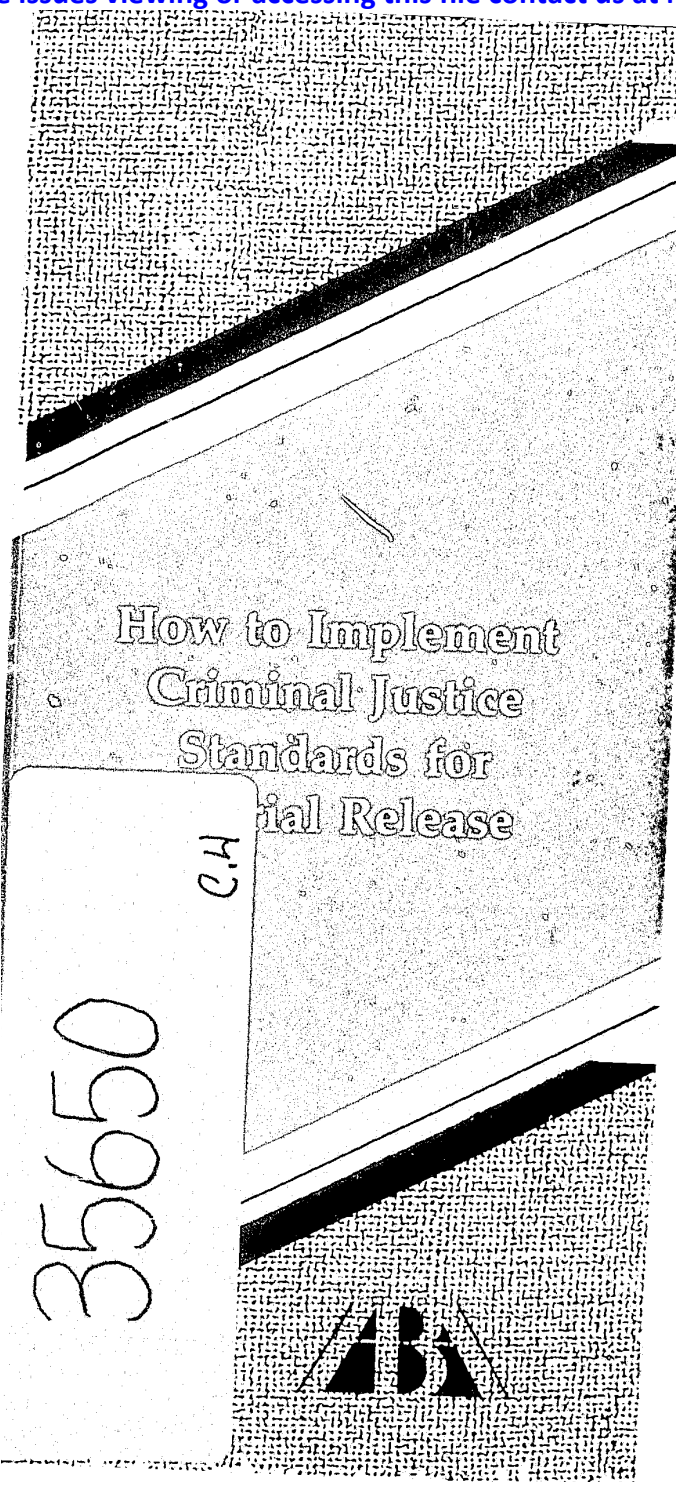

HOW TO IMPLEMENT CRIMINAL JUSTICE STANDARDS FOR PRETRIAL RELEASE

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PREFACE

When our pretrial detention facilities are overflowing and more than 250,000 persons crowd our correctional institutions, the need for meaningful guidelines to improve the pretrial release portion of the judicial process is evident. This brochure, written by Bruce Beaudin, Esquire, President of the National Association of Pretrial Service Agencies and Director of the District of Columbia Bail Agency, outlines a constructive series of suggestions on ways in which to bring about that much-needed improvement. Based chiefly on the *ABA Standards Relating to Pretrial Release,* Beaudin's monograph is one of the most thought-provoking works dealing with this subject in some time.

