

REPORT

on

NATIONAL SYMPOSIUM ON PRETRIAL JUSTICE

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Bail reformers advocate the use of empirically-validated risk measurements (instead of cash) to guide judges in determining who can be safely released and who must be detained. This evidence-based approach neither favors the rich nor penalizes the poor but seeks to administer justice with a sharp focus on fairness and public safety -- not on profits.

Timothy Murray, PJI

He who goes bail for a stranger will rue it...Proverbs 11:15

First known risk assessment tool

The symposium was a joint effort by the Department of Justice, specifically the Bureau of Justice Assistance and the pretrial service community to hit the restart button on the bail reform movement which initially was energized in May 1964 by then Attorney General Bobby Kennedy. The sponsors and organizers of the symposium were the Bureau of Justice Assistance and the Pretrial Justice Institute. Most of the circa 150 invitees, though not all, were from the pretrial service community or those having close ties or working relationships therein. Two attendees were from the commercial surety bail industry: Dennis Bartlett, executive director of the American Bail Coalition, a consortium of bail insurance companies, and Deborah Jallad, president of Accredited Surety and Casualty Company, a surety bail insurance company domiciled in Florida and a member company of ABC. Ms. Jallad's father, Hank Snow, had attended the original National conference in 1964. (Stephen Kriemer, executive director of the Professional Bail Agents of the US was also invited to attend but unable to do so because of prior commitments.) Despite their representing the commercial bail industry which most of the other attendees oppose, they were treated graciously with courtesy, respect, and invited to participate, especially by Tim Murray, executive director of PJI.

This report will first focus on the proceedings of the symposium and then offer some reflections concerning same. The Bureau of Justice Assistance promises an official report in SEP 2011. Hence, this account will not treat the symposium with the thoroughness expected from BJA. Furthermore, this narrative is reflective of the perspective of the commercial bail community.

Kickoff

Tim Murray acted as host for the Welcome and Opening remarks session. He mentioned that the pretrial service community had much to celebrate but grave challenges still to confront, especially jail overcrowding. In some ways the questions of 50 years ago still linger and that it was finally time for the bail reform movement to get it right by modifying bail laws and developing the risk assessment tool. Tim was followed by Jim Burch, the then acting director of BJA, who praised Tim's efforts and mentioned that BJA had developed a "remarkable" partnership on pretrial justice, providing funding for many efforts such as the pretrial demonstration projects starting in the 80's, a joint publication with PJI and NACo on how to reduce jail overcrowding by expanding pretrial services, funding research projects on evidence-based practices and risk assessments, other symposia, etc. Burch pledged BJA future support with funding for pretrial initiatives. Burch was followed by the Assistant Attorney General heading up the Office of Justice Programs, Laurie Robinson, who endorsed Burch's pledge of support and funding and mentioned that from Attorney General Holder on down, DOJ is committed to pretrial reform. She said she had a very special interest in it. She reaffirmed that the symposium was an effort to put the issue of pretrial justice back in the forefront and to try to influence policy makers, judges, and elected officials on all levels to effect release pending trial in a more fair, equitable, and empirically based method. Development of a risk assessment tool was key and the next stage in advancing pretrial justice.

Perdo Pierluisi, the Puerto Rico commissioner in the House of Representatives pledged his support for pretrial efforts in the house judiciary committee. He was followed by Bill Robinson the president-elect of the ABA who sensed that pretrial reform efforts were timely in that they made sense in the time of budgetary constraints. He encouraged selling the agenda as a cost savings initiative leveraged with a climate for change.

Turning back the clock

The next segment was a colorful recounting of the early days of the bail reform movement and featured reminiscences of Herb Sturz currently with the Open Society Initiative who was involved with the early days of the Vera Institute and retired DC court chief judge of the U. S. court of appeals, Patricia Wald. Judge Wald was a new hire attorney at the Kennedy DOJ and out of the blue was tasked with the bail reform issue. She showed formidable skill in mastering the subject matter. Along with Daniel Freed (deceased and to whom repeated and reverent mention was made) she researched and published *Bail in the United States: 1964* in preparation of Kennedy's National Conference on Bail and Criminal Justice, held 27-29 MAY 1964 in Washington DC. The remarkable feature of this almost half century old state paper is its accuracy and applicability for today. Chapter III: THE ROLE OF THE BONDSMAN with only slight editing could well have been published yesterday. Section C. The Surety Company might get by without any updating to deem it contemporary. Judge Wald is a delight to listen if you appreciate clarity and economy of delivery combined with *eloquentia*. Asked about the future for bail reform, she

