PRETRIAL SERVICE AGENCIES

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2705

MAY 13, 1980

Serial No. 96–72

inted for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1981

CONTENTS

TUESDAY, MAY 13, 1980

STATEMENT

TESTIMONY

PREPARED STATEMENTS

APPENDIX

PRETRIAL SERVICE AGENCIES

TUESDAY, MAY, 13, 1980

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., room 2228, Dirksen Senate Office Building, Senator Joseph R. Biden (chairman of the subcommittee) presiding.

OPENING STATEMENT OF SENATOR BIDEN

Senator BIDEN. The hearing will come to order please. This morning we will examine the operations of 10 demonstration pretrial service agencies and legislation to provide pretrial services in all Federal district courts.

The 10 demonstration pretrial service agencies were established in title II of the Speedy Trial Act of 1974. Congress enacted the Speedy Trial Act in response to the alarming rate of crime committed by persons free on bail.

Senator Ervin concluded that the solution to crime on bail is not the wholesale pretrial detention of persons presumed innocent, which the Nixon administration had proposed. Instead, he offered a solution which goes directly to the heart of the problem.

The longer the period of time before trial, the greater the likelihood of a second crime. Senator Ervin's solution is embodied in the three elements of the Speedy Trial Act. First, a short period before trial; second, informed bail decisions; and third, bail supervision.

The 10 demonstration pretrial service agencies were charged with carrying out the second and third elements. The demonstration agencies were further charged with implementing the goals of the Bail Reform Act. That act established a presumption in favor of the release on personal recognizance or unsecured bond, or when necessary, the imposition of the least restrictive conditions for release necessary to insure appearance.

Unfortunately, the act gave judicial officers no assistance in effectively carrying out the mandate. Not surprisingly, the courts were unable to make informed decisions on release and naturally tended to err on the side of incarceration.

Too often, defendants committed subsequent crimes or became fugitives. The demonstration pretrial service agencies enable judges to make informed decisions and supervised the defendants when conditions of release are imposed. Information available to this committee, including reports by the General Accounting Office and the Adminis-

trative Office of the U.S. Courts, indicate that pretrial service agencies perform functions essential to the bail process.

Therefore, the answer to the threshold question, "Are pretrial services necessary?" is, in the opinion of the subcommittee, "Yes."

The primary goal of today's hearing is to hear the views of individuals closely associated with the pretrial services agencies on two important issues. First, should the pretrial services agencies be expanded beyond the 10 demonstration districts? If we conclude that pretrial services are essential to carry out the goal of the Bail Reform Act, is there any rational basis for limiting the services to certain defendants?

I question the proposal that the size of the criminal caseload should determine whether a district receives pretrial services. An individual should not have a less informed bail decision, simply because he or she is arrested in a particular district.

Second, there is some controversy over the best means of providing pretrial services—through existing probation officers, or through pretrial service officers independent of probation. Ordinarily we might conclude that legislation is not the appropriate vehicle for a seemingly administrative decision.

However, congressional mandate may be necessary in this instance because there are a number of important factors which proponents of both probation and independent agencies argue will have substantial effect on the success of the program. Differing operational philosophies, priorities, and cost are factors of particular concern.

The Speedy Trial Act legislation, which passed the Senate in 1974, established independent pretrial service agencies managed by boards of trustees. The view in the House that probation should perform the service resulted in the demonstration programs evenly split between the two forms of administration. Although independent administration of the agency still appears to be the preferable approach, the subcommittee welcomes any evidence that, in the past few years, the probation-run agencies have done a better job than those administered by boards of trustees.

We may even find that there is a hybrid of the two forms of administration, which incorporates the best features of both. Our witnesses today are all well qualified to address these concerns. We will hear from representatives from the Federal judiciary, U.S. attorneys, the pretrial service branch of the Administrative Office of the U.S. Courts and the heads of five pretrial service agencies, including the District of Columbia.

Our first witness is Judge Gerald Tjoflat of the Fifth Circuit Court of Appeals. Judge Tjoflat is here today to share with us the views of the U.S. Judicial Conference Committee on the Administration of the Probation System, on which he has served as chairman since 1978.

Judge, if it's all right with you, we will begin with you. Welcome. I understand you have a prepared statement. You are welcome to follow that prepared statement or summarize it, we'll put it all in the record. Proceed in anyway you feel most comfortable.

Mr. TJOFLAT. Mr. Chairman, I do have a prepared statement which I'll appreciate being filed in the record and rather than reading that statement in the record, I would rather make some brief remarks and then leave myself open to questions.

Senator BIDEN. Fine.

STATEMENT OF HON. GERALD B. TJOFLAT, U.S. FIFTH CIRCUIT COURT OF APPEALS, AND CHAIRMAN, COMMITTEE ON ADMINISTRATION OF THE PROBATION SYSTEM

Mr. TJOFLAT. Let me say that the statement you just made for the record embodies most of my views on the subject. The probation committee on the Committee of the Administration of the Probation System of the Judicial Conference of the United States has had oversight responsibility of the pretrial service agencies in the 10 pilot districts, since the Speedy Trial Act began to be implemented.

And we also had oversight responsibility of the report, the final report filed by the director of the administration office of the United States Courts, last July. It was due July 1, 1979, and filed shortly before that.

So we are very familiar with how these agencies have operated since the Speedy Trial Act, title II, has been implemented. Let me say that your observations regarding the failure of the courts to implement the Bail Reform Act of 1966 are accurate in my judgment and in the judgment of the committee.

The Bail Reform Act in requiring a judge to investigate alternative methods of releasing an accused prior to trial, in the event that personal recognizance, or an unsecured bond are insufficient to secure his presence at hearings and at trial.

The act requires a judge to undertake a lot of investigative work in terms of relying on evidence in setting conditions of bail and there was no method available after the act was adopted to permit judges to do that.

In consequence, many times persons who ought not be detained, were detained, because they could not meet a monetary bail. And many times people who should have been detained or had restrictions placed on their release were not and were released under a monetary bail.

Now since the implementation of the pretrial services agencies in the 10 districts, we have monitored the reactions of judges, magistrates, prosecutors, defense counsel, probation officers, everyone connected with the pretrial services agencies. The overwhelming view is that these agencies have afforded judicial officers a greater factual basis upon which to make an informed bail determination.

There has been a reduction, they think, in the incidence of pretrial crime and in the failure of offenders to appear for hearings and for trial. And the feeling is there has been a reduction in pretrial detention. That is the feeling echoed by all of those having some involvement in the 10 districts.

To the extent that that has been accomplished, there has been a substantial improvement of the administration of criminal justice in those districts. And even in those instances where a benefit is not demonstrable, the appearance of justice has been enhanced because all offenders have been treated alike as it were and have had a fairer hearing and a more informed hearing on the issue of bail.

You mentioned the question of whether or not pretrial services can be limited to some offenders and deprived from others. I see no way that can be done, realistically. I think the effort to determine who ought not to have the benefit of the services and who ought to have the

benefit of the services would command as much manpower as the system is now expending.

Senator BIDEN. Judge, if you don't mind I'd like to interrupt you at that point. I make a personal reference which is awfully dated, I keep thinking that I'm fairly new here, but I've been here now over 8 years. It's been a long time since I've practiced law.

But in the Delaware State court system we implemented a bail reform system at the State level, with pretrial release officers. We also implemented a bail reform system. The information about an arrested person, accused of a felony, was in the hands of the probation and parole people. We used to rely on them a little bit. There was a difference in attitude in gathering the information about whether or not they warranted being released on their own recognizance.

There's a different attitude between the way they went about it and a year later when we implemented an independent agency which did nothing but determine whether or not and under what conditions someone should be released on bail, giving our State court judges the information they needed to make those judgments.

With the independent agency that did nothing but deal with the bail questions, there seemed to be, for lack of a better word, a slightly different sensitivity compared to when it was done within the Office of Probation and Parole.

I can't really articulate it any better than what I've just done. What I'm searching for, is there any feel for a difference? Because, one of the issues here, obviously, is whether an independent agency is needed, or do we use the infrastructure that we already have and expand it—probation and parole—to encompass the bail question.

Mr. TJOFLAT. Let me offer these observations. Probation officers, all pretrial service officers, under the two types of systems we've been operating, are answerable essentially to the courts. Probation officers historically have served at the pleasure of the courts. As a consequence, it is only natural, I would think, for probation officers, especially when the views of the judges they serve are fairly strong, to advise the judge, perhaps subconsciously, those things the officer thinks the judge wants to hear.

There's nothing new about that in a probation officer-judge relationship. That's true perhaps, even a Senator-staff personnel might be inclined to tell the Senator what the Senator wants to hear, sometimes.

Senator BIDEN. That probably happens——

Mr. TJOFLAT. I don't make observation in anyway to reflect on the probation officers. Now when pretrial service officers are also advising the judge on bail matters, there's a stayed attention, inevitably present when the pretrial service officer, whether he's a probation officer or an independent officer working for another branch of the court as it were, to maintain some kind of dialog with the court.

If the officer is recommending bail conditions, which the court is not going to accept, the officer is going to be inclined, regardless of how he's employed to get within the ballpark. To establish some kind of credibility with the court. And hopefully over a period of time as conditions of release, not previously used, become utilized with success, the judges change their views about admitting people to bail.

One of the reasons the Bail Reform Act didn't get off the ground really is because we still had monetary bail being the rule in most

districts. They simply followed the State practice and judges and lawyers came to the Federal system out of the State practice. And that's what worked and probably wasn't even questioned.

Now an argument can be made that the pretrial services operation ought to be reporting directly to the judge and not to a probation office so that you don't have an officer serving two masters, pretrial services and probation.

I think, however, that by and large regardless of the alternative chosen, you're going to ultimately build the same kind of rapport between the officer and the court. I think maybe it's very difficult to decide which officer will give the judge the most forthright and straight forward recommendation on a release.

There's a middle ground really. No two districts in the United States are alike. Some are small, some are spread out, the case loads vary depending upon the Justice Department's prosecutorial policy and many times if the system is implemented, it may well be that a court ought to be in a position, the local court, the circuit council, and the Judicial Conference, in a position to use both worlds as they were. In order that the manpower can be put to the best use.

But I think that the observation has some fact that you brought out.

Senator BIDEN. I, as you, am not sure exactly where that leads us.

Mr. TJOFLAT. The director's report recommended that the function be kept separate. That is the best of the worlds. That is the committee's view and my own view.

Senator BIDEN. It's further your view and the committee's view, if I understood you correctly, that the continued funding, and expansion of the pretrial services operation means, that we continue to expand from 10 districts, I assume, ultimately to all the districts.

Mr. TJOFLAT. That's right. On a need basis. On a demonstrated need basis.

Senator BIDEN. How is that need demonstrated? What criterion do you——

Mr. TJOFLAT. Well you have to know something about the criminal caseload in a given district. Some kind of study would have to be made about the criminal caseload and the best way to conduct pretrial services interviews.

If you took a State like Wyoming or Montana for example where you have offenders just spread out all over the place and the court isn't sitting in more than one or two places, you have one type operation if you're in the southern district of New York you have another.

I think that in the same fashion that speedy trial plans generally are fashioned. That is they emanate in the local court with a committee, the circuit council then is involved to approve the plan and finally the judicial conference has oversight responsibility.

Senator BIDEN. My problem with that is if the basis for the pretrial services operating independently is that it works better that way, and I assume that is the case, that conclusion is arrived at as a consequence of the determination that it works better in terms of providing the judge with the necessary information.

Mr. TJOFLAT. Those areas where you have a sizeable criminal caseload, there's no reason why you couldn't have, ought not have the pretrial services officers reporting directly to the court, just like the probation officers do.

I was speaking mainly of a lot of districts where it is hard to determine.

Senator BIDEN. Why would they report, I mean why should there be a difference?

Mr. TJOFLAT. If you have ample funds and ample manpower, you could do it in every district.

Senator BIDEN. I see what you're saying. What you're saying is that in those district where the caseload isn't that great, the assumption is that the existing apparatus could handle the bail, along with probation and parole.

Mr. TJOFLAT. Many districts for example adopt the policy of having probation officers conduct the pre-sentence investigation or commence doing it as soon as arraignment has occurred. They don't wait for a guilty plea, they don't wait for trial. Th it's a very efficient way of doing it.

It's done with the offender's consent of course and so that when a guilty plea occurs or the trial occurs, the investigation is concluded. Well in a sense, the probation officer has done both functions. The information he's gathered can be used for bail purposes just as easily as for presentence investigation purposes.

That usually occurs in these smaller spread out district as distinguished from a large metropolitan district where all the judges are in one place and you have large probation offices and large pretrial services offices.

Senator BIDEN. So you don't see in those instances any real problem or confusion existing because the probation being performed essentially for judge and the pretrial services function preformed essentially for magistrate. You don't see any problem arising as a consequence of that in the districts where there is a diverse, spread out and limited caseload.

Mr. TJOFLAT. In the report there are lots of such cases. No problem there as compared with a large metropolitan district. I would think the legislation ought to be flexible enough to accommodate the idea of having more desirable and independent functions for pretrial services.

Senator BIDEN. In those areas, those major metropolitan areas, is there a need based on anything other than the caseload to have the chief pretrial services officer independent of the chief probation officer?

Mr. TJOFLAT. Well I think——

Senator BIDEN. Is there any substantive reason for that?

Mr. TJOFLAT. No more than you would have anywhere. Ideally you have separate functions. In the large metropolitan district, because of the size of the caseload, because of the size of the probation offices, the number of officers, just the table of organization and the size of the court, you're going to have two separate functions in my view.

Senator BIDEN. And you don't see any fundamental difference between the attitudes and priorities of probation officers which might make an independent pretrial officer better suited to oversee the agency?

Mr. TJOFLAT. No, I do think that there ought to be separate functions in the large metropolitan courts. I just think in the nature of things, the goals of the pretrial services agency, the goals of the implementation of the Bail Reform Act can be administered better if the officers performing the function report directly to the court on that function they are performing.

Just as the probation officers do in their function.

Senator BIDEN. And the reason though that you depart in the smaller districts then relates mainly to money?

Mr. TJOFLAT. Well it relates to money and just the way in which the business in those courts transact, essentially.

Senator BIDEN. Because it's more informal or what?

Mr. TJOFLAT. Well just because you have a lesser caseload and spread out offenders.

Senator BIDEN. Well how does that impact on——

Mr. TJOFLAT. I agree with you if you had all the money, if money were not a problem and personnel were not a problem, you could have a pretrial service agency officer and a probation officer in each one of these localities where the court might go the whole course.

Senator BIDEN. Would you see any problem in the pretrial services officer in those districts being part time?

Mr. TJOFLAT. The question there would be whether or not you could get somebody as competent as a probation officer having the qualifications that the judicial conference and the administrative office set out. Before a court can hire a probation officer, you may not be able to find a probation officer, especially in those areas, having the background necessary to do the job. Then you would diminish the quality of the information and the quality of justice.

Senator BIDEN. You know that the caseload depends as much upon the Justice Department's policy in that district as anything else, doesn't it?

Mr. TJOFLAT. No doubt about that.

Senator BIDEN. And that in no way impacts upon the competence question.

Mr. TJOFLAT. If you stop having, prosecuting bank robbers and maybe some heavy narcotics and some forms of organized crime, which has occurred in some of the districts, especially in connection with bank robberies, and you substitute therefore, white collar offenders who have entirely different problems, coming from another strata of society and less caseload, you just have different——

Senator BIDEN. OK, Judge. Is there anything you would like to add?

Mr. TJOFLAT. No, as I stated, I was interested in answering any questions you might have.

Senator BIDEN. Well, as I said, the two things we are most concerned with are first whether or not the concept should be expanded beyond the 10 districts; you've answered that one pretty clearly.

Mr. TJOFLAT. I think that's indispensible or we ought to write the Bail Reform Act out of the books.

Senator BIDEN. And second question, which you've also answered is whether or not it should be part of an existing apparatus or independent. Whether or not it should be performed by those performing the probation function or by an independent bail operation and you've answered that one fairly well.

Mr. TJOFLAT. May I add one thing?

Senator BIDEN. Surely, please do.

Mr. TJOFLAT. I wouldn't have the separation if there were separations beyond that which is necessary at the local court. In my view there wouldn't be any necessity to establish another branch of the Administrative Office of the U.S. Courts or to carry the separation into the table organization beyond the local court, the function itself.

Senator BIDEN. I would tend to agree with you on that. Judge, thank you very much. I appreciate your time. I know you're a very busy man. Thank you for coming.

Mr. TJOFLAT. Thank you.

PREPARED STATEMENT OF JUDGE GERALD B. TJOFLAT

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 1973 I have been a member of the U.S. Judicial Conference, Committee on the Administration of the Probation System. 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 this Committee, I appear before you today to discuss the pretrial services agencies created by Title II of the Speedy Trial Act of 1974.

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 which provides that the Director of the Administrative Office shall establish on a demonstration basis a pretrial services agency in ten 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; and 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 to (1) 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) review and modify the reports and recommendations; (3) supervise and provide supportive services to persons released to their custody; and (4) 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.[1]

The daily cost of detention per defendant referred to above now exceeds $20 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."[2]

The above statements indicate that Congress recognized 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 pretrail 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."[3] 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.

[1] Senate Report No. 73–1021, 93d Congress, 2d session (1074), p. 1.
[2] House Report No. 93–1508, 93d Congress, 2d session (1974), p. 27.
[3] American Bar Association Standards Relating to the Administration of Criminal Justice, 2d edition, "Pretrial Release" (1979).

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.[4]

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,[5] 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.[6]

The General Accounting Office Report goes on to say that "because pretrial services are now providing this information, we support the continuation and expansion to other districts of this particular pretrial services agency function."[7]

The Judicial Conference of the United States approved the following resolution in March 1980:

The Commitee 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.

CONCLUSIONS AND RECOMMENDATIONS

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 is satisfied that the pretrial services agencies have contributed substantially to the improvement of the Federal pretrial release system and, therefore to the administration of criminal justice.

[4] *Ibid.*
[5] *The Federal Bail Process Fosters Inequitities*, A Report to the Congress by the Comptroller General of the U.S. GGD78–105, Oct. 17, 1978, p. 24.
[6] *Ibid.*, p. 5.
[7] *Ibid.*, p. 34.

The Committee accordingly recommends the continued funding and subsequent expansion of the pretrial services agencies.

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

Senator BIDEN. Our next panel consists of two district court judges, both of whom are intimately familiar with the day-to-day operations of title II of the Speedy Trial Act of 1974. The first is Edward S. Northrop, chief judge for the District Court of Maryland. Judge Northrop has been on the Federal bench for approximately 19 years and about one-half of that time he's served as the chief judge of his district and in addition to his serving for 6 years on the U.S. Judicial Conference on the Administration of Probation Services, Judge Northrop in his capacity as chief judge has been monitoring the performance of his district's pretrial service agency.

Appearing with Judge Northrop is his colleague on the Federal District Court of Maryland, Joseph H. Young. Judge Young has served as chairman of his district's pretrial services board of trustees since its creation. I would also point out that our distinguished colleague and ranking minority member, Senator Mathias of Maryland, had hoped to join us here today, but unfortunately was unable to do so.

Gentlemen, thank you for coming. You've obviously done well Judge Northrop for 19 years or longer. Gentlemen, why don't you proceed in anyway that you would feel most comfortable and in the interest of decorum, chief judge will begin first.

Mr. NORTHROP. Thank you, Senator. I'll stand on my statement that's already been filed, but I will make some observations if you don't mind independent of that.

Senator BIDEN. Surely.

PANEL OF JUDGES:

STATEMENTS OF EDWARD S. NORTHROP, CHIEF U.S. DISTRICT JUDGE, AND JOSEPH H. YOUNG, U.S. DISTRICT JUDGE, DISTRICT OF MARYLAND

Mr. NORTHROP. And one I think you asked Judge Tjoflat in connection with the function itself and I might say this, I feel they are two distinct functions and the objectives of the pretrial agencies are quite different from that of the probation in many respects.

When Judge Tjoflat referred to the condition obtaining in certain other areas rather than the metropolitan, of course, which I'll get back to in a moment, and the presentence reports, of course, had been before, at the time that the man is arraigned really and so when the trial is had, the presentence report is there and after the person is convicted, quite obviously the judge sentences because of the fact that he may not be back there for a couple of months.

And of course that is not so in the large metropolitan area. We don't order our presentence reports until there's been a jury verdict of guilty and consequently, the operation of the pretrial officer is quite different than that of the probation officer. Although they could be in the same areas they ought to direct their objective only to what they recom-

mend at the time of the arraignment when first brought in or preliminary hearing.

It takes a lot of investigative ability. The pretrial procedure has to be done for almost an hour, as Morris Street, chief of the pretrial agency, will tell you.

Senator BIDEN. They're quick judgments.

Mr. NORTHROP. They are, they're quick and all that has to be done at that time and then it has to be kept up to date and certain things are found during the period of time between that period when a defendant could have another hearing and then the bail may be lowered or some reason he had for letting him loose.

Now let me say categorically my experience has been that I don't know how we got along without this.

Senator BIDEN. I beg your pardon?

Mr. NORTHROP. I don't know how we got along without this pretrial agency in our district. We detained a lot of people who shouldn't have been detained and probably let some people go that should not have been let go at that time.

I find that my feeling is that we are letting out on bail maybe 15 to 20 percent more than we did before, maybe more than that I would think.

Senator BIDEN. We're letting a greater percentage out?

Mr. NORTHROP. Yes and they're subject to observation by the pretrial agency with the result that we're found it worked excellently and would feel at great loss if we would have to go back to the way we were before. I'll be glad to answer any questions that you might have.

Senator BIDEN. Judge, I do have questions, but maybe it would be better that Judge Young make his comments and then I ask some questions of both of you, if you don't mind.

Mr. YOUNG. Mr. Chairman, I guess it would be appropriate for me to clean up after my chief has testified so I guess I'll do that.

A few comments if I may first. I too have filed with the committee a statement which I will rest upon.

Senator BIDEN. Both your statements will be entered into the record as if read.

Mr. YOUNG. The Senator has made inquiry concerning the two problems here, one, expansion and the second, of course, the form. The need for expansion, just a few brief comments on that if I may.

Judge Northrop has indicated that he doesn't know how we got along without it before and I completely concur in that. I went over a number of my files to come up with an estimate and I would estimate that in the 4 years that we have had the pretrial services agencies in its present form, that I have released approximately 25 individuals who would otherwise have been warehoused, if you will, pending trial.

Now in Baltimore we have no Federal facility.

Senator BIDEN. Excuse me Judge, give me an idea how many people you had before you.

Mr. YOUNG. I would estimate 300. So a small percentage, perhaps, 10 percent or so, but these are people who otherwise would have been in jail pending trial. They would have been in Baltimore city jail, not the best of places to remain while one is awaiting trial, but we have no separate Federal facility.

The interesting thing to me is that of those, and I say roughly 25, the things that they needed pending release or pending their incarceration or pending trial, were able to be done. Some needed drug counseling, others need alcohol counseling, some needed vocational guidance, therapy of some sort.

This could be and has been provided by our pretrial release group or services agency. So that in some of those cases, and again I am estimating that approximately half of those who when the time came either pled guilty or went to trial, instead of sending them to jail, to prison, to get the things that we would need, drug rehabilitation, alcohol or vocational training, many of these things had been well underway as a result of the services that we had provided at the pretrial stage.

Senator BIDEN. Those services began between the time of arrest, the arraignment and the trial date or the plea?

Mr. YOUNG. And the rearraignment or the trial. They were a condition of the pretrial release. It was that they would enter into a drug program, enter into alcoholics anonymous, get some job supervision.

Senator BIDEN. Without, excuse me, without going into precise statistics, just give me a feel if you will for what percentage of those who are released on bail have conditions, other than the monetary condition attached to their release, in your court, roughly.

Mr. YOUNG. I would say probably half get in a drug program or get training of some sort or even mental therapy, counseling from a psychiatrist and so on. So this is not just a stagnant period of time, counting days until they come to trial, there is something being done to rehabilitate them. And as a result of that, I have estimated in my presentation, there is perhaps a $28 per day for some 60 days, a substantial savings.

But more important than that, it seems to me, is that these people are not being warehoused, they're being worked with and worked upon and that to me is the unknown quantity that I think we are inclined to forget about as we look at the big picture.

We also have the ongoing aspect of it. The individual first comes before the judicial officer and is incarcerated pending trial because he doesn't have the funds or because the indication initially is that he should have a substantial bail set. The pretrial officer keeps after that and he may get additional information that would justify, after the initial determination, that there should be some change in those conditions.

That is brought to the judicial officer and very often there is a change made so that there is an ongoing aspect. It isn't simply having a hearing and then waiting until the next procedure comes along.

There was also a comment from the Senator concerning the Delaware experience. I do think that there is a need for the separate and equal facility. In many areas, and I know this is one of the sticking points in all of this discussion, but the probation office has a magnificent job to do, having heavy caseloads in most cases and a primary responsibility to do probation work. The probation officer is not really a pretrial individual. He is accustomed to dealing with people who have been found guilty or plead guilty. Theoretically the pretrial

68-879 O - 81 - 2

stage, the individual under our laws is, of course you know, innocent. There's a different attitude.

Further the individual in the pretrial stage is willing to talk, usually freely, with the pretrial officer and as I say the pretrial work is a primary function of that individual, the officer. It isn't simply another tag-on job that's been assigned to him.

For this reason I do think there are different attitudes that would prevail with those that are working for the pretrial as well as the probation officer. I recognize, of course, that in some rural districts, having a full complement of the pretrial program would be unnecessary. As a matter of fact, if the Congress would adopt the requirement that a pretrial agency would be set up in each district, I think I would be inclined to apply for that job in Montana or Wyoming perhaps, it would be pretty good job to have. There just wouldn't be enough to do to keep somebody busy all the time.

Senator BIDEN. That would be the case if you're a judge out there too.

Mr. YOUNG. Well you're probably right.

So I think these are the points I would make, Senator. Again, I can't over emphasize, I don't like to overdo it, but it seems to be that those of us who have become accustomed to having this facility wonder how we've ever done it without it.

Senator BIDEN. Well, gentlemen, quite frankly there isn't a set of witnesses we could have who could be more ensightful as to whether or not this process works. I mean, and I mean that sincerely, we speculate about its success or failure, its usefulness or how cumbersome it might be and obviously you've had to work with it day to day and your testimony, as to the need and validity of such a service, is I think very compelling testimony.

But one of the things that I'm still a little bit concerned about is the question of the manner, the type, the form of the expansion. I mean I don't think there's any question that we have to expand the service. I will be very surprised if there are witnesses, folks out there suggesting that we should not.

My concern is, I'm not being facetious when I say this, not merely the convenience of the court, but the rights of defendants and accused must be the primary focus, so that we don't warehouse people who don't need to be warehoused.

I think you put it very succinctly and correctly, Judge Young. If that is the focus, and, if we acknowledge, and Judge Young you seem to share a view that I hold, that a minimal or slight attitudinal difference exists between a probation officer and a bail officer. I don't say that to be critical of the probation officers, I sincerely don't.

I think you put it very well. They're used to dealing with someone who's already either pled guilty and/or has been found guilty. The question is, what they're going to recommend in terms of time, essentially, or no time.

And that is a more time consuming and more urgent function than whether or not they make a mistake by $5,000 or $10,000 being recommended at the front end. Because I would assume that you can figure that can always be rectified. Whereas the finality of the recommendation of whether or not someone goes to jail for 2, 5, or 10 years or goes on probation is of a great magnitude. If I had those two decisions to

make, I'd find that one a more weighty decision to recommend or to make. And I'm making a decision that I'm recommending the court accept.

That difference in attitudinal approach is likely to exist as a consequence of the function, not the mentality, attitude or inclination of the officer, but because the press of the job just moves you in that direction.

If that is the case, then it seems to me that we should try our best not to, if you will, penalize the smaller districts, the more rural districts. The defendant arrested in Wyoming and I'm thankful that you all are not using Delaware as an example, it shows you used judicial discretion in picking Wyoming and not Delaware, then it seems to me that unless there is a significant difference in the cost, the expansion should be a total expansion.

So that the person picked up in Wyoming is as inclined to get the same treatment that the person in Baltimore City gets, if arrested. But obviously I don't mean to beat that to death. I'm not looking for you to expand on your comments any more than that, but I just want you to understand my concerns.

Expansion, but what type of expansion? And it seems that you are saying, correct me if I'm wrong, you're both saying expansion is necessary, continuation is essential, expansion is necessary and separation is advisable, if it can be done.

Mr. NORTHROP. I think that in the metropolitan area I would. I don't think that I have any great preference for example for the independent against the probation department, just so the functions are separate and they operate in the, along the lines you have indicated, Senator and the fact that their attitudes are quite different, I believe, in its ultimate objective.

But the board, for example, our board hasn't been particularly active. Judge Young can say more about that than me, but my observation of the board is the fact that they have some interest in being critical every once in a while and seeing that everything functions properly.

For example, that is particularly so of our public defender, he's been very helpful. I think that my observation is this that certainly in the large metropolitan areas they should be distinct.

And Wyoming or those places where they make presentence reports at the time of arraignment, I think probably the probation officer could make that distinction that's necessary under those circumstances.

Mr. YOUNG. I think, if I could just add one point here. I think that Judge Northrop's comments are correct and again it isn't the idea that the probation officer is going to give a different quality of service, I think the probation officer in Wyoming or New York City can do an equally good job, the attitudinal part of it, I think that can be worked out.

My concern is primarily workload. That the probation officer is that first and last and he's going to devote his time there and if the things comes to push and shove, he's going to put aside the pretrial work and I think it would suffer.

So I think the Senator's comments are well taken that the defendant in Wyoming is entitled to the same high caliber treatment as the one

in New York. I think it's just a matter of workload rather than attitude really.

Senator BIDEN. Well, now there are those that will argue that what we should do is that we should just increase the personnel, the funds available to the probation office so that they could hire folks to do this job. What would be your response to that?

Mr. NORTHROP. My response would that they are certainly capable of doing that. Most of the pretrial people are probation officers to begin with, but I think they've got to make the delineation all along the line, if they need them, they should probably under probation in a separate division, which is perfectly possible and that they can monitor them and——

Senator BIDEN. I assume that you would suggest that if in fact they were incorporated within the probation office that within that office there should be a delineation of responsibility. That one person should not have two functions, they should either do bail or do probation.