This is one of a series of brochures—published by the American Bar Association Section of Criminal Justice—dealing with the implementation of major criminal justice standards of concern to state and local government officials and criminal justice planners. Other brochures consider ways in which to bring about implementation of police standards, speedy trial standards, corrections standards and suggest ways in which local governments can economize through system-wide implementation of criminal justice standards. Additionally, there are publications on how civic and religious leaders can work toward criminal justice improvement; story ideas for journalists; and guidelines on ways to implement standards and goals. Each of these publications may be obtained free from the ABA Criminal Justice Section offices, 1800 M Street, N.W., Washington, D.C. 20036.

TABLE OF CONTENTS

I. INTRODUCTION

There is little doubt that without some unexpected miracle rising crime rates will continue to cost us dearly in both human and economic terms. To date our system of justice has provided little more than band-aide treatment for deep seated problems that are in need of major surgery. There is little indication that major surgery is imminent. It falls then to the criminal justice system to see that its scant resources are utilized most effectively.

Problems posed by the treatment and processing of arrested persons have been debated for years. Warning of arrest, release or detention, dismissal or prosecution, plea or trial, and sentence to rehabilitative programs or prison are but a few of the issues that must be decided daily. Here we are concerned with the issue of the release or detention of pretrial accused.

The American Bar Association Project on Standards For Criminal Justice and the National Advisory Commission on Criminal Justice Standards and Goals considered the problems that dealing fairly and equally with all persons between arrest and trial poses. Both groups condemn the pretrial release of the wealthy and the pretrial detention of the poor as unjust and unequal treatment. The programs outlined in the pages to follow are designed to minimize the inequality of treatment between rich and poor.

Present research and experience challenge the traditional wisdom of "bail." Experiments have proved that money alone is not the best criterion upon which to base decisions to release arrested persons before trial. Much more important in deciding who will return to court is the vital community tie information which until lately has not been the paramount consideration in fixing pretrial conditions of release. The standards posed by both the ABA and the NAC provide viable and tested alternatives to traditional bail. In addition, they provide options that, if implemented, can result in better use of human and economic resources.

The single issue that remains unaddressed is that of pretrial detention. Pretrial detention is a fact of life but an anomaly of the law. Bail conditions which result in "de facto" detention of people who cannot afford the bail are being set every day. Whether such practices are "legal" is highly questionable. There is much concern over the release of persons charged with dangerous or heinous crimes. The law and tradition require that only risk of flight be used as the standard against which bail is measured. Should not danger or potential danger be a valid, legal, criterion to be considered?

Some suggestions that should assist in fashioning a humane system for dealing with pretrial arrestees are contained in the following pages. A truly balanced system which protects the rights of indigents as well as rich defendants and the safety of society should be our objective. It cannot be achieved, however, without "scrapping" some outmoded, traditional concepts and investing the time necessary to design sound innovative alternatives.

II. OBJECTIVES TO BE REACHED

Before examining alternative methods for dealing with release problems it is perhaps wise to consider first why they should be examined at all. The excerpt below, which is taken from a recent opinion of a federal judge, is illustrative of the magnitude of the problem.

> *Severe and inhumane overcrowding of inmates presently exists at . . . detention facilities. This overcrowding occurs in violation of the law and according to the record costs the taxpayers . . . over $1,500,000 annually in unnecessary detention.*[1]

All over the country federal courts are intervening in states and counties to order the closing of detention facilities. The prisons are outmoded and operated in violation of Constitutional mandates. One of the primary causes for the overcrowding is the detention of pretrial accused in violation of release laws.

In assessing the best methods to achieve solutions to the problems posed it is necessary first to consider the objectives against which prospective solutions may be compared. Overall, the Constitution of the United States, as well as most state laws provides that excessive bail not be required. In essence this means that most persons accused should be released pending trial. On the other side of the coin lies the unwritten but nonetheless just as important correlative—the community must be protected. It is in balancing these competing philosophies that the problems occur. Judges use high money bonds that will result in "de facto" detention *not* to minimize risk of flight and insure reappearance but to prevent potential danger to the community.

