

Probation

Performing Pretrial Services: A Challenge in the Federal Criminal Justice System *James R. Marsh*

A Sanction Program for Noncompliant Offenders in the District of Nevada *John Allan Gonska*

Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections *National Institute of Corrections*

Probation: A Solution to California's Drunk-blem *Lea L. Fields*

Use of Force in Community Supervision *Paul W. Brown*

Evolutional Role of the Board of Parole *Michael M. Pacheco*

Programs on Probation *Thomas Ellsworth*
Karin A. Helle

Probation Eligibles: Who Gets an ISP Sentence? *Philip L. Reichel*
Billie D. Sudbrack

Probation Expansion Worth the Costs? *Thomas B. Marvell*

What Works With Juvenile Offenders: A Review of the Literature and Experience *Peter W. Greenwood*

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This Issue in Brief

Performing Pretrial Services: A Challenge in the Federal Criminal Justice System.—Contending that “the Federal release and detention process is far from routine and mundane,” author James R. Marsh explains in depth the challenges Federal pretrial services officers face daily. He discusses the responsibilities inherent in pretrial services—to assess the risks defendants pose, to complete investigations and prepare reports for the court, and to supervise defendants released pending disposition of their cases—and the challenges that accompany such responsibilities.

A Sanction Program for Noncompliant Offenders in the District of Nevada.—When probationers do not comply with the terms and conditions of supervision, probation officers must report the noncompliant behavior and take steps to correct it. Author John Allan Gonska describes how the U.S. probation office in the District of Nevada addressed the issue of noncompliance by creating a sanction program. The author explains how the program was developed and how it works, giving examples of violations and appropriate sanctions for them under the program.

Recruitment and Retention in Community Corrections: Report From a National Institute of Corrections Conference.—With a changing workforce and a changing work environment, how do community corrections agencies recruit and retain qualified employees? The National Institute of Corrections sponsored a conference to explore this issue with a group of community corrections managers from around the country. This article reports on the group’s discussion—which focused on probation and parole image, the recruiting market, qualifications, training, and motivation—and offers the group’s recommendations.

Pretrial Diversion: A Solution to California’s Drunk-Driving Problem.—Author Lea L. Fields explains how California currently has an array of pretrial diversion programs to address offenses ranging from drug abuse to domestic violence to sexual molestation but has no such program for drunk driving. The author examines drunk-driving diversion programs in

Oregon and Monroe County, New York, explains the benefits of these types of programs, and tells how a diversion program for drunk drivers could be set up in California.

The Continuum of Force in Community Supervision.—In these times of increased emphasis on offender control, some community corrections agencies may be providing their officers with lethal weapons such as revolvers and less-than-lethal weapons such as stun guns and personal defense sprays with little or no guidance as to when their use is appropriate. Author Paul W. Brown stresses the importance of proper training and describes the “continuum of force,” the primary tool for providing guidance to officers in the use of force. He explains how the continuum of force works, focusing

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Performing Pretrial Services: A Challenge in the Federal Criminal Justice System

BY JAMES R. MARSH

Chief United States Pretrial Services Officer, District of Nevada

ON FIRST impression, some practitioners in the Federal criminal justice system find the bail process¹ routine and mundane. Some question the need to supervise persons released pending disposition of their cases, pointing out that these individuals are not convicted. Largely, these beliefs are based on insufficient knowledge of the bail process. In the Federal bail system, unlike systems in some state and local courts,² release or detention³ is determined by considering two risks: the likelihood the defendant will honor future court appearances and the potential danger the defendant presents to others and the community. It is assessing these risks, making recommendations in pretrial services reports, and supervising defendants released pending disposition in their cases that make pretrial services extremely challenging for the pretrial services officer.⁴ This article delineates the challenges pretrial services officers face in performing pretrial services functions in the Federal release and detention process.

Pretrial Services' Identity

Pretrial services officers often struggle with their identity within the criminal justice system. This is particularly true where probation officers perform pretrial services functions.⁵ Although pretrial services agencies are not truly correctional agencies, as the mission of pretrial services is not to correct,⁶ they are generally classified as part of corrections. They are also not truly law enforcement agencies, as pretrial services officers do not have the power of arrest⁷ but at times perform many law enforcement functions such as investigations on criminal defendants, adversary proceedings against criminal defendants, and search and seizure. The pretrial services officer also does not enforce⁸ conditions of release, but "reasonably assures the defendant's compliance with release conditions."⁹ "There is no statutory authority to punish or rehabilitate defendants."¹⁰

