

# Pretrial Practice: *Building a National Research Agenda for the Front End of the Criminal Justice System*

**A Report on the Roundtable to Develop a National  
Pretrial Research Agenda**

**October 26-27, 2015**

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John Jay College of Criminal Justice  
New York City

# Acknowledgments

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The Prisoner Reentry Institute of John Jay College wishes to thank the Laura and John Arnold Foundation (LJAF) for the opportunity to partner with them in convening a series of roundtables on pretrial practice. This is the report on the second roundtable which was focused on Building a National Agenda for the Front End of the Criminal Justice System. The roundtables were inspired by conversations between Anne Milgram, LJAF Vice President of Criminal Justice, and Jeremy Travis, President of John Jay College and were framed to elevate the national conversation on pretrial practice. PRI particularly appreciates our close working relationship with Virginia Bersch, Deputy Director of National Implementation, Criminal Justice, and the support of Matt Alsdorf, LJAF Director of Criminal Justice.

We were honored by the generous and thoughtful participation of all the Roundtable invitees, and want to give special thanks to the seven academics who prepared presentations to stimulate conversation at the Roundtable. We also want to thank the professionals who joined us as observers and the eleven organizations and individuals who took the time to contribute their perspective to identify pretrial research priorities.

Carol Petrie, former Director of the Committee on Law & Justice at the National Academy of Sciences, provided invaluable consultation in the development of the roundtable agenda, the selection of potential discussants, and the synthesis of research questions that emerged from the conversation.

We are especially grateful to have benefitted again from the significant talent of Cynthia Reed, who is responsible for writing this report. This publication was designed by Damian Vallegonga from Echo.

Special thanks are due to PRI staff members Aimee Baker, Danielle Petrilli and Daonese Johnson-Colon for their work on the production of the Roundtable, the associated logistics, the production and dissemination of this report. Thanks also to the many John Jay staff members in audio-visual services, facilities management, security and catering who helped make this event possible.

Ann Jacobs, Director  
Prisoner Reentry Institute

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# About The Laura and John Arnold Foundation

Laura and John Arnold established the Laura and John Arnold Foundation in 2008. LJAF believes philanthropy should be transformational and should seek through innovation to solve persistent problems in society. Our core objective is to address our nation's most pressing and persistent challenges using evidence-based, multi-disciplinary approaches. We strive to create functional solutions that target the root causes, not just the symptoms, of these problems. The solutions must be both scalable nationally and sustainable without permanent philanthropy.

Our strategy is to systematically examine areas of society in which underperformance, inefficiency, concentrated power, lack of information, lack of accountability, lack of transparency, lack of balance among interests, or other barriers to human progress and achievement exist. We then apply a rigorous and comprehensive entrepreneurial problem-solving approach to these areas, considering all possible strategies, tactics, and resource allocations to effect solutions. Our approach is not limited to what has been tried, or even what has been proposed, in the past. Instead, we seek to incentivize bold, creative thinking and effort, with the goal of igniting a renaissance of new ideas and approaches applied to persistent problems.

LJAF's Criminal Justice initiative aims to reduce crime, increase public safety, and ensure the criminal justice system operates as fairly and cost-effectively as possible. In order to achieve these goals, we develop, incubate, and spread innovative solutions to criminal justice challenges. We assemble teams of experts from both inside and outside the criminal justice field to conduct research projects, create tools for practitioners, and partner with local jurisdictions to pilot and test new policies and practices. Our projects use data and technology to drive innovation and accelerate the adoption of proven reforms.

## **Laura and John Arnold Foundation**

Laura & John Arnold, Co-Chairs  
Dennis Calabrese, President  
Anne Milgram, J.D., Vice President of Criminal Justice  
Matt Alsdorf, Director of Criminal Justice

Houston | New York City | Washington, D.C.  
[ARNOLDFOUNDATION.ORG](http://ARNOLDFOUNDATION.ORG)



# About John Jay College Of Criminal Justice & The Prisoner Reentry Institute

**John Jay College of Criminal Justice of The City University of New York** is an international leader in educating for justice, offering a rich liberal arts and professional studies curriculum to upwards of 15,000 undergraduate and graduate students from more than 135 nations. In teaching, scholarship and research, the College approaches justice as an applied art and science in service to society and as an ongoing conversation about fundamental human desires for fairness, equality and the rule of law.

John Jay is a community of motivated and intellectually committed individuals who explore justice in its many dimensions. The College's liberal arts curriculum equips students to pursue advanced study and meaningful, rewarding careers in the public, private, and non-profit sectors. Its professional programs introduce students to foundational and newly emerging fields and prepare them for advancement within their chosen professions.

**The Prisoner Reentry Institute (PRI)** is one of twelve institutes that collectively comprise the Research Consortium of John Jay College of Criminal Justice. The mission of PRI is to spur innovation and improve practice in the field of reentry by advancing knowledge, translating research into effective policy and service delivery, and fostering effective partnerships between criminal justice and non-criminal justice disciplines. PRI works towards this mission by focusing its efforts on the following types of projects and activities:

- **Developing, Managing, and Evaluating Innovative Reentry Projects**
- **Providing Practitioners and Policymakers with Cutting Edge Tools and Expertise**
- **Promoting Educational Opportunities for Currently and Formerly Incarcerated Individuals as a Vehicle for Successful Reentry and Reintegration**
- **Identifying “Pulse Points” and Creating Synergy Across Fields and Disciplines**

## **John Jay College of Criminal Justice Prisoner Reentry Institute**

Jeremy Travis, President, John Jay College of Criminal Justice  
Ann Jacobs, Director, Prisoner Reentry Institute

New York City  
[JJAY.CUNY.EDU](http://JJAY.CUNY.EDU)  
[JOHNJAYPRI.ORG](http://JOHNJAYPRI.ORG)

# Roundtable Participants

## Rachel Barkow

Segal Professor of Regulatory Law & Policy New York University School of Law New York, New York

## Dr. Saurabh Bhargava

Assistant Professor of Economics Carnegie Mellon University Pittsburgh, Pennsylvania

## Barbara Broderick

Chief Probation Officer Maricopa County Adult Probation Dept. Phoenix, Arizona

## John T. Chisholm, J.D.

District Attorney Milwaukee County Milwaukee, Wisconsin

## Elyse Clawson

Principal & Founder Justice System Partners Portland, Oregon

## Dr. Mona Danner

Professor of Sociology and Criminal Justice Old Dominion University Norfolk, Virginia

## Leah Garabedian, Esq.

Defender Counsel National Legal Aid & Defender Assoc. Washington, D.C.

## Dr. James P. Lynch, Professor

Chair, Dept. of Criminology & Criminal Justice University of Maryland College Park, Maryland

## Dr. Barry Mahoney

President Emeritus The Justice Management Institute Denver, Colorado

## Anne Milgram, Esq.

Vice President of Criminal Justice Laura and John Arnold Foundation Former New Jersey Attorney General New York, New York

## Jennifer M. Perez

Director of Trial Court Services New Jersey Judiciary Trenton, New Jersey

## Janice Radovick-Dean, Director

Fifth Judicial District of Pennsylvania's Pretrial Services Department Pittsburgh, Pennsylvania

## Dr. Carla Shedd

Assistant Professor of Sociology & African-American Studies Columbia University New York, New York

## Dr. Faye S. Taxman, Professor

Criminology, Law & Society Department George Mason University Fairfax, Virginia

## Chief John Scott Thomson

Chief of Police Camden County Police Department Camden, New Jersey

## Jeremy Travis, President

John Jay College of Criminal Justice at the City University of New York New York, New York

## Dr. Marie VanNostrand

Justice Project Manager Luminosity: Data Driven Justice Solutions St. Petersburg, Florida

## The Honorable Roger K. Warren

President Emeritus National Center for State Courts Williamsburg, Virginia

## Dr. Robert E. Worden

Director, John F. Finn Institute for Public Safety Associate Professor of Criminal Justice University at Albany, State Univ. of New York Albany, New York

## Roundtable on Pretrial Practice Staff

### John Jay College of Criminal Justice Prisoner Reentry Institute:

#### Ann Jacobs

Director

#### Carol V. Petrie

Consultant, Former Director of Committee on Law & Justice at National Academy of Sciences

#### Danielle Petrilli

Administrative Associate

### Laura and John Arnold Foundation:

#### Virginia Bersch

Deputy Director of National Implementation, Criminal Justice

#### Matt Alsdorf

Director of Criminal Justice

# Presentations

**The following academics made presentations at the Roundtable to stimulate and guide discussion at various points in the agenda:**

- 1.** Dr. James Lynch, Chair, Department of Criminology and Criminal Justice, University of Maryland, “Developing a National Pretrial Research Agenda: Setting the Context.”
- 2.** Dr. Robert Worden, Professor, School of Criminal Justice, University at Albany, State University of New York, “Police Decision-Making at the Point of Arrest: What We Know, What We Don’t Know.”
- 3.** Rachel Barkow, J.D., Segal Family Professor of Regulatory Law and Policy, New York University School of Law, “Charging Decisions.”
- 4.** Dr. Marie VanNostrand, Justice Project Manager, Luminosity, “Pretrial Release Decisions.”
- 5.** Dr. Barry Mahoney, President Emeritus, The Justice Management Institute, “Pretrial Case Processing: Thoughts about Contemporary Practices and about Research Needs and Opportunities.”
- 6.** Dr. Faye Taxman, Director, Center for Advancing Correctional Excellence, George Mason University, “Dispositions.”
- 7.** Dr. Saurabh Bhargava, Assistant Professor of Economics, Carnegie Mellon University, “Behavioral Economics (and Psychology) as a Lens for Examining Pretrial Behavior.”

## **Contributing Presenters:**

- Dr. Michael Jones, Director of Implementation, Pretrial Justice Institute
- Marc Levin, Esq., Director, Center for Effective Justice & Right on Crime, Texas Public Policy Foundation
- Jim Parsons, MSc, Vice President and Research Director, Vera Institute of Justice
- Nicholas Wachinski, Esq., Executive Director Emeritus, American Bail Coalition

# ***Report On The Roundtable To Develop A National Pretrial Research Agenda***

## ***Executive Summary***

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*“There’s no question in my mind that the greatest opportunity we have is before people are deep into the system and having done years in jails and prisons.”*

**Anne Milgram, Vice President of Criminal Justice  
Laura and John Arnold Foundation**

*“We need better data, a better definition of the data we capture, and we need the data to be available for research and to the people who make decisions.”*

**Jeremy Travis, President  
John Jay College of Criminal Justice**

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From October 26-27, 2015, the John Jay College of Criminal Justice and the Laura and John Arnold Foundation (LJAF), held a Roundtable to Develop a National Pretrial Research Agenda as a follow-up to its earlier Roundtable in March 2015, which focused on pretrial practice and ways of rethinking the front end of the criminal justice system. “The national conversation on criminal justice is open to reform like never before,” President Jeremy Travis of the John Jay College of Criminal Justice stated. “There’s an urgency. It feels like we’re in the process of important policy discovery.”

At that initial Roundtable, participants were, in the words of Anne Milgram, Vice President of Criminal Justice for the Laura and John Arnold Foundation, “stunned by the lack of information in the space. All we could talk about was the need for research.” This report details the results of the follow-up to that conversation – a Roundtable devoted solely to the development of a national research agenda to move reform forward on the front end of the criminal justice system.

## Goals

The goals of the Roundtable were several – a what, who, and how of pretrial research and reform:

- **Determine what core questions need to be answered in the pretrial phase;**
- **Ascertain who can undertake such studies; and**
- **Once that work comes to fruition, establish how to implement those results, so that practices, policies, and outcomes can be improved.**

Milgram phrased the inquiry as follows: “What are the things we want to solve? What are the things we don’t know that would really change the way we run the front end of the criminal justice system?” Our ultimate goal, Travis stated, “is to define a research agenda for the next decade.”

Travis emphasized that the research agenda must be conscious of three things: data and data analytics, evidence-based best practices, and a normative framework. This latter consideration echoed a theme from the first Roundtable about the importance of ensuring that policies and practices in the pretrial phase are guided by value propositions and a human dignity context. These include considerations of procedural justice and legitimacy, proportionality, parsimony, citizenship, and social justice. “Our research should be guided by the question of how state power is applied vis à vis individuals who are thought to be engaged in antisocial behavior,” Travis stated in his introduction. He also encouraged participants to define the front end of the system very broadly, to include how citizens and police first encounter each other.

The identification of research priorities will contribute valuable insight into thinking in the field for both LJAF and others concerned about front end reform. In Milgram’s view, “This work will set us up to dramatically change the criminal justice system in America.”

## Participants

In order to construct a robust national agenda, the Roundtable included the voices of those with backgrounds in academics, policy, advocacy, and practice. Participants spanned the fields of law, economics, sociology, criminal justice, political science, criminology, statistics, and African American studies. In the room were practitioners from all stages of the process – law enforcement, prosecution, defense, probation, bail, pretrial and court services, and the judiciary. Detailed biographies of the participants can be found in **Appendix A**.

*This report is organized as follows:*

### Part I

**Setting the Context: The Pretrial Landscape in America** establishes the framework for a larger conversation about building a research agenda. Using statistics, participants looked at big picture trends in pretrial, showing changes in arrests, pretrial detention, and forms of release over time. These trends raised questions that provided a basis for discussion: What do we know about the pretrial landscape? What are the problems in pretrial? How has pretrial changed over time? Why are these macro-changes taking place? Why are some aspects of pretrial studied more than others? How can we build data infrastructures to assist future researchers?

### Part II

**A Step-by-Step Review of the Pretrial Process** frames the dialogue about research goals in terms of the stages of the front end of the criminal justice system. With experts in each phase introducing the discussions, the Roundtable considered decision points all along this process to assess the nature of existing research into what does and doesn’t work, and the gaps in our knowledge. The Roundtable focused on five stages, always with an eye to how each stage interconnects with and impacts upon the others: arrest and initial police-citizen interactions, charging and prosecutorial discretion, pretrial release decisions, case processing, and case dispositions.

## **Part III**

**Behavioral Economics as a Lens for Examining Pretrial Behavior** provides an alternative way to interpret pretrial decision-making using approaches from economics and psychology. The pretrial process is comprised of a series of decisions by a variety of individuals in various organizational contexts, and we often know little about how those decisions are made. Behavioral economics offers potential methods to focus on ways to increase efficacy and reduce biases and decision-making errors through offering incentives, examining the individual outlooks and backgrounds of decision-makers, and altering the way in which information is presented.

## **Part IV**

**Building a National Research Agenda: Recommendations from the Field** provides an overview of the conversations by participants and presenters about creating and prioritizing issues for research. Dozens of potential research questions from stakeholders representing all stages of the pretrial process were considered. This section provides an overview of this dialogue as well as a list of stakeholders' specific recommendations for areas of inquiry.

## **Part V**

**A Call to Action: A Proposed National Research Agenda** narrows the Roundtable participants' myriad ideas into a formal agenda. This agenda identifies and prioritizes key topics for research that will have the most impact in pretrial reform. Suggestions for research include:

- *Studies that provide an overview of existing pretrial practices and outcomes*
- *Studies on police behavior and law enforcement organizational culture*
- *Studies on policing and racial bias*
- *Studies on arrest and alternatives to arrest*
- *Studies on prosecutorial discretion in charging, diversion, and bail*
- *Studies on the impact prosecutors have on case processing*
- *Studies on prosecutorial discretion and racial bias*
- *Studies on the availability and impact of defense counsel at various pretrial stages*
- *Studies on the validity and validation of risk assessment tools*
- *Studies on the development of risk assessment tools for domestic violence and DUI*
- *Studies on how decision-makers use risk assessment tools*
- *Studies on the potential for embedded racial bias in risk assessment tools*
- *Comparative analyses of the effectiveness of various forms of pretrial release*
- *Studies on the impact of bail on failure to appear and public safety*
- *Studies on the efficacy of types of pretrial supervision on failure to appear and public safety*
- *Studies on incentives to ensure pretrial supervision compliance*
- *Cost-benefit analyses of pretrial release forms vs. pretrial detention*
- *Micro-analysis of the jail population to determine who is in jail pretrial and why*
- *Studies on the reasons why pretrial detention leads to negative outcomes*
- *Studies on the efficacy of various case processing procedures and reforms*
- *Studies to assess how judges exercise their discretion*
- *Studies on judicial education to improve decision-making*
- *Studies on judicial discretion and racial bias*
- *Studies to evaluate a full range of disposition options, including behavioral health pathways, triaging minor offenses, restorative justice, offender mediation, and individually-designed sentences*
- *Studies assessing the level and impact of victim participation in the pretrial process and the impact of pretrial decisions on victims*
- *Studies that assess community values and expectations related to pretrial*
- *Studies to evaluate a public health model of crime prevention, considering the needs of the mentally ill and those with substance abuse issues*
- *Studies on how best to disseminate innovation and implement evidence-based best practices in pretrial*

Such research would further the goal to build a field of scholarship dedicated to the pretrial stage and provide evidence for policy and procedural changes that can profoundly impact the fairness, efficacy, and costs of the criminal justice system.

## Part I

# Setting the Context: The Pretrial Landscape in America

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*"We need to take a look at the decision points in pretrial and ask the questions: Can we make these decision points more effective? Can we make them fairer? Can we make them in a way that reduces the amount of coercion that is imposed upon the population?"*

Dr. James T. Lynch, Chair  
Department of Criminology and Criminal Justice,  
University of Maryland

What is the pretrial process? Why is it important to study? What do we need to study and what resources do we need to accomplish that? These were some of the questions that Dr. James Lynch, Chair of the Department of Criminology and Criminal Justice at the University of Maryland, raised in the Roundtable's opening presentation to set the context for the larger conversation about building a national pretrial research agenda.

As an initial matter, "pretrial" must be defined, in order to delimit the scope of what must be studied. What are the components of the pretrial process, also known as the "front end of the system"? Lynch outlined the following stages:

- Arrest
- Booking
- Assignment of Counsel
- Custody
- Diversion
- Charging
- Filing
- Plea Negotiation

Roundtable participants expanded on these stages, with President Travis suggesting that a pretrial definition could be broadened to the “front of the front end of the system,” and include calls from victims or citizen-witnesses to initiate police involvement. Others stressed the importance of the first appearance, a stage at which many defendants remain unrepresented by counsel.