Our system of justice is based on the presumption of innocence. This presumption when applied to the pretrial release decision phase argues in favor of a presumption of release. The Federal Bail Reform Act of 1966[2] codifies this presumption and mandates release on some type of personal recognizance release with or without conditions in *all* but exceptional cases. Most state laws passed subsequent to 1966 track the provisions of the federal act. The standard is clearly the release of most accused without the need for posting surety bond.

The results of complying with the law will be effective from economic and human points of view. Overcrowding in prisons will cease. The need for new and bigger detention facilities to house pretrial detainees will disappear. The expense of welfare payments to the families of some incarcerated pretrial accused will terminate. Attorneys will be better able to prepare defenses with the assistance of the accused. Detainees who will return for trial will be released to become productive members of society while awaiting trial. Probably, and most significantly, there will be no need for costly and drastic federal intervention.

III. STANDARDS TO FOLLOW TO ACHIEVE OBJECTIVE[3]

The American Bar Association Project on Standards For Criminal Justice, Standards Relating To Pretrial Release, set out its approved recommendations in 1968. In 1973 the National Advisory Commission on Criminal Justice Standards and Goals presented its suggestions for dealing with problems posed by systematic failure to implement release laws. The recommendations of both groups have proved effective in implementation. The philosophy behind the recommendations of both groups perhaps is best summed up in the following:

> "The Bail System as it now generally exists is unsatisfactory from either the public's or the defendant's point of view. Its very nature requires the practically impossible task of translating risk of flight into dollars and cents and even its basic premise - that risk of financial loss is necessary to prevent defendants from fleeing prosecution - is itself of doubful validity."[4]

In other words, the most basic traditional assumption about pretrial bail—that surety bond is the best method of assuring reappearance—is highly suspect. Many experimental programs nationwide have underscored this doubt, and release on one's promise that he will

[1] *Alberti* v. *Sheriff Harris County*, U.S.D.C. S.Tex., 12/16/75 18 Cr. L. 2404.

[2] Bail Reform Act of 1966, Pub. Law 89-465 §3, 18 U.S. C. §3146 (1966).

[3] This section treats the recommendations of the ABA and NAC in a general fashion. No attempt to implement any system-wide changes should be made without reading in detail the ABA volume entitled "Standards Relating to Pretrail Release" and the NAC volumes on Courts and Corrections.

[4] ABA Project on Standards For Criminal Justice; Standards Relating to Pretrial Release, Introduction.

reappear has proven even more effective than surety release. Alternately called P.R., O.R., P.B., Personal Recognizance, Own Recognizance, Personal Bond, Unsecured Appearance Bond etc., all these forms of release have one thing in common—a personal promise to reappear, based on community ties, as the backbone of the release process.

Both sets of recommendations seek to minimize the number of people detained and the amount of time detention is necessary. Three time elements are identified as crucial: the time from arrest to booking, from booking to presentment in court, and from presentment in court until trial.

In the first area the standard to be met suggests that some cases require no custody at all. The use of citation release or summons in lieu of arrest enables the commencement of criminal justice processing with no detention.[5] Citation programs in effect in California and Washington, D.C., have proved that such programs are effective.

In the second area—between booking and presentment in court—the standard to be followed suggests that a fact finding agency determine community tie information so that informed release decisions can be made. If this period is not relatively short, *i.e.*, 2–12 hours, then the standard suggests that the accused be permitted to post a percent of the dollar amount approved in the bond schedule for the offense with which he is charged. Programs operating in Illinois, Oregon, and Philadelphia have proved the effectiveness of such a rationale.

Finally—between presentment and trial—the standard suggests that magistrates utilize information provided by specialized pretrial investigative agencies and release nearly all accused on personal recognizance with or without conditions. Programs that have proved such a system viable are many but results in Philadelphia, New York, and Washington, D.C. are particularly persuasive.

IV. ANALYSIS OF EXISTING SITUATION

Although the objectives and the standards designed to achieve those objectives are relatively straightforward, the method of implementation will be unique to each jurisdiction. Thus, before a tailored blueprint can be fashioned, you have to "know the territory."

