Judicial Responsibility for Pretrial Release Decisionmaking and the Information Role of Pretrial Services

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THE PRETRIAL services recommendation function is not well evaluated in isolation from the larger goals and issues of pretrial release and detention. The more one attempts to discuss the topic narrowly, the more the explanation begins to resemble the children's story, *If You Give a Mouse a Cookie,*[1] in which each action in the story begets another ("If you give a mouse a cookie, he is going to ask for a glass of milk. When you give him the milk, he'll probably ask you for a straw. . ."). The story unfolds a chain of events in which one action is sequentially related to the next until, lo and behold, the story has unwittingly returned to its original point of departure—to start again (when, after having become thirsty, the mouse asks for another glass of milk which leads to another cookie, and if you give a mouse a cookie, then...).

So it is that narrow questions about an aspect of the pretrial services function (e.g., the release recommendation) are tied to broader questions about the purpose of the pretrial services function, and those are tied to larger questions about "bail reform," its aims and impact. Current questions about the status of bail reform recall questions about the original aims of bail reform—and the reasons for pretrial services agencies in the first place. Making sense of pretrial services recommendation schemes needs to start by recalling the original aims of the pretrial services function.

When the original aims of the pretrial services invention are revisited, it becomes clear that there should be no pretrial services recommendation function. The fact that in 1993 we would be discussing a pretrial services "recommendation" function demonstrates that we have forgotten or never understood the role these agencies were designed to play in American criminal justice, or maybe that, with the passing of time, form has been mistaken for substance and that, in some cases, pretrial services agencies exist because they have been existing.

However, goal confusion on the part of pretrial services is merely symptomatic of the underlying lack of judicial direction and leadership in managing the *judicial* pretrial release decisionmaking function. The following eight propositions are intended briefly to place questions about the pretrial services role in the larger context of judicial responsibility for the fairness and effectiveness of pretrial release and detention in the United States, as well as to place questions about the pretrial services recommendation function (which doesn't or shouldn't exist) in the context of the role of pretrial services.

The role of pretrial services agencies cannot be understood independently of the legitimate aims of the pretrial release decision.

The role of pretrial services agencies at the pretrial release stage should be understood in the context of the purposes of pretrial release and from the perspective of the issues of (un)fairness and (in)effectiveness that have characterized pretrial release and detention practices in the United States for most of this century. With what is by now a considerable body of research literature, legal commentary, and case law to inform examination of this important decisionmaking stage in the processing of criminal cases, it is reasonable to view the aims of the pretrial release (a.k.a. the "bail") decision as assuring the *maximum responsible release* of criminal defendants that will ensure attendance in court at required proceedings and that will minimize the threat to public safety and the integrity of the judicial process posed by released defendants. After several decades of debate and revision of relevant law, with the exception of a handful of states which still acknowledge only the purpose of assuring appearance of defendants in court, public safety concerns have moved from occupying a powerful *sub rosa* status to being explicitly recognized as appropriate, almost preeminent goals of pretrial release determinations.

A student of the history of bail reform in the United States might argue that the debate over the legitimacy of the "danger" or public safety aims of pretrial release was more theoretical and academic than practical. It was widely documented—and widely known—that judges and other judicial officials were strongly influenced by public safety and related concerns in bail determinations. In retrospect, the rationale in favor of "pretrial detention" laws (popularly referred to as what they are, "preventive detention" laws) that sought to deal openly with confinement decisionmaking at the pretrial stage by treating the public safety agenda explicitly appears to have been a noble gambit. The reasoning was that by placing the "real" operating concerns of pretrial release decisionmaking "on the table," one could introduce procedural safeguards to

assure the fairness of release practices. (Thus, one could enunciate criteria by means of which presumptively "dangerous" defendants could be identified and then conduct hearings at which the threat posed by the defendant could be openly evaluated and argued.) The real target of this strategy was the anachronistic but firmly entrenched role of cash bail in American criminal justice (and all the inequities associated with it). Remarkable in its idealism, therefore, was the language in the Federal Bail Reform Act of 1984 (the model Federal preventive detention law) that prohibited the use of financial bail to detain defendants, thus seeking to force open and explicit detention decisions: "the judicial officer may not impose a financial condition that results in the pretrial detention of the person."[2]

Pretrial release decisionmaking is a judicial function. Continuing problems of unfairness and ineffectiveness in pretrial release can be traced to two key aspects of the judicial role: the relatively free exercise of discretion and the difficulties associated with predictive decisionmaking.