Mr. NORTHROP. Yes.

Mr. YOUNG. That should get their primary attention.

Senator BIDEN. Well gentlemen, it seems from your standpoint, as busy as you both are, a waste to get down here for so little, but it is so important for us to get your views particularly on these points. One, is it working and you've made a clear statement of that; two, should it be expanded, your answer is yes to that; three, and should it be separate and your answer is yes, it should where it can be.

I sincerely appreciate your taking the time and effort to help this committee.

Mr. NORTHROP. Senator, we appreciate your interest in this matter and hope for its success because we feel very strongly about it and I want to compliment you on your——

Senator BIDEN. May I ask you both one more question, come to think of it, if you don't mind and you need not answer the question, but it would be useful to me.

We all bring to our jobs certain strengths and weaknesses and prejudices, I don't mean racial prejudices, but certain inclinations. If I were a judge, I suspect I would be more inclined to be severe with someone who abused a child than I would with someone who was a bank robber. That's my prejudice. We all have those kinds of prejudices.

How closely do each of you look at and follow the recommendation of the bail officer? You have the defendant in front of you, I guess you really don't, but those you do see, but how closely are the recommendations of the bail officers followed in your district in your experience?

Mr. NORTHROP. I think they're followed very closely. I think he has an expertise, he has made an investigation and at least I do, I know I do, in many instances. For example the other day I had a young offender, who's 17 years old, who had committed a very terrible crime, he'd kidnaped somebody and brought him over to Maryland—that's why he happened to be there—and he attempted to cut his throat in the process, which was pretty lousy when you think of it.

In any event, it was recommended by the pretrial agency that he be released to his parents because it was necessary that he see a psychiatrist. We ordered him to be available and have that facility. So I did it.

Ordinarily, if we hadn't had that pretrial officer's recommendation, I would have sent him to jail, obviously.

Mr. YOUNG. These are the professionals in the group. Occasionally you find one particular individual because of his past experience or his experience with him or you may not be quite as satisfied with it.

Basically they're professionals that we follow and I think this is true of all the judges. My guess is 90 percent of the time we follow them.

Senator BIDEN. And you're satisfied with the competence of the personnel that are providing you with these decisions.

Mr. YOUNG. We're blessed with competent personnel.

Senator BIDEN. Gentlemen, thank you very much.

Mr. YOUNG. Thank you very much, Senator.

Mr. NORTHROP. Thank you for your consideration.

[The prepared statements of Judge Northrop and Judge Young follow:]

PREPARED STATEMENT OF JUDGE EDWARD S. NORTHROP

Mr. Chairman, Committee members, I am Edward S. Northrop. I was appointed United States District Judge for the District of Maryland on September 5, 1961 by the late President John F. Kennedy, and I have served as Chief Judge of the Court since September 28, 1970. From 1973 to 1979, I was a member of the U.S. Judicial Conference Committee on the Administration of the Probation System. As a Probation Committee member, I shared in the oversight responsibility for the final evaluation of the pretrial services agencies which make up the demonstration project.

Title II of the Speedy Trial Act established pretrial services agencies to maintain effective supervision and control over, and provide supportive services to, defendants released pending trial. The primary functions of the agencies are to (1) collect, verify and report promptly to the judicial officer all information pertaining to the pretrial release of persons charged with an offense and recommend appropriate release conditions; (2) review and modify the reports and recommendations; (3) supervise and provide supportive services to persons released in their custody; and, (4) inform the court of violations of conditions of release.

Title II, it seems, is an attempt to repair a deficiency in the bail process. As you know, the Bail Reform Act of 1966 requires judicial officers to take into consideration a number of factors about the accused before determining the least restrictive conditions of release that will reasonably assure appearance. It is presupposed that each defendant appearing before the court will have release conditions imposed that result from some knowledge of his circumstances. However, there was Congressional recognition that the Act lacked a mechanism to provide the Judiciary with sufficient information to make informed decisions. In effect, the Bail Reform Act required judicial officers to make informed bail decisions, but failed to provide support to carry out this responsibility.

The enactment of Title II acknowledged the fact that the bail process was deficient, and attempted to correct the deficiency. Title II provided a means by which judicial officers could intelligently and effectively implement the Bail Reform Act, by providing the informational conduit and the supervisory assistance in cases where non-monetary release conditions were imposed.

The District of Maryland was selected and organized as one of the Board of Trustees Agencies designated in Title II of the Speedy Trial Act and was the first board agency to begin interviewing defendants for bail-setting purposes. As Chief Judge of the District, I approved the Board and have monitored the performance of this agency for more than four years. I want to assure this committee that pretrial services has been a welcome addition to the criminal justice process in our District. The judicial officers of the Court have benefited greatly from having timely information provided for bail hearings, and needless to say, the availability of detailed information has inured to the benefit of defendants appearing before our Court. Of course, my colleagues and I managed to carry out our

responsibilities in bail matters prior to the introduction of pretrial services, but we are certainly far more satisfied now that the interests of the defendants, and of at least equal importance, the public interest, are being safeguarded to a maximum extent. All of the judges and magistrates have been able to release individuals who might otherwise have been confined for lack of adequate background data.

The benefits of having accused persons maintain their jobs, family and social relationships are immeasurable. Of corresponding significance is the dollar savings in jail costs. We are now in a period of economic flux and uncertainty in this country. Strenuous efforts are being made to reduce spending levels in all branches of Government. I submit that the pretrial agencies whose continued existence depends on the favorable action of your Committee, have saved literally thousands of tax dollars which would otherwise have been spent on costs of incarceration.

Contrary to some views, the agency does not promote dangerous liberal pretrial release practices. As it is being utilized by our Court, the agency has assumed its advisory role in assisting us to carry out the mandate of the Bail Reform Act, i.e., to reduct reliance on monetary bail without placing in jeopardy the judicial process. I believe the statistics clearly indicate that there has not been any increase in the incidence of defendants failing to appear or of the commission of new crimes on bail. I think that these results are directly attributable to improvement in the quality of pretrial release decisions and the effective supervision made possible by the pretrial services agency.

It is important to recognize that many additional benefits accrue from existence of the pretrial services agencies. Many defendants are given direction in the pretrial stage and receive impetus to become involved in constructive community programs that lead to personal growth and a heightened awareness of personal responsibility. Those who are supervised by pretrial services, usually individuals characterized as representing some risk of nonappearance, establish a favorable or unfavorable track record. In either case, the performance record can be of assistance to the Probation Office in the preparation of the presentence report and sentencing recommendation.

Mr. Chairman, the Probation Committee, in its review of the Fourth Annual Report to Congress, June 29, 1979, on the Implementation of Title II of the Speedy Trial Act, found that most of the judicial officers surveyed in the demonstration districts believed that pretrial services contributed to reductions in the incidence of pretrial crime, pretrial detention and failure to appear. Having personally observed the activities of pretrial services, I can state without qualification that I believe their activities have directly resulted in an improvement in the application of the release statute. It is my recommendation to you today that the existing agencies be continued and the concept extended to other Districts, where there is a need.

Congress recognized and accurately identified the defect in the Bail Reform Act, and cured that defect with the establishment of the pretrial services agencies, so that the Courts might have timely and accurate information at the critical pretrial stage of a criminal proceeding. The agency in the District of Maryland has operated effectively and efficiently, attaining optimal results for everyone involved at considerable savings to the taxpayer. I respectfully submit that, in the best interests of justice and dollar economy, there is ample justification to continue the pretrial services agencies.

I sincerely appreciate the opportunity to express my views on this important piece of legislation. I shall be happy to answer any questions you may have.

PREPARED STATEMENT OF JUDGE JOSEPH H. YOUNG

Mr. Chairman, members of the Committee, my name is Joseph H. Young. I have served as a United States District Judge for the District of Maryland since July 29, 1971.

The Pretrial Services Agency for the United States District Court of Maryland began operations on January 19, 1976. In the District of Maryland the powers of the agency are vested in a Board of Trustees, appointed in accordance with the provisions of the Speedy Trial Act of 1974, and operated under a Chief Pretrial Services Officer selected by the Board.

I was designated to serve as Chairman of the Board, and in that position I shared in the oversight resposibilities for the development of policy and general operating procedures implemented by the agency. From my perspective as a judicial officer and member of the Board, I have had an opportunity to observe

the performance of the agency for nearly four and one-half years. I feel that I have considerable knowledge about the agency and its activities and wish to offer my comments at this time in support of any pending legislation to amend Chapter 207 of Title 18, United States Code, relating to Pretrial Services.

From its inception pursuant to Title II of the Speedy Trial Act, Pretrial Services' emphasis has been placed on providing the court with accurate, verified information concerning criminal defendants' suitability for release under 18 USC 3141. Pursuant to the mandates of the Bail Reform Act of 1966 and Title II, Pretrial Services is unique not only as a comprehensive program designed to improve the administration of the bail process, but also as an example of a program capable of promoting change. The agency has attempted to satisfy the legislative intent of Congress by providing the judicial officer information concerning family and community ties, employment and educational histories, prior criminal record and other information essential to a fair assessment in bail matters, and has assisted the court in avoiding unnecessary detention, thus eliminating many injustices which may have existed previously in the bail process and which prompted the enactment of Title II. From the point of view of services to the court, offenders and society, the agency has succeeded in providing viable alternatives to incarceration in many cases during the pretrial process.

While the primary focus of the agency has been centered around interviewing and verifying background information of those individuals charged with a criminal offense, it has also had the responsibility of supervising those defendants released and awaiting final disposition, and providing counseling and treatment in the fields of drug and alcohol abuse and vocational assistance where necessary. During the pretrial period, released defendants are apprised of all court appearances and direct supervision is afforded to those considered by the court to represent a significant risk of non-appearance. In cases where the defendant is unable to secure immediate release; the court is advised of any change in circumstances which might suggest a need for judicial review of the terms and conditions of release initially imposed. The court is provided with detailed written summaries for each defendant as well as a summary of his adjustment during the pretrial period.

The Pretrial Services Agency also provides the court with other services which aid in the orderly and expeditious processing of criminal matters. Most often, the defendant's initial contact with an officer of the court is with the Pretrial Services Officer who is usually in the best position to assess the need for the appointment of counsel and to assist defendants in the filing of indigency affidavits in appropriate instances, eliminating the need to expend considerable court time for this purpose. For the past three years the Pretrial Services Agency has also assumed responsibility for deferred prosecution/diversion. It has not only assumed these responsibilities, but it has also served as the catalyst to expand the use of diversion as an alternative to the traditional criminal process in appropriate cases. The expanded use of the diversion procedure represents a tremendous savings in both time and money.

From my experience as a District Court Judge it is clear that, prior to the existence of Pretrial Services, the only guarantee the trial judge had to assume the court attendance of a defendant was the posting of bail, thereby making an accused's pretrial liberty dependent upon his financial status. Obviously, a system which places emphasis on monetary bail is unsatisfactory and inconsistent with the Bail Reform Act. In the absence of information on which to base a decision, it is probable that considerable unnecessary pretrial detention took place. Decisions made in a vacuum may do irreparable harm in human terms and do little to reinforce the notion that our system is fair and impartial.

> * * * Judicial officers do not have the necessary guidance to evaluate the significance of each of the factors listed in the Bail Reform Act as they relate to the danger of nonappearance imposed 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.[1]

[1] *The Federal Bail Process Fosters Inequities*, A report to the Congress by the Comptroller General of the U.S. GGD78–105, Oct. 17, 1978, p. 5.

I would estimate that I have released approximately twenty-five defendants to the Pretrial Services Agency, individuals who would otherwise have been incarcerated pending trial. Estimating the average cost of housing an individual in the prison system at $28.00 per day for sixty days, this has resulted in a saving of $1,680. Assuming my experiences are typical, the dollar savings are substantial.

But there is an even greater saving and one that has no dollar value. This is the rehabilitation that can take place during the pretrial stages. Instead of warehousing defendants pending trial this time can be used to begin needed therapy and in some cases may eliminate the need for incarceration after trial.

The Pretrial Services Program has made the decisionmaking process in bail matters more responsive to the goals of the Bail Reform Act. Nonfinancial conditions of release occur in far greater proportion than they did in the past due to the thoughtful and innovative recommendations made by the Agency.

I know of no national or local organization which has studied the bail process which does not advocate and recommend the establishment of Pretrial Services. The unanimity of support from my colleagues on the Bench, the American Bar Association, the American Correctional Association, the General Accounting Office and many others may be without precedent. I urge you to continue this vital porgram and to make it available in some appropriate form in each judicial district.

Senator BIDEN. Our next witness is Mr. Guy Willetts, Chief of the Pretrial Services Branch of the Division of Probation, Administrative Office of the U.S. Courts. He is accompanied by Mr. Glen W. Vaughn and Mr. Daniel B. Ryan, also of the Pretrial Services Branch.

These individuals have had extensive experience in pretrial services as well as in probation offices. Most recently they have had primary responsibility for the administration and evaluation of the 10 demonstration districts.

I hope they will share with us today their objective views on the performance of the 10 pretrial service agencies as well as their analysis of the data they have gathered on the performance of the probation and board of trustees agencies. Gentlemen, welcome, thank you for your time. Mr. Willetts, why don't you begin.

PANEL OF PRETRIAL EXPERTS:

STATEMENT OF GUY WILLETTS, CHIEF, PRETRIAL SERVICES BRANCH, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ACCOMPANIED BY GLEN W. VAUGHN AND DANIEL B. RYAN, PRETRIAL SERVICES BRANCH

Mr. WILLETTS. Thank you Senator, it's a pleasure to be here. Mr. Ryan is on my left and Mr. Vaughn is on my right.

It will be 5 years, Thursday, since I officially took the responsibility like to explain here that at the present time and since the very beginfor implementing the 10 demonstration pretrial service agencies. I'd ning the director of the administrative office delegated responsibility for setting up the 10 demonstration districts to the probation division.

Who in turn established a separate branch to handle it. and it is within that administrative framework that we have functioned over the last 5 years Also, we have been reviewed and looked over from time to time by the Probation Committee as Judge Northrop has indicated.

Our primary function in the 10 demonstration districts, as you know, is to collect, verify, and report to judicial officers information

pertaining to the release of defendants prior to trial. To review and modify reports to supervise and provide supportive service as you had testimony here indicating that the services had been provided in Maryland at least, as they have throughout the 10 demonstration districts.

We also followup on violations and report them to the courts. In traveling to the 10 districts to discuss with the judge, prosecutors, defense attorneys, chief probation officers, the establishment of the 10 pretrial service agencies, I discovered that like title I, the criminal justice system was somewhat resistant to introducing a new idea about the way they proceed.

As we became operational our credibility grew and now you hear statements from prosecutors, judges, such as you heard this morning. The idea at the outset was among most people was, it's not necessary, we don't need it. There seems to be a change of heart or a change of attitude about the program.

Senator BIDEN. Nothing like being able to share the burden or responsibility of decisions.

Mr. WILLETTS. Absolutely.

At any rate we started interviewing defendants or accused persons in Chicago in October of 1975, and by April of 1976, all 10 districts were operational. Which means that we've had about 40 months, an average of 40 months experience with this pretrial services procedure.

At the outset, not at the outset, but over the course of the first year, we established 106 professional positions in the 10 districts and 50 clerical positions. At the present time, because of the reduction in workload, we have reduced the professional staff to 92 professional positions and 43 clerical positions.

We've interviewed in excess of 36,000 defendants, we've supervised 20,000 of those and we have collected substantial data on approximately 28,000 cases that have been used as a basis for the director's fourth report to the Congress and has been used for the basis of the data we'll present to you at this time.

As we viewed the statutory requirements of title II, we were looking at reduction of crime on bail, reduction of volume and cost of unnecessary pretrail detention and effectiveness in proving the operation of chapter 207 of the Bail Reform Act.

I think you have to view the impact of this procedure from many aspects, not just the fact that you reduce the cost of unnecessary detention at the rate of $28 or $30 per day in a given case, but the total impact on the individual as he goes through the process.

The supervision and the cooperation that exists from release on bail to final sentence disposition, the conduct of that person may very well effect the outcome of the final sentence. For example, if a person has been released that would normally otherwise not be released and he does well for the 60 or 90 days, follows the instructions or the conditions of release, then this shows up or should at least in his presentence report and may impact on the final outcome of the sentence.

Senator BIDEN. Judge Northrop's prepared statement indicated that and if I'm not mistaken in his experience that is in fact taken into consideration.

Mr. WILLETTS. That is true. There are instances that could be shown where the information hasn't been utilized as often or to the extent

that it might have been, but I think this is a learning process that this system has to adjust to and eventually hopefully it will be used in every case.

In the data that we'll present to you now, we're using convicted cases in reference to crime on bail, failure to appear, because we're showing you data across time and we were unable to get statistics prior to pretrial services in the districts where we collected data, because there was no person or agency responsible for capturing pretrial data.

Some of the data will reflect on all cases, some on convicted cases, we'll point out the differences as we go along. If you will, ask Mr. Vaughn to use this flip chart and we'll briefly look at some of the statistical data and comment on it.

Mr. VAUGHN. The major control of the major emphasis or impact of the data, that we want to look at at least would be the trial line. So this point in the flip chart is eliminated. The major value of the time being involved in explaining what's happening is that it's very useful.

Sometime the result of other clearances in the simultaneous timing may have an impact on what we're saving.

Mr. WILLETTS. The first thing you have to look at, if pretrial is going to make an impact, you first have to have access to the defendant, conduct an interview, verify information, and provide a report to the judicial officer. This is the very crux of the pretrial program.

And we have statistics here indicating the percentage of persons interviewed by type of agency. In the board districts in the third year of operation, we were interviewing 87.2 percent in the probation districts, 74.5 percent of those persons.

Senator BIDEN. Why?

Mr. WILLETTS. Why? Well, there are a number of reasons. In my judgment from where I view the operation, one of them has to do with the emphasis, I think, that the independent unit places on their function. This particular part of their function.

And this is their sole purpose for being there. In some of the districts, some cases were brought in branch offices and bail interviews were not conducted.

I cannot speak to which specific districts that occurred, but in my judgment, the pretrial units who are in existence solely for conducting pretrial matters are more likely, and I think it has been demonstrated, to be aggressive, if you will, in performing their primary function.

Senator BIDEN. For the sake of developing this point, why were not 100 percent of the people interviewed? Why only 84 percent?

Mr. WILLETTS. Why only 84 percent? There are occasions where an arresting agent will bring a person before a magistrate without notifying pretrial. This could happen in either district. The degree to which you're successful in accessing the accused depends on the procedures that are established with the cooperation of the chief pretrial officer, the U.S. attorney, the U.S. marshal, the arresting agents, and with the blessing, if you will, of the judge in that district.

The judge has got to say, this is the way we operate and when there is a breakdown in communication or a breakdown in procedure, then something has to be done to correct that. And I think the reason for the difference in the two types is that the independent agencies

have procedures that are tighter. There are some probation districts also that have the very tight procedures.

But basically, it's a breakdown in procedure. The magistrate will agree to hear a bailant, to hold a bail hearing with the benefit of a pretrial report. And tradition in the district had a lot to play, had a part to play in this, in that many magistrates, for example, not having been accustomed to getting this information, didn't see the need for it.

But over a period of time, they have grown accustomed and many now do not want to make a bail decision without having verified information.

Senator BIDEN. What percentage of the defendants in the Federal Court System go before a magistrate as opposed to district court judge.

Mr. WILLETTS. It would have to be a guess, but I think probably 90 percent.

Mr. RYAN. Senator Biden, if I could just add to what Mr. Willetts is saying, before I came to work for him, I ran the pretrial services agency in Eastern District of New York. I was paid to make sure the defendants were seen and interviewed and the reports were given to the judges and magistrates.

I had no excuse if that wasn't done. That was my administrative responsibility.

Senator BIDEN. That's right.

Mr. RYAN. I would say at the outset that in the first 3 months of the operation, I spent at least two or three mornings a week, or part of them, in the Office of the Chief of the Criminal Division of the U.S. Attorneys Office, complaining, whinning, yelling, doing whatever I had to do to make sure that his assistants didn't bypass people who work for me and bring people into court and just try to blow them right through the system.

Senator BIDEN. That's why I asked the question. My question was, why does the board have a higher percentage than the probation? Why was the board's percentage higher? As a matter of fact, the percentages don't impress me. The fact of the matter is, it seems to me, that if all the pretrial services had to do was just what you said, they're not doing that good a job.

If the probation folks who have a multiplicity of responsibility are able to come up with—what were the numbers 74 versus 84 or something like that—I quite frankly don't find that impressive at all. I find that very unimpressive.

If that's the case, maybe I'm mistaken about my information that it should be the board, I think maybe it should be probation, if it can't do any better than that.

Mr. WILLETTS. Well, the answer Senator is in either type, you're fighting the system as it was and as it is in my districts. In order to be effective, you have to change the way the system works. You have to change the procedures and the way bail matters have been handled or you don't have any impact.

And this is where the rub comes. You've got to be willing to risk a little. You've got to, when there's a breakdown, you've got to contact the people that caused the breakdown and you have got to be strong

enough to say this isn't the way we do it and you've got to call it to the judge's attention, if it takes his attention to change it.

Mr. RYAN. One other thing that should be clarified. That solid line does not represent the percentage of defendants that are seen. We would estimate that almost, over 90 percent of the defendants are seen at one point.

Senator BIDEN. What does it represent?

Mr. RYAN. What that represents is what percentage of the defendants were seen prior to the judge making a bail decision, OK.

Senator BIDEN. This is sort of an important point.

Mr. RYAN. Exactly. But what Mr. Willetts said, I really, in going around looking at all the different agencies, I didn't find any where anybody was just saying oh, the hell with them, we don't care.

There are reasons that other people in the system have, including judges and magistrates for not letting pretrial services see certain defendants. One of which is that if a defendant is released on a summons, or let's say the U.S. attorney decides there is not need to arrest this person. Well a decision has been made, this person is not a flight risk.

Many judges and magistrates feel if that's the case, if the U.S. attorney doesn't think he's a flight risk, why do we even have, we don't need pretrial service's information.

Senator BIDEN. But another reason is that the U.S. attorney doesn't want you guys mucking around in there. He wants this guy to go sit in the cooler.

Mr. RYAN. Occasionally.

Senator BIDEN. He doesn't want some lib lab, bleeding heart coming in and saying, well guess what, this fellow just tried to cut Charlie's throat really needs psychiatric care, he's confused and so on and so forth.

Mr. WILLETTS. And he's going to get it in the jail.

Senator BIDEN. That's right, better have that good old boy sit out a while, and keep you long-haired fellows away from him. You know what I mean.

Mr. RYAN. There's one other.

Senator BIDEN. And does or does not that exist?

Mr. RYAN. That exists, but something else that exists that surprised me is that sometimes pretrial services interfere with defendants getting out of jail, that the prosecutors would like, in other words, the prosecutors would like them out, because they can serve as informants, and other things like that and pretrial services might turn up some information that would cause the judge to keep them in.

So it kind of cuts both ways.

Senator BIDEN. I understand. Let me be the devil's advocate for a moment gentlemen. The argument is that some say, well look, Biden, you're sitting here holding this hearing, you know, you're just making more work. You're setting up another damn bureaucracy because you want something independent. You're talking about having another operation.

What are you doing all this for? I mean, we already have some competent people who run the probation and parole. They've got the office, they've got the building, they've got the space, they've got the secretaries, they've got the telephones, they've paid the same heat bill, the same air-conditioning bill. Why do you need this?

We already coddled these people accused of crime too much anyway and I'm not sure your idea of the need and urgency of this, notwithstanding the judges testimony, that it is all that important, but if you think it is, fine. But one thing, don't go setting up another independent agency. I mean you have enough trouble, Biden, reading the heading. You have Chief of Pretrial Services Branch, Division of Probation Administrative Office of the U.S. Courts, so help me God.

So why another operation and then you guys come along and you say, well you know the board, the independent agency does a better job and I say OK I've got the statistics now. You know 84 versus 72, and I say, wait a minute. Is that worth setting up another infrastructure, within the courts, why not have them do it all. They can do it, they're competent folks.

Then this stuff about sensitivity, Biden. Now I realize I am not fulfilling the decorum you expect from this august committee, but that's what it comes down to, fellows.

Mr. WILLETTS. I agree.

Senator BIDEN. So you all better come up with something. Give me better ammunition than 84 versus 72, or we aren't going to make it.

Mr. RYAN. For one thing, maybe Mr. Vaughn can take you through, first of all when you say, we're not doing that well, what we didn't do is show you or discuss where we were when we started off, which I think maybe adds a little something to it.

Mr. VAUGHN. 1975–76 on the chart is where the pretrial service agencies come in. Probation got 69 percent of the people coming into the system at that time during the first year. The board got the 5 percent fewer people. Each year it grows here so to speak, it takes time to get yourself into the system, it takes time to get where its accepted, it takes time for a judge to feel it's needed before trial.

So each time, instead of progressing from a position of 63.5 percent to 75 and 80 percent. In some districts, the probation system did very well, the total picture of——

Senator BIDEN. Where are you.

Mr. RYAN. Just to go further with that, if you were to spread that out over the Federal criminal caseload, you're talking about the difference between 6 and 10,000 people, that 13-percent or 15-percent spread, it would not have the benefit of impartial information presented to a judge or magistrate.

Now if some people want to say that's not impressive or that's not important, I can't argue with that. I know if they were 1 of those 6 or 10,000 or it was somebody in their family sat in jail as a result of that because somebody said there's no difference between 64, I mean 74 and 87, it becomes important all of a sudden then.

Mr. WILLETTS. The next key element, after conducting the interview and verifying information, do you make a recommendation to the judicial officers. And we would like to show you the graphs representing the recommendations made in the cases interviewed.

Senator BIDEN. Fine.

Mr. VAUGHN. Sixty percent of the cases with probation involves a continuous spring from which recommendations are made at the same level from beginning to the end. While there is a rise in the ability to get business of making a report, provide information to the judicial officers in charge of making bail decisions, recommendations go concurrently as far as the rise in the cities is concerned.

The difference between the prebail interview and the bail recommendation where the statistics are concerned sometime and officers will not have an opportunity to judge the material and make a recommendation because of the time constraints placed on him. Sometimes the presentation of the information to the judicial officer in charge of that bail decision is altered. There are several reasons for this difference, the rate of recommendation and the rate of interview.

Mr. WILLETTS. One observation, Senator, in regard to recommendations and in discussing recommendations with some of the various districts, there is a difference in the attitude as far as the amount of information that you have, that you feel comfortable with when making a recommendation regarding release.

It's our observation in looking at the 10 demonstration districts that the probation operated programs have a tendency to need more verified information. I think this is a carryover from presentence reports.

In doing a presentence report, and I did them for 7 years, you want as much information as you possibly can get that's pertinent. You want the same thing in the bail setting, however, the nature of the information, the purpose you are going to use it for and the amount of information is not as great as making a bail release recommendation as it is in making a presentence report and you have to learn to accept less and work with less, and feel comfortable with it and make good decisions.

That's not to say that probation officers cannot do that. The problem is that they have to be trained and have to be reoriented and have to adopt, to use a social work term, internalize, if you will, but the Bail Reform Act is about what bail recommendation should be and what the persons rights are as an accused as opposed to a convicted offender.

And I think that in and of itself makes some difference in their feeling comfortable in making bail recommendations. I think I have seen this in the different districts, I've seen it at work. Those people I'm sure who are operating in those districts, don't necessarily agree with that, or maybe don't recognize it or won't accept it if they do recognize it, I don't know. That's my observation.

Recommendations certainly have an impact on release, as we move through the process.

Mr. RYAN. Just one last word on recommendations, I think somebody, one of the judges, when we brought these charts last spring in front of the probation committee that had oversight, interpreted not making a recommendation as kind of abandoning the decision process to defense lawyers and to the U.S. attorneys.

Mr. WILLETTS. We have our violations on a release broken down in three categories. All bail violations, well four really, we combine them and then we break them down. Crime on bail, failure to appear and this is a combination of all. You'll note, prior to pretrial, we collect the data to determine the number of total violations as nearly as possible.

We would contend that the numbers, even though they are higher, prior to pretrial, than they are during the pretrial period, they are still under reported because we had to rely on old records, primarily presentence reports and based on our knowledge of the system, we

feel comfortable that violations were under reported prior to the implementation of pretrial services because no one had that specific responsibility to capture that data.

You see a considerable, more than 50 percent, reduction in all violations combined, crime on bail. For technical violations, you see there was a jump in technical violations between prior to pretrial and during pretrial. The reason for this again is that no one was that concerned with technical violations.

What is a technical violation? Failing to follow a specific condition of release and that person would be reported to the judge and maybe a modification, conceivably a revocation, if it were serious enough.

We move on to the next chart. Failure to appear rates have dropped in the two types of agencies. There is not a significant difference there. We think that the better decisionmaking in releasing defendants and the availability of officers to supervise persons on release. The reduction can be attributed to that largely.

The type of violation that interest most people is new crime on bail. In that area also, we see a substantial reduction. Again in both types of agencies, there is a substantial reduction in rearrests. Misdemeanors and felonies are included in this chart.

I think in order to recognize the full impact of the pretrial procedure, you have to look at a number of things. The rate of release, the increase in the rate of release, and also the decrease in the rate of violations by those released.

In this chart we find that there is a higher rate of release in the independent agencies, in the probation operated agencies, they're slightly above where they started 3 years ago, at the time this data was compiled.

Mr. RYAN. Just to clarify that chart, that's not the percentage of the defendants who were released, that's the percentage of defendants who were released without financial conditions, which as you know the Bail Reform Act puts a premium on. So maybe if we could go through the numbers.

Mr. VAUGHN. The utilization of no money bail conditions of release when it's going to impose a financial hardship on the defendant is preferred. Only when those conditions don't return a person to court, you have to measure the odds of a trial defendant's responsibility. Then you start to add on extra conditions to reduce flight.

The utilization of no money bail is a hard concept to recommend to a judicial officer who is used to getting $50,000. If there's no way for a defendant to get that kind of money, then he's stuck. With an agency that has a track record for successful recommendations, and they know this is preferred by the Bail Reform Act, it's their job to make those recommendations, eventually some of them will be accepted.

