bail process, in conformity with present legislation, require that a person be released on the least restrictive type of bail, personal recognizance or an unsecured bond. If the defendant cannot meet or satisfiy this type of release, ther are other forms of release, more restrictive and monetary in nature that can be considered. Present bail laws do not require that every defendant should be placed under supervision. This Agency, in fact, only recommends conditions of release or supervision be imposed on defendants who appear to be a bail risk due to certain problems, i.e., alcohol or drug substance abuse, residence instability, lack of employment, and a history of non-conformity with specific societal mores. I heartily endorse the proposed legislative change in H.R. 3481, under Title 18, Section 3154 (2) which would require guidelines for supervision to avoid unnecessary supervision and the specification of factors not requiring supervision. It might be well to mention here that it is a rather known fact that an overabundance of restrictive conditions placed on a defendant could and has led, in the past, to violations of bail.

(4) Although it happens occasionally, Federal probationers who are rearrested while on supervision are not treated in any different manner than a new arrestee. If PSA has knowledge that a defendant is under Federal probation supervision, contact is made with the local office. Many times, PSA is the "first to know" of the rearrest. The probation file, however, might not be available at that moment and there may not be any relevant information on hand which might be useful in the bail consideration. Also, many probation officers are unaware or not familiar with the Bail Reform Act and its guidelines on bail decision-making and tend to be quite conservative and rigid in disclosing either favorable or unfavorable information which might assist Judicial Officers in arriving at an informed bail decision. The

idea of locating the Fretrial Services unit within the Probation Department would add, little, if any, assistance to Judicial Officers in the bail process. In this district, our Board Agency provides information, following conviction, to the Probation Department for the preparation of presentence investigations. Although it is now required that a brief statement be included in presentence reports regarding a defendant's participation with Pretrial Services, not all probation officers contact our Agency for this input. Also, on some occasions, our Agency receives either the wrong release form or a release form not signed by both the defendant and counsel when probation officers request our information. It seems that some of them do not quite understand our rules of confidentiality.

(5) Although there may be other cogent factors affecting our ability to provide Judicial Officers with verified pre-bail information, I would like to address what I think is one important element—time. Every defendant, regardless of the offense, should have the opportunity to be interviewed by PSA prior to the bail determination, according to due process. An ideal solution would be the establishment of a definite time-table during the working day for arraignments to take place. Once a definite time is established, it will provide PSA as well as other interested parties involved in the bail process with the opportunity to prepare adequately for a court arraignment. It would eliminate a lot of confusion, haste, and inadequate bail reports due to unnecessary time constraints.

(6) It is the practice of this Agency to record the difference of bail recommendations by the AUSA and Pretrial Services in the case folder. Also it includes the actual bail set by the Judicial Officer. Our bail recommendations for people who appear to be bad risks would normally be high but also with a practical view as to what the individual's resources are; the AUSA might ask for an astronomical bail to indicate their feeling someone is a high risk but with little relevance to the person's resources e.g. someone with no visible finances who is a high risk might elicit a recommendation from PSA of $150,000 surety bond whereas the AUSA might ask for $1,000,000. Conversely, if someone promises cooperation but seems to be a bad risk according to PSA (poor reporting to local probation officers, drug habit, etc.) we might recommend a surety bond whereas the AUSA might recommend an unsecured bond. When this Agency has determined that an individual seems to be the kind of person who will return to Court, we try to make recommendations that will not force the defendant to seek a bail bondsman. Sometimes, this means a creative bail recommendation e.g., several collaterals with specific supervision. The AUSA however would tend to recommend a surety that the defendant can make but that will force or suggest the defendant seeking out a bondsman.

(7) I can only speak to the statistics that we have compiled in EDNY over a five year period regarding the failure-to-appear rate. Having processed almost 6,000 cases since April 1976, at the present we have approximately 90+ cases that we can term truly FTAs. Also, a lot of these cases are the result of confusion about future court dates and/or negligence or carelessness on the part of the defendant. We feel, however, that our FTA rate is one of the lowest of the ten demonstration districts when you look at the overall figure of the number of defendants processed.

(8) Each defendant, prior to the interview, is provided with and signs a "Rights Form." Among its provisions is the statement "I understand that I will not be questioned about the details of the offense for which I am now being charged." each defendant at the arraignment stage, is under the presumption of innocence. PSOs do receive information from the arresting agent and the AUSA regarding the defendant's involvement. I personally feel that hearing both the agent's and the defendant's version of the arrest and the offense would not jeopardize the defendant's status before the court especially since the information obtained by Pretrial cannot be used for purposes of trial on the substantive offense according to the rules of confidentiality. One positive aspect of knowing something about the offense would aid PSA in arriving at a proper bail recommendation.

(9) Our PSA staff has been instructed to notify, by memorandum, the Judicial Officer and the AUSA when bail conditions have been violated. Usually, if the violation is serious, bail might be revoked on our recommendation. Also, the conditions of release might be reevaluated and a bail review held so that the defendant has an opportunity to explain his failure to abide by the conditions originally imposed. A "technical violation" might occur when a defendant fails to communicate with the PSO as previously instructed, e.g., fails to telephone three times per week as ordered by the Judicial Officer but phones in but once during the week. Usually, in this case a warning suffices and the situation is rectified.

(10) In the testimony before the Sub-Committee on Crime on April 6, 1981, both the Federal Public defender and the Private Attorney indicated that the defense cannot adequately provide pertinent information at the time of arraignment for an

informed bail decision. Secondly, they both have the defendant's "interests" at stake and are not about to portray their client in a "bad light." With respect to the government prosecutor, he seems only interested in supplying positive information if a defendant has been cooperative, promises cooperation. or the case is very "small potatoes." On the other hand, defense counsel seems usually to supply only a positive type recommendation. It has been noted that defense lawyers make bail applications when they have the poorest conceivable risks to work with. conversely, the government attorney sometimes uses unprovable speculative information to back up a high bail recommendation.

(11) This is a difficult question to answer. I am not that familiar with the intimate operation of Probation-run Pretrial Services. In their case, however, I would assume that any information that is available in Pretrial Services files is automatically turned over to Probation Officers for presentence reports after conviction. In this district, however, we are still bound by Board rules which require that the defendant and his attorney sign a release form before information is given to the Probation Department. As a former U.S. Probation Officer for some 17 years in this District and having been involved quite intimately with the bail process for the past five-and-a-half years, I have always felt that Pretrial Services should be apart and distinct from the Probation Department since the two units have opposing purposes and viewpoints in their respective functions. If Pretrial Services would be absorbed into the Probation Department, I believe that it would set a dangerous precedent, both legally and philosophically, particularly in the area of sentencing following a conviction. Even though Rule 32(C) provides for disclosure of the presentence material to defense counsel and his client, I do not believe that the time has come when Probation Officers can wear "two hats" and, although they may be professionally prepared to do pretrial work, it is quite possible that with all the other important obligations incumbent upon Probation Officers, Pretrial Services would suffer and be diminished in the long haul.

I wish to thank you very much for allowing me to come before your Committee for testimony on April 6, 1981 in connection with proposed House legislation on Pretrial Services. If you desire any further information or if I can be of assistance to you, please do not hesitate to communicate with me.

Sincerely yours,

JOHN J. FLYNN,
Chief, U.S. Pretrial Services Officer.

U.S. DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK,
PROBATION OFFICE,
New York, N.Y., June 3, 1981.

Re Pretrial Services Act of 1981.