Pretrial release decisionmaking at its core is a judicial function. A large part of the emphasis of "bail reform" was on developing pretrial services-type agencies to improve judges' decisions. To the extent that reform focused on the development of support agencies but not on changing judicial attitudes and habits (i.e., not on the judicial function), it missed its mark. In fact, the near imperviousness of bail practices to meaningful reform in jurisdictions even today can be best explained by failure adequately to address two properties of the judicial role in pretrial release: the wide discretion enjoyed by pretrial release decisionmakers and the unreconstructably predictive nature of the pretrial release decision. Reliance on financial bail options as the common mode of pretrial release/detention decisions in most jurisdictions melds the undesirable side-effects of unfettered judicial discretion and the drawbacks of imperfect predictions into a judicial decision function that stubbornly resists change.

The mantle of discretion attached to the judicial role derives ultimately from the status of the judiciary as a separate and independent branch of government in the United States. Attempts to control judicial discretion by legislatures—in sentencing as well as at the pretrial release stage—are often, and sometimes rightfully, seen by judges as attempts to remove judicial discretion and, thus, to diminish the independence of the judicial branch. The informed exercise of discretion is an essential component of the judicial function, including at the pretrial release stage. What is problematic, however, is unguided discretion or abuse of discretion that allows decisionmakers to be unaccountable to the legitimate goals of the decision tasks at hand. Many of the most difficult problems related to bail practices in the United States can be traced to the fact that historically judges and their judicial surrogates have had near total freedom of discretion to conduct pretrial release determinations—the enactment of two generations of bail reform legislation notwithstanding.[3]

The litany of unacceptable side-effects springing from this tradition of judicial improvisation in pretrial release is long and, by now, well-known. At its worst, the cloak of judicial discretion has given license to the biases and arbitrariness of judges, magistrates, and commissioners against society's most disenfranchised in allocating pretrial liberty. At its best, unguided judicial discretion produces pretrial release and detention decisions that are uneven overall and often decidedly suboptimal. As court systems struggle to manage the drug-related caseloads in contemporary America, the words of Arthur Beeley (1927, p. 160) still hold true 65 years later: "the system is lax with those with whom it should be stringent and stringent with those with whom it could safely be less severe."

Even if the goals of the pretrial release decision were universally agreed upon, the essentially predictive nature of pretrial release determinations would still pose a mighty challenge to fairness and effectiveness. While characterizing the pretrial release decision as tantamount to "fortune-telling" might be overly dramatic and comparisons to weather-forecasting or gambling might be more apt, much of the difficulty surrounding pretrial release determinations stems from the fact that they are based on predictions of future behavior of defendants. The judge, magistrate, or commissioner making these decisions is basically trying to divine how a given defendant might act if granted provisional liberty pending proceedings under particular conditions of release.

Just as judges may argue that their job is by definition to exercise discretion, by which they mean human judgment, psychologists and psychiatrists have argued that the expert predictions about human behavior that they are called upon to make in their fields are best made on the basis of clinical judgment. Just as judges may argue at bail and sentencing determinations that there is no substitute for judicial experience and wisdom, the *je-ne-sais-quoi* of discretion, clinicians have argued that there is no replacement for their professionally accumulated subjective expertise. Contrary to the intuitive appeal of this notion that the judicial, clinical, or subjective judgment is preferable in making decisions based on anticipations of human behavior, the literature on prediction resoundingly finds that human beings are not very good at predicting future events. That literature is further unequivo-

cal in its finding that predictions assisted by empirical methods always outperform subjective or "clinical" judgments.

This social science truism, which is fundamentally annoying to judges and "clinicians" alike, means that, when it comes to the accuracy of a body of predictive decisions, actuarial tables will be more accurate than judicial hunches at bail every time.[4] Thus, despite the conventional judicial wisdom that good decisionmaking requires a great deal of discretion and relies heavily on judicial "sense" (subjectivity or intuition), the road to optimal pretrial release decisionmaking may lie instead in the direction of a structured use of discretion and an empirically aided prediction of likely defendant misconduct.

