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EXPLORING FEDERAL SOLUTIONS TO THE STATE AND LOCAL FUGITIVE CRISIS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Durbin, Hon. Richard J., a U.S. Senator from the State of Illinois, prepared statement	38
Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania	1

WITNESSES

Bartlett, Dennis A., Executive Director, American Bail Coalition, Fairfax, Virginia	18
Gaillard, Marc, Second Deputy to the Clerk of Quarter Sessions, Philadelphia, Pennsylvania	11
Patrignani, John, Acting Marshal for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania	14
Preski, David, Chief of the Pre-Trial Service Division, First Judicial District of Pennsylvania, Philadelphia, Pennsylvania	16
Weise, Roy G., Senior Advisor, Criminal Justice Information Services, Federal Bureau of Investigation, Clarksburg, West Virginia	17
Williams, Seth, District Attorney, Philadelphia, Pennsylvania	2

SUBMISSIONS FOR THE RECORD

Bartlett, Dennis A., Executive Director, American Bail Coalition, Fairfax, Virginia, statement	27
Gaillard, Marc, Second Deputy to the Clerk of Quarter Sessions, Philadelphia, Pennsylvania, statement	39
Patrignani, John, Acting Marshal for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania, statement	41
Preski, David, Chief of the Pre-Trial Service Division, First Judicial District of Pennsylvania, Philadelphia, Pennsylvania, statement	50
Weise, Roy G., Senior Advisor, Criminal Justice Information Services, Federal Bureau of Investigation, Clarksburg, West Virginia, statement	51
Williams, Seth, District Attorney, Philadelphia, Pennsylvania, statement	54

VerDate Nov 24 2008 15:00 Aug 25, 2010 Jkt 057940 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\57940.TXT SJUD1 PsN: CMORC

EXPLORING FEDERAL SOLUTIONS TO THE STATE AND LOCAL FUGITIVE CRISIS

TUESDAY, JANUARY 19, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CRIME AND DRUGS,
Washington, DC

The Subcommittee met, pursuant to notice, at 9:35 a.m., Constitution Center, Philadelphia, Pennsylvania, Hon. Arlen Specter presiding.

Present: Seth Williams, District Attorney; John Patrignani, Acting U.S. Marshal for the Eastern District of Pennsylvania; Marc Gaillard; Office of the Clerk of Quarter Sessions; Roy G. Weise, Senior Advisor, Criminal Justice Information Services; David Preski, Chief of the Pre-Trial Service Division at the First Judicial District of Pennsylvania; and Dennis A. Bartlett, Executive Director, The American Bail Coalition.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. In early 2008, the *St. Louis Post Dispatch* published a series of articles, but here you have something that is far beyond Philadelphia. These fugitives move in interstate commerce, so that it really is a Federal problem. We find a lack of funding on the recordkeeping or on the entries of these fugitives to pose an enormous problem.

This is a matter where I think the Federal Government ought to play a significant role. Then-Senator Biden thought so, Senator Durbin thought so, in introducing legislation, but it hasn't progressed, with so many other things on the Senate and Congressional docket. But we see, with more than a million fugitives at large and the criminal justice system breaking down, that the efforts that Senator Biden made to have Federal funding and Federal grants ought to be carried forward, and that is something that we're going to take a look at when we get into the specifics on this issue.

We have a distinguished array of witnesses today. Our lead witness is sitting beside me, Hon. Seth Williams. He has been District Attorney of Philadelphia now for just a couple of weeks. DA Williams brings a distinguished record to this position: a graduate of Penn State University, where he first led the Black Caucus, and then was president of the student body, representing some 57,000 students; got his law degree at Georgetown, with distinction; served in the District Attorney's Office for 10 years, so he knows

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the nuts and bolts of the operation from having been there; headed up a great many unique efforts by the District Attorney's Office and is taking over from another distinguished Philadelphia District Attorney, District Attorney Len Abraham.

So many of these problems are really beyond the scope of what the DA can do and what the DA can control when you're talking about the interaction of witness intimidation, bench warrants, fugitives. But the DA, in our system, is really the central figure.

As is generally known, I was District Attorney in Philadelphia and assisted before that, and know the problems of the office intimately and am very much concerned about what's happening in this city. It's my hometown. I live here. I'm proud to say I do not live in Washington. Every Monday morning I travel the State and get to Washington late in the afternoon and back on Friday. Beyond the scope of a problem for Philadelphia, it proliferates out into the suburbs. Surrounding counties are not safe. The region is not safe and it's a national problem. These fugitives move in interstate commerce.

So this is a matter where I think the Federal Government has a very legitimate and important role, and I intend to push to see to it that appropriate action is taken at the Federal level.

Well, welcome, Mr. District Attorney. The floor is yours.

STATEMENT OF SETH WILLIAMS, DISTRICT ATTORNEY, PHILADELPHIA, PENNSYLVANIA

Mr. WILLIAMS. Well, thank you. Good morning to everyone that's here.

First, I'd like to thank you, Senator, for taking leadership on this issue and for hosting this series of hearings. It's of great import.

I, like you, as a Philadelphian, was saddened at first when I read the series of articles in the *Philadelphia Inquirer* titled, "Justice Delayed, Dismissed and Denied," and I have it with me. We have spoken about this several times, both personally and in public forums such as this.

I, as a Philadelphian, and I know you, was saddened by the statistics of our broken criminal justice system. I felt vindicated in many ways. As a politician, I was talking about many of these issues for the last 5 years to anyone that would listen, and I'm very glad that someone found the empirical evidence and the data and that you, and others, are listening now.

I'm very thankful and hopeful that these hearings, the articles in the newspaper, and also the fact that we all are in a fiscal crisis right now and that there is a new District Attorney, hopefully all of those forces acting together can bring us together to work to solve the problem, both from a Federal, a State, and a local level.

So again, let me just thank you for your leadership. More important than just the bright lights and the cameras being on, I look forward to my staff working with your staff, working with the staffs of all those who are here today, to discuss how we can solve this problem.

I have said many times that our criminal justice system is broken. You touched on the fact that the most recent hearing you had dealt with victim intimidation. I have to do all that I can as a District Attorney to ensure that the system works.

One of the ways we can do that is by protecting our victims, but when defendants are fugitives and fail to appear, it revictimizes our victims over and over again. They don't get their cup of justice filled. I heard many stories about you talking about filling the cup of justice for everyone that came into the DA's office. When a defendant fails to appear, the victim is left wanting to know, what happens to them? What is ever going to happen to their case? So I'm very glad that we're here to talk about fugitives and the different ways that we can go about trying to address the problem.

I recognize that I have 2 minutes and 27 seconds left, so I'll try to be as——

Senator SPECTER. Let's turn off the timer.

Mr. WILLIAMS. That's all right. I'll try to be as pointed as possible.

Senator SPECTER. I'm in charge here: turn off the clock.

[Laughter.]

Mr. WILLIAMS. But I believe the primary reason we have so many fugitives walking our streets, is our bail system in Philadelphia is broken. You are correct, there are nearly 50,000 fugitives in the city of Philadelphia. Each year, about 1 out of 3 defendants fails to show up for at least one court hearing. There are barely more than 50 court officers to catch these fugitives. Philadelphia courts issue approximately 25,000 bench warrants each year for criminal defendants who do not show up for court, and over the last 30 years fugitives owe the city approximately $1 billion in forfeited bail.

There are many reasons the system is broken. Hopefully there can be many solutions to this broken system. But I have spoken quite often that if we're going to change the system, if we're going to address criminal behavior, it's not the severity of punishment that matters, it's not that we're going to give someone 50 to 100 years, it's the certainty of punishment that changes behavior. If it's criminal behavior, if it's trying to housebreak a pet, or if it's raising three daughters like I have, it's the certainty of punishment. Clearly, there is no certainty of punishment when nearly 1 out of 3 defendants in a year fails to appear and a bench warrant is issued.

So, I believe we have to do all that we can to increase the certainty by increasing the effectiveness of our bail system and reducing the number of fugitives. So I have a list, and I ask that my written notes and testimony be entered into the Senate record.

[The prepared statement of Mr. Williams appears as a submission for the record.]

Mr. WILLIAMS. I have several bullet points I'd like to touch on briefly, but I believe all that it comes to, is we have to have a holistic approach. There's no one single magic bullet that we can have to change it. There are many things that we have to do. I know that I'm going to be pushing for us to have more hearings, both preliminary hearings and trials, in the absence of defendants that fail to appear.

If we can show that they wilfully failed to appear, that they knew of the date, then we have to proceed if the victim shows up to proceed with that preliminary hearing, to preserve that testimony and to be able to move that case forward. Many defendants know, and make fun of, our criminal justice system. They thumb

their noses. They know if they fail to appear, the victim will become frustrated and be worn out like they're on the Baton Death March. If we can proceed with these hearings in their absence, the victim will feel as though they were heard and we can proceed with their trial. That's one area that I would like to work on.

We could effectively carry out the financial background checks for those who put up bail money. It's been often said that it's easier to get bail than it is to get a loan for a car, so we have to go through the proper background checks of the people who are putting up money so when they fail to appear, we can go after the 90 percent. You're very familiar with it in Philadelphia, that if bail is set the defendant only has to put up 10 percent. For many, we don't know really who signed up. What collateral do they have? We have to do a much better checking of the background of those who are putting up the money so that we can then see if we can go after it.

I believe also—and you've been very helpful—in our programs for Safe Surrender. I believe that we have to be able to increase the Safe Surrender programs in Philadelphia where we can work with communities, the clergy, the Federal marshals, our own First Judicial District, warrant officers, to provide an opportunity for defendants who are fugitives to surrender themselves in an environment that they feel safe.

Also, it's a way to protect our police officers and our warrant officers who are out, like Officer Joseph LeClair who was killed in the line of duty while he was trying to effect an arrest on a warrant for a fugitive. The majority of police officers that lose their lives in the line of duty do so when they're pulling over a person who is wanted as a fugitives just at a routine traffic stop. So, Safe Surrender programs can help us reduce the number of fugitives by keeping them in the system, allowing them to turn themselves in.

We also have to do all that we can to better monitoring defendants that are out on bail. So you spoke of ways in which the Federal Government could help. I believe that the Federal Government, of course, could help us with funding for technologies, new technologies. The defendants have the latest weapons, they have the latest technologies. We have to stop playing catch-up and start catching them.

By having the most recent technologies, like GPS systems, defendants could get bail, but also have a monitoring system so that if they did fail to appear we could more easily find them. That's a possibility also. I could go on and on and on and on and talk about many other theories that I have, but I really believe that it's going to take a holistic approach, that we in the District Attorney's Office have to do all that we can.

I believe that we can use some of the most recent technologies, again, to change some of the theories about how we issue bail. Instead of just, what is the person's ability to pay, we can use risk analysis: what is the risk of not just their failing to appear, but of committing another crime while they're out on bail?

By working with Professor Goldcamp and Professor Sherman from University of Pennsylvania, we can instill new risk analysis in the charging and in the bail function so that we can better determine who is most likely to come. About 2 percent of the defend-

ants are the most violent. If we can find better ways to monitor that 2 percent, I believe that we could do a lot to reduce the fact of violence on the streets, but also those that will appear at court.

Senator SPECTER. Mr. Williams, starting with the issue of Safe Surrender, is that approach now in practice in Philadelphia, so that if a fugitive decides to surrender, the fugitive will be permitted to do so? What penalties, if any, will he face at that point, and how does it work?

Mr. WILLIAMS. Well, currently, if a defendant fails to appear, he or she at any time can surrender him or herself in the criminal justice system center and a new date will be issued for their hearing. That's part of where the system breaks down, because the victim has showed up, the defendant failed to appear. The defendant could show up that day, months later, or years later.

Senator SPECTER. Is there any penalty attached for somebody who comes forward in the Safe Surrender program?

Mr. WILLIAMS. No, there is not. To answer your question, the Safe Surrender program, as I understand it, really took place last year over a 4-day period at a church in South Philadelphia. The clergy were involved, the Federal marshals were involved, our court system was involved.

Senator SPECTER. How successful was it?

Mr. WILLIAMS. It was very successful, and many individuals turned themselves in. But it was focused for the first time just on non-violent felons and on misdemeanants.

Senator SPECTER. With someone who does not voluntarily come in but is apprehended, what is your view as to additional punishment for having jumped bail? Should there be a separate offense for jumping bail?

Mr. WILLIAMS. The Pennsylvania Crimes Code does have, as you are well aware, a separate provision for punishment for the wilful failure to appear. The judge could also issue a contempt holding for that person, which would add another possible 5 months' incarceration that could be consecutive or concurrent.

Senator SPECTER. So the statute does allow for increasing the penalty which is prescribed by statute for an offense?

Mr. WILLIAMS. That's correct.

Senator SPECTER. So if someone is apprehended for larceny, you could add to the 5-year sentence provided.

Mr. WILLIAMS. That is correct.

Senator SPECTER. Would there be any utility in having a separate offense or indicting for a separate criminal charge?

Mr. WILLIAMS. Well, part of the problem would be that it would just add more cases to the list, the preliminary hearing list, more paperwork, in some ways. I think while that's an option, and we utilize that in some cases, I think trying to find ways on the front end to reduce those that have the most potential to be fugitives, but also when a person fails to appear, to just proceed in their absence.

I think what they hope is that they don't show up, that the victim showed up, that when they come back again the victim won't come because either the victim just doesn't care or just doesn't want to show up anymore because they're so frustrated with the

system, and that the defendants defeat the system by frustrating the victims, by this gamesmanship.

The Commonwealth has to say what our status is first, and often the defendants will leave rooms and there's this gamesmanship. I think if the defendant failed to appear, if we can proceed more often in their absence and the message got out that that was happening, Senator, I think that would defeat the purpose of so many of them trying to game the system.

Senator SPECTER. Well, trial in absentia, which means trial in their absence, has been upheld by the appellate courts. As new process of law, if someone does not show up you could try them, even though he or she is not there.

To what extent is trial by absentia employed now in the Court of Common Pleas?

Mr. WILLIAMS. Senator, it is rarely employed because—one of the reasons is that all the defendant's constitutional rights cannot be waived in their absence currently, so we would have to do a jury trial if the defendant failed to appear previously. So, if we did all of the fugitive cases via jury trial, again, that would just bog down the system. So there are many theories on how we could proceed. We could, at an earlier point in the hearings, in a court of record, have, as part of the colloquy—after they've been held for court, at at some point a colloquy where they're told that if they fail to appear at a subsequent hearing, that they would waive their right to a jury trial by their wilful failure to appear. If they understood what their rights are—all the rights that we have—this building is an edifice to glorify the Constitution, but all of the rights we have can be waived. So if they maybe had a waiver, a colloquy early on, that could expedite the need for having jury trials for all those fugitives subsequently.

Senator SPECTER. It would be, probably, technical if you have a colloquy and you say, if you fail to show up, do you hereby waive your right to a jury trial? It's pretty difficult to get that if the person could decline. Well, I think it is a subject which ought to be explored.

Mr. WILLIAMS. Yes.

Senator SPECTER. Because the appellate courts have upheld it. There is a constitutional right to a jury trial, so we can't change it by legislation.

Mr. WILLIAMS. Correct.