Administratively, pretrial services officers fall under the auspices of the Probation and Pretrial Services Division of the Administrative Office of the United States Courts and, by statute¹¹ and hazardous duty retirement,¹² are Federal law enforcement officers. Pretrial services is perhaps more an administrative arm of the United States district courts than a correctional or law enforcement agency. As such, the pretrial

services agency adopts the qualities inherent in the judicial process—neutrality and objectivity. The board of directors of the National Association of Pretrial Services Agencies explains the importance of neutrality:

Pretrial services agencies should operate as neutral components of the criminal justice system and should strive to avoid any bias toward the defense or the prosecution. ... The pretrial services agency should be structured to insure independence. Whether it be located as part of a defender office, a prosecutor office, a probation office or the like it should define its own standards of operation. A program situated within a component of the system which has a vested interest may tend to adopt the attitude of its umbrella organization.¹³

Pretrial Services Reports

Challenge comes in many forms for the pretrial services officer or the probation officer performing pretrial services functions. The challenge begins with the workday, as officers receive investigative assignments with little prior notice. A person charged with committing a crime could be arrested¹⁴ on a complaint immediately after the commission of an offense. Although more prior notice is possible when persons are arrested on indictments, arrests frequently occur spontaneously. When investigations are assigned, the pretrial services officer must react quickly to obtain information on an arrested defendant, verify information obtained, and prepare a concise narrative report to the court *in only a few hours*. Title 18 U.S.C. 3154(1) directs pretrial services officers to:

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, including information relating to any danger that the release of such person may pose to any other person or the community, and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release; ...

Many obstacles may impede the officer from successfully completing investigations and preparing pretrial services reports in time for the initial appearance hearing. Delays in interviewing defendants occur if arresting agents do not make defendants available; if U.S. marshal personnel are processing defendants; if defense counsel are interviewing defendants; or if defense counsel direct defendants not to participate in interviews or answer certain questions. Collecting and testing urine samples cause delays, as do completing Criminal Justice Act forms for the court to appoint

counsel; waiting for an interpreter; or finding an available interview room. When persons who can verify information are unavailable, when the criminal history retrieval system malfunctions, or when defendants provide false information or identity, delays result.

In some districts, defense counsel interview defendants before the pretrial services interview so that defense counsel can properly advise their clients regarding questions posed to them by officers. The sentencing guidelines promulgated by the United States Sentencing Commission are the primary reason some defense attorneys are concerned about their clients being interviewed by pretrial services officers and providing them certain information. Under the sentencing guidelines, information regarding a defendant's drug or alcohol dependency, role in the offense, criminal history, and dependence upon criminal activity for a livelihood are relevant behavior in determining the appropriate sentence imposed. If a defendant provides false information to obtain release, the defendant's sentence could be enhanced for obstructing justice and new charges added for providing false statements.¹⁵ Although advice from an attorney before a pretrial services interview certainly appears reasonable and harmless, it reduces valuable time for the officer to prepare the pretrial services report for the court. It also, at times, inhibits the defendant from providing relevant information to the pretrial services officer.

Although pretrial services information has always been shared with probation officers to compile a presentence report,¹⁶ some defense attorneys, and particularly Federal public defenders, are advising their clients not to answer certain questions posed to them by pretrial services officers or interview at all.¹⁷ In attempts to reduce the number of defendants refusing interviews, some districts agree as a matter of policy not to ask defendants certain questions during the pretrial services interview. These questions usually pertain to drug use, criminal history, and financial information. Although there are no known cases in which truthful pretrial services information has adversely affected a defendant's sentence,¹⁸ procedures inhibiting pretrial services officers from functioning effectively continue to increase. Contrary to the Federal public defender's views, others profess the need for defendants to be interviewed by pretrial services officers.¹⁹ Others predict a merging of presentence investigations and pretrial services,²⁰ which may only exacerbate the problem. Procedures inhibiting defendants from providing information to pretrial services officers are just another challenge for officers, who must use their resources and investigative skills to obtain pertinent information on the defendant for the court despite these barriers.

Once the obstacles to completing interviews are overcome, the officer faces another challenge. The

officer must prepare a concise report containing only relevant information on the defendant and assess the risk of the defendant not appearing at future court appearances and posing a danger to other individuals and the community. The officer may be further challenged by the lack of adequate time to complete a written report for the court before the initial appearance hearing and may have to present the information orally to the court. In an oral pretrial services report, the officer presents orally to the court and defense and Government counsel²¹ information on the defendant that is pertinent to the release decision.

Oral reports are more work for the officer, as in addition to submitting the report orally, the officer must prepare a written report later when time permits. In presenting the information on the defendant and making a recommendation to the court, the officer may be asked to present the information in open court, an action which would be in conflict with the confidentiality regulations. The officer then faces the challenge to uphold the confidentiality regulations and, if the officer does not, could potentially face civil penalties for unauthorized disclosure.