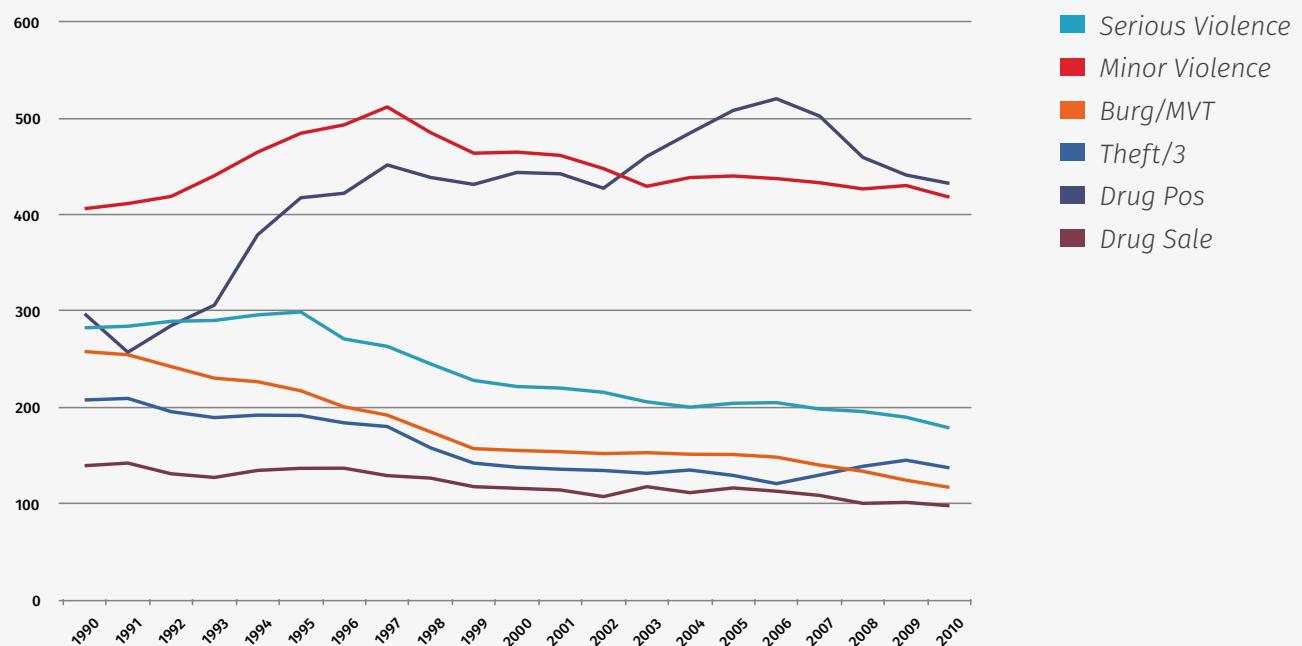
In considering these stages, Lynch outlined several key overarching issues for research to determine:

- *Can we reduce the pretrial custody population?*
- *Are the decisions in the pretrial process made fairly and effectively?*
- *What do we need to know to monitor the health of the pretrial process?*

In charts showing statistics related to arrest and pretrial release and detention over time, Lynch highlighted the following trends:

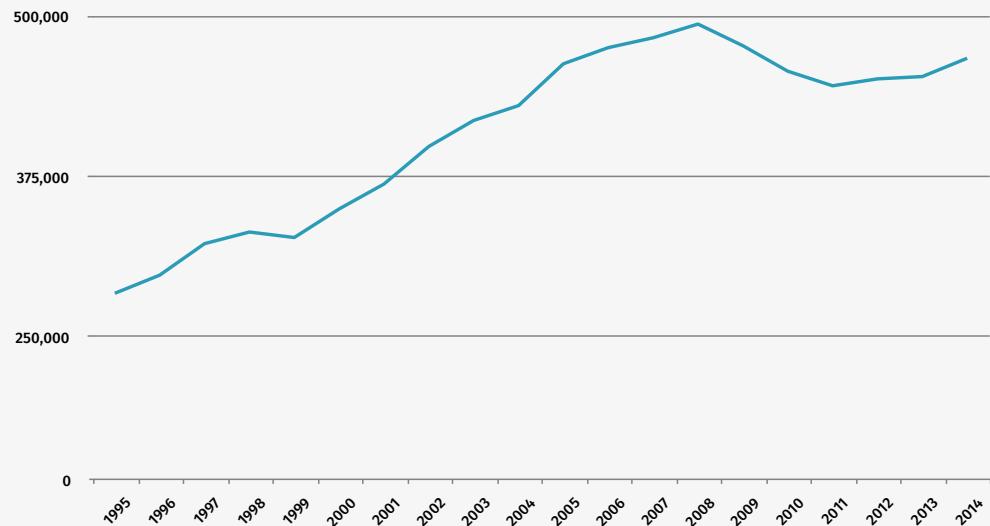
**1.** While crime overall, and violent crime in particular, is down, arrests have risen in two categories: minor violence (simple assaults) and drug possession. Looking at arrest rate data from the Bureau of Justice Statistics between 1980 and 2009,<sup>1</sup> Lynch asked, “If we’re thinking of reducing pretrial population, we need to scrutinize the idea, why have these two things gone up?”

### Arrest Rates by Time & Crime



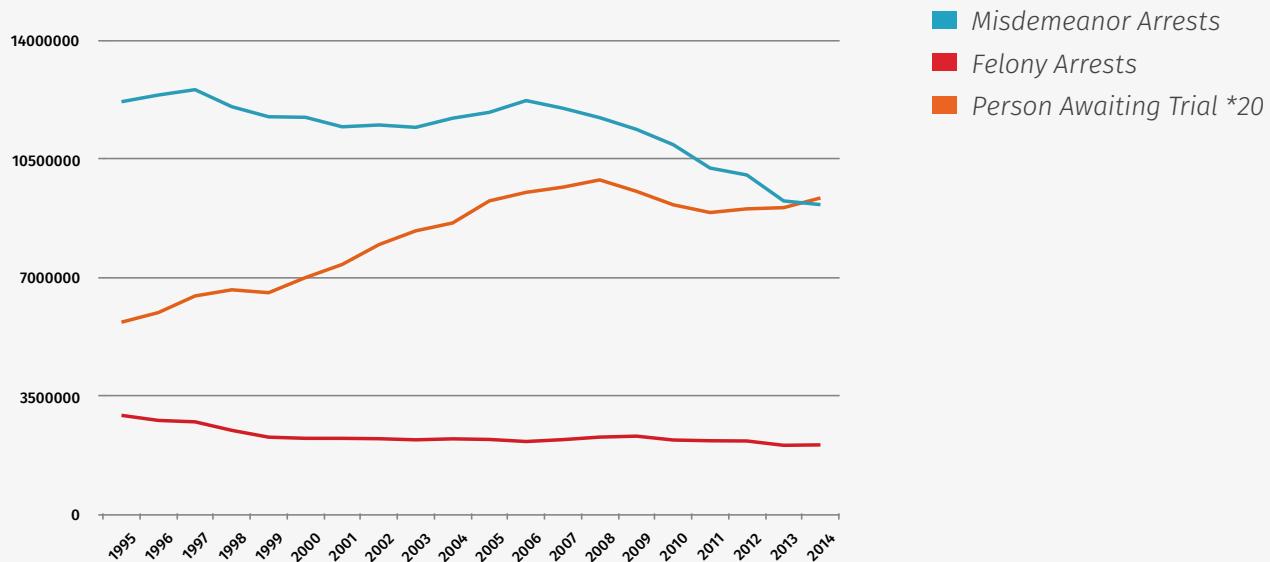
**2.** There have been increases in the pretrial custody population even as arrests for serious crime have declined. Trends in the stock of pretrial inmates from 1995 to 2014 are presented in the chart below, based on data gathered by the Bureau of Justice Statistics' Annual Survey of Jails:<sup>2</sup>

### **Trends in Stock of Pretrial Inmates**



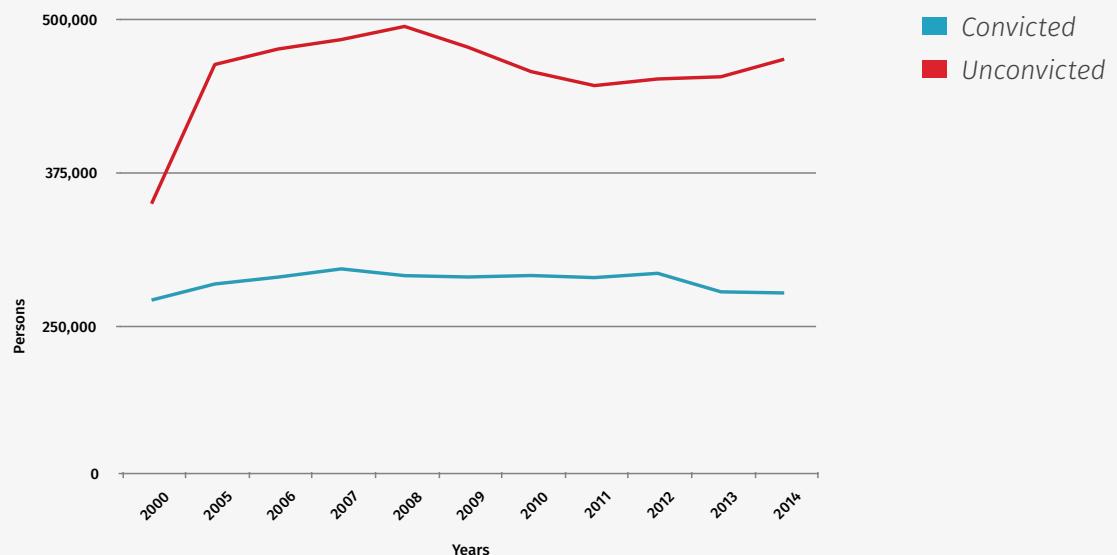
**3.** Even as arrest rates for both felonies and misdemeanors have declined,<sup>3</sup> the number of persons awaiting trial has continued to increase:<sup>4</sup>

### **Arrests & Pretrial Population Trends**



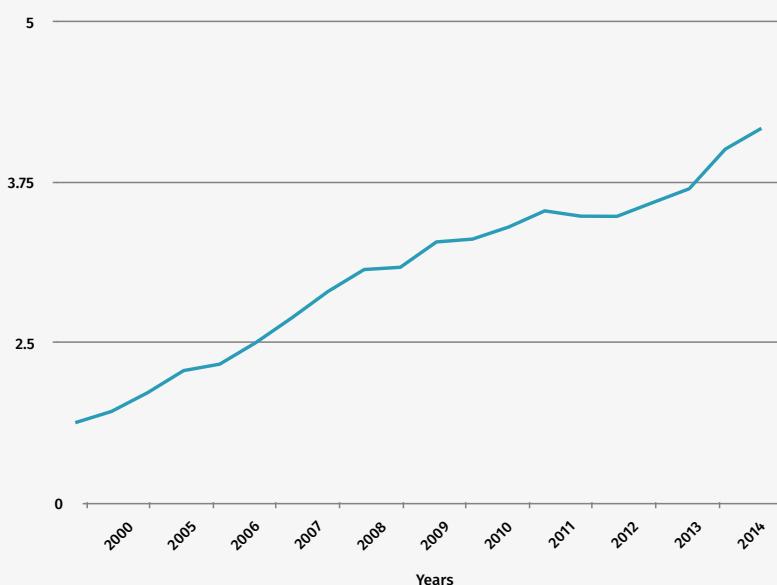
**4.** While the population of convicted jail inmates has remained steady since 2000, the population of unconvicted inmates has climbed:<sup>5</sup>

### *Trends in Stock of Pretrial Inmates*



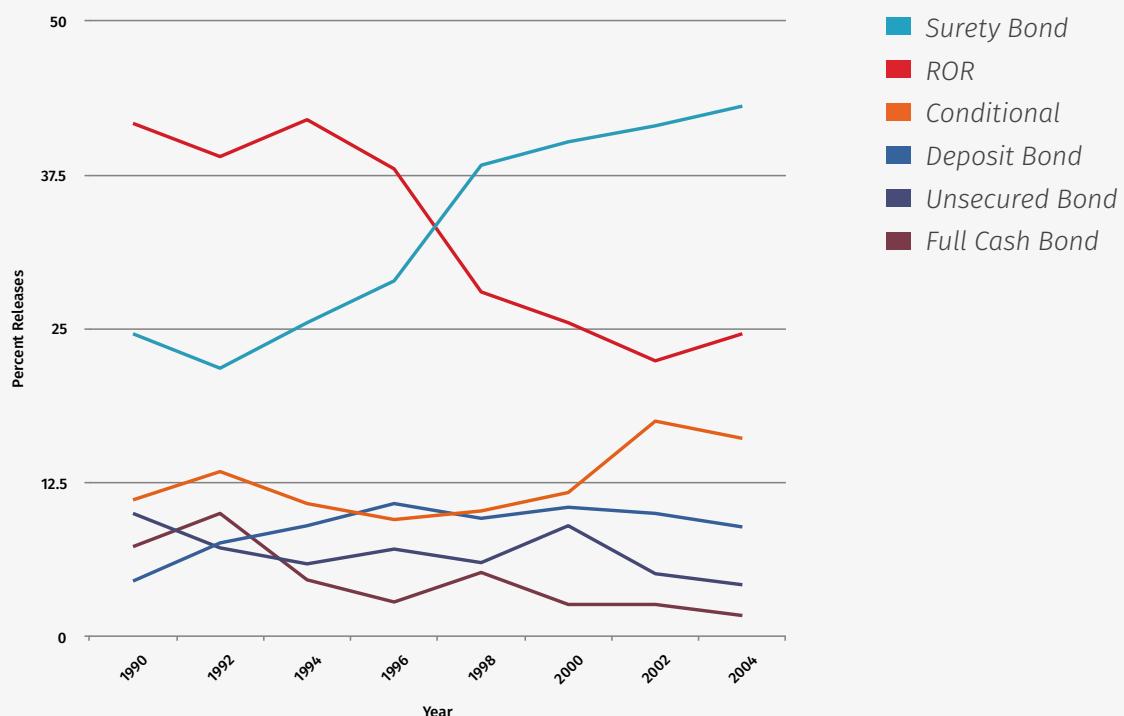
**5.** Though arrests are down, the ratio of the pretrial population to arrests has risen significantly:<sup>6</sup>

### *Ratio Pretrial Population to Arrests*



**6.** At the pretrial release stage, there have been substantial declines in the use of release on recognizance (ROR), with simultaneous increases in the use of surety bonds. The following chart illustrates trends in release type for state court felony defendants in the 75 largest counties in the U.S. between 1990 and 2004.<sup>7</sup>

## Arrests & Pretrial Population Trends



The reasons for these trends aren't known, Lynch suggests, primarily because we do not have the data to study them. Some aspects of pretrial have been studied more than others simply because the data exist. As Lynch told the Roundtable, "The research gets done where the data are. If the data are there, they will plumb it. The problem is, the data are not there." Data collection is complicated by a number of factors, according to Lynch. The pretrial process is highly decentralized. Data are rarely kept on a case-level linked across decision-makers. Data are often maintained by elected officials such as prosecutors and sheriffs who may be risk averse and disinclined to open their files. One solution, Lynch suggested, is to influence national associations to apply leverage to elected officials to disclose data.

What is most needed in pretrial research, in Lynch's view, is simply information: Case-level data on decisions that is linked across decision-makers. Data from multiple jurisdictions to facilitate the evaluation of organizational context. Criminal history data, since many decisions in pretrial involve the weighing of risk. Only with such data can the actions of many people making a sequential set of decisions on cases be assessed as a whole.

To solve this problem, Lynch proposed "the building of a statistical infrastructure" to produce case data linked across many agencies in the system. "This is not easy," Lynch said, "because you have to get them all cooperating. But that's the kind of data that would allow it to shine the

light on the dark parts.” He also emphasized the importance of building a culture of sharing data: “You need to get people to share data not on a case by case basis, but share it on a continuous basis, so that they think of this as infrastructure, not as a particular project.” The next issue becomes who can build such an infrastructure. “We have a federated system that makes it really, really difficult,” Lynch noted. “Who can fill that void? Is it the Center for State Courts? Is it the prosecutors’ association? Who do you bring to the table to give cogency and cooperation in this very decentralized system?”

With good, accessible data, Lynch contended, research can identify ways of making decisions in the pretrial process that can increase system fairness and efficacy. Then the challenge becomes the adoption of such evidence-based practices. “When you find something that works,” Lynch asked, “How do you disseminate it? How do you bring it to scale? What sort of incentive structure needs to be in place to get people to adopt a tool?” Highlighting what he terms the “dissemination of innovation,” Lynch emphasized that one aspect of pretrial reform must be to encourage jurisdictions in the decentralized pretrial system to adopt innovations that have been proven to be effective elsewhere.

Roundtable participants discussed some of the potential reasons for the trends Lynch highlighted, some using words like “stunning” and “shocking” to describe the information. Dr. Marie VanNostrand, a pretrial researcher with Luminosity, noted that what might be driving the pretrial population is both the number of people and their increased length of stay. Dr. Barry Mahoney, President Emeritus of the Justice Management Institute, was struck that while ROR is going down, other types of supervised release were increasing, so that the ultimate “liberty change” might not be as altered as it appears. Elyse Clawson, the Founder of Justice System Partners, looked at both the increase in arrests for drug possession and the decrease in ROR and speculated if “in some ways those conceivably are linked: that increased arrests for drug possession and reductions in ROR may have some relationship.” Dr. Faye Taxman, a professor at George Mason University, wondered about the impact of misdemeanors on these numbers. “The system is very stuck on how to handle a lot of misdemeanor crimes,” she noted. “People look too unstable to release.” Taxman also suggested looking at the creeping definition between misdemeanors and felonies over the past 20 years, especially for drug possession. Could that be driving the increase in population?

Dr. Carla Shedd, a professor at Columbia University, noted the potential impact of case continuances on the pretrial population. Leah Garabedian, Defender Counsel for the National Legal Aid & Defender Association, suggested that state legislatures may be effectuating more restrictions on release rules, which could be a factor in release rate changes. She proposed that researchers could “do a scan of state legislative changes around what you can and cannot permit in terms of releasing with or without conditions.”

Many participants cautioned against an assumption that the pretrial population is in jail solely because they cannot make bail. Janice Radovick-Dean, the Director of the Fifth Judicial District of Pennsylvania’s Pretrial Services Department, noted that there are many types of holds that can result in an inmate being detained pretrial and that it is important, if we are to truly understand the nature of the jail population, to make those classifications and to ensure that those classifications are defined consistently for research purposes. “If you create those definitions for systems to classify people coming into jail,” she said, “ideally on a national level – then everyone’s comparing the same thing.” VanNostrand agreed: “The jail is much more than pretrial and post-conviction.”

Some of the questions to be answered include, as Anne Milgram of LJAF put it, “What is the list of the data we would want from the jails? What is the information we would need to be able to answer the questions people are asking? Is that being collected and, if not, could we start a national incentive campaign on it?”