Mr. WILLETTS. The actual, the nonfinancial release for the boards jump from 63.7 to 77.5 and the probation 58.1 to 63.1. I wanted to give the statistic also on reduction in rearrests and the board agencies 70 to 3.4 percent and probation is 9.1 to 4.5. Reductions in failure to appear was 3.8 to 3.4 for the board and probation, 6.8 to 2.4.

One of the interesting aspects of this data is looking at initial release, that's release at the initial bail hearing, we looked at the statistics for total release, which means they eventually get out some

time prior to trial. This chart looks at what happens at the first bail hearing. The person may have been in, he may have been out, but he came in for the bail hearing and he either stayed out or he was released.

You can tell that, there is again, 12 to 15 percent difference between the way the initial release statistics look, between the two types of agencies and you can see that they started off, pretty close to the same rate, at the beginning of the program.

In the board agencies, the initial release rates have gone from 82 to 88 percent, and the probation agencies, I don't have all of them here. These are nonconvicted cases only, I'm sorry, that's not correct.

Are there any questions about this chart? This is the one that I was going to give you. Nonconvicted cases, which is a strange phenomenon, there seems to be a much higher initial release rate in the independent agencies as opposed to probation agencies and the only thing, again, I can attribute this to, although there are a number of factors, I'm sure, the way the district operates, but also it speaks to the issue of the urgency of the bail procedure.

That is that you don't wait a day or two or three or four before we get the interview and get the guy in before the judge, we do it the same day he comes in and we get him out.

Now a number of things impact on that, particularly the traditional procedure in the District and this relates to what I said earlier, if you're going to have this impact, you have to impact on the way things are done, the traditionally bail practices. And if you can't impact on that, the chances are you aren't going to improve the system.

Mr. RYAN. What that means basically is that in the probation districts now, people who are never convicted of anything, more of them spend time locked up now than they did in the first year of operation.

Mr. WILLETTS. We have, I think, one more chart, Senator, and that will conclude the charts. This has to do with the percent of reduction in detention and, of course, detention is the opposite of release. We've been talking about release up to this point. But this graphically illustrates the difference.

In the three types of district that we collected data, that is we used nondemonstration districts of either type for comparative purposes with probation and independent districts. And as you can see, the rate of reduction in detention, "unnecessary detention," to use the language of the act, unnecessary would, of course, have to be defined by detention that's not necessary to assure appearance and that's determined in a judicial, in the bail proceeding by the judicial officer, that's about the only definition we have.

The increase in release obviously has increased rate of reduction in detention and that's what this graph illustrates. And it's more obvious in the independent agencies than it is in the probation agencies.

I would conclude by saying this, the Congress perceived a problem with implementation of the Bail Reform Act. Five years ago they established title II to experiment with a means, a way of improving the Bail Reform Act. It is my belief, based on the 4 years experience with the program, that it has and can improve bail practices in this country.

I think for that reason it should be continued and expanded to all judicial districts in some form. Based on the information that we have gathered, subjective and I think objective in the form of the data, even though as you indicated, is not overwhelming, I believe that the process or the procedure can best be carried out, if it doesn't have to concern itself with all of the other obligations and responsibilities of a large probation parole program.

That is a personal observation as well as a professional observation on my part. I realize there are many in the system who disagree with me and I recognize their basis and why they disagree with me. I would like to say that what you have seen presented here by our small staff, has been presented in light of having been a part of the judiciary, a part of the probation service.

Having everything we have done reviewed by the probation committee and cleared through the judicial conference, through Judge Tjoflat of the probation committee. And cleared through the Assistant Director and the Director of the Administration Office.

There have been allegations made that I have a personal ax to grind, in trying to build a personal empire out of pretrial services. I consider myself an employee of the judiciary, everything that we have presented to this committee and to the House committee, as I indicated, has been approved through all the appropriate channels and my personal philosophy is and maybe this is inappropriate, that whether or not there is a pretrial services program, isn't going to hurt Guy Willetts.

It is going to impact on a lot of defendants in the Federal judicial process in the future and I think that should be the basis for any decision that's made.

Thank you. I'll answer questions if there are any.

Senator BIDEN. Fine, don't feel the need to apologize.

Mr. WILLETTS. It's coming down the hole.

Senator BIDEN. You would be a different type of animal than any of us, myself included, if you didn't have a vested interest in what you're suggesting. That does not mean that because you have an interest that what you have to say is less valid. So this subcommittee will look at the facts you presented and not your personal interest, if there is one.

I've one question for you. The pretrial services agencies administered by probation argue that they can do the job cheaper. Can they?

Mr. WILLETTS. Absolutely not.

Senator BIDEN. Why not?

Mr. WILLETTS. We have done a district by district analysis of what it would take to accomplish the pretrial services function, based on the experience in the 10 demonstration districts, including the probation districts.

Some of the largest units are probation units. For example two of them are represented here today, central California and southern New York. In each district we have added staff. In each of the five independent and each of the five probation districts. We have added staff people to perform this function.

Now it is true that since the project began the criminal filings have dropped. It is true that the probation workload and numbers of presentence reports, numbers of persons under supervision, have decreased. It doesn't make any difference who performs the function. It

68-879 O - 81 - 3

takes the same amount of manpower, we would contend it takes the same quality of manpower, it takes the same amount of space, equipment, travel, whatever.

What probation is contending is that we already have people available that we can give to the pretrial function until such time as the presentences increase, or the supervision load increases and at that time, pretrial would have to in my judgment, go by the board unless the probation system could come back to the Congress and say: "The work load has increased, we've got more parolees, we've got more probation, we still have to do pretrial so we need another 150 professional positions."

To perform the function will cost the same no matter who does it. To say that there is a savings, the only place that there could possibly be a savings is in a district where you've got 50 or 75 cases and the probation officer isn't busy, and he has to be there to serve those cases, and because he isn't working full time, he could pick up prebail interviews. And this is something you've discussed already this morning.

To say that there is a savings to the taxpayer in my judgment, very much misleading, it will cost the taxpayer the same regardless of who does it. In my judgment you'll get a better bang for the buck, if you'll pardon the expression, if you don't have it cluttered with the concerns of probation and parole and the mini-faceted responsibilities that they have.

[The prepared statement of Mr. Willetts follows:]

PREPARED STATEMENT OF GUY WILLETTS

Mr. Chairman, members of the Committee, I am Guy Willetts, Chief of the Pretrial Services Branch, Division of Probation, Administrative Office of the United States Courts. I have served in this capacity since May of 1975 when the branch was created to oversee the pretrial services program established by Title II of the Speedy Trial Act. I began my employment with the Federal courts as a Federal probation officer in the Eastern District of North Carolina in January of 1966. I came to the Probation Division of the Administrative Office in October of 1972 and worked as a regional probation administrator until I was assigned the responsibility to develop the pretrial services program. With me are Mr. Glen W. Vaughan and Mr. Daniel B. Ryan. Mr. Vaughan has a degree in law and comes from the Western District of Missouri where he worked as a United States probation officer for 5 years. He came to the Administrative Office as a probation programs specialist in 1975 and became a member of the staff of the Pretrial Services Branch in 1977. Mr. Ryan also has a degree in law. He is from Connecticut where he operated a city Pretrial Services Agency for 2 years and was appointed by the Board of Trustees as the chief pretrial services officer in the Eastern District of New York in 1975. He joined the staff of the Pretrial Services Branch in December of 1978. Mr. Vaughan and Mr. Ryan have contributed significantly to the experimental program by assisting in the supervision of the 10 agencies, gathering data, and assisting with the preparation of the information presented. The remainder of the staff consists of an additional professional who played a significant role in the early development of the data reporting procedures and evaluation design, 2 secretarial positions, and 3 data processors.

You will recall that the Speedy Trial Act was passed to address the problems of unnecessary detention and crime on bail in the Federal Criminal Justice System. Title I was designed to reduce the overall length of time from arrest to final disposition and Title II was to provide for the establishment of pretrial services agencies in 10 judicial districts on an experimental basis. These agencies were to maintain effective supervision and control over, and provide supportive services to defendants released on bail. Their primary functions are to (1) collect, verify, and report to the judicial officer, information pertaining to the pretrial release of persons charged with an offense and recommend appropriate release conditions; (2) review and modify the report and recommendation; (3) supervise and

provide supportive services to persons released to their custody; and (4) inform the court of violations of conditions of release.

The Speedy Trial Act, particularly Title I, was not initially welcomed with open arms by the Federal criminal justice community. Many judicial officers, prosecutors, and defense attorneys expressed the view that the legislation was unnecessary and that it would disrupt the processing of criminal cases. This reaction to Title I carried over into Title II. I personally visited all 10 of the districts that were designated to participate in the experimental program. The degree of acceptance or resistance to participation in the Title II program varied from district to district even though the chief judge in each district had agreed to support the program if his district was selected. As the development of the pretrial services agencies progressed, the skepticism subsided as each agency gained credibility with the court family.

All 10 of the demonstration agencies were fully operational by April of 1976. The first agency to begin interviewing defendants was the Northern District of Illinois and the last agency to become fully implemented was the Eastern District of New York. As of January 31, 1980, the 10 districts had been operational an average of 48 months. Their staffs consist of 106 authorized professional positions and 50 clerical positions in total. At the present time, due to the decrease of criminal filings in some of the districts, several vacancies exist. The actual numbers of professional and clerical personnel are 92 and 43 respectively. The 10 agencies have interviewed over 36,000 defendants. They have supervised 20,000 defendants who were released on bail. In addition to their statutory duties, these officers and clerical supporting staff have been required by the Pretrial Services Branch to complete an extensive data report on each defendant interviewed. We now have 28,306 defendants included in the pretrial services data base from these 10 districts. It is from the files of those defendants that we obtained the release rates and violation rates.

This data base also served as the basis for the Director's Report that was submitted to the Congress on June 29, 1979, and the study and report of the Federal Judicial Center appended to that report.

Before the demonstration districts were established the Pretrial Services Branch, with the approval of the Probation Committee of the United States Judicial Conference selected a time series design to examine the data. The time series study required that we collect data prior to the implementation of the pretrial services procedures to compare with the data that was collected through the course of the agency's operation. The important questions to be addressed by the study as required by the act are: (1) PSA effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The tables and graphs contained in the Director's Report are designed to reflect any changes in release rates, new crime on bail, and failure to appear on convicted defendants in time periods prior to the pretrial services agencies and during their operation. The comparison of prePSA data with PSA data is restricted to convicted defendants because we are unable to obtain sufficient information on nonconvicted defendants prior to the implementation of pretrial services.

Comparisons between types of agencies are based on the rates of prebail interviews and recommendations, rates of release, new crime on bail, failure to appear, and reduction of detention days. Statistical differences are observed in the data from year to year and between the 2 types of agencies. While these changes and differences may not be as dramatic as some may have suspected or hoped, it is my considered opinion that they do reflect improvement in the way the Bail Reform Act is being applied in these 10 districts. Title I of the Speedy Trial Act may be responsible for some of the reduction in length of detention. It is my understanding that the Congress intended that the pretrial services program should be a mechanism for improving the release rates of these defendants who would appear for scheduled court dates and not commit new crimes while on release.

Since that final report was prepared we have continued to update the information in these tables and found that there has been an increase in the number of defendants released, a decrease in the average number of days spent in detention, a reduction in the number of new crimes committed by those released on bail and a reduction in the failure to appear rate. A review of the report will reveal that the agencies operating under a Board of Trustees have shown a somewhat higher rate of prebail interviews and recommendations, a higher release rate, and a reduced violation rate. It is my view that board

operated PSA's have performed the pretrial services functions more effectively than those that operated as a unit of Probation.

The statistical information prepared by the Pretrial Services Branch provides the following results:

1. Rates of prebail reports submitted:
   All defendants.—Board districts—87.2 percent; probation districts—74.5 percent.
2. Rates of bail recommendations:
   All defendants.—Board districts—79.6 percent; probation districts—60.9 percent.
3. Reduction in rearrests rates:
   Convicted defendants.—Board districts—7 percent reduced to 3.4 percent; probation districts—9.1 percent reduced to 4.5 percent.
4. Reduction in failures to appear:
   Convicted defendants.—Board districts—3.8 percent reduced to 3.4 percent; probation districts—6.8 percent reduced to 2.4 percent.
5. Reduction in detention (as indicated by initial release rates):
   Nonconvicted defendants.—Board districts—The initial release rate for nonconvicted defendants at the start of the demonstration program was 68 percent and increased to 73 percent in the final year of the demonstration. Probation districts—Probation began the demonstration phase at a 64 percent release rate for nonconvicted defendants and decreased to a 53 percent initial release rate during the final year of examination.
   Convicted defendants.—Boards began the demonstration phase with a 73.6 percent release rate and increased to an 80.7 percent initial release rate. Probation commenced the demonstration phase with a 71.9 percent initial release rate and decreased to a 71.6 percent initial release rate in the final year of demonstration.
6. Improvement in the operation of the chapter on release (as indicated by nonfinancial conditions of release). Boards commenced the demonstration with a 63.7 percent rate of nonfinancial release and increased this type of release to 77.5 percent in the final year of the demonstration. Probation commenced the demonstration with a 58.1 release rate on nonfinancial conditions and an increase to 63.1 percent was noted in the final year of the demonstration.

Mr. Chairman, I recommend that the pretrial services agencies be continued in the 10 districts where they now exist and that PSA expanded to all Federal districts. This recommendation is based on my firm belief that there has been an improvement in the application of the release statute because of these agencies. Key court personnel, judges, magistrates, prosecutors, and public defenders who, as I indicated earlier were skeptical, now overwhelmingly support the activities of the pretrial services agencies and believe that they should be continued and expanded to other districts. This change of attitude among these court officials, in my opinion, stems from their observation that furnishing verified information to judicial officers for the purpose of setting bail improves the quality of justice by providing for more informed decisions that helped to bring about higher initial release and a reduction in failure to appear and new crime on bail.

There are over 200 state and local pretrial services agencies operating throughout the country. Two states have passed legislation establishing statewide pretrial services in their court system and others are considering such programs. Although a statistical comparison could not be made, when we compared the operation of the 10 demonstration agencies with those operating in state and local systems using nationally recognized standards, our findings indicated that the Federal agencies compared favorably in all significant areas. In fact, the Federal pretrial agencies provide a wider range of services to the court and to the offender than any other agency or group of agencies that we studied.

I further recommend that these agencies be established with their own administrative structure within the Federal court. The goals and objectives of a pretrial services agency that works with a defendant pre-conviction are different from the goals and functions of an agency working with convicted offenders. The goals and objectives dictate philosophy, policy, and procedure. As you know our system of justice presumes innocence until guilt is proven. The rights of the accused are broader than the rights of the convicted offender. The attitudes, policies, and procedures required to assure that the accused's rights are not violated must be delicately balanced with the need for the protection of society and a timely court process. The attitudes, policies, and procedures required to make

sentencing recommendations, and supervise convicted offenders on probation or parole are different.

It is my observation that it is very difficult if not impossible for an administrator to give equal consideration to the needs of both types of agencies. I have the highest regard for the professional stature of those five chief probation officers who also assumed the role of the chief pretrial services officer. I am convinced, however, that over the past four years their responsibilities to probation have frequently been in conflict with their responsibilities to the pretrial services agencies. This may be one reason why the Probation-operated pretrial services agencies conducted fewer prebail interviews, submitted fewer recommendations, and had lower release rates than the Board districts.

Probation officers are responsible for presentence reports, probation supervision, narcotic aftercare, and parole supervision. All of these functions deal with convicted offenders. These functions take much longer to perform. Presentence reports take three to six weeks, probation supervision averages about 30 months and parole cases much longer. Pretrial services activities such as interviewing, verifying, and report writing must be performed in a matter of hours. Supervision is very selective and short-term. Traditional Probation philosophy, practices, and procedures will not provide for an effective pretrial services program.

It is also my observation that the Board of Trustees did not provide the most appropriate type of administration as intended by the statute. The frequency of their meetings and the extent of their involvement varied from district to district. Experience shows that once the Board met, determined policy, and selected the chief pretrial services officer, they seldom met again. The day-to-day operation of the office was left to the chief pretrial services officer under the direction of the chief judge or his designee and the Pretrial Services Branch of the Administrative Office. When policy problems arose they were usually resolved by the chief pretrial services officer, chief judge, and the Pretrial Services Branch. Experience has also shown that it is very difficult to get the prosecutor, judge, defense counsel and community representatives together for meetings. Many of them are very busy and find their time limited for committee responsibilities. If a committee or Board concept were to be continued, I would suggest a much smaller committee consisting of a chief judge or his designee, an additional judge, and a U.S. magistrate.

The chief pretrial services officer and the employees of his office should be compensated at a rate established by the Director of the Administrative Office under the Judiciary Salary Plan as approved by the Judicial Conference of the United States. This will enable the agency to provide the court with the level of professionalism to which it has become accustomed. If the agency is to attract and keep personnel who will meet their high standards, it must offer adequate compensation.

Pretrial services officers deal with the same Federal offenders as arresting agents, probation officers, and U.S. marshals. Due to the nature of their work they are exposed to the same hazards as other Federal law enforcement officers within the meaning of Section 2680(h) of Title 28 of the United States Code. The Judicial Conference has recommended an amendment that would include pretrial services officers as law enforcement officers under Section 2680(h) of Title 28 of the United States Code. The amendment would provide an administrative route for resolution of claims against pretrial services officers in the area of assault, false imprisonment, etc.

The Conference also recommended that the Attorney General should not have approving authority for contractual arrangements by pretrial services agencies. It is the view of the Judicial Conference that no purpose is served by requiring the Attorney General to approve contracts for pretrial services between the Administrative Office of the U.S. Courts and vendors. The Attorney General has delegated this responsibility to the Bureau of Prisons who in turn has assigned it to community programs officers of the Bureau of Prisons. Traditionally, U.S. probation officers, and more recently pretrial services officers, have been responsible for the monitoring of services received by persons under their respective supervision. For that reason pretrial services officers are more knowledgeable about the type, quantity, and quality of services provided. The Administrative Office through pretrial services agencies can effectively arrange for suitable contracts and monitor their performance.

Since the passage of the Speedy Trial Act, the Congress passed the Contract Services for Drug Dependent Federal Offenders Act of 1978 and transferred the responsibilities for contracting for drug aftercare to the Director of the Administrative Office. That authority had been vested in the Attorney General.

Finally, it is the view of the Judicial Conference that it is inappropriate for the Attorney General to have control over a pretrial services agency function operated within the judiciary.

I would recommend that new legislation contain language emphasizing that pretrial officers be given sufficient time to interview, verify, and provide a report to the court with recommendation. Our data indicates that in most cases these primary functions can be achieved in two to four hours.

Close cooperation between arresting agencies and the pretrial services agencies has resulted in large numbers of defendants being processed through the bail procedures without undue delay. This is accomplished by early notification and coordination between the arresting agent, U.S. marshal, pretrial services officer, the prosecutor, and the judicial officer.

The GAO has recommended that the pretrial services agencies collect data to provide:

(1) A system to monitor and evaluate bail activities. This system would include information on defendants and bail decisions and would provide procedures for evaluating district court and judicial officer bail practices to identify areas in need of improvement.

(2) Information to judicial officers on the results of bail decisions so that they may evaluate their performance against the performance of other judicial officers and the systemwide results.

(3) Periodic reports on the status and problems in the bail area to assist in making improvements in the bail process.

I concur with their recommendations.

It has become apparent during the four years pretrial services agencies have been operational that pretrial diversion practices can be readily integrated with pretrial release procedures. Experience has shown that the collection, verification, and reporting of information about an accused who is being considered for pretrial release can be used along with additional information for consideration for diversion. The timing of the collection, verification, and reporting of the information in a bail matter occurs during the pretrial period and may be available when diversion is considered. The only significant difference under current practices is that information gathered to support a diversion decision is reported to the U.S. Attorney and information gathered to support a bail decision is reported to a judicial officer.

Supervision of persons released under a diversion agreement is essentially the same as supervision of persons released on bail. In both instances the supervising officer provides assistance and reports violations. The significant difference is in the length of time a person is supervised. Supervision in bail cases should not exceed 100 days (exclusive of appeals) because of Title I of the Speedy Trial Act. The usual length of supervision in a diversion case is 12 months. Four of the pretrial agencies are presently supervising 550 divertees.

The chief pretrial services officer should be required to prepare an annual report to the court, a copy of which should be provided to the Administrative Office. The report should relate to the agency's administration of its responsibilities for the previous period July 1 through June 30. The Director of the Administrative Office should be required to include in his annual report to the Judicial Conference a report on the administration of the pretrial services agencies for the previous year, a copy of which report should be transmitted to the Congress of the United States.

Chief Justice Burger, in his recent speech to the American Bar Association, stated:

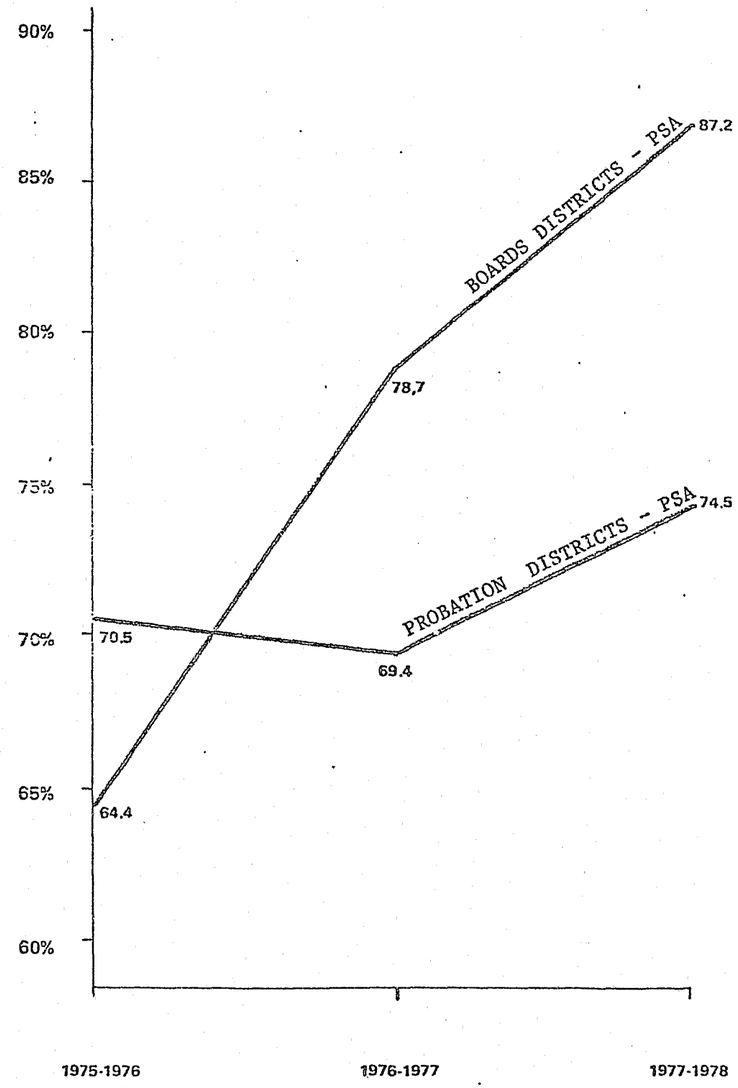
"I would like to be able to report great progress in the administration of our criminal justice system. In all candor, I cannot do so. Crime rates remain extremely high. The rate of violent crimes remains very high. The reasons are complex. There is no simple solution. But there are some things we can do and should do to avoid the fear that still infects many parts of our great cities."

For the past several years the Congress has been struggling with the recodification of the criminal code to improve the criminal justice system. I must agree with the Chief Justice. There are no simple answers to these tough questions. I do believe, however, that an efficient, equitable system would improve the likelihood of achieving the desired result of less crime. To accomplish that goal, the system needs to make quicker and more informed decisions in the pretrial period. Pretrial services is a way of achieving this objective.

I appreciate the opportunity to appear before you, and I shall be happy to answer any questions you may have.

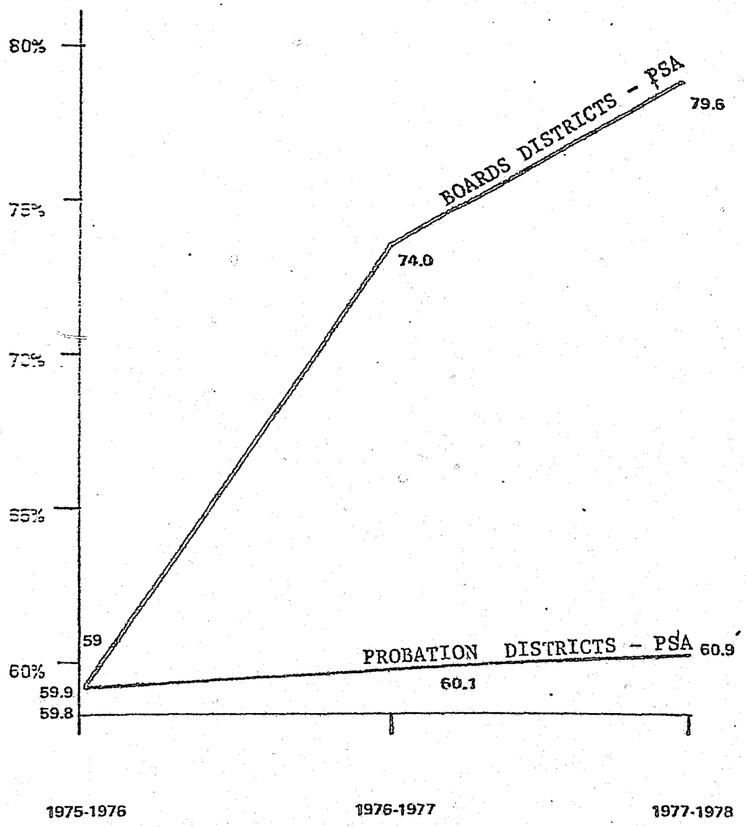
GRAPH 1

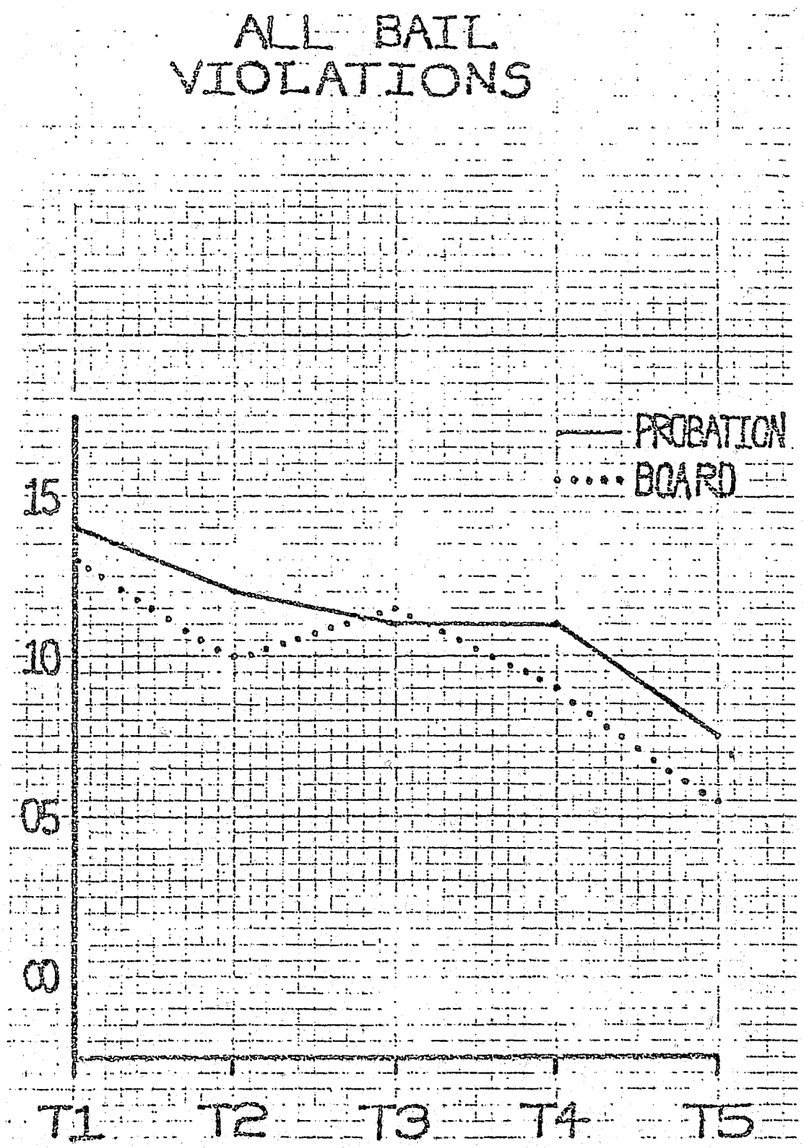
RATES OF PRE-BAIL REPORTS
IN BOARDS AND PROBATION DISTRICTS
(ALL DEFENDANTS INTERVIEWED)