When the officer prepares either an oral or a written report, the officer is required to provide the information received from the defendant and other sources in a standard format and must cite the sources of all information. The officer must verify information pertinent to the release process. The officer must obtain a complete criminal arrest history, including the disposition of criminal charges, in a limited time. Based on the information obtained, the officer must then assess the likelihood of the defendant honoring future court appearances and the risk of danger the defendant may pose to others or the community. If the defendant is found to be a risk of nonappearance or danger, the officer must determine if the defendant can be released:

subject to the least restrictive further condition, or combination of conditions, that . . . will reasonably assure the appearance of the person as required and the safety of any other person and the community. . . .²²

If no condition or combination of conditions can reasonably be determined to address the risk, the officer has no alternatives available and then recommends pretrial detention. All of this—the interview, verifications, and the production of the report—are done *in a matter of hours*.

Bail Hearings

Once the officer overcomes obstacles, completes the interview, verifies information, assesses the risks of nonappearance and danger, and has the report typed, the officer faces another challenge—the initial appearance hearing. The pretrial services officer must make the

report available to the court and defense and Government counsel in time for them to review the report before the initial appearance hearing. The initial appearance may be delayed due to other court commitments or hearings, absence of attorneys or interpreters, or other reasons out of the control of the officer. Although the pretrial services report must be thorough and should "stand on its own,"²³ the officer may be challenged further by the court or defense and Government counsel to explain information in the report. In limited situations, the officer may be asked to testify regarding the information and verifications made.²⁴ If the defendant is not released at the initial appearance, a detention hearing may be requested by the court or Government counsel. This hearing may take place immediately after the initial appearance hearing or may take place up to 5 days later. The officer is required to attend the detention hearing, which may last up to an hour or more.²⁵

After the court decides whether to release or to detain the defendant, the officer sometimes faces the challenge of retrieving the pretrial services reports from defense and Government counsel.²⁶ Although such action seems elementary, it is not always an easy task. The officer may have reports to retrieve on multiple defendants and counsel may have left the court and inadvertently forgotten to return the reports. The officer may also have to protect the confidentiality of the report from disclosure to agents or relatives by defense or Government counsel.²⁷ The officer may be challenged by counsel for asking for the return of the report and citing the confidentiality regulations.

After the initial appearance or detention hearing the officer must continue to verify information not previously verified and statistically process the case. For those defendants detained, the officer must continue to review and modify the reports and recommendations on those defendants seeking release through review or appeal of a detention order.²⁸ On those defendants released, although routine verifications are not authorized, the officer should continue verifications if necessary to monitor defendants' compliance with conditions of release.²⁹ In all cases the officer must complete statistical data on the defendant which establishes a record of information obtained from the interview of the defendant, verification of that information, and the court hearings. Since the inception of pretrial services in the Federal system, statistical information has been maintained on defendants processed by pretrial services offices. At times Congress has used these data to evaluate the Federal release and detention process. Also, the Director of the Administrative Office of the U.S. Courts uses the data in compiling his report on the administration and operation of pretrial services to the Judicial Conference.³⁰

The Foundation for Supervision

Title 18 U.S.C. 3154(3) establishes the authority for pretrial services officers to supervise defendants released.³¹ Congress, in drafting the pretrial services statute, also recognized the importance of pretrial services officers housing and treating pretrial defendants. Title 18 U.S.C. 3154(4) provides for pretrial services to:

Operate or contract for the operation of appropriate facilities for the custody or care of persons released . . . including residential halfway houses, addict and alcoholic treatment centers, and counseling services.

It is noteworthy that Congress not only allows pretrial services to contract for these services, but even to actually perform them if necessary.³² Congress obviously saw the importance of providing these services to pretrial defendants and did not want to hamper pretrial services officers in providing them.

The importance of pretrial services supervision was further recognized by the Judicial Conference of the United States Committee on Criminal Law. In December 1990, the Committee directed the Probation and Pretrial Services Division of the Administrative Office of the United States Courts to establish national standards for pretrial services supervision. A task force of pretrial services practitioners in the Federal system developed a draft of the supervision standards that was approved by the Committee on Criminal Law in June 1993. After the national standards were approved, the pretrial services system was trained in these standards. The supervision standards were ". . . designed to help officers manage the risk that defendants will not appear and will present a danger to the community. Managing risk is accomplished by assuring defendant's compliance with conditions of release imposed by the court."³³ The standards further indicate that

Supervision is a dynamic process that is adjusted to meet changed circumstances. Officers should adjust supervision activities as needed to reasonably assure the appearance of the defendant and the community's safety, and such activities should be the least restrictive possible to accomplish this. Supervision contacts with the defendant and others should be purposeful to ensure that the defendant is in compliance with the conditions of release.³⁴