[5] A citation release is one issued usually by the arresting officer either at the scene of the arrest or at the police station. It is much akin to a "traffic" summons in that it sets the court date at which the defendant must appear and allows his immediate release on his promise to appear on a certain date.

There are many forces that operate independently to influence the criminal justice system. As one or another is more or less influential a variety of chain reactions occurs. A brochure of this size cannot address the many variations that result. It can only identify the most basic ingredients.

As is true with any project the first vital element is good research. To fashion a release program complete with components necessary to achieve the objectives described, the architect must know where he is, where he can go, and how he can get there. At a minimum the following data must be analyzed:

1. *Crime Trends*
   - How many arrests occur daily for felonies? misdemeanors? municipal ordinance violations?
   - How many arrests result in prosecutorial decisions not to file charges? in subsequent dismissals? in "not guilty" verdicts? in "guilty" verdicts" in jail sentences?
2. *Release Patterns*
   - How many arrestees make bond or are otherwise released in one or two hours? in 24 hours? at the first court appearance? at a subsequent court appearance? never?
   - What are the predominant modes of release? Surety?, PR or OR?, Conditions?, Percent Deposit?
   - What are the comparative performance rates for appearance and rearrest for those on surety release versus those on O.R. release?
   - How many detainees could be released if the "Vera" criteria were applied?[6]
3. *Court Patterns*
   - How long from arrest to initial appearance?

[6] The "Vera" experiment carried out in New York City in the early 1960's was the first program to test personal recognizance (promise) release as an alterantive to surety release. The program's decision to "recommend" was based on a system of "points" which were awarded for various personal community ties. Developed by a sociologist, objective values were assigned for time in the area, residence, employment, prior record, etc. If the cumulative value of the "points" assigned to specific areas was high enough a personal recognizance release recommendation was made. Today, most release programs use some form of the original "Vera" scheme. Indeed, the judge in the case noted earlier, ordered the application of the Vera scheme to all detainees to help determine which might be eligible for release.

— How long from arrest to indictment in felony cases? to trial in misdemeanor cases? to trial in felony cases?
— What is the overall rate of case dismissals?, "guilty" pleas?, "guilty" verdicts?, jail sentences?

4. *Facilities*
— Where are arrestees held immediately after arrest? Can they be interviewed there?
— Where are arrestees held between booking and initial court appearance? Can they be interviewed there?
— Where are arrestees detained if held until trial? Can they be interviewed there?
— Are other prisoners detained in the same facility as pretrial detainees? If so, what problems does it cause?

5. *Governing Laws, Statute, Rules, Etc.*
— What is the law governing release? Is it merely theory or does practice follow law?
— What court rules implementing release laws exist? Do courts commonly make rules governing such practices as release?
— What court decisions have had recent impact on release procedures?
— Are legislative changes necessary?
— Are legislative changes presently under consideration?

6. *Resources*
— Is there a fact finding agency to assist law enforcement agencies with citation determinations? to assist courts with release determinations? to provide supervision of release conditions?
— What is the "out-of-pocket" cost for pretrial detention?
— What are the indirect costs of pretrial detention? Welfare payments to families of detainees? Costs to maintain detention facilities at a level sufficient to accommodate pretrial detainees? transportation of prisoner costs?
— What are the human costs? How many man years in unnecessary detention—where dismissals are entered? where "not guilty" occurs? where no jail sentence is imposed after conviction?

7. *Politics of Change*
— What professional group can influence a change in release philosophy? bar association? local community groups? boards of judges? news media? prosecutor? defenders?
— Who has economic control? courts? board of supervisors? executive branch? legislature?

When answers to the above questions are obtained the architect will then have the tools necessary to fashion a strategy. It should be obvious that care must be taken to avoid putting too much emphasis on any single factor. A balancing of all factors is vital to successful implementation.

V. DEVELOPING A PLAN

Once the research is complete the task of fashioning and implementing a comprehensive plan will be formidable. The problems posed by pretrial release considerations are unlike any others addressed by the ABA and the NAC. There is no single spokesman or agency with which to consult. Law enforcement, prosecution, defense, the judiciary, corrections, probation—all are distinct entities with easily identifiable representatives. Pretrial, on the other hand, while it cuts across the spectrum of the system, is difficult to analyze from any single perspective.

