

Pretrial Practice: *Rethinking the Front End of the Criminal Justice System*

**A Report on the Roundtable on Pretrial Practice
March 18–20, 2015**

Pretrial Practice:
*Rethinking the Front End of
the Criminal Justice System*

A Report on the Roundtable on Pretrial Practice
March 18–20, 2015

John Jay College of Criminal Justice
New York City

Acknowledgments

The Prisoner Reentry Institute of John Jay College wishes to thank the Laura and John Arnold Foundation (LJAF), and especially Anne Milgram, for the opportunity to partner with LJAF in convening this Roundtable on Pretrial Practice. We appreciated the close working relationship we had with Erica Gersowitz Bond in the production of the roundtable, and with Virginia Bersch in the work that has followed.

It was, of course, the energy and diverse voices of the participants that generated the quality of the exchange that occurred over the three-day meeting in New York City. We thank each of them for taking time out of their busy lives to join the conversation, and we thank the many observers whose participation contributed to the event. We note with special appreciation the facilitation of John Jay President Jeremy Travis who so ably guided the discussion.

We want to thank PRI staff members Kevin Barnes-Ceeney, Matt Bond, Maja Olesen, Daonese Johnson-Colon, and Ann Jacobs for their many contributions to this project. Thanks also to the many John Jay staff members in audio-visual services, facilities management, security and catering who helped make this event possible.

PRI is also grateful to Graham Kates, a journalist that wrote about the event, and to the students who participated in the roundtable as note takers: June Adams, Cristina Castanier, Jennifer Lopez, Sergine Louis, Johana Martinez, Meg Osborn, Sherin Siby, Sarah Ward, and Lindsay Whetter.

We are particularly indebted to the author of this report, Cynthia Reed, who listened to recordings of the three-day meeting, and worked diligently to capture the richness of the conversation that occurred there.

The report was designed by Damian Vallelonga at Echo and production of the report was coordinated by PRI's Lila McDowell.

Table of Contents

<i>About The Laura and John Arnold Foundation</i>	ii
<i>About The John Jay College of Criminal Justice & The Prisoner Reentry Institute</i>	iii
<i>Roundtable Discussants</i>	iv
<i>Papers Presented</i>	v
<i>Report on the Roundtable on Pretrial Practice Executive Summary</i>	1
<i>Part I Reviewing the System: Pretrial Practice in the “War on Crime” Era</i>	4
<i>Societal Responses to the Increase in Violent Crime</i>	4
<i>Initial Contact: Police and the Decision to Arrest</i>	5
<i>At the Courthouse: How Pretrial Release Decisions are Made</i>	6
<i>Part II Refocusing Pretrial Practice and Policy on Human Dignity and Procedural Legitimacy</i>	7
<i>Rethinking Pretrial with Dignity in Mind</i>	7
<i>Increasing Respect For The Law Through Procedural Legitimacy</i>	9
<i>Part III Keeping People Out of Jail: Changing How Police View Arrest</i>	11
<i>The Hamilton County/Cincinnati, Ohio Case Study</i>	12
<i>Part IV Reforming Pretrial Detention: When To Hold The Presumptively Innocent Behind Bars</i>	14
<i>Reframing the Bail vs. No Bail Narrative</i>	15
<i>Evaluating the Use of Pecuniary Justice</i>	18
<i>Developing Best Practices to Measure and Manage Pretrial Risk</i>	19
<i>Part V A Call For Research: Building a Robust Field of Pretrial Practice Scholarship</i>	23
<i>Part VI The Path Forward: Changing The Narrative</i>	25
<i>Appendix A Discussants’ Biographies</i>	26
<i>Endnotes</i>	31



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

Houston | New York City | Washington, D.C.
ARNOLDFOUNDATION.ORG



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

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
JOHNJAYRESEARCH.ORG/PRI

Roundtable Discussants

Dr. Marilyn Chandler Ford

Director, Volusia County Division
of Corrections
Daytona Beach, Florida

Tim Cadigan

Senior Associate
Chesterfield Associates
Rockville, Maryland

Matthew D. Chase

Executive Director
National Association of Counties
Washington, D.C.

John Choi, J.D.

Ramsey County Attorney
Saint Paul, Minnesota

Judge John C. Creuzot

Attorney, The Creuzot Law Firm
Former Texas State District Judge
Dallas, Texas

Ronald Day, M.P.A.

Associate Vice President
David Rothenberg Center for Public
Policy at the Fortune Society
Long Island City, New York

Dr. Robin S. Engel

Professor of Criminal Justice
University of Cincinnati
Cincinnati, Ohio

Robert D. James, Jr., J.D.

DeKalb County District Attorney
Decatur, Georgia

Cynthia E. Jones, Professor of Law

American University
Washington College of Law
Washington, D.C.

Tara Boh Klute, General Manager

Kentucky Court of Justice,
Administrative Office of the Courts,
Division of Pretrial Services
Frankfort, Kentucky

Dr. Christopher Lowenkamp

Social Science Analyst
Administrative Office of the U.S. Courts /
University of Missouri-Kansas City

Dr. Karin Martin

Assistant Professor of Public Management
John Jay College of Criminal Justice
New York, New York

Anne Milgram, J.D.

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

The Honorable Maryann Moreno

Superior Court Judge
Washington State Superior Court
Spokane, Washington

Tim Murray, Executive Director

Institute for Justice Planning
Director Emeritus, Pretrial Justice Institute
Washington, D.C.

Janice Radovick-Dean

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

Timothy R. Schnacke, J.D., LLM

Executive Director
Center for Legal and Evidence-Based Practices
Golden, Colorado

Dr. Jonathan Simon

Adrian A. Kragen Professor of Law
UC-Berkeley Boalt School of Law
Berkeley, California

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

Kevin Tully, J.D.

Public Defender
Mecklenburg County Public Defender Office
Charlotte, North Carolina

Dr. Tom R. Tyler

Macklin Fleming Professor of Law and
Professor of Psychology
Yale Law School
New Haven, Connecticut

Dr. Marie VanNostrand

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

Michael Wilson, Economist

Michael Wilson Consulting
South Easton, Massachusetts

Roundtable on Pretrial Practice Staff

John Jay College of Criminal Justice Prisoner Reentry Institute:

Ann Jacobs

Director

Kevin Barnes-Ceeney, Ph.D.

Director of Research

Matt Bond

Administrative Associate

Maja Olesen

Program Associate

Laura and John Arnold Foundation:

Virginia Bersch

Deputy Director of National
Implementation, Criminal Justice

Erica Gersowitz Bond

Former Director of Criminal Justice

Papers Presented

The following academic papers were presented at the Roundtable to stimulate and guide discussions:

- 1.** *Dr. Jonathan Simon, Professor of Law, UC-Berkeley, “Pretrial Dignity: Rethinking Pretrial Procedures and Practices as if Dignity Matters” (presented March 18, 2015).*
- 2.** *Dr. Tom Tyler, Professor of Law and Psychology, Yale Law School, “Legitimacy in Pretrial” (presented March 18, 2015).*
- 3.** *Dr. Robin S. Engel, Dr. Nicholas Corsaro, and Annelise Pietenpol, M.P.A., Institute of Crime Science, University of Cincinnati, “The Role of Police in Pretrial Justice: Changing How Police View Arrest” (presented by Dr. Engel, March 18, 2015).*
- 4.** *Timothy R. Schnacke, J.D., LL.M., Executive Director, Center for Legal and Evidence-Based Policies, Golden, Colorado, “An Overview of Pretrial Release and Detention in America: Fixing the Narratives for ‘Bail’ and ‘No Bail’” (presented March 18, 2015).*
- 5.** *Dr. Karin D. Martin, Assistant Professor of Public Management, John Jay College of Criminal Justice, “Revenue or Justice: An Inquiry into the Role of Money in Punishment” (presented March 19, 2015).*
- 6.** *Dr. Marie VanNostrand and Brian W. Kays, Luminosity, “Leveraging Data and Analytics to Advance Pretrial Justice” (presented by Dr. VanNostrand, March 19, 2015).*
- 7.** *Kristin Bechtel, M.S., Dr. Alexander Holsinger, Dr. Christopher T. Lowenkamp, and Madeline J. Warren, B.A., Administrative Office of the U.S. Courts, “A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions” (presented by Dr. Lowenkamp, March 19, 2015).*
- 8.** *Michael Wilson and Justice System Partners, “A Cost-Benefit Model for Pretrial Justice” (presented by Mr. Wilson, March 20, 2015).*

Report On The Roundtable On Pretrial Practice

Executive Summary

From March 18 – 20, 2015, the John Jay College of Criminal Justice, together with the Laura and John Arnold Foundation (LJAF), brought together a distinguished group of scholars and practitioners to generate new ways of thinking about pretrial justice. In the words of John Jay President Jeremy Travis, who chaired the Roundtable, those gathered represented a “national brain trust on the issues of pretrial policy, philosophy, values, and practice.” The Roundtable provided an integrated intellectual framework for considering the criminal pretrial stages and sought to boost momentum for change by expanding the community of academics, practitioners, and the public who are interested and invested in pretrial reform.

Anne Milgram, the Vice President of Criminal Justice for LJAF, explained the Foundation’s mission in this area: “Pretrial is a critically important part of the criminal justice system. When we focus solely on the back end of the system, we miss incredible opportunities to impact change.” Pretrial, she said, provides “the greatest opportunity to impact the criminal justice system.”

Millions of Americans come in contact with the criminal justice system, a number that grew substantially as a result of policy shifts brought about by an increase in violent crime between the late 1960s and the 1990s. As public pressure to combat crime mounted, policymakers launched what some have termed the “war on crime,” and actors at every stage of the process heightened their efforts to incapacitate criminals and potential criminals. Police used strategies like zero tolerance to arrest a growing number of individuals for minor lifestyle crimes. Court decisions made it easier to hold defendants behind bars pending their trials. Politicians enacted legislation to extend sentences and enact harsher penalties for a wide range of crimes. The impact of these decisions was felt most harshly in poor communities and by young men of color. Jails became overcrowded as part of what some describe as an era of mass incarceration.

But violent crime has been declining steadily and is currently at historically low levels. This moment presents an opportunity to step back and assess the pretrial stage of the criminal justice process in a new light, asking hard questions not only about what works in reducing crime, arrests, pretrial detention, and system costs, but also about what works in increasing fairness, legitimacy, and dignity.