Mr. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. HUGHES: The following constitutes our responses to the questions raised by the Honorable Hamilton Fish, Jr., as transmitted in your letter of 5/13/81.

(1) Responses to item No. 1: Pretrial Services Officers spend ¼ of their time in information gathering, ⅓ of their time providing supervision and social services, ¼ of their time administering the diversion program and 20 percent of their time providing statistics. This may total more than 100 percent, but our staff does considerable overtime in order to accomplish all their tasks as required by the Speedy Trial Act of 1974.

(2) Responses to item No. 2: We monitor the activities of defendants placed under Pretrial Services supervision and report back to the appropriate judicial officer any behavior which constitutes a violation of bail conditions or which may indicate a possible threat to society.

The judicial officer will then modify a defendant's bail in an appropriate fashion, and may even revoke bail. There is no need to change the law since the judge already has the authority to revoke bail. If an individual is considered to be a danger to the community, it is assumed that he will be arrested by local authorities because of his behavior and therefore will not be available to our Court for final disposition.

(3) Responses to item No. 3: The term unnecessary supervision is very ambiguous and virtually meaningless because of its vagueness. If a court places a defendant under supervision then we must assume that the court and others deemed that this is necessary. Supervision has a double meaning in the Southern District of New York. It means monitoring a defendant's activities and more than that, the providing of social services. The Speedy Trial Act of 1974 devotes approximately 60 percent of its language to the provision of services. If it should be determined by the

Pretrial Services Agency that supervision is not necessary, then a report is written to the court and a reduction of the bail condition is recommended and usually granted.

It is our understanding that many Congressmen and Senators wish to increase the number of individuals placed under supervision during the bail period.

(4) Responses to item No. 4: Our records check reflects that two or three percent of the defendants interviewed by the Pretrial Services Agency have had some prior contact with the Probation Office of this district. From the onset, Pretrial Services has been considered to be an integrated function of this department. Therefore, the entire file is given to the Pretrial Services Officer immediately. Likewise, after conviction, the entire Pretrial Services file is made available to the presentence writer. Finally, after the presentence report is completed it is given to the Pretrial Services Agency so that they can complete their file and prepare the data code sheets which are necessary for the research required under the Speedy Trial Act of 1974.

As indicated, the cordination of the two agencies' efforts assist in the bail process, speeds preparation of the presentence report, improves the judicial process, and finally provides research information. In our opinion, the integration of the two functions is an absolute necessity.

(5) Responses to item No. 5:

There is a myriad of factors, including those listed below and others:

(a) Timely availability of defendants for a pre-bail interview;

(b) Timely availability to obtain prior criminal record; and

(c) Sufficient time to make necessary verifications and determinations.

Efforts have been made to increase the amount of time to prepare for bail arraignments, i.e., the acquistion of our own Fingerprint Identification Network System which has been improved recently. Magistrates and Judges have endeavored to induce the U.S. Attorney's Office to eliminate their pedigree hearings and agents have been encouraged to bring defendants directly to the Pretrial Services Agency upon entering the Court's premises.

(6) Responses to item No. 6: A recent study indicated that the recommendations of the Pretrial Services Agency differ from those of the U.S. Attorney's Office approximately 60 percent of the time.

(7) Response to item No. 7: We can not make a comparison between the two New York districts and other districts because we do not have the available statistics. However, our statistics reveal that since Pretrial Services for the Southern District of New York was organized, the failure-to-appear rate has been reduced over 70 percent as revealed by the following chart:

Year	Total number of defendants released	Total number of defendants failing to appear	Percent of defendants failing to appear	Percent of change
1976	944	69	7.3	0
1977	1,007	54	5.4	26.0
1978	897	45	5.0	31.5
1979	847	18	2.1	71.2
1980	194	4	2.0	72.6

A possible simplistic and obvious reason for the higher failure-to-appear rate could be because of the large number of individuals prosecuted in the metropolitan area and the seriousness of the offense.

One-third of the defendants who appear before the Court are charged with narcotic offenses. We also have a large number of individuals charged with various types of fraud offenses. Our research reveals that these individuals have a higher than average failure-to-appear rate.

(8) Responses to item No. 8: The answer is quite simple. Pretrial Service Officers are forbidden by law to do so; i.e. Speedy Trial Act of 1974.

(9) Responses to item No. 9: The appropriate judicial officer is notified quickly by way of memorandum whenever bail conditions have been violated. Any failure to follow the exact conditions imposed by the court constitutes a violation. In general, the serious violations of bail are failure-to-appear and crimes committed on bail. An example of a technical violation would be: failure-to-report on the proper day designated; failure-to-report change of address prior to moving; etc.

(10) Responses to item No. 10: Definitely No!

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As noted we differ from the U.S. Attorney's Office 60% of the time. We do not have research available to indicate the degree to which we differ from the defense. Research has revealed that there are more failure-to-appear occurrences when the Judge accepts the U.S. Attorney's recommendations rather than ours.

Pretrial Service Officers have professional training in interviewing techniques, in the use of community resources and in the discovery of underlying social problems that may not always appear on the surface. Defendants are usually rather open with a Pretrial Service Officer about their backgrounds and quickly discover that these officers will readily attempt to assist them in resolving their long range problems. The Pretrial Services Agency presents itself as a neurtal party trying to assist a defendant in successfully resolving his involvement within the judicial system.

(11) Responses to item No. 11: No. The Pretrial Services Agency in the Southern District of New York and the Presentence Unit are two separate sections within the Probation Department. One handles pre-conviction and the other handles post-conviction. By separating the two functions we avoid many legal problems and each group is trained and works within its own specialty.

Please advise if we can be of further assistance to you.

Respectfully submitted,

MORRIS KUZNESOF,
Chief, U.S. Probation and Pretrial Services Officer.

U.S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK
PRETRIAL SERVICES AGENCY,
Brooklyn, N.Y., May 29, 1981.

Hon. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HUGHES: I am forwarding my response to the list of questions submitted by Congressman Hamilton Fish. The responses to the enclosed questionnaire reflect not only my personal feelings, but also the opinions of some staff members. I shall number each paragraph to correspond to the questions posed.

(1) It is impossible to break down by percentage the amount of time spent by each officer in the particular areas suggested by the question, since the question does not cover all of the facets of work carried on by the officers on our staff. In addition to the regular duties of each officer which indeed include interviewing the defendant, his family and friends; information gathering from sources apart from family; supervision; providing of social services etc., our officers conduct ongoing special assignments. We have officers assigned as liaison with the United States Marshals, exchanging information relevant to fugitive cases, and an in-depth study into a profile of warrant cases is being conducted by our office. One officer is specifically trained and assigned to Job Referral; officers fluent in foreign languages conduct informal discussions with defendants explaining the entire facet of court procedure, while other officers assist in collecting statistical data for in-office profile studies. All of these endeavors are at once in addition to and are part of the overall professional approach to the complex question of bail. Each officer maintains an average caseload of 110 cases, all of which require, in addition to investigative and reporting duties, timely reporting to the Administrative Office. It is not unusual for staff members to remain after working hours (without compensation) in order to complete assigned as well as voluntary duties.

