



Transcript: Justice Matters—Pre-Trial Justice and the Crucial Role Reentry Programs Play in the Justice System: An Interview With Tim Murray

The Bureau of Justice Assistance Justice Podcast Series is designed to provide the latest information in justice innovations, practices, and perspectives from the field of criminal justice. In this edition, James H. Burch II, Acting Director of the Bureau of Justice Assistance, talks with Tim Murray, Executive Director for the Pretrial Justice Institute, about his thoughts and concepts on pre-trial justice and reentry.

Jim Burch: Hi, I'm Jim Burch for the Bureau of Justice Assistance, and welcome to another edition of BJA's Justice Podcast Series. In this edition, we invite you to join our conversation with Tim Murray, the Executive Director of Pretrial Justice Institute. We're talking about the issue of pre-trial justice and its role in the justice system of today and tomorrow.

So Tim, why don't we start off with you telling us a little bit how you would define pre-trial justice and why it's so important to so many different stakeholders in the justice community?

Tim Murray: Thanks, Jim, I'd be happy to. We look at pre-trial justice to include the host of decisions that occur, from the point of arrest up to the point at which the case is concluded or disposed of. So, let's put that in real-life terms. The decision by the police officer on the street to make an arrest or to issue a summons or a citation. The decision by the prosecutor on the ground to divert from prosecution or to file formal charges. In the case of community prosecution, that BJA has supported for a number of years as well as problem-solving courts, is there an appropriate venue for this arrestee and this alleged misbehavior, supported by problem-solving or community justice that might achieve a better outcome. I think when most people think of pre-trial justice though, they think about the decision to detain or release the accused pending trial. As we all know, we have had the right to bail by virtue of the Eighth Amendment since our republic was founded. That doesn't, as defined by the courts, that doesn't mean everyone has the right to get out. It means that when bail is set and when bail is legally permissible, that bail is a right to not be beyond the means of the individual who's accused. When we worked to reform pre-trial justice, we look at that whole host of decisions, again from the law enforcement officer on the street to the jurist on the bench that has only a few minutes to make a very important decision.

Jim Burch: So I think, so historically then, the concept of pre-trial and pre-trial justice has really been focused on the bail decision, per se. But today, what we are saying is that this is a much bigger issue, and really starts at the point of law enforcement contact and goes all the way through disposition.

Tim Murray: Absolutely right. As has been the case with our move towards evidenced-based practice as criminal justice practitioners, we're learning a lesson from those in the health field. And public health has taught us that the earlier you intervene, the more likely your chances of success and the more cost-effective your interventions will turn out to be. That intervention should not be misinterpreted as letting people out of jail. That intervention is the introduction of evidence-based practice that will help the courts and help communities in general identify those who can be safely managed and what those management tools might include, and simultaneously identify those who pose a risk that cannot be managed, to identify those that should they be released to the community inadvertently, might cause significant harm.

Jim Burch: And I heard you mention cost-efficiency and cost-effectiveness, earlier, and that's certainly the name of the game today. What, in your experience, Tim, what is the state of pre-trial justice today around the country or across the country?

Tim Murray: Well I think, Jim, that my answer would probably parallel that of anyone involved in criminal justice generally. The answer is good news. The answer is bad news. Let me start with the bad news and hopefully I'll remember the good news when I get done with the litany. Over the last 15 years or so, we have seen a dramatic increase in our nation's jail populations. And that increase hinges directly on the bail setting practices of jurists from coast to coast. We have seen the proportion of defendants who are held in our nation's jails pre-trial go up dramatically. Once upon a time, about 15 years ago, it was about 55–60 percent of everybody in jail was convicted, the remainder was pre-trial. Now that number has inverted. About 65 percent of everyone in jail is there awaiting for the system to conclude their case. The amount of money bonds that have been set, and to that I mean the actual dollar figure set by the court, has steadily increased over the last 15 years. You know, it was only about 1995 or so where most bails that were set in this country, the largest percentage of them were \$2500 or less. Now that number is \$25,000 or

less. So, it's no surprise that results in greater detention. With greater detention comes jail crowding, greater cost.