was not optimistic because the nation currently is facing so many other grave issues. Bail reform is completely out of the public's mind. Also currently the public is severe in its attitude to criminals and promises to be so for the foreseeable future. She conceded that if risk assessments can be made *useable*, things might brighten. Also she added that if the bail reform movement wanted to make headway, they should be prepared to make compromises. Sturz echoed that risk assessment must be made useable in order to induce a shift from money bail. He said that there should be more focus on the front end, kind of a pre-pretrial release, e.g. culling out defendants into drug diversion programs, etc. He mentioned that there should more focus on supervised release. He was heartened that today more defendants are released on non-financial means of release.

Jim Austin, Academic Top Gun

Tim Murray introduced Jim Austin of the JFA Institute, a respected researcher well known by the pretrial service community. Jim's job was to sum up the last fifty years and address the phenomenon of increased pretrial detention and the impact of the pretrial community and the challenges the future has in store for it.

Jim, what happened after the '64 conference? The seminal event was the passage in 1966 of a federal bail reform act which gave a presumption of pretrial release to defendants on the least restrictive conditions. This principle was mirrored in most states soon after. But where is bail reform now? Austin answered with a snappy presentation entitled *Important Trends in Jail and Pretrial Release*. The brief made two key points, (1) the war on crime has been won. It's over folks. And (2) arrests are up, specifically over 12 million annually arrested and booked into jails. Reason? Almost a half million police, the result of a build up to confront the war on crime. Police continue to do what police do, that is, arrest people. Hence, many of these arrests are unnecessary and cause pain and humiliation to countless undeserving defendants, and results in overcrowding. In this respect bail reform has hit a wall. Crime is down, and there is push back from the corrections community whose jobs depend on jail populations, and also from the public whose general reaction to jail time is "No big deal."

Austin recommended that bail reform needs to shift its focus to prevent intake right up front. He also expressed skepticism regarding risk assessment instruments as the ultimate solution to pretrial release. He made a brief review of how many times this had been tried, the inconsistencies in same, the difficulties in producing such.

Tim Murray wrapped up the session with a catalog of attempts by the commercial bail community to restrict pretrial services to attend only to the indigent -- e.g. HR 1885, CO prop 102, FL, S 372, and CA [?]. Tim had made trips around the country and he made a number of observations: (1) pretrial programs are underfunded, (2) DA's want to impose financial conditions to release, (3) public defenders often try to get the judge to set financial conditions of release to hasten their clients getting out of confinement, (4) and judges set money bail for

political cover. In short, the legal culture was stuck in the past. He also mentioned that there was hope because of the need for new release options, and the promise of risk assessment tools.

Domine, libera animam meam a labiis mendacii, a lingua dolosa. Ps 119

Bartlett was invited to participate on a panel of participants from the criminal justice community and present the perspective of the commercial bail community. There was a wide ranging discussion over a number of topics some of which, given the forum, unsurprisingly involved criticism of commercial bail. Prior to the symposium Tim Murray had sent Dennis Bartlett a question to expect about commercial bail's sponsoring legislation which restricted the choices of the judiciary etc. in making release decision. This might have been in reference to the spate of bills introduced over the past couple of state legislative sessions in which pretrial services were to be restricted to indigent defendants. Bartlett mentioned that in contrast many of the bail community's efforts leaned toward expanding the array of release mechanism, e. g. allowing the use of commercial surety bonds in Oregon. Also Bartlett when given the opportunity took issue with some points, explaining the size of commercial bail and its contribution to the US criminal justice system, and that it dwarfed the pretrial community in terms of employees, transactions, defendants released, etc. He also leveled criticism at NAPSA for calling for its abolition and mentioned that thereby the pretrial service community had its answer about opposition to them and legislative initiatives from commercial bail. Bartlett emphasized that the commercial bail community was not opposed to pretrial services and that they merited recognition for their work with the indigent and mentally ill. However, as long as the pretrial community advocated and worked for its demise, commercial bail would not preside over or acquiesce in its own disappearance. He suggested a team approach with pretrial and commercial bail working together and suggested that BJA maybe provide a forum for such. He said that BJA was perceived as an advocate and federal funding mechanism for pretrial which in turn used such fiscal advantages to attack and work for the abolition of the commercial bail. Hence, there was not a little resentment in his community focused on BJA, which is perceived as a wholly owned subsidiary of pretrial services. He closed by mentioning that there would be no true bail reform without looping in the commercial bail community.