This brief discussion of the "root causes" of problems with pretrial release, unguided judicial discretion and the difficulties associated with predictive decisionmaking, is intended to point to two principal areas where strategies to improve pretrial release function need to be focused. What else was the invention of pretrial services agencies, if not a strategy for assisting the judiciary in this critical area of criminal justice decisionmaking? It is by serving as a resource for informing the exercise of judicial discretion, improving predictive decisions, and managing pretrial release-related tasks that pretrial services agencies should be playing a major role.

Even after decades of bail reform, serious questions about the fairness and effectiveness of pretrial release in the United States have not been resolved. Continued reliance on financial bail as the currency of release decisions is a major reason.

The problems resulting from the exercise of unfettered judicial discretion and from the difficulties inherent in making predictive decisions in pretrial release determinations are essentially problems of fairness and problems of effectiveness, problems having to do with how justice is experienced at the pretrial stage.

Characterization of pretrial release (bail) decisionmaking in legal commentary and research in the last two-thirds of a century has not, on the whole, been favorable. Bail decisionmaking has been depicted as highly discretionary (amounting to a *sub rosa* system of preventive detention), as being transacted on the basis of questionable and little useful information, and as institutionalizing cash bail (and the parasitic role of the bondsman as the entrepreneur of pretrial release). In short, serious questions about the equity of bail practices and the use of pretrial detention have been continously raised.

The concepts of fairness and equity are not, of course, interchangeable. *Equitable treatment* of defendants under the law forms a subcategory of the broader concerns about fairness, which include access to fair procedures and to meaningful prospects for pretrial release.[5] Evaluation of the equity of pretrial release decisions, to determine, in effect, that similarly situated defendants have been treated comparably, requires some discussion of what "similarly situated" means at the bail stage.

Contrary to traditional assumptions that the seriousness of a defendant's charges provides such a framework—as exemplified by the bail or bond schedule—the application of this concept to questions of pretrial release decisionmaking is not self-evident. The demand for equitable treatment of the criminally accused is not satisfied by establishing a fixed inventory of release "prices" for defendants' criminal charges, setting bail for robbery at, say, $10,000 and bail for burglary at $11,000. Rather, a framework for the definition of "similarly situated" in the context of pretrial release decisionmaking cannot be established except in relation to the goals of pretrial release and the criteria that form the basis for differentiating among defendants in pretrial release determinations in light of those goals. (See, for example, Goldkamp, 1979; Goldkamp & Gottfredson, 1985; Goldkamp, 1985.)

Bail practices have been characterized by a level of disparity (much of it judge-based) easily the match of that found to be associated with sentencing decisions, when the discovery of sentence disparity helped launch widespread efforts to reform sentencing during the 1970's and 1980's in the United States. In addition, the use of the dollar as the principal currency of pretrial release determinations has ensured that release from jail would be available only for defendants who were not the poorest of the poor and, then, that release would occur regardless of the likelihood of misconduct. It is still a current truism that a relatively small amount of cash bail will hold most defendants in most American jurisdictions, regardless of the risks they may or may not pose. It is a corollary that a relatively large amount of cash bail will not hold serious criminals who have easy access to cash. This state of affairs is a testament to the ultimate failure of bail reform in the United States to construct fair release procedures. The fact that criminal defendants are disproportionately poor and disproportionately minority continues to place questions of equity in pretrial release practices at the center of controversy in the 1990's.

Given the inequity it fosters, it is difficult to defend the use of cash bail as a means for detaining criminal defendants in this country. But the financial bail option is undesirable for another important reason: Reliance on cash bail also contributes to the overall

ineffectiveness of cash bail practices. Although many decisionmakers (and bail bondsmen) argue that the requirement of posting cash bail offers a unique inducement to defendants to comply, the research literature has not, on the whole, shown the hypothesized benefits.