## Part II

# A Step-By-Step Review Of The Pretrial Process

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In order to provide a baseline of knowledge about the pretrial process, expert presenters on each of its phases offered Roundtable participants an overview of the state of research in their respective areas, detailing what is known and underscoring what is not known. Though the agenda was divided into the traditional stages of pretrial, participants were encouraged to think on a system-wide basis and even to consider broadly the very definition of pretrial. These presentations then stimulated discussions of potential topics for further research. The presentations were divided into five stages. **Part A** covers arrest and initial police-citizen interactions. **Part B** looks at the decisions of what offenses to charge and, in particular, how the exercise of prosecutorial discretion affects these choices. **Part C** considers the pretrial release or detention decision, focusing on the methods by which those decisions are made, the measurement of risk and the use of risk assessment tools, and the management of risk through pretrial supervision conditions. **Part D** takes a step back and looks systemically at pretrial case processing – those practices, procedures, and events that take place from the time charges are filed until the commencement of trial or other disposition of the case. Finally, in **Part E**, we look at case dispositions and how research might spur novel thinking about alternatives to traditional sentences to incarceration.

### A. Arrest and Initial Police-Citizen Interactions

*"We haven't learned a lot about the forces that shape the discretionary decisions of police officers and their use of authority, even though that's been a recurring issue for decades."*

Dr. Robert Worden  
University at Albany  
State University of New York

The pretrial process begins at the point of a police-citizen interaction. A victim or citizen asks law enforcement to intervene in a situation, or a police officer makes a discretionary decision to stop, question, frisk, arrest, or cite an individual. Dr. Robert Worden, the Director of the John F. Finn Institute for Public Safety, Inc., and an associate professor of criminal justice at the University at Albany, State University of New York, provided the Roundtable with an overview about the state of research into these initial contacts with the criminal justice system.

**Police and Arrest: The Research Landscape.** Worden offered a detailed outline of what is known and not known about the decision to arrest, the decision to undertake alternatives to arrest, and the individual and organizational factors that influence those behaviors. Worden told the Roundtable that research over the last 15 years has dwelled largely on crime control, even as crime has plummeted. “There’s been much less attention,” he said, “to questions about the justice and propriety with which police act.”

According to Worden, we know quite a bit about the most immediate, or “situational,” influences on arrest decisions by uniformed patrol officers. The following factors have substantively significant effects on that decision: the strength of the evidence, the seriousness of the offense, the preference of the victim/complainant for arrest or non-arrest, and the suspect’s demeanor toward the police.

We know much less, according to Worden, about the impact of other factors on police arrest decisions, such as the backgrounds and outlooks of individual officers: “We don’t know a lot about the ways in which individual officers exercise their discretion and the ways in which variation in that is patterned by their backgrounds and their characteristics, even though we often prescribe that we should seek changes in those backgrounds and characteristics when we talk about changes in police culture.”

Worden also indicated that little is known about the formal and informal characteristics of police organizations, including their policies, procedures, incentives and disincentives, workload, supervision, training, or peer group norms, as well as bureaucratization, decentralization of authority, job specialization, geographic deployment, and management accountability mechanisms. Worden emphasized how little is known about the impact of forms of external oversight, including that by local elected officials, citizen oversight mechanisms like civilian review boards, and other structures like police auditors.

Moreover, Worden noted, we know very little about the determinants of officers’ choices to exercise forms of authority that are associated with arrest, such as the use of physical force and especially the misuse of force; decisions to frisk, search, or ask for consent to search; and decisions to stop citizens. Nor is there much research on how arrest and these other forms of authority are exercised – that is, the procedural justice and injustice with which police apply their authority – and about the forces that shape these behavioral patterns. There is also very little research into the forces that shape officers’ choices among non-arrest alternatives, such as warning, advising, or referral to social services. “Officers on the street make decisions about whom to refer and whom to divert,” Worden noted, “and as far as I know we don’t have a clue about how they make those decisions.”

Worden then turned to citizens’ perceptions of police. “We know that citizens’ subjective experiences in their contacts with the police are related to their pre- and post-contact levels of trust in the police,” he said, “but we know hardly anything about how and to what extent citizens’ subjective experiences are affected by officers’ actions.”

**Research Challenges.** Worden provided an overview of the nature of research methodology for observational studies of police. Previous research on police behavior and decision-making has relied largely on systematic social observation (SSO). In SSO, data on police-citizen encounters are coded by observers in numerical terms. Forms of police behavior are treated as the dependent variable in regression equations that include, as explanatory variables, features of police-citizen interactions, including characteristics of the citizens, from which inferences are drawn about the factors that influence decision-making.

In Worden’s view, SSO is particularly well-suited for analyzing the situational factors that impinge on decision-making, but it has its limits. It is less well-suited for analyzing the effects of officers’ backgrounds and outlooks or of organizational structures. In-person observation is also expensive, and so the last large-scale observational projects were undertaken 15-20 years ago, with only some small-scale projects since then.

Coupling observations with “debriefings” of officers – inviting officers to recount their thinking shortly after their resolutions of police-citizen interactions – has been done on a limited basis and shows some promise for enriching our understanding of the cognitive processes of discretionary decision-making.

The advent of dash-mounted and body-worn cameras in policing has opened up new possibilities for observational studies of policing – what Worden referred to as “armchair observation.” Armchair observation is much more economical and allows for more flexibility in sampling, so that we might better analyze and understand differences in individual patterns of police behavior, inter- and intra-organizational differences in police behavior, and behavioral responses in “critical incidents,” in which differences in officers’ knowledge, skills, and abilities are more likely to be manifested.

Judge Roger Warren, the President Emeritus of the National Center for State Courts, raised the relationship between departmental strategies or priorities about arrest – things like hot spots policing and zero tolerance – and arrest rates. “Law enforcement has been in the business of going out and deciding to arrest as a matter of law enforcement policy certain kinds of people in certain kinds of neighborhoods for certain kinds of things,” Warren said. “Do we know what the relationship is between those arrest polices and the arrest rates?” Chief Scott Thomson of Camden, New Jersey concurred. Often, he said, referencing the Department of Justice report on Ferguson, who gets arrested “comes down to political mandates.” Looking at non-arrest alternatives, Radovick-Dean asked: “How do we measure crime prevention as opposed to making the arrest? How do you measure *not* making the arrest?”

Shedd proposed looking at the police-citizen interaction from a sociological perspective: Looking at the race of officers and how that intersects with the race of citizens and whether that dynamic changes citizens’ assessment of these interactions. Garabedian also emphasized the importance of race: “Race underlies every aspect of the decision points and research, particularly with the police-citizen interaction.” She suggested tracking the races of officers, the racial make-ups of departments, and the make-up of departments as compared to the communities they serve, and analyzing how that affects outcomes like arrest.

## B. Charging and Prosecutorial Discretion

*“We don’t know very much about why prosecutors choose to charge cases as felonies versus misdemeanors, or why they dismiss or divert.”*

Rachel Barkow  
Professor of Law  
New York University

The nature of the charge against a particular defendant can impact bail amount, pretrial release and detention decisions, risk assessment scores, plea agreements and other disposition alternatives, and the ultimate length of a sentence to incarceration. Professor Rachel Barkow, the Segal Family Professor of Regulatory Law and Policy at New York University, opened the Roundtable discussion on the question of charging with a particular focus on prosecutorial discretion.

Barkow presented four areas of research questions that could be posed about the charging stage of the pretrial process: (1) decisions to charge offenses as felonies; (2) decisions to charge as part of the misdemeanor docket; (3) decisions to divert; and (4) decisions to make particular bail requests.

**1. What Factors Influence a Prosecutor's Decision to Bring Felony Charges in a Case?** What drives a prosecutor's decision to charge a case as a felony? Barkow hypothesized that the increased issuance of felony charges could be one of the drivers in the increase in incarceration. Yet, she said, we don't know very much about why prosecutors make these decisions. She made a number of research suggestions in this area.

First, she said, it would be helpful to find out if, within prosecutor's offices, there are particular charging guidelines to assist in making this decision. Perhaps, she suggested, prosecutors are looking at a defendant's prior record of multiple misdemeanors and making a decision to charge as a felony in the instant case because of this past history. She also suggested it might be helpful to consider whether prosecutors could use an internal risk assessment tool in making these charging decisions, so that they could direct their felony case resources toward those defendants who pose higher public safety risks.

Second, Barkow wondered if prosecutors are charging cases as felonies in order to ultimately obtain a particular sentence. If this is the case, Barkow suggests further asking why prosecutors are making such a determination: Why do they think a particular sentence makes sense in a particular case? Have they considered split sentences, programming, or other factors, or are they just interested in a particular length of sentence or whether there is a mandatory minimum involved?

Third, Barkow questioned whether what's driving the decision to charge a case as a felony is the potential to use the charge as leverage in future plea negotiations. If this is the case, Barkow suggested, the felony charge is more likely to result in pretrial detention for the defendant, which might not be necessary or wouldn't have been issued given the ultimate charge the prosecutor hopes that individual will plead to.

**2. How is Prosecutorial Decision-Making Affecting the Misdemeanor Docket?** In light of the ten million petty cases filed each year, Barkow offered the following key questions for study:

- *Do we know why prosecutors dismiss misdemeanors?*
- *Can we track what prosecutors are doing internally to improve office systems to move misdemeanor cases more quickly?*
- *What information do prosecutors have about the impact of case continuances when making decisions about misdemeanor case management? Are they considering that the length of pretrial detention might be criminogenic in the long run, so that there is a worse public safety outcome by allowing cases to drag on? Do prosecutors have access to this sort of information? Do they perform any kind of cost-benefit thinking about these factors?*

**3. How Do Prosecutors Make Decisions about Diversion?** Prosecutors are making decisions about who should and should not be diverted, allowing certain defendants to avoid charges or obtain an adjournment in contemplation of dismissal if they complete a diversion program. Barkow suggested that we know next to nothing about how these decisions are made. As research matters, she suggested the following areas of study:

- *Are there racial biases involved in decisions to divert?*
- *Who do prosecutors think are eligible to participate in diversion?*
- *On what facts are prosecutors making these decisions?*
- *On what facts should prosecutors be making these decisions?*
- *What level risk of offender can and should be diverted?*
- *Are people being required to plead guilty as a condition of diversion? How does that type of model compare to one that does not require a guilty plea?*
- *What kind of reward or incentive should be given to someone who participates in a diversion program? Reductions in sentence? Outright dismissal? How is success measured?*

Barkow also raised the issue of categories of offenders who aren't eligible for diversion either by statute or office policy. Sex offenders, for example, are barred from most programs. This issue raised a question of whether these statutory exclusions comport with what we know about risk. She posed this potential study: Track those categorical bars as well as the factors that make someone eligible for diversion and then try to determine if there is a fit problem between the people we're barring from the programs and the people we allow in. A similar study might look at whether or not these eligibility criteria lead to overlap with racial disparities.

**4. What Influences Prosecutors to Make Bail Requests?** Barkow also raised the issue of prosecutorial decisions to request bail, asking "What is prompting prosecutors to make bail requests? Are they just reflexively doing it? Is it based on charge severity or criminal history?" She suggested as research possibilities looking at how prosecutors could be incentivized to use risk tools to help them with some of these decisions, or a study considering what kind of system impact might be felt if prosecutors began to waive bail in certain cases. Would this lead to a domino effect to help judges rethink the perfunctory setting of bail?

Roundtable participants suggested a number of potential research questions related to the charging phase. John Chisholm, the Milwaukee County District Attorney, asked "What is the effect of the officer's presentation of the case to the prosecutor?" Milgram wondered how the victim response affected prosecutorial decision-making. Chief Thomson noted that in his experience, with the exception of homicide, most charging decisions lie with the police, who may charge as much as they can to see which charge or charges ultimately stick.

## C. Pretrial Release Decisions

*"Most research is not on HOW we should make the decisions, it just shows how horrible the consequences are."*

Dr. Marie VanNostrand  
Justice Project Manager  
Luminosity

For every arrestee, a decision must be made whether to detain or release that individual and, if released, on what conditions, whether under various methods of pretrial supervision and/or secured bonds. Dr. Marie VanNostrand, an expert on the pretrial phase of the criminal justice system and the Justice Project Manager at Luminosity, provided the Roundtable with an overview of how pretrial release decisions are currently being made, as well as the state of research in this area.

**How Pretrial Release Decisions are Made.** For every defendant, a judicial officer has to decide: "Should I release this person and, if so, under what conditions?" The legal considerations that underlie those decisions are the risk that person poses to public safety and the risk that the person will fail to appear in court if released. These potential risks must be balanced against the legal and constitutional rights of pretrial defendants: the presumption of innocence, the right to release on the least restrictive terms and conditions, and the right to equal protection. VanNostrand shared, anecdotally, that judges sometimes make that decision in less than a minute.

Pretrial release decisions in America are primarily made in one of the following three ways:

- **Bond Schedules.** A large number of jurisdictions rely on bond schedules to guide the release decision. In most cases, this simply equates a particular charge with a particular bond amount. According to VanNostrand, this practice results in ‘dual system errors.’ Many low risk defendants are detained solely due to their inability to pay the bond amount, while many high risk defendants are released because they have the ability to pay. As VanNostrand stated, “People are treated the same, but what happens to them is not fair.”
- **Subjective Decision-Making.** In some jurisdictions, release decisions are based solely on a subjective appraisal of each defendant. The result is decision-making that varies greatly from one location to another and even within a single jurisdiction. The people who make the decisions vary widely, as do the information, tools, and procedures that are used.
- **Risk-based Decision-Making.** In risk-based determinations, the risk to public safety and of non-appearance is measured and the risk posed by pretrial defendants released into the community is managed. In VanNostrand’s words, “Judicial discretion is used but the decision is informed by a formalized objective system which usually involves a risk assessment.” A pretrial risk assessment measures the risk to public safety and of non-appearance in court for pretrial defendants and a structured decision-making tool is used to identify release recommendations designed to manage risk in the most effective manner. The goal of risk-based decision-making is to identify and (1) release low-risk defendants with minimal or no conditions at the earliest point; (2) release moderate-risk defendants with supervision and services targeted to mitigate risk; and (3) detain, when allowable, the highest-risk defendants.

### ***State of the Research***

**Legal Issues Surrounding Pretrial Release.** According to VanNostrand, considerable peer-reviewed articles have been published relating to the legal considerations associated with pretrial justice, such as maintaining the integrity of the judicial process and honoring the legal and constitutional rights afforded to accused persons awaiting trial.

**Impact of Release and Detention Decisions.** She also noted that extensive research has been conducted and published in peer-reviewed journals related to the impact of the release and detention decision. “If you’re looking in the literature about the release and detention decision,” she told the Roundtable, “most of what you’re going to find particularly in peer-reviewed journals is about the negative consequences of detention.” Research has shown that being detained pending trial impacts (1) the likelihood of receiving a sentence to incarceration; (2) the length of the sentence to incarceration; (3) public safety in both the short- and long-term; (4) court appearance; and (5) the legal and constitutional rights afforded to pretrial defendants. The negative consequences of pretrial detention are amplified for low-risk, low-income defendants, especially those of color.

**Risk Measurement.** VanNostrand stressed that in order to be effective, risk assessment instruments must be research-based, objective, and fair. She noted that fewer than ten percent of jurisdictions nationally employ risk assessment instruments to inform pretrial release decisions and, of those, “many are not based on research and they haven’t been validated.”

VanNostrand outlined the state of research into risk measurement:

- Multi-jurisdictional pretrial risk assessments have been developed for use in seven states (Colorado, Connecticut, Florida, Kentucky, Maine, Ohio, and Virginia);
- A pretrial risk assessment is used in the federal court system;
- There have been two meta-analyses of pretrial risk assessments; and
- LJAF developed the Public Safety Assessment (PSA), a national model for risk assessment instruments.

Research also establishes that the strongest predictors of pretrial outcome are measures of criminal history and court appearance history. However, VanNostrand observed, little, if any, pretrial risk assessment research has been peer reviewed.

**Risk Management.** Limited research has been done to identify effective risk reduction strategies for pretrial defendants. VanNostrand noted that the research to date provides support for the following:

- *Court reminders reduce failure to appear;*
- *Pretrial supervision reduces failure to appear; and*
- *The risk principle applies to pretrial release.*

In VanNostrand's words, we need to know "nearly everything." This stage of pretrial is ripe for studies that would:

- *Expand knowledge of pretrial risk assessment generally;*
- *Explore risk assessment for defendants charged with domestic violence and driving under the influence; and*
- *Identify risk management strategies that are consistent with legal and constitutional rights.*

Roundtable participants raised questions about the ways in which decision-makers are using risk tools. Taxman noted that "We don't really know how system actors understand what's in the tools, how to use the tools, and how to integrate that into key decisions." Barbara Broderick, Chief Probation Officer for the Maricopa County Adult Probation Department in Arizona, mentioned the need for implementation science around the use of risk tools to test for quality assurance: "Do we have fidelity to the program?" she queried.

Others worried about the use of criminal histories in risk tools and the potential such factors have to introduce bias into the pretrial release decision, based on historically increased contact with the system for people of color; a concern that was echoed later in the recommendations panel portion of the Roundtable. Chisholm noted, however, that "we've seen the consequences of the bond schedule and mandatory minimums and codified restrictions on discretion – the National Academy report shows that subjective decision-making has led to incarceration rates that are simply disproportional."

## D. Case Processing

*"It is worth investing in research on ways to build and use information systems that cut across agency and court silos and provide much better information than is currently available for at least four purposes: (i) individual case decision-making; (ii) agency and court management purposes; (iii) statistical analysis; and (iv) policy development and implementation."*

Dr. Barry Mahoney  
President Emeritus  
The Justice Management Institute

Case processing comprises those practices, procedures, and events that take place in criminal cases from the time charges are filed against a defendant until the commencement of a trial or the disposition of the case by dismissal, diversion, or plea of guilty. Dr. Barry Mahoney, the President Emeritus of the Justice Management Institute and a researcher and consultant on court and justice system operations, provided the Roundtable with a holistic look at what is known and not known about how case processing decisions are made and whether those decisions are effective. In Mahoney's view, the optimal characteristics of a system of pretrial case processing are (i) processes that are fair, timely, understandable, respectful, and economical/cost effective; and (ii) outcomes that have legitimacy and proportionality.