Senator SPECTER. But we ought to explore ways of implementing trial by absentia, which would put people on notice that they can't game the system and have witnesses not show up because they failed to appear.

Mr. Williams, let me turn to the subject of the first hearing to get your views as to the approach of having a Federal offense for intimidating a witness in a State criminal procedure. Your experience is extensive. To what extent do you believe that there would be more apprehension of someone to intimidate a witness if that person knew that the FBI was going to be on the case or going to be tried in the Federal court where the sentencing is on record as being tougher? How effective would a Federal statute be?

Mr. WILLIAMS. Well, I believe that it would be helpful. I don't want to abdicate all of my own responsibilities as District Attorney

to finding ways that we can ensure the safety of our victims, the protection of them, to ensure that more witnesses are willing to come forward. We have to do all that we can so that, when people in some ways intimidate our witnesses, that they are punished in State court. So, that's my responsibility. I'm going to do all that we can internally to see that we can do that job better.

But I believe that a Federal law and the use of the U.S. Attorney's Office and FBI, and making examples of those that intimidate witnesses could in many ways change the culture. But again, it takes a holistic approach. We have to do all that we can to change the hearts and the minds of the young people that are doing this intimidation. We have to do all that we can to reach out to community members and potential victims, or future victims, to let them know that the police, the District Attorney's Office, will be there for them. I think that we have to do that every day.

So I look forward to doing that, both on our end, but would look forward to the opportunity to work with Federal authorities to prosecute people that are intimidating and victimizing our victims over and over again.

Senator SPECTER. Well, I like your attitude of not wanting somebody else to take over your responsibilities. You have the job.

Mr. WILLIAMS. Uh-huh.

Senator SPECTER. When I was District Attorney, I found I couldn't get sentences, that there were many burglars, repeat robbers who were getting insufficient sentences. When I got to the Senate, I introduced legislation which became the Armed Career Criminal bill, that anybody convicted of three or more offenses, like robbery, burglary, drug sales, found in possession of a firearm, would be tried in the Federal court and get a mandatory life sentence, which means 15 years to life in the Federal system.

Now, looking for Federal help, that has been—I'm sure you're familiar with it—a very important piece of legislation. But it seemed to me as DA, wanting to carry out my job, when I found the courts were not cooperating, to bring the Federal Government into it, taking those career criminals into Federal court, was a big, big help. So, I would analogize that to getting assistance from the Federal Government where there are forces beyond the control of the local prosecutor. What do you think?

Mr. WILLIAMS. Well, again, I'm hopeful that we'll have this opportunity.

Senator SPECTER. How has the Armed Career Criminal bill worked, in your experience, in sending those cases to Federal court?

Mr. WILLIAMS. Very well. The Federal Alternative State Trials program that exists currently is one that is very helpful. You know, but again, the defendants have to know about it, so in addition to the fact that we have a very good working relationship with the U.S. Attorney, just the ads that are on public transportation, when defendants see—or those public service announcements that are commercials—the funding that we can have to educate the public about the punishments of what will happen if you do commit a crime with a handgun, and how you could be prosecuted in Federal court.

Again, we have to change the hearts and minds, and that comes from the general deterrence and the specific deterrence. So when people see the SEPTA ads on the back of a bus, that you can go to Federal prison, you won't be up on State row, you won't even be at Greaterford, you might be somewhere in Colorado or Illinois, that drastically, in many ways, changes the mind-sets of the people who are considering those offenses. When people hear about people who have been sentenced, the general deterrence, again, is very effective.

Senator SPECTER. There have been some suggestions of seeking family sureties with the home property as collateral. Do you think that is worth exploring?

Mr. WILLIAMS. I do. Again, I believe that we have to be open to all the different possibilities. Having private entities or public entities that go after that balance of the bail would be helpful. But specifically, if the family member has to put up the bail and the defendant knows that his mother, his grandmother, or some family member will be at a loss as a result of their failure to appear, they might take more personal responsibility to show up. Also, the family members might make them show up, and if they don't show up, they might be more apt to help the authorities to locate them so that grandma or the aunt doesn't lose her home or the $15,000 that she put up.

Senator SPECTER. Do you think it's too tough to subject grandma to the possible loss of her home?

Mr. WILLIAMS. It is difficult. I understand that. But I hope that that would be a way just to motivate the defendant to show up, and also, again, as a way so that you don't lose the value of that home, for them to surrender the defendant in a more timely manner. That would thwart, again, you know, the gamesmanship that we so often see on a daily basis at the Criminal Justice Center.

Senator SPECTER. We've talked about, extensively, the fugitive problem, some comments about the intimidation of witnesses. I'm not sure where we're going to progress on these hearings. We may have more or we may not. But one of the subjects in the *Inquirer* series has been the issue of continuances. While you're here, I'd like your observations on how serious the problem is of continuances, where lawyers will not appear for putting "busy" slips and are in fact not busy.

We talked, on the earlier hearing, on intimidation, about a special program we have for a lawyer who had a very large volume of cases and might have multiple listings on the same day that we put on the "busy" slip, but wasn't busy anywhere. We had a special courtroom established for that individual. It was challenged in the Federal court as a denial of his constitutional rights. I won that case. But how big a problem, from your experience in 10 years in the DA's office, is this issue of continuances to wear out the witnesses, so it's continued again, and again, and again and the witnesses don't show up?

Mr. WILLIAMS. It's a serious problem, Senator. I was speaking with a judge and he mentioned that a defense attorney referred to the Criminal Justice Center here in Philadelphia as the Valhalla for defense attorneys. After having won the primary, I wanted to do all that I could to be the best District Attorney for the city of

Philadelphia, so I began traveling to other jurisdictions to speak with other District Attorneys about their systems.

I went far and wide. I went to Montgomery County, I went to Dauphin County, I met with the DA of Allegheny County, I went to Brooklyn, I went to San Francisco, and San Diego, just to name a few. Our system here—one of the reasons why we have so many failures to appear, is that there are so many listings for the defendant in the course of a criminal case. We can do a lot to reduce the number of times that the defendant has to appear. I think in many ways that would reduce the bench warrants that are issued. It would reduce the victimization of our victims, the revictimization, that they have to come to court over, and over, and over again.

Senator SPECTER. Well, on the continuance issue, don't you have to have the cooperation of the judge to deny the application for continuance?

Mr. WILLIAMS. We do.

Senator SPECTER. So, frequently, the expression, the attorney-client relationship has not been consummated, taking that expression.

Mr. WILLIAMS. Rule one.

Senator SPECTER. Now it's, Mr. Green hasn't shown up.

Mr. WILLIAMS. Right.

Senator SPECTER. So what do you suggest be done on the continuance issue?

Mr. WILLIAMS. Well, again, I believe that we can do a lot by holistically changing the level—the number of times cases have to be listed, by requiring—not requiring the——

Senator SPECTER. I'm sorry. How do you do it if you limit the number of times it has to be listed?

Mr. WILLIAMS. We can change the order. At a preliminary hearing, it's always, "Is the Commonwealth ready?" If the defense had to state what their status was first, that would change this. If the defense attorneys were not allowed to have a listing, a continuance at the first listing when they see that the Commonwealth is ready, just because rule one, or Mr. Green hasn't shown up, the defense attorney hasn't been paid, that wasn't allowed.

Senator SPECTER. Well, that requires tougher action by the judge.

Mr. WILLIAMS. That's correct. And that can't take Federal legislation, that takes the judiciary acting to police itself. I believe again, as a result of these reports, as a result of your interests, as a result also of all these entities having a fiscal crisis, that we are going to begin working together now to eliminate these potentials and the problems that you see, such as the multiple continuances.

Senator SPECTER. Have you seen any evidence of a crack-down on the continuance problem so far?

Mr. WILLIAMS. Well, I believe we have begun working with the judiciary, just as of last week, to begin a process to review the criminal courts and the process and protocols that we have in Philadelphia. I'm hopeful that that can be an impetus to find solutions, again, like these hearings.

Senator SPECTER. How adequate are the sentences handed down by the common pleas judges?

Mr. WILLIAMS. Well, again, we do have a sentencing guideline, a Sentencing Commission here in the Commonwealth of Pennsylvania that tries to make all of them uniform. For the most part, the judges do act and fall with their sentences within the sentencing guidelines. Some judges are more apt to find some aggravating circumstances and some more to look into the mitigated range, but I believe that for the most part the sentencing is not the issue when it comes to our fugitive problem. That is a separate and distinct issue.

But I believe that for the most part, the public elects judges in Pennsylvania without knowing much about who they are and what their philosophies are. You can't even ask them questions about what they would do when they became judges. I know that's an issue for another hearing and another day. But, you know, again, it's not the severity of the punishment of what that sentence would be, it's the certainty. In Philadelphia, the defendants know that there is no certainty.

Senator SPECTER. There was an effort made in the Constitutional Convention of 1969 to change the election of judges. What's your view on that subject, if you care to offer one?

Mr. WILLIAMS. Well, I believe there are many different theories. I actually teach a course—used to teach a class—at Penn State where we talked about the merit selection process or a mixed process like the Missouri program, where the executive gets to have a board that's comprised of community members, members of the legal field, to come with people they believe are qualified and meet some sort of minimum standard to be a member of the judiciary. Then there's a public election based on those people that were deemed appropriate. I think a hybrid of appointment and direct election, I think, would be helpful in the Commonwealth of Pennsylvania.

Senator SPECTER. In the Federal system, Senator Casey and I have a panel, going back to Senator Hines' and my time together years ago, a nominating panel. People who want to be Federal judges are screened. Senators then review it and make a recommendation to the President, which is really along the line of merit selection. What do you think of that for the State courts?

Mr. WILLIAMS. Well, I think that has a lot of merit, but I do believe that the public having something more than "they elected the executive that made the nomination," and the appointment has a little more of an egalitarian effect, a democratic effect, and people feel they're a part of it. So just the second step after the executive or the legislative branches have worked together to make this nomination to allow the public to basically give their imprimatur or their stamp of Good Housekeeping, as it were, I think is very democratic.

Senator SPECTER. Well, Mr. Williams, thank you very much for coming in today. There are going to be lots of problems. I know Senator Casey and the Philadelphia Congressional delegation would join me in saying that we want to be helpful to you. You've got a big job and we want to help you carry it out.

Mr. WILLIAMS. Thank you. I have big shoes to fill, yours, Governor Rendell, Ron Castile, Len Abraham. I look forward to, again, working with you and your staff to solve these problems and to

make Philadelphia a safer city for all of us to live, work, and to raise our families.

Senator SPECTER. You are the first District Attorney who didn't work in my office in modern times.

[Laughter.]

Senator SPECTER. You had Rendell following for 8 years, and you had Ron Castile elected twice, and you had Len Abraham reelected. So, you'll find the shoes fine. Thank you.

Mr. WILLIAMS. Thank you very much.

Senator SPECTER. Thank you.

We will now turn to our panel. Mr. John Patrignani, Mr. David Preski, Mr. Roy Weise, and Mr. Dennis Bartlett, if you would come forward.

We understand the DA has a lot of duties back at City Hall, so thank you for coming in.

We are going to begin, before proceeding to the panel, with a statement from Mr. Marc Gaillard, from the Office of the Clerk of Quarter Sessions. Welcome, Mr. Gaillard. We look forward to your statement.

STATEMENT OF MARC GAILLARD, OFFICE OF THE CLERK OF QUARTER SESSIONS, PHILADELPHIA, PENNSYLVANIA

Mr. GAILLARD. Good morning, and thank you, Senator. Again, good morning, Senator Specter and distinguished members of the subcommittee. Thank you for giving me this opportunity to speak with you today on behalf of Hon. Vivian T. Miller.

Senator SPECTER. Mr. Gaillard, pull the mic just a little closer.

Mr. GAILLARD. I am Marc Gaillard, deputy to the Clerk of Court of Sessions in Philadelphia County. We understand that we are here to speak with you about the way the bail process works in Philadelphia County, and particularly our involvement in it, so we will start by explaining the bail process in Philadelphia.

In order to be released from confinement after being arrested, a defendant pays 10 percent of the bail, which is set by the bail commissioner at the arraignment. When the bail is posted, the money is placed into a Quarter Sessions account by an employee of the First Judicial District, who also generates a bail acceptance log. The accounts and logs are reconciled and maintained by the Clerk of Quarter Sessions. Of the 10 percent collected bail, 30 percent goes to the city. If the defendant complies with all subpoenas and the case is concluded, the surety can apply for the refund of the remaining 70 percent of the posted bail.

If, over the course of a case, the defendant does not show up for any of his or her court appointments, the judge orders a bench warrant to be issued and the bail sued out, which means the defendant has 20 days to surrender and receive a new court date. If the defendant does not surrender within 20 days, a judgment for the full amount of the bail is issued against the surety. The surety now owes the city of Philadelphia the remaining 90 percent of the bail that was not collected earlier. There has been a lot of talk in the media that, dating back to 1968, the total amount of this forfeited bail owed the city is $1 billion. That is part of the reason why we're all here today.

Before I address how the 90 percent gets collected, I would like to speak for a little bit about the $1 billion figure that has been accepted as the amount owed the city. Before we came here, we prepared a report to show the amount of bail forfeited from last year. In 2009, the amount of the forfeited 90 percent cash bail was $2.2 million. Over the past few years the crime and arrest rates have been relatively high, so one might surmise that the rate of forfeitures is equally high and remains relatively constant.

To generate an estimate of the amount of forfeited bail owed the city, going back to 1968, let us double the number from last year and assume that the city is owed $5 million per year. This gives us an estimate of $205 million for the same time period, a far cry from the $1 billion that has been quoted so freely. We strongly caution against any reference to $1 billion until such time as anyone can produce any backup documentation. No matter what the actual amount is, we can agree that there is a significant amount of money owed to the city and we need to understand how this happens.

From a Quarter Sessions perspective, once a bench warrant is issued we have no additional responsibility until the defendant is rearrested or surrenders. If this does not occur within 20 days of the bench warrant, we mail a 20-day letter to the surety advising that if the defendant does not surrender within 20 days, the surety will be liable for the entire amount of the bail. After the 20 days, a default judgment is entered against the surety.

Since Mrs. Miller's first term, it has never been our responsibility to collect forfeited bail. We simply send a percentage of the collected bail to the city's Revenue Department. Prior to the inception of the state-wide computer system installed in 2006, we did this upon receipt of a judgment letter from the First Judicial District. Now the court clerks in the courtroom issue the judgments directly into the computer system and the accounting clerks respond accordingly.

But without getting into the blame game, as a member of the criminal justice system we are committed to being a part of the solution going forward. However, we realize that a significant percentage of the outstanding funds is uncollectible: some sureties are dead, imprisoned, or their whereabouts are completely unknown. Also, many are without the financial means to satisfy these debts. These facts notwithstanding, we want to see as much of this money collected as possible for the benefit of the city. We attempted to hire a collection firm previously, but the contract wasn't approved by the Law Department.

Since then, we have been working with a collection firm retained by the First Judicial District, and we will continue to provide any information or assistance to aid them in their duties. Over the past year, there have been many allegations made about the Quarter Sessions, suggesting that we have been remiss in the execution of our duties within the Philadelphia criminal justice system. This is simply not the case. With limited resources and workloads that constantly increase as we continue to take on functions previously performed by other judicial partners, we remain committed to the City of Philadelphia.