Thus ended the first day.

Pretrial: Engineers of the soul?

...risk wasn't f-----g managed. Risk was bitch-slapped, risk was tamed and told what to do.

Scott Patterson, *The Quants*

The opening session on the following day focused on the "new era" of evidence based decision making. Evidence based practices are the current fad in all sorts of fields where the social sciences intersect with the criminal justice system. The hope is that it will provide a predictive tool wherever it is applied. It works something like this. Based on scientific observation

desirable ends result from certain behavior(s). If the behavior can be reproduced, along with the same components and identical conditions, the same results can be guaranteed. This kind of positive or experimental method is not new. It undergirds modern science wherein sense perception is applied to the observation of phenomenon. In theory the results can be duplicated an indefinite number of times. This rightly is viewed as a powerful and useful tool to guarantee objectivity. It has but one weakness. It cannot penetrate to the moral and spiritual dimension of the human soul. A defendant's decision to appear in court or not essentially is a moral decision. Will he or won't he? Only the Recording Angel ultimately knows.

It was apparent from the symposium that the bail reform movement is shoving all its chips to the center of the table, going all in, betting that evidence based practices will provide a tool of such predictability regarding a defendant's performance, assessing the likelihood of the defendant's returning to face charges in court, that it will obviate the need for money bail which will become as obsolete as the medieval barbarism of bloodletting. From all appearances DOJ/OJP/BJA endorse this approach from the attorney general on down and is prepared to back it up with funding.

Does it work?

There were three presentations. It's fair to say that a lot of work needs to be done to not only to find a method, but also the quest is plagued by an across the board disparity in the definition of what constitutes evidence or empirically based reform, risk, risk assessment, risk management, how to measure effectiveness, accountability, etc. Then when the Augean stables are spic and span, when all these categories have been cleaned and agreement reached on a risk assessment instrument, it then has to be evaluated to see if it works or to what degree it works. Pretrial services currently serve only a fraction of the country and only 42% of pretrial services use a risk assessment tool. Furthermore, the method is being eschewed by most judges whose use of money bail has to be "broken down".

One must give credit to the faith exhibited by those endorsing this approach, but it appears based more on an intuition and hope than reality that the philosopher's stone is out there and the current alchemy of evidence based practices will transform the criminal justice system.

For seventy years of the 20th century the ultimate scientific predictor, the ultimate scientific law of social development held sway over more than half the planet: Communism. With exception of curiosities like North Korea and the hearts of some academics it collapsed. It did so for a very good reason. It failed.

Hardly anybody in the pretrial community would credit the commercial bonding industry for employing risk assessment tools. Their general image of the bail agent is of one who makes highly subjective, gut decisions about risk. This is not to be discounted, but the commercial bonding community does not rely exclusively on instinct. The bail agent does an extensive interview with a client and more importantly with his family and double checks the information

given. While pretrial services on occasion voluntarily have their risk assessment tools evaluated, commercial surety bail is subject to regulation by the states' departments of insurance. No pretrial service agency has ever undergone the nitpicking conduct market exam to which bail insurance companies and their agents have been subjected (for the cost of which they must pay the DOI in question -- not to mention any fines imposed by same). Departments of insurance perform such examinations in order to protect the consumer. One of the things they scrutinize is the agent's risk assessment form, not only for content, manner of presentation, clarity of intent, and *usability* but to insure and protect a client's financial rights also. Hence, risk assessment of clients is not the wholly owned turf of the pretrial services community. Last year BJA held a conference on risk assessment research to which the commercial bail community was not invited. Too bad. They might have learned something.