Judicial officers also recognize the importance of pretrial services supervision:

. . . from my view, the most important void filled by pretrial services officers is the monitoring and reporting functions of their agency. Bail is, in virtually all cases, based upon assessment of risk of danger to the community or flight. Having a person monitored by pretrial services officers assures that the defendant knows that he or she is being supervised and monitored by an arm of the court. This monitoring function gives most judicial officers confidence that their bail orders and conditions contained therein will be complied with, and, if there appears to be a violation, it will be brought promptly to the court's attention. Not only does this give the court a sense of confidence that the bail conditions will be enforced, but the public can be assured that the

setting of bail is not the end of the process but merely a prelude to court-supervised and enforced monitoring.³⁵

Managing Risks

Defendants released and placed under the supervision of the pretrial services officer pose further challenges for the officer. Some uninformed practitioners in the criminal justice system may assume persons released pretrial do not need supervision because they are not convicted but require supervision once sentenced. The person released as a pretrial defendant is the same person with the same background and history sentenced months later. The only difference is that this person is likely to be more of a risk at the pretrial stage because risk may diminish when the person is convicted or sentenced. Without pretrial services a person convicted is not supervised until the person is sentenced, which may be months after entering a plea or finding of a jury verdict. Why is it that some in the criminal justice system believe only sentenced offenders require supervision? It would appear that they believe risks cease upon arrest and resurface after sentencing. This is not to suggest, however, that every defendant requires pretrial supervision. In assessing the risk of the defendant, the officer and, more importantly, the court may determine pretrial supervision is not required to assure appearance and protect the community.³⁶

The pretrial services officer has the challenge to supervise defendants when the defendants are likely to be in crisis. The pretrial services officer is one of the first individuals to have contact with a defendant. Defendants, in many cases, may still be involved with the behavior that contributed to their arrest. Defendants may be under the influence of drugs or alcohol, may have substance abuse and mental health problems that have not been treated, and may still be involved in criminal activity at the time of their arrest. The pretrial services officer is charged with ensuring that these defendants appear in court as directed and do not commit crime on bail and with reasonably protecting the community within the conditions set by the court.³⁷ It may take days, if not weeks, for the pretrial services officer to learn of further risks a defendant may pose to the officer and the community as a whole. In some cases, the true identity of the defendant is not discovered until after the defendant's release. A defendant concealing his or her true identity may also be concealing a violent prior criminal arrest history or mental health problems that may place the officer at further risk.

A recent incident in Topeka, Kansas, supports the need to supervise defendants during release and before sentence. On August 5, 1993, a defendant scheduled for sentencing that day entered the Federal

Building in Topeka shooting and throwing pipe bombs. Before shooting and killing himself, he killed a court security officer and injured a bystander and several court employees. This individual had been released under pretrial services supervision, which included urinalysis.³⁸ For whatever reason, the risk this defendant posed escalated and manifested just before sentencing even though the defendant was under pretrial services supervision. Even with pretrial services supervision, there are no guarantees that risk will be identified and managed. There is, however, a greater likelihood that with pretrial services supervision risks will be properly identified and will diminish.³⁹

Although pretrial services should be considered an administrative arm of the United States district court, many practitioners would argue that pretrial services is a correctional agency. If one views pretrial services as a correctional agency, then pretrial services is the only correctional agency that interacts with persons charged with offenses, with limited information on the person and at a time when the person is not convicted. Probation officers have more time to collect and evaluate information on offenders than pretrial services officers have to collect and evaluate information on defendants.⁴⁰ If the defendant has been placed under the supervision of a pretrial services officer, the probation officer has the benefit of being able to evaluate the progress of the defendant in that supervision period.

Prison officials have presentence reports and mental health and substance abuse assessments on offenders before receiving the offenders at an institution. They also have the opportunity to observe them in a controlled setting. Parole officers have all the information available to probation and prison personnel, as well as reports of all of the offender's activity while incarcerated, including reports of further evaluations and progress in treatment programs while in the institution. The pretrial services officer has only the information he or she compiled in the few hours before the defendant's release on bail and release on supervision. In most cases this information is accurate and thorough; however, due to time constraints, it cannot be as complete as the information available to probation officers, institutional personnel, or parole officers. Pretrial services officers face the challenge of working with limited information and, because of such limitations, are at greater risk in supervising defendants.