The most basic and first step as suggested by both the ABA and the NAC is to create a fact finding agency. No matter what its ultimate "home" or composition, such an agency should exist to provide the police (citations and summons), the courts (bail investigations), and the community (supervision of release conditions and support services to the accused) with the necessary facts and services to administer a Constitutional and practical pretrial release system. Such agencies already exist and have proven their value in a number of communities.

At the local level, the District of Columbia established such an agency in 1966. It has been termed vital by members of the judiciary, law enforcement, and the community.[7] At the federal level Congress has ordered the creation of ten (10) such agencies,[8] and across the nation over 100 such agencies have come into being and exist as vital parts of their local systems.[9]

The effectiveness and continuation of pretrial services agencies hinges upon the input and support of the prin-

[7] D.C. Bail Act. P.L. 89-519, D.C. Code §23-1901 (1966); See also Court Reform and Criminal Procedure Act of 1970, P.L. 91-358, D.C. Code §23-1301 (1970).

[8] Speedy Trial Act of 1974, P.L. 93-619, 18 U.S.C. §3152 Title II, (1974).

[9] In 1973 these agencies and the nearly 50 then existing Diversion agencies combined to form the National Association of Pretrial Services Agencies.

cipal components of the system. A task force or "oversight committee" composed of at a minimum a judge, a prosecutor, a state or local planner, a defense attorney, a police official, a probation and/or corrections official and appropriate community representatives is important for ideas and education. Such a group should be appointed according to the same standards used for appointing other criminal justice coordinating bodies but it must be made clear that the focus of its work is pretrial.

Since the bulk of the agency's work will be for the courts a significant commitment from all courts should be obtained. It should be apparent, though, that without serious interest and support from the other agencies in the system, subsequent implementation will be difficult.

Whether or not the agency will be effective depends on many factors. Paramount among these is the person selected as its initial director and his or her ability to interact with the system and the committee. It is quite probable that the committee's planning process will begin with little or no money. It is unlikely that there will be a director to assist in the initial planning phase. There is real danger, however, in attempting to implement some ideas without careful analysis of their potential impact. Experience has shown that the plan should be complete and comprehensive. It is important, then, to select a concerned and qualified individual early and have his/her input as the plan develops.

VI. THE PLAN

In order to be truly comprehensive the plan must treat the entire system from arrest through final disposition (including appeal.) There are various points at which release determinations are made or reviewed and the plan must address all of them.

A. Arrest

As soon as a law enforcement officer detects the commission of a crime, connects an individual with that crime, and "arrests" the freedom of movement of that individual, detention occurs. The officer should have an option to release or further detain even at this early stage.

1. *Citation.* (See note 5) Both the ABA and the NAC recommend that police be required to issue citations in lieu of arrest for all minor crimes (those for which imprisonment is for less than 6 months.) In addition, both recommend that citations be issued shortly after arrest where police regulations require booking and full identification.[10] Obviously this type of release must receive careful attention since no magistrate will be involved in the decision to release. Careful guidelines for police use must be drafted. A list of "approved" crimes and standards is vital.

Implementation of a citation program is usually difficult for two reasons: the police feel that a "suspect" is back on the street before the paperwork is finished; and it is difficult at best to ask arrestees to give personal information required for release determinations to the very people who have arrested them.

The only answer to the first objection is that experience has shown police officers in jurisdictions where citation has been used for some time favor its retention. Citing such factors as the ability to keep men "on the streets" rather than in the station processing paper, reduced transportation problems, reduced detention "prior to court" populations, reduced "overtime" required to meet with prosecutors at the conclusion of a tour to "paper" cases, and other better uses of manpower, police officials soon become strong advocates. While these considerations are significant, the early release of an accused on his promise saves many dollars of bond premiums that would otherwise have been required to secure release, saves hours or even days of detention prior to a prosecutorial decision to proceed with a court case, and saves court time in conducting presentment and preliminary hearings which are unnecessary.