Dizzy With Success.

Stalin on the first Five Year Plan

Flag Ship of Pretrial Agencies -- DC

The next session was devoted to jurisdictions claiming positive results from evidence based practices. Two are worthy of special mention.

Susie Shaffer, the chief of the DC Pretrial services agency, probably runs the best pretrial service program in the nation. She not only is an attorney, but an extraordinarily capable administrator who has merited the admiration of not only the pretrial services community, judges, the police, and her staff, but of those who just are acquainted with her. Courteous and approachable she runs her program with aplomb in one of the hottest criminal environments in the country -- your nation's capitol.

She has eliminated almost all use of money bail. With the exception of about 200 commercial bonds a year (usually at the request of defendants [technically speaking commercial bail is legal, though unused, in DC] furthermore if a surety bond is used, the agency withdraws any involvement), every other transaction is non-financial or a bond which the defendant can meet. Her agency processes circa 25 thousand defendants a year almost all of whom are indigent. They can't pay anyway, so the requirement was dropped.

She continued that 85% of these defendants are released within 24 hours of arrest. The FTA rate is low for a pretrial service agency, circa 12%. (Commercial bail in contrast would go out of business with a 4% +FTA rate.) Of those on pretrial releases, only 3% are rearrested for felonies, and 9% for misdemeanors. (This does not count any arrests of the same cohort in either next door Maryland or Virginia.) She gave five reasons for such a success rate:

- Accurate information
- Quick charging

- Defense counsel involvement
- Judicial review re risk factors
- Tracking results

She also mentioned that the DC risk assessment instrument is being re-evaluated and re-tooled.

What happens to the highest risk defendants? About 15% are detained. The top 10% releasable are put on GPS. She sets conditions but not over conditions.

In summary, she attributes success to a combination of due process, collaboration and information sharing.

The price of success is not cheap.

- 2012 budget: \$60,761,000.00
- Fulltime employees: 378
- Case load: 6850 defendants
- Cost per defendants: \$8,870
- Population of DC: 600,000+

In a sense the DC pretrial services agency is like one of those DOD weapons programs that keep getting funding, keep getting improved, but never quite reach their full potential. We've thrown this money at it, what the heck, let's keep funding it. Other jurisdictions envious of the DC program probably will be drawn up short by sticker shock: close to \$61 million annually.

Rocky Mountain Higher?

Tim Schnake from Jefferson County, CO, wants JEFFCO to become the DC of the Rockies. In his position as a criminal justice planner/analyst for the county, he explained his two part program the first part of which was a jail impact study and the second part of which was to highlight the defects of the commercial bail system in Colorado. Schnake in a recent email also mentioned that he had been asked to write an official summary of this symposium.

Sidebar: *During the debate over CO SB 186, Schnacke's findings were challenged by a professor of criminology at the University of Texas, who concluded, that by "contemporary academic/scientific standards", Schanke's methodology suffered from such grave design flaws, that they were fatal to the validity of his findings. Schnake did not react well and attacked the professor ad hominem through all the deans on his campus, the provost, plus the system*

chancellor of the University of Texas. Schnake never did address the substance of the professor's criticism, nor did he mention such a challenge during the symposium presentation (nor did his colleague, Mike Jones, who gave substantially the same presentation at the National Sheriffs Association annual meeting on 18 JUN in a session lumberingly entitled, Increasing Public Safety While Reducing Jail Populations: The Benefit of Cost-Effective Bail Setting and Pre-Trial Services Programs).

The Case of the Missing Study.

The formidable Jim Austin had originally been on the schedule to comment on the JFA Institute's study of Kentucky pretrial services risk instrument. For some reason this presentation was scrubbed. Kentucky's pretrial service is a division of the state's administrative office of the courts and consists of 250 highly professional and apparently overworked staff who are assigned to jails throughout the state. It is the only state wide pretrial services agency.