The current state of research-based knowledge about case processing, however, is mixed. Mahoney noted that there is a dearth of hard national data on case processing, especially in limited jurisdiction courts, but that there is plenty of material that can be useful in shaping future research and developing a comprehensive agenda for needed reforms. This existing research includes:

- *Studies of individual courts and local criminal justice systems;*
- *Some work on the dynamics of decision-making in felony courts;*
- *A few multi-jurisdiction studies of case processing and court delay issues;*
- *Some research on specific aspects of the process, such as decisions on release/detention and plea bargaining practices; and*
- *Recently, work on limited jurisdiction court processes has documented egregious abuses in the imposition of economic obligations and related use of jail.*

In Mahoney's view, there are a number of what he terms "long-standing abuses in pretrial case processing" that merit consideration in a research agenda. These include:

- *Detention (often for long periods) of low risk defendants who cannot afford bail;*
- *Bail decisions made without the judicial officer having information about the defendant or about the nature and severity of risks potentially posed by defendant's release;*
- *Defendants in "minor" cases induced to plead to charges without legal assistance and without awareness of the consequences of a guilty plea;*
- *Lengthy (and costly) duration of cases, with multiple continuances;*
- *Outcomes of the process that have resulted in mass incarceration and over-representation of people of color in prisons, jails, and probation caseloads; and*
- *Imposition of fees, fines, court costs, and other economic obligations during the pretrial process and at sentencing, without regard to a defendant's ability to meet them.*

In Mahoney's view, research in this area – especially multi-jurisdiction comparative research – could identify fairer and more effective alternatives to avoid the negative outcomes he raised. Research is desirable to examine practices at all levels of courts, in different environments, and especially in less visible courts that deal with minor offenses. "These courts handle cases that involve and affect vastly greater numbers of people than the more visible felony cases," Mahoney stated. In addition to studying individual courts, research is needed that compares processes and outcomes across jurisdictions to determine what differences emerge, and what factors correlate with case processing practices and outcomes that are closest to the optimum characteristics of a system.

He listed these questions for comparative analysis:

- *What key differences exist in the legal frameworks for case processing?*
- *What options are available to relevant decision-makers (e.g., prosecutor, defendant, defense attorney, judicial officer) at key stages and decision points of the process?*
- *What information is available and to whom at these stages?*
- *What legal assistance/advice is available to the defendant at these stages?*
- *What restrictions and economic obligations is the defendant under at these stages?*
- *What is the duration of the process, both in total length in time and number of scheduled court dates?*
- *What are the outcomes, in terms of restrictions on the defendant's liberty and imposition of economic obligations?*

Mahoney also identified opportunities for research that assesses experiments with changes in procedural and substantive criminal law and the introduction of new case processing practices, such as:

- *De-criminalization of specific minor offenses*
- *Elimination of mandatory minimum sentences*
- *Elimination of reliance on surety bail*
- *Increased use of risk assessment in pretrial decision-making*
- *Use of alternatives to jail for non-criminal violation of release conditions*
- *Rapid access to relevant behavioral health background information about individuals*
- *Active implementation of case processing time standards*
- *Renewal and re-design of day fine experiments*
- *Caps on maximum amounts of economic obligations that can be imposed on a defendant*
- *Procedures that can enable offenders facing unpayable economic obligations imposed by the justice system to reduce the burden*
- *Alternative ways of providing legal advice/assistance to defendants, especially in minor cases*
- *Electronic recording of all proceedings in courts that handle minor offenses*

Who could provide such research? According to Mahoney, "There are knowledgeable organizations and individual researchers working in and with jurisdictions throughout the country who can be valuable resources in designing and carrying out research aimed at markedly improving pretrial case processing." He identified university-based researchers, researchers in nonprofit and for-profit organizations specializing in court and criminal justice system operations, foundations, and federal agencies.

Mahoney summarized his top priorities for research on pretrial case processing:

- *Basic descriptive research to develop data-based typologies of case processing policies, practices, and outcomes in different levels of courts and different socio-political environments;*
- *Comparative analysis to contrast jurisdictions with less optimal outcomes with processes in jurisdictions that have good or promising practices;*

- *Studies to assess the effectiveness of innovations designed to increase the fairness and timeliness of case processing and the legitimacy and proportionality of outcomes; and*
- *Education and outreach to engage practitioners and policymakers at all levels in shaping policies that are responsive to evidence produced by the research.*

Roundtable participants focused particularly on the effect of the presence of counsel in case processing, particularly in municipal courts. Garabedian noted that although the constitution mandates that defendants facing a liberty decision have counsel present, this isn't always the case. "There's no data on how many defendants go to first appearance without counsel," she said. Worden suggested that research could determine "whether and how much outcomes change with counsel at first appearance."

Milgram suggested that perhaps there should be a challenge or incentive grant focused on case processing time: "Why do defendants come back to court twelve times? Why do defendants come back when they're not needed? How do we translate that into research?"

Barkow proposed studying the effect of who in the prosecutor's office is making screening decisions, suggesting that junior staff might be more risk averse or more likely to obtain continuances. She asked: "Do the people in the office matter as far who on the prosecutorial staff – from junior to senior – is screening? Does it make a difference in case processing?"

Barkow also advocated studying how technology might help: "Can technology, such as video check-ins, help speed up delays so that defendants don't actually have to go to the courthouse?" President Travis followed up, suggesting a look at text messaging, night court availability, etc.: "Can you reduce barriers to make it easier for people to meet their obligations?"

Chisholm brought in a note of hope. Wisconsin is moving to a unified court system called "Measures for Justice," which will allow for case processing data to be publicly compared across counties, providing an incentive to decision-makers. He also put forward the importance of precision epidemiology, a public health approach to public safety: "You really do have the capacity to de-identify but link public health data, public education data, public safety data, community development data, and geocode to identify red flags in very specific neighborhoods. So instead of having broad-based strategies to address problems you can focus on very specific populations with a wide array of resources."

The group ended on the issues of organizational change and adoption of new practices. In Clawson's view, "Organizational change work and change around the culture is going to be absolutely essential – really seeing the power that the players have and which players have the most power." President Travis summarized the importance of organizational context: "How does reform get implemented?"

## E. Case Dispositions

*"We don't know about how decisions are made to use different dispositions throughout the systems except in guideline specific states where judges are bound."*

Dr. Faye Taxman, Director  
Center for Advancing Correctional Excellence  
George Mason University

The pretrial phase ends with either the commencement of trial or, far more often, in some other non-trial disposition of the case: plea bargaining, sentencing to time served, diversion, probation, fines, referrals to social services, community service, and/or restitution. According to Dr. Faye Taxman, Director of the Center for Advancing Correctional Excellence at George Mason University, at present there are a limited number of dispositions available and most non-incarcerative dispositions rely on the probation department for their execution. This might not be the best fit, as Taxman noted that probation departments are geared to focus attention on higher risk and higher needs individuals who present threats to public safety. As such, probation might not have the capacity "to adequately handle lower risk, lower need individuals within a different framework or set of processes." The question then becomes, she told the Roundtable, "How would we put in place the capacity of organizational systems to offer a full array of dispositions?"

She challenged the Roundtable participants to think of a research agenda in terms of novel types of dispositions that might better serve some of these individuals. In her words, "overall, the justice system has not fully taken advantage of restorative justice and civil processes to address the harms from a criminal event from lower risk, lower need individuals."

Taxman identified three areas in which research could spur new thinking about optimal dispositions for certain categories of offenders:

**1. Triage drug addicts, alcoholics, and the seriously mentally ill into a behavioral health pathway.**

There is a growing consensus, according to Taxman, that the justice system might not be the best place for this category of defendants. Accordingly, she suggests providing screening at the earliest possible stage for substance abuse, alcoholism, and serious mental illnesses to assess both behavioral health and readiness for behavioral health treatment services. In Taxman's scheme:

- a.** *The screening and assessment should occur at booking to expedite the identification of individuals with clear behavioral health disorders.*
- b.** *Treatment should be of longer duration given the severity of the addiction or mental illness (around 12 months) with other services to provide a continuum of care.*
- c.** *It might be necessary to use various types of controls (i.e., electronic monitoring, interlock, etc.) for those individuals where their criminal behavior may present a public safety threat (i.e., drinking and driving, property crimes, etc.).*
- d.** *Diversion into treatment should carry with it the potential to "erase" the arrest if the individual completes the program and remains drug/alcohol free for 12 months.*
- e.** *For the seriously mentally ill group, the goal should be to encourage medication compliance and treatment compliance.*

Taxman suggested research in the following areas to learn more about whether and how such diversion into treatment would work:

- *Studies on how to structure the diversion or specialized behavioral health programming*
- *Studies to identify how to measure readiness for treatment and the degree to which different incentives can be used to increase readiness*
- *Studies to identify how to assist the seriously mentally ill to comply with medication requirements*

**2. Triage minor offenses, such as those with sentences under 12 months, into non-incarcerative sentences that are swift, certain, and very time delimited.** Over the years, Taxman said, “We’ve criminalized a lot of behavior.” She championed the use of mediation, conflict resolution, community service, fines, and restorative justice programming for any person arrested for an offense that includes an incarcerable sentence of less than 12 months or the potential for short periods of probation. The goal would be to find a short-term response that is proportionate to the nature of the crime and that is designed to have the individual address the harm that occurred, and to offer this alternative within 30 days of the event to create a swift response to the behavior. Taxman views this type of disposition as a useful strategy to address “broken window” type minor offenses and small property crimes.

Taxman proposed the following procedural framework:

- *The dollar value of the sentence should not exceed a certain multiple of the dollar value of the crime and the cost of the criminal justice processing (Taxman suggests three times the value).*
- *Mediation or conflict resolution should be offered instead of criminal prosecution within 30 days of personal and property crimes like simple assaults or shoplifting.*
- *Fines or community service should be used for a greater array of offenses, particularly those that have nine months or less of probation. A model to consider is the Vera Institute “day fine” approach, also used in many European countries, where the number of days of a sentence is proportionate to the crime and, if community service or day fines are given, the amount should be determined based on the level of wages that an individual is likely to receive on a daily basis.*

Taxman suggested that a series of studies be conducted to see how such a process would affect recidivism, perceptions of procedural justice, and system costs and benefits.

**3. Enhance the meaning of sentences by providing individuals the option to design their own sentence.** In perhaps her most out of the box suggestion, Taxman proposed that we consider the impact of having individuals convicted of crime select their punishment. “How do we introduce the client’s voice in their sentence?” she asked. The lack of defendant inclusion in the process of sentence development, in Taxman’s view, may result in lack of ownership of the behavior and the punishment itself. Her hypothesis: “Being involved in determining the components of punishment should increase the individual’s sense of fairness and procedural justice as well as the legitimacy of the sentence.”

Taxman suggested the following possibilities for such a system:

- Establish an interchangeable framework for sentences from the perspective of society, justice system decision-makers, and those included in the justice system, to account for proportionality and parsimony. Research could help to determine what types of trade-offs with incarceration would be acceptable to different stakeholders, and how the sentence options could be enlarged.
- Develop a shared-sentencing framework where the individual identifies the key sentencing components that would serve to either rehabilitate, be a form of restitution, or deter from future behavior. The individual would inform the judge of their desired sentence options and the judge would be informed by this perspective. This framework could then be studied and tested for procedural justice, fairness, and impact on recidivism.
- Develop a series of incentives for individuals to participate in sentences that involve behavioral change as compared to incarceration, using their own health insurance (in Medicaid expansion states) to participate in a series of evidence-based programming that is better suited to change behavior, with incentives designed to address criminogenic needs as well as risk factors.

She proposed the following research to assess such a scheme:

- Conduct a series of studies to assess how individuals participate in the shared sentencing development process: what components are selected, how those components relate to the risk and need factors of the individual, etc.
- Examine how the individual's involvement in sentence design affects compliance and outcomes.

Milgram would prioritize research on restorative justice and offender mediation. She also wondered if there are any jurisdictions that could be studied currently using a pretrial risk assessment, mental health assessment, and a substance abuse assessment. Shedd suggested that there is a "lack of trust in alternative systems. How are we going to move these systems, especially with the lack of trust across these processes?"

With respect to the mentally ill, Jennifer Perez, Director of Trial Court Services for the New Jersey Judiciary, noted that the criminal justice system is often left to intervene in the absence of other social services. "Incarceration," she said, "is being used to save people on behalf of the entire system." This brought President Travis back to the framework of values: "This exchange raises the normative question of who makes what decision, at what point in the process, exercising what authority, and to what extent do we allow the extension of state supervision over somebody who is either charged with something really minor and therefore we should be very hesitant, using parsimony, to allow state authority; or who is so ill in some way, either through addiction or mental health, that it's just somehow morally wrong—or the right thing to do is something other than—to put them in jail. We have this crosscutting value proposition."

## Part III

# Behavioral Economics As A Lens For Examining Pretrial Behavior

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*“Behavioral economics recognizes that decisions are constrained by cognitive, emotional, and motivational limits and that preferences may be context dependent, beliefs about the world may be biased, and individuals do not or cannot always choose optimal actions.”*

Dr. Saurabh Bhargava  
Assistant Professor of Economics  
Carnegie Mellon University

The Roundtable presentations and discussions on the various pretrial stages underscored the impact that the various decision points along the path have on outcomes for individual defendants, as well as their effects on the system as a whole. Little is known about the factors that underlie individual decision-making behavior or contribute to overall organizational culture.

Dr. Saurabh Bhargava is an Assistant Professor of Economics at Carnegie Mellon University who specializes in behavioral economics. His presentation provided the Roundtable with a different approach for viewing decision-making in the pretrial context.

The traditional rational model of behavior in economics assumes that people have coherent, stable, and known preferences, rationally form beliefs about the world, and choose optimal actions based on those beliefs and experiences. In contrast, behavioral economics is an approach that leverages insights from psychology and other social sciences to produce more realistic descriptions of how people behave. In the pretrial context, Bhargava focused on three areas where behavioral economics studies could assist in explaining and altering the actions of those in the system: (i) the behavior of police; (ii) pretrial release and defendant compliance; and (iii) how to aid experts in making pretrial decisions.

**1. The Behavior of Police.** Bhargava raised two issues with respect to police behavior – the role of incentives and the nature of police bias.

First, he posed the question: “What are the structural approaches for increasing police efficacy?” He discussed a study of police arbitrations in compensation disputes in New Jersey and noted that police performance was highly sensitive to arbitration outcomes: when police were

successful, their case clearance rate rose 12% and, when unsuccessful, their case clearance rate dropped 6%. These effects were potentially linked to changes in police effort and willingness to cooperate with courts and prosecutors and, strikingly, the effects persisted for months and months after the decisions. The takeaway: Police productivity – their effort, motivation, and satisfaction – is highly sensitive to incentives and perceived fairness. These results, according to Bhargava, “speak to the need for more work on the role of institutional incentives on productivity outcomes in policing and the need for a metric for what productivity really means in the context of police.”

As a matter of research, Bhargava noted that there has been very little work into the role of incentives in police behavior. Behavioral economic studies could look into the efficacy of incentives and how best to design them. Some of the questions Bhargava suggested that would require field research in the police context include:

- *Can small, preferably non-monetary, incentives tied to outcomes be effectual, and what outcome metric should be used?*
- *Do perceptions of fairness and reciprocity heighten motivation?*
- *How can we test for behaviorally modified versions of incentives to see if they make a difference on outcomes?*

He then moved to the question of racial bias, asking: “How do we measure racial prejudice (or other decision-making mistakes) in policing?” Bhargava noted that there are “strong econometric challenges in causally capturing the effects of things like racial bias that seem to resonate and we all believe exist in some form.” Though there is clear evidence for racial disparities in average outcomes, he noted, the econometric challenge is distinguishing between statistical and taste-based discrimination. One potential measure of discrimination is to look at average search success by race, but doing so, Bhargava noted, “may lead to incorrect conclusions if there are unobserved predictors of search correlated with race.” He identified three such studies and their results, which were mixed:

- *Anwar and Fang (2006) leveraged police and motorist race as a means of overcoming this identification problem and did not find evidence for relative racial prejudice in drug searches in Florida.*
- *Antonovics and Knight (2007) employed a similar strategy in their analysis of police searches in Boston and did find evidence that officers treat other-race motorists more harshly.*
- *Gelman et al. (2007) looked at 125,000 pedestrian stops in New York and found that police were more likely to stop people of color relative to a baseline of prior year arrest rates.*

Bhargava suggested the need for more field research. This research may be difficult to design, he noted, but could determine what the situational contexts are that lead to prejudicial behavior or, more generally, other decision-making errors, and who is prone to making such mistakes.

**2. Pretrial Release and Defendant Compliance.** Bhargava posed this behavioral question as to the pretrial supervision stage: “Given the high costs of non-compliance, why do some defendants fail to comply?” What research has found in other contexts is that people may have distorted beliefs with respect to the costs and benefits of infractions. Even when people want to comply, a variety of factors may lead to non-compliance, such as small administrative hassles, forgetfulness or limited attention, impulsivity, confusion due to the complexity of information, mental health issues or substance abuse, and/or fear and anxiety. The effects of these factors, Bhargava noted, may disproportionately affect the poor and less educated.

Behavioral economics has shown that we can improve compliance through scalable, low-cost interventions that are worth testing in the pretrial context, such as:

- *The benefits of using simplified information regarding rules, requirements, and expectations*
- *Persuasive messaging*
- *Reminders by text, peers, and/or family*
- *Intention prompts that ask people to indicate what they are going to do and when*
- *Immediate small incentives or swift and certain punishments*

Higher cost methods to increase compliance could include pretrial mentorship, cognitive-behavioral therapy interventions, or monitoring technology.

**3. Aiding Experts in Pretrial Decisions.** Bhargava then focused on how to help experts – in particular judges – make better decisions in the pretrial system. He spoke to two issues related to judicial behavior: decision-making errors and biases and judicial use of pretrial tools.

First, he addressed decision-making errors by judges. Research suggests that even experts are subject to systematic decision-making errors in high stakes settings, Bhargava noted, especially when they are making high frequency decisions with little information, as often happens with pretrial release or the setting of bail. In such situations, experts may be susceptible to errors due to both overconfidence and reliance on simplified heuristics which can lead to systematic errors.

Field evidence on judicial sentencing and bail hearing decisions suggests racial discrimination (e.g., Abrams, Bertrand, Mullainathan 2010), potential susceptibility to sequential decision-making errors such as contrast effects (Bhargava 2008), and an inability to ignore inadmissible evidence, all can affect judges' decisions. There is a need for more research to develop persuasive field evidence on how judges and prosecutors make decisions.

Bhargava then addressed judicial behavior with respect to using pretrial decision aids, such as risk assessment tools. He noted that "simply providing information or tools – especially complicated information on risk – may lead to misinterpretation, information avoidance, confusion, or false confidence in decisions." Research should be done on how best to package this information to judges in a simple and actionable manner. Given limits on how people process information, he further suggested that there might be benefits to providing default recommendations or restricting choice sets based on decision aids. "Most research suggests," Bhargava noted, "that when experts are subjected to a lot of complicated information they disengage. They don't know what to do with it. They have difficulty translating it into actions. The way in which the tool conveys the information is hugely important in the effectiveness of its use and the willingness of the expert to use it."