Now, I think anyone would want to know, "What do we get in return for those higher bails?" Well, we know we get higher detention. Do we get better outcomes however, with regard to public safety or failure to appear? And it turns out we do get a slightly better appearance rate of about 1 and 1/2 percent. Interestingly, we get slightly worse outcomes when it comes down, when it comes to performance while on bail, crime while on pre-trial release, whether it's money bond or whatever. So, what we have gotten for this change over the last 15 years, as courts have moved away from non-financial release to financial release and high dollar financial release, is more detention, more pre-trial crime, and an almost insignificant change in the rate of appearance.

So I promised you I would talk about good news too.

Jim Burch: Yeah, we need it.

Tim Murray: And so, I think there is good news. And part of that is in part driven by the economy, quite frankly. Local communities and states are looking at their various practices and trying to identify where they can achieve cost-efficiencies. The cost of prisons, we all know, has been highly publicized and in some quarters highly criticized. The costs of local jails is no less painful to county governments. We have seen jurisdictions, such as Allegheny County, Pittsburgh; Larimer County, Colorado; a number of counties such as Summit County in Ohio, have all moved to state-of-the-art informed decisionmaking at the front end of their system, which has had dramatic impact on costs and upon outcomes. And so with all of those successes comes the good news because as you know from your work here at BJA, the more attention we give to those successes, the more likelihood of having them replicated by other communities around the country.

Jim Burch: I know, that is great news. It's certainly good to hear about the emphasis on the front end.

We've talked a lot here, at BJA as you know, about that Administration's strong support for the concept of offender reentry. And, in addition to the Administration, certainly the Congress has also shown this year, Fiscal Year 2010, with the Conference Report that was just released, \$100 million for the Second Chance Act to support offender reentry. I'm wondering, what's the role, the ideal role for pre-trial justice within the context of reentry and why is it so important to effective reentry to have some pre-trial justice in place?

Tim Murray: Jim, if two guys get arrested and they have the same criminal history and they're charged with the identical offense; one is released pending trial to effective monitoring supervision and treatment and one is held pre-trial. The defendant who is held, is far more likely to wind up in prison again for the same offense with the same criminal history than the individual who is placed on pre-trial supervision. There is no more profound predictor of prison than pre-trial detention. And the lessons we have learned from reentry with regard to understanding the levels of risk posed by individuals, understanding the levels of supervision that are appropriate, not just that make us feel better, but that actually work, are lessons that are now being applied to the front end of the system. Unless and until we can control what

comes into the front door of our justice systems, and manage that population successfully, divert those who do not need to be processed in a traditional way, stop spending money on everybody as though every offense and every offender is the same, concentrate on the serious and the dangerous offender with our most valuable resources and deal with the others effectively, we're going to forever be dealing with a reentry population that is bigger than we can possibly manage. I would say that \$500 million, as wonderful as a \$100 million is, it won't get the job done until we can start to control the flow of individuals that come through the system and start to divert to appropriate programming the numbers that we can successfully do so.

Jim Burch: So the decisions we're making on the front end, are going to in large part, determine how successful we are on the back end.

Tim Murray: Absolutely. And it will give us a utility for state prison beds and federal prison beds, for those that need that sanction, for those that the society is best served by that sanction, rather than making it the default sanction.

You know, I think that when we talk about reforms generally, we sometimes conjure up in people's minds—we're talking about letting people who've committed crime go, or just giving them a pass or turning a blind eye—that's not what we're talking about here. What we're talking about here is becoming more successful in reducing the amount of future crime that's committed by those who come under our charge. And that is the goal of reentry. That goal is now being stretched forward to the front end of the system. We're taking the lessons we've learned from using an evidenced-based platform at the parole and post-conviction end of the system and applying that to the front end. And I think we are going to see a lot of really interesting and favorable outcomes as a result.

Jim Burch: That's great news. You mentioned in one of your responses earlier, the idea of this pre-trial justice and these corrections issues being linked to our spending in the justice arena. We met recently with our friends over at the National Center for State Courts, who talked a lot about the financial crisis that many of our court systems are finding themselves in today, and it is not unlike other parts of our justice system and other parts of government. How can pre-trial justice play a role in improving court efficiency and maybe even saving some of the scarce resources in court administration?