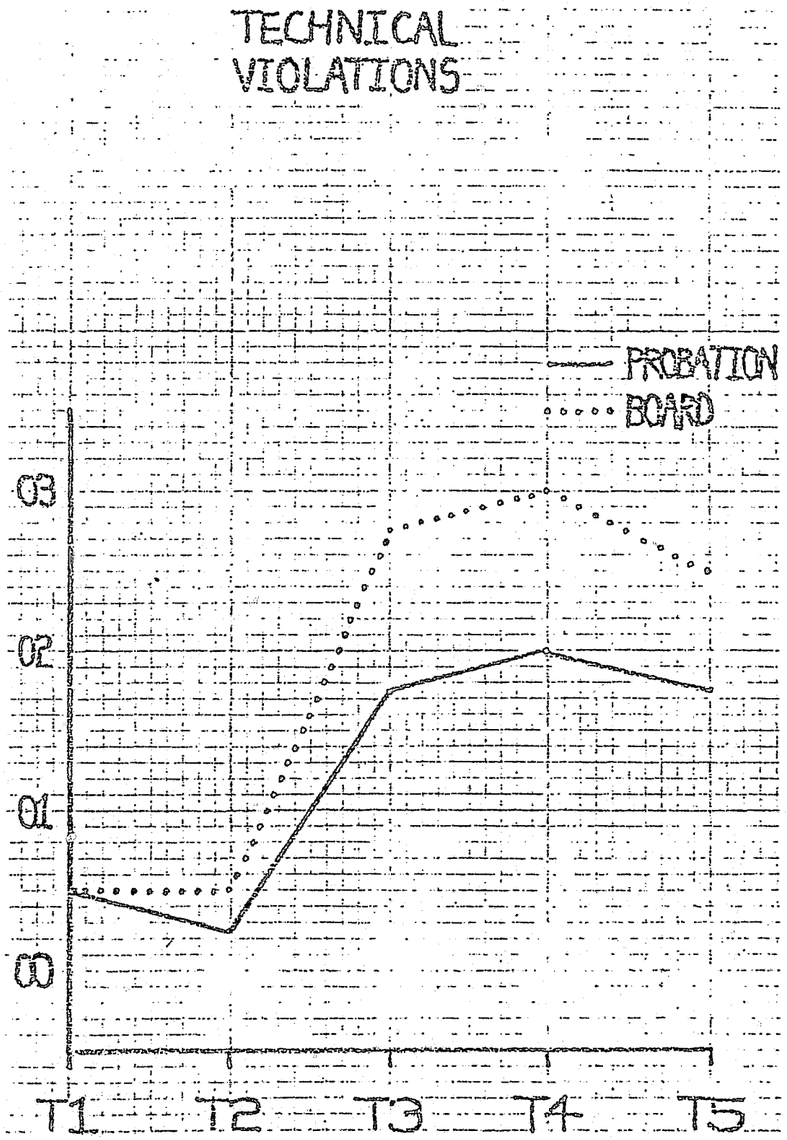


GRAPH 2

RATES OF BAIL RECOMMENDATIONS
IN BOARDS AND PROBATION DISTRICTS
(ALL DEFENDANTS INTERVIEWED)

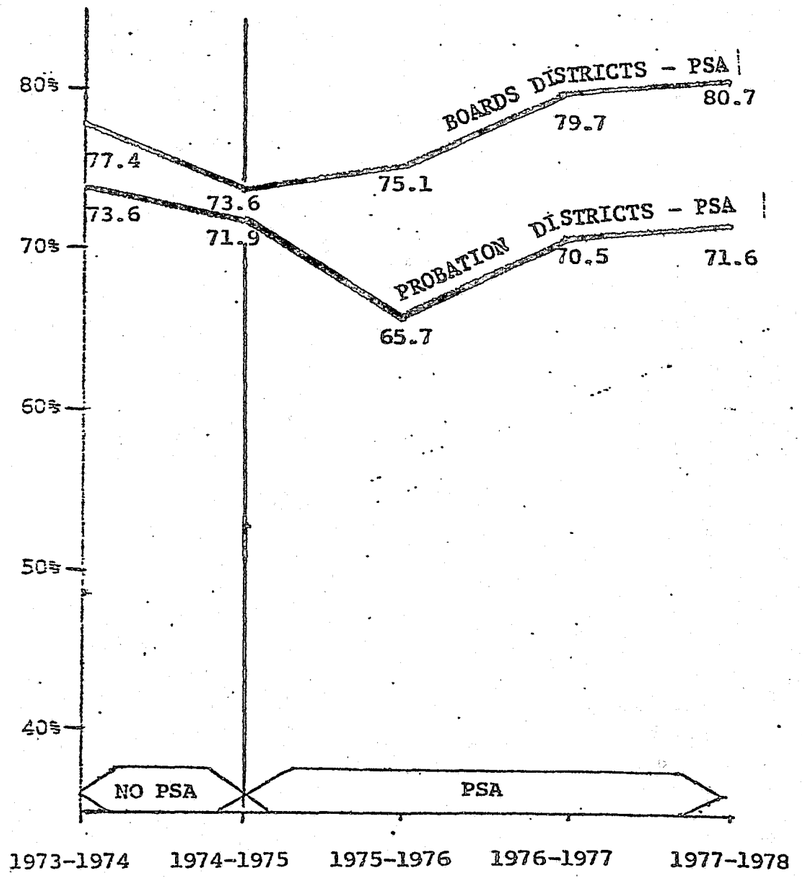






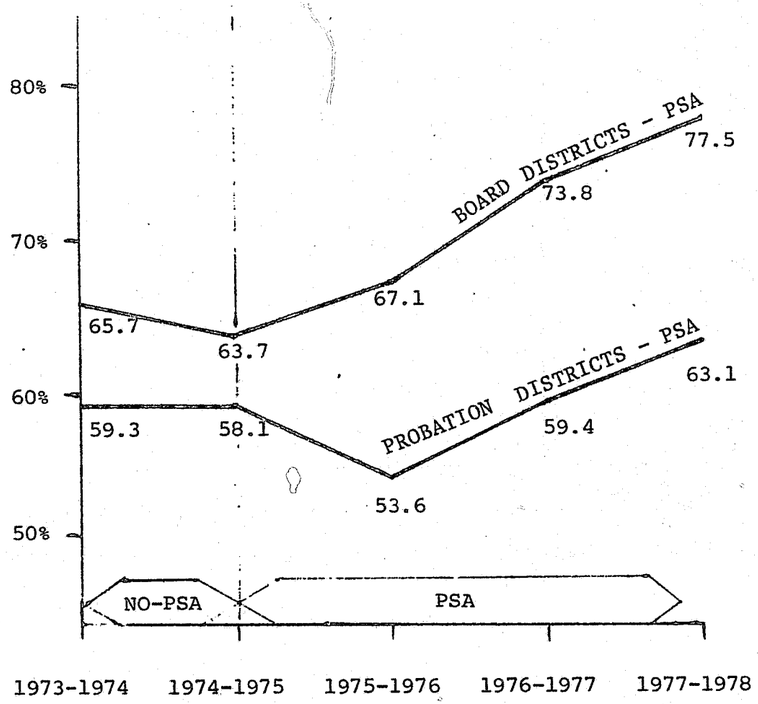
GRAPH 4(B)

RATES OF RELEASE AT INITIAL BAIL HEARING IN BOARDS AND PROBATION DISTRICTS (CONVICTED DEFENDANTS)

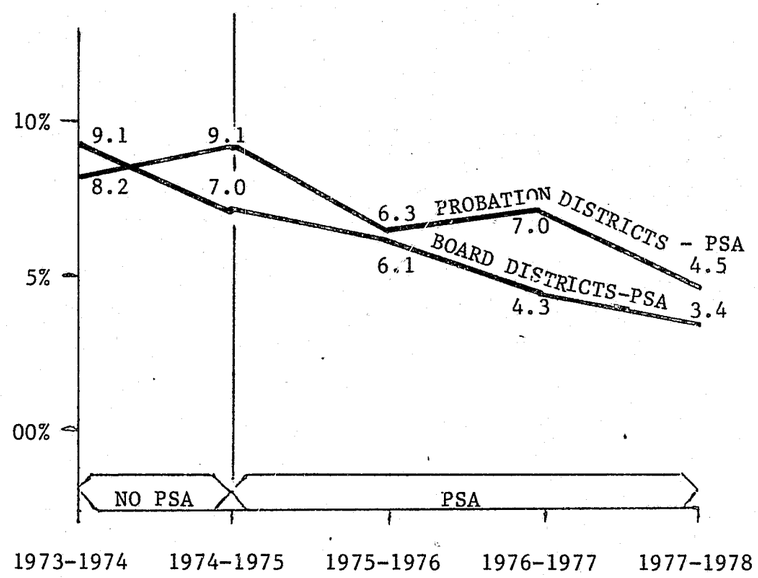


GRAPH 3

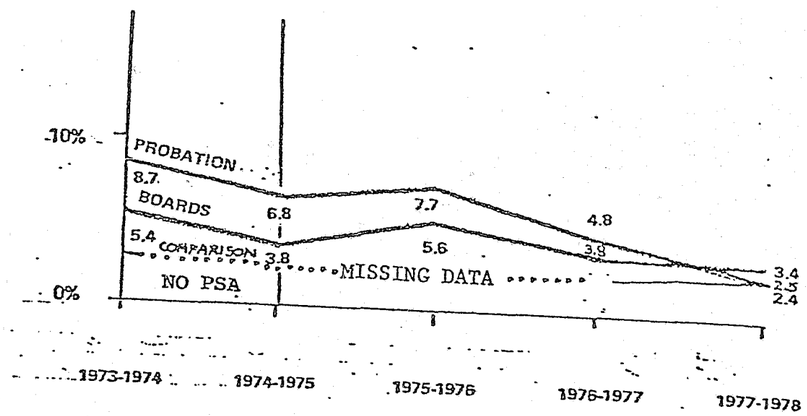
RATES OF NON-FINANCIAL RELEASE IN BOARDS AND PROBATION DISTRICTS (CONVICTED DEFENDANTS)

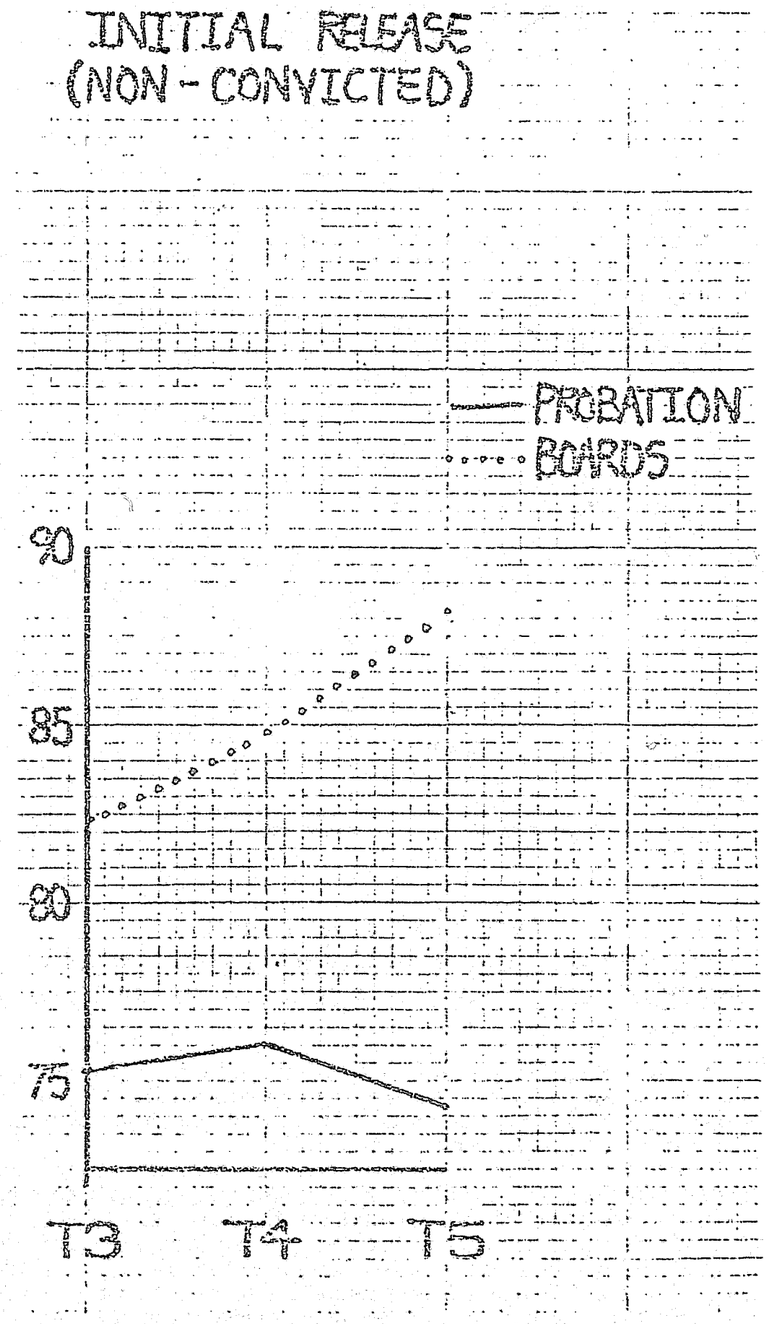


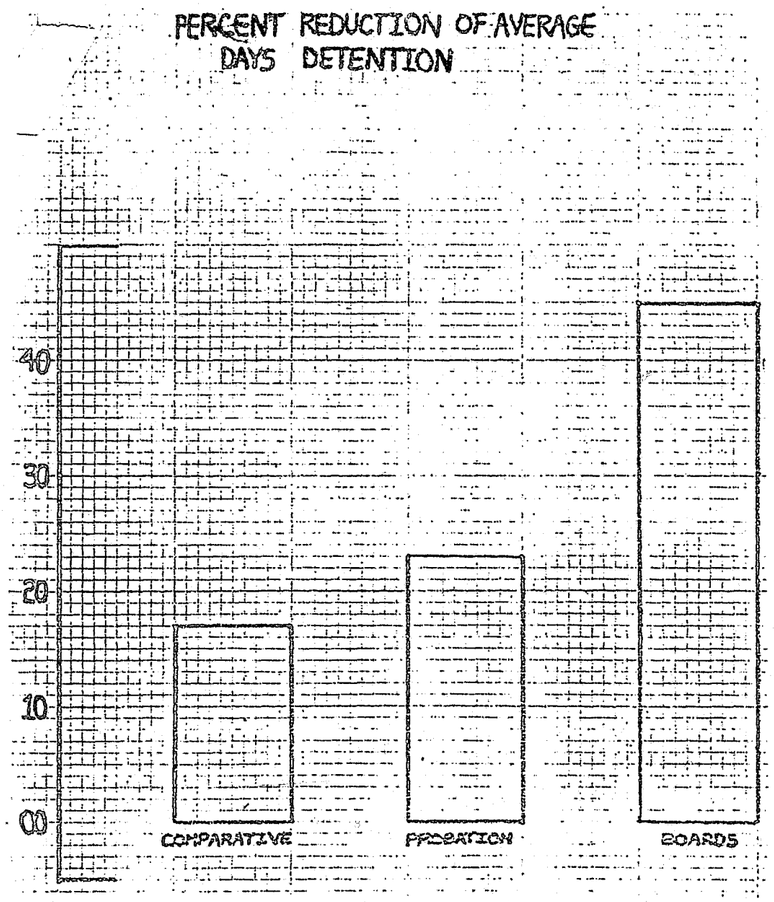
RATE OF CRIME ON BAIL



GRAPH 7(F).—Rates of failure to appear in boards, probation and comparison districts (convicted defendants)







PANELS OF U.S. ATTORNEYS:

STATEMENTS OF JAMES K. ROBINSON, EASTERN DISTRICT OF MICHIGAN AND KENNETH J. MIGHELL, NORTHERN DISTRICT OF TEXAS

Mr. ROBINSON. Thank you. Just a few general summary comments based upon that written statement. My experience with the pretrial services agency for the Eastern District of Michigan, began with my appointment as U.S. attorney in August 1977.

In our district, the pretrial services agency has performed two rather distinct functions, only one of which has been dwelt upon this morning in the testimony that I've heard and that is the bail review function.

In our district, at the current time, the pretrial services agency also plays a vital role in our view in the administration of the pretrial diversion program. Which is a very important part of our effort in the Eastern District of Michigan. As a couple of general comments on the

two areas, it's our view that the information gathered, the quality of the information and its timeliness, by the pretrial services agency, in connection with the bail review function is very helpful in permitting the magistrate to make an informed decision on the conditions of release.

And frankly it is also helpful to assistant U.S. attorneys in making bail recommendations to the magistrates. In this regard I think that the comments made by the judges who testified here this morning are comments that I would certainly endorse.

I think that the administration of the Bail Reform Act is better because of the services provided by the pretrial services agency. I know that in my own mind I had some questions as to whether, if the only function of the pretrial services agency was to be this rather limited bail review and supervision function, whether the program would justify the expenditure that would be necessary to establish this program in every judicial district in this country.

I think it's valuable, but whether a separate agency is warranted as a result of that function only, I think would be of some question. But I certainly feel that with the supplemental function, a very important function, that has been undertaken by the pretrial services agency in our district, and that is handling pretrial diversion, that the real promise for a viable organization that can be of real value to the criminal justice system is in the area of handling the pretrial diversion area as well.

When I became U.S. attorney, I was very much interested in revitalizing a pretrial diversion program, both because I think it's important to take certain offenders who qualify and put them into a program where they can avoid the permanent Federal felony conviction, through a supervised system and also because in order to manage the priorities currently set by the Department of Justice, it is necessary to make room to handle certain kinds of Federal criminal cases, other than putting them all through the entire system. I believe that the pretrial services agency performs very well in our district, both in the bail area function and in the pretrial diversion area. I would certainly be supportive of continuing the program.

I think I can speak for all of the assistant U.S. attorneys in my district, and I know it's true of the other districts that I have talked to that have similar programs, that this is a valuable program. It provides a real service to the court, the Department of Justice, the individual defendants who are appearing before the courts for bail and also to those who have the opportunity to participate in a pretrial diversion program and avoid the permanent stigma of Federal criminal conviction.

There are a couple of points, however, that we would like to make in connection with the bill that is currently being considered and that is in the area of access to information gathered by the pretrial services agency.

There is provided in the legislation and has been since its inception, a provision regarding the confidentiality of the information that has been gathered by the pretrial services agency. I certainly endorse the view that information gathered by pretrial services officers to perform their bail review functions and their pretrial diversion functions, ought not to be admissible in court for the purpose of establishing the guilt of any of the persons who participate in the program.

68-879 O - 81 - 4

We have had a few instances, particularly in the process of supervising people on bail, where persons released do not comply with conditions of release, because they are involved in bail jumping or committing other crimes in connection with their release. The current confidentiality provision makes it difficult to utilize that information for what I consider to be legitimate functions which would not interfere with the basic purposes of confidentiality.

Therefore we would like to propose for the subcommittee's consideration some language changes that I think would accommodate this concern without outdoing violence to the overriding principle that we want to have a confidentiality that insures a flow of legitimate information, to perform the bail review and supervision functions.

The language that we are proposing is taken from similar language that currently is contained in the bail legislation in the District of Columbia. The specific proposal we're suggesting is a substitute for the current subsection 3153 E III, in the committee's bill. I believe we have some additional copies of that language.

Basically, it would provide that information contained in the files of any pretrial service agency, presented in an agency report, or divulged by the agency during the course of any hearing, shall not be admissible in any judicial proceeding, and that's consistent with the current language.

But such information may be used in proceedings to determine penalties for failure to appear, to determine penalties for violation of the conditions of release in perjury proceedings and for the purpose of impeachment in any subsequent proceedings. And we are suggesting that language be substituted for the language of section 3153 (e) (3).

This is designed, as I indicated, to remedy what we perceive to be a problem from time to time where a person who is released under the Bail Reform Act, then violates the conditions of release by either leaving the jurisdiction, or failing in some other way to comply with the condition of release. At the present time, at least as we understand it, under the confidentiality provision, the pretrial services agency is not permitted even to inform the U.S. Attorneys Office of these matters and when there's a hearing on them or a prosecution for bail jumping or the like, there is a question as to whether the information obtained by the pretrial services officer in the performance of his or her functions, could be admissible at such a proceeding. It would be our view that that should be the case; and would foster the purposes of the Bail Reform Act and not do violence to the principle that we want to encourage a free flow of information.

In that regard and connected to it, we would support a change that was made by the House Subcommittee on Crime, of the House Judiciary Committee, which inserted some language in section 3154(5). That language currently provides that the agency is to inform the court of all the current violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modification of release conditions.

We're suggesting this provision be modified to provide that the agency shall inform the court and the U.S. attorney of all apparent violations. It is obviously incumbent upon the U.S. attorneys office to initiate proceedings in those instances where there has been a failure to comply with conditions and it's our feeling that we ought to be advised so we can bring the matter to the court's attention.

Sometime when you have the pretrial services agency——

Senator BIDEN. The court already has it brought to its attention. That isn't why you want it, is it?

Mr. ROBINSON. Pardon me?

Senator BIDEN. That's not why you want it.

Mr. ROBINSON. We want it so that we can monitor and initiate the proceedings. We have an adversary proceedings and we feel that when we have a situation where a person is released on certain conditions and fails to comply with those conditions, that we ought to be in a position to know of that.

For example, if an offender has left the jurisdiction in violation of the terms of his or her conditions, that we ought to be in a position to make a judgment as to whether we should seek a change in the conditions of pretrial release, if appropriate. And I think there has been some instances where we've had a few of those cases fall between the cracks because we have a pretrial services officer who will tell a clerk, and judges are busy and have a lot of other little things, and are not used to initiating proceedings for review of these things that sometimes, either our office or an investigative agency that has information that, put together with the violation of the conditions of release, make it important for us to consider whether we ought to bring additional matters to the court's attention.

But if we don't even know about it, we obviously aren't in a position to take it to the court. In a narcotics case, for example, we recently had a situation in which a person was restricted in travel to the Eastern District of Michigan, but in violation of the terms of the conditions of release he left, went to a southern State and was believed to be involved in another narcotics transaction.

We didn't find out about it until well after it all had occurred. We weren't in a position, because of the failure to have that information, to bring the matter to the court's attention.

I think that what we are really suggesting here is a way by which we can monitor the conditions of release in a way that will not interefere with the purposes of the confidentiality requirement and allow us to monitor the circumstances of the release. It will also see to it that we're not handicapped in taking before the court those offenders who violate the conditions of release, or jump bail, or engage in perjury in connection with some representations made to counsel or the like. I think that's really all we're suggesting there, Senator.

Senator BIDEN. We'll take both those recommendations under advisement. Thank you.

Mr. ROBINSON. Thank you. Other than that, I just simply wanted to say that in Eastern District of Michigan we have had an outstanding relationship with our pretrial services agency. We think highly of their officers; we think they've done a fine job in both of the areas and I don't want to stress too strongly our feeling that we believe that the real promise for an effective pretrial diversion program is having a separate agency like the pretrial services agency that is committed to dealing with offenders at a preconviction stage by investigation.

Those referrals that we make are with a view toward a determination of whether we should release these persons into a program like a pretrial diversion program.

Senator BIDEN. Thank you very much. Mr. Mighell, am I pronouncing that correctly?

Mr. MIGHELL. It's Mile.
Senator BIDEN. Mile?
Mr. MIGHELL. Like M-i-l-e; yes, sir.
Mr. ROBINSON. I was surprised the first time I saw it too, Senator.
Mr. MIGHELL. I have only my father to blame for that.
Senator BIDEN. You could not mispronounce my name in this case, but Ms. Zebrowski's name.
Mr. MIGHELL. I've never tried to pronounce her name.
Senator BIDEN. I don't know how you're going to mispronounce it, but I want to hear it. I apologize.
Mr. MIGHELL. That's quite all right, it gets mispronounced all the time.
Senator BIDEN. As long as they spell it right when they walk in the booth, right?
Mr. MIGHELL. Yes; that's correct. I appreciate the opportunity to appear today. I am, as you've stated, the U.S. attorney from Dallas. I have been in that office since 1961.

I am one of those U.S. attorneys you alluded to earlier who does not like the longhairs mucking up my prisoners. I lived in that office for a number of years under the old commissioner system, where I was provided a rap sheet by the FBI and generally flipped a coin on the amount of the bond. The commissioner asked me how much bond and I would tell him and that would be the bond that prevailed.

That's what I did because that's all there was in those days. There was some concern that prisoners did stay in jail too long and that concern certainly manifested itself in the Bail Reform Act. I am today a great advocate of the Bail Reform Act. Pretrial detention in our district dropped almost 50 percent after bail reform.

We operated in that manner merely because of our lack of information. We did not have the resources; we did not have the facility to properly evaluate defendants and to determine whether they should or should not be released. That was the evil of the system that the Bail Reform Act solved.

After the Bail Reform Act, I'm not sure we still had quite the tools, except by that time the commissioners were gone, the magistrates were in and they were operating under an act which allowed them much more latitude in setting bond.

They as all three judges mentioned this morning, did not have that much information upon which to base their decisions and I'm not so sure they weren't in the bathrooms flipping coins too. With the advent of pretrial services, 5 years ago, we suddenly had a tool with which to adequately evaluate the bondability, if you will, of detained defendants.

In our district, unlike the eastern district of Michigan, we operated with our probation office and out of that office, five probation officers were taken, a supervisor and four officers. Now this was a staff to handle a district which measures approximately 500 miles wide and 400 miles long. We have seven divisions.

In those divisions are supervised defendants, both pretrial and posttrial. The probation office was established, had probation officers on the scene in all seven divisions. The major population center of our district is the Dallas-Fort Worth metroplex. All of the pretrial services officers were stationed there. Three in Dallas and one in Fort Worth. The vast bulk of their work was in those two cities.

These were the same probation officers that we had dealt with for years. In fact the supervisor is one of the older ones in tenure in the office. He's a trained probation officer. he became by fiat a pretrial services officer. He's performed an outstanding function in that position.

The key to the whole program has been the separation of services. And in my opinion is merely the allocation of resources to a job that was not being done. I will readily agree that the work performed for pretrial detainees is an entirely different function than those performed by convicted felons.

Principally because in our district and in the past 5 years with the change in priorities, going more to the white-collar crime, pretrial detainees are a much higher classed individual than the typical parolee or probationer who may be on his third or fourth conviction, who knows the rules and doesn't have to really be told by probation officer what to do.

The pretrial services officer is performing a function with someone who's new to the system, he doesn't understand the system and who needs help in working his way through the system.

In our district, as I say, the pretrial detainees have been reduced to approximately 24 percent from a high of about 58 percent when the program started. I don't see an appreciable difference in the number of no shows, in the number of violations of terms and conditions. I do see a much better use of the drug abuse program, alcohol abuse programs. Programs that were never implemented pretrial before this service was performed.

Finally I would like to echo what Mr. Robinson has stated concerning pretrial diversion. Pretrial diversion is a program that became available to our offices, 5 or 6 years ago. It had great merit at the time, we were interested, the Department of Justice put out the guidelines and we sailed off into the unknown, which remained the unknown for a number of years because of the lack of available resources to provide the services that were required for pretrial diversion.

With the advent of pretrial services, we've been able to much more effectively utilize pretrial diversion and found it an extremely beneficial tool to our office in handling those defendants that would readily be probatable anyway thereby saving grand jury time, saving court time and probably saving a criminal record for someone who has merely made a mistake.

Without the use of the pretrial services officer, the pretrial diversion in our district would not have been an accomplished fact. We are very much in favor of the program. As an aside and not certainly as an official position, because I don't believe it is my position, nor the Department of Justice's place to tell the judiciary branch how to manage its function, I am somewhat adherent to a statement you made in your opening statement. "What business do we have litigating or legislating an administrative function."

The determination as to whether this should be a separate agency or whether it should be another format, I think, is a function that the

judiciary should determine. In my opinion, it should not be, this is a resource allocation question that's being raised—where best to put the resources that are available or that you deem to be available, in my opinion is the method of doing it.

When I started in the U.S. attorneys office, all assistant U.S. attorneys were assigned both civil, criminal, and appellate matters. In the late 1960's we decided that was not efficient. We then split it into civil and criminal sections in division. And people exclusively handled those things. There now is a much more efficient operation.

But we do not have to go to a new agency and we do not have administrative bodies controlling those. So that's my personal opinion. Thank you.

Senator BIDEN. I would point out that you did have to be prodded a little bit by this committee exercising its oversight function because you weren't doing pretrial services in your district.

I might respectfully suggest that I would have been very disappointed had the U.S. attorney from the Dallas-Fort Worth area come and say anything different than what you said.

I want to ask you one question. As I understood your statement, you do believe it is essential that there be a delineation of the distinction in responsibility between the pretrial services operation and within the probation operation as to how and who is responsible for pretrial and who is responsible for probation.

That's an important reason why it functions so well in your area. Is that correct? That they made that administrative decision internally and that's why it's functioning well.

Mr. MIGHELL. In my opinion yes. But understand that split of function may be a split of one body also, as in four unmanned divisions in my district, the pretrial services work is done by a probation officer who is split down the middle.

Mr. ROBINSON. Senator, if I might just interject. Ken and I have some minor disagreements here, as the department has no official position.

Senator BIDEN. I detected that from your statement.

Mr. ROBINSON. But I certainly feel that, particularly in the area of pretrial diversion, I've had an opportunity first to have it with the pretrial services agency, then they stopped doing it, it went to probation for a time, and then they put it back into the pretrial services agency.

Without disparaging at all our probation people who are very good and do an outstanding job, I think the attitudinal problems that you alluded to earlier and were alluded to previously, in my view, come out on side of having a separate agency deal with this problem. I just think that our experience under the two systems puts us in a position to have concluded, at least based upon our limited experience in Detroit, that it has worked very well with a separate agency and we feel like it works better this way than it did previously.

Senator BIDEN. Gentlemen, both your statements were very direct and to the point. Your statement answered the three essential questions that I and this subcommittee and the Congress as a whole will have to determine.

One, whether or not there should be pretrial services at all; two, if so, should the program be extended to all districts, and, three, who should be responsible. You've answered those three questions, very

directly. I also appreciate the suggestions as to how we could improve the legislation as written.

And it's a long way for you to come to take such a short time to tell us what you think, but you've done it very well, and it's very, very helpful to the committee and we appreciate it very much.

Mr. ROBINSON. Thank you.

Mr. MIGHELL. Thank you.

[The prepared statement of Mr. Robinson follows:]

PREPARED STATEMENT OF JAMES K. ROBINSON

Mr. Chairman and members of the subcommittee: I appreciate the opportunity to appear before you today to discuss the record of the Pretrial Services Agency in the Eastern District of Michigan from the point of view of the United States Attorneys Office. My direct experience with the agency dates from August 1977 when I became United States Attorney; however, many members of my staff have had contact with the agency from the time of its creation. Some of my staff members also had experience with the agency as defense attorneys before becoming Assistant United States Attorneys.

Since the subcommittee will undoubtedly receive much background and statistical information directly from the agency and from representatives of the United States District Court, I will limit my comments to our general perceptions of the impact that the agency has had on the administration of justice in this district from our perspective. These comments are the result of the collective experiences of our criminal division Assistant United States Attorneys drawn from daily contact with the agency since it was created to the present. The functions of Pretrial Services Agency in this district are separated into two distinct areas—bail review and pretrial diversion; accordingly, I will discuss these areas separately.