In these tough economic times, we are committed to working as efficiently as possible. We have conducted a thorough analysis of the processes executed by our accounting, our bail, and our cost and fines units to determine if there is room for improvement. The exercise has uncovered some areas for improvement. For example, we will be adjusting the way bail refunds are processed so that some 5 to 25 hours of effort will be saved on a daily basis. These hours can be redirected to other pressing needs within the office. A similar exercise analyzing our court clerks and our filing operations is currently under way.

Senator, we want to be a part of the solution to the problems Philadelphia's criminal justice system is experiencing and not the scapegoat. We look forward to sitting at the table with our partners in the system to devise the right solutions.

Again, Senator, we thank you for inviting us, for your invitation to this hearing, and your commitment to the people of Philadelphia. On behalf of Hon. Vivian T. Miller, we thank you.

Senator SPECTER. Mr. Gaillard.

Mr. GAILLARD. Yes, sir?

Senator SPECTER. Who should be responsible for collecting the bail if the Clerk of Quarter Sessions does not have that responsibility?

Mr. GAILLARD. Actually, I brought some other members of the staff that want to answer some specific questions. From our understanding, that seems to be a gray area. I mean, we've even spoken to staff that have been with the department for some 35 years who can remember a point in time where that issue was never addressed. It's always been the Department's stance that we collected the 10 percent that was owed, made sure that got into the city's general fund, but the 90 percent, from my understanding, was always a gray area of responsibility.

Senator SPECTER. Are you aware of the audit of the Office of Clerk of Quarter Sessions just released this week for the years 2007 and 2008?

Mr. GAILLARD. Yes.

Senator SPECTER. Which found that there were not reconciliations, causing some $26.8 million to be omitted from the city's preliminary financial statement and did not report to the city $352.8 million receivable for fines, costs, and restitutions?

Mr. GAILLARD. Yes. In fact, we had given answers to the—to the department in regards to it. One of the suggestions is that we needed to actually increase our accounting department personnel. We've asked the city for money for it. It's been approved. We're in the process now of hiring an additional accountant. It's not reported in a timely enough basis, so we're trying to address that area.

Senator SPECTER. So your point is, you've had insufficient funding to have the personnel to handle these problems?

Mr. GAILLARD. In the past, yes.

Senator SPECTER. Uh-huh. Do you disagree with the audit that I just referred to?

Mr. GAILLARD. Actually, we have given written response. We do have several discrepancies in terms of what was reported to us,

and even in terms of them not accurately looking at some of the records that were shown to the——

Senator SPECTER. Well, I understand the problems that the Clerk of Quarter Sessions has, Ms. Vivian Miller. She's your superior, right?

Mr. GAILLARD. Yes, she is.

Senator SPECTER. Uh-huh. And we want to explore further the operations and the problems that you have with respect to resources and to find out whose job it is to do precisely what. So we appreciate your coming in today and we will follow up with Ms. Miller. Tell her that I will give her a call personally and try to work out the procedures, to find out exactly what is going on to see if we can be helpful.

Mr. GAILLARD. OK. We appreciate that.

Senator SPECTER. Thank you for coming in. Thank you.

Mr. GAILLARD. Thank you, sir. Senator Specter. Our first witness on our panel is Mr. John Patrignani, Acting U.S. Marshal. He comes to this job with very extensive service in the U.S. Marshal's Office since 1990, serving in a variety of positions and has intimate knowledge of the operation of the fugitive problem. Thank you very much for joining us, and we look forward to your testimony.

STATEMENT OF JOHN PATRIGNANI, ACTING U.S. MARSHAL FOR THE EASTERN DISTRICT OF PENNSYLVANIA, PHILADELPHIA, PENNSYLVANIA

Mr. PATRIGNANI. Thank you, and good morning, Chairman Specter and members of the subcommittee. My name is John Patrignani, Acting U.S. Marshal for the Eastern District of Pennsylvania. Thank you for the opportunity to appear before you today to discuss what the U.S. Marshal Service can do to assist in the apprehension of dangerous State and local fugitives.

The Marshal Service has a long and rich history, with fugitive apprehension as one of its core missions. In 2006, Congress gave us the added responsibility of investigating sex offenders under the Adam Walsh Protection and Safety Act.

The success of the Marshal Service's fugitive apprehension program is unmatched in Federal law enforcement. In fiscal year 2009, the USMS arrested more than 127,000 felony fugitives, including more than 10,000 sexual offenders. Here in the Eastern District of Pennsylvania, the USMS and its State and local partners arrested over 1,500 fugitives, and we expect these statistics to increase this fiscal year.

U.S. Marshals lead 82 fugitive task forces that support State and local efforts in apprehending violent fugitives. Our partnerships with Federal, State and local agencies through the task forces provide the wherewithal necessary to take the worst of the worst fugitives off the streets and help make our communities safer.

The USMS provides our law enforcement partners with things that would not otherwise be available to them, such as overtime compensation, equipment, vehicles, technical assistance, and training. The force multiplier effect of the task forces lets criminals know that they can run, they can hide, but U.S. Marshals will track them down.

In the Eastern District of Pennsylvania, the Violent Crimes Fugitives Task Force leads the hunt for fugitives. Led by the Marshal Service and comprised of four Federal and five State and local agency partners, the task force focuses on apprehending Federal, State, and local violent and felony fugitives. In fiscal year 2009, the task force arrested over 1,500 fugitives, including 114 sex offenders, 5 gang members, and 93 persons wanted for homicide. Investigators also seized 26 firearms, $26,000 in cash, and a quantity of narcotics.

In June 2009, Operation FALCON, which is an acronym that stands for Federal and Local Cops Organized Nationally, was conducted in conjunction with our Federal, State and local partners. In the Eastern District, we arrested 333 fugitives during the course of the operation, including 4 persons wanted for homicide and 23 sexual offenders. In addition, investigators seized 5 firearms, $5,000 in cash, and a quantity of narcotics.

Another tool in the fight against crime is the Fugitive Safe Surrender program. Authorized under the Adam Walsh Act, FSS does not provide amnesty, instead it encourages persons wanted for nonviolent felony or misdemeanor crimes to voluntarily surrender in a faith-based or other neutral setting. Partnering with State and local law enforcement, the judiciary, and the religious community, the U.S. Marshal's Service has undertaken a total of 17 successful fugitive safe surrender operations. During the three operations conducted here in Pennsylvania, nearly 3,000 people self-surrendered, including over 1,200 in Philadelphia alone.

The USMS also provides resources to State and local partners through the Department of Justice's Asset Forfeiture Program, which is managed by the Marshal's Service. Proceeds from the sale of forfeited assets are deposited into the asset forfeiture fund and shared with State and local law enforcement agencies based upon their involvement in law enforcement actions that led to the forfeiture of the assets.

The USMS shared more than $7.5 million here in the Eastern District in fiscal year 2009. Additionally, the USMS has used asset forfeiture funds to purchase and equip nearly 600 vehicles and pay overtime costs for State and local law enforcement partners across the country.

The USMS is in a unique position with regard to the entry of warrants into the NCIC computer, since it serves as the national repository of all Federal arrest warrants that have been issued by U.S. District Courts and the U.S. Parole Commission. The Marshal Service also has apprehension authority for escaped Federal prisoners, bail-jumpers, parole violations, probation violators, non-compliant sexual offenders, and for fugitives wanted by other Federal law enforcement agencies. The USMS maintains nearly 30,000 wanted persons in NCIC, more records than any other Federal agency.

Mr. Chairman, cooperation and coordination with our Federal, State and local law enforcement partners is of the utmost importance to the U.S. Marshal Service. Quite simply, they need us and we need them. Through the expansive network of the task forces in fugitive roundups such as Operation FALCON, the USMS has proved the efficacy of the cooperative law enforcement model which

seeks to multiply the positive impact of law enforcement at all jurisdictional levels.

Thank you for the opportunity to appear here before the subcommittee. I am happy to answer any questions you may have, sir.

[The prepared statement of Mr. Patrignani appears as a submission for the record.]

Senator SPECTER. Thank you. Thank you very much. We'll come to the questions later.

We'll turn now to Mr. David Preski, Chief of the Pre-Trial Service Division of the First Judicial District of Pennsylvania.

Thank you for joining us, Mr. Preski. We look forward to your testimony.

STATEMENT OF DAVID PRESKI, CHIEF OF THE PRE-TRIAL SERVICE DIVISION AT THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA, PENNSYLVANIA

Mr. PRESKI. Thank you, Chairman Specter and members of the subcommittee. On behalf of the First Judicial District, I thank you for the invitation to answer any questions you may have.

Senator SPECTER. The First Judicial District is Philadelphia.

Mr. PRESKI. Yes, it is.

My name is David Preski. I'm currently the Chief of the Pre-Trial Service Division of the First Judicial District of Pennsylvania. The First Judicial District of Pennsylvania, through its Pre-Trial Service Division, operates a full-service agency. The agency is responsible for many of the components, from arrest to adjudication, within the criminal justice process. The agency acts as the informational gatekeeper for all arrested and charged individuals and is responsible for the monitoring, supervision, and enforcement of released individuals and the arrest and apprehension of wanted individuals.

The Warrant Unit is responsible for the enforcement of all criminal bench warrants and adult probation and parole warrants for the First Judicial District. Additionally, the unit is responsible for the enforcement of traffic court warrants and domestic relations warrants as they relate to child support and custody.

The Warrant Unit is presently comprised of 52 armed field personnel and approximately 24 part-time administrative staff. The unit operates 24 hours a day, 7 days a week, including holidays, to complete fugitive investigations for the arrest of individuals wanted on bench warrants, probation and parole violations, traffic court, and domestic relations warrants.

Administrative staff process correspondence from law enforcement agencies and departments throughout the Commonwealth in conjunction with the Commonwealth Law Enforcement Assistance Network, also called CLEAN, in order to confirm the validity of criminal warrants for individuals detained in other jurisdictions.

Warrant Unit investigative personnel are then dispatched to accept custody of confirmed fugitives who are not being held on any other criminal charges and return them to the custody of Philadelphia. The Warrant Unit also has a major role in the First Judicial District House Arrest Program from the initial investigation, field installation, equipment maintenance, and the arrest of violators. This unit also maintains an office at the Criminal Justice Center

to facilitate individuals who surrender peacefully on criminal bench warrants.

During calendar year 2009, the unit was responsible for the arrest of 6,300 individuals wanted on 10,787 warrants. Additionally, through its surrender process, the unit processed 17,381 cases, returning them to the active inventory. The Warrant Unit has established excellent working relationships with local, State, and Federal law enforcement partners, including, but not limited to, the Philadelphia Police Department, the U.S. Marshal Service, and the Federal Bureau of Investigation. The unit has participated in various sweeps, such as Operation FALCON, Operation Pressure Point, and Fugitive Safe Surrender.

The ultimate mission of the Warrant Unit is to reduce the warrant inventory and to maintain the integrity of the judicial process. Given adequate resources and personnel, the unit will strive to reduce the current outstanding bench warrant catalog.

Again, Senator Specter, I thank you for the invitation to this Committee.

[The prepared statement of Mr. Preski appears as a submission for the record.]

Senator SPECTER. Thank you very much, Mr. Preski.

We now turn to our next witness, Mr. Roy Weise, Senior Advisor, Criminal Justice Information Services, Federal Bureau of Investigation.

Thank you for coming here, Mr. Weise. The floor is yours.

STATEMENT OF ROY G. WEISE, SENIOR ADVISOR, CRIMINAL JUSTICE INFORMATION SERVICES, FEDERAL BUREAU OF INVESTIGATION, CLARKSBURG, WEST VIRGINIA

Mr. WEISE. Well, thank you, Senator. I'm Roy Weise, Senior Advisor in the FBI's Criminal Justice Information Services Division, or CJIS, located in Clarksburg, West Virginia. I thank you for this opportunity.

The CJIS division maintains the National Crime Information Center, more commonly known as NCIC, which was established in 1967. It's a computerized index of documented criminal justice information available to criminal justice agencies nationwide. The information maintained in NCIC assists authorized users in apprehending fugitives, locating missing persons, recovering stolen property, and identifying terrorists. NCIC operates under a shared management concept.

The shared management is achieved through the Advisory Policy Board, chartered under the Federal Advisory Committee Act, and comprised of Federal, State, local, and tribal criminal justice professionals. The FBI serves as the custodians of the records housed at NCIC and maintains the operational availability of the system. The entry, modification and removal of records are the responsibility of the law enforcement agency that holds the arrest warrant, the missing person report, the theft report, et cetera.

CJIS works very closely with tribal, local, State, and Federal law criminal justice agencies to develop the operational, policy, and procedural guidelines for using this system. Each State has a State level and a local agency representative who participates in the shared management process.

Due in large part to the shared management, NCIC has thrived. Presently, NCIC contains 19 files with over 15 million records which are accessed an average of 7.5 million times each day. The system has experienced upgrades, modifications, and policy changes in order to adapt to new capabilities and changing requirements, as dictated by the user demands and legislation.

Although there are no mandates requiring the entry of warrants into NCIC, law enforcement personnel rely greatly upon the use of the system. In 2007, the CJIS Advisory Policy Board convened a Warrant Task Force to address many outstanding warrant-related topics. The task force is comprised of a panel of subject matter experts who understand and place special emphasis on the importance of a wanted person file record entry by State and local law enforcement.

Through initiatives by the local and State agencies and the efforts of the task force, the number of warrants has improved over the years. In 2002, there were entries for 800,000 fugitives in NCIC; today there are 1.7 million. Having said that, the task force, the members of the shared management, and CJIS realize that there is room for more improvement.

Senator Specter, I thank you for the opportunity to appear here on this issue. It is regarded very seriously by the FBI and the CJIS division. I look forward to any questions you may have.

[The prepared statement of Mr. Weise appears as a submission for the record.]

Senator SPECTER. Thank you very much, Mr. Weise.

Our fourth and final witness on this panel is Mr. Dennis Bartlett, executive director of The American Bail Coalition.

We appreciate your appearing here today, Mr. Bartlett. The floor is yours.

STATEMENT OF DENNIS A. BARTLETT, EXECUTIVE DIRECTOR, THE AMERICAN BAIL COALITION, FAIRFAX, VIRGINIA

Mr. BARTLETT. Mr. Chairman, thank you for the invitation to appear. I am Dennis Bartlett, the executive director of The American Bail Coalition, which is an association of 13 bail insurance companies. Our companies write most of the bail in the United States.

Although the State of Pennsylvania permits the use of commercial surety bail for court appearance bonds, it also allows for local court rules. In 2006, Philadelphia allowed the use of commercial bail after a prohibition of over three decades. The new regulations, however, are so restrictive as to act as disincentives, hence, practically speaking, the use of commercial bail here is negligible.

Nobody can estimate how the use of commercial bail might have attenuated Philadelphia's current bail crisis, but we do know this: (1) commercial bail gets its defendants to court, and if we don't we pay the forfeitures in cash. Nationwide, commercial bail has a solid track record in accomplishing the basic purpose of bail, that is, getting defendants to court. For every 100 defendants we bond out, we will have about 8 of them skip, and of that handful we will recover, on average, 5 or 6, for an overall success rate of 97 to 98 percent. This success rate probably explains why, since 1990, State courts have doubled the use of commercial surety bonds.