It is in this spirit that the Roundtable discussants gathered. As President Travis phrased it, “*This is a moment in this field where big change is possible.*”

Goals. The goals of the Roundtable were fourfold:

- ***To build the field of pretrial by generating scholarly and popular interest and debate;***
- ***To identify what is known and not known about pretrial processes and their results;***
- ***To counteract the current “siloed-approach” to the study of pretrial issues and to develop knowledge and understanding of the interconnected nature of pretrial processes; and***
- ***To identify, discuss, and disseminate best practices in the pretrial process.***

Participants

Discussants spanned many areas of practice, including law enforcement, prosecutors, public defenders, judges, pretrial services professionals, corrections heads, policy advocates, and criminal justice consultants, as well as top legal scholars sharing their expertise in the areas of bail, pretrial risk assessment, racial disparities in justice, corrections, pecuniary justice, evidence-based policing, legitimacy in policing, and the core values of penal justice. Detailed biographies of the discussants can be found in *Appendix A*.

The Roundtable was ambitious both in the breadth of its participants and in its goal to synthesize the typically compartmentalized nature of pretrial practice and research, in which stakeholders and scholars at each stage of the process conduct debate and research largely insulated from the work and discussions of those involved in other stages. But the pretrial process is interconnected and each actor's role has an impact on the stages that follow. The Roundtable brought these actors together with the goal to integrate their work in pretrial reform so that best practices can emerge that not only provide better results at each stage, but better outcomes for the system as a whole.

The Roundtable embraced both policy and academic discussions and an action-oriented call for best practices in pretrial based on solidly researched evidence as to what works in reducing arrests, unnecessary pretrial detention, and system costs. Underlying these discussions was a commitment not just to finding solutions based in scholarship, but also to holding paramount the human dignity of those who find themselves navigating the system. Moving forward, the participants seek momentum to reframe the narrative of criminal justice that grew during the war on crime, so that the core norms that limit our society's right to punish again rise as overarching values that insert themselves into every level of policymaking and practice.

What follows are the bold ideas, the vibrant discussions, the areas of consensus, and the opportunities for further exploration that came out of the Roundtable and the eight academic papers prepared for and presented at it.

Part I

Reviewing the System: Pretrial Practice in the “War on Crime” Era provides an overview of the current pretrial landscape as it has been shaped by the war on crime, with its overriding goal to incapacitate criminals as efficiently as possible. The section looks at how public pressure to get “tough on crime” affected pretrial decisions at all stages of the process, from the augmented use of police practices like zero tolerance, which greatly increased arrests for minor crimes, to judicial and political decisions that made it easier to detain defendants pretrial.

Part II

Refocusing Pretrial Practice and Policy on Human Dignity and Procedural Legitimacy discusses the underlying values that, ideally, should govern the penal justice system – proportionality, parsimony, citizenship, and social justice—and how those values were largely crowded out in favor of public safety and procedural efficiency. This section focuses on the presentations by Dr. Jonathan Simon on the opportunity that the decline in crime presents for rethinking pretrial practice with human dignity at its core, and by Dr. Tom Tyler on how building trust and confidence in police and the courts works to enhance compliance with the law by improving the public's view of pretrial actors as legitimate.

Part III

Keeping People Out of Jail: Changing How Police View Arrest focuses on the opportunity to use law enforcement’s role as the gatekeeper to the criminal justice system to decrease the number of people who enter it. This section outlines Dr. Robin Engel’s presentation about exploring alternatives to arrest and illustrates, using the Cincinnati Police Department as a case study, how law enforcement can use highly focused location-based policing and a wide range of interventions to reduce arrests and simultaneously reduce crime.

Part IV

Reforming Pretrial Detention: When To Hold The Presumptively Innocent Behind Bars concentrates on the pretrial release or detention decision and the potential for reforming how these decisions are made. This section reviews attorney Timothy Schnacke’s presentation on how the use of secured bonds can result in the unnecessary detention of low-risk defendants pending trial; Dr. Karin Martin’s presentation on the issues surrounding the rise in monetary punishment; Dr. Marie VanNostrand’s presentation on the challenges and promises of measuring and managing pretrial risk using pretrial risk assessments, court reminder notification systems, and pretrial supervision conditions; and the importance of analyzing system costs, as presented by economist Michael Wilson.

Part V

A Call For Research: Building a Robust Field of Pretrial Practice Scholarship highlights the gaps in research into pretrial practices, as underscored by the meta-analysis Dr. Christopher Lowenkamp presented to the Roundtable. This section calls on the academic community to engage in study to ensure that the decisions policymakers and practitioners make at every stage of the pretrial process are based on data-driven evidence that has been rigorously tested and studied.

Part VI

The Path Forward: Changing the Narrative, we look ahead, with an appeal to change the conversation surrounding pretrial in light of the historic decline in violent crime rates, so that a new policy paradigm—one that is focused on human dignity and evidence-based practices—can arise.

Ultimately, reform in pretrial criminal justice will require a commitment to both best practices and our best selves.

Part I

Reviewing The System: Pretrial Practice In The “War On Crime” Era

“The war on crime was a very powerful metaphor, but we’re not in that moment anymore.”

Dr. Jonathan Simon, Professor of Law, UC-Berkeley

Societal Responses to the Increase in Violent Crime

Between 1968 and the late 1990s, America, “traumatized by a historic confluence of large and sustained growth in violent crime interspersed with spectacular micro-moments of violence . . . , committed itself politically to a ‘war on crime.’”¹ Policymakers and the public demanded action, convinced that traditional police strategies and court processes were no match for this new and dangerous era. “[C]rime was viewed as out of control, policing was perceived to be in crisis and ‘there was a strong sense that fundamental changes were needed.’”²

There arose an era of what some criminologists describe as “moral panic” over violent crime, which University of California-Berkeley law professor Jonathan Simon, one of the Roundtable presenters, defined as “the sense that crime is not just threatening our physical or domestic realm, but essentially threatening our honor, our values, our moral standing as a society.” Suddenly, every offender was treated as a potential high rate offender. “Many criminologists in the 1980s and 1990s,” Simon explains, “believed that the arrest pool was inevitably stocked with many such high rate offenders, but that due process requirements and the provision of criminal defense allowed too many of the most experienced to escape through ‘technicalities.’”³

And so the criminal justice system sought to achieve crime control through incapacitation. If we could put enough people behind bars for long enough periods of time, the theory went, “a large enough scale of imprisonment would reduce American crime.”⁴

This commitment to incapacitating offenders influenced every stage of the criminal justice process: from initial decisions to stop and search, to arrests, charging, bail setting, plea agreements, sentencing, and parole policy.⁵ As part of this ‘tough on crime’ wave, politicians and courts put in place or upheld more extreme criminal consequences across the spectrum, expanding the use of life without parole, implementing mandatory minimum sentencing guidelines, imposing three strikes rules, resuming the death penalty in many jurisdictions, and eliminating or reducing parole and forms of executive clemency. As Simon explained at the Roundtable, “Over time, due process became a cog in crime control and the goal of putting people in prison as quickly and efficiently as possible essentially came to dominate reform in every area of pretrial, whether it was policing, whether it was bail, jail, [or] the entire apparatus of prosecution and plea bargaining.”

Initial Contact: Police and the Decision to Arrest

Law enforcement in particular felt pressure from policymakers and the public to respond to the rise in violent crime. One policing theory that gained traction was the “broken windows” model. As explained by Tom Tyler, a Roundtable presenter, “Broken windows theory posits that signs of decline and disorder, whether piles of trash, graffiti, or beggars on the street, encourage more serious crimes in the future.”⁶ Clean up the community, the theory suggested, and crime would go down. Tyler writes: “[T]he model encouraged the police to take proactive steps to prevent major crimes in the future through curtailing the minor crimes that were their assumed precursors.”⁷

Ideally, broken windows policing would focus on those in the community whose behavior put them outside of societal norms. Police would work with community members to identify those individuals everyone could agree were causing the disorder. Some police departments, however, extended the original model to include zero tolerance policies. Zero tolerance moved beyond broken windows and led to widespread arrests for minor crimes like marijuana possession, public urination, or drinking beer on one’s front steps. Rather than focusing on individuals and behaviors that were outside the norm, as suggested by broken windows theory, zero tolerance practices drew ever larger segments of the community into the criminal justice system. Arrests led to jail detention, payments of fines, and criminal records for larger numbers of residents, who suddenly, as Tyler writes, “found themselves being excluded from the category of ‘decent people’ and socially marginalized by the police.”⁸

This concentration on minor lifestyle crimes required more police presence, which resulted in more involuntary police contacts with members of the public. Many departments, most notably the NYPD with its COMPSTAT program, ran crime data to strategically target repeat crime locations. Hot spots policing offered a focused place-based alternative to generalized random patrols, allowing police to direct their resources to trouble spots. Increased police presence in these areas was thought to deter crime but, when combined with zero tolerance policies, hot spots policing became about more than increased visibility. Law enforcement also increased the use of stop, question, and frisk techniques as police began to actively search out and question suspicious individuals on the theory that they might be carrying weapons or drugs. Tyler again explains: “This policy expanded the scope of proactive policing by including people who were not committing any crimes or even engaged in overtly suspicious behavior.”⁹

In New York City, for example, between 2004 and 2012, stop, question, and frisk practices “produced more than 4.4 million involuntary contacts between the police and members of the public . . . , most with the members of minority groups, almost none of whom were carrying weapons or serious drugs. Of these contacts, about one in nine resulted in an arrest or a citation, and about one in five appear to fall short of constitutional grounds of legal sufficiency.”¹⁰

The decision to arrest initiates the pretrial stage and the increased use of arrest as a policing tool brought millions of individuals into the criminal justice system:

- *Law enforcement officers in the U.S. arrest approximately 12 million people per year.*¹¹
- *Between 2004 and 2010, total stops increased 92%, total frisks increased by 161%, and arrests increased 155%.*¹²
- *An arrest is made in this country every three seconds, for approximately 30,000 arrests per day.*¹³
- *Between 1980 and 2013, the misdemeanor arrest rate in New York City increased by 190.5%.*¹⁴

The impact of these arrests did not fall equally across the demographic spectrum. Hot spots policing tended to focus disproportionately on poor, disadvantaged communities and young men of color. According to Simon, “The new goal, repressing violent crime, produced its own racially neutral rationale for targeting neighborhoods of high poverty and crime, which were generally almost 100 percent Black or Black and Hispanic.”¹⁵ Professor Cynthia Jones, whose scholarship focuses on addressing racial disparities in the criminal justice system, noted at the Roundtable that “[t]oo often, race comes into play in making decisions whether to arrest or divert.” Not only are men of color more likely to be detained, studies have shown that once in the system, they have higher bond amounts and higher odds of imprisonment relative to whites.¹⁶

At the Courthouse: How Pretrial Release Decisions are Made

Arrest is only the first step in a pretrial process that involves police, courts, and corrections.