Experience has demonstrated that effective pretrial services supervision better prepares a defendant for probation and parole supervision and incarceration. During the pretrial stage many defendants are motivated to change because without change they know they cannot remain free pending disposition and may

face a harsher sentence if convicted. The pretrial services officer and pretrial services supervision are often the catalyst for change. The officer must quickly identify the defendant's problem or problems and begin to find a resolution. By statute, a pretrial services officer must also assist defendants released, not just those under supervision, in securing any necessary employment, medical, legal, or social services,⁴¹ a responsibility which creates further challenges for the pretrial services officer. Probation and parole officers and institutional personnel are not required to provide services to persons not placed under their supervision or custody. With many motivated defendants, behaviors that may have contributed to their criminal activity may be controlled or diminished at the time of sentence due to the efforts of the pretrial services officer.⁴² The defendant's crisis is usually long past, before beginning probation or parole supervision and incarceration. The challenge facing the probation or parole officer and institution personnel is to ensure that antisocial behaviors do not resurface. If they do, these officers must address them again.

To address the challenge of supervising defendants in crisis and managing the risks they present, officers must make weekly or more frequent contact with many defendants under pretrial services supervision. Many defendants remark after sentencing how easy it will be for them to maintain monthly or quarterly reporting with probation officers, and later parole officers, after being used to weekly contact with pretrial services officers. Some practitioners and defendants have asked why contact frequency diminishes after sentencing, rather than increases. Again, if the defendant's behavior has changed at the time of sentencing through the intervention of a pretrial services officer, then there is no logical need to increase supervision contacts. As actions of defendants and offenders comply with socially acceptable behavior, contacts reasonably should decrease. Such principle is demonstrated by a case in which a defense attorney requested the court at the time of resentencing, after reversal on appeal, not to impose a period of incarceration and to reduce the time period on supervised release. The request was based on the fact that the defendant benefited from time in a halfway house and from drug monitoring while on pretrial release. The defendant had been drug tested frequently by a pretrial services officer and, as a result, ceased using illegal drugs. The court concurred with the defense counsel's request and did not impose a custody sentence imposed before the reversal on appeal and reduced the period of probation supervision by 1 year. As the Federal public defender wrote regarding this case,

Because he had received the benefits of a period of supervision by your agency [Pretrial Services], the period of Probation was reduced and no period of incarceration was imposed. He was sentenced to two years of probation and the fine was reduced from

\$3,000.00 to \$1,000.00. It is clear that the benefits of Pretrial supervision achieved several important results in this case. The Government was saved the cost of incarceration and the cost of a year of supervision by Probation, the defendant gained control of his marijuana use and the defendant continued to work and support his family throughout the period of supervision.⁴³

Supervising Cooperating Defendants

Pretrial services officers also face the challenge of sometimes supervising cooperating defendants, without knowing of their cooperation with the Government. Currently, no national policy addresses cooperation during the pretrial and presentence stage. However, as far as after a defendant is sentenced, many courts have adopted policies requiring approval of the court before a probationer may act as an informant. The United States Parole Commission prohibits parolees, as a condition of their parole, from operating as confidential informants without prior approval. The pretrial services officer unknowingly places himself or herself at risk and places others at risk when the officer makes community visits to cooperating defendants. What is unique to pretrial defendants as compared to offenders is that a pretrial defendant may be cooperating against other defendants in their pending case. The defendant may be placed in contact with these other defendants if the cooperating defendant reports to the pretrial services office. Such situation not only places the defendant at risk, but also the pretrial services officer and others in the office. An officer making community visits may also disrupt cooperating activity by a defendant without knowing it.

In supervising pretrial services defendants, pretrial services officers must be alert to actions and activities that may signify that a defendant is cooperating with the Government and take appropriate steps to protect themselves and others. Oftentimes cooperating defendants claim that their failure to comply with release conditions is due to their cooperation. This situation also presents a challenge for the officer to bring the defendant into compliance, as oftentimes Government counsel is reluctant to pursue revocation proceedings against a cooperating defendant. To do so may interrupt substantial assistance by the defendant. It would appear that Congress may have considered this factor when it drafted Title 18 U.S.C. 3148(b)⁴⁴ which provides that Government counsel may initiate revocation proceedings. This statute seems to be somewhat in conflict with Title 18 U.S.C. 3154(5) that requires pretrial services officers to inform the court and the United States attorney of all apparent violations.⁴⁵ Officers are again challenged when Government counsel elects not to proceed under Title 18 U.S.C. 3148(b), as officers must still inform the court and make appropriate recommendations to modify conditions of release. Defendants are cooperating more frequently, as their cooperation can gain them a downward departure in their sentence under the sentenc-

ing guidelines.⁴⁶ Thus, this is an area generating greater concern and challenge for the pretrial services officer.