BAIL REVIEW

In nearly every case in which a criminal defendant appears before a United States Magistrate in connection with a criminal charge the defendant is interviewed in advance by pretrial services. The purpose of these interviews and related background investigations is to aid the court in determining appropriate conditions of release under the Bail Reform Act. An additional purpose is to assist the court in determining indigency regarding eligibility for appointment of counsel. In addition to this screening process, the agency also provides supervision as specified by the Court for persons released on bail.

It has been the experience of this office that Pretrial Services performs these bail review and supervision functions competently and efficiently. The information gathered by the agency is helpful to the court in determining appropriate conditions for release of defendants and often aids the Assistant United States Attorney in making his or her bail recommendations and arguments concerning such recommendations to the court. The effect of this work is to save time for the court and counsel, to provide accurate information for making the important decision concerning pretrial release of persons charged with federal crimes, and to minimize the likelihood that persons released on bail will miss important court dates.

It is our belief that the services performed by the agency concerning pretrial detention are of real value to the criminal justice system, we question whether a permanent separate agency should be created in every judicial district if its only function will be to perform these rather limited functions. We believe that the real promise of Title II of the Speedy Trial Act lies in the potential for development of more effective pretrial diversion programs in the various judicial districts throughout the United States.

PRETRIAL DIVERSION

Pretrial Services participated in the supervision of persons placed on pretrial diversion by the United States Attorney's Office for a ten month period ending in April 1977 when the agency withdrew from the program on instructions from the Administrative Office of United States Courts. At the point of their withdrawal from the program the agency continued to supervise the existing caseload. As of April 1977 the preliminary investigation and subsequent supervision of persons placed on pretrial diversion was assumed by United States Probation. In June 1978, the handling of pretrial diversion cases was resumed by Pretrial Services. From June 1978 through January 1980, 361 persons have been processed

by Pretrial Services for consideration as candidates for pretrial diversion. Of these, 350 persons were admitted to the program. Only 2% of these persons were recommended for termination from the program due to failure to comply with the conditions of their pretrial diversion agreement. Pretrial Services currently has 200 pretrial diversion cases under supervision.

Briefly the program operates as follows: When information is brought to the atention of an Assistant United States Attorney regarding a violation of federal criminal law the Assistant makes a preliminary determination as to whether the potential defendant should be considered as a candidate for pretrial diversion. This determination is made by reference to guidelines established by the Department of Justice modified by our office. If the Assistant determines that pretrial diversion is a possibility the matter is referred to pretrial services for a pretrial diversion investigation and report. In cases not meeting the guidelines, approval by a supervising Assistant United States Attorney is required prior to referring the matter for a pretrial diversion investigation. Pretrial Services conducts an investigation to determine whether a particular person is a suitable candidate for diversion. A written report is prepared and submitted to the Assistant United States Attorney who then determines whether pretrial diversion is appropriate. If so, a formal written pretrial diversion agreement is entered into between the United States Attorneys Office, the divertee and his or her attorney. The agreement can be tailored to the specific circumstances of the case. For example, restitution can be made a condition of diversion in cases involving theft or embezzlement. Usually the period of supervision is one year. If the person successfully completes the program, the United States Attorneys Office declines criminal prosecution. If the person fails to comply with the terms of the pretrial diversion agreement formal criminal proceedings are considered.

We believe that pretrial diversion as currently administered is a valuable program which provides a workable alternative to criminal prosecution. The program provides qualified persons with an important second chance to avoid a federal criminal record. The success rate for persons participating in the program is high.

It has been our experience that the Pretrial Services Agency has performed its pretrial diversion work in an exemplary manner.

Senator BIDEN. We have one final panel of witnesses. I have a time problem because I will meet with the Chief of Naval Operations at 12:30 at the Pentagon. So, I'm going to call up the next panel and ask you if you would abbreviate your statements as much as you can. I will submit the series of three questions that I have for each of you and ask you to respond to those in writing and then our last witness I will ask, also to be relatively brief.

He is from Washington, D.C., and so we will have an opportunity to call him back, not that he's any less busy, but he's closer.

Our next panel includes Lewis Frazier of Kansas City, Mo., Morris Street of Baltimore, Md., representing districts administered by a board of trustees, and Morris Kuznesof of New York and Robert Latta of Los Angeles, Calif., representing agencies administered under probation. Gentlemen, retire to your respective corners and come out fighting, no hitting below the belt. And why don't you proceed as rapidly as you can. It's an unfair thing to do to you, but I have no alternative.

PANEL OF CHIEF PRETRIAL SERVICE OFFICERS:

STATEMENTS OF LEWIS D. FRAZIER, WESTERN DISTRICT OF MISSOURI; MORRIS T. STREET, JR., DISTRICT OF MARYLAND; MORRIS KUZNESOF, DISTRICT OF NEW YORK, AND ROBERT LATTA, DISTRICT OF CALIFORNIA

Mr. FRAZIER. Thank you, Mr. Chairman, it's my honor to be here today. It's going to be very difficult to make my remarks brief, since they've been building for the last 5 years, but I'll do my best.

The pretrial service agency in the western district of Missouri, is one of the board of trustee agencies. It's the smallest in terms of numbers of defendants, but as such it may be the most representative of what might be expected if the program is expanded nationally because, of the remaining districts, over 85 percent of them are at our size or smaller.

In many respects the conditions in our area were most favorable to start such a program, but we did have our detractors. There were a number of people who had questioned whether or not this type program could be meaningful. Plainly stated these "doubting Thomas'" were from Missouri and as such they had to be shown. We did just that, to be quite brief and succinct.

There were primarily seven areas in which we've had an impact. The bail decisions, as has been alluded to before, made by our judges after the advent of pretrial services agencies, were better informed. This was in keeping within the spirit of the law as well as the Bail Reform Act.

I want to point out that over 97 percent of all of our interviews were of the prebail status. Thus we could have an impact. If you don't get to the defendants prebail, then the information that you have is just in the nature of trying to support a judge's decision or trying to go back in to argue with him to say, "Hey, you might have made a mistake."

Well, we avoided that by entering into a cooperative role with the U.S. marshal, the U.S. attorney, the field agents, the magistrates and the other components of our system to be a manager or a coordinator, rather than a fragment of our bail process, we actually serve as a cohesive element in bringing those various parts together.

One of the spinoff benefits was that we were able to work into a program whereby over 50 percent of all our defendants voluntarily surrendered. Again this has helped us manage the system in a manner that's more advantageous, not only to us, but for the rest of the components.

Our decisions and recommendations have influenced the decisions made by the judges, they've told us so. If there's any doubt, statistically speaking, then this might be an area for further inquiry, but I don't really believe so. We've been able to increase the use of the statutory preferred methods of release. At the same time we've been able to see a decrease in the rates in failure to appear and bonds on bail.

In conclusion, I'd like to add my support, not only in the continuation and expansion of the pretrial services agency, but support the position taken by the conclusions of the final report for a separate agency.

You've made mention of a difference in an attitude, a difference in a philosophy. I believe there might be some confusion. This difference or differences may not be evident in the individual officers since they are doing the work. I think it's one of the perceptions of the chief officer and how he perceives his role in administering the program.

Senator BIDEN. Gentlemen, what you have to say, is obviously very important to us so I'd like to make an inquiry. I have one of three options; the first option is to have you submit your statements in the next 5 minutes and have them in the record, read them and submit the questions in writing.

The second option is to clear my schedule this afternoon and for us to come back at 2:30 or 3 o'clock, to have you make your statement in a more cohesive manner, but that may interfer with flights and other schedules that you have.

The third option is I could ignore the Chief of Naval Operations and be court martialed, which is not a real live option. Of the first two options, what would be your preference. Obviously, if we continue, you literally are not going to be able to get an opportunity to do anything other than submit your statement.

Mr. KUZNESOF. I would prefer to return this afternoon.

Mr. LATTA. I would too, if you feel you really have the time to give us.

Senator BIDEN. Oh, I will make the time to hear you, I'll clear my schedule to do it.

Mr. STREET. I can return also.

Senator BIDEN. In light of the fact you have taken so much time and some of you have traveled so far, I want to give you the opportunity to fully present your statements. I'd rather not do it this afternoon, because I'm going to make a lot of people angry clearing my schedule.

But by this afternoon, I will be angry with a lot more people, other than you, and that's the reason for it. I'm not demanding it, but I do think though you have a right, and I'd like to hear the full opportunity for you to express your positions in the way that you would like to do it, verbally, rather than just submitting your statements.

Is that what all of you prefer?

Mr. STREET. Personally, my written statement is complete.

Senator BIDEN. Why don't we do this—why don't we reconvene this hearing at 3 this afternoon. Those of you who wish to and are prepared to stand on your written statement, do that and we will in no way be prejudiced in terms of my review, because, believe it or not, I read them and when the report is written they will be taken into full consideration.

Those of you who would like to return to expand on what you've already said, or speak in the first instance, be here at 3. Maybe you could inform Ms. Zebrowski before you leave. We haven't even asked, Mr. Beaudin on whether or not he is able to be here at 3 o'clock.

Mr. BEAUDIN. Whatever you like, Senator.

Senator BIDEN. Are you sure? This is not a command performance. I would be very angry were I a witness traveled across the country and have some Senator I don't know, as it came my time to testify, say Gentlemen, condense your statement to 30 seconds, thank you very much for being here, you're a good American. So why don't we reconvene here at 3 o'clock. Those of you who wish to expand your statements, those of you who are able and wish to rely on the written statement, we'll do that and we will proceed at that time.

I promise you that since we only have one panel and one witness, the whole matter will not go beyond 4 o'clock if we begin at 3. So this will give everybody a chance to do what you thought you were going to be able to do when the hearing began. You can have an extra long lunch and I appreciate your indulgence.

We are recessed until 3 o'clock. Thank you.

[Whereupon the hearing recessed until 3 o'clock.]

AFTERNOON SESSION

Senator BIDEN. The meeting will come to order. I believe when we left off, we had heard from one of the four members of the panel. Maybe we could move on to the next member and proceed in whatever way is comfortable.

Mr. LATTA. If the first member, might not have had something else to say. Did you Lou?

Mr. FRAZIER. As a matter of fact, I do. You said we had until 4 o'clock, I believe.

Senator BIDEN. That's right.

Mr. FRAZIER. Mr. Chairman, I'd like to introduce a letter that I've just written to Hon. Peter Rodino, chairman of the House Judiciary Committee.

This was in response to a fact sheet that was filed by the Federal Probation Officer's Association and I think it has relevance here because it addresses many of the issues that have been mentioned up to this point.

Senator BIDEN. Without objection, it may be entered.

[The letters referred to above are on file with the subcommittee.]

Senator BIDEN. Who would like to go next?

Mr. LATTA. I will, if I may.

Senator BIDEN. Fine.

Mr. LATTA. My name is Bob Latta from central California. I'm in a probation operated district. I have submitted a written statement which I assume you have.

Senator BIDEN. Yes, we do have and it will be entered into the record in its entirety.

Mr. LATTA. I appreciate the time you've given us. I didn't want to go home for the second time with 5 minutes opportunity to speak, at least in behalf of the position I hold; so thank you very much.

Senator BIDEN. As long as you're not paying your own way, it's OK.

Mr. LATTA. No it's not.

Senator BIDEN. Just think how bad it would be if you had to do it the other way.

Mr. LATTA. I wouldn't be here, though I might.

Senator BIDEN. Sure you would. Fire away.

Mr. LATTA. Well, for one thing, I'd like to mention a little bit about the entire Federal justice system. The court and particularly the court has been speaking as though it's a very large operation to administer. It's certainly not a large operation to administer on the lower level.

In fact it's a small operation as most correctional operations go. The Federal system is quite small. I'm saying that and speaking to the point of responsibility of a chief probation officer as it relates to pretrial services.

In my district and I think in all the probation districts, we, individuals responsible for completing the pretrial investigations and supervisions are assigned separately. They don't have multiple duties. They are a separate, separate function. They're not together.

In fact I would say in my districts, the use of probation staff for, in terms of handling peak work loads in pretrial, I've used probation officers to handle pretrial during peak load periods when Mr. Willetts

may call people back for meetings in Washington and other type activities.

It offers a flexibility to an administrator that you don't get when you set up small units. The smaller the unit, when you have one man missing, they're all gone. In a larger operation, which I have, you can move people.

It so happens, we've just gone the one way from probation to pretrial, but I have trained the last 25 new probation officers, have spent their introduction to the system in pretrial services. That's the first thing they do. That's what they learn when they learn the Federal system.

I think that can give them the kind of orientation they need to do that job. But, and I don't think it causes any sort of a problem as far as their attitude is concerned.

In my particular report, I mentioned some reasons that I think central California is somewhat unique. For one thing, we will have very shortly, six full-time magistrates in the Los Angeles courts. We have nine part-time magistrates that are spread around seven southern California counties. A number of which are not close to downtown Los Angeles, nor are they close to a branch probation office.

So one of the reasons the people are not seen on the initial bail hearing is really the speed with which they attempt to get the Marshal, or whatever Federal agency arrests them, down to the central court.

It would take us longer to get out there, would actually hold up matters, if you were to send anyone to hear those cases for that moment, that it is to transport them in.

So our effort really has been to get arresting agencies to detain people, bring them to Los Angeles, rather than hold them in local jail facilities. I think each district has different kinds of problems and that happens to be one we have. At that magistrate hearing, there often is only a Federal officer. There's not a defense counsel, there's no one and that's the way it is worked.

Another thing, it seems to me that the whole pretrial services effort is an effort to correct something that isn't being done and should be done with the present law, As you read the Bail Reform Act, and if it's followed, you shouldn't have this kind of difficulty that we have in terms of pretrial detention. But we do.

So now we're having another set up to be administered in one way or another by the courts, to correct something that is not being done now. I think the focusing of attention on the matter is what has done something to improve the situation, really rather than the kind of administration.

I think the Federal court system, is one of the few integrated systems in the country, introducing a separate pretrial agency, I think will break that kind of cooperation.

Guy Willetts said it doesn't cost any more money, he may demonstrate that, it can't help but cost more money. For instance, if you have any kind of a chief pretrial services officer, that's a salary that's not going to be paid. That is going to be paid, in addition to my salary.

Senator BIDEN. Are you saying that your folks can do them both, you don't need——

Mr. LATTA. No; what I'm saying is if you have a chief pretrial service officer, you separate that function out and have a chief doing only that, you're going to pay him a salary.

Senator BIDEN. But I assume he's going to be doing a job you'd have to hire someone to do.

Mr. LATTA. Well, that's not the way it's operating now. I happen to have two supervisors who carry out basically the administrative responsibilities for me. In a sense they actually act as a buffer between myself and the court. As I say, I'm sorry the judges aren't here. I think judges can be difficult to deal with and I think as all of those who have spoken before me, find it necessary to bang heads with courts on a variety of topics and this is only one of them.

Senator BIDEN. I understand that. I assume that you would have one of those two administrative officers primarily focusing on the bail question. Are you suggesting those two officers could encompass, in addition to their present responsibilities, the focus that is required for the bail operation.

Mr. LATTA. Let me back up for just a moment. When the program started, we had 16 officers and 2 supervisors. We now have 10 officers and 2 supervisors. Those 2 supervisors and the 10 officers have no other responsibilities, never had any other responsibilities other than pretrial services. They have not been involved in probation.

One of the individuals came from the probation office, the rest have all been hired new, off the street. They never worked as Federal probation officers.

Senator BIDEN. But I don't understand. You had to hire them, because there was no independent pretrial agency such as Mr. Frazier is talking about, right?

Mr. LATTA. Yes; but for instance, Mr. Frazier is in effect, it's a small operation, but he is the Administrator of that agency.

Senator BIDEN. Well?

Mr. LATTA. OK, I am the Administrator of that agency and also of probation.

Senator BIDEN. But you have two administrators under you. How many do you have under you doing the same thing, Mr. Frazier?

Mr. FRAZIER. None. In fact it goes beyond that.

Senator BIDEN. What you're saying is that——

Mr. LATTA. It's a function of size.

Senator BIDEN. So, he could do it cheaper then.

Mr. LATTA. He could do it cheaper. If I had his program and the number of people he has, I could do it cheaper because I wouldn't pay Lou's salary.

Senator BIDEN. I got you, you just pay two little level people's salary.

Mr. LATTA. Or one, or whatever. You've got to have somebody responsible for this function and in this case, what I'm saying is that the Federal probation parole system is not so complicated that you cannot add other functions. Pretrial diversion or anything else. It's really a rather simply administrative kind of job. I feel.

Getting the work done, that's another question. Anyway that was one of the points I wanted to make. The one of attitude, I think it should be kept separate in terms of job responsibility, but when the workload merits it in one place or the other, I think work comes in and that the intake is going to be pretrial.

In other words, as people get arrested, that's the first part of your workload. They move from there into a sentencing phase where

you're going to do the presentence work, they move from there into supervision. It doesn't all come at once, it moves in a pattern.

The larger the staff you have, and the more flexibility you have, the better able you are to meet the peaks and valleys of that work. You may have a pretrial services officer doing nothing, or a probation officer perhaps doing nothing. In my office, I can keep them assigned to a variety of functions.

So I just don't see how it cannot, if you're going to start any other kind of bureaucracy, it's going to cost you more money. You can't help it. I'd like to say that the way the thing works, I think depends not so much on the structure, but it does depend on the people you have working the program. And that goes for your courts.

If you have courts that are going to be very reluctant to do this, you're going to have some problems, but they can be overcome and I think the northern district of Texas indicated that. They certainly had a reputation for locking people up and pretrial services changed that.

And I think it would have been changed whether there had been a board or probation. I don't think that was most of the people, not entirely, most of the people running these programs were probation officers anyway, first, before they became pretrial officers.

I can't really speak to the variety of statistics that Guy put on the board. I said our district, we do have, I think, some unique problems. That is, we still prosecute bank robbers. We have more bank robbers than any other district in the country and most of them we have end up with holds from other States or local agencies.

Also, many of them are addicts and we do get some of those people out. I would say the same thing, we put these people in halfway houses on drug programs that wasn't done before.

So the one thing that pretrial does do that the law did not provide for previously, was to provide for services and supervision of people who are arrested. In fact, and I'd say unfortunately, those services aren't really available to the probation office, after the person completes pretrial so its a nice option to have, in terms of treatment for offenders.

Again in contradicting what the judges here had to say, I think the system can tend to work better in a larger district, because you do have more staff, you can assign people separately. When you have a small district and a small operation and they were mentioning, picking on Montana, or Wyoming or wherever, then it does become difficult.

Because that person will have to do both jobs. And in my office, which is a large one, they don't have to. They don't have to be involved in shifting gears. I think they can, but they don't have to do it.

I think a whole lot of the problem is in educating magistrates and judges to follow the letter of the law which is already there and I think this is an effort that all of us have been making and we alienate some judges doing that. I don't know that that's all that bad.

Any questions that you'd like to ask?

Senator BIDEN. It doesn't make a whole lot of difference.

Mr. LATTA. I think as far as strictly from a point of view of administration, I think it makes more sense to leave it in probation.

Senator BIDEN. But it doesn't really make any real difference?

Mr. LATTA. I think so.

Senator BIDEN. Why?

Mr. LATTA. Because I think it's going to cost you more money. I think you're going to lose your flexibility and I don't think you will be able to use staff back and forth. I don't say it can't be done. That's why I say, it doesn't matter what kind of administrative set up you have, it's the people in it that's going to make the difference.

Senator BIDEN. Has the establishment of demonstration agencies caused some of the focus to be brought to bear in your district and others. You said focusing attention has done more to solving the problem than the form of administrative apparatus.

Mr. LATTA. No attention was focused on it by anyone other than the court, the defense counsel and the U.S. attorneys office. That was the bail manner. Nobody else was ever involved.

Senator BIDEN. What focus are you referring to? I'm talking about pretrial services going in verifying information and performing other functions. What caused the focus?

Mr. LATTA. Oh, legislation. Speedy Trial II.

Senator BIDEN. But didn't it really begin to focus with the demonstration districts being set up.

Mr. LATTA. Sure.

Senator BIDEN. I wonder if that focus remains when it's all rolled into one operation.

Mr. LATTA. I would think so. My guess is that whatever kind of operation you have, as you institutionalize it, it will lose some of the momentum, but not necessarily. That's why I think the function should be kept separate, but within the agency.

Senator BIDEN. OK.

Mr. LATTA. I have enough trouble getting to my judges on a variety of subjects. You've got the U.S. attorneys who need the judges time, you have the Federal defender, you've got an indigent panel, you've got a lot of people competing for judges' time. When I walk in, at least I can compete for two hats, I can look at two things. One is pretrial and one is probation and I would say that in the last 5 years, the majority of the discussion has been on pretrial rather than probation.

Probably because probation has been there and more of the problems are worked out.

Senator BIDEN. Will you need any more money.

Mr. LATTA. Will I need more than I have?

Senator BIDEN. Yes.

Mr. LATTA. No; if it went a different function, the only additional money you'd need now would be my salary. Someone to run it.

Senator BIDEN. But as it stands now, in order to do the pretrial and the probation function, you don't need any more money to do that adequately.

Mr. LATTA. I could do it better than I'm doing it now, with more people, but it depends, how far do you want to go. If I want to send somebody to Barstow, which is 225 miles from the office and station them there, it would be a great job, like the other judge said, but things wouldn't happen enough to warrant doing that.

Senator BIDEN. OK, thank you. Would you like to go next, Mr. Street?

Mr. STREET. Yes; I'm Morris Street, I'm from Maryland and Maryland has a board-operated pretrial services agency. Like other witnesses before me today, Senator, I wish to impress upon you also the need for pretrial services agencies. Such agencies are needed to fill a void that exists in the criminal justice system. As you know, persons in criminal cases are entitled to release pending trial on the least restrictive conditions that will reasonably assure appearance.

To determine the appropriate release conditions, judicial officers are required to take into consideration a number of factors designed to provide a basis for determining the type, the amount, and conditions of bail to be imposed.

Without a pretrial services agency, there exists no one or any agency whose function is to provide judicial officers with the information necessary that will allow them to make an informed decision.

When no such agency exists, such decisions are made in the dark or on the basis of very limited information to include basically the nature of the charged offense. Very often, there is some reliance on the recommendation of prosecutors or arresting officers. I submit that decisions made in such a fashion do little to insure the notion that a fair and impartial decision was made on a case-by-case basis. Nor does it facilitate adherence to existing legislation in this area.

Due to the availability of pretrial services, the information that is provided to judicial officers has reduced the reliance upon money bail and encouraged the use of all bail options.

It has virtually eliminated the setting of bail on the basis of the charged offense and in my opinion, reduced unnecessary detention and the resultant cost. Our efforts have resulted in some increase in the number of initial releases, while at the same time there's been some decrease in the rearrest and failure to appear rates.

At this point, I'm going to depart from my prepared remarks and offer some summary comments.

Senator BIDEN. Fine.

Mr. STREET. I want to comment directly on the issues of concern to this committee. First of all, I believe that my written statement will be put into the record.

Senator BIDEN. It will be.

Mr. STREET. My prepared statement reflects my views and the views of others before me today, that pretrial services should be continued. Second, I would recommend that the service be made available in every district. I think it inherently unfair to afford a service which might make the difference between pretrial detention and pretrial release available to some and not to others.

Third, we have all heard today some subjective views from several witnesses who seem to feel that pretrial services should be a separate entity or independent, if you will. I too have my own rationale as to why it should be separate, these reasons include the fact that pretrial services and probation have distinct functions that require different approaches to fulfilling their respective responsibilities.

From a managerial standpoint, it is a more simple task to direct one's energies toward accomplishing one goal, than it is to fulfill more than one goal. It seems to me that it is difficult to serve two masters equally. And when and if it becomes necessary to make choices, something is going to have to suffer.

These points and others have and they continue to be put forth and will undoubtedly prove to be unacceptable to some because of their subjective nature. If we cannot accept these subjective views, I think that all that we have left is the data.

Those of us in all of the 10 pretrial service agencies took great pains over the last 4½ years to provide accurate data so that a statistical presentation could be made. It seems to me that if we accept the premise that Mr. Willetts and his colleagues are honest men of integrity, then we have to accept that their charts and graphs reflect accurate data.

That data seems to support that board's operated more effectively than probation. If all that we have left, if we throw out the subjective views, is the data, then I think that you and your committee should rely on that in making your choices. Thank you.

Senator BIDEN. Thank you, Mr. Street. I don't doubt that is correct. The former Prime Minister of Great Britain once said there are three kinds of lies: Lies, damned lies, and statistics. And my problem with data generally is not that the material is not accurate, but that it may not support the proposition for which it is being offered.

I am inclined to believe in this case, that it does. I come with a previous position that supports the same conclusions, but ultimately we are getting down to a fairly subjective realm here, it seems to me.

I didn't realize Mr. Latta had a plane to catch, I didn't have more questions for him, because I was going to wait until the whole panel completed its testimony so I could have some exchange of comment. That's why I will probably save most of the questions for you Mr. Kuznesof. Why don't you proceed.

Mr. KUZNESOF. First, I want to thank the Senator for inviting me. I don't have a statement prepared.

Senator BIDEN. That's all right.

Mr. KUZNESOF. I will submit one on a later date if I may. Also, I don't have specific knowledge as to the bill or draft that the Senator is considering. Therefore, I assume it will be similar to H.R. 7084 and I've jotted down some notes pertaining to that.

But first, I'd like to digress and comment as to some of the testimony that occurred this morning. I think there is general agreement that pretrial services should be continued and expanded. This agreement is throughout the system; not simply a personalized plea of those who testified. I assure you it's throughout the probation system and most of the judicial system. That includes the 5 boards and the 5 probation districts and the 10 or 11 districts who volunteered to establish pretrial services without additional personnel. They did it on their own in probation with no additional personnel.

We all conclude that pretrial services should be continued. So we all seem to be in agreement as to that. The second area of agreement is that probation officers will do the pretrial services work for small districts. And I think it should be known that about 60 percent of the locales are in small districts.

There are 300 locations where there are probation officers. Therefore, even if you were to establish a separate system, probation officers for the most part, particularly in the small districts, would do the pretrial services work.

68-879 O - 81 - 5

Senator BIDEN. Well, that's obviously different than what, or is that different from what Mr. Latta had to say.

Mr. KUZNESOF. No, he was referring to the metropolitan districts.

Mr. BIDEN. Well, I understand that he was referring to metropolitan districts and I thought he was suggesting that both functions could be done more expeditiously by a probation office.

Mr. KUZNESOF. In the small districts, yes. But in the big districts, if I recall his testimony, and I think I will be testifying similarly, that there should be separate units, probation officers who will do nothing but pretrial work.

Senator BIDEN. I see.

Mr. KUZNESOF. And that's the way it is in the southern district of New York. We have an integrated system here. We've been integrated for the last 2 years and if you should pass the legislation tomorrow, we're ready to go tomorrow.

That pretrial services should be a branch within the probation division of the AO, I think you made that statement this morning, and I think most all of us, virtually all of us, concur with that.

Senator BIDEN. Virtually all of whom?

Mr. KUZNESOF. Virtually all of the probation offices that I know of. We believe it should be a branch within the probation division of the AO. It's going to cause a lot of less confusion, if they're getting direction from one boss, one head.

Then the only question that remains as I see it is whether there should be an independent agency within the metropolitan districts, such as New York eastern, such as New York southern and California, Philadelphia, and other large districts.

It is interesting that the judges of the southern district of New York, the eastern district of New York, the eastern district of Philadelphia, the district of New Jersey, the central district of California, metropolitan districts in all, have all gone on record to state that they want pretrial services to be done by a unit within their probation departments.

I have here a letter which is addressed to you, which I would like to read for the record from the honorable chief judge, Floyd F. McMahon. He is the chief judge of Southern New York which has 27 active judges, 7 active senior judges and 6 very active magistrates.

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 very 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 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.

I trust that your subcommittee will recommend against any agency independent of the probation department.

This letter is addressed to you.

Senator BIDEN. Very trusting judge. The trust is not well placed.

Mr. KUZNESOF. It's also interesting that the judges in the eastern district of New York and the eastern district of Philadelphia, where there are board operations, that is, board operated pretrial service agencies have also gone on the record to say that it should be within the probation department.

They are in the field and they know how their courts are operating, I think, they know what's best for their courts, and how pretrial is working—both in the board operated and in the probation operated formats.

Of the 76 judges who were surveyed, 74 said it should be within the probation department or as separate units within the probation department. Judge Platt of the eastern district of New York who serves as the chairman of the Board of the Eastern District Pretrial Services, testified recently before the House subcommittee and said that if there is a pretrial service agency, it should be within the probation department.

Mr. Gooch wrote a letter to the House; he's the chief probation officer in the eastern district of Pennsylvania. He wrote with the consent of the judges, also stating the same.

I think their viewpoints are to be considered. Perhaps, I'm going too fast. As I said, I didn't have time to prepare a statement; and when you don't have time, you run the risk of omitting material facts. Hopefully what I have to say will serve a positive purpose.

I have submitted a number of folders. This folder contains material prepared by others.

[Material referred to above is on file with the subcommittee.]

Senator BIDEN. By whom?

Mr. KUZNESOF. By chief probation officers, judges, and Federal Probation Officer's Association all who have a point of view; in particular that it should remain within the probation department, within the local probation department and within the Administrative Office of the U.S. Courts.

This folder reflects the work that's been done by the probation department of the southern district of New York. Our department that includes pretrial services, it's one and together. For example, my title has been changed. I am known as Chief U.S. Probation and Pretrial Services Officer. There's no need for another chief and that's the observation that Judge McMahon made that he doesn't need another bureaucracy; he doesn't need another chief. We've got enough bureaucracy in the judiciary.

Now I'd like to tell you how it works in the southern district.

We are very service oriented. First let me go to these charts. I wish there were a comparison of these charts showing you district by district. If there were it would show that southern district did rather well, on all th categories:

In failure to appear, reduction in failure to appear, a reduction in new arrests, interviewing of clients; in all, we've done rather well. Now those people who are in the pretrial unit in the southern district of New York, do nothing but pretrial.

In fact pretrial would never have gotten off the ground in the southern district of New York and would have been delayed a year, if the probation department had not given up 1,500 square feet of space. They would not have had the furniture to start with or the typewriters to start with.

There's considerable savings, not only in personnel, but also in equipment and furniture and space.