(2) All Pretrial Service Officers are well aware of the issue of danger to the community. However, as the law now stands, our primary interest is assuring the defendant's appearance in court as well as a reduction in crime on bail. Our reports to the Judicial Officers pinpoint prior convictions as well as character traits which may indicate a propensity to criminal activity. In these cases, the Judicial Officer is then prepared to place suitable conditions of bail on the defendant. If Pretrial feels that an individual does indeed pose a threat to the community, present legislation impairs him from considering that aspect when making a bail recommendation. A Judge can in fact revoke bail only when a defendant threatens government witnesses in a prosecution. In his testimony on April 6, 1981, Chief Judge Weinstein went on record as opposing any such legislation and Judge Platt concurred. Generally speaking, in federal court, we seldom come across the street mugger or violent assaultive type individual. This is a problem more evident in local courts. Some staff feel that danger to the community should be considered per se, while others feel that it should be considered to avoid the sub rosa use of this criterion in the setting of bail.

(3) PSA recommends supervision and Judicial Officers impose supervision only when it appears that the defendant appears to be somewhat of a risk due to a drug or alcohol problem, instability of residence, and a prior history of irresponsibility. If it appears that a supervised defendant in fact does not need supervision, PSA recommends that he be removed from supervision. There is a disparity between supervision in the EDNY and other districts for several reasons. Some probation districts make it a policy that all defendants are subject to supervision, and they in fact decide the type of supervision. The EDNY has always followed the mandates of the law by recommending the least restrictive conditions of release, thus the lower percentage of supervision cases. It should be noted that studies indicate that supervision has little impact on FTA rates.

(4) Rarely are probationers on the active caseload of U.S. probation arrested on new federal charges. Even less frequently are probationers under the supervision of the local U.S. probation office arrested. Consequently, the instances are few when the probation office has the capability of providing up-to-date and relevant information in the short time between a defendant's arrest and his arraignment.

In the few instances when a federal probationer is arrested on new federal charges, it has been as problematic to contact the appropriate officials in the U.S. probation department as any other source of relevant information and verification.

Keeping in mind the time constraints under which bail agencies must operate having had "some sort of contact with the probation office in the past" is by no means a guarantee that the information is readily retrievable prior to arraignment.

Relocation of pretrial services to within the probation office would effectively serve to make it a pre-sentence, information-gathering and verification unit for the probation office. The probation office's priorities would subvert the purposes and goals of the Bail Reform Act by emphasizing sentence-related data at the expense of data relevant to pre-trial release.

The probation department receives PSA information for assistance in preparing the PSI.

(5) The most important change would be a simple one. Each defendant must have the opportunity to have an interview with PSA prior to bail, and a Judicial Officer should never set bail until he has received a report from PSA. A defendant is not sentenced without a PSI, nor should bail be set until the PSA report has been submitted. PSA must become part of the overall Judicial process. The shortness of time often impairs our ability to make proper verification. Efforts should be made for bail hearings to be held at specific times of the day, e.g., 11:00 a.m. (for those arrested the previous evening or early in the morning), 2:00 p.m., and 4:00 p.m. Such a timetable would aid the Judicial Officer, United States Attorney, PSA and Federal agents.

(6) The difference between PSA recommendation and United States Attorney recommendation should be available from statistics gathered by the A.O. I prefer not to make a guesstimate but feel that there is a significant difference especially between recommendations as to PR release as opposed to Unsecured release.

(7) Speaking for the EDNY, we do not have high failure to appear rates. Most of our Failure to Appear cases involve individuals who failed to appear due to negligence or confusion, as well as lack of proper notification. The EDNY carries as fugitives some individuals who are presumed dead, but whose case remains alive. Since 1976 EDNY has processed more than 5,700 cases and at present there are 90 outstanding warrants for Failure to Appear. This figure is hardly a high figure for all of these cases.

(8) When the defendant is to be interviewed by PSA, he is advised of certain rights, one of which is that he will not be questioned concerning the offense. We are trained to observe the presumption of innocence, and that presumption precludes our questioning him as to the offense. We do receive some information from the arresting agent and from the United States Attorney, each of whom naturally has some prejudice in this matter. On the other hand, defense counsel has a different approach. We are not trained to weigh evidence, nor to discuss facets of a case which do not properly fall into our domain. We are a Bail Agency, and as such, recognize the rights of the defendant, while at the same time acting in a prudential manner when making a bail recommendation.

(9) When bail conditions have apparently been violated, a report is immediately prepared for the Judicial Officer recommending that either bail be revoked and that a warrant be issued, or that a bail review be held so that the defendant can show cause as to why he should not fulfill the conditions of bail. A technical violation can be described as a violation which goes against the letter of law regarding bail conditions. If a defendant is instructed to phone PSA three times a week, and fails to phone on one of these days, technically he is in violation of his bail. When this is

reported to the Judicial Officer, he usually advises us to warn the defendant that future violations of this type will receive swift judicial action. A technical violation may indicate some lack of responsibility but not necessarily an indication of flight risk.

(10) Both Mr. Concannon and Mr. Corbett indicated that defense could not adequately supply information that is supplied by PSA. The position that the United States Attorney can supply information is to say that the arresting agent can supply this information since the United States Attorney gathers his information from the agent. Defendants view PSA in an entirely different light and speak more candidly to us than to either their attorney or the arresting agent.

(11) We do not know the policy of Probation run districts. However, Mr. Concannon, in his remarks on April 6, 1981 indicated that he would find such a procedure extremely dangerous.

Thanking you for the opportunity to testify before you on April 6, 1981, and confident that the proposed legislation will be favorably received, I remain, with ever best personal wish to you and your staff,

Sincerely yours,

THOMAS E. KEARNEY,
Supervising U.S. Pretrial Services Officer.

PRETRIAL SERVICES RESOURCE CENTER
Washington, D.C., May 27, 1981.

Hon. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN HUGHES: Thank you for the opportunity to supplement my testimony of March 31 by providing additional comments for the record of your Subcommittee's hearings on the Pretrial Services Act of 1981. I will address each of your five questions below. I hope you will find the responses helpful as the Subcommittee considers the important issues involved in this proposed legislation.

1. Are there defendants who are currently being released on personal recognizance or other non-money bonds who, in your opinion, would not have been but for the report, recommendation, or other intervention of PSA?

Unequivocally, yes. The most current and comprehensive information on the subject comes from the 4-year, multi-site National Evaluation of Pretrial Release conducted by the Lazar Institute. Their findings, currently available in draft form, clearly indicate that recommendations from pretrial release programs have a significant relationship to the ultimate release decisions. For example, in 8 sites studied, 97 percent of those who received an own recognizance release recommendation from a release program were released (92 percent released on nonfinancial conditions). By comparison, when a recommendation for release on bail was made, only 56 percent were released (only 16 percent nonfinancially), and when the release program made no recommendation, 72 percent were released (32 percent nonfinancially). The draft reports conclude that "[T]he type of program recommendation was one of the most important factors affecting release/detention outcomes . . . and nonfinancial/financial release decisions."

It is perhaps of even greater significance to note Lazar's findings in 4 sites where the effects of program intervention were experimentally analyzed. In each site, some defendants were processed (with interviews and recommendations) by a release program, and a similar control group of defendants was not processed by the program. In three of the four sites, the release rates were significantly higher among the defendants processed by a release program. Moreover, there were suggestions from the experimental analyses that "[B]iases based on employment, status, and ethnicity may exist when pretrial release programs do not operate. In three of the four sites, greater release equity was found for the experimental groups . . . than for the control groups."