The pretrial services community touts this study as proof that a whole state can successfully operate without commercial bail. Indeed, the sample claims an impressive 95%+ appearance rate. A couple of secondary considerations might take the edge off the pretrial service community's euphoria, however. According to Tara Boh Klute, the chief operating officer of KY's pretrial services, the most used method of release is a financial one, the surety bond. It is not a commercial bond, but a surety bond nonetheless with friends or relatives providing the surety. In other words the state runs a bail bond agency (at considerable cost to the tax payers -- 250 full time employees). Its performance is not as effective as the commercial surety bond, denies the client a range of choices, but at 95% almost matches the 97%-98% of commercial bail.

Austin's study also reports that the average stay of a defendant undergoing an assessment is 10 to 14 days. Jailers cannot be too happy about the jail space clogged up due to the languid pace of processing and evaluating potential pretrial releases. Austin's study makes no mention of fugitives. While at the National Sheriffs Association meeting, Dennis Bartlett was confronted by a Kentucky sheriff who said "Getting rid of bail was the worst thing that ever happened to Kentucky." He said the state has a serious problem with fugitives, and cited that in Louisville alone there were 77,000 fugitives. Perhaps Kentucky is not the Garden of Eden portrayed by the pretrial services community.

Holder's Holding Forth

The attorney general visited the symposium and made remarks to the effect that DOJ supports bail reform. He obviously spoke from a statement prepared for him. For a person in his position, given the gravity of issues before him, bail reform probably is small potatoes, but he did make a personal appearance which in itself is an endorsement of this view. Look for the pretrial service community to make the most of this high level witness to their cause. On the other hand Holder's rating with the public is not all that high either, given the ATF gun running

fiasco and the threat of the AG being held in contempt of Congress over it, not to mention his witch hunt [only recently dropped] against CIA agents over waterboarding terrorists. (At the same time they currently are killing terrorists? Go figure.) [Holder's speech currently is on the net and probably will be accessible in the final official report of the symposium which BJA plans to publish SEP 2011.]

Breakout Interlude

There were breakout sessions after a working lunch presided over by the iconic and legendary Judge Bruce Beaudin, an irreplaceable figure in bail reform from the early days to the present. (He was the founder of the DC pretrial agency and also PJI [in its earlier incarnation as the Pretrial Services Resources Center, headed up for decades by the equally iconic D. Alan Henry [who also attended the symposium.]) The purposes of the breakout sessions as narrated by the peppy Cherise Fanno Burdeen from PJI was to reduce all the previous talk into practical principles which would be incorporated into tasks for future recommendations and implementation. Specifically:

- What should pretrial justice look like?
- If successful, by which means would you measure its outcome?

All recommendations from each breakout session hopefully will appear in the final report, hence, they need not detain us here, except the admission that to amend/enact state laws on behalf of the establishment/support for pretrial services programs is a long shot. Education of judges, the public, etc. is crucial to the ongoing health of the pretrial community. The biggest crimp, however, is funding.

Both Bartlett and Debbie Jallad had the impression that there was widespread ignorance concerning the commercial bail industry. For example, Debbie drew slack jawed expressions of wonder when she mentioned the high appearance success rate of commercial bail.

Winding things up.

What will happen to pretrial in the next half century? First of all it was agreed that all present will not see it unless assisted by the aforementioned Recording Angel. Judge Truman Morrison III (the spouse of Susie Shaffer), the chairman of the board of PJI, gave a candid and refreshing speech. Cardinal Newman must have had a person like the judge in mind when he advised his rhetoricians to speak *auctoritate* [with authority]. Morrison's main point was that pretrial will never get off the dime unless they get rid of money bail. Commercial bail is a symptom [and "their easy profits" – (another illusion entertained)], it is not the central problem. He said that if money bonds are available, judges will use them, DAs will recommend them. He asked what is holding us back from getting rid of money bonds. He lamented that justice system was hooked on money, and many of its decision were driven by fiscal concerns. It is a blunt force and the

system is afraid of getting rid of it. It is fixing a dollar amount for justice. The money bond is not a side issue. There will be no real progress with the bail reform movement unless it is eliminated.