Lest I sound like Cicero, pro domo sua, this record has been confirmed by DOJ's Bureau of Justice Statistics, plus a number of academic studies, which are detailed in the written testimony. We're not Federal, but we might be part of the solution. If, in the opinion of the Federal Government, commercial bail is deemed a helpful ancillary to the criminal justice system, that is, getting clients to court, recovering fugitives, paying forfeitures for those who don't, how can the Federal Government enhance this role?

One of the main obstacles to commercial bail is Federal funding granted to those who use these funds to try to eliminate commercial bail. The chief source of such funding is found in the Bureau of Justice Assistance and other agencies of DOJ's Office of Justice Programs. Recipients of government largesse, such as the National Association of Pre-Trial Service Agencies and the Pre—Trial Justice Institute, make no secret of their intention to eliminate commercial bail nationwide and replace it with government-run pretrial service agencies.

As far back as 1996, Congress chided OJB for such lopsided endorsements: "Pre-trial release. The Committee is concerned that the Bureau of Justice Assistance has awarded grants to programs that encourage the use of unsecured release for individuals charged with serious and violent crimes. The Committee believes that balanced information should be provided to States and localities regarding all available pre-trial alternatives." Hence, if commercial bail has a positive effect on the U.S. criminal justice system, al fortiori, Federal funding, which goes to undercut it seems out of place.

Furthermore, if pre-trial service agencies are recipients of Federal funding, it is not unreasonable for them to be accountable for their performance. According to a recent survey of 171 such agencies by the Pre-Trial Justice Institute, less than half of these agencies keep records, even of failures to appear. Furthermore, PJIA states that many of these agencies are disinclined to keep records out of fear that their poor performance will be used against them, especially in the budget process.

Pre-trial service agencies should be subject to reporting requirements that record who is released on what charge, how many times that person has failed to appear, and the offense committed while on release pending trial, and if money bail is used, a record of the bond amount and how much was fortified, how much paid, and, more importantly, how much owed.

There is a new development. It's a modest trend and it should be encouraged. Pre-trial service agencies recommend that their clients be released on commercial surety bonds. According to the PJI survey, pre-trial service agencies recommend about 20 percent of the time that their clients be bailed out on a commercial surety bail bond. Agencies who have partnered with commercial bail on this have reduced their FTA rates drastically. Naturally, those who advocate the demise of commercial bail oppose this trend. The same cannot be said for us; we welcome such cooperation.

Thanks again, Mr. Chairman.

[The prepared statement of Mr. Bartlett appears as a submission for the record.]

Senator SPECTER. Thank you. Thank you, Mr. Bartlett.

Mr. Preski, we'll begin with you. According to a Bureau of Justice Statistics report from 2004, Philadelphia is tied with Newark, New Jersey as having the Nation's highest fugitive felony rate of 11 percent. According to the *Inquirer* story, the total number of fugitives in Philadelphia today is almost 47,000, specifically, 46,839. Do those statistics sound about right to you?

Mr. PRESKI. Yes, they do.

Senator SPECTER. The factual situation also, as reported, is that Philadelphia is owed $1 million in bail monies, but they cannot be collected because of the absence of computerized records. Is that about right?

Mr. PRESKI. Senator Specter, the Pre-Trial Service Division is responsible for the collection of the bail. We're not responsible, when bail is entered into judgment, for the collection piece. In other words, when an individual comes in to post the bail, our responsibility is to validate the amount of the bail that's holding the individual and to collect the requisite fee. Once that is done, then the bail process is turned over to the Clerk of Quarter Sessions. They are responsible for the collection.

Senator SPECTER. It is the responsibility of the Clerk of Quarter Sessions to collect the bail?

Mr. PRESKI. Yes, sir. After it is entered into judgment.

Senator SPECTER. Are you aware of the audit of the Office of Clerk of Quarter Sessions which has just been released this week for 2 years, 2007 and 2008, which shows that there was a failure to have back reconciliations for $26,800,000 omitted from the city's preliminary financial statement and did not report to the city $352,800,000 in receivable funds for restitution?

Mr. PRESKI. No, I am not.

Senator SPECTER. Do you have any comment on that?

Mr. PRESKI. The one thing I would like to point out, if the Statewide automation system, which Philadelphia is a part of, any bill that is collected by my agency, the requisite information on the individual is part of the record. So whether the bill goes in the name of the defendant or in the name of a third-party surety, all that information is part of the criminal process and the criminal record process, and that is turned over to the Clerk of Quarter Sessions. So they should have the information available to them of who posted the bail when money is entered into judgment.

Senator SPECTER. Mr. Preski, the *St. Louis Post-Dispatch*, in a series of articles in 2008, reported that there are a vast number of fugitives who are not entered into the Federal system, into the National Crime Information Center. Do you have any idea how successful the Philadelphia system is for reporting fugitives into that system?

Mr. PRESKI. As of right now, Philadelphia's warrants are not entered into NCIC, however, they will be, from what I understand, in May of 2010.

Senator SPECTER. Why have they not been registered with the Federal system, the National Crime Information Center?

Mr. PRESKI. I believe it was a logistical problem with computer people. But Senator Specter, I'm not totally aware of why.

Senator SPECTER. Well, it's a pretty big omission, not to register the fugitives with the national system.

Mr. PRESKI. Correct.

Senator SPECTER. If the national system has a record of who the fugitives are from Philadelphia and they're apprehended someplace else, for example, St. Louis, then there's an opportunity for the St. Louis authorities to notify Philadelphia for Philadelphia to go and get the fugitive.

Mr. PRESKI. You're absolutely correct. That would put a greater burden on the District Attorney's Office, who is responsible for the extradition of that individual.

Senator SPECTER. Well, that's the burden of the District Attorney, to prosecute people charged with crime, and you have to bring them in. Isn't the practical effect of not reporting to the national clearinghouse fugitives really knowing the system, gaming the system, remaining at large and really thumbing their nose at the Philadelphia criminal justice system?

Mr. PRESKI. Senator Specter, the individuals will be entered into the national computer system in May of 2010. Now, I was not part of the committee or the reason why they were, or took so long for them to be entered into it.

Senator SPECTER. Who was on the committee? Who is responsible?

Mr. PRESKI. I'm not aware of that, Senator.

Senator SPECTER. Well, who's on the committee?

Mr. PRESKI. I believe it was the Philadelphia State Police, it was members of the First Judicial District Management Information Services, and court administration.

Senator SPECTER. This is January. Why should it take until May to start entering these fugitives in the national system?

Mr. PRESKI. I believe it was just logistical problems, from what I understand.

Senator SPECTER. What do you mean by "logistical problems"?

Mr. PRESKI. How the warrants were going to be entered in, what information was going to be entered in, et cetera. But again, I was not part of that, so it's very difficult for me to answer that.

Senator SPECTER. Well, who's responsible for it now? Whom can I call up and say, why the delay?

Mr. PRESKI. I would contact the court administration for the First Judicial District of Pennsylvania, Mr. Lawrence.

Senator SPECTER. And he has the answers?

Mr. PRESKI. I would hope so, sir.

Senator SPECTER. Mr. Patrignani, you are the Acting U.S. Marshal. How does the Federal Government work on a similar system? If you have a fugitive who doesn't show up for a Federal trial, is that person entered into the National Crime Information Center?

Mr. PATRIGNANI. Yes, they are.

Senator SPECTER. And if they are apprehended somewhere on another charge in some other city, is that information brought to the attention of the U.S. Marshal so that you can facilitate their being brought back to your court for trial?

Mr. PATRIGNANI. Yes, it is.

Senator SPECTER. And how does that work?

Mr. PATRIGNANI. Well, generally the arresting jurisdiction, if it's outside of the Philadelphia area, will run that person. If they identifiers that that person provides to that arresting jurisdiction are

the same that are entered into NCIC, then they'll get what's called a "wanted hit," which will be a computer-generated message letting them know that that individual is wanted in another jurisdiction for——

Senator SPECTER. And then what do you do, go get them?

Mr. PATRIGNANI. That's correct.

Senator SPECTER. What happens to the person who has skipped bail? Is there an additional penalty, an additional charge? What is the consequence of that?

Mr. PATRIGNANI. There can be, and generally that's left up to the judge who presides over that particular case.

Senator SPECTER. And what have you seen is the practice? Does the judge increase the severity of the sentence?

Mr. PATRIGNANI. I think it varies, Mr. Chairman. Some judges have made it more of a practice to add additional penalties for failure to appear and violations of——

Senator SPECTER. Is there a separate offense for jumping bail?

Mr. PATRIGNANI. Yes, there is.

Senator SPECTER. So there can be an additional sentence on an additional offense?

Mr. PATRIGNANI. That's correct.

Senator SPECTER. Mr. Weise, what recommendations would you have for the kinds of problems which we're facing here in Philadelphia? You're a senior advisor for the Criminal Justice Information System at the Federal Bureau of Investigation. How effective is the system employed in the Federal criminal courts contrasted with what we've heard about the Philadelphia criminal courts?

Mr. WEISE. I really feel I'm not qualified to answer that question. I couldn't compare the two, Senator.

Senator SPECTER. Well, how does the Federal system work? You've heard the description from Mr. Patrignani. How would you supplement that?

Mr. WEISE. The NCIC, we feel, is a very effective weapon. We now have 1.7 million warrants in the system. A recent survey showed that—not recent. It was actually a few years ago. But it showed that we apprehend a fugitive every 90 seconds using the system.

Senator SPECTER. The *St. Louis Post-Dispatch* cited Federal estimates of 1.9 to 2.7 million active Federal, State, or local felony warrants, but only 1.1 million of those warrants having been entered in the National Crime Information Center. Does that sound about right to you?

Mr. WEISE. Yes, sir. That article was written some time ago, so the 1.1 million is now 1.7 million. So, we have improved since then.

Senator SPECTER. So this is a national problem. Those figures cited not only Federal, but State and local as well, correct?

Mr. WEISE. Yes, sir. That's total.

Senator SPECTER. And do you have any idea why it is that so many fugitive warrants are not entered into the national system?

Mr. WEISE. I think some of it is the overhead involved in putting them in, administrative overhead. There's a requirement that you validate each record every year to make sure that it's still supposed to be in the system, which takes resources. I think sometimes it's a matter of education, and that's been one of our efforts, is we've

used that *St. Louis Post-Dispatch* article to—we sent that to every chief of police and every sheriff in the country to let them know about this issue, feeling that once they're aware of it they'll take care of it in their jurisdiction as well.

Senator SPECTER. So with that tremendous number of additional people who have jumped bail around the country, State and local, it seems the Federal Government has it pretty well in control, as described here today. There are a lot of people who are charged with crimes who are at large. Any statistics or studies available on the crime problem caused by those people who are at large?

Mr. WEISE. Not that I'm familiar with. The Post-Dispatch article did have some good anecdotal information about the crimes that are committed——

Senator SPECTER. And what was that anecdotal information?

Mr. WEISE. Just, individuals that committed a crime because they were not in the system, or perhaps they were in the system but when they were arrested and extradition was not accomplished.

Senator SPECTER. So there are specific cases where people who have jumped bail, who are at large, have committed other crimes of violence?

Mr. WEISE. Yes, sir.

Senator SPECTER. And with so many at large, it's a pretty sensible inference that many more are committing crimes of violence.

Mr. WEISE. Yes, sir.

Senator SPECTER. So it's a breakdown nationally, not just Philadelphia. We've got a lot of company.

Mr. WEISE. Yes. It's not unique to Philadelphia.

Senator SPECTER. Huh?

Mr. WEISE. It's not unique to Philadelphia.

Senator SPECTER. Not unique to Philadelphia.

You talk about commercial bail, and your testimony is that commercial bail has been a lot more successful in producing people who jump bail.

Mr. BARTLETT. Yes, sir, I think we are. If you've got a 97 to 98 percent success rate, I think that's pretty good.

Senator SPECTER. How good are your statistics? They sound a little too good to be true, Mr. Bartlett.

Mr. BARTLETT. They're industry statistics. It will vary from place to place, but that seems to be the general, that 8 percent initial skip rate, and then the picking up of 4 or 5. Also, that is confirmed by the Bureau of Justice statistics study.

Senator SPECTER. Would you recommend to a city like Philadelphia that they go back to commercial bail?

Mr. BARTLETT. Yes. I think the courts should have that option, and I think for certain defendants it would be a good option. I think the city ought to facilitate that. Right now, they have, like I said, since 2006, authorized the reintroduction of commercial bail, but you have to put down a $250 deposit and you cannot write more than $1 million face value.

Senator SPECTER. A $250 deposit?

Mr. BARTLETT. Two hundred and fifty thousand. Excuse me.

Senator SPECTER. Two hundred and fifty thousand.

Mr. BARTLETT. Correct.

Senator SPECTER. Who puts the deposit down, the commercial bail company?

Mr. BARTLETT. Yes. The person who's admitted, the company's that's admitted to write bail has to put down that deposit. Now, in the case of an insurance company, that's ridiculous because insurance is, in effect, a deposit. I don't think any property and casualty writer in the city has to put down such a deposit.

But the cap of $1 million only allows, say, a 10 percent profit, so you're basically putting down a quarter of a million dollars to make a $100,000 profit, if that. That's shared with bail agents and insurance companies and so forth, so as somebody said, the squeeze is not worth the juice.

Senator SPECTER. Mr. Bartlett, do you know the history of Philadelphia moving away from commercial bail to——

Mr. BARTLETT. Yes. I've heard it was the result of, as it was in many places 35 years ago or so, corruption in the bail industry. Nowadays, it's highly regulated. A corrupt bail agent today is soon a former bail agent. Abuses in the system—it's very highly self-policed. Very few bail agents will tolerate a colleague who is getting a commercial edge based on spurious practices. I'd say that almost any case that you could bring up to me, I could probably tell you that behind the prosecution of such abuses are probably other bail agents who are coming forth to the authorities regarding those abuses.

Senator SPECTER. When I was District Attorney, there was a lot of corruption in the bail system, implicated with a magisterial system where there were shake-downs and people who were under arrest. We used to have a theater across from City Hall called The Family Theater, and there were a lot of sting operations. They would arrest people on charges involving gays, take them into the police district. Suddenly, someone would appear and get them released on bail and extorted large sums of money. The bail system went by the boards. But it may be time to take another look at it.

Mr. BARTLETT. Well, I think under the current situation—you know, that's 35 years ago. I think the situation has changed drastically in that respect.

Senator SPECTER. I'd like you to submit to the subcommittee those statistics, and the backing of those statistics——

Mr. BARTLETT. Sure.

Senator SPECTER [contuning]. To show the success rate in the high 90s. That sounds like a——

Mr. BARTLETT. They are put forth in the studies which I referred to in my written testimony. I'll be happy to get that material to your staff.

Senator SPECTER. We have had a number of efforts to bring the Federal Government into the bail picture. Legislation was introduced by Senator Biden—held hearings in 2008—to provide for Federal grants authorizing the Attorney General to make Federal grants to assist in the funding of locating and apprehending fugitives and bringing them back. Senator Durbin and Senator Elizabeth Dole had similar legislation. Senator Durbin's staff and my staff have been talking about revitalizing that.