Roundtable participants identified many possible behaviors that could be analyzed using behavioral economics. Radovick-Dean suggested testing the paperwork used in the pretrial process, asking: "Are forms keeping people from coming to court because they are too complicated?" Chisholm proposed analyzing juvenile offenders who have weapons charges to learn "what drives you to pick up a gun and what could change that decision?" Dr. Mona Danner, a professor of sociology and criminal justice at Old Dominion University, raised the issue of buy-in: "If you want to get people to buy into new ideas you've got to sell them well, you've got to market them well."

## Part IV

# Building A National Research Agenda: Recommendations From The Field

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*“Targeted research and analysis is needed to lay the foundation for a system of pretrial justice that upholds the presumption of innocence, addresses systemic biases, and supports the health and well-being of communities by reducing the number of people under the purview of the criminal justice system.”*

Jim Parsons  
Vice President & Research Director  
Vera Institute of Justice

In order to bring in even more voices to shape a research agenda, representatives from other organizations that are deeply involved in pretrial were invited to present their recommendations for study from their policy or practitioner perspectives. Four presented at the Roundtable and others submitted their recommendations in writing. The four were: the Pretrial Justice Institute, the Texas Public Policy Foundation, the Vera Institute for Justice, and the American Bail Coalition.

### A. Presentations from Stakeholder Organizations

**The Pretrial Justice Institute.** The mission of the nonprofit Pretrial Justice institute is to advance safe, fair, and effective juvenile and adult pretrial justice practices. Michael Jones, PJI's Director of Implementation, began by identifying three broad categories of research that can be done: (i) research on what is currently happening in pretrial, which would provide a snapshot of the current landscape; (ii) research on why those things are happening or, as he put it, “What are the causes or correlates of the kinds of things we’re observing;” and (iii) research on what we can do about those things. “What can we change to make improvements?” Jones asked. “How can we make things more effective and remedy those inefficiencies?”

Jones offered three specific ideas for research, all of which fall into the third category above – determining how to make the system more effective:

- *What release conditions – non-financial and financial, at what doses, and at what frequency – are effective in reducing pretrial risk of failure to appear and new criminal activity, and for which defendants?*

- What is the robust empirical evidence that pretrial risk assessment instruments are not biased toward certain subgroups, and that they do not contribute to racial and ethnic disparity given that certain demographic subgroups are arrested more frequently, charged differently, convicted differently and, perhaps, “over-policed”?
- What is the impact of pretrial reform on pretrial release rates, failure to appear rates, and new criminal activity rates in states like Colorado, Delaware, Hawaii, and Kentucky that have made certain types of changes (e.g., rewritten laws, made smaller statutory changes, issued new court rules, implemented pretrial programs), and in states that will make such changes in the near future, like New Jersey?

In doing this research, Jones proposed three broad research strategies or approaches:

- Interface with the Law. Jones noted that pretrial practice requires balancing what he calls the “Three M’s” – maximizing release, maximizing public safety, and maximizing court appearance. “It’s important as we research remedies,” Jones said, “that we balance all three simultaneously. Research that looks at one or two is not as helpful as research that looks at all three.” As an example, Jones noted that while pretrial detention might maximize public safety and court appearance, it may not in some cases be legally permissible, thus failing the legally mandated goal to maximize release.
- A Search for Nontraditional Solutions. Jones encouraged research that might uncover entirely different processes to solve some of the problems in pretrial. Specifically, decision-makers and professionals who work in the justice system can look to remedy system problems using solutions from outside of the justice system, such as opportunities arising from the Affordable Care Act or crime prevention strategies like Blueprints for Violence Prevention.
- Shrinking the System. Jones proposed research that could reduce the number of individuals in the criminal justice system in order to improve the quality of justice. Whether achieved through diversion, decriminalization of certain offenses, prevention, or investment in youth and families, Jones said, research could provide ways to enable us to downsize the system. In his words, “Research may show that some of the problems that we see in our criminal justice system with ineffectiveness and inefficiencies will remedy themselves just because the system will have more time to improve its quality because it’s not so overburdened with the quantity.”

**The Center for Effective Justice at the Texas Public Policy Foundation.** Marc Levin directs the nonprofit Texas Public Policy Foundation’s Right on Crime initiative, a public policy program that promotes conservative ideas about criminal justice. He brought five research ideas to the table:

- Create a 50-state report on the existing pretrial justice landscape. Such a report would identify which states have statutes or regulations that create barriers to non-financial forms of release and decision-making informed by risk. Digging deeper, a report could identify pretrial practices in key counties that would examine—even in states without statutory barriers to implementing non-financial forms of release and decision-making informed by risk—what local cultural or institutional barriers may be present.
- Identify representative jurisdictions for which data are available to produce a report on revocations from pretrial supervision, including separating out the number due to technical violations versus alleged new offenses. Such a study would explore how reforms implemented in many probation departments, such as (i) the use of swift, certain, and commensurate sanctions; (ii) avoiding the use of unnecessary conditions unrelated to the individual’s offense or risk factors; (iii) use of positive incentives; and (iv) strategies to expedite case processing to reduce the period of pretrial supervision, could be used to significantly reduce pretrial supervision revocations. “You’re getting such a maze of conditions,” Levin said, “that you can’t really enforce the ones that are important because there are so many.”

- Study the impact of prompt appointment of counsel on pretrial detention through assembling data from jurisdictions such as King County, Washington, and Miami-Dade County, Florida, that have implemented mechanisms for expediting appointment of counsel upon arrest. “What we see in a lot of jurisdictions is that there is a hearing on the bail amount and the prosecutor is telling the judge they should raise the amount,” Levin said, “and there is no one there representing the defendants. No one is there to bring out facts about the defendant that may suggest there are lower risks.”
- Examine the use of adult civil citation in Florida and the potential it may offer for reducing jail use, including exploring what percentage of arrests this could avoid, the effectiveness of civil citation in deterring future criminal behavior, and the cost savings that are achievable.
- Study the impact of the decision-maker and whether they are subject to electoral influences. In jurisdictions with elected judges, magistrates could be empowered to make such decisions. More frequent delegation of pretrial decision-making from elected judges could lead to decisions that are more objective, not only in the context of the initial hearings but also in the context of revocation. For example, the pretrial supervision agency could be given greater authority to impose sanctions short of jailing an individual up until the trial date, such as imposing a weekend in jail, which might lead to fewer revocations.

Levin offered further potential topics of study, such as studies on the role of collateral in lieu of or as a portion of a money bond as an incentive to appear in court, and studies on the impact of having a prosecutor on duty at jails to evaluate cases as police bring them in, allowing for quick release if they have no interest in prosecuting the individual. “We can all agree that there are people in jail that don’t need to be in jail, particularly people who are indigent,” Levin concluded. “By the same token, we need to make sure we are doing the right assessments and protecting the public.”

**Vera Institute of Justice.** The Vera Institute is a nonprofit organization that seeks to make justice systems fairer and more effective through research and innovation. Jim Parsons, its Vice President and Research Director, raised three areas of study the Institute deems critically important, elaborating on each with specific research questions and methodologies.

- Strengthening risk assessment tools and guarding against the unintended consequences of structured decision-making. “Risk assessment instruments can perpetuate bias because the things that predict risk are often correlated with race for systemic reasons,” Parsons said. “In many places, it’s easier to get arrested for the same behavior if you are a person of color.” The concern then becomes, in Parsons’s words, “If something predicts an outcome that we care about such as reoffending or failure to appear, but for systemic reasons disproportionately affects a community, is it legitimate to use that as a way of making decisions that will have fundamental impacts on that person’s life?”

Study questions around the development and use of risk assessment tools could include:

- ◆ What racial and socioeconomic biases are latent in assessing risk based on a defendant’s prior criminal history and past contacts with the criminal justice system? Do we need to reach consensus about how we define racial bias in this context?
- ◆ How do we assess the extent to which risk assessment effectuates racial and ethnic bias?
- ◆ What steps do we take to address that bias by using statistical techniques to pull out the impact of racial identity when designing tools?
- ◆ To what extent should we accept that correcting risk assessment tools for latent bias will impact their validity? What is the appropriate balance between maximizing predictive power and safeguarding against bias?
- ◆ What are the challenges related to exporting tools validated for one jurisdiction to another?

- ◆ When do tools need to be revalidated and what is the procedure for doing so?
  - ◆ How do judges, prosecutors, defense attorneys, and other justice officials use the results of risk assessments and how can their impact be quantified for study?
- Limiting the use of pretrial supervision to the least restrictive and effective manner possible by tailoring services to needs. The goal of pretrial supervision, in Parsons' view, is to "treat people in the least restrictive way so that they will appear in court and will be less likely to commit new offenses in the pretrial period." While risk assessment tools provide some measure of these factors, Parsons encouraged Roundtable participants to think of risk more broadly. "The risk of re-arrest and the risk that a defendant will fail to appear in court are only two of a range of important factors that should be considered when determining appropriate forms of pretrial supervision," Parsons suggested. "The existence of family and job supports, a person's behavioral health needs, and the potential risk of specific types of re-offense are a few of many factors that should be considered as part of the pretrial supervision calculus." In short, Parsons stated, "How do we supplement an assessment of risk with an assessment of strength?"  

*He suggested the following further questions regarding the appropriate mix of pretrial services:*

  - ◆ What risk factors do we need to understand to assess appropriate pretrial supervision services?
  - ◆ What are the health or social services needs that, if addressed, will mitigate the risk of reoffending or failing to appear in court?
  - ◆ How can jurisdictions collect the multi-faceted data needed to make informed decisions about pretrial supervision, given constrained resources and the limitations inherent to working in courts and police stations?
  - ◆ What services are needed to meet different combinations of risk and need? How can these services build upon existing contacts with services and support networks in the community?
  - ◆ What are the potential improvements in outcomes for jurisdictions that incorporate non-traditional services such as providing behavioral health services, assistance with obtaining public benefits, workforce development opportunities, or childcare during court and other appearances?
  - ◆ Would a low-cost supervision option be sufficient to ensure appearance in court?
  - ◆ How can pretrial services be developed that specifically adapt to and meet the needs of the increasing numbers of women and girls in the criminal justice system?
- Documenting the specific impacts of pretrial detention as a tool for reform. Research has established the negative impact on those who are held in pretrial detention even for very short periods of time. Little is known, however, about the factors that contribute to these negative outcomes. Parsons suggested research into the mechanisms that cause people to experience worse outcomes: "Research is needed to supplement the existing knowledge base by exploring how pretrial detention affects family relationships, economic opportunities, and other sources of stability and support that may impact conviction, sentencing, and rates of re-arrest." He posed the following questions for study:
  - ◆ How does pretrial detention impact defendants' lives?
  - ◆ What are the mechanisms at play that cause pretrial detention to lead to future criminal justice involvement?
  - ◆ What are the potential pathways between pretrial detention and future criminal behavior?

**The American Bail Coalition.** The American Bail Coalition is a non-profit industry policy development association dedicated to ensuring that state governments adopt a system of best practices that maximizes the release of criminal defendants awaiting trial and minimizes the days between arrest and release through means that protect public safety. Nicholas Wachinski, Esq., its Executive Director Emeritus, offered the following areas for study:

Wachinski offered three specific ideas for research, all of which fall into the third category above – determining how to make the system more effective:

- *Micro-Analysis of the Jail Population to Determine Who is in Jail Awaiting Trial and Why.* Wachinski cautioned against an assumption that all defendants in the pretrial phase are being held because they cannot afford their money bail. He encouraged the Roundtable to look at what barriers, including monetary, non-monetary, administrative, or other legal obstacles, hold a person in jail. Some of the potential reasons he posited: Are people not posting bail because of lack of financial resources or for some other reason? Are there probation holds based on a previous offense keeping that person in jail pretrial? Is there a federal immigration hold? Does the person lack the personal or societal connections to assist them with the bail process and why? Are people being held because they owe criminal justice fines or fees for pretrial supervision or other matters? Has bail not yet been set because of administrative delays or the need to conduct risk assessment interviews? Is the person in jail as part of a legal strategy in anticipation of a plea deal or sentence to time served? What is the impact of substance abuse? Is the person subject to bail on multiple charges or in multiple cases? What is the effect of mandatory bond amounts in state statutes that create a presumption against release? “Each one of these,” Wachinski said, “should be examined as a catalog of what potentially holds people in jail.”  
Wachinski called for a study that “embraces a deeper analysis of these issues, including a methodology that would take a sample of these cases where bond has been set but not posted and get involved at the file level to collect more meaningful criminal justice data as to the reasons the bail was not posted.”
- *Studies Focusing on the Economic Incentives of Various Release Mechanisms.* Wachinski proposed updating and expanding a 2004 study that investigated the various economic incentives provided by different forms of release. In that study, the researchers specifically focused on cases where a third-party bail agent posted the bond for an accused and, using statistical techniques, were able to estimate the probabilities of failure and re-capture under various forms of release. “This research is now over one decade old and is the only modern academic research on this topic,” according to Wachinski. “The model used is sound, and could be replicated in various local jurisdictions over larger data sets to indicate the probabilities of various forms of release in terms of achieving the statutory goals of appearances and reduced time at large as a fugitive.”
- *Comparative Analyses of Effectiveness of the Forms of Release.* Noting a lack of research that demonstrates the comparative success or failure of various forms of bond types and conditions of release, Wachinski encouraged researchers to replicate a study performed by Dr. Robert Morris of the University of Texas that embraced the following research questions:
  - ◆ Do failure to appear rates vary across release mechanisms and if so, by how much?
  - ◆ Does recidivism/pretrial misconduct vary across release mechanisms and if so, by how much?
  - ◆ What are the additional court costs associated with failure to appear rates across release types?
  - ◆ What are the strongest predictors of failure to appear across each release mechanism?

- *Cost-Benefit Analysis of the Front-End of the Criminal Justice System.* Wachinski recommended a study performed by an economist on the various forms of release that includes consideration of all the economic benefits and costs involved in release from custody—cost of a new crime, cost of a failure to appear, cost to the state of supervision, benefits of supervision, benefits of financial bails, benefits of court deposit bails (10%), benefits and costs of surety bonds, costs and benefits of jails, costs and benefits to the defendant, etc. Such research, Wachinski contended, “would help guide a focus on the most cost-effective way to achieve the desired results in light of all of the potential costs and benefits of making a particular decision as to the form and conditions of release.”
- *Studies on the Forms of Release that are Most Effective for Individuals with Substance Abuse and Alcohol Issues.* According to Wachinski, no current academic studies focus on the issue of what form of release will be the most effective in cases where the accused has a severe substance abuse or alcohol problem. Such research would focus on the types of release that are most effective in terms of failure to appear, fugitive and recovery rates, and recidivism and pretrial misconduct rates when dealing with the specific population of those suffering from drug and alcohol addictions. Wachinski detailed an innovative program being developed by the bail industry called an “addiction bond,” a diversionary program that lasts for 12 months and is especially tailored to heroin addiction. Instead of guaranteeing a defendant’s appearance at trial, the bail bondsman guarantees the defendant’s appearance at treatment, reporting such to the court at 30 day intervals.

## B. Submissions from the Field

In addition to the representatives from the four organizations who presented at the Roundtable, seven other entities or individuals with a stake in pretrial criminal justice research submitted recommendations for research, which are set out below:

**Council of State Governments Justice Center.** The Council of State Governments Justice Center is a national nonprofit organization that provides nonpartisan advice and evidence-based strategies to increase public safety to policymakers at local, state, and federal levels and in all branches of government. Hallie Fader-Towe, Senior Policy Advisor, together with research advisor Dr. Alex Holsinger, proposed the following ideas for study related to the need to respond to individuals with mental illness and/or substance abuse issues at the pretrial stage:

- Are there any conditions under which a mental health indicator is a predictor for pretrial failure?
  - ◆ What definitions of “mental health” are in use by different jurisdictions?
  - ◆ What policies/processes are in place to establish whether an individual meets this definition?
  - ◆ How does this factor relate to risk of failure to appear or new criminal activity or violent activity?
- Are there any conditions under which a substance abuse indicator is a predictor for pretrial failure?
  - ◆ What definitions of “substance abuse” are in use by different jurisdictions?
  - ◆ What policies/processes are in place to establish whether an individual meets this definition?
  - ◆ How does this factor relate to risk of failure to appear or new criminal activity or violent activity?
- Are there different treatment and/or supervision strategies that are shown to reduce pretrial failure and increase connection to care among those with behavioral health needs?

**Justice Research and Statistics Association.** The Justice Research and Statistics Association is a national nonprofit organization of state Statistical Analysis Center directors and other researchers and practitioners throughout government, academia, and the justice community who are dedicated to the use of research and analysis to make informed policy and program decisions. Dr. Jeffrey Leigh Sedgwick, its Executive Director, provided the following topics for a national research agenda:

- Does it make sense to think in terms of a “national research agenda on pretrial justice”? “In the case of Pretrial Justice, participants include law enforcement, prosecutors, defense attorneys, and judicial officers at the federal, state, local, and tribal levels,” Sedgwick wrote, “hence we might well want to reconceptualize the problem as one of supporting a robust and varied mix of research agendas, better to disseminate and institutionalize an evidence-based culture in varied settings and among varied actors.”
- How should we define “success” in the context of risk pretrial risk assessment instruments? “At first glance, it seems quite reasonable to define success as the absence of failure to appear for the scheduled court date and/or re-arrest for further criminal violations prior to adjudication,” Sedgwick wrote. But risk assessment tools can produce both false positives (an incorrect prediction that an individual will fail to appear or will be arrested for another offense prior to adjudication) and false negatives (an incorrect prediction that an individual may be safely released to the community without failing to appear or being arrested for another offense prior to adjudication). Accordingly, in Sedgwick’s view, “In important ways that ought to be made explicit, risk assessment in pretrial justice is thus fundamentally an issue of the equitable distribution of cost or burden between the defendant and the community.”
- How good are the data that we currently have to construct risk assessment scales and how can we get better data? Much research on pretrial risk assessment instruments has been based on limited samples sizes drawn from limited jurisdictions. This research isn’t necessarily applicable the thousands of counties and jails in the United States. This number of geographically dispersed decision points raises the following research issues or needs, according to Sedgwick:
  - ◆ Data need to be collected from a very large number of sites; and
  - ◆ Pretrial risk assessment instruments need to be validated for that same large number of sites.
- What do we currently know about the service inventory available to those released or diverted from pretrial custody and the “dosage level” appropriate for each level of risk among a population of individuals under charge? “Collecting this data requires broadening the scope of data collection and puts a premium on established and sustainable data access at a convenient point of collection,” Sedgwick wrote. In his view, one strategy for encouraging sustainable policy change at the local level would be to “harness the data access of state Statistical Analysis Centers and the leverage of State Administering Agencies (who distribute federal justice assistance funds).”
- What are the strategies by which discretionary judgment by prosecutors and judges can be made more transparent or its use be limited on a sustained basis in order to reduce disparity in treatment of those under charge? “There may be no more intractable problem in criminal and juvenile justice research than the lack of data on how prosecutors and judges exercise discretion in the disposition of cases,” according to Sedgwick. “Successful implementation of pretrial risk assessment instruments will require a much greater level of understanding of how prosecutors and judges reach their decisions, and how to influence those decisions.”