While choosing among various amounts of cash bail has been shown greatly to influence the prospects that defendants will be detained (in many jurisdictions, amounts over $500 translate into a certainty that defendants will be detained), it has not been shown to have an impact on reducing failures-to-appear in court or rearrests by released defendants. In fact, the use of cash leaves to chance (or to the defendant's ability to tap cash resources, legitimate or otherwise) the determination of who will or will not actually achieve release and then affords the court no meaningful means for restraining defendants who have purchased their release. The main reason for the survival of cash bail in pretrial release determinations is therefore not its demonstrated effectiveness in controlling defendant misconduct.

Why it survives is an interesting question. There can only be two reasons for its endurance in American criminal justice. The first is its essential link to preserving maximum judicial discretion: Cash bail provides judges an all-purpose decision option that has the appearance of an actual decision, but is really a handy "fudge-factor" that permits great flexibility in allocating pretrial detention without having to be accountable for it. The second is that a powerful and anachronistic American industry, bail bonding, depends for its existence on the use of cash bail. Both explanations stand in the way of efforts to improve the effectiveness of pretrial release practices.

In recent years the most common criticisms of pretrial release practices—centering on the belief that they permit the release of defendants too many of whom either fail to appear in court or are rearrested for new crimes—have been questioning the effectiveness of pretrial release. On the one hand, the integrity of the judicial process and the ability to prosecute criminal cases is threatened. On the other, the public safety is threatened. An equally important and increasingly common criticism, however, has been that pretrial release practices have played a major role in jail crowding due to the unnecessary detention of defendants who could safely be released to the community. Both of these criticisms, one about unsafe pretrial release, one about unnecessary pretrial detention, are complaints about the effectiveness of pretrial release practices.

Effective release may be most simply defined as decision practices that foster the release of as many defendants as possible who do not fail to appear in court at required proceedings or commit crimes during the pretrial release period. Ineffective release stems from needlessly detaining defendants who, if released, would not have engaged in either form of misconduct, as well as from mistakenly releasing defendants who then go on to abscond from proceedings or commit crimes. If 100 percent of all defendants could be released in a given jurisdiction without a subsequent failure-to-appear or rearrest for crime during the pretrial period, pretrial release in such a jurisdiction would be 100 percent effective. To the extent that defendants are detained and/or defendants are "erroneously" released to engage in pretrial misconduct, the effectiveness of pretrial release drops to a level less than 100 percent.

Improvement in pretrial release and detention practices is in large part the responsibility of the judiciary. Chronic problems with pretrial release and detention in the United States will never be effectively addressed without judicial leadership and accountability in the pretrial release function.

If it is reasonable to conclude that the chief problems—fairness and effectiveness—associated with pretrial release practices are inextricably tied to problems of judicial discretion and prediction, then it follows that the responsibility for addressing them and the main hope for correcting them lie with the judiciary. There is an important role for judicial leadership in examining the role of judicial decisionmaking and its impact on pretrial release practices and in coming to grips with the challenges of predictive pretrial release decisionmaking.

There is a need for the judiciary to develop policy to structure the exercise of discretion in pretrial release determinations and to attend to its consequences as a matter of judicial administration. Judicial leadership should form policy to fill the gap between what the law says in general terms about bail and pretrial release and what judges do—improvisationally—in practice. This policy should assist judicial decisionmakers individually in the performance of the pretrial release function and assist the court as a whole in meeting the aims of pretrial release and detention. Such a policy should also have the effect of making individual decisionmakers accountable for their decisions and answerable to overall court policy as defined by judicial leadership. The truth is that the responsibility for reforming pretrial release rests primarily with the judiciary; it always has.

Either the judiciary develops court-based approaches to improving management of the pretrial release function, or others (i.e., legislatures) will mandate their own versions of system improvements.

The most often tried approach to improving the judicial pretrial release function has been through legislation. Laws on state and Federal levels have attempted to reform pretrial release by clarifying its aims, enunciating principles and procedures guiding release and the selection of conditions of release, and listing criteria thought to be appropriate for judges to consider in making pretrial release decisions. Laws vary in each of these areas in the kinds of provisions they have enacted. They range from laws which say very little about bail and pretrial release to laws that specify criteria in such great detail as to provide little actual meaningful instruction. (See Goldkamp, 1985.)