“Pretrial spans the point of arrest through disposition of a case, and includes diversion, jail, pretrial release, and court processing. Decision makers include police, prosecutors, judges and magistrates, jail administrators, and pretrial services professionals, all of whom aim to strike a balance between due process for the defendant, public safety, and efficient court operation.”¹⁷

Once arrested, courts need to decide whether to hold defendants pending trial, release them with conditions, or release them on their own recognizance. In reality, most defendants are spending at least some time behind bars before trial:

- *America leads the world in pretrial detention at three times the world average.¹⁸*
- *From 1995 to 2010, the percentage of federal defendants who were detained pretrial increased from 59% to 76%.¹⁹*
- *The federal government estimates that approximately 38% of presumptively innocent felony defendants are detained for the duration of their cases and, of those, nearly 90% remain in jail because they can't afford to post bail.²⁰*

These numbers exist in a world that looks vastly different from the era in which the war on crime was launched. Violent crime has steadily decreased in the United States and the homicide rate is now at 1960's levels. It is an opportune moment ripe for reconsidering pretrial criminal justice practices and the people and communities they affect.

Actors at each stage of the pretrial process often make decisions independently, and this “silo effect” fails to recognize the impact that every action along the unfolding pretrial process has on future outcomes for each individual. Marie VanNostrand, a pretrial research consultant, outlined some of these decisions at the Roundtable: “Do we warn? Do we cite? Do we arrest? Do we release pretrial? If we do release, under what terms and conditions? From a prosecutor standpoint, do we charge? Do we divert? What alternative prosecution path might we go down? All these decisions have huge implications way down the road.” John Choi, the Ramsey County Attorney in Minnesota, thinks of the criminal justice system as “a giant assembly line, and no one's ever questioned the assembly line. . . We're not thinking about the bigger picture.”

The Roundtable discussions provided an opportunity to take that step back and look at the system as an integrated whole.

Part II

Refocusing Pretrial Practice And Policy On Human Dignity And Procedural Legitimacy

“Contact with the police wouldn’t have to be a bad thing. Contact with the courts wouldn’t have to be a bad thing. It is the style and spirit of the contact that has caused it to be undermining of trust.”

Dr. Tom Tyler, Professor of Law and Psychology, Yale University

The statistics cited in Part I, above, show the volume of people in contact with the pretrial criminal justice system, but they say nothing about the personal and societal impact of those pretrial experiences on individuals, families, and communities. Pretrial justice has been defined as:

“the honoring of the presumption of innocence, the right to bail that is not excessive, and all other legal and constitutional rights afforded to accused persons awaiting trial, while balancing these individual rights with the need to protect community, maintain the integrity of the judicial process, and assure court appearance.”²²

And so the Roundtable discussions did not begin with the nuts and bolts of pretrial practice – those decisions about release, detention, and bail that typically make up this stage of the legal process. Rather, President Travis challenged the discussants to think on a broader level by considering “high order questions” about the values that underlie the system.

Rethinking Pretrial with Dignity in Mind

To stimulate this discussion, Dr. Jonathan Simon, Associate Dean of the Jurisprudence and Social Policy Program at the Boalt Hall School of Law, University of California-Berkeley, presented his paper “Pretrial Dignity: Rethinking Pretrial Procedures and Practices as if Dignity Matters.” The goals of punishment for criminal activity are many, including incapacitation of the dangerous, deterrence of future crime, restitution to the victims, and retribution for society. In the war on crime era, however, Simon argues that “[i]ncapacitating the dangerous to protect the innocent became for a long time the singular principle that began to shape criminal justice from policing, through bail, through disposition, etc.”²³ In response to public safety concerns, he noted in his presentation, “mass incarceration was a value. Part of what we have to come to terms with is the way we set certain values like retribution and incapacitation . . . in the driver’s seat in a way that has had real consequences.”

In so doing, the four values that have traditionally reined in these overall goals and restrained punishment – proportionality, parsimony, citizenship, and social justice – were often disregarded. These values were articulated in the National Academy of Sciences’ report on *The Growth of Incarceration: Causes and Consequences*:

- **Proportionality** “requires that crimes be sentenced in relation to their seriousness and the extent of the offender’s moral culpability.”²⁴
- **Citizenship** as a value requires that “[i]mprisonment, both with respect to its length and its conditions should not strip prisoners” of “[t]he full range of civil society engagements which make up lived membership in modern societies.”²⁶
- **Parsimony** requires that “[p]unishment for crime, and especially lengths of prison sentences, should never be more severe than is necessary to achieve the retributive or preventive purposes for which they are imposed.”²⁵
- **Social Justice**, in the context of sentencing and punishment, “requires that a penal system avoid adding to social inequality or reduced opportunity”²⁷ based on a belief that “prisons should be instruments of justice, and as such their collective effect should be to promote and not undermine society’s aspirations for a fair distribution of rights, resources, and opportunities.”²⁸

Each of these values, Simon suggested, “is better understood as helping us fulfill our commitment to human dignity.” He argues that what has been lost in the race to incapacitate criminals and potential criminals is dignity, which serves as “a master value to explain all four of the others.”²⁹ Human dignity underlies all of the constitutional limitations on criminal procedure – the Eighth Amendment’s ban on cruel and unusual punishment, the Fourth Amendment’s ban on unreasonable searches and seizures, the Fifth Amendment’s protection of the right to remain silent, and the Sixth Amendment’s right to counsel at trial. In Simon’s words, “[F]orty years of making pretrial a form of pre-prison has run its course and . . . the time has come to restore values that we have long insisted on as hallmarks of our legality.”³⁰

According to Simon, emerging evidence suggests that it is possible to treat those in the criminal justice system with human dignity and to reach goals of crime reduction and public safety. In his words, “dignity-enhancing procedures are not only compatible with crime prevention objectives; they may be integral to them.”³¹

A pretrial landscape that focused on human dignity would, in Simon’s vision, begin with eliminating racial profiling as a basis for police stops: “If the real reason, or the only plausible reason, a police officer stops an individual includes their race as a primary consideration, it is not a ‘reasonable’ seizure; not if dignity matters.”³²

Using dignity as a guide would also, in Simon’s opinion, require minimal use of arrest as a policing tool. “Respect for dignity,” he writes, “requires that nobody be placed through the difficulties involved in custodial arrest and jail detention unless the crime which the police have probable cause to arrest them for is one whose seriousness makes a jail or prison sentence possible or even likely.”³³

The Roundtable discussants recognized that focusing the public discourse on dignity as a value in pretrial policy and practice won't be easy. Robert James, the DeKalb County District Attorney in Georgia, noted that discussions of values can't be separated from politics, because many criminal justice decisions are made by elected officials: "The reality is as long as you have an electorate that values safety over dignity, you're going to have elected criminal justice decisions that in some respects adversely impact various segments of the community." Choi agreed and offered a strategy: "The political thing can warp good policy, just tear it up. But then I think back to . . . the value of research and education, not only to the community but also to elected officials, to get that 'I need to hold onto my job mentality' off the table and get down to some good public policy that's effective, that's verifiable, and that shows good outcomes." As Travis noted, "The proposition on the table is not to have a value conversation, but to have a *different* value conversation."

With crime at historic low points, now is an opportune moment for this shift in mindset. Simon suggested that perhaps "we can afford . . . as a nation, to ask what [pretrial justice] would look like if dignity really mattered. Maybe we just couldn't afford to do that in the 1970s and 80s. We might find that we're not going back to that crime control/due process trade-off; we're actually moving to a sustainable model of justice at the pretrial level that will actually shrink the carceral state because it will be controlling crime."

Increasing Respect for the Law through Procedural Legitimacy

To stimulate this discussion, Dr. Jonathan Simon, Associate Dean of the Jurisprudence and Social Policy Program at the Boalt Hall School of Law, University of California-Berkeley, presented his paper "Pretrial Dignity: Rethinking Pretrial Procedures and Practices as if Dignity Matters." The goals of punishment for criminal activity are many, including incapacitation of the dangerous, deterrence of future crime, restitution to the victims, and retribution for society. In the war on crime era, however, Simon argues that "[i]ncapacitating the dangerous to protect the innocent became for a long time the singular principle that began to shape criminal justice from policing, through bail, through disposition, etc."²³ In response to public safety concerns, he noted in his presentation, "mass incarceration was a value. Part of what we have to come to terms with is the way we set certain values like retribution and incapacitation . . . in the driver's seat in a way that has had real consequences."

"Each interaction throughout the system can be handled differently and better – and with each interaction, respect for the law can be increased."

Jeremy Travis, President, John Jay College of Criminal Justice

Dr. Tom Tyler, a professor of both law and psychology at Yale, provided another big picture look at pretrial, presenting a paper on ways to think about improving procedural legitimacy in the criminal justice system as a way of increasing compliance with the law. Tyler's research looks at how legal authority is experienced by people on its receiving end. As he explained, "legitimacy" is the word researchers use to discuss trust and confidence in system actors, and "trust and confidence is central to many behaviors we care about, like obeying the law. People who think the system is legitimate are less likely to break the law."

In "Legitimacy in Pretrial," the paper he presented to the Roundtable, Tyler writes of the paradox of the broken windows model of policing. Broken windows was intended to "show police responsiveness to community concerns and encourage public trust in the motives of the police because people see the police working to address the concerns of the community."³⁴ It was expected to increase popular legitimacy of the police force in the community.

This didn't happen. Because broken windows policing and, in particular, its expansion to zero tolerance policies, increased police contacts with residents, more members of the community were treated as suspected criminals. As a result, the community became less likely to support the police. Tyler writes: "Such individuals are normally motivated in their everyday behavioral choices about whether to obey or break laws by their views about the trustworthiness and legitimacy of the police, so their alienation from the police diminishes public support for policing and increases the rate of crime."³⁵ At the Roundtable, Tyler phrased it this way: "Research reviews show that any form or extent of contact with the criminal justice system is criminogenic."

Tyler's paper collected recent studies showing that if, in contrast, people perceive police as legitimate, they will defer to police authority during personal encounters, increase everyday compliance with the law, cooperate with police, accept police authority, and diminish support for public violence.³⁶

Historically, Tyler told the Roundtable, police departments operated on the belief that "if you drive down the crime rate, the public will trust you and respect your role as a law enforcement agency." But surveys show that despite the decline in crime, trust in the police has generally remained stable over the past 30 years.³⁷ That level of trust is marked by a deep racial divide. A 2011 Pew Foundation poll found that 61% of whites versus 43% of African-Americans view the police as trustworthy.³⁸ Trust in the criminal justice system as a whole, moreover, has declined from 43% in 1993 to 28% in 2011.³⁹

If declining crime rates don't increase trust and confidence, then what does? Tyler's research suggests that legitimacy is built from procedural justice, the perception that the police and the courts do or do not exercise their authority fairly. Tyler explained to the Roundtable: "It means that people want to see that decisions are made fairly, that they're inclusive, that they're neutral, that they can trust the motives of the authorities they're dealing with, and that they're being treated respectfully."

Chief Scott Thomson of the Camden County Police Department in New Jersey, echoed Tyler's overall message. Building trust and confidence, he noted, requires "a transition from the warrior mentality of the police officer to the guardian type of position that we need to be in, which you're starting to see now with the reinvention or revisiting of community policing."