At the federal level, although there were problems with some of the analyses undertaken concerning the impact of the experimental Pretrial Services Agencies, the findings nonetheless suggest that those federal districts with PSAs had higher initial release rates, higher nonfinancial release rates, and lower rates of detention than did the five comparison districts with no PSAs. Thus the existence of the agencies appears to facilitate the release of defendants who would otherwise not be released. Moreover, these higher release rates have been accompanied by significant decreases in both failure-to-appear and pretrial rearrest rates since the PSAs were established.

2. What is the effect, if any, of money bonds, as opposed to non-money bonds, in terms of failure to appear rates and pretrial rearrests?

Research conducted in a variety of jurisdictions throughout the country has consistently confirmed that release on recognizance and other nonfinancial forms of release are at least as effective as financial methods of release in assuring appearance in court and minimizing pretrial rearrests. In fact, much of the research has indicated that defendants released through the auspices of a pretrial release agency have higher court appearance rates and lower pretrial rearrest rates than do defendants released on money bail. Data from nearly all studies confirm that there is no basis for the continued widespread use of money bail. (For further discussion and for more detailed references on this point, see the attached "Significant Research Findings Concerning Pretrial Release," with particular reference to Conclusions 2 and 9.)

3. What is the relationship, if any, between the seriousness of the crime charged and the likelihood that the defendant will fail to appear in court?

In contrast to the "conventional wisdom" that defendants with serious charges and/or a strong probability of conviction will fail to appear in court, most research has shown no such effects. There is considerable evidence that in many cases defendants charged with the more serious offenses are the best risks. In the District of Columbia, for example, defendants released in 1979 on charges of homicide, rape, robbery, or kidnapping (1418 cases) had a combined appearance rate of approximately 94 percent.[1] Numerous sutdies also show FTA rates for serious charges to be no higher, and in some cases lower than those for less serious charges. (For more details, see the aforementioned paper, particularly conclusion seven.)

4. If PSA does not interview all defendants, how would you suggest distinguishing between those who will not be interviewed?

Ideally, all defendants should be interviewed. Certainly, based on the point made above, there should be no automatic exclusions based on the nature of the charge.

If exclusions were deemed necessary, two alternate approaches could be considered: (1) It would be possible to exclude defendants arrested on relatively minor charges, who have who have no prior revord and/or no record of FTA, and who, on paper, appear to have good community ties. For such defendants, an automatic own recognizance recommendation might be envisioned (akin to a "citation" type of approach, albeit at the arraignment level). On the other hand, failure to interview such defendants could lead to (a) the inability to verify that the information on paper is indeed accurate; (b) a missed opportunity to detect whether some problems might affect the defendant's probability of making future court appearances and to recommend conditions that would heignten that probability. In other words, the efficiency of the PAS recommendations—and of pretrial screening—would be reduced. (2) In contrast, there could be a policy of excluding those defendants against whom there is an outstanding warrant or detainer on another charge, anyone with a probation or parole hole, or anyone known to be on release on another pending charge. Such exclusions, however, limit the ability to verify (a) whether the outstanding warrant detainer results from a systemic breakdown, rather than willfully absconding on the part of the defendant—thereby, risking both unfairness to the defendant and unnecessary detention: (b) the severity of the hold against the defendant (as checked for instance with probation or parole officer) and the necesssity of detaining the person pretrial (again, a possibly unnecessary cost to the defendant and the system).

It seems to us that for reasons of both equity and efficiency, the allocation of resources that would ensure the interviewing of all defendants is well offset by the benefits that would accure.

5. Are there any studies that show a relationship between failure to conduct a pretrial investigation and make a recommendation and the setting of a monetary bond?

Yes. Among them are the previously-noted Lazar study. According to their draft, 40 percent of those defendants who received no release recommendaton from a pretrial agency we released on money bail, 32 percent were released with no financial conditions, and 28 percent were detained until disposition of their cases. By comparison, only 5 percent of those who were recommended for own recognizance release were released on money bail, 92 percent were released with no financial conditions, and only 3 percent were detained. Similarly, ongoing research conducted by the Criminal Justice Agency in New York City consistently indicates that about ⅔ of all defendants for whom release recommendations are made are released on their own recognizance, compared with about half of those defendants for whom no rec-

[1] This exceeded the overall combined appearance rate for all charges of 91 percent.

ommendation can be offered by the program. Money bail is set for the vast majority of the remaining defendants. In short, these data and other national experience indicate that independent release investigations do affect ultimate release decisions.

I hope that this information sufficiently answers the important questions you have raised. If you would like clarification or additional information, please feel free to contact me. Thank you for your interest, and please let me know if there are any other ways in which we can be helpful.

Sincerely,

MADELEINE CROHN,
Director.

SIGNIFICANT RESEARCH FINDINGS CONCERNING PRETRIAL RELEASE

SUMMARY OF CONCLUSIONS

1. The vast majority of defendants who are released awaiting disposition of their case return for all court appearances and remain arrest-free while on release.
2. Release on recognizance and other non-financial forms of release are as effective as, if not better than, financial methods of release in assuring appearance in court and minimizing pretrial rearrests.
3. The establishment of effective pretrial release recommendations procedures can lead to significant reductions in the pretrial detainee population, without increasing the rates of rearrest or of non-appearance in court.
4. The expense of pretrial release programs can be favorably compared with the costs associated with unnecessary pretrial detention.
5. The outcome of the pretrial release decision (whether the defendant is released or detained prior to trial) can have a significant impact on his/her ultimate disposition and sentence.
6. The longer a defendant is on pretrial release, the greater the probability that (s)he will miss a court appearance and/or be rearrested.
7. The risk of non-appearance or of serious pretrial crime does not appear to increase with the seriousness of the original charge.
8. Many non-appearances are due to system problems or to factors other than willful non-appearance by defendants.
9. The use of notification procedures, supervision, and/or conditional release can be used to increase the number of releases while reducing court non-appearances and (apparently) pretrial rearrests.
10. Preventive detention based on any prediction system developed to date will result in the detention of large numbers of defendants who would not be rearrested if released.
11. Objective criteria should be used in making release decisions. The criteria to be applied will vary among jurisdictions and therefore should be developed and periodically validated at the local level.

SUMMARY*

The summary of research that follows has been organized according to eleven major issues which are relevant to individual release decisions and to systems reform. The discussion highlights findings as they relate to measures of both court appearance and pretrial rearrest because the law in some states allows a consideration of the "danger" factor in addition to an assessment of risk of flight.

Conclusion No. 1

The vast majority of defendants who are released awaiting disposition of their case return for all court appearances and remain arrest-free while on release.

Careful research conducted in numerous sites around the country indicates that upwards of 90 percent of all defendants released while awaiting disposition of their cases do appear as directed for all scheduled court sessions.[1] Appearance rates exceed 95 percent in several jurisdictions, particularly those in which there are active pretrial release programs.[2] Willful failures to appear in court, where the defendant absconds or is returned only after being apprehended, typically do not exceed 4 percent of all released defendants.[3] Thus the clear conensus of the research findings is that few defendants escape prosecution as a result of being released into the community while awaiting disposition of their case.

*Footnotes at end of article.

Rates of pretrial criminality are more difficult to assess, primarily due to difficulties in defining and reliably measuring pretrial crime.[4] Not surprisingly then, estimates of the amount of such pretrial activity vary considerably across research studies. Several indicate rearrest rates of between 10 and 15 percent, with corresponding conviction rates of between 5 and 10 percent.[5] Other research has reported lower rearrest rates of between 3 and 8 percent.[6] Most of the studies suggest that even where the overall rearrest rates seem to be high, there are relatively few rearrests for serious or dangerous crimes during the pretrial period (with reported rates typically not exceeding 5 to 7 percent).[7]

Conclusion No. 2

Release on recognizance and other non-financial forms of release are as effective as, if not better than, financial methods of release in assuring appearance in court and minimizing pretrial rearrests.