**National Center for Victims of Crime.** The National Center for Victims of Crime advocates for stronger rights, protections, and services for victims of crime. It proposed three areas of inquiry:

● *Victim's Vulnerability. The Center identified the following research questions in this area:*

- ◆ *To what extent are victims vulnerable to further victimization from the offender?*
  - ◆ *To what extent are victims vulnerable to offender manipulation, harassment, or intimidation designed to lead the victim to drop charges or disengage from the criminal justice system?*
- Secondary research questions under this heading could include:
- ◆ *Are there certain crimes for which this is more or less likely?*
  - ◆ *To what extent does pretrial release decision-making take this into account?*
  - ◆ *What is the variability by victim demographic characteristics?*
  - ◆ *Does retaining the offender in custody sometimes create greater risk? If so, under what circumstances? What is the danger posed by release?*
  - ◆ *Do victims have time to relocate or take safety precautions prior to release?*
  - ◆ *How does victim cooperation with the criminal justice system differ in cases with pretrial release vs. those without, controlling for crime type and offense seriousness?*

Potential methodologies for examining these questions might include review of arrest records, crime and incident reports, court records, and call for service history based on address, as well as victim surveys and interviews and matched case analysis.

● *Victims' Rights in the Pretrial Release Process. The Center proposed the following research questions in this area:*

- ◆ *To what extent do victims participate in the pretrial release decision-making and supervision processes?*
- ◆ *To what extent are victims provided notification throughout the pretrial release decision-making and supervision processes?*
- ◆ *To what extent does victim notification and participation influence victim willingness to remain engaged with the criminal justice system?*

Secondary research questions under this heading could include:

- ◆ *What is the effect of non-participation and participation on victims?*
- ◆ *Do notification and participation lead to increased victim safety?*
- ◆ *Are there standard operating procedures in place to provide for notification?*
- ◆ *Does notification occur, either in the presence or absence of such policies?*
- ◆ *How do pretrial release decisions affect safety planning?*

Potential methodologies for examining these questions might include review of program operating procedures, employee surveys, and victim surveys.

● *Effect of Victim-Offender Relationship. The Center listed the following research questions in this area:*

- ◆ *What are the unique issues faced by victims who have children in common with their offenders?*
  - ◆ *How does victim-offender relationship affect pretrial release decisions and supervision?*
- Secondary research questions under this heading could include:
- ◆ *How are custody decisions and practices affected by pretrial release decisions and supervision?*
  - ◆ *What are the pretrial release differences between stranger, acquaintance, and intimate partner cases?*

Potential methodologies for examining these questions might include review of statutes and court records, as well as surveys of victims, advocates, and employees.

**The National Judicial College.** The National Judicial College provides education to judges at all levels of government. The Honorable Chad Schmucker, its President, emphasized that, when it comes to pretrial release decisions, judges can be risk averse. “They may view a potential mistake in a release decision as career-ending, should the defendant re-offend upon release as a result of the judge’s decision not to detain.” The judges the College educates therefore need, Schmucker wrote, “the most current data on the link between release, conditions imposed upon release, and the actual risk to public safety.” He proposed research into judicial education around their discretion-based pretrial release decisions, including elements of implicit bias and procedural fairness – covering both how the process is perceived by the public and how judges reach decisions.

**NCJA Center for Justice Planning.** The NCJA Center for Justice Planning is a cooperative effort between the U.S. Department of Justice, Bureau of Justice Assistance, and the National Criminal Justice Association to support state, tribal, and local efforts to institutionalize comprehensive approaches to community-based strategic planning for justice. It offered research agenda recommendations in six areas:

- *Victim Participation in the Pretrial Process.* NCJA made the following proposals for research in this area:
  - ◆ *Process Evaluation:*
    - Assess the degree to which victim rights are provided by pretrial programs
    - Determine feasibility of including victim-specific data in the risk assessment process
    - Assess the degree of utilization of actuarial risk assessments, such as the Ontario Domestic Assault Risk Assessment, that calculate how a man who has assaulted his female partner ranks among similar perpetrators with respect to risk and the likelihood of re-assault
    - Assess the use and effectiveness of Statewide Automated Victim Notification Systems in the pretrial process
  - ◆ *Outcome Evaluation:*
    - Measure the effect of victim participation in pretrial programs on pretrial release decisions and outcomes, subsequent criminal proceedings, and victim’s well-being and perception of fairness during pretrial process and subsequent criminal proceedings.
- *Risk Assessment Tools.* NCJA made the following proposals for research in this area:
  - ◆ Are selective items in the current generation of risk assessment instruments (i.e. criminal history, employment, contacts with the criminal justice system) racially or socio-economically biased, and if so, what can be done to eliminate that bias without compromising predictive validity?
  - ◆ What is the long-term impact of pretrial risk assessment on racial disproportionality in jail and other correctional settings?
  - ◆ How and to what degree is the risk assessment process and the determination of risk using a structured instrument still influenced by practitioner discretion and subjective judgment?
  - ◆ How can individual bias in the risk assessment process be identified and addressed?
  - ◆ To what extent do pretrial release decisions and case management plans reflect the defendant’s risk and needs identified through the risk assessment process?

- *Data and Information Sharing.* NCJA made the following proposals for research in this area:
  - ◆ What are the systems used (hardware and software, and who controls) for accessing necessary information for pretrial risk assessment?
  - ◆ What is the critical information needed to assess a jurisdiction's current pretrial activity, practice, and outcomes?
  - ◆ What are the biggest barriers (political and technological) to: (i) obtaining and accessing accurate and timely risk assessment data; and (ii) collecting and analyzing data to assess program impact and long term systemic change?
  - ◆ If data are not available or if there are gaps in certain areas of the state, could it become accessible with technical assistance provided to localities?
  - ◆ What governance structures and agreements are in place and needed to obtain and share criminal justice information?
- *Incorporating Prevention Using a Public Health Model.* NCJA made the following proposals for research in this area:
  - ◆ What lessons can be learned from applying prevention strategies that change community norms to pretrial services?
  - ◆ Where are the connections between prevention and pretrial reform?
  - ◆ What research is available to show the impact of prevention programs and future criminal justice contact and pretrial outcomes?
- *Establishing the Knowledge Base for Sustained Reform.* NCJA made the following proposals for research in this area:
  - ◆ What training and technical assistance and tools do states and local jurisdictions need to advance pretrial reform?
  - ◆ What are the costs associated with implementing pretrial reform efforts?
  - ◆ What are the most effective governance structures and agreements for advancing and sustaining pretrial reform efforts?
  - ◆ What are best practice strategies for consulting and engaging the public in pretrial reform efforts?
- *Assessing Community Values and Expectations.* NCJA made the following proposals for research in this area:
  - ◆ What are citizen expectations for their justice system and specifically pretrial services (e.g., parsimony, retribution, deterrence, rehabilitation)? How do citizen expectations impact pretrial services? How can the public best be engaged in designing pretrial responses?
  - ◆ Identify and compile public opinion surveys about components of the justice system and address those gaps.

**Professor Shima Baradaran Baughman, College of Law, University of Utah.** Professor Baughman is a national expert on bail and pretrial prediction whose current scholarship examines criminal justice policy, prosecutors, drugs, search and seizure, international law and terrorism, and race and violent crime. She proposed the following recommendations focusing on pretrial release for the research agenda:

- *Research on the impact of the right to counsel on the bail decision.*
- *Research on the impact of providing neutral information to a judge by pretrial services on the bail release decision.*
- *National training of state and federal court judges on the current research and best practices in pretrial decision-making, to include training of federal judges on how to properly apply federal standards that mandate that the majority of defendants should be presumptively released.*

**Texas Criminal Justice Coalition.** The Texas Criminal Justice Coalition conducts policy research and analysis on issues impacting the criminal and juvenile justice systems, with an overall goal to reduce the state's over-reliance on incarceration. Leah Pinney, its Executive Director, recommended the following areas for study:

- *A thorough examination of the full system utilization costs of a pretrial release program reliant on commercial bail vs. a pretrial release program that relies on risk assessments and supervision performed by a pretrial services agency.*
- *As part of the Jones v. City of Clanton litigation in the federal courts in Alabama, the City of Clanton agreed to release all defendants charged with a misdemeanor offense on unsecured bond unless they had an outstanding warrant for failure to appear. This raises the following questions for study:*
  - ◆ *What is the impact of a categorical presumption of release on the risk assessment model?*
  - ◆ *Could a hybrid model that presumes release for certain categories of lower-level offenses and utilizes a universal risk assessment tool be as effective as a pure risk assessment model?*
  - ◆ *If so, which lower-level offenses would be best included for presumptive release?*

## Part V

# A Call For Action: A Proposed National Research Agenda

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*"If you change the front end of the system,  
you change the system."*

Leah Garabedian, Esq.  
Defender Counsel  
National Legal Aid & Defender Association

To close the Roundtable, President Travis, together with Matt Alsdorf, Director of Criminal Justice for the Laura and John Arnold Foundation, began the work of narrowing down, categorizing, and prioritizing the dozens of recommendations for research that had originated during the gathering. "At the end of today, our hope is that we will have garnered from you in our conversation some actionable ideas in terms of a research agenda on pretrial issues broadly defined," Travis stated. His goal was to identify those projects that could draw public attention, advance thinking, and improve practice in pretrial in the near term: "In three to five years, we should be able to say: 'We have done things that have made a difference.'"

As an overarching framework to such an agenda, Travis provided four research touchstones:

**1. Values and Mission.** How is the criminal justice system supposed to benefit society? What is the mission of this complicated set of agencies and their exercise of discretion? How do we measure whether those overarching values have been achieved? Under this heading, participants raised issues of safety, community, legitimacy and public trust, procedural justice, racial justice, liberty and the social contract, the equitable distribution of risk, proportionality of punishment, parsimony, the presumption of innocence, and equal protection.

**2. Data.** How can we better describe the operations of the system? What data do we need for analytical, predictive, and instrumental purposes? Who has the data and how can it be mined? For descriptive purposes, participants noted the need for a uniform set of definitions, a need to map the landscape of data systems in the country, the need to ensure data quality, and the costs of building data infrastructure. For analytical purposes, participants discussed the need for cost/benefit analyses and studies that consider and compare variations in data over time, between jurisdictions, and amongst decision-makers.

**3. Effectiveness.** What works? How do we measure the effectiveness of the various systems and decision-makers that make up the pretrial stages? What research can we conduct to achieve system goals like reducing pretrial detention, removing racial bias, improving decision-making at the pretrial release stage, and addressing public health issues like substance abuse and serious mental illness that impact the criminal justice system?

**4. Methods and Implementation.** Who can perform such research? How do we advance and implement evidence-based change borne out by research to achieve better outcomes? How do we provide outreach and education to policymakers and decision-makers? Participants mentioned the possibility of building research consortiums or research centers, working to enact legislation, leveraging the resources of state coalitions, and engaging professional associations and the public. As research methods, demonstration projects, randomized control experiments, and legal research were suggested.

**Questions for Research.** Ultimately, the suggestions raised by these overarching touchstones must be boiled down into a research agenda. What follows are topics for study, categorized by pretrial phases or overarching system goals. A more detailed summary of the research questions raised by Roundtable participants is at **Appendix B**.

### **The Pretrial Landscape**

*Studies that Provide an Overview of Existing Practices and Outcomes*

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#### **Law Enforcement**

*Studies on Individual and Organizational Behavior and its Impact on Outcomes*

*Studies on Policing and Racial Bias*

*Studies on Arrest and Alternatives to Initial Police-Citizen Interactions*

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#### **Charging and Prosecutorial Discretion**

*Studies on Prosecutorial Discretion in Charging, Diversion, and Bail Decisions*

*Studies on the Impact Prosecutors Have on Case Processing*

*Studies on Prosecutorial Discretion and Racial Bias*

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#### **Role of Defense Counsel**

*Studies on the Availability of Defense Counsel*

*Studies on the Impact of Defense Counsel on Outcomes at Various Pretrial Stages*

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#### **Risk Assessment Tools**

*Studies on the Validity and Validation of Risk Assessment Tools*

*Studies on the Development of Risk Assessment Tools for Defendants Charged with Domestic Violence and DUI*

*Studies on the Adoption and Use of Risk Assessment Tools by Decision-makers*

*Studies on Risk Assessment Tools and the Potential for Embedded Racial Bias*

## **Pretrial Release and Supervision**

*Comparative Analyses of Effectiveness of Various Forms of Release*

*Studies on the Impact of Bail on Release, FTA and Public Safety*

*Studies on Efficacy of Types of Supervision on Failure to Appear and Public Safety*

*Studies on Incentives to Ensure Pretrial Supervision Compliance*

*Cost-Benefit Analyses of Pretrial Release Forms vs. Pretrial Detention*

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## **Pretrial Detention**

*Micro-Analysis of the Jail Population to Determine Who is in Jail Pretrial and Why*

*Studies on the Reasons Why Pretrial Detention Leads to Negative Outcomes*

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## **Case Processing**

*Studies that Provide the Following Information on Case Processing:*

- Basic descriptive research that develops data-based typologies of case processing policies, practices, and outcomes in different levels of courts and different socio-political environments
- Comparative analysis that contrasts processes in jurisdictions with optimal and less optimal practices
- Assessments of the effectiveness of innovations designed to increase the fairness and timeliness of case processing and the legitimacy and proportionality of outcomes

*Studies that Assess Experiments with Changes in Procedural and Substantive Criminal Law and the Introduction of New Case Processing Practices*

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## **Judicial Discretion**

*Studies to Assess How Judges Exercise their Discretion*

*Studies on Judicial Education to Improve Decision-Making*

*Studies on Judicial Discretion and Racial Bias*

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## **Disposition**

*Studies to Evaluate a Full Range of Disposition Options and to Build the Infrastructure Necessary to Support Them, e.g.:*

- Behavioral Health Pathways
- Triaging Minor Offenses
- Restorative Justice
- Offender Mediation
- Individually Designed Sentences

### **Victims' Rights / Community Impact**

*Studies Assessing the Level of Victim Participation in the Pretrial Process and its Impact on Outcomes*

*Studies Evaluating the Impact of Pretrial Decisions on Victims*

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### **Prevention and Public Health**

*Studies to Evaluate a Public Health Model of Crime Prevention, Considering the Needs of the Seriously Mentally Ill and Individuals with Substance Abuse and Alcohol Issues*

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### **Dissemination and Adoption of Research-Based Practices**

*Studies on the Dissemination of Innovation and the Adoption of Evidence-Based Practices*

*Studies on Implementation of Evidence-Based Best Practices*

## APPENDIX A

# Participants' Biographies

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**Rachel Barkow** is the Segal Family Professor of Regulatory Law and Policy and the Faculty Director of the Center on the Administration of Criminal Law at NYU. In June 2013, the Senate confirmed her as a Member of the United States Sentencing Commission. Since 2010, she has also been a member of the Manhattan District Attorney's Office Conviction Integrity Policy Advisory Panel. Professor Barkow teaches courses in criminal law, administrative law, and constitutional law. In 2013, she was the recipient of the NYU Distinguished Teaching Award. The Law School awarded her its Podell Distinguished Teaching Award in 2007. Her scholarship focuses on applying the lessons and theory of administrative and constitutional law to the administration of criminal justice. She has written more than 20 articles and is recognized as one of the country's leading experts on criminal law and policy. Barkow has testified before the Senate Judiciary Committee; the House of Representatives Subcommittee on Commerce, Trade, and Consumer Protection; and the U.S. Sentencing Commission. She has also presented her work to the National Association of Sentencing Commissions Conference, the Federal Judicial Center's National Sentencing Policy Institute, and the Judicial Conference of the Courts of Appeals for the First and Seventh Circuits. After graduating from Northwestern University (B.A. '93), Barkow attended Harvard Law School ('96), where she won the Sears Prize. She served as a law clerk to Judge Laurence H. Silberman on the D.C. Circuit and Justice Antonin Scalia on the U.S. Supreme Court. Barkow was an associate at Kellogg, Huber, Hansen, Todd & Evans in Washington, D.C.

**Saurabh Bhargava** is an Assistant Professor of Economics at Carnegie Mellon University. His research resides at the intersection of Economics and Psychology (Behavioral Economics) with a particular focus on questions with relevance to public policy. Recent projects have examined whether consumers are able to make sensible health insurance choices, why eligible individuals fail to claim social benefits such as the EITC, the psychological causes of long-term unemployment, the role of insurance incentives and their complexity on behavior, how perceptual biases influence judicial sentencing (and speed dating!), and the factors that determine happiness. This research has been published in journals such as the American Economic Review, the American Economic Journal, the Review of Economics and Statistics, and Psychological Science, and has been covered by media outlets including the New York Times, NPR, Bloomberg, New York Magazine, and CNBC. Prior to joining CMU, Dr. Bhargava taught at the Booth School of Business at the University of Chicago and was a consultant at McKinsey & Co.

**Barbara Broderick** was selected to be the Chief Probation Officer of the Maricopa County Adult Probation Department in December 2000. From June 2005 to August 2006, she served as Interim Chief Juvenile Probation Officer for Maricopa County. Prior to that, Broderick was the State Director for Adult Probation for the Arizona Supreme Court. In that position, she provided technical assistance to local jurisdictions and substance abuse treatment providers. She is knowledgeable in the areas of risk assessment, probation performance measures, drug courts, parole guidelines, substance abuse treatment with criminal defendants, sex offender supervision, enforcement of financial obligations, and the theory and practice of community justice. Prior to joining the Arizona judicial system, Broderick was the New York State Director of Probation and Correctional Alternatives. She has been involved with the development and expansion of drug courts and substance abuse treatment, the design and implementation of an operational review process for the oversight of fifteen probation departments, and the development of probation performance measures in her current home state. Broderick serves as chair of the Arizona Parents' Commission on Drug Education and Prevention and on the Maricopa County Community Justice Advisory Board. She is the past President of the American Probation and Parole Association and is a member of the American Corrections Association, the National Association of Drug Court Professionals, and the National Association of Probation Executives. Broderick earned her B.A. in History at Niagara University and her M.A. at the School of Criminal Justice at the State University of New York at Albany.