Tyler emphasized to the discussants that legitimacy is not solely a policing issue. "We should be evaluating all aspects of the system, from initial contacts through prison, against standards of perceived fairness, with the idea that our long-term goal is to build legitimacy." Attorney Tim Cadigan, a criminal justice consultant who spent 25 years working in the federal pretrial services and probation systems, concurred: "The backlash against police is a public response to the justice system as a whole. They absorb a lot of the negative stuff that gets directed at probation and parole."

There is opportunity for change. As Tyler summarized in his presentation, "As we move into this new era, it gives us a different framework to try to talk about the policies and practices and potentially argue for their change."

Part III

Keeping People Out Of Jail: Changing How Police View Arrest

“It’s very easy to count arrests. It’s not so easy to count non-arrests.”

Dr. Robin S. Engel, Director, Institute of Crime Science, University of Cincinnati

The criminal courts would lie dormant and the jails would remain empty if not for law enforcement officers arresting individuals they suspect of crime. Arrest starts the pretrial machine in motion. Reduce arrests and there will be fewer people in the system for potential pretrial detention and incarceration outcomes.

But could it possibly be that easy? Isn’t arrest the key to stopping crime and deterring future crime? The Roundtable moved from a broader discussion of values and legitimacy to a discussion of the role of police as the gatekeepers of the criminal justice system. Dr. Robin Engel of the University of Cincinnati’s Institute of Crime Science presented a paper co-authored by Dr. Nicholas Corsaro and Annelise Pietenpol entitled “The Role of Police in Pretrial Justice: Changing How Police View Arrest.” Their work suggests that it is possible to reduce both arrests and crime by changing the nature of initial police-citizen contacts. They propose that police view arrest as a “limited resource”—an option to be reserved for situations when lesser interventions either fail or are inappropriate.⁴⁰ They write: “Of all the potential reform efforts in the area of pretrial justice, police reform efforts designed to significantly reduce the use of arrest while simultaneously reducing crime have the potential for the greatest long-term impacts on the entire criminal justice system.”⁴¹

The initial decision to arrest determines the number of individuals who will require processing, bail, pretrial supervision, or pretrial detention, and the decisions made about those individuals at each of those pretrial stages, in the famous words of Professor Caleb Foote in 1954, “determine mostly everything.”⁴² Engel and her colleagues believe that law enforcement has the best opportunity to transform pretrial as we know it: “The sheer number of cases that are sent into the criminal justice system, the strength of the evidence provided, and type and severity of the offenses, are all within the direct control of the police. These are the same factors that have the strongest impact on pretrial detention and release decisions.”⁴³

Despite a significant reduction in crime over the past two decades, the adult arrest rate has not diminished.⁴⁴ Engel suggests that part of the reason for this is because arrest rates have been used politically as measures of police productivity and within forces to reward officers for effectiveness. Arrests, she contends, have come to be viewed as a valuable work “output,” rather than as what they are—merely one possible “outcome” of an officer-citizen interaction.⁴⁵

“When we develop COMPSTAT systems where all we are doing is measuring performance and the effectiveness of commanders and officers based on the number of stops that they make, or the number of arrests that they make, we are creating this problem.”

Chief Scott Thomson, Camden County Police Department

The Hamilton County/Cincinnati, Ohio Case Study

Engel and her colleagues posed this query: “[W]hat if police came to consistently view arrest as a limited commodity—a tool only to be used when no other alternatives for resolution were readily available?”⁴⁶

The loss of 36% of its jail beds forced the Cincinnati Police Department (CPD) to do just this, and the results demonstrate the potential for using evidence-based policing strategies to reduce arrests and crime simultaneously.

To understand what the CPD did, it’s first useful to look briefly at how policing typically occurs. A 2004 report by the National Research Council on Fairness and Effectiveness in Policing⁴⁷ found that police strategies run along two spectrums:

- ***A wide or narrow focus on locations to be policed:*** Targeted policing strategies like hot spots policing, for example, can be done on a neighborhood or community level, or in
- ***A wide or narrow focus on locations to be policed:*** Targeted policing strategies like an even more highly focused manner “based on analyses of crime patterns that identify repeat crimes, offenders, victims, locations, calls for service, etc.”⁴⁸
- ***A wide or narrow range of interventions used at the point of police-citizen interaction:*** Once police are interacting with the public, they may choose to use a narrow or wide range of interventions with the people they encounter – everything from persuasion, discussion, education, coordination with social services and calls for medical or mental health interventions, to warnings, cite and release and, ultimately, arrest.

The National Research Council (NRC) report found that most police agencies rely on an unfocused level of attention and a narrow range of interventions. In their paper, the Cincinnati team writes, “These types of strategies are the most likely to be ineffective, inefficient, and also highly likely to involve the routine use of arrest as a measure of police activity and response to crime problems.”⁴⁹

In contrast, because of the jail bed crisis, CPD commanders had little choice but to widen their range of interventions and to reserve arrest for the most chronic or high-risk offenders. Police coordinated with the University of Cincinnati for analysis of crime statistics and determined that .3% of the population in violent gangs or groups was responsible for 74% of the homicides. CPD created a special task force—the Cincinnati Initiative to Reduce Violence (CIRV) – and highly focused policing efforts on those individuals. When arrests were made of these individuals, officers wrote the initials “CIRV” on their arrest slips with the understanding that throughout the criminal justice process, these defendants would be prioritized for enforcement action—from bond setting, to pretrial detention decisions, to prosecution.⁵⁰

Non-CIRV offenses weren't ignored, they just weren't prioritized for arrest. District captains were asked to ensure that they were not using the limited jail resources for minor violations that could be handled in alternative ways and to be more strategic about who they were arresting, and why.⁵¹

The result? Shootings decreased 22% and homicides decreased 42%.⁵² In short, the CPD learned that "more arrests do not equate to increases in public safety; rather public safety is enhanced when arrests are limited and strategically focused."⁵³

What can be learned from the CPD case study? Engel noted three things:

- *Use data to determine the causes and perpetrators of the most chronic and violent crimes;*
- *Narrow the definition of place in hot spots policing to focus on those individuals; and*
- *For lesser crimes, widen the range of interventions deployed once police get involved.*

Chief Thompson echoed Engel's description of law enforcement's role as the "entry point into the criminal justice system." Calling this a "watershed moment in policing," Thomson emphasized that it is "time for us [law enforcement] to take an active role in fixing issues on the front end."

Kevin Tully, the Mecklenburg County Public Defender, focused on the benefit of using alternatives to arrest for the safety of police themselves. He queried: "Every time you make an arrest you put your life in danger. Why are you putting your life in danger over sleeping on a park bench?" Tara Boh Klute, the pretrial services manager for the Kentucky Court of Justice, noted that in many cases, "If you really look at who's in that jail, you're going to find that it's a poor defendant charged with a petty crime. If there's not the option to arrest for that low-level offense, then things can actually happen."

Engel believes that "the opportunity for police reform is now. The timing, the stars have aligned. If we are ever to make an impact on police strategies, it is right now." Viewing arrest as a limited resource could have real consequences, in her view, by keeping people out of the system at the outset. President Travis concluded that "We need to have a much richer toolbox of options for police—who are responding to real concerns brought to us by real citizens and communities—than we have now. If we did that better, [people] would never make it into jail, never make it to a bail questions, and they may not even be prosecuted."

Part IV

Reforming Pretrial Detention: When To Hold The Presumptively Innocent Behind Bars

If arrest is the front door to the criminal justice system, then pretrial detention is its waiting room. On any given day in America, nearly a half million individuals who have been convicted of no crimes are being kept behind bars awaiting their days in court.⁵⁴ As Tim Murray, a pretrial justice advocate, put it, the system begs the question: “What is the purpose of arrest? Is it the start of a process, or the start of my punishment?”

Having discussed the overarching values that should guide the system and considered the role of police as the first entry point into it, the Roundtable moved to the next decision point in the process: whether to release or detain a defendant. Ideally, that decision is made using an evidence-based risk assessment tool and by balancing three competing values: the defendant’s right to liberty, the public’s right to safety, and the need to ensure that the defendant will appear at trial. Defendants at high risk to either commit further violent crime or fail to appear would be detained, those at low risk would be released, and those who pose a moderate risk would be released with conditions like pretrial supervision.

In most jurisdictions, however, the decision to release or hold a defendant is made by judges and magistrates either using subjective factors or arbitrarily by applying bond schedules based on the offense. The result is a system in which high-risk defendants with access to resources tend to be released, while low-risk, typically poor, minority defendants, tend to be imprisoned awaiting trial because they cannot post bail.

The stakes of these pretrial decisions are high. Dr. Marie VanNostrand’s research outlines the negative impact that even short-term pretrial detention can have on a defendant:

“Research has shown that being detained pending trial impacts the likelihood of receiving a sentence to incarceration, the length of the sentence to incarceration, and public safety in both the short and long-term. Not surprisingly, the release of ‘high-risk’ defendants is related to higher rates of failure to appear and new crime pending trial. What is less apparent is that even short periods of pretrial detention (as few as 2-3 days) for ‘low-risk’ defendants is related to higher rates of failure to appear, new crime pending trial, and recidivism two years post-disposition.”⁵⁵

Pretrial detention doesn't come cheap. The federal government estimates that the U.S. spends \$9 billion per year holding defendants behind bars pending their days in court.⁵⁶ What this number fails to reflect are the intangible costs of pretrial detention to the defendants, their families, communities, and society as a whole. Incarcerated defendants incur further costs, not only because of the negative impact pretrial detention has on their case outcomes, but also from the risk of losing jobs and housing. These costs may indirectly affect taxpayers in the future by creating a need for human services or from the cost of future crime and additional use of the system. Michael Wilson, a policy and data-modeling consultant who presented "A Cost-Benefit Model for Pretrial Justice" to the Roundtable, demonstrated how to analyze such costs, assigning dollar values to easily assessed items like jail beds as well as to more difficult to quantify items like the costs to potential victims of pretrial crime.⁵⁷ Such a model would allow systems to see the full impact of their pretrial decisions in an effort to make better decisions about who to detain and release, and how.

Pretrial decisions are life changing, especially for the young men of color who are disproportionately likely to be affected. "Research has determined that many people simply outgrow behavior that gets others labeled as delinquent and locked up," said Ronald Day, Associate Vice President of the David Rothenberg Center for Public Policy at the Fortune Society, who spent more than a decade in prison. "The problem is that poor youths' contact with the criminal justice system becomes a detour that hampers their lives long into adulthood." As bail expert Timothy Schnacke put it, simply, "Pretrial detention causes bad things to happen to both the defendants and to society."⁵⁸

Reframing the Bail vs. No Bail Narrative

"How did we, as Americans, allow a mechanism created to free you to become the mechanism that keeps you in?"