Several studies have shown that defendants released through the auspices of a pretrial release agency or through other non-financial means have higher court appearance rates and lower pretrial rearrest rates than do defendants released on money bail.[8] Other research has shown more mixed findings, but with few significant differences in rates between those released through non-financial and financial methods.[9] The data from nearly all studies confirm that there is no basis for the continued widespread use of financial money bail. Based on the research findings, two noted commentators in the field have unequivocably stated that most jurisdictions could significantly increase their use of own recognizance and other non-financial forms of release without increasing the rates of non-appearance or of pretrial rearrest.[10] In fact, in the 1970s, substantial increases in own-recognizance release were instituted on an experimental basis in two communities, in California and New york, with no increase in non-appearance rates.[11]

It should also be noted that those ultimately released on high money bail do not appear to be any more likely to return for their court appearances than those with lower bail set. This is another indication that money bail frequently does not provide an incentive to return to court, as was once thought.[12] Moreover, available information suggests that released through bail bondsmen are more likely than those released through pretrial release programs to fail to appear in court or to be rearrested pretrial.[13] To the extent that financial release continues to exist, tentative data suggest that those released on percentage deposit bail (e.g., 10 percent) are as likely to appear in court as those released through bondsmen or other forms of financial release. So far there is insufficient data available to know the effect of percentage deposit bail on pretrial rearrests.[14]

Conclusion No. 3

The establishment of effective pretrial release recommendation procedures can lead to significant reductions in the pretrial detainee population, without increasing the rates of rearrest or of non-appearance in court.

The National Bail Study, conducted by Wayne Thomas, indicated that between 1962 and 1971 there were significant reductions in the proportions of defendants detained from arrest to disposition in the 20 cities studied. Despite the fact that there was about a 30 percent reduction in the detention rates during that period, the court appearance rates actually increased in some cities. There was a slight overall increase in the failure rate across all 20 cities, but Thomas concluded that in the future most jurisdictions could safely increase their rates of non-financial release without negatively affecting appearance rates.[15]

Data from Philadelphia indicate that the introduction of a pretrial release agency (in conjunction with the establishment of 10 percent deposit bail) led to a 28 percent *reduction* in the pretrial jail population over a five-year period when the number of arrests was *increasing* by 5 percent. This reduction took place without a corresponding increase in the rates of failure to appear in court or of pretrial rearrests.[16] Separate studies in Denver, Colorado; Rochester, New York; and San Francisco, California, have demonstrated the impact of release programs in reducing the detained populations in ways that were cost effective for their communities.[17]

Although there were problems with some of the analyses, data in a recent study on pretrial release and misconduct in Washington suggested that release decisions based on predictions developed during the study could lead to substantial reductions in the detained population in the District of Columbia, with no increase in the numbers of defendants rearrested or failing to appear in court.[18] Further support for such reductions comes from a comparison of outcomes of release decisions made by two judges in Washington for similar groups of defendants meeting the District's criteria for eligibility for preventive detention. Bail conditions set by one judge allowed 80 percent of the defendants to gain release, compared to only 49 percent for

the other judge. Despite the difference, the rearrest rates were almost identical (9 and 8 percent respectively). Thus a substantial number of additional defendants could have been released with no appreciable impact on crime in the District.[19]

The extent of reduction of detainees possible obviously depends in large part on the procedures, practices, and philosophies adopted by the release program when compared with those in existence prior to the advent of the program. Thus the impact will vary somewhat across jurisdictions. But the general conclusion should apply to most areas: Jail populations can be reduced without adversely affecting the community.

Conclusion No. 4

The expense of pretrial release programs can be favorably compared with the costs associated with unnecessary pretrial detention.

The actual extent to which a given program can prove to be cost effective depends on how it operates, its staff size, how often it recommends own-recognizance release, the frequency with which its recommendations are accepted by a judicial officer, the point at which the recommendations are made and the release occurs, etc. Clearly, an effective release program can save a jurisdiction money, as demonstrated in several studies in different types of communities.[20]

Moreover, many defendants are detained throughout the country during the entire pretrial period with minor charges and with low bonds set, simply because of an inability to post even those low amounts. A number of these could be safely released without financial conditions being imposed.[21] Furthermore, many defendants are detained for short periods of time and then released pending trial. There are substantial costs—to both the defendant and the system—associated with such unnecessary short-term detention. The compound effect of these two categories of pretrial detainees is to substantially increase unnecessary pretrial detention costs, with little or no added protection to the community or to the judicial process.

Conclusion No. 5

The outcome of the pretrial release decision (whether the defendant is released or detained prior to trial) can have a significant impact on his/her ultimate disposition and sentence.

Research has consistently confirmed that a defendant's pretrial release or detention status affects his/her ultimate disposition and sentence. Proponents of this point of view generally attribute this to one or a combination of three factors: (a) reduced access of the detained defendant to counsel and in general a reduced ability to prepare his/her defense, (b) pressure on the detained defendant to plea bargain, and (c) a negative perception of the detainee on the part of the court and/or jury.

Findings have shown that released defendants are more likely to have their cases dismissed; less likely to be convicted; and, if convicted, less likely to be incarcerated.[22] One researcher has suggested that some judges may set high bail to help assure pretrial detention as a means of imposing a form of "pretrial punishment" on defendants accused of serious crimes and/or with lengthy records.[23]

More recently, one researcher has raised questions about some of the earlier findings, suggesting that they may be less clear cut than has been assumed. His study in Philadelphia indicated that pretrial custody had no effect on the disposition of the case but that it did influence whether the defendant was sentenced to jail. Thus he concludes that pretrial detention may negatively impact on a defendant's ultimate sentence if convicted.[24] Recent findings for felony cases in Houston suggest a similar conclusion.[25]

Conclusion No. 6

The longer a defendant is on pretrial release, the greater the probability that s/he will miss a court appearance and/or be rearrested.

Most studies which have assessed this "exposure time" variable have concluded that substantial proportions of both missed appearances and pretrial rearrests occur several weeks or even months into the release period. Even when a study in North Carolina took into account such factors as previous record and nature of current charge, exposure time on release was the most important factor in explaining both missed court appearances and rearrests.[26] Other studies have shown that more than 60 percent of all rearrests and failures to appear occur after more than two months on release.[27] Although a few studies suggest that significant proportions of both missed appearances and rearrests occur earlier,[28] the overall findings lead to the conclusion that speedier trials and/or specific prioritization of court calendars could be instrumental in significantly reducing the amount of missed court appearances and crimes committed while on release.[29]

Conclusion No. 7

The risk of nonappearance or of serious pretrial crime does not appear to increase with the seriousness of the original charge.