**John T. Chisholm** is the District Attorney of Milwaukee County. His office handles criminal cases for the State of Wisconsin in the Milwaukee County Circuit Court. As District Attorney, Chisholm organizes his office to work closely with neighborhoods through his nationally recognized Community Prosecution program. He designed a Child Protection Advocacy Unit to better serve child victims, formed a Public Integrity Unit to focus on public corruption matters and a Witness Protection Unit to thwart attempts to intimidate victims and witnesses of crime. He helped start the drug treatment court and participated in Milwaukee County's selection as a seed site for the National Institute of Corrections' Evidence Based Decision Making framework. Chisholm is an Army Veteran and worked with the Veterans' Administration and collaborative partners to establish resources for veterans who encounter the criminal justice system in Milwaukee County, resulting in the opening of the Veterans Treatment Initiative and Treatment Court. He is past chair of the Milwaukee County Community Justice Council and currently chairs the Washington D.C. based Association of Prosecuting Attorneys.

John T. Chisholm sits on numerous boards including the Milwaukee Homicide Review Commission, Safe & Sound, and the Milwaukee High Intensity Drug Trafficking Area board. He is a graduate of Marquette University and the University of Wisconsin Law School.

**Elyse Clawson** is a founder and Principal for Justice System Partners and brings over 30 years of experience in both executive level roles in correctional agencies and as a nationally recognized consultant. She specializes in criminal and juvenile justice system reform at the state and local level, and is known for her innovative approaches to complex problems. Previously, Clawson was Executive Director for the Crime and Justice Institute for 13 years. She led the team that developed the Integrated Model for Evidence Based Practices for the National Institute of Corrections, which is now widely used across the country. Prior to CJI, Clawson was Executive Director of Multnomah County Department of Community Justice, where she assisted elected officials and partners in the development of countywide criminal and juvenile justice policy. In this role, she was able to substantially reduce juvenile detention and jail bed usage, and racial and ethnic disparities through pretrial supervision practices and an administrative sanctions system for probation. Clawson implemented evidence based programming in both the adult and juvenile divisions of the department. As Assistant Director for the Oregon Department of Corrections, she developed several pieces of legislation to reform community corrections, and implemented a risk assessment system in community corrections, administrative sanctions, and evidence based reentry programs. Clawson has been a consultant to elected officials, state and local leaders on policy and practice reform. She has led planning at the system and organizational level, provided leadership coaching, organizational change, and implementation assistance. She has overseen several large-scale reform efforts, both as a consultant and as an agency leader, and has a comprehensive understanding of the complexities to consider in developing new models and frameworks for doing business.

**Mona Danner** is Professor of Sociology and Criminal Justice at Old Dominion University in Norfolk, Virginia. Social inequalities, crime control policies, pretrial justice, and globalization comprise her primary research and teaching interests. With Dr. Marie VanNostrand of Luminosity, she recently completed *Risk-Based Pretrial Release Recommendation and Supervision Guidelines: Exploring the Effect on Officer Recommendations, Judicial Decision-Making, and Pretrial Outcome*. Dr. Danner has presented at conferences throughout the U.S., in Europe, Latin America, Australia, and at the NGO Forum held in conjunction with the 1995 United Nations Conference on Women in Beijing, China. She regularly conducts workshops on issues for women in academia and on the process of negotiating academic contracts. A reviewer for numerous scholarly journals, she has served as associate editor or on the editorial board of four journals, and as a reviewer for NIJ and NSF grants and for departmental and graduate programs, in addition to having held a number of administrative positions including Associate Dean at ODU. Dr. Danner has published op-eds, been featured in television and radio interviews, and been quoted by the popular print media.

**Leah Garabedian** serves as Defender Counsel for the National Legal Aid & Defender Association. Through policy advocacy, strategic alliances, and training and technical assistance, she works to promote the critical importance of public defense and to support public defenders in their pursuit of justice for all. NLADA has recently been named the training and technical assistance (TTA) provider for the Smart Defense Initiative, part of the Bureau of Justice Assistance's "Smart Suite." As the TTA lead for Smart Defense, Garabedian will work with five defender sites across the country, collaborating with diverse and impressive teams, to build and implement evidence based, data driven solutions to improve the quality of public defense representation. She brings a diverse range of experience, having practiced criminal law for six years, first with the Missouri State Public Defender and then in private practice on trial and appellate cases in both federal and state court. As Senior Associate with the Pew Charitable Trusts, Garabedian worked on public policy and legislative reform, providing technical assistance under the Bureau of Justice Assistance's Justice Reinvestment Initiative. Garabedian has a B.A. in Philosophy from Colgate University and a J.D. from Washington & Lee University School of Law.

**Michael Jones** is the Director of Implementation for the Pretrial Justice Institute (PJI), where he has worked since 2010. At PJI, he directs the Bureau of Justice Assistance's Smart Pretrial Demonstration Initiative, oversees training and technical assistance for states, localities, and various stakeholder organizations, and assists states and local jurisdictions in understanding and implementing more legal and empirically-based pretrial policies and practices by designing strategic, system-change initiatives, delivering technical assistance, performing empirical research, and publishing resource materials. Dr. Jones also works as a technical resource provider for the National Institute of Corrections, and previously served as the Criminal Justice Planning Manager for Jefferson County, Colorado, for nine years. He received his Ph.D. in Clinical Psychology from the University of Missouri-Columbia.

**Marc A. Levin, Esq.**, is the director of the Center for Effective Justice at the Texas Public Policy Foundation and Policy Director of its Right on Crime initiative. In 2010, Levin developed the concept for the Right on Crime initiative, which has become the national clearinghouse for conservative criminal justice reforms. Levin has testified on sentencing reform and solitary confinement at separate hearings before the U.S. Senate Judiciary Committee, and has testified before legislatures in states such as Texas, Nevada, Kansas, Wisconsin, and California. In 2007, he was honored in a resolution unanimously passed by the Texas House of Representatives that stated, "Mr. Levin's intellect is unparalleled and his research is impeccable." Levin served as a law clerk to Judge Will Garwood on the U.S. Court of Appeals for the Fifth Circuit and Staff Attorney at the Texas Supreme Court.

**James P. Lynch** is professor and chair of the Department of Criminology and Criminal Justice at the University of Maryland and director of the Maryland Data Analysis Center. Dr. Lynch joined the department after serving as the director of the Bureau of Justice Statistics in the United States Department of Justice. Previously, he was a distinguished professor in the Department of Criminal Justice at John Jay College, City University of New York. He was a professor in the Department of Justice, Law and Society at American University from 1986 to 2005 and chair of that department from 2003 to 2005. Dr. Lynch's research focuses on victim surveys, victimization risk, the role of coercion in social control, and crime statistics. He has published four books and numerous articles, many of them dealing with crime statistics. He was vice president-elect of the American Society of Criminology and currently is president-elect of that association. He served on the Committee on Law and Justice Statistics of the American Statistical Association. From 2008 to 2010 he was co-editor of the Journal of Quantitative Criminology. Dr. Lynch received his B.A. degree from Wesleyan University and his M.A. and Ph.D. in sociology from the University of Chicago.

**Barry Mahoney** is a Denver-based researcher and consultant whose work focuses principally on court and justice system operations. From 1993 to 2014 he was with The Justice Management Institute (JMI), serving twice as JMI's President (1993-2002 and 2008-2009). Since retiring from active work with JMI in 2014, he has been doing research on bail, sentencing, and post-conviction supervision issues, and occasionally taking teaching and consulting assignments. While with JMI, Dr. Mahoney developed and led national scope and local jurisdiction projects in areas that include court delay reduction, pretrial services, drug court planning and implementation, rural courts, assistance for self-represented litigants, use of fines and other intermediate sanctions, and strengthening justice system operations to help prevent the conviction of innocent persons. Before helping to found JMI in 1993, he was with the National Center for State Courts and the Institute for Court Management for nineteen years. In earlier years, Dr. Mahoney had extensive litigation experience handling criminal and constitutional law cases as an Assistant Attorney General in New York State. He has been an Associate Director of the National Center for State Courts; Director (twice) of the London Office of the Vera Institute of Justice; and Director of Research at the Institute for Court Management. He is the author of numerous publications on justice system operations and has led many educational programs in the U.S. and abroad. He is a graduate of New York City public schools, Dartmouth College, and Harvard Law School, and holds a Ph.D. in Political Science from Columbia University.

**Anne Milgram** is the Vice President of Criminal Justice at the Laura and John Arnold Foundation. Prior to joining the Arnold Foundation, Milgram served as New Jersey's Attorney General, where she headed the 9,000-person Department of Law and Public Safety. As New Jersey's chief law enforcement officer, she oversaw hundreds of prosecutors and approximately 30,000 law enforcement officers. Milgram implemented a statewide program to improve public safety through prevention of crime, law enforcement reform, and re-entry initiatives. She also served as a member of the United States' Attorney General's Executive Working Group on Criminal Justice and as a co-chair of the National Association of Attorneys General Criminal Law Committee. Prior to becoming Attorney General, Milgram served as First Assistant Attorney General and, before that, was Counsel to a United States Senator. She also previously served as a federal prosecutor in the Criminal Section of the United States Department of Justice's Civil Rights Division, prosecuting complex international sex trafficking, forced labor, domestic servitude, and hate crimes cases. In 2004, Milgram became the lead federal prosecutor in the country for human trafficking crimes. Milgram was also awarded the United States Department of Justice Special Commendation for Outstanding Service and the United States Department of Justice Director's Award. She began her prosecution career as an Assistant District Attorney in the Manhattan District Attorney's office. She graduated summa cum laude from Rutgers and holds a masters of philosophy degree in social and political theory from the University of Cambridge in England. She received her law degree from New York University School of Law and clerked for United States District Court Judge Anne E. Thompson in Trenton, New Jersey from 1996 to 1997. In addition to her work with the Laura and John Arnold Foundation, Milgram serves as a Senior Fellow at the NYU Law School Center on the Administration of Criminal Law and teaches a seminar course on Human Trafficking at the Law School. She is also a member of the Covenant House International Board of Directors.

**Jim Parsons** serves as vice president and research director of Vera Institute of Justice. He is responsible for shaping Vera's research agenda and working closely with practitioners, government officials, and partner institutions to implement research findings. Parsons joined Vera in March 2003. He previously served as both the director of the Substance Use and Mental Health Program and research director of the International Program. His work has included studies measuring the overlap of mental illness and incarceration in New York City and Washington, D.C.; the provision of jail-to-community reentry services in New York City and Los Angeles; an evaluation of the implementation and impacts of drug law reforms in New York City; and an ongoing study of the challenges that people with serious mental health disorders face accessing effective legal defense representation. Parsons also directed Justice and Health Connect, a federally funded initiative to improve information sharing as a tool for coordination between justice and health systems. His international work includes a number of projects to develop and implement empirical rule of law indicators for the UK Department for International Development and United Nations Department for Peacekeeping Operations, and the American Bar Association. This work has included data collection in Chile, Haiti, India, Liberia, Nigeria and South Sudan. For the past ten years, he has consulted

on justice reform projects in China. Prior to joining Vera, Parsons worked at the Center for Research on Drugs and Health Behavior and the Institute for Criminal Policy Research in London, where he conducted community studies of HIV prevalence among injecting drug users and evaluated needle exchange programs and prison reentry services. He holds an MSc in social research methods from the University of Surrey.

**Jennifer M. Perez** was appointed Director of Trial Court Services for the New Jersey Judiciary in May 2015, and in this role she manages central office operations related to the Civil, Family, Criminal, Probation and Automated Trial Court Services divisions. She also provides support and assistance to judges, managers, and staff throughout the trial courts. In addition to policy and operational issues, Perez works in close collaboration with members of the Information Technology Office (ITO) related to the development of a web-based application for electronic filing, electronic case management, and electronic records retention. Perez is a member of the Advisory Committee on Information Technology, as well as other committees within the Judiciary. She was also a member of the Supreme Court's Special Committee on Electronic Filing, and a former member of the Advisory Committee on Public Access. Perez is a graduate of St. Joseph's University in Philadelphia, where she obtained her undergraduate degree in International Relations and Economics, and of Rutgers Law School in Camden, where she obtained her J.D. degree. Perez began her career with the Judiciary as a law clerk to the Honorable Joseph M. Nardi, Jr., in the family division of the Camden Vicinage. After a brief period practicing matrimonial law and civil litigation, she returned to the Judiciary and has held management/court administration positions in the family and civil divisions. Prior to becoming the Director of Trial Court Services, Perez was the Judiciary's Chief of the Automated Trial Court Services Unit from 2013 to 2015, where she oversaw the development and implementation of eCourts for the Criminal and Tax Courts. She was also the Clerk of Superior Court from 2008 to 2013, responsible for foreclosure case processing, statewide judgment lien processing, electronic access to court records in the Judiciary's case management databases, and Superior Court records management. Perez worked in the Camden Vicinage for over 10 years, first in the Family Division and then as a Civil Division Manager.

**Carol V. Petrie** is currently a consultant working in the field of criminal justice research. Since 2010 she has worked with Development Services Group (DSG Inc.) on a project for the Office of Justice Programs and the National Institute of Justice. Prior to her retirement in 2009, she served as staff director of the Committee on Law and Justice at the National Research Council, a position she held for twelve years. During her tenure, she oversaw the development of over 20 National Research Council reports. Prior to her work there, she was the director of planning and management at the National Institute of Justice, responsible for policy development and administration. In 1994, she served as the acting director of the National Institute of Justice. Throughout a 30-year career, she worked in the area of criminal justice research, statistics, and public policy, serving as a project officer and in administration at the National Institute of Justice, the Bureau of Justice Statistics, and The District of Columbia Department of Corrections. She has conducted research on violence, and managed numerous research projects on the development of criminal behavior, policy on illegal drugs, domestic violence, child abuse and neglect, transnational crime, and improving the operations of the criminal justice system. Early in her career she worked as a High School English teacher in Camden, New Jersey, and Minot, North Dakota. She graduated from Kent State University. While attending Kent State, she co-founded their collegiate branch of the NAACP. Petrie's other interests include choral singing, travel, volunteer work. And baseball.

**Janice Radovick-Dean**, currently the Director of the Fifth Judicial District of Pennsylvania's Pretrial Services Department, began her career with the Allegheny County Probation Department in 1989. During that time Dean has worked in the DUI Unit, the Electronic Monitoring Unit, and the County's Drug Court Program. In 2001, Dean aided in the creation of the Allegheny County Ignition Interlock Program, which is one of the only County operated Programs in the state. In 2007, she was transferred to the newly created Pretrial Services Department. Dean has been instrumental in the creation of policies and procedures and to the overall changes made in the department and the Court. She holds degrees in Administration of Justice and Criminology from the University of Pittsburgh. Dean serves as Immediate Past President of the Pennsylvania Pretrial Services State Association, and serves as the Affiliate Director for the National Association of Pretrial Services.

**Carla Shedd** is Assistant Professor of Sociology and African American Studies at Columbia University. Dr. Shedd received her Ph.D. in Sociology from Northwestern University. Her research and teaching interests focus on: crime and criminal justice; race and ethnicity; law; inequality; and urban sociology. Dr. Shedd's first book, *Unequal City: Race, Schools, and Perceptions of Injustice* (October 2015, Russell Sage), focuses on Chicago public school students, and is a timely examination of race, place, education, and the expansion of the American carceral state. Dr. Shedd's current research focuses on New York City's juvenile justice system, investigating how young people's linked institutional experiences influence their placement on and movement along the carceral continuum. Dr. Shedd has been published in the *American Sociological Review* and *Sociological Methods & Research*, and she has received fellowships from the Russell Sage Foundation and the Ford Foundation.

**Faye S. Taxman, Ph.D.**, is a University Professor in the Criminology, Law and Society Department and Director of the Center for Advancing Correctional Excellence at George Mason University. She is recognized for her work in the development of systems-of-care models that link the criminal justice system with other service delivery systems, as well as her work in reengineering probation and parole supervision services and in organizational change models. Her work covers the correctional system from jails and prisons to community corrections, and adult and juvenile offenders. She has received grants from the National Institute on Drug Abuse, National Institute of Justice, National Institute of Corrections, Office of National Drug Control Policy and Bureau of Justice Assistance. She has active "laboratories" with the Maryland Department of Public Safety and Correctional Services. She developed the RNR Simulation Tool. Dr. Taxman has published more than 155 articles, including "Tools of the Trade: A Guide to Incorporating Science into Practice," and "Implementing Evidence-Based Community Corrections and Addiction Treatment" (Springer, 2012 with Steven Belenko). She is co-editor of the journal *Health & Justice*. The American Society of Criminology's Division of Sentencing and Corrections has recognized her as Distinguished Scholar twice, and she is the recipient of the Rita Warren and Ted Palmer Differential Intervention Treatment award. She has a Ph.D. from Rutgers University's School of Criminal Justice.

**John Scott Thomson** was sworn in as chief of the Camden County Police Department on May 1, 2013. Prior to that, he served as chief of the former Camden Police Department for five years. Chief Thomson has been in law enforcement since 1992. He holds an M.A. in education from Seton Hall University and a B.A. in sociology from Rutgers University. Chief Thomson ascended through the ranks of the Camden Police Department, serving in various operational and investigative positions and commands and receiving several commendations such as the Narcotic Detective of the Year in 1999 from the New Jersey County Narcotic Commanders Association. He served on the New Jersey Supreme Court Special Committee on Discovery in Criminal and Quasi-Criminal Matters. In 2011, Chief Thomson received the Gary P. Hayes Award from the Police Executive Research Forum. He sits on the board of advisors for New York University School of Law Center on the Administration of Criminal Law. Chief Thomson serves as an Executive Fellow for the Police Foundation and sits on the board of directors for the Police Executive Research Forum in Washington, D.C.

**Jeremy Travis** is president of John Jay College of Criminal Justice at the City University of New York. Prior to his appointment, he served as a Senior Fellow in the Urban Institute's Justice Policy Center, where he launched a national research program focused on prisoner reentry into society. From 1994-2000, Travis directed the National Institute of Justice, the research arm of the U.S. Department of Justice. Prior to his service in Washington, he was Deputy Commissioner for Legal Matters for the New York City Police Department (1990-1994), a Special Advisor to New York City Mayor Edward I. Koch (1986-89), and Special Counsel to the Police Commissioner of the NYPD (1984-86). Before joining city government, Travis spent a year as a law clerk to then-U.S. Court of Appeals Judge Ruth Bader Ginsburg. He began his career in criminal justice working as a legal services assistant for the Legal Aid Society, New York's indigent defense agency. He has taught courses on criminal justice, public policy, history, and law at Yale College, the New York University Wagner Graduate School of Public Service, New York Law School, and George Washington University. He has a J.D. from the New York University School of Law, an M.P.A. from the New York University Wagner Graduate School of Public Service, and a B.A. in American Studies from Yale College. He is the author of *But They All Come Back: Facing the Challenges of Prisoner Reentry* (Urban

Institute Press, 2005), co-editor (with Christy Visher) of *Prisoner Reentry and Crime in America* (Cambridge University Press, 2005), and co-editor (with Michelle Waul) of *Prisoners Once Removed: The Impact of Incarceration and Reentry on Children, Families, and Communities* (Urban Institute Press, 2003). He has published numerous book chapters, articles, and monographs on constitutional law, criminal law, and criminal justice policy.