What do you think of that, Mr. Preski? This is an obvious question, but the city of Philadelphia could use some assistance on

funding the identification of these fugitives and apprehending them and bringing them back.

Mr. PRESKI. Senator, we would welcome any additional funds that would assist in that endeavor. I mean, at the present time, if you look at the Warrant Unit, in and of itself, we're down 21 personnel due to budgetary constraints that the First Judicial District is under.

Senator SPECTER. You have only 52 people in the Warrant Unit?

Mr. PRESKI. I have 52 armed field personnel.

Senator SPECTER. How many do you need?

Mr. PRESKI. I would welcome any additional personnel.

Senator SPECTER. No, I know you'd welcome them, but how many do you need?

Mr. PRESKI. Presently we're down 21 individuals. I would like to replenish and get back to where I was, at least.

Senator SPECTER. If you had 21 more, up to 73, would that be adequate?

Mr. PRESKI. It would allow us to do our job even better than how we do it now. I mean, if you look at these 6,300 arrests for calendar year 2009, we would be able to increase that.

Senator SPECTER. When was the decision made to start putting Philadelphia fugitives into the national system next May? When was that decision made?

Mr. PRESKI. I was not part of that decision.

Senator SPECTER. Who made the decision?

Mr. PRESKI. Again, I have to defer to my hierarchy on that. I know that there were numerous meetings with the State Police, with the Philadelphia Police, and in order to complete——

Senator SPECTER. Those were inspired by the *Philadelphia Inquirer* articles?

Mr. PRESKI. No, it was before that, actually. This has been an ongoing discussion.

Senator SPECTER. Well, how long have the discussions taken?

Mr. PRESKI. Senator, again, I'm not part of that. I can't answer that.

Senator SPECTER. Okay. Well, we can find that out. We can find that out.

Mr. PRESKI. I can tell you this, that the Philadelphia warrants have been entered into the Commonwealth Law Enforcement Assistance Network, the CLEAN network, since 2004, so anyone that is stopped within the Commonwealth of Pennsylvania, the Philadelphia warrant will be visible to them.

Senator SPECTER. Since 2004?

Mr. PRESKI. 2004, sir.

Senator SPECTER. How effective has that been?

Mr. PRESKI. It's highly effective. Highly effective.

Senator SPECTER. So you knew that if you had these warrants entered into a statistical computer and you located people, but inside of Pennsylvania is very limited. These fugitives travel far and wide, don't they, Mr. Preski?

Mr. PRESKI. Yes, they do, Senator.

Senator SPECTER. Uh-huh.

Mr. Patrignani, would you have any suggestion for how the Philadelphia system ought to be restructured to be as effective as the Federal system?

Mr. PATRIGNANI. Well, I would defer to the local officials on that matter, Mr. Chairman, just because they're much more qualified to be able to answer their intimate questions.

Senator SPECTER. Well, we will pursue it, Mr. Preski, as you say, with the individuals who are charged to try to find out where the laxity has been and why it's going to take so long, until May. That's a long time between now and May. That's five months—four, five months.

And Mr. Bartlett, we'd appreciate your giving us those statistics and the way commercial bail works. That's something that ought to be considered here.

Senator SPECTER. Well, we thank you all very much for coming in, and that concludes our hearing. Thank you.

[Whereupon, at 11:02 a.m. the hearing was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

WRITTEN TESTIMONY

of

The American Bail Coalition

Concerning

"Exploring Federal Solutions to the State and Local Fugitive Crisis"

Senate Judiciary Committee
Subcommittee on Crime and Drugs

0930 Tuesday, January 19th 2010

National Constitutional Center

Philadelphia, Pennsylvania

Introduction

Mr. Chairman, members of the Sub-Committee,

Thank you for the opportunity to address the committee concerning the utilization of commercial surety bonds for release of defendants pending trial.

My name is Dennis Bartlett. I am the executive director of the American Bail Coalition, which is an association of bail insurance companies. Our 13 companies write most of the bail in the US. One of our companies has been doing this for over a century.

What is a Bail Bond?

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There are at least five methods of pretrial release: (1) release on own recognizance (ROR) [No dollar amount set for bail.], (2) cash bail [Defendant posts full amount of bail.], (3) unsecured financial bail [Defendant posts no dollar amount and is released on promise to appear, upon failure of which, he is obligated for the whole amounts.], (4) cash deposit bail [Defendant pays a small percentage – usually 10% -- of the bond set, which is supposed to be refunded upon appearance (a system commonly used in Philadelphia).], and (5) surety bail [A private party, called a surety, guarantees the appearance of defendant in court, upon the failure of which, the surety pays the court the full amount of the bond]. For the past three decades, the Philadelphia bail system has functioned without benefit of commercial surety bail. *

Surety bail is the only pretrial method wherein a third party, by means of a written undertaking, financially guarantees to the court the appearance of the defendant. If the defendant does not show, the surety pays.

Efficacy of Commercial Bail

What is the purpose of bail? Is it to sweat plea bargains from defendants, to punish defendants, to enrich the state through forfeitures, to manage jail populations and enhance "system efficiency", release the highest number of defendants possible? None of the above. The sole purpose of bail is to secure the appearance of the defendant in court. To wit:

US Court of Appeals 11th Circuit in United States v. Diaz says that the primary purpose of bail is to assure the defendant's appearance at all required court proceedings and trial.

In United States v. Ryder, the Supreme Court states: "...the object of bail in criminal cases is to secure the appearance of the principal before the court for purposes of public justice."

In achieving this end, the most efficient method of pretrial release is secured release, that is, release on commercial surety bonds. The U.S. government itself has confirmed this. The Bureau of Justice Statistics, using almost 15 years of data, has documented the track record of other methods and commercial bail. The recent BJS study, entitled *State Court Processing Statistics, 1990-2004, Pretrial Release of Felony Defendants in State Courts (November 2007, NJC 214994),* upholds the assertion that commercial bail is more effective in getting defendants to court and confirms that those released on secured bonds are less likely to commit crimes than those on unsecured release while back on the streets awaiting trial.

What does the Bureau of Justice Statistics Conclude?

Compared to release on recognizance, defendants on financial release were more likely to make all scheduled court appearances. Defendants released on an unsecured bond or

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as part of an emergency release were most likely to have a bench warrant issued because they failed to appear in court.

In addition, one of the authors of the BJS study, Thomas Cohen, J.D., Ph.D., has recently published an academic paper entitled "Commercial Surety Bail and the Problem of Missed Court Appearances and Pretrial Detention". (Dr. Cohen has written this as a private academician and his views do not represent those of BJS or DOJ). Within his study, Dr. Cohen compares the performance of five counties where surety bail dominates and five where there is little to no surety bail. In Table 3 (p. 14) of the study, the results show that for non-surety counties the failure to appear (FTA) rate is 21% and for surety counties 11%, a ten percent better performance. Also for numbers of skips remaining as fugitives: for non surety – 7%; for surety -- 3%.

Former Attorney General of the United States William P. Barr stated that the bail bond system plays a critical role in the U. S. criminal justice system and wrote in a February 2000 letter to Congressman Charles Canady:

On the one side of the balance are the rights of accused persons to be released on reasonable bail pending their trials. The Bail Clause of the Eighth Amendment to the Constitution embodies the long Anglo-American legal tradition favoring pre-trial release of accused persons. Bail insurers make this a reality by providing a financial service that permits such persons to post bail. The bail bond system thus performs an extraordinarily valuable public service by permitting accused persons to participate more fully in their own defense while at the same time freeing up crowded jail space. On the other side of the balance are the interests of the people as a whole in ensuring the persons accused of crimes appear for trial and that fugitives be returned to justice. Bail insurers provide appropriate assurances to the state that an accused person will appear as scheduled to answer charges. If the defendant "skips", the bondsman has significant financial incentives to take investigative steps to insure his return. These efforts are credited with recovering approximately 35,000 fugitives each year. Without their efforts, these fugitives would either remain at large or significant state and local police resources would need to be diverted from other law enforcement activities to secure their capture. In short, the system works well, returning many fugitives to custody at no cost to the government and with a low rate of abuse.

Not only the U.S. Government, but the academic community as well, has weighed in on the side of commercial bail. In April 2004, the University of Chicago Law School's *The Journal of Law and Economics* (Vol XLVII [1]) published an article entitled "The Fugitive: Evidence on Public versus Private Law Enforcement from Bail Jumping" by two economic professors, Eric Helland and Alexander Tabarrok. They conclude:

Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time... Given that a defendant skips town, however, the probability of recapture is much higher for those defendants released on a surety bond. As a result, the probability of being a fugitive is

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64 percent lower for those released on surety bond...These findings indicate that bond dealers and bail enforcement agents...are effective at discouraging flight and at recapturing defendants.

Hence it is clear that commercial surety bail does very well what it is supposed to do. Return defendants to court.

Cost

What would commercial bail cost the city? Nothing, in fact, the city stands to gain revenue.

Commercial bail agencies are private entities that bear all their own costs. No tax dollars go towards their operation.

As mentioned above, there is no question that in terms of release pending trail, commercial bail has the imprimatur of the Department of Justice's Bureau of Justice Statistics as the most effective method. Commercial bail brings to court more defendants (who commit less crimes while out) than any other method. Hence, among pretrial release mechanisms, commercial bail is the best method for stemming the social costs in terms of public safety.

What about dollars? What are the fiscal costs to Philadelphia without commercial bail? The loss of over $1 billion in uncollected forfeitures is shocking enough. But what about those expenses just attributable to a failure to appear (FTA)? That is, the administrative costs of skipping court dates, the cost of no-shows, and the cost of jail cells for re-committed skips. A cost of an FTA is calculated in loss of time for attorneys, judges, court officers, witnesses, and law enforcement. In 1997 Michael Block, an economics professor at the University of Arizona, and a former Arizona deputy attorney general, Steve Twist, wrote a study on the costs of FTA's. Entitled *Runaway Losses*, the study established the cost of each FTA in the Los Angeles criminal justice system. The result: each FTA cost circa $1,300. The current cost of an FTA today might vary according to each jurisdiction (and, in fact, might be less), but if multiplied by, say 50,000 FTA's, it annually would be an astounding sum, not to mention the dislocation to the courts.

Commercial bail would staunch Philadelphia's hemorrhage of FTA's right up front. Out of every 100 defendants released on a secured bond, it is estimated by industry performance in other states, that only eight will skip and of this hand full, all but two eventually will be recovered. In contrast, use of the current ten percent deposit bail method in the 23 states where it is permitted, results in a flood of FTA's. In some jurisdictions, such as Cleveland, Ohio, it runs as high as 50%, that is, one out of two released does not return. Also, a lower FTA rate, occasioned by commercial bail, means reduced jail occupancy. Those defendants on release pending trial on a secured bond are less likely to skip and less likely to commit crimes while back on the street.

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Commercial bail is an insurance policy written in favor of the state. If the defendant does not appear and a forfeiture judgment is executed, commercial bail pays the amount of the bond, e.g. if the bond is $50,000, commercial bail pays $50,000 cash. And if the commercial bail entity does not pay, the license for writing bail bonds is revoked. Hence, there is a powerful financial incentive to recover the absconder, and if this fails, there is a stronger incentive to pay the forfeiture necessary to stay in business.

In contrast, under Philadelphia's current system, if the defendant absconds, the city is out 90% of the bond if the ten percent method is used, and 100% if other methods like own recognizance are used.

Under commercial bonds, the numbers of forfeitures would be reduced right up front because of the lower FTA rates. However, for those defendants who skip and are never recovered, the surety will pay up.

Another source of revenue would be the licensing fees. In addition, insurance companies will pay premium taxes on the bonds they write.

If commercial bail is so efficient in recovering fugitives, won't this clog up the already overcrowded jails? When they are on the loose, skips, of course, occupy no jail space. The problem arises when they are returned to custody. In the first place there will be a lower number of skips, at maximum perhaps eight out of a hundred. And some of these will be re-bonded out. Hence, this cohort of returned skips is more than offset by the numbers who will be not confined while awaiting trial.

Furthermore, the cost of recovering fugitives is borne solely by the bonding agent and not by the state. Under the current system the city must either recover the fugitive by means of law enforcement resources, or in the case of extradition, pay all costs involved.

Hence, commercial bail not only will **not** cost the city dollars, but also in fact, will bring in new revenue through fees, forfeitures, and premium taxes.

Replace Pretrial Services?

There is no intention on the part of the commercial surety bail industry to replace the Philadelphia's current pretrial release system. That would be totally unrealistic and cause a severe dislocation in the court and criminal justice system. But there are cases in which the option of using a commercial surety bond would greatly assist the court. Example: A defendant arrested in Philadelphia often is discovered to have multiple failures to appear, each one for a further offense committed while pending trial for the previous release. With a commercial bond, the bonding agent would have a financial incentive to insure that that defendant makes his first court appearance. Under the current system there is little motivation for the defendant to appear, ever. Such lassitude brings disrespect for the law and the authority of the court.

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While it is a fact that pretrial services aspire to eliminate commercial bail (standard V of the National Association of Pretrial Service Agencies calls for the elimination of commercial bail), the reverse is not true. Pretrial services should be lauded for their work with the indigent, homeless, and the mentally ill, and for defense of defendant's rights. Commercial bail's objections to pretrial services essentially are twofold: (1) pretrial services' demand for the abolition of commercial bail, and (2) bonding out defendants financially capable of purchasing a commercial bail bond.

Where Did Government Funded Pretrial Services (PTS) Come From?

PTS got its start with the bail reform movement in the Sixties. They originally were set up to help the poor person sitting in jail who could not afford bail, namely, indigent first time non violent offenders. Nobody had any argument with this then, nor do they now. But over the past four decades, PTS has expanded in size and mission, and furthermore, has established as one of its goals the nationwide abolition of commercial bail. PTS advocates want to replace the national network of circa 14,000 bail agents (50% of whom are women) and 10,000 staffers with government agencies.

According to the Pretrial Justice Institute, currently there are about 300 PTS operations scattered throughout the US. (There are 3600 counties in the US.). They range in size from hundreds of employees with multimillion-dollar budgets to small part time operations. They cost the public close to $100 million per annum. As large as this is, it is a far cry from aspiration entertained by the early proponents of the bail reform movement who advocated the excision of commercial bail to be exchanged for a PTS program in every jurisdiction. Not only has commercial bail not faded away, it has flourished in all states with the exception of Illinois, Kentucky, Oregon, and Wisconsin. In fact, since 1990, the courts' use of commercial bail bonds almost has doubled.. Nationwide, the number of transactions in commercial bail dwarfs those of pretrial services. Has commercial bail survived due to the cunning of its practitioners? Commercial bail has vigorously contested its right to exist, but there is more behind its success than the wiles of bail bondsmen. The ultimate arbiters of commercial bail's fate are public officials in all three branches of government. And in 46 states they generally agree to one thing about commercial bail: it works. It does what it is designed to do -- get people back to court on time

Objections to Commercial Surety Bail

Bail agents determine who gets out of jail and who does not, and, furthermore, such a third party should not be invested with this type of decision-making authority. That the bail agent makes this call is nonsense. It is the court that makes that decision. The bail agent does not even enter into the picture until the court has deemed the defendant eligible for release pending trial, and has set the bond amount.