In contrast to the "conventional wisdom" that defendants with serious charges and/or a strong probability of conviction will fail to appear in court, most research has shown no such effects.[30] In fact, there is considerable evidence that in many cases defendants charged with the more serious offenses are the best risks.[31] Some studies have shown that particular charges have specific relationships to failure-to-appear rates (e.g., alleged property offenders and those charged with prostitution may have higher FTA rates; persons charged with assault may be more likely to appear).[32] But the overall conclusion of those who have systematically reviewed the literature in this area is that severity of charge is not a good predictor of nonappearance in court.[33]

The data on the relationship between original charge and subsequent pretrial rearrest are less clear. There are a few studies which suggest that those charged with more serious crimes are no more likely to be rearrested than are those charged with less serious offenses.[34] On the other hand, several studies have indicated that there is a greater likelihood of rearrest associated with particular original charges such as robbery, larceny, and burglary—and that those charged with homicide are relatively unlikely to be rearrested if released.[35] Several authors have also pointed out that rearrests for violent or other serious charges are relatively low (even among those defendants originally charged with serious offenses).[36] On balance, there is little basis for concluding that the original charge can accurately predict a defendant's probability of committing any subsequent offense while on release, much less a serious one.[37]

Conclusion No. 8

Many nonappearances are due to system problems or to factors other than willful nonappearance by defendants.

As noted earlier, willful failures to appear in court, where the defendant absconds or appears only after being apprehended, are rare. They typically amount to less than 4 percent of all defendants released.[38] One author has estimated that nearly half of all nonappearances are involuntary and caused by the defendant's either forgetting or not being adequately notified of the scheduled appearance.[39] This is supported by data from New York City, Louisville, and Washington, DC. These data indicate that system-related factors, uncontrollable reasons, forgetfulness, and appearances at the wrong place or time led to many of the nonappearances.[40]

Conclusion No. 9

The use of notification procedures, supervision, and/or conditional release can be used to increase the number of releases while reducing court nonappearances and (apparently) pretrial rearrests.

Many pretrial release agencies routinely notify defendants of future court appearances. The little formal research that has been done on the impact of such procedures indicates that they are effective in reducing FTA rates, especially for early court appearances.[41] No formal assessment of the impact of notification on rearrests has been reported.

Use of supervision (or conditional release) has been shown to be effective in reducing rates of nonappearance in court and seems to also have an impact in reducing rearrest rates.[42] This appears to hold true even where "high risk" defendants are being released under special supervision programs as in Des Moines and Philadelphia.[43] Such programs have been suggested as ways of releasing more defendants who might otherwise be detained (under a preventive detention statute or because money bond cannot be raised) while maintaining acceptably low rearrest and nonappearance rates.[44] A detailed national study of supervised release programs is about to be funded by the National Institute of Justice.

Conclusion No. 10

Preventive detention based on any prediction system developed to date will result in the detention of large numbers of defendants who would not be rearrested if released.[45]

The criminal justice system's ability to predict danger (or subsequent rearrests) is—like our ability to predict suicide or other violent acts in a mental health context—limited at best. To the extent that we attempt to predict what an individual defendant is likely to do, overprediction will occur. In other words, to detain a true "dangerous" defendant, a number of non-dangerous defendants would also be unnecessarily detained. The resulting errors in prediction are known as "false positives".[46]

The District of Columbia was the first jurisdiction to implement a preventive detention statute. The National Bureau of Standards studied defendants who were released but could have been considered eligible for preventive detention under that statute. The study found that only 5 percent of those defendants were subsequently rearrested for a similar alleged serious crime while on release. Thus, in order to have prevented each of those arrests, 19 defendants would have been inappropriately detained.[47]

In another study using a sample of defendants who would have met the basic eligibility criteria for preventive detention, a group of researchers developed two separate prediction equations to determine who should have been detained. In order to prevent all subsequent pretrial rearrests, the best equation would have incorrectly detained the equivalent of 5.5 defendants for every one correctly detained (i.e., for each one who was subsequently rearrested). There was no formula derived which would have resulted in more correct than incorrect detentions.[48]

Judicial predictions are equally fallible. As noted earlier, two judges using the same legal standards had significantly different release rates (80 and 49 percent), yet comparable subsequent rearrest rates. Thus it can be concluded that a significant number of defendants were inappropriately detained.[49]

It has been suggested that one alternative to the difficulties inherent in such inaccurate predictions is to make additional use of conditional release, as suggested above.[50] Also, preliminary findings from a national evaluation nearing completion indicate that courts frequently take no serious action if a defendant is rearrested pretrial or fails to appear in court. Suggestions have been made that pretrial criminality might be reduced through harsher sanctions for violating release conditions and/or consecutive sentences for those found guilty of any crimes committed while on release.[51] Each of these alternative approaches has problems and is by no means a panacea, but they should perhaps be considered as options which may be preferable to the widespread use of preventive detention.

Conclusion No. 11

Objective criteria should be used in making release decisions. The criteria to be applied will vary among jurisdictions and therefore should be developed and periodically validated at the local level.

The Vera point scale was an important pioneering development in the bail reform movement, with its emphasis on verified information about a defendant's community ties and other factors thought to be important in predicting subsequent court appearance. However, the same scale has often been used in various jurisdictions, with no attempts to determine its appropriateness in those different settings.

Summaries of national research suggest that there is little ability to accurately and reliably predict who will fail to appear in court and who will be rearrested while on release—and that what ability does exist varies considerably over time and from jurisdiction to jurisdiction.[52] Because the factors that do predict—and those that shape actual judicial release decisions—do vary so widely, it is important that each community and/or release program maintain, on a systematic basis, the ability to collect and analyze information on how well its recommendation procedures predict and to change those procedures as the need arises. Information available from about 120 release programs around the country suggests that this capability does not now exist within most jurisdictions.[53]

Those who make release decisions frequently do not ever learn the outcomes of their decisions. If bail is set, they may never know if the defendant made bond or not. If the person is released, the judicial officer, release program practitioner, or police officer who set the release conditions often never learns whether the defendant subsequently makes all of his/her court appearances and/or is rearrested while awaiting trial.

In the absence of this information about individual cases, and without adequate systemwide data, it is not surprising that release decisions are often based, at least in part, on factors that are unrelated (or even negatively related) to the ability to predict who will fail to appear for court appearances and who will be rearrested if released.[54] In other words, because release decision makers often lack sufficient knowledge of what has happened to previous defendants, subsequent inappropriate decisions may be made which lead to unnecessary detention of defendants who would otherwise appear for court and avoid rearrests. It is unrealistic and unfair to expect more appropriate release decisions to be made without more complete and accurate information. With more direct feedback of such information to judges, prosecutors, defense attorneys, and release program officials, such conditions can begin to be corrected in the future.

The footnotes that follow include complete references to the studies on which this summary was based. Readers interested in more information can contact the Pretrial Services Resource Center, 918 F Street, NW., Washington, D.C. 20004; telephone (202) 638-3080.

FOOTNOTES

1. See, for example, Wayne Thomas, *Bail Reform in America,* Berkeley, CA: University of California Press, 1976, pp. 87-105; Paul Wice, *Freedom for Sale,* Lexington, MA: Lexington Books, 1974, pp. 65-73; Jeffrey Roth and Paul Wice, *Pretrial Release and Misconduct in the District of Columbia,* Washington, D.C.: Institute for Law and Social Research, 1978 unpublished draft, pp. II-54, 55; Mary Toborg, Martin Sorin, and Nathan Silver, "The Outcomes of Pretrial Release: Preliminary Findings of the Phase II National Evaluation". *Pretrial Services Annual Journal* (Vol. II), Washington, D.C.: Pretrial Services Resource Center, 1979, pp. 150-151; S. Andrew Schaffer, *Bail and Parole Jumping in Manhattan in 1967.* New York, NY: Vera Institute of Justice, 1970, p. 3; Stevens Clarke, Jean Freeman, and Gary Koch, "The Effectiveness of Bail Systems: An Analysis of Failure to Appear in Court and Rearrest While on Bail", Chapel Hill, NC: Institute of Government, University of North Carolina 1976, Table 1. More generally, see also Michael Kirby, *Findings 1,* "Recent Research Findings in Pretrial Release, Washington, D.C.: Pretrial Services Resource Center, 1977 (hereinafter cited as *Findings 1*; Kirby, *FTA,* "Failure to Appear: What Does it Mean? How Can it be Measured?", Washington, D.C.: Pretrial Services Resource Center, 1979 (hereinafter citied as *FTA*); Donald Pryor, *Pretrial Issues,* "Current Research: A Review", Washington, D.C.: Pretrial Services Resource Center, 1979 (hereinafter cited as *Issues*).