The answer to the second issue is more difficult. In most places that have such programs the information is given to a non-law enforcement agency (such as the independent agency referred to above). When that agency completes its investigation and recommends release or non-release then the police need exercise only the option of deciding whether the defendant's release poses any risk. Since authority to release or not lies with the police, the community is protected.

If the program is run by the police, some arrestees are reluctant to provide the personal data necessary for such a release. In jurisdictions using police run programs the incidence of such reluctance is difficult to measure. In jurisdictions without such programs many defendants have objected to giving personal information to independent investigative agencies if that information

[10] Many jurisdictions have gone beyond the recommendations and have implemented citation releases in more serious cases.

exchange can be overheard by the police. In any case, the issue of making such personal information available to law enforcement officers at this stage and under these conditions is one which bears careful scrutiny.

2. *Summons.* In many jurisdictions arrests do not occur until a warrant is first obtained. In those cases for which the penalty is less than six months both the ABA and the NAC recommend the issuance of a summons rather than an arrest warrant.[11] The procedures for implementation roughly parallel those for implementing citation releases.

3. *Bail.* In most jurisdictions the notion that risk of flight can be translated into dollars continues to prevail. It is also true that in most jurisdictions very few arrestees will be released on citations or summons releases. Thus, the bulk of the arrest population will be permitted bail according to a predetemined schedule that matches dollar amounts to charges. (In those jurisdictions where arraignments occur 24 hours a day seven days a week, bail amounts are fixed at arraignment.) At a minimum, where bail schedules exist, both the NAC and the ABA recommend that a defendant be permitted to post a percentage of the bail amount (usually 10%) rather than execute bail with a professional surety.

The benefits of such a system are obvious. Defendants who appear as required will have their money returned in full or in part.[12] Defendants can secure release without "knowing" a bondsman or a lawyer. Since most police are already equipped to deal with the paperwork required by surety releases there is little additional charge to the processing system. Money that is otherwise lost if the case is not prosecuted (and nearly 20% of those arrested never are prosecuted) is returned to the defendant.

B. Initial Appearance

Most statutes, federal and state, require that an arrestee be brought "promptly" before a magistrate. Aside from necessary "processing" time for legitimate law enforcement purposes, an arrestee should appear before a judicial magistrate with counsel to be advised of the charges and have appropriate release conditions set. The ABA, the NAC, and the United States Supreme Court agree that the release condition hearing should be unhurried, informed, and most important, individual.[13]

In order to be individualized the hearing must explore the facts of the arrest and the history of the defendant including criminal and community tie information. The ultimate order of release should be reduced to writing and distributed to the defendant, his attorney, the prosecutor and the court jacket. The conditions of release should be clearly explained as well as the peanlties for failure to comply with those conditions or for failure to appear. It is obvious that without adequate investigation the one thing that will be lacking will be the requisite personal information about the defendant. It is precisely that information, however, which makes the hearing individually tailored to particular defendants. It is also that information which requires the investigation that is not being done in many jurisdictions.

1. *Interview.* All arrestees should be interviewed at the earliest possible time. The interview should be conducted by non-law enforcement (or independent) agencies. The interview should cover at a minimum:

- — the defendant's present and past residences including total time in the community
- — the defendant's present and past employment including present financial capability
- — the defendant's family ties including the nature, frequency, and reason for contact
- — the defendant's prior record including the number of prior appearances or non-appearances in those cases
- — the defendant's health patterns including narcotic or alcohol use as well as any regular "treatment" that might tie that defendant to the area
- — the defendant's participation in any programs that might tie that defendant to an area such as school, public assistance, welfare, etc.
- — the names, addresses, and telephone numbers of any persons who could assist with the verification process or who would be willing to assist with notification and appearance for all court dates.
- — any other facts indicating the defendant has strong ties to the community and/or little reason to flee the jurisdiction.

It should be noted that *no questions* should be asked about the defendant's participation in the alleged crimi-

[11] Again, most jurisdictions that make wide use of Citations and Summons have expanded the programs to include more serious crimes without suffering any ill effects.