Timothy Schnacke, Executive Director, Center for Legal and Evidence-Based Practices

The current norm in American pretrial practice is to require defendants to post a secured money bond to gain pretrial release. Defendants navigate bail amounts set by predetermined bail schedules or at the discretion of judicial decision-makers. Although detention exists as a viable option for those who pose a significant threat to public safety, the current system has led to defendants being held in pretrial detention despite the fact that, under historic rules governing bail, they would be considered low-risk and thus released quickly with no money changing hands. Timothy Schnacke is the Executive Director of the Center for Legal and Evidence-Based Practices in Golden, Colorado, a nonprofit that provides research and consulting for jurisdictions exploring and/or implementing improvements to the administration of bail. He presented to the Roundtable the paper "An Overview of Pretrial Release and Detention in America: Fixing the Narratives for 'Bail' and 'No Bail.'" In Schnacke's words, "despite all logic and, indeed, decades of empirical research showing that secured financial conditions of release lead to unnecessary pretrial detention, the use of those conditions has actually increased about 65% between 1990 and 2009."⁵⁹

Schnacke provided the Roundtable with a historic overview of the purpose and usage of bail, explaining that "the purpose of bail is to release people." Historically, the criminal justice system sought to release low risk, or "bailable," defendants quickly and without requiring any exchange of funds. This was accomplished, going way back to 1275 in medieval England, by the Statute of Westminster, which, for the first time, established the bail/no bail dichotomy. In his paper, Schnacke explained: "Essentially, one was either bailable or unbailable pursuant to the statute, and England's sheriffs were expressly required to release all bailable defendants and to detain all unbailable defendants (both without any money changing hands) under penalty of law."⁶⁰ Release on bail was the norm; detention, the exception.

The system operated for centuries using the personal surety model, in which a reputable person in the community would vouch for the accused without requiring any money up front. The system worked. Low-risk bailable defendants were released to the recognizance of their personal sureties with no money exchange; high-risk, unbailable defendants were detained.

The English system of personal sureties and unsecured bond traveled across the ocean to the American colonies, where it remained in effect through the 1800s. Until that point, Schnacke writes, indemnification of sureties—what we now call secured bonds – was considered unlawful in England and America as “being against the fundamental public policy for having sureties take responsibility in the first place.”⁶¹

What changed? Communities began to run out of personal sureties willing to take responsibility for the accused. Two paths forward arose:

- *In England and the rest of the world with similar personal surety systems, laws were passed to allow judges to release defendants without the need for personal sureties.*
- *In America, however, policymakers turned to secured bonds as a solution, and gave rise to the present for-profit bail bond industry. America, in Schnacke’s words, “made it legal to both profit and be indemnified at bail, essentially allowing the commercial surety system to operate in this country starting in about 1900.”⁶²*

Now, to be released, even traditionally bailable defendants had to pay something up front, making release dependent not only on factors associated with risk of pretrial misconduct or failure to appear, but on the defendant’s ability to pay a secured bond.

How did America transform a process created to free people into one that often operates to keep them behind bars? Schnacke believes this shift came about because, over time, courts and policymakers either ignored or redefined the constitutional limitations that traditionally kept excessive bail and unnecessary pretrial detention in check.

He outlined these changes in his paper. For example, though the Eighth Amendment guards against excessive bail, Schnacke found that “judges created a line of cases holding, essentially, that the financial condition of a bail bond is not necessarily excessive simply because a defendant cannot pay it. . . . Now, so long as it was unintentional, bail amounts could keep a defendant in jail.”⁶³

Schnacke then examined due process as it relates to bail in *U.S. v. Salerno*,⁶⁴ in which the Supreme Court upheld the Bail Reform Act of 1984, which governs bail in the federal court system. In *Salerno*, the Court held that pretrial detention isn’t “punishment,” and thus due process rights aren’t yet triggered. *Salerno* allows for the intentional detention of a much larger class of defendants through “a process called preventive detention, which the Court deemed not to be punishment, but instead to be a lawful response to the ‘regulatory goal’ of preventing danger to the community.”⁶⁵ Federal courts could now consider a defendant’s future dangerousness in making bail decisions.

In Schnacke's view, "The combined narrative of excessive bail and due process has thus become as follows: unintentional pretrial detention is not excessive, and intentional detention is constitutionally permissible."⁶⁶

Schnacke then discussed the impact of equal protection jurisprudence on bail, noting that in this area, neither courts nor legislatures have strained to reframe the equal protection narrative, even though money conditions of release can have an unequal effect depending on a defendant's ability to pay. Instead, he told the Roundtable, "unlike the other things that we redefined or reapplied in different ways, equal protection we have ignored."

"In the absence of a preventive detention statute, courts have used money to keep people locked up, and poor people get swept up in the system."

Cynthia Jones, Professor of Law, American University

The Path Forward

Fixing the narratives that have allowed money bail to predetermine the fate of so many pretrial defendants will require work at the legislative and policy levels to create, in Schnacke's words, "a pretrial release and detention system that is rational, fair, and transparent."⁶⁷

In Schnacke's view, the problems with bail are "complex, but wholly fixable. We have all the tools." Solutions he suggests include:

- *Legislatures can overrule the Excessive Bail Clause cases by adding a single line to their bail laws: "The judicial officer may not impose a financial condition that results in the pretrial detention of the person."⁶⁸ This line is already present in the federal statute and the District of Columbia bail law.*
- *Rather than merely comparing one potential bail amount against another, courts can focus on the term "reasonable" when making bail decisions, "which would tend to discourage any conditions of release that make release impossible."⁶⁹*
- *Finally, society should be brought into the bail discussion: "[C]itizens can and should question the government's use of secured money at bail when that money is arbitrary, unfair, and shown by research to be ineffective."⁷⁰*

"There's no research whatsoever that shows a relationship between someone's ability to post bonds and their danger to the community."

Dr. Marie VanNostrand, Luminosity

Evaluating the Use of Pecuniary Justice

Bond amounts aren't the only monetary aspects of the criminal justice system that poor defendants struggle to pay. Money punishments, known as Criminal Justice Financial Obligations or CJFOs, have become routine in the form of fines, restitutions, surcharges, fees, costs, and other monetary liabilities. Dr. Karin Martin, Assistant Professor of Public Management at John Jay College of Criminal Justice, whose research includes an investigation of criminal justice debt, presented to the Roundtable her paper "Revenue or Justice: An Inquiry into the Role of Money in Punishment."

While fines started out as part of the alternative sanction movement that would keep people out of jail, they are now often added on to incarceration as an additional means of punishment or as issued as an administrative cost of using the system. Criminal monetary penalties are being used more frequently and their amounts are increasing, even though, according to Martin, there is little "empirical support for [their] cost-effectiveness or punitive capacity."⁷¹ There is little doubt, however, that the fines have provided much-needed revenue to the criminal justice system. In New York City, for example, fines generate 47% of all criminal court revenue.⁷² As voters in many jurisdictions look to elected leaders to cut costs, systems are increasingly putting the onus on defendants to cover jail expenses. "This is a problem in all public services," said Matthew Chase, Executive Director of the National Association of Counties, "where we are changing to fee-for-service models because of scarce resources."

Nor is there doubt that the burden of monetary fines is staggering on those saddled with them. In New York's Southern District, for example, over \$300 million is owed for criminal debts.⁷³ That failure to pay comes with severe consequences and can lead to revocation of probation, additional warrants, liens, wage garnishment, tax rebate interception, civil judgments, negative credit reports, and accompanying difficulties in obtaining employment, housing, and transportation.⁷⁴

The economic hardships of these financial penalties are not limited to the people on whom they have been imposed. Taxpayers end up paying more to administer these systems and more still when people are driven to public assistance. These indirect costs have never been measured, so, according to Martin, "we have zero idea at this point the actual cost of this entire world of criminal justice financial obligations."

Martin is optimistic that "there is a way to craft policy that is sane and fair and that does achieve some of these goals." The key, she says, is to challenge three assumptions upon which CJFOs are based:

- *People should pay for using the criminal justice system when, in Martin's view, the criminal justice system serves the general public as a whole and not just those who come in contact with it;*
- *The system of CJFOs is revenue-producing and essentially cost-free when, as Martin concluded, no research exists to assess whether the costs of administering and collecting fines and managing nonpayment outweigh the revenue they bring in; and*
- *All money punishment is equal when, Martin suggests, the punitive effects of a monetary penalty are disproportionate, rising and falling based on the debtor's ability to pay.*

From the corrections perspective, Dr. Marilyn Chandler Ford, the director of the Volusia County Division of Corrections in Daytona Beach, Florida, noted there are also success stories: “Not every jail or prison collects the dollars at [this] rate, and not every system uses a compounding effect.” For those systems that do impose burdensome fines, Martin noted that policy change will require addressing several questions. First, what is the total amount of CJFO debt? Data is spread across many systems and institutions, making it difficult to determine the impact on the system as a whole or on individual debtors. Second, to what extent are monetary penalties—which were conceived as an alternative to imprisonment—being used in conjunction with incarceration? Finally, to determine if CJFOs are cost-effective, what are the costs of fine collection as measured against the burdens on debtors, their families, and the community?

Martin’s hope is that the United States will consider the use of proportional fines or “day fines” as is done in Europe, which are based both on the severity of the offense and the person’s ability to pay, and are issued in lieu of jail time.⁷⁵

Developing Best Practices to Measure and Manage Pretrial Risk

*“The first conversation shouldn’t be ‘What are the conditions of release?’ . . .
The first question is ‘What risk does someone pose?’”*

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

The goal of the pretrial detention or release decisions is, on its face, a straightforward one: Determine which defendants are most likely to reoffend if released and/or which defendants are flight risks who are likely to fail to reappear in court. Dr. Marie VanNostrand of Luminosity, a criminal justice consulting firm focused on the pretrial stage of the criminal justice system, has led numerous large-scale studies on pretrial risk assessment, effective risk management strategies, and the impact of pretrial release and detention decisions. In her paper “Leveraging Data and Analytics to Advance Pretrial Justice,” prepared for the Roundtable and co-authored with Brian Kays, she asks: “[H]ow do we make the most informed pretrial release and detention decisions that will minimize danger to the community and non-appearance in court while maximizing pretrial release?”⁷⁶ The answer, to VanNostrand, is first to measure risk and then to manage it.