2. Wice, Ibid; Thomas, Ibid; Administrative Office of the United States Courts, *Fourth Report on the Implementation of Title II of the Speedy Trial Act of 1974,* Washington, D.C.: June 1979, p. 54, Table C-1 (hereinafter cited as AOC Report); *Directory of Pretrial Services* (1979/1980 Edition), Washington, D.C.: Pretrial Services Resource Center (hereinafter cited as *Directory*).

3. Wice, Supra 1, p. 65; Thomas, Supra 1, pp. 102-104; Roth and Wice, Supra 1, pp. II-56-58; *Directory,* Supra 2.

4. John Goldkamp, *Two Classes of Accused: A Study of Bail and Detention in American Justice,* Cambridge, MA: Ballinger, 1979, pp. 95-96.

5. Mary Toborg and Brian Forst, *Crime During the Pretrial Period: A Special Subset of the Career Criminal Problem,* Washington, D.C.: prepared for Career Criminal Workship, sponsored by the National Institute of Law Enforcement and Criminal Justice Law Enforcement Assistance Administration, September 1979, pp. 3-4; Roth and Wice, Supra 1, pp. II-48, 50, 51 (felonies only); *Issues,* Supra 1, pp. 5, 12; J. W. Locke, R. Penn. J. Rick, E. Bunten, and G. Hare, *Compilation and Use of Criminal Court Data in Relation to Pretrial Release of Defendents: Pilot Study,* Washington, D.C.: National Bureau of Standards, U.S. Department of Commerce, 1970, p. 2; Arthur Angel, Eric Green, Henry Kaufman and Eric VanLoon, "Preventive Detention: An Empirical Analysis". *Harvard Civil Rights-Civil Liberties Law Review* (Vol. 6), 1971, pp. 308-309; Clarke et al., Supra 1, Table 1.

6. Roth and Wice, Supra 1, pp. II-49-50, 52 (misdemeanors only); Wice, Supra 1, p. 75; AOC Report, Supra 2, p. 54; Gerald Wheeler and Carol Wheeler, "Two Faces of Bail Reform: An Analysis of the Impact of Pretrial Status on Disposition, Pretrial Flight and Crime in Houston", Houston, TX: unpublished, 1980, pp. 18-19; William Landes, "Legality and Reality: Some Evidence on Criminal Proceedings", Journal of Legal Studies, (Vol. 3), 1974, p. 309; Malcolm Feeley and John McNaughton, The Pretrial Process in the Sixth Circuit: A Quantitative and Legal Analysis, unpublished, 1974, p. 40.

7. Locke et al., Supra 5, p. 2: Michael Gottfredson, "An Empirical Analysis of Pretrial Release Decisions", Journal of Criminal Justice (Vol. 2), 1974, p. 292; Goldkamp, Supra 4, p. 96; Report of the President's Commission on Crime in the District of Columbia, Washington, D.C.; U.S. Government Printing Office, 1966, p. 515.

8. Clarke, et al. Supra 1, Table 4; Roth and Wice, Supra 1, pp. II-48-58; Michael Kirby, An Evaluation of Pretrial Release and Bail Bond in Memphis and Shelby County, Memphis, TN: The Policy Research Institute, Southwestern College, 1974, p. 4 (hereinafter cited as Bail Bond in Memphis). All show clear differences in favor of nonfinancial release on both court appearance and rearrest variables. Also see, Findings 1, Supra 1, p. 8, note 43, p. 12; FTA, Supra 1, pp. 3, 7.

9. Wice, Supra 1, p. 75; Thomas, Supra 1, pp. 87-105; Toborg, et al., Supra 1, p. 151.

10. Thomas, Supra 1, p. 101; Goldkamp, Supra 4, p. 101.

11. Thomas, Supra 1, pp. 101–102; James Thompson, "Pretrial Services Agency Operations Report, April 1–April 28, 1974", Brooklyn, NY: mimeographed, Pretrial Services Agency, May 1974.
12. Goldkamp, Supra 4, p. 102; Issues, Supra 1, p. 6; Schaffer, Supra 1, Table 9-a.
13. Bail Bond in Memphis, Supra 8, p. 4; Roth and Wice, Supra 1, pp. II-48–58; Clarke, et al., Supra 1, Table 4.
14. John Conklin, "The Percentage Bail System: An Alternative to the Professional Bondsman", Journal of Criminal Justice (Vol. I), 1973, pp. 299–317; Thomas, Supra 1, pp. 192–196; D. Alan Henry, Ten Percent, "Ten Percent Deposit Bail", Washington, D.C.; Pretrial Services Resource Center, 1979, pp. 7–11.
15. Thomas, Supra 1, pp. 37–46, 65–79, 87–105.
16. Dewaine Gedney, "The Philadelphia Detentioner Population", Philadelphia, PA: Pretrial Services Division, Court of Common Pleas, 1977; David Runkel, "More Suspects are Staying Home Awaiting Trial", Philadelphia, PA: The Sunday Bulletin, December 4, 1977, p. 1; Henry, Supra 14, p. 9.
17. Pretrial Services Program, Denver, Colorado: Cost Benefits and Effectiveness, Denver, CO: unpublished, 1976; Cost-Benefit Analysis of the Monroe County Pretrial Release Program, Rochester, NY: Stochastic Systems Research Corporation, 1972; Elisabeth Jonsson, Benefits and Costs of Own Recognizance Release: An Empirical Study of the San Francisco OR Project, San Francisco, CA: School of Public Policy, June 1971.
18. See discussion of Inslaw study by Roth and Wice in Issues, Supra 1, pp. 6–10.
19. Thomas, Supra 1, pp. 239–240; Report of the Judicial Council Committee to Study the Operation of the Bail Reform Act in the District of Columbia, Washington, D.C.: Judicial Council of the District of Columbia Circuit, printed in Hearings on Preventive Detention before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91st Cong., 2nd Session, 1970, p. 149 (hereinafter cited as 1970 Hearings).
20. See note 17, supra. See also Chapter VI of "Pretrial Intervention Mechanisms: A Preliminary Evaluation of the Pretrial Release and Diversion from Prosecution Program in New Orleans Parish", New Orleans, LA: unpublished, 1976; Susan Weisberg, Cost Analysis of Correctional Standards: Pretrial Programs, Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, May 1978, p. 54; California State Board of Corrections, Report of Inspection of Local Detention Facilities to the California Legislature, March 1980, p. 190.
21. See, for example, Roth and Wice, Supra 1, pp. II-44–47, IV-18–21; Issues, Supra 1, p. 6, note 7.
22. Caleb Foote, "Compelling Appearance in Court: Administration of Bail in Philadelphia". University of Pennsylvania Law Review (Vol. 102), 1954, pp. 1052–3; George Alexander, Michael Glass, P. Kind, J. Palermo, J. Robers, and A. Schurz, "A Study of the Administration of Bail in New York City", University of Pennsylvania Law Review (Vol. 106), 1958, pp. 705, 726–7; Charles Ares, Anne Rankin and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole", New York University Law Review (Vol. 38), 1963, pp. 77–85; Anne Rankin, "The Effect of Pretrial Detention", New York University Law Review (Vol. 39), 1964, pp. 641–55; Eric Single, "The Unconstitutional Administration of Bail: Bellamy v. The Judges of New York City", Criminal Law Bulletin (Vol. 8), 1972; Landes, Supra 6. Some of these studies controlled for such variables as severity of charges, previous record, and other defendant characteristics; others did not. Regardless, the findings were consistent, as stated in the text.
23. Landes, Ibid.
24. Goldkamp, Supra 4, pp. 185–211.
25. Wheeler and Wheeler, Supra 6, pp. 9–15. See also, Marvin Zalman, Charles Ostrom, Phillip Guillaims, Garret Peaslee, Sentencing in Michigan: Report of the Michigan Felony Sentencing Project, Lansing, MI: Michigan Office of Criminal Justice, July 1979, pp. 267–268, which suggests similar findings, although that study does not focus primarily on the pretrial custody issue.
26. See generally, Clarke, et al., Supra 1.
27. Angel, et al., Supra 5, pp. 324, 360; Locke, et al., Supra 5, pp. 162–165; Bail Bond in Memphis, Supra 8, pp. VI–6, 17; N. H. Cogan, "Pennsylvania Bail Provisions: The Legality of Preventive Detention", Temple Law Quarterly (Vol. 44), Fall 1970, p. 51; Thomas, Supra 1, p. 105; Gottfredson, Supra 7, p. 293. See more generally, FTA, Supra 1.
28. Schaffer, Supra 1; Marian Gerwitz, "Brooklyn PTSA Notification Experiment", New York, NY: unpublished, Pretrial Services Agency, 1976, p. 4; Toborg and Forst, Supra 5, p. 13.