Knowledge: The Roots to Effectiveness

To add to the challenges the pretrial services officer faces in preparing pretrial services reports and supervising released defendants, the pretrial services officer must meet the challenge imposed by the officer's need to know the statute, case law, and legal opinions pertaining to pretrial services functions. Pretrial services is relatively new to the Federal system, having existed only since 1975. The current bail act, the Bail Reform Act of 1984, has also only been enacted a short period of time. This act drastically changed bail procedures in the Federal system. Like any new procedure, it is challenged by others. Cases such as *United States v. Salerno*,⁴⁷ *United States v. Dominguez*, *United States v. Al-Azzaway*, *United States v. Hurtado*, *Brown v. Rison*, and *United States v. Ploof* are just a few of the many court decisions that affect the bail process and how pretrial services officers perform their functions. For help in this area, the Probation and Pretrial Services Division of the Administrative Office of the U.S. Courts compiled a Pretrial Services Legal Opinion Manual in August 1988. This resource manual, established to help pretrial services officers perform their functions in compliance with the statute, contains legal opinions prepared by the Office of General Counsel of the Administrative Office of the U.S. Courts regarding pretrial services operations. To protect the free flow of information from a defendant to a pretrial services officer, pretrial services information is governed by highly restrictive confidentiality regulations issued by the Director of the Administrative Office of the U. S. Courts.⁴⁸ Although these regulations protect the basic concept of pretrial services⁴⁹ by prohibiting disclosure of information for bail purposes only, the regulations often stifle effective communications with other agencies.

A pretrial services officer is challenged daily by the statute, the Bail Reform Act of 1984, case law, legal opinions, and the confidentiality regulations. The most effective pretrial services officers are well versed in all these documents. They must be "bail experts." To quote one chief pretrial services officer, "Officers have to be well trained in the philosophy and mission of pretrial services and have bail laws and practices running through their systems like blood in their veins."⁵⁰

Obtaining Training

In addition to handling the many challenges they already face, pretrial services officers must receive 80 hours of training each year. Receiving adequate training is a challenge because the nature of pretrial services work makes it difficult to schedule training. As

previously stated, a pretrial services officer has little, if any, control over the assignment and scheduling of investigations and preparing pretrial services reports on defendants. The pretrial services function is so valuable to the court that services cannot cease to provide training to staff. If services were ceased, some defendants might be unnecessarily detained because the court did not have sufficient information on which to base a release decision⁵¹:

... Statutory requirements mandate that information of a rather detailed nature be assembled and analyzed in a relatively short period. Without specialized pretrial services officers providing this input, we as judicial officers would be hard-pressed to make informed bail or detention decisions.⁵²

By statute, the pretrial services officer is also required to provide a pretrial services report on "each individual charged with an offense."⁵³ In some districts, probation officers may assist pretrial services officers in performing their functions, allowing pretrial services officers to attend training. If outside assistance is not available, the pretrial services officer may have to schedule training after regular work hours or on weekends to complete training sessions without interruptions from investigative assignments. If a pretrial services office is large enough, though most are not, training can be conducted in segments to accommodate work demands. This, however, requires a duplication of effort by trainers and is more time consuming and costly.

Conclusion

To uninformed practitioners in the criminal justice system, I say, "The federal release and detention process is far from routine and mundane." Each case, each defendant, and each day present new and different challenges for those who chose pretrial services as a career. Pretrial services presents never-ending challenges and requires highly qualified and trained professionals⁵⁴ to address them successfully. The daily challenges of pretrial services create stress for those who strive to overcome them. But with the stress also comes opportunities. Pretrial services officers are on the forefront of the criminal justice system and have the opportunity to make an initial impression and impact on criminal defendants that may set the stage for the defendants' future success or failure. If pretrial services officers are to overcome the challenges and be successful, they need to be leaders in the criminal justice system and strive to be *first* in excellence and service.

NOTES

¹Bail Reform Act of 1984, Analysis, Section 3141 Release and Detention Authority Generally. "... judges have the authority to order the release of [sic] detention of persons pursuant to this chapter. Instead of using the term 'bail', this provision and the other

provisions in this chapter use the term 'release' in order to distinguish between money bond (i.e., 'bail') and conditional release (often referred to as 'release on bail')."

²In some state and local courts, release or detention is determined by a set fee or fee determined by the court for the offense charged and the defendant's ability to raise the fee set or retain a bail bondsman to intervene. For example, a charge of Robbery may have a bail set of \$25,000, and a defendant would have to post that bail or retain a bail bondsman to post the fee set to gain release. The bail bondsman usually charges a nonrefundable premium of 10-15 percent of the bail for this service.

³For the purposes of this article detention is defined as the pretrial detention of a defendant without a monetary bond being set. A defendant is either detained as a risk of nonappearance or danger or both.