Senator BIDEN. Where did you get the typewriters?

Mr. KUZNESOF. We loaned them to them.

Senator BIDEN. Pardon me.

Mr. KUZNESOF. We loaned them to them, we borrowed them from other parts of the department. We have a very cooperative interservice relationship within the court. If I need a typewriter, I can go to the clerk of the court and say "Mr. Bergoff, could I have a typewriter."

Senator BIDEN. And that wouldn't be the case if it were an independent agency?

Mr. KUZNESOF. I think they would have much more difficulty. They would have much more difficulty about even using or securing photostating equipment. For example, just to get supplies is difficult. Pretrial Services has had new furniture allocation since 1976, when there were only six officers and one supervisor. The probation department itself had trouble and yet we have contributed enough furniture to meet their needs, for our present staff of 13 officers.

Senator BIDEN. You must not have a lot left over. Are you sitting more than one person to a desk?

Mr. KUZNESOF. I'm known as a finder; and by the way, all the furniture has been upgraded because we secure it from the judges when they discard some furniture.

Senator BIDEN. I see.

Mr. KUZNESOF. And we take it from the U.S. attorneys office. In fact I think they have better furniture than the probation officers have ever had.

Senator BIDEN. I see.

Mr. KUZNESOF. Moreover, I used to be a mover so there's no problem in moving what is found or adopted.

Senator BIDEN. You should be judge. I don't know why we're wasting our time with you running this operation.

Mr. KUZNESOF. Also, it works harmoniously. Our training officer for pretrial is also a probation officer. Additionally, probation turned over its pretrial diversion duties to pretrial services in May 1979. I think you should know we had pretrial diversion in the southern district of New York since the late thirties for juveniles. And we've had it for adults since 1973.

The U.S. Attorneys Office for the Southern District of New York wanted us to develop that program much sooner, but we didn't have the personnel. As soon as we got the personnel, and it took Attica to get the personnel, we started a pretrial diversion program for adults.

The very man who instructed the pretrial service officers about pretrial diversion is our training officer in the probation section. He is also the expert on psychiatric problems, and helped rid the MCC of people who were awaiting trial, but who were mentally disturbed. He accomplished this by placing them into mental institutions in the State of New York.

The probation officer in question is excellent, and we were able to use his expertise for both sections. It's an excellent program when the two agencies are together. We have a community service program. Now we started the community service program in the probation section and then transferred part of it to the diversion program.

With the diversion program and the community service program we have a basic goal now and which is to reduce post-trial conviction. The benefit is that by affecting good treatment plans in our pretrial programs, by providing the pretrial services, and by incorporating them

into our presentence reports, the judges are more inclined to place a deserving probation.

We are not only concerned with pretrial detention, but we are concerned also with posttrial detention. We have a program known as IPSAS. Intensive PSA supervision. We have people who are in need of help, and accordingly get the maximum services. Pretrial uses the same drug treatment programs that probation developed.

They have the resources, but most of these resources are probation developed and, free of charge. We have a urine analysis program in which a judge can be apprised of the results within 2 hours after arraignment. These are things that have been done because we are united, we are integrated, and it works.

I see no reason, and the judges see no reason for it to change. Thank you.

Senator BIDEN. Thank you very much. You've all made your points very clearly. Sir, you read a letter into the record. Are you aware of a letter dated May 2, to Congressman Rodino from Mr. Foley, the director of Administrative Offices of the U.S. Courts, where he states that vesting full administrative authority for the performance of pretrial service functions in the probation offices in every Federal district,

Would not be substantially less expensive, would not preclude a need for additional personnel and that it would not serve the purposes to be served as well as an independent pretrial service officer in most Federal districts.

I assume that's the first you heard of that.

Mr. KUZNESOF. It's the first I've heard of it, and with all due respect to Mr. Foley, I disagree with it.

Senator BIDEN. I suspected you might. What this all comes down it, it seems to me gentlemen, is an argument over two points.

One, whether or not it would cost more to have an independent agency; and two, whether or not it would cost more, can an integrated probation pretrial services operation do the job as well as an independent pretrial service agency.

And both you sir, and Mr. Latta argued that it would cost more and the job can be done just as well, just as efficiently and just as professionally, with just as much diligence by having an integrated operation as by having it separate.

Mr. Street and Mr. Frazier, if I'm not mistaken, the essence of your argument is that it won't cost any more and even if it did cost more, it would be worth it because you'd get a higher grade of performance as the consequence of having an independent agency.

Is that a fair statement?

Mr. FRAZIER. Yes it is.

Senator BIDEN. And I guess what it comes down to in this committee is for us to make a determination. And I might note parenthetically, I think we've come a long way in that essentially we've narrowed it down to those two issues because we all agree that there is a need for the service. We all agree that there is a need for the job to be done. We all agree that all districts should have access to this kind of an operation, regardless of whether it's integrated and/or independent. Nonetheless, all accused should have the benefit of the services.

So we're really down to who should do the job. And the judgment as to whether or not there is an integrated or an independent agency will depend on the answers to the two questions: One, what will cost

more and, two, who can do the better job. It's up to us to balance those questions.

Mr. KUZNESOF. Excuse me. I'd like to state that I think that the judges of the district——

Senator BIDEN. Pardon me.

Mr. KUZNESOF. The judges of the district should decide. If they want an independent agency, let them have it. If they want a unit within their probation system, as long as it's controlled by the administrative office, then I see no reason why they can't have both.

They are the ones who are going to be responsible for the implementation of the program and I think they should be the ones to make that decision.

Senator BIDEN. They had on occasion needed some help in that regard on other matters and I should tell you that I doubt whether this committee will be reluctant to offer its advice to the courts on this matter.

I find it interesting how we all, including the judiciary, make an argument for independence and individual choice in pretrial services while in other instances for example relating to the need for magistrates, a completely different argument is made by the same judge.

So I must tell you in all candor that I am not overly impressed by what determination the courts had in this in terms of their districts. Quite frankly, there shouldn't have been any need for the Speedy Trial Act in the first place. We shouldn't have had to tell the courts what to do. If we followed the admonition of you and others about letting the courts make the decisions, we would not have speedy trials.

Speedy Trial Act and many other things that have occurred are usually a consequence of inaction on the part of other branches of the Government. I should note for the record that, believe it or not, we'd like to be a little out of the business of being involved in what other branches of Government do. There's enough figuring out what we're going to do in Zimbabwe without worrying about whether or not the Southern District of New York has an independent and/or integrated pretrial operation.

But my limited experience in 8 years as a U.S. Senator has been that sometimes other branches of the Government won't move unless prompted. I won't bore you with the litany of examples, but I would suggest that for every one time we act beyond our jurisdiction, without any real need, there are a half a dozen times that no action would have occurred, absent us acting. The action was needed.

I will point out to you that I am of the opinion that absent the legislation relating to the independent agencies in the 10 districts being picked as models, I doubt whether Mr. Latta or anyone else in the various areas would have focused as much attention on pretrial services.

There's nothing like looking over the precipice to focus ones attention. I find we get judges attention most urgently, as we do Congressmen and Senators, when we talk about salaries. That seems to focus attention instantaneously throughout the district courts and the circuit courts.

I suggest that we get instantaneous reaction from bureaucratic agencies when we talk about division of functions, loss of control or increase of control and I guess that's the nature of the beast and we the Congressmen are not exempt from that. I'm not suggesting that at all.

What I am suggesting I guess and I'm going on too long, is that I haven't made up my mind as to how this function should be carried out. I am fearful that additional independent agencies tend to bring on independent operations and independent bureaucracies, but I am also on the other hand fearful that failure sometimes to have an independent agency which competes, produces a vacuum within the administration of justice, that are not likely to be focused upon.

I think it would be easier for the chief to go in and argue with that judge as to why he did not follow the recommendation relating to sentencing than to question why he did not provide an opportunity for the person in charge of making bail recommendations available to the defendant.

So it's a judgment call. As I say, I honestly haven't made up my mind on it and I'm sure the rest of the committee has not. And the testimony of all of you here today will go a long way in providing us with the substantive information we need in order to be able to make a, hopefully, informed judgment. I would say that the experience with both the independent agencies and the integrated agencies has been very positive, very worthwhile and you have in both instances followed the intent of the Congress and the intent of the act in an attempt to solve a real problem.

I complement you all for that. Obviously you will hear about our recommendation.

I may very well, with your permission, be back to you for additional information as I sift through the record of the hearing today and try to synthesize the points that you have offered, I may seek additional information if that's possible. Thank you very much gentlemen, I appreciate it.

Mr. KUZNESOF. Thank you, Senator.

[The prepared statements of Messrs. Frazier, Latta, and Street follow:]

PREPARED STATEMENT OF LEWIS D. FRAZIER

INTRODUCTION

My name is Lewis D. Frazier. I am the Chief Pretrial Service Officer for the United States District Court, Western District of Missouri. Prior to my appointment to this position in 1975, I served as a United States Probation Officer in the Western District of Missouri for eight years.

I have been requested to testify concerning the local impact of the Pretrial Services Agency Project and have also been requested to render an opinion concerning the possible expansion of the program to other federal districts.

Although the Pretrial Services Agency in the Western District of Missouri is the smallest of the ten demonstration districts in terms of the volume of defendants processed, it is perhaps the most representative of what one could expect if PSA's are expanded nationally since over 85 percent of the remaining districts fall within our size category or are smaller.

Our PSA operates under the auspices of a Board of Trustees with the Honorable Chief Judge John W. Oliver serving as Chairman. The Pretrial Services Agency (PSA) in this district has had the total support of our court from the inception of the project and has gained the cooperation of the other court-related agencies in effecting necessary changes which have resulted in a successful program. As you may see from the information presented later, we have not fragmented the overall process but have actually served a cohesive function in achieving an integrated approach which has reduced the time necessary to process defendants.

Although the Western District of Missouri geographically comprises approximately the western one-half of the state of Missouri and encompasses 66 counties, it has five main geographical divisions of the court with six district judges

and one senior judge. All defendants who are arrested within the district are processed either through Kansas City (three-fourths of the total) or Springfield (one-fourth of the total).

There are three magistrates serving in the Western District of Missouri, two of whom process the criminal cases for pretrial procedures which include the setting of bond, initial appearances, bail review hearings, arraignments (for the purpose of please of not guilty only), omnibus hearings, and pretrial conferences.

The impact that PSA has had in this district has been achieved primarily through the close working relationship with the magistrates, especially Chief Magistrate Calvin K. Hamilton, and with the other court related agencies. That impact is described in the following seven areas:

I. BAIL DECISIONS

The report by the Comptroller General entitled The Federal Bail Process Fosters Inequities, (GGD–78–105), notes (p. 5):

* * * 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 report concludes (p. 17):

CONCLUSIONS

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 has shown that with information provided by the pretrial services agency, many of the negative factors cited in the GAO Report have been eliminated or obviated. The overall result has been that better informed bail decisions are being made and that these decisions comply with the mandates of the Bail Reform Act and Eighth Amendment.

If a pretrial services agency is going to have maximum impact on the bail decision, then it must have access to a defendant prior to the time that that defendant appears before the judicial officer who will fix his bond. The pretrial services agencies should be permitted enough time to conduct a prebail interview and investigation. Furthermore, the pretrial services agencies should submit a prebail report to the judicial officer along with an independent recommendation.

During the past four years, the PSA in the Western District of Missouri has interviewed almost every defendant arrested or charged with an offense in this district. Approximately 97 percent of those interviews have been prebail. In each case, a report was submitted to the judicial officer who set bond. The reports contain recommendations for a specific type of release as well as for conditions of release. The reasons for these recommendations are contained in the report.

Once a defendant is arrested, PSA is notified. The defendant is taken promptly to the United States Marshal's lockup for processing. A pretrial service officer interviews that defendant and begins his investigation. The United States

Marshal's Office has been extremely cooperative in developing this procedure so that we can gain access to an arrested defendant immediately after he is brought in.

The pretrial service officer then conducts an investigation, geared primarily toward verifying essential criteria that is named in the Bail Reform Act as being factors that may be considered in setting bail. These include: Family ties, employment, financial resources, character and mental condition, length of residency in community, record of convictions, record of appearance and flight to avoid prosecution or failure to appear in court. PSA does not discuss the offense with the defendant but does obtain information from the U.S. Attorneys Office concerning the details of the offense.

After the investigation, the pretrial service officer submits a report to the judicial officer. If time does not permit a written report, an oral report is submitted, but it is always followed by a written report. The oral reports permit the pretrial service officers an excellent opportunity to discuss fully and freely their views of a defendant and whatever other information that they believe is appropriate.

The bail report is not made available to the government attorney nor to the defense counsel. The judicial officer does, however, advise the defendant of the factors that he is considering in setting the bond, and the defendant has an opportunity to respond to them in open court. The pretrial service officer is also in attendance.

The information provided by the PSA in the Western District of Missouri and the options and alternatives (such as use of the CTC and our drug program) developed by it have permitted the court to release several individuals who otherwise would not have been released. The PSA information has also identified defendants who have special physical and mental problems and has identified defendants who pose security threats to the court. As an example, we had one defendant who was charged with an income tax case. Prior to his surrender, we learned that he was a member of a radical, militant organization that had disrupted other court procedures. This information was relayed to our court and adequate security measures were taken.

Attached to my statement are copies of actual bail investigation reports that have been submitted to our judges. A cover memorandum has been attached to the reports providing a synopsis of the case and the eventual outcome.

[The material referred to above is on file with the subcommittee.]

II. JUDICIAL TIME SAVED

Chief Magistrate Calvin K. Hamilton, who processes most of the criminal cases in Kansas City, has advised that PSA has saved him approximately 45 minutes per case. Prior to the existence of PSA, Magistrate Hamilton, in a conscientious effort to elicit the factors named in the Bail Reform Act, took a detailed statement from the bench from the defendant when he appeared for his initial appearance. The information was take under oath, but it was not verified. The PSA reports now provide that information plus additional data. This results in a defendant being processed by the magistrates in a shorter period of time.

We believe that we have relatively few bail review hearings by the magistrates and only a handful of appeals to the district judges because of better informed decisions being reached concerning bail. This savings in time permits the magistrates to devote their energy and time to their other judicial duties, especially in reference to civil cases which do not fall under the purview of the Speedy Trial Act. Because it has not been necessary for the district judges to hold hearings concerning the bail situation and/or the appeals from the bail decisions reached by the magistrates, it has also permitted the district judges to devote their time to other duties.

III. BAIL REVIEW HEARINGS

A pretrial service officer can initiate, and often does initiate, a bail review hearing once new information has bee obtained or verified by PSA that would dictate a review of the bail situation, both for defendants who are in custody and those who have already been released. We continue to monitor a defendant's situation, even if he is in custody, in an effort to determine if his situation has changed to the degree that it would permit him to be released on bond. Conversely, if a released defendant's situation in the community has deteriorated

to the point where we believe that he has become a flight risk and/or if new charges have been or are going to be filed, this information is provided immediately to the court for appropriate action.

IV. COORDINATED MANAGEMENT

Through the cooperation of court-related agencies and the magistrates, we have helped develop procedures so that it is not necessary for each person who is indicted to be arrested by the case agents. Over 50% of all of our defendants voluntarily surrender. Through cooperation with the U.S. Attorney, our grand juries now return indictments on a staggered basis. Previously, the grand jury would return all indictments at one time, usually late Thursday or Friday. This resulted in a rush of arrests that would cause a strain on limited facilities and would result in an over-capacity situation. PSA works closely with the Assistant United States Attorneys and case agents to determine which defendants can now voluntarily come in. These defendants are contacted and advised to report to PSA on a certain date and time. This permits PSA to began working a case prior to the time when these defendants actually surrender.

These procedures have not only made it easier to manage PSA time and efforts, but it has also allowed us to assist in managing the flow of defendants through our system at any given point in time. Scheduling in defendants who are going to surrender permits the Marshal's Office, the United States Attorneys Office, and the PSA to achieve better efficiency with a limited staff. Thus far, all defendants so notified have appeared as scheduled for their voluntary surrender and initial appearances.

These procedures have also reduced the number of defendants that were arrested late in the day or on weekends by the case agents in the absence of such a program. It has permitted a defendant to surrender on a time schedule that meets all of our needs. It has also saved defendants the embarrassment and disruption that an arrest might cause him, his family, and employer, which is especially important if he is not convicted. This is not to say, however, that we advocate that all defendants should surrender because we certainly see and understand the need for arrests of defendants who are flight risks, in a situation where a search might be appropriate, etc.

It has not been necessary for the United States District Court Clerk's Office to issue summonses to these defendants who voluntarily surrender. This saves the Clerk's Office time and manpower because our experience has shown that it is possible to get these defendants in with a minimum of effort and time.

In cases where it is necessary for a defendant to be arrested, such as on a complaint or on probable cause by the agent, the case agents notify the United States Marshal's Office, PSA, and/or the magistrates that they have a defendant in custody and will be bringing him in. This allows us to begin developing information about this defendant even prior to the time he actually is presented to the marshal for processing. We can begin running police checks, etc. and can develop useful information before we interview that defendant. Again, it results in better overall management, and we have found that it does not actually take any longer to process a defendant now than it did prior to the time that PSA was in existence. In fact, it may have even shortened the overall average because of the scheduled appearances and more efficient use of manpower, time, and space.

V. TRACK RECORD—ADJUSTMENT REPORT

Several members of our court view the period of time a defendant is under PSA supervision as a mini-trial period of probation. A section of the presentence report is devoted to a defendant's adjustment while on bond. By statute, the United States Probation Office may have access to PSA's information once a defendant has been convicted. Much of the information that is contained in the PSA files and reports is useful in developing a presentence report. This information has also proved to be beneficial to the court at the time the court imposes sentence because the court has had an opportunity to look at a defendant's "track record" under supervision .

One of the bail investigation reports and synopsis that is attached is an example of such a case. It illustrates that PSA was successful in developing a release plan for a defendant who did not need to be in custody prior to the time he was sentenced, and this information was used by the court in sentencing.

VI. SUPERVISION

When the Speedy Trial Act of 1974 was passed, the preamble to that Act noted that it was enacted "to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision of the persons pending trial * * *."

I believe that the supervision provided by PSA has afforded society greater protection without any compromise of the rights of defendants. Our judges have stated that they released a defendant primarily because of our ability to provide supervision and other services to him. That individual might not have been released if these services were not available. If a defendant is placed under PSA supervision in the Western District of Missouri, we run a police check on him on a regular basis to determine if he has been rearrested. If there is an apparent violation or a rearrest, PSA notifies the court immediately and makes a recommendation concerning what type action should be taken. PSA can place a defendant in a drug program, which includes urinalysis testing if it is indicated. This additional information can prove beneficial not only to PSA but also to the sentencing court if the defendant is convicted. Because many defendants are not convicted, we do not believe in forced "rehabilitative" efforts and believe that such a practice is contrary to the law.

We have modified our practice concerning supervision. Previously, almost all defendants who were released were placed under PSA supervision. However, that practice has been modified, and we no longer place all defendants under PSA supervision. This decision is made on a case-by-case basis.

PSA does not interpret our supervision role to be of a punitive nature. We have different levels of supervision. The various options PSA can provide the court has proven to be advantageous in selling the PSA project and helpful to the defendant on a selecting basis. Pretrial service officers often act as an "interpreter" to a defendant and his family and can also serve as an intermediary in the court process.

In view of the requirements of the Speedy Trial Act relative to the accelerated pace of processing criminal cases, we have assumed an additional role in the Western District of Missouri, primarily that of a backup notification system. Prior to the existence of PSA, the magistrates required each defendant to keep the United States Attorneys Office notified of his current address. They now require the defendants to notify PSA. Thus, we are able to get in touch with each defendant, as needed, in order to advise them of fast developing changes in their case. There have been numerous occasions when PSA has been called upon to notify and produce a defendant on short notice.

VII. RELEASE RATES—CRIME ON BAIL—FTA (FAILURE TO APPEAR)

The following charts depict the type of bail set in the Western District of Missouri during the operation of PSA and also reflects the crime on bail and technical violations during the same time periods.

TYPE BAIL SET—WESTERN DISTRICT OF MISSOURI

[In percent]

	PR	U/S	10 percent	C/S
1976	9	42	12	37
1977	13	44	11	32
1978	18	38	14	39
1979	25	43	4	28

Percent of defendants released:	Crime on bail	Technical violations
1976	7.0	11.0
1977	1.8	3.5
1978	1.9	2.5
1979	2.0	7.0

As may be seen in the charts, there has been an increase in the use of the preferred methods of release (PR and U/S). The overall release rate in the

district has increased from approximately 70 percent in 1976 to approximately 85 percent in 1979. I am not in a position to determine what portion of that increase may be directly attributed to PSA. I can say, however, that the judicial officers who set these bonds have reported time and again that the information provided by PSA plays an important role in the bail decision process.

In spite of an increase in the release rate, there has not been a corresponding increase in the rate of rearrest (crime on bail). In fact, there has been a decrease from approximately 7 percent in 1976 of those defendants who were released and then rearrested to 2 percent in 1979.

The technical violations have continued to fluctuate. I personally do not believe that they correlate to any meaningful factor except perhaps to the number of conditions of release that were set.

The overall FTA rate for the four year period approximates 1 percent to 1.5 percent. It has not increased in spite of the higher release rate.

Of course, with the increased release rates, the detention rates in the Western District of Missouri have decreased. I believe that by identifying those defendants who can be released and who will reappear at future court dates, PSA has helped to reduce unnecessary detention. It should be noted that, as mentioned previously, PSA re-evaluates each defendant who is in custody in an attempt to develop release plans for them.

CONCLUSIONS AND RECOMMENDATIONS

The GAO Report, "The Federal Bail Process Fosters Inequities" (GGD–78–105), reflects (p. iv):

* * * GAO supports the continuation and expansion of the pretrial services agency function of providing verified defendant-related information. Better information is needed to improve bail decisions, and pretrial services agencies can provide this information * * *.

I concur with this assessment based on the experience of the PSA Project in the Western District of Missouri. I believe that PSA has contributed to an overall improvement in the criminal justice system by not only providing verified information to the court relative to the bail decision process but also by providing selective supervision services to defendants who are released. It is my considered opinion that our information has played an important role in the greater use of the preferred conditions of release and has played a corresponding role in protecting society by supervising these defendants once they are released without compromising the rights of these defendants, many of whom will not be convicted.

The PSA project has shown that even with a higher release rate, there has not been a corresponding increase in failures to appear or in new crimes being committed by defendants who are released. There have been other benefits as well, such as a savings in pretrial detention costs. Just as important, we have demonstrated that our PSA did not cause fragmentation—rather just the opposite effect was achieved which resulted in a more efficient and better managerial system.

The question of whether PSA's should be operated as part of the existing probation system or should be set up as an independent agency within the court system is fraught with a great deal of controversy at this time, in spite of recommendations for an independent agency by the Chairman of the Probation Committee of the Judicial Conference (Judge Gerald B. Tjorflat) and by the Chief of the Pretrial Services Branch, Probation Division, Administrative Office of the U.S. Courts. We strongly support this recommendation for an independent agency because of a number of reasons.

As a former U.S. Probation Officer, I quickly learned after assuming my duties as a Chief Pretrial Services Officer that there is a conflict of those roles. There have been demonstrated definite differences of philosophies between Chief U.S. Probation Officers and Chief Pretrial Services Officers as well as differences of priorities concerning goals and functions of PSA. The cost factor has been clouded, even though a cost analysis by the Administrative Office Division of Probation showed that there was little, if any, cost differences. The question then becomes one of which type of agency has been and will be more effective in meeting the goals of a PSA as set by Congress and the law. The PSA four-year project has answered this question quite conclusively—independent agencies.

PREPARED STATEMENT OF ROBERT M. LATTA

My name is Robert M. Latta. I serve as Chief Pretrial Services Officer and Chief Probation Officer for the Central District of California. It is an honor to appear before your Subcommittee on Criminal Justice on the operations of the Pretrial Services Agency. This statement will give you and your fellow committee members an overview of our operation, and also allow us the opportunity to describe the benefits of the program from our perspective and the perspective of our Court.

DISTRICT CHARACTERISTICS

We have been in operation for four years and two months, and in that time have interviewed 6,600 defendants for their initial bail hearing. We have had approximately 40 percent of these people on supervision. As you know, we are a large metropolitan district with a population of 12 million people spread over 7 counties. The Mexican border is 130 miles to the south, and our district extends eastward to the Nevada State line. We have an international airport that is one of the busiest in the entire nation.

Our district in the last 2 years, has seen some definite changes in prosecutive policy. The U.S. Attorney has developed a selective approach which concentrates on white collar offenses, major mail frauds and embezzlements, wire transfers of bank funds, major narcotic activity, retaining the prosecution of bank robberies, and shifting away from prosecution of certain forgery offenses and other cases which can readily be prosecuted in local courts. It is our policy to summon to court many defendants, who need not be arrested, and this fact alone has a significant impact on court procedures and court workload. PSA has taken an active role in the summons process.

Another distinctive feature is that we arraign and set bail on many "out-of-district" cases—defendants who are wanted in other Federal or State jurisdictions. At times these defendants account for up to a third of the cases heard in our Magistrates' Courts. We mention this because these are difficult cases from a bail standpoint. Information about the crime or the defendant's background may be hard to vertify by the time the case is heard, and there is a tendency initially, to set bail as the court in the other jurisdiction has specified.

BAIL SETTING

Most of our bails are set by our five full-time Magistrates, although 9 part-time Magistrates in outlying areas of the District also set bail. Bail reviews are generally conducted by our Magistrates. Our Judges hear bail reviews far less often now (meaning a major savings in judicial time) since PSA has been submitting bail reports and bail review reports. Often, the initial bail hearing and bail reviews do not require argument by counsel in open court as the PSA report with verified data is the vehicle for arriving at a stipulation on bail. The savings in time, even on one case, can be as much as 20 minutes or one-half hour.

DETENTION ISSUES

Despite a reduction in bail amounts, we continue to have a somewhat higher detention rate over the first week or two after the arrest than do some other Districts. "Money bail" (as opposed to personal recognizance or unsecured release) is also used frequently here. We continue to address these issues while at the same time believing that detention rates and the setting of money bails are directly related to three factors unique to this District. These factors are: (1) the high incidence of bank robberies; (2) the filing of major narcotic cases here according to a very selective policy; (3) the high incidence of undocumented aliens in the District, as well as the high percentage of our documented persons who have families and ties on both sides of the Mexican border. Because these problems are unique, they bear some discussion:

(1) Bank Robbery—We have the unfortunate distinction of being the "bank robbery capital" of the country. For this reason and others, the Federal Bureau of Investigations has not relinquished the investigation of this crime to local police. Nineteen seventy-nine was a record year for these offenses, as we had 1,176 bank robberies, or more than three per day. Two persons presently in custody were responsible for 74 of the robberies. A total of 29 alleged bank

robbers are in custody in pretrial status, unable to make bails that range from $5,000 to $100,000. Twenty-two of the 29 offenders committed armed offenses, and 15 of the 29 committed multiple robberies.

One approach to the problem of adequate bail for such serious offenses has been to place these persons in half-way houses—with some restrictions on their mobility—while their trial is pending. This option is available at any time and is frequently recommended by my staff. Candidly, however, release of persons charged with armed or multiple offenses is infrequent. Our district has had more than 100 percent more bank robbery offenses than any other District. In some parts of the country, these defendants are no longer prosecuted in Federal Court.

(2) Drug Cases—From our observation and experience, the filing of hard narcotic cases involving less than pound quantities has been generally rejected in our District, in favor of referring such lesser cases to the State Court. Thus, our defendants are thought to be major drug dealers, and closer to the ultimate source of the drugs because of the quantities involved. Bails on drug cases are substantial as a result. While many of the cases involve a sale to agents of one or two pounds of cocaine or heroin, there are cases of much greater magnitude.

One notorious case last year (Araujo) was proven to have involved the deposit of 32 million dollars in Mexican banks from heroin and cocaine sales. At this time, 35 of our current 87 fugitives are drug law violators, and half of the 35 are of Mexican or Latin descent. Our Court is understandably concerned about the immediate release of persons with such serious charges. Typically, these arrestees do not make bail the first day, and many of our bail reviews are on the drug cases.

(3) Undocumented Aliens and Proximity to Mexican Border—The ease with which defendants can flee to Mexico from our District discourages the release of defendants who have ties to Central or South America, or who are bilingual. As with bank robberies and major drug cases filed here, our District stands out statistically for the unusually high percentage of Immigration Law violations (Reentry after Deportation, Alien Smuggling) filed.

Typically, these defendants have few, if any, ties in our District or State, or they have immediate ties here and across the border, which increases their risk of flight. Forty-six percent of our 87 fugitives are aliens (documented or undocumented). To our knowledge, these problems do not exist in any of the other nine PSA Districts to any significant degree.

Our detention rate is influenced by these three factors more than any others we know of. While it is true we have a fugitive rate of less than two percent, the flight of a defendant, particularly a drug law violator, is viewed with great concern by Magistrates and Judges.

Our goal for this year, and in the past, has been to expedite the release of defendants at the earliest possible date consistent with our ability to supply the Court with pertinent verified information about the arrestee.

Secondly, our goal is to effectively supervise those 150 people currently on PSA supervision pending trial or sentencing. We developed our own supervision plan called Intensive Supervision for special defendants who need close monitoring or special services (drug treatment, alcohol treatment, psycholigical counseling, employment placement). We devote substantial man hours to this effort in the belief that it reduces recidivism.

MAJOR BENEFITS OF PSA

During these four years, Magistrates and Judges have had verified data (and recommendations) on which to set bail. This was never available before. Secondly, we have brought about a reduction in the dollar amount of bail over the four years and in this alone, we have contributed to a reduction in detention and in detention costs. We feel we have also insured that the "right defendants" are released on bail, since the Magistrate or Judge has hard facts on which to base the bail decision.

OTHER BENEFITS OF THE PSA OPERATION

Just as the bail decision was not previously based on hard, verified data (prior record, residence or job verification, for example), it is only since PSA began that Judges and Magistrates receive documented reports on the conduct or misconduct of persons on bail. As a result, they can modify bail as is appropriate to the case.

The Court can precisely define how it wishes a defendant to be supervised, and what the bail expectations will be.