29. Thomas, Supra 1; Jan Gayton, "The Utility of Research in Predicting Flight and Danger", prepared for the Special National Workshop on Pretrial Release, San Diego, CA, April 1978, p. 15; Goldkamp, Supra 4, p. 97; Clarke, et al., Supra 1; Issues, Supra 1, p. 15.
30. Clarke, et al, Supra 1; Freeley and McNaughton, Supra 6; Roth and Wice, Supra 1.
31. Schaffer, Supra 1; Table 7-a; Chris Eskridge, An Empirical Study of Failure to Appear Rates Among Accused Offenders: Construction and Validation of a Prediction Scale, Columbus, OH: Program for the Study of Crime and Delinquency, Ohio State University, 1978; John Galvin, Instead of Jail: Pre- and Post-trial Alternatives to Jail Incarceration, Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, 1977, Vol. 2, pp. 76–78.
32. Bail Bond in Memphis, Supra 8; Chris Eskridge, "The Point Scale: Its Use and Abuse in Pre-Trial Release", prepared for National Symposium on Pretrial Services, Louisville, KY, April 1979; Roth and Wice, Supra 1, p. IV–15; Robert Wilson, "A Practical Procedure for Developing and Updating Release on Recognizance Criteria", Wilmington, DE: College of Urban Affairs, University of Delaware, 1975; Schaffer, Supra 1, Tables 7a, 8a.
33. FTA, Supra 1, p. 7; Gayton, Supra 29, p. 8; Goldkamp, Supra 4, pp. 92, 102.
34. Clarke, et al., Supra 1; Feeley and McNaughton, Supra 6.
35. Daniel Welsh, "Is Pretrial Performance Affected by Supervision?", Washington, D.C.: D.C. Bail Agency (D.C. Pretrial Services Agency), May 1978, pp. 15, 19; Locke, supra 5. p. 135; Roth and Wice, Supra 1, p. IV–15; Angel, et al., Supra 5, pp. 382, 384; Bail Bond in Memphis, Supra 8, p. VI–14; Toborg and Forst, Supra 5, p. 7.
36. Angel, et al., Supra 5, pp. 382, 384; Locke, Supra 5, pp. 2, 135; Gottfredson, Supra 7, p. 292; Goldkamp, Supra 4, p. 96.
37. Yet, even though charge is not an accurate predictor of either court appearance or pretrial rearrest, many pretrial release programs automatically exclude defendants from consideration for release on own recognizance eligibility. See, Donald Pryor and D. Alan Henry, Pretrial Issues, "Pretrial Practices: A Preliminary Look at the Data, Washington, D.C.: Pretrial Services Resource Center, 1980, pp. 13–14.
38. See note 3, Supra. Definitions of nonappearances (FTAs) may vary considerably. For a more complete discussion of this issue, see FTA, Supra 1,
39. Wice, Supra 1, p. 65.
40. Stan Boyton, Warrant Study, New York, NY: Pretrial Services Agency (Criminal Justice Agency), 1977; FTA, Supra 1, pp. 6–7; Second Annual Report, July 1, 1977 to June 30, 1978, Frankfort, KY: Kentucky Pretrial Services Agency, p. 17; D.C. Pretrial Services Agency unpublished data, 1980.
41. Gerwitz, Supra 28; Wice, Supra 1, p. 71.
42. The following studies have shown supervision and/or conditional release programs to be effective in reducing both nonappearance rates and pretrial rearrest rates (or in maintaining rates which are as low as, if not lower than, those of defendants released through other means): Peter Venezia, Pretrial Release with Supportive Services for "High Risk" Defendants: The Three-Year Evaluation of the Polk County (Iowa) Department of Court Services Community Corrections Project, Davis, CA: National Council on Crime and Delinquency, 1973; Herbert Miller, William McDonald Henry Rossman, and Joseph Romero, Second Year Report: Evaluation of Conditional Release Program Philadelphia, Pennsylvania, Washington, D.C.: Georgetown University Law Center, Institute of Criminal Law and Procedure, 1975. In addition, Welsh, Supra 35, found supervision to be effective in increasing appearance rates, but to have no impact on reducing rearrest rates.
43. Venezia, Ibid; Miller, et al., Ibid.
44. Wice, Supra 1. p. 173; Issues, Supra 1, p. 21; FTA, Supra 1, p. 7.
45. Thomas, Supra 1, p. 173; Clarke, et al., Supra 1.
46. John Monahan, "Ethical Issues in the Prediction of Criminal Violence", presented at the Conference on Solutions to Ethical and Legal Dilemmas in Social Research, Washington, D.C.: February 1978.
47. Locke, et al., Supra 5, p. 2.
48. Angel, et al., Supra 5, pp. 314–316.
49. Thomas, Supra 1, p. 240; 1970 Hearings, Supra 19.
50. Angel, et al., Supra 5, p. 362; Toborg and Forst, Supra 5, pp. 12–13.
51. Toborg and Forst, Ibid.
52. Eskridge, Supra 32; Gayton, Supra 29; Findings 1, Supra 1; FTA, Supra 1; Issues, Supra 1; Goldkamp, Supra 4.
53. Pryor and Henry, Supra 37.
54. Roth and Wice, Supra 1; Toborg, et al., Supra 1; Issues, Supra 1.

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