[12] In many jurisdictions that have used 10% programs a 1% fee is charged for the paperwork and 9% is returned. With the "surety release" nothing is returned nor does "the system" have use of the money. In some jurisdictions the fees collected and the interest earned have more than paid for the cost of the program.

[13] See *Stack* v. *Boyle*, 342 U.S. 1 (1951).

nal charge. Those facts, while important, can be disclosed at the hearing by proper law enforcement officials.

Also, the information obtained should be used *only* for purposes of setting release conditions. The importance of gathering data to assist the release setting magistrate outweighs the nebulous value of potential impeachment, conviction by means of an unsuspecting "guilty plea" or by the investigative leads that might be developed. The information should be confidential—except for that reported at the release hearing—and the agency conducting the interview should be immune from court process in proceedings other than those concerned with the setting of or monitoring of release conditions.

2. *Verification.* It is critical to verify the information obtained in the interview. Normally most of the verification process will be by telephone. Despite the method used it is wise to pose questions in open-ended ways, for example, "Where does _____ live?" not "Does _____ live at 212 Maple Street?" There are many potential sources of verification which include:

- references given by the defendant
- police and FBI criminal records
- records of probation and parole
- records of hospitals, schools, and other such agencies
- personal papers carried by the defendant such as a driver's license, school identification, social security, draft card, etc.
- prior court records
- Address-o-key and Tel-o-key directories
- Voter registration lists, census lists, etc.

At times the verification process will reveal discrepancies between interview information and verification. Reconciliation of this information is critical. In many cases a defendant has not deliberately lied but has not really understood the question. The best example, one which occurs frequently, is in reply to the question "Where do you live?" The answer is often an address of mother, father, or other relative. Verification discloses that while that address is where many belongings are kept, where mail is received, and where daily visits may occur, the defendant in fact lives with someone else. Confrontations over this type of conflict usually disclose a motive to "protect" others rather than lie, and, upon explanation of the importance of notification should release be granted, the conflict is quickly resolved.

3. *Recommendation.* A great deal of controversy exists over the value of and necessity for recommendations. In jurisdictions with agencies who make recommendations, attempts to end such practices have met with demands from magistrates to continue. One of the difficulties in formulating recommendations is that most agencies face an immediate dilemma. On the one hand there is a law—albeit not too well implemented—that presumes release on recognizance, a presumption which has been ignored. On the other, there is the need to establish credibility. The dilemma usually results in a "watered down" scheme with exclusion lines artifically draw to protect credibility.

A thorough recommendation scheme should encompass all the facts that are relevant including but not necessarily limited to:

- the provisions of the law
- the verified and unverified information received from the defendant (including all factors mentioned above)
- the nature of the offense (felony or misdemeanor)
- the relationship (if any) between the complainant and the defendant.

Since 1960, a successful technique that has been used to quantify objectively these factors is the well known "Vera point system." (See note 6.) Although the "point system" has undergone modification in nearly every jurisdiction that uses it, it remains the backbone of most recommendation schemes. Indeed, in the District of Columbia, where it has been used since 1963, it is still used as an aid to assist in fashioning conditional recommendations. Use of the point system has proven that it works, and that people released according to its design return with as much regularity as those released on surety bond.

The real weakness of the scheme is that it normally produces an "all-or-nothing" proposition. If the required number of points is not accumulated, then no recommendation is made. In addition to being at variance with the law—which provides for many gradations between unconditional release and money bond—an "all-or-nothing" policy ignores the real possibility of recommending conditional releases. In the District of Columbia the point system has been used to identify the types of conditions appropriate for recommendation. For example, if a defendant misses the number of points necessary for a personal recognizance recommendation, the deficiencies are analyzed, and conditional release is suggested according to the area(s) that accounted for the low point total. Thus a defendant whose employment history is deficient will receive a conditional recommendation that includes a plan of job counselling and/or

job procurement. This scheme, in use since 1969, has worked remarkably well.