Our functions include seeing that certain cases are calendared early and not overlooked. Speedy Trial time deadlines make this more urgent now than ever before. We monitor the Marshal's lockup and the jails to insure that bail hearings or bail reviews are heard. We assist in arranging for appointment of attorneys, locating of interpreters, and advising family members (who wish to post bail) to be present in Court. In certain cases, we transport indigent defendants to Court or insure they have bus fare and know their court dates.

A major improvement involves our interviewing of material witnesses (usually Mexican nationals) who may be able to be released on bond. Often these groups of witnesses include as many as 20 or 30 people, adults, juveniles, even mothers with small children. We have been able to save substantial sums of money by placing them with friends or relatives, and placing others in Community Treatment Centers (CTC's) to avoid their being jailed or held in facilities that cost as much as $80.00 per day. We feel this is more humane treatment than previously existed, although we have by no means solved the problems these cases present.

The PSA operation has enhanced the overall operation of the Probation Officer, as 25 of my present officers have been thoroughly trained in bail investigation practices, and have added the PSA officers on days of especially heavy intake. Of course, PSA files with verified data and records of supervision behavior, have immensely aided Probation Officers in the preparation of sentencing reports to the Court.

CONCLUSION

We feel PSA in our district has made a good start on achieving the goals Congress set in the 1974 Legislation. Unnecessary detention and recidivism are two distinct problems which can be addressed by well-trained, professional staff who investigate carefully, and attentively supervise defendants on bail. We urge the continuation of this program.

I will be pleased to answer any questions you and the Committee may have.

Attachment.

U.S. DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA,
Los Angeles, Calif., June 14, 1979.

Re Pre-Trial Services Agency.
ROBERT M. LATTA,
Chief U.S. Probation Officer,
Los Angeles, Calif.

DEAR BOB: I believe that the Pre-Trial Services Agency is providing an immensely valuable service to the Court. The service has been provided in our District by the Probation Office. They have assembled a corps of excellent officers who are both dedicated and exceptionally well-qualified. I see no reason to have anyone other than the Probation Officer involved in administering the program.

Very truly yours,

CHIEF JUDGE IRVING HILL.

BENEFITS OF PRETRIAL SERVICES AGENCY

1. Significantly reduces the time spent by Judges and Magistrates on bail hearings/bail reviews—Saves Court time.
2. Written Summary Reports facilitate stipulations by Government and defense attorneys to bond settings—Saves Court time.
3. Provides verified information for informed bail decision focusing on the defendant rather than alleged offense.
4. Presents verified information from neutral position.
5. Presents Judicial Officer with alternatives to detention and Money bonds (i.e., CTC's, 3rd Party Custody, PSA supervision, drug/alcohol treatment).
6. Assists other agencies in Court process, thereby increasing effectiveness of Title I (Clerks, U.S. Marshals, U.S. Probation, U.S. Attorneys Office, Public Defenders).
7. Helps establish universal bail language as set by Bail Reform Act.
8. Apprises Court of bail violations, need for bond modifications.
9. Has maintained low Failure-To-Appear rate (under 2 percent).
10. Provides detailed information and data regarding bail practices.

PREPARED STATEMENT OF MORRIS T. STREET, JR.

The Pretrial Services Agency for the U.S. District Court of Maryland commenced operations on January 19, 1976. Initial staffing included four Pretrial Services Officers, two Clerk/Stenographers and the Chief Pretrial Services Officer. Within six months, it became evident that the initial staffing pattern was inadequate to accommodate the workload and additional personnel was allocated. Our present staff total is 13, including seven (7) Pretrial Services Officers, five (5) Clerk/Stenographers and the Chief Pretrial Services Officer.

Prior to becoming operational, the Chief Pretrial Services Officer met individually and collectively with heads of agencies within the Court in an effort to explain the manner in which we planned to introduce the Pretrial Services concept and implement our mandate as set forth in Title II of the Speedy Trial Act. Meetings were also held with all U.S. Magistrates in the District as well as law enforcement personnel. Following these initial contracts, continuous planning and discussions ensued between Pretrial Services, Judicial Officers and other court officers to facilitate Pretrial Services' entry into the judicial process.

Given the necessity for the Bail Reform Act of 1966 and Speedy Trial II, we have undertaken and will continue to have as one of our primary objectives, to instill in the Court as a whole an awareness of the intent and spirit of those Acts in the bail decision process. Our experience in this demonstration project has enabled us to observe that there has evolved into the bail process certain habits and practices which give rise to some nullification of legislative edicts intended to safeguard the rights of the accused. To be sure, Courts are ever mindful of the rights and interests of both the public and defendants; nevertheless, we must recognize that there is a void in the Criminal Justice System itself.

Pretrial Services has made it possible to fill this vacuum and to rekindle the spirit of legislation in the area of bail. Its presence makes it possible to eliminate any built-in bias which has found its way into the system, negatively affecting those who find themselves before the bar of justice prior to any findings of guilt. As we seek to fulfill the promise of the Bail Reform and Speedy Trial Acts, we as an agency, must ensure that we maintain that same awareness or consciousness that we want to prevail in the Court at all times. This objective has been maintained throughout the demonstration project and will require a continuing effort on the part of Pretrial Services in the foreseeable future. This effort requires active reinforcement in our day-to-day interaction with the Court of the need to consider specified criteria in rendering bail decisions for each individual and, it demands that bail recommendations not be tailored to reflect necessarily what judicial officers may have been accustomed to doing.

One of our major responsibilities is to interview and investigate the backgrounds of individuals charged with a criminal offense. In doing so we develop information which is provided to judicial officers which enables them to make an informed decision in bail matters. Before the existence of Pretrial Services, judicial officers necessarily had to make bail decisions either with a minimum or no information or, they had to rely upon recommendations of prosecutors or law enforcement officers.

All too often there was lacking information material to the rendering of an informed bail decision. Since it is only human to err on the safe side and to prevent the proverbial "horror story," it is reasonable to conclude that some bail decisions made in a vacuum resulted in some unnecessary detention. It would seem essential then that if judicial officers are to make good bail decisions, there is a need for an agency to develop and provide them with information. It would seem just as essential that those developing that information be neutral and not a party to the adversary system. Pretrial Services fulfills these needs, injecting into the Criminal Justice System a mechanism that provides for an adherence to the precepts of the Bail Reform and Speedy Trial Acts.

During the past four (4) years Pretrial Services has interviewed more than 4000 individuals and made recommendations for bail. Most of these recommendations (85 percent) occurred prior to the initial bail decision. Significantly, the aforementioned percentage reflects on the ability to have input into and impact on initial bail decisions in a majority of cases. It does not reflect on the fact that we maintain a continuing interest in a case throughout the pretrial period or that we make additional bail recommendations at bail review proceedings. In our continuing effort to improve the implementation of the Bail Reform Act as mandated by Title II, there has been a concerted effort to reduce any reliance upon money bail. We have encouraged the use of every option available to the Court

in setting bail, reduced unnecessary detention and its resulting costs and effected the pretrial release of an untold number of individuals who would have had release conditions imposed that would likely have resulted in detention were it not for Pretrial Services' participation in the decision-making process. These accomplishments have taken place without any increase in rearrests, failure to appear, or technical bail violation rates. In fact, in comparison with previous years, there has even been an overall decrease in violation rates.

SERVICES TO JUDICIAL OFFICERS

A full range of investigative services is provided to all judicial officers, although the primary recipients of these services are U.S. Magistrates, who most often determine bond and/or conditions of release. These services include verifying information regarding defendants' personal backgrounds, their community ties, financial condition, and the development of criminal histories through collateral contacts both in and out of the District. Summary reports are provided to judicial officers for initial appearance, and progress reports on supervised defendants are provided in a timely fashion, relating to the defendant's progress and adjustment during the pretrial period.

Ever mindful of the necessity to facilitate efficiency in the Court, Pretrial Services has assumed responsibility to assist in determining the need for the appointment of counsel. If at the initial interview an individual expresses intent to request appointment of counsel, he is assisted in completing a financial affidavit and the Court is informed of the request in advance of the hearing. This procedure reduces considerably the amount of court time heretofore required.

Another effort undertaken by Pretrial Services to enhance court efficiency has been the development of a competent local resource to determine mental competency when a defendant appears incapable of understanding court proceedings following arrest. For several reasons it was necessary in the past to detain such individuals until such time as arrangements could be made to transport them to a federal facility. This former procedure required a period of detention until travel arrangements were made, transportation expenses were incurred and security personnel had to be diverted from other duties. This time-consuming procedure often took two (2) or more months; however, with the availability of the local resource and by Pretrial Services' coordination of the required activities, a competency examination can now be accomplished locally within two weeks for either a custody or noncustody case.

SERVICES TO DEFENDANTS UNDER SUPERVISION

Statistics reveal that approximately 30 percent of the defendants with whom we come in contact are assigned to our agency for supervision. Most often they are individuals whom Pretrial Services has identified as having problem areas of a personal nature that relate to their reliability in terms of future court appearances or, they are otherwise viewed by the agency and/or the Court as representing more than the average risk of nonappearance. For those individuals under supervision, we make employment referrals, arrange appropriate social services contracts, medical referrals and monitor their activities in an effort to more reasonably assure their availability at scheduled court appearances. It is perhaps significant to note that judicial officers have shown no reluctance to admit that were it not for the presence of Pretrial Services, they would have set more restrictive bail and release conditions that would have resulted in the pretrial detention of many in this group.

Under contractual arrangements we provide for drug and alcohol treatment which gives to defendants the opportunity to redirect their lives and to prepare them for personal responsibility. We also provide for residential placement in community-based treatment programs as an alternative to detention in jail facilities. Although the aforementioned services are more commonly utilized for supervised defendants, they are also available and have been afforded to nonsupervised defendants as well.

SERVICES TO DETAINED DEFENDANTS

The Pretrial Services Agency performs a followup investigation to insure that initial bail decisions that result in detention were based on complete and the most reliable information available. Where we develop information which in

68-879 O - 81 - 6

our opinion would give cause to reconsider the initial decision, such information is brought to the Court's attention. A report of this type frequently precipitates a bail review proceeding that may lead to the individual's eventual release under more favorable bail conditions.

CONTRIBUTIONS TO THE SENTENCING PROCESS

In all cases that become known to Pretrial Services there is the development of verified information which after a guilty finding is made can be utilized and incorporated into presentence reports prepared by United States Probation Officers. The information compiled by the agency undoubtedly reduces the man hours necessary to complete presentence reports for the Court. In those cases where we have also afforded supervision, the individual's pretrial adjustment may be clear indicator as to how one might be expected to perform if given the opportunity to remain in the community under probation supervision. Although it is difficult to quantitatively measure what effect Pretrial Services' supervision has on sentencing, it is readily apparent that the adjustment during supervision is certainly taken into consideration by the Court at the time of sentencing. Moreover, in minor offense cases where presentence reports may not be ordered, Magistrates have the benefit of reviewing reports with substantive information prepared for bail decisions which have been quite helpful at sentencing.

PRETRIAL DIVERSION

It was discovered during the infancy of the Pretrial Services demonstration project that within the United States Attorneys Office or elsewhere, there was no recognized policy, criteria, or practices in force for screening potentially divertable cases. We learned that during calendar year 1976, there were only seventeen (17) cases diverted. In the belief that diversion/deferred prosecution is a viable dispositional alternative which could be expanded in the Court, Pretrial Services sought and was given investigative and supervisory responsibility for all diversion cases effective January 1, 1977. It seemed logical that as the agency primarily responsible for developing information about an individual immediately after arrest, we were certainly in a better position than anyone else to perform the screening tasks and recommend to the U.S. Attorney those individuals who appeared suitable for entry into a diversion program. With the addition of diversion as a component of our total program, we have successfully demonstrated through the activation of more than three hundred (300) cases that the use of diversion could be expanded and that divertees could be effectively supervised by Pretrial Services.

CONCLUSION

It is my view that the pretrial services' experiment has amply demonstrated its worth. It has followed the mandates of Title II in a most efficient manner and has proved to be a remedy for recognized problems in the bail process. I think it important that pretrial services not be looked upon as merely desirable, but rather, as an essential component to a more perfect Criminal Justice System. I would sincerely hope that you share my views and that you will see fit to continue and expand this service throughout the Federal courts.

Senator BIDEN. Our final witness today is Bruce Beaudin. Mr. Beaudin has served since 1968 as Director of the District of Columbia Pretrial Services Agency. Mr. Beaudin is undoubtedly one of the most respected experts in the issue of bail, his qualifications include service on the D.C. Bail Project, chairman of the board of trustees of the Pretrial Services Resource Center, chairman of the advisory board of the National Association of Pretrial Service Agencies. He and the D.C. bail system are very familiar to members of this committee. In fact the D.C. Bail Agency served as a model for the pretrial services agency established in the Senate-passed version of the Speedy Trial Act of 1974.

Recently he has assisted in the analysis of the bail provision of the Criminal Code reform bill. The D.C. Pretrial Service Agency has been very successful, thanks in large part to your efforts, sir. And those of

your office. We welcome your views on the performance of the Federal Pretrial Services Agencies and pending legislation and will respectfully request that rather than tell how, or why there is a need for pretrial services and how well it's worked, submit that portion of your statement and get right to focusing on the only two questions that seem to be remaining in contention.

STATEMENT OF BRUCE D. BEAUDIN, DIRECTOR, PRETRIAL SERVICES AGENCY, DISTRICT OF COLUMBIA

Mr. BEAUDIN. Mr. Chairman, thank you very much for having me here. I might say that when we get to this crux issue of where to put it and how to set it up, Tom Maloney and I started fighting this battle back before he was the mayor of Wilmington, and when we put the National Association of Pretrial Services Agencies together, we knew what it was to fight an entire system steeped in the traditional notion of what should be. It's taken a hell of a long time to start to break those notions down.

Senator BIDEN. It was Maloney to whom I was referring. I was defense counsel at the time Maloney was running that operation and the only people he couldn't get to pay any attention at all were the parole folks.

Mr. BEAUDIN. That's right.

Senator BIDEN. They didn't want to hear any of it. They didn't want to hear any of his lib lab stuff about doing something about letting these crooks and felons out in the street. And judges were very concerned about it, at least in my district. It probably was different in New York; it probably was different in other parts of the country.

Mr. BEAUDIN. No, it wasn't.

Senator BIDEN. But in my State it was very, very——

Mr. BEAUDIN. Well, let me tell you something else. It was the same judges that are all worried about having a say in this that don't apply the law which says, people should be released. It's the judges that are applying that law, not the pretrial services agencies.

What the pretrial services agencies should be doing is providing the tools to those judges so they can implement that law with the community's safety in their heads. And they can't do it because they haven't got the information. But that concerns the need and you asked me not to talk about it.

I can remember the crying party that Mark Gitenstein and I had, when the House overrode the Senate in 1974, and I might say, he knows I feel this way. However, Guy Willetts insisted. And we're looking at Guy Willetts who's come 180 degrees from the position he took at the time the Senate bill flew over to the House and the House insisted that there be a demonstration project.

We're looking at a man who's had to live through the experience, and comes here and says, it won't work in probation. I think that is probably as key a factor, outside of statistics, as anything that you can look at.

I might say, Senator, we ought to start with the Vera project in New York. It started this whole bail reform issue, before 1966, before the Bail Reform Act was enacted.

When that project went out of business, and turned over their work to the probation office, what happened to it?

The number of recommendations declined, the number of interviews declined and so the Vera Foundation went back into business in the city of New York because the probation office had another goal to be served and it was not pretrial services.

When the cuts were made by the funding authorities, the cuts were last in, first out. And what went out were the people and the services that were provided for those pending conviction.

Another interesting thing about the statistics is (as you heard Mr. Willetts say) they were based on convicted cases. You know from your own defense experiences as I do from mine, that 30 percent of the people who are charged with crimes are never convicted. Now you take those 30 percent that weren't programed in there, don't provide that service to those 30 percent, and we're talking about some of that 30 percent being held, never convicted of anything, serving time in a country that contends that we don't punish people before trial.

Senator BIDEN. You suggest that the probation office fulfilling the function required by the law would not accommodate that.

Mr. BEAUDIN. I'm suggesting that, yes; that's exactly what I'm suggesting. I'm suggesting that the Department of Justice, the Law Enforcement Assistance Administration, uses me to go to all of the State jurisdictions where there has been Federal intervention because the jails are full.

And the intervention is occurring because the pretrial services agencies that exist there, are mostly located in probation departments. This is because that was the agency that existed that had social services available, and therefore, when the jail crunches came, the judges turned to their probation officers and said, "Do something about getting these jail populations down."

I'm one of the ones that's going on behalf of the Justice Department to those places, and I'm seeing it all over the country. And I think that this committee does not have before it information that it could have about what's happening in the States; when you want to look at what is going on as a true measurement between a probation-run service and an independent, one using that phrase however you might want to use it.

Under independent service, you see that the contrast is much different, even greater than what you've seen here. If you think about what you've seen here, remember that the very creation of these whole agencies, even the board agencies is under the probation division. What standards do you think were applied?

It was the probation division that decided who would be hired, how they'd be hired, how much they'd be paid. And, even where you had independent boards, which have operated, apparently, at greater efficiency as I would define it, than the probation districts, even those board agencies had to operate under probation standards.

Now Mr. Chairman, Mr. McNamara worked at the pretrial services agency in Washington. He can tell you to hire students, and this gets at the cost issue, which I think you've got to look at. Our students that do this work earn between $10,000 and $15,000 a year, over the course of their 3 years.

All the probation districts salaries are around $20,000. Now, if you're talking about costs, I don't understand why the administrative office never tested the student theory.

We tested it in Washington. It was proved to be effective. I can give you letters from our magistrates and from our district court saying that the services provided by our students result in a 95-percent release rate in the Federal court system and about an 85-percent release rate in the State court system. There is a 90-percent appearance rate, and if our service results in that effect, then how can we be better off with probation, when we're talking about 87 and 74 percent of the people not even being interviewed?

You know, I've mixed things up. What I mean is you've got 74 and 87 percent, as I heard this morning, of the people being interviewed. In D.C., we conduct interviews in 100% of the cases and they are carried out by students, at a cost, salary cost, per person of no more than $10,000 to $15,000. In the other districts—that is, the 10 that you are looking at—and the data that you're looking at, those people were all salaried at between $15,000 and $20,000 and they would climb from there because they are professionals that will always stay on the job.

So when you consider the expansion factor, I think one of the things that ought to be looked at is the staffing pattern that was designed——

Senator BIDEN. I fully agree with you. That's the way it was run, by the way, up in my State.

Mr. BEAUDIN. Of course it was.

Senator BIDEN. And ran well, and ran cheaply.

Mr. BEAUDIN. And effectively. You know, cheap isn't the only answer. We're talking about people's lives.

Senator BIDEN. I understand that, but I don't know how making it an independent agency, with all due respect to those who testified on that point, I don't have any doubt in my mind if we set up a nationwide, districtwide, independent agency that they won't become just bureaucratized as rapidly as the probation officers are, in my opinion.

Hopefully, they'd hire less former police officers than probation people hire. Unless maybe I'm wrong about that. I don't want to prejudice anything, but at least in the State systems, which I'm more familiar with, one of the criterion to be a presentence officer seems to be to have been a former police officer.

But how can we write a law that says they should be hiring students instead of people who are going to move right into the Federal GS structure, be at the $15,000 to $20,000 level.

Mr. BEAUDIN. The simple answer, Senator is that they wrote the law in my case, in the District of Columbia. When Sam Ervin decided that one of the things to do to implement the Bail Reform Act was put an agency in place in the District of Columbia, he said, "We will hire—" and he put into the law: "Law students, graduate students, and other sources as approved by the committee."

Now maybe this branch doesn't want to get involved in deciding what the technical qualifications of a pretrial services officer should be. But this body can, in administrative hearings, in legislative history that accompanies bills, suggest strongly to people like Mr. Foley, if they have the ultimate decision, that these things should be looked at.

68-879 O - 81 - 7

A decision was made in 1975 that people of the quality of probation officers had to be hired to do the risk.

Poppycock, poppycock, poppycock, that's exactly what that was. If you want to see a true measure of independence, you ought to look at some of the State agencies. I think the administrative office should have presented you with that kind of evidence.

What goes on in the States? What kinds of agencies are used in the States? What happens between probation-run agencies and between non-probation-run agencies in the States?

You've got a test tube thing that happened in the Federal system where there was a preordained administrative probation direction to the whole experiment.

And I think that any analyst will come in and tell you that that's not a valid experiment. Even given the fact that it's not valid, the probation districts are not as effective as the board districts.

Now, right now, I've heard there are six probation chiefs down here on the House side lobbying to have these agencies put into probation. Why do you think they're doing that?

Five years ago, all of the probation chiefs were asked, if you want to set up a voluntary agency, please do so. You know how many did? Seven. Why?

Senator BIDEN. Out of how many?

Mr. BEAUDIN. Seven out of ninety-four, except for the ten. Now why? If they're so damned interested now, why weren't they interested 5 years ago? The answer is because the probation caseload is going down, they can't justify the number of officers they have, and they see this as a way to put those officers to work.

Now Senator, if you believe in the principles of the Bail Reform Act, I can tell you that it isn't probation officers that are going to see that it is carried out. I go a step further than the administrative office and everybody else.

Consider the D.C. agency. We're a bureaucracy now, has been there since 1966. You know, that's a lot of years. By statute, the director of our agency has to be a lawyer. Now this sounds self-serving, no question about it, but I can bet money that with another director, our agency wouldn't be doing exactly what it's doing now.

I am concerned about the presumption of innocence. I was trained as a defense lawyer. When I detect a violation of conditions, I don't run to the judge and say, "Hey, bring this guy in and do something with him." What we do is say, "The law presumes this defendant should be released, and it is our job, judge, to see to it that he stays released so that we don't fill jails up and so that we don't have people committing crime in the community."

Now if I have misguessed, and you have misguessed, on what it is that should accomplish that, we have got to take another shot. That is different from the guy that has been convicted and is released on probation; who has been given a bite of the apple and messes up. And I'm telling you that from what I have seen around this country, the difference in service delivery between the guy who presumes conviction and that you had your chance, buster, and now you are going to pay for it, is very much different from the pretrial services agency that presumes innocence and says you have a right to release, and it is up to

us to see that that release stays in effect, and that you comply with the conditions.

There is a different kind of treatment by those people.

Senator BIDEN. At that point, I could not agree with you more. That is the point I was trying to establish in the first question I asked of our first witness. I couldn't agree with you more.

Mr. BEAUDIN. One more thing on the organizational thing. I am sorry. I get worked up on this. You know, the bill that your folks have drafted says that the chief judge shall direct how the thing shall be run. I think that's the biggest damn mistake that could be made. For one reason, the probation chiefs are already close to the chief judges.

The chief judges, by and large, in most of the Federal courts, rely on their chief probation officers to get all of the work done that they need to get done. Who in hell do you think they are going to ask how they should structure their pretrial services agency?

Senator BIDEN. How should it be written?

Mr. BEAUDIN. Well, the district, as everybody would say, has a unique organizational structure. But the way it is written here creates an executive committee of the four chief judges of the four courts, the two Federal courts and the two local courts. And because there is a cross-jurisdictional situation no one judge can lay his hand on my head. I will tell you why that is important in a second.

I suggested that there might be a way to have the chief magistrate perhaps, and the chief judge, and maybe a judge from the appellate court, sit as a committee to name the director of the pretrial services agency.

The reason that I think you should cross the court lines can be seen in the following: Once two judges in the district tried to fire me at different times. They were both chief judges and they both went to my committee. The reason they went to the committee was that I was agitating. I was saying things such as the reason the defendants don't appear is because the judges throw the release orders in the wastebasket, which they did.

So the chief judge says, "We can't have a rabble-rouser like that in our court." As a matter of fact, though, the reason defendants weren't appearing was because they had no notices. Subsequently, to that the judges ordered that all defendants be given a piece of paper the day they left court with the next court date on it.

That is my point. A probation officer isn't going to stand in front of a judge and say those things. I will. They can't turn me into a pumpkin. The best they can do is fire me. But the protection that I had when the chief judge wrote and said, "We have to get rid of Beaudin," was provided in the committee structure. The committee chairman at the time called me over and said, "Bruce, I've got this letter, and I think we ought to let things cool down, and I'm sure things will be all right."

Well, they were ultimately all right, Mr. Chairman, but this is a philosophical thing. These are some of the anecdotal experiences of how this philosophy translates into accomplishing the ultimate goal of that Bail Reform Act, which is the release of as many people as possible, under the least restrictive conditions possible.

At the beginning of the experiment I had an argument with counsel in the administrative office because every probation district was

imposing every single kind of condition that they used on probation on their pretrial release defendants. Now why should that be? Do you know why? Because they can create their presentence reports and they won't have to do so much work later.

Why should you have to comply with nine conditions that are applicable if you are found guilty, when if you are innocent and you are appearing, you are appearing?

Senator BIDEN. That is one of the questions I wanted to ask earlier. It worried me a little bit that there was such glee about the prospect of being able to finish a presentence report on someone who had been arrested and not convicted.

Mr. BEAUDIN. It gives us pause. It should. I mean, there are a lot of nice things that can be done; information exchanges between pretrial services and probation officers, etc. But when a probation officer sees the ability to gather information, do his background investigation, get in touch with all of those people before a defendant is even convicted, I have a problem not only from the defendant's perspective but with all of those people that that probation officer is contacting ahead of time. He is putting notions in their heads about what is going on.

Now I have seen some of the reports tendered here, and I can't believe some of what I see in a pretrial report. For example, a defendant had a copy of Playboy Magazine in his car; that the defendant has American Express debts of $5,000; and that the defendant seems to have an unhappy living relationship with his father. None of this was relevant to whether he should be released, none of it.

And all of that stuff, if that is all gathered in each case we may be the reason 100% of the defendants aren't interviewed. Mr. Latta doesn't reach more than 70 percent of his people. It is because you can't gather all of that information in an hour and a half? Why should you be getting it from somebody that hasn't been convicted in the first place? Why have a file created about yourself if you ultimately might end up with the diversion that Mr. Mighell would have, and all of that information would have been gathered needlessly? Why?

You see, I think there has been a lot of wheel spinning. And I think there has been, not deliberate misinformation, but incomplete information available to you and to this committee. I don't know where you are going to get it, except that I suggest that the pretrial services resources center may have gathered some of it. I suggest that LEAA has some more of it in its analysis of why the LEAA funded agencies went out of business.

That analysis, Mr. Chairman, by the way, usually is that it was turned over to a governmental agency to handle and then died a slow and the quiet death at the hands of the appropriations folks, because the first priority of corrections is to correct, not to get people out of jail pretrial.

I think that maybe I have overused my time.

Senator BIDEN. No, you haven't. Keep going. You just rewrote the bill.

Mr. BEAUDIN. Well, I don't know about that.

Senator BIDEN. I can guarantee you did. I know about it. I wrote it. It is going to be rewritten. Just keep going. We will put your name on it.

Mr. BEAUDIN. I think that this issue of locus of the agencies is critical. In the States right now it is an issue. I know, I have just testified before the Criminal Codes Committee in New York, and testified before the Clark County Commissioners in Las Vegas, and out in Flint, Mich. These organizations, Mr. Chairman, are all themselves trying to decide what to do about this problem of overcrowded jails. And what they are doing is looking to the old Vera that we know is 20 years old, and older. They are saying, "Where should we put these agencies?"

Nobody has guts enough to say, "They ought to be independent." When the Bail Reform Act was enacted in 1966, Congress created an agency in the District of Columbia and made it independent. Why? Why did they make it independent? Why didn't they put it in probation? Do you know why? Because probation authorities in the District of Columbia said, "We don't want anything to do with that; we don't know anything about pretrial; we don't want to have anything to do with pretrial; far better that you have an independent agency and let's see what happens."

I don't know how Mr. Pace, the present U.S. Probation Officer, feels, except that I know he is one of the six that is here lobbying to turn over all of the agencies now to the probation district.

My point, simply, is this. The States quickly followed the Federal lead in picking up bail reform in their States. Why, if the Bail Reform Act, which exists as it does here, exists in most of the States, are so many States having trouble with pretrial detention? Why has LEAA defined it a national priority to empty overcrowded jails? Why are Federal judges walking in and intervening at the request of public defenders, sheriffs, the National Institute of Corrections and others? Why are they going into county-run operations and saying, "Hey, wait a minute, fellas, you have to get those people out of our jail?"

The law has already said to do that. So we come right back full circle to saying the judges aren't implementing the law the way they should. Why not? You heard judges here say today, "If I don't have information then I do what I have always done. The prosecutor says $50,000 bond, that is good enough for me, because what else do I know?"

My point is simply that unless and until Congress, which all of the States are being told is debating this issue right now, decides where to locate these agencies, the States will stall their decision. I am going to tell you that if this Congress puts these agencies under the Division of Probation without some strong language about independence, without some kind of conscription about who should be hired and why, you can kiss pretrial services goodby.

Oh, it will be there. It will be there. But you will see that the rate of release, and the rate of interviews will decline. I am not telling you that out of a crystal ball. I am telling you that from having watched what has happened in the States over the last 15 years.

So I think that beyond the Federal system the impact of what you are going to do is going to have so great an impact on the States that you ought to do the same thing that you did with the Bail Reform Act and see to it that State defendants are given equal protection rights.

You know, when you asked the question, "Well, in a small district in Montana is one probation officer sufficient to handle both services?" I thought I detected at least the insinuated argument that there is an equal protection problem here, fellas. If you have to have independence and independence of thought in a metropolitan area, that same independence of thought is also applicable to a small area.

My suggestion to you is that without that voice of agitation, things will not be good. I think that at the crux of all of this, the bottom line, is that pretrial services agencies are consciences. That is what they are. They are consciences that are keeping the judges and the prosecutors accountable. If the philosophical role of that agency isn't going to be one that is willing to take that unpopular, "oh, you guys would recommend Jesse James if Frank was outside the courthouse door with his horse tied up," if we are not willing to accept that characterization in the face of the constitutional and statutory principles of the right to release, then you might as well not have these agencies.

You said we didn't need speedy trial. I couldn't agree with you more. We didn't need any speedy trial, except that the judges wouldn't force the prosecutors and the prosecutors wouldn't force the judges to enforce speedy trial, which is a constitutional right.

Why do we have pretrial services agencies? Because the Bail Reform Act isn't implemented the way it should be.