Bail agents are accountable to no one. Bail agents sell an insurance product, a bail bond. At a minimum, agents have to meet the state's licensing and continuing education requirements. They have to comply with other regulations pursuant to business and

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professional codes. In addition they have to honor their contractual requirement with the courts and their insurance company on every bond they write. And their insurance companies have to be admitted to practice in each state and meet that state's fiscal requirements and submit quarterly financial statements. They are subject to tax on insurance premiums and exposed to legal liabilities like any other business. If their client skips they have to pay a forfeiture in favor of the state.

The taking of collateral by the bonding agent reduces his incentive to recover an absconder. The effort and legal expense of trying to litigate liquidation of a defendant's collateral to cover the losses of a forfeiture are way out of proportion to the effort required to apprehend the skip. It is so bothersome that the agent often finds it more expedient to accept the loss rather than to recover the collateral. It's much easier to track down a skip, regardless of how bothersome and expensive, than try to cash in the collateral. This argument also fails to consider the equally as important reason for the taking of collateral -- the development of other parties to share the economic concerns for appearance. If a criminal defendant has no one in the community willing to stand by him financially, it perhaps speaks volumes as to the defendant's standing within the community. If no family is willing to do so, often times this is indicative of the defendant's previous failures, which speak to the likelihood of a future failure to appear. A government funded pretrial release program brings neither of these controls to the table.

The vast majority of FTA's are apprehended by law enforcement. This is also an exaggeration. When people abscond, a warrant is issued for their arrest. It is entered into a national criminal justice data base, called the NCIC and administered by the FBI. It is accessible to law enforcement nationwide. The warrant squads of most law enforcement agencies are minimally staffed and the pursuit of skips is a low priority for police. They don't have the resources to chase fugitives. The only place they are likely to re-arrest an absconder is at a random traffic stop or during apprehension for another offense. In the commercial bail industry, due to the existence of a financial incentive for returning the skip to court, apprehension of the absconder is the highest priority for a bondsman. Bail agents return close to 97%-98% of their skips. Evidence suggests fugitives thrive and find safe haven in jurisdictions that have no commercial bail, such as Philadelphia, Chicago, Washington, DC, and Multnomah County, Oregon.

The court surrenders its release power to a private entity. The court "surrenders" no release power to a bail agent. The decision whether a defendant is to be released lies exclusively with the court. The relationship of the bail agent to the court is contractual for a single purpose: that the defendant appears in court. Unacceptable risk is the sole reason a bondsman would refuse to bond out a defendant. The bail agent is under no obligation to assume the risk any more than an insurance company is obliged to write an automobile policy for person with multiple DUI's. PTS says that by refusing to assume such a risk, the bail agent is overriding a judicial order. This is not "fair" according to PTS. This concept of fairness, subjective, free floating and abstract, is without roots in either criminal or civil law.

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Some bonds are so low that a bail agent will not take the trouble to write them thereby forcing the defendant to stay in jail. This opinion is uninformed and reflects the thought -- "It's too much trouble." There is **no** bond so low that a bail agent will not write it. Within the commercial bail industry, examples abound with evidence that small bonds lead to larger bonds. Free market pressures assure that someone will write the small bond in hopes of developing a business relationship for the future.

The commercial bonding system is filled with corruption and opportunities for corruption. In this respect, the bonding community differs little from any other. Corruption is no more prevalent in commercial bail than in any other business or the courts, law enforcement, corrections, and so forth. The solution is not abolition of same, but to clean them up. For the most part commercial bail polices its own. Bondsmen don't cover for their own just because they are bondsmen. They are the first to approach authorities about corrupt colleagues. Commercial bail is competitive. Why allow another bondsman to obtain and or maintain an edge over you in the market through corrupt practices? Opponents also claims that commercial bail is like prostitution -- abuses are intrinsic to system. That is, wherever you find commercial bail, you find corruption. If this were the case, commercial bail would have disappeared decades ago. Neither the public nor public officials would have tolerated a business to operate openly that of its very nature is corrupt. Ironically, where commercial bail is prohibited in favor exclusively of government run pretrial services agencies like in Chicago, Portland, Oregon, and Philadelphia, an illegal bonding variant flourishes in the shadows like prostitution. Loan sharks put up the cash for bail for defendants and their families at exorbitant interest rates.

Criminal justice professionals are unanimous in their belief that commercial bail is an obsolete and antiquated system. This is hardly the case as evinced by the fact that within the judicial systems in 46 states where the use of commercially secured bonds is not only allowed, but the use of commercial bail has doubled since the early 1990's.

Money bail does not work. There is a shred of truth in this claim. If the financial condition of release used is the ten percent deposit bail option, it's true that money bail does not work. Criminals love this method. They get out of jail for one tenth the cost of the bond and there is almost nobody to pursue them. Many criminals, especially those in the illicit drug trade, consider the ten percent bail option just the cost of doing business.

What about the poor? Alexander Hamilton said that when you have liberty you have disparity of wealth. Hence, there are always going to be indigent or poor defendants. Pretrial services were established to handle the truly indigent. Commercial bail also helps the poor, through no interest easy credit terms. And families step up to the plate. Isn't this a burden on families? Of course it is. But name a family that does not willingly bear burdens for loved ones. That's what families are for, be it getting a kid out of trouble, paying orthodontic bills, assuming those backbreaking student loans, or that all time gut wrencher -- co-signing for your kid's first auto loan.

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Isn't bail paying to get out of jail? Though out confinement, a defendant released on bail technically is still in legal custody. The conditions of confinement have changed. A surety bail bond basically is an insurance policy to guarantee the defendant's appearance. It's analogous to having a car insurance policy to exercise the freedom to drive.

The bonding community makes money off the misfortunes of others. In this respect, commercial bonding is little different from physicians, attorneys, mechanics, plumbers, laundries, Merrimaids, and technogeeks. Almost every profession or business is reparative in that it fixes something. And, furthermore, and when you receive such a service, you should not be surprised when you have to pay for it.

Bondmen are low-lifes. There is no doubt that the commercial bonding profession suffers from a poor image problem due unflattering representations in the media, movies, and television. Several decades ago, this image perhaps comported with reality. Today, however, commercial bonding is complex, demanding, and highly professionalized. It employs staffs of attorneys, accountants, insurance specialists, investigators, and IT personnel to track the status of millions of transactions. However, even if it were true that bondsmen were lowlifes, it's irrelevant. Your garbage man might have a degree in comparative literature, but what you want from him is that he cleans up your trash.

But What Does Commercial Bail Bring to the Table?

Bondsmen are a necessary and integral part of the pretrial process. They help the court maintain a social control over the defendant in a manner unknown to PTS bureaucracies. The participation of friends and relatives is vital to both the court and bondsman by providing additional follow-up to insure the defendant's appearance in court.

Local law enforcement is strapped for resources and bondsmen fill the gap by apprehending absconded defendants. Bondsmen also assist the court to resolve mistaken and erroneous court dates. The bonding industry also helps ease the pressures of jail overcrowding by taking responsibility for defendants that the court could otherwise not release.

A judge has an incentive to use a bondsman in that the responsibility for the defendant's release is shared with the bondsman.

Bondsmen deal with the reality as they find it. They do not determine who is arrested or on what charges, they do not create the court or dictate its release policies or set its bonds.

Commercial surety bonds are solvent. Upon the execution of a forfeiture judgment, the bond is vacated with a cash payment made to the state.

Commercial bail has a long history in America. It was an outgrowth of medieval English common law in which a surety guaranteed a defendant's appearance to answer charges.

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It was a natural market driven development. There was a need and private enterprise stepped in to provide the service. Early on in American history, corporations with enough capital and authority to become surety for others served the public interest. They were able to charge a premium for the service. Instead of burdening friends and family, those in need of surety could go to a company specializing in that business. Furthermore, the law provided protection to those for whose benefit the bond was written. Well over a century ago surety bail had become well established and most of the states had enacted statutes allowing public authorities to accept corporate surety bail bonds.

In contrast, the aspiration of the advocates of government run pretrial services to eliminate financial bonding is a concept foreign to American legal tradition. Though touted under the shibboleth of bail reform, pretrial services did not organically develop from within the American system and constitutes a foreign body on the corpus of American law. Perhaps this explains its failure and the lack of adoption by most jurisdictions. In point of fact, PTS has survived because it has gone into the bail bond business itself. Despite aspirations to non financial means of release and sugar-coating the reality with phrases like "least restrictive means of release", PTS uses financial means of release, the most common of which is the ten percent cash deposit bail bond. (By means of this method, the defendant is released from custody after depositing with the court an amount equal to 10% of the bond. If all appearances are made, the court promises to refund the deposit.) But a PTS 10% deposit bond is worthless paper, in effect, a junk bond. In the event of an absconded defendant, the bond cannot be forfeited except pro forma because it has no financial backing. No one has assumed responsibility for the 90% balance of the bond other than the defendant himself and he's gone. That is, nobody pays any penalty. (More seriously, this lapse prejudices the state -- both the defendant and the money are lost.) The bottom line, however, is that PTS ends up running a financial bail bond operation funded by taxpayers, trying to duplicate the private sector equivalent. Furthermore, in many instances, court costs, fines, attorney fees are now routinely being deducted from the funds on deposit, effectively eliminating the promise of a refund made at the outset of the transaction.

New and Hopeful Trend

PTS and commercial bail share the same goals for release pending trial, which is: to release all defendants who are not a threat to public safety nor a flight risk. Competition between the two is wasteful and distracting. And furthermore, it's not necessary.

Over a decade ago, at the request of the judges of Harris County (Houston), the American Bail Coalition teamed up with the Harris County Pretrial Service Agency. Pretrial services supervised the defendants who were then released on a commercial surety bond The result? FTA's were reduced to 2%.

At the annual meeting of the National Association of Pretrial Service Agencies, held last autumn in Charlotte, the number of attendees who reported teaming up with pretrial service agencies had doubled from the previous year. In fact many of the objections to the above referenced BJS study's positive findings on behalf of commercial bail are from

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pretrial services that have teamed up with commercial bail. They don't think that the results give them any credit. (According to the Pretrial Justice Institute's recent survey of pretrial service agencies, 20% of the time they recommend release on commercial surety bonds.) Still, many in the pretrial services community oppose this trend. Almost no one in the commercial surety bail industry does.

Hence, in adopting the commercial surety bail option and integrating it into the current release pending trial practices, Philadelphia, would have a chance not only to enhance the rights of the defendant, but to enhance public safety as well.

*In theory, the Philadelphia court system since 2006 has allowed the use of commercial bail but under conditions which are distinguished by their disincentives for a commercial producer of bail bonds. The two most burdensome requirements are (1) a $250,000 cash deposit, and (2) a cap of $ 1 million penal sum in bonds. Bail insurance is insurance. It is its own deposit. How many property and casualty agents in Philadelphia are required to make a deposit? The $1 million cap provides a profit margin so slim as to hardly justify tying up the $250,000 deposit.

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Statement of Senator Richard J. Durbin
Senate Judiciary Committee Subcommittee on Crime and Drugs
Hearing on "Exploring Federal Solutions to the State and Local Fugitive Crisis"
Tuesday, January 19, 2010 at 9:30 a.m.

Chairman Specter, thank you for holding this hearing on one of the most serious problems with the criminal justice system today- the fact that too few fugitives are brought to justice. Last Congress, I authored legislation along with Vice-President Biden, then the chair of the Senate Crime and Drugs Subcommittee, to improve the identification, apprehension and extradition of felony fugitives. This legislation, called the Fugitive Information Networked Database (FIND) Act, was reported out of the Judiciary Committee in 2008. I look forward to working with the current chair of the Crime and Drugs Subcommittee, Chairman Specter, to pass legislation in this Congress that will address the shortcomings in the justice system's handling of fugitives.

Nationwide, it is estimated that approximately three million warrants are outstanding for the arrest of persons charged with felony crimes. However, those who are the subject of outstanding warrants can often escape justice by crossing state lines. Fewer than half of all outstanding felony warrants have been entered by state and local law enforcement agencies into the FBI's National Crime Information Center (NCIC) database, which is the database that law enforcement agencies check to determine if a person is wanted. And even when fugitives are caught in other states, they may not be prosecuted because of the high cost of extradition.

It endangers us all when fugitives remain at large, as many such fugitives go on to commit additional crimes. In addition, they pose a danger to law enforcement officers who encounter them but have no knowledge of their wanted status. We must ensure that states make complete information about outstanding warrants available to other states so that law enforcement agencies in one state can recognize when a fugitive from another state is in their grasp. We must also take steps to facilitate the extradition of fugitives from one state to another for prosecution.

The federal government must work together with state and local law enforcement to improve the sharing of information about fugitives and to see that they are appropriately brought to justice. I look forward to working with the Chairman, the Administration, and my colleagues on legislation that will achieve this goal.

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STATEMENT OF MARC GAILLARD

Good morning, Senator Specter and distinguished members of this subcommittee.

Thank you for giving me this opportunity to speak with you today on behalf of the Honorable Vivian T. Miller. I am Marc Gaillard, Deputy to the Clerk of Quarter Sessions, Philadelphia County. We understand that we are here to speak with you today about the way the bail process works in Philadelphia County; and particularly our involvement in it. So we will start by explaining the bail process in Philadelphia County.

In order to be released from confinement after being arrested, a surety pays 10% of the bail which is set by the Bail Commissioner at the arraignment. When the bail is posted, the money is placed into a CQS account by an employee of the First Judicial District; the employee also generates a bail acceptance log. The accounts and logs are reconciled and maintained by CQS. Of the 10% collected bail, 30% goes to the city. If defendant complies with all subpoenas and the case is concluded, the surety can apply for a refund for the remaining 70% of the posted bail.

If, over the course of the case, the defendant does not show up for any of his or her court appointments, the judge orders a bench warrant to be issued and the bail "sued out", which means the defendant has 20 days to surrender and receive a new court date. If the defendant does not surrender within 20 days, a judgment for the full amount of the bail is issued against the surety. The surety now owes the City of Philadelphia the remaining 90% of bail which was not collected earlier. There has been a lot of talk in the media that, dating back to 1968, the total amount of this forfeited bail owed the city is $1,000,000,000 ($1B). This is part of the reason why we're all here today.

Before I address how the 90% gets collected, I would like to speak for a little bit on the $1,000,000,000 figure that has been accepted as the amount owed the city.

Before we came here, we prepared a report to show the amount of bail forfeited from last year. In 2009, the amount of the forfeited 90% cash bail was $2.2 million. Over the past few years, the rate of crime and arrests has been relatively high, so one might surmise that the rate of forfeitures is equally high. To generate a high estimate of the amount of forfeited bail owed the city going back to 1968, let us double the number from last year, and assume that the city is owed $5M/year. This gives us an estimate of $205 million for the same time period. A far cry from the $1B figure that has been quoted so freely!!! We strongly caution against any references to $1B until such time as supporting documentation or other proof can be provided to substantiate the claim.

No matter what the actual amount is, we can all agree there is a significant amount of money is owed to the city, and we need to understand how this happened.