**Marie VanNostrand** is an experienced practitioner, skilled researcher, and nationally recognized expert in the pretrial phase of the criminal justice system. She has presented at national and statewide conferences, participated in a congressional briefing, and presented at the U.S. Attorney General's symposium on pretrial justice. Dr. VanNostrand's path to career fulfillment began with a strong desire to make a difference. Her goal was to reshape the pretrial justice system by developing both risk measurement and risk management strategies to ensure equal justice for all. In pursuit of this goal, she has led the largest studies ever conducted on pretrial risk assessment, alternatives to detention, and the impact of the pretrial release and detention decision. Over the course of her career, Dr. VanNostrand also amassed an impressive list of academic credentials. She's earned a Master's Degree in Public Administration, a second Master's degree in Urban Studies and a Doctorate in Public Policy with a specialty in research methods and statistics. Most impressively, she accomplished all this while working full time in the field. Before cofounding Luminosity, Marie gained 15 years of experience serving as a probation and parole officer, a pretrial services agency manager, and a criminal justice analyst. Her unique combination of practical experience and educational achievements serve her well in her role as Luminosity's justice project manager. Her extensive subject matter expertise drives the company forward on its continuing quest for a more equitable pretrial justice system.

**Nicholas Wachinski** is a lifelong resident of the Commonwealth of Pennsylvania. He began his practice as an attorney in 2006 with licensure in both the State of New Jersey and Commonwealth of Pennsylvania, and has tried cases in Pennsylvania, New Jersey, and Federal Court. In addition to his service to the American Bail Coalition, Wachinski currently serves as Chief Executive Officer of Lexington National Insurance Corporation in Maryland and serves as instructor for the Pennsylvania Supreme Court, Minor Judiciary Education Board, being originally appointed in 2010. In his capacity as an instructor, he has the privilege of teaching District Judges of Pennsylvania the rules/issues relating to bail, bail forfeitures, bail revocations, and bench warrants. Mr. Wachinski was appointed an advisor to the Pennsylvania General Assembly Joint State Government Commission in 2011 as part of an initiative to restructure the First Judicial District of Pennsylvania (Philadelphia). Specifically, he advises on issues relating to the establishment/revision of bail guidelines and the establishment of a system of best practices in bail matters for the Commonwealth of Pennsylvania. Wachinski frequently is called to provide advice/counsel to members of the Pennsylvania House of Representatives, members of the Pennsylvania Senate, Judges and members of the Pennsylvania Supreme Court Rules Committee on the issues of criminal procedure, bail, , and court reform.

**Judge Roger K. Warren** is the President Emeritus of the National Center for State Courts (NCSC), serving as President of the NCSC from 1996 to 2004. He currently serves as a principal consultant to the NCSC and its partnership with Pew Charitable Trusts' Public Safety Performance Project. From 2005 to 2012, Judge Warren served as Scholar-in-Residence with the Judicial Council of California, where he coordinated the Judicial Council's implementation of evidence-based practices to reduce recidivism and probation performance incentive funding programs. He is the author of over a dozen works on evidence-based sentencing and has conducted evidence-based practice training programs for judges and other criminal justice practitioners in over 30 states. Previously, Judge Warren served for twenty years as a trial judge in Sacramento, California, where he established Sacramento's pretrial release program, and was the Founder and First Chair of the Sacramento Criminal Justice Cabinet. He received the California Jurist of the Year award in 1995, and Sacramento Judge of the Year awards in the years 1987, 1993, and 1994. He also represented the California judicial branch on the California Constitution Revision Commission. Prior to his appointment to the bench, Judge Warren served as Executive Director of Northern California Legal Services. He graduated from Williams College and, following a Fulbright Fellowship to Iran, received a Master's Degree in Political Science and J.D. degree from the University of Chicago, where he served on the Editorial Board of the University of Chicago Law Review.

**Robert E. Worden** is the director of the John F. Finn Institute for Public Safety, Inc., and associate professor of criminal justice at the University at Albany, State University of New York. He holds a Ph.D. in political science from the University of North Carolina at Chapel Hill. Dr. Worden's interests revolve around questions about the accountability and responsiveness of criminal justice institutions to the public. Thus his work includes both basic research – concerned with explaining the behavior of criminal justice actors in terms of political, organizational, and social influences – and applied research – concerned with the implementation and outcomes (read: social benefits) of criminal justice policies and programs; most of it focused on police behavior and police programs and reforms. His scholarship has appeared in *Justice Quarterly*, *Criminology*, *Law & Society Review*, and other academic journals, and his research has been funded by the National Institute of Justice, the Bureau of Justice Assistance, the New York State Division of Criminal Justice Services, and other sponsors. Dr. Worden served on the National Research Council's Committee to Review Research on Police Policies and Practices, whose report, *Fairness and Effectiveness in Policing: The Evidence*, was published by the National Academies Press in 2004.

## APPENDIX B

# A Summary Of Research Questions Raised By Roundtable Participants

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### **The Pretrial Landscape**

Studies that Provide an Overview of Existing Practices and Outcomes

- *What is the existing statutory landscape of pretrial criminal justice in the United States?*
  - *What is causing the following trends in pretrial?*
    - ◆ *increase in the pretrial population*
    - ◆ *decrease in the use of release on recognizance (ROR)*
    - ◆ *increase in the use of secured bond*
    - ◆ *increase in the arrest to pretrial detention ratio*
    - ◆ *increase in simple assault and drug possession while crime overall is decreasing*
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### **Law Enforcement**

Studies on Individual and Organizational Behavior and its Impact on Outcomes

- *How do individual officers exercise their discretion and how is variation in that exercise patterned by officers' backgrounds and characteristics?*
- *What can we learn about the nature and impact of formal and informal characteristics of police organizations on police efficacy and behavior, including their policies, procedures, incentives and disincentives, workload, supervision, training, or peer group norms, as well as bureaucratization, decentralization of authority, job specialization, geographic deployment, and management accountability mechanisms?*
- *What is the impact of forms of external oversight on police behavior, including that by local elected officials, citizen oversight mechanisms like civilian review boards, and other structures like police auditors?*
- *How do department strategies or policies affect arrest priorities, arrest rates, and the demographics of arrestees?*

## Studies on Policing and Racial Bias

- What is the racial make-up of police departments as compared to the communities they serve?
- What impact does the racial make-up of a department have on outcomes like arrest? How does the race of officers and how that intersects with the race of the citizens they police change citizens' assessment of police-citizen interactions?
- What situational contexts lead to prejudicial behavior and who is prone to such bias?

## Studies on Arrest and Alternatives to Initial Police-Citizen Interactions

- How do police exercise their authority to arrest? What forces shape their behavioral patterns?
  - What are the determinants of officers' choices to exercise forms of authority that are associated with arrest, such as the use and misuse of physical force; decisions to frisk, search, or ask for consent to search; and decisions to stop citizens?
  - What forces shape officers' choices among non-arrest alternatives, such as warning, advising, or referral to other social services?
  - By what metric can we measure crime prevention?
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## Charging and Prosecutorial Discretion

### Studies on Prosecutorial Discretion in Charging, Diversion, and Bail Decisions

- What factors influence a prosecutor's decision to bring felony charges in a case?
  - ◆ Are particular charging guidelines used?
  - ◆ Is the charging decision based on the ultimate dispositional sentence available?
  - ◆ Is the charge made as leverage to be used in future plea negotiations?
  - ◆ Does the officer's presentation of the case impact the charge?
  - ◆ Does the victim's response affect prosecutorial decision-making?
  - ◆ What is the role of police in charging independent of prosecutors?
- How is prosecutorial decision-making affecting the misdemeanor docket?
  - ◆ When and why do prosecutors dismiss misdemeanors?
  - ◆ What information do prosecutors have about the impact of case continuances when making decisions about misdemeanor case management? Do they perform any kind of cost-benefit thinking about the criminogenic impact of pretrial detention?
- How do prosecutors make decisions about diversion?
  - ◆ Who do prosecutors think are eligible to participate in diversion? What level risk of offender can and should be diverted?
  - ◆ Are there racial biases involved in how decisions to divert are being made?
  - ◆ Are people being required to plead guilty as a condition of diversion? How does that type of model compare to one that does not require a guilty plea?
  - ◆ What kind of reward or incentive should be given to someone who participates in a diversion program? Reductions in sentence? Outright dismissal? How is success measured?
  - ◆ What is the impact of statutory or policy bars to participation in diversion programs?

- What influences prosecutors to make bail requests?
  - ◆ Is it based on charge severity, criminal history, and/or office policy or practice?
  - ◆ Can risk tools assist prosecutors in making bail requests?
  - ◆ What kind of system impact might be felt if prosecutors began to waive bail in certain cases?

Studies on the Impact Prosecutors Have on Case Processing

- How do office procedures and systems impact case processing times and how can these be improved?
- What is the impact of junior vs. senior prosecutorial staff on case processing, including requests for continuances?

Studies on Prosecutorial Discretion and Racial Bias

- What is the impact of implicit or explicit bias in prosecutorial decisions on charging, bail, and case processing?

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### **Role of Defense Counsel**

Studies on the Availability of Defense Counsel

- How many people are facing a liberty decision in the United States without appointed counsel?

Studies on the Impact of Defense Counsel on Outcomes at Various Pretrial Stages

- Do outcomes change if defendants are provided counsel at first appearance and how?
- What is the impact of prompt appointment of counsel on pretrial detention decisions?
- What is the impact of right to counsel on bail decisions?

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### **Risk Assessment Tools**

Studies on the Validity and Validation of Risk Assessment Tools

- What are the challenges related to exporting tools validated for one jurisdiction to another?
- When do tools need to be revalidated and what is the procedure for doing so?

Studies on the Development of Risk Assessment Tools for Defendants Charged with Domestic Violence and DUI

- Can tools be developed to assess risk for defendants charged with domestic violence or driving under the influence? What factors predict and measure risk of failure to appear (FTA) and re-offense in these contexts?

### Studies on the Adoption and Use of Risk Assessment Tools by Decision-makers

- How do judges, prosecutors, defense attorneys, and other justice officials use the results of risk assessments and how can their actions and impact be quantified for study?
- How, and to what degree is the risk assessment process and the determination of risk using a structured instrument still influenced by practitioner discretion and subjective judgment?

### Studies on Risk Assessment Tools and the Potential for Embedded Racial Bias

- Are selective items in the current generation of risk assessment instruments (i.e., criminal history, employment, contacts with the criminal justice system) racially or socio-economically biased, and if so, what can be done to eliminate that bias without compromising predictive validity?
  - What is the long-term impact of pre-trial risk assessment on racial disproportionality in jail and other correctional settings?
  - How can individual bias in the risk assessment process be identified and addressed?
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## Pretrial Release and Supervision

### Comparative Analyses of Effectiveness of Various Forms of Release

- Do failure to appear (FTA) rates vary across release mechanisms and if so, by how much?
- Does recidivism/pretrial misconduct vary across release mechanisms and if so, by how much?
- What are the strongest predictors of FTA across each release mechanism?
- What is the impact of a categorical presumption of release on the risk-assessment model? If so, which lower-level offenses would be best included for presumptive release?
- What legislative restrictions on pretrial release exist and what is their impact?

### Studies on the Impact of Bail on FTA and Public Safety

- Do secured bonds serve as a deterrent to FTA or pretrial criminal activity?

### Studies on Efficacy of Types of Supervision on Failure to Appear and Public Safety

- What release conditions are effective in reducing pretrial risk of FTA and new criminal activity, and for which defendants?
- What risk factors do we need to understand to assess appropriate pretrial supervision services?
- To what extent do pre-trial release decisions and case management plans reflect the defendant's risk and needs identified through the risk assessment process?
- What are the potential improvements in outcomes for jurisdictions that incorporate non-traditional services such as providing behavioral health treatment, assistance with obtaining public benefits, workforce development opportunities, or childcare during court and other appearances?
- How can pretrial services be developed that specifically adapt to and meet the needs of the increasing numbers of women and girls in the criminal justice system?

### Studies on Incentives to Ensure Pretrial Supervision Compliance

- Given the high costs of non-compliance, why do some defendants fail to comply with pretrial conditions?
- How can compliance with pretrial conditions be maximized?
- How can messaging and reminders best be designed to ensure court appearance?

### Cost-Benefit Analyses of Pretrial Release Forms vs. Pretrial Detention

- What are the comparative costs and benefits of pretrial release vs. detention, considering all economic factors?
  - What are the comparative costs of pretrial release programs that rely on commercial bail vs. those that rely on risk assessments and supervision performed by a pretrial services agency?
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## Pretrial Detention

### Micro-Analysis of the Jail Population to Determine Who is in Jail Pretrial and Why

- For what other reasons besides inability to pay bail are people in jail, including holds, nonpayment of criminal justice fines and fees, administrative delays, legal strategy, or lack of social supports?
- What is the effect of mandatory bond amounts in state statutes that create a presumption against release?

### Studies on the Reasons Why Pretrial Detention Leads to Negative Outcomes

- What are the mechanisms at play that cause pretrial detention to lead to future criminal justice involvement?
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## Case Processing

### Studies that Provide the Following Information on Case Processing:

- Basic descriptive research that develops data-based typologies of case processing policies, practices, and outcomes in different levels of courts and different socio-political environments
- Comparative analyses that contrast processes in jurisdictions with optimal and less optimal practices
- Assessments of the effectiveness of innovations designed to increase the fairness and timeliness of case processing and the legitimacy and proportionality of outcomes
- Studies to develop uniform definitions of case processing and pretrial terms to assist in data collection and analysis across agencies and jurisdictions
- Evaluation of the duration of the process in terms of both length in time and number of scheduled court dates
- An overview of the options available to relevant decision-makers at key stages of the process

- An overview of the options available to relevant decision-makers at key stages of the process
- Analysis of type and impact of restrictions and economic obligations is the defendant under at various pretrial stages
- Review of the landscape of pretrial case processing in lesser visibility courts
- The impact of pretrial reform on pretrial release rates, FTA rates, and new criminal activity rates in states that have made such changes (KY, DE, CO, HI), and in states that will make such changes in the near future (NJ)

Studies that Assess Experiments with Changes in Procedural and Substantive Criminal Law and the Introduction of New Case Processing Practices

- De-criminalization of specific minor offenses
  - Elimination of mandatory minimum sentences
  - Elimination of reliance on surety bail
  - Increased use of risk assessment in pretrial decision-making
  - Use of alternatives to jail for non-criminal violation of release conditions
  - Rapid access to relevant behavioral health background information about individuals
  - Active implementation of case processing time standards
  - Renewal and re-design of day fine experiments
  - Caps on maximum amounts of economic obligations that can be imposed on a defendant
  - Procedures that can enable offenders facing unpayable economic obligations imposed by the justice system to reduce the burden and start afresh
  - Alternative ways of providing legal advice/assistance to defendants, especially in minor cases
  - Electronic recording of all proceedings in courts that handle minor offenses
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## Judicial Discretion

Studies to Assess How Judges Exercise their Discretion

- What factors influence judicial decision-making in pretrial?
- How can judicial decision-making be made more transparent?
- How do electoral influences impact judicial decision-making?

Studies on Judicial Education to Improve Decision-Making

- How can judges best be educated on the use of risk assessment tools?
- How can judges be trained on current research and best practices in pretrial decision-making?

Studies on Judicial Discretion and Racial Bias

- What is the impact of implicit or explicit bias in judicial decisions on bail, pretrial release, and case processing?

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## **Disposition**

Studies to Evaluate a Full Range of Disposition Options and to Build the Infrastructure Necessary to Support Them, e.g.:

- *Behavioral Health Pathways*
  - *Triaging Minor Offenses*
  - *Restorative Justice*
  - *Offender Mediation*
  - *Individually Designed Sentences*
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## **Victims' Rights / Community Impact**

Studies Assessing the Level of Victim Participation in the Pretrial Process and its Impact on Outcomes

- *To what extent are victim rights provided by pretrial programs?*
- *To what extent is it feasible to include victim-specific data in the risk assessment process?*
- *What is the effect of victim participation in pretrial programs on pretrial release decisions, outcomes, and subsequent criminal proceedings?*
- *What is the effect of victim participation in pretrial programs on victims' well-being and perception of fairness during the pretrial process and subsequent criminal proceedings?*

Studies Evaluating the Impact of Pretrial Decisions on Victims

- *To what extent do victims participate in the pretrial release decision-making and supervision processes?*
- *To what extent are victims provided notification throughout the pretrial release decision-making and supervision processes?*
- *To what extent does victim notification and participation influence victim willingness to remain engaged with the criminal justice system?*
- *To what extent are victims vulnerable to further victimization from the offender during the pretrial process, and how does this impact victim participation?*

Studies that Assess Community Values and Expectations

- *How do citizens view their encounters with police?*
- *What are citizen expectations for their justice system, specifically pretrial services, and how do these expectations impact pretrial procedures? Identify and compile public opinion surveys about components of the justice system and address gaps.*
- *How best can the public be engaged in designing pretrial responses?*

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## **Prevention and Public Health**

Studies to Evaluate a Public Health Model of Crime Prevention, Considering the Needs of the Seriously Mentally Ill and Individuals with Substance Abuse and Alcohol Issues

- *How are jurisdictions currently assessing mental health and substance abuse? Are any jurisdictions using assessments for mental health, substance abuse, and risk?*
  - *What definitions of “mental health” and “substance abuse” are in use by different jurisdictions?*
  - *How do mental health and substance abuse factors relate to risk of failure to appear and new criminal activity pending trial?*
  - *What forms of release are most effective for individuals with mental health, substance abuse, and/or alcohol issues?*
  - *Can a public health model focused on treatment and prevention be used to reduce crime? What research is available to show the impact of prevention programs on future criminal justice contact and pretrial outcomes?*
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## **Dissemination and Adoption of Research-Based Practices**

Studies on the Dissemination of Innovation and the Adoption of Evidence-Based Practices

- *What are the most effective governance structures and agreements for advancing and sustaining pretrial reform efforts?*
- *What are best practice strategies for consulting and engaging the public in pretrial reform efforts?*
- *How do you overcome barriers to change, such as a lack of trust across actors and agencies?*

Studies on Implementation of Evidence-Based Best Practices:

- *What training and technical assistance and tools do states and local jurisdictions need to advance pretrial reform?*
- *What are the costs associated with implementing pretrial reform efforts?*

## ENDNOTES

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2. Bureau of Justice Statistics, Correctional Populations of the United States, available at <http://www.bjs.gov/index.cfm?ty=pbse&sid=5>.
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