⁴The term pretrial services officer applies to both pretrial services officers in those districts establishing offices independent of probation offices and probation officers performing pretrial services functions in probation offices where an independent pretrial services office has not been established.

⁵Title 18 U.S.C. 3153(b). "The chief probation officer in all districts in which pretrial services are established . . . shall designate personnel appointed . . . to perform pretrial services . . ."

⁶*Webster's II, New Riverside University Dictionary*. To punish for the purpose of improving.

⁷Letter to Daniel B. Ryan, chief pretrial services officer, Eastern District of New York, from Carl H. Imlay, general counsel, June 30, 1976. "Pretrial service [sic] officers nowhere are given the power of arrest or of executing criminal process. Nor are they considered law enforcement officers under the provisions of the Federal Tort Claims Act described above. Therefore, neither under the traditional definition of a 'peace officer' nor under the Federal Tort Claims Act do pretrial service [sic] officers possess the status of peace officers. As a result of this fact, a pretrial service [sic] officer has no express statutory authority to engage in 'police' activity."

⁸*Webster's II, New Riverside University Dictionary*. To bring about by force.

⁹*United States Pretrial Services Supervision* (Publication 111), Foreword, p. v.

¹⁰*Ibid.*

¹¹Title 18 U.S.C. 115(4)(c)(1). "Federal law enforcement officer' means any officer, agent, or employee of the United States authorized by law or by Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law. . . ."

¹²*Federal Register*, Vol. 52, No. 22, p. 2069. "Law Enforcement Officer means an employee occupying a rigorous position whose primary duties are the investigation, apprehension or detention of individuals suspected or convicted of offenses against the criminal laws of the United States"

¹³*Pretrial Release*, July 1978, p. 53.

¹⁴National PSA Statistical Profile as of 5/25/94 reveals that 77.3 percent of cases activated by pretrial services offices are arrested.

¹⁵*United States v. Ojo*, 916 F.2d 388 (7th Cir. 1990). Sentence was enhanced under obstruction of justice for providing false name, date of birth, length of residence, current residence, family history, financial information, and arrest information to pretrial services officer and magistrate judge. *United States v. Delgado*, 936 F.2d 303 (7th Cir. 1991). Sentence was enhanced under obstruction of justice for false statements regarding drug use to pretrial services officer and probation officer. Defendant also denied using drugs to pretrial services officer, although he tested positive for drugs.

¹⁶Title 18 U.S.C. 3153(c)(2)(C).

¹⁷Table H-2, for the 12-month period ending March 31, 1994. The number of defendants refusing interview with pretrial services officers is as high as 19.9 percent in the Ninth Circuit and as high as 48.9 percent in one district within the Ninth Circuit.

¹⁸Letter from David N. Adair, Jr., assistant general counsel, dated July 8, 1994. ". . . I have found no cases in which an enhancement to a defendant's sentence was specifically identified as being the result of a truthful answer to a question by a pretrial services officer."

¹⁹Betsy Kushlan Wagner, "Limiting Preventive Detention Through Conditional Release: The Unfulfilled Promise of the 1982 Pretrial Services Act," *The Yale Law Journal*, Vol. 97, Number 2, December 1987, p. 340. "Finally, defense counsel should insist that their clients receive pretrial services interviews and should help shape creative and enforceable conditions that will allow safe release."

²⁰D. Alan Henry, "Pretrial Services: Today and Yesterday," *Federal Probation*, June 1991, p. 61. "With that in mind we make the following technological predictions about pretrial services and systems in the year 2001: . . . Presentence investigation will be combined with pretrial supervision services, with recommendations based on the pretrial track record of the offender."

²¹Title 18 U.S.C. 3153(c)(1). ". . . Each pretrial services report shall be made available for the attorney for the accused and the attorney for the Government."

²²Title 18 U.S.C. 3142(c)(B).

²³*Guide to Judiciary Policies and Procedures*, Pretrial Services Manual, chapter IV, part C., 3, E. "A well written pretrial services report should stand by itself and should not require further explanation or amplification."

²⁴Joel B. Rosen, "Pretrial Services—A Magistrate Judge's Perspective," *Federal Probation*, March 1993, p. 16. "While under certain limited circumstances an officer may of necessity become a witness in a judicial proceeding, we should guard against making officers witnesses on a routine basis. This would, in my view, diminish their role as adjuncts of the court and make them less effective in the collection of accurate information."

²⁵The Staffing Allocation Formula for Pretrial Services Offices, November 5, 1991, factors an average of 2.10 hours for detention hearings.