From a CQS perspective, once a bench warrant is issued, we have no additional responsibility until the defendant is re-arrested or surrenders. On the date the defendant fails to appear, we mail a "20 day letter" to the surety, advising that if the

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defendant does not surrender within 20 days, the surety will be liable for the entire amount of set bail. After the 20 days, a default judgment is entered against the surety, and the 10% bail posted gets sent to the City.

Since Mrs. Miller's first term, it has never been our responsibility to collect forfeited bail. We simply sent the 10% of the bail which was collected to the city's revenue department. Prior to the inception of the statewide computer system (CPCMS) – installed in 2006 – we did this upon receipt of a judgment letter from First Judicial District; now the court clerks issue the judgments directly into the computer system, and the accounting clerks respond accordingly.

But without getting into the blame game, as a member of the criminal justice system, we are committed to being a part of the solution going forward. However, we realize that a significant percentage of the outstanding funds is uncollectable. Some sureties are dead, imprisoned, or their whereabouts are completely unknown. Also many are without the financial means to satisfy these debts.

These facts notwithstanding, we want to see as much of this money collected as possible for the benefit of the city. We attempted to hire a collection firm previously, but the contract wasn't approved by the law department. We have since been working with the collection firm retained by First Judicial District, and we will continue to provide any needed information or assistance to aid them in this process.

Over the past year, there have been many allegations made about CQS suggesting that we have been remiss in the execution of our duties within the Philadelphia criminal justice system.

This is simply not the case! With limited resources and a workload that constantly increases as we continue to take on functions previously performed by other criminal justice partners, we remain committed to the City of Philadelphia.

In these tough economic times we have resolved to work as efficiently as possible. We have conducted a thorough analysis of the processes executed by our Accounting, Bail and Costs & Fines units to determine if there is room for improvement. The exercise has uncovered some areas for improvement; for example, we will be adjusting the way bail refunds are processed so that some 5 – 25 work hrs of effort will be saved on a daily basis. These hours can be redirected to other pressing needs within the office. A similar exercise analyzing our court clerk and filing operations is underway.

We want to be a part of the solution to the problems Philadelphia's criminal justice system is experiencing, and not the scapegoat. We look forward to sitting at the table with our partners in the system to devise the right solutions.

Thank you again, Senator, for the invitation to this hearing, and for your commitment to the people of Philadelphia. Have a good day.

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Department of Justice

STATEMENT OF

JOHN PATRIGNANI
ACTING UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BEFORE THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND DRUGS
UNITED STATES SENATE

ENTITLED

"EXPLORING FEDERAL SOLUTIONS TO THE STATE AND LOCAL FUGITIVE CRISIS"

PRESENTED

JANUARY 19, 2010

JOHN PATRIGNANI
ACTING UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF PENNSYLVANIA
Before the U.S. Senate Judiciary Subcommittee on Crime and Drugs
January 19, 2010

Good morning, Chairman Specter and Members of the Subcommittee. My name is John Patrignani, Acting U.S. Marshal for the Eastern District of Pennsylvania (E/PA). I am pleased to appear before you today as a representative of the United States Marshals Service (USMS) to discuss the issue of fugitive apprehension and what can be done by the Marshals Service to assist in the apprehension and extradition of dangerous state and local fugitive felons.

As you know, the Marshals Service has a long and rich history, with fugitive apprehension as one of its core missions. The Marshals Service is charged with assisting state and local law enforcement in apprehending their most violent felons and is responsible for tracking down and apprehending individuals wanted for federal parole and probation violations and for escaping from federal prison. In 2006, Congress gave the Marshals Service the added responsibility of investigating sex offender registration violations, apprehending non-compliant sex offenders, and assisting state and local jurisdictions in their investigations of fugitive sexual predators under the Adam Walsh Child Protection and Safety Act.

The success of the Marshals Service's fugitive apprehension program is unmatched in federal law enforcement. In FY 2009, the USMS arrested more than 127,200 felony fugitives, including over 90,800 state and local fugitives, and apprehended more than 10,000 sex offenders as mandated by the Adam Walsh Act. In the Commonwealth of Pennsylvania, the USMS and its state and local partners arrested more than 3,700 fugitives during FY 2009, including over 1,500 in the Eastern District alone. We expect these statistics to be surpassed in this fiscal year.

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The USMS is the Federal Government's primary agency for conducting fugitive investigations. It is also the most successful, and the bulk of that success results from the Agency's vast and well-developed network of both district-based and regional fugitive task forces, supplemented by our international investigative capabilities. Partnerships with federal, state, local, and international agencies provide the knowledge, resources, and expertise necessary to take the "worst of the worst" fugitives off the streets and help make our communities safer.

USMS Fugitive Task Forces

The Marshals Service's network of district, regional, and international criminal investigators provides the critical element in a successful fugitive investigation, since these cases rarely involve just one jurisdiction, agency, or department. This network provides a "force multiplier" effect that lets criminals know that they can run, they can hide, but the U.S. Marshals will track them down.

The U.S. Marshals lead seven Regional Fugitive Task Forces (RFTFs) and 75 district fugitive task forces that support state and local investigative efforts in apprehending violent felony fugitives. The task forces combine the efforts of federal, state and local law enforcement agencies to locate and arrest the most dangerous fugitives. In addition to multi-jurisdictional investigative guidance and expertise, the USMS provides its law enforcement partners with overtime compensation, equipment, vehicles, technical assistance, financial and electronic surveillance, international investigative support and capability, and training that would not otherwise be available to them. In all, 39 federal and 793 state and local agencies participate in the RFTFs and district task forces.

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Coordination with state and local law enforcement is essential to the success of the task forces. In FY 2009, 90,806 of the USMS' 127,200 fugitive arrests (71%) were state or local fugitives. Of those 127,200 fugitives arrested, there were 10,019 sex offenders, 3,628 homicide suspects, and 3,664 gang members. The task forces have significantly enhanced the fugitive apprehension program of the U.S. Marshals and created an investigative network that crosses the globe, resulting in fewer safe havens for violent felons.

In the E/PA, the Violent Crimes Fugitive Task Force (VCFTF) leads the hunt for fugitives. The VCFTF was established in 1983 and was the first USMS task force of its kind. Originally intended as a six-month endeavor, the VCFTF was so successful in finding and arresting violent criminals that its mission was extended, and it became the model for all other USMS-led fugitive apprehension task forces. Using resources and management coordination supplied by the Marshals Service, the VCFTF focuses on apprehending federal, state, and local felony fugitives wanted for violent criminal offenses. Over the past 27 years, more than 30 federal, state, and local law enforcement agencies have participated in the VCFTF's operations; currently there are four federal and five state and local agency partners. The VCFTF has arrested over 23,400 fugitive felons since its inception.

The individuals arrested by the Task Force frequently are among the participating agencies' "Most Wanted" fugitives. In FY 2009, the E/PA arrested over 1,500 fugitives, including 114 sex offenders, five gang members, and 93 persons wanted for homicide. Investigators also seized 26 firearms, over $23,800 in U.S. currency, and nearly a kilogram of narcotics.

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Fugitive Apprehension and Extradition

By definition and nature, fugitives are mobile and opportunistic, preying on innocent citizens by committing crimes against persons and property. Fugitives are as diverse as our society - transcending gender, ethnicity, religion, age, background, and every other demographic parameter. They are highly recidivist criminals and frequently finance their continued flight from justice by robbing, stealing, and defrauding the public and by selling controlled substances. Unable to hold down jobs and live normal, productive lives, fugitives support their existence through the commission of additional crimes, leaving more victims in their wake. Among the more than 127,200 fugitives apprehended by the USMS in FY 2009, most averaged more than four prior arrests each – for crimes like assault, robbery, narcotics possession, or weapons offenses.

The Marshals Service's mandate under both the Presidential Threat Protection Act and the Adam Walsh Act is to provide assistance to state and local law enforcement agencies in the apprehension of their dangerous fugitive felons and non-compliant sex offenders, and this is a mandate that the Agency takes very seriously. In addition to the investigative assistance that the USMS provides in locating and arresting violent fugitives, the task forces also provide their state and local law enforcement partners with electronic, air, and financial surveillance resources, training, equipment, overtime, and assistance in transportation and extraditions of fugitives from outside their local jurisdictions. Extradition assistance is particularly important to our state and local partners because not all of them are financially able to extradite the fugitives who are located and arrested outside their jurisdiction, thus limiting the geographic scope of enforcing felony warrants. Unfortunately, we have learned anecdotally from our state and local partners that this is not an unusual problem.

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Operation FALCON

In June 2009, the United States Marshals Service partnered with thousands of law enforcement officers from hundreds of federal, state, and local agencies to engage in a record-breaking operation named Operation FALCON 2009 (Federal And Local Cops Organized Nationally). This initiative represented the sixth effort in a continuing series of historically successful national fugitive apprehension missions, which have resulted in the collective capture of more than 91,000 dangerous fugitive felons.

As in prior operations, an emphasis was placed on the apprehension of violent criminals, gang members, and sexual offenders. During Operation FALCON 2009, the Marshals Service and its federal, state, and local law enforcement partners arrested 35,190 fugitives, including 433 persons wanted for homicide, 900 gang members, and 2,356 sexual offenders. FALCON investigators also seized 582 weapons, approximately 2,232.816 kilograms of assorted narcotics, and more than $342,100 in U.S. currency.

In the E/PA, Deputy U.S. Marshals teamed with their federal, state and local law enforcement partners to arrest 333 fugitives, including four persons wanted for homicide and 23 sexual offenders over the course of the operation. In addition to the arrests, investigators seized five firearms, $5,000 in cash, and a quantity of narcotics.

An example of the success of the interagency cooperation during Operation FALCON 2009 in the E/PA is the arrests of Lawrence Peel and Dwayne Robinson. On June 13, 2009, Philadelphia Police Officers Ashley Hoggard and Michael Alexander were on patrol when they heard numerous gunshots. They observed a large crowd in front of a bar near their location. The officers exited their vehicle, and as they were responding to the area, several more shots were fired. Officer Hoggard was struck in the left side of the chest and was transported to Temple

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University Hospital where he was admitted in stable condition. Three other individuals in the area were also struck by the gunfire. All were transported to a local hospital and survived their injuries. On June 13, the VCFTF was asked by the Philadelphia Police Department to assist in the apprehension of Lawrence Peel, who was wanted for the domestic abuse of his ex-girlfriend and was also a suspect in the shooting of Officer Hoggard. Peel has an arrest record that goes back 10 years. Investigators learned of a possible location for Peel and responded to the residence, where they arrested Peel on June 16. After Peel's arrest, the VCFTF continued its investigation of the June 13 bar shooting and determined that Dwayne Robinson was also involved. Task Force officers subsequently arrested Robinson on June 17 for his role in the bar shooting. Both Peel and Robinson have been charged with attempted murder, aggravated assault, and weapons offenses related to the June 13 shootings.

Asset Forfeiture

The U.S. Marshals Service administers the Department of Justice's Asset Forfeiture Program by managing and disposing of properties seized and forfeited by federal law enforcement agencies and U.S. Attorneys nationwide. The proceeds from the sale of forfeited assets are deposited into the Asset Forfeiture Fund (AFF) and subsequently used to further law enforcement initiatives. Under the Equitable Sharing Program, the USMS shares these proceeds with the state and local law enforcement agencies based upon their involvement in law enforcement actions that led to the forfeiture of the assets. This sharing of resources fosters increased cooperation between federal, state, and local law enforcement agencies, and provides additional resources to the participating state and local agencies.

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The USMS shared nearly $432 million with state and local law enforcement agencies nationwide in FY 2009; Pennsylvania received over $12 million, including more than $7.5 million here in the Eastern District. In FY 2009, and thus far in FY 2010, the USMS has received $26 million in asset forfeiture funds to pay overtime costs for state and local task force personnel. Additionally, the USMS used $31.6 million from the AFF in FY 2009 to purchase and equip 587 vehicles for use by our state and local law enforcement partners.

Fugitive Safe Surrender

Another tool in the fight against crime is the Fugitive Safe Surrender program. Authorized under the Adam Walsh Act, Fugitive Safe Surrender (FSS) is a creative, non-violent and highly-successful approach to fugitive apprehension. The goal is to reduce the risk to law enforcement officers who pursue fugitives, to the neighborhoods in which they hide, and to the fugitives themselves. This program does not provide amnesty; instead, it encourages persons wanted for non-violent felony or misdemeanor crimes to voluntarily surrender in a faith-based or other neutral setting. Partnering with state and local law enforcement, the judiciary, and the religious community, the USMS has undertaken a total of 17 successful FSS operations, including three in the Commonwealth of Pennsylvania. The first FSS was conducted in Philadelphia from September 17-20, 2008, and during this time, 1,248 individuals surrendered. The second FSS took place in Harrisburg from June 10-13, 2009, and 1,282 people surrendered. The latest FSS took place in Chester from September 30-October 3, 2009, during which time 447 individuals self-surrendered. Since the program's inception in 2005, more than 25,000 fugitives across the country have taken advantage of the Fugitive Safe Surrender initiative.

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Entry of Warrants into NCIC

The USMS is in a unique position with regard to the entry of warrants into the National Crime Information Center (NCIC), since it serves as the national repository of all federal arrest warrants that have been issued by United States District Courts and the United States Parole Commission. The Marshals Service has statutory responsibility for the apprehension of escaped federal prisoners, bail jumpers, parole violators, probation violators, and non-compliant sex offenders. The USMS also has apprehension authority for fugitives wanted by other Federal agencies, such as the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The USMS maintains nearly 30,000 wanted person records in the NCIC – more records than any other federal agency. NCIC policy mandates that federal agencies enter these records within 24 hours after receipt of the arrest warrant. Since the majority of violent offenders originate from state and local jurisdictions, the USMS encourages a similar expediency for state and local agencies who participate in our task forces.

Conclusion

Cooperation and coordination with our federal, state and local law enforcement partners is of the utmost importance to the U.S. Marshals. Quite simply, they need us and we need them. Through the expansive network of the task forces and fugitive round-ups such as Operation FALCON, the USMS has proved the efficacy of the cooperative law enforcement model, which seeks to multiply the positive impact of law enforcement at all jurisdictional levels.

Thank you for the opportunity to appear before the subcommittee. I am happy to answer any questions you may have.

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David V. Preski
Chief
Pretrial Service Division
First Judicial District of Pennsylvania
1401 Arch Street – Suite 1005
Philadelphia, PA 19102

My name is David Preski and I am currently the Chief of the Pretrial Service Division of the First Judicial District of Pennsylvania. Accompanying me is Thomas Press the Commanding Officer of the Warrant Unit.

The First Judicial District of Pennsylvania, through it Pretrial Service Division, operates a full service Agency. The agency is responsible for many of the components from arrest to adjudication, within the Criminal Justice process. The agency acts as the informational gatekeeper for all arrested and charged individuals and is responsible for the monitoring, supervision and enforcement of released individuals and the arrest and apprehension of wanted individuals.

The Warrant Unit is responsible for the enforcement of all adult Criminal Bench Warrants and Adult Probation and Parole Violation Warrants for the First Judicial District. Additionally, the Unit is responsible for the enforcement of Traffic Court Warrants and Domestic Relations Warrants related to Child Support and Custody.