Tim Murray: Jim, when you think about the decision whether to release or to detain pending trial, historically that decision takes from a few seconds to at most a few minutes in each case. And some of our large courts, they hear hundreds of these cases every day. The court cannot possibly be expected to make successful decisions, and by successful decisions I mean be able to identify those who can be safely released to the community with the assurance of appearance in court when they're required and with the assurance that they will remain law-abiding while on release. And conversely, the identification of those who pose a significant threat to our community, either in terms of pre-trial crime or intimidating witnesses who are failing to appear in court. The courts cannot possibly make that decision in a minute or two without help. And where pre-trial services comes into play is

to inform the judicial discretion that our communities invest in each of our judges, to help make those decisions successful decisions. These aren't programs about holding the door open and letting people out of jail. These are programs that are neutral, fact-finders that, the best of which are evidence-based, that help courts rationally assess the individual risk of each defendant. When courts can be successful in those assessments, they waste far less time. They are able to devote their resources to those individuals and those cases where they're needed, rather than to apply a lot of misguided time and resources to all of the defendants as though each of them are the same.

You know, if I could go back to the question you just asked me about reentry, it occurs to me there is another lesson from reentry that we're all beginning to benefit from. The most valuable aspect to me of the reentry movement has been its insistence at looking at the individual risks of each of these offenders rather than treating them all as though they were some kind of homogeneous class. Each arrestee comes into the system with a different set of strengths, a different set of liabilities, different set of needs, a different set of risks. And, what pre-trial services has learned from reentry is to scientifically assess the individual risks of each of those arrestees so as to get more favorable outcomes. Just as you can no longer say each parolee is the same as each and every other parolee, the same principle applies at the front end of the system with pre-trial defendants. We now have the tools to scientifically assess the relative strengths and debits of each of these arrestees and to help courts make successful and cost-beneficial decisions.

Jim Burch: So we're talking about getting smart on the front end and really leveraging what we've learned in other places and leveraging the best of technology and technology in a broad sense meaning science as well as some of the tools that have been developed. I guess that begs the question for me, do we have a vision for pre-trial justice of the future? We've talked a little bit about where we are today, where will we be in 5 to 10 years if you have your way?

Tim Murray: Haha, I think we're actually heading in that direction and that's due in no small part to the support we've received from BJA. And just as important, the support that BJA has given to our array of partners because we find ourselves in partnership with the National Association of Counties, the American Jail Association, National Sheriffs', National District Attorneys, National Legal Aid—the litany goes on. Council for State Governments, the Center for Court Innovation, these are all important groups that BJA has recognized as having important contributions to make. Those groups recognize, as do we, that we have to get smarter about the decisions we make at the front end because those decisions have a ripple effect all the way through, and including, reentry.

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My vision is one that when we work with those partners, they help support the notion that anything less than evidence-based best practice is not good enough for our nation's communities. They join us in envisioning a paradigm that is supported by science, as you've just cited, by technology, not just the technology that might come to most listeners' minds with regard to electronic monitoring or GPS tracking, but information technology. For the first time in our history, we're able to cull data that we can use to construct reasonably effective, risk-prediction and supervision schemes and instruments that will help decisionmakers make successful decisions.

And last but not least my vision includes accountability. These programs for the most part are publicly funded, they do public work, and the public view for the public good, and they have to be held publicly accountable. They have to publish their outcomes for all to see. It is only through that kind of accountability can programs expect to get better and to improve their practices and ultimately their outcomes.

Jim Burch: Well, that's a very exciting vision and we look forward to working with you and all of the other organizations that you mentioned—all of our partners and our friends—in making sure that that vision becomes a reality.

Tim, for our listeners today, where could they go for more information on pre-trial justice? Is there a web site that you can provide?

Tim Murray: We maintain a web site and the, you can reach us at pretrial.org and they can always e-mail me directly. I have a painfully simple e-mail address; it's tim@pretrial.org. The National Association of Pretrial Services Agencies can be located on the net at napsa.org as well, and the array of partners that I've just mentioned, American Jail Association, American Probation and Parole, and others each have resources and information regarding pre-trial justice available through their electronic portals as well.

Jim Burch: Well Tim, this has been a fascinating conversation and I'm sure that all of our listeners will benefit from it and you'll probably get quite a few e-mails with questions and comments as well so we maybe have to schedule a followup podcast for some point in the future.

Tim Murray: I look forward to it.

Thank you for taking the time to join us for this conversation. If you found the discussion interesting, we encourage you to visit the BJA web site for more innovative ideas and best practices at www.ojp.gov/BJA. From all of us here at BJA, thank you for tuning in to today's podcast. We hope you will join us again for another edition of BJA's Justice Podcast Series.