Senator BIDEN. My point is we need speedy trial very badly. But I was pointing out that if, in fact, the courts had done their job we would not have had to step into the void. That was my point.

Mr. BEAUDIN. Well that is my point here too, that if the courts were doing their job, you might be able to collect this information under any one of a number of means. But the key in this bill that you have is one provision that says that the agency will provide an ongoing system of monitoring what happens in the pretrial services area. And that is so key. That is probably the key role when you come right down to the best value, the best benefit that these agencies have.

I am sorry that that may come out to be a too liberal, too civil libertarian sounding thing. But we are talking about $35 and up a day cost for keeping people in jail, and that doesn't even count the processing. If we are going to process a guy and put him in jail for 2 days so that we can collect information and 2 days later release him, what in the hell is the sense of collecting the information anyway? Why not just release him the first day?

We can guess that he'll be back as well as we can put information together 2 days later and then let him go. And our statistics won't be hurt at all by it.

SenatorBIDEN. By the way, you don't ever have to apologize to this Senator about being too liberal or too civil libertarian. My concern is that we are not civil libertarian enough in these days of deciding that we are going to have expeditious implementation of the law.

At any rate, I think your testimony is very enlightening, and I am going to do something very unusual, at least in this committee. Rather than submit questions to all of the other witnesses who have testified, I am going to ask that the transcript of your statement be printed as rapidly as possible, that portion, and mailed to each of the people who testified and have them comment on it; because if they don't have real good arguments, that is the way I am going to rewrite the bill.

[The prepared statement of Mr. Beaudin follows:]

PREPARED STATEMENT OF BRUCE D. BEAUDIN

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 and I appreciate the opportunity to be here.

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 Resources Center, 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 of 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 created under Title II of the Speedy Trial Act of 1974, I find that I must first address some of 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 of the Bail Reform Act was to eliminate discrimination between rich and poor and to provide less restrictive methods of release for persons awaiting trial than the traditional surety option. Without recounting the evils of the surety system and the inherent difficulties in using financial conditions to address the specific problems posed, suffice to say that the main goal of the Act was to effect the safe released 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 address in testimony, was never mentioned in the law. The sole criterion by which release conditions could be determined was "Will the condition imposed reasonably assure the appearance of the defendant as required?"

At the time that the Bail Reform Act was being designed and debated, a parallel bill creating 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 percent 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 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 has a staff of 44, a

budget of slightly over $1 million, utilizes a fully automated system, employs law students and graduate students as its main professional work force, conducts more than 24,000 interviews a year, supervises more than 14,000 conditions of release (an average of 3 conditions for the nearly 4,500 people on release at any given time), prepares reports in every case prior to the setting of bail by the Magistrates, generates 35,000 notification letters, records 76,000 "check-in" calls from releasees, records 16,000 "check-in's" by people who appear in person, and submits information for use in the presentence reports of all defendants convicted for whom presentence reports are prepared.

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 and at the same time, to eliminate discriminatory practices based on financial ability to "pay out." 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, and continue to use, high bail to detain dangerous persons. They justify the high bail on risk of flight grounds, however. Unless the issue of safety is addressed in the open and on the record the bail process will continue to be criticized for its apparent inefficiency.

We need a new approach to the bailing of the criminal suspect. But an understanding of where we are and the course bail reform should take first requires an examination of the myths and realities of current bail practice:

Myth No. 1.—Current bail laws assure that the bail decision is limited to a single issue: whether the suspect is likely to appear for trial. This noble constitutional principle is honored in the breach today. Most suspects detained in jail pending trial are unlikely threats to flee. The possibility of flight is all too often used as a pretext to detain suspects perceived by the court to be dangerous to the community it released. A pervasive hypocrisy infects the bail process as sub rosa considerations of community safety lie at the heart of the bail decision while judges make public pronouncements about the likelihood of flight.

Myth No. 2.—Preventive detention statutes are one surefire way to protect the community from an increase in "bail crime." The hard evidence points to the opposite conclusion. Preventive detention, where it exists, is rarely invoked today, not only because prosecutors are unwilling to seek preventive detention because of due process prerequisites and expedited trial schedules but because such a draconian measure is unnecessary. Instead, at the prosecutor's request, judges simply impose extraordinarily high bail—which the defendant cannot raise—on the phony ground that the suspect is likely to flee the jurisdiction.

Myth No. 3.—The more serious the crime, the more likely the possibility that an offender, if bailed, will flee. This is the most pervasive prevailing myth. Recent data confirms an opposite conclusion—that motivation to flee does not increase in direct proportion to the seriousness of the offense. The poorest bail risks—those most likely to flee rather than appear at trial—are not those charged with murder, rape and robbery, but, rather, suspects charged with relatively minor offenses such as larceny and prostitution.

Myth No. 4.—The setting of a financial bond is an effective way to guarantee a suspect's appearance at trial. Study after study demonstrates that the setting of a bail bond discriminates against the poor and that a simple promise to appear is as effective as the use of the bail bondsman in assuring appearance at trial.

Those of us who are a part of the existing bail system continue to witness firsthand the evils traceable to these prevailing myths. The hypocrisy of the current system is responsible for the unprincipled pretrial detention of thousands of suspects. It is time to recognize that considerations of community safety should candidly and publicly be taken into account by judges in attempting to fashion appropriate bail conditions.

The proposed Federal Criminal Code Reform Act S. 1722, goes a long way toward shattering the harmful myths surrounding today's bail decisions. The bill first requires the court to make a bail release decision based solely on the likelihood of the defendant's future appearance at trial. Once a decision is made to bail the suspect, however, the court is given new authority to take into consideration community safety in setting release conditions designed solely to protect the community. The bill thus requires that the issues of appearance and community safety be treated separately and openly. And the bill also prohibits

the use of high money bail as a vehicle to jail defendants perceived to be dangerous.

We all have a concern for community safety. Since recent data demonstrates that those charged with serious offenses are among the most likely to appear at trial, we can no longer continue to justify their pretrial detention on some appearance-based rationale. Rather, we should fashion bail release conditions designed to protect the community while at the same time assuring the release of those who have not yet been convicted of the crime charged. The new federal criminal code, if enacted and implemented, will be an innovative step in the direction of true bail reform.

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 Surety Condition: An Outmoded Alternative

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 approaches its tasks 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 persuade a criminal justice system used to other practices to change.

CONTINUED

1 OF 2

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 solely 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 entire release plan 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. 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? According to data collected by the Administrative Office of the Courts the Trustee Districts did a far better job.

2. 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. Again, data from the Administrative Office indicate that the Trust Districts had greater percentages of change.

3. 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?

4. 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 of the Department of Justice 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 such as probation agencies whose main task is the delivery of services to guilty defendants.

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 14 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, the enthusiasm or the philosophical outlook required for effective implementation of a law which requires release on the least restrictive conditions possible. 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 safe release of as many people as possible.

Mr. Willetts of the Pretrial Services Division 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 high educational and experience standards imposed by the Administrative Office require people with substantially more degrees and education than those necessary. 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 stiff 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.

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. Finally, I 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 the very important project in whatever way that I can.

Senator BIDEN. The hearing is adjourned.

[Whereupon, at 4:14 p.m., on May 13, 1980, the hearing was adjourned.]

APPENDIX

96TH CONGRESS
2D SESSION

S. 2705

To amend chapter 207 of title 18, United States Code, relating to pretrial services.

IN THE SENATE OF THE UNITED STATES

MAY 14 (legislative day, JANUARY 3), 1980

Mr. BIDEN (for himself, Mr. MATHIAS, Mr. KENNEDY, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 207 of title 18, United States Code, relating to pretrial services.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pretrial Services Act of 1980".

SEC. 2. Section 3152 of title 18, United States Code, is amended to read as follows:

"§ 3152. Establishment of pretrial services agencies

"The Director of the Administrative Office of the United States Courts (hereinafter in this chapter referred to

as the 'Director') shall under the supervision and direction of the Judicial Conference of the United States provide directly, or by contract or otherwise, for the establishment of a pretrial services agency in each judicial district (other than the District of Columbia) with respect to which the appropriate United States district court and circuit judicial council have recommended such establishment.".

SEC. 3. Section 3153 of title 18, United States Code, is amended to read as follows:

"§ 3153. Organization and administration of pretrial services agencies

"(a) The pretrial services agencies established under section 3152 of this title shall be under the general authority and direction of a separate entity established within the Administrative Office of the United States Courts by the Director.

"(b) Each pretrial services agency shall be headed by a chief pretrial services officer selected by a panel consisting of the chief judge of the circuit, the chief judge of the district and a magistrate of the district or their designees.

"(c)(1) With the approval of the district court, the chief pretrial services officer shall appoint such other personnel as may be required to staff the agency. The position requirements and rate of compensation of the chief pretrial services officer and such other personnel shall be established by the

Director with the approval of the Judicial Conference of the United States, except that no such rate of compensation shall exceed the rate of basic pay in effect and then payable for grade GS–16 of the General Schedule under section 5332 of title 5, United States Code.

"(2) The chief pretrial services officer is authorized, subject to the general policy established by the Director and the approval of the district court, to procure temporary and intermittent services to the extent authorized by section 3109 of title 5, United States Code. The staff of the agency, other than clerical, may be drawn from law school students, graduate students, or such other available personnel.

"(d) An individual who is a probation officer appointed under section 3654 of this title may perform functions and duties of an officer or employee of a pretrial services agency except a function or duty of the chief pretrial services officer.

"(e)(1) Except as provided in paragraph (2) of this subsection, information contained in the files of any pretrial services agency, presented in an agency report, or divulged by the agency during the course of any hearing, shall be used only for the purposes of a bail determination and shall otherwise be confidential. The agency report shall be made available to the attorney for the accused and the attorney for the Government.

"(2) The Director shall issue regulations establishing the policy for release of information contained in the files of each pretrial services agency. Such regulations shall provide exceptions to the confidentiality requirements under paragraph (1) of this subsection to allow access to such information—

"(A) by qualified persons for purposes of research related to the admission of criminal justice;

"(B) by persons under contract under section 3154(a) of this title;

"(C) by probation officers for the purpose of compiling presentence reports;

"(D) insofar as such information is a pretrial diversion report, to the attorney for the accused and the attorney for the Government; and

"(E) in certain limited cases, to law enforcement agencies for law enforcement purposes.

"(3) Information contained in the files of any pretrial services agency is not admissible on the issue of guilt in any criminal judicial proceeding, except that such information, if otherwise admissible, may be admitted on the issue of guilt for a crime committed in the course of obtaining pretrial release.".

SEC. 4. Section 3154 of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking out "such of the following" and all that follows through "specify" and inserting in lieu thereof "the following functions";

(2) so that paragraph (1) reads as follows:

"(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, and recommend appropriate release conditions for such individual.";

(3) in paragraph (4), by striking out "With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of" and inserting "Provide for" in lieu thereof;

(4) in paragraph (5), by inserting "and the United States attorney" after "court";

(5) so that paragraph (9) reads as follows:

"(9) Perform other functions as specified under this chapter."; and

(6) by adding at the end the following:

"(10) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare

68-879 O - 81 - 8

periodic reports to assist in the improvement of the bail process.

"(11) To the extent provided for in an agreement between the pretrial services agency and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

"(12) Make contracts for the carrying out of any of the functions of such pretrial services agency.".

SEC. 5. Section 3155 of title 18, United States Code, is amended to read as follows:

"§ 3155. Annual reports

"Each chief pretrial services officer shall prepare an annual report to the chief judge of the district court and the Director concerning the administration and operation of the agency. The Director shall be required to include the Director's annual report to the Judicial Conference under section 604 of title 28, United States Code, a report on the administration and operation of the pretrial services agencies for the previous year.".

SEC. 6. The table of sections for chapter 207 of title 18, United States Code, is amended—

(1) in the item relating to section 3153, by inserting "and administration" after "Organization"; and

(2) so that the item relating to section 3155 reads as follows:

"3155. Annual reports.".

Rebuttal of Fact Sheet on HR 7084 Prepared by FPOA

FPOA claims: "Passage of this Bill as it now reads would create a completely new Federal agency with its own independent structure."

This bill may or may not create a new Federal agency. It would depend upon the needs of each Federal district court as ascertained by that court and the Circuit Judicial Counsel.

FPOA claims: "A new agency can only further fragment the Criminal Justice System and may encumber and slow the functioning of the U.S. Court System."

Quite the opposite of resulting in fragmentation, a pretrial services agency (PSA) is the first agency to come along in quite awhile which exists as a coordinating entity, assisting the prosecutor, defense counsel, the defendant, as well as the court in rapidly resolving bail situations. Board agencies were more willing to take a wider role in this coordination effort. The demonstration phase has graphically illustrated that pretrial release can be significantly increased and at the same time reduce pretrial crimes and failures to appear by one half. This coordination, reduction in crime, reduction in failures to appear can only assist, not fragment, the Criminal Justice System.

FPOA claims: "This new agency will cost the taxpayers TWELVE MILLION DOLLARS a year."

Regardless of who runs PSA, independent or Probation, the cost to taxpayers will still be 12 million dollars a year.

FPOA claims: "This new agency at great expense will duplicate services the Federal Probation System already provides in many judicial districts, at no additional cost to the government."

Six probation districts volunteered to illustrate that the Federal Probation System could provide the PSA service at no additional cost to the government. Only three of those volunteer districts were able to respond, in a majority of the criminal cases filed, to the primary deficiency which prompted creation of the agencies -- that of providing prebail information to the judicial officer responsible for making bail decisions. The effectiveness of the agency hinges on the accomplishment of this task. Performance of this task is a matter of justice and doing what the law requires. Boards performed more prebail interviews, made more recommendations, and experienced higher release rates. To abandon the best service available with economic excuses is to compromise fundamental rights of the individual.

FPOA claims: "This Bill also proposes that the new agency do pretrial diversion work for the Department of Justice. However, Pretrial Diversion originated with and has been carried on for the past 40 years by the Federal Probation Departments at no additional cost to the taxpayers."

This bill does propose that PSA can do pretrial diversion work, but officer positions in projected staffing patterns are not dependent upon that work. No additional costs are anticipated due to pretrial diversion work. Four of the demonstration agencies presently provide pretrial diversion at "no additional costs to the taxpayer." They have undertaken this service at the request of the U.S. Attorney through the board of trustees or by direct assignment by Chief Probation Officers in their capacity as Chief Pretrial Services Officers. The bill merely allows the agency to do the work. The choice of who performs the service is up to the Department of Justice.

FPOA claims: "The evaluative report to Congress favoring the creation of a new agency is biased and self-serving. It was compiled by the Pre-Trial Agency itself, contrary to all norms of objective evaluation."

The evaluative report to Congress was prepared by the Pretrial Services Branch of the Probation Division. The fact sheet fails to mention that the report was prepared by Administrative Office personnel who collectively have 54 years experience as probation officers. It fails to mention that the report was approved after very close scrutiny by the Probation Committee of the Judicial Conference, which acting in oversight capacity, spoke for the entire Judicial Conference. The fact sheet fails to mention that the Chairman of the Probation Committee testified before the Subcommittee on Crime in support of independent agencies where justified after an intense evaluation of both the Pretrial Services Branch report and the Federal Judicial Center report. Furthermore, the GAO report on PSA concluded that "the Final Report will provide the Congress useful information on PSA's accomplishments if it is carried out as planned." That report was carried out as planned.

FPOA claims: "ON THE OTHER HAND: the Government Accounting Office (GAO) report on Pre-Trial Services found no difference in effectiveness between independent and Probation run operations."

The GAO's report to Congress entitled, "The Federal Bail Process Fosters Inequities," reported on page 26 that, ". . . the Administrative Office must comment on the effectiveness of PSA's operated by boards of trustees as compared to PSA's operated by probation offices." In sampling two of each kind of district (board and probation), the GAO was unable to find clear operational differences between the two. But nowhere between the covers of this extensive report is there any reference to a "no difference in effectiveness" finding.

FPOA claims: "FURTHER: the Federal Judicial Center evaluation study interpreted available statistics as showing no difference in effectiveness."

Again, this statement is in error, not as outrageous as the above, but simply illustrates the Probation Officers Association lack of understanding of statistical concepts and presentations. In short, and we are sure the Federal Judicial Center would echo the following, the Center study did not even attempt to perform an evaluation study concerning effectiveness. In fact, that report disclaims evaluating anything, merely submitting an analysis of available statistics for use in an evaluation.

FPOA claims: "Seventy-six (76) of 96 Chief United States District Judges surveyed, stated if Pre-Trial Services are expanded the Probation Departments should do the job."

What did these district judges base their judgements on? Did any one of them sit down and read the series of reports or the Final Report of the Director of the Administrative Office concerning PSA? Did they impartially evaluate the facts from the 10 demonstration districts, or confer with people who actually know PSA? The judges of the Probation Committee of the Judicial Conference fully evaluated the PSA program. Then, as the representative of the policy making arm of the Federal Judiciary, in exercise of his oversight responsibilties, that chairman testified before the Subcommittee on Crime that the Judicial Conference and the Director of the Administrative Office of the U.S. Courts supported the establishment of PSA units independent of the probation service, except in districts where the caseload would not warrant a separate unit. Beyond the demonstration districts, very few of the judges are sufficiently informed to make any judgements on the operation of PSA, much less, its eventual structure.

FPOA claims: "Ninety-four (94) of 96 Chief United States Probation Officers surveyed, want Pre-Trial Services implemented through existing Probation Departments."

Most of these Chiefs of Probation are insufficiently informed concerning PSA. It is simply a matter of viewing independent PSA's as invading their "turf." It is interesting that Probation, which recently underwent close scrutiny by the GAO and was found to be lacking in a report entitled, "Probation and Parole Activities Need To Be Better Managed," would want yet another function to mishandle. No one has ever evaluated whether the probation service performs a worthwhile service -- has ever evaluated their "effectiveness" in doing their job -- yet they command an 80 million dollar annual budget. Why did they wait until now to express such an interest in PSA?

FPOA claims: "The Federal Probation Officer's Association representing over 1400 of the 1600 U.S. Probation Officers, unequivocally advocates assumption of pretrial services by the Court Probation Departments, which have 50 years experience delivering the same kind of services."

The voice of the FPOA is merely an extension of the collective voice of the Chief USPO's, and, as such, the comments in the previous statement apply.

FPOA claims: "The Federal Probation Service with existing Probation Departments and trained personnel set up in over 300 offices nationwide, are willing and able to provide pretrial services on 24 hours notice."

As stated in the GAO reports entitled, "Probation and Parole Activities Need To Be Better Managed," and "Community-Based Correctional Programs Can Do More To Help Offenders," the Federal Probation Service does not even fully manage its own responsibilities. Even so, they assume new burdens.

FPOA claims: "Pretrial services can be provided by the Probation Service at considerably less than half the cost of creating a new agency. Eliminating the cost of the proposed Pretrial Service Chief position alone, will result in a savings of over two million dollars. Still greater savings will result from the flexibility of the Federal Probation Service which can meet and match fluctuations in pretrial workflow with probation's professional permanent personnel."

The statement claims to express an anguished concern over the cost of establishing a new agency. In recent communications from the FPOA, we know that the Federal Probation Service is between 60 and 100 officer positions over-staffed. Yet, few Chief Probation Officers, if any, have turned backed positions made available through resignations and retirements. To the contrary, most clamor for more staff. Congressional appropriations continue to "fatten up" an already over-staffed probation service. Many probation officers and chiefs have expressed the idea that acquisition of PSA would give their idle officers something to do, and justify keeping the staff they already have. This statement also claims that eliminating the cost of PSA Chief positions will result in the savings of over two million dollars. In over three-fourths of the proposed independent PSA's, the chief would be a working officer with administrative duties, not simply overhead as they are in Probation. Thus, those chiefs are figured in a regular workload formula, which results in absolutely no savings to a probation-run PSA comparison. In separate cost analysis, the Division of Probation, as well as the Financial Management Division (responsible for the national staffing of probation officers), have agreed that there would be little or no cost difference, regardless of the organizational structure of PSA. That conclusion was strongly reaffirmed in a recent letter to the Chairman of the Subcommittee on Crime by the Director of the Administrative Office of the U.S. Courts.

FPOA claims: "IN CONCLUSION: the local Federal Probation Office can supply pretrial services 24 hours notice at a fraction of the 12 million dollar cost estimated for HR 7084. How can a new agency be justified?"

It is obvious to us that this fact sheet on HR 7084 prepared by FPOA and consisting of one misrepresentation after another is simply an emotional instrument designed to delay enactment and thereby acquire an agency function, which over the past four demonstration years, has proven that it is capable of delivering more "results for the taxpayers' buck" than any other criminal justice agency established in recent memory. Were Probation able to deliver as they say they can, Pretrial Services Agencies would be in operation in every Probation Office right now; but, they aren't.

REPORT ON
IMPLEMENTATION OF PRETRIAL SERVICES
ON A NATIONWIDE BASIS
By
FEDERAL PROBATION OFFICERS ASSOCIATION
SUBMITTED
July 12, 1979

'ederal Probation Officers Assocation advocates that PRETRIAL SERVICES BE PROVIDED BY LOCAL PROBA- OFFICERS WITHIN THE FRAMEWORK OF COURT SERVICES PRESENTLY SUPPLIED.

:commendation is made after careful study of all available material concerning the operation of the experimental pretrial program, supplemented by on-site observation of the operation in the ten experimental districts and a survey of the Judges and Chief Probation Officers throughout the United States Court System.

basic premise that pretrial services, if legislatively authorized, should be administered by the Courts within the probation e, was supported by 77 out of the 79 Chief Judges that were interviewed (15 were not available) and by 92 of the 94 Chief tion Officers that were surveyed.

o how these services should be provided, every factor studied leads to the inevitable conclusion that pretrial services be- in the Courts and that such pretrial services are best provided by existing Court personnel.

At a meeting of all Chief U.S. Probation Officers in December 1978, a resolution was adopted that pretrial service functions should be assumed by the already functioning probation departments. The probation service can provide these services to the Court and wants the opportunity to do so.

The allocation of pretrial services to a new agency means an enormous financial expenditure for the taxpayers. The present probation departments are set up, in place, and have the qualified personnel, both professional and clerical, to provide the service nationwide on 24 hours notice. There is no rational reason for creating a duplicate agency at great expense when an existing functioning organization can provide the same services at high professional standards with only a modest increase in personnel for the larger districts and none at all in the majority of the districts.

Pretrial services provided by the probation department permits more expeditious service to the Courts from one department. The presentence process could begin at the earliest possible stage so that necessary information could be gathered for the sentencing court in the shortest possible time sequence. This consideration is of great importance as the demands of the Speedy Trial Act impinge more and more on Court practices.

Pretrial services by the probation department provides for a continuity of services from the time of arrest and arraignment through sentencing and, ultimately, through probation and parole services. This can increase the impact upon law breakers and ultimately result in greater protection for the community.

Lastly, but perhaps the most important of all considerations, the location of pretrial services within the probation service would contribute to the integration of the Criminal Justice System rather than promoting further fragmentation through the creation of a new and additional agency.

rmation, it is the position of the Federal Probation Officers Association that pretrial services are a necessary adjunct to nited States Court System. Further, such services are best implemented and most economically provided within the work of existing court services rendered by the well structured and highly professional United States Probation Service.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

March 14, 1980

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Judicial Conference of the United States, meeting in Washington on March 5 - 6, adopted a resolution which I believe may be of special interest to you, given the series of hearings commenced by the House Judiciary Committee's Subcommittee on Crime on February 13, 1980. A copy of the Conference's resolution, which recommends the continuation and extension of the Pretrial Services program created by Title II of the Speedy Trial Act of 1974, is enclosed.

Let me take this opportunity to express my personal appreciation for the attention which the House Judiciary Committee has given this issue in the past few months. I have been encouraged by the actions taken by Mr. Conyers and the members of his subcommittee, as have the individuals working for the ten experimental offices. When I wrote to you on September 19, 1979, I was concerned that we would lose the services of many of the professionals working for the Pretrial Services project. Fortunately, we have not lost as many of them as we might have since September. I believe the interest shown by your committee has been influential in helping to retain those valuable employees in spite of the fact that the Pretrial Services program's funds will be exhausted by June 30, 1980.

Let me also specifically commend Mr. Hayden Gregory, counsel to the subcommittee, for the cooperation he has extended, both in working with Judicial Conference and Administrative Office representatives and with Senate Judiciary Committee staff. Judge Gerald B. Tjoflat, chairman of the Conference's committee, has also asked that I extend his thanks. We are hopeful that the coordination of activity with the Senate will result in a congressional determination of the program's future in the next few weeks, at least early enough to avoid serious problems in May.

Honorable Peter W. Rodino, Jr.
page two

I know that you are aware of our need to obtain program authorization before we seek both (1) supplemental appropriations, to provide funding for the months of July, August, and September of 1980, and (2) fiscal year 1981 appropriations authority, in the event Congress does decide to continue and expand the Pretrial Services program. Because we must act on both requests by early May, we are especially appreciative of your committee's efforts within the past month.

Sincerely yours,

William E. Foley
Director

Enclosure

cc: Honorable John Conyers, Jr.
Honorable Edward M. Kennedy
Honorable Joseph R. Biden, Jr.
Honorable Gerald B. Tjoflat

RESOLUTION
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

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.

Formally adopted March 5, 1980

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

May 2, 1980

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I write this letter both as Director of the Administrative Office of the United States Courts and as Secretary to the Judicial Conference of the United States.

Let me first express my sincere appreciation for your committee's efforts in recent weeks to preserve the Pretrial Services Program, which has been functioning experimentally for the past four years under authority of Title II of the Speedy Trial Act of 1974. The attention given to the project by Mr. Conyers' Subcommittee on Crime has been most appreciated. Subcommittee Counsel Hayden Gregory's continuing communications with the Administrative Office and representatives of the Judicial Conference have consistently been characterized by cooperation and understanding, especially when matters under discussion have been complex and controversial. In response to my letter to you of April 2, 1980 (copy enclosed), Mr. Gregory met with us, reviewed recommended revisions we had suggested in draft bill language, and subsequently conveyed our recommendations to the Subcommittee on Crime. While some of our recommendations were not accepted, others were. The resulting bill, H.R. 7084, as amended, which was approved by the subcommittee on April 24, conforms substantially with the Judicial Conference's views quoted in my April 2 letter. On behalf of the Conference, I would strongly recommend enactment of H.R. 7084 as approved by the subcommittee.

Having expressed our approval of the bill in its presently pending form, I would like to address two aspects of one issue which I am advised may be placed before your committee when the pending bill is considered. The basic issue is that of the advisability of vesting full administrative authority for the performance of pretrial service functions in probation offices in every federal judicial district. I understand that individual probation officers have conveyed their sincere opinion that such an arrangement can be achieved at substantially less expense, and with almost no increase in the number of supporting personnel employed by the courts.

Honorable Peter W. Rodino, Jr.
page two

The Judicial Conference, after studying that alternative approach, concluded that it would not be substantially less expensive, that it would not preclude a need for additional personnel, and that it would not serve the purposes to be served as well as independent pretrial service offices in *most* federal judicial districts. The subcommittee reviewed a great deal of the information we had relied upon in our evaluations. We provided all relevant information for its use. I believe the Subcommittee on Crime approved H.R. 7084 in its presently pending form because that information supports the arrangement authorized by the bill and refutes the argument that probation offices will be able to do the job with fewer people at less expense in *most* judicial districts.

As now pending, H.R. 7084 will permit those judicial entities most qualified to evaluate the question to determine whether services should be provided through a separate unit or through existing probation offices. Each individual district court will make a preliminary decision, subject to review by the appropriate circuit judicial council. I think I can assure you, Mr. Chairman, that where administrative efficiency and operational expense factors will permit the provision of adequate services through probation offices, that method will be utilized. The Judicial Conference framed its recommendations, as conveyed in my April 2 letter, with precisely that objective in mind -- enough administrative flexibility to insure that inefficient, inadequate, unnecessarily expensive means of providing services would not have to be incurred. In my opinion H.R. 7084 will promote the sensible administration of the program. Our studies of costs have convinced us that the key element is personnel, and that salary costs will be a direct reflection of workloads, whether the individual employees are supervised by a chief probation officer or a pretrial services officer.

In conclusion, let me again express our appreciation for the attention your committee has given this matter since I wrote to you last September.

Sincerely yours,

William E. Foley
Director

Enclosure

National Association of Pretrial Services Agencies

918 F Street, N.W. Suite 500 Washington, D.C. 20004

May 21, 1980

Honorable Joseph R. Biden, Jr.
The United States Senate
431 Russell Building
1st and C Streets, N.E.
Washington, D.C. 20510

Dear Senator Biden:

The Board of Directors of the National Association of Pretrial Services Agencies is writing to ask your support for the legislation that is currently being considered to establish pretrial services agencies in the Federal courts. As you are probably aware, the Federal Speedy Trial Act of 1974 established 10 of these agencies on a demonstration basis.

The results of that experiment demonstrated that the district courts in which those agencies operated were able to release a greater number of criminal defendants (and thus save high detention costs to the taxpayer) while the numbers of defendants committing new crimes and failing to appear in court were reduced by fifty percent.

This was accomplished by placing in the courts pretrial services officers who were responsible for investigating and reporting on the eligibility of criminal defendants for pretrial release and then supervising them if they were released.

The experiment further demonstrated that the five agencies that operated independently of Federal Probation had higher rates of interviews with criminal defendants (thus providing more information relevant to the bail decision to judges and magistrates), were able to provide more recommendations, and had lower crime on bail rates than the five Probation operated agencies. Despite predictions to the contrary, there was virtually no difference in the cost of operating the two types of agencies.

It was for these reasons that representatives of the Administrative Office of the U.S. Courts, the Judicial Conference of the United States, the American Bar Association, the Pretrial Services Resource Center, and the National Association of Pretrial Services Agencies have testified before the Senate Judiciary Subcommittee on Criminal Justice that these agencies should be expanded to all Federal districts and that they should be independent of Federal probation.

As citizens who are concerned with the rights of the accused and the safety of the public, we would urge your support of this legislation that would reduce the cost of unnecessary pretrial detention while reducing the incidence of crime and failure to appear by those released pending trial.

Sincerely,

Robert E. Donnelly

Robert E. Donnelly
President of NAPSA
(for the Board of Directors)

○

END