The Unit is presently comprised of 52 armed field personnel and approximately 20 full and part time administrative staff. The Unit operates 24 hours a day, seven days a week, including holidays, to complete fugitive investigations for the arrest of individuals wanted on Bench Warrants, Probation and Parole Violations, Traffic Court and Domestic Relations Warrants. Administrative staff process correspondence from Law Enforcement Agencies and Departments throughout the Commonwealth in conjunction with the Commonwealth Law Enforcement Assistance Network (CLEAN) in order to confirm the validity of Criminal Warrants for individuals detained in other jurisdictions. Warrant Unit Investigative personnel are dispatched to accept custody of confirmed fugitives who are not being held on any other Criminal charges and return them to Philadelphia. The Warrant Unit also has a major role in the FJD House Arrest program from the initial investigation, field installation and equipment maintenance to the arrest of violators. The Unit also maintains an office at the Criminal Justice Center to facilitate individuals who surrender on Criminal Bench Warrants.

During calendar year 2009, the Unit was responsible for the arrest of 6,300 individuals wanted on 10,787 Warrants. Additionally, through its surrender process, the Unit processed 17,381 cases; returning them to the active inventory.

The Warrant Unit has established excellent working relationships with Local, State and Federal Law Enforcement Partners including but not limited to: the Philadelphia Police Department, U. S. Marshal's Service and the FBI. The Unit has participated in various arrest sweeps such as: Operation Falcon, Operation Pressure Point and Fugitive Safe Surrender.

The ultimate mission of the Warrant Unit is to reduce the Warrant inventory and to maintain the integrity of the Judicial Process. Given adequate resources and personnel, the Unit will strive to reduce the current outstanding Bench Warrant catalog.

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Department of Justice

STATEMENT OF

ROY G. WEISE
SENIOR ADVISOR
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME AND DRUGS
UNITED STATES SENATE

ENTITLED

"EXPLORING FEDERAL SOLUTIONS TO THE STATE AND LOCAL FUGITIVE CRISIS"

PRESENTED

JANUARY 19, 2010

Statement of Roy G. Weise
Senior Advisor, Criminal Justice Information Services Division
Federal Bureau of Investigation

Before the Senate Judiciary Subcommittee on Crime and Drugs
January 19, 2010

Good morning Senator Specter and distinguished Members of the Subcommittee on Crime and Drugs. I am Roy G. Weise, Senior Advisor in the FBI's Criminal Justice Information Services Division, or CJIS, located in Clarksburg, West Virginia, and I thank you for this opportunity. The CJIS Division maintains oversight of 5 major programs including the National Crime Information Center, more commonly known as NCIC.

NCIC is a computerized index of documented criminal justice information available to criminal justice agencies nationwide. The information maintained in NCIC assists authorized users in apprehending fugitives, locating missing persons, recovering stolen property, and identifying terrorists. In addition, information contained in NCIC assists law enforcement officers in performing their official duties more safely and provides them with information necessary to aid in protecting the general public.

NCIC operates under a shared management concept. This means the FBI serves as the custodian of the records housed in NCIC and maintains the operational availability of the system. The entry, modification, and removal of records are the responsibility of the law enforcement agency that holds the arrest warrant.

In January 1967 when NCIC became operational, it included 5 files, which contained 356,784 records. In its first year of operation, NCIC processed approximately 2.4 million transactions, or an average of 5,479 transactions daily. Last year NCIC processed 2.4 billion transactions. Recently, NCIC experienced a new one day record of 8.6 million transactions. Presently, NCIC contains 19 files with over 15 million records, of which nearly 1.7 million are in the wanted person file. NCIC services more than 90,000 user agencies and averages 7.5 million transactions per day.

Although there are no mandates that require the entry of warrants into NCIC, law enforcement personnel rely greatly upon the use of the system as is apparent with the dramatic increase in transactions over the past 43 years. Even though participation in NCIC is voluntary, except for the entry of juvenile missing person records, once a record is entered into the system, the record must be maintained following the rules and regulations decided upon by the users through the CJIS Advisory Process. These policies, which include timely entry/timely removal, validation, second party checks, and hit confirmation, support the data quality and integrity of the system. The FBI's CJIS Audit Unit conducts compliance audits of the law enforcement and criminal justice community to ensure users comply with NCIC, III, and CJIS policies and procedures. Likewise, states are required to perform audits of all of their constituent agencies.

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At CJIS, we are actively engaged with the user community in promoting the use of the system and its benefits. This is accomplished by daily interaction – whether by phone, video teleconference, or e-mail; attendance at meetings and seminars; and via the CJIS Advisory Process. In fact, in 2007 the CJIS Advisory Policy Board convened a warrant task force to address many outstanding warrant related topics. The task force is comprised of a panel of subject matter experts who understand and place special emphasis on the importance of wanted person file record entry by state and local law enforcement.

Throughout my travels, I am constantly reminded by law enforcement how vital NCIC is in the performance of their official duties. Some have called it their lifeline, and the volume of transactions bears that out.

Thank you for the opportunity to address the Subcommittee on this issue, and I look forward to answering any questions you may have.

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EXPLORING FEDERAL SOLUTIONS TO THE STATE AND LOCAL FUGITIVE CRISIS

Testimony of R. Seth Williams
District Attorney of Philadelphia
January 9, 2010
U.S. Senate Judiciary Subcommittee on Crime and Drugs
Philadelphia, PA

Good morning Chairman Specter, my name is Seth Williams, and I am the newly elected District Attorney of Philadelphia. I very much appreciate the interest you have taken in the problems of Philadelphia's criminal justice system. As you know, I was sworn into office on January 4, 2010, and I have vowed to reform what I see as a broken system. Among the most important challenges we face are increasing our conviction rate and ending the fugitive crisis.

In order to achieve these goals and to make Philadelphia safer, it is critical that those of us in all levels of government – local, state and federal – collaborate together. Your hearings, Senator Specter, are bringing us all together to discuss possible solutions in a candid, respectful manner.

I thank you for your leadership and very much look forward to working with you as we begin to reform the system and make our neighborhoods safer.

You have asked me to talk this morning about the fugitive crisis here in Philadelphia. You are absolutely right, Senator Specter, this is a crisis. Together, we must make a series of changes to ensure that the criminals that fail to show up for court are apprehended and held accountable for their criminal acts. Consider the following statistics, which reveal a broken system:

- The number of outstanding warrants in Philadelphia is nearly 50,000, and there are nearly 40,000 individual fugitives.
- Each year, about 1 out of every 3 defendants fails to show up for at least one court hearing.
- There are barely more than 50 court officers to catch these fugitives.
- Among the nation's largest counties, Philadelphia ties for the highest felony fugitive rate.
- Philadelphia courts issue approximately 25,000 bench warrants each year for criminal defendants who do not show up for court.
- Over the last 30 years, fugitives owe the city $1 billion in forfeited bail.

The primary reason we have so many fugitives walking our streets is that our bail system in Philadelphia is broken. Our bail system neither assures the presence of defendants at court nor makes them subject to the financial penalties for skipping out on bail.

As you know Chairman Specter, bail affords our courts the ability to release defendants after they are charged with certain crimes by allowing payment of a sum of money in exchange for the release of that person as a guarantee of his or her appearance at trial. In Philadelphia, eligible defendants are released on bail when just 10% of the total bail amount is paid. Whoever pays that amount is – in theory – on the hook for the remaining 90% of the full bail amount should the defendant not appear at trial.

A properly functioning bail system helps to ensure the defendant's presence at trial in two ways: 1) by providing for the apprehension of the defendant if he or she does not appear

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in court; and 2) by providing for the forfeiture of the full bail amount should the defendant flee.

In Philadelphia, neither of these two assurances exists. Instead, criminals are well aware of the unfortunate and very dangerous reality that 1) if they fail to show up to court, they will very likely not be apprehended; and 2) whoever put up the initial 10% will almost never be held accountable for the remaining 90% of the bail money. In short, the reality is that criminals are incentivized to skip court because there are no consequences when they do so.

The problem we face with our bail system is not a failure of policy. There is some logic to requiring only a small portion of the full bail amount to be paid. But the failure lies with the implementation of this policy because there are few financial or criminal consequences for defendants who fail to show up. The statistics I cited at the beginning of my testimony prove this point.

It is no wonder why many crime victims in Philadelphia have little confidence in our criminal justice system. Imagine the shock, disappointment and anger a crime victim must feel when the person who victimized him or her fails to appear in court, roams the street freely, and never faces any meaningful consequence for flouting the system yet again. Our victims expect defendants to show up in court. So do I, and I know, Mr. Chairman, you do as well.

Professor John Goldkamp of Temple University describes this problem best:

> The harm done by the billion-dollar fugitive caseload is serious. Many of these are defendants who flagrantly disregard the authority of the judicial system and do damage to the reputation of our system's presumption of innocence. They return to the streets to continue to prey upon the neighborhoods they were removed from. They contribute mightily to citizens' perceptions that serious offenders can scoff at the system and continue doing whatever they were doing before they were arrested.

This is not, as some have said, a problem that all big cities face. In fact, data from the Department of Justice shows that other many other urban areas have far lower felony fugitive rates: Dallas (2%); Los Angeles (3%); Cook County (4%), and Bronx (5%).

There is no magic bullet to solving the fugitive crisis. We are, however, taking important steps toward reform by the fact that we are here today identifying the problems and discussing potential solutions is a critical first step. To fix this problem, we will have to work together on all levels – local, state and federal -- to explore new innovative ideas, better support preexisting programs and policies and identify appropriate sources of funding. I look forward to working with you, as partners in this important endeavor.

How do we address the crisis? We need to look at ideas that do one of two things: 1) provide for the apprehension of fugitives; or 2) increase the likelihood that the person who has put down 10% bail will be liable for the remaining 90% of the full bail should

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the defendant fail to appear in court. To these ends, I would like to offer a few ideas that I believe warrant further exploration and consideration:

- Increase Safe Surrender Programs
  - Fugitive Safe Surrender encourages those wanted for non-violent felony or misdemeanor crimes to voluntarily surrender to the law in a faith-based or other neutral setting. It has operated in more than 15 jurisdictions, including Philadelphia. In September, 2008, more than 1,200 individuals with outstanding warrants turned themselves in at the Philadelphia True Gospel Tabernacle Church of God in Christ.

  - This operation was an effective inter-agency collaboration with my criminal justice colleagues in Philadelphia. Additionally, Safe Surrender would not have been possible without your guidance Chairman Specter. This successful story reminds us that in order to encourage fugitives to turn themselves in, they must trust that the criminal justice system will treat them fairly. The media campaign that was used to bring in fugitives to the Tabernacle Church during those four exciting days need not stop because the four days of the Philadelphia-Safe Surrender as supervised by the U.S Marshall ended. It is important that we continuously educate the public about where they can surrender themselves or someone else they know if there is a warrant out for their arrest.

- Have Appropriate Public or Private Entity Go After Uncollected Forfeited Bail
  - We have $1 billion in uncollected forfeited bail. I know full well that much of this money is uncollectible. Many of the defendants who forfeited the money and their families simply have no money. But at the same time the message is clear to criminals: there are no financial consequences if you skip out on bail. We must change this perception. Criminals need to now that if they skip bail, we will go after the full bail amount that can be collected. We can no longer allow valid, collectable judgments for substantial sums of money go unenforced.

  - It is not always the severity of punishment that deters crime but rather the swiftness and certainty of punishment that deters future criminal conduct. This logic applies to the fugitive crisis: if fugitives know that any time they fail to show to court, someone may be on his way to collect the available forfeited bail, then I believe criminals will get the message that there are consequences for failing to appear in court. If we commit ourselves to collecting forfeited bail money in the appropriate circumstances, this will deter defendants from becoming fugitives.

  - Additionally, we will bring in much needed money to the criminal justice system. To successfully expedite collections, an appropriate public or private entity should be tasked with collecting forfeited bail money, a portion of which the entity would keep. This will also bring needed money

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into the city.

- Effectively Carry Out Financial Background Checks of Those Who Put Up Bail Money
    - In many cases, the defendant puts up the bail money. In other cases, it is a family member or friend who has paid. There is no review of the person's financial resources. This does not make sense, and it is detrimental to the community at large. If we know the person can never pay the forfeited amount of bail, that person should never be permitted to offer bail in the first place. When someone buys a car or house or takes out even a small loan, that person's credit is checked. Unfortunately, no such due diligence occurs for anyone putting up bail. That makes no sense. We need to consider requiring some basic review of a person's financial suitability.

- Focus Our Efforts on the Most Dangerous Fugitives
    - We have to be smart on crime by targeting our resources on the most dangerous fugitives. We simply do not have the resources to focus on each and every single outstanding warrant. I have already spoken about building community trust when I spoke about Safe Surrender and the importance of educating the public. The most dangerous egregious offenses take up only 2 percent of the crimes convicted but they are the highest risk to the community, particularly as a fugitive. We need to find more effective ways of better identifying which defendants are high risk so that that if they do become fugitives we can take more proactive steps to finding this dangerous individual.

    - I believe that by receiving technical assistance and by working with national experts we can identify which fugitives pose the greatest risk to the community. I hope that we can work together, Chairman Specter, to identify some of these experts and others who can provide us technical assistance.

- Better Monitoring of Defendants Out on Bail
    - Technological advances, such as electronic monitoring and GPS devices, allow law enforcement to track the whereabouts of certain defendants, sometimes on a real time basis. We should consider investing in more electronic monitoring and GPS devices so that conditions of bail can increasingly require that the most high risk defendants wear such a device. Fugitives wearing these devices can typically be tracked down.

- Abolish the Office of the Clerk Of Quarter Sessions
    - This office is responsible for collecting bail and overseeing bail forfeitures. It has not done so effectively, and it is time to shift the bail functions to the courts in a way that will modernize and streamline the process. It simply makes no sense to retain an office that contributes to the fugitive crisis instead of alleviating it.

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- Increase Resources to Law Enforcement
  - We need more officers going after the known and high risk fugitives. Currently about 50 officers lead this endeavor, but each officer has an average of over 900 cases at a given time. Additional resources, more information sharing, and additional task forces will allow us to expedite more searches for dangerous perpetrators.

  - I also want to endorse legislation from last session, S. 3136 (FIND Act) and S. 3143 (Capture Arrest and Transport Charged Fugitives Act), which would provide financial incentives to States to enter new and outstanding felony warrants into the National Crime Information Center (NCIC) database by authorizing grants to State and local agencies to upgrade their warrant databases. These are precisely the kind of incentives we need to upgrade our systems to be able to capture more fugitives, especially those that cross state lines.

- Secure Funding
  - To make any of the changes described above, we will need to secure appropriate funding. I know that budgets are tight, and we are all scaling back as we weather the economic crisis. But I hope that as we discuss these initiatives we think of them as investments that will ultimately give the city a much needed return. I am certain that we can work together to find the necessary funding and ultimately achieve our mutual goals.

Chairman Specter, thank you for the opportunity to appear before you today. This is an important hearing. I hope that this is the first of many opportunities we have to work together. I hope that going forward we can freely exchange our ideas and suggestions and determine the best and most efficient ways of addressing and eliminating our fugitive crisis in Philadelphia.

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