Morrison criticized judges for almost mindlessly using money bail randomly, for high visibility cases and for which they will give no reason or explanation. He said that it was key to point out the dysfunctionality of money bail which results in a stark departure from the Supreme Court on preventive detention. Morrison held out the DC agency as a model and said that (1) it was not an anomaly, and (2) if it can work in crime plagued DC it can work anywhere. Upholding his wife's agency as a national model to be emulated is problematic. Despite the agency's respectable performance, DC is not highly regarded as a model of efficiency by the balance of the nation. In fact, its high crime rate, almost 600 uncleared murders, and politics before almost anything ethos renders the city to many Americans a scandal, much less something to be imitated.

Morrison put the nail in the coffin regarding any compromise of working with the commercial bail community, probably doubly so in view of the fact that he is chairman of the board of PJI which has assumed the spokesman role for the pretrial community in the US. (After the talk some judges mentioned to Bartlett, they resented Morrison painting them as mindless automatons witlessly assigning bail amounts.)

Mike Jacobson, president of the Vera Institute, talked about setting up a pretrial program in New Orleans, and mentioned how crucial it was to gain the support of the business community and gather more information plus financial support from both public and private funding.

The symposium adjourned after a number of concluding remark including those of AAG Laurie Robinson, the head of OJP, and deputy attorney general, Jim Cole. Tim Murray crisply wound up the symposium asking if it was a success, would it get attention from outside the room. He said that the bail reform movement had another chance to get it right, time for talk was over. To Tim great credit must go for a very well organized and more importantly on time every step of the way symposium.

Scolion: *Is non money bail constitutional? Are non financial means of release pending trial unconstitutional? Well, according to that the part of the 8th amendment about bail not being excessive it certainly meets the Constitution's test. You can't be less excessive than zero. Regarding "excessive" the Supreme Court has said that bail is excessive when it is set in an amount higher than that reasonably calculated to ensure that one accused will stand trial and submit to sentence if found guilty. It doesn't say a high bail cannot be set if the charge is grave enough to discourage the defendant's appearance. However, the 8th amendment also says that there shall be bail. What is a sufficient surety on an OR release? The constitutions of 41 states say that bail can only be granted by "sufficient sureties". Even the four states that prohibit commercial bail not only use money bail but require sufficient sureties.*

Hence, the starting point of the 8th amendment on bail is that it is all about getting a person to court, but don't set it too high. They didn't want it too low either. Too high bail deprives the defendant. Does bail set too low make the community suffer? BJS has shown repeatedly that defendants released on OR or deposit bail fail to appear more often and commit more crimes pending trial than those released on secured bonds. Does the public get a fair shake when a defendant is released with low or no financial conditions? Is it constitutional?

Reflections on the Symposium.

The event with the exception of two invitees from the commercial bail industry was exclusively dominated by pretrial services community. This was to be expected insofar as it was to emulate the original Kennedy conference of half century ago. By its very nature the bail reform movement is antithetical to the commercial bail industry. It has never blushed to say so.

Which bail reform movement?

The bail reform/pretrial community in reality is filled with enough contradictions that it would take Thomas Aquinas to sort out the subdistinctions. All government run pretrial agencies use money bail (with the possible exception of DC). Yet leadership in the bail reform movement eschews financial conditions of release. Advocating the abolition of financial means of release while using it is sort of like being half pregnant. Furthermore, the early days of bail reform, concentrated on the indigent. It then morphed into a moral argument against commercial bail in which the commercial bonding industry was pilloried as rapacious. All defendants, not just the poor should be the beneficiaries of non financial means of release. Not to mention that a criminal defendant should not have to answer to a private party like a bail agent regardless of the nature of his contract with the agent. We help with jail overcrowding; surety bonds cause it. Whence this argument with jail populations declining? Another argument was that a government function should not be privatized when in fact the bail reform movement actually has moved to governmentize a private sector option of over two centuries standing. An additional argument is that from moral superiority: we in the bail reform movement are better people, of superior sentiment than bail agents, and a follow up argument that has lost a lot traction in the last few decades: government employees are better stewards of this process than those in the private sector. The current season for bail reform is that soon it will be able to predict the behavior of a defendant to the point that no longer will the financial sword of Damocles need to hang over his head. As Tim Murray rightly said; "We better get it right this time."

Widow maker virus?