These laws have in common the fact that they have either not intended to affect judicial discretion much or they have done it in a fashion that would not ultimately interfere with a relatively free exercise of judicial discretion. Some of the best ideas that have found their way into legislation, such as the principle of release under least restrictive alternatives and the prohibition against causing pretrial detention through cash bail, have been easy for decisionmakers to ignore or circumvent in day-to-day practice. However, the prospect that legislatures may adopt approaches to pretrial release analogous to mandatory sentencing laws or sentencing guidelines that limit judicial discretion almost entirely is not a promising one from the perspective of addressing the problems of fairness and effectiveness in pretrial release. Of these approaches, judiciaries should be rightfully wary.

The other alternative is for courts to address the inadequacies of the pretrial release function themselves, within the room for interpretation and implementation left by state and Federal laws. The experiments to develop court-based *pretrial release (bail) guidelines* in several jurisdictions, notably Philadelphia, Maricopa County (Phoenix), Dade County (Miami), and Boston, were precisely an attempt to develop such a judicially based approach by means of which the pretrial release function could be managed and improved. The aim of these innovations was to formulate an operational, court-based, pretrial release policy, to guide the exercise of discretion, to incorporate a means for improving predictive aspects of decisionmaking, and to provide feedback to the court on the impact of pretrial release decisions. (See Goldkamp & Gottfredson, 1985.)

The pretrial release guidelines approach is designed as a self-help or court-based policy approach designed to allow judiciaries to review performance in the area and to devise a decisionmaking resource to guide day-to-day pretrial release decisionmaking. The approach combines an explicit statement of the goals of the decision, a clearly specified policy spelling out the kinds of information to be considered (and how information should be weighed) in pretrial release considerations, and a rational scheme for designating release conditions for specific categories of defendants. Under this approach, a judicial working committee examines the transaction of pretrial release and its impact with the assistance of researchers and designs a policy framework that spells out how pretrial release ought generally to be decided. The initial versions of pretrial release guidelines have incorporated empirically derived risk-classifications into the organizing frameworks, thus increasing the likelihood that predictive decisionmaking will be improved.

One weakness so far in the development of pretrial release guidelines is that judiciaries appear inclined to retain the use of cash bail, at least for certain categories of defendants. Although the guidelines have by design reduced the range of defendants for whom cash bail options (and hence *de facto* detention) would still be appropriate, one could argue that the use of cash bail at all in pretrial release guidelines defeats the overall purpose of having an explicit decisionmaking process under the control of the court system. Since we have learned that manipulating amounts of cash bail has little impact on defendant performance during pretrial release, we can only conclude that it remains in the guidelines to provide the judges with the familiar all-purpose tool that allows detention to be decided on a *sub rosa* basis. It remains for future efforts to incorporate some of the better features of pretrial detention laws, such as eliminating the cash bail option entirely, into court-based pretrial release guidelines approaches.

The promise of the guidelines approach, though, lies not only in its potential for addressing traditional problems relating to poor prediction and inequity, but also in its ability to devise conditions of release that could replace the use of cash bail on a category-specific basis.

The pretrial services mission is to "staff" the judicial pretrial release function and to provide the wherewithal to manage the fair and effective use of pretrial release and detention.

For various reasons, judiciaries in the United States have increasingly been forced to recognize the importance of the judicial pretrial release function. Just as the world has become "smaller" and more interconnected, so the criminal justice system in American localities has become smaller. It is hard for the courts to escape the impact of institutional crowding on their own ability to manage the criminal caseload, for example. Inappropriate uses of confinement cause delays in scheduling and processing of cases; the needs for pretrial and postconviction confinement resources compete for the same finite capacity. Inappropriate release translates into a high rate of absenteeism in court-

rooms and ineffective caseflow management. New crimes by released defendants not only threaten the public safety but multiply the number of times defendants will play a part in the future criminal caseload, as the new and old offenses are adjudicated. The traditional not-my-problem approach of courts is not only inappropriate (as it clearly always was), but it is self-defeating—because it does not work.

