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The Pretrial Services Act: 25 Years Later

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THE 25th ANNIVERSARY of the Pretrial Services Act of 1982 has special significance for the District of Maryland because this District was one of the 10 original "demonstration" pretrial services agencies in our federal system. The officers during the early years of pretrial services were true pioneers. They helped to develop policies, standards, regulations and protocols about how pretrial services would be performed in our federal courts. Their pioneering efforts helped demonstrate that by providing verified information to the court and providing necessary services to defendants released pending trial: 1) crime committed by persons released on bail could be reduced; 2) the volume and cost of unnecessary detention could be reduced; and 3) the nonfinancial release provisions that had been outlined in the 1966 Bail Reform Act could be more effectively utilized.

One of the former Chief Judges in the District of Maryland was a key witness during testimony before a Senate Judiciary Subcommittee that was considering expanding pretrial services to all federal judicial districts. The supportive testimony of Chief Judge Edward S. Northrop more than 25 years ago seems to still apply today:

> *The Judicial Offices of the Court have benefitted greatly from having timely information provided for bail hearings, and needless to say, the availability of detailed information has inured to the benefit of defendants appearing before the Court.*
>
> *The benefit of having accused persons maintain the jobs, family and social relationships are immeasurable. Of corresponding significance is the dollar savings in jail costs. We are now having a period of economic flux and uncertainty in this country. Strenuous efforts are being made to reduce spending levels in all branches of government. I submit that the pretrial agencies, whose continued existence depends on the favorable action of your committee, have saved literally thousands of tax dollars which would otherwise have been spent on costs of incarceration.*

As we know, the Pretrial Services Act of 1982 authorized the Director of the Administrative Office of the U.S. Courts to provide for the establishment of pretrial services in each U.S. judicial district other than the District of Columbia. Although discussions continued in Washington and around the country as to whether pretrial services were best performed by separate or combined offices, the District of Maryland continued to function as a "separate" office for nearly 20 more years, until retirement of the chief probation officer prompted consideration of a consolidated office. The Court interviewed staff of both offices as well as

members of the U.S. Attorney's Office, the Public Defender's Office and members of the bar. In 2001 the Court decided to consolidate the offices, concluding that consolidation under one chief would not negatively affect the scope or caliber of service or negatively impact the personnel of either office.

As the former chief of a separate pretrial services office, I believe I understand the differences and similarities between pretrial and probation work. One of the core similarities lies in our overall mission, which is to serve the court and the community by promoting public safety and supporting the fair and equitable administration of justice. All officers also share the vision for promoting lasting positive change and accountability in each defendant and offender. However, it is important to recognize that there are some significant distinctions between pretrial and probation work that are related to a defendant's "presumption of innocence." The presumption of innocence is of extreme importance, as it is considered a fundamental principle of American jurisprudence. I believe it is critical to teach officers the history of the bail reform movement and some of the key reasons why we perform this important work. Providing these history lessons can help to develop a keener understanding of the value of the "presumption of innocence"and hone critical thinking so that officers can provide well-reasoned recommendations relating to release and detention. The release or detention decision is critical because it carries enormous consequences that impact the defendant, the community, our criminal justice resources, and the integrity of our judicial process. Let's be honest: it's easy to recommend detention, especially given the fact that 90 percent of defendants in the federal courts are convicted. However, one of our primary areas of expertise and one of our statutory obligations is to develop and evaluate background information on the defendant so that the court can make a well-informed decision. Officers are also challenged to supervise defendants while remaining mindful that they are "presumed innocent." Performing these functions requires tremendous skill and insight. It also requires management's understanding of the unique challenges of pretrial services work and a great deal of leadership.

I believe leaders in our field must begin to look more closely at our intended outcomes of reasonably assuring a defendant's future appearance in court and the safety of the community. What do we know about defendants who fail to appear? What do we know about those who commit new offenses while on release? Before developing policies and implementing new practices, our decisions should be informed ones based on research—in the current terminology, "evidenced-based" information. Perhaps we should look at the kinds of tools and protocols we have in place to guard against individual biases or tendencies to become complacent or categorically consider certain cases for detention. Whether we are dealing with an alleged terrorist, a sex offender or a murderer, the key word is "alleged"and all defendants should be viewed as possible release candidates. So after 25 years it seems that "how" the pretrial services function is locally administered is perhaps less important than whether statutory mandates are being met and districts are addressing unnecessary detention and recidivism issues.

Many things have changed over the last 25 years. Our defendants seem to have more extensive and more egregious criminal histories. Thankfully, we no longer have to telephone the FBI for a verbal criminal record check that is recorded by hand. Imagine in those very early years, officers worked without computers or fax machines. Today we obtain criminal histories through automated inquiries of national and state databases. We also use many forms of technology to perform our investigative and supervision functions, such as electronic monitoring of defendants and computer monitoring software. But some aspects of pretrial services work have remained constant, such as the fast-paced environment, requiring immediate interviews with defendants arrested and preparing written reports for initial appearances before the Court.

It's often said that in life things come full circle. I hope that is not the case for pretrial services, but rather that the Pretrial Services Act of 1982 continues to be celebrated as the authority for establishing pretrial services in every federal court. My hope is that whether separate or combined, the pretrial services function may be recognized and continue to be performed with energy and enthusiasm in all judicial districts throughout the country. Pretrial services work is one of the ways we underscore the value of the "presumption of innocence," the rights of all

citizens under the 8th Amendment, while providing some measure of protection to the community against crime committed by defendants released pending trial.

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