Measuring Pretrial Risk

The good news, VanNostrand told the Roundtable, is that “in the past three or four years we’ve learned more about assessing risk pretrial than we’ve ever known.” Advancements have been made in measuring risk through initiatives to develop pretrial risk assessment instruments. The first research-based multijurisdictional pretrial risk assessment instrument in the U.S. was developed in 2003 for use in The Commonwealth of Virginia. Similar assessments are now used in six states and in the federal court system, including the Public Safety Assessment-Court (PSA-Court) spearheaded by an LJAF initiative and implemented in Kentucky beginning in 2013, with, VanNostrand notes, “very promising results.”⁷⁷

The pretrial risk assessments vary and depending on the tool used, may factor in the defendant’s record of arrests or convictions, prior failures to appear, substance abuse history, residential stability, employment status, and the nature of the pending charges. Such tools may also evaluate the defendant’s marital status, educational level, living situation, whether the defendant has health insurance, and whether the defendant’s driver’s license is suspended.⁷⁸

Some Roundtable discussants cautioned against too heavy a reliance on pretrial risk assessment instruments. Jonathan Simon queried, “Is this just replacing the cops ‘I’m arresting the bad guys’ with the technocrats ‘I’m arresting the high-risk guys’?” Some factors commonly assessed – employment status, health insurance, prior arrests and convictions, and educational level – were viewed as possibly problematic because of “their potential to introduce bias based on race, gender, and socioeconomic status.”⁷⁹ As Simon noted, “Having an arrest at 16 is a mark of being a potential high rate offender, but your chances of having that arrest are hugely skewed based on race.” But the alternative to using a pretrial risk assessment is the continued use of a system that is not based on evidence. “I find myself defending the position of using data, [but] a risk assessment is a tool to inform the decision,” VanNostrand explained, “it is not the decider. The decisions that are being made are very subjective, they’re very arbitrary, and they oftentimes don’t achieve our goals and result in disparity and discrimination along the way. . . . We can use data to help identify particular programs or interventions or risk to help make better informed decisions.”

Others worried that using an instrument would remove the individual nuances of a case. “I don’t want to rely so heavily on that risk assessment that I forget about the [defendants’] dignity, the respect, the humanity, and all of the other things that I think we need to take into consideration,” said Maryann Moreno, a Superior Court judge in Spokane County, Washington. But John Creuzot, a former state judge in Texas, spoke from the judicial perspective on the value such a tool can add to the process: “A system demands that there be some kind of predictability that makes sense along the way from case to case and from court to court, and when you have a validated risk assessment properly done and administered and coming up with the proper answers, that gives the lawyer something to work with that he or she can understand, that the judge can understand, that the prosecutor can understand. Everybody is on the same page, finally.”

The reality is that the vast majority of decisions are being made without any tools, and it’s not working. Over 90% of U.S. jurisdictions use no evidence-based pretrial risk assessment when making pretrial decisions on detention, release, and pretrial supervision conditions.⁸⁰ How decisions are made in these jurisdictions is a concern for former New Jersey Attorney General Anne Milgram of LJAF. “Every time we pull data, we find the exact same thing,” she stated. “More than 50% of high-risk people are released and low-risk people are being kept in jail at high rates.”

Managing Pretrial Risk

“From a prosecutor’s perspective, our job is to seek justice and not to seek convictions or, in this context, lack of release during the pretrial process. What that means is that if the right thing to do is agree to certain conditions of pretrial release, . . . then as a prosecutor I have to and I should do that.”

Robert D. James, Jr., DeKalb County District Attorney, Decatur, Georgia

Though the use of assessments to measure pretrial risk is still the exception, there have been efforts to develop evidence-based tools, as shown above. In contrast, there have been far fewer advances in legal and evidence-based practices short of pretrial detention that can be used to manage the risks of re-offense pending trial and failure to appear in court.

Courts impose a variety of pretrial release conditions in an effort to manage the risk of pretrial misconduct and flight. VanNostrand conducted a comprehensive review of research into the following release conditions to determine their effectiveness in reducing unnecessary detention and assuring court appearance and community safety:

- *Court date reminders and notifications*
- *Electronic monitoring*
- *Pretrial supervision*
- *Drug testing*

Of these, she found that “reminding defendants of their court date is the one release strategy that is consistently supported by research with results demonstrating an impact (of varying degrees) on reducing missed court appearances. Court reminders were identified as a promising practice while it was noted that more rigorous research would be beneficial.”⁸¹

VanNostrand also identified pretrial supervision as a “risk management strategy that appears to have promise.”⁸² Pretrial supervision practices vary greatly across jurisdictions and may involve face-to-face contact, home visits, monthly phone calls, automated phone check-ins, and daily in-person reporting by defendants.⁸³ Given this variety, there is an opportunity to further research the efficacy of the types and frequency of pretrial contacts with defendants to determine what an ideal evidence-based pretrial supervision strategy for managing risk would look like.

Despite their popularity as pretrial conditions, VanNostrand found the research to be inconclusive on the effectiveness of drug testing and electronic monitoring in managing pretrial risk. “In fact,” she writes, “courts across the country order various types of conditions intended to manage pretrial risk without research to support their effectiveness (e.g., continue or actively seek employment; continue or start an education program; restrictions on personal association, residence, or travel; and location restriction programs such as abiding by a curfew, home detention, or electronic monitoring).”⁸⁴

In practice, this can be extraordinarily burdensome to defendants, as Janice Radovick-Dean, the director of the Fifth Judicial District of Pennsylvania’s Pretrial Services Department, noted: “Some of the conditions make judges and magistrates feel better, but you’re really making defendants fail because they have to keep up with so many new responsibilities in addition to their livelihoods.”

“We’re requiring people to pee in a cup and be watched and they have to pay for that, [and] we don’t know if it’s effective. It’s degrading on every level and you [haven’t been] convicted of anything.”

Tara Boh Klute, General Manager, Kentucky Court of Justice, Administrative Office of the Courts, Division of Pretrial Services

The Need for Data

The truth is that research in this area is full of gaps. Data on pretrial outcomes—release, detention, re-offense, and failure to appear – is contained in multiple separate agency databases with little or no linkage that would allow researchers to connect and track individual cases across systems. Because of this, “the number and percentage of defendants released or detained pending case disposition is unknown.”⁸⁵

The biggest barrier to conducting research in managing pretrial risk is the lack of uniformly kept, easily accessible, and usable data that links individuals, cases, and outcomes across agency systems. Ultimately, criminal justice systems must be able to answer three basic questions:

- *What is your pretrial release rate?*
- *What is your pretrial court appearance rate?*
- *What is your public safety rate?*⁸⁶

The data necessary to answer these questions is spread across five entities: law enforcement offices, jails, courts, state and federal criminal history records, and pretrial service administrations. Even when pulled, the data is difficult to use, as each agency logs the information it needs to perform its particular task within the criminal justice system without linking information on an individual or case basis so that the system as a whole can be examined.

To VanNostrand, data and analytics are the key to advancing pretrial justice. As she told the Roundtable, “I would argue that we don’t know what works solely because we don’t have the data.” In the short term, she calls for modifications to allow data to be linked at the person, arrest event, and court case levels across pretrial agency actors. In the long term, she recommends that “as data systems are upgraded or replaced, planning for changes should be approached from a wider *criminal justice* system perspective and not simply an internal agency perspective.”⁸⁷

Obtaining and leveraging this data could produce powerful results. As she shared with the Roundtable, VanNostrand believes that with this knowledge, “We truly can substantially advance pretrial justice, [and] we can build a pretrial system that is risk-based, where the absolute highest risk defendants are detained, the lowest risk defendants are released with minimal or no conditions, and we have proven strategies and interventions to deal with defendants who present certain risks. This is within our reach.”

Part V

A Call For Research: Building A Robust Field Of Pretrial Practice Scholarship

One fact stood out from the Roundtable and the academic papers submitted in support of it: Though the U.S. criminal justice system makes thousands of life-changing decisions each day, it doesn't very often make those decisions using evidence-based legal principles that have been found to be most effective in reducing crime, arrests, pretrial detention, and system costs. Academics can play a vital role in providing the information necessary for policymakers and practitioners to make more effective decisions. "We need to bring the scholarly community to bear as an ally in the reform effort," President Travis noted.

In a meta-analysis of existing research studies on the pretrial process, Dr. Christopher Lowenkamp, a social science analyst at the Administrative Office of the U.S. Courts, together with his colleagues, sought to "comprehensively and rigorously review [existing literature] in order to determine which practices are most effective at reducing a defendant's risk for failure to appear and new arrest pending case disposition."⁸⁸ Lowenkamp presented to the Roundtable their paper "A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions." What the team found was that of over 800 potential studies identified, fewer than 20% contained data and, of those, fewer than 20% contained information that could be coded for meta-analysis. Most of this research was unpublished and even those studies that did provide usable data still failed to report basic descriptive statistics or articulate reasons for methodological decisions.⁸⁹ The authors' conclusion: The research reviewed "lacks enough methodological rigor to make any concrete conclusions."⁹⁰ They made a broad call to action: "[M]ore peer-reviewed, quantitative research needs to be completed regarding interventions for pretrial services."⁹¹

Given the gaps in our knowledge, the following areas appear ripe for scholarship. The Laura and John Arnold Foundation, in conjunction with the John Jay College of Criminal Justice and the participants in the Roundtable on Pretrial Practice therefore call on those in the field to engage in statistically-solid, data-driven research in the following areas:⁹²

- 1. *The Arrest Stage and the Role of Police***
Research is needed on the potential impact the police can have on enhancing pretrial justice, in particular exploring the impact of using alternatives to arrest.
- 2. *The Bail Decision***
More research is needed to determine whether secured bonds serve as a deterrent to failure to appear or pretrial crime.
- 3. *Pretrial Risk Measurement and Pretrial Risk Assessment Tools***
More research is needed in the area of risk assessment development and implementation, tests of risk assessment validity, the nuances of predicting failure to appear, and how to best use the information produced by risk assessment instruments.⁹³

4. Risk Management through Pretrial Release Conditions

The available research on the effectiveness of pretrial release conditions and interventions is limited. More research is needed to determine the efficacy of the following pretrial conditions:

- *Electronic monitoring*
- *Drug testing*

Though research shows the following conditions show promise in managing pretrial risk, practices vary widely from jurisdiction to jurisdiction. Research is needed to standardize best practices for:

- *Court reminder systems, to determine the nature and frequency of the most effective court date reminder notification mechanisms; and*
- *Pretrial supervision conditions, to determine best practices and an ideal standard for the frequency of pretrial contacts, the nature of those contacts, and with whom those contacts are made.*

5. The Costs of Pretrial Practices

More research is needed into the use of money punishments in pretrial, as well as into analyzing the costs and benefits of the system as a whole:

- *Whether the revenue from Criminal Justice Financial Obligations (CJFOs) exceeds the costs of administering and collecting them.*
- *Whether and how CJFOs are viewed by different types of offenders as a punitive measure.*
- *Increased cost-benefit analyses of the effects of pretrial decision-making that consider not only the costs of jail beds versus pretrial supervision, but also factor the costs to defendants, their families, and society of pretrial detention and release.*

Part VI

The Path Forward: Changing The Narrative

“Policies should be data-driven, but they should also be value-defined.”