Pretrial services can best be understood as the single most important tool that judiciaries could have in implementing strategies for improving pretrial release and detention decisionmaking in the critical areas we have discussed. Having established the policies to guide court-based decisionmaking approaches, clear agreement on goals, release options, and eligibity criteria, it is the mission of pretrial services to perform the support work required to implement them.

Two capabilities are essential to achieving a high rate of fair and effective pretrial release in any jurisdiction: a) a capacity to assess accurately the risk of misconduct defendants pose; and b) a capacity to impose conditions of release that can adequately control or counterbalance the level and kind of risk posed. The capacity to assess risk presumes a validated risk classification scheme that ranks defendants according to the risk of flight or crime posed. The ability to assign appropriate conditions of release presupposes a knowledge of the kinds of release conditions that are usually appropriate for different types of defendants. Both of these functions depend on a clearly defined policy approach to the gathering, preparation, and use of information, including risk classification and conditions selection. Pretrial services agencies should have a major role in each of these areas.

A central task of the pretrial services function is the collection, summarization and presentation of reliable information necessary to support the pretrial release decisionmaking and management function.

In the modern, 21st century court system, the pretrial services agency should be seen as a critical information resource that sits at the gateway to the criminal process and begins the information functions that serve as the building blocks for the processing of criminal defendants (and their cases) through the early stages. (Perhaps a more complete title for such agencies would be "pretrial defendant information and release management agencies.") The first critical function performed by the pretrial services agency is to gather information required to support the very early release decisions and to compile the information that will be necessary at subsequent release reviews. Just what kinds of information ought to be collected through defendant interview, criminal history check, and other searches (e.g., contacts with probation or parole) is a matter for court policy to spell out. Arguably, the information should permit the pretrial services staff to provide the information judicial decisionmakers require for the pretrial release decision and should support other key decisions about defendants or cases, such as diversion or early case tracking, that occur at the earliest stages of processing. The tasks involved in collecting reliable information and conducting the interagency contacts necessary to present up-to-date information require a highly efficient and speedy information processing capacity.

Assuming that court policy has outlined the way the pretrial release decision is conceived and the criteria (kinds of information) serving as the basis on which release options will be selected, the first task of pretrial services is to assemble the information gathered in the proper, easily usable (decisionmaker-friendly) format. Assuming further that estimations of the likelihood of defendant risk of flight or crime during pretrial release form a major dimension of the release decision, pretrial services staff would have the responsibility for classifying defendants according to the court's risk classification scheme and indicating the condition of release generally suggested by court policy for each type of defendant.

Under the court-based pretrial release guidelines approach, the pretrial services information function is most appropriately viewed as a classification function. That is, according to the criteria specified by court policy (e.g., risk of misconduct and relative severity of charges), defendants are placed within designated "presumptive" decision categories that would generally be appropriate for particular types of defendants. The information summarization/classification function further requires that other unusual information about defendants be pointed out for consideration by the decisionmaker so that the most appropriate decision can be made. Finally, it is the responsibility of pretrial services to indicate when particular supervisory or other special conditions of pretrial release would be appropriate—based on a court-approved typology of conditions. Pretrial services also serves as the primary data collector regarding the use and impact of pretrial release decisions, so that these can be analyzed and reported back to the judicial leadership on a periodic basis. This pretrial release decision monitoring function serves as the basis for future modifications of court policy regarding pretrial release and provides a means for assuring accountability for the pretrial release function.

As defendants move through the criminal process toward completion of their cases, and have successfully or unsuccessfully completed conditions of pretrial release, the pretrial services information function con-

tinues to update the defendants' files so that prompt action may be taken when necessary (when it appears that a defendant is not complying with conditions of release) and future decisions will be based on complete information about the defendants' background and performance.

Subjective recommendations by pretrial services staff are irrelevant to fair and effective pretrial release decisionmaking.

Given the larger context outlined in this essay, it can be easily seen that the information-gathering and management functions of the modern pretrial services agency are of critical importance in developing judicially based capacities to improve the fairness and effectiveness of pretrial release and detention practices. It is also clear that no role for a pretrial services recommendation function has been identified. That is because, while there is a major need for information to support the judicial function (and the classification of defendants based on that information), there is no need to add even less-seasoned subjective input—in the form of pretrial services recommendations—to the judicial discretion that is in need of improved management.