²⁶Regulations Governing the Confidentiality of Pretrial Services Information, part A., 4, D. ". . . Any copies of the pretrial services report so disclosed shall be returned to the pretrial services officer at the conclusion of the hearing."

²⁷*Ibid.* ". . . The pretrial services report should not be redisclosed to other parties by the attorney for the defendant or the attorney for the Government. . . ."

²⁸Title 18 U.S.C. 3154(2).

²⁹*Guide to Judiciary Policies and Procedures*, Pretrial Services Manual, chapter IV, part A., number 16.

³⁰Title 18 U.S.C. 3155.

³¹"Supervise persons released into its custody under this chapter."

³²United States probation has not been granted this same authority for offenders. United States probation officers can only contract for similar services, except residential halfway houses.

³³*United States Pretrial Services Supervision* (Publication 111), I-1.

³⁴*Ibid* at IV-1.

³⁵Rosen, p. 16.

³⁶H-Tables, H-6A, for the 12-month period ending March 31, 1994. Of 25,348 defendants released at their initial appearance hearing, 17,177 were released with pretrial services supervision as a condition of their release.

³⁷Wagner, p. 323. "The pretrial services program is a modern expression of a traditional idea—that of the personal surety as security for the defendant's appearance at and good behavior prior to trial."

³⁸*News and Views*, Vol. XVII, No. 22, October 25, 1993, pp. 3 and 4.

³⁹Wagner, p. 339. "In *United States v. Loren Michael Grey Bear*, a case involving charges of beating, murder, and intimidation of witnesses, the district court properly applied the 1984 Bail Reform Act. It reversed the magistrate's order of detention pending trial, explaining that 'it is not possible for the court to find . . . that no condition or combination of conditions will reasonably assure the appearance of these . . . defendants as required and the safety of any other person and the community.' The district court released the defendants to the custody of the pretrial services office subject to stringent conditions. . . . None of the thirteen defendants in this case fled or committed a criminal offense during the period of conditional release."

⁴⁰Timothy P. Cadigan, "Technology and Pretrial Services," *Federal Probation*, March 1993, p. 48. ". . .—in terms of the time constraints within which it must operate—pretrial services is unlike any other criminal justice organization. Pretrial services professionals are the only members of the criminal justice community who are expected, as a matter of routine, to perform their work in hours. While probation officers have weeks and in some cases months to prepare presentence reports, . . . pretrial services officers must produce reports for the court very quickly."

⁴¹Title 18 U.S.C. 3154(7). Although the statute is unclear, the *Guide to Judicial Policies and Procedures, Pretrial Services Manual*, Vol. XII, chapter VII, part A, 2, states that these services may be provided at the request of the defendant.

⁴²*Supervised Release*, Pretrial Services Resource Center, April 1988, p. 10. "Contacts and supportive services aimed at ensuring court appearance may also help minimize risk of pretrial crime. Enrollment in social services programs can affect criminal behavior by dealing with problems that might have contributed to initial criminal involvement."

⁴³Letter from Franny A. Forsman, Federal public defender, District of Nevada, dated May 13, 1993.

⁴⁴"The attorney for the Government may initiate a proceeding for revocation of an order of release by filing a motion with the district court. . . ."

⁴⁵"Inform the court and United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to the custody of providers of pretrial services or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and *recommend* (emphasis added) appropriate modification of release conditions."

⁴⁶*Federal Sentencing Guidelines Handbook* (1993 Edition), Section 5K1.1. "Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines."

⁴⁷Wagner, p. 321. "The Salerno case magnifies the importance of pretrial services. Once authorized to detain defendants whom they perceive as dangerous, judicial officers may be more likely than in the past to order detention unless they have at their disposal the information and supervising facilities essential to an effective conditional release program."

⁴⁸Title 18 U.S.C. 3153(c)(2) "The Director shall issue regulations establishing the policy for release information made confidential by paragraph (1) of this subsection."

⁴⁹Regulations Governing Disclosure of Pretrial Services Information, Part A, 1, C. "Confidentiality of pretrial services information is preserved primarily to promote a candid and truthful relationship between the defendant and the pretrial services officer in order to obtain the most complete and accurate information possible for the judicial officer."

⁵⁰Response to survey on effective communications practices for pretrial services from Frank A. Rieger, chief pretrial services officer, Western District of Missouri.

⁵¹Title 18 U.S.C. 3142(g)(3)(A). "The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—. . . the history and characteristics of the person, including—the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceeding; . . ."

⁵²Rosen, p. 15.

⁵³Title 18 U.S.C. 3154(1).

⁵⁴Henry, p. 54. "In fact the most heartening aspect of pretrial services in recent years has been the continuing increase in the level of professionalism, a trend that we would expect to continue as programs mature."