Peter Drucker in his classic volume *Management* discusses the widow maker job which is one in which nobody regardless of how talented, virtuous, knowledgeable, high-minded, or compassionate can succeed. It falls flat on its six no matter how much money is thrown at it. Why? It's the nature of the job itself. There is fatal flaw in the design of the tasks, in the objective, that no means can overcome it.

The accomplishments of pretrial services over almost a half century and nationwide are modest in the extreme. Today there are only a handful of agencies, less than 300, varying in size from the battlewagon DC agency to a couple of deputy sheriffs cross assigned from a traffic beat to such functions, scattered over 3000+ counties, with only around 3,500 employees, with probably over \$100,000,000 public finding annually, trying to deal with 12 million arrestees annually entering the system. This system has never caught up with the commercial bail system in terms of performance. Regardless of how many times the goal posts are moved, how often definitions are changed, how often statistics are spun, the pretrial community doesn't come close to having 15,000 agents, It doesn't come near to releasing 350,000 defendants a month, or to making sure the 97% to 98% return to court. Unlike its commercial counterpart, pretrial pays no premium taxes, no forfeitures. Unlike its commercial rival it costs the tax payer. If this does not meet the criteria for a widow maker job, the next edition of *Management* will have to be revised.

A wonderful world?

Let's imagine that the criminal justice equivalent of a meteor took out the dinosaurs of the commercial bail world. Total extinction. Not even a memory of same. Let's further imagine that just like the ABA advocates, every jurisdiction has a pretrial services program through which every arrested person would be processed. We finally made it, a nationwide system knit together by a rational bail system consistent from the top to the bottom. Every defendant would be in the state's power to be released or not. No more hare brained judges setting bail according to a bail schedule, according to their own whim, according to local political pressures egged on by DAs out to collect scalps. Yes, we found the ideal fix. We had a Peace Corps, an Americorps, and now a pretrial justice corps. Finally, a consistent pretrial justice mechanism. Oh, and inadvertently, we also have found the perfect response to Stalin's question: How heavy is the state?

Hunters, Gatherers.

"Hey, hon, could you run across the street to the for-profit grocery store for me?"

"Sure. What for-profit things do you want me to pick up?"

"Well, get some for-profit eggs, and for-profit bacon. Oh, would'ya also pick up my for-profit prescription from the for-profit pharmacy."

"Will do. Maybe I'll stop by the for-profit Starbucks on the way back and get you a for-profit treat. How about a for-profit latte grande?"

Absurd? The bail reform/pretrial services term for the commercial bail industry is "for-profit bonding". The term primarily is meant to be inflammatory, evocative of class warfare and an encouraging nudge towards fallen mankind's propensity towards envy, one of the seven deadly sins. Its purpose is to tar the commercial bonding community with the neocolonial exploitation

brush. It also reveals a primitive and obsolete grasp of the nature of profit. In reality, the profit motive plays no part in business. A business does not succeed because its owners subjectively are motivated by profit. It succeeds only insofar as it meets the needs of its customers/clients. Profit is the condition of business, not its objective. Those in government also depend on the profits. If there were no profits, there would be nothing to tax. No tax revenue, no government. In fact, some government run pretrial programs and courts are also in the profit business in terms of fees charged and type of bail used. Courts have found a fiscal blessing in the ten percent deposit bail system originally invented by the bail reform movement to render the bondsman unnecessary. Rare is the defendant that actually gets a full ten percent refund upon conclusion of the case. Most jurisdictions take a bite right off the top and call it an administrative fee, and then keep biting with fines, other fees, victim's compensation, child support etc. The great thing about this money is that it is free, off budget, indeed, a profit. Judge Morrison was right. The courts have too much invested in money bail to break out of the system. On the other hand, should we be consoled that the entrepreneurial spirit of America penetrates even gray precincts of government?

How much energy behind bail reform?

The bail reform movement will edge forward for awhile especially with the funding and encouragement of the current Department of Justice. It faces an uphill fight regarding funding in the face of severe budget constrictions. Bail reform is not high on anybody's list. In fact, for the most part it's hasn't even made the list, especially that of the public. As mentioned by Judge Wald the time is not propitious for bail reform.

Quaestio disputata de vadimonio novissimo hic finitur.