It may be understandable from an historical perspective how pretrial services agencies developed the practice of making recommendations for pretrial release. Pretrial release recommendation schemes have their origins in the innovations of the Vera Institute in the first bail reform program in the United States. Strangely, versions of this first approach, intended to present the New York judges with recommendations regarding the defendant's suitability for release on personal recognizance in the early 1960's are found in court systems in the United States today. The Vera approach claimed to employ an objective point scale to rate defendant's suitability for recognizance release. Interestingly, the "objective" point scale system was not derived from empirical study of the correlates of defendant flight or rearrest, but was assembled as someone's subjective view of what an objective approach might look like.

The Vera approach pioneered in the effort to improve the information available to judges at the pretrial release stage and in the effort to expand the use of release options other than financial bail. In so doing, the Vera Institute marked for future initiatives key issues to be targeted by bail reform. Unfortunately, it is more the form than the substance of the Vera innovation that remains after the ensuing decades. While the issues of better information and alternative release options were formulated decades earlier by others (e.g., Arthur Beeley, Caleb Foote), Vera attempted to translate these ideas into action-reform. The further development and sophistication of these very information responsibilities designed to improve the judicial pretrial release function lie at the heart of the mission of the modern pretrial services agencies—not the formulation of agency "recommendations."

Much of what has been said in this essay serves merely as a call back to the basics of what bail reform was originally about. To learn about the information function that should be performed by pretrial services agencies, it is useful to recall the experience—and the strengths and weaknesses—of the early Vera approach to obtain some historical perspective. However, enhanced by such an historical appreciation, pretrial services professionals should not be fooled into believing that, just because pretrial services is currently found on a certain path, the path necessarily leads in the direction of greater fairness and effectiveness in pretrial release and detention practices. In some respects, by merely following our feet over these years, we may find ourselves back at the beginning. There is good news and bad news in this predicament. The good news is that there is an important chance to re-examine the mission of pretrial services in the United States at the turn of the century. The bad news is that, without such a re-examination, there is danger of repetition, and, well, *if you give a mouse a cookie. . . .*

NOTES

[1]Numeroff and Bond, New York: Harper and Row, 1985.

[2]18 U.S.C.A § 3142 (c) (Supp. 1985).

[3]It can be argued that "bail reform" has experienced at least two generations since its inception in the early 1960's—the first aimed at fostering greater use of nonfinancial forms of pretrial release, at establishing presumptions favoring pretrial release and pretrial release under the least restrictive conditions, and at encouraging consideration of a broader base of information relating to defendants' backgrounds and community ties. The second generation of reform focused on the public safety or "danger" agenda and efforts to make it explicit and legitimate through amendment of state constitutions, state and Federal legislation, and various versions of preventive detention laws. It is questionable ultimately to what extent the two generations of reform succeeded in addressing the questions posed by the unguided exercise of judicial discretion at the pretrial release stage. (See Goldkamp, 1985.)

[4]This was neatly demonstrated in the field of pretrial release in the Harvard study by Angel et al. (1971) in which the impact of the then new District of Columbia preventive detention law on pretrial crime and pretrial detention was tested.

[5]There is an interesting question, for example, about the extent to which procedural safeguards can really redress inappropriate pretrial release and detention decisions, even under recent preventive detention measures. In fact, even under the new Federal procedures, defendants who "win" reviews of their custody status may find that they have already been detained for considerable periods by the time they are granted release or modification of conditions or that the relief has come too late and been made moot by the adjudication of their charges.

REFERENCES

Beeley, A. (1927). *The bail system in Chicago* (reprinted ed., 1966). Chicago: University of Chicago.

Goldkamp, J.S. (1979). *Two classes of accused: A study of bail and detention in American justice.* Cambridge, MA: Ballinger Publishing Company.

Goldkamp, J.S. (1985). Danger and detention: A second generation of bail reform. *Journal of Criminal Law and Criminology*, 76(1).

Goldkamp, J.S., & Gottfredson, M.R. (1985). *Policy guidelines for bail: An experiment in court reform.* Philadelphia: Temple University Press.