Jeremy Travis, President, John Jay College of Criminal Justice

The current pretrial criminal justice system has been defined by decades of policing strategies, judicial decisions, and legislative policies implemented in reaction to public concern about violent crime.

With violent crime reaching historically low levels, it’s time to change that narrative.

The purpose of the Roundtable was to surface issues related to pretrial practice in the criminal justice system and to discuss bold ideas about reform. Several areas of consensus arose:

- *Historically low crime rates present an opportunity to refocus policy on the value of human dignity to counter incapacitation of criminals and procedural efficiency as drivers of practice.*
- *The pretrial system’s disparate parts need to be viewed as a coherent and integrated whole, with policymakers and practitioners recognizing how decisions made at one stage affect the others.*
- *Exploring alternative strategies to arrest whenever possible has the potential reduce the number of individuals entering the criminal justice system and, thus, the negative consequences that ensue from such contacts.*
- *There is an opportunity for scholarship and a need for research to provide data that policymakers and practitioners can use to make better decisions and exercise their discretion wisely at all points of the process.*

The pretrial process, rethought, can maximize public safety and protect the rights of the defendants. A message must go out to the public and all stakeholders about what works and what doesn’t work in reducing crime, arrest, and costs so that a new public policy paradigm can arise.

Reform of the pretrial criminal justice system will require actors from across the spectrum—from arrest to case disposition—to work together: law enforcement, courts, prosecutors, public defenders, judges, court officials, pretrial services administrators, corrections officials, outside service providers, defendants, and victim advocates, as well as scholars, politicians, and policymakers at the federal, state, and local government levels.

No one believes this process will be simple. As Robin Engel noted, “Organizational change is not quick. It’s not easy. It’s not by accident. It’s by design. It takes planning and hard work.” John Choi, the Ramsey County Attorney, put it this way: “A narrative can be developed that’s focused around better outcomes. We will do something that will not cost more, that will keep the public safe, that will make people better, and is based around intervention.”

APPENDIX A

Discussants' Biographies

Though their expertise often covered more than one aspect of pretrial, the discussants' core backgrounds broke down as follows:

Law Enforcement

Chief J. Scott Thomson serves as the Chief of Police for the Camden County Police Department in New Jersey, after decades of ascending through the ranks of law enforcement. Chief Thomson also 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., and the board of advisors for New York University School of Law Center on the Administration of Criminal Law. In 2011, Chief Thomson received the Gary P. Hayes Award from the Police Executive Research Forum.

Anne Milgram, J.D., is the Vice President of Criminal Justice at the Laura and John Arnold Foundation. Prior to joining the Arnold Foundation, Ms. 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. Ms. Milgram implemented a statewide program to improve public safety through prevention of crime, law enforcement reform, and re-entry initiatives. She also has 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.

Prosecutors

John Choi serves as the Ramsey County Attorney in Saint Paul, Minnesota, following four years as City Attorney for Saint Paul. He is known for innovative reforms in the criminal justice system, including introducing the use of GPS technology to keep domestic violence victims safe in Minnesota, implementing new performance-based outcomes for juvenile diversion programs, creating a pre-charge diversion program, and establishing a Veteran's Court in Ramsey County. He was honored by his colleagues in North America for his innovation and leadership with the International Municipal Lawyers Association's top award for City Attorneys in 2009.

Robert D. James, Jr., serves as the DeKalb County District Attorney in Decatur, Georgia, where he oversees 155 employees while administering a \$12M annual budget and prosecuting more than 8,000 felony cases each year. In 2008, Mr. James launched the Jobs Not Jail year-long initiative, providing first-time offenders with an opportunity to complete their education, participate in job/life skills training, and provide job placement. He also created the unique and innovative Project Perfect Attendance program as part of his goal to redefine the justice system in DeKalb County. Prior to becoming District Attorney, Mr. James served as the DeKalb County Solicitor-General which prosecutes criminal misdemeanor offenses filed in the State Court of DeKalb County.

Public Defenders

Kevin Tully has served as Public Defender for Mecklenburg County in Charlotte, North Carolina, since 2007, after nearly two decades working for the office in many positions. He oversees the largest public defender's office in North Carolina, with a staff of 62 lawyers and 35 support professionals, including investigators, legal assistants, and social workers. The Mecklenburg County Public Defender Office represents an annual average of 19,000 clients in adult criminal trial court. He received his J.D. from the University of North Carolina-Chapel Hill.

Pretrial Services

Tara Boh Klute is the General Manager for the Kentucky Court of Justice, Administrative Office of the Courts, Division of Pretrial Services. In this position, she developed the program mission, goals, and objectives, pretrial risk assessment and data management tools, and the training module for new and existing staff. She also created an inter-disciplinary training program with the Department of Public Advocacy and the Circuit and District Judicial Colleges. Ms. Klute led the design and implementation of the Pretrial Release Information Management pretrial case management system known as PRIM.

Dr. Christopher Lowenkamp is currently employed by the Administrative Office of the US Courts-Probation and Pretrial Services Office. He is the co-author of numerous training curricula for criminal justice staff. He is also the co-author of numerous risk assessment instruments, including the Ohio Risk Assessment System, the Post-Conviction Risk Assessment, the Pretrial Risk Assessment, and the Pretrial Services Assessment-Court Version. He is internationally recognized as an expert in risk assessment and supervision practices. He previously served as the director of the Center for Criminal Justice Research and associate director of The Corrections Institute at the University of Cincinnati.

Janice Radovick-Dean is the Director of the Fifth Judicial District of Pennsylvania's Pretrial Services Department in Pittsburgh, Pennsylvania, and previously served in the Allegheny County Probation Department. Ms. Dean has been instrumental in the creation of policies and procedures and the overall changes made in the department and the Court. She serves as Immediate Past President of the Pennsylvania Pretrial Services State Association and as the Affiliate Director for the National Association of Pretrial Services.

Courts

Judge John C. Creuzot currently practices criminal defense law in Dallas, Texas, after serving as a State District Judge for over two decades and, before that, working as a felony prosecutor. Judge Creuzot is nationally recognized as an expert in drug courts, criminal justice reform, and evidence-based sentencing. His initiatives include the founding of Dallas County's first drug court, which has achieved a 68% reduction in recidivism and boasts over \$9.00 in avoided criminal justice costs for every dollar spent on participants in the program.

The Honorable Maryann Moreno was appointed to the Washington State Superior Court bench in 2003 and served as Presiding Judge from 2008-2011. Prior to her appointment, she worked both as a private criminal defense attorney and as a public defender for Spokane County. She is a member of the state presiding judge education committee, the sentencing guidelines commission, the capital qualification committee, and the criminal rules committee. She is currently working at the county level with other criminal justice partners to implement improvements to pretrial detention decision making, including development of an appropriate risk tool and other evidence-based practices.

Corrections

Dr. Marilyn Chandler Ford is the Director of the Volusia County Division of Corrections, a 1500-bed jail system in Daytona Beach, Florida. She has held a variety of positions within the Division, in research and planning, as supervisor of classification and programs, finance, human resources, and training, and as institutional warden. She has published on jails, youthful offenders, leadership, juries, and social control. Dr. Ford was appointed to Florida's Criminal Justice Executive Institute Policy Advisory Board in 2014. She is a charter member and past president of the Association of Women Executives in Corrections and a Certified Jail Manager.

Public Policy Advocates

Matthew D. Chase is the Executive Director of the National Association of Counties, the only national association representing America's 3,069 county governments. During his professional career, Mr. Chase has focused on promoting America's community and economic competitiveness, strengthening the intergovernmental cooperation of federal, state, and local officials, and engaging local government officials in the federal policymaking process. In addition, he is a regular presenter on the impact of federal budget and policy trends on local governments and communities.

Ronald F. Day is the Associate Vice President of the David Rothenberg Center for Public Policy at the Fortune Society, where he oversees advocacy efforts to reduce reliance on incarceration, promote model programming for the incarcerated population, change laws and policies that create barriers for successful reintegration, and foster a just and equitable criminal justice system. He is passionate about reentry, reducing recidivism, dismantling mass incarceration, and addressing the stigma of incarceration. He is a criminal justice doctoral student at the CUNY Graduate Center / John Jay College of Criminal Justice and an Adjunct Instructor at John Jay.

Criminal Justice Consultants

Tim Cadigan is Senior Associate of Chesterfield Associates of Maryland, where he consults with state, county, and local jurisdictions on probation, pretrial services, substance abuse treatment, judicial/ attorney training on criminal justice issues, and racial disparity in criminal justice. For more than 25 years, he worked in the federal pretrial services and probation system. In these roles, he led the data analysis program, developed evidence-based programming for the federal pretrial services system, including implementing the Pretrial Services Risk Assessment, and developed federal policies and procedures incorporating evidence-based programs.

Tim Murray is the Director Emeritus of the Pretrial Justice Institute and the current Executive Director of its Institute for Justice Planning, providing planning support to jurisdictions engaged in criminal justice system reform. His extensive pretrial justice experience includes management and executive positions with the pretrial services systems in Washington, D.C. and Miami-Dade County. While in Miami, he was the principal architect and administrator of the nation's first drug court and he went on to serve with the U.S. Department of Justice as first director of the Drug Court Program Office. He is a lifetime member of the National Association of Pretrial Services Agencies and the recipient of the Association's most prestigious honor, the Ennis J. Olgiati Award.

Timothy R. Schnacke is the Executive Director of the Center for Legal and Evidence-Based Practices, a Colorado nonprofit that provides research and consulting for jurisdictions exploring and/or implementing improvements to the administration of bail. In addition to his consulting role, he serves as a pretrial faculty member and has authored pretrial materials for the National Institute of Corrections. He currently co-chairs the American Bar Association's Pretrial Justice Committee and, in 2014, he received the John C. Hendricks Pioneer Award from the National Association of Pretrial Services Agencies for his work promoting pretrial justice.

Dr. Marie VanNostrand is the Justice Project Manager of Luminosity, a research entity based in Florida that seeks data driven justice solutions. Prior to joining Luminosity, she worked in the criminal justice system for 15 years in a variety of positions, including alcohol safety case manager, probation and parole officer, pretrial services agency manager, and criminal justice analyst. Dr. VanNostrand is a national expert in the pretrial stage of the criminal justice system and has led numerous large-scale studies on pretrial risk assessment, effective risk management strategies, and the impact of the pretrial release and detention decision.

Michael Wilson is an economist who works around the country as a cost-benefit and criminal justice research consultant. In this role he has worked closely with counties to build local capacity by developing cutting-edge criminal justice tools, including cost-benefit models, jail and policy projections tools, and a pretrial specific cost-benefit model. He works with the Pew Charitable Trust to provide technical assistance in implementing cost-benefit models to multiple states and counties.