In general, a comprehensive recommendation scheme should be objective (to eliminate the possibility of being influenced by the known proclivities of a particular magistrate); charge "blind" (while more serious charges demand different considerations, the charge alone should not determine who will and won't receive a recommendation); and most important, should "track" the law (the law provides many alternatives to unconditional personal recognizance release and the recommendation scheme should address these alternatives). Consistent with the recommendations of the ABA and the NAC a recommendation scheme should avoid recommending dollar amounts. Such recommendations are totally inconsistent with the notion that risk of flight *cannot* be translated into dollar amounts.

4. *Release.* The release decision itself is within the exclusive province of the magistrate. There are a number of procedures that can make such a hearing more relevant, meaningful, and effective. No hearing should take place without the following:

- A written report by the investigative agency. The report should be provided to the defense and prosecuting attorneys as well as the magistrate. It should be entered into and become part of the court record.
- Appropriate legal arguments about the factual basis supporting the charges.
- A written order signed by the magistrate, the defendant and a witness. The order should contain the exact conditions of release, the warnings including penalties for violation of release conditions, failure to appear, and conviction of crime committed while on release, and the next known court date. It should be given the defense and prosecuting attorneys, the defendant, the supervising agency, and a copy should be placed in the court record.
- A concise statement of reasons for denial of personal recognizance, conditional, or unsecured appearance release should accompany the order.

Once the order is signed and the hearing terminated, the defendant should be ordered to review the conditions with the supervising agency immediately upon release from court. If the order mandates detention, the defendant should be advised of his rights and duties with respect to appealing that decision.

C. After Conviction--Pending Appeal

In most jurisdictions, once conviction occurs, release considerations must encompass a new element—danger to the community. Because most pretrial situations do not permit this criterion to be considered, most recommendation and release schemes do not formally incorporate such a criterion. Obviously all the facts considered in the initial release setting hearing are relevant, as well as the actual evidence adduced during the trial, the likelihood of success on appeal or of probation at sentence, and most important, the track record compiled by the defendant during the period of pretrial release. In at least one jurisdiction, the element of danger and its effect on corresponding recommendation and release schemes has resulted in little difference in release, failure to appear, or rearrest rates. In the District of Columbia the danger element has been an integral part of the pretrial system since February 1971. Hard data discloses little difference in pre and post 1971 recommendation/release schemes.

From the above, it should be clear that in order to develop an effective pretrial release agency, the concept—and the plan implementing that concept—must have the *support* and *input* of all who will use it. Judges, lawyers, clerks, probation officers, investigative agencies, and appropriate noncriminal justice personnel *must* understand the formulation of the plan in order to be able to help execute its implementation. The most important single activity is the selection and appointment of key individuals. Implementation blueprints exist in the ABA Standards, the National Advisory Commission Standards and Goals, and other materials listed in the " Selected References" section of this brochure.

VII. CONCLUSION

The idea of challenging the traditional concept of bail and its application—let alone implementing alternatives that have already been proven viable—is almost revolutionary. Those concerned with individual human rights recognize immediately the need for such challenge. Those concerned with budget constraints conceive an image of bureaucratic and costly programs. Those used to the "old way" see no reason to add new and complicating procedures. The single most crucial cornerstone upon which a humane and economical pretrial release system must be built is education.

Today much data exists that proves conclusively that programs that insure pretrial rights of release need be

neither costly nor dangerous. Better use of police, judge, and prosecutor time has been demonstrated. Cost savings in detention facility and transportation expenses have been documented. Project records show appearance and rearrest rates similar to or lower than comparable rates for surety releases. Most significant, human beings have been spared the collective anguish of literally thousands of years in jail prior to conviction where well planned and executed schemes are in effect. It is, after all, the notion of the sanctity of human life and the commitment of our nation to this sanctity that pervades all our laws. Can we then shortchange a process that effects so dramatcially the sanctity of human life? The pretrial release issue demands our attention.

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* This pamphlet contains a 25-page bibliography that is the most complete collection of writings on release problems that exists. The listing identifies the specific categories of "General Literature," "Pretrial Release Practices in Specific Jurisdictions in the U.S.: Pre-1965," "Pretrial Release Practices in Specific Jurisdictions in the United States: 1965-1974," and "National Scope Studies." Perusal of this bibliography is highly recommended.

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