Criminal Justice Scholars

Dr. Robin S. Engel is Professor of Criminal Justice at the University of Cincinnati and Director of the Institute of Crime Science. Dr. Engel's work involves establishing academic-practitioner partnerships and promoting best practices in policing and criminal justice. Her research expertise includes quantitative and qualitative assessments of police behavior, police-minority relations, police supervision and management, criminal justice policies, criminal gangs, and crime reduction strategies. For the last several years, she has been ranked among the top academics, and the number one female academic, in the field of criminal justice/criminology. She is the Principal Investigator for the Cincinnati Initiative to Reduce Violence, which resulted in several prestigious team awards.

Cynthia E. Jones is a Professor of Law at American University in Washington, D.C., where she teaches courses in evidence, criminal law, criminal procedure, and a seminar on Race, Crime and Politics. Professor Jones co-founded the Washington College of Law Criminal Justice Practice and Policy Institute in 2013 and each year she conducts numerous evidence training seminars for federal and state judges. She is the former Executive Director of the Public Defender Service for the District of Columbia, the former Deputy Director of the District of Columbia Pretrial Services Agency, and has served as the Director of the American Bar Association Racial Justice Improvement Project. Professor Jones currently serves on the governing boards of the Sentencing Project and the Pretrial Justice Institute.

Dr. Karin Martin is Assistant Professor of Public Management at John Jay College of Criminal Justice and Faculty Director of the Tow Policy Advocacy Fellowship, a program of the Prisoner Reentry Institute. Her current projects include a multi-method investigation of criminal justice debt, a survey experiment examining dehumanization in the criminal justice system, and an assessment of the role of implicit racial bias in support for punitive crime policy. She was a post-doctoral scholar in the Psychology Department at UCLA, where she was also a Fellow with the Center for Policing Equity. She has been a Fellow at the Center for Research on Social Change at UC Berkeley, a Berkeley Empirical Legal Studies Fellow, and a National Science Foundation-funded Fellow in the Integrated Graduate Education Research and Training Program in Politics, Economics, Psychology, and Public Policy.

Dr. Jonathan Simon is the Adrian A. Kragen Professor of Law at UC Berkeley and the faculty director of the Center for the Study of Law & Society. Professor Simon's scholarship includes award-winning books on parole, *Poor Discipline: Parole and the Social Control of the Underclass*, and the transformative politics of crime fear in America, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. His most recent book, *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America*, explores the momentum for criminal justice reform brought on by the Supreme Court's historic *Brown v. Plata* decision in 2011.

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, Mr. Travis directed the National Institute of Justice, the research arm of the U.S. Department of Justice. Prior to his service in Washington, he served as deputy commissioner for Legal Matters for the New York City Police Department, a special advisor to New York City Mayor Edward Koch, and special counsel to the Police Commissioner of the NYPD. Mr. Travis 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.

Dr. Tom R. Tyler is the Macklin Fleming Professor of Law and Professor of Psychology at Yale Law School. Professor Tyler's research explores the role of justice in shaping people's relationships with groups, organizations, communities, and societies. In particular, he examines the role of judgments about the justice or injustice of group procedures in shaping legitimacy, compliance, and cooperation. He is the author of several books, including *Why People Cooperate; Legitimacy and Criminal Justice; Why People Obey the Law; Trust in the Law;* and *Cooperation in Groups*. He was awarded the Harry Kalven prize for "paradigm shifting scholarship in the study of law and society" by the Law and Society Association in 2000 and, in 2012, was honored by the International Society for Justice Research with its Lifetime Achievement Award for innovative research on social justice.

ENDNOTES

1. Simon, Jonathan, “Pretrial Dignity: Rethinking Pretrial Procedures and Practices as if Dignity Matters” at 2. Unpublished conference paper presented at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 18, 2015.
2. Tyler, Tom, “Legitimacy in Pretrial” at 2 (quoting Bayley, David H. & Nixon, Christine, “The Changing Environment for Policing, 1985-2008,” Executive Session on Policing and Public Safety, Harvard/NIJ, Sept. 2010). Unpublished conference paper presented at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 18, 2015.
3. Simon, *supra* n.1 at 9.
4. *Id.*
5. *See id.*
6. Tyler, *supra* n.2 at 3.
7. *Id.* at 4.
8. *Id.* at 6 (citations omitted).
9. *Id.* at 9.
10. *Id.* (citations omitted). A study of NYPD stops between 2003-2009 found that in 1.7% of stops police found contraband; 1.09% of stops police found non-gun weapons; and .15% of stops police found guns. *See id.* at 10 (citations omitted).
11. Schnacke, Timothy R., “An Overview of Pretrial Release and Detention in America: Fixing the Narratives for ‘Bail’ and ‘No Bail’” at 8. Unpublished conference paper presented at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 18, 2015.
12. Engel, Dr. Robin S., Corsaro, Dr. Nicholas, and Pietenpol, Annelise, M.P.A., “The Role of Police in Pretrial Justice: Changing How Police View Arrest” at 12. Unpublished conference paper presented by Dr. Engel at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 18, 2015.
13. VanNostrand, Dr. Marie & Kays, Brian W., “Leveraging Data and Analytics to Advance Pretrial Justice” at 1 (citation omitted). Unpublished conference paper presented by Dr. VanNostrand at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 19, 2015.
14. Engel, *supra* n.12 at 12 (citation omitted).
15. Simon, *supra* n.1 at 8 (citation omitted).
16. Engel, *supra* n.12 at 4 (citation omitted).
17. Wilson, Michael & Justice System Partners, “A Cost-Benefit Model for Pretrial Justice” at 1. Unpublished conference paper presented by Mr. Wilson at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 20, 2015.
18. Schnacke, *supra* n.11, at 7 & n.12 (citing David Berry & Paul English, *The Socioeconomic Impact of Pretrial Detention* (Open Society Foundation 2011)).
19. U.S. Dept. of Justice, Bureau of Justice Statistics, “Special Report: Pretrial Detention and Misconduct in Federal District Courts, 1995-2010” (Feb. 2013), available at <http://www.bjs.gov/content/pub/pdf/pdmfdc9510.pdf>.
20. Schnacke *supra* n.11, at 8 & n.15 (citing Reaves, Brian A., “Felony Defendants in Large Urban Counties, 2009 – Statistical Tables” (BJS 2013), available at <http://www.bjs.gov/content/pub/pdf/fdluc09.pdf>).
21. Dills, Angela K., Miron, Jeffrey A., and Summers, Garrett, “What Do Economists Know About Crime?” (National Bureau of Economic Research 2008) at 32, fig. 2. Available at <http://www.nber.org/papers/w13759.pdf>.
22. Engel, *supra* n.12 at 3 (quotation omitted).

23. Simon, *supra* n.1 at 5.
24. Travis, Jeremy & Western, Bruce, eds., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (National Academy of Sciences 2014) at 324 [NAS Report].
25. NAS Report, *supra* n.24 at 323.
26. *Id.*
27. NAS Report, *supra* n.24 at 332.
28. *Id.* at 23.
29. Simon, *supra* n.1 at 5.
30. *Id.* at 4.
31. *Id.* at 10.
32. *Id.* at 11.
33. *Id.* at 13.
34. Tyler, *supra* n.2 at 11.
35. *Id.* at 7.
36. *See id.* at 12.
37. *Id.* at 11 (citations omitted).
38. *Id.* at 11-12 (citation omitted).
39. *Id.* at 11 (citations omitted).
40. Engel, *supra* n.12 at 23.
41. *Id.* at 5 (citation omitted).
42. VanNostrand, *supra* n.13 at 3 (citation omitted).
43. Engel, *supra* n.12 at 7.
44. *See id.* at 7.
45. *Id.* at 8.
46. *Id.* at 9.
47. Skogan, Wesley & Frydl, Kathleen, eds., *Fairness and Effectiveness in Policing: The Evidence*, National Research Council (The National Academies Press 2004), available at <http://www.nap.edu/catalog/10419/fairness-and-effectiveness-in-policing-the-evidence>.
48. Engel, *supra* n.12 at 10.
49. *Id.*
50. *Id.* at 20-21.
51. *Id.* at 22.
52. *Id.* at 21.
53. *Id.* at 23-24.
54. Walmsley, Roy, *World Pre-trial/Remand Imprisonment List* (2d ed.) (International Centre for Prison Studies 2014) at 1. Available at http://www.prisonstudies.org/sites/default/files/resources/downloads/world_pre-trial_imprisonment_list_2nd_edition_1.pdf.
55. VanNostrand, *supra* n.13 at 3 (citations omitted).
56. Schnacke at 9 (citing National Symposium on Pretrial Justice: Summary Report of Proceedings (BJA/PJI 2011) at 30 (statement of Attorney General Eric Holder)).
57. Wilson, *supra* n.17.
58. Schnacke, *supra* n.11 at 9.
59. *Id.* at 8 (citations omitted).
60. *Id.* at 11.
61. *Id.* at 13.
62. *Id.* at 15.
63. *Id.* at 19.
64. *United States v. Salerno*, 532 U.S. 1009, 121 S. Ct. 1737, 149 L. Ed. 2d 661 (2001).
65. Schnacke, *supra* n.11 at 20.

66. *Id.* at 21.
67. *Id.* at 25.
68. *Id.*
69. *Id.* at 26.
70. *Id.*
71. Martin, Dr. Karin D., “Revenue or Justice: An Inquiry into the Role of Money in Punishment” at 4. Unpublished conference paper presented at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 19, 2015.
72. *Id.* at 6.
73. *Id.* at 7.
74. *Id.* at 7-8.
75. *Id.* at 15.
76. VanNostrand, *supra* n.13 at 3.
77. *Id.* at 6.
78. *See id.* at 4-5.
79. *Id.* at 4-5.
80. VanNostrand, *supra* n.13 at 15.
81. *Id.* at 7.
82. *Id.*
83. *Id.* at 7-8.
84. *Id.* at 8-9.
85. *Id.* at 1.
86. *Id.* at 14.
87. *Id.*
88. Bechtel, Kristin, M.S., Holsinger, Dr. Alexander, Lowenkamp, Dr. Christopher T., and Warren, Madeline J., B.A., “A Meta-Analytic Review of Pretrial Research: Risk Assessment, Bond Type, and Interventions” at 4. Unpublished conference paper presented by Dr. Lowenkamp at the Roundtable on Pretrial Practice, John Jay College of Criminal Justice, New York City, March 19, 2015.
89. *Id.* at 24.
90. *Id.* at 24-25.
91. *Id.* at 27.
92. LJAF and the John Jay College of Criminal Justice gathered stakeholders for a two-day follow-up “Roundtable to Develop a National Pretrial Research Agenda” on October 26-27, 2015 in New York City to further formulate and prioritize scholarship in this field.
93. *Id.* at 26. *See also* VanNostrand, *supra* n.13 at 9 (“substantially more research is needed to improve our ability to measure pretrial risk”).

